

Case Management and Legal Liability for the PSA Worker

Thursday, October 6, 2011

Handout Materials



**New York State
Office of
Children & Family
Services**

New York State
Office of Children and Family Services
and
PDP Distance Learning Project

Case Management & Legal Liability

Training For the PSA Worker

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These training materials are provided to give the PSA worker a basic understanding of the concepts of legal liability. They are not a substitute for legal advice. If you have any questions, you should consult with your county attorney.

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Theories of Liability

Tort Law (Negligence) - Elements

- ✓ Duty of care owed by Defendant (D) to Plaintiff (P)
- ✓ Breach of duty of care by D
- ✓ Injury
- ✓ Causation
- ✓ Damages

To establish negligence, the plaintiff must be able to prove all of the following:

- 1) a duty of care was owed by the defendant to the plaintiff;
- 2) the duty of care was breached by the defendant;
- 3) injury resulted to the plaintiff from the defendant's action or inaction.

Duty of Reasonable Care - the degree of care which a person of ordinary prudence would exercise in the same or similar circumstances. Failure to exercise such care is ordinary negligence. (Black's Law Dictionary)

Great Care – that degree of care usually bestowed upon the matter in hand by the most competent and careful persons having to do with the particular subject. This is MORE than reasonable care; it is a degree of care commensurate with the risk of danger.

Highest Degree of Care - this requires the care and skill exacted of persons engaged in the same or similar business. It means the highest degree required by law where human safety is at stake. (Black's Law Dictionary)

Experience – A word implying skill, facility or practical wisdom gained by personal knowledge, feeling, and action, and also the course or process by which one attains knowledge or wisdom. (Black's Law Dictionary)

Expert Testimony – An expert is a person who possesses special skill or knowledge in some science, profession or business which is not common to the average person and which is

possessed by the expert by reason of his special study or experience. (Black's Law Dictionary)

Vicarious Liability – Indirect legal responsibility; for example, the liability of an employer for the acts of an employee as long as those actions are within the scope of the employee's employment.

Scope of Employment – when the employee is doing something in furtherance of duties he owes to his employer and where employer is, or could be, exercising some control, directly or indirectly, over the employees actions. (Black's Law Dictionary)

Among the factors to be weighed in considering scope of employment are:

- ✓ the connection between the time, place and occasion for the act;
- ✓ the history of the relationship between employer and employee as spelled out in actual practice;
- ✓ whether the act is one commonly done by such an employee;
- ✓ the extent of departure from normal methods of performance; and
- ✓ whether the specific act was one that the employer could reasonably have anticipated. (see Prosser, Torts [4th ed], § 70, p 461; Restatement, Agency 2d, § 229)

Negligent referral

Liability for negligent referral can result if an agency/individual does not exercise due care in making a referral and harm occurs. Generally, no liability results for a good faith referral unless the individual/agency knew or should have known that an injury might result from the referral. Some tips to avoid referral liability are:

- ✓ if possible, give several names rather than a single source;
- ✓ do not influence the selection process;
- ✓ state basis for referral in writing;
- ✓ update referral list;
- ✓ note limitations of referral services;

- ✓ establish uniform policy for referrals; and
- ✓ educate staff on referral policies

How Does the Law Define the “Reasonable” PSA Worker?

The Law

Social Services Law Section 473. Protective Services

1. In addition to services provided by social services officials pursuant to other provisions of this chapter, such officials shall provide protective services in accordance with federal and state regulations to or for individuals without regard to income who, because of mental or physical [fig 1] impairments, are unable to manage their own resources, carry out the activities of daily living, or protect themselves from physical abuse, sexual abuse, emotional abuse, active, passive or self neglect, financial exploitation or other hazardous situations without assistance from others and have no one available who is willing and able to assist them responsibly. Such services shall include:

- (a) receiving and investigating reports of seriously impaired individuals who may be in need of protection;
- (b) arranging for medical and psychiatric services to evaluate and whenever possible to safeguard and improve the circumstances of those with serious impairments;
- (c) arranging, when necessary, for commitment, guardianship, [fig 1] or other protective placement of such individuals either directly or through referral to another appropriate agency, [fig 2] provided, however, that where possible, the least restrictive of these measures shall be employed before more restrictive controls are imposed;
- (d) providing services to assist such individuals to move from situations which are, or are likely to become, hazardous to their health and well-being;
- (e) cooperating and planning with the courts as necessary on behalf of individuals with serious mental impairments; and
- (f) other protective services for adults included in the [fig 1] regulations of the department.

2. (a) In that the effective delivery of protective services for adults requires a network of professional consultants and services providers, local social services districts shall plan with other public, private and voluntary agencies including but not limited to health, mental health, aging, legal and law enforcement agencies, for the purpose of assuring maximum local understanding, coordination and cooperative action in the provision of

appropriate services.

(b) Each social services district shall prepare, with the approval of the chief executive officer, or the legislative body in those counties without a chief executive officer, after consultation with appropriate public, private and voluntary agencies, a district-wide plan for the provision of adult protective services which shall be a component of the district's multi-year consolidated services plan as required in section thirty-four-a of this chapter. This plan shall describe the local implementation of this section including the organization, staffing, mode of operations and financing of the adult protective services as well as the provisions made for purchase of services, inter-agency relations, inter-agency agreements, service referral mechanisms, and locus of responsibility for cases with multi-agency services needs. Commencing the year following preparation of a multi-year consolidated services plan, each local district shall prepare annual implementation reports including information related to its adult protective services plan as required in section thirty-four-a of the social services law.

(c) Each social services district shall submit the adult protective services plan to the department as a component of its multi-year consolidated services plan and subsequent thereto as a component of its annual implementation reports and the department shall review and approve the proposed plan and reports in accordance with the procedures set forth in section thirty-four-a of this chapter.

3. Any social services official or his designee authorized or required to determine the need for and/or provide or arrange for the provision of protective services to adults in accordance with the provision of this section, shall have immunity from any civil liability that might otherwise result by reason of providing such services, provided such official or his designee was acting in the discharge of his duties and within the scope of his employment, and that such liability did not result from the willfull act or gross negligence of such official or his designee.

4. For the purpose of developing improved methods for the delivery of protective services for adults, the department with the approval of the director of the budget, shall authorize a maximum of five demonstration projects in selected social services districts. Such projects may serve a social services district, part of a district or more than one district. These demonstration projects shall seek to determine the most effective methods of providing the financial management component of protective services for adults. These methods shall include but not be limited to: having a social services district directly provide financial management services; having a social services district contract with another public and/or private agency for the provision of such services; utilizing relatives and/or friends to provide such services under the direction of a social services district or another public and/or private agency and establishing a separate public office to provide financial management services for indigent persons. The duration of these projects shall not exceed eighteen months. Furthermore, local social services districts shall not be responsible for any part of the cost of these demonstration projects which would not have otherwise accrued in the provision of protective services for adults. The total amount of state funds available for such financial management services demonstration projects,

exclusive of any federal funds shall not exceed three hundred thousand dollars. The commissioner shall require that a final independent evaluation by a not-for-profit corporation be made of the demonstration projects approved and conducted hereunder, and shall provide copies of such report to the governor and legislature.

5. Whenever a social services official, or his or her designee authorized or required to determine the need for, or to provide or arrange for the provision of protective services to adults in accordance with the provisions of this title has a reason to believe that a criminal offense has been committed, as defined in the penal law, against a person for whom the need for such services is being determined or to whom such services are being provided or arranged, the social services official or his or her designee must report this information to the appropriate police or sheriff's department and the district attorney's office when such office has requested such information be reported by a social services official or his or her designee.

Social Services Law Section 473-b. Reporting of endangered adults; persons in need of protective services

Any person who in good faith believes that a person eighteen years of age or older may be an endangered adult or in need of protective or other services, pursuant to this article, and who, based on such belief either:

(a) reports or refers such person to the department, office for the aging, or any local social services district office or designated area agency on aging, law enforcement agency, or any other person, agency or organization, that such person, in good faith, believes will take appropriate action; or

(b) testifies in any judicial or administrative proceeding arising from such report or referral shall have immunity from any civil liability that might otherwise result by reason of the act of making such report or referral or of giving of such testimony

Regulations

18 New York Code Rules and Regulations Part 457

457.15 Reports to law enforcement officials

(a) Whenever a social services official, or his or her designee authorized or required to determine the need for, or to provide or arrange for the provision of PSA, in accordance with the provisions of this Part, has a reason to believe that a crime (a misdemeanor or a felony), as defined in the Penal Law, has been committed against a person for whom the

need for such services is being determined or to whom such services are being provided or arranged, the social services official or his or her designee must report this information to the appropriate police or sheriff's department. This information also must be reported to the district attorney's office when such office has requested this information.

(b) In determining whether there is a reason to believe that a crime, as defined in the Penal Law, has been committed against a person whose need for PSA is being determined, or a person for whom PSA is being provided or arranged, a social services official or his/her designee must review and evaluate, as necessary, the following:

(1) information obtained through observing and interviewing a person whose need for PSA is being determined, or a person for whom PSA is being provided or arranged;

(2) information obtained from other persons, agencies, offices or organizations who are involved in determining a person's need for PSA or providing or arranging services for a person who is receiving PSA;

(3) information obtained from the person or persons who are suspected of committing a crime against a person whose need for PSA is being determined or a person for whom PSA is being provided or arranged; and

(4) information obtained from other persons who have knowledge about the person whose need for PSA is being determined, or a person for whom PSA is being provided or arranged.

§ 457.4 Staffing standards

(a) Designation. The local commissioner of social services shall designate, as an identifiable assignment, protective services for adult caseworker position(s), as indicated by the district's estimated needs.

(b) Qualifications. Such caseworkers shall:

(1) preferably have had experience in working with the elderly or have basic knowledge in the field of gerontology; and

(2) meet such qualifications as established under section 680.1 of this Title.

(c) Training. (1) All workers who provide PSA, including supervisors, are required to complete satisfactorily a basic training program in PSA. Staff must attend the first department-sponsored PSA institute designated for their region following the date of their employment in PSA. Basic PSA training provided directly by local districts in lieu of the department-sponsored institute must be approved by the department.

(2) All workers who provide PSA, including supervisors, must attend department-

sponsored training on the legal aspects of PSA at the first session designated for their region following their completion of the basic PSA institute or approved local equivalent. Training on the legal aspects of PSA provided directly by social services districts must be approved in advance by the department.

(3) All PSA supervisors must attend department-sponsored PSA supervision training at the first session designated for their region following the date of their employment as a PSA supervisor. PSA supervision training provided directly by social services districts must be approved in advance by the department.

(4) If the department does not have sufficient resources to enable a social services district to comply with the requirements set forth in paragraph (1), (2) or (3) of this subdivision, the department must make arrangements with the district to have its staff attend a subsequent offering of the required training for which there are adequate resources available to meet the district's needs.

Statutory authority: Social Services Law, §§ 20, 34, 309, 473, 473-a, 473-b, 473-c; Mental Hygiene Law, art. 81

§ 457.5 Duties and responsibilities

(a) In the provision of this service, the agency shall be responsible for the services as listed in subdivision (c) of section 457.1 of this Part and the then in effect CSP.

(b) Contacts with PSA clients. (1) PSA staff must maintain contact with PSA clients as frequently as staff of the local social service district determine necessary to assure that the service needs of such clients are adequately met through the utilization of available community resources. The type and frequency of client contacts will depend on:

- (i) the specific circumstances of the individual's situation;
- (ii) the ability and willingness of family members, friends and neighbors to assist the individual; and
- (iii) the involvement of other agencies in the provision of services to PSA clients.

(2) At a minimum, PSA clients, who are living in the community and are in any of the situations specified in subparagraphs (i), (ii) and (iii) of this paragraph, must be visited in their homes at least once every calendar month:

- (i) when abuse, neglect or exploitation by another person is suspected or documented;
- (ii) when environmental conditions exist in the home which are a threat to the health and safety of the client; or

(iii) when a client is home bound or when there is no other way to have a face to face contact with the client without making a home visit.

(3) For PSA clients in any of the situations specified in subparagraphs (2)(i), (ii) and (iii) of this subdivision, the monthly home visit may be delegated to the professional casework or social work staff of another public agency or voluntary agency if the following conditions are met:

(i) the case is stabilized;

(ii) the other agency agrees to submit written monthly status reports which become part of the client's case record;

(iii) the district evaluates the status reports submitted by the other agency;

(iv) the PSA caseworker visits the client within 72 hours of the receipt of the status report, if the report indicates that there has been a change in the client's circumstances; and

(v) local districts adhere to their case management responsibilities as defined in section 403.4 of this Title.

(4) For all other PSA clients living in the community, PSA staff must maintain at least face to face contact every calendar month and make a home visit at least once every three calendar months.

(5) For PSA clients who are permanent residents of residential care facilities, PSA staff must maintain telephone contact with facility staff at least once every three months in order to monitor the condition of the client.

(6) PSA clients who are hospitalized need not be visited, but PSA staff must maintain monthly telephone contact with hospital discharge planning staff in order to monitor the client's condition and to plan for the discharge of the client to his or her home or other appropriate setting.

(7) PSA clients who are incarcerated need not be visited, but PSA staff must maintain monthly telephone contact with correction facility staff in order to monitor the client's condition and plan for his or her release to the community.

(c) In addition to those activities listed in subdivision (a) of this section, the PSA unit has the following areas of responsibility:

(1) Emergency assistance to adults. PSA staff shall be responsible in conformity to subdivision (c) of section 397.5 of this Title for a social study to determine the need for protective services in those EAA situations where there is need to replace lost or mismanaged cash for a person who by reason of advanced age, illness, infirmity, mental

weakness, physical handicap, intemperance, addiction to drugs, or other cause, has a substantial impairment in his ability to manage. An application for emergency assistance shall not be deemed an application for services.

(2) Alternative social services payment procedures. Based on the adult's incapacity as established by social study, there may be a need to initiate forms of payment as otherwise provided, and include restricted money payments, vendor payments, and the designation of a protective payee. The designation of a protective payee shall preferably be made from the PSA staff in conformity to section 381.7 of this Title.

(3) Representative payee for social security benefits. When there are indications that social security benefits are being mishandled due to the recipient's incapacities, the PSA staff will be responsible for:

(i) developing a social study to determine the need for the designation of a representative payee;

(ii) initiating the application to the social security office in those situations where there is no one else available; and

(iii) securing a representative payee in appropriate situations. It shall be the responsibility of the local commissioner of social services or director of social services to serve as representative payee when there is no one else willing or able to do so, provided, however, that the responsibility for actual service delivery may be delegated to appropriate staff.

Statutory authority: Social Services Law, §§ 20, 34, 309, 473, 473-a, 473-b, 473-c; Mental Hygiene Law, art. 81

§ 457.6 Serving involuntary clients

(a) General. When the district believes that there is a serious threat to an adult's well being and that the adult is incapable of making decisions on his or her own behalf because of mental impairments, the social services official has a responsibility to pursue appropriate legal intervention in accordance with the provisions of sections 473 and 473-a of the Social Services Law, articles 9, 15, and 81 of the Mental Hygiene Law, article 8 of the Family Court Act and article 17-A of the Surrogate's Court Procedure Act, even though such intervention may be against the wishes of or without the knowledge of the adult at risk. The districts must employ the least restrictive intervention necessary to effectively protect the adult. The immediacy and seriousness of the threat to the individual will determine whether crisis intervention procedures and/or other legal procedures are warranted as set forth in subdivisions (b) and (c) of this section.

(b) Crisis intervention. For an adult who exhibits such a degree of self-destructive

behavior or who is living in such a hazardous situation that there is substantial risk of harm to himself, herself or others and such adult is incapable of making decisions on his or her own behalf because of mental impairments, the social services official has a responsibility to initiate appropriate action even though it may be without the adult's consent or knowledge. Such actions of intervention will usually include enlisting the services of other agencies and professionals. The district shall utilize the appropriate intervention or procedures as follows:

- (1) enlist immediate help of a peace officer to take an adult into custody pursuant to section 9.41 of the Mental Hygiene Law or for other appropriate assistance;
- (2) request the local director of community services to apply for admission of an adult to a hospital or to direct the removal of an adult to a hospital pursuant to sections 9.37 and 9.45 of the Mental Hygiene Law or to take other appropriate action;
- (3) initiate application for admission to a mental hygiene facility on certification of two examining physicians pursuant to sections 9.27 and 15.27 of the Mental Hygiene Law;
- (4) enlist help from public health officials and call an ambulance or other emergency medical care provider in acute situations;
- (5) take the necessary action for the initiation by a social services official of a petition to obtain an order authorizing the provision of short-term involuntary protective services pursuant to section 457.10 of this Part; and/or
- (6) take the necessary action to initiate proceedings for an order of protection against an abusive household or family member pursuant to sections 119, 822 and 842 of the Family Court Act.

(c) Other legal procedures. There are other procedures established in the Mental Hygiene Law and the Surrogate's Court Procedure Act to be utilized in non-crisis situations in order to provide long range planning or protection to certain PSA clients. These procedures require more time to implement than afforded in emergency or crisis situations. In appropriate situations the district must:

- (1) initiate efforts to arrange for the appointment of a guardian in accordance with the provisions of article 81 of the Mental Hygiene Law;
- (2) serve in the capacity of guardian in those situations in which a PSA client is in need of a guardian and no one else is willing and able to serve responsibly; or
- (3) initiate efforts to arrange for the appointment of a guardian for the mentally retarded in accordance with article 17-A of the Surrogate's Court Procedure Act.

(d) Local social services districts must develop and implement procedures for the provision of services to involuntary clients. Such procedures must include provisions for:

(1) training PSA and legal staff in the appropriate utilization of the various interventions which may be employed on behalf of involuntary PSA clients, as described in this section and in paragraphs (2) and (3) of subdivision (c) of section 457.5 of this Part;

(2) continuing community education and networking activities in accordance with section 457.7 of this Part, including meetings with representative community agencies for the purpose of establishing specific agency roles and areas of responsibility in the provision of services to involuntary clients;

(3) obtaining mental health evaluations on behalf of PSA clients when involuntary interventions are being considered;

(4) assuring the availability of the agency's legal staff for timely consultation with PSA staff when requested and the timely implementation of legal interventions on behalf of involuntary clients in appropriate situations; and

(5) assuring that any significant disagreements between PSA and legal staff regarding the need for legal intervention on behalf of an involuntary PSA client are promptly referred to the local social services commissioner or his or her designee for resolution.

Section statutory authority: Family Court Act, § A8, § 119, § 822, § 842; Mental Hygiene Law, § TBA9, § TCA15, § TEA81, § 9.27, § 9.41, § 9.37, § 9.45, § 15.27; Surrogate's Court Procedure, § A17-A; Social Services Law, § 473, § 473-A

Statutory authority: Social Services Law, §§ 20, 34, 309, 473, 473-a, 473-b, 473-c; Mental Hygiene Law, art. 81

§ 457.7 Coordination and utilization of community resources

(a) The provision of PSA shall not be viewed as a single agency responsibility but rather as a community-based service responsibility.

(b) As such, the local social services agency must make known and, to the extent possible, secure the active participation and cooperation of those community resources providing specific services for adults.

(c) Community resources to be involved will include personnel from medical, psychiatric, nursing and legal resources, law enforcement groups, public service agencies, advocacy groups, church councils and those other public and private service agencies of the particular community. These resources shall constitute a PSA delivery network.

(d) Meetings shall be held with representative community agencies for the purpose of establishing specific agency roles and areas of responsibility in the provision of PSA. The

social services district shall initiate such efforts directed at establishing this community-based responsibility unless such action has been initiated by other agencies.

(e) In addition to the involvement of other community agencies in the provision of services to PSA clients, the other divisions/units of the local social services department, such as legal, accounting, medical assistance, income maintenance and services, shall be effectively integrated into the PSA service delivery network.

(f) Social services districts must educate the general public, service providers, advocacy groups and other appropriate agencies about the scope of PSA and how to obtain services. Public education and outreach activities must:

(1) be sufficient to ensure access to PSA;

(2) be conducted on an on-going basis; and

(3) use any informational materials provided by the department.

Statutory authority: Social Services Law, §§ 20, 34, 309, 473, 473-a, 473-b, 473-c; Mental Hygiene Law, art. 81

Sample Agency Directives

07-OCFS-ADM-04 March 26, 2007

Protective Services for Adults (PSA): Memorandum of Understanding with Office of Mental Retardation and Developmental Disabilities (OMRDD)

(Excerpts)

I. Purpose The purpose of this Administrative Directive is to inform Local Departments of Social Services (LDSS) of the enactment of Chapter 536 of the Laws of 2005, as amended by Chapter 356 of the Laws of 2006. This new law requires the Commissioner of OMRDD to investigate reports of physical, sexual or emotional abuse, or active, passive or self-neglect, of a ny adult living in the community presumed to be diagnosed with mental retardation or a developmental disability known by the OMRDD Commissioner or any of OMRDD's duly authorized service providers. Further, it directed OMRDD and OCFS to develop the attached Memorandum of Understanding (MOU) delineating the responsibilities of both agencies regarding the reporting and investigating of suspected cases of a abuse of adults diagnosed with mental retardation and/or a developmental disability. This MOU shall be executed by each Developmental Disabilities Services Office (DDSO) and each LDSS within its jurisdiction and reviewed at least annually.

II. Background

In 1992, a report was issued by the Commission on Quality of Care for the Mentally Disabled which strongly recommended that the NYS Department of Social Services (now OCFS) and OMRDD clarify the responsibilities of Protective Services for Adults (PSA) and other agencies serving adults diagnosed with mental retardation and/or a developmental disability when allegations of abuse, neglect or exploitation were conveyed regarding incidents in the community (as opposed to a protected, residential setting). The former DSS in conjunction with OMRDD developed a model Memorandum of Understanding (MOU) for use by PSAs and DDSOs. Use of the model MOU was recommended but not required. With the enactment of Chapter 536 of the Laws of 2005, PSAs and DDSOs are now required to execute an MOU.

III. Program Implications

This MOU covers the following topics:

- the eligibility criteria for PSA and OMRDD services;
- the referral process between each agency;
- service delivery;
- procedures for investigating abuse, neglect or exploitation;
- referrals to law enforcement;
- dealing with high-risk cases;
- information sharing; and
- conflict resolution.

The MOU will support Section 473 of Social Services Law, which requires that LDSSs plan with other public, private and voluntary agencies for the purpose of assuring maximum local understanding, coordination and cooperative action in the provision of appropriate services to PSA clients.

IV. Required Action

Each LDSS Protective Services for Adults (PSA) unit must:

- execute a Memorandum of Understanding (MOU) with the DDSO that provides services to clients in that county;
- submit a copy of the fully executed MOU to the NYS OCFS Bureau of Adult Services, 52 Washington Street, Rensselaer, NY 12144 as soon as the agreement is reached and whenever it is modified;
- compile, either by use of the Adult Services Automated case management Program (ASAP) where available, or manually, a log of the clients referred to PSA by OMRDD or any of its duly authorized service providers together with case details on service plans and outcomes sufficient for OCFS to develop a systemic issues report summarizing strategies and successes. LDSS shall submit the log to the Bureau of Adult Services by December 30 of each calendar year.
- The OCFS Bureau of Adult Services, in concert with OMRDD, is required to submit a report addressing referrals regarding adults diagnosed with mental retardation or a developmental disability and service delivery to the Governor, Temporary President of the Senate and Speaker of the Assembly in early January of the following year.

V. Systems Implications

None at this time.

VI. Effective Date: Immediately s/s Jane G. Lynch

Issued By:

Name: Jane Lynch

Title: Deputy Commissioner

Division/Office: Division of Development and Prevention Services

Office of Program Support

Bureau of Adult Services

OMRDD-DDSO / OCFS-PSA MEMORANDUM OF UNDERSTANDING

I. PURPOSE

This agreement is between _____ Developmental Disabilities Services Office (DDSO) and the _____ County/Local Department of Social Services (LDSS). The agreement sets forth the joint responsibilities of the DDSO and the LDSS pertaining to the abuse reporting for individuals with mental retardation or developmental disabilities. The DDSO provides services to such persons as defined in Section 1.03(22) of the Mental Hygiene Law (MHL). The LDSS through its Protective Services for Adults program (PSA) provides protective services to impaired individuals over 18 years of age as defined in Article 9-B of the Social Services Law (SSL). Pursuant to Chapter 536 of the Laws of 2005, which amended Section 16.19 MHL, each DDSO and LDSS must enter into a Memorandum of Understanding (MOU) to ensure the appropriate reporting and investigation of suspected cases of abuse of adults with mental retardation or developmental disabilities.

Both entities recognize that each has a unique role in service provision to adults with mental retardation or developmental disabilities. Both entities also recognize that the needs and interests of said adults will be better served with a clear delineation of the roles and responsibilities of each entity with regard to such adults who are subjected to abuse, neglect or exploitation. Both the DDSO and the LDSS/PSA enter into this agreement in a spirit of interagency collaboration to facilitate the coordination of appropriate and necessary services to adults with mental retardation or developmental disabilities.

**Protective Services for Adults (PSA): Confidential
Information Sharing Agreement
99 OCFS INF-6**

I. Purpose

The purpose of this release is to inform local districts of a Confidential Information Sharing Agreement which has been developed by the New York State Office of Children and Family Services (OCFS) in cooperation with the New York State Office of Mental Health (OMH) and the New York State Office of Mental Retardation and Developmental Disabilities(OMRDD). This agreement, which conforms to the applicable confidentiality laws and regulations of each agency, sets forth the conditions under which confidential information may be disclosed among local district PSA, OMH and OMRDD providers concerning individuals who are being mutually served. Safeguards have been included to ensure that information disclosed will not be used inappropriately by either party and that the confidential nature of the information will be protected.

II. Background

One of the guiding principles of Protective Services for Adults (PSA) is that PSA is a community effort requiring cooperation among a number of agencies. This concept is supported by Section 473.2(a) of the Social Services Law (SSL) which states that: "the effective delivery of protective services for adults requires a network of professional consultants and services providers" and requires local social services districts to work "with other public, private and voluntary agencies including but not limited to health, mental health, aging, legal and law enforcement agencies, for the purpose of assuring maximum local understanding, coordination and cooperative action in the provision of appropriate services" to PSA clients. The SSL therefore anticipates the sharing of information necessary to appropriately serve the client.

Sections 20, 34, 136 and 473 of the Social Services Law, and Section 33.13 of the Mental Hygiene Law (MHL) set forth the standards for maintaining the confidentiality of clinical and case record information. Some local districts have from time to time experienced difficulty obtaining confidential information from agencies licensed by OMH or OMRDD when such information was necessary for the provision of Protective Services for Adults. This hesitancy or refusal to provide information is generally based on a belief that the sharing of such information is legally prohibited despite the fact that both the SSL and MHL allow for the exchange of information between service agencies as set forth in the attached agreement.

This agreement, which has been sanctioned by the commissioners of OCFS, OMH and OMRDD respectively, will assist in facilitating a more cooperative relationship in the appropriate sharing of

confidential information. Local districts are urged to contact local mental health and mental retardation and developmental disability service providers in order to sign this agreement and abide by its contents. When accompanied by the letter signed by the OCFS, OMH and OMRDD commissioners, local agencies should feel secure in entering into the agreement with your agency's PSA program. It is anticipated that many of the previously experienced problems in obtaining confidential information will be alleviated through the use of the Agreement.

Donald K. Smith
Deputy Commissioner
Development and Prevention Services

Who is Responsible?

A senior client became ill while at the local DSS office, where she was meeting with the PSA case worker, and decided to go home. The worker transported him to his car via a wheel chair and offered to take him to the doctor and/or to drive him home. The client refused both. After starting his car the senior lost control and struck another senior citizen in the parking lot. The injured senior sued the worker and the county claiming they had a duty to prevent the ill senior from driving. (Bartoli v Rapisarda, 202 A.D.2d 463, 609 N.Y.S.2d 47, N.Y. 1994)

Answer:

According to one NY court, the district and worker had no authority to prevent the ill senior from driving his car even though some staff members were aware of the driver's illness.

Liability for the negligent acts of third persons generally arises only when the defendant has the authority to control the actions of the third person. (Bartoli v Rapisarda, 202 A.D.2d 463, 609 N.Y.S.2d 47 (N.Y. 1994)

Contract Law

1. Promises by provider to client
2. Promises by provider to client representative
3. Promises by provider to third party
4. Legal actions based on broken promises

Promises can be expressed or implied

Express Contract – an actual agreement of the parties, the terms are clearly stated in distinct language, either orally or in writing.

Implied Contract – not created by explicit agreement of the parties, but inferred as a matter of reason and justice from the acts of the parties and the circumstances surrounding their conduct.

Legal bailment - A bailment occurs when the client (bailor) delivers personal property for a specific purpose to the agency (bailee) which has an obligation to return the property or account for it.

A bailment consists of three parts:

1. The delivery of the goods by the bailor/client to the bailee/agency
2. Possession of the goods by the bailee for a specific purpose
3. A return of the goods to the bailor at a later time, or the delivery of the goods according to the bailor's directions

An important duty on the part of a bailee-agency is the return of the goods or chattel to the bailor-client or to dispose of the goods according to the bailor's-client's directions. The same goods must be returned to the bailor-client in the same condition. If the bailee-agency does not return the bailed goods, the bailor-client is entitled to bring an action against the bailee-agency for the tort of conversion.

Who is Responsible?

A PSA worker accepts a ring from a client for safekeeping while the client is temporarily hospitalized. A niece of the client presents herself to the case worker and asks for the ring, saying she will feel more comfortable if the ring is held for safekeeping by a family member. The worker hands over the ring to the niece. Two weeks later the client goes home and asks for her ring back. When she finds out the worker gave it to her niece she is very upset stating,

“You gave my heirloom ring to a thief. My niece steals anything she can from me and I never get anything back”.

The client sues the case worker for the value of the ring and emotional distress.

Answer:

An agency has no greater ownership rights in the bailed property than the client has. This means, for example, that if an agency worker accepts a ring from a client for safekeeping while the client is temporarily hospitalized, *the worker can refuse to deliver the ring to a cousin of the client who presents herself and asks for the ring*, saying she will feel more "comfortable" if the ring is held for safekeeping by a family member. But if the agency is informed that the ring is actually owned by the cousin, the agency/worker might be liable for refusing to turn over the ring to its rightful owner. Some delay for the agency to investigate the true ownership of the ring would be permitted.

This is a legal bailment

A bailment occurs when the client (bailor) delivers personal property for a specific purpose to the agency (bailee) which has an obligation to return the property or account for it. Parties to a bailment should have contractual capacity (the capacity to understand the nature of their actions and the consequences).

Once in possession of a bailed item, principles of negligence law require the agency to use reasonable care in safekeeping the property. For instance, in the example above, once the agency accepts the client's ring, it must exercise reasonable care while in possession of the ring.

Risk = the ring could be lost, stolen, broken or damaged

Legal expectation for the Agency is to keep the bailed item safe.

- Check your office policy on safekeeping for clients
- Note circumstances under which watch was given for safe keeping and the plan to return the item to the client

- Describe the ring
- Put in safe and have another person see you put it there
- Both staff persons should document when and where it was put
- Document its safe return to the client

Defenses in Civil Actions

A legal defense is a response by the defendant to the lawsuit filed by the plaintiff setting forth reasons why the claims should not be granted.

- *Statute of Limitations* - A statute of limitations is the fixed period of time in which a legal action must be commenced after the event which caused the harm. In New York, a plaintiff has six years to sue on a contract theory and three years for a negligence claim.
- *Comparative Negligence* – Negligence is measured in terms of percentage, and any damages allowed shall be diminished in proportion to the amount of negligence attributable to the person/agency from which the damages for injury or death is sought.
- *Statutory Protection* - Employee immunity under Social Services Law Section 473.3 “Any social services official or his designee authorized or required to determine the need for and/or provide or arrange for the provision of protective services to adults in accordance with the provision of this section, shall have immunity from any civil liability that might otherwise result by reason of providing such services, provided such official or his designee was acting in the discharge of his duties and within the scope of his employment, and that such liability did not result from the willful act or gross negligence of such official or his designee.” (Social Services Law Section 473.3)

Damages

Damages are a pecuniary compensation or indemnity, which may be recovered in the courts by any person who has suffered a loss or injury, whether to his person, property, or rights, through the unlawful act or omission or negligence of another.

Risk Management

Risk management is a term used to describe an agency's process of understanding risks that are inherent in certain types of service provision and the steps taken to reduce the risk of legal liability.

Prevent harm

Avoid legal liability

Promote safe actions

Reduce liability anxiety

Shows client is high priority

The Process of Risk Management

- ✓ Acknowledge and identify the risk
- ✓ Evaluate and prioritize the risk
- ✓ Implement risk management techniques
- ✓ Monitor and update the program

Managing the Risk of Providing Protective Services for Adults

1. Agency standards and guidelines
 - a. Social Services Law Section 473
 - b. 18 New York Code Rules Regulations Parts 457
 - c. ADMs, INFs, MOUs
2. Job description
3. Documentation
 - a. Agency criterion (computer vs. hand written)
 - b. Documentation techniques
 - c. Confidentiality
4. Staff education/supervision

TITLE 18. DEPARTMENT OF SOCIAL SERVICES
CHAPTER II. REGULATIONS OF THE DEPARTMENT OF SOCIAL SERVICES
SUBCHAPTER C. SOCIAL SERVICES
ARTICLE 5. ADULT AND FAMILY SERVICES
PART 457. PROTECTIVE SERVICES FOR ADULTS

(18 NYCRR Part 457)

§ 457.2 PSA client case record

The case record of a PSA client must include the following:

(a) Application. (1) The completion of the application form designated by the department is required in order for the PSA activity to be reimbursed from Federal and State financial participation.

(2) There will be those situations when the adult in need of protective services is unable or unwilling to sign the application or complete information that cannot be immediately obtained. In these situations, the application form shall be completed and, in accordance with department instructions, entries shall be made in the case record documenting the circumstances and reasons why the application form was not signed. (b) PSA

assessment/services plan. (1) The case record of each PSA client shall include a PSA assessment/services plan consisting of the following information:

(i) source of referral;

(ii) reason for referral;

(iii) household composition;

(iv) residence and living arrangements;

(v) income and resources;

(vi) medical and mental limitations;

(vii) ability to manage resources;

(viii) identification of significant other persons such as family members and friends and their willingness and capability to assist the individual;

(ix) identification of other agencies involved with the individual;

(x) assessment of problem(s) and needs and the names of agencies involved in the

assessment;

(xi) client specific objective(s) to be achieved;

(xii) service(s) to be provided to obtain the objective(s) and name(s) of the agencies providing the services;

(xiii) expected duration of the services;

(xiv) frequency of contact with the client;

(xv) concurrence and acceptance of services by the applicant or a notation that the client is involuntary;

(xvi) in the case of a client who cannot or will not sign the application for services (DSS 2921), documentation as to why the worker is signing the application on behalf of the client;

(xvii) frequency of review of the services plan;

(xviii) progress evaluation at the time of review;

(xix) changes made in the client's services plan as a result of the periodic reviews;

(xx) signatures of worker and supervisor; and

(xxi) such other information as the department shall require.

(2) The PSA assessment/services plan shall replace the individual service plan required in section 406.2(b) of this Title.

(3) The PSA assessment/services plan shall be prepared on a form prescribed by the department or on a local equivalent form approved by the department.

(4)(i) The PSA assessment/services plan must be completed within 60 days of the referral date. The date of completion will be determined by the date of the supervisor's signature on the form prescribed by the department or an approved local equivalent.

(ii) Notwithstanding the time frames for completing the PSA assessment/services plan specified in subparagraph (i) of this paragraph, the services needs of individuals who are being assessed for PSA must be addressed promptly and appropriately, in accordance with the provisions of section 457.1 (c) of this Part, regardless of the date the PSA assessment/services plan is completed.

(5) The PSA assessment/services plan must be reviewed and updated:

(i) within six calendar months of the date of referral and every six calendar months thereafter; or

(ii) whenever a PSA case is closed or transferred to another service provided by the social services district, except that a form need not be completed when a case is closed due to the client's death. The date of review will be determined by the date of the supervisor's signature on the form prescribed by the department or an approved local equivalent.

(c) Progress notes. Progress notes must be maintained as part of the PSA client record as prescribed by the department. Progress notes must be recorded in the PSA case record as soon as possible but no later than 30 days after date of the event which required the use of progress notes.

(d) Other information. The PSA client record shall contain all other information required in section 406.2 of this Title, with the exception of the individual service plan, and any other information which the department may from time to time require.

**96 ADM-18 Revised Process standards
(Excerpts)**

I. PURPOSE

The purpose of this directive is to advise social services districts of the revised Process Standards for the Protective Services for Adults (PSA) Program. The revised standards apply to all PSA case activity on or after May 31, 1996.

II. BACKGROUND

The original PSA Process Standards were developed by the Department in collaboration with a committee of social services district representatives and became effective on April 1, 1985. The Process Standards were revised in 1991 and again in 1994 as a result of revisions to Part 457 of the Department's regulations. The Process Standards are again being revised to reflect amendments to Part 457 of the Department's regulations, which became effective on May 31, 1996. As indicated in 96 LCM-49, copies of the revised regulations were sent to social services districts on April 12, 1996.

III. PROGRAM IMPLICATIONS

The revised PSA regulations and the provisions of this directive provide easements to the social services districts in the following areas:

° The maximum time frame for the completion of a PSA assessment/services plan has been increased from 30 to 60 days after the date a referral is received.

° Services plan updates are now required six calendar months following the referral date and every six calendar months thereafter. Previously, services plan updates were required four and seven calendar months following the referral date and every six months thereafter.

° For some PSA clients living in the community, the minimum frequency of home visits has been reduced from at least once every calendar month to at least once every three calendar months with face to face client contact required in the calendar months in which home visits are not made. A home visit at least once every calendar month continues to be required for PSA clients under the following circumstances:

1. when abuse, neglect or exploitation by another person is
Date October 3, 1996

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suspected or documented; or

2. when environmental conditions exist in the home which are a
threat to the health and safety of the client; or

3. when a client is homebound or when there is no other way to
have face to face contact with the client without making a home
visit.

° Requirements for visits to PSA clients who are permanent residents of residential care facilities, including Family Type Homes for Adults, have been eliminated. The required frequency for telephone contact with residential care facilities to monitor the condition of PSA

clients has been reduced from at least monthly to at least once every three months.

° The requirement that districts have written procedures, subject to Department approval, for the provision of services to involuntary clients has been eliminated.

IV. REQUIRED ACTION

A. Response to Referrals

Section 457.1(c)(2) of the Department's regulations requires a prompt response and investigation of PSA referrals. Districts must commence an investigation as soon as possible, but not later than 24 hours, after receipt of a PSA referral when it is determined that a life threatening situation exists. If a life threatening situation does not exist, an investigation must be commenced within 72 hours of the referral and a visit must be made to the client within three working days of the referral.

A PSA referral is defined in the regulations as any written or verbal information provided to a district in which a specific person is identified as apparently in need of PSA, or any verbal or written information provided to a district on behalf of an adult for whom the district determines that a PSA investigation and assessment is necessary.

It is the district's responsibility to determine whether a life threatening situation exists at the time the referral is made. If district staff cannot determine whether a life threatening situation exists at time of the referral, the situation must be treated as life threatening and immediate action must be taken. For more detailed information on responding to referrals, including the use of the DSS-3602A (PSA Intake Disposition), please consult 93 ADM-23, "Protective Services for Adults: Intake".

B. PSA Assessment/Services Plan

Section 457.2(b)(4) of the Department's regulations requires the completion of a PSA Assessment/Services Plan (DSS-3602B) for each PSA client. The PSA Assessment/Services Plan must be completed and signed within 60 days of the date of referral. For PSA cases which will not receive service beyond the assessment period, districts have the option of completing the DSS-3602C (Determination of PSA Ineligibility) in lieu of the DSS-3602B.

This form also must be completed within 60 days of the date of referral. The date of completion is determined by the date of the supervisor's signature on these forms. Please consult 93 ADM-23 for more information on the completion of these forms.

The increase in the assessment period, from a maximum of 30 to 60 days, places greater responsibility on PSA caseworkers and supervisors to promptly identify and address emergent client needs during the assessment period. As stated in Section 457.(2)(b)(4)(ii) of the Department's regulations, the services needs of individuals who are being assessed for PSA must be addressed promptly and appropriately regardless of the date the PSA assessment/services plan is completed. Accordingly, potential health risks, environmental hazards or suspected acts of abuse, financial exploitation and neglect of clients by other persons must be promptly and aggressively investigated and addressed.

Decisive action also must be taken during the assessment period to promptly address unmet basic client needs for food, clothing, shelter, medical treatment and homecare.

C. PSA Assessment/Services Plan Review/Update

In accordance with the revisions to Section 457.2(b)(5) of the Department's regulations, the PSA Assessment/Services Plan Update (DSS-3603) must be reviewed and updated as often as necessary to ensure that the services provided continue to be necessary and appropriate, but, at a minimum, within six calendar months from the date of referral and every six calendar months thereafter. The date of completion of the PSA Assessment/Services Plan Review/Update is determined by the date of the supervisor's signature. In addition, a DSS-3603 must be completed when a PSA case is transferred or closed, except when a closing is due to a client's death. For more information on the completion of the DSS-3603, please consult 93 ADM-23.

D. Progress Notes

Section 457.2(c) of the regulations requires that progress notes be maintained as part of the client record as prescribed by the Department. Requirements for the completion of PSA progress notes are discussed below.

Date October 3, 1996

1. Definition

Progress notes are concise case record entries which provide a chronological overview of important activities and events regarding a PSA case. The activities and events recorded in the progress notes should provide an up-to-date description of activities undertaken by the caseworker to complete the client's assessment, service plan and subsequent reviews. They should include any other pertinent information concerning a case which is not recorded elsewhere or which is referred to in the record but needs to be expanded upon.

2. Recording, Content and Utilization

a. Progress notes begin at the time a PSA referral is received. Progress notes must be recorded as soon as possible, but within 30 days of the occurrence of the event or receipt of the information which is to be recorded. Progress notes may be handwritten or typed; however, handwritten notes must be legible to anyone reading the case record. Progress notes must include the date of the event, the date the entry was made, and the name or initials of the person making the entry. Examples of the type of information to be recorded include but are not limited to:

- (1) information obtained at the time of referral;
- (2) information concerning the provision of emergency services if appropriate;
- (3) activities related to collecting information from other agencies and individuals which is needed to formulate the PSA Assessment/Services Plan and subsequent reviews;
- (4) action taken to implement the Service Plan;
- (5) contacts with the client;
- (6) contacts with other agencies or divisions/units of the local social services district;

- (7) contacts with other collaterals (e.g. relatives, friends, neighbors, landlord); and
- (8) significant events which result in new service needs or affect service provision.

b. Since progress notes may be used to support legal proceedings to secure protective services, progress notes should be factual and void of ambiguous or opinionated statements, unless clearly stated that the information is opinion. Progress notes made following contacts with the client must include the caseworker's observations regarding the client's mental and physical condition; a description of the client's social and environmental setting and his/her ability to function in that setting; any specific behaviors which may indicate a need for PSA; and the client's attitude about accepting or refusing services which are offered. Some of the specific behaviors which may indicate a need for protective services include instances in which the client:

- (1) is so forgetful or otherwise mentally disorganized as to neglect activities of daily living;
- (2) neglects his/her personal hygiene and/or refuses to eat, and/or is ill and refuses to receive medical care;
- (3) is inappropriately dressed, i.e. not dressed for protection in cold weather or wearing winter clothing in extreme heat;
- (4) is oblivious of, or refuses to correct or leave unsanitary or hazardous living conditions, or creates situations hazardous to self or others;
- (5) gives money or possessions away; spends or hoards money and goes without essentials; constantly loses checks or money, keys, food stamps; does not open mail; fails to pay rent or other bills;
- (6) is unaware or too incapacitated to protect self from abuse, neglect or exploitation (financial, physical, psychological or sexual);
- (7) isolates self, locks or barricades self in home;
- (8) over or under medicates or attempts suicide or otherwise causes self injury; acts bizarrely, hallucinates or is disoriented as to person, time and place; wanders off; or
- (9) causes injury to others or repeatedly causes disturbances in the community.

c. As noted above, progress notes must include a record of contacts with other divisions/units of the local social services district or other agencies. All requests for assessments, benefits and/or services for a PSA client as well as conferences, consultations and conversations with staff of other divisions/units or agencies must be documented in the progress notes. This documentation must at a minimum include:

- (1) name of the person contacted and the agency or division/unit they represent;
- (2) date and type of contact;
- (3) the issues discussed during the contact; and
- (4) agreements or understandings reached during the contact.

d. In addition, each district must have a procedure to follow if another division/unit of the local social services district or another agency does not respond to a request for an assessment, services, benefits or another inquiry concerning the delivery of services to a PSA client. This procedure must include provisions for reasonable follow up efforts by PSA workers, and their supervisors with their counterparts in other divisions/units or agencies. All follow up contacts by workers and their supervisors must be documented in the progress notes as described above. If these follow up efforts are not successful, supervisors must advise their local commissioner or designee of the situation.

E. Required Client Contacts

Section 457.5(b) of the regulations sets forth the standards regarding required contacts with PSA clients. PSA staff must maintain regular contacts with PSA clients as frequently as necessary to assure that the services needs of the individual are adequately met.

The purpose of these client contacts is:

1. to determine what progress has been made towards achieving the services plan;
2. to identify and assess any problems that may be present that affect achieving the services plan or threaten the client's safety or well being; and
3. to determine what adjustments, if any, need to be made in the services plan or in the tasks associated with the implementation of the services plan.

The frequency of contacts to a PSA client depends on:

1. the specific circumstances of the individual's situation;
2. the ability and willingness of family members, friends and neighbors to assist the individual; and
3. the involvement of other agencies in the provision of services to the individual.

The frequency and type of client contact is determined by the worker in consultation with the PSA supervisor as a part of the PSA assessment process.

At a minimum, face to face contacts must be maintained with all PSA clients every calendar month. All PSA clients also must be visited in their homes at least once every three calendar months. Face to face contact can occur in the office, in a client's day program, in a senior center, or in any other setting. Every effort should be made to arrange for client contacts in locations that best meet the needs of the clients. However, PSA clients who meet any of the following three criteria must be visited in their home at least once every calendar month:

1. The client is a suspected or documented victim of abuse, neglect or exploitation by another person: If there is a reasonable suspicion or specific evidence that the client is a victim of physical abuse, sexual abuse, psychological abuse, financial, or other material exploitation, active neglect or passive neglect by others, as defined in Section 473.6 of the Social Services Law and in 95 INF-38, a home visit is required at least once every calendar month.

2. Environmental conditions exist in the home which are a threat to the health and safety of the client: If a client's living conditions present health and/or safety risks, a home visit must be made at least once every calendar month. Health and safety risks include, but are not limited to; serious unsanitary conditions, fire hazards, and the lack of utilities and/or water.

3. when a client is homebound or when there is no other way to have face to face contact with the client without a home visit: If a client is unable, due to mental or physical impairments, or unwilling to leave home, or if a face to face contact cannot be arranged outside of the client's home, a home visit must be made at least once every calendar month.

Required home visits may be delegated to the professional casework or social work staff of another public or voluntary agency if all of the following conditions are met:

1. the case is stabilized;
2. the other agency agrees to submit written monthly status reports which become part of the client's case record;
3. the district evaluates the status reports submitted by the other agency; and
4. the local social services district caseworker visits the client within 72 hours of the receipt of the status report, if the report indicates that there has been a change in the client's circumstances.

The following client contact requirements pertain to PSA clients in certain types of facilities:

1. PSA clients who are permanent residents of residential care facilities do not need to be visited. PSA staff must maintain telephone contact with facility staff to monitor the client's condition at least once every three months.

As discussed in 89 ADM-22, "Residential Placement Services for Adults", there are situations in which PSA staff may have to take a more active role on behalf of a PSA client who is a resident of a FTTHA. These situations include the inability of a FTTHA operator to meet the needs of the resident or to protect the resident from abuse, neglect or exploitation by others outside of the home. In these situations, PSA staff must work with the district's Family Type Home Coordinator and take the necessary actions to protect the client and assure that his/her needs are met. In these situations, the type and frequency of contact with the client will be determined by the seriousness of the situation.

2. PSA clients who are hospitalized do not need to be visited. PSA staff must maintain monthly telephone contact with hospital discharge planning staff in order to monitor the client's condition and to plan for the discharge of the client to his/her home or another appropriate setting.

3. PSA clients who are incarcerated do not need to be visited. PSA staff must maintain monthly telephone contact with facility staff in order to monitor the client's condition and to plan for his/her release to the community.

The client contact requirements for persons in certain types of facilities, as presented above, do not supersede the provision contained in Section 81.20 of Mental Hygiene Law that requires guardians to visit persons for whom they are acting as guardian at least four times a year. Therefore, if a commissioner is acting

as guardian for a PSA client in one of the aforementioned facilities, at least four visits must be made annually to the client in accordance with this requirement, or more often if required by the court order appointing the guardian.

In addition to contacts with clients, caseworkers must maintain regular communications with all persons involved in the care of their clients. These communications are essential to good case management, an important PSA function, and the delivery of quality services to PSA clients. While ideally, a case conference should be held and a joint case plan developed in all PSA cases in which other persons or agencies are involved in the client's care, such a blanket requirement is unrealistic. However, there should be regular, open and collaborative discussions of the client's case plan among all involved parties. Whenever possible, the client should be involved in these discussions.

To ensure that client contact requirements are met, diligent efforts must be made to schedule client contacts and visits at times and locations that will ensure their success. For example, the caseworker should determine the days of the week and times of day that a client is most likely to be at home and schedule home visits accordingly. For other client contacts, caseworkers should determine the days and times of day when it is most feasible to schedule office visits with the client or to meet the client at an agreed upon location. If a scheduled home visit or other required contact cannot be made, it is expected that at least one additional attempt will be made to complete the required visit or contact unless unforeseen circumstances beyond the control of the district are present. If a second attempt to make a home visit or other required client contact is unsuccessful, the need for additional attempts to make the required visit or contact must be evaluated by the caseworker and supervisor based on the particulars of the case. If unforeseen circumstances, such as a client's failure to keep a previously arranged appointment(s) or weather conditions which make travel impossible, prevent the completion of a required home visit or other client contact, alternative measures must be made to verify the client's safety. Alternative verification measures include making telephone contact with the client if he/she can be expected to accurately report on his/her situation, or making personal or telephone contact with a reliable collateral source.

In situations in which there is a real danger of physical harm to a PSA worker that cannot be alleviated by sending an additional staff person on the visit or obtaining police assistance, an alternative arrangement must be made for client contact. The alternative arrangement must be approved by the supervisor. In all cases in which a required client contact or visit cannot be completed due to the circumstances described above, the particulars of the situation, the diligent efforts made by the district to contact or visit the client and the alternative methods used to verify the client's safety must be reflected in the progress notes.

F. Services Plan Implementation

Sections 457.5 and 457.6 of the Department's regulations require districts to provide services to meet the individual needs of PSA clients, including arranging for appropriate involuntary legal interventions. Accordingly, PSA staff must complete necessary tasks and take timely action to obtain or provide services that are proposed in PSA Assessment/Services Plans and Review/Updates. PSA workers must take concrete actions to obtain proposed services within the timeframes established in the Services Plans and Plan Updates, unless the services plan is modified and a reasonable explanation is given for the modification. Proposed services plan activities must be completed prior to the due date of the next Services Plan Review/Update unless a reasonable explanation is given in the case record why a proposed activity could not be completed. For additional information on the completion and implementation of Services Plans and Updates, please consult 93 ADM-23: "Protective Services For Adults (PSA): Intake".

V. ADDITIONAL INFORMATION

For administrative ease, it is recommended that PSA Assessment/Services Plan Reviews/Updates be coordinated with WMS-Services programmatic Eligibility redeterminations.

VI. SYSTEMS IMPLICATIONS

None

VII. EFFECTIVE DATE

October 15, 1996

Rose M. Pandozy
Deputy Commissioner
Services and Community Development

Documentation Tips

- Time and date each entry.
- Use clear and concise language, avoid ambiguous terms and phrases.
- Review entry before signing.
- Make all entries at the time of client contact or as soon after as possible.
- Record as accurately as possible conversations with client using direct quotes.
- Include information relevant to the services being provided or that may need to be provided, i.e., psychosocial factors, client's support system, physical environment, client behavior and special needs of client.
- Include specific information about a complication, special problem, or need of the client. Record how the client was, or will be, affected and what specific actions were taken by your agency to address the problem. These situations should be followed in subsequent notes until the desired outcome has been achieved.
- Stick to the facts and choose your words carefully if a mishap occurs. Defensive entries can damage the credibility of the entire record.
- Make sure the record reflects client's complaints and concerns and indicates that they are taken seriously.
- Record all contacts with other providers that deal with service provision. Record the date contacted, summary of the discussion, actions to be taken, and by whom.

Documentation Reminder

A **assessment**
E **empathy**
I **implementation**
O **outcome**
U **update**

GUIDELINES FOR WRITING PROGRESS NOTES

Use concrete, descriptive language:

Not: The client was drunk.
Write: The client smelled of alcohol, his eyes were bloodshot, his speech slurred and he had difficulty keeping his balance.

Not: Mr. Jones is abusing and neglecting his wife.
Write: Mr. Jones has refused all services for his wife. There was no food in the house. Mrs. Jones is weak and pale and says she is losing weight. There is dust and dirt all over the furniture, dishes encrusted with food on the table and evidence of rodent activity. He screams at her whenever she speaks and tells her to “shut up”.

Explain what you mean:

Not: Mr. Smith is very nasty to his wife.
Write: Mr. Smith raised his voice several times and shouted at Mrs. Smith to “shut up”. He stood over her, clenched his fist and shook the fist in front of her face.

Avoid judgmental statements:

Not: Mr. Smith is a bully.
Write: Mr. Smith appears to exercise complete control over his wife, answers questions addressed to her, and is preventing her from obtaining necessary services.

Identify and record contacts with other professionals:

Not: Contacted Visiting Nurse Service about client’s need for homecare.
Write: Contacted Judith Smith at Visiting Nurse Service via phone on 9/5/0_. Discussed Mr. Jones’ need for home care services. Ms. Smith agreed to send a nurse to do an admission assessment on 9/7/0_ at 2:30 p.m.

NOTE: PSA worker should follow up to make sure the service provider performed the agreed upon actions. If for some reason the action was not performed make a plan to ensure it is accomplished within a reasonable period of time. All follow up efforts must be clearly documented in the case record

Confidentiality

- Social Services Law Section 473-e;
- 18 NYCRR Section 457.14; 457.16
18 NYCRR Part 357
- 92 INF- 26 Disclosure Without Consent
- Health Insurance Portability and Accountability Act - HIPAA

Social Services Law Section 473-e. Confidentiality of protective services for adults' records

1. Definitions. When used in this section unless otherwise expressly stated or unless the context or subject matter requires a different interpretation:

(a) "Subject of a report" means a person who is the subject of a referral or an application for protective services for adults, or who is receiving or has received protective services for adults from a social services district.

(b) "Authorized representative of a subject of a report" means (i) a person named in writing by a subject to be a subject's representative for purposes of requesting and receiving records under this article; provided, however, that the subject has contract capacity at the time of the writing or had executed a durable power of attorney at a time when the subject had such capacity, naming the authorized representative as attorney-in-fact, and such document has not been revoked in accordance with applicable law; (ii) a person appointed by a court, or otherwise authorized in accordance with law to represent or act in the interests of the subject; or (iii) legal counsel for the subject.

2. Reports made pursuant to this article, as well as any other information obtained, including but not limited to, the names of referral sources, written reports or photographs taken concerning such reports in the possession of the department or a social services district, shall be confidential and, except to persons, officers and agencies enumerated in paragraphs (a) through (g) of this subdivision, shall only be released with the written permission of the person who is the subject of the report, or the subject's authorized representative, except to the extent that there is a basis for non-disclosure of such information pursuant to subdivision three of this section. Such reports and information may be made available to:

(a) any person who is the subject of the report or such person's authorized representative;

(b) a provider of services to a current or former protective services for adults client, where a social services official, or his or her designee determined that such information is necessary to determine the need for or to provide or to arrange for the provision of such services;

(c) a court, upon a finding that the information in the record is necessary for the use by a party in a criminal or civil action or the determination of an issue before the court;

(d) a grand jury, upon a finding that the information in the record is necessary for the determination of charges before the grand jury;

(e) a district attorney, an assistant district attorney or investigator employed in the office of a district attorney, a member of the division of state police, or a police officer employed by a city, county, town or village police department or by a county sheriff when such official requests such information stating that such information is necessary to conduct a criminal investigation or criminal prosecution of a person, that there is reasonable cause to believe that the criminal investigation or criminal prosecution involves or otherwise affects a person who is the subject of a report, and that it is reasonable to believe that due to the nature of the crime under investigation or prosecution, such records may be related to the criminal investigation or prosecution;

(f) a person named as a court-appointed evaluator or guardian in accordance with article eighty-one of the mental hygiene law, or a person named as a guardian for the mentally retarded in accordance with article seventeen-A of the surrogate's court procedure act; or

(g) any person considered entitled to such record in accordance with applicable law.

3. The commissioner or a social services official may withhold, in whole or in part, the release of any information in their possession which he or she is otherwise authorized to release pursuant to subdivision two of this section, if such official finds that release of such information would identify a person who made a referral or submitted an application on behalf of a person for protective services for adults, or who cooperated in a subsequent investigation and assessment conducted by a social services district to determine a person's need for such services and the official reasonably finds that the release of such information will be detrimental to the safety or interests of such person.

4. Before releasing a record made pursuant to this article in the possession of the department or a social services district, the appropriate official must be satisfied that the confidential character of the information will be maintained in accordance with applicable law, and that the record will be used only for the purposes for which it was made available.

5. In addition to the requirements of this section, any release of confidential HIV related information, as defined in section twenty-seven hundred eighty of the public health law, shall comply with the requirements of article twenty-seven-F of the public health law.

6. When a record made under this article is subpoenaed or sought pursuant to notice to permit discovery, a social services official may move to withdraw, quash, fix conditions or modify the subpoena, or to move for a protective order, as may be appropriate, in accordance with the applicable provisions of the criminal procedure law or the civil

practice law and rules, to (a) delete the identity of any persons who made a referral or submitted an application for protective services for adults on behalf of an individual or who cooperated in a subsequent investigation and assessment of the individual's needs for such services, or the agency, institution, organization, program or other entity when such persons are employed, or with which such persons are associated, (b) withhold records the disclosure of which is likely to be detrimental to the safety or interests of such persons, or (c) otherwise to object to release of all or a portion of the record on the basis that requested release of records is for a purpose not authorized under the law.

18 NYCRR Part 357 Confidential Nature of Records

357.5 Procedures for safeguarding information maintained by the New York State Department of Social Services, local social services districts and other authorized agencies. (a) Records containing individually identifiable information shall be marked "confidential" and kept in locked files or in rooms that are locked when the records are not in use.

(b) When in use, records shall be maintained in such a manner as to prevent exposure of individual identifiable information to anyone other than the authorized party directly utilizing the case record.

(c) No records shall be taken from the place of business without prior authorization by appropriate supervisory staff of the New York State Department of Social Services, the local social services district or other authorized agency.

(d) No records shall be taken home by agency staff except upon prior authorization by appropriate supervisory staff in order to perform a function which requires the possession of the records outside of the agency and where return of the records to the agency at the close of business would result in an undue burden to the staff. In those cases where records are taken home by staff, the records are to be maintained in a secure location and are not to be disclosed to anyone other than those expressly authorized by statute or regulation. The records are to be returned to the agency by staff on the following business day.

(e) Records shall be transmitted from one location to another in sealed envelopes stamped "confidential," and a receipt shall be obtained documenting delivery of said records.

(f) Interviews with clients shall be conducted at a location and in a manner which maximizes privacy.

(g) Employees of the New York State Department of Social Services, the local social services district or the other authorized agency, consistent with applicable statute and regulation, shall have access to individual identifiable information only where the employee's specific job responsibilities cannot be accomplished without access to individual identifiable information.

EVALUATING DECISION MAKING CAPACITY

If there is a question as to whether a client has the ability to provide informed consent, an evaluation has to be made to determine the client's decision-making capacity. The mental status evaluation should focus specifically on the client's ability to address the particular decision at hand and should include issues such as:

- Is the client able to make and express choices in relation to this particular service intervention?
- Is the client able to provide reasons for his or her choices?
- Do the client's reasons have some basis in fact and reality?
- Is the client able to understand and appreciate the potentially harmful consequences of his or her chosen course of action?

A mental status evaluation, along with a physical and social assessment, may also determine whether or not a person suffers from cognitive deficits sufficient to impair the person's judgment.

A finding that the client lacks capacity to make decisions in one area does not imply a lack of capacity for any other purpose. Generally, decision-making capacity refers to the ability to:

- Understand and process information;
- Make reality based decisions regarding one's lifestyle and deportment that are in character with one's beliefs and values over time;
- Communicate those decisions;
- Carry out the activities of daily living; or
- Direct others to carry out personal wishes in order to meet essential needs for food, clothing, shelter and medical

Depending on how much the client still understands, speak of what needs to be done to protect her so she can remain at home. Are there any relatives to consult with? They need to be in on this discussion so they too see it as a protective measure.

“Work Worries”

What is the Worry/Risk? Who/What May be Harmed?

How do You Manage the Risk?

What needs to happen to make this a safer situation?

- Actions to reduce the likelihood of injury
- Actions to reduce how bad an injury would be

How much does it cost?

Does the benefit outweigh the expense?

Does it fit with state, federal and regulatory requirements?

How do you make it happen?

Evaluate the Technique

Did the technique work?

Was it safe for you/the client?

Did you tell your supervisor so that you have support for your actions or suggestions for the future?

Did you ask for more information from your supervisor when appropriate?

Elizabeth Mantis et al., Plaintiffs, v. United Cerebral Palsy Association of Nassau County, Inc., et al., Defendants.

INDEX NO. 6364/94

SUPREME COURT OF NEW YORK, NASSAU COUNTY

173 Misc. 2d 778; 662 N.Y.S.2d 698; 1997 N.Y. Misc. LEXIS 399

July 30, 1997, Decided

NOTICE: [***1] EDITED FOR PUBLICATION

DISPOSITION: The defendant's motion for partial summary judgment dismissing the first, second and third causes of action alleging a defamation, false imprisonment and intentional infliction of emotional distress is granted. The plaintiffs' cross-motion for a stay of decision pending depositions is denied.

CASE SUMMARY

PROCEDURAL POSTURE: Plaintiff mother and child filed a complaint against defendant association alleging intentional infliction of emotional distress, defamation, and false imprisonment. The association filed a motion for partial summary judgment and the mother and child filed a cross motion for a stay of decision pending completion of depositions.

OVERVIEW: Twice the child, who suffered from cerebral palsy, claimed that her mother hit her and was removed from the mother's home. The association claimed that it was immune from civil liability pursuant to N.Y. Soc. Serv. Law § 473-b and alleged that the claims were legally insufficient. The court determined that the plain language of § 473-b, the legislative intent of § 473-b, and analogous case law supported the conclusion that § 473-b barred the mother and child's claims of defamation, false imprisonment, and intentional infliction of emotional distress. The court also held that the mother and child failed to submit any evidence of malice, which would defeat the association's qualified privilege on the defamation claim. On the intentional infliction of emotional distress claim, the court concluded that there was no evidence of extreme or outrageous conduct by the association to support such a claim. With regard to the false imprisonment claim, the court found no evidence submitted by the mother and child to defeat the association's qualified privilege or to support their contention that the child did not consent to the confinement.

OUTCOME: The court granted the association's motion for partial summary

judgment dismissing the causes of action alleging defamation, false imprisonment, and intentional infliction of emotional distress and denied the mother and child's cross motion for a stay of decision pending depositions.

COUNSEL: Garfunkel, Wild & Travis, Great Neck, for defendants. Leeds & Morelli, Carle Place, for plaintiffs.

JUDGES: Hon. Sandra J. Feuerstein, J.S.C.

OPINION BY: SANDRA J. FEUERSTEIN

OPINION

[**699] [*778] Sandra J. Feuerstein, J.

Motion by the defendants for, inter alia, partial summary judgment and the cross motion by the plaintiffs for a stay of decision pending completion of depositions are determined as hereinafter provided.

On March 17, 1993, Stephanie Mantis, a 25-year-old competent, quadriplegic adult with cerebral palsy, was enrolled in an Adult Day Treatment Program operated by defendant, United [*779] Cerebral Palsy Association of Nassau County, Inc. (UCP). On that date she reported to UCP employees that her mother had hit her and that she did not wish to return home. An examination of Stephanie's legs [***2] by a nurse revealed bruises consistent with her statement. UCP, following its mandated procedures, reported Stephanie's allegations to the New York State Office of Mental Retardation and Developmental Disabilities (OMRDD) and Adult Protective Services (APS).

Both agencies advised UCP that Stephanie should not return home that day and authorized UCP to provide her with overnight lodging at a residential facility operated by UCP in Bayville, New York. Stephanie's mother, plaintiff Elizabeth Mantis, was informed of the allegations and Stephanie was transferred to UCP Bayville. The next day, after speaking to her mother, Stephanie asked to return home. She was transported back to UCP and then returned home. Three weeks later Stephanie resumed attendance at UCP's Adult Day Treatment Program.

Elizabeth Mantis claimed that UCP had fabricated the allegations in order to fill a vacant bed at UCP Bayville. Mrs. Mantis demanded and obtained an investigation of the entire incident. OMRDD conducted an investigation during which Stephanie recanted her allegations. Nevertheless, OMRDD found that "UCP acted in the best interest of Stephanie Mantis in respiting the client after she was [***3] abused by her mother and that at no time were Stephanie's rights violated."

Not satisfied with this conclusion, Mrs. Mantis demanded a further comprehensive investigation which was conducted by Nicholas [**700] Constantino, the Director of OMRDD's Office of Internal Affairs (OIA) in Albany.

On March 1, 1994, before OIA concluded its investigation, Stephanie Mantis advised the UCP staff that her mother had hit her again and she did not wish to return home. UCP contacted Mr. Constantino who authorized UCP to videotape a statement from Stephanie with OMRDD representatives present. In the videotaped interview, Stephanie repeated her allegations that her mother had hit her that day and that she did not wish to return home. Stephanie also stated that her mother had hit her in March 1993 and that her mother had pressured her into recanting her statement.

Based upon her statement, OMRDD agreed to provide Stephanie with respite at an OMRDD facility in Melville.

On March 14, 1994 UCP was served with the summons and complaint in this action. The complaint asserts causes of action [*780] for intentional infliction of emotional distress, defamation and false imprisonment relating [***4] to the March 17, 1993 incident. A fourth cause of action relates to an unrelated incident in which it is alleged that UCP employees "dropped" Stephanie while changing her.

On April 18, 1994, OMRDD/OIA issued its report which found that UCP's handling of the March 1993 incident was proper and that UCP did not bill or receive reimbursement for the respite it provided for Stephanie in UCP Bayville. In fact, it is undisputed that the only reason the bed was available was because a patient had been recently transferred to a local hospital.

Counsel for UCP requested on four separate occasions that the attorneys for the plaintiffs voluntarily discontinue the action. Plaintiffs' counsel refused.

Accordingly, UCP now moves for partial summary judgment dismissing the defamation, false imprisonment and intentional infliction of emotional distress causes of action based upon UCP's immunity from civil liability pursuant to Social Services Law § 473-b and based upon the legal insufficiency of the claims asserted.

The plaintiffs cross-move for a stay of decision pending completion of depositions.

Section 473-b of the Social Services Law, entitled "Reporting of endangered adults; persons [***5] in need of protective services", provides in pertinent part:

"Any person who in good faith believes that a person eighteen years of age or older may be an endangered adult or in need of protective or other services, pursuant to this article, and who, based on such belief either:

"(a) reports or refers such person to ... any local social services district office ... or any other person, agency or organization that such person, in good faith, believes will take appropriate action;

"(b) ... shall have immunity from any civil liability that might otherwise result by reason of the act of making such report or referral."

While there are no reported cases applying section 473-b to shield a reporting agency from civil liability, the plain language of the statute, the legislative intent of the statute and analogous case law support the conclusion that Social Services Law § 473-b bars the plaintiffs' present claims of defamation, false imprisonment and intentional infliction of emotional [*781] distress (see, Assembly Mem in support of L 1984, ch 523, § 1, adding Social Services Law § 473-b; Dagan v Brookdale Hosp. Med. Ctr., 202 AD2d 385 [hospital workers held to [***6] be immune from liability for reporting suspicion of child abuse based upon Social Services Law § 419]; Isabelle V. v City of New York, 150 AD2d 312 [same]).

Here, in applying Social Services Law § 473-b, UCP has amply demonstrated its good faith in reporting allegations of abuse of Stephanie by her mother. Indeed, upon reporting the March 17, 1993 incident to OMRDD, UCP was instructed by OMRDD to provide overnight respite to Stephanie.

In opposition, the plaintiffs have submitted no evidence, in admissible form, establishing a triable issue of fact with regard to any bad faith by UCP.

[**701] Accordingly, the defendant's motion for partial summary judgment dismissing the first, second and third causes of action alleging a defamation, false imprisonment and intentional infliction of emotional distress is granted.

The court notes that even if section 473-b was not applicable, the above causes of action would be dismissed based upon legal insufficiency and the defendant's qualified privilege (see, CPLR 3016 [a]; Howell v New York Post Co., 81 NY2d 115; Liberman v Gelstein, 80 NY2d 429; Broughton v State of New York, 37 NY2d 451; Dunajewski [***7] v Bellmore-Merrick Cent. High School Dist., 138 AD2d 557). Specifically, the plaintiffs have not submitted any evidence of malice which would defeat the defendant's qualified privilege on the defamation claim (see, Dunajewski v Bellmore-Merrick Cent. High School Dist., supra). On the intentional infliction of emotional distress claim, there is no evidence of extreme or outrageous conduct by the defendant to support such a claim (see, Howell v New York Post Co., supra). Additionally, the plaintiffs have not submitted an affidavit of a physician attesting to any injury caused by the defendant's actions. With regard to the false imprisonment claim, the plaintiffs have not submitted any evidence to defeat the defendant's qualified privilege or to support their contention that Stephanie did not consent to the confinement (see, Broughton v State of New York, supra). Moreover, conspicuous by its absence is an affidavit from Stephanie Mantis, a named plaintiff, supporting the allegations made in the complaint. Indeed, the court is concerned that

Stephanie may not be a willing plaintiff in this action and counsel for the plaintiffs is advised to review this case carefully [***8] with their clients before proceeding any further.

[*782] The plaintiffs' cross motion for a stay of decision pending depositions is denied. The plaintiffs' mere hope or speculation that something will be uncovered during discovery is not a sufficient basis to postpone a decision on a summary judgment motion (see, Billy v Consolidated Mach. Tool Corp., 51 NY2d 152; Wood v Otherson, 210 AD2d 473; Kennerly v Campbell Chain Co., 133 AD2d 669).

Finally, UCP's request for the imposition of sanctions and attorney's fees against plaintiff, Elizabeth Mantis, and her attorneys pursuant to CPLR 8303-a is granted to the extent that the plaintiffs and their attorneys are each directed to pay to UCP \$ 500 each per cause of action, totaling \$ 3,000, upon the resolution of the final and sole remaining cause of action. Specifically, the court finds that the continuation of the first three causes of action, despite four requests by UCP to discontinue, was in bad faith without any reasonable basis in law or fact and could not be supported by a good-faith argument for extension, modification or reversal of existing [***9] law.

New Jersey Lawyer

August 8, 2005

BYLINE: Summaries by E. E. Mazier, Beach J. Wires, Jennifer R. Sentivan, and John G. Grieder

SECTION: DECISIONS; Unpublished Opinions; Vol. 14, No. 32; Pg. 25

HOLEVINSKI v. OCEAN COUNTY BOARD OF SOCIAL SERVICES, Appellate Division, A-1461-03T1, July 25, 2005, not approved for publication. (13 pages).
Facts-on-Call Order No. 18287.

Summary judgment for the defendant Ocean County Board of Social Services, the defendant employees of the Board, and the defendant doctor on immunity grounds in an action that arose from an investigation by the Board affirmed; the investigation confirmed that an 89-year-old woman's son was exploiting her, and it led to the plaintiff niece's appointment as guardian after competency proceedings; the niece alleged claims for defamation, deprivation of constitutional rights under 42 U.S.C. § 1983, intentional infliction of emotional distress, inadequate training and supervision, false light defamation, and medical malpractice; the doctor was immune from liability because he was ordered by a court to evaluate the woman; the Board and its employees were immune from liability under the Adult Protective Services Act because their actions were within the scope of their employment.

Case Management & Legal Liability



Theories of Liability

- **NEGLIGENCE LAW – ELEMENTS**
 - ✓ Duty of care owed by D to P
 - ✓ Breach of duty of care by D
 - ✓ Injury
 - ✓ Causation
 - ✓ Damages

The Reasonable PSA Worker

- Law
- Regulations
- Agency directives
- Experience
- Expert witness

Theories of Liability

- ***Vicarious Liability*** – Indirect legal responsibility; for example, the liability of an employer for the acts of an employee as long as those actions are within the scope of the employee’s employment.

Theories of Liability

- ***Scope of Employment*** – When the employee is doing something in furtherance of duties he owes to his employer and where employer is, or could be, exercising some control, directly or indirectly, over the employees actions.

Scope of Employment

Among the factors to be weighed in considering scope of employment are:

- the connection between the time, place and occasion for the act;
- the history of the relationship between employer and employee as spelled out in actual practice;

Scope of Employment

Among the factors to be weighed in considering scope of employment are:

- **whether the act is one commonly done by such an employee;**
- **the extent of departure from normal methods of performance; and**

Scope of Employment

Among the factors to be weighed in considering scope of employment are:

- **whether the specific act was one that the employer could reasonably have anticipated. (see Prosser, Torts [4th ed], § 70, p 461; Restatement, Agency 2d, § 229)**

Theories of Liability

NEGLIGENT REFERRAL

Some tips to avoid referral liability are:

- ✓ **if possible, give several names rather than a single source;**
- ✓ **do not influence the selection process;**
- ✓ **state basis for referral in writing;**
- ✓ **update referral list;**

Theories of Liability

NEGLIGENT REFERRAL

Some tips to avoid referral liability are:

- ✓ note limitations of referral services;
- ✓ establish uniform policy for referrals; and
- ✓ educate staff on referral policies.

Theories of Liability

CONTRACT LAW

- ✓ Promises by provider to client
- ✓ Promises by provider to client representative
- ✓ Promises by provider to third party
- ✓ Legal actions based on broken promises

Theories of Liability

- **EXPRESS CONTRACT** – an actual agreement of the parties, the terms are clearly stated in distinct language, either orally or in writing.

Theories of Liability

- **IMPLIED CONTRACT** – not created by explicit agreement of the parties, but inferred as a matter of reason and justice from the acts of the parties and the circumstances surrounding their conduct.

Theories of Liability

- **LEGAL BAILMENT** - A bailment occurs when the client (bailor) delivers personal property for a specific purpose to the agency (bailee) which has an obligation to return the property or account for it.

Bailment

- 1. The delivery of the goods by the bailor/client to the bailee/agency
- 2. Possession of the goods by the bailee/agency for a specific purpose
- 3. A return of the goods to the bailor/client at a later time, or the delivery of the goods according to the bailor's/client's directions

The “Reasonable” PSA Worker

- Law
- Regulation
- Administrative directives (ADMs), Informational letters (INFs), Memorandums of Understanding (MOUs)
- Experience
- Expert witness

The “Reasonable“ PSA Worker

Amendment 2011: Referral Response

A social services official who is investigating whether an adult is in need of protective services shall have access to the Statewide Central Register of Child Abuse and Maltreatment if the official has reasonable cause to believe such adult may be in need of protective services due to the conduct of an individual or individuals who had access to such adult when such adult was a child and that such reports and information are needed to further the present investigation. (Social Services Law Section 422)

Access Order Amendment - 2011

A social services official which is refused access shall assess, in consultation with a person in a supervisory role, whether or not it is appropriate to apply for an order to gain access to such person. Such assessment must be made as soon as necessary under the circumstances, but no later than twenty-four hours after the investigating official is refused access. The determination of whether or not to apply for an order to gain access and the reasons therefore shall be documented in the investigation file. (SSL 473-c)

Risk Management

- Risk management is a term used to describe an agency's process of understanding risks that are inherent in certain types of service provision and the steps taken to reduce the risk of legal liability.

Risk Management

- Prevent harm*
- Avoid legal liability*
- Promote safe actions*
- Reduce liability anxiety*
- Shows client is high priority*

Risk Management

- **The Process of Risk Management**
 - ✓ Acknowledge and identify the risk
 - ✓ Evaluate and prioritize the risk
 - ✓ Implement risk management techniques
 - ✓ Monitor and update the program

Risk Management

MANAGING THE RISK OF PROVIDING PROTECTIVE SERVICES FOR ADULTS

1. Agency standards and guidelines

- a. Social Services Law Section 473
- b. 18 New York Code Rules
Regulations Parts 457 and 357
- c. Administrative Directives
- d. Informational Letters
- e. Memorandums of Understanding

Risk Management

MANAGING THE RISK OF PROVIDING PROTECTIVE SERVICES FOR ADULTS

2. Job Description

3. Documentation

- a. Agency Criteria (computer v. hand written)
- b. Documentation techniques
- c. Confidentiality

Effective Documentation

DOCUMENTATION TIPS:

- Time and date each entry.
- Use clear and concise language, avoid ambiguous terms and phrases.
- Review entry before signing.
- Make all entries at the time of client contact or as soon after as possible.

Effective Documentation

DOCUMENTATION TIPS:

- Record as accurately as possible conversations with client using direct quotes.
- Include information relevant to the services being provided or that may need to be provided, i.e., psychosocial factors, client's support system, physical environment, client behavior and special needs of client.

Effective Documentation

DOCUMENTATION TIPS:

- Include specific information about a complication, special problem, or need of the client. Record how the client was, or will be, affected and what specific actions were taken by your agency to address the problem. These situations should be followed in subsequent notes until the desired outcome has been achieved.

Effective Documentation

DOCUMENTATION TIPS:

- Stick to the facts and choose your words carefully if a mishap occurs. Defensive entries can damage the credibility of the entire record.
- Make sure the record reflects client's complaints and concerns and indicates that they are taken seriously.

Effective Documentation

DOCUMENTATION TIPS:

- Record all contacts with other providers that deal with service provision. Record the date contacted, summary of the discussion, actions to be taken, and by whom.
- Record when actions completed-follow-up entries

Effective Documentation

DOCUMENTATION SHOULD BE:

- | | |
|-------------|--------------|
| ✓ Complete | ✓ Timely |
| ✓ Concise | ✓ Accurate |
| ✓ Specific | ✓ Consistent |
| ✓ Objective | |

Effective Documentation

DOCUMENTATION REMINDER

- A** —————> Assessment
E —————> Empathy
I —————> Implementation
O —————> Outcome
U —————> Update

Confidentiality

- Social Services Law section 473-e;
- 18 NYCRR section 457.14; 457.16
- 92 INF- 26 Disclosure Without Consent
- Health Insurance Portability and Accountability Act - HIPAA

Evaluating Decision Making Capacity

If there is a question as to whether a client has the ability to provide informed consent, an evaluation has to be made to determine the client's decision-making capacity. The mental status examination should focus specifically on the client's ability to address the particular decision at hand and should include issues such as:

Evaluating Decision Making Capacity

- Is the client able to make and express choices in relation to this particular service intervention?
- Is the client able to provide reasons for his or her choices?
- Do the client's reasons have some basis in fact and reality?
- Is the client able to understand and appreciate the potentially harmful consequences of his or her chosen course of action?

Evaluating decision Making Capacity

A mental status examination, along with a physical and social assessment, may also determine whether or not a person suffers from cognitive deficits sufficient to impair the person's judgment.

How do you Manage the Risk?

- What needs to happen to make this a safer situation?
- How can the frequency/severity be reduced?
 - Actions to reduce the likelihood of injury
 - Actions to reduce how bad an injury would be

How do you Manage the Risk?

- How much does it cost?
- Does the benefit outweigh the expense?
- Does it fit with state, federal and regulatory requirements?
- How do you make it happen?

Evaluate the Technique

- Did the technique work?
- Was it safe for you/the client?
- Did you tell your supervisor so that you have support for your actions or suggestions for the future?
- Did you ask for more information from your supervisor when appropriate?

**Documenting Calls Received
In Office About Vulnerable Adults**

- *Confirm that calls are transferred to PSA Intake*
- *Calls to other units within LDSS re vulnerable adults*
- *Calls on open PSA cases*

**Referrals to Law Enforcement and
District Attorneys**

- *Direct contact by PSA to law enforcement/DA*
- *Document referrals in writing*
- *Regular contact in law enforcement/DA to discuss fact patterns*

**Interviews of
Alleged Victims of Abuse**

- *Interview away from suspected perpetrator*
- *Be wary if anyone is unwilling to allow alleged victim to speak privately with PSA*

**Interviews of
Alleged Victims of Abuse**

- *Check with collateral sources and with referral source if need be to gather additional information*
- *Interviewing adults with special needs; seek assistance of experts where possible*

**Gaining Access to Alleged Vulnerable
Adult – and to the Home**

- *Upon a refusal of access, new law (Chapter 412, Laws of 2011) requires consultation with a supervisor within 24 hours of the refusal as to whether or not an access order shall be sought, and documentation of the determination in the case record. Additional guidance on the new law to be forthcoming from OCFS.*

Gaining Access to Alleged Vulnerable Adult – and to the Home

- *The new law builds on existing law, regulations and guidance as to the actions to be taken when access is refused or not obtained*

Gaining Access to Alleged Vulnerable Adult – and to the Home

- *The supervisor's decision whether or not to support the need for an order to gain access, the reasons for the determination and the information obtained by the caseworker shall be recorded in the case record. 87 ADM 6, 18 NYCRR 457.11*

Confidentiality/ Eligibility/ Ineligibility Notices

- *Communications with referral sources and non-referral sources about vulnerable adults being investigated, assessed or served by PSA must be made in compliance with the confidentiality statute SSL section 473- e and regulations at 18 NYCRR 457.14 (informing referral sources)and 457.16 (confidentiality)*

Confidentiality/ Eligibility/ Ineligibility Notices

- *Document required notifications to referral sources as per 18 NYCRR 457.14(d)*

Regularly document the actions you take to:

- *Promote safety for your clients;*
- *Reduce the potential for harm to your clients;*
- *Respect the client's rights of self-determination;*

Where it is believed the client lacks capacity to protect him or herself from danger, and you will be seeking involuntary intervention to try to protect the individual, make sure you have documented :

- *The basis for the belief about the incapacity;*
- *The basis for the belief that the client faces clear and serious danger without an intervention;*

Where it is believed the client lacks capacity to protect him or herself from danger, and you will be seeking involuntary intervention to try to protect the individual, make sure you have documented :

- *The less restrictive ways you have attempted previously to protect the individual short of an involuntary action; and*

Where it is believed the client lacks capacity to protect him or herself from danger, and you will be seeking involuntary intervention to try to protect the individual, make sure you have documented :

- *The basis for believing that there is no less restrictive way than the intervention sought to effectively protect the client.*

Please Note:

These training materials are provided to give the PSA worker a basic understanding of the concepts of legal liability. They are not a substitute for legal advice. If you have any questions, you should consult with your county attorney.

Contact Information:

Debra Sacks, Esq.

Brookdale Center for Healthy Aging & Longevity

rdsacks@aol.com or (845) 227-0451

NYS OCFS Bureau of Adult Services

(518) 473 - 6446

BROOKDALE CENTER
for Healthy Aging & Longevity
Hunter College / The City University of New York

Continuing Legal Education Credits Instructions
for Staff Development Coordinators

You have received a (1) CLE attendance roster and an (2) evaluation form for CLE credits via email from OCFS. These forms are to be used for attorneys only. All non-attorneys have separate sign-in sheets and evaluation forms to be filled out and sent back to OCFS.

Please be certain that the attorneys sign in when they arrive and sign out when they leave. We need to confirm that the attorneys fully attended the session.

The evaluation form for CLE credits is to be handed out to the attorneys at the end of the session, only if you can confirm from the attendance roster that they successfully completed this training.

All completed CLE attendance rosters and evaluation forms for CLE credits should be mailed to the following address:

Brookdale Center for Healthy Aging & Longevity
Attn: Steven Jones
2180 3rd Avenue, 8th Floor
NY, NY 10035

Do not send any CLE information to OCFS, only send OCFS sign-in and evaluation forms from non-attorneys.

Thank you for your assistance in this task,

Steven Jones
Project Assistant
Brookdale Center for Healthy Aging & Longevity
(212) 481-5393
steven.jones@hunter.cuny.edu

REGISTRY FOR CONTINUING LEGAL EDUCATION CREDITS

FOR ATTORNEYS ONLY

Program Title: PSA Case Management & Liability (Course # IC 15941)

Date of Program: October 6, 2011

Start Time: 1:00pm

End Time: 3:30pm

Print Name	Sign In	Time In	Sign Out	Time Out

Note: You must attend the full session (from 1:00pm – 3:30pm) in order to be eligible for CLE credits. A CLE request form will be distributed at the end of the session to all attorneys who successfully complete this training.

**TRAINING EVALUATION
&
CONTINUING LEGAL EDUCATION (CLE) REQUEST FORM**

Your response to the following questions will aid the Law Institute in its efforts to better serve you. Please take a few minutes to respond to the following questions. If you wish to receive Continuing Legal Education (CLE) credit for attending this training, completion of this form is required.

Thank you in advance for your assistance.

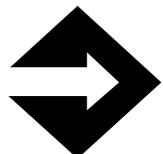
PSA Case Management & Liability – Course# IC15941

Today's Date: ___ / ___ / ___

[*Please circle the appropriate answers]

- 1) In general, the content of the training was:
 Excellent Good Fair Poor
- 2) The Instructor's presentation of the subject was:
 Excellent Good Fair Poor
- 3) The course training materials were:
 Excellent Good Fair Poor
- 4) How many Law Institute trainings/workshops have you attended?
 First time 2-4 4-6 6-8 8+
- 5) How long have you been working in the field covered in this training?
 Beginner 1-3 years 4-6 years 7 years or more
- 6) Would you take another training course given by the Law Institute?
 Yes No (Why? _____.)
- 7) How would you rate the training location and facilities?
 Excellent Good Fair Poor
- 8) What is your background?
 Law Social Work Other: _____
- 9) If your background is in law, what type:
 Private (elder law) Law Firm (elder law) Private (Other _____.)
 Paralegal (Other _____.)

Please turn over



Training Evaluation (continued)

10) What other benefit program training classes would be of interest to you?

11) How did you hear about this particular training?

mailing co-worker our website other _____

12) Additional Comments / Suggestions:

13) If you would like to be placed on our mailing list to receive training announcements, please complete the following:

Name (*PLEASE PRINT!*): _____

Title: _____

Organization: _____

Address: _____ Rm/Apt/Suite# _____

City: _____ State: _____ Zipcode: _____

Telephone: (_____) _____ Fax: (_____) _____

Email: _____

Continuing Legal Education (CLE) Credit Request:

(Only attorneys may apply)

This will verify that I have attended the **“PSA Case Management & Liability” (Course# IC15941)** workshop sponsored by the Sadin Institute on Law & Public Policy and request CLE credit for attending this training on October 6, 2011 from 1:00pm – 3:30pm.

Name (*PLEASE PRINT!*) _____

Title _____

Organization/Firm: _____

Address: _____ Floor/Rm/Suite/Apt: _____

City: _____ State _____ Zipcode: _____

Tel # (_____) _____ Fax # (_____) _____

Signature: _____ Date: ____/____/____

Attendance records will be kept on file in our offices. A letter verifying your attendance will be issued upon written request to The Sadin Institute on Law & Public Policy, Brookdale Center for Healthy Aging & Longevity, 2180 Third Avenue, NY, NY 10035. For the workshop named above, you will receive the following transitional/non-transitional CLE credit(s): **approval for CLE accreditation is pending**

