

Office of Public Defense Services Parent Child Representation Program Case Manager Practice Principles

Thank you to Washington State Office of Public Defense Parent Representation Program, Klamath Defender Services Inc., and the National Association of Social Workers for providing much of the information contained within this manual. *Updated October 2017.*

Table of Contents:

Table of Contents:.....2

1. Introduction6

 1.1 Office of Public Defense Services.....6

 1.2 Parent Child Representation Program6

 1.3 Applicability.....7

2. General Qualifications and Continuing Education8

 2.1 Qualifications8

 2.2 PCRCP Case Manager Orientation.....8

 2.3 Continuing Education.....8

 2.4 Current Child Welfare Literature9

3. Professional Responsibilities9

 3.1 Case Management9

 3.2 Contract Position Title.....9

 3.3 Availability.....9

 3.4 Professional Liability Insurance10

 3.5 Conflicts of Interest10

 3.5.1 Previous Professional Relationships.....10

 3.5.2 Other Professional Activity10

 3.6 Client Record Keeping and Record Retention10

 3.7 Mandatory Reporting11

 3.8 Attorney Client Privilege12

 3.9 Confidentiality12

 3.10 Communication with Persons Represented by Counsel.....13

4. Professional Duties and Roles13

 4.1 Professional Relationships with Clients13

 4.1.1 Duties & Roles13

 4.1.2 Voluntary Service.....14

 4.1.3 Communication with Clients.....14

 4.1.4 Informed Consent14

 4.1.5 Client complaint/grievance.....14

 4.1.6 Closing Cases.....15

 4.2 Professional Relationships with Parent Child Representation Program Attorneys 15

| | |
|--|----|
| 4.2.1 Agent of the Parent Child Representation Program Attorney | 15 |
| 4.2.2 Duties & Roles as Agent of the Parent Child Representation Program Attorney | 15 |
| 4.2.3 Client conflict of interest..... | 16 |
| 4.2.4 Attorney Support Model | 17 |
| 4.2.5 Referrals | 17 |
| 4.2.6 Professional and Independent Assessment..... | 17 |
| 4.2.7 Monthly Service Updates..... | 17 |
| 4.2.8 Collateral Case Information Provided to Attorneys | 18 |
| 4.2.9 Professional Relationships with Others | 18 |
| 4.3 Professional Relationships with the Office of Public Defense Services | 18 |
| 4.3.1 Reporting | 18 |
| 4.3.2 Training..... | 18 |
| 4.3.3 Evaluation | 19 |
| 5. Caseloads | 19 |
| 5.1 Caseload Standards | 19 |
| 5.2 Caseload Distribution..... | 19 |
| 6 Contract Hours Distribution & Reporting | 20 |
| 6.1 Direct Client Service Hours..... | 20 |
| 6.2 Administrative Service Hours..... | 20 |
| 6.3 Contract Hour Expectations..... | 20 |
| 6.4 Mileage | 21 |
| 7 Code of Ethics..... | 21 |
| 8 Miscellaneous | 21 |
| 8.1 Requests for Exceptions to Parent Child Representation Program Social Worker Practice Principles | 21 |
| 8.2 Quality Assurance..... | 22 |
| 8.3 Program Development..... | 22 |
| 8.4 Social Work Forms | 22 |
| 8.5 Invoicing | 22 |
| 8.6 Disclaimers | 22 |
| APPENDIX 1. FORMAL OPINION NO. 2011-188 Information Relating to the Representation of a Client: Third-Party Electronic Storage of Client Materials | 24 |

| | |
|---|----|
| APPENDIX 2. ORS 419B.005-050 REPORTING OF CHILD ABUSE..... | 27 |
| 419B.005 Definitions..... | 27 |
| 419B.007 Policy..... | 29 |
| 419B.010 Duty of officials to report child abuse; exceptions; penalty. | 30 |
| 419B.015 Report form and content; notice. | 30 |
| 419B.016 Offense of false report of child abuse..... | 31 |
| 419B.017 Time limits for notification between law enforcement agencies and Department of Human Services; rules. | 32 |
| 419B.020 Duty of department or law enforcement agency receiving report; investigation; notice to parents; physical examination; child’s consent; notice at conclusion of investigation..... | 32 |
| 419B.021 Degree requirements for persons conducting investigation or making determination regarding child. | 34 |
| 419B.022 Short title. | 34 |
| 419B.023 Duties of person conducting investigation under ORS 419B.020..... | 34 |
| 419B.024 Critical Incident Response Team for child fatality; rules. | 36 |
| 419B.025 Immunity of person making report in good faith..... | 37 |
| 419B.028 Photographing child during investigation; photographs as records. | 37 |
| 419B.030 Central registry of reports. | 37 |
| 419B.035 Confidentiality of records; when available to others. | 37 |
| 419B.040 Certain privileges not grounds for excluding evidence in court proceedings on child abuse. | 40 |
| 419B.045 Investigation conducted on public school premises; notification; role of school personnel..... | 40 |
| 419B.050 Authority of health care provider to disclose information; immunity from liability..... | 40 |
| APPENDIX 3. QUESTIONS AND (Some) ANSWERS ABOUT MANDATORY CHILD ABUSE REPORTING FOR LAWYERS..... | 42 |
| Question 1: What is Mandatory Child Abuse Reporting? | 42 |
| Question 2: What Are Lawyers Required To Do?..... | 42 |
| Question 3: What Is “Reasonable Cause?”..... | 43 |
| Question 4: What Is “Comes In Contact?” | 44 |
| Question 5: How Is A Lawyer Expected To Identify Child Abuse? | 45 |
| Question 6: Are There Any Exceptions To The Reporting Requirement? | 46 |

| | |
|--|----|
| Question 7: What If Someone Expresses The Intent To Commit An Act Of Child Abuse? | 48 |
| Question 8: Are Lawyers Obligated to Report Child Abuse Occurring Outside Of Oregon?..... | 49 |
| Question 9: What Type Of Report Is Required And To Whom Must It Be Made? | 50 |
| Question 10: Are Child Abuse Reports Confidential? | 50 |
| Question 11: What If I Am Wrong, And There Really Was No Abuse? | 51 |
| Question 12: Are Lawyers Liable For Not Reporting Child Abuse? | 51 |
| Question 13: What Does The Law Require The Oregon State Bar To Do In Connection With Child Abuse Reporting?..... | 52 |
| Question 14: Are Lawyers Also Mandatory Reporters Under The Elderly And Disabled Person Abuse Prevention Act, ORS 124.050, Et Seq.?..... | 53 |
| Question 15: Are Lawyers Also Mandatory Reporters of Abuse of Adults with Mental Illness or Developmental Disabilities? | 53 |
| APPENDIX 4. – ORS 40.225 LAWYER-CLIENT PRIVILEGE..... | 55 |
| APPENDIX 5. OREGON RULES OF PROFESSIONAL CONDUCT 1.6..... | 58 |
| APPENDIX 6. OREGON RULES OF PROFESSIONAL CONDUCT 4.2..... | 59 |
| APPENDIX 7. OREGON RULES OF PROFESSIONAL CONDUCT 5.3..... | 59 |
| APPENDIX 8. CASE MANAGER REFERRAL FORM..... | 60 |
| APPENDIX 9. MONTHLY ACTIVITY REPORT | 62 |
| APPENDIX 10. MONTHLY INVOICE..... | 64 |
| APPENDIX 11. CODE OF ETHICS FOR REGULATED SOCIAL WORKERS..... | 65 |
| APPENDIX 12. SAMPLE FORMS | 70 |

1. Introduction

1.1 Office of Public Defense Services

The Public Defense Services Commission (PDSC) is a seven-member commission appointed by the Chief Justice of the Oregon Supreme Court that serves as the governing body for Oregon's public defense system. The Commission provides policy direction and oversight for the administration of the system. As required by ORS 151.216(1)(b), the Commission established the Office of Public Defense Services (OPDS) that serves as the administrative agency responsible for carrying out the Commission's directives and other statutorily defined duties. The legal services provided by OPDS represent an essential component of Oregon's public safety system.

Our Mission:

To administer a public defense system that ensures the provision of public defense services in the most cost-efficient manner consistent with the Oregon Constitution, the United States Constitution, and Oregon and national standards of justice.

Our Vision:

- An agency that is a model for other agencies in its responsiveness to clients, customers and stakeholders
- An Appellate Division that serves as a vigilant guardian of the legal rights of public defense clients and the public's interest in equal justice and due process of law
- A Contract & Financial Services Division that provides efficient and effective management of public defense resources statewide
- A Public Defense Services Commission that strives to be a visionary planner, a responsive and cooperative policy maker, and a responsible steward of taxpayer dollars

1.2 Parent Child Representation Program

Over the last six years, the Office of Public Defense Services has evaluated and sought to improve the work of its juvenile contractors through a number of approaches including promotion of best practices; education and training opportunities; investigation and resolution of complaints from judges, attorneys and clients; the creation of a juvenile law resource center; and the creation of a Juvenile Appellate Section within the OPDS appellate division. Despite these efforts, a statewide survey and the agency's peer review evaluations and structural reviews disclose continuing deficiencies in the quality of representation being provided statewide.

The State of Washington has addressed similar issues through the Parent Representation pilot program. Components of the program include: reduced caseloads, additional training and oversight, and independent social work support for attorneys representing parents. The evidence of their success has been the expansion of their pilot from three to

twenty-five counties, and a statewide reduction in the number of pending juvenile dependency cases.

As part of the agency's effort to ensure improved outcomes for children and families, it is approaching the pilot program in collaboration with other state agencies and child welfare organizations. The Oregon Judicial Department (OJD), Department of Human Services (DHS), and Department of Justice (DOJ) volunteered to partner and provide resources to assist in the overall goal of improving representation in juvenile cases from beginning to end. These agencies have offered to assist with multi-disciplinary trainings, resources, and shared information to make overall systematic improvements in assuring these cases are handled to best meet the needs of children, youth and parents. The agency is also working with CASA programs at the local level.

The pilot counties were selected after a review of the following criteria:

1. Number of children in care.
2. Time to jurisdiction and permanency hearing.
3. Average length of time in care.
4. Incidence of attorneys not being present at shelter hearings.
5. Willingness to participate and make systematic changes.
6. Willingness to change business processes.
7. Willingness to conform to pilot expectations.

Yamhill and Linn County are the initial pilot counties.

Through the pilot, contract attorneys in the pilot counties will have a maximum caseload of 80 cases, be provided a case management system, and access to independent social worker or case manager¹ resources.

OPDS is working to provide effective representation to parents and children in juvenile dependency, delinquency and termination of parental right cases. In order to achieve a high level of quality, there must be a systematic change in the handling of cases. As part of this program, providing independent case managers to work in collaboration with attorneys for parents, youth, and children during this period of time is a vital part of assuring positive outcomes.

1.3 Applicability

- (a) The Parent Child Representation Program (PCRP) Case Manager Practice Principles ("practice principles", "principles") apply to all PCRP Case Managers working on cases funded by the Office of Public Defense Services for the Parent Child Representation Program.

¹ The services provided by the case managers are similar to those which would be typically provided by social workers, with the exception of therapeutic services. However, because "Social Worker" is a protected title which requires registration and/or licensing, the PCRP has chosen the term "case manager" to reflect the social work like services to be provided.

- (b) If any of the statements made in these practice principles conflict with applicable federal, state or local law, the Oregon Rules of Professional Conduct, and/or professional regulations that pertain to a member's practice, statutory and professional obligations should take precedence over statements made in this document. All such conflicts shall be reported to the Office of Public Defense Services.
- (c) The principles are effective August 15, 2014.

2. General Qualifications and Continuing Education

2.1 Qualifications

Possess:

- (a) a Bachelor's or higher level degree in Social Work/Human Services or a closely related field; OR
- (b) a Bachelor's degree in a field not closely related (to Social Work/Human Services) and one year of human services related experience (i.e., work providing assistance to individuals and groups with issues such as economically disadvantaged, employment, abuse and neglect, substance abuse, aging, disabilities, prevention, health, cultural competencies, inadequate housing).
- (c) Preference for License or Registration as a social worker in Oregon by the Oregon State Board of Social Workers.

2.2 PCRCP Case Manager Orientation

- (a) All PCRCP case managers will participate in a program and practice introductory training with the Office of Public Defense Services or its designee(s) within 30 days of the contract effective date.
- (b) Newly contracted case managers will attend the next available PCRCP attorney meeting in their contracted county(ies).
- (c) Newly contracted case managers will participate in monthly in-person or telephone case reviews for the first three months of the contract and in quarterly reviews thereafter.

2.3 Continuing Education

- (a) Case managers will participate in a minimum of 10 hours of continuing education per contract year.
- (b) Continuing education includes all identified OPDS continuing legal education (CLE) trainings, Oregon Criminal Defense Lawyers Association (CLE) trainings, and trainings presented by Board of Licensed Social Workers-accepted credentialing bodies whose subject matter is related to practice in juvenile dependency or delinquency cases.
- (c) Case managers are responsible for documenting their continuing education and providing records to the Office of Public Defense Services as requested.

2.4 Current Child Welfare Literature

Case managers are encouraged to stay current with macro and micro level child welfare related scientific method and theory literature.

3. Professional Responsibilities

3.1 Case Management

- (a) Case managers know and understand they are primarily providing parent, youth and child support, investigative, and advocacy services.
- (b) Case managers know and understand they are not acting in a therapist role. Case managers make this information clear to the client and other professionals.
- (c) Case managers know and understand they are acting as an agent of the attorney who has been appointed to represent the client in the case and make this information clear to the client and other professionals.

3.2 Contract Position Title

- (a) All case managers contracted directly with OPDS shall formally be referred to as a "Parent Child Representation Program Case Manager (PCRPCM)." Case managers, who are also licensed and/or registered social workers may choose to formally be referred to as a "Parent Child Representation Program Social Worker."
- (b) Case managers are independent contractors, not employees of the Office of Public Defense Services. They shall not represent themselves as employees of the Office of Public Defense Services.

3.3 Availability

- (a) Case managers have one telephone line primarily dedicated to their professional position. The telephone voice mail clearly identifies the case manager's name, position and typical work hours.
- (b) Case managers have one e-mail account set up exclusively for their professional position. The e-mail account is private and not accessible by others. All professional e-mail correspondence includes a confidentiality notice.
- (c) Full-time (160 hours per month) contracted case managers are predominately available during normal business hours and communicate typical work hours on telephone voice mail and email.
- (d) Full-time (160 hours per month) contracted case managers notify the Office of Public Defense Services Deputy General Counsel or its designee, in writing and prior to leave dates, when they are expected to not be available to work more than three business days in a row. The preferred method of notification is by e-mail.
- (e) Part time (less than 160 hours per month) contracted case managers make their available hours primarily during the normal business hours and communicate typical work hours on telephone voice mail email.
- (f) Part-time (less than 160 hours per month) case managers notify the Office of Public Defense Services Deputy General Counsel or its designee, in writing and

prior to leave dates, when they are expected to not be available to work more than three business days in a row. The preferred method of notification is by e-mail.

3.4 Professional Liability Insurance

- (a) Case managers carry and maintain professional liability insurance.
- (b) Case managers provide proof of professional liability insurance upon request of Office of Public Defense Services or its designee.

3.5 Conflicts of Interest

3.5.1 Previous Professional Relationships

- (a) Case managers must not provide services on behalf of a parent, youth or child they were previously assigned to work with during their employment with the Oregon Department of Human Services, or any other agency which provided services to such parent, youth or child client.
- (b) Case managers must not disclose to persons not authorized to receive it any confidential information gained by their previous employment position with the Oregon Department of Human Services, or any other agency which provided services to such parent, youth or child client.

3.5.2 Other Professional Activity

- (a) Case managers shall fully disclose, in writing, to the Office of Public Defense Services or its designee, any and all professional employment/contracts unrelated to their Office of Public Defense Services contract. If the unrelated employment/contract is expected to start during a case manager's contract period, the written disclosure shall occur before the new and unrelated employment/contract begins.
- (b) The written disclosure shall include the name of the employment or contract agency, the nature of the role, typical weekly work schedule and, the total work hours expected during a week and month. If the professional activity is considered social services, case managers shall clearly identify what action(s) they will take to avoid a conflict of interest with the Office of Public Defense Services contract.
- (c) The Office of Public Defense Services maintains sole discretion in determining if a contract conflict exists and, if so determined, what course of action shall occur to resolve the concern. Within two weeks of submission of written disclosure, the case manager will be notified in writing of the conflict finding and any required actions.

3.6 Client Record Keeping and Record Retention

- (a) Client record keeping is kept to a minimum in the interest of providing as many direct client service hours as possible. In consultation with the referring attorney, case managers determine what client record keeping is appropriate for each specific case.
- (b) Client records not intended to be shared professionally are clearly identified as "Attorney Work Product." Case managers know and understand that client records not labeled as Attorney Work Product could be subject to discovery requests.

- (c) Case managers secure and maintain all client specific documents and/or information regarding assigned clients in locked cabinets or secure locations.
- (d) Case managers secure and protect electronic devices which contain client specific documents and/or information, such as laptops and tablets used in the course of providing services. Electronic devices must be password protected and stored in locked cabinets or secure locations when not in use.
- (e) Cloud-based electronic storage of client materials is permitted as long reasonable steps are taken to ensure that the storage company will reliably secure client data and keep information confidential.

See Appendix 1., Formal Opinion No. 2011-188, Information Relating to the Representation of a Client: Third-Party Electronic Storage of Client Materials.

- (f) Any and all client records produced or obtained by case managers are subject to disclosure to clients. However, before disclosing client records, the case manager shall consult with the referring attorney. The referring attorney makes the final decision regarding disclosure of records to clients. When case managers disclose client records, they also provide a copy of the records to the referring attorney, as well as keep a copy of the records provided.
- (g) Upon closure of the case, the case manager makes a copy of the entire client paper file. The original paper file is forwarded to the referring attorney for inclusion in the attorney's paper client file. The copy of the client file is retained by the case manager for a minimum of two years.
- (h) Upon closure of the case, the case manager makes an electronic copy of all electronically stored client records. One copy of the electronic client records is forwarded to the referring attorney for inclusion in the attorney's electronic client file. The other copy of the electronic client records is retained by the case manager for a minimum of two years.

3.7 Mandatory Reporting

- (a) Attorneys are mandated reporters of child abuse under ORS 419B.010. Case managers working as agents of the attorney in the Parent Child Representation Program, ARE NOT mandatory reporters. Regulated and/or licensed social workers ARE mandatory reporters. However, when a social worker is working as an agent of an attorney, exceptions to child abuse reporting may apply. There are three exceptions to the statutory reporting requirement:
 - i. Lawyers, together with clergy, psychiatrists, psychologists and guardian ad litem appointed under ORS 419B.231 are not required to report information "communicated by a person if the communication is privileged under ORS 40.225 to 40.295 or 419B.234(6)."
 - ii. A lawyer is also not required to report child 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."
 - iii. No official is required to report if the information about child abuse is acquired "by reason of a report" or "by reason of a proceeding arising out of a report" made under ORS 419B.010, provided the official "reasonably believes that the information is already known by a law enforcement agency"

or the Department of Human Services.” ORS 419B.010(2).

- (b) Before making a child abuse report, the case manager shall communicate the information to the attorney to determine whether the report is required by ORS 419B.010. The attorney makes the final decision regarding reporting of child abuse.

See Appendix 2., ORS 419B.005-050

See Appendix 3., Questions and (some) answers about mandatory child abuse reporting for lawyers (Oregon State Bar General Counsel’s Office)

3.8 Attorney Client Privilege

- (a) ORS 40.225 governs lawyer-client privilege. Under the statute, 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.
- (b) The privilege extends to communications between the client and any representative of the lawyer. A case manager is a representative of the lawyer and therefore subject to the attorney client privilege.
- (c) Before disclosing any confidential communications, the case manager shall communicate with the attorney to determine whether disclosure violates the privilege. The attorney makes the final decision regarding disclosure of confidential communications.

See Appendix 4., ORS 40.225

3.9 Confidentiality

- (a) Oregon Rule of Professional Conduct 1.6 governs confidentiality of information. The rule states “A lawyer **shall not reveal information relating to the representation of a client unless the client gives informed consent...**”.(*Emphasis added*)

Note: *Information relating to the representation of a client is a broad definition. The rule applies not only to matters communicated in confidence by the client but also to all information relating to the representation, whatever its source. A lawyer may not disclose such information except as authorized or required by the Rules of Professional Conduct or other law. (ABA Commentary to Rule 1.6).*

- (b) There may be limited circumstances where disclosure of confidential information is permitted without prior informed consent of the client. However, before disclosing any confidential client information, the case manager shall communicate with the attorney to determine whether disclosure violates the Oregon Rules of Professional Conduct. The attorney makes the final decision regarding disclosure of confidential information.

See Appendix 5., Oregon Rule of Professional Conduct 1.6

3.10 Communication with Persons Represented by Counsel

- (a) Case managers shall not communicate on the subject of the representation with parties who are represented by a lawyer regarding that subject.
- (b) There may be limited circumstances where communication with a represented party is permitted. However, before communicating with a represented party, the case manager shall communicate with the attorney to determine whether such communication is permitted by the Oregon Rules of Professional Conduct. The attorney makes the final decision regarding communication with represented parties.

See Appendix 6., Oregon Rule of Professional Conduct 4.2

4. Professional Duties and Roles

Case managers will provide many roles in support of parents, youth, and children. Please note that this list includes most, but not all possible duties and roles. Each case manager will be assigned to cases at the request of referring attorneys. The case manager serves as an agent of the referring attorney.

4.1 Professional Relationships with Clients

4.1.1 Duties & Roles

- (a) Provide support to parents, youth and children in delinquency, dependency and termination of parental rights proceedings.
 - i. Interview parents, youth and families to determine case and service needs;
 - ii. Communicate, engage, and motivate parents, youth and children to participate in their case plan;
 - iii. Assist parents in locating and obtaining appropriate services that address their needs and the allegations or findings in the juvenile dependency case;
 - iv. Assist children and youth in locating and obtaining appropriate services that address their needs and the findings in juvenile dependency or delinquency cases;
 - v. When appropriate, develop a service plan as an alternative or supplement to the plan developed by Oregon DHS or the Juvenile Department, including need, activities, and timeframes for completion when necessary;
 - vi. Attend court hearings when necessary, as support for clients, as determined by assigned lawyer;
 - vii. Compile a list of services and resources available to parent and child clients;
 - viii. Make individualized recommendations for services based upon client need and circumstances;
 - ix. Understand, represent and advocate for the client's position, in consultation with the assigned lawyer, at meetings when the lawyer is unavailable; and

- x. Provide on-going in-person visits to assess progress as requested by lawyer.
- (b) Case managers are not acting in a therapist role.
- (c) The case manager is an agent of the assigned attorney and acts within the ethical duties of the attorney-client relationship, including attorney-client privilege.

4.1.2 Voluntary Service

Case managers shall clearly inform clients, at first contact, that services are voluntary and at any time, clients may choose to discontinue case management services.

4.1.3 Communication with Clients

- (a) When referrals are accepted by case managers, initial contacts with clients are attempted as soon as possible, but no later than five business days after the referral. The referring attorneys reserve the right to revise the contact timeframes on specific cases.
- (b) At initial contacts with clients, case managers provide their clients with direct case manager contact information and normal business hour availability.
- (c) Case managers meet and communicate regularly with clients. Case manager communication with clients primarily focuses on clients' progress, performance and any real and/or perceived barriers in court ordered services and treatment.
- (d) Additional communication focuses on the support roles of DHS and the Juvenile Department, service providers and other parties in the case. Case managers attempt to guide clients through real and/or perceived barriers of meeting their court ordered services and self-directed goals. Case managers focus on locating and obtaining the resources required to satisfactorily complete court-ordered services and achieve the client's self-directed goals.

4.1.4 Informed Consent

Case managers shall, orally and/or in writing, inform clients in clear and understandable language, about pertinent informed consent information including, but not limited to:

- (a) Role as an agent of the referring attorney, including attorney/client privilege;
- (b) Purpose of case manager services;
- (c) Timeframes covered by consent;
- (d) Services limited to amount of professional available time;
- (e) Client's right to ask questions;
- (f) Client's right to refuse or withdraw consents;
- (g) Client's complaint/grievance procedures; and
- (h) Services provided at no cost to clients.

4.1.5 Client complaint/grievance

Clients are first encouraged to discuss and resolve their complaints/grievances with case managers. Upon request from clients, case managers provide clients with information on submitting formal complaints/grievances regarding actions by case managers.

If complaints/grievances are not resolved between clients and case managers, clients are directed to discuss the concerns with their assigned attorney. If complaints/grievances are not ameliorated between clients and the attorneys, clients are directed to the Office of Public Defense Services Deputy General Counsel or its designee.

4.1.6 Closing Cases

- (a) Cases are closed if requested by the client or referring attorney.
- (b) Cases are closed when case managers determine that their services are no longer necessary, and the referring attorney concurs.
- (c) Cases are closed if no contact has been made between the case manager and client during the last full calendar month. Diligent contact attempts should be made by case managers before a case is closed for lack of client contact.
- (d) No case shall remain open for more than one full year without prior approval from the referring attorney *and* the Office of Public Defense Services Deputy General Counsel or its designee.
- (e) Case managers shall notify the client orally and/or in writing that their case is being closed.
- (f) At the time of closing, the case manager shall notify the referring attorney that the case has closed and shall provide the attorney with a brief oral or written synopsis of case involvement and status at the time of closing.

4.2 Professional Relationships with Parent Child Representation Program Attorneys

4.2.1 Agent of the Parent Child Representation Program Attorney

- (a) Case managers perform work as an independent contractor who is solely an agent of the referring attorney, under the direction and general supervision of the referring attorney.
- (b) Case managers are professionally responsible to the referring attorney. For purposes of interpretation of the Rules of Professional Conduct for attorneys in the State of Oregon, Parent Child Representation Program Case Managers are considered “non-lawyer assistants.”

See Appendix 7., ORPC 5.3 Responsibilities Regarding Nonlawyer Assistance

4.2.2 Duties & Roles as Agent of the Parent Child Representation Program Attorney

- (a) Case managers provide service updates on clients and case progress.
- (b) Case managers write progress and/or observation reports and inform the referring attorney on family situation, performance in services, unmet need, and relationship with other individuals involved in the case;
- (c) Case managers provide investigation support to the referring attorney including, but not limited to:
 - i. Locating relevant child welfare research;
 - ii. Observing visits;
 - iii. Interviewing third parties;

- iv. Reviewing case files/discovery;
 - v. Assistance in locating expert services;
 - vi. Assistance in preparing alternative reunification plans;
 - vii. Assistance in developing alternative visitation and placement plans; and
 - viii. Communication with service providers regarding progress.
- (d) Case managers may act as fact witnesses. However, a case manager should not testify in court unless the testimony is necessary for the client's case and there is no other reasonable alternative to provide such information to the court.
- (e) Case managers may prepare written documentation of services provided or observations noted for court;

4.2.3 Client conflict of interest

- (a) Case managers accept referrals from attorneys on a "first come, first serve" basis. All attorneys representing parents, youth or children on a particular case are notified by e-mail from the case manager regarding the case manager's case assignment with a specific party in a particular case. The case manager must provide such notice prior to beginning work on a case.
- (b) Case managers shall not accept a referral to provide services to more than one party in a case. Case managers may work with more than one sibling in the same family, provided a conflict does not exist. Before accepting a referral to work with more than one sibling, the case manager should discuss the potential for conflict with the referring attorney. Attorneys have final authority regarding all conflict decisions.
- (c) Case managers shall not accept a referral to provide services to a party when the case manager has previously provided services on a case in which any of the current parties were previously parties in the case. Notwithstanding the previous sentence, case managers may provide services to a party when the case manager has previously provided services on a case to the same party. For example, a case manager may not provide services to a mother in a case when the case manager previously provided services to a child in a case in which the mother was a party. However, a case manager may provide services to a mother in a case when the case manager previously provided services to the same mother in a prior case.
- (d) Case managers and attorneys are encouraged to discuss third party communication prior to the initial contact between the case managers and the client. For example, case managers and attorneys should determine a process for sharing information with DHS. Attorneys have final authority regarding all third party communication decisions.
- (e) Case managers clearly inform and discuss with clients the case manager's role in working with the client. Case managers clearly inform clients of the attorney-case manager decisions regarding third party communication.
- (f) Case managers clearly identify the client and the referring attorney with whom they are working when engaged in third party communications.

4.2.4 Attorney Support Model

Case managers may be assigned to work with a particular attorney or may be part of a panel referral system. The Office of Public Defense Services reserves the right to designate and/or change the support model and attorney assignment at any time.

4.2.5 Referrals

- (a) Case managers accept referrals only from attorneys. If a referral for case management services is requested by a third party, the third party is referred to the respective attorney for his or her referral consideration.
- (b) Before accepting a case, the case manager informs the administrator regarding the names and dates of birth of the parties in the case. The administrator checks for conflicts, confirms the lack of conflict with the case manager, and adds the case to the master conflict list.
- (c) Case managers are encouraged to request attorneys utilize the “Parent Child Representation Program Case Manager Referral” form for referral purposes. Lack of a written referral from the attorney does not in and of itself prevent case managers from accepting and responding to referral requests by attorneys.
- (d) Case managers are encouraged to request that attorneys provide a copy of the current case plan, court report and court orders. These documents provide case managers with an initial understanding of the court’s expectation of clients.

See Appendix 8., PCRCP Parent Child Representation Program Case Manager Referral Form

4.2.6 Professional and Independent Assessment

Case managers shall maintain an independent and objective professional assessment of a case. At the request of the referring attorney, case managers should provide insight and assessment in the progress and barriers of parents, youth and children. Case managers understand the professional role of attorneys in that any case manager provided insight or assessment is available to the referring attorney to utilize for legal purposes.

4.2.7 Monthly Service Updates

Case managers shall provide “Monthly Service Updates” to the referring attorney on each case. “Monthly Service Updates” should be written. The preferred update method is through e-mail.² The “Monthly Service Updates” include at a minimum:

- (a) Dates of face to face and/or telephone contact(s) with clients;
- (b) Approximate number of direct service hours provided to the client;
- (c) Brief description of clients’ progress;

² In ABA Op. 99-413 (1999) (“Protecting the Confidentiality of Unencrypted E-Mail”), the standing committee on ethics and professional responsibility concluded that, in general, a lawyer may transmit information relating to the representation of a client by unencrypted e-mail sent over the Internet without violating Model Rule 1.6(a) because the mode of transmission affords a reasonable expectation of privacy from a technological and legal standpoint. The opinion, nevertheless, cautioned lawyers to consult with their clients and follow their clients’ instructions as to the mode of transmitting highly sensitive information relating to the clients’ representation. It found that particularly strong protective measures are warranted to guard against the disclosure of highly sensitive matters. Note that there are several free encryption systems available which provide an additional level of security.

- (d) Any assessed barriers to clients' progress; and
- (e) All other client relevant information.

See Appendix 12, Sample Forms

4.2.8 Collateral Case Information Provided to Attorneys

- (a) Case managers share any and all case specific information provided by DHS, service providers, CASA/GALs, Juvenile Department, OYA, other professionals and/or other collateral information sources with the referring attorney.
- (b) Unless otherwise requested by the attorney, all case manager case specific written communication provided to DHS, service providers, CASA/GALs, Juvenile Department, OYA, other professionals and/or other collaterals should include a copy (cc) to the referring attorney.

4.2.9 Professional Relationships with Others

- (a) Case managers shall interact respectfully, professionally, and make good faith attempts to work collaboratively with others involved in the case in order to provide clients with the best opportunity to address their deficiencies and further their desired outcome on their case;
- (b) Case managers should maintain ongoing contact and collaboration with service providers, as needed, to assess and monitor client progress;
- (c) Case managers should maintain ongoing contact and communication, as needed, with DHS caseworkers, Juvenile Court Counselors and other professionals and/or collaborative parties to discuss case plan and client progress;
- (d) Case managers are encouraged to participate in community child welfare, juvenile justice, and court improvement meetings; and
- (e) Upon initial contact with professionals and/or collaborative parties, case managers shall clearly disclose their association as an agent of the referring attorney and their participation in the Parent Child Representation Program.

4.3 Professional Relationships with the Office of Public Defense Services

4.3.1 Reporting

Case managers shall provide a monthly activity report to the Office of Public Defense Services. The activity report for the prior month is due on the 20th business day of the current month. The activity report requires the following information: list of cases assigned (case number and last name), attorney of record on the case, case type (DEP, DEL, TPR), number of direct service hours worked on the case, and brief summary of the service provided.

See Appendix 9., Monthly Activity Report

4.3.2 Training

Case managers are encouraged to attend multidisciplinary trainings related to improving the juvenile dependency and delinquency systems.

4.3.3 Evaluation

Case managers will attend in person, or by phone, quarterly reviews to examine data and ensure sufficient support to achieve program expectations.

- (a) As part of the review, case managers may be asked to choose one or more cases to discuss with the Office of Public Defense Services or its designee. Case reviews will include:
- (b) General circumstances that lead to the initiation of the case;
- (c) The client's current progress and barriers;
- (d) The case manager's efforts made to move towards achieving clients' goals;
- (e) Discussion of possible future efforts to move towards achieving clients' goals;
- (f) Any other relevant information or issues; and
- (g) General feedback from the Office of Public Defense Services or its designee.

Case managers respect the confidentially rights of their clients at all time. Case managers shall not disclose clients' names, or specific information that would clearly identify them.

5. Caseloads

5.1 Caseload Standards

- (a) A "case" is defined as any referral assignment from an attorney where case managers provide a total of three or more hours of direct client service within the month. A "case" can be regarding a parent, youth, or child client.
- (b) Full time case managers carry a minimum of 28 open cases for full time contracts. An "open case" is a case which has had at least one client contact in the past month.
- (c) Part time case managers carry a minimum of 28 cases, prorated by their percentage of a full time contract.
- (d) Case managers are encouraged to not accept more than five cases over the 28 minimum caseload standard, but may do so at their professional discretion.
- (e) Attorneys may occasionally request direct client services for a client which do not last a total of three or more hours in duration. For the purpose of caseload count, these direct client services are not counted as cases, and it is not expected that a case will be reported to the Office of Public Defense Services. *An example would include a situation where an attorney requests a case manager to attend a meeting with no request for further services.* Case managers are expected to respond to such requests within their available schedule and contract. For purpose of invoicing, case mangers report these hours on their monthly invoice as "non-case assigned direct service hours."

5.2 Caseload Distribution

- (a) Because case managers have the capacity to receive referrals from several attorneys, case managers shall make every reasonable attempt to provide fair and

equitable caseload and direct service hour distribution to all supported attorneys' client referrals.

- (b) When a case manager's caseload reflects an uneven distribution of referring attorneys, the case manager accepts new referrals from referral attorneys who are underrepresented and requests overrepresented referral attorneys to prioritize their case manager assignments or utilize a different case manager.
- (c) When uneven caseload distribution cannot be resolved between case managers and attorneys, case managers shall contact the Office of Public Defense Services or its designee for resolution.

6 Contract Hours Distribution & Reporting

6.1 Direct Client Service Hours

- (a) Direct client service hours are defined as any professional case management activity conducted for the purpose of a specific client.
- (b) Direct client service hours generally average 85% or more of the case manager's contracted monthly hours.
- (c) Direct client service hours include case managers' transportation time to and from in-person, or attempted in-person, contacts.

See Appendix 10: Monthly Invoice

6.2 Administrative Service Hours

- (a) Administrative service hours are defined as all non-direct client service hours that can reasonably be attributed to work necessary to fulfill case manager contract expectations. Examples of administrative service hours include billing and invoicing time, continuing education requirements, PCRPs evaluations and program development, general child welfare literature review, and case reviews/conference calls with the Office of Public Defense Services Deputy General Counsel or its designee.
- (b) Administrative service hours generally average 15% or less of the case manager's contracted monthly hours.

It is expected and understood by the Office of Public Defense Services that some months will require more administrative service hours than others and that some months will require case managers to exceed 15% of contract hours on administrative service hours. For example, months that have considerably more continuing education expectations or community child welfare participation commitments may fall into this category.

6.2 Personal Development Hours

- (a) Personal development hours are defined as hours that promote trauma stewardship.
- (b) Case managers contracted for more than 40 hours/month may utilize 2 personal development hours per month. Case managers contracted for less than 40 hours/month may utilize 1 personal development hour per month.

6.4 Contract Hour Expectations

- (a) Case managers are not expected to provide more service hours per month than their contract stipulates.
- (b) Any difficulties in keeping social work services within contract hours should be communicated to the Office of Public Defense Services Deputy General Counsel or its designee for resolution.
- (c) Any questions or clarifications necessary should be directed to the Office of Public Defense Services Deputy General Counsel or its designee.

6.5 Mileage

- (a) Case managers will be reimbursed for all non-overhead mileage incurred within their duties. Consistent with the Model Terms, contractors shall pay for all ordinary reasonable and necessary costs and fees. Travel time and expenses between home and office for an independent contractor are overhead and not reimbursable.

7 Code of Ethics

- (a) The Oregon Code of Ethics for Regulated Social Workers, OAR 877-030-0025 through OAR 877-030-0100, is the code of ethics standard for Parent Child Representation Program case managers. Case managers have full knowledge and understanding and agree to adhere to the Oregon Code of Ethics for Regulated Social Workers as they pertain to their practice.
- (b) Any and all alleged code of ethics violations by case managers who are also registered or licensed social workers will be referred to the Oregon Board of Licensed Social Workers for appropriate action. Any and all alleged code of ethics violations by case managers who are not registered or licensed social workers are addressed by the Office of Public Defense Services or its designee.

See Appendix 11, Code of Ethics for Regulated Social Workers

8 Miscellaneous

8.1 Requests for Exceptions to Parent Child Representation Program Social Worker Practice Principles

- (a) All requests for exceptions to these practice principles should be brought to the attention of the Office of Public Defense Services Deputy General Counsel or its designee as soon as possible. All requests shall be in writing with e-mail the preferred method of request.
- (b) The Office of Public Defense Services or its designee reserves the right to provide an exception to any practice principle to the extent it does not conflict with federal, state or local laws and statutes, rules of professional conduct for attorneys in the State of Oregon and/or professional regulations that pertain to attorney or social worker practice.

8.2 Quality Assurance

Case managers will participate in quality assurance or evaluation processes as requested by the Office of Public Defense Services or its designee. For contract purposes, quality assurance participation is counted as administrative service hours.

8.3 Program Development

Case managers will participate in professional development as requested by the Office of Public Defense Services. For contract purposes, professional development participation is counted as administrative service hours.

8.4 Social Work Forms

Various PCRCP standard forms are made available to case managers by the Office of Public Defense Services. Case managers are encouraged to utilize the standard forms, but may choose to develop and utilize their own forms.

See Appendix 12, Sample Forms

8.5 Invoicing

Case managers shall submit a hard copy of the case manager invoice. Case managers are required to submit a document reporting monthly hours utilized for direct service, non-case assigned direct service, and administrative service hours.

Contracted monthly hours may be “carried over” to subsequent months within a calendar quarter as long as the total hours invoiced within the quarter do not exceed the total amount permitted in the contract matrix for the same time period.

The total hours invoiced during a calendar quarter should comply with the requirements of Sec. 6.1, 6.2, 6.3 regarding time categories.

See Appendix 10, Monthly Invoice

8.6 Disclaimers

- (a) If any of these practice principles are unclear, or require further elaboration, case managers shall clarify with Office of Public Defense Services Deputy General Counsel or its designee before any practice occurs.
- (b) If any statements made in the practice principles conflict with applicable federal, state or local law statutes, the Rules of Professional Conduct for attorneys in Oregon, and/or professional regulations that pertain to a member’s practice, statutory and professional obligations shall take precedence over statements made in this document. All such conflicts are reported to the Office of Public Defense Services Deputy General Counsel.

APPENDIX 1. FORMAL OPINION NO. 2011-188 Information Relating to the Representation of a Client: Third-Party Electronic Storage of Client Materials

Facts:

Law Firm contracts with third-party vendor to store client files and documents online on remote server so that Lawyer and/or Client could access the documents over the Internet from any remote location.

Question:

May Lawyer do so?

Conclusion:

Yes, qualified.

Discussion:

With certain limited exceptions, the Oregon Rules of Professional Responsibility require a lawyer to keep client information confidential. See Oregon RPC 1.6.³ In addition, Oregon RPC 5.3 provides: With respect to a nonlawyer employed or retained, supervised or directed by a lawyer:

- (a) a lawyer having direct supervisor authority over the nonlawyer shall make reasonable efforts to ensure that the person's conduct is compatible with the professional obligations of the lawyer; and

³ Oregon RPC 1.6 provides:

- (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 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
- (c) to provide the following information in discussions preliminary to the sale of a law practice under Rule 1.17 with respect to each client potentially subject to the transfer: the client's identity; the identities of any adverse parties the nature and extent of the legal services involved; and fee and payment information. A potential purchasing lawyer shall have the same responsibilities as the lawyer to preserve confidences and secrets of such clients whether or not the sale of the practice closes or the client ultimately consents to representation by the purchasing lawyer.

(b) except as provided by Rule 8.4(b), a lawyer shall be responsible for conduct of such a person that would be a violation of the Rules of Professional Conduct if engaged in by the nonlawyer if:

- i. the lawyer orders or, with the knowledge of the specific conduct, ratifies the conduct involved; or
- ii. the lawyer is a partner or has comparable managerial authority over the person, and knows of the conduct at a time when its consequences can be avoided or mitigated but fails to take reasonable remedial action.

Lawyer may store client materials on a third-party server so long as Lawyer complies with the duties of competence and confidentiality to reasonably keep the client's information secure within a given situation.⁴ To do so, the lawyer must take reasonable steps to ensure that the storage company will reliably secure client data and keep information confidential. Under certain circumstances, this may be satisfied though a third-party vendor's compliance with industry standards relating to confidentiality and security, provided that those industry standards meet the minimum requirements imposed on the Lawyer by the Oregon RPCs. This may include, among other things, ensuring the service agreement requires the vendor to preserve the confidentiality and security of the materials. It may also require that vendor notify Lawyer of any non-authorized third-party access to the materials. Lawyer should also investigate how the vendor backs up and stores its data and metadata to ensure compliance with the Lawyer's duties.⁵

Although the third-party vendor may have reasonable protective measures in place to safeguard the client materials, the reasonableness of the steps taken will be measured against the technology "available at the time to secure data against unintentional disclosure."⁶ As technology advances, the third-party vendor's protective measures may become less secure or obsolete over time.⁷ Accordingly, Lawyer may be required to reevaluate the protective measures used by the third party vendor to safeguard the client materials.⁸

⁴ Some call the factual scenario presented above "cloud computing." See Richard Acello, *Get Your Head in the Cloud*, ABA Journal, April 2010, at 28–29 (providing that "cloud computing" is a "sophisticated form of remote electronic data storage on the internet" and "[u]nlike traditional methods that maintain data on a computer or server at a law office or other place of business, data stored 'in the cloud' is kept on large servers located elsewhere and maintained by a vendor").

⁵ See OSB Formal Ethics Op No 2005-141, which provides: "As long as Law Firm makes reasonable efforts to ensure that recycling company's conduct is compatible with Law Firm's obligation to protect client information, the proposed conduct is permissible. Reasonable efforts include, at least, instructing the recycling company about Law Firm's duties pursuant to Oregon RPC 1.6 and obtaining its agreement to treat all materials appropriately." See also OSB Formal Ethics Op Nos 2005-129, 2005-44.

⁶ See NJ Ethics Op 701 (discussing electronic storage and access to files).

⁷ See Arizona Ethics Op 09-04 (discussing confidentiality, maintaining client files, electronic storage, and the Internet).

⁸ A lawyer's obligation in the event of a breach of security of confidential materials is outside the scope of this opinion.

Approved by Board of Governors, November 2011.

APPENDIX 2. ORS 419B.005-050 REPORTING OF CHILD ABUSE

419B.005 Definitions.

As used in ORS 419B.005 to 419B.050, unless the context requires otherwise:

(1) (a) "Abuse" means:

- A. Any assault, as defined in ORS chapter 163, of a child and any physical injury to a child which has been caused by other than accidental means, including any injury which appears to be at variance with the explanation given of the injury.
- B. Any mental injury to a child, which shall include only observable and substantial impairment of the child's mental or psychological ability to function caused by cruelty to the child, with due regard to the culture of the child.
- C. Rape of a child, which includes but is not limited to rape, sodomy, unlawful sexual penetration and incest, as those acts are described in ORS chapter 163.
- D. Sexual abuse, as described in ORS chapter 163.
- E. Sexual exploitation, including but not limited to:
 - (i) Contributing to the sexual delinquency of a minor, as defined in ORS chapter 163, and any other conduct which allows, employs, authorizes, permits, induces or encourages a child to engage in the performing for people to observe or the photographing, filming, tape recording or other exhibition which, in whole or in part, depicts sexual conduct or contact, as defined in ORS 167.002 or described in ORS 163.665 and 163.670, sexual abuse involving a child or rape of a child, but not including any conduct which is part of any investigation conducted pursuant to ORS 419B.020 or which is designed to serve educational or other legitimate purposes; and
 - (ii) Allowing, permitting, encouraging or hiring a child to engage in prostitution as described in ORS 167.007 or a commercial sex act as defined in ORS 163.266, to purchase sex with a minor as described in ORS 163.413 or to patronize a prostitute as described in ORS 167.008.
- F. Negligent treatment or maltreatment of a child, including but not limited to the failure to provide adequate food, clothing, shelter or medical care that is likely to endanger the health or welfare of the child.
- G. Threatened harm to a child, which means subjecting a child to a substantial risk of harm to the child's health or welfare.
- H. Buying or selling a person under 18 years of age as described in ORS 163.537.
- I. Permitting a person under 18 years of age to enter or remain in or upon premises where methamphetamines are being manufactured.
- J. Unlawful exposure to a controlled substance, as defined in ORS 475.005, that subjects a child to a substantial risk of harm to the child's health or safety.

(b) "Abuse" does not include reasonable discipline unless the discipline results in one of the conditions described in paragraph (a) of this subsection.

(2) "Child" means an unmarried person who is under 18 years of age.

- (3) “Higher education institution” means:
- (a) A community college as defined in ORS 341.005;
 - (b) A public university listed in ORS 352.002;
 - (c) The Oregon Health and Science University; and
 - (d) A private institution of higher education located in Oregon.
- (4) “Law enforcement agency” means:
- (a) A city or municipal police department.
 - (b) A county sheriff’s office.
 - (c) The Oregon State Police.
 - (d) A police department established by a university under ORS 352.383 or 353.125.
 - (e) A county juvenile department.
- (5) “Public or private official” means:
- (a) Physician or physician assistant licensed under ORS chapter 677 or naturopathic physician, including any intern or resident.
 - (b) Dentist.
 - (c) School employee, including an employee of a higher education institution.
 - (d) Licensed practical nurse, registered nurse, nurse practitioner, nurse’s aide, home health aide or employee of an in-home health service.
 - (e) Employee of the Department of Human Services, Oregon Health Authority, Early Learning Division, Youth Development Division, Office of Child Care, the Oregon Youth Authority, a county health department, a community mental health program, a community developmental disabilities program, a county juvenile department, a licensed child-caring agency or an alcohol and drug treatment program.
 - (f) Peace officer.
 - (g) Psychologist.
 - (h) Member of the clergy.
 - (i) Regulated social worker.
 - (j) Optometrist.
 - (k) Chiropractor.
 - (l) Certified provider of foster care, or an employee thereof.
 - (m) Attorney.
 - (n) Licensed professional counselor.
 - (o) Licensed marriage and family therapist.
 - (p) Firefighter or emergency medical services provider.
 - (q) A court appointed special advocate, as defined in ORS 419A.004.

- (r) A child care provider registered or certified under ORS 329A.030 and 329A.250 to 329A.450.
- (s) Member of the Legislative Assembly.
- (t) Physical, speech or occupational therapist.
- (u) Audiologist.
- (v) Speech-language pathologist.
- (w) Employee of the Teacher Standards and Practices Commission directly involved in investigations or discipline by the commission.
- (x) Pharmacist.
- (y) An operator of a preschool recorded program under ORS 329A.255.
- (z) An operator of a school-age recorded program under ORS 329A.257.
- (aa) Employee of a private agency or organization facilitating the provision of respite services, as defined in ORS 418.205, for parents pursuant to a properly executed power of attorney under ORS 109.056.
- (bb) Employee of a public or private organization providing child-related services or activities:
 - A. Including but not limited to youth groups or centers, scout groups or camps, summer or day camps, survival camps or groups, centers or camps that are operated under the guidance, supervision or auspices of religious, public or private educational systems or community service organizations; and
 - B. Excluding community-based, nonprofit organizations whose primary purpose is to provide confidential, direct services to victims of domestic violence, sexual assault, stalking or human trafficking.
- (cc) A coach, assistant coach or trainer of an amateur, semiprofessional or professional athlete, if compensated and if the athlete is a child. [1993 c.546 §12; 1993 c.622 §1a; 1995 c.278 §50; 1995 c.766 §1; 1997 c.127 §1; 1997 c.561 §3; 1997 c.703 §3; 1997 c.873 §30; 1999 c.743 §22; 1999 c.954 §4; 2001 c.104 §148; 2003 c.191 §1; 2005 c.562 §26; 2005 c.708 §4; 2009 c.199 §1; 2009 c.442 §36; 2009 c.518 §1; 2009 c.570 §6; 2009 c.595 §364; 2009 c.633 §10; 2009 c.708 §3; 2010 c.60 §§4,5; 2011 c.151 §12; 2011 c.506 §38; 2011 c.703 §34; 2012 c.37 §60; 2012 c.92 §1; 2013 c.129 §26; 2013 c.180 §40; 2013 c.623 §17; 2013 c.624 §82; 2013 c.720 §11]

419B.007 Policy.

The Legislative Assembly finds that for the purpose of facilitating the use of protective social services to prevent further abuse, safeguard and enhance the welfare of abused children, and preserve family life when consistent with the protection of the child by stabilizing the family and improving parental capacity, it is necessary and in the public interest to require mandatory reports and investigations of abuse of children and to encourage voluntary reports. [1993 c.546 §13]

419B.010 Duty of officials to report child abuse; exceptions; penalty.

(1) Any public or private official having reasonable cause to believe that any child with whom the official comes in contact has suffered abuse or that any person with whom the official comes in contact has abused a child shall immediately report or cause a report to be made in the manner required in ORS 419B.015. Nothing contained in ORS 40.225 to 40.295 or 419B.234(6) affects the duty to report imposed by this section, except that a psychiatrist, psychologist, member of the clergy, attorney or guardian ad litem appointed under ORS 419B.231 is not required to report such information communicated by a person if the communication is privileged under ORS 40.225 to 40.295 or 419B.234(6). 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.

(2) Notwithstanding subsection (1) of this section, a report need not be made under this section if the public or private official acquires information relating to abuse by reason of a report made under this section, or by reason of a proceeding arising out of a report made under this section, and the public or private official reasonably believes that the information is already known by a law enforcement agency or the Department of Human Services.

(3) The duty to report under this section is personal to the public or private official alone, regardless of whether the official is employed by, a volunteer of or a representative or agent for any type of entity or organization that employs persons or uses persons as volunteers who are public or private officials in its operations.

(4) The duty to report under this section exists regardless of whether the entity or organization that employs the public or private official or uses the official as a volunteer has its own procedures or policies for reporting abuse internally within the entity or organization.

(5) A person who violates subsection (1) of this section commits a Class A violation. Prosecution under this subsection shall be commenced at any time within 18 months after commission of the offense. [1993 c.546 §14; 1999 c.1051 §180; 2001 c.104 §149; 2001 c.904 §15; 2005 c.450 §7; 2012 c.92 §11]

419B.015 Report form and content; notice.

(1)(a) A person making a report of child abuse, whether the report is made voluntarily or is required by ORS 419B.010, shall make an oral report by telephone or otherwise to the local office of the Department of Human Services, to the designee of the department or to a law enforcement agency within the county where the person making the report is located at the time of the contact. The report shall contain, if known, the names and addresses of the child and the parents of the child or other persons responsible for care of the child, the child's age, the nature and extent of the abuse, including any evidence of previous abuse, the explanation given for the abuse and any other information that the

person making the report believes might be helpful in establishing the cause of the abuse and the identity of the perpetrator.

(b) When a report of child abuse is received by the department, the department shall notify a law enforcement agency within the county where the report was made. When a report of child abuse is received by a designee of the department, the designee shall notify, according to the contract, either the department or a law enforcement agency within the county where the report was made. When a report of child abuse is received by a law enforcement agency, the agency shall notify the local office of the department within the county where the report was made.

(2) When a report of child abuse is received under subsection (1)(a) of this section, the entity receiving the report shall make the notification required by subsection (1)(b) of this section according to rules adopted by the department under ORS 419B.017.

(3)(a) When a report alleging that a child or ward in substitute care may have been subjected to abuse is received by the department, the department shall notify the attorney for the child or ward, the child's or ward's court appointed special advocate, the parents of the child or ward and any attorney representing a parent of the child or ward that a report has been received.

(b) The name and address of and other identifying information about the person who made the report may not be disclosed under this subsection. Any person or entity to whom notification is made under this subsection may not release any information not authorized by this subsection.

(c) The department shall make the notification required by this subsection within three business days of receiving the report of abuse.

(d) Notwithstanding the obligation imposed by this subsection, the department is not required under this subsection to notify the parent or parent's attorney that a report of abuse has been received if the notification may interfere with an investigation or assessment or jeopardize the child's or ward's safety. [1993 c.546 §15; 1993 c.734 §1a; 2005 c.250 §1; 2007 c.237 §1]

419B.016 Offense of false report of child abuse.

(1) A person commits the offense of making a false report of child abuse if, with the intent to influence a custody, parenting time, visitation or child support decision, the person:

(a) Makes a false report of child abuse to the Department of Human Services or a law enforcement agency, knowing that the report is false; or

(b) With the intent that a public or private official make a report of child abuse to the Department of Human Services or a law enforcement agency, makes a false report of child abuse to the public or private official, knowing that the report is false.

(2) Making a false report of child abuse is a Class A violation. [2011 c.606 §2]

Note: 419B.016 was added to and made a part of 419B.005 to 419B.050 by legislative action but was not added to any smaller series therein. See Preface to Oregon Revised Statutes for further explanation.

419B.017 Time limits for notification between law enforcement agencies and Department of Human Services; rules.

- (1) The Department of Human Services shall adopt rules establishing:
 - (a) The time within which the notification required by ORS 419B.015 (1)(a) must be made. At a minimum, the rules shall:
 - A. Establish which reports of child abuse require notification within 24 hours after receipt;
 - B. Provide that all other reports of child abuse require notification within 10 days after receipt; and
 - C. Establish criteria that enable the department, the designee of the department or a law enforcement agency to quickly and easily identify reports that require notification within 24 hours after receipt.
 - (b) How the notification is to be made.
- (2) The department shall appoint an advisory committee to advise the department in adopting rules required by this section. The department shall include as members of the advisory committee representatives of law enforcement agencies and multidisciplinary teams formed pursuant to ORS 418.747 and other interested parties.
- (3) In adopting rules required by this section, the department shall balance the need for providing other entities with the information contained in a report received under ORS 419B.015 with the resources required to make the notification.
- (4) The department may recommend practices and procedures to local law enforcement agencies to meet the requirements of rules adopted under this section. [2005 c.250 §3]

Note: 419B.017 was added to and made a part of 419B.005 to 419B.050 by legislative action but was not added to any smaller series therein. See Preface to Oregon Revised Statutes for further explanation.

419B.020 Duty of department or law enforcement agency receiving report; investigation; notice to parents; physical examination; child's consent; notice at conclusion of investigation.

- (1) If the Department of Human Services or a law enforcement agency receives a report of child abuse, the department or the agency shall immediately:
 - (a) Cause an investigation to be made to determine the nature and cause of the abuse of the child; and
 - (b) Notify the Office of Child Care if the alleged child abuse occurred in a child care facility as defined in ORS 329A.250.
- (2) If the abuse reported in subsection (1) of this section is alleged to have occurred at a child care facility:

- (a) The department and the law enforcement agency shall jointly determine the roles and responsibilities of the department and the agency in their respective investigations; and
 - (b) The department and the agency shall each report the outcomes of their investigations to the Office of Child Care.
- (3) If the law enforcement agency conducting the investigation finds reasonable cause to believe that abuse has occurred, the law enforcement agency shall notify by oral report followed by written report the local office of the department. The department shall provide protective social services of its own or of other available social agencies if necessary to prevent further abuses to the child or to safeguard the child's welfare.
- (4) If a child is taken into protective custody by the department, the department shall promptly make reasonable efforts to ascertain the name and address of the child's parents or guardian.
- (5) (a) If a child is taken into protective custody by the department or a law enforcement official, the department or law enforcement official shall, if possible, make reasonable efforts to advise the parents or guardian immediately, regardless of the time of day, that the child has been taken into custody, the reasons the child has been taken into custody and general information about the child's placement, and the telephone number of the local office of the department and any after-hours telephone numbers.
- (b) Notice may be given by any means reasonably certain of notifying the parents or guardian, including but not limited to written, telephonic or in-person oral notification. If the initial notification is not in writing, the information required by paragraph (a) of this subsection also shall be provided to the parents or guardian in writing as soon as possible.
- (c) The department also shall make a reasonable effort to notify the noncustodial parent of the information required by paragraph (a) of this subsection in a timely manner.
- (d) If a child is taken into custody while under the care and supervision of a person or organization other than the parent, the department, if possible, shall immediately notify the person or organization that the child has been taken into protective custody.
- (6) If a law enforcement officer or the department, when taking a child into protective custody, has reasonable cause to believe that the child has been affected by sexual abuse and rape of a child as defined in ORS 419B.005 (1)(a)(C) and that physical evidence of the abuse exists and is likely to disappear, the court may authorize a physical examination for the purposes of preserving evidence if the court finds that it is in the best interest of the child to have such an examination. Nothing in this section affects the authority of the department to consent to physical examinations of the child at other times.
- (7) A minor child of 12 years of age or older may refuse to consent to the examination described in subsection (6) of this section. The examination shall be conducted by or under the supervision of a physician licensed under ORS chapter 677 or a nurse practitioner licensed under ORS chapter 678 and, whenever practicable, trained in conducting such examinations.

- (8) When the department completes an investigation under this section, if the person who made the report of child abuse provided contact information to the department, the department shall notify the person about whether contact with the child was made, whether the department determined that child abuse occurred and whether services will be provided. The department is not required to disclose information under this subsection if the department determines that disclosure is not permitted under ORS 419B.035. [1993 c.546 §16; 1993 c.622 §7a; 1997 c.130 §13; 1997 c.703 §1; 1997 c.873 §33; 2007 c.501 §4; 2007 c.781 §1; 2013 c.624 §83]

419B.021 Degree requirements for persons conducting investigation or making determination regarding child.

- (1) Except as provided in subsection (2) of this section, the following persons must possess a bachelor's, master's or doctoral degree from an accredited institution of higher education:
- (a) A person who conducts an investigation under ORS 419B.020; and
 - (b) A person who makes the following determinations:
 - A. That a child must be taken into protective custody under ORS 419B.150; and
 - B. That the child should not be released to the child's parent or other responsible person under ORS 419B.165 (2).
- (2) Subsection (1) of this section does not apply to:
- (a) A person who was employed or otherwise engaged by the Department of Human Services for the purpose of conducting investigations or making determinations before January 1, 2012, provided the person's employment or engagement for these purposes has been continuous and uninterrupted.
 - (b) A law enforcement official as that term is defined in ORS 147.005. [2011 c.431 §1]

Note: 419B.021 was enacted into law by the Legislative Assembly but was not added to or made a part of ORS chapter 419B or any series therein by legislative action. See Preface to Oregon Revised Statutes for further explanation.

419B.022 Short title.

ORS 419B.023 and 419B.024 shall be known and may be cited as "Karly's Law." [2007 c.674 §1]

Note: 419B.022 was enacted into law by the Legislative Assembly but was not added to or made a part of ORS chapter 419B or any series therein by legislative action. See Preface to Oregon Revised Statutes for further explanation.

419B.023 Duties of person conducting investigation under ORS 419B.020.

- (1) As used in this section:
- (a) "Designated medical professional" means the person described in ORS 418.747 (9) or the person's designee.
 - (b) "Suspicious physical injury" includes, but is not limited to:

- A. Burns or scalds;
 - B. Extensive bruising or abrasions on any part of the body;
 - C. Bruising, swelling or abrasions on the head, neck or face;
 - D. Fractures of any bone in a child under the age of three;
 - E. Multiple fractures in a child of any age;
 - F. Dislocations, soft tissue swelling or moderate to severe cuts;
 - G. Loss of the ability to walk or move normally according to the child's developmental ability;
 - H. Unconsciousness or difficulty maintaining consciousness;
 - I. Multiple injuries of different types;
 - J. Injuries causing serious or protracted disfigurement or loss or impairment of the function of any bodily organ; or
 - K. Any other injury that threatens the physical well-being of the child.
- (2) If a person conducting an investigation under ORS 419B.020 observes a child who has suffered suspicious physical injury and the person is certain or has a reasonable suspicion that the injury is or may be the result of abuse, the person shall, in accordance with the protocols and procedures of the county multidisciplinary child abuse team described in ORS 418.747:
- (a) Immediately photograph or cause to have photographed the suspicious physical injuries in accordance with ORS 419B.028; and
 - (b) Ensure that a designated medical professional conducts a medical assessment within 48 hours, or sooner if dictated by the child's medical needs.
- (3) The requirement of subsection (2) of this section shall apply:
- (a) Each time suspicious physical injury is observed by Department of Human Services or law enforcement personnel:
 - A. During the investigation of a new allegation of abuse; or
 - B. If the injury was not previously observed by a person conducting an investigation under ORS 419B.020; and
 - (b) Regardless of whether the child has previously been photographed or assessed during an investigation of an allegation of abuse.
- (4) (a) Department or law enforcement personnel shall make a reasonable effort to locate a designated medical professional. If after reasonable efforts a designated medical professional is not available to conduct a medical assessment within 48 hours, the child shall be evaluated by an available physician.
- (b) If the child is evaluated by a health care provider as defined in ORS 127.505 other than a designated medical professional, the health care provider shall make photographs, clinical notes, diagnostic and testing results and any other relevant materials available to the designated medical professional for consultation within 72 hours following evaluation of the child.

- (c) The person conducting the medical assessment may consult with and obtain records from the child's regular pediatrician or family physician under ORS 419B.050.
- (5) Nothing in this section prevents a person conducting a child abuse investigation from seeking immediate medical treatment from a hospital emergency room or other medical provider for a child who is physically injured or otherwise in need of immediate medical care.
- (6) If the child described in subsection (2) of this section is less than five years of age, the designated medical professional may, within 14 days, refer the child for a screening for early intervention services or early childhood special education, as those terms are defined in ORS 343.035. The referral may not indicate the child is subject to a child abuse investigation unless written consent is obtained from the child's parent authorizing such disclosure. If the child is already receiving those services, or is enrolled in the Head Start program, a person involved in the delivery of those services to the child shall be invited to participate in the county multidisciplinary child abuse team's review of the case and shall be provided with paid time to do so by the person's employer.
- (7) Nothing in this section limits the rights provided to minors in ORS chapter 109 or the ability of a minor to refuse to consent to the medical assessment described in this section. [2007 c.674 §3; 2009 c.296 §1]

Note: 419B.023 was added to and made a part of 419B.005 to 419B.050 by legislative action but was not added to any smaller series therein. See Preface to Oregon Revised Statutes for further explanation.

419B.024 Critical Incident Response Team for child fatality; rules.

- (1) The Department of Human Services shall assign a Critical Incident Response Team within 24 hours after the department determines that a child fatality was likely the result of child abuse or neglect if:
 - (a) The child was in the custody of the department at the time of death; or
 - (b) The child was the subject of a child protective services assessment by the department within the 12 months preceding the fatality.
- (2) During the course of its review of the case, the Critical Incident Response Team may include or consult with the district attorney from the county in which the incident resulting in the fatality occurred.
- (3) The department shall adopt rules necessary to carry out the provisions of this section. The rules adopted by the department shall substantially conform with the department's child welfare protocol regarding Notification and Review of Critical Incidents. [2007 c.674 §4]

Note: 419B.024 was enacted into law by the Legislative Assembly but was not added to or made a part of ORS chapter 419B or any series therein by legislative action. See Preface to Oregon Revised Statutes for further explanation.

419B.025 Immunity of person making report in good faith.

Anyone participating in good faith in the making of a report of child abuse and who has reasonable grounds for the making thereof shall have immunity from any liability, civil or criminal, 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. [1993 c.546 §17]

419B.028 Photographing child during investigation; photographs as records.

- (1) In carrying out its duties under ORS 419B.020, any law enforcement agency or the Department of Human Services may photograph or cause to have photographed any child subject of the investigation for purposes of preserving evidence of the child's condition at the time of the investigation. Photographs of the anal or genital region may be taken only by medical personnel.
- (2) When a child is photographed pursuant to ORS 419B.023, the person taking the photographs or causing to have the photographs taken shall, within 48 hours or by the end of the next regular business day, whichever occurs later:
 - (a) Provide hard copies or prints of the photographs and, if available, copies of the photographs in an electronic format to the designated medical professional described in ORS 418.747 (9); and
 - (b) Place hard copies or prints of the photographs and, if available, copies of the photographs in an electronic format in any relevant files pertaining to the child maintained by the law enforcement agency or the department.
- (3) For purposes of ORS 419B.035, photographs taken under authority of this section shall be considered records. [1993 c.546 §18; 2007 c.674 §5]

419B.030 Central registry of reports.

- (1) A central state registry shall be established and maintained by the Department of Human Services. The local offices of the department shall report to the state registry in writing when an investigation has shown reasonable cause to believe that a child's condition was the result of abuse even if the cause remains unknown. Each registry shall contain current information from reports cataloged both as to the name of the child and the name of the family.
- (2) When the department provides specific case information from the central state registry, the department shall include a notice that the information does not necessarily reflect any subsequent proceedings that are not within the jurisdiction of the department. [1993 c.546 §19]

419B.035 Confidentiality of records; when available to others.

- (1) Notwithstanding the provisions of ORS 192.001 to 192.170, 192.210 to 192.505 and 192.610 to 192.990 relating to confidentiality and accessibility for public inspection of public records and public documents, reports and records compiled under the provisions of ORS 419B.010 to 419B.050 are confidential and may not be disclosed except as provided in this section. The Department of Human Services shall make the records available to:

- (a) Any law enforcement agency or a child abuse registry in any other state for the purpose of subsequent investigation of child abuse;
 - (b) Any physician, at the request of the physician, regarding any child brought to the physician or coming before the physician for examination, care or treatment;
 - (c) Attorneys of record for the child or child's parent or guardian in any juvenile court proceeding;
 - (d) Citizen review boards established by the Judicial Department for the purpose of periodically reviewing the status of children, youths and youth offenders under the jurisdiction of the juvenile court under ORS 419B.100 and 419C.005. Citizen review boards may make such records available to participants in case reviews;
 - (e) A court appointed special advocate in any juvenile court proceeding in which it is alleged that a child has been subjected to child abuse or neglect;
 - (f) The Office of Child Care for certifying, registering or otherwise regulating child care facilities;
 - (g) The Office of Children's Advocate;
 - (h) The Teacher Standards and Practices Commission for investigations conducted under ORS 342.176 involving any child or any student in grade 12 or below;
 - (i) Any person, upon request to the Department of Human Services, if the reports or records requested regard an incident in which a child, as the result of abuse, died or suffered serious physical injury as defined in ORS 161.015. Reports or records disclosed under this paragraph must be disclosed in accordance with ORS 192.410 to 192.505; and
 - (j) The Office of Child Care for purposes of ORS 329A.030 (8)(g).
- (2) (a) When disclosing reports and records pursuant to subsection (1)(i) of this section, the Department of Human Services may exempt from disclosure the names, addresses and other identifying information about other children, witnesses, victims or other persons named in the report or record if the department determines, in written findings, that the safety or well-being of a person named in the report or record may be jeopardized by disclosure of the names, addresses or other identifying information, and if that concern outweighs the public's interest in the disclosure of that information.
- (b) If the Department of Human Services does not have a report or record of abuse regarding a child who, as the result of abuse, died or suffered serious physical injury as defined in ORS 161.015, the department may disclose that information.
- (3) The Department of Human Services may make reports and records compiled under the provisions of ORS 419B.010 to 419B.050 available to any person, administrative hearings officer, court, agency, organization or other entity when the department determines that such disclosure is necessary to administer its child welfare services and is in the best interests of the affected child, or that such disclosure is necessary to investigate, prevent or treat child abuse and neglect, to protect children from abuse and neglect or for research when the Director of Human Services gives prior written approval. The Department of Human Services shall adopt rules setting forth the procedures by which it will make the disclosures authorized under this subsection or subsection (1) or (2) of this section. The name, address and other identifying

information about the person who made the report may not be disclosed pursuant to this subsection and subsection (1) of this section.

- (4) A law enforcement agency may make reports and records compiled under the provisions of ORS 419B.010 to 419B.050 available to other law enforcement agencies, district attorneys, city attorneys with criminal prosecutorial functions and the Attorney General when the law enforcement agency determines that disclosure is necessary for the investigation or enforcement of laws relating to child abuse and neglect.
- (5) A law enforcement agency, upon completing an investigation and closing the file in a specific case relating to child abuse or neglect, shall make reports and records in the case available upon request to any law enforcement agency or community corrections agency in this state, to the Department of Corrections or to the State Board of Parole and Post-Prison Supervision for the purpose of managing and supervising offenders in custody or on probation, parole, post-prison supervision or other form of conditional or supervised release. A law enforcement agency may make reports and records compiled under the provisions of ORS 419B.010 to 419B.050 available to law enforcement, community corrections, corrections or parole agencies in an open case when the law enforcement agency determines that the disclosure will not interfere with an ongoing investigation in the case. The name, address and other identifying information about the person who made the report may not be disclosed under this subsection or subsection (6)(b) of this section.
- (6) (a) Any record made available to a law enforcement agency or community corrections agency in this state, to the Department of Corrections or the State Board of Parole and Post-Prison Supervision or to a physician in this state, as authorized by subsections (1) to (5) of this section, shall be kept confidential by the agency, department, board or physician. Any record or report disclosed by the Department of Human Services to other persons or entities pursuant to subsections (1) and (3) of this section shall be kept confidential.
 - (b) Notwithstanding paragraph (a) of this subsection:
 - A. A law enforcement agency, a community corrections agency, the Department of Corrections and the State Board of Parole and Post-Prison Supervision may disclose records made available to them under subsection (5) of this section to each other, to law enforcement, community corrections, corrections and parole agencies of other states and to authorized treatment providers for the purpose of managing and supervising offenders in custody or on probation, parole, post-prison supervision or other form of conditional or supervised release.
 - B. A person may disclose records made available to the person under subsection (1)(i) of this section if the records are disclosed for the purpose of advancing the public interest.
- (7) An officer or employee of the Department of Human Services or of a law enforcement agency or any person or entity to whom disclosure is made pursuant to subsections (1) to (6) of this section may not release any information not authorized by subsections (1) to (6) of this section.
- (8) As used in this section, "law enforcement agency" has the meaning given that term in ORS 181.010.

- (9) A person who violates subsection (6)(a) or (7) of this section commits a Class A violation. [1993 c.546 §§20,20a; 1995 c.278 §51; 1997 c.328 §8; 1999 c.1051 §181; 2003 c.14 §224; 2003 c.412 §1; 2003 c.591 §8; 2005 c.317 §1; 2005 c.659 §2; 2009 c.348 §§3,4; 2009 c.393 §1; 2012 c.3 §2; 2013 c.624 §84]

419B.040 Certain privileges not grounds for excluding evidence in court proceedings on child abuse.

- (1) In the case of abuse of a child, the privileges created in ORS 40.230 to 40.255, including the psychotherapist-patient privilege, the physician-patient privilege, the privileges extended to nurses, to staff members of schools and to regulated social workers and the husband-wife privilege, shall not be a ground for excluding evidence regarding a child's abuse, or the cause thereof, in any judicial proceeding resulting from a report made pursuant to ORS 419B.010 to 419B.050.
- (2) In any judicial proceedings resulting from a report made pursuant to ORS 419B.010 to 419B.050, either spouse shall be a competent and compellable witness against the other. [1993 c.546 §21; 2009 c.442 §37]

419B.045 Investigation conducted on public school premises; notification; role of school personnel.

If an investigation of a report of child abuse is conducted on public school premises, the school administrator shall first be notified that the investigation is to take place, unless the school administrator is a subject of the investigation. The school administrator or a school staff member designated by the administrator may, at the investigator's discretion, be present to facilitate the investigation. The Department of Human Services or the law enforcement agency making the investigation shall be advised of the child's disabling conditions, if any, prior to any interview with the affected child. A school administrator or staff member is not authorized to reveal anything that transpires during an investigation in which the administrator or staff member participates nor shall the information become part of the child's school records. The school administrator or staff member may testify at any subsequent trial resulting from the investigation and may be interviewed by the respective litigants prior to any such trial. [1993 c.546 §22; 2003 c.14 §225]

419B.050 Authority of health care provider to disclose information; immunity from liability.

- (1) Upon notice by a law enforcement agency, the Department of Human Services, a member agency of a county multidisciplinary child abuse team or a member of a county multidisciplinary child abuse team that a child abuse investigation is being conducted under ORS 419B.020, a health care provider must permit the law enforcement agency, the department, the member agency of the county multidisciplinary child abuse team or the member of the county multidisciplinary child abuse team to inspect and copy medical records, including, but not limited to, prenatal and birth records, of the child involved in the investigation without the consent of the child, or the parent or guardian of the child. A health care provider who in good faith disclosed medical records under this section is not civilly or criminally liable for the disclosure.

(2) As used in this section, “health care provider” has the meaning given that term in ORS 192.556. [1997 c.873 §27; 1999 c.537 §3; 2001 c.104 §150; 2005 c.562 §27]

APPENDIX 3. QUESTIONS AND (Some) ANSWERS ABOUT MANDATORY CHILD ABUSE REPORTING FOR LAWYERS



QUESTIONS AND (Some) ANSWERS ABOUT MANDATORY CHILD ABUSE REPORTING FOR LAWYERS Oregon State Bar General Counsel's Office

Question 1: What is Mandatory Child Abuse Reporting?

The Oregon Child Abuse Reporting Law is found at ORS 419B.005 to 419B.050. It imposes a legal obligation on certain “public and private officials” to report child abuse. The statute also expresses the state’s policy that all citizens have a responsibility to prevent abuse and protect children, and the statute encourages voluntary reporting in situations in which reporting is not required. Mandatory reporters are a critical link in the state’s system of child protection and account for approximately 75% of reports received.

Question 2: What Are Lawyers Required To Do?

Lawyers are included in the definition of “public or private officials” who have a duty to report child abuse. ORS 419B.005(3)(m). Physicians, compensated youth coaches, higher education employees, school employees, social workers, police, firefighters, clergy, psychologists, day care workers, youth camp workers, and members of the Legislative Assembly are among the other mandatory reporters. Reporting is required when a lawyer has “reasonable cause to believe that any child with whom the [lawyer] comes in contact has suffered abuse or that any person with whom the [lawyer] comes in contact has abused a child. . . .” ORS 419B.010(1).

Child abuse reporting is a 24-hour-a-day, 7-day-a-week responsibility. Originally, the statute required public and private officials to report only information they learned in the performance of official duties. In 1991, however, the statute was amended to eliminate that language, with the result that mandatory reporters are never “off-duty” for purposes of child abuse reporting.

The duty to report child abuse is personal to the mandatory reporter. See HB 4016 (2012). A mandatory reporter is required to personally report even if his or her employer has internal policies or procedures for addressing reports of child abuse. *Id.*

Failure to report as required by the statute is a Class A violation. ORS 419B.010(5). The penalty for a Class A violation is a maximum fine of \$2000, according to ORS 153.018(2)(a).

Oregon Rule of Professional Conduct 1.6(a) prohibits a lawyer from revealing information relating to the representation of a client.⁹ Oregon 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 thus report child 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 (discussed in Question 6, *infra*), the law does not require reporting, and therefore would not permit a lawyer to disclose information protected by Oregon RPC 1.6. In addition, Oregon RPC 1.6(b)(5) permits disclosure to the extent that is required by law; it does not give a lawyer permission to reveal information about child abuse that the law does not require be reported. In other words, a lawyer cannot use the permission in the disciplinary rule to justify disclosing information about child 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 phrase specifically in connection with ORS 419B.010(1). One case interprets “reasonable cause” in connection with ORS 419B.020, a provision that requires the Department of Human Services to investigate a report of child abuse and make a determination of whether the allegations of abuse are “founded,” that is, whether there is “reasonable cause to believe that abuse has occurred.” ORS 419B.020(2). In *Berger v. State Office for Services to Children and Families*, 195 Or App 587, 98. P3d 1127 (2004), the court noted that the agency's determination of whether charges are founded is limited only to “whether there is evidence that creates a reasonable suspicion of child abuse; [the agency] does not decide whether child abuse in fact occurred or even probably occurred.” *Id.* at 590

Child Protective Services investigators who have reasonable suspicion that a suspicious physical injury is or may be the result of abuse are required to immediately photograph the injury and ensure that a medical assessment is conducted within 48 hours. ORS 419B.023(2). “Reasonable suspicion” in this context 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.” OAR 413-015-0115. The administrative rule further explains that “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,

⁹ Lawyers 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 Oregon RPC 1.6.

interviews, experience, and training. The fact that there are possible non-abuse explanations for the injury does not negate reasonable suspicion.”

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.”

“Reasonable cause,” has also been defined in a variety of criminal and civil cases and sometimes has been equated with “probable cause.” 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 has occurred, and it is distinguishable from “mere suspicion or belief, unsupported by facts of circumstances.” *Id.* at 629. This articulation of probable cause sounds more like the reasonable suspicion standard.

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) found that a showing of reasonable cause requires a recital of known facts, not merely conclusory statements. By contrast, 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). The statute cited 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).

As used in ORS 419B.010(1) and in order to qualify for immunity, “reasonable cause” is a good faith determination that child abuse has occurred based on facts reasonably believed by the reporter to be true. See ORS 419B.025.

Question 4: What Is “Comes In Contact?”

“Comes in contact” is a more nebulous phrase that is also not defined in the statute or case law. A dictionary definition of “contact” includes “coming together...,” “not being

separated by space . . . ,” and “being in communication.” *Webster’s Illustrated Encyclopedic Dictionary, Tormont Publications (Montreal: 1990)*. That definition and common usage suggest that a lawyer is required to report child abuse only when the lawyer has had some kind of physical contact with a person who has abused a child or with a child 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 child or abuser. Reliable second- or third-hand information may provide the reasonable cause to believe that abuse has occurred; reporting would then be required if the lawyer had come in contact with the abuser or the child. For example, if a neighbor tells a lawyer that she heard from another neighbor that a child living down the street (with whom the lawyer has occasional contact) appears to have been abused, 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 that, under a broad reading of the statute and its purpose, that contact includes knowledge of child abuse even without any physical contact with the victim or abuser. The Oregon Attorney General does not interpret the statute so broadly, opining 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.” Oregon AG Opinion No. OP-5543 (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: How Is A Lawyer Expected To Identify Child Abuse?

The child abuse reporting statute identifies various types of conduct that constitute child abuse. ORS 419B.005(1)(a). Lawyers, like many mandatory reporters, may not be experts in identifying child abuse and are not expected to be. The intent of the statute is to get at-risk children into a 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.”

Abuse that leaves physical marks is relatively easy to recognize. Some forms of neglect are also visible, such as malnutrition or young children left unattended. Criminal assault

and certain sex crimes constitute child abuse, as does allowing a child to be in a place where methamphetamines are manufactured. Other kinds of child abuse, such as mental injury, may be more difficult to detect, particularly where contact with the child is limited. The mandatory reporting law does not require lawyers to conduct investigations into suspected child abuse, but lawyers should make reasonable inquiry where possible to follow up on initial observations or information that appears to involve child abuse to ensure that they have “reasonable cause” to believe that abuse has occurred.

The Oregon Department of Human Services publishes a booklet entitled “What You Can Do About Child Abuse--A Guide for Mandatory Reporters” that lawyers may find helpful. It is available on-line at <http://dhsforms.hr.state.or.us/Forms/Served/DE9061.pdf>. DHS will also answer questions and consult about whether a situation should be reported.

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

There are three exceptions to the statutory reporting requirement:

- A. Lawyers, together with clergy, psychiatrists, psychologists and guardian ad litem appointed under ORS 419B.231 are not required to report information “communicated by a person if the communication is privileged under ORS 40.225 to 40.295 or 419B.234(6).”
- B. A lawyer is also not required to report child 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.”
- C. No official is required to report if the information about child abuse is acquired “by reason of a report” or “by reason of a proceeding arising out of a report” made under ORS 419B.010, provided the official “reasonably believes that the information is already known by a law enforcement agency or the Department of Human Services.” ORS 419B.010(2).

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 the lawyer-client privilege.¹⁰ The reference, however, encompasses thirteen other privileges: psychotherapist- patient (40.230), physician-patient (40.235), nurse-patient (40.240), school employee-student (40.245), clinical social worker-client (40.250), husband-wife

¹⁰ 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 (ORS 40.225).

(40.255), clergy-penitent (40.260), counselor-client (40.262), stenographer-employer (40.265), public officer (40.270), disabled person-sign language interpreter (40.272), non-English speaking person-interpreter (40.273), and informer (40.275).

Clearly, if a lawyer learns in a privileged communication with a client that the client has abused a child, 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 child 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 the 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 Oregon 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 Oregon RPC 1.0(f) as both "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."¹¹

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.

¹¹ These are the definitions, respectively, of "confidences" and "secrets" from former DR 4-101.

In creating the statutory exception for some of the information that would be protected by Oregon RPC 1.6,¹² the legislature limited it to information that would be detrimental (not merely embarrassing) if disclosed. This appears to be the legislature’s way of reconciling the sanctity of the lawyer-client relationship with the interest of protecting children. The legislature appears to have concluded that mere embarrassment to a client is not sufficient justification for the lawyer to ignore child abuse.

C. Information Learned from an Official Report

The final exception to the reporting requirement applies to all mandatory reporters. Reporting is not required of information learned “by reason of a report” or “by reason of a proceeding arising out of a report” made under the mandatory reporting statute. The exception applies if the reporter “reasonably believes that the information is already known by a law enforcement agency or the Department of Human Services.” This relatively new exception¹³ appears to be the legislature’s attempt to clarify that mandatory reporters do not need to report when the only information they have comes from an existing report. The language is not crystal clear, however, as it suggests that reports may be made and proceedings may arise therefrom, yet the information might not be known to DHS. Although it is difficult to image a situation where that could actually be the case, a lawyer who learns about abuse (involving a person with whom the lawyer has had contact) from another reporter’s report would be prudent to confirm that DHS is aware of the situation. If DHS cannot confirm its existing knowledge of the abuse, the lawyer should report.

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 child 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 a child or is a victim of abuse must be reported.

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

ORS 419B.010(1) mandates reporting only when there is reasonable cause to believe that a child “has suffered abuse” or that a person “has abused a child.” It does not require advance reporting of possible future child abuse, except where the future abuse constitutes a “threatened harm” under ORS 419B.005(G). Threatened harm is defined broadly to include any situation that subjects a child to a substantial risk of harm to the child’s health or welfare.

¹² This exception was added by the 2001 Legislature in response to suggestions by lawyers that the exception for privileged communications could easily put lawyers in the difficult situation of having to violate their ethical duties to clients in order to comply with the statute.

¹³ This exception was also added by the 2001 Legislature.

If the situation does not involve “threatened harm” within the meaning of ORS 419B.005(G), reporting may still be possible. Oregon 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 ORS 40.225(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.” Oregon 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.” Oregon RPC 1.0(o).

It is not clear that all incidents of child abuse identified in the statute constitute crimes. A lawyer whose client has expressed a clear intention to commit child 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 commission of the crime.

A voluntary report of suspected future abuse that is not required under ORS 419B.010 would nevertheless be subject to the same statutory confidentiality and immunity as a mandatory report.

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

While all states have adopted mandatory child abuse reporting 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.

Additionally, the scope of Oregon’s mandatory child 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 ORS 419B.010 can be read to limit reporting only to incidents occurring within the state. The language of the statute sweeps broadly to include “any child” who has been abused and “any person” who has abused on child. On the other hand, if a lawyer fails to report an incident of child abuse involving non-Oregonians and learned about while visiting another state, it may be difficult for Oregon to assert jurisdiction over the lawyer for purposes of citing a violation pursuant to ORS 419B.010(3).

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 child abuse reporting statute to protect children not only by requiring reports, but also “to encourage voluntary reports.” ORS 419B.007.

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

The statute requires that reports be made “immediately,” ORS 419B.010(1), and the report must be “an oral report by telephone or otherwise.” ORS 419B.015. That combined language suggests that a letter will not suffice. (It has been suggested to the author that a fax, if sent during office hours, meets the requirement at least in part because it is transmitted by telephone.) In-person or telephone reports are obviously preferred. Reports must be made to the local office of the Department of Human Services, its designee, or a law enforcement agency within the county where the person making the report is located at the time of the contact. In SB 234(2011), the Legislature defined 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.
- A county juvenile department.

The report must contain, if known:

- the names and addresses of the child and the parents of the child or other persons responsible for care of the child,
- the child’s age,
- 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 abuser.

Question 10: Are Child Abuse Reports Confidential?

Notwithstanding Oregon’s public records law, “reports and records compiled under [the mandatory child abuse reporting law] are confidential and are not accessible for public inspection.” ORS 419B.035. DHS is required to make the reports available in some circumstances and permitted to do so in other circumstances. Id. In either case, however, the name, address or other identifying information about the reporter cannot be disclosed except on court order. ORS 419B.035(3). Recipients of records under DHS’s mandatory or permissive disclosure authority are also required to maintain the confidentiality of the records and commit a Class A violation for failure to do so.

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. Police and DHS will accept anonymous reports, however. 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 child 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 419B.025. See *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 it left the plaintiff without a remedy for an injury not compensable under the workers' compensation system. Similarly, the immunity granted by ORS 419B.025 may conflict with the arguable common-law right of an alleged abuser to sue a reporter for defamation.

This immunity provision will not shield an attorney from civil or criminal liability if he or she knowingly made a false report. In 2011, the Legislature enacted HB 2183, which provides it is a Class A violation to knowingly make a false child abuse report in order to influence a custody, parenting time, visitation or child support decision.

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

As mentioned above, failure to report child abuse when required under the statute is a Class A violation punishable by a fine. The bar is aware of at least one case in which a mandatory reporter (not a lawyer) was prosecuted for failing to report. In that 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.

Civil liability is also a possibility. There are no reported cases in Oregon imposing liability on mandatory reporters for failure to report child 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 statutory tort analysis in context of 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).

Legislation that would have eliminated any private right of action under the mandatory child abuse reporting law was vetoed by the governor during the 1999 legislative session. Other jurisdictions have imposed liability on mandatory reporters for failure to report suspected abuse. See *Singley, Failure to Report Suspected Child Abuse: Civil Liability of Mandated Reporters*, 19 J Juv L 236 (1998).

The Professional Liability Fund also has defended and settled two claims arising out of a lawyer's failure to report when there was no privilege or other exception to the duty to report. If you are an attorney in private practice, a claim for failure to report child abuse will be covered under the Professional Liability Fund Coverage Plan only if the claim falls within the definition of a "Covered Activity," that is, it arises from an act, error, or omission by a lawyer in rendering professional services in his or her capacity as a lawyer. In short, the lawyer must have obtained the information about child abuse while on the job, in the context of rendering professional legal services. See PLF Plan, Section V—Exclusions from Coverage, Comments to Exclusion 16. Claims not covered by the PLF may also be covered under a lawyer's commercial general liability policy or homeowner's policy.

Question 13: What Does The Law Require The Oregon State Bar To Do In Connection With Child Abuse Reporting?

The Oregon State Bar is required to identify those persons regulated by the bar (Oregon lawyers) "who in their official capacity have regular and ongoing contact with children" and to notify them every two years of their duty to report child abuse. ORS 418.702(2). The notice must also advise them of the symptoms to look for and provide a contact number for further information. The bar meets this statutory obligation by publishing notice regularly in the Oregon State Bar Bulletin.

The Bar is also required to ensure that attorneys complete one hour of training every three years on the duties of attorneys under the mandatory child abuse reporting law. ORS 9.114. The legislature enacted this educational requirement in 1999, in the apparent belief that lawyers were not sufficiently aware of their duties as mandatory child abuse reporters.

Question 14: Are Lawyers Also Mandatory Reporters Under The Elderly And Disabled Person Abuse Prevention Act, ORS 124.050, Et Seq.?

Generally, no. ORS 124.060 requires reporting of elder abuse by “any public or private official” who comes in contact with the abused elder or with the abuser while the reporter is “acting in an official capacity.” The definition of “public or private official” in ORS 124.050(5) does not specifically include lawyers. Cf. ORS 419B.005(m). However, “public or private official” does include “any public official who comes in contact with elderly persons in the performance of the official’s duties.” ORS 124.050(5)(k). Thus, although lawyers generally are not covered by the Act, lawyers who are public officials and who come in contact with elderly persons in the performance of their official duties must comply with the Elderly Abuse Reporting Act.

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)

Question 15: Are Lawyers Also Mandatory Reporters of Abuse of Adults with Mental Illness or Developmental Disabilities?

Yes. 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).

The statute defines abuse to include: abandonment, physical abuse, sexual abuse, neglect, verbal abuse of a person with a developmental disability, financial exploitation of a person with a developmental disability, involuntary seclusion of a person with a developmental disability, the wrongful use of a physical or chemical restraint upon a person with a developmental disability (unless prescribed by a physician or court order), and any death of an adult caused by other than accidental or natural means. ORS 430.735(1).

Although this mandatory reporting requirement provides an exception for attorneys whose reports are based on information that is attorney-client privileged under ORS 40.225,

unlike the mandatory child abuse reporting requirement, it does not recognize an exception for information that is confidential and detrimental to a client if disclosed. ORS 430.765(2).

Lawyers who make a report of abuse of an adult with a mental illness or developmental disability in good faith, based on reasonable grounds, are entitled to civil immunity, as well as immunity “with respect to participating in any judicial proceeding resulting from the report.” ORS 430.753.

APPENDIX 4. – ORS 40.225 LAWYER-CLIENT PRIVILEGE

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. [1981 c.892 §32; 1987 c.680 §1; 2005 c.356 §1; 2005 c.358 §1; 2007 c.513 §3; 2009 c.516 §1]

APPENDIX 5. OREGON RULES OF PROFESSIONAL CONDUCT 1.6

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.

APPENDIX 6. OREGON RULES OF PROFESSIONAL CONDUCT 4.2

RULE 4.2 COMMUNICATION WITH PERSON REPRESENTED BY COUNSEL

In representing a client or the lawyer's own interests, a lawyer shall not communicate or cause another to communicate on the subject of the representation with a person the lawyer knows to be represented by a lawyer on that subject unless:

- (a) the lawyer has the prior consent of a lawyer representing such other person;
- (b) the lawyer is authorized by law or by court order to do so; or
- (c) a written agreement requires a written notice or demand to be sent to such other person, in which case a copy of such notice or demand shall also be sent to such other person's lawyer.

APPENDIX 7. OREGON RULES OF PROFESSIONAL CONDUCT 5.3

RULE 5.3 RESPONSIBILITIES REGARDING NONLAWYER ASSISTANCE

With respect to a nonlawyer employed or retained, supervised or directed by a lawyer:

- (a) a lawyer having direct supervisory authority over the nonlawyer shall make reasonable efforts to ensure that the person's conduct is compatible with the professional obligations of the lawyer; and
- (b) except as provided by Rule 8.4(b), a lawyer shall be responsible for conduct of such a person that would be a violation of the Rules of Professional Conduct if engaged in by a lawyer if:
 - (1) the lawyer orders or, with the knowledge of the specific conduct, ratifies the conduct involved;
or
 - (2) the lawyer is a partner or has comparable managerial authority in the law firm in which the person is employed, or has direct supervisory authority over the person, and knows of the conduct at a time when its consequences can be avoided or mitigated but fails to take reasonable remedial action.

APPENDIX 8. CASE MANAGER REFERRAL FORM

CONTAINS CONFIDENTIAL INFORMATION
Parent Child Representation Program
Case Manager Referral Form

Referring Attorney Name: _____ Date: _____

Case Manager: _____

Do you prefer contact/updates via: Phone Email Face to Face

Client Name: _____ Phone #: _____

Address: _____

Role in case (mother, father, child): _____ Case #: _____

Child's Name(s): _____

Children's D.O.B.'s: _____

Date of Petition: _____ Case Type: Dependency Termination Delinquency

Other Involved Party's name/relationship to child: _____ Phone #: _____

Attorney representing other parties: _____

Assigned DHS Case Worker/Juv. Dept. Counselor _____ Phone #: _____

Assigned GAL/CASA: _____ Phone #: _____

Assigned Juvenile Dept. Representative: _____ Phone #: _____

Client needs assistance with:

Education Housing Treatment

Benefits Intimate Partner Violence Medical

Dental Mental Health Services General Support

Food Other: _____

What client need category do you feel needs to be prioritized? _____

Please provide a BRIEF synopsis of case:

What Specific needs can we assist this family in addressing?

Date of Next Court Hearing/CRB: _____

Page 1 of 2

Any other considerations we should know?



Non-exhaustive list of case manager roles (varies by case)

Parent & Child Supports

- Provide weekly, bi-weekly, or monthly face to face visits
- Attend court hearings/CRB as client support
- Attend meetings as client support
- Provide on-going, in-person visits to assess progress

Assist client in obtaining:

- Substance Abuse services
- Mental Health Services
- Housing Needs
- Domestic Violence Services
- Assist parents in obtaining concrete services (i.e. clothing, furniture, household goods, etc.)

Investigator

- Observe Visits
- Research relatives
- Assist in locating child welfare research
- Review case files/discovery for social worker input
- Relative Home Study
- Locate Expert Witness
- Prepare alternative reunification plan
- Prepare alternative service plan

Advocate

- Attend FDMs
- Attend CSM
- Attend other meeting(s)
- Contact DHS caseworker
- Contact JCC
- Contact CASA
- Contact service providers

APPENDIX 10. MONTHLY INVOICE

PCRP CASE MANAGER'S FEE STATEMENT FOR CONTRACTED SERVICES

1. CASELOAD INFORMATION

County _____ Total number of cases _____

2. PROVIDER INFORMATION

Provider's Name _____ Vendor No. _____
 Mailing Address _____ Phone No. _____
 Email _____

3. EXPENSE INFORMATION

| Code | Description | Quantity Total | Rate | Amount Billed | PDSC Use Only |
|-------|---|----------------|------|---------------|---------------|
| XXX | Direct Service | | | | |
| XXX | Non-case assigned direct service | | | | |
| XXX | Administrative service | | | | |
| XXX | Group administrator | | | | |
| XXX | Mileage (attach supplemental documentation) | | | | |
| | | | | | |
| Total | | | | | |

I certify that the information above is true. I have not received and will not accept direct or indirect compensation for these services other than as approved by PDSC or authorized by contract.

Signature _____ Date _____

Submit fee statement and include monthly activity report to:

Amy Miller, PDSC
 1175 Court Street NE
 Salem, OR 97301

Or to: amy.miller@opds.state.or.us

APPENDIX 11. CODE OF ETHICS FOR REGULATED SOCIAL WORKERS

DIVISION 30

CODE OF ETHICS FOR REGULATED SOCIAL WORKERS

877-030-0025

Applicability

The following rules in this division of rules provide a standard of ethics to be followed by regulated social workers and applicants for licensure or certification to practice as a regulated social worker.

Stat. Auth.: ORS 675.510 - 675.600 & 675.900

Stats. Implemented: ORS 675.595

Hist.: BCSW 1-2001, f. & cert. ef. 5-4-01; BLSW 3-2010, f. 12-15-10, cert. ef. 1-1-11; BLSW 1-2012, f. 12-14-12, cert. ef. 1-1-13

877-030-0030

Ethical Responsibility

Regulated social workers' ethical responsibilities to their clients begin when the client-provider professional relationship is entered into by the regulated social worker and the client and remain in effect until the relationship is terminated by either party, except as provided in OAR 877-030-0070.

Stat. Auth.: ORS 675.510 - 675.600 & 675.900

Stats. Implemented: ORS 675.595

Hist.: BCSW 2-1993, f. & cert. ef. 10-13-93; BCSW 1-1994, f. & cert. ef. 2-17-94; BCSW 1-2001, f. & cert. ef. 5-4-01; BLSW 3-2010, f. 12-15-10, cert. ef. 1-1-11

877-030-0040

Conduct and Reporting Requirements of Regulated Social Workers

(1) Conduct: The following minimum standards of professional conduct apply to regulated social workers:

(a) Private conduct of regulated social workers is a personal matter to the same extent as with any other person, except when that conduct compromises the fulfillment of professional responsibilities.

(b) Regulated social workers may not participate in, condone, or be associated with dishonesty, fraud, deceit, or misrepresentation.

(c) Regulated social workers may not misrepresent their professional qualifications, education, experience, or affiliations.

(2) Reporting Requirements:

(a) Regulated social workers must report to the Board as soon as practicable, but not later than 10 days after:

(A) Being convicted of a misdemeanor or felony;

(B) Being arrested for a felony crime;

(C) Receiving notice of a civil lawsuit that names the regulated social worker as a defendant and makes allegations related to the regulated social worker's practice of clinical social work or the regulated social worker's license or certificate;

(D) Becoming an in-patient in a psychiatric hospital or psychiatric day treatment facility; or

(E) Receiving notice of a regulatory action related to the regulated social worker's license or certificate.

(b) Regulated social workers must report child and elderly abuse as required by ORS 419B.005 to 419B.050 and 124.050 to 124.095.

(c) Unless state or federal laws relating to confidentiality or the protection of health information prohibit disclosure, a regulated social worker is required to report to the board any information the regulated social worker has that appears to show that a regulated social worker is or may be an impaired professional or may have engaged in unprofessional conduct according to the guidelines of the code of ethics, to the extent that disclosure does not conflict with the requirements of ORS 675.580. A regulated social worker is an impaired professional if the regulated social worker is unable to practice with professional skill and safety by reason of habitual or excessive use or abuse of drugs, alcohol or other substances that impair ability or by reason of a mental health disorder.

(d) Unless state or federal laws relating to confidentiality or the protection of health information prohibit disclosure, a regulated social worker licensee who has reasonable cause to believe that a licensee has engaged in prohibited or unprofessional conduct is required to report the conduct to the board responsible for the licensee who is believed to have engaged in the conduct. The reporting regulated social worker must report the conduct without undue delay, but in no event later than 10 working days after the reporting regulated social worker learns of the conduct. In this section:

(A) "Licensee" means a health professional licensed or certified by or registered with a board.

(B) "Board" has the meaning given that term in ORS 676.150.

(C) "Prohibited conduct" means conduct by a licensee that:

(i) Constitutes a criminal act against a patient or client; or

(ii) Constitutes a criminal act that creates a risk of harm to a patient or client.

(D) "Unprofessional conduct" means conduct unbecoming a licensee or detrimental to the best interests of the public, including conduct contrary to recognized standards of ethics of the licensee's profession or conduct that endangers the health, safety or welfare of a patient or client.

(3) Administrative Reporting Requirements: Regulated Social Workers must notify the Board as soon as practicable, but no later than 30 days, after changes in the regulated social workers name of record, address of record, and employer of record, including changes in the mailing address of the employer of record, as defined in OAR 877-001-0009.

Stat. Auth.: ORS 675.510 - 675.600 & 675.900

Stats. Implemented: ORS 675.595

Hist.: BCSW 2-1993, f. & cert. ef. 10-13-93; BCSW 1-2001, f. & cert. ef. 5-4-01; BCSW 2-2005, f. & cert. ef. 12-22-05; BCSW 1-2008, f. 6-27-08, cert. ef. 7-1-08; BLSW 1-2010, f. & cert. ef. 1-15-10; BLSW 2-2010(Temp), f. & cert. ef. 7-1-10 thru 12-28-10; BLSW 3-2010, f. 12-15-10, cert. ef. 1-1-11; BLSW 1-2012, f. 12-14-12, cert. ef. 1-1-13

877-030-0070

Ethical Responsibility to Clients

A regulated social worker's primary responsibility is to clients. Regulated social workers must serve clients with professional skill and competence including but not limited to the following:

(1) Dual Relationship:

(a) Regulated social workers must not violate their position of power, trust, and dependence;

(b) Regulated social workers may not enter into a relationship with a client that conflicts with the ability of the client to benefit from social work practice;

(c) Regulated social workers may not enter into a relationship with a client that may impair the regulated social worker's professional judgment or increase the risk of exploitation of the client;

(d) Regulated social workers may not enter into a relationship with a client that increases the risk of exploitation for the client for the regulated social worker's advantage;

(e) Regulated social workers may not provide professional social-work services to an employee, supervisee, close colleague, or relative, or to any other person if there is a risk that providing the service would impair the regulated social worker's judgment or increase risk of client exploitation.

(f) Regulated social workers may not enter into an employer, supervisor, or any other relationship if there is a potential for exercising undue influence on a client. This includes the sale of services or goods in a manner that might exploit a client for the financial gain or personal gratification of the regulated social worker or a third party, or if there is a risk that such a relationship would be likely to impair the regulated social worker's judgment and increase the risk of client exploitation. This applies both to current clients and to those to whom the regulated social worker has, at any time in the previous year, rendered services as a regulated social worker.

(g) Regulated social workers may not, under any circumstances, engage in or solicit sexual acts or engage in any conduct, verbal behavior or other communication with or towards a client that may reasonably be interpreted as sexual, seductive or sexually demeaning. This prohibition applies to current clients and to clients to whom the regulated social worker has at anytime within the previous three years provided social work services. The client's consent to, initiation of, or participation in, sexual behavior with the regulated social worker does not change the prohibited nature of the conduct.

(2) Regulated social workers must provide services with professional skill, cultural awareness, and language competency with respect to each client's needs.

(3) Regulated social workers may not provide inappropriate or unnecessary professional services to clients.

(4) Regulated social workers must provide clients with accurate and complete information regarding the extent and nature of services available. This includes the risks, rights, opportunities, and obligations associated with the provision of professional services to the client.

(5) Regulated social workers must seek consultation or make referrals whenever it may improve the provision of social-work services and is in the best interest of the client.

(6) Regulated social workers may not attempt to provide professional social-work services to clients outside their area of competence, training, and qualifications.

(7) Regulated social workers must terminate professional social-work services to clients when the services are no longer required or no longer serve the client's needs or interests.

(8) Regulated social workers may withdraw professional social-work services precipitously only under unusual circumstances, giving careful consideration to all factors in the situation and taking care to minimize possible adverse effect. Regulated social workers in fee-for-service settings may terminate services to clients who are not paying an overdue balance if the client does not pose an imminent danger to self or others; if the financial arrangements have been made clear to the client; and if the clinical and other consequences of nonpayment have been addressed and discussed with the client.

(9) Regulated social workers who anticipate the termination or interruption of service to clients must notify those clients promptly and provide for transfer, referral, or continuation of service in relation to the client's needs and preferences.

(10) Regulated social workers may not violate the legal rights of their clients.

(11) When a regulated social worker must act on behalf of a client who has been adjudged legally incompetent, the regulated social worker must safeguard the interests and rights of that client.

(12) When another individual is legally authorized to act on behalf of a client, regulated social workers may conduct business with that person, always keeping the client's best interests in mind.

(13) Except as permitted in ORS 675.580 and ORS 40.250, regulated social workers must respect the privacy of clients and hold in confidence information obtained in the course of professional contact between client and the regulated social worker.

(14) Information received by a regulated social worker from a potential client at the point of initial contact must be treated with the same respect for privacy as that of information received from a client.

(15) Regulated social workers must inform clients fully about the limits of confidentiality requirements.

(16) Access to records:

(a) Regulated social workers must provide clients reasonable access to records concerning them and should take due care to protect the confidences of others contained in those records. Client access to their own records should be restricted only in exceptional circumstances when there is compelling evidence that access would cause harm to the client. Regulated social workers who are concerned that client access to their own records could cause serious misunderstanding or harm to the client should assist the client in interpreting the records. Both the client's request and the rationale for withholding some or all of the record should be documented by the regulated social worker in the case file.

(b) The provisions of sub-section (a) of this section do not apply in the case of a request for a public record.

(c) The provisions of sub-section (a) of this section do not apply in the case of regulated social worker who practices within an agency.

(17) Regulated social workers must obtain informed consent from clients before taping, recording, or permitting third party observation of their activities.

(18) Regulated social workers, when making reports, must obtain a release of confidentiality and shall avoid undue invasion of privacy by only presenting patient data pertinent to the purpose of the report.

(19) Fees. Regulated social workers in fee-for-service settings may charge reasonable fees and must inform clients of the fee arrangement before providing services.

(20) Regulated social workers may not solicit the clients of colleagues.

(21) Regulated social workers may not solicit clients from their employer for private practice.

(22) Regulated social workers may not assume professional responsibility for the clients of another agency or colleague without appropriate communication with that agency or colleague.

(23) Regulated social workers must relate to the clients of colleagues with full professional consideration.

(24) A regulated social worker who serves the clients of colleagues, during a temporary absence or emergency, must serve those clients with the same professional competence as to his or her own.

Stat. Auth.: ORS 675.510 - 675.600 & 675.900

Stats. Implemented: ORS 675.510 - 675.600 & 675.900

Hist.: BCSW 2-1993, f. & cert. ef. 10-13-93; BCSW 1-1994, f. & cert. ef. 2-17-94; BCSW 1-1997, f. & cert. ef. 3-25-97; BCSW 1-2001, f. & cert. ef. 5-4-01; BCSW 2-2005, f. & cert. ef. 12-22-05; BLSW 3-2010, f. 12-15-10, cert. ef. 1-1-11

877-030-0080

Administrators, Supervisors, and Teachers of Clinical Practice

(1) A regulated social worker serving as an administrator, supervisor, or teacher must promote conditions that foster and support ethical and competent professional performance.

(2) Clinical social workers in the role of administrator, supervisor, or teacher may not, under any circumstances, engage in a sexual relationship with a supervisee or student.

(3) Clinical social workers in the role of administrator, supervisor, or teacher may not enter into a therapeutic relationship with any employee, supervisee, or student.

(4) Clinical social workers in the role of administrator, supervisor, or teacher must explicitly define the conditions of their professional relationship to their supervisees or students.

(5) Clinical social workers as an employer, or in the role of administrator, supervisor, or teacher, must support and emphasize the need for formulation, development, enactment, and implementation of policies and agency rules which provide for safeguarding the rights of clients.

(6) Clinical social workers as employer, or in the role of administrator, supervisor, or teacher, bear the ethical responsibility for persons practicing under their direct supervision who are not regulated by professional registration, certification, or license.

Stat. Auth.: ORS 675.510 - 675.600 & 675.900

Stats. Implemented: ORS 675.510 - 675.600 & 675.900

Hist.: BCSW 1-1982, f. & ef. 1-29-82; BCSW 1-1986, f. & ef. 7-7-86; BCSW 2-1991, f. & cert. ef. 5-30-91; BCSW 2-1993, f. & cert. ef. 10-13-93; Renumbered from 877-030-0015; BCSW 1-1994, f. & cert. ef. 2-17-94; BCSW 1-1997, f. & cert. ef. 3-25-97; BCSW 1-2001, f. & cert. ef. 5-4-01; BLSW 3-2010, f. 12-15-10, cert. ef. 1-1-11

877-030-0090

General Provisions Governing Conduct

(1) A regulated social worker must cooperate with the Board, its investigators, and its committees in investigations made under OAR Chapter 877.

(2) A regulated social worker must fully comply with a final order issued to the regulated social worker by the Board.

Stat. Auth.: ORS 675.510 - 675.600 & 675.900

Stats. Implemented: ORS 675.595

Hist.: BCSW 2-1993, f. & cert. ef. 10-13-93; BCSW 1-2001, f. & cert. ef. 5-4-01; BCSW 2-2005, f. & cert. ef. 12-22-05; BLSW 3-2010, f. 12-15-10, cert. ef. 1-1-11

877-030-0100

Retention of Client Records; Disposition of Client Records in Case of Death or Incapacity of Licensee

(1) In this rule, "client record" means information maintained in a written or electronic form regarding treatment or billing of a client.

(2) A regulated social worker who serves clients outside of an agency setting must ensure that a client record is maintained for each such client and that all client records are legible and are kept in a secure, safe, and retrievable condition. At a minimum, a client record must include an assessment of the client, a treatment or intervention plan, and progress notes of therapy sessions, all of which should be recorded concurrently with the services provided.

(3) Retention of records. A regulated social worker must retain a client record for seven years from the date of the last session with the client.

(4) A regulated social worker in private practice must make necessary arrangements for the maintenance of and access to client records that ensure the clients' right to confidentiality in the event of the death or incapacity of the licensee. In regard to this requirement:

(a) The regulated social worker must name a qualified person or appropriately qualified records management company to intercede for client welfare and to make necessary referrals, when appropriate.

(b) The regulated social worker must keep the board informed of the name of the qualified person or records management company.

(c) The board will not release the name of the qualified person or records management company except in the following cases:

(A) The death or incapacity of the regulated social worker

(B) A client is unable to locate the regulated social worker.

(5) To be a qualified person under this rule a person must be a Licensed Clinical Social Worker or other licensed mental health professional licensed under Oregon law or a certified alcohol and drug abuse counselor.

Stat. Auth.: ORS 675.510 - 675.600 & 675.900

Stats. Implemented: ORS 675.595

Hist.: BCSW 2-2005, f. & cert. ef. 12-22-05; BCSW 1-2009, f. 6-15-09, cert. ef. 7-1-09; BLSW 3-2010, f. 12-15-10, cert. ef. 1-1-11

12.2 Monthly service update form

Screenshot of a Microsoft Word document showing a form titled "Case Manager Monthly Service Update". The form includes fields for client name, referring attorney, case manager, month, and year. It also features a table with four columns: Date of contact, Contact type (phone, in person, email), Direct service hours provided, and Brief Description. Below the table are sections for Client progress summary, Barriers to client progress, and Other relevant information.

Case Manager Monthly Service Update

client name: _____

referring attorney: _____

case manager: _____

month: _____ year: _____

| Date of contact | Contact type (phone, in person, email) | Direct service hours provided | Brief Description |
|-----------------|--|-------------------------------|-------------------|
| | | | |
| | | | |
| | | | |
| | | | |
| | | | |
| | | | |

Client progress summary:

Barriers to client progress:

Other relevant information: