



**QUESTIONS AND ANSWERS ABOUT
MANDATORY ELDER ABUSE REPORTING FOR LAWYERS**
Oregon State Bar General Counsel's Office

Question 1: What is Mandatory Elder Abuse Reporting?

The Oregon elder abuse reporting law is found at ORS 124.050 to ORS 124.095. It imposes a legal obligation on certain “public and private officials” to report elder abuse. Lawyers are included in the definition of “public or private officials” having a duty to report. ORS 124.050(9). Physicians; dentists; optometrists; chiropractors; nurses; police officers; firefighters; Department of Human Services (DHS) and Oregon Health Authority workers; owners and employees of adult foster care facilities; clergy; social workers; psychologists, counselors, and psychotherapists; physical, speech and occupational therapists; audiologists; speech pathologists; senior center workers; information and referral or outreach workers and members of the Legislative Assembly are among the other mandatory reporters.

Oregon is in the midst of a demographic shift: As baby boomers age, our population as a whole is aging. Each year, over 50,000 Oregonians turn 65 years old. The median age of Oregon’s population was 30.3 in 1980, but is forecast to rise to 39.7 by 2020. With advancing age come declining health and greater reliance on family members and caregivers. And elder abuse is a significant problem. In 2014, DHS investigated and substantiated over 2,500 instances of elder abuse in Oregon. Nationally, one in ten elders living at home is subject to abuse, neglect, or exploitation.

Question 2: What Are Lawyers Required To Do?

Elder abuse reporting is a 24-hour-a-day, 7-day-a-week responsibility. Reporting is required whenever a lawyer has “reasonable cause to believe that any person 65 years of age or older with whom the [lawyer] comes in contact has suffered abuse, or that any person with whom the [lawyer] comes in contact has abused a person 65 years of age or older”

ORS 124.060. The administrative rules encourage voluntary reporting in situations where reporting is not mandated. OAR 411-020-0020(2). Failure to report as required by the statute is a Class A violation. ORS 124.990. The penalty for a Class A violation is a maximum fine of \$2,000. ORS 153.018(2)(a).

Oregon Rule of Professional Conduct (RPC) 1.6(a) prohibits a lawyer from revealing information relating to the representation of a client.¹ RPC 1.6(b)(5) *permits*, but does not require, a lawyer to disclose information relating to the representation of a client when required by law. A lawyer may report elder abuse as required by law without violating the lawyer's ethical duty of confidentiality to a client.

Note that when one of the exceptions to reporting applies (Question 6, below), the law does *not* require reporting, and therefore would *not* permit a lawyer to disclose information protected by RPC 1.6. In addition, RPC 1.6(b)(5) permits disclosure only to the extent required by law; it does not give a lawyer permission to reveal information about elder abuse that the law does not require be reported. A lawyer cannot use the permission in the disciplinary rule to justify disclosing information about elder abuse that is not required to be reported by the exceptions in ORS 419B.010.

Question 3: What Is “Reasonable Cause?”

There are no reported cases applying or interpreting this term specifically in connection with the abuse reporting statutes. The Department of Human Services interprets “reasonable cause” in related statutes as being equivalent to “reasonable suspicion.” *A.F. v. Dep’t of Human Res. ex rel. Child Protective Servs. Div.*, 251 Or App 576, 590, 98 P3d 1127 (2012); *Berger v. State Office for Services to Children and Families*, 195 Or App 587, 590, 98 P3d 1127 (2004). In that context, “[r]easonable suspicion’ means a reasonable belief given all of the circumstances, based upon specific and describable facts, that the suspicious physical injury may be the result of abuse.” The rule further explains:

¹ Lawyers similarly are required by ORS 9.460 to “maintain the confidences and secrets of ... clients consistent with the rules of professional conduct” ORS 9.460 uses the terminology of *former* DR 4-101, which has been replaced by RPC 1.6.

“The belief must be subjectively and objectively reasonable. In other words, the person subjectively believes that the injury may be the result of abuse, and the belief is objectively reasonable considering all of the circumstances. The circumstances that may give rise to a reasonable belief may include, but not be limited to, observations, interviews, experience, and training. The fact that there are possible non-abuse explanations for the injury does not negate reasonable suspicion.”

OAR 413-015-0115(37). Similarly, “reasonable suspicion” for an officer to stop an individual in the criminal law context is defined as “a belief that is reasonable under the totality of the circumstances existing at the time and place the peace officer acts.” ORS 131.605(5). The standard is an “objective test of observable facts” and requires the officer “to point to specific articulable facts that give rise to a reasonable inference that a person has committed a crime.” *State v. Ehly*, 317 Or 66, 80, 854 P2d 421 (1993).

By contrast, the standard of “probable cause” for arrest in the criminal law context is generally thought of as a higher standard than that of “reasonable suspicion.” “Probable cause” is defined by ORS 131.005(11) as a “substantial objective basis for believing that more likely than not an offense has been committed and a person to be arrested has committed it.” In *State v. Childers*, 13 Or App 622, 511 P2d 447 (1973), the court held that a police officer did not have probable cause to make a warrantless search for marijuana since he was uncertain whether he had smelled it. The court cited the probable cause standard as the existence of circumstances that would lead a reasonably prudent person to believe that an event had occurred, and distinguished it from “mere suspicion or belief” *Id.* at 629.

Interpreting “reasonable cause” in the context of obtaining a subpoena for bank records under ORS 192.565(6), the court in *State v. McKee*, 89 Or App 94, 99, 747 P3d 395 (1987), held that a showing of reasonable cause required a recital of known facts, not mere conclusory statements. In another case, a merchant was found to have reasonable cause to detain a suspected shoplifter when the merchant saw the person leaving the store with unpaid-for

merchandise partially concealed in a pocket. *Delp v. Zapp's Drug & Variety Stores*, 238 Or 538, 395 P2d 137 (1964).²

A potential “floor” for “reasonable cause” is found in ORS 124.075, which provides immunity to reporters for criminal and civil liability. In order to qualify for immunity, the reporter must “participat[e] in good faith” in the reporting process, and have “reasonable grounds” for the making of the report. Outside the client representation context, attorneys are well advised to use this standard for determining when to make a report of potential elder abuse.

Question 4: What Is “Comes In Contact?”

“Comes in contact” is a more unfamiliar phrase that is also not defined in the statute or case law. A dictionary definition of “contact” includes “a touching or meeting” and “association or relationship (as in physical or mental or business or social meeting or communication).” *Webster’s Third New International Dictionary* 490 (unabridged ed 1993). That definition, and common usage, suggest that a lawyer is required to report elder abuse only when the lawyer has had some kind of physical or associational contact with a person who has abused an elder or with an elder who has been abused. This does not necessarily mean “in person” contact; telephone or even email or written contact would likely suffice.

The “comes in contact” requirement does not appear to modify the “reasonable cause” requirement. In other words, the statute does not appear to require reporting only when the lawyer learns of the abuse directly from the victim or the abuser. Reliable second- or third-hand information may provide reasonable cause to believe that abuse has occurred; reporting would then be required if the lawyer had come in contact with either the abuser or the victim. For example, if a neighbor tells a lawyer that she heard from another neighbor that an elder living down the street (with whom the lawyer has occasional contact) appears to have been abused,

² The statute applied in *Delp*, which allows merchants to detain suspected shoplifters, has since been amended to require “probable cause” as opposed to “reasonable cause.” See ORS 131.655(1).

the lawyer may have reasonable cause to believe that abuse occurred if the lawyer believes the neighbors are reliable sources of information.

It is sometimes suggested, under a broad reading of the statute and its purpose, that “contact” includes knowledge of abuse even without any physical or associational contact with the victim or the abuser. The Attorney General does not interpret the statute so broadly, opining in another context that “physicians, psychologists and social workers who serve as members of the board of directors of a self-help child abuse prevention organization, but who do not provide direct services, are not required to report suspected child abuse when they acquire that information indirectly in their official capacities as board members.” Attorney General Letter of Advice to Sen Margie Hendriksen (OP-5543) (June 12, 1984). The basis for the opinion lies primarily in the fact that the list of mandatory reporters in Oregon consists of professionals and service providers who are most likely to come into direct contact with victims or perpetrators of child abuse. “We believe that if the drafter of [the statute] had intended to impose a mandatory reporting duty, violation of which is punishable by a substantial fine ... , upon persons who merely have knowledge about child abuse, from whatever source, they would have said so clearly.” *Id.*

Question 5: What Is Elder Abuse?

The elder abuse reporting statute identifies the types of conduct that constitute elder abuse:

- **Infliction of Pain or Physical Injury**: Pain or injury caused by other than accidental means or apparently inconsistent with the explanation given for it. According to regulation, this includes force-feeding and all physical punishments. OAR 411-020-0002(a)(B)(ii). Physical abuse is presumed to injure and inflict pain upon someone who is non-responsive. See OAR 411-020-0002(a)(C).
- **Abandonment or Neglect**: This includes desertion as well as withholding caretaking responsibilities.
- **Sex Abuse**: Commission of a crime enumerated in the statute, including both public and private indecency.

- Verbal Abuse: Threatening physical or emotional harm by words or gestures. Again, it does not matter whether the victim can comprehend.
- Financial Exploitation: Defined in ORS 124.050(4). Wrongful taking of an elder's property; a threat of taking that causes alarm to an elder; stealing or transferring account funds without authorization (even if jointly held); failing to use the elder's resources effectively for their support.
- Involuntary Seclusion: For convenience or discipline.
- Wrongful Use of Physical or Chemical Restraints: Authorized medical or legal uses are excluded.

ORS 124.050(1).

DHS has published a summary of the warning signs of abuse at <http://www.oregon.gov/DHS/SENIORS-DISABILITIES/ADULT-ABUSE/Pages/signs.aspx>. That said, lawyers, like many mandatory reporters, may not be experts in identifying abuse, and they are not expected to be. The law does not require lawyers to conduct investigations into suspected abuse, but lawyers should make reasonable inquiries where possible to follow up on initial observations or information that appears to involve elder abuse, to ensure that they have "reasonable cause" to believe that abuse has occurred. The intent of the statute is to get at-risk seniors into a regulatory system where the circumstances will be evaluated and, as necessary, addressed by qualified professionals. Hence, the standard for reporting is only "reasonable cause," not "certainty."

Question 6: Are There Any Exceptions To The Reporting Requirement?

There are three exceptions to the statutory reporting requirement:

- Lawyers, together with clergy, psychiatrists, and psychologists, are not required to report information "communicated by a person if the communication is privileged under ORS 40.225 to 40.295 [OEC 503 – OEC 295]." ORS 124.060.

- A lawyer is also not required to report elder abuse based on information communicated to the lawyer “in the course of representing a client if disclosure of the information would be detrimental to the client.” *Id.*
- “An elderly person who in good faith is voluntarily under treatment solely by spiritual means through prayer in accordance with the tenets and practices of a recognized church or religious denomination by a duly accredited practitioner thereof shall, for this reason alone, not be considered subjected to abuse by reason of neglect”
ORS 124.095.

The effect of these statutory exceptions to the duty to report is that most of the information a lawyer will be required to report will be that learned outside the lawyer’s “official capacity.” For instance, witnessing an act of abuse in a public place will trigger the reporting obligation, despite the fact that the lawyer may not have a lot of information to report. Similarly, information that a non-client friend or neighbor is abusing an elder, or is a victim of abuse, must be reported.

A. Privileged Communications.

The first exception relates to statutory privileges. Lawyers are not required to report information that is “privileged under ORS 40.225 to 40.295.” ORS 40.225 is OEC 503, the lawyer-client privilege.³ The reference, however, encompasses thirteen other privileges: psychotherapist-patient (OEC 504), physician-patient (OEC 504-1), nurse-patient (OEC 504-2), school employee-student (OEC 504-3), clinical social worker-client (OEC 504-4), husband-wife (OEC 505), clergy-penitent (OEC 506), counselor-client (OEC 507), stenographer-employer

³ A client has a privilege to refuse to disclose and to prevent any other person from disclosing confidential communications made for the purpose of facilitating the rendition of professional legal services to the client. A “confidential communication” is one that is “not intended to be disclosed to third persons other than those to whom disclosure is in furtherance of the rendition of professional legal services to the client or those reasonably necessary for the transmission of the communication.” Confidential communications include those (1) between the client or the client’s representative and the client’s lawyer or a representative of the lawyer, (2) between the client’s lawyer and the lawyer’s representative, (3) by the client or the client’s lawyer to a lawyer representing another in a matter of common interest, (4) between representatives of the client or between the client and a representative of a client, or (5) between lawyers representing the client. OEC 503.

(508A), public officer (OEC 509), disabled person-sign language interpreter (OEC 509-1), non-English speaking person-interpreter (OEC 509-2), and informer (OEC 510).⁴

Clearly, if a lawyer learns in a privileged communication with a client that the client has abused an elder, the lawyer is not required to report. What, however, of information protected by one of the other privileges contained in ORS 40.225 to 40.295? Can ORS 419B.010(1) be read to also exempt a lawyer from reporting information that is protected by any one of the other thirteen privileges even if it was not, for some reason, covered by the attorney-client privilege? For instance, what if the lawyer receives a report containing the client's disclosure to a psychotherapist that the client committed abuse, but the client has never made the disclosure directly to the lawyer. Is the lawyer exempted from reporting the information because it is protected by the psychotherapist-patient privilege? Or is the psychotherapist-patient privilege lost when the report is delivered to the lawyer? The first question to ask in a situation such as the foregoing is whether the information continues to be privileged; if so, there remains the unanswered question of whether a lawyer is excepted from reporting information protected by the other privileges.

Although the plain language of the statute suggests that lawyers, psychiatrists, psychologists and clergy are excused from reporting information protected by all the statutory privileges, there is no authority interpreting the scope of the privilege exception. Given that absence of authority and the broad protective purpose behind the statute, prudence may dictate a less expansive reading.

B. Information Detrimental to Client if Disclosed.

The second exception to mandatory reporting applies only to lawyers, and tracks to some extent a lawyer's ethical obligation to protect confidential client information. Lawyers are prohibited by RPC 1.6(a) from revealing "information relating to the representation of a client." "Information relating to the representation of a client" is defined in RPC 1.0(f) as both

⁴ Also included is OEC 512, "privileged matter disclosed under compulsion or without opportunity to claim privilege."

“information protected by the lawyer-client privilege under applicable law” and “other information gained in a current or former professional relationship that the client has requested be held inviolate or the disclosure of which would be embarrassing or would be likely to be detrimental to the client.”⁵

Clearly then, “information relating to the representation” is not limited to information that is privileged because communicated by the client. Information protected under Oregon RPC 1.6 includes information learned from witnesses and other third parties as well as information imparted by the client that is, for some reason, not covered by the privilege. All that is required is that it be gained during the course of the professional relationship between the lawyer and the client, and either that the client has requested it be “held inviolate” or that it would be embarrassing or detrimental to the client if revealed.

In creating a statutory exception for only some of the information that would be protected by RPC 1.6, the legislature limited the reporting exception to information that would be detrimental (not merely embarrassing) to the client if disclosed. This appears to be the legislature’s way of reconciling the sanctity of the lawyer-client relationship with the interest of protecting elders from abuse. The legislature appears to have concluded that mere embarrassment to a client is not sufficient justification for the lawyer to ignore elder abuse.

C. Treatment by Spiritual Means Through Prayer.

This exception is not elaborated in case law or in regulation. Practitioners should note that it is very narrow. The treatment must be “voluntary”; beliefs of the caregiver are irrelevant to the determination of whether reporting is required. The treatment must be “through prayer.” It must be “in accordance with the tenets and practices of a recognized church or religious denomination” and conducted “by a duly accredited practitioner” of the church. Here as elsewhere, attorneys should err on the side of reporting and letting DHS evaluate the situation.

⁵ These are the definitions, respectively, of “confidences” and “secrets” from *former* DR 4-101.

Question 7: What If Someone Expresses The Intent To Commit An Act Of Elder Abuse?

ORS 124.060 mandates reporting only when there is reasonable cause to believe that an elder “*has suffered* abuse” or that a person “*has abused* a person 65 years of age or older.” It does not require advance reporting of possible future abuse, except where the future abuse constitutes “verbal abuse” under ORS 124.050(1)(f). “Verbal abuse” is defined in regulation to include “threatening significant physical harm or threatening or causing significant emotional harm to an adult” OAR 411-020-0002(1)(d)(A).

If the situation does not involve “verbal abuse” within the meaning of ORS 124.050(1)(f), reporting may still be possible. RPC 1.6(b)(1) permits a lawyer to reveal confidential information to the extent the lawyer reasonably believes necessary “to disclose the intention of the lawyer’s client to commit a crime and the information necessary to prevent the crime.” There is also no lawyer-client privilege under OEC 503(4)(a) “if the services of the lawyer were sought or obtained to enable or aid anyone to commit or plan to commit what the client knew or reasonably should have known to be a crime or fraud.” RPC 1.6(b)(2) permits a lawyer to reveal information otherwise protected to the extent the lawyer reasonably believes necessary “to prevent reasonably certain death or substantial bodily harm,” whether or not a crime is involved. When used in reference to degree or extent, “substantial” denotes “a material matter of clear and weighty importance.” RPC 1.0(o).

It is not clear that all incidents of elder abuse identified in the statute constitute crimes. A lawyer whose client has expressed a clear intention to commit elder abuse in the future should ascertain first whether the intended conduct is a crime or if it puts a person at risk of reasonably certain death or substantial bodily harm. If so, the lawyer may disclose information necessary to prevent the intended conduct.

A voluntary report of suspected future abuse that is not required under ORS 124.060 is subject to the same statutory confidentiality and immunity as a mandatory report. *See* ORS 124.075; ORS 124.085; ORS 124.090.

Question 8: Are Lawyers Obligated to Report Elder Abuse Occurring Outside Of Oregon?

While all states have adopted some form of elder abuse prevention laws, the laws are not uniform and lawyers are not mandatory reporters in all jurisdictions. Lawyers who are licensed in multiple jurisdictions should be attentive to the statutory requirements of each jurisdiction as well as to the interplay between those statutory requirements and the disciplinary rules to which the lawyer is subject.

The scope of Oregon's mandatory elder abuse reporting law is not clear with respect to incidents occurring outside of Oregon or involving abusers and victims who are not residents of Oregon. Nothing in the statute can be read to limit reporting only to incidents occurring within the state. The language of the statute sweeps broadly to include "any person 65 years of age or older" who has been abused and "any person" who has abused an elder.

A lawyer who wishes to act most cautiously should make a report to DHS of the out-of-state incident and allow DHS to determine whether and how to deal with the information. Reporting in that circumstance does not violate any ethical responsibility of the lawyer or violate any right of the persons involved; moreover, it is consistent with the policy behind the DHS regulation that encourages encourage voluntary reporting. See OAR 411-020-0020(2).

Question 9: What Type Of Report Is Required And To Whom Must It Be Made?

The statute requires that "an oral report be made immediately by telephone or otherwise" ⁶ ORS 124.065(1). Reports must be made to the local office of the Department of Human Services or a law enforcement agency within the county where the person making the report is located at the time of the contact. ORS 124.050(6) defines "law enforcement agency" to mean:

- a city or municipal police department,
- a county sheriff's office,
- the Oregon State Police,
- a police department established by a university, or

⁶ **The statewide telephone number for reporting suspected abuse is 1-855-503-SAFE (7233).**

- any district attorney.

The report must contain, if known:

- the names and addresses of the elderly person and any persons responsible for care of the elderly person,
- the nature and extent of the abuse, including any evidence of previous abuse,
- the explanation given for the abuse, and
- any other information that might be helpful in establishing the cause of the abuse and the identity of the perpetrator.

ORS 124.065(1).

When a report of a potential crime is received by DHS, it is required to notify law enforcement. ORS 124.065(2); *see also* ORS 124.065(3). When law enforcement receives a report of elder abuse, it is required to notify both DHS and the law enforcement agency having jurisdiction. ORS 124.065(4).

Question 10: Are Elder Abuse Reports Confidential?

Notwithstanding Oregon's public records law, "the names of the public or private official or any other person who made the complaint, the witnesses and the elderly persons, and the reports and records compiled under the [elder abuse reporting law], are confidential and are not accessible for public inspection. ORS 124.090(1). DHS is required to make the reports available in some circumstances and permitted to do so in other circumstances.

ORS 124.090(2). Recipients of records under DHS's mandatory or permissive disclosure authority are also required to maintain the confidentiality of the records. ORS 124.090(3).

The confidentiality is not absolute, as a reporter may be required to testify in juvenile or criminal court proceedings relating to the report. In criminal proceedings, the alleged abuser's constitutional right to confront witnesses would override the statutory confidentiality.

Confidentiality may be enhanced by reporting anonymously. While there is no requirement in the statute that the reporter identify him- or herself, it is also clear that the statute does not contemplate anonymous reporting, and it is likely not preferred by DHS. Law enforcement and DHS will accept anonymous reports. Because of the liability that can result

from not reporting, lawyers should weigh the desire for confidentiality with the possible need for proof that a report was in fact made as required.

Question 11: What If I Am Wrong, And There Really Was No Abuse?

A person who acts in good faith in making a report of elder abuse, and who has reasonable grounds for doing so, is immune from civil or criminal liability for making the report and for the content of the report. Reporters have the same immunity with respect to their participation in any judicial proceeding resulting from the report. ORS 124.075(1); *see also McDonald v. State of Oregon*, 71 Or App 751, 694 P2d 569 (1984) (negligence claim against teacher dismissed because plaintiffs failed to assert any facts to negate teacher's good faith and reasonable grounds to report child abuse, notwithstanding the fact that the report was later determined to be unfounded).

The efficacy of the foregoing immunity provision may be open to question, based on the Oregon Supreme Court's decision in *Smothers v. Gresham Transfer, Inc.*, 332 Or 83, 23 P3d 333 (2001). That case held that the exclusive remedy of the workers' compensation statutes violated Article I, Section 10, of the Oregon Constitution, to the extent that it left the plaintiff without a remedy for an injury not compensable under the workers' compensation system. Similarly, the immunity granted by ORS 124.075(1) may conflict with the arguable common-law right of an alleged abuser to sue the abuse reporter for defamation.

Question 12: Are Lawyers Liable For Not Reporting Elder Abuse?

As mentioned above, failure to report elder abuse when required under the statute is a Class A violation, punishable by a fine. The bar is aware of at least two cases in which a mandatory reporter (not a lawyer) was prosecuted for failing to report *child* abuse. In one case, the official informed the parents of the victim, who took immediate and apparently successful steps to protect her. The official also informed her supervisor. She was prosecuted for not reporting to DHS exactly as the statute required; she was eventually acquitted. In another case, a mother who was also a mandatory reporter was found to have violated her duty when she failed to immediately report the abuse of her own daughter. *See Dep't of Human Servs. v. F.L.B.*, 255 Or App 709, 711–12, _ P3d _ (2013).

Civil liability is also a possibility. There are no reported cases in Oregon imposing liability on mandatory reporters for failure to report *elder* abuse, but at least one jury has rendered a verdict in favor of a plaintiff based in part on the defendant's failure to report *child* abuse. See *Shin v. Sunriver Prep. School*, 199 Or App 352, 111 P3d 352 (2005). A statutory tort theory may provide the basis for liability because the mandatory reporting statute "imposes a duty to protect a specified group of persons." *Scovill v. City of Astoria*, 324 Or 159, 172, 921 P2d 1312 (1996) (setting forth the statutory tort analysis in the context of the protective custody statute, ORS 430.399). In addition, the Court of Appeals has held that a child who had been sexually abused could state a claim for negligence against the Children's Services Division (CSD) by alleging that CSD breached its statutory duty to investigate abuse allegations. *Blachly v. Portland Police Dept.*, 135 Or App 109, 898 P2d 784 (1995).

Question 13: What Does the Law Require the Oregon State Bar to Do in Connection with Elder Abuse Reporting?

The bar is required to ensure that attorneys complete one hour of training every three years regarding their obligations under the mandatory elder abuse reporting law. ORS 9.114.

Question 14: Are Lawyers also Mandatory Reporters of Child Abuse?

Yes. The parameters are similar to the elder abuse reporting requirement. A lawyer must report child abuse when he or she has reasonable cause to believe child abuse has occurred, and the lawyer has had contact with the potential victim or the alleged abuser. ORS 419B.010(1). The threshold for reporting is low, and the scope of abuse encompassed within the law is broad. Additional information may be found in a separate Q&A sheet on child abuse reporting. An exception is provided for information acquired in a privileged context. See *id.*

Question 15: Are Lawyers Mandatory Reporters of Abuse in Other Contexts?

Yes. First, in certain contexts, lawyers must report suspected abuse of people with developmental disabilities or mental illness. ORS 430.765(1) provides, "Any public or private official who has reasonable cause to believe that any adult with whom the official comes in contact while acting in an official capacity, has suffered abuse, or that any person with whom the official comes in contact while acting in an official capacity has abused an adult shall report

or cause a report to be made in the manner required in ORS 430.743.” The legislature has defined “public or private official” to include attorneys. ORS 430.735(12)(i). Under the statute, “Adult” means any person 18 years of age or older with “(a) A developmental disability who is currently receiving services from a community program or facility or was previously determined eligible for services as an adult by a community program or facility; or (b) A mental illness who is receiving services from a community program or facility.” ORS 430.735(2).

In addition, ORS 441.640 requires any public or private official to report abuse of a resident of a long-term care facility. The definition of “public or private official” in this section includes legal counsel for the resident, guardian or family member of the resident. ORS 441.630(6)(h). Long-term care facility means “a facility with permanent facilities that include inpatient beds, providing medical services, including nursing services but excluding surgical procedures except as may be permitted by the rules of the director, to provide treatment for two or more unrelated patients.” ORS 442.015(2).

APPENDIX A
OREGON REVISED STATUTES 2015
REPORTING OF ELDER ABUSE

124.050 Definitions for ORS 124.050 to 124.95. As used in ORS 124.050 to 124.095:

(1) "Abuse" means one or more of the following:

(a) Any physical injury to an elderly person caused by other than accidental means, or which appears to be at variance with the explanation given of the injury.

(b) Neglect.

(c) Abandonment, including desertion or willful forsaking of an elderly person or the withdrawal or neglect of duties and obligations owed an elderly person by a caretaker or other person.

(d) Willful infliction of physical pain or injury upon an elderly person.

(e) An act that constitutes a crime under ORS 163.375, 163.405, 163.411, 163.415, 163.425, 163.427, 163.465, 163.467 or 163.525.

(f) Verbal abuse.

(g) Financial exploitation.

(h) Sexual abuse.

(i) Involuntary seclusion of an elderly person for the convenience of a caregiver or to discipline the person.

(j) A wrongful use of a physical or chemical restraint of an elderly person, excluding an act of restraint prescribed by a physician licensed under ORS chapter 677 and any treatment activities that are consistent with an approved treatment plan or in connection with a court order.

(2) "Elderly person" means any person 65 years of age or older who is not subject to the provisions of ORS 441.640 to 441.665.

(3) "Facility" means:

(a) A long term care facility as that term is defined in ORS 442.015.

(b) A residential facility as that term is defined in ORS 443.400, including but not limited to an assisted living facility.

(c) An adult foster home as that term is defined in ORS 443.705.

(4) "Financial exploitation" means:

(a) Wrongfully taking the assets, funds or property belonging to or intended for the use of an elderly person or a person with a disability.

(b) Alarming an elderly person or a person with a disability by conveying a threat to wrongfully take or appropriate money or property of the person if the person would reasonably believe that the threat conveyed would be carried out.

(c) Misappropriating, misusing or transferring without authorization any money from any account held jointly or singly by an elderly person or a person with a disability.

(d) Failing to use the income or assets of an elderly person or a person with a disability effectively for the support and maintenance of the person.

(5) "Intimidation" means compelling or deterring conduct by threat.

(6) "Law enforcement agency" means:

(a) Any city or municipal police department.

(b) Any county sheriff's office.

(c) The Oregon State Police.

(d) Any district attorney.

(e) A police department established by a university under ORS 352.121 or 353.125.

(7) "Neglect" means failure to provide basic care or services that are necessary to maintain the health or safety of an elderly person.

(8) "Person with a disability" means a person described in:

(a) ORS 410.040 (7); or

- (b) ORS 410.715.
- (9) "Public or private official" means:
 - (a) Physician or physician assistant licensed under ORS chapter 677, naturopathic physician or chiropractor, including any intern or resident.
 - (b) Licensed practical nurse, registered nurse, nurse practitioner, nurse's aide, home health aide or employee of an in-home health service.
 - (c) Employee of the Department of Human Services or community developmental disabilities program.
 - (d) Employee of the Oregon Health Authority, local health department or community mental health program.
 - (e) Peace officer.
 - (f) Member of the clergy.
 - (g) Regulated social worker.
 - (h) Physical, speech or occupational therapist.
 - (i) Senior center employee.
 - (j) Information and referral or outreach worker.
 - (k) Licensed professional counselor or licensed marriage and family therapist.
 - (L) Member of the Legislative Assembly.
 - (m) Firefighter or emergency medical services provider.
 - (n) Psychologist.
 - (o) Provider of adult foster care or an employee of the provider.
 - (p) Audiologist.
 - (q) Speech-language pathologist.
 - (r) Attorney.
 - (s) Dentist.
 - (t) Optometrist.
 - (u) Chiropractor.
 - (v) Personal support worker, as defined by rule adopted by the Home Care Commission.
 - (w) Home care worker, as defined in ORS 410.600.
- (10) "Services" includes but is not limited to the provision of food, clothing,

medicine, housing, medical services, assistance with bathing or personal hygiene or any other service essential to the well-being of an elderly person.

(11)(a) "Sexual abuse" means:

(A) Sexual contact with an elderly person who does not consent or is considered incapable of consenting to a sexual act under ORS 163.315;

(B) Verbal or physical harassment of a sexual nature, including but not limited to severe or pervasive exposure to sexually explicit material or language;

(C) Sexual exploitation;

(D) Any sexual contact between an employee of a facility or paid caregiver and an elderly person served by the facility or caregiver; or

(E) Any sexual contact that is achieved through force, trickery, threat or coercion.

(b) "Sexual abuse" does not mean consensual sexual contact between an elderly person and:

(A) An employee of a facility who is also the spouse of the elderly person; or

(B) A paid caregiver.

(12) "Sexual contact" has the meaning given that term in ORS 163.305.

(13) "Verbal abuse" means to threaten significant physical or emotional harm to an elderly person or a person with a disability through the use of:

(a) Derogatory or inappropriate names, insults, verbal assaults, profanity or ridicule; or

(b) Harassment, coercion, threats, intimidation, humiliation, mental cruelty or inappropriate sexual comments.

124.055 Policy. The Legislative Assembly finds that for the purpose of preventing abuse, safeguarding and enhancing the welfare of elderly persons, it is necessary and in the public interest to require

mandatory reports and investigations of allegedly abused elderly persons.

124.060 Duty of officials to report; exception. Any public or private official having reasonable cause to believe that any person 65 years of age or older with whom the official comes in contact has suffered abuse, or that any person with whom the official comes in contact has abused a person 65 years of age or older, shall report or cause a report to be made in the manner required in ORS 124.065. Nothing contained in ORS 40.225 to 40.295 affects the duty to report imposed by this section, except that a psychiatrist, psychologist, member of the clergy or attorney is not required to report such information communicated by a person if the communication is privileged under ORS 40.225 to 40.295. An attorney is not required to make a report under this section by reason of information communicated to the attorney in the course of representing a client if disclosure of the information would be detrimental to the client.

124.065 Method of reporting; content; notice to law enforcement agency and to department. (1) When a report is required under ORS 124.060, an oral report shall be made immediately by telephone or otherwise to the local office of the Department of Human Services or to a law enforcement agency within the county where the person making the report is at the time of contact. If known, such reports shall contain the names and addresses of the elderly person and any persons responsible for the care of the elderly person, the nature and the extent of the abuse (including any evidence of previous abuse), the explanation given for the abuse and any other information which the person making the report believes might be helpful

in establishing the cause of the abuse and the identity of the perpetrator.

(2) When a report of a possible crime is received by the department under ORS 124.060, the department or the designee of the department shall notify the law enforcement agency having jurisdiction within the county where the report was made. If the department or the designee of the department is unable to gain access to the allegedly abused elderly person, the department or the designee of the department may contact the law enforcement agency for assistance and the agency shall provide assistance.

(3) If the department or the designee of the department determines that there is reason to believe a crime has been committed, the department or the designee of the department shall immediately notify the law enforcement agency having jurisdiction within the county where the report was made. The law enforcement agency shall confirm to the department or the designee of the department its receipt of the notification.

(4) When a report is received by a law enforcement agency, the agency shall immediately notify the law enforcement agency having jurisdiction if the receiving agency does not. The receiving agency shall also immediately notify the local office of the department in the county where the report was made.

124.70 Duty to investigate; notice to law enforcement agency and department; written findings; review by district attorney. (1) Upon receipt of the report required under ORS 124.060, the Department of Human Services or the law enforcement agency shall cause an investigation to be commenced promptly to determine the nature and cause of the abuse. The investigation shall include a visit

to the named elderly person and communication with those individuals having knowledge of the facts of the particular case. If the alleged abuse occurs in a residential facility, the department shall conduct an investigation regardless of whether the suspected abuser continues to be employed by the facility.

(2) If the department finds reasonable cause to believe that a crime has occurred, the department shall notify in writing the appropriate law enforcement agency. If the law enforcement agency conducting the investigation finds reasonable cause to believe that abuse has occurred, the agency shall notify the department in writing. Upon completion of the evaluation of each case, the department shall prepare written findings that include recommended action and a determination of whether protective services are needed.

(3) After receiving notification from the department that there is reasonable cause to believe that a crime has occurred, a law enforcement agency shall notify the department:

(a) That there will be no criminal investigation, including an explanation of why there will be no criminal investigation;

(b) That the investigative findings have been given to the district attorney for review; or

(c) That a criminal investigation will take place.

(4) If a law enforcement agency gives the findings of the department to the district attorney for review, the district attorney shall notify the department that the district attorney has received the findings and shall inform the department whether the findings have been received for review or for filing charges. A district attorney shall make the determination of whether to file charges within six months of receiving the findings of the department.

(5) If a district attorney files charges stemming from the findings of the department and the district attorney makes a determination not to proceed to trial, the district attorney shall notify the department of the determination and shall include information explaining the basis for the determination.

124.71 Deadline to complete abuse investigation; exception; written report required.

(1) Investigations commenced by the Department of Human Services pursuant to ORS 124.070 must be completed by the department on or before 120 days after receipt of the report of abuse made under ORS 124.060, unless there is an ongoing concurrent criminal investigation, in which case the department may take a reasonable amount of additional time in which to complete the investigation.

(2) Upon completion of an investigation in accordance with subsection (1) of this section, a written report shall be prepared that includes information as required by rule adopted by the department, including but not limited to the following:

(a) The date and location of the report of abuse and of the incident of abuse that was reported;

(b) The dates that the investigation was commenced and completed and by what entity;

(c) A description of documents and records reviewed during the investigation;

(d) An identification of any witness statements that were obtained during the investigation; and

(e) A statement of the factual basis for any findings and a summary of the findings made as a result of the investigation.

124.72 Required disclosure of protected health information to law enforcement agency; liability for disclosure. (1) Upon notice by a law enforcement agency that an investigation into abuse is being conducted under ORS 124.070, and without the consent of the named elderly person or of the named elderly person’s caretaker, fiduciary or other legal representative, a health care provider must:

(a) Permit the law enforcement agency to inspect and copy, or otherwise obtain, protected health information of the named elderly person; and

(b) Upon request of the law enforcement agency, consult with the agency about the protected health information.

(2) A health care provider who in good faith discloses protected health information under this section is not civilly or criminally liable under state law for the disclosure.

(3) For purposes of this section:

(a) “Health care provider” has the meaning given that term in ORS 192.556.

(b) “Protected health information” has the meaning given that term in ORS 192.556.

124.73 Training for abuse investigators. (1) The Department of Human Services shall:

(a) Using new or existing materials, develop and implement a training and continuing education curriculum for persons other than law enforcement officers required by law to investigate allegations of abuse under ORS 124.070 or 441.650. The curriculum shall address the areas of training and education necessary to facilitate the skills required to investigate reports of abuse, including, but not limited to, risk assessment, investigatory technique, evidence gathering and report writing.

(b) Using new or existing materials, develop and implement training for persons that provide care to vulnerable persons to facilitate awareness of the dynamics of abuse, abuse prevention strategies and early detection of abuse.

(2) For purposes of this section, “vulnerable person” means a person 65 years of age or older.

124.075 Immunity of person making report in good faith; identity confidential.

(1) Anyone participating in good faith in the making of a report of elder abuse and who has reasonable grounds for making the report shall have immunity from any criminal or civil liability that might otherwise be incurred or imposed with respect to the making or content of such report. Any such participant shall have the same immunity with respect to participating in any judicial proceeding resulting from such report.

(2) The identity of the person making the report shall be treated as confidential information and shall be disclosed only with the consent of that person or by judicial process, or as required to perform the functions under ORS 124.070.

124.077 Immunity for disclosure to prospective employer. A person who has personal knowledge that an employee or former employee of the person was found by the Department of Human Services, a law enforcement agency or a court to have committed abuse under ORS 124.005 to 124.040, 124.050 to 124.095 or 124.100 to 124.140, is immune from civil liability for the disclosure to a prospective employer of the employee or former employee of known facts concerning the abuse.

124.080 Photographing of victim; photograph as record. (1) In carrying out its duties under ORS 124.070 a law enforcement agency or the Department of Human Services may photograph or cause to have photographed any victim who is the subject of the investigation for purposes of preserving evidence of the condition of the victim at the time of the investigation.

(2) For purposes of ORS 124.090, photographs taken under authority of subsection (1) of this section shall be considered records.

124.085 Catalog of abuse records; confidentiality. A proper record of complaints made under ORS 124.060 and 124.065 shall be maintained by the Department of Human Services. The department shall prepare reports in writing when investigation has shown that the condition of the elderly person was the result of abuse even if the cause remains unknown. The complaints and investigative reports shall be cataloged under the name of the victim but shall be treated as confidential information subject to ORS 124.090, and shall be disclosed only with the consent of that person or by judicial process.

124.087 Policies and guidelines to plan for development and standardization of certain resources and technologies. The Department of Human Services shall adopt policies and guidelines to plan for the development and standardization of resources and technologies to:

(1) Create a database, registry or other electronic record of reports of abuse made under ORS 124.060 and 441.640 and investigations of abuse conducted pursuant to ORS 124.070 and 441.650 with information including, but not limited to:

(a) The date and location of the report of abuse and the incident of abuse that was reported;

(b) If applicable, the date that the initial status report required under ORS 441.650 was completed and a summary of the information required to be contained in the initial status report as set forth in ORS 441.650;

(c) The date that the investigation was commenced and by what entity;

(d) Any actions taken during the course of the investigation, including but not limited to the actions required under ORS 441.650 (6);

(e) The date that a written report, including but not limited to the written report required under ORS 124.071 and 441.650 (6), was completed and a summary of the information contained in the written report; and

(f) The disposition of the report of abuse or the investigation of the report, including but not limited to the date and time that the investigation, if applicable, was completed and the date that a letter of determination under ORS 441.677 was prepared;

(2) Standardize procedures and protocols for making and responding to reports of abuse made under ORS 124.060 and 441.640;

(3) Standardize procedures and protocols for investigations of reports of abuse conducted pursuant to ORS 124.070 and 441.650; and

(4) Promote and coordinate communication and information sharing with law enforcement agencies regarding reports and investigations of abuse under ORS 124.060, 124.070, 441.640 and 441.650.

124.090 Confidentiality of records; exceptions. (1) Notwithstanding the provisions of ORS 192.410 to 192.505, the names of the public or private official or any other person who made the complaint, the witnesses and the elderly persons, and the reports and records compiled under the provisions of ORS 124.050 to 124.095, are confidential and are not accessible for public inspection.

(2) Notwithstanding subsection (1) of this section, the Department of Human Services or the department's designee may, if appropriate, make the names of the witnesses and the elderly persons, and the reports and records compiled under ORS 124.50 to 124.095, available to:

- (a) A law enforcement agency;
- (b) A public agency that licenses or certifies residential facilities or licenses or certifies the persons practicing in the facilities;
- (c) A public agency or private nonprofit agency or organization providing protective services for the elderly person;
- (d) The Long Term Care Ombudsman;
- (e) A public agency that licenses or certifies a person that has abused or is alleged to have abused an elderly person;
- (f) A court pursuant to a court order or as provided in ORS 125.012; and
- (g) An administrative law judge in an administrative proceeding when necessary to provide protective services as defined in ORS 410.040 to an elderly person, when in the best interests of the elderly person or when necessary to investigate, prevent or treat abuse of an elderly person.

(3) Information made available under subsection (2) of this section, and the recipient of the information, are otherwise subject to the confidentiality provisions of ORS 124.050 to 124.095.

124.095 Spiritual treatment not abuse. An elderly person who in good faith is voluntarily under treatment solely by spiritual means through prayer in accordance with the tenets and practices of a recognized church or religious denomination by a duly accredited practitioner thereof shall, for this reason alone, not be considered subjected to abuse by reason of neglect under ORS 124.050 to 124.095.

APPENDIX B
OREGON REVISED STATUTES 2015
PRIVILEGES

40.225 Rule 503. Lawyer-client privilege. (1) As used in this section, unless the context requires otherwise:

(a) "Client" means a person, public officer, corporation, association or other organization or entity, either public or private, who is rendered professional legal services by a lawyer, or who consults a lawyer with a view to obtaining professional legal services from the lawyer.

(b) "Confidential communication" means a communication not intended to be disclosed to third persons other than those to whom disclosure is in furtherance of the rendition of professional legal services to the client or those reasonably necessary for the transmission of the communication.

(c) "Lawyer" means a person authorized, or reasonably believed by the client to be authorized, to practice law in any state or nation.

(d) "Representative of the client" means:

(A) A principal, an officer or a director of the client; or

(B) A person who has authority to obtain professional legal services, or to act on legal advice rendered, on behalf of the client, or a person who, for the purpose of effectuating legal representation for the client, makes or receives a confidential communication while acting in the person's scope of employment for the client.

(e) "Representative of the lawyer" means one employed to assist the lawyer in the rendition of professional legal services, but does not include a physician making a physical or mental examination under ORCP 44.

(2) A client has a privilege to refuse to disclose and to prevent any other person from disclosing confidential

communications made for the purpose of facilitating the rendition of professional legal services to the client:

(a) Between the client or the client's representative and the client's lawyer or a representative of the lawyer;

(b) Between the client's lawyer and the lawyer's representative;

(c) By the client or the client's lawyer to a lawyer representing another in a matter of common interest;

(d) Between representatives of the client or between the client and a representative of the client; or

(e) Between lawyers representing the client.

(3) The privilege created by this section may be claimed by the client, a guardian or conservator of the client, the personal representative of a deceased client, or the successor, trustee, or similar representative of a corporation, association, or other organization, whether or not in existence. The person who was the lawyer or the lawyer's representative at the time of the communication is presumed to have authority to claim the privilege but only on behalf of the client.

(4) There is no privilege under this section:

(a) If the services of the lawyer were sought or obtained to enable or aid anyone to commit or plan to commit what the client knew or reasonably should have known to be a crime or fraud;

(b) As to a communication relevant to an issue between parties who claim through the same deceased client, regardless of whether the claims are by testate or intestate succession or by inter vivos transaction;

(c) As to a communication relevant to an issue of breach of duty by the lawyer to the client or by the client to the lawyer;

(d) As to a communication relevant to an issue concerning an attested document to which the lawyer is an attesting witness; or

(e) As to a communication relevant to a matter of common interest between two or more clients if the communication was made by any of them to a lawyer retained or consulted in common, when offered in an action between any of the clients.

(5) Notwithstanding ORS 40.280, a privilege is maintained under this section for a communication made to the office of public defense services established under ORS 151.216 for the purpose of seeking preauthorization for or payment of nonroutine fees or expenses under ORS 135.055.

(6) Notwithstanding subsection (4)(c) of this section and ORS 40.280, a privilege is maintained under this section for a communication that is made to the office of public defense services established under ORS 151.216 for the purpose of making, or providing information regarding, a complaint against a lawyer providing public defense services.

(7) Notwithstanding ORS 40.280, a privilege is maintained under this section for a communication ordered to be disclosed under ORS 192.410 to 192.505.

40.252 Rule 504-5. Communications revealing intent to commit certain crimes.

(1) In addition to any other limitations on privilege that may be imposed by law, there is no privilege under ORS 40.225, 40.230, 40.250 or 40.264 for communications if:

(a) In the professional judgment of the person receiving the communications, the communications reveal that the declarant has a clear and serious intent at the time the communications are made to subsequently commit a crime involving

physical injury, a threat to the physical safety of any person, sexual abuse or death or involving an act described in ORS 167.322;

(b) In the professional judgment of the person receiving the communications, the declarant poses a danger of committing the crime; and

(c) The person receiving the communications makes a report to another person based on the communications.

(2) The provisions of this section do not create a duty to report any communication to any person.

(3) A person who discloses a communication described in subsection (1) of this section, or fails to disclose a communication described in subsection (1) of this section, is not liable to any other person in a civil action for any damage or injury arising out of the disclosure or failure to disclose.

APPENDIX C
Selected Oregon Rules of Professional Conduct
(As amended, effective February 19, 2015)

Rule 1.0 Terminology

(f) "Information relating to the representation of a client" denotes both information protected by the attorney-client privilege under applicable law, and other information gained in a current or former professional relationship that the client has requested be held inviolate or the disclosure of which would be embarrassing or would be likely to be detrimental to the client.

Rule 1.6 Confidentiality of Information

(a) A lawyer shall not reveal information relating to the representation of a client unless the client gives informed consent, the disclosure is impliedly authorized in order to carry out the representation or the disclosure is permitted by paragraph (b).

(b) A lawyer may reveal information relating to the representation of a client to the extent the lawyer reasonably believes necessary:

- (1) to disclose the intention of the lawyer's client to commit a crime and the information necessary to prevent the crime;
- (2) to prevent reasonably certain death or substantial bodily harm;
- (3) to secure legal advice about the lawyer's compliance with these Rules;
- (4) to establish a claim or defense on behalf of the lawyer in a controversy between the lawyer and the client, to establish a defense to a criminal charge or civil claim against the lawyer based upon conduct in which the client was involved, or to respond to

allegations in any proceeding concerning the lawyer's representation of the client;

(5) to comply with other law, court order, or as permitted by these Rules; or

(6) in connection with the sale of a law practice under Rule 1.17 or to detect and resolve conflicts of interest arising from the lawyer's change of employment or from changes in the composition or ownership of a firm. In those circumstances, a lawyer may disclose with respect to each affected client the client's identity, the identities of any adverse parties, the nature and extent of the legal services involved, and fee and payment information, but only if the information revealed would not compromise the attorney-client privilege or otherwise prejudice any of the clients. The lawyer or lawyers receiving the information shall have the same responsibilities as the disclosing lawyer to preserve the information regardless of the outcome of the contemplated transaction.

(7) to comply with the terms of a diversion agreement, probation, conditional reinstatement or conditional admission pursuant to BR 2.10, BR 6.2, BR 8.7 or Rule for Admission Rule 6.15. A lawyer serving as a monitor of another lawyer on diversion, probation, conditional reinstatement or conditional admission shall have the same responsibilities as the monitored lawyer to preserve information relating to the representation of the monitored lawyer's clients, except to the extent reasonably necessary to carry out the monitoring lawyer's responsibilities under the terms of the diversion, probation, conditional

reinstatement or conditional admission and in any proceeding relating thereto.

(c) A lawyer shall make reasonable efforts to prevent the inadvertent or unauthorized disclosure of, or unauthorized access to, information relating to the representation of a client.