

Nurses and Mandatory Reporting Laws

written by Nancy Brent | August 31, 2013

Avoiding Liability Bulletin - April 2013

Federal and state laws require that certain individuals, particularly those who work in health care, with the elderly, with children, and other vulnerable populations, have an affirmative duty to report to a specified state agency when violence occurs against those populations.

Nurses are listed in most, if not all, mandatory reporting statutes. Statutes include child abuse and neglect reporting statutes, medical neglect of children and the elderly, elder abuse in the community or in nursing homes reporting laws, and domestic violence.

Reporting statutes have certain conditions and protections the reporter must meet and possesses in order to ensure that the reporting is not done “willy-nilly”. Conditions may vary slightly but most reporting statutes include that the mandated reporter:

1. Have a “good faith belief” or a “reasonable suspicion” that an injury or injuries are the result of abuse or neglect;
2. The reporter enjoys immunity from civil, criminal and professional licensure actions if the report meets criteria #1;
3. “Good faith” is a presumption that attaches to all reports and must be rebutted by another (e.g., family member, alleged victim); and
4. Provides that the report is made confidentially so that the mandated reporter’s identity is not made public. 1

When a mandatory duty to report violence against an individual or individuals exists, there is no exception to the directive: one must report without fail. This translates into no excuse for not doing so. As a result, nurse-patient confidentiality, another staff member or administrator telling you not to report your concerns, or a family member pleading with you not to report your observations do not affect your duty to report.

Indeed, if you as a nurse fail to report an instance of violence when required to do so, you could face professional disciplinary action by the state board of nursing, a loss of any certifications you hold (e.g., certification as a school nurse), and criminal prosecution (usually a misdemeanor). 2

So, what should you do when you suspect that abuse and/or neglect is occurring with one of your patients? Some guidelines to consider include:

- Watch, look and listen to your patient. Gather as much information as you can about the patient’s concerns;

- Assess the patient constantly for any signs of physical abuse, mental anguish, fear, financial abuse or unusual behavior;
- Document your observations and conversations pursuant to your facility or agency's policy and if forms are required, use them;
- Share your concerns with the individual identified in your facility or agency policy to do so (e.g., CNO, Administrator, Risk Manager);
- Visit websites in your state that deal with reporting abuse and neglect to obtain guidance, especially in the event your concerns are not supported by your agency or facility; most have direct hot-lines for you to report your concerns without any agency support;
- Consult with a nurse attorney or attorney to help guide you with the reporting, especially if you are not supported by your employer;
- If you are in home health nursing, in the ED, or in a long-term facility, and you or your patient is threatened, either of your lives are at risk, or injury is a possibility, call security (if available) and 9-11; and
- When filing your report, do so accurately and completely, including all content the agency report requires.

FOOTNOTES

1. Nancy J. Brent (2001), "Issues Related To Violence", *in* Nurses And The Law: A Guide To Principles And Applications. 2nd Edition. Philadelphia: W.B. Saunders Company, 280-283.
2. Id.

GENERAL REFERENCES

1. Kathy Karageorge and Rosemary Randall (Office on Child Abuse And Neglect, Children's Bureau) (2008). The Role Of Professional Child Care Providers In Preventing And Responding To Child Abuse. Available at: <https://www.childwelfare.gov/pubPDFs/childcare.pdf>. Accessed February 24, 2013.
2. Center Of Excellence On Elder Abuse And Neglect. University of California, Irvine, School of Medicine, at: <http://www.centeronelderabuse.org/> . Accessed February 24, 2013.

DISCLAIMER

THIS BULLETIN IS FOR EDUCATIONAL PURPOSES ONLY AND IS NOT TO BE TAKEN AS SPECIFIC LEGAL OR ANY OTHER ADVICE BY THE READER. IF LEGAL OR OTHER ADVICE IS NEEDED, THE READER IS ENCOURAGED TO SEEK SUCH ADVICE FROM A COMPETENT PROFESSIONAL.

REFERENCES