

Nursing Home Abuse & Neglect

Morris County Bar Association – Elder Law Section

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Practice Areas: Mass Tort, Nursing Home Negligence, Products Liability,
Personal Injury & Wrongful Death

Areas of Emphasis: Nursing Home Negligence, Asbestos Litigation,
Pharmaceutical Liability (e.g. Accutane, Avandia, Fen-Phen),
Lead Poisoning, Products Liability,

Bar Admission: New Jersey, 1991
New York, 1992

Education: J.D., Rutgers School of Law - Newark, 1991
B.A., The American University, 1988

Biographical Information: Since 1991 Mr. Sugarman has represented individuals and the families of those who have suffered injury and wrongful death. Admitted to practice law in both New Jersey and New York, Barry litigates cases in both states' Courts for those harmed by dangerous and defective products and the negligence of others.

Mr. Sugarman represents those injured by many different kinds of products including Asbestos, Diet Drugs (Fen-Phen), Accutane, Avandia and others. He and his firm individually, and together with regional and national law firms, work to obtain the best results possible for victims of corporate misconduct.

Barry is proud to be an advocate for the elderly and children. A substantial part of his practice is devoted to lawsuits against nursing homes for negligence and violations of law causing catastrophic injury and death. He also represents children suffering from lead poisoning caused by their exposure to lead paint in poorly maintained housing.

Barry regularly presents and moderates local and national seminars related to nursing home negligence, asbestos litigation and childhood lead poisoning. In 1996, he was selected as a finalist for the Trial Lawyer of the Year Award by Trial Lawyers for Public Justice for his work on the White v. City of Newark lead poisoning class action.

He is a member of several boards and organizations including the Public Interest Law Center of New Jersey, Advocates for a Lead Safe New Jersey, the American Association for Justice and the Middlesex County Bar Association.

Barry has served as a Barrister in The Joseph Halpern Inn of Court helping less experienced attorneys develop their legal skills.

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Presentation Purpose

- Provide information protect “elder” clients and their families
 - Factual
 - Legal
- Proactive approach for information/advice to prevent nursing home neglect, injuries and death.
- Overview of Nursing Home Abuse Litigation
- Explain the “what happens” when nursing homes don’t do their jobs!

Nursing Home Selection

Publically Available Information

•Internet

- www.medicare.gov – NH Compare
- www.NJ.gov/ooie/ - Ombudsman
- <http://web.doh.state.nj.us/apps/healthfacilities/fsSearch.esp>
x - NJDOH

•Doctors/Nurses & Caregivers/Social Workers

- Connecting patient needs with facility knowledge

DON'T FORGET ABOUT LOCATION

Nursing Home Interview and Tour

• Administrator & Director of Nursing

- Staff ratios
- Staff training- elderly specific
- Medical doctor
- Attending physicians (investigate)- especially if this will be a “new doctor” for resident
- Surveys & Complaints- #, severity, timing

•Tour

- Forget the lobby
- Hygiene- physical & residents
- Talk to staff
- Watch, listen and learn

DON'T FORGET ABOUT LOCATION

Nursing Home Responsibilities & Resident's Rights

- Nursing STD of Care- STD's that “nurses” in geriatric/NH/custodial care settings must follow- “Nursing 101”

AND

- Federal & State Regs- elaborate scheme mandating care to protect NH residents from most common preventable injuries
 - Pressure ulcers
 - Falls
 - Malnutrition & dehydration

“Nursing Home Bill of Rights” (N.J.S.A 30:13-1, et seq.)

- NH Responsibilities – Care complying with:
 - Federal/State Regulations
 - State Law
 - Much More
- Resident’s Rights
 - Dignified care & treatment (ADLs)
 - And More
- Minimum Standards of Care
 - “ Floor, not a ceiling.”

Why Nursing Homes Fail

- Lower Level Staff
- Inadequate training
- Too many residents
- Lack of supervision
- Shouldn't have admitted resident at all

Warning Signs of Nursing Home Abuse & Neglect

- Lack of nursing care/attention
 - Pressure ulcers
 - Fractures
 - Falls (fx, head injury, etc.)
 - Dehydration/malnutrition/weight loss
 - Infection
 - Acute kidney failure

INJURIES - NOT MEDICAL CONDITIONS

Litigating the Case

- Intense Investigation
- Complaint
 - Common law
 - Statutory
- Fact Discovery
 - Written- Chart, Policies & Procedures, Financial
 - Depositions- Testimony from every level of care
- Expert Discovery
 - Geriatrician
 - Nurse
 - Injury specific expert (e.g. Infectious disease, WCN)

Types of Damages

- Pain & Suffering
 - Physical
 - Emotional
 - Loss of dignity
- Consortium
- Wrongful Death
 - Advice, companionship and guidance
 - Funeral bills
 - Unpaid medical expenses
 - Additional Economic Loss

Lien Issues

Medicare - Problem

Medicaid- Big Problem

Private Liens- ???

*Liens ALWAYS impact settlement and trial of
case*





08/04/2006



08/04/2006





Settlements

- \$70,000- \$1,000,000
- Average \$250,000- \$300,000
- Traumatic Injury vs. Systemic Failure Cases
- Insurance & Lien issues impact case value
- Fee and Cost Shifting Issues

Verdicts

- Sugarman Law holds one of the largest NJ nursing home verdicts/judgments
 - March 2012- Middlesex County- \$930,000 including attorney's fees and costs

Nursing Home Litigation Trends

- More Lawsuits- NH, ALF, Alzheimer/Memory Care Unit
- Mediation
- Arbitration- New defense tactic- warn your clients
- Appellate Law
- Trials

Elder Lawyers - Working Together

- Laws designed to protect elderly
- Public awareness, accountability & compensation is critical to provide protection
- Law instrument of social change
- *Ptaszynski v. Atlantic Health* (March 2012)
- *Ellinger v. Arden Courts of Whippany* (September 2012)