

# Elder Abuse: An FAQ for Attorneys

In recognition of World Elder Abuse Awareness Day, the Elder Abuse Committee of the Elder Law Section of the New York State Bar Association has created an FAQ about elder abuse tailored specifically for attorneys. Elder abuse is a widespread, growing problem and attorneys like you are effectively positioned to identify, address and remedy incidents of elder abuse within your pool of clients and potential clients.

The committee's goal is to increase legal practitioners' proactive and informed responses to elder abuse through substantive educational programming, resource creation and distribution, and community building.

## **What is elder abuse?**

Elder abuse is an action or lack of appropriate actions, which causes harm, risk of harm, or distress to an individual 60 years or older and occurs:

- a) within any relationship where there is an expectation of trust; or
- b) when the targeted act is directed towards an elder person by virtue of age or disabilities.

Elder abuse can be intentional or unintentional, can take various forms, and includes but is not limited to emotional, physical, sexual or financial abuse, neglect and abandonment.

## **How do you know if your client is the victim of elder abuse?**

Indicators of abuse you may encounter in your elderly clients 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- Withdrawn or flat/unemotional affect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 or relatives 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.

## **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
- A frivolous or baseless guardianship petition

## **Is anyone mandated to report elder abuse?**

No. New York is one of only three states 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).

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

It may not. If **1)** the client 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.”

## What should I do if I suspect elder abuse?

If your client's situation falls into one of the categories outlined in the previous answer, you may contact 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 Abuse Prevention 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)(2009).

## How prevalent is elder abuse?

According to *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 New York State government agencies, there are nearly 24 that go unreported. Nationwide, elder financial abuse results in a national annual financial loss to victims of \$2.9 billion.

## Why is elder abuse difficult to identify?

Because a pattern of abuse often includes physical and social isolation of victims and therefore usually takes place without witnesses, elder abuse often goes unnoticed. Moreover, some victims are unable to speak out due to dementia or other impairments, and may not be believed if they do. Moreover, many victims are reluctant to report abuse because they may:

- Feel ashamed and embarrassed, particularly if a family member is the abuser
- Be afraid that the abuser 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 it.

*A publication of the Elder Abuse Committee of the Elder Law Section  
of the New York State Bar Association*

*For more information about the Elder Abuse Committee,  
please contact Joy Solomon, Esq. at [jsolomon@hebrewhome.org](mailto:jsolomon@hebrewhome.org)*