



# The Medico-Legal Aspects of Dementia-Driven Resident-to- Resident Sexual Abuse in Nursing Homes

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# Dementia-Driven Sexual Abuse

- Between two and three o'clock in the morning on April 1, 1998, in a Lexington, Kentucky nursing home, three nurse aides gathered excitedly in the East Wing hallway, as they peered into an elderly woman's room. Apparently talking and laughing too excitedly, and fearful the noise would stop the action they were watching, one of them tapped the other on the shoulder and said "shhh – be quiet, [Resident B] is getting a piece of ass."



# Dementia-Driven Sexual Abuse

- Resident B was a violent, sexually aggressive, demented resident. In his first eleven days as a resident of the Sunrise Care & Rehabilitation Center in Lexington, he swung scissors at staff members, threw a water pitcher at staff members, and tried to hit them with his cane. He used the medication cart as a battering ram against residents. He also grabbed a woman's breast and was generally known to be sexually abusive.



# Dementia-Driven Sexual Abuse

- On the night in question, Resident B was sexually assaulting Resident A to the amusement of 3 nurse aides. The nurse aides gave statements indicating that they had seen both residents naked from the waist down; Resident B had an erection; Resident A's diaper had been taken off and was on the floor; they also said Resident B's penis was touching the other resident's bare vaginal area. Several staff members also reported seeing semen on the female victim.



# Dementia-Driven Sexual Abuse

- The facility administration reported the incident to state officials like this:
  - Resident B found in bed with Resident A sleeping. Neither patient is [unreadable] and both suffer from dementia. Neither patient recalls the incident and neither appear to be traumatized. The residents were examined and there are no signs of trauma or sexual assault. [The Physician] examined two residents and found no injuries.



# Dementia-Driven Sexual Abuse

- The State was not planning to investigate this incident because it seemed that nothing untoward had happened. Then the state got calls from some facility employees explaining the what had actually happened.
- An investigation ensued and the facility was fined the lowest possible fine for an event like this - \$3,050. The government claimed that Resident A had been abused, but the ALJ disagreed: no abuse had occurred because Resident B was demented.



## Prevalence Of The Problem

- Dementia-driven resident-to-resident sexual abuse is the most common form of sexual abuse in nursing homes.



# Dementia and Sexual Assault

- Dementia is a consequence of disease process (Alzheimer's Disease, Frontal Lobe Lesions, etc.), some medications (benzodiazepines) and other causes.



# Problems with the Literature

- The policy-driven scholarly research fails to appreciate the role of dementia in causing most of the sexual abuse of nursing home residents.
  - This results in focusing on failings in criminal justice to address this problem.
  - Criminal Justice approach is certainly appropriate in non-dementia induced sexual assault, but where dementia is driving the conduct, a better focus is on regulatory solutions because they focus on facilities' culpability.
- Medical Literature focuses almost exclusively on dementia.



# If This Is A Legal Problem, What Law Best Addresses it?

- Criminal Law
  - Mens Rea
  - Philosophical and Practical Considerations
- Tort Law
  - Intent
  - Practical Considerations
- Regulatory Law?

# Federal Regulations Governing Nursing Homes

- Federal regulations governing nursing homes provide residents with “the right to be free from verbal, sexual, physical, and mental abuse, corporal punishment, and involuntary seclusion.”
- Abuse is defined as “the willful infliction of injury, unreasonable confinement, intimidation, or punishment with resulting physical harm, pain or mental anguish.”



# Problems with Federal Regulations

- Because demented residents lack a willful intent to abuse, federal regulators classify sexual and physical abuse committed by demented residents as accidents.
- This understates the problem of sexual abuse in nursing homes, devalues the experience of the victims, and results in misleading information on Nursing Home Compare, the government website designed to inform the public about conditions at individual nursing homes across the country.

# Proposed Solutions

- The Affordable Care Act allows for the amendment of federal regulations and training of staff and surveyors.
  - Keep definition of abuse.
  - Add a definition of “sexual abuse”
  - A suggested definition of sexual abuse is “non-consensual sexual contact of any kind with a resident.”
  - This definition is consistent with the ones used by other governmental agencies and it provides a more accurate description of the harm befalling these residents.