

N.D.A.G. Letter to Clapp (Oct. 15, 1990)

October 15, 1990

Ms. Sonya Clapp
Assistant State's Attorney
Grand Forks County
P.O. Box 607
Grand Forks, ND 58206-0607

Dear Ms. Clapp:

Thank you for your July 19, 1990, letter requesting my opinion of whether N.D.C.C. § 50-25.1-03 requires "protection workers" who are employees of a rape and abuse crisis center to report abuse.

N.D.C.C. § 50-25.1-03 provides, in part:

Any physician, nurse, dentist, optometrist, medical examiner or coroner, or any other medical or mental health professional, religious practitioner of the healing arts, school teacher or administrator, school counselor, addiction counselor, social worker, day care center, or any other child care worker, police or law enforcement officer having knowledge or reasonable cause to suspect that a child is abused or neglected shall report the circumstances to the department if the knowledge or suspicion is derived from information received by that person in that persons official or professional capacity.

In your letter you state that you believe the protection workers in question are not required to be licensed as social workers or in any other capacity. You state that they are required to have a four year degree in "behavioral sciences." From this information it is apparent that a "protection worker" could be a member of many different occupations or professions. In that regard I believe your question is one which raises issues of fact, rather than law. To determine the answer to this factual question, consideration must be given to the profession or occupation of the person who is employed as a "protection worker."

Another factor which would aid in determining this issue is whether or not the person is licensed as one of the listed professions. However, I note that even unlicensed professionals are required to report. I base this conclusion upon the fact that N.D.C.C. § 50-25.1-03 was enacted in 1975 before social workers, one of the listed professions, were licensed by the state in 1983. See 1983 Sess. Laws ch. 492, 1975 N.D. Sess. Laws 448, § 3. Despite the fact state licensure was not required between 1975 and 1983, social workers were required to report by virtue of engaging in the practice of social work.

In sum, the question you raise is a question of fact. To determine whether or not a protection worker is required to report under N.D.C.C. § 50-25.1-03 reference must be

made to the person's occupation or profession. If the person's occupation or profession is one of those listed under N.D.C.C. § 50-25.1-03 then the person is required to report.

Sincerely,

Nicholas J. Spaeth

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