

**TESTIMONY BEFORE THE
PENNSYLVANIA HOUSE OF REPRESENTATIVES
-COMMITTEE ON AGING AND OLDER ADULT SERVICES-**

DECEMBER 9, 2013

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INTRODUCTION

Good morning. My name is Rebecca Warren and I am the Montour County District Attorney. Thank you for allowing me to speak with you today on the issue of elder abuse and protective services. I am grateful for the opportunity to present my impressions and experiences as a relatively new DA.

GENERALLY

The older adult population is growing. According to AARP, by 2015, people aged 50 and older will comprise 45% of the US population. Pennsylvania has one of the highest populations of adults over the age of 65 as well as one of the highest percentages.¹ As a result, elder abuse is of particular concern to our Commonwealth.

Remarkably, the segment of the US population comprised of persons 50 years of age and older controls between Seventy (70%) to Ninety (90%) Percent of our Nation's wealth, depending on which source you review.² These citizens have worked hard, accumulated wealth, and are relying on those assets to finance their needs as they enter their retirement years.

Unfortunately, as we age, we also begin to experience physical and mental decline which makes us more susceptible to exploitation. Additionally, many older adults are more trusting and gullible, having been raised and lived in an age when deception was not as rampant. Sadly, because of these factors, many older adults will not experience the full fruits of their hard-earned labors, or will be financially compromised due to theft or loss of their assets.

A MetLife Mature Market Institute study estimated that in 2010, the annual financial loss for elder victims had reached a staggering \$2.9 billion. Regrettably, it is a trend that appears to be increasing.

ELDER ABUSE ISSUES

Since taking office in January of 2012, I have seen a sharp increase just in our small, rural county alone, in the number of complaints, concerns and cases relating to elder abuse. The two categories of abuse which I wish to focus on are those which have become all-too-familiar to me:

- 1) Financial Exploitation through use of a Power of Attorney; and,
- 2) Abuse caused by theft of the older adult's pain medication (also referred to as Drug Diversion).

¹ U.S. Census Bureau, *Demographic Profiles: Census 2000*, at www.census.gov

² Sources include US Senate Subcommittee on Aging, Wiki Answers, ICSC.

Financial Exploitation through Use of a Power of Attorney

Having practiced in the private sector for over 20 years before being elected District Attorney, I am very familiar with Durable Powers of Attorney, which are significant and important estate planning tools. I have a Power of Attorney myself, and take comfort in the fact that I have personally selected someone whom I trust to act as my Agent and manage my affairs should I be unable to do so. I believe it is fair to say that many Pennsylvanians have done and feel the same about their estate planning. However, shockingly, the cold, hard truth is that many older adults will be victimized by the very persons they have named as their Agent – someone who is most likely a trusted family member.

Imagine your grandmother suffering from early onset dementia. She can tell that “something isn’t quite right” and seeks a diagnosis from her family physician. After testing, the diagnosis confirms that she will be robbed of her mental acuity by that dreaded disease, Alzheimer’s. Your grandmother, a woman of action and planning, contacts her attorney and executes estate planning documents to legally protect her assets and provide for her anticipated assisted living care. She names her daughter – her only child --as her POA Agent, and one of her grandsons as Substitute Agent. Her disease progresses and she must be admitted to an assisted living facility where she will have the necessary help for her daily needs. Her daughter passes away unexpectedly, and the grandson steps into the role of POA Agent through his substitute designation. Over the course of a little more than one year, the grandson Agent depletes all of your grandmother’s investments, assets and income totaling almost \$140,000.00. Your family thought your grandmother was being taken care of and her bills were being paid. You now receive a phone call because your grandmother’s assisted living bill has not been paid in ages and she is going to be evicted from the facility. She has nowhere to live, no one to provide 24-hour care for her, and no money. She does not qualify for any governmental assistance because she had \$140,000 for her care which was improperly squandered. And to add insult to injury, the grandson Agent not only claims through legal counsel that his grandmother actually consented to his removal of her monies as compensation for services provided, but also claims a POA is really a “license to steal” with only civil remedies available to redress a perceived wrong. What do you do? Where do you turn? What becomes of your grandmother?

Unfortunately, this scenario is true. It is a case that I was able to successfully prosecute only with the outstanding and ongoing support of the Columbia-Montour Area Agency on Aging, a local municipal police department, and Temple University’s Institute on Protective Services. Make no mistake about it, however, this was a challenging and difficult case because of the lack of criminal law addressing such financial exploitation and the lack of resources available to small District Attorney Offices like mine. Only through the crucial services provided by and direction from Dr. Ron Costen and Certified Fraud Examiner Linda Mill, were we able to pore over

thousands of pages of financial documents to glean and then detail in spreadsheets the evidence necessary to prove the dissipation of \$140,000 by the grandson Agent, recover \$50,000 in advanced restitution from him, and secure an agreement for repayment of all of the remaining monies owed.

This is only one of several POA theft cases which I have successfully prosecuted. Sadly, in the other cases, the victims may never receive full restitution due to the offender's lack of resources to repay the significant sums of monies stolen. The lack of repayment of restitution will most likely cause financial distress for those elderly victims who are still alive and residing in nursing home or assisted living facilities.

Potential Solutions to POA Financial Exploitation

What are some potential solutions to prevent POA financial exploitation?

- 1) Prohibit a Power of Attorney from being a "license to steal". Although ignorance of the law is no excuse, defenses raised to prosecutions for theft via POA, usually include the claim that the Agent was unaware of the criminal nature of their acts. 20 Pa.C.S.A. §5601 was revised in the early 90's to include specific language regarding an Agent's duties and acknowledgement of the same. It would be helpful from a prosecution perspective for that Acknowledgement to include a statement that failure to comply with those directives may result in criminal charges against the Agent. Forewarned is forearmed.
- 2) Expand the ability of the Office of Protective Services/Area Agencies on Aging to secure discoverable information and records regarding the Agent's actions. At present, 20 Pa.C.S.A. §5604(d) does not include the ability to petition the Court to secure such documentation if there exists the inability to secure consent of the older adult due to their incapacity .
- 3) Require an Agent to provide an annual accounting such as a Guardian is required to do. Although Guardians are required to file their accounting with the Court, an Agent may be required to file an accounting with the Area Agency on Aging. This would allow a review by an independent and objective third party.

Thefts of Drugs from Older Adults (Drug Diversion)

The second area of concern in my County is a form of elder abuse or neglect that I do not believe is really on the radar at this time. However, it is of utmost concern to me: the proliferation of thefts of elderly persons' pain medications by healthcare providers.

Drug addiction and crime associated with that addiction is obviously of epidemic proportions in not only our Commonwealth but also our Nation. Drug addicts are turning increasingly to easily-accessible prescription medications to satisfy their cravings. Theft of prescription medications from medicine cabinets in homes has become more and more common.

Another source of readily-available narcotics is health care facilities. A significant number of older adults in nursing homes and hospitals are prescribed narcotic medications by their doctors to manage and/or alleviate pain for their many and varied medical issues. Although these medical facilities are required to have controls regarding the handling and dispensing of medications, the requirements and capabilities of each facility in that regard vary widely. Some utilize computer generated records, while others employ pen and paper charts. Regardless of the system employed, thefts occur and they are rapidly increasing.

In the last two years, I have prosecuted many of these cases. Most situations have involved theft of a patient's medication by a nursing professional. There is one particular nursing home in my County that has an outstanding Director of Nursing who is vigilant regarding the medication paperwork and willing to contact the police to report suspected thefts. Geisinger Medical Center's main campus is located in Montour County and they, similarly, are exceptional regarding reports of such thefts.

These drug diversion cases can be very difficult to prosecute because in many instances, the nurses are clever enough to steal the medication in a way that allows them to dispose of the medication undetected, and no controlled substances are ever found in their possession. Additionally, they can refuse to take a blood test which means immediate loss of employment at that facility, but virtually guarantees lack of evidence for the prosecution. Lack of such evidence results in difficulty in proving such a case beyond a reasonable doubt as is required by law.

One particularly egregious case which springs to mind, involved a Certified Nursing Assistant (CNA) working at a local nursing home through a temp agency. CNAs are not allowed to handle or dispense medication. After this particular CNA was terminated from employment at the Montour County nursing home, she would routinely "visit" some of the lonely, elderly residents that she had befriended. Interestingly, all of the elderly residents who considered this CNA a friend were prescribed Fentanyl patches for chronic pain. The CNA would drive an hour and a half out of her way to visit these residents, bringing them treats, talking to them, giving them manicures, and massaging their hands and feet. Invariably, at each visit, the CNA would always "readjust" and "clean" the pain patches as a loving act of service to these residents. It was discovered that in fact the CNA was removing the Fentanyl gel from the patches and robbing the resident of their needed pain medication. She was only caught because another nurse working for a temp agency noticed her at two separate facilities in the same residents' rooms where the

Fentanyl patches had been tampered with and robbed of their gel. One of the residents whose narcotic pain medication was stolen, was in the final stages of dying. As a result of the theft, that poor elderly man died without the necessary medication to relieve his pain. Although we prosecuted that case not only as a theft but also as an assault, we only received a conviction on the theft charges.

Potential Solutions to Thefts of Drugs from Older Adults

Some potential solutions to combat the increasing theft of drugs from older adults would be to:

- 1) Regulate and monitor temp agency health professionals more rigorously to prevent those who steal drugs from being able to transfer or work at different facilities, particularly when they have been terminated for suspected thefts of drugs;
- 2) Consider the implementation of a law which specifically addresses theft of medication from older adults in hospitals, nursing home and other healthcare facilities;
- 3) Include theft of medication from older adults in the enhanced sentencing law of 42 Pa.C.S.A. §9717;
- 4) Encourage the use of more secure methods of storing, documenting and dispensing narcotic medications in healthcare facilities; and
- 5) Educate healthcare administrators, providers and facilities regarding this ever-increasing threat.

Conclusion

Obviously, financial exploitation and theft of drugs from older adults are complex and widespread issues difficult to address in the span of 10 to 15 minutes. There are no simple solutions. However, I thank you for taking the time to consider these topics in an attempt to protect our senior citizens and improve their lives.

This concludes my remarks and I would be pleased to answer any questions you may have.