

REPORTING ABUSE – ACTUAL OR SUSPECTED: FREQUENTLY ASKED QUESTIONS

INTRODUCTION

This is a quick reference to frequently asked questions (FAQs) about the reporting of abuse of children or vulnerable adults and elderly.

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1. Is it mandatory to report suspected or actual abuse?

There is no law in New Zealand that makes reporting of abuse of children, adults or the elderly mandatory. However, some organisations have an employment policy which states it is mandatory. Best practice recommends that staff who identify or suspect abuse report their concerns to a statutory agency, the Police or the Child, Youth and Family Services (CYFS)...

The following are extracts from relevant legislation.

Children, Young Persons, and Their Families Act 1989

Paramount Principle (section 6)

“... [the] welfare and interests of the child or young person shall be the first and paramount consideration.”

Reporting (section 15)

“Any person who believes that any child or young person has been, or is likely to be, harmed (whether physically, emotionally or sexually) ill-treated, abused, neglected, or deprived may report the matter to a Social Worker or a member of the Police.”

Protection when disclosing (section 16)

“No civil, criminal, or disciplinary proceedings shall lie against any person in respect of the disclosure or supply or the manner of the disclosure or supply by that person pursuant to section 15 of the Act of information concerning a child or young person (whether or not that information also concerns any other person), unless the information was disclosed or supplied in bad faith.”

The statutory responsibility for investigation lies with the Child, Youth and Family social worker or member of the Police.

Responsibility for investigation (section 17)

“Where any Social Worker or member of the Police receives a report pursuant to section 15 of this Act relating to a child or young person, that Social Worker or member of the Police shall, as soon as practicable after receiving the report, undertake or arrange for the undertaking of such investigation as may be necessary or desirable into the matters contained in the report and shall, as soon as practicable after the investigation has commenced, consult with a Care and Protection Resource Panel in relation to the investigation.”

2. Am I criminally liable if I do not report actual abuse?

Section 195A of the Crimes Amendment Act – Failure to protect child or vulnerable adult states:

“A person is liable for the offence of failing to take reasonable steps to protect a child or vulnerable adult.”

A vulnerable adult is someone who is unable by means of detention, age, sickness, mental impairment or any other cause, to withdraw him or herself from the care or charge of another person, when that person:

- Is a member of a hospital or institution where the victim resides;
- or

- Is so closely connected to the victims household that they are regarded as a member of it;

And

- Has frequent contact with the victim;

And

- Is aware that the victim is at risk of death, grievous bodily harm or sexual assault;
- As a consequence of an unlawful act or grossly negligent omission by a third party;

And

- Fails to take reasonable steps to protect that victim from injury.

3. Am I breaching any legislation by reporting suspected abuse?

There are no legal barriers to disclosure of patient information relating to suspected or actual child abuse given in good faith to an appropriate authority (CYP&F Act 1989 sections 15 and 16).

The Health Act 1956 (applicable to all consumers of care) protects practitioners acting under section 22C from civil or criminal liability, if they act in good faith and take reasonable care. Also see the reference to the CYP&F Act 1989 above.

4. Am I required, by law, to pass on any health information / records to Child Youth & Family Services (CYFS) or Police?

Legislation implies that you may disclose health information; however, consideration must be given to the paramount principle (CYP&F Act 1989, section 6) “... *[the] welfare and interests of the child or young person shall be the first and paramount consideration.*”

The following are extracts from relevant legislation.

Health Act 1956 (applicable to all consumers of care)

- (1) Any person (being an agency that provides health services, or disability services, or both, or being a funder) may disclose health information –
 - (a) If that information -
 - (i) Is required by any person specified in subsection (2) of this section;

And

- (i) Is required....for the purpose set out in that subsection in relation to the person so specified; or
- (a) *"If that disclosure is permitted –*
 - (i) *By or under a code of practice issues under section 46 of the Privacy Act 1993....*
- (2) *The persons and purposes referred to in subsection (1) (a) of this section are as follows:*
 - (c) *A Social Worker or a Care and Protection Co-ordinator within the meaning of the Children, Young Persons and Their Families Act 1989, for the purposes of exercising or performing any of the person's powers, duties, or functions under the Act."*

Health Information Privacy Code 1984

Rule 11 Limits on disclosure of health information

- (1) A health agency that holds information must not disclose the information unless the agency believes, on reasonable grounds:
 - b) That the disclosure is authorised by:
 - (i) The individual concerned; or
 - (ii) The individual's representative where the individual is dead or is unable to give his/her authority under this rule;
- (2) Compliance with paragraph (1) (b) is not necessary if the health agency believes on reasonable grounds that it is either not desirable or not practicable to obtain authorisation from the individual concerned and:
 - a. That the disclosure of the information is directly related to one of the purposes in connection with which information was obtained;
 - b. That the information is disclosed by a registered health professional to a person nominated by the individual concerned or to the principal caregiver or a near relative of the individual concerned, in accordance with recognised professional practice and the disclosure is not contrary to the express wish of the individual or his or her representative;
 - d. That the disclosure of the information is necessary to prevent or lessen a serious and imminent threat to:
 - (i) public health or public safety; or
 - (iii) the life or health of the individual concerned or another individual;
- (i) that non-compliance is necessary:

- (i) to avoid prejudice to the maintenance of the law by any public sector agency, including the prevention, detection, investigation, prosecution, and punishment of offences; or...
 - (ii) for the conduct of proceedings before any court or tribunal (being proceedings that have been commenced or are reasonably in contemplation)....;
- (3) Disclosure under sub-rule (2) is permitted only to the intent necessary for the particular purpose....;
- (5) This rule applies to health information about living or deceased persons obtained before or after the commencement of this code.
- (6) Despite sub-rule (5), a health agency is exempted from compliance with this rule in respect of health information about an identifiable deceased person who has been dead for not less than 20 years.

5. What is a Family Violence Intervention Programme (FVIP)?

This is a national initiative to reduce the harm of family violence by implementing early intervention programmes such as early identification, assessment and referral of victims presenting to health services. Coordinators train DHB staff in brief intervention, equip them with knowledge and skills to recognise family violence and give appropriate support to victims.

The Ministry of Health Agreement requires DHB planning and funding teams to report on their implementation of family violence intervention guidelines.

6. If I work outside a DHB, what should my workplace be doing?

Some organisations are developing FVIPs. The following resources are available from the Ministry of Health website.

- Family violence guidelines
- Reports on family violence
- Establishing a FVIP programme
- Family violence questions and answers
- Health professional resources
- Family violence organisations and websites
- Updates on family violence

<http://www.health.govt.nz/our-work/preventative-health-wellness/family-violence>

7. Where can I access education and training about detection, assessment and reporting of abuse?

Contact your local DHB FVIP which runs workshops or other family violence organisations.

Child Matters provides training from introductory level half-day workshops through to a one-year NZQA accredited diploma course. Phone (07) 838 3370 or email: info@childmatters.org.nz Further information on the training programmes is available on their website www.childmatters.co.nz

The CYFS delivers child protection workshops in partnership with Child Matters. This is a one-day free seminar. The topics covered can be found on their website: <http://www.cyf.govt.nz/working-with-others/index.html>

Shine is a national organisation offering a free helpline, training and consultancy throughout New Zealand. Phone 0508 744 633. Further training information is available on their website: <http://www.2shine.org.nz/>

Age Concern has an abuse, neglect and prevention service that includes education for people working with and caring for elderly people and has training available to order from their website: <http://www.ageconcern.org.nz/safety/elder-abuse/elder-abuse-and-neglect-prevention-service>

8. Are workplaces required to have a policy relating to reporting actual or suspected abuse?

It is good practice to have a policy. The government will be introducing a range of initiatives including:

- change to current law so all agencies working with children must have policies covering how to recognise and report suspected abuse and neglect. This will be supported by a code of practice that makes it clear everyone working with children has a responsibility to report suspected abuse or neglect.
- train all frontline public sector staff by 2015 to help them recognise the signs of child abuse and act to protect children.

(The White Paper for Vulnerable Children, Vol 1, NZ Government 2012)

9. If my workplace doesn't have a policy, where can I access one?

The Ministry of Health publishes guidelines on its website:

- Family Violence Intervention Guidelines: Elder Abuse and Neglect (Aug 2007).
- Family Violence Intervention Guidelines: Child and Partner Abuse (Nov 2002). Currently being updated.

- Recognising and Responding to Partner Abuse (June 2003).
- Suspected Child Abuse and Neglect: Recommended referral process for general practitioners (May 2001)

Legal disclaimer:

The answers to these frequently asked questions about reporting of abuse do not in themselves constitute legal advice. They are general responses only. If a member has a specific question relating to an individual situation about indemnity, please contact NZNO for legal advice.

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