

Supreme Court Expands Liability for Failure to Report Suspected Elder Abuse

The Washington Supreme Court recently expanded the potential exposure to liability for mandated elder abuse reporters such as physicians, nurses and other employees of health care facilities. In Kim v. Lakeside Adult Family Home, et al., No. 91536-9 (May 12, 2016), the Court held that the Abuse of Vulnerable Adults Act RCW 74.34, et seq. creates an implied private right of action against mandated reporters who fail to report suspected signs of elder abuse involving a vulnerable adult. How can health care and other businesses that work with older adults make sure they are reducing their potential exposure? By training employees on identifying vulnerable adults, what are signs of suspected elder abuse, and how to properly report suspected abuse.

In Kim v. Lakeside Adult Family Home, an elderly woman died from acute morphine intoxication when it was given to her by an individual who was caring for her at the adult family home. This case involved two outside nurses who were employed by Alpha Nursing and Services Inc., who were alleged to have seen signs of suspected abuse and physical assault that should have been reported to the Department of Social and Health Services (DSHS). One of the nurses was in the home making a visit when she heard a “thud” and saw the woman lying on the floor. The nurse did not report the fall to DSHS. A second nurse, who did report to DSHS, but not immediately, saw the same woman who seemed to be heavily sedated, was being dragged across the floor. The woman had not been prescribed morphine. The death was ruled a homicide.

Who is a vulnerable adult?

The Abuse of Vulnerable Adults Act RCW 74.34 defines a vulnerable adult as someone who is sixty years of age or older who has the functional, mental, or physical inability to care for himself or herself; or (b) has been found incapacitated, (c) or who has a developmental disability, (d) admitted to any facility or (e) receiving services from home health, hospice, or home care agencies or an individual provider in their own home. So this would include anyone aged sixty or over or disabled who cannot completely care for themselves who is in a care facility or receives home care services at their own home. One example would be an elderly person who is brought to the eye doctor for a checkup by a home health aide. If the person is over 60 and needs help to get to a medical appointment from a home care aide, then they would qualify as a vulnerable adult.

Who is a mandated reporter?

Mandated reporters include: DSHS employees; law enforcement officers; social workers; professional school personnel; individual providers; an employee of a facility; an operator of a facility; an employee of a social service, welfare, mental health, adult day health, adult day care, home health, home care, or hospice agency; county coroner or medical examiner; Christian Science practitioner; or health care providers. This is a very broad net of employees attached to varied businesses including police, health care employees, social service employees, mental health workers and others. Mandated reporters are required to report actual or suspected abuse under the law.

What is suspected elder abuse?

Elder abuse can take many forms including “willful action or inaction that inflicts injury, unreasonable confinement, intimidation, or punishment on a vulnerable adult. Abuse includes sexual abuse, mental abuse, physical abuse, and personal exploitation of a vulnerable adult and improper use of restraint.” RCW 74.34.020. This can include financial abuse such as exerting undue influence over the elder such as using the elder’s Social Security check to pay the child’s rent.

What do employers need to know?

It is fairly easy to identify some mandated reporters such as physicians, nurse and social workers. But what about a hospital admitting clerk who notices that an elder has bruising on her arms or that her son or daughter yell at her when they bring her for her doctor’s appointments? The statute includes employees of health care providers without limiting reporting requirements to those that have direct hands on care of the patients. Members of law enforcement are mandated reporters as well who may be called in on a domestic violence matter and determine that the elderly person is not being well cared for in their home.

How does suspected abuse get reported?

Reports must occur when there is reasonable cause to believe that abandonment, abuse, financial exploitation, or neglect of a vulnerable adult has occurred, mandated reporters shall immediately report to DSHS; if physical or sexual assault has occurred then the report must be made to DSHS and the appropriate law enforcement agency. In Chelan and Douglas Counties, the DSHS reporting number is 1-800-459-0421. The report should include indentifying information about the reporter, the elder, the alleged perpetrator, what has happened and any other helpful information.

What is the expanded liability?

Under Kim v. Lakeside Adult Family Home, mandated reporters who fail to report suspected elder abuse can be held individually liable. It is not a far stretch to imagine significant employer liability as well when an employee fails to report suspected abuse observed during the course of their duties.

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