



Volume 21
Number 3
July 2018

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Suing a long term care facility for elder abuse or neglect

By Brian Dretke, Attorney at Law and J. Glenn Null, Attorney at Law

The first step in pursuing a lawsuit against a nursing home or other care facility is to identify the proper plaintiff. A suit against a facility will generally be for personal injury or wrongful death. In a wrongful death action, the plaintiff is required to be the personal representative for the estate of the person who died. *Norwest v. Presbyterian Intercommunity Hospital*, 52 Or App 853, 860, 631 P.2d 1377 (1981), aff'd, 293 Or. 543, 652 P.2d 318 (1982). However, in a personal injury action, identifying the plaintiff depends largely upon the harmed person's ability to participate actively in the suit.

The three candidates for plaintiff when personal injury is at issue are:

1. **The harmed person.** The harmed person is alive when litigation is initiated and remains alive during the pendency of the action.

2. **The personal representative.** A personal representative is necessary when the harmed person has died.

There are two possible justifications for a personal representative to pursue a personal injury action. The most likely is an action for personal injury where the harmed person dies, but the harmed person's death was not caused by the injury. The action continues to be pursued as a personal injury case by the duly appointed personal representative. Occasionally, an action for personal injury is initiated during the harmed person's lifetime but he or she subsequently dies as a result of the injury. In this case, the action may transition from a personal injury action to a wrongful death action and the personal representative would become the plaintiff.

3. **The conservator.** A conservator is used when the harmed person is alive, but financially incapable. Generally, if a harmed person becomes unable to direct counsel or make litigation decisions, a conservator should be substituted as plaintiff.

At the outset of litigation, if circumstances permit, attorneys should try to obtain a nomination of conservator from the harmed person for use in the event the plaintiff becomes financially incapable. If the harmed person dies, a will that nominates a personal representative is the most efficient method to pave the way for the probate court to appoint a personal representative.

Attorneys should also determine whether a preservation deposition of the harmed person should be done and what effect, if any, his or her diminished capacity/financial capability may have on the testimony. This determination should be done in the context of ORPC 1.14, which requires lawyers to treat clients

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Suing a long term care facility

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with diminished capacity as closely as possible to a client with no capacity/financial capability issues.

If a conservator for the harmed person is needed, the conservatorship must be obtained through a separate court case that petitions for appointment of a conservator. In order to establish a conservatorship, the harmed person must be found financially incapable by a court (ORS 125.400).

Financially incapable means a condition in which a person is unable to manage financial resources effectively for reasons that include but are not limited to mental illness, mental retardation, physical illness or disability, chronic use of drugs or controlled substances, chronic intoxication, confinement, detention by a foreign power, or disappearance.

“Manage financial resources” means those actions necessary to obtain, administer, and dispose of real and personal property, intangible property, business property, benefits, and income. ORS 125.005(3).

Once you have identified the potential plaintiff for your case against a nursing home, a number of steps should be taken before filing a complaint in state or federal court. Abuse and neglect cases are vigorously defended by the insurance companies. A careful evaluation of the merits of your case will save you a significant amount of time and money in the long run.

Getting started

Prior to meeting with the family, it is essential to learn about the facility at issue. DHS has recently introduced a helpful website: <https://ltlicensing.oregon.gov>. Click on the “Facility Search” tab and type in the name of the facility. The website will show you the history of inspections and substantiated violations.

Next, visit the Secretary of State’s website and conduct a business name search. This will show you who the registrant (owner) is. Be sure to visit the facility’s website and conduct a Google search as well, because websites often identify additional entities. You will want to bring an action not only against the facility, but also its ownership and management company.

Interview the family

The initial interview should focus on the family members’ relationship with the resident and their knowledge of the care provided while in the facility. Find out how often they visited. Ask about observations of the facility during those visits. Were the staff members attentive? Was the facility clean? When there were changes in the resident’s condition, was the family notified immediately? Was the family invited to participate in care conferences on a regular basis?

You will also need to inquire about the reasons for the decision to place their relative in a long term care facility and how this particular one was selected. These questions are not intended to put the family on the spot. Instead, they will help you understand their situation. Often, placement of a loved one into a nursing home facility was an agonizing decision.

Be wary of cases in which visits by the family were rare or sporadic. If jurors feel the family did not care about the resident in life, it will be an uphill battle to convince them the family is outraged now their relative is dead.

On the same note, go with your gut when sizing up the potential personal representative (PR) of the estate who is going to sit with you at counsel table. If you don’t like the person, chances are the jury won’t either. Do not be hesitant to evaluate each of the potential PRs and select the one you believe will make the most favorable impression at trial.

DHS Complaint

Find out if the family filed a complaint with the Oregon Seniors and People with Disabilities Division about the care their relative received. It has been our experience that state investigators take these complaints seriously. If the suspected neglect or abuse occurred within six months of the initial meeting with the family, we recommend they contact the state and file a complaint.

The report generated often provides insight into potential claims such as staffing shortages, lack of training, and medication errors. It also helps identify potential witnesses; not by name, but by their role in the facility. You can easily match up names when you conduct a review of the nursing home records.

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Suing a long term care facility

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The death certificate

Obtain a copy of the long-form death certificate. It will identify the cause of death, as well as significant conditions that contributed to the death. Often you will find such things as an unresolved decubitus ulcer or urinary tract infection as significant conditions.

Do not be dissuaded from pursuing a case in which death is attributed to “natural causes.” Only a detailed review of the nursing home records will reveal conditions, possibly the result of neglect or abuse, that weakened the resident to the extent it hastened his or her death.

Get the records

42 CFR § 483.10(g) and OAR 411-054-0027(1)(h) provide that the resident or the resident’s legal representative has the right to inspect all of the resident’s nursing home records within 24 hours of making an oral or written request. If requested, a copy must be provided (at a cost not to exceed the community standard for photocopying) within two working days.

Often, clients will arrive at their initial consultation with a small packet of records the facility has represented to be the resident’s file. In reality, even a month’s stay will generate hundreds of pages of records. A resident’s file will typically contain the following:

- Facility admission sheet
- Treatment records (such as wound flow records)
- Discharge summary
- Meal intake records
- History and physical behavior monitoring records
- Physician progress notes
- Physician orders
- Notes from interdisciplinary care planning meetings
- Laboratory results
- Consultation records
- Diagnostic studies
- Vital signs, weight charts
- Social services notes/records
- Nursing admission assessment

- Records from physical/speech/respiratory therapy
- Minimum data set (MDS)
- Care plan(s)
- Nutritionist’s records
- Nurse’s notes
- Transfer forms
- Activities of daily living (ADLs)
- Medication administration records (MARs)

The nursing admission assessment and minimum data set are of particular importance in the initial case evaluation. These assessments will provide a good snapshot of the resident’s physical and mental status at the time of admittance to the facility. Such details as mental status, risk factors for development of pressure ulcers, ambulatory status and fall risk, current disease diagnoses, degree of continence, weight, and special instructions with respect to dietary needs will be included. These will provide a baseline.

For example, if on admission a resident is evaluated and believed to be at low risk for skin issues because he is continent, ambulatory, and has no nutrition issues, development of a pressure ulcer six weeks later would be highly suspicious. Perhaps the person was not being bathed regularly or was allowed to remain in bed for long periods of time without being prompted to get up and move around. Only a close review of the records will reveal these deficiencies.

Before proceeding any further, make sure you receive a complete copy of the resident’s entire file.

Hire an expert

Unless you possess a deep knowledge of medical issues that face the elderly, the effect of co-morbidities, and the appropriate standard of care for nursing homes with regard to nutrition, falls, urinary tract infections, and development of skin issues, you should hire an expert to review the case before filing. The money you will spend preemptively on an expert review will invariably save you and your clients a ton of money in pursuing a defensible case. Since the cost of filing is now \$834 for a claim of \$1 million or more, spending an equal amount on a records review is money well spent.

Conclusion

Taking on a nursing home case is time-consuming and expensive, and the litigation can be complex and document intensive. Keep in mind, however, that the nursing home industry is responsible for some of the most egregious cases of elder abuse and neglect you are likely to encounter in your practice. Successful prosecution of a civil claim that forces a nursing home to be accountable can make a substantial difference in the lives of elderly residents across the state. ■

Factors to consider when deciding whether to file a civil action for abuse

By Brook D. Wood, Attorney at Law



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Most attorneys are helpful people who do what they do to right wrongs and fix problems. This seems especially true for those engaged in the representation of vulnerable and marginalized groups, including the elderly. As the righters of wrongs and fixers of problems, it can be challenging to know when it is appropriate to take action. Some attorneys may be moved to take on a client and bring an elder abuse claim before giving due consideration to whether or not that is the best course of action. Presuming actionable abuse under ORS 124.105 or 124.110 has occurred, this article presents a non-exhaustive list of factors to consider when deciding whether to file a civil action under ORS 124.100, et seq. (Though this article focuses on elder victims, ORS 124.100's class of "vulnerable persons" is more broad than just individuals over the age of 65 and these considerations will apply in most, if not all, cases under these statutes.)

Who is your client?

The Oregon statutory scheme that creates a right of action for elder abuse vests standing to bring those claims in elders; their guardians, conservators, or attorneys-in-fact; personal representatives of their estates; and their trustees. ORS 124.100(3). You first must ensure your client-plaintiff falls within one of these categories.

Sometimes, when the victim is incapacitated (or deceased), it is one of the already-appointed fiduciaries with standing who seeks to retain an attorney's services to pursue an elder abuse claim. Often, however, it is the abuse that first leads family or friends of the victim to question his or her capacity and to consult with an attorney, and it may be necessary to appoint a guardian (ad litem or plenary) or conservator. If you represented or consulted with the victim previously, be wary of potential conflicts of interest that may bar you from representing the party commencing protective proceedings. ORPC 1.9.

If your client is the elderly victim, it is possible that he or she is perfectly competent and capable of helping to gather evidence and of providing testimony at deposition and trial. However, he or she may suffer from some physical or mental disability, potentially to the

point of incapacity, that led the abuser to target him or her in the first place. In such cases, this person may not be able to assist in the representation in any manner. Representation under these circumstances would likely implicate the attorney's obligations under ORPC 1.14 (regarding clients with diminished capacity). In representing a client of diminished capacity, the attorney "shall, as far as reasonably possible, maintain a normal client-lawyer relationship with the client." ORPC 1.14(a). However, an attorney who "reasonably believes that the client has diminished capacity *** and cannot adequately act in the client's own interest" may seek out individuals who might themselves petition for appointment of appropriate fiduciaries and reveal client confidential information reasonably necessary to protect the client-victim's interests. ORPC 1.14(b), (c). It is important to understand that the attorney may only undertake action so far as is necessary to protect the client. So, for example, if the client's capacity issues can be adequately addressed by raising the point with the client's family, more extreme measures would not be proper. See Formal Ethics Opinion 2005-41.

In the preparation of an elder abuse case, it is often necessary to involve family members—or they may attempt to involve themselves out of concern for the victim. Once you have established who your client is, it is essential to clearly and repeatedly affirm everyone's respective roles in communications with the client and others to avoid creating unintended and potentially conflicting attorney-client relationships. For further clarification on this point, see Linn B. Davis's article, "Avoiding common ethical missteps and sources of complaint," Oregon State Bar *Elder Law Newsletter*: vol. 20, no. 3, pp 1-2 (Aug., 2017).

Who are your defendants?

The answer to this question seems more straightforward than it is – the abuser, right? While this is one correct answer, it is not always the entire answer. ORS 124.100 allows claims to be brought against not only the abuser but also against someone who permitted the

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Civil action

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abuse to occur; i.e., a person who “knowingly acts or fails to act under circumstances in which a reasonable person should have known” of the abuse. ORS 124.100(2), (5). Who knew or arguably should have known of the abuse? Who else was involved and what red flags existed to put them on notice that something was amiss? What did these people do or not do to protect the victim? This “bystander liability” can be useful in bringing attorneys, accountants, notaries, the abuser’s spouse, other members of the victim’s family, and still others into the litigation, even when they themselves committed no abuse. This can be especially helpful in conjunction with ORS 124.140, which estops a criminally convicted abuser from denying the abuse in a civil case, leaving the plaintiff’s attorney to prove only that these third parties turned a blind eye when a reasonable person would have acted to prevent or stop the abuse.

As with most civil litigation, a key consideration in identifying appropriate defendants to the action is the collectability of an eventual money award against them. Was part of the abuse a transfer of the victim’s real property that can be undone by the court? Do any of your potential defendants own an interest in other real property? If there is a mortgage on the property, can you confirm or estimate any equity? Portlandmaps.com, LexisNexis® Accurint®, title or asset search companies, and other resources can help here. Execution against real property is generally one of the surest ways to secure payment on any judgment.

Is there professional insurance to satisfy a judgment? Did the victim or the abuser use the services of a professional during the course of the abuse? Many professionals (including all Oregon attorneys) are protected by insurance that could cover all or a significant portion of your victim’s damages. Sadly, this may be your only means of recovery if the abuser has burned through the \$300,000 bilked from his vulnerable mother and spent it on, as Lake Oswego attorney Richard Braun describes them, “hedonic goods and services” like recreational drugs, gambling debts, lavish dinners, and family vacations. So, take care that you do not inadvertently plead into a coverage exclusion, because many of these policies do not insure against overt acts of fraud or other intentional

torts. Another step in the identification of potential defendants is determining if any statutory exemptions apply. ORS 124.115 precludes elder abuse claims against financial institutions (as defined by ORS 706.008), health care facilities (as defined by ORS 442.015), facilities licensed or registered under ORS Ch 443, and broker-dealers of securities licensed under ORS Ch 59. The exemptions do not apply, however, if the putative defendant has been convicted of an abuse crime described in ORS 124.105 or 124.110. ORS 124.115(2). It is unlikely that an exempt bank or care facility corporation, LLC or other entity, for example, would be so convicted. The plain language of the exemption does not extend to those entities’ employees, though, who may themselves be among the abusers or liable bystanders.

When you analyze your potential defendants, also give thought to the risk of losing a judgment against them to bankruptcy. While bystander liability may be dischargeable in bankruptcy (because no abusive acts were alleged against the bystander), claims may often be pled against the actual abuser in such a way as to implicate one or more of the exceptions to discharge in bankruptcy provided by 11 U.S.C. 523, such as claims based on money or property obtained by false pretenses (11 U.S.C. 523(2)) or for fraud or defalcation by a fiduciary, embezzlement, or theft (11 U.S.C. 523(4)).

What kind of abuse is at issue?

ORS 124.100 applies to claims for both physical and financial abuse. For claims based on physical abuse, ORS 124.105 points to specific actionable conduct explicitly defined by reference to Oregon’s criminal code. For claims based on financial abuse, actionable conduct is more described than defined. An action for financial abuse may be based upon either:

- 1) a wrongful taking or appropriation of an elder’s money or property (ORS 124.110(1)(a)); or
- 2) the bad faith withholding from an elder of his or her money or property in one’s custody (ORS 124.110(1)(b)).

Neither of the statute’s key terms, “wrongfully” or “takes,” are defined in ORS 124.110, leaving it to the courts to determine what constitutes a wrongful taking.

Keep in mind that a case can involve both kinds of abuse. Those that involve physical abuse will differ greatly from those based solely on financial abuse, because they emphasize the physical injuries to the victim and likely require more expert testimony.

When did the abuse occur?

ORS 124.130 provides a seven-year statute of limitations for elder abuse claims, subject to a “discovery rule.” The limitations period begins to run “when the plaintiff has discovered facts or, in the exercise of reasonable diligence, should have discovered facts that would alert a reasonable person to the existence” of the claim. *Swango v. Nationstar Sub1, LLC*, et al., 3:17-cv-01338-MO (D.Or., Feb. 20, 2018), quoting *Murphy v. Allstate Ins. Co.*, 284 P.3d 524 (Or.App. 2012).

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Given this longer limitations period as compared to other claims and possible delays in discovery, the passage of time can wreak havoc on the ability to gather evidence and prove elder abuse. Witnesses move away, die, or simply forget. Banks and other institutions often purge themselves of records seven years or older. Victims who were perhaps once competent to testify for themselves can lose capacity by the time someone discovers the abuse. Considering these difficulties, can you still prove the case?

What are the damages?

Elder abuse plaintiffs can seek recovery of three times both the economic and non-economic damages suffered by the victim. ORS 124.100(2)(a), (b). Economic damages are the victim's "objectively verifiable monetary losses," including the value of the wrongfully taken property, while non-economic damages are "subjective non-monetary losses, including but not limited to mental suffering, emotional distress, humiliation, injury to reputation," etc. ORS 31.710. Even in cases of solely financial abuse, give careful thought to the non-economic damages suffered by the victim and chargeable to the defendants.

What other claims might there be?

Depending upon the facts and circumstances, there may be additional claims that can be brought on behalf of the victim. If a lawyer involved in some way had an attorney-client relationship with the victim, the facts might support a legal malpractice claim. As mentioned above, sometimes professional insurance will be the only source of recovery available. Other types of claims to consider include: securities fraud, violations of the Oregon Unlawful Trade Practices Act, or violations of the Fair Debt Collection Practices Act.

One especially interesting option in the context of elder financial abuse is a possible racketeering claim (ORICO) under ORS 166.725(7). ORICO claims are also subject to an award of treble damages, plus the potential for punitive damages. ORS 166.725(7)(a). Establishing a "pattern of racketeering activity" on which to base an ORICO claim requires proving only two or more instances of "racketeering activity." ORS 166.715(4).

Racketeering activity can include forging or fraudulently obtaining the victim's signature, or using the victim's credit cards without authorization. ORS 166.715(6)(a)(P) (together with the statutes referenced therein).

How will fees and costs be paid?

In these cases, rarely will you find yourself representing a client willing and able to pay attorney fees and other costs as the litigation progresses. More often than not, you will defer all or a substantial portion of your hourly fees until conclusion and recovery or enter into a contingent agreement. However, in order for the case to move forward, costs must be paid by someone to file the case, serve defendants, prepare and obtain documentary evidence, conduct depositions, obtain medical records, engage a forensic document examiner or other expert witnesses, etc. If your client is unable to pay these as they are incurred, you or your firm, as helpful folk, might consider advancing costs. This arrangement is allowed by the Rules of Professional Conduct, so long as the client ultimately remains liable for the costs advanced "to the extent of the client's ability to pay." ORPC 1.8(e). However, if there is a doubt as to the client's ability ever to repay them, the attorney must carefully determine the financial risk in advancing such costs. This will entail much the same analysis as determining the collectability of a judgment for the client. Is there insurance or real property? Is the defendant a bankruptcy risk? How likely are you to win? Can you afford to lose?

If the ability to bear the out-of-pocket expense of the litigation leads you to question your ability to take the case, consider associating co-counsel or referring the client to a more established firm. This could result in a fee-splitting arrangement, contract work on the case, or good old referral karma.

Other options

If the analysis of these factors were to lean toward not taking a case, are there other options you can present to the client that may help secure some justice? If the abuse has not yet been reported, the victim or the concerned person that came to you seeking help for the victim can report the abuse by calling the state hotline at 1.855.503.7223. A report triggers a mandatory investigation process that may lead to the prosecution of the abuser and a criminal restitution judgment or a civil action by the Attorney General. Heed caution before simply relying on this process, however, given the general budgetary constraints suffered by nearly all state offices over the last several years.

Also, recognize that another attorney's analysis of these same factors may differ from your own. Consider advising the client to consult with another elder abuse attorney. Offer to submit a request for referrals to the Elder Law Section email discussion list or suggest that the client call the OSB Lawyer Referral Service at 503.684.3763. ■

*The author wishes to thank Richard Braun for his counsel and his materials from past CLE seminars on the subject, and Kristen West McCall, Richard Vangelisti, and Bonnie Richardson for their contributions to the "Elder Abuse and Nursing Home Litigation" chapter of Bar Books' **Elder Law** (2017 rev.).*

How ORS 125.650 can protect against financial abuse

By Matthew Whitman, Attorney at Law

ORS 125.650 is a Swiss Army knife for problem-solving practitioners. It allows the entry of narrowly tailored, purpose-built protective orders. It is not much of an exaggeration to say that the limitations on ORS 125.650's flexibility are only in the minds of practitioners and judges.

Prior to the 2017 amendments¹ to ORS 125.055, courts typically defaulted to appointing conservators and guardians with all the powers that Chapter 125 can provide, and some courts were openly hostile to tailoring fiduciary powers to the respondent's specific circumstances and needs. ORS 125.650's most common use therefore became a way of crafting conservatorships and guardianships in which the fiduciaries would have less than "full" powers.² But to assist judges in tailoring appropriately narrow fiduciary powers, those recent amendments now require petitioners to declare what less-restrictive alternatives to a Chapter 125 fiduciary have been explored, and whether the petitioner seeks appointment of a fiduciary with "full" Chapter 125 powers. ORS 125.055(2)(g, k).

With those amendments, ORS 125.650 can return to its "one-shot" purposes, which are incredibly versatile. The breadth of the court's authority is vast: it can authorize the appointment of a fiduciary with powers up to and including full "plenary" powers, or exercise those powers directly itself. ORS 130.650(2). It may further exercise any power that a conservator or guardian could exercise only with court approval. *Id.* It may authorize or ratify contracts for care, insurance, or training. ORS 125.650(5)(a). And the post-order transactional costs can be minimal, since the court may in its discretion require minimal or no follow-up reporting, rather than a UTCR 9.160 accounting or ORS 125.325 guardian's report.

But it is in the "catch-all" provisions of ORS 125.650(5)(b) the statute's true power lies. That subsection authorizes the court to "[a]uthorize, direct, or ratify...[a]ny contract, trust or other transaction relating to the protected person's financial affairs or involving the estate of the person if the court determines that the transaction is in the best interests of the protected person." In other words, through an ORS 125.650 order, the court can in effect directly or indirectly authorize any act that the

respondent could do if competent. If an agent under the broadest possible power of attorney could properly do an act, the court can authorize a person to do that act, or do it directly.

Limitations and procedure

There are important procedural requirements that govern these orders. All the mandatory allegations of an ordinary protective proceeding petition under ORS 125.055 must be included in an ORS 125.650 petition, and the same notice must be given. ORS 125.650(1). Whether the order would appoint a fiduciary or instead exercise judicial power directly, there must be jurisdictional evidence that would justify appointment of a fiduciary: the respondent must be financially incapable and have money or property in need of protection and/or the respondent must be incapacitated. *Id.* The court is required to consider "the interests of creditors and dependents of the protected person." ORS 125.650(3). So an order that would protect the respondent's property from creditors should not be permitted, if the protected person could not directly do so without committing fraud on creditors.

Usefulness

Obvious uses for an ORS 125.650 order include:

- Authorizing gifts in excess of \$250 per person annually consistent with the respondent's existing estate plan, to bring an incapable but dying respondent's estate under the Oregon estate tax threshold. ORS 125.435.
- Appointing an investigator or "fact-finding fiduciary" to engage in discovery regarding allegations of financial abuse or undue influence. ORS 125.025(3)(c).
- Authorizing one discrete transaction, such as the sale of the respondent's primary residence. ORS 125.650(5)(a), ORS 125.430.
- Authorizing the settlement of a respondent's claim, including a structured settlement, providing the court is satisfied as to the disposition of the payments under the resulting annuity. ORS 125.650(5)(a).
- Authorizing creation or amendment of a trust. ORS 125.650(5)(a, b). This power necessarily includes creation of any permissible self-settled supplemental needs trust. However, in the "right" situation, it could include creation of a revocable living trust, the trustee of which would have all the typical obligations of a trustee of an RLT to its living settlor. In other words, a trust created under ORS 125.650 could manage all the respondent's assets for the respondent's benefit, but without continuing to report to the court or the necessity of bond. ORS 125.650(4). ■

Footnotes

1. 2017 Or Laws c. 391
2. Because protective proceedings deprive respondents of civil liberties, courts must act with the lightest touch necessary, appointing fiduciaries and entering orders only to the extent necessary to protect the respondent. See, e.g., ORS 125.305(2) ("The court shall make a guardianship order that is no more restrictive upon the liberty of the protected person than is reasonably necessary to protect the person.")

New law aimed at curbing financial exploitation of vulnerable persons

By Andrea Ogston, Attorney at Law



Andrea Ogston is an attorney at Legal Aid Services of Oregon where she practices elder law. Her position is funded in part by the Older American Act, which prioritizes autonomy and freedom from exploitation for individuals over the age of 60.

House Bill 2622 was introduced in 2017 by the Oregon Bankers Association with the goal of allowing banks, credit unions, and trust companies discretion to refuse certain financial transactions if they reasonably believe a vulnerable adult is being exploited. It does not require the banks to take any action, but makes clear that they have the discretion to do so.

Vulnerable person is defined pursuant to ORS 124.100. ORS 708A.670. This is a broad definition that includes elderly individuals, financially incapable persons under ORS 125.005, and incapacitated persons under ORS 125.005. It also includes a person with a disability that is likely to last no fewer than 12 months and prevents the person from performing substantially all of the ordinary duties of an individual who is similarly situated but for the disability.

If the financial institution believes the individual to be a vulnerable person and has a reasonable belief or receives information that financial exploitation has occurred, the financial institution can refuse the transaction with the vulnerable person, prevent a withdrawal or disbursement from the vulnerable person's account, prevent a change in ownership of the vulnerable person's account, prevent a transfer of funds from a vulnerable person's account, and refuse to comply with instructions given to the financial institution by an attorney in fact under a power of attorney. ORS 708A.675 (1)(a-e).

The Oregon Bankers Association testimony in favor of the bill highlighted that many financial institutions already have provisions in their customer agreements that allow the institution to place holds on accounts. This law is in addition to any authority the institution may have under its client-account contracts.

When a financial institution uses its discretion to take one of the above actions, the financial institution shall take reasonable effort to notify the parties involved in the transaction unless the financial institution determines that providing such notice could compromise an investigation or response to the financial exploitation. ORS 708A.6753(a-b).

The financial institution's hold on the activity expires after 15 business days, but it may extend that timeframe if it reasonably believes the financial exploitation is ongoing or that financial exploitation did occur, absent a court order directing it to act differently. ORS 708A.675(4-5).

A financial institution and all employees are immune from criminal, civil, and administrative liability for actions taken pursuant to the statute.

The Oregon Trial Lawyers Association testified against the bill, with the argument that it did not go far enough in protecting vulnerable adults, and pushed for the law to mirror more closely SB 95, which required broker dealers to report financial exploitation to DCBS which would report to DHS in turn. Here, HB 2622 grants financial institutions blanket immunity if they take one of the allowed actions, but does not require the financial institution to report the abuse. It is not clear on the face of the law that that immunity would extend to failing to act. According to attorney Gary Berne of Stoll Berne, this is the only such law that grants immunity to banks but does not require a report of the action taken. ■

Insights into peer-to-peer bullying and other antagonistic behaviors among older adults

By Robin P. Bonifas, PhD, MSW, LICSW



*Dr. Robin Bonifas is an associate professor and the Associate Director for Curriculum & Instruction at the Arizona State University School of Social Work. She has more than 15 years experience working with elders and their families in both long term care and inpatient psychiatric settings. Her current projects examine elder social justice issues such as resident-to-resident aggression in nursing homes, bullying among older adults, and other challenges to social relationships in senior care organizations. Dr. Bonifas is the author of **Bullying Among Older Adults: How to Recognize and Address and Unseen Epidemic**, available through Health Professions Press.*

Peer-to-peer bullying has long been recognized as a problem among children and youths in school systems, but there is less awareness that such interactions also occur among older adults in elder housing and other elder-care organizations. This article introduces readers to the characteristics of bullying and other antagonistic behaviors that may take place among older adults in community centers, independent older-adult apartments, congregate meal settings, assisted living facilities, and similar environments.

Defined as intentional repetitive aggressive behavior involving an imbalance of power or strength (Hazelden Foundation, 2008), research indicates that anywhere from 10 to 50 percent of elders experience peer-to-peer bullying in older adult living environments (Rosen, Lachs, & Pillemer, 2010; Trompetter, Scholte, & Westerhof, 2011; Benson, 2012; Bonifas, 2016). Behaviors of the older generation are comparable to those of younger age groups in that incidents can involve verbal, physical, or antisocial behaviors exhibited in the context of social relationships, and like youngsters, older targets of bullying typically experience considerable emotional distress.

Types of bullying

Verbal bullying involves name-calling, teasing, hurling insults, taunting, threatening, or making sarcastic remarks or pointed jokes. For example, George was overheard in the hallway of an assisted living facility saying to Eleanor as she walked by, "Fatso, hey fatso," and then mimicking a pig's oink (Bonifas, 2016). Alternatively, a few residents may gather in cliques near the entrance to a senior housing facility and provide audible negative commentary about each peer who passes by.

Physical bullying involves pushing, hitting, destroying property, or stealing. For instance, two residents in independent elder housing got into an argument over control of the remote control in the activity room, and one punched the other in the face (Bonifas & Frankel, 2012). In another community, a resident used her cane to strike out with contact at her neighbor's dog as the neighbor walked it nearby (Reese, 2012).

Antisocial bullying includes shunning, excluding or ignoring, gossiping, spreading rumors, and making racial or sexual slurs. Also known as relational aggression, antisocial bullying extends to negative non-verbal body language such as mimicking someone's walk or disability, making offensive gestures or facial expressions, turning one's head or body away when the victim speaks, using threatening body language, or encroaching on personal space. For example, Robert went right up to Sam, shook his fist in Sam's face, and threatened, "One of these days, I am going to hit you with a hammer" (Bonifas, 2016).

Reactions to bullying

The individual targets of bullying are negatively affected by such experiences. Common reactions involve anger, annoyance, frustration, fearfulness, anxiety, retaliation followed by shame, self isolation, and exacerbation of existing mental health conditions (Bonifas, 2016). Other observed responses include feeling a pervasive sense of rejection, voicing more physical complaints, experiencing functional declines or changes in appetite and sleep, increased talk of moving out of a living community, and even suicidal ideation (Bonifas & Frankel, 2012). The frequency of incidents and the level of emotional distress felt in response influences subsequent outcomes. Specifically, people who encounter bullying and other negative social interactions the most often also tend to have lower emotional well-being, lower physical functioning, and less emotional connection to peers (Bonifas & Casalean, 2017). Those who report greater emotional distress stemming from incidents often have lower self-esteem and more depressive symptoms (Bonifas, 2016). The harmful impact of bullying is not exclusive to the recipients of such behavior: individuals who witness bullying also experience negative consequences. A common response is feeling intense guilt for not intervening, which can contribute to a sense of poor self worth.

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Bullying

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Differences between bullying and antagonistic behavior

Given the definition of bullying provided above, it is important to recognize that not all problematic behaviors between older adults are actually bullying because the dynamics of power and control are absent. For example, consider the following list of situations and experiences identified by assisted-living residents as the most challenging peer interactions:

1. Loud arguments in communal areas
2. Name calling
3. Being bossed around
4. Negotiating value differences, especially related to diversity of beliefs stemming from culture, spirituality, or socioeconomic status
5. Sharing scarce resources, especially seating, television programming in communal areas, and staff attention
6. Repetitive hounding for money or cigarettes
7. Listening to others complain
8. Experiencing physical aggression
9. Witnessing psychiatric symptoms, especially those that are frightening or disruptive

Only behaviors 2, 3, 6, and 8 fit the definition of bullying. The rest are simply antagonistic behaviors because intentional intimidation is lacking. Even an individual who yells and strikes out at everyone is not necessarily a bully. Some people exhibit verbal or physical aggression when they are frustrated or upset as a way of communicating their feelings rather than attempting to usurp others' power. The potential for such behavior increases in the context of dementia, due to impulse control problems, communication difficulties, frustration regarding impaired task performance, and misperceptions of potential environmental threats. Thus, dementia-related behaviors are typically not bullying. At the same time, even though some problematic behaviors may not qualify as bullying, experiencing them can still feel victimizing and contribute to negative responses and outcomes described above (Bonifas, 2016).

Characteristics of older people who bully

As suggested by the definition of bullying, the characteristics of many older adults who bully reflect underlying needs for power and control. Indeed, the majority of bullies' behaviors and social interaction patterns strive to achieve these aims. Although most people like to be in charge of their situation, they accomplish this in ways that do not negatively impact others. In contrast, bullies are more likely to use power and control strategies at the expense of others, and may find it positively reinforcing to make others feel threatened, fearful, or hurt, or to contribute to conflict between people. These tendencies are further complicated by difficulty tolerating individual differences, lack of empathy, and very few positive social relationships. Furthermore, the experience of many providers suggests there are gender differences in bullying behaviors, wherein women tend to engage in more passive-aggressive behavior like gossiping and whispering, and men are more likely to make negative in-your-face comments (Bonifas & Frankel, 2012).

However, it is important to acknowledge additional issues that may contribute to older bullies' behavior. First, bullies denigrate others in order to build themselves up, which suggests low self-esteem plays a role in their behavior. Second, loss is ubiquitous with aging in Western societies; examples include loss of independence, relationships, income, and valued roles. Such losses are especially salient for seniors who move into assisted living facilities, nursing homes, and other long term care settings, and bullying behavior may represent efforts to seek control during a time when they feel especially powerless. Third, many long term care residents may not have lived in a communal setting for years, if at all. Shared living requires adjustments in terms of space and diverse personalities. For example, one assisted living resident described how hard it was to cope with co-residents she perceived as different "I have problems accepting their problems ... that's one of the things that is hardest to deal with" (Bonifas, 2016). Bullying behaviors related to territoriality, as with selection of channels for shared televisions, dining room seating, and the like, may involve attempts to exert control and change public space into private space (Bonifas & Frankel, 2012). There is also evidence that bullying among the older generation is associated with fewer traumatic life experiences and thus fewer associated opportunities to develop empathy toward others (Bonifas, 2016).

Characteristics of older people who are bullied

In contrast to individuals who bully, individuals who are the targets of bullying have trouble defending themselves. They do nothing to "cause" the bullying, but passive social interaction styles make them ideal to overpower and control. Targets may also experience a sense of powerlessness because bullying experiences are unpredictable, and they have difficulty preventing incidents and removing themselves from bullying situations. For example, one individual described constant efforts to avoid someone who would purposely bump into him in communal areas, "I just have to dodge him ... because he will altercate me. I have to try and avoid being harangued ... if he hits me, and I fall, I'll break a bone" (Bonifas, 2016). In addition, targets tend to show a lot of emotion, are often anxious, and typically do not read social cues well; they may be perceived as shy and insecure. Among older adults, such victims may

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Bullying

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have early dementia or a developmental disorder. Sadly, minority status based on race, ethnicity, faith tradition, or sexual orientation can also contribute to individuals being targeted for bullying because people who bully have difficulty tolerating individual differences. Even being new to the community can play a role. For example, recent move-ins may be purposely excluded from public leisure events by excessive seat-holding behavior in which peers do not allow them to occupy any available chairs with the excuse “It’s saved.” (Jamie Childress, personal communication, June 28, 2018).

Considerations for responding to bullying

Recognition that bullying is occurring is the first step toward addressing it. To that end, older adults who are being bullied may exhibit the following behaviors: non-characteristic self isolation, avoidance of specific areas or activities, use of long circuitous routes to get to and from communal areas even in the context of mobility impairment, making vague complaints such as “They don’t like me” or “They won’t let me,” and exhibit depressed moods. If such behaviors are observed, talk to the individual about how peers are treating him or her, and discuss noted concerns with facility administration or contact the Area Agency on Aging for additional resources. ■

References

- Benson, J. (2012). “Relational aggression and subjective well-being in independent senior living communities.” Unpublished manuscript for Mather LifeWays Institute on Aging.
- Bonifas, R. P. (2016). *Bullying among older adults: How to recognize and address an unseen epidemic*. Health Professions Press: Baltimore, MD.
- Bonifas, R. P., & Casalean, M.* (July, 2017). *Peer bullying and other antagonistic behaviors among older adults in independent low income housing*. Late-breaker poster presentation at the 21st IAGG World Congress of Gerontology and Geriatrics, San Francisco, California.
- Bonifas, R. P., & Frankel, M. (March, 2012). *Is it bullying? Strategies for assessing and intervening with older adults*. Workshop presentation at the Aging in America Conference of the American Society on Aging, Washington, D. C.
- Hazelden Foundation. (2011). *Bullying is a serious issue*. Available at <http://www.violencepreventionworks.org/public/bullying.page>
- Reese, R. (March 22, 2012). *Georgia woman, 87, accused of bullying neighbor*. ABC News. Available at <http://abcnews.go.com/blogs/headlines/2012/03/georgia-woman-87-accused-of-bullying-neighbor/>
- Rosen, T., Lachs, M., & Pillemer, K. (2010). “Sexual aggression between residents in nursing homes: Literature synthesis of an underrecognized problem.” *Journal of the American Geriatrics Society*, 58, 1070-1079.
- Trompetter, H., Scholte, R., & Westerhof, G. (2011). “Resident-to-resident relational aggression and subjective well-being in assisted living facilities.” *Aging and Mental Health*, 15, 59-67.

Should bullying among older adults be reported as elder abuse?

By Christian Hale, Attorney at Law

Bullying and other types of abusive behavior may be reported in confidence to Oregon’s Department of Human Services (the department). Some categories of professionals and caregivers are mandatory reporters of suspected abuse when the victim is a person aged 65 or older. See ORS 124.050(9), 124.060, 441.630(6), and 441.640.

In licensed care settings, resident-to-resident altercations are not an acceptable part of living and facilities must have policies and procedures in place to help prevent and appropriately respond to any incident. OAR 411-054-0028, OAR 411-085-0360. Examples of behavior that should be reported include: punching, shaking, pinching (potentially physical abuse); derogatory name-calling, harassment, intimidation, humiliation, or inappropriate sexual comments when they cause or threaten significant physical or emotional harm (potentially verbal or emotional abuse); and any sexual contact that is achieved through force, trickery, threat, or coercion, including where a victim lacks capacity to understand or consent to what is going on (potentially sexual abuse). For the abuse definitions, see OAR 411-020-0002(1).

All abuse reports to the department go through a screening process to determine whether the reported behavior meets one or more of the types of abuse defined in administrative rules and whether the bullied elder meets the eligibility criteria for protective services. See OAR 411-020-0060, OAR 411-020-0015. If so, a protective services investigation will take place.

The department has established a state-wide abuse reporting phone number for callers to give information about suspected abuse: 855.503.7233. In an emergency, call 911. ■

Christian Hale is a policy analyst with the Oregon DHS Aging and People with Disabilities program, where he also serves as the Older Americans Act legal assistance developer. He has practiced elder law in Oregon and Nevada.

Reporting elder abuse

If you suspect abuse, neglect, or financial exploitation of an elderly person or an adult with physical disabilities, report abuse or neglect to the Department of Human Services office in your area.

<https://www.oregon.gov/DHS/Offices/Pages/Seniors-Disabilities.aspx>

If you suspect abuse, neglect, or financial exploitation of an adult with developmental disabilities, report abuse or neglect to your county developmental disability program.

<https://www.oregon.gov/DHS/SENIORS-DISABILITIES/DD/Pages/county-programs.aspx>

If you suspect abuse, neglect, or financial exploitation of an adult with mental illness report abuse to your county mental health program.

<https://www.oregon.gov/oha/hsd/amh/pages/index.aspx>

You may also call 855.503.7233. This toll-free number allows you to report abuse or neglect of any child or adult to the Oregon Department of Human Services.

For information about abuse of the elderly and vulnerable adults see: Adult Abuse Investigations and Prevention:

<https://www.oregon.gov/DHS/SENIORS-DISABILITIES/ADULT-ABUSE/Pages/index.aspx>

Guide for Mandatory reporters

https://www.oregon.gov/DHS/ABUSE/Pages/mandatory_report.aspx

Registration now mandatory for all placement agencies

The elder care industry has seen an explosion in referral and placement services over the last decade. Some agencies will simply supply the client with a list of “recommended” facilities based on a short telephone interview or an on-line screening. Others may want to visit the family and the elderly client to discuss finances, care needs, desired locations, and “must haves,” and then will hand-hold the client through the entire process of searching for the right place to move.

OSRAA (Oregon Senior Referral Agency Association) has been working on creating oversight for referral agencies for several years. Oregon HB 2661 was signed by the governor in July 2017 and became effective July 1, 2018. To provide placement services in Oregon, the bill requires placement agencies to be registered with DHS, follow rules as defined by DHS, and carry \$1 million in liability insurance. Referral agencies are now mandatory reporters, must have background checks, must be transparent in how they are paid, and must present clients with their disclosure statements. In addition, anybody who receives \$1,000 or more in a calendar year in gift cards or gifts for making referrals to senior housing must register as a referral agent.

For further information, contact Liz Fischer, president of Oregon Senior Referral Agency Association at 503.830.63268. ■

Scammers continue to target elders

The “Grandparent Scam” has been around for many years and is just one variation of the impostor scams that dupe people into losing thousands of dollars. The typical scam involves a frantic call from a “grandchild” in trouble, or someone saying the grandchild is in trouble with the law, had an accident, or is detained in a foreign country while on vacation. These calls often come late at night and the callers express urgency and the need for an immediate wire transfer of cash or an online gift card to help the grandchild.

In recent years, some scammers have hacked into social media accounts and will send messages to friends and family with a similar and urgent need for emergency money.

The Portland Police Bureau recently reminded community members of the following tips to avoid these scams:

- Don’t send money. Never wire money out of the country to persons unknown. This includes buying reloadable VISA cards or gift cards.
- Be skeptical. Ask questions that only family members would know—like pet names or favorite foods—without revealing too much personal information.
- Verify information. Check with family members to confirm the locations of grandchildren.
- Stay private. Regularly update privacy settings for social media sites. Scammers often make their stories more believable by trolling for personal information on Facebook, Twitter, and similar sites.
- Know where to turn. Victims suffering a financial loss should report incidents to local law enforcement agencies and the Oregon Attorney General’s Office, Department of Justice.

The Oregon Department of Justice has a lot of information and resources available to protect consumers: <http://www.doj.state.or.us/Pages/index.aspx>

For more information, visit the Federal Trade Commission (FTC) Scam Alert website: www.consumer.ftc.gov/scam-alerts

Changes to long term care program have been modified

By Amy Scott, Lane County Oregon Law Center,
and Andrea Ogston, Portland Regional Office of Legal Aid Services of Oregon



The January 2018 *Elder Law Newsletter* included an article that highlighted broad changes to Oregon's long term care program, the program that provides approximately 35,000 low-income Oregonians with payment to live in a care facility or to receive care services in their own homes, if they need significant help to accomplish their basic activities of daily living (ADL). The program changes were a response to reduce the number of in-home care hours allotted for people who receive long term care services in their home. In July 2017, these rule changes began to affect individuals who received "live-in" long term caregiving services: then in October 2017, the new rules and criteria affected everyone in the long term care program.

As elders and people with disabilities began to receive long term care termination or reduction notices from the state, Legal Aid Services of Oregon (LASO), the Oregon Law Center (OLC), and Disability Rights Oregon (DRO) began to experience a high volume of calls from clients. Our clients were losing eligibility for the program altogether (which would require some people to move out of their long term care facility), or were facing drastic reductions in the number of in-home care hours on which they relied to meet their health and safety needs. In response to this sudden high volume of clients needing our help, LASO, OLC, and DRO advised the state that we intended to file litigation to challenge the rule changes. We argued, among other things, that the notices given to long term care clients didn't give them enough information to satisfy due process requirements, the in-home care hours reductions were not reasonable, and there was insufficient process built into the rules to allow people to request and receive exceptions to the maximum in-home hours limits.

The state Department of Human Services (DHS) promptly responded by agreeing to discuss possible solutions to the concerns raised, and by offering to restore almost all long term care clients who received terminations or reduction of hours (based on the rule changes) to their previous level of eligibility and services while we attempted to negotiate a settlement. DHS, LASO, OLC, and DRO spent the next two months working collaboratively on solutions to the problems raised, and all parties came to a

final settlement on February 7, 2018. <https://droregon.org/wp-content/uploads/Memorandum-of-Understanding.pdf>. Check OAR 411-015 and OAR 411-030 for the rules that codify the agreement and govern the operation of the long term care program.

Below are some of the major changes the state agreed to make to the long term care program to address the concerns of the advocates. The state agreed to make rule and policy changes to:

- Reverse all of the reductions in maximum hours allowed per ADL (although the state kept the reductions in maximum hours for Instrumental Activities of Daily Living (IADL), i.e., housekeeping, laundry, meal preparation, medication management, shopping, and transportation)
- Redesign the termination/reduction notice to be issued to all applicants and participants in the long term care program, which is now designed to provide individualized information so clients can understand what is happening to their eligibility/hours, why any changes are happening, and an explanation if they have been given less than the maximum in-home hours for each ADL and IADL
- Create a new rule that defines the process for requesting an "exception" to the maximum hours per ADL in the rules, and provides criteria for granting those exceptions
- Clarify that the assessment of whether a person can accomplish an ADL must consider whether the person can complete the task "in a safe and dignified manner, comparable with how tasks would be performed by an individual not receiving [long term care services]" It is hoped that this clarification will address the problem of clients who are assessed as not needing any help in a task because they could technically complete it, although it took a tremendously long time, put them in terrible pain, or could only be accomplished in an undignified manner, such as getting to the bathroom by crawling there.

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Changes to LTC program

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- Review all persons who lost “live-in” services since July 2017 to determine whether they qualify for “shift services” which can cover up to 24 hours of care per day, although divided into shifts
- Get rid of the rule that required people to find a caregiver within 14 days of being found eligible or lose eligibility for the in-home care program
- Allow caseworkers to factor in individuals’ “cognition” needs when determining the number of in-home care hours needed to address all ADLs

DHS is currently training case managers on the new rules and practices, and on how to create notices that comply with the terms of the settlement.

Persons whose eligibility terminations or in-home hours reductions were “stayed” during the course of the settlement negotiations have now started to receive new termination/reduction notices pursuant to the settlement agreement.

During this transition, attorneys should make sure to carefully review the notices their clients receive to ensure they include the following:

- A detailed explanation for the reduction or termination of benefits or denial of eligibility
- A list of people present during the assessment and any other information the case

manager used to make the determination

- A detailed and individualized explanation for any change in the level of care needed for specific activities of daily living. For example, if a person who was assessed as needing “full assistance” in ambulation, but who is currently found to be “independent” in ambulation should get some explanation such as “because they had knee surgery and physical therapy which eliminated their need for hands-on assistance to prevent falls”

- A minimum of ten days’ notice prior to the notice becoming effective

Additionally, attorneys should interview their clients to determine if:

- The number of in-home hours given is actually sufficient to support the health and safety of their client
- The client was screened for shift services eligibility and exceptions hours if applicable
- The client was provided with a detailed explanation for any determination of ineligibility
- The client was given a detailed explanation as to why any request for “exceptions” hours (above the maximum hours for an ADL) was denied or only partially approved
- If the client whose benefits are being terminated was screened for extended waiver eligibility (E.W.E.—an exemption from termination if loss of eligibility for long term care services in a facility or at home would result in a threat to health and safety within the next 30 days)

If a notice does not contain all the information required by the settlement agreement, or if the consumer disagrees with the determination, they may request a hearing and continuing benefits. Please feel free to refer low-income Oregonians to the LASO and OLC Public Benefits Hotline at 800.520.5292 for information and advice on long term care terminations and denials, or contact your local LASO, OLC, or DRO office to share your clients’ experiences with the program. ■

New Medicare cards aim to lower risk of ID theft



In April, the government began sending out new Medicare cards in an effort to lower the risk of identity theft.

Historically, Medicare ID cards have been stamped with the Social Security numbers of members, but that’s been problematic. If a wallet or purse were stolen, a thief could use that information, along with an address or birthdate on a driver’s license, to steal someone’s identity.

Phone scammers have preyed on older adults by requesting their Medicare numbers, giving various reasons for doing so. People who fall for these ruses have found bank accounts emptied, Social Security payments diverted, or bills in their mailboxes for medical services or equipment never received.

The new cards address these concerns by removing each member’s Social Security number and replacing it with a new, randomly generated 11-digit “Medicare number” (that includes some capital letters). Going forward, this will be used to verify eligibility for services and for billing purposes.

Cards are being sent to people covered by Medicare on a rolling basis over a 12-month period ending in April 2019. Older adults in Oregon were among the first to receive the mailings, and your clients should have received their new cards by July 1. ■

Elder Law Section unCLE program

The Elder Law Section held its annual unCLE program on May 4, 2018, in Eugene at the Valley River Inn.

Consistent with prior years, registration maxed out at 80 several weeks prior to the session. Attendees have consistently given this CLE program the highest ratings.

Unlike other continuing education programs, the unCLE consists of unique facilitated round-table discussions where Elder Law Section members come together to brainstorm, network, and exchange ideas. The main topics include estate planning, protective proceedings, long term care planning, and office practice management.

Despite its title, the Oregon State Bar grants CLE credits for the program.

Next year's unCLE will be May 3, 2019. ■



Michael Edgel and Steve Heinrich



Liz Jessop and Laura Nelson

Save the date

**Annual Elder Law
CLE Program**

Friday, October 5, 2018

**Multnomah Athletic Club
Portland**

Sessions will focus on
basic elder law topics



Julie Meyer Rowett, Sybille Baer, and Jason Broesder

Resources for elder law attorneys

Events

Trusts and Estates

September 19, 2018/Noon–1:00

Sponsored by the OSB Taxation Section

Red Star Tavern, Portland

RSVP: [Justin Hobson](#)

Annual Elder Law Section CLE Program

October 5, 2018

Multnomah Athletic Club, Portland

The sessions will focus on basic elder law topics. Details TBA

Basic Estate Planning and Administration

November 16, 2018

Multnomah Athletic Club, Portland ■

Websites

Elder Law Section website

<https://elderlaw.osbar.org>

The website has links to information about federal government programs and past issues of the Section's quarterly newsletters.

National Academy of Elder Law Attorneys (NAELA)

www.naela.org

A professional association of attorneys dedicated to improving the quality of legal services provided to elders and people with special needs

National Center on Law and Elder Rights

<https://ncler.acl.gov>

One-stop support center for the legal services and aging and disability community to access trainings and technical assistance on a broad range of legal issues that affect older adults

OregonLawHelp

www.oregonlawhelp.org

Helpful information for low-income Oregonians and their lawyers

Aging and Disability Resource Connection of Oregon

www.ADRCofoOregon.org

Includes downloadable *Family Caregiver Handbook*, available in English and Spanish versions

Administration for Community Living

<https://www.acl.gov>

Information about resources that connect older persons, caregivers, and professionals to federal, national, and local programs

Big Charts

<http://bigcharts.marketwatch.com>

Provides the price of a stock on a specific date

American Bar Association Senior Lawyers Division

http://www.americanbar.org/groups/senior_lawyers/elder_law.html

National Elder Law Foundation

<http://www.nelf.org>

Certifying program for elder law and special-needs attorneys

National Center on Elder Abuse

<https://ncea.acl.gov>

Guidance for programs that serve older adults. Practical tools and technical assistance to detect, intervene, and prevent abuse ■

Bar Books

Available on the Bar Books section of the Oregon State Bar website.

Elder Law (OSB Legal Pubs 2017)

Elder Law 2016: Advanced Concepts, 2016 CLE materials

Elder Law Elements: 2015 CLE materials ■

Publications

The American Bar Association Commission on Law and Aging has published a new legislative fact sheet, *Guardianship and the Right to Visitation, Communication, and Interaction*, which offers assistance to lawyers, bar associations, allied professionals, legislative staff, and advocates to make policy recommendations, improve practice, and raise professional awareness about visitation and guardianship.

https://www.americanbar.org/content/dam/aba/administrative/law_aging/2018-05-24-visitation-legislative-factsheet.authcheckdam.pdf

The Gentle art of Swedish Death Cleaning: How to Free Yourself and Your Family From a Lifetime of Clutter

By Margaret Magnusson

Despite the startling title, this tiny international bestseller offers a charming approach to guiding elders—whether oneself or a loved one—through the process of eliminating clutter.

The book is not intended for emergencies or sudden life shifts; its express purpose is to enable readers to avoid them through a thoughtful and unhurried process over time. It reads more like a conversation with a fairly sophisticated and well-traveled grandparent with a wicked sense of humor than a manual.

Ms. Magnusson, a retired Swedish artist who traveled the world with her late husband, an international businessman, and raised her kids overseas, peppers the text with simple but lovely drawings. Delightful food for thought or an excellent gift for a retiree. ■

**Important
elder law
numbers**

as of
July 1, 2018

Supplemental Security Income (SSI) Benefit Standards	Eligible individual.....\$750/month Eligible couple\$1,125/month
Medicaid (Oregon)	Asset limit for Medicaid recipient.....\$2,000 Long term care income cap.....\$2,250/month Community spouse minimum resource standard \$24,720 Community spouse maximum resource standard\$123,600 Community spouse minimum and maximum monthly allowance standards\$2,057.50/month; \$3,090/month Excess shelter allowance Amount above \$617.25/month SNAP (food stamp) utility allowance used to figure excess shelter allowance\$454/month Personal needs allowance in nursing home.....\$61.38/month Personal needs allowance in community-based care\$167/month Room & board rate for community-based care facilities..... \$583/month OSIP maintenance standard for person receiving in-home services.....\$1,250 Average private pay rate for calculating ineligibility for applications made on or after October 1, 2016\$8,425/month
Medicare	Part B premium \$134.00/month* Part D premiumVaries according to plan chosen Part B deductible \$183/year Part A hospital deductible per spell of illness\$1,340 Skilled nursing facility co-insurance for days 21–100..... \$167.50/day * Premiums are higher if annual income is more than \$85,000 (single filer) or \$170,000 (married couple filing jointly).



**Elder Law
Section**

Newsletter Committee

The Elder Law Newsletter is published quarterly by the Oregon State Bar’s Elder Law Section: Jan Friedman, 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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