

Abuse Of Dependent Adult: Facility Administrator Convicted, Failed To Report Incident With Staff.

In a recent opinion, the California Court of Appeal applied the state's law on mandatory reporting of adult abuse to an administrator of a skilled nursing facility for adult psychiatric patients who failed to report a staff member who placed a patient in a choke hold after the patient refused to stand down from aggressive behavior toward a nurse.

Mandatory Reporter

Each state has its own definition of a mandatory reporter, who by law must report abuse or suspected abuse of a vulnerable adult to protective services and/or law enforcement. These definitions as a general rule include nurses, with respect to patients who are under their care.

Failure to Report Abuse Criminal Offense

A mandatory reporter must report known or suspected abuse to proper authorities who are specified by state law. State law may say it is adult protective services, and give a phone number for the reporting hotline, and/or say that local law enforcement is to be notified.

A mandatory reporter can be charged with a serious criminal offense for failing to report abuse as required by law.

Overreaction by a staff member in an institution for the mentally ill, involving physical contact that could produce physical injury, is abuse and must be reported to authorities.

By law, certain healthcare professionals have the mandatory duty to report abuse of dependent adults.

In California the definition of a mandatory reporter of abuse is very broad, including any staff of any public or private institution that cares for dependent adults.

The legal definition of what must be reported is also very broadly worded. It includes actual abuse that has been witnessed directly, abuse that has been reported to the mandatory reporter and abuse that is suspected to be occurring or to have occurred, provided there is a reasonable basis behind the reporter's suspicion of abuse.

CALIFORNIA COURT OF APPEAL
February 18, 2005

Staff Member Overreacted Court Sees Abuse

Mandatory Duty to Report

The events occurred in a skilled nursing facility providing long-term care to adults disabled by psychiatric problems. The patients qualified as dependent adults.

A nurse intervened in an argument between two patients. She sent the non-aggressor to her room. A male staff member then moved in and began trying verbally to intimidate the aggressor patient to stand down. Both the patient and the staff member became more agitated. Then the staff member put the patient in a choke hold. It did not produce unconsciousness or any visible injury.

A report of the incident went from the nurses to the director of nursing to proper authorities. It resulted in criminal charges being filed against the administrator for not reporting abuse by the staff member.

Injury Not Required

Actual injury is not required for conduct to amount to abuse that must be reported. The potential to produce injury, physical or psychological, is all that is required. A choke hold is not appropriate in these circumstances and can cause injury or death. A choke hold is an example of plainly abusive conduct, the court said.

A mandatory reporter need not actually witness abuse or its effects, to be required to report it. Reasonable suspicion is all that is required. The fact the perpetrator is also a caregiver and a subordinate or co-worker is also no defense to the mandatory duty to take action. **People v. Davis**, 126 Cal. App. 4th 1416, 25 Cal. Rptr. 3d 92 (Cal. App., February 18, 2005).

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