

CHICAGO LAWYER

FEBRUARY 2017

MED-MAL MATTERS

N

ursing home and assisted-living centers, historically, have been accused of medical negligence and abuse for their physical treatment of patients. But smartphones and social media are creating new ways to harm the most vulnerable of patients. The way this is done is by employees posting photos of helpless residents they're supposed to be caring for.

According to an investigation by ProPublica, a nonprofit news organization in New York that co-published its findings in the *Washington Post*, nursing home workers around the country are posting "embarrassing and dehumanizing" photos and videos of helpless nursing home residents on social media networks, violating the residents' privacy and dignity.

ProPublica has identified at least 47 incidents since 2012 in which nursing home employees inappropriately photographed or videotaped residents, some partially or completely naked, then posted them on social networks. Almost half of the cases involved Snapchat, a service in which photos appear for a few seconds and disappear with no record, unless the recipient takes a screen shot.

One case involved a nursing assistant at a Washington skilled-nursing facility who sent a Snapchat video of a resident sitting on a portable toilet with her pants below her knees. Another case involved a nursing assistant at Rosewood Care Center in west suburban St. Charles, who recorded another assistant lightly slapping the face of a 97-year-old resident with a nylon strap. On the video, the resident can be heard saying, "Don't! Don't!" while both employees laugh, according to ProPublica's documentation of the incident.

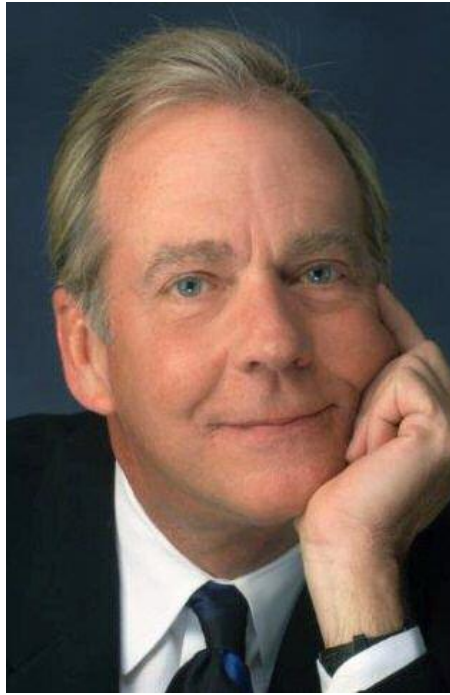
Last February at a nursing facility in Ohio, a nursing assistant coached several residents to say, "I'm in love with the coco," which are lyrics from a rap song and slang for cocaine. The employee recorded the residents lying in bed reciting their line and holding a sign that said, "Got these hoers trained" and then shared the video on Snapchat.

One resident's son was interviewed by state inspectors and told them that his mother had worked as a church secretary for 30 years and would be "mortified" by the video, according to ProPublica's documentation of the incident.

The true extent of elder abuse by social media is unknown. ProPublica identified the incidents it reported by combing government inspection reports, court filings and media reports. Known incidents are likely only the tip of the iceberg, however, many of the victims have dementia and are unable to perceive or report the abuse.

Indeed, nursing homes rarely discover this type of abusive behavior themselves. According to ProPublica, most cases are reported by people who receive posts and are disturbed by them.

Last fall, an employee of a nursing facility near San Diego took a video of a partially nude resident going into the shower and shared it on Snapchat. In the video, a second employee can be seen



#ElderAbuse

Social media has created new forms of mistreatment

By THOMAS A. DEMETRIO and KENNETH T. LUMB

laughing. When the video came to light, both employees were fired and one was charged with elder abuse and invasion of privacy by the California Attorney General's Office.

ProPublica reported that Tom Allen, a lawyer for the facility, stated that if it were his mother he would be "furious" and "inconsolable." Allen said nursing homes are feeling their way through social media and employee abuse because there are "no ground rules."

But there are ground rules and they are very clear. According to the American Nurses Association, patient privacy is a fundamental ethical and legal obligation of nurses. Nurses must observe standards of patient privacy and confidentiality at all times and in all environments, including online.

The ANA has published "Principles for Social Networking and the Nurse: Guidance for Registered Nurses" since at least 2011. In that guideline, the ANA recognized that the nature of the internet is such that, regardless of privacy settings, postings are public and permanent.

The ANA's "Tips to Avoid Problems" include not only a prohibition on transmitting individually identifiable patient information, but also a prohibition on sharing any information or photos gained through the nurse-patient relationship. The National Council of State Boards of Nursing also states that a nurse should never share, post or otherwise disseminate any images or information about a pa-

tient gained in the nurse-patient relationship.

These prohibitions apply regardless of whether an image or post contains information that the nurse believes could identify a patient, and for good reason. The very act of taking a video or a photo of a patient for nonmedical reasons is degrading, dehumanizing and harms the patient even if he or she is not aware of it. Further, many postings are potentially identifiable, even if only by the patient's or resident's loved ones, and the fact that only close family is aware of the abuse does not lessen this harm.

Under Illinois law, sharing photos or videos of a patient can give rise to a number of causes of action, including invasion of privacy or the public disclosure of private facts. Where the conduct is extreme or outrageous and the nurse knows there is a high probability that the images will cause severe emotional distress, an action for intentional or reckless infliction of emotional distress may also be available.

In short, the nursing home business should never mock residents, but rather supply them with quality care — and with dignity. CL

Thomas A. Demetrio is a founding partner of Corboy & Demetrio, representing victims of medical malpractice and personal injury.

Kenneth T. Lumb is a medical-malpractice attorney and partner at Corboy & Demetrio.