



FATE

Newsletter of Foundation Aiding The Elderly

President's Message

GUARDIANSHIPS AND CONSERVATORSHIPS

by Carole Herman

On November 13, 2005, the Los Angeles Times published a four-part, in depth series on Guardianships and Conservatorships, which prompted the California Senate Joint Committee on Boards, Commissions and Consumer Protection to conduct a hearing on December 7, 2005, to review the scope and practices of California professional conservators. I was asked by the

Committee to give testimony regarding my personal knowledge of this growing problem, not only in California, but throughout the country.

Prior to modern medicine, few people lived long lives and those that did had family members care for them. With societal changes and the fragmentation of the family, some people live too far from family members or have no

family members to care for them. This leaves the elderly person vulnerable for a conservatorship. To make matters worse, there is no over-sight system in place to monitor court appointed conservators; thus, more and more financial and personal abuses are taking place as the elder population increases. And, the



CAROLE HERMAN

courts are rubber stamping conservatorships.

I first became aware of conservatorships back in 1985 when a colleague, Charlie Fish, asked me to visit an elderly, blind woman who had been confined in an Auburn, California nursing home. She had been placed under the Placer County Public Guardian and was complaining to Charlie

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"Assuring our elders are treated with care dignity and the utmost respect during their final years when they can no longer take care of themselves."

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- Direct & On Site Advocacy
 - Patient & Family Rights Advice
 - Elderly Service Referrals
 - Long Term Care Facility Evaluation
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CALIFORNIA SENATE HEARINGS:

Address Lack of Enforcement of Nursing Home Standards

FATE participated in the November 11, 2005 joint oversight hearing of the Senate Committee on Health and the Subcommittee on Aging and Long-Term Care which focused on nursing home enforcement by the Department of Health Services Licensing & Certification Division. Carole Herman gave testimony and submitted a scathing report which outlined the results of 162 complaints filed by FATE over the past five years on behalf of nursing home patients. The report showed that 18 complaints were completed by the department within two months or less; 128 complaints took three to 11 months to complete; and 13 complaints took over a year to complete. This report showed that 79% of the complaints filed took the state licensing office between three and 11 months to complete. The department is mandated by law to complete the investigation within 45 days after receipt of the complaint. The FATE report clearly shows that the department is in violation by not responding in the time frame mandated by the law. Herman testified that each one of the complaints represents a compromised, elderly patient who has been subjected to poor care and that the department's failure to investigate places other patients in those facilities "in harms way". Herman further stated that these are not isolated cases..if one person is not getting proper care, that means another person down the hall is not getting proper care either.

The Deputy Director of the Licensing Office has been quoted as saying federal recertification visits by her staff take precedence over complaints because the department would lose its federal funding if these license renewal recertifications were not conducted according to the federal time mandate. Herman stated that this is not acceptable that complaints are put on a back burner. California has always been looked up to by other states as the "pace setter" in many areas including the monitoring of nursing homes. The example set by California and the lack of direction from those responsible for making sure this department runs effectively and efficiently in order to insure the health and safety of nursing home patients certainly is not the message to send out to the rest of the country. Herman urges other advocacy groups to talk with Legislators in their states about the lack of timely enforcements of complaints against nursing home operators for poor care and abuse in their facilities and to open up hearing regarding this matter. Herman is hopeful that the outcome of this hearing will be that the Senate will seek an audit of the department by the California Auditor General.

GUARDIANSHIPS AND CONSERVATORSHIPS

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about being mistreated. Charlie's brother had died in the same facility and after his death, Charlie began visiting the patients in the facility. He met Isabel Miller and after she told him of the problems she was having in the facility, he filed complaints with the state licensing office monitoring that nursing home. As a result of the complaints Charlie was filing, the public guardian had a restraining order placed against him and he was barred from visiting Isabel. It took three months before the public guardian allowed me to see her and to bring Charlie. Isabel was extremely happy that Charlie was there to see her. We were only allowed to visit for about 10 minutes when the public guardian whisked her away after Isabel complained

to us that she was being given pills that made her dizzy. Five months after my visit with her, she died..her body riddled with bed sores. Neither the nursing home or her public guardian were held accountable for her horrific death. I was able to get her story featured in an Associated Press article and to have her plight be the first elder abuse case to air on national television. Since then, I have documented over 50 conservatorship cases of neglect, loss of estates, violations of civil rights, inappropriate nursing home placements and oversedation of medications.

Once a conservatorship is in place, the conservatee can no longer direct anything about their life, such as where they will live, how they will spend their money, who they can socialize with, and if there is abuse, court appointed attorneys are reluctant to file any actions against conservators. When this occurs, the conservatee is deprived of civil liberties.

Conservators and the courts are supposed to do what is best for the conservatee and what the

conservatee wishes. However, in too many cases, this is not what transpires. Decisions are made in the best interest of the conservator, not what is best for the conservatee and that is when the overall condition of the conservatee, both financially and personally, begins to deteriorate. History has also shown that most who are placed under conservatorships are not allowed to remain in their own homes or keep their possessions and within a short period of time are placed in some type of institutionalized case, such as a nursing home, without any merit to the placement.

Conservators are court-appointed guardians who control the lives, property and finances of adults, usually elderly, who probate judges determine can no longer manage their own affairs. One family member asked the Committee how it is legal in this country for total strangers to take over the life and assets of a person within a five-day period. The Committee also wanted that question answered.

Along with my testimony at the Senate hearing, elder law experts and senior care advocates offered a bleak review of the state's conservatorship system, and urged California lawmakers to license professional conservators and to establish an oversight process to hold those conservators accountable who violate the conservatee's rights.

It is hopeful that the results of this meeting will lead to the California Legislature enacting laws to govern public and private conservators and, along with it, the proper enforcement to ensure accountability.

To read the Los Angeles Times article on the web, go to www.latimes.com and search "Guardians for Profit", four part series beginning on November 13, 2005.

WHAT IS ADVOCACY

"Advocacy; the function of an advocate; pleading in support of advocate; Latin advocatus ; a person who pleads, intercedes or speaks for another: see avokey "to call a cause to a higher tribunal"

Advocator; "a patron saint; a person who advocates something."

MY DAD

Barbara A. Salerno
Reno, Nevada

I wish you had known my father, Albert Salerno, during his life - he was immeasurably kind, honest, patient and caring. He was a civil engineer (a bridge designer) for the State of California for 37 years, a scratch golfer, a World War II veteran, and a doting father and grandfather. He was married to my mother for 55 years. But he's gone now. The coroner ruled that his death was natural. There was nothing natural about it!

My father's story begins on a common note. At age 79, he suffered a hip fracture and entered a Sacramento nursing home for short-term rehabilitation. He then went home for a brief stay, but soon re-entered the same nursing home due to complications from a rare, pre-existing neurological disorder.

My father's story then becomes tragic. During his last ten days at the nursing home, he slowly and painfully died. At the end, it was my sister that insisted on his hospitalization, not the nursing home staff. By then it was too late. After a few days in the hospital my father died of renal failure and double pneumonia.

No one in my family has any formal medical training. Yet we suspected that my father's renal failure and pneumonia did not develop overnight. Consequently, we requested an autopsy at the hospital after his death and filed a complaint with the Department of Health Services (DHS). After a thorough investigation, DHS found the nursing home was directly responsible for my father's death. They issued their findings in an eight page, AA citation, which is the most severe citation under California law. (Citation No. 10-1694-0002224-S, at the DHS website: www.dhs.ca.gov)

The DHS findings noted dramatic and sudden changes in my father's condition over his last ten days in the nursing home. These included a failure to

respond, slurred speech, a droopy head, cloudy, sedimented urine in his catheter bag, deterioration in blood pressure, a fever and greenish yellow sputum.

While noting these various symptoms and changes of condition in his medical charts, the nursing home staff did nothing. They neither treated my father nor reported his decline to our family or the home's attending physician. He slowly and painfully died.

Recently the nursing home conceded to the AA citation. My family also settled a civil suit against the home, in part because my mother has terminal cancer and could not sustain the stress of a trial. We are now petitioning to amend my father's death certificate. There was nothing natural about his death.

Where does this leave my family now? We remain bewildered, angry and overwrought with guilt. We thought we were vigilant and doing the right thing. At least one of us in the family - my mother, two sisters, my brother or I - visited my father on the average of six days of each week that he resided at the nursing home.

My father went to the home with our hope and confidence that he would receive the best care. And that's what the nursing home promised. But the promise and the reality were literally as disparate as life and death.

On the dates of my father's birth and death, I have placed a memoriam in the Sacramento Bee which quotes Samuel Johnson: "It matters not how a man dies, but how he lives." I wish you had known my father during his life. Unfortunately, you now know him only in his death.

FAMILIES DENIED RIGHTS

By Shirley and Norm Matzek
Hudson, WI

Our life changed when the Christian Community Nursing Home in Hudson, WI issued a temporary restraining order against us accusing us of harassment as we were attempting to get reasonable care of our mothers. Our story, "Battle of the Banned" was published in the November 2004 AARP Bulletin.

Since that time, we learned that we are not alone in being retaliated against by nursing home operators for complaining about poor care. We received many calls from family members from 20 different states anxious to share their experiences with us.

Some of the comments we received were:

- Many felt that they could substitute their names for ours.
- Family members showing the most concern about poor care are the most likely to be retaliated against.
- Most family members had the Durable Power of Attorney (DPOA) for healthcare.
- Most family members had difficulty in obtaining legal counsel to defend themselves from the facility barring them.
- Generally, the oversight agencies (state offices that license and monitor nursing homes) were of little help.
- Retaliation tactics include attacks on family members who are complaining about poor care thus restricting their visits.

- Operators will try to tarnish the image of the restrained family members with accusations making it appear that their complaints of poor care are invalid.
- Most had restraints, such as temporary restraining orders, no trespassing orders, letters from the nursing home administrator listing restrictions.

In listening to families describe their experiences, it quickly becomes apparent what an egregious hardship these types of restraints inflict upon the elderly patient, as well as the most caring of family members. It becomes torture for family members to no longer know how their loved one is being treated once they are not able to closely monitor their condition and care.

In our opinion, a lack of law enforcement of the nursing home industry by our state licensing and certification departments has put the vulnerable elderly at risk by denying them visits with family caregivers. The fact that these retaliatory tactics by the nursing homes exist should be a wake up call to all Americans. We must fight for our freedom and the rights that are legally ours. We can no longer take our government for granted to protect us from harm. America's core values of life, liberty and the pursuit of happiness apply to everyone, regardless of age. Silence is deafening and permitting is promoting.

MEDICATION ERRORS PLAGUE NURSING HOME PATIENTS

Each month, nearly one out of every 10 nursing home patients suffers a medication-related injury, according to a study by Massachusetts researchers that suggests the problem is far more widespread than previously estimated. The most common problems were confusion, over sedation, hallucinations, or bleeding due to prescribing errors or failure to carefully monitor patients for side effects. "This seems to be a major safety issue for some of our most vulnerable patients," said Dr. Jerry Gurwitz, the lead author of the study and a professor at the University of Massachusetts Medical School. In Gurwitz's study, published in the American Journal of Medicine, he and his colleagues scrutinized drug-related problems at two large nursing homes in Connecticut and Ontario. The study was an intensive follow-up to research four years ago in 18 Massachusetts nursing homes that found a significant, but lower, rate of complications. Gurwitz said that little, if anything, has changed in nursing homes' handling of medicines since the data was collected. Gurwitz also added that relatives of nursing home patients need to be alert to possible medication errors. The best way to do that is to know what is going on, ask a lot of questions and understand what medications their relatives are on, why they are on them and what the side effects are.

Reference Books

At any Book store:

- ❖ Best Pills/Worst Pills, a Consumers Guide to Avoid Drug induced Death or Illness, by Sidney Wolfe, M.D., and Public Citizen's Health Research Group, Washington, DC
- ❖ 50+, People's Pharmacy, by Joe and Teresa Graedon
- ❖ Ending Elder Abuse, a Family Guide, by Diane Sandell and Lois Hudson
- ❖ Nursing Home Answer Book, by Eric Carlson, Esq. and Katharine Bau Hsiao order from National Senior Citizens Law Center, 3435 Wilshire Blvd., Suite 2860, Los Angeles, CA 90010

NURSING HOME COMPLAINTS

One of FATE's services is filing complaints with the state regulatory agencies on behalf of nursing home, assisted living, residential care and acute care hospital patients and residents. Some of these complaints result in the appropriate state departments citing these facilities for violations of Federal and State regulations. the following are the results of some of those complaints:

Arden Rehab and Care Center, Sacramento, CA....Deficiencies....Failure to provide sufficient staffing.

Heritage Convalescent, Sacramento, CA....Class B Citation \$1,000 Penalty...Failure to assess resident for risk for falls, failure to develop an individual written care plan to prevent falls, failure to ensure health record included nurses notes that were dated, failure to include CNA records which include care and treatment and failure to record blood pressure notations.l

Eskaton of Fair Oaks, Fair Oaks, CA....Deficiencies...Failure to assess and monitor for use of a foley catheter to prevent blockage, failure to update and implement care plan to incorporate declining conditions causing severe pain to patient, failure to administer accurate pain medications all of which presented a direct or immediate relationship to patient's health, safety or security.

Placerville Pines, Placerville, CA...Deficiencies...Failure to implement care plan, failure to monitor for risks of falls.

Sander's Residential Care/Fair Oaks, CA...Deficiencies...Failure to have a physician's order for physical restraints, failure to keep resident records complete, failure to provide elder abuse training to staff, unclean refrigerator causing mold.

Springwood Nursing Home, Sarasota, FL....Deficiencies...Failure to provide medical records in a timely manner.

Sunbridge of Carmichael, Carmichael, CA..Class B Citation \$800.00 penalty...Failure to provide assistance causing patient to fall and failure to provide medical treatment.

Sutter General Hosptial, Sacramento, CA...Substantiated that patient developed bed sores, was given antipsychotic medications without consent, was dehydrated with impacted bowels, and had a urinary tract infection; however, no regulations were violated.

Urbano Residential Care Facility, Sacramento, CA...Deficiencies...Facility accepted a bedridden patient when not capable of caring for the patient and failed to sufficient train staff for feeding compromising the patient and causing hospitalization.

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