



Free Webinar For Legal Professionals: Elder Abuse, Neglect and Exploitation and Clients with Dementia

Jane Tilly, DrPH, Office of Supportive and Caregiver Services,
Administration on Aging/Administration for Community Living

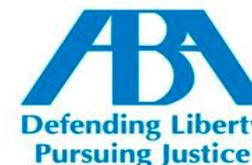
Kathy Greenlee, the Administrator of the Administration for
Community Living and Assistant Secretary for Aging,

Lori Stiegel, Senior Attorney,
ABA Commission on Law and Aging

Jessica Hiemenz

National Consumer Law Center

January 24, 2013



National Elder Rights Training Project for the National Legal Resource Center.
Sponsorship for this Webinar is provided by the National Consumer Law Center and a grant from the
Administration for Community Living/ Administration on Aging .



NLRC

Providing Legal Support to the
Aging Advocacy Network

- <http://www.nlrc.aoa.gov/>
 - Collaboration developed by the Administration for Community Living/ Administration on Aging between the National Consumer Law Center, National Senior Citizens Law Center, American Bar Association Commission on Law and Aging, Center for Elder Rights Advocacy, and the Center for Social Gerontology
 - See upcoming trainings, conferences, and webinars
 - Request a training
 - Request consulting
 - Request technical assistance
 - Access articles and resources
-

Moderator – Jane Tilly, DrPH



- Joined the Administration on Aging in December 2008 as Team Leader for Dementia and Brain Health Programs.
- She has extensive experience with research and policy analysis on a variety of health, long term services and supports, and public benefit issues at the state, national and international levels stemming from her work at the Urban Institute and AARP's Public Policy Institute.
- Just prior to joining the Administration on Aging she worked on dementia policy and practice issues for the Alzheimer's Association.

Presenter – Kathy Greenlee

- Ms. Greenlee serves dual roles of Administrator of the Administration for Community Living and Assistant Secretary for Aging. She was appointed by President Obama as Assistant Secretary for Aging at the U.S. Department of Health and Human Services and confirmed by the Senate in June 2009.
- Assistant Secretary Greenlee believes that people with functional support needs should have the opportunity to live independently in a home of their choosing, receiving appropriate services and supports. She is committed to building the capacity of the national aging and disability networks to better serve older persons, caregivers, and individuals with disabilities.
- She served as Secretary of Aging in Kansas and as the Kansas State Long Term Care Ombudsman. She also served as the General Counsel of the Kansas Insurance Department and served as Chief of Staff and Chief of Operations for then-Governor Kathleen Sebelius.





What is Dementia?

- Progressive decline in cognition and/or behavior from a prior level of functioning
 - Decline in two or more: memory, reasoning, language, visual perceptual processes, executive functions, social interpersonal behaviors, personality
 - Interferes with customary activities and social relationships, causing dependence, alienation
 - Caused by brain disease
- 



Dementia Considerations

- Dementia is a fatal illness with progressive decline in decision-making and personal independence
 - Decision-making discussions early in the disease process are crucial for ensuring that the wishes of the person with dementia are honored regarding financial matters and health and long-term care services
 - Difficulties with financial management and other matters involving “executive function” (the ability to manage one’s life) are often the first signs of dementia
 - Caregivers, when available, take on more and more decision-making for the person with dementia and need to be involved in discussions as needed/appropriate
- 



Dementia Capable Professionals

- Have skills needed to identify individuals with possible dementia, assess capacity and communicate with them and their families
 - Empower and support persons with dementia and their families
 - Know the legal issues and risks faced by persons with dementia
 - Know the local services available to help people with dementia and their caregivers
 - Provide linkages to other community-based services that are dementia capable
- 

Presenter – Lori Stiegel



- Senior Attorney, joined the American Bar Association Commission on Law and Aging staff in 1989. Since that time she has, among other things, developed and directed all of the Commission’s work on elder abuse. She is the author or a co-author of numerous books, manuals, curricula, and articles including:
 - *Elder Abuse Detection and Intervention: A Collaborative Approach* (Springer, 2007);
 - “Undue Influence: The Criminal Justice Response” (YWCA of Omaha, 2006);
 - *Elder Abuse Fatality Review Teams: A Replication Manual* (ABA 2005);
- Stiegel was a member of the National Academy of Sciences Study Panel on the Risk and Prevalence of Elder Abuse and contributed to the panel’s groundbreaking report: *Elder Mistreatment: Abuse, Neglect, and Exploitation in an Aging America* (National Research Council 2003).

Overview of Topics

- Types
- Victims & Abusers
- Reporting
- Capacity & Undue Influence
- Impact
- Manifestations, Prevention, & Remedies
- Resources

Types

- Physical abuse
- Sexual abuse
- Emotional or psychological abuse
- Financial exploitation
- Neglect
- Abandonment
- Self-neglect

(http://www.ncea.aoa.gov/ncearoot/Main_Site/FAQ/Basics/Types_Of_Abuse.aspx)

Types

- **Domestic abuse** occurs in an elder's home in the community
- **Institutional abuse** occurs in long-term or residential care facility
 - Facility staff
 - Resident on resident
- Laws and interventions may differ

Victims

- Age
- Vulnerability
 - Condition
 - Function
 - Living Situation
 - Receipt of Services

(See ABA's Threshold Eligibility for APS Charts,
http://www.americanbar.org/groups/law_aging/resources/elder_abuse.html)

Abusers

- Relationships of Trust
 - Relatives
 - Intimate partners
 - Caregivers (paid & unpaid)
 - “Friends” or “neighbors”
 - Fiduciaries (e.g., agents, guardians)
- Strangers (?)

Why Victims Don't Report

- Don't recognize the abuse
- Feel at fault and ashamed
- Fear disbelief, stigma, or retaliation
- Dependent on or concerned about abuser
- Fear guardianship or placement in LTCF
- Unaware of or incapable of getting help

Reporting Elder Abuse

- Most APS laws mandate reporting to APS or law enforcement
 - Voluntary reporting in CO, NY, ND
 - Standard: *suspicion*
 - Protections for good faith reporting
 - Sanctions for failure to report
 - Possible conflicts with other laws or ethical codes
 - Some states require lawyers to report
- Other state or federal laws may also mandate

Capacity

- Assessment of capacity:
 - to have lawyer-client relationship
 - to make financial or other decisions

(Previous AoA webinar:

http://www.aoa.gov/AoARoot/AoA_Programs/HPW/Alz_Grants/index.aspx#resources)

- Take seriously reports from or about persons with diminished capacity

Undue Influence

- Psychological Definition
 - Use of power and control
 - Exploit trust, dependency and fear
 - Substitution of one person's will for the true desires of another
 - Purpose: deceptively gaining control

Source: Margaret Singer

Undue Influence

- Method of exploiting or sexually abusing
 - Easier to commit if capacity diminished, but can happen to adults with capacity
 - Generally a pattern of tactics, not one incident
 - Victim doesn't recognize it & identifies with perpetrator

(Previous AoA/NLRC webinar: <http://www.nclc.org/the-role-of-undue-influence-in-elder-abuse/event-details.html>)

Source: Undue Influence: The Criminal Justice Response (YWCA of Omaha, 2006)

Laws & Systems

- Adult protective services
- Aging services
- Animal control
- Attorneys general
- Code enforcement
- Courts
- Crime victim services
- Domestic violence
- Financial services
- Guardianship
- Housing
- Law enforcement
- Lawyers
- LTC ombudsman
- LTC facility licensure & certification
- Medicaid Fraud Control
- Mental health
- Prosecutors
- Protection & Advocacy
- Sexual assault

Financial Exploitation

- **Manifestations** – excess/inappropriate charges, failure to provide reasonable consideration for property/services, fiduciary abuse, forgery, fraud, identity theft, misappropriation, misrepresentation, “sweetheart scam”
- **Prevention** – counseling, money management services, appointment of fiduciary, oversight of fiduciary, injunctions, termination of relationships

Financial Exploitation

- **Civil Remedies** – accounting, breach of duty, civil protection orders, constructive trusts, consumer fraud, conversion, damages, divestiture, divorce/separation/annulment, eviction, fraud, guardianship, misrepresentation, rescission
- **Criminal Actions** – freezing assets, restraining orders, prosecution (e.g., conspiracy, exploitation, forgery, fraud, larceny, theft)

Physical & Sexual Abuse

- **Manifestations** – death, isolation/withdrawal, physical injuries
- **Prevention** – victim services (APS, crime victim, domestic violence, sexual assault), civil protection orders

Physical & Sexual Abuse

- **Civil Remedies** – civil protection orders, divorce/dissolution/annulment, eviction, guardianship, tort claims
- **Criminal Actions** – assault, battery, domestic violence, manslaughter, murder, rape, violation of civil protection orders

Neglect (Domestic & Institutional)

- **Manifestations** – bed sores, death, inappropriate medication, inappropriate use of restraints, infections, injuries, lack of supervision of caregivers & other residents, malnutrition, untreated illness or injury (if treatment is desired)
- **Prevention** – background checks, careful selection of caregivers, monitoring care (family, ombudsman, regulators)

Neglect (Domestic & Institutional)

- **Civil Remedies** – breach of contract, consumer fraud, Civil Rights of Institutionalized Persons Act (CRIPA – 42 U.S.C. §1997a *et seq.*), false claims, guardianship, tort actions
- **Criminal Actions** – assault, battery, conspiracy, fraud, manslaughter, murder, sexual assault, theft

Self-Neglect

- **Manifestations** – inability to perform ADLs & IADLs
- **Prevention** – capacity assessment, socialization, proper medical care and nutrition, mental health treatment, services
- **Civil Remedies** – animal control, code enforcement, eviction, guardianship
- **Criminal Actions** – animal cruelty, code enforcement

Impact on Victims

- Increased risk of mortality (Lachs, et al., 1998; Dong, et al., 2012)
- Physical and mental health problems
- Loss of assets and home
- Loss of caregiver
- Loss of independence
- Loss of trust
- Increased isolation and vulnerability

Selected Resources

- Administration on Aging Elder Rights Protection
http://www.aoa.gov/AoARoot/AoA_Programs/Elder_Rights/index.aspx
- ABA Commission on Law & Aging www.americanbar.org/aging
 - http://www.americanbar.org/groups/law_aging/resources/capacity_assessment.html
 - http://www.americanbar.org/groups/law_aging/resources/elder_abuse.html
- Consumer Financial Protection Bureau www.consumerfinance.gov
- National Adult Protective Services Association www.napsa-now.org
- National Association of Medicaid Fraud Control Units
www.namfcu.net
- National Association of Attorneys General www.naag.org

Selected Resources

- National Center on Elder Abuse www.ncea.aoa.gov
- National Association of State Long-Term Care Ombudsman Programs <http://www.nasop.org/index.htm>
- National Consumer Voice for Quality Long-Term Care <http://www.theconsumervoice.org/>
- USDOJ/National Institute of Justice <http://www.nij.gov/topics/crime/elder-abuse/welcome.htm>
- USDOJ/Office for Victims of Crime <http://www.ojp.usdoj.gov/ovc/>