



COMMONWEALTH of VIRGINIA

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The Honorable Marissa J. Levine, MD, MPH, FAAFP
State Health Commissioner
Virginia Department of Health
Post Office Box 2448
Richmond, Virginia 23218

Dear Commissioner Levine:

I am responding to your request for an official advisory Opinion in accordance with § 2.2-505 of the *Code of Virginia*.

Issues Presented

You ask whether a hospital licensing inspector who is a nurse is required to make a report of suspected child abuse or neglect under Virginia Code § 63.2-1509 upon reviewing the medical record of a fourteen-year-old girl who was pregnant and received services, such as prenatal or abortion services, at the hospital. You further ask whether a hospital licensing inspector is required to make a report to law enforcement given that it is a crime to have carnal knowledge of a child between the ages of thirteen and fifteen under Virginia Code § 18.2-63.

Response

It is my opinion that a Virginia Department of Health (“VDH”) licensing inspector who is a nurse and who, during the course of a hospital inspection, learns from the review of a medical record that a fourteen-year-old girl received services related to her pregnancy is not required to make a report of child abuse and neglect pursuant to Virginia Code § 63.2-1509 unless there is reason to suspect that a parent or other person responsible for the child’s care committed, or allowed to be committed, the unlawful sexual act upon the child. It is also my opinion that the VDH licensing inspector is not required to make a report to law enforcement of the crime of carnal knowledge of a child between the ages of thirteen and fifteen.

Background

You relate that VDH performs inspections of hospitals that it licenses pursuant to Virginia Code § 32.1-126 and that such inspections typically include a review of medical records of patients treated at the hospital that is the subject of the inspection. You also state that many of the VDH licensing inspectors are nurses licensed by the Board of Nursing and are considered to be acting within their professional nursing capacity when performing inspections of hospitals. As such, you relate that they are considered to be mandated reporters of suspected child abuse and neglect under Virginia Code § 63.2-1509.

Applicable Law and Discussion

Virginia Code § 63.2-1500 sets forth the general policy of the Commonwealth regarding the reporting of suspected child abuse and neglect. Specifically, § 63.2-1500 states:

The General Assembly declares that it is the policy of this Commonwealth to require reports of suspected child abuse and neglect for the purpose of identifying children who are being abused or neglected, of assuring that protective services will be made available to an abused or neglected child in order to protect such a child and his siblings and to prevent further abuse or neglect, and of preserving the family life of the parents and children, where possible, by enhancing parental capacity for adequate child care.^[1]

This policy underscores the importance of the duty placed upon certain professionals to report suspected child abuse and neglect in accordance with Virginia law.

Virginia Code § 63.2-1509 requires “certain persons, who in their professional or official capacity, have reason to suspect that a child is an abused or neglected child” to report the matter immediately to the local department of social services or to the toll-free child abuse and neglect hotline of the Department of Social Services.² Nurses employed in the nursing profession are mandated reporters under the statute.³ Because the nurses employed as VDH licensing inspectors are considered to be acting within their professional nursing capacities when performing hospital inspections, they must comply with § 63.2-1509 and make a report to DSS if they suspect that a child is an “abused or neglected child.”

An “abused or neglected child” is defined as “any child less than 18 years of age . . . [w]hose parents or other person responsible for his care commits or allows to be committed any act of sexual exploitation or any sexual act upon a child in violation of the law . . .”⁴ Virginia Code § 18.2-63 provides that “if any person carnally knows, without the use of force, a child thirteen years of age or older but under fifteen years of age, such person shall be guilty of a Class 4 felony.”⁵ Clearly, with respect to a fourteen-year-old who is pregnant, a sexual act upon a child was committed in violation of § 18.2-63. This fact alone, without additional information or evidence, is not sufficient to create a reason to suspect that the child is an “abused or neglected child” within the meaning of § 63.2-100. Under the statutory definition of an “abused or neglected child,” there must also be some evidence or information that the unlawful sexual act was committed or allowed to be committed by the child’s parents or other person responsible for the child’s care.⁶ Thus, whether or not a VDH licensing inspector who is a nurse has a duty to report under § 63.2-1509 would depend on what information the inspector obtained during the course of the inspection.

¹ 2002 Va. Acts ch. 747, at 1108, 1197 (quoting § 63.2-1500, not set out in Virginia Code).

² VA. CODE ANN. § 63.2-1509 (Supp. 2014).

³ *Id.*

⁴ Section 63.2-100 (Supp. 2014).

⁵ VA. CODE ANN. § 18.2-63 (2014).

⁶ See § 63.2-100(4). See also *Moore v. Brown*, 2014 Va. App. LEXIS 181 (Va. Ct. App. May 20, 2014) (finding that § 63.2-100(4) requires that the suspect be either a parent of the abused child or some other person responsible for his care). In *Moore*, the Virginia Court of Appeals also interpreted “other person responsible for his care” to mean an adult who by law, social custom, express or implied acquiescence, collective consensus, agreement, or any other legally recognizable basis has an obligation to look after the well-being of a child left in his care. Simply being an adult residing in the same home as a child does not make one responsible for every child in the home.” *Moore*, 2014 Va. App. LEXIS 181, at *8.

In an official Opinion to Delegate Robert G. Marshall issued in 2003 (the “Marshall Opinion”), this Office determined that medical personnel have a duty under § 63.2-1509 (mandatory reporting of child abuse) to report statutory rape when a child victim reveals such incidence to them in conversation.⁷ In contrast, you state that VDH licensing inspectors obtain information solely from their reviews of medical records and do not have any interaction or engagement with the patients treated by the facility that is the subject of the inspection. If the only information in the medical record reviewed by a VDH licensing inspector is that a hospital treated a pregnant fourteen-year-old, without any information as to how the child became pregnant, and there is no other basis upon which the licensing inspector could have reason to suspect that the child’s parents or other person responsible for the care of the child committed or allowed to be committed the sexual act, then there is no duty to report under § 63.2-1509. On the other hand, if the medical record showed, for example, that the child’s father committed the sexual act, then the VDH nurse licensing inspector is required to make a report in accordance with § 63.2-1509. The mere knowledge that a child between thirteen and fifteen is or was pregnant is, without more evidence, insufficient to trigger the reporting responsibility of § 63.2-1509.

A 2001 official opinion of this Office issued to Staunton Commonwealth’s Attorney Raymond Robertson (the “Robertson Opinion”) concluded that teachers who learn that a sexual act was committed upon a child that would constitute a violation of § 18.2-63 had a duty to report under then-Virginia Code § 63.1-248.3 (recodified in 2002 to § 63.2-1509), regardless of whether the teacher had reason to suspect that the child’s parents, or other person responsible for the care of the child, committed or allowed to be committed, the sexual act.⁸ This opinion relied on then-Virginia Code § 63.1-248.2 (now recodified at § 63.2-1508), which states: “Nothing in this section shall relieve any person specified in § 63.1-248.3 from making reports required in that section, regardless of the identity of the person suspected to have caused such abuse or neglect.” This language was enacted by the General Assembly in 1990, presumably in response to a 1989 Opinion of this Office determining that the responsibility of the local department of social services in child abuse and neglect matters is limited to the investigation of alleged acts committed by a parent or other person responsible for the care of a child.⁹

The Robertson Opinion concluded that the General Assembly’s 1990 amendment of § 63.1-248.2 (now § 63.2-1508), after the issuance of the 1989 Opinion indicated a legislative intent that the definition of “abused or neglected child” not be limited to acts committed by a parent or other person responsible for his care.¹⁰ The Marshall Opinion followed this same line of reasoning and concluded that medical personnel who learn that a sexual act was committed upon a child that would constitute a violation of § 18.2-61 or § 18.2-63 have a duty to report under § 63.2-1509, regardless of whether the medical personnel had reason to suspect that the child’s parent, or other person responsible for his care, committed or allowed to be committed, the sexual act.¹¹ Both Opinions, however, are inconsistent with long-standing rules of statutory construction and interpretation.

Section 63.2-1508 specifies what constitutes a valid report of child abuse or neglect that requires the local department of social services to conduct an investigation.¹² One required element is that the

⁷ 2003 Op. Va. Att’y Gen. 185, 187.

⁸ 2001 Op. Va. Att’y Gen. 94.

⁹ 1989 Op. Va. Att’y Gen. 354, 356

¹⁰ 2001 Op. Va. Att’y Gen. at 96.

¹¹ 2003 Op. Va. Att’y Gen. at 188.

¹² Section 63.2-1508 (2012).

alleged abuser is the alleged victim child's parent or other caretaker. This is consistent with the definition of "abused or neglected child" contained in § 63.2-100.¹³ Section 63.2-1508 ends by stating that nothing in the section shall relieve a person obligated to report suspected child abuse or neglect from making a report required by § 63.2-1509, regardless of the identity of the abuser.

"The general rule is that statutes may be considered as *in pari materia* when they relate to ... the same subject Statutes that have the same general or common purpose or are parts of the same general plan are also ordinarily considered as *in pari materia*."¹⁴ In *Prillaman v. Commonwealth*, the Supreme Court of Virginia stated that:

"Under the rule of statutory construction of statutes *in pari materia*, statutes are not to be considered as isolated fragments of law, but as a whole, or as parts of a great connected, homogeneous system, or a single and complete statutory arrangement. Such statutes are considered as if they constituted but one act, so that sections of one act may be considered as though they were parts of the other act, as far as this can reasonably be done. Indeed, as a general rule, where legislation dealing with a particular subject consists of a system of related general provisions indicative of a settled policy, new enactments of a fragmentary nature on that subject are to be taken as intended to fit into the existing system and to be carried into effect conformably to it, and they should be so construed as to harmonize the general tenor or purport of the system and make the scheme consistent in all its parts and uniform in its operation, unless a different purpose is shown plainly or with irresistible clearness. It will be assumed or presumed, in the absence of words specifically indicating the contrary, that the legislature did not intend to innovate on, unsettle, disregard, alter or violate a general statute or system of statutory provisions the entire subject matter of which is not directly or necessarily involved in the act."¹⁵

Section 63.2-1508 states that its terms do not relieve a person obligated to report child abuse or neglect from making a report *as required by § 63.2-1509* regardless of the identity of the alleged abuser.¹⁶ Section 63.2-1509 only requires reports when there is a reason to suspect that a child is an "abused or neglected child."¹⁷ By statutory definition, "an abused or neglected child" is one who has been subject to a sexual act in violation of the law that was committed or allowed to be committed *by the child's parent or other person responsible for his care*.¹⁸ To construe § 63.2-1508 as expanding the reporting requirements of § 63.2-1509, thereby expanding the definition of "an abused or neglected child," results in an inharmonious interpretation in which both statutes could not stand.¹⁹ Such an interpretation is even more absurd given that § 63.2-1508 only requires the local department of social services to investigate reports where the alleged abuser is a parent or other person responsible for the child's care.²⁰ To the

¹³ Section 63.2-100.

¹⁴ *Prillaman v. Commonwealth*, 199 Va. 401, 405, 100 S.E.2d 4, 7 (1957) (quoting 50 Am. Jur., Statutes, § 349, at 345-47).

¹⁵ *Id.*

¹⁶ Section 63.2-1508 (emphasis added).

¹⁷ Section 63.2-1509.

¹⁸ Section 63.2-100 (emphasis added).

¹⁹ See also 1977-78 Op. Va. Att'y Gen. 351, 353 (concluding that where two statutes are in apparent conflict, they should be construed, if reasonably possible, in such manner that both may stand together).

²⁰ Section 63.2-1508.

extent that the referenced official opinions issued in 2001 and 2003 (the Robertson Opinion and the Marshall Opinion) require reporting of suspected child abuse or neglect regardless of whether the alleged abuser is a parent or other person responsible for the child's care, they contradict longstanding rules of statutory construction and are hereby overruled.

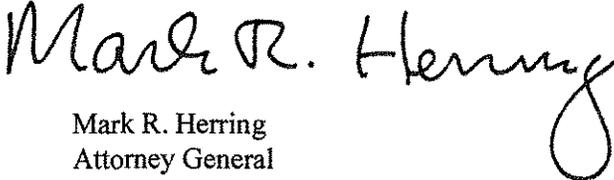
You next ask whether a VDH licensing inspector who reviews the medical record of a pregnant fourteen-year-old is required to make a report to law enforcement in the absence of a duty to report under § 63.2-1509. There is no law that requires a VDH licensing inspector to report a crime discovered during the inspection of a hospital.

Conclusion

Accordingly, it is my opinion that a VDH licensing inspector who is a nurse and who, during the course of a hospital inspection, learns from the review of a medical record that a fourteen-year-old girl received services related to her pregnancy is not required to make a report of child abuse and neglect pursuant to Virginia Code § 63.2-1509 unless there is reason to suspect that a parent or other person responsible for the child's care committed, or allowed to be committed, the unlawful sexual act upon the child. It is also my opinion that the VDH licensing inspector is not required to make a report to law enforcement of the crime of carnal knowledge of a child between the ages of thirteen and fifteen.

With kindest regards, I am

Very truly yours,


Mark R. Herring
Attorney General