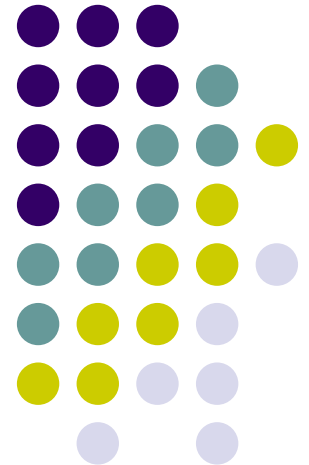


Elder Abuse & Domestic Violence in Later Life

ABA Commission on Domestic Violence
Domestic Violence Awareness Month
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Rebecca Henry, Esq.
Senior Staff Attorney





Objectives

- Understand the unique dynamics and features of domestic abuse of older persons
- Identify legal remedies and community resources that will serve both vulnerable and competent older victims
 - Prevention
 - Protection
 - Recovery

The Stats...



- As many as 5 million seniors are abused each year in the US
- More than half of all reported elder abuse is caused by family members
 - children (33%)
 - spouses (15%)
 - other relatives (13%)
- 84% of all elder abuse cases are never reported
 - 24 in 25 cases of financial abuse go unreported
- 40% of all elder abuse includes some sort of financial exploitation
 - people over age 50 control 70% of the wealth in the US

The Stakes



- Older adults who are mistreated are *three times more likely to die* within the next decade than their peers who are not mistreated
- The suicide rate for the elderly is higher than for any other age group



Types of Elder Abuse

- Institutional
 - Long term care facilities, etc.
 - Financial centers
 - Professionals
- Self-neglect
 - may be a psychological condition
- DV: Abuse, Neglect, Exploitation
 - 67% of elders live in a domestic setting
 - 75% of *them* live alone
 - 75% of *them* are women

Conditions Which May Contribute to Abuse



- Social isolation
- Past abuse
- Inadequate external supports
- Mental state of abuser (emotional, psychological, or substance abuse problems)
- Dependency of abuser on victim

Caregiver Stress



Early theory of elder abuse

- Assumes a well-intending, normally competent caregiver
- Becomes overwhelmed and lashes out
- High stress and low resources result in maltreatment
- Not supported by research (which points to a DV model)
- Identifies victim as the “problem”
- Validates abuser
- Leaves victim in harm’s way

Added Hurdles for Older Clients



- Economic insecurity – limited job history
- Lack of affordable and appropriate housing
- Complex health care needs or infirmities of aging
- Lack of accessible services
- Lack of response by criminal justice system
- Rejection by family members
- Generational and religious values
- Loss of decision-making power
- Denial and self-blame
- Fear of starting over

Abuse Takes Many Forms



- Physical
- Sexual
- Emotional/Psychological
- Neglect
- Abandonment
- Financial Exploitation



Physical Abuse

Intentional actions which result in bodily harm, unreasonable confinement, intimidation or pain:

- pushing, hitting, shaking, slapping, pulling hair, kicking, pinching, burning
- tying to bed or chair or locking in a room
- force-feeding
- under or over-medicating
- striking with objects



Sexual Abuse

Any non-consensual sexual contact, including sexual contact with incapacitated adult:

Not surprisingly, the least reported type of abuse

- unwanted touching
- suggestive talk
- rape, sodomy
- coerced nudity
- sexually explicit photographing



Emotional/Psychological Abuse

Intentional infliction of anguish, pain or distress:

Emotional abuse is rarely actionable under law

- denying visits with friends or family
- name-calling, harassment, insults, humiliation
- mocking spiritual or cultural values
- verbal threats, intimidation
- threats of institutionalization or social isolation
- infantilizing treatment

Neglect



Failure of designated caregiver to provide care and services when an adult is unable to care for her/himself:

Neglect is the most prevalent of reported abuse

- adequate shelter, clothes, food, water or supervision
- mental/social stimulation
- personal care and hygiene
- medical attention or medication
- glasses, dentures, hearing aids, walkers

Abandonment



Desertion by a person who has assumed responsibility for providing care for an elder, or by a person with physical custody of an elder

- “ER dumping”



Financial Exploitation

Illegal or improper use of an adult's money or property for another's profit or advantage:

Financial Exploitation is frequently linked with other types of abuse

- forcing (or preventing) an adult to change a will, sign over control of assets, sell or give away property, sign a power of attorney
- stealing or misapplying social security and/or pension checks
- forging signatures
- grossly overcharging for rent, personal items or services
- improperly seeking guardianship or conservatorship

Some Criminal Remedies...



- Assault, Attempted Murder
- Violation of a Protection Order
- Tampering with a Witness
- Endangering the Welfare of a Dependent Person
- Stealing Drugs/Furnishing Drugs
- Theft, Fraud, Misappropriation

Some Civil Remedies...



- Negotiation and Safety Planning
- Independent Counsel
- Civil Protection Orders
- Powers of Attorney
- Guardianship
- Adult Protective Services
- Administrative/Litigation Remedies

Special Issues with Older Clients



- Literacy
- Hearing
- Vision
- Dementia
- Sundowning

Case Preparation



- ***Always*** interview the victim alone
- Interview early in process once facts are known
- Interview more than once and at different times of day—remember special issues
- Talk to all parties whether competent or not
- Be respectful of both victim and caregiver
- Consider capacity evaluation
- Some cases require that the victim testify, others do not: Build all cases so role of the victim is minimized
- Videotape interviews
- NB: *Crawford v. Washington...*

Secure testimony early!

Interview Questions



- Who else lives here? Does anyone else visit regularly?
- Describe your routine day to me.
- How is the household run? Are there any house rules? What are the expectations about who does what? Who makes them?
- Does anyone in your home have a problem with drugs or alcohol? Any substance abuse or alcohol consumption prior to the incident?
- Have you told anyone what has been happening? Who else may know?
- Where are the relevant records? (police, bank, medical, court...)
- Are you taking any medications? How often do you take them?
- If there are prior incidents
 - What were the incidents about?
 - How were they resolved?

Negotiation & Safety Planning



- Alternative to Litigation
 - Puts abuser on notice
 - Mediate appropriate cases
- Work with DV agencies
 - Physical safety
 - Escape plan
 - ID Resources

Independent Counsel

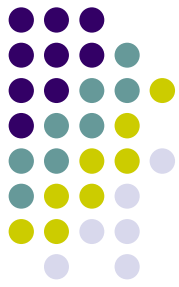


- Always Disclose Potential Conflicts
 - Rule 3.4(a): “lawyer *shall* disclose...”
- Simultaneous Representation Requires Informed Consent
 - Rule 3.4(c)(2): “lawyer *may not* undertake...”
 - Rule 3.4(c)(2)(ii): “lawyer *shall* consult with each...”
 - Rule 3.4(c)(2)(iii): “lawyer *shall* terminate upon request”
- Informed consent determined in light of:
 - mental capacity
 - quality of explanation of advantages/risks
 - circumstances under which explanation provided and consent obtained



Civil Protection Order

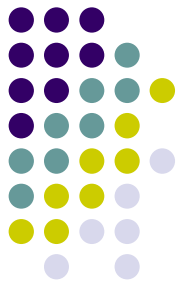
- State law does not include any upper age restrictions in defining physical abuse of adults
- Typically: guardians can file; POAs cannot
- May encounter difficulty with “family or household member” requirement
- Remedies can be more difficult; clients may not want “kick-out” or “stay-away” orders



Power of Attorney

Written document naming another person (the “agent” or “proxy”) to make decisions about health care (HCPOA) or legal or financial affairs (DPOA):

- Anybody principal chooses
- Starts immediately or upon incapacity
- As broad or as limited in scope as principal desires
- “Durable” = lasts beyond incapacity



Powers of an Agent

- Spend money, cash checks
- Withdraw money from accounts
- Sell property
- Enter contracts
- Pursue insurance claims and legal actions
- Health care decisions (including mental health)
- End-of-life decisions

Benefits & Risks of POAs



Benefits

- Principal can direct their own medical treatment or legal/financial affairs
- Decision-maker the principal *wants*
- Prompts discussion and dissemination of information

Risks

- A *huge* amount of power to agent
- Essentially a license to exert power and control
- Safety measures exist but are hard to monitor and enforce

Guardianship: “Incapacitated Person”



(in Maine...)

Any person impaired by reason of

- Mental illness or deficiency
- Physical illness or disability
- Chronic use of drugs
- Chronic intoxication, or
- Other cause except minority

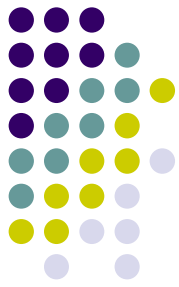
to the extent that the person lacks understanding or capacity to make or communicate responsible decisions

Powers of a Guardian



Same powers, rights and duties as parent to child (except liability to third parties)

- Establish placement
 - Possession of personal property
 - Decisions re: medical care, treatment, services
 - Financial authority if no conservator
-
- NB: Limited guardianship is an option



POA vs. Guardianship

POA

- Principal retains legal authority
- Agent must do as principal wishes—regardless of principal's best interest
- *No* substituted judgment

Guardianship

- Ward has no legal authority
- Guardian must act in ward's best interest—ward's wishes are only advisory
- *Requires* substituted judgment

Adult Protective Services

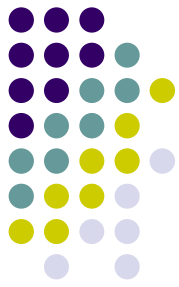


Services provided to protect adults who are unable to protect themselves from abuse, neglect or exploitation

- **Dependent adult:** any adult who is wholly or partially dependent upon others for care or support, either emotional or physical, and who would be in danger if that support were withdrawn
- **Incapacitated adult:** any adult who is impaired by reason of mental or physical illness or disability to the extent that that individual lacks sufficient understanding or capacity to make or communicate responsible decisions concerning that individual's person, or to the extent the adult cannot effectively manage or apply that individual's estate to necessary ends

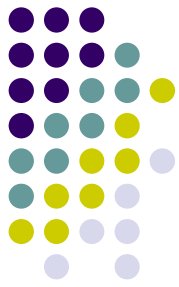
Most state APS statutes define abuse, neglect, sexual assault and financial exploitation specifically

What Can APS Do?



- Investigate reports of abuse, neglect or exploitation
- Arrange services to make adults safe and to allow the most personal freedom possible
- Seek guardianship &/or conservatorship of adults who are unable to make decisions for themselves and have no suitable family or friends to help them

APS: Mandatory Reporting



State law requiring certain people to immediately report to APS, who will assess and report to prosecutor

(in Maine...)

- Any person who has assumed full, intermittent or occasional responsibility for the care or custody of an adult, whether or not the person is paid
- Various professionals
- When they have reasonable cause to suspect that
 - an adult has been or is at substantial risk of being abused, neglected or exploited
 - And that the adult is dependent or incapacitated
- When reports are made in good faith, reporters are protected from civil suit

Administrative/Litigation Remedies



- Against Professionals or Institutions
 - licensing, malpractice, Medicare fraud, negligent hiring/supervision
- Against non-professionals
 - Torts: assault, damages, emotional distress
 - Contracts: fraud, breach of fiduciary duties, constructive trust, eviction



Maine's Improvident Transfer Act

33 MRSA § 1021

Presumption of undue influence when:

- Elder is “dependent” on transferee;
(limited mobility, vision, hearing, emotional or mental functioning, major illness or surgery)
- Has “confidential” relationship, and
(family, fiduciary, health care provider, clergy, friend)
- Was without independent counsel

Coordinated Community Response



- Attorney General
 - Consumer Protection
 - Medicaid Fraud
- Elder Services Officers
- Elder Death Analysis Review Teams
- Triad
- DV/EA Task Forces
- Legal Services
- DV/SA Advocates
- Area Agencies on Aging
- Independent Living Centers
- University Center on Aging
- Long Term Care Ombudsman
- Public Health Nursing