

PROTECTING NURSING
HOME RESIDENTS

June
2006

Arkansas Advocates for Nursing Home Residents



Next Meeting June 12

MEETING PLACE:

First Assembly of God
Church
4501 Burrow Road
North Little Rock
Directions to church on
back of Newsletter

10 a.m.

Meeting for Members,
Family and Friends of
Residents (Closed to
persons representing
the nursing home
industry).

11:00 a.m.

Public Meeting:
(see gray box on page
one)

We're on the web!
www.AANHR.org

Conway (501) 450-9619 • Fairfield Bay (501) 884-6728
Little Rock (501) 224-8431

AANHR's Mission Statement:

"To protect and improve the quality of care and life for residents in Arkansas nursing homes."

Jon Hopkins/Kim Laffoon Investigating Nursing Homes for Neglect and Abuse

Be sure to attend the June 8, 2006, meeting and learn how investigators work.

Jon Hopkins and Kim Laffoon will tell us how they locate hard to find witnesses and how they investigate nursing home abuse and neglect.

Jon Hopkins began his career of investigations in a rural county Sheriff Department in Arkansas. He went on to obtain the rank of Lieutenant with the State of Arkansas' Special Operations Unit. Prior to starting his own company he worked as Director of Investigations for one of the largest investigation companies in the nation. He is the Chief Executive Officer and Chief Investigator of Hopkins & Associates. Jon has been responsible for nursing home investigations in Arkansas, Texas, Mississippi, Tennessee and Kentucky. His techniques have been featured on nationally shown television shows.

Kim Laffoon is a Senior Investigator with Hopkins and Associates. Kim began her investigative career October 2003 as a licensed private investigator with a large private investigative agency that specialized solely in cases of nursing home abuse and neglect. Wanting to diversify her knowledge and fully utilize her skills in the investigative field she has joined the offices of Hopkins and Associates. While in college she worked as a legal assistant for Arkansas Attorney General Mike Beebe. Prior to beginning her investigative career she worked as a State Certified Security Consultant developing custom Security systems, CCTV, access control, fire alarm systems, as well as other security and loss prevention services and products.



From the President's Desk

Nancy Allison

FROM THE PRESIDENT'S DESK:

As a child and then again as a young mother, how many times did you hear or did you say “wash your hands before eating, don’t put your fingers in your mouth, cover your mouth when you cough, cover your nose when you sneeze, don’t drink from somebody else’s glass”? These are the ways we knew to prevent the spread of germs causing infection. We worry constantly about newborns “catching something.” Then as we age, it seems to be forgotten. However, as we get older, our immune systems start to weaken and we suddenly find ourselves again worried about infection. It is at that time in a person’s life that it becomes most important to eat properly and drink plenty of fluids.

When we visit nursing homes, it is not unusual to see a water pitcher out of the reach of the resident. In a health care facility, caregivers should know that hydration is one of the most important concerns in maintaining the health of the elderly persons residing there. Encouraging residents to drink and eat is a vital part of the work of the caregivers.

It appears that many caregivers do not understand that older adults are at increased risk for infection and that good nutrition and hydration play a significant part in maintaining a well-balanced immune system and healthy skin tissue. When the immune system is compromised, it diminishes the body’s ability to fight off infection and if skin breaks down pressure, sores develop.

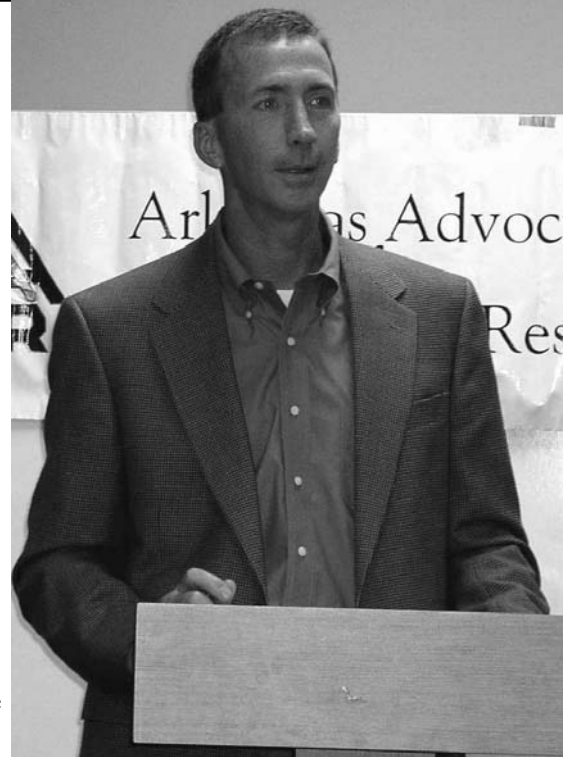
Urinary tract infections seem to be prevalent in nursing homes. Because of the way, the immune system changes as we age, older adults do not always show the typical signs of infection. This can delay the diagnosis until the individual is seriously ill with infection. The most common sign of infection in older adults is either decreased alertness or increased confusion. If the caregiver does not understand that these symptoms could be signs of infection, they are diagnosed as dementia. They then could be given medications that they do not need and that could worsen the condition or create other problems.

It is extremely important that you be watchful that your loved one is receiving adequate amounts of fluids and nutrition. Discuss your concerns with the CNA and charge nurse. If you become aware of unusual symptoms, bring them to the attention of the caregivers and work together to determine the cause.

Ten (of 20) Common Nursing Home Problems And How to Solve Them

Atty. Darren O'Quinn was the featured speaker at AANHR's May meeting and gave tips on how to deal with common nursing home problems.

Family members continue to give care to their loved ones after admittance to a nursing home by overseeing their care and by insisting on the level of care needed by the loved one. A nursing home is paid thousands of dollars each month to care for a resident and is obligated under the admission contract to provide care which allows a resident to reach the highest possible level of functioning. Family members need to see that this happens. The following are problems which commonly crop up. If these occur, make a polite request in writing referring to the law or Federal code and if possible to the care plan and/or doctor's orders. If the nursing home continues to refuse to correct the problem, try going through the Resident or Family Council because others are probably experiencing the same difficulties. Further complaints can also be made to the ombudsman and to the state Office of Long Term Care (a complaint can be made without giving your name).



#1. Discrimination against Medicaid residents.

What is sometimes heard: "Medicaid does not pay for the service you want." The fact is That a nursing home "must establish and maintain identical policies and practices...for all individuals *regardless of source of payment.*" (Federal Code) Never accept second-class treatment. If the problem arises quote the law to them.

#2. Planning the resident's care.

The resident and the resident's family have the right to participate in planning the resident's care. An individualized plan of care for each resident must be completed within 14 days after admission and it must be evaluated every three months thereafter. The resident, if able and family members should be notified of the meeting and the nursing staff is required to schedule the meeting at a time that family can attend. You, as a family member, know the likes and needs of your loved one better than the nurses or staff members so there is no reason to be intimidated by them. Speak up! And afterwards make sure that what was written in the care plan is what is given.

3. Honoring personal preferences

A nursing home must make reasonable adjustments to honor resident needs and preferences. Federal regulations say that residents have "the right to choose activities, schedules, and health care consistent with his or her interests, assessments, and plans of care." This is the resident's home and the staff is there to assist the resident. The schedule should accommodate the wishes of the resident - for instance, when to get up, when or what to eat, when to shower - not make it easiest for the staff. If a requested change in procedure is reasonable ("that's the way I was taught to do it" is not sufficient), the nursing home must make the change or be in violation of federal law.

#4. "We just don't have enough staff to do that"

It is the nursing home's legal responsibility to provide the care to which they have agreed in the plan of care. Shortage of staff or money is no excuse. If this happens on a regular basis even after you have politely called their attention to their legal responsibility, you may need to call upon state regulators.

#5. Use of physical restraints

A physical restraint is any device that restricts a resident's freedom of movement. Under the Nursing Home Reform Law, a physical restraint can be used only to treat medical conditions or symptoms. Family members need to know the possible negative consequences of restraints and be aware of less restrictive ways to manage the underlying problem. *Restraints cannot be used for the nursing home's convenience or as a form of discipline* and only with the consent of the resident or - if the resident does not have the mental capacity to consent - the resident's representative and by the order of a physician. Even if the doctor orders restraints, the resident or his representative has the right to accept or reject that order.

#6. Use of behavior-modifying medication

Behavior-modifying medications serve a purpose in the treatment of various emotional and psychological conditions. However it is improper for them to be given simply for the convenience of the staff, i.e., simply to make a resident more manageable. When used in this way such medications are simply another form of restraint. To be properly used the resident must have a diagnosis appropriate to the medication and the resident must benefit from it.

#7. Use of feeding tubes

A resident's slowness in eating is not reason enough for insertion of a feeding tube. Neither is a nursing home's shortage of staff. It is the nursing home's responsibility to provide necessary assistance. If necessary, the facility should increase its staff or stagger its mealtimes. Insertion of a feeding tube is an invasive procedure with many risks and therefore should always be considered a last resort.

#8. Visitors

A nursing home should be as homelike as possible. Consistent with this philosophy, a nursing home cannot limit visiting hours. A resident has the right to receive visitors at any time he/she desires. There are good reasons why a family member might want to visit at odd times, such as irregular work hours. In fact, a late night or early morning visit may be an excellent way to monitor how care is being given when usual administrative oversight is absent.

#9. "Responsible Party" clauses in admission agreements

The Nursing Home Reform Law prohibits a nursing home from requiring a family member or friend to become financially liable for nursing home expenses. The signature of a family member or friend can be required only if the family member or friend is signing on the resident's behalf. Admission is a confusing process and the amount of paperwork to be signed is so large that few people read it carefully. However it is a legal document. *Beware of hidden clauses such as this.* If at all possible seek a lawyer's guidance before signing.

#10. Arbitration agreements

This is another clause which may be hidden in the admission agreement. By signing it you agree that future disputes will not be taken to court but to an arbitrator, whose decision is final. The arbitration process is often more expensive than a lawsuit because you are responsible for paying the arbitrator by the hour. Arbitrators often are hand picked by the nursing home and may be less sympathetic to residents' concerns. Furthermore, nursing homes commonly write the arbitration agreement in a way that favors the nursing home over the resident. There is no good reason for a resident or his representative to sign an arbitration agreement at the time of admission. Once again, it is important to know what is in the admission agreement.

These concerns are discussed at greater length in a publication "20 Common Nursing Home Problems - and How to Solve Them" from the National Senior Citizen's Law Center. This publication is available from AANHR.

Atty. Darren O'Quinn cautioned those attending the May AANHR meeting to be aware that ***nursing home residents still have the right to choose their own pharmacist*** as long as that pharmacist can provide packaging used by the facility. He has heard that some nursing homes signed all residents in that facility for one Medicare Part D plan regardless of whether or not that plan is the best choice for each resident. All family members should be aware of this illegal practice.

AANHHR is printing excerpts from an English composition by CNA Carol Beirne on "Requirements to become a Nursing Assistant." Part one was her description of the training process. This is part two, an analysis of the program.

The training for a CNA should be at least 30 days of intense training and include two weeks of clinical training before qualifying to take the certification test. The written test should have more questions regarding the health department regulations and more questions regarding the different types of common diseases of the elderly that affect the mind, such as dementia and Alzheimer's disease.

Ed's Note: AANHHR believes the training requirements for CNA's should be at least as rigorous as that required for manicurists, which is 600 hours (15 weeks). The current training requirement for CNA's is 75 hours (which is less than 2 weeks). Beginning June 1, 2006, this will be increased to 90 hours (2 weeks plus 1 ½ days), the additional 15 hours to be devoted to the study of dementia type diseases. This increase enacted by the 2005 legislative session largely due to ANHR efforts.

Other areas that are lacking in the current CNA training include:

1. Causes of dementia
2. Communication techniques
3. Behavioral management programs
4. Treatment strategies
5. Development of a healing environment
6. Working with families

Some of the opposing arguments to extend the requirement of hours spent for training a candidate to receive their certification are the claim that longer training would discourage students who are unable to manage the length of training schedules and the cost. However, since most are paid while participating in the training, this should have no effect.

The expense to have a more detailed and lengthy training program would be much less than the expense of increased illness due to substandard care that is given because the caregivers - the CNA's - are not adequately trained. High turnover due to lack of sufficient training for a tough job is an unnecessary expense that costs nursing homes when they must seek and train new personnel. If the training and awareness of the skills and care needed is understood and taught in detail, and if care is given with correct supervision from licensed staff, then there will be a lower turnover rate of CNA's and fewer reports of abuse and neglect.

There is no excuse for harm being inflicted on any of the residents by a certified nursing assistant. Proper training is desperately needed.

AANHHR is proud to announce that on April 24, 2006 the Arkansas State LTC Ombudsman, Kathie J. Gately, BSW was elected to the National Association of State LTC Ombudsman Board of Directors. In addition, it was nationally announced, that the 2007 NASOP conference is scheduled to be held in Little Rock, AR and will be hosted by the Office of the State LTC Ombudsman. The dates will be released soon.

Public Notice

Arkansas Advocates for Nursing Home Residents are here to help with any problems you might face in dealing with nursing home care. As consumers, you need to know, there had not been a congressional report written in the past twenty years documenting that nursing home residents are being cared for and protected the way the federal laws require.

In order that you are better informed, we urge you to order GAO congressional reports illustrating the serious problems government investigators have found in nursing homes.

To receive the government studies free of charge either:

- Telephone AANHR at (501) 450-9619
- Go to our web site at <http://www.aanhr.org> and click on "Contact Us."

Volunteer Ombudsman Needed

Regardless of whether or not you plan to become a volunteer ombudsman your knowledge will increase ten fold by attending an ombudsman training session. Volunteer Ombudsman training takes only one day and can make an incredible difference in the life of a nursing home resident. A volunteer ombudsman is authorized to help the residents with any concerns. Protecting the resident's rights is a priority. The volunteer ombudsman is authorized to take complaints and report things they see that are questionable to their regional ombudsman, who can take steps to remedy the situation. A volunteer ombudsman can make a big difference brightening the life of a nursing home resident. Please contact Martha Deaver at 501-450-7405, she will put you in contact with your regional ombudsman.

AANHR has several wonderful videos that we would like to loan for use at Family Council meetings, or to help any family member seeking to learn more about receiving good care of residents in nursing homes. If you cannot attend our monthly meetings in Little Rock, please contact one of the officers listed in this Newsletter and make arrangements to have one of these helpful videos mailed to you. The Videos are:

- NURSING HOME CARE PLANS
- THE IMPORTANCE OF NURSING HOME FAMILY COUNCILS
- BATHING WITHOUT A BATTLE

AANHR Special Thanks

We extend heartfelt thanks to the following people and groups who make our outreach possible:

1. **Darren O'Quinn** of The Law Offices of Darren O'Quinn, PLLC, for assistance in the publication of this newsletter, meeting rooms, lunches and donations.
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3. **Todd Griffin** of The Law Offices of Todd Griffin, P.L.L.C. for advising AANHR's Board of Directors.
4. **Bob Davidson** of The Law Offices of Bob Davidson, P.L.L.C. for advising AANHR's Board of Directors.
5. **Brian Reddick** and **Bob Edwards** of Wilkes and McHugh for its generous donation toward the publication costs of this newsletter.
6. **Jack Wagoner** and **Gene Ludwig** for keepin AANHR supplied with copies of the book, DANGER ZONE.
7. **Clark Mason** of Hare Wynn Newell & Newton for financial and promotional support over the years.
8. **First Assembly of God** in North Little Rock for providing a meeting room free of charge.
9. **Eric Wewers** of The Law Offices of Eric D. Wewers, P.L.L.C. for advising AANHR's Board of Directors.
10. **David Couch** of Grayson and Grayson, PA, for employing Brent Birch of One6media, LLC, to do AANHR's new website design.

AANHR Officers and Board Members

President - Nancy Allison, Conway

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The June issue of Ladies Home Journal (now on sale at newsstands) contains an excellent story about nursing homes. The lead story is a woman from Conway, her trials and accomplishments. You will find the story on pages 98-112. It gives great insight into the good and bad of nursing homes, some of the problems organizations like ours are working to correct, and in some cases, what you, the community, can do to help make nursing homes "homes" and not "institutions." There are references to Green House Homes, Pioneer Network and the Wellspring Program. These are all dedicated to changing Long Term Care to **Resident Directed Care**. It is not about rebuilding nursing homes, it is changing the attitude and atmosphere and allowing the resident to retain control of their life to the extent they are able to do so.

Strength in Numbers, AANHR Needs You!!

AANHR is a nonprofit organization run by non-paid volunteers dedicated to protecting and improving the quality of care and life for Arkansas residents in long term care facilities.

Won't you please lend your support to us by joining our organization. Your membership dues help to pay for our activities that support our mission statement. Memberships are available on a calendar year basis. Join now and you will be a member until December 31, 2006.

We are so appreciative of people like you who support us and our cause, because together we can make a difference.

- I wish to receive the AANHR newsletter.
- \$15 per individual membership enclosed.
- \$20 per family or corporate membership.
- \$4 per student or CNA membership.
- Waive dues because of financial hardship.

Please make checks payable to: AANHR and mail to PO Box 22421, Little Rock, AR 72221

AANHR Meeting Directions

First Assembly of God Church, 4501 Burrow Road, North Little Rock, Arkansas

From Little Rock on Highway 67-167, take the West McCain Blvd. Exit. Immediately after crossing under the McCain Blvd. bridge, turn right (east) onto the newly constructed ramp. Get into the left lane as you will be turning left (north) at the first opportunity onto Landers Road. Once on Landers Road, keep in the far left hand lane as you will be turning left when you get to the new "turn around." At the turn around, you will go under Highway 67/167 and enter Warden Road going southbound. As soon as you can move safely, get into the far right hand lane as you will be turning right immediately past the Golden Coral Restaurant onto Commercial Street.

Commercial Street dead ends in about three blocks into Burrow Road at the church, which will be recognized by its three large crosses. Proceed straight into the church's parking lot and turn right at the west end of the building into the narrow alley-like drive.

The entry door is located about half way down this side of the church and the meeting room (#113) is immediately inside the entrance door.



Arkansas Advocates *For* Nursing Home Residents

P. O. Box 22421 Little Rock, AR 72221-2421
www.aanhr.org

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