

# The Washington Supreme Court Allows Private Lawsuits Against Health Care Providers Who Do Not Report Suspected Child Abuse

Legal Alert  
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Garvey Schubert Barer Legal Update, February 2011.

## **Beggs v. Washington**

On February 17, 2011, the Washington Supreme Court issued a ruling that reemphasizes a health care provider's important duty to report suspected child abuse. The new case is entitled ***Beggs v. Washington***, No. 84098-9, slip op.

In *Beggs*, the Court clarified that patients may sue providers who fail to notify authorities, as required under Washington's Mandatory Child Abuse Reporting Statute, RCW 26.44.030. In most states with similar statutes, patients may not bring such a private right of action.

## **The Case Involved Particularly Upsetting Facts**

The case arose after Tyler DeLeon died on his seventh birthday of dehydration and starvation. When Tyler died, he weighed only 28 pounds. Tyler's death was the culmination of a history of abuse at the hands of his adoptive mother. Along the way, Tyler broke his femur, lost both his front teeth, and was kicked down the stairs, causing bruises and lacerations. Six other foster children in his home suffered similar abuse. Tyler received medical care on multiple occasions for his injuries.

Suit was filed against Tyler's pediatrician, his psychiatrist and the Rockwood Clinic of Spokane claiming that Tyler's providers were aware of information that should have been reported as suspected child abuse under the Reporting Statute.

## **Washington Law Requires Certain Parties to Report Suspected Child Abuse**

As you may be aware, Washington's Reporting Statute requires certain professionals, including health care providers, who have "reasonable cause to believe that a child has suffered abuse or neglect" to report the suspected abuse to the Washington State Department of Social and Health Services (DSHS) or the proper law enforcement agency. RCW 26.44.030(1)(a). The failure to file a required report is a gross misdemeanor. RCW 26.44.080. The statute does not *explicitly* state that an abused child can sue a provider who fails to make a required report.

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### **The Washington Supreme Court Ruled that the Reporting Statute Implies a Civil Remedy**

The Washington Supreme Court had little trouble finding that the Reporting Statute implies a civil remedy. The Court also addressed the effect of Washington's Medical Malpractice Statute, Chapter 7.70 RCW, which provides the exclusive remedy for damages resulting from "health care." The Court held that a health care provider's duty to report suspected child abuse is not necessarily "health care," and therefore the Medical Malpractice Statute does not preclude a claim for damages stemming from a failure to report suspected abuse.

In reaching this conclusion, the Court emphasized that the Reporting Statute imposes a reporting duty on a wide range of actors (e.g., juvenile probation officers, social service counselors, law enforcement officers), many of whom do not provide health care. The commonality among the Reporting Statute's class of mandatory reporters is that they have primary and frequent contact with children who might be at risk of abuse. Therefore, the Court concluded: (1) a medical professional's duty to report suspected child abuse is not necessarily health care; and (2) the Medical Malpractice Statute does not preclude a civil action implied by the Reporting Statute.

### **Suggested Action**

In light of this new case, we suggest that you notify your health care providers of this new court decision and impress upon them their duty under the Mandatory Reporting Statute. In addition, you may want to review your policies and procedures for reporting suspected child abuse and, if necessary, make appropriate modifications.