

## Long-Term Care Survey Alert

### **ABUSE REPORTING: To Report Or Not To Report A Resident Injury That Occurred During A Family Outing**

#### **Wonder if you're falling short on or overstepping your reporting obligation?**

A non-verbal resident with severe dementia returns from a visit home with bruising on his buttocks. The family explains that the resident slipped and fell in the bathroom, an accident that seems consistent with his injuries. The family seems very caring and has visited the resident regularly since his admission two years ago.

**Now what?** "The facility has to make a judgment call [about whether abuse occurred in some cases]," says **Nancy Shellhorse**, a private practice attorney in Austin, TX. That's true "even if the family provides an explanation of how bruising, for example, occurred, and it satisfies the facility."

**Keep in mind:** Surveyors tend to come in behind and second guess the facility," cautions Shellhorse. She's seen several instances where the family explains an injury to the resident that sounds perfectly logical. "But surveyors will ask questions about the facility's investigation," inquiring if they asked this and that, she says. And surveyors will conclude that the facility couldn't know if the resident was abused if it didn't do a thorough investigation, Shellhorse warns.

**A tough call:** "As a general rule," says attorney **Joseph Bianculli**, "when in doubt, report." But he advises interpreting that general rule in the light of state law that may require you to report any unwitnessed injury or potential crime.

You also have to use common sense, says Bianculli, who is in private practice in Arlington, VA.

Bianculli has handled cases running the gamut from possible family sexual abuse or exploitation to minor injuries. "And the analysis is similar," he notes.

When an alert and oriented resident can report that she just stubbed her toe at the mall with her daughter, the facility can bandage it and that's "the end of it," says Bianculli. But if a resident unable to consent appears to have engaged in sexual activity, "the sirens should go off--maybe literally," he says.

The bottom line, in Shellhorse's view: If there is even a tiny possibility that abuse may have occurred, you have to report it, she advises. "The same is true of injuries of unknown origin," adds Shellhorse.

#### **Know the State Requirements**

The facility has an obligation to report suspected abuse or neglect usually under both the state licensure law as well as adult protection statutes, advises Bianculli. "A nurse or administrator would be a mandated reporter," he says.

Reporting requirements vary by state, reminds **Kathy Hurst, RN, JD**, director of healthcare operations for **TSW Management Group**, which owns and manages nursing facilities in Anaheim, CA. "In California, if we suspect a resident was abused by family offsite, then we'd contact the state survey agency and Adult Protective Services."