

## Reporting past abuse when the patient is an adult: Behnke and beyond

APA Ethics Director Steven Behnke, Ph.D., J.D., has inaugurated a delightful and useful series of articles in the APA Monitor on Psychology. Every other month, he and a selected co-author will publish a discussion of an ethical dilemma faced by psychologists in our everyday work. Each article begins with a clinical vignette and addresses related issues. The articles show the benefits of Behnke's dual training in law and psychology. He and his co-authors organize the thicket of law, regulation, and APA code into a clear and comprehensible logical structure. If you want authoritative answers to difficult questions, you can't do better than to read these articles.

But still, answers are elusive. For one thing, local conditions vary, so to speak. State law and other local considerations bear on these issues and therefore an analysis based on national factors can only go so far. Secondly, authoritative guidance is less available or helpful than Behnke appears to believe. Legal training, if my impression is correct, teaches that one's conduct must be guided by rule, authority, and precedent. Accordingly, Behnke addresses the dilemmas with a thorough review of relevant principles in the APA code and elsewhere, together with recommendations to consult relevant authorities when written codes fail to decide the issue. The trouble is, the appeal to authority falls short.

The second and most recent article in the series, in the May 2002 issue of the Monitor, addresses the vexing and often critical question of whether we are required to report child abuse when the victim is now an adult. In the vignette, a 20-year-old woman tells her therapist that her uncle molested her when she was 12 and that if others in her family ever knew this, "a major and irreparable rift" would result. Behnke and his co-author, Robert Kinscherff, Ph.D., J.D., acknowledge that unless one practices in a state where the reporting statute is clear and explicit, this situation is likely to fall in a gray area where "the law speaks less distinctly (p. 57)." In deciding whether to make a report, they suggest a psychologist (1) review the state statute, (2) consult CPS, and (3) consult a colleague or an expert in law and ethics, perhaps through the APA Office of Ethics or through one's malpractice carrier. They reassure us that mandatory reporting laws protect psychologists who make reports in good faith and that our uncertainty in this situation is more likely a consequence of the law's ambiguity than of any lack of diligence on our own parts.

California law, as far as I have been able to discover, is not explicit on this point. The most authoritative source I have been able to find is an informal opinion issued by the Attorney General's office on February 3, 1987 (Indexed Letter 87-202, available through the California Attorney General's office; see also Richard Leslie in the January/February 1990 issue of The California Therapist), written by Deputy Attorney General Karen Ziskind. Based on the wording of the reporting statute, she concludes that the Legislature "contemplated that a report is required only if the victim...is still a child, (p. 3)" and therefore that no therapist could be prosecuted for failing to report past abuse of an adult. In qualifying this statement, she notes that, of course, "if the therapist has reasonable suspicion to believe other children are abused, there is a clear duty to report. (p. 3)" She further notes that relevant judicial opinions have held that the law is also intended to protect *other* children (which might require a CPS investigation) and to cure or punish the abuser. Given these opinions, Ziskind writes, therapists *should* make reports

whenever any of these purposes would be served, using their own discretion. Nevertheless, she concludes, until the Legislature revises the law, "there is no mandatory duty to report unless the victim...is still a child. (p. 5)"

Thus, in California, a therapist is not required to report in this situation, but under the Deputy Attorney General's opinion *may* legally violate confidentiality to do so if she or he believes that a guilty perpetrator might be punished as a result of the report or even if the report might lead to protection of other children. The decision becomes a matter of personal and professional ethics. The next Behnke Ethics Rounds, due in the July issue of Monitor on Psychology, will address this kind of situation.

In the meantime, I would like to raise some questions about the approach Behnke and Kinscherff advocate. Some of the authorities they recommend, namely CPS workers and malpractice carriers, are likely to be biased in favor of reporting; the issue of confidentiality does not weigh as heavily for them as it does for us, in my experience. Moreover, substantive consultation with ethical authorities is less available than one would like. For example, the CPA Ethics Committee generally limits itself to citations of relevant sections of the APA code and the APA Office of Ethics can be unresponsive.

Moreover, they make no mention of the central therapeutic issue in their poignant vignette, namely, the impact on this young woman and on the therapeutic relationship if she discovered that her disclosure, contrary to her intent and without her consent, was going to unleash an upheaval in her family from which there would be no return. In fact, Behnke and Kinscherff are so closely focused on consultation with authorities and on the APA Ethics Code that they inadvertently recommend something that could only be described as an ethical lapse. After acknowledging that the law in this area is likely to be ambiguous, they suggest that if a client objects to the unauthorized disclosure, a psychologist "can explain that the law leaves no room for discretion. (p. 57)" Given the law's ambiguity and the likelihood that consultants would differ on the right course of action, a psychologist responding in this way would, in many cases, be taking cover behind a convenient lie. Sometimes, it seems, Ethics can get in the way of ethics.

In the new Ethics Rounds, we find lawyerly reasoning of psychologists at its best. But, partly for that very reason, in these articles we can also see its limits.

Read the original Behnke and Kinscherff article by [clicking here](#).