

CALIFORNIA

Required Precautions in Medical Abuse or Neglect Reporting: Legal Standards & Medical Ethics

Healthcare providers should not resort to threats of making a CPS report in order to coerce consent to a medical procedure or treatment. All medical procedures carry some risk, and parents are entitled either to have their concerns adequately addressed or to seek a second opinion. A threat of a CPS report by a healthcare provider imposes duress and may cause trauma to the well-being of the family and the child, substantially impairing the doctor-patient relationship and causing mistrust of the medical system.

How is child abuse or neglect defined in CA state law?

"[N]eglect" means the negligent treatment or the maltreatment of a child by a person responsible for the child's welfare under circumstances indicating harm or threatened harm to the child's health or welfare. The term includes both acts and omissions on the part of the responsible person."

"(a) "Severe neglect" means the negligent failure of a person having the care or custody of a child to protect the child from severe malnutrition or medically diagnosed nonorganic failure to thrive. "Severe neglect" also means those situations of neglect where any person having the care or custody of a child willfully causes or permits the person or health of the child to be placed in a situation such that his or her person or health is endangered, as proscribed by Section 11165.3, including the intentional failure to provide adequate food, clothing, shelter, or medical care."

"(b) "General neglect" means the negligent failure of a person having the care or custody of a child to provide adequate food, clothing, shelter, medical care, or supervision where no physical injury to the child has occurred."

Cal. Penal Code §11165.2

"[T]he willful harming or injuring of a child or the endangering of the person or health of a child," means a situation in which any person willfully causes or permits any child to suffer, or inflicts thereon, unjustifiable physical pain or mental suffering, or having the care or custody of any child, willfully causes or permits the person or health of the child to be placed in a situation in which his or her person or health is endangered."

Cal. Penal Code §11165.3

"[T]he term "child abuse or neglect" includes physical injury or death inflicted by other than accidental means upon a child by another person, sexual abuse as defined in Section 11165.1, neglect as defined in Section 11165.2, the willful harming or injuring of a child or the endangering of the person or health of a child, as defined in Section 11165.3, and unlawful corporal punishment or injury as defined in Section 11165.4."

Cal. Penal Code §11165.6

From the American Medical Association (AMA) Code of Medical Ethics

"Decisions for pediatric patients should be based on the child's best interest, which is determined by weighing many factors, including effectiveness of appropriate medical therapies and the needs and interests of the patient and the family as the source of support and care for the patient. When there is legitimate inability to reach consensus about what is in the best interest of the child, the wishes of the parents/guardian should generally receive preference." – 2.2.1 - Pediatric Decision-Making

CA state law does not give immunity to persons who make false reports of child abuse or neglect.

"Any person who makes a report of child abuse or neglect known to be false or with reckless disregard of the truth or falsity of the report is liable for any damages caused."

Cal. Penal Code §11172(a)

A healthcare provider who threatens to make a CPS report in order to coerce consent to a medical procedure or who makes such report in bad faith may be reported to the applicable licensing board for unprofessional conduct.

"The board shall take action against any licensee who is charged with unprofessional conduct. [U]nprofessional conduct includes, but is not limited to: (e) The commission of any act involving dishonesty or corruption that is substantially related to the qualifications, functions, or duties of a physician and surgeon."

Cal. Business & Professions Code §2234

A parent's informed decision to decline a medical procedure for the child does not fall under the definition of child abuse or neglect under CA state law. Examples may include preventative or prophylactic procedures, such as vaccination or vitamin K.

"An informed and appropriate medical decision made by parent or guardian after consultation with a physician or physicians who have examined the minor does not constitute neglect."

Cal. Penal Code §11165.2(b)

A parent may decline medical treatments for the child for religious reasons.

"A child receiving treatment by spiritual means as provided in Section 16509.1 of the Welfare and Institutions Code or not receiving specified medical treatment for religious reasons, shall not for that reason alone be considered a neglected child."

Cal. Penal Code §11165.2(b)



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