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## **Physicians Often Fail to Report Suspected Elder Abuse**

A recent report finds that doctors in almost every state are required by law to report suspected elder abuse of their patients. But hardly any of them do, even if they fear that their silence may subject an elderly person to continued abuse at the hands of a caregiver. (*See article below outlining Mississippi's elder abuse law.*) Physicians report just 2 percent of the elder abuse and neglect cases recorded each year by state protective service agencies, according to medical and legal experts and recent articles published in medical journals. One study, published in 2005 in a journal focusing on geriatric medicine, says that the actual figure may be even lower. The lack of physician reporting is a huge problem, experts say, because as the elderly population continues to grow and doctors become ever more pressed for time in meeting the demands for care, more elder abuse will go undetected. Doctors are often the only people outside an elderly victim's home who have contact with the victim. If they don't blow the whistle, who will? "I think we have an ethical responsibility, a moral responsibility and we're shirking it," says Dr. Laura Mosqueda, director of geriatrics at the University of California, Irving College of Medicine, who is co-director of the school's Elder Abuse Forensic Center. "If you see signs that a person may have been abused, you need to ask: 'Has anybody hurt you? Are you afraid of anybody? How did this happen?' If the explanation doesn't fit with what you see, you need to probe further."

Source: Providence Journal (10 August 2008)

Full story:

[http://www.projo.com/news/content/PHYSICIAN\\_REPORTING\\_ELDERLY\\_08-10-08\\_S8B4NFJ\\_v39.3cd00b6.html](http://www.projo.com/news/content/PHYSICIAN_REPORTING_ELDERLY_08-10-08_S8B4NFJ_v39.3cd00b6.html)

**Copied below is our summary of the Mississippi Vulnerable Adults Act explaining rules for elder abuse reporting:**

### **ABUSE OF THE ELDERLY**

According to an April 2006 Houston Chronicle article: "The National Center on Elder Abuse, a Washington, D.C. clearinghouse for elder rights advocates, estimates there may be as many as 5 million victims of elder abuse a year. But it acknowledges no one knows for sure because there is no comprehensive data collection nationwide and because many seniors suffer in silence." Eileen Alt Powell, Associated Press, "*Financial abuse grows as elderly become targets / With population aging, more scams aimed at seniors*", The Houston Chronicle (April 17, 2006). The Mississippi Vulnerable Adults Act (MCA §43-47-1, -7) requires that any person, care facility or professional employee

who has knowledge of or reasonable cause to believe that a “vulnerable adult” has been the victim of abuse, neglect, or exploitation shall report the information to the Mississippi Department of Human Services (for home health agency reports) or the Mississippi Department of Health (for other care facility reports or reports by private persons). There are criminal penalties for such acts, and protective services may be obtained for adults who lack capacity to understand and consent to such services.

**What is a “vulnerable adult”?**

- Any person (child included) whose ability to perform the normal activities of daily living or to provide for his/her own care or protection is *impaired* due to a mental, emotional, physical or developmental disability or dysfunction, or brain damage or the infirmities of aging.
- Includes all residents or patients of a care facility.

**How does the law protect vulnerable adults?**

- The Act defines the crime, provides for mandatory reporting, and provides for protective services

**What is the crime?**

It is unlawful for any person to abuse, neglect, or exploit any vulnerable adult.

**What is abuse?**

- The willful or non-accidental infliction of physical pain, injury or mental anguish
- The unreasonable confinement of a vulnerable adult, by physical or drug-induced confinement
- The willful deprivation by a caretaker of services which are necessary to maintain the mental and physical health of a vulnerable adult
- Includes sexual abuse
- Does not mean conduct which is a part of the treatment and care of, and in furtherance of the health and safety of a patient or resident of a care facility.
- Includes, but is not limited to, a single incident.

**What is neglect?**

- The inability of a vulnerable adult who is living alone to provide for himself the food, clothing, shelter, health care or other services which are necessary to maintain his mental and physical health.
- The failure of a caretaker to supply the vulnerable adult with the food, clothing, shelter, health care, supervision or other services which a reasonably prudent person would do to maintain the vulnerable adult’s mental and physical health.
- Includes a single incident.

**What is exploitation?**

- The illegal or improper use of a vulnerable adult or his resources for another’s profit or advantage with or without the consent of the vulnerable adult, and includes acts committed pursuant to a power of attorney.
- Includes a single incident.

### **What is the punishment?**

- Misdemeanor Abuse – (contributes to, tends to contribute to or results)
  - Fine up to \$1,000
  - Imprisonment up to 1 year in the county jail, or
  - Both fine and imprisonment
- Misdemeanor Neglect –
  - Fine up to \$1,000
  - Imprisonment up to 1 year in the county jail, or
  - Both fine and imprisonment
- Misdemeanor Exploitation – (value exploited less than \$250.00)
  - Fine up to \$5,000
  - Imprisonment up to 1 year in the county jail
  - Both fine and imprisonment
- Felonious Abuse –
  - Imprisonment in the State Penitentiary up to 20 years
  - Fine up to \$10,000
- Felonious Exploitation – (value exploited more than \$250.00)
  - Imprisonment in the State Penitentiary up to 10 years
- Other charges can be used as well (i.e., forgery, embezzlement, rape, etc.) depending on the facts of the case.

### **Who has to report?**

#### **General Public**

- Any person who knows or suspects that a vulnerable adult has been or is being abused, neglected or exploited.
- Including, but not limited to, the following:
  - Attorney, physician, medical examiner, chiropractor or nurse engaged in the admission, examination, care or treatment of a vulnerable adult;
  - Health professional or mental health professional not otherwise specified;
  - Practitioner who relies solely on spiritual means for healing;
  - Social worker or other professional adult care, residential or institutional staff;
  - State, county or municipal criminal justice employee or law enforcement officer;
  - Human rights advocacy committee or long-term care ombudsman council member; or
  - Accountant, stockbroker, financial advisor or consultant, investment advisor or consultant, insurance agent or consultant, financial planner, or any officer or employee of a bank, savings and loan, credit union or any other financial service provider.

#### **Care Facilities**

- Any person who within the scope of his employment at a care facility or his professional or personal capacity who has knowledge of or a reasonable cause to

believe that any patient or resident of a care facility has been the victim of abuse, neglect or exploitation.

**What has to be reported?**

The facts of what you know or suspect.

**Who receives the reports?**

**In Private Homes:**

- The Department of Human Services (800-222-8000) or Attorney General's Vulnerable Adult Unit (601-359-4158)
- Local law enforcement

**In Care Facilities:**

- The Medicaid Fraud Control Unit of the Attorney General's Office (800-852-8341)
- The Division of Health Facilities Licensure and Certification of Department of Health (800-227-7308)
- Long-term Care Ombudsman Program (800-948-3090 or 800-345-6347)

**What is the punishment for not reporting?**

**General Public**

- Misdemeanor punishable by a fine up to \$500 and/or imprisonment up to 6 months in the county jail

**Health Care Facilities**

- Misdemeanor punishable by a fine up to \$500 and/or imprisonment up to 6 months in the county jail

**What can happen to me if I make a report?**

- Nothing. If you report, investigate, testify, you are **immune from liability, civil or criminal**, that might otherwise be incurred or imposed.
- The suspect/perpetrator is not immune.
- Intentional false reporting is not protected.

**What kind of protective services are available?**

**Private Homes**

- DHS investigates/makes a preliminary report to AG's Office within 48 hours
- DHS prepares a plan of services for the vulnerable adult
- DHS can ask court to order the provision of protective services
- A court can authorize an evaluation by a qualified third party upon a showing of probable cause, i.e., mental evaluation, financial records, etc.
- Local law enforcement and/or the AG's Office can take action through criminal prosecution

**Care Facilities**

- AG's Medicaid Fraud Unit investigates/prosecutes criminal acts
- Department of Licensure takes licensure actions