

Guidance and Procedures Number: 51

Title: Reporting Suspected Abuse or Neglect of Children, Elderly Individuals, and Dependent Adults

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I. Introduction

California law requires certain statutorily defined categories of persons (“mandated reporters”), including, but not limited to, licensed health practitioners, to report to appropriate authorities the known or reasonably suspected abuse or neglect of a child, elder, or dependent adult.

California law provides immunity from liability for a mandated reporter who complies with his or her reporting obligations, and also provides a more limited immunity for non-mandated reporters who notify authorities of suspected child, elder or dependent adult abuse or neglect. A mandated reporter who fails to report a known or reasonably suspected incident of child, elder, or dependent adult abuse or neglect may be subject to criminal fines and penalties.

A mandated reporter must report to appropriate authorities when, in the course and scope of his or her employment or professional capacity, he or she knows of, or reasonably suspects, that a child, elder or dependent adult has been the victim of abuse or neglect. Further, except as otherwise provided by law, a mandated reporter must report to appropriate authorities when told by an elder or dependent adult that he or she has experienced behavior, including an act or omission, that constitutes abuse or neglect, including physical abuse, abandonment, isolation, or financial abuse. A mandated reporter also must report an injury that indicates possible abuse of an elder, dependent adult or child or if they have personally treated a patient with injuries from an apparent assault.

University investigators should familiarize themselves with the statutory definitions of the terms “abuse” and “neglect,” and the procedures for reporting incidents to appropriate authorities. A summary of several of the key statutory definitions is provided below.

A University investigator who knows of, or reasonably suspects neglect or abuse of a child, elder, or dependent adult while engaged in University approved research, and who is otherwise classified as a mandated reporter under California law (e.g., is a licensed physician and surgeon), must report such abuse or neglect to appropriate authorities, unless otherwise directed by University Counsel, Hospital Counsel or Campus Counsel. A University investigator who is not otherwise classified as a mandated reporter under California law, and who knows or reasonably suspects that a child, elder, dependent adult has been abused or neglected, should seek guidance from University Counsel, Hospital Counsel or Campus Counsel and Risk Management to determine an appropriate course of action. Investigators also must report such incidents of abuse or neglect to the responsible University IRB.

Investigators also are reminded that state law periodically changes and does vary from state to state. Investigators conducting research outside of California should familiarize themselves with the applicable local reporting requirements.

II. Definitions

Abuse: intentionally or recklessly causing or attempting to cause bodily injury or causing reasonable apprehension of imminent serious bodily injury to himself, herself, or another.

Abuse of an elder or a dependent adult means: physical abuse, neglect, financial abuse, abandonment, isolation, or other treatment with resulting physical harm or pain or mental suffering, or the deprivation by a care custodian of goods or services that are necessary to avoid physical harm or mental suffering.

Child: a person under the age of 18 years.

Child abuse or neglect includes: sexual abuse, sexual exploitation, other physical or emotional abuse, severe or general neglect of the child's needs (food, clothing, shelter, medical care, and willful cruelty or unjustifiable punishment of a child).

Child care custodian: includes teachers, administrative officers, supervisors of child welfare or attendance, or certified pupil personnel employees of any public or private school; administrators of a public or private day camp; licensed day care workers; administrators of community care facilities licensed to care for children; headstart teachers; licensing workers or licensing evaluators; public assistance workers; employees of a child care institution including, but not limited to, foster parents, group home personnel, and personnel of residential care facilities; and social workers or probation officers.

Confidentiality: The identity of persons filing reports is confidential, but may be made known to appropriate licensing, law enforcement, and protective service agencies.

Dependent adult: any person between the ages of 18 and 64 years residing in California, who has physical or mental limitations that 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. It includes all such persons admitted to a 24-hour health facility.

Elder: any person residing in California who is 65 years of age or older.

Health care practitioners required to report include: licensed physicians, surgeons, psychiatrists, psychologists, dentists, residents, interns, podiatrists, chiropractors, licensed nurses, dental hygienists, optometrists, social workers and associate clinical social workers, and any other person who is currently licensed under Division 2 of the California Business and Professions Code. They also include marriage, family and child counselors, emergency medical technicians, paramedics, and others certified under Division 2.5 of the Health and Safety Code, psychological assistants, marriage, family and child counselor trainees and interns, county public health employees who treat children for venereal disease or any other condition, and coroners, medical examiners, and others who perform autopsies.

Immunity from liability and legal fees: Reports of child or elder abuse/neglect are confidential. In addition, health professionals are immune from civil or criminal liability for making required reports. Other individuals who file reports (but who are not required to do so) are immune if they acted in good faith. Health professionals who are sued for filing a required report of child or elder abuse/neglect will be reimbursed up to \$50,000 for legal expenses incurred while defending the suit, if the judge dismisses the action or if they prevail at trial.

Medical practitioner: includes physicians and surgeons, psychiatrists, psychologists, dentists, residents, interns, podiatrists, chiropractors, coroner, licensed nurses, dental hygienists, or any other person who is licensed under Division 2 (commencing with Section 500) of the Business and Professions Code.

Non-medical practitioner: includes state or county public health employees who treat minors for venereal disease or any other condition; coroners; paramedics; marriage, family, or child counselors; and religious practitioners who diagnose, examine, or treat children.

Neglect of an elder or dependent adult means: the negligent failure of any person having the care or custody of an elder or a 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:

- 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;
- failure to protect from health and safety hazards; and
- failure to prevent malnutrition.

Protection from liability: No health professional or other mandated reporter will be subject to civil or criminal liability for filing a report of known or suspected abuse. Nonmandated reporters are protected as well, unless it is shown that the person knowingly filed a false report.

Reasonable suspicion: an objectively reasonable suspicion that a person would entertain, based upon facts that could cause a reasonable person in a like position, drawing when appropriate upon his or her training and experience, to suspect abuse or neglect.

Reporting Abuse or Neglect of a Child: Reports of known or suspected child abuse or neglect should be reported immediately, by telephone, to a child protective agency and be followed by a written report within 36 hours.

Reporting Abuse or Neglect of an Elder or Dependent Adult: Reports of known or suspected elder or dependent adult abuse or neglect should be reported immediately or as soon as practicably possible, by telephone, and by written report sent within two working days to the responsible agency identified in California Welfare and Institutions Code section 15630.

III. IRB Responsibility

The IRB is required to determine whether the risks to subjects are sufficiently minimized, informed consent is appropriate, vulnerable research subjects are adequately protected, and that privacy and confidentiality protections are adequate. If the IRB believes that a reportable observation or revelation of suspected harm to a child or other vulnerable person, such as a dependent adult or elder, might occur during the research, it may require that the informed consent statement include a warning of the limits to research confidentiality and advise subjects of the investigator's duty to report known or suspected incidents of abuse or neglect to appropriate authorities, including law enforcement.

V. Investigators' Responsibility

Each proposal for research that includes procedures which might lead to the disclosure of known or suspected child, dependent adult or elder abuse, OR will be conducted in subjects' homes (where signs of abuse may be observed), should include the following in the application for IRB review:

1. An investigator should explain to the IRB whether he/she is a "mandated reporter"¹ as defined by California law governing child or elder and dependent adult abuse and neglect..
2. An investigator who is not a mandated reporter should clarify whether he/she intends to report information about alleged, probable, or known sexual or physical abuse of a child, dependent adult or elder which may be disclosed during the research.²
3. The investigator should delineate in the IRB application any conditions under which confidential information might be disclosed, should specify what information will be reported to the authorities, and describe the procedures which will be followed. (i.e., who will make the report, to whom will the report be made, etc.)
4. The investigator should create and submit for IRB review an informed consent document that accurately reflects the conditions under which confidential information might be disclosed, including any voluntary disclosure by the researcher about alleged, probable, or known sexual or physical abuse of a child, dependent adult or elder.

The informed consent and assent form Confidentiality section should include a description and examples of all types of information which the research team will report to authorities. Examples:

Consent form: *Under California law, we will not maintain as confidential, information about known or reasonably suspected incidents of abuse or neglect of a child, dependent adult or elder, including, but not limited to, physical, sexual, emotional, and financial abuse or neglect. If any member of the program staff has or is given such information, he or she is required to report it to the authorities. [provide description and examples of types of information which would be reported ...]*

Assent Form: *We will not tell anyone what you tell us without your permission unless there is something that could be dangerous to you or someone else. If you tell us that someone is or has been hurting you, we have to tell that to people who are responsible for protecting children so they can make sure you are safe.*

¹ The California Child Abuse and Neglect Reporting Act (the Act) defines "child abuse and neglect" and identifies persons who are legally required to report known or suspected child abuse, termed "mandated reporters" [Cal Pen Code § 11165.7 (2004)]. California Welfare and Institutions Code section 15601 *et seq.* requires health practitioners, care custodians, clergy members, and county adult protective services employees and law enforcement agencies to report known or suspected cases of elder and dependent adult abuse and encourages community members in general to report as well.

² The Act further stipulates that in addition to "mandated reporters", "any other person who has knowledge of or observes a child whom he or she knows or reasonably suspects has been a victim of child abuse or neglect may report the known or suspected instance of child abuse or neglect ..." [Cal Pen Code § 11166(e) (2004)].

V. Certificate of Confidentiality

Under federal law, researchers may obtain a Certificate of Confidentiality from the NIH, which provides protection against compulsory legal disclosure of identifiable research information subject to the Certificate. Certificates of Confidentiality may be granted for studies collecting information that, if disclosed, could have adverse consequences for subjects or damage their financial standing, employability, insurability, or reputation. The NIH generally advises that despite general protection from compulsory legal disclosure, researchers may nevertheless voluntarily disclose information pursuant to state mandated reporting statutes, so long as the researcher advises the subject of his or her intention or obligation to report such information.

Certificates of Confidentiality were developed to encourage participation in research by granting certain protections to a subject divulging possible compromising information. A Certificate, however, does not exempt investigators from performing ethical research, nor does a Certificate allow investigators to abdicate their responsibility to act in the public good and protect vulnerable research subjects. Although a Certificate of Confidentiality potentially may protect an investigator from compulsory legal disclosure of child, elder and dependent adult abuse, in the absence compelling circumstances, the IRB may require investigators to report known or suspected incidents of abuse or neglect to appropriate authorities pursuant to California law. As a general practice, the IRBs expect investigators to inform subjects in the consent form of a mandated reporter's obligation and/or the investigator's intention, to report known or reasonably suspected incidents of child, elder, and dependent adult abuse or neglect to appropriate authorities.

VI. Abuse Reporting in Research Conducted in International Settings

International law may include different definitions of child, dependent adult or elder abuse and/or include legal penalties for such activities. Implicit in the conduct of research is an ethical obligation to take appropriate action in the event that such activities are disclosed to an investigator.

Investigators conducting research procedures which might lead to the disclosure of known or suspected child, dependent adult or elder abuse in international settings should consult with their professional associations and appropriate legal experts to identify related laws and responsibilities if such information is disclosed during the course of the research.

Investigators should describe this consultation in their application to the IRB, and should design their research materials, including their consent process, to respond to the identified laws and responsibilities.

Regulations:

Child Abuse Prevention and Treatment and Adoption Reform (CAPTA), US Code Title 42 Public Health and Welfare, Chapter 67. <http://www.access.gpo.gov/uscode/title42/chapter67.html>

Child Abuse and Neglect Reporting Act, California Penal Code, Sections 11164-11174.

Elder Abuse and Dependent Adult Civil Protection Act, California Welfare & Institutions Code, Section 15601.

Mandatory and Nonmandatory Reports of Abuse, California Welfare and Institutions Code, Sections 15630-15632.

Other Injuries to Persons, California Penal Code, Sections 346-368.

References:

National Institutes of Health Certificates of Confidentiality Kiosk.
(<http://www.grants.nih.gov/grants/policy/coc/index.htm>)