

# When the Court Interprets Legislative Intent: Mandatory Reporting of Child Abuse

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In 2009, a nurse was arrested and charged with endangering the welfare of a child in violation of state law because the nurse did not report suspected sexual abuse of children. After an investigation and hearing, the board of nursing (BON) found the nurse guilty of unprofessional conduct and suspended her license for 2 years. On appeal, the superior court reversed the BON's decision because the suspected abuse was outside of the nurse's employment. This article reviews the legal and ethical basis for the BON's decision, the legal basis for the court's reversal, and the implications for BONs.

To maintain the confidentiality of the children involved, this article does not reveal the identities of the nurse or state.

*In 2009, a registered nurse was arrested and charged with endangering the welfare of a child in violation of state law that mandates that nurses report child abuse. Three months later, the state filed a complaint with the board of nursing (BON), alleging the nurse was guilty of unprofessional conduct for failing to report incidents of sexual abuse inflicted on three young children by two older children. All of the children were members of the nurse's family.*

*After an investigation, the BON held an evidentiary hearing at which the nurse admitted that several third parties made her aware of the abuse and that she did not notify authorities. The BON found that the nurse's failure to report several incidents of sexual abuse to the parents of the children or any other authority as mandated by state law constituted unprofessional conduct. The BON suspended the nurse's license for 2 years and ordered continuing education before her reinstatement.*

*The nurse appealed the BON's decision.*

## Basis of the BON's Decision

The BON noted that federal and state laws, regulatory standards, and professional and ethical principles require nurses to report child abuse. The Child Abuse Prevention and Treatment Act (CAPTA) is the federal law mandating the report of child abuse. To comply with CAPTA, state statutes identify persons who must report suspected child abuse to an identified agency, such as child protective services, a law enforcement agency, or a state reporting hotline. Approximately 48 states and the District of Columbia designate nurses as mandatory reporters of child abuse. In some states, any person, regardless of profession or occupation, who suspects child abuse or neglect must report it (Child Welfare Information Gateway, 2014a, 2014b). In the state where the nurse in this case was arrested and charged, individuals working in the healing arts are required to make a report of a knowing or good

faith suspicion of child abuse or neglect. Moreover, the American Nurses Association's (ANA) *Code of Ethics*, some nurse practice acts (NPAs), and the principles of nursing professionalism require nurses to report child abuse.

BONs judge a nurse's actions based on both the law and professional standards. To protect the public, BONs must review the nurse's conduct, apply the law, and determine a disciplinary sanction for violations (Russell, 2012). If a BON finds a nurse guilty of unprofessional conduct, it may impose a range of sanctions on the nurse's license. Unprofessional conduct is defined in part as conduct that fails to conform to legal standards and the standards of the nursing profession and conduct that adversely affects the health and welfare of the public (Russell, 2013). To understand the BON's decision in this particular case, one should consider not only state statute but also the nursing code of ethics and the principles of the profession.

Nursing is considered a profession and a chosen, paid occupation requiring prolonged training and formal qualifications (Gokenbach, 2012). As professionals, nurses are expected to exhibit competent, skillful behaviors in alignment with their profession. The values of the profession drive the professional's beliefs and behavior (Gokenbach, 2012). Further, obligations of professionalism and practice embedded in codes and regulations require nurses to comport themselves with respect, confidentiality, moral courage, and cultural sensitivity and to act as good citizens of the world (Butts, 2013).

ANA's (2015) *Code of Ethics* outlines ethical obligations. One of the nonnegotiable tenets in the code is the nurse's commitment both to the welfare of the sick, injured, and vulnerable in society and to social justice. Further, the code states that the nurse's duty is to promote the best interests of the patient and, consequently, the duty to maintain confidentiality may be limited

TABLE 1

### American Nurses Association's Code of Ethics Responsibilities

The *Code of Ethics for Nurses With Interpretive Statements* provides guidance, not absolutes, for the legal, ethical, and moral responsibilities that nurses have toward their patients. Provisions of the code relevant to a nurse's responsibility to report suspected child abuse include the following (American Nurses Association, 2015):

**Provision 2.** The nurse's primary commitment is to the patient, whether an individual, family, group, community, or population

- **2.1. Primacy of the patient's interests.** The nurse's primary commitment is to the recipients of nursing and health care services.
- **2.2. Conflict of interest for nurses.** Nurses address conflicts in ways that ensure patient safety and that promote the patient's best interests while preserving the professional integrity of the nurse.

**Provision 3.** The nurse promotes, advocates for, and protects the rights, health, and safety of the patient.

- **3.1. Protection of the rights of privacy and confidentiality.** The duty to maintain confidentiality is not absolute and may be limited, as necessary, to protect the patient or other parties, or by law or regulation such as mandated reporting for safety or public health reasons.

TABLE 2

### Nurse Practice Act: Model Rules

#### 7.3 Grounds for discipline

a. Non-compliance with federal, jurisdictional or contractual requirements

c. Confidentiality, patient privacy, consent or disclosure violations, including, but not limited to:

1. Failure to safeguard the patient's dignity, the right to privacy and confidentiality of patient information. This does not prohibit or affect reporting responsibilities under other statutes such as Child Abuse or Older Adults Protective Service Acts (National Council of State Boards of Nursing, 2012, p. 13)

to protect the patient by laws or regulations such as mandated reporting for safety or public health reasons. (See Table 1.) Clearly, a failure to report child abuse is a violation of the *Code of Ethics*.

NPAs, including the one in this nurse's state, require a nurse to behave professionally both within and outside of the workplace. The NPA model rules address noncompliance with federal statutes such as CAPTA as well as disclosure and patient safety and advocacy. (See Table 2.)

Accordingly, the BON found that the nurse was required to report the abuse but failed to do so and that such failure constituted unprofessional conduct. The nurse's license was suspended

for 2 years with a requirement to complete remediation before reinstatement.

### Superior Court Appeal

*The nurse appealed to the superior court claiming she could not be guilty of unprofessional conduct because she was not required under state law to report abuse occurring outside the scope of her employment as a nurse. The superior court agreed and reversed the decision of the BON, finding that the BON erred in its interpretation of the law and that the nurse did not violate statute.*

#### Rationale for Superior Court Decision

In 2009, when the nurse failed to report suspected sexual abuse of a child, the statute read, "Any physician, and any other person in the healing arts including any person licensed to render services in medicine, osteopathy, dentistry, any intern, resident, nurse, school employee, social worker, psychologist, medical examiner or any other person who knows or in good faith suspects child abuse or neglect shall make a report . . ." In 2010, the statute was amended to clarify the duty to report. After the amendment, the statute read, "Any person, agency, organization or entity that knows or in good faith suspects child abuse or neglect shall make a report . . ." (See Table 3.)

The superior court found the language of the earlier statute identified nurses as "members of a series of professionals mandated to report known or suspected incidents of child abuse." Further, the statute's language was ambiguous as to whether the professionals in the healing arts were required to report knowledge of incidents of abuse gained from outside their scope of employment; therefore, the court looked to the plain language of the legislation. The superior court found that since the legislature distinguished mandatory reporter by occupation (i.e., healing arts), that it was reasonable to conclude that the legislature did not intend the statute to apply to nurses in familial circumstances outside the scope of their employment.

Therefore, the BON had no substantial evidence to support a finding of unprofessional conduct. The BON, according to the superior court, erred in its interpretation of the mandatory reporting requirement as noted in the statute. The superior court found the nurse had acquired second-hand information regarding abuse, not within the scope of her employment but within her familial relationship role with the victims; therefore, the nurse did not have a legal obligation to make a report of the suspected abuse.

### The BON's Appeal to the State Supreme Court

*The BON appealed the superior court's decision, arguing that substantial evidence existed to demonstrate that the nurse violated applicable provisions of the State Code, which required reporting of child sexual abuse. According to the BON, the statute was not ambiguous, and the BON*

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