

SAN MATEO COUNTY  
MENTAL HEALTH SERVICES DIVISION

DATE: March 22, 2001

MENTAL HEALTH POLICY: MH 01-03

SUBJECT: Assaults on Clients: Suspected or Reported

AUTHORITY: California Welfare and Institution Codes 15600 –15659  
Elder/Dependent Adult Abuse

California Penal Code Section 11164-11174.3  
Child Abuse

California Penal Code Section 11160 – 11163  
Assaultive and Abuse Conduct of Adults

AMENDED: July 7, 2003

ATTACHMENTS

- A. Dependent Adult or Elder Abuse Reporting Agreement (for Employees)
- B. Child Abuse Reporting Agreement (for Employees)
- C. Table - Mandated Reporting of Dependent Adult and Elder Abuse
- D. Emergency and Mandated Phone Numbers for Reporting Dependent Adult/Elder Abuse
- E. Police Phone Numbers for Reporting Purposes (Non Emergency)
- F. Report of Suspected Dependent Adult/Elder Abuse
- G. Table - Mandated Reporting of Child Abuse
- H. Emergency and Mandated Phone Numbers for Reporting Child Abuse
- I. Report of Suspected Child Abuse
- J. Community Resources Crisis Lines
- K. Instructions for Residential Care Facilities

POLICY

All reports or suspicions that an incident of assault and/or abuse has occurred to a client who is served by San Mateo County Mental Health Services Division shall be immediately investigated and all necessary steps taken to help the client. If mandated, a report to local law enforcement officials or other legally designated agencies in accordance with California Law will be made promptly, as delineated in this policy. This policy applies to all county mental health staff and to contracted providers of community based mental health services and/or residential care.

## PURPOSE

This policy serves two purposes: to provide information and guidance for staff, community based mental health agencies and residential providers of San Mateo County Mental Health Services, who are aware or suspicious of abuse and/or assault on a client, and to remind them of mandatory reporting responsibility.

Reports or suspicions that a client has experienced recent physical or sexual abuse must be responded to as a crisis situation requiring immediate intervention. The intent of the intervention is to help the client feel safe and be safe, assure timely and appropriate investigation, comply with all legal mandates, and offer sensitive comprehensive services to the client/family.

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## PROCEDURE

### I. GENERAL

#### A. CONFIDENTIALITY

1. Although abuse reporting can be mandated by law, caution must be taken to protect the client's right to confidentiality to the greatest extent allowed.
2. Clients may need to be reminded that information can be released without their consent if they report evidence to suggest that child, dependent adult, or elder abuse has occurred. (Refer to Application for Services and Consent to Treatment form, and to the Notice of Privacy Practices.)

#### B. DUTY TO REPORT

California state laws require reporting of abuse and/or sexual assault by mandated reporters in specified circumstances. It is the responsibility of professionals and paraprofessionals to know their reporting responsibilities under these laws. Failure to report could result in criminal liability, civil liability, and/or disciplinary action. The law further states:

- Welfare and Institutions Code, Section 15659: any person who enters into employment on or after January 1, 1995, as a care custodian or health practitioner, prior to commencing his/her employment and as a prerequisite to that employment shall sign a statement on a form, which shall be provided by the prospective employer, to the effect that he/she has knowledge of the statutory elder and dependent adult abuse reporting requirement and will comply with its provisions. This form will be maintained in the employee's personnel file (Attachment A).
- California Penal Code, Section 11166: any person who enters into employment on or after January 1, 1985, as a child care custodian, health practitioner, or with a child care agency, prior to commencing his or her employment, and as a prerequisite to that employment, shall sign a statement on a form provided to him or her by his or her employer to the effect that he or she has knowledge of the provisions. This form will be maintained in the employee's personnel file (Attachment B).

#### C. WHEN TWO OR MORE PERSONS ARE AWARE OF THE SAME INSTANCE OF ABUSE

1. If two or more persons are aware of the same instance of abuse, they may select, by mutual agreement, a single person to be responsible for making the telephone report and making and signing the written report.

2. If one of these persons knows that the designated person has failed to report, that person must thereafter make the report.

D. DOCUMENTATION

1. In addition to reporting, clinicians should document the incident and that an abuse report was filed.
2. A copy of the abuse report should be filed in the restricted area of the client's chart (because this report may contain unverified information).
3. A critical incident report should be sent to Mental Health Administration.

E. CONSULTATION

When a mandated reporter becomes aware of an incident, he/she:

- must inform his/her supervisor immediately or as soon as possible of the incident.
- is encouraged to consult with county or agency management, Adult Protective Services or Child Protective Services concerning his/her reporting obligations.

F. NOTIFICATION

1. In situations where the client is conserved, the conservator shall be notified.
2. Encourage the client to allow contact with Patient's Rights Advocacy, so that additional support can be provided.

G. COMMUNITY MENTAL HEALTH AGENCIES

Agencies shall develop and maintain a current assault and/or abuse policy specific to their own organization; such policy shall reference staff training.

**II. ABUSE/ASSAULT OF ELDERS AND DEPENDENT ADULTS**

A. CLINICAL CONSIDERATIONS

1. As specific situations occur, discuss with clients the legal and ethical obligation of reporting suspected abuse, and that abuse reporting is not protected by medical record confidentiality regulations.

2. Safety assessment: In all situations concerning assault and/or abuse, assess and take necessary immediate measures to ensure client's safety.
3. Follow-up: Provide support, counseling and or groups as indicated for abuse/trauma.

B. GENERAL

The Elder Abuse and Dependent Adult Protection Act imposes mandatory reporting requirements for abuse of elders and dependent adults. The reporting requirements for elder or dependent adults are identical. Abuse of an elder or dependent adult is a criminal act.

C. DEFINITIONS

1. "Abuse of an elder or a dependent adult" means any of the following: behavior, including an act or omission, that constitutes physical abuse including sexual assault, neglect, financial abuse, abandonment, isolation, abduction, 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.
2. "Care custodian" means an administrator or an employee of public or private clinics or agencies, or persons providing care or services for elders or dependent adults, including members of the support staff and maintenance staff.
3. "Dependent Adults" are persons residing in California between the ages of 18 and 64 years, who have physical or mental limitations that restrict their ability to carry out normal activities or to protect their rights including persons who have physical or developmental disabilities or whose physical or mental abilities have diminished because of age. **This also includes any person between the ages of 18 and 64 who is admitted as an inpatient to a 24-hour health facility.**
  - The determination of whether a specific adult meets the criteria for dependant adult requires clinical evaluation on a case-by-case basis.
  - If unclear whether a client meets the definition of dependent adult, consult with your supervisor.
4. "Elders" are persons in California 65 years of age or older.
5. "Mandated Reporters" (for the purposes of this policy) mean any person who has assumed full or intermittent care or custody of an adult or

dependent adult whether or not that person receives compensation, including administrators, supervisors, and any licensed staff of a public or private facility that provides care or services for elder or dependent adults, or any elder or dependent adult care custodian or health practitioner. The law names additional mandated reporters (see W&I Code Section 15610.17 for full list).

6. “Reasonable suspicion” means 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.

D. REPORTING

1. When to report:

When any mandated reporter, who in his or her professional capacity, or within the scope of his or her employment: (See table in Attachment C).

- has observed or has knowledge of an incident that reasonably appears to be physical abuse, mental suffering, abandonment, isolation, financial abuse, or neglect, or
- is told by an elder or dependent adult that he or she has experienced any of the above behaviors, or
- reasonably suspects that any of the above have occurred.

2. How to report:

- **Both a written and telephone report must be made to the appropriate agency** based on location of client (Attachment D):
  - Clients residing in a Long Term Care facility or in a residential care facility should have reports filed either with the Ombudsman or police (Attachment E).
  - Clients living independently or in an Acute Care Facility should have reports filed either with Adult Protective Services or police (these agencies co-report).
- A report must be made of the known or suspected instance by telephone immediately or as soon as practically possible.

- A written report, State of California – Health and Welfare Agency Form SOC 341 (Attachment F) must be sent within two working days.

3. Failure to report:

Any mandated reporter who fails to report an incidence of known or reasonably suspected assault, abuse or neglect of an elder or dependent adult as required by law is guilty of a misdemeanor punishable by up to six months confinement in a county jail or by fine of one thousand dollars or by both fine and punishment.

E. EXCEPTIONS TO MANDATORY REPORTING REQUIREMENT

Mandated reporters are **not required** to report abuse when **all four** of the following conditions exist:

- When the mandated reporter has been told by an elder or dependent adult that he or she has experienced behavior constituting physical abuse, abandonment, isolation financial abuse or neglect,  
and
- The mandated reporter is not aware of any independent evidence that corroborates the statement that the abuse has occurred,  
and
- The elder or dependent adult has been diagnosed with a mental illness or dementia, or is the subject of a court-ordered conservatorship because of a mental illness or dementia,  
and
- The mandated reporter reasonably believes that the abuse did not occur.

III. **CHILD ABUSE**

A. CLINICAL CONSIDERATIONS

1. As specific situations occur, discuss with clients the legal and ethical obligation of reporting suspected abuse, and that abuse reporting is not protected by medical record confidentiality regulations.
2. Safety assessment: In all situations concerning assault and/or abuse, assess immediate danger to child and take necessary measures to ensure child's safety.
3. The following may raise the index of suspicion for abuse or neglect:



- Lack of care or poor hygiene
- Malnourishment
- Injuries at different stages of healing
- Medical neglect of a physical condition
- Caregiver unresponsiveness to child's needs
- Presence of sexually transmitted diseases

4. Reporting considerations

- Discuss mandated reporting with client/guardian if possible or appropriate
- If disclosure involves an offending adult, give opportunity for the offender to immediately call in the report in your presence. (This does not change the mandated obligation to report.)

B. GENERAL

The California Penal Code imposes mandatory reporting requirements for the reasonable suspicion of child abuse. Abuse of a child is a criminal act.

C. DEFINITIONS

1. "Child" means a person under the age of 18.
2. "Child Abuse" means a physical injury that is inflicted by other than accidental means on a child by another person. Child abuse includes:
  - Unlawful corporal punishment or injury
  - Neglect
  - Willful cruelty or unjustifiable punishment including mental suffering
  - Sexual abuse
  - Abuse or neglect in out of home care
  - Child abuse does not include an injury caused by reasonable and necessary force used by a peace officer acting within the course and scope of his or her employment as a peace officer.
3. "Mandated Reporter" includes an administrator or employee of a public or private organization whose duties require direct contact and supervision of children, and the following: physician, surgeon, psychiatrist, psychologist, dentist, resident, intern, podiatrist, chiropractor, licensed nurse, marriage and family therapist, clinical social worker, any person who performs autopsies, a marriage and family therapist trainee, an unlicensed marriage and family therapist intern registered, or any other person who is currently

licensed under Division 2 (commencing with Section 500) of the Business and Professions Code.

4. “Reasonably suspects” 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/her training and experience, to suspect child abuse.

D. REPORTING

1. When to report:

A mandated reporter shall make a report if he/she in his/her professional capacity or within the scope of his or her employment has knowledge or observes a child whom he/she knows or reasonably suspects has been the victim of child abuse or neglect. (See table in Attachment G.)

2. How to report:

- **Both a telephone report and a written report must be made to Child Protective Services** (Attachment H).
- A telephone report is to be made immediately or as soon as is practically possible.
- A written report must be sent within 36 hours of receiving the information concerning the incident (Attachment I).

3. Failure to report:

Any mandated reporter who fails to report an incident of known or reasonably suspected child abuse or neglect as required by this section is guilty of a misdemeanor punishable by up to six months confinement in a county jail or by fine of one thousand dollars or by both fine and punishment.

IV. **ABUSE/ASSAULTS OF ADULTS  
(Other than Dependent and Elderly)**

A. CLINICAL CONSIDERATIONS

(Mental Health practitioners are exempt from mandated reporting, thus this policy will stress clinical considerations for abuse/assaults of adults).

1. Assess the situation for client safety.
2. Alerts for further assessment and/or interventions:

- Traumatic injuries and bruising
  - Unexplained injuries
  - Injuries inconsistent with the history given
  - Evasive responses
  - Delay in seeking medical care
  - Genital injuries
  - Repeated medical visits for vague complaints
3. Inform client that he/she can report the abuse to the local police department.
- Assist the client in making decisions regarding reporting.
  - Provide support to the client through the process.
  - Follow-up: Provide support, counseling and/or groups as appropriate.

B. SAFETY PLANNING

2. Assaults/Abuse

- It is imperative that the care provider inquire about a battered or abused client's safety. The severity of current or past injury is not a predictor of future violence, and many people minimize the danger they face.
- After assessing the situation, a plan for the client's safety should be discussed before they leave the clinic.
- Identify with the client where he/she will be living or if a place to stay is needed.
- Ask the client if he/she would like a family member to be notified.
- Extreme caution shall be taken not to violate the client's right to confidentiality.

2. Domestic Violence

- In the situation of domestic partner violence help the client develop an exit plan for where he/she could go during the middle of the night in an emergency, including what personal belongings to bring including financial documents, drivers license and social security numbers.

- Safety assessment: In all situations suspicious of domestic violence, assess and take necessary measures to ensure client's safety.
- Clients exhibiting signs of spousal or partner abuse should be advised of available crisis intervention services (Attachment J).
- Follow-up: Provide support, counseling and or groups as indicated for abuse.

### 3. Protection of Client When He/She Reports Sexual Assault

- General

**Any client who reports any type of sexual assault will be believed and immediate and necessary steps shall be taken until such time as an investigation leads to an alternate conclusion.**

- Immediate Action (For residential care facilities, see additional information on Attachment K).
  - Assess the client's immediate health and safety.
  - Initiate supportive treatment as indicated and insure that it is carried out.
  - Inform the client of his/her right to report an assault to the police. If the client chooses to make a report, provide assistance with this process.
  - Encourage the client to obtain medical help. This may include arranging a physical examination for evidentiary purposes and arranging transportation and assistance to an emergency room. (In the case of sexual assault, evidence must be collected within 72 hours of the assault.)
  - As much as possible stay with the client or provide other accompanying staff as needed to provide support.
  - When the client agrees to have an evidentiary examination, inform the client not to shower or change clothing until the examination is completed. (A "negative rape" or "negative physical findings" by no means indicates that there was not a rape. The fact that the exam is being done means that there is suspicion of rape but that there will have to be other evidence in order to convict.)

- In the situation of rape assure that the Keller Center for Family Violence Intervention (573-2623) is involved.
- Provide phone numbers of community services available (Attachment J).
- Help the client make any other necessary phone calls or arrangements.

C. MENTAL HEALTH PRACTITIONER EXEMPTION

A mandated reporter is a health practitioner providing medical services for a physical condition.

**Since mental health practitioners are not providing medical services for a physical condition, mental health practitioners are exempt from mandated reporting for adults who are neither dependent or elderly.**

V. **WHEN A CLIENT REPORTS ANOTHER CLIENT OR A STAFF PERSON AS AN ALLEGED PERPETRATOR**

A. GENERAL

1. Immediate action should be taken to ensure safety of the victim.
2. Follow all previous sections of this policy regarding mandatory reporting and safety planning.
3. Measures should be taken to protect the legal rights and well-being of the alleged perpetrator.
4. There shall be no contact between the client and his/her alleged perpetrator.
5. If the alleged perpetrator is a staff person, he/she may be placed on administrative leave per county or agency protocols until the investigation is completed.
6. The alleged perpetrator shall be informed that an appropriate report will be filed.
7. If the person accused is aware of the accusation, he/she should be informed that this is not a determination of guilt.

8. The alleged perpetrator should be provided with support and counseling consistent with his/her needs.
9. When feasible, the outcome of the investigation may be shared with the client(s) involved.

B. DOCUMENTATION

Any documentation done in the client's chart shall protect the confidentiality of the client and the alleged perpetrator.

Accepted: \_\_\_\_\_

Gale Bataille, Director  
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