

WHAT TO DO IF YOU SUSPECT YOUR LOVED ONE IS THE VICTIM OF ABUSE AND/OR NEGLECT



Sean Doolan
Doolan Platt & Setareh, LLP
56 Main Street 2nd Floor
Irvington, NY 10533
T: 518-755-3443
F: 914- 478-0100
E: Sean@dpsattorneys.com

Phil Rizzuto
The Rizzuto Law Firm
50 Charles Lindbergh Blvd.
Uniondale, NY 11553
T: 516-622-0606
F: 516-622-2112
E: Prizzuto@rizzutolaw.com

What should you do if you notice signs of neglect or abuse such as unexplained injuries, an unexplained change in behavior, poor hygiene, complaints of pain such as back pain which could be a bedsore, or sudden weight loss?

Nursing home neglect can occur in many forms such as physical abuse, verbal abuse, neglect, and negligence.

Neglect is any single or repeated act of intentional or unintentional negligence committed by a nursing home professional that has the potential to cause physical, mental, or psychological harm to nursing home residents. Any commission or omission of an act that harms a patient may be considered nursing home abuse.

In New York, nursing home negligence often comes under the category of elder abuse and is widespread throughout the United States. Approximately 1.7 million people are cared for in nursing homes every year and it is estimated that a quarter of all Americans will receive long term care at some point in their lifetime.

Thousands of nursing home residents die from starvation, dehydration, or bedsores each year and all three of these conditions are a result of nursing home malpractice.

Unfortunately, nursing home abuse comes in all sizes and flavors. These include: physical abuse, verbal abuse, emotional

abuse, improper care, failure to provide care or medical treatment, and physical negligence

Nursing home negligence can take many forms such as:

- Home health attendants who negligently drop a patient
- Patients who are burned by scalding water
- Falls from wheel chairs
- Falls from beds where railing was not placed in an upward and locked position or where the patient was left unattended in an unsafe situation
- Improper or insufficient care which leads to bedsores/pressure ulcers
- Improper or insufficient care which leads to malnutrition or dehydration
- Patients who injure themselves by trying to get up by themselves because they couldn't obtain assistance
- Slips and falls due to premises liability such as: broken or slippery floors, loose cords, clutter, etc.

Problems the Care Facility Has May Be Due To:

- Poorly trained, poorly paid, or insufficient nursing staff
- Overcrowding
- Inadequate responses to questions about nursing home care
- Sometimes, staff members have a history of violence. Other times, staff members are poorly qualified or not trained adequately.

Resident Rights

In order to advocate for your loved one, who you suspect may be the victim of abuse or neglect, you must know what rights a nursing home resident has. The following link to the Department of Health Website delineates the rights residents have.

Your Rights as a Nursing Home Resident in New York State and Nursing Home Responsibilities
www.health.ny.gov/facilities/nursing/rights

You have the right to exercise your rights without fear of reprisal. In other words, you have the right to assert your rights without fear that the nursing home will retaliate against you for doing so. I have found that families are reluctant to come forward because they fear that the nursing home will retaliate by discharging their loved one.

Attend care plan meetings

Under the New York Public Health Law, a nursing home resident has the right to receive quality care and treatment. If you suspect that they are not receiving quality care there are a variety of actions you can take. If you are designated as the legal representative of your loved one by the nursing home,

you have the right to attend care plan meetings. This is something that few families take advantage of. Nursing homes must have multidisciplinary care plan meetings to implement and review your loved one's care plan. At the meeting you can expect a nurse supervisor, doctor, physical therapist, if appropriate, dietician and other service providers. This is a rare opportunity for you to discuss your loved one's needs. It is important that you come prepared for the meeting. You might want to obtain your loved one's medical records before attending so you can review the care plan beforehand. At the meeting you can express your concerns and insist that they document your concerns in your loved one's chart.

What is an Ombudsman?

Every nursing home in New York State has an ombudsman whose job it is to protect vulnerable residents and protect their most basic rights. They are also a resource you can use to resolve disputes, get advice on how to make sure your loved one gets quality care and advise you on residents' rights.

Should I File a complaint with the Department of Health?

Every nursing home resident and/or their representative has the right to file a complaint with the New York State Department of Health Hotline.

New York State Department of Health Hotline

www.health.ny.gov/facilities/nursing/complaints.htm

You should file a complaint with the Department of Health (DOH) if you suspect that your loved one's basic rights have been violated or they have suffered abuse and/or neglect. Obviously use your discretion when deciding whether to report the nursing home. You might be able to involve the ombudsman and resolve the issue without involving the DOH.

Document Everything

If you have a specific complaint and/or concern, make sure that the staff documents it in your loved one's chart. For example, if you believe that your loved one isn't getting turned and repositioned consistent with their care plan, then make sure they document your concern. Maybe your loved one isn't getting the proper medications, or sufficient physical therapy, etc. It is important that your concerns are in the medical record for all of the staff to see.

Consider taking photographs as well as video of any visible injuries. If your loved one has bedsores in a private area you can insist that the nursing staff take photographs. You should also consider keeping a journal.

You should know the certified nurse aides that care for your loved one

Nurse aides provide the majority of care to nursing home residents. They feed, bath, comfort, and turn and reposition residents. They are on the frontline. Get to know them. Watch them work and decide for yourself if they seem rushed and unable to provide basic care. You might to ask for the aide to attend the care plan meeting.

Should I look for another nursing home?

This is a very personal decision that only you can answer. There are many factors, not the least of which is, is the nursing home is close to your home? Would moving your loved one would result in fewer visits? You want to avoid this if possible. I would advise you to first try and resolve the issues before moving your loved one. Of course, use your judgment. If your loved one is at great risk then you might have to act quickly and have them transferred.

Do I have a right to obtain my loved one's medical records?

Yes, if you are the legal representative. Under New York State and Federal law you have a right to a copy of your loved one's medical records. A simple written request for the records is

sufficient. If you are only interested in a specific time period let them know.

Should I install a camera in my loved one's room if I suspect abuse?

Clients have done this but the decision to do so was made long before they hired me. This is a complex decision that cannot be addressed in this format. There are many factors including the right to privacy of your loved one and their roommates.

Attend Family Council Meetings

Many nursing homes have family council meetings where the family members of the resident gather to discuss various issues. As the expression goes, there is power in numbers so you may find that other families are having the same experience as you. You might also find out about other issues you weren't aware of at these meetings.

Visit often

One of the most effective ways to ensure that you loved one gets quality care is to visit often. Studies has demonstrated that just showing up and visiting results in better care for your loved one. Visit at different hours of the day including late at night when there are fewer staff. Make sure you sign in so there is evidence that you visited. As a lawyer, one of the criteria I use in selecting a case is whether the family visited often. If they didn't visit, I would like to think there to be a good reason.

Family Involvement in Residential Long-Term Care: A Synthesis and Critical Review

www.ncbi.nlm.nih.gov/pmc/articles/PMC2247412

Should I call a lawyer?

A lawyer will investigate your claim and if appropriate seek money damages for your loved one's pain and suffering. Our firm doesn't get paid unless there is a recovery from the nursing home. We are typically paid one third (1/3) of the gross settlement.