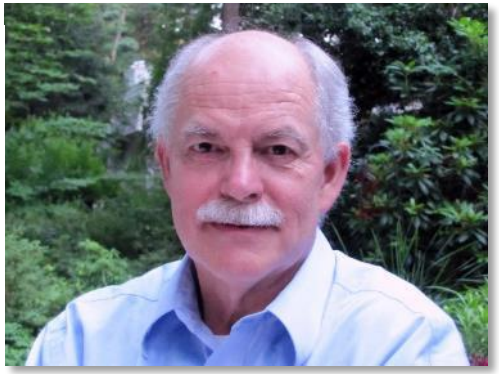
Elder Abuse and Exploitation

presented by:

Dr. Harry Morgan &
Attorney Carmine Perri

About the speakers

Dr. Harry Morgan



Licensure:	Connecticut State License, 1981 – present
Board Certification:	Certified by the American Board of Psychiatry and Neurology, 1980 Added Qualifications in Geriatric Psychiatry, April 1991 – December 2001 Added Qualifications in Geriatric Psychiatry, Recertified 2001 – December 2011 Added Qualifications in Geriatric Psychiatry, Recertified 2011 – December 2021
Present Positions:	President, The Center for Geriatric and Family Psychiatry, Inc., Glastonbury, CT Multidisciplinary practice of Geriatric Psychiatry, 1991 – present Medical staff, Institute of Living/Hartford Hospital Member Medical Advisory Board, Alzheimer's Association of Connecticut, 2004 – present Medical Director, Alzheimer's Resource Center of Connecticut, Southington, Ct., 2007-present Psychiatric Director, The Alzheimer's Resource Center Of Connecticut, 1992-present Active Consultant to Multiple Community agencies and Institutions Active Lecturer to Various Community agencies and Institutions Faculty, National Lecturer, Capacity and Competence and Elder Abuse Training Under Grants from Department of Justice, OVW ; National Institute for the Protection Against Elder Abuse; Various Statewide presentations in California, Washington State, Missouri, Maine, Connecticut; National Council of Juvenile and Family Court Judges faculty
Appointments:	Assistant Clinical Professor, Department of Psychiatry, University of Connecticut Health Center, School of Medicine, July 1999 – 2017 Clinical Manager, The Center for Geriatric and Family Psychiatry training site, Yale School of Nursing, September, 2014 - present
Education:	A.B. Dartmouth College, Hanover, New Hampshire, 1970 B.M.S., Dartmouth Medical School, Hanover, New Hampshire, 1972 M.D., Harvard Medical School, Boston, Massachusetts, 1974
Training:	Rotating Internship, Mary Imogene Bassett Hospital, Cooperstown, New York, 1974-1975 Anesthesiology Residency, Dartmouth-Hitchcock, Medical Center, Hanover, New Hampshire, July 1975 – December 1975

About the speakers

Dr. Harry Morgan

Psychiatric Residency, Mary Imogene Bassett Hospital, Cooperstown, New York, January 1976 – June 1977
Rural general psychiatry and consultation/liaison psychiatry, A Columbia University Affiliate program
Psychiatric Residency, University of Cincinnati Medical Center, Cincinnati, Ohio, July 1977 – June 1979, including the following:
Community and Consultation Psychiatry and Chief Resident at Jewish Hospital, Cincinnati, Ohio, July 1978 – December 1978
Chief Resident in Psychiatry, Cincinnati General Hospital, Inpatient Unit, January 1979 – June 1979
Chairperson Psychiatric Residents' Council and Resident Representative to Residency Training Committee and Department Executive Committee, June 1978 – June 1979

Research:

Primary Investigator – "A Prospective, 26-week, Open-label, Single-arm, Multi-center Study Evaluating the Efficacy and Safety of Exelon (rivastigmine tartrate) 3-12 mg/day in Patients with Mild to Moderate Alzheimer's Disease Who Are Responding Poorly to Aricept (donepezil0 Treatment. Novartis Protocol: CENA713BUS13, March 2003 – September 2004.
Primary Investigator – "Bayer Metrifonate Investigational Nationwide Trial M.I.N.T.)" Protocol Number: D97-019 (bay a 9826 Metrifonate) 1997-1998
Primary Investigator – "An Open-Label, Multicenter Clinical Trial Evaluating the Safety and Efficacy of Donepezil Hydrochloride (E2020) in Patients with Alzheimer's Disease", October 1996 – August 1997
Principal Investigator – "A Treatment IND (Investigational New Drug) Protocol for the Use of Cognex (Tacrine Hydrochloride) for the Management of Patients with Mild to Moderate Alzheimer's Dementia". Cognex Treatment IND Protocol 970-58. 1994-1995

Immediate Past Positions:

Director of Psychiatry, Masonic Healthcare Center, Wallingford, CT, 1995 – 2005
Partner, Trilogy Psychiatric Services, LLC, Wallingford, CT , a Regional Geriatric Psychiatry Network, A Masonicare Affiliate, 1997 – 2004
Board of Directors, Connecticut Alzheimer's Association, 1986 – 2005
Board of Directors, Alzheimer's Resource Center of Connecticut, 1992-2001
Board Member, State of Connecticut Alzheimer's Coalition, 1989 – 1995
Member Governor's Connecticut Blue Ribbon Commission on Mental Health, 1999-2001
Clinical Assistant Professor of Psychiatry, University of Connecticut Health Center, 1982-1997
Director, Department of Geriatric Psychiatry, Institute of Living, 1985-1991
Clinical Director of the Braceland Center for Mental Health and Aging, 1987-1991
Director of Training for Postgraduate Fellowship in Geriatric Psychiatry at the Institute of Living, 1985-1991
Member of the Executive Committee of the Medical Staff, Institute of Living, 1985-1989
Member, Board of Directors, Institute Medical Group, 1985-1990
Institute of Living Site Coordinator for the University of Connecticut Alzheimer's Alliance 1987-1990
Member IOL/UConn Residency Training Committee, 1985-1991

Prior Professional:

Geriatric Psychiatrist, Institute of Living, Hartford, Connecticut, August 1984 – 1991
Staff Psychiatrist, Mount Sinai Hospital, Hartford, Connecticut, August 1982 - July, 1984
Director of Psychogeriatric Outreach Program
Director of Phobia and Panic Disorders Service
Assistant Professor, Department of Psychiatry, University of Connecticut Health Center at Capitol Region Mental Health Center, January 1981 - November 1982
Director of Geropsychiatry of the Department, 1981-1983
Director of Education at Capital Region Mental health Center, 1981-1982
Executive Committee Member of Capitol Region Mental Health Center 1981-1982
Assistant Professor, Department of Psychiatry, The Pennsylvania State University, Hershey Medical Center, August 1, 1980 – January 1981
Geriatric Psychiatry Consultant to Harrisburg Hospital
Supervisor, Psychiatric Residency Outpatient Department
University of Cincinnati, Cincinnati, Ohio
Consultant to Court Psychiatric Clinic, 1979-1980
Instructor, Department of Psychiatry, University of Cincinnati, Cincinnati, Ohio, August 1, 1979 - July 15, 1980
Geropsychiatric Unit Chief, Cincinnati General Hospital, 1979-1980
Consultation/Liaison Psychiatrist at Central Psychiatric Clinic as member of the community consultation and education team

Special Interests:

Geriatric Psychiatry and Forensic issues
Of Brain – Behavior Interface
Alzheimer's disease and other Dementias
Geriatric Psychopharmacology
Depression
Elder Abuse

Prior Licensures:
New York State License, 1976 (inactive)
Ohio State License, 1977 (inactive)
Pennsylvania State License, 1980 (inactive)

About the speakers

Dr. Harry Morgan

Publications:

Harry E. Morgan, M.D., Wetle, Terrie, Ph.D., Besdine, Richard W., M.D. Keckich, Walter, M.D., Gesino, Jack, D.S.W, Smolski, Sue, A., R.N., M.S.W., Fulmer, Terry, R.N., Ph.D., "Family Centered Detection and Management of Alzheimer's Disease". Pride Institute Journal of Long Term Home Health Care, Fall 1989, 8(9):3-11.

Jacobs, N.J., Jacobs, J.M. and Morgan, H.E., Jr., "Comparative Effect of Oxygen and Nitrate on Protoporphyrin and Heme Syntheses in Bacterial Cultures", Journal of Bacteriology, December 1972, Vol. 112, pp. 1444.

Morgan, Harry E., "Mental Health Consultation in a School: A Clinical Example", unpublished.

Whitman, Roy, and Morgan, Harry, "Homosexual Onslaught; Styles of Institutional Coping", Social Psychiatry, 1981, Vol. 16, pp. 105-109.

Keckich, Walter, A., and Morgan, Harry E., "The Diagnosis and Treatment of Behavioral Disturbances in the Elderly", Connecticut Medicine, September 1985, pp. 578-581.

Morgan, Harry E., "Effective Approaches to Treatment Resistant Depression," Psychiatric Annals, July 1987.

About the speakers
Attorney Carmine Perri

Attorney Perri is a principal at the elder law firm Czepiga Daly Pope & Perri. He specializes in elder law and is recognized for protecting an individual's rights. He has represented clients in cases of Medicaid, nursing facility collections, will contests, conservatorships, and other contested probate matters.
He has argued cases before the Connecticut Supreme Court, the Connecticut Appellate Court, and throughout the State at the trial court and probate court levels; cases he has argued include the following two cases that have an impact on the fields of elder law and probate law:

- *Paul Valliere et al. v. Commissioner of Social Services, SC 19701*- In a decision released February 1, 2018, the Connecticut Supreme Court found in favor of the plaintiffs, represented by Carmine Perri, who had challenged the Commissioner of Social Services over a determination from the DSS regarding whether or not a preexisting spousal support order rendered by the Probate Court was binding on DSS. As a result of the decision, for married couples who intend to apply for Medicaid benefits, it is now possible for the healthy spouse to keep as much income as is needed to remain safely in the community, even if means keeping more than the State's $3,000/month cap or even keeping all of the institutionalized spouse's income.
- Before the Connecticut Supreme Court, Carmine successfully defended a client against a proposed collection tactic by a nursing facility (*Wilton Meadows Limited Partnership vs. Sally Coratolo*). The client's husband was a resident of the facility and was unable to pay for the first months of his stay. About 6 months after his death, the facility sued Sally Coratolo, claiming that she was liable for her husband's debt. Carmine argued before the Supreme Court on Sally's behalf and won. This case is an important one because it showed that nursing facilities are always looking for alternative grounds for recovery beyond the admission agreement and it underscores the Court's intention to prevent the admission agreement from requiring third party guarantors of payment.

In addition, Attorney Perri is an active member of the Probate Court Rules Advisory Committee, Sub-Committee II, and as part of this committee played a role in writing the latest Connecticut Probate Court Rules of Procedure (updated through 2018). He has also contributed to numerous professional publications.

A notable quote…

"Wealth begins with . . . articles of necessity. And here we must recite the iron law which nature thunders in these northern climates. First, she requires that each man should feed himself. If happily his fathers have left him no inheritance, he must go to work, and by making his wants less or his gains more, he must draw himself out of that state of pain and insult in which she forces the beggar to lie. She gives him no rest until this is done; she starves, taunts and torments him, takes away warmth, laughter, sleep, friends and daylight, until he has fought his way to his own loaf. Then less peremptorily but still with sting enough, she urges him to the acquisition of such things as belong him."

-Ralph Waldo Emerson
Conduct of Life, Essay on Wealth, 1860

Capacity and Undue Influence

Neuropsychiatric Assessments

Consent

- Informed consent
  - Assumes capacity

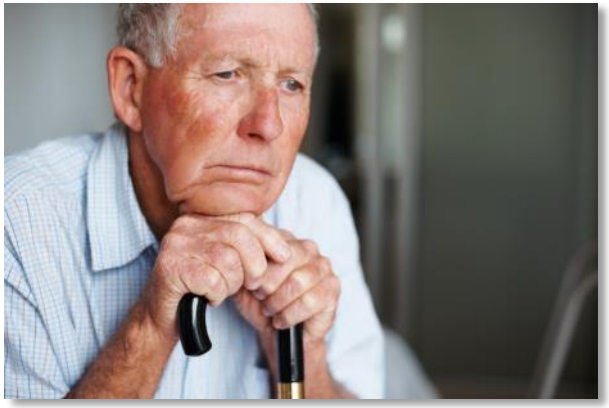
- Consent may be
  - Real
  - Apparent

Capacity

- **Capacity is task specific, not global**
  - Enter into a contract
  - Make a gift
  - Manage finances
  - Engage in complex planning and execution of steps
  - Personal care

Capacity

- **Mental capacity includes ability to:**
  - Think clearly
  - Recall accurately
  - Organize thoughts
  - Express thoughts through communication
  - Plan and execute actions



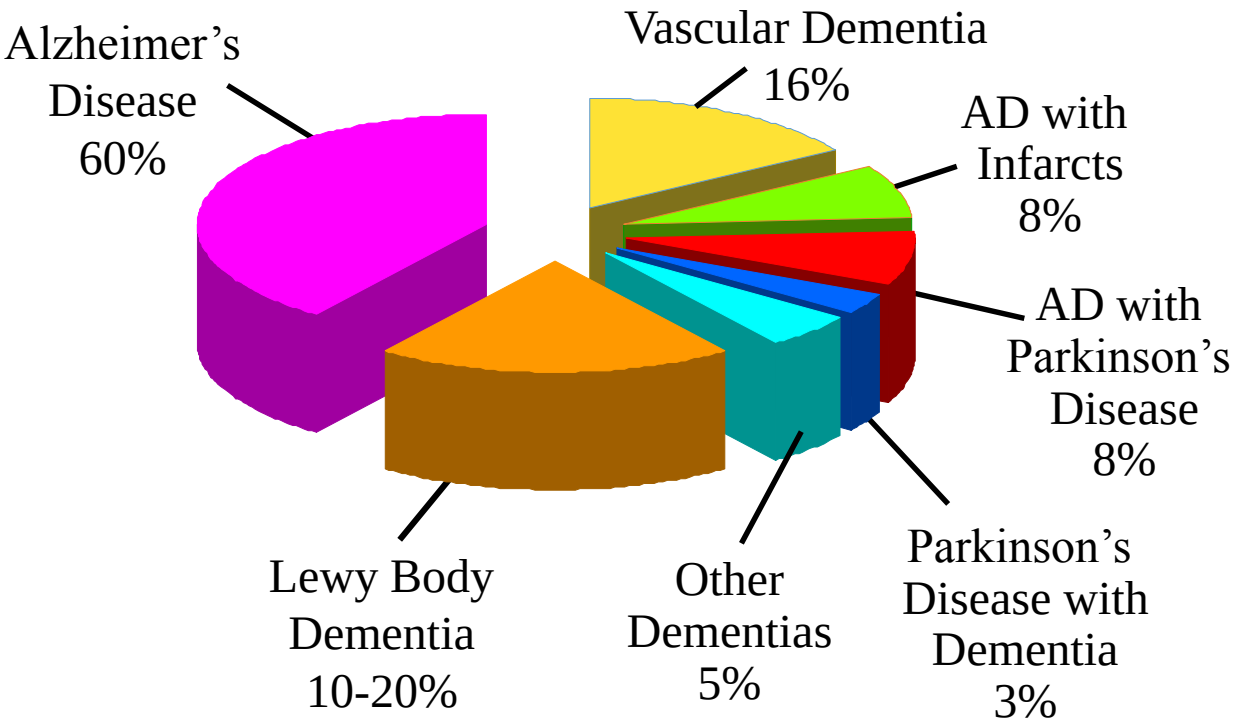
Capacity

- Capacity can fluctuate
  - Medical condition, illness
  - Medication
  - Time of day
  - Events in a person's life, e.g., grief, loneliness
- Experience and education may be relevant
  - Literacy and extent of education may be related to ability to understand complex financial transactions
- Language capacity may be relevant to ability to understand

Executive Function

- Ability to plan, consider and evaluate steps and alternatives, and carry out a plan
- Critical in financial transactions
- Person can have deficits in executive function without having typical dementia or memory impairment (Dyer et al)
- Requires alertness and attention
- Ability to process information
- Ability to modulate mood and affect

Many Etiologies for Dementia



Morris JC. Clin Geriatr Med. 1994(May);10(2):257-276

Dementia Syndromes

Alzheimer's Disease

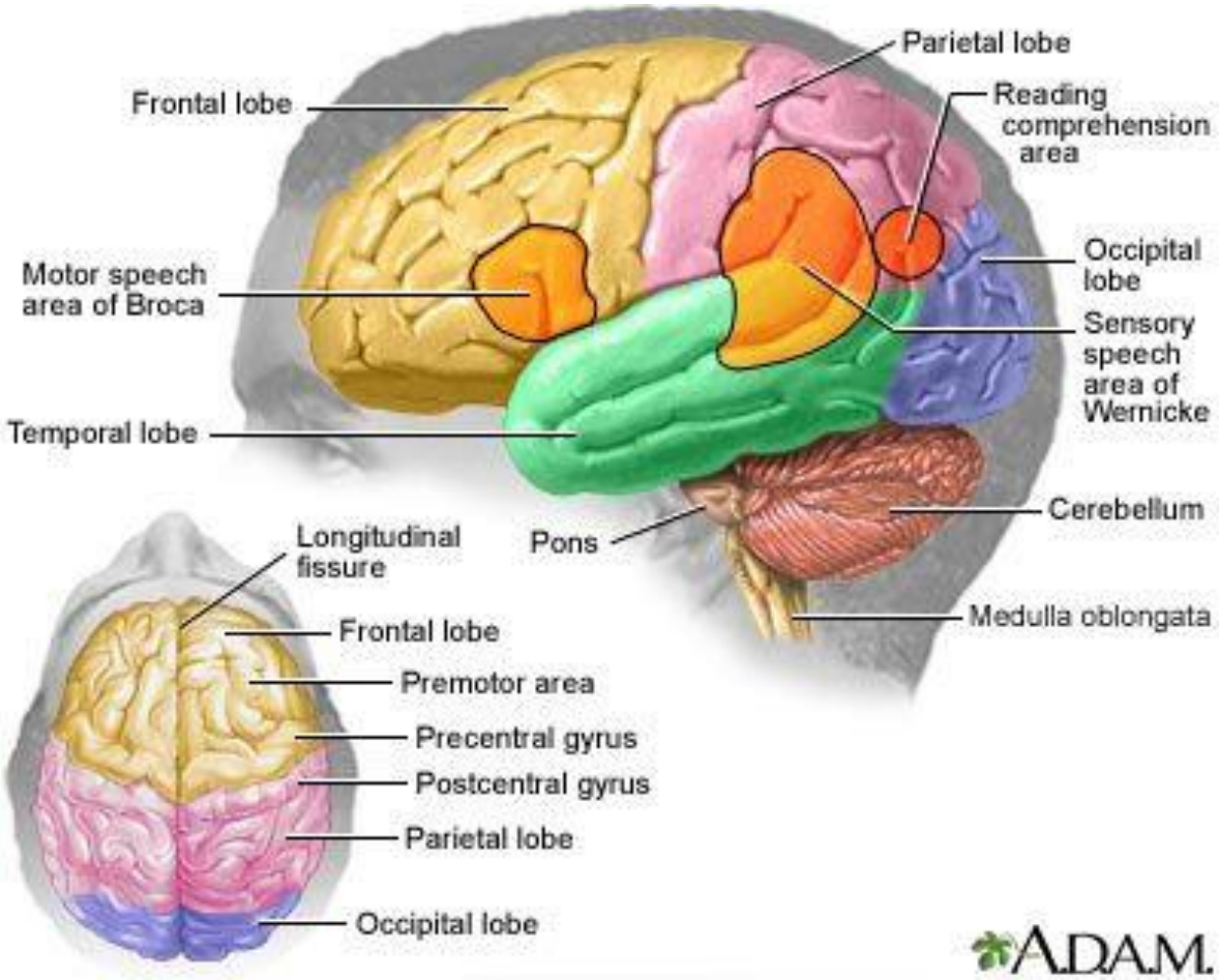
Vascular Dementia

Lewy Body Dementia

Frontal Dementias

Mixed/ Combinations

The Brain - Anatomy



The Brain - Function

Mild Cognitive Impairment

- Measurable change but—
- Able to lead generally normal life
- Despite subjective awareness of change
- Generally still capable legally

Psychiatric Syndromes

- Mood Disorders
- Grieving
- Chemical Abuse
- Other

Capacity Assessment – *Function not Diagnosis*

- Contemporaneous with Decisions
- In Anticipation of Decisions
- Post (even posthumous)

Domains of Cognitive Function - 1

- Alertness, Attention, Orientation
- Speech, Language – expressive, receptive
- Memory – Short vs. Long term
- Numerical, Arithmetic
- Sensory, Motor – apraxia

Domains of Cognitive Function - 2

- Executive function – Initiation, sequencing, perseverating, organizing
- Judgment

Common Testing Options Screening - 1

- Clinical Interview– The Narrative

- Mini-Mental Status Examination (Folstein)
  - Portable and Universal
  - BUT state dependent and nonspecific

- SLUMS or MOCA

Common Screening - 2

- Clock drawing – Spatial, organizational, abstraction, executive function
- Word List—Shopping list; Animals
- Neuropsychological- 2-6 hours—very detailed, reliable between evaluators

Undue Influence

- Complicating issue of consent
- May be criminal
- Role of weakened capacity

Undue Influence

- Use of deception, abuse of a trusting relationship, and an array of tactics to take over victim's free will
- Pattern of manipulative behaviors
  - "Process not an event"
- Victims may have or lack capacity
  - "Susceptibilities"

Undue Influence

- More than persuasion or salesmanship
- Pattern of tactics similar to domestic violence, stalking, and grooming in sexual assault
- Brainwashing
- Method to commit financial exploitation (and sexual abuse)

Source: Undue Influence: The Criminal Justice Response (YWCA of Omaha, 2006)

Undue Influence: *Common Tactics*

Victims: Vulnerability

- Lonely
- Unsophisticated, uninformed
- Ill or cognitively impaired
- Drugged, drunk/alcoholic
- Fatigued, exhausted, distracted
- Frightened
- Dependent

Assessing the Client

- Context of the Meeting
- Safe Environment
- Meeting “alone”

Clinical Assessment

- Observation for signs of distress
- Look for physiologic arousal, anxiety, fear, protectiveness
- Examine degree of mood disturbance and relate to clients emotional needs

Framing of Client Relationships

- Be wary of clients who globally deny any problem
- Be wary of clients who express unrealistic idealization of their “influencing party”
- Explore the nature of awareness of other important relationships in the clients life

Cognitive Appraisal in Undue Influence

- Capacity issues are still relevant
- Domains of cognitive function

A Few References

- Handbook for Judges: Judicial Determination of Capacity of Older Adults in Guardianship Proceeding. By American Bar Assn., American Psychological Assn., National College of Probate Judges
- Common Pitfalls in the Evaluation of Testamentary Capacity. Thomas Gutheil, MD. J. Am. Acad. Psychiatry and the Law (Dec 2007)
- Civil Capacities in Clinical Neuropsychology, Ed. George J. Demakis,2012
    - Chapter by Stacey Wood, Ph.D. – see her presentation here at this meeting, Check her web-site

Elder Abuse from a Legal Perspective

Elder Abuse:
Three Types of Crimes

1. **Opportunity** – occurs because the victim is merely in the way of what the perpetrator wants.

2. **Desperation** – occurs when family members or friends become so desperate for money that they will do whatever it takes to get it. Many of these people are dependent on the elder relative for housing and money.

3. **Predation** – occurs when a relationship is built with the specific intention to financially exploit the victim later.

Elder Abuse Investigations In Connecticut

According to an April 4, 2019 Hartford Courant article by Kate Farrish, “State investigations from elder abuse, ranging from neglect to emotional abuse to physical abuse, more than doubled in Connecticut between 2011 and 207, from 3,529 to 7,196.”

Hartford Courant

Farrish, Kate. “Elder abuse investigations in Connecticut have more than doubled in seven years.” *Hartford Courant,* 4 April 2019, www.courant.com/health/hc-chit-elder-abuse-investigations-connecticut-20190404-y2mph3ynizhkrdcayth73cadae-story.html

Reported Cases in CT

TYPES OF ELDER ABUSE CASES REPORTED IN CONNECTICUT, 2017

TYPE	NUMBER OF CASES	PERCENTAGE
Self Neglect	3,375	30%
Neglect	2,853	26%
Exploitation	2,340	21%
Emotional Abuse	1,527	14%
Physical Abuse	929	8%
Sexual Abuse	63	1%
Abandonment	36	<1%

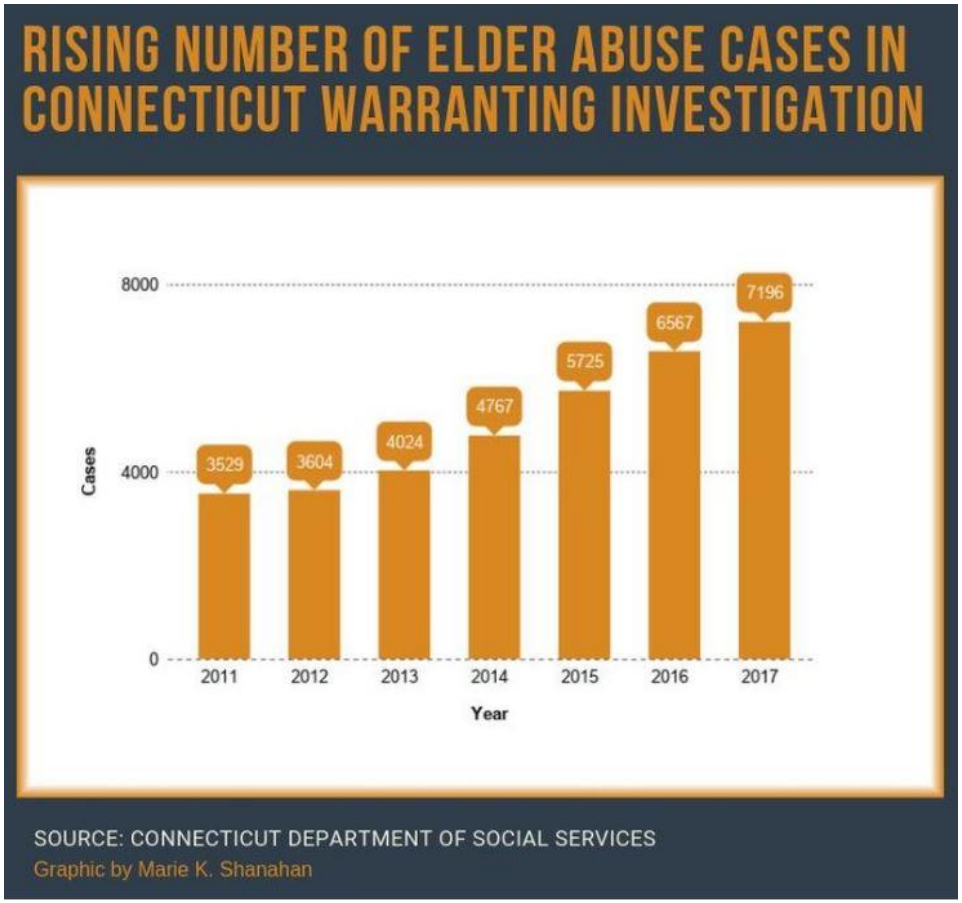
SOURCE: CONNECTICUT DEPARTMENT OF SOCIAL SERVICES

Graphic by Marie K. Shanahan

"Connecticut is the sixth oldest state [in the country]."

Farrish, Kate. "Elder abuse investigations in Connecticut have more than doubled in seven years." *Hartford Courant,* 4 April 2019, www.courant.com/health/hc-chit-elder-abuse-investigations-connecticut-20190404-y2mph3ynizhkrdcayth73cadae-story.html

Cases on the Rise

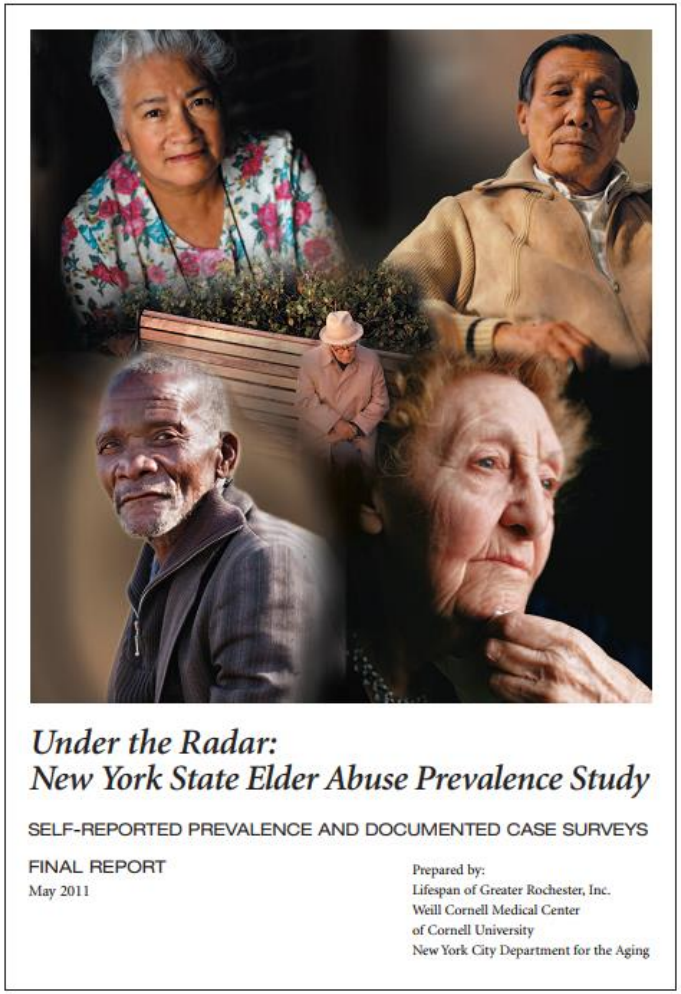


"In 2017 alone, the DSS received 11,123 reports of elder abuse and decided that 7,196 warranted an investigation."

Farrish, Kate. "Elder abuse investigations in Connecticut have more than doubled in seven years." *Hartford Courant,* 4 April 2019, www.courant.com/health/hc-chit-elder-abuse-investigations-connecticut-20190404-y2mph3ynizhkrdcayth73cadae-story.html

New York Study

NY/ Cornell Investigation- Study titled “Under the Radar” is approximately five years old



EXECUTIVE SUMMARY

The New York State Elder Abuse Prevalence Study is one of the most ambitious and comprehensive studies to quantify the extent of elder abuse in a discrete jurisdiction ever attempted, and certainly the largest in any single American state. With funding from the New York State William B. Hoyt Memorial Children and Family Trust Fund, a program administered under NYS Office of Children and Family Services, three community, governmental, and academic partners (Lifespan of Greater Rochester, the New York City Department for the Aging and the Weill Cornell Medical College) formed a collaborative partnership to conduct the study.

AIMS OF THE STUDY

The study had three central aims achieved through two separate study components:

- To estimate the prevalence and incidence of various forms of elder abuse in a large, representative, statewide sample of older New Yorkers over 60 years of age through direct interviews (hereafter referred to as *the Self-Reported Prevalence Study*)
- To estimate the number of elder abuse cases coming to the attention of all agencies and programs responsible for serving elder abuse victims in New York State in a one-year period (*the Documented Case Study*), and
- To compare rates of elder abuse in the two component studies, permitting a comparison of "known" to "hidden" cases, and thereby determining an estimate of the rate of elder abuse underreporting in New York State.

Prevalence refers to the number of older adults who have ever experienced elder mistreatment since turning 60. **Incidence** refers to the number of new cases of elder abuse in the year prior to the survey interview.

METHODOLOGY

At the completion of the study, 4,156 older New Yorkers or their proxies had been interviewed directly and 292 agencies reported on documented cases from all corners of the state. Through the collaborative efforts of the three research partners, the study employed "cutting edge" methodologies to accomplish the goals of the study. These included (1) improvement of existing survey instruments to make them "state of the art" using the combined field knowledge of academics and direct service providers; separate surveys were created for the Self-Reported Prevalence Survey and the Documented Case Study, (2) utilization of the Cornell Research Survey Institute in Ithaca to assemble a representative state sample of older adults and to conduct the interviews by telephone, (3) administration of a survey to all major service systems, agencies and programs in the state that receive reports of elder abuse and provide investigation and intervention to older adult victims.

Methodology - Self-Reported Prevalence Study

In the Self-Reported Prevalence Study, the research team assembled a representative sample of all residents of New York State age 60 and older representing a broad cross section of the older population in the state. The sample was created using a random digit dialing strategy derived from census tracts targeting adults over 60. The study was limited to older adults living in the community, that is, not living in licensed facilities such as nursing homes and adult care facilities. The actual surveys were conducted by telephone by trained interviewers at the Cornell Survey Research Institute. The survey instrument used for this component of the study captured elder mistreatment in four general domains: (1) Neglect by a responsible caregiver (2) Financial Exploitation (3) Emotional Abuse and (4) Physical Elder Abuse (including Sexual Abuse).

Methodology - Documented Case Study

The Documented Case Study contacted programs and agencies responsible for specifically serving victims of elder abuse and older victims of domestic violence in New York State and requested that they complete a survey about cases served in calendar year 2008. The survey included questions on elder abuse cases that mirrored the questions used for the statewide Self-Reported Prevalence Study. Programs surveyed included Adult Protective Services, law enforcement, area agencies on aging, domestic violence programs, elder abuse programs, programs funded by the Office of Victim Services (previously known as the Crime Victims Board), elder abuse coalitions, and District Attorney (DA) offices. While the amount of data supplied varied by county and organization, at least some data was collected for each of the 62 counties in New York State.

MAJOR FINDINGS

- **The findings of the study point to a dramatic gap between the rate of elder abuse events reported by older New Yorkers and the number of cases referred to and served in the formal elder abuse service system.**
- **Overall the study found an elder abuse incidence rate in New York State that was nearly 24 times greater than the number of cases referred to social service, law enforcement or legal authorities who have the capacity as well as the responsibility to assist older adult victims.**
- **Psychological abuse was the most common form of mistreatment reported by agencies providing data on elder abuse victims in the Documented Case Study. This finding stands in contrast to the results of the Self-Reported Study in which financial exploitation was the most prevalent form of mistreatment reported by respondents as having taken place in the year preceding the survey.**
- **Applying the incidence rate estimated by the study to the general population of older New Yorkers, an estimated 260,000 older adults in the state had been victims of at least one form of elder abuse in the preceding year (a span of 12 months between 2008-2009).**

Caution must be exercised in interpreting the large gap between prevalence reported directly by older adults and the number of cases served. The adequacy of some documentation systems to provide elder abuse case data may have played a role in the results. The inability of some service systems and individual programs to report on their involvement in elder abuse cases may have affected the final tally of documented cases. As a

result, an undetermined number of cases may not be accounted for from agencies and programs that could not access some data about elder abuse victims served. However, the study received comprehensive data from the largest programs serving elder abuse victims: Adult Protective Services, law enforcement and community-based elder abuse programs.

Table A

Rates of Elder Abuse in New York State:
Comparison of Self-Reported One-Year Incidence and Documented Case Data

	Documented Rate per 1,000	Self-reported Rate per 1,000	Ratio of Self-Reported to Documented
New York State - All forms of abuse	3.24	76.0	23.5
Financial	.96	42.1	43.9
Physical and Sexual	1.13*	22.4*	19.8
Neglect	.32	18.3	57.2
Emotional	1.37	16.4	12.0

*The Documented Case rate includes physical abuse cases only. Physical and sexual abuse data were combined in the Self-Reported Study. The sexual abuse rate for the Documented Case Study was 0.03 per 1,000.

It should be noted that the sum of the rates exceeds the total rates in both the Documented Case and Self-Reported Studies because some victims experienced more than one type of abuse.

SELF-REPORTED PREVALENCE STUDY

Major findings of the Self-Reported Study include:

- **A total one-year incidence rate of 76 per 1,000 older residents** of New York State for any form of elder abuse was found.
- The cumulative prevalence of any form of **non-financial elder mistreatment was 46.2 per thousand subjects studied** in the year preceding the survey.
- The highest rate of mistreatment occurred for **major financial exploitation** (theft of money or property, using items without permission, impersonation to get access, forcing or misleading to get items such as money, bank cards, accounts, power of attorney) with **a rate of 41 per 1,000 surveyed.** This rate reflects respondent reports of financial abuse that occured in the year preceding the survey. (The rate for moderate financial exploitation, i.e. discontinuing contributions to household finances in spite of agreement to do so, constituted another 1 per 1,000 surveyed.)
- The study also found that **141 out of 1,000 older New Yorkers have experienced an elder abuse event since turning age 60.**

DOCUMENTED CASE STUDY

Major findings of the Documented Case Study include:

- Adjusting for possible duplication of victims served by more than one program, the study determined that in a one-year period **11,432 victims were served throughout New York State, yielding a rate of 3.24 elder abuse victims served per 1,000 older adults.**
- Rates of documented elder abuse varied by region. The highest rate was in New York City (3.79 reported cases per 1,000 older adult residents) compared to the region with the lowest rate of documented cases, Central New York /Southern Tier (2.30 cases per 1,000).
- Variability in data collection across service systems contributed to the large gap uncovered between the number of cases reported through the Documented Case Study and the prevalence rates found in the Self-Reported Study. The extent to which the gap can be attributed to data collection issues among service systems has not been established.
- While there was little difference among urban, suburban and rural counties in types of abuse reported in the Documented Case Survey (for all regions, emotional abuse is the most common abuse category reported), urban areas tend to have higher documented case rates than rural counties.

Table B

Victim Demographic Information
Comparison of Documented Case Data and Self Reported Data

Information about victims	Documented Case Study Percent of Victims	Self-Reported Study Percent of Victims
Age groups		
60-64	17.0	20.3
65-74	41.9	38.0
75-84	28.1	29.1
85+	13.0	12.7
(Missing)	14.9	0.0
Gender		
Male	32.8	35.8
Female	67.2	64.2
(Missing)	13.8	0.0
Race/Ethnicity		
African American	27.9	26.3
Asian/Pacific Islander	3.0	1.6
Caucasian	69.3	65.5
Hispanic/Latino	16.4	7.6
Native American/Aleut Eskimo	0.8	1.9
Race, other	10.5	2.9
(Missing)	50.8	1.9

Under Race/Ethnicity, it should be noted that in the Documented Case Study, some agencies permitted elder abuse victims to declare more than one ethnic category; as a result the sum of percentages exceeds 100. In the Self-Reported Study column, respondents who self identified as Hispanic/Latino in addition to another category are reported in a separate statistic (7.6%). As a result, the sum of all categories again exceeds 100 percent.

Note that in Table B, "Missing" in the Documented Case Study column indicates the percentage of cases in which responding organizations were unable to supply the data requested. In the Self-Reported Study column, "Missing" indicates the percentage of telephone survey respondents who declined to supply the requested information.

The comparison of demographic data in Table B reveals similar trends in both the Self-Reported and Documented Case data except in the area of Race/Ethnicity. The percentage of Hispanic/Latino and Asian/Pacific Islander victims served by Documented Case Study respondent organizations was approximately twice the percentage of Self-Reported Study respondents who self-identified as Hispanic/Latino or Asian/Pacific Islander. On the other hand, Native Americans/Aleut Eskimos were represented in the Documented Case findings at less than half the rate they were found in the Self-Reported Study. It should also be noted, however, that responding organizations in the Documented Case Study were as a whole unable to provide racial/ethnic data in half of the cases.

CONCLUSIONS

While the Prevalence Study did not attempt to analyze the reasons for the disparity in self-reported versus documented elder abuse, some possible explanations can be offered. Considerable variability in documentation systems may play a role in the results. The Documented Case Study found a great deal of variability in the way service systems and individual organizations collect data in elder abuse cases. Some service systems and some regions may lack the resources to integrate elder abuse elements in data collection systems or may simply not have an adequate elder abuse focus in their data collection. Population density, the visibility of older adults in the community and, conversely, social isolation in rural areas may contribute to differences in referral rate trends based on geography. Greater awareness by individuals, both lay and professional, who have contact with older adults and might observe the signs and symptoms of elder abuse, may also explain higher referral rates in some areas.

The New York State Elder Abuse Prevalence Study uncovered a large number of older adults for whom elder abuse is a reality but who remain "under the radar" of the community response system set up to assist them.

The findings of the New York State Elder Abuse Prevalence Study suggest that attention should be paid to the following issues in elder abuse services:

- Consistency and adequacy in the collection of data regarding elder abuse cases across service systems. Sound and complete data sets regarding elder abuse cases are essential for case planning and program planning, reliable program evaluation and resource allocation.
- Emphasis on cross-system collaboration to ensure that limited resources are used wisely to identify and serve elder abuse victims.
- Greater focus on prevention and intervention in those forms of elder abuse reported by elders to be most prevalent, in particular, financial exploitation.
- Promotion of public and professional awareness through education campaigns and training concerning the signs of elder abuse and the resources available to assist older adults who are being mistreated by trusted individuals.

IMPLICATIONS FOR FOLLOW UP AND FURTHER STUDY

For the first time, a scientifically rigorous estimate of the prevalence of elder abuse in New York State has been established. The study also provides an estimate of the number of cases that receive intervention in a one-year period throughout the state. The study raises many questions about differences in rates of abuse in various regions, about referral rates by region and about how elder abuse data is recorded. Further exploration of these issues in future research studies is warranted.

The findings also serve as a platform for more informed decision making about policy, use of limited resources and models of service provision for the thousands of older New Yorkers whose safety, quality of life and dignity are compromised each year by elder mistreatment.

What Financial Exploitation Looks like

- Unusual activity in bank accounts- (joint accounts, see C.G.S. §36a-290)
- Caregiver accompanying victim to bank to withdraw money
- Signature on check that does not resemble that of victim
- Newly drafted powers of attorney or changes or creation of a will or trust that is not similar to previous documents
- Unpaid bills, when someone should be paying them
- Unusual concern by caregiver that excessive money being expended for care
- Missing personal belongings
- Deliberate isolation by family member or caregiver
- Systematic attempts to sequester victim from rest of world
- “Can’t come to phone . . . (person is sick and can’t have visitors)”
- Caregiver demonstrating excessive control
- Strangers with increased involvement
- Consumer fraud

Examples of Financial Exploitation

Charging excessive fees for goods or services

- Transportation;
- Food;
- Medicine; and/or
- Home repair ("the woodchuck").

What's Next After Exploitation?

C.G.S. §17b-462-Cause of Action by Elderly Victim.

- (a) An elderly person who has been the victim of abuse, neglect, exploitation or abandonment, as such terms are defined in section 17b-450, may have a cause of action against any perpetrator and may recover actual and punitive damages for such abuse, neglect, exploitation or abandonment together with costs and a reasonable attorney's fee. The action may be brought by the elderly person, or the elderly person's guardian or conservator, by a person or organization acting on behalf of the elderly person with the consent of such elderly person or the elderly person's guardian or conservator, or by the personal representative of the estate of a deceased elderly victim.
- (b) In any action to recover damages based upon a claim of exploitation, as defined in section 17b-450, the Superior Court shall have jurisdiction to render an order pursuant to chapter 904 prohibiting the defendant from transferring, depleting or otherwise alienating or diminishing any funds, assets or property.
- (c) Notwithstanding the preceding provisions of this section, no cause of action for neglect or abandonment may be brought against any person who has no contractual obligation to provide care to an elderly person unless such neglect was willful or criminal.

What's Next After Exploitation?

C.G.S. §17b-450. Definitions.

- For purposes of sections 17b-450 to 17b-461, inclusive:
- (1) The term "elderly person" means any resident of Connecticut who is sixty years of age or older.
- (2) An elderly person shall be deemed to be "in need of protective services" if such person is unable to perform or obtain services which are necessary to maintain physical and mental health.
- (3) The term "services which are necessary to maintain physical and mental health" includes, but is not limited to: (A) The provision of medical care for physical and mental health needs, (B) the relocation of an elderly person to a facility or institution able to offer such care, (C) assistance in personal hygiene, food, clothing, adequately heated and ventilated shelter, (D) protection from health and safety hazards, (E) protection from abuse, neglect, exploitation or abandonment, and (F) transportation necessary to secure any of the above stated needs, except that this term shall not include taking such person into custody without consent except as provided in sections 17b-450 to 17b-461, inclusive.
- (4) The term "protective services" means services provided by the state or other governmental or private organizations or individuals which are necessary to prevent abuse, neglect, exploitation or abandonment.

What's Next After Exploitation?

C.G.S. §17b-450. Definitions, continued.

- (5) The term "abuse" includes, but is not limited to, the willful infliction of physical pain, injury or mental anguish, or the willful deprivation by a caregiver of services which are necessary to maintain physical and mental health.
- (6) The term "neglect" refers to the failure or inability of an elderly person to provide for himself or herself the services which are necessary to maintain physical and mental health or the failure to provide or arrange for provision of such necessary services by a caregiver.
- (7) The term "exploitation" refers to the act or process of taking advantage of an elderly person by another person or caregiver whether for monetary, personal or other benefit, gain or profit.
- (8) The term "abandonment" refers to the desertion or willful forsaking of an elderly person by a caregiver or the foregoing of duties or the withdrawal or neglect of duties and obligations owed an elderly person by a caregiver or other person.
- (9) The term "caregiver" means a person who has the responsibility for the care of an elderly person as a result of family relationship or who has assumed the responsibility for the care of the elderly person voluntarily, by contract or by order of a court of competent jurisdiction.

What's Next After Exploitation?

Other Laws within Chapter 319dd- Protective Services for the Elderly (C.G.S. §17b-450 through C.G.S. §17b-489)

- C.G.S. §17b-451- Report of suspected abuse, neglect, exploitation or abandonment or need for protective services. Penalty for failure to report.
- C.G.S. §17b-453- Initiation of protective services. Injunction against interference by caregiver.
- C.G.S. §17b-460- Referral for criminal investigation or proceedings.

What's Next After Exploitation?

If, as a result of any investigation initiated under the provisions of sections 17b-450 to 17b-461, inclusive, a determination is made that a caregiver or other person has abused, neglected, exploited or abandoned an elderly person, such information shall be referred in writing to the Chief State's Attorney or the Chief State's Attorney's designee who shall conduct such further investigation, if any, as deemed necessary and shall determine whether criminal proceedings should be initiated against such caregiver or other person, in accordance with applicable state law.

What's Next After Exploitation?

Other Possible Civil Causes of Action.

- Breach of Fiduciary Duty
- Conversion
- Unjust Enrichment
- Statutory Theft (C.G.S. §52-564)

MetLife Study of Elder Financial Abuse, 2011

- 76% of victims are between ages 70 & 89, living alone, but needing some assistance
- Women fall prey to exploitation twice as often as men
- 60% of perpetrators were adult children
- 35% were other relatives, including grandchildren, friends, neighbors, and caregivers
- It is estimated that 80% of all cases go unreported
- The goals of the perpetrators were achieved through deceit, threats, and emotional manipulation of the elder
- Incidences increase during the holidays

https://ltcombudsman.org/uploads/files/issues/mmi-elder-financial-abuse.pdf

Pickman v. Pickman

6 Conn. App. 271 (1986), factors:

Undue influence is the exercise of sufficient control over a person, whose acts are brought into question, in an attempt to destroy his free agency and constrain him to do something other than he would do under normal control. It is stated generally that there are four elements of undue influence: (1) a person who is subject to influence; (2) an opportunity to exert undue influence; (3) a disposition to exert undue influence; and (4) a result indicating undue influence. Relevant factors include age and physical and mental condition of the one alleged to have been influenced, whether he had independent or disinterested advice in the transaction consideration or lack or inadequacy thereof for any contract made, necessities and distress of the person alleged to have been influenced, his predisposition to make the transfer in question, the extent of the transfer in relation to his whole worth failure to provide for all of his children in case of a transfer to one of them, active solicitations and persuasions by the other party, and the relationship of the parties.

CUIST

California Undue Influence Screening Tool

Client's Vulnerability

- ☐ Poor or declining health or physical disability
- ☐ Depends on others for help or care
- ☐ Problems with hearing, vision, or speaking
- ☐ Problems with memory
- ☐ Problems communicating and understanding
- ☐ Does not understand consequences of decisions
- ☐ Developmental disability
- ☐ Dependent or passive behavior
- ☐ Emotional distress (e.g., grief, anxiety, fear, depression)
- ☐ Language/literacy barriers
- ☐ Isolated from others
- ☐ Lives in chaotic or dysfunctional environment
- ☐ Influencer knew or should have known of person's vulnerability
- ☐ Other (please specify)_____
- ☐ No apparent vulnerability

To download a copy, visit:
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CUIST

California Undue Influence Screening Tool

Influencer Authority/Position of Power

- ☐ Stands in a position of trust, authority, or confidence resulting from:
  - ☐ Intimate/family relationship
  - ☐ Caregiver
  - ☐ Professional standing (e.g., legal professional, spiritual adviser, health care professional, real estate agent, banker, accountant)
  - ☐ Legal authority (e.g., power of attorney, conservatorship, trust, representative payee)
  - ☐ Controls elder's finances
  - ☐ Immigration sponsor
  - ☐ Landlord or long term care facility operator
  - ☐ Predatory salesperson (e.g., telemarketer, annuity company, lottery)
- ☐ Has access to client's home/possessions, finances, documents, or private information (e.g., legal/immigration status, sexual orientation/identity
- ☐ Other (please specify)_____
- ☐ No apparent authority, power, or access to assets and information

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CUIST

California Undue Influence Screening Tool

Actions or Tactics
☐ Manipulates or controls the client's access to food, sleep, medication or personal care
☐ Makes promises to help the client get rich
☐ Makes false claims or promises, or misrepresents self (e.g. claims to be an expert)
☐ Professionals or paid caregivers involve clients in their personal lives or ask for gifts/loans
☐ Controls access to information
☐ Isolates from visitors, telephone/computer, or mail
☐ Instills distrust and fear (e.g., nursing home placement, abandonment, threats of violence, "poisons relationships")
☐ Moves into client's residence or changes their residence
☐ Changes clients's usual providers (e.g. physicians, lawyers, bankers, accountants)
☐ Makes frequent/repeated requests that benefit the influencer
☐ Pressures during periods of distress, illness, transition
☐ Uses affection, sex, intimidation or coercion
☐ Rushes client to make decisions secretly and at inappropriate times and places
☐ Solicits or encourages gifts, loans, bequests, or cash
☐ Other (Please specify)_____
☐ No apparent use of actions or tactics described above

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CUIST

California Undue Influence Screening Tool

Unfair or Improper Outcome(s)

- ☐ Economic losses (e.g. money, property, investments)
- ☐ Changes in prior intent, conduct, or practices (e.g., new beneficiaries on wills; new signatories on bank accounts, changes in property ownership, changes to estate plans or charitable contributions)
- ☐ Excessive gifts, payments, or donations in light of length and nature of relationship
- ☐ Loss of home or residence, or eviction
- ☐ Deterioration of home and environment
- ☐ Loss of control of credit cards, bank accounts, or property
- ☐ Identity theft
- ☐ Unexplained physical decline or injury including weight loss, physical function
- ☐ Negative mental or emotional changes including depression, loss of will to live, suicidal thoughts
- ☐ Violation of rights (e.g., to live where one wants, to marry or divorce, agree to or refuse treatment)
- ☐ Other (please specify)_____
- ☐ No apparent unfair or improper outcomes

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Case Study 1

The Ninety-Two-Year-Old Aunt

SUMMARY:
[1]-An elderly aunt was entitled to a prejudgment remedy (PJR) pursuant to Conn. Gen. Stat. § 52-278d(a)(1) against the defendants arising from their misappropriation and mishandling of her financial affairs, as they had a fiduciary relationship based on their power of attorney from her and they did not show that they acted honestly, diligently, and in good faith; [2]-She also showed probable cause that she would succeed on her conversion and statutory theft claims under Conn. Gen. Stat. § 52-564 because defendants deprived her of significant sums of money through unauthorized means with the requisite intent; [3]-Defenses were not sufficient to avoid granting the PJR because they did not overcome the finding of probable cause to believe that she would prevail in her action.
FACTS:
During the period of time in which the defendants held powers of attorney, numerous checks were drawn on the plaintiff's account, payable to "cash," which were cashed by—or deposited into the account of—the defendants. The plaintiff, in summarizing her damages claim, states that there are 64 of these checks payable to "cash" and they total approximately $66,000. The defendants do not appear to dispute the number and amount of the checks. The defendants claim that the cash was used to reimburse them for incidental expenses for the household or to give cash to the plaintiff herself. Nonetheless, no satisfactory accounting or credible explanation has been provided by the defendants for those transactions. Therefore, there is probable cause to believe the money was misappropriated and diverted to the personal use of the defendants.

Continued…

Case Study 1 *continued…*

The Ninety-Two-Year-Old Aunt

FACTS (continued):
During the period of time in which the defendants held powers of attorney, numerous checks were drawn on the plaintiff's account, payable to the defendants themselves. Those checks were cashed by (or deposited into the checking account of) the defendants. The defendants do not appear to dispute those facts. The defendants contend that the payments were either reimbursement for amounts they paid from their personal funds (or charged to credit cards) for the plaintiff's benefit, or they were payments authorized and approved by the plaintiff herself. The plaintiff denies authorizing any such payments. No satisfactory documentation such as receipts or credit card statements was provided to corroborate the defendants' explanation of the payments. Based on the totality of the evidence presented, the court finds that there is probable cause to believe the money was misappropriated and diverted to the personal use of the defendants.
The defendants used funds from the plaintiff's account to pay their personal gas credit card bills. They claim this was authorized by the plaintiff to compensate for numerous trips from their residence to her residence, but there is no testimony from the plaintiff or documentation to corroborate this. The court finds that there is probable cause to believe the payments were not for the benefit of the plaintiff and were not authorized.
The defendants used funds from the plaintiff's account to pay their electric bills for their properties. They claim this was authorized by the plaintiff but again there is no testimony or documentation to corroborate this. The court finds that there is probable cause to believe the payments were not for the benefit of the plaintiff and were not authorized.

Continued…

Case Study 1 *continued…*

The Ninety-Two-Year-Old Aunt

FACTS (continued):
The defendants used funds from the plaintiff's account to pay for cable TV service for their residence. Again, the defendants claim this was authorized by the plaintiff but there is no testimony from the plaintiff or documentation to corroborate this. The court finds that there is probable cause to believe the payments were not for the benefit of the plaintiff and were not authorized.
The defendants used funds from the plaintiff's account to pay for their personal cell phone bills, including overseas phone calls. The plaintiff did not own a cell phone. The defendants claim that some of the overseas phone calls were to check on the plaintiff. There are no records or invoices to support this claim and there is no documentation or testimony showing the plaintiff authorized these payments. The court finds that there is probable cause to believe the payments were not for the benefit of the plaintiff and were not authorized.
The defendants used funds from the plaintiff's account to pay for various restaurant outings. The defendants claim that payment for each of these events was authorized by the plaintiff, or bizarrely, that one of the defendant "just happened to have" the checkbook from the plaintiff's account with him at the restaurant and used that for the payment (at another point he testified that he viewed his own personal checking as "interchangeable" with the plaintiff's checking account). There is no testimony from the plaintiff or documentation to suggest that she knew of these restaurant outings, much less agreed to fund them. The court finds that there is probable cause to believe the payments were not for the benefit of the plaintiff and were not authorized.
The defendants used funds from the plaintiff's account to pay for renovations and improvements to their condominium property. There is no testimony from the plaintiff or documentation to suggest that she knew of these improvements to the condominium property, much less agreed to fund them. The court finds that there is probable cause to believe the payments were not for the benefit of the plaintiff and were not authorized.

 Continued…

Case Study 1 *continued…*

The Ninety-Two-Year-Old Aunt

FACTS (continued):

One defendant used $1,300 from the plaintiff's account to pay for a European tour. There is no testimony from the plaintiff or documentation to showing that she authorized the use of her funds for this purpose. The court finds that there is probable cause to believe that the payment was not for the benefit of the plaintiff and was not authorized.
There is probable cause to believe that the various expenditures outlined above were not disclosed to the plaintiff at the time they were made.
There is probable cause to believe that during the time that the defendants managed the plaintiff's finances under the powers of attorney, that one of the defendants either intentionally withheld information from the plaintiff regarding the various expenditures outlined above, or actively misled the plaintiff to conceal the fact that these expenditures were being made.

Case Study 2

ABC NEWS ARTICLE:

Actor Mickey Rooney Granted Court Protection From Step kids

By COURTNEY HUTCHISON, ABC News Medical Unit

Feb. 17, 2011

Actor Mickey Rooney has been the alleged victim of elder abuse at the hands of his own step kids, according to restraining orders filed Monday.

The 90-year-old actor, who, born into vaudeville has had one of the longest careers of any actor, was granted court protection from stepson Chris Aber and his stepdaughter Christina Aber, after he filed a case against them charging verbal, emotional and financial abuse, and for denying him such basic necessities as food and medicine.

The court documents say that both Chris and Christina Aber have been keeping Rooney as "effectively a prisoner in his own home" through the use of threats, intimidation and harassment.

Chris Aber has also been accused of taking control over Rooney's finances, blocking access to his mail and forcing the actor into performances he does not wish to do.

With the assistance of attorneys Bruce Roth and Vivian Thoreen of Holland & Knight LLP, Rooney sought and was granted temporary protection for not only himself but for his wife, Jan Rooney, and his stepson, Mark Rooney, who lives with the actor.

Rooney fears for their safety and is worried Chris and Christina Aber might retaliate in a physically abusive way, or try to kidnap the actor now that the case has been filed, court documents say.

Continued…

Case Study 2 *continued…*

ABC NEWS ARTICLE (continued):

"All I want to do is live a peaceful life, to regain my life and be happy," Rooney wrote in a statement to his fans. "I pray to God each day to protect us, help us endure and guide those other senior citizens who are also suffering."
In addition to two temporary restraining orders granted against Christina and Chris Aber, Los Angeles Superior Court Judge Reva Goetz appointed attorney Michael Augustine as temporary conservator of his estate. A hearing on who should take over as permanent conservator of the estate will take place in March, Bruce says.
Elder Abuse: Taking Advantage of the Aged
While elder abuse of this magnitude is relatively rare, geriatric experts say, instances of some kind of abuse and neglect, whether psychological, physical, sexual or financial, are a major concern among aging populations.
According to the American Psychological Association, an estimated 2.1 million older Americans become victims somewhere on the spectrum of abuse.
Debra Greenberg of the Gerontology Division at Montefiore Medical Center in New York says that this kind of "extreme case" has only come across her desk a couple of times. More often than not, elder abuse has to do with unintentional neglect from family members who are ignorant of the proper ways to care for an aging individual.
Self-neglect, which occurs when the elderly fail to follow medical advice or otherwise care of themselves, is a leader in the reporting of elder abuse. Financial abuse, when younger family members misuse the elderly person's assets, follows closely. According to the National Elder Abuse Center study, self- and financial-abuse comprise 21 percent of elder abuse cases.
And abuse has consequences that reach beyond an assault on the quality of life of the elderly: Studies suggest that older people who have been abused tend to die earlier than those who have not been, even in the absence of chronic or life-threatening illness, according to the American Psychological Association.
"If you see abuse of any kind going on, there are people you can turn to," Greenberg says. "If you think this is life and death, obviously call 911, but if it's ongoing, most departments for the aging can get you where you need to go."

Mickey Rooney's Testimony

At the March 2, 2011 hearing before the Senate Special Committee on Aging to address elder abuse and financial exploitation, Mickey Rooney-- actor, legendary performer and World War II veteran-- bravely shared the following:

"I have worked almost my entire lifetime of ninety years to entertain and please other people…But even with this success, my money was stolen from me, by someone close…a family member. When that happens, you feel scared, disappointed, angry, and you can't believe this is happening to you. You feel overwhelmed. The strength you need to fight, it is complicated. You're afraid, but you're also thinking about your other family members. You're thinking about the potential criticism of your family and friends. Because you love your family and for other reasons, you might feel hesitant to come forward. You might not be able to make rational decisions. When I asked for information, I was told that I couldn't have any of my own information….At first, it was something small…but then it became something sinister that was completely out of control….I felt trapped, scared, used, and frustrated. But above all, I felt helpless….For years, I suffered silently….I was literally left powerless…."

-Testimony of Mickey Rooney, Senate Special Committee on Aging, March 2, 2011.

Connecticut Helplines

1-888-385-4225 (For suspected elder mistreatment in the home, in -state line)

1-800-203-1234 (For suspected elder mistreatment in the home, out of state line).

211 (For Suspected elder mistreatment in the home, in state, after hours)

1-866-388-1888 (For suspected elder mistreatment in long-term care facilities, in state line)

1-860-424-5200 (For suspected elder mistreatment in long-term care facilities, out of state line)

THANK YOU

(860) 236-7673

www.ctseniorlaw.com

The Center for Geriatric and Family Psychiatry, Inc

(860) 657-3506

www.centerforgeri-psych.com