

QUESTIONS OF CONFIDENTIALITY

1. You are contacted by a neighboring Children and Youth agency. They request information about Mr. Liable. He is the grandfather of 2 children taken into custody by their agency, and he has requested consideration as a possible placement resource. During their interview with him, he mentions that he used to live in your county, and that years ago he had some involvement with Children and Youth. He minimizes the involvement explaining that he was accused of physically abusing his daughter, but the charges were later “unfounded”. The daughter is the mother of the 2 grandchildren in question.

You find a closed record concerning Mr. Liable in the fileroom. There is an old case naming him as an Indicated perpetrator of abuse. You complete a review of the record and send a brief summary as requested by the neighboring county.

Several weeks later Mr. Liable appears at the office. He shows you an old letter from Childline stating that all records will be expunged since his daughter has reached the age of 18. You review the file more closely and realize your agency’s record should have been expunged several years ago. Someone missed it, and you did not notice the oversight when you reviewed the file. Mr. Liable is very angry, and states he was unable to obtain custody of his grandchildren because of the information you provided to the neighboring county. He is demanding to know how we sent information when his letter from Childline states that the records would be destroyed!

- Did the agency violate Mr. Liable’s confidentiality?
- How would you proceed in this situation?
- Where are the guidelines for releasing child abuse records to other Children and Youth agencies? For expunging child abuse records?

*Notes:

2. A Family Court Judge contacts your office and requests to review one of the agency’s files. The family’s name is provided, and the Judge explains that a staff member will be sent to pick up the record. The case involves a report of suspected child sexual abuse which the agency has filed as an unfounded case with Childline. The Judge explains that someone approached him after he did a speaking engagement and complained about the case. They were extremely upset about the agency’s decision to unfound the report. He wants to review the work the agency did on the case. There has been a strained relationship between this Judge and the agency.

- Do you release the file to the Judge? Why or why not?
- How would you proceed in this situation?
- Where are the guidelines for releasing child abuse information to the courts?

*Notes:

3. A person walks in to your office and claims to be an investigator for the Sexual Offender Assessment Board. He states that the board is conducting an assessment to determine whether an incarcerated individual is a “sexually violent predator”. He believes the individual was involved with Children and Youth Services as a child and requests to review the agency’s file. A closed file is located.
 - How do you verify that he is an investigator for the board?
 - Do you permit him to review the file? Why or why not?
 - Where are the guidelines for releasing information in this situation?

Notes:

4. A dependency hearing was held in which a father was found to be a perpetrator of physical abuse. Criminal charges were also filed for the abuse. As part of the Children & Youth case, father participated in a psychological evaluation and ongoing therapy during which he made certain admissions about the abuse. The District Attorney’s office requested copies of all agency records to assist in their preparation for prosecuting the case.
 - Do you release records to the DA’s office? Which ones?
 - Where are the guidelines for releasing information to law enforcement?

Notes:

Discussion “Key” to Questions of Confidentiality

1. Section 6340(a)(1) of the Child Protective Services Law authorizes release of child abuse records to another children and youth agency. Although the worker was permitted to release the records to the neighboring agency, *there should not have been any records on file due to the expungement notice*. The only recourse was to apologize to the client, explain that an oversight had occurred, and that the records would be expunged immediately. The agency had definitely violated the client’s confidentiality. Section 6338(b) of the Child Protective Services Law provides general guidelines for expunging child abuse records. There is further clarification in Section 3490.39 of Chapter 3490, Child Protective Services Regulations.
2. Guidelines for releasing child abuse information to the Courts is provided in Section 6340(a)(5) and (5.1) of the Child Protective Services Law. There is further clarification in Section 3490.91(a)(5) and (5)(i) of Chapter 3490, Child Protective Services Regulations. In this situation the record should *not* be handed over to the Judge unless a Court Order is provided. Even if a court order is provided consultation should first be made with your agency solicitor. There was no criminal court action or custody court action occurring. The agency had not filed court action since there were no dependency allegations. The case involved allegations of sexual abuse by a father with his 3 year old daughter. The child was living with her mother who was protective. This is a sensitive situation due to the strained relationship with the Judge. The agency solicitor should be consulted and used as an intermediary to resolve the situation. The Judge must be cautious about “*ex-parte*” communications in the event the case ever comes before him/her.
3. The Sexual Offender Assessment Board is required by Megan’s Law. Children, Youth & Families Bulletin #00-97-11, *Megan’s Law – Providing Information Regarding Sexually Violent Offenders, Releasing Case Record Information*, provides guidelines for releasing information under Megan’s Law. Although the actual bulletin is not provide as a handout, it is listed in Handout #34, The 1999 Annual Bulletin Update. The agency has a right to ask for a copy of the court order directing the board to conduct an assessment. The person requesting the information should also identify himself/herself by presenting a letter on the board’s letterhead along with a photo ID and badge.
4. Releasing records to law enforcement officials is addressed in Sections 6340(a)(9) and (10) of the Child Protective Services Law, and Sections 3490.91(a)(9) and (10) of Chapter 3490 Regulations, Child Protective Services. Basically, records obtained during the investigation phase can be released to Law Enforcement. An issue arises when the adjudication phase is complete and the treatment phase begins. If an independent patient-client relationship exists during treatment, and the subject is not aware that admissions he makes may be used against him, treatment records may not be released for use in a criminal proceeding.