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### Since You Asked: LEGAL ISSUES AFFECTING ELDERLY CLIENTS

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Linda Bryceland, *Attorney, Monahan and Cohen*

Elder Abuse: Legal Definitions and Mandatory Reporting of Elder Abuse

In 2005, it was estimated that the State of Illinois received 8,600 elder abuse reports. (Illinois Department on Aging, Elder Abuse and Neglect Program Annual Report FY 2005.) Elder abuse takes many forms: physical abuse, emotional abuse, sexual abuse, neglect, self-neglect and financial exploitation. This article is confined to abuse in a domestic, rather than institutional setting. Social workers in Illinois need to be aware of what constitutes elder abuse in this State, whether they are required to report abuse and to whom to make such a report.

#### A. What Is Elder Abuse and Neglect in Illinois.

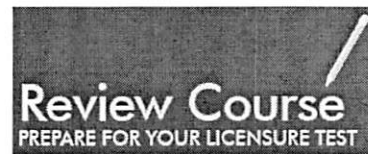
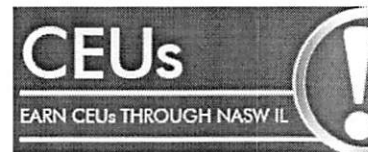
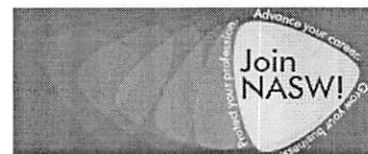
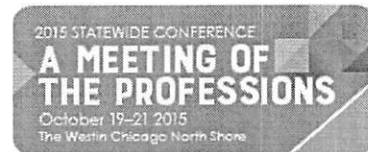
The Elder Abuse and Neglect Act, 320 ILCS 20/1 et. seq., sets forth the following relevant definitions:

1. Eligible adult, 320 ILCS 20/2(e): "a person 60 years of age or older who resides in a domestic living situation and is, or is alleged to be, abused, neglected, or financially exploited by another individual or who neglects himself or herself."
2. Emergency, 320 ILCS 20/2(f): "a situation in which an eligible adult is living in conditions presenting a risk of death or physical, mental or sexual injury and the provider agency has reason to believe the eligible adult is unable to consent to services which would alleviate that risk."
3. Abuse, 320 ILCS 20/2: "The causing of any physical, mental or sexual injury to an eligible adult, including exploitation of such adult's financial resources. Nothing in this Act shall be construed to mean that an eligible adult is a victim of abuse, or neglect for the sole reason that he or she is being furnished with or relies upon treatment by spiritual means through prayer alone, in accordance with the tenets and practices of a recognized church or religious denomination. Nothing in this Act shall be construed to mean that an eligible adult is a victim of abuse because of health care services provided or not provided by licensed health care professionals."
4. Neglect, 320 ILCS 20/2(g): another individual's failure to provide an eligible adult with or willful withholding from an eligible adult the necessities of life including, but not limited to, food, clothing, shelter or health care . . . ."

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5. Self-neglect, 320 ILCS 20/2(i-5): "a condition that is the result of an eligible adult's inability, due to physical or mental impairments, or both, or a diminished capacity, to perform essential self-care tasks that substantially threaten his or her own health, including: providing essential food, clothing, shelter, and health care; and obtaining goods and services necessary to maintain physical health, mental health, emotional well-being, and general safety."

B. Indicators of Elder Abuse and/or Neglect.

Generally, the physical abuse of an elder is the non-accidental use of force against the elder that results in physical pain or injury. Such abuse may encompass both physical assaults such as hitting or shoving, and the inappropriate use of drugs, restraints and confinement. Physical abuse may be present when an elder presents with unexplained injuries or bruises, markings on wrists or ankles indicative of the use of restraints, or confusion and sleepiness not explained by a medical condition.

Neglect of the elderly is most often characterized by the failure of a caretaker to provide essential services such as clean and adequate shelter, food, clothing, medication and healthcare to the elderly person. Self-neglect also occurs in instances where there is no caregiver or guardian for the elderly person, and the elder evidences similar lack of care for self. The elderly person may present with poor hygiene, excessive weight loss, an unkept appearance, lack of medical care, and a home that is unclean and/or unsafe. Neglect of an elderly person constitutes the majority of reported cases of abuse.

Financial exploitation of the elderly may be brought about by a caretaker, guardian or a stranger. Those with access to the elder's home may steal from the elder. The elder's signature may be forged, or cash, credit cards or bank accounts misappropriated. The elder's identity may be stolen. The elderly are also the targets of phony charities, investments and prizes that require them to send money in order to claim their prize. In other instances, suspicious changes may take place in the execution of wills, powers of attorney, title changes and changes in beneficiaries on annuity and insurance policies. Indications of financial abuse include: bills not being paid despite sufficient income/funds, valuables missing, and the transfer of assets without a rational basis.

Victims of elder abuse and/or neglect may exhibit behaviors such as withdrawal, anxiety, helplessness, or an unwillingness to talk openly. The older person may appear intimidated by a caregiver or person holding a power of attorney for the older person. The elderly often may not disclose that they are being abused or neglected, and absent physical signs of abuse, various factors may be evaluated in reaching a conclusion of suspected abuse or neglect.

C. You Believe That There Is Elder Abuse or Neglect. Now What Do You Do.

Social workers in Illinois are mandatory reporters under the Elder Abuse and Neglect Act. 320 ILCS 20/2(f-5) Accordingly, social workers in this State are afforded immunity from civil and criminal liability or professional disciplinary action, notwithstanding any requirements concerning the confidentiality of information, which could arise from making a good faith report under the Act. 320 ILCS 20/4(a-7) Immunity is also provided to good faith actions in participating in making a report and providing information and records as part of an investigation of a report made under the Act. 320 ILCS 20/4(b)

Finally, in Illinois reports of elder abuse and/or neglect are to be made to the Illinois Department on Aging. The Illinois Department on Aging investigates allegations of abuse or neglect against individuals 60 or older, residing in the community. That agency should be contacted through its hotline number: IDOA Elder Abuse Hotline 866-800-1409.

This will be the first in a three part series addressing legal issues affecting elderly clients. This article centers on the problem of elder abuse. The next article will address issues regarding incompetent elderly clients, guardianship and powers of attorney. The final article in this series will provide guidance as to Medicare and Medicaid planning for the elderly.

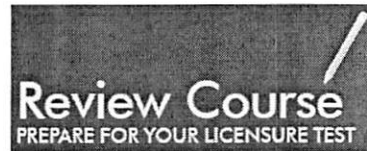
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