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Do Professionals have an Obligation to Report Child Abuse?

Douglas W. Johnson M.S.W.

At the 1976 AMCAP Convention, after the panel presentation on Confidentiality and Privileged Communications, a controversy arose over whether or not professionals or bishops have a responsibility to comply with the section of the UTAH CODE REQUIRING THE REPORTING OF CHILD ABUSE TO PROPER AUTHORITIES. Some felt, for example, that a bishop who received a confession of such abuse from one of his ward members could properly deal with the matter as a bishop has the right to do, but did not need to report further. Others felt that he was obligated to report to legal authorities. Some professionals felt like the privileged communication granted by their licensing laws also freed them from the obligation to report child abuse.

I believe that such reports should be made with few exceptions. A father had confessed having an incestuous relationship with a daughter. The daughter was placed in foster care through L.D.S. Social Services and the father was excommunicated from the church. No report was made to the legal authorities. I believe that if this father had faced legal sanction as a result of his crime, it would have done much to prevent further problems. But, this family has now been all but destroyed. I have recently gone to court and removed two more children from this family. I don't want to deal more with the specifics of this case, but I have been motivated to research the law to see if there is a valid reason why such abuse is not reported.

As a social worker in the State of Utah I have dealt specifically with the Utah statutes but a professional working in another state would find similar statutes both in regard to the reporting of child abuse and in regard to the evidentiary problem of privileged communication in cases of child abuse. From analyses of various state laws as made by Brian Fraser and Roy D. Wienberg I glean the following:

All fifty states have a child abuse reporting statute.
2. In forty-nine of these states reporting is mandatory, (New Mexico is the exception).

3. In twenty-nine of these states there is a criminal penalty for failure to report child abuse.

4. In thirty-nine states some part of the statutes dealing with privileged communication have been changed or removed in cases of child abuse.

5. Every state grants some form of immunity to persons required to report child abuse.

6. Six states have statutes which deal specifically with "Psychologist-Client" communication.

7. Seventeen states have "Psychologist-Client" statutes.

8. Thirty-eight states have "Attorney-Client" statutes.

9. Thirty-seven states have "Physician-Patient" statutes.

10. Forty-four states have "Priest-penitent" statutes. These in most cases would apply to L.D.S. Bishops.

11. Privileged communication for social workers and marriage and family counselors is recent and is covered in their individual licensing laws. Those states which have passed laws are likely to be similar to those in Utah because they are most likely to be based on models suggested by the National Association of Social Workers and the American Association of Marriage and Family Counselors.

The text of Utah's law on reporting child abuse is as follows:

55-16-1. Mandatory of cases of abuse or neglect. - In order to protect children whose health and welfare may be adversely affected as a result of abuse or neglect, the legislature of the state of Utah provides for the mandatory reporting of all known or suspected instances of child abuse and neglect to the local city police or county sheriff or office of the division of family services by any person having cause to believe such case exists. It is the intent of the legislature that protective social services shall be made available in an effort to prevent further abuse or neglect and to safeguard and enhance the health and welfare of such children and to preserve family life whenever possible.

55-16-1.5. Definitions. - As used in this act and only for the purpose of this act:
(1) "Child abuse and neglect" means harm or threatened harm to a child's health or welfare by a person responsible for the child's health or welfare.
(2) "Harm or threatened harm" means any nonaccidental physical or mental injury, sexual abuse, or negligent treatment or maltreatment including the failure to provide adequate food, clothing, or shelter. A parent or guardian legitimately practicing religious beliefs who does not provide specified medical treatment for a child, for that reason alone, shall not be considered a negligent parent.
(3) "Child" means a person under eighteen years of age.
(4) "A person responsible for a child's health or welfare" means the child's parent, guardian, or other person responsible for the child's health or welfare, whether in the same home as the child, a relative's home, a foster care home, or a residential institution.

55-16-2. Persons required to report suspected abuse or neglect. - Any person who knows or reasonably suspects that a child's health or welfare has been or appears to have been harmed as a result of abuse or neglect shall report or cause reports to be made in accordance with the provisions of this act; provided that when the attendance of any person with respect to a child is pursuant to the performance of services as a member of the staff or as an employee of a hospital or clinic or similar institution, he shall notify the person in charge of the institution or his designated delegate who shall report or cause reports to be made in accordance with the provisions of this act.

55-16-3. Procedure for making reports. Contents. - An oral report shall be made as soon as possible by telephone or otherwise and may be followed by a report in writing to the local city police or county sheriff or office of the division of family services. Such reports shall contain the name and address of the child, if known by the person making the report, and any other information the person making the report believes might be helpful in establishing the cause of the abuse or neglect and the identity of the perpetrator; provided, that any report under this act shall be to an agency other than the agency, institution, or other facility involved in the acts or omissions and other than an agency which supervises, governs, or directs the affairs of any institution or facility involved in the acts or omissions.
55-16-4. Immunity from liability of persons or institutions making reports.
Any person or institution making report in good faith pursuant to this act shall have immunity from any liability, civil or criminal, that might be otherwise incurred or imposed. Any person or institution making a report in good faith pursuant to this act shall have the same immunity with respect to participation in any proceeding resulting from such report.

55-16-5. Physical-patient privilege not ground for excluding evidence.
The physician-patient privilege shall not be a ground for excluding evidence regarding the minor's injuries or cause thereof in any proceeding resulting from a report made in good faith pursuant to this act.

55-16-6. Penalty for violation.
Anyone knowingly or willfully violating the provisions of this act shall be guilty of a misdemeanor.

55-16-7. Appointment of guardian ad litem.
In every case involving an abused or neglected child which results in a judicial proceeding, the court shall appoint a guardian ad litem to represent the child in such proceedings.

A careful reading of this law would lead me to believe that there are no exceptions to the requirement to report.
The section of the Utah code dealing with Privileged Communications applies only to being examined as a witness.
I find no part of it which would prohibit the reporting of child abuse. Complete text of this code as far as it applies to attorneys, clergymen and physicians is as follows:

There are particular relations in which it is the policy of the law to encourage confidence and to preserve it inviolate. Therefore, a person cannot be examined as a witness in the following cases:
(2) An attorney cannot, without the consent of his client, be examined as to any communication made by the client to him, or his advice given therein, in the course of professional employment; nor can an attorney's secretary, stenographer or clerk be examined, without the consent of his employer, concerning any fact, the knowledge of which has been acquired in such capacity.
(3) A clergyman or priest cannot, without the consent of the person making the confession, be examined as to any confession made to him in his professional character in the course of discipline enjoined by the church to which he belongs.

55-16-7. Appointment of guardian ad litem.
Any communication between the marriage or family counselor and the person counseled is privileged and confidential. Its secrecy shall always be preserved and this privilege is not subject to waiver, except: . . .

Paragraph 3 of this section applies to bishops and it seems clear that, though a bishop could not be examined in court about a confession made by a ward member, he would not be precluded by this section from complying with the provision of the reporting law. The law as it applies to attorneys and physicians will be discussed later.

Specific licensing laws for individual professions deal specifically with Privileged Communication. The Utah law regarding Marriage and Family Counselors is as follows:

(1) A marriage or family counselor may communicate orally about any person being counseled with another member of his profession or of a related profession who is also working with or has worked with the person being counseled. However, he may make no written communication with other professional persons about the communications from the person being counseled, unless the person being counseled consents in writing.
(2) A marriage or family counselor, to whom a person has been referred by a court or by a conciliation department working under the supervision of a court, may submit to the appropriate court a written evaluation of the prospects or prognosis of a particular marriage without divulging facts or revealing confidential disclosures.
(3) If the counselor is a party defendant in a civil, criminal or disciplinary action arising from that counselling, in which case the waiver is limited to that action.
Thus, there seems to be a conflict between this law and the child abuse reporting law, which has not as yet been resolved. The likely resolution of this by case law would probably be against the marriage and family counselors and in favor of the child abuse reporting law. I make this judgment based on case law developed around the attorney-client privilege, which is the oldest and most firmly developed of all the special privileges. The attorney-client privilege applies to giving testimony and not to reporting. There has been much case law in which the attorney’s ethical duty is held to be different from privileged communication.

It is his ethical duty to comply with the law. It is also his ethical duty to “preserve his clients’ confidences”, according to Canons of Professional Ethics of the American Bar Association. If an attorney were to report information gained from his clients’ confidences, he may be in violation of his profession’s code of ethics. But, since he would not be providing testimony, he would not be violating the law dealing with privileged communication. It is probable that the court would follow the precedents developed in regard to the attorney-client privilege and thus separate the ethical duty of the marriage and family counselor from the legal requirements of privileged communication.

The law also fails to distinguish between ethical duty and legal requirement but it speaks only to giving testimony and refers to the attorney-client relationship. It does not preclude reporting child abuse except in section 58-25-11 (8) in which “communicating without the consent of the client, information acquired in dealing with the client necessary to enable the psychologist to act for such a client” is defined as unprofessional conduct. The dilemma again is whether to comply with the reporting law or to violate an ethical rule.

The privileged communication given to a physician clearly not only does not free him from his obligation to report, but as seen above in section 55-16-5 his privilege is not ground for excluding evidence.

The law does not grant privileged communication to the clients of certified social workers but rather requires confidentiality as follows:

58-35-10. Information confidential - Exceptions. - No licensed certified social worker shall disclose any information he may have acquired from persons consulting him in his professional capacity except:

(1) With the written consent of the client, or in the case of death or disability, of his personal representative, other person authorized to sue in behalf of the client or the beneficiary of an insurance policy on the client’s life, health, or physical condition;

(2) A licensed certified social worker shall not be required to treat as confidential a communication that reveals the contemplation of a crime or harmful act;

(3) When the person is a child under the age of 16 and the information acquired by the licensed certified social worker indicates that the child is the victim of a crime, the licensed certified social worker may be required to testify fully in relation thereto at any legal or administrative proceeding in which the commission of the crime is a subject of inquiry;

(4) When the person waives the privilege of (by) bringing charges against the licensed certified social worker.

Note that paragraph 3 specifically requires that the social worker not only report but may be required to testify.

Many persons hold dual licences, attorneys, social workers, physicians, etc. and some are also bishops. Rather than trying to define different privileges, it seems to make more sense to try to use good judgment and make the decision that will most
help the people with whom we work. Each therapist will have to make his decision but should consider many factors.

At the last AMCAP convention, Elder Hartman Rector, Jr. complimented us highly when he said, "you, by your selection of a profession, have decided that you want to help people to overcome their problems, their sins: . . . " To help people overcome their sins is to help them repent.

I have understood that to repent of a violation of the law included answering to the lawgiver. If a person breaks one of the laws of God, he can repent and through His representative our Father in Heaven may grant forgiveness. But, if the law broken is also the law of the land, the bishop can grant only the forgiveness of the one he represents. A violation of the law of the land can be forgiven only by the duly constituted authorities charged with administering justice. I believe that if we really want to help people to overcome their problems, and we find that they have committed a crime, whether against a child or others, we are not really doing our job unless we help them take the proper course to gain forgiveness for their crime. This includes confession to the proper authorities and submitting to them. Such submission is not always for punishment, but may be for counselling or other appropriate treatment.

Alma told his son, Corianton, that none but the truly penitent are saved. It is true that we work with many people who may never be truly penitent but this seems to be a worthwhile goal for those who have broken the law.

The Twelfth Article of Faith says we believe in obeying, honoring and sustaining the law. The law of the state of Utah requires all persons to report child abuse and gives the reasons for such reporting that "protective social services shall be made available in an effort to prevent further abuse or neglect and to safeguard and enhance the health and welfare of such children and to preserve family life whenever possible." This goal is in harmony with the principles of the gospel and the counselor or therapist who fails to report may be held eternally responsible if he makes decisions which keep child abusers unknown to proper authorities and as a result children and families are further injured or destroyed.

"You, by your selection of a profession, have decided that you want to help to overcome their problems, their sins: . . . "

there are manipulators and manipulovers. manipulators can be easily identified and work their malicious acts out where they can be seen by those who have eyes to see. "manipulovers" work differently. they tell others how much they love them; how they would never hurt them; how they would gladly give their lives for them; how they would lift those they love up even if it meant that they themselves might fall. but when all is said and done, manipulovers pull people that they have claimed to love down into turmoil, and the love and support that they have expressed is far more cruel and evil than the acts of the manipulator.

Richard R. Wootton