



JUSTICE CENTER

The Justice Center was created pursuant to legislation in June of 2012 with the purpose of protecting vulnerable persons. The Justice Center has the primary responsibility for tracking, investigating and pursuing serious abuse and neglect complaints for facilities and provider agencies that are operated, certified or licensed by the following six agencies: Department of Health, Office of Mental Health, Office of People with Developmental Disabilities, Office of Children and Family Services, Office of Alcoholism and Substance Abuse Services and the State Education Department.

1. Investigation/Disciplinary Process:

- a. The Justice Center can stand in the shoes of the employer for purposes of investigating and pursuing disciplinary matters. This means that the Justice Center can question members regarding an incident, they can be a part of the drafting and/or issuing of a Notice of Discipline (“NOD”) against members, and they can act as the prosecutor of disciplinary matters at arbitration hearings.
- b. When the Justice Center acts in this manner, they are treated the same as if your employer was doing the questioning or prosecuting the NOD. All of the rights of the collective bargaining agreement are to be provided (i.e. BOR for representation and notice, and Article 8 procedures for NODs), as well as the rights to representation contained in the *Taylor Law*. Frequently, an individual from the employing agency will also be present for each of the steps.
- c. With respect to union representation in these matters, a member has the same right to union representation as they would if the employer was questioning them. Keep in mind, as discussed above, this may not mean a right to union representation in every instance, but a member should always make the request.
- d. The Justice Center also employs a Special Prosecutor and has a law enforcement branch which has concurrent jurisdiction with district attorneys to prosecute abuse and neglect crimes. With respect to any questioning by this branch of the Justice Center, the provisions of the Outside Police Agreement will apply. This is why it is important at the start of any questioning to establish whether you are compelled, as a condition of employment, to answer the Investigator’s questions. If yes, then the Justice Center is acting as your employer, and you must answer the questions (and need to request a union representative). If the answer is no, then the Outside Police Agreement applies, and you cannot be compelled answer the Investigator’s questions.

2. **Report of Substantiated Finding/Staff Exclusion List Charges:** The Justice Center also has the authority to issue Report of Substantiated Abuse or Neglect Findings against a member.
 - a. Such Reports are separate charges from a Notice of Discipline and proceed through a separate process. This procedure is often referred to as “Staff Exclusion List Charges.”
 - b. Following a report called into the Justice Center of suspected abuse of neglect, the Justice Center must investigate and issue a finding. This investigation is often the same investigation that can or does lead to a Notice of Discipline (because the Justice Center and the agency are interchangeable for investigation/disciplinary purposes).
 - c. If the Justice Center finds that the report is “substantiated,” a notice indicating this is mailed to the member’s home. This notice will be entitled “Report of Substantiated Finding.” There are separate procedures to appeal these charges. These charges are not the same as disciplinary charges. If the report remains “substantiated,” depending on the Category of the offense, you could be placed on a list – called the staff exclusion list – that could affect potential employment outside of your current facility in the future. Due to the NYSCOPBA collective bargaining agreement, a member cannot be terminated (or otherwise disciplined) based on these charges. But, the outcome of these charges could potentially affect future employment.
 - d. Due to the differences in these two types of charges, it is possible for a member to receive both an NOD and a Report of Substantiated Finding charge based on the same incident. Unlike NODs, Report of Substantiated Finding charges are not sent to NYSCOPBA and there is no automatic appeal of these charges. If you receive a Report of Substantiated Finding in the mail, and you wish to appeal, it is your obligation to do so in a timely manner. Appeals must be received by the Justice Center within 40 days of the date of the report. If you wish to seek NYSCOPBA’s assistance in an appeal, you must formally request NYSCOPBA’s assistance by immediately providing a copy of the letter to your Vice President.
3. **Interplay between an arbitrator’s decision in an NOD and the Justice Center hearing regarding a Report of Substantiated Finding:**
 - a. We have successfully argued that a favorable arbitration decision in a disciplinary matter has preclusive effect upon the Justice Center hearing regarding a Report of Substantiated Finding under the theories of *res judicata* and collateral estoppel. This means that if an arbitrator finds a member not guilty in a disciplinary matter, then the Justice Center cannot re-litigate the issue in a Report of Substantiated Finding charge on the same incident.

- b. Simply put, the Justice Center does not get “two bites of the apple” against an employee based upon the same incident.
- c. NYSCOPBA pursued litigation on behalf of a member and successfully had Report of Substantiated Charges thrown out based upon a finding by a disciplinary arbitrator that the employee was not guilty of misconduct. Both the NOD and the Justice Center charges were based upon the same incident. The Justice Center attempted to argue that *res judicata* and collateral estoppel didn’t fully apply because the second case (the Justice Center case) alleged one more theory or ground of the alleged assault. The Appellate Court disagreed and re-iterated the *res judicata* and collateral estoppel do apply and that the Justice Center doesn’t get to re-litigate its case in a second proceeding by alleging something more in one of the forums when it is all based on the same incident.
- d. *Res Judicata* and collateral estoppel is a two way street though. If the disciplinary arbitrator finds a member guilty of misconduct then that decision also applies in a subsequent Justice Center case based on the same incident.
- e. Generally, we like to proceed with a disciplinary hearing prior to the Justice Center hearing. If a Justice Center hearing were to proceed prior to a discipline (which it usually does not), then the disciplinary arbitrator would likely have to give preclusive effect to the Justice Center decision.