Opinion Medico-Legal

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Statutory obligations regarding child welfare and protection

***Ms Dee Duffy** provides an overview for doctors of statutory requirements in the area of child protection*

Due to the high stakes involved in ensuring child protection and preventing harm to children, there are a number of mandatory requirements placed on healthcare professionals, who play a critical role in safeguarding the welfare of children.

All registered medical practitioners are mandated persons under 'Children First'. Children First is a generic term used to encompass the *Children First: National Guidance for the Protection and Welfare of Children 2017* (a national policy document to assist people in identifying and reporting child abuse) and the Children First Act 2015.

Mandated persons

The current (ninth) edition of the Medical Council's *Guide to Professional Conduct and Ethics for Registered Medical Practitioners* provides that doctors must be aware of and comply with the national guidelines and legislation for the protection of children, and if they have reasonable grounds for suspecting that a child is being harmed, has been harmed, or is at risk of harm through sexual, physical, emotional abuse or neglect, they must report this to the appropriate authorities and/or the relevant agency without delay.

The Child and Family Agency (Tusla) is the dedicated State agency in Ireland responsible for improving wellbeing and outcomes for children. Doctors have two main legal obligations under the Act:

1. To report harm of children, above a defined threshold, to Tusla; and
2. To assist Tusla, if requested, in assessing a concern which has been the subject of a mandated report.

Mandated reporting

As mandated persons, doctors are required to report any knowledge, belief or reasonable suspicion that a child has been harmed, is being harmed, or is at risk of being harmed. The Act defines harm as assault, ill-treatment, neglect, or sexual abuse, and covers single and multiple instances.

In determining whether a concern reaches the legal threshold to make a mandated report, a helpful question may be: Has the child's health, development, or welfare been affected, is being affected or is likely to be affected by the harm?

If a doctor is in any doubt as to whether the concerns reach the legal definition of harm for making a mandated report, they can contact Tusla, on a no-names basis, and seek further guidance.

Contact details for local Tusla social workers, including emergency/out-of-hours, should be available to doctors. At no stage should a child's safety be compromised and doctors should contact the gardaí without delay if they think a child is in immediate danger and they cannot contact Tusla.

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HSE Child Protection and Welfare Reporting Policy[1]

It is important to be familiar with the most up-to-date version of the above policy and any guidelines in place for a particular hospital. The HSE reporting procedure outlines key stages as: Recognising concerns, responding to any immediate safety needs, consulting with a line manager/senior staff member, reporting to Tusla, informing the family (unless there is good reason not to), recording, assisting Tusla where requested, and monitoring as to whether any further action is required.

Making a mandated report

The Act requires mandated persons to report a concern to Tusla "as soon as practicable". All mandated reports can be submitted via www.tusla.ie and doctors should include as much information as possible. Mandated reports cannot be submitted anonymously. A report made in good faith detailing a reasonable concern about a child's welfare will not amount to a breach of patient confidentiality and doctors will be protected from civil liability.

While there is no legal requirement for doctors to inform the child's parents/legal guardians that they intend to make a mandated report, the guidelines state that it is good practice to tell them and discuss the reasons. However, if by doing so, a doctor believes the child will be placed at further risk or it would impair Tusla's ability to carry out a risk assessment, or indeed that a doctor will be placed at risk of harm, they should not inform them.

Recognising concerns

Doctors working in any specialty can come across child welfare concerns either through their own observations or through allegations reported to them. When treating adult patients, doctors should consider the possibility of child welfare concerns in the context of parent/carer-related issues (eg, substance abuse, mental illness).

According to the *HSE Child Protection and Welfare Policy*, child neglect is the most frequently reported category of abuse, both in Ireland and internationally. Children may present with features of neglect such as malnourishment, lack of hygiene, etc, and sometimes, identifiers of neglect are only apparent over a period of time.

Doctors may observe signs of physical abuse such as non-accidental injuries, bruising, scarring, etc. Signs of emotional abuse may be more difficult to recognise as the signs are behavioural rather than physical and can be difficult to identify in once-off interactions.

Sexual abuse

It is important to remember that sexual activity involving a young person may be sexual abuse even if the young person concerned does not themselves recognise it as abusive.

A recent Court of Appeal judgment[2] provided clarity to mandated persons in respect of obligations to report disclosures of retrospective allegations of sexual abuse and made it clear that where an adult patient reports historical abuse to a doctor, the doctor is not obliged to report it to Tusla unless there is a current risk of harm to a child.

Revised text inserted into the *HSE Child Protection and Welfare Reporting Policy*[3] in January 2024 reflects this judgment.

Consensual sexual activity

There is one exception to reporting concerns of possible sexual abuse, which relates to certain consensual sexual activity between teenagers. In Ireland, the age of consent for sexual intercourse is 17, but where one of the parties to a sexual relationship is under 17, it may fall under the statutory reporting exception.

If a doctor is satisfied that all of the following criteria are met, they do not have to report consensual sexual activity between older teenagers to Tusla:

- The young persons concerned must be between 15 and 17 years;
- The age difference between the two must not be more than 24 months;
- There is no material difference in their maturity or capacity to consent;
- The relationship does not involve intimidation or exploitation of either person; and
- The young persons concerned do not want the matter disclosed to Tusla.

There is no reporting exception for sexual activity involving persons under 15 years; doctors must make a mandated report to Tusla in those circumstances.

Consequences of non-reporting

While the Act does not impose criminal sanctions on mandated persons who fail to make a report to Tusla, if, following an investigation, it transpires that a doctor did not make a mandated report and a child was subsequently left at risk or harmed, Tusla may:

- Make a complaint to the Medical Council;
- Pass information to the National Vetting Bureau of An Garda Síochána, which could be disclosed to a current or future employers when the doctor is next vetted.

Mandated assistance

Children First also provides that mandated persons can be requested by Tusla to provide necessary and proportionate assistance to aid their assessment of risk to a child, which usually involves a request for information (eg, a verbal/written report or to attend a case conference). Data protection legislation does not prevent the sharing of information on a reasonable and proportionate basis for the purpose of child protection.

Tusla has the authority to share information concerning a child with a mandated person and can only share what is necessary and proportionate. If a doctor is required to share information with Tusla when assisting in the assessment of risk to a child, they are protected from civil liability. The Act makes it an offence, however, for a doctor to disclose information shared with them by Tusla to a third party, unless they are provided with prior written authorisation from Tusla to do so.

Conclusion

Doctors play a key role in child protection and it is important to always bear in mind that the welfare of the child is paramount.

If a doctor has any concerns relating to the health, development, or welfare of a child, they should report those concerns to Tusla without delay. Doctors should also contact their indemnifier for advice if they are unsure how to proceed.

References

1. www2.healthservice.hse.ie/files/163/
2. McGrath v HSE [2023] IECA 298
3. www2.healthservice.hse.ie/files/163/