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**Coalition of Wisconsin Aging Groups**  
*Advocacy Membership Legal Services*

TO: Glenn Silverberg  
FROM: Grant Nyhammer  
RE: EBS reporting abuse  
DATE: January 21, 2009

Elderly benefit specialists (EBS) are generally prohibited from reporting potential elder abuse to a governmental entity (i.e. county department, law enforcement, board of aging, etc.) without client consent. While there are some limited circumstances where a report may be made, this a complex area of law and EBS should never report suspected abuse without first discussing it with a supervising attorney.

The reason EBS cannot generally report abuse is because they are permissive reporters under Wisconsin elder abuse reporting system (Reporting System<sup>1</sup>) and, therefore, would typically be prohibited from reporting abuse by the Wisconsin Supreme Courts Rules of Professional Conduct (RPC). The RPC governs the conduct of attorneys and those supervised by attorneys such as EBS. Since the obligations of the EBS to report suspected abuse under the Reporting System is discretionary, and the duty to comply with the RPC is compulsory, an EBS may only report abuse if it is allowed by the RPC.

#### 1. Reporting not mandatory

EBS are permissive reporters under the Reporting System because they are specifically excluded from the list of mandatory reporting occupations. Under the Reporting System certain occupations (such as health care providers, counselors, and social workers) are required to report suspected abuse without client consent if there is imminent risk of harm. Wis. Stat. § 46.90(4)(ad)(1).

EBS, however, are given discretion to report suspected abuse because they are supervised by attorneys. Wis. Stat. § 46.90(4)(ar). This discretion is given because the Reporting System recognizes that the client confidentiality provisions of the RPC may forbid disclosure.

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<sup>1</sup> There are two abuse reporting statutes in Wisconsin, one for elder abuse (Wis. Stat. § 46.90 *et. seq.*) and one for adults at risk (Wis. Stat. § 55.043 *et. seq.*). Since both use the same language regarding reporting abuse, references to the Reporting System apply equally to both statutes.

## 2. RPC allows limited reporting

In order to protect client confidentiality, the RPC allows for disclosure of client information in three circumstances:

- i. The information is learned outside of the scope of representing a client; or
- ii. It is necessary to prevent substantial injury to another; or
- iii. Client is unable to act in their best interests because of a disability.

Without one of these three exceptions applying, the RPC would normally prohibit an EBS from reporting abuse.

### A. Information outside representation

The RPC forbids EBS from reporting abuse if the information is learned while representing a client. The RPC states:

The confidentiality rule applies not merely to matters communicated in confidence by the client but also to all information relating to the representation, whatever its source. A lawyer [or EBS] may not disclose such information except as authorized or required by the Rules of Professional Conduct or other law. SCR 20:1.6

Under the RPC, all information relating to a client, no matter the source or subject, is confidential information and normally may not be disclosed under the Reporting System without client consent. Information learned outside the course of representing a client, however, is likely not confidential and could possibly be used to report abuse. For example, information learned by an EBS visiting a nursing home to deliver brochures probably could be used to report abuse.

### B. Confidential information limited circumstances

Even if an EBS has confidential information, the RPC still allows for possible disclosure in two limited circumstances. The first is if it is necessary to prevent substantial injury to another (SCR 20:1.6) and the second is if a client is unable to act in their own best interests because of a disability (SCR 20:1.14). Both of these exceptions are intended to be extraordinary and used only after a thorough review of the facts.

Since determining when it is permissible to report abuse under the RPC is complicated, a supervising attorney should be consulted immediately.

Cordially,

Grant Nyhammer,  
Legal Director