

Caring for the Ages

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Resident-to-Staff Abuse: Don't Do Me Like That

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When Tom Petty and the Heartbreakers released one of their biggest hits, “Don’t Do Me Like That,” they probably had no idea it could aptly describe an unfortunate trend in skilled nursing facilities (SNFs). An alarming 35% of certified nursing assistants (CNAs) reported being physically assaulted by residents within a one-year period, according to a national survey conducted by the National Institute for Occupational Safety and Health (NIOSH).¹ Estimates of verbal abuse, while much higher than 35%, vary somewhat according to the study. Because residents’ abusive behavior is so ubiquitous, the terms Resident-to-Staff Abuse (RSA) and Resident-to-Staff Violence (RSV) have crept into our everyday parlance.



Verbal abuse is the most common form of workplace violence in SNFs, with 64% of nurses in one study reporting verbal threats or aggressive language from residents.² Twenty-seven percent of the nurses in one study were physically assaulted.³ Other studies reported the prevalence of verbal abuse directed at nurses as high as 67% based on a meta-analysis.⁴

The statistics are even higher for CNAs, as they are 23 times more likely to suffer RSA in SNFs than in other clinical settings.⁵

RSA directed at nursing facility staff comes in two forms: verbal and/or physical. Nurses and CNAs have been the victims of verbal and/or physical abuse for decades. SNFs have a higher incidence of RSA when compared to other clinical settings. Being subjected to physical and/or verbal abuse should not be “part of the job,” but due to very strict regulations regarding discharge and restraint of residents, effectively handling these situations can be extremely difficult, if not impossible. Exposure to RSA and RSV can be emotionally traumatic, physically harmful, and lead to a lack of job satisfaction, as well as increase staff

turnover. Additionally, it has led to lawsuits against SNFs. Compounding the problem, it can also lead to retaliation by affected staff who are more inclined to verbally or physically abuse an offending resident.

Legal Implications

There has been a plethora of lawsuits against SNFs by aggrieved CNAs and nurses who alleged verbal or physical abuse from residents (see below for some examples). Multiple avenues of legal remedies are available to staff. For example, under the Occupational Safety and Health Administration's OSH Act, there is the "General Duty Clause," which mandates that employers protect employees from known hazards that can potentially harm them. The General Duty Clause is sweeping in its protection for employees and is known as the "catch-all" provision that OSHA enforces.

In addition to a lawsuit predicated on a violation of the OSH Act, employees who allege discriminatory comments made to them by a resident may file a suit under Title VII of the Civil Rights Act, which prohibits discrimination based on several protected categories (e.g., sex, national origin, race, color, etc.). Title VII is enforced by the Equal Employment Opportunity Commission (EEOC). Additionally, staff who allege abuse may bring a civil lawsuit based on negligence, negligent supervision, and other cognizable torts. In most cases, an employee must file a Workers' Compensation claim for a workplace injury, although some courts have articulated exceptions to that form of relief.

Residents with cognitive impairment are statistically more likely to exhibit abusive behavior, which represents a daunting challenge for providers. Residents with Alzheimer's disease and related dementias present the greatest challenge and vulnerability for a SNF. It may be a fool's errand to expect a resident with advanced dementia to stop using sexually or racially offensive language. Still, a SNF should be able to demonstrate that it took all appropriate measures to mitigate the situation, if not eliminate a resident's verbally or physically offensive behavior directed at staff (as well as other residents). Adequate documentation, as in so many other areas, is critical to illustrate a SNF's efforts.

Cases Involving RSA

The following are examples of how different laws can be used against a SNF based on RSA.

- OSHA cited Pioneer Health Care Center for failing to protect employees from workplace violence. OSHA's investigation alleged that the facility failed to protect staff from multiple injuries, including human bites, head injuries, and blunt force trauma perpetrated by residents. The facility had to pay a fine and also improve security measures, such as installing cameras and increasing staff training on dealing with violent residents. [Link to news release.](#)
- In *Gardner v. CLC of Pascagoula, LLC*, No.17-60072 (5th Cir. 2019), a CNA claimed she was sexually groped and assaulted by a resident who suffered from dementia. When the CNA complained to the administrator, she was told to "put [her] big girl panties on and go back to work," according to the court. The Fifth Circuit Court of Appeals held that a CNA could sue a SNF based on a "hostile work environment." It observed that while the health-care environment is unique, employees are not required to suffer ongoing sexual aggression. It held that for a plaintiff to prevail, he/she would have to demonstrate that "the employer knew or should have known

about the hostile work environment but failed to take reasonable measures to try and stop it.” This decision overruled a lower court’s dismissal and allowed the case to proceed.

Recommendations

- A key issue in the cases described above is whether the facility knew of the RSA and took appropriate remedial action. Protecting caregivers from abusive residents is essential. It can also help insulate facilities from unwanted lawsuits. Below are some measures a facility may implement.
- Adopt a zero-tolerance policy regarding residents’ aggressive behavior
- Consider a focused medical and psychological evaluation for at-risk residents
- Recognize resident-specific risk factors, such as escalating behaviors, increased confusion, and combativeness.
- Routinely evaluate a resident’s medication regimen for medications that overstimulate or excite residents
- Employ security measures (e.g., cameras)
- Develop and implement a violence prevention program (VPP)
- Develop and implement appropriate policies and procedures
- Using the facility assessment as well as other tools, involve the interdisciplinary team, medical director, and Quality Assessment and Assurance (QAA) Committee as needed
- Revise care plans according to the resident’s specific behaviors
- Educate staff regarding recognition and reporting of all events
- Provide training, including de-escalation techniques
- In some cases, transfer to another type of facility (e.g., psychiatric hospital, behavioral institution, etc.) may be necessary. Note: Full compliance with regulatory requirements and adequate documentation is critical for involuntary discharges.

The above list is not exhaustive and reflects some basic measures a SNF may employ to protect its staff from harm and the SNF from liability. According to employment attorney Caroline Berdzik, “a SNF should also involve the Department of Health or similar licensing agency for suggestions on how to be compliant with CMS regulations.”

References

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