

## Cooperation With Child Abuse Investigator (?)

### Avoiding Liability Bulletin - November 2009

*For a previous article related to this topic, please [click here!](#)*

... While practitioners must be mindful of the duty of confidentiality and must instinctively lean toward resisting (at least initially) disclosures without the patient's signed authorization, it is also useful for practitioners to know well the exceptions to confidentiality – those that are required and those that are permissible. When some form of disclosure is mandated, the decision of the therapist or counselor (assuming awareness) is easy. When the disclosure is permissive, it does not necessarily follow that the practitioner should or will disclose without a written authorization. One hopefully interesting example follows.

The primary and most significant exceptions to confidentiality are found in the laws dealing with the mandates for counselors and therapists to report known or reasonable suspicion (or a similar standard) of child abuse, elder abuse, and dependent adult abuse. Connected with these duties is the issue of whether or not a therapist or counselor, after making such a report, is required or permitted to cooperate with the investigator of the abuse who desires further information, perhaps appearing at the office of the practitioner who made the report – either announced or unannounced. For example, in one state the law provides that information relevant to the incident of child abuse or neglect may be given to an investigator from an agency that is investigating the known or suspected case of child abuse or neglect.

What is the law in your state with respect to giving information to the investigator after you have filed the mandatory report(s)? I have counseled therapists in California around this issue for many years – and each situation is different. For example, if the therapist were treating the alleged perpetrator of physical or sexual abuse that was revealed and reported during the course of therapy, I would more often than not advise the therapist not to cooperate with the investigator. Of course, if the therapist discusses the matter with the patient and/or with the patient's attorney, the patient may sign an authorization form allowing the therapist to communicate with the investigator. While the law allows the communication without the patient's written authorization, it does not mandate it. My view has been that the reporting laws are intrusion enough into confidentiality (although well-accepted at this time), and that there is no need or duty to help with an investigation.

If the practitioner is treating the victim of the abuse, such as a child, the therapist or counselor may be more inclined to cooperate with the investigator. Again, even though the therapist would be able to cooperate with the investigator pursuant to the aforementioned law, that isn't necessarily the wisest decision. In some cases, the written authorization of both parents would be desired and easy to get, while in others, the written authorization of only one of the parents may be necessary. In some states, depending upon the age of the child and the circumstances involved (such as, being the victim of child abuse), only the child's authorization is needed – so why not get it? There

will be times when a practitioner may choose to provide additional information to the investigator without the patient's authorization – but the practitioner must first be certain that state law allows this to be done. Something that may need to be avoided, in my view, is the effort by an investigator to have ongoing contact with the therapist - expecting to periodically obtain information. Such situations can be awkward or problematic, whether with or without an authorization.

**Author:**

Richard Leslie