

ELDER ADVOCACY PROGRAM

A partnership between YOUR
ORGANIZATION and PARTNERS

Presenter Information Here



We believe that all people, regardless of age or ability, deserve to live free of abuse or neglect and to be able to participate fully in society.

As more Americans live longer and healthier lives, we need to strengthen and support our social systems to ensure access for older people.

CELJ is the lead partner on the Elder Advocacy Program, a cross-systems collaboration between CELJ, Chautauqua County, and the New York State Unified Court System, which is working to remove accessibility barriers, improve outcomes, and ensure equity for older adults.

DISCLOSURE

This document was supported, in part, by a grant (GRANT NUMBER) from the GRANTOR. Grantees carrying out projects under government sponsorship are encouraged to express freely their findings and conclusions. Therefore, points of view or opinions do not necessarily represent official GRANTOR policy.

WHAT TO EXPECT:

- What is the EAP?
- Elder Abuse Training:
- Changing demographics
- What is elder abuse?
- Types of elder abuse
 - Financial Exploitation
- Dynamics of elder abuse
- Risk factors for survivors and perpetrators
- Factors affecting willingness to report
- The aging process and cognitive changes
- Capacity
- Concepts to keep in mind while interviewing
- Types of elder abuse cases
- New York State laws concerning elder abuse
- Questions

WHAT IS THE ELDER ADVOCACY PROGRAM?

- A pilot project in YOUR LOCATION, funded by FUNDER
- In **partnership** with PARTNER and PARTNER
- One of only five grants awarded nationally, and the only one to go to a non-university

*Points of view or opinions do not necessarily represent official ACL or DHHS policy.

* ACL Elder Justice Innovation Grant Award Number: 90EJIG0011-01-00

WHAT DO WE DO?

- Act as a **SINGLE POINT-OF-ENTRY** for survivors of elder abuse
- With the aim of identifying and addressing survivors' full range of needs, reducing harm, and **empowering** survivors
- While addressing systemic barriers to our justice and social systems, and improving court and long-term outcomes for survivors



HOW DO WE DO IT?

- The **SINGLE POINT-OF-ENTRY** is a one-stop referral destination for elder abuse survivors, as well as community members and allied professional suspecting abuse of an older adult

REFERRAL CRITERIA

- Any older adult appearing experiencing or suspected of experiencing any form of elder abuse is eligible for referral to the EAP.
- The EAP aims to assist individuals 55 and over.



WHO CONTACTS US:



- Survivors
- Family Members
- Adult Protective Services
- Law Enforcement
- District Attorney's Office
- Courts
- Office for the Aging
- Salvation Army

OUR INTAKE PROCESS:

EAP Social Worker and Attorney conduct a **Global assessment** of survivor's legal and non-legal needs, including:

- Civil Legal Representation on current civil matter or future elder abuse-related case(s)
- Review by County EMDT
- Assistance engaging with law enforcement
- Assistance with courtroom accessibility
- Assistance with finances
- Medical
- Social
- Other community services



CONNECTING SURVIVORS WITH DIRECT SERVICES

- **Civil Legal representation by LEGAL SERVICES PROVIDER**

- **Family Court Orders of Protection**
- **Power of Attorney drafting or revocation**
- **Execution of Health Care Proxy**
- **Special Proceedings under Power of Attorney statute (GOL)**
- **Civil complaints to recover money**
- **Evictions or Ejectments**

DIRECT SERVICES, CONT'D

- **Case review by the Chautauqua County Elder Abuse Enhanced Multi-Disciplinary Team**

- Coordinated investigation by team members with the aim of:
 - Intervening and stopping abuse
 - Preventing future harm
 - Criminal prosecution
 - Restitution
- Utilization of a forensic accountant



DIRECT SERVICES, CONT'D

• Assistance with Law Enforcement

- Support and assistance in making initial contact with police
- Follow-up with law enforcement once report filed
- Advocacy regarding wishes of survivor
- Assistance contacting and following up with Victims' Assistance Program
- Assistance **To** police in obtaining bank records, communicating with survivor and perpetrator



DIRECT SERVICES, CONT'D



- **Assistance with courtroom accessibility**

- Emergency funds available to assist older adults with the cost of transportation to and from court
- Provision of **accessibility devices**, such as wheelchairs, hearing amplifiers, and document magnifiers
- Availability of **Court Support Person**
- **Advocacy** for appropriate court calendaring and case handling
- **Remote Electronic Filing and Video Conferencing for** petitions for Temporary Orders of Protection in Family Court



DIRECT SERVICES, CONT'D

• Assistance with Finances

- Connection with Adult Protective Services for **representative payee** assistance
- Advice and Counsel, and advocacy as appropriate, regarding **guardianship** by trusted individual or through Adult Protective Services
- **Advocacy** to banks and financial institutions
- **Budgeting** assistance
- Connection to Office for the Aging for additional services
- Emergency funds available for certain essentials



DIRECT SERVICES, CONT'D

• Assistance with Medical Needs



- Connection with in-home care providers through Office for the Aging
- Referrals to Geriatric Psychiatrists for capacity evaluations
- Advocacy to Dept. of Social Services on Medicaid applications and denials
- Referrals to WNY Coalition Pooled Trust, a supplemental needs trust managed by CELJ, People, Inc., and Key Bank

DIRECT SERVICES, CONT'D

• Assistance with Social Needs and Activities of Daily Living

- Referrals to Office for the Aging/NY Connects, Adult Day Services, and community programs for connection with:
 - Community centers and social groups to decrease isolation
 - Friendship Line to decrease isolation of home-bound older adults
 - Meal provision through Meals of Wheels
 - Provision of in-home assistance with household chores and ADLs



INCREASING AWARENESS OF ELDER ABUSE AND THE EAP THROUGH:

- Training on Elder Abuse to:
 - Community Members
 - Allied Professionals
 - Community Stakeholders
- Making the EAP Accessible
 - Outreach to community and partners
 - Materials translated into Spanish



EAP TRAININGS CONDUCTED OR SCHEDULED:

Courts

- Family
- Surrogates
- Supreme
- County
- City
- Justice

Law Enforcement

- Local Police
Departments
- State Police
- Sheriff's Office
- District
Attorney's
Office

Other Government Agencies

- Adult Protective
Services
- Office for the
Aging
- Meals on
Wheels

Miscellaneous

- Financial
Institutions
- Council on
Elder Abuse
- Adult Day
Services

CREATION OF THE ELDER ADVOCACY PROGRAM DESK GUIDE

- A tool for identifying elder abuse, locating substantive law, practical considerations for courts, and community resources



CHANGING DEMOGRAPHICS

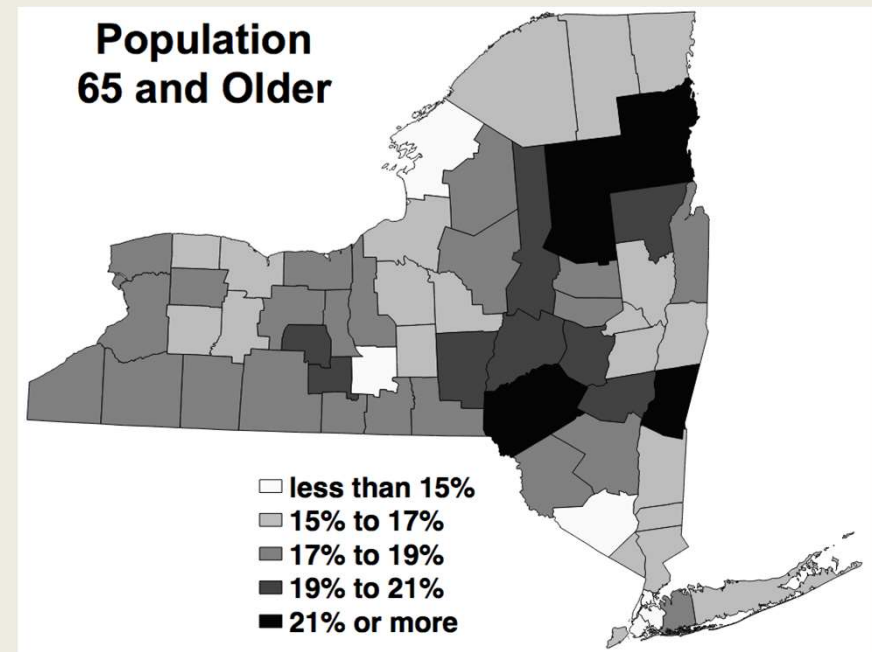
AN OLDER AMERICA

- In 2015, there were approximately 47.8 million Americans aged 65 and older.
- By 2050, the population of people in America aged 65 and older is expected to almost double to 83.7 million.
 - In 2050 1 out of 5 people, worldwide, will be over the age of 60.

(U.S. Census Bureau, 2017)

NEW YORK STATE AND CHAUTAUQUA COUNTY

- As of 2017, 19.6% of Chautauqua County residents were over the age of 65, compared with 15.4% state-wide
- Approximately 24,390 individuals in Chautauqua County are 65 or older



ELDER ABUSE IN NEW YORK STATE

- Nationally, at least 10% of older adults experience abuse.
- In New York State, approximately 260,000 older adults have experienced some form of elder abuse in the past year.
- Since turning age sixty, 141 out of 1,000 older New Yorkers have experienced some type elder abuse.

(Under the Radar, 2011; National Council on Aging, n.d.)

WHAT IS ELDER ABUSE?

TYPES OF ELDER ABUSE

- Physical Abuse
- Emotional/Psychological Abuse
- Sexual Abuse
- Neglect
 - Passive Neglect
 - Active Neglect
 - Self Neglect
- Financial Exploitation

- Elder Abuse takes many forms and is not always readily apparent.

WHO ARE VICTIMS OF ELDER ABUSE

- While there is no set age, it generally describes those aged 60 and over. However, the **EAP can assist those aged 55 and over.**
- Women more than men, although men can be victims, as well
- All racial, ethnic, socio-economic and religious backgrounds
- Does not include vulnerable or at-risk adults aged 18 – 54/59

WHO COMMITS ELDER ABUSE?

- Trusted Individuals
 - Adult children and other family members, including grandchildren
 - Intimate partners (long-term, new, or late onset)
 - Occurs in heterosexual/gay/lesbian relationships
 - Includes dating relationships
 - Caregivers
 - Others in positions of authority
- Criminal Organizations – Scammers

WHERE DOES ELDER ABUSE OCCUR?

- Private residences within the community – 95.5%
- Facility setting – 4.5%

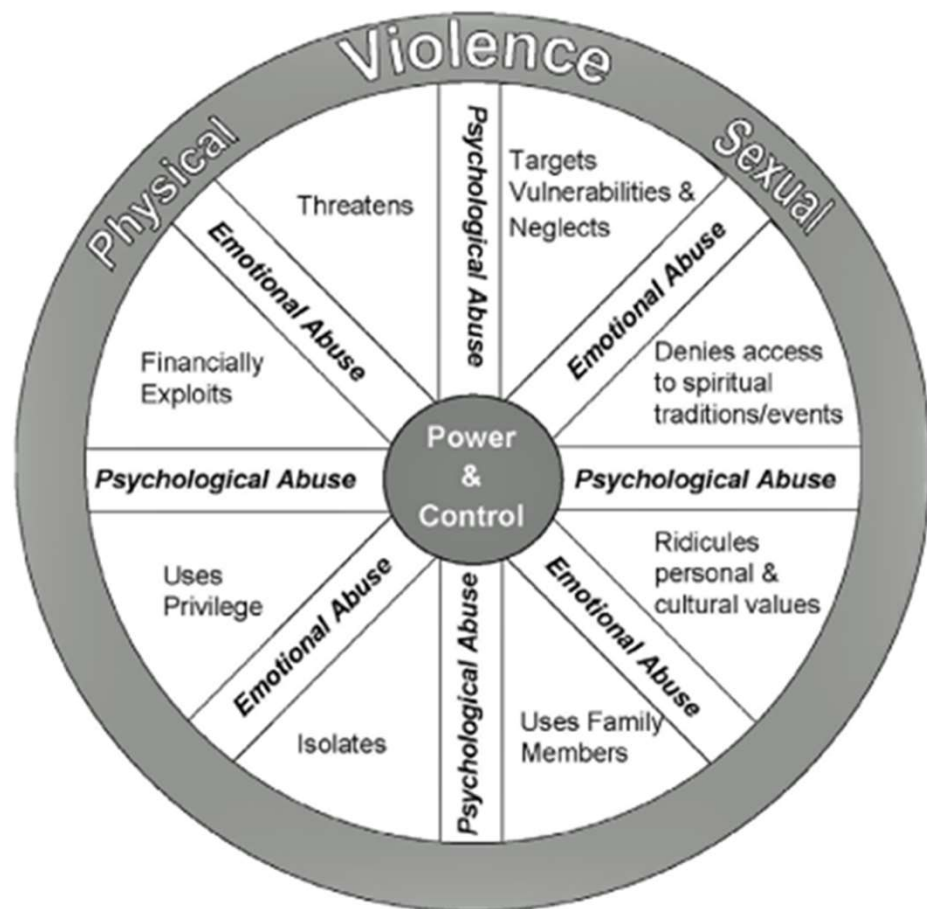
AGEISM AND ELDER ABUSE

- Abusers will rely upon stereotypes and explain away signs and symptoms of abuse
- Abuse may be excused or ignored because of our biases about aging
- “Creating a just society includes treating older people as equal members and making sure we are all connected to our communities as we age, so that we can prevent and address elder abuse.”
 - FrameWorks Institute

ELDER ABUSE: UNDER THE RADAR

- Only 1 in **23** cases of elder abuse is reported
- In financial exploitation cases, only 1 in **44** is ever reported
- **9 out of 10** perpetrators of abuse are family members

Source: NYS Elder Abuse Prevalence Study; Weil Cornell Medical College; NYC Dept. for the Aging; Lifespan (2011).



Created by the National Clearinghouse on Abuse in Later Life (NCALL), a project of the Wisconsin Coalition Against Domestic Violence (WCADV).
 307 S. Paterson St., Suite 1, Madison, WI 53703(608) 255-0539 , www.ncall.us/www.wcadv.org
 This diagram adapted from the Power and Control/Equality wheels developed by the
 Domestic Abuse Intervention Project, Duluth, MN

APPROXIMATELY 90% OF PEOPLE WHO
COMMIT ELDER ABUSE ARE FAMILY
MEMBERS OR TRUSTED OTHERS

(National Adult Protective Services Association)

CHARACTERISTICS OF VULNERABLE OLDER ADULTS

- Decreased physical health and mobility
- Increased confusion, forgetfulness, or gradual decline in **capacity** or mental acuity
- Isolation from family, friends, and neighbors
- May not know how or where to seek help
- More trusting of other
- Social Butterfly
- Lacking knowledge or understanding about new technology
- Fear of losing independence and dignity

PHYSICAL ABUSE

- Non-accidental use of force that results in bodily injury, pain, or impairment
- Includes but not limited to:
 - Inappropriate use of drugs, restraints, or confinement
 - Hitting, punching, slapping, choking
 - Twisting/pulling limbs
 - Bumping or tripping

SIGNS OF PHYSICAL ABUSE

- Unexplained or suspicious injuries or pain
- Cuts, puncture wounds, bruises, or burns
- Dehydration or malnutrition
- Poor color, sunken eyes or cheeks
- Frequent hospital visits
- Frequent changes in doctor

EMOTIONAL ABUSE

- Willful infliction of mental or emotional anguish by threat, humiliation, intimidation, bullying, or other abusive conduct
- Includes isolation and purposefully frightening

BEHAVIORAL SIGNS OF EMOTIONAL ABUSE

- Fear or hesitation to talk openly
- Anxiety or agitation
- Isolation or withdrawal
- Change in normal activities
- Non-responsiveness
- Confusion or disorientation

SEXUAL ABUSE

- Non-consensual sexual contact of any kind
- Includes but not limited to:
 - Forced sexual contact with self or others
 - Showing pornographic materials to older adult
 - Forcing older adult to watch sex acts
 - Forcing older adult to undress
 - Inappropriate touching during routine care

PHYSICAL OR BEHAVIORAL SIGNS

- Difficulty walking or sitting
- Unexplained STDs or HIV
- Bruise patterns on outer arms, chest, inner thighs
- Hypervigilance
- Shying away from being touched
- Victim appears to be embarrassed or shameful

NEGLECT

- Active: Willful failure by a caregiver to fulfill caretaking functions and responsibilities
- Passive: Non-willful failure to fulfill caretaking responsibilities because of inadequate knowledge or training, infirmity, etc.
- Self: Person's inability to perform tasks essential to caring for oneself

ENVIRONMENTAL AND PHYSICAL SIGNS

- Lack of heat, water, electric, etc.
- Extreme filth and clutter
- Strong odors, soiled clothing, poor hygiene
- No food or spoiled food
- Unsafe living space
- Damaged assistive devices

FINANCIAL EXPLOITATION

- Defined as the **unauthorized use of an individual's funds, property, or resources by another person or people**
- Financial exploitation is the *most common form* of abuse and often goes unrecognized
 - When other forms of abuse are occurring, it is likely that financial abuse is also occurring

FINANCIAL EXPLOITATION, CONT'D

- One in 20 seniors indicate that over the past year they have experienced some form of financial exploitation
- Nationally, financial exploitation accounts for 30.2% of all founded APS reports

FINANCIAL EXPLOITATION, CONT'D

- Financial Exploitation includes but is not limited to:
 - Fraud
 - Embezzlement
 - Forgery
 - Falsifying Records
 - Coerced property transfer
 - Denial of access to funds
 - Theft
 - Theft by False Pretense or Trick

TYPES OF FINANCIAL EXPLOITATION

- Financial Exploitation by Criminal Organizations
 - SCAMS
- Financial Exploitation by Trusted Individuals

IMPACT OF FINANCIAL ABUSE

- As a direct result of the exploitation, 10% of financial abuse victims will require Medicaid.
- FTC Survey (2011) of scams and frauds: 7.3% of adults 65-74 were victims and 6.5% of adults 75 and older.
- Annual financial losses estimated at \$2.9 billion to \$36.5 billion.
- Survivors of financial exploitation suffer more than solely monetary losses.

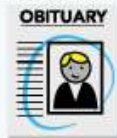
(National Center on Law & Elder Rights)

WATCH OUT FOR...

THE TOP 9 SCAMS

1 OBITUARY SCAM

Using obituaries to target recent widows, scammers attempt to collect false debts of the deceased.



2 MAGAZINE SUBSCRIPTION

Company sends free magazines and convinces a senior he owes money for the subscription.



3 SWEEPSTAKES

Crooked contest claims a senior won a prize and needs to send in money to collect winnings.



4 CHARITABLE DONATIONS

Unscrupulous charities take advantage of generosity and memory loss to request donations repeatedly.



5 INVESTMENT SCAM

Salesperson convinces a senior that an unusual asset like a horse farm is worth significant investment.



6 GRANDPARENT SCAM

Scammer calls late at night pretending to be a grandchild in need of emergency funds by wire.



7 HELPFUL NEPHEW SCAM

Trusted relative visits a senior frequently and asks to borrow \$100, knowing the requests will be forgotten.



8 SWEETHEART SCAM

Scammer befriends a lonely older adult to get access to money or be written into the will.



9 TV SHOPPING TRICKERY

As-seen-on-TV products hide extra fees and charges in the fine print.



(TrueLink Financials, n.d.)

POSSIBLE MEANS OF FINANCIAL ABUSE BY TRUSTED INDIVIDUALS

- Power of Attorney abuse
- Social Security Representative Payee abuse
- Wills – undue influence, coercion, fraud
- Creation of Joint Accounts – by undue influence, coercion, improper use of POA
- Larceny
 - By Trick or False Pretense, Taking or Withholding

WARNING SIGNS OF FINANCIAL EXPLOITATION

- Caregiver has control of finances
- Older adult is accompanied by a coercive individual
- Significant withdrawals from accounts
- Sudden changes in financial condition and/or banking activity
- Items or cash missing from household
- Suspicious changes in wills, power of attorney, titles, and or policies
- Unpaid bills or lack of medical care
- Unnecessary purchases of services, goods, subscriptions
- Forged or suspicious signature on documents
- Recent, new “best friends” or “sweethearts”
- Changes in appearance, mood, habits

(National Center on Law & Elder Rights)

WHAT FINANCIAL EXPLOITATION MIGHT LOOK LIKE IN A HOME

- Many people residing in older adult's home
- Older adult relegated to one small area of their home
- Older adult has unkempt appearance
- Older adult keeps all important documents with them at all times
- No mail anywhere or unpaid bills piling up
- Lack of nutritious food

POWER OF ATTORNEY: WHAT IS IT?

- A Power of Attorney is a Legal Document in which an individual – the principal – gives authority to a third party – the agent – to perform certain enumerated tasks and conduct business on the principal’s behalf.
- The POA document lists the various tasks and transactions on which the agent is authorized to act for the principal.
- A “substituted decision-making” document
- Principals may designate more than one agent, as well as successor agents
- The agent is often called the “Power of Attorney” or “Attorney-in-fact”
 - Agents act on principal’s authority and in their best interest

WHAT IS IT, CONT'D

- A document for financial decisions
- NOT for medical decisions; to make medical decisions one would need to be appointed as Health Care Proxy
 - But, the POA can be used to secure medical documents needed to understand and pay medical bills
- Agents have only those powers designated to them in the document; agents cannot make decisions such as who can live with or visit the principal

WHEN DOES THE POA TERMINATE?

- At the principal's death
- When the POA is revoked
 - Third parties must be put on notice that the POA has been revoked

GUARDIANSHIP

- Guardianship is established through a legal proceeding, Article 81 or 17A, which results in a Court Order designating someone as guardian of another individual's person and/or property
- If someone claims to be another's guardian, ask for the paperwork showing this to be the case

RISK FACTORS FOR ABUSE

Victim:

- Dependent on the abuser
- Physical or mentally frail
- Socially isolated
- Verbally or physically aggressive
- History of substance or mental health issues
- Hesitant to use social services system

Abuser:

- Intimate or familial relationship with the victim
- Dependent on the victim
- Younger
- Suffering from a disturbed psychological state
- Resentful of providing care
- History of substance abuse or mental health issues
- Previous history of elder abuse in caregiving context

FACTORS THAT MAY AFFECT AN OLDER ADULT'S WILLINGNESS OR ABILITY TO REPORT ABUSE

The Victim's:

- Dependence on the abuser for care and companionship
- Dementia or other mental health issues
- Frailty or lack of mobility
- Fear of reprisal, abandonment, or loss of independence (placement in nursing home)
- Fear of involvement in the legal system
- Not knowing where to turn for help
- Having responsibilities as the caregiver for the abuser

If the abuser is the victim's own child:

- Parent's inclination to protect their child rather than consider their own personal safety
- Feelings of guilt, shame or embarrassment because the older adult attributes the abuse to poor child raising
- Desire to maintain contact with children and grandchildren
- Fear that the child will become homeless if the older adult reports the abuse
- The abuser's manipulation of the older adult's emotions, including parental love

AGEISM AFFECTS AN OLDER ADULT'S WILLINGNESS TO REPORT

- **Ageism is the stereotyping, prejudice, and discrimination against people on the basis of their age.**
- It is a widespread and an insidious practice which has harmful effects on the health and wellbeing of older adults. For older people, ageism is an everyday challenge.
- Ageism is the most socially “normalized” of any prejudice, and is not widely countered – like racism or sexism.
- Ageism influences formal and informal policies and procedures, and the provision of services by the structures and systems developed to support our communities.
- Systemic ageism leads to the marginalization of older adults and has negative impacts on their health and well-being.

THE AGING PROCESS & COGNITIVE CHANGES

THE AGING PROCESS

- Physiological Aging
- Psychological Changes
 - The Developmental Process
 - Mental Health
 - Cognitive Changes



COGNITIVE IMPAIRMENTS

- Dementia
 - Mild Cognitive Impairment
- Alzheimer's Disease

CAPACITY

CAPACITY

- Capacity is an individual's functional ability, *with or without extra help*, to understand the significance of and consequences that flow from making a particular decision
- It can describe mental skills, such as logic and memory, decision-making ability, and behavioral and physical functioning
- Capacity is rarely lost completely, except in the most severe cases, and it varies by the complexity of the decision or task at hand
- Capacity should always be evaluated in relation to the particular act at issue; the more significant the decision and its consequences, the higher the level of capacity required.

CAPACITY IS FLUID

- “Sundowners Syndrome” is a common phenomenon in which individuals may be able to think clearly and make sound decisions earlier in the day, but just before nightfall they experience sadness, agitation, fear, delusions and hallucinations
- Capacity may be affected by medications and vitamin deficiencies, depression, physical illness, such as urinary tract infections or thyroid problems, excessive alcohol use or abuse and neglect. In these cases, a change in status or circumstances may lead to recovered capacity

QUESTIONS OF CAPACITY WILL ALMOST ALWAYS BE PRESENT IN CASES OF ALLEGED ELDER ABUSE.

SOME EXAMPLES OF THIS ARE:

- An APS petition for guardianship or an order authorizing protective services where the older person has refused such services but may lack the capacity for that decision.
- A family member petitioning the court claiming that an older adult's guardian is abusing or exploiting the senior, and the senior either still lacks capacity and requires the appointment of a new guardian, or has capacity and the guardian should thus be discharged.
- A lawyer representing an older adult who has been exploited argues that her client lacked capacity to make a gift or execute a Power of Attorney, while the defense argues the older adult understood the nature of the transaction and had the capacity to enter into it.
- A party seeking to overturn a will might allege that the decedent was unduly influenced by a beneficiary who had been abusing or exploiting him or her.

ELDER ABUSE AND THE COURTS

Types of Cases

- Criminal;
- Family law;
- Civil actions and special proceedings;
 - POA accounting and other statutory special proceedings;
 - Civil conversion, fraud, and breach of contract;
- Cases regarding health care decisions of incapacitated persons;
- Guardianship;
- Domestic violence;
- Probate;
- Proceedings brought by Adult Protective Services;
- Evictions;
- Foreclosures;
- Consumer defense;
- Adult adoptions;
- Juvenile (abuse of elder);
- Lawsuits against facilities;
- Traffic;
- Personal injury

APPOINTING COUNSEL FOR AN ABUSED OLDER PERSON

- Many statutes provide for the appointment of counsel for the allegedly incapacitated person.
 - Appointment should be at the earliest possible point in the proceedings.
 - Where appointment is not required, an early referral to a free legal services provider can benefit both the individual and the court.

UNDUE INFLUENCE

The misuse of one's role and power to exploit the trust, dependency, or fear of another to deceptively gain control over that person's decision-making.

Undue influence does not itself constitute elder abuse; it is the means by which elder abuse may be carried out.

WARNING SIGNS OF UNDUE INFLUENCE:

- The abuser increasing the elder's dependence on him or her
- Manipulation of the older adult's vulnerabilities
- Victim being unable to explain the reasons for a decision clearly against their best interest and in the interest of a third party
- Isolation of the older adult by the abuser

INDICATORS OF POWER OF ATTORNEY ABUSE, WHAT TO ASK

Observed in Court	Questions to Ask
Elder defendant always paid bills on time but is now behind	Where have the funds to pay these bills gone? Is someone else managing the older adult's money?
Elder cannot pay for essential needs, such as food or housing	What has changed to create the current situation? Who has control of funds?
A Power of Attorney document or an agent is present in court	Did the agent act in the principal's best interest, or fail to act? Does the agent have financial records to account for how money was spent?
Is someone other than the older adult defendant or victim, or his or her attorney, speaking on their behalf?	Ask the older person why someone is speaking on his or her behalf. Is there someone with a superior relationship to the defendant or victim who should be involved on his or her behalf, if they cannot speak for themselves?

COURT RESPONSES TO ELDER ABUSE

SUGGESTED CASE HANDLING:

- Provide priority case-setting for elder abuse cases;
- Be flexible in scheduling court appearances, keeping in mind the fluidity of capacity at various times of day;
- Be cognizant of the elder's need for medication, meals, and rest when scheduling appearances;
- Limit unnecessary continuances and delays, and expedite hearings and trials;
- Take more frequent breaks
- Arrange courtrooms to increase accessibility and utilize accessibility assisting devices in the courtroom
- Utilize court advocates to assist elders with the courthouse and the court process

COMMUNICATING WITH OLDER ADULTS:

- Ensure the use of (appropriate) assistive devices;
- Allow documents to be read out loud to the older adult;
- Use writing as an alternative means of communicating;
- Reduce distracting lighting and background noise;
- Ensure that the older adult is physically and emotionally comfortable;
- Schedule matters involving older adults neither late in the day nor early in the morning;
- Recognize that medications can affect an elder's level of awareness and ability to communicate.
- Allow elders additional time to answer questions and respond on examination

BE CONCERNED IF:

- A caregiver or family member will not let the older adult answer questions
- A caregiver or family member will not let you speak with the older adult alone
- The caregiver or family member is trying to explain away injuries or ill health
 - Look out for inconsistencies between the “story” and the actual injury
- The caregiver or family member is insistent that the older adult does not have capacity or does not know what they are talking about

COMMON JUSTIFICATIONS MADE BY PERPETRATOR

Blames the Victim

- “She’s clumsy” (accident)
- “She fell and bruises easily” (accident)
- “He wasn’t cooperating” (victim’s behavior)
- “She started it” (mutual abuse)
- “He is too difficult to care for” (caregiver stress)

COMMON JUSTIFICATIONS, CONT'D

Offender Excuses

- “I have a problem with my temper” (anger)
- “I was drunk or high” (substance abuse problem)
- “I have Alzheimer’s Disease. It’s not my fault.” (physical or mental health issue)
- “He hit me when I was a child” (learned behavior)
- “Elders are supposed to share their resources” (culture)

(OVW Dynamics Module, n.d.)

WHAT ABOUT CAREGIVER STRESS?

- True:
 - Providing care can be stressful
 - That stress can be overwhelming and lead to problems
 - Caregivers often experience behavioral issues due to stress, including overeating, lack of sleep, depression, etc.
- But:
 - Everyone experiences stress, yet most do not abuse, neglect, or exploit their loved ones
 - Abuse is generally a pattern, not an isolated incident
 - We would not tolerate similar circumstances with children or pets
 - Caregiver stress is no excuse for abusive or neglectful acts or omissions

ASSESS THE SITUATION:

- Is someone speaking for or over the older adult?
- Is there a support person available to assist the older adult?
- Is undue influence occurring?
- Is a criminal order of protection necessary?
 - If so, are other supports necessary?
- Is the older adult linked to any service providers?
- Has a referral been made to the EAP? APS?

FURTHER CONSIDERATIONS FOR COURTS WHEN HEARING ELDER ABUSE CASES

- Has a support person been made available throughout the proceeding?
- If the abused has testified, should the judge provide instructions to the jury regarding the credibility of an elder witness?
 - Is it appropriate to instruct the jury that the elder is no more or less credible due to their cognitive, mental, or communication impairment.
- Courts can and should encourage victims to provide impact statements at sentencing
- Have alternative methods of obtaining and preserving testimony of older victims, such as those below, been considered?

ALTERNATIVE METHODS OF OBTAINING AND PRESERVING TESTIMONY OF OLDER VICTIMS

- Depositions
- Telephonic Hearings
- Substituting an older adult's court appearance with a conditional examination using a magistrate or court reporter
- Videoconferencing
- Using videotaped testimony

CRAFTING EFFECTIVE ORDERS IN CASES INVOLVING ELDER ABUSE

ALL COURTS SHOULD CONSIDER:

- **The safety of the abused person.**

- Is there a safety plan?
- Should a restraining order or Order of Protection be granted?
- Should the court require the surrender of firearms?
- Should the abuser or abused be removed from the setting?
- Is a capacity assessment needed?

DOES THE ABUSED PERSON WISH TO MAINTAIN A RELATIONSHIP WITH THE ABUSER?

- Is a relationship possible without the victim sustaining further harm?
- Should counseling be ordered (for the abuser or both the abuser and the abused?)
- What kinds of counseling are appropriate?
- Is visitation appropriate?
 - With or without supervision?

HAS THE ABUSED PERSON BEEN LINKED TO APPROPRIATE SERVICES?

- Is Adult Protective Services involved? Should they be?
- Are services through Office for the Aging appropriate?
 - Caregiver assistance, dietician and nurse consultations, personal in-home care services, meal programs, etc.
- Domestic Violence Program or Victim Assistance Program

PROTECTING OTHERS FROM ABUSE BY THE ABUSER

- Are there others at risk of abuse?
- Should the order consider restraining similar conduct or behavior?

MAKING THE VICTIM WHOLE

- Is there a basis for ordering the return of property?
- Is an order for restitution appropriate?
- Are there wages that can be garnished or property that can be attached?
- Is it appropriate to order a repayment schedule?

ADDITIONAL CONSIDERATIONS FOR CIVIL COURTS

- **Protecting the abused person's assets**
 - Restraining orders, injunction, accounting
 - Is there a POA or some other arrangement that needs to be terminated or replaced?

MAINTAINING THE INDEPENDENCE OF THE ABUSED PERSON

- Does the abused person have capacity?
 - Is a capacity assessment or health evaluation appropriate?
- Are there services available that will help the elder stay in their domestic setting?
- Are there alternatives to guardianship?
- Have the least restrictive alternatives been considered?
- Should the abuser provide financial support to the abused?

CONDITIONS ACCOMPANYING SETTLEMENT NEGOTIATIONS INVOLVING THE COURTS

- Is the abused person safe?
- Are they being made whole?
- Is a repayment schedule appropriate?
- Are escalating sanctions appropriate?

ADDITIONAL CONSIDERATIONS FOR CRIMINAL COURTS

- Conditions accompanying law enforcement investigation
 - Emergency order of protection? Is a restraining order appropriate?
- Conditions for orders of release, release on bail, or release on own recognizance
 - Is the victim at risk of further abuse? Is a stay away order appropriate?
- Adequate punishment of the abuser
 - Is the sentence severe enough? Is restitution appropriate?
- Conditions for probation or other case disposition
 - Further risk of abuse? Others at risk? Restitution? Ongoing monitoring? Ordering mental health or substance abuse counseling?
- Conditions for negotiated guilty pleas between the prosecution and defense
 - Have alternative punishments been discussed with victim? Does the agreement make the victim whole?
- Rehabilitation of the abuser
 - Counseling ordered? What type? Programs available?

ENFORCING ORDERS

SUGGESTIONS FOR ENSURING COMPLIANCE WITH COURT ORDERS:

- Draft orders with specificity and clarity so that the defendant and a victim can understand them.
- Draft orders with specificity and clarity so that law enforcement officers can enforce them.
- Judges can explain to the abuser that only the court can change the order, and the actions or statements of the victim are irrelevant.
- Mutual orders should be discouraged.
- Orders should specify in detail the consequences and penalties that defendants will face for violating them.
- An order should indicate its duration or expiration date.

SUGGESTIONS FOR ENSURING COMPLIANCE WITH COURT ORDERS (CONT'D):

- Consider automatically giving a copy of orders to the sheriff/chief of police.
 - Officers should be able to confirm the existence and contents of orders at any time of the day; systems should be created or modified to accomplish this.
- Keep jurisdiction over elder abuse cases so that enforcement will be more effective and to ensure continuity of judicial oversight.
- Consider setting periodic reviews of compliance with orders, if authorized to do so by statute, and if feasible given the court's docket.

- **WHERE CAN YOU MAKE REFERRALS?**

ADULT PROTECTIVE SERVICES

Client Characteristics and Procedures

1. The referral to APS must be for a resident of that agency's county who is age 18 or older **and**
2. The individual being referred must meet **all three** of the following:
 - A. Have a reduced capacity for self-care due to a **mental and/or physical impairment**
 - B. **Because of this mental and/or physical impairment he/she is unable to meet essential needs** for shelter, food, clothing, medical care, securing entitlements, or to protect themselves from physical or mental injury, neglect, maltreatment, or financial exploitation
 - C. **Have no one** available who is willing and able **to provide responsible assistance**

IMPORTANT SERVICES:

NY Connects (716) 858-8526

(1-800-396-2705 toll free long distance)

- ❖ Home Delivered Meals Program
- ❖ In-Home Services for older adults
- ❖ Home healthcare aides
- ❖ Medical Transportation Services
- ❖ HIICAP (Insurance Counseling)



CENTER FOR ELDER LAW AND JUSTICE ELDER ADVOCACY PROGRAM

- ❖ 55 years old and over
- ❖ In an abusive situation
- ❖ Has mental capacity to accept legal representation
- ❖ Wants assistance

*No income guidelines



COUNTY ENHANCED MULTI-DISCIPLINARY TEAM

- Complex elder abuse cases for individuals 55 and over
- Victim does not need capacity to be referred to Team
- Referral to achase@elderjusticenyc.org; (716) 853-3087 x 261

NEW YORK STATE LAWS CONCERNING ELDER ABUSE

PENAL LAW:

- **§ 120.05 12.** With intent to cause physical injury to a person who is sixty-five years of age or older, he or she causes such injury to such person, and the actor is more than ten years younger than such person;
- **§§ 260.34, 260.32:** Endangering the Welfare of a Vulnerable Elderly Person or an Incompetent or Disabled Person in the first and second degree
- **§§ 260.25, 260.24:** Endangering the Welfare of an Incompetent or Physically Disabled Person in the first and second degree
- **§ 155.05** Larceny
- **§ 190.05** Issuing a bad check
- **§ 190.25** Criminal Impersonation
- **§§ 190.78 - 190.80** Identify Theft
- **§§ 190.60, 190.65** Scheme to Defraud
- **§ 240.75** Aggravated Family Offense

ADULT PROTECTIVE SERVICES (SOCIAL SERVICES LAW):

- **§ 473 (1)(a) – (e):** Protective Service for individuals because of mental or physical impairments who are unable to manage their own resources, carry out activities of daily living, or protect themselves from abuse.
- Services shall include:
 - Receiving and investigating reports;
 - Arranging for medical and psychiatric services to evaluate and when possible safeguard and improve the circumstances of impaired individuals;
 - When necessary, arranging for commitment, guardianship, or other protective placement either directly or through referral to another appropriate agency using the least restrictive measures before the imposition of more restrictive
 - Providing services to assist impaired individuals to move from hazardous or likely to become hazardous situations.
 - Cooperating and planning with the courts as needed on behalf of individuals with serious mental impairments.

ADULT PROTECTIVE SERVICES (SOCIAL SERVICES LAW) CONTINUED:

- **Also required or authorized by statute:**
 - Mandatory report to police, sheriff, and, where request has been made, the district attorney's office, any reason to believe that a criminal offense has been committed
 - Short-term Involuntary Protective Services petitions to the supreme and county courts for endangered adults where there is imminent risk of death or of serious physical harm and the individual lacks capacity to comprehend the nature and consequences of remaining in the current circumstances
 - Immunity from civil liability for those who report that an individual may be an endangered adult, or who testifies in a proceeding arising from such report, if such report or testimony is made in good faith
 - Petitions to supreme or county court for an order to gain access to a person believed to be in need of protective services for adults, where access is refused by that person or another individual

MANDATED REPORTING

- There is no mandatory reporting of suspected elder abuse in New York State, making New York the only state in the nation without such a mandate. APS is required, however, to make a report to law enforcement where there is suspicion of a criminal offense against an endangered adult. Office for the Aging is mandated reporter.

GUARDIANSHIP (MENTAL HYGIENE LAW):

- **§§ 81.05, 81.06** Petitions for guardianship to supreme or county court, commenced by various individuals or entities, including facilities and Adult Protective Services.
- Court appointment of a guardian of person and/or property where:
 - It is necessary to provide for the personal needs of that person, including food, clothing, shelter, health care, or safety and/or to manage the property and financial affairs of that person; and
 - the person agrees to the appointment, or the person is incapacitated as defined in the mental hygiene law
- Duties and powers of a Guardian

GUARDIANSHIP (MENTAL HYGIENE LAW) CONTINUED:

- Provisional Remedies, including:
 - Temporary Guardian
 - Injunction and temporary restraining order,

GUARDIANSHIP (MENTAL HYGIENE LAW) CONTINUED:

- **§ 81.43** Proceedings to discover property withheld, commenced by a guardian may commence in the court that appointed the guardian to discover property withheld, based upon knowledge or information and belief, for any real or personal property, or the value thereof, that should be delivered and paid to the guardian

FAMILY COURT ORDERS OF PROTECTION

- **Family Court Act § 822. Persons who may originate Proceedings**
- **§ 828 Temporary Order of Protection**
- **§ 842 Order of Protection**

DURABLE POWER OF ATTORNEY STATUTE (GENERAL OBLIGATIONS LAW):

- **§ 5-1501B** Creation of a valid power of attorney, when effective
- **§§ 5-1502A – 1502N** Construction of authority-granting provisions
- **§ 5-1504** Acceptance of statutory short form power of attorney
- **§ 5-1505** Standard of care; fiduciary duties; compelling disclosure of record
- **§ 5-1505(2)(b)** The agent may be subject to liability for conduct or omissions which violate any fiduciary duty

DURABLE POWER OF ATTORNEY STATUTE (GENERAL OBLIGATIONS LAW) CONTINUED:

- **§5-1510** Special proceedings.
 - To compel an accounting or production of the power of attorney and such record;
 - To determine whether the power of attorney is valid
 - To determine whether the principal had capacity at the time the power of attorney was executed;
 - To determine whether the power of attorney was procured through duress, fraud or undue influence;
 - To determine whether the agent is entitled to receive compensation or whether the compensation received by the agent is reasonable for the responsibilities performed;
 - to approve the record of all receipts, disbursements and transactions entered into by the agent on behalf of the principal;
 - to remove the agent upon the grounds that the agent has violated, or is unfit, or unwilling to perform, the fiduciary duties under the power of attorney;
 - to determine how multiple agents must act;
 - to construe any provision of a power of attorney
 - to compel acceptance of the power of attorney in which event the relief to be granted is limited to an order compelling acceptance.

DURABLE POWER OF ATTORNEY STATUTE (GENERAL OBLIGATIONS LAW) CONTINUED:

- **§ 5-1511** Termination or revocation of power of attorney; notice
- **§ 5-1514** Certain gift transactions; formal requirements; statutory form. **(1)** If the principal intends to authorize the agent to make gifts other than gifts authorized by subdivision fourteen of section 5-1502I (limit

LONG TERM CARE OMBUDSMAN PROGRAM

- **Pub. Law 89-73, 1965.** Mandated in every state by federal law as a condition of receiving federal money under the Older Americans Act.
- The LTCOP is a federal advocacy program dedicated to protecting people living in long term care facilities. In New York State, the Office for the Aging operates LTCOP through its Office of the State Long Term Care Ombudsman.
- **45 CFR Parts 1321 and 1327; 9 NYCRR 6660.2 – 6660.12**

Questions?



CONTACT INFORMATION

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PHONE NUMBER

EMAIL ADDRESS

Program Social Worker SOCIAL WORKER'S NAME

PHONE NUMBER

EMAIL ADDRESS