Workplace Violence v. Resident Rights

Kim C. Stanger

IHCA
Convention
(7/19)

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Overview

- The problem
- Legal issues
  - Employer obligations
    - Resident Rights
    - OSHA
    - Title VII
    - Similar state laws
    - Common law duties
  - Self-defense
  - Respondent's liability

- Suggestions and resources for responding, e.g.,
  - Written violence prevention plan
  - Worksite analysis
  - Training
  - Environmental changes
  - Administrative changes
  - Record keeping
  - Others?

Written Materials

- .Ppt slides
- OSHA, *Guidelines for Preventing Workplace Violence for Healthcare and Social Service Workers* (2016)
- OSHA, *Preventing Workplace Violence: A Road Map for Healthcare Facilities* (12/15)

➢ Available on IHCA website

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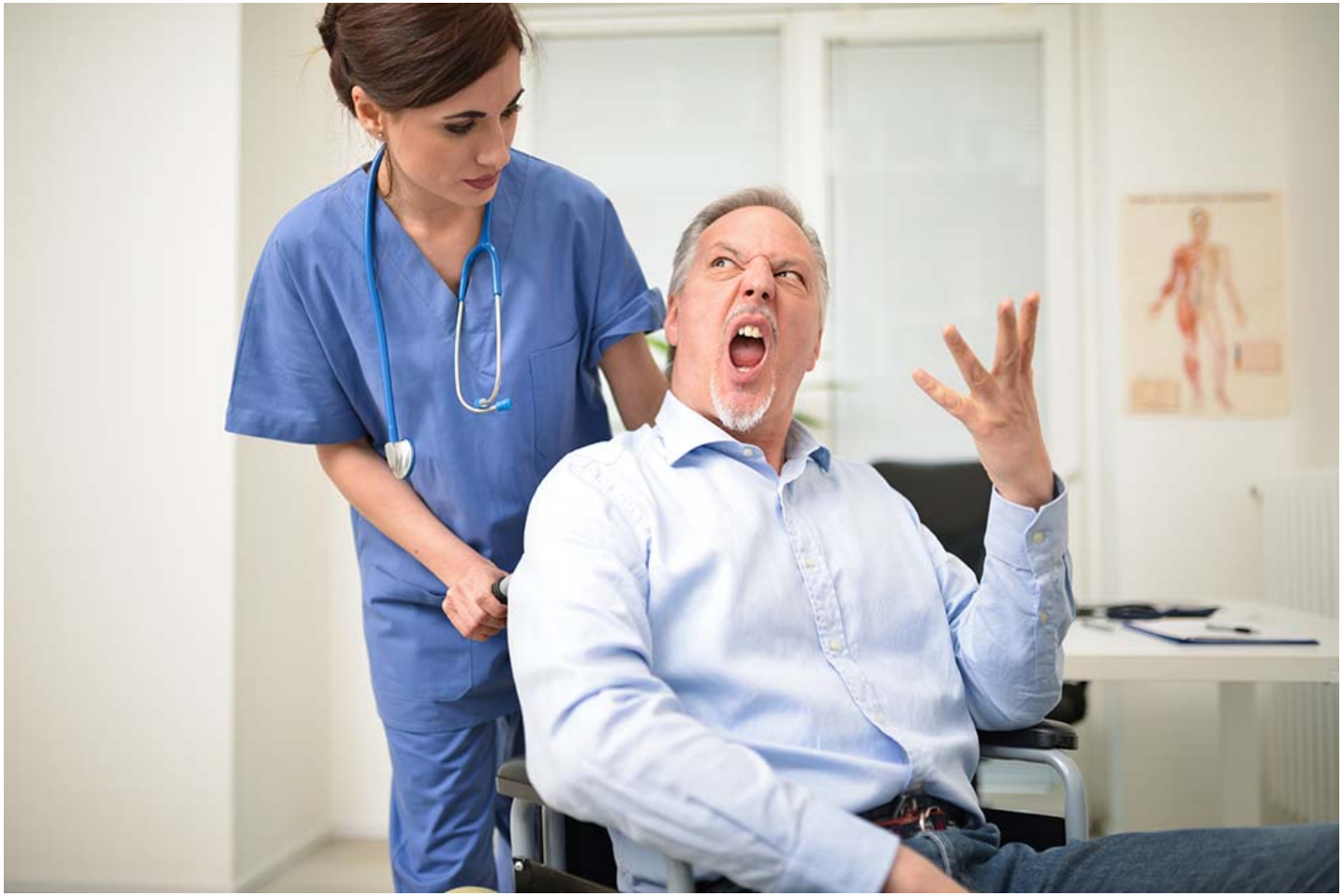
Workplace Violence



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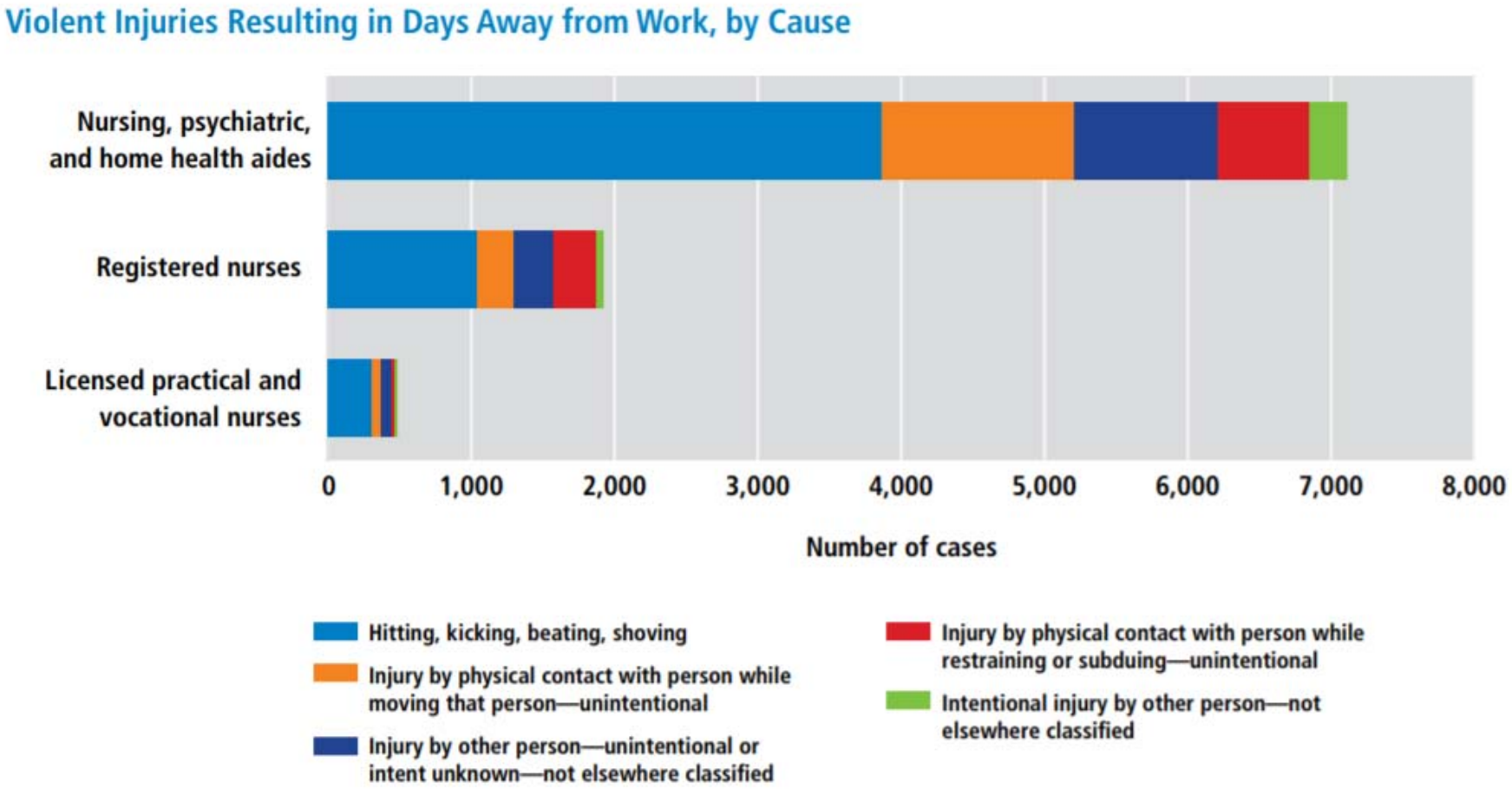
The Problem

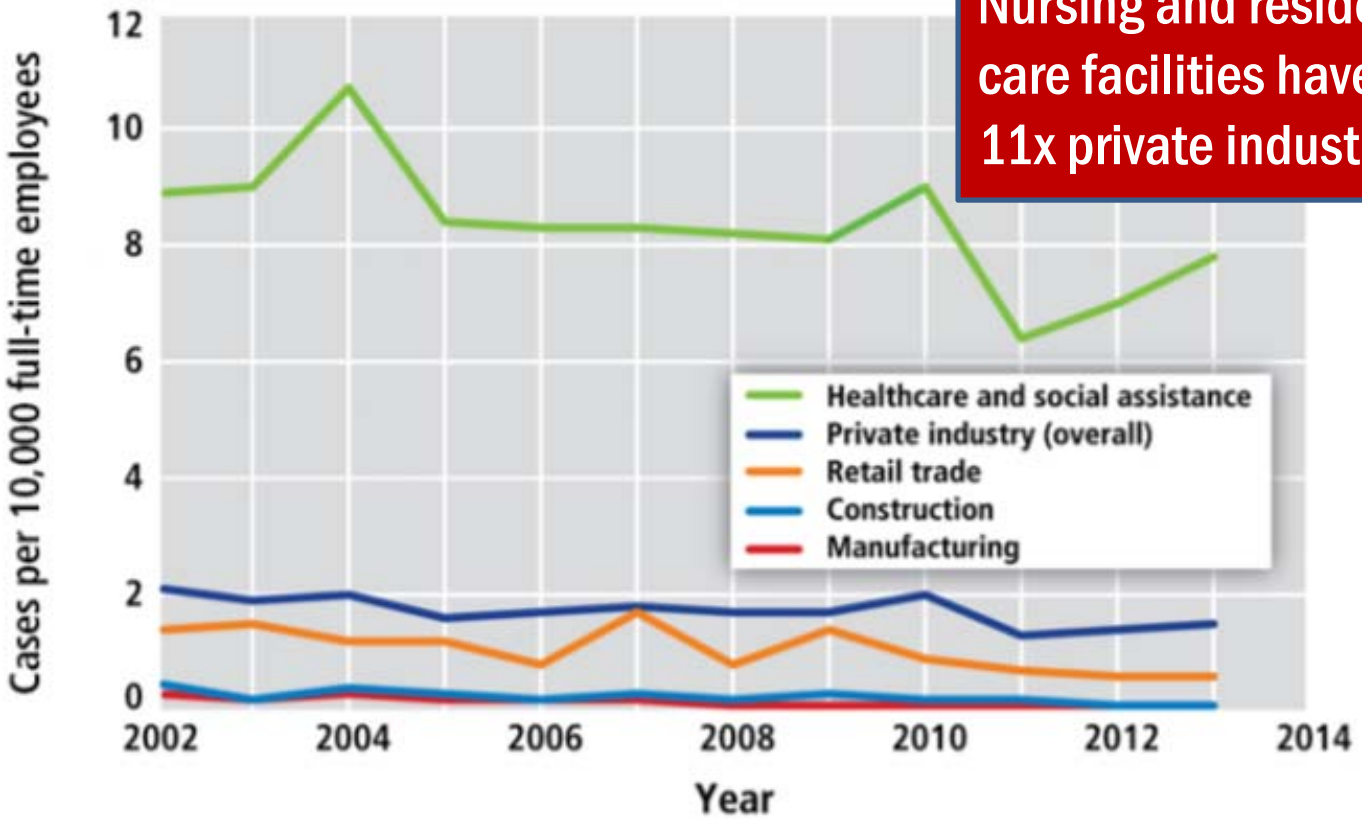
Workplace Violence in Healthcare



Data source: Bureau of Labor Statistics, 2013 data.

Workplace Violence in Healthcare

Violent Injuries Resulting in Days Away from Work, by Industry, 2002–2013



Nursing and residential care facilities have rates 11x private industry.

Data source: Bureau of Labor Statistics data for intentional injuries caused by humans, excluding self-inflicted injuries.

The Problem

Effects

- Physical harm to staff
- Emotional harm to staff
- Poor morale
- Absenteeism
- Workers compensation costs
- Fatigue, stress, burnout
- Turnover
- Diminished care to resident
- Increased errors
- Retaliatory action against resident
- Potential liability of employer
- $$$$$$$$$$$

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Resident Rights v. Staff Safety

Resident Rights

- Free from abuse or neglect
- Transfer limits
- Safe environment
- Dignity and respect
- Free from restraints for discipline or convenience
- Free from interference, coercion or reprisal
- Self-determination
- Privacy
- Grievance

(42 CFR 483.10, 483.12, 483.15; IDAPA 16.03.02.100.03(c))

Staff should not be subjected to:

- Physical violence
  - Hitting, kicking, spitting, biting, throwing, etc.
- Verbal assaults
  - Threats, hostility, abuse, harassment, bullying, degradation, sexually or racially inappropriate comments, constant criticism, etc.
  - ➢ *Studies show verbal assaults lead to physical assaults*

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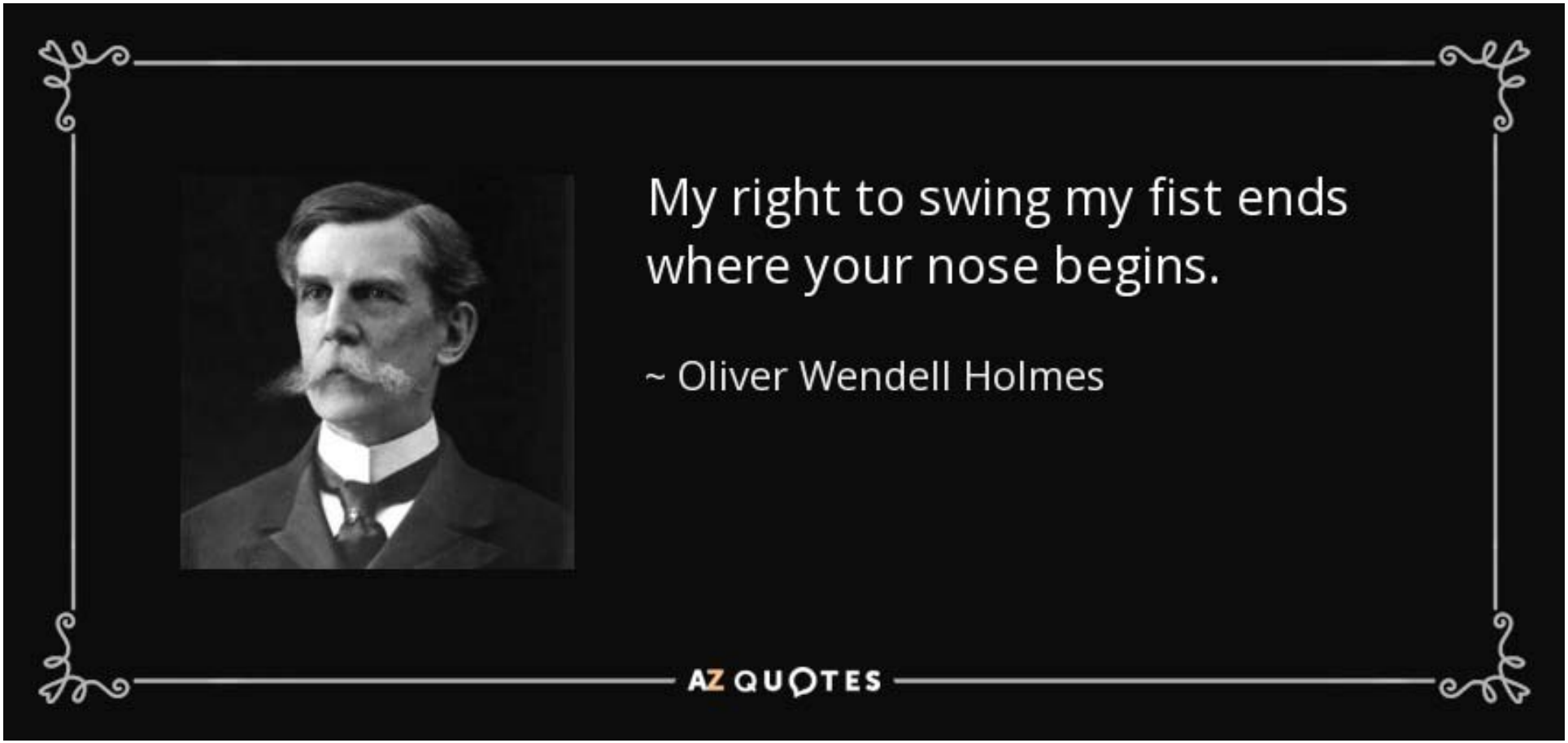
Resident Rights v. Staff Safety



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Resident Rights v. Staff Safety

Ligenza v. Genesis Health Ventures of Mass., Inc., 995 F. Supp. 226 (1998)

- Resident in LTC facility had a long history of sexually inappropriate behavior.
- Respiratory therapist caught resident looking up her blouse while cleaning his tube. Therapist hit him.
- Therapist was fired.
- Therapist sued for sexual harassment (hostile work environment) under Title VII.
- Facility argued that resident rights limited its ability to respond to alleged sexual misconduct.

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Resident Rights v. Staff Safety

Ligenza v. Genesis Health Ventures of Mass., Inc.

- Court disagreed:
  - "[T]he court does not believe that Genesis can shield itself from liability under Title VII … simply by relying on such regulations…. Although patients have rights, employees of long term care facilities also have the right to a workplace free from sexual harassment."
  - "[T]he regulations do not appear to foreclose Genesis from seeking to remove a patient from its facility. If anything, the regulations provide that if 'the safety of individuals in the nursing facility is endangered,' … some affirmative action, including removal, may be permissible."

Resident Rights v. Staff Safety

- **Resident rights do not prohibit the facility or staff from taking appropriate action to protect staff from resident misconduct.**
- To the contrary:
  - CMS Interpretive Guidelines
  - OSHA
  - Civil Rights Act of 1964
  - Idaho Human Rights Act
  - Common law duties?

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Resident Rights: Interpretive Guidelines

"The resident has the right to be free of interference, coercion, discrimination, and reprisal from the facility in exercising his or her rights."

(42 CFR 483.10(a)(2))

Interpretive Guidelines:

- "Exercising rights means that residents have autonomy and choice, to the maximum extent possible, about how they wish to live their everyday lives and receive care, subject to the facility's rules, as long as those rules do not violate a regulatory requirement."

(CMS State Operations Manual, Appendix PP - Guidance to Surveyors for Long Term Care Facilities at F151, (hereafter "Interpretive Guidelines").

Resident Rights: Interpretive Guidelines

"The resident has the right to be free from any physical or chemical restraints imposed for purposes of discipline or convenience, and not required to treat the resident's medical symptoms."

(42 CFR 483.13(a))

Interpretive Guidelines

- "If a resident's unanticipated violent or aggressive behavior places him/her or others in imminent danger, the resident does not have the right to refuse the use of restraints. In this situation, the use of restraints is a measure of last resort to protect the safety of the resident or others and must not extend beyond the immediate episode."

(Interpretive Guidelines at F222)

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Resident Rights: Interpretive Guidelines

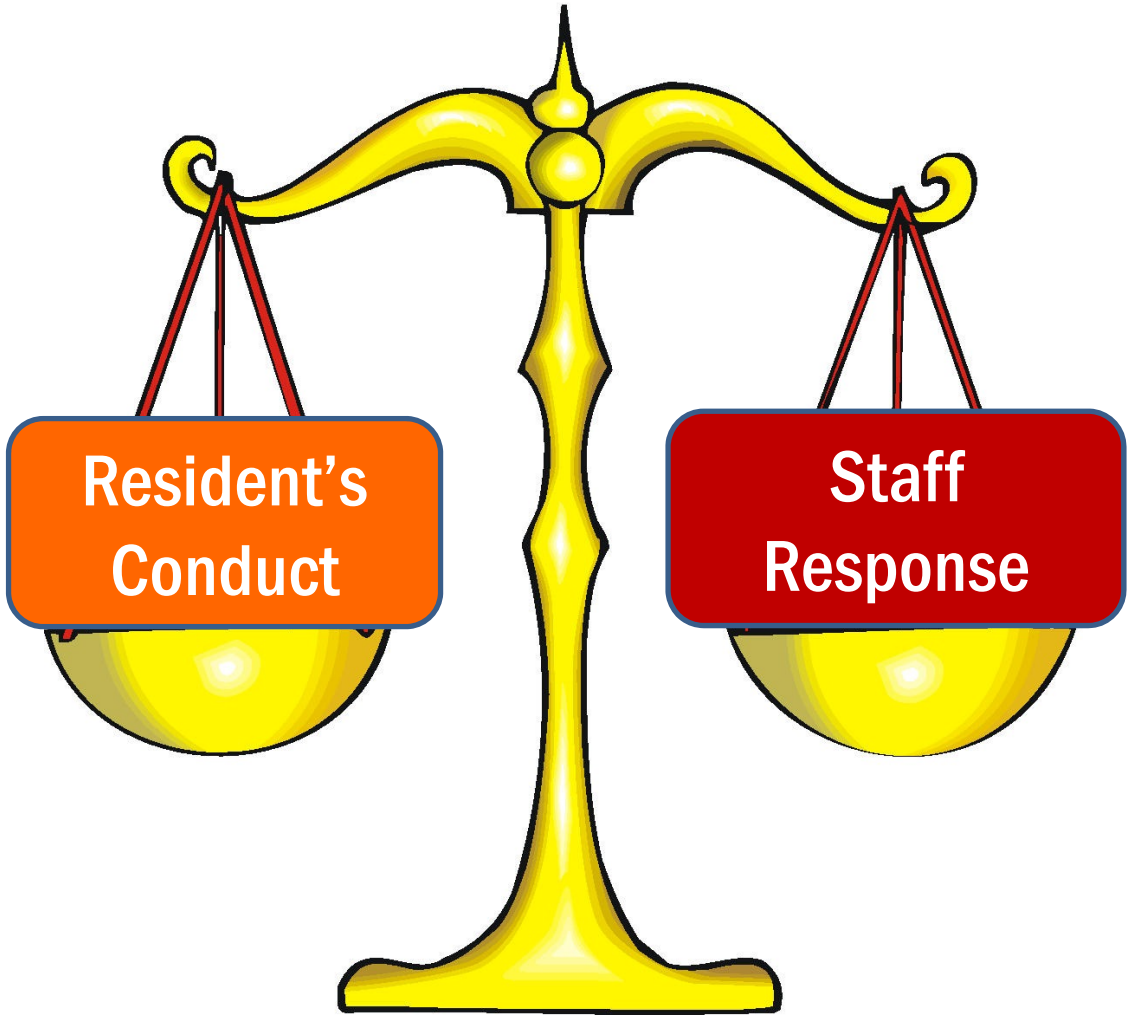
"The resident has the right to be free from verbal, sexual, physical, and mental abuse, corporal punishment, and involuntary seclusion."
(42 CFR 483.13(b))

Interpretive Guidelines

- "If a resident is receiving emergency short-term monitored separation due to temporary behavioral symptoms (such as brief catastrophic reactions or combative or aggressive behaviors which pose a threat to the resident, other residents, staff or others in the facility), this is not considered involuntary seclusion as long as this is the least restrictive approach for the minimum amount of time, and is being done according to resident needs and not for staff convenience."

(Interpretive Guidelines at F223)

Ensure the response is appropriate to the misconduct.



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Resident Rights: Interpretive Guidelines

Interpretive Guidelines

- "Properly trained staff should be able to respond appropriately to resident behavior.
- "The CMS does not consider striking a combative resident an appropriate response in any situation. Retaliation by staff is abuse and should be cited as such."

(Interpretive Guidelines at F223)

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Resident Rights: Interpretive Guidelines

"Staff Treatment of Residents. The facility must develop and implement written policies and procedures that prohibit mistreatment, neglect, and abuse of residents. The facility must--

(i) Not use verbal, mental, sexual, or physical abuse, corporal punishment, or involuntary seclusion."

(42 CFR 483.13(c))

Interpretive Guidelines

- Each resident has the right to be free from mistreatment …. This includes the facility's identification of residents whose personal histories render them at risk for abusing other residents, and development of intervention strategies to prevent occurrences, monitoring for changes that would trigger abusive behavior, and reassessment of the interventions on a regular basis.

(Interpretive Guidelines at F224)

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Resident Rights: Interpretive Guidelines

The facility must:

- "Train employees, through orientation and on-going sessions on issues related to abuse prohibition practices such as:
  - Appropriate interventions to deal with aggressive and/or catastrophic reactions of residents;
  - How staff should report their knowledge related to allegations without fear of reprisal;
  - How to recognize signs of burnout, frustration and stress that may lead to abuse; and
  - What constitutes abuse [and] neglect."

(Interpretive Guidelines for Tag F226)

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Resident Rights: Interpretive Guidelines

- Summary
  - Identify in advance potential risks associated with the resident.
  - Train personnel to respond.
  - Ensure the intervention or response is appropriate.
  - Do not do more than is reasonably necessary to protect resident, staff or others.
  - Document incident and response.
  - Take action to avoid or mitigate incident in future.

➢ In short: use your common sense!

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Occupational Safety and Health Admin ("OSHA")

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Occupational Safety and Health Admin ("OSHA")

- OSHA covers:
  - Most private sector workers
  - Not state and local govt workers
- General Duty Clause
  - "Each employer— shall furnish to each of his employees employment and a place of employment which are free from recognized hazards that are causing or are likely to cause death or serious physical harm to his employees."

(29 USC 654)

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OSHA

- To prove a General Duty Clause violation, OSHA must prove:
  1. The employer failed to keep the workplace free of a hazard to which employees were exposed;
  2. The hazard was recognized;
  3. The hazard was causing or was likely to cause death or serious physical harm; and
  4. There was a feasible and useful method to correct the hazard.

OSHA

Sec'y of Labor v. Integra Health Mgmt, Inc., No. 13-11124 (5/17/19).

- Client had history of schizophrenia and criminal aggravated assault and battery.
- Newly hired healthcare service coordinator assigned to visit client at home.
- Coordinator reported strange behavior and that she felt "uncomfortable" being alone with him.
- On subsequent visit, client killed coordinator by stabbing her nine times.

OSHA

Sec'y of Labor v. Integra Health Mgmt, Inc..

- Integra did:
  - Internet-based training on in-home safety.
  - Utilize voluntary buddy system.
  - Maintain workplace violence protection policy.
- Integra did not:
  - Obtain history about clients' unsafe history.
  - Conduct background checks.
  - Adequately communicate risks about client.
- Held: Integra violated OSHA General Duty Clause; approximately $10,000 penalty.

OSHA

Pioneer Health Center (1/29/18)

- "CNAs were exposed to incidents of violent behavior by residents that have resulted in bites, sprains, broken skin, bruising, scratches, soft tissue trauma, and injuries to the head and torso from punches, kicks and forceful grabs."
- Held:
  - Pioneer Health "failed to keep workforce free of hazards."
  - $9,054 penalty

OSHA

Pioneer Health Center

- Feasible means to abate violence include:
  - Implementation of effective workplace violence prevention program that includes:
    - Engineering and work practice controls, e.g., security cameras, give CNAs radios, remove unsecured items to prevent them being used as weapons.
    - Training, e.g., specific hazards, how to protect self, and reporting.
    - Administrative controls, e.g., workplace policy, adequate staffing, "buddy system".

OSHA

- 12/7/16: OSHA issued a request for information addressing violence in the healthcare workplace to determine whether additional OSHA standards should be implemented. (*See* 81 FR 88147 (12/7/16) and https://www.regulations.gov/document?D=OSHA-2016-0014-0001).
  - Status unclear.
- 3/14/19: *Workplace Violence Prevention for Health Care and Social Service Workers Act* was proposed.
  - Directs OSHA to issue a standard requiring a health care employers to develop and implement a workplace violence prevention plan to prevent and protect their employees from violent incidents.
  - Status unclear.

State Standards

- As of 2015, nine states require certain healthcare facilities to have some type of workplace violence prevention program.
  - California
  - Oregon
  - Washington
  - Illinois
  - New York
  - Maine
  - Connecticut
  - New Jersey
  - Maryland

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State Standards

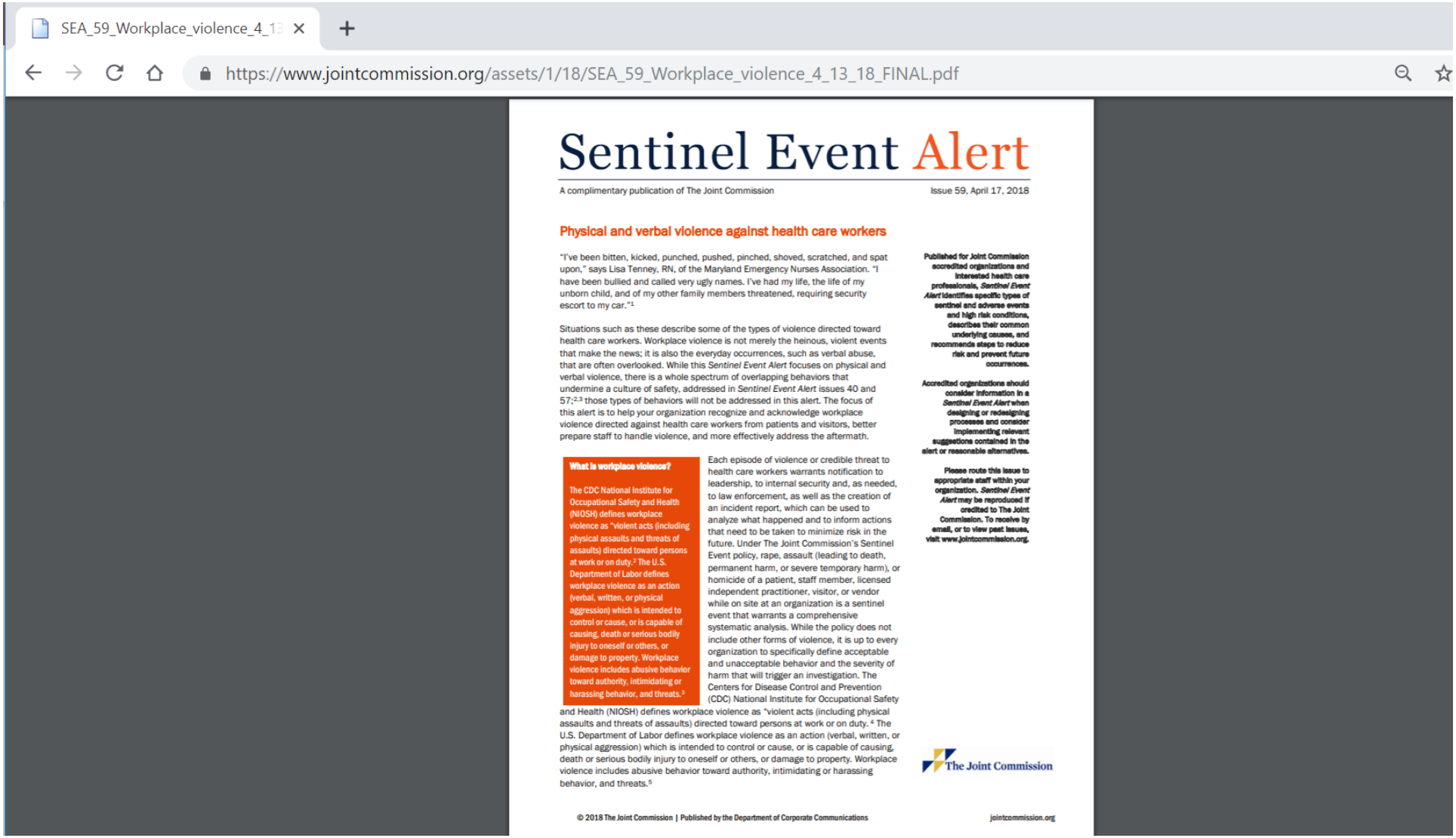
Compare recent California law

- Health employer must prepare workplace violence prevention plan that includes:
  - Annual training regarding workplace violence;
  - System for investigating and responding to violent incidents;
  - Annual assessment and evaluation of factors to prevent violence.

Accreditation Standards

- Joint Commission standards address workplace violence, although perhaps indirectly, including those that require:
  - Culture of safety and quality
  - Manage safety and security risks
  - Patient safety programs
  - Emergency operations plan
- Joint Commission Sentinel Event Policy includes items related to workplace violence.
- *See also* ACHC, CARF, HQAA, etc.

https://www.jointcommission.org/assets/1/18/SEA_59_Workplace_violence_4_13_18_FINAL.pdf



Civil Rights Act of 1964
Title VII

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Title VII

- Prohibits employment discrimination on the basis of race, color, religion, sex or national origin.

(42 USC 2000e)

- Extends to sexual harassment cases in which the employer knew or should have known about a hostile work environment yet allowed it to persist.

(*Vance v. Ball State Univ.*, 570 U.S. 421 (1998))

➢ **May apply to sexual comments, sexual behavior, racial epithets, discriminatory practices, etc.**

Title VII

- "An employer may also be responsible for the acts of non-employees, with respect to sexual harassment of employees in the workplace, where **[i] the employer (or its agents or supervisory employees) knows or should have known of the conduct and [ii] fails to take immediate and appropriate corrective action**.
- "In reviewing these cases the [EEOC] will consider the extent of the employer's control and any other legal responsibility which the employer may have with respect to the conduct of such non-employees."

(29 CFR 1604.11(e))

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Title VII

Gardner v. CLC of Pascagoula, LLC, 915 F.3d 320 (5th Cir. 2019)

- Elderly, mentally ill resident in ALF with long history of sexually inappropriate behavior to staff.
- Experienced, trained, African-American female CNA.
- Resident tried to grope her, and punched her twice in the breast.
- CNA allegedly:
  - Brought up fist over or toward's resident's head but did not touch resident.
  - Said, "I'm not doing shit else" for resident and "I'm not the right color."
- CNA went to the ER later that night. After returning from workers comp, CNA fired.
- CNA sued employer for failing to stop sexual harassment.

Title VII

Gardner v. CLC of Pascagoula, LLC,

- **District court granted summary judgment:** Workers in long term care facility must expect some inappropriate conduct from residents given their condition.
- **Appeals court reversed and remanded:** facts could support an actionable claim of harassment, including:
  - Not mere offensive utterances
  - Pervasiveness, daily misconduct
  - Physical sexual assault and violent outbursts

➢ **Caution: address sexual and other discriminatory conduct by residents.**

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Title VII

- Hostile work environment
  - Severe or pervasive
    - Physical assault
    - Effect on employment
    - Inappropriate statements
    - Other factors
  - Not severe or pervasive
- Not hostile work environment

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Title VII

- "Prevention is the best tool for the elimination of sexual harassment. An employer should take all steps necessary to prevent sexual harassment from occurring, such as
  - affirmatively raising the subject,
  - expressing strong disapproval,
  - developing appropriate sanctions,
  - informing employees of their right to raise and how to raise the issue of harassment under title VII, and
  - developing methods to sensitize all concerned."

(29 CFR 1604.11(f))

Title VII

Ligenza v. Genesis Health Ventures of Mass., Inc., 995 F. Supp. 226 (1998)

- Respiratory therapist caught resident with history of sexually inappropriate conduct looking up her blouse. Therapist hit him and was fired.
- Therapist sued for sexual harassment (hostile work environment) under Title VII but employer not liable:
  - Facility devised and implemented care plan to address concerns.
  - Facility charted misconduct and admonished resident.

Idaho Human Rights Act

- Idaho prohibits employment discrimination on the basis of age, disability, race, color, religion, sex or national origin.

(IC 67-5909)

- "An employer may also be liable for the harassment coming from non-employees if **[i] the employer has some legal control over the non-employees, [ii] fails to take immediate corrective action or [iii] expects an employee to tolerate the harassment as part of his or her job."**

(Idaho Human Rights Commission website, https://humanrights.idaho.gov/Idaho-Law/Types-of-Discrimination/Race-Color-and-National-Origin)

State Human Rights Act

Childs v. Evergreen Butte Health & Rehab, LLC, Mont. Dept. of Labor (2000).

- Two black CNAs were subjected to racially derogatory statements by two residents with dementia.
- In response:
  - Evergreen took action to warn the residents, temporarily confined one resident to his room, and trained staff.
  - Evergreen reassigned one CNA from the offending residents.
- CNAs sued for racial discrimination under Montana statute.

State Human Rights Act

Childs v. Evergreen Butte Health & Rehab, LLC

- Montana DOL held:
  - Acknowledged resident rights limit the response.
  - Employer may be liable for acts of incompetent residents.
  - Evergreen acted appropriately in responding to action by CNAs by, e.g., investigation, warnings, and discipline.
  - Evergreen acted inappropriately in reassigning the CNA to another resident.

Common Law Torts

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Common Law Torts

- Negligence
  - Duty to keep employees safe?
  - Breach of duty
  - Causation
  - Damages
- Negligence per se
  - Violation of statutory standard
- Negligent infliction of emotional distress
- Intentional infliction of emotional distress
- Others?

One study reports that average jury award in workplace violence case in which employer failed to take proactive, prevented measures is $3.1 million. (*See Violence in Healthcare Facilities*, ERCI.org)

Self-Defense

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Self-Defense

- Persons are generally immune from liability if act in self-defense provided that the person "use[es] such degree and extent of force as would appear to be reasonably necessary to prevent the threatened injury."
- "Reasonableness is to be judged from the viewpoint of a reasonable person placed in the same position and seeing and knowing what the person then saw and knew without the benefit of hindsight."

(IC 19-202; *see also* IC 6-808).

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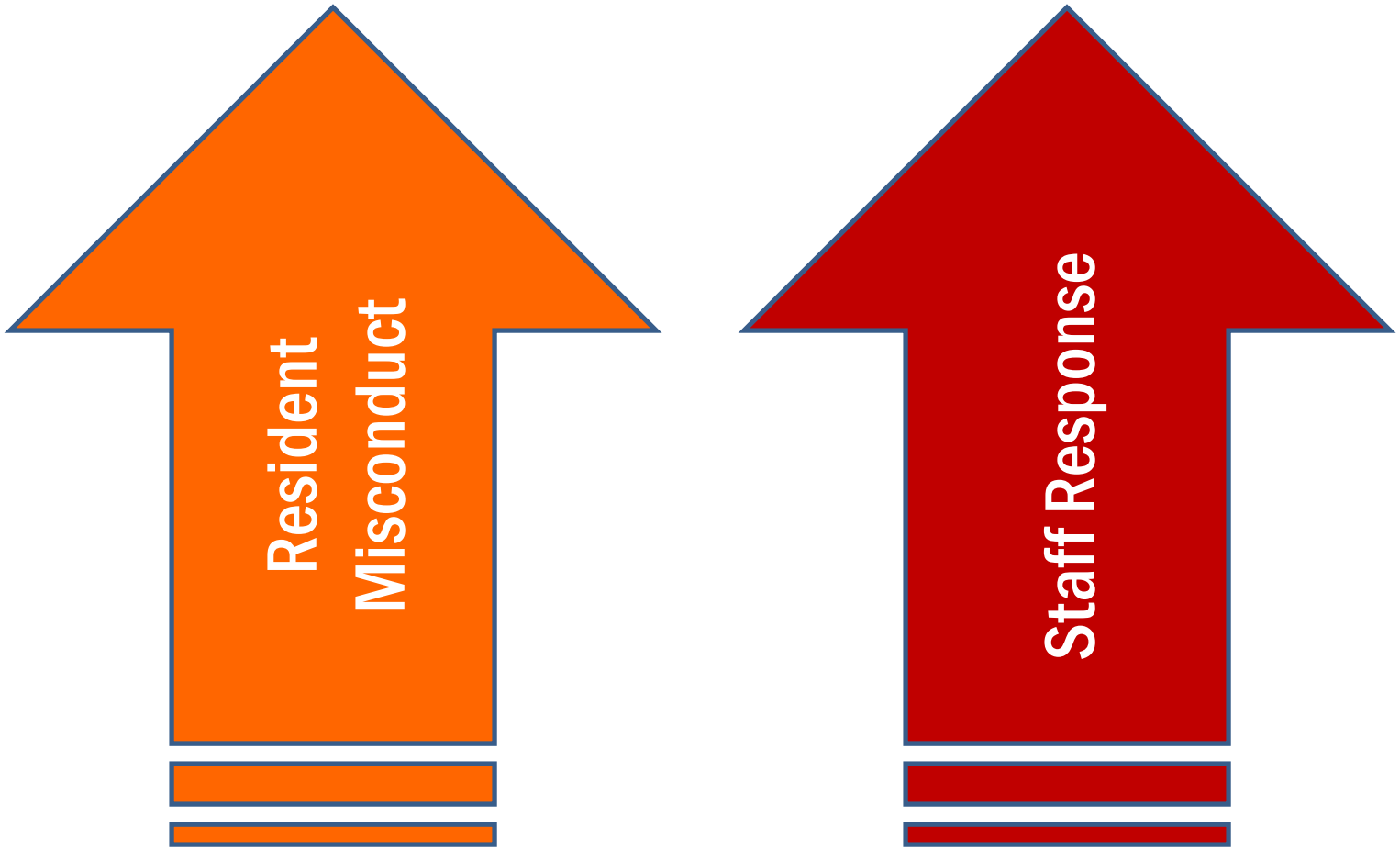
Ensure the response is appropriate to the misconduct.



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Self-Defense

- Idaho Civil Jury Instructions: Self-Defense

"In this case the defendant has asserted the affirmative defense of [self-defense] [or defense of others]. On this affirmative defense, the defendant has the burden of proof on each of the following propositions:

"1. The defendant believed that there was an imminent danger from the plaintiff and believed that force was necessary for [self-protection] [or protection of others];

"2. The defendant's belief in the necessity of force was reasonable under all of the circumstances then appearing; and

"3. The defendant used, in such defense, no more force than was reasonably necessary under the circumstances."

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Liability of Resident

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Liability of Resident

Criminal

- Assault
- Battery
- Assault on healthcare worker

Defenses

- Generally requires *mens rea*, *i.e.*, sufficient capacity to act knowingly

Civil

- Negligence
- Negligent infliction of emotional distress
- Intentional torts
  - Assault
  - Battery
  - Negligence
  - Intentional infliction of emotional distress
- Other?

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Liability of Resident

- "An assault is:

  (a) An unlawful attempt, coupled with apparent ability, to commit a violent injury on the person of another; or

  (b) An intentional, unlawful threat by word or act to do violence to the person of another, coupled with an apparent ability to do so, and doing some act which creates a well-founded fear in such other person that such violence is imminent."

(IC 18-901)

- "An assault is punishable by fine not exceeding one thousand dollars ($1,000), or by imprisonment in the county jail not to exceed three (3) months, or by both such fine and imprisonment."

(IC 18-902)

Liability of Resident

- "A battery is any:

  (a) Willful and unlawful use of force or violence upon the person of another; or

  (b) Actual, intentional and unlawful touching or striking of another person against the will of the other; or

  (c) Unlawfully and intentionally causing bodily harm to an individual.

(IC 18-903)

- "Battery is punishable by a fine not exceeding one thousand dollars ($1,000), or by imprisonment in the county jail not to exceed six (6) months, or both...."

(IC 18-904)

Liability of Resident

- "BATTERY AGAINST HEALTH CARE WORKERS. Any person who commits battery … against or upon any person licensed, certified or registered by the state of Idaho to provide health care, or an employee of a hospital, medical clinic or medical practice, when the victim is in the course of performing his or her duties or because of the victim's professional or employment status under this statute, shall be subject to imprisonment in the state prison not to exceed three (3) years."

(IC 18-915C)

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Liability of Resident

- "PERSONS CAPABLE OF COMMITTING CRIMES. All persons are capable of committing crimes, except those belonging to the following classes:

  1. Persons who committed the act or made the omission charged, under an ignorance or mistake of fact which disproves any criminal intent.

  2. Persons who committed the act charged without being conscious thereof."

(IC 18-201)

- "LACK OF CAPACITY TO UNDERSTAND PROCEEDINGS. No person who as a result of mental disease or defect lacks capacity to understand the proceedings against him or to assist in his own defense shall be tried, convicted, sentenced or punished for the commission of an offense so long as such incapacity endures."

(IC 18-210)

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Liability of Resident

- General rule: person is civilly liable for damages caused by their intentional or negligent conduct.
- However, some courts hold that incompetent residents are not liable to healthcare workers for damages caused by their conduct.
  - Public policy precludes holding incompetent resident liable.
  - Caretaker assumed some risk by accepting job.
  - Caretaker is in better position to be able to avoid damage.
- (*See, e.g., Gould v. American Fam. Mut. Ins. Co.*, 543 N.W.2d 282 (Wis. 1996); *Berberian v. Lynn*, 845 A.2d 122 (NJ 2004); *Colman v. Notre Dame Convalescent Home, Inc.*, 968 F. Supp. 809 (1997); *Herrle v. Marshall*, 53 Cal. Rptr. 2nd 713 (1996))

Report to Law Enforcement

- HIPAA allows disclosures to law enforcement:
  - To avoid serious and imminent threat of harm.
  - To report crime on the premises, e.g.,
    - Assault
    - Battery
    - Other?

But are these "crimes" if the resident is incompetent?

(45 CFR 164.512(f))

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Suggestions for Addressing Workplace Violence

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According to LTC staff

Causes for workplace violence

- Understaffing
- Impersonal task driven organization of work
- Inappropriate resident placement
- Inadequate time for emotional and social care
- Lack of time and resources to meet the care needs of residents.

Barriers to change

- Facility undervalues staff and residents
- Insufficient training
- Insufficient resources
- Lack of recognition of severity and pervasiveness of the problem
- Limited public awareness

(*See* Science Daily, *Violence Against Long-Term Care Staff "Normalized"*)

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Common Errors in LTC Facilities per OSHA Audits

- No stand-alone written violence prevention program.
- Program does not address specific actions employees should take in the event of an incident.
- No clear reporting procedures.
- Staff not trained to deal with aggressive behavior.
- Staff not readily available to render assistance.
- Residents are not evaluated or screened for history of violence.
- No system to flag chart when there is history or incident of violence.
- Staff not trained to understand resident charting system.
- Insufficient administrative controls to ensure staff are not alone with potentially violent residents.

(Wilder, *Minimizing Workplace Violence in LTC Facilities*)

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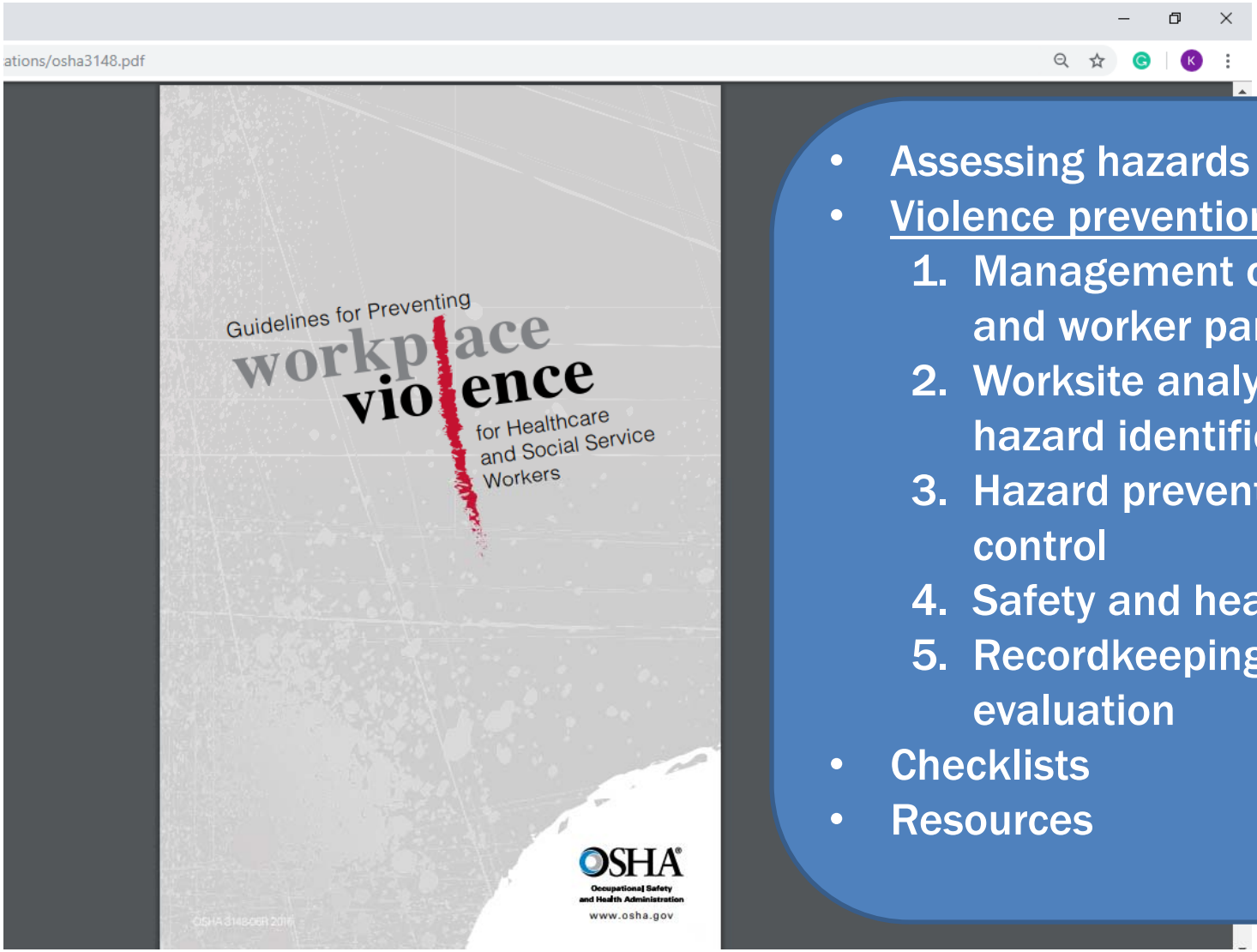
https://www.osha.gov/Publications/OSHA3827.pdf



- Assessing hazards
- Violence prevention programs
  1. Management commitment and worker participation
  2. Worksite analysis and hazard identification
  3. Hazard prevention and control
  4. Safety and health training
  5. Recordkeeping and program evaluation
- Checklists
- Resources

OSHA Workplace Violation Prevention Program

1. Management commitment and worker participation
2. Worksite analysis and hazard identification
3. Hazard prevention and control
4. Safety and health training
5. Recordkeeping and program evaluation

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Suggestions

Workplace Violence Prevention Program

- Affirm management commitment to safety for employees as well as residents.
- Clear policy of zero tolerance for workplace violence, verbal and nonverbal threats, and related actions.
- Ensure all staff, residents, families and visitors know policy.
- Encourage employees to report incidents promptly and suggest ways to reduce or eliminate risks.

Suggestions

Workplace Violence Prevention Program (cont.)

- Require reports.
- Ensure no reprisal against staff who reports violence.
- Outline comprehensive plan for maintaining security in workplace, including liaison with law enforcement.
- Assign responsibility and authority for program to those with appropriate training and skills.
- Commit adequate resources.

Suggestions

Workplace hazard assessment

- Past incident reports, workers comp claims, insurance claims, police reports, etc.
- Staff interviews, surveys, complaints, etc.
- Resident history and behaviors
- Staff training and capability
- Current policies and programs for responding to hazards

Suggestions

Engineering/design

- Work areas secure and well-lighted.
- Surveillance cameras, curved mirrors, etc. as appropriate.
- Alarm systems, panic buttons.
- Time out or seclusion rooms.
- Nursing stations protected.
- Furnishings are light weight, no sharp corners, and positioned so they cannot be used to trap staff.
- Remove clutter and items may be thrown or used as weapon.
- Secondary doors for escape.
- Maintain facilities and systems in good repair.

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Suggestions

Training

- Violence should be expected but can be avoided or mitigated.
  - It is not "just part of the job."
  - Facility will address incidents.
- Workplace Violence Prevention Program.
- Risk factors that cause or contribute to hazards.
- Recognizing warning signs and escalating behavior.

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Suggestions

Know the resident

- "The facility is responsible for identifying residents who have a history of disruptive or intrusive interactions, or who exhibit other behaviors that make them more likely to be involved in an altercation. The facility should identify the factors (e.g., illness, environment, etc.) that increase the risks associated with individual residents, including those (e.g., disease, environment) that could trigger an altercation. The care planning team reviews the assessment along with the resident and/or his/her representative, in order to identify interventions to try to prevent altercations."

(Interpretive Guidelines at F323, re Resident-to-Resident Altercations)

Suggestions

Know the resident

- History
  - Violent behavior
  - Misconduct
  - Criminal history
  - Drug use
  - Others issues
- Triggering circumstances
- Mitigating actions

Educate staff about resident

- Timely, thorough and accurate records, e.g.,
  - Behaviors
  - Incidents
  - Assessments
  - Medications
- Daily huddles
- Appropriate staff hand off between shifts

Suggestions

Common triggers

- Dressing, turning, incontinence care, transfer, bathing.
- Lack of sleep, physical impairment, lack of control of bodily functions
- Lights, loud noises, cluttered rooms, staff movement
- Changes in rooms, routines, roommates, etc.

Staff actions that trigger

- Handing residents in rough, hurried manner; quick, deliberate or startling movements.
- Loud, directive voice that may be perceived as threatening or demeaning.
- Actions that may be perceived as removing patient's control

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Suggestions

Know the resident and appropriate responses

"For the resident who engages in name-calling, hitting, kicking, yelling, biting, sexual behavior, or compulsive behavior:

- Providing a calm, non-rushed environment, with structured, familiar activities such as folding, sorting, and matching; using one-to-one activities or small group activities that comfort the resident, such as their preferred music, walking quietly with the staff, a family member, or a friend; eating a favorite snack; looking at familiar pictures;
- Engaging in exercise and movement activities; and
- Exchanging self-stimulatory activity for a more socially-
- appropriate activity that uses the hands, if in a public space."

(Interpretive Guidelines at Tag F248)

Suggestions

Know the resident and appropriate responses

"The interventions listed below include supervision and other actions that could address potential or actual negative interactions:

- Providing safe supervised areas for unrestricted movement;
- Eliminating or reducing underlying causes of distressed behavior such as
- boredom and pain;
- Monitoring environmental influences such as temperatures, lighting, and noise levels…"

(Interpretive Guidelines at F323, re Resident-to-Resident Altercations)

Suggestions

Know the resident and appropriate responses (cont.)

- "Evaluating staffing assignments to ensure consistent staff who are more familiar with the resident and who thus may be able to identify changes in a resident's condition and behavior;
- Evaluating staffing levels to ensure adequate supervision (if it is adequate, it is meeting the resident's needs); and
- Ongoing staff training and supervision, including how to approach a resident who may be agitated, combative, verbally or physically aggressive, or anxious, and how and when to obtain assistance in managing a resident with behavior symptoms."

(Interpretive Guidelines at F323, re Resident-to-Resident Altercations)

Suggestions

Also know your staff…

"Identify, correct and intervene in situations in which abuse [or] neglect … is more likely to occur. This includes an analysis of:

- Features of the physical environment that may make abuse and/or neglect more likely to occur, such as secluded areas of the facility;
- The deployment of staff on each shift in sufficient numbers to meet the needs of the residents, and assure that the staff assigned have knowledge of the individual residents' care needs;
- The supervision of staff to identify inappropriate behaviors, such as using derogatory language, rough handling, ignoring residents while giving care…; and
- The assessment, care planning, and monitoring of residents with needs and behaviors which might lead to conflict or neglect, such as residents with a history of aggressive behaviors …."

(Interpretive Guidelines at F226)

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Suggestions

Training

- Ways to prevent or diffuse violent situations, e.g.,
  - Progressive behavior control methods
  - Active listening
  - Effective verbal responding using calm, soothing communication
  - Redirecting
  - Positioning
  - Environmental controls
  - Eye contact
  - Music, pet therapy, favorite item
  - Stance

Suggestions

Training

- Use of "buddy system."
- Response plan for violent situations, including:
  - Call for assistance
  - Alarm systems
  - Communication procedures
- Location and proper operation of safety devices.
- Proper use of chemical or physical restraints.
- Self-defense in non-violent, appropriate manner.
- Consider drills or roll play.
- Reporting and documenting incidents.

Suggestions

Training

- Ways to deal with hostile people other than residents, e.g., relative and visitors.
- Managing the employee's own behaviors or response.
  - Stress management and relaxation techniques
- Availability of and obtaining support for employee who has been the target of violence or abuse.
  - Counseling
  - Medical care
  - Workers compensation
  - Legal assistance

Suggestions

Review and evaluate training

- Periodically update based on needs, incidents.

Document training

- Upon hire
- Annually or other appropriate time
- In response to specific situations or concerns

Suggestions

Admissions and intake

- Review and evaluate residents before accepting them, including:
  - Resident's behavior
  - Facility capability
  - Staff expertise and capability
- Discuss with resident and/or family
  - History
  - Behavior triggers
  - Anticipated responses
- Address expectations with resident and/or family in advance.
  - Notice of Workplace Violence Prevention Program
  - Admission agreements or similar documents

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Suggestions

Staffing

- Increase staffing where violence is likely
- Require backup or "buddy system" when entering violent resident's room
- Reassign staff as appropriate
  - Beware discrimination issues
- Manage schedule to minimize staff fatigue
- Ensure management is available to help respond

Suggestions

Respond to incidents

- Investigate.
  - Cause
  - Response
- Evaluate.
  - Ways to avoid or mitigate future incidents
  - System improvements
- Make necessary changes.
  - Goal: no repeats!
- Document investigation and response.
- Support affected employees.

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Suggestions

Maintain records

- OSHA Log of Work-Related Injury and Illness (OSHA Form 300).
- Resident's medical records, including:
  - Past violence
  - Drug abuse
  - Criminal activity
- Medical reports of work injury.
- Supervisor reports.
- Incident reports re violence, verbal abuse, etc.
- Workplace analyses, safety committee, and action plans.
- Training programs and attendance.

Resources

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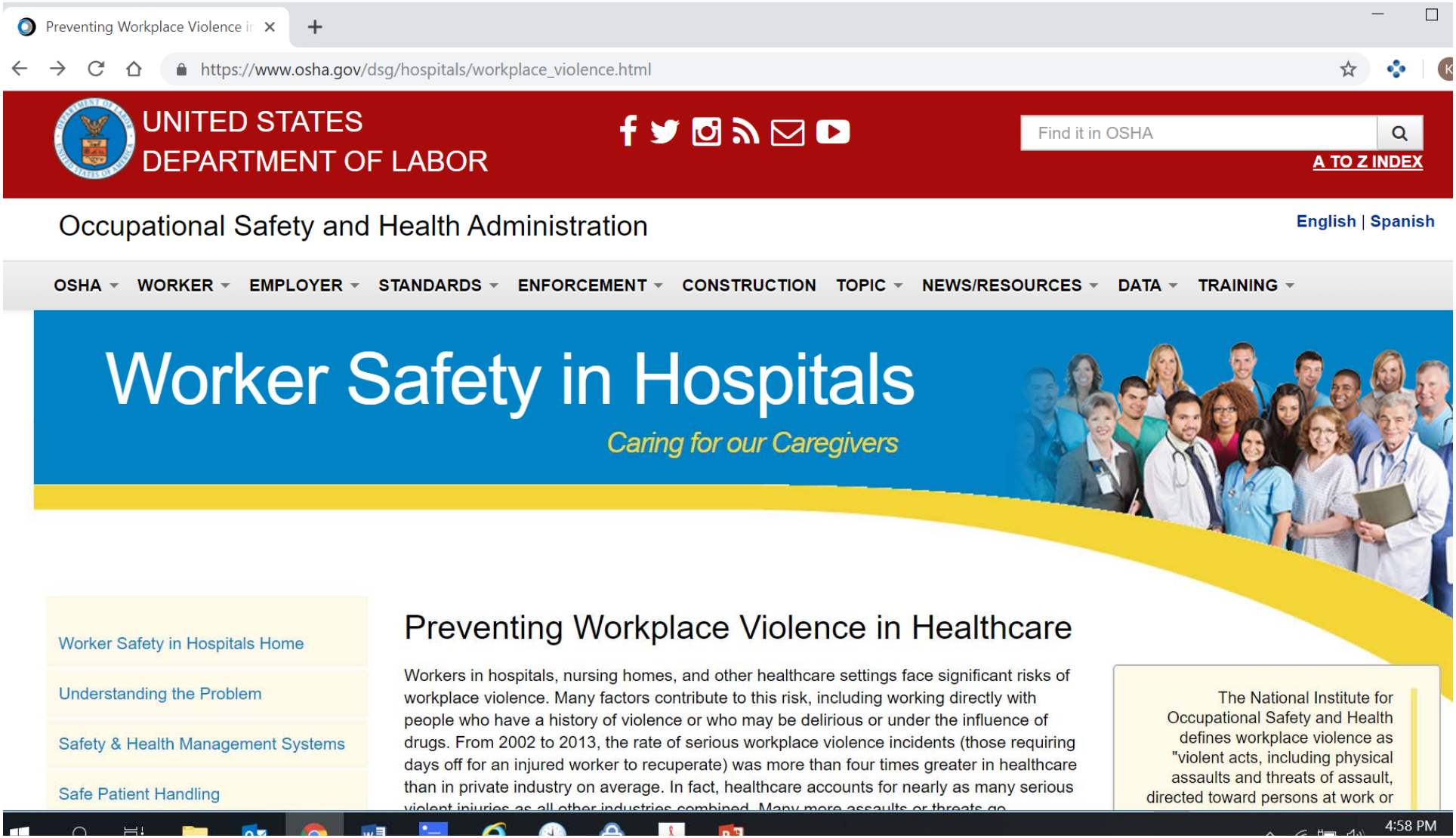
https://www.osha.gov/dsg/hospitals/workplace_violence.html



https://www.osha.gov/Publications/OSHA3827.pdf

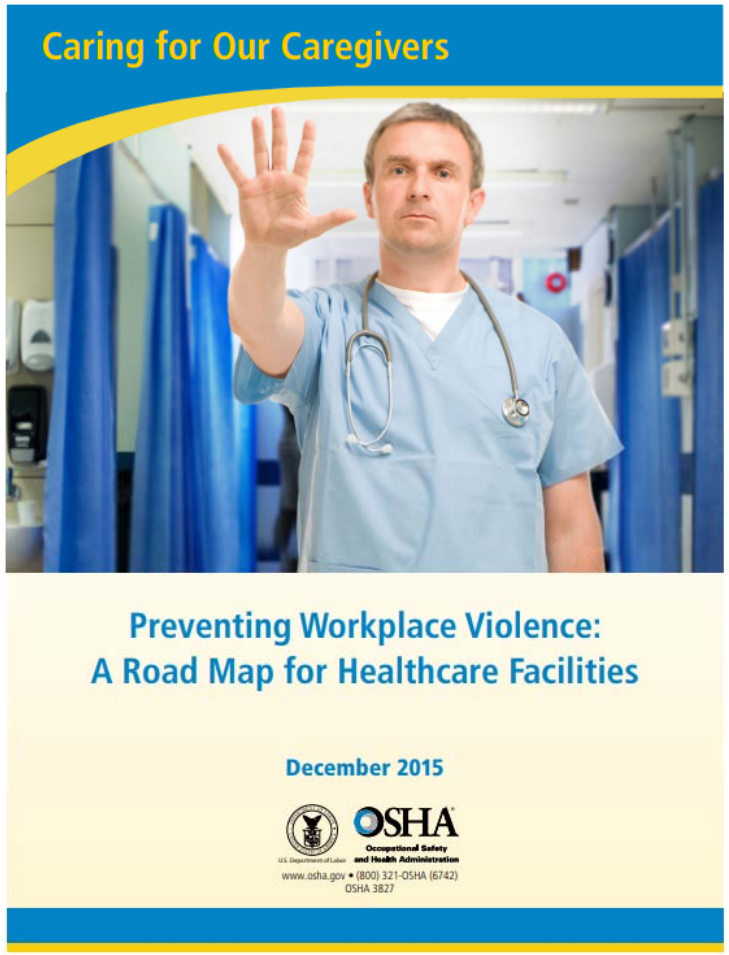
Preventing Workplace Violence:

https://www.osha.gov/Publications/OSHA3827.pdf

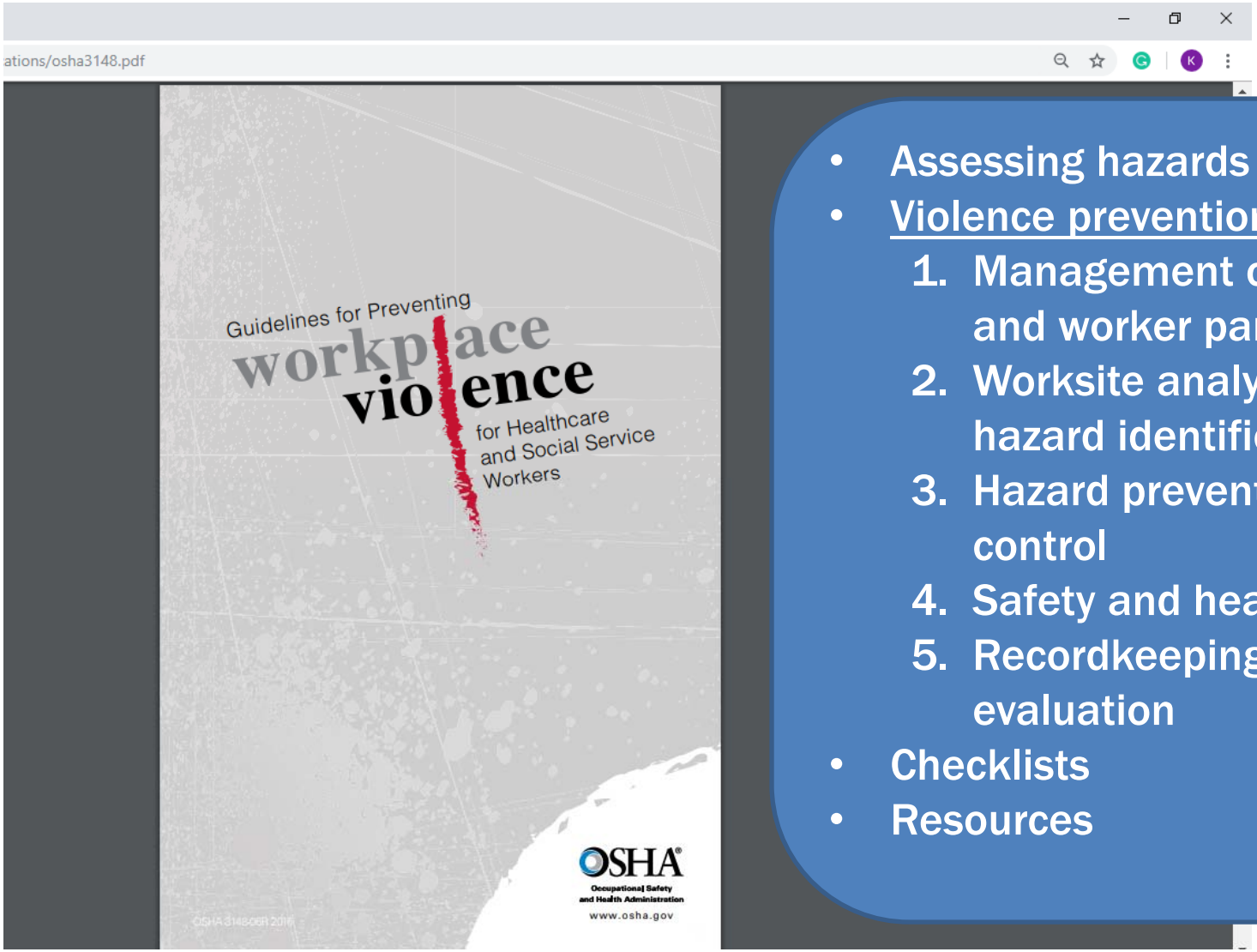
Prevention Programs

1. Management commitment and employee participation
2. Worksite analysis and hazard identification
3. Hazard prevention and control
4. Safety and health training
5. Recordkeeping and program evaluation

+ General resources



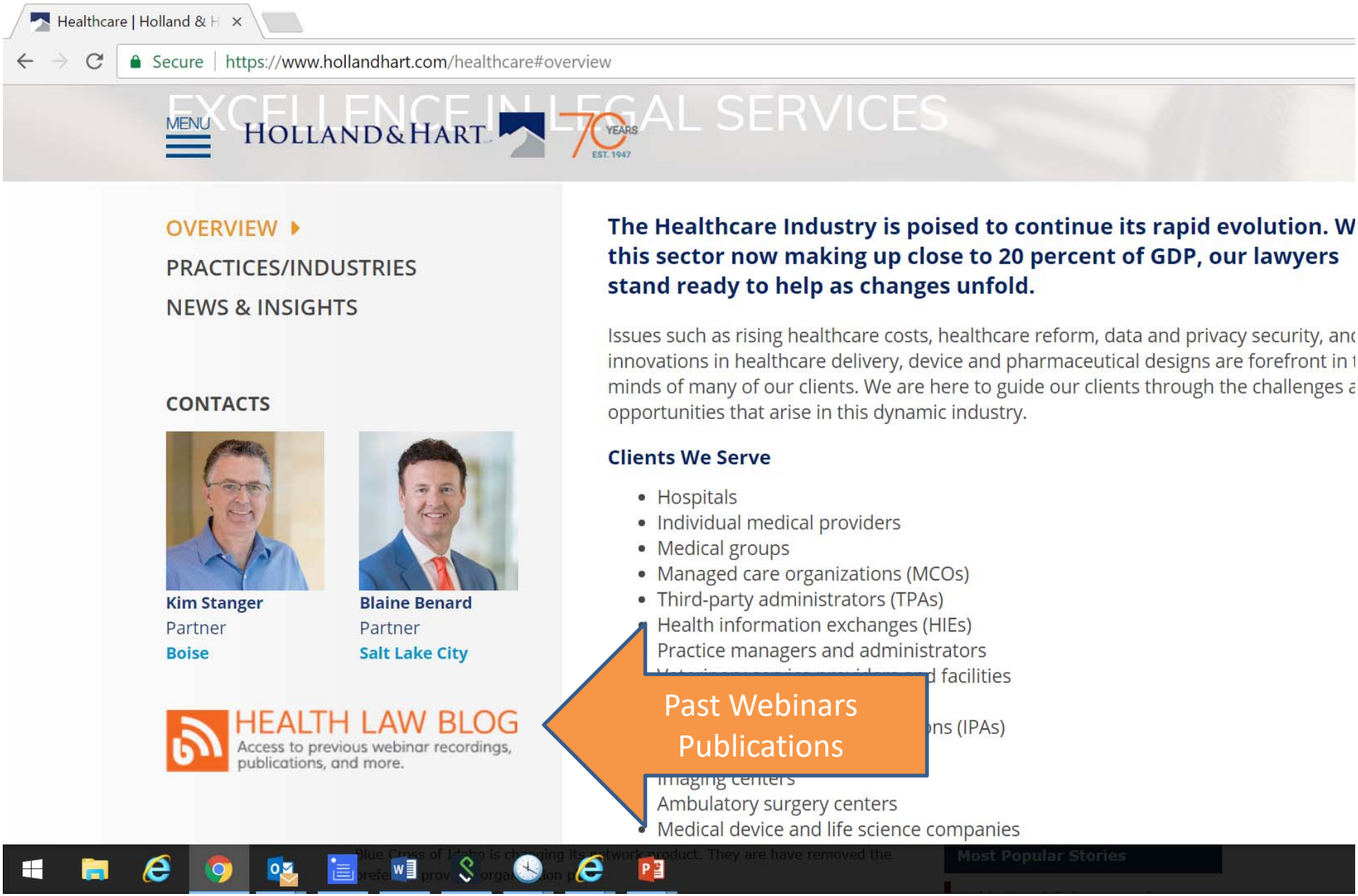
https://www.osha.gov/Publications/OSHA3827.pdf



- Assessing hazards
- Violence prevention programs
  1. Management commitment and worker participation
  2. Worksite analysis and hazard identification
  3. Hazard prevention and control
  4. Safety and health training
  5. Recordkeeping and program evaluation
- Checklists
- Resources

https://www.cdc.gov/niosh/topics/violence/training_nurses.html

https://www.hollandhart.com/healthcare#overview



Questions?

Kim C. Stanger

office 208-383-3913

cell 208-409-7907

kcstanger@hollandhart.com

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