

Is it Abuse, Neglect, or Something Else:
Medical and Legal Issues in Identifying
Elder Abuse

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Who Is Here?

- Adult Protective Services
- Long Term Ombudsman Programs
- Aging Services
- Health Care Professionals
- Mental Health
- Criminal Justice Professionals
- Attorneys
- Public Guardian
- Other

Workshop Goals

- Define abuse and neglect in the context of the legal duty to provide care
- Identify the common risk patterns for abuse and neglect of the elderly and vulnerable adults
- Identify the physical and medical evidence that is useful for the prosecution of elder abuse and neglect criminal cases

Outline of Presentation

- The aging body
- Injuries of abuse and conditions mirroring abuse, case development
- Strangulation and suffocation
- Sexual abuse injuries
- Neglect
- Medications
- Working with the medical expert

Aging and Its Effect on the Body

- Sensory losses
 - Problems with hearing, vision, and sensitivity to touch (which can effect balance and raise the risk of falls)
 - May be susceptible to hypothermia, heat stroke, and heat exhaustion

Aging and Its Effect on the Body

- Musculo-skeletal changes
 - Bone density decreases
 - Leads to osteoporosis
 - Increases risk of fractures
 - Less adipose tissue (“padding”)

Aging and Its Effect on the Body

- Skin
 - Decreased collagen
 - Decreased elasticity
- Central Nervous System
 - Impaired gait, balance, coordination, motor strength
 - Cerebral atrophy
- Lungs
 - Decreased muscle strength, cough reflex

Aging and Its Effect on the Body

- Decreased estrogen
- Decreased gastric secretions
- Decreased sense of smell and taste
- Decreased thirst
- Decreased metabolism and temperature perception

Chronic Health Conditions

- Arthritis
- Ringing in the ears
- Congestive heart failure
- Dementia , including Alzheimer's disease

Chronic Health Conditions

- Diabetes Mellitus (sugar diabetes)
- Hypertension (high blood pressure)
- Hypothyroidism
- Parkinson's disease
 - A neurological disease that results in tremors, rigidity, lack of expression, and difficulty walking.
- Stroke
- Alcoholism

Forensic Medical Issues

- Co-occurring Forms
- Identification of Abuse
- Conditions Mirroring Abuse

Investigative Overview

- Likely multiple forms co-occur
- Look for multiple forms to provide motive or justification for conduct
- Rule financial in until you investigate and rule it out!
- Elder death—check for open APS or criminal fraud investigation

Distinguishing Abuse From Other Causes

- Location and pattern, rather than color are significant
- Do explanations match observations
 - Implausible or inconsistent
- Medical and medication history
 - If person is in a facility, has care been documented

Definitions

- Abrasion: scrape of the skin by friction
- Contusion: bleeding under the skin (bruising)
- Laceration: shearing or tearing open the skin by stretching over bone

Distinguishing Falls from Assaults

- Look at risk factors that increase the severity of minor injury (osteoporosis with fracture, cerebral atrophy with subdural hematoma, senile purpura, coumadin)
- Assess the level of combativeness of the patient (agitation, mobility, gait)

Distinguishing Falls from Assaults

- It is not the seriousness of the injury that should alarm the investigator.
- **IT IS THE LOCATION AND PATTERN OF THE INJURY THAT GETS OUR ATTENTION.**

Patterned Injury

- Contusion or abrasion revealing the pattern, surface texture, shape, or lever arm of a weapon or surface

Dementia causes restlessness, agitation and combativeness, which can lead to injuries. If injuries are actually inflicted, they can be misinterpreted as accidental.

Drugs like aspirin and coumadin do increase bleeding from minor injuries, leading perhaps to a misinterpretation of inflicted injuries.

SENILE PURPURA

- Exaggerated contusion or bruise in skin, most often of hands, forearms, and shins
- The bruise is from trauma, but its' exaggerated appearance is caused by age-related deterioration of the collagen in the skin
- Worse in people who also have malnutrition, chronic edema from congestive heart failure, and poor hygiene
- May be large bruises around medical skin puncture sites

SENILE PURPURA

- Location
- Swelling
- Abrasion
- Predisposing conditions

OSTEOPOROSIS

- Not uniformly preventable even with intensive medical treatment
- Pathologic fracture of demineralized bone complicates otherwise minor trauma
- Failure to heal after injury like hip fracture increases likelihood of decubitus ulcers and malnutrition

Typical Accidental Fall

- Complicated by osteoporosis, and anticoagulant therapy

Bruising Study

Dr. Laura Mosqueda and Team, UCI

- Bruises cannot be reliably aged by color
- Accidental bruises occur in predictable location, pattern
 - Nearly 90% of bruises on the extremities
 - No injuries on neck, ears, genitalia, buttocks, soles
- Multiple bruises associated with anticoagulation medication and persons needing help with ADLs
 - No difference in the location, size, or color of the bruises between such persons and other seniors in the study

Bruising Due to Abuse Study

- In confirmed cases of physical abuse,
 - 72% had bruises within 30 days of injury
 - Bruises were significantly larger than those in the non abused study group; and significantly more likely that victims knew their cause (89.6% of victim group vs. 23.5% of the non abused study group)

Bruising Due to Abuse Study

- Abused persons were significantly more likely to have bruises on the face, lateral aspect of the right arm and posterior torso, including back, chest, lumbar, and gluteal regions than persons from an earlier study who had not been abused

Wiglesworth, A., Austin, R., Corona, M., Schneider, D., Liao, S., Gibbs, L., & Mosqueda, L. (2009) "Bruising as a Marker of Physical Elder Abuse" Journal of the American Geriatrics Society, 57:1191-1196

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HIPAA

(Health Insurance Portability and Accountability Act of 1996)

- HIPAA does not override state reporting duties
 - Elder abuse
 - Suspicious death
 - Off-site emergency involving crime
 - Serious and imminent threat to individual or apprehend someone who has escaped
 - Gunshot wounds or serious injuries caused by violent attacks
- HIPAA does not override
 - Consent
 - Search warrant
- Only applies to victim information

Thinking about Building a Criminal Case

- May not be allowed to use the same evidence admissible in a civil or guardianship matter
- Will need live witnesses to testify to what they saw, heard, or perceived through their senses in a criminal case

Crawford v. Washington

- Important case affecting admissibility of hearsay evidence
 - Anything offered for its truth during a trial
 - Defendant has right to cross examine witnesses offering evidence against him/her
 - Requires prosecutor produce the witness to testify in court and be cross examined
 - Problems producing elder abuse victims at trial
 - It tells us what other kinds of evidence can be used even without calling the victim

Building Cases Without the Victim

- Casual or off-handed remarks or informal comments
- Spontaneous statements (to anyone)
- 911 transcripts/statements/tapes when emergency is occurring
- Statements to law enforcement while emergency occurring

Building Cases Without the Victim

- Business records
- Dying declarations
- Statements made to enable law enforcement to meet an ongoing emergency
- Medical records and statements for medical diagnosis
- Statements made to non governmental agents

What About APS?

- Think about why you are doing this interview
 - Develop a criminal case for court
 - Assess client for risk, capacity, and needs to develop a care plan
- Would you have done the interview, asked these questions if no criminal conduct was suspected? Why?
- No settled law on APS statements but more not to build a criminal case but to do your job the more likely court will not apply Crawford to your work

Forfeiture By Wrongdoing

- Applies when the victim/witness is unavailable because of defendant's misconduct done with the intent to cause the unavailability
 - Intimidation or threats
 - Has defendant contacted or called since the arrest?
 - Caused victim to hide
 - Domestic violence behaviors
 - Killed the victim
 - Calls from jail
- How will you find out? Know about the conduct?

Sources of Evidence

- Identify persons in victim's life
 - May be able to describe prior functioning
 - May have heard complaints from victim
 - May corroborate victim
 - May provide dates of events
 - Are victim's potential support system

Sources of Evidence

- Any involved community organizations
- Neighbors and family members
- Search the medicine cabinet!
 - Inventory all medications
 - Including OTC
 - Names of doctors, pharmacists, number of pills, date filled, number prescribed
- Collect financial records
 - Bills
 - Check and other bank books
 - Bank statements
- Handwriting exemplars
- Employment agreements

Documentation

- Photos
- Body maps
- Copies of documents
 - Medical records
 - Bank records
 - APS records
- Vet and humane society records
- Utility records
- Court order applications
- Notes, letters, gifts
- EMT and paramedic run sheets

How Do You Get Records?

- Need permission?
- Whose?
- How do you get it?
- Are there any legal issues that may affect a criminal case?

Getting Records

If mental capacity is in issue, do not ask victim to consent to release of records

Elder Sexual Assault

- Least known form
- Includes contact when victim cannot give legal consent
- Abuser can be a family member, visitor, or other resident
- When by CNA, often predatory with multiple victims

Victims of Elder Sexual Assault

- Victims overwhelmingly female
- With major disabilities
- Many are dependent on others for ADL

Elder Sexual Assault

- Seen as “Perfect Victims”
 - Can’t defend selves or resist
 - Cannot report
 - Not believed

Sexual Abuse Indicators

- Injuries to and around genitals
- STDs and VD
- Vaginal bleeding
- Intense fear reactions
- Nightmares, sleep disturbances
- Regressive and aggressive behaviors
- Coded disclosures

Medical Findings

- Increased vaginal/anal tearing and bruising that may never heal
- Brittle pelvis or hip bones more likely to fracture
- Increased risk of infection

Neglect from a Medical Standpoint

- "...the diagnosis of severe neglect should be considered whenever a dependent patient with adequate resources and a designated provider of care presents with gross inattention to nutrition, hygiene, or established medical needs (such as missed appointments or unfilled prescriptions)."

– Lachs and Pillemer, 1995

Caregiver

- Contractual
- Legal Relationship other than contractual
- Assumed
- What kinds of questions will you ask?
- What kinds of evidence will be helpful?

Hygiene

- Dirt
- Fingernails and toenails
- Clothing
- Bedding
- Diaper / catheter
- Environment

MALNUTRITION AND DEHYDRATION

- Body weight
- Skin fat stores
- Skin turgor and tenting
- Mucus membrane dryness

DECUBITUS ULCERATION OF SKIN

- Definite pattern to the location of the lesions
- Severity or stage of lesion is related to its' duration since onset
- Healing over time produces scarring
- Super-infection with bacteria
- Bone erosion with osteomyelitis

ULCERS CHANGE IN APPEARANCE WITH TIME

- Earliest finding is localized redness.
- Then, the lesion shows wet blistering.
- Then, the lesion erodes open to produce an ulceration of the superficial skin.
- Then, the lesion expands. If infected, it may erode into bone.
- When healing, the edges turn white with scar tissue.

ULCERS CHANGE IN APPEARANCE WITH TIME

- None of the changes are predictable enough to use to establish or refute an alibi.
- There is tremendous variability from one person to another.
- Even for a single person, changes in nutrition, and ongoing natural diseases alter the course of development and healing of skin ulcers.

These age-related changes are only approximations, and do not apply invariably to every person in every case.

Medical Evidence of Neglect

- Bedsores alone do not prove neglect
- Malnutrition alone does not prove neglect

How long does it take to develop malnutrition and dehydration?

How long has this ulcer been on this patient?

Is this condition painful?

The reality is that firm, consistent answers to these important questions are elusive and often speculative. Defense lawyers may be able to find “experts” who have firm answers apparently helpful to the defendant.

Proof and Defenses

- “What she wanted”

- Not the legal caregiver

- Inadequate caregiver
 - Did my best
 - Capacity and medical condition of the caregiver
 - No one told me what I needed to do

Proof and Defenses

- What Kind of Evidence Would You Collect to address each of these defenses?
- Table 1 : “What she wanted”
- Table 2: Not the legal caregiver
- Table 3 and 4: Did my best
- Table 5: Did what I thought was needed - no one told me what I needed to do

Not the Legal Caregiver

- Victim's needs
- Who provided the care?
- Did suspect benefit from the arrangement?
- Payment?
- Has suspect told anyone s/he is the caregiver?
- Prior APS investigations?

Inadequate Caregiver “I Did My Best”

- Capacity and medical condition of the caregiver
- Receive instructions on care needs
- Ask for help?
- Decisions to reject assistance

“What She Wanted”

- Prior statements
- Advance directives
- When said? Capacity?
- Is the victim's situation (in pain, festering wounds, sleeping on a floor, not being given food, etc.) consistent with prior life and way victim lived when statements made?

Neglect

- Always consider co-occurring financial exploitation
 - What is being spent on elder
 - What spent to benefit caregiver
 - Who controls the finances
 - Is caregiver focused on costs rather than elder's needs and resources
- Most successful criminal cases have co-occurring financial abuse

Strangulation and Suffocation

STRANGULATION

- Pressure placed upon the neck
- Resulting in reduction of blood flow through the brain
- If this persists, then oxygen delivery to the brain is impaired, and the brain cells become hypoxic, then anoxic, then dead
- This type of serious bodily injury is called ASPHYXIA, and it occurs first at the cellular level, then throughout the body

Suffocation

- Obstructing oxygen from getting into the lungs
- Sealing off the mouth and nose by manual compression
- Duct tape over face
- Head inside plastic bag
- Pillow over mouth and nose
- Sitting on chest

Babies, young children, intoxicated adults, and the infirm elderly are very easy to kill by strangulation or suffocation. Little force is needed in victims who put up little resistance. Therefore, less injury will be found, and less evidence of the violence is present.

The Role of Medications

- Tool of compliance or abuse
- Cataloguing the medications and OTCs
- Determine medical history
 - Treating doctors, diagnoses, prescribed medications
- May need an expert to review and analyze drug combinations

Medications

- Toxicology screen
 - Is the caregiver providing the prescribed medicines?
 - What is in the victim 's system? Should it be? Anything missing?
 - Check for levels of heart and blood pressure medications
 - Suspect
 - Specify screen for medications, not street drugs

Inventory the Medications See Handout Sample

Medication	Dosage	Doctor	Pharmacy	Date Filled	Number prescribed	Number in bottle

Working with the Medical Expert

- You may not be able to prove physical abuse or neglect without a medical expert
- They will need
 - Medical history
 - Underlying diseases and conditions
 - Complete records from most current hospitalization, including lab , nursing and social worker reports
 - Prior medical records and hospitalizations
 - Medications list
 - Any statements and documentation
 - Information on elder’s activity level

Medical Consultants in Neglect Cases

- Most neglect is lack of “care” – nurses are experts in care/caring
- Understand medical terminology and know what *should* be in the documentation and what may be missing
- Can sift through what is and is not important
- Know the function of other professionals
- Can be an MD, nurse, wound care specialist, etc.

Practical Tips

- Know the issue you need addressed
- More narrow the issue, less time expert may need
- Costs can be mitigated

How You Might Find a *Pro Bono* Medical Consultant

- University faculty (medical and nursing schools)
- Community colleges
- Medical centers/hospitals
- Medical Examiner
- Form relationships
- Value of MDTs

Questions?

THANK YOU !

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