

Nursing Home Negligence/Abuse

In the absence of extended family support, millions of us are faced with the difficult decision of how to care for an elderly loved one. More often than not we are forced to look outside the safety of our homes in that search. We are looking for a “home away from home” for our loved ones. An estimated 3.3 million Americans will live in the nations nearly 16,000 nursing homes in 2013. That number translates to 1 in 7 people ages 65 and up, and more than 1 in 5 of those 85 and older. Perhaps you already have a loved one in a nursing home or assisted care living facility and just don't feel good about it.

YOU HAVE EVERY RIGHT TO BE CONCERNED

RESIDENT'S RIGHTS

1. The 1987 Omnibus Budget Reconciliation Act (OBRA) requires that each resident must receive, and the facility must provide, the necessary care and services to attain or maintain the highest practical physical, mental, and psychosocial well-being, in accordance with the comprehensive assessment and plan of care. By law, every nursing home and assisted living facility (ALF) must provide the resident or guardian with a copy of their Bill of Rights when the resident is admitted. Individuals do not lose their rights because they live in a nursing home. They are entitled to the same basic rights as any citizen in the community.
2. In fact, every resident of a nursing home is entitled to other additional specific rights. Each and every resident is to be treated in a manner and in an environment that will promote or enhance their quality of life. The three most important rights are:
 - To receive adequate and appropriate healthcare,
 - To be free from mental and physical abuse or neglect, and
 - To be treated courteously, fairly and with the fullest measure of dignity.

When placing a loved one in a nursing home please be aware of the following:

3. You should participate in the assessment and care planning process. Your participation shows that you want to be involved and that you want the resident to receive the best care possible.
4. Residents and family members need to know that they do not have to accept the care plan goals identified by that nursing home staff. They do have the right to have staff identify alternatives if something about the care plan is unacceptable.
5. Residents and family members have the right to refuse treatment and decide what goals are important to them.
6. Residents and family members have the right to and should bring up non-medical issues, such as personal routines and preferences.
7. Residents and family members have the right to raise concerns or questions about care, treatment or medications.
8. Residents and family members have the right to have a re-assessment conducted whenever there is a significant change in the resident's condition.
9. Residents and family members have the right to inquire about lost personal items. False teeth, eyeglasses, jewelry, clothing, and special bedding are just a few items that are frequently lost or stolen. Mark every piece of clothing with a permanent ink pen. TAKE AN INVENTORY OF ALL ITEMS AND GIVE A COPY TO THE NURSE IN CHARGE. Keep this list up to date, add to or remove items taken home. Insist that lost articles and clothes be found or replaced.
10. Guardians and family members have the right to introduce themselves to all staff and provide information about the resident that will allow them to provide better care for that person. This means varying the time of your visits so that you can meet and observe the caregivers throughout the different shifts.

WHAT DO YOU DO IF YOU THINK THERE IS A PROBLEM?

Trust your instincts. Ask questions, be persistent and visit often. If you are not satisfied with the answers you get, tell them. Call the doctor yourself to ask about a medical condition or treatment you are concerned about.

There are many approaches that can be taken to resolve problems in nursing homes. We encourage you to try several approaches, beginning with working with the facilities staff particularly when it is a situation that can be easily remedied. Express your concerns, ask to have a meeting with the caregivers and the administrator. If the nursing home is unreceptive or unwilling to help, consult with your local Ombudsman or community advocate to resolve the problem. Contact the Florida's Long Term Care Ombudsman Program at: www.ombudsman.myflorida.com.

Nursing homes and assisted care living facilities were designed to care and provide for our loved ones when we could not. It has been proven time and time again that this is not always the case.

11. With approximately 3.3 million elderly and dependant adults now living in nursing homes throughout the country, nursing home abuse and neglect has become more widespread than ever and we want to do everything in our power to see that it changes.
12. Often times, when abuse occurs, the system itself may be to blame. This is particularly true in understaffed or overcrowded facilities, where too few caregivers must care for too many residents with widely varying medical, personal and emotional needs. Even though there are some nursing homes that provide excellent care and treatment, there are those that do not. Nearly 1 in 3 nursing homes are cited for violations every year and nearly 1 out of 10 nursing homes have violations that cause residents harm, serious injury, or placed them in jeopardy of death. According to the U.S. House of Representatives Report the caregivers that are working in understaffed or underpaid conditions tend to take it out on our loved ones. Some of the “red flags” that may indicate that there is a problem are:
 - Weight loss.
 - Unexplained bruises, marks, skin tears or any other recurrent injury.
 - Changes in behavior such as withdrawal, lack of communication with family members or sudden lack of interest in things that used to interest the resident.
 - Sores that do not heal.
 - Soiled clothing and/or bedding.
 - Missing items or personal belongings.
 - Lack of basic supplies
 - The onset of bed sores since entering the facility.
 - Insufficient number of staff members.
 - Failure to maintain resident’s medical record.
 - Failure to provide medications and treatment in accordance with physician’s orders.
 - Muscle wasting.
 - Reduced urinary output

Early attention and intervention to “red flags” may prevent further injury or even prevent the resident’s death.

DO NOT BE AFRAID TO ASK QUESTIONS OR VOICE CONCERNS!!!

13. Remember, the sole function of a nursing home is to CARE and PROVIDE for elderly and dependent adults. When they fail to care and provide for the elderly and dependent they are committing abuse and/or neglect. Of the types of abuse complaints in U.S. nursing homes 29% consisted of physical abuse, 21% psychological abuse, 14% gross neglect, 7% claimed that they were sexually abused and, 7% of financial exploitation.

14. The U.S. Department of Health and Human Services has identified seven basic forms of abuse or neglect that occur in nursing homes and assisted living facilities:

- 1. Physical abuse**
- 2. Verbal or emotional abuse**
- 3. Misuse of physical restraints**
- 4. Misuse of chemical restraints (drugs)**
- 5. Physical or medical neglect**
- 6. Verbal or emotional neglect**
- 7. Abuse of the resident's or patient's personal property**

15. Some additional forms of abuse include the following:

- Assault**
- Battery**
- Sexual assault**
- Sexual battery**
- Rape**
- Prolonged or continual deprivation of food or water**
- Unexplained falls often left untreated**
- Physical beatings or burns**

In a study of 2,000 interviews of nursing home residents, 44% said they had been abused and, 95% said they had been neglected or seen another resident neglected. (Broyles) Also, over 50% of nursing home staff admitted to mistreating (e.g. physical violence, mental abuse, neglect) older patients within the past year. Two thirds of those incidents involved neglect. (Ben Natan) Another survey of certified nursing assistants (CNA) found that 17% of CNA's had pushed, grabbed, or shoved a nursing home resident and, 23% had insulted or sworn at a resident. (Pillemer & Hudson)

16. As a result of persistent deprivation of basic care, residents may suffer injuries such as:

- Broken bones
- Necrotic and festering bed sores (decubitus ulcers)
- Severe dehydration
- Severe malnutrition/septic shock
- Undetected gangrene
- Pneumonia
- Death by choking
- Death by asphyxiation

Unfortunately, many deaths can be directly linked to progressive neglect. These are very painful and avoidable means of death!

17. Neglect is defined as the negligent failure of any person having the care or custody of an elder or a dependent adult to exercise that degree of care which a reasonable person in a like position would exercise. The U.S. Department of Health and Human Services stated that "studies of the process States use to detect, investigate, resolve, and prevent elder mistreatment in nursing homes, assisted living facilities, and board and care homes are deeply flawed. As a result, the estimates of elder abuse and neglect are lower than the actual prevalence, and the process must be strengthened to protect residents."

Neglect includes but is not limited to:

- Failure to provide food, clothing, or shelter
- Failure to prevent malnutrition or dehydration
- Failure to provide the appropriate medical care for the patient's physical or mental needs

- Failure to ensure personal hygiene
- Failure to protect from hazards
- Failure to properly assess and treat medical needs or conditions

18. You will find that in some nursing homes, residents are not taken to the toilet when necessary, they are often left lying in urine and feces without being regularly bathed.
19. Residents develop painful and life threatening pressure sores (also known as decubitus ulcers)
20. Residents are not fed properly, are not given sufficient fluids, and are over-medicated or under-medicated.
21. Residents are dropped resulting in painful fractures which can ultimately lead to death.
22. Residents are overly restrained either physically or chemically.
23. Residents are often ignored, left in their beds all day with no stimulation, or not included in activities with the rest of the residents.
24. Residents are often not dressed properly according to the weather.
25. Residents are subject to being the victim of physical and/or verbal attacks by other residents.

Did you know that more than half of nursing home residents have behavior problems? Certain mental and physical disabilities, as well as personal characteristics, increase the likelihood that a nursing home resident will have behavioral problems. (William D. Spector, Ph.D., of the Center for Organization and Delivery Studies, Agency for Health Care Policy and Research) **This raises two obvious concerns.** First and maybe foremost, are the residents mental health needs being properly evaluated and met? And second, are other resident's in danger of possible injury from a fellow resident because he or she was not properly evaluated and treated?

WHEN DO I CONSULT AN ATTORNEY?

1. When abuse or neglect has led to injury or death
2. When you suspect medical or other types of professional malpractice

WHO CAN BRING A LEGAL ACTION AGAINST A NURSING HOME?

Anyone who resides in a nursing home, or is the guardian of a resident, or has durable power of attorney for a resident. A surviving spouse or family member of a resident who died in the nursing home, or a representative of a group of residents.

HOW MUCH DOES IT COST?

Your first consultation is free of charge. At this consultation we will gather the facts, explain your legal rights to you and answer any questions you may have and explain what options you have. If you are unable to come to our office, we will come to you.

Most cases are generally handled on a contingency basis. While you may have a meritorious case, not all cases are accepted. All cases are very costly to pursue, and therefore must meet all qualifying guidelines and requirements. These guidelines may not be fully realized until the case is fully investigated. Since these types of cases generally take a long time to investigate and prosecute, it is recommended that you seek legal advice early.

We are devoted to protecting the rights of those disabled or elderly that can't protect themselves. When you think that nursing home abuse has been committed, call us at 1-800-4LAWDOC, we are here to protect your rights and the rights of your loved ones.