

## Mandatory Reporting Law Gone Awry

*The ANA and KSNA fight to protect adolescents' access to confidential care.*

In June 2003 a Kansas attorney general issued a controversial opinion that could have a wide-ranging impact on sexually active adolescents and the nurses and other professionals who provide care to them. And ever since that opinion was made public, RNs, nurses' organizations, and other advocates have been working hard to protect adolescents' access to health care and patient confidentiality.

Most recently, the ANA and the Kansas State Nurses Association (KSNA) signed on to an amicus or "friend of the court" brief submitted to the federal 10th Circuit Court of Appeals in Denver, objecting to Kansas attorney general Phill Kline's new interpretation of the state's mandatory reporting law regarding suspected child abuse.

In the brief, the ANA and other professional groups contend that Kline's interpretation "rests on an un rebuttable presumption that abuse has occurred whenever a person under age 16 has engaged in certain sexual activity."

The groups also say that mandated reporters such as nurses, social workers, and counselors would be forced to notify authorities when adolescents engage in a range of sexual activities, from intercourse to touching with the intent to arouse, because Kansas law defines sexual abuse so broadly.

"Nurses have always taken their obligation to report suspected abuse seriously," says Mary Jean Schumann, MSN,

RN, CPNP, director of the ANA's nursing practice department. "It's part of our Code of Ethics, and it's something that is taught in every nursing program.

"But this interpretation is changing the whole definition of what constitutes abuse and neglect."

The interpretation seems so beyond the norm that one patient advocacy group is calling Kline's version of the mandatory reporting law the "kiss and tell" law.

### AT THE HEART OF THE ISSUE

There are many concerns raised in the amicus brief and corroborated by nurse leaders and front-line professionals. One focuses on the sanctity of the nurse-patient relationship.

Trust is an important component in all nurse-patient relationships, and perhaps it's even a more crucial, and potentially more fragile, factor when adolescents are involved.

"When working with teenagers, you have to build trust with them," says Margot Breckbill, RN, a Kansas child-birth and human sexuality educator and long-time expert on adolescent health issues. "If adolescents think you are talking about their business, they won't talk to you."

Breckbill is one of several professionals who sued Kansas state district attorneys in U.S. District Court to prevent reporting the sexual activities of underage patients. That suit led to a district judge issuing a preliminary injunction in July 2004 barring enforcement of the heightened standard, and to the case going

before the federal appellate court.

"What the attorney general is doing is setting up a system of mistrust," Breckbill says.

Terri Roberts, JD, RN, executive director of the KSNA, agrees, saying "A major concern among front-line staff nurses in clinics and ERs is that they'll be forced to violate the basic principle of nurse-patient confidentiality."

Under the longstanding mandatory reporting law, nurses, social workers, counselors, and other mandated reporters must notify the state Department of Social and Rehabilitation Services when they suspect that a crime of child abuse or neglect has occurred. Specifically, they are required to disclose highly personal information, such as the name and address of the patient, the name of the parents or guardian, the nature of the injury, and the identity of the person responsible for the injury.

Most professional health care organizations, including the ANA, hold dearly to a code of patient confidentiality, even if the patient is an adolescent. For example, the Society for Adolescent Medicine (SAM), which also signed onto the amicus brief, stated in a 2004 position paper that professionals could only get complete information to treat adolescents appropriately in the context of a confidential relationship. Furthermore, SAM maintains that "protecting the confidentiality of adolescents' health information is a professional duty that derives from the moral tradition of physicians and the goals of medicine."

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Kline's interpretation would remove the ability of professionals to use their judgment in determining what constitutes normal sexual activity—including when it's consensual and between similarly aged teens—and what constitutes sexual abuse, according to the brief.

"Adolescence by its very definition is a time when teens are beginning to identify who they are, to experiment and engage in risk-taking behaviors," says Schumann, who's been involved in teen pregnancy prevention programs. "Such experimentation is not rape or abuse. It's about hormones and normal growth and development."

Elizabeth Saewyc, PhD, RN, PHN, is on faculty at the University of British Columbia School of Nursing and has conducted extensive research on adolescents, sexual abuse, and risky behaviors.

She believes that health care professionals working with adolescents generally can discern when teenagers are engaging in sexual activities that are experimental or "romantic," and when they are the victims of sexual abuse and violence.

"Adolescents have a pretty clear sense of coercion and violence, if something is done against their will or involves an illicit relationship, such as incest," says Saewyc, a long-time member of the ANA Task Force on Adolescent Health. "So are we really preventing sexual assault and exploitation if we charge two 15-year-olds who engaged in consensual behavior with sexual abuse of each other?" she asks. "Do we want them to have criminal records and have to report as sexual offenders for the rest of their lives?"

Saewyc adds, "When health care professionals are put in the

position of acting as the police, they are no longer about giving care. They certainly will not be able to give care for sexually transmitted diseases (STDs), pregnancy testing, or assistance in answering any kind of sexual health question if it becomes known among teens that they might have to report it."

### **A ROAD TO NO HEALTH CARE?**

The ANA and other groups contend that broadening the Kansas reporting law will indeed lead to adolescents delaying care, not seeking care, or not providing honest information necessary for health care professionals to treat them appropriately.

They noted a study published in 2002 that revealed that 59% of single, sexually active girls under 18 years old who were using family planning clinics would stop using health services or delay testing or treatment for

HIV or other STDs if their parents were told that they were seeking prescribed contraceptives. Additionally, the study reported that only 1% of these girls would stop having sexual intercourse.

In the amicus brief, the professional groups maintain that the attorney general's interpretation would also thwart important public health initiatives, such as reducing the overall incidence of adolescent pregnancy, as well as promoting healthy pregnancies among young girls. (Young mothers tend to have babies with low birth weights, ongoing childhood health problems, and more hospitalizations.)

"We need to be doing whatever we can to help kids, to encourage them not to get pregnant or to learn about birth control or any aspect of human sexuality," Breckbill says. But the attorney general's opinion

could lead to the decline of many beneficial programs.

Finally, health care professionals are concerned that by forcing mandated reporters to notify authorities of adolescents' consensual sexual activities, there will be few resources available to pursue actual cases of abuse. In fiscal year 2003, the state received reports of about 40,000 cases of possible abuse and neglect.

"When I consider the difficulty the judicial system seems to have in apprehending, charging, and convicting people who commit really hideous and unambiguous acts of sexual abuse, I have to question the appropriateness of this sort of 'universal' approach," Saewyc says.

She notes that often legitimate victims of abuse are not believed by anyone but health care providers. Ironically, under this broadened law, these same health care professionals could face los-

ing their licenses or even prosecution if they provide responsible, confidential clinical care to consenting, sexually active adolescents without reporting it.

Edwards says that she has talked with Kansas nurses about the attorney general's opinion and has advised them to file reports only if they feel comfortable doing so. She further advised them that federal privacy law could offer them some protection if they decide to forego reporting cases under Kline's heightened standard.

Edwards, Breckbill, and others question the motive of the attorney general, who has also launched a very public campaign to open up Kansas clinics' abortion records.

Says Breckbill about the potential change to the reporting statute, "I don't think this is coming out of the goodness of his heart." ▼