

Emotional Abuse of Children

written by Richard Leslie | May 24, 2016

Avoiding Liability Bulletin - May 2010

...A recent article in the newspaper drew my attention to the issue of psychological abuse or maltreatment of children, sometimes referred to as emotional abuse. According to the most recent annual report from the U.S. Department of Health and Human Services regarding child abuse and neglect data, 7.3% of the child victims suffered psychological maltreatment, while 9.1% were sexually abused. Physical abuse accounted for 16.1% of the total, while 71.1% were the victims of neglect. I was surprised that psychological maltreatment represented such a substantial percentage of the total. "Psychological or emotional maltreatment" is defined by HHS as acts or omissions, other than physical abuse or sexual abuse, that caused or could have caused, conduct, cognitive, affective, or other mental disorders. It includes emotional neglect, psychological abuse, mental injury, etc. It frequently occurs as verbal abuse or excessive demands on a child's performance and may cause the child to have a negative self-image and disturbed behavior.

State child abuse reporting laws govern the reporting requirements of mandated reporters. Each state may treat the subject of emotional abuse or psychological maltreatment somewhat differently. For example, some states may differentiate between severe and non-severe emotional abuse, requiring a report for the former and permitting, but not requiring, a report for the latter. In California, the law pertaining to this subject has been in a state of flux for a number of years. For approximately twenty five years, California law permitted a report to be made for what may be described as non-severe emotional abuse. If a mandated reporter had reasonable suspicion that mental suffering had been inflicted upon a child or that his or her emotional well-being had been endangered in any other way, a report of suspected child abuse was permitted, but not required. A report was required for severe emotional abuse, which was generally described in the law as *willful cruelty or unjustifiable punishment of a child*.

Several years ago, the law changed, and in the process, the italicized phrase (see immediately above) was removed from the law. The new law provides that mandated reporters who have knowledge or reasonable suspicion that a child is suffering serious emotional damage or is at a substantial risk of suffering serious emotional damage, evidenced by states of being or behavior, including but not limited to, severe anxiety, depression, withdrawal, or untoward aggressive behavior toward self or others, may make a report. The statute interestingly (and perhaps intentionally) does not describe the report as a report of suspected child abuse (although the context seems to indicate that it is) and does not describe or refer to maltreatment by a parent or caregiver - it merely refers to the mental condition of the child. Additionally, in another section of law defining the term "child abuse," this section of the law permitting a report is not referenced. It is my view that this state of the law is dangerous to children. The prior statute (described above), which did not require the practitioner to suspect serious emotional damage

(or the substantial risk thereof) before making a report, was the appropriate approach.

If a therapist or counselor was aware, for example, that a parent was starting to belittle, degrade, blame, and engage in double-message communication with a child, the practitioner might think about making a report of suspected emotional abuse if other measures or interventions are not successful, assuming that the law permitted such a report to be made. Under the old law in California, the therapist could make a report if the emotional well-being of the child was endangered in any way. There need not be a belief that the child was at substantial risk of suffering serious emotional damage, although it could be argued that such parental behavior did create such a risk. Under the current law, there is a question as to when or whether a report is permissible. The statute arguably requires several findings by the therapist, one of which is whether the emotional damage is "serious." If it is not serious, then a determination must be made as to whether there is a substantial risk of serious emotional damage. Additionally, the current law specifies that the serious emotional damage (or the risk thereof) must be evidenced by states of being or behavior of the child, such as (but not limited to) severe anxiety, depression, or withdrawal.

Although this may seem like a fine point or nuance to some, it is my view that the earlier law was the correct approach. In other words, the public policy of the state should allow mandated reporters, especially mental health practitioners, to make reports of suspected child abuse without having to first measure the degree of the emotional abuse. Public policy should lean in favor of protecting the child, and early intervention is sometimes appropriate – even necessary. A failure on the part of the mental health practitioner to act promptly could put the child at substantial risk. Those who argue otherwise point to the danger that a parent may be labeled as a child abuser (or suspected abuser) for actions or behaviors that amount, at worst, to bad parenting. Such a label, once given, is not easy to shed.

How is "emotional abuse" or "psychological maltreatment" handled in the child abuse reporting law in your state? How is it defined? When is a report mandated or permitted? Does the abuse have to be severe or serious in order to be reported? Is the therapist or counselor immune from liability for making such reports?