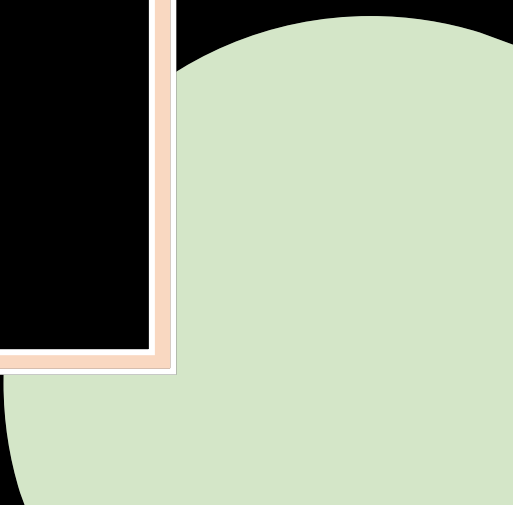




Sexual Expression in Long-Term Care

An Advocate's Guide

State Long-Term Care Ombudsman Program
Patty Ducayet and Alexa Schoeman
January 2023



Note

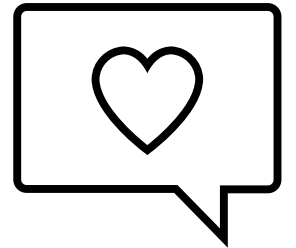
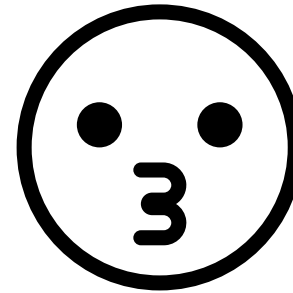
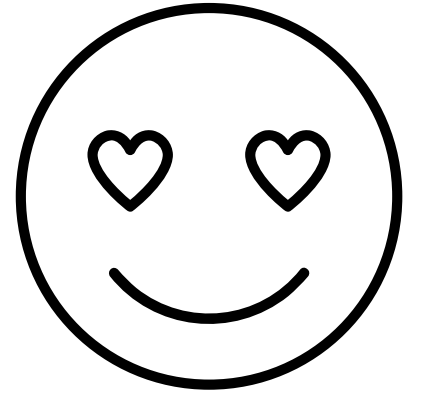
This presentation contains explicit language about sex and intimacy.



What Is Sexual Expression?

Acts of self expression, affection, and sexual gratification, including:

- Bed sharing
- Fantasizing
- Flirting
- Grooming and self-presentation
- Holding hands
- Hugging
- Kissing
- Masturbation
- Physical sex acts with a partner
- Sexting



In chat...

Share an inappropriate comment you heard facility staff make about a resident's sexual expression.

For example:

“We can't *let them* have sex”





3 Minute Video

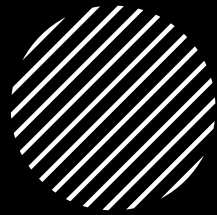


[The Door Does Not Lock – YouTube](#)





Myths and Misconceptions



Sexual expression is not often discussed in facilities, but it may be a part of residents' lives

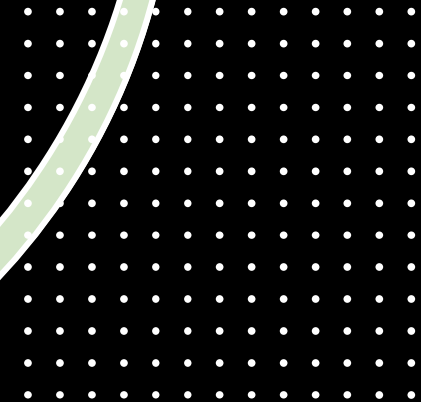
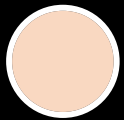
Myths and misconceptions prevent staff, family members, and residents from anticipating these expressions or knowing how to respond

MYTH #1

Residents are not interested in sexual expression.

REALITY:

Many residents desire intimacy or sexuality. Older age, chronic health conditions, or disability do not stop people from expressing themselves. Moving into a long-term care facility does not mean giving up these aspects of life and identity. Sexual expression can also have physical, mental, and emotional benefits for residents.

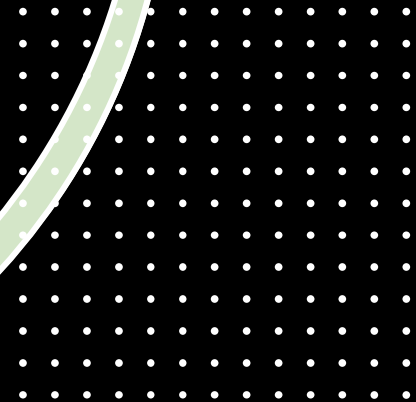


MYTH #2

Sexual expression in facilities is inappropriate because they are shared medical settings.

REALITY:

Facilities are workplaces for healthcare staff, but they are also residents' homes. People are entitled to meaningful privacy and self-expression in their own homes.



MYTH #2 Continued

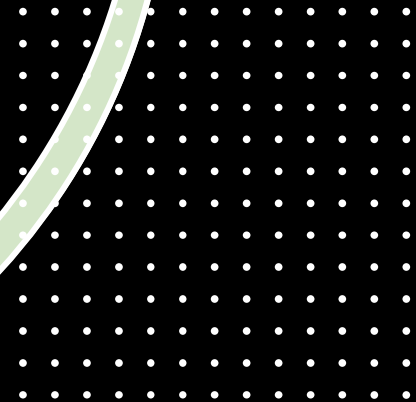
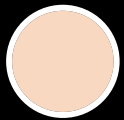
...



Sexual expression in facilities is inappropriate because they are shared medical settings...

REALITY:

These expressions should not infringe on the comfort and safety of other residents or care staff. In order to ensure this, staff can clearly communicate with residents about when and where they are entitled to such privacy.



MYTH #3

If a resident has dementia, they cannot consent to engage in a romantic relationship.

REALITY:

There are a range of ways for people with dementia to express themselves and these expressions may provide comfort, connection, or pleasure. Each situation requires nuanced assessments for consent and safety. Resources can assist care teams with this work.

Benefits to Sexual Expression

Over 50% of people aged 65 to 80 believe that sexual expression is important to their overall quality of life. This includes people who live in continuing care homes.

- Physical health and psychological wellness benefits
- A sense of intimacy and connection
- Opportunities to feel good in and about their bodies



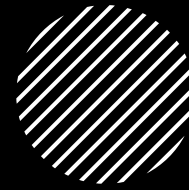


Residents' Rights

Related to Sexual Expression



Please
Do Not
Disturb



Residents have
the right to:

Consensual sexual
activity

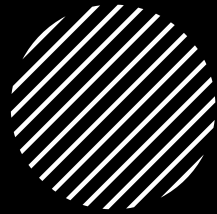
Privacy

Choice to say no, to end
a relationship

Freedom from abuse



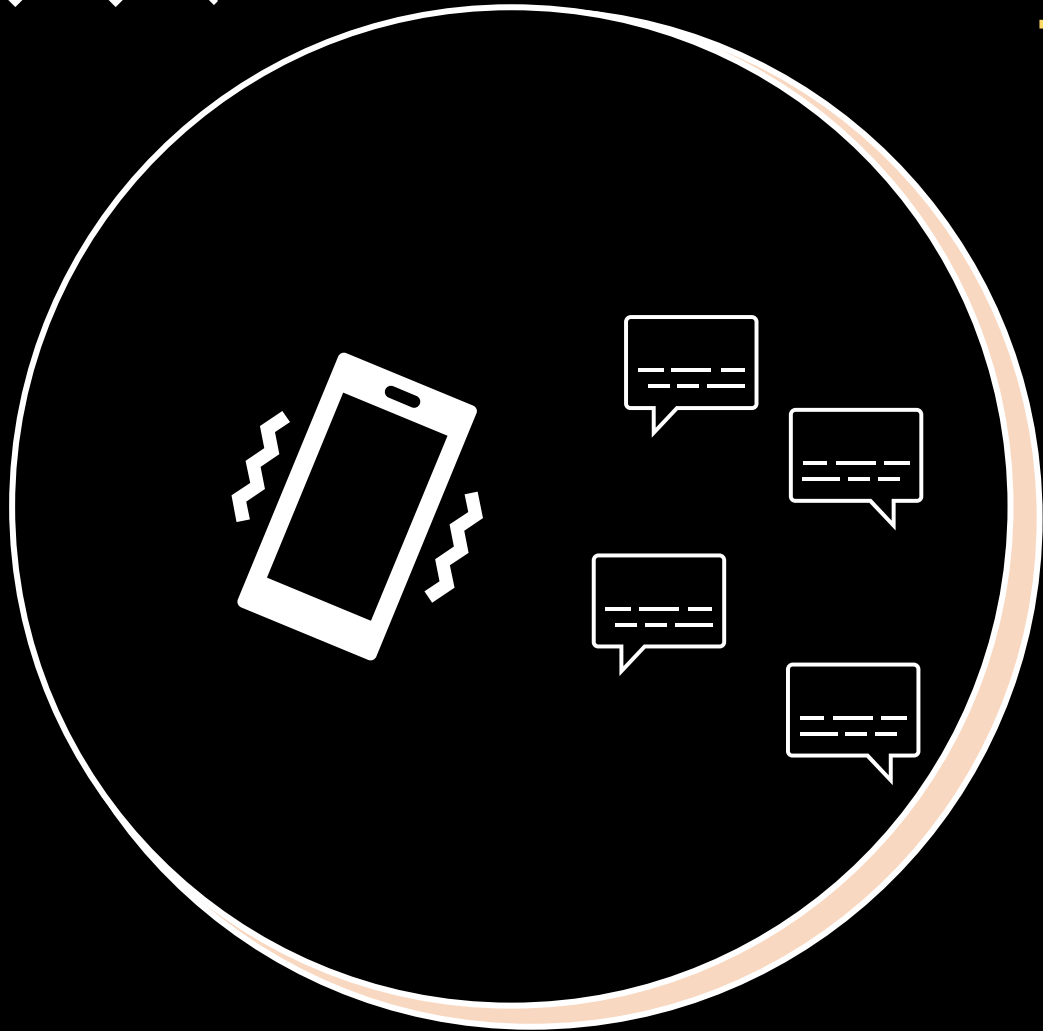
Factors Contributing to Limitations



1. Inadequate facility policies on sexual consent capacity.
2. Policies or people don't recognize the uniqueness of each situation.
3. Inadequate training for staff about facility policies, assessing capacity, or weighing harm vs. benefit.
4. Myths, stigmas, and judgements are in play.



In chat...



Homework Video

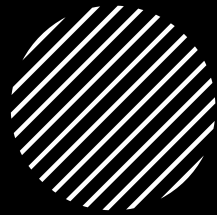
[Communicating about sexual expression in continuing care homes – YouTube](#)

- What would it be like to get this call?
- How could a facility better communicate what happened?





Consent to Sexual Acts



- Consent determines whether actions are acceptable or a crime.
- Texas defines consent in Penal Code Title 1, Chapter 1, Sec. 1.07(11) as, “assent in fact, whether express or apparent.”
- Other factors used to determine whether a sexual act is consensual: age, capacity, sobriety, and whether there is a significant imbalance within the relationship in question.



Capacity to Consent

- An adult has the capacity to consent unless there is clear evidence to the contrary.
- When situations are not clear, staff must follow facility policies.
 - Examples: Advanced dementia, significant developmental concerns, and serious mental illness that impairs cognition
 - The facility's interdisciplinary care team can assess the situation to determine if between two consenting adults

Texas Penal Code Title 5.
Offenses Against the
Person Chapter 22.
Assaultive Offenses

The Big 3

Sexual Consent Capacity

Ability to understand

Ability to reason

Given voluntarily

A Complicated Balancing Act

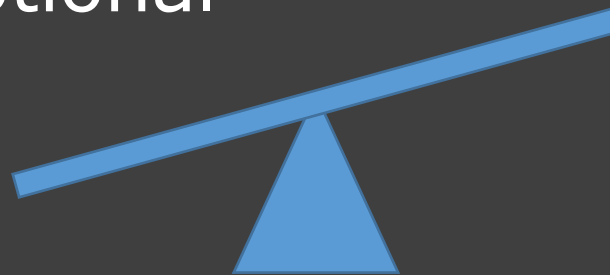
How is Sexual Consent Capacity Determined?

Standardized, objective, or structured measures

- Functional assessment of capacity for sexual consent
- Medical diagnosis
- Cognitive functioning
- Psychiatric or emotional factors

Subjective or hypothetical factors

- Values and preferences of the resident
- Risk of harm, gain of benefits
- Possible interventions to enhance capacity





The Facility Role

Develop & maintain sexual expression policy

Train staff on policies, procedures, and response guidelines.

Protect resident privacy and confidential information

Determine if - a consensual relationship developed, or if inappropriate sexual activity or a crime possibly occurred



Facility Policies Should Address Multiple Factors

- State Requirements
- Prevent sexual abuse
- Residents' Rights:
Confirm a resident's
right to establish a
relationship
- A written process for
determining sexual
consent capacity.

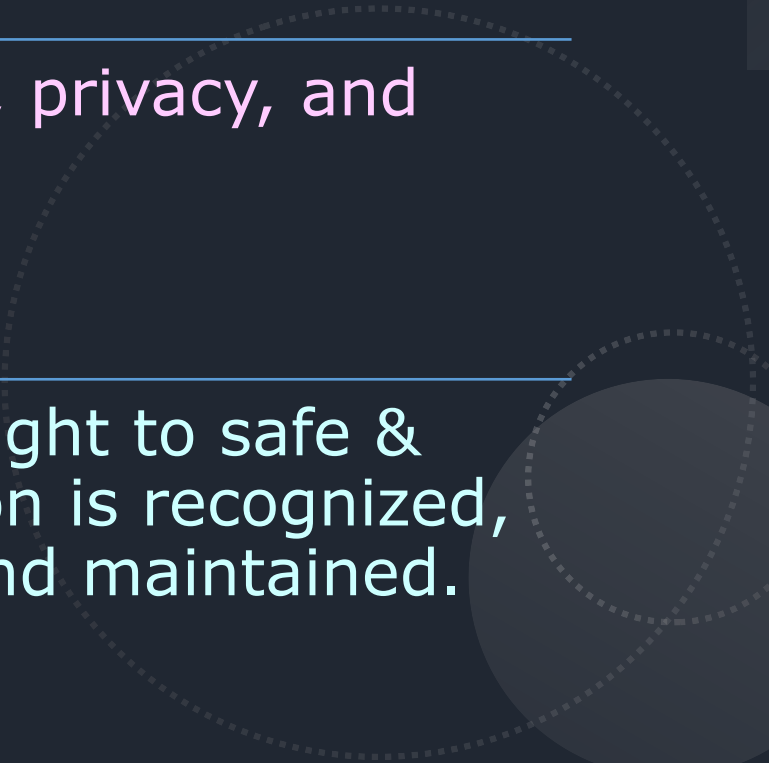


Role of Facility Staff

Follow & support the facility's resident sexual expression policy

Protect residents' safety, privacy, and confidentiality

Ensure each resident's right to safe & healthy sexual expression is recognized, respected, supported, and maintained.



The Hebrew Home's Policy *Interdisciplinary Care Team (ICT)*

- The ICT meets when situations are not clear.
 - Determine if sexual expression is between consenting adults;
 - Decide next steps when the sexual activity is negatively impacting the community as a whole; and
 - Investigate, assess, make a *clinical* judgement on benefits and potential harm.
- Intervene if sexual expression does not appear consensual.
- Inform and involve resident's LAR regarding options when required by policy.*
- Develop and update care plans at least quarterly.

The Hebrew Home's Policy - *Handout* *The* *Interdisciplinary* *Care Team*

- Inform and involve resident's LAR regarding options when required by policy.*
 - ❑ In instances where conditions expressed in Hebrew Home's sexual expression policy are not fulfilled, including those involving cognitively impaired residents, the relevant Interdisciplinary Care Team (ICT) will make clinical determinations weighing the relative benefits or potential harm associated with the resident's(s') sexual expression.
 - ❑ Involvement of a family member or legal representative may be indicated only in instances where the involved resident(s) is cognitively impaired. In such cases, it is the facility's responsibility to uphold the choices and rights of cognitively impaired residents, and to work with families and/or legal representatives if their suggested course of action is discrepant.

The Ombudsman Role

Protect resident's privacy, safety, welfare,
and rights

Refer facility staff to their policies and
review the policy yourself

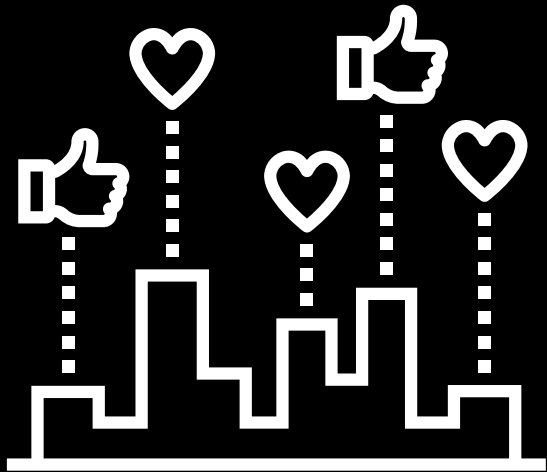
Provide resources on policies and training
if policies are weak or antiquated

With consent, amplify a resident's voice

Based on resident goals, explore
limitations and privacy concerns



In chat...



Share something good that a facility has done to support residents' sexual expression.





Practice

Are there concerns?
What is the ombudsman role?
Who needs to be involved?

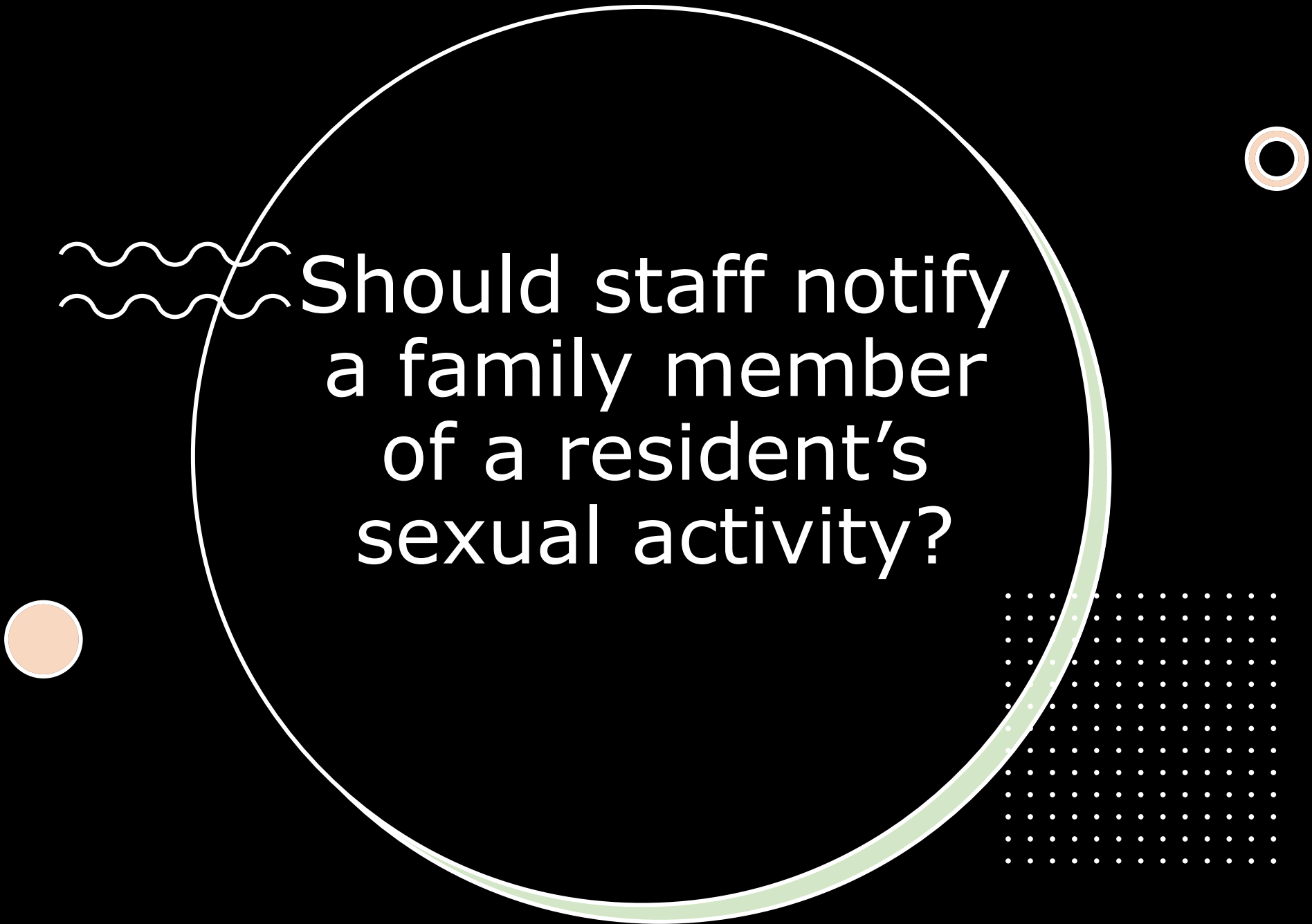


Case Study

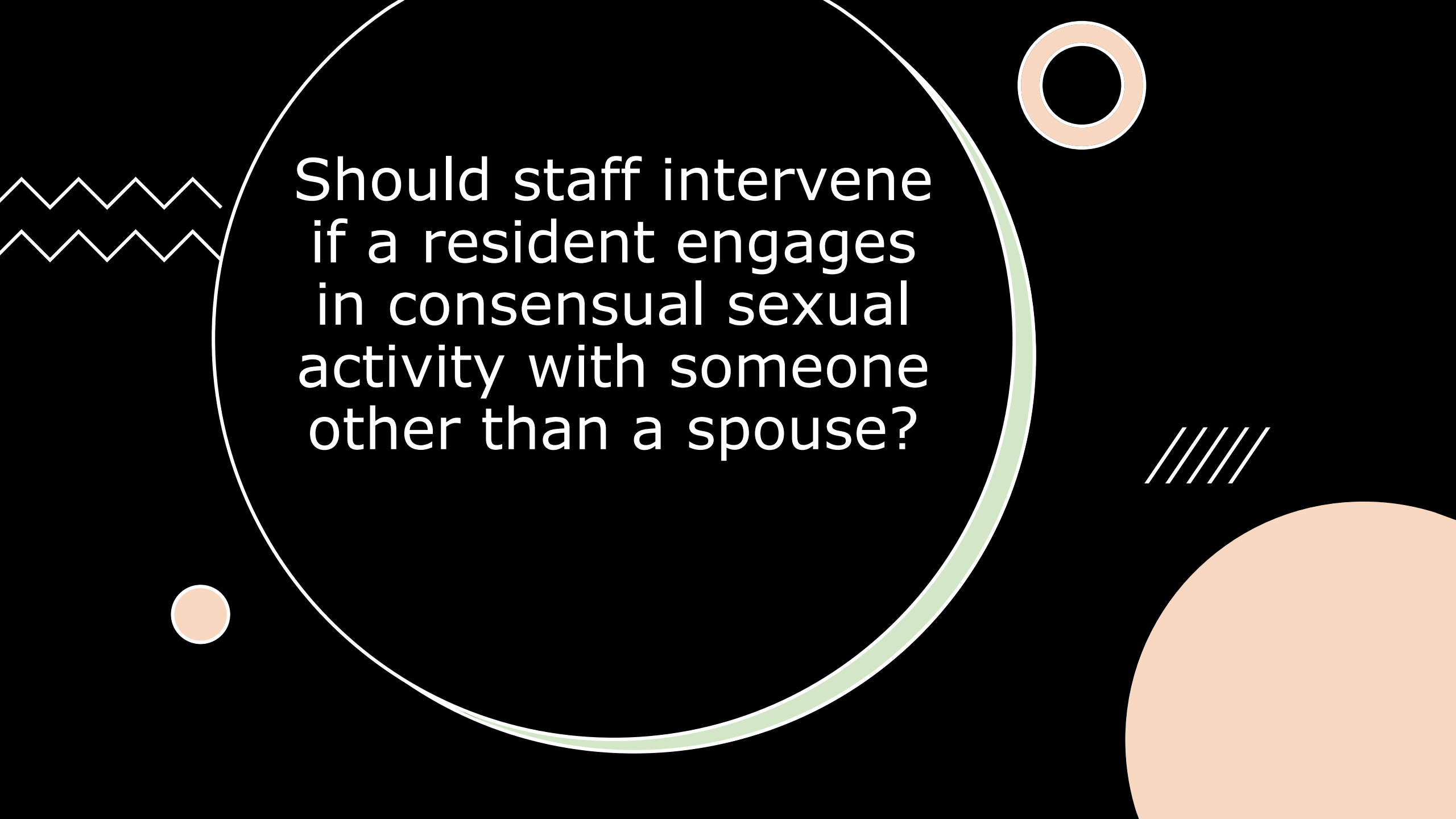
1



- Michael is 73 and has lived at Green Acres nursing home for 3 years. He has moderate dementia. He likes to give and receive hugs from everyone. His spouse lives in their home of 35 years and visits infrequently.
- He has engaged in sexual activities with other residents in the past.
- He is very fond of Ellen. Ellen is a neighbor who visits his room 3-4 times a week. Michael and Ellen have been observed sharing hugs, giving one another a kiss, and holding hands in public areas.
- Michael tells staff he is excited. Ellen will visit his room at 2:00 p.m. today and told the CNA, "If the van's a rockin', don't come a knockin'."



Should staff notify
a family member
of a resident's
sexual activity?

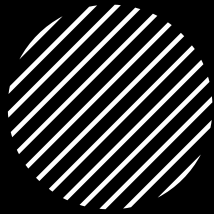
The background is black and features several abstract elements: a large light green circle with a thin white outline that frames the text; a smaller orange circle with a white outline in the top right; a white zigzag line on the left; a small orange circle with a white outline in the bottom left; a set of four parallel white diagonal lines on the right; and a large solid orange circle in the bottom right corner.

Should staff intervene
if a resident engages
in consensual sexual
activity with someone
other than a spouse?



Case Study

2



- Roberto and Bruce have been a couple of over 20 years and are married.
- Roberto recently fell and shattered his pelvis.
- After surgery, he was admitted to a SNF with a plan to return home after a couple of months of healing and physical therapy.
- Roberto's roommate called the nurse from his cell phone and insisted the nurse come to his room and stop the couple touching each other.
- The nurse entered the room and saw Roberto and Bruce cuddling in bed. She knocked loudly and cleared her throat as she entered. She stayed until Bruce got up from bed and sat in a chair by Roberto's side.
- After this, the nurse tells other staff what happened. They disagree on what to do.
- The nurse and social worker ask their volunteer ombudsman for advice.

The background is black with several abstract geometric elements. In the top left, there is a large orange semi-circle. Below it, two white zigzag lines are stacked. To the right of the text box, there is a large light green semi-circle. The text box itself is a dark rectangle with a thin white border and a slightly thicker orange border on the right side. A small light green circle is positioned on the left side of the text box, near the bottom.

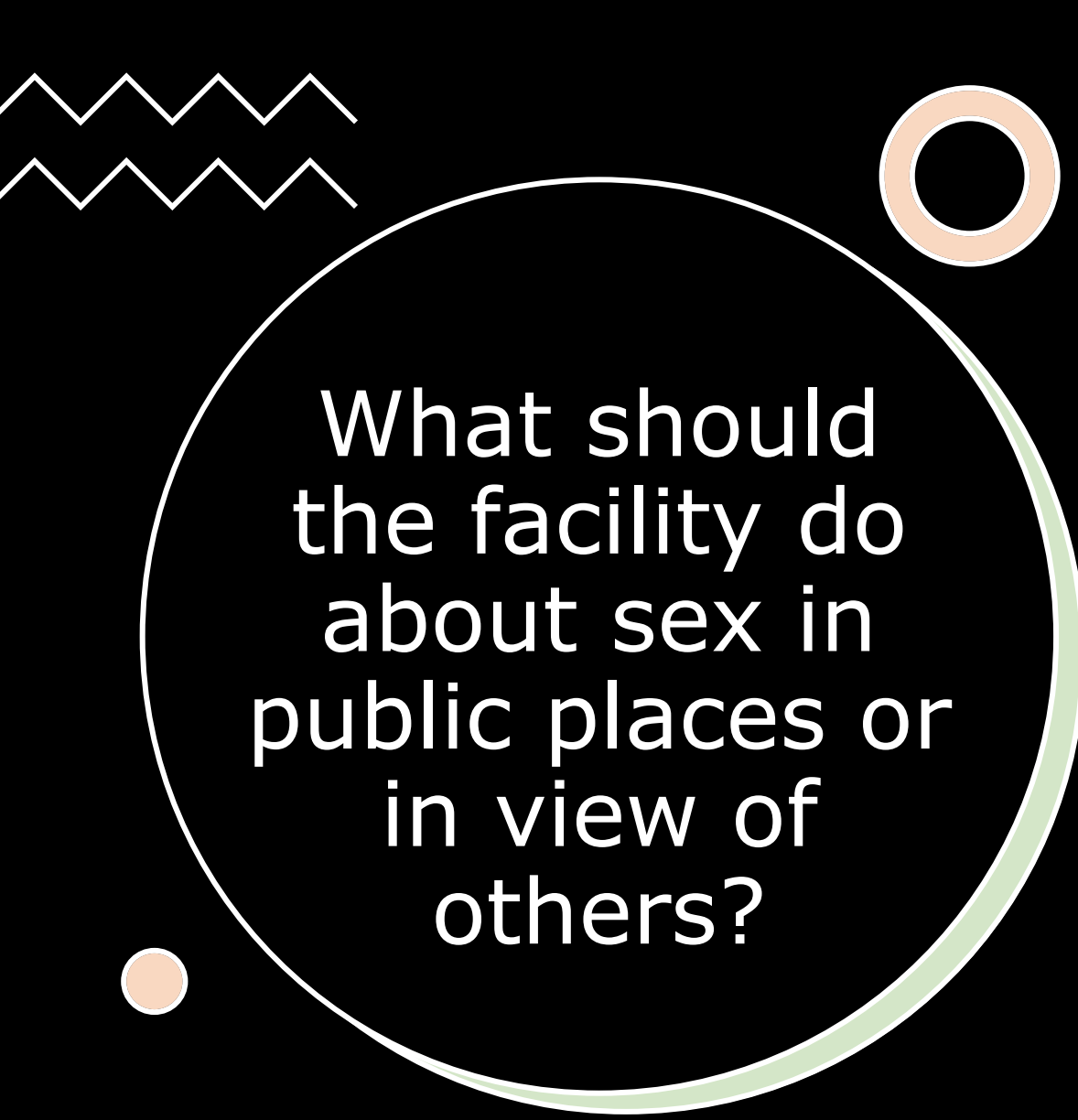
When should sexual
activity be care
planned?



Case Study 3



- May is 93 and has late-stage dementia. She is a resident at Sunny Manner Nursing Facility.
- May's husband of 64 years, Jay, is 95. He visits May every day. He spends hours in her room reading to her, combing her hair, and watching old movies with her. Jay patiently feeds his wife for her lunch and dinner meals each day. They never lived apart until May's care was more than he could provide.
- Jay is named as the agent on his wife's MPOA.
- Jay was seen in the hall touching May's breast over her dress. Staff also report observing Jay putting his hand under her dress and fondling her. Staff report not noticing May have a negative reaction to his touch.
- Nursing and administrative staff are meeting internally to discuss these reports. They ask you to attend.



What should
the facility do
about sex in
public places or
in view of
others?

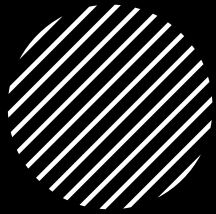
Staff are responsible for ensuring:

- a safe environment
- the needs of all residents are met
- residents are not exposed to the private acts of other residents
- tactfully redirecting residents to a private space





Can an
agent on an
MPOA make
decisions
about a
resident's
sexual
activity?



The agent does not make these decisions unless:

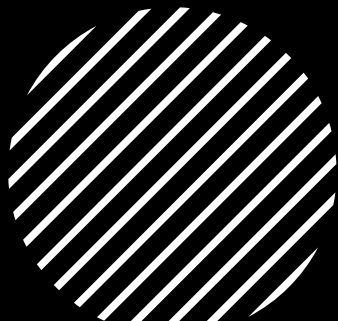
- The resident is determined by their physician to lack capacity to make these decisions

AND

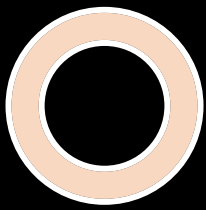


- The MPOA document gives the agent authority to make this type of decision



Case Study 4



- Beverly is 62. She is diagnosed with schizophrenia and early-stage dementia. She frequently talks to voices in her head and often organizes her room and other spaces in response to what the voices tell her to do.
- Sometimes she can't remember what she did. She's lived at Poppy Manor for 7 years. Her behavior is managed with behavioral techniques and her illnesses are stabilized with medication.
- Recently, Beverly made a new male friend. She and her boyfriend have moved from acts of affection to acts of sexual gratification.
- Beverly has a full guardianship of the person.
- Staff have not contacted the guardian. They ask for a consult with you.



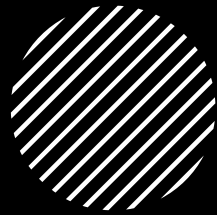
Does a resident with a guardian retain rights about sexual expression?

1. What is the nature of the guardianship?
2. Are the guardian and facility staff encouraging maximum self-reliance and independence of the ward?
3. Is the guardian considering the expressed desires and personal values of the ward to the extent known (not the guardian's or family's values)?
 - Have the guardian, staff, family suspended their own spiritual & moral beliefs?
4. Does the sexual activity carry significant health risks?





When should a resident's physician be notified of sexual activity?



1. Not appropriate or necessary in the absence of medical complications or considerations
2. Do not have the authority to abridge rights or determine a resident's activities or relationships
3. Physicians prescribe treatments
4. May educate, coordinate, and consult with staff

Open Q and A

References

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- Peter A. Lichtenberg, PhD, ABPP, "Sexuality and Physical Intimacy in Long-Term Care: Sexuality, Long-term Care, Capacity Assessment" (Occup Ther Health, Jan. 2014, 28(1): 42-50)
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- www.hebrewhome.org; Assessment of Older Adults with Diminished Capacity: A Handbook for Psychologists - © American Bar Association Commission on Law and Aging – American Psychological Association, located at <http://www.apa.org/pi/aging/programs/assessment/capacity-psychologist-handbook.pdf>