

# Preventing Abuse and Exploitation

## A Personal Shift in Focus

By Margaret K. Dore

I graduated from law school in 1986. I first worked for the courts and then for the U.S. Department of Justice. After that, I worked for other lawyers, and then, in 1994, I officially started my own practice in Washington State. Like many lawyers with a new practice, I signed up for court-appointed work in the guardianship/probate context. This was mostly guardian ad litem work. Once in a while, I was appointed as an attorney for a proposed ward, termed an “alleged incapacitated person.” In other states, a guardianship might be called a “conservatorship” or an “interdiction.” A guardian ad litem might be called a “court visitor.”

### My Guardianship Cases

Most of my guardianship cases were straightforward. There would typically be an elderly person who could no longer handle his or her affairs. I would be the guardian ad litem. My job would be to determine whether the person needed a guardian, and if that were the case, to recommend a person or agency to fill that role.

My work also included private cases with moderate estates. With these cases, I would sometimes see financial abuse and exploitation. For example, there was an elderly woman whose nephew took her to the bank each week to obtain a large cash withdrawal. She had dementia, but she could pass as “competent” to get the money. In another case, “an old friend from 30 years ago” took “Jim,” a 90-year-old man, to lunch. The friend invited Jim to live with him in exchange for making the friend sole beneficiary of his will. Jim agreed. The will was executed, and he went to live with the friend in a nearby town. A guardianship was started, and I was appointed guardian ad litem. I drove to the friend’s house, which was dilapidated. Jim did not seem to have his own room. I asked him if he would like to go home. He said “yes,” and got in my car. He was not incompetent, but he had allowed someone else to take advantage of him. In another case, there was a disabled man whose caregiver had used his credit card to remodel her home. He too was competent, but he had been unable to protect himself.

In those first few years, I loved my guardianship cases. I had been close to my grandmother and enjoyed working with older people. I met guardians and other people who genuinely wanted to help others.

But then I got a case involving a competent man who had been railroaded into guardianship. The guardian, a company, refused to let him out. The guardian also appeared to be churning the case, i.e., causing conflict and then billing for work to respond to the conflict and/or to cause more conflict. I have an accounting background

and also saw markers of embezzlement. I tried to tell the court, but the supervising commissioner didn’t know much about accounting. She allowed the guardian to hire its own CPA to investigate the situation, which predictably exonerated the guardian. The guardian had many cases and, if what I said had been proved true, there would have been political fallout. There were also conflicts of interest among the lawyers.

At this point, the scales began to fall from my eyes. My focus started to shift from working within the system to seeing how the system itself sometimes facilitates abuse. This led me to write articles addressing some of the system’s flaws. See, e.g., Margaret K. Dore, *Ten Reasons People Get Railroaded into Guardianship*, 21 AM. J. FAM. L. 148 (2008), available at [www.margaretdore.com/pdf/Dore\\_AJFL\\_Winter08.pdf](http://www.margaretdore.com/pdf/Dore_AJFL_Winter08.pdf); Margaret K. Dore, *The Time Is Now: Guardians Should Be Licensed and Regulated Under the Executive Branch, Not the Courts*, WASH. ST. B. ASS’N B. NEWS, Mar. 2007 at 27–29, available at <http://maasdocuments.files.wordpress.com/2013/08/dore-the-time-is-now-ashx.pdf>.

### The MetLife Studies

In 2009, the MetLife Mature Market Institute released its landmark study on elder financial abuse. See [www.metlife.com/assets/cao/mmi/publications/studies/mmi-study-broken-trust-elders-family-finances.pdf](http://www.metlife.com/assets/cao/mmi/publications/studies/mmi-study-broken-trust-elders-family-finances.pdf). The estimated financial loss by victims in the United States was \$2.6 billion per year.

The study also explained that perpetrators are often family members, some of whom feel themselves “entitled” to the elder’s assets. The study states that perpetrators start out with small crimes, such as stealing jewelry and blank checks, before moving on to larger items or coercing elders to sign over the deeds to their homes, change their wills, or liquidate their assets.

In 2011, MetLife released another study, available at [www.metlife.com/assets/cao/mmi/publications/studies/2011/mmi-elder-financial-abuse.pdf](http://www.metlife.com/assets/cao/mmi/publications/studies/2011/mmi-elder-financial-abuse.pdf), which described how financial abuse can be a catalyst for other types of abuse and which was illustrated by the following example. “A woman barely came away with her life after her caretaker of four years stole money from her and pushed her wheelchair in front of a train. After the incident the woman said, ‘We were so good of friends . . . I’m so hurt that I can’t stop crying.’”

### Failure to Report

A big reason that elder abuse and exploitation are prevalent is that victims do not report. This failure to report

can occur for many reasons. A mother being abused by her son might not want him to go to jail. She might also be humiliated, ashamed, or embarrassed about what's happening. She might be legitimately afraid that if she reveals the abuse, she will be put under guardianship.

The statistics that I've seen on unreported cases vary, from two in four cases to one in 20 cases. Elder abuse and exploitation are, regardless, a largely uncontrolled problem.

### A New Development: Legalized Assisted Suicide

Another development relevant to abuse and exploitation is the ongoing push to legalize assisted suicide and euthanasia in the United States. "Assisted suicide" means that someone provides the means and/or information for another person to commit suicide. If the assisting person is a physician who prescribes a lethal dose, a more precise term is "physician-assisted suicide." "Euthanasia," by contrast, is the direct administration of a lethal agent with the intent to cause another person's death.

In the United States, physician-assisted suicide is legal in three states: Oregon, Washington, and Vermont. Eligible patients are required to be "terminal," which is defined in terms of having less than six months to live. Such patients, however, are not necessarily dying. One reason is because predictions of life expectancy can be wrong. Treatment can also lead to recovery. I have a friend who was talked out of using Oregon's law in 2000. Her doctor, who did not believe in assisted suicide, convinced her to be treated instead. She is still alive today, 13 years later.

Oregon's law was enacted by a ballot measure in 1997. Washington's law was passed by another measure in 2008 and went into effect in 2009. Vermont's law was enacted on May 20, 2013. All three laws are a recipe for abuse.

### Call for Nominations JOHN H. PICKERING ACHIEVEMENT AWARD

The ABA Senior Lawyers Division is accepting nominations for the 2014 John H. Pickering Achievement Award. The award honors the life and accomplishments of John H. Pickering, an outstanding lawyer who was involved in various pro bono activities and law-related societal issues affecting the elderly.

The award nominees shall have attained the age of 55 years; must be a lawyer or judge (not necessarily an ABA member); shall have demonstrated throughout his or her career outstanding legal ability; shall have compiled a distinguished record of dedicated service to the profession and the community at large; and shall have made significant contributions to the furtherance of access to justice for all.

The deadline for nominations is February 28, 2014. The award will be presented at the August 7, 2014, SLD dinner held during the ABA Annual Meeting in Boston. For more information, visit [www.americanbar.org/srlawyers](http://www.americanbar.org/srlawyers) and scroll to "Awards" to download the requirements and nomination form.

One reason is that they allow someone else to talk for the patient during the lethal dose request process. Moreover, once the lethal dose is issued by the pharmacy, there is no oversight over administration. Even if the patient struggled, who would know?

Here in Washington State, we have already had informal proposals to expand our law to nonterminal people. The first time I saw this was in a newspaper article in 2011. More recently, there was a newspaper column suggesting euthanasia "if you couldn't save enough money to see you through your old age," which would be involuntary euthanasia. Prior to our law being passed, I never heard anyone talk like this.

I have written multiple articles discussing problems with legalization, including Margaret K. Dore, "Death with Dignity": What Do We Advise Our Clients?, KING CO. B. ASS'N B. BULL., May 2009, available at [www.kcba.org/newsevents/barbulletin/BView.aspx?Month=05&Year=2009&AID=article5.htm](http://www.kcba.org/newsevents/barbulletin/BView.aspx?Month=05&Year=2009&AID=article5.htm); Margaret K. Dore, *Aid in Dying: Not Legal in Idaho; Not About Choice*, 52 THE ADVOCATE [the official publication of the Idaho State Bar] 9, 18-20 (Sept. 2013) available at [www.margaretdore.com/pdf/Not\\_Legal\\_in\\_Idaho.pdf](http://www.margaretdore.com/pdf/Not_Legal_in_Idaho.pdf).

### My Cases Involving the Oregon and Washington Assisted Suicide Laws

I have had two clients whose fathers signed up for the lethal dose. In the first case, one side of the family wanted the father to take the lethal dose, while the other did not. He spent the last months of his life caught in the middle and traumatized over whether or not he should kill himself. My client, his adult daughter, was also traumatized. The father did not take the lethal dose and died a natural death.

In the other case, it's not clear that administration of the lethal dose was voluntary. A man who was present told my client that his father refused to take the lethal dose when it was delivered ("You're not killing me. I'm going to bed"), but then took it the next night when he was high on alcohol. The man who told this to my client later recanted. My client did not want to pursue the matter further.

### Conclusion

In my guardianship cases, people were financially abused and sometimes treated terribly, but nobody died and sometimes we were able to make their lives much better. With legal assisted suicide, the abuse is final. Don't make Washington's mistake. **VOE**

**Margaret K. Dore** ([margaretdore@margaretdore.com](mailto:margaretdore@margaretdore.com)), JD, MBA, is an attorney in private practice in Washington State, where assisted suicide is legal. She is a former law clerk to the Washington State Supreme Court and the Washington State Court of Appeals. She worked for a year with the U.S. Department of Justice and is president of *Choice Is an Illusion*, [www.choiceillusion.org](http://www.choiceillusion.org), a nonprofit corporation opposed to assisted suicide and euthanasia.