

Domestic Violence and the Duty to Make Mandated Reports

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While reporting domestic violence is not mandated for MFTs, there are other reporting duties that may be triggered by a domestic violence situation. This article reviews the reporting duties that may arise for MFTs in such scenarios.

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Domestic violence, or intimate partner violence as it is also called, is a problem nationwide. Some surveys and studies suggest there are more domestic violence victims in California than the national average.¹ As such, it is imperative for Licensed Marriage and Family Therapists to understand their reporting obligations surrounding domestic violence. As a general rule, LMFTs are not mandated reporters of domestic violence if, in their professional capacity, they have knowledge of or suspicion of injury inflicted by a spouse, partner or cohabitant, in a domestic setting. There are, however, some important distinctions to make in regard to this general rule.

This article will discuss the relevant law that affects the mandated reporting of domestic violence, explain the reporting obligations owed to “protected classes” of people such as minors, dependent adults and elders, and will provide a review of two vignettes.

Who Reports Domestic Violence?

California Penal Code §11160(a) states, “any health practitioner employed in a health facility, clinic, physician’s office, local or state public health department, or a clinic or other type of facility operated by a local or state public health department who, in his or her professional capacity or within the scope of his or her employment, provides medical services for a physical condition (emphasis added) to a patient whom he or she knows or reasonable suspects is a person suffering from any wound or other physical injury inflicted by his or her own act or inflicted by another where the injury is by means of a firearm or by assaultive or abusive conduct, shall immediately make a report...” Since LMFTs do not provide medical services for physical conditions, LMFTs are not included in this group of health practitioners who report knowledge of or reasonable suspicion of a person who is suffering from the described injury.

The distinction that must be made is between health practitioners who provide medical services for a physical condition, such as physicians and nurses, and health practitioners who do not provide those types of medical services, such as psychologists, LMFTs, LCSWs, and LPCCs.

Abuse of Protected Classes

There are two significant laws in California that mandate reporting instances of abuse or neglect to the appropriate authorities. First, the Child Abuse and Neglect Reporting Act (CANRA) has the primary intent of protecting children (a person under the age of 18).² Under CANRA, mandated reporters who

have reasonable suspicion or knowledge of child abuse or neglect of a minor must file a report to a Child Protective Services agency or local law enforcement. The following are types of “abuse” under this law: physical abuse, sexual abuse (including both sexual assault and sexual exploitation), willful harming or injuring of a child or the endangering of the person or health of the child, unlawful corporal punishment or injury, and neglect. LMFTs, while acting within their professional capacity are mandated reporters of child abuse and neglect. For more information about a therapist’s obligations to report child abuse or neglect please see Ann Tran-Lien’s article, “A Look at the Child Abuse and Neglect Reporting Act” in the Jan/Feb 2014 issue of *The Therapist*.

The other reporting law in California is the Elder Abuse and Dependent Adult Civil Protection Act (the Act).³ The intent of the Act is to protect elders, persons who are 65 years or older, living in California and dependent adults, persons between the ages of 18-64 who reside in California and who have physical or mental limitations that restrict his or her ability to carry out normal activities or protect his or her rights, or a person between the ages of 18-64 who is admitted into a twenty-four hour health facility. Mandated reporters are required to report any reasonable suspicion or knowledge of physical abuse, abandonment, abduction, isolation, financial abuse, neglect, and the failure of a care custodian to provide goods or services that are necessary to avoid physical or mental suffering. LMFTs, while acting within their professional capacity are mandated reporters of elder and dependent adult abuse and neglect. For more information about elder and dependent adult abuse reporting please see David Jensen’s article, “The Fundamentals of Reporting Elder and Dependent Adult Abuse” in the March/April 2006 issue of *The Therapist*. Children, elders and dependent adults are considered a “protected class,” meaning they are protected under the law, as discussed above. Because of this special status, mandated reporters are required to help protect any abuse or neglect inflicted upon the minor, elder or dependent adult via mandated reporting to the appropriate authorities. Therefore, it is important to distinguish between reporting domestic violence and the duty to make mandated reports of child, elder or dependent adult abuse or neglect. If the victim of the domestic violence is a child, an elder, or a dependent adult, and mandated reporter has knowledge or a reasonable suspicion that the abuse has occurred a report must be made to the appropriate entity. In such a case, the report would be required due to the abuse of a protected class, not due solely to the domestic violence.

The fact that a child’s parent or guardian is a victim of domestic violence should not, in and of itself, be a sufficient basis for reporting suspected child abuse or neglect.⁴ Further, a child’s exposure to a domestic violence incident, in and of itself, should not be a sufficient basis for reporting suspected abuse or neglect.⁵ The mandated reporter should consider other factors that would lead the mandated reporter to reasonably suspect that the child’s physical well-being or emotional health is endangered as the result of the domestic violence.⁶ “Reasonable suspicion” occurs when “it is objectively reasonable for a person to entertain such a suspicion based upon facts that would cause a reasonable person in a like position, drawing when appropriate on his or her training and experience, to suspect child abuse.” (California Penal Code § 1166(a)(1)).

Vignette 1

Alice, an LMFT, has been treating a minor client, Tommy, for six months. Alice has noticed that the parents are having marital difficulty. One day, Tommy informs Alice that he has witnessed his parents “fighting” and might even have seen and heard verbal and physical violence between his parents. Tommy indicates that when his parents are “fighting,” he hides in his room.

In this case, the critical consideration is whether a child who is a witness to domestic violence warrants the therapist making a mandatory child abuse report. As noted, LMFTs are not necessarily mandated

reporters because domestic violence has occurred, however, the therapist may be mandated to report depending on the effect of the domestic violence on the minor.

Under CANRA, the category to consider in this situation would be “the willful harming of a child or the endangering of the person or health of a child.” (California Penal Code § 11165.3) Willful harming of a child includes situations in which a person willfully causes or permits any child to suffer, or inflicts upon the child unjustifiable physical pain or mental suffering. Under this definition, if a person willfully causes or allows a child to suffer unjustifiable mental suffering, it should be reported. Consistent extreme and outrageous behavior toward, or witnessed by a child, may be indicative of unjustifiable mental suffering, which would call for a mandatory report.⁷¹

This should be distinguished from a child suffering serious emotional damage, which does not warrant a mandatory report, but may be reported at the discretion of the mandated reporter. In suspected instances of emotional suffering, the therapist should exercise their professional judgment and determine if the emotional damage amounts to unjustifiable mental suffering.⁸

Additionally, any person who cares for or has custody of a child, and willfully causes or permits the person or health of the child to be placed in a situation in which his or her person or health is endangered warrants a mandatory report.⁹

Thus, the therapist may be mandated to report because of the effect the observation of domestic violence has on the child, or other protected class of person, even though you are not a mandated reporter of domestic violence.

Vignette 2:

Fred, an LMFT Registered Intern, has been treating Jane, a 75-year-old married woman for 8 months. Jane has told her therapist that she is the sole caregiver for her 76-year-old husband who is also an elder and very sick. Jane says that the increased dependency of her husband has left her feeling stressed, overwhelmed and resentful. She also told Fred that sometimes she yells and threatens her husband. Recently she told Fred that she hit her husband after he spilled food on the floor. In this case, the consideration for the therapist is whether an Elder/Dependent Adult Abuse Report should be made. When reporting elder or dependent adult abuse, the therapist should not be concerned about whether it is “right” or “wrong” to report, only whether it is reasonable to report based upon the available factual information, meaning, does the therapist have knowledge or a reasonable suspicion of abuse.¹⁰

In this case, Jane said her husband was an elder, thus the Elder Abuse and Dependent Adult Civil Protection Act, would apply. This is because the Act expressly protects elders from physical abuse, of which there are six types covered by the Act. The Act also *permits*, but does not mandate, the reporting of mental suffering. Therefore, the therapist may be mandated to report in this case because of the physical abuse done by an intimate partner where the victim was part of a protected class. According to the National Center on Elder Abuse, “...spouses make up a large percentage of elder abusers.”¹¹ Thus, a report may be mandated because of the age, status of the victim, and the physical abuse.

Conclusion

To summarize, LMFTs are not health practitioners defined in the law to report a client who is a victim of domestic violence. However, other reporting duties may be triggered by the effects of domestic violence if the victim is part of a protected class, such as minors, elders or dependent adults.

Endnotes

¹ Randy Collins, *California Domestic Violence Statistics*, <https://domestic-violence-law.com/statistics/>

² California Penal Code §11165

³ California Welfare and Institutions Code §15600 et seq.

⁴ L. Michael Clark, *Domestic Violence Reporting Criteria*. Santa Clara County

⁵ Id.

⁶ Id.

⁷ Id.

⁸ Ann Tran-Lien, *A Look at the Child Abuse and Neglect Reporting Act*. *The Therapist* (January/February 2014)

⁹ Id.

¹⁰ David Jensen, *Lost in the Tule Fog of Elder and Dependent Adult Abuse Reporting*. *The Therapist* (March/April 2013)

¹¹ National Center on Elder Abuse, FAQ's, <https://ncea.acl.gov/faq/index.html>

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