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CHILD PROTECTION: LEGAL AND ETHICAL OBLIGATION REGARDING THE REPORT OF CHILD ABUSE IN FOUR DIFFERENT COUNTRIES

Ivana Cukovic-Bagic¹, Richard R. Welbury^{1,2}, Gordana Buljan Flander³, Sahza Hatibovic-Kofman⁴, Emilio Nuzzolese⁵

¹ School of Dental Medicine, University of Zagreb, Croatia

² Dental School, University of Glasgow, Scotland, United Kingdom

³ Child Protection Center of Zagreb, Croatia

⁴ Schulich School of Medicine & Dentistry, University of Western Ontario, London, Canada

⁵ Forensic Odontology, Bari, Italy

Corresponding author: ivana.bagic@gmail.com

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ABSTRACT

Child protection is the duty of every single member of the society. Health professionals who work with children, such as members of dental team, are in the unique position to recognize signs of physical, sexual and emotional abuse as well as (dental) neglect. They should report any suspected case where a child is or may be in need of welfare. The professional responsibility is regulated by legal and ethical obligations. In this preliminary work the authors investigate the legal and ethical Acts, and the similarities vs. differences in obligations regarding reporting child abuse and neglect (CAN) cases in four countries: Croatia, United Kingdom, Italy and Canada. In all four countries all health professionals have a duty to report their suspicion if a child is in a harmful situation. All of them who fail to report, or even neglect or delay to report a suspicion, are liable on conviction to a pecuniary fine which varies from country to country. Depending on the country, if a professional has reasonable grounds to suspect that a child is or may be in need of protection, must report to: CAS (children's aid society), to CSS (center for social services), to police, to a Juvenile Court, or to the ombudsman. In all four countries, dentists are not asked to diagnose 'child maltreatment', but simply report the suspicion with supportive evidence. Ethical obligation comes from medical and dental ethical codes regulated by the Chamber or Council of Dentists. In all four countries legal and ethical obligations in reporting CAN are similar. Differences are related mostly to fines for nonreporting or a delay in reporting. Expanded investigation through other European countries and standard operational procedures is needed, in order to harmonize policies and guidelines for reporting CAN and maximize children protection.

KEYWORDS: Child abuse, Child neglect, Child protection, Reporting, Legal acts, Ethics

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INTRODUCTION

The United Nations Convention on the Rights of the Child (UNCRC) requires all signatory countries (USA, Somalia and South Sudan are the only non signatory countries) to establish integrated child protection systems to ensure a coordinated response to child abuse and neglect cases.¹ Mandatory reporting of suspected or confirmed child abuse and neglect represents a main strategy to address violence against children. However, health/dental professionals are in a unique position to identify child abuse and neglect cases. Legislation covering child protection can be divided in categories of civil and criminal law. Legislation mandating health/dental professionals to report concerns for child abuse and neglect is available in many countries across the world (as well as in Canada, Croatia, Italy).² Some countries such as the United Kingdom do not mandate health professionals to report concerns for child abuse and neglect but give guidance (NSPCC National Society for Protection of Cruelty to Children). Mandatory reporting of child abuse and neglect varies between jurisdictions. Ethical obligation comes from medical and dental ethical codes which are in all four countries regulated by the Chamber or Council of Dentists. In general, ethical obligations cover protection of children, the elderly and the disabled, in particular when the environment, family or the community in which they live is not sufficiently responsive to health care.

REPORTING CHILD ABUSE IN CROATIA

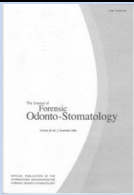
Croatia, as a signatory country of the UNCRC accepts a definition that a child is every human below the age of eighteen years.³

Reasonable grounds for suspicion that a child has been abused justify the assessment and decision to report to institutions in charge, which means that the professional, even if s/he does not have sufficient information, is obliged to report the suspicion. The Constitution of Croatia considers children to be a vulnerable group in need of special care and protection by the society and the state. The issue of child protection is thus included in many legal documents: Convention on the Rights of the Child, Social Care Act, Family Law Act, Criminal Code, Patients' Rights Act, Ombudsman for Children Act, Domestic Violence Act, Primary Education Act and Secondary Education Act.⁴

The Family Law Act,⁵ Article 108, requires one to inform the Social Welfare Center on violation of any child's rights and especially of all forms of physical or mental violence, sexual abuse, neglect, abuse or exploitation of a child. The Social Welfare Center is obliged, immediately after receipt of the notification, to investigate the case and to undertake the measures necessary for the protection of the child's rights.

The Penal Code,⁶ Article 300, requires that anyone aware of a serious criminal offense, for which long-term imprisonment is prescribed by law, that was committed and who to report it, although he knows that by reporting it the discovery of the offense or the perpetrator would be made possible or considerably facilitated, shall be punished by a fine or by imprisonment not exceeding three years.

The Domestic Violence Act,⁷ Article 21, states a pecuniary fine of at least 400 € will be imposed upon a person that fails to report domestic violence to the police or the State Attorney's office while performing their professional duties.



The Act on Physicianship,⁸ Article 22, states that a medical doctor is obliged to file a report to the police or to the State Attorney's office when during the performance of their duties they suspect that the death or a physical injury to a person occurred due to an act of violence. The doctor is also obliged to file a report when they suspect that the health of an underage person or a person in need of care is seriously endangered by neglect or abuse. In case of a suspicious injury which may be due to domestic violence, the professional is obliged to talk to that person and to help that person confide to them that domestic violence has occurred and to learn the exact personal circumstances of the case.

Children and parents could also consider telephoning the Croatian National Emergency for Minors Resource Center named "Brave Phone".⁹ Brave Phone is a non-profit, non-government association established with the aim of the prevention of abuse, neglect and inappropriate behavior of children and youth and of direct help to abused and neglected children and their families. This Help-line is confidential, anonymous, safe and free. This ethical obligation originates in the dental ethical code which states that doctors should protect the child, the elderly and the disabled.¹⁰

REPORTING CHILD ABUSE IN THE UNITED KINGDOM

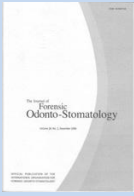
England, Wales, Northern Ireland and Scotland each have their own guidance setting out the duties and responsibilities of organizations to keep children safe, but they agree that a child is anyone who has not yet reached their 18th birthday.¹¹

Reporting of child abuse and neglect is not mandatory in the United Kingdom but the

General Dental Council (GDC) which has the sole responsibility for protecting patients and regulating the dental team expects all registered members of the dental team to be aware of the procedures involved in raising concerns about the possible abuse or neglect of children and vulnerable adults.¹²

This is embodied in the statement contained in Principle 1.8, 'Standards for dental professional'. The standards guidance is a code of behavior that registrants agree to abide by. This is one of the main ways in which the GDC protect patients, but standards also protect the dental professional by making it clear what is expected of them as a registrant.¹³

Dental professionals have a responsibility to raise any concerns they may have about the possible abuse or neglect of children or vulnerable adults. It is their responsibility to know whom to contact for further advice and how to refer cases to an appropriate authority (such as a local health trust or board). Dental professionals are likely to observe and identify injuries to the head, eyes, ears, neck, face, mouth and teeth, as well as other welfare concerns. Bruising, burns, bite marks and eye injuries are the types of injury that could suggest a concern should be raised. The web-based resource 'Child Protection and the Dental Team' was specifically developed as an educational resource for dental professionals in 2006. This resource assists in identifying child abuse or neglect.¹⁴ The dental professional is advised that if they make a professional judgment and decide not to share their concern with the appropriate authority, they must be able to justify how they came to this decision and are advised to contact their legal defense organization or professional association for advice. If any dental professional is unsure of the local procedures in their area, then they have a



duty to find out what they are, whether they work for the National Health Service (NHS) or in private practice.

In the United Kingdom there is a free confidential telephone helpline called Childline that is available 24 hours a day. This is funded by the National Society for the Prevention of Cruelty to Children (NSPCC).¹⁵

Forensic science is considered a modern development. Human identification is one of the most challenging subjects that has confronted man. The professional obligation of the dental surgeon to mankind is not only to serve in examination, investigation, diagnosis and treatment of oral and orofacial diseases of local and systemic origin but also to serve in other community functions

With the ever-increasing demands placed upon law enforcement to provide sufficient physical evidence linking a person to a crime, it makes sense to utilize any type of physical characteristic to identify suspects guilty of a particular offense. Establishing a person's identity can be a very difficult process.¹

REPORTING CHILD ABUSE IN CANADA (ONTARIO)

The age of majority in Canada is determined by each province and territory (18 or 19 years), and for Ontario is eighteen years.¹⁶

Section 72 of the full legislation on Ontario's Child and Family Services makes provision for general legislation applicable to all members of society regarding duty to report child abuse and neglect. This is general legislation, but there is a specific mention of the duty of dentists.^{17,18}

Ontario's Child and Family Services Act (CFSA) recognize that each person has a responsibility for the welfare of children.

All members of the dental team share a responsibility to protect children from harm. This includes situations where children are abused or neglected in their own homes.

Section 72 of the Child and Family Services Act¹⁷ states that the public, including professionals who work with children, must promptly report any suspicions that a child is or may be in need of protection to a Children Aid Society (CAS). The Act defines the phrase "child in need of protection" and explains what must be reported to CAS. It includes physical, sexual and emotional abuse, neglect, and risk of harm. Anyone who has reasonable grounds (information that an average person, using normal and honest judgment, would need in order to decide to report) to suspect that a child is or may be in need of protection must promptly report the suspicion and the information upon which it is based to a CAS. Professionals and officials have the same duty as the rest of the public to report their suspicion that a child is or may be in need of protection. These professionals are; health care professionals (physicians, nurses, dentists, pharmacists), psychologists, teachers and school principals, social workers and family counselors, religious leaders, operators or employees of child care programs or centers, youth and recreation workers (but not volunteers), peace officers and coroners, child and youth service providers and employees of these service providers and any other person who performs professional or official duties with respect to a child. The Act recognizes that people working closely with children are in a unique position to recognize the signs of child abuse and neglect, and therefore have a particular

responsibility to report their suspicions. Any professional who fails to report a suspicion is liable on conviction to a fine of up to 750 €, if they obtained the information in the course of their professional or official duties.¹⁸ Ethical aspects are covered by the Code of Ethics of the Royal College of Dental Surgeons of Ontario.¹⁹ In addition, in Canada there is a free confidential helpline called Canada Child Abuse Hotline and Kids Help Phone.²⁰

REPORTING CHILD ABUSE IN ITALY

Law no. 39 of 8 March 1975 established that the age of majority is acquired at 18 years. Previously the threshold was 21 years.²¹

The Italian Penal Code²², Article 572, defines the crime of maltreatment. If the act results in a serious personal injury, the penalty is imprisonment for four to eight years; if it results in a serious injury, imprisonment from seven to fifteen years; if death follows as a consequence of the serious injuries, imprisonment from twelve to twenty years. The Article does not give a definitive frame to this crime so abuse can be considered any usual behavior which leads to harm or puts an individual into danger. Harmful acts can be not only any act against integrity, freedom, and honor, but also acts of contempt, humiliation, and subjugation that offend the dignity of the victim. There is no distinction between physical or emotional mistreatment. Episodic but not systematic events are not considered maltreatment and fall into another form of crime. The crime of Article 572 penal code is prosecuted *ex officio*, thus resulting in an obligation for all health professionals to report their suspicions of maltreatment to the judicial authority (Penal Code,²² Articles 361, 362, 365). This reporting is mandatory for dentists, dental hygienists,

as for any other medical professions. To this regard there is a legal distinction between the following positions:^{23,24} public officer; operator in charge of a public service; a private doctor who works only for the interest of the patient (public health) and not for the State administrative interest. Depending of their above status, a dentist will have to safeguard and protect either collectively or for a single patient. In the first two cases, if there is a suspicion of a crime, then the dentist is obliged to report to the Police or the Juvenile Court.

A public official and any medical professional who neglects or delays to report to the Police or to the Court will be punished with a fine up to 516 € and the dentist in charge of a public service will be fined up to 103 €. The report must be done or sent within 48 hours or handed directly to the police if there is an immediate danger. Dentists are asked not to diagnose 'child abuse', but simply to report their suspicions with supportive evidence.^{23,25}

The dental professionals could also consider telephoning the Italian National Emergency for Minors Resource Center 114.²⁶ The service is free and is sponsored by the Department for Equal Opportunities and operated by 'Telefono Azzurro'. This service is active 24 hours a day and can assist a child or adolescent who is in danger. In particular, the task of the service is to provide assistance in situations of emergency and trauma that may impair the mental and physical development of any child and adolescent, and utilize local social services resources.

Ethical obligation comes from the medical and dental ethical code.²⁷ Article 32 of the medical ethical code states that doctors should protect the child and the elderly and the disabled, especially when the environment, family or the community in

which they live is not sufficiently responsive to health care or they are victim of physical or psychological violence or sexual abuse.

DISCUSSION AND CONCLUSION

Reporting laws are not promulgated to punish offenders, but rather to help the children in need. Dentists and the members of the dental team are in the unique position to recognize child abuse and neglect because approximately 60% of all signs are visible in the craniofacial region (head and neck).¹² To fulfill professional, ethical, and legal duties adequately, dentists should be educated on child abuse and neglect issues in undergraduate and postgraduate dental education.^{28,29}

All four countries presented in this article are signatory countries of the United Nations Convention on the Rights of the Child (UNCRC), so they are obliged to establish integrated child protection systems to ensure a coordinated response to child abuse and neglect cases.¹

In all four investigated countries, an individual is considered a child until the age of eighteen years.^{3,11,16,21}

The initial steps in prevention should be early recognition and reporting. Reporting varies between different jurisdictions and legislation mandating dental professionals to report concerns for child abuse and neglect is available in Canada, Croatia and Italy, but not in the UK.² However in the latter professional standards and guidance state clearly that it is their duty to safeguard children. The General Dental Council (GDC) which has the sole responsibility for protecting patients and regulating the dental team expects all registered members of the dental team to be aware of the procedures embodied in the statement contained in 'Standards for dental professional'. The standards guidance is a code of behavior that

registrants agree to abide by. This is one of the main ways in which the GDC protect patients and also protect the dental professionals.¹³

The Croatian judicial system seems to be keen to demand reporting child abuse and neglect from any professional, including dentists, according to nine different acts.^{5-8,10}

Unlike Croatia, Canada/Ontario, apart from general legal act titled Ontario's Child and Family Services with regulated and detailed provisions on prompt abuse reporting, also has an act which only deals with abuse reported by dental professionals.^{17,18} Italy has obligation of reporting within 48 hrs which is written in detail in several legal acts. Consequences of failing to report abuse in different countries are different; varying from various fines of up to 750 € to imprisonment of up to 3 years..

All four countries have similar ethical views as stated in the Codes of Ethics and Guidance from their Dental Chambers or Dental Councils. These highlight the obligation for dentists to safeguard the child, the elderly and the disabled, thereby allowing their normal mental and physical development, and protecting their quality and dignity of life.^{10,13,19,27}

It can be seen from the guidance documents of the four countries discussed that they are not completely congruent. It would be to the benefit of the child if there could be more harmonious and precise legal international policies and responsibilities that would help to maximize child protection and safeguarding. Dental professionals must take a more proactive role on behalf of children in this regard and must always act in the best interest of their young and vulnerable patients.

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