



## Ethical and legal challenges of mandated child abuse reporters<sup>☆</sup>

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### ABSTRACT

**Background:** Mandated reporters inconsistently report child abuse cases. Ethical dilemmas and legal challenges to reporting arise creating barriers to assist abused children and their families.

**Purpose:** The purpose of this study was to describe professionals' ethical dilemmas and legal challenges to reporting child abuse.

**Method:** A qualitative study was conducted to explore the ethical and legal challenges of mandated reporters when reporting child abuse. Individual interviews between 60 and 100 min were conducted with a purposive sample of 18 mandated reporters including physicians, nurses, social workers, and teachers. Grounded theory methodology was used to develop categorical themes that reflected mandated reporters' experiences and challenges.

**Result:** Three themes emerged from the data: conflicts, time, and law as refuge. Professionals described challenges in balancing autonomy, beneficence, nonmaleficence, and justice. There was no best solution to do no harm. The associated stigma and pressure of cultural and secular norms of child abuse inhibit professionals' action based on legal and ethical requirements. The theme of time included limited time and an uncertain future. The law provides security and refuge for professionals to find a solution to the challenges of reporting child abuse.

**Conclusion:** The ethical and legal challenges of reporting child abuse create complex dilemmas for mandated reporters. Ethical principles are in constant opposition when negotiating rights of children and rights of parents. Supportive structures and education are needed to assist professionals in meeting their reporting obligation and solving their dilemmas.

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### 1. Introduction

Mandatory reporting laws in Taiwan, the United States and around the world protect children from abuse (ISPCAN, 2007). The belief underlying mandatory reporting laws is that a government is obligated to help individuals and families suffering from violence through the vehicle of legislation. The law requires individuals who have the opportunity to detect child maltreatment to identify cases, and also provides immunity mechanisms to protect reporters from legal impediments (Zellman & Fair, 2002). Article 34 of the Children and Youth Welfare Law in Taiwan mandates that if professionals, working closely with children, "learn that the children or youth fall in following cases, they should communicate immediately with the

municipal and county authorities not later than 24 hours... (Shih & Liu, 2007a, 2007b, p. 953)."

Although aware of their mandatory reporting responsibilities, professionals inconsistently report child abuse (Flaherty et al., 2006; Webster, O'Toole, O'Toole, & Lucal, 2005). Most professionals in Taiwan have never reported a child abuse case; some fail to report suspected cases (Feng, Huang, & Wang, 2010; Feng & Levine, 2005). Significant reporting barriers include lack of obvious evidence, lack of knowledge, misinterpretation of the law, and fear of negative consequences (Alvarez, Kenny, Donohue, & Carpin, 2004). A culture that emphasizes family integrality, reporting child abuse, especially for intra-familial violence, also poses a hazard for reporters acting against their own values. Mandated reporters in Taiwan have expressed confusion, reluctance, tension and fear, and have suggested that the law is not achieving its aims (Feng, Chen, Wilk, & Fetzer, 2009).

The experience of child abuse reporting has a powerful and long-lasting impact on clinicians' future practice and decision making. Professionals are often apprehensive, unsure if they have reported abuse appropriately (Levi, Brown, & Erb, 2006; Levi & Loeben, 2004). While

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the law is intended to facilitate reporting through professional's judgment, ambiguous wording creates confusion and hampers the reporting process (Flaherty, 2006). Child protection legislation and protocols are complex and perceived as ambiguous. Decisions made based on individual professional's judgment and definition of maltreatment can differ from the legal perspective (Smith, 2006).

The child protection law represents a societal value protecting a vulnerable population of children. However, confidentiality of reporting is constrained. Procedures to maintain confidentiality and provide immunity are main concerns for reporters. Unsure of their protection, professionals hesitate to risk personal safety and liability to report suspected cases of child abuse (Feng et al., 2009). Every decision, action (commission) or inaction (omission), leads to a corollary involving three components: harm to the child, harm to the professional reporter, or harm to a third party (guardians, alleged perpetrators). Professionals constantly weigh the alternatives carefully and responsibly. The "don't ask, don't tell" behavior opposes victims' desire to be asked. A New Zealand study (Read, 2007) identified the same paradox as many health care professionals ignored an added abuse section of the hospital admission assessment. Professionals' refusal disrespects clients' autonomy and violates professional codes of ethics (Becker-Blease & Freyd, 2007; Black & Black, 2007).

There is a need to reframe and re-conceptualize child abuse and child protection. Ethical dilemmas arise from the process of reporting suspected child abuse for mandated reporters, especially those in close relationships with families. The threat of damaging a relationship in a culture that values harmony becomes intolerable. The experience of working with child abuse cases is challenging and emotionally charged. Unrecognized or unresolved ethical dilemmas impede child abuse reporting (Cheung & Boutte-Queen, 2000; Flaherty, Jones, & Sege, 2004). This study sought to understand the ethical and legal challenges of reporting child abuse.

## 2. Method

A qualitative study of professionals actively involved in the care of children was conducted. Individual interviews asked professionals to describe challenging child abuse cases.

### 2.1. Sample and setting

A purposive sample using snowball sampling identified 18 professionals who had worked with abused children, including 4 social workers, 3 physicians, 6 nurses, and 5 teachers. Three of the social workers worked in hospitals and one in child protective services. The interviewed professionals ranged from 28 to 53 years old (Mean = 40.4, S.D. = 7.45) and had practiced for 3 to 27 years (Mean = 14.6, S.D. = 7.65). Thirteen had reported suspected child abuse and 5 indicated they failed to report at least one suspected incident of child abuse. Professionals were asked to describe the most unforgettable and significant cases of child abuse they have encountered. According to grounded theory, the descriptions of professionals' experiences were the events sampled. The total number of described case of child abuse was 56 ranging from one to six cases per professional. The most common type of child abuse professionals experienced was physical abuse.

### 2.2. Data collection

Approval was obtained from the Institutional Review Board at the researchers' university before data collection. After obtaining informed consent from participants, a structured interview guide asked participants to describe their experiences reporting child abuse, particularly the ethical and legal barriers to care. Participants were encouraged to describe a variety of cases illustrating the ethical and legal foundations of their decisions, difficulties, and conflicts. The interviews lasted 60–100 min and were transcribed verbatim.

### 2.3. Data analysis

Grounded theory analysis started with open coding, a line-by-line close examination of data, which is the process of breaking down, examining, comparing, conceptualizing, and categorizing (Strauss & Corbin, 1998). Categorical themes that emerged from the open coding were compared. Three nurse researchers analyzed data independently, compared and discussed differences in coding and themes to reach agreement. Memoing, peer debriefing and peer checking enhanced credibility.

## 3. Results

Three themes emerged from the interviews: conflicts, time, and law as refuge.

### 3.1. Conflicts

Reporting child abuse is a decision that challenges all professionals to prioritize, weigh, and find balance among ethical principles, personal values and viewpoints. Professional conflicts, occurring throughout the process of caring for abused children and their families, were categorized as ethical conflicts, sympathy versus responsibility, and cultural norms versus responsibility.

#### 3.1.1. Ethical conflicts

In the context of child abuse, it is difficult for professionals to honor and respect individual will and provide benefits for the entire family. For example, reporting child abuse may be beneficial for the child, but detrimental to the parent. The justice of reporting opposes child and parental autonomy. Social workers experienced conflict in the role of helper and resource provider to the family, yet created distress by removing the child. Acting on the principles of beneficence (do good) and nonmaleficence (do no harm) conflicted with the autonomy of child and parent. "Some children just don't want to leave... It was important to take the child away from the dangerous environment. But he didn't want to go and argued it was the mom who had psychiatric disease and should leave!" Beneficence and nonmaleficence are not synonymous, and decision based on the ethical analysis of each child abuse case is diverse.

Achieving justice is difficult with limited resources. Reporting can waste resources if it consumes the energy and time of the child welfare system without demonstrable benefit (Lindsey, 2003). Professionals felt that energy used to remove children deprived others. A physician noted, "The care quality to the abused child would be increased if you could spend more time to understand the entire situation. But the time you spend on this case deprives you of the time to care for other patients." A social worker added, "Unlike most parents, some irresponsible parents wanted the child to be taken away because they didn't want to raise them. In this case, we will try to keep the child home." Professionals desired to do no harm. They continually sought evidence to understand and accurately portray an abuse case. Conclusive abuse evidence accelerates the legal process and reduces mandated reporters' apprehension and insecurity. Uncertainty creates conflicts in the reporting process.

Professionals believed that the original family was the best environment for children. Children placed in foster institutions feel abandoned. Professionals felt conflict wanting the child removed, yet felt that no place was better than home. "Children would feel terrified with the separation if they were placed in an institution. They need to return to their home in the end. Children need their own parents after all." It is difficult to determine the best physical and emotional environment, and professionals often feel uneasy making the decision. The conflict between beneficence and nonmaleficence creates uncertainty of a positive outcome for the child.

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