Child Abuse Reporting – Duty to Investigate?

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… Does a therapist or counselor generally have a duty to investigate in situations involving possible child abuse so as to determine whether a child abuse report must be made? Is there a duty on the part of a mandated reporter to seek information from the patient or others in order to identify or locate an alleged child abuser so that a possible child abuse report can be complete? The general answer to these questions appears to be "no," but one must be careful to make sure that state law or a particular situation does not require otherwise.

Therapists and counselors are not generally viewed as having an investigative function, and their respective licensing laws generally do not require duties of an investigative nature. They treat patients for mental and emotional problems and are health care practitioners who are duty-bound to protect the patient's privacy and to treat information about the patient as confidential. Therapists and counselors of course obtain information from the patient and others in the course of providing professional services, but that information gathering is for the purpose of treatment and a natural part of the therapeutic process – not for separate investigative purposes.

Child abuse reporting laws provide an exception to confidentiality, and usually require a report when the practitioner knows or reasonably suspects (or a similar standard) that child abuse has occurred. One must look carefully at the state child abuse reporting law to see whether or not there is any duty to investigate under specified circumstances.

As to the first question asked above, one of the times this question may arise is when a minor engages in consensual sexual intercourse or other sexual activity with another person. For instance, if a sixteen year-old girl tells her therapist that she engages in consensual sexual activity with her boyfriend, a therapist may be required to make a child abuse report based upon the age of the boyfriend, or in some cases, based solely upon the nature of the consensual sexual activity.

In one state, for example, no statute or case obligates the licensed practitioner to inquire of their minor patients as to the age of their sexual partners or to the particular kind of sexual activity being engaged in. Of course, that information may come out in the ordinary course of therapy or the patient may deliberately not want to reveal the partner's age or the nature of the sexual activity. Each case is different. In such circumstances, that particular state essentially leaves it to the judgment of the practitioner as to whether or not to inquire as to the age of the partner or to the kind of sexual activity involved.

As to the second question asked above, a common example where this question may arise is in the

circumstance where an adult patient tells his or her therapist or counselor of abuse that occurred when the patient was a minor. Perhaps the most compelling situation would be when the alleged abuser was a teacher at a school where the adult patient attended some years earlier. Would the therapist or counselor be under an obligation (or “duty to investigate”) to check with the school or to inquire of the patient as to the present whereabouts of the alleged abuser? As an aside, even if that were done and it was discovered that the teacher is still employed at the same school, a report may not be required.

While many states do not generally require a report when an adult patient reports abuse that occurred when the patient was a minor, there can be exceptions, such as in a circumstance where an 18 year old talks with the therapist about sex with her father when she was a minor and also tells the therapist that she has a 16 year old sister that now lives with the father. It may well be that because of the nature and extent of the former abuse of the patient, the therapist may develop a reasonable suspicion that abuse is currently taking place with the sister of the patient.

But as to the question about a “duty to investigate” the present whereabouts of the teacher, the therapist or counselor would ordinarily not have such a duty (unless state law imposed a duty). Of course, if the present whereabouts of the teacher is important to the patient and is connected to her treatment, this information may come to the therapist during the course of inquiry naturally attendant to the performance of therapy. The therapist would not ordinarily be expected to call the school to inquire, or to press the patient for more information about the teacher’s current location.

These questions can be tricky, and the answers will necessarily depend upon state statutes and other sources of legal authority. There have been several attempts in California to impose some sort of a duty to investigate under specified circumstances – but none of those attempts have thus far been successful. How does the law treat this issue in your state?