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Dementia and Sexual Expression: Keeping Loved One's Safe

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desires of our loved ones are respected, while also keeping them safe?

Key takeaways:

- The decision-making capacity of your loved one with dementia can change by the hour, day, or week.
- What constitutes consensual sexual activity is often determined by state criminal statutes.
- Designating a legal decision-maker to provide consent to sexual expression may help to support the wishes and needs of your loved one.

Sexual expression in the older population and agism

Attitudes to sexuality in our society have significantly loosened over time. However, there is still a discomfort or lack of recognition that sexual expression remains an integral part of life as we age.

The lack of recognition seems at odds with the statistical information available. Researchers at the University of Michigan conducted a [national poll on healthy aging](#). The survey revealed that forty percent of older adults are sexually active with sixty-one percent of couples describing sex as integral to their quality of life.

Although there is limited research on sexual activity in the older population, we do know that sexual relations enhance the quality of life and longevity. The numerous physical and psychological benefits of sexual activity include:

- Social connection.
- Longer life expectancy.
- Calming effect on agitation.
- Decreased pain sensitivity.
- Improved cardiovascular circulation.

Despite this research, there are still perceptions of shame around the sexuality of older people. Adding a dementia diagnosis to these attitudes can lead to uncomfortable discussions around consent and the desire to engage in sexual expression. Given the potential benefits of intimacy, family members must examine their feelings surrounding older loved ones with dementia engaging in such activities.

Dementia and sexual activity

A diagnosis of dementia does not automatically mean that the person has lost the capacity to consent to and experience the benefits of sexual expression. However, you may notice that the capacity of your loved one to consent verbally may be transient. This consent is further complicated by the fact that it is defined through criminal statutes.

Criminal laws focus on whether your loved one has expressed consent to the kiss, the touch, or the intercourse. Each state has its definition of what constitutes the capacity to consent, making it more confusing for families.

A tragic example of how we have allowed the criminal system to frame and define consent to sexual activity in people with dementia is the 2014 case involving former nine-term Iowa state legislator Henry Rayhons.

The case of Mr. and Mrs. Rayhons

In 2007, the Rayhons were married after meeting and falling in love at their church. Both were widows with adult children from their first marriages. Family and friends described them as very much in love. In 2014, Mrs. Rayhons' recall of words, and ability to feed herself and engage in activities of daily living were significantly affected by her Alzheimer's disease.

Mrs. Rayhon's daughters placed her in a nursing home. Although he did not agree with the decision, Mr. Rayhons went along, visiting his wife every morning and evening.

One of Mrs. Rayhons' daughters was concerned about her mother being intimate with Mr. Rayhons and asked her mother's physician to assess her capacity to consent to sex. The physician did a short-term memory and cognitive ability test, determining that Mrs. Rayhons could not consent to sex. Mr. Rayhons was informed.

during the visit, and she heard the couple having sexual relations.

During Mr. Rayhon's trial, the prosecutor argued that Mrs. Rayhons did not have the capacity to consent to sex by virtue of her Alzheimer's diagnosis. No physical evidence of sexual activity was introduced at trial.

Mr. Rayhons, who was 78, testified that he and his wife held hands, kissed and he prayed at her bedside, but they did not engage in sexual activity that evening. The jury found that the prosecution had not proved its case, and acquitted Mr. Rayhons.

Sexual expression in dementia

The question of whether your loved one with dementia can consent to and safely engage in sexual activities is often framed by state criminal statutes on sexual abuse. The state asks two questions:

1. Was the sexual activity consensual?
2. Did the person have the capacity to consent?

When your loved one has dementia, there are many concerns you both have regarding what abilities will be lost and what care will be required. Given the overwhelming list of possible issues, most geriatricians do not assess your loved one's ability or desire to engage in sexual expression.

Unless your loved one engages in inappropriate sexually explicit behavior due to severely deteriorated executive functions and social inhibitions, there is usually no discussion of your loved one's intimacy level.

Spouses, partners, and family members are left with no guidance on how their loved one's desire or ability to engage in sexual activity may change with dementia. There is no information on the level of intimacy that is safe for your loved one.

A mixed bag of criminal law and cognitive testing

Sexual expression and consent are some of the least understood areas in dementia care. There are many general cognitive tests to measure memory, ability to reason, ability to balance a

nonverbally consent to intimate relations.

The ability of your loved one with dementia to consent is complicated because the ability may fluctuate as cognition changes by the hour, day, or week. Your loved one may be fairly lucid early in the day but confused by evening.

Difficult questions relating to intimacy

The desire for intimacy may remain intact even though your loved one cannot remember names or recognize family. If your loved one can profess love for and a desire to be intimate with a spouse but does not recognize the spouse, is there sufficient capacity to consent?

Neither the medical nor the criminal systems have determined the best way to evaluate the capacity to consent in dementia. Determining if safe decisions can be made regarding sexual expression requires examining more than executive functions and short-term memory.

Advanced planning for your loved one with dementia

One way of preserving a loved one's ability to engage in sexual expression is to appoint a legal decision-maker.

By drafting a Health Care Power of Attorney, your loved one may preserve the right to continue to enjoy some or all of the following intimate activities:

- Touch.
- Kissing.
- Hand holding.
- Access to sexually explicit reading materials.
- Intercourse.

In essence, you can help your loved one memorialize the desire to engage in future intimacy. Consent and risk assessment will be done by the legal decision-maker.

Advanced planning allows your loved one to change the framework of consent to sexual activity from strictly a cognitive capacity test to a patient-centered approach. The scope of inquiry is widened to include:

- What verbal or non-verbal consent is your loved one able to express now?
- How physically safe it is for your loved one to engage in the activity desired - are there medical limitations?
- What can be done to protect your loved one from the risk of harm, while allowing the fulfillment of intimacy needs?

Until healthcare providers receive adequate training on sexual expression and dementia, and uniform assessment tools are developed, it will be up to family members to protect loved ones with dementia and their right to engage in sexual expression.

Actively helping loved ones discuss the right to safe sexual expression with family and health care providers and creating protective language in Health Care Powers of Attorney will go a long way toward keeping matters of intimacy out of the criminal courts.

5 resources

1. Journal of the American Society on Aging. The Evolving Concept of Older Adult Sexual Behavior and Its Benefits.
2. Aging Mental Health. Examining aging sexual stigma attitudes among adults by gender, age, and generational status.
3. American Family Physician. Evaluating Medical Decision-Making Capacity in Practice.
4. Journal of the American Academy of Psychiatry and the Law. Consent for Intimacy for Intimacy Among Persons with Neurocognitive Impairment.
5. National Library of Medicine. Paradoxical Lucidity: A Potential Paradigm Shift for the Neurobiology and Treatment of Severe Dementias.

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