Law and Ethics

What to do when conflicts occur

Andrew J. McLean, MD, MPH
Clinical Professor and Chair
Department of Psychiatry and Behavioral Science
University of North Dakota School of Medicine & Health Sciences
1919 Elm St. N., Fargo, ND 58102
Phone: (701) 293-4113
Fax: (701) 293-4109
E-mail: andrew.mclean@und.edu

Objectives

- At the end of the presentation, the participant will:
- 1) Understand the difference between “law” and “ethics.”
- 2) Be aware that each state has their own laws re: reporting requirements
- 3) Be able to identify differences between public health and clinical ethical issues

Law & Ethics

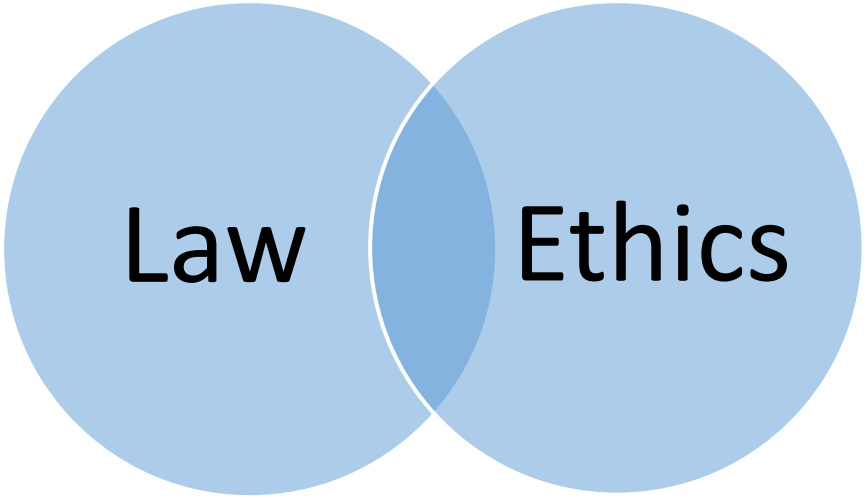
- Law – system of binding rules

- Derived from state and federal constitutions, statutes, regulations and case law
- If laws are not followed, civil or criminal penalties may occur

- Ethics – system of moral principles

  - Derived from jurisprudence, policies of professional organizations, professional standards of care and institutional policies and practices
  - Should be followed, but difficult to enforce
  - Legal determinations do not always solve ethical problems

Relationship between Law and Ethics



Law (must do)

Ethics (should do)

some define
“morals” as pertaining to the individual,
“ethics” as societal/system

John Stuart Mill

- The Harm Principle

- Only justification for interfering with individual liberty against one's will is to prevent harm to others….

Differences…

Public Health vs. Clinical Ethics

Public Health Ethics

- State – Community relationship
- Maximize group well-being (Social justice over autonomy)
- "The Good" is socially defined
- Public benefit over individual well-being
- Uniform and compulsory measures
- Consequentialist/Utilitarian

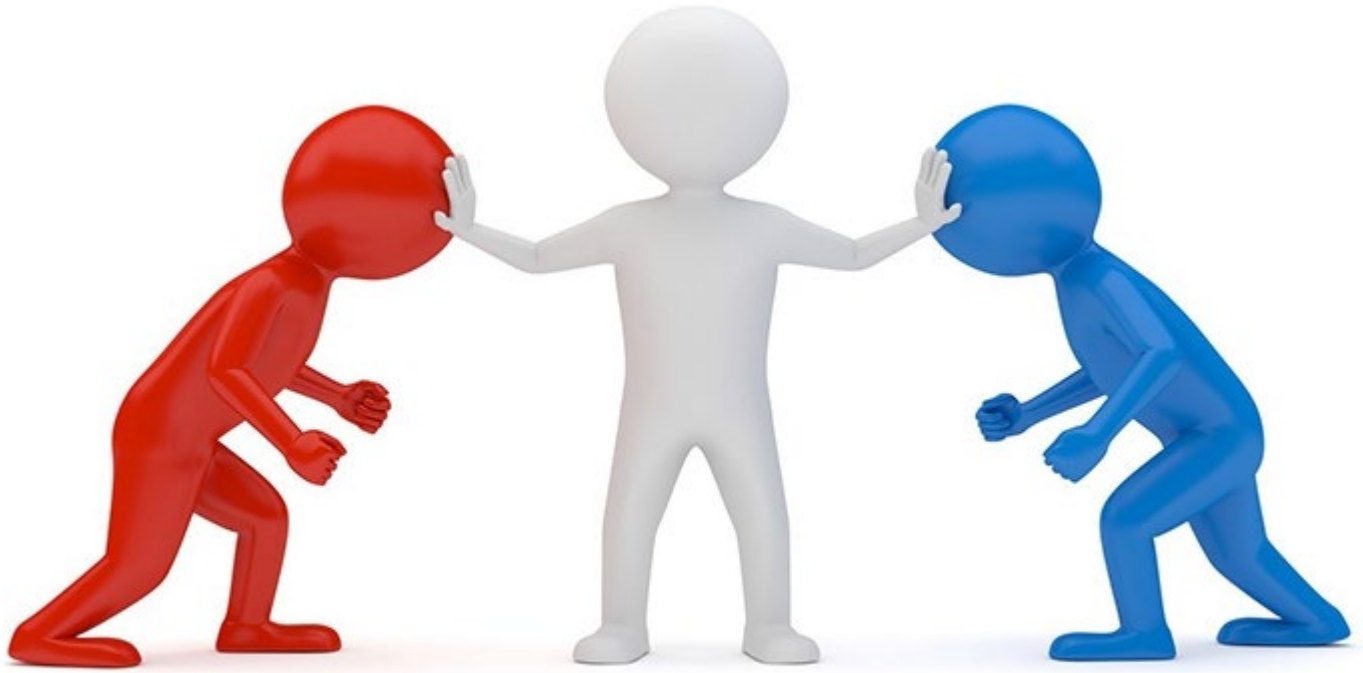
Clinical Ethics

- Doctor – Patient relationship
- Promote individual well-being, autonomy
- "The Good" is individually defined
- Individualized, patient-centered measures
- Compulsion and coercion are to be avoided
- Virtue

With appreciation to Dr. Tom Kirsch

Issues

- Individual Rights
- Public Good



Provider-Patient/Client Relationship

- Establishes legal duty and fiduciary relationship
- Fiduciary: "one who owes to another a duty, of good faith, trust, confidence and candor" (Blacks Law Dictionary)
  - Exceptions
    - Concern for safety of specific person or group – threats of violence towards a specific person (*Tarasoff v. Regents*), child, elder or dependent person abuse, other safety concerns
    - Concern for public welfare – reportable diseases

Is this your patient/client?

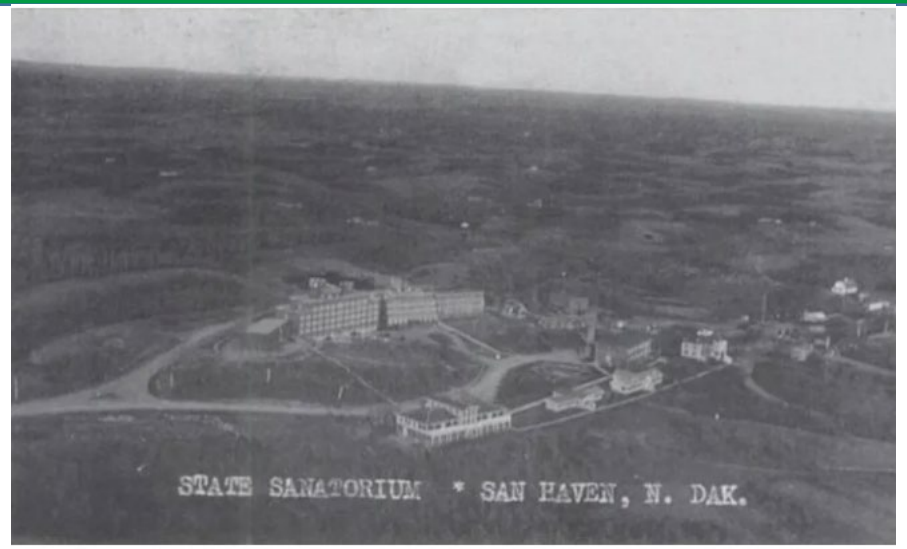
- Forming contractual relationship
  - Usually requires patient's offer/request for treatment, physician's acceptance and provision of treatment
    - Express or implied
    - Capacity to contract (of age, competent, etc…)
    - Mutual assent (agree, and are talking about the same thing…)

Considerations

- Motivational Interviewing
- Shared Decision-Making
- Standard of Care
- Mandated Reporting
- Century Code (Laws)

ND 20th Century Institutions

- TB Sanitorium—San Haven
- Lamoure Trachoma Hospital
- NDSH
- ND Developmental Center (Life Skills)

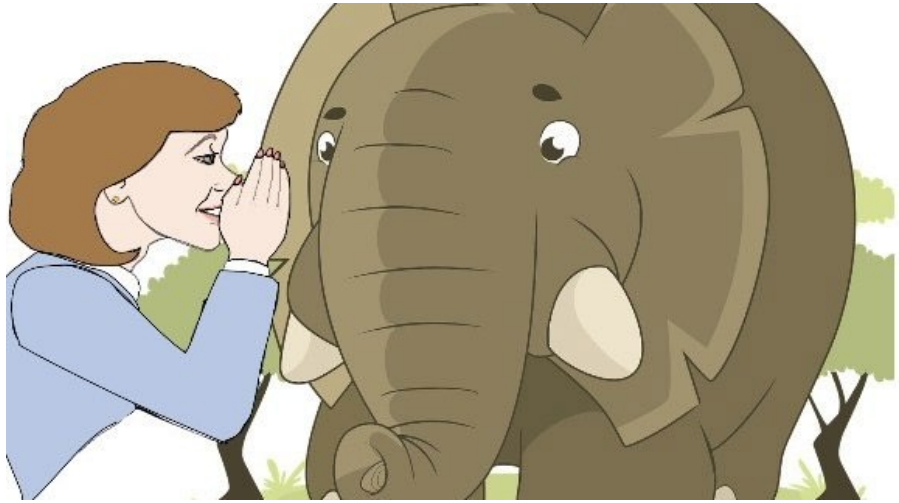


Still, 20th Century

- Compulsory Sterilization (California and Nazi Germany…)

- Hiawatha Insane Asylum for Indians

Confidentiality and Privilege



Definition of Privilege as relates to practitioners

- Privilege: the status which allows for the protection of special, confidential information.

  Privileged means that which is to be only shared between specific parties and not admissible in court, protected from a subpoena

- Privilege: the authorization of a licensed or certified healthcare practitioner's specific scope of patient care services.

Confidential vs. Privileged information/status

- **Confidential**

- By duty

(a clinician has a duty to hold patient/client information confidential)

Privileged

- By special status:
- Examples-
- Medical Staff Executive Committee
- Medical Licensing Board Reviews

What are other examples of "privileged relationships?"

- Clergy and penitent

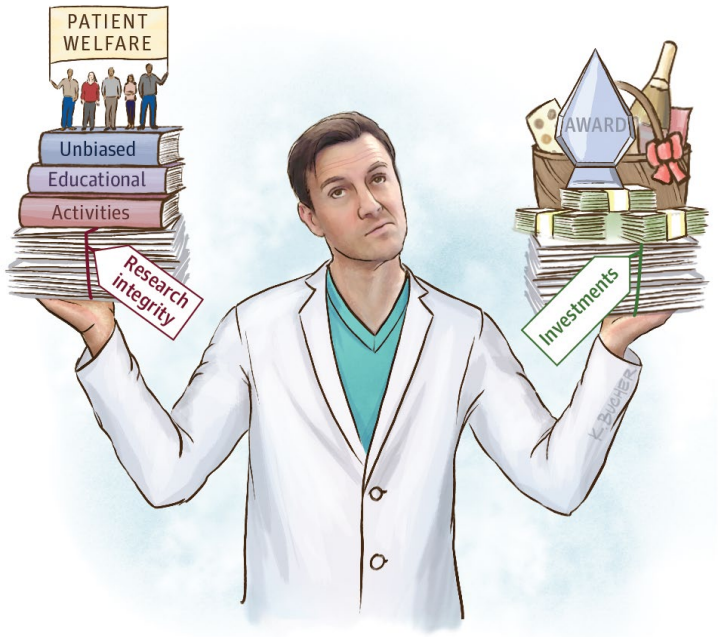
- Spouses

- Attorney-client

Dual Agency and Conflict of Interest

- What is Dual Agency?

- What are conflicts of interest?
- How does one know?



Decision-making capacity (mental capacity)

- Clinically task-specific:

- Recognize a decision needs to be made
- Understand the needed information
- Understand options
- Understand the consequences (R/B/Alt)
- Formulate a decision consistent with his/her values and goals

- A person may be able to easily make a decision re: having stitches, compared to having gamma-knife vs. open spinal surgery for a tumor

Duty to Warn/Protect

- Is there significant risk of harm to an identified individual?
- If so, the practitioner has an obligation to take reasonable steps to warn or protect…
- What does this mean?

Difference

- **Duty to Warn:**

- Breach of Confidentiality by notifying a third party of potential imminent danger or harm

- **Duty to Protect:**

- Maintaining Confidentiality by protecting a third party of potential imminent danger or harm through patient hospitalization, rigorous outpatient treatment or other clinical interventions

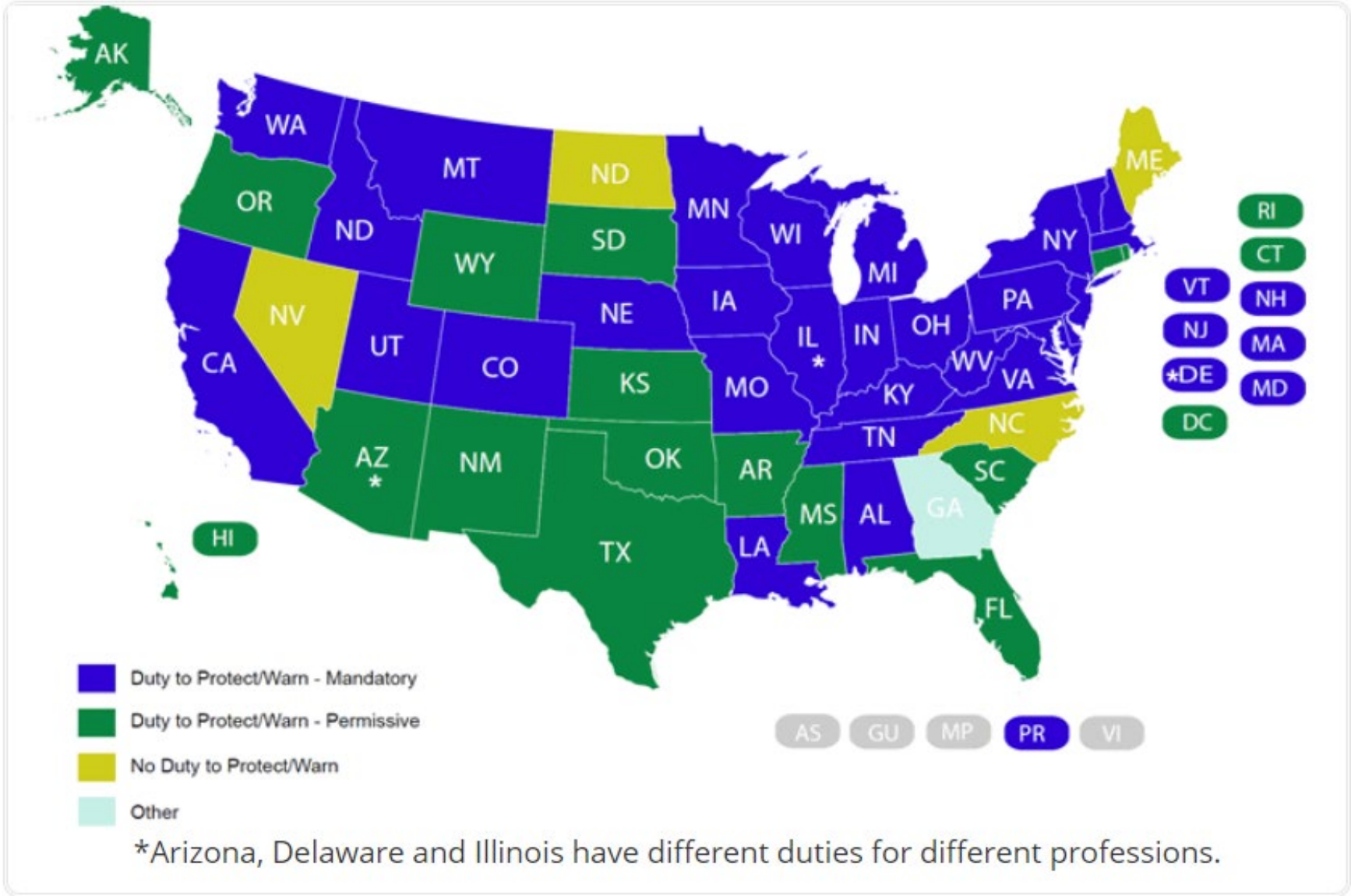
Tarasoff

- When a therapist determines, or pursuant to the standards of his profession should determine, that his patient presents a serious danger of violence to another…

- Duty to Warn?
- Duty to Protect?
- State by State rule?

Duty to Protect/Warn

National Conference of State Legislatures, 2018



Issues:

- What is foreseeable?
- What is dangerousness?
- Time frame?
- What of the general public?
- What of confidentiality?
- What are reasonable steps/actions?

Issues related to mandated reporting

- Do you tell the individual?****
- Why or why not?

Forced Treatment/Compliance

- When is it justified?
- Are there alternatives, even if criteria is met?
- What are the implications if an alternative is used and there is a negative outcome?

Who are the decision makers in forced treatment issues?

- State Legislators (laws)
- Judges
- Public Health Officials
- Administrators
- Patients/Advocates
- Practitioners
- Others?

Four Topics and Healthcare Ethics

Medical Indications	**Patient Preferences**
What are the indications for or against medical intervention?	**What choices does the patient make when faced with decisions about medical treatment?**
Beneficence and Non-maleficence	***Autonomy***
Quality of Life	Contextual Features
The degree of satisfaction that people experience and value in their life as a whole and in its particular aspects, including physical health.	How do professional, familial, religious, financial, legal and institutional factors influence clinical decisions?
Beneficence, Non-maleficence and Autonomy	*Justice*

Mandated Reporting

Reporting Requirements to the North Dakota Department of Health (NDDoH)

There are several mandatory reportable conditions in North Dakota (North Dakota Administrative Code 33-06, North Dakota Century Code 23-07). This means that health care providers are required by law to report cases to the North Dakota Department of Health (NDDoH).

The following conditions are IMMEDIATELY reportable to NDDoH:

- Hepatitis A
- Hepatitis B, acute
- Pregnancy in a HIV positive individual
- Pregnancy in a Hepatitis B positive individual
- Tuberculosis, active

Mandated Reporting

The following conditions are to be reported within **7 DAYS OF DIAGNOSIS:**

- Chlamydia
- Gonorrhea
- Hepatitis B, chronic
- Hepatitis C
- HIV/AIDS
    - All CD4+ Counts and All HIV Viral Load Tests
- Syphilis
- Tuberculosis, latent

Who must report?

Health care providers who make a diagnosis of any of the conditions listed above are required to report to NDDoH. In addition to health care providers, other mandatory reporters include:

- All physicians and other health care providers administering screening, diagnostic, or therapeutic services.
- Hospitals, including those providing inpatient or outpatient services, or both.
- Health care facilities, including basic care facilities and mobile units, providing screening, diagnostic, or therapeutic services.
- **Teachers must report suspected cases.** Whenever any school principal or teacher in any private, public, or parochial school has reason to suspect that any pupil is suffering from or has been exposed to any communicable condition, such principal or teacher shall report that student to NDDoH
- All medical diagnostic laboratories are required to report any laboratory test result (serological, culture, etc.) which may be interpreted as indicative of any of the reportable conditions to the state department of health. Test results from specimens sent by in-state laboratories to out-of-state laboratories are also required to be reported.

Information

What information does the NDDoH need?

Information required for a disease report includes but is not limited to the following:

- **Patient Demographics**: Name, Address, Telephone Number, Date of Birth, Race/Ethnicity, Gender, Country of Birth.
- **Clinical Information**Laboratory Tests Performed, Results of Laboratory Tests, Results of Physical Examination, Symptoms, Onset Date of Symptoms, Pregnancy Status, Treatment
- **Risk History**: Risk Factors for Disease, Travel History, Close Contacts/Sexual Partners Requiring Additional Follow-Up for Testing/Examination
- **Physician/Facility Information**: Diagnosing Physician, Diagnosing Facility, Physician Phone Number, Testing Laboratory, Reporter, and Reporter Phone Number.

How can you report?

By doing one of the following, you are making a report to NDDoH of a condition:

- Disease Specific Reporting Tools:
  - Tuberculin Test Registration Card
  - STD Reporting Form - Health Care Providers
    - Can be Faxed to: 701.328.0355
  - STD Reporting Form – Patient Interview
    - Can be Faxed to: 701.328.0355
  - Syphilis Case Report Form
    - Can be Faxed to: 701.328.0355
  - HIV Confidential Case Report Form
    - Can be Faxed to: 701.328.0355
- Online Report Form
- Electronic Laboratory Reporting
  - For more information, please call 701.328.2378.
- Complete the Morbidity Report Card and Mail to NDDOH, Division of Disease Control.
  - Mailing Address: North Dakota Department of Health, Division of Disease Control, 2635 E Main Ave, Bismarck, ND 58506.
  - To order Morbidity Report Cards, please call 701.328.2378.
- Calling the North Dakota Department of Health at
  - 701.328.2378 or 800.472.2180
  - Local Field Epidemiologist

Mandated Reporting of Communicable Diseases in North Dakota

- Primarily based on test results

http://www.ndhealth.gov/disease/documents/reportableconditions.pdf

Mandatory Reportable Conditions

How to Report:

+ Submit report to the North Dakota Cancer Registry. Call 800-280-5512 for assistance.
* Autism report form: www.nd.gov/eforms/Doc/sfn60804.pdf
- Telephone: 701-328-2372
- Secure Fax: 701-328-2785
- Secure website: www.ndhealth.gov/disease/reportcard/
- Electronic reporting may be available. Email dohstateepi@nd.gov for more information.

NORTH Dakota | Health
Be Legendary.™

Other Mandatory Reportable Conditions

If highlighted red, report immediately: 701-328-2372

Report all other conditions within seven days

- Autism*
- Cancer+
- Cluster of severe or unexplained illnesses or deaths
- Critical congenital heart disease (CCHD)
- Fetal alcohol syndrome (FAS)
- Lead level results (all)
- Neonatal abstinence syndrome (NAS)
- Overdoses
- Suicide and suicide attempts
- Tumors of the central nervous system+
- Violent deaths^
- Visible congenital deformity

^ Homicides, legal intervention, unintentional fire-arm related injury death, deaths of unknown intent and terrorism.

“Rules”

- When stuck, expand the field (legal, supervisor, colleague, etc…)
- Document
- Omission of Fact vs. Omission of Judgment
  - Review of Facts
  - Decision Made

Further Discussion