

# Legal Brief

## Reporting Child Abuse

This Legal Brief was drafted for general informational purposes only. It is not meant to be a comprehensive guide, nor should it be construed as legal advice. The information in this brief is current as of February 1, 2013; readers should consult the most recent versions of referenced statutes, regulations, and cases to ensure there have been no material changes.

### Summary

*Health care professionals are required to report suspected child abuse or neglect. The law provides for a specific reporting process. Medical facilities must have a written policy to comply with the law. Health care professionals are granted immunity for both making the report and participation in further investigation.*

### Discussion

#### Abused or Neglected Child Defined

An “abused or neglected child” is defined in state law as a child:

1. Whose parent, guardian, or custodian has abandoned the child or has subjected the child to mistreatment or abuse;
2. Who lacks proper parental care through the actions or omissions of the child's parent, guardian, or custodian;
3. Whose environment is injurious to the child's welfare;
4. Whose parent, guardian, or custodian fails or refuses to provide proper or necessary subsistence, supervision, education, medical care, or any other care necessary for the child's health, guidance, or well being;
5. Who is homeless, without proper care, or not domiciled with the child's parent, guardian, or custodian through no fault of the child's parent, guardian, or custodian;
6. Who is threatened with substantial harm;
7. Who has sustained emotional harm or mental injury as indicated by an injury to the child's intellectual or psychological capacity evidenced by an observable and substantial impairment in the child's ability to function within the child's normal range of performance and behavior, with due regard to the child's culture;
8. Who is subject to sexual abuse, sexual molestation, or sexual exploitation by the child's parent, guardian, custodian, or any other person responsible for the child's care;
9. Who was subject to prenatal exposure to abusive use of alcohol, marijuana, or any controlled drug or substance not lawfully prescribed; or whose parent, guardian, or custodian knowingly exposes the child to an environment that is being used for the manufacture, use, or distribution of methamphetamines or any other unlawfully manufactured controlled drug or substance.

## Persons Required to Report

Any physician, nurse, dentist, chiropractor, optometrist, mental health professional or counselor, podiatrist, psychologist, religious healing practitioner, social worker, hospital intern or resident, parole or court services officer, law enforcement officer, teacher, school counselor, school official, licensed or registered child welfare provider, employee or volunteer of a domestic abuse shelter, employee or volunteer of a child advocacy organization or child welfare service provider, chemical dependency counselor, coroner, who has reasonable cause to suspect that a child under the age of eighteen has been abused or neglected as defined above, shall report that information. SDCL §26-8A-3.

## Making a Report

The HIPAA mandated privacy rules specifically authorize child abuse or neglect reports to the extent permitted and required by applicable state law. 45 CFR §160.203. If the suspected abuse or neglect is discovered in the physician's clinic, the physician is obligated to immediately make an oral report to the state's attorney, the South Dakota Department of Social Services, or to law enforcement personnel. SDCL §26-8A-3, §26-8A-8.

If the suspected abuse or neglect is discovered in a hospital setting, the physician must report the discovery to the person in charge of the institution or that person's designee. The person in charge must then report the discovery to the state's attorney, Department of Social Services, or law enforcement and provide complete copies of all medical examination, treatment, and hospital records regarding the child. SDCL §26-8A-6. If the suspected abuse or neglect is discovered in a school setting, the physician must make a report to the school principal or school superintendent or designee, who in turn must make a report to the state's attorney, Department of Social Services, or law enforcement. SDCL §26-8A-7.

Any person receiving a report of suspected child abuse or child neglect shall keep the report confidential unless otherwise directed by law. SDCL §26-8A-8. SDSMA recommends that the physician also keep the report confidential.

Any person who has reasonable cause to suspect that a child has died as a result of child abuse or neglect shall report that information to the medical examiner or coroner. SDCL §26-8A-4

## Failure to Report

Any person, required to report, who knowingly and intentionally fails to make the required report and submit the required records, is guilty of a Class 1 misdemeanor.

## Confidentiality Privilege

The physician-patient privilege of confidentiality does not exist in any judicial proceeding involving an alleged abuse or neglected child or resulting from the giving or causing the giving of a report concerning abuse or neglect. SDCL §26-8A-15.

## Immunity from Liability

Any person who makes a report of child abuse or who provides copies of medical examination, treatment, or hospitalization records, or who performs radiological or other medical examination or testing of a child as a result of an investigation, whether or not consent has been given by the parents, are immune from civil or criminal liability. Immunity also extends to the participation in any judicial proceeding resulting from the report of suspected abuse or neglect. SDCL §26-8A-14 and SDCL §26-8A-16.

## Written Policy

Medical facilities are required by law to have a written policy on reporting of child abuse and the submission of medical examination, treatment, and hospital records to the state's attorney or other designated recipient. SDCL §26-8A-6

## Conclusion

*Health care professionals are among a group of individuals required to report suspected child abuse or neglect. The reporting of the suspected abuse or neglect, and the participation in further investigation, does not subject the reporting party to potential liability. Further, the physician-patient privilege does not exist in an abuse or neglect situation.*



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