

# Report From Counsel

Winter 2011/2012

## Chemical Restraint: Drugging of the Elderly Is on the Rise

As the population continues to grow and to get older, the number of residents in nursing homes is on the rise. Nursing homes are a growth industry, and more and more for-profit nursing homes are opening.

Increasingly, nursing homes are using drugs (usually some kind of antipsychotic medication) on their residents. These drugs, which are intended to be prescribed to people suffering from psychoses or other mental illnesses, have many side effects, causing those who take them to become drowsy, docile, in-

active, or confused. This allows a larger number of residents to be watched by a smaller number of staff members.

The degree to which chemical restraints are being used is staggering. Research done in one state

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Although some of these facilities are very good, some of them put profits ahead of patient care. A recent study shows that the average for-profit nursing home has 30% fewer nurses and 45% more problems than its nonprofit counterpart has.

One of the unfortunate side effects of this lower level of staffing is a rise in the “chemical restraint” of elderly nursing home residents.

### Signs of Abuse and Neglect

What are the signs of nursing home abuse or neglect to look out for? Although a number of things might indicate that there are problems, common signs of possible trouble include:

- bedsores;
- soiled bed linen or the smell of feces or urine;
- unexplained bruises or cuts;
- use of physical or chemical restraints;
- changes in mood or disorientation;
- weight loss; and
- unexplained fear or anxiety.

Trust your feelings. People can often sense trouble before they can identify a specific problem. *Don't ignore your instincts.*

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# Pill Splitting: A Dangerous Practice

With the cost of medications sky high, many people engage in a practice known as “pill splitting.” Pill splitting is just what it sounds like—splitting a large pill into smaller pieces that contain a smaller dose of the drug. Patients split pills because one large pill often costs less than two or three smaller pills, even if the dosage is the same.

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In order to save money, many patients buy the less expensive larger pills and split them in half instead of buying the smaller pill in the correct dosage they need. Doctors and pharmacists, who are sensitive to the cost of drugs, have even been known to recommend pill splitting. Pill splitting is so common that it is even possible to buy a mechanical pill splitter, a small cutter that makes it easier to split pills.

Unfortunately, a recent study has shown that pill splitting can be dangerous. The most obvious reason is that pill splitting may lead to the patient’s receiving uneven doses. If the patient splits the pill inaccurately, he or she may receive a larger or smaller dose of medicine than intended, depending on which half of the pill is consumed. Even if the patient is able to split the pill accurately, the amount of the drug in each half may vary from pill to pill. The study shows that these problems mean that dosages in split pills

can vary by as much as 25%, a large amount if the drug is one requiring very precise dosing to be effective.

Pill splitting also leads to other, less obvious problems. One problem is that people who buy a higher dosage pill with the intent of splitting it may forget to do so, taking far too much medicine (this is a particular problem for elderly patients, who may be forgetful). Another concern is that even carefully split pills may crumble. If some of the pill ends up as dust, this reduces the amount of medicine that the patient actually consumes.

Finally, some pills are difficult to split, either because they are an

unusual shape or because they are harder than average. All of these problems make pill splitting risky.

The study suggests that drug companies should routinely make drugs available at all recommended prescription strengths, especially for those drugs where correct dosages are more critical. Another possibility is for drug companies to charge the same price per milligram of drug no matter what the size of the pill, which would reduce the economic incentive to split pills. Until then, caution suggests that a patient should not split a pill unless it is absolutely necessary.

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## Chalk One Up for the Little Guy

Nate Thoma is not a lawyer, but rather a small investor in Washington Mutual, the big bank that was seized by the federal government in 2008 and ended up in bankruptcy. As for so many other investors, Nate’s stake in the bank was wiped out.

Nate became something of a folk hero during that tumultuous period when big banking institutions were failing and the little people always seemed to get the short end of the stick as the messes were being cleaned up.

Nate’s big moment came when the federal bankruptcy judge let him have his say—and at some length—in a hearing that culminated in an investigation of trading by some very large hedge funds and in the rejection of a bankruptcy plan for the bank.

The issues made for a real legal thicket, especially for a novice to sort out. Essentially, Nate’s complaint, on behalf of the many small investors in the bank, was that the hedge funds were buying up the bank’s trust preferred securities that go to the front of the line for any money distributed from the bank’s estate.

The hedge funds also owned the bank’s bonds, so their dominant ownership of both classes of securities would help them control the course of the bankruptcy, to their benefit and to the corresponding detriment of the little guys. Nate’s oral argument and his accompanying 33 pages of supporting documents no doubt played a role in an eventual favorable settlement between small investors like himself and the hedge funds.

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# What to Do?

If you have been injured in an accident and have hired an attorney to assist you in making a claim, try to keep the following things in mind:

## Help Your Attorney Help You

Your attorney is on your side, fighting for your rights. Help your attorney as much as you can. Keep copies of all of the information about your accident, including police reports, medical bills, records about lost wages, and information sent to you by insurance companies. If you need to see your attorney, make an appointment, and be sure to keep all of the appointments that you make. If you move, be sure to give your attorney your new address and telephone number.

## Insurance Adjusters Are Not on Your Side

Remember that the adjuster working for the insurance company of the person who caused the accident is *not* your friend. The adjuster may make it sound like he or she is trying to help you, but the adjuster's job is to make sure that you receive as little compensation as possible, or even nothing. Once you have hired an attorney, inform the adjuster that you have done so, and give the adjuster your attorney's name and telephone number. After you have given this information to the adjuster, let your attorney handle all discussions with the adjuster.

## Health Care

Be sure to keep all of your appointments with your doctors and/or physical therapists. Do everything that they tell you to do, whether it is to take medicine, do

exercises, or get some rest. If they ask, tell your doctors or therapists that you have an attorney, but do not feel as though you have to volunteer information about your case or claim. Their focus is your health, and the question of how your legal case is going should not be any concern of theirs.

## Consider the Source of Advice

Family and friends often want to help you out if you have been hurt. This is great, but if they are giving you advice about your legal case, remember that they are not your attorney. Usually, it is not a good idea to take this inexpert advice—always consult your attorney first.

## We Love Referrals!

*Despite this modern age of marketing and advertising, the best source of our new business is word of mouth. We are grateful that many of our clients and friends feel confident in recommending our firm.*

*Unfortunately, many people who need a good lawyer do not know where to turn. If you or someone you know has been injured and needs legal help, call us.*

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# Automobile Airbags: Know the Risks

There is no question that airbags have saved thousands of lives. However, the government also estimates that hundreds of people have been killed by their airbags, and therefore it is important to know the risks.

A car's airbags fully deploy in 1/25th of a second, or approximately 200 miles per hour. Any object moving this fast can be dangerous. Several simple tips can help ensure that the airbag does its job properly and doesn't create more injuries than it prevents.

- Children (who are the most vulnerable to airbag-related injuries) should always ride in the back seat of a car. Young chil-

dren and infants should be buckled up in an age- and size-appropriate child safety seat.

- Drivers and front-seat passengers should always wear both their lap belts and shoulder belts to keep them from being thrown into the airbag while it is being deployed.
- Drivers should make sure that their seats are far enough away from the airbag to avoid the impact from the airbag opening and to give it time to deploy. Although this advice may be difficult for some drivers, particularly shorter ones, it will help prevent possible serious injury and even death.

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## Chemical Restraint

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shows that more than 70% of new nursing home residents were put on some kind of psychoactive drug within three months of moving into the nursing home and that many residents were placed on a cocktail of different drugs.

The overwhelming majority of these patients had not been diagnosed before they moved into a nursing home with a mental illness that required such treatment, and the suspicion is that they were being given these drugs solely to make them easier for the nursing home staff to manage.

In many cases, these drugs are being given to nursing home residents without a doctor's prescription, and those who refuse to take them have the drugs forced on them. Not only is it unethical to sedate the elderly with drugs that they do not need just to keep them

quiet, but the practice can also have serious effects on the physical health of the person taking the pills.

Patients who have been drugged are less active and can lose muscle mass and develop bedsores. The depressive effect that these drugs have on patient behavior may cause other injuries, such as fainting or falls. They may also react with other drugs that the nursing home residents are legitimately taking, such as blood pressure medication. Finally, these drugs have been linked to an increased risk of death when they are given to people suffering from dementia, a common problem among the elderly.

Reaction to the growth of this problem of chemical restraint has been slow in coming. Some laws have been passed that are intended to crack down on the improper use of antipsychotic drugs in nursing homes, but these laws are so filled with gray areas and loopholes that the use of these medications has

actually increased since the laws were passed.

Additionally, nursing homes that are found to violate these laws (and others) are usually given a chance to come into compliance with the rules within a certain period of time. If they do so, they are not fined for the violations found. This leads to sketchy nursing home operators "yo-yoing" in and out of compliance, fixing problems only when forced to by regulators, to the detriment of the residents.

The best defense against a loved one's being mistreated in a nursing home is a family that is involved and not afraid to ask questions. Nursing homes are less likely to drug a resident if they know the family might drop in at any time. If you have any questions about whether a loved one is being chemically restrained in a nursing home, don't be afraid to ask, and don't be afraid to consult our firm if you don't like the answer that you receive.

*Actual resolution of legal issues depends upon many factors, including variations of facts and state laws. This newsletter is not intended to provide legal advice on specific subjects, but rather to provide insight into legal developments and issues. The reader should always consult with legal counsel before taking action on matters covered by this newsletter.*