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## EVALUATOR MANUAL TRANSMITTAL SHEET

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<b><u>Distribution:</u></b>	<b><u>Transmittal No.</u></b> 07RM-03
<input type="checkbox"/> All Child Care Evaluator Manual Holders <input type="checkbox"/> All Residential Care Evaluator Manual Holders <input checked="" type="checkbox"/> All Evaluator Manual Holders	<b><u>Date Issued</u></b>  July 2007

**Subject:**

### REFERENCE MATERIAL – COMPLAINTS

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**Reason For Change:**

**Revise Section 3-2400 Clearing the Complaint**

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**Filing Instructions:**

REMOVE – Pages 22 &amp; 23

INSERT – Pages 22 &amp; 23

**Approved:***Tricia Nishio for**7/20/07*


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 THOMAS STAHL, Chief  
 Policy Development Bureau  
 Community Care Licensing Division
 

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 Date
 

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**3-2400 CLEARING THE COMPLAINT****3-2400**

After the investigation is completed and the Licensing Program Analyst has delivered the findings to the licensee, including citations, plans of correction, and possible immediate civil penalties (if violation substantiated), the Licensing Program Analyst must indicate the resolution for each allegation on the LIC 802 and complete the remaining sections. The Licensing Program Analyst shall complete all unfinished documentation (detail supportive forms, etc.) related to the complaint investigation as soon as possible after the findings are delivered to the licensee.

Upon completion of all documentation, the Licensing Program Analyst submits the LIC 802 along with all associated documentation to the Licensing Program Manager for review via the Field Automation System.

Licensing Program Managers are responsible to review the complaint documentation to ensure there was a thorough investigation, the findings are appropriate, and any related citations, plans of correction, and civil penalty assessments are appropriate. If the Licensing Program Manager determines that other work such as corrections or additional investigation is necessary, the complaint will be returned to the Licensing Program Analyst via Field Automation System with direction and a date for completion.

The Licensing Program Manager approves the complaint investigation and findings by signing the LIC 802 via Field Automated System. The Licensing Program Analyst is responsible for timely follow up to ensure the facility has completed their plans of correction. See Evaluator Manual Section 3-3605 Clearing the Deficiency.

The LIC 802 is filed in the confidential file and the LIC 9099 is filed in the public file, with the following exception: unfounded allegations for any Community Care Facilities or any Child Care Facilities are to be retained in the confidential file.

All references to Field Automation System apply to Community Care Licensing staff and do not apply to counties.

**3-2600 COMPLAINTS ALLEGING ABUSE****3-2600**

Complaints alleging priority I or II situations involving children, clients, or residents are considered top priority and are to be handled expeditiously. The steps involved in abuse investigations differ from routine complaint investigations and should be carefully planned with the assistance of the supervisor.

The procedures in Evaluator Manual, Reference Material Sections 3-2602 through 3-2650, below, are to be used by all county licensing staff and Regional Offices. Regional Office staff must refer all allegations of serious abuse or suspicious deaths to Program Investigations, as outlined in Evaluator Manual section 1-0620, Investigative Priorities. The referral procedures are to be followed prior to beginning the complaint investigation.

In addition, because they are Department licensing employees, analysts must comply with the requirements to report suspected abuse of children, dependent adults and elders. (Refer to the Licensing Unit Manager Guidebook for general directions on Evaluators role as Mandated Reporters. Refer to Evaluator, Reference Material Section 4-0000, Abuse Reporting Requirements, for Child Care cases. See form PS 314 for thorough instruction, and procedure, regarding who must report abuse of dependent adults and elders.)

## 3-2600.1 DEFINITION OF CHILD ABUSE

3-2600.1

**Child abuse means a situation of physical injury on a child which is inflicted by other than accidental means, or of sexual abuse or severe neglect, or unlawful corporal punishment or injury, or willful cruelty or unjustifiable punishment (including mental suffering) of a child.** [Child abuse also includes the definitions set forth in Penal Code Sections 11165.1 through 11165.6]. The definition of child abuse includes but is not limited to the following:

- ◆ A **physical injury** which is inflicted by other than accidental means on a child by another person. [See Penal Code Section 11165.6]
- ◆ **Sexual abuse** means sexual assault, sexual exploitation or sexual molestation of a child including, but not limited to:
  - Rape, sodomy, oral copulation, or penetration of a genital or anal opening by a penis or foreign object. [See Penal Code Section 11165.1]
  - The intentional touching of the genitals or intimate parts (including the breasts, genital area, groin, inner thighs, and buttocks) or the clothing covering them where such touching cannot be reasonably construed to be normal caretaker responsibilities. [See Penal Code Section 11165.1]
- ◆ **Intentional neglect** including, but not limited to, the following:
  - The negligent failure of a person having the care or custody of a child to protect the child from severe malnutrition. [See Penal Code Section 11165.2]
  - The intentional failure to provide food, clothing, shelter, medical care or supervision even if no physical injury has occurred. [See Penal Code Section 11165.2]
- ◆ Willfully causing or permitting **infliction of unjustifiable physical pain or mental suffering.** [See Penal Code Section 11165.3]

**NOTE:** It is important to note that even though no visible physical injury can be observed, child abuse may still be present where the person willfully causes or permits the child to be exposed to conduct which results in mental suffering to the child.

**Example:** The licensee places the child in a pen full of snakes and tells her that if she does not stop crying the snakes will bite her. The snakes in fact are non-poisonous. The child suffers emotional and mental suffering from the experience.

- ◆ The willful infliction of any **cruel or inhuman corporal punishment** or injury resulting in a traumatic condition. [See Penal Code Section 11165.4]

**NOTE:** Administering corporal punishment to children in care is prohibited in Community Care Licensing facilities. Pursuant to Health and Safety Code Section 1531.5, foster parents may administer corporal punishment not constituting child abuse to their own children. Thus, while corporal punishment may not meet the definition of child abuse, it is still a violation of the child's personal rights if administered upon a child in care.