Child Abuse – Neglect/Endangerment

written by Richard Leslie | November 1, 2024

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***NOTE:** This article was first published on the CPH website in September 2015. It appears below with minor changes. Child abuse reporting duties of mental health practitioners are sometimes fraught with ambiguities and dilemmas – all with possibly serious consequences, both to the practitioner and to the patient. This article addresses an aspect of the reporting duty that is perhaps not as widely addressed as physical or sexual abuse of a child.*

CHILD ABUSE – Neglect/Endangerment

This topic came to mind as the result of three news stories from three different states. My immediate thought upon learning of each of these stories was that mental health practitioners can unexpectedly be thrust into very thorny situations that could result in significant exposure to liability if not handled wisely and appropriately. While the three news stories do not, to my knowledge, involve people who were actually in treatment at the time of the incident, the issue of the necessity of reporting child abuse or neglect is raised by the facts involved (assuming that the information had been shared by a patient with a treating mental health practitioner/mandated reporter).

One story involved young "free range children" walking around the neighborhood without parental supervision. Another story involved teenagers, knowledgeable about boating, venturing out to sea on a small boat without adult supervision. The third news story involved a parent driving at an excessive rate of speed with a young child in the car. (These stories arose in 2015. More recently, stories have arisen about parental responsibilities re: allowing access to guns by minors.)

Imagine if the parents of the "free range children," ages 10 and 6, disclosed to their couples therapist that they regularly allow their children to venture out unsupervised to a neighboring public park or to the local convenience store. What if the neighborhood was a high crime area? What if serious harm actually came to the children? What if the children were one or two years younger? Or, imagine if one of the parents of the sea-going boaters (a pair of fourteen year old boys) told a treating therapist that both parents allowed the experienced son to go out to sea with the other boy, unsupervised by an adult. What if the boys were eleven or twelve years of age? Lastly, imagine a parent telling the therapist about driving 120 miles per hour with the twelve year old child in the car. What if the parent was instead driving at a speed of 80 mph in a 55 mph zone?

What makes these situations thorny is the reality that mandated reporters who do not report may sometimes be judged with the benefit of hindsight and in the glare of highly charged publicity. The decisions that are made by mandated reporters are critical to clients and to practitioners. For the

practitioner, the failure to report child abuse or neglect is often both a crime and considered to be unprofessional conduct. Reporting known or reasonably suspected child abuse will in most states provide the reporter with immunity from liability. The parameters of the protections afforded for reporting, and the possible penalties for failing to report, vary from state to state. Filing a report that is not authorized by law could result in a claim of breach of confidentiality by the patient and the licensing board. Confidentiality should not be broken unless a report is required or authorized – the patient's life could change dramatically for the worse if unjustifiably reported for suspected child abuse or neglect.

With respect to two of the examples above, the age of the children and the particulars of the situation of course matters. If the boaters were 9 years of age instead of fourteen, there would certainly be little controversy as to whether there should have been reasonable suspicion of neglect. With respect to driving 120 miles per hour with a child in the car, it would seem that the age of the child is not material – such conduct endangers the health and safety of the child and would likely constitute either child endangerment or neglect, or both, depending upon state law. As to the free range children, it would seem that the neighborhood, time of day, and the age and maturity of the children are critical. In the reported case, no harm came to the children and I believe child protective services did not pursue the parents for neglect. What would have happened if the children had been sexually molested – would CPS have acted differently with the benefit of hindsight?

Since there are so many variables, it is important for practitioners to have a clear understanding of each and every aspect of the child abuse reporting requirements. Two of the examples described above involve neglect. In California, "neglect" means the negligent treatment or maltreatment of a child by a person responsible for the child's welfare under circumstances indicating harm or threatened harm to the child's health or welfare. Neglect includes both acts and omissions on the part of the responsible person. The law defines severe neglect and general neglect, both of which are reportable. General neglect means the negligent failure of a person having the care or custody of a child to provide adequate food, clothing, shelter, medical care, or supervision where no physical injury to the child has occurred but the child is at substantial risk of suffering serious physical harm or illness. Child endangerment is typically defined, in part, as willfully causing or permitting the person or health of a child to be placed in a situation in which the child's health or safety is endangered.

A question that is often raised when dealing with situations like the above is "where is the line to be drawn between poor parenting and reportable neglect." What is adequate parental supervision? There are innumerable marginal or questionable situations that arise during the course of therapy that go unreported by mandated reporters (usually, justifiably so), and because nothing untoward or unexpected occurs thereafter, there is no issue. But in situations where unexpected harm comes to a child, and once it is discovered that there was a treating therapist, there are questions asked and increased scrutiny – why wasn't this reported? What did the therapist know, and when did the therapist learn of the information? Should the therapist have had a suspicion (or a reasonable suspicion)? If not, why not?

Therapists' actions are sometimes scrutinized after a child suffers physical or mental/emotional harm.

The question typically is whether the therapist acted or failed to act (no report is made) like the reasonably prudent therapist of like licensure would have acted under the same or similar circumstances. Using good judgment and consulting with another clinician may help. It would also be helpful if the practitioner's records reflected that the matter had been discussed with child protective services and that the CPS worker agreed that the situation did not require a report. The skillful practitioner can (or should) develop the art of conversing with CPS and leading/convincing them to agree with the practitioner's judgment so that the treatment records can then be documented and prove helpful (perhaps crucial) should a vigorous defense be necessary. Cases that involve issues of possible or arguable endangerment or neglect, where no report is made, may be quite defensible – but hope that you are not given the "opportunity" to defend!