

RONALD V. MCGUCKIN AND ASSOCIATES
Post Office Box 2126
Bristol, Pennsylvania 19007
215-785-3400 215-785-3401 (FAX)
Childproviderlaw.com (website)

Mandated Reporting of Suspected Child Abuse and Neglect

Every state in the nation has a law mandating early childhood educators to report suspicions of child abuse and neglect. This mandate is directed to the individual educator as well as to child care agency. The individual responsibility to report suspicions of child abuse and neglect presents many implications for the early childhood educator. Furthermore, this mandate carries with it criminal penalties for failure to report suspected abuse and/or neglect.

When we discuss mandated reporting with early childhood educators the most frequently asked question is, "what will happen to me if I don't report suspected abuse because I just don't want to get in the middle of the families domestic situation?" Since this mandate has criminal penalties for failure to report suspected abuse, our first question to the educator is usually, "Do you look good in orange? Do you really have the waist for a jumpsuit?" The answer is, if you fail for any reason, whether you just didn't want to get involved, or you didn't notice what was blatantly obvious to the average person, you will be looking at serving time in a correctional institution. JAIL!

Federal, State and Local prosecutors are under a new directive to step up the prosecution of mandated reporters of suspected abuse and neglect who fail to report their suspicions to the appropriate authorities. This new directive comes following a report Janet Reno presented to President Clinton in the late 90's. This report cited a gross failure on the part of mandated reporters to report suspicions of child abuse and neglect across the nation. The report indicated that the majority of mandated reporters failed in most cases to report their suspicions of abuse or neglect to the appropriate authorities. The report also indicated that in a majority of child abuse cases, someone in a position, which carries a mandate to report abuse or neglect, knew or should have known that the abuse was taking place. President Clinton was outraged by these findings and issued the directive to step up the prosecution of mandated reporters who failed to follow the mandate.

In the twenty years prior to this new directive that Ronald V. McGuckin and Associates represented child care providers, we were involved in only three cases in which a mandated reporter was prosecuted criminally for failure to report suspected abuse. In all three cases the child or children involved were seriously injured or killed at the hands of their abuser, which was the catalyst to the investigation into what, and when the child care provider knew or should have known that the child was being abused. In the five years since the new directive was issued by Clinton, our office has been involved in at least thirty-three cases in which the child care provider or educator has been prosecuted for their failure to report under this mandate. As stated above, these child care providers and educators are looking at serving time in jail as a result of their failure to follow the mandate.

While identifying who is mandated under this law seems to be straight forward, often times, the issue becomes clouded when individual agencies attempt to institute policies directing their employees in this matter. The law, as written does permit child care agencies to designate, as a matter of policy, one person through whom all reports of suspected child abuse and neglect should be directed. Often this person is the center director, or owner of the child care agency. When the director or agency owner draft such a policy they often forget the employees individual mandate to report suspicions of abuse or neglect to the appropriate authorities. What happens many times with this policy is, the employee has a suspicion that little Johnny has been beaten by his mother, the employee follows the applicable personnel policy and report the suspicion to the center director. The center director does not feel a report to the authorities is warranted, so makes no call. The employee disagrees with the director and calls the appropriate authorities on her own. When the director finds out the employee called in the suspicion on her own, the director disciplines the employee under the insubordination policy in the personnel policy manual. Often times the insubordination policy includes an option for the director to terminate the employee for violations of this policy, and in fact, this employee may be fired. In this scenario, the center director's termination or discipline of the employee is wrong because the employee was following "public policy." The employee followed the agency policy by reporting the suspicion to the director, and then protected herself by following her individual mandate to report. Had the employee not reported the suspicion, she could have left herself open to prosecution for failure to report. In this instant case, the employer (agency) must realize that the employee can only be disciplined for failure to report suspected abuse or neglect to the director before making her own call to the

appropriate authorities. The employee commits no wrong in making her own call to the appropriate authorities regardless of whether the agency makes a report or not.

As a matter of protection for the employee, we always recommend making your own call to the appropriate authorities when there is a suspicion of abuse or neglect. If your agency also makes a call, because you followed policy and told them first, perhaps the report will be taken more seriously because two people have called and the child or children will get the necessary help and intervention.

When making a report, the caller has a right to anonymity. One does not need to give their name, or association to the alleged victim when calling the appropriate authorities. In reality, often times the identity of the caller can be surmised by the details given in the report. Even if the reporter offers their name to the authorities, the alleged abuser does not have a right to know the identity of the caller. The authorities should not be disclosing this information to the alleged abuser during their investigation. Unfortunately, candor and discretion is not a strong character point for many child abuse investigators. Whether it is lack of training, or natural gossiping tendencies, many investigators frequently disclose the identity of the reporter. Should the investigator reveal the identity of the reporter, the reporter would have cause to file suit against the investigatory body as well as the individual investigator. These cases are not frequently filed, even though this violation occurs quite often, for several reasons. First, the reporter must provide specific evidence showing that the investigator disclosed the protected information. And secondly, the reporter needs to have funds to pay the attorney's fees to represent her in the suit.

Even if the investigator up holds the professional responsibility to keep the identity of the reporter confidential, the alleged abuser will themselves surmise the origin of the report. Even with out direct evidence the alleged abuser may accuse the child care provider of making the report out of anger and frustration. Should an alleged abuser accuse someone in the agency of making a report, and should an alleged abuser confront that person, it is our recommendation that the response be; "Reports of abuse or neglect are confidential, we will not discuss whether or not we made the report you are asking about or not." If the alleged abuser is inappropriately confrontational, we recommend barring that individual from the agency premises. We have found informing the parents up front (in the parent handbook for example) that all persons associated with the child care agency carry a mandate to report suspected abuse or neglect, and that all reports are confidential and will not be discussed, will quell most outbursts from alleged abusers. Additionally, we strongly recommend stating that any attempt by any parent to discuss a report can result in their being barred from agency property thereafter. Should an alleged abuser threaten or become hostile towards anyone associated with the agency, certainly the police should be informed immediately.

When making a report, it is always advisable for the reporter to document that they have made the report. The documentation should include the date, time and number called to make the report. The reporter should list the details they have reported and the name of the person with whom they spoke. If your state gives confirmation numbers to identify calls, this number should be included with the documentation. We recommend that every child care professional keep personal professional diaries to record this type of information. The documentation will help prove, if it is ever questioned, that the mandated reporter fulfilled their obligations according to this law. The documentation should be kept until the child in question reaches at least twenty years of age. The records should be kept for this length of time because this is the period of time in which the family and/or the child can file a suit against you.

Throughout this chapter there is reference made to "the appropriate authorities." Who exactly are the "appropriate authorities?" The answer depends upon the state in which your agency is situated. The government agency in your state which handles children and family services is most likely the agency designated to process and investigate child abuse and neglect cases. In many states, these agencies have established hotlines with 800 numbers to take reports.

It is important that you find out what agency is the appropriate authority to which these reports should be made because you could be violating a parent or child's right of privacy by making the report to the wrong government agency. In one recent case handle in our office, our client, the child care agency fired and employee for, among other incidents, violating a families right of privacy. The employee attempted to defend her actions claiming that she was a mandated reporter of suspected child abuse and neglect, and that her report to the Federal Marshall's office was protected under this mandate. Our argument, on behalf of the child care agency, was that while the employee did have a mandate to report suspected child abuse, the mandate specified the appropriate authority to be "Children and Youth Services of Pennsylvania" not the Federal Marshall's Office. By disclosing the family's confidential information to the wrong governmental agency, the employee had in fact violated the agency's "Confidentiality" policy and was subject to termination. In this case, the family was not aware that this individual violated their right of privacy, however the family, if aware could have filed suit against the employee for violation of their right of privacy.

In regard to the criminal penalty for failure to report, a report to an inappropriate government agency would be considered the same as a failure to report. Now, this person may be facing termination of employment, a

civil lawsuit for violations of rights of privacy, and criminal prosecution for failure to report. The purpose for designating an appropriate authority in this law is to create a system for monitoring, investigating and tracking cases of child abuse and neglect. Ultimately, the intent is to provide a system, which protects children. By reporting a suspicion to an agency not designated to investigate the report and secure the appropriate services to help the child, what would be the point of such a report? Think of it this way, one wouldn't call the plumber when their house is on fire, one would call the appropriate agency to take care of the fire, one would call the fire department.

Now that it is established that you have a mandate to report, what the consequences are for not reporting and to whom reports need to be directed, we should look at when does a report need to be made. The law states that mandated reporters are to report suspicions of child abuse and/or neglect. There is no further guidance provided in the law to define either of these terms, "abuse" or "neglect." There many misconceptions today in our society regarding exactly what is and is not child abuse. Let us first look to define, or clarify the term "abuse."

Child abuse means different things to different people. Clearly, any form of physical force which leaves a mark would be considered under this law to be grounds for a report. The touchy, and confusing issues surround the physical discipline of children. Spanking. Our society is somewhat confused about corporal punishment of children. Clearly, the child care provider is not permitted to use corporal punishment with the children they serve under any circumstance. However, are parents allowed to, for means of discipline, spank their children. The answer is an obvious YES! Parents can spank, and should, spank their children.

Listen, it could be argued, and probably will, until the end of time that talking with and reasoning with children is the more appropriate way to get a child to behave. Have you ever tried reasoning with a two year old? It is utterly an ineffective waste of time. Children do not have the mental sophistication to reason until they reach the age of nine or ten, and even at this stage it is limited to concrete operations. The ability to reason abstractly does not develop until much later. So, how effective is it to sit a two year old down and explain in great detail the pro's and con's of hitting little Suzy on the head with a book, or the consequences of running out into the street. Children do not have the cognitive ability at two, three or even four, to really understand Suzy's feeling, or to comprehend death or self preservation. But what they can comprehend is pain and pleasure. A child will remember that they aren't to hit Suzy over the head with the book if the last time they did it they were told "No" and received a swat on the backside. The two year old child is able to understand and retain the cause and effect relationship between the action and response. The bottom line here is that parents can physically discipline their children. There is a line between discipline and abuse, and where you personally draw that line will direct you in reporting under this mandate.

Whether you personally believe in corporal punishment or not will not help us define what is reportable under this mandate. Basically, a mandated reporter should make a report when they go "Uh-Oh!" When you get that feeling in your gut that something just doesn't feel right, you should make that call. This is a very personal and individual response. As discussed above, some people go "Uh-Oh!" when a child is smacked on a diapered backside. Others would look at that as age appropriate discipline when it is in response to the child's inappropriate behavior.

Let us consider this question we often get from providers, "At pick-up today, little Debbie and her mom left the building and in the parking lot little Debbie got away from mom and was running around in the parking lot, not listening to mom. When mom finally go a hold of little Debbie, mom gave little Debbie a firm smack on the backside and put her in the car. Do I have to report this to Child Protective Services?" As lawyers you know the first thing we do is ask a question right back, we're almost as bad as psychologists. "When you saw the parent smack the child did you go "Uh-Oh!" or feel that it crossed the line? If so, you need to report it," would be our typical response. Legal guidance aside, isn't it far less cruel to smack the child on the backside then have the child squashed by a car? But, if you personally feel in you gut that this was inappropriate than you must make a report under this mandate.

"Neglect" is a far grayer concept than "abuse." As with abuse, a mandated reporter must report when they go "Uh-Oh!" or have that feeling that something in this situation isn't right. We must remember that just because we make a report, doesn't mean the parent is going to jail. Child Protective Services will conduct an investigation and determine an appropriate course of action, to best serve and protect the child. More now than ever, Child Protective Services is for the preservation of the family, and will work towards securing services to help the parents appropriately meet the needs of the child. In the case of neglect, reporting things such as inappropriate or soiled clothing, failure to provide a nutritious lunch, or failure to seek services for a disabled child, would be prudent if the situation made you personally go "Uh-Oh!"

When faced with a situation, it is always better to error on the side of caution and make a report. If you are not sure, it is within reason to call the Child Protective Services agency in you state and present the situation to them in a hypothetical manner and ask for guidance. They will be able to help you determine if the situation should be reported, and at that point you can give all of the pertinent, identifying details you left out of your hypothetical situation.

Let the following list serve as a guide when determining what types of scenarios should be reported to Child Protective Services under this mandate:

- ◆ Unusual bruising, marks, or cuts on the child's body
- ◆ Severe verbal reprimands
- ◆ Improper clothing relating to size, cleanliness, season
- ◆ Transporting a child without appropriate child restraints (e.g. car seats, seat belts, etc.)
- ◆ Dropping off or picking up a child while under the influence of illegal drugs or alcohol
- ◆ Not providing appropriate meals including a drink for your child
- ◆ Leaving a child unattended for any amount of time
- ◆ Failure to attend to the special needs of a disabled child
- ◆ Sending a sick child to school over medicated to hide symptoms, which would typically require the child to be kept at home until symptoms subside.
- ◆ Children who exhibit behavior consistent with an abusive situation

Another important term to discuss is "Suspected." The law clearly directs a mandate to report "Suspected" Child Abuse and/or Neglect. It is not a mandate to report child abuse and/or neglect once you have investigated and without a doubt know that the child is being abused and/or neglected. The term "suspected" goes back to that feeling of "Uh-Oh!" in your gut. Once you go "Uh-Oh!" you must make that report. Your mandate is to report, not to investigate. The job of investigating is the responsibility of the Child Protective Services agency. You as a mandated reporter are not equipped nor are you trained to conduct an investigation. Also, consider that while you are investigating, to assure yourself that the child is really being abused or neglected, the child could be in real danger. In fact, there have been instances where the child care agency was getting all there evidence together to prove that the child was really being abuse, and the child was killed by the abuser before a report was made. In this case, the child care provider, aside from feeling distraught by the loss of the child, was subject to prosecution for failure to report under the mandate. Now it is a known fact that the Child Protective Services agencies do not always conduct investigations expeditiously, or thoroughly, but that should not be the mandated reporters concern. The mandated reporters responsibility is fulfilled once that report is made. What the Child Protective Services agency does with that report is the responsibility of Child Protective Services.

Child care providers often attempt to justify their investigation by stating that they don't want to be sued by the parent if they make a report and the cases is determined to be unfounded. The child care provider will go off in length about slander, liable and defamation of character lawsuits that they are sure the parents will file if they make a report that determined to be unfounded. Child care providers state that they feel more comfortable making a report if they know without a doubt that abuse or neglect is taking place; they feel they are reducing their risk of being sued.

These types of comments indicate to us that this child care provider clearly does not understand the intricacies of this law. As a standard provision in the law, there is protection for the mandated reporter should the investigation find the cases to be unfounded. If a mandated reporter makes a report of suspected child abuse or neglect to serve what they consider to be the best interest of the child, the mandated reporter is insulated from liability. This means that if Ms. Jean calls Child Protective Services to report the suspicious looking bruise on little Ricky's back, and the investigation reveals that the bruise was caused by the tumbersault that little Ricky attempted off the living room coffee table when mom was out of the room for five seconds, Ms. Jean can not be sued by mom for slander, liable, defamation of character, or any other related offense. Ms. Jean was acting in the child's best interest and is therefore protected. The authors of this law recognized the potential deterrent a potential lawsuit by the alleged abuser, against the mandated reporter would be to the effectiveness of the law, which is why they included this protection. Mandated reporters would not be able to effectively report their suspicions without it, and ultimately the law would not achieve its ultimate purpose, which is to protect children.

This insulation from liability will not stop all lawsuits from being filed, it will however, provide your counsel with an argument to have the case dismissed. In many states, there are provisions for a defendant to be reimbursed legal fees, from an attorney who files a frivolous lawsuit. This type of law could apply to a lawsuit filed against a mandated reporter by an alleged abuser.

Every child care provider must recognize and understand their role as a mandated reporter f suspected child abuse and neglect. It is an awesome responsibility, with many implications and potential repercussions. Ultimately, the child care provider must remember that we are here to provide a safe, warm, and nurturing environment to the children. Our first and foremost obligation is to the children we serve. This law is meant to guide and aid us in that pursuit.