

Elder Abuse Reporting: Your Role, Your Risks

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USA v. Rachel Lee, Blancey Lee and Porsha Lee





Legal Control

March 17, 2008: POA

- Rachel and Jr. execute Durable Power of Attorney (POA) form
- Rachel Lee as attorney-in-fact and agent
- Grants authority over finances and real property transactions
- Jr.'s attorney Michael Moore prepared and personally notarized the POA

2007 – 2011: Financial Control

- Jr. believes Rachel Lee and Mary Marks are both “doing the books” – provide a check and balance
- Jr.’s CPA works directly with Rachel Lee
- Rachel Lee and Porsha Lee trained by CPA to enter financial history in QB
- Annual QB history clearly shows substantial funds moving to Lee family (sometimes masked as employment)
- UBS accounts are liquidated



Missed Opportunities

- Attorney Moore
- CPA firm
- Forest Grove Police
- Tree Farm Realtor

- Most responsive: bank staff & UBS

- Some faced civil suits and/or licensing issues

Team Ralph – post indictment

- Court appointment of ODVA as temporary conservator
- Kit Jensen as CAA for Jr. in the conservatorship
- Jensen contests ODVA beyond temp status
- Attorney Andy Rich appointed as 2nd conservator
- Rich hires Stoll Berne to serve as attorneys for conservator

Elder Abuse Lawsuit

ANDREW RICH, as conservator for Ralph W. Raines, Jr. and personal representative of the Estate of Ralph W. Raines, Sr.; and RAINES TREE FARM LLC,

Plaintiffs,

v.

JARRARD, SEIBERT, POLLARD & COMPANY LLC; an Oregon limited liability company; RUSSELL RIES, an individual; JOHN SEIBERT, an individual; MARK SLEASMAN, an individual; WILLIAM LISAC, an individual; JERRY POLLARD, an individual; and CANDACE DUNBAR, an individual,

Defendants.

Case No. 15CV26333

FIRST AMENDED COMPLAINT
(Malpractice/Negligence; Breach of Fiduciary Duty; Elder Abuse; Aiding and Assisting Breach of Fiduciary Duty; Aiding and Assisting Fraud and Conversion)


[NOT SUBJECT TO MANDATORY ARBITRATION]

JURY TRIAL DEMANDED

Filing Fee Authority: ORS 21.160(1)(e)
Amount in Controversy: \$30,000,000

Elder Abuse Lawsuit

Through this action, Mr. Rich (in his capacity as conservator and personal representative) asserts claims against the Firm and its members and employees for professional malpractice/negligence, breach of fiduciary duty, elder abuse (ORS 124.100(2)), and aiding and assisting the Lees' breach of fiduciary duty, fraud and conversion. Defendants are liable for compensatory damages in the approximate amount of \$10 million, treble damages in the approximate amount of \$30 million, and prejudgment interest as allowed by Oregon law. Mr. Rich further seeks an award of attorney fees and conservator fees.



Elder Abuse Reporting

Reporting: Legislative Purpose

- **124.055** “The Legislative Assembly finds that for the purpose of preventing abuse, safeguarding and enhancing the welfare of elderly persons, it is necessary and in the public interest to require mandatory reports and investigations of allegedly abused elderly persons.”

Reporting Duty

- As of January 1, 2015, all attorneys are mandatory reporters of elder abuse.
- Attorneys remain mandatory reporters of:
 - Child abuse – ORS 419B.005(3)(m)
 - Abuse of adults with mental illness or developmental disabilities – ORS 430.735(12)(i)
 - Abuse of long-term care resident (if representing the resident) – ORS 441.630(6)(i)

Changing Demographics

- In 2013, an estimated 15% of Oregonians were 65 or older
- In 2030, it is estimated to be 20%
- Average life expectancy in OR is 84.3 years



Where does abuse occur?

- 66% of abuse occur in victim's home
- 34% occurs in licensed care settings



Who are the Abusers?

- Family members
- Caregivers
- Orderlies
- Con artists
- **ANYONE** can be an abuser

Elder Abuse Reporting Duty

- If you have
 - **Reasonable cause** to believe
 - **Abuse has occurred** to person 65 years or older
 - **Contact** with victim or abuser
- Then you **MUST report in a timely manner**
 - (unless an exception applies)

ORS 124.060

“Reasonable Cause”

What is Reasonable Cause?

- DHS advice is to report any “reasonable suspicion of abuse.”
- Reasonable suspicion is more than a hunch – ability to point to **articulable facts** based on the totality of the circumstances.



What is Reasonable Cause?

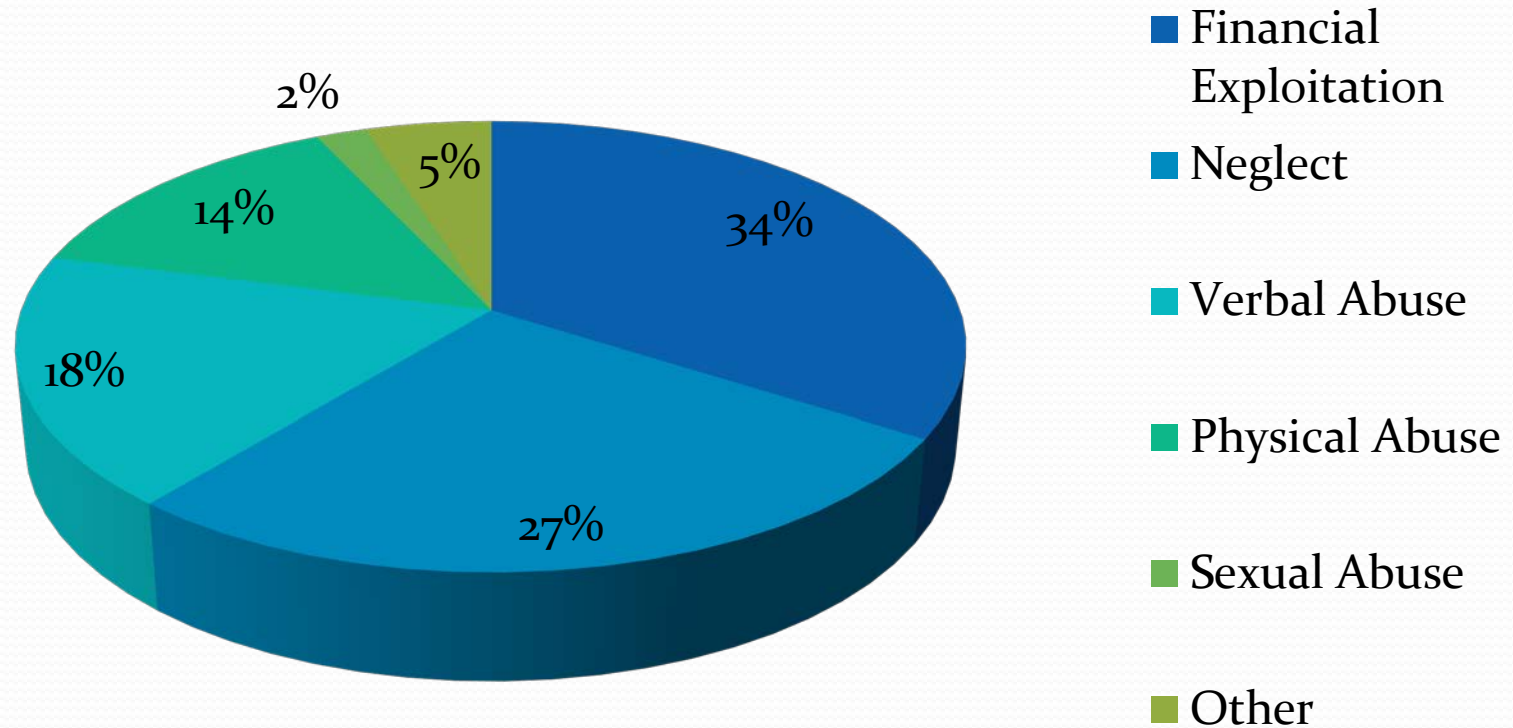
- Court may look to “whether the evidence creates a reasonable suspicion of ... abuse, not whether abuse in fact occurred or even probably occurred.”

Berger v. SOSCF, 195 Or App 587 (2004)
(interpreting analogous child abuse reporting provision)

“Abuse Has Occurred”

Reported Abuse (2012)

Types of Abuse



WHY DO BANK ROBBERS ROB BANKS?

\$54,000

- NET WORTH OF PEOPLE UNDER 65 YEARS OF AGE IN THE 2010 CENSUS

\$175,000

- NET WORTH OF PEOPLE OVER 65 YEARS OF AGE IN THE 2010 CENSUS

Financial Exploitation

- **Wrongfully taking assets** belonging to or intended for an elderly person
- **Alarming** an elderly person by threatening to take their money/property
- **Misappropriating/misusing /transferring** money without authorization
- **Failing to use** income/assets effectively for support and maintenance



SCAMS = THEFT BY DECEPTION

- Intent to defraud+
 - Creates, confirms, fails to correct, prevents another from acquiring information regarding a false impression that causes them to part with money or
 - Promises performance that the person does not intend to perform or knows will not be performed



SCAMS

- LOTTERY
- IRS
- ARREST WARRANT
- SWEET HEART
- CHECK CASHING
- CONSIGNMENT
- CONSTRUCTION

Neglect

- “Failure to provide basic care or services that are necessary to maintain the health or safety of an elderly person.” ORS 124.050(7)
- *Does not* include spiritual treatment if the elderly person **in good faith** is **voluntarily** under spiritual/prayer treatment in accordance with a **recognized religion** by an **accredited practitioner**. ORS 124.095

Neglect

	HERMISTON POLICE DEPARTMENT	Page 3
	330 S 1ST ST HERMISTON, OR 97838 541-567-5519 IMAGES FOR CASE 16-2479	10/26/2016
		
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Verbal Abuse

- Threatening significant physical or emotional harm through the use of:
 - Derogatory names, insults, profanity, ridicule
 - Harassment, threats, intimidation, humiliation, mental cruelty, inappropriate sexual comments.



Physical Abuse

- Any non-accidental physical injury
- Any injury that is inconsistent with the explanation given
- Willful infliction of physical pain



Sexual Abuse

- Nonconsensual sexual contact
- Sex crimes
 - Rape
 - Sodomy
 - Unlawful Sexual Penetration
 - Sex Abuse
 - Public Indecency
 - Private Indecency
 - Incest



Sexual Abuse (cont.)

- Verbal or physical sexual harassment
 - Includes pervasive exposure to sexually explicit material or language
- Sexual exploitation
- Sexual contact between employee of care facility and person served by it
 - EXCEPT: **Consensual** with paid caregiver
- Sexual contact through trickery, threat, force, coercion

Seclusion and Restraint

- Involuntary seclusion as discipline or for convenience of caregiver
- Physical or chemical restraint
 - Except as prescribed by a doctor or part of an approved treatment plan



Abandonment

- Desertion
- Withdrawal of duties/obligations
- Neglect of duties/obligations

Warning Signs of Abuse

- Unexplained injury
- Injury that doesn't fit explanation
- Injuries that don't make sense
- Elderly person not allowed to speak without caregiver present
- Limited access to person



Warning Signs of Abuse

- Elderly person who is extremely withdrawn, non-communicative or non-responsive
- Unpaid bills, overdue rent, utility shut-off notices
- Person who is unclean, unkempt, disheveled



Contact with Elder or Abuser

What is “contact?”

- No statutory or case law definition
- Can be before or after the abuse
- Probably limited to direct contact
 - AG Opinion: “Contact” means more than board members receiving info through board because acquisition of info was too indirect. AG Op. No. 5543
- No time requirement –
can be fleeting



Reporting Elder Abuse

When to Report

IMMEDIATELY!!

- Oral report is required
- Shall be made immediately by telephone or otherwise

What to Report

- Names/addresses of victim and caregivers
- Nature and extent of abuse
- Evidence of previous abuse
- Explanation given for abuse
- Any other information you think could be helpful

Where to Report

- Law enforcement agency in county where you are at time of contact
- Department of Human Services

Reporting Hotline
1-855-503-SAFE

DHS Branch Offices

<http://www.oregon.gov/dhs/spwpd/pages/offices.aspx>

But I'm a Lawyer!!!

Client Confidences

- Attorneys are not required to report if:
 - The information is based on an attorney/client privileged **communication**
 - The information is based on **communication** during client representation and disclosure would be detrimental to client



Revealing Confidences

- RPC 1.6(A) and (B) allow lawyers to reveal confidences if:
 - Client consents
 - Required by law
 - Client intends to commit future crime
 - Necessary to prevent reasonably certain death or substantial body harm

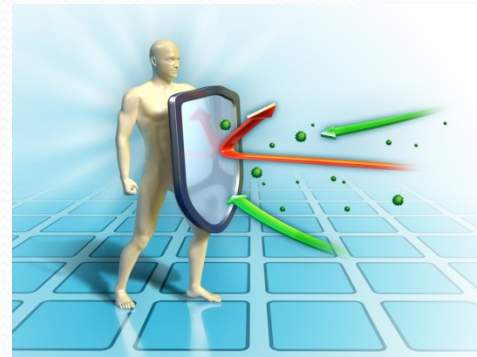
Immunity

Who Gets Immunity?

- Anyone who:
 - Reports in **good faith** and
 - Has **reasonable grounds** for making the report
- Anyone who:
 - Has **personal knowledge** that an employee was found to have committed abuse by DHS or LEA and discloses that knowledge to a prospective employer

What Kind of Immunity?

- Criminal liability
- Civil liability



- For anything related to the report
- For disclosure of personally known info to prospective employer

Who Will Know I Reported?

- Identity of reporter is **confidential** and only disclosed if:
 - You consent
 - Judicial process requires it
 - It is required during the investigation/prosecution

Consequences for Not Reporting

What if I Don't Report?

- Class A violation (fine)
- Failure to perform duties of office
- Tort Liability
 - Failure to protect from foreseeable harm
 - Negligence



Google Image

What Happens Next?

- Screening
- Investigation and evaluation
- Visit with elderly person
- Contact with witnesses
- Possible prosecution
- Protection of the person
- Resources for the person



Lets try it out

- Quinn and her husband are nurses at the local hospital. Quinn schedules an appointment with her Attorney to discuss her older brother's financial exploitation of her elderly parents. Quinn's brother has been forging checks on the parents account. Quinn's parents want the money back, but do not want to prosecute the brother.
- DOES THE ATTORNEY HAVE DUTY TO REPORT?
- WHAT ADVICE DO YOU GIVE TO THE CLIENT?

Questions?