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Chapter 34

Exhibit B

SUSPECTED ELDER OR DEPENDENT ADULT ABUSE

(Revised 02/16)

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Who Are Mandated Reporters of Suspected Elder or Dependent Adult Abuse?

Employees of a public or private agency working in specified occupations or providing “care and services for elders or dependent adults” are mandated reporters.

Authority: Welfare and Institutions Code, sections 15610.17 and 15630.

DOR Employees Who Are Mandated Reporters

All DOR employees who provide services to elderly or dependent adults are considered to be "care custodians" and are therefore mandated to report suspected abuse of elderly and dependent adults.

All DOR employees who are considered "health practitioners" are mandated reporters. Welfare and Institutions Code section 15610.37 defines “health practitioner” to mean a physician and surgeon, psychiatrist, psychologist, dentist, resident, intern, podiatrist, chiropractor, registered nurse, dental hygienist, licensed clinical social worker or associate clinical social worker, marriage and family therapist, licensed professional clinical counselor, or any other person who is currently licensed under Division 2 (commencing with Section 500) of the Business and Professions Code, any emergency medical technician I or II, paramedic, or person certified pursuant to Division 2.5 (commencing with Section 1797) of the Health and Safety Code, a psychological assistant registered pursuant to Section 2913 of the Business and Professions Code, a marriage and family therapist trainee, as defined in subdivision (c) of Section 4980.03 of the Business and Professions Code, an unlicensed marriage and family therapist intern registered under Section 4980.44 of the Business and Professions Code, a clinical counselor trainee, as defined in

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subdivision (g) of Section 4999.12 of the Business and Professions Code, a clinical counselor intern registered under Section 4999.42 of the Business and Professions Code, a state or county public health or social service employee who treats an elder or a dependent adult for any condition, or a coroner.

Authority: Welfare and Institutions Code, sections 15610, 15610.37, and 15630.

Who Is An Elderly Adult?

An elderly adult is any person residing in the state of California who is 65 years of age or older.

Authority: Welfare and Institutions Code, section 15610.27.

Who Is A Dependent Adult?

A dependent adult is defined as any person residing in California between the ages of 18 and 64 years, 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 with physical or developmental disabilities, or whose physical or mental abilities have diminished because of age.

The definition of dependent adult also includes any person between the ages of 18 and 64 years who is admitted as inpatient to certain a 24-hour health facility, such as hospitals, skilled nursing facilities, and treatment centers for chemical dependency.

As DOR consumers are eligible for vocational rehabilitation services because of a disability that limits normal activities, specifically constitutes or results in a substantial impediment to employment, DOR consumers are generally included in the definition of a “dependent adult” even though they may be independent by other terms.

Authority: Welfare and Institutions Code, sections 15610.23 and 15610.25.

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Does a Mandated Reporter Have an Individual Duty to Report Suspected Abuse of Elder or Dependent Adults?

Each mandated reporter has an individual duty to report suspected abuse of elder or dependent adults under specified circumstances. No supervisor or administrator shall impede or inhibit the reporting duties of a mandated reporter and no person making the report shall be subject to any sanction for making the report. Impeding or inhibiting a mandated report is a misdemeanor.

Authority: Welfare and Institutions Code, section 15630(f) and (h).

Duty to Protect Consumer Confidentiality Not Violated

The DOR may share confidential consumer information with law enforcement and Adult Protective Services without violating the DOR duty to protect the confidentiality of consumer information.

Authority: 34 CFR 361.38(e)(4) and (5); and, CCR, title 9, section 7143.

What Must Be Done Before Making a Mandated Report of Suspected Elder or Dependent Adult Abuse?

The DOR, as an employer, has the right to establish internal procedures that are consistent with the law for employees to follow in making reports.

Therefore, if a mandated reporter believes that he or she is required to make a mandated report of suspected abuse of an elderly or dependent adult to an outside agency, so long as the reporter may meet the deadlines for reporting, prior to making the report he or she should perform all of the following actions:

1. Notify his or her supervisor or other district supervisor in the absence of his or her supervisor.
2. Contact the DOR Legal Affairs Office for guidance to ensure that any changes in the law that may affect mandated reporter status or the obligation to report are followed.

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The DOR policy regarding consultation with a supervisor or DOR's Legal Affairs Office is intended to facilitate a report and should never inhibit reporting in a timely manner.

Authority: Welfare and Institutions Code, section 15630(f).

When Must a Mandated Report of Suspected Elder or Dependent Adult Abuse Be Made?

Any mandated reporter must make a mandated report of suspected elderly or dependent adult abuse if, in their professional capacity or within the scope of their employment, he or she:

- a) Has observed or has knowledge of an incident that reasonably appears to be physical abuse, abandonment, abduction, isolation, financial abuse or neglect;
- b) Is told by an elderly or dependent adult that he or she has experienced behavior, including an act or omission, constituting physical abuse, abandonment, abduction, isolation, financial abuse or neglect, including failure to exercise self care that a reasonable person in a like position would exercise; or,
- c) Reasonably suspects such abuse.

Welfare and Institutions Code section 15610.63 defines "physical abuse" to mean any of the following: (a) Assault, as defined in Section 240 of the Penal Code. (b) Battery, as defined in Section 242 of the Penal Code. (c) Assault with a deadly weapon or force likely to produce great bodily injury, as defined in Section 245 of the Penal Code. (d) Unreasonable physical constraint, or prolonged or continual deprivation of food or water. (e) Sexual assault, that means any of the following: (1) Sexual battery, as defined in Section 243.4 of the Penal Code. (2) Rape, as defined in Section 261 of the Penal Code. (3) Rape in concert, as described in Section 264.1 of the Penal Code. (4) Spousal rape, as defined in Section 262 of the Penal Code. (5) Incest, as defined in Section 285 of the Penal Code. (6) Sodomy, as defined in Section 286 of the Penal Code. (7) Oral copulation, as defined in Section 288a of the Penal Code. (8) Sexual penetration, as defined in Section 289 of the Penal Code. (9) Lewd or lascivious acts as defined in paragraph (2) of subdivision (b) of

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Section 288 of the Penal Code. (f) Use of a physical or chemical restraint or psychotropic medication under any of the following conditions: (1) For punishment. (2) For a period beyond that for which the medication was ordered pursuant to the instructions of a physician and surgeon licensed in the State of California, who is providing medical care to the elder or dependent adult at the time the instructions are given. (3) For any purpose not authorized by the physician and surgeon.

Welfare and Institutions Code section 15610.57 defines “neglect” to mean either of the following: (1) The negligent failure of any person having the care or custody of an elder or a dependent adult to exercise that degree of care that a reasonable person in a like position would exercise. (2) The negligent failure of an elder or dependent adult to exercise that degree of self care that a reasonable person in a like position would exercise. (b) Neglect includes, but is not limited to, all of the following: (1) Failure to assist in personal hygiene, or in the provision of food, clothing, or shelter. (2) Failure to provide medical care for physical and mental health needs. No person shall be deemed neglected or abused for the sole reason that he or she voluntarily relies on treatment by spiritual means through prayer alone in lieu of medical treatment. (3) Failure to protect from health and safety hazards. (4) Failure to prevent malnutrition or dehydration. (5) Failure of an elder or dependent adult to satisfy the needs specified in paragraphs (1) to (4), inclusive, for himself or herself as a result of poor cognitive functioning, mental limitation, substance abuse, or chronic poor health.

Authority: Welfare and Institutions Code, sections 15610.57, 15610.63, and 15630(b)(1).

Limited Exception for Physician and Surgeon, Registered Nurse or Psychotherapist

A mandated reporter who is a physician and surgeon, a registered nurse, or a psychotherapist, as defined in Section 1010 of the Evidence Code, shall not be required to report, pursuant to paragraph (1), an incident if all of the following conditions exist:

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- i. The mandated reporter has been told by an elder or dependent adult that he or she has experienced behavior constituting physical abuse, as defined in Section 15610.63, abandonment, abduction, isolation, financial abuse, or neglect.
- ii. The mandated reporter is not aware of any independent evidence that corroborates the statement that the abuse has occurred.
- iii. 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.
- iv. In the exercise of clinical judgment, the physician and surgeon, the registered nurse, or the psychotherapist, as defined in Section 1010 of the Evidence Code, reasonably believes that the abuse did not occur.

Authority: Welfare and Institutions Code, section 15630(b)(3)(A).

What is Considered Reasonable Suspicion of Elderly or Dependent Adult Abuse?

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

Refer to the following Welfare and Institutions Code sections for definitions of incidents of elder or dependent adult abuse:

- Abandonment – Section 15610.05
- Abduction – Section 15610.06
- Financial abuse – Section 15610.30
- Isolation – Section 15610.43
- Neglect – Section 15610.57
- Physical abuse, including sexual assault – Section 15610.63.

Authority: Welfare and Institutions Code, sections 15610.05, 15610.06, 15610.30, 15610.43, 15610.57, 15610.63, and 15610.65.

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Mandated Reporter Has No Duty to Investigate

A mandated reporter does not have a duty to investigate a known or suspected incident of abuse. Such investigation is to be conducted by the agency receiving the report. Law enforcement and Adult Protective Services are the proper authorities to investigate.

Authority: Welfare and Institutions Code, section 15630(b)(3)(B).

Examples of Instances Requiring a Report

The following are a few examples of instances requiring mandated reports of suspected elder or dependent adult abuse. These examples are not exhaustive.

A 65-year old consumer with a significant visual impairment tells his Rehabilitation Counselor that he has not received his Social Security check since he moved in with his sister, who is handling his finances and is not his payee. The consumer complains that he has no money to buy essentials.

A 47-year old consumer, who is deaf and has chronic depression as a result of being physically and sexually assaulted, discloses to her Rehabilitation Counselor that her husband uses drugs and hits her.

An 18-year old consumer, diagnosed with schizophrenia, lives in a board and care home. His teeth are in bad condition and he is dirty and very thin, but neither he nor the board and care home provider will discuss his situation with his Rehabilitation Counselor.

How is a Mandated Report of Suspected Elder or Dependent Adult Abuse Made?

A report of suspected abuse of an elder or dependent adult is made to the appropriate agency by telephone immediately or as soon as practically possible, followed by a written report within two working days.

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Refer to the [California Department of Social Services](https://www.cdss.ca.gov/inforesources/adult-protective-services) for additional information on how to report suspected abuse, at: <https://www.cdss.ca.gov/inforesources/adult-protective-services>. Online resources are available by selecting the Report Abuse link on the webpage.

Authority: Welfare and Institutions Code, section 15630(b)(1).

Immediate Telephone Report

The telephone report shall include the following, if known:

- Name of the person making the report.
- Name and age of the elder or dependent adult.
- Present location of the elder or dependent adult.
- Names and addresses of family members or any other person responsible for the elder or dependent adult's care.
- Nature and extent of the elder or dependent adult's condition.
- Date of the incident.
- Any other information, including information that led that person to suspect elder or dependent adult abuse, as requested by the agency receiving the report.

Authority: Welfare and Institutions Code, section 15630(b)(1) and (e).

Mandatory Written Report Within Two Working Days

A written follow-up report is made within two (2) working days by completing the mandatory Department of Social Services SOC341 REPORT OF SUSPECTED DEPENDENT ADULT/ELDER ABUSE form.

The SOC341 form can be printed from <https://www.cdss.ca.gov/Portals/9/FMUForms/Q-T/SOC341.pdf> or obtained from the local county Adult Protective Services office.

The original report of suspected elder or dependent adult abuse is sent to the agency that received the telephone report.

Authority: Welfare and Institutions Code, sections 15630(b)(1) and 15658(a)(1).

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Where is a Mandated Report of Suspected Elder or Dependent Abuse Made?

Typically, the mandated report is made to the local law enforcement agency or county Adult Protective Services agency. Exceptions include the following:

- If the individual with a disability resides in a state mental health hospital or a state developmental center, the report is made to designated investigators of the California Department of State Hospitals, California Department of Developmental Services, or to the local law enforcement agency.
- If the individual resides in a long-term facility (except those noted above), the report is made to the local ombudsman or local law enforcement agency.

If after reasonable efforts a mandated reporter is unable to submit an initial report by telephone to the agency called, the reporter shall call another agency listed above to assure a timely report.

Authority: Welfare and Institutions Code, section 15630(b)(4)(A) and (c)(2) and (3).

Retaining Copy of Mandated Report Outside Record of Services

Due to the confidentiality of mandated reports, including the filing of a mandated report, a mandated report shall not be included or referenced in an applicant's or consumer's record of services.

While a case note could be entered stating what consumer told staff or what staff observed (e.g., a bruise), the DOR shall not reference or include a copy of the confidential mandated report. By law mandated reports are confidential and even the subject of the report is not entitled to be advised of the report.

The mandated reporter shall consult with his or her supervisor as to where the report should be maintained securely and confidentially. If it is placed in the hard copy file, the mandated reporter shall include a

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cover sheet noting that the attached report is confidential and shall not be disclosed.

For further guidance, contact the DOR's Legal Affairs Office.

Authority: Welfare and Institutions Code, sections 15633 and 15633.5.

Who Must Report if Two Mandated Reporters are Present and Receive the Same Information?

When two or more mandated reporters are present and jointly have knowledge or reasonably suspect abuse that must be reported has occurred, the mandated report may be made, by agreement, by one of the two mandated reporters. The other mandated reporter must report if he or she becomes aware that the selected person failed to report as agreed.

If the other mandated reporter is not a DOR employee, the DOR employee should make a report to avoid potential liability should the other person fail to report.

Authority: Welfare and Institutions Code, section 15630(d).

Potential Liability for Mandated Reporters and Persons Impeding or Inhibiting Mandated Reporting

Failure to report or impeding or inhibiting a report of physical abuse, abandonment, abduction, isolation, financial abuse or neglect of an elder or dependent adult is a misdemeanor punishable by imprisonment in jail, fine, or both. If a mandated reporter intentionally conceals his or her failure to report, the failure to report is a continuing offense.

Authority: Welfare and Institutions Code, section 15630(h).

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Protections for Mandated Reporters

No mandated reporter of known or suspected elder or dependent adult abuse shall be civilly or criminally liable for making any required or authorized report.

Despite the immunity from liability, the possibility exists that claims or lawsuits may be brought against mandated reporters based on a required or authorized report. A mandated reporter who makes such a report in the course and scope of his or her employment with the DOR generally will be entitled, upon request, to legal representation defense provided by the DOR.

In other cases, to the extent a mandated reporter incurs costs as a result of a required or authorized report, the State Victim Compensation and Government Claims Board is authorized to review and approve payment for claims from mandated reporters for reasonable attorney fees and costs incurred in defending such actions up to the statutory maximum amount.

Authority: Welfare and Institutions Code, section 15634.

Discretionary Reports of Suspected Elder or Dependent Adult Abuse

Individuals who are not mandated reporters, or mandated reporters making reports of forms of abuse that they are not required to report, may make a discretionary report of suspected abuse.

Refer to [What Must Be Done Before Making A Mandated Report of Suspected Elder or Dependent Adult Abuse](#) section above.

Authority: Welfare and Institutions Code, sections 15630(c)(1) and 15631.

What Should Be Done Before Making a Discretionary Report of Suspected Elder or Dependent Adult Abuse?

Before making a discretionary report of suspected elder or dependent adult abuse, a discretionary reporter is required to perform all of the following actions to ensure applicable confidentiality requirements are met:

- Notify his or her supervisor or other district supervisor in the absence of his or her supervisor.
- Contact DOR Legal Affairs Office for guidance regarding the law.

Where is a Discretionary Report of Suspected Elder or Dependent Adult Abuse Made?

Discretionary reports are made to the county Adult Protective Services or local law enforcement agency, unless the suspected abuse occurred in a long-term care facility, in which case the report is made to the long-term care ombudsman program or local law enforcement.

If the suspected or alleged abuse or neglect occurred in a state mental hospital or a state developmental center, the mandated reporter may file a discretionary report to designated investigators of the [State Department of State Hospitals](http://www.dsh.ca.gov/) located at <http://www.dsh.ca.gov/> or the [State Department of Developmental Services](http://www.dds.ca.gov/) located at <http://www.dds.ca.gov/>, and also to the local law enforcement agency.

Authority: Welfare and Institutions Code, sections 15630(b)(E)(i), 15631(c)(2) through (5), and 15631.

Protection for a Discretionary Reporter of Suspected Abuse of Elder or Dependent Adults

Discretionary reporters are not civilly or criminally liable for making an authorized (discretionary) report of suspected abuse unless it is proven that a false report was knowingly made by the reporter.

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Discretionary reporters are not required to include their names when making a report.

Authority: Welfare and Institutions Code, sections 15631, 15634, and 15633.5(d).