Emotional Abuse of Children

written by Richard Leslie | March 31, 2021

Avoiding Liability Bulletin – April 2021

EMOTIONAL ABUSE OF CHILDREN

I am aware that there is a belief by some who have examined this issue that there is an underreporting of emotional abuse of children and that this form of child abuse is a somewhat neglected topic when child abuse issues are discussed. One study found that "emotional abuse is sometimes hard to detect or determine and somewhat difficult to document, but it can affect children emotionally, behaviorally and intellectually." Some states may have laws that permit, but do not require, a child abuse report for what may be called or referred to as "emotional abuse." The legal definition of "emotional abuse" and the fact that the reporting of emotional abuse may "only" be permissible (depending, of course, upon state law) and not mandatory, may contribute to the underreporting of emotional abuse – if in fact there is such underreporting.

In most state child abuse reporting laws, and separate and apart from emotional abuse, there are provisions that mandate the reporting of certain forms of mental harm or mental suffering inflicted upon a child. Additionally, most, if not all, states have some kind of a child endangerment statute that requires a report under specified circumstances. In one state, for example, the statute describes a situation in which any person willfully causes or permits any child to suffer, or inflicts thereon, unjustifiable physical pain or mental suffering, or having the care or custody of any child, willfully causes or permits the person or health of the child to be placed in a situation in which his or her person or health is endangered. The word "health" would seemingly include mental as well as physical health.

One state's definition of "emotional abuse" (which may be reported) previously included situations where the mental health practitioner reasonably suspected that mental suffering had been inflicted upon the child *or that his or her emotional well-being was endangered in any other way*. Interestingly, that broad definition of "emotional abuse" has since been amended. The law in that state now requires that the health practitioner have a reasonable suspicion that the child is suffering serious emotional damage or is at a *substantial risk of suffering serious emotional damage*. Even in such circumstances, a child abuse report is permitted or authorized – but not required (in that particular state). I must remind readers that each state law and state practice will likely treat this subject matter somewhat differently.

Terms like "mental suffering," " emotional harm," "emotional abuse", "endangerment of health (would seemingly include mental health), "neglect" and "endangerment" are often defined in state statutes and may either require or permit reporting if the child's mental health is negatively affected in a material way. When a report is not mandated, but rather, is "merely" permitted, a licensed mental health professional may be reluctant to make a child abuse report. As many practitioners are aware,

sometimes reports are made (whether mandated or permitted) and the ensuing harm to the child and the family may be more severe than if the matter were not reported – but rather, dealt with clinically. Of course, if a report is mandated, there is little choice for the practitioner.

I have spoken with some mental health practitioners who feared that they might be sued for breach of confidentiality and that a persuasive argument might be made that since a report of emotional abuse was not mandatory, the practitioner negligently compromised the patient's privacy and confidentiality. On the other hand, I have spoken with practitioners who have relied upon the often broad language of emotional abuse statutes to make reports where neglect or physical abuse, although suspected, is not yet clear enough to trigger a report. Practitioners have also raised concerns about the difference between "bad parenting" and reportable emotional abuse.

Some statutes or information published by the state may describe indicators of emotional abuse as, for example, a parent's belittling, screaming, threatening, blaming or otherwise verbally assaulting a child. Emotional abuse may be suspected if a child is withdrawn, depressed, or is considered a behavioral problem. Thus, the determination of emotional abuse vs. so-called bad parenting is not always easy. It is important to examine each state's law with respect to the immunity granted to mandated reporters of child abuse in order to see the degree of protection provided by the statute. More particularly, it is important to see whether permissible or authorized reports (as in some states) of emotional abuse receive the same degree of immunity from liability as do mandated reports of physical abuse.

The following article was first published on the CPH Insurance's website in January 2013 and appears below with minor and non-substantial changes.

CHILD ABUSE REPORT BY SUPERVISOR

Each state has a child abuse reporting law where licensed mental health practitioners and others are required to report known or reasonably suspected child abuse. These laws vary from state to state, sometimes in fine nuance. One aspect of the reporting law involves the time frame for making reports, which is usually rather short. Suppose that a pre-licensed person (the supervisee) comes to a supervision session and describes information that was received from a patient three days earlier. Suppose further that the supervisee has described something that constitutes reportable child abuse, but either missed identifying it as such, or delayed reporting beyond the required time frame in order to discuss the issue in supervision.

Failure to make a required report within the time frame specified usually constitutes a crime and/or unprofessional conduct. Once the supervisor discovers that a report should have been made, the question arises as to whether or not the supervisor must (or should) file a report or whether the supervisor should encourage the supervisee to make the report forthwith. It has been my view (at least in California) that the supervisor would be required to make the report, since the supervisor is a

mandated reporter who found out about the suspected abuse in the reporter's professional capacity or within the scope of the reporter's employment.

If the supervisor had not made a report, the supervisor would arguably have violated the reporting law and be subjected to the applicable penalties and consequences. Moreover, if the supervisor merely encouraged the supervisee to make the report, albeit late, the supervisor would essentially be encouraging the supervisee to admit to the commission of a crime. Something about that bothers me, especially when I believe there is a better alternative. When the supervisor makes a report, the supervisor can explain the fact that the supervisee was new or inexperienced, or that the need to report was not readily apparent and that it was arguable as to whether or not a report was required under the circumstances. Assuming that the child has suffered no injury during the period of time that the report was delayed, it is unlikely that the supervisee would be prosecuted for a failure to report. Of course, each case is different and there can be no guarantees.

The following reminder was first published on the CPH Insurance's website in December 2015 and appears here with minor changes.

REFERRALS

Because the need to refer a patient or a prospective patient is a common occurrence, it is important to know how your state regulates referrals by licensed health professionals, if at all. For example, state law may make it unlawful for a licensed health professional to pay or receive any money or other consideration as compensation or inducement for the referral of patients, clients, or customers. Such conduct may be considered to be unethical, unprofessional conduct, and/or a crime. While such arrangements may be lawful in other industries, it is typically unlawful when it involves a licensed health professional.

Referrals should be made based solely upon the needs of the patient and not pursuant to some prior arrangement, contractual or informal, between the licensed mental health practitioner and the other person. I have consulted with practitioners about referrals between spouses with the same or related licensures and with mutual referrals between "office mates." Such arrangements must be carefully examined to ensure that they do not run afoul of state law or applicable ethical standards. One of the questions presented when examining such a scenario involves the kind and extent of disclosures that should (or must) be made to the patient regarding the reasons for the referral to that particular practitioner.