

# Emancipated Minors and Child Abuse | Abuse of a Spouse - Can It Ever Be Lawfully Reported By The Practitioner?

written by Richard Leslie | June 1, 2019

## **Avoiding Liability Bulletin - June 2019**

### **EMANCIPATED MINORS AND CHILD ABUSE**

In last month's Avoiding Liability Bulletin, I wrote about child abuse reporting laws and the circumstances under which a failure to report would constitute a crime. The example given in the [May 2019 article](#) presented facts which indicated that the practitioner did not have a good grasp on his or her child abuse reporting duties. Another circumstance that could lead to some confusion for the unwary is when the person being abused is an emancipated minor – emancipated under state law, often by court order. Each state's laws will vary with respect to the age at which a minor can become emancipated and the details regarding the proof necessary to obtain the court's approval for emancipation. Some minors may be emancipated by operation of law – for example, when a minor is lawfully married or on active duty in the U.S. Armed Forces.

The various state laws also explain what emancipation means and its consequences; that is, they specify the right of the emancipated minor to act as, and to be lawfully considered an adult for specified but limited purposes. For example, the law may specify that an emancipated minor will be treated as an adult for purposes of entering into a valid contract, for obtaining medical or other health care without parental consent, knowledge, or liability, to be free from parental control, to make a will, to sue and be sued, to establish residence, to enroll in a school or college, and more. In California, a minor who is at least fourteen years of age and who meets the requirements of the statute may be declared an emancipated minor.

A question sometimes arises as to whether an emancipated minor remains a child for purposes of the child abuse reporting law. Reference must be made to the child abuse reporting law and the emancipation statutes to determine whether a child abuse report must still be made despite the emancipation. In California, the child abuse reporting law defines "child" as a person under the age of eighteen. There are no exceptions to that clear definition. As for the emancipation statutes, there is no indication that emancipation of the minor means that the minor is treated as an adult for purposes of the child abuse reporting law. Thus, if a mental health practitioner in California knows or reasonably suspects (while acting in his or her professional capacity or within the scope of his or her employment) that an emancipated minor has been abused, a report would likely be required. What is the law in your state?

## **ABUSE OF A SPOUSE - CAN IT EVER BE LAWFULLY REPORTED BY THE PRACTITIONER?**

Does the law in your state of practice require the reporting of, for example, the fact of serious physical injury if a mental health practitioner knows or reasonably suspects that a client has been abused or assaulted by his or her spouse? In California, certain health practitioners employed in a health facility, clinic, physician's office, and elsewhere have a reporting duty with respect to spousal abuse and other physical injuries to patients under specified circumstances, but licensed mental health practitioners generally do not. When the legislation was initially proposed, it fully applied to mental health practitioners, but legislators eventually recognized the special need for, and importance of, confidentiality in the psychotherapist-patient relationship. The Legislature made the law applicable only to those situations where medical services are being provided for a physical condition.

While confidentiality usually applies, the patient can of course decide, with the help and support of the practitioner, whether he or she wants to report the abuse to law enforcement. There may be scenarios or circumstances where the practitioner believes that a report should be made, but is properly reluctant to tell the patient what to do – it is the patient's decision. Because of the duty of confidentiality, the practitioner would not ordinarily make the report, unless state law required it. However, there may be rare or unusual circumstances encountered where a report could arguably be mandated by the state laws that deal with the reporting of “dependent adult” (or “vulnerable adult”) abuse, and possibly child abuse. In such cases, the practitioner would arguably not be violating the confidentiality laws, but would be complying with a mandated reporting law – and therefore protected by the immunities granted in that law.

Child abuse and elder abuse reporting issues generate much attention, while dependent or vulnerable adult abuse may be somewhat overlooked. Under California law, a “dependent adult” is, among other things, a person residing in California, between the ages of 18 and 64, 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 (emphasis mine). Circumstances may occur where a treating practitioner believes that the abused spouse being treated has “mental limitations” (perhaps a long-existing severe or serious mental illness or disorder) that prevent the patient from taking protective action by reporting the abuse to law enforcement. “Mental limitations” is not defined in that law, thus providing room for interpretation. In another state, it is a “mental impairment” that might prevent vulnerable adults from protecting themselves from abuse, and that state law provides that vulnerable adults are not necessarily individuals with “disabilities.”

Perhaps some part of the definition of a dependent or vulnerable adult in the various state statutes will be applicable in cases involving physical abuse of a spouse. Courts may interpret such statutes liberally in order to fulfill their purposes – protection of the vulnerable. If the definition is unclear or ambiguous, consulting by telephone with Adult Protective Services (or the agencies where dependent adult reports are to be made) and documenting the content of the phone call can provide some support for the decision ultimately made. Some state reporting laws may require a report of child abuse (e.g., child

endangerment), such as where physical abuse of a spouse occurs in front of a child or in a household where a child resides. Such a law would provide another possible avenue for the practitioner to make a report of the physical abuse of the spouse (indirectly through the child abuse report) and enjoy the protection of specified immunities.

Does the "dependent adult" abuse reporting law in your state define the term in a manner that might support making a report (under some circumstances) when a physical injury has been caused by spousal abuse or assault (assuming there is no spousal abuse reporting law for mental health/counseling professionals of your licensure)? Can you imagine a situation where you might want to report an incident of physical abuse of a patient despite the desire of the abused spouse to not make a report? Have there been successful efforts in your state of practice to require the reporting of spousal abuse by mental health practitioners under specified conditions? Does the child abuse reporting law allow or require the reporting of child abuse when physical abuse of a spouse is committed in the presence of a minor or otherwise?