

# Strategies to Manage the Difficult Resident, SDM or Family Member

Dealing with the difficult or even abusive resident, substitute decision-maker (SDM) or family member in the health care setting can place incredible demands upon an already resource-stretched work environment.

Long term care homes have an overriding duty to ensure a good quality of health care and to protect the safety of residents, visitors and staff members. They also have an obligation to protect staff members from abuse and harassment. Long term care homes are required to ensure that staff are trained to prevent and manage abusive behaviour, that there are sufficient resources, policies and procedures in place to support a safe environment and that residents are protected from abuse and neglect. Unfortunately, situations arise in which these measures are not enough and additional steps, including legal action, may be necessary.

Intervention may be required where individual behaviours and demands potentially compromise the care provided to a resident or other residents, or have a negative impact on the ability of staff to carry out their professional roles. Abuse can take many forms and can be emotional, verbal, physical or sexual.

Long term care homes may consider the following strategies, among others, when dealing with difficult residents, SDMs or family members.

## Develop a detailed treatment plan

Where capacity of the resident fluctuates or is otherwise at issue, or where there are unrealistic demands for care, consider developing a detailed treatment plan for the

resident. This should set out clear expectations and will help the health care team to avoid entering into repeated discussions with the resident or SDM.

## Create communication strategy

Establish clear lines of communication with the resident, SDM or family member so that staff are not working at cross purposes. A communication strategy should be developed, which may include designating individual staff members to communicate with the person, with clear identification of persons to whom staff should refer questions. Such a strategy is important to ensure that there is consistent messaging, limits are set and expectations managed.

## Address concerns at case conferences

Concerns about inappropriate behaviour on the part of the resident, SDM or family member may be addressed directly at resident meetings or case conferences. For concerns of an ongoing nature, it may be appropriate to follow up in writing.

## Offer supportive services

Where available, it may be helpful to offer social work, pastoral care, counselling or other support services. This may help the individual in managing his or her frustration level and expectations.

## Document communication attempts/abusive behaviours

Documentation ought to be maintained regarding all communication attempts. Furthermore, staff should report and document abusive behaviour in accordance with the facility's policies and procedures. It may be appropriate to consider legal advice to explore options. Where appropriate, legal counsel may direct further investigation, documentation or activity, which may be subject to solicitor and client privilege. Staff should receive direction about what information ought to be included in the record of personal health information and what should be documented separately.

## Institute zero-tolerance abuse and neglect policies

Long term care homes are required to ensure that there are policies in place to promote zero tolerance of abuse and neglect of residents. There are a number of useful resources on the prevention and management of abuse. For example, the College of Nurses of Ontario has developed nursing standards and programs on preventing client abuse and neglect.

## Develop workplace violence/harassment policies/programs

The prevention of abuse and violence against staff in the health sector has received increasing focus in recent years, particularly with high-profile cases such as the Dupont/Daniel inquest. This inquest was triggered after a physician stabbed a nurse to death. Recent proposed changes to workplace legislation in Ontario will, if passed, require employers to develop workplace violence and harassment policies and programs.

Long term care homes are encouraged to proactively develop and implement such policies, and to develop strategies for dealing with and preventing violence or abuse. Staff are not required to simply accept abusive behaviour on the part of residents, family members or other staff members. It is important to establish a policy framework that will support staff as situations arise.

## Consider a corporate response that limits access

Despite the development of policy, at times a more comprehensive response is required from a corporate level. Long term care homes are private property and a facility has the ability to limit and restrict individuals' access to the premises. This must be balanced with the rights of the resident and the need for an SDM, for example, to receive all information necessary in order to make decisions on behalf of the incapable resident.

## Invoke the Trespass to Property Act or seek a peace bond

Long term care homes may restrict or limit a person's access to the premises by virtue

### by Kathryn Frelick

*Kathryn Frelick is a partner with the law firm of Miller Thomson LLP and leads the firm's health regulatory and policy practice in Toronto. Ms. Frelick works exclusively with health clients from the public and private sectors. She can be reached at (416) 595-2979 or kfrelick@millerthomson.com.*

of the *Trespass to Property Act*, which may include serving the person with a Notice Prohibiting Entry. This Notice may then be enforced by security personnel or the local police. Alternatively, the facility may go to court to obtain a peace bond, restraining an individual. This may be necessary where, for example, an individual is making harassing telephone calls to staff members or is contacting staff members outside of the workplace. Again, these measures must be balanced against the resident's rights under the *Resident's Bill of Rights*.

### **Call for police assistance**

Individual staff members may call for police assistance where there is concern that the resident, staff or others are at risk of harm. Staff members should be aware of the appropriate protocols for calling for assistance.

### **Draft a 'behavioural contract'**

In some situations, a 'behavioural contract'

with the resident or SDM may be effective. This contract may set out guidelines around care, as well as expectations with respect to visiting, communicating with the care team and behaviour toward staff and physicians. This contract should also set out consequences for non-compliance.

### **Report suspected abuse**

If the resident is incapable and there is concern about possible abuse by the SDM or power of attorney for property, there may be a need to report the suspected abuse to the Office of the Public Guardian and Trustee for investigation.

### **Appeal to the Ontario Consent and Capacity Board**

There may be recourse to the Ontario Consent and Capacity Board in some situations—for example, if the health care professional proposing treatment is of the opinion that the SDM is not acting in

accordance with the principles for giving or refusing consent (i.e., prior capable wishes or best interests). This option is also available in relation to personal assistance services.

### **Be proactive**

There may be other strategies or legal options that can be explored depending upon the particular circumstance of the case and the particular behaviours in question. Dealing with difficult residents, SDMs or family members can be challenging, but it is a reality within the health care system. It is important for long term care homes to be proactive in the development of policies and procedures and in the management of these situations. Long term care homes may wish to review particularly difficult situations with legal counsel, since they can have a significant effect on the workplace and staff morale. **LTC**