

Ignorance of the Law

A Recipe for Abuse in Aged Care



Brian Herd
P: 07 3236 2900
E: bherd@crhlaw.com.au

SEX

Facts Tell Stories Sell

Sandra Day O'Connor

Who Disagrees?

Older people may*:

- Think sex is important
- Be sexually active
- Have more than one partner
- Masturbate
- Have same sex partners
- Use Viagra
- Hide their sexuality
- Want to express their sexuality
- Become depressed if can't express it

*Vic Health Dep't Help Sheet

The Truth

Sexual expression

- and old age are not mutually exclusive

Sexual needs

- do not decline with age

Sexual intimacy

- provides many physical and psycho-social benefits

Sexual care

- is a foreign phrase in aged care

BUT THEN THEY ENTER AGED CARE

“I always look for a man under the bed at night...just the thought there might be, makes me feel better”

“If it gave us trouble, we just gave it a whack with a cold spoon – that usually did the trick and deflated the bugger”

“Seriously, you would think in their twilight years, these people would have better things to do than shag, like writing their histories”

“Unfortunately, we have to treat sex in high care as just another form of assault and we have to report it...”

My Abuse Thesis

- **Paternalism**



- **Protection**



- **Deprivation**



- **Loneliness**



- **Depression**



ABUSE

What is Intimacy in Aged Care?

- It is ***Sexual Expression*** (not just copulation)
- It can be:
 - Cuddling
 - Canoodling
 - Intimacy
 - Whispering sweet nothings
 - Kissing
 - Eye fluttering
 - Fondling
 - Holding hands
 - Hanging out with
 - Sex (& attempts)
 - Massaging
 - Masturbating
 - Sex toys
 - Pornography
 - A paid service

The Problem with Care

- **Resident sexuality:**
 - is taboo
 - so is weight loss apparently
 - is too private to be discussed
 - rarely features in care plans
 - no strategies for loneliness
 - is more managed than facilitated
 - doesn't fall neatly into clinical care
 - all webster packs no condom packs
 - is counter-intuitive to the thrust of aged care
 - comforting your decline not satisfying your desires
 - all flaccid no fluorescence

The Problem with Care (cont)

- **The ‘built environment’ discourages**
 - No quiet time rooms
 - No resident lockable rooms
 - No knock and wait
 - No physical privacy
 - Single beds (with bed rails)
 - 4 bed rooms
- **Use lazy language or euphemisms**
 - ‘Challenging behaviour’
 - ‘Acting out’
 - ‘A resident to resident altercation’
 - ‘He’s just a lothario’

The Problem with Care (cont)

- **Providers (and staff)**
 - Just downright uncomfortable about it
 - Seldom addressed in care assessments and plans
- Evidence?*
- Survey of 826 ACF's in Victoria
- How do you deal with intimacy & sexuality needs in information to residents?
 - 20% responded to say they had policies
 - but were directed at 'problem' or 'disruptive' behaviour
 - 64% said 'had no information available'
 - 7 ACF's retorted that the research was inappropriate and intrusive
 - 7 ACF's said sexuality and intimacy are 'NA' or not important to older people in residential care

* Bauer, Nay, McAuliffe

THE LAW

The Problem with the Law

- **Law is seen as a threat!**
 - Because it's complicated
- **Legal 'Push/Pull' factors:**
 - Capacity and consent
 - Substitute Decision makers
 - General Principles
 - Charter of Rights (& Responsibilities)
 - Privacy
 - Mandatory Reporting
 - Duty of Care (Social control)
 - Contract (Policies and Procedures)
 - 'Hoverers' (family moral rights!)

The Law (cont)

- **The Biggest Law**
 - Capacity (consent)
- **Legal Presumption**
 - Everyone is legally capable of anything until there is evidence to the contrary
- **Capacity is decision specific**
 - Sexual consent is not a big legal hurdle
- **What if**
 - If a resident with dementia is capable of deciding what to wear & what to eat and who to talk to
 - could they not also decide who they want to be with?

The Law (cont)

Substitute Decision Makers

- Not a law unto themselves
- Respect principal's rights
 - Charter of Rights (Aged Care Act)
 - Principles (eg Qld Powers of Attorney Act)
 - Human Rights Act
- Can they make 'sexual' decisions?
 - Issues of the head and hip-pocket but not the heart
 - Installation of CCTV in resident's room (& ensuite)
- Mix of 'morality' and self interest

Question

**SHOULD WE HAVE A SEXUAL
POWER OF ATTORNEY?**

**DO NOT
DISTURB**

Please do not enter

From: 2 pm

To: 3 pm

Speak to nurse in charge

That's It

There is no more Sweet Dreams



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Level 10, 193 North Quay Brisbane Qld 4000