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Understanding, recognizing and empathizing with elder abuse

THE MOST COMMON AILMENTS AFFLICTING ELDERS IN HOSPITAL AND INSTITUTIONAL SETTINGS THAT CAN RESULT FROM NEGLIGENT CARE

Elder abuse in hospital and institutional settings is often easy to miss until it is too late. As more members of the baby boom generation enter hospitals and senior-care facilities, these settings are likely to experience more claims of mistreatment and abuse. An attorney should learn to recognize situations involving potential abuse to better assist and respond to the needs of their elderly and dependent clients in hospitals and institutional settings.

It is intuitive but explicitly stated by the California Legislature that the senior population is more vulnerable to varieties of abuse and neglect. Physical or mental deterioration and disability frequently leave the elderly vulnerable. These deficits often hinder requests for assistance and protection, creating a vicious spiral for abuse and neglect.

Understanding the common bedsore – decubitus ulcer claims

Pressure ulcers are localized areas of tissue breakdown in the skin or the tissues underneath it. They can happen to anyone who is constantly put under mechanical stress, but they are more common in people who are bedridden, in a wheelchair, or wearing a prosthesis or orthosis.

Ulcers are generally painful, difficult to treat, and inconvenient. They affect the lives of many young and old people. The senior population accounts for roughly 70% of all pressure ulcers. Diabetics may have a neuropathy that prevents them from sensing the sore and its deterioration. There is no substitute for careful manual (palpation) and visual assessments for redness (erythematous) areas and heat from potential infection.

Experts agree that following a seven-step plan can help prevent pressure ulcers: (1) using a risk assessment tool (e.g., Waterlow); (2) doing daily skin assessments; (3) repositioning (off-loading) patients and following a turning schedule; (4) using support surfaces to address pressure redistribution (both bed and chair); (5) controlling moisture from perspiration, urinary, and fecal incontinence; (6) providing nutritional assessment and supplementation when needed; and (7) educating the client and their family.

Once a pressure ulcer has appeared, experts generally agree that there is a nine-step plan that can help keep them from happening again: (1) Regularly assessing and reassessing the wound and writing it down (daily, weekly, etc.); (2) writing down the ulcer's (a) length, (b) width, (c) depth, (d) amount of discharge, (e) tissue type, and (f) pain; (3) providing local wound care: (a) preparing the wound bed, (b) repositioning (off-loading) patients and following a turning schedule, (c) using support surfaces to address pressure redistribution (both bed and chair), (d) controlling moisture from perspiration, urinary, and fecal incontinence, (e) assessing nutrition and giving supplements when needed, (e) using adjunctive therapies (like negative pressure wound therapy, electrical stimulation, etc.), and educating the client and their family.

Comorbid illnesses, like diabetes and particularly conditions causing immobility or extremely sedentary lifestyles, or those who have decreased tissue perfusion, such as COPD, congestive heart failure or angina pectoris associated with coronary artery disease, will result in significant deconditioning and low oxygen saturation. This can dramatically increase the risk of developing pressure ulcers and other harm. In theory, those at risk of developing pressure ulcers are identifiable, and greater effort can be directed toward preventing their bedsores.

Bedsores are a result of one of the most common forms of elder abuse. Unfortunately, given many care facilities' ongoing emphasis on profits by staffing cuts, patients are at increased risk for suffering pressure ulcers.

Pressure ulcers account for as much as 45% of nursing-home litigation and many other cases. While there are systematic and comprehensive preventive measures that could forestall many pressure-ulcer lawsuits at no cost to the hospital, they are often ignored. As a result, defendant healthcare providers are often unable to demonstrate that a complete and appropriate risk assessment was performed when patient (plaintiff) was admitted, or that the provider did not plan or follow appropriate (time-tested) strategies to prevent the development or exacerbation of pressure ulcers.

Many times, inferences have to be drawn about the totality of the care based on the presence or deterioration of the bed sore(s).

In general, claims involving harms from pressure ulcers can be filed under three distinct legal theories: negligence, professional negligence, and statutory elder or dependent adult abuse.

Skin infections/dermatological issues

Closely related to pressure ulcers are staph infections and sepsis. The skin is the largest organ in the body, and it is also the most vulnerable to injury. Skin loses elasticity and becomes thinner with age. This can lead to a variety of skin problems. The elderly's immune system weakens with age, making them more susceptible to skin lesions that do not heal. If these dermatological issues aren't addressed, they can lead to more serious health issues like cellulitis, a local infection. In more extreme cases, sepsis, a blood-borne systemic infection, can occur.

Abuse of the elderly can cause skin infections in a variety of ways. If a person does not properly wash their hands after using the restroom, for example, their skin can become infected. Bacteria can also grow on the skin if the person does not properly bathe. Skin infections can

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occur if a wound is not properly covered. Cuts, bruises, and scrapes caused by elder abuse can expose the skin to bacteria. Skin infections are more common in people who have poor circulation, such as those who have diabetes. A skin infection can be excruciatingly painful and lead to a variety of health problems. When a skin infection becomes severe, it can be fatal.

Dehydration

Dehydration is one of the most common, yet potentially dangerous, health problems that the elderly and dependent adults face. Elder abuse is often reported after instances of severe dehydration, which can be fatal. Elderly people are particularly at risk for dehydration because of problems with regulating fluid levels (i.e., electrolytes) that compromise their activity level and even mentation. Water is not adequate in many patients who are prone to electrolyte imbalances like low potassium, or sodium. Balance is essential to neurovascular and organic health.

Malnutrition

Calories and hydration can be a significant concern for the elderly and infirm. Dietary concerns should rank as high as any other at the time of admission. Reassessments must be made at regular intervals and when there is a change in the patient's condition. Every effort should be made to ascertain what the patient enjoys eating and how to keep them nutritionally balanced.

Weight loss

One of the surest signs of something amiss is unexpected weight loss and when that occurs in nursing homes and assisted-living facilities, it is a red flag. Systemic illnesses like sepsis can affect appetite. Constipation, leading to impaction may also reduce intake. When patients lose weight, they tend to become frail and more prone to mishaps like falls. Trends must be monitored, and interventions may be necessary to diagnose or treat the source of the problem.

It also bears mentioning that cognitive decline can also lead to weight loss because patients can forget to eat or drink and require much closer monitoring than ordinary elderly and dependent adults. This is a very important consideration for the demented patient.

Gastrointestinal infections

Gastrointestinal infections are a common type of infection in elder abuse cases, and they are frequently caused by contaminated food or water. Symptoms of these infections include diarrhea, vomiting, and abdominal pain. Gastrointestinal infections can also cause dehydration, which is dangerous for the elderly. These infections can be fatal in some cases.

Because of weakened immune systems, the elderly may be more vulnerable to these infections. Gastrointestinal infections can be avoided by practicing good hygiene, such as frequently washing hands and carefully cooking and preparing food. If an elderly person develops a gastrointestinal infection, prompt medical attention is critical. Abuse occurs when a caregiver intentionally ignores or fails to act on symptoms of gastrointestinal infections.

Blood infections/sepsis/anemia

Lethargy, somnolence, fevers, and other signs of trouble can occur as a result of infections and anemias. Blood infections result from bacteria entering the bloodstream. They can cause fever, chills, confusion, and end-organ damage.

Anemia or lack of proper blood components, like T-cells, and other agents that fight pathogens, can result from all manner of pathologic conditions. Lab studies with physical examinations should be consulted, commented upon, and made part of the care plan when necessary. For example, nutritional supplements and medications address these conditions to maintain quality of life and for improvement. The failure to consider these conditions and the patient's wellbeing can be abuse.

Abuse is actionable under the California Welfare & Institutions Code sections 15600 et. seq. The California Legislature recognized this vulnerability in the Elder Abuse and Dependent Adult Civil Protection Act, which is codified in sections of the California Welfare and Institutions Code. In Welfare & Institutions Code section 15600, subdivision (h), the Legislature declared that infirm, elderly, and dependent adults are a disadvantaged class, and that few civil cases are brought in connection with their abuse due to difficulties with proof, delays, and a lack of incentives to prosecute these suits.

Legislators knew they needed new rules for regulating elder abuse within institutions, and incentivizing private legal action, so they included provisions in the Act for attorney's fees, non-economic-damages claims for decedents that survived death, and punitive damages.

Proving negligence

Patients have an inalienable right to be treated with dignity and respect in the care of their personal needs, as mandated by federal or state law or regulation, such as the right to be free of all types of abuse under 42 Code of Federal Regulations part 482.13.

According to Title 22 of the California Code of Regulations, patients have an innate right to "considerate and respectful" treatment. While the source of the regulation may differ depending on the type of institution being sued, such as an acute hospital versus a residential care facility, the following types of regulations should be sought:
(1) Minimum staffing ratios and requirements prescribed by law;
(2) Mandates that nursing services be structured, staffed, equipped, and provided in order to fulfill the demands of your client;
(3) Rules requiring defendants to develop, implement, and record policies and procedures for patient care, such as assessment, nursing diagnosis, planning, intervention, and evaluation;
(4) Rules demanding ongoing patient assessments and/or planning, such

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as assessment, diagnosis, planning, intervention, and evaluation;
(5) Rules mandating treatments and activities to be provided to each patient in order to attain or maintain the maximum possible physical, mental, and psychosocial well-being in accordance with a recorded plan of care;
(6) Regulations establishing an active program for the prevention, control, and investigation of infections and communicable diseases in order to provide a sanitary environment to avoid infection and communicable disease origins and transmission;
(7) Nutritional demands must be met in accordance with approved dietary practices and the practitioner or practitioners in charge of the patient's care.
(8) Regulations require a full, accurate, uniform, repeatable examination of each patient's functional capacity from the outset and on a regular basis.

In many cases of abuse, these explicit rules are not followed. Attorneys should be able to recognize or spot worrying signs that make them think something is wrong.

For example, basic patient management requires a custodial care provider to obtain and become familiar with the patient's health history when they are admitted. Treatment plans must be developed, written, and followed. Plans are based on assessments and the patient's risk factors, and it must be accomplished promptly on admission. Morbidity, or bad results from care are reduced in frequency and quality when plans are created and followed. Departures are sure signs of a problem. For example, when pureed foods are necessary for people with swallowing disorders, dysphagia, and part of the plan of care, when one sees food on their trays or plates that is in chunks and pieces (with a fork or knife), it is an obvious departure from the plan and could cause harm from inhaling food particles and starting a pneumonia.

It should be obvious that health incidents and problems will be mitigated or eliminated when a care plan is put into action. Attorneys can quiz family members about what they have seen and advise them to take pictures to preserve their recollections and the condition of the patient. This information will be compared to the custodian's records and charting if a claim is made.

Empathizing with clients

As attorneys, we represent individuals, not cases. Clients want lawyers who listen and understand. Being heard and understood are one of the simplest and most powerful measures of respect, especially outside the legal setting.

In many of the above-described instances, pain is unavoidable. Most of the time, the pain is present even while your client is sleeping. Most of the time, it is too great to handle when your client is performing daily tasks. A wound may also have a distinct odor if germs are present. Patients who have excessive sweating and odor may feel guilty, ashamed, or isolated.

As research into the social and psychological effects of elder abuse has grown, medical literature has found a link between this kind of mental agony and a lower quality of life. As a patient gets more negative, their nutrition, depression risk, and ability to recover from future comorbidities all go down.

If you know what your client's life was like before the abuse, you may be able to advocate for their rights and interests more successfully. This can assist the jury to appreciate the impact of abuse and how horrible things have been for your victimized client. People who are abused as seniors frequently have lower physical and mental health and feel alone. Importantly, this decrease is not generally gradual. Instead, it generally occurs all at once when the abuse begins.

Empathy introduces a great grasp of what is important to the patient and their family. When a lawyer refines their focus on cultivating a relationship using empathy, they gain a clearer picture of what legendary plaintiffs' trial lawyer, Moe Levine, used to teach: an injury to a party is an injury to the whole. For these reasons, you must spend time learning about your client's life prior to the abuse. Only then can you genuinely advocate for their rights and your clients' best interests.

Accurate documentation – smoking gun and expert engagement

The observations that can be made and processed about how elderly or dependent adult patients are faring at custodial facilities are acquired tools for lawyers. These skills should be honed to process the records and paperwork that accompanies custodial settings, including care plans. If it was not charted, it is safe to assume it was not done. Learning how the actual care departed from what was written or planned is generally a sure guide to why there was *sequelae*.

Conclusion

An increasing number of baby boomers will find themselves in need of legal assistance as a direct result of some forms of elder and dependent adult abuse. It is imperative for lawyers who have this client base to have some understanding of the perils of custodial care. Knowledge is power and it may even prolong quality of life. It will certainly place you in better stead with the families going through difficulties with members who are heading into the sunset. Familiarity and empathy are just as important as a developed index of suspicion. It may even serve the lawyer's family because everyone is aging, some more gracefully and knowledgeable than others.

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