

Case Studies for “Legal Issues” Training

- Not long ago, we had a guardian ad litem come to the clinic with a D&N wanting to see the medical records of her client who was also our patient. She, the attorney, insisted that she had the right to review the records as she had a court order. Our understanding has always been that Family Planning record is not a medical record. We would not release the records. Our county attorney concurred. The guardian ad litem went to her client and got a ROI specific for our records, returned, and got what she wanted/needed. So I think clarification of what constitutes a FP vs. medical record would be good and to be cautious in what we release (or not). And in what circumstances are we required to release information.
- Our county is becoming home to a large Somali population. We have had some women come through our family planning clinic. Although they come with an interpreter, what are the legal issues of signing English consents? Do we eventually have to get these family planning documents translated for this Somali population?
- If a woman who is no longer a minor – let’s say she is 18 or 19 – reports a past history of abuse – let’s say a step father or brother – that she has never reported, what are our obligations? She does not want to report it to anyone now.
- We don’t have a large enough Spanish speaking clientele to justify having Spanish speaking staff. Sometimes a Spanish speaking client will come with a child to translate. We know that is not ideal, but isn’t it better to serve her anyway than to tell her to come back with a different interpreter, or to come back when we can locate someone more appropriate?
- There is a 16 year old client living with a 26 year old guy – her family knows about it and is OK with it. Is there anything I need to report?

Colorado State Reporting Laws

**THE PURPOSE OF THIS GUIDE IS TO PROVIDE GENERAL INFORMATION ONLY.
IT IS NOT INTENDED AS LEGAL ADVICE OR TO APPLY TO ANY PARTICULAR SITUATION.**

TITLE X

Background:

In 1970, Congress added Title X to the Public Health Services Act to make family planning and reproductive health services available to individuals who need them, with priority given to low-income individuals.

Providing family planning services:

All clients, including adolescents, who are seeking Title X services may consent to their own care, and these services must be provided to them on a voluntary and confidential basis.

Confidentiality and state law requirements for reporting abuse and neglect:

Although Title X providers are legally required to maintain confidentiality of all clients, including adolescents, they are not exempt from state laws that require the reporting of “child abuse, child molestation, sexual abuse, rape, or incest.” This reporting obligation creates a limited exception for the duty to maintain client confidentiality.

Please refer to the Supporting Statutes, which are attached.

DUTY TO REPORT

Child abuse:

Persons required to report are physicians or surgeons, including a physician in training; child health associate; registered nurse or licensed practical nurse; hospital personnel engaged in the admission, care or treatment of patients; social workers; mental health professionals; psychologists; physical therapists; licensed professional counselors; licensed marriage and family therapists; and unlicensed psychotherapists:

- who have reasonable cause to know or suspect that a child has been subjected to abuse or neglect or who have observed the child being subjected to circumstances or conditions which would reasonably result in abuse or neglect.

Persons required to report shall immediately upon receiving such information report to local law enforcement or the Department of Social Services.

Other crimes – sexual assault:

- Without injuries – no mandatory duty to report.
- With injuries – Licensed medical professionals who attend to or treat any injury believed to have resulted from a criminal act must immediately report said injuries to local law enforcement. No other information is required to be disclosed other than injuries.

AGE OF “CONSENT”

No minimum age of “consent”

Sexual contact with a child is illegal if:

- The victim is less than 15 years of age and the actor is at least 4 years older than the victim and is not the spouse of the victim; or
- The victim is at least 15 years of age but less than 17 years of age and the actor is at least 10 years older than the victim and is not the spouse of the victim.

WHO ARE REPORTS MADE TO?

Local law enforcement or the Department of Social Services.

PROCEDURE FOR MAKING A REPORT

Immediately upon receiving information, report to above entities.

CAN A REPORTER BE HELD LIABLE IF IT TURNS OUT THAT HER/HIS SUSPICIONS WERE WRONG?

All those required to report who do so in good faith are protected from penalties if suspicions are unfounded. Any person who intentionally makes a false report could be civilly liable.

CONSEQUENCES OF FAILURE TO REPORT

Penalty for failure to make a report is a misdemeanor.

VICTIMS SERVICES AGENCIES

Each clinic should contact their local District Attorney's Office or Sheriff's Department for Victims Service contact information, as it is not a state service, but a town/city or community service.

The purpose of this guide is to provide general information only. It is not intended as legal advice or to apply to any particular situation.



Supporting Statutes

18-6-401(2) Child means a person under the age of sixteen years.

18-6-401(6) Victim means the person alleging to have been subjected to a criminal *sexual assault*.

18-3-401(1) Actor means the person accused of a sexual offense.

18-3-401(4) Sexual contact means the knowing touching

- Of the victim's intimate parts by the actor, or of the actor's intimate parts by the victim, or
- The knowing touching of the clothing covering the immediate area of the victim's or actor's intimate parts
- If that sexual contact is for the purposes of sexual arousal, gratification, or abuse.

18-3-401(5) Sexual intrusion means any intrusion, however slight,

- by any object or any part of a person's body, except the mouth, tongue, or penis, into the genital or anal opening of another person's body
- If that sexual intrusion can reasonably be construed as being for the purposes of sexual arousal, gratification, or abuse.

18-3-401 (6) Sexual penetration means sexual intercourse, cunnilingus, fellatio, analingus, or anal intercourse.

- Emission need not be proved as an element of any sexual penetration.
- Any penetration, however slight, is sufficient to complete the crime.

18-6-401(1) Child abuse occurs when a person:

- Causes an injury to a child's life or health, or
- Permits a child to be unreasonably placed in a situation that poses a threat of injury to the child's life or health, or
- Engages in a continued pattern of conduct that results in malnourishment, lack of proper medical care, cruel punishment, mistreatment, or an accumulation of injuries that ultimately results in the death of a child or serious bodily injury to a child, or
- Excises or infibulates, in whole or in part, the labia majora, labia minora, vulva, or clitoris of a female child, or
- Engages in the manufacture or attempted manufacture of a controlled substance, possesses ephedrine, pseudoephedrine, or phenylpropanolamine, or their salts, isomers, or salts of isomers, with the intent to use the product as an immediate precursor in the manufacture of a controlled substance when done in the presence of a child, or on the premises where a child is found, or where a child resides.

Statute of limitations – Child abuse can be prosecuted 5 to 10 years after the commission of the crime, depending on the nature and severity of the offense.

18-6-301 Incest - Any person who:

- Knowingly marries, inflicts sexual penetration or sexual intrusion on, or subjects to sexual contact to: An ancestor or descendant, including a natural child, child by adoption, or stepchild twenty-one years of age or older, a brother or sister of the whole or half blood, or an uncle, aunt, nephew, or niece of the whole blood.

18-3-402 Sexual assault – Infliction of sexual intrusion or sexual penetration on a victim when:

- The actor causes submission of the victim by means of sufficient consequence reasonably calculated to cause submission against the victim's will; or
- The actor knows that the victim is incapable of appraising the nature of the victim's conduct; or
- The actor knows that the victim submits erroneously, believing the actor to be the victim's spouse; or
- At the time of the commission of the act, the victim is less than fifteen years of age and the actor is at least four years older than the victim and is not the spouse of the victim; or
- At the time of the commission of the act, the victim is at least fifteen years of age but less than seventeen years of age and the actor is at least ten years older than the victim and is not the spouse of the victim; or
- The victim is in custody of law or detained in a hospital or other institution and the actor has supervisory or disciplinary authority over the victim and uses this position of authority to coerce the victim to submit, unless the act is incident to a lawful search; or
- The actor, while purporting to offer a medical service, engages in treatment or examination of a victim for other than a bona fide medical purpose or in a manner substantially inconsistent with reasonable medical practices; or
- The victim is physically helpless and the actor knows the victim is physically helpless and the victim has not consented.

18-3-405 Sexual assault on a child - Any actor who knowingly subjects another, not his or her spouse, to any sexual contact when:

- The victim is less than fifteen years of age and the actor is at least four years older than the victim.

18-3-405.3 Sexual assault on a child by one in a position of trust - Any actor who knowingly subjects another not his or her spouse to any sexual contact when:

- the victim is a child less than eighteen years of age and the actor committing the offense is one in a position of trust (*includes, but is not limited to, any person who is a parent or acting in the place of a parent and charged with any of a parent's rights, duties, or responsibilities concerning a child, including a guardian or someone otherwise responsible for the general supervision of a child's welfare, or a person who is charged with any duty or responsibility for the health, education, welfare, or supervision of a child, including foster care, child care, family care, or institutional care, either independently or through another, no matter how brief, at the time of an unlawful act*) with respect to the victim.