

Organized By:

Downtown
Personal Injury Lawyers **L.A.**
LAW GROUP

Downtown L.A. Law Group

CALIFORNIA ELDER ABUSE LAWSUIT LEGAL GUIDE



ATTORNEY DISCLAIMER: This legal guide is intended for the sole purpose of providing the general public with legal information in the state of California. This pdf is not intended to provide legal advice and does not create the formation of a lawyer or attorney client relationship

© 2019 All Rights Reserved

Table of Contents

| | |
|--|-----------|
| INTRODUCTION | 1 |
| WHAT IS ELDER ABUSE | 2 |
| Physical Elder Abuse | 3 |
| Elder Sexual Abuse | 4 |
| Emotional Elder Abuse | 5 |
| Elder Neglect & Self Neglect | 7 |
| Elder Neglect Can Lead to Bed Sores | 8 |
| Dehydration & Malnutrition in Nursing Homes..... | 9 |
| Financial Elder Abuse/Exploitation | 10 |
| ELDER ABUSE LAWSUITS..... | 12 |
| Statute of Limitations..... | 12 |
| Wrongful Death..... | 13 |
| Financial Elder Abuse | 13 |
| How Much are Elder Abuse Cases Worth? | 13 |
| REPORTING ELDER ABUSE..... | 14 |
| Mandatory Reporting of Elder Abuse | 15 |

Introduction

[Elder abuse](#) often gets pushed into the background when compared to similar social problems such as child abuse or domestic violence. As a society, we have tended to shy away from senior abuse, as its victims are often ignored and muted. However, as an ever aging population is in increasing need of elderly care, and with resources devoted to that care continuously dwindling, the problems associated with elder abuse are real and potentially growing.

There are several reasons why elder abuse often goes unnoticed in our society. For one, very few studies and research have been dedicated to the topic. While countless reports, studies and articles are consistently at the forefront for child abuse and domestic violence, elder abuse has failed to garner similar attention. Perhaps this is due to the fact that, generally speaking, our culture seems to devalue the worth and attention our elderly deserve. Furthermore, our elderly often lack a proper channel to voice their displeasure, as they are kept silent and isolated by their abusers. Often times, our elderly simply do not feel comfortable giving notice to individuals who can assist them due to what they perceive as a taboo subject matter.

Whatever the cause, elder abuse and neglect is a budding problem. It is expected that the worlds over 60 year-old population will double in the next ten to fifteen years. Advances in medicine and science have a direct effect on helping people live longer, forcing a higher percentage of our population fall into the elderly demographic. Additionally, the United States and other countries will continue to allocate fewer per capita resources to elderly care, as an aging population will undoubtedly hamper an already struggling economy.

The good news is that elder abuse does not need to be a reality. Higher levels of efficiency, training, supervision and hiring standards can help ensure better care for our loved ones. However, the people and organizations responsible for elderly care will fail to hold themselves to these higher standards necessary to abolish elder abuse and neglect unless they are held accountable for their actions.

The goal of this legal guide is to educate individuals on the perils of elder abuse. Specifically, how to spot elder abuse, how to protect our elder population from improper care and treatment, and the legal recourse available to individuals who have been affected, either personally or through a loved one, by elder abuse and neglect.

What is Elder Abuse?

Unfortunately, elder abuse has many different faces. Generally speaking, the World Health Organization has defined elder abuse as "...a single or repeated act or lack of appropriate action, occurring within any relationship where there is an expectation of trust which causes harm or distress to an older person." In other words, any type of wrongdoing against an individual over the age of sixty can be classified as elder abuse.

However, the definition of abuse extends far beyond our traditional sense of the word when pertaining to our elderly population. The National Center on Elder Abuse has identified seven different categories of elder abuse. They include (in no respective order):

- Physical Abuse
- Sexual Abuse
- Emotional Abuse
- Neglect
- Self-neglect
- Exploitation/Financial Abuse
- Abandonment

Elder abuse, even more than other instances of violence and abuse, are extremely complex. This is because there are so many variables that give rise to elder abuse cases, including psychological factors of the perpetrator, over-worked and negligent care by health care professionals, and dependence by the elder. Further complicating matters, older individuals are constant targets of preying fraudsters looking for financial gain.

In the following chapters, we will delve into the different types elder abuse, including how they are defined and what to look for.

PHYSICAL ELDER ABUSE

Physical abuse is the result of actual brunt force that results in any form of injury. There are many reasons why the elderly are physically abused. Sometimes, the caregivers in charge of the elderly are simply ill-equipped to handle the stresses associated with treating them. Caregivers have also been known to physically retaliate against the elderly when they are unresponsive to their demands. Sometimes, there simply is no motive or explanation as to why an elderly patient is physically abused. Either way, it is never acceptable.

Surprisingly, the criminal act of physical abuse against the elderly is most commonly committed by acquaintances of the patient, such as a friend, family member, or even a spouse. In fact, nearly two-thirds of all abusers of the elderly are adult children and spouses. Physical abuse can come in any form of force, most commonly kicking, punching, slapping, burning, choking and pushing. In more egregious situations, perpetrators are known to use weapons, even when the victims are helpless and frail.

How Do I know If a Loved One is a Victim of Physical Elder Abuse?

It might be hard to believe, but identifying physical elder abuse can be quite difficult. It is reported that only one out of every six elderly abuse cases are ever reported. That means that nearly eighty-four percent of elderly abuse go unnoticed, overlooked or ignored. Further complicating matters, at least for victims of physical abuse, is that people tend to bruise easily as they advance in age, and the elderly are more susceptible to accidental bumping, falling or any other accident that can give rise to a physical manifestation of abuse. This provides perpetrator an avenue of dodging culpability and deflecting blame on an elderly patient.

Consequently, one should look at a myriad of physical AND behavioral indicators which should raise suspicion of elder abuse.

Physical Signs of Physical Elder Abuse

- ◆ Sprains, fractures, broken bones
- ◆ Burning, especially those that are seemingly caused by everyday items or cigarettes
- ◆ Internal pain - look out for abnormalities or difficulty moving
- ◆ Bruising - although bruising is common among the elderly, certain types of bruises are a clear indication of physical abuse. Horizontally shaped bruising on the arms is a clear sign that the individual was shaken or grabbed. Bruising on the inner thighs could point to sexual abuse.

Behavioral Signs of Physical Elder Abuse

- ◆ The injury and the explanation of the accident do not add up
- ◆ Failure to notify anybody about the injury
- ◆ The elder patient is demonstrating moody or aggressive behavior
- ◆ The elder individual is feeling depressed, helpless, angry or confused

SEXUAL ELDER ABUSE

The definition of sexual abuse for the elderly remains consistent to any other type of sexual abuse; it is the non-consensual sexual contact by any person onto another. Sexual abuse also includes instances where the person is unable to give their consent, which is quite common in situations involving the elderly.

- Females are roughly six times more likely to be a victim of elder sexual abuse than men
- In a three year study of elder sexual abuse, over eighty percent of victims were assaulted in either a nursing home or adult care facility.
- Surprisingly, elder sexual abuse was occurred in the presence of at least one witness in over 3 out of every 4 cases.
- Sexual abuse does not necessarily require physical touching. It can also include showing the elderly individual pornographic material or forcing them to watch sexual acts, and forcing them to undress against their will.

Signs of Elder Sexual Abuse

Regrettably, the elderly are far more susceptible to sexual abuse than other demographics due to their perceived shame, their reliance on the abuser and their inability to fight back. Consequently, sometimes sexual abuse can be difficult to detect. Some signs of elder sexual abuse are:

- ◆ Genital pain, bruising or bleeding
- ◆ STD's
- ◆ Inability to walk or sit normally
- ◆ Abnormal relations between the elderly individual and the caretaker

ELDER EMOTIONAL ABUSE

It is heartbreaking to learn that an individual put in charge of the care of our loved ones is verbally or emotionally abusive. Emotional abuse can be both verbal and nonverbal, or both.

Verbal:

- ◆ Verbal abuse, threats, intimidation or humiliation
- ◆ Constant yelling or degradation or harassment
- ◆ Placing blame on the elderly

Nonverbal

- ◆ Isolation or confinement
- ◆ Placing the elderly individual in a constant state of fear

Unlike other forms of elder abuse, emotional abuse rarely shows itself in a physical manifestation in the victim. Rather, it places the elderly in a constant state of emotional pain and distress. Therefore, emotional abuse is far more difficult to detect than other types of elder abuse.

Emotional abuse instead is noticeable almost exclusively through a victims behavior or change in patterns. Victims commonly feel depressed, withdrawn or are unresponsive. They can be in a constant state of fear, anxiety and anxiety. Other times, the elderly will show signs of emotional abuse through self-neglect (more in this later).

ELDER NEGLECT & SELF-NEGLECT

Elder neglect is often an overlooked type of elder abuse; however it can have detrimental physical and emotional effect on a person. Elder neglect is the refusal or failure by a caretaker to provide the elderly individual with basic necessities. These necessities can include anything the risks the livelihood and well-being of the elderly person, including:

- ◆ Shelter
- ◆ Hygiene
- ◆ Food
- ◆ Medicine or health care
- ◆ Clothing
- ◆ Psychological neglect - caretaker leaves an elderly person isolated for a prolonged period of time without social interaction or human contact
- ◆ The prevention of health and safety hazards

Elder neglect can be both intentional or unintentional. Intentional neglect is the purposeful withholding of these basic necessities. Unintentional neglect is the direct result of a caregivers inability or unknowing failure to provide proper care. Unintentional neglect is not a defense against elder abuse, as these caregivers are under a heightened duty provide proper medical, emotional and basic care.

Self-neglect occurs when the elderly individual fails or refuses to protect themselves from potential dangers or harm. Although it is difficult to understand why an individual would voluntarily put themselves at risk, self-neglect is commonly rooted in an individual's desire to remain independent, or frustration coping with the realities of getting older.

Other times, self neglect is the result of mental issues, such as dementia, Alzheimer's or drug abuse. Unsurprisingly, self-neglect is the most commonly form elder abuse reported, as the caretaker will report it as a last resort.

Elder Neglect Can Lead to Bed Sores

[Bed sores](#), sometimes called pressure sores or [decubitus ulcers](#) are often a result of elder neglect. Bed sores are injuries caused when a patient is left in one position, without being moved, turned, cared for or repositioned for a prolonged period of time. Being left completely immobile places pressure on the body that can lead to severe injuries, amputations or even death.

Bed sores generally form around the bony prominences of the body such as the elbow, knees, hips, shoulders, back and skull, and affects as many as thirty percent of nursing home residents. There are five categories of bed sores which are separated by either a no pressure ulcer, or placed into one of four stages:

Stage 1: Skin is intact with slight discoloration or redness with no breakage in the skin.

Stage 2: Limited thickness of the skin is deteriorated. Often diagnosed as an abrasion, shallow crater or blister

Stage 3: Complete deterioration of the skin revealing the underlying fascia. Bone, tendon and muscle are not left exposed, but still presenting a deep crater.

Stage 4: Complete deterioration of the skin, exposing bones, tendons and muscles. Stage four bed sores are characterized by a very deep crater.

Elderly Neglect - Dehydration and Malnutrition in Nursing Homes

Dehydration and malnutrition due to neglect in nursing homes and elderly care centers is a major issue facing thousands of residents each year. According to a recent study 35 to 85 percent of U.S. nursing home residents are malnourished.

Laws to Protect the Elderly: Several laws have been enacted over several decades ensuring that nursing home meet residents' nutrition and hydration needs. According to California and Federal Guideline nursing homes owe a responsibility to provide in the future, ongoing assistance with activities of daily living without which the resident's physical health, mental health, safety or welfare would be endangered." The Nursing Home Reform Act of 1987 places a legal duty on nursing homes to provide sufficient standard in their facilities to prevent malnutrition and dehydration. Ongoing assistance by nursing home staff includes the proper feeding and nutritional daily intake of food and liquids to deter malnourishment.

What is Dehydration: Dehydration is defined as the weight loss of more than 3 percent of body mass resulting from either rapid fluid loss or a failure to rehydrate the body with sustainable levels of fluids.

What is Malnutrition: Malnutrition is defined as intake of a diet lacking in certain nutrients resulting in severe physical and cognitive complications.

A large percentage of elderly residents of nursing homes require specialized diets or have other risk factors due to their physical and mental health. Some of the most common risk factors and signs associated with malnourishment amongst the elderly are as follow

- ◆ Specially prescribed diets due to chronic ailments
- ◆ Individuals to must be fed because of functional or cognitive impairments
- ◆ Mouth and tooth medical issues - dentures that no longer fit
- ◆ Dysphagia - swallowing disorders
- ◆ Mental heal issues including dementia and Parkinson's
- ◆ Physical disability
- ◆ Rapid Weight Loss - looser clothing
- ◆ Chronic bed sores
- ◆ Slow healing of cuts and bruises
- ◆ Repeated infections including pneumonia and urinary tract infections

FINANCIAL ELDER ABUSE

Financial elder abuse, sometimes called exploitation of the elderly, entails a wide variety of misconduct that strips vulnerable individuals of more than \$2.6 billion a year annually. Financial abuse, in the general sense, is the unlawful, illegal or improper taking of money or any other personal property and assets from an elder. Financial elder abuse can quite often lead to the sudden loss of a person's life savings, leaving them unable to pay for their basic needs and can even lead to a deterioration of their health.

The susceptibility of our elderly leaves them open to many different forms of financial abuse. The most common examples are:

- ◆ **Telemarketer fraud** - AARP reports that the majority of fraudulent telemarketers target people aged 50 years-old or older. Telemarketing fraud strips Americans of more than \$40 billion annually.
- ◆ **Misappropriation of assets by person in charge** - family members and even caretakers are often given power of attorney, guardianship or conservatorship over the assets in order to distribute funds in the best interest of the elderly. Instead, these funds are used for personal gain
- ◆ **Forging signatures**
- ◆ **Advance payment for lifelong care** - perpetrators will take money or property in exchange for a promise of care, but fail to follow through
- ◆ **Predatory lending or home improvement scams** - Elderly individuals are the target of lenders or home improvement scams that fail to follow through with promises, charge unconscionable interest rates or fees.

Elder Abuse Lawsuits

Due to a growing population, and perhaps due to society's unwillingness to discuss the issue, only recently have lawmakers and attorneys appreciated the severity of elder abuse. Below are certain [legal and statutory issues pertaining to elder abuse](#).

Statute of Limitations for Elder Abuse: How Long Do I Have to File a Lawsuit for Elder Abuse?

Statute of limitations is the amount of time a person has to file a lawsuit for damages in a court of law. If the statute of limitations period has run out, a potential plaintiff or plaintiffs are forever barred from filing a claim. In California, elder abuse statute of limitations is governed by California Code of Civil Procedure §335.1, which states that a lawsuit must be filed within **2 years** of the intentional or negligent act.

There are certain exceptions though to the two year statute of limitations rule. These exceptions include:

- ✓ Mental or physical incapacitation
- ✓ The injury did not manifest itself until a later date

However, California recently enacted the Elder Abuse and Dependant Adult Civil Protection Act (EADACPA) under the Welfare & Institutions Code §15600-15601, which was created to protect elder individuals age 65 and older, and dependant adults between the ages of 18 to 65. The EADACPA protects these individuals from abuse, neglect, financial abuse, abandonment, isolation, abduction or other treatment with resulting physical harm or pain or mental suffering. The main importance of this act in regards to statute of limitations is that California imposes a 3 year statute of limitations for lawsuits based upon a statute under California Code of Civil Procedure §338. Therefore, although courts have not yet ruled based upon this theory, this 3 year statute could apply to elder abuse lawsuits.

Statute of Limitations for Wrongful Death from Elder Abuse

Generally, a wrongful death claim in California carries a one-year statute of limitations. However, the successor of interest may file suit under the applicable law if the person had not died. Therefore, this period may be extended depending on when the statute would have run.

Statute of Limitations for Financial Elder Abuse

The Welfare & Institutions Code § 15657.7 specifically states that an action for damages for financial abuse or dependant adult must be initiated within four years of the when the financial abuse was discovered, or should have been discovered based on the facts, whichever one comes first.

How Much are Elder Abuse Cases Worth?

No attorney can accurately predict the amount an elder abuse case. However, it is usually one of the most common questions a victim and their loved ones will ask. The truth is that there are several different variables that are considered when evaluating the value of an elder abuse case.

- These variables include:
- Severity and type of injury
- Amount of pain and suffering
- Future medical costs
- Punitive damages

Reporting Elder Abuse

If you suspect that someone is a victim of elder abuse, it is imperative that the proper officials are notified. Seniors often fail to report abuse due to inability, fear of retaliation or embarrassment. However, the state of California has made it incredibly easy to report elder abuse. Reporting can be done through:

Adult Protective Services (APS) agency - California passed a law requiring all APS agencies to provide a 24-7 hotline for individuals to report elder abuse.

The California Department of Health Services - this government entity oversees all health facilities, including elder care and nursing homes. Elder abuse should be reported to the Licensing and Certification District office, and the number should be posted in the nursing home. The can be reached at:

| | | |
|-----------------------------|-----------------------------------|-----------------------------------|
| Bakersfield: (866) 222-1903 | Orange County: (800) 228-5234 | San Diego (South): (866) 706-0759 |
| Chico: (800) 554-0350 | Riverside: (888) 354-9203 | San Francisco: (800) 554-0353 |
| East Bay: (866) 247-9100 | Sacramento: (800) 554-0354 | San Jose: (800) 554-0348 |
| Fresno: (800) 554-0351 | San Bernardino: (800) 344-2896 | Santa Rosa: (866) 784-0703 |
| Los Angeles: (800) 228-1019 | San Diego (North): (800) 824-0613 | Ventura: (800) 547-8267 |

Long-Term Care Ombudsman Program - Ombudsman are trained professional that work to protect the rights of patients in long-term care facilities.

California Attorney General Bureau of Medi-Cal Fraud and Elder Abuse - Abuse can be reported to the attorney general via their hotline at (800)722-0432.

Local or state law enforcement

Mandatory Reporting of Elder Abuse

Certain professions and individuals have a heightened duty and therefore are required to report elder abuse in the state of California. In fact, failure to report elder abuse by these individuals is a crime under California Welfare and Institutions Code. These individuals are:

- ◆ Physicians and medical professionals
- ◆ Clergy
- ◆ Employees in charge of care at elder care facilities and hospitals
- ◆ Caretakers

Downtown L.A. Law Group is a personal injury law firm located in Los Angeles, California. For more information, contact our elder abuse attorney.



LOCATIONS:

601 North Vermont ave.
Los Angeles, CA 90004
(213)372-0456

3460 Wilshire Blvd. #950
Los Angeles, CA 90010
(213)389-3765

TOLL FREE: (855)385-2529

FAX: (877)389-2775

www.downtownlalaw.com