

# Criminal elder neglect: Medical & legal issues

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The criminal law: PC  
368[b][1]

Any person who knows or reasonably should know that a person is an elder or DA and who, under circumstances or conditions likely to cause GBH or death .....having the care or custody of any elder or DA, willfully causes or permits the person or health of the elder or DA to be injured, or willfully causes or permits the elder or DA to be placed in a situation in which his or her person or health is endangered.....

# Having the care or custody..

- People vs. McKelvey 230 Cal. App. 3rd 399 [1991]

- D & sister lived with paralyzed mother; D cooked & maintained home while sister was responsible for V's hygiene. Sister left home after becoming overwhelmed. 4 days later D called 911. Paramedics found V lying in excrement & covered with maggots. She died 4 days later. Both D & sister were charged with neglect. Sister PG.

- D was convicted & appealed. He argued that he was not V's caregiver because [1] that was his sister's responsibility & [2] his mother refused to let him care for her hygiene & [3] V was alert & had a telephone next to her bed

- The Appellate Court stated that the evidence showed that V had no hygienic care during the 4 days before D called 911, that her condition indicated she was unable to seek help & that D was “the only physically able, competent adult in the household after his sister left” and therefore was responsible for her care.

People vs. Heitzman 37 Cal.Reptr.  
2d 236  
1994

- The California Supreme Court determined that a legal duty to prevent abuse falls only on those persons who have an existing duty to control the conduct of a third party because of a special relationship.

- The Court determined that V's daughter was NG of neglecting V even though she visited V's home frequently & was fully aware of the deplorable conditions in which V was living. She had no special relationship with - and thus no duty to control - her brothers who were V's caregivers.

A jury found the Heitzman brothers guilty in the December, 1990, death of their father, Robert Heitzman. The 68-year-old retired plumber was found dead in the house the family shared. Witnesses at the trial testified that the poisoning resulted from infected bedsores caused by exposed springs from the rotting mattress.

"The vision of your father," the judge told the brothers, "lying in excrement, on a mattress that had been eaten away from the chemicals of his bodily discharge, just paints a picture of cruelty and depravity that I don't think any of us can turn away from without recognizing that as a picture of severe suffering that must have occurred to your father in his last weeks and days."

- The Court - after weighing the evidence regarding which family members were arrested and charged - determined that PC 368 failed to provide a clear standard to guide those responsible for enforcing the law.
- D & her 2 brothers were the only ones charged with neglect even though other family members either lived in the home or frequently visited.

What are some age-related vulnerabilities to neglect?

As age increases, so do the number of health, social, and psychological issues that make older people more dependent

**Chronic Illnesses**

**Medications**

**Depression**

**Dementia**

**Quantity and quality of social support**

# Vulnerability

- **Emotional:** fear of being a burden, low self worth
- **Physical:** more difficult to fend for oneself
- **Cognitive:** may not know that neglect is occurring or know how to get help
- **Social:** lack of financial resources, family members may feel obligated and unhappy about providing care,

# A Physician's view of neglect

- Understand the patient's functional status (ADLs and IADLs)
- Understand the patient's vulnerabilities
  - Which activities require assistance?
  - Is the need due to physical issues, cognitive issues, or both?
  - What type of assistance is required?
- Identify the caregiver, if possible

# A Physician's view of neglect

- What are the caregiver's capabilities and limitations?
  - Physical
  - Emotional
  - Social
  - Financial
- This is where we tend to excuse behavior that is actually unacceptable

# Instrumental Activities of Daily Living (IADLs)

- Shopping
- Cooking
- Handling finances
- Transportation (driving or arranging)
- Medications

Independence with IADLs  
predicts independence in the  
community.

# Basic Activities of Daily Living

- Mobility
- Transferring
- Bathing
- Continence
- Toileting
- Getting dressed
- Feeding oneself

Independence with ADLs  
predicts independence in the  
home.

# What I look for

## ■ Patient

- Hygiene
- Foot care
- Skin condition
- Medical issues that don't get better despite prescribed treatment

## ■ Caregiver

- Lack of follow up
- Missed appointments
- Disengaged
- Incompetent (physical, emotional, intellectual)

# Gathering the evidence...

- Do you have a 911 call from the suspect caregiver?
- Who were the first responders?
- Using your paramedic as a key witness

# Gathering the evidence:

- Prior APS reports of neglect, abuse or abandonment
- Statements from neighbors
- Photos of the living conditions - the kitchen, bathroom, the victim's bed, & the suspect's quarters
- Evidence of any addictions attributed to suspect
- Evidence of suspect's role as a caregiver

# Gathering the evidence...

- In many situations it is preferable not to arrest suspect - so as to allow time to develop case
- Non-custodial statement from suspect - to establish whether they admit to having a caregiver role & allow for possible defenses to be disclosed

Pressure sores....

Are these avoidable? When  
is it criminal?

# Pressure Sores: why can't we give you a straightforward answer?!

- Lots of factors influence the risk of developing a pressure sore and the rate of worsening
  - Mobility
  - Mattress
  - Medical conditions
  - Nutritional status

# Pressure Sores: what an expert may be able to tell you

- Whether this was a high risk situation in which a pressure sore may have been inevitable
- Whether this is typical in appearance
- Whether this is typical in location
- Whether treatment was sought or carried out appropriately

# What can blood tests reveal?

- Nutritional status
- Hydration status
- Kidney function (important in metabolism of medications)
- Control of diabetes
- Evidence of infection
- Medications/drugs
  - Direct
  - Indirect

## THE DEMOGRAPHY OF Dementia

- 4 million in U.S. currently
- 14 million in U.S. by 2050
- 1 in 10-20 persons aged 65+ and nearly half of those aged 85+ have dementia
- Life expectancy of 8-12 years after symptoms begin

# Criteria for Dementia

- Loss of memory
- Loss in at least one other cognitive domain (e.g. language, spatial relations, judgement)
- Loss of function

# Dementia and Neglect

- May be unable to recognize neglect
- May be unable to report neglect
- May not be believed



## Early AD

### Symptoms:

- Short term memory
- Words
- Judgment

### Neglect:

- safety
- wandering



## Mid AD

### Symptoms:

- Behavior
- Dressing
- Insight

### Neglect:

- meals/cooking
- hygiene



## Late AD

### Symptoms:

- Communication
- Mobility
- Swallowing

### This is when we see severe neglect:

- Filthy
- Pressure sores
- Malnourished
- Dead

## A medical doctor's question

- Can you prosecute a case for neglect when the victim has died due to a condition that is either unrelated or indirectly related to the neglect?
- *86 year old woman dies as a result of a heart attack. She is found in deplorable conditions: covered in feces, grossly overgrown nails, matted hair, poor nutrition*

## Classic neglect cases

- Deprivation of medical attention
- Deprivation of food
- Lack of hygiene
- Lack of ventilation, heat or light
- Over-medicated
- Under-medicated

## The classic neglected victim

- Malnourished
- Semi-comatose
- Dehydrated
- Coated with fecal matter/ urine stained
- Inadequately clothed
- Untrimmed toenails, matted hair
- Bed sores

The role of a medical expert  
to determine if we can  
prove neglect

Defining the functional status  
of the victim - to help  
understand the risk &  
circumstance for neglect

# Nutrition & hydration status of the victim

Comparing another elder  
with similar medical  
problems but who has been  
given proper care

What the medical expert  
expects from the legal “team”  
before entering the  
courtroom.....

# Working with Juries

- Use the expert to
  - Explain medical terms in clear, simple language
  - Dispel myths (need to anticipate jurors' misconceptions)
  - Provide context
  - Understand the situation through the victim's eyes

How can we convey to the jury what the victim must have endured.... and avoid jury apathy..

Anticipating some  
defenses...

“At least I was doing  
something. The rest of the  
family simply didn’t bother.”

She hated doctors. She refused to let me get help.

His religious beliefs got in the way. He only wanted “divine healing.”

## **THE SENILITY PRAYER**

Grant me the senility to forget  
the people I never liked  
anyway, the good fortune to  
run into the ones I do, and the  
eyesight to tell the difference.

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[www.centeronelderabuse.org](http://www.centeronelderabuse.org)



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