



Nursing and Long Term Care Home Liability

January 9, 2019

LONG-TERM CARE HOME NEGLIGENCE

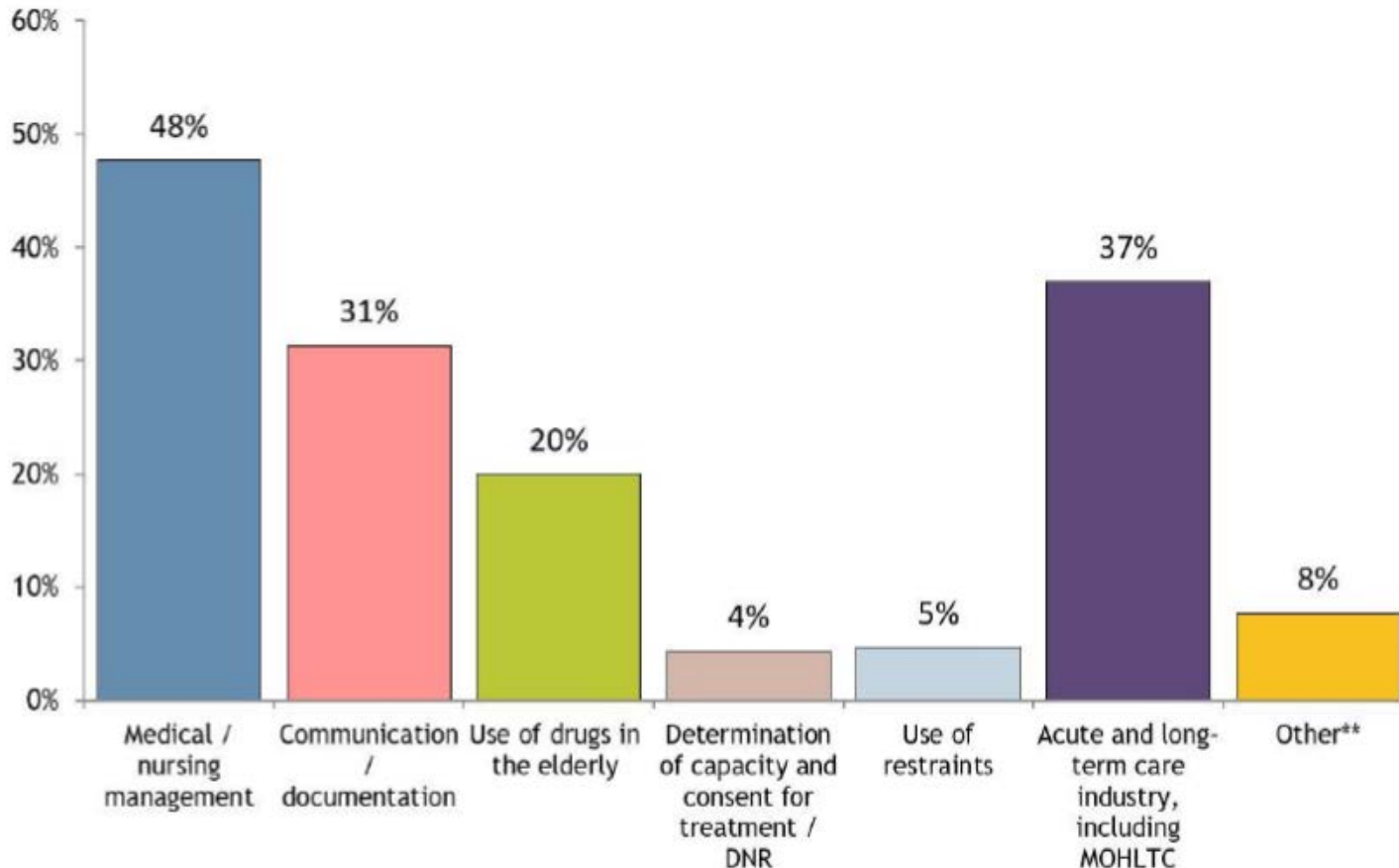
RICHARD BOGOROCH
rbogoroch@bogoroch.com

INTRODUCTION

- July 1, 2010: *Long-Term Care Homes Act, 2007* (“LTCHA”), S.O. 2007, c. 8, and Ontario Regulation 79/10 (“Regulation”) implemented
- **Goal:** designed to help ensure that residents of long-term care homes receive safe, consistent, high-quality, resident-centered care.
- ***Measuring Up 2018:*** Health Quality Ontario reports that anywhere from 1 in 30 to 10 in 30 long-term care home residents fall per month, reflecting substantial regional and home-to-home variation.

GERIATRIC AND LONG-TERM CARE REVIEW COMMITTEE

2017 ANNUAL REPORT



The Chief Coroner for Ontario's Report highlights continued concerns based on review of 300 cases from 2004 – 2017, identifying 6 main thematic issues.

SLIP AND FALLS

- **Issue:** Falls are the leading cause of injury-related hospitalizations among Canadian seniors, between 20%-30% of seniors fall each year
- **Occupiers' Liability Act - Section 3:** an occupier of a premise owes a duty to take such care as in all the circumstances of the case is reasonable to see that persons entering on the premises, and the property brought on the premises by those persons are reasonably safe while on the premises. R.S.O. 1990, c. O.2, s. 3.
- **LTCHA - Section 5:** Every licensee of a long-term care home shall ensure that the home is a safe and secure environment for its residents. 2007, c. 8, s. 5.
- **LTCHA - Section 6(1):** Every licensee of a long-term care home shall ensure that there is a written plan of care for each resident that sets out, (a) the planned care for the resident; (b) the goals the care is intended to achieve; and (c) clear directions to staff and others who provide direct care to the resident. 2007, c. 8, s. 6 (1).
- **Liability:** *History of falls?* Defect on the premises? Reasonable system of inspection and maintenance? Was Home complying with their own procedures and written policies?

SLIP AND FALLS –CONT.

- **Regulation - Section 48:** (1) Every licensee of a long-term care home shall ensure that the following interdisciplinary programs are developed and implemented in the home:
 1. A **falls prevention and management** program to reduce the incidence of falls and the risk of injury.
 2. A **skin and wound care program** to promote skin integrity, prevent the development of wounds and pressure ulcers, and provide effective skin and wound care interventions.
 3. A **continence care and bowel management** program to promote continence and to ensure that residents are clean, dry and comfortable.
 4. A **pain management program to identify pain** in residents and manage pain. O. Reg. 79/10, s. 48 (1).
- (2) Each program must, in addition to meeting the requirements set out in section 30,
 - a) provide for **screening protocols**; and
 - b) provide for **assessment and reassessment instruments**. O. Reg. 79/10, s. 48 (2).

SLIP AND FALLS –CONT.

- **Regulation - Section 49:** (1) The falls prevention and management program must, at a minimum, provide for strategies to reduce or mitigate falls, including the monitoring of residents, the review of residents' drug regimes, the implementation of restorative care approaches and the use of equipment, supplies, devices and assistive aids. O. Reg. 79/10, s. 49 (1).
- (2) Every licensee of a long-term care home shall ensure that when a resident has fallen, the resident is assessed and that where the condition or circumstances of the resident require, a post-fall assessment is conducted using a clinically appropriate assessment instrument that is specifically designed for falls. O. Reg. 79/10, s. 49 (2).
- (3) Every licensee of a long-term care home shall ensure that the equipment, supplies, devices and assistive aids referred to in subsection (1) are readily available at the home. O. Reg. 79/10, s. 49 (3).

MEDICAL AND NURSING CARE EXAMPLE: PRESSURE ULCERS

- **Issue:** Decubitus ulcers are one example of an issue arising from poor medical and nursing care. They result from failing to take proper precautions such as turning a patient every two hours, allowing a patient to remain in his or her own urine and the failure to eliminate pressure points on a patient's skin. They can result in plastic surgery, amputation, and even death.
- **LTCHA - Section 6(1):** Requires a written plan of care. (See Slide 5)
- **Liability:** Important to review a resident's medical records, wound documentation and any photographs of the pressure sores in their various stages. Review the plan of care to see if the development or worsening of a pressure ulcer has been addressed. Was the Home has adhered to the comprehensive bedsore prevention and treatment programs? Did they have reduced said programs to a written policy or document?

PRESSURE ULCERS – CONT.

- **Regulation - Section 50:** (1) The skin and wound care program must, at a minimum, provide for the following:
 1. The provision of routine skin care to maintain skin integrity and prevent wounds.
 2. Strategies to promote resident comfort and mobility and promote the prevention of infection, including the monitoring of residents.
 3. Strategies to transfer and position residents to reduce and prevent skin breakdown and reduce and relieve pressure, including the use of equipment, supplies, devices and positioning aids.
 4. Treatments and interventions, including physiotherapy and nutrition care. O. Reg. 79/10, s. 50 (1).
- (2) Every licensee of a long-term care home shall ensure that,
 - a) a resident at risk of altered skin integrity receives a skin assessment by a member of the registered nursing staff,
 - i. within 24 hours of the resident's admission,
 - ii. upon any return of the resident from hospital, and
 - iii. upon any return of the resident from an absence of greater than 24 hours;

PRESSURE ULCERS – CONT.

- (b) a resident exhibiting altered skin integrity, including skin breakdown, pressure ulcers, skin tears or wounds,
 - i. receives a skin assessment by a member of the registered nursing staff, using a clinically appropriate assessment instrument that is specifically designed for skin and wound assessment,
 - ii. receives immediate treatment and interventions to reduce or relieve pain, promote healing, and prevent infection, as required,
 - iii. is assessed by a registered dietitian who is a member of the staff of the home, and any changes made to the resident’s plan of care relating to nutrition and hydration are implemented, and
 - iv. is reassessed at least weekly by a member of the registered nursing staff, if clinically indicated;
- (c) the equipment, supplies, devices and positioning aids referred to in subsection (1) are readily available at the home as required to relieve pressure, treat pressure ulcers, skin tears or wounds and promote healing; and
- (d) any resident who is dependent on staff for repositioning is repositioned every two hours or more frequently as required depending upon the resident’s condition and tolerance of tissue load, except that a resident shall only be repositioned while asleep if clinically indicated. O. Reg. 79/10, s. 50 (2).
- (3) In this section, “altered skin integrity” means potential or actual disruption of epidermal or dermal tissue. O. Reg. 79/10, s. 50 (3).

WANDERING

- **Issue:** Injuries may occur when residents walk around the facility or grounds unsupervised. Residents with dementia are now the core group in Ontario's long-term care homes, and are especially at risk for wandering.
- **LTCHA - Section 5:** Every licensee of a long-term care home shall ensure that the home is a safe and secure environment for its residents. 2007, c. 8, s. 5.
- **LTCHA - Section 6(1):** Requires a written plan of care. (See Slide 5)
- **Liability:** Home have prevention programs to keep the facility safe? At risk for wandering? Incident or occurrence reports identifying wanderers; review policy/procedure governing staff response to alarms; and review security records for entry/exit alarm testing and servicing frequency.

WANDERING – CONT.

- **Regulation - Section 9(1):** Every licensee of a long-term care home shall ensure that the following rules are complied with:
 1. All doors leading to stairways and the outside of the home other than doors leading to secure outside areas that preclude exit by a resident, including balconies and terraces, or doors that residents do not have access to must be,
 - i. kept closed and locked,
 - ii. equipped with a door access control system that is kept on at all times, and
 - iii. equipped with an audible door alarm that allows calls to be cancelled only at the point of activation and,
 - a) is connected to the resident-staff communication and response system, or
 - b) is connected to an audio visual enunciator that is connected to the nurses' station nearest to the door and has a manual reset switch at each door.
 - 1.1 All doors leading to secure outside areas that preclude exit by a resident, including balconies and terraces, must be equipped with locks to restrict unsupervised access to those areas by residents.

WANDERING – CONT.

2. All doors leading to non-residential areas must be equipped with locks to restrict unsupervised access to those areas by residents, and those doors must be kept closed and locked when they are not being supervised by staff.

3. Any locks on bedrooms, washrooms, toilet or shower rooms must be designed and maintained so they can be readily released from the outside in an emergency.

4. All alarms for doors leading to the outside must be connected to a back-up power supply, unless the home is not served by a generator, in which case the staff of the home shall monitor the doors leading to the outside in accordance with the procedures set out in the home's emergency plans. O. Reg. 79/10, s. 9; O. Reg. 363/11, s. 1 (1, 2); O. Reg. 246/13, s. 2.

- **Regulation - Section 9(2):** The licensee shall ensure that there is a written policy that deals with when doors leading to secure outside areas must be unlocked or locked to permit or restrict unsupervised access to those areas by residents. O. Reg. 363/11, s. 1 (3).

ABUSE

- **Issue:** More than 10,000 Canadians in nursing homes suffer abuse at the hands of **their fellow residents** each year.
- **LTCHA - Section 2(1):** “Abuse” in relation to a resident means physical, sexual, emotional, verbal or financial abuse.
- **LTCHA - Section 19:** (1) Every licensee of a long-term care home shall protect residents from abuse by anyone and shall ensure that residents are not neglected by the licensee or staff. 2007, c. 8, s. 19 (1).
 - (3) **Every licensee who contravenes subsection (1) is guilty of an offence.** 2017, c. 25, Sched. 5, s. 3.
- **LTCHA - Section 20:** Without in any way restricting the generality of the duty provided for in section 19, every licensee shall ensure that there is in place a written policy to promote zero tolerance of abuse and neglect of residents, and shall ensure that the policy is complied with. 2007, c. 8, s. 20 (1).

ABUSE – CONT.

- **LTCHA - Section 23:** requires the Home to immediately investigate and take appropriate action relating to every alleged, suspected/witnessed incident, and every incident of neglect.
- **Regulation - Section 54:** sets out the preventive actions that must be taken to minimize altercations and other potentially harmful interactions between residents.
- **Regulation - Section 96-99:** requires Home to protect a resident from abuse and from neglect by the Home or its staff and/or by anyone. Promotes zero tolerance of abuse and neglect of residents.
- **Liability:** Did the home fail to adequately protect a resident from harm? Reasonable care in selecting and supervising medical and non-medical personnel (i.e., individuals who were previously found guilty of abuse)?

RESTRAINTS & ANTIPSYCHOTIC DRUGS

- **Issue:** Many Ontario nursing home residents were taking an antipsychotic drug or sedatives that are not approved for use by elderly people suffering from dementia, and are often prescribed to treat behaviours associated with dementia. These can lead to confusion, drowsiness, increased risk of stroke, pneumonia, heart disease, kidney injury, diabetes and falls, and increased mortality.
- **LTCHA Section 30(1):** Every licensee of a long-term care home shall ensure that no resident of the home is:
 1. Restrained, in any way, for the convenience of the licensee or staff.
2007, c. 8, s. 30 (1).
- **Amendments to Section 30(1) to make resident protections more robust have been passed but not proclaimed.**
- **LTCHA Section 36(3):** A resident may not be restrained by the administration of a drug pursuant to the common law duty described in subsection (1) unless the administration of the drug is ordered by a physician or other person provided for in the regulations. 2007, c. 8, s. 36 (3).

ANTIPSYCHOTIC DRUGS – CONT.

- **Regulation - Sections 114-137:** The Regulation includes requirements to address medication incidents, adverse drug reactions, and the use of any drug or drug combinations, including psychotropic drugs, which could potentially put residents at risk.
- The Home must monitor and document the resident's response to the drug and the drug's effectiveness appropriate to – or in keeping with – the risk level of the drug.
- **Regulation - Section 135:** requires that an adverse reaction be documented, together with a record of the immediate actions taken to assess and maintain the resident's health.
- **Liability:** conduct a thorough review of the Home's medication management system, of the resident's medical file and of the plan of care.

WHAT BOGOROCH & ASSOCIATES LLP DOES

- Types of Cases We Can Help With:
 - Falls
 - Pressure ulcers/bedsores
 - Failure to supervise residents, including wandering and resident-on-resident harm
 - Medication prescription or administration errors
 - Nursing home negligence
 - Negligent medical treatment in long term care homes
- Types of Cases We Cannot Help With:
 - Capacity issues including Substitute Decision-Making and Guardianship
 - Medical Assistance in Dying (MAID)
 - Wills & Estates Matters
 - Powers of Attorney for Property or Personal Care

CONCLUSION

- It is important that family members and healthcare professionals understand the potential issues that elderly residents may face and the standards that Homes must adhere to pursuant to the *LTCHA* and Regulation.
- Family members are encouraged to bring their concerns to the Home administration and to consider litigation in the event that a family member has been injured. Accountability is critical to bring about improvements in care.

CONTACT BOGOROCH &
ASSOCIATES LLP WITH YOUR
QUESTIONS ABOUT LONG TERM
CARE HOME NEGLIGENCE