

Legal Resources on Elder Abuse in the Institutional Setting

Robin C. Schard
University of Miami Law

Follow this and additional works at: <http://scholarship.law.marquette.edu/elders>



Part of the [Elder Law Commons](#)

Repository Citation

Schard, Robin C. (2000) "Legal Resources on Elder Abuse in the Institutional Setting," *Marquette Elder's Advisor*: Vol. 2: Iss. 2, Article 11.

Available at: <http://scholarship.law.marquette.edu/elders/vol2/iss2/11>

This Column is brought to you for free and open access by the Journals at Marquette Law Scholarly Commons. It has been accepted for inclusion in Marquette Elder's Advisor by an authorized administrator of Marquette Law Scholarly Commons. For more information, please contact megan.obrien@marquette.edu.

ON - LINE

Legal Resources on Elder Abuse in the Institutional Setting

This column focuses on locating online resources related to institutional elder abuse. Web site addresses are provided for the most comprehensive organizations and governmental agencies, along with reviews of their most useful pages.

By Robin C. Schard

Robin C. Schard, J.D., M.L.S., is Head of Public Services at the University of Miami Law Library.

According to the National Center on Elder Abuse, elder abuse in the institutional setting (nursing homes, board and care facilities, and other long-term care situations) consists of several categories of mistreatment by “persons who have a legal or contractual obligation to provide elder victims with care and protection (e.g. paid caregivers, staff, professionals).”¹ The 1998 National Elder Abuse Incidence Study detailed approximately 551,011 incidences of domestic abuse, neglect, and self-neglect of persons sixty years and older.² The study does not mention, however, the problem of elder abuse in institutional settings, nor are the criminal aspects of this type of abuse counted in such reports as the National Crime Victimization Survey.³ An indicator of how widespread the problem of institutional elder abuse may be is the number of complaints taken by the Long-Term Care Ombudsman Program. In order for a state to receive funds from the Vulnerable Elder Rights Protection allotment,⁴ it must

have a State Long-Term Care Ombudsman Program.⁵ The ombudsmen’s duties include investigating and resolving complaints, providing services to protect residents’ health and welfare, advocating on behalf of residents, educating residents as to available services, and more.⁶ In 1997, for example, the Ombudsman Program took a total of 188,163 complaints from persons in nursing facilities and board and care facilities.⁷ The nature of the complaints ranged from physical abuse to gross neglect.⁸ These are just a few of the categories of mistreatment that make up elder abuse. In addition to physical abuse and neglect, other types of mistreatment include psychological abuse, sexual abuse, abandonment, financial exploitation, and self-neglect. The actual description and definition of elder abuse, of course, depends upon individual state law. Several organizations and governmental agencies provide information on institutional elder abuse.

National Center on Elder Abuse (NCEA)

(<http://www.gwjapan.com/NC EA>)

The premier organization providing this type of information is the National Center on Elder Abuse. The Web site for this organization contains lots of useful information on both domestic and institutional elder abuse. For a basic explanation of what elder abuse is and what causes it, the NCEA Fact Sheets provide a good starting place. The Web site also describes the procedures for receiving information from the Clearinghouse on Abuse and Neglect of the Elderly (CANE) at the University of Delaware. For a fee, staff at CANE will do electronic research in their substantial database of elder abuse-related material. Furthermore, under the heading of Reporting Elder Abuse, this Web page provides telephone numbers to report elder abuse in each state, the District of Columbia, and Puerto Rico. The table provides information for both domestic and institutional abuse, as well as any state specific details. Of greater importance for legal research, however, the Web page lists state statutory citations for laws on Adult Protective Services in cases of elder abuse, for institutional abuse laws where available, and for the Long-Term Care Ombudsman Program. The NCEA also includes a list of publications, newsletters, up-coming conferences, and other information about the association on this site.

National Citizens Coalition for Nursing Home Reform (NCCNHR)

(<http://www.nccnhr.org>)

The NCCNHR is another organization interested in the problem of elder abuse in institutional settings. While its main emphasis is on improving overall nursing home conditions, the Web site for this organization provides some very useful resources on elder abuse. To begin with there is a listing of state citizen groups involved in advocating on behalf of nursing home or long-term care residents. Within the Publications section, there are several Fact Sheets or short pamphlets on several topics. For example, the one called Neglect and Abuse briefly defines these subjects and discusses reporting elder abuse. The other topics covered by Fact Sheets include Resident's Rights, Restraint Use, and Long-Term Care Insurance. The Family Involvement section includes the text of the Nursing Home Reform Act of 1987 and several sections of the Code of Federal Regulations. (Be sure to update these sections before relying on them.) Like the NCEA site, the NCCNHR Web page also has a listing of state ombudsmen as well as general press releases and recent legislative activity related to nursing homes.

Administration on Aging (AOA)—Elder Abuse Prevention and Treatment Resources

(<http://www.aoa.dhhs.gov/abuse>)

The best place to learn about the AOA's actions against elder

abuse is the Elder Abuse Prevention Fact Sheet which describes the types of elder abuse, the assistance available to combat abuse, and AOA programs currently engaged in fighting the abuse. Also found on this Web page is the *National Elder Abuse Incidence Study, Final Report*. The report provides statistics on primarily domestic abuse and the demographic features of abuse. Additionally, the AOA site has a calendar of upcoming conferences and press releases related to elder abuse.

AOA Elder Abuse Sites

(<http://www.aoa.dhhs.gov/agingsites>)

Although this Web page seems to arise from an earlier version of the AOA site, the links to other resources is still helpful and the majority of the links are valid. The sites included here (and not on most other sites) range from general elder abuse sites like the NCEA to state and local resources like the Illinois Department on Aging Elder Rights page, to international programs, and college and university sites. For each entry, the AOA provides an address, short description of the page, and a hyperlink.

National Committee for the Prevention of Elder Abuse (NCPEA)

(<http://www.preventelderabuse.org>)

Although this Web page includes minimal amounts of information, it still represents a valuable resource. NCPEA is involved in

training and outreach to its affiliates. The main emphasis of this training is on advocacy, outreach, and public awareness on the elder abuse problem. One nice feature of the site is the "Ask the Expert" section, which allows the submission of questions to the NCPEA staff.

Kansas Elder Law Network (KELN)

(<http://www.keln.org>)

Maintained by the University of Kansas Elder Law Clinic, this Web site has a much broader reach than Kansas. There are particularly two parts of this page that contain excellent resources about elder abuse. The first part is the Elder Abuse and Neglect portion of the page, best located through the site map for KELN. The Elder Abuse and Neglect section has links to other elder abuse-related sites and links to KELN bibliographies on elder abuse. For example, there is one bibliography entitled *Elder Abuse in the Institutional Setting*. (See below under Articles.) The KELN bibliographies are the other part of this site that is so useful. In addition to the ones on elder abuse, other bibliographies cover such topics as age discrimination, pet trusts, long-term care insurance, and veterans' benefits. Most bibliographies include relevant statutes, cases, articles, books, and Web sites. The KELN Web site also includes some forms and downloadable versions of Health Care Financing Administration (HCFA) manuals.

Annals of Long-Term Care

(<http://www.mmhc.com/nhm/index.shtml>)

Written mostly from the medical perspective of long-term care, this journal includes interesting articles on various topics, such as risk management in long-term care, responses to institutional abuse, and a recent two-part article on preventing abuse and neglect. (See below under Articles.) The Web page has the full text of the current issue of *The Annals of Long-Term Care* and an archive of about two volumes. It also has a rudimentary search engine that allows the researcher to search the full text of the posted articles.

Nursing Home Abuse and Neglect Information Center

(<http://www.nursinghomeabuse.com>)

The Bauman & Rasor Group Inc. sponsor this Web site. According to the page, this is not a law firm, but rather an investigative and consulting firm working with law firms. In addition to general information on the sponsors and abuse and neglect, the page provides tips on choosing a nursing home. It also has an outline of federal laws regulating nursing homes, including citations mainly to the Code of Federal Regulations. Another part of the page discusses remedies available to victims of elder abuse in nursing homes. This section briefly describes the benefits and drawbacks of remedies, such as contacting the local ombudsman and litigation. The

Web site gives suggestions to family members of patients in nursing homes on how to prevent and recognize problems with the care being given. Recently added to this site is an article that details and critiques the process of evaluating and investigating nursing homes.

Nursing Home Compare

(<http://www.medicare.gov/NHCompare/home.asp>)

Although this resource is not directly related to elder abuse, Nursing Home Compare is a source for information on specific nursing homes. In addition to the directory of state Long-Term Care Ombudsmen (surprisingly enough, this Web site includes all states and territories [e.g., American Samoa, Guam] but not the District of Columbia), the site provides summary data derived from each nursing home's last state inspection. More explanation on the origins of the information can be found in the Important Information section. Since HCFA maintains this site, only nursing homes that are Medicare and Medicaid certified are included. The particular nursing home(s) is selected by state and county or by zip code. Once a nursing home(s) is selected, there are three types of information the researcher can get about the institution. The first type of data is general information about the nursing home, such as address, size, and affiliation. The next type of information is about the residents currently residing in the nursing home. This includes the percent-

age of residents with pressure sores or with restraints as well as other conditions. The site also provides the national average for each condition, so the researcher can make a comparison. Nursing Home Compare provides the number and nature of any deficiencies and the severity of the deficiencies.

The nature of these generalizations and numerical evaluations has made Nursing Home Compare a controversial source which should be supplemented by other sources, preferably local, and sound professional advice.

Other Resources

Included below is a very selective bibliography of paper and Internet materials which consider the legal aspects of elder abuse.

Books

ALISON BARNES, ET AL., *COUNSELING OLDER CLIENTS* (1997) addresses many of the issues concerning older clients; chapters 25 and 26 deal with nursing home care.

JANINE FIESTA, *LEGAL IMPLICATIONS IN LONG-TERM CARE* (1997) provides an overview of all types of litigation in which long-term care providers become involved.

MARSHALL B. KAPP, *GERIATRICS AND THE LAW: UNDERSTANDING PATIENTS RIGHTS AND PROFESSIONAL RESPONSIBILITY* (3d ed. 1999) explains the legal and ethical responsibilities of health care providers when confronted with elder abuse.

ALAN D. LIEBERSON, *HEALTH-CARE ENTERPRISE LIABILITY* (1997 & Supp. 1999) is a practitioner-oriented treatise that even provides sample language for pleadings. Chapters 15–19 specifically address nursing home litigation.

JAMES T. O'REILLY, ET AL., *THE LAWYER'S GUIDE TO ELDER INJURY AND ACCIDENT COMPENSATION* (1995) discusses all types of tortious litigation involving older clients although the majority of the text covers abuse and health care related injuries.

Articles

Susan J. Hemp & Cheryl Rae Nyberg, *Elder Law: A Guide to Key Resources*, 3 *ELDER L. J.* 1 (1995) describes many resources designed for elder law practitioners.

George S. Ingalls, et al., *Elder Abuse Originating in the Institutional Setting*, 74 *N. D. L. REV.* 313 (1998) considers both civil and criminal aspects of elder abuse and includes discussion of several state law schemes.

Duncan S. MacLean, *Preventing Abuse and Neglect in Long-Term Care Part I: Legal and Political Aspects*, 7 *ANNALS OF LONG-TERM CARE* 452 (1999), <http://www.mmhc.com/nhm/articles/NHM9912/mclean.html>, provides a general overview of the current legal situation with regard to abuse in long-term care facilities, but it is written mainly for administrators of these enterprises.

Duncan S. MacLean, *Preventing Abuse and Neglect in Long-Term Care Part II: Clinical and*

Administrative Aspects, 8 *ANNALS OF LONG-TERM CARE* 65 (2000), <http://www.mmhc.com/nhm/articles/NHM0001/mclean.html>, considers the types of elder abuse, the causes of elder abuse, and ways to prevent it mostly from a risk management standpoint.

Christine L. McDaniel, *Elder Abuse in the Institutional Setting*, *KANSAS ELDER LAW NETWORK*, <http://www.keln.org/bibs/mcdaniel2.html> (1997) lists elder abuse resources including legislation, cases, Internet sites, and articles.

Seymour Moskowitz, *Saving Granny from the Wolf: Elder Abuse and Neglect—The Legal Framework*, 31 *CONN. L. REV.* 77 (1998) detailed analysis of existing responses to, primarily domestic, elder abuse.

Robert A. Polisky, *Criminalizing Physical and Emotional Elder Abuse*, 3 *ELDER L. J.* 377 (1995) detailed analysis of elder abuse and suggested ways to reduce the problem.

Jeffrey Spitzer-Resnick & Maya Krajcinovic, *Protecting the Rights of Nursing Home Residents: How Tort Liability Interacts with Statutory Protections*, 19 *NOVA L. REV.* 629 (1995) considers remedies available to residents for nursing home abuse.

James G. Sokolove, *Handling Elder Abuse and Neglect Cases*, 35 *TRIAL* 40 (December 1999) gives a practical description of evaluating litigation of elder abuse against institutional facilities.

Endnotes

1. National Center on Elder Abuse, *What Is Elder Abuse*, (last modified Mar. 20, 2000) <<http://www.gwjapan.com/NC EA/basic/index.html>>.
2. National Center on Elder Abuse in Collaboration with Westat, Inc., *The National Elder Abuse Incidence Study; Final Report*, Table 4.1 <<http://www.aoa.dhhs.gov/abus e/report/GFindings.htm>> (September 1998).
3. Bureau of Justice Statistics, CRIMES AGAINST PERSONS AGE 65 OR OLDER 1992-1997, p. 26 (last modified Jan. 2000) <<http://www.ojp.usdoj.gov/bjs/abstract/cpa6597.htm>>.
4. See 42 U.S.C. § 3058b.
5. See 42 U.S.C. § 3058g.
6. See 42 U.S.C. § 3058g(a)(3).
7. Administration on Aging, 1997 *National Ombudsman Reporting System Data Tables, Table A-3: Complaint Summary—Nursing Facilities and Table A-4: Complaint Summary—Board & Care Facilities*, (last modified Mar. 2000) <<http://www.aoa.dhhs.gov/ltcombudsman/98nors/default.htm>>.
8. *Id* at Table B-2: *Complaints by Category for Nursing Facilities*.

Web sites mentioned in this column:

- AoA Elder Abuse Prevention and Treatment Resources <http://www.aoa.dhhs.gov/abuse>
- AoA Elder Abuse Sites <http://www.aoa.dhhs.gov/agingsites>
- Annals of Long-Term Care <http://www.mmhc.com/nhm/index.shtml>
- Bureau of Justice Statistics <http://www.ojp.usdoj.gov/bjs>
- Kansas Elder Law Network <http://www.keln.org>
- Long-term Care Ombudsman Program <http://www.aoa.dhhs.gov/ltcombudsman>
- National Center on Elder Abuse <http://www.gwjapan.com/NCEA>
- National Citizens Coalition for Nursing Home Reform <http://www.nccnhr.org>
- National Committee for the Prevention of Elder Abuse <http://www.preventelderabuse.org>
- National Elder Abuse Incidence Study <http://www.aoa.dhhs.gov/abuse/report/GFindings.htm>
- Nursing Home Abuse and Neglect Information Center <http://www.nursinghomeabuse.com>
- Nursing Home Compare <http://www.medicare.gov/NHCompare/home.asp>