

Does A Statute Of Limitations Exist?

written by Richard Leslie | May 24, 2016

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I have written extensively about child abuse and child abuse reporting requirements in prior issues of this Bulletin. Those articles can be found in the Avoiding Liability Bulletin archives on the CPH & Associates website. One area that I have not written about is the misunderstanding amongst some mandated reporters regarding the issue of an applicable "statute of limitations." Suppose that a nineteen year-old patient tells a therapist that she was molested by an uncle ten years earlier. Or, suppose that a seventeen year old patient tells his therapist that he was molested by his uncle seven years earlier. What are the reporting requirements and what role, if any, does a statute of limitations play with respect to reporting in each of these examples? As I have written here many times before, state laws vary, sometimes in fine nuance, so my remarks below are based upon California law.

In the first scenario, there is no duty to report child abuse because the nineteen year old is not a child, but rather, an adult. Generally, there is no duty in California to report child abuse when an adult patient tells the therapist of abuse that occurred when the patient was a child. There is an exception to this general rule, but that is a topic for another article. If a thirty year old patient reveals that she was raped when she was fifteen, there is no duty to report. The patient, whether thirty or nineteen years of age, may choose to report the prior abuse if he or she desires. There may be an applicable statute of limitations that will prevent the perpetrator from being criminally prosecuted. The determination as to the existence of a statute of limitations affecting the prosecution, and the precise calculation, usually depends upon the advice of law enforcement (e.g., the police and/or the District Attorney) or a private attorney. Statutes of limitations are sometimes tolled (the clock does not tick) during certain periods of time or under certain circumstances.

In the second scenario, the therapist must report child abuse. A child (the seventeen year old) was abused (I of course assume that the child's report to the therapist is credible and that reasonable suspicion exists). There is no statute of limitations applicable to the reporting of child abuse by a therapist. In other words, even if the crime is old, and even if the criminal prosecution of the perpetrator were barred by an applicable statute of limitations, the child abuse reporting law contains no statute of limitations with respect to the duty of the mandated reporter to report suspected or known child abuse - provided that the information conveyed to the practitioner is about a child, and not an adult who was abused as a child. As to the statute of limitations that may apply to the criminal prosecution, that determination is typically made by the prosecuting authorities.

Are the laws in your state similar to what I have described here? You never should fail to make a child abuse report that is required by law. Similarly, you should not make a report when no report is specifically required or authorized. To do so will likely constitute a violation of law for breach of

confidentiality that can result in disciplinary action by the state and monetary liability in a civil lawsuit.