

What should I do if I suspect elder abuse?

If your client's situation falls into one of the categories outlined previously, you may assist your client in contacting the police or Adult Protective Services. You can also contact the District Attorney's office to inquire about a potential criminal prosecution. Many communities have programs that include supportive services for older adults, and a growing number in New York State have local elder abuse agencies that can assist in individual cases. Additionally, the Weinberg Center for Elder Justice is always available as a resource for attorneys. While there is no universal method for addressing a situation of suspected elder abuse, an attorney is always under an ethical obligation not to perform services that will perpetuate a pattern of abuse. See 22 NYCRR Part 1200 §1.1(c)(2).

Does disclosure of elder abuse to a third party violate attorney/client privilege?

It may not. If the client 1) is at risk of "substantial physical, financial or other harm" 2) is unable to act in his own interest and 3) the attorney believes the client to have diminished capacity, Rule 1.14(b) of the New York Rules of Professional Conduct permits the attorney to take "reasonably necessary protective action." Furthermore, an attorney may always reveal confidential information gained during or related to the representation of a client to the extent he believes "reasonably necessary to prevent reasonably certain death or substantial bodily harm." See 22 NYCRR Part 1200 §1.6(b)(1).

You may be the critical first step toward help for a client in a potentially life-threatening situation.

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The Harry and Jeanette
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AT THE HEBREW HOME AT RIVERDALE

Attorneys and Elder Abuse Prevention

FREQUENTLY ASKED QUESTIONS

What is elder abuse?

According to the Centers for Disease Control and Prevention, elder abuse is an intentional act or failure to act by a caregiver or another person in a relationship involving an expectation of trust that causes or creates a risk of harm to an older adult. In New York, there is no authoritative legal definition of elder abuse.

How prevalent is elder abuse?

Elder abuse is a widespread, growing phenomenon and attorneys like you are effectively positioned to identify, address and remedy incidents of elder abuse within your pool of clients or potential clients. According to the 2011 *Under the Radar: New York State Elder Abuse Prevalence Study*, 14% of all older adults in New York State have experienced some form of elder abuse since turning 60. Yet, for every elder abuse incident documented by law enforcement or social service agencies, nearly 24 go unreported. Nationwide, elder financial abuse results in an annual financial loss to victims of \$36.48 billion, according to a 2015 study by TrueLink Financial.

Why is elder abuse difficult to identify?

A pattern of abuse often includes physical and social isolation of people who experience abuse and therefore usually takes place without witnesses and goes unnoticed. Some people who experience elder abuse are unable to speak out due to dementia or other impairments, and may not be believed if they do. Moreover, many older adults are reluctant to report abuse because they may:

- Feel ashamed and embarrassed, particularly if a family member is committing the abuse
- Be afraid that the person committing the abuse will get “in trouble”
- Worry that they will be forced to live in a nursing home
- Feel guilty or that they are to blame
- Be in denial that abuse is occurring, or unaware that what is happening constitutes abuse or neglect
- Be afraid that the abuse will get worse if they report

Is anyone mandated to report elder abuse?

No. New York is the only state with NO mandatory reporting of elder abuse. All disclosure of abuse to the police or law enforcement, Adult Protective Services and other government agencies is strictly voluntary. This fact speaks to the need for legal professionals and advocates to exercise proactive vigilance when they suspect elder abuse. Adult Protective Service officials are mandated to report to law enforcement if they have “reason to believe that a criminal offense has been committed” against any of their clients. See N.Y. Soc. Serv. Law, Art. 9B, §473(5).

How do you know if your client is experiencing elder abuse?

Indicators of abuse include:

- Social and physical isolation
 - Family members or caregivers restrict the older adult’s contact with others
 - Older adult is not given the opportunity to speak with others without the family member or caregiver present
- Unexplained injuries
- Unkempt or dirty appearance
- Agitation, trembling, confusion and/or disorientation
- Confusion about finances and transactions
- Emotional distress like crying and/or depression
- Withdrawn or flat/unemotional affect

Should I raise the subject of elder abuse with my client?

Yes. Speak with the client alone, away from any friends, relatives or caregivers who may have accompanied the client to your office. Attempt to make your client comfortable. Try to ensure that your client has the appropriate glasses, hearing aids or other assistance needed to participate fully in a conversation, as sensory impairments can often be a barrier to meaningful dialogue. Ask questions about the aspects of the client’s situation that are troubling to you, beginning with less invasive, less threatening topics and language. For example, you might consider using the term “mistreatment” instead of “abuse”. Remember that your client may react with some degree of fear, shame or shock. Develop a plan for your client to contact you independently for follow up. Be sure to follow up if you say you will. Consider integrating some questions that screen for elder abuse in your standard intake process.

Are there certain types of documentary evidence that indicate financial abuse/exploitation?

Yes. Such evidence may include:

- Activity deviating from usual banking patterns
- Requests for additional ATM cards or first time use of ATM card
- Opening a joint account, changing power of attorney, changing account beneficiary, or opening inappropriate investments
- Sudden property transfers or changes to will or other estate planning documents
- New authorized signers on signature cards
- Mail redirected to a new address
- Checks written out of numerical order
- Flurry of bounced checks/overdraft fees or low balances
- Large withdrawals from previously inactive accounts
- Frivolous or baseless guardianship petition