

**Investigating Abuse Allegations  
in Nursing Homes**

Rick Harris  
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**Why Investigate Abuse Allegations?**

- \* Regulatory Requirement (F226)
- \* Facility's Own Policies and Procedures
- \* Deter Abusive Behaviors by Staff
- \* Protection of Residents

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**What is Investigating?**

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Investigating Is Not Nursing

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Investigating Is Not Nursing  
Investigating Is Not Social Work

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Investigating Is Not Nursing  
Investigating Is Not Social Work  
Investigating Is Not  
Dietary Mgmt.

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Investigating Is Not Nursing  
Investigating Is Not Social Work  
Investigating Is Not  
Dietary Mgmt.  
Investigating Is Not Rec. Therapy

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***Investigating is a  
unique task for which  
very few of us have  
been adequately  
trained!***

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INVESTIGATING IS UNIQUE

Investigating is more akin to the work done by police detectives and accident scene investigators than it is to professional health practices.

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**INVESTIGATING IS UNIQUE**

Investigating is more akin to the work done by police detectives and accident scene investigators than it is to professional health practices.

A professional background is valuable training that helps nursing home staff members understand what they are investigating.

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**INVESTIGATING IS UNIQUE**

An investigator's job is to:

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**INVESTIGATING IS UNIQUE**

An investigator's job is to:

- \* Gather and document evidence relating to the matter of interest.

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### INVESTIGATING IS UNIQUE

An investigator's job is to:

- \* Gather and document evidence relating to the allegation.
- \* Analyze the evidence to ascertain the facts.

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### INVESTIGATING IS UNIQUE

An investigator's job is to:

- \* Gather and document evidence relating to the matter of interest.
- \* Analyze the evidence to ascertain the facts.
- \* Write a report that sets out facts (based upon the evidence) and draws reasoned conclusions based upon these facts.

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### INVESTIGATING IS UNIQUE

- \* Nursing home staff members, like other investigators, must also be prepared to defend their facts and conclusions.

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**INVESTIGATING IS NOT FOR THE  
TIMID!**

Investigators must . . .

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**INVESTIGATING IS NOT FOR THE  
TIMID!**

Investigators must . . .

- \* maintain composure and professional demeanor in an environment where certain staff may be working as hard to hide information as the investigator is working to find it;

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**INVESTIGATING IS NOT FOR THE  
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Investigators must . . .

- \* maintain composure and professional demeanor in an environment where certain staff may be working as hard to hide information as the investigator is working to find it;
- \* write a concise, accurate and defensible summary of his or her investigation; and

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**INVESTIGATING IS NOT FOR THE  
TIMID!**

Investigators must . . .

- \* maintain composure and professional demeanor in an environment where certain staff may be working as hard to hide information as the investigator is working to find it;
- \* write a concise, accurate and defensible summary of his or her investigation; and
- \* Defend his or her findings to supervisors or corporate staff and possibly to surveyors and lawyers.

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**INVESTIGATING IS NOT FOR THE  
TIMID!**

To be successful in these job functions, those with management responsibilities in nursing home must have strong investigative skills.

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**Why Is This So Important??!!**

When assigned staff fail to adequately investigate allegations of abuse, the residents of the facility have no avenue of appeal. It is these residents who must to live with the dangerous risks and consequences that follow from undetected or poorly investigated problems.

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### Why Is This So Important??!

Investigators have an important job and a difficult job that constantly demands their very best. It is always tempting to reduce investigative work to a check list of tasks requiring no cerebral heavy lifting. We are all to some degree mentally lazy, but investigative work must always be undertaken with thoughtfulness and care. Investigators must resist the temptation to take intellectual shortcuts, and their supervisors must support them in resisting this temptation.

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### TRAINING

Good investigators must have ordinary intelligence, common sense, good judgment and perseverance. Nursing home supervisory staff lacking either of the first two qualities are unlikely to be successful and should probably find another line of work— **nursing home management is not for everyone.** Judgment and perseverance can be improved with the help of strong mentors or models.

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### OVERSIGHT AND FOLLOW-UP

- \* All management staff of a nursing home, including those at corporate levels, must be expected to show by word and deed that use of good investigative skills is a top priority.
- \* It is as important, and probably more important, to examine whether serious problems are being missed, as it is to examine whether allegations are appropriately investigated and responded to.

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**Principles of Investigative Skills,  
aka Good Management**

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**Develop and Keep an Investigative Attitude**

At the outset of an investigation, a supervisor should maintain objectivity and neutrality about whether an abuse allegation will be substantiated.

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**Allegation Surfaces**

*What should I do now?*

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**Allegation ≠ Actual Abuse**

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**Review Regulations and Policies and Procedures**

Before conducting any investigation, the supervisor should review the regulatory requirements and the facility's own policies and procedures. Awareness of the precise requirements is critically important in planning the course of the investigation.

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**Review Regulations and Policies and Procedures**

F223 Sec. 483.13(b) Abuse

The resident has the right to be free from verbal, sexual, physical, and mental abuse, corporal punishment, and involuntary seclusion.

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**Review Regulations and Policies and Procedures**

Interpretive Guidelines

“Abuse” means the willful infliction of injury, unreasonable confinement, intimidation, or punishment with resulting physical harm, pain, or mental anguish.

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**Review Regulations and Policies and Procedures**

Interpretive Guidelines

“Verbal abuse” is defined as the use of oral, written or gestured language that willfully includes disparaging or derogatory terms to residents or their families, or within their hearing distance, regardless of their age, ability to comprehend, or disability.

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**Review Regulations and Policies and Procedures**

Interpretive Guidelines

Examples of verbal abuse:

- \* Threats of harm
- \* Saying things intended to frighten a resident, such as telling the resident that she will never be able to see her family again

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**Review Regulations and Policies and Procedures**

Interpretive Guidelines

“Sexual abuse” includes (non-exhaustive list):

- \* Sexual harassment
- \* Sexual coercion
- \* Sexual assault

Rick’s addenda:

- \* Any sexual contact between staff and resident (unless they are married)
- \* Any sexual contact with a resident who is incapable of giving consent

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**Review Regulations and Policies and Procedures**

Interpretive Guidelines

“Physical abuse” includes (non-exhaustive list):

- \* Hitting
- \* Slapping
- \* Pinching
- \* Kicking
- \* Controlling resident behavior by using corporal punishment

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**Review Regulations and Policies and Procedures**

Interpretive Guidelines

“Mental abuse” includes (non-exhaustive list):

- \* Humiliation
- \* Harassment
- \* Threats of punishment
- \* Threats of deprivation

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**Review Regulations and Policies and Procedures**

Interpretive Guidelines

“Involuntary seclusion” is defined as separation of a resident from other residents or from her/his room or confinement to her/his room (with or without roommates) against the resident’s will, or the will of the resident’s legal representative

Exceptions: temporary, short term, monitored therapeutic interventions; dementia units with locked doors; medical quarantine

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**Review Regulations and Policies and Procedures**

Interpretive Guidelines

“Neglect” means failure to provide goods and services necessary to avoid physical harm, mental anguish, or mental illness.

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**Review Regulations and Policies and Procedures**

Interpretive Guidelines

“Misappropriation of resident property” means the deliberate misplacement, exploitation, or wrongful, temporary or permanent use of a resident’s belongs or money without the resident’s consent.

Rick’s note: Includes use of resident credit cards. Includes any borrowing from resident who is incapable of consent.

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**An abuse allegation must involve actual abuse, neglect, or misappropriation of property or it should not be treated as abuse.**

*Rude or disrespectful behavior may and usually does violate a facility's policies and procedures, but it is not true abuse unless it is of such nature that it would be expected to frighten a resident.*

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Every kind of abuse has essential elements that must be proven in order to sustain a finding of abuse. If a supervisor assumes he or she knows the elements of, say, physical abuse, and fails to actually review the regulatory language and guidance and the facility's policies and procedures before proceeding with the investigation, the likelihood that he will fail to get needed evidence or reach the wrong conclusion is greatly increased. No matter how much experience an investigator may have, it is critical to undertake this review before conducting an investigation. This step must never be omitted.

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**Investigator decides what evidence is needed to determine if abuse has actually occurred**

Much planning needs to take place before the investigator reviews any evidence or conducts any interviews. **Think** about how to uncover the answers to: Who? What? Where? When? Why? How?

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Who? What?  
When? Where?  
Why? How?

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\* Example: If the allegation is “resident with dementia complained that CNA Jones slapped her on the mouth,” just some of the questions to be answered are:  
Who is the alleged perpetrator? Who else may have witnessed the event? When did it happen? Where did it happen? How, or under what circumstances, did this slapping or hitting occur? When was it reported? What should the facility do to protect residents during the investigation? Who else may have talked to the resident about this or heard her report of abuse?

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This same group of questions can not only help you think about the type of information you need to gather, but also how to gather it:

- Who do I need to interview?
- When can I interview the person? (During the person’s shift? Right after shift change?)
- Where should I interview the person? (At the nursing station? In a particular office or conference room? On the phone?)
- How do I want to conduct my interviews– in what order, do I want to separate those who have been interviewed from those who have not?
- What records should I review?

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In summary, before beginning the investigation, the investigator must analyze and outline **in writing** what he or she will need to do to get the answers to the questions posed by the complaint or area of concern. Included in the plan should be the specific questions for each witness, the records to be examined, any documents to be copied, other sources of information that might need to be tapped, and the time of day for the investigation that will yield the most relevant information for this allegation.

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## Scrupulously Document and Keep It Organized.

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### Scrupulously Document

- \* Documentation of observations must include date, time, location, and a detailed and descriptive account of what is observed.
- \* Documentation of interviews must include the date, time, identity and position of each person interviewed, and record exactly what was asked and what was answered.
- \* If you copy records, do not mark them, it can destroy evidentiary value.

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After completing the original investigative plan, the investigator must stop and assess what questions remain unanswered and in what areas there is a conflict in the information that may be cleared up with additional investigation.

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**Consider possible defenses**

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**Gather evidence to refute defenses**

The investigator who believes that abuse has likely occurred should ask, "If I were the perpetrator how would I argue against this charge?"

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The investigator should evaluate what additional evidence might be gathered to refute the possible argument of the perpetrator, and to resolve possible weaknesses in the investigator's theory of the case.

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**Mistakes we frequently make**

- \* We stop short and don't finish the investigation.
- \* We go down the "rabbit trail," instead of prioritizing and staying focused.
- \* We leap to questionable conclusions.
- \* We ruin the investigation by interviewing perpetrator first, rather than at the end.



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**Mistakes we frequently make**

We lose control of the investigation

- \* Allowing evasiveness in interviews
- \* Allowing staff to delay giving interviews or producing records
- \* Allowing staff to refuse to give information on advice of counsel



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### Mistakes we frequently make

- \* WE FAIL to implement our carefully-crafted plan.
- \* As soon as we obtain any evidence to say that the allegation is not true, we quit.
- \* We fail to gather documentation to show we conducted a thorough investigation. **Carry out your plan!**
- \* It is just as important that allegations be investigated thoroughly as it is to determine the validity of the allegations.
- \* We need to protect ourselves, and we must be able to defend our work.



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### Mistakes we frequently make

We correctly identify abuse and a perpetrator as a result of the abuse investigation, BUT WE FAIL to identify the cause or system failure that permitted abuse to occur.



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### JOB WELL DONE!

- \* We planned a thorough investigation of the allegation.
- \* We conducted and documented a thorough investigation of the allegation.
- \* We documented our work in a way that can convince anyone that we conducted a thorough investigation whether we validated the abuse or not.



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Interviewing skills

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Why interview?

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Why interview?  
To obtain direct evidence of existence  
or non-existence of abuse or neglect.

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**Why interview?**

To obtain direct evidence of existence or non-existence of abuse or neglect.

“I observed CNA Sally Jones attempt to transfer Mrs. Smith, a two person transfer, by herself. I then saw Mrs. Smith fall and heard a cracking noise.”

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**Why interview?**

To obtain direct evidence of existence or non-existence of abuse or neglect.

“I was in the room and observed care provided by CNA Donald Murphy to resident at the time she says he cursed her. That positively did not happen. He was extremely polite to her.”

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**Why interview?**

To provide the staff member suspected of abuse practice an opportunity to explain the evidence already gathered.

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### Why interview?

To test evidence already gathered, and to assess credibility of witnesses.

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### Why interview?

To test evidence already gathered, and to assess credibility of witnesses.

CNA 1 is accused by CNA 2 of hitting a resident. CNA 2 denies the allegation. The DON asks CNA 1 whether she has any reason to lie about CNA 2. She says she does not, and sounds very convincing to the investigator. But the DON later learns that these CNAs are ex-spouses involved in a custody battle.

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### Why interview?

To test evidence already gathered, and to assess credibility of witnesses.

An LPN tells the investigator that she observed care being improperly to a resident while standing in the doorway to a resident's room. The investigator asks the LPN to arrange the furniture the way it was arranged when the incident occurred. When she does so, the investigator notices that the view to the resident's bed from the doorway was obstructed by a high-backed chair and a TV stand. The investigator asks the LPN if she is sure that the furniture was arranged in that particular way. The LPN says she is sure. The investigator then asks the LPN to stand in the doorway and asks her how she could see care being delivered.

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Interviews should follow the PEACE model

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Interviews should follow the PEACE model

- P PREPARATION and planning
- E ENGAGE and explain
- A ACCOUNT
- C CLOSURE
- E EVALUATION

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Interviews should follow the PEACE model

- P PREPARATION and planning

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Interviews should follow the  
PEACE model

P PREPARATION and planning

“The [interviewing officer] should prepare an interview plan, connecting this to the prosecution evidence, identifying specific areas requiring investigation, points to prove the offence, and negation of defences. It is essential that before starting an interview, interviewing officers remind themselves of the main elements of the offence(s) they believe to have been committed. “

--From a British manual for police officers

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Interviews should follow the  
PEACE model

P PREPARATION and planning

A good interview plan involves:

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Interviews should follow the  
PEACE model

P PREPARATION and planning

A good interview plan involves:

Understanding the specific purpose of the interview

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Interviews should follow the PEACE model

P PREPARATION and planning

A good interview plan involves:  
Understanding the specific purpose of the interview  
Understanding the aims and objectives of the interview

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Interviews should follow the PEACE model

P PREPARATION and planning

A good interview plan involves:  
Understanding the specific purpose of the interview  
Understanding the aims and objectives of the interview  
Listing the points that the interview can help prove or disprove

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Interviews should follow the PEACE model

P PREPARATION and planning

A good interview plan involves:  
Understanding the specific purpose of the interview  
Understanding the aims and objectives of the interview  
Listing the points that the interview can help prove or disprove  
Assessing the evidence already acquired

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**Interviews should follow the  
PEACE model**

**P PREPARATION and planning**

- A good interview plan involves:
  - Understanding the specific purpose of the interview
  - Understanding the aims and objectives of the interview
  - Listing the points that the interview can help prove or disprove
  - Assessing the evidence already acquired
  - Assessing the evidence still needed and its possible sources

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**Interviews should follow the  
PEACE model**

**E ENGAGE and explain**

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**Interviews should follow the  
PEACE model**

**E ENGAGE and explain**

An investigator conducting an interview should engage the interest of the interview subject and should attempt to motivate the subject to be helpful. Always the investigator should make sure the interview subject knows why the investigator is conducting an investigation, and explain that is the investigator's role to both identify problems in the facility so that the facility can correct them and provide better care to its residents, and to rule out problems that are suspected but which actually do not exist. In many cases, it will be useful to explain the specific reasons for the interview.

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Interviews should follow the PEACE model

E ENGAGE and explain

“You were working on the 3-11 shift on B hall on the evening a resident claimed to have been assaulted. It is important that I talk to everyone who was working that hall that evening as well as talk to any other witnesses to this incident.”

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Interviews should follow the PEACE model

E ENGAGE and explain

“I don’t understand the documentation in this patient’s chart and I need to talk to the people who made entries into it.”

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Interviews should follow the PEACE model

E ENGAGE and explain

The investigator should ordinarily map out the interview for the subject, telling in advance what sorts of questions and issues need to be discussed. This will help put the subject at ease.

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Interviews should follow the  
PEACE model

A ACCOUNT

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Interviews should follow the  
PEACE model

A ACCOUNT

The witness or interviews subject tells in his or her own words what happened. This can be done in one of two ways. In some cases, the witness may be asked to simply provide a chronological narrative of an incident or event. After this, the investigator should ask clarifying questions. The investigator should also ask the witness to repeat the narrative using an altered time line, such as by asking him or her to start at a different point in time.

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Interviews should follow the  
PEACE model

C CLOSURE

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Interviews should follow the  
PEACE model

C CLOSURE

When the interview is finished, it is important to thank the subject and to go over with the subject what the investigator believes the subject said, and to ask the subject to affirm that the investigator's understanding is correct.

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Interviews should follow the  
PEACE model

E EVALUATE

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Interviews should follow the  
PEACE model

E EVALUATE

After an interview, the information obtained from the witness should be evaluated to determine whether the interview objectives were satisfied.

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Interviews should follow the  
PEACE model

E EVALUATE

Were there elements of abuse that the  
witness had knowledge of but which  
were not asked about?

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Interviews should follow the  
PEACE model

E EVALUATE

Were there defenses to the abuse that the  
witness knew about but which were not  
explored?

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Interviews should follow the  
PEACE model

E EVALUATE

**DID OTHER INFORMATION SURFACE  
DURING THE INTERVIEW THAT SHOULD  
BE INVESTIGATED?**

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Areas that must be covered when interviewing eyewitnesses to incidents or events

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ADVOKATE model

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ADVOKATE model

A: AMOUNT of time incident or occurrence was observed

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**ADVOKATE model**

D: DISTANCE from the witness to the incident or occurrence

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**ADVOKATE model**

V: VISIBILITY—was the incident in a well-lit or poorly lit room; how well can the witness see (especially important when interviewing residents!)

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**ADVOKATE model**

O: OBSTRUCTIONS to the ability of the witness to view the incident—doors, chairs, other furniture, other individuals, corners

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**ADVOKATE model**

K: KNOWN or seen before—how well does the witness know the individual involved in the incident; is there any animosity between the witness and the individual observed

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**ADVOKATE model**

A: ANY REASON to remember: Does the witness have any reason to remember this particular incident—was it a special day? Was there something about the incident that made it especially memorable—did it surprise the witness?

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**ADVOKATE model**

T: TIME – how long has it been since the incident?

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### ADVOKATE model

E: ERROR or material discrepancy—Are there any errors or material discrepancies between descriptions in the first and subsequent accounts of this witness—does her story substantially match that she told the facility during its investigation? Are there discrepancies between the story of this witness and other facts you know or believe to be true?  
***POINT OUT THESE DISCREPANCIES TO THE WITNESS AND GIVE AN OPPORTUNITY TO EXPLAIN THEM!!***

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### Other important points

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### Other important points

Interview residents.

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Other important points

Interview residents.  
*They know stuff!*

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Other important points

Listen to the witness.

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Other important points

Listen to the witness.  
They often tell us startling things.

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Other important points

Listen to the witness.  
They often tell us startling things.  
When that happens, make sure  
you follow up and nail down what  
they are saying.

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Other important points

When conducting a series of  
interviews, interview from  
bottom to top.

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Other important points

When conducting a series of  
interviews, interview from  
bottom to top.  
Witnesses first.

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Other important points

When conducting a series of interviews, interview from bottom to top.

Witnesses first.

Suspected perpetrator last.

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The End

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Questions?

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Questions?  
Comments?

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