# Child abuse and professional confidentiality: 'Focus on proper care, not on remaining silent'

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How long should and may a doctor remain silent if he suspects child abuse? A GP who often sees the whole family, or a paediatrician, fills a crucial role when it comes to picking up signals of child abuse. Mirjam Sombroek-van Doorm examined how tenable professional confidentiality of medical practitioners is and will defend her doctoral thesis on 19 February.

Child abuse generates considerable public and political interest, according to Sombroek-van Doorm. "Doctors are very important when it

comes to preventing and combatting child abuse. For instance, a GP is often aware of domestic quarrels, of a father who drinks too much and can be aggressive towards his children, or a mother who neglects her child." But doctors are bound to professional confidentiality. This safeguards the privacy of their patients and in addition serves the public interest since citizens are entitled to unrestricted access to medical care without the fear that their medical data will be made public. For these reasons, medical confidentiality is firmly enshrined in law.

"Remaining silent, or speaking out; this is what my thesis deals with. It appears to be a difficult topic not just for medical practitioners, but also for the House of Representatives and for the legislature in the Netherlands. An increasing desire is heard in politics to place more emphasis on 'speaking out.' But this immediately conflicts with the statutory requirement of the medical practitioner to remain silent. For this reason, I have examined how these different interests—remaining silent and speaking out – can be reconciled and also how this can be incorporated in law."

## Ending the tension

It frequently became clear throughout the research period just how topical this issue is. "Last year, the Regional Disciplinary Tribunal in The Hague decided in a case where the doctor in question had perhaps breached professional confidentiality without due care, that no disciplinary measure was to be imposed because it had not been clear for the doctor in which way non-compliance with medical confidentiality would be tested. Such uncertainty is of course not desirable. Not for the doctor, who could become too cautious when exchanging information with other bodies, such as hotline Veilig Thuis (Safe at Home). And certainly not for children who are possibly victims of child abuse and who need help as fast as possible. In my thesis I have tried to put an end to this tension."

Sombroek-van Doorm distinguishes three situations in her thesis. "The first is where a medical practitioner has received signals of child abuse. He must investigate the signals and if necessary report his findings to Veilig Thuis. A step-by-step plan exists for this." The problems arise in the two other scenarios: when a medical practitioner wants to report a suspicion of child abuse to a different organisation than Veilig Thuis, for example the Child Care and Protection Board, because an emergency intervention is necessary; and when for example the Child Care and Protection Board or Veilig Thuis requests information from a medical practitioner in connection with an investigation they have instigated. "In these situations, it is not clear at all how the doctor can review his consideration of whether or not to provide information. And so it is also not clear whether he must remain silent or provide information. This is not a good situation."

Sombroek-van Doorm concludes that the duty of due care can be seen as a solution to problem areas in medical confidentiality. "We must see medical confidentiality within the context of the duty to provide good care. In the case of child abuse, doctors must go through a number of steps and if their suspicion is refuted, they remain silent. Otherwise, they must speak out. Remaining silent and speaking out are thus part of the doctor's duty to provide due care."

In addition, the researcher concludes that 'speaking out' in cases of child abuse is no longer seen as an exception to the thou-shalt-be-silent rule for doctors. "A ground for exception in breaching the medical confidentiality, the so-called 'conflict of duties," no longer applies to medical confidentiality in the context of child abuse. This ground for exception is based almost exclusively on the assumption that the doctor 'remains silent – unless," and this is not in line with the stance politics has taken when it comes to preventing and combating child abuse.

## Sufficient certainty

Sombroek-van Doorm has drawn up a roadmap for cases where a doctor is asked to provide information in an investigation concerning child abuse. "Such a roadmap already exists for when a doctor wants to make a report himself and in practice this appears to provide sufficient certainty. It would be prudent to provide clarity in the situation when the doctor must provide information not only to Veilig Thuis, but also for example to the Child Care and Protection Board. This situation is also incorporated in the roadmap."

With her research, Sombroek-van Doorm wishes to serve both medical practitioners and the judicial system. "There is a clear need for more clarity on how to deal with medical confidentiality in situations concerning child abuse. I therefore hope that these conclusions and recommendations will be adopted in the professional code for doctors, the KNMG (Royal Dutch Medical Association) reporting code. Child abuse after all cannot be combated by placing the emphasis on remaining silent, but rather by providing proper care to children and families. And finally, I believe my findings in relation to child abuse apply almost identically to another issue in society today: abuse of the elderly."

Provided by Leiden University

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