



THIS WEBSITE focuses on the need for legislation to prevent the financial exploitation of individuals in situations like the one pictured here.

The questions posed below make clear this need.

The scene pictured above is copied from a 3-minute video which was recorded in a hospital's emergency room. ABC News broadcast this video as part of the report which it presents online at <http://abcnews.go.com/2020/mary-ellens-mansion-elder-abuse/story?id=8976473>. The video itself can be viewed at <http://abcnews.go.com/video/playerIndex?id=8486577>

**The patient in this video has just suffered a massive stroke.**

**The attorney is presenting the patient a will to sign.** The attorney is recording the video in order to present it as evidence that the patient's condition is not being financially exploited. In fact, the video ended up being key evidence that resulted in the attorney being disbarred and indicted on criminal charges.

**This video provides the context for the following questions**, which address elements of our laws which not only facilitate the financial exploitation of cognitively-impaired older adults but also are responsible for its under-reporting

- 1) Does this video provide any **REASONS FOR SUSPECTING** that this victim was being financially exploited?
- 2) Does the video suggest that the **LAWYER WAS AWARE** that someone might reasonably suspect that this victim was being taken advantage of?
- 3) Did **MANDATORY REPORTING LAWS** protect this victim against being taken advantage of?
- 4) Did **ADULT PROTECTIVE SERVICE LAWS** protect this victim against being taken advantage of?
- 5) Did **GUARDIANSHIP LAWS** protect this victim against being taken advantage of?
- 6) Did the **ADA (Americans With Disabilities Act)** protect this victim against being taken advantage of?
- 7) Did the **OAA (Older Americans Act)** protect this victim against being taken advantage of?
- 8) **COULD OUR LEGISLATURE** include in our mandatory reporting laws a provision that would require mandatory reporters to report circumstances such as these?
- 9) **SHOULD OUR MANDATORY REPORTING LAWS INCLUDE** a provision that would require mandatory reporters to report circumstances such as these?
- 10) **TO WHOM SHOULD OUR MANDATORY REPORTING LAWS REQUIRE NOTIFICATION** in situations such as this one? A representative of the hospital, such as its risk manager or patient ombudsman? Adult Protective Services? Law enforcement? Affected family members? At least one of the above? All the above?
- 11) **SOME STATES DEFINE "EXPLOITATION"** as the unlawful or improper act of a caretaker. **SHOULD THESE STATES AMEND THEIR CODE** so as to include the unlawful or improper acts of others, as do the statutes of other states, including Florida, as well as the Older Americans Act?

- 12) **DO OUR LAWS REQUIRE A MEDICAL EXAMINATION** of the subject in order to establish the validity of a will, trust, deed, POA or other significant document that is executed in a situation like this?
- 13) **SHOULD OUR LAWS REQUIRE** a medical examination of the subject in order to establish the validity of an important document that is executed in a situation like this?
- 14) **WOULD A MEDICAL EXAMINATION** of the subject suffice to establish the validity of an important document that is executed in a situation like this?
- 15) **CAN SOMEONE WHO IS MENTALLY COMPETENT** still be defrauded or unduly influenced into executing an important document in a situation like this?
- 16) In a situation like this, **IS IT MORE IMPORTANT** to determine whether the subject is **COMPETENT** or whether the subject is being **EXPLOITED**?
- 17) **WHAT KINDS OF QUESTIONS SHOULD BE ASKED** in a situation like this in order to establish whether or not the subject is being exploited?
- 18) If a subject is examined in order to establish the validity of an important document that is executed in a situation like this, would the examination be for a **MEDICAL PURPOSE** or a **FORENSIC PURPOSE**?
- 19) If a subject is examined in order to establish the validity of an important document that is executed in a situation like this, **WHO SHOULD CONDUCT THE EXAMINATION**? An individual with an interest in the document? Someone connected to such individuals? The drafter of the document?
- 20) If a subject is examined in order to establish the validity of a document executed in a situation like this, **SHOULD THE SUBJECT BE EXAMINED ALONE**, away from the document's drafter and others whose presence might influence the examination?
- 21) If a subject is examined in order to establish the validity of a document executed in a situation like this, **SHOULD THE SUBJECT BE EXAMINED FIRST**, before the examiner has any contact with anyone who might try to influence the examination?
- 22) If a subject is examined in order to establish the validity of a document executed in a situation like this, should the examination determine if the subject has executed other **DOCUMENTS WHICH CONFLICT** with this one?
- 23) If a subject is examined in order to establish the validity of a document executed in a situation like this, and if the subject indicates that he has executed other **DOCUMENTS WHICH CONFLICT** with this one, **SHOULD A SUBJECT BE ASKED TO EXPLAIN WHY** he is now executing a document which conflicts with those he previously executed?
- 24) Should the law provide each of us the opportunity to execute **INSTRUCTIONS WHICH A COURT MUST FOLLOW** when deliberating the validity of documents that we might execute in a situation like this?

#### Recommended Reading

- Diagnostic and Treatment Guidelines on Elder Abuse and Neglect, American Medical Association, 1992, pages 7-12
- "Wills, Testamentary Capacity, and Undue Influence", Irwin Perr, MD, JD, Bulletin of the AAPL, Vol IX, No. 1, pages 15-22
- "Undue Influence and Written Documents: Psychological Aspects", Margaret Thaler Singer, Ph.D., Cultic Studies Journal, Vol 10, No. 1, 1993, pages 19-32
- "Testamentary Capacity: History, Physicians' Role, Requirements, and Why Wills Are Challenged", Ryan C.W. Hall, MD, Richard C.W. Hall, MD, Wade C. Myers, MD, and Marcia J. Chapman, Clinical Geriatrics June 2009, pages 18 – 24
- "Should Attorneys Have a Duty to Report Financial Abuse of the Elderly?", Carolyn Dessin, Akron Law Review, Vol. 38, p. 707, 2005
- Financial Abuse of the Elderly; A Detective's Case Files of Exploitation Crimes, Joe Roubicek, 2008, Chapter 6

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