Scope of License and Questions to Ponder

Avoiding Liability Bulletin – January 2026

NOTE: *This article was first published on the CPH website in May 2019. It appears below with minor changes.*

SCOPE OF LICENSE – Questions to Ponder

Malpractice (professional liability) insurance does not typically provide coverage for claims or suits arising out of any business or personal activity other than the profession named on the declarations page of the policy. For example, if you are insured as a licensed marriage and family therapist, a claim arising out of your executive coaching activities/services with a particular client will likely not be covered.* Governmental agencies and insurance companies sometimes analyze licensing laws (and other information) to determine the lawful scope of a particular license – perhaps for purposes of reimbursement or enforcement. Scope of license may be at issue in state or federal judicial settings, such as when treating or examining practitioners testify in court or administrative proceedings, either as expert witnesses or ordinary or fact witnesses.

**CPH Note*: CPH offers the option to add coaching (and other licenses/certifications) as an additional occupation to your policy. You can add this coverage and make other policy changes in your online Customer Portal.*

When thinking about scope of license issues, I often recall a California Attorney General's Opinion regarding scope of license which said, in essence – in the beginning, there were physicians. Thereafter, the opinion states, "…other categories of health personnel sought recognition through licensure." The opinion explains that the physician has a "virtually unlimited license," while other licensed health personnel, such as psychologists and marriage and family therapists, have "limited licenses to perform tasks previously within the exclusive province of the physician." Some of the questions that follow have been addressed in prior articles and some may be addressed in future articles in this Bulletin.

Does your license allow you to diagnose and treat severe or serious mental disorders? Are you allowed to advertise that one of the services you provide is psychological testing? Are you permitted to sell, as an adjunct to your practice, dietary supplements? Are you able to give nutritional advice or recommend dietary supplements to patients that you are treating? Are you permitted to hire a physician to perform medical services as a part of your practice? Is there a prohibition in your licensing law against touching the patient in order to relieve or palliate pain? Does your license allow you to advertise and act as an executive or personal lifestyle coach? May you lawfully provide biofeedback services as a part of your practice? Depending upon one's license, and depending upon state law, the answers to these and other questions may not be without controversy and may not be easily determined.

FAILURE TO REPORT CHILD ABUSE – Is It a Crime?

The child abuse reporting duty of mental health practitioners is governed by state law. While many of the state laws are similar, and as attentive readers of this Bulletin know, the laws sometimes vary in fine nuance. Most practitioners are familiar with the child abuse reporting laws in their respective states because the laws specify mandated duties related to very serious matters, and because the penalties (criminal) that can be imposed or the consequences suffered (civil or administrative liability) if there is a violation of the law (a failure to report) are substantial. Moreover, the well being and safety of a child may be at stake, and sometimes, time is of the essence. Of course, the various circumstances that can present themselves are limitless, and sometimes, it may be difficult to determine whether a report is required or permissible.

Suppose a practitioner is treating a 17 year old patient who tells the practitioner that she was sexually molested by her uncle, who presently resides in another state, when she was 10 years of age and also residing in such other state. Suppose further that the practitioner believed that because the act of abuse occurred in another state, because the alleged abuser was now located in another state, and because the alleged abuse occurred seven years earlier, a report was not required. Additionally, the practitioner was told that criminal prosecution of the uncle in the other state was precluded because of the statute of limitations. The practitioner told the patient that she was free to report the matter herself and that the report would best be made in the state where the uncle resides. The patient had also informed the practitioner that she did not want a report to be made and that her relationship with her uncle is now dormant- and she wants to keep it that way!

As to whether the practitioner's failure to report this instance of alleged child abuse constitutes a crime, an analysis of the applicable state child abuse reporting laws would be necessary. The question of whether or not the conduct of a licensee constitutes a crime is of critical importance for a number of reasons. Licensing boards can easily suspend or revoke the license of a licensee who has been convicted of a crime that is substantially related to the qualifications, functions, or duties of the licensee (they only need to prove the fact of the conviction). Child abuse reporting duties are without question substantially related to the license, so the determination of whether or not there is criminal exposure in a particular scenario is important. Moreover, malpractice insurance policies typically exclude coverage for claims or suits arising out of the insured's intentional wrongful acts or arising out of any criminal act or omission.

The practitioner in this scenario failed to report child abuse and this violated the law. First, the 17 year old patient was a "child" as per child abuse reporting law since she was not yet 18 years of age. Had the patient been 18 years of age at the time this information was shared with the practitioner, the situation presented would be one where an adult was sharing information about abuse that occurred when the now adult was a child – another scenario often encountered by practitioners but not discussed here. The fact that the statute of limitations may have run for purposes of criminal prosecution is irrelevant to the question of whether a report is required. Prosecution of child abusers is not the only reason for the existence of the reporting law. The main purpose of child abuse reporting laws is to protect children from abuse and neglect.

With respect to the abuse taking place in another state, the child abuse reporting law must be examined to see whether or not this fact would excuse the practitioner from reporting. In California, no such restriction applies and a report would be required. There is no limitation on the duty to report based upon the place where the abuse occurred or the present location of the abuser in the California child abuse reporting law. The report would be made to the California authorities who would in turn notify the authorities in the state where the uncle resides. I suspect that the laws in other states require reporting regardless of where the abuse occurred and regardless of where the alleged perpetrator resides.

The practitioner in this example seemingly believed, perhaps in good faith, that a report was not required. This belief was mistaken and arguably the result of negligence on the part of the practitioner. This is distinguishable from a situation where the practitioner knows or reasonably believes that a report is required, but intentionally does not make the report. I have spoken with many therapists over the years who were reluctant to make a required report because they believed that the likely damage or harm done to the child and the family would be substantial and that a report was thus contraindicated. In such situations, however, the practitioner should not substitute his or her judgment for the dictates of the law. Those who do so, risk much.

The reporting law in California, similar to other states, requires, among other things, that a report be made when the mandated reporter "knows or reasonably suspects" that a child has been the victim of child abuse or neglect. With respect to the issue of a criminal penalty for a failure to report, the California reporting law provides that if there is a failure to report a known or reasonably suspected incident of child abuse or neglect, the practitioner has committed a misdemeanor punishable by jail, or fine, or both. The law also provides that if a mandated reporter intentionally conceals his or her failure to report an incident known by the reporter to be abuse or severe neglect, the failure to report is a continuing offense.

The practitioner who fails to report as the result of negligence (mistakenly believing that a report is not required) should not ordinarily suffer criminal penalty. The requisite criminal intent (the *mens rea or* guilty mind) is arguably not present. The practitioner who knows or reasonably suspects that child abuse has occurred but does not report, and who substitutes their judgment for the dictates of the law, would be subject to possible criminal prosecution – no matter how rational their judgment may appear. Whether a failure to report will be determined to be intentional and criminal or the result of negligence will depend upon the facts and circumstances of a particular case. A failure to report due to negligence may of course be referred to the licensing board for investigation and possible disciplinary action. A criminal prosecution is more likely when there is additional or subsequent injury or harm inflicted upon a child following a failure to timely report.