

Healthcare Institutions and Mandated Reporting Law

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Learning Objectives: Upon completion of this session participants will be able to

1. Discuss the key components of Abuse of the Elder/Dependent Adult and Mandated Reporting Law
2. Identify the complexity of the Mandated Reporting Law
3. Understand healthcare institutions decision making process for abuse of elder /dependent adult investigation, Regulatory and Mandated Reporter compliance.

A Silent Epidemic

Elder abuse is an intentional act, or failure to act, by a caregiver or another person in a relationship involving an expectation of trust that causes or creates a risk of harm to an older adult. (An older adult is defined as someone age 60 or older.) Forms of elder abuse are below.

Centers for Disease Control
(CDC)



Statistics

- 1 in 10 Americans aged 60+ have experienced some form of elder abuse
- estimates range as high as **5 million elders** who are abused each year
- studies estimate that only 1 in 14 cases of abuse are reported to authorities



Elder Abuse

- **Physical abuse** means inflicting physical pain or injury upon an older adult
- **Sexual abuse** means touching, fondling, intercourse, or any other sexual activity with an older adult, when the older adult is unable to understand, unwilling to consent, threatened, or physically forced
- **Emotional abuse** means verbal assaults, threats of abuse, harassment, or intimidation



- **Confinement** means restraining or isolating an older adult, other than for medical reasons.



- **Passive neglect** is a caregiver's failure to provide an older adult with life's necessities, including, but not limited to, food, clothing, shelter, or medical care.



- **Willful deprivation** means denying an older adult medication, medical care, shelter, food, a therapeutic device, or other physical assistance, and exposing that person to the risk of physical, mental, or emotional harm—except when the older, competent adult has expressed a desire to go without such care



- **Financial exploitation** means the misuse or withholding of an older adult's resources by another



| Family Perpetrated Elderly Abuse | Percent |
|--|---------|
| Percent of Adult Protective Service cases that involve elderly abuse | 68 % |
| Percent of elderly abuse perpetrated by adult children or spouses | 66 % |
| Percent of murder victims over 60 who were killed by their own offspring | 42 % |
| Percent of murder victims over 60 who were killed by their spouses | 24 % |
| Nursing Home Abuse | Percent |
| Percent of <u>nursing homes</u> that lack adequate staff to properly care for patients | 91 % |
| Percent of nursing homes that have been in violation of elderly abuse laws | 36 % |

Sources: National Center on Elder Abuse, Bureau of Justice Statistics
Date research was conducted: December 1st, 2015

| Breakdown of Reported Elder Abuse Cases | Percent |
|---|---------|
| Neglect | 58.5 % |
| Physical Abuse | 15.7 % |
| Financial Exploitation | 12.3 % |
| Emotional Abuse | 7.3 % |
| Sexual Abuse | 0.04 % |
| All other types | 5.1 % |
| Unknown | 0.06 % |

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Mandated Reporting Law

Mandatory reporting statutes require individuals to report certain injuries or cases of abuse or neglect to law enforcement, social services, and/or a regulatory agency. The most common mandatory reporting laws address child abuse, sexual assault, domestic violence, elder abuse, gunshot wounds, and abuse of vulnerable adults (e.g., persons 18 years or older that are unable to report abuse and/or protect themselves from further harm).

The Older Adults Protective Services Act (OAPSA), which was amended by Act 13 of 1997, mandates reporting requirements on suspected abuse.

Who is Required to Report?



- All physicians and other practitioners of the healing arts or any caregiver having reasonable cause to believe that any protected person has been subjected to physical abuse, neglect, exploitation, sexual abuse, or emotional abuse shall report
- Any employee or administrator of a facility who suspects abuse is mandated to report the abuse.

Who do you report to?

- Licensing/ Regulatory, DPH agencies in your state and the local Agency on Aging
- If the suspected abuse is sexual abuse, serious physical injury, serious bodily injury, or suspicious death as defined under Older Adult Protective Service Act (OAPSA), the law requires additional local law enforcement & regulatory agencies



How & By When Is Determined by the laws of your state

Texas Hum. Res. Code Ann. § 48.051 (a) Except as prescribed by Subsection (b), a person having cause to believe that an elderly or disabled person is in the state of abuse, neglect, or exploitation shall report the information required by Subsection (d) immediately to the department. (b) If a person has cause to believe that an elderly or disabled person has been abused, neglected, or exploited in a facility operated, licensed, certified, or registered by a state agency other than the Texas Department of Mental Health and Mental Retardation, the person shall report the information to the state agency that operates, licenses, certifies, or registers the facility for investigation by that agency. 53 (c) The duty imposed by Subsections (a) and (b) applies without exception to a person whose knowledge concerning possible abuse, neglect, or exploitation is obtained during the scope of the person's employment or whose professional communications are generally confidential, including an attorney, clergy member, medical practitioner, social worker, and mental health professional.

Elder abuse is Underreported by Healthcare Providers

- It is a hidden issue
- Reporting Policy & Procedures are unclear
- Are not trained to spot it/don't recognize it
- Do not know how, who, or where to report
- Afraid to damage relationship with client by reporting
- Think they can "handle" the problem alone
- Think abuse and neglect signs are normal aging



Case Study

22 areas of severe skin breakdown on bilateral lower extremities not POA assessed on admission day #21



Who Was Responsible to Report this abuse??



A FINGERPOINTING GORDIAN KNOT OF POINCIANA PLAZA ACCUSATIONS

Cecille Hestor Esq.

CASE EXAMPLES AND FURTHER OBJECTIVES

- Increase knowledge of mandated reporting obligations
- Improve understanding of the potential consequences of non-compliance
- Increase awareness of the risk of patient-to-patient assault
- Provide tools to manage a DOJ investigation
- Avoid reliance on what may seem reasonable

The Incident

- Mr. V, a 41-year-old male, transferred to psych unit from addiction medicine unit (depression/suicidal ideation)
- Roommate Mr. P, 71-year-old male with Psychotic Disorder, advanced Parkinson's Disease (delusions/paranoia)
- At 11:40 pm on Saturday night, Mr. P hit Mr. V on the head with a plastic trash can
- Mr. V was sleeping at the time, sustained multiple scalp lacerations

Immediate Actions

- The patients were immediately separated
- Mr. V was taken to the ED where he received treatment for the lacerations
- Mr. P was restrained, in seclusion with a sitter
- Physicians and Mr. V's wife were notified
- Mr. P was confused, no awareness or memory of the incident

{ 22 }

Other Actions



- Nursing Supervisor called the unit manager at home and discussed notifying law enforcement
- Manager did not think it was necessary to notify police at that time
- Decision made to replace all hard plastic trash cans with soft plastic cans

{ 23 }

Reporting

- Mr. V's wife filed a report with the local Sherriff's Department the following morning
- Police officers interviewed the patients and our caregivers
- The officers collected the trash can and photographs taken by the caregivers, as evidence
- Adverse Event Reports were filed with CDPH and the CA Dept. of Mental Health

{ 24 }

Internal Investigation

- Concluded that the incident was unpredictable and unpreventable
- Mr. P was well-known to staff after 12-day hospitalization the month before
- No history of aggressive behavior toward staff or other patients in the unit
- MD reports supported that patient showed no violent or aggressive behavior

{ 25 }

DOJ's Investigation

- About three months later, Special Agents from the DOJ and a Deputy Sheriff began interviewing caregivers
- Initially unaware of DOJ's intent
- Legal counsel to communicate with the AG's office



{ 26 }

DOJ's Investigation

- We cooperated with the DOJ's investigation by producing caregivers and copies of P&Ps related to managing combative patients, training, statutory reporting to regulatory agencies, and abuse/assault/neglect/exploitation, etc.
- Early one morning, several armed officers arrived at the hospital with a search warrant.
- Content seized from computers
- Engaged services of criminal defense attorneys

{ 27 }

Applicable "Reporting" Obligations under California Law

- Department of Mental Health
- Health & Safety Code section 1279.1 "never event" mandatory reporting to California Department of Public Health
- Penal Code section 11160 reporting of injuries by a deadly weapon or criminal act
- Welfare & Institutions Code section 15630 mandatory reporting of abuse and neglect of elders and "dependent adults"

California Welfare and Institutions Code Section 15630

15630 (a) **Any person who has assumed full or intermittent responsibility for the care or custody of an elder or dependent adult**, whether or not he or she receives compensation, including administrators, supervisors, and any licensed staff of a public or private facility that provides care or services for elder or dependent adults, or any elder or dependent adult care custodian, health practitioner, clergy member, or employee of a county adult protective services agency or a local law enforcement agency, **is a mandated reporter.**

[29]

California Welfare and Institutions Code Section 15630

(b) (1) Any **mandated reporter** who, in his or her professional capacity, or within the scope of his or her employment, **has observed or has knowledge of an incident that reasonably appears to be physical abuse**, as defined in Section 15610.63, abandonment, abduction, isolation, financial abuse, or neglect, or is told by an elder or dependent adult that he or she has experienced behavior, including an act or omission, constituting physical abuse as defined in section 15610.63, abandonment, abduction, isolation, financial abuse, or neglect, or reasonably suspects that abuse"

[30]

California Welfare and Institutions Code Section 15630

(b) (1) continued

...shall report the known or suspected instance of abuse by telephone or through a confidential Internet reporting tool, as authorized by Section 15658, **immediately or as soon as practicably possible**. If reported by telephone, a written report shall be sent, or an Internet report shall be made through the confidential Internet reporting tool established in Section 15658, within two working days.

{ 31 }

California Welfare and Institutions Code Section 15630

(f) The reporting duties under this section are **individual, and no supervisor or administrator shall impede or inhibit the reporting duties**, and no person making the report shall be subject to any sanction for making the report. However, internal procedures to facilitate reporting, ensure confidentiality, and apprise supervisors and administrators of reports may be established, provided they are not inconsistent with this chapter.

{ 32 }

What is a “dependent adult?”

15610.23.

- (a) **“Dependent adult” means any person between the ages of 18 and 64 years** who resides in this state **and** who has physical or mental limitations that restrict his or her ability to carry out normal activities or to protect his or her rights, including, but not limited to, persons **who have physical or developmental disabilities**, or whose physical or mental abilities have diminished because of age.
- (b) **“Dependent adult” includes any person between the ages of 18 and 64 years who is admitted as an inpatient to a 24-hour health facility**, as defined in Sections 1250, 1250.2, and 1250.3 of the Health and Safety Code.

{ 33 }

Criminal Prosecution



Seeking more defendants

- Investigation turned to Charge Nurse who made the decision to place Mr. V in the same room with Mr. P
- **Penal Code section 368** "Crimes against elder or dependent adults."

(b)(1) "Any person who knows or reasonably should know that a person is an elder or dependent adult and who, under circumstances or conditions likely to produce great bodily harm or death, **willfully causes or permits** any elder or dependent adult to suffer, or inflicts thereon unjustifiable physical pain or mental suffering, or having the care or custody of any elder or dependent adult, **willfully causes or permits the person or health of the elder or dependent adult to be injured, or willfully causes or permits the elder or dependent adult to be placed in a situation in which his or her person or health is endangered**, is punishable by imprisonment in a county jail not exceeding one year, or by a fine not to exceed six thousand dollars (\$6,000), or by both that fine and imprisonment, or by imprisonment in the state prison for two, three, or four years."(b)(2) If in the commission of an offense described in paragraph (1) **the victim suffers great bodily injury**, as defined in Section 12022.7 (set forth hereinbelow), the defendant shall receive an additional term in the state prison as follows: (A) three years if the victim is under 70 years of age . . ."

{ 35 }

Impact to Caregivers

- AG filed criminal misdemeanor charges against an LVN, a Charge Nurse, the Nursing Supervisor, and the Unit Manager.
- The criminal charges were based upon failure to report the incident to Adult Protective Services or to local law enforcement in violation of Welfare and Institutions Code Section 15630(a) and Penal Code sections 240 and 242
- Failure to report "an incident of physical abuse, to-wit, assault and battery, in violation of Penal Code sections 240 and 242, by Mr. P on Mr. V."

{ 36 }

Outcome: Criminal charges

- Charges against the LVN and the Nursing Supervisor were dismissed under deferred prosecution agreement after providing proof of completion of a training course on mandated reporting
- Charges against the Charge Nurse were dismissed under deferred prosecution agreement after completing 60 hours of community service and proof of completion of a training course on mandated reporting
- Unit Manager went to trial

37

Proposed Jury Instructions

Elements of the Offense

Mr. R is charged in Count One with failing to report a suspected incident of physical abuse of a dependent adult, in violation of California Welfare and Institutions Code section 15603(b)(1). You may not convict Mr. R of this offense unless the People have proved each and every one of the following elements to be true beyond a reasonable doubt:

1. On or about April 28, 2012, Mr. V was a dependent adult, meaning that he was between the ages of 18 and 64 years, resided in California, and had physical or mental limitations that restricted his ability to carry out normal activities or to protect his rights;
2. Mr. R was a **mandated reporter with regard to Mr. V**, meaning that Mr. R had assumed responsibility for the care and custody of Mr. V at that time;
3. A **reportable incident of physical abuse of Mr. V occurred, specifically, assault and battery** of Mr. V in violation of Penal Code sections 240 and 242;
4. **Mr. R reasonably suspected that any physical abuse that occurred was reportable**; and
5. Mr. R **failed to report the suspected incident of physical abuse as soon as practically possible** to an adult protective services agency or to a local law enforcement agency.

Proposed Jury Instructions

Mandated Reporter

You may not convict Mr. R of the offense charged in Count One unless the People have proved beyond a reasonable doubt that Mr. R was a mandated reporter with regard to Mr. V, meaning that Mr. R had assumed responsibility for the care and custody of Mr. V at the time of the incident. **In deciding whether Mr. R had assumed responsibility for the care and custody of Mr. V at that time, you may consider factors such as the time of day or night when the incident occurred; where the incident occurred; where Mr. R was at that time; whether Mr. R was on professional duty at that time;** and any other factors that you believe may bear on the issue.

Proposed Jury Instructions

Physical Abuse

You may not convict Mr. R of the offense charged in Count One unless the People have proved beyond a reasonable doubt that **(1) any physical abuse that occurred was reportable; and (2) Mr. R reasonably suspected that any physical abuse was reportable. In evaluating those issues, you may consider the Legislature's purpose in enacting the reporting requirement. The reporting requirement was enacted to protect dependent adults from abuse by those entrusted to care for them - for example, abuse by their doctors, caregivers, or relatives.**

State of CA v. Hospital

- A civil lawsuit was filed alleging violation of California Welfare and Institutions Code Section 15630 based upon the following:
 - Failure to immediately report the physical altercation between Mr. P and Mr. V to local law enforcement in violation of Welfare and Institutions Code section 15630(b)(1)(F)
- Prayer:
 - Judgment in an amount equal to the full penalties under the law
 - Declaratory and injunctive relief
 - Attorneys' fees and expenses
 - Other relief deemed just and proper by the Court

{ 41 }

Outcome: CA v. Hospital

The terms of settlement:

1. \$25,000 payment to the California Department of Justice
2. Prevention of patient-to-patient assault through the following measures:
 - policies and procedures regarding the investigation, reporting, and protection of patients from verbal abuse, sexual abuse, physical abuse and neglect, mental abuse and neglect, ...

{ 42 }

Outcome: CA v. Hospital

3. Training of personnel
4. Reporting
 - Meet with representatives from the Bureau of Medi-Cal Fraud & Elder Abuse to provide evidence that the training has occurred

[43]

What we learned...

- Interpreted the reporting requirements to exclude some patient-to-patient altercations (accident or crime/abuse)
- Increased reporting to local law enforcement
- If regulators or law enforcement say they don't want these types of reports, get it in writing
- Re-educated caregivers
- Review policies/procedures, be careful

[44]

Risk Reduction Strategies

- Anticipate and prevent patient-to-patient altercations
- Know your reporting obligations and legal consequences
- When in doubt --- report!
- Be prepared (Search Warrant Protocol)

[45]

Questions? Comments?


