

A PHYSICIAN'S GUIDE TO PROTECTING CHILD ABUSE PATIENTS' CONFIDENTIALITY

The clinician's role in promoting socially responsible media coverage of child abuse



Manila, Philippines, 1998

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LETTER FROM THE HEAD OF THE CHILD PROTECTION UNIT

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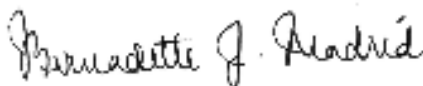
Dear Colleagues:

The media has a vital role in raising public awareness about child abuse and neglect in our society. Through television, radio and newspapers, journalists educate our communities and, thus, advance the early detection and prevention of child maltreatment.

The potential for cooperation between the medical and media professions is enormous. As partners in the fight against child abuse, pediatricians, media and other professionals must maintain at all times a spirit of collaboration and respect towards one another. All of us have an obligation to protect abused children from the re-traumatization that results from undue and sensationalized publicity, improper medical care, and insensitive investigative techniques.

In cases of child sexual abuse, the laws clearly state that a child's confidentiality is absolute and inviolable. In cases of physical abuse and neglect, existing laws, Supreme Court rulings and other ethical and legal documents give guidance on how to balance a child's need for confidentiality with the collective hope that the media may be used as a powerful tool for raising awareness and combating abuse and neglect in our society.

A Physicians' Guide to Protecting Child Abuse Patients' Confidentiality aims to help clinicians navigate these complicated issues. We hope that you find it informative and balanced, and we welcome your comments for future publications.



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MEDICAL BASIS FOR CONFIDENTIALITY

The mass media is a powerful tool for public education concerning child abuse and neglect. To ensure the continuum of care necessary for abused children, however, physicians must protect the privacy, dignity and self-respect of these traumatized patients. A case history from the Philippine General Hospital Child Protection Unit (PGH-CPU) demonstrates the medical rationale for maintaining child abuse patients' confidentiality.

A publicized interview jeopardizes a patient's health and safety

In 1997, an adult male neighbor raped "Maricel," a ten-year-old honor student from Makati. Evaluated and cared for by CPU physicians, Maricel had sustained minor physical injuries but serious psychological injuries. She entered psychotherapy with a CPU child psychiatrist to deal with post-traumatic stress disorder as well as extreme anxiety and a global fear of men.

After being bullied into a media interview that the reporter claimed would be "cathartic," Maricel discovered that her name and the details of the assault became public knowledge. Although she had been making progress in therapy, suddenly Maricel became depressed. "Hindi ko na mabubura," she said. "Now that everyone knows everything I can never erase what happened."

At age ten, Maricel could not have anticipated the consequences of a televised interview. Her classmates teased and taunted her so harshly that she refused to go to school. Finally, her entire family moved to a new neighborhood. Unfortunately, continuing media coverage of Maricel's case permitted the alleged perpetrator to locate her. After he made threats on Maricel's life through her new principal, Maricel developed a paralyzing fear of school and ceased attending classes.

Mandatory case reporting is an exception to the confidentiality rule

Clinicians' mandatory reporting of known or suspected child abuse cases to designated government authorities (pursuant to Republic Act 7610) overrides physician-patient confidentiality. Except when fulfilling this reporting duty and discussing case management with other direct service providers, clinicians must maintain absolute confidentiality of the patient's identity and medical record.

OF CHILD ABUSE PATIENTS' IDENTITIES

Under the Hippocratic Oath, physicians' primary responsibility is to protect and care for their patients. Although physicians should help the media fulfill its role in educating the public about child abuse, when media coverage threatens a patient's physical or mental health, physicians must intervene. In cases of abuse and neglect, the threshold for clinician intervention is especially low because of the child's vulnerability.

Medical rationale for limiting media interaction with abused children

“As research indicates, these youngsters often feel powerless as a result of their initial trauma and lose trust in the world and in their own sense of control. They may be affectively blunted, depressed, or disassociated so they have difficulty relating to the emotional demands of a media encounter.”

“Health professionals who are entrusted with the care of young victims should protect the interests of these children and their families so as not to lead their young patients inadvertently into yet another traumatic experience that is likely to impede their long-term psychological recovery.”

Source: Dr. Judith A. Libow, Ph.D. “Traumatized Children and the News Media: Clinical Considerations.” *American Journal of Orthopsychiatry*. July 1992.

Managing media interaction with abused children

By managing media interaction with the abused child, physicians aim to:

- Ensure the safety of the child and his/her family from the perpetrator or other hostile persons (by protecting the child's identity, for example)
- Safeguard the child's psychotherapeutic, recovery, and rehabilitation processes from derailment
- Prevent release of misinformation that may jeopardize a police investigation, a court trial, or a child's life
- Advocate media coverage that empowers rather than traumatizes the child victim and his/her family

PHILIPPINE LAW PROTECTS ABUSED

In accordance with the medical rationale for protecting abused and exploited children from further trauma and public stigmatization, Philippine law codifies the sanctity of the child patient's identity and official records. The laws cited verbatim below explicitly prohibit sensationalized publicity that may humiliate or traumatize the child patient and his or her family.

REPUBLIC ACT 7610, SECTION 29. PROTECTING CONFIDENTIALITY

“At the instance of the offended party, his name may be withheld from the public, until the court acquires jurisdiction over the case.

It shall be unlawful for any editor, publisher, and reporter or columnist in case of printed materials, announcer or producer in case of television and radio broadcasting, producer and director of the film in case of the movie industry, to cause undue and sensationalized publicity of any case of violation of this [Special Protection of Children Against Abuse, Exploitation and Discrimination] Act which results in the moral degradation or suffering of the offended party.”

PRESIDENTIAL DECREE 603: CHILD WELFARE CODE, ARTICLE 166

“In cases of sexual abuse, the records pertaining to the case shall be kept strictly confidential and no information thereto shall be disclosed except in connection with any court or official proceeding based on such report. Any person disclosing confidential information in violation of this provision shall be punished by...fine and imprisonment, at the discretion of the court.”

CHILDREN FROM RETRAUMATIZATION

The freedom of the press is one of the fundamental underpinnings of a free and democratic society. Although the Supreme Court considers it a duty to be vigilant against all attempts to violate an independent press and the free expression of ideas, it nevertheless has limited these freedoms in rulings that are relevant to the protection of the interests of abused children and their families.

SUPREME COURT RULINGS: BALANCING BASIC FREEDOMS

- “The freedom of expression is not an absolute. It would be too much to insist that at all times and under all circumstances it should remain unfettered and unrestrained. There are other societal values that press for recognition.” *Gonzales and Cabiago v. Comelec*, 35 SCRA 28
- “The ‘clear and present danger rule,’ as a limitation on freedom of expression is justified by the danger or evil of a substantive character that the state has a right to prevent.”
Gonzales and Cabiago v. Comelec, 35 SCRA 28
- “The law has recognized the right to privacy. The publication of a photograph of a private person without his sanction is a violation of this right.” *Peay v. Curtis Pub. Co. et al.*, 78 F. Supp. 305
- “The enjoyment of a private reputation is as much a constitutional right as the possession of life, liberty, or property. It is one of those rights necessary to human society and underlies the whole scheme of civilization and stable government.” *Perfecto v. Contreras*, 28 Phil. 538

Recognizing the unique vulnerability of children in our society, the Philippines ratified the United Nations Convention on the Rights of the Child in 1990. This agreement obligates all signatory nations to provide special protection to abused and traumatized children and outlines the following principles for media interaction with children.

UNITED NATIONS CONVENTION ON THE RIGHTS OF THE CHILD

- *Article 3*: In all actions concerning children...the best interests of the child shall be a primary consideration.
- *Article 16*: No child shall be subjected to arbitrary or unlawful interference with his or her privacy, family, home or correspondence, nor to unlawful attacks on his or her honour or reputation.
- *Article 39*: State parties shall take all appropriate measures to promote physical and psychological recovery and social integration of a child victim of: any form of neglect, exploitation or abuse...Such recovery and reintegration shall take place in *an environment which fosters the health, self respect, and dignity of the child.*

SOCIALLY RESPONSIBLE MEDIA

In recent years, many Philippine media practitioners have seen the need to define a code of professional ethics that more clearly delineates what level of media interaction with children is appropriate. The best models formalize practices that balance the media's role in news reporting and public education with traumatized children's rights to privacy and special protection.

ASIAN COUNTRIES COMMIT TO CHILD-SENSITIVE MEDIA

In 1996, leaders from twenty-seven countries in Asia gathered in Manila for the Asian Summit on Child Rights and the Media and signed a declaration committing them to:

- Raise awareness and mobilize all sectors of society to ensure the survival, development, and protection of all children.
- Address all forms of economic, commercial and sexual exploitation and abuse of children in the region and ensure that such efforts do not violate their rights, *particularly their right to privacy*.

- Asian Summit Declaration on Child Rights and the Media, adopted July 5, 1996, Manila

In his address to recipients of the "Kagawad Lawin" journalism awards at the Manila Rotary Club in June 1998, Supreme Court Chief Justice Andres Narvasa underscored the spirit of the media's ten-year-old Code of Ethics: "The operative word that would sum up the injunctions of both the judges' and the journalists' codes is **responsibility**. The term, in its many nuances, conveys what is expected of both the judge and the journalist in the way of honesty, devotion to duty, fair-mindedness and the determination to do, not what is popular, but what is right."

JOURNALISTS COMMIT TO A CODE OF ETHICS

- *Section VIII:* I shall exercise caution in publishing names of minors and women involved in criminal cases so that they may not unjustly lose their standing in society.
- *Section II:* I shall not violate confidential information on material given me in the exercise of my calling.
- *Section IV:* I shall refrain from writing reports which will adversely affect a private reputation unless the public interest justifies it. At the same time, I shall fight vigorously for public access to information, as provided for in the Constitution.
- *Section VIII:* I shall presume persons accused of crime of being innocent until proven otherwise.

- National Press Club Convention, 1988

PROTECTS ABUSED CHILDREN

Philippine law protects children from the most egregious violations of rights. Recently the community of media practitioners has stepped forward to outline a more rigorous set of *ethical guidelines* for protecting our children. These recommendations aid reporters and journalists as they seek to promote public awareness without retraumatizing abused children or jeopardizing their recovery and safety.

PHILIPPINE JOURNALISM REVIEW

In March 1994 the Philippine Journalism Review published a set of guidelines formalizing responsible media practices that apply to the coverage of child abuse and neglect. Selected tenets are presented below:

Informed consent

- Recognize and explain the victim's right to decide whether or not to be identified
- Do not assume consent unless expressly given; refrain from pressuring children into consent
- Realize that children may not be able to give informed consent because they may not understand the consequences of public knowledge

Responsible reporting

- Report crimes of violence against children factually and seriously
- Refrain from words that tend to pass judgement on the child victim
- Maintain the confidentiality of the child victim

Non-compromising images

- Recognize the child victim's right to privacy by not printing identifying pictures
- Recognize the child victim's right to dignity by not printing degrading photographs

Excerpted from "*Guidelines on the Coverage of Crimes Against Women and Minors*," 1994

PHILIPPINE CENTER FOR INVESTIGATIVE JOURNALISM

But publicizing the name of a minor who is somehow mixed up in a violent crime or splashing his or her picture across the pages of a newspaper or television screen are not the only ways by which media can ride roughshod over the rights of a child in such a situation. An interviewer who bullies the child into answering questions can do that. So too can a reporter who pretends to be a child's friend—only to forget about the whole thing once the story is published.

Excerpted from *The Child with a Fish for a Twin (Or How Not to Write About Children)*, pp. 58-59

GUIDELINES FOR PHYSICIAN AND

Interpreting the letter and spirit of Philippine laws, the Child Protection Unit has devised guidelines for covering cases of child abuse and neglect. Because of the cultural stigma of sexual abuse, these guidelines extend special protection to children who have been molested, especially when the molestation is intrafamilial. As coverage of physical abuse and neglect may raise awareness and support for compromised children without stigmatizing them, media interaction with these children is conditional upon their mental and physical stability, as well as their wishes.

IN ALL CASES OF CHILD ABUSE OR EXPLOITATION

- Sensationalized publicity or any coverage that may cause the child and family to suffer is prohibited.
- Media practitioners must duly explain and respect the child's or family's right to have their names withheld (and must not coerce or otherwise pressure children into revealing their names).
- Privacy and dignity of the child must be safeguarded at all times (*suggestions: use pseudonyms, digitized or solarized images, dramatic reenactments*). This means no interviewing in periods of acute trauma.
- To preserve the possibility of rehabilitation, the identity of minor perpetrators must remain confidential.
- All cases of intrafamilial abuse must be handled with the utmost caution to leave open the possibility for family reconciliation and rehabilitation (when this is in the best interest of the child).

IN KNOWN OR SUSPECTED CASES OF CHILD SEXUAL ABUSE

- Patient identity, medical records and clinical findings are completely confidential; physicians may only discuss this information in the context of court proceedings.
- Pursuant to PD603, it is illegal to publicize child victim's name or any information regarding the case.
- Release of child's identity, information that indirectly identifies the child (e.g., child's school, barangay, relatives) or details of the case may be punished by fine and/or imprisonment.
- In cases of intrafamilial sexual abuse, alleged perpetrator identity shall not be released (as this would lead to identification and stigmatization of the child and family).

IN KNOWN OR SUSPECTED CASES OF CHILD PHYSICAL ABUSE OR NEGLECT

- If the patient is in a state of acute physical and/or emotional trauma, the media shall not interact with the child (as this might aggravate the child's condition and compromise recovery).
- If and only if the physician deems that the patient is stable and will not be traumatized, media may request a respectful interview.
- Release of the child's identity to elicit support for the child or aid in his or her medical care is acceptable if the child and his/her family give informed consent; in all other cases, identity shall remain confidential.

MEDIA COLLABORATION

In their role as advocates for child abuse treatment and prevention, physicians and media practitioners should cooperate. Together, they can go beyond simply focusing attention on particular cases of child abuse in order to:

- Create a forum for discussion of the societal problems underlying abuse
- Mobilize resources for earlier detection and more effective intervention
- Promote prevention strategies through public education

Although there are myriad templates for collaboration, listed below are some concrete ways for physicians to work with media practitioners towards our common goals.

COOPERATE WITH REPORTERS

- Release timely press statements that raise awareness about real-life situations but do not compromise patient's identity
- Hold hospital or clinic press conferences, when necessary, to disseminate accurate information
- Explain the significance of any medical findings released in layperson's terms

PARTICIPATE IN CHILD ABUSE CASE STUDIES

- Highlight those aspects of the cases relevant to public safety, awareness, and policymaking
- Provide a clinical analysis of the case, revealing risk factors and suggesting strategies for prevention of similar cases
- Assess failures in current intervention systems and prioritize those areas for future resource allocation

SUPPORT PROACTIVE MEDIA PROJECTS

- Help to identify target audiences for media prevention programs or campaigns using clinically sound criteria (e.g., children-at-risk, socially isolated parents)
- Provide medical information to media programs aimed at educating discrete segments of the public such as parents, barangay captains, schoolteachers, other clinicians, children
- Advocate public service announcements on simple methods of child abuse prevention (e.g., stop Shaken Infant Syndrome by raising awareness of its consequences)

FORMALIZING THE GUIDELINES

The medical community has both a responsibility and an opportunity to formulate clear clinical guidelines that balance their patients' need for privacy and protection with the media's role in raising public awareness. To aid hospitals and their affiliated physicians in leading the drive for socially responsible media coverage, we have provided sample policies for clinical use on the following pages. These three templates, which may require modification to fit local circumstances, define protocols for media interaction with patients.

TEMPLATE	PURPOSE	PAGE
Informed patient consent	To ensure that patients understand their right to accept or decline any media interaction and make a truly informed decision. Also, to empower clinicians to intercede when patient consent is not informed and/or may threaten the patient's health, wellbeing, or self-respect.	11
Hospital general media policy	To define an institutional policy for respectful media interaction with all patients. This policy delineates the steps that media practitioners need to take when requesting access to the hospital and to specific patients.	12
Media policy for sensitive cases	To define an institutional policy for respectful media interaction with patients whose physical or mental condition is particularly sensitive. This policy outlines the supplementary protective steps that must be taken to ensure that traumatized patients are not compromised by media interaction.	14

THE PHYSICIAN'S ROLE IN INFORMED CONSENT

Physicians must take an active role in ensuring that informed consent has been properly attained. It is the clinician's duty to make the following tenets of informed consent understood by media practitioners as well as the child and the child's family or legal guardian.

- Truly informed consent by a child or his/her parent requires a full understanding of the consequences public knowledge will have on their future lives.
- Child advocates, such as a physician, counselor, guardian, or social worker, should be consulted to determine what is in the best interest of the child.
- Do not assume consent unless expressly given, for example, through the form on the facing page.
- The child patient has the right to decide whether or not to be identified and should be informed of this right
- A child patient must not be pressured or bribed into granting an interview; the same applies to the child's family.
- A child's wish not to be interviewed should be respected over a parent's consent for an interview on behalf of the child.

INFORMED PATIENT CONSENT TO MEDIA COVERAGE

Patient's review and signature of this form is to be requested by the physician-in-charge only after media personnel have secured an official hospital permit from the office of the hospital's Director.

I, _____, aged _____ years, agree to participate in the media coverage to be conducted while I am a patient of the _____ Hospital. (If the patient is under eighteen, the patient's parent or guardian shall offer or decline informed consent and sign this document).

The following conditions have been explained to me and I understood them completely before I signed this consent form:

- The medium for coverage will be ☐ newspaper ☐ radio ☐ television ☐ film ☐ other _____
- The organization conducting the coverage is _____.
- The person/persons conducting the coverage is/are _____.
- I have the right to decline to answer any/all questions, to decline to have my photograph taken and/or published, and to require that my identity (and any direct or indirect references to me or my family, such as our address) be withheld.
- The physician-in-charge of my care, Dr. _____, shall be allowed to override my consent if s/he believes that such media coverage would pose a threat to my health or well being.
- I have the right to withdraw my consent at anytime during the coverage.

Patient's signature _____

Parent's/guardian's signature _____ (if patient is under 18)

First witness' signature _____

Second witness' signature _____

Date _____ / _____ / 1998

Physician's judgment ☐ I believe that patient's consent is informed and that coverage will not jeopardize patient's health.
☐ I must override patient's informed consent for medical reasons.

Physician's signature _____ Date _____ / _____ / 1998

"The legal doctrine of informed consent, based on a minimum moral standard, emphasizes the adequate disclosure of information. The moral doctrine aims higher and the enabling of a competent, voluntary choice."

- Alderson, *Journal of Medical Ethics*, 1992

HOSPITAL'S GENERAL MEDIA POLICY

Recognizing the media's role in reporting news items that concern medicine and public health, and considering as our first priority the well-being of our patients and their families, the hospital administration herein codifies a protocol for the respectful and responsible interaction of members of the media with the staff and patients of our institution.

1. PROTOCOL FOR REQUESTING MEDIA COVERAGE WITHIN THE HOSPITAL

In the official pursuance of their profession, media personnel (i.e., journalists, television reporters, photographers, radio announcers, newscasters, and all affiliated others) are allowed access to specific areas in the hospital, only after completing the following steps in the order specified:

- **OBTAIN HOSPITAL ENTRY PERMIT**

Media personnel must first secure an entry permit from the office of the Director or Assistant Director for Health Operations (ADHO). This permit allows them to approach a specific patient or staff member and request informed consent for an interview. For medical reasons, ADHO grants approval only after discussing the case with the Consultant-in-charge of the patient's care. *(For sensitive patients such as abused or traumatized children, attempted suicides, and suspicious deaths, please see special policy).* After office hours, the Senior House Officer (SHO) represents the ADHO and may consult the ADHO before rendering a final decision on the permit.

- **REGISTER WITH ON-DUTY GUARD**

Media personnel proceed directly to the location of the designated patient where they present their identification cards to the on-duty security guard who shall record their names and represented news agency in the logbook. To minimize strain on patients and staff, only two persons per news agency shall be allowed entry to a unit.

- **REQUEST PATIENT'S INFORMED CONSENT THROUGH PHYSICIAN-IN-CHARGE**

Before personal interviews may be granted, statements and photographs taken, or video footage shot, media personnel will seek written permission from the patient or his/her nearest of kin. Permission is requested through the physician-in-charge who will present the patient with an informed consent document and discuss the possible implications of coverage. (No substitute forms allowed; forms available at the Director's office).

The patient, or the patient's guardian in the case of minors, maintains the right to accept or decline any and all media coverage after reviewing the conditions of informed consent. When medically indicated or in situations wherein the health of the patient is threatened, however, the decision of the Consultant-in-charge of the service shall override the patient's consent.

- **PRESENT SIGNED INFORMED CONSENT TO MEDICAL OFFICER & BEGIN MEDIA COVERAGE**

Media personnel shall then present the signed informed consent document to the medical officer in charge of the unit (e.g., the Resident or nurse-on-duty) and will follow his or her instructions as to the exact location and duration of the interview. This individual maintains the right to request that media personnel leave the area if their presence disrupts hospital operations or if the patient or his/her family so requests.

HOSPITAL'S GENERAL MEDIA POLICY

2. ACCEPTANCE OF HOSPITAL PRESS RELEASE OR DESIGNATED PRESS CONFERENCE

If a patient is unable to speak with media personnel for medical reasons, the hospital will prepare and release a written statement for publication or hold a press conference and duly inform the media.

3. PROTECTION OF PATIENT'S IDENTITY

The identities of patients shall be protected (e.g. by blocking or blotting the face) if delicate portions of the body will be included in the media coverage or if the patient or family so requests. In such cases, media shall publicize neither the patient's name nor other information leading to the identification of patient (e.g., parent's or other relatives' names, address, barangay, school). In case of accidents or natural disasters, the media shall not release patient identification until authorities have officially notified the patient's family or next of kin.

4. RESPECT OF ALL HOSPITAL RULES

In the best interest of all our patients, whose right to superior medical care supercedes the media's privilege to obtain coverage, media personnel must obey the following rules at all times within the hospital:

- Media access to sterile or aseptic areas such as operating rooms, the labor and delivery room, and high-traffic or specialized areas such as the intensive care units or the emergency room shall be prohibited.
- Media professionals shall abide by departmental or unit-specific restrictions such as "no smoking," "no food or drinks," and "silence."
- As house staff may not participate in media interviews or air their opinions about the hospital or their patients without the official approval of the ADHO and Director, media personnel are requested to address the aforementioned administrators before taking statements from clinicians.

5. ADVANCE NOTICE FOR NON-NEWS VIDEOTAPING

All requests for video coverage about the hospital and its facilities for any purpose other than news reporting should be submitted in writing at least two days before actual videotaping. Requests will be reviewed and approved on a case-by-case basis by the Assistant Director for Health Operations (ADHO).

6. VIOLATION OF POLICY

Any violation by media personnel of the above guidelines shall be cause for refusal of future coverage in the hospital. Strict compliance is hereby enjoined.

HOSPITAL MEDIA POLICY FOR SENSITIVE CASES

Recognizing the sensitive medical and psychological condition of certain patients, and needing to ensure their health and wellbeing while in our care, our hospital herein codifies a special policy for media coverage of particular categories of cases. The primary requirement of media coverage of these cases is complete patient confidentiality, meaning that under no circumstances shall media release confidential case information such as a patient's name, address, school attended, or relative identification.

For the following sensitive cases, therefore, confidentiality of the patient's identity and medical records is absolute and inviolable:

- all cases of known or suspected child sexual abuse (*pursuant to PD 603*);
- all cases of highly traumatized children (*at least until their physician deems them physically and emotionally stable and, thus, able to consider granting informed consent to a media encounter*)
- attempted suicides or suspicious deaths;
- all cases under investigation by law enforcement agencies (until law enforcers decide otherwise); and
- any other case deemed sensitive by the office of the PGH Director or ADHO.

Recognizing the media's role in news reporting, the hospital will release a prepared statement to the press that omits the patient's name and other identifying information but provides his or her medical status and any other pertinent details.

The hospital's rationale for this special policy is grounded in the following responsibilities:

- protection of particularly traumatized patients whose immediate recovery, long-term rehabilitation and/or safety may be jeopardized by media interaction, however responsible;
- shielding of patients' families-in-crisis from further grief or public pressure; and
- safeguarding of police investigations in progress.

In an effort to balance the media's role in public education with these patients' requirement for privacy, the hospital will cooperate fully in collaborative media projects such as exposés aimed at raising public awareness of health issues. Hospital personnel will provide key medical information and analysis regarding such issues as child abuse or suicide.

CONCLUDING ASPIRATIONS

- α *Champion maltreated children's rights to protection, privacy, health, and happiness.*
- α *Mobilize resources to care for children-at-risk and prevent future maltreatment.*
- α *Inform a constructive public dialogue on how to best solve the complex social problem of child abuse and neglect.*