

CASE FOCUS

Investigating Allegations of Elder Abuse Can be Complicated

February 09, 2024 Winter 2024 Vol. 68 #1



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The Problem

The National Center on Elder Abuse [reports](#) that “the population age 65 and older numbered 52.4 million in 2018” (the most recent year for which data are available). That group of older

Americans then “represented 16% of the population, more than one in every seven Americans. The number of older Americans has increased by 13.7 million (or 35%) since 2008, compared to an increase of 4% for the under-65 population.”

Elder abuse appears in many forms: physical, neglectful, sexual, emotional, and financial. Some are easily recognizable. Others are not. Regardless of the form, elder abuse is widespread, often hard to detect, and can be deadly. The good news is there are many community and government resources that address elder abuse. The bad news is that these resources do not come with a guarantee. Identifying and addressing each instance of abuse presents inherent roadblocks. Many roadblocks only serve to underscore the complicated nature of elder abuse. Victims may not have a viable support system. They often live alone, have few family or friends close by, and can be isolated because of a disability, memory loss, dementia, or overmedication.

The Law

The Older Americans Act became law in 1965 as part of President Johnson’s “Great Society” initiative. Its goal was to help older Americans live at home while maintaining their dignity and independence for as long as possible. The Supporting Older Americans Act of 2020 is the reauthorization of the Older Americans Act. Its goal was to make significant improvements on behalf of older Americans across the country.

There are laws in every jurisdiction to combat elder abuse. The term “abuse” means the knowing infliction of physical or psychological harm or the knowing deprivation of goods or services that are necessary to meet essential needs or to avoid physical or psychological harm. Although the definition appears to be easy to perceive or understand, one must prove the allegation and the act as prohibited by the statute. Investigating these reports is not simple and meeting burdens of proof can be difficult.

A Recent Case

A recent Massachusetts Appeals Court case addresses the complexities of elder abuse cases. In [Gallagher v. South Shore Hospital, Inc.](#), 101 Mass. App. Ct. 807 (2022), the plaintiff was named the health care agent and attorney-in-fact by an elderly man for whom she was the caretaker and who had lived in her home for years. *Id.* at 809. The Appeals Court reversed the lower court’s summary judgment ruling granted in favor of the defendants: caseworker, police officer, social service agency and hospital. The plaintiff alleged the defendants violated the [Massachusetts Civil Rights Act](#), G.L. c. 12 §§ 11H-11I, by intimidating an elderly person and his caretaker. *Id.* Allegations included the defendants “illegally entering their home and seizing the man, using threats of intimidation.” *Id.*

Specifically, a police officer and elder care caseworker entered the plaintiff’s home, pursuant to a report filed under [G.L. c. 19A § 15](#) (1982) (elder abuse and neglect report (“§15 Report”). The §15 Report contained allegations of verbal abuse and neglect. *Id.* Neither the police officer nor the caseworker gave notice pursuant to the statute, to enter the home or had a court order. *Id.* at 809. Over the objections of the caretaker, the man was transported to a hospital. *Id.* at 809.

The Appeals Court disagreed with the lower court’s summary judgment ruling based upon a number of facts in dispute. Alleged violations of civil rights and trespass failed to support summary judgment in favor of the Defendant police officer, caseworker, and Elder Services. *Id.* at 807-809, 813-14. In dispute was whether the caseworker, while standing outside the front door, could see that the elderly man was nonresponsive. *Id.* at 814. There was no dispute that the officer and caseworker entered the home without permission. *Id.* at 807, 814. Summary judgment was also unsupported for the claims of false imprisonment and battery in favor of the Defendant hospital. *Id.* at 816-17. Although there were “no locks on the doors or physical barriers” to prevent the caretaker or man from leaving, the hospital had a “sitter” present 24 hours at the elderly man’s door. *Id.* at 817.

[G.L. c. 19A § 18](#) (1982) mandates that, “an elderly person who is the subject of the report shall receive written notice that an assessment is being conducted and shall have the right to review the file and report developed as a result of the assessment.” There was no evidence that either [the caretaker] Gallagher or [the elder] LaPlante received notice of, or were given the opportunity, to review a report. *Id.* 807.

The caseworker and police officer claimed that, after observing the elderly man through a glass storm door and receiving no response when they rang the bell, called for the caretaker, and telephoned, they took it upon themselves to determine the need for a wellness check because of “exigent circumstances.” *Id.* at 896. The police officer called an ambulance because he had observed the elderly man as non-verbal, looking “disheveled, ... pale and in a deep sleep.” *Id.* at 815. The caretaker claimed the police officer and caseworker refused to heed her explanation of the elderly man’s current condition. *Id.* The caretaker, who was the elderly man’s health care agent did not consent to him being taken by ambulance to the hospital. *Id.* Having cared for the elderly man for many years, the caretaker understood his baseline abilities and needs. *Id.* at 816. The hospital staff, however, ignored the caretaker. *Id.* at 816-18.

Contrary to the caseworker's assumptions, the man was not dehydrated. *Id.* at 815. In due course, it was determined that the caretaker was correct and there was simply no medical need. *Id.* at 817-18.

Conclusion

The *Gallagher* case presents a complex situation. The caretaker's responsibility was to protect the elderly man in her charge. The police and the caseworker's responsibilities were also to protect this elderly man. This can be likened to a person who claims she was wrongfully admitted to the hospital as a danger to herself, or others, because someone, perhaps her own doctor, reacted to observations of her behavior. Both were being vigilant, cautious, and prudent. Nevertheless, this may result in unintended adverse consequences.

How do we get beyond this? Here are some modest suggestions:

Although in many states the public is not legally obliged to report suspicions of elder abuse, the more the subject is discussed the more the public will be aware. It is important to be aware that the predominant perpetrators of elder abuse are people in positions of trust. This means immediate family members and caregivers.

Training regarding elder abuse should be a requirement for attorneys, law enforcement, judicial, health, and social service personnel.

Besides physical abuse, attorneys should be aware of all professionals interacting with an elderly person and be alert to possible exploitation regarding the disposition of an older person's property, will, inheritance, and finances.

The vast majority of victims have no voice. Elder abuse is a transgression which places the victim at the mercy of those entrusted with their care. The *Gallagher* case underscores how professionals may be at fault. Elder abuse is a societal ill which must be placed on high alert. That can only come with education and awareness.

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