

**MANDATORY REPORTING  
of CHILD ABUSE  
CONSIDERATIONS  
FOR  
NEW YORK STATE  
FAMILY PLANNING PROGRAMS**

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**February 2011  
Cicatelli Associates Inc.**

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**DISCLAIMER**

This presentation is for information and education only, and is not intended as legal advice for any particular situation.

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**Why such an emphasis on  
statutory rape and child abuse  
reporting?**

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## Federal Appropriations Bill

Federal 1999 Omnibus Appropriations Bill (Pub. L. 105-277):

- ▣ *“Notwithstanding any other provisions of law, no provider of services under Title X of the Public Health Service Act shall be exempt from any State law requiring notification or reporting of child abuse, child molestation, sexual abuse, rape, or incest.”*

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## Federal Requirement

- ▣ The federal law does not impose any federal reporting requirements.
- ▣ It leaves state requirements that detail when to report child abuse in effect.

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## New York State Reporting Requirements

- ▣ Mandatory Reporters
  - health and educational professionals who are *required by law* to report suspected cases of child abuse or neglect to the **State Central Register**

N.Y. Soc. Serv. Law Section 413(1).

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### New York State Reporting Requirements

when they have *reasonable cause* to suspect that a child who has come before them in their *professional capacity* is an abused or neglected child

N.Y. Soc. Serv. Law Section 413(1).

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### What is “professional capacity?”

Any of the following professionals acting within their professional role:

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### Mandatory Reporters

- Registered Nurses (& NPs)
- Physicians
- Registered PAs
- EMTs
- Mental health professionals
- Other health professionals
- Hospital personnel involved in patient admissions, exams, care treatment
- School officials
- Social service workers
- Residential care facility volunteers

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## Mandatory Reporters cont'd ...

- ☐ Foster and child care workers
- ☐ Law enforcement officials
- ☐ District Attorneys and investigators employed by the DAs
- ☐ Christian Science practitioners
- ☐ Social workers
- ☐ Therapists
- ☐ Alcohol and substance abuse counselors
- ☐ School personnel

SS law § 413

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## What is child abuse?

A child less than 18 years of age whose parent or other person legally responsible for her/his care:

- Physically, emotionally, or sexually harms the child; or
- Allows another person to physically, emotionally, or sexually harm the child.

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## What is neglect?

A child less than eighteen years of age whose parent or other person legally responsible for her/his care:

- Fails to provide a minimum degree of care and allows the physical, mental or emotional impairment as a result.

N.Y. Fam. Ct. Act § 1012(f).

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### What is neglect?

Fails to supply the child with adequate food, clothing, shelter, education or medical/health care.

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### What is neglect?

Fails to provide the child with proper supervision or guardianship, by unreasonably inflicting or allowing to be inflicted harm, including the infliction of excessive corporal punishment.

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### When/how should a report be made?

- ▣ Mandatory reporters must report reasonable suspicions of child abuse or neglect **immediately**.
- ▣ This requires calling the hotline and following up with a written report within 48 hours.

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**When should a report be made?**

*A reasonable suspicion* must be based on *articulable facts* which when examined objectively would lead others to the conclusion that a child who has come before them in their *professional capacity* has been abused or neglected.

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**What is “reasonable suspicion?”**

Reasonable suspicion is “the quantum of knowledge sufficient to induce an ordinarily prudent and cautious [person] to believe criminal activity is at hand.”

*People v. Brooks* 452 NYS 2d 740 (1982).

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**What is an “articulable fact?”**

Articulable fact is not “a mere hunch, but based on [information that], when examined objectively, would lead others to the same conclusion.”

*People v. Brooks* 453 NYS 2d 740 (1982).

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### What is an “articulable fact?”

What would be an example of an articulable fact?

- ☐ Bruises, burn marks
- ☐ Tears of the vagina or anus
- ☐ The minor’s first hand comments of abuse

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### What does “allow” mean?

“...whether a reasonable and prudent parent would have acted, or failed to act, under the circumstances as presented.”

*In the Matter of Scott G. 508 NYS 2d 669 (1986).*

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### Who is a “legally responsible for care?”

- ☐ Adults responsible for the child’s care at the relevant time
- ☐ Includes a parent's paramour
- ☐ Minor siblings of the child are excluded from mandated reporting

*In the Matter of Catherine G 785 NYS 369 (2004)*

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### What will be investigated?

- ❑ NY has limited child abuse to **acts committed by a legal caregiver.**
- ❑ The State Central Register has the authority to investigate cases against *a legal caregiver ONLY.*
- ❑ If a report is made because of the acts of a non-family member, only the family will be investigated.

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### What will be investigated?

HOWEVER:

If the Central Register believes that the acts or circumstances described in a phone call may constitute a crime or an immediate threat, they may notify law enforcement or the district attorney to provide necessary aid or assistance.

N.Y. Soc. Serv. Law Section 422(2)(c).

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### What will be investigated?

- ❑ There are several other circumstances in which information is disclosed, such as child fatality review teams.
- ❑ Other than that, all calls are to remain confidential.

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- ❑ Mandated reporters are NOT entitled to any follow-up information about hotline calls.

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- ❑ Most likely, the only way mandated reporters find out the status of a report is from the parents, CPS workers or attorneys if the matter presents such risk to the child that the parents are petitioned to Family Court.

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### **Are all crimes child abuse?**

- ❑ NO!
- ❑ Parents/legal guardians are presumed to act in the best interests of their child.
- ❑ It is up to a parent to decide to report a crime committed by a non-family member against their child.

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## Are all crimes child abuse?

The legal standard is that “parents have a fundamental right to raise their children and state intervention in the parent-child relationship can only be justified where necessary to protect the child’s life, health and safety.”

*In re Katherine C.* 471 NYS 2d 216 (1984).

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## Making the Report

- ☐ A report made in good faith will not result in liability.
- ☐ “Good Faith” is presumed unless:
  - A reporter acts with willful misconduct (makes a knowingly false report); or
  - Makes a report without even slight care or diligence to determine the validity of the report.

NY Soc. Serv. Law Section 419.

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“ when in doubt about whether a case must be reported under [the law], [mandated reporters] ought to err on the side of caution and make a report.”

*In the Matter of Catherine G.* 785 NYS 2d 369 (2004)

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### If the report is not filed ...

- ❑ If abuse is suspected and a report is not made, the mandatory reporter may be guilty of a class A misdemeanor.
- ❑ The mandatory reporter can be sued for damages resulting from the failure to report.

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Is a sex crime committed by a non-family member child abuse?

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### Crimes Against Minors

- ❑ Mandatory reporters are only required to report **child abuse**.
- ❑ Child abuse is a crime against a child by a parent or other legal guardian/caregiver, or
- ❑ When the parent or caregiver is aware of and allows the crime to be committed against the child and does nothing to stop it.

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### Crimes Against Minors

- ❑ No NY law requires that a mandatory reporter report crimes to the police.
- ❑ Providers are not permitted to breach a client's confidentiality to report a crime without consent.
- ❑ If the reporter is bound by confidentiality laws, she/he is prohibited from reporting without the patient's consent *unless the crime constitutes child abuse.*

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### Statutory Rape...Child Abuse?

- ❑ Failure to prevent a child's voluntary sexual activity does not constitute abuse under New York law.
- ❑ Unless the child is having sex with a parent or caregiver, or where there is evidence of abuse other than the mere fact that a child is sexually active, statutory rape is not reportable.

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### Statutory Rape ...Child Abuse?

"To suggest that parents should [...] incur legal liability for the sexual activities of their children [...] fails to take into account the reality that the degree of supervision a parent is able to exert diminishes as a child's freedom, independence, age and privacy increase."

*In re Leslie C.* 614 NYS 2d 855 (1994).

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## Confidentiality

### ▣ Federal Guidance for Title X Family Planning Services

"All information as to personal facts and circumstances obtained by the project staff about individuals receiving services must be held confidential."

42 CFR Chapter 1 Section 59.11  
Part 59 Subpart A (10-1-00 Edition).

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## Confidentiality

"...and must not be disclosed without the individual's documented consent, except as may be necessary to provide services to the patient as required by law with appropriate safeguards for confidentiality."

"Otherwise, information may be disclosed only in summary, statistical or other form which does not identify particular individuals..."

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## What about HIPAA?

- ▣ Does not change the protection already afforded by both NYS law and the Title X regulations
- ▣ Allows any state laws that are more restrictive than HIPAA to preempt.
- ▣ Therefore, there is no change for NYS family planning providers.

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### **Statutory Rape ...Child Abuse?**

- ▣ Where there is no evidence of parental abuse or neglect, any report could expose the clinic and or staff to an action by the minor or his/her parents for breach of confidentiality.

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- ▣ However, providers are encouraged to discuss the realities of statutory rape with patients.
- ▣ Providers still have other options, even when the provider does not have to report it under NYS law

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### **What else can providers do?**

- ▣ Safety planning with clients
- ▣ Coercion assessment and counseling

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## The Balancing Act

- ☐ Confidentiality
- ☐ Concerns about the safety of your clients
- ☐ Child abuse laws
- ☐ Regulatory requirements (OPA)
- ☐ Ethical responsibility

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## Discussion

- ☐ What is agency policy for addressing concerns about sexual activity of younger patients, i.e. a 13 year old with a 19 year old partner?
- ☐ What are the confidentiality concerns?
- ☐ What options does your agency encourage other than exercising your obligation as mandated reporters?

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## Case 1: Tonya

- ☐ Tonya is a 15 yr . old female who is at the clinic for her third abortion. She also has a history of STIs. During your counseling session with her, you learn that her boyfriend is 29. Tonya says she is in love with Mike, and he takes care of her and her mother. Mike lives with Tonya and her mother when he is not on the road working as a truck driver. He loves Tonya and plans to marry her on her 16<sup>th</sup> birthday. Tonya's mother approves of the relationship.

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### Case 2: Celine

- ▣ Celine is a 14 yr. old high school student who has never had a vaginal exam or gynecological visit. She came to the clinic seeking medicine that will stop the itching. The vaginal exam reveals several bruises and small tears around the vagina and anus. When you ask Celine about it, she cries and says, "my gymnastics coach, he keeps forcing himself on me. I'm afraid of him, please don't tell."

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### Case 3: Shari

- ▣ Shari, a 13 yr. old honor student, was referred to FP by the nurse clinician. Shari has had several STIs over the last few months. You ask Shari about her sexual partners, and whether or not they use protection. She answers, he is NOT my partner, he's my stepbrother, and he NEVER uses anything. Shari tells you that her 16 yr. old brother has been forcing sex on her for about a year. Her brother hits her and threatens to tell her friends and her family that she is a lesbian if she tells anyone. Shari is too afraid to tell her mother and stepfather and she doesn't think they know what her stepbrother is doing.

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