

## **MANDATED REPORTING**

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Providers of mental health services and others, including, in some cases, Patients' Rights Advocates, have the responsibility to report certain types of abuse under statutes or regulations.

### **CHILD ABUSE**

#### **Duty to Report**

Penal Code Sections 11164 through 11174.3 require certain persons including a "child care custodian" or "health practitioner" (including both medical and nonmedical practitioners) who has knowledge of or observes a child (defined as a person under age 18) in his/her professional capacity or within the scope of his/her employment whom he/she reasonably suspects has been the victim of child abuse, to report such suspected instances of child abuse to a "child protective agency" immediately or as soon as practically possible by telephone and within 36 hours by a written report.

#### **Mandated Reporting**

Reporting is required by certain person when they have knowledge of or observe a child whom they know or reasonably suspect has been the victim of child abuse.

*"...reasonable suspicion means that it is objectively reasonable for a person to entertain a suspicion, based upon facts that could cause a reasonable person in a like position, drawing, when appropriate, on his or her training and experience, to suspect child abuse." (P.C. Section 11166[a])*

#### **Penal Code section 11165.6 defines child abuse as:**

- A physical injury which is inflicted by other than accidental means on a child by another person;
- Sexual abuse of a child;
- Neglect of a child or abuse in out-of-home care.
- "Sexual abuse" means sexual assault or exploitation. (P.C. Section 11165.1)

**"Sexual assault"** means conduct in violation of the Penal Code including

rape, rape in concert, incest, sodomy, lewd or lascivious acts upon a child under 14 years of age, oral copulation, penetration of a genital or anal opening by a foreign object, and child molestation.

**"Sexual Exploitation"** refers to any of the following:

Conduct involving any matter depicting a minor engaged in obscene acts, which violates the law prohibiting the preparation, sale, or distribution of obscene matter or employment of minors to perform obscene acts.

A person who knowingly promotes, aids, or assists, employs, uses, persuades, induces, or coerces a child, or a person responsible for a child's welfare who knowingly permits or encourages a child to engage in, or assist others to engage in, prostitution or to either pose or model alone or with others for purposes of preparing a film, photograph, negative, slide, or live performance involving obscene sexual conduct.

A person who depicts a child in, or who knowingly develops, duplicates, prints, or exchanges, any film, photograph, videotape, negative, or slide in which a child is engaged in an act of obscene sexual conduct, except for those activities by law enforcement and prosecution agencies and other persons described in Penal Code Sections 311.3(c), (e).

**"Neglect"** 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. (P.C. Section 11165.2)

**"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."

**"General neglect"** means "the 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."

**"Willful Cruelty or Unjustifiable Punishment"** means a situation where a person willfully causes or permits a child to suffer, or inflicts upon a

child, unjustifiable physical pain or mental suffering, or having the care and custody of the child, willfully causes or permits the child to be placed in a situation where the child's person or health is endangered. (P.C. Section 11165.3)

**"Unlawful Corporal Punishment or Injury"** means a situation where a person willfully inflicts upon a child cruel or inhuman corporal punishment or injury resulting in a traumatic condition. It does not include an amount of force that is reasonable and necessary for a person employed by or engaged in a public school to quell a disturbance threatening physical injury to a person or damage to property, for purposes of self-defense, or to obtain possession of weapons or other dangerous objects within the control of the pupil, as authorized by Cal. Education Code Section 49001. It also does not include the exercise of the degree of physical control authorized by Cal. Education Code Section 44807. In addition, unlawful corporal punishment or injury does not include an injury caused by a peace officer's reasonable and necessary while acting within the course and scope of the officer's employment as a peace officer. (P.C. Section 11165.4)

**"Abuse in Out-of-Home Care"** means situations where child abuse, as defined above, is suspected and the person responsible for the child's welfare is a licensee, administrator or employee of a licensed community care or child day care facility or a facility licensed to care for children or the administrator or employee of a public or private residential home, school, or other institution. It does not mean an injury caused by a peace officer's reasonable and necessary force while acted within the course and scope of the officer's employment as a peace officer. (P.C. Section 11165.5)

### **Discretionary Reporting**

If any child care custodian, health practitioner or employee of child protective services has knowledge of or reasonable suspects that mental suffering has been inflicted on a child or the child's emotional well-being is endangered in any other way, he or she may, at his or her discretion, report such suspected instance of child abuse to a child protective agency. (P.C. Section 11166[b])

### **Person Required to Report**

Penal Code Sections 11165 to 11166 require a "child care custodian,"

"health practitioner," or employee of a "child protective agency" to report suspected child abuse.

A "child care custodian" includes social workers, teachers, teacher's aides and assistants, licensed day care workers, employees of child care institutions, probation officers, parole officers and various community professional and workers in schools, day care programs, youth centers and camps. (P.C. Section 11165.7)

A "health practitioner" means a physician, psychiatrist, nurse, dental hygienist, optometrist, or any other person who is licensed under California Business and Professions Code Section 500 et seq.; a marriage, family and child counselor, and emergency medical technician I or II, paramedic, or other person certified pursuant to Cal. Health and Safety Code Section 1797 et seq.; a psychological assistant registered pursuant to California Business and Professions Code Section 2913; a marriage and family and child counselor trainee, as defined California Business and Professions Code Section 4980.03(c); an unlicensed marriage, family, and child counselor intern registered under California Business and Professions Code Section 4980.44; a state or county public health employee who treats a minor for venereal disease or any other condition; a coroner; a medical examiner, or any person who performs autopsies; or a religious practitioner who diagnoses, examines, or treats children. (P.C. Section 11165.8)

**"Child protective agency"** means a police or sheriff's department, a county probation department or a county welfare department. It does not include a school district police or security department. (P.C. 11165.9)

### **Required Reports**

A mandatory reporter can fulfill the reporting requirements by telephone report, followed by a written report, which must be made to a "child protective agency," which means a police or sheriff's department, a county probation department, or a county welfare department, but not a school district police or security department.

### **Telephone Report**

A telephone report must be made immediately or as soon as is practically possible after receiving the information concerning the incident. (P.C. Section

11166[a]) The oral report must include:

- The name of the person making the report.
- The name of the child.
- The present location of the child.
- The nature and extent of the injury.
- Any other information requested by the child protective agency, including information that led the person to suspect child abuse.

**Written Report** The state Department of Justice has adopted a form, "Suspected Child Abuse Report," form SS 8572, which must be used for the written report.

### **Privileges**

Neither the physician-patient privilege nor the psychotherapist-patient privilege applies to information reported pursuant to this statute in a court proceeding or administrative hearing. (P.C. Section 11171 [b])

### **Immunity**

No health practitioner or other person required by law to report suspected cases of child abuse shall incur any civil or criminal liability as a result of making a report required or authorized by the statute. (P.C. Section 11172[a])

## **ELDER AND DEPENDENT ADULT ABUSE**

### **Reporting**

W&I Sections 15600 through 15637 state reporting requirements for abuse of elders and dependent adult. Abuse of an elder or dependent adult is a criminal act. (P.C. Section 368)

**"Elder"** means a person 65 years of age or older. **"Dependent Adult"** means any person who is between the ages of 18 and 64, who has physical or mental limitations which restrict his or her ability to carry out normal activities or to protect his or her rights, including, but not limited to, persons who have physical or developmental disabilities or whose physical or mental abilities have diminished because of age.

"Dependent adult" includes any person between the ages of 18 and 64 who is admitted as an inpatient to a 24-hour health facility, as defined in Sections 1250, 1250.2, and 1250.3 of the Health and Safety code.

### **Mandated Reporting**

A custodian or health practitioner must file a report where that person, in

the scope of employment or in his or her professional capacity, either:  
Has observed an incident that reasonably appears to be physical abuse;  
Has observed a physical injury where the nature of the injury, its location on the body, or the repetition of the injury, clearly indicates that physical abuse has occurred; or Is told by an elder or dependent adult that he or she has experienced behavior constituting physical abuse. (WIC § 15630[b])

### **Physical Abuse**

"Physical Abuse" means all of the following (which are defined, where appropriate, in the Penal Code):

### **Assault and Battery**

- Assault with a deadly weapon or force likely to produce great bodily injury
- Unreasonable physical constraint, or prolonged or continual deprivation of food or water

### **Sexual Assault**

And, the use of a "physical or chemical restraint or psychotropic medication" under any of the following conditions:

- For punishment.
- For a period significantly beyond that for which the restraint or medication is authorized by a physician licensed in California who is providing medical care to the elder or dependent adult.
- For any purpose not consistent with that authorized by the physician. (WIC § 15610.63)

### **Discretionary Reporting**

Any mandated reporter who has knowledge of, or reasonably suspects that, types of elder or dependent adult abuse for which reports are not mandated have been inflicted upon an elder or dependent adult or that his or her emotional well-being is endangered in any other way, may report the known or suspected instance of abuse. (WIC § 15630©[1]) Types of elder or dependent adult abuse other than physical abuse include: neglect, abandonment, fiduciary abuse, other treatment with resulting physical harm or pain or mental suffering, intimidation or cruel punishment, isolation, physical restraint of an elder or dependent adult for the purpose of preventing him or her from meeting with visitors, false imprisonment, deprivation by a care custodian of goods or services necessary to avoid harm or mental suffering.

**"Neglect"** means the negligent failure of a person having the care or custody of an elder or dependent adult to exercise that degree of care which a reasonable person in a like position would exercise. Neglect includes, but is not limited, to the following:

- Failure to assist in personal hygiene, or in the provision of food, clothing or shelter.
- Failure to provide medical care for physical and mental health needs. No person shall be deemed neglected or abused for the sole reason that he or she voluntarily relies on treatment by spiritual means through prayer alone in lieu of medical treatment.
- Failure to protect from health and safety hazard.
- Failure to prevent malnutrition. (WIC § 15610.57)

### **Person Required to Report**

An elder or dependent adult "care custodian," "health practitioner" or employee of an adult protective service agency or local law enforcement agency is required to report known or suspect *physical* abuse.

**"Care custodian"** means an administrator or an employee (except person who do not work directly with elders or dependent adults as a part of their official duties, including members or support staff and maintenance staff) of the following public or private facilities when the facilities provide care for elders or dependent adults.

- Twenty-four-hour health facilities Sections 1250, 1250.2, 1250.3)
- Clinics
- Home health, agencies
- Adult day health centers
- Certain educational institutions
- Sheltered workshops
- Camps
- Community care and residential care facilities (H&S 1502, 1569.2)
- Respite care facilities
- Foster homes
- Regional centers for persons with developmental disabilities
- State Department of Social Services and state Department of Health Services licensing divisions
  - Offices of Patients' Rights Advocates
  - Office of long-term care ombudsman
  - Offices of public conservators and public guardians any other protective or public assistance agency that provides health

services or social services to elders or dependent adults

**"Health practitioner"** means a physician, psychiatrist, psychologist, dentist, resident intern, optometrist, podiatrist, chiropractor, licensed nurse (including registered and licensed vocational nurses), dental hygienist, licensed clinical social worker, marriage, family and child counselor and trainee or intern, an emergency medical technician I or II, paramedic, psychological assistant, state or county public health or social service employee who treats an elder or dependent adult for any condition, a coroner, or a religious practitioner who diagnoses, examines or treats elders or dependent adults.

**"Adult protective services agency"** means a county welfare department, except person who do not work directly with elders or dependent adults as part of their official duties, including members of support staff and maintenance staff.

**"Local law enforcement agency"** means a city police or county sheriff's department or a county probation department.

### **Persons Permitted But Not Required to Report**

Welfare and Institutions Code section 15631(a) permits, but does not require, reporting from any person who has knowledge of or reasonably suspects that and elder or dependent adult has been the victim of abuse.

**"Reasonable suspicion"** means that it is objectively reasonable for a person to entertain such a suspicion, based upon facts that could cause a reasonable person in a like position, drawing when appropriate from his or her training and experience, to suspect abuse. (WIC § 15610.65)

### **Reporting Procedure**

A telephone report, followed by a written report within two working days, must be made, to either the long-term care ombudsman coordinator or to local law enforcement when abuse is alleged to have occurred in a long-term facility, or to either the county adult protective services or to a local law enforcement agency when the abuse is alleged to have occurred anywhere else. (WIC § 15630[b][1][3]) The report should include the name of the person making the report, the name and age of the elder or dependent adult, the present location of the elder or dependent adult, the names and addresses of family members or any other person responsible for the elder or dependent adult's care, if known, the nature and extent of the elder or dependent adult's condition, the date of the



incident, and any other information, including information that led that person to suspect elder or dependent adult abuse requested by the agency receiving the report. (W&I Section 15630[e])

### **Immunity**

No care custodian, health practitioner or employee of an adult protective service agency or a local law enforcement agency who reports a known or suspected instance of elder or dependent adult abuse shall be civilly or criminally liable for any report required or authorized by this article. Any other person reporting a known or suspected instance of elder or dependent adult abuse shall not incur civil or criminal liability as a result of any report authorized by this article, unless it can be proven that a false report was made and the person knew that the report was false. (WIC § 15634[a])

### **Sanctions**

Any person who fails to report an instance of elder or dependent adult abuse, as required by this article, is guilty of a misdemeanor and shall be punished by imprisonment in the county jail not exceeding six months, by a fine of not exceeding one thousand dollars (\$1,000), or by both that fine and imprisonment. (WIC § 15634[d])

### **Employee acknowledgement of Reporting Obligations**

Any person who enters into employment on or after January 1, 1995, as a care custodian, health practitioner, or with an adult protective services agency or a local law enforcement agency, prior to commencing his or her employment and as a prerequisite to that employment shall sign a statement on a form, that shall be provided by the prospective employer, to the effect that he or she has knowledge of Section 15630 and will comply with its provisions. (WIC § 15659[a])

### **LAWS & REGULATIONS**

- California Welfare & Institutions Code §§ 15630-15632- Elder Abuse and Dependent Adult Abuse Civil Protection Act
- California Welfare & Institutions Code § 15700 Protective Placements and Custody of Endangered Adults
- California Welfare & Institutions Code §§ 15703-15705.40 – Protective Services
- California Penal Code § 368 – Crimes Against Elders and Dependent Adults