

November 26, 2013

-----  
-----  
-----

Re: Our Client: -----  
Your Claim No: -----  
Date of Incident: -----

Dear Ms. -----:

As you are aware, our office represents --client-- regarding an incident that occurred while he was working with your insured, Cooperating Community Programs.

To introduce you to our client, --client--, he is currently 23 and has lived in a group home setting since he was 16 years old.

--client-- was put up for adoption from his birth mother soon after he was born and was adopted by his parents, --mother and father--, at three weeks old. --client-- parents came to realize at a young age that --client-- did not exhibit normal infant behaviors and this similarly followed into his toddler then school-aged years. June and James noticed that he was not coming to understand age appropriate social cues, academics, and was not able to regulate himself appropriately in matters of emotion or compulsion.

--client-- was having difficulties acclimating to school and social settings and was a disruption in class. Early on in school, by age five, --client-- was put on an individualized education plan. This was a benefit to --client-- in that he got the attention required to aid in his learning, but his parents and teachers still knew that there was a deeper seeded issue with --client--.

At age eight and a half, it was discovered that --client-- suffered from fetal alcohol syndrome which was found to have resulted in permanent brain damage. It was determined that the FAS interfered with him physically, he has profound hearing and sight loss, and psychologically, he is unable to self-regulate and exhibits intense anxiety/hyperactivity.

When this diagnosis came to light, it gave --client-- and his care givers a jumping off point in as far as understanding his lag in development and his growing disruptive behavior. --client-- began seeing a doctor that prescribed medication for his mood disorder and attention disorders.

As --client-- grew older, his parents began looking for a facility that would better accommodate his increasing needs; especially that of all but constant supervision. This led them to chose a residential group home where he would have constant monitoring as well as engagement with peers.

This now brings us to the time around when the incident occurred that gave rise to this claim. --client--, at this time, is living with Cooperating Community Programs and participates in the offsite day program.

On December 12, 2011, --client-- was working with his staff at Arc Value Village Thrift Store. --client-- went into a multi-stall bathroom unaccompanied and spent some time in there while the staff person waited outside. A customer went into the bathroom and noticed two set of shoes in one bathroom stall, one --client-- and one of an unknown person, and at this time made his presence known by clearing his throat. This alerted the person with --client-- and he quickly exited the bathroom and then the building. Once it was discovered that something of a sexual nature had gone on between --client-- and this unknown person, law enforcement was notified. --client-- and the staff persons and a witness were interviewed and --client-- mother was notified. --client-- was soon brought to Regions Hospital to be examined by a sexual assault nurse examiner. Please refer to the attached Incident Report completed by St. Paul Police Department.

--client-- has an extensive Risk Management Assessment and Plan. This details his need for monitoring in almost every aspect of his life, from reminding him to wear his glasses and hearing aids, to monitoring his eating habits, and his inability to recognize proper boundaries with others. In reviewing this list, it is quite apparent that --client-- has poor judgement and ability to determine cause and effect.

--client-- staff is made aware of his sexually risky behavior in this same Plan. It is noted throughout that --client-- “may not exhibit socially accepted behaviors in public”, “has a history of unprotected sex and may not have the judgement to engage in safe sex practices”, “may not use caution with strangers”, and most importantly “(s)taff will physically accompany --client-- in the community at all times...[he] may only use a single person restroom alone and if one is not available staff must accompany --client-- into the restroom to ensure he is safe.” Please refer to the attached Risk Management Assessment and Plan.

As --client-- was a vulnerable adult, this incident was brought to the attention of and subsequently investigated by the Minnesota Department of Human Services. MNDHS issued an Investigation Memorandum on December 26, 2012. It is noted in this memorandum that the facility investigated, Cooperating Community Programs, was “substantiated as to the neglect of a vulnerable adult by a staff person” and citing Minn. Stat. § 626.557 subd 9c(b) and Minn. Stat. § 626.5572 subd 15 & subd 17(a). Of personal

interest in this report, the staff person is acknowledged to have had on site training regarding caring for --client-- but the staff person stated that they “chose to violate company policy in what was a mistake”. Rather than care for --client-- in the manner of this staff person’s training and the lengthy Risk Management Assessment and Plan, this staff person violated policy to give --client-- “a sense of dignity” in using the bathroom. Please refer to the attached Minnesota Department of Human Services Investigation Memorandum.

The sequence of events that led to the sexual incident in the bathroom of Arc Value Village Thrift Store on December 12, 2011 are alarming enough, but coupled with the knowledge of --client-- behavior history and the training of his monitoring staff; it is downright inexcusable and incomprehensible.

The negligence in the matter is immediately apparent. --client-- should not have been allowed to go into this bathroom unattended, yet the staff person working with him on this day permitted this; every detail of what occurred should have been prevented as it was as predictable as snowfall in December. The negligence is magnified in that the Risk Management Assessment and Plan was reviewed and revised only two months prior to this incident.

It is without doubt that Cooperating Community Programs owed --client-- and his family a duty to ensure --client-- safety. This duty was neglected profoundly to the extreme detriment of --client--.

In corresponding with the --client-- family, a settlement amount of \$250,000.00 would be fair and adequate compensation for this claim.

I look forward to your prompt response.

Very truly yours,

Michael A. Bryant

MAB/cmp