

MANDATORY REPORTING

CAVEAT: States vary in laws, statutes, and State Boards' ethical codes—readers should know their state's health & safety codes, laws/statutes relevant to: minors' rights, protective services, mandatory reporting, and licensing board's ethical guidelines. You must modify the forms so they comply with your state laws, professional organizations' codes of ethics and your State Licensing Board's guidelines.

Mandatory reporting: when the law compelled breaches of confidentiality

PROTECTIVE SERVICES

- Counselors are mandated in all states to report suspected abuse under penalty of criminal charges. They are required by law to report the reasonable suspicion of abuse, even in the absence of hard evidence.
- Abuse cannot always be definitively identified.
 - The ethical decision lies in deciding: being a mandatory reporter requires judgment; and, being directed by law to report means being aware and alert to the potential of abuse, then deciding its presence
- State statutes vary slightly in language, but the meaning is generally the same and reads similarly. Counselors are mandatory child abuse reporters, which means they:
 - Have an absolute duty to report
 - Do not have to be certain; suspicion is enough to establish a duty
 - Have a duty that is not discretionary but is absolutely clear
 - Are protected as good faith reporting is assumed
 - Understand that there is not a statute of limitations on child abuse reporting

WHO MUST REPORT?

Any person who reasonably believes that a minor or vulnerable adult is or has been the victim of physical injury, abuse, child abuse, a reportable offense or neglect that appears to have been inflicted on the minor or vulnerable adult by other than accidental means or that is not explained by the available medical history as being accidental in nature, or who reasonably believes that there has been a denial or deprivation of necessary medical treatment or surgical care or nourishment with the intent to cause or allow the death, shall immediately report or cause reports to be made of this information to a peace officer or to Child Protective Services or Adult Protective Services.

The following persons are required by law to report:

Every state defines who the mandatory reporters are. Check your state. However, counselors are listed as mandatory reporters in all states. A person making a report or providing information about a child is immune from civil or criminal liability unless such person has been charged with, or is suspected of, the abuse or neglect in question. A

person acting with malice, who either knowingly or intentionally makes a false report of child abuse and neglect or who coerces another person to make a false report, is guilty of a crime. A person who knowingly and intentionally falsely accuses another of maliciously making a false report of child abuse and neglect is also guilty of a crime.

WHAT IS ABUSE AND NEGLECT?

When a parent, guardian or custodian inflicts or allows the infliction of physical, sexual or emotional abuse, neglect, exploitation or abandonment.

- **Physical abuse** includes non-accidental physical injuries such as bruises, broken bones, burns, cuts or other injuries.
- **Sexual abuse** occurs when sex acts are performed with children. Using children in pornography, prostitution or other types of sexual activity is also sexual abuse.
- **Neglect** occurs when children or vulnerable adults are not given necessary care for illness or injury. Neglect also includes leaving young children or vulnerable adults unsupervised or alone, locked in or out of the house, or without adequate clothing, food, or shelter. Allowing children or vulnerable adults to live in a very dirty house which could be a health hazard may also be considered neglect.
- **Emotional abuse** of a child or vulnerable adult is evidenced by severe anxiety, depression, withdrawal or improper aggressive behavior as diagnosed by a medical doctor or psychologist, and caused by the acts or omissions of the parent or caretaker.
- **Exploitation** means use of a child or vulnerable adult by a parent, guardian or custodian for material gain.
- **Abandonment** means the failure of the parent to provide reasonable support and to maintain regular contact with the child or vulnerable adult, including providing normal supervision, when such failure is intentional and continues for an indefinite period.

When to report?

A report should be made when any person, who reasonably believes that a child under 18 has been abused, neglected, exploited or abandoned. A report of suspected abuse, neglect, exploitation or abandonment is only a request for an investigation. The person making the report does not need to prove the abuse. Investigation and validation of child abuse reports are the responsibilities of child protective service or adult protective service workers. If additional incidents of abuse occur after the initial report has been made, make another report.

ASSIGNMENT (Self-reflection and/or Group Discussion)

Every state defines who the mandatory reporters are. **Check your state.**

What constitutes child abuse?

What's the difference between "bad parenting" and abuse?

DUTY TO WARN AND PROTECT

Serious Threat of Harm to Self or Others

The core innovation of Tarasoff was the creation of a new exception to psychotherapist-patient confidentiality. Although the duty to warn often is standard among jurisdictions, not all states have adopted the “protection standard” which requires counselors to attempt to contact a specific, identifiable third party. Clinicians should be familiar with laws in their jurisdictions. Knowing your state's statutes is critical.

DUTY TO WARN AND PROTECT: HOMICIDE RISK

- Since it is impossible to predict with 100% accuracy dangerousness ahead of time, violation of a client's confidentiality must be undertaken with great care and in consultation with others.
- The art of counseling involves learning to discern what a client is really saying.
- When someone says, "I wish I (or someone else) was dead" are they talking suicide or homicide or just expressing frustration with their current stress levels or relationship difficulties?

DUTY TO WARN AND PROTECT: SUICIDE RISK

- There is no pure legal duty to prevent suicide—the duty is to intervene appropriately—the law recognizes limits in the ability to stop a determined person from suicide.
- The duty to intervene is judged according to the degree of suicidal risk exhibited by a client and the counselor's ability to accurately assess and control that risk. The counselor's liability increases as the risk of suicide increases and the counselor is able to foresee and control the client's actions. Since the clinician in an inpatient facility can control the patient's behavior more than in an outpatient setting, liability is greater when suicide occurs in a hospital, day treatment, or residential care facility.

SEE: “Assessment” section for more information on duty to warn and protect, suicide assessment and suicide safety plan.