

Romance & the Fertile Octogenarian

By Karen E. Boxx and Arnettia S. Wright

Unlike many international countries, sex as it relates to seniors continues to be a taboo topic in the United States. Although oftentimes ignored or admonished in nursing homes, as baby boomers retire and the use of Viagra continues to rise, that will realistically have to change. In fact, according to the University of Chicago's National Social Life, Health and Aging Project, many men and women remain sexually active well into their 70s and 80s. Thus, is there any reason to believe that if given the opportunity, seniors living in institutional settings would not have the same zeal?

The family of former Supreme Court Justice Sandra Day O'Connor obviously accepts the notion of nursing home romance. When the former Justice's husband of 54 years entered a nursing home after battling Alzheimer's for 17 years, she graciously accepted her husband's companionship with a fellow Alzheimer's patient. For her, perhaps, her amiability comes from knowing her husband has found solace in the midst of chaos, even if only temporarily.

For many, romance late in life - that is after 60 - raises financial as well as personal autonomy issues. Estate planning issues, prenuptial agreements and cohabitation agreements, registered domestic partnerships, and benefits planning are some of the key financial matters that tend to surface in these situations. Some recurring personal autonomy issues center around rights to physical intimacy in group residential settings, such as rights to certain prescriptions, accommodating residents' rights to view sexually explicit materials balanced against employees' rights to harassment-free workplaces, facilities' ability to restrict certain activities and require STD testing, authority of surrogate decision makers such as attorneys-in-fact to make decisions on prescriptions and access to physical intimacy, discrimination based on sexual orientation, determining capacity needed for consensual behavior, and potential liability issues for nursing homes.

During the RPTE Spring Symposium, the Elder Law, Disability and Bioethics Group explored these issues as well as the legal implications during a CLE entitled "The Fertile Octogenarian Revisited: Romance Late in Life, its Financial Implications and the Right to Physical Intimacy in the Nursing Home." An article on the same topic will be featured in the November/December 2008 issue of Probate & Property Magazine.