

“OK Boomer”
By Bradley L. Kenny, Esq.

I’m sure you have all heard the phrase, “OK Boomer” in relation to the generational gaps within the last five years. The story behind the phrase is that in early November 2019, while giving a speech supporting a climate change bill Chlöe Swarbrick a member of New Zealand’s Parliament responded to another political foe with the famous saying after being heckled.

Why am I writing about this? Because as a country, we are heading into uncharted territory. As we get older, more of us will need some form of assisted living. As noted in a recent CNBC story, there are currently 14 million people receiving some form of long-term care. That number will double by 2050, according to estimates from the U.S. Centers for Medicare and Medicaid Services. About 70% of people over age 65 will need some form of long-term care before they die, per an analysis by the Urban Institute. This industry will doubtless experience considerable growth over the next 15 years as the Baby Boomers age. This also means that there will be an increase in nursing home/residential care facility abuse claims. Our firm handles such cases. If you or a loved one has been a victim of elder care abuse, you need to speak with someone in our office to help you navigate potential claims.

Recently, an attorney at our firm had an opportunity to argue against a motion brought by the defense regarding an issue of Medical Negligence and Elder Abuse. Basically, the defense was arguing that the case had no element of elder abuse. You can read part of the argument below:

‘MR. MITTIN: Your Honor, it's very interesting the arguments being made by the defense because basically, all the cases they cited, including Yafchak, are ones where the plaintiff did not sue like we did here for both med malpractice and elder neglect. And so in those other cases the issue was that they were suing for elder neglect or other claims that might have sounded in med mal and they were trying to get around the med mal statute by not doing the affidavit. And so the courts were basically ruling you couldn't do that. In those cases, you have to bring some type of med mal case if that, you know, the issues are going to be crossing. Here we've done exactly what you're supposed to do and they're still saying you can't have elder neglect because somehow med mal trumps everything. First of all, we're not doing an end-around. If you go to page 4 of the decision, the court talks about not only are the elder claims separate and distinct for med malpractice but it talks about the importance. It says here NRS 41.1395 is an important statute for protecting Nevada's elderly and vulnerable population and incentivizes attorneys to represent this type of client by permitting plaintiffs to recover enhanced damages and where appropriate, attorney's fees and costs.’

As you can tell by the argument, these cases are somewhat complex, and the facilities are always in denial about their ongoing care. I have yet to see one apologize for the treatment an elderly patient has endured. The statute referenced in the argument has enhanced damages, and by that I mean that it provides “two times the actual damages incurred by an older person.” It is highlighted below:

NRS 41.1395 Action for damages for injury or loss suffered by older or vulnerable person from abuse, neglect or exploitation; double damages; attorney’s fees and costs.

1. Except as otherwise provided in subsection 3, if an older person or a vulnerable person suffers a personal injury or death that is caused by abuse or neglect or suffers a loss of money or property caused by exploitation, the person who caused the injury, death or loss is liable to the older person or vulnerable person for two times the actual damages incurred by the older person or vulnerable person.

2. If it is established by a preponderance of the evidence that a person who is liable for damages pursuant to this section acted with recklessness, oppression, fraud or malice, the court shall order the person to pay the attorney's fees and costs of the person who initiated the lawsuit.

3. The provisions of this section do not apply to a person who caused injury, death or loss to a vulnerable person if the person did not know or have reason to know that the harmed person was a vulnerable person.

We must remain forever vigilant in our quest to provide the best environment for our elderly loved ones. If you have any reason to believe that a family member has suffered any form of elder abuse/elder neglect, please do not hesitate to contact our office.