

Neglect of Care Dependent Persons

Forensic Nurse Investigation Pennsylvania Law

Suzanne Sheaffer
Pennsylvania Office of
Attorney General
Nurse Analyst

18 Pa. C.S.A. Section 2713

- Who can be subject to prosecution
 - Caretakers
 - Owner, operator, manager or employee of a
 - Nursing home
 - Personal care home
 - Community residential facility
 - Adult daily living center
 - Home health agency
 - Home health service provider

Caretakers also include

- Corporations
- Partnerships
- Unincorporated associations
- Or any other business entity



Neglect of a Care- Dependent Person
18 Pa.C.S.A. Section 2713

Mental Status of Accused

- Knowing
- Intentionally
- Recklessly
 - A conscious disregard of a substantial and unjustifiable risk that bodily injury will result, and
 - A gross deviation from the standard of conduct that a reasonable person would observe in the actors situation

Injury

- Causing bodily injury or
 - Impairment of physical condition or
 - Substantial pain
- Serious bodily injury
 - Serious permanent disfigurement or
 - Protracted loss or impairment of the function of any bodily member or organ

Type of injury required

- By failing to provide the
 - Treatment
 - Care
 - Goods or
 - Services that result in an injury under 2713(a)(1)
- By failing to provide correctly the
 - Physical restraint
 - Chemical restraint
 - Medication or
 - Isolation that results in an injury under 2713(a)(2)

What is the Duty Owed?

- To preserve the:
 - Health
 - Safety or
 - Welfare
 - Of a Care- Dependent Person to whom he/ she is responsible to provide care to

Care- Dependent Person

- Any adult
- Due to a physical or cognitive disability or impairment
- Requires assistance to meet his/ her needs for
 - Food
 - Shelter
 - Clothing
 - Personal care or
 - Health care

18 Pa.C.S.A. Section 2713(F)

Characteristics of Residents at Risk

- Dependent on Caretaker
- Non- Supportive Family/ Friends
- History of Physical Abuse
- Inability to Communicate Needs
- Dementia

Indicators of Abuse

- Physical Injuries- Undetermined Origin
- Unexplained Fractures
- Unusual Resident Behavior
- Increase/ Decrease in Appetite
- Incontinence/ Change in Toileting Habits
- Sudden/ Unprovoked Aggressive Behavior

Indicators of Neglect

- Resident Care needs unmet
 - Lack of personal grooming products
 - Lack of assistive devices
- Resident appearance unkempt
- Lack of timely medical care
- Residents dietary needs unmet

Attorney General Jurisdiction

- Pennsylvania Commonwealth Attorney's Act
- Federal Medicaid Fraud Control Unit Grant

In order for the Attorney's General office to have authority to pursue a conviction, both prongs of jurisdiction must be met

Commonwealth Attorney's Act

- There are 22 specified criminal statutes that grant prosecutorial jurisdiction to the Attorney General
- Neglect 18 Pa.C.S.A. 2713(d) (2)
- Medicaid Fraud Act 62 P.S. Section 1407(b) (4)

Penalty for Conviction

- Bodily Injury → Misdemeanor in the 1st degree
 - Maximum Punishment
 - 5 years and \$10, 000
- Serious Bodily Injury → Felony in the 1st degree
 - Maximum Punishment
 - 20 years and \$25, 000

Statutory Defenses

- Compliance with a living will
- Compliance with written or signed and written instructions, executed when a person is competent
- Compliance with persons
 - Agent
 - Health Care Agent
- Compliance with a DNR



Investigation

Major Sources of Information

- The Victim and Family
- State, County, and other investigative agencies
- The Facility

Victim and Family

- Medical records
- Releases for other medical information
- Names of witnesses
- Family doctor
- Verify DNR or Living will
- If deceased death certificate
- Fully identify the P.O.A. if applicable
- Other Relevant information from people who knew and observed the victim

State, County and Other Investigative Agencies

- Who controls the license for the facility
- Determine if any other Law Enforcement Agencies are involved
- Is Department of Health involved ?
- Is Department of Public Welfare involved?
- Is Department of State involved?
- Is the local County Area Agency on Aging involved?
- Was there an autopsy?

Licensing

- Nursing Home Facilities
 - Department of Health issues on the facilities license
- The facility has obligations to report incidents to the licensing agency within a prescribed time table

License

- Personal Care Home and Assisted Living Facility
 - Department of Public Welfare issues the license
- The facility has obligations to report incidents to the licensing agency within a prescribed time table

Nursing Home Facility

- Important information to gather
 - Owner of Corporation
 - On- site Administrator
 - On- Site Director of Nursing
 - Nursing staff
 - Aids
 - Work schedules
 - Care plans of victims
 - Nursing notes
 - Physician orders
 - Skin care records/ photo's

Personal Care Assisted Living Facility

- Owner of Corporation
- On- site Administrator
- Resident Contract
- Original Resident File
- List of employees and their titles
- Medication Administration Record (MAR)
- Incident/ Accident Reports
- Transportation logs
- Resident's face sheet on chart
- P.O.A., Living Will

Obtaining Information

- Search Warrants
 - See attachment for sample items to be seized and computer language
- Computer Search Warrant
 - In addition to above
 - Computer records may not be stored in the facility- need to know the “hub”

Facility Responsibility

- Assessment
- Plan of Action
- Monitoring
- Reassessment

Common Problems with Investigation

- Dealing with Corporate Counsel
- Dealing with Experts
- Victim's ongoing medical problems
- Cooperation of witnesses

Problems with Investigation

- Elderly Victims
- MHMR Victims
- Deceased Victims
- Reluctant Victims

Dealing with the Problem Investigation

- Prepare the investigation as if you do not need the victim present
- Use witnesses and records to show inconsistencies with the treatment that was being provided
- Have an expert connect the pieces to prove the neglect

Legal Problems

- Criminal v. Civil
 - Criminal Statute
 - Knowingly, Intentional or Reckless
 - Civil Standard
 - Negligence
 - What is the balance
 - Need to look at all the circumstances regarding the injury
 - Could require looking back over the long course of medical treatment or lack of medical treatment
 - Medical Records – Not documented, NOT done
- !!! Or loose lips sink the ship???



Medical Issues

Recognition of Potential Neglect

- Facility Appearance
- Resident Appearance
- Staff Demeanor
- Facility Staffing

Facility Appearance

- Is there a strong odor of:
 - Urine
 - Feces
 - Mold
- General Discord in the appearance
 - Dirt visible
 - Paint chipping
 - Uplifting floor tiles
- Presentation of Equipment used in facility

Staff Demeanor

- General attitude upon presentation to Law Enforcement
 - Engaging
 - Appear as if staff is trying to hide something
 - Appearance of staff member
- Was the appropriate pre-employment background check conducted
- Licensure verification (when applicable)

Facility Staffing

- Are there enough staff present to provide appropriate treatment to the residents
- Has the facility been cited by the regulatory agency in the past for staffing violations
- Best resource
 - Talk with the present staff

Resident Appearance

- Location of the Residents
- Are Residents engaging
- Grooming
- Cleanliness
- Clothing
- Physical Appearance
 - Visible injuries

Facility Responsibility

- Personal Care Facility
- Nursing home
- Assisted Living Facility

Restraints

- Chemical
- Physical

- Restraint in general rule
 - Not used for staff convenience
 - Not first option
 - RN determines need for restraint
 - MD orders the restraint

Medical Terminology

- Familiarize yourself with the most common medical abbreviations that you will see when reviewing medical records
- Refer to Medical Abbreviation Handout
This **IS NOT** an inclusive list



Mandatory Reporting

Reporting under Act 28

- Who
 - Pennsylvania Department of Aging
 - Pennsylvania Department of Public Welfare
 - Pennsylvania Department of Health
- When
 - If there is a reasonable belief that a care- dependent person residing in a facility has suffered bodily or serious bodily injury OR
 - Has been unlawfully restrained
- To Whom
 - Local Law Enforcement
 - Office of Attorney General Care –Dependent Neglect Unit

Reporting under Act 13

- Who
 - Employees or administrators of the facility
- When
 - If there is reasonable belief that a care-dependent person residing in a facility has suffered bodily or serious bodily injury OR
 - Has been unlawfully restrained
- To Whom
 - The local AAA, Department of Health and Law Enforcement
 - Office of Attorney General

Reporting under the Crimes Code

- Who
 - Personnel in emergency departments
 - Hospitals
 - Pharmacies
- When
 - When treating a person for injuries inflicted due to criminal conduct, including neglect
- To Whom
 - Law Enforcement
 - Office of Attorney General

Bibliography

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