

Child Abuse Reporting - A Dilemma Fully Explored

written by Richard Leslie | May 24, 2016

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... While I have written about this topic recently, I was asked to comment on the topic again – that is, the situation where a registered intern or trainee fails to report child abuse, and then discovers this failure to obey the law when receiving supervision. What is the dilemma created for the pre-licensed person, and what is the dilemma created for the supervisor? What are some of the legal issues involved?

Suppose that the pre-licensed person (recently granted status as a Marriage and Family Therapist Registered Intern) is properly employed and supervised by a licensed practitioner in a private practice, or is employed in a nonprofit agency and is supervised by an employee of the agency. A seventeen year-old patient is seen by the intern on a Monday. The patient reveals that five years ago, when she was around twelve, she was sexually molested (touched inappropriately) by her father. This happened twice, but never again, according to the patient. The patient mentioned this when describing her current relationship with her parents. When the intern inquired further into the events of five years ago, the patient told the intern that she did not want this reported to the authorities because it would cause great harm to the family and to the father in particular, a prominent attorney. The girl was fearful that she would be blamed for causing so much pain to the family.

The intern reasonably believed that the patient was in no immediate danger and awaited supervision on Thursday morning in order to discuss the matter. Additionally, the intern was not certain that this should be reported because of the passage of five years and because of the girl's fear of being blamed. During supervision, the intern learned that this information needed to be reported because the intern had, or should have had, a reasonable suspicion that child abuse had occurred. The intern also is reminded that under the applicable state law, the child abuse report was supposed to be made as soon as practicably possible by telephone and within 36 hours in writing – both periods of time then having passed. The intern knew that she was a mandated reporter. She knew, or should have known, that failure to report child abuse within the time frame specified in law is a crime – a misdemeanor.

The licensed supervisor, herself a mandated reporter, learned about the abuse for the first time in supervision and obviously learned about the abuse while acting in her professional capacity. The intern asks the supervisor what she should now do. The supervisor is not sure whether the intern should be told to now make the report, or whether the supervisor should make the report, or whether both should make the report. My discussion follows. While each state's laws regarding child abuse reporting vary, often with fine nuance, I discuss the issues with California law in mind.

If the intern now reports the incident of child abuse, it would likely be noticed that the report was not filed in a timely fashion. Technically, the intern's failure to timely report could be investigated and she could be charged with a crime. As a practical matter, if there has been no harm to the minor during the delay in reporting, an investigation and prosecution is unlikely. If the supervisor makes the report, he or she would be making the report in a timely manner, but would probably have to reveal, when describing the situation, that the intern knew about this several days earlier.

Hopefully, the supervisor will be able to present the report in a manner that will minimize the jeopardy to the intern – that is, the supervisor might explain that the intern is not yet licensed and was very recently registered, that the intern brought the issues up in the first supervision session since learning of the information, that the intern competently evaluated the threat to the seventeen year-old, and that the intern has learned from the experience. While this is no guarantee against trouble for the intern, the possibility of trouble should hopefully be minimized. Of course, if harm did take place during the delay in making a timely report, criminal charges become more likely – with increased implications for disciplinary action by the licensing board.

Several other points are useful to make. First, in California and I suspect in most states, there is no statute of limitations on the reporting of child abuse. What is meant by that statement is that if the victim of the abuse is a child (under 18) for purposes of the reporting law, then even if the abuse took place many years earlier, a report would still be required. While a criminal prosecution of the perpetrator might at times be barred by a statute of limitations, a report would nevertheless be required. There is ordinarily no need to report the situation involving an adult patient who talks of abuse suffered as a child. An exception to this general rule might occur where, for example, an eighteen year old patient describes recent and previous sexual abuse by her father and expresses concern for her sixteen year-old sister residing in the house. The therapist might justifiably have a reasonable suspicion that child abuse is now occurring.

Even though circumstances may exist that make the therapist believe that a report is not necessary or might be counter-productive to the patient and the family, the practitioner cannot substitute his or her judgment for the requirements of the law. I always remember the therapist in California who had his license suspended for a period of years for a failure to report child abuse. He had determined that a report would not be wise under the circumstances, and that it might be counter-productive to the therapy. During an administrative hearing held in order for him to get his license back, he was asked by the Deputy Attorney General representing the State licensing board whether he would act differently in the future if the same circumstances were to occur. Instead of saying that he would always obey the child abuse reporting law, he indicated that he would do the same thing as he did in the instance that led to the disciplinary action. Obviously, his license was not restored.

In California, when two or more persons who are required to report jointly have knowledge of a known or suspected instance of child abuse or neglect, and when there is agreement among them, the telephone report may be made by a member of the team selected by mutual agreement and a single report may be made and signed by the selected member of the reporting team. If a member of the team has

knowledge that the member designated to report has failed to do so, then that member must thereafter make the report. This statute typically applies to situations where both mandated reporters find out about the suspected abuse at the same time. This statute can also be read as having application to the situation described in this article. In most cases, however, the supervisor will want to report the suspected abuse in a timely manner and there is ordinarily no need for the intern to file a separate, duplicate, and late report.