



Court of Appeals Enforces Stringent Standard for Statutory Duty to Report Suspected Child Abuse or Neglect and Imposes Liability on Employers for an Employee's Failure to Report

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PRACTICE AREAS

Health Care

A recent decision by the Michigan Court of Appeals emphasizes the need for health care professionals and facilities to diligently comply with the statutory duty to report suspected child abuse or neglect. *Lee v Detroit Medical Center* (decided July 14, 2009). The court adopted a stringent standard governing the reporting duty and held that employers are liable for noncompliance by employed physicians and health care professionals.

MCL 722.623 requires most health care professionals who have reasonable cause to suspect child abuse or neglect to make an immediate report to the Department of Human Services. The statute imposes civil and criminal liability for failing to make a required report. (Further detail about the reporting statute is included at the end of this alert.)

There are two important holdings in the recent case:

- **A report is required if there is any reasonable cause to suspect abuse or neglect.**

The Court of Appeals held the reporting duty arises whenever a health care professional has "any reasonable cause to suspect abuse or neglect."

In *Lee*, the defendant physicians argued that their compliance with the reporting obligation must recognize the medical judgment exercised when examining a child and obtaining relevant history. The court disagreed, stating that the reporting decision does not involve "significant decision making to assess the reasonableness and dependability of information." Rather, "doctors are left with little, if any, discretion in reporting."

Under *Lee*, determining whether there is reasonable cause to report does not require the exercise of medical judgment. As a result, a physician's decision is not judged according to the

standard of care applied in malpractice cases, *i.e.*, whether a reasonable physician would suspect abuse or neglect based on information obtained through examination and history. Instead, an ordinary negligence standard applies, *i.e.*, whether a reasonable person would suspect that a child has been abused or neglected.

The court's opinion offers only generalized guidance for physicians and other health care professionals:

If a child is presented to a doctor with an inherently non-suspicious injury, the caregiver's explanation is innocent, consistent, and reasonably explains the injury, and there are no other indicia of child abuse or neglect present, the doctor would not reasonably suspect child abuse or neglect and would not be under a duty to report.

Under the statute, a person who makes a report in good faith is immune from any liability resulting from that action. Because the court adopted the "any reasonable cause" standard, there is good reason to report any marginal cases.

▪ **An employer can be held liable for an employee's failure to report suspected abuse or neglect**

The Court of Appeals held that entities employing physicians and health care professionals, such as hospitals, are vicariously liable for damages resulting from their employees' failure to report. *Lee* is the first appellate decision imposing liability on employers.

The court said that the reporting statute's goals will be furthered by encouraging proper supervision and training of mandated reporters and by encouraging organization-wide reporting policies. While the court's observation is correct, having appropriate training and policies does not protect an employer against liability for an employee's failure to report.

As a result, entities that employ physicians and health care professionals should adopt and enforce policies that recognize the stringent reporting standard and the potential for significant liability for noncompliance.

CONCLUSION

The *Lee* case involved a child who suffered four years of horrific abuse and was beaten to death by a foster parent. The court's desire to strictly enforce the reporting statute is understandable and laudable. However, in many situations, physicians and nurses see injuries that are far more ambiguous. Deciding whether to report is very difficult and troubling.

In light of the "any reasonable cause" standard and the potential liability for failing to report, health care professionals should err on the side of reporting. Employers should take steps to ensure that reporting is encouraged and enforced.



SUMMARY OF CHILD ABUSE OR NEGLECT REPORTING STATUTES

Mandated reporters

- physician
- dentist
- physician's assistant
- registered dental hygienist
- medical examiner
- nurse
- person licensed to provide emergency medical care
- audiologist
- psychologist
- marriage and family therapist
- licensed professional counselor
- social worker
- licensed master's social worker
- licensed bachelor's social worker
- registered social service technician
- social service technician
- a person employed in a professional capacity in any office of the friend of the court
- school administrator
- school counselor or teacher
- law enforcement officer
- member of the clergy
- regulated child care provider

REPORTING DUTY

Immediate oral report

A person subject to the statute who has reasonable cause to suspect child abuse or neglect is required to make an immediate oral report, or cause an oral report to be made, to the Department of Human Services.

The statewide reporting number is 800-942-4357. Reports in Wayne County should be made to 800-716-2234.

Written report within 72 hours

The oral report must be followed up with a written report within 72 hours. The written report is sent to DHS' office in the county of the child's residence. A copy must be provided to the person in charge of the reporter's facility or organization. The report is not a medical record and should not be put in the chart.

The reporting form is DHS-3200 (Report of Suspected or Actual Child Abuse or Neglect). The form is available at: www.mfia.state.mi.us/ChildSupport/policy/Documents/DHS-3200.doc

DEFINITIONS OF CHILD ABUSE AND CHILD NEGLECT

"Child abuse" means:

- harm or threatened harm to a child's health or welfare
- that occurs through nonaccidental physical or mental injury, sexual abuse, sexual exploitation, or maltreatment
- by a parent, legal guardian, or any other person responsible for the child's health or welfare, or by a teacher, a teacher's aide, or a member of the clergy.

"Child neglect" means:

- harm or threatened harm to a child's health or welfare
- by a parent, legal guardian, or any other person responsible for the child's health or welfare
- that occurs through either of the following:
 - negligent treatment, including the failure to provide adequate food, clothing, shelter, or medical care.
 - placing a child at an unreasonable risk to the child's health or welfare by the failure of the parent, legal guardian, or other person responsible for the child's health or welfare to intervene to eliminate that risk when that person is able to do so and has, or should have, knowledge of the risk.

PENALTIES:

- Civil liability for damages proximately caused by the failure to report
- Criminal liability for knowing failure to make a required report – misdemeanor
- A good faith report provides immunity against civil or criminal liability