

Oregon  
State  
Bar

CLE  
Seminars

# Mandatory Abuse Reporting for Oregon Lawyers



Thursday, March 17, 2022  
Noon–1 p.m.

1 Abuse Reporting credit (ID 87622)

# MANDATORY ABUSE REPORTING FOR OREGON LAWYERS

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OREGON STATE BAR  
16037 SW Upper Boones Ferry Road  
P.O. Box 231935  
Tigard, OR 97281-1935

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## SCHEDULE

### Noon Mandatory Abuse Reporting for Oregon Lawyers

This seminar discusses Oregon's mandatory reporting statutes and their function, provides information about how abuse or neglect may present, and helps attorneys to understand the intersection between mandated reporting requirements and their obligations under the Oregon Rules of Professional Conduct.

### 1:00 Adjourn

## FACULTY

**Sarra Yamin**, *Oregon State Bar, Tigard*. Ms. Yamin is an Assistant General Counsel in the Oregon State Bar's Client Assistance Office. She previously worked in the bar's Diversity and Inclusion Department. Before joining the bar, she served as an Assistant Attorney General with the Washington State Attorney General's Office, where she represented the Department of Early Learning in childcare licensing matters, represented the Department of Social and Health Services in juvenile dependency and termination of parental rights matters, and advised the Washington State School for the Blind and Center for Childhood Deafness and Hearing Loss. She also served as a liaison to the Clark County Children's Justice Center.



## Mandatory Abuse Reporting for Oregon Lawyers

SARRA M. YAMIN

ASSISTANT GENERAL COUNSEL  
OREGON STATE BAR

ANKUR DOSHI  
GENERAL COUNSEL

## Oregon Statutory Abuse Reporters [summarized and condensed]

- ▶ Medical Professionals
- ▶ Audiologists and Therapists
- ▶ Police Officers, Firefighters, EMTs
- ▶ School and College Employees
- ▶ Health and Human Services Workers
- ▶ Care Providers and Legal Custodians
- ▶ Clergy and Mental Health Professionals
- ▶ Physical, Speech and Occupational Therapists
- ▶ Members of the Legislative Assembly
- ▶ Attorneys

# Legislative Purpose

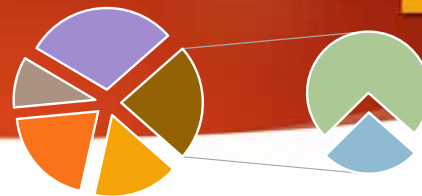
[example: elder abuse reporting]

“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.”

ORS 124.055



About 80% of all child abuse reports come from mandatory reporters.



All voluntary 23%

- Police 17%
- School 20%
- Medical 10%
- Other mandated 30%
- Parent/Self 6%
- Other voluntary 17%

## Attorneys' Abuse Reporting Duties



**ELDERS [ORS  
124.060]**



**CHILDREN [ORS  
419B.010]**







**MENTAL ILLNESS/  
DEVELOPMENTAL  
DISABILITY [ORS 430.765]**




**LONG-TERM CARE  
RESIDENT [ORS 441.640]**

## Your Abuse Reporting Duty

You **must** report abuse if you have:

-  **Contact** with an abuser or a victim, and
-  **Reasonable cause** to believe that
-  **A protected person**
-  **Has Been abused,**

 **UNLESS** an exception applies.

**This duty exists 24 hours a day, 7 days a week!**

**Following an employer's policy is not enough!**

## How to Report

- ☎ Immediately = without delay
- ☎ To DHS or law enforcement
- ☎ Oral report required
- ☎ Give as much information as possible
- ☎ Explain allegation of abuse

**Reporting Hotline:**

**1-855-503-SAFE**

or call DHS Branch Offices

## Report Should Include ...

- ▶ Names and addresses
- ▶ Nature and extent of the abuse
- ▶ Explanation given for the abuse
- ▶ Cause of abuse and identity of perpetrator.

## CHILD ABUSE REPORTING



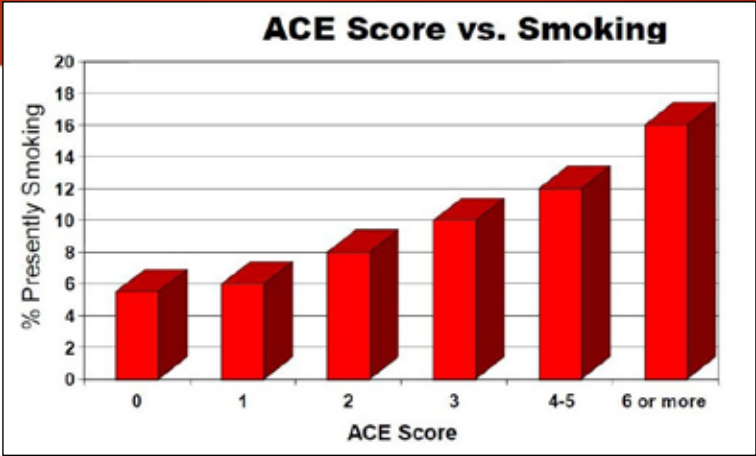
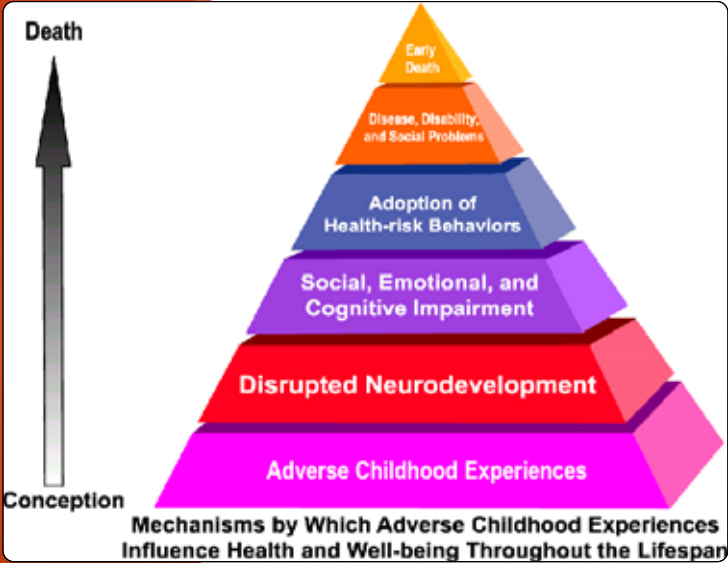
## The Battered Child Syndrome

- ▶ C. H. Kempe, Frederic N. Silverman, Brandt F. Steele, William Droegemuller & Henry K. Silver, *The Battered Child Syndrome*, 181 J Am Med Ass'n 17 (1962).

Foundation  
of child  
abuse as a  
diagnosis.

Also called  
Tardieu's syndrome;  
Caffey-Kempe  
syndrome.

# ACEs Pyramid



- Alcoholism and Alcohol Abuse
- Chronic Obstructive Pulmonary Disease (COPD)
- Depression
- Fetal Death
- Health-related Quality of Life
- Illicit Drug Use
- Ischemic Heart Disease (IHD)
- Liver Disease
- Risk for Intimate Partner Violence
- Multiple Sexual Partners
- Sexually Transmitted Diseases (STDs)
- Smoking
- Suicide Attempts
- Unintended Pregnancies
- Early Initiation of Smoking
- Early Initiation of Sexual Activity
- Adolescent Pregnancy
- Psychotropic Medications Prescribed

## What is Contact?

- A touching or meeting; association or relationship
- Need not be to be linked to abuse BUT there must be physical or associational contact
- Receiving information in a public meeting about someone is not sufficient (AG opinion)
- Telephone or email contact?
- Can be before or after the abuse or the disclosure



## What is Reasonable Cause?

- ▶ Any reasonable suspicion of abuse should be reported.
- ▶ Reasonable suspicion is more than a hunch.
- ▶ It requires an ability to point to articulable facts based on the totality of the circumstances.
- ▶ Your obligation to report does not depend upon whether abuse actually occurred

## Let the Experts Decide

- ▶ You do not need to investigate
- ▶ OK to comment on injury or situation and observe
- ▶ Your job is not to determine whether abuse occurred.
- ▶ Do you have a reasonable suspicion of abuse?
- ▶ Consider making a voluntary report (assuming no confidentiality issue).
- ▶ If the explanation does not suit the injury, make a report.

## Child Abuse Defined—ORS 419B.005

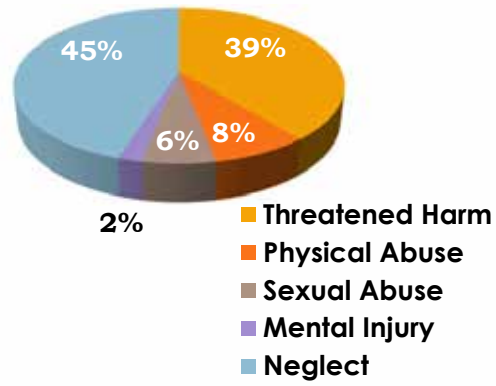
- ▶ Any assault; any injury not caused by accident; any injury at variance with the explanation given for it.
- ▶ Any mental injury caused by cruelty
- ▶ Rape, sexual abuse, or sexual exploitation
- ▶ Neglect
- ▶ Child selling
- ▶ Presence where methamphetamines are manufactured
- ▶ Unlawful exposure to controlled substance w/risk of harm
- ▶ Threat of harm
- ▶ No abuse exception for “reasonable discipline” if results in above

## Warning Signs of Child Abuse

- ▶ Unexplained injury or one that doesn't fit the explanation given for it
- ▶ Injuries in various stages of healing
- ▶ Multiple bruises or bruises on soft tissue; any bruise on a baby
- ▶ Child wary of parents or adults generally.
- ▶ Fatigue, listlessness, constant hunger
- ▶ Unusual sexual knowledge
- ▶ Inappropriately adult or infantile



## Types of Child Abuse Reported—2015



## ELDER ABUSE REPORTING



## Where does elder abuse occur?



- 66% at home
- 34% care facility

## Abuse has a Wide Scope: The Case of Brooke Astor

- ▶ Philanthropist
- ▶ Writer
- ▶ NYC Socialite
- ▶ Widow of Vincent Astor
- ▶ \$200 million estate



## The Brooke Astor Story

- ▶ Mrs. Astor was diagnosed with Alzheimer's and anemia
- ▶ Anthony "Tony" Marshall, her only son, was tasked with her care
- ▶ Anthony earned \$450,000/yr to take care of her portfolio



## Brooke Astor: Reasonable Cause?

- ▶ Phillip Marshall, Mrs. Astor's grandson, sought a change in guardianship
- ▶ Phillip alleged that despite her great wealth Mrs. Astor was living in squalor and his father Anthony had reduced her necessary medication and doctor's visits



Francis X. Morrissey, Jr.  
John Marshall Mantei for the New  
York Times

## Elder Abuse Defined—ORS 124.050(1)

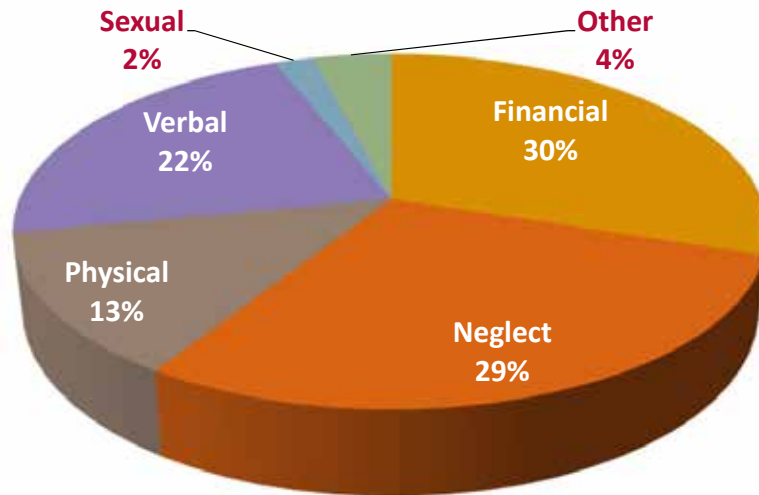
- ▶ Financial Exploitation
- ▶ Abandonment or Neglect
- ▶ Verbal Abuse
- ▶ Willful infliction of physical pain or injury
- ▶ Any injury not caused by accident; any injury at variance with the explanation given for it.
- ▶ Sex Abuse
- ▶ Seclusion or Restraint

## Warning Signs of Elder Abuse

- ▶ Unexplained injury or one that doesn't fit the explanation given for it
- ▶ Elder not permitted to speak for themselves or without the presence of others.
- ▶ Being extremely withdrawn and non-communicative or non-responsive.
- ▶ Unpaid bills, overdue rent, utility shut-off notices



## 2015 Substantiated Elder Abuse



## The Brooke Astor Story: Consequences for Perpetrators

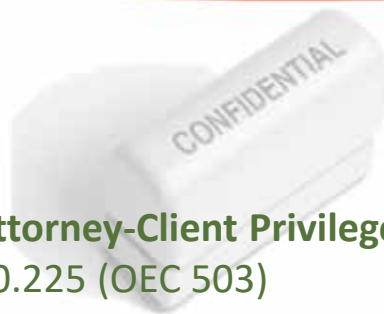
- ▶ The jury convicted Anthony Marshall of one charge of grand larceny and Francis X. Morrissey Jr. of forgery.
- ▶ Both were sentenced to 1-3 years in prison.
- ▶ On February 10, 2010, Francis X. Morrissey Jr. was disbarred



## Exceptions to Reporting

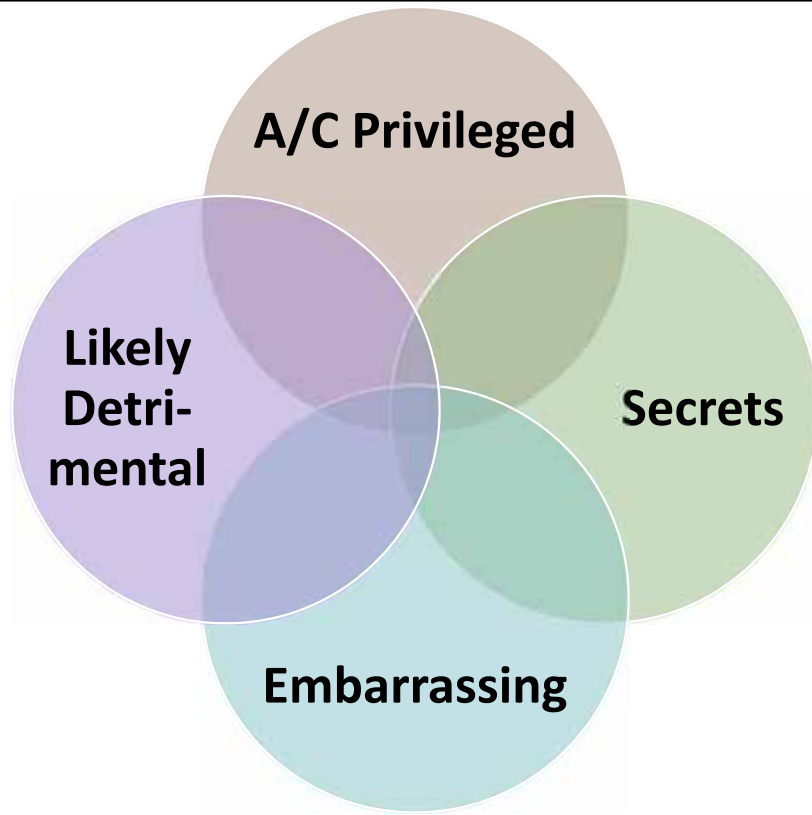


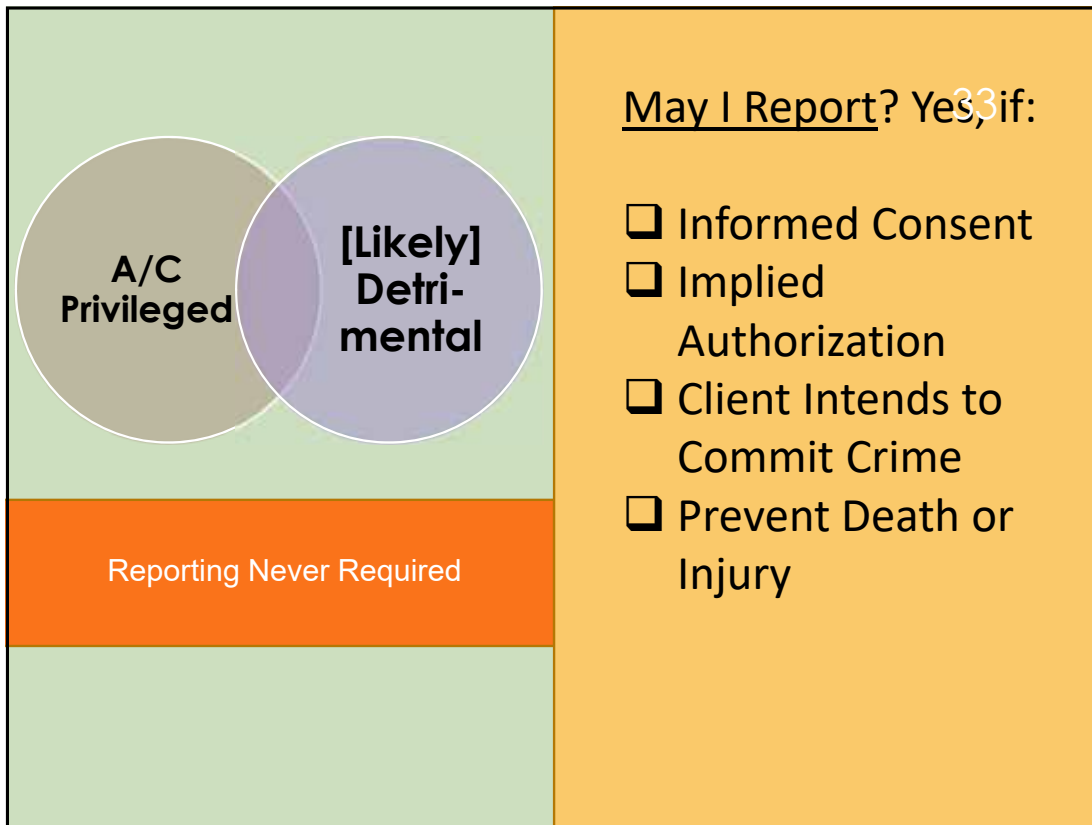
## Exception: Certain Client Confidences



- ▶ **Attorney-Client Privileged** under ORS 40.225 (OEC 503)
- ▶ **Information communicated during representation that is *detrimental* to client** if disclosed (reconciles RPC 1.6 duty)

**Lawyer Confidences—RPC 1.6**  
[information relating to the representation of a client]





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Some examples

- ▶ Lawyer representing person charged with child abuse who admits past acts
- ▶ Lawyer representing person charged with child abuse who expresses intention to “pay back” child for speaking with prosecutor

### Some examples

- ▶ Lawyer representing wife in divorce is told by wife of physical abuse by husband of their child while meeting in a crowded restaurant. Lawyer has met the husband.
- ▶ Lawyer representing court-appointed guardian of elderly person suspects guardian is neglecting elderly person based upon interaction with protected person

### Exception: “Reasonable Discipline” [of a child!]

- ▶ “Abuse” does not include reasonable discipline unless the discipline results in one of the conditions [specifically defined to constitute abuse].” ORS 419B.005(1)(b).

## Exception: Duplicative Reports [child abuse only]

- ▶ Report already made  
OR
- ▶ Proceeding already pending  
AND
- ▶ Reasonable belief the information is already known

## Exception: Spiritual Treatment [for an elder!]

- ▶ Voluntary
- ▶ Through prayer
- ▶ Recognized church
- ▶ Duly accredited practitioner
- ▶ Reconciles “neglect” as not abuse

**Sarra Yamin**  
**Assistant General Counsel**  
**Client Assistance Office**  
**Oregon State Bar**  
**503.431.6366**  
**1.800.452.8260 x 366**  
**[syamin@osbar.org](mailto:syamin@osbar.org)**

**Ethics Hotline: 503.431.6475**

Oregon State Bar