

**AMENDED AND RESTATED AGREEMENT
BETWEEN THE CITY OF SAN JOSE AND
THE CALIFORNIA DEPARTMENT OF DEVELOPMENTAL SERVICES
REGARDING INVESTIGATION OF CASES OF RESIDENT DEATH, SERIOUS
INJURY OF UNKNOWN ORIGIN, AND ALLEGATIONS OF ABUSE OF A
CRIMINAL NATURE**

THIS AMENDED AND RESTATED AGREEMENT is made and entered into this 23rd day of April 2002, by and between the CITY OF SAN JOSE, a municipal corporation (hereinafter "CITY"), and the CALIFORNIA DEPARTMENT OF DEVELOPMENTAL SERVICES, a Department of the State of California (hereinafter "DDS").

RECITALS

WHEREAS, Agnews Developmental Center, which is located at 3500 Zanker Road, San Jose, is under the primary jurisdiction of California Department of Developmental Services whose officers derive their authority from California Penal Code Section 830.3(h) and 830.38; and

WHEREAS, DDS is responsible for processing, investigating and prosecuting all crimes committed on the DDS Developmental Center property; and

WHEREAS, California Welfare & Institutions Code Section 4427.5 states in part: A developmental center shall immediately report all resident deaths, serious injuries of unknown origin, and allegations of suspected or known abuse of a criminal nature (hereinafter referred to as "allegations of abuse of a criminal nature") to the appropriate law enforcement agency that may, at its discretion, conduct an independent investigation; and

WHEREAS, the purpose of this AMENDED AND RESTATED AGREEMENT is to establish a reporting process to implement this legislation; and

Agreement between CITY and DDS
Re: Investigation of Resident Deaths and Serious Injuries

WHEREAS, CITY entered into an agreement with Agnews Developmental Center on February 8, 2002 covering the same subject matter as this AMENDED AND RESTATED AGREEMENT and the CITY and DDS wish to enter into an AMENDED AND RESTATED AGREEMENT that will amend the original agreement to modify the term "injuries of unknown origin" to "serious injuries of unknown origin," to add the reporting and investigation of allegations of abuse of a criminal nature of residents, and to substitute DDS for Agnews Developmental Center as the contracting party on behalf of the State of California;

NOW THEREFORE, the parties hereby agree as follows:

1. The term of this AMENDED AND RESTATED AGREEMENT commences on the date of its execution by both parties. It shall remain in effect either until such time as the law requiring these notifications may be modified or repealed or until such time as the agreement is either terminated or amended in accordance with Paragraph 13.
2. DDS will report all deaths, serious injuries of an unknown origin, and allegations of abuse of a criminal nature at Agnews Developmental Center to the San Jose Police Department by telephone notice to the San Jose Police Communications Center immediately after DDS staff has determined that a resident has died or that a resident has suffered a serious injury of unknown origin. The San Jose Police Communications Center can be reached by dialing 9-1-1 in emergency situations or 3-1-1 in non-emergency situations.
3. In addition, in the event of a serious injury to a resident at Agnews Developmental Center, where the cause of injury is known and a criminal felony by staff has or probably has occurred, DDS shall immediately notify the San Jose Police Communications Center.

Agreement between CITY and DDS
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4. It is the responsibility of DDS staff at Agnews Developmental Center to provide the San Jose Police Communications Center with information sufficient for the District Supervisor and or the Area Commander to determine the type of response the Police Department will make to the call.
5. DDS staff at Agnews Developmental Center shall provide to the San Jose Police Department all Developmental Services "Crime/Incident Reports" (to include any supplemental reports that are completed at a later time) regarding any death or serious injury of unknown origin, or allegations of abuse of a criminal nature that is the subject of this AMENDED AND RESTATED AGREEMENT immediately after completion and review by the CENTER. Reports will be mailed to:

San Jose Police Department - Records Division
201 W. Mission Street
San Jose, CA. 95110

6. For the purpose of this AMENDED AND RESTATED AGREEMENT the type of serious injuries of unknown origin to Agnews Developmental Center residents that are subject to this agreement are as follows:
 - Internal Organ Damage
 - Unconsciousness
 - Require five or more sutures/staples
 - loss, or partial loss of body parts
 - injury to one fourth or more of the body
 - Any Fracture.
7. For the purpose of this AMENDED AND RESTATED AGREEMENT, the term "abuse" shall have the meaning given to it by DDS in Section II,

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Administrative Directive # 50-B-1, Abuse, Mistreatment, Neglect, effective March 14, 2002, or in such successor Directive as may be issued by DDS. Directive #50-B-1 is incorporated as part of this AMENDED AND RESTATED AGREEMENT and attached hereto as Exhibit A. The San Jose Police Department reserves the discretion to decide whether a reported incident of abuse is criminal in nature, to decide whether to investigate the case criminally, and to decide the scope of that investigation.

8. In the case of the death of a resident, the San Jose Police Department shall notify the Santa Clara County Coroner pursuant to Department procedures set forth in the San Jose Police Department Duty Manual section L5900.
9. All information that DDS releases to the San Jose Police Department as part of an investigation conducted under the terms of this AMENDED AND RESTATED AGREEMENT will be handled as a controlled document. San Jose Police Department personnel will follow Department procedures and the requirements of applicable State and Federal law and court orders governing the release of information upon receipt of a request for any investigation records or information contained in those records.
10. Notwithstanding any other term or condition of this AMENDED AND RESTATED AGREEMENT, the San Jose Police Department has full authority to conduct an investigation independent of any DDS investigation. In the event the San Jose Police Department elects to conduct an independent investigation; the San Jose Police Department will contact DDS police at 451-6000. The San Jose Police Department reserves the discretion to decide whether to investigate a case criminally, and to decide the scope of that investigation.

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11. CITY shall not be liable for any claims, losses, liabilities or damages resulting from the failure of DDS to immediately notify CITY of its request for services.
12. DDS acknowledges that this AMENDED AND RESTATED AGREEMENT in no way establishes a special relationship between DDS or Agnews Developmental Center residents or any third party and CITY. This Agreement does not obligate CITY to provide any higher degree of protection or service than it provides to other persons in the City of San Jose.
13. DDS and CITY shall have the right to terminate this AMENDED AND RESTATED AGREEMENT, without cause, by giving not less than seven- (7) days written notice of termination to the other party. The Chief of Police is authorized to terminate this AGREEMENT on behalf of CITY.
14. This AMENDED AND RESTATED AGREEMENT, including all Exhibits attached hereto, represents the entire understanding of the parties as to those matters contained herein. No prior oral or written understanding shall be of any force or effect with respect to those matters covered hereunder. This AGREEMENT may only be modified by a written amendment duly executed by the parties to this AGREEMENT

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WITNESS THE EXECUTION HEREOF on the day and year first
hereinabove written.

APPROVED AS TO FORM:



Carl B. Mitchell
Senior Deputy City Attorney

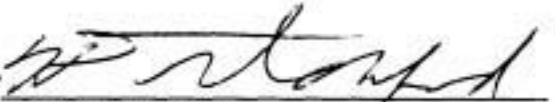
"CITY"

CITY OF SAN JOSE, a municipal
corporation

By 

Peter Jensen
Assistant to the City Manager
801 North First Street
San Jose, CA 95110

"DDS"

By 

Harold Pitchford
Executive Director
DDS Developmental Center

EXHIBIT A

DEPARTMENT OF DEVELOPMENTAL SERVICES
AGNEWS DEVELOPMENTAL CENTER

ADMINISTRATIVE DIRECTIVE
50-B-1

Title: ABUSE, MISTREATMENT, NEGLECT

Effective: March 14, 2002

Review By: Clinical Management Committee, Human Rights Committee, Special Investigators, Chief of Police Services, People First, Client Rights Representative, Program Rights Representatives.

Note: Administrative Directive # 50-B-1 dated July 30, 2001 on the same subject is rescinded.
[Indicates change.

Authority: Title 22 Section 76325 (14) and (20), Welfare and Institutions Code Sections 15600, 15610, and 15630 et. seq., Title 42 Code of Federal Regulations Section 483.13, Penal Code Section 11165 (k), 830.3 (f) and 830.4 (e).

Cross Reference: 10-A-9, 50-A-1, Nursing Procedure #8

I. GENERAL:

It is a fundamental responsibility of every employee to ensure the safety and well-being of individuals who live at Agnews Developmental Center. Any form of abuse, mistreatment and/or neglect by staff, contractors, volunteers, visitors, or any member of the public having business on the facility grounds, is expressly prohibited. Employees must be vigilant in their responsibility to ensure that the individuals served are not abused, mistreated or neglected by any person with whom they have contact.

II. DEFINITIONS:

A. Physical Neglect:

Negligent treatment or maltreatment of a person that indicates harm or threatened harm to the person's health or safety. Examples include the failure to provide adequate food, clothing, shelter, medical care and services. Conditions which may indicate neglect include poor personal hygiene, repeated accidents/injuries and unsanitary living conditions.

B. Physical Abuse:

Any physical action which may or may not result in bodily harm or trauma. An assault, such as slapping, pinching, pushing, shoving, kicking, hitting, burning, biting, cutting, poking, twisting limbs or otherwise mistreatment of a person are examples of physical abuse.

The use of physical strength to secure the cooperation of persons is to be avoided and is to be undertaken only when less restrictive measures have been tried and failed and only to the extent necessary to ensure the safety of those impacted, and sufficient assistance must be obtained so that injury to all parties is avoided.

In addition, altercations between clients that result in physical injury may be reviewed by the Incident Action Team. If it is determined, during the course of the review that an individual demonstrated willful intent to do harm, the incident may be referred to the Special Investigators for a full investigation of the facts surrounding the incident.

C. Sexual Abuse:

Acts of sexual assault and/or sexual exploitation by any person. Examples include rape, rape in concert, sodomy, lewd or lascivious acts, fondling, oral copulation, penetration of a genital or anal opening by a foreign object and molestation. Sexual exploitation includes conduct or activities related to pornography depicting minors and promoting prostitution. Indicators of sexual abuse may include but are not limited to genital discharge, physical trauma such as pain, itching, swelling, bruising, bleeding, lacerations and abrasions, pain on urination/defecation, and difficulty walking or sitting.

D. Psychological Abuse:

Treatment which may cause emotional distress to a client. Examples include belittling, threats, coercion, blaming, name calling, and deliberately not intervening in a behavior which is demeaning to the individual.

E. Verbal Abuse:

Any verbalization that may be threatening to the individual such as yelling, name calling, teasing with derogatory content, volume or tone.

F. Fiduciary Abuse:

Deliberate misplacement, exploitation, or wrongful temporary or permanent use of a person's belongings or money for any use or purpose not in the due and lawful execution of his or her trust.

III. REPORTING:

- A.** Any person having knowledge of, or suspecting that abuse, mistreatment, exploitation or neglect of a client has occurred and/or witnesses a serious injury with known cause, where a criminal felony by a staff person has or probably has occurred, is required to immediately report this information by calling the Abuse Hotline 7500 and his or her supervisor. The supervisor is responsible for notifying his/her Program Director and the Program Director of the client involved.

No manager, supervisor, or employee of the Center will take any retaliatory action against, or harass any person for reporting a criminal, unlawful, improper act or a violation of Center's policy. Disciplinary action will be taken against persons who engage in retaliatory actions against, or harassment of an individual for reporting such violations.

- B. The Telephone operator receiving the report will notify the Facility police who will immediately report to the scene to begin a preliminary investigation.
- C. The reporting employee, or employee receiving a report from a person not employed by ADC, will secure immediate medical attention or obtain a determination via a nursing assessment conducted by the ACNS or HSS, as appropriate, of the medical condition of the client who is the alleged victim of abuse, mistreatment, exploitation, or neglect.
- D. The Program Director will confirm notification has been made to Police Services, the Special Investigator, and ACNS. In addition, the Program Director/designee will notify the following:
 - Clinical Director
 - Family, Conservator, or other representative;
 - Regional Center
 - Director of Quality Assurance
 - Client Rights Advocate
- E. Agnews' Police Department will notify the San Jose Police Department.
- F. The Special Investigator will assist the reporting employee in making the following notifications when indicated:
 - 1. Allegations involving minors will be reported to Child Protective Services.
 - 2. Allegations reported to have occurred in a community location other than Agnews Developmental Center will be reported to the police department of that jurisdiction, and Child Protective Services or Adult Protective Services, as appropriate, of that county.
- G. Failure to report incidents of abuse, mistreatment, exploitation, or neglect is a crime in addition to being a cause for disciplinary action.

- H. If, at any time, a client, his/her family or other representative has a concern regarding the investigation of an incident of alleged mistreatment, they may file a complaint through the complaint process.
- I. The Clinical Director will provide notification to the Executive Director of the incident, including the status of the investigation and any actions taken to protect the clients from further harm.
- J. The Director of Quality Assurance will insure appropriate reports are made to DDS, DOH, and other agencies as indicated in AD #10-A-9 "Client Protection".

IV INVESTIGATION:

An immediate investigation will be initiated upon receipt of an allegation of client abuse. The person alleged to have committed the abuse will be removed from client services pending investigation results.

A. POLICE SERVICES:

An officer will immediately report to the scene of the alleged abuse and begin a preliminary investigation.

- B. A Special Investigator will conduct a complete and thorough investigation of each allegation of abuse, providing the Executive Director and the Clinical Director with regular status reports and a preliminary report of findings within five days of the date the allegation was made.

- C. The Program Director/designee will insure all persons on duty and in the area at the time of the alleged abuse complete a signed, dated declaration by the end of their shift which includes:

1. A description of their assignment for the day;
2. A chronology of their individual activities during their shift;
3. Any contact with the alleged perpetrator and/or victim;
4. Eyewitness account of the reported incident, or lack thereof.

Declarations will be routed to the Office of Special Investigations for incorporation with the investigative report within 24 hours of the report of alleged abuse.

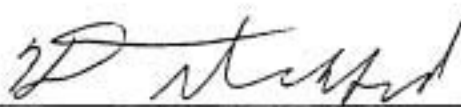
D. DOCUMENTATION:

1. The employee reporting the abuse will initiate an Incident Report DS2506, (See AD # 10-A-9 "Client Protection") and summarize information in the Interdisciplinary Notes.
2. The physician will document the results of his/her examination on Incident Report DS2506 and summarize findings in the Physician's Progress Notes.
 - a) The Registered Nurse will document the results of his/her Nursing Assessment on the Incident Report DS2506 and summarize information in the Interdisciplinary notes with any recommendations for care and treatment.
 - b) The Residence Manager will complete a Level I review/investigation, documenting the results on the Incident Report DS2506. The report will be sent to Quality Assurance Services with a copy to the Special Investigator by 10:00 a.m. the next working day.
 - c) The Program Director will complete a Level II review/investigation which includes a thorough investigation of the incident, and insure notifications are documented on the Incident Report DS2506. The Level II review will include:
 - The impact of the incident on the client, e.g. emotional, physical injury, etc.;
 - Actions taken to protect the client from further harm, including disposition of the person who is the alleged perpetrator.
 - Circumstances surrounding the incident including environmental conditions and persons present.
 - d) Quality Assurance Services will complete a Level III review/investigation stating agreement or disagreement with the Level II findings. Disagreement with the Level II findings and recommendations for further actions will be brought to the attention of the Executive Director for action as indicated.
 - e) The police officer who conducted the preliminary investigation will document his/her findings on DDS213 "Crime/Incident Report". A copy of the report will be provided to the Special Investigator as soon as the investigator assumes responsibility for the investigation.

- f) The Special Investigator will complete a summary of his/her investigation which includes all actions taken in the investigation of the allegation, and a statement as to whether the allegation is substantiated, unfounded, or inconclusive.

V. DISPOSITION:

Administration will take all needed actions to insure the health and safety of the client, which may include but is not limited to, changes in environment, peer group, staffing levels, service delivery, personnel actions, and referral to the District Attorney for prosecution of criminal acts.



Harold Pitchford, Executive Director

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