

MANDATORY REPORTING BY HEALTH CARE PROFESSIONALS

Each year over one million women seek medical treatment for injuries obtained by violence committed against them by their intimate partner.ⁱ One third of battered women see health care professionals, often repeatedly,ⁱⁱ whereas only seven percent of assaults between spouses are ever reported to the police.ⁱⁱⁱ Due to the high number of battered women who do not call the police but do seek medical attention for their injuries, health care providers are in a unique position to help fight against domestic violence.^{iv}

The American Medical Association (AMA) Diagnostic and Treatment Guidelines in Domestic Violence include guidelines to assist physicians in the interviewing process, documentation, and interventions.^v In addition, the issue of how to deal with injuries caused by domestic violence has been approached by states in a variety of ways across the country.^{vi} Some states have developed their own protocol addressing the responsibilities of health care professionals in identifying and responding to domestic violence. New York State, for example, has the Family Protection and Domestic Violence Intervention Act of 1994 which requires all health care staff in hospitals and treatment facilities to give a suspected victim of domestic violence a victim's rights notice that contains referral information. The act also requires health care professionals to document the injuries and include them in the patient's medical file.^{vii}

Almost all states have statutes that require physicians to make a report when a patient is injured by a gun, knife, or other deadly weapon,^{viii} but most states do not have statutes that specifically address the responsibilities of physicians to report domestic violence. However, six states - California, Colorado, Kentucky, New Hampshire, New Mexico, and Rhode Island - have statutes specifically mandating reporting of domestic violence to law enforcement or social services. Those laws have been met with mixed reviews. In general, the verdict is still out on the effectiveness of mandatory reporting in preventing future incidents of violence.^{ix}

For more information please contact:

Colorado Coalition Against Domestic Violence

P. O. Box 18902 • Denver, CO 80218 • 303.831.9632 • 1.888.778.7091 • Fax 303.832.7067

CCADV works to eliminate domestic violence in all its forms.

ARGUMENTS IN FAVOR OF MANDATORY REPORTING BY PHYSICIANS

Proponents of mandatory reporting by health care providers argue that such laws improve domestic violence screening by medical care providers and thus create an opportunity for state intervention at what is often the earliest possible point, i.e., when a woman goes to her doctor with injuries resulting from domestic violence. Another claimed benefit of mandatory reporting is that it increases offender accountability by identifying batterers who would otherwise remain undetected and elude prosecution.^x Further, the documentation of the injuries in the victim's medical file and the highly persuasive presence of a physician in the courtroom will help in obtaining convictions of batterers.

IMPROVING HEALTH CARE PROVIDERS RESPONSE TO DV: Proponents of mandatory reporting claim that mandatory reporting laws force physicians to screen for domestic violence. With increased identification of injuries the physician will be better equipped to provide the needed treatment. For example, a battered woman may not readily disclose that her bloodshot eyes and split lip are a result of prolonged strangulation. As a result, the physician may not adequately treat the high risk injury of strangulation. However, with training on how to screen for domestic violence injuries the doctor will be better able to identify such injuries and thus better able to prescribe the appropriate treatment.

ENHANCING PATIENT SAFETY: Once the health care professional has identified injuries known or suspected to be caused by domestic abuse mandatory reporting is said to ensure state intervention at the earliest possible point thus providing the opportunity to stop the violence before it escalates or reoccurs.^{xi} Interviews with battered women in Kentucky revealed that the majority of battered women answered affirmatively when after the mandatory reporting law was explained they were asked, "should professionals be required to report domestic violence".^{xii} The reasons given include: "'protects victims' lives and safety. Might save a life,' and 'keeps him from doing it again.'"^{xiii} However, it must be noted that increased receptiveness to mandatory reporting in Kentucky as opposed to other states with mandatory reporting may be affected by the fact that reports are made to social service agencies rather than to law enforcement directly and women can refuse service from the social service agency.^{xiv}

The law may also indirectly enhance victim safety by increasing the likelihood of the victim being granted an order of protection and in prosecuting and convicting the batterer. When the health care professional reports the crime to law enforcement, a statement from the health care professional will often be taken. This statement and the medical record of injuries provided by the physician can provide important evidence that the victim can use in obtaining an order of protection.

IMPROVING DV DATA COLLECTION AND DOCUMENTATION: Since domestic violence is known to be an under-reported crime it is believed that mandatory reporting by health care professionals would serve as a means of collecting data regarding the prevalence of domestic violence.^{xv} It is thought that this data would help secure funding and resources for agencies providing services to victims. In Kentucky some argue that the mandatory reporting law has contributed to the well funded shelter system in the state.^{xvi}

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HOLDING BATTERERS ACCOUNTABLE: Perhaps the primary argument in favor of mandatory reporting is the public interest in prosecuting criminals. Mandatory reporting serves to identify batterers who would otherwise not be identified and elude prosecution.^{xvii} The medical care professionals will serve the important function of identifying these criminals and then the evidence that they collect in the medical file, in conversation with the victim, and by their persuasive presence in the courtroom will help obtain convictions. Arguably, holding an increased number of batterers accountable for their crime will serve the public interest in stopping crime in general and ending domestic violence in particular.

SENDING A MESSAGE TO SOCIETY THAT DV IS A CRIME: Finally, domestic violence sends the important message to society that domestic violence is a serious crime that will not be ignored. By requiring physicians to report all instances of domestic violence, the state is sending a powerful message to the general public; all domestic violence, regardless of the race, ethnicity, gender, sexual orientation, or social standing of the victim or perpetrator, is a crime for which the offender will be held accountable.

ARGUMENTS AGAINST MANDATORY REPORTING BY PHYSICIANS

Battered women, organizations assisting battered women, and medical associations, including the AMA, have voiced opposition to the mandatory reporting laws.^{xviii} The central arguments against mandatory reporting is that it jeopardizes battered women's safety, fails to recognize women as autonomous adults capable of making decisions affecting their lives and in so doing reinforces the harmful stereotype of battered women as passive and helpless, violates the ethical tenants of the medical profession, and as a result negatively affects access to and quality of care.

FAILS TO ADDRESS SAFETY CONCERNS/RISK OF RETALIATION: When a domestic violence victim seeks intervention or tries to leave the relationship the batterer often feels he is losing power and control. As a result the violence often escalates. Indeed, the risk of serious bodily injury and murder dramatically increases when a victim tries to leave the abusive relationship.^{xix} Many jurisdiction reports from health care professions have only a superficial response and if the perpetrator is arrested he is unlikely to spend more than a few hours in jail before being released thus placing the victim at an increased risk for retaliation.^{xx}

A carefully thought out safety plan is of the utmost importance to a victim's ability to escape a violent relationship.^{xxi} It is necessary for plans that account for a woman's safety to be in place when a police report is made.^{xxii} Prior to leaving women often have to resolve the complex issues of housing, financial self-sufficiency, and protecting children from abuse or abduction. Mandatory reporting not only does not consider a battered woman's future safety, it often foils the safety plan she had in place. For example, a woman may seek medical attention to seek assistance for her injuries and to have them documented in her medical file as a part of preparing to leave and get a protective order and perhaps press assault charges. If the doctor calls the police at that point her plans to leave may be exposed and place her in further danger. The implementation and development of a safety plan and the planning surrounding the issues often involved with leaving can take time. While those trying to help the victim are often frustrated by that amount of time, without such protections a battered woman is at an increased risk of facing violent retaliation by her abuser.

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DETERENT TO SEEKING CARE: If a doctor reports domestic violence and the batterer is arrested or contacted by law enforcement, a woman's health may be further jeopardized since the batterer may deny a victim's access to health care in the future. As a result of the obstacles and deterrents to seeking medical care in jurisdictions where health care professionals are mandated to report the injuries, more victims may suffer from untreated injuries.^{xxiii} Thus mandatory reporting laws can have a negative impact on victim's health and safety.^{xxiv} Mandatory reporting by health care professionals poses particular obstacles for undocumented immigrant women seeking medical care because they may fear that a report will lead to their deportation or the deportation of their abuser.

IMPEDE QUALITY CARE: For a battered woman to receive proper medical care she must feel comfortable discussing her injuries and the cause of those injuries with her doctor. If she knows that the doctor will report injuries which she admits to be caused by domestic violence she very well might not fully disclose the nature of her injuries and as a result not get the treatment she needs. For example, if a woman seeks medical treatment after an abusive incident she may feel she is able to get treatment for a sprained wrist by claiming to have fallen but that she is unable to seek treatment for injuries caused by strangulation. This presents a clear obstacle for the woman receiving the quality medical care she deserves because if the physician has inadequate information it could lead to inadequate medical treatment. As a result, in states that have mandatory reporting laws battered women could suffer from a decreased quality of care.

CONFIDENTIALITY: Battered women have often had relationships with people who have broken their trust. As a result battered women are frequently hesitant to confide in others and physicians may have to work to gain a battered woman's trust. This trust would be shattered if the doctor breached confidentiality. Yet, mandatory reporting requirements force doctors to breach that confidentiality. This places doctors in an ethical dilemma and is a violation of medical ethics according to the American Medical Association.^{xxv} The express policies of the American Medical Association provide that "for competent adult victims, physicians must not disclose an abuse diagnosis to caregivers, spouses, or any other third party without the consent of the patient"^{xxvi}

The American Medical Association recently adopted a policy opposing mandatory reporting of competent non-elderly victims without their consent if the report includes identifying information.^{xxvii} The primary rationale for such a policy was that the confidentiality of the physician-patient relationship must be preserved in order to provide quality health care. In practice many doctors have shown agreement with the AMA's policy. A recent survey of Colorado physicians found that of the 684 Colorado physicians surveyed, only four in ten reported domestic violence injuries to the police.^{xxviii} The doctors indicated that they often did not report because their patients asked them not to for safety reasons.^{xxix} Thus mandatory reporting puts doctors between a rock and a hard place; they are forced to choose between breaking the ethical codes of their profession and breaking the law.

PATIENT'S AUTONOMY: One of the primary arguments in opposition to mandatory reporting laws for domestic violence is that women are rational adults capable of making decisions about their own lives but mandatory reporting treats women as though they are helpless and childlike.^{xxx} Present in the legislative history of the New Mexico mandatory reporting statute is the following: the "legislature recognizes that many adults in the state are unable to manage their own affairs or to protect themselves from exploitation, abuse, or neglect."^{xxxi} Mandatory reporting is based on concepts such as battered women's syndrome and learned helplessness which often leads to the belief that battered women are helpless and unable to make rational decisions, thus needing a parental figure, such as the state, to intervene. Like the New Mexico statute, the language of Kentucky's mandatory reporting statute reveals such reasoning; "The General Assembly of the Commonwealth of Kentucky recognizes that some adults of the Commonwealth are unable to manage their own affairs or to protect themselves from abuse, neglect, or exploitation."^{xxxii} The result of these views is to further victimize battered women by taking more power away from them.

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CONCLUSION

The goal of all domestic violence interventions should be to provide opportunities for people who experience domestic violence to access assistance without further jeopardizing their safety. After ten years of a mandatory reporting by physicians statute in Colorado, there are indications that the effects of mandatory reporting by physicians present a serious threat to the safety, confidentiality, and autonomy of battered women. Colorado should seek to adopt alternatives to mandatory reporting by physicians that maintains the point of intervention within the health care field, prioritizes victim safety, and includes methods to increase offender accountability. When responding to a patient who the medical care professional knows or suspects to be a victim of domestic violence, CCADV recommends the following steps as the actions that are in the best interest of the safety of victims^{xxxiii}:

- 1.) tell the victim that you are concerned about her safety
- 2.) ask if it is safe for her to go home that day
- 3.) if it is not safe for her to go home give her the number of the domestic violence hotline or local advocacy organization and let her use a private phone
- 4.) let her know that there are people who care and can help her
- 5.) provide referral information for victim services
- 6.) do not tell the perpetrator about the intervention

CCADV, with the involvement of broad stakeholders, will continue to examine of the best programs and policies for healthcare professionals in addressing domestic violence issues with patients.

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- ⁱ Evan Stark & Anne Flitcraft, *Medical Therapy as Repression: The Case of the Battered Women*, *Health and Medicine*, (Summer/Fall 1982).
- ⁱⁱ *Id.*
- ⁱⁱⁱ Muarry Straus & Christine Smith, *Family Patterns and Primary Prevention of Family Violence*, *Trends in Healthcare, Law and Ethics*, (Spring 1993).
- ^{iv} *Id.*
- ^v See *Mandatory Reporting of Domestic Violence*, *supra* note 6, at 7.
- ^{vi} See Karen West et al., *The Mandatory Reporting of Adult Victims of Violence: Perspectives from the Field*, 90 *Ky. L.J.* 1071 (2001-2002).
- ^{vii} *Id.* at 9.
- ^{viii} *Id.* at 3.
- ^{ix} *Id.* at 5.
- ^x See AM. MED. ASS'N, *Board of Trustees Report 11-A-97*, at 3 (1997).
- ^{xi} See *The Case Against Mandatory Reporting of Domestic Violence Injuries*, *supra* note 16.
- ^{xii} See *supra* note 12, at 4.
- ^{xiii} *Id.*
- ^{xiv} *Id.*
- ^{xv} See *The Case Against Mandatory Reporting of Domestic Violence Injuries*, *supra* note 16, at 2.
- ^{xvi} See *Mandatory Reporting of Domestic Violence*, *supra* note 6, at 4.
- ^{xvii} *Id.* at 8.
- ^{xviii} See *supra* note 6.
- ^{xix} See *supra* note 16.
- ^{xx} Patricia R. Salber, *Mandatory Reporting of Domestic Violence: Understanding the Risks versus the Benefits*, *Arizona Medical Association*, at http://www.armadoc.com/dv_reporting.htm (last visited April 10, 2004).
- ^{xxi} See *supra* note 12.
- ^{xxii} See *supra* note 6.
- ^{xxiii} See *The Case Against Mandatory Reporting of Domestic Violence Injuries*, *supra* note 16.
- ^{xxiv} See *Killing her Softly*, *supra* note 12.
- ^{xxv} *Id.*
- ^{xxvi} See Am. Med. Ass'n, *Police Compendium 515.983 (6)(1991)*. See the AMA Opposes Mandatory Medical Reporting, *DOMESTIC VIOLENCE REPORT*, Oct./Nov. 1997, at 1.
- ^{xxvii} See *The Mandatory Reporting of Adult Victims of Violence*, *supra* note 12.
- ^{xxviii} Suzanne Batchelor, *Better Treatment Sought for Domestic Violence Epidemic*, at <http://www.feminist.com/news/news186.htm>.
- ^{xxix} *Id.*
- ^{xxx} See *Mandatory Reporting of Domestic Violence*, *supra* note 6.
- ^{xxxi} N.M. STAT. ANN. § 27-7-15 (1978).
- ^{xxxii} Ky. Rev. Stat. Ann. § 209.090 (1995).
- ^{xxxiii} See *The Case Against Mandatory Reporting of Domestic Violence Injuries*, *supra* note 16.