



# Elder Law Newsletter

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## SB 370 allows courts to enter limited judgments on fees

*By Ryan Gibb, Elder Law Section Legislative Subcommittee Chair*

The Elder Law Section sponsored one bill in the 2009 legislative session and can report that its efforts were successful.

Senate Bill 370 proposed amendments to ORS 111.275 and ORS 125.030. These amendments allow the court to enter limited judgments on requests for attorney fees and on requests for fiduciary fees in estate proceedings and in protective proceedings. The practice of entering limited judgments in these situations is common in some courts, but others would not enter the limited judgments because there was no clear statutory authority.

SB 370 amends ORS 111.275, allowing the court to enter a limited judgment on "(e) a decision on a request for an award of expenses under ORS 116.183."

The bill amends ORS 125.030, allowing the court to enter a limited judgment on "(e) a decision on a request for an award of expenses under ORS 125.095."

These amendments were not intended to create an additional basis for an award of attorney or fiduciary fees. Rather, the intent was to unify the practice throughout the state.

The bill was also intended to allow the attorney or fiduciary the security of having a judgment in those cases where the fees may not be paid for some time. This can be a significant issue if the assets of the estate or the protective proceeding are not liquid, because a limited judgment provides more security than a simple order.

This bill takes effect on January 1, 2010. ■

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## Under SB 16, advance directive covers hospitalization for dementia

By Penny L. Davis, Attorney at Law



*Penny L. Davis is a partner in Davis Pagnano McNeil & Vigna, LLP, dba The Elder Law Firm, in Portland. She chairs the OSB Elder Law Section.*

Senate Bill 16 (2009 Oregon Laws Chapter 381) gives a health care representative named in an advance directive for health care the power to consent to the involuntary psychiatric hospitalization of the principal for up to 18 days for the treatment of behavior caused by dementia. The change applies to existing advance directives as well as to those executed on or after June 18, 2009, the effective date of the legislation.

Prior to the passage of the bill, ORS 127.540 prohibited a health care representative from consenting to "...admission to or retention in a health care facility for care or treatment of mental illness." Section 1(7) of SB 16 adds a definition of "dementia" to ORS 127.505, and section 2(6) amends ORS 127.535 to provide that hospitalization for up to 18 days for treatment of dementia-related behavior is not prohibited by ORS 127.540.

Geriatric psychiatrist Maureen C. Nash, MD, MS, requested the amendment through the Senate Interim Committee on Health and Human Services. Dr. Nash, who is a staff psychiatrist at the Tuality Center for Geriatric Psychiatry, testified at a legislative hearing on May 13 that she was seeing increasing numbers of older adults being referred to Tuality for psychiatric hospitalization due to dementia and behavior disturbances. She expressed her concern that dementia patients who had signed advance directives were still being required to go through the mental health involuntary commitment process or the temporary guardianship process in order to be admitted to psychiatric facilities for treatment and stabilization.

The OSB Elder Law Section did not oppose the bill in its final form, but did oppose an earlier version of the bill that would have allowed a health care representative to consent to psychiatric hospitalization for an unlimited length of time with no review and no opportunity for the principal to object.

The initial version of the bill proposed modifying the statutory form of the advance directive by adding a section to indicate whether the health care representative had been authorized to consent to short-term hospitalization for treatment of dementia. SB 16, as adopted, does not add this option or otherwise alter the advance directive form. However, at least one publisher and a state agency are circulating alternative advance directive forms based on the initial version of SB 16. It is unclear whether the modified forms will be accepted as valid advance directives.

ORS 127.535(4) states that a health care representative has the duty to act consistently with the principal's wishes as set out in the advance directive or "...as otherwise made known..." to the health care representative. A person who does not want his or her health care representative to have the authority to consent to short-term hospitalization for dementia can limit or restrict the health care representative's authority by including appropriate language in the "special conditions or instructions" section in Part B of the advance directive form.

Advance directives are likely to be on the legislature's agenda again in 2011. Section 3 of SB 16 provides that the amendment to ORS 127.535 authorizing a health care representative to consent to short-term hospitalization for dementia care will sunset on January 2, 2012. ■



# HB 3077 changes spousal elective share statutes

By S. Jane Patterson, Attorney at Law

The 2009 Oregon Legislature passed HB 3077, which amends former ORS 114.105-114, the estate-administration statutes that deal with the elective share of a surviving spouse.

Previously, the elective share applied only to the decedent’s probate assets, and the surviving spouse was entitled to only 25 percent of the net estate. This could result in fundamental unfairness. For example, the surviving spouse could be disinherited entirely by nonprobate transfers. Also, the elective share could be less than the surviving spouse would have normally received in a dissolution proceeding, when generally each spouse is awarded one-half the marital assets. The existing elective share statute encouraged separation or dissolution of marriage as a means of protecting a spouse’s share of marital assets.

Efforts at reforming the statutes began back in 1996 when the Estate Planning Section of the Oregon State Bar formed a subcommittee. Thereafter, the Oregon Law Commission was established, and a work group, chaired by Professor Bernie Vail, was formed to recommend statutory changes. A bill was presented to the legislature in 2007 but did not pass out of the Judiciary Committee. The work group submitted a different version of the bill to the 2009 legislature.

## What’s changed

The major changes are that the elective share is based on the “augmented estate,” and that the percentage increases from five percent for marriages of less than two years’ duration, to a maximum of 33 percent for marriages of fifteen years’ duration. **See table at right.**

Included in the augmented estate are the decedent’s probate and non-probate assets, the surviving spouse’s assets, and the probate and non-probate assets received by the surviving spouse from the decedent net of claims and expenses.

Excluded are: completed gifts made prior to the decedent’s death, irrevocable transfers in which the surviving spouse signed a written joinder or written consent, community property, or life insurance proceeds unless the surviving spouse is the recipient of the proceeds.

To make the election, the surviving spouse – or the surviving spouse’s conservator, guardian, or attorney-in-fact – must file a petition or motion within nine months of the date of death. This can be done by filing a petition for appointment of a personal representative and a motion within the probate proceeding, by filing a motion in an existing probate proceeding, or by filing a separate proceeding.

If the court determines that the elective share is payable, the court will determine the amount of the elective share and also its payment pursuant to priorities established in the act. If property is not in the possession of a personal representative, the court will determine the liability of any person who has an interest in, or possession of, the property.

Length of Marriage	Elective Share Percentage of Augmented Estate
Less than 2 years .....	5%
2 years but less than 3 years .....	7%
3 years but less than 4 years .....	9%
4 years but less than 5 years .....	11%
5 years but less than 6 years .....	13%
6 years but less than 7 years .....	15%
7 years but less than 8 years .....	17%
8 years but less than 9 years .....	19%
9 years but less than 10 years .....	21%
10 years but less than 11 years.....	23%
11 years but less than 12 years.....	25%
12 years but less than 13 years .....	27%
13 years but less than 14 years .....	29%
14 years but less than 15 years .....	31%
15 years or more .....	33%

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## Spousal elective share

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*It is likely that amendments will be required in the future when the elective share is applied to actual estate situations.*

If the election has been made and the surviving spouse dies before receiving the share, a personal representative can collect it on behalf of the surviving spouse's estate.

Many valuation issues are involved, particularly since trusts and present or future interests are included. The statute values a trust which distributes income and allows for invasion of principal for health, education, support, and welfare at 100 percent. A trust that distributes income only is valued at 50 percent.

The value of any property included in the augmented estate will be reduced by the amount of enforceable claims and encumbrances. An exemption or deduction for estate or inheritance tax purposes which is attributable to the marriage and the surviving spouse inures to the benefit of the surviving spouse.

In the interests of administrative efficiency, the statutes provide for set percentages rather than a case-by-case determination of what constitutes marital assets and how those assets should be divided in a fair and equitable manner. That determination would still be considered by the court in making a determination whether to deny or reduce the elective share in the event of the parties' separation before the death of a spouse, taking into account the reason for the separation, its length, whether it is a first or subsequent marriage, and the contributions of the surviving spouse to the decedent's property.

### Effect on Medicaid

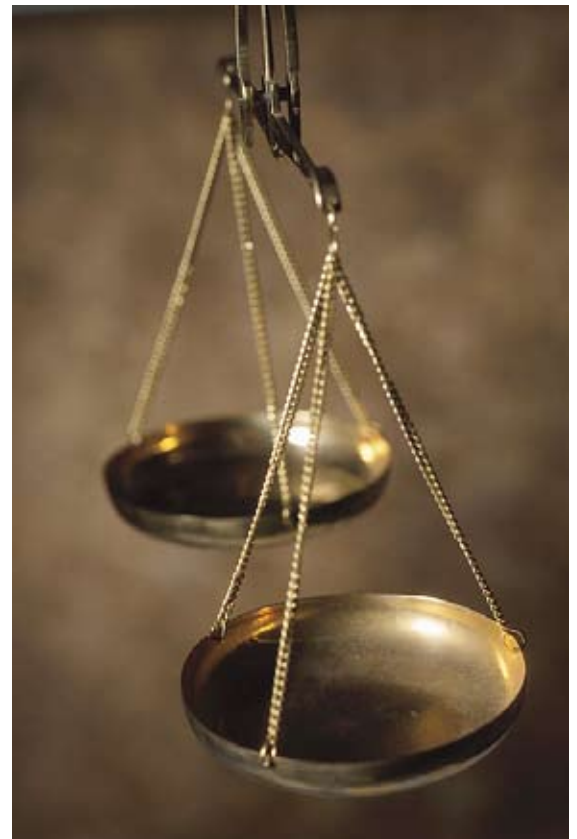
The new statute will affect situations in which the surviving spouse is a recipient of Medicaid benefits. The elective share increases the extent to which the decedent's (community spouse's) assets may be available as a resource for the ill spouse, due to the expansion of the election to the augmented estate and the increased percentage share. However, the elective share is less than 25 percent when the marriage has lasted for less than 11 years. The statute may increase the estate recovery amounts received by the state.

### Further changes likely

The work group debated numerous policy issues related to the elective share statute. The group also worked diligently on calculating the effect that the elective share would have on taxable estates, and provisions were included to address these concerns. The Estate Planning Section contributed a great deal to the estate and inheritance tax consequences of the proposed bill. The resulting bill is a compromise among members of the Estate Planning Section and the Elder Law Section, and the Department of Human Services.

It is likely that amendments will be required in the future when the elective share is applied to actual estate situations. In the meantime, the statutes have changed the potential for unfairness.

The Act becomes effective on January 1, 2011. ■





## 2009 legislation affects estate planning and administration

By Susan N. Gary, Attorney at Law

The Estate Planning and Administration Section of the Bar sponsored six bills that passed in the 2009 legislative session. The bills make changes that range from technical corrections to substantive additions to Oregon law. The effective date for 2009 bills is January 1, 2010, unless otherwise indicated.

### SB 235: Small estate affidavit amounts increased

The amounts that qualify an estate for administration using a small-estate affidavit under ORS 114.515 have increased. A "small estate" is now an estate with a fair market value of \$275,000 or less, increased from \$200,000. The personal property in the estate must be \$75,000 or less (the amount had been \$50,000), and the real property must be \$200,000 or less (increased from \$150,000).

The impetus for this bill was the recognition that these days an estate with a house valued at under \$200,000 is a small estate, particularly when one considers that the values used are not reduced by liens or other debts. Although a probate administration might cost "only" a few thousand dollars, that amount is significant for a family of means this modest. Despite the rather minimal increases in amounts, a number of members of the Estate Planning Section expressed concern that without the oversight of the probate court bad things could happen. The Section pulled back from the bill and was surprised to learn that it had passed. Perhaps a better way to address the costs of probate—particularly for families of modest means—will be to develop a form of "nonintervention probate" similar to the process used in Washington. The Estate Planning Section is now working on that idea.

### SB 237: Powers of attorney—springing powers

This act confirms the validity of springing powers under Oregon law. A springing power is a power of attorney that does not confer authority when executed and instead "springs" into being on the happening of an event. A person (the principal) can use the springing power to authorize an agent to act only after the principal becomes incapacitated. Springing

powers have been used in Oregon, but Oregon law has not clearly authorized their use. SB 237 amends the power of attorney statute so that it now explicitly provides for springing powers of attorney.

Whether a springing power is an appropriate tool for a client depends on the client's willingness to take a bit of a risk. Third parties do not necessarily accept powers of attorney, and a springing power may make acceptance by third parties even less likely. The trigger that springs the power has to be one that is easily verifiable, and in the age of HIPAA, having adequate information available to determine incapacity of a level that triggers the power may be difficult. Nonetheless, giving an agent a power of attorney while the principal is well carries its own risks, so in some situations a springing power may be a good solution.

SB 237 also defines the term "agent" to include an attorney-in-fact and then removes the term "attorney-in-fact" from the statute.

### SB 238: Uniform Adult Guardianship and Protective Proceedings Jurisdiction Act

The Uniform Law Commission spent several years developing this act and approved it in the summer of 2007. Oregon joins the District of Columbia, Minnesota, Montana, Nevada, North Dakota, Washington, and West Virginia in adopting this act. Other states will likely follow. UAGPPJA, which SB 238 follows fairly uniformly, addresses jurisdictional questions with respect to adult guardianships and conservatorships and provides rules for determining which state has jurisdiction when a conflict occurs. The act contains rules for the initial appointment of a guardian or conservator, the transfer of a guardianship or conservatorship to a different state, and the registration and recognition of orders from other states.

#### Jurisdiction

A question sometime arises as to which state should take jurisdiction when an appointment of a guardian or conservator is necessary. SB 238 creates an order of priority. First in line is

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## Estate planning legislation

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*Once a court has appointed a guardian or conservator, the court has exclusive and continuing jurisdiction.*

the person's "home state." This is followed by a "significant-connection state" if (1) the person does not have a home state, or (2) the person does have a home state, but a court in the home state has declined jurisdiction – or no petition is pending there and no one objects to jurisdiction – and another state's court concludes that it is an appropriate forum. If the home state and all significant-connection states have declined jurisdiction, then any other state may take jurisdiction.

The "home state" is the state in which the person was physically present for at least six consecutive months immediately before the filing of the petition. If no state meets this requirement, then the home state is the state in which the person was physically present for at least six consecutive months ending within the six months before the filing of the petition. If a child moves a parent to live with the child, the place the parent now lives will not be a home state until the parent lives there for six months.

The "significant-connection state" is a state to which the person has ties other than mere physical presence. Connections can include the location of the person's family, the length of time the person was present in the state, the location of the person's property, voter registration, tax filings, vehicle registration, driver license, social relationships, and receipt of services. In the example of a child moving a parent to live with him or her, the child's state of residence may be a significant-connection state for the parent. If the family members all agree that the move to the child's state of residence is best, then that state will likely take jurisdiction. If the child in the state where the parent used to live wants to keep the parent there and accuses the other child of snatching the parent, the "home state" rule will trump the significant-connection rule.

In determining whether a state is an appropriate forum for jurisdiction as a significant-connection state the court should consider:

- (1) any expressed preference of the person,
- (2) the possibility of abuse, neglect, or exploitation, and in which state the person might be best protected from abuse, neglect, or exploitation
- (3) the length of time the person was physically present in the state or another state

- (4) the distance of the person from the court
- (5) the nature and location of evidence
- (6) the ability of the court to decide the issue expeditiously
- (7) the familiarity of the court with the facts and issues, and the court's ability to monitor the guardian or conservator after an appointment is made

### **Exclusive and continuing jurisdiction**

Once a court has appointed a guardian or conservator, the court has exclusive and continuing jurisdiction over the guardianship or conservatorship until the proceeding is terminated or the order expires. Thus, if Child #1 moves Mom to live with him or her and files a petition for guardianship and conservatorship in his state, Child #2 must object before the court appoints the guardian and conservator. Once the guardian and conservator are appointed, moving the guardianship and conservatorship becomes much more difficult.

### **Transfer to another state**

Sometimes a protected person needs to move to another state – perhaps to be near a family member in that state or to move to a better living arrangement. To make transfers, court orders are necessary both from the court transferring the case and from the court accepting the case. To transfer a case, the transferring court must find that the person will move permanently to another state, that no one objects to the transfer or the objector has not established that the move would be contrary to the person's interests, reasonable and sufficient plans for care for the person have been made (for the transfer of a guardianship), and adequate plans for the management of the person's property have been made (for the transfer of a conservatorship). The court must also be satisfied that the court in the new state will accept the case. To assure continuity, the court in the original state cannot dismiss the local proceeding until the order from the other state accepting the case is filed with the original court. To expedite the transfer process, the court in the accepting state must give deference to the transferring court's finding of incapacity and selection of the guardian or conservator.

## Estate planning legislation *Continued from page 6*

### Enforcement of out-of-state orders

A guardian or conservator appointed in another state can register in Oregon. After the guardianship order or conservatorship order is registered, the guardian or conservator can exercise all the powers authorized in the order, except as prohibited by the laws of Oregon. Registration might be used in order to sell property or arrange for a residential placement. A guardian or conservator appointed in Oregon can register in another state that has adopted UAGPPJA. This provision and other portions of the act will become increasingly useful as more states adopt the act. The registration process means that a new guardianship or conservatorship need not be created when a piece of property or some other issue requires action in a state other than the one in which the original petition was filed.

### **SB 262: De novo review now discretionary for will contests**

Oregon has been one of only a few states with universal de novo review. In an attempt to streamline court functions and reduce costs, SB 262 makes de novo review discretionary, rather than automatic, in equity cases. De novo review is now required in only a few types of cases, and in other types of cases, including will contests, de novo review is up to the court.

SB 262 also permits review by a two-judge panel. If the two judges do not agree, then the case is reheard with a third judge participating. Two pro tem judges can sit as two of the three judges on three-judge panels.

This act applies to appeals filed on or after the effective date of June 4, 2008.

### **SB 371: Oregon Uniform Trust Code technical corrections**

Oregon adopted the Uniform Trust Code in 2005. As is common with a statutory enactment of this scope, a few glitches occurred. The Estate Planning Section decided to gather comments and problems for several years before proposing a technical corrections bill. More corrections may be necessary in the future, but SB 371 fixes a number of problems that surfaced as practitioners used the Oregon Uniform Trust Code (OUTC).

### No waiver of notice about termination

Practitioners continue to discuss when and to whom a trustee must give notice. Under some circumstances the settlor can waive the duty to give notice, but the statute limits the settlor's power to waive this duty entirely. The OUTC's provisions on waiver of notice of termination were unclear and suggested that the settlor could waive notice under some circumstances. That was not the intended result. ORS 130.020 is amended to provide that a settlor cannot waive the duty to provide reports containing information about termination of the trust to qualified beneficiaries and to any person designated to receive notice on behalf of the qualified beneficiaries.

### Modification without judicial consent

One of the things the Uniform Trust Code does is facilitate modification by beneficiaries. Oregon already had more advantageous modification statutes than most states, and the intention of the work group that drafted the OUTC was not to change Oregon's law on modification. Unfortunately, due to confusion in the way the statutory provisions fit together, Oregon's process for nonjudicial modification disappeared. SB 371 restores Oregon's law of trust modification and termination to its pre-UTC form. After a settlor has died, the beneficiaries can, by unanimous written agreement and without judicial oversight, modify or terminate a trust.

ORS 130.045 now provides that the interested persons in a trust (the settlor if alive, all beneficiaries who have an interest in the subject of the agreement, any acting trustee, and the Attorney General if the trust is a charitable trust) can enter into a binding nonjudicial settlement agreement with respect to any matter involving a trust, including modification or termination. A nonjudicial settlement agreement is valid only if it does not violate a material purpose of the trust. The agreement is filed with the circuit court, with notice to each person interested in the trust. If no one files an objection within 120 days, the agreement is effective and binding on all persons interested in the trust. If an objection is filed, then a hearing takes place.

*The interested persons in a trust can now enter into a binding nonjudicial settlement agreement with respect to any matter involving a trust, including modification or termination.*

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## Estate planning legislation *Continued from page 7*

*Claims involving a revocable trust belong in "probate court" wherever that is in a given county.*

The OUTC also permits court approval of modification and termination. Under ORS 130.200, a court can approve a modification or termination of a trust if the settlor and all beneficiaries consent, even if the modification is inconsistent with a material purpose. The court may terminate a trust if all the beneficiaries consent and if the court concludes that continuance of the trust is not necessary to achieve a material purpose. Even if all the beneficiaries do not consent, the court can approve a modification or termination if the change is one that could have been made if all the beneficiaries had consented and if the interests of any beneficiary who did not consent will be adequately protected.

### **Charitable Trusts**

The Attorney General takes the role of a beneficiary in a trust that includes a charitable interest. Thus, the Attorney General receives notices a beneficiary would receive. In many trusts, a charitable interest exists only as a backstop. For example, a settlor may name a charity to take property from the trust if several layers of beneficiaries fail to survive until distribution. The Attorney General does not need or want to receive notices if the charitable interest in a trust is remote, and that is what the OUTC provided. The language as enacted needed clarification, so SB 371 changed the definition of charitable trust to clarify that a trust is not a charitable trust if contingencies make the charitable interest negligible. If the charitable interest is negligible, the Attorney General will not receive notices as a beneficiary because the trust will not be a charitable trust. This change does not affect the role of the Attorney General, because the provisions directing that notice be given to the Attorney General or that the Attorney General consent had read: "unless contingencies make the charitable interest negligible."

### **Which court for revocable trusts?**

Under the OUTC the circuit court has jurisdiction over trust matters. With respect to claims against a revocable trust, however, the OUTC states that the claims belong in "probate court." When Oregon adopted the OUTC, the language of the uniform act was not adjusted to address a problem possibly unique to Oregon: in a few counties the probate court is not

the circuit court. ORS 111.055. A lawyer practicing in one of those counties did not have clear instructions about where to file actions involving a revocable trust. SB 371 provides that claims involving a revocable trust belong in "probate court" wherever that is in a given county, and other trust matters belong in circuit court (not probate court).

### **Revocable trust categorized for OUTC as revocable even though settlor cannot revoke**

If the settlor of a revocable trust loses capacity, he or she may be unable to revoke the trust. (The trust may, in fact, be revoked, because the settlor may regain capacity or someone acting on behalf of the settlor may have the authority to revoke the trust.) The concern addressed by SB 371 was that some provisions of the OUTC – ORS 130.520 – 575 apply to "revocable trusts." A question arose as to whether these provisions should continue to apply to a trust if it had become irrevocable due to the settlor's incapacity. (The trust will, of course, become irrevocable when the settlor dies.) SB 371 amends ORS 130.500 to clarify that a "revocable trust" continues to be categorized as a revocable trust even if it becomes irrevocable as a result of the settlor's incapacity or if an event occurs that by the terms of the trust prevents the revocation of the trust.

### **Notice during administration of revocable trust**

A revocable trust may make one or more specific gifts when the settlor dies. The beneficiaries named to receive the gifts are "qualified beneficiaries" under the OUTC and therefore are entitled to receive information about the trust. If a beneficiary's interest in a trust is only the right to a specific gift and the gift can be distributed quickly, then the beneficiary does not need information about the trust to protect the beneficiary's interest. A requirement that the trustee distribute information to recipients of specific gifts seems both unnecessary and unwise. However, if the beneficiary does not receive the gift in a timely manner, the beneficiary might need information about the trust to protect the beneficiary's interest. An amendment to ORS 130.710 balances these concerns. It protects the beneficiaries but limits the necessity of providing information.

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## Estate planning legislation *Continued from page 8*

A new subsection provides that a trustee need not provide a trustee's report or notice of the right to request a trustee's report to a qualified beneficiary until six months after a revocable trust becomes irrevocable, if the beneficiary's only interest in the trust is a distribution of a specific item of property or a specific amount of money. If the beneficiary receives the distribution within the six-month period, then no notice is necessary. If the beneficiary does not receive the bequest during that period, then the trustee must begin sending trustee reports to the beneficiary.

The beneficiary may still have the right to request a copy of the trust instrument. The Estate Planning Section had intended to change the statute so that the trustee need not provide information about the right to request a copy of the trust instrument until after the six-month period had passed. The statute as enacted is unclear as to whether the trustee needs to provide that information and, if requested, a copy of the trust instrument.

### Trust advisers

This new provision (which is not really a technical correction) allows a settlor to appoint both a trustee and a separate adviser to handle specific tasks – usually investments and trust distributions. For example, a settlor may want a particular money manager to handle the investments, but may not want to appoint the money manager as trustee. The change in the law protects the trustee from bad investment decisions made by the adviser and limits a trustee's liability for acting in accordance with the directions of the adviser. The trustee has no duty to monitor the adviser's conduct except to the extent stated in the trust instrument. The trustee will not be liable for actions taken pursuant to a direction from the adviser "unless the decision constitutes reckless indifference to the purposes of the trust or the interests of the beneficiaries." The adviser acts as a fiduciary with respect to the authority granted to the adviser, unless the trust instrument provides otherwise.

In order to take advantage of this section, the settlor must refer specifically to the new section. That requirement means that an old trust cannot take advantage of this provision, unless the trust is modified using one of the modification provisions.

### HB 2308: Discharge of estate fiduciary from liability on inheritance tax

A personal representative or trustee acting in Oregon can request a federal closing letter to protect the fiduciary from liability with respect to the federal estate tax.

The Oregon Department of Revenue did not provide a process for requesting a similar letter with respect to the Oregon inheritance tax. Without protection from personal liability, fiduciaries were reluctant to make final distributions from an estate until the statute of limitations had run. HB 2308 creates a process for obtaining a closing letter for Oregon inheritance tax purposes.

Under the new rules, the executor or trustee of a taxable estate can apply in writing to the Oregon Department of Revenue for a determination of estate tax due and a discharge from personal liability for that tax.

The Department of Revenue will inform the executor or trustee of the tax due within the later of 18 months of the date of the application or the date the tax return is filed. After payment of the amount in the notice, the trustee or executor will be discharged of personal liability for any deficiency in the tax. This bill applies the statute of limitations currently in effect for Oregon income tax returns to Oregon inheritance tax returns. In the absence of fraud or other factors, after three years the state cannot assess a deficiency.

The law went into effect September 28, 2009, for applications filed after January 1, 2010.

### HB 2357: Uniform Disclaimer of Property Interests Act

The treatment of a disclaimed share of an intestate estate was not clear under prior law. This amendment to ORS 105.633 provides that the disclaimed interest passes as if the disclaimant had died immediately before the time of distribution. The disclaimed interest then passes by representation to the descendants of the disclaimant who survive at the time of distribution. If none of the disclaimant's descendants survive at the time of distribution, the interest passes instead to the persons who would succeed to the transferor's intestate estate under the intestate law of the transferor's domicile, including the state but not including the disclaimant. If the transferor's surviving spouse is alive, but has remarried at the time of distribution, the transferor is treated as if he or she died unmarried at the time of the distribution. ■

## HB 2137: Keeping DHS clients' records confidential in protective proceedings

By: Fred Steele, Attorney at Law

*Fred Steele is the Senior Policy Analyst & Legal Services Developer for the Seniors and People with Disabilities Division of the Oregon Department of Human Services.*

At the request of the Governor on behalf of the Department of Human Services (DHS), the 2009 legislature passed HB 2137 granting DHS the ability to directly communicate with courts for the purpose of seeking ORS Chapter 125 court-ordered protections for vulnerable adults. See 2009 Oregon Laws, Chapter 512. HB 2137 became effective upon the governor's signature on June 24, 2009.

To enact HB 2137, procedural safeguards were written into the bill's language so as to extend protections of confidential DHS information. For parties involved in protective proceedings where DHS-provided information is used, these procedural safeguards create additional expectations.

### Background

Prior to the passage of HB 2137, Adult Protective Services (APS) within DHS was limited in its ability to share findings of APS investigations with a probate court. This was the case even when APS determined that, in the best interest of a vulnerable individual, a court should be provided such findings in order to protect the individual. For example, if either a conservator or proposed conservator was previously found by APS to have a substantiated allegation of financial exploitation, DHS was often prevented from directly sharing that substantiated abuse information with a court. This scenario was especially problematic when no other person was available to provide information to the court in order to assist the individual statutorily designated as a "protected person."

Similar complications have arisen where DHS has been left without a clear ability to share findings of an APS investigation regarding a guardian or proposed guardian for whom there has been a substantiated allegation of abuse. As a result, vulnerable seniors and persons with disabilities have remained in situations where abuse continued or worsened despite the information collected by DHS. Such situations have led to individuals losing their life savings, home or property, being evicted from care facilities due to nonpayment, remaining in physically abusive situations with guardians.

### New, clear authority for DHS to seek protective orders

With HB 2137, the DHS units that provide protective services to adults now have the ability to communicate in two direct ways with courts engaged in protective proceedings. First, the department now has clear authority to petition for guardianships or conservatorships under ORS Chapter 125. Second, HB 2137 enabled DHS to share confidential and protected health information with a court, not only in support of DHS-initiated petitions, but also in cases where DHS did not initiate the petition or in cases where a protective order has already been entered.

However, this new authority for DHS comes with restrictions and limitations. The information that may be shared must be limited to only the minimal amount that is "reasonably necessary to prevent or lessen a serious and imminent threat to the health or safety" of the person for whom protection is being sought or for whom a protective order has already been issued. See 2009 Oregon Laws, Chapter 512. DHS is further limited in that it may only disclose confidential or protected health information for the purpose of providing *protective services* as defined in ORS 410.040. As interpreted by the department, this means that DHS may initiate a petition for a protective order or share DHS confidential information in a protective proceeding "in response to the need for protection from harm or neglect to elderly persons and persons with disabilities." ORS 410.040.

The intention of these limitations, as contemplated by DHS, is to minimize the amount of DHS confidential information being disclosed to persons or entities not covered by the confidentiality laws that otherwise restrict the use of DHS information. To fully meet this intention, restrictions were also placed on the use of this information by legal practitioners following disclosure by DHS.

*Continued on page 11*

## Keeping DHS records confidential *Continued from page 10*

### Effect on legal practitioners

Section three of HB 2137 establishes restrictions that protect DHS information from further disclosure once it is released by DHS. It is important to recognize that the confidentiality requirements in this bill were intended to apply only to information provided by DHS for the proceeding. Specifically, attorneys presenting DHS-provided confidential information must identify and mark the applicable DHS information as confidential to be sealed by the court. For example, although courts are required by this new law to seal confidential DHS information disclosed to the court, the expectation is that the attorney who uses any confidential or protected health information provided by DHS will be responsible for monitoring the use of the DHS-provided information during the protective proceeding and notifying the court of any confidential DHS information that must be part of the sealed record.

In addition, the court is required to seal all confidential or protected health information provided by DHS that is contained in the report of a visitor appointed under ORS 125.150. The visitor should note when any confidential or protected health information provided by DHS is incorporated into the visitor's report and indicate that the report be part of the sealed record. Pursuant to Section Two, subsection (3)(c) of HB 2137, only parties to the proceeding and their legal counsel are permitted access to confidential or protected health information provided by DHS (unless otherwise ordered by the court).

What this means for legal practitioners is that additional steps must be followed when dealing with confidential or protected health information provided by DHS. DHS policy implementing HB 2137 has not yet been fully developed, but based on DHS interpretation of the bill's language, when an attorney discloses confidential DHS information in any communications with a probate court, the petitioning attorney must:

- Use only the minimum amount of confidential information as is reasonably necessary to achieve the protective order

- Identify, segregate, and mark as confidential any documents provided that contain confidential or protected information provided by DHS
- Include a motion to seal all documents containing confidential DHS information, including the petition and visitor's report; the motion should cite to the new law as authority for the court to seal the confidential information

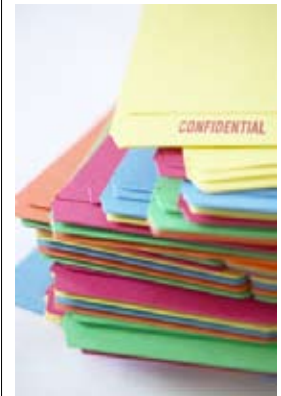
These requirements apply to attorneys under contract with DHS to initiate a protective proceeding and to any person or entity disclosing confidential or protected health information provided by DHS in the course of a protective proceeding under ORS chapter 125.

Some thought will also need to be given by the practitioner to craft the petition for a protective order carefully so as not to provide confidential or protected health information provided by DHS to persons who are currently required to receive notice of the petition under Oregon law but who are not parties to the proceeding.

Per discussions with the trial court administrator's office, DHS understands that the process for identifying, protecting, and segregating protected personal information for complying with HB 2137 is covered under the Uniform Trial Court Rules (UTCR), Chapter Two: standards for pleadings and documents.

Although DHS drafted this bill with the advice of various stakeholders – including client advocates, the trial court administrator's office, probate practitioners, and the Attorney General's office – to address issues of which DHS was aware, there may be practical issues that were not contemplated and consequently were not addressed.

If you have any questions regarding DHS policy implementation of HB 2137 or encounter problems with implementation that may require legislative changes, contact Valerie Eames, Abuse Prevention Policy Analyst with DHS Seniors and People with Disabilities, at 503.945.5884. ■



## SSA stops automatic denial of benefits due to existence of arrest warrants

Sources: Social Security Administration and National Senior Citizens Law Center

On September 24, 2009, the United States District Court in the Northern District of California approved a nationwide class action settlement agreement in the case of *Martinez v. Astrue*. The *Martinez* settlement changes the types of felony arrest warrants that the Social Security Administration (SSA) will use to prohibit payment of Social Security, SSI, and Special Veterans benefits.

A provision of the Social Security Act seeks to prevent people from using government benefits to flee from arrest. To enforce the provision SSA implemented a computer system that matched names in a warrant database to those at SSA. Many of the matches and automatic benefit suspensions involved false or unproven allegations, minor infractions, or long-dormant arrest warrants. Individuals who lost benefits were routinely and inaccurately informed by SSA staff that they could not appeal decisions.

"The vast majority of class members were not fleeing at all; many never knew that criminal charges were pending against them, let alone that a warrant had been issued," said Gerald McIntyre, attorney with the National Senior Citizens Law Center (NSCLC), one of the organizations that represented the plaintiffs, said. "Most of the people relied on these benefits for most or all of their income and ended up destitute or, in some cases, homeless when the benefits were stopped."

Under the agreement, SSA has agreed to repay more than \$500 million in benefits that were withheld from 80,000 people whose benefits have been suspended or denied since January 1, 2007. The settlement does not apply to persons whose benefits were denied or stopped because of an arrest warrant due to a parole or probation violation. SSA is now suspends or denies benefits based on outstanding felony arrest warrants only for the crimes of flight to avoid prosecution or confinement, escape from custody, and flight-escape.

If you want more information and regular updates about the settlement's implementation, join the NSCLC's "Martinez Settlement Listserv" by e-mailing [Oakland@nsclc.org](mailto:Oakland@nsclc.org).

The full notice of the final settlement agreement is available at

[www.socialsecurity.gov/martinezsettlement/StipulationSettlement.htm](http://www.socialsecurity.gov/martinezsettlement/StipulationSettlement.htm) ■

## HB 2287: New fees in probate and protective proceedings in effect

In addition to extending the temporary surcharges on probate filing fees and adding a new settlement conference fee, HB 2287 (2009 Oregon Laws Chapter 659) contains the following new provision:

### SECTION 25.

- (1) In a court with probate jurisdiction, the clerk shall charge and collect the following fees for an annual or final accounting filed in a probate proceeding or a conservatorship proceeding on or after October 1, 2009, and before July 1, 2011:
  - (a) If the amount of the estate is not more than \$500,000, a fee of \$100.
  - (b) If the amount of the estate is more than \$500,000 and not more than \$1 million, a fee of \$200.
  - (c) If the amount of the estate is more than \$1 million, a fee of \$300.
- (2) In determining fees under subsection (1) of this section in a probate proceeding, the amount of a settlement in a wrongful death action brought for the benefit of the decedent's surviving spouse or dependents is not part of the estate.
- (3) All fees imposed under this section in a circuit court shall be deposited in the Judicial System Surcharge Account. All fees imposed by a county court under this section shall be paid to the county treasurer.
- (4) The collections and revenue management program established under ORS 1.204 may not be reimbursed under ORS 1.204 from fees imposed under this section.

In addition, note the following new provision:

### SECTION 38

- (1) In any civil proceeding subject to a fee under ORS 21.110, 21.111, 21.114 or 21.310 [*this is the provision establishing probate and protective proceeding filing fees*], the clerk of a circuit court shall collect the sum of \$10 for filing or submission of an ex parte order or judgment for the purpose of signature by the judge and entry.
- (2) The fee established under this section may not be collected for filings or submissions in small claims actions.
- (3) The fee imposed under this section applies only to ex parte orders or judgments filed or submitted on or after October 1, 2009, and before July 1, 2011.
- (4) All fees imposed under this section shall be deposited in the Judicial System Surcharge Account.
- (5) The collections and revenue management program established under ORS 1.204 may not be reimbursed under ORS 1.204 from fees imposed under this section.

Every probate requires a minimum of three judgments (opening, distribution, and discharge) for which this fee will be charged. ■

# Multnomah County to institute mandatory probate mediation

By Sam Friedenber, Attorney at Law

The Probate Department of Multnomah County is ready to begin mandatory mediation in contested matters. The pilot project is expected to begin on October 1, 2009. Judge Katherine Tennyson, Multnomah County Probate Supervisor Helga Barnes, and a number of other judges, administrators, attorneys and mediators have worked since January 2008 on this project.

It goes without saying that probate matters lend themselves to mediation. They tend to be intra-family disputes with high emotional content. Issues tend to be factual rather than technical, and trials tend to be tedious and often arrive at predictable conclusions. Finally, legal fees are often paid by one "pot" and efficiency is at a premium.

The project has taken more effort than was initially supposed. Different persons and committees served to draft rules, weigh the civil rights of protected persons, set standards for training, organize training for mediators, establish forms and coordinate the project with the court bureaucracy. While this is not of direct importance to the practitioner it is worth noting to anyone skeptical about the project.

The project will be initiated by an order from the presiding judge. Draft rules have been prepared and may be inserted in Chapter 12 of the supplemental local rules of Multnomah County. Elder Law Section practitioners will be primarily interested in the mediation procedure.

## Summary of rules

The essence of the mediation project is that the court will be ordering contested matters to mediation. This will include all matters in ORS Chapters 111-116 and 125-130. These matters include protective proceedings, gifts, trusts, health care directives, powers of attorney, probate estates, and estate matters outside of probate. Temporary protective proceedings will be excluded from mediation.

Matters may also be mediated by agreement of the parties or notice of any one party that is not objected to by other parties. If a party objects to mediation, there is a set procedure with detailed timelines on how to make the objection. The timeline begins whether or not the matter has already been set for hearing before the court. However, a court hearing about whether or not a matter shall be mediated will require that the person seeking to avoid mediation show "good cause." In other words, there is a presumption for mediation. If a court determines the matter should not be mediated, it is set for hearing.

The parties may choose the mediator by agreement. If there is no agreement, the parties are to provide a list of available mediators and, if there is no further agreement on a mediator, the court will appoint a mediator without a hearing. Only three categories of persons may serve as mediators:

- (1) attorneys licensed in Oregon with five years experience in estates, trusts or protective proceedings
- (2) individuals with special skills or training in the administration of estates, trusts, or protective proceedings
- (3) individuals with special skills or training as mediators.

In addition, if a mediator is to be appointed by the court, the mediator must also comply with the Oregon Judicial Department Court-Connected Mediator Qualification Rules and must have attended Multnomah County Probate Department mediation training. One two-day training session was held this summer.

There are also rules on how to set dates for mediation. Attorneys may be present. Parties are to mediate in good faith and for a minimum of three hours unless the mediator concludes that no progress is likely to occur.

Once an agreement is reached it must be memorialized in writing and signed by all parties. Each party has seven days to repudiate the agreement. If it is not repudiated it must be reduced to a court order or judgment for approval by the court. If the agreement is repudiated the parties must inform the mediators and the court so that the matter can be scheduled for hearing.

Costs of mediation shall be born equally by the parties unless there is agreement to the contrary. All costs and fees of mediation will be set forth in the mediation agreement. None of these rules is intended to affect the existing statutory rights for reimbursement of fees and costs. The court will have a special program for indigent cases and there is most likely going to be a request that mediators provide some services pro bono.

This project is one of the first mandatory probate mediation projects in Oregon. Inevitably there will be bumps in the road and the project will be a work in progress. To the extent that there are suggestions or concerns, they should be addressed to Helga Barnes or Judge Katherine Tennyson. ■

*Editor's note: See page 14 for a description of the new mediation program in Deschutes County.*



# Mandatory probate mediation in Deschutes County

By Donald Cole, Oregon Justice Department, and Julie Sorick, Central Oregon Mediation

Since June of 2009, attorneys who file probate petitions in Deschutes County Circuit Court that wind up contested are referred to mandatory mediation.

## Referral

The Deschutes County Circuit Court refers appropriate probate guardianship/conservatorship cases to Central Oregon Mediation.

After a petition is filed in a probate guardianship/conservatorship case, or at any time during the pendency of the matter, the case may be referred to mediation on the motion of the court. The court will sign an order for mediation and route the file to the probate commissioner for scheduling. Also, at any time during pendency of the matter, a party or interested person may file a request for mediation and serve copies of the request on interested persons and parties.

When an order for mediation has been signed, the probate commissioner will contact Central Oregon Mediation to schedule the mediation within 14 days. The commissioner will promptly complete a mediation intake form and provide that information to Central Oregon Mediation. The parties and interested persons will be notified by mail of the scheduled mediation, with a copy of the order for mediation and a copy of the Central Oregon Mediation brochure.

If the court believes the need for mediation is urgent, the court will bring this to the attention of the probate commissioner. The mediation will then be scheduled on the very next Tuesday, not sooner than four calendar days. In addition to the notification procedures described above, the probate commissioner will notify the parties and interested persons by telephone.

## Mediators

The mediators will be experienced mediators, selected from the rosters of the court-connected mediation program and Central Oregon Mediation. All of the mediators will have training and experience that meets or exceeds the requirements for "general civil mediators," as articulated in the Oregon Judicial Department court-connected mediator qualifications rules. In addition, the mediators will have completed advanced substantive training in probate guardianship/conservatorship.

Mediations will be conducted at the office of Central Oregon Mediation, 1029 NW 14th Street in Bend or at such other location as Central Oregon Mediation may designate. When

significant security issues exist, the judge may direct the mediation to be conducted in the Deschutes County Justice Building, 1100 NW Bond Street in Bend.

## Mediation participants

All affected persons will participate in the mediation, including the petitioner, the proposed protected person, and his or her representative, and other necessary interested parties. If the proposed protected person is not able to participate, his or her representative may do so as deemed appropriate by the court and the mediators. Other persons, including attorneys and service providers, may participate in the mediation as necessary and helpful. The court visitor may participate, at the discretion of the parties and court visitor. However, the court visitor shall not be compensated for mediation time. His or her report shall be available in any event. The mediators will assist the parties in deciding who among this group should participate in the mediation. Interpreters will be provided by Central Oregon Mediation when needed.

## Post mediation

When the mediation is concluded, Central Oregon Mediation will provide a report of mediation to the court, including information about the case number, case name, the date mediation concluded, and whether or not an agreement was reached. When a referred case does not result in mediation, Central Oregon Mediation will provide a report to the court with a brief explanation. If mediation results in a written mediation agreement, the written agreement shall be filed with the court upon the consent of the parties. To the extent the court deems consistent with Oregon law, terms of the mediation agreement will be reflected in the Orders of the court.

## Confidentiality

Mediation communications are confidential, including communications made to the mediators during case development. The mediators will not be called to testify in any proceedings subsequent to the mediation. Participants will sign a confidentiality agreement at the beginning of the first mediation session. The confidentiality agreement shall articulate exceptions to confidentiality regarding allegations of child abuse and elder abuse, or for threats to commit a crime that pose a serious danger to a person or property. Mediators may report such communications to the staff of Central Oregon Mediation for notification of the appropriate authorities. If a participant in the mediation is a mandatory reporter of child abuse or elder abuse, that fact shall be made clear at the beginning of the first mediation session. The parties may agree in writing to keep some or all terms of a mediation agreement confidential. Any mediation agreement filed with the court shall not be confidential.

## Fees

Central Oregon Mediation will charge the parties a fee for mediation services that is not to exceed a total of \$500. The fee will be apportioned and paid as agreed by the parties by prior arrangement with Central Oregon Mediation. For modest-means clients, the fee will be on a sliding scale according to the party's ability to pay. ■

*The substance of this article originally appeared in the April 2009 issue of the Oregon State Bar Estate Planning and Administration Section Newsletter.*

## Elder Law Section News

### "Elder Law Issues and Answers" CLE program

The Elder Law Section's annual CLE program on October 2, 2009, at the Oregon Convention Center was well planned, well executed, and well received. All evaluations rated the program's overall quality as either good (11%), very good (63%), or outstanding (26%). The reviews for the presentations on Cultural Competence in the Legal World, by Janet M. Bennett, PhD; Removing the Outlaw In-Law and Other Unwanted Occupants, by Susan Ford Burns; and Understanding Medicaid and Long-Term Care, by Michael J. Edgel and Julie Lohuis were particularly positive. Karen Lee and the OSB CLE staff made sure that the program ran smoothly.

The lawyers who attended the program ranged from a 2009 graduate who just passed the Oregon Bar Examination to a very experienced practitioner with a 1951 bar number. In addition to the 165 people registered for "Elder Law Issues and Answers" live program, others viewed the video replays at locations around the state in October

Audio discs and video rentals of the program are available from the Oregon State Bar CLE Service Center, Call 503.431.6413 or 800.452.8260, ext. 413. ■

### Executive Committee Retreat

The Executive Committee of the Elder Law Section held its annual retreat at Beverly Beach on September 19, 2009. Following the business meeting, the participants discussed potential new projects ranging from matching experienced mentors with newer elder law attorneys, to taking CLE programs on the road, to ways to share information about the business aspects of practicing elder law. ■



*Executive Committee members (left to right) Mike Schmidt, Treasurer Brian Haggerty, Chair-Elect Sylvia Sycamore, and Whitney Yazzolino get down to business.*

### Annual meeting

The Oregon State Bar Elder Law Section held its annual meeting on Friday, October 2, 2009, at the Oregon Convention Center during a break in the fall CLE program co-sponsored by the section. Chair Penny Davis summarized the work done by the Section during the past year and invited members to join one of the Section's committees by contacting the committee's chair. The committees are the CLE Program Committee (Brian Thompson, Chair), the Newsletter Committee (Brian Haggerty, Chair), the Legislative Committee (Ryan Gibb, Chair), the Computers and Technology Committee (Susan Ford Burns and Ryan Gibb, Co-Chairs), the Agency and Professional Relations Committee (Michael Edgel, Chair), the Elder Abuse Committee (Steve Owen, Chair), and the Executive Committee.

Treasurer Brian Haggerty reported that the Section had 571 members as of August 31, 2009. The paid memberships totaled 540, with 31 complimentary memberships for judges, judges' lawyer staff, and 50-year members of the bar. The Section's fund balance was \$25,656. No change was proposed to the current dues of \$25 per year.

The main business of the meeting was the election of officers and executive committee members for the coming year. The Section elected the following officers:

Chair: Sylvia Sycamore, Eugene  
 Chair-Elect: Brian Haggerty, Newport  
 Past Chair: Penny L. Davis, Portland  
 Secretary: Whitney D. Yazzolino, Portland  
 Treasurer: J. Geoffrey Bernhardt, Portland

The Section elected the following members-at-large for two-year terms ending December 31, 2011:

Susan Ford Burns, Portland  
 Erin M. Evers, Hillsboro  
 Sam Friedenberg, Portland  
 Ryan Edward Gibb, Salem  
 Kathi D. Holmbeck, Grants Pass  
 Stephen R. Owen, Portland  
 Brian M. Thompson, Eugene

The continuing members-at-large, whose terms will expire at the end of 2010, are:

Jason C. Broesder, Medford  
 Don Blair Dickman, Eugene  
 Eric M. Kearney, Portland  
 Michael A. Schmidt, Aloha ■

**Important elder law numbers**

as of July 1, 2009

<b>Supplemental Security Income (SSI) Benefit Standards</b>	Eligible individual.....\$674/month Eligible couple ..... \$1,011/month
<b>Medicaid (Oregon)</b>	Long term care income cap.....\$2,022/month Community spouse minimum resource standard ..... \$21,912 Community spouse maximum resource standard .....\$109,560 Community spouse minimum and maximum monthly allowance standards .....\$1,822/month; \$2,739/month Excess shelter allowance ..... Amount above \$547/month Food stamp utility allowance used to figure excess shelter allowance .....\$379/month Personal needs allowance in nursing home.....\$30/month Personal needs allowance in community-based care .....\$152/month Room & board rate for community-based care facilities..... \$523.70/month OSIP maintenance standard for person receiving in-home services..... \$675.70 Average private pay rate for calculating ineligibility for applications made on or after October 1, 2008 .....\$6,494/month
<b>Medicare</b>	Part B premium ..... \$96.40/month* Part B deductible ..... \$135/year Part A hospital deductible per spell of illness.....\$1,068 Part D premium: Varies according to plan chosen..... average is \$35/month Skilled nursing facility co-insurance for days 21-100 .....\$133.50/day * A person whose income is more than \$85,000/year will pay a higher premium.

**POLST online registry to be available statewide**

Source: Oregon Health & Science University

As part of the state legislature’s health care reform package, Oregon has launched the nation’s first 24-hour electronic registry for the Physician Orders for Life-Sustaining Treatment (POLST) program. The purpose of the registry is to ensure that in all cases – especially in emergency situations – medical personnel can obtain quick and accurate information about a patient’s health care wishes.

The statewide program is anticipated to launch December 1, 2009, under a contract agreement between the state and the Oregon Health & Science University (OHSU) Department of Emergency Medicine, which will operate the registry and hotline. A pilot project was launched in Clackamas County this past May.

The POLST is a medical order form completed by a patient and his or her physician, nurse practitioner, or physician assistant.

The pink form provides specific medical instructions to health care professionals at a time when the patient is incapacitated. It is specifically created for patients with advanced illness or frailty. Program participants who remain at home are directed to place the form on their refrigerator.

There is a new June 2009 edition of the form. Forms executed earlier may be used, but additional identifying information must be provided.

Susan Tolle, M.D., director of the OHSU Center for Ethics in Health Care, said, “This 24-hour service will make it possible for a person’s POLST form to be located and followed even when a patient is away from home or if a copy of the form cannot be located in their home.”

Under the new system, when emergency medical personnel are called to a scene to treat an incapacitated person in the advanced stages of illness, they will first look for the paper POLST form on site. If the form is not immediately available, the POLST Registry based at OHSU will be called. The first responders will inquire about the existence of a POLST form and ask questions to ensure that the person and the form are an exact match. This information then will be used to help guide the care of the patient.

More information about the POLST program and the new online registry is at [www.polst.org](http://www.polst.org) ■

## Resources for elder law attorneys

### Upcoming events

#### 2009 Legislation Highlights

OSB CLE Program

November 6, 2009

Oregon State Bar Center, Tigard

Your opportunity to learn which new laws will impact your practice and clients. Hear from the lawyer-legislators who made it happen in these areas of major legislative changes: Business and Tax Law, Commercial and Consumer Law, Criminal Law, Family and Juvenile Law, Health Law, and Labor and Employment Law.

Registration includes a copy of *2009 Oregon Legislation Highlights*, which contains summaries of hundreds of bills in 23 practice areas.

[www.osbar.org](http://www.osbar.org)

#### An Eye on Civil Rights: A State and Federal Update on Discrimination

OSB CLE Program

November 12, 2009

Oregon State Bar Center, Tigard

[www.osbar.org](http://www.osbar.org)

#### Broadbrush Taxation

OSB CLE Program

November 13, 2009

DoubleTree Hotel, Portland

[www.osbar.org](http://www.osbar.org)

#### Administering the Taxable Estate

OSB CLE Program

November 20, 2009

The Nines, Downtown Portland

Estate planning experts who can help you understand tax intricacies and twists when it comes to estate planning.

[www.osbar.org](http://www.osbar.org)

#### Attorney Ethics When Changing Firms

OSB CLE Quick Call

November 20, 2009

[www.osbar.org](http://www.osbar.org)

#### Planning to Reduce Estate/Guardianship Litigation

NAELA Telephonic Elder Law Training Program

December 2, 2009

[www.naela.org](http://www.naela.org)

#### Nuts and Bolts of Gift Taxation

OSB CLE Quick Call

December 3, 2009

[www.osbar.org](http://www.osbar.org)

#### 2010 NAELA UnProgram

January 22 to 24, 2010

Embassy Suites; Outdoor World

Grapevine, Texas

[www.naela.org](http://www.naela.org)

### Books

The 2009 edition of the *Elder Law Handbook* can be found under the 60+ section of the [www.oregonlawhelp.org](http://www.oregonlawhelp.org) web site.

#### *Who Gets Grandma's Yellow Pie Plate*

The University of Minnesota offers this workbook for \$12.50 and a 13-minute video for \$30. To order, call 800.876.8636.

#### *Moving On* by Linda Hetzer and Janet

Hulstrand offers practical advice on what to do when it's time to empty the family house.

### Elder Law Section Web site

[www.osbar.org/sections/elder/elderlaw.html](http://www.osbar.org/sections/elder/elderlaw.html)

The Web site has useful links for elder law practitioners, past issues of the *Elder Law Newsletter*, and current elder law numbers.

### Elder Law Section electronic discussion list

All members of the Elder Law Section are automatically signed up on the list, but your participation is not mandatory.

#### How to use the discussion list

Send a message to all members of the Elder Law Section distribution list by addressing it to: [eldlaw@lists.osbar.org](mailto:eldlaw@lists.osbar.org). Replies are directed by default to the sender of the message *only*. If you wish to send a reply to the entire list, you must change the address to: [eldlaw@lists.osbar.org](mailto:eldlaw@lists.osbar.org)—or you can choose "Reply to all." ■



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**Newsletter Board**

The *Elder Law Newsletter* is published quarterly by the Oregon State Bar’s Elder Law Section, Penny Davis, Chair. Statements of fact are the responsibility of the authors, and the opinions expressed do not imply endorsement by the Section.

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