



Mandatory Abuse Reporting for Oregon Lawyers

MARK JOHNSON ROBERTS

**DEPUTY GENERAL COUNSEL
OREGON STATE BAR**

**AMBER A. HOLLISTER
GENERAL COUNSEL**

Oregon Statutory Abuse Reporters [summarized and condensed]

- ▶ **Medical Professionals**
- ▶ **Audiologists and Therapists**
- ▶ **Police Officers, Firefighters, EMTs**
- ▶ **School and College Employees**
- ▶ **Health and Human Services Workers**
- ▶ **Care Providers and Legal Custodians**
- ▶ **Clergy and Mental Health Professionals**
- ▶ **Physical, Speech and Occupational Therapists**
- ▶ **Members of the Legislative Assembly**
- ▶ **Attorneys**

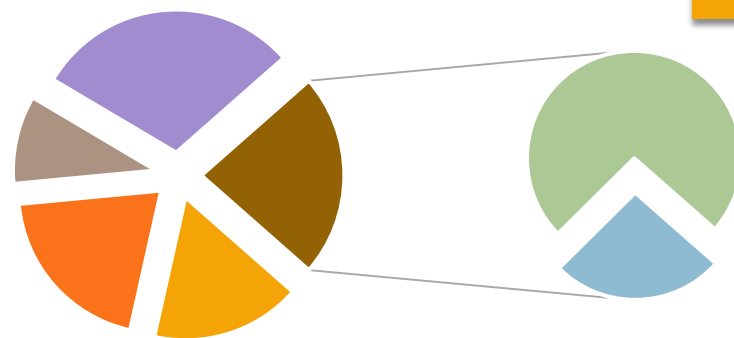
Legislative Purpose [example: elder abuse reporting]

“The Legislative Assembly finds that for the purpose of preventing abuse, safeguarding and enhancing the welfare of elderly persons, it is necessary and in the public interest to require mandatory reports and investigations of allegedly abused elderly persons.”

ORS 124.055



Three quarters of all child abuse reports come from mandatory reporters.



All voluntary 23%

- Police 17%
- School 20%
- Medical 10%
- Other mandated 30%
- Parent/Self 6%
- Other voluntary 17%

Attorneys' Abuse Reporting Duties



ELDERS



CHILDREN



**MENTAL ILLNESS/
DEVELOPMENTAL
DISABILITY [ORS 430.765]**



**LONG-TERM CARE
RESIDENT [ORS 441.640]**

Your Abuse Reporting Duty

You **must** report abuse if you have:






- ☎ **Contact** with an abuser or a victim, and
- ☎ **Reasonable cause** to believe that
- ☎ **A protected person**
- ☎ **Has Been abused,**

➔ **UNLESS** an exception applies.

This duty exists 24 hours a day, 7 days a week!

Following an employer's policy is not enough!

How to Report

-  Immediately = without delay
-  To DHS or law enforcement
-  Oral report required
-  Give as much as information as possible
-  Explain allegation of abuse

Reporting Hotline:

1-855-503-SAFE

or call DHS Branch Offices

Report Should Include ...

- ▶ Names and addresses
- ▶ Nature and extent of the abuse
- ▶ Explanation given for the abuse
- ▶ Cause of abuse and identity of perpetrator.

CHILD ABUSE REPORTING



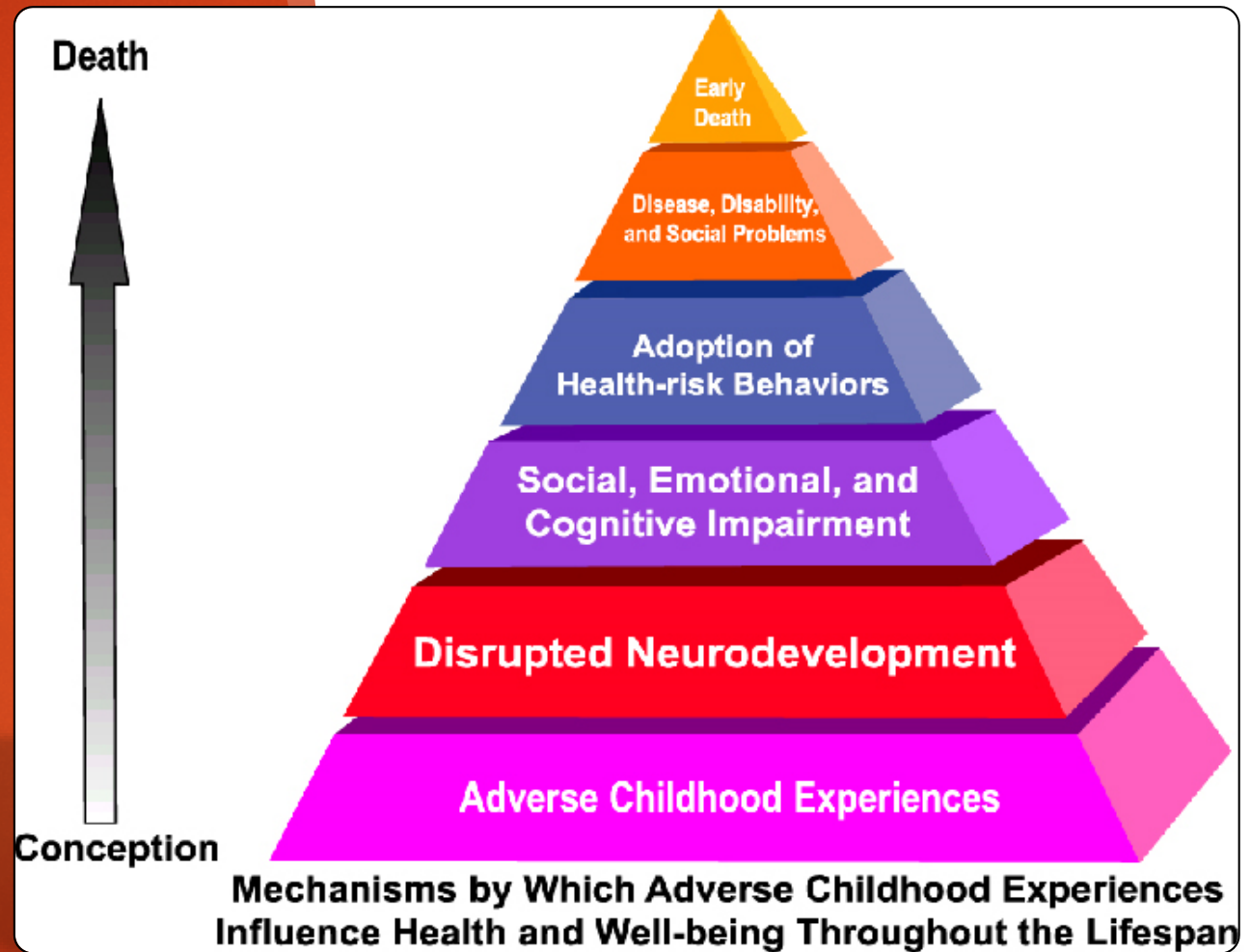
The Battered Child Syndrome

- ▶ C. H. Kempe, Frederic N. Silverman, Brandt F. Steele, William Droegemuller & Henry K. Silver, *The Battered Child Syndrome*, 181 J Am Med Ass'n 17 (1962).

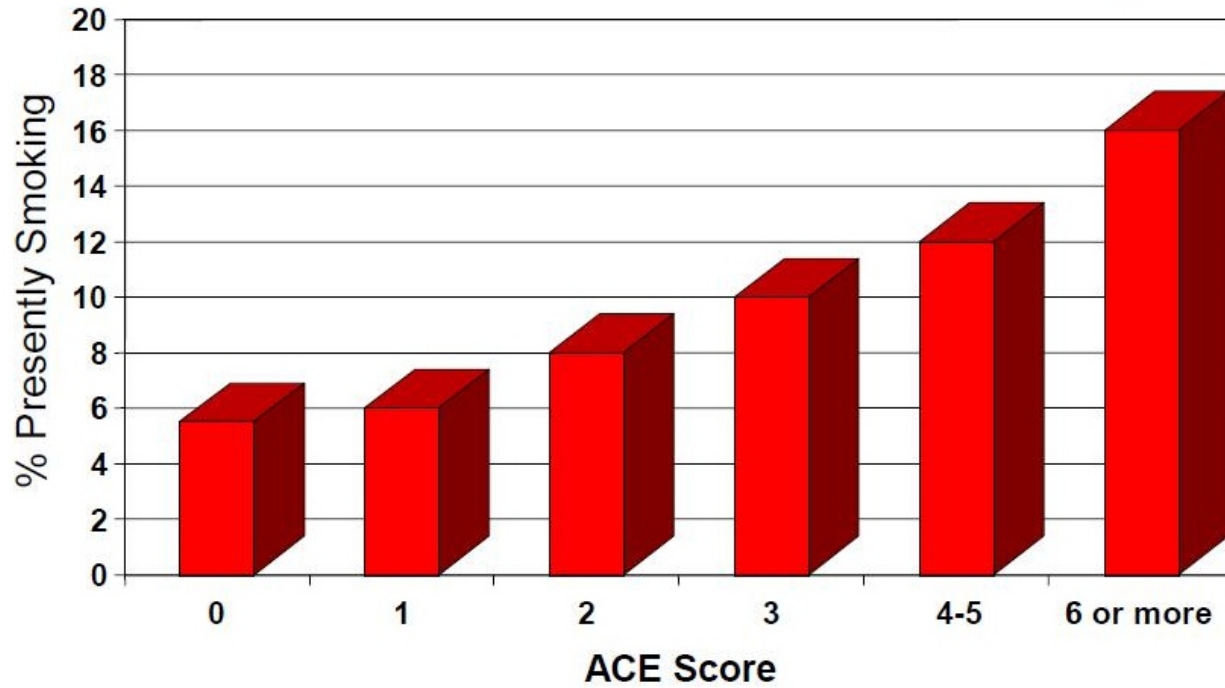
Foundation
of child
abuse as a
diagnosis.

Also called
Tardieu's syndrome;
Caffey-Kempe
syndrome.

ACEs Pyramid



ACE Score vs. Smoking



- 
- **Alcoholism and Alcohol Abuse**
 - **Chronic Obstructive Pulmonary Disease (COPD)**
 - **Depression**
 - **Fetal Death**
 - **Health-related Quality of Life**
 - **Illicit Drug Use**
 - **Ischemic Heart Disease (IHD)**
 - **Liver Disease**
 - **Risk for Intimate Partner Violence**
 - **Multiple Sexual Partners**
 - **Sexually Transmitted Diseases (STDs)**
 - **Smoking**
 - **Suicide Attempts**
 - **Unintended Pregnancies**
 - **Early Initiation of Smoking**
 - **Early Initiation of Sexual Activity**
 - **Adolescent Pregnancy**
 - **Psychotropic Medications Prescribed**

What is Contact?

- A touching or meeting; association or relationship
- Need not be to be linked to abuse BUT there must be physical or associational contact
- Receiving information in a public meeting about someone is not sufficient (AG opinion)
- Telephone or email contact?
- Can be before or after the abuse or the disclosure



What is Reasonable Cause?

- ▶ Any reasonable suspicion of abuse should be reported.
- ▶ Reasonable suspicion is more than a hunch.
- ▶ It requires an ability to point to articulable facts based on the totality of the circumstances.
- ▶ Your obligation to report does not depend upon whether abuse actually occurred

Let the Experts Decide

- ▶ You do not need to investigate
- ▶ OK to comment on injury or situation and observe
- ▶ Your job is not to determine whether abuse occurred.
- ▶ Do you have a reasonable suspicion of abuse?
- ▶ Consider making a voluntary report (assuming no confidentiality issue).
- ▶ If the explanation does not suit the injury, make a report.

Child Abuse Defined—ORS 419B.005

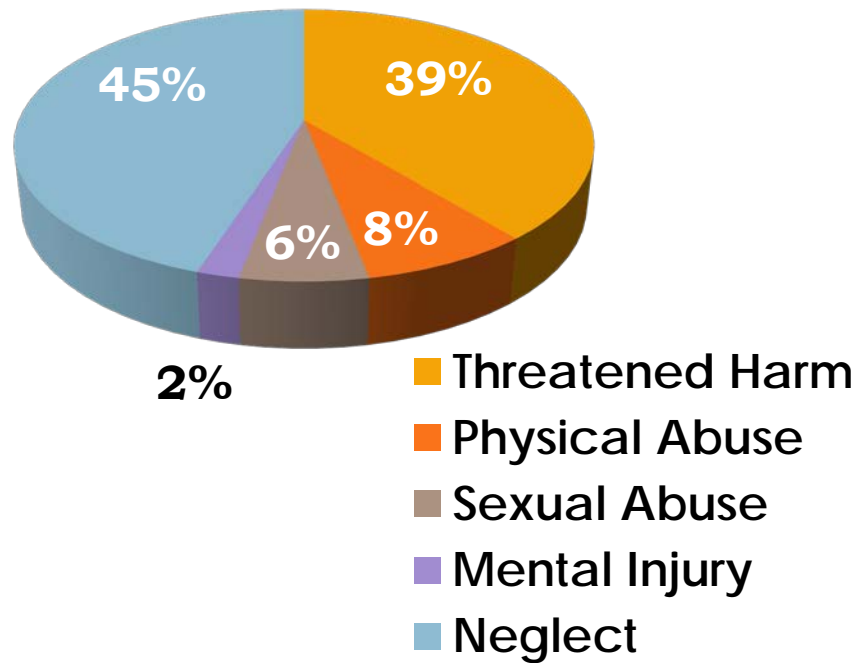
- ▶ Any assault; any injury not caused by accident; any injury at variance with the explanation given for it.
- ▶ Any mental injury caused by cruelty
- ▶ Rape, sexual abuse, or sexual exploitation
- ▶ Neglect
- ▶ Child selling
- ▶ Presence where methamphetamines are manufactured
- ▶ Unlawful exposure to controlled substance w/risk of harm
- ▶ Threat of harm
- ▶ Not reasonable discipline unless results in above

Warning Signs of Child Abuse

- ▶ Unexplained injury or one that doesn't fit the explanation given for it
- ▶ Injuries in various stages of healing
- ▶ Multiple bruises or bruises on soft tissue; any bruise on a baby
- ▶ Child wary of parents or adults generally.
- ▶ Fatigue, listlessness, constant hunger
- ▶ Unusual sexual knowledge
- ▶ Inappropriately adult or infantile



Types of Child Abuse Reported—2015



ELDER ABUSE REPORTING



Where does elder abuse occur?



- **66% at home**
- **34% care facility**

Elder Abuse Defined—ORS 124.050(1)

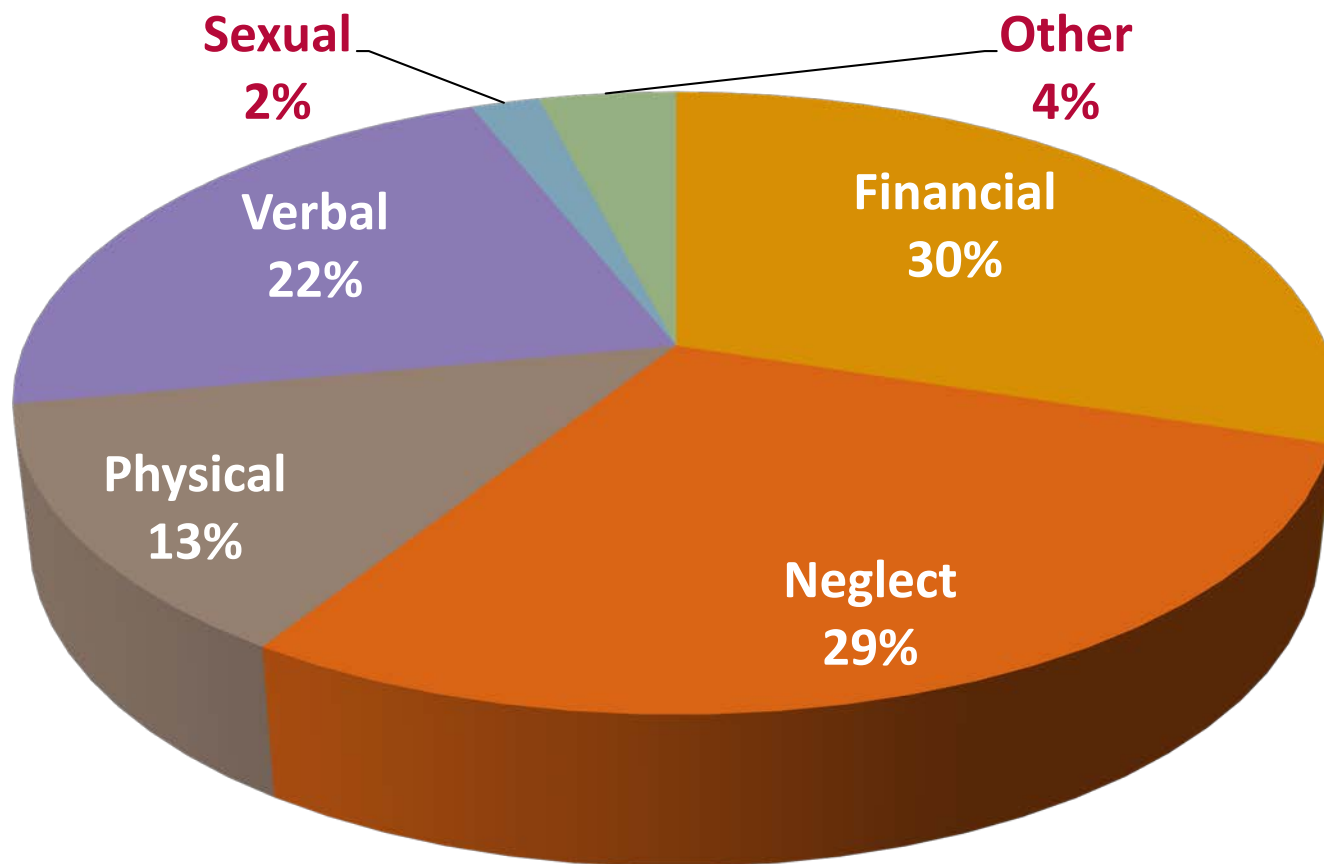
- ▶ Financial Exploitation
- ▶ Abandonment or Neglect
- ▶ Verbal Abuse
- ▶ Willful infliction of physical pain or injury
- ▶ Any injury not caused by accident; any injury at variance with the explanation given for it.
- ▶ Sex Abuse
- ▶ Seclusion or Restraint

Warning Signs of Elder Abuse

- ▶ Unexplained injury or one that doesn't fit the explanation given for it
- ▶ Elder not permitted to speak for themselves or without the presence of others.
- ▶ Being extremely withdrawn and non-communicative or non-responsive.
- ▶ Unpaid bills, overdue rent, utility shut-off notices




2015 Substantiated Elder Abuse



EXCEPTIONS TO REPORTING

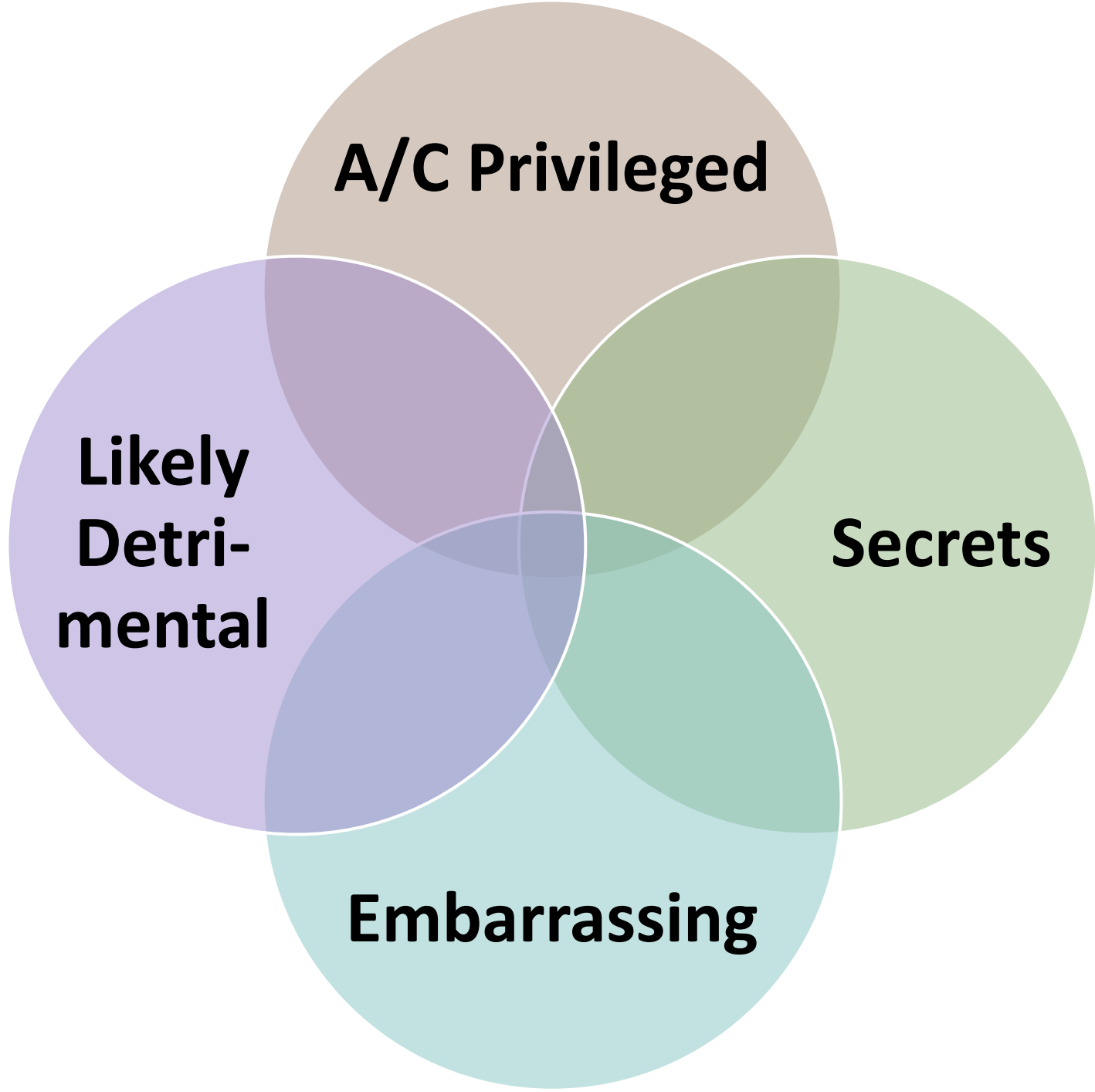


Exception: Certain Client Confidences

- 
- ▶ **Attorney-Client Privileged** under ORS 40.225 (OEC 503)
 - ▶ **Information communicated during representation that is *detrimental* to client** if disclosed (reconciles RPC 1.6 duty)

Lawyer Confidences—RPC 1.6

[information relating to the representation of a client]



**A/C
Privileged**

A Venn diagram consisting of two overlapping circles. The left circle is olive green and contains the text 'A/C Privileged'. The right circle is purple and contains the text '[Likely] Detrimental'. The overlapping area is a darker shade of purple.

**[Likely]
Detri-
mental**

Secrets

A Venn diagram consisting of two overlapping circles. The left circle is olive green and contains the text 'Secrets'. The right circle is purple and contains the text 'Embar-rassing'. The overlapping area is a darker shade of purple.

**Embar-
rassing**

Reporting Never Required

Reporting Always Required

A/C
Privileged

[Likely]
Detri-
mental

Reporting Never Required

May I Report? Yes, if:

- Informed Consent
- Implied Authorization
- Client Intends to Commit Crime
- Prevent Death or Injury

Some examples

- ▶ Lawyer representing person charged with child abuse who admits past acts
- ▶ Lawyer representing person charged with child abuse who expresses intention to “pay back” child for speaking with prosecutor

Some examples

- ▶ Lawyer representing wife in divorce is told by wife of physical abuse by husband of their child while meeting in a crowded restaurant. Lawyer has met the husband.
- ▶ Lawyer representing court-appointed guardian of elderly person suspects guardian is neglecting elderly person based upon interaction with protected person

Exception: “Reasonable Discipline”
[of a child!]

- ▶ **“Abuse” does not include reasonable discipline unless the discipline results in one of the conditions [specifically defined to constitute abuse].”**

Exception: Duplicative Reports **[child abuse only]**

- ▶ **Report already made**
- OR**
- ▶ **Proceeding already pending**
- AND**
- ▶ **Reasonable belief the information is already known**

Exception: Spiritual Treatment **[for an elder!]**

- ▶ **Voluntary**
- ▶ **Through prayer**
- ▶ **Recognized church**
- ▶ **Duly accredited practitioner**
- ▶ **Reconciles “neglect” as not abuse**



Mark Johnson Roberts
Deputy General Counsel
Oregon State Bar
503.431.6363
1.800.452.8260 x 363
mjohnsonroberts@osbar.org

Oregon State Bar