

**Litigating Elder Abuse Cases Against Facilities,
Restraining Orders and Elder Abuse Prevention**

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I. INTRODUCTION

Oregon has approximately 138 nursing homes. The risk of neglect and abuse does not abate upon admission to a nursing home. The risk probably increases because elders who are admitted to nursing homes are often the most vulnerable, dependent and ill. This reality is acknowledged in the extensive system of federal and state laws intended to protect nursing home residents from neglect and abuse. Those same laws can be used to hold nursing homes accountable when a resident suffers neglect or abuse.

II. INTAKE AND CLIENT INTERVIEW

A. Intake—What to Look for and Considerations

Thorough client intake of a potential matter is necessary to determine whether there is a sufficient legal and factual basis to assert claims. Additionally, a thorough client intake is necessary to ensure that claims are economically viable to justify a contingency fee arrangement with a lawyer. Victims of abuse and their families rarely can afford to retain a lawyer on an hourly basis to pursue claims against a nursing home. Nursing homes and their insurers will often spend hundreds of thousands of dollars to attempt to defeat claims of victims of abuse in nursing homes.

A lawyer should at least obtain the following information **before** ordering/reviewing the nursing home and medical records (*i.e.*, hospital) of the victim:

1. Names, contact information, and relationship to victim.
2. Victim's name, DOB, SSN, and marital status.
3. Record of payments to facility and victim's pay source(s) (potential liens).
4. Pending bankruptcy, judgments, and liens.
5. Nature of injuries (photographs), diagnosis, prognosis, and cause of death.
6. Date of injury and discovery of symptoms or first diagnosis.
7. Witnesses, *e.g.*, administrator, director of nursing, RN, LPN, CNA, etc.
8. Did any law enforcement or other public officials investigate the injury?
9. What statements did any person make about the incident? Did anyone take any recorded statement?
10. Does the victim have any pre-existing injuries that could be related to their current injuries? Prior hospitalizations? Prior facilities?
11. List medical providers.
12. How was the facility chosen (*e.g.*, was it recommend to the family)?

13. Were there any marketing materials from the facility available?
14. Were representations made by the facility prior to placing the victim?
15. Were any notices, citations, and/or surveys posted in the facility?
16. Did the family attend any assessment or care plan meetings?
17. Were there any formal complaints made to the facility or outside organizations?
18. Did the family ever witness abuse of other residents of the facility?
19. Were call lights answered in a timely manner?
20. Was staffing ever an issue?
21. In the case of death, was an autopsy done? Does the family have a copy of the death certificate?
22. Was the victim ever placed in physical or chemical restraints? If so, did they see the victim in those restraints?
23. Did the victim have bruises or bed/pressure sores?
24. Does the victim have a condition that could contribute to the bed sore?
25. Has the victim been diagnosed with Alzheimer's illness or dementia?
26. If the case involves an Alzheimer patient, was the Alzheimer patient in a locked facility?
27. If the case involved an Alzheimer patient, are you aware of any self abuse?
28. Was the family always notified of changes in the resident's conditions?
29. Was there ever significant weight loss?
30. If so, what was the response by the facility in taking measures to address that weight loss?
31. Did the victim need assistance in eating?
32. Did the patient ever have a swallowing problem?
33. Is there an appointed guardian or power of attorney? Is there a copy?
34. What does the family hope to achieve by bringing a lawsuit?

B. Use of Criminal Investigation

Investigations by adult protective services and local law enforcement can provide valuable sources of evidence of abuse. The Facility Complaint Reports are available to the public, although identifying information is redacted.

C. Causes of Action

1. Oregon's Elder Abuse Statute

Unfortunately, a resident cannot bring a claim under Oregon's Elderly Persons and Persons with Disabilities Abuse Prevention Act (EDPAPA) (ORS 124.005-.990) against a nursing home unless it is convicted of a crime of physical abuse specified in ORS 124.105(1), ORS 124.115(1)(b), ORS 442.015(16)(a), .015(22), .015(32). A resident may bring a claim under EDPAPA, however, against owners and employees in their individual capacity.

2. Negligence

A nursing home resident—or his or her guardian or guardian ad litem—may bring a tort claim for injuries caused by negligence in custodial care, premises maintenance or professional services. The statute of limitations for injuries to persons is two years, although the time may be tolled for disability. ORS 12.110(1), ORS 12.160; *see also* ORS 12.110(4) (two-year discovery rule if medical negligence is at issue; five-year statute of repose). The statute of repose for negligent injury to persons is 10 years after the date “of the act or omission complained of.” ORS 12.115(1). If the nursing home is operated by a governmental body, the Oregon Tort Claims Act requires a notice to be filed within 180 days of the injury. ORS 30.275(2).

3. Negligence per se

The standard of care can be established by the applicable statutes and regulations. In 1987, Congress passed the Federal Nursing Home Reform Act ("FNHRA"), contained in the Omnibus Budget Reconciliation Act of 1987 ("OBRA '87"), Pub.L. No. 100-203, §§ 4201-4218, 1987 U.S.C.C.A.N. (101 Stat.) 1330, 1330- 160 to -221 (codified at 42 U.S.C.A. §§ 1395i-3, 1396r), which provides for the oversight and inspection of nursing homes that participate in Medicare and Medicaid programs.

“A nursing facility must care for its residents in such a manner and in such an environment as will promote maintenance or enhancement of the quality of life of each resident.” 42 U.S.C. 1396r(b)(1)(A). “A nursing facility must provide services and activities to attain or maintain the highest practicable physical, mental, and psychosocial well-being of each resident in accordance with a written plan of care which--(A) describes the medical, nursing, and

psychosocial needs of the resident and how such needs will be met; (B) is initially prepared, with the participation to the extent practicable of the resident or the resident's family or legal representative, by a team which includes the resident's attending physician and a registered professional nurse with responsibility for the resident; and (C) is periodically reviewed and revised by such team after each assessment” 42 U.S.C. § 1396r(b)(2).

Under OBRA '87, the Centers for Medicare and Medicaid (“CMS”) has established detailed regulations covering a resident’s care. “Each resident must receive and the facility must provide the necessary care and services to attain or maintain the highest practicable physical, mental, and psychosocial well-being, in accordance with the comprehensive assessment and plan of care.” 42 C.F.R. § 483.25; *see also* § 483.30 (nursing staff requirements). CMS’s interpretive guidelines may be found at <www.cms.hhs.gov/manuals/default.asp?>.

Oregon’s Nursing Home Patients’ Bill of Rights can be found at ORS 441.605, and these rights include the right to be “[f]ree from mental and physical abuse” ORS 441.605(7). The applicable state regulations governing nursing facilities include OAR 411-085-0000 to 0370 and OAR 411-086-0010 to 0360.

OAR 411-085-0005 broadly defines abuse as:

“(a) Any physical injury to a resident that has been caused by other than accidental means. This includes injuries that a reasonable and prudent person would have been able to prevent such as hitting, pinching or striking, or injury resulting from rough handling;

(b) Failure to provide basic care or services to a resident, which failure results in physical harm or unreasonable discomfort or serious loss of human dignity;

(c) Sexual contact, including fondling, with a resident caused by an employee, agent or other resident of a long-term care facility by force, threat, duress or coercion, or sexual contact where the resident has no ability to consent;

(d) Illegal or improper use of a resident's resources for the personal profit or gain of another person; or borrowing resident funds; or spending resident funds without the resident's consent; or if the resident is not capable of consenting, spending resident funds for items or services from which the resident cannot benefit or appreciate; or spending resident funds to acquire items for use in common areas when such purchase is not initiated by the resident;

(e) Verbal abuse as prohibited by federal law, including the use of oral, written or gestured communication to a resident or visitor that describes a resident(s) in disparaging or derogatory terms;

(f) Mental abuse as prohibited by law including humiliation, harassment, threats of punishment or deprivation directed toward the resident;

(g) Corporal punishment; or

(h) Involuntary seclusion for convenience or discipline.”

See also 42 CFR § 483.13(b); OAR 411-085-0310(7) (resident’s right to be free from abuse).

In pleading a claim for intentional abuse, it is particularly important to plead that the employee’s acts were within the course and scope of employment. *See G.L. v. Kaiser Foundation Hospitals, Inc.*, 306 Or. 54, 757 P.2d 1347 (1988) (hospital not responsible for sexual assault of respiratory therapist; but see dicta regarding long-term care facility at 306 Or at 68); *Fearing v. Bucher*, 328 Or. 367, 977 P.2d 1163 (1999) (Archdiocese could be found vicariously liable, if acts that were within priest's scope of employment "resulted in the acts which led to injury to plaintiff"); *Barrington ex rel. Barrington v. Sandberg*, 164 Or.App. 292, 991 P.2d 1071 (1999) (police officer's work as supervisor of police cadets was necessary precursor to his misconduct towards female cadet and that the misconduct was direct outgrowth of that work created issue for jury regarding city's respondeat superior liability for officer's intentional tort).

4. Wrongful Death

“When the death of a person is caused by the wrongful act or omission of another, the personal representative of the decedent, for the benefit of the decedent’s surviving spouse, surviving children, surviving parents and other individuals, if any, who under the law of intestate succession of the state of the decedent’s domicile would be entitled to inherit the personal property of the decedent, and for the benefit of any stepchild or stepparent whether that stepchild or stepparent would be entitled to inherit the personal property of the decedent or not, may maintain an action against the wrongdoer, if the decedent might have maintained an action, had the decedent lived, against the wrongdoer for an injury done by the same act or omission.” ORS 30.020(1).

In a wrongful death action, damages may be awarded in an amount which: “(a) [i]ncludes reasonable charges necessarily incurred for doctors’ services, hospital services, nursing services, other medical services, burial services and memorial services rendered for the

decedent; (b) [w]ould justly, fairly and reasonably have compensated the decedent for disability, pain, suffering and loss of income during the period between injury to the decedent and the decedent's death; (c) [j]ustly, fairly and reasonably compensates for pecuniary loss to the decedent's estate; (d) [j]ustly, fairly and reasonably compensates the decedent's spouse, children, stepchildren, stepparents and parents for pecuniary loss and for loss of the society, companionship and services of the decedent; and (e) [s]eparately stated in finding or verdict, the punitive damages, if any, which the decedent would have been entitled to recover from the wrongdoer if the decedent had lived." ORS 30.020(2).

In wrongful death actions, noneconomic damages are capped at \$500,000. ORS 31.710; *Greist v. Phillips*, 322 Or. 281, 906 P.2d 789 (1995) (application of statutory cap to wrongful death claim did not violate remedies provision, privileges and immunities provision, or jury trial rights under Oregon Constitution; and application of cap did not violate substantive due process or equal protection under Fourteenth Amendment).

"The action shall be commenced within **three years after the injury causing the death** of the decedent is discovered or reasonably should have been discovered by the decedent, by the personal representative or by a person for whose benefit the action may be brought under this section if that person is not the wrongdoer." ORS 30.020(1) (emphasis added). "In no case may an action be commenced later than the earliest of: (a) [t]hree years after the death of the decedent; or (b) [t]he longest of any other period for commencing an action under a statute of ultimate repose that applies to the act or omission causing the injury, including but not limited to the statutes of ultimate repose provided for in ORS 12.110(4), 12.115, 12.135, 12.137 and 30.905." *Id.*

If the nursing home is operated by a governmental body, the Oregon Tort Claims Act requires a notice to be filed within one year of death. ORS 30.275(2). The statute of limitations is two years if the defendant is a governmental body. ORS 30.275(9).

5. Survival Action

"Causes of action arising out of injuries to a person, caused by the wrongful act or omission of another, shall not abate upon the death of the injured person, and the personal representatives of the decedent may maintain an action against the wrongdoer, if the decedent might have maintained an action, had the decedent lived, against the wrongdoer for an injury done by the same act or omission." ORS 30.075(1).

“In any such action the court may award to the prevailing party, at trial and on appeal, a reasonable amount to be fixed by the court as attorney fees.” ORS 30.075(2). “Subsection (2) of this section does not apply to an action for damages arising out of injuries that result in death. If an action for wrongful death under ORS 30.020 is brought, recovery of damages for disability, pain, suffering and loss of income during the period between injury to the decedent and the resulting death of the decedent may only be recovered in the wrongful death action, and the provisions of subsection (2) of this section are not applicable to the recovery.” ORS 30.075(3).

“The action shall be commenced within the limitations established in ORS 12.110 by the injured person and continued by the personal representatives under this section, or within **three years** by the personal representatives if not commenced prior to death.” *Id.* (emphasis added); *see also* ORS 12.190(1) (“If a person entitled to bring an action dies before the expiration of the time limited for its commencement, an action may be commenced by the personal representative of the person after the expiration of that time, and within one year after the death of the person.”). The three year statute set forth in ORS 30.075(1) should control over the more general provision in ORS 12.190(1).

6. Breach of Contract

The nursing home’s breach of the contract with the resident may provide a basis of a claim. The contract may provide for a certain level of care that was not met. The statute of limitations for an action on breach of contract is generally six years. ORS 12.080. Defendants sometime argue that that the two-year statute applies if the liability arises out of contract when a party owes an independent standard of care. *See, e.g., Dauven v. St. Vincent Hospital*, 130 Or App 584, 883 P2d 241 (1994), *subsequent appeal and remand on other grounds*, 144 Or App 363 (1996) (plaintiffs could proceed on contract theory when plaintiffs alleged an agreement that set forth hospital’s duties).

7. Fraud and Oregon’s Unlawful Trade Practices Act

A nursing home’s marketing materials or other oral representation may provide the basis for a fraud claim or claim under Oregon’s Unlawful Trade Practices Act (UTPA), ORS 646.608, 646.638. A nursing home’s materials can make representations such as “24x7 nurse on duty,” “safe and secure premises,” or “superior care.” Those representations, however, must be true.

A fraud claim generally requires a showing that: (1) the accused had falsely represented a material fact; (2) the accused knew that the representation was false; (3) the misrepresentation was made with the intent to induce the recipient to act or refrain from acting; (4) the recipient

justifiably relied on the misrepresentation; and (5) the recipient was damaged by that reliance. *Riley Hill General Contractor v. Tandy Corp.*, 303 Or. 390, 405-06, 737 P.2d 595 (1987). To support an allegation of fraud, the misrepresentation need not arise out of an affirmative falsehood--active concealment also can satisfy that element. *In re Milton O. Brown*, 255 Or. 628, 634-35, 469 P.2d 763 (1970).

A nursing home's violation of following provisions of ORS 646.608 of the UTPA may provide the basis for a claim:

(e) Represents that real estate, goods or services have sponsorship, approval, characteristics, ingredients, uses, benefits, quantities or qualities that they do not have or that a person has a sponsorship, approval, status, qualification, affiliation, or connection that the person does not have.

* * *

(g) Represents that real estate, goods or services are of a particular standard, quality, or grade, or that real estate or goods are of a particular style or model, if they are of another.

* * *

(i) Advertises real estate, goods or services with intent not to provide them as advertised, or with intent not to supply reasonably expectable public demand, unless the advertisement discloses a limitation of quantity.

* * *

(s) Makes false or misleading representations of fact concerning the offering price of, or the person's cost for real estate, goods or services.

* * *

(u) Engages in any other unfair or deceptive conduct in trade or commerce."

The statute of limitations for a fraud claims is two years after the date of discovery of the fraud. ORS 12.110(1). The statute of limitations for a UTPA claim is one year from the discovery of the unlawful trade practice. ORS 646.638(6).

8. Punitive Damages

"Punitive damages are not recoverable in a civil action unless it is proven by clear and convincing evidence that the party against whom punitive damages are sought has acted with malice or has shown a reckless and outrageous indifference to a highly unreasonable risk of harm

and has acted with a conscious indifference to the health, safety and welfare of others.” ORS 31.730(1).

“If an award of punitive damages is made by a jury, the court shall review the award to determine whether the award is within the range of damages that a rational juror would be entitled to award based on the record as a whole, viewing the statutory and common-law factors that allow an award of punitive damages for the specific type of claim at issue in the proceeding.” ORS 31.730(2)

“In addition to any reduction that may be made under subsection (2) of this section, upon the motion of a defendant the court may reduce the amount of any judgment requiring the payment of punitive damages entered against the defendant if the defendant establishes that the defendant has taken remedial measures that are reasonable under the circumstances to prevent reoccurrence of the conduct that gave rise to the claim for punitive damages. In reducing awards of punitive damages under the provisions of this subsection, the court shall consider the amount of any previous judgment for punitive damages entered against the same defendant for the same conduct giving rise to a claim for punitive damages.” ORS 31.730(3).

When seeking punitive damages, practitioners should be familiar with the applicable constitutional issues. *See Bocci v. Key Pharmaceuticals, Inc.*, 190 Or.App. 407, 79 P.3d 908, (2003) and *Bocci v. Key Pharmaceuticals, Inc.*, 189 Or.App. 349, 76 P.3d 669, (2003).

If the action is filed in state court, plaintiff may not plead a demand for punitive damages in the initial pleading. ORS 31.725(2) provides in part: “At the time of filing a pleading with the court, the pleading may not contain a request for an award of punitive damages. At any time after the pleading is filed, a party may move the court to allow the party to amend the pleading to assert a claim for punitive damages. The party making the motion may submit affidavits and documentation supporting the claim for punitive damages. The party or parties opposing the motion may submit opposing affidavits and documentation.”

A court may not award punitive damages against a “health practitioner” unless there is a showing of malice. ORS 31.740. The definition of “health practitioner” does not include a nursing home.

III. DISCOVERY—FORMAL AND INFORMAL

A. Interrogatories

Interrogatories are not allowed under the Oregon Rules of Civil Procedure, but they are allowed under the Federal Rules of Civil Procedure. Inquiry should be made into the following areas:

- Employees employed at the time of incident and/or injury;
- Residents in the facility at the time of incident and/or injury;
- Identity of Administrator, DNS, CNAs, dietary consultants, etc.;
- Existence of documents;
- Persons with knowledge of events;
- Identity of investigations/violations;
- Identity of management and consulting companies;
- Identity of members of the Quality Assurance Committee;
- Factual bases of defenses;
- Prior complaints;
- Employee suggestions; and
- Prior lawsuits.

B. Request for Production of Documents

Requests should be made for the following documents:

- Insurance policy;
- Nursing home chart (including ADL sheets, MDSs, etc.);
- Revenue/remittance and reimbursements;
- Third party billing information;
- Billing file;
- Administrative/nursing policies and procedures;
- Care plan policies and procedures and RAP (resident assessment protocol);
- Corporate guidelines;
- Records related to ownership;
- Personnel policies and procedures;
- Work schedules;
- Census sheets;
- Financial and budget information;

Employee personnel files;
Job descriptions;
Staffing agency records;
Government surveys and reports;
HCFA reports;
Complaints;
Internal reports and investigations;
Pressure sore reports;
Corporate organizational chart;
Pictures; and
Advertising.

C. Request for Admissions

These should be tailored to pin down the defendants on key liability issues.

D. Depositions

In most circumstances, the at least the following defendant-employees should be deposed: Administrator (42 CFR § 483.75(2)); Director of Nursing Services (OAR 411-86-0020); Certified Nursing Assistants; Caregivers (who are not required to be licensed by state); House Doctors (42 CFR § 483.40; OAR 411-086-0200(4)(a)); and Custodian of Records.

It is important to videotape key depositions. These videotapes depositions can be very effective at mediation and subsequently at trial.

E. Investigators

Private investigators are often an essential part of the litigation team. By interviewing nursing home employees and particularly any former employees, investigators can obtain information that is not contained in the nursing home's records. This informal investigation can also provide explanations for irregularities in nursing home records. Before initiating any contact with employees or former employees of a nursing home, it is important to be familiar with Oregon's RPC 4.2 (formerly DR 7-104(A)(1)). RPC 4.2 prohibits contact with represented parties except in certain circumstances. For application of the rule in the entity context, guidance may be found in Oregon Formal Ethics Opinions 1991-80 (corporate context) and 1998-152 (governmental context). Employees whose conduct upon which a party intends to hold the nursing home liable cannot be contacted. Employees who are merely occurrence witnesses, however, may be contacted.

F. Internet

Information about Quality Measures, Nursing Home Staffing and Inspection Results for particular nursing homes can be found at <medicare.gov>. Quality Measures information comes from resident assessment data that nursing homes routinely collect on all residents at specific intervals during their stay. The information collected pertains to the resident's physical, clinical conditions and abilities. Nursing Home Staffing information comes from reports that the nursing home reports to its state survey agency. It contains the nursing staff hours for a two-week period prior to the time of the state inspection. The Centers for Medicare and Medicaid Services receives this data and converts the reported information into the number of staff hours per resident per day. Inspection Results information refers to the regulatory requirement that the nursing home failed to meet but does not reflect the entire inspection report.

IV. VALUE-INJURY AND DEFENDANT MISCONDUCT

The amount of damages that a victim of nursing home abuse can recover often depends on the culpability of the nursing home's conduct. If the victim's injuries were ultimately caused by a nursing home putting "profits over people," then juries are more likely to award a higher level of damages. For example, if a resident was dropped by a staff person during a transfer, any negligence may have been caused by poor training, which in turn may have been caused by a corporate decision to reduce the training budget.

V. MEDIATION, TRIAL AND ARBITRATION

A. Media & Publicity

Exposing poor care in a nursing home can heighten public and governmental awareness. Heightened awareness in turn can lead to better industry regulation and practices. Consistent with the interests of a particular client, lawyers may consider being open to inquiries by the press. When communicating with the media, practitioners should be familiar with RPC 3.6 Trial Publicity. See also Kateri Walsh, *Engaging the Media: What Lawyers Should Know When Talking to Reporter*, Oregon State Bar Bulletin (October 2001).

B. Confidentiality

Confidentiality provisions may have tax consequences. You may advise the client to consult a tax advisor.

V. RESTRAINING ORDERS IN ELDER ABUSE CASES

Elements for Elder Abuse Restraining Order as Provided in Oregon's Elderly Persons and Persons with Disabilities Abuse Prevention Act

ORS 124.012. A petition under ORS 124.010 may be filed only in a **county in which the petitioner or respondent resides.**

ORS 124.005. (2) **“Elderly person”** means any person **65 years of age** or older who is not subject to the provisions of ORS 441.640 to 441.665 **[not a resident in a “long term care facility aka nursing home].** **“Person with Disabilities”**

124.020(a). That the respondent be required to move from the residence of the elderly person or person with disabilities, if in the **sole name** of the elderly person or person with disabilities or if **jointly owned or rented** by the elderly person or person with disabilities and the respondent, or if the **parties are married** to each other;

124.010 (1)(a) An elderly person or a person with disabilities who has been the **victim of abuse within the preceding 180 days** or a guardian or guardian ad litem of an elderly person or a person with disabilities who has been the victim of abuse within the preceding 180 days may petition the circuit court for relief under ORS 124.005 to 124.040, if the elderly person or person with disabilities **is in immediate and present danger of further abuse from the abuser.**

[124.020 (3) Immediate and present danger under this section includes but is not limited to situations in which the respondent has recently threatened the elderly person or person with disabilities with additional abuse.]

(b) The elderly person or person with disabilities or the guardian or guardian ad litem of the elderly person or person with disabilities may seek relief by filing a petition with the circuit court alleging that the elderly person or person with disabilities is in immediate and present danger of further abuse from the respondent, alleging that the elderly person or person with disabilities has been the victim of abuse committed by the respondent within the 180 days preceding the filing of the petition and describing the nature of the abuse and the approximate dates thereof. **The abuse must have occurred not more than 180 days before the filing of the petition.**

ORS 124.005. (1) **“Abuse” means** one or more of the following:

(a) Any physical injury caused by other than accidental means, or that appears to be at variance with the explanation given of the injury.

- (b) Neglect that leads to physical harm through withholding of services necessary to maintain health and well-being.
- (c) Abandonment, including desertion or willful forsaking of an elderly person or a person with disabilities or the withdrawal or neglect of duties and obligations owed an elderly person or a person with disabilities by a caregiver or other person.
- (d) Willful infliction of physical pain or injury.
- (e) Use of derogatory or inappropriate names, phrases or profanity, ridicule, harassment, coercion, threats, cursing, intimidation or inappropriate sexual comments or conduct of such a nature as to threaten significant physical or emotional harm to the elderly person or person with disabilities.
- (f) [SWEEPSTAKES]
- (g) Wrongfully taking or appropriating money or property, or knowingly subjecting an elderly person or person with disabilities to alarm by conveying a threat to wrongfully take or appropriate money or property, which threat reasonably would be expected to cause the elderly person or person with disabilities to believe that the threat will be carried out.
- (h) Sexual contact with a nonconsenting elderly person or person with disabilities or with an elderly person or person with disabilities considered incapable of consenting to a sexual act as described in ORS 163.315. As used in this paragraph, "sexual contact" has the meaning given that term in ORS 163.305.

For information on representing victims of elder abuse in restraining order hearings or on other pro bono opportunities, please contact . . .

Legal Aid Services of Oregon
921 SW Washington St #500
Portland OR 97205
Phone: 503 224-4086 Fax: 503 295-9496

VI. ELDER ABUSE PREVENTION TIPS

Physical, Emotional or Sexual Abuse

Although comprehensive national data is not collected, it is estimated that between 1 and 2 million elderly Americans have been injured, exploited or otherwise mistreated by someone on whom they depended for care or protection.

Though definitions of elder abuse vary, it is generally defined as the intentional or negligent act by any person that causes harm or a serious risk of harm to a vulnerable adult. Elder abuse may take the form of neglect, financial exploitation, abandonment, or physical, emotional or sexual abuse. Elder abuse can be caused by a stranger, family member, caregiver, or those persons working in a boarding home, residential care facility, assisted living facility, or nursing home.

An alert friend or family member can detect danger signs of abuse by looking for:

Unexplained injuries such as bedsores, pressure sores, cuts, bruises, burns or fractures.

Emotional changes, anxiety, depression or sudden change in behavior.

Malnutrition, dehydration or ongoing infections.

Families can take a number of steps to prevent elder abuse:

Frequently maintain contact with elders to monitor for any danger signs of abuse.

Ensure that any caregivers—whether family or otherwise—are qualified to provide care.

Visit with caregivers on a regular basis to ensure that they are providing proper care.

If selecting a long-term care facility, collect as much data on the facility as possible. Visit the facility several times, and obtain a copy of its most recent inspection survey. After narrowing a search for a facility to fewer than six, contact the Office of the Long-Term Care Ombudsman (in Oregon, 800-522-2602; in Washington, 800-562-6028) to obtain additional information on particular facilities.

If elder abuse is suspected, there are a number of steps a family should take:

Seek medical attention. If an injury is a life threatening emergency, call 911.

Otherwise, depending on the acuity of the injury, the victim should be treated in a hospital or by the victim's primary care physician.

Report the suspected elder abuse. If there is an immediate threat to health or safety, call 911. Otherwise, call the Office of the Long-Term Care Ombudsman, which will ensure that the suspected abuse is reported to the appropriate law enforcement or adult protective services agency.

Follow up with the appropriate governmental authorities to ensure that the suspected elder abuse is fully investigated.

For tips on preventing abuse in Nursing Homes, please visit

http://www.vangelisti.com/practice_areas/nursing_home.htm