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The Gradual Decline of a Hearsay Exception: The Misapplication of Federal Rule of Evidence 803(4), the Medical Diagnosis Hearsay Exception

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I. INTRODUCTION

Incest and child sexual abuse perpetuates as an abysmal malady of humanity. During the concluding years of the 1960s, however, criminal laws were created for the first time to exclusively cover sexual abuse. Since that time, the reported offenses have dramatically increased. As a result, the American people demanded that the criminal and legal systems effectively stop and deter child abuse perpetrators.

The use of child-victim testimony is fundamental for successfully prosecuting child abusers. Since a significant number of these child-victim statements are made out of court, a great legal dilemma exists as to how to admit such statements into evidence. Out-of-court statements offered to prove the truth of the matter asserted are considered hear-

2. Id. The reporting incidence was believed to be 1.87 per 10,000 children in 1978, 5.76 per 10,000 children in 1980, 9.0 per 10,000 children in 1982, and 15.88 per 10,000 children in 1984. Id.
3. Some of these demands consisted of initiating programs intended to increase the reporting and prosecution of child sexual abuse such as expanding child protective programs and to greatly increase the number of caseworkers to investigate reported incidences of child abuse. See David C. Raskin & John C. Yuille, Problems in Evaluating Interviews of Children in Sexual Abuse Cases, in Perspectives on Children's Testimony 184, 185 (S.J. Ceci et al., eds., 1989). Furthermore, women groups successfully lobbied for more punitive penalties for sex offenders and established victim/witness funds and programs to provide social and financial support for women who were victims of sexual abuse and whose husbands/partners sexually abused their children. See JAMES SELKIN, The Child Sexual Abuse Case in the Courtroom 281 (2d ed. 1991).
5. See id.
say\(^6\) and are only allowed into evidence if the statement qualifies under a specific hearsay exception.\(^7\) As a result, children’s hearsay statements “take on [an] extraordinary significance in the context of child abuse litigation [because such statements] constitute the most important evidence in the case.”\(^8\) This significance sometimes induces courts to “force-fit” such statements under a specific hearsay exception.\(^9\)

For example, some federal courts admit hearsay statements made by a child to a physician that identify the alleged abuser.\(^10\) These federal courts admit this evidence under Federal Rule of Evidence 803(4), the medical diagnosis hearsay exception.\(^11\) However, admitting these hearsay statements under the medical diagnosis exception contradicts the drafters’ intent of Rule 803(4) because the identifying statements cast fault on the named persons.\(^12\) Consequently, the diverse court interpretations and applications of Rule 803(4) have caused inconsistent and contradictory results in child

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7. See discussion infra Part II.B-C.
8. See MYERS, supra note 4, at 260. The child-victim is predominately the only witness to the crime because the abuser is quite often someone who the child initially trusts and, therefore, the abuser has many opportunities to be alone with the child while committing the crime. Id. at 260-61 (citing Judy Yun, Note, A Comprehensive Approach to Child Hearsay in Sex Abuse Cases, 83 COLUM. L. REV. 1745 (1983)).
9. See e.g., FED. R. EVID. 803(1)-(23).
10. Some of these federal courts are: (1) the Eighth Circuit in Lovejoy v. United States, 92 F.3d 628 (8th Cir. 1996); United States v. Provost, 875 F.2d 172 (8th Cir. 1989); United States v. Shaw, 824 F.2d 601 (8th Cir. 1987); United States v. DeNoyer, 811 F.2d 438 (8th Cir. 1987); United States v. Renville, 779 F.2d 430 (8th Cir. 1985); (2) the Tenth Circuit in United States v. Tome, 61 F.3d 1446 (10th Cir. 1995); United States v. Farley, 992 F.2d 1122 (10th Cir. 1993); and; (3) the Ninth Circuit in United States v. Yazzie, 59 F.3d 807 (9th Cir. 1995); Territory of Guam v. Ignacio, 10 F.3d 608 (9th Cir. 1993). See discussion infra Part II.E.
11. FED. R. EVID. 803(4). Rule 803(4) states: “Statements made for the purposes of medical diagnosis or treatment and describing medical history, or past or present symptoms, pain, or sensations, or the inception or general character of the cause or external source thereof insofar as reasonably pertinent to diagnosis or treatment.” Id.
12. The drafters’ intent was to admit statements made to health-care providers for the purposes of medical diagnosis and treatment and not to admit statements that cast fault. FED. R. EVID. 803(4) advisory committee’s note. The Advisory Committee’s Note offers an example for this premise stating that “a patient’s statement that he was struck by an automobile would qualify but not his statement that the car was driven through a red light.” Id.
abuse allegation cases. This comment discusses the effects of various federal courts’ applications of the medical diagnosis hearsay exception. In particular, it describes the federal courts’ expansive uses of the medical diagnosis hearsay exception by discussing several court rationales that support admitting child-victim hearsay statements, which identify alleged child abusers. This comment emphasizes how these different and expansive uses contradict the intended purpose for having hearsay exceptions, as well as the inherent trustworthiness that is imbedded within the medical diagnosis exception. The comment also illustrates how the current trend of expanding the coverage of the medical diagnosis exception is effectively making Rule 803(4) a less “firmly rooted” and well-established hearsay exception.

II. BACKGROUND

The background section is divided into five parts. First it discusses the child abuse problem in the United States and how society has attempted to curb this problem. Next it explains the Hearsay Rule and the reasons why hearsay statements are generally excluded from evidence. The third part discusses the main purposes for having exceptions to the Hearsay Rule, and section four explains and discusses the rationale and scope of Federal Rule of Evidence 803(4), the medical diagnosis hearsay exception. Finally, the last sec-

13. See discussion infra Part II.E.
14. See discussion infra Part II.E.
15. The intended purpose for having hearsay exceptions is that under particular situations a hearsay statement may contain “circumstantial guarantees of trustworthiness sufficient to justify nonproduction of the person at trial.” FED R. EVID. 803(1)-(23) advisory committee’s note. In addition, guidelines on how and when to apply the hearsay exceptions is described not only in the rules themselves, but also in the Advisory Committee’s Note, the House Judiciary Committee Report and the Senate Judiciary Committee Report for each hearsay exception. See, e.g., FED. R. EVID. 803(4) advisory committee’s note.
16. It is accepted by courts that a patient has a very strong motivation to be truthful when consulting a physician or any other health care provider for an accurate diagnosis or treatment. FED. R. EVID. 803(4) advisory committee’s note. See discussion infra Part IV.
17. See discussion infra Part IV.
18. See discussion infra Part II.A.
19. See discussion infra Part II.B.
20. See discussion infra Part II.C.
21. See discussion infra Part II.D.
tion discusses the federal courts’ application of Rule 803(4); in particular, how and why some federal courts have expanded this rule to include child-victim hearsay statements that identify their abusive perpetrators.  

A. The Child Abuse Problem

In 1997, over three million children were reported as having been victims of child abuse and neglect. Approximately 47 out of every 1,000 children are reported as victims of some form of abuse. Physical and sexual abuse accounts for 30% of these reportings. This amounts to approximately 5% to 16% of all American men and 20% to 25% of all American women who have experienced some form of sexual abuse prior to the age of 18. The median age at the time of sexual abuse for boys is 9.9 years and for girls it is 9.6 years. Approximately 115,000 cases of child sexual abuse are handled by child protective services annually. A child-protection organization once concluded that approximately only one-half of all reports of child sexual abuse in the United States produce enough evidence for authorities to prosecute. Regardless of the successful prosecution of child sexual abusers, all sexual abuse has possible longstanding adverse mental and physical effects on the victims. Rightfully so, in 1990, the United States

22. See, e.g., Lovejoy v. United States, 92 F.3d 628 (8th Cir. 1996); United States v. Tome, 61 F.3d 1446 (10th Cir. 1995); United States v. Yazzie, 59 F.3d 807 (9th Cir. 1995); Territory of Guam v. Ignacio, 10 F.3d 608 (9th Cir. 1993); United States v. Farley, 992 F.2d 1122 (10th Cir. 1993); United States v. Provost, 875 F.2d 172 (8th Cir. 1988); United States v. Shaw, 824 F.2d 601 (8th Cir. 1987); United States v. DeNoyer, 811 F.2d 436 (8th Cir. 1987); United States v. Renville, 779 F.2d 430 (8th Cir. 1985). See also discussion infra Part II.E.


24. See id.

25. See id.


29. This child-protection organization is called the Association for Protecting Children. Raskin & Yuille, supra note 3, at 185.

30. The degree of harm depends upon the nature of the act, the age of the child, and the child’s general environment. See Nat’l Comm. to Prevent Child Abuse, Child Sexual Abuse (visited Jan. 6, 1999)
government declared the child abuse situation a national emergency. 31

Statistics such as these caused many organizations and political leaders to search for programs and coordinate efforts to "increase the reporting and prosecution" of child abuse crimes. 32 Similarly, the public supported such programs and efforts designed to curb this problem, many of which turned out to be impractical and ineffective. 33 For example, in the fifteen million dollar McMartin pre-school child abuse case in Los Angeles, California, 34 the district attorney's office "arranged for bulldozers to excavate huge trenches around the school in order to verify the children's reports of having been tortured in underground dungeons." 35 Despite these extreme measures, none of the seven defendants were found guilty of any of the more than fifty charges held against them. 36

Unverifiable allegations seem to be a common occurrence in child abuse cases. In 1985, it was found that "more than sixty-five percent of all reports of suspected child [abuse]—involving over 750,000 children per year—turned out to be

<http://www.childabuse.org/fs19.html>. Physical harm may include cuts, disfigurement, deformity, and pregnancy. Id. Mental harm may consist of feelings of pain, panic, devastation, betrayal, shame, fear, guilt, and vulnerability that may persist throughout the victim's life. Id.

31. See Robert G. Marks, Should We Believe the People Who Believe the Children?: The Need for a New Sexual Abuse Tender Years Hearsay Exception Statute, 32 HARV. J. ON LEGIS. 201, 207 (1995).

32. See Raskin & Yuille, supra note 3, at 185.


34. The McMartin case began in August 1983, when Judy Johnson, a mother of a child at the nursery school in question, reported to police that her son's bottom was red and that her son mentioned a man named Ray who worked at the school. As a result, letters were sent alerting parents to check their children for signs of molestation. On the basis of Johnson's complaint, prosecutors alleged that Ray Buckey, his mother, sister, grandmother, and three other women teachers had molested hundreds of children at the school over the course of five years. Children told investigators accounts of satanic rites and animals being tortured to frighten the youngsters into silence. The alleged forty-one child-victims was narrowed down to eleven by the time the trial began. The trial ran for thirty-three months and cost fifteen million dollars. This case was the longest and most expensive criminal proceeding in United States history. However, none of the defendants were found guilty of any of the more than fifty charges held against them. See Lynda Deutsch, Mother, Son Acquitted in McMartin Child Molestation Case. Jury Says "Not Guilty" on 52 Charges, Deadlocks on 13 Others in U.S.' Longest, Costliest Trial, S. F. EXAM'R, Jan. 18, 1990, at A1.

35. See SELKIN, supra note 33, at 287.

36. See Deutsch, supra note 34, at A1.
volving over 750,000 children per year—turned out to be unfounded.”

Of the cases that are actually investigated, at least eight percent are fictitious. With such a rate of fictitious allegations, it is possible that over 8,000 actions are falsely prosecuted each year. In cases involving family disputes the fictitious allegation rate is even greater; it is allegedly as high as 50 percent. Despite these numbers, it is likely that “many of [these] formerly ‘unsubstantiated’ cases [will] proceed to formal prosecutorial actions” because society generally favors the prosecution of alleged abusers.

B. Hearsay

1. The Hearsay Rule: Federal Rules of Evidence 801 and 802

The Hearsay Rule, set forth in Federal Rule of Evidence 802, states that “hearsay is not admissible except as provided by these rules or by other rules prescribed by the Supreme Court pursuant to statutory authority or by Act of Congress.” Federal Rule of Evidence 801(c) defines the term “hearsay.” This rule states that hearsay is “a statement, other than one made by the declarant while testifying at the trial or hearing, offered in evidence to prove the truth of the matter asserted.” The declarant is the person who made the

37. Raskin & Yuille, supra note 3, at 185 (quoting Besharov, the former Director of the U.S. National Center on Child Abuse and Neglect).
38. See id. at 186.
39. See id. For example, in Scott County, Minnesota, cases were “dismissed against twenty-one persons accused of child sexual abuse even while investigations were in progress concerning allegations of homicide and sexual abuse made by some of the alleged child victims.” Id. at 187.
40. See id. at 186. Since 1974, University of Utah researchers conducted polygraph examinations on persons accused of sexually abusing children. “Test outcomes consistent with truthful denials of sexual abuse . . . increased from 50% in the 1974-82 period to 79% truthful outcomes in the 1983-87 period. A large proportion of these allegations arose in domestic relations disputes . . . .” Raskin & Yuille, supra note 3, at 186.
41. See id. at 186.
42. See FED. R. EVID. 802.
43. Compare id., with FED. R. EVID. 803 (the statement contained in Rule 802 allows courts the opportunity to admit hearsay statements if they fit under the Rule 803, 804 or 807 hearsay exceptions).
44. See FED. R. EVID. 801.
45. FED. R. EVID. 801(c). This Rule also describes types of statements made by a declarant that are not considered hearsay. However, for this discussion, an explanation of those particular examples is not pertinent. See FED. R. EVID.
original statement, which is repeated by a witness at trial.46

In addition to an out-of-court statement being repeated, the statement must be offered for the truth of the matter asserted in order for it to be excluded from evidence. The mere statement is not the sole reason for the exclusion, rather the intent of use of the statement is also pertinent.47 Evidence is only hearsay when "the repeated statement [is] offered for the purpose of proving that what the declarant said is true."48 For example, assume that a declarant stated to a witness that he saw the accused assailant hit the victim over the head with a baseball bat. Suppose then, that this statement is later offered by the witness in court to prove the type of weapon the accused assailant used to attack the victim. This statement is hearsay because the statement was used to prove that the assault and battery was committed with a baseball bat.49 Hence, the statement was used for the truth of what it stated. Therefore, upon objection by the opposing party, the statement will be excluded from evidence.50

2. The Dangers of Hearsay Evidence

In enacting Federal Rules of Evidence 801 and 802, Congress recognized the problems associated with hearsay evidence.51 Hearsay evidence does not allow the judge or jury to personally evaluate a witness' "perception, memory, and narration in the courtroom."52 In order to encourage the witness to accurately communicate these factors and to "expose any inaccuracies which may enter the testimony of the witness, Anglo-American tradition53 developed three conditions under

46. See FED. R. EVID. 801(b). A witness on the trial stand who repeats his own out-of-court statements is considered as both a witness and a declarant of the statement at issue. See FED. R. EVID. 801(d).


48. Id. at 157. 

49. Alternatively, the statement would not be considered hearsay if the statement was not used for the purpose of proving the means of assault and battery, but rather, it was used to identify the assailant. In this alternative situation, the statement is not being used for the truth of the matter asserted, but rather it is being used to identify the assailant. Therefore, the statement would not be considered hearsay.

50. See LILLY, supra note 47, at 157-58.

51. FED. R. EVID. advisory committee introductory note to hearsay.

52. See id.

53. The Anglo-American tradition described in this sense is the common
which witnesses will ideally be required to testify: (1) under oath, (2) in the personal presence of the trier of fact, and (3) subject to cross examination.\(^{54}\)

The basis and rationale for the Hearsay Rule focuses on the importance of cross-examination.\(^{55}\) To be sure, John Henry Wigmore, one of the prominent 20th century scholars on the law of evidence,\(^{56}\) stated:

> [T]he policy of the Anglo-American system of Evidence has been to regard the necessity of testing by cross-examination as a vital feature of the law. The belief that no safeguard for testing the value of human statements is comparable to that furnished by cross-examination, and the conviction that no statement (unless by special exception) should be used as testimony until it has been probed and sublimated by that test, has found increasing strength in lengthening experience.\(^{57}\)

The American legal process depends upon cross-examination to expose the imperfections of perception, memory, and narration of the witness.\(^{58}\) The cross-examination of a witness serves to expose the many possible deficiencies of that person's statements.\(^{59}\)

Graham C. Lilly also emphasized the importance of cross-examination.\(^{60}\) According to Lilly, most hearsay objections arise when “the opponent is unable to confront and cross-examine the ‘real’ witness—the declarant—and to expose [the] weaknesses in his statement.”\(^{61}\) These weaknesses are commonly referred to as the “hearsay dangers.”\(^{62}\) Lilly defines these dangers as follows:

(a) **Defects in perception** involves disabilities that arise from a failure or inability to observe or hear accurately.

(b) **Defects in memory** involves inaccurate or incomplete recollection.

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\(^{54}\) FED. R. EVID. advisory committee's introductory note to hearsay.

\(^{55}\) See id.

\(^{56}\) See WIGMORE, supra note 53.

\(^{57}\) Wigmore, supra note 53, at 28-29.

\(^{58}\) See FED. R. EVID. advisory committee's introductory note to hearsay.

\(^{59}\) See WIGMORE, supra note 53, at 3.

\(^{60}\) See LILLY, supra note 47, at v.

\(^{61}\) Id. at 157.

\(^{62}\) Id. at 159.
Defects in sincerity or veracity involves testimonial faults that arise from a reluctance to tell the complete truth, or from a conscious effort to distort or falsify.

Defects in transmission involves mistransmissions that arise because the declarant’s statement is ambiguous or incomplete.\(^\text{63}\)

Attempting to avoid these dangers, common law developed a general rule excluding all hearsay evidence.\(^\text{64}\) However, common law also enumerated specific exceptions to this general rule and Federal Rules of Evidence 803 and 804 mirrored these exceptions.\(^\text{65}\) Hearsay statements may fall under one of these exceptions when the statements are made under circumstances that foster a high probability of truthfulness, and when cross-examination of these statements would be futile.\(^\text{66}\)

C. Federal Rules of Evidence 803 and 804: The Hearsay Exceptions

The Federal Rules of Evidence contain twenty-eight exceptions to the Hearsay Rule.\(^\text{67}\) Each hearsay exception “proceeds upon the theory that under appropriate circumstances a hearsay statement may possess circumstantial guarantees of trustworthiness sufficient to justify nonproduction of the declarant in person at the trial even though he may be available.”\(^\text{68}\)

1. General Principles for the Hearsay Exceptions

The primary reason supporting the hearsay rule is that the unchallenged testimony of a witness might have been derived from inaccurate and untrustworthy sources.\(^\text{69}\) These inaccurate and untrustworthy sources are best exposed and tested by the cross-examination process.\(^\text{70}\) However, there

\(^{63}\) Id.

\(^{64}\) See FED. R. EVID. advisory committee’s introductory note to hearsay.

\(^{65}\) See FED. R. EVID. 803(1)-(23) and 804(b)(1)-(4). Rule 803 contains twenty-three exceptions and Rule 804 contains four exceptions. Id. In addition, recently enacted Federal Rule of Evidence 807 is the “Residual Exception” that substituted former Rules 803(24) and 804(b)(5). See FED. R. EVID. 807.

\(^{66}\) See FED. R. EVID. advisory committee’s introductory note to hearsay.

\(^{67}\) See FED. R. EVID. 803(1)-(23), 804(b)(1)-(4), and 807.

\(^{68}\) FED. R. EVID. 803 advisory committee’s note.

\(^{69}\) See 5 WIGMORE, supra note 53, at 202.

\(^{70}\) See id.
are instances when cross-examination is not necessary because the circumstances surrounding the statement naturally promote creditable and accurate statements.\textsuperscript{71} Hence, cross-examination of statements created in these situations would be an unnecessary process for finding the truth of the matter asserted.\textsuperscript{72} Additionally, cross-examination may not be possible when the declarant is rendered unavailable.\textsuperscript{73} Therefore, in order to allow hearsay statements into evidence, it must be necessary that the statements be admitted into evidence and the statements must have been made under circumstances that promote trustworthiness.\textsuperscript{74} Therefore, the necessity for use and the trustworthiness of the statement is essential to the creation and use of a hearsay exception.\textsuperscript{75}

a. Necessity

There must be some necessity for using a hearsay statement.\textsuperscript{76} Necessity occurs when the only alternative to using a hearsay statement is to not use the evidence at all.\textsuperscript{77} Necessity normally occurs in either one of two situations.\textsuperscript{78} The first situation occurs when the declarant is considered unavailable for further cross-examination.\textsuperscript{79} The second

\textsuperscript{71} See id. See also, e.g., FED. R. EVID. 803(1)-(23).
\textsuperscript{72} See 5 WIGMORE, supra note 53, at 202.
\textsuperscript{73} See id. See also, e.g., FED. R. EVID. 804. Federal Rule of Evidence 804(a) defines a witness as being unavailable when the declarant:
   (1) is exempted by ruling of the court on the ground of privilege from testifying concerning the subject matter of the declarant's statement; or (2) persists in refusing to testify concerning the subject matter of the declarant's statement despite an order of the court to do so; or (3) testifies to a lack of memory of the subject matter of the declarant's statement; or (4) is unable to be present or to testify at the hearing because of death or then existing physical or mental illness or infirmity; or (5) is absent from the hearing and the proponent of his statement has been unable to procure the declarant's attendance . . . by process or other reasonable means. A declarant is not unavailable as a witness if his exemption, refusal, claim of lack of memory, inability, or absence is due to the procurement or wrongdoing of the proponent of a statement for the purpose of preventing the witness from attending or testifying. FED. R. EVID. 804(a)(1)-(5).
\textsuperscript{74} See 5 WIGMORE, supra note 53, at 202.
\textsuperscript{75} See id. See also discussion infra Part II.C.1.a-b.
\textsuperscript{76} See 5 WIGMORE, supra note 53, at 202.
\textsuperscript{77} See id.
\textsuperscript{78} See id.
\textsuperscript{79} See id. The Federal Rules of Evidence defines five situations in which they consider a declarant unavailable to act as a witness. See supra note 73
situation occurs when the hearsay statement was made under a very unique set of circumstances and cross-examination of the declarant would not add more creditability to the statements. However, necessity alone is not sufficient for accepting the statement into evidence. The statement must also be made under a highly trustworthy situation; only then may a substantial reason exist for admitting the statement.

b. Trustworthiness

When a statement is made in a highly trustworthy situation, cross-examination is not necessary because the hearsay dangers are avoided. Therefore, when a situation supports the inference that uncontested testimony will not contain defects in perception, memory, sincerity, veracity, or transmission, the statement is most likely accepted into evidence.

2. Deciding When a Hearsay Statement Is Admitted Under a Hearsay Exception

The general rule for admitting a hearsay statement under a hearsay exception is to admit the evidence only when it “falls within a firmly rooted hearsay exception.” Courts hold that the admission of such statements under a hearsay exception “satisfies the constitutional requirement of reliability because of the weight accorded longstanding judicial and legislative experience in assessing the

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80. See 5 WIGMORE supra note 53, at 204. An example of this type of situation is contained in Federal Rule of Evidence 803(2), the Excited Utterance hearsay exception, FED R. EVID. 803(2). The Excited Utterance exception is based on the fact that the declarant makes a statement under the stress of excitement that was caused by a startling or surprising event. Id. The situation deters any possibilities of reflection or fabrication by the declarant. See FED. R. EVID. 803(1) and (2) advisory committee’s note. The medical diagnosis exception is another example of this situation and is discussed in greater detail infra Part II.D.


82. Trustworthy situations are described as circumstances that naturally deter the creation of fabricated statements by the declarant. Id. at 205.

83. See id.

84. See, e.g., FED. R. EVID. 803(1)-(23) and 804(b)(1)-(4).

85. See 5 WIGMORE supra note 53, at 203.

86. Id.

trustworthiness of certain types of out-of-court statements. To be sure, Justice Blackmun once noted that "[s]tatements squarely within established hearsay exceptions possess the imprimatur of judicial and legislative experience... and that fact must weigh heavily in our assessment of their reliability for constitutional purposes." As a general rule, therefore, hearsay evidence is admitted when it fits squarely within the original framework of a hearsay exception.

D. Federal Rule of Evidence 803(4): Statements for Purposes of Medical Diagnosis or Treatment

1. Rationale for the Exception

Congress enacted Federal Rule of Evidence 803(4), the medical diagnosis exception to the Hearsay Rule, to include statements that describe the nature and cause of an injury and which affect the medical diagnosis or treatment of such injury. The underlying rationale to this rule is that the declarant's motive guarantees its trustworthiness. The declarant has a great motivation to be truthful with his or her doctor because the "[declarant's] health—even life—may depend on the accuracy of information supplied [to] the doctor."

2. The Statement Does Not Need to be Made to a Physician

The declarant's self-interest in offering accurate information for diagnosis or treatment is the underlying rationale behind the medical diagnosis exception; however, the statement does not have to be made to a physician. Statements made to any person for the purpose of diagnosis

88. Id. at 817.
89. Id. at 817 (quoting Lee v. Illinois, 476 U.S. 530, 552 (1986)).
90. See Fed. R. Evid. 803(4). Rule 803(4) states: "Statements made for the purposes of medical diagnosis or treatment and describing medical history, or past or present symptoms, pain, or sensations, or the inception or general character of the cause or external source thereof insofar as reasonably pertinent to diagnosis or treatment." Id.
91. See Fed. R. Evid. 803(4) advisory committee's note.
92. 2 Meyers, supra note 27, at 287-88.
93. Id. at 287.
94. See Fed. R. Evid. 803(4) advisory committee's note.
or treatment are allowed under this hearsay exception. For example, such statements do not have to be communicated to only attending physicians or nurses; rather statements made to psychiatrists, social workers, "hospital attendants, ambulance drivers, or even members of the family" may fall under this hearsay exception. The important distinction is that the statements are made to someone for the purpose of obtaining proper medical diagnosis or treatment.

3. Statements Identifying an Alleged Perpetrator

The Advisory Committee’s Note stipulates that "statements as to fault [do] not ordinarily qualify under this hearsay exception." Accordingly, "a patient’s statement [articulating] that he was struck by an automobile [qualifies] but his statement that the car was driven through a red light [does not]." However, some federal courts admit child abuse victims’ statements that identify their alleged sexual or physical perpetrator when the statements are made to a medical provider. In effect, this practice has expanded the scope of the medical diagnosis hearsay exception by disregarding the Advisory Committee Note and including statements that cast fault on alleged child abusers.

E. The Expansion of Federal Rule of Evidence 803(4) to Include the Identity of Accused Child Abuse Perpetrators

1. United States v. Iron Shell

In 1975, Congress codified and passed the Federal Rules of Evidence. In 1980, United States v. Iron Shell was the first Eighth Circuit case to apply the medical diagnosis exception in its decision. In Iron Shell, the defendant appealed a jury conviction of assault with intent to commit

95. See id.
96. See Fed. R. Evid. 803(4) advisory committee’s note.
97. See id.
98. Id.
99. Id.
100. See discussion infra Part II.E.
101. See id.
102. See Fed. R. Evid.
103. 633 F.2d 77 (8th Cir. 1980).
104. United States v. Iron Shell, 633 F.2d 83 n.8 (8th Cir. 1980).
rape upon a nine-year-old girl. The defendant challenged the admission of statements made by the child-victim to her doctor. The doctor examined the child and elicited a series of statements from the girl concerning the cause of her injuries.

The court allowed the child-victim's statements into evidence and held that Federal Rule of Evidence 803(4) changed the common law in two ways. The court stated that the rule "adopted an expansive approach by allowing statements concerning past symptoms and those which related to the cause of the injury." The rule also negated the "distinction between the doctor who is consulted for the purpose of treatment and an examination for the purpose of diagnosis only." As a result, the Iron Shell court proposed a two-part test for determining the admissibility of statements under this medical diagnosis exception. First, the declarant's motive must be consistent with the purpose of obtaining medical treatment. Second, the content of the statement must be reasonably relied on by the physician in order to provide medical treatment or diagnosis. Hence, the court decided

105. Id. at 80.
106. See id. at 82.
107. See id. at 82 n.6.

The doctor testified that, he first asked Lucy 'what happened' and she didn't answer. He asked whether she was in any pain and she pointed to her vaginal area. He asked if she hurt anywhere else and she didn't answer. Dr. Hopkins again asked 'what happened' and Lucy said she had been dragged into the bushes. The doctor then asked if the man 'had taken her clothes off.' She said yes... Dr. Hopkins testified that he was not 'badgering' the patient, nor 'dragging information out', but was asking 'simple questions.'

Id.

108. The majority rule under common law did not admit testimony about the cause of the injury that was unrelated to the treatment of the declarant, and the majority rule also did not admit hearsay statements made to a physician solely for the purpose of testifying. United States v. Iron Shell, 633 F.2d 77, 83 (8th Cir. 1980).

109. Id.

110. Id.

111. The court based this prong of the test on the fact that the patient has a strong motive to tell the truth when obtaining medical treatment because the diagnosis or treatment depends in a large part on what the patient tells the doctor. Id. at 83-84.

112. The court ruled that hearsay statements are sufficiently trustworthy if doctors reasonably rely on such statements to properly diagnose the patient. Id. at 84.
that the child-victim's statements can be included into evidence only if the statements were reasonably related to treatment and were relied upon by the doctor for diagnosis or treatment. \(^{113}\)

Applying this two part test, the court held that the child's statement's were appropriately allowed into evidence because her motive for making the statements came from her desire to seek treatment and not for any other reason. \(^{114}\) Additionally, the doctor's questions satisfied the second part of the test because they elicited reasonably relied upon information that assisted the doctor's diagnosis and treatment of the victim. \(^{115}\) The court held that the child's statements effectively narrowed the doctor's physical examination to the affected areas of her body. \(^{116}\) The court stated it was not necessary that the patient's discussion of events must "lead to a fundamentally different exam" as opposed to if the statements were never stated. \(^{117}\)

The court emphasized that the admitted statements contained facts describing what happened rather than who did it. \(^{118}\) They concluded that statements describing what happened are almost always pertinent to the diagnosis and treatment, whereas statements regarding the identity of the assailant would "seldom, if ever, be sufficiently related." \(^{119}\)

2. United States v. Nick

The Ninth Circuit, in *United States v. Nick*, \(^{120}\) decided whether the identity of an alleged child-abuse perpetrator can be allowed into evidence under the medical diagnosis exception. \(^{121}\) The court ultimately held that the identity of the alleged assailant was not pertinent to the medical diagnosis or treatment of the child-victim and therefore, was

\(^{113}\) See United States v. Iron Shell, 633 F.2d 77, 84 (8th Cir. 1980).

\(^{114}\) See id.

\(^{115}\) See id. The court based this holding on the doctor's testimony, stating "most doctors would have sought such a history and that he relied upon [the child's] statements in deciding upon a course of treatment." Id. at 85.

\(^{116}\) The court rationalized that "discovering what is not injured is equally as pertinent to treatment and diagnosis as finding what is injured." Id. at 84.

\(^{117}\) United States v. Iron Shell, 633 F.2d 77, 84 (8th Cir. 1980).

\(^{118}\) See id.

\(^{119}\) Id.

\(^{120}\) 604 F.2d 1199 (9th Cir. 1979).

\(^{121}\) United States v. Nick, 604 F.2d 1199 (9th Cir. 1979).
not allowed into evidence under this exception.\footnote{122}

In \textit{Nick}, the defendant allegedly assaulted a three-year-old boy while baby-sitting the child. When the child's mother arrived, she found her son in a locked bedroom, asleep with the defendant, and with his pants unzipped.\footnote{123} After bringing the child home and noticing evidence of a possible molestation,\footnote{124} the mother questioned the boy and had a physician examine him on the following day.\footnote{125} The physician examined the three-year-old boy and discovered evidence of sexual abuse.\footnote{126} While testifying, the doctor revealed the child's description of the assault.\footnote{127} However, the defendant appealed his conviction arguing that the district court erred in admitting the child's damaging hearsay statements into evidence.\footnote{128} The damaging statements at issue concerned the child-victim's identification of the defendant while he was questioned by his physician.\footnote{129}

The Ninth Circuit affirmed the district court's ruling, holding that the child's statements were relevant to the cause of his injury.\footnote{130} They held, however, that the identifying statements could not be repeated at trial.\footnote{131} Therefore, the court decision can be understood to hold that the identity of the defendant was not admissible under Rule 803(4) because it was not reasonably pertinent to the diagnosis or treatment of the child.\footnote{132}

3. United States v. Renville

The Eighth Circuit, in \textit{United States v. Renville},\footnote{133} took a much more expansive approach to Rule 803(4) by allowing

\footnotesize
\begin{itemize}
  \item 122. \textit{See id.} at 1202.
  \item 123. \textit{See id.} at 1201.
  \item 124. The mother observed that there was "white stuff" in the child's clothing. The mother also asked the child whether Nick had done anything to him, and the child responded, "Yeah, Eneas [Nick] stuck his tutu in my butt." The child also stated Nick had hurt him and made him cry. \textit{Id.}
  \item 125. \textit{See id.}
  \item 126. The doctor's physical examination of the child showed evidence of anal penetration. \textit{See id.}
  \item 127. \textit{United States v. Nick}, 604 F.2d 1201 (9th Cir. 1979).
  \item 128. \textit{See id.} at 1200-01.
  \item 129. \textit{See id.} at 1202.
  \item 130. \textit{See id.}
  \item 131. \textit{See id.}
  \item 132. \textit{See id.} at 1202.
  \item 133. 779 F.2d 430 (8th Cir. 1985).
\end{itemize}
hearsay statements into evidence under the medical diagnosis exception that identify an alleged abuser. The Renville court ruled that identifying statements may be allowed into evidence under the medical diagnosis exception if the alleged abuser is a member of the child-victim's immediate household.134

In Renville, the defendant was convicted on two counts of child abuse for sexually abusing his eleven-year-old stepdaughter.135 The defendant appealed, arguing that the district court erred by allowing the physician to repeat the victim's statements in court.136 The statements, originally made during the child-victim's medical examination, identified the defendant as her abuser.137 The defendant argued that the medical diagnosis hearsay exception does not cover statements indicating fault or identity.138

The Renville court applied the Iron Shell two part test.139 The court held that the medical diagnosis exception's threshold question is whether the statement satisfies the second part of the Iron Shell test: a statement that is "reasonably pertinent to diagnosis or treatment."140 The court, however, did not follow Iron Shell's holding and held that when the identified abuser is a member of the child-victim's immediate household, "a sufficiently different case [is presented] from that envisaged by the drafters of Rule 803(4) [and] that it should not fall under the general rule."141 The court held that a child abuse victim's statements to a physician during an examination, which identify a member of the victim's immediate household as the abuser, "are reasonably pertinent to treatment."142

The court held that the statements in this case can be distinguished from the statements of fault identified by the Rules Advisory Committee and from the ones excluded by

134. United States v. Renville, 779 F.2d 430 (8th Cir. 1985).
135. Id. at 431.
136. See id. at 435.
137. See id.
138. See id.
139. See United States v. Iron Shell, 633 F.2d 77 (8th Cir. 1980). See also discussion supra Part II.E.1.
140. United States v. Renville, 779 F.2d 430, 436 (8th Cir. 1985).
141. Id.
142. Id. (emphasis added).
past decisions. The court believed that child abuse "involves more than physical injury [because] the physician must be attentive to treating the emotional and psychological injuries which accompany this crime." The court also stated that physicians have an obligation to "prevent an abused child from being returned to an environment in which he or she cannot be adequately protected from recurrent abuse."

The court also concluded that the identifying statements satisfy the first part of the Iron Shell test, which focuses on the declarant's motivation for giving the information. The court held that the physician properly explained to the girl before questioning that the examination would include questions necessary for effective diagnosis and treatment. Furthermore, the court held that the child's motivation to answer the physician's questions was in anticipation for the prospective treatment. As a result, the Renville court expanded the Iron Shell and Nick approach by allowing statements that identify child abuse perpetrators, who are members of the victim's immediate household, to be covered by the medical diagnosis exception to the Hearsay Rule.

4. Subsequent Federal Cases Applying the Expansive View of Renville

Two subsequent cases expanded the medical diagnosis exception similar to Renville. In United States v. Shaw, the defendant appealed a conviction for sexually abusing his eleven-year-old foster daughter. The defendant argued that the girl's statements identifying fault were not reasonably

143. Id. See also discussion supra Part II.E.1-2.
144. Renville, 779 F.2d at 437. The court was convinced that the “extent of the psychological problems which ensue from child abuse often depend on the identity of the abuser.” Id.
145. Id. at 438.
146. See discussion supra Part II.E.1.
147. United States v. Renville, 779 F.2d 430, 438 (8th Cir. 1985).
148. See id.
149. See id.
150. See discussion supra Part II.E.1.
151. See discussion supra Part II.E.2.
152. United States v. Renville, 779 F.2d 430, 438 (8th Cir. 1985).
153. 824 F.2d 601 (8th Cir. 1987).
154. United States v. Shaw, 824 F.2d 602 (8th Cir. 1987).
pertinent to her diagnosis or treatment. Similarly, in United States v. DeNoyer, the defendant appealed a conviction for engaging in involuntary sodomy with his five-year-old son. The defendant argued that the son's out-of-court statements identifying the defendant to social workers should have been excluded.

The Shaw and DeNoyer courts followed Renville, holding that the admission of the statements were appropriate because "[s]tatements of fault made to a physician by a child who has been sexually abused by a household member meet Iron Shell's two part test and are admissible under 803(4)." The DeNoyer court admitted the child-victim's hearsay statements into evidence by following the Renville explanation which stated that the "exact nature and extent of psychological problems which ensue from child abuse often depend on the identity of the abuser." However, other federal courts continued this expansion by allowing the medical diagnosis exception to cover the identities of people who are not members of the victim's immediate household.

The Tenth Circuit expanded the "immediate household member" criteria. In United States v. Tome, the defendant was convicted of sexually abusing his daughter. The defendant appealed, arguing that his daughter's statements which identified him as the assailant to her pediatrician did not fall under the medical diagnosis exception. The court disagreed, holding that the child's statement to her doctor were "reasonably pertinent" to the "proper diagnosis and treatment."

155. See id. at 608.
156. 811 F.2d 436 (8th Cir. 1987).
158. See id.
159. United States v. Shaw, 824 F.2d 601, 608 (8th Cir. 1987). See also DeNoyer, 811 F.2d at 438.
160. DeNoyer, 811 F.2d at 438 (quoting United States v. Renville, 779 F.2d 430, 436-37 (8th Cir. 1985)).
161. See, e.g., United States v. Tome, 61 F.3d 1446 (10th Cir. 1995); Territory of Guam v. Ignacio, 10 F.3d 608 (9th Cir. 1993); United States v. Farley, 992 F.2d 1122 (10th Cir. 1993); United States v. Provost, 875 F.2d 172 (8th Cir. 1988).
162. See United States v. Tome, 61 F.3d 1446 (10th Cir. 1995).
163. Id.
164. Id.
165. See id. at 1449.
166. See id. at 1450.
held that a hearsay statement revealing the identity of a child abuser who is a member of the victim's family or household, "is admissible under Rule 803(4) where the abuser has such an intimate relationship with the victim that the abuser's identity becomes 'reasonably pertinent' to the victim's proper treatment." Thus, the Tome court further expanded the medical diagnosis exception to include identifying statements of family members who may or may not be immediate household members.

The Eighth Circuit distinguished their "family member" criteria by including a victim's half-relation. In United States v. Provost, the alleged perpetrator was the child-victim's half brother. The court held that the man was part of the ten-year-old female victim's immediate family even though he was the victim's half brother. The court came to this decision despite the fact that the defendant and the victim did not continuously reside in the same household.

The Ninth Circuit further expanded the "family member" criteria. In Territory of Guam v. Ignacio, the defendant married his three-year-old victim's mother's first cousin. The defendant, therefore, was the victim's second cousin by marriage. Although the defendant never resided in the victim's household and was not a blood-relative to the victim, the Ignacio court held that the identifying statements were admissible because they pertained to the "cause or external source" of the injury.

Following suit, the Tenth Circuit also continued to expand Rule 803(4) by including a child-victim's statements which identified an accused abuser who was not in any way related to the victim. The defendant, in United States v. Farley, was convicted of engaging in forced intercourse with

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167. Id. (quoting United States v. Joe, 8 F.3d 1488, 1495 (10th Cir. 1993)).
168. 875 F.2d 172 (8th Cir. 1988).
169. United States v. Provost, 875 F.2d 177 (8th Cir. 1988).
170. They were at times before and during the time of the assault residing together in their mother's home. See id.
171. Territory of Guam v. Ignacio, 10 F.3d 608 (9th Cir. 1993).
172. See id. at 610.
173. See id. at 613 (quoting United States v. George, 960 F.2d 97, 99 (9th Cir. 1992)).
174. See United States v. Farley, 992 F.2d 1122 (10th Cir. 1993).
175. Id.
a five-year-old girl.\textsuperscript{176} The defendant lived on the same Indian reservation as the victim.\textsuperscript{177} The Farley court, however, did not base its holding on the "family member" or "household member" rationale. Nonetheless, the court held that the identifying statements could be covered by the medical diagnosis hearsay exception because they were made for the "purposes of medical diagnosis and treatment" by the child-victim's psychologist.\textsuperscript{178} In effect, the Farley court's decision did not require any family or household relation whatsoever.

Two federal circuit courts have also expanded this hearsay exception to include identifying statements made by third parties.\textsuperscript{179} In United States v. Yazzie\textsuperscript{180} and Lovejoy v. United States,\textsuperscript{181} each mother of the child-victims identified the alleged perpetrator to their respective child's physician.\textsuperscript{182} Both courts ruled that the identifying statements were covered by the medical diagnosis hearsay exception because the mothers' statements were made for medical purposes with the intention of being pertinent to medical diagnosis and treatment, and were important in aiding the medical professionals' examinations of the victims.\textsuperscript{183}

However, two cases declined to extend the medical diagnosis exception in particular situations where the alleged abused children did not understand that they were speaking to someone for the purpose of medical diagnosis or treatment.\textsuperscript{184} In Ring v. Erickson,\textsuperscript{185} a mother sought medical

\textsuperscript{176} Id.
\textsuperscript{177} See id.
\textsuperscript{178} See id. at 1125.
\textsuperscript{179} See Lovejoy v. United States, 92 F.3d 628 (8th Cir. 1996); United States v. Yazzie, 59 F.3d 807 (9th Cir. 1995).
\textsuperscript{180} Yazzie, 59 F.3d at 807.
\textsuperscript{181} Lovejoy, 92 F.3d at 628.
\textsuperscript{182} In Yazzie the mother of the nine-year-old boy wrote a note to the physician implicating that the boy's stepfather had sexually abused him. The mother also elaborated to the physician the extensive sexual abuse that went on between her son and his stepfather. Yazzie, 59 F.3d at 809. In Lovejoy, the mother of the alleged sexually abused thirteen-year-old blind girl made statements to a nurse while the girl was being examined. The mother stated she observed the victim's father standing over the child with an erection, the victim's underwear was down, and her T-shirt was pulled up. Lovejoy, 92 F.3d at 631-32.
\textsuperscript{183} See Lovejoy, 92 F.3d at 632; Yazzie, 59 F.3d at 813.
\textsuperscript{184} See Ring v. Erickson, 983 F.2d 818 (8th Cir. 1993) (holding the child herself did not seek doctor's help, and there was no evidence that she even
treatment for her three-year-old girl who was allegedly sexually abused. Evidence did not support any inference that the girl understood the doctor was a treating physician and that the doctor's purpose was to medically assist her. The court, therefore, did not admit the identifying statements of the accused perpetrator into evidence because the girl did not have the necessary motive to tell the truth that is ordinarily present when people seek medical diagnosis or treatment. Thus, the Ring court held that the identifying statements were not trustworthy enough to be covered by the medical diagnosis exception because the patient herself did not seek the doctor's help and evidence concluded that she never knew she was talking to a doctor.

Similarly, United States v. White followed the ruling of Ring. The White court held that the child-victim's statements made to a social worker were inadmissible under the medical diagnosis exception because the child lacked the necessary motive of seeking treatment or a diagnosis. In White, the nine-year-old male victim told a social worker the identity of his alleged abuser. However, the court held that the child did not understand that he was speaking to the social worker for the purpose of a medical diagnosis or providing treatment for emotional or psychological injuries. The court held that the evidence did not show that the child understood "it was in his best interest to tell the truth and knew she was talking to a doctor). See also United States v. White, 11 F.3d 1446 (8th Cir. 1993) (holding there was insufficient evidence to establish that the child-victim understood the social worker was conducting an interview in order for her or another to provide diagnosis or treatment for emotional and psychological injuries).

185. Ring, 983 F.2d at 818.
186. Id. at 820.
187. The court rationalized that the victim was only three years old at the time and there was no way that the girl realized she was seeking medical treatment. See id.
188. See id.
189. See id. The motive the court was speaking of is the selfish-motive doctrine which is "based on the belief that a person seeking medical treatment is unlikely to lie to a doctor she wants to treat her, since it is in her best interest to tell the truth." Id.
190. Ring v. Erickson, 983 F.2d 818 (8th Cir. 1993).
191. 11 F.3d 1446 (8th Cir. 1993).
192. United States v. White, 11 F.3d 1450 (8th Cir. 1993).
193. Id. at 1448
194. See id.
was therefore unlikely to lie.

Therefore, the child's statements were inadmissible because the social worker never "explained her role and purpose" to the child and because the child did not personally seek the help of the social worker nor think he was speaking to a medical professional.

III. IDENTIFICATION OF THE PROBLEM

"The solution evolved by the common law has been a general rule excluding hearsay but subject to numerous exceptions under circumstances [that] furnish guarantees of trustworthiness." Congress codified these common law practices by enacting twenty-eight hearsay exceptions in the Federal Rules of Evidence. The Supreme Court held that hearsay evidence should only be admitted if it falls within one of the "firmly rooted hearsay exceptions." As assistance, the Advisory Committee Note to Federal Rule of Evidence 803(4) explicitly set the guidelines for this exception by stating that this Rule does not include statements as to fault.

To the detriment of Rule 803(4), several federal courts disregard the Advisory Committee Note and expand this Rule to cover child abuse victims' statements made to their medical provider which identify their alleged abuser. In effect, some federal courts extend the medical diagnosis exception to disregard the Advisory Committee Note and to satisfy their goal of convicting the alleged perpetrator.

195. Id. at 1450. The facts showed that the interview with the social worker took place in an automobile around which the child's siblings were playing and he was attempting to speak to the social worker in secrecy. The child had to hide the pictures shown to him by the social worker in order to prevent the children around him from seeing what he was doing. Id.

196. Id. at 1446.

197. FED. R. EVID. advisory committee's introductory note to the hearsay problem.

198. See FED. R. EVID. 803(1)-(23), 804(b)(1)-(4), and 807.


200. The Advisory Committee Note states, "[t]he same guarantee of trustworthiness extends to statements of past conditions and medical history, made for purposes of diagnosis or treatment. It also extends to statements as to causation, reasonably pertinent to the same purposes. . . . Statements as to fault would not ordinarily qualify under this latter language." FED. R. EVID. 803(4) advisory committee's note.

201. See discussion supra Part II.E.3-4.

Hence, the questions posed are: 1) whether the medical diagnosis hearsay exception can be considered a firmly rooted hearsay exception if the courts continue to expand the rule beyond what was contemplated by Congress; and 2) do arbitrary interpretations of Rule 803(4) by various federal courts contradict the underlying theory of trustworthiness that is supposed to support each exception to the Hearsay rule?

IV. ANALYSIS

The child abuse problem in our country cannot be ignored. In 1997, approximately 84,320 new cases of child sexual abuse in the United States were accepted for service by child protective services. This number is significantly higher than the 10,000 to 20,000 cases that were accepted for service in the 1970s and early 1980s. It is disputed as to what has caused this alarming increase. However, it is not disputed that attitudes toward sex crimes have become more punitive. In part, the media has aided the shaping of attitudes toward child abuse in this country by publicizing court proceedings. For example, media coverage in the 1970s and 1980s showed protestors picketing courtrooms across America who were pleading for tougher penalties against the sex offenders on trial. Elected judges were also pressured by the public and were wary of being stereotyped as lenient on sex offenders.

As a result, efforts have been made to penalize child abuse perpetrators to the greatest extent possible. Such efforts include admitting evidence that would not be allowed

204. See id.
205. See SELKIN, supra note 33, at 3.
206. See id. at 4
207. See id. at 287. See also discussion supra part II.A.
208. See SELKIN, supra note 33, at 3-4. The protests were partly the result of the women's movement in the 1970s. Many of these protests dealt with the movement against rape and the push for longer prison terms of convicted rapists. As a result of longer prison terms for convicted rapists becoming the norm rather than the exception, sexual crimes against children were, and are now, vigorously prosecuted. Id.
209. See id.
210. See SELKIN, supra note 33, at 4.
under most other circumstances. These efforts are exemplified by some federal court interpretations of Federal Rule of Evidence 803(4) to include statements, made by an abused child to a physician, that identify the alleged abuser. Among the range of problems associated with this practice is the weakening of a valuable hearsay exception.

A. The Expansive, Differing, and Arbitrary Federal Court Rulings of Admitting the Identity of Alleged Child Abuse Perpetrators Under Rule 803(4) Makes This Hearsay Exception Less Firmly Rooted

Experts agree that child sexual abuse is often very difficult to prove because molestation normally occurs in secret and the child is usually the only eyewitness. This problem multiplies when "children find the courtroom a forbidding place, and when a child is asked to testify against a familiar person . . . the experience can be exasperating." As a result, "prosecutors turn to physicians, psychiatrists, social workers, and psychologists" to testify to the out-of-court statements the child-victims stated. Frequently, the child hearsay statements are the most valuable pieces of evidence collected and relied upon to successfully prosecute an alleged abuser. One way these hearsay statements are allowed into evidence at trial is by introducing them under the medical diagnosis hearsay exception. However, courts differ as to whether identifying statements made by the child-victim to his or her medical provider should be admitted under this exception. The differing of ideas and application of the medical diagnosis exception makes it a less firmly rooted hearsay exception.

1. The Problems Associated With the Differing and

211. See, e.g., discussion supra Part II.E.3-4.
212. See, e.g., United States v. Renville, 779 F.2d 430, 436 (8th Cir. 1985) (finding child-victim's statement to her treating physician as identifying the defendant as her abuser is admissible evidence).
213. See FED. R. EVID. 803(4).
214. See 1 MYERS, supra note 27, at 411.
215. Id.
217. See MYERS, supra note 4, at 260.
218. See id. at 357-59.
219. See discussion supra Part II.E.
Expansive Applications of Rule 803(4)

Justice Blackmun noted, "[s]tatements squarely within established hearsay exceptions possess the imprimatur of judicial and legislative experience... and that fact must weigh heavily in our assessment of their reliability for constitutional purposes." However, the differing and expansive interpretations of Rule 803(4) make this exception less established and allow unforeseeable hearsay statements to be included under this Rule. Therefore, the reliability of this exception is greatly minimized.

For example, the Iron Shell court initially refused to extend this hearsay exception to include statements containing the identity of the assailant. The court based its holding on the Advisory Committee Notes to Rule 803(4), which provides that "statements as to fault would not ordinarily qualify." The court also emphasized that the age of the victim/patient declarant is not a determining factor as to whether the statements fall within the traditional rationale of the rule. Hence, this court concluded that child abuse cases should not be treated any differently than injury liability cases when using the medical diagnosis exception. This holding represented that statements as to "what happened" will fall under the medical diagnosis exception, but statements as to "who did it" will not.

Furthermore, the Nick court concluded that statements identifying the perpetrator were not relevant to the cause of the injury because not only were they considered statements as to fault, but they were also not reasonably pertinent to the diagnosis or treatment of the child. This holding represented the general rule and consensus of courts and

221. United States v. Iron Shell, 633 F.2d 77 (8th Cir. 1980).
222. See discussion supra Part II.E.1.
223. Iron Shell, 633 F.2d at 84 n.10 (quoting from the advisory committee notes of 803(4) that "a patient's statement that he was struck by an automobile would qualify but not his statement that the car was driven through a red light." FED. R. EVID. 803(4)).
224. See Iron Shell, 633 F.2d at 84.
225. See id.
226. See id.
227. United States v. Nick, 604 F.2d 1199 (9th Cir. 1979). See also supra note 132 and accompanying text.
228. See discussion supra Part II.E.2.
commentators regarding the application of the medical diagnosis exception in child abuse cases. This rule was followed from the inception of the Federal Rules of Evidence in 1975 to the mid-1980s. However, during the 1980s, some federal courts expanded this general rule which was followed for almost a decade. This was the beginning of the end of Rule 803(4) as a firmly established and reliable hearsay exception.

The *Renville* court expanded the medical diagnosis exception by holding that the exception properly covers identifying statements of the alleged perpetrator if the accused is a member of the child abuse victim’s “immediate household.” The court expanded the inclusive capabilities of the exception because it felt that a perpetrator who lives under the same roof of the child-victim poses a greater and more significant risk to the treatment and diagnosis of the child than a “non-immediate household” perpetrator. This holding, if strictly followed, may have been adequate in maintaining Rule 803(4) as a firmly established exception. However, federal courts continued the expansive weakening of Rule 803(4) in subsequent cases.

The “victim’s immediate household” distinction became the “member of the victim’s family” distinction. Currently, some courts perceive no difference between a family member living in the victim’s household and one who is a frequent or infrequent visitor. The only distinction is whether the defendant is in one way or another related to the victim.

229. *See e.g.*, United States v. Iron Shell, 633 F.2d 77 (8th Cir. 1980); *Nick*, 604 F.2d 1199.


231. *See discussion supra* Part II.E.3 (discussing that the *Renville* court held that identifying statements would be admissible under the medical diagnosis exception).


234. The court expressed that “sexual abuse at home presents a wholly different situation” than abuse that is not involved in the child’s home; thereby, statements of fault are not relevant to perpetrators who do not live in the victim’s home. *See Renville*, 779 F.2d at 437.

235. *See, e.g.*, Territory of Guam v. Ignacio, 10 F.3d 608 (9th Cir. 1993); United States v. Farley, 992 F.2d 1122 (10th Cir. 1993).


237. *See United States v. Tome*, 61 F.3d 1446 (10th Cir. 1995) (where the child-victim’s abuser was the child’s father and the father lived in a separate household); United States v. Provost, 875 F.2d 172 (8th Cir. 1989) (where the
This relation, however, does not have to be from a blood relation. For example, the expansion of Rule 803(4) also includes family relations by marriage. In Ignacio, the identity of the defendant was allowed into evidence because he was married to the victim's second cousin. Consequently, courts continued to expand the exception and now the identified perpetrator does not have to be either a member of the victim's immediate household or a member of the victim's family.

For example, in United States v. Farley, the court allowed the identity of the defendant into evidence even though he was not related to the victim and he did not live in the same household. The court disregarded the "household member" and "family member" criteria. Instead, the Farley court held that such evidence could be admitted solely for the reason that the statements were made for medical diagnosis and treatment. This practice is followed even when courts are not presented with evidence showing that the alleged abuser is either a relative or a household member, which usually correlates the need for the identifying statement to administer proper medical diagnosis or treatment.

The federal courts are continuously expanding Rule 803(4). Initially, the courts refused to extend this exception to include identifying statements of the alleged abuser.

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child-victim's abuser was her half-brother who did not continuously reside in the same household with the victim). See also Territory of Guam v. Ignacio, 10 F.3d 608 (9th Cir. 1993) (the defendant in this case was the husband of the child-victim's mother's first cousin. In other words, the defendant was the child-victim's second cousin by marriage).

238. See, e.g., Ignacio, 10 F.3d 608 (9th Cir. 1993).
239. See id.
240. Id. See also discussion supra Part II.E.4.
241. See supra text accompanying note 171.
242. See, e.g., United States v. Tome, 61 F.3d 1446 (10th Cir. 1995); Territory of Guam v. Ignacio, 10 F.3d 608 (9th Cir. 1993); United States v. Provost, 875 F.2d 172 (8th Cir. 1989).
243. 992 F.2d 1122 (10th Cir. 1993). See also discussion supra Part II.E.4.
244. United States v. Farley, 992 F.2d 1122 (10th Cir. 1993) (the defendant was a resident on the same Navajo Indian Reservation of the child-victim).
245. Id. at 1125.
246. See, e.g., United States v. Shaw, 824 F.2d 601, 608 (8th Cir. 1987) (holding that statements of fault which identify a household member are admissible under the medical diagnosis exception because doctors take domestic abuse into account when making a diagnosis and administering a plan of treatment).
247. See discussion supra Part IV.A.1.
Then, the courts extended the exception to include identifying statements of an alleged abuser if he or she was a member of the victim's household.\textsuperscript{249} Some years later, the "victim's immediate household" distinction of Rule 803(4) stretched to include "a member of the victim's family."\textsuperscript{250} Currently, some courts choose to not follow either criteria and instead base their rulings on doctors' testimony. These rulings are unpredictable because they depend on whether the doctor states he or she relies upon such statements to provide a medical diagnosis or treatment for the child.\textsuperscript{251}

Hence, the courts' applications of Rule 803(4) will contrast as much as doctors' opinions and testimony contrast. Therefore, the differing and expansive applications of the medical diagnosis exception makes Rule 803(4) a less reliable hearsay exception because it is gradually losing its once defined boundaries.

2. The Problems Associated With The Arbitrary Court Interpretations that Disregard, in Part, the Advisory Committee's Note to Rule 803(4)

The United States legislature enacted the Federal Rules of Evidence to "secure fairness in administration . . . and [for the] promotion of growth and development of the law of evidence to the end that the truth may be ascertained and proceedings justly determined."\textsuperscript{252} Congress promotes "fairness in administration" by offering an Advisory Committee Note in adjunct with each evidence rule. These notes guide the courts administration of justice by providing some indication of legislative intent.\textsuperscript{253} Hence, in the search for the intended application of the rules and to maintain them as firmly rooted exceptions, courts should rely on the accompanying Advisory Committee Notes.\textsuperscript{254}

\textsuperscript{249} See, e.g., United States v. Renville, 779 F.2d 430 (8th Cir. 1985).
\textsuperscript{250} See, e.g., Territory of Guam v. Ignacio, 10 F.3d 608 (9th Cir. 1993).
\textsuperscript{251} See, e.g., United States v. Farley, 992 F.2d 1122 (10th Cir. 1993).
\textsuperscript{252} FED. R. EVID. 102.
\textsuperscript{253} See, e.g., United States v. Iron Shell, 633 F.2d 77, 84 (8th Cir. 1980) (quoting the Advisory Committee Note to Rule 803(4) in footnote 10 of this case, and using the Note to support its holding).
\textsuperscript{254} See, e.g., United States v. Renville, 779 F.2d 430, 436 (8th Cir. 1985) (the court referred to the Advisory Committee Note to support its ruling); United States v. Iron Shell, 633 F.2d 77, 83 (8th Cir. 1980) (citing the Advisory Committee when discussing the liberalization effect Rule 803(4) had on prior court practices).
The Advisory Committee Note to Rule 803(4) explicitly denotes that statements covered by the medical diagnosis exception are "past conditions and medical history, made for purposes of diagnosis or treatment. It also extends to statements as to causation, reasonably pertinent to the same purposes.... Statements as to fault would not ordinarily qualify under this latter language." The note states that if statements as to causation carry the burden of fault, such statements will not be allowed under this exception. Common sense cannot ignore the fact that the identification of a perpetrator will cast a strong sense of fault onto the accused, notwithstanding that a medical provider uses the identification of the assailant for treatment or diagnosis purposes.

However, some federal courts have chosen to disregard this result. These courts decide to give greater credence to the attending medical provider who may reason that he or she uses the identification of the alleged perpetrator for treatment and/or diagnosis of the victim. Regardless, such balancing of interests perpetuates a strong contradiction against the Advisory Committee Note and the underlying purpose of Rule 803(4).

The Advisory Committee Notes offer a guide and basis for applying each Evidence Rule. The Note to Rule 803(4) explicitly states that statements as to fault should not be included under this hearsay exception. Identifying statements will undoubtedly cast some sense of fault onto the alleged abusers. However, some federal courts have decided to disregard the Advisory Committee Note to Rule 803(4) and have, in effect, made the Rule a "less firmly rooted" hearsay exception.

255. FED. R. EVID. 803(4) advisory committee's note.
256. See id.
257. See discussion supra Part II.E.4.
258. The underlying purpose of Rule 803(4) is to allow the patient's statements into evidence because the patient has a strong motive to tell the truth when the diagnosis and treatment depends upon what the patient says. United States v. Iron Shell, 633 F.2d 77, 83-84 (8th Cir. 1980). However, these statements are only admissible when they are "reasonably pertinent to diagnosis or treatment." Id. at 83. The Advisory Committee's Note states that statements as to fault would not ordinarily qualify for purposes of medical diagnosis or treatment. See FED. R. EVID. 803(4) advisory committee's note.
259. See FED. R. EVID. 803(4) advisory committee's note.
260. The Supreme Court in Idaho v. Wright stated that "a firmly rooted
B. Allowing the Identity of an Alleged Child Abuser into Evidence Under Rule 803(4) Contradicts the Main Principles of the Hearsay Exceptions

The two main considerations for allowing hearsay statements into evidence is the necessity for the use and the inherent trustworthiness of the statements. Courts frequently disregard these two inherent factors by allowing hearsay statements into evidence that identify an accused child abuser.

1. It Is Not Necessary to Admit the Identifying Statements Under the Medical Diagnosis Exception

Professor John E.B. Myers, an expert on investigation and litigation of child abuse and neglect, stated that hearsay statements of child abuse victims are frequently necessary for the successful prosecution of alleged child abusers. This is based on the fact that child abuse is "often exceedingly difficult to prove" because the child-victim is often the only witness to the crime. The Supreme Court also stated that "[c]hild abuse is one of the most difficult crimes to detect and prosecute, in large part because there often are no witnesses except the victim." For this reason, different groups have strived to find ways to prosecute such crimes and part of the result has been to allow identifying statements made by the child-victim into evidence. However, allowing such

hearsay exception satisfies the constitutional requirement of reliability because of the weight accorded longstanding judicial and legislative experience in assessing the trustworthiness of certain types of out-of-court statements." Idaho v. Wright, 497 U.S. 805, 817 (1990). Nonetheless, the federal courts differ as to: 1) allowing or not allowing identifying statements into evidence, and 2) disregarding or complying with the legislature's Advisory Committee's Note that states "[s]tatements as to fault do not ordinarily qualify." See FED. R. EVID. 803(4) advisory committee's notes. See also discussion supra Part IV.A.1. Hence, since there is no longstanding judicial experience in allowing identifying statements into evidence and since the legislature's assessment in its Advisory Committee's Note is at times disregarded by some courts, the federal courts differing and expansive applications of Rule 803(4) has made the exception a "less firmly rooted" hearsay exception.

261. See supra notes 74-75 and accompanying text. See also discussion supra Part II.C.1.
262. See MYERS, supra note 216, at ix.
263. Id. at v.
264. Id.
265. Id. (quoting Pennsylvania v. Ritchie, 480 U.S. 39, 60 (1987)).
266. See MYERS, supra note 4, at 372.
statements into evidence under the medical diagnosis exception may be unnecessary since alternative options are available.

In many situations, the identifying statements made by the child-victim can easily come in under other hearsay exceptions such as the excited utterance or residual hearsay exceptions. When these alternatives are available, there is no need to admit the identifying hearsay statements by misconstruing the medical diagnosis exception. However, when these alternatives are not available, the medical diagnosis exception may be the only means for allowing the child-victim hearsay statements into evidence. Nonetheless, there may still be some doubt as to whether the child-victim's hearsay statement contains the inherent sense of trustworthiness to fit under the medical diagnosis exception.

2. The Identifying Statements of the Child-Victim Are Not Always Inherently Trustworthy

The essential reason statements made for the purposes of medical diagnosis or treatment fall under a separate hearsay exception is because such statements are usually made from a strong motivation by the patient to be truthful. In order for such statements to be inherently trustworthy, the patient must believe the "effectiveness of the treatment he receives depends largely upon the accuracy of the information he provides to the physician." It is not clear whether young children understand the importance of being truthful with health care providers. One

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267. Compare Iron Shell, 633 F.2d at 85 (police officer was allowed to testify as to what nine-year-old victim said following the assault under the excited utterance hearsay exception), and Territory of Guam v. Ignacio, 10 F.3d 608 (9th Cir. 1993) (child statement to defendant's wife that defendant had molested child was admissible under the excited utterance hearsay exception to the hearsay rule), with United States v. Farley, 992 F.2d 1122 (10th Cir. 1993) (sexually abused child's account of assault told to mother was admissible under the residual hearsay exception), and Lovejoy v. United States, 92 F.3d 628 (8th Cir. 1996) (nurse's hearsay testimony of statements made by mother of alleged child-victim of attempted sexual abuse during daughter's medical examination, that mother had seen defendant, child's father, standing over child with an erection and that child's underwear was down and her T-shirt was pulled up, were admissible under the residual hearsay exception).

268. See Fed. R. Evid. 803(4) advisory committee note.

child psychologist concluded, "[[logical concepts such as cause of illness, necessity of treatment, and role of medical personnel are often beyond the inherent developmental ability of the young patient." For example, child psychologist Margaret Steward described a situation illustrating this point. Steward interviewed a young boy who was in the hospital after he suffered a concussion and a fractured skull. When the boy was asked if the doctors were helping him get well, the boy answered, "[n]o, the doctors are berry mean."  

This situation can be further complicated when the traditional physician or nurse is not providing the health care, but rather a psychotherapist or social worker is tending to the child's physical and emotional needs. Two common reasons for a child not to appreciate the need to be accurate and truthful with the psychotherapist or social worker are: 1) the child may not understand the sessions are therapeutic or in his best interest, and 2) "psychotherapy usually occurs in surroundings that would not remind a child of being in the traditional doctor's office."

Because of such problems, the Ring and White courts refused to admit identifying statements of an alleged child abuser into evidence under the medical diagnosis exception. In both cases the courts refused to allow the statements into evidence because the children did not understand the purpose of the health care providers or the type of help they could receive. These holdings kept the underlying purpose of trustworthiness in mind. Unfortunately, not all courts pay enough attention to this kind of analysis.

Yazzie and Lovejoy are two such cases. Both courts extended the medical diagnosis exception to include

271. See id. at 220.
272. Id.
273. See id. at 221-22.
274. Id. at 222.
275. Ring v. Erickson, 983 F.2d 818 (8th Cir. 1993).
276. United States v. White, 11 F.3d 1446 (8th Cir. 1993).
277. See discussion supra Part II.E.4.
278. See discussion supra Part II.E.4.
279. See supra note 258 (discussing the underlying purpose of Rule 803(4)).
280. United States v. Yazzie, 59 F.3d 807 (9th Cir. 1995).
281. Lovejoy v. United States, 92 F.3d 628 (8th Cir. 1996).
identifying statements made by someone other than the actual child-victim. In both cases the statements were made by the mothers of the victims. The rationale given by both courts for extending the exception was that the mothers' statements were made with the intention of assisting the medical professionals' examinations of the victims. Although this was most likely true in these two cases, this rationale allows for the possibility of admitting statements that were intentionally made for ill-conceived reasons.

For example, "parental custody and visitation disputes . . . [are] fertile sources for the production of fictitious allegations." Unfortunately, these types of cases occur quite frequently in family and divorce court settings. For this reason, "professionals [working] in the area of child sexual abuse evaluations find the coexistence of custody disputes with child sex allegations a particularly difficult area of work" because inter-family disputes may lead to spiteful and fictitious allegations. Despite all this, many federal courts seem to hold that Rule 803(4) is an adequate and proper tool for admitting identifying statements of alleged child abusers made by child-victims; and in some instances, made by relatives of the victims.

Professor Myers contends that the medical diagnosis exception was designed for adults. Therefore, when the exception is applied to young children, legitimate questions are raised about their understanding of the need to be truthful. These legitimate concerns support the doubt surrounding the reliability of such statements.

282. See discussion supra Part II.E.4.
283. See Lovejoy, 92 F.3d at 632; Yazzie, 59 F.3d at 809.
284. See discussion supra Part II.E.4.
286. It is believed that the rate of fictitious allegations may be as high as 50% in child abuse cases involving divorce, custody, and visitation issues. See Raskin & Yuille, supra note 3, at 186.
287. See Jones & Seig, supra note 285, at 22.
288. Id.
289. See, e.g., Lovejoy v. United States, 92 F.3d 628 (8th Cir. 1996); United States v. Yazzie, 59 F.3d 807 (9th Cir. 1995). See also discussion supra Part II.E.4.
290. See generally Myers, supra note 270, at 221.
291. Id.
292. See id.
should caution courts from extending the medical diagnosis exception to cover identifying statements made by a child to a health care provider.

In many situations the necessity for admitting the identifying evidence under Rule 803(4) is questionable. Additionally, there are many instances when the motivation for making such statements does not carry the inherent trustworthiness needed to apply the medical diagnosis exception. Furthermore, it is contended that the medical diagnosis exception was intended for statements made by adults. For these reasons, admitting identifying statements made by child abuse victims conflicts with the main principles of the medical diagnosis hearsay exception.293

V. PROPOSAL

Federal Rule of Evidence 803(4) is not the appropriate exception for admitting statements, made by child abuse victims to their health-care providers, that identify alleged abusers. Nevertheless, most everyone with some sense of decency agrees that the child abuse problem must be stopped. However, admitting such statements under the medical diagnosis hearsay exception ignores the legal protections intended by the Hearsay Rule.294 It also misconstrues the framers' guidelines and intentions of Rule 803(4).295

When possible, the federal courts should continue to use other hearsay exceptions to admit identifying statements into evidence, such as Federal Rule of Evidence 803(2), the excited utterance exception, and Federal Rule of Evidence 807, the residual hearsay exception. In some situations, however, the child-victim's out-of-court statements do not fit under these two hearsay exceptions.296 Therefore, if alternative exceptions such as these are not an adequate solution for prosecutors and the courts to be able to utilize all the reliable and vital evidence gathered to convict child abusers, Congress must enact a provision in the Federal

293. See supra note 258 (discussing the underlying purpose of Rule 803(4)).
294. See discussion supra Part IV.A-B.
295. See discussion supra Part IV.A.2. See also supra note 258 (discussing the underlying purpose of Rule 803(4)).
296. See FED. R. EVID. 803(2).
297. See FED. R. EVID. 807.
298. See MYERS, supra note 4, at 372.
Rules of Evidence that would solve this problem.

More than two-thirds of the states in this country have already attempted to solve this problem by enacting specific hearsay exceptions for statements made by child abuse victims. These hearsay exceptions make it possible to admit child-hearsay in child abuse cases that would otherwise be inadmissible. In essence, these statutes authorize the admission of any reliable out-of-court statements made by abused children that pertains to the abuse. These statutes are the result of states clarifying a vague area in their evidence codes which never before dealt with reliable out-of-court statements made by child-abuse victims.

In 1995 the California legislature enacted a medical diagnosis hearsay exception specifically for child-abuse cases.

299. See Marks, supra note 31, at 237.
300. See id.
301. See Myers, supra note 4, at 372.
302. The Washington state legislature enacted a child victim hearsay exception in 1982 and this exception has served as a model for other states. See id. at 373. The Washington statute states:

A statement made by a child when under the age of ten describing any act of sexual contact performed with or on the child by another . . . not otherwise admissible by statute or court rule, is admissible in evidence in dependency proceedings . . . and criminal proceedings . . . in the courts of the state of Washington if:

(1) The court finds, in a hearing conducted outside the presence of the jury, that the time, content, and circumstances of the statement provide sufficient indicia of reliability; and

(2) The child either:
(a) Testifies at the proceedings; or
(b) Is unavailable as a witness: PROVIDED, That when the child is unavailable as a witness, such statement may be admitted only if there is corroborative evidence of the act.

WASH. REV. CODE § 9A.44.120 (1998).

The Florida statute is similar to the Washington statute. See Myers, supra note 4 at 372 n.533. This statute is titled the Statement of Child Victim hearsay exception and states in relevant part:

Unless the source of information or the method or circumstances by which the statement is reported indicates a lack of trustworthiness, an out-of-court statement made by a child victim with a physical, mental, emotional, or developmental age of 11 or less describing any act of child abuse or neglect, any act of sexual abuse against a child, the offense of child abuse, the offense of aggravated child abuse, or any offense involving an unlawful sexual act, contact, intrusion, or penetration performed in the presence of, with, by, or on the declarant child, not otherwise admissible, is admissible in evidence in any civil or criminal proceeding . . . .

FLA. STAT. ch. 90.803(23)(a) (1998)
Section 1253 of the California Evidence Code states in relevant part:

[E]vidence of a statement is not made inadmissible by the hearsay rule if the statement was made for purposes of medical diagnosis or treatment and describes medical history, or past or present symptoms, pain, or sensations, or the inception or general character of the cause or external source thereof insofar as reasonably pertinent to diagnosis or treatment. This section applies only to a statement made by a victim who is a minor at the time of the proceedings, provided the statement was made when the victim was under the age of 12 describing any act, or attempted act, of child abuse or neglect.  

This exception takes into consideration the importance of admitting out-of-court statements made by abused children into evidence. In essence, this statute allows into evidence some out-of-court statements made by children which identify the child-victim's abuser. A statute such as this would alleviate the need to compromise, Rule 803(4), the medical diagnosis hearsay exception. Furthermore, the enactment of a similar federal statute will allow for a more consistent, fair and predictable approach to admitting such evidence.

If Congress does not follow the lead of the states, the medical diagnosis exception will continuously be misconstrued and ultimately be weakened. The medical diagnosis exception was not intended to include identifying statements of child abuse perpetrators. These statements cast fault on the alleged perpetrator and statements of fault are explicitly prohibited by the Advisory Committee's Notes to the Rule. Therefore, Congress should enact a statute that specifically covers child-hearsay in child abuse situations. More importantly, the provision should maintain the underlying characteristic of the other hearsay exceptions—an inherent sense of trustworthiness. Congress should enact such a statute or we will continue to witness the deterioration and gradual decline of the once "firmly established" medical diagnosis exception to the Hearsay Rule.

303. CAL. EVID. CODE § 1253
304. See id.
305. See FED. R. EVID. 803(4) advisory committee's note.
306. Id.
VI. CONCLUSION

This comment discussed how the increase of reported child sexual abuse cases directly relates to society taking great measures to stop and deter child abusers. In effect, child-protective groups influenced the criminal justice system to toughen their stance against child abusers. Following society's anger, courts were also able to assist this objective by admitting hearsay statements made by a child-victim to a medical provider that identify the alleged abuser. However, this solution contradicted and misconstrued the main principles of one particular exception which was used to allow such statements into evidence—Federal Rule of Evidence 803(4), the medical diagnosis hearsay exception. In effect, the differing and expansive federal court rulings of Rule 803(4) make the medical diagnosis exception less reliable and "less firmly rooted."

No rational person wants to compromise the health and safety of our country's children. However, if the medical diagnosis hearsay exception is strictly interpreted, the abused and violated children of our country cannot be adequately protected. Therefore, Congress needs to take action. Congress should add another exception to the hearsay rule that takes into consideration the basic underlying principles of the Hearsay Rule, the exceptions to the Hearsay Rule, and the needs of our country's children. In this way, neither the health and safety of our country's children nor the federal legal system will be compromised.

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307. See discussion supra Part II.A.
308. Among others, one solution was to enact tougher penalties against convicted child sex offenders. See SELKIN, supra note 33, at 281.
309. See discussion supra Part II.E.
310. See discussion supra Part IV.
311. See discussion supra Part IV.