

Irwin Siegel Agency, Inc.  
Human Service Program  
Risk Management Division

# The Investigation Process



**A Key to Eliminating and Reducing  
Recurrence of Accidents and Abuse**

Supporting Those Who Support Others™

# **The Investigation Process**

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Recurrence of Accidents and Abuse**

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## Preface

This booklet explores some of the standardized procedures by which an agency may conduct an administrative investigation of an untoward event or other situation as warranted. The authors use the term “untoward event” throughout this booklet to reflect a variety of situations for which an investigation may be necessary. In general, the most prevalent ‘untoward events’ are also the ones for which many states have specific regulations. These include serious incidents and/or allegations of abuse of people receiving supports.

The booklet provides guidance in addressing situations occurring at all types of organizations including nonprofit, for-profit, voluntary and privately operated agencies. Therefore, some terms used in this document have been intentionally broadened in scope to include a wider definition.

For example:

**Director:** The CEO, President or Executive Director of a private or voluntary agency.

**Agency:** An organizational entity of a private or voluntary nature.

**Investigator:** Individual(s) designated by the agency Director to conduct an investigation. The investigator should have specialized training to fulfill that role.

**Investigation:** The systematic collection of facts for the purpose of describing and/or explaining an event or series of events.

**Interviewee:** The person being interviewed.

“The most prevalent ‘untoward events’ are also the ones for which many states have specific regulations.”

### Objectives of an Investigation

- To determine facts through review and analysis of evidence and witness statements.
- To use the results to uncover causes and methods of prevention.
- To provide accurate information on which the agency can base administrative action.



Although different states impose different requirements regarding investigations of untoward events, all administrative investigations share the following basic objectives:

- To determine the facts of a particular untoward event by completing a thorough review and analysis of all available evidence and witnesses' statements.
- To use the results of the investigation to discover the condition(s) that lead to the incident and implement appropriate corrective actions that will help to prevent repeat occurrences.
- To provide accurate and detailed information to assist an agency in preparing for appropriate administrative action(s) such as disciplinary (e.g., suspension, termination), non-disciplinary (e.g., training, counseling) or both depending on the results.

Provider agencies, regardless of population served, can use the information here as a guide in conducting timely, accurate investigations that will yield remedial measures as well as documentation of efforts to meet recognized standards of care.

"...different states impose different requirements regarding investigations of untoward events..."



### Who should be an investigator?

Certified investigators are people who have been trained according to your state's office of Mental Retardation and/or Mental Health. Minimum qualifications should include:

- High school degree
- 21 years of age
- Satisfactory criminal background check
- Successful completion of your state's training protocols

Certified investigators should be required to take refresher classes every two to three years. Investigators should also be required to conduct a minimum of three investigations before being certified.

## SEVEN KEY COMPONENTS TO REDUCE, DETECT AND PREVENT ABUSE AND NEGLECT

- 1. PREVENT:** The provider has the capacity to detect and prevent the occurrence of abuse and neglect, and review specific incidents for lessons learned. This forms a feedback loop, which may affect necessary policy changes.
- 2. SCREEN:** The provider makes the effort to determine the appropriateness of a prospective employee's experience in working with individuals with specific needs and conditions. This includes seeking to identify and verify any previous charges of abuse and neglect brought against a prospective employee. The provider also screens individuals receiving services to determine whether their needs can be addressed appropriately within the provider's setting.
- 3. IDENTIFY:** The provider creates and maintains a proactive approach for identifying events and occurrences that may constitute or contribute to abuse or neglect.
- 4. TRAIN:** The provider gives all employees thorough orientation and ongoing trainings regarding abuse and neglect. Training should include reporting requirements and procedures for detection, intervention and prevention. Individuals receiving services should be trained to recognize and identify signs and symptoms of neglect. They should also be informed of ways in which they and their family members can support detection and prevention efforts.
- 5. PROTECT:** The provider seeks to support and protect individuals serviced, their families and staff. Additionally, the provider makes an effort to protect individuals from abuse and neglect during an investigation of such allegations.
- 6. REPORT AND INVESTIGATE:** The provider puts measures in place that facilitate and assure the reporting of abuse and neglect. The provider also assures timely, thorough and objective investigation of all allegations of abuse, neglect or mistreatment.
- 7. RESPOND:** The provider assures that the appropriate corrective, remedial or disciplinary action occurs in accordance with applicable local, state or Federal law if investigations find the presence of mistreatment.

*Source: CMS's Appendix Q, Guidelines for Determining Immediate Jeopardy*



# The Investigation Process

Rather than assume that there is a one-size-fits-all investigation process, we must realize that the differences in locations, situations, consumers and other factors will influence how an investigation is conducted. Accordingly, readers are asked to apply the information in this booklet to their specific situations. For example, suppose a consumer at your agency has an injury that needs medical attention. If this document suggests that you bring the consumer to the nearest hospital for treatment or to an on-site physician, then have the **nearest physician** examine the individual.

## I. INITIAL ACTIONS

### Reporting Incidents

A good measure of a facility's general health is the effectiveness of its incident reporting and review process. Over time, the incident review process will reveal whether the facility is making progress in protecting the people served from harm. With an effective incident investigation and review process, the facility accepts responsibility for the actions of staff and residents and the obligation to correct the problems.

If an untoward event occurs, staff needs to:

- Ensure the safety of those involved,
- Notify the supervisor,
- Complete an incident report, and
- Document the date and time of the incident and the names of all involved parties.

"Ensuring safety may include calling 911 for emergency assistance."



Staff is trained in how to identify and report incidents as defined by applicable state and/or federal regulations. If an untoward event occurs, staff needs to ensure the safety of those involved and then notify the supervisor, nurse and family contact, as appropriate. Ensuring safety may include calling 911 for emergency assistance. Designated staff should conduct a thorough examination to check for injuries and complete an incident report as soon as possible. In general, the reporter(s) should document the date and time the incident occurred and the names of the injured party(s) and witnesses.

The report needs to describe the incident in a factual and objective manner, and it should give specific details without speculating blame on anyone. The reporter or his/her supervisor should document the names of the doctor, nurse and any family members who were notified of the incident, when they were informed and by whom. Even if the report contains medical information, it needs to be kept separate from the medical files of the individuals served.

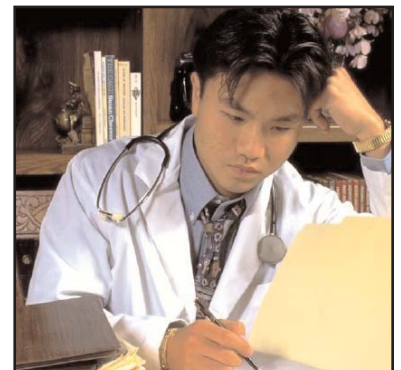
### NYS Commission on Quality Care - Case Study # 20 - *Abstract* *Errors Spanning Three Shifts Lead to the Death of Juan Garcia*

Juan Garcia, in his early thirties, diagnosed with moderate mental retardation, a seizure disorder, and emotional difficulties, resided in a program serving 40 developmentally disabled individuals. On a Saturday evening, two staff “called in sick” leaving only three staff - two working overtime - responsible for the overnight care of the 40 residents; five staff is the minimal staffing pattern. At 6:00 a.m. on Sunday, one staff finding Mr. Garcia downstairs with some type of white powder around his mouth and shirt made an unsuccessful attempt to find if Mr. Garcia ingested anything; two hours later the cook arrived and determined Mr. Garcia ate baking soda placed in the microwave as well as frozen hotdogs and raw bacon. The shift supervisor called the on-call administrator who advised monitoring Mr. Garcia; this same information was relayed when the day-shift supervisor arrived at 10:00. Starting around 11:00, Mr. Garcia began experiencing severe episodes of vomiting and diarrhea, but the on-call administrator was not contacted until noon, at which time the supervisor was told to call the nurse who told the supervisor to call EMS to transport Mr. Garcia to the hospital. Arriving at the hospital around 2:00 p.m., Mr. Garcia, diagnosed with hypernatremia (i.e., excess sodium in the blood) and dehydration, was hydrated over the next 24 hours to replenish the volume depletion and stabilize his body chemistry; however, he developed seizure activity, and despite attempts to control it, he expired. His death was attributed to “extreme depletion of bodily fluids due to poisoning by alkalizing agent - baking soda.”

#### The Lesson

The lapses in performance and judgement spanning three shifts and compounded by the on-call administrator culminated in Mr. Garcia’s death. Policies on staffing standards and requirements including stringent enforcement of the minimum number, storage of potentially hazardous materials as well as staff training in securing medical advice following possible ingestion, and timely medical assessments and instructions by appropriate health personnel should be reviewed by facilities.

“The report needs to describe the incident in a factual and objective manner...”



## Receiving the Verbal Report

Before beginning any formal investigation, someone in a managerial or administrative position needs to be notified of the event. This person should visit the site to obtain first-hand information, or (s)he should document the reasons for not visiting the site. Usually, the supervisor at the site where the event occurred would give the manager/administrator initial notification by telephone. An administrator is often designated to receive the initial report of an untoward event during evenings, nights, weekends and /or holidays, but local facility/ agency policy should prevail regarding who is to be notified, etc. The supervisor should be prepared to inform the manager/administrator of the time and place of the incident, the name(s) of persons injured or otherwise involved and any medical treatment or other actions carried out thus far.

## Manager's/Administrator's Role

The manager/administrator plays a very important role in the initial phase of the investigation process and has several specific responsibilities. **(S)he may have even been responsible for the initial investigation of an untoward event.** When notified of an event, the manager/administrator should first ask if any consumer was injured or believed to be injured in any way. If so, ensure that the consumer has received medical treatment. If (s)he has not received treatment, direct that (s)he be treated immediately. The following is a list of items/ procedures that a manager/administrator is responsible for gathering.

Request and record the following:

- The location of the event.
- The time and date of the occurrence.
- The name and medical status of any consumers involved.
- The names and titles of all employees who were on duty at the time of the event.
- The name(s) of any employee who witnessed the event.
- The name(s) of any consumer who witnessed the event.
- The name(s) and title(s) of any visitor who may have been present during the event.
- The name and title of the person reporting the information and a brief statement regarding the event.

*list continued on next page*

"The manager/ administrator plays a very important role in the initial phase of the investigation process..."



- If there is suspicion that a crime has been committed, direct that the immediate vicinity of the untoward event be declared “off limits” to consumers and staff, unless that area must be used for consumer care. Advise that any furniture and/or other items are to be left undisturbed until the manager or the investigator arrives.
- Ensure that all staff and other witnesses remain at the scene until the investigator has spoken to them, presuming that the investigator will be at the scene within a reasonably short time. For employees who are at or near the end of their shift, their delayed departure may involve some form of compensation (pay, time, etc.) by the agency.
- If there was staff misconduct/culpability, one or more of the witnesses may be motivated to distort or suppress the facts and may seek cooperation from others in doing so. Separation of the staff is the only practical means of reducing their opportunity to collaborate in this manner. Explain that any known witnesses must be separated from each other to the fullest extent possible and that they are not to discuss the event with anyone until after they are interviewed.
- Do not overlook consumers as potential witnesses. Depending on their verbal skills, mental states and cognitive abilities to recall events, they may be very helpful to the investigation. Therefore, the manager should also ensure that those consumer witnesses be separated to prevent possible distortion of their account of the event.
- If appropriate, direct that color photographs be taken of any consumer injuries or other relevant items. Access to photographic equipment generally depends on agency policy and practice, but either the manager or the investigator should have immediate access to such equipment.
- If a consumer was injured and was examined/treated by a physician, contact the physician as soon as possible to determine if (s)he has the nature, age, duration and probable cause of any injuries noted. **This information is vitally important to the investigation of the event.**
- Notify the investigator and brief him or her on all information collected and action(s) taken thus far. Time is of the essence and the manager and/or the investigator should proceed to the scene immediately to follow-up in person on the orders for securing the area and retaining the witnesses.

“Separation of the staff is the only practical means of reducing their opportunity to collaborate...”



### Manager's/Administrator's Role

- Ensure the consumer's immediate safety and well-being in case of a consumer-related untoward event.
- Request the preliminary information regarding who, what, when, where and how.
- Take immediate action relating to the scene of the untoward event, which will facilitate an efficient and productive investigation.
- Make a preliminary assessment of the situation and notify the appropriate administrative personnel per agency policy.
- Make the appropriate and necessary administrative decisions on behalf of the agency regarding consumers and/or staff.
- Visit the site to obtain firsthand information, including written statements from key persons present.

### Investigator's Role

This section outlines the initial actions a trained investigator should take. By following this action plan promptly, the agency will be more likely to complete an investigation that is accurate, legally sufficient and successful in revealing both cause and means of prevention. Investigators who have any real or perceived conflict of interest are obligated to remove themselves from that investigation. Regardless of your agency's organizational structure, and the manner in which the investigators are assigned, these actions by the investigator are universal.

"Investigators who have any real or conflict of interest are obligated to remove themselves from that investigation."

### Actions upon Receipt of a Report

When asked to investigate an untoward event, the investigator should confirm the following:

- The Incident or Abuse Report Form is completed in accordance with the existing state regulations and agency policies.
- The location, date and time of the event has been documented.
- The victim's medical condition is known and recorded.
- The scene has been secured.
- The names of all witnesses including consumers, staff, visitors, etc. have been obtained and that witnesses have been retained and separated.
- The available physical evidence has been secured.



## Actions at the Scene

The investigator should proceed to the scene as promptly as possible. The longer the delay in arrival, the greater the possibility that physical evidence will be contaminated and that witnesses' accounts will be distorted.

On arrival, the investigator should assume charge of the scene and of the preliminary investigative steps. (S)he should collect and review all pertinent documents related to the untoward event (e.g., log books, a clinical file, bed check records, staff assignment sheets, sign in sheets, etc.). The investigator must also determine if (s)he will need any other documents/records (e.g., EMS report, police records, hospital records, etc.) and arrange to get them. The order in which the investigator carries out the tasks below will depend upon the circumstances at the time. Rather than relying on memory, the investigator should use a notebook to record all information and findings during the initial stage.

It is a wise business practice to have a standard incident reporting form used by all agency personnel. This will help keep reports consistent and increase the accuracy with which incidents are reported.

## The Physical Setting & Securing the Scene

Upon entering the area, the investigator must examine the entire scene, including the room(s), furnishings and equipment, while taking care not to contaminate any evidence.

The investigator should cover the following points with the on-site supervisor:

- Location of people and the contents of the room before and after the untoward event.
- Physical evidence discovered at or near the scene, such as blood or other spilled liquids, potential weapons, etc.
- The investigator is to ensure that "off limits" instructions are carried out.

"...the investigator should use a notebook to record all information and findings during the initial stage."

*list continued on next page*



- All furnishings and other objects should be left undisturbed and no one should “clean” the room of any debris (spilled liquids, body fluids, etc.), which could prove to be evidence.
- Staff should not bathe the victim (consumer) or clean his or her clothing until told to do so by the investigator.

### Visual Records

The investigator should take immediate steps to inspect and record the physical appearance and features of the scene where the untoward event occurred. There are two main recording methods and the investigator should use both if the area contains significant physical evidence and/or is difficult to describe verbally. These two methods are:

- **Photographs** - see section entitled “Photographic Evidence.”
- **A Sketch of the Scene** - The sketch can be “roughed out” after a preliminary examination of the site. Additions and refinements can be made as information is gathered during interviews. The investigator should carry a tape measure to aid in preparing accurate sketches. If floor plans are readily available, the investigator can use them in place of a drawing.

Both of these methods will help the investigator to do the following:

- Depict all significant items and conditions in and around the scene.
- Establish a rough scale of distances and object sizes.
- Prepare a drawing to scale later.
- Show the placement of principle parties, objects, etc.
- Conduct witness interviews.

“The investigator should carry a tape measure to aid in preparing accurate sketches.”



#### VISUAL RECORDS

Photographs  
Sketchs  
Measurements  
Descriptions

## Preserving Physical Evidence

This section addresses the identification and preservation of pertinent items at a site. It is crucial to remember that when criminal activity is involved, evidence should be left alone for the police to collect! There may be only one opportunity to skillfully perform the task of collecting and preserving physical evidence. Each piece of evidence should be preserved in a separate bag. It is preferable to have one person retain possession and control of all items of evidence. The chain of evidence is weakened each time another person becomes involved. Every person who handles evidence may be required to testify as to its identity if the investigation leads to a criminal or administrative proceeding. The investigator is not to allow staff to pass materials around for visual inspection.

Almost any physical object or substance associated with a scene may have a bearing on the investigation.

It requires care and diligence to identify, handle and preserve items of possible relevance correctly. Major categories of evidence include:

- **The scene itself** - The area should be sketched and/or photographed during a preliminary review.
- **Contents** - These items may help reveal crucial facts about an event by virtue of their placement and condition.
- **Corroborative Evidence** - This includes hair, blood, fibers, tissue, latent fingerprints or other materials that may be used for comparative analysis.
- **Any object or instrument that could have been used as a weapon** - These include, but are not limited to, such things as curtain rods, plastic bowling pins, hockey sticks, brushes, belts, keys, clothes hangers, etc.

The investigator should write a brief description of each item of evidence and attach it to the object or to its container. Many law enforcement supply stores sell evidence tags or tape for this purpose. Stationary stores sell tags, tapes or labels that are also sufficient.

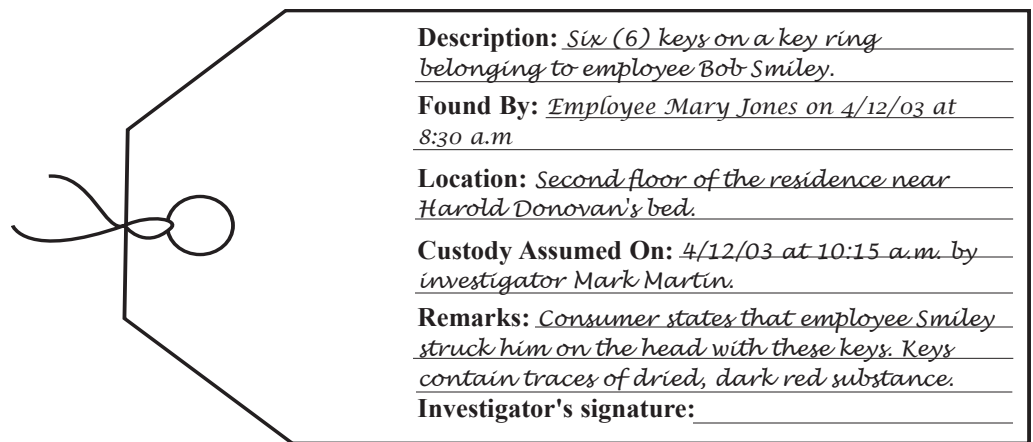
It is crucial to remember that when criminal activity is involved, evidence should be left alone for the police to collect!



**Record the following data/information on each identification tag:**

- Date, time and location where an item was found and the identity of the person who found it.
- Date and time the investigator or designee took custody of the item and from whom.
- Brief description of item.
- Pertinent remarks regarding an item’s origin, connection with the event, who had possession of it, etc.
- Investigator’s signature.

**Sample Evidence Tag**



**Description:** *Six (6) keys on a key ring belonging to employee Bob Smiley.*

**Found By:** *Employee Mary Jones on 4/12/03 at 8:30 a.m.*

**Location:** *Second floor of the residence near Harold Donovan's bed.*

**Custody Assumed On:** *4/12/03 at 10:15 a.m. by investigator Mark Martin.*

**Remarks:** *Consumer states that employee Smiley struck him on the head with these keys. Keys contain traces of dried, dark red substance.*

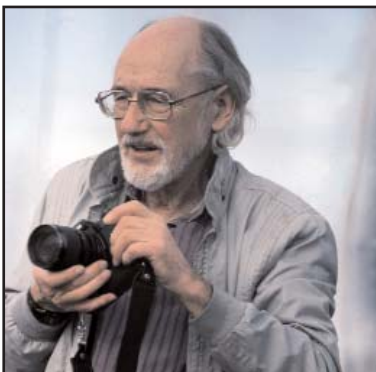
**Investigator's signature:** \_\_\_\_\_

**Photographic Evidence**

Photographs are taken in order to:

- Provide a permanent record of fragile or perishable evidence (e.g., bruises)
- Clarify written reports
- Supplement notes and sketches
- Aid in identification

“Take color photographs whenever possible.”



Take color photographs whenever possible. Cuts, bruises or other visible injuries, particularly if sustained by a consumer, are the most obvious and critical pieces of evidence to record by photograph. Such injuries should be photographed within one hour of the incident.

The agency should have a 35-mm camera available as well as an “instant developing” type camera. The 35-mm film can provide more detail and a “clearer” representation of the scene or injury, while the instant type allows you to be certain that you have captured at least one image of each relevant detail. The 35-mm film size is adequate for most photographs. As a rule, it is better to have two good, medium-priced cameras rather than one expensive camera. Photographs of injured individuals and the scene of the incident must be treated confidentially. If the agency does not use an instant camera, it should hire a local photo service that is dependable and discreet.

In order to protect the evidentiary value of all investigative photos, adhere to the following guidelines:

- The object(s) in the photo must be relevant.
- The photo must focus on a specific object or scene and accurately represent it.
- The photo should not appeal to emotions.
- Include a gray ruler for scale/color in each photo.
- Take different views of the scene and make certain that the lighting is adequate for each one.
- Use distance, mid-range and close-up photos to provide a better perspective.
- The photographer may need to testify about the date and time each photo was taken.

Evidentiary photographs must be:

Clear  
Relevant  
In Color  
Captioned  
Timely

The best photograph may not be usable if it is improperly labeled, so caption **every** photo as follows:

- Identify the subject.
- State the date and time the photo was taken.
- Identify the person taking the photo.
- Include a description/narrative (if needed).
- Identify the subject’s name/status, ID number or some other identifier.

“The agency should have a 35-mm camera available as well as an “instant developing” type camera.”



## Events Involving Violations of the Law

Sometimes, an untoward event also involves a criminal act such as homicide, assault, arson, sexual assault or theft. If the investigator suspects any sort of criminal activity, (s)he should inform local law enforcement officials according to the agency's policy. The investigator may also seek advice from his/her agency's counsel.

If a police agency does become involved, the investigator should be prepared to brief the officer(s) when he or she arrives. The investigator and police officer(s) should agree quickly on a specific sequence for conducting the criminal and administrative investigations. The investigator will find it helpful to remember that the possibility of a crime presents many variables that law enforcement agents need to weigh, and this will influence their response.

Agencies may need to take prompt administrative action to ensure the well-being of consumers and staff following an untoward event, but they must also coordinate their actions with any criminal investigation in progress. The investigator must cooperate with the local police and/or district attorney so that all parties can work effectively. This positive relationship will smooth both the criminal and civil investigation process.

"The investigator must cooperate with the local police and/or district attorney so that all parties can work effectively."



### What to do in cases where a crime may have been committed.

- ✓ Consult with agency counsel and local law enforcement authorities.
- ✓ Give full cooperation to law enforcement authorities and do not obstruct their activities.
- ✓ If a criminal investigation is initiated, it may be advisable to await its outcome before taking punitive or other administrative actions.
- ✓ Coordinate the agency's administrative and investigative actions with any criminal investigation.
- ✓ Comply with all regulatory, legal and agency policies regarding the handling of untoward incidents.
- ✓ Document all actions and conversations.

The subject of a criminal investigation is presumed innocent unless proven guilty “beyond a reasonable doubt.” An administrative investigation makes the same assumption but requires only a “preponderance of evidence” (50 percent or more) to establish the individual’s guilt. Since higher levels of proof and more severe penalties rest with criminal investigations, it is often in an agency’s best interest to patiently await that outcome. If one is found guilty in the criminal forum, it will follow routinely that the person is also guilty in the administrative forum, which demands a less stringent level of proof.

### New York State Commission on Quality Care Case Study #14

#### *Staff Abuse and Cover-Up In the Matter of Jesse Caron*

Jesse Caron reported to his sheltered workshop with his left eye black, blue and almost swollen shut; the white of the eye was completely bloodshot. He told workshop staff that a residential staff member had punched him in the face. The residential investigation concluded that, although the staff person had changed his story and said that he may have accidentally struck Mr. Caron during a restraint, there was insufficient evidence that Mr. Caron was the victim of abuse. The NYS Commission on Quality Care requested that the agency reopen the case, which it did, and found that the staff person hit Mr. Caron in the face and chest, and then restrained Mr. Caron with the help of another staff person. The residence manager was told of the incident and he instructed the two staff to report that Mr. Caron hit his face on a doorknob.

### The Lesson

Agency administrators must take care to objectively collect, analyze and weigh evidence in client abuse cases, particularly when the only testimony is from the victim and the alleged perpetrator. Direct care staff must reflect on the degree to which they will go to ‘help’ a fellow worker. They need to consider their own careers as well as the health and well-being of the individuals they serve when they are tempted to cover for their peers’ mistakes. Finally, a simple request to make a telephone call was denied by residential staff, and triggered a chain of events; assault, serious client injury, conspiracy, the termination of three employees and the arrest of one.

“Early involvement with law enforcement authorities in abuse investigations can help the agency maintain objectivity...”

Early involvement with law enforcement authorities in abuse investigations can help the agency maintain objectivity, communicate to all parties the seriousness the agency attaches to the allegations and lead to the quick resolution of charges.



## II. INTERVIEWING PROCESS

### *OBTAINING THE WITNESS'S ACCOUNT*

This section focuses on obtaining information from witnesses, as they are considered the best source of information during an investigation.

#### **Interviews**

Investigators should avoid simply collecting written statements from employees in which they have jotted down what they know about the incident. Without follow-up questioning, many employees will write that they know nothing about the incident because they were not in the immediate area or that they only know what they learned from another staff member. Personal interviews are essential to uncover the facts of any incident or event.

#### **Scheduling the Interviews**

The investigator should classify witnesses by category and decide the order in which (s)he will interview them.

Based on the information available at this point, it should be possible to establish the following witness categories:

- **Victim:** The consumer, staff person or anyone else reported to have been harmed by the untoward event.
- **Primary/Secondary Witnesses:** Persons present at the time, including consumers, who may or may not have been involved in the untoward event.
- **Staff:** Those who were on duty but not present at the time.
- **Others:** Those who may have relevant information about the case.
- **A Perpetrator/target (if known):** A person(s) whose acts or omissions may have caused or contributed to the untoward event. The investigator should speak with this person after (s)he has spoken with all others, and the discussion is likely to be an interrogation rather than an interview.

“Personal interviews are essential to uncover the facts of any incident or event.”



When determining the sequence of interviews, the investigator should visualize the witnesses as occupying different points on an “expanding circle” of events and circumstance. At the center of the circle are the victim and those nearest to him/her at the time of the untoward event. The investigator should interview these people first, while their recollections are fresh.

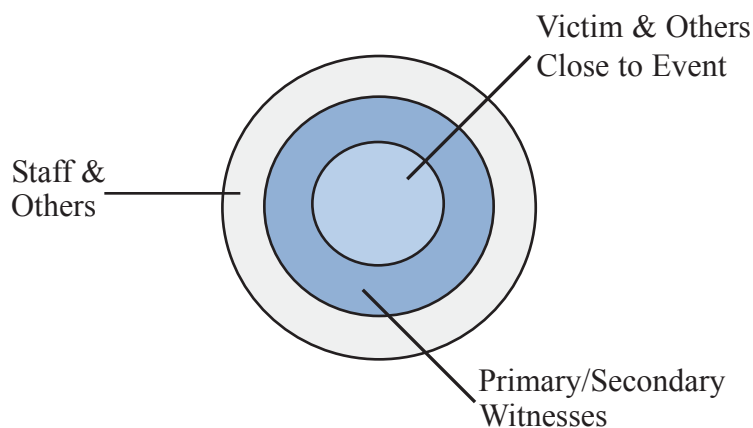
Next, (s)he should interview others who were in the general vicinity at the time of the untoward event, such as a staff person who was near the event site or someone who is known to have been in an adjacent room.

The investigator may also wish to interview people who were not in the immediate area at the time of the incident, but who may have information that supports or refutes specific theories of the case.

#### Examples include:

- Clinical staff having direct knowledge of a consumer’s mental capabilities, physical condition, prior behavior, etc.
- Other supervisory staff familiar with the work records of employees closest to an event.
- Human Resources employees who can provide information and background on all employees involved.

### The Interviewing Circle



“...the investigator should visualize the witnesses as occupying different points on an “expanding circle”...”



## Preparing for Interviews

Once the investigator has categorized the witnesses and decided the sequence of interviews, (s)he must find an appropriate setting and establish objectives for the interviews.

**Interview Location:** Select a site with a relaxed, informal atmosphere that will promote candid, private discussions. An interview should not be disturbed by telephone calls, loud background noise or people coming and going in their normal pursuits. Take the time to locate a private office, unused room or other area that will be free from interruptions. If a discussion is to take place at the scene of an untoward event, make sure that normal activity in or near the area is eliminated or at least curtailed. The investigator should be sure that no other actual or potential witnesses or associated parties will be able to overhear or observe the interview.

### Preparing for successful interviews

- Find a quiet, private location.
- Create a relaxed but professional atmosphere.
- Identify your specific objectives in advance and keep them in mind.
- Have assistance as needed.
- Consider the tools you may need and keeping them at hand such as writing materials, tape recorder or video recorder still camera, etc.

"An interview should not be disturbed by telephone calls, loud background noise or people coming and going in their normal pursuits."



**Interview Objectives:** The investigator should set specific objectives for each discussion based on advance information about the interviewee's connection with the case.

#### For example:

- ✓ Confirming a person's presence at the scene when the untoward event occurred.
- ✓ Confirming or ruling out any possible motive to suppress or distort the facts of a case.
- ✓ Learning about others who were present during the untoward event, or who had an opportunity to observe part or all of it.
- ✓ Learning about eyewitnesses' work records, attitudes and behaviors.

**Interview Assistance:** It is highly recommended to have another management representative present for some, or all, of the witness interviews. This person can assist by taking notes while the investigator concentrates on the witness. In deciding whether or not (s)he needs this assistance, the investigator should use common sense and consider the following guidelines.

- ✓ If the investigator wants a management staff member to attend the interviews, (s)he should first ask the staff member about his or her relationship with each witness. If the investigator detects significant positive or negative bias toward those who will be interviewed, (s)he should choose another representative.
- ✓ If a witness objects to another party's presence and the investigator determines that the grounds for the objection are valid, then (s)he should accommodate the interviewee, preferably by securing another representative with whom the interviewee is comfortable. Some investigators have experienced better interviews by having a management staff person of the gender opposite that of the investigator.

## Conducting the Interview

**The Opening:** The investigator should be aware that the amount of cooperation (s)he receives from the witness is often determined by the attitude the witness forms in the first few minutes of conversation. An investigator should try to create a positive atmosphere from the outset and maintain it throughout the interview.

- The investigator should begin each interview with a cordial, sincere greeting and follow up with his/her full name, job title and organizational unit. Introduce the management representative and explain the reason for his/her presence. Depending on agency policy and the circumstances, it may be advisable to tape-record interviews. If this is to be done, inform the witness beforehand and give him/her a copy after the interview, upon request.

"An investigator should try to create a positive atmosphere from the outset..."



- The investigator should state the following:
  - The investigator represents the Director and has been authorized to investigate an untoward event on his or her behalf.
  - Any information provided will only be shared with management to the extent required for a full and fair investigation.
  - Advise the interviewee that (s)he should refrain from discussing the content of the interview with others.
  - Ask the interviewee to indicate his or her full name, job title, work assignment, length of service, immediate shift supervisor, etc.
- The investigator should attempt to place the interviewee at ease by spending a few moments discussing the person's job and length of service at the agency. Address the situation to be discussed when the interviewee's initial anxiety has subsided.
- The investigator should continue to show interest in an interviewee's personal concerns, without allowing an interviewee's responses to stray significantly from the questions asked.
- The investigator should keep the conversation as informal and relaxed as possible, without becoming overly familiar or personal.
- Maintain good eye contact throughout the interview.
- The investigator should avoid the use of legal or bureaucratic sounding language (e.g., victim, subject, perpetrator, etc.).

### Getting off to a good start

- ✓ Keep the atmosphere informal, but not overly familiar.
- ✓ For the record, establish the identity, role, title, etc. of everyone present.
- ✓ Emphasize the need to maintain confidentiality and that information will be shared only as necessary.
- ✓ Take the time to 'get acquainted' before introducing the reason for the interview.
- ✓ Use "everyday" language and encourage the interviewee to do the same.
- ✓ Above all, collect as much pertinent information as possible and avoid creating an adversarial or stressful atmosphere.

"The investigator should attempt to place the interviewee at ease..."



The investigator should remember that an interview is not an adversarial encounter and that the interviewee can be very helpful in the investigation process. Staff members can become nervous and upset at the thought of being interviewed, and the investigator should behave in ways that will reduce the staff's concerns and discomfort.

## The Discussion

There are two interviewing techniques for exploring an interviewee's knowledge of an untoward event. These are the Free Narrative and Direct Examination. The Free Narrative is the interviewee's description, in his or her own words, of what occurred. A Direct Examination consists of a series of specific questions designed to help the interviewee to relate a complete account of events in an orderly and logical fashion. Both techniques have a place in the interview process and are more fully discussed below.

An investigator needs to learn to be a good listener!

**Free Narrative:** An interview usually begins with the "free narrative" technique. This method is very important in evaluating a witness's credibility. The interviewer gives each witness a frame of reference that includes the dates, times and events of interest to the investigator, and asks each witness to "tell what happened" in his or her own words. The investigator interrupts only when necessary to keep the witness "on track" or to ask that (s)he clarify major details. When a management representative or second investigator is present, (s)he can take extensive notes while the primary investigator focuses on the interviewee. If only one investigator is present, there are two reasons why (s)he should limit note taking to the basic essentials during this phase. First, it is extremely hard to listen and write effectively at the same time, and second, a witness will be more at ease if the investigator's attention is clearly focused on what he or she has to say.

"...an interview is not an adversarial encounter..."



**The investigator should consider the following points during an interview:**

- Everyone reacts differently to emotional and physical stimuli and this can affect the validity of the information they provide.
- Lighting, distance or physical limitations such as impaired sight or hearing may cause a witness to describe or interpret events inaccurately.
- An interviewer must be alert for personal motives that may cause a person to give misleading information.

Direct Examination: Direct examination questioning is designed to reveal who, what, when, where, how and why, the backbone of any investigation. Despite its name and its strategic approach, direct examination is a subtle technique, and the investigator should rely on the following guidelines when using it.

Build a foundation for each area to be explored. For example, the investigator can begin with questions which, when answered, place a witness at the scene of the untoward event, even before asking the witness what he or she saw, heard or did. Questions should move from general to specific points. For example, the progression might be:

**Interview Tip!**

Many times a person remembers an incident more clearly when questions are asked in reverse time. For example:

- What was the last thing you saw?
- Explain the event from when you arrived on the scene - going backwards in time.

1. "Were you on duty at 8:00 p.m.?"
2. "What were you doing at 8:00 p.m.?"
3. "Was anyone else present?"
4. "Who?"
5. "Where was consumer Sally at that time?"
6. "Where was Joan?"
7. "What did you hear?"
8. "What, if anything, did Joan do?"
9. "How did Joan react?"

"Questions should move from general to specific points."



When nearing crucial points in a witness's account, the investigator should ask questions that help a witness paint a detailed word picture of what was seen, heard and done. The investigator literally wants the person to "freeze" events, frame-by-frame, as one might do with a movie projector or video tape recorder.

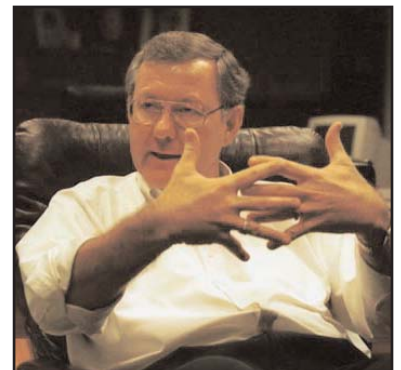
To continue the previous example:

10. "How far away were you?"
11. "How was the lighting in the hallway at that moment?"
12. "Who was present in the dining room?"
13. "What did Joan say?"
14. "When did you move to another area?"
15. "Who was present?"

The investigator should try to judge a witness's ability to recall events and tailor questions accordingly. Most people will not readily remember an event with the level of detail that is being sought. Some will respond readily to the 'refresher' questions outlined above, while others will have difficulty doing so, even if they are doing their best to cooperate. The investigator can help them by identifying points that appear important to the interviewee and frame questions around those points. For example, if a witness recalls that a hallway was "noisy" when (s)he entered, the investigator should ask the witness to focus on what (s)he heard; voices, machinery, music, furniture being moved, etc. These associations may bring out a flow of detail, which the witness mentally "filed away" as "unimportant" at the time. Another good technique is for the interviewer to ask the witness what the last thing is that (s)he remembers seeing or doing, and then lead the witness back to the event by asking questions in reverse order.

The investigator should avoid the use of "leading questions" or those that suggest a specific response. For example, when a witness has not stated that Joan, or anyone, hit the consumer, the investigator should not ask, "How many times did Joan hit the consumer?" The investigator needs to be certain that the information the witness provides is not generated or influenced by what the investigator suggests. The investigator needs to probe, not prompt! A witness's mind has probably recorded a host of visual and verbal data of interest to the investigator. It is the investigator's task to help the witness recall that data completely and express it clearly.

"The investigator needs to probe, not prompt!"



The investigator must also try to separate facts that a witness knows firsthand from conclusions or inferences the witness may make about events or circumstances. In the previous examples, the witness may mix facts, conclusions and inferences in response to the same question sequences. For example:

**Q:** “What did Joan do after Sally called her an ugly slob?”

**A:** “Joan pushed Sally into the wall.” (Direct observation)

**Q:** “After the incident, what did employee Bob do?”

**A:** “He (Bob) called the mid-level supervisor and reported it.”  
(Conclusion)

**Q:** “Did you hear or see him (Bob) make the call?”

**A:** “No, but that's what Bob should have done - that's what we are supposed to do in such cases.” (Inference)

Such inferences and conclusions may be reasonable and are often correct, but they do not meet the strict criteria for factual, “first-hand” information. While the investigator cannot immediately add them to the fact pattern, (s)he should note them for use in future interviews. For example, based on the previous interview, the investigator would follow up with employee Bob directly.

The investigator needs to be wary of quantitative estimates such as time, distance and room sizes offered by a witness. Most people have trouble making these judgments. An effective technique is to verify each response against a known object or quantity. For example:

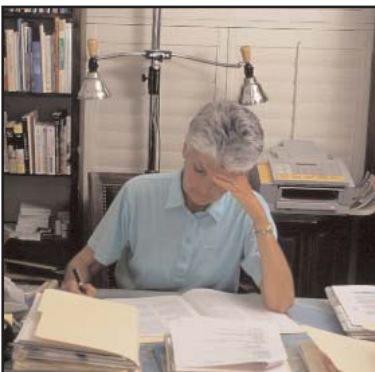
**Q:** “How far were you from Bob Smiley?”

**A:** “About 30 feet.”

**Q:** “Compare the distance with the size of this room.”

**A:** “From me to the wall.”

“The investigator must also try to separate facts...from conclusions or inferences...”



The investigator may find that the actual distance is only half that of a witness's original estimate. The point is that verbal estimates are frequently inaccurate and, if believed without verification, may significantly distort an investigator's perception of events. Every quantitative estimate should be verified as suggested above, and/or by taking a witness back to the scene for a reenactment of where people and objects were placed. The investigator also needs to explore 'physical factors' that may affect a witness's observations. Examples include:

**Eye Sight:** Does a witness wear corrective lenses? Were they in place when he or she observed the event? Does a witness have any other physical limitation such as a hearing impairment or color blindness?

**Lighting:** Was the lighting sufficient for a witness to have seen clearly what he or she is reporting?

**Distances:** Having reviewed a witness's estimate as discussed before, can the investigator rule out or confirm possible distortion of the events reported?

**Obstructions:** Did a witness have a clear, unobstructed view?

### An Overview of The Discussion

**The Free Narrative** - Ask the witness to describe what happened, using his/her own words.

**Direct Examination** - Ask the witness to respond to a series of predetermined, "who, what, where, when, how and why" questions that will produce an orderly account of what happened before, during and after the event.

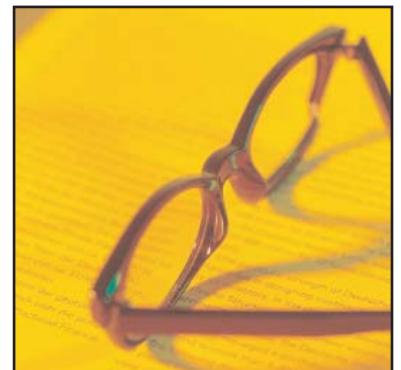
**Probe, Don't Prompt** - Avoid "leading" questions that would influence the witness's response.

**Separate Facts from Inferences and Conclusions** - Recognize the difference among these three types of information and treat them appropriately.

**Verify Quantitative Estimates** - Use comparisons to verify testimony regarding size, distance, time elapsed and other measurements.

**Explore Physical Factors** - Lighting, distance and physical impairments can all affect the accuracy of the testimony.

"The investigator also needs to explore 'physical factors,' which may affect a witness's observations."



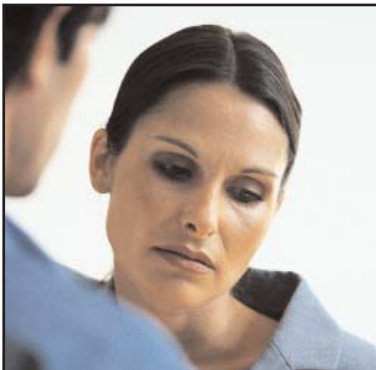
## Special Witness Categories

**Reluctant Witness:** The previous information has focused on the cooperative witness who simply needs help in recalling specific details of an event. The investigator will also encounter one or more witnesses who intentionally ‘evade the issue.’ Their behavior may range from an outright refusal to answer questions to providing vague or conflicting recollections of things they should know. These individuals can be classified as **reluctant witnesses**. The reasons for such behavior could include the following:

- A reluctance to share information about a coworker because of uncertainty about what actions administrators might take based upon the information.
- A belief that it is not appropriate to help management and that investigations are “witch hunts” intended to lay blame for an allegation of abuse on one or more employees, even if no one is guilty of misconduct.
- A witness is friendly with another staff member who (s)he feels may become a target of discipline.
- A witness believes (s)he may be disciplined for causing or contributing to the situation.
- A witness failed to stop or intervene in a particular situation and feels (s)he may become a target of discipline.

The last two conditions can create difficulties for the investigator, as information obtained from such witnesses may place them in a “target” category, thereby changing the interview to an interrogation. More information is provided about interrogations later in this booklet.

“The investigator will also encounter one or more witnesses who intentionally ‘evade the issue.’”



### Working with a Reluctant Witness

- Reassure the witness that you are trying to get the facts of what happened, not to find blame.
- Explain your role as an impartial investigator.
- Ask the person to tell the story in their own words the first time around, without forcing any issues. Ask relevant questions when they are done.
- Help gain cooperation from the witness by being personable and unaggressive. Try to put him/her at ease while remaining professional.
- **DO NOT** put the witness on trial!

'Facilitated Communication' - Can It Produce Evidence? *(abridged)*  
*New York State Commission on Quality Care*

"Facilitated communication" is a method of communication for certain persons with communication disabilities. It was developed by Rosemary Crossley and her colleagues at the Dignity through Education and Language Communication Centre [DEAL] in Melbourne, Australia during the 1970's, initially to assist people with cerebral palsy to communicate.

Communication is accomplished by means of a trained staff person, called a "facilitator," who provides physical support to the disabled person's arm, hand, etc., to enable him or her to achieve sufficient control over movements operating some form of communications equipment. The medium of communication is usually a mechanical device such as a typewriter, computer, or specialized sound-making machine, i.e. a voice-synthesizer. The facilitator is merely supposed to guide, not control or determine, the disabled person's motions, such as by pulling his or her arm, hand, etc. back to center after each selection.

Under the common law, the system inherited by the American judicial system, a non-verbal or mute witness would have been automatically disqualified from giving testimony in a court of law.<sup>(22)</sup> However, this is no longer the rule because it is now accepted that persons who cannot communicate directly to a court, whether due to using a different language or because of a disability, may nevertheless communicate through another person who is a recognized interpreter, translator or facilitator to overcome that communications barrier.

The court must be satisfied on a twofold basis: first, that the facilitator, translator or interpreter is qualified; and second, that the communication or testimony being heard by the court and jury is actually that of the witness alone and not of the witness' assistant nor unduly influenced by the assistance given.

Facilitated communication is undoubtedly a valid practice when the client clearly has the ability to communicate but for the need of such assistance. Two of the decisions discussed above have allowed the trier of fact to view the witness and the facilitator and decide if the witness is actually communicating independently, albeit with some physical or mechanical assistance.

However, for out-of-court statements, where the process cannot be observed directly, courts have been reluctant to admit such statements into evidence without broad scientific evidence.

Thus, it appears that the uses of facilitated communication in court will have to be judged on a case-by-case basis until further knowledge is accumulated.

"The investigator's first responsibility is to learn if the consumer can serve as a principle witness"



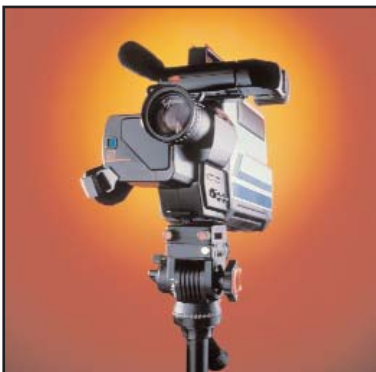
**Consumer Witness:** Often, a consumer will be the only available eyewitness in a case where an employee's acts or omissions may have caused the situation. The investigator may want to interview the consumer/witness at once, but this could be inappropriate. The investigator's first responsibility is to learn if the consumer can serve as a principle witness, based on his/her ability to recall and describe events accurately. When an investigator first gets a report of a consumer-related untoward incident, (s)he should get a determination of the consumer's mental capabilities and communication skills. Ideally, a licensed psychologist or psychiatrist will perform the evaluation, especially if the consumer may later have to provide sworn testimony.

Unless a consumer must receive immediate medical treatment away from the site, (s)he should be retained at the scene until the investigator arrives. Like any other potential witness, a consumer should be separated from others who were involved in or observed the situation. The consumer should be sequestered with a staff person (s)he trusts, in a place where (s)he will feel comfortable. This staff person is not to discuss the situation with the consumer.

**Non-Verbal Consumers:** Do not overlook non-verbal consumers, whether witnesses or victims, as a source of information. Such consumers may be able to communicate by signing, using a communication board or other means. Whether the investigator or another person does the questioning, the investigator should be present to guide the questioning, assess the consumer's demeanor and weigh the value of his/her information.

When interviewing a consumer, the investigator should listen carefully and patiently, recording whatever information the consumer provides. First, ask the consumer to give a 'free narrative,' and describe what happened in his/her own words. Frequently, a consumer will discuss events in the limited context of the environment with which (s)he is familiar. The investigator may wish to have a psychologist or other clinician present to help clarify personal identities and other details. If appropriate, arrange a second interview as soon as is practical, preferably within 24-hours, in order to assess the consistency and continuity of the consumer's testimony.

"It may be prudent to videotape interviews with consumers..."



It may be prudent to videotape interviews with consumers, and the agency should have a policy in place to cover this eventuality. If this is impractical, the interviewer should write or dictate a complete set of notes to document what (s)he learned from the consumer, including significant factors that may relate to

the consumer's credibility or reliability. For example, a statement that the accused employee has been "out to get me" would require corroboration before being accepted as fact. The investigator is not to attempt to have a consumer sign a statement if the consumer is incapable of reading and comprehending such a statement.

Often, a consumer will not know the investigator and it may be necessary to enlist the aid of someone the consumer knows and trusts, who can gain the consumer's cooperation and place him or her at ease. This person, who may be a clinician or other staff person, must understand thoroughly the need for confidentiality, as (s)he will have to be briefed on aspects of the investigation.

**Clinical and Other Staff Witnesses:** Promptly after interviewing a consumer, the investigator should review his/her clinical record and speak with the clinical staff who are responsible for the consumer's care and treatment. This includes the staff member(s) accountable for coordinating the consumer's program plan. The investigator should also interview the staff who regularly attend to the consumer's daily needs, because they will often have the best perspective on the consumer's customary behavior and relationships with other consumers and employees. Areas that the investigator should explore with these clinical and program staff include:

- ✓ Factors that might color the consumer's perception of reality, such as his or her ability to recall events.
- ✓ The consumer's relationships with, and behavior toward, other consumers and staff. Of specific concern are interactions with the person or persons who are, or may become, the target of disciplinary action because of the consumer's accusations and/or other circumstances.
- ✓ Any adverse reports by the consumer about staff or others. For example, has the consumer complained about care or treatment received? Were these complaints investigated? What were the results?
- ✓ Prior instances of injury or abuse to the consumer and/or allegations made by the consumer, including the results of any investigations conducted.

It should be noted that the investigator should obtain assistance from an "objective" or neutral interpreter when interviewing any person who does not speak, read or write English or is significantly hearing impaired.

"The investigator should also interview the staff who regularly attend to the consumer's daily needs..."



**Supervisory Witnesses:** Investigators should talk with supervisors in order to record any information that the supervisor may have about the untoward event. As they do so, they should also become acquainted with the facts and circumstances of the staff's reliability and credibility. The investigator should advise the supervisor that the discussion's primary purpose is to gather facts regarding a situation, not to make judgements about the staff's general performance.

The subsequent supervisory discussion is to cover the following:

- A supervisor's general impression of an employee witness, including overall work performance, reliability and relationships with coworkers. The supervisor can provide information from the employee's prior work performance evaluations.
- An employee's specific responsibilities, job description and training record.
- Relationships between supervisor and staff.
- An employee's relationship, if any, with the consumer(s) and/or other staff involved in the untoward event, including any indication of hostility or bad feelings among them.
- Previous problems in performance and/or conduct, including oral or written counseling delivered by a supervisor and any prior disciplinary action.
- A supervisor's assessment about an employee's general reliability and credibility.

"Investigators should talk with supervisors..."



The investigator must also be aware that past or present supervisory relationships may significantly affect individual loyalties during investigation of a consumer-related untoward event. A supervisor may find it extremely difficult to accept the possibility that a staff member has engaged in such misconduct. Consequently, his or her attitude toward the investigator could vary from full cooperation to open resistance. It may be necessary to remind the supervisor of the agency's absolute obligation to protect the welfare of its consumers and to fully investigate any circumstances that may affect that welfare. The investigator must stress that his or her responsibility is to gather facts for the protection of consumers and staff.

## Overview of Special Witness Characteristics

### Reluctant Witness

- Evasive
- Reluctant to help management
- Fearful of disciplinary action toward themselves or friendly colleagues
- Change from a witness to be interviewed to a target to be interrogated

### Consumer Witness

- May be the only witness available
- Should be sequestered in a comfortable environment in the company of someone (s)he trusts
- Should have a professional evaluation of mental capabilities and communication skills before being interviewed as quickly as possible
- Videotape interviews if possible and document them in writing
- Repeat the interview within 24 hours to assess consistency and credibility
- Do not ask consumers to sign their statements if they cannot read or understand them

### Nonverbal Consumer

- May be able to communicate by sign language or other means
- The investigator should still be present to guide the interview and assess the witness's demeanor and the value of the testimony

### Clinical or Other Staff

- Interview clinical staff who coordinate the consumer's program
- Support staff who oversee daily care
- Any staff members who know about the consumer's relationships with other staff/consumers, particularly those involved in previous adverse reports or complaints by consumer

### Supervisory Witness

- Interview supervisors to collect information from them, not to judge them or their staff
- Center questions on employees' history, reliability and credibility
- Supervisor/staff relationships may influence supervisors' loyalty
- Emphasize that their primary duty is to the agency and its consumers

"Interview clinical staff who coordinate the consumer's program"



## The Interrogation

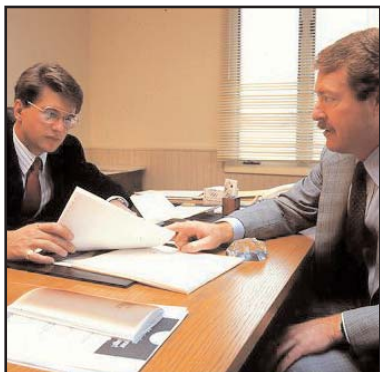
The investigation may reach a point where the available evidence leads him or her to believe that an employee, through his/her actions or failure to act, may be culpable for the event under review. If the investigator has evidence that casts suspicion on a particular employee, (s)he can no longer conduct a simple interview with that employee. Any further discussions between the investigator and the “target” will occur in a more formalized setting called an “interrogation.” If the suspicion is proven, that employee is likely to receive some form of discipline.

The labor unions that represent most public, and many private, provider employees have negotiated contracts that state how management is to deal with employees who are suspected of committing abuse or neglect. The investigator must know and follow the contract provisions at that particular agency in order to avoid mistakes in protocol that could compromise the entire investigation. This resource does not describe the procedures that an investigator should follow since there are so many differences among union/agency contracts. Investigators are encouraged to consult with their agency's Human Resources personnel to ensure that their understanding of interrogation procedures is current and accurate.

### Interrogating the Target

- An interview becomes an interrogation if the facts indicate that a individual’s act or failure to act caused the incident.
- Interrogation procedures must conform to the agency’s policies and those of the agency’s labor union contract if there is one.
- Consult with the agency’s Human Resources personnel to confirm that policies are current and accurate.

“An interview becomes an interrogation if the facts indicate that a individual's act or failure to act caused the incident.”



### III. WRITTEN STATEMENT

#### The Purpose of the Written Statement

A written statement records a witness's observations and actions regarding an untoward event. If taken correctly, such a statement accomplishes the following objectives:

- ✓ It gives each witness a written format in which to review and affirm the details of his/her verbal account.
- ✓ It helps the investigator understand and summarize the facts and circumstances that the witness related.
- ✓ It may be used in a subsequent administrative proceeding to refresh a witness's recollection, to establish the circumstance of an investigation and/or to prevent a witness from recanting his/her account of the situation.

#### Preliminary Written Statement

Upon learning of an allegation of abuse or other untoward event, one of the manager's/administrator's first actions is to obtain written statements from employee witnesses. These preliminary written statements represent the manager's sincere effort to obtain information at the earliest possible time, when employees' memories are at their best. Often, the manager/administrator does not attempt to evaluate these preliminary written statements, but just collects and gives them to the assigned investigator. The investigator must consider the thoroughness and quality of these preliminary written statements, as the investigator will proceed based, in part, on the information they contain.

Each state, agency and investigator may use a different format for employee statements. To improve consistency in collecting and presenting information, some agencies have developed standard, pre-printed forms. These forms contain pre-lined spaces for the basic data (e.g., name, title, shift, location, date prepared, etc.) and some of the basic examination questions of who, what, when, where, why and how.

"...the supervisor's first action is to obtain written statements from employee witnesses."



Agencies that use these standard forms have indicated that their preliminary written statements are far more informative than statements prepared without the benefit of standard forms. Apart from promoting consistency in collecting information, standardized forms offer the additional advantage of allowing margins on all four sides of the paper. These margins prevent portions from being cut off or deleted when statements are copied or faxed.

### Completed Written Statement

The investigator should write a complete statement of the interview after (s)he has thoroughly explored the witness's verbal account. This statement should contain all of the relevant information the investigator has obtained from the interviewee. The investigator's completed written statement will have more information in it than the witness's preliminary written statement since the investigator will write after (s)he has read the preliminary statement and interviewed the witness.

#### Techniques Used When Obtaining Written Statements

Investigators can use one of two basic techniques when taking written statements. These differ only in who physically writes the statement, the investigator or the witness. During the interview, the investigator should make brief notes on the information the witness discloses. At the conclusion of the interview, the investigator will either:

1. Write complete sentences which will become the witness's statement, or
2. Repeat the witness's words to the witness and have him/her write those words in the sentence form. This will become the written statement.

In either case, statements should always be written in the witness's words.

"Encourage the witness to talk in his or her own words."



### The Use of Witness's Vocabulary/Language

Encourage the witness to talk in his or her own words. This will establish that (s)he is familiar with an event and is not simply responding to questions. Use the witness's grammar and vocabulary. A written statement is more credible, and can be given greater evidentiary weight, if its language and style are those normally used by the person who makes it. Using the witness's language also eliminates grounds for a later claim that (s)he did not understand portions of the written statement.

Prepare the statement using the first person pronoun (“I”), because it is the witness’s first-hand account of an untoward event. Before transcribing the information to a prose format, the investigator should carefully review with a witness the facts and circumstances the witness has given orally. This will reduce the need for corrections and changes as the writing proceeds. The statement should respond to the essential questions of who, what, when, where, why and how. It is imperative that the written statement includes all of the details of the witness's oral recollections.

Under ideal conditions and with unlimited resources, the written statement will be prepared and typed after the interview so that both the interviewee and the investigator can sign it. It should be typed double-spaced so it will be easy to insert corrections. The interviewee can correct and initial typographical errors.

#### Crucial Tip!

When all corrections have been made, ask the witness to **sign** the last page, noting the date and time of signature. In case of a multi-page document, the witness should sign the bottom of each page. This will establish that there were no page substitutions after the document was signed. The investigator should also sign the statement and include the date and time of his or her signature. Whether the statement is typed or handwritten, the investigator should retain the signed original, and give the interviewee a copy on request.

### Format of the Written Statement

Include the following information in the heading:

- The witness’s name and relationship to the agency (e.g., employee, consumer, visitor, etc.).
- The location, date and time of preparation.
- For employees, include job title, shift, work location and immediate supervisor.
- For consumers, include residence. Prepare consumer written statements only for consumers who can read and comprehend such a statement.
- For persons who are neither consumer nor staff, include place of employment and relationship, if any, to the consumer.

“The statement should respond to the essential questions of who, what, when, where, why and how.”



## IV. INVESTIGATIVE REPORT WRITING

The Investigative Report is the primary vehicle by which all of the information obtained during the investigation is shared with agency management and other oversight or regulatory agencies. Investigators should never forget that the best investigation is useless if the written report is unclear or does not contain comprehensive and accurate information.

State and private agencies depend on clear, comprehensive and accurate reports so that they can determine an appropriate course of action. To serve that purpose, the investigative report should do the following:

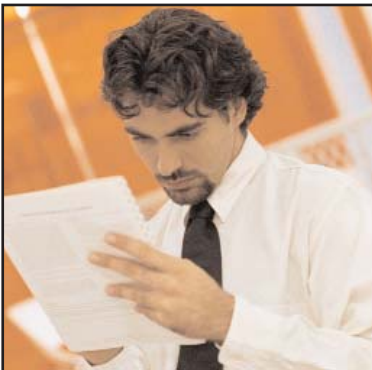
- Advise agency management of what actually occurred with respect to the untoward event, as best as can be determined through the investigation.
- Provide management with a basis for informed decisions, both short and long-term, with respect to personnel or other factors.
- Recommend appropriate corrective actions, which would prevent future similar occurrences.

### New York State Commission on Quality Care - Case Study # 19

#### *When Investigations Miss the Basic Facts*

Alanis Petty had been in the psychiatric unit of a local hospital for one week; her diagnoses were R/O depression and R/O bipolar, and Ms. Petty had ruled out using psychotropic medications for her mental illness because she was concerned about the impact on her pregnancy. She had participated in several off-unit outings; however, her psychiatrist did not believe she should be allowed unescorted passes. One week into her stay, she eloped when a staffperson left her and another patient alone in front of the building elevator while he went to look for the other staffperson. Several hours later, at the age of 35 and 7 1/2 months pregnant, she walked from the passenger waiting area of a Long Island railroad station and lay down in the path of an oncoming train. She died instantly, and the fetus could not be saved. Based on eyewitness accounts, the death was clearly a suicide. The hospital's review of the incident determined that Ms. Petty eloped when she got ahead of the group, but received adequate care, even though the events leading up to her death, specifically being unsupervised for a period of time, were well documented in staff statements.

“Investigators should never forget that the best investigation is useless if the written report is unclear...”



## The Lesson

In its review of the incident, the facility looked at a number of critical clinical issues; however, the facility failed to examine some practical questions such as how did Ms. Petty leave, why was she left alone, and what steps need to be incorporated for supervision during outings. It took an external review (CQCs) to make the facility see that they missed the basic facts. Facilities' quality assurance mechanisms need to be eye-opening vehicles so administrators can provide staff with policy guidance to prevent mishaps. In the case of Ms. Petty, the facility revised its policies so now physicians indicate the level of supervision patients need when participating in off-ward activities, all equipment and staff required for an outing are assembled on the unit prior to leaving, and staff now know what to do when faced with supervision issues.

## Types of Reports

Investigative findings will generally be presented as follows:

**Oral Reports:** These reports occur throughout the investigation. The investigator uses them to keep the Director or designee up-to-date on any findings that require a management decision or action. Examples include:

- Identification of any condition adversely affecting the welfare or safety of consumers.
- Identification of a person or persons strongly suspected of consumer abuse or involvement in a consumer-related untoward event.

**Interim Written Status Report:** These occur on an “as needed” basis.

During the course of an extensive investigation, it is advisable to commit the findings to writing on a regular basis such as weekly or bimonthly. Interim reports serve three purposes:

- They provide agency management with chronological updates on the investigation’s progress.
- They offer the investigator a solid foundation on which to base the final written report.
- They can also make it easier for agencies to meet certain regulatory requirements. For example, some states require agencies to provide them with monthly reports on the status/results of investigations into serious reportable incidents or allegations of abuse.

“Assessing the potential for and preventing dangerous behavior is one of the most serious tasks confronted by clinicians”



**Final Written Report:** The final written report must serve as the investigator's formal record of his/her methodology, findings, conclusions and recommendations. As such, it must be a comprehensive history of the completed investigation.

### **Format of a Written Investigation Report**

While there is no universal design for investigation reports, the following format is suggested for a final investigation report.

**Issue/Event/Incident/Allegation:** This section should include a brief statement of the event under investigation and a summary of the factor(s) that may have caused or contributed to it.

**Background/History:** In this section, give the description and general background of each consumer, staff person or other principle involved in the investigation. Include enough information to give a reader who is unfamiliar with the individuals a thumbnail sketch of each one.

**Investigative Process or Protocol:** The investigator will use this section to describe the investigation process (s)he followed and list the name and title of every person (s)he interviewed/interrogated and the dates of all discussions. (S)he will also list any records/documents reviewed and any physical evidence examined.

**Factual Findings:** The investigator will provide a chronological summary of all the facts (s)he discovered during the course of the investigation. This section represents the "meat" of the investigation and is often written in a brief, numbered or bulleted fashion. Investigators indicate that this is the easiest and most organized way to write, and readers find it easier to follow than lengthy paragraphs.

**Conclusions:** Investigators should base their conclusions on the Factual Findings section of the report. The ideal report will answer any outstanding questions, particularly about the "who, what, when, where, how and why" of the untoward event.

**Recommendations:** Any recommendations should be presented in a broad, rather than specific, manner. For example, "Seek appropriate administrative action for the infractions committed by employee Johnson," is better than "Employee Johnson should be fired." As another example, "Agency should change bed

"The final written report...must be a comprehensive history of the completed investigation."



check frequency from current 60 minute to 30 minute intervals,” is usually not as suitable as, “Agency should review policies regarding the maximum time intervals between bed checks.”

### Maintenance of Investigation Reports

It is important to remember that confidentiality is of paramount importance in each investigation. All materials related to an investigation report (witnesses’ statements, physical evidence, pictures and diagrams, etc.) are to be maintained in a private and secure place. A locked file cabinet would meet this requirement. Please refer to your state’s requirements for the length of time and any other special provisions regarding the retention of investigation reports and related confidential documents.

#### New York State Commission on Quality Care Case Study # 26

*In the Matter of Lester Banks: A Recreational Accident*

When 50 year-old Joan Stalker died in her family care home, it was initially reported that she had suffered a massive heart attack. Upon autopsy, however, it was discovered that she had serious underlying medical conditions which may have been neglected; she also had numerous bruises suggestive of physical abuse. This was not the first time abuse was suspected in the home where Ms. Stalker lived. Nearly two months before Ms. Stalker's death, another resident of the home claimed she was abused by her care provider, prompting an investigation by the state agency which certified the home. The investigation results, which indicated misconduct, however, were not shared with the agency sponsoring the home until three months after Ms. Stalker's death, and offered too little, too late.

#### The Lesson

All certified service agencies have an obligation to protect their charges from harm; a viable incident reporting and investigation system is but one vehicle to fulfilling this obligation. For Ms. Stalker, the incident reporting and investigation system offered too little too late. By the time her sponsoring agency was informed that months earlier the care provider may have caused injury to another client, failed to report the injury and neglected to care for the injury, Ms. Stalker was already dead, a victim of possible abuse and medical neglect.

“Any recommendations should be presented in a broad, rather than specific, manner.”



## V. LIABILITY CONCERNS

Even an agency that meets the highest standards in conducting its investigation may find itself defending against a legal action related to an untoward event. The plaintiffs who file such suits usually claim that the agency failed to meet a certain standard or fulfill a duty, and thereby caused or failed to prevent the untoward event. Here are common mistakes that providers make when dealing with incidents. These behaviors consistently crop up to support plaintiffs' arguments and help them win lawsuits against provider agencies.

### 1. Not Reporting in a Timely Fashion

Any event or situation that endangers, or has the potential to endanger, a person's well-being or safety must be reported to the program administrator immediately upon discovery. All staff is responsible for doing so. With prompt notice, the governing body, executive, administrators, medical staff and supervisors can take corrective measures and reduce the chances of recurrence. Neglect is often charged for failure to act in a timely manner. It is crucial that staff can demonstrate that they reported any incident promptly, and that administrators, or other appropriate authority, took immediate corrective action, took steps to prevent recurrence, and investigated the incident. The health, welfare and safety of people served are always of utmost concern, and an investigation is an occasion to review and amend policies and procedures that safeguard them.

### 2. Going Against Written Policies and Procedures

Policies and procedures should be reviewed annually by all staff. Agencies usually have written plans and/or procedures on how to care for consumers, investigate incidents and handle problem employees, etc. These written plans and procedures are important because your actions will be reviewed based on them. If an agency's written procedures call for staff to contact a doctor in a particular instance and a staff member contacts a staff nurse, (s)he has just violated agency procedures. If the consumer dies in the hands of the nurse, the plaintiff will allege it was because the agency did not contact a doctor, and (s)he will have those policies and procedures as proof that the agency is negligent.

"All materials related to an investigation report are to be maintained in a private and secure place."



### 3. Admitting to Liability in an Incident Report

Supervisors know their staff well, and understand that they feel and voice a certain amount of guilt, remorse and concern whenever a consumer is injured while receiving supports and services. For instance, when a consumer gets injured, an employee may say, “Oh, it is my fault, I should have/could have done something differently.” In the context of a lawsuit, these statements will be considered admissions against interest and could be used to develop theories of liability against an agency whether it was really at fault or not. While it is important to decipher what caused the incident, it is not necessary to admit liability for it. There is a distinct legal difference between being sensitive to consumer injury and admitting to negligent acts. Encourage accurate reporting of the facts. Only after the incident investigation will all the facts be examined and a corrective action determined.

### 4. Manipulating, Fixing or Adding to Existing Records

Altering records is never a good idea! For example, an employee forgets to fill something in and adds it after the incident, or someone adds a fact to make the file clearer. Unfortunately, any file that has been manipulated is rendered useless by the courts. The perception is that any changes could be a cover-up for a wrongdoing. Most attorneys recommend that the records not be touched at all. Existing and untouched documents are most effective for minimizing liability.

If changes must be made to a file after an incident, never delete or tamper with the original information. Make additions or corrections on a separate piece of paper. They should be highlighted as amendments, dated and signed.

### 5. Formulating Opinions Without all the Facts

The main purpose of an incident review and investigation is to gather facts. The goal is to identify the cause of the incident so that management can take steps to prevent further incidents. Those closest to the incident, whether they are direct care staff, new employees or supervisors, can do the initial gathering. They must record the facts as quickly and clearly as possible.

“Neglect is often charged for failure to act in a timely manner.”



## 6. Failing to Investigate

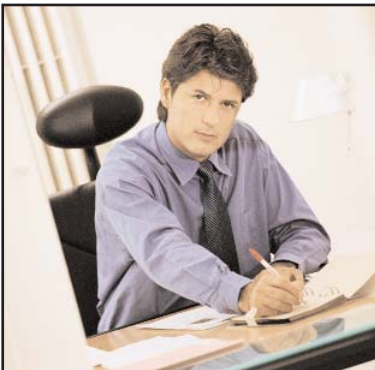
Not investigating reported problems is a clear path to an allegation of negligence. If an individual is found with bruises on repeated occasions and an investigation is not done and documented, this could easily be cause for a claim of negligence. Good judgement and complete investigations of incidents are required to address incidents in a timely manner. No incident is too small to investigate; investigation of minor incidents can prevent larger ones.

Reaching of conclusions and forming opinions, however, should be reserved for supervisors and trained investigators. Again, it goes back to the strength of documentation. Suppose, for example, one of your consumers had a history of self-abuse and inflicted injuries on himself. A poorly trained investigator might well explore the cause of the injuries and document a conclusion that a staff member abused the consumer. You would not want that inaccurate report to become a matter of record that would most certainly be used against you in a court of law.

### What Lessons Can Be Learned from Incident Investigations

1. Treatment Plans: Ability to foresee possible incidents and the knowledge of how to manage future incidents.
2. Staff Training and Hiring Practices: Reinforcement of the importance of background checks and risk assessments. Training of de-escalation techniques to help eliminate restraints.
3. Quality Assessment Team: Development of a team of trained individuals who can maintain the highest levels of quality within the organization.
4. Communication: Fostering internal and external communication can help reduce impact of incidents if, and when, they occur.
5. Consumer/Client Feedback: Analysis of feedback can be used to help reduce the risk of incidents in the future.

“Encourage accurate reporting of the facts.”



## VI. SUMMARY

The task of providing services to people with mental or physical disabilities or addictions is a very serious and difficult assignment. There are oversight agencies whose laws, regulations and standards impose demands for compliance on providers at every twist and turn. Just as solemn is every provider's duty to deliver the highest standards of care. Among many competent, dedicated staff are some who do not belong in the field of delivering services to the clients/ consumers you support. Despite all of the rules, regulations, policies, procedures, staff orientation efforts and inservice training intended to protect staff and customers, untoward events can occur.

Every agency has a perennial responsibility to learn from these events in order to prevent similar occurrences in the future. The best-known way to meet that obligation is to understand the conditions that spawned the event. The investigation process exposes that information and the corrective actions that will reduce the chance of a repeat occurrence. This booklet was prepared to assist you in conducting successful investigations that reveal both causes and deterrents.

“Not investigating reported problems is a clear path to an allegation of negligence.”



## ABOUT IRWIN SIEGEL AGENCY, INC.

The Irwin Siegel Agency, Inc. (ISA) has been developing comprehensive insurance products and safety supports for agencies within the Human Service field for over 30 years. Our allegiance to the Human Service field has carried us beyond typical insurance and risk management services to the highest level of mission-focused specialization. The ISA team shares a commitment to improve the quality of life for people living with mental and physical disabilities or addictions.

We are actively involved with provider and national associations, such as AAMR, UCP, ANCOR, IAPSRs, NAATP and the National Safety Council (NSC), and have been chosen to represent the interests of the developmentally disabled on the National Safety Council Board of Directors. ISA has received many awards such as the NSC “Distinguished Service to Safety Award.” We also sponsor numerous awards including the United Cerebral Palsy (UCP) “Commitment to Quality Award,” the American Association on Mental Retardation’s (AAMR) “Robert Guthrie Award for Advances in Biochemical and Molecular Genetics,” the NAATP’s “American College of Addiction Treatment Administrators Award” and the NSC “Award for the Improvement in the Quality of Life for People with Disabilities.”

The Irwin Siegel Agency, Inc. would like to thank Nicholas Constantino for contributing so much to this piece. Mr. Constantino is the Executive Director of Administrative and Investigative Services. He has extensive experience in the field of mental retardation and developmental disabilities from a 24-year career with the New York State Office of Mental Retardation and Developmental Disabilities. He was Executive Director of New York State Developmental Disabilities Council for five years and was Director, Office of Internal Affairs for 10 years.

Information contained in this publication has been obtained from sources believed to be reliable. The Irwin Siegel Agency assumes no responsibility for the accuracy or completeness of the information and recommendations. If you would like additional information, please contact our Risk Management Department at 800-622-8272 or by email at [siegel@siegelagency.com](mailto:siegel@siegelagency.com). You can also visit ISA at [www.siegelagency.com](http://www.siegelagency.com).



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