

Physical Elder Abuse and the Elder Law Attorney

By Sanford J. Mall, CELA, CAP

Abuse, under any circumstances, is appalling and inexcusable. When the victim of abuse is at either end of the age spectrum - an elderly person or a child - abuse is especially despicable. Most often, adult victims are those elders who are vulnerable and dependent upon others for daily needs.¹ Abuse can take many forms and be inflicted upon the elder by anyone. However, statistics show that most often the abuser is a family member (or unrelated person) whom the elder trusts.² This article will show that the incidence of physical elder abuse appears to be growing. Nonetheless, being aware of the signs and symptoms of physical elder abuse can help with prevention as well as early intervention when problems are evident.

What is physical elder abuse?

Physical elder abuse is the infliction of physical harm against an elderly person. Examples include sexual abuse, slapping, forceful grabbing, or restraining (which includes dispensing medications that have the effect of restraining a person's will or ability to function).³ According to statistics from 2010, approximately 42 percent of murder victims over the age of 60 were killed by their own children, and 24 percent were killed by their spouse.⁴ Elder abuse is a frightening reality that can have an everlasting impact.

There are many effects or symptoms of physical abuse, including severe emotional distress, deterioration in health and overall wellness, hospitalization, and even death.⁵ Physical abuse is indicated not only by more obvious visual evidence (such as bruises or broken bones), but also by changes in mood, behavior or personality; whether these changes are subtle or drastic.⁶ Examples of subtle changes in behavior that could be evidence of physical abuse are "withdrawal from normal activities" or "unusual depression."⁷ In order to assist in detection and reporting of elder abuse, one should stay alert to recognize the signs and take action to protect vulnerable elders when the need arises.

How prevalent is elder abuse?

Unfortunately, an overwhelming majority of elder abuse incidents go undetected or unreported. "One study estimated that only 1 in 14 cases of elder abuse ever comes

¹ Administration on Aging, *What is Elder Abuse?*, http://www.aoa.gov/AoA_programs/Elder_Rights/EA_Prevention/whatIsEA.aspx, Retrieved March 2013.

² *Id.*

³ *Id.*

⁴ Statistic Brain, www.statisticbrain.com/elderly-abuse-statistics/, Retrieved March 2013.

⁵ Nat'l Center on Elder Abuse, Agency on Aging, www.ncea.aoa.gov.

⁶ *Id.*

⁷ *Id.*

to the attention of the authorities.”⁸ Another study “found that for every [1] case known to programs and agencies, 24 were unknown.”⁹ However, while the reporting of any type of abuse is extremely low, the rate of reporting has been steadily increasing.¹⁰ This trend is attributable to the steady increase in the population of elderly Americans age 65 and older (“13 percent of the total population”).¹¹ “The fastest growing segment of America’s population consists of those age 85 and older...[and]...[b]y 2050, it is projected that there will be 19 million people aged 85 or older.”¹² As our elderly population increases and more of us become dependent on others for our daily needs, it is predictable that the incidence of elder abuse and the rate of reporting will also increase.

What should a concerned party do about suspected or incurred physical elder abuse?

No one should ever have to suffer from physical abuse, let alone a vulnerable elderly person. Two of the keys to protecting an elderly loved one are to take steps to prevent abuse in the first place, and to stay alert to the signs in the event abuse occurs. To reduce the chances of an elderly loved one being abused (whether he or she lives in a nursing home or a private residence), a concerned party should take steps to become aware of the elderly person’s total surroundings; this includes sleeping arrangements, daily activities, medications, social groups, and the elder’s usual emotional reactions. Also, a concerned party should become familiar with and known to any of the elder’s caregivers. Being aware of the elder’s environment, the people he or she is exposed to and dependent upon, and understanding the elder’s normal behaviors and reactions will offer protection as well as the likelihood of a quick response if any symptoms should surface.

For incidents where physical abuse is suspected or has occurred, it is extremely important for the concerned party to know how to effectively respond. Abuse of any kind, whether suspected or incurred, should be reported. There are several avenues for reporting abuse, including through local law enforcement, the state’s Adult Protective Services Agency, Office of Services to the Aging, and the Eldercare Locator – a national hotline which puts concerned parties in touch with local agencies and services, and the elder’s attorney. “Remember, [a concerned party does] not need to prove that abuse is occurring; it is up to the professionals to investigate the suspicions.”¹³

The Elder Law Attorney as a Resource

⁸ Nat’l Center on Elder Abuse, <http://www.ncea.aoa.gov/Library/Data/index.aspx>, Retrieved March 2013.

⁹ *Id.* See also Lifespan of Greater Rochester, Inc., Weill Cornell Medical Center of Cornell University. & New York City Dep’t for the Aging (2011), *Under the Radar: New York State Elder Abuse Prevalence Study*.

¹⁰ Nat’l Center on Elder Abuse, <http://www.ncea.aoa.gov/Library/Data/index.aspx>, Retrieved March 2013.

¹¹ *Id.*

¹² *Id.*

¹³ *Id.*

In physical elder abuse situations, an attorney who specializes in elder law or elder abuse litigation may be a vital resource in several ways. First, persons directly involved in a situation involving physical elder abuse should help assure the elder is in a safe environment. Often, family members do not have the knowledge or resources to effectively respond and emotions may cloud good judgment. The experienced elder law attorney is an effective and objective ally to turn to for support and to ensure that measures are taken in a timely manner. Second, the elder law attorney has experience in detecting behaviors or patterns of abuse that lay persons may overlook or misinterpret. In addition, every state has laws criminalizing elder abuse. Therefore, it is important for the abused, as well as any concerned party, to be informed of his or her rights and legal actions that can be taken.

Lastly, an experienced elder law attorney is an excellent resource to assist in planning and arranging for safe and appropriate care of elderly loved ones. The elder law attorney's experience and knowledge enables him or her to assemble a unique care plan that best suits the elderly loved one's circumstances. Elder care planning can be a significant factor contributing to the prevention of physical elder abuse.

Sadly, physical abuse is an unfortunate reality and is a very serious problem affecting our nation's elderly. In order to help eradicate this increasingly prevalent problem, concerned loved ones and others should encourage elders to establish effective preventative planning, including having appropriate persons named as medical and financial agents (decision makers) under durable power of attorney. Additionally, the appointed agents and concerned others should stay involved and be familiar with the elder's level of functioning and care needs. Finally, knowing the signs of abuse will enable a concerned family member or friend to report abuse if it occurs or when it is suspected.

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