

Hand Outs



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Clearinghouse on Abuse and Neglect of the Elderly (CANE)

Annotated Bibliography

Financial Abuse, Undue Influence, Scams, Frauds and Protection of Assets November 2003

Older individuals may be more susceptible to financial exploitation and fraud simply because many have assets in the forms of savings, stocks, insurance policies, and property. Seniors with dementia or mental health concerns may be particularly vulnerable to financial abuse by friends and family members or court appointed guardians who exert undue influence. They may also be targeted for identity theft or become victimized by predatory lending practices. Elders may experience financial abuse in conjunction with other forms of abuse and intimidation. Detecting the abuse may be difficult as the victim may be generally isolated and dependent upon the abuser(s).

This annotated bibliography contains citations for references that address these and other aspects of elder financial exploitation. Included are a number of articles that address the need for protection of assets and other consumer issues.

To Order Articles from the Annotated Bibliography:

The following collection of resources highlights various aspects of elder financial abuse and exploitation. Many of these publications are literally at your finger tips as they are online.* Unless otherwise indicated, reference materials may be obtained through CANE. Some resources, such as videos and manuals, are only available directly through the agencies that produce them; in such instances the contact information is provided.

The digits following the hyphen in the file numbers indicate the total number of photocopied pages. For example, if the file number is A78-11, then this article (number A78-11) is 11 pages in length. Generally, articles of interest will be forwarded to you at a cost of \$.20 per page. However, it may be possible to send you single copies of a few short articles at no cost. CANE endeavors to fulfill your requests as quickly as possible, and we urge you to contact us regarding your interest in receiving any of the following. CANE may be contacted by telephone (302/831-3525), by email (cane-ud@udel.edu) or by mail at:

University of Delaware
Clearinghouse on Abuse and Neglect of the Elderly/CANE
Department of Consumer Studies
Alison Hall West (annex) - Rm. 211
Newark, DE 19716

To find other resources on elder abuse and neglect, visit the CANE web site at

<http://db.rdms.udel.edu:8080/CANE>

(A note about web addresses: like the enchanted staircases at Hogwort's, web pages can mysteriously move. In the event that a web address given is no longer accurate, we recommend that you search for the title on a generic search engine, such as Google. Please contact the CANE office if you need assistance.)

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Annotated Bibliography:

P5419-00

U.S. Senate Committee on Health, Education, Labor and Pensions - Subcommittee on Aging - Executive Session

Hearing on Financial Abuse and Exploitation

Washington, D.C.; October 30, 2003

This hearing presents testimony from Richard Chambers (Victim, Maryland), J. Joseph Curran, J. (AG, Baltimore, MD), Carol Scott (Ombudsman, MO, and National Association of State Long-Term Care Ombudsman Programs or NASOP), Robert Blancato (National Committee for the Prevention of Elder Abuse or NCPEA), and W. Lee Hammond (AARP). Numerous examples of financial abuse are described as exploitation occurring within the community and in nursing homes. Pending legislation is commented upon by participants. (Note: Testimonies are accessible from the Committee's schedule page at <http://health.senate.gov/calendars/all.html>)

P5350-32

U.S. Senate Committee on the Judiciary

Hearing entitled: Elder Abuse, Neglect, and Exploitation: Are We Doing Enough?

Washington, D.C.; September 24, 2003

This hearing, sponsored by the U.S. Senate Committee on the Judiciary presented testimony from Daniel Mihalko (U.S. Postal Inspection Service), James Huse (Inspector General of the Social Security Administration), Christopher Chiles (Prosecuting Attorney, Cabell County, WV), Lori Stiegel (Commission on Law and Aging, American Bar Association), James Wright (TRIAD, National Sheriff's Association) and from Senators Biden and Leahy. The hearing addressed crimes against and financial exploitation of the elderly. (Note: The witness testimony may be accessed online at the Judiciary committee's web site at <http://judiciary.senate.gov/>)

P5393-4

Wilkinson, C. & Wilkinson, P.

Financial Abuse: A Case Study & Litigation Guide for the Elder Law Attorney

NAELA Quarterly (National Academy of Elder Law Attorneys); 18-21; Summer 2003

Using an illustrative case study, this article emphasizes key components of litigating elder financial abuse. In this scenario, a trusted, long-time employee has been named the agent of a husband who is suffering from dementia. Although she does not have power of attorney for his wife, she represents the wife as an agent in a real estate transaction. Later, she diverts funds from the sale to an account on which she is also a signator. Legal issues that are pivotal in addressing such cases of financial exploitation include the following: the need to freeze assets immediately (either through a temporary restraining order {TRO} or through written instruction to financial institutions); the admissibility of certain victim statements when the victim is deceased; conflicts of interest occurring when an agent represents more than one individual; and the need for tracing the victim's funds, particularly by employing a forensic C.P.A.

P5417-48

National Association of Adult Protective Services Administrators (NAAPSA), for the National Center on Elder Abuse (NCEA)

Report on State Adult Protective Services Response to Financial Exploitation of Vulnerable Adults 2003

2003

In preparation for the U.S. Department of Health and Human Services study on financial exploitation of vulnerable adults, the National Association of Adult Protective Services Administrators (NAAPSA) conducted a survey in 2001 of all states, the District of Columbia, and Guam, regarding their response to financial abuse cases. Thirty-four states and Guam responded to the mailed questionnaire, 23 using data from the most recent fiscal year, and 8 from the most recent calendar year. Of the results, 28 states had a combined 38,015 reports of financial exploitation; 29 states had mandatory reporting laws for financial exploitation; 11 states included financial institutions as mandatory reporters. Of the states able to describe sources of reports, only 54 of

18,476 reports were made by banks. Fifty-eight per cent of the victims were female, and 64.7 per cent were aged 66 and older, with approximately 40 per cent of reports made on people between ages 65 and 80. While some states reported that victims appeared of higher income levels than the average APS client, others saw no difference in income level. And, while 24 states have multidisciplinary teams (MDTs) to address financial abuse, only 14.3 per cent of these have bank representatives as members on state teams. Only ten states had a registry of financial abusers, and only Oregon was able to estimate the value of loss for the year (totaling between \$50,000 and \$100,000 for 47 substantiated cases). A significant problem in evaluating the data for this survey, as well as in measuring program effectiveness, is the absence of consistent (or uniform) data tracking across state APS departments. Recommendations that were generated in order to better serve these clients include the need for NAAPSA to lead such national initiatives as public awareness campaigns, recognition of best practices, advocacy for APS, development of a national database of perpetrators, increased cross training of APS professionals, willingness to prosecute crimes involving smaller losses, and greater referral of APS financial abuse cases for prosecution. The report includes a copy of the survey along with descriptions of each participant's response. (Note: This report is available online at the National Center on Elder Abuse web site at http://www.elderabusecenter.org/pdf/publication/NAAPSA_9.pdf)

P5361-29

Nerenberg, L., for the Institute on Aging (formerly the Goldman Institute on Aging), for the National Center on Elder Abuse (NCEA)

Daily Money Management Programs - A Protection Against Elder Abuse

National Center on Elder Abuse, Washington, D.C.; June 2003

Individuals who are unable to manage personal finances are at risk for financial exploitation, undue influence and financial abuse by predators as well as unscrupulous acquaintances, friends and family members. This manual describes Daily Money Management (DMM) programs, which are designed as a preventative measure for elders who are unable to manage their finances. Despite their effectiveness, there are few DMMs. Programs are offered by both public and private, non-profit and for profit agencies, and routine services such as bill paying, banking, and check writing, as well as more complex services such as negotiating with creditors and maintaining home payroll records for home employees are performed. Services are provided by a variety of volunteers and professionals, including accountants, bookkeepers, social workers, private fiduciaries, nurses, etc. Programs vary widely in their scope of services; for example, some offer guardianship of estate. One concern regarding the for-profit DMMs is that the field is largely unregulated. The publication includes a list of indicators for assessing whether an elder is a good candidate for DMM services. Risk management strategies are described and include periodic monitoring of bank statements, having clients sign service agreements, and professional consultation (with attorneys, auditors, etc.) Insurance issues are also described and include general liability insurance, malpractice insurance and bonding. Deterrents to providing DMM services are explored, and include issues regarding consent, the complexities of client needs, client resistance, and ethical and cultural considerations. The manual concludes with list of best practices recommendations and a highlighting of model programs and resources (including the AARP Money Management Program; Delaware's Financial Management Program; Jewish Family and Children's Services in San Francisco, the Peninsula, Marin, and Sonoma Counties; Massachusetts Money Management Program; and Western Montana Chapter for the Prevention of Elder Abuse). (Note: This manual is available online through the NCEA web site at <http://www.elderabusecenter.org/pdf/publication/DailyMoneyManagement.pdf>)

P5404-88

Johnson, K., for the U.S. Department of Justice, Office of Community Oriented Policing Services (COPS)

Financial Crimes Against the Elderly (Problem-Oriented Guides for Police - Problem-Specific Guides Series No. 20)

U.S. Department of Justice, Office of Community Oriented Policing Services (COPS); 2003

Part of the series of Problem Specific Guides for the police, this publication provides a comprehensive overview of financial elder abuse and guidelines for customizing a law

enforcement approach to address the problem on a local level. The topic of financial exploitation is broadly divided into those acts committed by strangers (including schemes such as consumer fraud, lottery and pyramid scams, telemarketing and mail fraud, predatory lending practices, home improvement fraud, medical fraud, and confidence games) and those committed by friends family, and caregivers (including theft, borrowing without permission, misappropriating funds, mishandling funds, refusal to use the elder's funds for necessary care) by means of coercion, intimidation, undue influence, deception and/or emotional abuse. Factors that contribute to financial crimes, including victim vulnerabilities, are also discussed. The greatest predictor of future victimization is previous victimization. Understanding the victim's mental capacity and the issue of consent are vital in terms of investigation. In describing perpetrator characteristics, the "boiler-room" mobility structure of telemarketing fraud is highlighted, including the practice of referring customers for specialized sales pitches depending upon their level of resistance or receptivity. In order to tailor the response to financial elder abuse in a given community, law enforcement needs to analyze the current types of abuse occurring, and will need to develop multidisciplinary/interdisciplinary efforts. The guideline includes a detailed list of questions that responders should ask when assessing the crime(s), including questions regarding those who avoided victimization. Pre- and post-intervention measurements are needed in order to determine the effectiveness of the implemented response, and quantifiable recommendations are provided. A number of response strategies are suggested, including multi-agency task forces, improved reporting mechanisms, police training for interviews of the elderly, public awareness and education and reversing the "boiler room" by publicizing information about known scams. The publication also identifies strategies that have proven ineffective, such as "stand alone" information dissemination, mandatory reporting legislation, bonding telemarketers, and increasing sentences in existing legislation. (Note: This publication is available online at <http://www.cops.usdoj.gov/mime/open.pdf?Item=963>)

P5346-20

Smith, R.

Misuse of Older Persons' Assets by Professionals - Paper presented at the Australian Institute of Family Studies' "Steps Forward for Families: Research, Practice and Policy Conference"

February 12, 2003

This paper examines risk factors for financial abuse and exploitation of the elderly by professionals. It also explores the complications of attempting recovery of lost assets. While current statistics (from the Australian Crime Victims Survey 2000) indicate that those over 65 are half as likely as younger people to experience consumer fraud, there are certain trends that imply that elders may become increasingly vulnerable. These trends include greater contact with health care and financial professionals, increasing value of assets, increasing reliance upon professional, legally appointed agents, and increasing computer usage. The five systems of redress are conciliation, civil action, disciplinary action, and criminal action. Various law enforcement led initiatives (such as Canada's PhoneBusters and the U.S. Triad and SALT councils) are highlighted as prevention outreach programs.

(http://www.aic.gov.au/conferences/other/smith_russell/2003-02-AIFS.pdf)

P5286-167

U.S. Senate Special Committee on Aging

Hearing entitled: Guardianship Over the Elderly: Security Provided or Freedoms Denied?

February 11, 2003

Testimony provided at this hearing addressed the need for oversight of the guardianship process and alternative interventions. Issues concerning health directives and financial concerns were explored. Witnesses included Jane Pollack, niece of Mollie Oshansky, the famous economist who became the center of a controversial guardianship case; Diane Armstrong, who has written extensively about financial motives in obtaining guardianship; and Penelope Hommel of the Center for Social Gerontology. (Note: This transcript may be accessed online at

<http://aging.senate.gov/index.cfm?Fuseaction=Hearings.Home>)

P5311-51

Dessin, C.

Financial Abuse of the Elderly: Is the Solution a Problem?

McGeorge Law Review; Vol. 34; Winter 2003

This article provides a comprehensive discussion and examples of the "often vague" definition of financial abuse in existing state legislation. Statutes are often vague in order to allow for flexibility in addressing financial exploitation, but this also weakens effectiveness in terms of prosecution. Many laws presume that an abusive act benefits the perpetrator and involves lack of consent. The simplistic assumption that one's assets should always be retained for one's own benefit is considered as it negates the autonomy of many elders who, out of a sense of duty or generosity, may wish to give to others. The complexities of identifying exploitation involving incompetent individuals and the difficulty of monitoring guardianship issues are also examined. The benefits and weaknesses of voluntary arrangements, such as powers of attorney and trusts are considered. The author argues that legally defining financial abuse and exploitation in terms of age is an example of "new ageism." She proposes an alternative that is without "ageist stereotyping." (Note: This article is available electronically through Lexis-Nexis subscription services.)

P5287-45

Hughes, S. of the American Bar Association Commission on Law and Aging, for the National Center on Elder Abuse

Can Bank Tellers Tell? - Legal Issues Relating to Banks Reporting Financial Abuse of the Elderly

2003

As quoted from the paper: "...Banks have the potential of be the 'first line of defense' against financial abuse by identifying the abuse at its outset, before the elder's assets have been dissipated..." This report provides an overview of the impact that the banking industry can have in stemming financial elder abuse, and it explores the legal issues surrounding the roles of bankers as both mandatory and voluntary reporters. Variations in state legislation are presented, and federal laws that provide guidance concerning the liability of banks as reporters, such as the Gramm-Leach-Bliley Act of the Federal Bank Privacy Law, are discussed. The history of the collaborative bank reporting projects which involve input and training from Adult Protective Services (APS) professionals, beginning with the Massachusetts Bank Reporting project, and the experiences of various state efforts to encourage or mandate reporting are also examined. The paper also compares the experiences of states which define bankers as mandatory reporters with those that do not. Among the conclusions, bank reporting projects have proven effective in increasing reporting of financial abuse in both mandatory and voluntary states, and although the presence of mandatory reporting laws alone do not increase reporting, they appear to facilitate the development of statewide bank reporting initiatives. (Note: this paper is available online at the NCEA web site at

http://www.elderabusecenter.org/pdf/publication/bank_reporting_long_final_52703.pdf)

P5288-9

Hughes, S. of the American Bar Association Commission on Law and Aging, for the National Center on Elder Abuse

Legal Issues Related to Bank Reporting of Suspected Elder Abuse

2003

This paper is an abridged version of "Can Bank Tellers Tell? - Legal Issues Relating to Banks Reporting Financial Abuse of the Elderly." It provides an overview of the federal and state legal issues that surround the role of bank employees as reporters (mandatory or voluntary) of suspected financial abuse of the elderly. Adult Protective Services (APS) professionals and elder rights advocates will find this information helpful when meeting resistance from the banking industry to the development of bank reporting projects. (Note: This paper is available online at the NCEA web site at

http://www.elderabusecenter.org/pdf/publication/bank_reporting_summary_final_52703.pdf)

P5289-3

Greenspan, A. et al.

Federal Regulatory Agencies' Opinion Letter About Michigan's Bank Reporting

Procedures

July 2003

In this letter, federal regulatory agencies governing financial issues respond to questions regarding the federal liability of reporting suspected elder financial abuse in Michigan to the Michigan Family Independence Agency (FIA). In conclusion, the regulators indicate that after reviewing the protocols in place, the reporters would be excluded from the Gramm-Leach-Bliley (GLBA) act privacy rules. (Note: This letter is available online at the NCEA web site at

<http://www.elderabusecenter.org/pdf/publication/nceaabaletter030701.pdf>)

P5284-2

North American Securities Administrators Association (NASAA)

"Top 10 Investment Scams" List Released by State Securities

April 2003

This article describes the top ten frauds and scams of the past year. The list includes unlicensed individuals selling securities, payphone and ATM sales, internet fraud, Ponzi/pyramid schemes and viatical settlements. (Note: this article is available online at <http://www.seniors.gov/articles/0401/investment-scams.html>)

V38

National Criminal Justice Reference Service (NCJRS)

F.A.S.T. (Financial Abuse Specialist Team) Video

2003

This video describes the Santa Clara County's Department of Aging and Adult Services Financial Abuse Specialist Team (F.A.S.T.). Information regarding elder financial abuse and fraud is provided. This is a model program that may be adapted for use in other communities. (Note: This video may be ordered online, at no charge, through the National Criminal Justice Reference Service at <http://puborder.ncjrs.org> Item ID: NCJ198153)

P5148-8

Walters, N., for the AARP Public Policy Institute Consumer Team

The Fair Credit Reporting Act: Issues and Policy Options

Public Policy Institute of the AARP, Washington, D.C. 20049

AARP PPI Issue Brief No. 58; January 2003

This report, prepared for the AARP Public Policy Institute, describes the function and limitations of the Fair Credit Reporting Act (FCRA) and how it could be strengthened to provide greater consumer protection. The use of the credit report is increasing and becoming greater in scope, yet a 2000 survey indicates that more than half of all reports contain inaccuracies. Older adults may be more susceptible to identity theft if relatives or others have access to their vital personal information. Policy options discussed include strengthening the security standards for those creditors purchasing reports, allowing consumers to place a security freeze on credit reports, and requiring consumer reporting agencies (CRAs) to provide the consumer with a free annual report so that they may become aware of inaccuracies or fraudulent activities. (Note: This issue brief is available online at http://research.aarp.org/consume/ib58_credit.pdf)

P5254-60

Eggert, K.

Symposia: Lashed to the Mast and Crying for Help: How Self-Limitation of Autonomy Can Protect Elders From Predatory Lending

Loyola of Los Angeles Law Review; Vol. 36; Winter 2003

The purpose of this article is to address the dilemma of preserving the autonomy of elders while protecting them from financial abuse and fraud, including predatory lending practices. The author proposes that seniors record an instrument called the Elder Home Equity Loan Instrument (or the Elder HELP Instrument) which would allow homeowners to have loans reformed that have excessive fees or interest rates. Other models of self-limitation are also discussed. (Note: This article is available electronically through Lexis-Nexis subscription service.)

P5255-22

Finberg, J.

Symposia: Financial Abuse of the Elderly in California

Loyola of Los Angeles Law Review; Vol. 36; Winter 2003

This article provides an overview of the most common types of elder financial abuse perpetrated in California. It also describes the state legislation that addresses such abuses. Annuity scams, living trust scams, sweepstakes and volume sale scams (such as the Canadian Lottery and Nigerian Money Scams) identity theft, unfair and misleading funeral and burial practices, and predatory lending are among the topics highlighted.

P5290-00

U.S. Senate Special Committee on Aging

Schemers, Scammers and Sweetheart Deals: Financial Predators of the Elderly

Washington, D.C.; May 20, 2002

This is a transcript of the U.S. Senate Special Committee on Aging hearing entitled "Schemers, Scammers and Sweetheart Deals." Testimonies were heard from professionals, such as prosecutors and detectives, as well as victims, regarding their direct experiences with con artists and the difficulties they face in prosecuting these offenses. Detective Reyes describes the F.A.S.T. team of Los Angeles that he co-founded. (The transcript for this hearing can be accessed online at <http://aging.senate.gov/events/052002.html>)

P5219-9

Blum, B. & Feledy, T.

Undue Influence Worksheets for Police, APS, and Probate Investigators

Bennett Blum, M.D. and Tom Feledy, M.B.A., Park Dietz & Associates, Newport Beach, CA; 2002

The Undue Influence Worksheet is based upon the IDEAL Model for analyzing potential undue influence in financial cases. Evidence of undue influence requires a listing of all pertinent events occurring between the victim and perpetrator. This packet contains an overview of financial abuse or exploitation, an overview of the IDEAL Model (Isolation, Dependence upon the perpetrator, Emotional Manipulation or Exploitation of Vulnerability, Acquiescence and Loss), the Events List Form, The Events Details Form, along with examples of the completed forms. (Note: This packet may be obtained by contacting Dr. Bennett Blum, Director - Forensic Geropsychiatry, c/o Park Dietz & Associates, Newport Beach, CA, 949-760-0422.)

P5116-00

Beaulieu, M. & Spencer, C., for the Law Commission of Canada

Older Adults' Personal Relationships and the Law in Canada - Legal, Psycho-Social and Ethical Aspects

The Law Commission of Canada; updated 2002

This report "...provides an analysis and critical reflection of the relationships between Canadian law and older adults' personal relationships..." It addresses differences between the social science and legal concepts of such relationships. Divided into 8 chapters, the report covers such topics as healthy aging, relationships with spouses, family and friends as well as relationships with the community and institutions. Factors affecting such relationships include economic influences. Chapter III addresses the development and parameters of Elder Law in Canada, while Chapter IV focuses on Canadian social values and how they impact upon older adults. Chapter V and VI examine how older individuals interact with the legal system in terms of contract law, wills and estate planning, criminal law, family law, adult protection, guardianship, health law and substitute decision making. Three cases are presented that exemplify some of the intricacies of addressing older Canadians personal relationships: Kim v. DeCamillis, R. v. McCune, and Sawatzky v. Riverview Health Centre. Ethical concerns, elder abuse, undue influence, advocacy, and neglect are among the many aspects raised in discussions regarding these cases. (Note: This report is available only online at http://www.lcc.gc.ca/en/themes/pr/oa/spencer/spencer_main.asp)

A466-7

Quinn, M.

Undue Influence and Elder Abuse: Recognition and Intervention Strategies

Geriatric Nursing; Vol. 23 (1), 11-17; January/February 2002

In this continuing education article, designed for nurses, the author defines undue influence and the components of psychological abuse that often accompany it. In addition to outlining Singer's six factors related to undue influence, the article uses case situations to illustrate various scenarios including both family manipulators and non-family manipulators. A table of indicators of undue influence is included. (Note: The article also includes a continuing education test with instructions for 1 nursing CE credit.)

P5293-10

Malks, B., Schmidt, C. & Austin, M.

Elder Abuse Prevention: A Case Study of the Santa Clara County Financial Abuse Specialist Team (FAST) Program

Journal of Gerontological Social Work; Vol. 39 (3), 23-40; 2002

After providing an overview of the little that is known about financial abuse and exploitation of the elderly, this article presents a description of the Santa Clara County Financial Abuse Specialist Team (FAST) Program. The FAST Team is composed of representatives from Adult Protective Services (APS), the Public Administrator/Guardian's Office, County Counsel, the District Attorney's office and the Department of Adult and Aging services. Since 1999, this multidisciplinary/interdisciplinary model program has been addressing referrals of suspected abuse. The article describes the process in which the referral is addressed, including those that warrant an emergency response in order to protect assets. Cases warranting legal intervention are transferred to the District Attorney's office for further investigation and possible prosecution. The benefits of the rapid response team and the criticisms of the process (which include those that claim it promotes loss of autonomy) are discussed, along with lessons learned since the program's inception.

P5024-9

Frolik, L.

The Developing Field of Elder Law Redux: Ten Years After

Elder Law Journal; Vol. 10; 2002

This essay provides an overview of the development of elder law as a legal specialty during the past decade. What was initially seen as Medicaid planning has evolved to address the complexities of estate planning for an ever growing population of elders, along with medical and end of life-decision making, nursing home and medical negligence issues, guardianship, elder abuse and age discrimination. Two points made in the discussion include the lack of academic support for this expanding specialty area, and the development of multidisciplinary practices that seek to holistically address the needs of elder law clients. (Note: This article is available electronically through Lexis-Nexis subscription services.)

A31-2

Brisk, W. & Flynn, J.

Combatting Attorneys Who Abet Financial Abuse of the Elderly (Advocacy and Litigation SIG Column)

NAELA News (National Association of Elder Law Attorneys); 5-6; November/December 2002

This article describes the necessity of scrupulous and ethical adherence to the Code of Professional Responsibility when lawyers (particularly elder law attorneys) are transferring property. In particular, the lawyer must communicate directly with the client and determine that he or she is not acting under undue influence. Failure to do this would result in financial abuse or exploitation.

A451-9

Longan, P.

Middle-class Lawyering in the Age of Alzheimer's: the Lawyer's Duties in Representing a Fiduciary

Fordham Law Review; p901; December 2001

This article explores the legal intricacies of addressing potential financial abuse by guardians of elderly, incapacitated wards. The Model Rules of Professional Conduct and the Restatement of the Law Governing Lawyers are considered as they relate to the ethical conflicts of maintaining client confidentiality while preventing irresponsible,

fraudulent or criminal actions. Both the vulnerability of the ward and the susceptibility of the guardian to commit such acts are discussed. A spectrum of professional options is outlined and includes counseling without the right to disclose as the least intrusive, and a duty to discover as the most extreme. Also presented are the more moderate, but perhaps more effective interventions of optional and mandatory disclosure. (Note: This article is available electronically through Lexis-Nexis.)

N4621-10

Greenwood, P.

Prosecuting Financial Abuse: A Tool Kit

November 8, 2001

This packet provides a guideline for prosecuting financial abuse, which was presented at an Adult Protective Services Conference in San Antonio, Texas, November 8, 2001. The "tool kit" is a quick reference, power point outline of the key steps and concepts used by the presenter, Paul Greenwood, Deputy District Attorney, San Diego, California.

N4623-110

U.S. Senate Special Committee on Aging

Saving Our Seniors: Preventing Elder Abuse, Neglect, and Exploitation

Serial No. 107-8; June 14, 2001

This is a transcript of a hearing before the Senate Special Committee on Aging, held on June 14, 2001. Participants included Sara Aravanis, Dr. Laura Mosqueda, Joanne Hopper, Paul Greenwood, and Ricker Hamilton. Statements were also provided by the National Indian Council on Aging, the American Bar Association and testimony by the Social Services Block Grant Coalition. This report can be accessed, free of charge, at the following web address: <http://aging.senate.gov/events/> or ordered by contacting the GPO Order Desk at Toll-Free: 1-(866) 512-1800 or, in Washington, D.C., telephone (202) 512-1800. <http://aging.senate.gov/events/061401.html>

N4650-34

Moskowitz, S.

Upper-level Courses: On Golden Pond: Integrating Legal Issues of the Elderly into Family Law

Stetson Law Review; Vol. 30, 1427; Spring 2001

Noting that law school curricula are not reflective of the needs of the aging American population, this attorney explores areas of family law that could be enhanced to better serve elders. Issues surrounding marriage, multi-generational families, intra-family support obligations, elder abuse and ethics are addressed. Among other points, the author emphasizes the need to properly identify the client when an elder is brought to an attorney for assistance with financial planning by a friend or family member. (Note: This article is available electronically through Lexis-Nexis Academic Universe.)

P5089-313

U.S. Department of Justice, Office of Justice Programs

Our Aging Population: Promoting Empowerment, Preventing Victimization, and Implementing Coordinated Interventions - Symposium Report of the Proceedings

December 2000

This online publication contains the proceedings of a symposium co-sponsored by the Department of Justice and Department of Health and Social Services in October, 2000. The symposium focused on three topics: financial abuse and consumer fraud, elder abuse and neglect in the home, and institutional abuse and neglect. Each topic was the focus of a plenary session and a number of workshops were presented focusing on promising programs and interventions developed throughout the country. In the closing session, Attorney General Janet Reno identified the following three priorities to address elder victimization: prevention, interdisciplinary/multidisciplinary collaborations, and prosecution. The publication also includes program descriptions of those presented, including the South Carolina Vulnerable Adult Medical Protocol, the Texas Elder Abuse Mistreatment (TEAM) Team, the Maricopa Elder Abuse Prevention Alliance, Los Angeles County Fiduciary Abuse Specialist Team (FAST), and many others. It also includes the recommendations made by the Tribal Caucus, with emphasis upon the need for

coordination between the FBI, the Bureau of Indian Affairs and state and local law enforcement agencies operating within Indian Country. (Note: This publication is available online at http://www.ojp.usdoj.gov/docs/ncj_186256.pdf)

P5152-27

Saunders, M., Renuart, E., of the National Consumer Law Center, with Hermanson, S., for the AARP Public Policy Institute Consumer Team

Home Improvement Financing: A Model State Law - Vol. I Model State Law

October 2000

The Home Improvement Financing Model Act was developed to address the predatory lending practices that occur when contractors either directly lend or arrange for the financing of home improvement projects. Older homeowners are more often targeted by fraudulent home improvement contractors, in part because they are less likely to attempt home repair projects themselves, more likely to have older homes in need of repair, and more likely to have financial assets. Predatory lending practices occur when the contractor obtains loans at excessively high rates, or receives the loan directly without providing services, for which the homeowner is still liable. Among other features, the Act provides that the lender bear the cost of incomplete or inadequately completed repairs as a strong incentive to ensure that the contractor fulfills his/her obligations. It also provides consumers with a right to civil action along with the possibility of criminal prosecution for intentional violations. Volume I presents the model law; Volume II presents summaries of existing state laws, Alabama through Michigan; Volume III presents summaries of existing state laws Minnesota through Wyoming. (Note: All three volumes are accessible online at http://research.aarp.org/consume/d17165_home_1.html)

L4417-9

Quinn, M.

Undoing Undue Influence

Journal of Elder Abuse & Neglect; Vol. 12 (2), 9-17; 2000

The article provides an overview of the dynamics of undue influence. Victims and perpetrators of undue influence are profiled, and several scenarios are used to illustrate prevention and intervention strategies.

L4404-14

Sklar, J.

Elder and Dependent Adult Fraud: A Sampler of Actual Cases to Profile the Offenders and the Crimes They Perpetrate

Journal of Elder Abuse & Neglect; Vol. 12 (2), 19-32; 2000

This article discusses elder and dependent adult fraud, and profiles four offender groups: (1) adult children, grandchildren, or other relatives; (2) professional or hired caretakers; (3) friends or others in trusted positions; (4) professional crime groups that target elders and dependent adults. Summaries of actual cases prosecuted by the Santa Clara District Attorney's office are used to illustrate these types of crimes. The article also touches upon preventative tips and investigative tools employed in dealing with fraud.

L4498-10

Abramson, B.

Ethical Considerations in Elder Law Cases

Wisconsin Lawyer; Vol. 73 (9); September 2000

This article presents five legal scenarios that highlight the "4 C's" of Ethics in Elder Law: client identification, conflicts of interest, communications, and competency. In addition to addressing fiduciary issues, there are guidelines as to how the attorney may assist clients in danger of physical abuse. (Note: This article is available online only at <http://www.wisbar.org/wislawmag/2000/09/abram.html>)

L4500-16

Hughes, M.

Remedying Abuse by Finance Agents

Wisconsin Lawyer; Vol. 73 (9); September 2000

This article describes a number of legal remedies that may be used in pursuing an

agent under a Power of Attorney who has financially abused his/her Principal. Remedies presented include: a review of the Agent's performance; steps to revoke the Power of Attorney document; a Constructive Trust; an action for accounting; eviction; surcharge against the Agent; and theft loss as a federal income tax deduction. (Note: This article is available online only at <http://www.wisbar.org/wislawmag/2000/09/hughes.html>)

L4501-7

Henningsen, E.

Preventing Financial Abuse by Agents Under Powers of Attorney

Wisconsin Lawyer; Vol. 73 (9); September 2000

This article recommends that attorneys reduce the risk of financial abuse by Powers of Attorneys by: (1) drafting documents that clearly explain the limits to the Agent's authority; (2) educating the Agent about financial responsibilities and limitations; (3) including "oversight" provisions into the document to increase the chances of discovering financial abuse; (4) including documentation and testimonial evidence to prove that the Agent is aware of limits to his/her authority. (Note: This article is available online only at <http://www.wisbar.org/wislawmag/2000/09/henning.html>)

L4544-5

Pennant, L.

Unresolved Grief: A Risk Factor for Abuse and Neglect in Old Age

Generations; 70-74; Summer 2000

Using the case study of Anne Morrow Lindbergh, the author demonstrates how emotional vulnerability, particularly unresolved grief, may be exploited by unscrupulous service providers. The narrative describes how a psychotherapist exerted undue influence in order to benefit financially and procure employment for friends at the expense of this disabled celebrity and her family. Practical recommendations to prevent such manipulation are outlined. (This article is part of a special edition of Generations dedicated to the recognition of the problem of elder abuse.)

N4648-13

Thilges, A.

Comment: Abuse of a Power of Attorney: Who is More Likely To Be Punished, the Elder or the Abuser?

The Journal of the American Academy of Matrimonial Lawyers; Vol.16, p579; 2000

This article discusses how states statutes are addressing financial exploitation of elders through misuse of power of attorney rights. Misuse of power of attorney is classified alternately as theft, elder abuse, embezzlement and exploitation (specifically) in various states, and implied in other state legislation. The article details laws from Arizona, Utah, Montana, Nevada, California, Oklahoma, Louisiana, Florida, Illinois, North Dakota, Oregon, Vermont, Georgia, Minnesota, South Dakota, Indiana and Delaware. (This article is available electronically through Lexis-Nexis subscription services.)

N4649-23

Dessin, C.

Financial Abuse of the Elderly

Idaho Law Review; Vol. 36 p203; 2000

As financial abuse of the elderly appears to be a growing phenomenon, this article seeks to outline types of financial abuse and examine possible remedies and preventions. Theft, fraud and scams, intentional misuse of an elder's assets by a fiduciary or caregiver, and negligence are four broad categories identified. A case example is provided to illustrate the difficulties in determining if financial abuse has occurred, and if so, how it should be categorized. The subtleties of financial abuse, compounded by the rights to privacy and autonomy, create difficulties in detection of abuse by guardian, power of attorney or caregiver. Remedies include civil and criminal penalties, protective orders, but will also require further definition and training, as well as funding and education for the state offices charged with the responsibility of addressing financial abuse of the elderly. (This article is available electronically through Lexis-Nexis subscription services.)

N4715-50

Dessin, C.

The Impaired Matrimonial Client: Financial Exploitation Statutes' Impact on Domestic Relations Practice

Journal of the American Academy of Matrimonial Lawyers; Vol. 16 p379; 2000

This article examines, state by state, those statutes addressing exploitation and financial abuse of the elderly, and the impact that this has on matrimonial law practice. The discussion centers on definitions and categorization of the offenses, and the mandatory reporting requirements (if applicable) with noted exceptions. (This article is available electronically through Lexis-Nexis subscription services.)

P5115-5

Wasik, J.

The Fleecing of America's Elderly

Consumers Digest; p77-p83; March/April 2000

This article provides an overview of financial exploitation of America's elderly. With those aged 50 and older controlling at least 70 per cent of the country's household income, elders, particularly those who are housebound and/or impaired, are often targeted. Professionals agree that most cases of financial abuse remain unreported, and that most of the perpetrators are family members or in-home caregivers often misusing power of attorney and manipulating elders with undue influence. This discussion examines reasons for underreporting, as well as examples of effective prevention and intervention models such as the interdisciplinary Elder Person's Estate Unit in Los Angeles.

L4505-5

Hyman, J.A.

Self-Financing Long-Term Care: The Elder Law Attorney as Investment Counselor

The ElderLaw Report; Vol. XI (8), 1-5; March 2000

In this article, the author points out that the elder law attorney is performing many functions of financial planning and should be able to assist the elderly client in understanding self-financing alternatives to the Medicaid process for long-term care planning.

A151-101

Wilson, L.

Financial Exploitation in Oregon's Senior and Disabled Population (1991-1998)

Thesis/Exit Project, Dept. of Planning, Public Policy and Management and the Graduate School of the University of Oregon; March 2000

As quoted from the abstract: "This study is a review of characteristics of both alleged victim and alleged perpetrator to create a baseline profile for future studies. Data includes 3,034 financial exploitation cases and characteristic information for 2,508 seniors in a community setting and 355 persons with a disability receiving services through Oregon's Senior and Disabled Services Division. This study is unlike previous studies that focus attention between genders; it focuses on men and women as individual populations and found senior women more likely to be victims of financial exploitation."

K4323-9

Barron, T.

Financial Exploitation of the Infirm Elderly: A Delaware Perspective

Delaware Lawyer; Vol. 18 (1), 12-20; Spring 2000

This article discusses Delaware's approach to financial abuse of the infirm elderly. The various topics discussed include legislative initiatives taken by the state of Delaware, the role of Adult Protective Services in financial abuse cases, the profiles of both the perpetrator and the victim as generally seen in the court room, as well as future initiatives that need to be taken to aid in the prosecution of the perpetrator.

N4884-9

Walsh, K. & Bennett, G.

Financial Abuse of Older People

Journal of Adult Protection; Vol. 2 (1), 21-29; February 2000

This article presents an overview of financial abuse of elders. In addition to offering guidelines to distinguish between "reasonable exchanges" and misappropriation, potential indicators related to abusers and victims are listed. Prevention tips from the British Geriatric Society are included. Complexities of financial issues surrounding long-term care placement and recommendations by the Royal Commission on Long Term Care (1999) are also discussed.

P5275-21

Choi, N. & Mayer, J.

Elder Abuse, Neglect, and Exploitation: Risk Factors and Prevention Strategies

Journal of Gerontological Social Work; Vol. 33 (2), 5-25; 2000

As quoted from the abstract: "Along with health care professionals, social workers are the professionals most likely to be responsible for detecting signs of elder maltreatment and providing interventions and preventive services. In this study, using data from a county adult protective services unit, we discuss the complex nature of domestic elder maltreatment, identify risk factors for different types of maltreatment, and recommend prevention strategies. Specifically, we compare self-neglecting elders and those abused and/or neglected by others. Of the latter, we further compare risk factors for physical and emotional/psychological abuse and/or neglect with risk factors for financial exploitation only. The risk factors analyzed include elders' gender, age, living arrangement, acute or chronic health conditions, mental health status, cognitive deficits, size of social support, and alcohol abuse. As preventive strategies, we discuss case-management services, caregiver support services, and alcohol/substance abuse screening and treatment." Among the findings, elders who abused substances were more likely to be self-neglecting; cognitive deficits, inability to manage finances and home ownership were risk factors for financial abuse, which was more often perpetrated by strangers; and elders with greater physical health problems were more vulnerable to abuse and neglect by others.

M46-132

The Executive Office of Elder Affairs, Commonwealth of Massachusetts

Replicating the Massachusetts Bank Reporting Project - A Guide for Other States

Executive Office of Elder Affairs, Commonwealth of Massachusetts; 1997

As quoted from the manual: "The Massachusetts Bank Reporting Project is the first statewide public/private partnership to prevent elder financial exploitation. The project educates bank employees to recognize financial exploitation and other types of abuse, and report them to the appropriate authority..." This guide is meant to be used by other states and adult protective services wanting to model this program. {To request a copy or for more information contact The Massachusetts Bank Reporting Project, Executive Office of Elder Affairs, Boston, MA 02108, Phone (617) 222-7484.}

M9-26

Fox, C., Price, G., Scheft, J. & Irving, B.

The Bank Reporting Project - An Edge Against Elder Financial Exploitation - Employee Training Manual (Massachusetts)

Commonwealth of Massachusetts; First Edition, 1995

This manual is a quick reference guide developed especially for employees of participating banks. It describes common situations, gives information on recognizing the symptoms of exploitation, and outlines the appropriate response of the employee in suspicious circumstances. {To request a copy or for more information contact The Massachusetts Bank Reporting Project, Executive Office of Elder Affairs, Boston, MA 02108, Phone (617) 222-7484.}

M10-161

Fox, C., Price, G., Scheft, J. & Irving, B.

The Bank Reporting Project - An Edge Against Elder Financial Abuse - Trainer Reference Manual (Massachusetts)

Commonwealth of Massachusetts; First Edition, 1995

This manual, developed with the expertise of many professionals in both public and

private sectors, is a comprehensive reference tool for financial institutions training personnel to identify and report elder financial exploitation. It addresses many questions and issues relating to the financial exploitation of older customers. {To request a copy or for more information contact The Massachusetts Bank Reporting Project, Executive Office of Elder Affairs, Boston, MA 02108, Phone (617) 222-7484.}

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Protective Services for Adults Financial Exploitation Investigations

New York State Social Services Law 473 and regulations 18 NYCRR Part 457 require that local social services departments, through their Protective Services for Adults program, receive and investigate reports of impaired individuals who may be in need of protection from financial exploitation. Financial exploitation is defined as the improper use of an adult's funds, property or resources by another individual, including but not limited to fraud, false pretenses, embezzlement, conspiracy, forgery, falsifying records, coerced property transfers or denial of access to assets.

In conducting these investigations, social services officials often need to contact banks and other financial institutions to determine if exploitation may have occurred. **Social Services Law 144-a** governs information that officials of any banking or financial organization or institution must furnish to officials of the department and of social services districts. **Section 4 of Banking Law contains similar provisions.**

Federal laws also govern banking transactions. The **Right to Financial Privacy Act (RFPA)** provides that in most circumstances, a customer must be given prior notice and an opportunity to challenge the government's action in court before the government can obtain customer information. However, the RFPA applies only to the federal government and it therefore places no restrictions on the action of state and local agencies in obtaining financial records and information.

The Financial Services Modernization Act of 1999 also known as the Gramm-Leach-Bliley Act is comprehensive legislation concerning all manner of financial transactions. Title V of Gramm-Leach-Bliley, Subtitle "A" contains strong privacy protections concerning "Disclosure of Nonpublic Personal Information". However, Section 502(e) contains several exemptions that permit disclosure without prior notice to the customer. This section appears in the U.S. Code as **15 U.S.C. 6802**

Exemptions that permit the disclosure of non-public personal information:

- 6802(e)(3)(B) permits disclosure "to protect against or prevent actual or potential fraud, unauthorized transactions, claims or other liability"
- 6802(e)(5) permits disclosure "to the extent specifically permitted or required under other provisions of law"
- 6802(e)(8) permits disclosure "to comply with Federal, State, or local laws, rules and other applicable legal requirements"

Banks that continue to be concerned about liability should be advised of the immunity provisions contained in Social Services Law(SSL) 473-b. This law provides immunity from civil liability to any person who in good faith refers an endangered adult whom they believe may need protective or other services. This section also covers reporting or testifying in any judicial or administrative proceeding.

**LEGAL ASPECTS OF ADULT PROTECTIVE SERVICES
2004 UPDATE**

CONTENTS OF TRAINING PACKET

Agenda

Adult Abuse

National legislation
State legislation
Financial records memo

Health Law

HIPAA

**Health Care Decisions Act for Persons
With Mental Retardation**

(Review)

Cases of Interest

Article 9 Mental Hygiene Law

Assisted Outpatient Treatment

Article 81

Article 17-A SCPA

LEGAL ASPECTS OF ADULT PROTECTIVE SERVICES 2004 UPDATE

Tele-training March 15, 2004

AGENDA

INTRODUCTION

2 min

Moderator: Warren Otto
SUNY Distance Learning Project

LECTURE I

40 min

Debra Sacks, Esq.
Sadin Law Institute
Brookdale Center on Aging

- Adult Abuse
- Civil Commitment
- Assisted Outpatient Treatment
- Health Law
- Representative Payee-ship

AGENCY ISSUES

10 min

Kathy Crowe, Adult Specialist II
OCFS

QUESTION AND ANSWER

10 min

Debra Sacks and Kathy Crowe

10 min

BREAK

LECTURE II

30 min

Debra Sacks

Article 81 Case Law

Guardianship Special Issues

QUESTION AND ANSWER

10 min

Debra Sacks and Kathy Crowe,

CLOSING REMARKS

5 min

Warren Otto

Adult Abuse

National Legislation (passed)

Social Security Protection Act of 2003 (H.R.743)

Title I: Protection of Beneficiaries – Subtitle A

(Sec. 101) Directs the Commissioner of Social Security to fully reimburse beneficiaries for any or part of their benefits that were misused by a representative payee that is either an organization or an individual serving 15 or more beneficiaries during any one month.

(Sec. 102) Requires non-governmental representative payees to certify annually that they are bonded and state-licensed.

Directs the Commissioner to do periodic onsite reviews of certain payees; and report to congress on the number of payee abuse cases found.

(Sec. 103) Prohibits the appointment of a payee if the person has been convicted of any offense resulting in imprisonment for more than a year; or the person is fleeing prosecution, custody or confinement for a felony.

(Sec. 104) Prohibits a representative payee from collecting a fee for services in any month if it is determined that the payee has misused any amount of the benefit for that month.

(Sec. 105) Provides that a representative payee that is not a federal, state or local government agency will be held liable for misuse of funds and that any misused amount recovered by the Commissioner shall be refunded to the beneficiary or the alternate payee.

(Sec. 106) Permits the Commissioner to require a payee to receive payments at the local SSA field office if the payee has failed to furnish an annual report or a report requested by the Commissioner.

Subtitle B: Enforcement

(Sec. 111) Provides that each misuse of benefits by a payee shall be punishable by a civil penalty of up to \$5,000, as well as an assessment of up to twice the value of any misused payments.

National Consumer Credit Reporting System Improvement Act of 2003

- Requires the FTC to prepare a summary of rights for victims of fraud or identity theft for consumers who want to obtain or dispute information contained in consumer credit reports.
- Requires the development of guidelines/regulations for identity theft and credit reporting.
- Requires the development of procedures and forms for consumers to use when reporting identity theft.
- Allows consumers to receive a free, annual credit report upon request that will include data from all three credit reporting agencies.

Telemarketing Sales Rule (TSR) Amendment 16 C.F.R. Part 310

The Amendment gives effect to the Telemarketing Consumer Fraud and Abuse Prevention Act.

Telemarketing and Consumer Fraud and Abuse Prevention Act

15 U.S.C. Sections 6101-6108

Gives the FTC and state attorneys general law enforcement tools to combat telemarketing fraud, gives consumers added privacy protections and defenses against unscrupulous telemarketers.

National Do Not Call Registry PL 108-82

Prohibits telemarketers from calling consumers whose name is on the national registry.

State Legislation (passed)

NYS Do Not Call Registry merges with National Registry

Chapter 124 of the Laws of 2003

To strengthen the effectiveness of the NYS Do Not Call Registry this Bill authorizes merging the NYS Registry with the National Registry.

Assigned Council Fees Increased

Legislative Budget Bill 5/15/03

(A 2106-B)

Beginning January 1, 2004 the rate for law guardians and 18-B counsel will be increased to \$75 an hour. Per case caps on compensation will increase from \$1200 to \$4400. This long overdue legislation will hopefully increase the number and experience of attorneys representing indigent clients

Orders of Protection – Duration

Chapter 579 of the Laws of 2003

(A 8923A)

This Bill increases the possible maximum length of an Order of Protection from one year to two years. It also increases the possible maximum length of an Order of Protection where aggravating circumstances are present from three years to five years.

Criminal History Checks

(A 7161-C) (S 5638)

The Law gives the Office of Mental Retardation and Developmental Disabilities (OMRDD) providers access to criminal histories of prospective employees for MRDD programs and facilities.

Health Insurance Portability and Accountability Act - HIPAA (45 CFR Part 160)

Covered Entity (CE) - *Covered entity* means:

1. A health plan.
2. A health care clearinghouse.
3. A health care provider who transmits any health information in electronic form in connection with a transaction covered by section 1173(a)(1) of the Health Insurance Portability and Accountability Act of 1996.

Individually Identifiable Health Information (IIHI) - *Individually identifiable health information* is information that is a subset of health information, including demographic information collected from an individual, and:

1. Is created or received by a health care provider, health plan, employer, or health care clearinghouse; and
2. Relates to the past, present, or future physical or mental health or condition of an individual; the provision of health care to an individual; or the past, present, or future payment for the provision of health care to an individual; and
 - i. That identifies the individual; or
 - ii. With respect to which there is a reasonable basis to believe the information can be used to identify the individual.

Protected Health Information (PHI)- *Protected health information* means individually identifiable health information:

1. Except as provided in paragraph (2) of this definition, that is:
 - i. Transmitted by electronic media;
 - ii. Maintained in electronic media; or
 - iii. Transmitted or maintained in any other form or medium.
2. *Protected health information* excludes individually identifiable health information in:
 - i. Education records covered by the Family Educational Right and Privacy Act, as amended, 20 U.S.C. 1232g;
 - ii. Records described at 20 U.S.C. 1232g(a)(4)(B)(iv); and
 - iii. Employment records held by a covered entity in its role as an employer.

Covered Entities May Use or disclose PHI For:

- Treatment
- Payment
- Health Care Operations
- Appointment Reminders
- Treatment Options
- Health-related Benefits and Services
- Release of Information to Family/Friends
- Disclosures required by Law

Uses and Disclosures Where Consent is NOT Required Section 164.512

- Uses and Disclosures required by law *
- Public Health Activities
- Victims of abuse, neglect or domestic violence *
- Health oversight activities
- Judicial and Administrative proceedings *
- Law enforcement purposes *
- Decedents
- Organ and tissue donation
- Research purposes
- Serious threat to health and safety
- Military

- National Security
- Inmates
- Workers' compensation

Patient Rights Regarding PHI

Confidential Communications

You have a right to request that the health provider communicate with you about your health and related issues in a particular way or at a certain location.

Requesting Restrictions

You have the right to request restrictions in the use or disclosure of your PHI for treatment, payment or health care operations. Additionally you can request that the health provider restrict the disclosure of your PHI to only certain individuals involved in your care or the payment of your care. Providers are not required to agree to your requests.

Inspection and Copies

You have the right to inspect and obtain a copy of your PHI except for psychotherapy notes.

Amendment to Health records

You may ask the health care provider to amend your health record if you believe it is incorrect or incomplete.

Accounting Disclosures

You can request a list of certain non-routine disclosures the provider has made of your PHI for non-treatment or operations purposes.

Paper copy of Notice of Privacy Practices

Right to File a Complaint

If you believe your privacy rights have been violated you may file a complaint with the provider or with the Secretary of the Department of Health and Human Services.

Provide Authorization for Other Uses and Disclosures

HIPAA Disclosure Exceptions

Use or Disclosures required by law

Section 164.512(a)

- 1) A covered entity may use or disclose PHI to the extent it is required by law and is limited to the relevant requirements of such law.
- 2) A covered entity must meet the requirements of sections c, e, or f of this section.

Disclosures about Victims of Abuse, Neglect or Domestic Violence

Section 164.512 (c)

Standard: disclosures about victims of abuse, neglect or domestic violence.

1. *Permitted disclosures.* Except for reports of child abuse or neglect permitted by paragraph (b)(1)(ii) of this section, a covered entity may disclose protected health information about an individual whom the covered entity reasonably believes to be a victim of abuse, neglect, or domestic violence to a government authority, including a social service or protective services agency, authorized by law to receive reports of such abuse, neglect, or domestic violence:
 - i. To the extent the disclosure is required by law and the disclosure complies with and is limited to the relevant requirements of such law;
 - ii. If the individual agrees to the disclosure; or
 - iii. To the extent the disclosure is expressly authorized by statute or regulation and:
 - A. The covered entity, in the exercise of professional judgment, believes the disclosure is necessary to prevent serious harm to the individual or other potential victims; or
 - B. If the individual is unable to agree because of incapacity, a law enforcement or other public official authorized to receive the report represents that the protected health information for which disclosure is sought is not intended to be used against the individual and that an immediate enforcement activity that depends upon the disclosure would be materially and adversely affected by waiting until the individual is able to agree to the disclosure.
2. *Informing the individual.* A covered entity that makes a disclosure permitted by paragraph (c)(1) of this section must promptly inform the individual that such a report has been or will be made, except if:

- i. The covered entity, in the exercise of professional judgment, believes informing the individual would place the individual at risk of serious harm; or
- ii. The covered entity would be informing a personal representative, and the covered entity reasonably believes the personal representative is responsible for the abuse, neglect, or other injury, and that informing such person would not be in the best interests of the individual as determined by the covered entity, in the exercise of professional judgment.

Disclosures for Judicial and Administrative Proceedings

Section 164.512(e)

Standard: disclosures for judicial and administrative proceedings.

1. *Permitted disclosures.* A covered entity may disclose protected health information in the course of any judicial or administrative proceeding:
 - i. In response to an order of a court or administrative tribunal, provided that the covered entity discloses only the protected health information expressly authorized by such order; or
 - ii. In response to a subpoena, discovery request, or other lawful process, that is not accompanied by an order of a court or administrative tribunal, if:
 - A. The covered entity receives satisfactory assurance, as described in paragraph (e)(1)(iii) of this section, from the party seeking the information that reasonable efforts have been made by such party to ensure that the individual who is the subject of the protected health information that has been requested has been given notice of the request; or
 - B. The covered entity receives satisfactory assurance, as described in paragraph (e)(1)(iv) of this section, from the party seeking the information that reasonable efforts have been made by such party to secure a qualified protective order that meets the requirements of paragraph (e)(1)(v) of this section.
 - iii. For the purposes of paragraph (e)(1)(ii)(A) of this section, a covered entity receives satisfactory assurances from a party seeking protecting health information if the covered entity receives from such party a written statement and accompanying documentation demonstrating that:
 - A. The party requesting such information has made a good faith attempt to provide written notice to the individual (or,

- if the individual's location is unknown, to mail a notice to the individual's last known address);
 - B. The notice included sufficient information about the litigation or proceeding in which the protected health information is requested to permit the individual to raise an objection to the court or administrative tribunal; and
 - C. The time for the individual to raise objections to the court or administrative tribunal has elapsed, and:
 - 1. No objections were filed; or
 - 2. All objections filed by the individual have been resolved by the court or the administrative tribunal and the disclosures being sought are consistent with such resolution.
- iv. For the purposes of paragraph (e)(1)(ii)(B) of this section, a covered entity receives satisfactory assurances from a party seeking protected health information, if the covered entity receives from such party a written statement and accompanying documentation demonstrating that:
 - A. The parties to the dispute giving rise to the request for information have agreed to a qualified protective order and have presented it to the court or administrative tribunal with jurisdiction over the dispute; or
 - B. The party seeking the protected health information has requested a qualified protective order from such court or administrative tribunal.
- v. For purposes of paragraph (e)(1) of this section, a qualified protective order means, with respect to protected health information requested under paragraph (e)(1)(ii) of this section, an order of a court or of an administrative tribunal or a stipulation by the parties to the litigation or administrative proceeding that:
 - A. Prohibits the parties from using or disclosing the protected health information for any purpose other than the litigation or proceeding for which such information was requested; and
 - B. Requires the return to the covered entity or destruction of the protected health information (including all copies made) at the end of the litigation or proceeding.
- vi. Notwithstanding paragraph (e)(1)(ii) of this section, a covered entity may disclose protected health information in response to lawful process described in paragraph (e)(1)(ii) of this section without receiving satisfactory assurance under paragraph (e)(1)(ii)(A) or (B) of this section, if the covered entity makes reasonable efforts to provide notice to the individual sufficient to meet the requirements of paragraph (e)(1)(iii) of this section or to seek a qualified protective order sufficient to meet the requirements of paragraph (e)(1)(iv) of this section.

2. *Other uses and disclosures under this section.* The provisions of this paragraph do not supersede other provisions of this section that otherwise permit or restrict uses or disclosures of protected health information.

Disclosures for Law Enforcement Purposes

Section 164.512(f)

1. Permitted disclosures: pursuant to process and as otherwise required by law. A covered entity may disclose protected health information:

(i) As required by law including laws that require the reporting of certain types of wounds or other physical injuries, except for laws subject to paragraph (b)(1)(ii) or (c) (1)(i) of this section; or

(ii) In compliance with and as limited by the relevant requirements of:

A. A court order or court-ordered warrant, or subpoena or summons issued by a judicial officer;

B. A grand jury subpoena; or

C. An administrative request, including an administrative subpoena or summons, a civil or an authorized investigative demand, or similar process authorized by law, provided that:

1. The information sought is relevant and material to a legitimate law enforcement inquiry;

2. The request is specific and limited in scope to the extent reasonably practicable in light of the purpose for which the information is sought; and

3. De-identified information could not reasonably be used.

The Health Care Decisions Act for Persons with Mental Retardation (Review)

Chapter 500 of the Laws of 2002

Key Provisions

- Expanded legal standard
- Details decision making process
- Right to access medical records
- Life-sustaining decisions
- Disputes/objections to health care decisions
- Provider compliance
- Immunity

Decision Making Process must consider

- Person's dignity and uniqueness
- The preservation, improvement or restoration of health
- The relief of suffering
- The unique nature and effect of artificially provided nutrition and hydration
- The entire medical condition

Life-sustaining Decisions

In order for a decision to withhold or withdraw life-sustaining treatment the mentally retarded person's incapacity to make such decisions must be re-certified. The attending physician must also certify:

- that the person is terminal, is permanently unconscious, or has a condition requiring life-sustaining treatment which is irreversible and which will continue indefinitely, and
- that the life-sustaining treatment would be an extraordinary burden, in light of the person's medical condition and the expected outcome, notwithstanding the person's mental retardation.

If the decision is to withdraw or withhold artificially provided nutrition or hydration it must be proven that either there is no reasonable hope of maintaining life, or that it poses an extraordinary burden.

CASES OF INTEREST

Civil Commitment

Article 9 of the Mental Hygiene Law

Miroslav Krajca vs. City of New York, 305 A.D.2d 375; 758 N.Y.S.2d 685; 2003

NYC APS was granted an Access Order to enter plaintiff's premises to conduct an evaluation. Shortly thereafter the plaintiff was removed from his residence and admitted to a psychiatric facility for emergency care and treatment. Subsequently a retention hearing was held. After the hearing the Supreme Court ordered the plaintiff's release, finding that there was no clear and convincing evidence that he was mentally ill and in need of retention. The plaintiff then commenced this action to recover damages for false imprisonment challenging both the Access Order and Commitment Order. Since the plaintiff never appealed or moved to vacate the orders he is now precluded from challenging their validity. Furthermore, the challenge to the Access Order was without merit since the order did not authorize his detention, but rather granted APS access to plaintiff's premises to conduct an evaluation.

Assisted Outpatient Treatment (9.60 MHL)

Matter of MacGilvray, 196 Misc.2d 469; 765 N.Y.S.2d 433; 2003

The court had ordered assisted outpatient treatment for respondent who suffers from psychological disorders as well as alcohol and substance abuse. Pursuant to Mental Hygiene Law Section 9.60, petitioner sought an additional outpatient treatment plan, replacing the representative payee responsible for managing the respondent's supplemental security income funds. Respondent sought dismissal, arguing that the statute does not authorize the court's appointment of a representative payee and that the federal statutes and regulations reserve the appointment of a representative payee to the social security administration (SSA). Denying dismissal, the court held that while the SSA treats representative payees "appointed" by state courts as nominees, appointment remains the province of the SSA and the failure of a treatment plan and court order to reflect that a representative payee's designation is subject to the final approval of the SSA does not render an order or treatment plan defective.

Matter of Kwang L., 2003 N.Y. App. Div., LEXIS 758

Matter of KL is a Queens case involving a patient who was ordered by the court to undergo a 180-day treatment regime under the Assisted Outpatient Treatment law. KL challenges the Order primarily on constitutional grounds that it permits the courts to deny

patients the “fundamental right to control the course” of their own medical treatment without any finding that the patient is incapable of making a competent decision (relying on *Rivers v. Katz*). The Appellate Division, Second Department, upheld Kendra’s Law as a legitimate exercise of the state’s *parens patriae* power. It said the concerns of the patient are outweighed by the court’s conclusion that, absent treatment, the patient is likely to relapse and hurt himself or others. The Court also upheld the constitutionality of the initial 72-hour confinement, finding that the “brief detention of a noncompliant” patient “does not constitute a substantial deprivation of liberty”. The case is now before the New York Court of Appeals for additional constitutional scrutiny.

Guardianship

Article 81 of the Mental Hygiene Law

In the Matter of McNally (Williams), 194 Misc. 2d 793; 755 N.Y.S.2d 818; 2003

The Court ruled that a woman who suffers from mild to moderate dementia living in an assisted living facility is an appropriate residence. Although the woman’s expressed preference to return to her home is to be respected, returning to her home is not in her best interests because her home is the scene of contentious disputes between two family factions. The woman’s disinterested psychiatrist and her impartial guardian support her residing at the facility, as does one of the combative family factions. Moreover, the woman has stated that she is comfortable and content at the facility. She has peace of mind and the disruptive influences of her feuding relatives can be far more readily controlled if she remains at the facility. (MHL Sections 81.02 (c)(3); 81.20(a)(7); 81.22(a)(9))

In the Matter of Jospe (McGarry), Sup. Ct. Suffolk Co., Index # 00185/03

(Berler, J.)

AIP consented to the appointment of a guardian and admitted to functional limitations. She nominated her friend and neighbor to be guardian. This friend was appointed. The only matter in dispute was AIP’s place of abode. AIP was in a psychiatric hospital at the time of the petition and hearing. The treatment team maintained that she could be discharged only to an assisted living facility or adult home. The AIP wanted only to return home to her own apartment. While in the hospital she met another patient who happened to be a licensed home health aide. This woman needed a job and a place to live. She and the AIP agreed that she would assist the AIP in exchange for her room and board. Citing MHL Section 81.22 (a)(9) the court held that the availability of less restrictive alternative resources in the community dictated that the AIP should not be removed from her home and granted the guardian the power to change the AIP’s abode only subject to further court order.

In re Application of Department of Social Work of Beth Israel Medical Center (Panartos), 308 A.D.2d 350; 764 N.Y.S.2d 87; 2003 N.Y. App. Div.

Appellate Division reverses trial court where trial court refuses to permit a jury trial even though appellant made timely demand therefore. Instead, trial court held “preliminary hearing” to determine whether there were any triable issues of fact and decided that there were none. Mental Hygiene Legal Services (MHLS) was not given any warning that there would be a hearing that day and had no witnesses and thus could not rebut the hospital’s case. Court used the preliminary hearing to find there were no triable issues of fact to justify a jury trial.

The Appellant division points out that “the lower court’s conclusion that no jury trial was warranted . . . ignores that no factual record of any value was even developed, through no fault of the appellant. We are not holding that a jury trial is required under Article 81 merely because it is demanded, without the consideration of whether there are facts to be decided, but only that on this record, we cannot conclude that there were no factual issues to be resolved. Since the record is clear that appellant denied the need for a guardian and MHLS was not afforded an opportunity to make a record in support of this position, we find that a trial by jury is in order”

In Re Eggleston (Wali Muhammed), 303 AD2d 263 (1st Dept. 2003)

A Petition was brought by APS for appointment of a guardian for a man, with a psychiatric history, facing eviction. The lower court dismissed the petition without holding a hearing. A hearing is required to dismiss or grant an Article 81 petition. It may be requested by any party. Here the AIP had made repeated requests for appointment of counsel. The lower court concluded that the petition lacked merit and, on that basis, declined to accommodate the AIP’s request for counsel. The Appellant Division states “...upon the AIP’s request and in view of the facts, the court should have appointed a guardian or granted a short adjournment to allow the AIP to hire counsel. An attorney would have more effectively presented the AIP’s own position and would have explained the proceeding to the AIP. The Appellant Division reversed the dismissal of the Petition and remanded for a hearing.

In the Matter of the Application of Eggleston (A.J. and B.J.), 2004 N.Y. Misc. LEXIS 30 (Sup. Ct., Kings Co.)

APS petitioned for guardian for elderly married couple who reside with one of their adult sons. The petition alleged that the son is physically abusive and financially exploits his parents. Furthermore, the son hoards garbage, allowed the home to fall into disarray and refuses to allow repairs to the premises. The court evaluator moved to close the courtroom and exclude all but respondents, their attorneys, Counsel for the petitioner, the court evaluator and the doctor. She also sought a redaction of the court evaluator’s report and sealing of the record. The evaluator maintained that the couple were fearful of their

son and would not be as forthcoming in his presence. Likewise, the evaluator had interviewed individuals who were fearful of retribution by the son if he learned what they told the evaluator. There were no objections to this request by any of the parties. The court found that “the sound administration of justice, the privacy of the respondents and the nature of the proceedings outweigh any public or other interest in keeping these proceedings open. Good cause to seal these proceedings and to close the courtroom to all non parties has been shown” (MHL Section 81.14).

Matter of Robin Garson (Gershenoff), 2003 N.Y. Misc. LEXIS 1678 (Sup. Ct., N.Y. Co.)

Attorney in Fact breached his fiduciary duty and must repay \$163,000 to his aunt. An AIP executed powers of attorney naming her nephew, a Kings County Supreme Court Justice, to be her attorney in fact. Pursuant to MHL Section 81.44 the AIP's property management guardian sought the return of \$163,000 in undocumented withdrawals and reimbursements. Stating that cash payments on his aunt's behalf exceeded the undocumented withdrawals, the nephew admitted to keeping no records or receipts of payments made on his aunt's behalf. The court ordered the AIP's nephew to return \$163,000 to the property management guardian, ruling that he breached his fiduciary duty to account for money while managing his aunt's financial affairs. The court deemed a cash flow sheet purportedly accounting for the undocumented withdrawals to be fundamentally flawed because items such as rent, telephone and utility service, listed as expenses, would have been paid by check.

Matter of Nora McL. C., 308 A.D.2d 445; 764 N.Y.S.2d 128; 2003

Appellant Division affirms trial court's appointment of a third party guardian of the person and property where niece who held POA and HCP evidenced “self dealing” by transferring AIP's stock and other assets into her own name.

Jacobs (Sarah Newton) v. Newton, Faye Baker and Rockaway Home Attendant Services, 1 Misc. 3d 171; 768 N.Y.S.2d 94; 2003

The guardian daughter, on behalf of her incompetent mother, brings a negligence suit for failure to provide proper services, against the brother and wife who took the mother in, and against the agency that provided home care services. This case provides an extensive discussion of the following issues: the duty owed by an adult child for a needy parent, NY Penal Law Section 260.32 and 260.34 – Endangering the Welfare of a Vulnerable Elderly Person, the duty of a home care provider to prevent injury to the patient. The court, citing the novelty of the issues and factual uncertainties, ruled in favor of the defendants, dismissing the claim against them.

55th Street Management Corp. vs. Leslie Goldman, 768 N.Y.S.2d 747, 2003

The case poses the question: if a person believes he/she was defamed in an out of court statement made to a court evaluator in the context of a guardianship proceeding, will a defamation action lie or, alternatively, will the defamation claim be defeated by the longstanding common law rule that a statement made in the course of a judicial proceeding is absolutely privileged so long as pertinent to the controversy? The court was satisfied, given the legislative design of the scope and processes of an article 81 guardianship proceeding, “that extending recognition of the absolute privilege to remarks made to a court evaluator is vital to the judicial quest for soundly based determinations on the paramount issues presented in a guardianship proceeding, i.e. whether an innocent person suffers from an incapacity and, for such reason, should be stripped of all or some degree of liberty and control of person and property. Accordingly, where a statement is pertinent to the litigation, given that the court evaluator serves as an investigative agent of the court and acts on behalf of the court and that no public policy mandates to the contrary, this court holds that a statement made to a court evaluator is a communication properly subject to the absolute privilege”.

In the Matter of Balich, NYLJ, 7/22/03, Pg 16, col. 2 (Sup. Ct., Special Term, Suffolk Co.) (Berler, J.)

Pursuant to Article 81 the petitioner sought a guardian for an AIP. The AIP, partially paralyzed after a coma, stroke and brain surgery, needed a feeding tube to survive. Her children asserted that petitioner, a friend and companion of the AIP, violated the AIP’s health care proxy by approving the feeding tube, contending that he ordered the feeding tube “more for his benefit” than their mother’s. The court refused to appoint a guardian and rejected arguments by the AIP’s children that the petitioner was not acting in the best interests of the AIP. In addition to finding “nothing venal” in the petitioner’s decision regarding the feeding tube, the court concluded that evidence of the AIP’s sufferance of irreversible brain damage was “quite limited”, noting that “there are numerous references in the AIP’s medical chart to her being alert and responsive and references to her communication and attempts to communicate.”

In re Margaret Russell, No.2003-01184 (N.Y. Sup. Ct., Jan. 24, 2003)

Family and Children’s Services was appointed guardian for IP but was not granted end of life decision making powers. In 1991, IP signed a Health Care Proxy (HCP) when she was competent stating that she did not want artificial nutrition or hydration under any circumstances. There was no precondition that she have irreversible brain damage or terminal illness. In the 1991 HCP she named her nieces as her proxy. In 1995 she executed a Living Will that also said no artificial nutrition and hydration but includes the precondition that she be suffering from a terminal illness with irreversible brain damage. IP then executed a 1999 HCP. This time she named Roger Russell as her proxy but she did not address the end of life issues specifics in that document. In 2003, when IP was terminally ill, Roger Russell wanted to keep her on life support. The court conducted a hearing to determine the IP’s prior expressed intent. The court finds that putting the IP

on life support is contrary to the IP's wishes as expressed in the earlier HCP and Living Will and that such was her only expression of intent. The court found that the latter HCP, which did not address the end of life decision, did not cancel out the express intent in the previous instruments and therefore the court voids the later HCP and empowers the guardian to make end of life decisions consistent with the IP's expressed intent as found by the court.

17-A of the Surrogate court Procedure Act

In the Matter of MB, NYLJ, 11/ 7/03, Pg 20 (Surr. Ct., Staten Island) (Fusco, S.)

The guardian of a mentally retarded man in a terminal, irreversible vegetative state – appointed before Surrogates Court Procedure Act Sections 1750 and 1750-b, the Health Care Decisions Act (HCDA), took effect – sought the man's removal from a respirator and life-support. The man's doctors and all other interested parties agreed that to do so was in his best interest. However, Mental Hygiene Legal Services contended that the court had to issue an order giving the guardian power to act because his authority predated the HCDA. The court held that the HCDA applies retroactively to all guardians. The court noted that the last sentence of Section 1750 provided that the failure of a guardian appointed prior to the HCDA's effective date to include, within the petition, the determination of two physicians that the mentally retarded person lacks the capacity to make health care decisions, "shall not preclude such guardians from making health care decisions."

In the Matter of AB, 196 Misc.2d 940; 768 N.Y.S.2d 256; 2003

The court ruled the mother and natural guardian of her child was empowered to decide to withhold extraordinary life-prolonging measures. In this decision that broke with established case law, the judge authorized withdrawal of a respirator from a child who was in a persistent vegetative state but not mentally retarded. Much of the rationale for the unprecedented decision was the Health Care Decision Making Act for Persons with Mental Retardation (HCDA). The judge wrote:

"..While this statute specifically addresses guardians of individuals with mental retardation appointed under Article 17-A of the Surrogates Court Procedure Act, it also reflects an evolving consensus in this State that the law must better allow health care practitioners, patients and their families to make decisions in the best interests of their children when faced with tragic circumstances."

The judge went on to describe at length how AB's condition met or exceeded each and every standard in the Health Care Decision Act which must be met to withdraw life-sustaining treatment. This is the first attempt by the court to create a crack in New York's restrictive law governing life- sustaining treatment. The first legislative attempt was the passage of the HCDA

Today's Teleconference

- Adult Abuse Updates
- Civil Commitment
- Assisted Outpatient Treatment
- Health Law
- Representative Payee-ship

National Legislation (passed)

- Social Security Protection Act of 2003 (H.R.743)
- National Consumer Credit Reporting System Improvement Act of 2003
- Telemarketing Sales Rule (TSR) Amendment 16 C.F.R. Part 310

National Legislation (passed)

- Telemarketing and Consumer Fraud and Abuse Prevention Act
15 U.S.C. Sections 6101-6108
- National Do Not Call Registry
PL 108-82

State Legislation (passed)

- NYS Do Not Call Registry merges with National Registry
Chapter 124 of the Laws of 2003
- Assigned Council Fees Increased
Legislative Budget Bill 5/15/03
(A 2106-B)

State Legislation (passed)

- Orders of Protection – Duration
Chapter 579 of the Laws of 2003
(A 8923A)
- Criminal History Checks
(A 7161-C) (S 5638)

Health Insurance Portability and Accountability Act – HIPAA (45 CFR Part 160)

- Covered Entity (CE)
- Individually Identifiable Health Information (IIHI)
- Protected Health Information (PHI)

Covered Entities May Use or Disclose IHI for:

- Treatment
- Payment
- Health Care Operations
- Appointment Reminders
- Treatment Options

Covered Entities May Use or Disclose IHI for:

- Health-related Benefits and Services
- Release of Information to Family Friends
- Disclosures Required by Law

**Uses and Disclosures Where Consent is NOT Required
Section 164.512**

- Uses and Disclosures Required by Law
- Victims of Abuse, Neglect or Domestic Violence
- Judicial and Administrative Proceedings
- Law Enforcement Purposes

Patient Rights Regarding PHI

- **Confidential Communications**
- **Requesting Restrictions**
- **Inspection and Copies**
- **Amendment to Health Records**

Patient Rights Regarding PHI

- **Accounting Disclosures**
- **Paper Copy of Notice of Privacy Practices**
- **Right to File a Complaint**
- **Provide Authorization for Other Uses and Disclosures**

HIPAA Disclosure Exceptions

- **Use or Disclosures required by law**
Section 164.512(a)
- **Disclosures about Victims of Abuse, Neglect or Domestic Violence**
Section 164.512 (c)
- **Disclosures for Judicial and Administrative Proceedings**
Section 164.512(e)

HIPAA Disclosure Exceptions

- **Disclosures for Law Enforcement Purposes**

Section 164.512(f)

1. Pursuant to process and as required by law
2. For identification and location purposes
3. For victims of a crime

HIPAA Website

Health and Human Services
Office for Civil Rights
<http://www.hhs.gov/ocr/hipaa/>

The Health Care Decisions Act for Persons with Mental Retardation

Chapter 500 of the Laws of 2002

Key Provisions

- Expanded legal standard
- Details decision making process
- Right to access medical records
- Life-sustaining decisions

**The Health Care Decisions Act for
Persons with Mental Retardation**

Chapter 500 of the Laws of 2002

Key Provisions (cont):

- Disputes/objections to health care decisions
- Provider compliance
- Immunity

**The Health Care Decisions Act for
Persons with Mental Retardation**

Chapter 500 of the Laws of 2002

Decision Making Process Must Consider

- Person's dignity and uniqueness
- The preservation, improvement or restoration of health
- The relief of suffering

**The Health Care Decisions Act for
Persons with Mental Retardation**

Chapter 500 of the Laws of 2002

Decision Making Process Must Consider

- The unique nature and effect of artificially provided nutrition and hydration
- The entire medical condition

**The Health Care Decisions Act for
Persons with Mental Retardation**

Chapter 500 of the Laws of 2002

Life-sustaining Decisions

- Attending physician must re-certify incapacity to make such decisions , and
- Must certify that the person is terminal, is permanently unconscious, or has a condition requiring life-sustaining treatment which is irreversible and which will continue indefinitely, and

**The Health Care Decisions Act for
Persons with Mental Retardation**

Chapter 500 of the Laws of 2002

Life-sustaining Decisions

- Must certify the life-sustaining treatment would be an extraordinary burden, in light of the person's medical condition and the expected outcome, notwithstanding the person's mental retardation.

**NYS Laws: Financial
Exploitation**

- SSL 473 provides authority to investigate abuse, neglect and exploitation
- SSL 473.6 defines financial exploitation
- SSL 144-a requires banks to furnish certain information to social services officials
- Banking Law Section 4 also applies
- SSL 473-b – civil immunity

Federal Laws

- The Right to Financial Privacy Act applies only to the federal government's request for information
- Financial Services Modernization Act of 1999, also known as the Gramm Leach-Bliley Act, is in U.S. Code as 15 U.S.C. 6802

Gramm Leach Bliley Act Exemptions Permit Disclosure

- 6802(e)(3)(B)- to protect against or prevent fraud...
- 6802(e)(5) –to the extent permitted under other provisions of law
- 6802(e)(8) – to comply with Federal, State, or local laws...

Resource Information:

www.elderabusecenter.org

Clearinghouse on Abuse and Neglect of the Elderly (CANE)-
<http://db.rdms.udel.edu:8080/CANE>

Examples of Resources Available from CANE

- “Daily Money Management Programs- A Protection Against Elder Abuse”
- “Legal Issues Related to Bank Reporting of Suspected Elder Abuse”
- “Prosecuting Financial Abuse: A Tool Kit”
- “Financial Crimes Against the Elderly- Problem Oriented Guides for Police”

Adult Services Automation Project Update

- Pilot of Phase I and II completed- covering Intake, Client Information and Basic Caseload Information
- Phase III now testing Progress Notes, Administrative Screens, Caseworker Notes
- OFT now conducting site surveys for distribution of computers

ASAP Update cont.

- Phase IV will test Assessment/Services forms, Case Assignments, Basic Search
- Phase V will test Reviews/Updates, Alerts, Letters and Reports
- Statewide Rollout and Implementation Planned for Dec 04- Feb 05

Questions on ASAP

- Sandra Carrk, Bureau of Information Technology 518 486-3236
- Kathleen Crowe, Bureau of Adult Services, 518 486-3451

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Evaluation And Handouts

Intranet

<http://sdssnet5/ohrd>

Internet

<http://www.dfa.state.ny.us>

**Probation and Child Welfare:
Building Effective
Relationships**

**March 22, 2004
1:30-3:30**
