Housing and Health
The Role of the Medical-Legal Partnership

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Disclosure
Elizabeth Hanson, MD and Rick Roman, JD have no relationships with commercial companies to disclose.

Learning Objectives
At the end of this presentation the participant will be able to:
1. Discuss the relationship between the home environment and diseases such as asthma
2. Identify situations in which a referral to a medical legal partnership is warranted for housing related health issues
3. Define reasonable accommodations with regard to housing for individuals with disabilities

Overview
• Environmental contributions to disease
• Cases
  – Asthma and housing conditions
  – Disability and requests for accommodations
• Legal Interventions

Environment and Disease
• 26% of the disease burden worldwide is attributable to the environment
  – 16% in the United States
• Asthma: 44% of the disease burden worldwide attributable to environment
  – Excludes pollen
  – Approximately half from INDOOR exposures

Cost
Washington State, 2004
• $1.9 billion
  – The cost of childhood disease attributable to the environment
• $2.7 billion, if adults are included
  – Approximately 17% of total healthcare expenditures for the state

Case 1
A 6-year-old boy with asthma has been hospitalized 4 times over the last 6 months, with two ICU stays despite maximal medical management.
A home visit reveals several concerning conditions including overcrowding, cockroach infestation, water leaks with mold growth, and dirty shag carpets.

Where’s the Evidence?
Does bad housing really make asthma worse?

Answerable Clinical Question:
• Among children with asthma, how does high vs. low density of housing code violations in their neighborhood affect their risk of subsequent asthma morbidity?

Medical Legal Partnerships Can Help
• One index case with 2 children identified in clinic
  • Cluster of 16 total housing units in several buildings with common owner
    – 45 children
    – 36% with asthma, 33% with developmental/behavioral problem, 9% with elevated lead level

Case 2
5-year-old girl with history of hypoxic-ischemic encephalopathy. Requires CPAP at night, wheelchair, hospital bed. Her four-person family has been approved for a 2 bedroom apartment but are requesting a letter supporting their need for an extra bedroom to house the patient and all of her equipment. Additionally they would like to make sure they get a first floor unit.
Who are we going to call?

Overview of Legal Presentation

- Requesting Repairs
  - The Lease
  - Texas Property Code
  - City Code Compliance
- Reasonable Accommodation Request
  - Legislative History
  - Technical Requirements
  - Don’t think outside the box – think about a bigger box
  - Examples

Requesting Repairs
State Laws and Local Remedies

- Begin with the Lease
  - Notice provisions – whose responsibility is it
- The Texas Property Code
  - Health and Safety issues – proper repair request
- City Code Compliance
  - A big stick but limited power to mold
- Petition for Repairs
  - Health and Safety issues
  (may also petition for Utility Restoration)

The written request for repair

- The request should be in writing.
- The request should be sent by certified mail return receipt requested (keep a copy).
- Rent payments MUST be up to date.
- Landlord must be allowed a “reasonable time” to make the repair. 7 days presumed reasonable.
  - See TPC 92.052

Although a Dr.’s letter is not required, as an attachment to the letter requesting repairs, it can be helpful in getting the landlord’s attention and improving response time. Ideally the Dr.’s letter should tie the medical condition to the requested repair.
What about City Code Compliance? FAQ’s from the COSA –CCC website.

1. I have mold in my house what do I do?
   If you think you have an issue with mold at your residence and would like it to be tested, you will have to hire a private contractor. The City of San Antonio does NOT have authority to force private property owners (rental properties) to remediate mold.

FAQ

2. Sewage has backed up into my apartment, whom do I call?
   First, contact your apartment complex manager. If the manager is unresponsive, call 311.

FAQ

3. My neighbor has sewage running from their property to mine, whom do I call?
   If you live in COSA, call 311. If it is a sewer line break contact SAWS. If the issue is taking place in Bexar County, call Bexar County Public Works.

FAQ

4. I believe that my water is bad or contaminated. What do I do?
   Contact your purveyor/water service provider (SAWS, Bexar Met)

SA Property Maintenance Code

• 108.1 General.

When equipment is found by the code official to be unsafe, or when a structure is found unfit for human occupancy or is found to be an unlawful structure, the structure and/or the equipment shall be deemed to be threats to the public health, safety or welfare.

108.1.3 Structure unfit for human occupancy.

A structure is unfit for human occupancy whenever the code official finds that such structure is unlawful, unsanitary, vermin or rat infested, contains filth and contamination, or lacks ventilation, illumination, sanitary or heating facilities or other essential equipment required by this code, or because the location of the structure constitutes a hazard to the occupants of the structure or to the public.
### 302.5 Rodent harborage

- All structures and exterior property shall be kept free from rodent harborage and infestation. Where rodents are found, they shall be promptly exterminated by approved processes which will not be injurious to human health. After extermination, proper precautions shall be taken to eliminate rodent harborage and prevent reinfestation.

### 309.1 Infestation

- All structures shall be kept free from insect and rodent infestation. All structures in which insects or rodents are found shall be promptly exterminated by approved processes that will not be injurious to human health. After extermination, proper precautions shall be taken to prevent re-infestation.

### 309.2 Extermination Prior to Occupancy

- Where infestation exists, the owner of any structure shall be responsible for extermination within the structure prior to renting or leasing the structure.

### 309.5 Occupant

- The occupant of any structure shall be responsible for the continued rodent and pest-free condition of the structure.

  Exception: Where the infestations are caused by defects in the structure, the owner shall be responsible for extermination.

### Petitioning the Court for Repairs

- Section 92.0563 of the Texas Property Code provides a means for petitioning the court for repairs when the landlord fails to make required repairs.
- A prior written request is generally a prerequisite.
- Again, rent must be current.
- In addition to repair, LL can be ordered to pay a penalty of one month’s rent, $500, attorney’s fees and court costs.

### Laws Protecting People With Disabilities Against Housing Discrimination

- Federal Fair Housing Act (1968, 1988)
- Section 504 of the Rehab. Act (1973)
- Americans with Disabilities Act (1990)
When originally passed in 1968, the Fair Housing Act only covered four protected classes: race, color, religion, and national origin. Sex was added as a protected class in 1974. In 1988, disability and familial status were included as protective classes as well.

Definition of Disability under Fair Housing Act

- Physical or mental impairment which substantially limits one or more major life activities
- Having a record of having such an impairment
- Being regarded as having such an impairment

Affirmative Rights for People with Disabilities

- Reasonable Accommodations
- Reasonable Modifications
- Design & Construction Requirements

Reasonable Accommodations

- A person has a disability within the meaning of the law
- An accommodation is needed for the person to benefit from the housing
- The housing provider knows, or should have known:
  - Of the nature of the disability
  - Of the need for the accommodation

Reasonable Accommodations

- Housing provider has an affirmative duty
  - To make changes in policies, rules, practices, or services to accommodate the disability which affords equal opportunity to the tenant to use and enjoy the dwelling, including public and common use areas

When Do Accommodations Have to Be Made?

- The requested accommodation must be made if it is reasonable
- There must be a connection between the reasonable accommodation the disability
- The requested accommodation must be acted upon within a reasonable time, because delay may amount to a denial of the accommodation
When is a Request for an Accommodation Unreasonable?

- A request for a reasonable accommodation may be rejected if it is unreasonable:
  -- The accommodation would pose an undue financial and administrative hardship  
  OR  
  -- The accommodation would fundamentally alter the nature of the program

Verification

- Housing provider may request reliable disability-related information that is necessary to:
  1. Verify that the person has a qualified disability;
  2. Describe the needed accommodation; and
  3. Show the relationship between the disability and the need for the accommodation.

- Verification can be provided from a physician, psychiatrist, social worker, other mental health professional, peer support group, non-medical service agency, or a reliable third party in a position to know about disability.

Diagnosis is NOT the issue

- Unlike program eligibility, it is not the name of the disability that matters or the source of the income; it is how the disability, of whatever type, affects a person’s ability to go about daily activities
- For this reason, asking the label of the disability is not necessary
- The nature of the disability does not normally have to be disclosed

What About “Invisible” Disabilities?

- If the disability or the need for an accommodation is obvious, the housing provider may NOT ask for verification of the disability.

  “If a landlord is skeptical of a tenant’s alleged disability or the landlord’s ability to provide an accommodation, it is incumbent upon the landlord to request documentation or open a dialogue.” Jankowski Lee and Associates v. Cisneros, 91 F. 3rd 891 (7th Cir. 1996)

Costs Associated With Reasonable Accommodations

- Under the Fair Housing Act, reasonable accommodations must be made at the expense of the landlord/housing provider

If an Accommodation is Denied...

- The housing provider MUST engage in an interactive process...
  “…the [housing] provider should discuss with the requester whether there is an alternative accommodation that would effectively address the requester’s disability-related needs without a fundamental alteration to the provider’s operations and without imposing an undue financial and administrative burden.”
- HUD/DOJ Joint Statement, question 7.
A Response to an Accommodation May Not be Conditioned

- A housing provider cannot:
  --Place a condition on granting the accommodation
  --Charge a fee for the accommodation
  --Require something extra, like insurance, for the accommodation
- HUD/DOJ Joint Statement on Reasonable Accommodation, question 11.

Reasonable Accommodation Exception: Direct Threat Rule

- Individual with a disability who poses a “direct threat” to the health or safety of other tenants or damage to the property is not protected
- Exception to the exception:
  ---- Must account for whether the individual has received intervening treatment or medication that has eliminated the direct threat
- HUD/DOJ Joint Statement on Reasonable Accommodation, Questions 4-5.

Typical Reasonable Accommodations

- Designating a handicap parking space
- Service/assistive/companion animal
- Transfer to ground floor unit
- Late rent payment because disability income arrives after first of month or grace period

Private Housing versus Public Housing

- Private
  Ma and Pa typically seek to avoid govt. entanglements.
  Education of landlord required.
  Reasonable Accommodation issues arise in context of eviction.
- Public
  Documentation is the key.
  Documentation means a Doctor’s letter.
  The nexus is crucial to grant of RA.
  Mitigation versus RA may be appropriate if issue will not recur.

Common Reasonable Accommodation Issues Arising in Federally Assisted Housing

- Admission to the program:
  - Credit History:
    ---- A person with a disability may have a negative credit history as a result of his or her disability and requests for an accommodation to ignore the credit history.
  - Criminal Background:
    ---- An applicant may ask for a reasonable accommodation to consider mitigating circumstances when his or her past criminal activity was related to or the direct result of his or her disability.

Common Reasonable Accommodation Issues Arising in Federally Assisted Housing (Cont.)

- Locating a Unit: (Voucher Program)
  - Extension of Voucher Search Time:
    Housing Authorities must allow tenants to extend time allotted to search for an apartment if necessary as an accommodation.
  - Portability:
    Housing Authorities must consider a request for accommodation for moves necessary for individuals with disabilities to benefit from the program.
Common Reasonable Accommodation Issues Arising in Federally Assisted Housing (Cont.)

- **Occupancy:**
  - Unit Size/Live-in Aide:
    A person with a disability may request a larger unit, to allow for a live-in aide or for other reasons relating to the participant’s disability.
  - Early Termination of Lease:
    A tenant may request early lease termination as an accommodation if there is a nexus between the termination need and the disability.

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**FHA applies to service animals**

- Guide Dogs
- Hearing Assistance
- Emotional Support Animals

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**What is an “Assistance Animal” Under the Fair Housing Act?**

- An assistance animal is not a pet, rather it is an animal that provides assistance or performs tasks for the benefit of a person with a disability.
- Assistance animals under the Fair Housing Act or Section 504 of the Rehab Act do not need to be “trained” or “certified” (Cf. ADA definition)
- While dogs are the most common type of assistance animal, other animals can also be assistance animals. (Cf. ADA definition)

HUD Memorandum “Service Animals and Assistance Animals,”

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**When can an assistance animal be denied?**

- Breed, size, and weight limitations may not be applied to an assistance animal.
- The request may be denied only if the specific assistance animal, based on an individualized assessment of the animal:
  --Poses a direct threat to the health or safety of others
  --Would cause substantial physical damage to the property of others.
- UNLESS this can be reduced or eliminated by another reasonable accommodation.

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**Typical violations of Fair Housing Act**

- Outright denial of a request for accommodation.
- Unreasonable delay in responding to a request for an accommodation.
- Conditioning an accommodation by charging a fee, such as a transfer fee or pet deposit.
- Conditioning an accommodation by requiring some action before it is granted.
- Requiring medical documentation or completion of a form before considering an accommodation when the disability or the accommodation is obvious.
- Failing to engage in an interactive process when an accommodation is denied.
- Or some combination.
Short Review

- The requested accommodation must be made if it is reasonable
- The accommodations must be made if they are connected with the disability
- The requested accommodations must be acted upon within a reasonable time, because delay may amount to a denial of the accommodation
- Housing provider bears the cost of accommodations

Resources

Accommodation Request Resources: Fact Sheets and Sample Documents

- Bazelon Center for Mental Health Law
- Fair Housing Fact Sheets, including the following:
  --- Early Termination of a Lease
  --- Using Reasonable Accommodations to Prevent Eviction
  --- Right to Emotional Support Animals in "No Pet" Housing (see sample verification letter)
  --- Using Reasonable Accommodations for Tenant Posing a "Direct Threat" To Others
  [http://www.bazelon.org/Where-We-Stand/Community-Integration/Housing/Housing-Policy-Documents.aspx](http://www.bazelon.org/Where-We-Stand/Community-Integration/Housing/Housing-Policy-Documents.aspx)

Federally Assisted Housing Resources

- HUD has provided more detailed information about Section 504's requirements: [www.hud.gov/offices/fheo/disabilities/sect504.cfm](http://www.hud.gov/offices/fheo/disabilities/sect504.cfm)
- Increasing the Usability of Housing Choice Vouchers for People with Disabilities: [http://www.bazelon.org/LinkClick.aspx?fileticket=ht7fNsTaV64%3d&tabid=245](http://www.bazelon.org/LinkClick.aspx?fileticket=ht7fNsTaV64%3d&tabid=245)

Complaint Resources

NFHA Member Organizations
“Find Local Help”

HUD Administrative Complaint Process
Local Help Resources
Fair Housing Council of Greater San Antonio
4414 Centerview Dr., Suite 229, San Antonio, Texas 78228  (210) 733-3247
Texas Rio Grande Legal Aid Inc.
1111 N. Main, San Antonio, Texas 78212  (210) 212-3700
City of San Antonio Fair Housing Program
106 S. St. Mary’s, San Antonio, Texas 78205  (210) 207-8198

Helpful Resources for this Presentation

Framing Legal Care as Healthcare
Nation Center for Medical Legal Partnership
Kate Marple, January 2015.

Medical Legal Assistance for Families: September 2010 - Grand Rounds.  Rebecca Huston MD, MPH -- Susan Zinn, JD

Helpful Resources for this Presentation

• Fair Housing for Veterans and Service members
  June 3, 2015 Presentation
  Paralyzed Veterans of America (Susan Prokop) National Fair Housing Alliance (Morgan Williams)


References