

# VICTIMIZATION OF THE ELDERLY AND DISABLED™

## Preventing Abuse, Mistreatment, and Neglect

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### Assisted Living Under Investigation

by Amy E. Bennett

Are standards for assisted living high enough? Are elderly adults at risk at for-profit facilities for assisted living when the bottom line is the top priority? Just who is responsible for accidents, assaults, and deaths at assisted living facilities?

#### “Frontline,” ProPublica Documentary

ProPublica, an independent, nonprofit investigative news organization, and PBS’ television series, “Frontline,” sought the answers. In a documentary entitled “Life and Death in Assisted Living,” the curtain is pulled back. The series took an in-depth look at assisted living facilities, federal and local oversight, and some high-profile cases of negligence, focusing on whether or not there is enough accountability. (The documentary can be viewed at <http://www.PBS.org/wgbh/pages/frontline/social-issues/life-and-death-in-assisted-living/elderly-at-risk-and-haphazardly-protected/>.) The one-hour “Frontline” program originally aired on July 30, 2013, on PBS. An accompanying four-part online series, written by A.C. Thompson (who hosted and co-produced the “Frontline” show), ProPublica, and Jonathan Jones, special to ProPublica, also appeared concurrently on

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#### Financial Abuse

### Who’s on the Lookout?

by Dana Shilling

The problem of elder financial abuse is severe, and only growing worse. But at least there are some gleams of hope in the situation, as some of the existing organizations that protect elders add some new research and enforcement tools, and as some new groups are mobilized to defend the financially vulnerable.

#### Touch-Screen Disclosures

As reported in the New York Times’ aging blog, Northeastern University researchers used touch-screen computers to assist abuse victims in discussing sensitive matters. The researchers, who presented their results at the Gerontological Society of America’s 2013 annual meeting, asked the subjects to think about the paid or unpaid person who provided the most help with their care, and then asked the subjects how often in the last year that person insulted or cursed at them, stormed out of the house, or threatened to hit them. The lead researcher, Terry Fulmer, says that, over her 20 years of elder abuse research, elders often complain about being sworn at, yelled at, and threatened with being put in a nursing home.

Dr. Fulmer interviewed 142 ambulatory elders, average age approximately 75, who lived in the community and do not suffer from dementia. More than

one-third (38%) reported at least one instance of primary-caregiver verbal abuse in the past year. Span points out that treating a single incident as verbal mistreatment is a low bar, but it was adopted because there are no accepted standards for what constitutes verbal abuse. Seniors reporting one or more instances of caregiver verbal abuse had worse mental health and significantly lower social functioning levels than those who did not report such abuse. Dr. Fulmer said that the point is to “sensitize caregivers to the fact that words hurt,” and senior citizens can suffer from “a pattern of aggressive, abusive interactions.”

Fulmer encouraged caregivers to care for themselves if they find themselves turning to insults or intimidation. Therapy, respite care, and help from caregiver support groups, clergy, and social work can be useful. (Paula Span, “Words That Wound,” NY Times, Dec. 2, 2013; available at <http://NewOldAge.blogs.nytimes.com/2013/12/02/words-that-wound/?ref=health&>.)

#### Help at the Door

The Harry and Jeanette Weinberg Center for Elder Abuse Prevention at the Hebrew Home at Riverdale (New York City) has launched a

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ProPublica's website, and can be found at <http://www.ProPublica.org/series/life-and-death-in-assisted-living>.

### **Don't Look Under the Rock**

Assisted living facilities are home for almost a million seniors. Assisted living is also a multibillion-dollar business. What is the nature of oversight when it comes to medical care in assisted living that the facility cannot provide?

"The head of a state licensing agency told me, 'assisted living is the rock we don't want to look under,'" said Catherine Hawes, director of the Program on Aging and Long-Term Care Policy at Texas A&M University. This documentary, however, looks under that rock, to reveal the fissure between moneymaking assisted living ventures and the seniors whose lives are at risk because they are not getting the care and monitoring they need. In addition, it's difficult to determine where the fault

line lies, because traditional data is not available. Hawes says, in a transcribed interview:

[T]here's a paucity even of clinical information for care planning. So that's one thing. You don't really have good information on residents and what their care needs are, what their health care needs are, or what their preferences are for activities. It also means that unlike nursing homes, where you have information systems and consumer rating systems that tell you something about the facilities in terms of quality indicators, in terms of staffing, in terms of deficiencies, you don't really have that in assisted living. In fact, it's not even clear what assisted living is from state to state or even from facility to facility. ("Catherine Hawes: Assisted Living Is a Ticking Time Bomb," Jul. 30, 2013, Frontline.org; available at <http://www.PBS.org/wgbh/pages/frontline/social-issues/>

*life-and-death-in-assisted-living/catherine-hawes-assisted-living-is-a-ticking-time-bomb/.*)

### **George McAfee**

The investigation featured interviews with families whose tales were both heartbreaking and horrifying. George McAfee suffered from dementia and was a resident at Cypress Court, an assisted living facility later bought by Emeritus Industrial, a national chain. George wandered off at night when no one was on duty and gained access to an unlocked cupboard. He drank dish-cleaning fluid and suffered burns to his esophagus. Hospitalized and in pain, he later died. The family sued and settled with Emeritus. But Emeritus also was under investigation by the state, which fined them \$601. The family could not believe that. They compared the incident to an alternate tragedy—pointing out that if a child died in a day

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care facility, that facility would have been shut down, and stated that the fine in this case meant “nothing.”

Emeritus’ official website reads:

What happened to George McAfee at the Court of Decatur in the spring of 2009 was a tragic accident. Emeritus Senior Living accepts responsibility and we are deeply sorry. (Emeritus; available at <http://www.EmeritusFacts.com/mcafee.html>)

The CEO of Emeritus, Granger Cobb, spoke to correspondent A.C. Thompson about several of the cases, addressing the accusations of negligence. According to Mr. Cobb, human error happens, but it’s a rare occurrence and staff are doing their best to keep occupants safe.

### **Dementia Is Major Player**

Some Emeritus facilities offer what is termed a “Memory Care Program” for

by “Frontline” point to issues of how to treat older adults with different levels of dementia, how to assess what type of care is best, and what more can be done to avoid tragedies resulting from loosely monitored residents who suffer from dementia and may be a danger to themselves or others.

### **Making a Killing**

Emeritus had \$1.6 billion in revenue last year. The need for assisted living facilities is great, and provides a profitable business opportunity. With less oversight in comparison to nursing homes, where medical staff must be more specifically trained, overhead costs may be lower. “You can charge what the market can bear. . . There’s no limitation on fee increases,” said Patricia McGinnis, CA Advocates for Nursing Home Reform.

Thus, it seems the bottom line for some companies may well be to fill the facility with paying clients and keep

for Emeritus said, “The biggest thing I always heard was 100%, we need 100%.” She found that task difficult, because she preferred to find the right fit for potential residents, rather than just a warm body to fill up the building.

### **Hit Them Where It Hurts**

The family of Merle Fall told “Frontline” that after Merle moved into Ridgeland Pointe, an Emeritus facility near Jackson, MS, the family found her “drugged, drooling,” and wearing the same clothes they had left her in four days prior. Nine days later, Merle climbed out a second floor window and fell to the ground. When the family arrived, Merle was being put into an ambulance, with no Ridgeland Pointe staff in sight. She died three days later.

Merle’s family sued Emeritus. Her daughter Diane said:

Shut the facility down and put the people in jail. We’ll drop the lawsuit. Because [for us] it’s not the money, it’s truly not the money. But the money is all that truly matters to Emeritus. And if it’s all that matters to them, it’s the only way to hurt them. And believe me, I want to hurt them.

Emeritus was not cited or fined for Merle’s death. Mr. Cobb told “Frontline,” “This was a case where we actually followed all our policies and procedures.” He added, “sometimes their behavior is unpredictable.”

### **Fines for Fatalities Fall Short**

There are a number of cases in which fatalities have occurred and investigations have ensued. In most cases, the assisted living facility claimed it was not at fault and had done all that was necessary to protect the resident. The citations and fines, when facilities are found to have been at fault, however, are almost laughable.

In one example, presented by “Frontline”:

Irving Weinberg, 98, died in 2010 when his motorized wheelchair tumbled down a staircase at an Escondido, CA, facility operated by Emeritus Senior Living. . . It took regulators eight months to complete an investigation. When the state finally cited the facility for not having enough staff in place to prevent the fatal accident, the company was fined \$150.

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seniors with dementia. It costs more, and is claimed to be safer and have better-trained staff. When PBS/ProPublica investigated this claim, it turned out that staff received only eight hours of training, according to Kelly Scott, vice president of Emeritus Senior Living.

In her study, Hawes found that many facilities are ill equipped to deal with the complex medical needs of their residents. “If all you need is hospitality, you don’t leave your home,” she pointed out. However, those in assisted living are more likely to suffer from cognitive impairment and dementia. They need medical attention from staff with specialized training.

Constantine Lyketsos, M.D., a dementia specialist at Johns Hopkins University, said:

We found that about two-thirds at any time have dementia. So, the majority. And the implications therefore, are anybody who operates in assisted living needs to know that dementia is a major player.

Given the prevalence of dementia in assisted living, the concerns raised

them there. That is just what some of those interviewed said—including former employees of Emeritus.

Mary Kasuba, a former senior nurse at Emeritus in Emerald Hills in Northern California, said of the facility, “It was very dysfunctional and not very organized.” She said the med room was not managed properly and was staffed by people who did not have training or support, and who were often overworked and unable to keep up with the grave tasks that were required of them. Nurse Kasuba said, in a registered letter to Emeritus, that improvements needed to be made or she would resign. Her letters to the company and her follow-up phone calls went unanswered and so she quit. Other employees told “Frontline” that they were unable to make headway with the “ethics hotline,” and if they complained, they were fired.

At the same time that current staff was complaining about the lack of staff and subsequently inadequate care for residents, Emerald Hills was trying to get more seniors into the building. Melissa Gratiot, former salesperson

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A review of state inspection reports revealed that the state had cited the same facility just months before Weinberg's death for failing to provide adequate medical attention for a resident who died of sepsis, a shock-like condition brought on by severe infection. In that case, too, the facility was fined \$150. "A hundred and fifty dollars for someone's life?," asked Leslie Weinberg, Irving's daughter-in-law. "I don't think that is adequate." The Weinberg family sued and settled with the facility's owner.

In another example, the facility is not fined at all.

In 2012, a worker at Gold Age Villa, a small assisted living facility in Placer

County, picked wild mushrooms and put them in gravyshe fed to five seniors. Unfortunately, the fungi were toxic. Four residents eventually died. The incident generated headlines around the country. The government response, however, was largely overlooked: The state barred the caregiver from working in the industry, but did not revoke the facility's license or fine its owner.

In yet another example, an assisted living facility failed to comply with plans laid out to put it into compliance with the law, to disastrous consequences:

In 2011, an inspector concluded that workers at an Attitudes Senior Care facility, in Del Mar, had "neglected" a bed-ridden resident, causing the person to suffer from "severe malnutrition" and "numerous

pressure ulcers, or bed sores, including a wound that eroded the flesh all the way down to the coccyx bone. State officials handed out a \$150 fine and crafted a plan to bring Attitudes into compliance with California law. Records show the facility—part of a modest three-facility operation—had been put on just such a plan a few years earlier, in 2008, when another resident "did not receive the required care."

The focus of this documentary and online series was to bring attention to these particular issues. In other online forums, this focus is hotly debated and considered slanted. The Emeritus website links to articles defending their position. That said, it's worth taking a look at the cases presented, and the questions that still linger over accountability and standards in assisted living.

## Seven Questions to Ask When Searching for Assisted Living

This list, part of the online supplemental articles in the "Frontline"/ProPublica series, can assist families searching for assisted living facilities for their loved ones, and can provide a starting point for discussion for caregivers and counselors who may advise them. (Jason M. Breslow, "Seven Questions to Ask When Searching for Assisted Living," Jul. 30, 2013, Frontline.org; available at <http://www.PBS.org/wgbh/pages/frontline/social-issues/life-and-death-in-assisted-living/seven-questions-to-ask-when-searching-for-assisted-living/>.)

1. What are your needs? Determining what the needs are and finding the appropriate facility can be a challenge. Assisted living isn't for everyone. When it comes to seniors with dementia, it's even tougher, as these seniors may be physically well. Can the assisted living facility handle the challenges that may present themselves, not just now, but down the road?
2. Have you visited? Visit the facility and don't just take the tour. Talk to residents and staff and get a sense of the community, and safety measures in place.
3. For-profit or nonprofit? The funding model of an assisted living

facility will have an impact on its cost structure and how resources are allotted. While not an overall indication that a facility is good or bad, it's best to keep in mind that profit margins at privately owned assisted living facilities are on the rise, according to research from Sagemworks, a financial information company, and that those gains corresponded with a drop in payrolls.

4. What are the true costs? While expensive, the sticker price often won't account for the fees a facility charges for additional services. Little extras may include meal delivery, transportation to and from the facility, or laundry and housekeeping. Additional fees for bathing assistance, dressing assistance, and medication management can add thousands of dollars a month to the base rate.
5. What's in the admissions agreement? Admissions agreements can be lengthy and complicated, so experts advise taking your time to read them carefully. Watch out for so-called negotiated risk agreements, which are offered as a way for residents to make care choices that could present risks. It looks like a way to maintain independence,

but will also take away your right to sue should something go wrong. The same goes for liability waivers. If any part of the admissions agreement is unclear, consult with an elder law attorney.

6. Where is the facility? Have a balance between it being easy to visit and a great facility. "It is really important to have a place that's easy to visit, but it's more important to find a facility that's really good. Don't choose a facility that's five minutes closer to you, or 10 minutes closer to you just because of that. Make sure that you're getting the best facility for what your loved one needs, and be realistic about what they need," said Hawes of Texas A&M.
7. What does the ombudsman say? It's difficult to find data on assisted living facilities, so contacting the long-term care ombudsmen in your local area can be helpful. They can report any citations against a facility and answer additional questions. The National Long-Term Care Ombudsman Resource Center provides a map on its website with contact information for ombudsmen in all 50 states. (Available at <http://www.LTCOmbudsman.org/ombudsman>.) ■



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