Chapter 6—Legal Responsibilities and Recourse

Because many parents who abuse substances also neglect or abuse their children, it is common for clients in substance abuse treatment to have contact with some part of the child protective services (CPS) system. While the organizational roles and titles will vary, a CPS agency is the part of a State’s child welfare system responsible for investigating and processing child abuse and neglect cases. For convenience, the term "CPS agencies" is used in this chapter to refer to all aspects of social services related to child welfare. For more on the role of CPS agencies, see Chapter 5.

Some substance-abusing parents will be drawn into the CPS system during treatment; others will be compelled into substance abuse treatment by a CPS agency. In either case, it is critical that treatment providers become familiar with the laws governing the child protective system, including:

- How child abuse and neglect are defined
- Whether, when, and how a counselor must report a parent or other primary caretaker—or a parent who was maltreated in childhood—to a CPS agency or police
- What happens after a report is made
- How State-mandated family preservation services operate
- How welfare reform will affect clients in treatment

There are a number of Federal and State laws designed to protect the health and safety of children:

- State criminal statutes outlawing certain acts
- State civil statutes prohibiting child abuse and neglect
- State mandatory reporting laws requiring certain categories of persons to report suspected child abuse or neglect
- State "family preservation" laws offering families certain services or requiring families to participate in substance abuse treatment or types of counseling
- State "fast track" adoption laws that limit the time a child may remain in foster care before the State brings proceedings to terminate parental rights and free the child for adoption
- Federal laws requiring States to adopt policies, goals, and time limits in the child welfare realm

Complicating the picture are the Federal law and regulations governing confidentiality of information about clients in substance abuse treatment (42 U.S.C. §290dd-2; 42 Code of Federal Regulations [C.F.R.], Part 2), which restrict the circumstances under which programs can make disclosures about clients, as well as the information they can disclose. This chapter explains the legal requirements treatment providers must follow, discusses the difficulties and potential conflicts that may arise, and offers some guidelines to help minimize legal difficulties and clinical dilemmas.

Mandated Reporting

All States require designated groups of individuals to report incidents of known or suspected child abuse or neglect. Eighteen States, in fact, require all citizens to report suspected abuse or neglect; other State mandatory reporting statutes often include substance abuse treatment staff, particularly staff comprised of State-licensed therapists, nurses, and social workers. If a professional’s failure to report results in injury to the child, he may face criminal charges or a civil suit for damages or suspension or revocation of his professional license. Those who are mandated reporters under State law generally are immune from liability for reports made in good faith that are later found unsubstantiated or erroneous. In some States, any person or agency that employs individuals who are mandated reporters must provide all employees with written information outlining the reporting requirements.

An adult survivor of abuse, however, usually discusses events that took place many years before. In these...
situations, there is generally not a duty to report and often little legal recourse for the survivor. A counselor is generally under no obligation to report abuse or neglect that the client describes suffering as a child many years ago. CPS agencies are not interested in investigating cases in which no child is in imminent danger. However, if the person who abused or neglected the client now has custody of other children, the program should seek advice about whether it has reporting responsibility. If a client consents, the program can report the situation even if it is not mandated to do so. The situation is more complicated if, while in treatment, a client has had to leave her children with a family member who is the same person who abused her as a child. She may fear for her children's safety but have no alternatives for child care and therefore may not even identify this person as the perpetrator.

**Mandatory Reporting Procedures**

All States specify how reports must be made. Most require an immediate oral (spoken) report, and many now have toll-free telephone numbers to facilitate reporting. Most States require that reports include:

- The age and address of the child
- The address and name of the parent or caretaker
- The type of abuse or neglect, as specific and factual as possible
- The name of the perpetrator

Most States require oral reports to be confirmed in writing and within a given time frame. State statutory reporting procedures are available on the Internet at [http://www.calib.com/nccanch/services/statutes.html](http://www.calib.com/nccanch/services/statutes.html).

**Disclosing information in reporting child abuse or neglect**

Substance abuse treatment providers should disclose only the information required by State law when they report child abuse or neglect. Counselors and other staff members in treatment agencies are permitted to comply with State mandatory reporting laws under a narrow exception in the Federal confidentiality regulations. Those regulations (which are discussed below and in Appendix B) generally prohibit substance abuse treatment agencies and their staff from disclosing client-identifying information to anyone without the client's written consent. The child abuse reporting exception applies only to initial reports of child abuse or neglect ([22 C.F.R. §2.12 (c)(6)](http://www.calib.com/nccanch/services/statutes.html)). Programs may not respond to followup requests for information or to subpoenas for additional information, even if the records are sought for use in civil or criminal proceedings resulting from the program's initial report. (See below for a discussion of how to deal with such requests.) That means that in making an initial report of suspected abuse to a CPS or other designated agency, the mandated reporter should provide only the basic information required by the State mandatory reporting law. The counselor may give her name and the name of the program, and if the law requires it, she must. No other information should be disclosed without the client's written consent.

Please note that these guidelines are an explanation of current Federal and State laws regarding client confidentiality for substance abuse treatment programs. They are meant to help reduce legal complications that could interfere with a client's treatment—or a program's operation. They are not meant to imply or encourage an adversarial relationship with CPS agencies. Ongoing collaboration is important and allowed when appropriate consent forms are signed. With more than 50 percent of child protective cases involving substance abuse, CPS agencies are dependent on the expertise of the treatment agencies.

**Dealing with the legal requirements: Making the task easier**

Agencies providing substance abuse treatment should develop a protocol to handle legal requirements. For example, an agency may have a protocol that requires the counselor to discuss the case in question with a supervisor. If they decide the case is reportable, then the supervisor discusses it with the clinical director. If more information is sought, such as by subpoena, the director would contact a lawyer. Orientation for new staff members should include the agency's reporting policies and procedures. It is recommended that these policies include provisions requiring staff members to inform their supervisor or appropriate program personnel whenever they make a report, as well as the need to consult with their supervisor whenever they have concerns regarding the need to report.

Many substance abuse treatment agencies have found it useful to designate a capable member of the staff to

- Handle all requests for information from outside individuals or organizations when no proper consent form exists to authorize a release of information
- Keep current with developments in the area of child abuse and neglect, including court decisions that clarify what conditions are reportable and how reports should be made
• Develop and update a list of resources the agency can consult when difficult questions arise (e.g., there may be a member of the agency’s governing board who is a lawyer who would be willing to provide advice in difficult cases).
• Develop a form to use in making reports so only specific, relevant information is given.
• Be careful of letterheads, logos, and headings on fax machines that may inadvertently reveal that the treatment center is involved.

A list of other potential sources of assistance appears in Figure 6-1.

Clinical concerns

Counselors may be concerned that compliance with the mandatory reporting law will damage the client-counselor relationship or trigger relapse. A recent study shows that neither is likely to occur: Most clients stay in treatment after a report, and many are able to overcome the negative feelings that often result (Steinberg et al., 1997).

There are ways to limit the potential damage to the therapeutic relationship. The first is to inform the client about the mandatory reporting law at the time of admission (Watson and Levine, 1989). This practice is actually required by the Federal confidentiality regulations. §2.22 of the regulations requires that substance abuse treatment programs give all clients a notice describing the confidentiality rules, as well as their exceptions (which include mandatory child abuse reporting), upon admission or as soon thereafter as possible. (The regulations contain a sample notice at §2.22(d) that may be used for this purpose.) This practice is also endorsed by the American Psychological Association and the Code of Ethics for Social Workers (Kalichman, 1993).

A second way to limit damage is to provide the client an opportunity to self-report. Self-reporting "affords the individual an opportunity to assume responsibility for his or her own actions and allows for at least some control in what otherwise might be a powerless situation" (Kalichman, 1993, p. 126). If the client makes the report from the counselor’s office, the counselor can provide appropriate support. Counselors should be aware, however, that although this might preserve the therapeutic relationship, it may not fulfill the counselor’s statutorily imposed duty to make a report. Sometimes it is possible to minimize damage to the relationship by completing the report (both oral and written) in the client’s presence.

If there is imminent risk to a child, the counselor may not have time to engage the parent in the process. For example, if a counselor learns that the client has scalded his child and tied him to the bed, it would be appropriate to contact a CPS agency immediately. Similarly, if there is a risk that the client will continue his behavior and seek to cover his tracks, the counselor would probably not involve him in the report or inform him until after it has been made.

Although counselors may sometimes be tempted to use the threat of reports to coerce clients into complying with treatment requirements, counselors must remember that the purpose of the reporting laws is to protect children—*not* to provide counselors with a bargaining chip in the treatment process.

Reporting may advance a client's recovery by providing an appropriate limit-setting example, increasing the parent's sense of responsibility for harmful behavior, and giving the family an opportunity to change. Parents may be relieved after a report has been made that external control has been introduced into a situation that frightens them as much as it does the children. Reporting may also open a dialog with the client concerning family relationships and any personal history of abuse, if one exists. Whether these positive results occur appears to depend on when the report is made (earlier in treatment is more likely to affect the relationship negatively), how much support the counselor offers when the report is made, and how well the counselor deals with the client's anxiety and anger (Melton et al., 1995).

The National Center on Child Abuse and Neglect offers the following guidance:

The law does not require mandated reporters to tell the parents that a report is being made; however, in the majority of cases, advising the client that the therapist is taking action is advisable. First, the therapist is employing clinical leverage by using authority to set a firm and necessary limit... Second, if the therapist does not mention the report, there is secrecy and tension, which may result in the clients’ feelings of suspicion, isolation, or betrayal. In some cases, reporting may elicit an extreme response from the clients... It can be very beneficial to give clients the opportunity to make the reports themselves in the therapist's presence (Peterson and Urquiza, 1993, p. 13).

Although the manner in which the counselor makes the report may affect the counselor-client relationship, the importance of that relationship must not override the counselor's responsibility to fulfill the statutorily imposed obligation to report when a report is necessary to protect a child. If a client has a history of violence, the counselor must also consider her own safety when deciding how much to include the client in the reporting process.
Developing Reporting Policies and Procedures

Failure to comply with statutory reporting mandates or to limit the report as required by the Federal confidentiality regulations can place the individual counselor and the counseling agency at risk. Therefore, everyone in the agency who is required by law to report suspected abuse or neglect must clearly understand when and how a report must be made and what information must be reported.

The best practice is to adopt a written policy or protocol before a case arises. Recently hired counselors should read or be given training on such policies. Reporting policies and procedures should include a reference to the State's legal requirements, including the definitions of child abuse and neglect, the categories of persons who must report, what information must be in the report, and how a report should be made and documented.

Specifically, the Consensus Panel recommends that agency policy include:

- A statement that the agency strictly adheres to the State's mandatory reporting laws
- The State's definition of abuse and neglect
- The State law delineating when reports must be made (e.g., when a counselor has "reasonable suspicion" or "reasonable belief")
- A list of the categories of persons who are mandated reporters
- An outline of the information that must be reported and a statement that no other information will be disclosed unless the client has consented in writing
- The name, address, and telephone number of the person or agency to whom the report must be made
  (Generally, jurisdictions require persons who suspect child abuse or neglect to telephone a report to the local CPS agency or the department of human services and follow it with written confirmation.)
- A requirement that clients receive a notice, when they are admitted, summarizing the Federal confidentiality regulations and the child abuse reporting exception (§2.22(a)) (The Federal regulations contain a sample notice that may be used for this purpose; the Consensus Panel recommends that the client be required to acknowledge in writing receipt of the notice.)
- A requirement that staff members who are mandated reporters consult a supervisor or team leader before calling the CPS agency to report suspected child abuse or neglect unless the situation is an emergency
  (Some States require that the agency as well as the individual care provider make a report; moreover, consulting with a supervisor ensures that the wisest decision is made in this emotionally charged area, particularly in ambiguous or doubtful cases, and it will ensure that the agency is prepared to handle any legal issues that may subsequently arise.)
- A statement describing how the report must be documented in the agency's records (At a minimum, documentation should include the name of person and agency to whom a telephone call was made, the date and time of the call, the information provided, a copy of the written confirmation, and a notation of whether and when the parent was notified of the report.)
- Guidelines describing when and how the client will be notified, including a description of the circumstances under which a parent should not be notified because of danger to the child
- A procedure for review of all cases and of issues that arise after reporting (Routine review will ensure that any problems, whether of a procedural or therapeutic nature, will be addressed expeditiously.)
- A requirement that orientation for all new staff include the agency's reporting policies and procedures and a statement that the agency will provide ongoing training in this area

State Laws Regarding Child Abuse and Neglect

All 50 States and the District of Columbia have statutes that protect children from abuse and neglect by their parents or others. There are criminal statutes prohibiting certain acts (or failures to act), violation of which may lead to imprisonment. There are also civil statutes that prohibit abuse and neglect. If these statutes are violated, the court may impose requirements that parents accept certain kinds of help (such as substance abuse treatment, parenting classes, or anger management training), that their children be removed from the home, or that their parental rights be terminated.

Most States define abuse as an act or failure to act that results in nonaccidental physical injury or sexual abuse of a child. Neglect generally includes the denial of adequate food, shelter, supervision, clothing, or medical care when such resources or services are available. As noted in Chapter 1, each State defines abuse and neglect
differently, and the conditions considered to be neglect or abuse in one State may not be the same in others. Because State law often requires that treatment providers report suspected abuse and neglect, treatment staff should become familiar with their State's definitions of abuse and neglect. Staff can contact the State's CPS agency for information on current laws. (If the abuse occurred in another State, or if the perpetrator is currently living in another State, it is wise to check on the laws in the other State to ensure compliance. At times, there may be a need to report in both States.) Readers can also find State statutory child abuse and neglect definitions on the Internet at http://www.calib.com/nccanch/services/statutes.htm. Federal definitions of these terms appear in the Child Abuse Prevention and Treatment Act, 42 U.S.C. §5106(g). In some cases, the CPS agency can be consulted regarding whether or not a report must be made in a particular situation without divulging confidential (i.e., identifying) information. Consultation with the CPS agency must be done with great care, and this communication can be noted in the client's chart.

Although each State's laws are different, the following conditions are reportable in most States:

- The child has been seriously physically injured by a parent or other adult by other than accidental means.
- The child appears injured or ill to the point that a reasonable person would seek medical attention, but the parent has not sought medical attention, refuses to consider it, or fails to follow medical advice, putting the child at risk.
- An adult has sexually touched (or made the child sexually touch the adult), abused, or exploited the child.
- The child is not registered for or attending school, and the parent refuses to remedy the situation (home schooling must be adequately documented).

Although the behaviors outlined above are the most blatant examples of child abuse or neglect, other parental behaviors or practices may put children at risk. For example, the following may also constitute child abuse or neglect:

- Leaving a young child alone and unsupervised
- Inappropriate punishment that puts a child at risk (e.g., locking a young child out of the house as a punishment)
- Depriving a young child of food for an extended period of time
- Treating one child, the "bad one," far more harshly than others

Whether behaviors like these are reportable depends, in part, on how State statutes define abuse and neglect, the seriousness of the behavior or incident, its impact on the child, and the counselor's perception of the client's overall behavior with the child and of the client's willingness to correct inappropriate behavior.

The difficulty for counselors is that substance abusers are often the products of poor parenting themselves and many have had little or no exposure to appropriate parenting behavior (Whitfield, 1981). Without a reasonable model of nurturing behavior, they may simply deal with their children in the same inappropriate ways they were treated. They may have no intention of harming their children and no notion that they are putting their children at risk.

Because of these complicating factors, the decision whether to report parents who treat their children inappropriately can be rather difficult. Clearly, inappropriate child-rearing practices cannot be ignored; they are important danger signals. Yet not every inappropriate action a parent takes can--or should--be reported. On the other hand, counselors must keep in mind that they are required to report when they have a firm belief or a reasonable suspicion (the statutory definition will vary) that a child is abused or neglected (as that term is defined). Their responsibility is limited to making a report; it does not include conducting an investigation to determine whether the abuse or neglect actually occurred. That is the job of the CPS agency. There may also be timeframes within which reporting must occur, and sanctions for failure to report.

If counselors are unsure of how to proceed or what is required in a murky or complex case, they should consult with a supervisor, a colleague in the treatment program, or others (see Figure 6-1). Of course, such consultation must be made without violating Federal confidentiality regulations. (See Appendix B for a further discussion of this issue.) As this chapter advises earlier in "Developing Reporting Policies and Procedures," programs should adopt written policies governing child abuse reporting and should require counselors to consult with supervisors before making a child abuse or neglect report. Ongoing training and a thorough knowledge of community resources will help counselors determine what actions are most likely to benefit the child and whether reporting is required.
The differences in the ways States define child abuse and neglect are particularly striking in the area of parental substance abuse. In some States, parental substance abuse, by itself, may constitute child abuse or neglect. In others, something more must be shown. For example, in South Carolina, giving birth to a drug-exposed infant is a criminal offense; a conviction may send the mother to prison (State v. Whitner, 328 S.C. 1, 492; S.E. 2d 777 [1997], cert. denied, 118 S. Ct. 1857 [1998]). In other States, like New York, "a report which shows only a positive toxicology for a controlled substance [in the newborn] generally does not in and of itself prove that a child has been [neglected]" (Nassau County Department of Social Services v. Denise J., 87 N.Y. 2d 73, 661 N.E. 2d 138, 637 NYS 2d 666 [1995]).

New York offers a particularly interesting approach to the question of parental substance abuse, as it distinguishes among three kinds: (1) those parents who misuse substances but not to the extent that they become intoxicated, unconscious, or their judgment is impaired; (2) those parents who misuse substances but are in treatment; and (3) those parents not in treatment who misuse substances to the extent that they become intoxicated, unconscious, or their judgment is impaired.

In New York, a CPS agency that brings a neglect proceeding against a parent who uses substances must show, at a minimum, that the parent "repeatedly misuses a drug or drugs or alcoholic beverages, to the extent that it has or would ordinarily have the effect of producing a substantial state of stupor, unconsciousness, intoxication, hallucination, disorientation or incompetence, or a substantial impairment of judgment or a substantial manifestation of irrationality...." Substance abuse below that level is not prima facie evidence of neglect. When a parent is in treatment, the State may not use "such drug or alcoholic beverage misuse [as] prima facie evidence of neglect" even if it results in "a substantial state of stupor" (§1046(b)(iii) of the Family Court Act).

Similarly, for a court to rule that a child is neglected because of the substance abuse of a parent who is not in treatment, the court need find only that the parent's substance abuse results in loss of self-control of his actions. On the other hand, if the parent is voluntarily and regularly participating in treatment, the court cannot make a ruling of neglect unless it finds (1) that the substance abuse results in the loss of self-control and (2) that there is sufficient evidence that the "child's physical, mental or emotional condition has been impaired or is in imminent danger of becoming impaired" (§1012(f) of the Family Court Act).

The wide variation in the way States define child abuse and neglect makes it imperative that providers be familiar with their States' statutes.

Substance-using pregnant women

Many States have employed both criminal and civil sanctions in an attempt to penalize pregnant women who use substances for the harm they may be causing the fetus. Since until recently no existing criminal statute directly addressed prenatal injury to the fetus by a substance-using mother, criminal prosecutors have used "State statutes related to child abuse and neglect, involuntary manslaughter, prohibitions on delivery or distribution of controlled substances to minor, and pure drug use" (Garrity-Rokous, 1994, p. 219). By 1991, at least 19 States and the District of Columbia charged women with felonies for substance use during pregnancy.

Many courts have also disregarded sentencing guidelines and imprisoned pregnant drug users for terms long enough to ensure their infants were born drug free (Garrity-Rokous, 1994). The South Carolina State Supreme Court was the first to rule that a viable fetus could be considered a "person" under child abuse laws. (In other States, however, courts have held that child endangerment laws do not apply to fetuses.) In South Carolina, district attorneys were directed to treat situations in which a pregnant woman is using drugs as subject to duty-to-report provisions, placing medical personnel and counselors in legal jeopardy if they failed to inform authorities of such a pregnancy. In a related trend, judges commonly remand substance-using pregnant women who are arrested for prostitution, drug peddling, or other crimes to residential treatment centers, which are ordinarily reserved for persons with severe substance dependence.

Mothers who give birth to babies who are born harmed by or addicted to illegal substances may also face legal consequences. Child abuse and neglect laws have been passed in some States specifying that the birth of an infant who is addicted to an illegal substance constitutes a mandated reporting situation. A South Carolina woman was sentenced to a 5-year prison term for child neglect when her child was born with cocaine in his system. In a well-known 1989 Florida case, another woman was arrested and mandated into residential treatment for child abuse because of evidence of cocaine in the umbilical cord at birth. Because a fetus is not considered a "person" in Florida, the State prosecutor had to show that the woman "delivered drugs" to the baby in the brief period before the umbilical cord was cut (Garrity-Rokous, 1994). Eventually, the Florida Supreme Court overturned this conviction. Even so, there has been a movement in some States to define any maternal substance use during pregnancy as child abuse or neglect.
Significant cultural and economic issues are associated with the way in which State reporting requirements are implemented. One landmark study showed that a woman who delivers a substance-dependent child is more likely to be reported if she is a woman of color (Chasnoff et al., 1990). It is worth noting that the same standards are not applied to women who use alcohol or smoke, even though the consequences may be equally--or even more--harmful for the baby. The long-term impact of fetal alcohol syndrome is far more clearly documented than that of fetal exposure to cocaine, for example. And according to at least one study, maternal alcohol abuse may be the most frequent environmental cause of mental retardation in the Western world (Ray and Ksir, 1996).

If counselors are aware of these trends in their jurisdiction, they will be better able to discuss the possible legal consequences with pregnant women. At the same time, understanding the current mood in the country will allow the counselor to understand better the added stress felt by drug-abusing mothers. This pressure is a good topic to discuss with pregnant clients in substance abuse treatment. Counselors should be aware that the client's concern for her unborn child, and the self-esteem issues evoked by the situation, might help keep her in treatment--or lead to relapse.

**CPS Agency Investigation and Potential Outcomes**

Once a professional, relative, or neighbor has made a report about a child, the State or local CPS agency is supposed to take action and investigate the complaint. If the complaint is unfounded or unsubstantiated, it is dismissed, and there are no further consequences. If, on the other hand, an initial investigation substantiates the complaint, the CPS agency has a number of options:

1. It may reach an agreement with the family (without filing any court action) regarding what changes are needed and what services will help the family achieve those changes. It will then develop a service plan outlining the remedial steps the family has agreed to take and establishing a timetable for the family to complete those steps.

2. A CPS agency can bring a neglect or abuse petition against the parent or guardian in a family or trial-level court. After a trial or fact-finding hearing, the court may take one of the following actions:
   a. Dismiss the petition (setting the parent free from further obligation)
   b. Issue an order requiring the parent to comply with all or part of the CPS agency's service plan, an order the court may review periodically to assess the parent's compliance. (If the parent fails to comply with the court's order, the court may, after a hearing, either give the parent another chance or, if the case has been pending for some time, the parent has made little progress, or her behavior is particularly egregious, remove the child and begin proceedings to terminate parental rights.)
   c. Issue an order for the child's removal

3. If the situation is life threatening, a CPS agency can remove the child (and any siblings) immediately and schedule a prompt court hearing at which the parent or guardian may contest the removal. If the court finds the removal unnecessary, the child may be returned, but the parent may still be required to comply with a service plan.

4. A CPS agency can refer the case to criminal justice officials.

The majority of child abuse or neglect reports will not result in full-fledged court cases. Of those that do result in court action, most are brought in a family court, where hearings are closed to the public and files are sealed. Only rarely will a report result in criminal charges against the parent.

Whatever is reported to the CPS agency or whatever action that agency takes, if the parent contests the charges or objects to the CPS agency's proposals, she is entitled to a hearing and to be represented by an attorney. In this country, parents may not have their children permanently removed or their parental rights terminated or be punished or be required to go into substance abuse treatment without a court proceeding. (Of course, parents may find themselves coerced into agreeing to enter treatment to retain their children.) In cases where a child has been removed from a home against the parent's wishes, a hearing must be held within a specified time, or the child must be returned. The focus in any initial hearing will be placement of the child during a CPS agency investigation or during any trial.

**The Service Plan**

Unless the charges of child abuse or neglect are dismissed (or the parent is charged with a crime and incarcerated), at some point the CPS agency will meet with the client to assess his needs and develop a service
The plan should detail:

- The steps the client must take and the terms and conditions he must meet to retain or regain custody of the children
- A timetable for accomplishment of each step, term, and condition
- A list of resources the CPS agency will make available to the family

It is the CPS agency's obligation to make every effort to assist the client in retaining or regaining custody of his children.

**Clinical Issues**

The counselor's role can be critical for a client involved in a child abuse or neglect investigation or proceeding. Getting the client to sign a consent form allowing communication and joint service planning can be an important first step (see Appendix B). The counselor can help a client understand what is happening, help her stay focused on what needs to be accomplished, and provide support and encouragement. However, to offer the client sound assistance the counselor needs some basic information:

- Is this the first time the client has had a case with a CPS agency?
- What are the charges against the client (e.g., abuse, neglect)? What precisely is the client charged with doing or not doing?
- Has a child ever been removed from the client's home?
- Does the client have a lawyer representing him? (The counselor should ask the client to sign a consent form permitting the counselor to communicate with the lawyer.)
- At what stage is the client's case? Has the client agreed to a service plan? Is he subject to a court order?
- What actions must the client take to comply with the service plan or court order? Is there a timetable?
- What are the likely outcomes of the proceeding and is termination of parental rights a possibility?
- What is the client's view of the CPS agency and of the entire situation?

Although some might think the last question strange, soliciting the client's view of the CPS agency will help to maintain the counselor-client relationship as the investigation unfolds. Clients have often had negative experiences with CPS agencies or other social service agencies that have intervened in their lives, especially if cross-cultural issues are involved. If a counselor acts on the assumption that the client thinks a CPS agency is acting in her best interest, the counselor may well alienate the client and close the door on what could be an opportunity for developing a therapeutic alliance. In other words, if the counselor characterizes the CPS agency's intentions as beneficent and its intervention as beneficial, the client may well view the counselor as naive at best, and possibly part of the "enemy camp." It is best to begin a dialog with the client about the role of the CPS organization. Perhaps the safest approach is for the counselor to take the position that whether or not the CPS agency's intentions are benign or its intervention is welcome, it is a force with which the client must deal.

It is important, however, for the counselor to help the client move past denial, hurt, and anger into a working relationship with the CPS agency. She should not align or overidentify with the client against the CPS agency. The counselor should make it clear that his major role in this situation will be to work with the client to ensure that the client understands and complies with the CPS agency's or the court's requirements regarding substance abuse treatment. To this end, the counselor should obtain a copy of the service plan and review it with the client. The terms and requirements of the service plan can often be integrated effectively into counseling objectives.

In fact, the CPS system may have information for the treatment provider on the client's substance abuse history and other relevant clinical information. Collateral information from CPS agencies on substance abuse evaluations can be invaluable in raising the quality of the evaluation, providing accurate information, and making better treatment decisions. (For guidelines on maintaining client confidentiality and the legal requirements involved, please see Appendix B.) Frequently clients do not understand the severity of their situation and may minimize or withhold information. This may be due to drug-related cognitive impairments, low IQ, naivete regarding the legal system, or the same denial and rationalization that sustained their addictions.

Service plans may include a comprehensive treatment plan involving several agencies. Some communities have established multiagency teams to coordinate support for families in crisis. In West Hawaii, for example, a
multidisciplinary team is formed to assist the CPS agency worker in high-risk or complex cases, such as severe abuse that results in hospitalization. Members of the team represent the disciplines of medicine, nursing, psychology, and social work. Because more than half of reported child abuse and neglect cases involve substance abuse, a substance abuse treatment professional has recently been added to the team. The team helps the CPS agency worker assess the extent to which further harm is likely to befall the child, gauge the family's motivation and capacity for change, and weigh the advisability of various options for protecting the child. Team members review available documentation (such as case histories, school reports, and medical records) in addition to contributing their own knowledge of the family in question, providing a wide range of additional support on an as-needed basis. Pediatricians assess the medical needs and perform comprehensive abuse, neglect, and sexual abuse exams. Consultants also provide expert witness testimony for the family court.

The team approach can be extremely helpful to a client or family involved in the child protective process. The team can coordinate services so that requirements, appointments, and obligations do not overwhelm the client and can reduce the number of conflicting demands the client must meet. A team approach can be very helpful in obtaining a more complete picture of the client and the severity of the problem. A client often presents differently to various practitioners and may share different information depending on the practitioner's area of expertise and nature of the relationship with the client. The difficulty for a treatment provider is that before information may be shared with other agencies, the client must sign a consent form permitting the program to communicate freely with specified agencies. (In parallel fashion, the client must have signed a consent form allowing the other agency to communicate with the substance abuse treatment provider. Some counselors address this by having the client sign the two consent forms necessary for two-way communication and sending a copy of the appropriate version to the other agency.) The other agencies must also understand that they are prohibited by Federal regulations from redisclosing any information they receive from the counselor (see Appendix B).

Communicating With CPS Agencies and Others After the Initial Report

Alcohol and drug counselors working with parents during CPS agency investigations or court proceedings may find that the CPS agency and others view them as a good source of information. It is important to keep two things in mind. First, substance abuse treatment programs and the child welfare system (including both the courts and the CPS agency) have different concerns, goals, and measures of success. Once the counselor has made the initial report, her concern must turn to the client's progress toward recovery. While the child protective system is also concerned with the client's safety and stability, these differences in primary focus mean that while the alcohol and drug counselor can help the client achieve recovery (and thereby successfully end the involvement of the CPS agency), she cannot change either the client or the situation. Sometimes, the treatment system's interest in the client's recovery conflicts with the CPS agency's interest in protection of and permanency planning for the child. For example, the counselor's goal of having the client reduce his substance abuse (and allowing sufficient time for that to happen) may conflict with the CPS agency's goal of finding a permanent placement for a child who has been in foster care for many months.

Counselors must keep in mind that they may communicate with or respond to requests for information only when the proposed communication conforms to one of the Federal regulations' narrow exceptions permitting a disclosure. If a counselor fails to abide by Federal confidentiality rules, an unpleasant and expensive lawsuit may be brought against the program and possibly the counselor. Moreover, if word spreads that the program fails to protect information about its clients, it may have a difficult time in retaining its clients' confidence and in attracting new clients into its treatment services (as well as the possibility of professional sanctions and relicensing difficulties).

The following discussion about communicating with parts of the child welfare and legal systems relies heavily on four exceptions to the Federal regulations that permit disclosures:

- Proper written consent from the client (§2.31)
- Proper written criminal justice system consent from the client (§2.35)
- Court orders (§§2.64-2.66)
- Qualified service organization agreements (§§2.11, 2.129(c)4)

Appendix B contains a full discussion of the regulations, including these exceptions.

Dealing With CPS Agencies, Courts, and Law Enforcement

All professionals who work in the field of substance abuse treatment are aware that their clients have serious problems that may involve procuring and using illicit drugs. Abuse of such illicit substances interferes with their
lawful behavior and, when they are parents, interferes with responsible parenting (Magura and Laudet, 1996). Treatment providers, therefore, will often need to interact with the legal and child protective systems. The way in which counselors interact with these agencies will vary from case to case. The counselor may have to contact a CPS agency to report a client suspected of child abuse, or the legal system may contact the counselor for information about a client's participation in a treatment program. Whatever the nature of the interaction with CPS agencies or the legal system, counselors need to be aware of their legal responsibilities.

The following subsections discuss how the counselor should deal with various agencies. In all of these circumstances, the Consensus Panel recommends that counselors (1) ask for their supervisor's guidance on what boundaries to keep, (2) consult their client, (3) use common sense, and (4) consult State law (or a lawyer familiar with State law).

Communicating with a CPS agency

Even if a CPS agency has sent the program a Request for Information Release that the client has already signed, if the form does not comply with §2.31 of the Federal confidentiality regulations, the counselor may not release any information. (For a sample form that complies with the Federal regulations, see Appendix B.) Even if the form complies with the Federal requirements, the counselor should remember that a signed consent form does not require her to disclose any information. The counselor should still evaluate the appropriateness of the request in the context of its impact on the client's treatment.

First, after getting the client's written consent to do so, the counselor should consult with the client's lawyer. (Some clients may not be aware that they have the right to an attorney when custody of their children is being questioned.) The counselor should ask the lawyer whether she has objections to the program's making a disclosure and whether she thinks it is in the client's interest for the program to disclose the requested information. The lawyer may be pleased to know that the Federal confidentiality regulations provide a way to limit the kind of information disclosed. If the lawyer has no objections, the counselor can simply have the client sign a valid consent form, making sure to limit the scope of the disclosure as appropriate (and as the regulations require). If the lawyer does have an objection, then it is best to let her take the lead.

If the client has signed a proper consent form authorizing the counselor to communicate with the caseworker at the CPS agency, how much information should the counselor disclose and how active a role should he take? In some cases, disclosing information to the CPS agency or court will benefit the client. It may also help the client if the counselor participates in developing a service plan for the family. However, it is up to the client and the lawyer, not the counselor, to determine whether communication or cooperation with a CPS agency will benefit the client. Therefore, it is essential that the counselor communicate with the client's attorney before taking it upon himself to communicate with a CPS agency.

Counselors should avoid using a standard report form in communicating with a CPS agency, unless the form calls for a limited amount of relevant, objective data. Each case is different, and a one-size-fits-all approach may hurt the client. It is best to think through each case on its own terms—with the help of the client's lawyer and with appropriate supervision. Sometimes, however, CPS agencies only need to know whether the client is participating in treatment, what the program's expectations are, if the client's participation has been satisfactory, the extent of drug involvement, and whether the client has complied with specific directives the treatment provider may have made.

Responding to lawyers' inquiries

If a lawyer calls to find out about a client's treatment history or current treatment, unless the client has consented in writing to the counselor's communicating with the lawyer, the counselor must tell the lawyer, "I'm sorry. I can't respond to that question right now. Can I have your telephone number and call you back at another time?" This is because the Federal confidentiality regulations prohibit any other response without the client's written consent. The regulations view any response indicating that the person in question is the counselor's client as a disclosure that the person is in fact in substance abuse treatment. This applies even if the lawyer already knows that the client is in treatment.

A firm but polite tone is best. If confronted by what could be characterized as "stonewalling," a lawyer may be tempted to subpoena the requested information and more. The counselor will not want to provoke the lawyer into taking action that will harm the client. Even if the counselor has the client's written consent to speak with the lawyer, she may find it helpful to consult with the client before having a conversation about him. The lawyer can be told, "I'm sure you understand that I am professionally obligated to speak with this person before I speak with you." It will be hard for any lawyer to disagree with this statement.
The counselor should then speak with the client to ask whether the client knows what information the caller is seeking and whether the client wants her to disclose that or any other information. She should leave the conversation with a clear understanding of the client's instructions—whether she should disclose the information and, if so, how much and what kind. It may be that the lawyer is representing the client and the client wants the counselor to share all the information she has. On the other hand, the lawyer may represent the CPS agency, the prosecuting attorney, or some other party with whom the client is not anxious to share information. There is nothing wrong with refusing to answer a lawyer's questions.

If the lawyer represents the client and the client asks the counselor to share all information, the counselor can speak freely with the lawyer once the client signs a proper consent form. However, if the counselor is answering the questions from a lawyer who does not represent the client (but the client has consented in writing to the disclosure of some information), the counselor should listen carefully to each question, choose her words with care, limit each answer to the question asked, and take care not to volunteer information not called for. If the lawyer asking for information represents the prosecuting attorney, the counselor should consult both the client and his lawyer, as well as the program's legal counsel before responding to any questions.

**Responding to subpoenas**

Subpoenas come in two forms. One is an order requiring a person to testify, either at a deposition out of court or at a trial. The other—known as a *subpoena duces tecum*—requires a person to appear with the records listed in the subpoena. (Depending on the State, a subpoena can be signed by a judge or filled out by a lawyer and stamped by a court clerk.) Unfortunately, it can neither be ignored nor automatically obeyed.

When a subpoena is received, the counselor should call the client about whom he is asked to testify or whose records are sought and ask what the subpoena is about. It may be that the subpoena has been issued by or on behalf of the client's lawyer, with her consent. However, it is equally possible that the subpoena has been issued by or on behalf of the CPS agency's lawyer (or the lawyer for another adverse party). If that is the case, the counselor's best option is to consult with the client's lawyer (if the client has signed a consent form) to find out whether the lawyer will object (i.e., ask the court to "quash" the subpoena) or whether the counselor should simply obtain the client's written consent to testify or turn over her records. An objection can be based on a number of grounds and can be raised by any party, as well as by the person whose treatment information is sought. Often, the counselor may assert the client's privilege for her.

If the program has an attorney to represent it or an attorney who is willing to provide advice on issues like these, the counselor could seek his advice. As is detailed in Appendix B, the best way to handle this arrangement is for the program and the lawyer to sign a "Qualified Service Organization Agreement" (§§2.11, 2.12(c)(4)), which permits the program to communicate information to a person or agency that provides services to the program.

**Project Connect Coordinating Committee**

In Rhode Island, the Project Connect Coordinating Committee meets monthly to explore and establish linkages between treatment agencies. Its members include representatives of the Department of Children, Youth, and Families (DCYF); the Department of Health, Division of Substance Abuse; substance abuse treatment providers; health care providers; staff from perinatal addiction programs funded by the Center for Substance Abuse Prevention; and staff for Project Connect. Among the project's accomplishments are the following:

- Holding a treatment provider fair to give DCYF a better grasp of treatment issues and options
- Preparing a resource directory to help DCYF workers make appropriate referrals
- Developing referral, intake, and reporting procedures to integrate and facilitate the work of substance abuse treatment providers and DCYF workers serving the same family
- Sponsoring a conference to work toward a common language
- Exchanging information through formal presentations on topics of mutual concern
- Advocating for the development and implementation of a managed care system

**Communicating with the court**

Sometimes, the court hearing a client's case will ask a treatment program to write a report about his progress in
treatment. Or a client's lawyer may ask an agency to submit a letter to the court to support a disposition she is advocating. In any letter it submits, the agency should limit itself to reporting factual information, such as client attendance and urine toxicology screen results; it should not speculate on the future of the client or the client's family. Nor should it offer an opinion as to where the child should be placed. Of course, any information the agency releases in the form of a letter-report must be limited to the kind and amount of information the client agreed to have released when he signed the consent form. Moreover, the agency should consult with the client's attorney to ensure the letter covers the areas of concern and will do no damage.

What should a counselor do if the client is continuing to abuse the child, the counselor knows this, and the counselor is asked to submit a report? First, if a counselor believes that her client is continuing to abuse a child and that the child's life or health is in danger, the counselor can make another "initial" report to the CPS agency (even when no report has been requested).

Second, if the client's lawyer has asked the counselor to write a report for the court and the counselor believes that the client is continuing to have difficulty meeting his parenting responsibilities (but that active abuse that would require another report is not present), the counselor can explain why she doesn't want to write a report, so long as the client has signed a consent form permitting the counselor to talk to the lawyer.

Third, if the court has asked the program for a report, the counselor can state in the beginning of the report that it will be limited to factual matters related to the client's progress and compliance with substance abuse treatment. The only circumstance in which a counselor could voluntarily inform a court of his opinion that there was ongoing abuse would be when the client's signed consent form would permit this kind of communication.

Finally, if the court insists on a report (or testimony) on the subject of the client's parenting and the client has not consented to such communications, the program must explain that in order for the counselor to report (or testify) on this issue, the court must issue an order under subpart E of the Federal regulations. Note that if the report or testimony will include "confidential communications" it can only be done if the disclosure

- Is necessary to protect against a threat to life or of serious bodily injury
- Is necessary to investigate or prosecute an extremely serious crime (including child abuse)
- Is in connection with a proceeding at which the client has already presented evidence concerning confidential communications (for example, "I told my counselor...") (§2.63) (see Appendix B)

Responding to inquiries by law enforcement

If a client faces criminal child abuse or neglect charges, a police officer, detective, or probation officer may pay the counselor a visit. If any of these officials asks a counselor to disclose information about a client or her treatment records, the counselor should handle the matter in the same way he would handle it with a lawyer. The counselor should tell the officer, as he might a lawyer, "I can't tell you if I have a client with that name. I'll have to check my records." Of course, if the client was mandated into treatment in lieu of prosecution or incarceration and has signed a criminal justice system consent form authorizing communication with the mandating agency, program staff may be obligated to speak with someone from that agency. (See discussion in Appendix B.)

If the officer's inquiry has come unexpectedly, the counselor should determine from the client whether she knows the subject of the officer's inquiry; whether she wants the counselor to disclose information and, if so, how much and what kind; and whether there are any particular areas the client would prefer she not discuss with the officer. Again, the counselor must obtain written consent from the client before he speaks with the officer. If the client has a criminal case pending against her, it is best to check with her lawyer, too.

Maintaining Working Relationships With CPS Agencies and Others

While a treatment program and a CPS agency may have conflicts regarding certain clients' cases, the program needs to maintain a good working relationship with the CPS agency and other agencies involved in the child protection system. It is possible, outside the context of any individual case, for treatment programs, CPS agencies, and others to work together to develop common approaches to improve family functioning, reduce substance use, and keep children safe. Many States have coordinating committees to exchange information among diverse agencies about goals and strategies to promote understanding of each agency's perspectives, needs, and legal constraints (see box above).

Education and outreach by substance abuse treatment agencies is particularly important, because CPS agency workers and other individuals in the child protective system often

- View treatment agencies as lenient on substance abusers
- Have difficulty understanding or respecting the treatment process, particularly relapse
- Do not understand or accept the constraints imposed on treatment agencies by Federal confidentiality requirements

Providing a forum for these misunderstandings to be resolved and for acceptance and respect to develop will benefit all concerned.

The following are examples of the ways that treatment providers in some States and communities have engaged in education and outreach:

- Florida drug treatment providers educate State legislators, judges, and sheriffs through conferences and seminars. Events are locally organized and help create understanding and acceptance of the treatment process and the confidentiality requirements that affect the provider.
- In Vermont, the State funds seminars on family violence and substance abuse treatment options for judges and other members of the legal system. These seminars are also open to the public.
- Some communities hold regular brown bag lunches for probation officers and others in the legal system. These meetings are an opportunity for education on such issues as confidentiality or how to work through problems, such as discrepancies between what the court is mandating (e.g., enrollment in a residential treatment program) and what is available (e.g., only nonresidential programs).
- Every summer Texas holds an annual Institute on Alcohol and Drug Abuse 2-week event that usually has 1,500 attendees per week. Numerous private and nonprofit providers have booths to exhibit their services. Bookstores exhibit and sell literature on such subjects as substance abuse, health, mental health issues, marriages, relationships, cultures, and motivational stories. A "Best Practices Conference" is held in the winter with about 1,200 people in attendance. Trainings are provided throughout the year in various regions of the State to make attendance convenient and more cost-effective for the providers.
- The Community Youth Network in Grayslake, Illinois, provides training sessions to area law enforcement personnel and school personnel. They address both victim and perpetrator issues, which is unusual because many programs do not address perpetrator treatment.
- Community Advisory Boards are an effective method of interagency collaboration and networking. The integrated family treatment program in San Antonio, Texas, has an active Community Advisory Board with representatives from the CPS system, Criminal Justice System, District Attorney's office, Family Violence Unit, Health Department, battered women's shelters, and other support agencies. Monthly meetings are held to exchange ideas and programmatic information, develop advocacy for substance-using women within their respective agencies, and gain an understanding of how each local system works.
- In Connecticut, the Alcohol and Drug Policy Council created a Women and Children's Client-Based Model. The various State agencies have been meeting to discuss implementing the model. There are monthly meetings of Child Protective Services Substance Abuse Regional Resource Consultants (psychiatric social workers with substance abuse certification who are internal consultants to the CPS agency) with the substance abuse case managers for women and children to go over cases and resources. Both systems fund services for the population. The CPS system funds Project SAFE (Substance Abuse Family Evaluation), which is a statewide system to screen and provide priority access for evaluation and outpatient substance abuse treatment for clients in the CPS system. Another project, Supportive Housing for Recovering Families, provides housing assistance for clients who have successfully completed residential treatment and are planning to reunify with their families. The Alcohol and Drug Policy Council also recommends cross-training between substance abuse treatment programs and CPS agencies. Some of the major issues are how to make treatment systems more family focused and how to break down the traditional barriers in funding and measures.
- In Louisiana, recovered survivors have become effective lobbyists within the State legislature. Their personal experiences are brought into legislative subcommittees to gain more stringent, effective laws on behalf of abused children. The Louisiana State legislature has an appointed official in the victim representative capacity whose primary qualification is being a recovered survivor of childhood victimization.
- Montgomery County, Maryland, has a task force to integrate adult treatment services within the social services of CPS agencies, welfare and housing, and the juvenile justice system, recognizing the shared interests and client base.
The Child Welfare League of America has published a book called Responding to Alcohol and Other Drug Problems in Child Welfare that includes many references and resources (Young et al., 1998).

More needs to be done, however. Many State legislatures still view substance abusers as criminals, not people who have a disease. With busy schedules and limited financial resources, law enforcement officials often prefer incarcerating individuals, where treatment is limited. (For more information on substance abuse treatment and criminal offenders, refer to TIP 30, Continuity of Offender Treatment for Substance Use Disorders From Institution to Community [CSAT, 1998b].)

Education is a two-way street. Treatment programs may benefit from training provided by other agencies, including CPS agencies and law enforcement organizations. Civic organizations, such as the Rotary Club, often have a speaker's bureau that may recommend a local expert in a particular field who would speak pro bono.
Boxes

Figure 6-1: Reporting Child Abuse and Neglect: Sources of Advice in Difficult Cases

Sources to be consulted only after reviewing confidentiality rules

- A clinical supervisor or a member of the treatment team
- Another peer
- The treatment program's legal counsel (or an attorney who is a board member)
- The CPS agency (speak of a "hypothetical" case)
- Counsel for the Single State Agency
- The State Attorney General's office
- The local legal aid society or legal services office
- An attorney at a family law clinic or, perhaps, at a law school
- An attorney in private practice who specializes in family law
- The local bar association
- Professional organizations such as the American Psychological Association and the National Association of Social Workers*
- Child Welfare League of America*
- Resource Center on Domestic Violence: Child Protection and Custody*
- Childhelp USA/National Child Abuse Hotline*

* These resources may be unable to give case-specific advice because of the differences in State laws.

Copyright Notice: http://www.ncbi.nlm.nih.gov/books/about/copyright/