

Opinion No. 2012-090

August 14, 2012

Peggy Pryor Cryer
Executive Secretary
Arkansas State Medical Board
1401 West Capitol, Suite 340
Little Rock, Arkansas 72201

Dear Ms. Cryer:

This is my opinion on your questions about reporting requirements under A.C.A. § 12-18-402 (Supp. 2011), part of the Child Maltreatment Act, A.C.A. 12-18-101 to -1108 (Repl. 2009, Supp. 2011):

1. Is the Arkansas State Medical Board, a state agency, required by law to report suspected child maltreatment pursuant to A.C.A. § 12-18-402 that has been either identified or reported to the Medical Board?
2. Are the individual physicians on the Board, who are referred to as mandatory reporters in the statute, held to the same reporting requirements when they learn of a suspicion or incident through a complaint made to the Arkansas State Medical Board rather than through their regular role in a doctor/patient relationship?

RESPONSE

In my opinion, the answer to your first question is “no” and the answer to your second question is “yes.”

Question 1 – Is the Arkansas State Medical Board, a state agency, required by law to report suspected child maltreatment pursuant to A.C.A. § 12-18-402 that has been either identified or reported to the Medical Board?

Any “individual listed as a mandated reporter” must notify the Child Abuse Hotline of certain suspicions or observations relating to child maltreatment. A.C.A. § 12-18-402(a).¹ The statute lists mandated reporters in 37 categories. *See* A.C.A. § 12-18-402(b). Each category describes individual human beings. The list includes, for example, any “child care worker,” “dental hygienist,” “physician,” or “teacher.” *See id.* But it does not include entities like corporations, associations, or governmental bodies.

By the statute’s plain language, the reporting requirement applies only to individuals. Only listed persons are mandated reporters; only individuals are listed; and the reporting requirement is limited to any “*individual* listed as a mandated reporter” A.C.A. § 12-18-402(a) (emphasis added).

In my opinion, then, the Arkansas State Medical Board is not a mandated reporter and the statute’s reporting requirements do not apply to the Board. *Cf. Cooper Clinic, P.A. v. Barnes*, 366 Ark. 533, 237 S.W.3d 87 (2006) (medical clinic was not mandatory reporter under predecessor law which, like current law, listed only individuals as mandatory reporters).

Question 2 – Are the individual physicians on the Board, who are referred to as mandatory reporters in the statute, held to the same reporting requirements when they learn of a suspicion or incident through a complaint made to the Arkansas State Medical Board rather than through their regular role in a doctor/patient relationship?

As noted, physicians are mandated reporters. *See* A.C.A. § 12-18-402(b)(19).

¹ The subsection provides:

- (a) An individual listed as a mandated reporter under subsection (b) of this section shall immediately notify the Child Abuse Hotline if he or she:
 - (1) Has reasonable cause to suspect that a child has:
 - (A) Been subjected to child maltreatment; or
 - (B) Died as a result of child maltreatment; or
 - (2) Observes a child being subjected to conditions or circumstances that would reasonably result in child maltreatment.

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The statute does not expressly make the reporting requirement contingent on how a mandated reporter comes to possess the information that creates a suspicion sufficient to require reporting, or on the circumstances under which she observes conditions that might result in child maltreatment. I see no evidence that such a contingency is implied by the law or was otherwise intended by the General Assembly.

In my opinion, a physician's duty as a mandatory reporter is the same whether her suspicions or observations occur in connection with her service as a member of the Board or in connection with her regular practice of medicine. *Cf. First Commercial Trust Co. v. Rank*, 323 Ark. 390, 404, 915 S.W.2d 262 (1996) (Glaze, J., concurring; emphasis added) (“a physician has an *absolute duty* to report . . . a reasonable suspicion [of] child abuse” under predecessor law substantially similar in this respect).

Assistant Attorney General J. M. Barker prepared this opinion, which I approve.

Sincerely,

DUSTIN McDANIEL
Attorney General

DM:JMB/cyh