

Child abuse: will the doctor report?

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Abstract

The phenomenon of child abuse is a very important social issue, not only globally, but also in Poland. There is a silent consent in the Polish society for violence against children. The research presents the issues of the children abuse issue and forms. The most important are: physical abuse, mental abuse, sexual abuse and negligence. Also research presents the legal instruments governing the obligation to report cases of violence against children including medical confidentiality

It is still necessary to sensitize the doctors, and especially the paediatricians about the abused child issues, as well as to educate and broaden knowledge in the scope of recognizing such phenomena. The doctors' involvement and their will to act towards the social and legal direction, by helping the family and the child are also important. In the current situation, reporting of abuse cases and non-medical actions regarding this issue is mainly a moral and professional obligation of a doctor, coming mainly from the care about patient's health.

Keywords: Mandatory reporting, Physician responsiveness, child

The phenomenon of child abuse is a very important social issue, not only globally, but also in Poland. Nearly every day the media inform about the abuse cases of young children, which have consequences in the form of disability or death. The Police Headquarters' data show that, in the 2008 only, there were 47 thousands reported acts of child (under 18 years old) abuse. It is estimated, that 130 children are abused in the Polish houses every day. Annually, about 500 children under 15 are accepted to the children's surgery wards, including infants, and a dozen or so cases end up with death caused by the abuse. Of course, the official statistics do not show the entire scale of the problem, but just highlight its existence. There are still many unreported cases, where there are less or more severe body injuries. There is the entire, unnamed crowd of the abuse victims, without any chances for receiving help and support. [5,16]. Brągiel thinks that the abused child is a child that suffers from the inappropriate behaviour of other people, mainly parents and carers, against it, experiencing the feeling of injustice and helplessness. This process includes both intended and unintended actions of an adult, harmful to health, physical and psychosocial development of a child. [1,2]. Polish Nationwide Emergency Service for Victims of Domestic Violence "Blue Line" defines the phenomenon of „domestic violence” as: ...”intended action, which uses the advantage of power against a member of a family, violating law and personality rights, causing suffering and losses”. The violence phenomenon in such view is characterised by: Intention – that is, an intentional and conscious human action, which aims to control and to subdue the victim. Unbalance of power – where the victim is weaker than the perpetrator. Violence of personality rights (e.g. the right to personal inviolability, dignity, respect, etc.). Causing the suffering and pain of the victim, exposing the victim's health and life to serious threat [6,17,20]. The Police Headquarters statistics show, that the different type of violence is present not only in the pathological families, but also in these regarded as „normal”. It is estimated, that the violence phenomenon takes place in about 30% of urban families and in 40% of countryside families. As many as 65% of violence cases are caused by alcohol. The rest is a, so called, sober violence [16]. The research entitled „Polacy wobec zjawiska przemocy w rodzinie oraz opinie ofiar, sprawców i świadków o występowaniu i okolicznościach występowania przemocy w rodzinie” („Poles towards the domestic violence phenomenon and the opinions of the victims, perpetrators and witnesses about the existence and circumstances of its occurrence in the family”) performed by the TNS OBOP, ordered by the Ministry of Labour And Social Policy in November 2007, shows that Poles mostly disagree with the stereotypes regarding the violence in the families, but there is an alarmingly high level of support for some of the violent actions. There is a silent consent in the Polish society for violence against children. There is a common view, that there is no need for intervention, when the victim does not ask for help. The passive attitude of the society causes the broad spectrum of consequences – from a small injury, mental disturbance to the death of a child [8]. The OBOP research shows, that „The violence against children is a quite often phenomenon. 14% of respondents live in a family, in which a child was a victim of abuse. Children were the most often the victims of emotional and physical abuse, rarely economical and sexual abuse”. The performed research shows, that 10% of respondents think that the parents have the right to beat their children; 3% show, that the deprivation of meals is a good educative measure. The researchers of the children abuse issue have differentiated a few forms. The most important are: physical abuse, mental abuse, sexual abuse and negligence. The physical abuse is shown, among others, in the following behaviours: beating, kicking, shaking, jerking, burning, cutting (burns, cuts, and stab wounds), limb twisting, starving, and restriction of movements. The results of such behaviours cause child's physical pain despite the number and scope of left marks or the lack of such marks. Mental abuse

consist of intentional damaging or lowering child's proper development opportunities – from insulting, ridiculing, through emotional rejection, excessive expectations regarding the child and not accounting child's developmental possibilities, screams, insults and mental abuse, rejection, isolation, threats and blackmailing. The mental abuse does not leave any physical marks, but causes damages in the child's psyche, which cause problems with its functioning in the future life [14].

The symptoms of using violence against children are, among others, bed-wetting and playing with faeces with no reason, facial nervous ticks, involuntary muscle movements, body-mind conditions (stomach- and headaches, nausea), often lying, inadequate reactions to the situations, speech defects (e.g. stuttering), constant seeking of attention and emotions from adults, excessive „sticking” to adults, passiveness, withdrawal and lack of confidence, often clearly disobedient behaviour, anxiety of failure. Sexual abuse consists of forcing a child to enter into sexual activity, which is inadequate to its level of development and violates social and legal regulations. There are three forms of sexual abuse of children by the adults: The actions without any physical contact (exhibitionism, voyeurism, fetishism, obscene phone calls and showing other adults a child's body in order to satisfy their sexual desires), Actions concentrating only on the physical contact of an adult with a child (petting, masturbation practices), Actions regarded as rape (forcing child to sex).

The sexual abuse syndromes include: epidermis chafes, pain in the sex organs and anus, swelled genitals, pain during urination, walking and sitting, excessive interest in sexuality, odd and new sexual behaviours, pseudo-maturity, seductive behaviour towards adults, acting out sexual violence on dolls and toys, secrets (e.g. a child says it has a secret, but for no reason cannot reveal it), alarming stories about a known adult, anxiety against a specific person, place, situation, bed-wetting, finger sucking and other untypical behaviours, from which a child is grown out, nervousness, anger, crying from no reason or silence. Negligence. The reason for not fulfilling children's' biological and psyche needs is poverty, alcohol and mental diseases. The visible symptom of negligence is abnormally low weight and height of a child, dirty underwear and scruffy wear, often inadequate to the season, untreated wounds and child's tiredness, passiveness and apathy [14]. Children, who are the victims of violence very rarely ask for help. They hide their problems in the anxiety, shame and helplessness feelings. In case of sexual abuse, they are so frustrated, that the breakage of their silence is extremely hard. Therefore special caution, thoroughness and precise observation are very important during the examination. Katarzyna Wojaczyńska-Stanek, from the Paediatric and Development Age Neurology Clinic in the Faculty of Paediatrics of the Medical University of Silesia, has added different types of body injuries of nearly all parts of child's body, to the almost certain symptoms, visible during the examination, which can lead to the assumption that a child is a victim of violence, e.g.: Skin – scars, eruptions, bruises (blue colour in the first days, and green-yellow after 7 – 10 days from the event), large haematomas in the head skin area, which are caused by pulling children's hair; burns: symmetrical of „gloves” or „socks” type, occurred in the intentional dipping child in hot water, burning lesions, caused by a cigarette, electrical devices, etc. „Lesions on back, buttocks, calves, symmetrical, often of geometrical shapes, always draw the suspicion of not accidental nature, sometimes they even have a contour of an item, which caused these lesions.” During the examination, one have to eliminate diseases, among others, the Ehlers-Danlon syndrome, thrombocytopenia, photodermatitis, acrodermatitis enteropatica, drug induced lesions, lichen sclerosis, pemfigoid, pemphigus, herpes, lymphatic nodules, pigment

stains, which clinical state can be similar to the lesions caused by violence Bones – non-accidental fractures. According to Katarzyna Wojaczyńska – Stanek, the characteristic features, which draw suspicion to the non-accidental fractures, include: bilateral fractures, on different levels, in „different age” (fresh, knitting, knitted), which are inadequate to the injury; vertebra body fractures, sternum, back ribs fractures (they never break during resuscitation); skull bones fractures (80% of fractures in children under the age of 1 are non-accidental injuries); clavicle (from 11th day of life); distal parts of fingers; shin and femoral bones in infants; humeral bones under the 3rd year of life. When there is a suspicion of non-accidental injuries, there is a necessity of an X-ray of the entire skeleton in 2 projections, to exclude other, clinically „silent” fractures. One should take into consideration the following diseases: osteogenesis imperfecta, Albright disease and other bone dysplasias. Abdominal – non-accidental injuries, mostly of intestines. They result in perforation and acute abdominal pain. One should remember, that in children, the non-accidental injuries consist mainly of the spleen and pancreas Head: skull bones fractures and injuries, which are caused as a result of the kinetic energy action (characteristic especially, for the specific type of the abused child, that is the shaken baby syndrome, e.g. brain contusion, subdural haematomas) [14]. The main duty of a doctor is to protect patient’s health and to treat him. But this is not the end of his work. In the scope of non-medical help for children, who are victims of abuse, an important skill of a doctor is to recognize the signals signifying the occurrence of violence and the method of such talk, which will enable to recognize the forms of violence. In case of recognizing such necessity, it is doctor’s duty to report the social assistance, police, and the district commission of counteracting against alcohol problems. Besides, in the case of recognition or suspicion of committing a crime, it is doctor’s duty to report the law enforcement bodies.

According to the International Statistical Classification of Diseases and Related Health Problems ICD-10, the physical abuse is under the T74 symbol. Till now, there was no definition of „neglected and abused child”. However, the nearest formulation characterizing such case treats the violence against children as „harming non-accidentally”, e.g. beating, shaking, burning, tying up, drowning, strangling, that causes injuries. Apart from „harming” one use the following names: maltreating, abusing, violence, molesting, abusing sexually. In Poland, the cases of children abuse are rarely recognized by the doctors. In diagnosing of some somatic conditions of a child, the doctors often do not consider the fact that many symptoms can result from the abuse. In the pathogenesis and treatment of such conditions, diseases and disturbance in child’s development, the impact of violence is often unjustly omitted. In such case, it is still necessary to sensitize the doctors, and especially the paediatricians about the abused child issues, as well as to educate and broaden knowledge in the scope of recognizing such phenomena. The doctors’ involvement and their will to act towards the social and legal direction, by helping the family and the child are also important [14]. In the current situation, reporting of abuse cases and non-medical actions regarding this issue is mainly a moral and professional obligation of a doctor, coming mainly from the care about patient’s health. The doctor should know, that there is a support system for abuse victims in Poland, the „Blue line”, that is the Polish Nationwide Emergency Service for Victims Of Domestic Violence, phone no. 0 800 20002 and the police „Blue card”, as well as a set of legal acts, which are the base for such actions [6]. Within the legal acts, obliging the citizens to report specific bodies about the violent acts and events that signify violence usage, there is an act from 17th November 1974 - Civil Proceedings Code (Dz.U. no 43, pos.. 296 with amendments), which art. 572 § 1. states: „Anyone, who knows about an

event, justifying the institution of a proceeding, is obliged to report about this event to the guardianship court". So, in the situation of just suspicion, that the child is being abused, one can submit to the guardianship court an application for access to the family situation of a child. Such application is free of judicial fees and is not too much formalized. One should state in it the personal data of the family and its address and include facts that made ones suspicious of child abuse. The legal act does not precise the time period in which such application can be submitted, but it seems obvious, that such fact should be submitted immediately. The obligation to report to the court includes, among others, an event of child abuse, which may result in limitation or deprivation of the parental custody rights [11]. Another legal act – art. 304 . § 1 of the act from the 6th June 1997 – Code of Penal Procedure (Dz.U. no. 89, pos. 555 with amendments), obliges every citizen to report the crime to the prosecutor or police „Whoever, who learnt about the commitment of a crime has a social obligation to report it to the prosecutor or the police” and the art. 304 § 2, there – „National and self-government institutions, which within their activity have learn about the commitment of a crime, are obliged to immediately report it do the prosecutor or police(...)”. Current regulations disallow to deduce a legal obligation to perform an action and their enforcement. The lack of performance of this obligation has no penalty, but the lack of reaction on the child’s pain is usually condemned by the public opinion. The obligation to report such crimes concerns crimes, which are prosecuted ex officio, that is regarding which, the police or prosecutor can and must initiate a penal proceedings, regardless the will of the victim [13]. The doctors, who meet the abuse victims, usually deal with crimes described in the Penal Code from the 6th June 1997, which are sanctioned with prison sentences: In the art. 156 § 1. „Whoever causes grievous bodily harm in a form which 1) deprives a human being of sight, hearing, speech or the ability to procreate, or 2) inflicts on another a serious crippling injury, an incurable or prolonged illness, an illness actually dangerous to life, a permanent mental illness, a permanent total or substantial incapacity to work in an occupation, or a permanent serious bodily disfigurement or deformation shall be subject to the penalty of the deprivation of liberty for a term of between 1 and 10 years. § 2. If the perpetrator acts unintentionally he shall be subject to the penalty of deprivation of liberty for up to 3 years. § 3. If the consequence of an act specified in § 1 is the death of a human being, the perpetrator shall be subject to the penalty of the deprivation of liberty for a term of between 2 and 12 years. years.” and art. 157 § 1 „Whoever causes a bodily injury or an impairment to health other than specified in Article 156 § 1, shall be subject to the penalty of the deprivation of liberty for a term of between 3 months and 5 years.” In the art. 160 § 2 „If the perpetrator has a duty to take care of the person exposed to danger he shall be subject to the penalty of the deprivation of liberty for a term of between 3 months and 5 years.” Art. 191 §1 of the Polish Penal Code: „Whoever uses force or an illegal threat with the purpose of compelling another person to conduct himself in a specified manner, or to resist from or to submit to a certain conduct shall be subject to the penalty of deprivation of liberty for up to 3 years.” (prosecuted ex officio)*. Art. 197 §1 1. Whoever, by force, illegal threat or deceit subjects another person to sexual intercourse shall be subject to the penalty of the deprivation of liberty for a term of between 1 and 10 years. (prosecuted on application of the victim) 199 § 1. Whoever by abusing the relation of dependence or by taking advantage of critical position, brings another person to a sexual relationship or to submission to another sexual act or to performing such act, Shall be subject to imprisonment up to 3 years. § 2. If the act set forth in § 1 was committed to the injury of a minor, then perpetrator shall be subject to imprisonment from 3 months to 5 years. § 3. The penalty set forth in § 2 shall apply to whoever brings a minor to a sexual relationship or to submission to another sexual act or to performing such act, by abusing

trust or providing him a material or personal benefit, or promising the same. 200 § 1. Whoever maintains a sexual relationship with a minor under 15 years of age or commits towards such a person another sexual act or brings him to submit to such acts or to perform the same, Shall be subject to imprisonment from 2 to 12 years. § 2. The same penalty applies to whoever with the purpose of achieving sexual satisfaction, presents to a minor under 15 years of age the exercising of a sexual act. Art. 207 § 1. Whoever mentally or physically mistreats a person close to him, or another person being in a permanent or temporary state of dependence to the perpetrator, a minor or a person who is vulnerable because of his mental or physical condition shall be subject to the penalty of deprivation of liberty for a term of between 3 months and 5 years. § 2. If the act specified in § 1 is compounded with a particular cruelty, the perpetrator shall be subject to the penalty of deprivation of liberty for a term of between 1 and 10 years. Art. 208 Whoever induces a minor to become an inveterate drinker by supplying him with alcoholic beverages, or by facilitating or by urging him to drink such beverages shall be subject to a fine, the penalty of restriction of liberty or the penalty of deprivation of liberty for up to 2 years Art. 209 §1 Whoever persistently evades the duty imposed on him by law or by a court judgement to pay for the support of a next of kin or other person and exposes such a person to a situation where they cannot satisfy their essential needs shall be subject to a fine, the penalty of restriction of liberty or the penalty of deprivation of liberty for up to 2 years. (prosecution initiates on the injured person's application) [4,12]. While, the art. 12 of the Family Violence Prevention Act from 12th July 2005 puts the obligation of reporting the cases of family violence on persons, who during the performance of their duties, draw a suspicion of the commitment of a family violence crime. The addressees of this obligation, are mainly doctors, dentists and nurses, because of their frequent contact with family violence victims. The doctor, after the examination, in case of finding alarming symptoms, has a legal obligation to report the fact of a crime commitment against a child. In opposition to the obligation from the art.304 of the Code of Penal Procedure, this regulation includes an obligation of reporting, but limited: Subjectively – it puts this obligation on persons who are in the employment relationship or non-employment employment relationship, who within the scope of their professional duties, had ground for suspecting a crime commitment. This concerns both doctors and other persons working in a given institution on managerial posts; Objectively – the obligation of reporting the cases of violence concerns the crimes committed against all members of the family, including a child. These regulations are prosecuted ex officio [3,7,10].

The obligation of reporting to the police or prosecutor a suspicion of crime commitment including a child abuse starts from the moment of gaining such suspicion. The legislator did not provide any penalties for not fulfilling this obligation. Failing to fulfil this obligation may only cause a negative evaluation and professional responsibility. The reporting of crime commitment may be submitted by the supervisor or employer, or signed by the senior registrar and submitted to the police or prosecutor's office. In case of diagnosing a disease entity T 74, the doctor writes the entry in the child's chart. Most often, the entry in the chart itself, without noticing the law enforcement bodies stays unnoticed. Therefore it is important to sensitize doctors on this problem. It is often that the doctors stay passive regarding the issue in question and they do not inform about the cases of abuse, among others, because of reporting the case to the police and connected with it troubles, a waste of time and negligence. Often, the doctors are afraid of the violence perpetrators and threats from them. Therefore the police are notified only in the most severe cases. The awareness, that the doctors, like every other person, who calls the police on the grounds of the „Blue card”, have the right for an immediate safety – is not

too strong argument in deciding in such tough cases. The doctor, not wanting to reveal his personal data, having grounded fear of his safety and the safety of the closest to him, may report the case in the prosecutor's office and restrict his personal data to the knowledge of the court and prosecutor only. In extreme cases, he may submit a report anonymously. When reporting a fact of maltreatment of a child, the doctor should reject the false view, that a parent does not want to hurt his child; that children easily bruise themselves during play, that they fall and fracture bones or that the abused child will ask for help. The doctor should not be worried that notifying the police will be treated as a denunciation, by which he can be brought to trial for slander. The Ombudsman For Children, being of the opinion that, the doctor is the first defender of the child in such case, has issued an appeal the President of the Polish Chamber of Physicians and Dentists with the demand of „performing disciplining actions and bringing into doctor's attention their moral and social duty regarding the reporting children abuse cases to the appropriate institutions”. The ombudsman has underlined, that the early diagnosis and immediate reporting to the law enforcement bodies is a factor, often deciding on the child's life, therefore, in his opinion, the doctor's role is essential in such cases [17]. Often, during the decision making process regarding the reporting of child abuse, the doctor faces a problem of keeping the doctor-patient privilege. In case of the diagnosis or suspicion, that the child is a victim of abuse, the doctor is exempt from such privilege and obliged to reveal such fact in accordance to the art. 40 point 1 of the Medical Profession Act, from 5th December 2006 (Dz.U. 2008 no. 136, pos. 857). The doctor is exempt from such privilege when, among others, the above mentioned act states and the Code of Penal Procedure constitutes that, when the privilege may cause threat to life or health of the patient or other persons, or when the exemption is necessary for treating patient by other doctor or for scientific purposes (art. 40 point 2) [3,9,15]. In case of the symptoms and justified suspicion of physical abuse or sexual abuse, the doctor is obliged to report his observations to the Family Court or Regional Prosecutor's Office. The doctor-patient privilege includes all information about the patient, learnt in reference to the performed profession. In a similar manner as the art. 40 of the above mentioned act, treats this issue the Medical Code of Ethics. The article 25 states, that the exemption from the doctor-patient privilege may take place, when the patient agrees to it or when the keeping of the privilege seriously threatens patient's health or life, or health or life of other persons, and when he is obliged to do so by legal provisions (e.g. the Code of Civil Procedure, the Code of Penal Procedure, the Family Violence Prevention Act). And the art. 27 of the Code, clearly shows, that „the doctor has the right to reveal the observed facts of health or life threat as a result of human rights violation”. In case of doubts regarding the doctor-patient privilege, one should take into consideration the list of exemptions in the art.40 point 2. of Medical Profession Act, from 5th December 1996 [15,18]. Jolanta Zmarzlik and Emiliana Piwnik in the article on the abuse children aid, published in the newsletter of the Nobody's Children Foundation, state, that: „A medical certificate can become evidence, equal to the forensic certificate. Every doctor, should remember, that the Medical Profession Act, in the art. 40 par. 1, puts an obligation of „keeping all the information regarding the patient, gathered through the professional actions in secret”, regardless the organizational structures in which the doctor works. The breach of doctor-patient privilege is sanctioned by the art. 266 par. 1 of the Penal Code. The Medical Profession Act does not regulate in any way the doctor's cooperation with law enforcement bodies through reporting about the crimes commitment” [19].

Conclusion:

The doctor has a legal and social obligation to notify of violence against children, which

is suspected or found in the performance of professional activities. Doctor before deciding on the notice of violence against children should be aware of the exceptions specified in the Act on professions of doctor and dentist, which allow the possibility to waive the obligation of medical confidentiality. It is still necessary to sensitize the doctors, and especially the paediatricians about the abused child issues, as well as to educate and broaden knowledge in the scope of recognizing such phenomena.

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