THE UNITED STATES DISTRICT COURT SOUTHERN DISTRICT OF TEXAS HOUSTON DIVISION

BARBARA LATHAM, Individually And as Durable / Medical Power of Attorney and Health Care Surrogate for MURIEL MINTZ, ESTELLE NELSON Seeking appointment under F.R.C.P. 17c Alternatively & MURIEL MINTZ	§ § § § § §	
VS.	§	
	§	No. _____
JUDGE MIKE WOOD, Individually and Official Capacity as Statutory Probate Judge Harris County, Texas, MICHELE GOLDBERG Individually & Officially, HARRIS COUNTY TERESA PITRE, Individually & Officially, DONALD MINTZ & HOUSTON HOSPICE STACY KELLY	§ § § § § § §	

ORIGINAL COMPLAINT WITH EMERGENCY APPLICATION FOR TEMPORARY RESTRAINING ORDER, DECLARATORY RELIEF, PRELIMIARY & PERMANENT INJUNCTION

1. THIS CASE IS A DIRE EMERGENCY IN WHICH MURIEL MINTZ'S LIFE HANGS BY A THREAD FORCED TO DIE BY STARVATION AND DANGEROUS DRUGS, AS APPROPRIATE MEDICAL TREATMENT IS WITHHELD AND HER REGISTERED NURSE DAUGHTERS ARE BANNED FROM ACCESS TO MURIEL MINTZ OR ANY INFORMATION OR RECORDS CONCERNING WHY SHE IS BEING FORCED TO DIE 3 WEEKS AFTER THE PURPORTED TEMPORARY GUARDIAN ASSUMED HER CARE—IT IS A LIFE AND DEATH MATTER!

2. BARBARA LATHAM, Individually and as Medical/Durable Power of Attorney for MURIEL L. MINTZ, guardian in the event of need, health care surrogate and attorney in fact for MURIEL L. MINTZ, ESTELLE NELSON, AND MURIEL MINTZ, individually respectfully

file this COMPLAINT for deprivations of privileges, immunities and fundamental human rights guaranteed by the United States Constitution, including the right to life, liberty and property which shall not be taken absent due process and equal protection of law (14th Amendment), 42 U.S.C. s 1983, First amendment right to life, freedom of speech and association with familiar rights not infringed by any government entity or person "acting under color of State law", the Fourth Amendment guarantee against unreasonable search or seizure, the Sixth Amendment right to *effective assistance of counsel*, Seventh Amendment right to trial by jury prior to any deprivation, Eighth Amendment guarantee against cruel and unusual punishment, 42 U.S.C. 12101 et seq; the Americans with Disabilities Act of 1990, and ADAAA (2008 and 2016 regulations) and Section 504 of the Rehabilitation Act of 1990 ("Section 504") of the Rehabilitation Act of 1973, 29 USC s 794.

3. DEFENDANTS unlawfully seized the person and property of MURIEL MINTZ AND BARBARA LATHAM in violation of 42 U.S.C. 1983 and the Fourth Amendment. MURIEL MINTZ was ORDERED by HON. MIKE WOODS to be totally incapacitated as he stripped her of ALL RIGHTS citizens of the United States is guaranteed, including inalienable rights that cannot be taken away by a State or local government official acting "under color of State law" without it being a serious criminal act, violating 18 U.S.C s 242, 241.

4. **The most EGREGIOUS aspect of her deprivation of rights lies in the FACT that MURIEL MINTZ was never given notice or an opportunity to be heard, simple due process, much less meaningful access to the Courts with a meaningful opportunity to participate before they are deprived of liberty, property or life**. SHE WAS NEVER PERSONALLY SERVED BEFORE HER ILLEGAL GUARDIAN SEIZED OVER $100,000 of her assets and everything she owned after which time she put her on hospice three weeks after

assuming her care, leading to the question*: HOW COULD A GUARDIAN PLACE A WARD ON HOSPICE TO DIE THREE WEEKS AFTER ASSUMING HER CARE WHEN SHE WAS NOT SICK WHEN SHE WAS DROPPED AT MICHELE GOLDBERG'S OFFICE??*

5. This case brings up many disturbing questions and the answer appears virtually indisputable. The court, in usual form, failed to observe almost any provision of the Texas Estates Code or Constitution and federal laws before seizing MURIAL, her estate and taking away every right she conceivably had, at which time the purported guardian (serving by virtue of a void court order) wasted no time to put her on hospice. Why?

6. **The answer is disturbingly beyond the bounds of decency and humanity in treating the elderly disabled mother as mere chattel to be disposed of in favor of taking her estate and a trust which has no relevance to her because the funds were transferred into a family trust, MURIEL MINTZ FAMILY TRUST, benefitting only the ward's three children and over which she retained no control or right.**

I. PARTIES

a. PLAINTIFFS

7. MURIEL MINTZ is a citizen of the United States and a resident of BRAZORIA COUNTY, and has resided at 1022 Northwick Drive, Pearland, Texas 77584. She may be served with citation and process as Houston Hospice, 1905 Holcomb Blvd, Houston Texas, 77030.

8. BARBARA LATHAM is a citizen of the United States and was, at all times relevant to this complaint, a resident of BRAZORIA COUNTY, TEXAS. She may be served through attorney, CANDICE SCHWAGER, 1417 Ramada Drive, Houston, Texas 77062, Tel: 832.315.8489, Fax: 713.456.2453, candiceschwager@icloud.com.

9. ESTELLE NELSON is a citizen of the United States and was at all times a resident of Harris County, Texas during relevant time periods. She may be served through attorney, CANDICE SCHWAGER, 1417 Ramada Drive, Houston, Texas 77062, Tel: 832.315.8489, Fax: 713.456.2453, candiceschwager@icloud.com.

b. DEFENDANTS

10. MICHELLE GOLDBERG is a resident of Harris County, Texas and may be served with process at 6750 W. Loop S. Suite 615, Bellaire, Texas 77401.

11. STACY KELLY is a citizen of the United States and resident of Harris County, Texas. She may be served with process at 6363 Woodway, Suite 300, Houston, Texas 77057.

12. TERESA PITRE is a citizen of the United States and resident of Harris County, Texas. She may be served with process at 12808 W. Airport STE 255C, Sugarland, Texas 77478.

13. HON. JUDGE MIKE WOOD is a citizen of the United States and resident of Harris County, Texas. He may be served with process at 201 Caroline Street, Suite 680, Houston, Texas 77002, Statutory Probate Court No. 2.

14. HOUSTON HOSPICE is located at 1950 HOLCOMB BLVD, HOUSTON, TEXAS. 77030 and may be served with process through registered agent, Christine V. Blackmon. MURIEL is currently being confined and starved at this facility.

15. DONALD MINTZ is a resident of HARRIS COUNTY TEXAS and may be served with process at 3519 Yupon Street, Houston Texas 77006.

II. JURISDICTION AND VENUE

16. This action arises under the United States Constitution, particularly the 1ST, 4TH, 5TH, 6TH, 7TH, 8TH AND 14TH Amendments, and under federal law, specifically, Title 42 U.S.C. §

1983, and § 2000cc et seq. This court has jurisdiction:

17. Plaintiffs' claims arising under the United States Constitution and federal law pursuant to 28 U.S.C. § 1331, 29 U.S.C. §794, 42 U.S.C. § 1983, and 42 U.S.C. §12101 *et seq*.; Over Plaintiffs' prayer for preliminary and permanent injunctive relief and damages under FEDERAL RULE 65(a);

> **Rule 65. Injunctions and Restraining Orders**
>
> **(a) Preliminary Injunction.**
>
> (1) *Notice.* The court may issue a preliminary injunction only on notice to the adverse party.
>
> (2) *Consolidating the Hearing with the Trial on the Merits.* Before or after beginning the hearing on a motion for a preliminary injunction, the court may advance the trial on the merits and consolidate it with the hearing. Even when consolidation is not ordered, evidence that is received on the motion and that would be admissible at trial becomes part of the trial record and need not be repeated at trial. But the court must preserve any party's right to a jury trial.
>
> **(b) Temporary Restraining Order.**
>
> (1) *Issuing Without Notice.* The court may issue a temporary restraining order without written or oral notice to the adverse party or its attorney only if:
>
> (A) specific facts in an affidavit or a verified complaint clearly show that immediate and irreparable injury, loss, or damage will result to the movant before the adverse party can be heard in opposition; and
>
> (B) the movant's attorney certifies in writing any efforts made to give notice and the reasons why it should not be required.
>
> (2) *Contents; Expiration.* Every temporary restraining order issued without notice must state the date and hour it was issued; describe the injury and state why it is irreparable; state why the order was issued without notice; and be promptly filed in the clerk's office and entered in the record. The order expires at the time after entry—not to exceed 14 days— that the court sets, unless before that time the court, for good cause, extends it for a like period or the adverse party consents to a longer extension. The reasons for an extension must be entered in the record.
>
> (3) *Expediting the Preliminary-Injunction Hearing.* If the order is issued without notice, the motion for a preliminary injunction must be set for hearing at the earliest possible time, taking precedence over all other matters except hearings on older matters of the same character. At the hearing, the party who obtained the order must proceed with the motion; if the party does

not, the court must dissolve the order.

(4) *Motion to Dissolve.* On 2 days' notice to the party who obtained the order without notice—or on shorter notice set by the court—the adverse party may appear and move to dissolve or modify the order. The court must then hear and decide the motion as promptly as justice requires.

(c) Security. The court may issue a preliminary injunction or a temporary restraining order only if the movant gives security in an amount that the court considers proper to pay the costs and damages sustained by any party found to have been wrongfully enjoined or restrained. The United States, its officers, and its agencies are not required to give security.

(d) Contents and Scope of Every Injunction and Restraining Order.

(1) *Contents.* Every order granting an injunction and every restraining order must:

(A) state the reasons why it issued;

(B) state its terms specifically; and

(C) describe in reasonable detail—and not by referring to the complaint or other document—the act or acts restrained or required.

(2) *Persons Bound.* The order binds only the following who receive actual notice of it by personal service or otherwise:

(A) the parties;

(B) the parties' officers, agents, servants, employees, and attorneys; and

(C) other persons who are in active concert or participation with anyone described in Rule 65(d)(2)(A) or (B).

(e) Other Laws Not Modified. These rules do not modify the following:

(1) any federal statute relating to temporary restraining orders or preliminary injunctions in actions affecting employer and employee;

(2) 28 U.S.C. §2361, which relates to preliminary injunctions in actions of interpleader or in the nature of interpleader; or

(3) 28 U.S.C. §2284, which relates to actions that must be heard and decided by a three-judge district court.

18. Declaratory relief under Title 28 U.S.C. § 2201;

19. ATTORNEYS FEES pursuant to Title 42 U.S.C. § 1988.

20. Venue is proper under 28 U.S.C. § 1391 in the SOUTHERN DISTRICT OF TEXAS because this claim arose therein. Each and all of the acts alleged herein were done by the

Defendants under the color and pretense of state law, statutes, ordinances, regulations, or customs

III. RELATED CASES OF PATTERN/PRACTICE

21. The Appeals court of Texas has repeatedly mandamused JUDGE MIKE WOOD for decisions made without REGARD TO ANY LAW WHATSOEVER, WOOD has been repeatedly sued for ACTING IN THE COMPLETE ABSENCE OF ALL JURISDICTION. [1]

22. PLAINTIFF gives notice of *Cause No. 4:16: 03215; Sherry Lynn Johnston; in the Southern District of Texas, Houston Division*, Honorable Lee Rosenthal presiding; as a related case, eerily similar to this case,

23. **The undersigned represented the PLAINTIFF in SHERRY JOHNSTON VS. DAVID DEXEL; and watched MS. MILLS be starved and drugged to death, as DEFENDANTS are conspiring to do in this case.**

24. The same pattern, practice and methods of unlawful conduct were used in that case to end the life of WILLIE JO MILLS, for which the Honorable JUDGE LEE ROSENTHAL ruled that claims can proceed against the JUDGE'S BOND AND GUARDIANS for wrongful death of WILLIE JO MILLS, deceased, starved and drugged to death to 80 lbs. at death with severe contractures in violation of Section 504); *Cause No. 4:16: 03215; in the Southern District of*

[1] *See attached 3rd amended petition against HON.JUDGE WOOD, HON. JUDGE BUTTS, HON JUDGE HERMAN in Carolyn James vs. Stephen Calkins; Cause No. 01910; before the HONORABLE JUDGE DAVID HITTER. See Tricks and Traps Article authorized by JUDGE MIKE WOOD AND KEITH MORRIS, STACY KELLY'S law firm, with such firm representing a party in the wrongful death case against JUDGE CHRISTINE BUTTS, HARRIS COUNTY, and court appointed guardians for the wrongful death of WILLIE JO MILLS, DECEASED, before the Honorable Lee Rosenthal, Southern District of Texas.*

Texas, Houston Division. The undersigned was personally threatened and forced out of the guardianship case by lawyers acting in conspiracy with the DEFENDANTS to hasten her death and retaliate against JOHNSTON.

25. Plaintiff gives notice of *Cause No. 4:12—00592; Candace Curtis vs. Anita Brunsting, et* al, Honorable Kenneth Hoyt; in which the Fifth Circuit ruled that the trust was in the jurisdiction of the federal court such that probate court could not snatch it back, at which time JASON OSTROM, the same law firm involved in this case and the wrongful death case of JOHNSTON VS. DEXEL, ET AL. OSTROM fraudulently conspired against his own client, CURTIS, entering a Rule 11 Agreement to move the case back to the probate court after the 5th Circuit ruled jurisdiction was in the FEDERAL DISTRICT COURT and the district Judge Hoyt entered a federal injunction against the DEFENDANTS under FRCP 65.

26. PLAINTIFFS further ask this Honorable Judge to take JUDICIAL NOTICE of Texas Court of Appeals decision against HON. JUDGE MIKE WOOD; *In re Alpert; Cause No. 01:08: 00804;* in the 14th Court of Appeals, Houston Division (2008); as well as the following media articles demonstrating an abuse of power and utter disregard for human rights or the law in the following features dating back to 2006-2008:

27. The Court held Judge Wood acted improperly in NOT FOLLOWING THE LAW and paying his prior law firm partners $2 million in fees when these fees should not have been paid;

28. The Court is asked to take judicial notice of the following news articles, which show a pattern and practice of similar civil rights violations, utter disregard for the rule of law and the Americans with Disabilities Act; *See email from Schwager to Harris County probate judges 2015, outlining their responsibilities to the disabled under the ADA which fell on deaf ears;*

- *Judge Wood Slapped Again, Rick Casey Houston Chronicle (2008)*

- *Grave problems in Texas: Looting Assetsof the Dead and Disabled; Lou Ann Anderson, Estate of Denial (2008)*
- *Houston Chronicle feature of Lise Olsen, 2007, Millionaire, 84, dies fleeing Harris County Probate Court (Judge Wood presiding).*
- *Houston Chronicle feature of Rick Casey, 2008, Judge Wood found in "error"*

29. The following exhibits are attached to support this EMERGENCY APPLICATION FOR TEMPORARY RESTRAINING ORDER, PRELIMINARY AND PERMANENT INJUNCTION FILED WITH THIS COMPLAINT UNDER EMERGENCY CONDITIONS:

- Designation of Guardian in the event of need 2006 by Muriel Mintz, disregarded with no hearing or evidence
- Bill of rights of wards (Jim Crow laws for the elderly and disabled) violated;
- MURIEL L MINTZ FAMILY TRUST and TRUST LAWSUIT to remove BARBARA LATHAM, a feat that cannot be accomplished by this court or DONALD MINTZ **even for cause UNTIL MURIEL IS DEATH, such that the clock is ticking for her death;**
- **Multiple returns of service demonstrating that Muriel was not personally served with process in this case such that WOOD never acquired jurisdiction over her or her property;**
- **One return that is abject fraud because it fraudulently avers that MURIEL was served with process in court when DONALD MINTZ'S lawyer admits in court transcripts that MURIEL was not present the day of this purported service and BARBARA swears that her mother was in the hospital the night before and was not there; It was executed to eliminate MINTZ'S problem serving her;**

- Return of Service demonstrating that TERESA PITRE was served with process on behalf of MURIEL MINTZ when no attorney could be appointed for MURIEL until she was served by law and service cannot be made on a proposed ward's attorney for guardianship applications;
- Return of service from Clarewood where she lived, unserved;
- Ambiguous void order granting temporary and permanent guardianship to MICHELE GOLDBERG removing ALL RIGHTS of MURIEL MINTZ stating she is "totally incapacitated" based on clear and convincing evidence which was never introduced into any record, with no expert witness, no trial no notice, or due process; violating MURIEL'S right to attend and participate when the county's DR. POA concluded that she could attend and participate, leaving no basis for WOOD to summarily conclude her presence was not necessary;
- Medical and Durable powers of attorney granted BARBARA LATHAM;
- Appointment of LATHAM as agent for disposition of remains;
- DONALD MINTZ'S perjured affidavit attached to application for guardianship falsely representing the family trust to be MURIEL'S revocable trust;
- **Texas law on less restrictive alternatives, which were egregiously violated in derogation of Title II of the ADA;**
- Expert report of Dr. Edward Poa of the Menninger Clinic dated June 9, 2017;
- Plea in abatement and motion to transfer venue ignored by JUDGE WOOD, transcript of 12/12/17 provided;
- Motion to transfer venue of the trust action filed 11/27/17, three days after MICHELE GOLDBERG took possession of MURIEL, which was premature given MURIEL was not even sick and removal of a trustee requires that she be dead,

which seems to explain GOLDBERG'S abrupt news that she was going to hospice;

- Affidavit for TRO in support of this lawsuit by BARBARA LATHAM;
- Affidavit in Guardianship action of BARBARA LATHAM; supporting argument that guardian had no standing to file show cause and threaten contempt or demand personal banking documents of LATHAM or the TRUST because MURIEL was not a beneficiary and her appointment was not even legal.
- Affidavit of Latham to support trust action motions
- December 21 Letter of Candice Schwager to Houston Hospice warning of lawsuit and demanding hospice stop starving and dehydration MURIEL MINTZ because she was not terminal and they engaged in stealth euthanasia;
- Order in Judge Lee Rosenthal's Court providing the guardian and judge were not immune, permitting the wrongful death case to proceed against JUDGE CHRISTINE BUTTS and GINGER LOTT, among other DEFENDANTS; ADA AND 1983 claims under review;
- 3rd Amended Complaint in Carolyn James vs. Richard Calkins case mentioned herein to give notice of similar egregious acts taken by WOOD in the complete absence of jurisdiction;
- Verification attached to motion to transfer venue to Brazoria County in trust action, having mandatory venue, with motion to compel mandatory arbitration which WOOD steamrolled;
- Transcript of 12/12/17 hearing granting void TRO in trust action because no evidence was introduced of irreparable harm or anything that would show mere risk, demonstrating WOOD refused to allow SCHWAGER, LATHAM'S counsel to cross examine GOLDBERT OR MINTZ, the witnesses who made conclusory

defamatory statements but provided no evidence;

- Durable power of attorney granted to LATHAM by MINTZ in 2006 and 2016;
- Supreme Court decision in Cruzan vs. Mo. Dept. public health 497 US 291 (1990)
- Email communications from SCHWAGER to HARRIS COUNTY PROBATE JUDGES informing them of mandates of ADA and how they are all violating it in a pattern and practice of civil rights and ADA violations;
- Emails of GOLDBERG threatening ESTELLE NELSON AND/OR BARBARA LATHAM with trespass or terminating their visit based on fabricated stories designed to conceal criminal activity;
- Transcript of 10-31-17 demonstrating collusion of the attorneys with LATHAM'S prior counsel, likening her to a criminal;
- Transcript of 11-28-17 emergency motion for continuance due to ambush of show cause hearing and order to produce documents, all void;
- Transcript of 12-12-17 showing due process and equal protection violations and the JUDGE'S role in refusing to allow evidence in by not permitting SCHWAGER to ask relevant questions to the trust DONALD MINTZ introduced into evidence;

IV. FACTUAL BACKGROUD

30. **MURIEL** is 93 years of age and has rarely been ill aside from mild congestive heart failure that has always been effectively managed by mediations, macular degeneration causing severe visual impairment bordering on blindness (low vision), occasional urinary tract infections, and a decade of thinning hair not due to any particular cause she is aware;

31. **MURIEL** has three adult children: DONALD, ESTELLE AND BARBARA for whom she established an IRREVOCABLE LIVING TRUST as a gift to them in 2015, retaining assets to include her monthly person for living expenses;

32. **MURIEL** always planned to live in assisted living or with BARBARA when that was no longer possible and openly agreed to share expenses if that transpired;

33. **MURIEL** is very quiet, but has no significant history of impairment caused by dementia or Alzheimer's. When tested by Dr. Edward Poa of the Menninger Clinic, DR. POA utilized visual and auditory tests placing her at a severe disadvantage given her near blindness and labored hearing; These disabilities significantly distorted the results of DR. POA'S testing of MURIEL, with both ESTELLE AND BARBARA having little confidence that the test is remotely accurate as a representation of their mother's cognitive abilities;

34. BARBARA LATHAM was designated as MURIEL'S DURABLE AND MEDICAL POWER OF ATTORNEY, HEALTHCARE SURROGATE, AND GUARDIAN IN THE EVENT OF NEED, as well as attorney in fact to handle remains and most all needs MURIEL envisioned could be required in the future—more than a decade ago; *See sworn affidavits of Barbara Latham in guardianship and trust case, to include three affidavits Barbara Latham submits under oath by penalty of perjury.*

35. MURIEL appointed BARBARA LATHAM and left such appointments UNCHANGED until DONALD MINTZ overcame **MURIEL'S** resistance. See also 2016 corrections to name BARBARA LATHAM and correct the mistake.

36. DONALD had long threatened to take her money and force her into a nursing home, which MURIEL was violently opposed to occurring; and appears to have put his plan to seize the trust and MURIEL'S assets in motion in 2015 via the formation of the MURIEL MINTZ FAMILY TRUST;

37. DONALD hired JIM MULDER, high school friend, in 2015 to prepare the trust, designating himself and LATHAM co-trustees for beneficiaries, ESTELLE NELSON,

BARBARA LATHAM AND DONALD MINTZ.

38. DONALD convinced MURIEL to put most of her assets in the trust as a gift for the three to access for care, maintenance, education and support (of any of the three according to needs) granting the TRUSTEE'S broad discretion to move funds to other banks, issue UNEQUAL distributions according to needs of the beneficiaries existing now,

39. DONALD MINTZ included several odd provisions in the trust that are virtually unheard of in trust law—to ensure liberal access to funds, no judicial oversight, and make it impossible for LATHAM AND/OR NELSON to remove him UNTIL MURIEL WAS DEAD.

40. MURIEL retained no control, right, title, or ownership to any assets funding the trust, and DONALD ensured that it was IRREVOCABLE to avoid it being busted by any court and prevent beneficiaries from even removing him for cause UNTIL MURIEL WAS DEAD, at which time the trust immediately ends and is split 1/3 to each child;

41. Almost immediately after the trust was formed, DONALD MINTZ became enraged with co-trustee BARBARA LATHAM, for complying with her duty to inform ESTELLE NELSON that she was made a beneficiary of this trust and convey the extent of ESTELLE'S right to distributions; DONALD refused to inform ESTELLE which is a BREACH OF TRUST.

42. DONALD MINTZ relinquished control of the trust in its entirety to BARBARA LATHAM not long after it was created, becoming estranged from both sisters in anger, possibly brought on by mental problems attendant to pituitary cancer treatment or otherwise;

43. DONALD took one distribution of $14,000 and did not otherwise request any accounting, secure a successor trustee to fill the vacancy he left when he breached his duties

to the beneficiaries by abandoning the trust –yet not officially resigning, such that LATHAM remained confused as to whether she had the power to appoint a successor;

44. By accepting the benefits, he accepted the terms even if those terms were part of a form trust, rather than chosen;

45. As a result of his own bad decisions, DONALD apparently discovered the no-win scenario he found himself in, which is: (a) abandoning the trust possibly extinguished DONALD'S standing, which arguably deprives him of standing to sue for breach of trust period, (b) violating the trust by subjecting it to continuing jurisdiction of a court of improper venue when arbitration is mandatory or (c) suing to bust the trust forfeited his interest, rendering him to have pre-deceased MURIEL with his remaining share split pro rata between ESTELLE AND BARBARA;

46. One of two things is true: (a) Either Donald is engaged in collusion for pre-mediated murder dating back to 2015 when he had this trust created or (b) Upon realizing that his actions have extinguished his interest in the trust, he concocted a scheme with unscrupulous lawyers known for gaming the system—and the scheme required DONALD to file guardianship of his mother and hasten her death because HE CANNOT REMOVE BARBARA LATHAM EVEN FOR CAUSE UNTIL MURIEL MINTZ IS DEAD, perTHE TRUST.

47. DONALD filed for guardianship of his mother in March of 2017 to "bust" the trust, by seeking a third party guardian and perjuring himself as he took the knowingly fraudulent position that the trust was REVOCABLE and actually belongs to MURIEL'S estate.[2]

[2] In essence, his "tricky" lawyers "tricked" him into essentially swearing that he essentially took $150,000 from MURIEL'S estate to prevent the federal government from taking it by calling the trust IRREVOCABLE, but now concedes that the money does not belong to him?

48. DONALD MINTZ failed to even get his mother served the entire duration of this void proceeding so the DEFENDANTS conspired to pretend MURIEL was actually in court and served, when that has never occurred and MURIEL was in the hospital the night before so neither her nor BARBARA were in court that day;

49. Every return confirms the citation was not served on MURIEL MINTZ. DEFENDANTS understood that MURIEL had to be served, not the attorney the Judge already appointed beforehand, TERESA PITRE, an IRS and tax law expert seemingly chosen to determine monies owed to the IRS when MURIEL dies and the estate is distributed as well;

50. DONALD MINTZ already chose his "fall guy" and created the scenario that he now finds so objectionable, even though no facet of BARBARA LATHAM'S actions as trustee will support a finding of breach; DONALD *filed the guardianship* seeking a third-party guardian to accuse BARBARA of fraudulent transfers, hoping the Court would bust the trust on the theory that it was never valid from the outset;

51. DONALD became obsessed that BARBARA was spending the trust money on ESTELLE and HERSELF, fearing that if he did not act quickly, the trust would be gone entirely—a fear with no basis in fact;

52. DONALD'S dilemma is BARBARA never intended to defraud anyone, nor did she believe there was anything wrong with the agreement or MURIEL making a lifetime gift while competent to do so, reserving substantial assets to live on—because BARBARA HAD NO INTENTION of allowing her mother to reside in a Medicaid nursing home—ever. BARBARA AND MURIEL agreed long before that MURIEL would live with BARBARA when the time came that she was not able to reside alone;

53. DONALD'S PLAN was quite the opposite. DONALD made no secret for the last 20

years of his intent to take control of MURIEL AND ALL OF HER MONEY and place her in a NURSING HOME!

54. DONALD proceeded with the only means he believed had a chance of giving him control of MURIEL OR BARBARA'S assets and the TRUST, GUARDIANSHIP but even GUARDIANSHIP DID NOT FIX HIS SITUATION.

55. THE SMOKING GUN proving MURIEL being placed on hospice to die a mere three weeks after MICHELE GOLDBERG had custody of her that PROVES INTENT TO KILL IS THE TRUST CLAUSE ON THE POWER TO REMOVE A TRUSTEE, which says that no trustee can be removed—even for cause UNTIL MURIAL IS DEAD. DONALD filed a trust lawsuit to remove BARBARA November 27, three days after MICHELE had total control of MURIAL and the power to conceal it all; MURIEL WASN'T SICK but is at the verge of death three weeks later;

56. Why would DONALD file a lawsuit to remove BARBARA before his mother was even ill if the lawsuit could not be filed until she was dead? What did he learn in those three days that LATHAM did not see in 8 months?

57. For the better part of 7 months neither DONALD nor MICHELE said anything about MURIEL'S care, though they engaged in a campaign of slander and harassment with law enforcement and Adult Protective services to wear BARBARA down and retaliate to the point she would just give up, which is exactly what happened;

58. In an effort to conceal her malfeasance, gross neglect and collusion with DONALD, MICHELE accused BARBARA of not caring for MURIEL sufficiently stating that MURIEL was malnourished when if that were even remotely true, MICHELE is likely to blame for the incredible amount of distress, stress and terror wrought upon BARBARA AND MURIEL,

with constant threats to take MURIEL;

59. DEFENDANTS' conspiracy is clear in the VOID order appointing MICHELE GOLDBERG as temporary and then permanent guardian in the same contradictory ORDER, that states it is temporary before concluding in the last clause that it is permanent after all;

60. Without any evidence, expert testimony satisfying Rule 702 of the Rules of Evidence, no opportunity to receive notice be heard, meaningfully participate as mandated by the ADA, but denied by the Judge who concluded her presence was unnecessary and issued a void order that failed to identify the supports, services considered, "clear and convincing evidence" he refers to in determining she is totally incapacitated; and using what appears to be a form order that the lawyers didn't want the burden of even specifically identifying the rights granted to the guardian, so the Judge wrote MURIEL was deprived of 'ALL RIGHTS." INALIENABLE?

61. As soon as MICHELE GOLDBERT was appointed in September, DONALD and his two adult children became increasingly hostile and demanding insisting that BARBARA drive to MICHELE'S office 2-3 times per week and wait two hours at a time for them to visit—letting her know that she was not invited. The visits appeared geared towards harassment and making a record of BARBARA'S failure to comply with every demand

62. MURIEL L MINTZ has never been declared incapacitated by a standard that satisfies Texas law, such that she remains presumed competent. Nevertheless, BARBARA LATHAM has been entrusted to manage her mother's assets and estate since 2006 when MURIEL named BARBARA as DURABLE AND MEDICAL POWER OF ATTORNEY, GUARDIAN IN THE EVENT OF NEED, Healthcare surrogate, and attorney in fact for all purposes

63. DONALD'S application for guardianship included a perjured affidavit falsely stating that the MURIEL MINTZ FAMILY TRUST (benefitting her adult children and naming BARBARA AND DONALD as Trustees irrevocably) was revocable and part of her estate in a clear attempt to gain control of the TRUST and her ESTATE by deception and a court's order giving him total control of his mother—if he prevailed.

64. When BARBARA refused to willingly provide a stranger with private banking documents she had no standing, jurisdiction or right to demand, GOLDBERG wrote a 73 page show cause order, threatening her with jail for contempt if she held back;

65. MICHELLE GOLDBERG had no standing to investigate LATHAM'S personal bank assets, individual retirement accounts, or family trust account even if her guardianship appointment was valid because MURIEL MINTZ was not a beneficiary of the MURIEL MINTZ FAMILY TRUST and retained no interest, control or rights to the assets in that IRREVOCABLE TRUST—a fact that DONALD MINTZ knew because he is the person who set up the trust and chose the form and clauses included therein.

66. Judge Wood issued a second ORDER TO PRODUCE DOCUMENTS which he had no jurisdiction to ORDER and GOLDBERG had no standing, jurisdiction or right to demand; *her ½ million-dollar bond, as well as the court appointed guardian, denying both immunity*.

67. Much like DONALD, GOLDBERG showed no interest in the person of MURIEL, which is quite likely the reason MURIEL was sentenced to death by her in a mere three weeks.[3]

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1. [3] *See 3 Affidavits of Barbara Latham, Applications for Guardianship of Donald Mintz wherein he perjures himself TWO DIFFERENT TIMES WITH TWO DIFFERENT LAWYERS, and falsely states the trust is revocable and part of the estate; LATHAM'S plea to the jurisdiction and motion to vacate; Motion for Temporary Restraining Order and Temporary Injunction; Latham's verified Motion to transfer venue and compel arbitration; Citation*

68. MURIEL MINTZ was never served with process and was illegally seized from her home, as MICHELLE GOLDBERG stole her assets in a void court order which could not possibly have appointed her as temporary or permanent guardian because of the egregious deprivations of due process and equal protection of the laws.

69. Given that fraud VITIATES EVERYTHING IT TOUCHES and the guardianship was void from the outset, and JUDGE WOOD' statement that clear and convincing evidence demonstrated MURIEL was totally incompetent and should retain NO RIGHTS WHATSOEVER.

70. MURIEL MINTZ WAS DENIED every imaginable right violating rules of evidence, statutes, common law, the Texas and U.S. Constitution, committing torts, crimes and civil rights violations against her. She was never provided with even a voice, much less an opportunity to meaningfully participate as mandated by the ADA;

71. DEFENDANTS SEIZED MURIEL AND SEQUESTERED HER AND SEIZED HER ASSETS, over $116,000 with NO JURISDICTION TO DO SO, violating the 4th Amendment to the United States Constitution and 42 U.S.C. 1983, the ADA, 42 U.S.C. 12101 et seq, Section 504 of the Rehabilitation Act of 1973, the 14th Amendment (due process and equal

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returns proving MURIEL was never served with process such that this entire case was a complete deprivation of all due process, Durable / Medical Powers of Attorney granted to Latham by Muriel; Application for guardian and attorneys' fees of Michele Goldberg which must be disgorged for fraud on the court; Muriel L Mintz Family Trust, and December 22nd Letter from C. Schwager to Houston Hospice, 3rd Amended Complaint in Cause NO. 4:16-01910; Carolyn James vs Stephen Calkins; pending before the Honorable David Hittner (a similar example of Judge Mike Wood acting in the complete absence of subject matter jurisdiction, for which no immunity attaches); Transcripts of Oral Hearings dated 10/31/17 (demonstrating collusion with LATHAM'S prior counsel) and 11/28/17 (Motion for emergency continuance of show cause hearing; as well as 12/12/17 (to be amended upon receipt from court reporter imminently);

protection as well as the right to be safe while in custody and the right to adequate medical care), with criminal and tortious violations of the 1st Amendment, 4th, 5th, 6th, 7th, 8th, and 14 Amendments to the U.S. Constitution and Articles I and V of the Texas Constitution.

72. DEFENDANTS ARE IN THE PROCESS OF HASTENING HER DEATH IN A CRIMINAL SCHEME THAT HAS BECOME UNDENIABLE ELDER ABUSE: Texas Penal Code 22.04 (elder abuse), which provides:

> § 22.04. INJURY TO A CHILD, ELDERLY INDIVIDUAL, OR DISABLED INDIVIDUAL
> A person commits an offense if he intentionally, knowingly, recklessly, or with criminal negligence, by act or intentionally, knowingly, or recklessly by omission, causes to a child, elderly individual, or disabled individual:
>
> **(1)** serious bodily injury
>
> **(2)** (2) Serious mental deficiency, impairment, or injury; or
>
> **(3)** bodily injury.
>
> (A-1) **A person commits an offense if the person is an owner, operator, or employee of a group home, nursing facility, assisted living facility, intermediate care facility for persons with mental retardation, or other institutional care facility and the person intentionally, knowingly, recklessly, or with criminal negligence by omission causes to a child, elderly individual, or disabled individual who is a resident of that group home or facility:**
>
> (1) serious bodily injury;
>
> **(2) Serious mental deficiency, impairment, or injury;**
>
> (3) bodily injury;
>
> (4) **exploitation**.
>
> (b) An omission that causes a condition described by Subsection (a)(1), (2), or (3) or (a-1)(1), (2), (3), or (4) is conduct constituting an offense under this section if: (1) the actor has a legal or statutory duty to act; or
>
> (2) the actor has assumed care, custody, or control of a child, elderly individual, or disabled individual.
>
> (4**) "Exploitation" means the illegal or improper use of an individual or of the resources of the individual for monetary or personal benefit, profit, orgain.**
>
> (d) For purposes of an omission that causes a condition described by

> Subsection (a)(1), (2), or (3), the actor has assumed care, custody, or control if he has by act, words, or course of conduct acted so as to cause a reasonable person to conclude that he has accepted responsibility for
> or disabled individual. For purposes of an omission that causes a condition described by Subsection (a-1)(1), (2), (3), or (4), the actor acting during the actor's capacity as owner, operator, or
> employee of a group home or facility described by Subsection (a-1) is considered to have accepted responsibility for protection, food, shelter, and medical care for the child, elderly individual, or disabled individual who is a resident of the group home or facility. (e) An offense under Subsection (a)(1) or (2) or (a-1)(1) or (2) is a felony of the first degree when the conduct is committed intentionally or knowingly.

73. The entire guardianship is void and has wrought serious bodily injury upon 93-year-old MURIEL MINTZ, a protected person with a disability under federal law.

74. LATHAM sought relief from Harris County Probate Judge Mike Wood via temporary restraining order after Wood admitted that KELLY'S freezing LATHAM'S federally insured FDIC and IRA funds was wrongful and a pre-hearing deprivation of property, but refused to sign an order mandating KELLY cease and desist her hold; He told the lawyers they should permit as much access to information about MURIEL and access to MURIEL as possible, but he refused to sign a written order, commanding them to do so;

75. LATHAM'S TRO APPLICATION was denied December 12, 2017 to allow GOLDBERG to continue to ban and threaten ESTELLE AND BARBARA with trespass knowing that their 30+ years of nursing experience would expose their scheme; SCHWAGER was prohibited from cross examining any witness and no evidence to support a Temporary Restraining ORDER was ever produced, by the JUDGE and DEFENDANTS' admissions;

76. On the 12th of December, KELLY'S TEMPORARY INJUNCTION, enjoining LATHAM completely from performing her duties as trustee was granted, over objections it

was overbroad and a page from Tricks and Traps to tie her hands behind her back and render her incapable of defending herself; All relief requested by SCHWAGER for LATHAM AND NELSON was denied including medical records and the items in the TRO filed; WOOD also violated SCHWAGER'S ADA ACCOMODATION REQUEST, admitting he was unfamiliar with the ADA.

77. From 11/24 to 12/5 neither ESTELLE NOR BARBARA EVEN knew where MURIEL was and the information obtained thereafter in the approximate 4 occasions they were not banned and threatened with trespass was either fabricated or scant.

78. The purported guardian lacks sufficient information concerning MURIEL'S medical history or health issues to be capable of providing informed consent, such that this constitutes criminal medical battery, committed by Goldberg (felony) which is intended to result in death, violating 18 USC 241, 242.

79. DEFENDANTS are not entitled to immunity because of the absence of all jurisdiction in this case over MURIEL MINTZ or her property; *See Unserved Returns and Affidavit of Barbara Latham proving that MURIEL MINTZ was never served with any guardianship petition in this case, depriving the Court of all jurisdiction and rendering all ORDERS issued NULL AND VOID.*

80. JUDGE WOOD HAS NO IMMUNITY BECAUSE HE HAS ACTED IN THE ABSENCE OF ALL JURISDICTION—a pattern of abuse seen in almost every case reported against him by the Court of appeals or in the news.

81. The affidavits of BARBARA LATHAM, a Registered Nurse (30 years, inactive) are based upon observations that raised serious red flags in her mind and that of her sister, a geriatric R.N with 30 years of experience, revealing the cover up and deception DEFENDANTS are clearly

engaged to deprive MURIEL of even life itself for no justifiable reason.

82. THIS IS A TRUE EMERGENCY AND DEATH IS IMMINENT if it has not already occurred. PLAINTIFFS are filing for HABEAS CORPUS relief in the Court of Appeals as well but desperately plead for this Court's intervention. JUDGE MIKE WOOD has

demonstrated he is utterly unwilling to consider LATHAM'S pleas to intervene and stop MURIEL from being criminally battered by an incompetent purported temporary guardian who is not informed enough to make medical decisions concerning MURIEL that aren't criminal. JUDGE WOOD has been unyielding regardless of the dangers LATHAM'S counsel disclosed as risks to MURIEL. Judge Wood was unwilling to even mandate that MICHELE be transparent and share medical records with family so that Muriel's medically trained daughters could help her make appropriate decision.

83. LATHAM filed an APPLICATION FOR TRO mirroring the relief requested from this Honorable Judge and every request was denied, with WOOD only begrudgingly agreeing to orally suggest that MICHELE "do her best" to provide information and access to BARBARA AND ESTELLE.

84. JUDGE WOOD refused to sign an ORDER mandating this and the result was predictable— MICHELE lied, fabricated mistruths, twisted facts, failed to share any medical information with BARBARA OR ESTELLE that was actually significant. Much of what she said has been deceptive in a clear attempt to conceal the truth—DEFENDANTS' plan to terminate MURIEL'S life in hospice to take her assets.

85. MURIEL had virtually no health problems for the 7-8 months she resided with BARBARA but ended up on hospice three weeks after MICHELE took over. MURIEL had no terminal illness that would ever have merited hospice.

86. PLAINTIFFS fear that unless this Court intervenes to save MURIEL'S life, she will be dead in 48 hours if not less, leaving them devastated as in the case, of Willie Jo Mills Cause No. 4:16-cv-03215; *Sherry Lynn Johnston vs. David Dexel, Judge Christine Butts, et al; In the Southern District of Texas, Houston Division, before Judge Lee Rosenthal*[3]. MILLS and MINTZ were deprived of all civil rights with the stroke of a pen and ended up on hospice, suffering horrific torture and abuse which will forever scar the lives of their daughters.

87. MURIEL MINTZ'S person and estate was fraudulently, illegally searched and seized after which she was discarded within a matter of three weeks by MICHELLE GOLDBERG, who claims she fell in the assisted living (landing her in St. Luke's and now Houston Hospice) on the edge of death for conditions MICHELLE claims exist, but MURIEL'S RN daughters did not observe any signs. Instead, BARBARA observed their mother is being starved to death and denied water and medical care. Houston Hospice entities get paid 90% of their costs from Medicare, creating a nationwide incentive for abuse, well documented by Bloomberg and Forbes. *The Affidavits of Latham demonstrate a conspiracy of fraud, lies, and a cover up suggesting foul play is at work rather than natural death processes. See Affidavits attached hereto.*

88. SCHWAGER provided notice as a certified ADA advocate, emphasizing that attorney training is desperately needed. *See email to Judges of three of four probate courts in Harris County, Texas, 2015. Without an understanding of disabilities, attorneys cannot possibly give informed consent, rendering every medical decision criminal battery.* The result is systemic victimization of the vulnerable through disability discrimination, associational discrimination, retaliation for advocating for the disabled, and unwanted institutionalization and segregation deemed illegal in nursing homes, by virtue of the Olmstead Act and Title II of the ADA.

89. Despite providing notice two years ago of the County's failure to train court appointed attorneys and guardians with respect to ADA compliance or even competence, HARRIS COUNTY has done nothing and continues to egregiously discriminate against vulnerable persons with disabilities. As a result, the elderly and disabled are subjected to cruel and unusual punishment (death), deprivations of equal protection of the law, the guarantee of safety while in the custody of the county, Constitutional rights under the 1st,4th, 5th, and 14th Amendments to the United States Constitution, and discrimination prohibited by 42 U.S.C. 1983 (The Civil Rights Act) and 42 U.S.C. 12101 et seq., the Americans with Disabilities Act of 1990 and Amendments thereto, ADAAA 2008 and 2016, and Section 504 of the Rehabilitation Act of 1973 ("Section 504"). *See Carolyn James vs. Stephen Calkins; In re Alpert, In re Whatley; Stories re Doris Davis whose whereabouts and condition remain unknown after months of Wood's court refusing to tell the family*;

90. GOLDBERG, BARBARA LATHAM is the only person with authority to act on MURIEL'S behalf in this matter and is granted sole discretion, which remains unaffected by GOLDBERG'S attempted albeit VOID APPOINTMENT. GOLDBERG was never validly appointed because JUDGE WOOD failed to acquire personal or subject matter jurisdiction over MURIEL MINTZ by failing to ensure MURIEL was served with process, rather than denied notice and an opportunity to be heard, aside from additional bases.

91. MICHELE GOLDBERG's *purported appointment* is VOID for lack of jurisdiction over MURIEL MINTZ OR HER PROPERTY by the failure of any party, court appointed lawyer, temporary guardian, attorney or the judge to verify that MURIEL MINTZ was SERVED WITH PROCESS FIRST. MURIEL MINTZ was never given legally mandated notice or any opportunity to be heard or participate in a predatory guardianship proceeding filed with DONALD MINTZ'S perjured affidavit.

92. DONALD AND HIS ATTORNEY, STACY KELLY, MICHELE GOLDBERG, TERESA PITRE (court appointed attorney ad litem providing ineffective assistance of counsel), the PRESIDING JUDGE, and LATHAM'S first attorneys (fired for betrayal) ERINN BROWN AND MATTHEW MAHONEY all played a part in this criminal scheme devised to seize control of MURIEL MINTZ, BARBARA LATHAM, AND THE MINTZ FAMILY TRUST'S assets by DONALD MINTZ. The modus operandi is repeated over and over in Harris County Probate Courts with the schemes involved to accomplish their goal detailed in their own advanced continuing education writings filed with the Texas State Bar. *See e.g. Tricks and Traps from a Litigator and Judicial Perspective, discussing pre-hearing deprivations of property to cripple your opponent, force inequitable settlement under duress, and obtain favor with the Judge for enriching the "system.*[4]*"*

93. DONALD MINTZ is MURIEL'S son, who masterminded this criminal scheme to seize MURIEL'S person, estate and then use the guardianship to seize all assets in the MURIEL MINTZ FAMILY TRUST by removing his sister, co-trustee LATHAM with perjured affidavits and false accusations of theft of trust assets, as well as abuse, exploitation and/or neglect of MURIEL MINTZ and her estate. The evidence shows premeditation on the part of DONALD MINTZ as early as 2015, when he had the trust formed and convinced MURIEL to place over $150,000 in assets into an IRREVOCABLE TRUST that he and BARBARA would be Co-Trustees for the benefit of MURIEL'S THREE ADULT CHILDREN, Donald, Barbara and Estelle Nelson.

94. DONALD MINTZ colluded and conspired with attorney STACY KELLY, purported temporary guardian MICHELE GOLDBERG, JUDGE MIKE WOOD, TERESA PITRE, and seemingly BARBARA'S first two attorneys, ERINN BROWN AND MATTHEW MAHONEY, prior to firing them and hiring new counsel. *The evidence of that collusion is extensive but is included in the attached schedule of exhibits, consisting of LAWSUITS, MOTIONS, ORDERS,*

[4] Written by the Honorable Mike Woods and Stacy Kelly's Law Firm, Ostrom Morris, who coincidentally represented the colluding son of the decedent, resulting in the wrongful death of his mother, Willie Jo Mills (deceased) in guardianship in Court No. 4, Hon. Christine Butts. Cause No.

AFFIDAVITS, and other documents filed in the official Court files of Cause No. 456, 059, 462505.

95. ATTORNEY STACY KELLY, MICHELE GOLDBERG took control of more than $250,000 in MURIEL'S estate and/or the MURIEL L. MINTZ FAMILY TRUST, which is an IRREVOCABLE TRUST that has nothing to do with MURIEL MINTZ, such that the Court's ORDER TO SHOW CAUSE AND ORDER TO PRODUCE DOCUMENTS is VOID.

96. GOLBERG had no standing to make such demands, but threatened and coerced LATHAM to provide documents personal private banking documents protected by the Federal Banking Secrecy Act (prohibiting unauthorized access to the same absent consent or legitimate criminal law enforcement investigation), using a void Texas Statute, purporting to allow probate courts and their authorized representatives to "spy" on citizens bank accounts to determine if they need "protection" by a cottage industry of high paid fiduciaries seeking maximum profit and limited liability for the damage caused.

97. MURIEL MINTZ stands to be deprived of fundamental human rights to life, liberty and property, by the failure of DONALD MINTZ, MICHELE GOLDBERG, STACY KELLY, JUDGE WOOD, TERESA PITRE and JUDGE MIKE WOOD, to even serve her with notice and the opportunity to be heard, due process fundamentals.

98. WOOD issued ORDERS subjecting MURIEL to unreasonable search and seizure, deprivations of fundamental rights guaranteed by the U.S. Constitution, Amendments 1 (associational discrimination, deprivation of the right to life), 5, 14 (due process, equal protection, the right to be safe in state custody and receive adequate medical care), 4, 5, 6 (right to EFFECTIVE assistance of counsel), 7 (right to trial by jury), without ever serving her with process to obtain jurisdiction over her person and estate. and 8medical battery, false imprisonment, cruel and unusual punishment of forced starvation, dehydration and drugging in hospice to hasten her death

XIII. EMERGENCY RELIEF SOUGHT

99. PLAINTIFFS seek an EMERGENCY TEMPORARY RESTRAINING ORDER to prevent DEFENDANTS from forcing her into hospice to be starved, dehydrated and drugged

to death when she has no terminal illness that would otherwise warrant even serious medical care—in a process known as STEALTH EUTHANASIA, which usually manages to remain hidden or concealed from detection; *See article on Stealth Euthanasia.* PLAINTIFFS seek an ORDER:

100. ENJOINING THE DEFENDANTS FROM VIOLATING MURIEL MINTZ'S RIGHTS and mandating her immediate release to BARBARA LATHAM'S custody, transporting her to any facility LATHAM directs on an emergency basis;

101. ENJOINING DEFENDANTS FROM FURTHER CONTACT WITH MURIEL MINTZ OR BARBARA LATHAM,

102. ENJOINING DEFENDANTS from being within 200 years of BARBARA LATHAM, MURIEL MINTZ or the residence they reside;

103. GRANTING PLAINTIFFS' EMERGENCY TEMPORARY RESTRAINING ORDER AND SETTING PLAINTIFFS' PRELIMINARY INJUNCTION FOR HEARING as soon as reasonably possible given MURIEL'S dire health emergency and the need for witnesses by the parties;

104. PROHIBITING any and all persons from depriving MURIEL MINTZ of food, Water, hydration, adequate medical care, critical medication, that conforms to the standard of care mandated for her dire health emergencies

105. ENJOINING the administration of dangerous sedating drugs or opiates to MURIEL MINTZ, that carry the risk of death or bodily injury to MURIEL;

106. ENJOINING DEFENDANTS from harassment OF BARBAA LATHAM, MURIEL MINTZ by malicious vindictive reports to the police and/or ADULT PROTECTIVE SERVICE or other governmental organizations without a sincere belief in the validity of such

report,

107. ENJOINING any further deprivations of privileges and immunities guaranteed to MURIEL MINTZ AND BARBARA LATHAM by Articles I and V of the Texas Constitution, ADA and ADAAA, 42 U.S.C. 12101, Section 504 of the Rehabilitation Act of 1973, 29 USC 794, 42 USC 1983, the 1st, 4th, 5th, 6th, 7th, 8th, and/or 14th Amendments of the United States Constitution, or any State or Federal law granting MURIEL rights of protection against deprivations of right, abuse, neglect, or exploitation;

108. ENJOINING DEFENDANTS from restraining or attempting to interfere with MURIEL MINTZ'S or BARBARA LATHAM'S right to liberty, property or life, including any and all attempts to seize property belonging to PLAINTIFFS or the MURIEL MINTZ FAMILY TRUST.

109. ENJOINING DEFENDANTS from any and all attempts to place holds upon, freeze or seize assets belonging to BARBARA or MURIAL'S assets.

110. MANDATING that GOLDBERG return all funds she seized from MURIEL MINTZ, BARBARA LATHAM, THE MINTZ FAMILY TRUST, or any account in connection with this case;

111. MANDATING DEFENDANTS cease and desist from taking any property believed to belong to BARBARA LATHAM OR MURIEL MINTZ or the MURIEL L MINTZ FAMLY TRUST;

112. MANDATING that DEFENDANTS immediately remove all encumbrances placed on any financial account of BARBARA LATHAM, MURIEL MINTZ OR THE MINTZ FAMILY TRUST, irrespective of further fiduciary designations;

113. DECLARING ALL ORDERS issued in the guardianship of MURIEL MINTZ NULL

AND VOID; ENJOINING THEIR ENFORCEMENT;

114. MANDATING DEFENDANTS RETURN ALL FUNDS taken without the consent of BARBARA LATHAM, regardless of whether such funds were seized from personal or trust accounts of BARBARA LATHAM OR MURIEL MINTZ to the banks from which they were confiscated

115. MANDATING DEFENDANTS CEASE AND DESIST from any and all efforts and/or attempts to contact or communicate with MURIEL MINTZ OR BARBARA LATHAM by phone, email, text message, mail or any other means, including through a third party;

116. MANDATING HOUSTON HOSPICE IMMEDIATELY CEASE AND DESIST from withholding food, water, critical and necessary medications or health care geared to recover or administering any sedating drug or opiate typically used in hospice to hasten death or sedate;

117. MANDATING HOUSTON HOSPICE IMMEDIATELY RELEASE MURIEL MINTZ TO BARBARA LATHAM, durable and medical power of attorney, health care surrogate, and guardian in the event of need and comply with any directive by LATHAM regarding transport of her mother to a hospital for emergency medical care.

118. ENJOINING THE DEFENDANTS FROM VIOLATING MURIEL MINTZ'S RIGHTS and mandating her immediate release to BARBARA LATHAM'S custody, transporting her to any facility LATHAM directs on an emergency basis;

119. ENJOINING DEFENDANTS from coming within 200 yards of MURIEL MINTZOR BARBARA LATHAM;

120. ENJOINING DEFENDANTS from disturbing the peace of BARBARA LATHAM OR MURIEL MINTZ.

121. ENJOINING ANY AND ALL medical professionals from denying MURIEL MINTZ food, water, hydration, adequate medical care or administering opiates and other dangerous drugs used to hasten death in hospice;

122. ENJOINING DEFENDANTS from all acts of harassment that have pervaded this case and terrorized LATHAM, including but not limited to welfare checks and police reports which are not SERIOUS and based upon ACTUAL EVIDENCE rather than slander, supposition or malicious intent;

123. ENJOINING any further acts in this conspiracy to deprive MURIEL MINTZ of life, liberty, and property without due process of law, equal protection or any other Constitutional, federal, state, statutory or common law right;

124. DECLARING ALL ORDERS issued in the guardianship of MURIEL MINTZ void for fraud on the court, lack of notice, failure to serve MURIEL, denial of the due process and equal protection of the law, discrimination, denial of the right to effective representation of counsel, denial of the right to jury trial, lack of jurisdiction, improper venue, mandatory arbitration; and lack of standing;

125. MANDATING that MICHELE GOLDBERG be disgorged and immediately return all funds taken or paid to her from any account whatsoever in the Muriel Mintz guardianship, as an unauthorized taking of property without due process of law;

126. MANDATING that DEFENDANTS RETURN ALL FUNDS SEIZED FROM LATHAM, the MJRIEL MINTZ FAMILY TRUST, OR MURIEL MINTZ IMMEDIATELY to the banks from which they were wrongfully taken and/or confiscated without due process of law or any evidence to justify the same;

127. MANDATING THAT DEFENDANTS CEASE AND DESIST FROM ALL

CONTACT OR EFFORTS TO HARASS BARBARA LATHAM OR MURIEL MINTZ by prohibiting DEFENDANTS from emailing, calling, or coming within 200 years of any location where DEFENDANTS believe PLAINTIFFS to be;

a. PLAINTIFFS seek damages against DEFENDANTS jointly and severally in an amount within the jurisdictional limits of this Court for deprivations of constitutionally protected rights and violations of their rights under the ADA and ADAAA or any other torts or state/federal laws;

b. PLAINTIFFS seek reasonable costs and expenses of this action, including attorneys' fees in accordance with 42 U.S.C. § 1988.

c. PLAINTIFFS pray the Court Grant such other and further relief as this Court shall seem just and equitable.

d. ORDERING AN EMERGENCY HEARING BE SET ON PLAINTIFFS' PRELIMINARY INJUNCTION TO REVIEW ALL ISSUES IN THIS MATTER TO BE SET ON THE____DAY OF_____, 2017.

e. PLAINTIFFS pray that this Court retain jurisdiction of this matter for the purpose of enforcing this Court's order. In support of this relief, PLAINTIFFS plead the following:

XIV. COUNT 1: 42 USC 1983 CONSTITUTIONAL VIOLATIONS

128. A governmental entity deprives a citizen of due process by not following its own procedures—prior to deprivations of privileges and immunities guaranteed by the Constitution or federal law. MURIEL MINTZ'S rights have been grossly violated and consciously disregarded to the point of near death without ever having a hearing or the opportunity to appear before the Court and OBJECT!

129. The ADA requires Harris County provide a MEANINGFUL OPPORTUNITY to

participate and HARRIS COUNTY provided NO OPPORTUNITY WHATSOEVER TOMURIEL MINTZ, despite HARRIS COUNTY'S expert witness stating she can and should attend her hearing—that did not occur, because few wards are ever given a hearing in guardianship.

130. Despite the impropriety and illegality for the Court to do anything but find probable cause at the HEARING that was mandated for temporary guardianship, the Court violated the law and COULD NOT POSSIBLY HAVE FOUND MURIEL incapacitated by "clear and convincing evidence"—revealing this report was little more than rubber stamped. *The attached returns of service indicate that she was never served with process and was totally deprived of the right to notice and the opportunity to be heard mandated by the 5th and 14th Amendments*.

131. The Temporary / Permanent guardianship ORDER IS VOID. There was no hearing, no trial, no expert testimony or evidence produced, and the record is clear – MURIEL WAS NEVER EVEN SERVED WITH NOTICE OF THE GUARDIANSHIP, depriving JUDGE WOOD of ALL SEMBLANCE OF JURISDICTION OVER MURIEL.

132. DEFENDANTS fraudulently misrepresented in Court records that MURIEL MINTZ was served with process when MURIEL was never in the courtroom as they fraudulently stated in the record, but was hospitalized the night before. WOOD could not possibly have determined MURIEL WAS TOTALLY INCAPACITATED by clear and convincing evidence without a conducting a hearing in which an expert provided testimony under Rule 702 of the Texas Rules of Evidence and the *Daubert case*.

133. Temporary Guardianship was never appropriate in this case, as no emergency was ever even identified to justify such extraordinary relief. While emergency temporary

guardianships are sometimes required, JUDGE GUY HERMAN reiterates that they are rarely justified and abused more often than not-to deprive others of statutorily mandated notice. *See Guy Herman article, attached hereto.*

134. MURIEL MINTZ WAS NEVER SERVED WITH PROCESS OR NOTICE AND WAS NOT GIVEN THE OPPORTUNITY TO BE PRESENT prior to being deprived of ALL RIGHTS, this Court had no jurisdiction over MURIEL rendering every ORDER signed VOID and unenforceable. When fraud so permeates as case that almost nothing about the proceeding is legitimate, it's void. FRAUD VITIATES EVRYTHING IT TOUCHES this guardianship was void from the start. MURIEL is a hostage being falsely imprisoned and put to death in violation of every human rights law imaginable, clearly cruel and unusual punishment for the crime of getting old.

135. The Court made no findings of whether less restrictive alternatives were available and failed to even consider its own expert's findings, which negated any rationale for depriving MURIEL of ALL RIGHTS WITHOUT LIMITATION AS THIS VOID GUARDIANSHIP ORDER PURPORTS TO DO.

136. Supports and services mandated by the ADA to be provided to MURIEL as a "qualified individual with a disability" were not even proposed much less considered nor was there any clear identification of the emergency justifying this guardianship, VIOLATING THE

137. In her fervor to end MJRIEL'S life and seize her assets, MICHELE GOLDBERG would not even get a second opinion as to whether hospice was appropriate or other measures short of death were appropriate, despite BARBARA AND ESTELLE'S pleas.

138. The Estates Code mandates that the proposed ward's wishes as demonstrated in prior

designations be honored and MURIEL'S were ignored completely. This provision is not discretionary but mandatory! Yet not one attorney even mentioned it, particularly her court appointed lawyer, TERESA PITRE, who breached her fiduciary duty to MURIEL and continues to collude with those seeking to inflict harm.

139. Seeking to ensure MURIEL received the best care possible with decisions made by those who know her best, LATHAM'S counsel asked the Court to order the temporary guardian to execute HIPPAA RELEASES to each adult child of MURIEL MINTZ, BUT WOOD REFUSED. It suddenly became evident that nobody cared about MURIEL'S best interests. They had long since disregarded her entirely concerned with covering up their guilt.

140. BARBARA was and remains the only valid durable power of attorney, medical power of attorney or health care surrogate despite the tricks and traps designed to deceive her into backing down in favor of a purported temporary guardian who was never appointed in a valid court order to do anything on behalf of MURIEL. As such, every nasty action taken by GOLDBERG to block her daughters from access to her person or medical information was tortious.

141. The focus of the guardianship has rarely been about MURIEL MINTZ, BUT ALMOST EXCLUSIVELY about her money and trust funds of the family that experienced trust lawyer GOLDBERG billed $18,000 to hunt down, harass, demand private and trust documents she had no legal right to see, and even get a show cause order threatening to arrest LATHAM, when she never had standing for any of this and knew better.

142. JUDGE WOOD categorically refused to follow the law, violating Schwager's ADA accommodation rights, ignoring the Texas Trust Code's mandatory venue provision and his duty to cease forcing this case into evidentiary hearings given any and all disputes are

subject to mandatory arbitration. In doing so, he repeatedly abused his discretion in favor of lawlessness rather than the rule of law.

143. SCHWAGER lodged objections to the hearing going forward at all given the lack of venue, jurisdiction, mandatory arbitration, lack of evidence, overbroad order, and denial of due process in prohibiting SCHWAGER from cross examination of witnesses who testified. *The transcript of the December 12, 2017 proceeding has been requested but delayed by the holidays and will be supplemented imminently; see also affidavit of Candice Schwager.*

144. SCHWAGER pointed out that the ORDER for INJUNCTION is precisely the type of "Unconstitutional" trick or trap discussed in the article co-authored by this judge as a means to disarm opponents, cripple their ability to defend themselves or fight back (allowing the perpetrator to force a settlement and win favor with the judge. In complete abandonment of the duty to follow any law, the Court issued broad injunctive relief in the absence of any proof of irreparable injury or a probable right of success at trial. The evidence revealed that LATHAM did nothing she was not authorized to do under the trust. When informed that LATHAM'S motive for moving funds was to protect them from DONALD MINTZ, WOOD said he was charged with deciding whether LATHAM would be permitted to "protect" the trust any longer.

145. JUDGE WOOD enjoined the sole trustee, BARBARA LATHAM, from exercising authority over the MINTZ FAMILY TRUST, far exceeding the authority given to him under Texas law notwithstanding his lack of jurisdiction and venue;

146. Acknowledging there was no evidence of wrongdoing on the part of BARBARA LATHAM as TRUSTEE, the JUDGE STILL enjoined LATHAM from 'PROTECTING THE TRUST' signing a void injunction ORDER which was devoid of jurisdiction as much as the entire

guardianship case.

147. MICHELLE GOLDBERG spent $18,000 WHICH IS HALF OF MURIEL'S ANNUAL INCOME, chasing trust funds that she could see on the face of the document did not belong to Muriel, her estate and were in an irrevocable trust benefitting the children of MURIEL MINTZ. She filed a 73-page show cause motion and order that she never had standing to assert causing LATHAM to be threatened with incarceration wrongfully as the court invaded her personal accounts and a trust over which it had no jurisdiction to threaten jail for not producing the documents.

148. JUDGE MIKE WOOD admitted that KELLY'S hold on BARBARA LATHAM'S IRA'S and GOLDBERG'S seizure of $6000+ in bank funds from LATHAM'S checking account constituted an unauthorized pre-hearing deprivation of property, much like the strategies outlined in his CLE, *Tricks and Traps*. Yet, he refused to sign an ORDER prohibiting their unlawful acts.

149. Houston Hospice has violated and will further violate MURIEL's below rights under the Constitution and laws of the United States and specifically the First, Eighth, and Fourteenth Amendments to the United States Constitution, the Religious Land Use and Institutionalized Persons Act (RLUIPA), 42 U.S.C. §§ 2000cc et seq., the Americans with Disabilities Act (42 U.S.C. §12101 et seq.), the Rehabilitation Act of 1973 (29 U.S.C. §794), and Title 42 U.S.C. § 1983 for which monetary damages are sought.

XV. TRO AND PRELIMINARY INJUNCTION

PLAINTIFFS SEEK A TEMPORARY RESTRAINING ORDER, PRELIMINARY INJUNCTION AND PERMANENT INJUNCTION STATING:

150. AN EMERGENCY TEMPORARY RESTRAINING ORDER AND PRELIMINARY

INJUNCTION TO SAVE THE LIFE OF MURIEL L MINTZ from imminent death in a conspiracy forcing her into hospice to be starved, dehydrated and drugged to death when she has no terminal illness that would otherwise warrant even serious medical care—in a process known as STEALTH EUTHANASIA, which usually manages to remain hidden and concealed and would have but for PLAINTIFF and her sister ESTELLE'S advanced medical training which caused them to detect it,; *See article on Stealth Euthanasia.*

151. ENJOINING THE DEFENDANTS FROM VIOLATING MURIEL MINTZ'S RIGHTS and mandating her immediate release to BARBARA LATHAM'S custody, transporting her to any facility LATHAM directs on an emergency basis;

152. ENJOINING DEFENDANTS FROM FURTHER CONTACT WITH MURIEL MINTZ OR BARBARA LATHAM,

153. ENJOINING DEFENDANTS from being within 200 YARDS of BARBARA LATHAM, MURIEL MINTZ or the residence they reside;

154. GRANTING PLAINTIFFS' EMERGENCY TEMPORARY RESTRAINING ORDER AND SETTING PLAINTIFFS' PRELIMINARY INJUNCTION FOR HEARING as soon as reasonably possible given MURIEL'S dire health emergency and the need for witnesses by the parties;

155. PROHIBITING any and all persons from depriving MURIEL MINTZ of food,

Water, hydration, adequate medical care, critical medication, that conforms to the standard of care mandated for her dire health emergencies

156. ENJOINING the administration of dangerous sedating drugs or opiates to MURIEL MINTZ, that carry the risk of death or bodily injury to MURIEL;

157. ENJOINING DEFENDANTS from harassment OF BARBAA LATHAM, MURIEL

MINTZ by malicious vindictive reports to the police and/or ADULT PROTECTIVE SERVICE or other governmental organizations without a sincere belief in the validity of such report,

158. ENJOINING any further deprivations of privileges and immunities guaranteed to MURIEL MINTZ AND BARBARA LATHAM by Articles I and V of the Texas Constitution, ADA and ADAAA, 42 U.S.C. 12101, Section 504 of the Rehabilitation Act of 1973, 29 USC 794, 42 USC 1983, the 1st, 4th, 5th, 6th, 7th, 8th, and/or 14th Amendments of the United States Constitution, or any State or Federal law granting MURIEL rights of protection against deprivations of right, abuse, neglect, or exploitation;

159. ENJOINING DEFENDANTS from restraining or attempting to interfere with MURIEL MINTZ'S or BARBARA LATHAM'S right to liberty, property or life, including any and all attempts to seize property belonging to PLAINTIFFS or the MURIEL MINTZ FAMILY TRUST.

160. ENJOINING DEFENDANTS from any and all attempts to place holds upon, freeze or seize assets belonging to BARBARA LATHAM OR MURIEL MINTZ

161. MANDATING that GOLDBERG return all funds she seized from MURIEL MINTZ, BARBARA LATHAM, THE MINTZ FAMILY TRUST, or any account in connection with this case;

162. MANDATING DEFENDANTS cease and desist from taking any property believed to belong to BARBARA LATHAM OR MURIEL MINTZ or the MURIEL L MINTZ FAMLY TRUST;

163. MANDATING that DEFENDANTS immediately remove all encumbrances placed on any financial account of BARBARA LATHAM, MURIEL MINTZ OR THE MINTZ

FAMILY TRUST, irrespective of further fiduciary designations;

164. DECLARING ALL ORDERS issued in the guardianship of MURIEL MINTZ NULL AND VOID; ENJOINING THEIR ENFORCEMENT;

165. MANDATING MICHELE GOLDBERG be disgorged and immediately return all funds which she was paid in this matter for misconduct and deliberate wasting of MINTZ'S resources THROUGH FRAUD;

166. MANDATING DEFENDANTS RETURN ALL FUNDS taken without the consent of BARBARA LATHAM, regardless of whether such funds were seized from personal or trust accounts of BARBARA LATHAM OR MURIEL MINTZ to the banks from which they were confiscated

167. MANDATING DEFENDANTS CEASE AND DESIST from any and all efforts and/or attempts to contact or communicate with MURIEL MINTZ OR BARBARA LATHAM by phone, email, text message, mail or any other means, including through a third party;

168. MANDATING HOUSTON HOSPICE IMMEDIATELY CEASE AND DESIST from withholding food, water, critical and necessary medications or health care geared to recover or administering any sedating drug or opiate typically used in hospice to hasten death or sedate;

169. MANDATING HOUSTON HOSPICE IMMEDIATELY RELEASE MURIEL MINTZ TO BARBARA LATHAM, durable and medical power of attorney, health care surrogate, and guardian in the event of need and comply with any directive by LATHAM regarding transport of her mother to a hospital for emergency medical care;

170. ORDERING AN EMERGENCY HEARING BE SET ON PLAINTIFFS' PRELIMINARY INJUNCTION TO REVIEW ALL ISSUES IN THIS MATTER TO BE SET

ON THE___DAY OF_____, 2017.

171. ENJOINING THE DEFENDANTS FROM VIOLATING MURIEL MINTZ'S RIGHTS and mandating her immediate release to BARBARA LATHAM'S custody, transporting her to any facility LATHAM directs on an emergency basis;

172. ENJOINING DEFENDANTS from coming within 200 yards of MURIEL MINTZOR BARBARA LATHAM;

173. ENJOINING DEFENDANTS from disturbing the peace of BARBARA LATHAM OR MURIEL MINTZ.

174. ENJOINING ANY AND ALL medical professionals from denying MURIEL MINTZ food, water, hydration, adequate medical care or administering opiates and other dangerous drugs used to hasten death in hospice;

175. ENJOINING DEFENDANTS from all acts of harassment that have pervaded this case and terrorized LATHAM, including but not limited to welfare checks and police reports which are not SERIOUS and based upon ACTUAL EVIDENCE rather than slander, supposition or malicious intent;

176. ENJOINING any further acts in this conspiracy to deprive MURIEL MINTZ of life, liberty, and property without due process of law, equal protection or any other Constitutional, federal, state, statutory or common law right;

177. ENJOINING DEFENDANTS from ANY AND ALL attempts to further restrain MURIEL or threaten BARBARA /MURIEL as well as any attempt to freeze, retain or withhold funds to which BARBARA LATHAM has legal title or is believed to be the rightful owner;

178. DECLARING ALL ORDERS issued in the guardianship of MURIEL MINTZ void

for fraud on the court, lack of notice, failure to serve MURIEL, denial of the due process and equal protection of the law, discrimination, denial of the right to effective representation of counsel, denial of the right to jury trial, lack of jurisdiction, improper venue, mandatory arbitration; and lack of standing;

179. MANDATING that MICHELE GOLDBERG be disgorged and immediately return all funds taken or paid to her from any account whatsoever in the Muriel Mintz guardianship, as an unauthorized taking of property without due process of law;

180. MANDATING that DEFENDANTS RETURN ALL FUNDS SEIZED FROM LATHAM, the MJRIEL MINTZ FAMILY TRUST, OR MURIEL MINTZ IMMEDIATELY to the banks from which they were wrongfully taken and/or confiscated without due process of law or any evidence to justify the same;

181. MANDATING THAT DEFENDANTS CEASE AND DESIST FROM ALL CONTACT OR EFFORTS TO HARASS BARBARA LATHAM OR MURIEL MINTZ by prohibiting DEFENDANTS from emailing, calling, or coming within 200 years of any location where DEFENDANTS believe PLAINTIFFS to be;

a. PLAINTIFFS seek damages against DEFENDANTS jointly and severally in an amount within the jurisdictional limits of this Court for deprivations of constitutionally protected rights and violations of their rights under the ADA and ADAAA or any other torts or state/federal laws;

b. PLAINTIFFS seek reasonable costs and expenses of this action, including attorneys' fees in accordance with 42 U.S.C. § 1988.

c. PLAINTIFFS pray the Court Grant such other and further relief as this Court shall seem just and equitable.

d. PLAINTIFFS pray that this Court retain jurisdiction of this matter for the purpose of enforcing this Court's order. In support of this relief, PLAINTIFFS plead the following:

XVI. 42 U.S.C. 1983 (CIVIL RIGHTS ACT VIOLATIONS)

182. Houston Hospice is a program or activity that receives Federal financial assistance, and is thus a person acting under color of Federal law for purposes of 42 U.S.C. § 2000cc *et seq*. MICHELE GOLDBERG was fraudulently appointed as purported temporary and personal guardian of MURIEL MINTZ without notice, a hearing, due process, evidence of incapacity, evidence of any emergency mandating that temporary or permanent guardianship be given to a stranger as opposed to MURIEL'S very qualified medical professional daughters.

183. By virtue of her apparent authority, but not actual, she acted under color of State law to deprive MURIEL of the right to life, liberty and property; of 1866, 42 U.S.C. § 1983.

184. The United States Supreme Court, in *Cruzan v. Missouri Department of Health*, 497 U.S. 261 (1990), determined that the Due Process Clause of the Fourteenth Amendment requires that decisions to remove hydration and nutrition from an incapacitated person must be supported by clear and convincing evidence that the incapacitated person would have made the Eighth Amendment to the United States Constitution states, "Excessive bail shall not be required, nor excessive fines imposed, nor cruel and unusual punishments inflicted." DEFENDANTS conspired to deprive MURIEL of her eighth amendment right to not be subjected to cruel and unusual punishment, and death by starvation, dehydration and drugging is clearly a violation of the 8th Amendment, ADA and human rights law;

185. DEFENDANTS knew and exhibited deliberate indifference to a substantial risk of serious harm VIA DEATH, in violation of clearly established Eighth Amendment rights of

which a reasonable person would have known, given the Supreme Court's decisions proscribing the deprivation of food, water, and medical care as well as other basic human needs to those in custody by a judicial decree of the state.

186. DEFENDANTS have been jointly and severally deliberately indifferent to every constitutional and statutory right guaranteed MURIEL MINTZ under federal and state law, including but not limited to 42 USC 1983, 42 USC 12101 ET SEQ; TEX. PENAL CODE 22.04,[1]18 USC 241, 242, the 1st, 4th, 5th, 14th, 6th 7th, and 8th Amendment rights and the Texas Constitution Articles I and V.

XVII. COUNT 1: ADA and SECTION 504

187. MURIEL'S rights continue to be violated in clear disability discrimination, as she is subjected to associational discrimination, isolated and confined in Hospice as family and friends are denied access or notice of her whereabouts, as well as all information concerning her status;

188. Instead of accommodating her rights the JUDGE, who admits he is unfamiliar with the ADA, stated that her presence was not necessary. Apparently, WOOD felt that notice was not needed either and entered void orders which failed to give him jurisdiction over her person or estate as he instructed attorneys to seize her person and assets in violation of the law.

189. A prima facia claim for discrimination in violation of the ADA requires that PLAINTIFF show:

(1) that he is a qualified individual within the meaning of the ADA;

(2) that he is being excluded from participation in, or being denied benefits of, services, programs, or activities for which the public entity is responsible, oris

otherwise being discriminated against by the public entity; and

(3) that such exclusion, denial of benefits, or discrimination is by reason of his disability.

190. The regulations promulgated under the ADA specify a number of prohibited forms of discrimination. For instance, when providing any aid, benefit, or service, a public entity may not [a]fford a qualified individual with a disability an opportunity to participate in or benefit from the aid, benefit, or service that is not equal to that afforded others." 28 C.F.R. § 35.130(b)(1)(ii). 28 C.F.R. § 35.130(b)(3)(ii).

191. In addition to bringing claims for denials of benefits or other forms of discrimination, disabled persons can also bring "reasonable accommodation" claims under the ADA. The regulations implementing the ADA require that "[a] public entity shall make reasonable modifications in policies, practices, or procedures when the modifications are necessary to avoid discrimination on the basis of disability, unless the public entity can demonstrate that making the modifications would fundamentally alter the nature of the service, program, or activity." 28 C.F.R.

§ 35.130(b)(7).

192. The ADA and Rehabilitation Act "impose upon public entities an affirmative obligation to make reasonable accommodations for disabled individuals. The accommodation must be sufficient to provide a disabled person "**meaningful access to the benefit" or service offered by a public entity. S**ee Alexander v. Choate, 469 U.S. 287, 301, 105 S.Ct. 712, 83 L.Ed.2d 661 (1985).

193. If the court finds that an accommodation is required to prevent discrimination, the court must then determine whether the requested accommodation is "reasonable," or whether it would impose "undue financial or administrative burdens" or require a "fundamental

alteration in the nature of the program." Bennett-Nelson, 431 F.3d at 455 n. 12 (quoting School Board of Nassau County v. Arline, 480 U.S. 273, 288 n. 17, 107 S.Ct. 1123, 94 L.Ed.2d 307 (1987))

194. The Fifth Circuit found that "[t]he Supreme Court has broadly understood a `service' to mean `the performance of work commanded or paid for by another,' or `an act done for the benefit or at the command of another.'" See id. at 226 (quoting Holder v. Humanitarian Law Project, 561 U.S. 1, 23-24, 130 S.Ct. 2705, 177 L.Ed.2d 355 (2010)). Jones, Johnson v. City of Saline, 151 F.3d 564, 569 (6th Cir.1998) (concluding that "services, programs, and activities include all government activities" and that "the phrase `services, programs, or activities' encompasses virtually everything that a public entity does"). *Hobart v. City of Stafford*, 784 F.Supp.2d 732, 756-57 (S.D.Tex.2011)

195. The ADA actively and explicitly prohibits public entities from denying to disabled persons any of "the benefits of the services, programs, or activities" that the entities offer or from subjecting disabled persons to any other form of discrimination, 42 U.S.C. § 12132, and mandates that public entities "shall make reasonable modifications in policies, practices, or procedures when the modifications are necessary to avoid discrimination on the basis of disability." 28 C.F.R. § 35.130(b)(7).

196. Harris County has been on notice for more than two years via SCHWAGER'S emails to three statutory probate court judges concerning widespread violations of the ADA, inquiring as to what measures they intended to take to ensure that all court appointees understood this law and enforced it and as of December 12, 2017, WOOD admitted that he was unfamiliar with this landmark legislation.

197. MURIEL MINTZ continues to face discriminatory treatment, threatening to deprive her

of the right to life simply because she is a person with a disability whose worth is diminished in the eyes of predatory attorneys and guardians who routinely end the lives of wards by placing them on hospice as they move on to their next victim.

198. Section 504 of the Rehabilitation act of 1973, 29 U.S.C. § 794, prohibits discrimination against an "otherwise qualified" handicapped individual, solely by reason of his or her handicap, under any program or activity receiving federal financial assistance. Hospitals and Houston Hospices that accept Medicare and Medicaid funding are subject to the Act. MURIEL was denied any form of rehabilitative therapy in violation of 29 USC 794.

XVIII. CONCLUSION AND PRAYER FOR RELIEF

199. PLAINTIFFS pray for this Honorable Judge to GRANT PLAINTIFFS' EMERGENCY TEMPORARY RESTRAINING ORDER, PRELIMINARY AND PERMANENT INJUNCTION. MURIEL faces imminent death in a conspiracy forcing her into hospice, starved, dehydrated and drugged to death when she has no terminal illness that would otherwise warrant even serious medical care—STEALTH EUTHANASIA, which usually manages to remain hidden and concealed from discovery and/or covered up as in this case. *See article on Stealth Euthanasia.*

200. PLAINTIFFS seek a TEMPORARY RESTRAINING ORDER ON EMERGENCY BASIS ACCORDING TO THE TERMS PLED;

201. PLAINTIFFS give notice of intent to amend for wrongful death and other federal claims upon discovery or occurrence of the same in the tragic event that DEFENDANTS succeed in causing MURIEL'S DEATH.

202. PLAINTIFFS seek reasonable costs and expenses of this action, including attorneys' fees in accordance with 42 U.S.C. § 1988.

203. PLAINTIFFS pray the Court Grant such other and further relief as this Court shall seem just and equitable.

204. PLAINTIFFS pray that this Court retain jurisdiction of this matter for the purpose of enforcing this Court's order.

XIX. CERTIFICATES AND CLOSING

205. Under Federal Rule of Civil Procedure 11, by signing below, I certify to the best of my knowledge, information, and belief that this complaint: (1) is not being presented for an improper purpose, such as to harass, cause unnecessary delay, or needlessly increase the cost of litigation; (2) is supported by existing law or by a non-frivolous argument for extending, modifying, or reversing existing law; (3) the factual contentions have evidentiary support or, if specifically so identified, will likely have evidentiary support after a reasonable opportunity for further investigation or discovery; and (4) the complaint otherwise complies with the requirements of Rule 11.

Respectfully Submitted,

SCHWAGER LAW FIRM

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ATTORNEY FOR BARBARA

LATHAM AND MURIEL MINTZ

THE UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF TEXAS
HOUSTON DIVISION

BARBARA LATHAM, Individually	§	No. _____
And as Durable / Medical Power of	§	
Attorney for MURIEL MINTZ,	§	
ESTELLE NELSON, next friend	§	
Of MURIEL MINTZ and Individually	§	
& MURIEL MINTZ, by and through	§	
BARBARA LATHAM AND/OR	§	
ESTELLE NELSON	§	

AFFIDAVIT OF BARBARA LATHAM

STATE OF TEXAS §

COUNTY OF BRAZORIA §

BEFORE ME PERSONALLY APPEARED, BARBARA LATHAM, WHO TESTIFIED UNDER OATH AS FOLLOWS:

"My name is BARBARA LATHAM. I am over the age of 21, of sound mind, and am in all ways competent to execute this affidavit. It is all based upon my personal knowledge and true and correct. I have never been convicted of a felony or crime involving moral turpitude. All statements in my ORIGINAL COMPLAINT, APPLICATION FOR TEMPORARY RESTRAINING ORDER, DECLARATORY JUDGMENT, PRELIMINARY INJUNCTION, PERMANENT INJUNCTION AND DAMAGES are true and correct based upon my personal knowledge.

I am writing this affidavit to save my mother's life, who was placed in Hospice less than one month by her court appointed temporary guardian, MICHELLE GOLDBERG (a trust lawyer with no medical training or knowledge of my mother's

medical history who was appointed in a proceeding tainted by fraud and abuse of authority) completely disregarding the pre-planned documents my mother executed in 2006 and 2016, naming me as her medical and durable power of attorney, health care surrogate, guardian in the event of need, and attorney in fact. Michele Goldberg, knows nothing about my mother's medical conditions or history so that she could provide informed consent and also appears clueless concerning medical issues in general common to the elderly. She asked me what a bedsore was when I revealed that my mother had a bedsore which developed since GOLDBERG took over her care.

Michelle Goldberg has been abusive and hostile to me and ESTELLE, my sister, banning us from visiting our mother and blocking our access to any and all medical information through hospital or hospice staff, nurses or personnel. GOLDBERG has refused our requests for information and medical records, which I believe caused my mother to decline spiraling down to near death by whatever she is hiding and depriving us of the opportunity to likely save her life. My sister and I both have advanced training as registered nurses and over 30 years of experience and I have advanced certifications, including a master's in psychiatric nursing and I am an inactive clinical nurse specialist and advanced nurse practitioner. My sister, Estelle's specialty is geriatric home health nursing as an R.N.

Given our advanced training in the medical field, we should never have been denied access to medical information and records concerning our 93-year-old mother as we are forced to watch GOLDBERG hasten her death deliberately through starvation, dehydration, drugs, and immobility as well as apparent deprivation of critical medications

to manage her history of congestive heart failure. On November 24, 2017, I attempted to explain in detail my mother's medication schedule and the necessity that all medications be given on time. She expressed no interest whatsoever and appeared to not even pay attention. Her billing indicates a similar lack of regard for the "person" over whom she took guardianship, with only 13 hours devoted to my mother and approximately 51 hours devoted to seizing my mother's assets along with mine as she engaged in a fraudulent hunt for every dime she could find in a trust that she knew was not part of MURIEL'S estate, nor subject to the Court's jurisdiction, but solely the property of MURIEL'S three adult children. As an experienced trust lawyer with approximately 300 cases, her $16789.80 bill to scour for every dollar she could find in a trust over which she had no standing or right to access information is abject FRAUD.

Along with constant harassment in her pursuit to seize my assets and a trust she had no right to take, she harassed and retaliated against me to the point I became physically exhausted and ill, unable to care for my mother as I had easily done the past 8 months before she terrorized my life and my mother's. GOLDBERG'S constant threats to take my mother upset her greatly, compounding the stress I was subjected to. GOLDBERG and my brother's illegal taking of thousands of dollars from my personal accounts, freezing my IRA's, valued at more than $100,000, persistent threats of jail for contempt nearly immobilized me. Her terror campaign left me in a state nearing post-traumatic stress disorder.

I was repeatedly victimized by slander and psychological abuse and torment at the hands of the DEFENDANTS for 8 months until I finally gave up. The stress hit a high I

have rarely experienced when I suddenly found out my attorneys were colluding with Donald's attorneys and Goldberg, trashing me to the Judge behind my back, violating their duties to me as a client in unimaginable ways. I have been in constant fear that GOLDBERG intended to steal my entire retirement, rendering me hardly able to function, when I have always functioned at a very high level. Now, I am devastated by having to watch my mother starve to death before my eyes or be banned from seeing her at all with trespass threats, when "I" did nothing to deserve this cruelty. My husband mistakenly and unintentionally carried his firearm on the premises not realizing he had done so, but I WAS NEVER AWARE HE HAD THE WEAPON ON HIS PERSON AND SHOULD NOT BE BANNED AND THREATENED WITH TRESPASS AS MY MOTHER DIES, depriving me of the opportunity to even say goodbye or have closure as my mother passes.

My brother and his children have lashed out at me with threats, accusations, slander and the silent treatment, treating Estelle the same way, creating an unbearably hostile situation. Despite the social worker's assurance that Donald and his family would be made to exit my mother's room so that Estelle and I could visit her in peace, he refuses and hovers over me – pacing nervously the floor all day long. My brother's constant calls to GOLDBERG to instigate more retaliation has risen to a level that is unbearable. DONALD has acted unnatural and suspiciously nervous for days, suggesting he is part and parcel to this despicable conspiracy to deprive my mother of life.

I had no idea that GOLDBERG would lack even minimal competence in the care of an elderly woman, given her extensive history of appointments as a guardian in Harris County probate courts. I am outraged that the County cares so little for the elderly and

disabled that they would appoint a totally incompetent person whose sole mission is extracting tens of thousands of dollars from my mother's estate and our trust—feigning concern for my mother's welfare when her abusive, deceptive actions prove otherwise.

If my mother was simply given food, water, and minimal medical treatment rather than toxic drugs that hasten death, I believe she would recover given the 92 years of excellent health she has enjoyed and lack of any discernable problems during her stay with me the past 8 months. My mom in St. Luke's over 3 weeks when this is unheard of as a length of stay. I now believe that her long stay there was in preparation for her eventual move to hospice. Having been denied access until Wednesday the 19th of December, it seems quite obvious that she has been intentionally denied nutrition and hydration denied critical medications while pumped full of narcotics to hasten her death—and this is criminal. Her age renders her incapable of metabolizing these dangerous drugs, which compounded by starvation and dehydration. Once the conditions were created that would justify admission to hospice she was transferred. Michele also claims that my mother has aspiration pneumonia when my sister and I thoroughly examined her and she exhibits absolutely NO SIGNS of this yet. Undoubtedly, Michele's plans are to induce organ shut down, pneumonia, sepsis and death and these lies are merely preparation for her imminent death. With a diagnosis of respiratory insufficiency, distress, pneumonia or any respiratory complication you would certainly see or hear some type of signs or symptoms. I saw no evidence not even so much as a cough or change in respiratory rate.

When we got there yesterday her speech was barely intelligible and it was not until the evening that I realized no food or hydration had been provided all day. I asked the nurse

for food telling her that mom had requested food and water. I was told the kitchen was closed and no food other than applesauce and soup was available. But there had been no food provided to her all day or night. She was continuously asking for water and asked to leave with Estelle and began to beg Mark Liss, a male companion, to please take her with him. We went out and got her a burger which she wolfed down. Within a few minutes there was a noticeable improvement in her overall condition. I never saw or heard anything that would indicate any of the conditions Michele listed in her email.

Stealth euthanasia is now accomplished by no longer administering drugs that cause immediate death but by causing the CONDITIONS that result in death. The withholding of nutrition and hydration along with medications that can cause serious side effects in the elderly because of their inability to metabolize. Michele has also claimed that Muriel's lungs continued to fill up with fluid as a reason to hasten her death in hospice and it is my strong suspicion that IF HER LUNGS TRULY WERE FILLING WITH FLUID, IT WAS DIRECTLY CAUSED BY WITHHOLDING CRITICAL MEDICATIONS PRESCRIBED FOR CONGESTIVE HEART FAILURE AND ATRIAL FLUTTER. If the facility withheld these medications for more than a day, this would be the exact result of this criminal act.

To be clear, withholding nutrition and hydration for the amount of time she was hospitalized at St. Luke's without notice to BARBARA LATHAM AND I, whom Michele understands have advanced medical credentials, would cause immediate rebound symptoms of congestive heart failure—with death not far behind. Her unusually long stay at St. Luke's from the end of November to December 19, 2017 (another fact which Houston

Hospice lied to me about, claiming that MURIEL had been a patient at their facility several days and continued to refuse food and water—a fact I knew to be PATENTLY FALSE because my attorney's husband (who is an intercessory prayer minister with Praise Chapel) Richard Schwager visited MURIEL at ST. LUKE'S EPISCOPAL HOSPITAL on the evening of December 19, 2017, the night before these deliberate lies were uttered to me—with the conversation occurring December 20, 2017. The only other day I was permitted access to my mother at Houston Hospice was Thursday, December 21, 2017.

I offered my mother peanut butter and crackers because she was ravenous as if she was starving to death. Michele Goldberg was not present and fabricated the story of her sitter supposedly taking the crackers/peanut butter before my mother could eat it. By dehydrating her and withholding food for what may have been weeks, she would have met the criteria for hospice—the conditions of death clearly present, and Michele could easily have concealed the fact that my mother was not terminally ill from chronic or acute illness caused by anything other than foul pray, including but not limited to withholding critical medications required to manage congestive heart failure, forced dehydration and starvation, and administering toxic opiate drugs her body could not effectively metabolize. My sister and I observed unmistakable signs that she was drugged with opiates, such as pinpoint pupils, labored speech almost indecipherable (which rapidly changed once she was fed and hydrated). Due to our attorney putting Michele on notice that she lacked the ability to provide informed consent, rendering her decisions criminal medical battery, she was desperate to conceal the truth. This is the only rational explanation for Michele's fabricated stories that Estelle and I supposedly engaged in abusive, aggressive, threatening

and disruptive behavior – is that Michele is terrified that Estelle and I already know what she is doing to our mother. December 5th was the first day we were notified where our mother was hospitalized and given a small window of time to visit her. In textbook fashion, MICHELE'S lies and threats were issued the very next day and both Estelle and my visitation were restricted for no legitimate reason other than concealing the truth.

I observed nurses disclosing health information openly to my brother Donald Mintz at St. Luke's and Houston Hospice and inexplicably prohibited Estelle and I from any access to information concerning my mother's medical status. This was a repeated pattern EVEN AFTER JUDGE MIKE WOODS verbally admonished MICHELLE to ensure Estelle and I had access to information regarding my mother's health and as much access to visit her as possible. My brother's visitation was never restricted in the least nor was his daughter's access to Muriel or information we were denied. If the foregoing is not outrageous enough to shock the conscience of a reasonable person, MICHELLE even denied my mother access to a few minutes of prayer. Michele's disparate treatment of my brother and his family as compared to Estelle and me was night and day.

While Estelle and I were strictly prohibited from any access to health information concerning my mother's prognosis or condition and I was forced to leave the premises for merely asking a staff member for a blank HIPPAA form, whereas my brother deliberately lied to St. Luke's staff, claiming to be MURIEL'S court appointed guardian, knowing full well that Michele was the only person purportedly appointed by Judge Mike Woods. Based upon Michele's prior prohibition against me using my power of attorney for any reason whatsoever (without notice that her temporary purported appointment could have

invalidated the POA), Michele should have EXPELLED DONALD from St. Luke's and restricted his visitation also, but did not. I never once observed Michele being anything but cordial with my brother, in sharp contrast to her immediate hostility and unprovoked attacks against me and Estelle.

I have little doubt that foul play is at work because there is no rational justification for a stranger to imprison and isolate a vulnerable, blind, 93-year-old woman or threaten her daughters against even asking for medical information which might save her life. My brother's complicit behavior in hastening my mother's death shocks my conscience, leaving me powerless to save her because he is working so hard to end her life with attorneys who have one goal in mind—money. I have cried out to every resource I can find, including Right to Life groups, State and Federal agencies, the Department of Justice (ADA), DADS, and the court charged with "protecting" Muriel, rather than sanctioning criminal acts against her through abject refusal to intervene when I pled for mercy via Temporary Restraining Order. I pled for Judge Mike Woods to enjoin MICHELLE GOLDBERG from denying my sister and I access to information and our mother and he refused.

MICHELLE GOLDBERG, my brother DONALD, his children, and corrupt lawyers have imprisoned my mother and subjected her to abuse akin to torture, while having the audacity to suggest what they are doing is humane or just. MICHELLE GOLDBERG has repeatedly lied along with hospital and/or hospice staff doing her bidding to keep ESTELLE and I in the dark. Clearly, the objective is to prevent us from having even a window of opportunity to intervene. MICHELLE demonstrated conscious disregard for

my mother's safety and life by placing her in assisted living without 24-hour supervision—with knowledge via the County's medical expert that MURIEL had to have 24-hour supervision and care to prevent severe injury or death, given she is a high fall risk. GOLDBERG has been so dishonest with ESTELLE, my attorney, and I catching her in so many lies we have no confidence that anything she reports is true. I no longer believe that my mother suffered the "fall" MICHELLE alleges, which was shocking given MICHELE had custody of my mother less than one week. It seems more likely a cover up for the opiates my mother is being sedated with to hasten her death. Strangely, almost immediately after my mother was hospitalized, Michele no longer mentioned the alleged fall and my sister and I observed no visible signs that this was even true.

My attorney asked MICHELLE to be transparent which has not remotely occurred. She further asked the Court to mandate that MICHELE sign releases for access to my mother's medical records and denying two nurses who know her medical history access to this critical information in the midst of an emergency MAY VERY WELL BE THE CAUSE OF HER DEMISE. Criminal negligence and manslaughter come to mind if this is true. The Court rode the fence on the issue of transparency in an apparent attempt to protect Michele and those conspiring with her to harm my mother and retaliate against my sister and I.

If the Court had any interest in transparency, my request for medical records would have been granted. In fact, if the Court respected civil rights and dignity at all, it would not have usurped control of every aspect of MURIEL'S life and instead respected her estate planning and powers of attorney / medical directives created over a decade ago. She named

me as guardian in the event of need as well and the Court has violated every known request and preference my mother carefully set forth in 2006. Texas law mandates that powers of attorney and medical directives be honored as the least restrictive alternative but the reality is far from this. Guardianship is the most horrific institution I ever imagined possible, reminiscent of the Holocaust in Nazi Germany. It abuses and traumatizes families shamelessly while they are going through the most difficult circumstance of their life, contemplating the loss of a parent.

I ask the Court for an emergency injunction to provide my mother with due process and equal protection of the law prior to being deprived of life in a grotesque and inhumane manner. I plead with the Court to intervene and not allow this senseless crime to occur against my mother, who is helpless to stop it. Her only hope is that the federal court will intervene before it's too late. I believe she will be dead in 24-48 hours maximum absent this Honorable Judge's relief. I also pled for the Judge to enjoin DONALD'S corrupt attorney and GOLDBERG from illegally emptying my bank account and mandate by court order that they cease their illegal takings of my bank funds, insured by the FDIC. My pleas fell on deaf ears of the Judge and my attorney was not even allowed to cross examine witnesses before the Judge issued yet another void order.

My sister and I have no idea why we have been denied all access to any information on my mother's condition, banned from visitation throughout most of this past month (seeing my mother approximately 4x), as MICHELLE constantly moved her room to undisclosed locations with no ability to find her given GOLDBERG'S secret registration of my mother to conceal her whereabouts as her condition deteriorated. Every time I

visited, MICHELLE lied and fabricated false accusations of misconduct against ESTELLE AND I to block further visits or abruptly terminate the few visits we were afforded. Hospital staff treated us with contempt, stating that they were following the guardian's instructions. MICHELLE is concealing my mother's whereabouts and condition, permitting only a few individuals chosen by MICHELLE to visit MURIEL, even turning away prayer ministers having nothing but benevolent intentions.

After experiencing the abuse and scorched earth retaliation at the hands of MICHELLE GOLDBERG, colluding with my brother and his lawyers, I do not believe my mother is terminal, was injured, or should be on hospice. Our family is suffering in ways I never imagined possible and for this reason, I ask this Honorable Judge for a reprieve in the form of injunctive relief so that we can obtain a second opinion which was demanded by my attorney to GOLDBERG and refused. The Constitution cannot permit a stranger to hold the power of life and death over an innocent elderly mother, but mandates that MURIEL not be deprived of life itself without due process of law and equal protection. Further affiant sayeth not."

SIGNED BEFORE ME ON THIS DAY OF DECEMBER 2017 BY MY HAND UNDER SEAL

_____
BARBARA LATHAM

_____
NOTARY PUBLIC IN AND FOR STATE OF TEXAS

AA

CAUSE NO. 456059

IN THE GUARDIANSHIP OF	§	IN THE PROBATE COURT
	§	
MURIEL LUBA MINTZ,	§	NUMBER _____ OF
	§	
AN INCAPACITATED PERSON	§	HARRIS COUNTY, TEXAS

APPLICATION FOR APPOINTMENT OF PERMANENT GUARDIAN OF THE PERSON AND ESTATE

Post 1 Per by IN 3/8/17

TO THE HONORABLE JUDGE OF SAID COURT:

NOW COMES, **Donald M. Mintz** ("Applicant"), and makes and files this Application for Appointment of Guardian of the Person and Estate of **Muriel Luba Mintz**, a person in need of a guardian ("Proposed Ward") pursuant to Section 1101 of the Texas Estates Code, and would respectfully show the Court the following:

I.

That Proposed Ward is a female who is 92 years of age, having been born on September 5, 1924. The Proposed Ward currently resides at Clarewood House located at 7400 Clarewood Drive #518, Houston, Harris County, Texas 77036. The Proposed Ward is not presently under a guardianship in Texas or any other state. The Proposed Ward is the mother of Applicant.

II.

Notice is being given as required by Section 1102 of the Texas Estates Code to the following people:

Patrick Pheifer
Executive Director of Clarewood House
7400 Clarewood Drive
Houston, Texas 77036

Barbara Ann Mintz Latham
Relationship: daughter
1022 Northwick Drive
Pearland, Texas 77584

Estelle Claire Mintz Johnson Nelson
Relationship: daughter
1333 Eldridge Parkway, Apt. 816
Houston, Texas 77077

The Proposed Ward's natural parents are deceased.

The Proposed Ward does not have any siblings.

The Proposed Ward is not married.

III.

Applicant's address is 3519 Yupon Street, Houston, Texas 77006. Applicant desires to be appointed Guardian of the Person and Estate of Proposed Ward. The Proposed Ward's Estate consists of bank accounts containing approximately $108,764 and a revocable living trust containing approximately $116,000. Although the Proposed Ward is not the Trustee of this Trust, she does have the power to appoint its assets or demand distributions. Applicant is not ineligible by law to act as Guardian.

IV.

Applicant is requesting a full and permanent guardianship of the person, with complete power and authority. In accordance with §1101.001 of the Texas Estates Code, alternatives to Guardianship have been considered, but due to the extent of the Proposed Ward's disabilities, no alternatives were found feasible or that could be pursued in lieu of guardianship. Furthermore, Applicant seeks to take away Proposed Ward's rights to operate a motor vehicle, vote in a public election, make decisions regarding marriage, and make decisions regarding residence

V.

This Court has venue over these proceedings because **Muriel Luba Mintz** resides in this county.

VI.

The Proposed Ward lacks the necessary capacity, as provided by the Texas Estates Code, to provide food, clothing, or shelter for herself, to care for her own physical health or manage her own financial affairs.

VII.

Applicant requests that the Court appoint **Donald M. Mintz** as Guardian of the Person and Estate of **Muriel Luba Mintz** to see to the care of all of Proposed Ward's personal and physical needs and manage all of Proposed Ward's financial affairs and the assets of her Estate.

Therefore, Applicant prays that:

Notice of this Application be given as required by law;

The Court appoint an attorney ad litem to represent the Proposed Ward's Person and Estate;

A hearing on this Application be set;

Donald M. Mintz be appointed Guardian of the Person and Estate of **Muriel Luba Mintz**, a person in need of a guardian;

The Court Order appointing **Donald M. Mintz** as Guardian be effective upon his taking Oath and giving a bond as required by law;

Upon the Guardian's qualification, the Clerk of this Court shall issue Letters of Guardianship to **Donald M. Mintz**; and

The Court enter any other Orders it deems necessary.

Respectfully submitted:

Hayes & Wilson, PLLC

Julia R. Hayes*
State Bar No. 24084621
julia@hayeswilsonlaw.com
Lisa L. Wilson*
State Bar No. 00795723
lisa@hayeswilsonlaw.com
William R. Hayes*
State Bar No. 09280700
bill@hayeswilsonlaw.com
Hilary H. Lane*
State Bar No. 24087882
hilary@hayeswilsonlaw.com
Caroline G. Kulpers*
State Bar No. 24099870
caroline@hayeswilsonlaw.com
1235 North Loop West, Suite 907
Houston, Texas 77008
(713) 880-3939 Telephone
(713) 880-9990 Fax
Attorneys for Applicant
**Certified pursuant to T.E.C.§1054.201*

AFFIDAVIT

STATE OF TEXAS *

* KNOW ALL MEN BY THESE PRESENTS THAT:

COUNTY OF HARRIS *

I, **Donald M. Mintz**, Applicant, having been duly sworn, hereby state on oath that the foregoing *Application for the Appointment of Permanent Guardian of the Person and Estate* is a true and complete statement.

Donald M. Mintz
Donald M. Mintz

SWORN TO AND SUBSCRIBED BEFORE ME by **Donald M. Mintz** on this 8th day of March, 2017, to certify which witness my hand and seal of office.

D. MICHELLE DAY
My Notary ID # 128770490
Expires October 14, 2019

D. Michelle Day
Notary Public, State of Texas

3/13/17 9:20A
3/14/17 8:30
3/16/17 9:30A
3/22/17 10:30A

STAN STANART
COUNTY CLERK, HARRIS COUNTY, TEXAS
PROBATE COURTS DEPARTMENT

County Probate Court No. 2

PERSONAL CITATION – APPOINTMENT OF GUARDIAN

The State of Texas { **Docket No. 456059** Receipt No. PB-2017-35912 03-08 $75

County of Harris { **In the Estate of: Muriel Luba Mintz, Incapacitated**

RETURNED UNSERVED

To: Muriel Luba Mintz, Clarewood House, 7400 Clarewood Drive #518, Houston, Texas 77036.

Donald M. Mintzfiled in County Probate Court No. 2 of Harris County, Texas, on March 8, 2017 an application requesting that **Donald M. Mintz** be appointed Guardian of the **Person and Estate of Muriel Luba Mintz, Incapacitated** alleging the nature of the disability to be: **incapacitation).** A copy of the application is attached to this citation.

The court may act on this application at the Harris County Civil Courthouse, 201 Caroline, Room 800, Houston, Texas 77002, at any time on or after 10:00 o'clock a.m. on the first Monday after 10 days following the date this citation is served as required by Texas Estates Code § 1051.101.

You are cited to appear and answer the application for guardianship within the time indicated above should you desire to do so. Any written contest, objection, intervention, or other answer should be filed with the County Clerk of Harris County, Texas in cause number **456059,** styled **Muriel Luba Mintz, Incapacitated**.

You may wish to consult with an attorney concerning the application and your rights in this case.

You are notified that you have the right under Texas Estates Code Section 1051.252 to file with the clerk a written request that you be notified of any or all specifically designated motions, applications, or pleadings filed by any person, or by a person specifically designated in your request, relating to the application for the guardianship that has been filed or relating to a subsequent guardianship proceeding involving the ward after the guardianship is created, if any. If you make such a request, you are responsible for the fees and costs associated with furnishing you the documents specified in the request. The clerk may require a deposit to cover the estimated costs of furnishing you with the requested notice.

Given under my hand and the seal of the Probate Court of Harris County, Texas at the office of the Harris County Clerk in Houston, Texas on this the 9th day of March, 2017.

(SEAL)

Stan Stanart, County Clerk
County Probate Court No. 2
201 Caroline, Room 800
Harris County, Texas

Charlene Rosser
Deputy County Clerk

FILED
2017 MAR 27 AM 8:29

ATTORNEY: Julia R. Hayes
1235 North Loop West, Ste. 907
Houston, TX 77008
713-880-3939

OFFICER'S RETURN

THE STATE OF TEXAS §
COUNTY OF _____ §

PERSONALLY APPEARED before me, the undersigned authority, _____

_____, who being by me duly sworn, deposes and says that in
(Name of Serving Officer)

the County of _____, State of Texas, on day of _____, _____,

came to hand a true copy of the Citation, together with the _____, was delivered to the person directed to be served at the following time(s) and place(s), to-wit:

NAME	DATE			TIME		PLACE
	Month	Day	Year	Hour	Min.	

_____
Sheriff

Constable _____ County, Texas

Sworn to and subscribed before me, this _____ day of _____.

(SEAL)

_____
(Give name and official capacity such as Notary Public)

Fees for Serving: $_____

OFFICER'S RETURN

Came to hand on _____, at _____ o'clock _____.M. and

executed on _____, at _____ o'clock _____.M. by

causing a true copy hereof to be published one time at least 10 days before the return day hereof in the _____

_____, a newspaper published at _____, in Harris County,
Texas. This return is accompanied by the affidavit of the publisher of said newspaper as required by law.

_____
Sheriff-Constable, Harris County, Texas

Fee: $_____ By _____ Deputy

OFFICER'S RETURN

Came to hand on _____, at _____ o'clock _____.M. and

executed on _____, at _____ o'clock _____.M. by
posting a true copy of the above Citation for ten days, exclusive of the day of posting, before the return day thereof, at the Courthouse door, of C[illegible] of Harris, State of Texas, to-wit:

_____,thru _____.

_____

Sh

Fe

By _____ Deputy

Cause #: 456059
Tracking #: 30670956
Person To Serve: MINTZ, MURIEL
LUBA

Form No. I-02-79 (Rev. 09/23/2011)

Constable Return Of Individual

Cause #: 456059

Tracking #: J06700956

In the case of THE STATE OF TEXAS VS IN THE ESTATE OF:MURIEL LUBA MINTZ, INCAPACIATED a CITATION and attached APPLICATION FOR APPOINTMENT OF PERMANENT GUARDIAN OF THE PERSON AND ESTATE was issued by the Probate Court No. 2 court of Harris County, TX and came to hand on the 10 day of March , 2017 at 10:10AM to be delivered at 7400 CLAREWOOD DR 518 , HOUSTON , Tx 77036 by delivering to: MINTZ, MURIEL LUBA

Attempted Service

(Attempted service at 7400 CLAREWOOD DR, 518, HOUSTON, Tx, 77036 unless otherwise noted.)

Date	Time	Service Attempt Type	Attempted Address	Remarks
3/22/2017	2:21:37 PM	RTC UNSERVED	7400 CLAREWOOD DR 518 HOUSTON Tx 77036	RTC PER PLAINTIFF'S ATTORNEY FOR OUT OF COUNTY SERVICE
3/22/2017	10:30:00 AM	NOT IN	7400 CLAREWOOD DR 518 - HOUSTON, Tx 77036	Defendant still with her daughter in Pearland
3/20/2017	9:30:00 AM	NOT IN	7400 CLAREWOOD DR 518 - HOUSTON, Tx 77036	Not in per receptionist. Has not made it back to her room after leaving with her daughter about a week ago
3/14/2017	8:30:00 AM	NOT IN	7400 CLAREWOOD DR 518 - HOUSTON, Tx 77036	Deputy had appointment to met with Mr Mintz at 8:30 Am this date to serve Guardianship citation, possibly daughter came and took Mr Mintz to her home to evade service.
3/13/2017	9:20:00 AM	OTHER	7400 CLAREWOOD DR 518 - HOUSTON, Tx 77036	Deputy spoke with mrs Mintz this date and stated she was not going to accept the citation. Deputy spoke with plaintiff attorney she will try and speak with Mrs Mintz son and meet with deputy to serve citation

NOT EXECUTED to the defendant: MINTZ, MURIEL LUBA

The information received as to the whereabouts of the said defendant(s) being:

Fee $ 0.00

by Deputy John Parris Scut
Printed

Deputy Signature

Attempts: 5

Ted Heap , Constable Precinct #5
Harris County Texas
17423 Katy Freeway Houston Texas 77094

STAN STANART
COUNTY CLERK, HARRIS COUNTY, TEXAS
PROBATE COURTS DEPARTMENT

County Probate Court No. 2

PERSONAL CITATION

The State of Texas { **Docket No. 456059** Receipt No. PB-2017-51302 05-17 $75

County of Harris { **In the Estate of: Muriel Luba Mintz, Incapacitated**

To: Muriel Luba Mintz, 12808 W. Airport, Suite 255C, Sugar Land, Texas 77478.

RETURNED UNSERVED

Greetings:

You are hereby commanded to appear by filing a written contest or answer on said **Answer of Attorney Ad Litem in Guardianship Proceeding,** filed May 11, 2017, **Application for Appointment of Permanent Guardian of the Person and Estate,** filed March 8, 2017, & **Motion for Independent Medical Examination,** filed March 8, 2017 hereto attached before the Honorable County Probate Court No. 2, of Harris County, Texas, on or before 10 o'clock a.m. of the Monday next after the expiration of 10 days after the date of service hereof.

Issued and given under my hand of said court, at Houston, Texas, on this the 18th day of May, 2017.

(SEAL)

Stan Stanart, County Clerk
County Probate Court No. 2
201 Caroline, Room 800
Harris County, Texas

Allen Hurley
Deputy County Clerk

Attorney: Julia R. Hayes
1235 North Loop West, Suite 907
Houston, Texas 77008
713-863-8891

RETURN TO COURT
FOR OUT OF COUNTY
SERVICE

FILED
2017 JUN -8 AM 9:05
Stan Stanart
COUNTY CLERK
HARRIS COUNTY, TEXAS

OFFICER'S RETURN

THE STATE OF TEXAS §
COUNTY OF _____ §

PERSONALLY APPEARED before me, the undersigned authority, _____

_____, who being by me duly sworn, deposes and says that in
(Name of Serving Officer)

the County of _____, State of Texas, on day of _____, _____,

came to hand a true copy of the Citation, together with the _____, was delivered to the person directed to be served at the following time(s) and place(s), to-wit:

NAME	DATE			TIME		PLACE
	Month	Day	Year	Hour	Min.	

_____
Sheriff

Constable _____ County, Texas

Sworn to and subscribed before me, this _____ day of _____.

(SEAL)

_____
(Give name and official capacity such as Notary Public)

Fees for Serving: $_____

OFFICER'S RETURN

Came to hand on _____, at _____ o'clock _____.M. and

executed on _____, at _____ o'clock _____.M. by

causing a true copy hereof to be published one time at least 10 days before the return day hereof in the _____.

_____, a newspaper published at _____, in Harris County,
Texas. This return is accompanied by the affidavit of the publisher of said newspaper as required by law.

_____
Sheriff-Constable, Harris County, Texas

Fee: $_____ By _____ Deputy

OFFICER'S RETURN

Came to hand on _____, at _____ o'clock _____.M. and

executed on _____, at _____ o'clock _____.M. by
posting a true copy of the above Citation for ten days, exclusive of the day of posting, before the return day thereof, at the Courthouse door, of County of Harris, State of Texas, to-wit:

_____,thru _____.

_____
Sheriff-Constable, Harris County, Texas

Fee: $_____ By _____ Deputy

Form No. I-02-79 (Rev. 09/23/2011)

J06716835

STAN STANART
COUNTY CLERK, HARRIS COUNTY, TEXAS
PROBATE COURTS DEPARTMENT

County Probate Court No. 2

PERSONAL CITATION

RETURNED
SERVED

The State of Texas { **Docket No. 456059** Receipt No. PB-2017-52161 05-22 $75

County of Harris { **In the Estate of: Muriel Luba Mintz, Incap.**

To: Muriel Luba Mintz, 12808 W. Airport, Ste. 255C, Sugar Land, Texas 77478, or other location.

Greetings:

You are hereby commanded to appear by filing a written contest or answer on said **Application for Appointment of Permanent Guardian of the Person and Estate** filed March 8, 2017; **Motion for Independent Medical Examination** filed March 8, 2017 **& Answer of Attorney ad Litem in Guardianship Proceeding** filed May 11, 2017 hereto attached before the Honorable County Probate Court No. 2, of Harris County, Texas, on or before 10 o'clock a.m. of the Monday next after the expiration of 10 days after the date of service hereof.

Issued and given under my hand of said court, at Houston, Texas, on this the 22nd day of May, 2017.

(SEAL)

Stan Stanart, County Clerk
County Probate Court No. 2
201 Caroline, Room 800
Harris County, Texas

Charlene Rosser
Deputy County Clerk

ATTORNEY: Jason Ostrom
6363 Woodway, Ste. 300
Houston, TX 77057
713-863-8891

FILED
2017 MAY 25 PM 1:03
Stan Stanart
COUNTY CLERK
HARRIS COUNTY TEXAS

OFFICER'S RETURN

THE STATE OF TEXAS §
COUNTY OF _____ §

PERSONALLY APPEARED before me, the undersigned authority, _____.

_____, who being by me duly sworn, deposes and says that in
(Name of Serving Officer)

the County of _____, State of Texas, on day of _____, _____,

came to hand a true copy of the Citation, together with the _____, was delivered to the person directed to be served at the following time(s) and place(s), to-wit:

NAME	DATE			TIME		PLACE
	Month	Day	Year	Hour	Min.	

_____
Sheriff

Constable _____ County, Texas

Sworn to and subscribed before me, this _____ day of _____.

(SEAL)

_____
(Give name and official capacity such as Notary Public)

Fees for Serving: $_____

OFFICER'S RETURN

Came to hand on _____ , at _____ o'clock _____.M. and

executed on _____ , at _____ o'clock _____.M. by

causing a true copy hereof to be published one time at least 10 days before the return day hereof in the _____

_____, a newspaper published at _____, in Harris County,
Texas. This return is accompanied by the affidavit of the publisher of said newspaper as required by law.

_____
Sheriff-Constable, Harris County, Texas

Fee: $_____ By _____ Deputy

OFFICER'S RETURN

Came to hand on _____ , at _____ o'clock _____.M. and

executed on _____ , at _____ o'clock _____.M. by
posting a true copy of the above Citation for ten days, exclusive of the day of posting, before the return day thereof, at the Courthouse door, of County of Harris, State of Texas, to-wit:

_____,thru _____.

_____
Sheriff-Constable, Harris County, Texas

Fee: $_____ By _____ Deputy

Form No. I-02-79 (Rev. 09/23/2011)

Constable Return Of Individual

Cause #: 456059 Tracking #: J06716835

In the case of THE STATE OF TEXAS VS IN THE ESTATE OF:MURIEL LUBA MINTZ, INCAPACIATED a CITATION and attached APPLICATION FOR APPOINTMENT OF PERMANENT GUARDIAN OF THE PERSON AND ESTATE was issued by the Probate Court No. 2 court of Harris County, TX and came to hand on the 23 day of May , 2017 at 8:16AM to be delivered at 201 CAROLINE ST , HOUSTON , Tx 77002 by delivering to: MURIEL LUBA MINTZ

Service of Individual

Executed in Harris County County, Texas by delivering to each of the within name defendant(s) by PERSONAL SERVICE ; a true copy of this CITATION together with the accompanying copy of the APPLICATION FOR APPOINTMENT OF PERMANENT GUARDIAN OF THE PERSON AND ESTATE , at the following times and places:

Name	Date	Time	Full Address of Service
MURIEL LUBA MINTZ	5/23/2017	9:10AM	201 CAROLINE ST HOUSTON Tx 77002

Fee $ ~~0.00~~ 75.00

by Deputy Oliver Davis
Printed

Deputy Signature

Attempts: 2

Alan Rosen , Constable Precinct #1
Harris County Texas
1302 Preston, 3rd Floor Houston Texas 77002

PITRE
LAW GROUP
8303 SW Freeway, Ste. 110
Houston, TX 77074
Teresa K. Pitre
281-972-9676

J06716835

STAN STANART
COUNTY CLERK, HARRIS COUNTY, TEXAS
PROBATE COURTS DEPARTMENT

County Probate Court No. 2

PERSONAL CITATION

RETURNED
SERVED

The State of Texas { **Docket No. 456059** Receipt No. PB-2017-52161 05-22 $75

County of Harris { **In the Estate of: Muriel Luba Mintz, Incap.**

To: Muriel Luba Mintz, 12808 W. Airport, Ste. 255C, Sugar Land, Texas 77478, or other location.

Greetings:

You are hereby commanded to appear by filing a written contest or answer on said **Application for Appointment of Permanent Guardian of the Person and Estate** filed March 8, 2017; **Motion for Independent Medical Examination** filed March 8, 2017 **& Answer of Attorney ad Litem in Guardianship Proceeding** filed May 11, 2017 hereto attached before the Honorable County Probate Court No. 2, of Harris County, Texas, on or before 10 o'clock a.m. of the Monday next after the expiration of 10 days after the date of service hereof.

Issued and given under my hand of said court, at Houston, Texas, on this the 22nd day of May, 2017.

(SEAL)

Stan Stanart, County Clerk
County Probate Court No. 2
201 Caroline, Room 800
Harris County, Texas

Charlene Rosser
Deputy County Clerk

ATTORNEY: Jason Ostrom
6363 Woodway, Ste. 300
Houston, TX 77057
713-863-8891

FILED
2017 MAY 25 PM 1:03
Stan Stanart
COUNTY CLERK
HARRIS COUNTY, TEXAS

OFFICER'S RETURN

THE STATE OF TEXAS §
COUNTY OF _____§

PERSONALLY APPEARED before me, the undersigned authority, _____.

_____, who being by me duly sworn, deposes and says that in
(Name of Serving Officer)

the County of _____, State of Texas, on day of _____, _____,

came to hand a true copy of the Citation, together with the _____, was delivered to the person directed to be served at the following time(s) and place(s), to-wit:

NAME	DATE			TIME		PLACE
	Month	Day	Year	Hour	Min.	

_____
Sheriff

Constable _____ County, Texas

Sworn to and subscribed before me, this _____ day of _____.

(SEAL)

_____
(Give name and official capacity such as Notary Public)

Fees for Serving: $_____

OFFICER'S RETURN

Came to hand on _____, at _____ o'clock _____.M. and

executed on _____, at _____ o'clock _____.M. by

causing a true copy hereof to be published one time at least 10 days before the return day hereof in the _____

_____, a newspaper published at _____, in Harris County,
Texas. This return is accompanied by the affidavit of the publisher of said newspaper as required by law.

_____
Sheriff-Constable, Harris County, Texas

Fee: $_____ By _____ Deputy

OFFICER'S RETURN

Came to hand on _____, at _____ o'clock _____.M. and

executed on _____, at _____ o'clock _____.M. by
posting a true copy of the above Citation for ten days, exclusive of the day of posting, before the return day thereof, at the Courthouse door, of County of Harris, State of Texas, to-wit:

_____,thru _____.

_____
Sheriff-Constable, Harris County, Texas

Fee: $_____ By _____ Deputy

Form No. I-02-79 (Rev. 09/23/2011)

Constable Return Of Individual

Cause #: 456059 Tracking #: J06716835

In the case of THE STATE OF TEXAS VS IN THE ESTATE OF:MURIEL LUBA MINTZ, INCAPACIATED a CITATION and attached APPLICATION FOR APPOINTMENT OF PERMANENT GUARDIAN OF THE PERSON AND ESTATE was issued by the Probate Court No. 2 court of Harris County, TX and came to hand on the 23 day of May , 2017 at 8:16AM to be delivered at 201 CAROLINE ST , HOUSTON , Tx 77002 by delivering to: MURIEL LUBA MINTZ

Service of Individual

Executed in Harris County County, Texas by delivering to each of the within name defendant(s) by PERSONAL SERVICE ; a true copy of this CITATION together with the accompanying copy of the APPLICATION FOR APPOINTMENT OF PERMANENT GUARDIAN OF THE PERSON AND ESTATE , at the following times and places:

Name	Date	Time	Full Address of Service
MURIEL LUBA MINTZ	5/23/2017	9:10AM	201 CAROLINE ST HOUSTON Tx 77002

Fee $ ~~0.00~~ 75.00

by Deputy Oliver Davis
Printed

Deputy Signature

Attempts: 2

Alan Rosen , Constable Precinct #1
Harris County Texas
1302 Preston, 3rd Floor Houston Texas 77002

PITRE
LAW GROUP
8303 SW Freeway, Ste. 110
Houston, TX 77074
Teresa K. Pitre
281-972-9676

STAN STANART
COUNTY CLERK, HARRIS COUNTY, TEXAS
PROBATE COURTS DEPARTMENT

County Probate Court No. 2

PERSONAL CITATION – APPLICATION FOR APPOINTMENT OF PERMANENT GUARDIAN OF THE PERSON AND ESTATE & MOTION FOR INDEPENDENT MEDICAL EXAM

The State of Texas { **Docket No. 456059** Receipt No. Private Service
{
County of Harris { **In the Estate of: Muriel Luba Mintz, Incapacitated**

To: **Muriel Luba Mintz, Clarewood House, 7400 Clarewood Drive, #518, Houston, Texas 77036.**

RETURNED
SERVED

Greetings:

You are hereby commanded to appear by filing a written contest or answer on said **Application for Appointment of Permanent Guardian of the Person and Estate & Motion for Independent Medical Examination,** filed March 8, 2017, hereto attached before the Honorable County Probate Court No. 2, of Harris County, Texas, on or before 10:00 o'clock a.m. of the Monday next after the expiration of 10 days after the date of service hereof.

Issued and given under my hand of said court, at Houston, Texas, on this the 24th day of March, 2017.

(Seal)

Stan Stanart, County Clerk
County Probate Court No. 2
201 Caroline, Room 800
Harris County, Texas

Allen Hurley
Deputy County Clerk

Attorney: Julia R. Hayes
1235 North Loop West, Suite 907
Houston, Texas 77008
713-880-3939

FILED
2017 APR -4 PM 3:41
COUNTY CLERK

OFFICER'S RETURN

THE STATE OF TEXAS §
COUNTY OF Harris §

PERSONALLY APPEARED before me, the undersigned authority, _____

Paul Nolen, who being by me duly sworn, deposes and says that in
(Name of Serving Officer)

the County of Harris, State of Texas, on day of April 30, 2017, came to hand a true copy of the Citation, together with the Application for Appointment of Permanent Guardian of the person And Estate Motion for Independent Medical Examination, was delivered to the person directed to be served at the following time(s) and place(s), to-wit:

NAME	DATE			TIME		PLACE
	Month	Day	Year	Hour	Min.	
Muriel Luba Mintz	4	3	2017	1:	00 P.M	1022 Northwick Dr.
						Pearland TX
						77584

Paul Nolen SCH# 6218 Exp. 12.31.18

~~Constable~~ _____ Sheriff

_____ County, Texas

Sworn to and subscribed before me, this 4 day of April 2017.

(SEAL)

WILLIAM J KESMAN
Notary Public, State of Texas
Comm. Expires 07-30-2020
Notary ID 129072251

_____
(Give name and official capacity such as Notary Public)

Fees for Serving: $_____

OFFICER'S RETURN

Came to hand on _____, at _____ o'clock _____.M. and

executed on _____, at _____ o'clock _____.M. by

causing a true copy hereof to be published one time at least 10 days before the return day hereof in the _____

_____, a newspaper published at _____, in Harris County,
Texas. This return is accompanied by the affidavit of the publisher of said newspaper as required by law.

_____
Sheriff-Constable, Harris County, Texas

Fee: $_____ By _____ Deputy

OFFICER'S RETURN

Came to hand on _____, at _____ o'clock _____.M. and

executed on _____, at _____ o'clock _____.M. by
posting a true copy of the above Citation for ten days, exclusive of the day of posting, before the return day thereof, at the Courthouse door, of County of Harris, State of Texas, to-wit:

_____,thru _____.

_____
Sheriff-Constable, Harris County, Texas

Fee: $_____ By _____ Deputy

Form No. I-02-79 (Rev. 09/23/2011)

4/1/16 Updated legal POA to replace fraud POA filed @ county records 4/17/17

Statutory Durable Power of Attorney of Muriel L. Mintz

NOTICE: THE POWERS GRANTED BY THIS DOCUMENT ARE BROAD AND SWEEPING. THEY ARE EXPLAINED IN THE DURABLE POWER OF ATTORNEY ACT, SUBTITLE P, TITLE 2, ESTATES CODE. IF YOU HAVE ANY QUESTIONS ABOUT THESE POWERS, OBTAIN COMPETENT LEGAL ADVICE. THIS DOCUMENT DOES NOT AUTHORIZE ANYONE TO MAKE MEDICAL AND OTHER HEALTH-CARE DECISIONS FOR YOU. YOU MAY REVOKE THIS POWER OF ATTORNEY IF YOU LATER WISH TO DO SO.

You should select someone you trust to serve as your agent (attorney in fact). Unless you specify otherwise, generally the agent's (attorney in fact's) authority will continue until:

(1) you die or revoke the power of attorney;

(2) your agent (attorney in fact) resigns or is unable to act for you; or

(3) a guardian is appointed for your estate.

I, **Muriel L. Mintz**, 7400 Clarewood #518, Houston, TX, 77036 hereby revoke my Statutory Durable Power of Attorney dated October 28, 2015 and now appoint:

Barbara Mintz Latham
1022 Northwick Drive, Pearland, TX 77584

as my agent (attorney in fact) to act alone for me in any lawful way with respect to all of the following powers that I have initialed below.

TO GRANT ALL OF THE FOLLOWING POWERS, INITIAL THE LINE IN FRONT OF (N) AND IGNORE THE LINES IN FRONT OF THE OTHER POWERS LISTED IN (A) THROUGH (M).

TO GRANT A POWER, YOU MUST INITIAL THE LINE IN FRONT OF THE POWER YOU ARE GRANTING.

TO WITHHOLD A POWER, DO NOT INITIAL THE LINE IN FRONT OF THE POWER. YOU MAY, BUT DO NOT NEED TO, CROSS OUT EACH POWER WITHHELD.

____ (A) Real property transactions;
____ (B) Tangible personal property transactions;
____ (C) Stock and bond transactions;
____ (D) Commodity and option transactions;

____ (E) Banking and other financial institution transactions;
____ (F) Business operating transactions;
____ (G) Insurance and annuity transactions;
____ (H) Estate, trust, and other beneficiary transactions;
____ (I) Claims and litigation;
____ (J) Personal and family maintenance;
____ (K) Benefits from social security, Medicare, Medicaid, or other governmental programs or civil or military service;
____ (L) Retirement plan transactions;
____ (M) Tax matters;
MM (N) ALL OF THE POWERS LISTED IN (A) THROUGH (M). YOU DO NOT HAVE TO INITIAL THE LINE IN FRONT OF ANY OTHER POWER IF YOU INITIAL LINE (N).

IF LINE N ABOVE IS INITIALED THIS DOCUMENT SHALL BE CONSTRUED AND INTERPRETED AS A GENERAL POWER OF ATTORNEY AND MY AGENT (ATTORNEY IN FACT) SHALL HAVE THE AUTHORITY, WITHOUT LIMITATION, TO PERFORM OR UNDERTAKE ANY ACTION I COULD PERFORM OR UNDERTAKE IF I WERE PERSONALLY PRESENT. MY INTENTION IS TO GRANT AND VEST IN MY AGENT A FULL, COMPLETE AND UNIVERSAL POWER OF ATTORNEY TO BE EXERCISED BY MY AGENT IN THE SOLE AND INDEPENDENT DISCRETION OF MY AGENT AS FULLY AS I MIGHT OR COULD DO IF I WERE PRESENT AND ACTING ON MY OWN. THE ABOVE LISTING OF POWERS, AND THE "SPECIAL INSTRUCTIONS" SET OUT BELOW, ARE BY WAY OF EXAMPLE ONLY AND ARE NOT IN ANY WAY INTENDED TO LIMIT THE COMPLETE AND UNIVERSAL POWER I INTEND, AND BY THE EXECUTION OF THIS DOCUMENT, DO GRANT TO MY AGENT.

SPECIAL INSTRUCTIONS:

1. **To make gifts of any or all of my property to**, or to pay amounts on behalf of (including transfers which are made outright, in trust or otherwise), **any one or more of my descendants (including my agent, if my agent is a descendant of mine)** or to any charitable organization to which deductible gifts may be made under the income and gift tax provisions of the Internal Revenue Code of 1986, as amended, (the "Code") if, in the sole opinion of my agent, such gifts would be made by me during my capacity. I understand that the gifting authority I am granting to my agent may result in distributions of my assets in a manner that does not reflect the terms of a Will, Trust, Bank or Investment Account with Rights of Survivorship or a Payable on Death beneficiary, Life Insurance Policy, Annuity, IRA, or other Estate Planning document I may have executed.

2. To take any action necessary in order to seek qualification, on my behalf, for any and all government benefits that I may be entitled to including, but not limited to, Social Security Disability, Medicaid, and Medicare. This power also includes the right to

sell or swap any of my property or to exchange any property for assets that would be exempt under the rules of these programs.

3. To indemnify and hold harmless any third party dealing with my Agent who accepts and acts under this Power of Attorney from and against any and all claims, demands, losses, damages, actions and causes of action that the third party may sustain or incur in connection with accepting and acting under this Power of Attorney.

4. To take legal action to compel third parties to recognize the validity of this instrument, and the power to sue for damages, both punitive and actual, in the case of a refusal by a third party to honor this power.

5. To exercise all of the powers and authority given to trustees by the trust laws of the State of Texas.

6. To create revocable or irrevocable trusts for any reason whatsoever and to transact business on my behalf with regard to such entity or entities, including making transfers of any or all of the assets which I own, or in which I have an ownership interest, or over which I have control, into such entity or entities.

7. To transfer any or all of the assets which I own, or in which I have an ownership interest, or over which I have control, to a trust of which I or my descendants or both are the present or contingent beneficiaries.

8. To create a trust, or trusts, and/or transfer any or all of the assets which I own, or in which I have an ownership interest, or over which I have control, to such trust, or trusts, if, in my Agent's sole discretion, this is necessary or will assist in qualifying me for government benefit programs and/or preserving my assets for my descendants.

9. The power to take any and all actions, and to execute any and all documents, which, in the sole judgment of my agent, are necessary in connection with the sale, gift, transfer, lease or management of any real estate I may own. I may have attached a list of real estate that I currently own as an exhibit to this Power of Attorney. This list is not meant as a limitation on this Power of Attorney but is intended to authorize any Title Company to honor my intentions as set forth herein. If no such list is attached or if the list does not include all real property this shall not in any way be construed as an intention to limit the authority to my agent in connection with the sale, gift, transfer, lease or management of any real estate I may own or in which I have any ownership interest. Any Title Company acting under this Power of Attorney will be indemnified by provisions set forth elsewhere in the Power of Attorney.

10. To exercise any duties or powers vested in me, either solely or jointly, as a settlor, executor, administrator, trustee, custodian, agent, director, partner or other fiduciary, so far as that duty or power may be so delegated by me.

11. To take any action with regard to any life insurance policies I own or may own in the

future if, in the sole opinion of my agent, such action will assist me in obtaining or maintaining any and all government benefits including, but not limited to, Social Security Disability, Medicaid, and Medicare.

12. My agent shall have the power and authority to create a trust for my benefit, naming my agent or any substitute or successor agents named in this instrument as trustee or, if my agent so chooses, naming a bank or trust company with assets under management of $100 million or more as trustee, which trust may also benefit any of my descendants and/or any devisee or beneficiary under what my agent reasonably believes is my latest validly executed will, and to transfer all or any part of my property or estate to the trust so created or to any existing trust of which I am a Settlor, a beneficiary, or both, even though my agent may be the trustee. Any trust created by my agent or to which my agent transfers property under this provision may contain such dispositive provisions as my agent shall deem appropriate, so long as they are consistent with this provision, including but not limited to placing assets in a trust which will be protected from and/or assist in qualifying me or a member of my family for Medicaid or other governmental benefits.

13. To represent me in all tax matters; to prepare, sign and file federal, state or local income, personal property, gift or other tax returns of all kinds, including, where appropriate, joint returns, FICA returns, payroll tax returns, claims for refunds, requests for extensions of time, protests or petitions to administrative agencies or courts regarding tax matters, and any and all other tax related documents, including, but not limited to, consents and agreements under Section 2032A of the Internal Revenue Code, as amended, or any successor section thereto and, where appropriate, consents to split gifts, closing agreements, extensions or waivers of the period of limitations and any power of attorney required by the Internal Revenue Service or any state or local taxing authority with respect to any tax year between the years 1950 and 2050; to pay taxes due and to collect and make such disposition of refunds as my Agent shall deem appropriate; to post bonds, receive confidential information and contest deficiencies determined by the Internal Revenue Service or any state or local taxing authority, to exercise any elections I may have under federal, state or local tax law, and generally to represent me or to obtain professional representation for me in all tax matters and proceedings of all kinds for all periods between the years 1950 and 2050 before all officers of the Internal Revenue Service and state and local authorities or in any court; and to engage, compensate and discharge lawyers, accountants and other tax and financial advisers and consultants who represent or assist me in connection with any and all tax matters involving or in any way related to me or any property in which I have any interest or for which I bear any responsibility.

Without limiting the authority of my agent with respect to tax matters as provided above, I specifically authorize my agent to represent me, and to appoint an agent or agents to represent me, before the Internal Revenue Service or any state or taxing authority by completing, signing and delivering IRS Form 2848 or any other governmental form.

UNLESS YOU DIRECT OTHERWISE ABOVE, THIS POWER OF ATTORNEY IS EFFECTIVE IMMEDIATELY AND WILL CONTINUE UNTIL IT IS REVOKED.

CHOOSE ONE OF THE FOLLOWING ALTERNATIVES BY CROSSING OUT THE ALTERNATIVE NOT CHOSEN:

(A) This power of attorney is not affected by my subsequent disability or incapacity.

~~(B) This power of attorney becomes effective upon my disability or incapacity.~~

YOU SHOULD CHOOSE ALTERNATIVE (A) IF THIS POWER OF ATTORNEY IS TO BECOME EFFECTIVE ON THE DATE IT IS EXECUTED.

IF NEITHER (A) NOR (B) IS CROSSED OUT, IT WILL BE ASSUMED THAT YOU CHOSE ALTERNATIVE (A).

If Alternative (B) is chosen and a definition of my disability or incapacity is not contained in this power of attorney, I shall be considered disabled or incapacitated for purposes of this power of attorney if a physician certifies in writing at a date later than the date this power of attorney is executed that, based on the physician's medical examination of me, I am mentally incapable of managing my financial affairs. I authorize the physician who examines me for this purpose to disclose my physical or mental condition to another person for purposes of this power of attorney. A third party who accepts this power of attorney is fully protected from any action taken under this power of attorney that is based on the determination made by a physician of my disability or incapacity.

I agree that any third party who receives a copy of this document may act under it. Revocation of the durable power of attorney is not effective as to a third party until the third party receives actual notice of the revocation. I agree to indemnify the third party for any claims that arise against the third party because of reliance on this power of attorney.

If the agent named by me dies, becomes legally disabled, resigns, or refuses to act, I name the following (each to act alone and successively, in the order named) as successor(s) to that agent:

Donald Mintz; then

Monte S. Donaldson

Signed this 1st day of April 2016.

Muriel L. Mintz

STATE OF TEXAS
COUNTY OF HARRIS

This document was acknowledged before me on April 1, 2016 by Muriel L. Mintz.

Notary Public, State of Texas

JAMES C. MULDER
MY COMMISSION EXPIRES
June 4, 2016

Filed 10/28/15
Posted online
not in Don's original Application for guardian 3/8/17

456059

Statutory Durable Power of Attorney
of
Muriel L. Mintz

NOTICE: THE POWERS GRANTED BY THIS DOCUMENT ARE BROAD AND SWEEPING. THEY ARE EXPLAINED IN THE DURABLE POWER OF ATTORNEY ACT, SUBTITLE P, TITLE 2, ESTATES CODE. IF YOU HAVE ANY QUESTIONS ABOUT THESE POWERS, OBTAIN COMPETENT LEGAL ADVICE. THIS DOCUMENT DOES NOT AUTHORIZE ANYONE TO MAKE MEDICAL AND OTHER HEALTH-CARE DECISIONS FOR YOU. YOU MAY REVOKE THIS POWER OF ATTORNEY IF YOU LATER WISH TO DO SO.

You should select someone you trust to serve as your agent (attorney in fact). Unless you specify otherwise, generally the agent's (attorney in fact's) authority will continue until:

(1) you die or revoke the power of attorney;

(2) your agent (attorney in fact) resigns or is unable to act for you; or

(3) a guardian is appointed for your estate.

I, **Muriel L. Mintz**, 7400 Clarewood #518, Houston, TX, appoint:

Barbara Mintz Latham
1022 Northwick Drive, Pearland, TX 77584

and/or:

Donald Mintz
3519 Yupon, Houston, TX 77006

as my co-agents (attorney in fact) and either may act alone for me in any lawful way with respect to all of the following powers that I have initialed below.

TO GRANT ALL OF THE FOLLOWING POWERS, INITIAL THE LINE IN FRONT OF (N) AND IGNORE THE LINES IN FRONT OF THE OTHER POWERS LISTED IN (A) THROUGH (M).

TO GRANT A POWER, YOU MUST INITIAL THE LINE IN FRONT OF THE POWER YOU ARE GRANTING.

TO WITHHOLD A POWER, DO NOT INITIAL THE LINE IN FRONT OF THE POWER. YOU MAY, BUT DO NOT NEED TO, CROSS OUT EACH POWER WITHHELD.

____ (A) Real property transactions;
____ (B) Tangible personal property transactions;

____ (C) Stock and bond transactions;
____ (D) Commodity and option transactions;
____ (E) Banking and other financial institution transactions;
____ (F) Business operating transactions;
____ (G) Insurance and annuity transactions;
____ (H) Estate, trust, and other beneficiary transactions;
____ (I) Claims and litigation;
____ (J) Personal and family maintenance;
____ (K) Benefits from social security, Medicare, Medicaid, or other governmental programs or civil or military service;
____ (L) Retirement plan transactions;
____ (M) Tax matters;
m.m. (N) ALL OF THE POWERS LISTED IN (A) THROUGH (M). YOU DO NOT HAVE TO INITIAL THE LINE IN FRONT OF ANY OTHER POWER IF YOU INITIAL LINE (N).

IF LINE N ABOVE IS INITIALED THIS DOCUMENT SHALL BE CONSTRUED AND INTERPRETED AS A GENERAL POWER OF ATTORNEY AND MY AGENT (ATTORNEY IN FACT) SHALL HAVE THE AUTHORITY, WITHOUT LIMITATION, TO PERFORM OR UNDERTAKE ANY ACTION I COULD PERFORM OR UNDERTAKE IF I WERE PERSONALLY PRESENT. MY INTENTION IS TO GRANT AND VEST IN MY AGENT A FULL, COMPLETE AND UNIVERSAL POWER OF ATTORNEY TO BE EXERCISED BY MY AGENT IN THE SOLE AND INDEPENDENT DISCRETION OF MY AGENT AS FULLY AS I MIGHT OR COULD DO IF I WERE PRESENT AND ACTING ON MY OWN. THE ABOVE LISTING OF POWERS, AND THE "SPECIAL INSTRUCTIONS" SET OUT BELOW, ARE BY WAY OF EXAMPLE ONLY AND ARE NOT IN any WAY INTENDED TO LIMIT THE COMPLETE AND UNIVERSAL POWER I INTEND, AND BY THE EXECUTION OF THIS DOCUMENT, DO GRANT TO MY AGENT.

SPECIAL INSTRUCTIONS:

1. **To make gifts of any or all of my property to,** or to pay amounts on behalf of (including transfers which are made outright, in trust or otherwise), **any one or more of my descendants (including my agent, if my agent is a descendant of mine)** or to any charitable organization to which deductible gifts may be made under the income and gift tax provisions of the Internal Revenue Code of 1986, as amended, (the "Code") if, in the sole opinion of my agent, such gifts would be made by me during my capacity. I understand that the gifting authority I am granting to my agent may result in distributions of my assets in a manner that does not reflect the terms of a Will, Trust, Bank or Investment Account with Rights of Survivorship or a Payable on Death beneficiary, Life Insurance Policy, Annuity, IRA, or other Estate Planning document I may have executed.

2. To take any action necessary in order to seek qualification, on my behalf, for any and all government benefits that I may be entitled to including, but not limited to, Social

Security Disability, Medicaid, and Medicare. This power also includes the right to sell or swap any of my property or to exchange any property for assets that would be exempt under the rules of these programs.

3. To indemnify and hold harmless any third party dealing with my Agent who accepts and acts under this Power of Attorney from and against any and all claims, demands, losses, damages, actions and causes of action that the third party may sustain or incur in connection with accepting and acting under this Power of Attorney.

4. To take legal action to compel third parties to recognize the validity of this instrument, and the power to sue for damages, both punitive and actual, in the case of a refusal by a third party to honor this power.

5. To exercise all of the powers and authority given to trustees by the trust laws of the State of Texas.

6. To create revocable or irrevocable trusts for any reason whatsoever and to transact business on my behalf with regard to such entity or entities, including making transfers of any or all of the assets which I own, or in which I have an ownership interest, or over which I have control, into such entity or entities.

7. To transfer any or all of the assets which I own, or in which I have an ownership interest, or over which I have control, to a trust of which I or my descendants or both are the present or contingent beneficiaries.

8. To create a trust, or trusts, and/or transfer any or all of the assets which I own, or in which I have an ownership interest, or over which I have control, to such trust, or trusts, if, in my Agent's sole discretion, this is necessary or will assist in qualifying me for government benefit programs and/or preserving my assets for my descendants.

9. The power to take any and all actions, and to execute any and all documents, which, in the sole judgment of my agent, are necessary in connection with the sale, gift, transfer, lease or management of any real estate I may own. I may have attached a list of real estate that I currently own as an exhibit to this Power of Attorney. This list is not meant as a limitation on this Power of Attorney but is intended to authorize any Title Company to honor my intentions as set forth herein. If no such list is attached or if the list does not include all real property this shall not in any way be construed as an intention to limit the authority to my agent in connection with the sale, gift, transfer, lease or management of any real estate I may own or in which I have any ownership interest. Any Title Company acting under this Power of Attorney will be indemnified by provisions set forth elsewhere in the Power of Attorney.

10. To exercise any duties or powers vested in me, either solely or jointly, as a settlor, executor, administrator, trustee, custodian, agent, director, partner or other fiduciary, so far as that duty or power may be so delegated by me.

Original 10/30/2006 Filed 9/1/15 with county records

20150397945
09/01/2015 RP2 $24.00

STATUTORY DURABLE POWER OF ATTORNEY

NOTICE: THE POWERS GRANTED BY THIS DOCUMENT ARE BROAD AND SWEEPING. THEY ARE EXPLAINED IN THE DURABLE POWER OF ATTORNEY ACT, CHAPTER XII, TEXAS PROBATE CODE. IF YOU HAVE ANY QUESTIONS ABOUT THESE POWERS, OBTAIN COMPETENT LEGAL ADVICE. THIS DOCUMENT DOES NOT AUTHORIZE ANYONE TO MAKE MEDICAL AND OTHER HEALTH-CARE DECISIONS FOR YOU. YOU MAY REVOKE THIS POWER OF ATTORNEY IF YOU LATER WISH TO DO SO.

I, MURIEL L. MINTZ, appoint:

Name: BARBARA ANN LATHAM

Address: 1022 Northwick
Pearland, Texas 77584

Phone No.: 713-824-6890

as my agent (attorney-in-fact) to act for me in any lawful way with respect to all of the following powers except for a power that I have crossed out below.

TO WITHHOLD A POWER, YOU MUST CROSS OUT EACH POWER WITHHELD.

(A) Real property transactions;
(B) Tangible personal property transactions;
(C) Stock and bond transactions;
(D) Commodity and option transactions;
(E) Banking and other financial institution transactions;
(F) Business operating transactions;
(G) Insurance and annuity transactions;
(H) Estate, trust, and other beneficiary transactions;
(I) Claims and litigation;
(J) Personal and family maintenance;
(K) Benefits from social security, Medicare, Medicaid, or other governmental programs or civil or military service;
(L) Retirement plan transactions;
(M) Tax matters.

IF NO POWER LISTED ABOVE IS CROSSED OUT, THIS DOCUMENT SHALL BE CONSTRUED AND INTERPRETED AS A GENERAL POWER OF ATTORNEY AND MY AGENT (ATTORNEY IN FACT) SHALL HAVE THE POWER AND AUTHORITY TO PERFORM OR UNDERTAKE ANY ACTION I COULD PERFORM OR UNDERTAKE IF I WERE PERSONALLY PRESENT.

SPECIAL INSTRUCTIONS:

ON THE FOLLOWING LINES YOU MAY GIVE SPECIAL INSTRUCTIONS LIMITING OR EXTENDING THE POWERS GRANTED TO YOUR AGENT.

None at this time.

UNLESS YOU DIRECT OTHERWISE ABOVE, THIS POWER OF ATTORNEY IS EFFECTIVE IMMEDIATELY AND WILL CONTINUE UNTIL IT IS REVOKED.

CHOOSE ONE OF THE FOLLOWING ALTERNATIVES BY CROSSING OUT THE ALTERNATIVE NOT CHOSEN:

(A) This power of attorney is not affected by my subsequent disability or incapacity.

(B) This power of attorney becomes effective upon my disability or incapacity.

YOU SHOULD CHOOSE ALTERNATIVE (A) IF THIS POWER OF ATTORNEY IS TO BECOME EFFECTIVE ON THE DATE IT IS EXECUTED.

IF NEITHER (A) NOR (B) IS CROSSED OUT, IT WILL BE ASSUMED THAT YOU CHOSE ALTERNATIVE (A).

If Alternative (B) is chosen and a definition of my disability or incapacity is not contained in this power of attorney, I shall be considered disabled or incapacitated for purposes of this power of attorney if a physician certifies in writing at a date later than the date this power of attorney is executed that, based on the physician's medical examination of me, I am mentally incapable of managing my financial affairs. I authorize the physician who examines me for this purpose to disclose my physical or mental condition to another person for purposes of this power of attorney. A third party who accepts this power of attorney is fully protected from any action taken under this power of attorney that is based on the determination made by a physician of my disability or incapacity.

I agree that any third party who receives a copy of this document may act under it. Revocation of the durable power of attorney is not effective as to a third party until the third party receives actual notice of the revocation. I agree to indemnify the third party for any claims that arise against the third party because of reliance on this power of attorney.

If an agent named by me dies, becomes legally disabled, resigns, or refuses to act, I name the following (each to act alone and successively, in the order named) as successor(s) to that agent:

return to;
Barbara Latham
1022 Northwick Dr.
Pearland, TX 77584

A. First Alternate Agent

Name: DONALD M. MINTZ

Address: 3400 Welborn St.
Dallas, Texas 75219

Phone No.: 512-694-2391

B. Second Alternate Agent

Name: MONTE S. DONALDSON

Address: 4615 Southwest Freeway, Suite 600
Houston, Texas 77027

Phone No.: 713-621-5222

NOTICE: I REVOKE ANY PRIOR STATUTORY DURABLE POWER OF ATTORNEY, SPECIFICALLY INCLUDING THE POWER GRANTED TO ESTELLE M. NELSON ON OCTOBER 18, 2004

Signed this 30 day of October, 2006.

Muriel L. Mintz
MURIEL L. MINTZ

THE STATE OF TEXAS §
§
COUNTY OF HARRIS §

This document was acknowledged before me on the 30TH day of October, 2006, by MURIEL L. MINTZ.

TAMMY DIANNE MCCORKLE NOTARY PUBLIC STATE OF TEXAS EXPIRES 12-09-2007

Tammy McCorkle
NOTARY PUBLIC IN AND FOR
THE STATE OF TEXAS

THE ATTORNEY IN FACT OR AGENT, BY ACCEPTING OR ACTING UNDER THE APPOINTMENT, ASSUMES THE FIDUCIARY AND OTHER LEGAL RESPONSIBILITIES OF AN AGENT.

RP-2015-641-1866

FILED

2015 SEP -1 PM 12:40

Stan Stanart

COUNTY CLERK
HARRIS COUNTY, TEXAS

Stan Stanart
COUNTY CLERK
HARRIS COUNTY, TEXAS

SEP - 1 2015

ANY PROVISION HEREIN WHICH RESTRICTS THE SALE RENTAL, OR USE OF THE DESCRIBED REAL PROPERTY BECAUSE OF COLOR OR RACE IS INVALID AND UNENFORCEABLE UNDER FEDERAL LAW.

THE STATE OF TEXAS
COUNTY OF HARRIS

I hereby certify that this instrument was FILED in the Number Sequence on the date and at the time stamped hereon by me; and was duly RECORDED, in the Official Public Records of Real Property of Harris County, Texas

STAN STANART
COUNTY CLERK
POST OFFICE BOX 1525
HOUSTON, TEXAS 77251-1525

RETURN SERVICE
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Original
Filed
POA

HBDVSSB 77584

314

20150397945

Please find enclosed your instrument as recorded in the Office of the County Clerk. It has been a pleasure to serve you.

Stan Stanart

Stan Stanart
County Clerk
Harris County, Texas

20150397945

BARBARA LATHAM
1022 NORTHWICK DR
PEARLAND, TX 77584

2006

DECLARATION OF GUARDIAN IN THE EVENT OF LATER INCAPACITY OR NEED OF GUARDIAN

I, MURIEL L. MINTZ, Declarant, make this Declaration of Guardian, to operate if the need for a guardian for me later arises.

1. I designate BARBARA ANN LATHAM to serve as guardian of my person, DONALD M. MINTZ as first alternate guardian of my person, and MONTE S. DONALDSON as second alternate guardian of my person.

2. I designate BARBARA ANN LATHAM to serve as guardian of my estate, DONALD M. MINTZ as first alternate guardian of my estate, and MONTE S. DONALDSON as second alternate guardian of my estate.

3. If any guardian or alternate guardian dies, fails, or refuses to qualify, or resigns, the next named alternate guardian succeeds the prior named guardian and becomes my guardian.

4. I expressly disqualify the following persons from serving as guardian of my person:

None at this time.

5. I expressly disqualify the following persons from serving as guardian of my estate:

None at this time.

Signed this 30 day of October, 2006.

Muriel L. Mintz
MURIEL L. MINTZ,
Declarant

Witness
Printed Name: JACK STEPHEN PURSLEY

Address: 9100 WESTHEIMER RD. #223
HOUSTON, TEXAS 77063

Witness
Printed Name: MONTE S. DONALDSON

Address: 8439 Westview
Houston, TX 77055

Self-Proving Affidavit

Before me, the undersigned authority, on this date personally appeared the Declarant and Jack Stephen Pursley and Monte S. Donaldson, as witnesses, and all being duly sworn, the Declarant said that the above instrument was his or her Declaration of Guardian and that the Declarant had made and executed it for the purposes expressed in the declaration. The witnesses declared to me that they are each fourteen (14) years of age or older, that they saw the Declarant sign the declaration, that they signed the declaration as witnesses, and that the Declarant appeared to them to be of sound mind.

Muriel L. Mintz
MURIEL L. MINTZ,
Declarant

Jack Stephen Pursley
Witness
JACK STEPHEN PURSLEY
Printed Name

Monte S. Donaldson
Witness
MONTE S. DONALDSON
Printed Name

SUBSCRIBED AND SWORN TO BEFORE ME by the above named Declarant and witnesses on this 30TH day of October, 2006.

TAMMY DIANNE MCCORKLE NOTARY PUBLIC STATE OF TEXAS EXPIRES 12-09-2007

Tammy McCorkle
NOTARY PUBLIC IN AND FOR
THE STATE OF TEXAS

2006

MEDICAL POWER OF ATTORNEY

DESIGNATION OF HEALTH CARE AGENT.

I, MURIEL L. MINTZ, appoint:

Name: BARBARA ANN LATHAM
Address: 1022 Northwick
Pearland, Texas 77584
Phone No.: 713-824-6890

as my agent to make any and all health care decisions for me, except to the extent I state otherwise in this document. This medical power of attorney takes effect if I become unable to make my own health care decisions and this fact is certified in writing by my physician.

HIPAA AUTHORIZATION.

I further authorize that my agent shall have access to any and all protected health information from any and all covered entities pursuant to 45 C.F.R. §§ 160-164, Health Insurance Portability and Accountability Act ("HIPAA"). This release authority applies to any and all information governed by HIPAA and should be complied with by any and all health care providers and insurance companies that have provided treatment, testing, or services.

"Protected health information" regarding my records is to be given the most liberal interpretation by my health care providers and is to include any and everything regarding my health condition. This authority allows my agent to request and obtain copies of any of the protected health information, including any chemical dependency records, AIDS/HIV testing, results, or treatment, and all other treatment, testing, or records that my agent deems necessary.

This authority shall supercede any prior agreements that I may have executed with my providers regarding access or disclosure or lack thereof of my protected health information.

This authorization only expires upon a written revocation by me delivered to the health care provider.

LIMITATIONS ON THE DECISION-MAKING AUTHORITY OF MY AGENT ARE AS FOLLOWS:

None

DESIGNATION OF ALTERNATE AGENT.

(You are not required to designate an alternate agent but you may do so. An alternate agent may make the same health care decisions as the designated agent if the designated agent is unable or unwilling to act as your agent. If the agent designated is your spouse, the designation is automatically revoked by law if your marriage is dissolved.)

If the person designated as my agent is unable or unwilling to make health care decisions for me, I designate the following persons to serve as my agent to make health care decisions for me as authorized by this document, who serve in the following order:

A. First Alternate Agent

Name: DONALD M. MINTZ
Address: 3400 Welborn St.
Dallas, Texas 75219
Phone No.: 512-694-2391

B. Second Alternate Agent

Name: MONTE S. DONALDSON
Address: 4615 Southwest Freeway, Suite 600
Houston, Texas 77027
Phone No.: 713-621-5222

The original of this document is kept at my home.

The following individuals or institutions have signed copies:

Name: BARBARA ANN LATHAM
Address: 1022 Northwick
Pearland, Texas 77584

Name: DONALD M. MINTZ
Address: 3400 Welborn St.
Dallas, Texas 75219

Name: MONTE S. DONALDSON
Address: 4615 Southwest Freeway, Suite 600
Houston, Texas 77027

DURATION.

I understand that this power of attorney exists indefinitely from the date I execute this document unless I establish a shorter time or revoke the power of attorney. If I am unable to make health care decisions for myself when this power of attorney expires, the authority I have granted to my agent continues to exist until the time I become able to make health care decisions for myself.

(IF APPLICABLE) This power of attorney ends on the following date: N/A

PRIOR DESIGNATIONS REVOKED.

I revoke any prior medical power of attorney, specifically including the power granted to Estelle M. Nelson on October 18, 2004.

STATEMENT OF FIRST WITNESS.

I am not the person appointed as agent by this document. I am not related to the principal by blood or marriage. I would not be entitled to any portion of the principal's estate on the principal's death. I am not the attending physician of the principal or an employee of the attending physician. I have no claim against any portion of the principal's estate on the principal's death. Furthermore, if I am an employee of a health care facility in which the principal is a patient, I am not involved in providing direct patient care to the principal and am not an officer, director, partner, or business office employee of the health care facility or of any parent organization of the health care facility

Signature: Jack Stephen Pursley Date: October 30, 2006
Print Name: JACK STEPHEN PURSLEY
Address: 9100 WESTHEIMER Rd. #223 HOUSTON, TX

SIGNATURE OF SECOND WITNESS.

Signature: Monte S Donaldson Date: 10-30-2006
Print Name: MONTE S. DONALDSON
Address: 8439 Westview, Houston, TX 77055

ACKNOWLEDGMENT OF DISCLOSURE STATEMENT.

I have been provided with a disclosure statement explaining the effect of this document. I have read and understand that information contained in the disclosure statement.

Muriel L. Mintz
MURIEL L. MINTZ

SIGNATURE OF MEDICAL POWER OF ATTORNEY

I sign my name to this Medical Power of Attorney on 30 day of OCTOBER, 2006, at Houston, Texas.

Muriel L. Mintz
MURIEL L. MINTZ

STAN STANART
COUNTY CLERK, HARRIS COUNTY, TEXAS
PROBATE COURTS DEPARTMENT

County Probate Court No. 2

PERSONAL CITATION – APPLICATION FOR APPOINTMENT OF THIRD-PARTY GUARDIAN OF THE PERSON AND ESTATE

The State of Texas { **Docket No. 456059** Receipt No.PB-2017-64478 07-18 $75
{
County of Harris { **In the Estate of: Muriel Luba Mintz, Incapacitated**

RETURNED UNSERVED

To: Muriel Luba Mintz, 1022 Northwick Dr., Pearland, Texas 77584.

Donald M. Mintz filed in County Probate Court No. 2 of Harris County, Texas, on July 18, 2017 an application requesting that **Donald M. Mintz** be appointed Guardian of the **Person and Estate** of Muriel Luba Mintz **Incapacitated** alleging the nature of the disability to be: **Incapacitation.** A copy of the application is attached to this citation.

The court may act on this application at the Harris County Civil Courthouse, 201 Caroline, Room 800, Houston, Texas 77002, at any time on or after 10:00 o'clock a.m. on the first Monday after 10 days following the date this citation is served as required by Texas Estates Code § 1051.101.

You are cited to appear and answer the Application for Appointment to Third-Party Guardian of the Person and Estate within the time indicated above should you desire to do so. Any written contest, objection, intervention, or other answer should be filed with the County Clerk of Harris County, Texas in cause number **456059,** styled **Muriel Luba Mintz, Incapacitated**.

You may wish to consult with an attorney concerning the application and your rights in this case.

You are notified that you have the right under Texas Estates Code Section 1051.252 to file with the clerk a written request that you be notified of any or all specifically designated motions, applications, or pleadings filed by any person, or by a person specifically designated in your request, relating to the application for the guardianship that has been filed or relating to a subsequent guardianship proceeding involving the ward after the guardianship is created, if any. If you make such a request, you are responsible for the fees and costs associated with furnishing you the documents specified in the request. The clerk may require a deposit to cover the estimated costs of furnishing you with the requested notice.

Given under my hand and the seal of the Probate Court of Harris County, Texas at the office of the Harris County Clerk in Houston, Texas on this the 19th day of July, 2017.

(SEAL)

Stan Stanart, County Clerk
County Probate Court No. 2
201 Caroline, Room 800
Harris County, Texas

Karina Marino
Deputy County Clerk

ATTORNEY: Julia R. Hayes
1235 North Loop West, Suite 907
Houston, Texas 77008
713-863-8891

FILED
2017 JUL 21 AM 8:30
Stan Stanart
COUNTY CLERK
HARRIS COUNTY, TEXAS

P.O. Box 1525 ● Houston, TX 77251-1525 ● (713) 274-8585

www.cclerk.hctx.net

Form No. I-02-247 (Rev. 04/30/2013)

OFFICER'S RETURN

THE STATE OF TEXAS §
COUNTY OF _____ §

PERSONALLY APPEARED before me, the undersigned authority, _____

_____, who being by me duly sworn, deposes and says that in
(Name of Serving Officer)

the County of _____, State of Texas, on day of _____, _____,

came to hand a true copy of the Citation, together with the _____, was delivered to the person directed to be served at the following time(s) and place(s), to-wit:

NAME	DATE			TIME		PLACE
	Month	Day	Year	Hour	Min.	

_____
Sheriff

Constable _____ County, Texas

Sworn to and subscribed before me, this _____ day of _____.

(SEAL)

_____
(Give name and official capacity such as Notary Public)

Fees for Serving: $_____

OFFICER'S RETURN

Came to hand on _____ , at _____ o'clock _____.M. and

executed on _____ , at _____ o'clock _____.M. by

causing a true copy hereof to be published one time at least 10 days before the return day hereof in the _____

_____, a newspaper published at _____, in Harris County,
Texas. This return is accompanied by the affidavit of the publisher of said newspaper as required by law.

_____
Sheriff-Constable, Harris County, Texas

Fee: $_____ By _____ Deputy

OFFICER'S RETURN

Came to hand on _____ , at _____ o'clock _____.M. and

executed on _____ , at _____ o'clock _____.M. by
posting a true copy of the above Citation for ten days, exclusive of the day of posting, before the return day thereof, at the Courthouse door, of County of Harris, State of Texas, to-wit:

_____,thru _____.

_____
Sheriff-Constable, Harris County, Texas

Fee: $_____ By _____ Deputy

Form No. 1-02-79 (Rev. 09/23/2011)

APPOINTMENT OF AGENT TO CONTROL DISPOSITION OF REMAINS

I, MURIEL L. MINTZ, 7950 N. Stadium Drive, #24, Harris County, Houston, Texas 77030 being of sound mind, willfully and voluntarily make known my desire that, upon my death, the disposition of my remains shall be controlled by BARBARA ANN LATHAM in accordance with Section 711.002 of the Texas Health and Safety Code and, with respect to that subject only, I hereby appoint such person as my agent (attorney-in-fact).

All decisions made by my agent with respect to the disposition of my remains, including cremation, shall be binding.

SPECIAL DIRECTIONS:

Set forth below are any special directions limiting the power granted to my agent:

AGENT:

Name: BARBARA ANN LATHAM

Address: 1022 Northwick
Pearland, Texas 77584

Phone No.: 713-824-6890

Acceptance of Appointment: Barbara Ann Latham
(Signature of Agent)

Date of Signature: 10/30/06

SUCCESSORS:

If my agent dies, becomes legally disabled, resigns, or refuses to act, I hereby appoint the following persons (each to act alone and successively, in the order named) to serve as my agent (attorney-in-fact) to control the disposition of my remains as authorized by this document:

1. First Successor

Name: DONALD M. MINTZ

Address: 3400 Welborn St.
Dallas, Texas 75219

Phone No.: 512-694-2391

Acceptance of Appointment: _____
(Signature of Agent)

Date of Signature: _____

2. Second Successor

Name: MONTE S. DONALDSON

Address: 4615 Southwest Freeway, Suite 600
Houston, Texas 77027

Phone No: 713-621-5222

Acceptance of Appointment: Monte S Donaldson
(Signature of Agent)

Date of Signature: 10/30/06

DURATION:

This appointment becomes effective upon my death.

PRIOR APPOINTMENTS REVOKED:

I hereby revoke any prior appointment of any person to control the disposition of my remains, specifically including the power granted to Estelle M. Nelson on October 18, 2004.

RELIANCE:

I hereby agree that any cemetery organization, business operating a crematory or columbarium or both, funeral director or embalmer, or funeral establishment who receives a copy of this document may act under it. Any modification or revocation of this document is not effective as to any such party until that party receives actual notice of the modification or revocation. No such party shall be liable because of reliance on a copy of this document.

ASSUMPTION:

THE AGENT, AND EACH SUCCESSOR AGENT, BY ACCEPTING THIS APPOINTMENT, ASSUMES THE OBLIGATIONS PROVIDED IN, AND IS BOUND BY THE PROVISIONS OF, SECTION 711.002 OF THE TEXAS HEALTH AND SAFETY CODE.

Signed this 30 day of OCTOBER, 2006.

Muriel L. Mintz
MURIEL L. MINTZ

THE STATE OF TEXAS §
§
COUNTY OF HARRIS §

This instrument was acknowledged before me on the 30TH day of October, 2006, by MURIEL L. MINTZ.

TAMMY DIANNE MCCORKLE NOTARY PUBLIC STATE OF TEXAS EXPIRES 12-09-2007

Tammy McCorkle
NOTARY PUBLIC
IN AND FOR THE STATE OF TEXAS

NO. 456,059

IN RE GUARDIANSHIP OF	§	**IN PROBATE COURT**
	§	
MURIEL LUBA MINTZ	§	**NUMBER FOUR 2 OF**
	§	
AN INCAPACITATED PERSON	§	**HARRIS COUNTY, TEXAS**

AFFIDAVIT OF BARBARA LATHAM

STATE OF TEXAS §

COUNTY OF BRAZORIA §

BEFORE ME PERSONALLY APPEARED, BARBARA LATHAM, WHO TESTIFIED UNDER OATH AS FOLLOWS:

My name is BARBARA LATHAM. I am over the age of 21, of sound mind, and am in all ways competent to execute this affidavit. It is all based upon my personal knowledge and true and correct. I have never been convicted of a felony or crime involving moral turpitude. All statements in my Temporary Restraining Order against Goldberg and Mintz are true and correct based upon my personal knowledge.

I am writing this affidavit to save my mother's life, who is or was in the hospital under "guard" of Michele Goldberg, who is not a medical professional and knows nothing about my mother's medical conditions or history so that she could provide informed consent. This renders her medical decisions on my mother's behalf criminal battery. I was expressly instructed through an email Goldberg sent to NOT discuss my mother's medical history with anyone at St. Luke's despite the medical emergency and the fact that I know more about my mother's health than most anyone save Estelle Nelsen, my sister who is a geriatric nurse working in home health. There is no reason why both me and my sister as registered nurses, should be prevented from speaking to doctors or nurses at the hospital to help our mother. As an expert under the rules of evidence, duly qualified to testify, and based on extensive knowledge of my mother's health history and current health conditions at 93 years of age, I can testify

that Michele Goldberg is not an expert and cannot state
what is in my mother's best interests, nor can she even give informed consent under the law, rendering her authorization for treatment criminal medical battery.

The hospital is not liable for criminal medical battery because of the emergency but Michele Goldberg is. For the judge to not remove her as my mother's guardian when she is placing her in grave danger is gross negligence, recklessness and may result in imminent death of Muriel Mintz. To hide her true health status and what happened to her as a result of this full may result in Mintz's death. Guardianship is supposed to protect, not conceal the truth.

Muriel Mintz is virtually blind with macular degeneration, and she is quite hearing impaired, and relies on my sister and I to simply know how to care for her because we are both registered nurses. She does not speak up for herself and will not likely tell anyone at the hospital or Goldberg critical medical needs. I am a 30+ year psychiatric and mental health with a master's degree in psychiatric mental health nursing. I am an inactive advanced nurse practitioner and clinical nurse specialist, who was caring for our mother before becoming so stressed by this guardianship proceeding and our brother's malicious actions that I could no longer function. Watching my mother becoming more and more emotionally upset to the point I felt this is affecting her health has caused me to feel terrorized to the point of something like post traumatic stress disorder, which I feel is being intentionally inflicted upon me to cause this very result.

I believe this guardianship was filed by Donald solely to get my mother's money by getting control of my mother. But he clearly had no concern for her person Donald said to my mother "I am taking control of you and I am taking control of your money" and ordered her to stay put at Clarewood. My mother was so upset she came home with me immediately and never wanted to go back. I have a recording of my mother screaming, very upset emotionally about Donald's attempt to "have her declared

incapacitated" and she has not ceased to be emotionally traumatized since this was done to her.

My mother was doing well for several years and not sick for nearly 92 years. Her only health problems were macular degeneration and she had a high risk of fall due to severe low vision problems, and proof of that is the emergency we now face. Michele had just taken Muriel into her custody as temporary guardian assuming liability for her person and decided to give her to Donald Mintz—when this accident occurred. My mother's vision makes it imperative that she has a sitter whenever she is not in a familiar place. She has frequent UTI's as many elderly persons do, but hers is due to overactive bladder, so there are many reasons why she should have had sitter but did not. This put her in the hospital in mere days and I am worried about her breaking a hip or suffering a fatal accident. I also do not believe my mother is capable of caring for her, nor does he have her best interest at heart. I know Goldberg is not capable.

My mother's life is in danger and the criminality of all of this is evident in Goldberg even demonizing my sister in addition to me, never once calling her for information or to consult, nor has she asked Estelle about the funds she outrageously hunts down which do not belong to my mother's estate, but a family trust that is irrevocable, a fact known to Donald Mintz years before he filed this fraudulent guardianship, perjuring himself to say that the trust was revocable and contained my mother's assets.

Either Donald Mintz is more mentally incapacitated than I ever imagined or he is a scam artist who is working with a known crooked attorney to manufacture a scenario that is not remotely true, but is part of a scheme or artifice to defraud by having my mother abducted through a relentless barrage of harassment and terror on me to the point that I could not continue caring for my mother. Clearly, Donald, his attorneys and Goldberg's plan was to wear me out and invade my privacy, while

stealing money and funds having no place in this guardianship. Donald has been focused on taking other people's money for more than 30 years to the point of obsession and his behavior reveals mental illness, including but not limited to obsessive compulsive disorder.

Goldberg is more concerned with covering up and avoiding liability for harming my mother by criminal medical battery (no informed consent) and the proof is in the transparent scheme she is engaging in with my brother and the predictably hostile notes containing false accusations, as she prevents my sister and I from accessing any information about our mother whatsoever. If she were legitimately investigating anything other than how much money to bill my mother's estate (so far 50% of her annual earnings through her pension taken by Michele, along with her IRA which has Michele Goldberg's name on it rather than my mother's.

The scheme is obvious because others have reported the same modus operandi to me before, such as the case of Lily Mason in Judge Rory Olsen's Court. Michele Goldberg immediately began searching for ways to demonize Elizabeth Mason and terrorized her to the point that Elizabeth could no longer handle dealing with her. Michelle Goldberg took her mother Lily Mason from the place she was well cared for and placed her far away from her daughter and the witch hunt began, just like this case. Goldberg used Mason's sister against her just as Goldberg uses Donald against me—to make false outrageous accusations when the only thing Donald cares about is our mother's money. The scheduled visits were not legitimate desires to visit my mother, but calculated to harass me and create reasons to find fault if I failed to show on time. It was another tactic in her arsenal of weapons against me. The entire scheme was to take not only our mother's money but the IRREVOCABLE TRUST given to us by our mother in 2015, which DONALD MINTZ had created, so he knows that he perjured himself telling the court it is revocable. Goldberg is far exceeding her powers under the law and on a fishing expedition to steal my personal funds now and gain access to

accounts that she has no right to see or hinder.

Michelle said that while at Gardens of Bellaire, my mother fell. She said the staff checked on her every 2 hours and found her on the floor. I did not engage in disruptive or argumentative behavior at St Luke's nor did Estelle Nelson. We were treated badly because

Goldberg ensured that the medical professionals there treated us rudely, demanded we leave a public place when we have the constitutional right to see our mother and she has the right to see us and Michelle is breaking the law in blocking us. She is committing torts against my mother of criminal medical battery because she knows nothing about my mother and she cannot give informed consent. She did not even know if my mother had any fatal allergies the hospital should know about and the Court is being grossly negligent in allowing a trust attorney who is a stranger to take my mother against her will and make medical decisions while blocking her daughters from all access to information about what happened to her.

I immediately went to the hospital to see my mother when I got an email from Michelle stating she fell and was there, but I was not to have any discussions with any staff. All I did to merit being slandered again by her is ask for a BLANK HIPPAA FORM, which I intended to leave there, but was refused based upon Donald and Michelle's instructions that we not be privy to any information. Immediately, a male nurse came to the room and said "the two of you need to leave. Donald Mintz is on the phone. He is the court appointed guardian and he wants both of you to leave right away." Estelle told the nurse Donald was not the court appointed guardian, but the temporary guardian was Michelle Goldberg. Predictably, my mother could be dying and Michelle is no where to be found. I suppose it's because she has or is involved in several hundred cases and is too busy to actually tend to her ward.

"Bishop, R.N" said "Michelle Goldberg is on the phone and you two need to

leave right away." Neither I nor Estelle had done anything to merit being told to leave the hospital and what is Goldberg hiding? Estelle got on the phone and asked Michelle "why are you telling me to leave?" She said "I'm telling you to leave right now." Although she claims her issue is with me, not Estelle, she demanded and commanded Estelle leave the hospital and was rude and lied afterwards. She was not there and the prohibition against talking to nursing or medical staff is illegal.

I have never been spoken to by a medical professional that way, much less in an emergency involving my mother. Estelle and I are registered nurses with extensive knowledge of every aspect of my mother's care and no one should be blocking us from communicating with medical professionals or obtaining information on her health especially in an emergency. She is 93 and all of the stress of this guardianship has caused her health to spiral down when she was perfectly healthy before my brother intervened to take her estate and our trust. Michelle is clearly on a witch hunt and outrageously tried to blame me for my mother's hair thinning when my mother's hair has been "balding" for more than a decade. It's genetic and benign. Michelle now outrageously claims that my mother is malnourished when I have taken very good care of her and she has done well in my care for the past 8 months. For a trust lawyer to question the judgment of a physician's assistant, advanced 30 year registered nurse is outrageous and practicing without a license.

My mother said medical personnel told her that she fractured her spine and she told us both that she was in terrible pain. I don't know if the pain was even treated and I have no idea why she was released so quickly at her age with a potential fractured spine. Michelle lied to us and said we could return to see her when Michelle had already taken her away.

Michelle also said she believed Muriel to be malnourished and if that were true, it is another reason she should at least be in rehabilitation or with family. The very

health complaints that Michelle brings up were caused by her witch hunt and threats which have made me and my mother constantly upset and nervous to the point of not sleeping or eating well. My mother is like a prisoner in her care and forced to do what she says regardless of what Muriel wants. Plus Dr. Poa gave her a visual competency test which is one of the reasons she scored so low, along with her hearing impairment which is becoming more severe.

I am extremely worried that my mother is at risk of imminent death and no longer wants to live. She wanted to live with me but Goldberg and my brother made our lives a living Hell with constant harassment to the point we had absolutely no peace for much of this year. It is very upsetting to me that I am being blocked from accessing my mother and helping to ensure she regains her health and I do not understand why any court of law would approve of this behavior on the part of Ms. Goldberg. I have done nothing to Goldberg to make her so hostile to me because I have never been hostile to her.

Since April and the filing of this guardianship, I met with Michelle but until now Michele did not show interest in my mother's health but was only interested in her money I have always had records and could have answered Donald's request for accounting if that's what he wanted as a beneficiary but he never asked for one. Instead, he brought this lawsuit when he is precluded by the trust document itself from suing me because it mandates arbitration and does not allow any litigation. This case is also filed in a county of improper venue (the trust) because exclusive venue is in Brazoria County, where the situs of the trust is and where I live. Donald admits that he abdicated his role as trustee and while he breached his duty to the trust and beneficiaries in simply walking away and not acting as a trustee, he is entitled to an accounting upon request. But I am entitled to 90 days to have the accounting prepared and cannot be forced to give my personal bank account information to him no matter how bad he wants my assets. Before he can even sue to account he was supposed to ask for an accounting and he didn't.

The trust gives me broad discretion provided I comply with its terms and I have not breached my duty to any beneficiary nor have I blocked Donald Mintz's access or participation as a co-trustee. Quite likely due to his failing mental health, and ignorance of his duties as trustee, he simply quit acting as trustee and left the responsibility for managing the trust and caring for my mother, providing for all of her needs, in my lap.

There hasn't been a week that went by since this guardianship began when threats were not issued, upsetting me to the extreme. I have been targeted for harassment and constantly threatened during the past 8 months that they were going to take my mother and had the police called, in addition to APS for welfare checks. As an RN, I should never have been subjected to APS or Police welfare checks, which have been constant. All of this has rattled me to the point that I can hardly function with a clear mind. It is a constant assault emotionally and almost seems geared to breaking me down so that I give up and allow Donald and Michele and his lawyers to violate my mother's rights by falsely imprisoning her against her will, which is sure to cause her to just give up and die because she never wanted to live in a nursing home. She didn't like Clarewood where Donald put her before but he is like a task master.

The collusion of Donald Mintz and Michelle Goldberg is so obvious, you can see it was a pre-meditated scheme to create the adverse interest they needed to take guardianship of my mother and in doing so, encroach upon her assets and our trust. Outrageously Jason Ostrom, Stacy Kelly and Michele Goldberg have seized FDIC insured funds with my name of them and frozen my IRA accounts when no show cause hearing or evidentiary hearing has ever occurred showing I did anything wrong.

Donald lies pathologically. He tells the court the trust is revocable when he is the one who had it made and knows it's irrevocable. He filed guardianship to attach the

trust and lie to create the false accusation that I had taken my mother's money when he knows all of this is false. Donald's mental health has been poor for more than 2 years and some have even asked if he is impaired by drugs or alcohol because his behavior is erratic and dishonest. He has become outright criminal in his lies by perjuring himself to forcibly take my mother, which is in essence what was done by wearing me down to the point of being ill and a nervous wreck fearful that they were coming to take her away constantly. As an RN and victim of this, I can tell you that few people could have endured it as long as I did.

I was forced to bring Muriel to Michele's office and the whole thing seemed like a set up for failure so I gave up. Michelle Goldberg is the most aggressive abusive lawyer I have ever met and if you don't jump when Michele snapped her fingers, along come threats to rattle you emotionally to the point you cannot endure it. I have been public enemy number one since before this guardianship began because Donald and his crooked lawyers engineered the entire fraudulent scheme.

I believe Donald Mintz set this all up prior to 2015 with the goal of demonizing me so that he could take my mother and thereby take everything she owned. But the emergency in this travesty of justice is my mother's life hangs in the balance because as is obvious from Donald dumping our mother in a home without sufficient supervision to avoid injury, he never had the concern about her welfare that is implied in filing a guardianship. He did not consult filing guardianship or the trust with me and has never disclosed information to me about the trust. Don clearly set up the trust for himself and intended to set up and trash me while denying any benefit to Estelle. He has yet to disclose all of his secret fraudulent activities but I recall him getting a power of attorney by having my mom sign the last signature page only. He did not explain the power of attorney he tried to fraudulently use to my mom. He has always tried to run over my mother who fears him.

Right before filing guardianship with a fraudulent affidavit stating that the trust was revocable in support of his guardianship application (for which no need for a guardian existed given my mother's good health), he secured a fraudulent power of attorney to move Muriel Mintz's assets around. Most times he picked up my mom from Clarewood, I would find out later that he was at the bank with mom changing accounts, moving money, changing passwords and addresses to gain control over her money like he demanded for the better part of 40 years. I would have to end up intervening to fix what Donald tried to steal. I finally removed funds to keep him from stealing them because he is a liar and a thief who will do anything for money.

Donald has always had the bizarre need to interfere in other persons' financial situations and Estelle has refused to tell him anything about her finances because he seems to have his eyes always looking on how he can profit off of others. About 30 years ago, Estelle told him that I was never going to discuss money with him because all he thinks about is money. I would never have agreed to be a co-trustee with Donald if I truly realized as Estelle did that he is a garden variety thief who thinks of money constantly and waysto take advantage of people.

I now see that my brother chose me as a trustee so that he could engage in malfeasance and then he could make up lies as he is doing now to "gaslight" and make me appear to be the "bad guy" that is actually DONALD. He gaslights by stealing my mother's money and making her hand it over with pathological control over her to the point of fearing him. Mom always had her needs met and I have tried to protect her from him, but he consistently isolates her from being protected from his exploitation by doing things like he is doing now—putting her in a nursing home under guard without free access to leave or see her daughters, monitoring her access to others and limiting access to Estelle and I in order to watch her like a hawk because his goal for 40 years has been to take everything she has and put her on Medicare and Medicaid.

In the interest of my mother, I made the mistake of trusting him at all but once I began to see his constant theft, I took action as a trustee is required for the protection of the trust and all beneficiaries. Donald accuses me of stealing because that is his mindset. He thinks of little else than money to the point of obsession and he does not realize that while most people protect their assets, it doesn't consume all of their time and thought-life, nor do they sit around contemplating how to steal from other people. Donald puts on a good act of being cooperative with Michelle Goldberg to demonize me but Goldberg is a fool if she buys it. Donald has designs on my assets, my mother's assets and anything he can get his hands on whether he takes it by force, intimidation or otherwise.

My mother told me that even when working for the City of Houston, 40 years ago, she had always turned over all of her money to Donald. Donald filed tax returns falsely stating that my mother was his employee at one point in time in order to secure some benefit. My mother had to pay extra taxes because he did this, which was several thousand dollars. The tax return reflecting this is attached hereto and says that approximately $1297 was incurred in federal taxes and paid by mom. This is tax fraud and criminal.

My brother's behavior was always poor, but he became much worse when he went on long term disability and quit his dental practice. He had a mental illness diagnosis and was seeing a psychiatrist to receive medication. He has been very secretive about this illness and sometime later, we discovered he had a brain tumor, for which he had surgery to remove the tumor on his pituitary gland in 2015. He has to take supplemental hormones for thyroid, has diabetes insipidus (diabetes of the brain), and other bodily functions because his pituitary no longer works properly.

After the surgery and tumor he contacted Moulder, an attorney he was good friends with who admits he keeps a drawer of form trusts that he sold for cheap, rather

than drafting them with specific provisions according to each situation. Donald had the intent of taking all of my mother's assets but I disagreed. I also went to 4 lawyers to get advice on the trust and find out what monies could be used for my mother because even though Muriel executed the trust as a gift to us children irrevocably, I found myself constantly spending money for her care, long term care insurance, and medical needs. I wanted to see if funds could be transferred back to my mother out of the trust and was repeatedly told no.

Donald had surgery just prior to creating the Mintz Family Trust and his behavior has been erratic and cruel towards my mother and Barbara since then. As dark as this seems, I now believe he created this entire scheme. I can only surmise he targeted me to be his co- trustee because he knew I had some savings for retirement as a result of talking about my assets with him, which I never should have done. He went to U of H and got some sort of financial planner certificate. His attorney friend is the one who was sought to create the trust and he did this almost entirely behind the back of both of us. He never told Estelle anything and got enraged when I said we have to inform her that she is a beneficiary too and give her a yearly distribution, following all terms in the trust. In retaliation for me doing my job as trustee and notifying Estelle to give her the annual $14,000 provided for, he initiated this fraudulent guardianship based on a sworn perjured affidavit. This should have not invoked the court's jurisdiction. The entire 8 months has been the biggest nightmare of my life and now my mother's life hangs in the balance while these crooked lawyers outrageously freeze my FDIC insured IRA accounts with no proof I took any money from anyone. Moving funds for their protection from those who would steal them first is not a violation of any duty on my part, but consistent with my duty to protect the trust and funds in it.

I do not know how much money he has taken over the years from my mother because he is so secretive. Donald was planning on putting my mother in a nursing home 20 years ago and he had no problem putting her in a Medicaid nursing home

while taking her money. There was a squabble between them because my brother wanted her to take out long term care insurance so that she could afford a nursing home. She began belligerent about not having any intention of going into a nursing home and told him no. Estelle and I do not want our mother in a nursing home cared by strangers and we believe she will die imminently in this scenario Michelle has placed her.

My mother was fully competent and showed no signs of dementia or Alzheimer's or any impairment in her executive functioning in 2015 and she willingly created the trust as a lifetime gift to her three children. She has never expressed regret but after visiting with several attorneys after creating the trust, she decided not to further fund it. I took her to see attorneys because she asked and she obtained all of the answers to her questions, as did I as trustee. We decided no more of her money would be put in that trust based on advice of attorneys we met and so nothing further was deposited in it.

I am asking the court to dismiss this guardianship and allow my mother to return to my home, which is the best place for her given her advanced age and near blindness. Also, because she is so docile and quiet, unless someone knows her well, she is not likely to speak or give them the information they need to care for her health well and have information to give informed consent. Donald, his lawyers and Michelle Goldberg have so stressed my mother that it has taken an enormous emotional and physical toll on both of us, to the point I have been physically ill, delaying me from getting information to my forensic accountant to complete the accounting I am preparing for the trust benficiaries. This guardianship has done nothing but terrorize my family, not protect my mother. My mother was not in any danger to deserve this and I am certain that the only reason this guardianship exists is for Donald to exploit my mom. Furthermore, I have never sequested my mother or blocked visitation. If she failed to appear, it was because she did not want to visit or I was ill.

I further demand that all restrictions against me speaking to medical personnel or persons caring for my mother cease immediately as this is putting her in imminent danger of death. No trust attorney should interfere in a family's communication concerning medical issues and in this case, with two RN children with advanced medical training and intimate knowledge of my mother's health, it is criminal.

SIGNED BEFORE ME ON THIS 08 DAY OF DECEMBER, 2017 BY MY HAND UNDER SEAL

Barbara Latham

BARBARA LATHAM

YANET SALAZAR
Notary Public
STATE OF TEXAS
My Comm. Exp. 04-24-19
Notary ID # 13020401-8

Yanet Salazar

NOTARY PUBLIC IN AND FOR THE STATE OF TEXAS

SUBCHAPTER H. RIGHTS OF WARDS
TEXAS ESTATES CODE, SEC. 1151.351.

BILL OF RIGHTS FOR WARDS.

(a) A ward has all the rights, benefits, responsibilities, and privileges granted by the constitution and laws of this state and the United States, except where specifically limited by a court-ordered guardianship or where otherwise lawfully restricted.

(b) Unless limited by a court or otherwise restricted by law, a ward is authorized to the following:

(1) to have a copy of the guardianship order and letters of guardianship and contact information for the probate court that issued the order and letters;

(2) to have a guardianship that encourages the development or maintenance of maximum self-reliance and independence in the ward with the eventual goal, if possible, of self-sufficiency;

(3) to be treated with respect, consideration, and recognition of the ward's dignity and individuality;

(4) to reside and receive support services in the most integrated setting, including home-based or other community-based settings, as required by Title II of the Americans with Disabilities Act (42 U.S.C. Section 12131 et seq.);

(5) to consideration of the ward's current and previously stated personal preferences, desires, medical and psychiatric treatment preferences, religious beliefs, living arrangements, and other preferences and opinions;

(6) to financial self-determination for all public benefits after essential living expenses and health needs are met and to have access to a monthly personal allowance;

(7) to receive timely and appropriate health care and medical treatment that does not violate the ward's rights granted by the constitution and laws of this state and the United States;

(8) to exercise full control of all aspects of life not specifically granted by the court to the guardian;

(9) to control the ward's personal environment based on the ward's preferences;

(10) to complain or raise concerns regarding the guardian or guardianship to the court, including living arrangements, retaliation by the guardian, conflicts of interest between the guardian and service providers, or a violation of any rights under this section;

(11) to receive notice in the ward's native language, or preferred mode of communication, and in a manner accessible to the ward, of a court proceeding to continue, modify, or terminate the guardianship and the opportunity to appear before the court to express the ward's preferences and concerns regarding whether the guardianship should be continued, modified, or terminated;

(12) to have a court investigator, guardian ad litem, or attorney ad litem appointed by the court to investigate a complaint received by the court from the ward or any person about the guardianship;

(13) to participate in social, religious, and recreational activities, training, employment, education, habilitation, and rehabilitation of the ward's choice in the most integrated setting;

(14) to self-determination in the substantial maintenance, disposition, and management of real and personal property after essential living expenses and health needs are met, including the right to receive notice and object about the substantial maintenance, disposition, or management of clothing, furniture, vehicles, and other personal effects;

(15) to personal privacy and confidentiality in personal matters, subject to state and federal law;

(16) to unimpeded, private, and uncensored communication and visitation with persons of the ward's choice, except that if the guardian determines that certain communication or visitation causes substantial harm to the ward: (A) the guardian may limit, supervise, or restrict communication or visitation, but only to the extent necessary to protect the ward from substantial harm; and (B) the ward may request a hearing to remove any restrictions on communication or visitation imposed by the guardian under Paragraph (A);

(17) to petition the court and retain counsel of the ward's choice who holds a certificate required by Subchapter E, Chapter 1054, to represent the ward's interest for capacity restoration, modification of the guardianship, the appointment of a different guardian, or for other appropriate relief under this subchapter, including a transition to a supported decision-making agreement, except as limited by Section 1054.006;

(18) to vote in a public election, marry, and retain a license to operate a motor vehicle, unless restricted by the court;

(19) to personal visits from the guardian or the guardian's designee at least once every three months, but more often, if necessary, unless the court orders otherwise;

(20) to be informed of the name, address, phone number, and purpose of Disability Rights Texas, an organization whose mission is to protect the rights of, and advocate for, persons with disabilities, and to communicate and meet with representatives of that organization;

(21) to be informed of the name, address, phone number, and purpose of an independent living center, an area agency on aging, an aging and disability resource center, and the local mental health and intellectual and developmental disability center, and to communicate and meet with representatives from these agencies and organizations;

(22) to be informed of the name, address, phone number, and purpose of the Judicial Branch Certification Commission and the procedure for filing a complaint against a certified guardian;

(23) to contact the Department of Family and Protective Services to report abuse, neglect, exploitation, or violation of personal rights without fear of punishment, interference, coercion, or retaliation; and

(24) to have the guardian, on appointment and on annual renewal of the guardianship, explain the rights delineated in this subsection in the ward's native language, or preferred mode of communication, and in a manner accessible to the ward.

(c) This section does not supersede or abrogate other remedies existing in law.

Effective June 19, 2015.

REPORTER'S RECORD

VOLUME 1 OF 1 VOLUME

TRIAL CAUSE NO. 456,059

IN RE: THE GUARDIANSHIP OF	*	IN PROBATE COURT
	*	
MURIEL LUBA MINTZ,	*	NUMBER TWO (2) OF
	*	
AN INCAPACITATED PERSON	*	HARRIS COUNTY, TEXAS

STATUS CONFERENCE

BE IT REMEMBERED that beginning on the 31st day of October, 2017, came on to be heard outside the presence of a jury, in the above-entitled and -numbered cause; and the following proceedings were had before the Honorable Mike Wood, Judge Presiding, held in Houston, Harris County, Texas.

Proceedings reported by Computerized Stenotype Machine, Reporter's Record produced by Computer-Assisted Transcription.

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(In Chambers.)

THE COURT: This is Cause No. 456,059, Guardianship of Muriel Luba Mintz. Could I have appearances?

MS. GOLDBERG: Yes. My name is Michele Goldberg. I'm the temporary guardian pending contest and I actually requested this scheduling conference.

Oh, and let me just introduce, Your Honor, this is Alexa Vitucci. She's my law clerk.

THE COURT: Okay.

MS. GOLDBERG: She's graduating from South Texas in May, and she's helped on the file. I would ask that she be allowed to attend.

THE COURT: Okay.

MS. KELLY: Stacy Kelly for Donald Mintz.

MS. BROWN: Erinn Brown for Barbara Latham.

MS. PITRE: Teresa Pitre, Attorney ad Litem.

MR. MAHONEY: Matt Mahoney for Barbara Latham.

THE COURT: Okay. What's your motion?

MS. GOLDBERG: I'm not going on a motion, Your Honor. As I said -- I'm sorry --- I had to leave a mediation to come here so I have two different files with me.

THE COURT: Yes.

MS. GOLDBERG: As I said, I'm the temporary guardian pending contest; and there were some things that I needed to bring to everyone's attention, rather than just send e-mails. I would like to bring some things to the Court's attention and ask for some direction and maybe some explanation to all counsel of what my role is as temporary guardian pending contest and what's expected of me and of the litigants.

I've divided it into three particular areas. One has to do with the finances, the ward's finances. The other has to do with living arrangements and visits. And the other has to do with Facebook postings in which I believe my ward's privacies are being seriously violated in a really ugly and public way. So you tell me which -- what you want me to start with.

THE COURT: Whatever. It's your hearing. You pick it.

MS. GOLDBERG: I pick it. Maybe I'll dive into two.

THE COURT: Okay.

MS. GOLDBERG: Okay. The living arrangement. So when I was appointed -- the ward is living with her daughter Barbara Latham who is Mr. Mahoney and Ms. Brown's client. She lives in Pearland. And when I was appointed the first thing I did was go there and

make sure she was okay. The house is nice. It's clean. It's tidy. She appears to be well-nourished and she appeared very comfortable and told me that she wants to live there. So I knew there was no emergency in getting her out of there and moving there.

She had been living in an assisted-living facility. She had her own little apartment in it at Clarewood and that was in Houston, Harris County, Texas. And she put herself in there. But Barbara Latham took her out and took her to move -- live with her.

The problem -- there's a problem with that. And the problem is that -- I'm just going to call her Barbara, okay, just for short -- Barbara has her mother and Barbara has really cut her mother off from communications with just about everybody. There is -- there is another daughter. The ward has another daughter, Estelle. Estelle -- I met Estelle. Estelle sees her mother.

There is a son Donald who is Ms. Kelly's client and Barbara won't allow Donald to see his mother. There are two adult grandchildren. They're both in their 30s. Barbara won't allow them to see the grandmother. She has a boyfriend who has called me and he can't see her. He wants to see her. She's 93. He's 86. And he can't get access.

Since I've been on the case -- she also had some friends -- excuse me -- some friends and some -- one is the other mother-in-law that she was good friends with and always had holidays with and nobody can see her. When I was first appointed, I arranged for one visit -- one of the first things I did -- in my office. And I had Donald come, the son, and the grandson, Scott. And they came and Barbara did bring her mother for exactly one hour and they visited in my office. I closed the door and let them visit. Then I went and talked to her and she was so happy to see her son and her grandson. And she said, I haven't seen them in so long. Where have they been? Da, da, da. She wanted to see them.

I told her that her boyfriend had called and wanted to see her and she wanted to see him. She wanted to see her granddaughter. I arranged for another visit. And Barbara -- I sent some possible times -- and Barbara told me which time she was available. It was last Friday. She was supposed to have her mother there at 9:30. And I said -- and I copied all counsel -- The ward should not have to sit in my office for one hour to visit with her son and grandson. Let's make it a two-hour visit. Let them take her out wherever they want, out to breakfast, whatever they want to do with her. But drop her off at 9:30 and pick her up at 11:30 so it would be neutral.

I e-mailed everybody, and I confirmed that we were meeting the next morning at 9:30. Donald and the granddaughter, who hasn't seen her grandmother -- hasn't seen the ward since March. And, apparently, they had a very good relationship. According to the family, they were in regular contact with her.

Barbara just didn't show up. I called her. No answer. I sent e-mails. No answer. I contacted her attorneys and let them know that she just didn't show up. Donald and Lauren, the granddaughter, waited for an hour and then left. So even in my office and even though there's Court supervision, I think we're in a point to -- I'm a representative of the Court and I'm neutral -- I'm neutral here -- she -- Barbara didn't even honor that and didn't bring her mother. She never contacted me. I sent her an e-mail and I copied all counsel, Please let me know you're okay. Did something happen? Because maybe something happened. No response, nothing at all.

Donald did call the Pearland Police and did a wellness check on his -- on our mother over the weekend. She's fine. The police said she's fine, not to worry about it. I've never heard from her since.

So I -- I initially didn't want to pull her out of Barbara's house because she appears to be comfortable there, and I don't think that's my role to

interfere. But she's 93 years old, and I don't think that Barbara -- I think it's egregious. I find it abusive. And I think it is commonly considered to be abuse to isolate someone like that. She is 93. She can't see the people that care about her and that she loves and they can't see her. So that's one.

THE COURT: Well, let's deal with that.

MS. GOLDBERG: Okay. Let's deal with that, please.

MR. MAHONEY: The issue is this, Judge, and this is why one of the e-mails that we sent back was, Send us a motion, because I can assure you --

THE COURT: Here is the thing -- here is the thing --

MR. MAHONEY: -- we're trying.

THE COURT: Here is the thing: She can't limit the family members anytime they want to come within reason. Anytime between 9:00 and 5:00 they ought to be able to just visit. She can't say no. If she says no one more time, she's going to be hauled out --

MR. MAHONEY: Judge --

THE COURT: -- because it's -- why does she get to see them and nobody else?

MR. MAHONEY: Judge, I've told her that. Okay?

THE COURT: But if she's not listening to her counsel, that's even more. I'm not going to give her one -- tell her she has no more chances.

MR. MAHONEY: I understand.

THE COURT: No more chances.

MR. MAHONEY: And I appreciate you -- let me just say, I appreciate you giving her one more chance. And I will relay that message.

THE COURT: No. I'm not giving her one more chance.

MR. MAHONEY: Well, but I don't think you understand what I'm saying. I've explained it to her. Okay? And I've told her she has to do this. I can't go pick her up and --

THE COURT: Well, I --

MR. MAHONEY: You know, what I'm saying? I'm trying.

THE COURT: She is --

MR. MAHONEY: And so --

THE COURT: It's not going to get better for her.

MR. MAHONEY: I understand. I understand that, too.

THE COURT: I understand she's still -- according to something I saw -- she's still using the

power of attorney.

MS. GOLDBERG: She's using the powers of attorney.

MR. MAHONEY: Again, Judge, this is part of the issue is Ms. Goldberg is here -- and I don't think she's misrepresenting anything that she believes -- but these are just the things that she believes. These are not facts that have been proven. And that's what -- that's why I started --

THE COURT: You --

MR. MAHONEY: -- this by saying --

MS. GOLDBERG: It is a fact.

MR. MAHONEY: I'm sorry.

MS. GOLDBERG: She did not show up at my office. That's a fact.

THE COURT: I mean, you agree she didn't show up at the office?

MR. MAHONEY: I agree that she didn't show up at the office. That's not the fact that I'm talking about.

THE COURT: But you don't agree that she's using the power of attorney?

MR. MAHONEY: I don't agree that she's using the power of attorney. I don't agree that -- there have been other e-mails, I mean, there have been countless

e-mails that have gone back and forth -- I don't agree with a lot of the things that are in the e-mails. Those are -- I mean, those are fact issues and I --

THE COURT: I'm not going to have a trial --

MR. MAHONEY: I understand.

THE COURT: -- about those.

MR. MAHONEY: Sure.

THE COURT: And keep in mind, if she's an agent under a power of attorney, she has a fiduciary duty to the beneficiary which means she has to justify her conduct. The agent has to justify her conduct. Somebody else, the guardian, acting on behalf of the ward, doesn't have to say, Hey, you need to give me proof. She has to justify it. If she doesn't, she's guilty of breach of fiduciary duty and there are damages.

MR. MAHONEY: And I agree, Judge, with every -- with all of the -- I understand all of what you said. And I guess that's where I'm kind of at a loss is if she believes that has happened, if Ms. Goldberg believes that has happened, then do what needs to be done so that I can explain that to -- and I've tried to explain it to Ms. Latham. Okay?

THE COURT: Well, why don't you --

MR. MAHONEY: We've --

THE COURT: She's not here. Why don't you

get her before me. I'll explain it to her.

MR. MAHONEY: That's -- Judge, that's how I was going to start this. That's why I was asking for a motion. If we had a motion and I could tell her, We're going to have this motion and the Judge is going to ream you. And I can say that to her because I know that's what you're going to do, and I get that. But, you know, to -- it needs to be approached from the proper standpoint because I --

THE COURT: Well, do you understand what you just said? That your client will not do what she's supposed to do unless I call her into Court and ream her --

MR. MAHONEY: Well --

THE COURT: Okay?

MR. MAHONEY: I understand.

THE COURT: She's not going to follow your advice as her counsel. She's going to require being brought before the Court and have the Court tell her her duties. That's not really my job. I mean, we had a hearing. We appointed a temporary guardian.

MR. MAHONEY: I understand.

THE COURT: And the temporary guardian has the authority to haul her out and not let her see, you know, not let her visit with her mother except under some

kind of limited circumstances. And that -- this is all costing money.

MR. MAHONEY: Yes, I agree a hundred percent. And that's --

THE COURT: And she's going to want to pay with her mother's money.

MR. MAHONEY: Well, that's an issue for -- and maybe that's an issue for today or that's an issue for another day. But that's another one of those that, you know, I don't -- has been kicked around back and forth. But when the time comes, then we can litigate those issues. And I'm not -- I'm not here trying to litigate all of the issues. But I --

THE COURT: I'm not trying -- I don't have any facts before me right now, except for the temporary guardian I have appointed because I have faith in her abilities and her honor --

MS. GOLDBERG: Thank you.

THE COURT: -- and her credibility.

MS. GOLDBERG: Thank you.

THE COURT: So, I mean, I wouldn't appoint somebody I don't believe, right?

MR. MAHONEY: Sure.

THE COURT: But litigating is going to cost somebody money. The guardian's fees are going to be paid

but so are everybody else's fees and that doesn't make any sense. I mean, she's 93. I think she ought to be with all of her family as much as she can. I don't see -- other than just personal animosity, I don't see why she's not allowing it.

MS. BROWN: Well, and, you know, just because the way the dynamic in our relationship works with Ms. Latham -- I'll kind of jump in here because I do tend to talk with her more than Matt on some of these issues. But I think part of the issue is the lack of professional courtesy that we, Matt and I, have been afforded since Ms. Goldberg got appointed. It's difficult.

We've asked for teleconferences on multiple occasions to narrow some of these issues, Judge. And if she would pick up the phone, and say, Here are some of the things I'm having issues with. She sends these, e-mail after e-mail, and we can't even follow some of what these --

THE COURT: What's your hourly rate?

MS. GOLDBERG: 325.

THE COURT: Why do you have to have her talk to you a long time?

MS. BROWN: I didn't say a long time, Judge.

THE COURT: She is --

MS. BROWN: I didn't say a long time.

THE COURT: She has to arrange a phone conference.

MS. BROWN: And she's talking with all the other lawyers.

THE COURT: That means get Stacy involved and getting all the other lawyers involved and having a telephone conference.

MS. BROWN: She's talking to Stacy.

THE COURT: Why do you have to have lawyers involved in visitation?

MR. MAHONEY: I don't want to be involved in visitation. I was in trial Friday. That's why I wasn't -- I don't want to be involved in visitation. I agree.

THE COURT: Well, why didn't she show up?

MR. MAHONEY: Well --

MS. BROWN: Judge, we're not sure. We're not -- okay? We don't know.

MR. MAHONEY: She doesn't respond to us, either, Judge.

MS. BROWN: She doesn't always respond to us. But to be treating us -- for us to be treated --

THE COURT: I'm not --

MS. BROWN: -- it's almost akin to a criminal, like I'm sitting next to one of my criminal

clients and I'm being looked at by particular lawyers in the case as though I'm the one on trial --

THE COURT: Well, you need to --

MS. BROWN: -- and that's the problem, Judge.

THE COURT: I'm sorry you're so sensitive. If you tell me, We can't control our client. We don't know why she didn't show up at something we set up for her to show up at, then that's not good. Because I don't know what's happening to the ward.

MS. BROWN: And --

THE COURT: The lady who's allegedly been using the power of attorney improperly, allegedly -- I haven't seen any evidence -- allegedly is not responding to her lawyers, allegedly is continuing to use the power of attorney. That's troubling when you say, Well, we can't really control her. We've told her, and she's still not doing it.

MS. BROWN: Well, I --

THE COURT: That's troubling.

MS. GOLDBERG: May I say something, Your Honor? I asked for the status conference. I'm trying to keep -- once again, in my role here, my fiduciary role, I'm trying to keep this -- it's a family and I'm trying to keep them out of litigation. I know how to file a motion.

I asked for some direction from the Court and to get these issues out without being in a public courtroom and having a brother and sister and there's another sister if she would appear, if she wants to appear, have to be there accusing each other or whatever, however it goes in litigation. The ward has very limited money. She's 93. It's not good for her to have her family, her children, fighting over her. That's why I asked for a conference here.

I just want to address something before I go on to what I have here. I'm very happy to speak on the phone with Mr. -- Ms. Brown and Mr. Mahoney. I've been sending them a series of questions. They don't answer them.

Let me read some of the questions. Please ask your client to provide the following information: Was there a security deposit refund from Clarewood House? Where was it deposited?

Provide proof that Muriel's Medicare -- Muriel is the ward -- Medicare supplemental policy and supplemental prescription drug polices are current.

Is there a life insurance policy from her employment with the City of Houston?

What is the account that ends in 7007? There have been significant transfers to that account. In

whose name is it and which financial institution? I don't have -- I haven't gotten a statement.

Into which account is Muriel's monthly social security check deposited?

THE COURT: Well, those are all different questions than what she's talking about.

MS. GOLDBERG: No, no, no. This is exactly what she's talking about. And I keep telling Ms. Brown, Just send me the answers to those questions and then we can have a phone conference. But I need the information in front of me because I have -- I've got all kinds of records. It's taking up a lot of time in my office. My wonderful assistant and Alexa have been working on this, putting all this together, the financial statements. And what I said to Ms. Brown is -- what I've written to her is, If you could get me some specific information, then we can have a phone conversation. But there's missing information. So as soon as I get the information, then we can discuss it.

MS. BROWN: And, Judge, every time we send over information, Ms. Goldberg sends another e-mail and tells us that's not right. Then we send more information and she tells us that's not right, which is why we've repeatedly asked her to pick up the phone and clarify for us a couple of things.

If she weren't speaking on the phone to any of the other lawyers and that was just how she conducted these cases and her business, okay. But she contacts -- she sends e-mails where she's clearly gotten information from the other side or from wherever.

MS. GOLDBERG: You don't know where I'm getting my information from.

MS. BROWN: Did I interrupt?

MS. GOLDBERG: Excuse me?

MS. BROWN: Did I interrupt you?

MS. GOLDBERG: No, you didn't interrupt me, but don't make allegations against me when you don't have anything to base it on.

MR. MAHONEY: Okay.

MS. BROWN: Isn't that what you --

MR. MAHONEY: Okay. Okay. My point is this, okay? Judge, when she sends us an e-mail, we forward it to our client. Okay? If we're not answering the specific questions, I think the Judge knows why, because our client is not -- I don't know the answers. I'm trying to get them from my client. If I don't give you those specific answers --

THE COURT: Well, you need to tell your client this: She has a duty of full disclosure. She needs to turn over every piece of paper she has and she

needs to do it by Friday at 5:00 o'clock. If she doesn't, I'm going to move the ward out and I'm going to authorize the temporary guardian to file a lawsuit against her for theft. She could be arrested right now, maybe even for holding the ward against her will. I don't know. I don't know.

MR. MAHONEY: I understand.

THE COURT: I know.

MR. MAHONEY: And you don't.

THE COURT: And you can't really tell me because when was the last time you saw the ward?

MR. MAHONEY: Well, I don't see the ward. I don't think that would be appropriate. So I don't see the ward. I mean, I can --

THE COURT: Do you know whether she's being taken care of or whether your client is hiding her because she wants to hide her because something has happened?

MS. BROWN: Well --

MR. MAHONEY: The only information I have on that would be what Mr. Goldberg said which was that she was fine. But that was the last time she saw her. I don't --

THE COURT: Yeah.

MR. MAHONEY: I'm the lawyer. I don't go out there and go visit the ward. I don't -- that wouldn't

be the right thing to do.

THE COURT: Well, when your client is not answering your questions, I would suggest that there's a real problem.

MR. MAHONEY: And I don't -- and I am not disagreeing. But at the same time -- it's just like this, Judge, you've said she needs to get these papers by Friday at 5:00 o'clock. Obviously, I'm going to relay that message. But if she doesn't do it, it's not going to be because I didn't --

THE COURT: No, I know. I'm not blaming you. I'm blaming your client.

MR. MAHONEY: I understand.

THE COURT: But I'm concerned when you haven't seen the ward.

When was the last time you saw her?

MS. GOLDBERG: I saw her, maybe, three weeks ago.

THE COURT: And I don't know why she's being so uncooperative.

MR. MAHONEY: Judge, I don't, either.

MS. GOLDBERG: If I may, Your Honor, here is one question that I keep asking -- and I did -- actually, Alexa put this together -- but Ms. Latham did provide -- Ms. Brown did provide this from her client. I asked for

this information about all accounts and financial institutions. Here's a copy. Here's a copy. A copy for Teresa and one for the Judge.

Okay. This is this account 7007. It's -- that's Ms. -- I guess Ms. Latham wrote that "irrevocable trust" on it. As you see, there's no cover. I don't know whose name this statement is in. I've had four trips to Bank of America. Bank of America won't give me any information on this account because Muriel Mintz's name, the ward's name, is not on this. So I don't know whose account this is. I want to tell you why it's significant.

I went to the bank. I had Donald Mintz meet me in the bank because there was a trust with Donald and Barbara as co-trustees. Donald was there. Gave his -- Ms. Kelly's client -- he got the information on the trust for me. And they wouldn't give us, while he was sitting there, any information on 7007. I'm assuming it's in Barbara Latham's name. I don't know. But why am I so concerned, obsessed with this account?

We have all the transfers here. If you go -- there are transfers from different accounts, mostly from the trust starting in September of 2016 through September of 2017. So in one year, here are the transfers. I'll start at September of 2016 and go up. The first transfer to this 7007 from Muriel Mintz's trust,

$5,000, then $6,037, then 3,898.96, then $7500 -- please remember that. I have something to mention about that -- then $50,000 in April of 2017 and then 31,000 in September of 2017.

So I am really concerned about whose account this is and if Barbara Latham -- and it might be there. What I keep saying to Ms. Brown and Mr. Mahoney, if the money is there, fine. Fine, I'll back -- fine. Just let me know where the money is. But whose account is this? And is she putting it into her own name?

There is -- they're going to blow up when they hear this. There's a credit card. I asked them who paid their fees. There's a credit card bill, a credit card that's in -- I think it's in here. I've got it here somewhere. I think it's in Barbara's name. On 3/18 or 3/19 for $7,500 to Erinn Brown. That's their business. That's what they charge. Except that there's a transfer on the very next day of 7,500 from Muriel Mintz's money to this mystery account here.

So when I've been telling Ms. Brown, I'll talk to you on the phone, but give me information about this account first, because I don't have anything to talk about until we know what's going on here. The other -- I tried to narrow down my questions. I wrote to Ms. Brown. I narrowed down -- now I'm getting disorganized here. It

was all organized. Here we go.

The last -- this is the last e-mail I sent Ms. Brown and Mr. Mahoney. I copied all counsel. Thursday, October 26th: Let me just narrow it down to two things. One is about this account, 7007, this mystery account. The other question -- give me -- I need the cover. I need whose name is this in?

The other is -- the other question. I narrowed it down to two is: I need to prepare an annual budget that details Muriel's monthly expenses for Court approval. Muriel told me with Barbara and Estelle, the other daughter, present, that she contributes approximately $6,000 to the Latham household. I asked what the money was used for and Barbara responded that it was paid for private nursing care, that both she and her husband are RNs.

Is Barbara charging for her mother's care? How much per month? Has she reported a salary? I'll probably need to have a 1099 issued for 2017. Barbara will also have to sign an employment contract for Court approval. Please confirm the status. And I've heard nothing back from them. I don't see what's so difficult about that. If I could have the information, then we could have a phone conversation.

The ward's monthly income between social

security and her pension from the City of Houston equals about 3,000 a month. And I would expect her to contribute to the Latham household if she lives there. I don't have a problem with that. I don't think anybody does. But $6,000 a month? That's cutting into her assets, and her money is limited.

Ms. Latham in her application for guardianship reported that her mother has about 225,000. So to be taking 3,000 a month out of the asset is pretty significant and I would want the Court to be supervising that.

MR. MAHONEY: We've taken -- we took that e-mail and we forwarded it to our client with instructions that, These are the questions from Ms. Goldberg. We need some answers.

MS. GOLDBERG: Actually --

MR. MAHONEY: Unless we got it --

MS. GOLDBERG: Actually, what you wrote to me was: We will forward this information to Barbara and respond where response is warranted. I still haven't seen the accounting of your fees to date. Has it been set and I inadvertently missed it? Perhaps we can exchange the information you're requesting the same time that you're providing the information that our client is requesting -- which is my accounting.

I told you and I wrote to your client, I included you, that I file a fee application with the Court. And all accounting -- and the Judge has to approve my fees and expenses and all counsel will be copied at the time.

My fees are going to be higher than they should be because of -- and I'm not blaming them. It's, apparently, their client -- but they're going to be higher than they should be. My office -- I'm telling you, Judge, my office has been tied up taking care of this. So I'm kind of --

THE COURT: And your client hasn't responded to you?

MS. BROWN: Meanwhile -- but there was a $7,777 withdrawal taken out on October 24th without -- and Barbara knows nothing about it. So --

MS. GOLDBERG: From where? From which account?

MS. BROWN: I'm about to --

MS. GOLDBERG: There's numerous accounts.

MS. BROWN: I'm aware. Just one second. I'm aware.

MS. GOLDBERG: Okay.

MS. BROWN: $8777.61 --

MS. GOLDBERG: Yeah.

MS. BROWN: -- was taken from Bank of America checking account --

MS. GOLDBERG: Yes.

MS. BROWN: -- on October 23rd. What is that?

MS. GOLDBERG: That's the guardianship account. I took -- I took possession of the guardianship account. I want to talk about that account. That's another --

MS. BROWN: I didn't ask about possession. I'm not asking was is that? Was that withdrawal you?

MS. GOLDBERG: Yeah. Here it is (indicating). It's right here.

MS. BROWN: Okay. What was that for?

MS. GOLDBERG: I took possession of the account. I turned -- I took the money out of that account and deposited it into another account that's a guardianship account.

MR. MAHONEY: Okay. So --

MS. GOLDBERG: That's my job. That's what I'm supposed to do.

MR. MAHONEY: Okay. I think you understand what --

THE COURT: But she doesn't have to account daily. She's the guardian. She has to report every

expenditure and get permission. She hasn't spent that money because she can't without permission.

MR. MAHONEY: Sure. No, I --

THE COURT: So it's not being spent, but she's got to close down all of the accounts in the ward's name --

MS. GOLDBERG: I didn't spend it. It's there.

THE COURT: -- and put them into accounts in her name.

MS. GOLDBERG: I paid -- I paid one check from there. I paid Dr. Poa's fees which you approved. They were $1400. The first check I wrote.

MR. MAHONEY: Right.

MS. GOLDBERG: Check No. 100.

MR. MAHONEY: And that's -- and that's -- but that's not -- the point is if it were -- obviously, we've asked our client those questions. Obviously, we don't have the answers, although we're trying to get them. And as soon as we get them, we will give them to Ms. Goldberg. But I think what -- what bothers me is Ms. Goldberg, obviously, knows that she can't get the answer -- I mean, for example, when she said she met Mr. Mintz at the bank and he gave her the information. He's cooperative. I get it. Our client may not be.

THE COURT: He had to meet there because he was on the account and that was the only way to get the information.

MR. MAHONEY: Right. But if our client was cooperative, then she would meet her at the bank. But she won't do that. And I get it. Okay? I mean -- but it's not that we're not trying. It's not -- I mean, I don't know --

THE COURT: Well, but --

MS. BROWN: When have we asked her to meet her at the bank?

MR. MAHONEY: Right.

MS. BROWN: Because when that incident occurred, Judge, they were already at the bank. Then Michele is e-mailing me, demanding whatever, wanting this, wanting me to stop what I'm doing because she's at the bank. Maybe if she had sent me an e-mail --

MS. GOLDBERG: I didn't write you from the bank.

MS. BROWN: -- maybe if she had sent me an e-mail and said, I'm going to the bank tomorrow at such and such time. Donald will be there at this time. Maybe Barbara could -- could you have Barbara to be there early? Right? We could have done that. She's never asked me to have Barbara meet her there. That may fix a lot of this

and it would certainly streamline the process.

THE COURT: Well, given the fact that you've told me that Barbara doesn't respond to you --

MS. BROWN: Well --

MR. MAHONEY: Well, I understand. But -- but that's my point is that we get these e-mails that say we won't even talk to you on the phone until you get me these answers. Well, if you'd call us, we would say, Michele, we're trying to get you those answers. But, oh, by the way --

THE COURT: What good does it do for her to call you and be told she won't cooperate?

MS. BROWN: Well, this is what good it does, Judge.

MR. MAHONEY: Right.

MS. BROWN: A lot of Michele's e-mails are -- they come all the time -- convoluted. Then these questions are asked and these questions are asked. And then I have some questions. When I call Barbara and I say, Hey, Barbara, Michele is asking about whatever. Then Barbara says, Well, no. I already told you, Erinn, this account -- whatever she says she says. And then I have a legitimate question where I need to clarify something with Michele.

One of the questions I had was about the

irrevocable trust account number, something like that. Well, if you don't want to give -- extend the professional courtesy to explain to me a couple of things so I can clarify them with Barbara, I don't know what to tell her, Judge. But we're sending information daily to Ms. Goldberg's office and it's not, apparently, the right information.

And so all I said to her was, Wait a second. Let's have a conference call when I'm in front of my office -- my computer with these account numbers and with these e-mails so I can address what pieces of information -- like you just said, she needs to have the information by 5:00 o'clock Friday. Got it. Yes, sir.

THE COURT: I've just got to --

MS. BROWN: But when is someone going to tell me what that information is exactly? What is missing?

THE COURT: Everything, every single piece of paper she has to justify every single act she took as agent under a power of attorney. She's got to justify it. Now, obviously, doing a full accounting of everything by Friday is not reasonable. I'm not saying that.

MS. BROWN: No, sir.

THE COURT: She has given nothing.

MS. BROWN: That's not true.

THE COURT: She won't even -- she won't even say what this account is that she transferred $100,000 from in a year.

MS. BROWN: Judge, but that's not true. We have explained that Barbara and her -- that's not true that --

THE COURT: She didn't transfer $100,000?

MS. BROWN: No, no, no. It's not true we haven't given anything, first of all. I want to address -- because we're on the record -- I want to address the first thing she said, she hasn't given anything. That's not accurate.

MS. GOLDBERG: No, she's given some things. They've given some things, but it's incomplete.

MS. BROWN: This is crazy.

THE COURT: Here is the thing, the reason I'm -- appear to be angry is because you are adults. You are all licensed attorneys. You are in my Chambers talking to me about why we can't talk to one another. I can't order you to be reasonable adults and reasonable attorneys. I'm talking to her, too. I'm talking to everybody. You need to just pick up the phone and call one another and talk. But if you -- if she's called you -- if she sent you a letter and said, Tell me what these things are and you haven't responded --

MS. BROWN: But that's not accurate. She -- we did --

THE COURT: Did you send what --

MS. BROWN: Yes.

THE COURT: -- this Account 7007 is? Have you ever --

MS. BROWN: Judge, we've --

THE COURT: -- answered that?

MS. BROWN: Yes, sir.

MS. GOLDBERG: No, you have not sent it. I don't know whose name that is in. I've been asking you since September 20th, whatever the first day was.

MS. BROWN: Okay.

MS. GOLDBERG: I don't have it. That's what I got from your client and she wrote across the top, "irrevocable trust" (indicating).

THE COURT: And it's one month.

MS. BROWN: Yes, sir. It was one month. So then Michele said, I would like to see additional months. So then we called our client. We had her come in and bring additional months and we sent those over. Then she sent back the questions about the -- or one she read earlier in this hearing which I don't believe we've gotten all of the answers to which Matt responded to. But that's, I guess, Judge, that's what I'm -- that's why I

was --

MS. GOLDBERG: I didn't get -- I didn't get the other months' transfers. I didn't get the other months. Okay. You get the -- you understand why -- my dilemma here, Your Honor?

THE COURT: Well, I can't solve the problem of attorneys who won't pick up the phone and talk.

MS. GOLDBERG: I'm happy to talk. I just need some information.

THE COURT: Well, you don't need information before you talk to them. Call them and tell them, I haven't got an answer on 7007. Would you please tell me. You don't need to know about -- all about 7007 --

MS. GOLDBERG: Okay.

THE COURT: -- to ask another question and have a conversation.

MS. GOLDBERG: Okay.

THE COURT: Just talk and work these things out. It doesn't make any sense for you to be coming down here all charging. Everybody is going to expect the ward to pay for all of this except for me. I'm not going to expect it.

MS. BROWN: No, sir.

MR. MAHONEY: You're not going to let the ward pay for it. You've told us that and I understand.

THE COURT: Yeah. But you need to talk. I can't do it. I don't know of any reason to set a hearing.

MS. GOLDBERG: I don't want to set a hearing.

THE COURT: But this is a hearing. It's on the record. And I bet somebody is going to ask for the transcript, demand it quickly so that Tina gets to stay up all night. But --

MS. BROWN: But, I mean, would -- would Barbara meeting Michele down at -- with Bank of America, wouldn't that just take care of a lot of this? I guess I --

THE COURT: Well, I don't know why Barbara has to be there to say what this account is. Barbara has been making transfers with the power of attorney, apparently, whether that's into an account in the ward's name --

MS. BROWN: Well, that account is in Barbara's name. The 7 -- wait --

THE COURT: Yeah, but she's transferring the ward's money into an account in her name.

MS. GOLDBERG: That's all I've asking all along, whose name is it in.

THE COURT: She can't --

MS. GOLDBERG: If I had gotten that

answer --

THE COURT: She can't transfer money into the ward's name unless there's justification for it. As an agent under a power of attorney, why is she transferring 30,000 or $50,000 into an account in her name? I mean, that --

MR. MAHONEY: She's going to have to account for that money and we've -- and we've explained that to her.

THE COURT: And you've explained to her that --

MR. MAHONEY: Absolutely.

THE COURT: -- we don't have to ask. I don't have to ask her. She has to tell us without being asked, without discovery being propounded, without a lawsuit being filed. If she doesn't, she's basically breaching her fiduciary duty by not disclosing. So -- and the reason I'm concerned -- I've been a probate judge for a long time -- when people aren't answering questions, it's because they're hiding something. That may be a warranted assumption, maybe it's an unwarranted assumption.

MS. GOLDBERG: There were other accounts, too. There were other transactions that I questioned as well. And I did send them in writing, Your Honor. But

you get the gist. We don't have to go over every one.

MR. MAHONEY: Can I ask the question or maybe make a suggestion? If -- the order appointing Ms. Goldberg, does it not authorize her with the bank to get all bank records with regard to the ward? Why --

MS. GOLDBERG: With regard to the ward. But that doesn't have Muriel's --

THE COURT: The 7007 --

MS. GOLDBERG: -- that doesn't have Muriel's name on in.

MR. MAHONEY: Oh, yeah.

THE COURT: -- is not the ward's --

MS. GOLDBERG: That was the problem.

THE COURT: -- account.

MR. MAHONEY: So is that the only --

MS. GOLDBERG: Yes.

MR. MAHONEY: -- one? Okay.

MS. GOLDBERG: That's -- that's --

MR. MAHONEY: When you said there were other accounts, I thought you were saying that there were accounts that --

MS. GOLDBERG: There are other accounts that I have some questions -- some transfers --

MR. MAHONEY: Okay.

MS. GOLDBERG: -- that I question. And,

once again, I've said all along, I'm not saying your client has done anything wrong with the money. Maybe it's there. We just need to know where it is. That's all. If I just knew where the money is.

THE COURT: She can't file an accounting --

MS. GOLDBERG: I'm not accusing her --

THE COURT: -- that she's supposed to file.

MS. GOLDBERG: I'm not accusing her of wrongdoing. She may think it's okay to be moving the money around. Maybe that's her financial plan and she thinks it's better to move it here or there. I don't know. That's all. We need to know.

There are accounts I had asked also -- there were a number of CDs that were closed out. They had matured. It was okay to close them out. I don't have a problem with that, but where is the money? Because it tallied up to several --

MS. BROWN: Right.

MS. GOLDBERG: -- I don't remember.

MS. BROWN: And I wrote back and said those -- those CDs are what they've put into the irrevocable trust.

MS. GOLDBERG: But the irrevocable trust is down from whatever -- my paperwork is all mixed up now -- from whatever it was. A huge amount is down to -- it's

down. That money is gone, too. That's been transferred out, largely, into this 7007 account.

MS. BROWN: And you may not like the answer of what happened with the CDs, but I have answered that question. They matured. They rolled them into the irrevocable trust. I understand what Michele is saying, that there are transfers out of the irrevocable trust into 7007. But that doesn't mean we haven't answered the question. It just means that's the answer.

MS. GOLDBERG: No. But all I said was I need a statement for that. That's all. I just need a statement. I'm responsible for the accounting. I'm the one that's bonded. So I need a -- I just need a statement. That's all.

THE COURT: Yes. She needs to file an accounting --

MS. GOLDBERG: I just need a statement --

THE COURT: -- of the assets --

MS. GOLDBERG: -- that's all.

THE COURT: -- and she needs to get hold of the assets and your client has been acting --

MS. GOLDBERG: Yes.

THE COURT: -- under a power of attorney for a while. She needs to tell us where all the money is.

MS. GOLDBERG: She's made herself -- and I

don't -- maybe, maybe my ward -- maybe Muriel did this for her daughter -- but at least on one of the accounts at Bank of America, Barbara has made -- Barbara is the sole POD. And that was done more recently.

I went to Texas -- Texas Dow Employer Credit Union the other day. There are two accounts there. One is an IRA. One is a checking account. Those were set up when they were originally set up with just Muriel Mintz's name on them. And they have Barbara's name -- now they have my name on them. I took them as guardian. They're now guardianship accounts. But Barbara's name was on them as POA. And on one of them Barbara's name was on there as a joint accountholder. So now they're guardianship accounts. And maybe Muriel put Barbara on that. I don't know. I don't know.

THE COURT: Yes.

MS. GOLDBERG: I'm just trying to figure out where things are. We get it with the finances. Can we move on to my next --

THE COURT: Well, as I said, I shouldn't be in a position of having to order you-all to be professional, but I'm ordering y'all to be professional. Just talk to one another. Keep in mind that her job is to file an inventory saying she has the assets. And as she pointed out, she has a bond. So we're careful about

finding out where the assets are. That's --

MS. GOLDBERG: Yeah, that's all. I just need to know.

THE COURT: My primary goal here has nothing to do with the family relationships before this started. I don't care whose feelings are hurt. I just -- I've got to make sure that the ward's finances are protected and the ward's person is protected. And I think all -- all wards should be in the presence of all family members as much as possible, unless the ward says, I don't want him around. I don't like him. I don't want him around. Then we shouldn't force her to be around your client if that's the case. But it's not proper for someone who has the ward living with them to not let people -- if it's inconvenient for people to come visit because she's not there, then they need to make arrangements to get her to live somewhere where it's convenient.

And $6,000 a month contribution to living expenses at a house is ridiculous. I mean, I don't know what the house is like and I don't know what it costs. If that includes paying money to Barbara and/or her husband, as she said, it's got to be arranged for and it's got to be appropriate. I mean, I don't know what -- you know, I mean, we just -- I just went through this with my mother-in-law. We had 24-hour-7 care. It cost $10,000 a

month. But that's 24/7 professional care. That's three people a day. You have to change them, you know, every 40 hours. It's a huge mess to schedule them all.

But $6,000 from her to a family member is a lot of money. Because that means -- there are two other people living there. So one person is paying more than one-third of the cost to maintain the household or it cost a whole lot to live in that house. I might move in. There's bound to be some extra space there.

MR. MAHONEY: Yes, sir.

MS. GOLDBERG: It's a nice house in a very nice neighborhood.

MR. MAHONEY: But I don't believe it's 18,000 a month.

MS. BROWN: Yeah.

MR. MAHONEY: 18,000 might be a little pricey.

THE COURT: I mean, it doesn't cost me that much to keep my house up. It's a fairly nice house.

MS. GOLDBERG: No, and as the guardian, if they want to do that, then we have to have a contract and I file -- do payroll taxes for them.

MR. MAHONEY: Sure.

MS. GOLDBERG: So...

THE COURT: What are -- you had three

issues.

MS. GOLDBERG: My final thing -- yes.

THE COURT: Visitation was one and money was one.

MS. GOLDBERG: Yeah. And, of course, there's more to the money, but we get it. Everybody gets what I'm trying to say. There's more, but everybody gets it.

Okay. There are Facebook postings that I find -- this is my ward. This is my lady. She's not my momma, but she's my lady now -- that Barbara is posting pictures of my ward on Faceboook. And this is what she wrote on -- I hate Facebook. But anyway, that aside -- My mom, a ward of the State, for the crimes of advanced age and having worked all her life and saved all her money to enjoy her retirement, is now stripped of all rights, has been appointed an ad litem temporary guardian by Probate Court in Harris County, Texas, who can pull her from my loving home at a moment's notice and has unlimited access to her bank accounts, all started because Muriel Mintz's son hired shyster attorney to file application for guardianship for Muriel Mintz.

THE COURT: Didn't even put your name in there.

MS. KELLY: I know. I feel cheated.

MR. MAHONEY: She didn't tag you in the Facebook --

MS. GOLDBERG: A criminal who has -- yeah, she didn't tag you.

MS. KELLY: Thank God.

MS. GOLDBERG: A criminal who has committed murder has more rights than my mother. She's declared incapacitated without a Court hearing or jury trial. Yes, this is America in 2017. Yes, it is a kangaroo court. But, yes, help is on the way. Thank you U.S. Senate and House of Representatives. Please, Facebook readers, help me spread the news of America's dirty, little secret. Contribute to AAAPG, a fine organization that is helping our elders and grieving family members.

But that's my ward's picture (indicating). Here is another one (indicating). She doesn't have Muriel's picture on this one. This is Donald Mintz and his son Scott. So the son and grandson.

Barbara: Two peas in a pod, Donald Mintz and son, Scott Mintz, sold their mother/grandmother into slavery to -- into slavery -- to Probate Court in Harris County, Texas, for a cut of the money. The root of all evil. Missing from colluders is daughter Lauren Mintz -- that's the granddaughter who took off of work on Friday to see her grandmother and then didn't see her -- Enjoy the

weekend and --

MS. BROWN: Are any of these postings after you brought this to my attention and I talked to Barbara?

MS. GOLDBERG: Yeah, yes. This one came up the other today. She doesn't have -- she has Muriel's picture up here (indicating). I don't know who this guy is (indicating). Don't let this happen to someone you love. She kept that -- she was a little bit more guarded, Seven Acres, some guy. I mean, maybe he fell. I don't know what happened to him. And I don't know who this guy is, Seven Acres, Jewish Senior Care Center.

MS. BROWN: That doesn't have anything to do with --

MS. GOLDBERG: Well, yeah, Muriel is not on this one. But still: Enjoy the weekend, and keep your family safe from predators. It's got my ward's picture on there, so. You actually pointed out --

MS. BROWN: These are very interesting exhibits for a jury trial. But we've talked to her --

MS. GOLDBERG: We don't want a jury --

THE COURT: No, they're not.

MS. GOLDBERG: We don't want a jury trial.

MS. BROWN: But this isn't --

MR. MAHONEY: They're horrible. I would never --

THE COURT: If she posted them, she shouldn't be around her. I mean, I've had this problem. I had a woman from River Oaks who came in that wanted to save somebody and ended up spending a huge amount of effort and trouble and didn't help the ward one bit. I mean, I got -- I got phone calls from county commissioners. I got a phone call from a congressman because this woman was calling them -- same charges. You know, they stole her away from -- and it was all B-S, all B-S.

I can't -- I mean, she's got a constitutional right to say anything she wants. But the more she puts online like that, the less likely she's going to get to see her mother. We're going to take her away from her mother if she's going to be abusing her. How she could possibly think it makes -- it's good for her mother to put her picture on Facebook. I mean, her mother is older than I am -- not that much older -- but I bet she didn't --

MS. GOLDBERG: Oh, Judge.

THE COURT: -- have a Facebook account.

MR. MAHONEY: But, Judge, I'll take it one step further. How could -- how would anybody possibly think that that would be good for their case is beyond -- they obviously don't. I mean --

MS. GOLDBERG: Well, she's your client.
THE COURT: I'm not worried about whose case is advancing or going away. I'm worried about the ward. And she's not competent to be embarrassed, but she's 93. And she deserves better. It's just outrageous conduct. Although, you know, I'm not -- I'm probably not going to be making any decisions one way or the other. She's not earning Brownie points with the Court --
MR. MAHONEY: No, I understand.
THE COURT: -- acting the way she is.
MR. MAHONEY: No. I mean, it's not -- obviously, I don't -- it's -- and I think Erinn did talk to her about the posts, and I think that she cut them back.
MS. GOLDBERG: Okay.
MR. MAHONEY: I'm like Michele.
MS. GOLDBERG: Has she backed off?
MR. MAHONEY: I don't think Facebook is --
MS. BROWN: I'm not Facebook friends with her.
MR. MAHONEY: Right. I don't --
MS. BROWN: I don't know, Michele. I can tell you this: You sent me the e-mail. I was appalled.
MS. GOLDBERG: Yes.
MS. BROWN: I called my client up and said,

Don't do that. That's stupid.

Now that -- that is the extent of my relationship with Barbara Latham. I can -- you know, we advise her.

MS. GOLDBERG: No, I understand that.

MS. BROWN: The issue, Judge, I have not one single issue with Ms. Goldberg's concern. The issue that we have is what I feel has been a lack of cooperation or whatever. And when I legitimately am saying, Look, I'm not understanding this e-mail. I'm not understanding what you're asking. Can you -- can we do a conference call so we can go through some of these numbers?

I just feel like rather than call -- bringing -- how much money did this hearing cost? The phone call would have been cheaper. Just -- that's all. I mean, and then --

MR. MAHONEY: Well, he addressed that.

MS. BROWN: And that's all I'm saying.

THE COURT: As I said, I can't order you-all, all of you, to be more professional --

MS. BROWN: But the Facebook thing --

THE COURT: -- but you need to.

MS. BROWN: -- we addressed that with our client. And that's why I just asked her, Have any of those been since you e-mailed me? She says, No.

So I'm like, okay. Well --

THE COURT: She said some of them had come out.

MS. BROWN: Well, not with the pictures.

MR. MAHONEY: Not with the pictures of the ward.

MS. GOLDBERG: Yeah. And that's what I have. I don't -- I'm not a Facebook user. But I do have those.

MS. BROWN: Right.

MS. GOLDBERG: I found those.

MS. BROWN: We told her she can't post about -- she can't --

MS. GOLDBERG: There may be more. I really don't know.

THE COURT: I don't care. She can say anything she wants about me as long as she doesn't mention the ward. I mean, I'm an elected official. You can call me anything you want, freely.

MS. KELLY: October 24th was the last one.

MS. PITRE: The real problem is she has the picture of her and her mother as her profile picture on Facebook.

MR. MAHONEY: Okay. But how is that any --

MS. PITRE: So anytime anyone accesses her

account, the ward's picture shows up.

MR. MAHONEY: Okay. But that's like telling somebody they can't put a picture of them and their kids on there. I don't know that you can say -- and I'm not -- I'm not saying what she's saying is wrong.

THE COURT: Well, I would say it shows a lack of discretion which is a bad thing for somebody that's involved in litigation to have in Probate Court. I mean, why would -- why doesn't she have a picture of the whole family? Why doesn't she have a picture of her and her siblings?

MS. BROWN: I don't think she --

THE COURT: She hates them.

MS. BROWN: -- likes Donald.

MR. MAHONEY: I can answer that one. I can't answer many, but I can answer that.

THE COURT: But it doesn't make sense. She ought to have a picture of herself on Facebook and not somebody else. How did she get her mother's permission to show the picture?

I mean, I had this case before I was talking about where a lawyer took the ward to and set up a meeting with Channel 13 --

MS. GOLDBERG: Ooh.

THE COURT: -- at his office.

MS. GOLDBERG: Ooh.

THE COURT: And they photographed the ward and had a story on the 6:00 o'clock news. And the reporter called me for a comment. And I said, Who gave you permission to talk to her?

MR. MAHONEY: Wow.

THE COURT: Well, uh-uh-uh.

She's incapacitated. I've determined she's incapacitated. Who gave you permission? Do you go around taking pictures of children and putting them on? Who gave you -- you know, it's just outrageous. She didn't have permission from the ward to put her picture on Facebook and that's bad.

MR. MAHONEY: Yes, sir.

MS. PITRE: Yeah, and she's got a picture on October 29th at 3:03 --

THE COURT: That's fairly recently.

MS. PITRE: -- 3:23.

MR. MAHONEY: Of her and the --

MS. PITRE: Her and her mom.

MR. MAHONEY: -- ward?

THE COURT: Yeah.

MS. GOLDBERG: Your Honor, can I just conclude with this? And I'm saying this to everybody. When I first got on the case -- because she is well-cared

for. She is well-cared for. And it looked to me like there's some -- whatever the family discord is --

THE COURT: Obviously.

MS. GOLDBERG: -- this looked to me -- yeah, obviously. It's pretty bad, too -- it looked to me at first like maybe we could mediate this and figure something out and she doesn't need a guardian, she doesn't need to be in the court system at all. But now I really -- I don't -- I don't know that that's my position anymore because there's more -- I'm not taking --

THE COURT: You can always mediate everything, including money that's lost. You can just -- I mean, there are ways to settle cases. And guardianship mediations work. I'm told.

MS. GOLDBERG: Sometimes.

THE COURT: I haven't seen that many. Because they're still an ongoing deal. And usually when it's an ongoing deal, it's harder to mediate. But it's possible. You-all may have done mediation as mediators as well as parties. It's a way to get everybody together in one room talking, which sometimes hasn't happened for years. But all I'm going to tell you right now -- because I've got to leave and go to a doctor's appointment -- is go forth and sin no more. Pick up the phone and call them. Answer the call.

If your client doesn't respond, you need to start thinking about whether you can represent her. If I were in your situation -- I'm not telling you this -- go off the record.

(Discussion off the record.)

THE COURT: Just keep working and talk to one another and let's try to get it done. I would rather see it settled. I don't want to try anything about this case.

MS. BROWN: Yes, sir.

MS. GOLDBERG: I don't want to try this case.

THE COURT: But we need to -- I have to insist that the guardian report everything about finances to me. I can't insist that your client report everything yet. But after a lawsuit is filed against her for breach of fiduciary duty, she's going to have to. So she should probably want to avoid that if she can.

MR. MAHONEY: Yes, sir.

MS. BROWN: Yes, sir.

THE COURT: All right. Thank y'all.

(End of proceedings.)

THE STATE OF TEXAS)
COUNTY OF HARRIS)

I, TINA K. WHITE, Official Court Reporter in and for Probate Court No. 2 of Harris County, State of Texas, do hereby certify that the above and foregoing contains a true and correct transcription of all portions of evidence and other proceedings requested in writing by counsel for the parties to be included in this volume of the Reporter's Record, in the above-styled and numbered cause, all of which occurred in open court or in chambers and were reported by me.

I further certify that this Reporter's Record of the proceedings truly and correctly reflects the exhibits, if any, admitted, tendered in an offer of proof or offered into evidence.

I further certify that the total cost for the preparation of this Reporter's Record is $_____ and was paid by _____.

WITNESSED MY OFFICIAL HAND this the 8th day of November, 2017.

/s/ Tina K. White
Tina K. White, CSR, RPR
Official Court Reporter
Probate Court No. 2
Certificate No. 5488
Expires: December 31, 2018
201 Caroline, Suite 680
Houston, TX 77002
832-927-1440

ROUGH DRAFT - MINTZ 11-28-17

THE COURT: Cause No. 456,059, the Estate of Muriel Luba Mintz. Could I have appearances?

MS. KELLY: Stacy Kelly for Donald Mintz.

MS. GOLDBERG: Michele Goldberg, temporary guardian pending contest.

MS. SCHWAGER: Candice Schwager for Barbara Latham.

MS. CHAPITAL: Aldrinette Chapital for the ad litem, Teresa Pitre.

THE COURT: Okay. So you have filed a motion to show cause?

MS. GOLDBERG: Correct, Your Honor. And I did receive -- I was -- Ms. Schwager did notice me. Actually, she noticed all attorneys, I believe it was Sunday evening, of her motion for continuance. Even this morning, what we can access from the Court's Website, I didn't see any orders signing her -- approving her appearance in the --

THE COURT: That's because I didn't sign it until this morning --

MS. GOLDBERG: Oh, okay. Well, I had filed a response --

THE COURT: -- but it was signed.

MS. GOLDBERG: I had prepared a response to

the motion for continuance but I didn't e-file it because I didn't think she was -- I was not apprised that she was an attorney of record. I am prepared to respond, though, if the Court is going to hear her motion for continuance.

THE COURT: Yeah, I'll hear it.

MS. SCHWAGER: Thank you, Judge. Well, I first just would like to point out what you just have pointed out that I submitted a request to substitute in as counsel which I understand you signed this morning. I thought it was signed yesterday. I filed my emergency motion on Saturday evening on the grounds that I had insufficient notice. I have not had time to review the bank statements which I understand are the only ones outstanding after the over $100,000 that Michele took out of Ms. Mintz's account, her personal account and a trust account which Muriel Mintz established in 2015 which not only benefits -- well, it benefits all three children, Donald Mintz included.

MS. GOLDBERG: Objection, Your Honor. This has nothing to do with motion for continuance. It's procedural. Motion for continuance is based on procedural grounds.

THE COURT: Yes.

MS. SCHWAGER: The show cause hearing is to address these things.

THE COURT: Well, but the basis of your continuance...

MS. SCHWAGER: I would argue that there's good cause. I have not made it through all of the pleadings, so if I have any mistaken statements in my motion, I apologize and will correct that. I pulled as many as I could, read them as quickly as I could. But I have --

THE COURT: I have no idea why you had transcripts from Court 4 in an unrelated case attached to your motion. I have no idea why you had a disqualification of your firm in a bankruptcy.

MS. KELLY: Well, she's asking for Jason. But Jason is not on this case.

THE COURT: Well, I know. But, I mean, it was about a disqualification in Bankruptcy Court.

MS. SCHWAGER: I can answer that. It affects crediblility.

THE COURT: It's a motion for continuance. The only question on a motion for continuance is why the hearing should be delayed. It has nothing to do with evidence in the case at all.

MS. SCHWAGER: Well, I believe --

THE COURT: Now if you say you need time to discover --

MS. SCHWAGER: Yes, sir.

THE COURT: -- they're not producing any documents. That's time you need to spend with your client.

MS. SCHWAGER: Right.

THE COURT: You said she's ill, but you didn't say that in any kind of a way that's grounds for continuance.

MS. SCHWAGER: She was ill the last couple of days that I spoke with her and so I wasn't able to meet with her to go through the statements.

THE COURT: Well, that -- to do that, you have to have a doctor's letter that says the person is ill. You can't just say, My client is not feeling well and can't meet with me.

MS. SCHWAGER: Well, if you would like to hear from her, she can be sworn in and testify that she's ill.

THE COURT: Is she here?

MS. SCHWAGER: Yes, she's here.

THE COURT: Well, why isn't she up here?

MS. SCHWAGER: She's right there (indicating).

THE COURT: Have her come on up.

MS. SCHWAGER: Ms. Latham.

(Barbara Latham approached the Bench.)

THE COURT: I'm sorry you're ill. But the question is: Are you going to produce the documents that I ordered you to produce by the beginning of last month I think?

MS. LATHAM: I'm really not aware -- are you --

THE COURT: Well, let me explain something.

MS. LATHAM: What is it I'm lacking?

THE COURT: You are acting -- you acted under a power of attorney --

MS. LATHAM: Uh-huh.

THE COURT: -- or as a trustee under a trust. I'm not sure which. But when you act in those capacities, you have a fiduciary duty to the beneficiaries. Which means you have to produce every bit of information you have to justify everything you've done. If you don't produce it, you lose. It's not like a typical lawsuit where the burden is on the person who is complaining to prove things. In a fiduciary case, the burden is on the fiduciary to justify everything that's done.

So if you took a dollar in the last two years, last four years, you have to explain what that dollar was taken for. You haven't done that. The

guardian is acting on behalf of the ward because I appointed her and told her to do so. She's asking for those documents so she knows what's been taken and she can take whatever action she needs to to get it back.

So the quicker you can get every single piece of paper that you have to justify every single dollar you spent, the better off. The longer you delay -- and I know we've had this conversation with your prior counsel in my Chambers several months ago. So you do know what I'm talking about.

MS. LATHAM: Well, sir, I -- when it -- if it was in your Chambers, I was not privy to that. And if it was up here --

THE COURT: You were there.

MS. LATHAM: -- I can't hear back there.

THE COURT: You were there. You were in my Chambers.

MS. SCHWAGER: I believe her counsel told you that they couldn't communicate with her. And I can attest to that fact because I have no problem communicating with her.

THE COURT: You have no problem?

MS. SCHWAGER: No.

THE COURT: Okay. Well, I don't know why they said it was an issue.

MS. SCHWAGER: Well, it was an issue because she wasn't informed of everything that she was supposed to disclose. And many of the e-mails that were forwarded to prior counsel were not sent to her.

THE COURT: Well --

MS. KELLY: Your Honor, along those lines, I've sent discovery asking for the same exact information and that was due last week and she hasn't, you know, served me with her responses. So there's definitely just a sitting back, I'm not going to do what I'm told.

MS. GOLDBERG: Additionally, Your Honor, I would like this on the record. I had Ms. Latham served with citation on November 10th of my motion for show cause to which I attached the transcript from the status conference hearing. And even if it is indeed correct that her previous attorneys didn't properly communicate with her, she could read what was in the transcript where you ordered her to have all of those documents to my office by Friday of that week. We were in your Chambers on October 31st.

MS. SCHWAGER: I believe she's also entitled to an attorney who actually can communicate with her and go through the documents to insure that you get what you need and I'm here to do that for her now.

THE COURT: So what date are you going to

get all the documents?

MS. SCHWAGER: Can we have two weeks, ten days, something of that nature?

MS. LATHAM: Well, how far back are we talking documents?

THE COURT: Well, the statute of limitations is, I think, four years. Isn't it?

MS. KELLY: Four.

THE COURT: So...

MS. LATHAM: Well, I can -- if I go online, I have no more access to these accounts.

MS. SCHWAGER: We will see what we can pull together.

THE COURT: Yeah. If you don't, as I told you, you acted as a fiduciary. And if you don't have the documents to prove that you acted properly as fiduciary you lose and you have to give the money back. You probably don't have the money so that may be a problem. But what I'm suggesting to you is you can't not do anything. You can't --

MS. LATHAM: Isn't --

THE COURT: -- you can't say, I'm not feeling well. I can't deal with this. I want you all to go away and leave me alone. You can't do any of those things. Okay? So you need to face this. Get your

lawyer's help to explain it all to you. I'm trying to explain it to you in layman's terms. You just need to get all the information you have in your possession and get it to the counsel that has asked for it in writing and get it to the guardian.

MS. LATHAM: I actually thought I had given Errin Brown that information.

MS. GOLDBERG: Your Honor, as I put in my pleading and I've written in numerous and I attached the numerous and various written correspondence to all attorneys and to Ms. Latham directly that there are -- Ms. Latham put in her application for guardianship which was filed in, I believe, April 7th -- something like that -- 2017, April of 2017, that her mother had about 225,000 in her estate.

From the records that I have been able to access that still have the name of Muriel Mintz on them, there's about $107,000 which means there are various transfers and I've been asking for them and I've been asking for this account that appears to be in Ms. Latham's name. So when she says she can't get records, we need to see her accounts. Because there's transfers of more than half of her mother's assets into accounts that appear to be in her name. I'm not saying the money is not there. I'm assuming it is there. But we need to see it and where

is it?

And I have a real problem, Your Honor, because as a neutral third party and as the court-appointed temporary guardian, I'm charged with the duty of making sure that Ms. Mintz is in a -- is appropriately placed in a place that is safe and secure for her and I need to know how to pay for it. So with the transfers that I have been able to view and access thus far, Ms. Mintz's assets are very limited. She's got about 3,000 a month in income. Her cash assets to which I have access as I said are about 107,000. And with the kind of transfers that Ms. Latham appears to have made using a power of attorney, Ms. Mintz will be totally disqualified from applying for -- I can't even apply for her for nursing home Medicaid coverage once her 107,000 in assets are spent down because of these transfers that will be considered fraudulent and criminal under the Federal law.

So Ms. Latham -- I want Ms. Latham to be apprised of that, that there are serious criminal consequences if she has transferred money into her own name. And if it's there, it just needs to come back. That's all. That's all I want, get the money back so I can take care of her mother.

MS. SCHWAGER: Regarding the TRO --

THE COURT: You're nodding "no."

MS. LATHAM: Well, I'm -- I'm not sure what -- how far back this goes.

MS. SCHWAGER: We'll talk about it.

MS. LATHAM: Okay.

THE COURT: Well, you said in March of this year that your mother had $225,000.

MS. GOLDBERG: 225.

MS. LATHAM: I believe that the lawyer was just -- seemed to just copy verbatim what Donald had on his application.

MS. GOLDBERG: I'm sorry. Ms. Latham had to sign it. An application for guardianship is verified. She signed it. Everything was true and correct.

MS. LATHAM: And when I asked about what does this means, I was told it doesn't mean anything. It's a bottom or a top figure.

THE COURT: Well, you may have a lawsuit against your lawyer. I don't know. I'm not suggesting that. I don't know. I wasn't there for the conversations but you did sign that, a pleading, that said it was true and correct.

So you think ten days?

MS. SCHWAGER: I think we can do it in ten days. Don't you think?

MS. LATHAM: Yeah. I think so.

MS. SCHWAGER: I have a hearing on the 6th. What is that, eight days?

MS. GOLDBERG: I've been asking since September 20th, Your Honor.

MS. SCHWAGER: Well, Your Honor, it's not going to go anywhere. I mean, it's --

THE COURT: Well, it has gone, over half of the money has gone somewhere.

MS. SCHWAGER: There's a family trust that Muriel Mintz established for her three children. I suspect that may be where some of it is. I don't know.

MS. GOLDBERG: I have access to the trust. It's not there. It's been transferred out of the trust.

I just want to get something on the record, and I want Ms. Latham to understand something. I'm trying to do this -- once again, I'm a neutral, third party -- I am trying to take care of Muriel Mintz and make sure that there's enough money.

I -- if I don't get these records and I can't get this straightened out, as an officer of the Court I have -- I will have a duty, I believe, anyway, I will file a surcharge action. I will be forced to file surcharge action against her, an action for conversion of the assets and to report her client -- and to report Ms. Schwager's client to the appropriate law enforcement

agencies for taking her mother's funds.

I don't want to do that. I don't want to take such serious measures. I don't want this to be ugly. It's already ugly. And I don't want it to be more ugly. We're just trying to take care of a 93 year old woman.

MS. SCHWAGER: And are you saying that Ms. Mintz had no authority to transfer her own money, even though she was only found incompetent July 9th or June 9th?

MS. GOLDBERG: That's not before the Court today. That's not before the Court.

THE COURT: I would suggest to her -- you understand the law, I think. I'm not sure -- but you understand that she has a duty.

MS. SCHWAGER: Yes.

THE COURT: If she spent one dollar of her mother's money, she has a duty to justify it. Not -- they don't have to ask for her to justify it. She has to justify it. She has to have the justification available instantly to give to anybody who asks.

MS. SCHWAGER: I understand that. So if there's justification --

THE COURT: If the justification is it's my money --

MS. SCHWAGER: No.

THE COURT: -- then it will show that.
MS. SCHWAGER: Okay. What if the justification is that Muriel Mintz signed it and transferred it?
THE COURT: Well, then you're going to have to establish she was competent to do that. There may be some question about that.
MS. SCHWAGER: Well, I didn't realize that was my duty or my burden. But if it's within the last few months, I do understand that.
THE COURT: If you're representing -- if you're representing the person who took the money, yeah.
MS. SCHWAGER: Well, I would also point out that I think Muriel Mintz needs to be re-evaluated. She has a hearing problem that nobody seems to have noticed and macular degeneration. Many of the tests were -- that were done were visual. So it's no wonder she failed them.
THE COURT: That's certainly not before me, and I don't know whether you're qualified to say that. But...
MS. GOLDBERG: That's not before the Court. But since Ms. Schwager has put it before the Court, I would like on the record, I want the Court to be aware, that on Friday afternoon of Thanksgiving holiday, of Thanksgiving weekend, fortunately, I was in the office,

Ms. Latham called and said she was ill. She couldn't take care of her mother. I should come get her.

I asked her to bring her -- there's more to the conversation -- I asked her to please bring her mother to the office. I would arrange for -- I would make arrangements for her mother. She dropped her off at my office at about 3:00 o'clock on Friday afternoon. Since that time we've had an evaluation of her -- we've been having medical evaluations of her -- and under Ms. Latham's care -- and I know Ms. Latham is an RN -- and maybe it's not her fault. Maybe that's just because it's a 93-year-old woman who is ill -- she has lesions in her mouth. Her fingernails are cracked. She's had hair loss. She does have vision problems and she's had significant memory loss. And the doctors are saying -- the doctor and nurse that evaluated her at Gardens of Bellaire where I'm looking for placement -- said that it is because of malnourishment. So I'm -- I have additional concerns of, not only for the money, but she wants to bring it up. So I want to bring this to the Court's attention.

And also, if the Court will allow, Ms. Schwager made, on behalf of her client, made numerous allegations against me personally and against me as a professional. And I just want to get a few things on the record. It will be brief, Your Honor. But I'm asking the

Court to allow --

THE COURT: Well, I didn't see that. Where is that mentioned?

MS. GOLDBERG: It's in her motion for continuance.

THE COURT: Okay.

MS. SCHWAGER: Would you like a copy?

THE COURT: That's all right. I saw it.

MS. GOLDBERG: Well, I just have a few things. On page 7 Ms. Schwager asked where I got the power of the KGB to seize Muriel against her will.

So, first of all, her client dropped her off at my office. I didn't seize anything.

But I do want to make an announcement to this Court -- it's on Page 7.

THE COURT: Yes.

MS. GOLDBERG: I want to make an announcement to this Court -- and while I'm here and it's on the record -- to the Federal Government and to the Department of Homeland Security that I am not affiliated in anyway with the KGB and I never have been.

THE COURT: I don't think that was serious, a serious charge. Maybe it is.

MS. GOLDBERG: It's in the public record now, Your Honor.

MS. SCHWAGER: Figure of speech.
MS. GOLDBERG: There is, additionally, on page --
THE COURT: It's not a figure of speech.
MS. SCHWAGER: She has been ordered -- ordering my client --
THE COURT: You realize that pleadings filed in Court, that there's a qualified privilege?
MS. SCHWAGER: Yes, I do.
THE COURT: To slander?
MS. SCHWAGER: I don't believe that is slander. I believe, as you --
THE COURT: To say that a lawyer that's appointed is a representative of the KGB?
MS. SCHWAGER: Ms. Goldberg has gone beyond the authority that I have seen given to her in the order which she was appointed for which a motion for temporary guardianship that I noticed was never even filed and ordering my client during certain time periods to bring her there and acting very ugly and hostile when --
THE COURT: Did you -- I mean, but that doesn't justify you say she's related to the KGB. You cannot possibly prove that. So you know when you say those crazy things, you know it's untrue. You have to know it's untrue.

MS. SCHWAGER: I do know --
THE COURT: You've made --
MS. SCHWAGER: -- that's not true. I didn't mean it as a true statement.
THE COURT: Well, then, why did you put it in a court pleading and sign it?
MS. SCHWAGER: I put it in a court --
THE COURT: Have you read the rules?
MS. SCHWAGER: I could put it in a court pleading because I feel like my client is in a witch hunt. Donald Mintz retired from the trust in order to do just this.
THE COURT: I would suggest to you that you limit your arguments to this Court to be arguments of law. The motion for continuance, in attaching as it did, transcripts from hearings in another court by another lawyer in another case is not persuasive. It's just -- it's stupid. It doesn't make any sense.
You attached something from the Whatley case. I don't know whether you were even practicing law when the Whatley case was going on. And I don't -- if you want to claim credit for anything that happened to that man, I would suggest you not do it in this court. Because what happened to him was he was -- he was -- had his entire estate stolen from him by lawyers, some of whom

you're associated with, and non-lawyers that practice law.

But the point is: I would limit your pleadings in writing to things that you can demonstrate are true.

MS. SCHWAGER: Well, that's why I attached the transcripts to show that some of the officers of this court are acting less than forthcoming.

THE COURT: He -- whoever you -- I think you're talking about Mr. Ostrom.

MS. SCHWAGER: Yes.

THE COURT: He's not counsel in the case.

MS. SCHWAGER: His name is on the pleadings.

THE COURT: His -- no. Stacy Kelly's name is on the pleading. She's an --

MS. SCHWAGER: With Jason.

THE COURT: -- she's an associated partner, but what difference does that make? So you want to say you should win this case, you should win your point in this case because another lawyer said something else in another case and he's so bad in that other case, then -- do you understand that that's not useful?

MS. SCHWAGER: I understand that my point was just simply to have my client treated fairly, instead of --

THE COURT: Then why don't you say --

MS. SCHWAGER: -- presumed in the wrong.
THE COURT: -- why don't you say, I want my client treated fairly?
MS. SCHWAGER: Okay.
THE COURT: I don't think you need to say that. I treat everybody fairly.
MS. SCHWAGER: I didn't say anything towards you, Your Honor. It was about --
THE COURT: Well --
MS. SCHWAGER: -- the attacks on her credibility and the seeming inquisition.
THE COURT: Has she done what I ordered her to do?
MS. SCHWAGER: No.
THE COURT: No.
MS. SCHWAGER: But I explained to you her attorneys were less than --
THE COURT: Well, then, that's something you can take up with them.
MS. SCHWAGER: Uh-huh.
THE COURT: Rather than taking the time to file that motion for continuance, which had to have taken a couple of hours to write, it was fairly lengthy, you could have spent the time with your client trying to respond to the discovery.

MS. SCHWAGER: Well, it's kind of hard to do Saturday night when the banks are closed, but I understand the point.

THE COURT: Well, I didn't know why you waited until Saturday.

MS. SCHWAGER: Because I wasn't appointed in this case. I wasn't substituted in.

MS. GOLDBERG: You weren't on Saturday, either.

THE COURT: You could -- you could have acted in the case. I mean --

MS. SCHWAGER: Her attorneys filed nothing. I figured I ought to file something for her. And if you accepted it, I would appreciate it. That was my perspective at the time.

THE COURT: Well...

MS. GOLDBERG: Your Honor, there are some other points. I'll be quick. But there are some other points. She's made very serious allegations against me I just want to put on the record. I just need a record of this, Your Honor, please.

On Page 7 Ms. Schwager, on behalf of Ms. Latham, alleged that I took IRS funds -- IRA funds belonging to the ward and that I removed the funds, incurring penalties and interest.

I didn't remove any IRA funds. I didn't remove IRA funds. I don't know why they have that. I did restyle the account. I put my name on it and I took Barbara Latham's name off where she can't get access to it.

On Page 8 Ms. Schwager states that Goldberg is appointed every time there is big bucks. And there is proof the random appointment statute is being violated.

I don't even know what that means. I'm trying to find where the money is. Once again, it's her client who has removed the big bucks.

I want her -- throughout her pleadings, throughout her motion for continuance, Ms. Schwager, on behalf of Ms. Latham, has accused Donald Mintz of all kinds of stuff. I have asked Donald Mintz since we've started -- and all attorney are always copied -- I've asked him for all kinds of records. Anything I've asked from him, he has delivered to my office promptly and quickly. If I had a question, he responded. He -- his attorney gave him permission to speak directly with me for efficiency and so as not to run up legal fees.

So I'm treating -- once again, I'm neutral. I keep saying it -- but I consider myself neutral. And I'm asking both sides for the same. I'm getting nothing from Ms. Latham. I'm getting cooperation from Mr. Mintz.

Ms. Ms. Schwager on Page 4 states, I filed an inventory. It's complete. And the Court approved it. Making it a point moot to ask for more.

I don't even know what that means. But she should know --

MS. SCHWAGER: Well, let me read you the statute.

MS. GOLDBERG: -- she should know that I can always amend the inventory as I receive more information and I'm going to have to report any changes to the estate on the annual account. So to say it's moot for me to ask for more information, I don't even know what that means.

I already addressed that...

THE COURT: Today is the 28th of November.

MS. GOLDBERG: I think that's all I have right now.

THE COURT: So have the documents --

MS. GOLDBERG: Here is an order, a turn over order.

THE COURT: -- have the documents to the temporary guardian by Friday, the 8th of December. And file a -- don't just take a stack of documents. File some kind of statement saying this is all the documents that relate to what I have, what I took, what I moved because she's going to have to justify them.

MS. SCHWAGER: Sure.
THE COURT: And it would be quicker and easier and save more money for the ward if it's done basically by agreement.
MS. SCHWAGER: Can we have an agreement that the ward appear, given the doctor said she should and can and it's not harmful?
MS. GOLDBERG: No.
THE COURT: Do what?
MS. GOLDBERG: I do not agree.
MS. SCHWAGER: Well, I suspected that. But the ward, it has been said by the physician, that she should be able to appear; that's it's not a danger for her to appear; that she shouldn't be in the most restrictive environment, which is what Ms. Goldberg is seeking, apparently. And some of these issues are properly addressed by Ms. Mintz.
MS. LATHAM: Can I --
MS. SCHWAGER: If she signed documents, at least she can be asked is this her signature.
THE COURT: If the doctor -- well, number one, you said can't see. But...
MS. GOLDBERG: But the transfers -- Ms. Latham did the transfers, made the transfers. She made the transfers. I'm not talking about transfers that

Muriel Mintz made.

THE COURT: No. She said that she made them.

MS. GOLDBERG: Authorized them?

MS. KELLY: If we can get into the TRO, that might clear up a little bit of this.

THE COURT: Okay.

MS. CHAPITAL: Your Honor, can I explain the question, please, regarding the date?

THE COURT: This is original petition and application for removal of trustee. Is that it?

MS. GOLDBERG: Yes.

MS. SCHWAGER: Your Honor, this wasn't noticed. And the other issue is the Trust and Property Code states that any action for removal of a trustee -- I believe it is Section 115, under Title 9 on Trust, at 115.01, Jurisdiction: Except as provided by Section D, District Court has original jurisdiction and exclusive jurisdiction over all proceedings by or against a trustee and all proceeding concerning trusts, including proceedings to -- you go down -- appoint and remove a trustee, determine the powers, responsibilities, duties, and liability of the trustee. So --

THE COURT: Believe it or not, since I've been a Statutory Probate Judge for 24 years, I'm aware the

jurisdiction of this court includes jurisdiction of a trust. I have concurrent jurisdiction with District Courts over trusts. So that's just not an issue. Maybe you don't know that. I don't need you to do any research to tell you.

MS. SCHWAGER: It's under the related to statute which I believe --

THE COURT: It's not related -- it's not related to. The trust is in this court. The ward is in this court. The grantor of the trust in this court. So this court has jurisdiction.

MS. SCHWAGER: Well, then, I believe the grantor should be permitted to be here and is relevant.

MS. LATHAM: That's true.

THE COURT: We have a temporary restraining order. I've already disposed of everything else. Your going to get -- your client -- you've agreed your client is going to get every document she has related to the transfers --

MS. SCHWAGER: Correct.

THE COURT: -- to the temporary guardian by what date?

MS. SCHWAGER: By the 8th of December.

THE COURT: Okay.

MS. GOLDBERG: Here is an order. I've

altered the order I prepared. I put December 8th. Everything to my office, please.

MS. CHAPITAL: Your Honor, are you going to put a time on that?

MS. GOLDBERG: I had 5 o'clock. I would ask --

THE COURT: 5:00 o'clock.

MS. GOLDBERG: Since it's a Friday, I would ask the Court to make that 3:00 o'clock.

THE COURT: Okay.

MS. GOLDBERG: Everybody leaves my office early.

THE COURT: 3:00 o'clock.

MS. GOLDBERG: Thank you.

THE COURT: Okay.

MS. SCHWAGER: I would also point out that in reference to this TRO she's arguing, which is supposed to be considered on paper, that statements made about Mr. Mintz are untrue and I have documents to prove it.

THE COURT: I haven't found the application for TRO.

MS. SCHWAGER: Okay.

THE COURT: What I was handed -- I don't know who handed it to me -- but it's got a bunch of blank pages in it. Okay.

MS. KELLY: Just concerning the transfers that were made since the guardianship was filed made into Barbara Latham's personal account, and I would like that money -- I would like her enjoined from spending that money and they were massive amounts. And my client -- I know this isn't an evidentiary hearing. That's usually on the next one, but my client is here. He is on the same account where the accounts [sic] came out of as co-trustee. And he can testify that $92,398.96 was transferred into a Bank of America account ending in 7007 which Ms. Latham's attorneys have admitted is her personal account.

MS. SCHWAGER: Mr. Mintz is no longer trustee.

MS. KELLY: It has medical disability, too, which I don't understand why she did that.

MS. GOLDBERG: As temporary guardian, I back that up.

MS. KELLY: I don't know if it's still in Account 7007 or if she's moved it somewhere else. That's why I would like to enjoin her from spending the 92,000 and enjoin Bank of America from allowing her to access any Merrill Lynch account just to keep the status quo.

MS. CHAPITAL: I don't have a copy of that.

MS. KELLY: It was filed late. I'm sorry.

MS. CHAPITAL: Some of the documents wouldn't come through.

MS. KELLY: I'll make sure Teresa gets it. I'll e-mail it.

MS. CHAPITAL: Thank you.

MS. KELLY: No problem.

MS. CHAPITAL: She will be back Thursday.

MS. KELLY: I'll get it out today. I don't want her to not have it.

THE COURT: You're going to serve Bank of America?

MS. KELLY: Yes, sir.

THE COURT: Do you have an order?

MS. KELLY: Yes, Your Honor.

MS. GOLDBERG: It's right here. Is that it?

MS. KELLY: That's it.

MS. GOLDBERG: Make sure that's what you want him to have.

MS. KELLY: No, that's it.

MS. SCHWAGER: Your Honor, I would just object to the extent it applies to her personal account. She can be enjoined herself from spending any money properly belonging to Muriel, but I don't think it's appropriate that her personal checking account be enjoined.

THE COURT: That's where she put the money when she stole it or whatever.

MS. KELLY: I mean --

MS. SCHWAGER: That's what you're --

MS. KELLY: -- we have documents.

MS. SCHWAGER: -- surmising. But at any rate, I believe Muriel Mintz authorized these transfers and there's also her own personal funds in that account. So by freezing that account, you are freezing her access to the funds that are hers.

MS. KELLY: I'm not asking to freeze the entire account, just $92,398.96 of it. Everything else, do with it as you please.

MS. GOLDBERG: She can transfer it back to the guardianship account.

MS. KELLY: I mean, instead of enjoining, if she would agree to transfer that amount back to Michelle, I would be find with that.

THE COURT: Will she do that?

MS. LATHAM: What is the situation for other beneficiaries who may be needing help with their maintenance and support?

MS. SCHWAGER: If the funds belong to Muriel, you'll transfer them back, correct?

MS. KELLY: No.

THE COURT: No.
MS. LATHAM: Why --
MS. KELLY: I want $92,398.96 transferred back.
MS. LATHAM: I would like to see where that figure came from.
MS. KELLY: Okay. Let me read the testimony from --
MS. LATHAM: I mean, I would like a copy of it.
MS. KELLY: Well, it's your account and you're on it --
MS. LATHAM: What?
MS. KELLY: -- as co-trustee.
MS. LATHAM: I've never seen this before.
MS. KELLY: Really? Bank of America? Because you've been pulling money out.
MS. LATHAM: What's -- is that --
MS. KELLY: -- Bank of America in the name --
MS. LATHAM: Is that --
MS. KELLY: -- of the trust?
MS. LATHAM: Wait a minute. Are you for real?
MS. SCHWAGER: Your Honor, the trust is

not --

MS. KELLY: Isn't this your name?

MS. SCHWAGER: -- in Muriel's name.

MS. KELLY: Aren't you on this account?

THE COURT: I'm sorry.

MS. SCHWAGER: The trust is not in Muriel's name. So that's 2015 --

COURT REPORTER: I'm sorry.

MS. GOLDBERG: I'm sorry. Ms. Schwager keeps saying she hasn't had time to look at anything. She's making these --

MS. LATHAM: I have to look at things --

MS. GOLDBERG: -- affirmative statements about these accounts.

MS. LATHAM: -- and my lawyer has to look at these things.

MS. KELLY: Okay. Then, I'll just.

MS. LATHAM: This makes no sense to me.

THE COURT: Here is -- here is what I'm going to tell you one more time: You have an absolute obligation as a trustee to account for that 62,000 -- $92,000. You can't say, I don't know what's going on. Because you have an absolute burden as trustee to say where that money is. Okay? You can't say, I don't know anything about that. That doesn't work.

MS. SCHWAGER: We've agreed that we would do that.

THE COURT: Okay.

MS. LATHAM: And so, for example, if I say I spent $239 on a wheelchair for my mother, am I in trouble for doing that?

THE COURT: That's a different issue, if you actually spent money for your mother for a wheelchair. That's $239, you say --

MS. LATHAM: Uh-huh.

THE COURT: -- but they're concerned about 90-some-odd-thousand dollars.

MS. KELLY: Well, I've got a 5,000; a 31,000; a 50,000; a 7,500; a 3,800. That is what equals the 92,000. All of that was transferred into her personal account after we filed the guardianship. It started one week after we filed the guardian.

MS. LATHAM: I -- I also have another beneficiary who needs help with maintenance and support. Am I not allowed to help that other beneficiary?

MS. KELLY: The trust actually says that if you gift to one child, you have to gift the equal amount to all three.

MS. LATHAM: Oh, no.

MS. KELLY: Yes, it does. So I don't know

where she's going to get two times 92,000.

MS. LATHAM: She's talking about -- Donald referred to it as a revocable living trust. It's an irrevocable trust.

MS. KELLY: Basically, Your Honor, it's like a crummey trust. This lady didn't have the funds to do it this way.

MS. GOLDBERG: Yeah.

MS. KELLY: It was so that she could funnel money to her children and qualify for Medicaid.

MS. LATHAM: No. She was --

MS. KELLY: They got a bad trust.

MS. LATHAM: Well, yeah.

MS. SCHWAGER: We're talking about --

MS. KELLY: Which we will deal with later.

MS. LATHAM: She was scammed, as I was, into it.

MS. SCHWAGER: We're talking about two different accounts, Your Honor. We're talking about her personal account and a trust account. It's not the same account.

MS. GOLDBERG: I agree. We just need to protect the funds. An argument over what the funds are -- just protect them.

MS. LATHAM: I did ask Don to go to the bank

with me and my mother and Estelle and let's give her our money back.

MS. GOLDBERG: That's not before the Court. We just need to protect her. Once again, if her money is spent -- if Muriel Mintz's money is spent down, Your Honor, and I need to apply for Medicaid, nursing home Medicaid, I'm not going to be able to until -- unless we can account for every single penny and where it's gone. Anything that was in the name of Muriel Mintz for the past five years has to be accounted for because of Medicaid rules.

MS. LATHAM: And there was no --

MS. SCHWAGER: I think this order is superfluous, given the fact that we just committed to be back on the 8th and give these documents.

THE COURT: Well, it's just --

MS. GOLDBERG: They're to be delivered to my office.

THE COURT: Right.

MS. KELLY: I'm talking about cash money here that she has stollen.

MS. LATHAM: Stolen? Now that sounds rather slanderous to me.

THE COURT: What did you do with $50,000? If you took it out of that trust, you were supposed to

give it to each of the beneficiaries.

MS. LATHAM: There are -- when new money is added --

THE COURT: $50,000.

MS. LATHAM: -- there is money that can be given to the beneficiaries, to three beneficiaries, that is equal and that was done. Estelle, myself, and Don did get that money.

MS. SCHWAGER: I have a check to Donald Mintz, who says he had no control, possession of money, for $14,000.

MS. GOLDBERG: They each had a check for 14,000. I saw that in the records. I already brought that up in previous hearings -- a previous hearing.

MS. LATHAM: He has also --

MS. SCHWAGER: I think we can resolve this best on the 8th.

MS. LATHAM: Okay.

THE COURT: No, we're not going to have a hearing on the 8th. You're going to have the documents in her office by the 8th.

MS. SCHWAGER: That's fine.

THE COURT: The hearing is going to be on December the 12th.

MS. GOLDBERG: What's the hearing on

December 12th? On the temporary?

MS. LATHAM: I've been slandered --

THE COURT: The temporary injunction.

MS. LATHAM: -- something awful during this case.

MS. GOLDBERG: December 12th, what day is that? I have a trial.

TRIAL COORDINATOR: We have a trial at 9:00, Judge. We can have it at 1:30. Hopefully, the 12th will be gone.

MS. GOLDBERG: What day of the week is that?

THE COURT: December 12th is the regular docket, isn't it?

TRIAL COORDINATOR: Yes. But we have that common law trial, Dubose. Remember?

THE COURT: On Tuesday?

TRIAL COORDINATOR: Yes.

MS. GOLDBERG: Your Honor, may I just check my calendar? May I get my calendar?

TRIAL COORDINATOR: Yeah. We discussed that at the last hearing to put it on Tuesday.

THE COURT: Well, what about all of the rest of the dockets on Tuesday?

TRIAL COORDINATOR: We passed everything.

THE COURT: Oh.

TRIAL COORDINATOR: Well, we didn't have anything set at the moment. So we just --

THE COURT: Okay. So 1:30 on --

MS. GOLDBERG: I think I have to be in Fort Bend County. If you don't mind I am checking.

THE COURT: Well, it can't be over 14 days.

MS. GOLDBERG: Oh, it can't be over 14 days.

THE COURT: And I only have Mondays and Tuesdays to use this courtroom, occasional Fridays.

MS. GOLDBERG: Oh, 12th, no. 12th I can be here. I'm sorry. The 11th is Monday. Fort Bend does all -- all the courts in Fort Bend do probate on Monday. The 12th I'm fine. Sorry.

THE COURT: So the 12th of December, at 1:30 p.m.

MS. GOLDBERG: December 12th, 1:30.

Your Honor, I just want to make one brief statement as well. Due to lack of cooperation on Ms. Schwager's client's behalf, for whatever reason, maybe her previous attorneys weren't clear with her, I have no idea. That's not the point --

THE COURT: There is a temporary restraining order.

MS. GOLDBERG: -- this has taken so much time that it shouldn't have. I shouldn't have had to

spend as much time as I've had to spend on this. It's unfortunate. I try real hard -- my office, we take pride on being very efficient and it's very difficult to be efficient in this matter, under these circumstances.

THE COURT: I understand. Hopefully, in the future we're going to get over this bump and have some more corporation --

MS. GOLDBERG: Thank you, Your Honor.

THE COURT: -- by all parties. All right. I've signed the order to produce documents and I've signed the TRO. And so I'll see you on the 12th.

MS. GOLDBERG: Thank you, Your Honor.

THE COURT: That gives you a chance to get documents and report back --

MS. GOLDBERG: Figure out what's going on --

THE COURT: -- to Ms. Goldberg on the status of those. All right. Thank y'all.

REPORTER'S RECORD

VOLUME 1 OF 1 VOLUME

TRIAL CAUSE NO. 462,505

IN RE:	*	IN PROBATE COURT
	*	
THE MURIEL L. MINTZ	*	NUMBER TWO (2) OF
	*	
FAMILY TRUST	*	HARRIS COUNTY, TEXAS

MOTION FOR TEMPORARY INJUNCTION

BE IT REMEMBERED that beginning on the 12th day of December, 2017, came on to be heard outside the presence of a jury, in the above-entitled and -numbered cause; and the following proceedings were had before the Honorable Mike Wood, Judge Presiding, held in Houston, Harris County, Texas.

Proceedings reported by Computerized Stenotype Machine, Reporter's Record produced by Computer-Assisted Transcription.

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No.	Description	Offered	Admitted	Vol
P-5	Wells Fargo PhotoCopy Request Recon plus debit certificates in process - cashier's check Made payable to Barbara Latham Check No. 24702096 In the amount of $52555.47 Issued on 12-24-17 Account ending 2861	37	37	1

THE COURT: Calling Cause No. 462,505, Muriel Mintz Family Trust. Could I have appearances?

MS. KELLY: Stacy Kelly for Donald Mintz.

MS. GOLDBERG: Michele Goldberg, temporary guardian pending contest.

MS. SCHWAGER: Candice Schwager for Barbara Latham.

THE COURT: Okay. So what do we have?

MS. KELLY: I would like to put on a little bit of evidence. I would like to call Michele Goldberg.

THE COURT: Okay. Can you just do it from where you are sitting?

MS. KELLY: Yeah. I can do it from here.

MS. GOLDBERG: That would be great.

THE COURT: You've got to talk up, though. We don't have a sound system.

MS. KELLY: Okay.

THE COURT: We have one, but we can't seem to make it work.

MS. GOLDBERG: My disclaimer is I'm a little sick and congested. So I don't know how loud my voice comes out.

THE COURT: Well, you can come sit up here closer if she can't hear you.

MS. GOLDBERG: No. I tend -- I have a lot

of volume. I might be too loud.

THE COURT: Okay.

MS. GOLDBERG: Some may say I yell.

THE COURT: All right. Go ahead.

MICHELE GOLDBERG,

having been first duly sworn, testified as follows:

DIRECT EXAMINATION

QUESTIONS BY MS. KELLY:

Q. Would you please state your name for the Court, please.

A. Michele Goldberg.

Q. And you're the temporary guardian of Muriel Mintz pending contest; is that correct?

A. Yes.

MS. KELLY: As part of this, Your Honor, I would ask you to take judicial notice of your file.

THE COURT: So noted.

MS. KELLY: Okay.

Q. (BY MS. KELLY) Now, as part of your duties, did you attempt to collect all of Muriel Mintz's financial assets?

A. Yes.

Q. And did you receive some of that information from Barbara Latham?

A. Some of the information, yes.

Q. I'm going to show you what I've marked as Plaintiff's Exhibit 1. I'm showing counsel a copy. Do you recognize this document?

A. Yes.

Q. Where did you receive this document?

A. I received this -- actually, I can't remember if I received it from Barbara. But I may have received it from Donald Mintz. I can't -- I can't remember.

Q. Okay. And what is this?

A. This is a statement of an account that is the Muriel Mintz Family Trust.

Q. And what is the date of this statement?

A. The ending balance is February 16th, 2017.

Q. And is this a true and correct copy of what you received?

A. Yes.

MS. KELLY: Your Honor, I would ask that Plaintiff's Exhibit 1 be admitted.

MS. SCHWAGER: Your Honor, I just have a general objection. I have not had the time to set my motions that I filed this weekend. I have a verified motion to transfer venue, to compel arbitration. And so I just want to put an objection on the record to the hearing going forward as without jurisdiction in the sense that the only trustee who is acting at this point by admission

is Barbara Latham who lives in Brazoria County and the accounts that she operates are in Brazoria County. And so exclusive venue under the Texas Trust Code, Section 115.002(b), says, It shall be brought where the trustee resides or the situs of administration of the trust. And so I want to put in that preliminary objection.

And the second is that the trust itself, it requires arbitration, according to the Supreme Court decision of Reitz -- Rachal versus Reitz, which is 2013, and I have a copy for you and I also filed it as an exhibit. But the language in that case is almost the same as this. It says, I -- It's my desire, you know, that the arbitration occur.

THE COURT: That's not a proper objection to evidence.

MS. SCHWAGER: It's a proper objection to the entire hearing.

THE COURT: You have not filed a motion to compel arbitration.

MS. SCHWAGER: Yes, sir.

THE COURT: And you haven't set it for motion to compel arbitration.

MS. SCHWAGER: Because I couldn't set it before this hearing --

THE COURT: And we should take that up.

MS. SCHWAGER: But I don't want --
THE COURT: It's not set for this hearing. There's nothing --
MS. SCHWAGER: Right. And I'm not waiving that objection by the inability to set it before she's proceeding with this.
THE COURT: This was set two weeks ago --
MS. SCHWAGER: I understand that.
THE COURT: -- and you haven't filed anything. If you want to compel arbitration and say I don't have jurisdiction -- you had two weeks. What have you done?
MS. SCHWAGER: I've also filed a request for accommodation under the ADA because of pain that I have experienced --
MS. GOLDBERG: I have not been copied on that.
MS. SCHWAGER: -- over the last few weeks.
MS. GOLDBERG: I have not been copied on that.
THE COURT: I haven't seen that.
MS. SCHWAGER: You are not entitled to receive it, if you knew the law. It's under the ADA. It's confidential. It goes to the ADA coordinator and it's supposed to go to you.

THE COURT: I haven't gotten anything.

MS. SCHWAGER: Okay.

THE COURT: You have been e-mailing to my guardianship coordinator. That is not a proper way to communicate with the Court.

MS. SCHWAGER: I have CC'd the other attorneys when I've done that; Ms. Goldberg has not and calls it ex parte and says she's disinterested.

THE COURT: Well, it is ex parte for you to communicate directly with the staff on a contested case. You should send it to the clerk and then set a hearing and then all of the parties will have copies of it and we can discuss it.

MS. SCHWAGER: ADA accomodation requests are confidential. They are not entitled to receive it. And they are to go directly to the Court. That is one of the few ex parte communications --

THE COURT: I haven't gotten it.

MS. SCHWAGER: Okay. Well, I've asked that it be forwarded to the ADA coordinator and to you.

THE COURT: I don't have an ADA coordinator.

MS. SCHWAGER: I don't know why that wasn't done.

THE COURT: I don't have an ADA coordinator. I don't think I do.

MS. SCHWAGER: Harris County does.
THE COURT: Okay.
MS. SCHWAGER: The Probate Division does.
THE COURT: The Probate Division does?
MS. SCHWAGER: Yes.
THE COURT: Or the County Clerk?
MS. SCHWAGER: Well, the County Clerk, right.
THE COURT: The Probate Division has an ADA coordinator?
MS. SCHWAGER: Yes.
THE COURT: Are they aware of that?
MS. SCHWAGER: I'm surprised everybody doesn't know that.
THE COURT: Are they aware of that? I've been here 24 years.
MS. SCHWAGER: Right.
THE COURT: This has never come up.
MS. SCHWAGER: Well, I guess, I'm very surprised about that, given that we deal with disabilities every day. But, yes, they're aware of that. And the way that it's supposed to be handled is confidentially because I have HIPAA rights as well.
THE COURT: So they're supposed to -- I'm supposed to stop doing anything until the clerk --

MS. SCHWAGER: That --
THE COURT: -- brings me something? And what do I --
MS. SCHWAGER: I was merely alluding to the fact that you asked me why it wasn't set. And I told you I have been in chronic pain and I have been going through thousands of documents trying to get the accounting done as well as look at the issues in this case and the fraud that occurred in filing a sworn affidavit --
THE COURT: Well, you can stop testifying and just -- none of that is a reason not to file a motion to compel arbitration. I would think that would be the first thing you'd do --
MS. SCHWAGER: No.
THE COURT: -- before you kept on going. Or the first thing you should do is the ADA thing if you think that's going to stop us from going forward because of your --
MS. SCHWAGER: It is the first thing I did.
THE COURT: Okay. Well, then you didn't bring it up at the hearing two weeks ago. When you were here, you didn't say anything about it.
MS. SCHWAGER: Because I was not in pain, and I was doing all right.
THE COURT: All right. Well, I don't -- I'm

not familiar with the ADA enough to know about an attorney being able to file something and stop proceedings. Can I go forward? Do I need to call the clerk and have them bring it to me so I can see what it is?

MS. SCHWAGER: I have a copy of it. I don't believe I have it in writing, but I have it on my computer.

THE COURT: I assume you have it in writing, if you gave it to the clerk.

MS. SCHWAGER: I didn't bring it with me in writing is what I'm saying.

THE COURT: Okay. All right. Well, I'll call the clerk. But I set this hearing on an application for temporary injunction.

MS. SCHWAGER: Yes.

THE COURT: And I'm going to go forward with the hearing, and you can do whatever you need to do on the other stuff.

MS. SCHWAGER: I just want to preserve my objections. I'm not waiving objections to venue or arbitration being compelled.

MS. GOLDBERG: Your Honor --

MS. KELLY: Your Honor, first of all, there are two co-trustees, according to the terms of the trust; and that's part of what I'll put on here eventually. And

so she's quoting the wrong section of 115.002(b). It's when there are multiple non-corporate trustees, I can bring it in any County where one of the trustees has resided in the last four years. My client resides in Harris County. I brought the trust action in Harris County. You have proper venue.

THE COURT: Well, that's not --

MS. GOLDBERG: Additionally, Your Honor, she's --

THE COURT: -- before me, either.

MS. GOLDBERG: I'm sorry.

THE COURT: Go ahead.

MS. GOLDBERG: She's waived her right to file a motion to change venue by entering an appearance in this contest and filing her motion for continuance. The time to file her motion to transfer -- transfer venue was at the last hearing when she appeared and filed pleadings with the Court. She's waived her right.

THE COURT: Well, let me see the exhibit. The exhibit is admitted.

(Plaintiff's Exhibit No. 1 was admitted.)

MS. GOLDBERG: That's TRCP, Rule 86.

MS. KELLY: I'm going to continue to question her.

THE COURT: Okay. Thank you.

Q. (BY MS. KELLY) Will you look at Exhibit 1 that's been admitted, Ms. Goldberg?

A. Yes.

MS. SCHWAGER: I believe that Rule deals with the answer and what must be pled. The first thing I pled in my answer is a verified motion to transfer venue. Nevertheless, a motion to compel arbitration is enforceable.

MS. KELLY: Your Honor, may I proceed with my temporary injunction hearing?

THE COURT: Yes. It would be nice if I saw the motion to compel arbitration. That would be great. You haven't filed it.

MS. SCHWAGER: Yes, I have, Your Honor.

THE COURT: Well, it --

MS. SCHWAGER: Would you like to see it?

THE COURT: No. Because it's not set today. And you didn't bring it up two weeks ago when you were here. You didn't mention anything about it.

MS. SCHWAGER: When I was here two weeks ago you signed my appearance that morning. I had just got in the case.

THE COURT: Well, you --

MS. SCHWAGER: I don't know how I am supposed to have gone through an entire --

THE COURT: You filed -- you filed your appearance several weeks before --

MS. SCHWAGER: These lawyers have been in this case since April.

THE COURT: -- I signed it.

MS. SCHWAGER: And they have told you it's Muriel Mintz's trust. It's not. It is a misnomer. It's a family trust. It has nothing to do with her estate. And that is why they filed a separate trust lawsuit.

MS. GOLDBERG: Objection, Your Honor. She's stating conclusions of law.

THE COURT: Well, you're arguing something that's not before me. So state your objection. It's overruled. Go forward.

MS. SCHWAGER: My objection is that --

THE COURT: You've already stated your objection. I overruled it.

MS. SCHWAGER: Okay. Thank you.

THE COURT: Go ahead.

Q. (BY MS. KELLY) Okay. Exhibit No. 1, Ms. Goldberg, how is this account titled?

A. Muriel Mintz Family Trust; Donald Mintz, Trustee, Barbara A. Latham, Trustee. I don't know what "UA" is.

Q. So it's in the name of the Muriel Mintz Trust?

A. Correct, Family Trust.

Q. Family Trust. What was the balance on February 16th, 2017?
A. $123,454.50.
Q. I'm going to show you what I've marked as Plaintiff's Exhibit 2 and ask if you recognize that document? It's actually four documents. Do you recognize them?
A. I have three.
Q. Okay. I'm sorry. Three, three pages.
A. Yes, I do recognize these.
Q. And what is this document?
A. This is a document that I received from Erinn Brown who was Barbara Latham's previous attorney at my request for bank statements for any money that Muriel Mintz had. She sent me this.
Q. Is this a true and correct copy of what you received from Barbara Latham's attorney, Erinn Brown?
A. Yes.
MS. KELLY: Your Honor, I would ask that Exhibit 2 be admitted.
MS. SCHWAGER: No objection.
THE COURT: Exhibit 2 is admitted. This one is not marked with an exhibit number.
(Plaintiff's Exhibit No. 2 was admitted.)
MS. KELLY: I was going to give the court

reporter the ones that are marked.

THE COURT: All right. Well, you're walking away with that one. I was going to look at it. I just won't give any of these that you are showing me to the court reporter.

MS. KELLY: I'll keep a pile so we don't get confused.

THE COURT: Okay.

Q. (BY MS. KELLY) Okay. What is the date on this document?

A. September 12th, 2017.

Q. Okay. I will ask you if you will look at the activities starting on March 15th, one week after Donald Mintz filed his application for guardianship.

A. Okay.

Q. What occurs on that date, on March 15th?

A. There's a transfer from Savings Account 5966 to this account that ends in 7007 in the amount of $3,898.96.

Q. And Saving Account 5996, what is that?

A. That is the account number on the Muriel Mintz Family Trust that we just looked at.

Q. On Exhibit 1?

A. On Exhibit 1.

Q. On March 20th, is there another transaction?

A. Yes. There's a transaction, on-line transfer

from Savings Account 5966, which is this Muriel Mintz Family Trust, to this -- to this account for $7,500.

Q. And on April 10th what occurs?

A. There is an on-line banking transfer from Savings Account 5966, once again, the Muriel Mintz Family Trust, to this account that ends in 7007 for $50,000.

Q. Okay. And then on September 12th, is there another transaction?

A. September 12th, yes. On September 12th, transferred from Account No. 5996, the Muriel Mintz Trust, of -- $31,000 was transferred into this account ending in 7007.

Q. I'm going to show you what I've marked as Plaintiff's Exhibit No. 3. Do you recognize that document?

A. Yes.

Q. And where did you receive this document?

A. I received this from Ms. Schwager, who is sitting here, on behalf of her client, from her client, Barbara Latham.

Q. And what is this document?

A. This is a checking account statement for an account ending in 7007.

Q. And is this a true and correct copy of what you received from Ms. Latham's attorney, Ms. Schwager?

A. Yes.

MS. KELLY: Your Honor, we would ask that Plaintiff's Exhibit No. 3 be admitted into evidence.

MS. SCHWAGER: No objection.

THE COURT: Plaintiff's 3 will be admitted.

(Plaintiff's Exhibit No. 3 was admitted.)

Q. (BY MS. KELLY) What is -- how is this account titled?

A. B of A, Bank of America, Interest Checking Preferred Rewards Platinum Honors in the name of Barbara Latham and Steven Latham, beneficiary.

Q. And what are the last four digits of this account?

A. 7007.

Q. So does that match up with the Exhibit 2 where we showed transfers going into this 7007 account?

A. Yes.

Q. And that's Barbara Latham's account?

A. Yes, with her husband as beneficiary.

MS. KELLY: I pass this witness.

CROSS-EXAMINATION

QUESTIONS BY MS. SCHWAGER:

Q. Have you read the -- Well, let me put it this way: You -- your billing indicates that you spent a substantial amount of time reviewing the Muriel Mintz

Family Trust, correct?

MS. GOLDBERG: I object to the question, Your Honor. I don't know what she's talking about. That's not before the Court today. I'm not going to answer.

THE COURT: What are we --

MS. SCHWAGER: I'm getting -- the point I'm getting to is that she understands the terms of the trust because she's reviewed it and researched it.

THE COURT: What --

MS. SCHWAGER: What relevance does it have?

MS. KELLY: I don't understand the relevance.

MS. SCHWAGER: We're sitting here putting documents in for it and suggesting that they -- suggesting some sort of malfeasance by Barbara Latham when the trust permits her to do just what she did which is why I have no objection to her entering it.

MS. KELLY: The trust does not permit her to remove $92,000, all of what was in the Muriel Mintz Trust account, except for 6 cents which is left, into her personal account.

MS. SCHWAGER: First and foremost, Ms. Goldberg never had standing to demand these documents, and I suspect that's why Stacy Kelly filed the trust

lawsuit because they finally wanted to acknowledge that the guardianship estate had no relevance to it.

Second of all --

THE COURT: I can't hear you when you're sitting down.

MS. SCHWAGER: I'm sorry. I said, Ms. Goldberg had no standing to compel this accounting. You know, the first step should have been -- we've got the cart, like, way before the horse -- it should have been an accounting under the Texas Property Code, Section 113, a request for an accounting, which never happened. You can't even file a suit for accounting until you do the request. But we've jumped way ahead of that and are suing for a breach when under the expressed terms of the trust --

THE COURT: Well, this is not --

MS. SCHWAGER: They've failed to identify any -- any transaction that Ms. Latham made that wasn't authorized. The terms of the trust are so broad that --

THE COURT: She can take all the money?

MS. SCHWAGER: No. That is not what I'm saying.

THE COURT: Well, but she did take all the money.

MS. SCHWAGER: She can protect the trust

from Donald Mintz.

THE COURT: She did take all the money.

MS. SCHWAGER: She's protecting --

THE COURT: The question --

MS. SCHWAGER: -- the money.

THE COURT: Oh, okay. The question is whether I should grant an injunction against her protecting any more money by taking it, not anything else. I'm not -- I'm not deciding whether ultimately she is entitled to a hundred percent of the money --

MS. SCHWAGER: She's not entitled --

THE COURT: -- or ultimately her brother --

MS. SCHWAGER: -- to a hundred percent.

THE COURT: -- or ultimately her mother. That's not before me today. Before me today, the only question is whether or not there should be an injunction.

MS. SCHWAGER: The -- she's not entitled to all of it. That's not what I'm saying. She's not spending it. That's not what I'm saying.

THE COURT: Well --

MS. SCHWAGER: She's protected it. She has transferred it.

THE COURT: Again, you're missing the point. The question is whether I should grant an injunction against her continuing to protect the money by taking it.

She may come back and prove before a jury at some point that she was not really taking the money. She was protecting it. But right -- this is way before that. That's not before --

MS. SCHWAGER: That's easy to prove and we've established that.

THE COURT: We're not deciding the ultimate issues here. We're deciding whether there should be an injunction to preserve the status quo. That's the only question before me today.

MS. SCHWAGER: Subject to the jurisdiction/arbitration arguments/objections that I made, I would -- and the terms as they have stated in this draft they prepared for you, prohibiting her from defending herself -- which is one of the tactics they use to cripple their opponent and make them settle, force a settlement when it's not equitable -- I would say that I don't have any problem with her agreeing not to spend that money.

THE COURT: That was all argument ad hominem. I don't even know what you're talking about "they." But -- so I'm not sure even what --

MS. SCHWAGER: Mr. Mintz seems to have trouble separating his intent from Barbara's actions. He has spent four years taking his mother's money. She's just merely trying to protect --

MS. GOLDBERG: Your Honor, that's not before the Court today. I object to this rambling.

THE COURT: Yeah. That's --

MS. SCHWAGER: There's been no evidence of wrongdoing. All I'm saying is --

THE COURT: Well, there's also no evidence of Mr. Mintz taking money for four years.

MS. SCHWAGER: Mr. Mintz relinquished control, whatever that means. I would say that's a breach of fiduciary duty, and that he's a co-tortfeasor unless he's resigned.

THE COURT: I have no idea what you're talking about.

MS. SCHWAGER: It's just -- it's funny to me, Your Honor, that he is the one who had this trust drafted. He sought the lawyer. He picked the terms. And Barbara is the one --

MS. KELLY: Your Honor, I object to her testifying of facts that aren't in evidence. This has to do with --

THE COURT: Yeah. I don't know what you're talking about.

MS. KELLY: This has to do with her client moving money. And I'm going to show some more and then --

THE COURT: Okay.

MS. KELLY: -- I'll let the Court rule.
THE COURT: All right. Go ahead.
MS. KELLY: I call Donald Mintz. Would you like him to come stand up there or --
THE COURT: No. He can sit there if he can be heard.
Raise your right hand to be sworn.
(Witness sworn.)
THE COURT: If you want to -- if everybody wants to come up here and stand, you can; or you can just sit where you are.
MS. SCHWAGER: Your Honor, just as a preliminary objection, I wasn't -- I never got to cross-examine Ms. Goldberg before Stacy took over and went --
THE COURT: Well, you started to cross-examine her about things that were not before me today. If you have any questions about the temporary injunction, only -- you were asking about her bills. You were asking about her knowledge. That's not before me.
MS. SCHWAGER: Okay. The temporary injunction requires proof of imminent harm that cannot be remedied under the law.
THE COURT: That's not even close to correct.

MS. SCHWAGER: Okay. What does it require, then? Tell me, please.

THE COURT: I don't -- do I look like a lawyer professor? I know what it requires. So...

MS. SCHWAGER: They have stated the standard, and it's probable right of success on the merits. And we've proven nothing, except for a few bank transfers. And all I want to ask her is: Did she read the trust?

THE COURT: That is not relevant to the issue of whether or not there should be an injunction against your client for taking money.

MS. SCHWAGER: Your Honor --

MS. GOLDBERG: Your Honor --

MS. SCHWAGER: -- the Court is not authorized to intervene in every trust matter. The trust document controls. And the Court should not be contradicting that language and the power given to the trustee.

MS. KELLY: Your Honor, this is a trust action. Ms. Goldberg is not even a party to the trust action. She's just testifying because she received documents as guardian that I needed in. Whether she read the trust is irrelevant. She is not a party to the trust action.

THE COURT: Okay.

MS. SCHWAGER: When there's an 18,000-dollar bill for concluding that, it is relevant.

THE COURT: You are -- here is what you're going to do: You are going to stay on point. You are famous around the courthouse for going off everywhere but not on point. Okay. So stay on point. Anything you go into other than what's on point on the application is overruled.

MS. SCHWAGER: I'm not allowed to ask her that she knows -- whether she knows or not that this is an irrevocable trust and what the terms state?

THE COURT: It has nothing to do with her being temporary guardian of the ward's estate.

MS. SCHWAGER: Your Honor, you --

THE COURT: She is not the trustee.

MS. SCHWAGER: -- you granted her show cause order based on this trust.

MS. KELLY: No, no, no.

MS. SCHWAGER: So why do all of this?

MS. KELLY: No. The show cause was so that Ms. Goldberg could get documents, bank documents.

MS. SCHWAGER: Bank documents concerning the trust and my client's personal account.

MS. KELLY: Because she was taking money

from the trust and putting it in her personal account.

MS. GOLDBERG: Yeah. I have the trust documents. I didn't need a show cause for that, Your Honor. I was asking -- I wanted to know what her -- what Ms. Latham, Ms. Schwager's client, did with the money. That's all.

THE COURT: Right.

MS. GOLDBERG: And I've said numerous times on the record: I'm not accusing her of using the money for herself. I was not accusing her at the time, until I got the records.

THE COURT: Well, but --

MS. GOLDBERG: Just where is it? Where is the money?

THE COURT: The -- your request to cross-examine the temporary guardian about the trust is denied.

MS. SCHWAGER: Okay. Thank you.

THE COURT: Go ahead.

MS. KELLY: Do you have any other questions concerning the temporary injunction or are you passing?

MS. SCHWAGER: I just -- I guess, in general, would like to know what basis you think it should be granted.

THE COURT: That's an argument on the

ultimate issue. We're not to final argument. She's putting on her evidence.

MS. SCHWAGER: Right.

THE COURT: Then when she's through putting on her evidence, I assume she will let me know the basis upon which she wants it granted.

Q. (BY MS. SCHWAGER) Well, let me ask you this: Out of every document produced to you, can you point to any transaction that was in violation of the trust or fraudulent?

A. Yeah. I can -- I can point to it from the documents that your client gave me -- and I don't have copies from the Court. I'm not asking to admit it -- in one year she transferred with her handwriting -- you gave me these documents, these ledgers -- she transferred $71,391.62. She used them for her own expenses and for her sister, Estelle's. Yes, 71,900 something.

Q. And for her -- they were used for her mother's care?

A. No. That's what she used for herself. I highlighted those. For her mother is minimal compared to what she used. I didn't tally up what she used for her mother because they were minimal. It was for herself.

She paid property taxes for Brazoria County. It's her house. She transferred $50,000 for lawyer's

fees; for Barbara, Muriel and Estelle's laptop, internet service of chairs. I don't even know what that is. She paid for Estelle's credit card balance and there's more. She paid for Estelle's rent for several months. She paid for attorney's fees for Estelle, $3,930. This was all within one year.

Q. The trust allows her --

A. You sent me this document. You sent me this ledger.

Q. Yes, I did, because I have nothing to hide.

A. Did you tally it up?

Q. The trust permits her to spend, with her discretion, to support, maintenance and the needs -- based upon the needs of the beneficiary, right?

A. I'm not arguing with the trust. I'm telling you as the guardian --

THE COURT: Let's go on and get the evidence.

THE WITNESS: Yeah, okay.

MS. KELLY: Have you been sworn in?

THE COURT: Yes.

MS. KELLY: You can just sit.

DONALD MINTZ,

having been first duly sworn, testified as follows:

DIRECT EXAMINATION

QUESTIONS BY MS. KELLY:

Q. I'm going to show you what's been marked as Plaintiff's Exhibit No. 4. Do you recognize this document?

A. Yes.

Q. And what is this document?

A. This is my mother's trust mother had drawn up.

THE COURT: Speak up a little bit. The court reporter has got to be able to hear you.

A. This is my mother's trust that she had drawn up.

Q. (BY MS. KELLY) Is this a true and correct copy of the trust?

A. Yes.

MS. KELLY: Your Honor, I would ask that Exhibit 4 be admitted.

THE COURT: Objection?

MS. SCHWAGER: No objection.

THE COURT: Exhibit 4 is admitted.

(Exhibit No. 4 was admitted into evidence.)

Q. (BY MS. KELLY) Who are the trustees of this trust?

A. My sister, Barbara, and myself.

Q. I'm going to show you what's been previously admitted as Plaintiff's Exhibit No. 2. That's a printout from your sister's bank account at Bank of America ending in 7007. If you'll turn to Page 2.

On March 15th, the transfer for $3,898.96, did you make that transfer?

A. No.

Q. Did your sister tell you about this transfer?

A. No.

Q. Did she discuss it with you at all before she made the transfer?

A. No.

Q. On March 20th, there is a transfer for 7,500. Do you see that right above it?

A. Yes.

Q. Did you make that transfer?

A. No.

Q. Did your sister, Barbara, the co-trustee, tell you about this transfer?

A. No.

Q. Did she discuss it with you before she made it?

A. No.

Q. And on April 10th, do you see a transfer for 50,000?

A. Yes.

Q. Did you make that transfer?
A. No.
Q. Did your sister, Barbara, the co-trustee, tell you about that transfer before she made it?
A. No.
Q. Did she discuss it with you?
A. No.
Q. If you go back to Page 1 -- we're going in the opposite order -- at the very top on September 12th, do you see a transfer for 31,000 into Barbara's personal account, very top?
A. Yes, I see it.
Q. Okay. Did you make that 31,000-dollar transfer?
A. No.
Q. Did your sister, Barbara, the co-trustee, discuss that with you before she did it?
A. No.
Q. Did she tell you she was going to do it?
A. No.
Q. Mr. Mintz, as co-trustee, are you aware of another bank account for the Muriel L. Mintz Family Trust that existed this year? Are you familiar with one --
A. Yes.
Q. -- at another bank?
A. Yes.

Q. What bank is that?
A. Wells Fargo.
Q. And did you go by Wells Fargo today?
A. Yes, I did.
Q. And did you ask them about this trust or the account Muriel Mintz Family Trust account at Wells Fargo?
A. Yes, I did.
Q. I'll show you what I've marked as Plaintiff's Exhibit 5. Do you recognize these?
A. Yes, I do.
Q. What are these?
A. These -- these are documents that show mother's account was closed out.
Q. When you say your "mother's account," do you mean the Muriel Mintz Family Trust account?
A. Yes.
Q. Okay. And these were given to you by Wells Fargo today?
A. Yes.
Q. Because you're co-trustee of the trust?
A. Yes.
Q. And this was a trust account?
A. Yes.
Q. Is this a true and correct copy of what you received from the bank today?

A. Yes.

MS. KELLY: Your Honor, I would ask that Exhibit 5 be admitted into evidence.

MS. SCHWAGER: Objection based upon authentication and hearsay.

MS. KELLY: He just authenticated it.

MS. SCHWAGER: It's not a certified copy. It's not -- I mean, she could have even got a certified copy.

MS. KELLY: He is co-trustee.

MS. SCHWAGER: This could have easily have been --

MS. KELLY: He went to the bank.

MS. SCHWAGER: -- distorted, forged, like other documents I've seen in probate courts.

THE COURT: Objection is overruled. Exhibit 5 will be admitted.

(Exhibit No. 5 was admitted into evidence.)

Q. (BY MS. KELLY) Is this a copy of a cashier's check made on that account?

A. Yes, it is.

Q. What's the amount of that cashier's check?

A. $52,555.47.

Q. And who is the cashier's check made out to?

A. It's made out to Barbara Latham.

Q. As trustee or just Barbara Latham, individually?
A. Just individually. There's no other --
Q. Do you see on Page 2 where she's closing this account?
A. Uh-huh.
Q. And it asks the reason for closing?
A. Yes.
Q. What does it say?
A. It says, "No longer needs account."
Q. And when was this closed?
A. Let's see. It looks like October 24th, 19 -- 2017.
Q. So just a month and a half ago?
A. Yes.
Q. So in addition to the 92,000 we've identified that went into her account at Bank of America 7007, there's another 52,000 that she pulled out of a trust account and got a cashier's check in her own personal name, correct?
A. Yes.
MS. KELLY: No further questions, Your Honor.

CROSS-EXAMINATION

QUESTIONS BY MS. SCHWAGER:

Q. Mr. Mintz -- Mr. Mintz, you're familiar with this trust -- the statement?

A. I didn't understand what you said.

Q. Did you -- you hired Mulder Law Group, Jim Mulder to prepare the trust; is that right?

A. Barbara suggested that we go to see him.

Q. Isn't he a friend of yours from high school?

A. I knew him from high school, yes.

Q. Did he -- was he in your class?

A. Yes.

Q. Was he your friend or Barbara's friend?

A. He was my friend.

MS. GOLDBERG: Relevance, Your Honor. I object.

MS. KELLY: Your Honor, how is this relevant to whether this money should be frozen?

MS. SCHWAGER: It's relevant to whether your client has any credibility because he's perjured himself. He says one thing in the prior lawsuit and another thing in this one.

MS. KELLY: Your Honor, we've presented documents, five pieces of evidence that show --

THE COURT: Right.

MS. KELLY: -- over 140,000 being in the last seven months.

MS. SCHWAGER: We haven't gotten to the evidence yet that the trust says it can be transferred.

THE COURT: Well, I'm not sure -- I guess your objection is sustained. Let's try to keep on point.

MS. SCHWAGER: And I really fail to see how this is not on point, Your Honor.

THE COURT: When you're trying to attack credibility of witnesses by who went to high school with somebody and then you are saying he perjured himself because of something he said in another case. That's not in evidence. What he said in another case is not in evidence.

MS. SCHWAGER: It is in evidence. There's an affidavit attached to the guardianship application.

THE COURT: And that was perjury because he went to school with --

MS. SCHWAGER: No. Because he said, "irrevocable trust of his mother's." And now suddenly it's not.

MS. KELLY: Your Honor, I will take full responsibility for the scrivener's error and not having "i-r" before revocable. We all know it's a --

MS. SCHWAGER: Oh.

MS. KELLY: -- irrevocable trust.
THE COURT: Well, that's --
MS. KELLY: You find that funny? I mean, that happens all the time.
MS. SCHWAGER: I don't find it funny. I find it outrageous that you would say that. You are signing an affidavit. And irrevocable and revocable, that's a big difference.
MS. KELLY: Yes, it is a big difference.
THE COURT: But it doesn't make any difference what an affidavit says. Because what the trust is is controlled by the trust document.
MS. SCHWAGER: And I'm trying to get into the trust.
THE COURT: And a trustee can't change the trust document by whatever they say about it in an affidavit or otherwise.
MS. SCHWAGER: And I'm not doing that.
THE COURT: So -- well, but you're -- I've seen --
MS. SCHWAGER: I'm establishing that he understands the trust --
THE COURT: I've seen a lot of pleadings where -- you filed where they're all about him committing perjury.

MS. SCHWAGER: If you would let me question him, maybe I could establish that.

THE COURT: Why? We're not trying to decide whether he's a perjurer.

MS. SCHWAGER: Because she's using him as her witness and you're relying on his testimony.

THE COURT: As to a cashier's check your client got in October, after this case was already going on in this Court.

MS. SCHWAGER: And as to his claims to, I didn't do anything wrong and I didn't know and I relinquish control; but I'm still a trustee.

THE COURT: I didn't hear -- that's not, any of that -- that's you saying what somebody said. That's not before me today.

MS. SCHWAGER: It's in the pleadings that were sworn.

THE COURT: But it's not --

MS. SCHWAGER: I'm just trying to get to the truth, Your Honor, and to establish to you that this trust is completely separate from the guardianship estate and whatever happened with the trust. He understands the terms and that the actions that he complains of are authorized. I suppose I can just count on the document to speak for itself, but I would like for him to answer my

questions.

MS. KELLY: Whether --

THE COURT: It's not a deposition.

MS. KELLY: Whether the trust authorizes the co-trustees to make distributions to the three children is one thing. Commingling trust funds in your own personal account is a breach of fiduciary duty; and we have shown $140,000 going into her account, personal account. If she wants to make distributions out of the trust, they go from the trust to the beneficiary. They don't go to her in her personal account.

MS. SCHWAGER: Your Honor, that's not even -- this account is a separate operating account that she set up with the trust. It's not like her personal checking account with her husband or something. It's --

THE COURT: Well, it actually was.

MS. KELLY: Yeah, it is.

THE COURT: It was an account with her and her husband.

MS. SCHWAGER: Well, I haven't seen -- I'm sorry. That is not something I was aware of. But the trust itself has language in there saying she can close the accounts --

THE COURT: She can take all the money herself and not give any to the other beneficiaries?

MS. SCHWAGER: No. And that's not what she was doing.

THE COURT: But that's what she did.

MS. SCHWAGER: It says, she can close accounts. She can move them. She can give gifts that are required based upon needs.

THE COURT: And she needs 120 -- $140,000 of the trust assets?

MS. SCHWAGER: No, Your Honor. I've already explained to you that she used -- in her -- her intent has always been to protect the trust --

THE COURT: By taking --

MS. SCHWAGER: -- from her brother.

THE COURT: -- money and putting it in her personal name?

MS. SCHWAGER: I don't know that she --

THE COURT: $52,555 was withdrawn from the trust account and put in -- payable to her personally, not as trustee, not payable to the trust.

MS. SCHWAGER: All I know about this -- I don't have personal knowledge, of course, you know that --

THE COURT: Well, then why are you testifying?

MS. SCHWAGER: No, I'm just -- I'm not testifying.

THE COURT: You are saying she took money out for trust purposes and they were perfectly valid, proper withdrawals.

MS. SCHWAGER: I'm saying the trust permits her to close accounts, move accounts, move money as long as -- disburse to herself, disburse to her sister, disburse to her brother, which she has, and approved. And he hasn't also established that he's asked for disbursements or needed them. The trust is based upon need and the circumstances. There's a lot more involved here than just, Oh, she moved money. We're going to take it. And she can -- it says, Authorize or establish any type of bank account of any banking institutions.

THE COURT: Do you have any other questions of him other than asking him to interpret the trust document which is kind of my province?

MS. SCHWAGER: Your Honor, he's a trustee.

THE COURT: Right.

MS. SCHWAGER: Are you suggesting that he doesn't need to know the terms?

THE COURT: I'm suggesting this is not a deposition. I'm suggesting this is a hearing on Ms. Kelly's application for temporary injunction.

MS. SCHWAGER: And it's extraordinary relief that she has the burden of proof on.

THE COURT: It has to be probable --

MS. SCHWAGER: So I'm not being permitted to cross-examine the witness.

THE COURT: Well, but -- okay. Cross-examine him on something that's relevant. I'm not going to have you take his deposition about the document. You can set his deposition and take it any time you want, but that's not now. Probable right and probable injury or right by a trustee for property taken from the trust, probable injury. She's already made her case.

MS. SCHWAGER: Your Honor, they have already placed holds on IRAs that are -- that belong to Barbara as an individual, her retirement accounts, federally insured accounts. So I fail to see how an injunction would even be authorized because they have a remedy at law. They've already put freeze orders on the IRAs. And --

THE COURT: You said she's taken all the money. Does she have personal accounts that she can establish ownership of other than the money in dispute here? Or is all of the money in her accounts, has it come in in the last year or so when she's taken --

MS. SCHWAGER: Her IRAs are her retirement accounts. Those are hers exclusively. They have nothing to do with the trust.

MS. KELLY: She -- when we presented Bank of

America with the temporary restraining order, she had moved everything out of Account 7007, conveniently. And so they froze --

MS. SCHWAGER: So Ms. Goldberg emptied the account.

MS. KELLY: -- they froze 92,000 of three different accounts to get to the total of 92,000. I'm not aware if it's an IRA or not. But, I mean, she can't -- she needs to account to where this 92,000 went. Now I've got an extra 52,555. I have no idea where that went.

So there could be other bank accounts at other banks, but --

THE COURT: Well, if there -- if she has money in IRAs that were established before this dispute started, I don't think it's appropriate for us to freeze those. They're her money. This is not about collecting any potential judgment that you might have against her --

MS. KELLY: Correct.

THE COURT: -- because you don't have that yet. You're hundreds of miles away from a judgment.

MS. KELLY: But we have no idea where all this money was. It's all Bank of America, her moving it right and left into different accounts.

MS. SCHWAGER: I can give you the account numbers of the IRAs if that will be helpful because I've

been asked that they be restrained from trying to place holds on. She has no intent of taking her IRA funds out.

MS. GOLDBERG: Your Honor, may I just add something? On the Texas Credit -- the Texas Dow Employee's Credit Union account that Muriel Mintz had set up years ago -- she has an account and an IRA and Barbara Latham was listed as an agent under a power of attorney. But on October 24th, which is the same day that she removed the 52,000, whatever that amount was, from Wells Fargo, she went to the credit union and put herself -- on October 24th, 2017, after I was appointed, after my appointment as temporary guardian pending contest -- put herself on as a joint owner of this account.

And then Ms. Schwager in her pleadings accused me -- accused me in a public document of stealing money from her client because this money belongs half to her. I took possession of the accounts as a guardianship account.

MS. SCHWAGER: I'm not speaking about this credit union.

MS. GOLDBERG: Excuse me.

MS. SCHWAGER: I'm talking about the $6,000 that she took out of Barbara's personal account --

MS. GOLDBERG: Which personal account are you referring?

MS. SCHWAGER: -- 7007, which is now another number that was emptied.

MS. GOLDBERG: She's accusing me of stealing. You are on the record. Are you accusing me of stealing in a public courtroom?

MS. SCHWAGER: I'm not accusing you of stealing that.

MS. GOLDBERG: Well, what are you accusing me of? That's what you said in your pleading.

MS. SCHWAGER: I said, you took the money out.

MS. GOLDBERG: I have no access to her account, and I don't steal.

MS. SCHWAGER: I didn't say you stole. I said you took it out.

THE COURT: Yeah, you did.

MS. GOLDBERG: Yeah, you sure did. And her client --

MS. SCHWAGER: No, I did not.

MS. GOLDBERG: -- when I took possession of the Bank of America account that had had I don't know how many -- 80,000 in it -- it's down when I got it. It's 87,000 -- her client went to the Pearland Police and accused me of stealing.

A detective from the Pearland Police called

me and questioned me. I was on the phone for 45 minutes with him explaining what was going on, walking him through the court documents on the website. He had to set up an account so he could access our documents. But she -- she was trying to get me arrested. And now she's accusing me of stealing.

MS. SCHWAGER: Your Honor, I can tell you from my own experience with my client that she doesn't understand all of the intricacies of these issues or her rights which I explained to take possession of certain assets, though I have not seen orders authorizing these actions, particularly for Stacy Kelly to go seize her IRAs. I haven't seen anything authorizing that. I've never accused anybody of stealing. I have merely --

THE COURT: You just did.

MS. SCHWAGER: -- stated in my pleading what occurred.

THE COURT: You just said, She took. You said, You took --

MS. SCHWAGER: "Took" means stole?

THE COURT: -- $6,000.

MS. GOLDBERG: In your pleadings --

MS. SCHWAGER: "Took" doesn't necessarily mean stole.

MS. GOLDBERG: In your pleadings you say it.

THE COURT: Well, I'm going to grant the temporary injunction. We need to set the bond for at least the amount that's being taken.

I would suggest that Bank of America is on very thin ice if they took IRAs away from her or held them in connection with this. We don't have anything to do with her IRAs, unless you can establish that it was money that was taken improperly at some point. I think we're a long way from that. I would suggest that y'all focus on the ward and quit filing papers.

MS. GOLDBERG: Thank you, Your Honor. As temporary guardian --

THE COURT: Pardon?

MS. GOLDBERG: I'm sorry. I interrupted you.

MS. SCHWAGER: Your Honor, are you ordering them to take their freeze off of her IRAs?

THE COURT: I'm not ordering -- I didn't order them to put a freeze. I don't think they put the freeze on.

MS. SCHWAGER: Yes, they did.

THE COURT: I think Bank of America put the freeze on because they inadvertently let your client take the money out of the account that they weren't supposed to. They were trying to get some money seized to protect

themselves. That's between the bank and you-all to figure all that out.

MS. SCHWAGER: Well, I think we need a Court order to clarify to the bank what is permissible to hold and what is not.

THE COURT: File an application for something if you want a Court order. I'll grant the temporary injunction.

MS. KELLY: Your Honor, also the temporary restraining order -- just because Ms. Schwager has made it very clear that her client doesn't understand all of this -- this temporary injunction, as the restraining order does, prohibits her from spending any money that she has pulled out of the Muriel Mintz Family Trust since this action started, that includes the 92,000 and the 52,555 that we put on today. So she's restrained -- she's enjoined from that. At the end of the day, your client better have $146,000.

MS. SCHWAGER: Your Honor, I think that this injunction violates the expressed terms of the trust. And this really just matches the article that Keith Morris wrote on how to cripple your opponent --

MS. KELLY: He wrote with you, Your Honor.

MS. SCHWAGER: -- and make them unable to fight.

MS. KELLY: On a temporary injunction, I believe, I have to have a trial date setting in the order for it to be effective.

THE COURT: Yes. What should the bond be? 92,000?

MS. KELLY: 92,000.

THE COURT: I'm just going to make it 95,000.

MS. SCHWAGER: Mr. Mintz is paying a 92,000-dollar bond?

MS. KELLY: 95,000.

THE COURT: $95,000. Trial date?

MS. SCHWAGER: Can I have clarification that the injunction is not intended to violate the expressed terms of the trust?

MS. KELLY: She's enjoined from spending the 92,000 and the 52,000.

MS. SCHWAGER: Your Honor, she has to do an accounting, a forensic accounting, and the trust has to fund that. And she's entitled to hire professionals and consultants if she needs it. And this injunction is too broad.

MS. KELLY: She shouldn't have taken the money out of the trust and put it in her personal account.

MS. SCHWAGER: Stacy Kelly has not proven

that my client has breached her duty in any way. Until such time, she's allowed to defend herself.

THE COURT: Well, and she needs -- she has an absolute duty as a fiduciary to account.

MS. SCHWAGER: She does.

THE COURT: She doesn't have to be asked. And whether she can continue to steal money from the trust and pay forensic accountants -- I mean, she should have all -- 100 percent of the records for the last year wherein she took all this money and what she did with it. So I don't know why she has to hire forensic accountants.

MS. SCHWAGER: She's disorganized, probably that's why.

THE COURT: Well, that's not --

MS. SCHWAGER: I would know that on a firsthand basis.

THE COURT: That's not a very good admission.

MS. SCHWAGER: I did my best to get everything in.

THE COURT: Can you call Yolanda to get a trial date?

GUARDIANSHIP COORDINATOR: How far do they want? I've got Monday, January 29th.

THE COURT: Well, no, we can't try it in six

weeks. I would say after the summer.

GUARDIANSHIP COORDINATOR: Oh.

THE COURT: I mean, I don't know that we --

MS. KELLY: That's fine. It just needs a trial date.

THE COURT: Yeah. Well, I don't have it here. Maybe I can look at this calendar.

MS. SCHWAGER: Your Honor, can we write two things into this order?

THE COURT: I'm sorry?

MS. SCHWAGER: Would you be willing to write two things into this order? Since you think it's inappropriate for IRA funds to be held, could you merely state that in the order?

THE COURT: Well, the order doesn't effect IRAs, IRA funds.

MS. SCHWAGER: Okay. And regarding her ability to hire an accountant, period, or an attorney, period, to defend the trust, the trust further says he forfeits his interest if he files a lawsuit on it. It's supposed to be arbitrated. And so I would think this is real shaky ground to be on and that she should be expressly authorized to hire an accountant and an attorney. She's being sued as trustee.

If it turns out later that you find or

another arbitrator or Court finds that she owes it, well, Stacy has already found her IRAs. It seems to me there's no --

THE COURT: I'm not, in this temporary injunction, going to say what she can spend money on. You should file an application for whatever expenditures you think she needs to make. But since she's taken $140,000 and put it into her account in the last year, there ought to be enough left. I don't know why she needs to hire an accountant.

MS. SCHWAGER: She hasn't done an accounting, and this is what should have been done before this lawsuit was filed. I mean, it's frivolous to the extent that she can sit down and show in writing where everything went and that it's authorized.

MS. KELLY: I don't have to ask for an accounting before I bring a trust action.

THE COURT: No, you don't.

Here are the exhibits.

MS. SCHWAGER: He's a trustee, Your Honor. He should know whether or not --

COURT REPORTER: I'll take them, Judge.

THE COURT: No. These don't have any numbers on them. She's going to give them to you.

MS. KELLY: Oh, I skipped you. I'm sorry.

I just packed them up.

MS. GOLDBERG: Your Honor, while we're here, can I just say something?

THE COURT: Yeah.

MS. GOLDBERG: You've heard a lot already, though.

Ms. Schwager, maybe your client doesn't understand, but when my ward was in the hospital last week, your client called -- I reported to her that her mother was in St. Luke's Hospital. I let her know. I let her sister know that she was at St. Luke's Hospital. She had fallen. And she specifically asked me: You're not the guardian anymore, right, because the guardianship lasts for 60 days?

I said, No, that's a temporary guardian. I'm temporary guardian pending contest. Under the *Estates Code*, that lasts for nine months. I'm still the guardian. I told her she could visit her mother at St. Luke's any time after 7:00 o'clock.

At 7:00 o'clock -- and I know all of this because the charge nurse called me and the supervisor, the nursing supervisor called me -- she went to the hospital with expired powers of attorney, tried to get medical records, tried to get my ward to sign a release to be released from the hospital. The nursing supervisor

wouldn't allow it because I had already sent my certificate of appointment of guardianship.

He told her that he had a Court order from 2017 which overrode her powers of attorney. She carried on so much that they had to call security to get her off of there. I was on the phone for I don't know how long, on and off the phone trying to get it under control.

They brought two other women to the room there that I don't know who they were. Neither Barbara nor Estelle, neither sister would identify them. They were demeaning to the staff. And that is why I -- and she's trying to interfere with my ability to take care of -- my duty as a guardian. She's getting in the way. She told --

MS. SCHWAGER: Well, why did you --

MS. GOLDBERG: Among the things she was screaming up there -- I was told --

MS. SCHWAGER: Hearsay, objection. I mean, are you going to testify? It's hearsay. Are you going to bring a witness? This is not before the Court.

THE COURT: Can she finish?

MS. KELLY: Barbara told the nurses --

MS. SCHWAGER: This isn't before the Court. This case isn't before the Court.

THE COURT: I'm the one that says that. You

don't get to decide that. Do you understand? She is my guardian and she is telling me what your client is doing that's wrong.

MS. SCHWAGER: She's telling you hearsay and she's not telling you the whole story.

THE COURT: Well, because we -- you haven't shut up and let her finish. All right.

MS. GOLDBERG: Ms. Schwager is saying that her client doesn't understand what she's supposed to do or not do. I'm saying --

THE COURT: Does she not understand that powers of attorney are not valid?

MS. SCHWAGER: She did not understand that the medical power of attorney was not valid. In fact, Michele asked me for a copy of it because she said -- after I told her it's criminal medical battery to make medical decisions for someone for which you cannot give informed consent, she said, The family needs to be making these decisions --

MS. GOLDBERG: I didn't ask --

MS. SCHWAGER: -- and asked for the POA.

MS. GOLDBERG: That's not what I said --

MS. SCHWAGER: So why are we getting these mixed messages?

MS. GOLDBERG: -- and I have it in writing,

Your Honor.

THE COURT: Well, I don't know what this criminal -- I saw your references to criminal battery.

MS. SCHWAGER: She asked -- she didn't even know where --

THE COURT: She is the guardian.

MS. SCHWAGER: And she's supposed to consult with the family. That's her duty.

THE COURT: That's not her duty.

MS. GOLDBERG: No, it's not my duty.

THE COURT: Her duty is to take care of the ward. If her family is in the way, the family needs to be out of the way.

MS. SCHWAGER: She has two daughters who are RNs, and she won't even speak to Estelle.

THE COURT: They're up there -- the nursing supervisors are calling for help --

MS. GOLDBERG: At night.

THE COURT: -- calling security because your two RNs are up there being abusive to staff.

MS. SCHWAGER: How do you know this?

MS. GOLDBERG: They told me. I -- what I asked Ms. Schwager was the nursing home where I have her, where I enrolled her and have her admitted to live now, asked me to sign DNRs. I said, I just want the -- all the

family's opinion. If I'm going to sign something that could be an end-of-life decision, I at least want to know what the family has to say about that.

I know that my guardianship paperwork overrules a medical power of attorney. But Barbara Latham was up there -- the nurses told me Barbara Latham was up there saying that I am appointed on a lot of cases, that I'm only in this for the money. I'm Jewish and I've already gotten 100,000 of her dollars.

MS. SCHWAGER: This is more hearsay and it's irrelevant and minutia. Can we get to the point? The point is that Muriel Mintz --

THE COURT: The point is your client is not -- needs to be informed of --

MS. SCHWAGER: I have informed her.

THE COURT: Then why was she up there --

MS. SCHWAGER: But I can't respond until I hear a complaint.

MS. GOLDBERG: I'm complaining.

MS. SCHWAGER: You can complain to me.

MS. GOLDBERG: I'm complaining.

MS. SCHWAGER: You don't have to get a bunch of hearsay in and spout it off on the record. At any rate --

THE COURT: Was your client there?

MS. SCHWAGER: My client? She went to see her mother. Ms. -- before she even went, before any visits ever occurred, Ms. Goldberg instructed her and her sister, who is a geriatric RN, that they could not ask any questions concerning their mother's medical care, what's going on with her and they --

THE COURT: They couldn't talk to --

MS. SCHWAGER: -- went into a panic because they have been --

MS. GOLDBERG: Talk about hearsay.

MS. SCHWAGER: Barbara has taken care of her for eights months and she's not complained one bit about her care.

MS. GOLDBERG: That's the hearsay.

MS. SCHWAGER: Your Dr. Poa --

MS. GOLDBERG: I told the staff that. I didn't tell that to those two women.

MS. SCHWAGER: Dr. Poa --

MS. GOLDBERG: Who I did inform that their mother was in the hospital. And Barbara's license, by the way, is not active.

MS. SCHWAGER: I have an e-mail where you tell them that they can't talk about the stuff. And then you tell them the next day, Well --

THE COURT: Well --

MS. SCHWAGER: -- you've misbehaved. You're revoked.

THE COURT: -- the general rule is that once a guardian is appointed, no one else can communicate with the staff of the hospital about medical care.

MS. SCHWAGER: Isn't that quite dangerous? Because the guardianship standards require that she be educated as to the ward's health or she can't give informed consent.

MS. GOLDBERG: Well, Your Honor --

THE COURT: She does -- I mean, that's -- you're just totally wrong about that.

MS. SCHWAGER: I am?

THE COURT: Yes.

MS. GOLDBERG: Ms. Schwager --

MS. SCHWAGER: A Federal Judge did not agree with that.

MS. GOLDBERG: Ms. Schwager, when we had her admitted -- when I had her admitted to the Gardens where she's living and there was a medical assessment done by both a medical doctor and an active RN, not an RN whose licence is inactive as is your client's, that he was concerned, the doctor was concerned, that she was suffering from malnutrition because of the lesions inside of her mouth --

MS. SCHWAGER: Your Honor --
MS. GOLDBERG: -- the way her fingernails were --
MS. SCHWAGER: -- that is even more hearsay.
MS. GOLDBERG: -- and her hair was falling out.
MS. SCHWAGER: If she wants to bring this doctor in here, I'm happy to bring him in here.
MS. GOLDBERG: I'm not --
MS. SCHWAGER: Dr. Poa stated to you that she needs 24-hour supervision. As soon as she gets possession of Ms. Mintz, a couple of days later she's fallen and she's in the hospital, maybe broke a hip. We don't know. She won't let us know. We can't know. We're prohibited.
MS. KELLY: Your Honor, for the Court's information --
MS. SCHWAGER: How is that in the best interest? How?
MS. KELLY: Just before we had the hearing on the IME, Ms. Mintz was supposed to come down here and she couldn't make it because she fell while in the care of her daughter and was in the hospital. That's why Ms. Mintz wasn't at the initial IME hearing. So this is --

MS. SCHWAGER: And that gives you notice that she's a fall risk. She's also blind. You've got her in a place where they only check on her every two hours --

MS. KELLY: I don't have her anywhere, Your Honor.

MS. SCHWAGER: -- when your expert says she requires 24-hour supervision. This is a problem.

MS. GOLDBERG: We've got a real problem here.

MS. SCHWAGER: I would ask for a restraining order based upon --

MS. GOLDBERG: A real problem.

MS. SCHWAGER: She's in imminent danger, maybe not right this moment because she's in the hospital.

THE COURT: Well, you're --

MS. SCHWAGER: But this place where she placed her is not an appropriate placement. She can't live in assisted living. She's blind. She drinks stuff -- she can pick up a bottle of lotion.

THE COURT: She was living with your client for eight months --

MS. SCHWAGER: Right.

THE COURT: -- when she was blind. And your client by herself was giving her 24/7 care?

MS. SCHWAGER: Her husband is there, too.

THE COURT: Oh, well, that makes it a whole lot better.

MS. SCHWAGER: He's an RN as well.

MS. GOLDBERG: They're not licensed.

MS. SCHWAGER: It doesn't matter if they're licensed currently. They're retired.

MS. GOLDBERG: I don't practice law if my license hasn't been renewed --

MS. SCHWAGER: It is not practicing medicine --

MS. GOLDBERG: -- is not active.

MS. SCHWAGER: -- to take care of your mother. But at least she has a degree and some background in it. She's not a trust lawyer. I mean, she's got 30 years' experience as a psychiatric nurse. Her sister is a geriatric care nurse. How in the world would this Court want them not to have any input? I don't understand that.

THE COURT: Well, she called and asked for input. The problem is -- and it's a problem -- your clients couldn't take care of their mother. That's why we're here. If your clients had been taking care of their mother, then we wouldn't never had come to Probate Court. None of this --

MS. SCHWAGER: That's not why we're here.

THE COURT: -- would have started.

MS. SCHWAGER: We're here because he filed a fraudulent affidavit that there is a revocable trust that belongs to Muriel Mintz. We never said anything about her health or she would have been seized like the trust was. I mean, her health has been fine. And if she has any issues right now, most of them have been longstanding, but I would say it was stress because she's constantly threatening my client.

THE COURT: The problems in her mouth, according to you, were not from malnutrition?

MS. SCHWAGER: I don't know. She's telling you hearsay. I think we need to get a doctor in to answer the questions. But I have a tape recording that I heard that shocked me of Muriel screaming at her son for filing this case. She doesn't sound incapacitated to me, but I'm not a doctor. But the point is she was stressed. So I would expect her -- that possibly she hasn't been eating as much as she usually does. I don't know. I'm not a nurse or a doctor. But they are and they were.

THE COURT: They were nurses.

MS. SCHWAGER: 30 years. So you just lose all that?

MS. GOLDBERG: Her client dropped her mother off -- as I said this in the previous hearing --

THE COURT: Yeah.

MS. GOLDBERG: -- at 3:00 o'clock on Friday after Thanksgiving. Dropped her off. Said, I can't take care of her anymore. Come and get her.

I said, I can't come down there. Will you drop her at my office? She brought her to my office building in Bellaire and dropped her off. Estelle was there. They -- your client didn't even ask me what I was going to do with her. I don't know what she thought I was going to do with her 93-year-old mother who was not well on Friday after Thanksgiving, but she dropped her off.

MS. SCHWAGER: She dropped her off because you're the guardian and you've been harassing her since this thing started. And Mr. Mintz has been calling the cops and doing well-checks and APS and they called Harris County APS and they dismissed it. So they called Brazoria County APS. I mean, how much harassment are you expected to take before you say, Forget it, I can't do this?

MS. GOLDBERG: Well, then back off.

MS. KELLY: If we're going to talk about hearsay, no, APS did not not find anything wrong. Barbara Latham refused to be interviewed by them and they reached a stalemate where they couldn't go any further on the APS report. My client was doing welfare checks because Barbara Latham refused to let him or his two children and grandchildren visit his mother. That's why he filed the

guardianship action because she had been taken out of Clarewood against her will and moved to Brazoria County --

MS. SCHWAGER: That is a lie.

MS. KELLY: -- and shut off from all --

MS. SCHWAGER: You need to have evidence of it. She was not taken out of her will anywhere.

THE COURT: How did she get to your client's house?

MS. SCHWAGER: She wanted to --

THE COURT: She drove herself?

MS. SCHWAGER: -- go there with her. She wanted nothing to do with her son. We have a tape recording I can play for you.

MS. GOLDBERG: That's not what -- that's not what my ward told me. She didn't tell me that.

MS. SCHWAGER: What? Okay. So now you're saying she's incapacitated on one hand. She can't come to court. She can't talk for herself. And now you're going to rely upon her statements.

THE COURT: Well, you were going to play a tape recording of her.

MS. SCHWAGER: I do --

MS. KELLY: After being worked by Barbara and Estelle. Yeah, after they got her all worked up, yeah, of course she's screaming.

MS. SCHWAGER: No.
THE COURT: Well, I signed the order. I've given it to the clerk.
MS. KELLY: Thank you.
MS. GOLDBERG: Thank you, Your Honor.
MS. SCHWAGER: I filed a TRO and I don't have an order on it yet but it covers these medical issues.
THE COURT: You need to file it.
MS. SCHWAGER: I did file it.
THE COURT: It hasn't been brought to the Court.
MS. SCHWAGER: Well, I don't understand why you are not getting my filings.
THE COURT: Well, I mean, I saw -- I saw an application for something. It wasn't verified or signed.
MS. SCHWAGER: No. I have -- both pleadings I filed this weekend were verified, three affidavits. So --
THE COURT: Well, I haven't seen the affidavits.
MS. SCHWAGER: I would ask you to please look at them.
MS. GOLDBERG: The clerk's office rejected them, Your Honor.

THE COURT: Pardon me?

MS. GOLDBERG: I got a message that the clerk -- I got some filing from 5:30 on Saturday afternoon, but the Clerk's office rejected it. So I don't know whether it's really filed.

MS. KELLY: They had account numbers in it.

MS. SCHWAGER: That was refiled. So if you don't have it, you should get it. But I guess --

THE COURT: Normally, what's done with a TRO is you bring it to the Court and present it to the Court. You don't present any evidence. You don't have to give notice to the other side. It's a TRO.

MS. SCHWAGER: I understand.

THE COURT: That hasn't been done yet.

MS. SCHWAGER: I did it as a courtesy. I gave notice this weekend. It was rejected. So I refiled it.

THE COURT: Okay.

MS. SCHWAGER: It's been refiled.

THE COURT: The filing of it doesn't get it before the Court. You need to bring it to the Court and say, Here is an application for TRO. And you don't make any -- don't offer any evidence. You just go on the basis of the application --

MS. SCHWAGER: Right.

THE COURT: -- and the affidavit.

MS. SCHWAGER: I understand. Okay. I'll come back up here tomorrow.

THE COURT: And then if I grant it, I'll set it for hearing. If I deny it, I'll set it for a hearing --

MS. SCHWAGER: Okay.

THE COURT: -- the TRO. You are set for a hearing on a temporary injunction.

MS. SCHWAGER: All right. I appreciate that.

THE COURT: It's getting to be Christmastime. I don't know that the Court is going to be open. I think it's Dead Week from Christmas day through the 1st of January, December 25th through January 1st. And there's not going to be many people around next week, the 19th, 20th, and the 21st. So you need to make sure you call ahead. But there will not be any hearings the following week, Dead Week.

MS. SCHWAGER: Well, can I get a hearing today? It's already on file.

THE COURT: Okay.

MS. SCHWAGER: Because I'm worried that Muriel may have broken a hip and anything may have happened. We just don't know. We're not being allowed

knowledge. Her daughters know her intimately and her medical care and they should not -- the guardianship standards require her to apply for some information from that and that's not happening.

THE COURT: It requires her to find out information, not necessarily people -- not necessarily from the warring parties.

MS. SCHWAGER: Well, I don't know who she's going to get it from because her daughter --

THE COURT: Well, her medical records. The way all medical professionals get information about medical history is from medical records of the patients.

MS. SCHWAGER: Your Honor, attorneys are not qualified to read and interpret medical records; and Ms. Mintz is in danger.

THE COURT: Well --

MS. SCHWAGER: She's in the hospital. I mean, why do we have to go through all of this? Why can't we just cooperate regarding her care? They can be mad as they want regarding the transfers, but that's a different issue.

THE COURT: She called your clients and told them they could come down and visit. They ended up getting --

MS. SCHWAGER: And now they --

THE COURT: They ended up getting thrown out of the hospital by the hospital, not by the guardian, the hospital.

MS. GOLDBERG: Risk Management. They called Risk Management, Your Honor.

MS. SCHWAGER: Barbara was or Estelle was told that Donald was on the phone saying he was the guardian and kick them out.

MS. GOLDBERG: They have some -- whatever the sibling -- whatever it is -- rancor, I have no idea. All I know is that I was on the phone at 7:00, 7:30, 8:20, 8:45. I agreed with the nursing survivor that they could stay until 8:45 and then they would have to leave. If not, security was to remove them. And the supervisor told them that and they did leave on their own at 8:45. But according to the supervisor, Risk Management was there, the nursing supervisor was there, and security was there present. And they had two other women in the room which they wouldn't identify.

MS. SCHWAGER: Are we trying to protect her or protect you, I would like to know?

MS. GOLDBERG: I asked what they looked like. I thought maybe Ms. Schwager was there. And the nursing supervisor said, It's two olden women. One has a cane.

MS. SCHWAGER: I don't know who visited her. Maybe she has friends. I mean --

MS. GOLDBERG: Nobody knew she was there.

MS. SCHWAGER: I don't know. But are they allowed to visit? Are they allowed to get information? I mean, they've --

THE COURT: They're not allowed to get --

MS. GOLDBERG: They're not allowed to get information --

THE COURT: -- information from the nursing staff.

MS. GOLDBERG: -- and to bully them.

MS. SCHWAGER: Are they allowed to get medical information from Ms. Goldberg so they can help their mother and help her make educated decisions?

MS. GOLDBERG: Well, I'm given them -- I was trying to give them medical information but they abused it.

MS. SCHWAGER: No, you haven't given me anything. I've asked you three times.

THE COURT: Not you. You're not asking -- you're saying your clients.

MS. SCHWAGER: She hasn't given it to my clients, either. My client -- she hasn't called Estelle. She's not communicated at all.

MS. GOLDBERG: I called both of them. That's how they got there. That's how they knew she was there. I called them.

MS. SCHWAGER: She told them they could go. That's it. And then there was e-mail of all this. It was so predictable. It was almost like a template. But the point is: Yes, your mother falls and she's in the hospital and may have a broken hip because she said her back and her spine hurt or may have a fractured spine. So -- and her daughters are upset and she's surprised about that. And then she makes it worse by banning them. I mean, so are they banned? Is that what the Court is going to hold, that they're banned?

THE COURT: I'm not saying anything about the care.

MS. SCHWAGER: Are you saying that that's okay for her to do?

MS. GOLDBERG: I said that while she's recuperating and resting they needed to stay away and I would notify them when they could visit. I would not keep a 93-year-old lady from her daughters.

THE COURT: Well, I would try to get them as much access as you can.

MS. GOLDBERG: Yeah. I would prefer they have access, in my opinion. She's 93. Everybody should

be seeing her.

MS. SCHWAGER: I think it's reckless for you to not have her medical information. I would ask you to be transparent.

MS. GOLDBERG: I got her medical records -- I got her medical information from the doctor that Barbara took her to. It's at the Gardens.

THE COURT: We generally get medical information from treating physicians and staff, not from family members.

MS. SCHWAGER: Really?

THE COURT: Yes.

MS. SCHWAGER: She's been taking care of her mother for eight months.

THE COURT: What has happened in the last two days to her mother? She doesn't know.

MS. SCHWAGER: She doesn't know. You are right.

THE COURT: She doesn't know. That is why we rely on the nursing staff at the hospital and the doctors at the hospital to tell what's going on with the patient.

MS. SCHWAGER: St. Luke's is not her treating doctor. How in the world are they going to know? I mean, normally don't they ask questions?

THE COURT: Because they have medical records.

MS. SCHWAGER: Wow. So that's okay?

MS. KELLY: This is kind of like how my client probably felt for the seven months Barbara wouldn't let him visit his mother.

THE COURT: Off the record.

(End of proceedings.)

THE STATE OF TEXAS)
COUNTY OF HARRIS)

I, TINA K. WHITE, Official Court Reporter in and for Probate Court No. 2 of Harris County, State of Texas, do hereby certify that the above and foregoing contains a true and correct transcription of all portions of evidence and other proceedings requested in writing by counsel for the parties to be included in this volume of the Reporter's Record, in the above-styled and numbered cause, all of which occurred in open court or in chambers and were reported by me.

I further certify that this Reporter's Record of the proceedings truly and correctly reflects the exhibits, if any, admitted, tendered in an offer of proof or offered into evidence.

I further certify that the total cost for the preparation of this Reporter's Record is $_____ and was paid by _____.

WITNESSED MY OFFICIAL HAND this the 24th day of December, 2017.

/s/ Tina K. White
Tina K. White, CSR, RPR
Official Court Reporter
Probate Court No. 2
Certificate No. 5488
Expires: December 31, 2018
201 Caroline, Suite 680
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832-927-1440

CANDICE SCHWAGER

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http://www.schwagerfirm.com

Fax: 713.456.2453
1417 Ramada Drive
Houston, Texas 77062

James A. Faucett Jr.
Houston Hospice
1905 Holcomb Blvd
Attention: Administrator

Re: Notice of intent to sue for medical malpractice and file criminal charges for manslaughter, criminally negligent homicide and criminal medical battery, demanding that Houston Hospice cease and desist from violating Estelle Nelson or Barbara Latham's civil rights by denying them access to their dying mother or access to information on her medical condition.

To whom it may concern:

This letter will serve as notice under Texas Civil Practice and Remedies Code 4590i, Texas Penal Code Section 22.04 (elder abuse, neglect and exploitation), the Americans with Disabilities Act, 42 U.S.C. 12101, and 42 U.S.C. 1983 with respect to disability discrimination against MURIEL MINTZ AND BARBARA LATHAM. I am writing this letter IN A LAST DITCH EFFORT TO SAVE MURIEL'S LIFE FROM BEING TAKEN THROUGH NEFARIOUS ACTIONS OF HOUSTON HOSPICE AND MICHELE GOLDBERG. MURIEL was placed at Houston Hospice on DECEMBER

19, 2017 after what appears to be weeks of being deprived of nutrition and hydration while administered toxic drugs that hasten death, including opiates.

MICHELLE GOLDBERG is a trust lawyer with no medical training or knowledge of MURIEL'S medical history who was appointed in a proceeding tainted by fraud which invalidates her appointment, necessarily meaning that you are violating my client's right to serve as medical and durable power of attorney, attorney in fact, and health care surrogate and you do so at your own risk. You are violating advanced directives and engaging in criminal activity with the purported guardian, violating advanced directives and withholding food/water and comfort measures mandated by law and MURIEL'S clearly expressed wishes. I have little doubt that foul play is at work here far beyond mere negligence and intent to hold Houston Hospice accountable for her death.

Given ESTELLE NELSON AND BARBARA LATHAM'S advanced training in the medical field, they should never have been denied access to medical information and records concerning their 93-year-old mother as they are inhumanely forced to endure her starvation death or threatened with jail for trespass when they have done nothing to merit it. MICHELE'S intentions towards MURIEL have been blasé and malicious from the outset of this nightmare. Her attorney fee billing reflects a total lack of concern for MURIEL'S wellbeing as she hunted down every dime she could find and seized more than $100,000 of MURIEL'S estate, illegally emptied LATHAM'S bank account and conspired with DONALD MINTZ to defame her with fraudulent perjured accusations designed to illegally freeze her retirement accounts.

Her billing indicates a similar lack of regard for the "person" over whom she took

guardianship, with only 13 hours devoted to MURIEL MINTZ and approximately 51 hours devoted to seizing MURIEL'S assets along with mine as she engaged in a fraudulent hunt of money in a family trust that she knew was not part of MURIEL'S estate, but solely the property of MURIEL'S three adult children. MICHELE has lied to every facility MURIEL has been falsely imprisoned at and concealed her whereabouts with secret registrations and threats to my client and her sister – which you have been complicit with at your own risk. Reports have been made for violation of the ADA to the Department of Justice with respect to Title III, the Department of Aging and Disability, and Adult Protective Service, as well as law enforcement.

BARBARA AND ESTELLE are devastated by having to watch MURIEL starve to death as they are banned and threatened with trespass by your business. They have taken note of your malicious actions and the profit you stand to earn by facilitating MURIEL'S death. STEVE LATHAM mistakenly and unintentionally carried his firearm on the premises not realizing he had done so, but this error should never have barred BARBARA from access to her dying mother as you hasten her passing. She was unaware that he had made this mistake and you are acting just as malicious as GOLDBERG.

GOLDBERG knows absolutely nothing about MURIEL'S medical history such that HOUSTON HOSPICE is complicit in criminal medical battery by allowing her to make medical decisions in the absence of informed consent. She is uninformed such that informed consent is not remotely possible. If MURIEL MINTZ was simply given food, water, and minimal medical treatment rather than toxic drugs that hasten death, I believe she would recover given the 92 years of excellent health she has enjoyed and lack of any

discernable problems during her stay with me the past 8 months. MURIEL was in St. Luke's over 3 weeks—which is unheard of as a length of stay. We now believe that her long stay there was in preparation for hospice. It seems quite obvious that she has been intentionally denied nutrition and hydration, denied critical medications while pumped full of narcotics to hasten her death—and this is criminal. Her age renders her incapable of metabolizing these drugs, which is compounded by starvation and dehydration.

Once the conditions were created that would justify admission to hospice she was transferred. Michele claims that MURIEL MINTZ has aspiration pneumonia when my client and her RN sister thoroughly examined her and she exhibited absolutely NO SIGNS of any of these conditions. Undoubtedly, Michele's plans are to induce organ shut down, pneumonia, sepsis and death but there are no discernable signs of it yet, so you may want to back up. With a diagnosis of respiratory insufficiency, distress, pneumonia or any respiratory complication you would certainly see or hear some type of signs or symptoms. She did not so much as cough or exhibit increased respiratory rates.

Though she was heavily drugged when BARBARA AND ESTELLE arrived yesterday and could barely speak, they quickly discovered that the cause of her spiraling condition was deprivation of food, water and appropriate medications with excessive drugging with opiates. It was clear that HOUSTON HOSPICE is engaged in starving and dehydrating her as she's drugged to death by the lack of food in the entire facility. Outrageously, complaints were lodged when her daughters merely had the compassion to feed her as she ravenously grabbed the crackers and peanut butter and fruit juice as if she

had not eaten or drank in weeks. Within a few minutes there was a noticeable improvement in her overall condition.

My client is fully aware of the illegal practice of stealth euthanasia which your facility is apparently engaged in to hasten her death when she is not terminal and was completely healthy less than three weeks ago. The withholding of nutrition and hydration along with medications that can cause serious side effects is taking a serious toll on her body, for which you are responsible. Michele claims that Muriel's lungs continue to fill up with fluid but the cause is quite clear—depriving her of congestive heart failure medications to remove the fluid. Given her CHF is mild, this is unacceptable and unconscionable. If the facility has withheld these medications for more than a day, I would expect this exact result.

Houston Hospice lied about the date MURIEL arrived, falsely claiming that MURIEL had been a patient for several days when she had only arrived that day—December 19th. Witnesses have come forward to confirm the same and report the reprehensible and illegal actions being wrought upon MURIEL MINTZ. MURIEL MINTZ was not terminally ill from ANY chronic or acute illness and her demise is clearly manufactured by Houston Hospice in collusion with GOLDBERG.

WITNESSES observed unmistakable signs that she was drugged with opiates, such as pinpoint pupils, labored speech almost indecipherable (which rapidly changed once she was fed and hydrated). OUR ATTORNEY put Michele on notice that she lacks the ability to provide informed consent, rendering her decisions criminal medical battery, and your decision to accept them unwise. Michele is terrified that Estelle and Barbara already know

what she is doing to MURIEL. In textbook fashion, MICHELE'S lies and threats have been issued every time my client has visited in a concerted effort to demonize her and threaten her with trespass to conceal her malfeasance.

Your facility has acted with cruelty and in apparent collusion with MICHELLE GOLDBERT in your decision to deny access to medical information and MURIEL to BARBARA AND/OR ESTELLE and your failure to ensure that their visits are peaceful by mandating that DONALD MINTZ AND HIS HATEFUL DAUGHTER leave during their visits rather than stay in the room to intimidate them. I have little doubt that foul play is at work because there is no rational justification for a stranger to imprison and isolate a vulnerable, blind, 93-year-old woman or threaten her daughters against even asking for medical information which might save her life.

MICHELLE GOLDBERG has repeatedly lied along with hospice staff doing her bidding to keep my clients in the dark. Clearly, the objective is to prevent them from having even a window of opportunity to intervene. GOLDBERG has been so dishonest that we no longer have confidence that anything she reports is true. We are beginning t doubt any fall ever occurred and this is a cover up to drug her with opiates. Strangely, almost immediately after MURIEL MINTZ was hospitalized, Michele no longer mentioned the alleged fall and my client observed no visible signs that this was even true. Hospice staff have acted outrageously and treated my client and her sister with contempt unlike anything I have ever witnessed. It is the most unprofessional abuse of authority I could even imagine. One would think a business such as yours would accommodate families as they grieve so that you can continue to reap financial benefits. HOUSTON HOSPICE IS ENGAGING IN THE SAME

ILLEGAL CONDUCT as GOLDBERG. You are hereby advised to cease and desist threats and bans of BARBARA LATHAM OR ESTELLE NELSON from visiting MURIEL or receiving the same liberal access to health information being freely given to DONALD MINTZ. You are also requested to take immediate action to stop the harassment of BARBARA AND ESTELLE by removing DONALD MINTZ AND HIS FAMILY from the premises during their visits. If you continue to threaten my client with trespass, all legal remedies provided by law will be pursued against you, including civil and criminal claims. Conduct yourself accordingly. Should you have questions or concerns that we need to work out so that my client is not deprived of seeing her mother as you hasten her death, you should call immediately. My number is 832.315.8489. If I do not answer, you may email candiceschwager@icloud.com

Sincerely,

Candice Schwager

Candice L. Schwager

Menninger

Edward Poa, MD, FAPA
Chief of Inpatient Services
The Menninger Clinic
12301 Main Street
Houston, TX 77035

Associate Professor
Menninger Department of Psychiatry
Baylor College of Medicine

Phone: 713-275-5111
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Email: epoa@menninger.edu

June 7, 2017

The Honorable Mike Wood
Harris County Probate Court Two (2)
201 Caroline, 6th Floor
Houston, TX 77002

Re: CAUSE NO. 456,059 IN THE GUARDIANSHIP OF MURIEL LUBA MINTZ, AN INCAPACITATED PERSON, IN PROBATE COURT NUMBER TWO (2) OF HARRIS COUNTY, TEXAS

Dear Judge Wood,

Pursuant to a court order dated May 23, 2017, I performed an Independent Mental Examination of Muriel Luba Mintz. The results are presented in an attached Physician's Certificate. Also attached are a summary of the proposed ward's medical history and the results of a mini-mental status examination. I have also included a copy of the invoice which will be filed with the County Clerk.

Respectfully,

Edward Poa, M.D.

Appendix I: Summary of medical history

Muriel Mintz is a 92 year-old woman whom I evaluated on 6/3/2017 at the home of her daughter Barbara Latham, with whom she currently resides. Ms. Mintz was friendly and cooperative with the entire evaluation. She was dressed casually and appropriately. She was seated in a wheelchair and her left ankle/foot was in an orthopedic boot. She appeared frail but well-nourished. Her speech was normal for rate, rhythm, volume, and tone. She exhibited decreased physical movement but no abnormal physical movements.

Ms. Mintz stated that she felt "fine," and she did not report any feelings of depression. She did not endorse any thoughts of hurting herself or others. She did not describe any auditory or visual hallucinations, and she did not appear to respond to any hallucinations. Her thought processes were mostly logical, but she repeatedly had instances where she appeared to forget the topic of our conversation and would revert to talking about a prior topic. During pauses in our conversation, Ms. Mintz appeared to fall asleep occasionally.

Ms. Mintz exhibited significant deficits in her memory, attention, concentration, and orientation. She believed it was September 1981, and that the season was Fall. She believed we were in Houston, even though she previously indicated that she lived with her daughter Barbara in Pearland. She was not aware of the street address. She was unable to recall any of three simple words after a few minutes. Her attention and calculation were poor as evidenced by her inability to subtract 7 serially from 100 more than once. She was unable to name a watch/wristwatch. She struggled with remembering basic information at times, including the married name of one of her daughters. She was also easily confused about past events, both distant and recent.

Ms. Mintz knew that she is the subject of a guardianship proceeding initiated by her son, Don Mintz. She acknowledged that she needs physical help as well as assistance with her decision-making. She also acknowledged that she has noticed a decline in her memory. She expressed satisfaction with her current arrangement of living with her daughter, Barbara Latham, and having her assistance with healthcare, personal care, and decision-making.

Ms. Mintz stated that she was born on 9/5/1924 in New York City, NY. She was an only child and graduated from high school. She was never diagnosed with a learning disability. She moved to Houston, TX after marrying Sam Mintz at age 24, who was from Texas. Together, they had three children – Don, Barbara, and Estelle. She described her marriage to Sam as troubled due to his struggle with Obsessive-Compulsive Disorder, and they divorced after 20 years. After their divorce, Ms. Mintz worked as a secretary for Houston Mayor Louie Welch, and then for the Houston Public Library. She retired at about age 72 and currently receives a pension and Social Security benefits. She did not know the amounts of either of her benefits.

Ms. Mintz reported that she saw a psychiatrist while she was married to Sam. She engaged in psychotherapy and also took a medication for the purpose of helping her cope with the issues at home. She does not recall if she was ever diagnosed with a specific

illness or the name of the medication. Ms. Mintz stated that she has never been suicidal or had serious thoughts of hurting someone else. She has never attempted suicide. I screened Ms. Mintz for the symptoms of a mood, anxiety, and psychotic disorder. She did not endorse symptoms fulfilling the criteria for any of these disorders.

Ms. Mintz said that she doesn't think she has any chronic medical conditions, and she did not think that she takes any medications. She does not use alcohol or illicit drugs.

Barbara Latham stated that her mother, Ms. Mintz, suffers from macular degeneration (resulting in poor vision), congestive heart failure (reduced ability of the heart to pump blood), and chronic urinary tract infections. She has had skin cancer on her face which has been surgically removed. Ms. Mintz suffered from a left ankle fracture on 4/27/2017. Barbara noted that Ms. Mintz has been very unsteady on her feet and prone to falling, requiring 24 hour assistance.

Barbara Latham reported that Ms. Mintz was hospitalized in March 2017 and diagnosed with atrial flutter (a heart arrhythmia). This also coincided with a decline in Ms. Mintz's cognitive and physical abilities.

Barbara Latham showed me Ms. Mintz's current medications, which she administers:

- Nitrofuranoin (antibiotic commonly used for urinary tract infections) 100mg four times a day for seven days (was on last day of medication course)
- Eliquis (blood thinner) 2.5 mg twice a day
- Amiodarone (medication for heart arrhythmias) 200 mg daily
- Metoprolol (medication for hypertension) 50 mg twice a day
- Lisinopril (medication for hypertension) 2.5 twice a day

A CT scan of Ms. Mintz brain from 4/14/2017 indicated:

- mild small vessel ischemic changes (small areas of damage that build up over time, commonly as a result of age and hypertension)
- subacute or chronic lacunar infarct of the right anterior limb of internal capsule/lentiform nucleus (prior stroke)
- slightly prominent ventricles (relatively larger size of the fluid spaces around the brain)

It is my opinion that Ms. Mintz suffers from ***Major Neurocognitive Disorder, Unspecified, Moderate Severity***. The previous name for this was Dementia Not Otherwise Specified. This diagnosis is based on Ms. Mintz's decline in her cognitive functioning, particularly in the areas of orientation, memory, attention, and concentration. The descriptor ***Unspecified*** is used because the cause of her deficits is unknown. However, her medical history which includes hypertension, heart arrhythmias, and changes on head CT indicate that Vascular Disease is a likely contributing factor. These cognitive deficits have negatively impacted her ability to function, and the severity of her deficits is ***Moderate***.

Appendix II: Results of mini-mental status examination

Orientation to time	1/5 points
Orientation to place	2/5 points
Immediate recall	3/3 points
Attention	1/5 points
Delayed recall	0/3 points
Naming	1/2 points
Repetition	0/1 point
3-stage command	3/3 points
Reading	1/1 point
Writing	1/1 point
Copying	0/1 point
Total	**13/30 points**

Score interpretation:

25 or higher:	normal
20 to 24:	mild cognitive impairment
10-19:	moderate cognitive impairment
0-9:	severe cognitive impairment

Physician's Certificate of Medical Examination

Revision October 2016

#456,059

In the Matter of the Guardianship of
MURIEL L. MINTZ,
an Alleged Incapacitated Person

For Court Use Only
Court Assigned: _____

To the Physician

This form is to enable the Court to determine whether the individual identified above is incapacitated according to the legal definition (on page 3), and whether that person should have a guardian appointed.

1. General Information

Physician's Name: EDWARD POA, MD Phone: (713) 275-5111
Office Address: 12301 Main Street, Houston, TX 77035

☒ YES ☐ NO I am a physician currently licensed to practice in the State of Texas.

Proposed Ward's Name: MURIEL L. MINTZ
Date of Birth: 09/05/1924 Age: 92 Gender ☐ M ☒ F
Proposed Ward's Current Residence: 1022 Northwick Dr., Pearland, TX 77584

I last examined the Proposed Ward on June 3, 20 17 **at:**
☐ a Medical facility ☒ the Proposed Ward's residence ☐ Other: _____

☐ YES ☒ NO The Proposed Ward is under my continuing treatment.
☒ YES ☐ NO Before the examination, I informed the Proposed Ward that communications with me would not be privileged.
☒ YES ☐ NO A mini-mental status exam was given. If "YES," please attach a copy.

2. Evaluation of the Proposed Ward's Physical Condition

Physical Diagnosis: Macular degeneration, Congestive heart failure, Left ankle fracture, Chronic urinary tract infections
a. Severity: ☐ Mild ☒ Moderate ☐ Severe
b. Prognosis: Fair
c. Treatment/Medical History: Blood pressure lowering medications, antibiotics

3. Evaluation of the Proposed Ward's Mental Functioning

Mental Diagnosis: Major Neurocognitive Disorder, Unspecified
a. Severity: ☐ Mild ☒ Moderate ☐ Severe
b. Prognosis: Guarded - likely to worsen
c. Treatment/Medical History: Deficits in orientation, memory, attention, concentration

If the mental diagnosis includes dementia, answer the following:
☐ YES ☒ NO ---- It would be in the Proposed Ward's best interest to be placed in a secured facility for the elderly or a secured nursing facility that specializes in the care and treatment of people with dementia.
☒ YES ☐ NO ---- It would be in the Proposed Ward's best interest to be administered medications appropriate for the care and treatment of dementia.
☐ YES ☒ NO ---- The Proposed Ward currently has sufficient capacity to give informed consent to the administration of dementia medications.

d. Possibility for Improvement:
☐ YES ☒ NO ---- Is **improvement in the Proposed Ward's physical condition and mental functioning possible?**
If "YES," after what period should the Proposed Ward be reevaluated to determine whether a guardianship continues to be necessary? _____

4. Cognitive Deficits

a. The Proposed Ward is oriented to the following (check all that apply):

☒ Person ☐ Time ☐ Place ☒ Situation

b. The Proposed Ward has a deficit in the following areas (check all areas in which Proposed Ward has a deficit):

☒ --- Short-term memory
☒ --- Long-term memory
☐ --- Immediate recall
☒ --- Understanding and communicating (verbally or otherwise)
☒ --- Recognizing familiar objects and persons
☒ --- Solve problems
☒ --- Reasoning logically
☒ --- Grasping abstract aspects of his or her situation
☐ --- Interpreting idiomatic expressions or proverbs
☒ --- Breaking down complex tasks down into simple steps and carrying them out

c. ☐ YES ☒ NO -- The Proposed Ward's periods of impairment from the deficits indicated above (if any) vary substantially in frequency, severity, or duration.

5. Ability to Make Responsible Decisions

Is the Proposed Ward able to initiate and make responsible decisions concerning himself or herself regarding the following:

☐ YES ☒ NO ---- Make complex business, managerial, and financial decisions
☐ YES ☒ NO ---- Manage a personal bank account
If "YES," should amount deposited in any such bank account be limited? ☐ YES ☐ NO
☐ YES ☒ NO ---- Safely operate a motor vehicle
☐ YES ☒ NO ---- Vote in a public election
☐ YES ☒ NO ---- Make decisions regarding marriage
☐ YES ☒ NO ---- Determine the Proposed Ward's own residence BUT PREFERENCES SHOULD BE
☐ YES ☒ NO ---- Administer own medications on a daily basis TAKEN INTO CONSIDERATION.
☐ YES ☒ NO ---- Attend to basic activities of daily living (ADLs) (e.g., bathing, grooming, dressing, walking, toileting) without supports and services
☒ YES ☐ NO ---- Attend to basic activities of daily living (ADLs) (e.g., bathing, grooming, dressing, walking, toileting) with supports and services
☐ YES ☒ NO ---- Attend to instrumental activities of daily living (e.g., shopping, cooking, traveling, cleaning)
☐ YES ☒ NO ---- Consent to medical and dental treatment at this point going forward
☐ YES ☒ NO ---- Consent to psychological and psychiatric treatment at this point going forward

6. Developmental Disability

☐ YES ☒ NO ---- Does the Proposed Ward have developmental disability?
If "NO," skip to number 7 below.
If "YES," answer the following question and look at the next page.

Is the disability a result of the following? (Check all that apply)

☐ YES ☐ NO ---- Intellectual Disability?
☐ YES ☐ NO ---- Autism?
☐ YES ☐ NO ---- Static Encephalopathy?
☐ YES ☐ NO ---- Cerebral Palsy?
☐ YES ☐ NO ---- Down Syndrome?
☐ YES ☐ NO ---- Other? Please explain _____

Answer the questions in the "Determination of Intellectual Disability" box below only if both of the following are true:

(1) The basis of a proposed ward's alleged incapacity is intellectual disability.
and

(2) **You are making a "Determination of Intellectual Disability" <u>in accordance with rules of the executive commissioner of the Health and Human Services Commission governing examinations of that kind</u>.**

If you are not making such a determination, please skip to number 7 below.

<u>"DETERMINATION OF INTELLECTUAL DISABILITY"</u>

Among other requirements, a Determination of Intellectual Disability must be based on an interview with the Proposed Ward and on a professional assessment that includes the following:

1) a measure of the Proposed Ward's intellectual functioning;
2) a determination of the Proposed Ward's adaptive behavior level; and
3) evidence of origination during the Proposed Ward's developmental period.

As a physician, you may use a previous assessment, social history, or relevant record from a school district, another physician, a psychologist, an authorized provider, a public agency, or a private agency if you determine that the previous assessment, social history, or record is valid.

1. Check the appropriate statement below. If neither statement is true, skip to number 7 below.
   - ☐ **I examined the proposed ward in accordance with rules of the executive commissioner of the Health and Human Services Commission governing Intellectual Disability examinations**, and my written findings and recommendations include a determination of an intellectual disability.
   - ☐ **I am updating or endorsing in writing a prior determination of an intellectual disability** for the proposed ward made in accordance with rules of the executive commissioner of the Health and Human Services Commission by a physician or psychologist licensed in this state or an authorized provider certified by the Health and Human Services Commission to perform the examination.
2. What is your assessment of the Proposed Ward's level of intellectual functioning and adaptive behavior?
   ☐ Mild (IQ of 50-55 to approx. 70) ☐ Moderate (IQ of 35-40 to 50-55)
   ☐ Severe (IQ of 20-25 to 35-40) ☐ Profound (IQ below 20-25)
3. ☐ Yes ☐ No ---- Is there evidence that the intellectual disability originated during the Proposed Ward's developmental period?

Note to attorneys: *If the above box is filled out because a determination of intellectual disability has been made in accordance with rules of the executive commissioner of the Health and Human Services Commission governing examinations of that kind, a Court may grant a guardianship application if (1) the examination is made not earlier than 24 months before the date of the hearing or (2) a prior determination of an intellectual disability was updated or endorsed in writing not earlier than 24 months before the hearing date. If a physician's diagnosis of intellectual disability is <u>not</u> made in accordance with rules of the executive commissioner — and the above box is not filled out — the court may grant a guardianship application only if the Physician's Certificate of Medical Examination is based on an examination the physician performed within 120 days of the date the application for guardianship was filed. See Texas Estates Code § 1101.104(1).*

7. <u>Definition of Incapacity</u>

For purposes of this certificate of medical examination, the following definition of incapacity applies:

An "**Incapacitated Person**" is an adult who, because of a physical or mental condition, is substantially unable to: (a) provide food, clothing, or shelter for himself or herself; (b) care for the person's own physical health; or (c) manage the person's own financial affairs. Texas Estates Code § 1002.017.

8. <u>Evaluation of Capacity</u>

☒ YES ☐ NO ---- Based upon my last examination and observations of the Proposed Ward, it is my opinion that the Proposed Ward is incapacitated **according to the legal definition in section 1002.017 of the Texas Estates Code, set out in the box above.**

If you indicated that the Proposed Ward is incapacitated, indicate the level of incapacity:

☒ **Total** ---------- The Proposed Ward is totally without capacity (1) to care for himself or herself and (2) to manage his or her property.

☐ **Partial** ---------- The Proposed Ward lacks the capacity to do some, but not all, of the tasks necessary to care for himself or herself or to manage his or her property.

Evaluation of Capacity (continued)

If you indicated the Proposed Ward's incapacity is partial, what specific powers or duties of the guardian should be limited if the Proposed Ward receives supports and services? _____

_____

_____

If you answered "NO" to all of the questions regarding decision-making in Section 5 (on page 2) and yet still believe the Proposed Ward is **partially** incapacitated, please explain: _____

_____

_____

If you answered "YES" to any of the questions regarding decision-making in Section 5 (on page 2) and yet still believe the Proposed Ward is **totally** incapacitated, please explain: MS. MINTZ IS ABLE TO PARTICIPATE AND ASSIST IN HER ACTIVITIES OF DAILY LIVING. HOWEVER, SHE CANNOT PERFORM THEM INDEPENDENTLY.

9. Ability to Attend Court Hearing

- ☒ YES ☐ NO ---- The Proposed Ward would be able to attend, understand, and participate in the hearing.
- ☐ YES ☒ NO ---- Because of the Proposed Ward's incapacities, I recommend that the Proposed Ward not appear at a Court hearing.
- ☐ YES ☒ NO ---- Does any current medication taken by the Proposed Ward affect the demeanor of the Proposed Ward or his or her ability to participate fully in a court proceeding?

10. What is the least restrictive placement that you consider is appropriate for the Proposed Ward:

- ☐ ---------- Nursing home level of care
- ☐ ---------- Group Home
- ☐ ---------- Own Home or with family
- ☐ --- Assisted Living Facility
- ☐ --- Memory care unit
- ☑ --- Other live with family with 24° support

11. Additional Information of Benefit to the Court: If you have additional information concerning the Proposed Ward that you believe the Court should be aware of or other concerns about the Proposed Ward that are not included above, please explain on an additional page.

Physician's Signature

6/7/2017
Date

EDWARD POA
Physician's Name Printed

L6144
License Number

Revised October 2016

Edward Poa, M.D.

The Menninger Clinic
12301 Main Street
Houston, Texas 77035
Phone 713-275-5111 Fax 713-275-5117

INVOICE

INVOICE #249
DATE: JUNE 7, 2017

TO:
The Honorable Mike Wood
Harris County Probate Court Two (2)
201 Caroline, 6th Floor
Houston, TX 77002

FOR:
Cause 456,059
Muriel Luba Mintz – Independent Mental Examination

DESCRIPTION	QUANTITY	UNIT PRICE	LINE TOTAL
Driving to and from proposed ward's residence – 6/3/2017	1 hour	$400/hr	$400
Evaluation of proposed ward – 6/3/2017	1 hr 15 min		$500
Report preparation – 6/3/2017	1 hr 15 min		$500
		TOTAL	**$1400**

Make all checks payable to The Menninger Clinic

**Mail payment to Edward Poa MD, The Menninger Clinic,
12301 Main Street, Houston, TX 77035**

Menninger®

Appendix D:

LESS RESTRICTIVE ALTERNATIVES TO GUARDIANSHIP

I. AVOIDING GUARDIANSHIP OF THE PERSON

1. Emergency Protective Order ("EPO") or Emergency Order for Protective Services ("EOP") TEX. HUM. RES. CODE § 48.208 - A procedure to remove a person lacking capacity to consent to medical services from a situation posing an immediate threat to life or physical safety. Adult Protective Services files a verified petition and an Attorney Ad Litem is appointed. On a finding of probable cause by the probate court of the threat and lack of capacity, the person is removed to treatment and examined within 72 hours. The removal may last no longer than 72 hours unless extended by the court for up to 30 days. An application for temporary and permanent guardianship usually follows.

2. Surrogate Decision -Making ("SDM") – TEX. HLTH. & SAF. CODE § 313.001-.007 – For **non-emergency** medical decisions to be made for incapacitated individuals who are either in a hospital or nursing home without the necessity of a guardianship.

Decision–Maker Priority: 1) the patient's spouse; 2) an adult child of the patient with the waiver and consent of all other qualified adult children of the patient to act as the sole decision-maker; 3) a majority of the patient's reasonably available adult children; 4) the patient's parents; or 5) the individual clearly identified to act for the patient by the patient before the patient became incapacitated, the patient's nearest living relative, or a member of the clergy.

Limitations on consent: Surrogate decision-maker cannot consent to: 1) voluntary inpatient mental health services; 2) electro-convulsive treatment; 3) the appointment of another surrogate decision-maker; 4) emergency decisions; or 5) end-of-life decisions (extending or withdrawing life support).

SDM does not: 1) replace the authority of a guardian nor an agent under a medical power of attorney; 2) authorize treatment decisions for a minor unless the disabilities of minority have been judicially removed; 3) authorize patient transfers under Chapter 241 of the Health and Safety Code.

Withdrawal of Life Support: for provisions concerning withdrawal of life support where no Directive to Physicians has been executed, and in situations where there is no guardian, see TEX. HLTH. & SAF. CODE § 166.039.

3. Surrogate Decision Making for Intellectually Disabled (MR) - TEX. HLTH. & SAF. CODE § 597.041 – A more specialized form of surrogate decision-making, this statute allows SDM Committees to act for MR persons who reside in an intermediate care facility for the mentally retarded (ICF/MR) – Allows medical and non-medical decisions to be made by the committee.

4. Surrogate Decision Making for Minors When Parent Unavailable TEX. FAM. CODE § 32.001ff - consent to dental, medical, psychological, and surgical treatment of a child by persons authorized in statute.

5. Authorization Agreement for Non-Parent Relative – TEX. FAM. CODE Ch. 34 - A parent may authorize a grandparent, adult sibling or adult aunt or uncle to have decision-making authority for a minor child for: healthcare, insurance coverage, school enrollment, school activities, driver's education, employment and application for public benefits. This essentially authorizes the designee to do anything a guardian of the person could do.

The official form, promulgated by the Texas Department of Family and Protective Services and identified as "Form 2638", can be accessed at: www.dfps.state.tx.us/documents/Child_Protection/2638.pdf

6. Emergency Medical Treatment Act - TEX. HLTH. & SAF. CODE § 773.008 - In certain limited circumstances involving emergency situations, consent to medical treatment does not have to be given, it is implied. Hospital emergency rooms could not function if consent had to be secured beforehand.

Emergency treatment of minors - Consent is also implied for the treatment of a minor who is suffering from what reasonably appears to be a life-threatening injury or illness (even if they can communicate) if the minor's parents, conservator, or guardian is not present. TEX. HEALTH & SAFETY CODE § 773.008(3).

7. Managing Conservatorships TEX. FAM. CODE Ch. 153 - **Functional equivalent to Guardian of the Person** Especially for families involved in a divorce context, a conservatorship may be used in place of a guardianship of the person for a minor, but only when there is no issue of assets belonging to the minor children.

Check the small print - The divorce decree, if there is one, should be carefully examined regarding any management powers granted either spouse regarding property of the children. TEX. FAM. CODE §153.132 grants a parent appointed sole managing conservator essentially the full rights of a guardian of the person and in TEX. FAM. CODE §153.073, the right to manage the property of the child "to the extent that the estate has been created by the parent or the parent's family." The Family Code provides no monitoring mechanism for property management.

8. School Admission Procedures - TEX. EDUC. CODE §25.001(d) – Under §25.001(d) of the Education Code, a school district may adopt guidelines to allow admission of non-resident children to school without the need for a guardianship. You may want to find out who in the school district administration possesses this information before you need it.

9. School Admission Procedures - TEX. EDUC. CODE §

25.001(b)(9) – A school district may adopt guidelines to allow admission of non-resident children to school if a grandparent of the child resides in the school district and the grandparent provides "a substantial amount" of after-school care for the child. The local school board is to adopt guidelines to implement this provision. No cases yet as to how this might square with TEX. EDUC. CODE § 25.001(d) if there is a guardian, but the child wants to live with the grandparent.

10. Court-Ordered Mental Health Services - TEX. HLTH. & SAF. CODE §§ 462.001, 571.001, 574.001 – In the case of a chronically mentally ill person, a temporary involuntary commitment may well be preferable to a guardianship. A guardianship, with its attendant removal of functional rights, might well be much more restrictive once the patient/ward has become stabilized on medication. Commitment provisions for the chemically dependent, mentally retarded, persons with AIDS and tuberculosis are also available in limited circumstances.

11. Driving Issues: Katie's Law and the Re-Test Request - Effective September, 1, 2007, Texas drivers aged 79 or older can no longer renew a driver's license by mail or electronic means, but must renew the license in person at an authorized license renewal station. In addition, drivers aged 85 and older will now have to renew every two years, rather than every six years. TEX. TRANSPORT. CODE § 521.2711

"Re-Test Request" A potential ward who refuses to stop driving may be reported to the DPS by a physician, a family member, or even a stranger, if the person's driving capability is impaired. Although physicians are somewhat reticent to report their patients because of the physician-patient privilege and HIPAA, it is possible for the applicant in a guardianship or the ad litem to request the court to make a request to the Department of Public Safety for the proposed ward to be re-tested under DPS regulations to determine the proposed ward's suitability to continue to drive.

A relatively new concept is the "Family Driving Agreement" a type of advance directive for driving decisions. The driver agrees in writing to designate someone to advise him or her when it is time to "give up the keys." For more information, see keepingussafe.org.

12. Mental Illness Diversion Programs (Criminal Courts)

Persons with mental health issues are often jailed for crimes over which they had little or no control.

In a mental illness diversion program, individuals with a documented mental health problem are treated as patients, not criminals.

In the program, individuals are placed on a strict, supervised probation with regular court check-in dates to document and receive progress updates. Psychiatrists and other professionals develop a mental health treatment program, customized to meet the specific needs of the participants.

Following completion of the program, the charges are dismissed and may be eligible for expunction.

II. ADVANCED MEDICAL DIRECTIVES

The Federal Patient Self-Determination Act 42 USCA § 1395cc(f) requires health care providers, to be eligible for Medicare and Medicaid payments, to supply patients with information regarding Medical Powers of Attorney as well as Directives to Physicians. Patients are to be given information regarding their rights under Texas law to make decisions regarding medical care (including the right to accept or refuse treatment) and the right to formulate advance directives. TEX. HLTH. & SAF. CODE Ch. 166 consolidates the location of the law regarding the 1) the Medical Power of Attorney, 2) and the Directive to Physicians. and 3) the "Out of Hospital Do Not Resuscitate" form. The chapter also provides common definitions to be used among all three documents

13. Medical Power of Attorney - TEX. HLTH. & SAF. CODE § 166.151 The most commonly used tool to avoid guardianship, the Medical Power of Attorney (formerly the Durable Power of Attorney for Health Care) is a creature of statute and should be prepared and executed with close attention to the statutory scheme set out in the Health & Safety Code. Most prudent estate planners will include the Medical Power of Attorney along with a Will and Durable Power of Attorney in a basic estate plan.

The Medical Power of Attorney is not automatically revoked upon the appointment of a guardian. The court may choose to suspend or revoke the power of the agent or to leave the Medical Power of Attorney in place as a less restrictive alternative.

CAVEAT: Nursing homes and hospitals may be reluctant to accept Medical Powers of Attorney which are executed made close to the time they are needed, particularly if the patient's capacity is questionable.

14. Directive to Physicians and Family or Surrogates ("Living Will") – TEX. HLTH. & SAF. CODE § 166.031 –

The newly revised and renamed form also now requires a disclosure statement (much like in the medical power of attorney), a place to indicate a choice between two treatment options, and a place for designation of an agent. The Directive interrelates to the Medical Power of Attorney in that it instructs the principal not to designate an agent on the Directive if a Medical Power has been executed. Unlike the new mandatory form for the Medical Power, the new Directive form is **permissive**.

Intractable Pain Treatment Act. - TEX. REV CIV. STATS Art. 4495c. This act, adopted in 1995, was the first state statute in the nation designed to protect doctors for prescribing morphine to terminal patients for pain management during end-stage treatments without fear of professional disciplinary action for addicting the patients. See www.medsch.wisc.edu/painpolicy. the website for the Pain & Policy Studies Group of the University of Wisconsin Medical School for additional information and discussion on pain management policy.

15. Out-of Hospital DNR ("EMT-DNR")- TEX. HLTH. &

SAF. CODE § 166.081 – requires the ambulance personnel to let you die if that is your expressed wish. The tricky thing is having the right document or indicator available. This is one form that you cannot prepare. The forms are actually printed by the Texas Department of Health. Only the officially printed forms (with red ink in the right places) will be honored by the EMTs. The Texas Department of Health has information on ordering the forms and necessary identifying bracelets at http://www.tdh.state.tx.us/hcqs/ems/index.htm#EMSRESOURCES.

16. End-Stage Planning: The Patient's Intent, If Known

With or without legal assistance, a person may express his or her wishes and desires as to treatment decisions as disability or death approach. The oldest and most widespread of these is the "Five Wishes," a pamphlet developed in Florida and used in 33 states. It combines 1) surrogate decision making, 2) a medical power of attorney and 3) palliative care choices, many of which are sufficiently thought-provoking to promote some discussion on the topic with the one considering such choices.

CAVEAT: Because of the stringent witnessing requirements under the Advanced Medical Directives Act (TEX. HLTH. & SAF. CODE Ch. 166) and the mandatory nature of the form of the Texas Medical Power of Attorney, the universal *Five Wishes*™ pamphlet has not been implemented in Texas, however, Texas law does require that the patient's wishes, if known, are to be followed, (e.g.: TEX. HLTH. & SAF. CODE § 166.152(e)(1)). As a result, the Five Wishes may still function as a statement of the patient's intent. www.agingwithdignity.com

III. AVOIDING GUARDIANSHIP OF THE ESTATE

17. Common Law Power of Attorney

A common law power of attorney is an agency relationship created by contract between a principal and an attorney-in-fact (person to whom the principal gives power to act). Thus, anyone who has the legal capacity to create a valid contract may appoint an attorney-in-fact. See *Texas Transaction Guide* §92.21.

No writing required, but very limited application. Not available for minors or the incapacitated. Expires upon incapacity. If "coupled with an interest" may be irrevocable.

Don't seriously consider arguing this unless it is your only hope.

18. Durable Power of Attorney - TEX. EST. CODE § 751.001ff – provides for all acts done by the attorney in fact (agent) to have the same effect, inure to the benefit of, and bind the principal and the principal's successors in interest as if the principal were not disabled. The statutory form allows the grant of broad authority. **If** the Proposed Ward still has enough capacity to grant the power, this is virtually a "no-brainer".

Will the Bank accept it? If you have a client who is planning to use a durable power of attorney and you have some special provisions that have been requested, it is really a good idea to check with your client's banker, stockbroker and other people who are gatekeepers with respect to the client's assets. If they are not prepared to accept those special provisions, you probably want to go a different direction.

Other drawbacks – Because there are no real checks-and-balances on the attorney-in-fact, anecdotal evidence of fraud and abuse often comes "too little, too late" for effective relief. Amendments in 2001 impose a duty on the agent to inform and account to the principal of actions taken under the power and to maintain complete records of actions taken. TEX. EST. CODE § 751.101.

Patriot Act – Know Your Customer – A further complication hampering the use of Durable Powers of Attorney comes as a result of the "Know Your Customer" provisions of the "Patriot Act" (Public Law 107-56 – Oct. 26, 2001). Because the bank must aggressively verify identities, if the attorney in fact presents the power of attorney in question after the incapacity of the principal, there will most likely be insurmountable problems.

19. Convenience Accounts - TEX. EST. CODE § 113.102

- allows a depositor to name a co-signer on his or her account without giving the co-signer ownership rights before or after the depositor's death.

- creates a straightforward agency relationship for a potential ward to allow a family member or friend to help them pay bills and handle other banking business.

- a Convenience Signer cannot pledge the assets of the account. TEX. EST. CODE § 113.251.

Convenience Signer On Other Accounts TEX. EST. CODE § 113.106 – Account owner may designate "Convenience Signers" on other types of multi-party accounts such as joint tenancy with right of survivorship, pay-on-death and trust accounts.

Beware of unintended consequences.

20. Sophisticated Tax Planning

This alternative is included by way of issue recognition, rather than as an attempted exposition. Non-tax-planners might consult their tax planning brethren if a situation presents itself where there is a potential to employ tax planning as a part of disability planning/guardianship avoidance.

21. Inter Vivos ("Living") Trusts - TEX. PROP. CODE §§ 111-115 – Like any tool in the toolbox, a revocable inter vivos trusts has its particular applications. It is an excellent and highly flexible tool when drafted by a knowledgeable, competent estate planning lawyer, working with a full understanding of the client's needs, objectives, and circumstances, and when coordinated with other appropriate estate planning tools and techniques. The trustee can be given much more freedom that a guardian would enjoy, especially in such areas as investments and distributions.

Scam Trusts - IRS - The See IRS Pamphlet 2193 for the attempts of the IRS to educate the public about trust scams. It gives consumers some simple ways to help decide if the trust they are contemplating is "too good to be true."

Irrevocable Trusts – To protect clients from themselves.

22. §142 Trusts – TEX. PROP. CODE § 142.005

In a suit in which a minor who has no legal guardian or an incapacitated person is represented by a next friend or an appointed Guardian Ad Litem, the court may, on application by the next friend or the Guardian Ad Litem and on a finding that the creation of a trust would be in the best interests of the minor or incapacitated person, order the clerk to deliver any funds accruing under the judgment to a trust company or a state or national bank with trust powers. TEX. PROP. CODE § 142.005.

Drawback: These trusts generally fail to provide for any accountability on the part of the trustee. A burgeoning number of fiduciary breach suits are being brought as a result.

Advance Planning: If the suit in question has not already gone to judgment, consider instituting a guardianship proceeding and requesting that the suit be transferred into the probate court.

If you are not in a statutory probate court, ask for a Statutory Probate Judge to be appointed under TEX. GOVT CODE § 25.0022. The Statutory Probate Judge brings with him or her all of the jurisdiction of a statutory probate court, including the transfer power under TEX. EST. CODE § 1022.007. TEX. GOVT CODE § 25.0022(n).

Once you are in the probate court, a Guardianship Management Trust may be created without the necessity of also creating a guardianship. TEX. EST. CODE § 1301.051.

23. Testamentary Trusts

Testamentary trusts can be used to avoid a guardianship for the Testator's spouse, any family members with special needs and children and grandchildren of the Testator. When combined with traditional disability and tax planning, the potential for avoiding guardianship (and most of probate altogether) is great. As always, getting the client in to start the planning process is the hardest part.

24. Guardianship Management Trusts – TEX. EST. CODE § 1301.051 - An effective property management tool while protecting the property from malfeasance.

- may be established whether a guardian is ultimately appointed or not.

- Applicants can include a guardian, an Attorney Ad Litem, a Guardian Ad Litem or a person interested in the welfare of the ward.

The ability to continue the administration of the trust until age 25 (TEX. EST. CODE § 1301.203) can be particularly advantageous to provide a few more years of professional money management during an extended "training wheels" period for the ward/beneficiary.

- **Distribution to Pooled Trust Subaccount** – In light of the global economic downturn since 2008, the Guardianship Management Trust assets can be transferred to a subaccount of a Master Pooled Trust for more economic management of assets that might otherwise be too modest for a bank trust department. TEX. EST. CODE §§ 1302.001ff. See *infra*.

25. Pooled Trust Subaccounts TEX. EST. CODE §§ 1302.001ff - As an alternative to a Guardianship Management Trust, funds otherwise appropriate for a Management Trust to be transferred to a pooled trust, such as that operated by the Association for Retarded Citizens (ARC). It will preserve Medicaid qualification. It requires that an annual report be filed, but not a guardianship-style accounting. The trustee may assess its standard fees against the subaccount.

26. Special Needs/ Medicaid Qualification Trusts - 42 USC 1396p (1)(d)(4)(A)

Medicaid is a federal, means-tested program health program for eligible individuals and families with low incomes and resources. It is jointly funded by the state and federal governments, and is managed by the states. In Texas, an individual whose resources or income exceed certain limits cannot qualify for Medicaid benefits. However, certain resources, or assets, do not count for Medicaid eligibility purposes.

The enabling statute, "OBRA 93", allows the use of very specific trusts which may be established with an individual's own assets, but which will not count against the resource limit for that individual for Medicaid purposes.

Although there are three types of such trusts, it is the trust for disabled persons under age 65, authorized pursuant to 42 U.S.C. § 1396p(d)(4)(A) which typically involves the courts. These are most often called "Special Needs Trusts" or "Supplemental Needs Trusts."

Personal injury attorneys are only recently appreciating the utility of these trusts in preserving assets for the permanently disabled client who will remain institutionalized.

Be aware of the potential exposure for an Attorney Ad Litem in a P.I. case who fails to consider the appropriate use of the supplemental needs trust, resulting in a much smaller net benefit for the disabled client.

27. Trusts for Intellectually Disabled (MR) Persons TEX. HLTH. & SAF. CODE § 593.081 - Up to $250,000 may be placed in a trust for the benefit of MR individuals in certain residential-care facilities without disqualifying them from receiving state benefits and without the need for a guardianship.

A copy of the trust must be provided to Texas Department of Aging and Disability Services.

DADS may request current financial statements.

Guardianship funds - Ch. 142 trusts, patient's trust fund's in a residential-care facility, child support, an interest in a decedent's estate, and funds in the registry of the court are not considered trusts and are not entitled to the exemption.

28. Community Administrator - TEX. EST. CODE § 1353.002 - Upon a declaration of incapacity of one spouse, the other spouse, in the capacity of "community administrator" (no the decedent's estates kind) has the power to manage, control and dispose of the entire community estate without the necessity of a guardianship upon a finding by the Probate Court that: 1) it is in the best interest of the ward for the capacitated spouse to mange the community

property, and 2) the capacitated spouse would not be disqualified to be appointed as guardian of the estate under §1104.351ff.

An ad litem may be appointed, the administrator required to return an inventory and accountings and a guardian of the estate may retain management rights over some specified varieties of real and personal property. These matters are considered in the context of a guardianship application and are not freestanding applications.

TEX. FAM. CODE § 3.301ff (the corollary provision to TEX. EST. CODE § 1353.002) was drastically amended in 2001. It is no longer possible to have the capacitated spouse manage or sell the community property under the Family Code, absent highly unusual circumstances.

29. Court Registry - TEX. EST. CODE § 1355.001 - This provision is often viewed as simply an administrative deposit mechanism and is often overlooked as an opportunity to avoid administration of a minor's or other incapacitated person's guardianship estate. Up to $100,000 may be deposited into the court's registry during the period of incapacity. The clerk is to bring the matter to the judge's attention and the funds are to be ordered invested in an interest-bearing account.

"Mini-administration:" Certain specified persons are permitted to withdraw all or a portion of the funds in the registry under bond to be expended for the benefit of the incapacitated person. After an accounting to the court, the bond may be released. This provides a very simple alternative to guardianship, particularly in a rural county. Upon attaining majority, minors are able to withdraw the funds upon proof of age and an order of the court. TEX. EST. CODE § 1355.105.

CAVEAT: TEX. LOC. GOVT. CODE §§ 117.054 & 117.055 authorize the county clerk to charge investment management fees on funds in the court's registry: a) 10% of any interest earned on interest-bearing accounts and b) 5% (but not to exceed $50.00) on non interest bearing accounts.

Where funds are interplead because of a settlement but no probate case is pending, make sure the order specifies that the funds are to be deposited in an interest-bearing account.

Institutionalized incapacitated individuals: TEX. EST. CODE § 1355.151ff allow funds being held for an incapacitated individual who is institutionalized by the State of Texas to be paid to the institution for a trust account for the benefit of the individual, up to a maximum of $10,000.

30. **Payment to Non-Resident Creditor** TEX. EST. CODE § 1355.002 Permits money payable to a non-resident minor, a non-resident adult ward or a non-resident former ward of a terminated Texas guardianship ("non-resident creditor") to be paid either to the guardian of the non-resident creditor in the domiciliary jurisdiction or to the county clerk where the non-resident creditor owns property or in the county of the debtor's residence.

30. Sale of Minor's Interest in Property - TEX. EST. CODE § 1351.001

This relatively simple procedure allows the interest of a minor in realty to be sold and deposited into the court's registry if the minor's interest is less than $100,000. The minor's interest needs to be cash only, so it sometimes is necessary to do a bit of structuring to "cash out" a minor's undivided interest.

The sworn application, which must contain the name of the minor and a legal description of the property, is filed and then is supposed to sit for five days. Citation is optional with the court. Most courts will want to see some indication of value beyond a contract and tax statement. Venue for this procedure is the same as for a guardianship. Court approval is subject to a 'best interest' test on behalf of the minor.

Upon approval by the court (check your local practice as to whether a hearing is actually required), the sale is closed and the proceeds deposited into the court's registry. The funds are available for withdrawal as described above.

31. Sale of Adult Incapacitated Ward's Interest in Property - TEX. EST. CODE § 1351.051

Until this section was enacted, adult incapacitated individuals with meager personal property but with undivided interests in real property were often required to have somewhat meaningless guardianships of the estate. This provision allows adult incapacitated individuals to proceed with a guardian of the person only where their interest in real property is valued at less than $100,000.

32. Mortgage of Minor Interest/ Minor Ward's Interest in Property - TEX. EST. CODE §§ 1352.051, 1352.101

These provisions allow the parents, managing conservator or guardian of the person (as applicable), to obtain a home equity loan secured by the minor's interest in homestead property for the payment of education and medical expenses , for repairs to the homestead property, and for repayment of the loan.

A bond set in twice the amount of the loan amount is required, as well as a hearing on the front end and annual accountings while the loan is being paid off.

33. Uniform Transfers to Minors Act - TEX. PROP. CODE § 141.001 et. seq. - The ability of a donor to make transfers of various types of assets to a minor by the donor's appointment of a custodian has broad coverage and far-reaching implications. The custodian has authority to invest and expend the transferred assets – without court order – for the support, education, maintenance and benefit of the minor.

Again, the lack of supervision may dictate against this as a vehicle of choice unless the custodian is sophisticated enough to really understand fiduciary responsibility.

34.Receivership TEX. EST. CODE § 1354.001, TEX. CIV. PRAC. & REM. CODE §§ 64.001ff, - Of particular interest is where the incapacitated person owns an interest in a going business or commercial property which is in danger of injury. The court may appoint a receiver, who is subject to the same compensation and bonding provisions under the Estates Code as a personal representative. The Receiver administers the property until the need for the receivership is over.

In 1999, the provisions for guardianship for missing persons were repealed. Receivers are now to be appointed for missing persons.

35. Order of No Administration TEX. EST. CODE §§ 451.001ff

If your object is simply to transfer title to estate assets to a disabled surviving spouse or minor children and your facts meet the criteria specified, this somewhat archaic procedure, sort of an amalgamation of a small estate affidavit and an application for family allowance, may be employed if there is otherwise no necessity for administration. The court may dispense with notice or may prescribe the quality and quantity of notice required. TEX. EST. CODE § 451.002.

The court's order reads like the "facilitation of payment" language in a muniment of title proceeding and acts as authority to effect the transfer of the property involved. TEX. EST. CODE § 451.003. Such an order may be "undone" within one year if other information comes to light showing a necessity for administration. TEX. EST. CODE § 451.004.

36. Representative Payee 42 USC § 1383(a)(2)

A Representative Payee may be appointed by the Social Security Administration to manage Social Security benefits without the appointment of a guardian. Potentially available to all of the 50 million individuals receiving some sort of Social Security benefits, close to 7 million people currently receive Social Security benefits under the representative payee program. This is approximately ten times greater than all active court-supervised guardianships in the United States.

37. Veteran's Benefits Fiduciary - 38 USC § 5502(a)(1) Very similar to the Social Security rep payee program, the Department of Veteran's Affairs allows the appointment of a person to handle the administration of veteran's pension benefits without the appointment of a guardian. www.vba.va.gov/bln/21/Fiduciary/index.htm

38. Payment of Employees Retirement System Funds to Parent of Minor - Op. Tex. Att'y Gen. No. H-1214 - a parent may receive and manage a minor child's Texas Employees Retirement System (ERS) benefits without guardianship. This opinion relies on two propositions:

- a parent has authority to manage the estate of a minor child without court appointment of a guardian. TEX. FAM. CODE § 151.001(a)(4).
- A parent may also receive, hold, and disburse funds for the minor's benefit. TEX. FAM. CODE § 151.001(a)(8).

39. International Treaty

There is at least one international treaty between Mexico and the united States that provides for judgments benefitting minors who are Mexican Nationals to be paid to the Mexican Government to as trustee. E-mail from Judge Guy Herman, April 12, 2002 to Texas Probate Listserve www.texasprobate.net

Similarly, Memoranda of Understanding are frequently executed between governmental agencies providing for international cooperation regarding minors in cross-border situations. See Memorandum of Understanding Between the Monterey County Department of Social and Employment Services, Family and Children Services and the Consulate General of México in San José, California Regarding Consular Involvement in Cases Involving Minors www.f2f.ca.gov/res/pdf/Monterey MOUMexicanconsulate.pdf Accessed February 16, 2011

40. Suit by Next Friend - TEX. RULES CIV. PROC. 44

A minor without a legal guardian may sue by next friend. A next friend has the same rights concerning such suits as guardians have. These rights include seeing that the funds or other property recovered is placed in the court's registry, placed in a § 142 Trust under the Property Code or a Guardianship Management Trust under the Estates Code.

Under no circumstances should a non-parent next friend be allowed to seeks to manage the funds personally, as neither the Property Code nor the Rules of Civil Procedure provide for any oversight mechanism for next friend management of a minor's property.

CAVEAT: Next Friends are subject to the same restrictions as guardians re contingent fee agreements. *Massey v. Galvan* 822 S.W.2d 309 (Tex. App. – Houston – [14th District] 1992, wr. den.) In *Stern v. Wonzer* 846 S.W.2d 939 (Tex. App. – Houston - [1st District] 1993, no pet.).

CAVEAT #2: When a P.I. case settles and little or no thought is given to the allocation of the award between the survival cause of action and the wrongful death cause of action, some sticky tax issues and angry creditors (and probate judges) may have to be faced. *Texas Health Insurance Risk Pool v. Sigmundik*, 315 S.W.3d 12 (Tex. 2010); *Elliott v. Hollingshead*, 327 S.W.3d 824 (Tex. App. Eastland, 2010, no pet.).

41. Social Service Agencies - Many social services agencies provide a variety of services specifically tailored to the needs of children, the disabled and elderly. A quick check of the yellow page listings under "social service agencies," will reflect literally dozens of organizations existing to this purpose. Many will have a particular emphasis toward a target group: veterans, the elderly, intellectually disabled, etc.

Beyond the Order for Emergency Protection (*supra*) the ability of either Adult Protective Services or Child Protective Services to investigate a potential exploitation or neglect situation is vital.

42. Geriatric Care Manager

A Geriatric Care Manager (GCM) is a health and human services professional, such as a gerontologist, social worker, counselor, or nurse, with a specialized body of knowledge and experience on issues related to aging and elder care issues.

GCMs are able to coordinate and manage eldercare services, which often includes conducting an assessment to identify problems, eligibility for assistance and need for services; coordinating medical services, including physician contacts, home health services and other necessary medical services; screening, arranging and monitoring in-home help

or other services; reviewing financial, legal, or medical issues and offering appropriate referrals to community resources; providing crisis intervention; ensuring everything is going well with an elder person and alerting families to problems; and assisting with moving an older person to or from a retirement complex, care home, or nursing home.

While California has developed a state registry of Geriatric Care Managers, Texas does not yet have any central registry. The National Association of Professional Geriatric Care Managers**,** the non-profit association of these professional practitioners, has promulgated a Pledge of Ethics and Standards of Practice. Their website has a locator database. *www.caremanager.org*

IV. LIMITING THE EFFECT OF THE GUARDIANSHIP

43. Pre-Need Designation of Guardian For Self – TEX. EST. CODE § 1104ff

An adult with capacity may, by written declaration designate those persons whom the declarant wishes to serve as guardian of the person or of the estate of the declarant in the event of later incapacity. The declaration may be in any form adequate to clearly indicate the declarant's intention to designate a guardian for the declarant's self in the event of the declarant's incapacity. The designation may be holographic, acknowledged before a notary or attested to by two witnesses, age 14 years of age or older and who are not designees to be guardian. In the case of attestation, a self-proving affidavit should be executed and attached.

A declaration that is not written wholly in the handwriting of the declarant may be signed by another person for the declarant under the direction of and in the presence of the declarant.

The court is required to follow the designations in the declaration, unless the court finds such designee to be disqualified or their appointment not to be in the ward's best interest.

Pre-Need Disqualification - Perhaps more importantly, the declarant may also indicate those persons who are to be specifically disqualified from serving as guardian, either of the person or estate. Such a disqualification is binding on the court and is among the listed reasons for disqualification under TEX. EST. CODE § 1104.202.

Revocation/Nullification - The designation may be revoked by execution of another designation or by following the same formalities as revoking a will. Divorce will serve to nullify a designation of a former spouse.

44. Pre-Need Designation of Guardian by Parent - TEX. EST. CODE §§ 1104.103, 1104.151

Similarly, a parent may designate, either in by separate written declaration or in the parent's will, those persons (in preferential order) whom they desire to be guardian of the person and/or estate of their child or children. The designation may specify that the court waive bond as to a guardian of the person, but not as to a guardian of the estate. This designation may be for either minor children or for adult incapacitated children.

Like the designation for one's self, the designation for a child may be in any form adequate to clearly indicate the declarant's intention to designate a guardian for the declarant's child in the event of the declarant's death or incapacity.

Unlike the Pre-Need Designation for Self, the Pre-Need Designation of Guardian by Parent does not contain the provision to expressly disqualify others as guardian.

45. Pre-Need Declaration for Mental Health Treatment - TEX. CIV. PRAC & REM. CODE § 137.007

A capacitated adult may, by written declaration, indicate his or her preferences or instructions for mental health treatment, including the right to refuse such treatment. Such a declaration is effective on execution and expires on the third anniversary of its execution or when revoked, whichever is earlier.

Witnesses - The declaration is to be witnessed by two qualified witnesses (similar to other advanced directives). Physicians or other health care provider are to follow such declaration, however, as long as the declarant is capable for giving informed consent, such informed consent is to be sought.

Does not apply – The declaration is ineffective if the declarant, at the time of making the designation, is under a temporary or extended commitment and treatment is authorized under the Mental Health Code or in the case of an emergency when the declarant's instructions have not been effective in reducing the severity of the behavior that has caused the emergency.

46. Safekeeping or "Freeze" Agreements - TEX. EST. CODE § 1105.155 - Where the personal representative deposits estate cash or other assets in a state or national bank, trust company, savings and loan association, or other domestic corporate depository, to be held under an agreement that the depository will not allow withdrawal or transfer of the principal of the assets and/or interest on the deposit except on written court order. (See example in Appendix Ad.) The amount of the bond of the personal representative may then be reduced in proportion to the cash or other assets placed in safekeeping.

47. Restoration of Ward - TEX. EST. CODE § 1202.051 - A Guardian Ad Litem must be appointed and everyone noticed similar to the original grant of guardianship.

48. Annual Determination - TEX. EST. CODE § 1201.052 - Each year, the probate judge is required to review each guardianship file created after September 1, 1993,and may review annually any other guardianship files to determine whether the guardianship should be continued, modified, or terminated. This provision appears fairly innocuous, but is in reality very powerful. It was recently used in a very large guardianship with massive pending litigation to restore the ward's capacity and terminate the guardianship. Because the standards for the court are somewhat of a blank slate (i.e.

discretionary), especially in courts other than statutory probate courts, this provision could be employed in a number of creative ways. Even though the procedure and standards for modification under § 1202.051 are fairly restrictive (see above), the annual determination under § 1201.052 contains no such procedural requirements.

49. Emancipation of Minor Ward - TEX. FAM. CODE § 31.01ff - Where a minor who is over 16, self-supporting (or married) and living apart from parents, a conservator or guardian may ask the court to legally remove the disabilities of minority for either limited or general purposes. The petition is decided on a "best interest" standard and the order is to specify whether the removal of disabilities is limited or general in scope and the purposes for which disabilities are removed.

50. Enumeration of Powers in Guardianship Order TEX. EST. CODE § 1101.151ff - If the guardianship is to be a plenary guardianship, it is perhaps best to simply reflect in the order that *"The guardian is to be granted all power and authority allowed under Texas law and the rights of the ward are limited to the extent not inconsistent therewith."* Otherwise, attempting to cover everything by an exhaustive listing may leave the guardian with specific deficits. Some attorneys feel that a listing of eight or ten powers is complete, while others can go on for pages.

However, if the ward is partially capacitated, a careful enumeration of those areas in which the ward's rights are not to be limited can have a great effect on the ward's functioning ability and self-esteem.

51. Interstate Guardianships TEX. EST. CODE § 1253.001ff - Where a guardianship exists in another state and the ward has been moved to this state, it can be advisable to allow a part of the guardianship to remain in the other state until affairs (pending litigation, etc) are resolved before all of the remnant is transferred.

52. Negligible Estate TEX. EST. CODE §§ 1204.001 - When the ward's estate is exhausted or **w**hen the foreseeable income accruing to a ward or his estate is so negligible that maintaining the guardianship would be a burden, the court may authorize the income to be paid to a parent or other person acting as guardian, to assist as far as possible in the maintenance of the ward, and without any liability for future accountings as to the income.

53. Minor Ward's Estate <$100,000 TEX. EST. CODE §§ 1204.001(d) & 1355.102 - Unlike the adult ward's estate, which is needed for the upkeep and maintenance of the ward, a minor ward's guardianship estate is less likely to be called upon for day-to-day living expenses. If the guardian of the estate is a parent of the ward, the court is usually going to want to see some proof that the guardian/parent cannot make the expenditures out of his/her own pocket rather than out of guardianship assets. The mindset here is more of asset preservation and maybe some college planning, assuming of course that the minor ward has no special needs to deplete the estate. If the estate cash falls below $100,000 (up from $50,000 in 2001), the guardianship of the estate may be closed and the remaining funds paid into the court registry. Withdrawals are then possible under the procedure set out under TEX. EST. CODE § 1355.102 above.

54. Mediation and Family Settlement Agreements TEX. EST. CODE § 1055.151 - Rarely on a guardianship contest is issue of incapacity the real issue. Most often, decades of unresolved conflict among the family members of the proposed ward spark the contests. Perceived favoritism, sibling rivalry, jealousy of a stepparent or step-children or step-siblings, unresolved grief, etc. are all manifested in the guardianship arena.

While resolution of a guardianship contest might remove the procedural obstruction in granting a guardianship, it rarely resolves the family disputes and wounded relationships which led to the contest. Mediation can provide a level playing field for the family to resolve those issues behind the guardianship fight. The long-standing "burrs under the saddle" that so often give rise to fights in the probate arena can be aired and often resolved. TEX. EST. CODE § 1055.151 allows those settlements to be made irrevocable.

"A family settlement agreement is a favorite of the law." *Shepherd v Ledford*, 962 S.W.2d 28 (Tex. 1998).

55. Mother Nature and Father Time -

Spontaneous Remission - It is not unusual - once a person gets adequate nutrition/ hydration/ socialization / therapy/ medication for a few weeks or months - for many symptoms of delirium/ confusion/ diabetic conditions to clear up. In some instances, it is a question of employing successive alternatives in an effort to forestay the inevitable, whether a guardianship or death.

It is rarely in the best interest of a terminally-ill proposed ward to go through successive independent medical examinations and for extensive litigation to exhaust an already beleaguered estate, only to have the ward die the day after letters are granted.

PREJUDGMENT PROCESSES AND PROCEDURE TO LEVEL THE PLAYING FIELD — TRICKS TRAPS AND OPPORTUNITIES FROM A LITIGATOR AND JUDICIAL PERSPECTIVE

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40TH ANNUAL
ADVANCED ESTATE PLANNING & PROBATE
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CHAPTER 25

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Fiduciary Duty in Real Estate Transactions
HBA Real Estate Section
May 2013

Protecting and Administering Digital Assets
HBA Litigation Section Westside Luncheon
February 2013

Estate Planning and Probate with Social Media in Mind
HBA Estate Planning and Probate Section
December 2012

Guardian Ad Litems and Contested Matters
Guardian Ad Litem Certification Course
2011 Wills and Probate Institute – South Texas College of Law
September 2011

Planning for the Future
Mended Hearts Support Group
Annual Meeting – July 2011

Estate Planning and Probate
University of Houston Law Center
The People's Law School – October 2009

Estate Administration Procedures: Why Each Step Is Important
National Business Institute
May 2009

Estate Planning and Probate
University of Houston Law Center
The People's Law School
April 2009

Finding FDCPA Claims in Bankruptcy
Houston Association of Debtor's Attorneys
February 2008

Consumer Credit and Debt – How to safeguard your credit
Stonewall Lawyers Association Law Day
June 2007

Consumer Credit and Debt – Debt Collection and your Credit Report
University of Houston Law Center
The People's Law School – April 2007

Living the Dream: Perspectives on Solo Practice or Starting your own Firm
Asian American Bar Association
March 2007

Basics of Estate Planning
Interfaith Care Partners

February 2006

Organizing for the Future
Interfaith Care Partners
March 2006

Probate Law for Personal Injury Attorneys
Texas Trial Lawyers Association CLE
Maximizing Your Case Recovery in 2006
Death and Dying:
Wills, Living Wills and Powers of Attorney
University of Houston Law Center – The People's Law School
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Member, Association of Attorney Mediators, Society of Professionals in Dispute Resolution.

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Speaker and Author, "What am I Doing in Probate Court?", 19th Advanced Personal Injury Law Course, State Bar of Texas, 2003
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Panelist and Author, "Anatomy of a Trial", Advanced Estate Planning and Probate Course, State Bar of Texas, 2002.
Speaker, "Pattern Jury Charges in Probate, Trust, and Guardianship Litigation, Tarrant County Probate Bar Association, 2002.
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Speaker and Author, "Role of the Ad Litem in Guardianships", Houston Bar Association, September 2000.
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Speaker and Author, "Judicial Records" and "Ethics", Regional Judicial Conferences, Texas Center for the Judiciary, Winter, 1998.
Speaker and Author, "The Duties of an Ad Litem in Probate Court", Houston Bar Association, October, 1997.
Speaker and Author, "Jurisdictional Overlap between Probate and Family Courts", Houston Bar Association, August, 1997.
Speaker and Author, "Common Mistakes in the Courtroom in Guardianship Matters", Houston Bar Association, May, 1997.
Speaker and Author, "Guardianship Overview", Elder Law Institute, State Bar of Texas, September, 1996.
Panelist, "Family Law and Probate Statutory Overlaps", Bench Bar Conference, Houston Bar Association, September, 1996.
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Married to Sharolyn Wood, Retired Judge 127th Judicial District Court; 3 children: Chris, Ricky and Laura
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PREJUDGMENT PROCESSES AND PROCEDURE TO LEVEL THE PLAYING FIELD—TRICKS, TRAPS AND OPPORTUNITIES FROM A LITIGATOR AND JUDICIAL PERSPECTIVE

I. INTRODUCTION

Lawsuits involving fiduciaries are not unique; the numbers of these lawsuits seem to continue to rise each year. While most lawsuits start with the filing of a petition and end with the entry of a judgment, there are certain prejudgment processes that can fundamentally change the course of a case.

These processes can be particularly important in lawsuits involving fiduciary relationships. For example, the ability of a fiduciary to use fiduciary funds or remain in control of fiduciary assets can affect how each side prepares its case. Likewise, the seemingly ever-shifting burdens must be considered when utilizing other pretrial options. These options may include:

- Temporary Restraining Order/Temporary Injunction
  - Payment of legal fees and expenses
  - Distributions
  - Sales of assets
- Appointment of personal representative
- Court appointed receiver
- Court appointed auditor
- Motion for Bond
- Motion for Security
- Appointment of ad litem
- Motion to compel examination. TEX. R. CIV. P. 204
- Motion to inspect property
  - Real estate
  - Computers
  - Personal property
- Special Exceptions. TEX. R. CIV. P. 90, 91; *Roark v. Allen*, 633 S.W.2d 804, 810 (Tex. 1982); *Broom v. Brookshire Bros., Inc.*, 923 S.W.2d 57, 60(Tex. Civ. App.—Tyler 1995, writ denied).
- Motion in Limine
- Motion to dismiss
- Motion to abate
- Demand for accounting
- Motions for Summary Judgment. TEX. R. CIV. P. 166a
  - No-Evidence
  - Traditional
- Interlocutory appeal /Mandamus
- Special appearance
- Appointment of a receiver/trustee
- Certain discovery rulings
- Rulings on arbitration provisions
- Consolidation of actions
- Motions to seal

See Pacheco & Christopher, *Executors & Trustees: Considerations and Checklists for Fiduciary Litigation Related To Estate Planning/Probate/ Executors/Trustees*; State Bar of Texas; Trial of a Fiduciary Litigation Trial Notebook Course, December 2010.

When and if to use one or more of these options is governed by the facts and circumstances of each case. But when used properly, these prejudgment procedures can often fundamentally change the playing field in a way that allows a party to gain an advantage over his or her opponents. This paper does not attempt to address each and every prejudgment process as there are many excellent substantive outlines, beginning with the outlines discussing many of these processes on the State Bar of Texas CLE website located at http://www.texasbarcle.com. Rather, this presentation and thus this outline are intended to discuss the more commonly used prejudgment processes from the strategic perspective. It should be noted that those outlined herein are not exclusive, nor do the authors suggest they can or should be utilized in all cases. The actual facts and circumstances of each case (which in fiduciary litigation are always unique) should dictate the actual considerations, strategies, motions and actions.

II. TEMPORARY RESTRAINING ORDERS AND TEMPORARY INJUNCTIONS

A. Requirements

Temporary restraining orders and temporary injunctions operate to enjoin a party or other individual from doing a certain act to ensure status quo, but may only be granted if the applicant can show a probable right to relief. TEX. R. CIV. P. 680.

When seeking a temporary restraining order or injunction, the issue before the trial court is whether the moving party is entitled to preservation of the status quo of the subject matter of the suit pending trial on the merits. *See Davis v. Huey*, 571 S.W.2d 859, 862 (Tex. 1978); *Recon Exploration, Inc. v. Hodges*, 798 S.W.2d 848, 851 (Tex. App. — Dallas 1990, no writ). To be entitled to injunctive relief, the moving party must plead and prove:

- a probable right to final relief on the underlying claims;
- a probable imminent and irreparable injury if temporary injunctive relief is not granted; and
- lack of an adequate remedy at law.

See, e.g., Munson v. Milton, 948 S.W.2d 813, 815 (Tex. App. --- San Antonio 1997, writ denied).

To show a probable right of recovery, a party must show that a bona fide issue exists as to its right to ultimate relief. *183/620 Group Joint Venture v. SPF Joint Venture*, 765 S.W.2d 901, 904 (Tex. App. — Austin 1989, writ dism'd w.o.j.).

In fiduciary cases, temporary restraining orders and temporary injunctions, a party moving for a temporary restraining order or injunction may do so to:

- Protect or preserve the disputed fiduciary assets that form the basis of that dispute.
- Prevent the sale of a trust, estate or entity asset.
- Prevent interference with the sale of a trust, estate or entity asset.
- Prevent interference with the administration or business of a trust, estate or entity asset.
- Prevent the use of trust, estate or entity assets to pay legal or other prosecution or defense costs.
- Compel a fiduciary to take certain actions mandated by a will, trust or corporate governance documents.

Temporary restraining orders and temporary injunctions are generally not granted to compel a fiduciary to take certain discretionary actions. For example, temporary restraining orders and temporary injunctions are generally not granted to force a trustee to make a non-mandatory distribution, as such decisions or reviewed on an abuse of discretion standard that is difficult to establish. *See Coffee v. William Marsh Rice Univ.*, 408 S.W.2d 269, 284 (Tex. Civ. App. — Houston [1st Dist.} 1966, writ ref'd n.r.e)(courts will not second guess the fiduciary unless there is an "abuse of discretion").

When the decision is made to seek a temporary restraining order and temporary injunction, care should be taken comply will all applicable procedural and evidentiary requirements, including the filing of a verified complaint. Temporary restraining orders can be issued for a limited time without notice to the other party if a judge decides that a circumstance is imminent enough to require it. This typically requires the movant to establish at an evidentiary hearing that there is a likelihood of irreparable harm with no adequate remedy at law, that the balance of harm favors the movant, that there is a likelihood of success on the merits of the case, and that the public interest favors the granting of the injunction. TEX. R. CIV. P. 680; *Sun Oil Co. v. Whitaker*, 424 S.W.2d 216, 218 (Tex.1968).

B. No Other Adequate Remedy at Law

1. The Inadequacy of Money Damages

One advantage to the requirement that there be no adequate remedy at law is that the court will not recognize illusory money damages. Simply put, a court may still exercise its equitable powers and grant a movant a temporary restraining order and temporary injunction even if the relief sought by the plaintiff could be remedied by money damages. Below are some examples in which a movant had the right to recover money damages, but nonetheless was granted a temporary injunction based on the principles of equity.

In *Southwestern Telegraph v. Smithdeal*, the court approved a mandatory injunction for a movant homeowner who complained that the city's telephone poles and wires were interfering with the health of his trees and obstructing his shade. 136 S.W. 1049 (Tex. 1911). The court noted that even though the homeowner would be entitled to damages for this destruction, equity should provide him with the injunction because despite damages being an adequate remedy at law, the remedy was impractical. *Id*. at 1052. The court noted that the damages would be illusory because "such a claim would be confined to the effect the destruction of trees would have toward depreciating market value of his property." *Id*.

Likewise in *Summer v. Crawford*, a trustee in possession of a firm's stock of goods to be used to pay the debts of the firm was entitled to an injunction to prevent its unlawful seizure. *Summer v. Crawford*, 91 Tex. 129, 131 (Tex. 1897). The court reasoned that a trial of rights to the property, though a remedy at law, would be inadequate to properly preserve the stock. *Id.*

These cases demonstrate that a party who can show a potential damage to a property interests may be able to obtain a temporary restraining order or temporary injunction without the burden of establishing that there is no other honest means of protection.

2. Adequacy of Money Damages

Some courts have held that the ability to award monetary damages is a defense to the granting of temporary relief. For example, in *Ballenger v. Ballenger*, 694 S.W.2d 72 (Tex. App. --- Corpus Christi 1985, no writ). In *Ballenger*, a settlor created equal trusts for her four children, and her husband served as trustee. Upon the husband's death, each of the four children became co-trustees of the four trusts. Each child resigned as trustee from his or her own trust for tax purposes. The trust agreement, provided "that each of the four trusts shall be held, managed and controlled by the co-trustees for the use and benefit of the child for which the respective trust is named, and, upon that

child's death, all property '*remaining*' in each of said trusts shall pass to and vest in fee simple title to the grandchildren." *Id.* at 74. Three of the trustees wrote to the fourth trustee to inform him of their intent to exercise their sole discretion under the will and distribute to themselves $200,000.00 apiece from the corpus of their respective trusts.

One of the beneficiaries intervened in the case and filed for injunctive relief claiming the three trustees were going to deplete the corpus of the trust. The trial court ordered that the three trustees could not distribute the principal of the trusts without a court order determining that it was for the care, comfort and support of the distributees. The appellate court reversed the trial court, finding it had "abused its discretion" in ordering a temporary injunction. *Id.* at 78. The court reasoned that the adequate remedy at law prevented the entry of an injunction against the trustees of the testamentary trust:

> We agree with appellants' contentions that appellee has failed to show that appellants are insolvent or unable to respond in damages for any wrongful distributions made by them from the trusts in question. At the hearing for temporary injunctive relief, appellee presented evidence of the appellants' adjusted gross incomes for the years 1977-1982, based on their individual tax returns. Appellee also offered evidence of the amounts of trust income distributed to each of the four beneficiaries for the years 1977 through 1983.
>
> . . .
>
> We find from the record that any damages that might ensue are capable of exact calculation. The proposed distribution of trust corpus involves a distribution of *cash* which can readily be replaced with other money (plus statutory interest) should it be determined that appellants, acting as trustees, abused their discretion and made an unwarranted distribution. This is not a case in which the conduct sought to be enjoined affects property that is unique in its nature or in the character in which it is being used, such as land, cattle or precious jewels. Appellee's own argument that appellants have joined together to "deplete the liquid assets of the trust corpus," supports the conclusion that the damages, if any, are capable of exact calculation. Any harm which appellee or any other contingent remainderman might possibly suffer as a result of possible wrongful distribution of corpus in the form of cash can be adequately cured by monetary damages, regardless of the passage of time between entry of a judgment and satisfaction thereof.

Id. at 77-78 (internal citations omitted).

3. No Less Restrictive Forms of Protection

The moving party must also show there are no other less restrictive forms of protection available. For example, in *Ex parte Tucci*, the Texas Supreme Court held that prior restraints may not issue solely because a party will otherwise face imminent and irreparable harm. *See* 859 S.W.2d 1, 6 (Tex.1993).

C. Know Your Court

1. Introduction

In practice, juries are never responsible for determining whether or not an injunction should be granted to a party. This discretion lies solely with the judge. Therefore, it is helpful to gain an understanding of the specific court's history of when and under what circumstances it has granted a temporary restraining order and temporary injunction in other cases.

2. Timing

When to file a request for a temporary restraining order and temporary injunction can be critical in the success in obtaining one prior to trial, though there is no clear rule governing the timing. To the extent actions are sought to be restrained, it is important to move for protection as soon as such actions are known and sufficient evidence is obtained to support the allegations because if a party waits too long, it may appear that a temporary restraining order and temporary injunction are not necessary. And, once the parties have answered, some courts will generally only consider a request for a temporary injunction with proper notice. Therefore, the party loses the element of surprise to the other side.

3. Equities and Different Judicial Approaches

When balancing equities associated with a temporary restraining order or injunction, some courts may take a conservative approach in determining whether or not to grant a temporary restraining order or injunction, while others are less conservative. A court may look at the equities and the harm that each side could suffer if the relief is granted or withheld, and balance them to determine if it is worth granting, or whether some alternative relief should be given.

In probate and fiduciary matters, a judge may take the same approach when balancing the equities. For example, if a movant is highly concerned about a piece of property (or business) in the estate being damaged or destroyed, a given judge engaging in this balancing of the equities test who places more weight on economic considerations might be more likely to grant the

injunction on the basis of preservation alone, regardless of whether there is overwhelming evidence of a likelihood of irreparable harm.

D. Strategic Advantage

1. Locks up Funds for Opposing Party

Temporary injunctions or restraining orders may also offer a strategic financial benefit to the movant. When access to money is restrained, or limits are placed on how money can be used, it can have the effect of squeezing an opponent financially. That may place financial pressure on an opponent, forcing them to settle or dispose of litigation altogether. For example, in an estate situation in which the litigating attorneys are being paid their fees out of the estate, an injunction on the assets of that estate would essentially leave the non-moving party without the option to pay his attorney with those funds.

By way of illustration, if there is a sizeable estate being administered, and party A is granted an injunction against party B who has filed a will contest to be litigated, party B can no longer reach into that estate to pay his attorney. This is a significant advantage in a case wherein one or more of the parties relies on the estate funding the litigation so that the parties never having to come out of pocket for their own litigation expenses. Litigants who do so often exhaust a large portion of the estate by dragging on in litigation because they know the money is there. The strategic advantage to party A is that he has essentially disarmed his opponent financially by taking away his ability to pay his attorney hourly. This results in party B having to fund his own litigation which will likely result in party B's lack of fervor because he will have to pay his attorney's fee out of his own pocket. Additionally, this strategy prevents the bankrupting of the estate so that the ultimate beneficiaries still enjoy its fruits.

An injunction can also tie up an opposing party's access to living expenses if he is meeting those through estate funds. Though harsh, it can place your client strategically in a better position when the opposing party does not have access to cash to pay for daily expenses. A temporary restraining order and temporary injunction would essentially cut off the opposing party from using any of the estates assets to provide for daily life. Without estate money to take care of basic needs, a party to litigation is forced to rely on his own income. The non-moving party is therefore, far less likely to carry forward with litigation against the moving party.

2. Assists in Protecting Assets

The most obvious strategic advantage of being granted a temporary restraining order or injunction is that it ensures protection of the estate's assets. In practice, it is common for parties to obtain an injunction to preserve the assets and protect them from premature sale, damage or destruction. This proves most beneficial in cases involving real property to be inherited by a beneficiary or sold. For example, if during an administration, a party in opposition wants to sell or tear down property, an injunction would serve to protect that home. Furthermore, it benefits the estate by preserving the very assets that can be used to pay creditors who have valid claims.

E. Disadvantages in Trust Litigation

The Texas Trust Code Section 114.008 allows a beneficiary to enjoin a trustee from committing a breach of trust if a breach of trust has occurred or might occur. TEX. PROP. CODE § 114.008. While this is beneficial for beneficiaries who can prove an *actual* breach, the same cannot be said for those who suggest that a fiduciary breach might occur but lack evidence to demonstrate that a breach is impending.

Though the language of the Texas Trust Code appears clear, obtaining an injunction is usually difficult when there is merely an anticipatory breach of trust due to self-dealing by a trustee.

Traditionally, a party seeking an injunction must prove, among several other elements, that there is a likelihood of success on the merits of the case. This means that the party must establish the prima facie elements he intends to prove in the substantive case. However, a party seeking an injunction in a trust case involving a potential breach of fiduciary duty need not establish this because the burden of proof falls on the trustee.

For example, in *Archer v. Griffith*, the plaintiff, a wife in a divorce action asked the court to set aside a settlement agreement she made with her attorney that granted the attorney 1/4 of her undivided one-half interest in real property to satisfy payment to the attorney. The court reasoned that because the attorney client relationship is fiduciary in nature, the agreement was subject to the same scrutiny that any transaction between a trustee and a beneficiary would be. Like an agreement between an attorney and a client, a transaction between a trustee and a beneficiary, is subject to the same presumption of unfairness or invalidity attaching to the contract, and the burden of showing its fairness and reasonableness is on the trustee.

Therefore, as long as a trustee can overcome the presumption of unfairness, the temporary injunction will not be granted to the party seeking it. This can be problematic in potential breaches because it affords no protection of the trust property further than a TRO. Beneficiaries therefore, lose out in a sense unless there is an actual breach, and not merely a potential one. *See Archer v. Griffith*, 390 S.W.2d 735, 739-42 (Tex. 1965).

F. Advantages in Trust Litigation

Conversely, obtaining an injunction is simpler in some aspects for a moving party in a trust case because principles of equity allow for more relaxed standards. One appellate court has noted that "in a proceeding to enforce or protect fiduciary duties and equitable titles, the applicant is not required to demonstrate that his remedy at law is inadequate." *183/620 Group Joint Venture v. SPF Joint Venture*, 765 S.W.2d 901, 903 (Tex. App. - --- Austin 1989, writ dismissed w.o.j.).

Courts treat the elements of imminent irreparable injury and "no adequate remedy at law" interchangeably, as the terms are not always mutually exclusive. The requirements to prove up both elements are similar, and therefore the court may only require a showing of some questionable action by the trustee. *Texas Industrial Gas v. Phoenix Metallurgical Corp.*, 828 S.W.2d 529, 533 (Tex. App. --- Houston [1st Dist.] 1992, no writ).

A trustee's actions just months before the filing of the temporary restraining order can be enough for a court to conclude that an imminent harm exists. For example, in *Twyman v. Twyman*, the moving party, acting as agent under a power of attorney to the beneficiary of a trust was granted a temporary injunction after a court found that the trustee had withdrawn money for personal use, executed a promissory note after the moving party demanded an accounting, and failed to repay any of the withdrawn funds. 2009 WL 2050979 at *5 (Tex. App. --- Houston [1st Dist.] 2009, no pet.). The court reasoned that past behavior was indicative of irreparable harm, and therefore, an injunction should be granted. This case supports the argument that a party in a trust case, or any fiduciary case for that matter, need only establish harmful prior actions by a party to show imminent irreparable harm.

III. TEMPORARY ADMINISTRATORS AND TEMPORARY ADMINISTRATORS PENDING CONTEST

A. Texas Estates Code § 452.051

A court may appoint a temporary administrator under certain circumstances for a limited period of time. And, when a contest is pending related to the probating of a will or granting letters of administration is pending, the court may appoint a temporary administrator, with powers limited as the circumstances of the case require. This appointment will usually continue until termination of the contest or when a permanent executor or administrator is appointed.

B. Requirements

With regard to a temporary administrator, a judge may appoint a temporary administrator when it appears that the interest of the estate requires an appointment of one.

With regard to a temporary administrator pending contest, explicit in the statute itself is the provision that there must be some filing of a will contest or a contest to administration before a judge will appoint a temporary administrator. The purpose is to allow the administration to continue with the assistance of a trusted individual pending the contest concerning the probate of the will or administration of the estate. Furthermore, the temporary administrator assists in the preservation of the estate assets until the contest is resolved.

Like many motions, it is within the judge's discretion whether or not to appoint a temporary administrator or a temporary administrator pending contest.

C. Procedure

1. Application

An individual may file an application for appointment as temporary administrator that includes facts showing an immediate necessity for appointment. However, one benefit to the process of appointing a temporary administrator pending contest is that the appointment may be made with no application for citation. A judge may appoint a temporary administrator sua sponte as long as the judge sees an immediate need for one, and the person is a trusted individual. Many times a temporary administrator pending contest can be agreed upon by the parties. The main advantage of having an administrator that both parties agree with is that it reduces the potential for future conflict.

2. Order of Appointment

An order appointing a temporary administrator with a specified period of time that the temporary administrator will serve is then signed by the judge not to exceed 180 days. In practice, a temporary administrator pending contest usually serves until the contest is resolved.

3. Temporary Administrator's Oath and Bond

Similar to any other administration in probate, the administrator takes an oath and must also file a bond with the county clerk in the amount that is ordered by the court.

4. Letters of Temporary Administration

The newly appointed administrator is then issued letters of temporary administration granting them the limited powers to exercise on behalf the estate.

D. Strategic Advantages

1. Appointee is Disinterested

In Texas, a disinterested temporary administrator is often preferred over the appointment of one of the

parties. The benefit to the estate is that the third party temporary administrator serves as an unbiased third party with no pecuniary interest in the outcome of the parties. The temporary administrator can take possession of the personal and real property in the estate and make the necessary adjustments to preserve the estate. Though the temporary administrator's power is limited (usually less than the authority of the executor of a will), the court can grant powers which give the administrator the right to sell property in order to preserve estate assets. The client is benefitted because the estate is preserved and will likely allow the temporary administrator to collect assets and augment the estate and correspondingly, the beneficiary's interest in the estate. The limited powers of the administrator coupled with the fact that they are disinterested and subject to court supervision assures the beneficiary that the administrator has no ulterior motive to self-deal, and that the assets will be adequately preserved in the process.

2. Another Set of Eyes

An often overlooked benefit to the appointment of a temporary administrator pending contest is that the administrator can detect any malfeasance or misfeasance on the part of the parties. As mentioned above, the temporary administrator is usually an unbiased, third party with no connection to the estate who is appointed by the court to preserve the estate. Since the administrator has no stake in the outcome of the litigation between the parties, their only interest is preserving the estate to distribute once they are instructed to do so by the court. The temporary administrator is required to pursue the return of alleged probate assets that are in the hands of third parties or claims of the estate that must be asserted against a third party if they believe that it is proper under the circumstances.

3. Relaxed Requirements and Delayed Administration

The requirements for appointing a temporary administrator pending contest are less stringent when compared to those to appoint a permanent administrator to an estate. The judge's only requirement is that the temporary administrator be suitable. This means there will be no unnecessary delay while the court attempts to locate an individual who can meet a specific list of qualifications. The temporary administration pending contest delays the appointment of a permanent administrator. Much like an injunction, the appointment acts as a hold or freeze on the permanent administration, meaning no action can be taken until the temporary administration expires either by time or the resolution of the contest. The obvious advantage is that the temporary administrator can preserve the assets without interference and the parties can focus on the contest without worrying about the state of the assets.

4. Allows for Transfers to Statutory Probate Courts

Once an estate proceeding of any kind is created – permanent or temporary – the court may, upon request, transfer any lawsuit related to the estate proceeding. Specifically, Texas Estates Code Section 34.001 provides that:

> A judge of a *statutory probate court*, on the motion of a party to the action or on the motion of a person interested in an estate, may transfer to the judge's court from a district … court a cause of action related to a probate proceeding pending in the statutory probate court or a cause of action in which a personal representative of an estate pending in the statutory probate court is a party . . .

TEX. ESTATES CODE § 34.001(a) (emphasis added).

Estates Code Section 22.029 defines the terms "probate matter," "probate proceedings," "proceeding in probate," and "proceedings for probate" to be synonymous and include "a matter or proceeding relating to a decedent's estate." TEX. ESTATES CODE § 22.029.

IV. TEMPORARY GUARDIANS & TEMPORARY GUARDIANS PENDING CONTEST

A. Texas Estates Code

On application and notice, a court may appoint a temporary guardian of an individual's person and/or estate. And, the court, on it its own motion or on the motion of any interested party, may appoint a temporary guardian, without issuing additional citation if an application for temporary guardian, for the conversion of a temporary guardianship to a permanent guardianship, or for a permanent guardianship is challenged or contested, provided the court finds that the appointment or issuance of the order is necessary to protect the proposed ward or the proposed ward's estate.

B. Procedure: Texas Estates Code § 1251.003 – 1251.006

1. Application

A person petitioning the court for a temporary guardianship must complete a sworn written application to be filed with the court. This application must state the name and address of the person who is the subject of the guardianship proceeding; the danger to the person or property alleged to be imminent; the type of appointment and the particular protection and assistance being requested; the facts and reasons supporting the

allegations and request; the proposed temporary guardian's name, address and qualification; the applicant's name, address, and interest. A judge may also, on his or her own motion, appoint a temporary guardian if he or she determines that it is necessary for protection of the proposed ward.

2. Ad Litem Appointment

The court will appoint an attorney ad litem who has a duty to represent the legal interest of the proposed ward. The court may also appoint a guardian ad litem to represent the proposed ward's best interest regardless of their legal interest, if the court deems it necessary. The ad litems will generally appear at all hearings. The attorney ad litem will act as the proposed ward's attorney and the guardian ad litem will provide the court with an update on the proposed ward's well-being.

3. Notice of Application

Upon the filing of an application for temporary guardianship, the clerk serves notice on the proposed ward and the proposed ward's attorney. The proposed temporary guardian is also served, unless the temporary guardian is the applicant.

4. Hearing

There is a hearing to determine whether a temporary guardianship is necessary given the circumstances, and whether the proposed temporary guardian is suitable.

C. Strategic Advantages

1. Halts Unwanted Action by or Against Ward

One of the obvious advantages to the appointment of a temporary guardian is that the proposed ward's person and property will be protected during the pendency of the contest. If an existing guardian is not suitable to continue to serve as guardian and protect the ward's interest, then a temporary guardian can be appointed while the underlying contest to the guardianship is pending. During this time, the current guardian is unable act on behalf of the ward and has no access to the ward's estate.

This is an advantage to the petitioning party because the estate will remain intact with no interference from any third party's actions which might harm the estate. Oftentimes a temporary guardian will be appointed to protect the ward from imminent danger to his person or his property. The temporary guardian pending contest can be authorized to collect the proposed ward's assets, pay the proposed ward's bills and even move the ward to a protective environment.

2. Probable Cause

In determining whether or not to appoint a temporary guardian, the judge need only probable cause to believe appointment is necessary. The judge will take into consideration the health, safety and overall well-being of the ward. The standard of proof is relaxed in order to make it easier for the petitioning party to provide proof that the ward's estate or person is in need of a temporary guardian.

3. Allows Time to Evaluate Need

The proposed ward's best interest is at forefront of all guardianship proceedings, and many times, medical evaluations are not done properly by a doctor with the necessary qualifications. The temporary guardian has the opportunity to evaluate the needs of the proposed ward and obtain a formal medical evaluation to determine the proposed ward's level of incapacity. In Texas, an appointed temporary guardian would generally have the authority to consent to a medical and psychological evaluation by a licensed Texas physician. The temporary guardianship stays the permanent guardianship proceedings so that the appointee can submit the doctor's findings to the court and help determine the best course of action for the proposed ward.

4. Temporary Guardian Objectivity

The temporary guardian has the same fiduciary duties as a permanent guardian, but generally remains more objective and does not become emotionally involved in the contest. The temporary guardian's job is to merely provide protection or the proposed ward's person and estate until the determination of whether a guardianship is necessary, whether there are any lesser restrictive alternatives and a suitable permanent guardian should one be necessary. The benefit to a temporary guardian, as opposed to a permanent guardian who might be related to the proposed ward, is that the temporary guardian will remain objective and will dispassionately fulfill their duty on behalf of the proposed ward.

5. Finding of Incapacity Not a Necessity

Application or appointment of a temporary guardian does not require a finding that the proposed ward is incapacitated, only that the appointment of a temporary guardian pending contest is necessary for the protection of the proposed ward. The court will typically be satisfied if there is proof that immediate intervention is required on behalf of the ward's person or estate. A temporary guardian may then go about obtaining a medical evaluation and submitting it to the court. This not only saves time and expedites the process, but it enables the temporary guardian to protect the ward in the interim.

6. Allows for Transfers to Statutory Probate Courts

Once a guardianship of any kind is created – permanent or temporary – the court may, upon request, transfer any lawsuit related to the guardianship proceeding. Specifically, Texas Estates Code Section 1022.005 provides that:

> (b) A *cause of action related to a guardianship proceeding of which the statutory probate court has exclusive jurisdiction* as provided by Subsection (a) *must be brought in the statutory probate court* unless the jurisdiction of the statutory probate court is concurrent with the jurisdiction of a district court as provided by Section 1022.006 or with the jurisdiction of any other court.

TEX. ESTATES CODE § 1022.005 (emphasis added).

To the extent such lawsuits are pending in other courts, the Texas Estates Code provides for transfer of the lawsuit to a statutory probate court, as follows:

> (a) A judge of a statutory probate court, *on the motion of a party to the action* or of a person interested in the guardianship, may:
>
> (1) *transfer to the judge's court* from a district, county, or statutory court a cause of action that is a matter related to a *guardianship proceeding pending in the statutory probate court*, including a cause of action that is a matter *related to a guardianship proceeding pending in the statutory probate court and in which the guardian, ward, or proposed ward in the pending guardianship proceeding is a party*; and
>
> (2) *consolidate the transferred cause of action with the guardianship proceeding to which it relates* and any other proceedings in the statutory probate court that are related to the guardianship proceeding.

TEX. ESTATES CODE § 1022.007(a) (emphasis added).

A cause of action "related to" a guardianship proceeding includes:

- A claim brought by or against a guardianship estate;
- A claim involving title to real property that is guardianship estate property, including the enforcement of a lien against the property;
- A claim involving the right of property that is guardianship estate property;
- A claim brought by or on behalf of the former ward against a former guardian of the ward for alleged misconduct by the guardian;
- A claim involving the surety of a guardian or former guardian, which may include the award of a judgment against the guardian or former guardian in favor of the surety;
- A claim against a former guardian of the ward that is brought by a surety that is called on to perform in place of the former guardian;
- A claim based on an authorization made or duty performed by a guardian under Chapter 1204;
- Any claims related to the appointment of a trustee for a trust created under Section 1301.053 or 1301.054, the settling of an account of the trustee, and all other matters relating to the trust.
- A suit, action, or application filed against or on behalf of a guardianship or a trustee of a trust created under Section 1301.053 or 1301.054; and
- A cause of action in which a guardian in a guardianship pending in the statutory probate court is a party.

See TEX. ESTATES CODE § 1021.001.

V. MOTIONS TO APPOINT AUDITORS

A. Texas Rule of Civil Procedure 172 and Appointment Requirements

When an investigation of accounts or examination of vouchers appears necessary for the purpose of justice between the parties of any suit, the court shall appoint an auditor or auditors to state the accounts between parties and to make report thereof to the court as soon as possible. The auditor shall verify his report by his affidavit stating that he has carefully examined the state of the account between parties, and that his report contains a true statement thereof, so far as the same has come within his knowledge. *See* TEX. R. CIV. PROC. 172.

There are no stringent set of requirements in order to get an auditor appointed; like any other motion, one must petition to the court to have one appointed. The court merely analyzes whether or not there is a need for an auditor in the interest of justice.

B. Procedure

The petitioning party must first draft a verified motion for appointment of auditor pursuant to TEX. R. CIV. PROC. 172 to make a finding of the state of accounts between parties. The motion must spell out the claims that are to be submitted to the auditor, and give a brief statement as to why the appointment of an auditor is necessary. This motion, like any other pleadings must be filed with the court.

C. Strategic Advantages

1. "Shall Appoint an Auditor…"

One advantage in the process of appointing an auditor is that once an examination proves necessary, the judge has no discretion with respect to appointment. The language in Rule 172 provides that "the court *shall* appoint an auditor or auditors to state the accounts between parties and to make a report thereof to the court as soon as possible." TEX. R. CIV. PROC. 172. Therefore, upon interpreting the pleadings, a judge is obligated to appoint an auditor once he establishes that such need exists. This provides that the movant has the advantage of being able to avoid arguing the issue in court with the opposing party as long as a valid need is evident from the pleading.

2. Eliminates Fraud in Accounting

The primary advantage for a moving party is that it makes an accurate finding of the state of the accounts between the parties. The auditor ensures that before litigation continues or commences, he has a realistic picture of the history of financial transactions of both parties. Auditors can operate to uncover any possible fraud in accounting and determine whether a party has possibly been unjustly enriched.

Auditors were intended to assist in clarification in suits that involve numerous financial documents and accounting, making them ideal in probate and fiduciary cases. Inventory and accounting are integral in the practice of probate and fiduciary law whether the process is being carried out by an administrator, executor or other fiduciary. *See Whitaker v. Bledsoe*, 34 Tex. 401(Tex. 1871) ("An auditor should be appointed in suit involving numerous or unusual matters of account.") Fiduciary obligations arise in accounting and are often breached for lack of or fraud in accounting. Appointment of an auditor limits fraud and holds fiduciaries accountable for their actions. They are also helpful in removal proceedings in which fiduciaries have committed fraud or breach or their fiduciary duty.

3. Auditors Have Broad Authority.

The court, in *Richie v. Levy*, decided that the role of an auditor spans further than simply reviewing and making notes of accounting. Over the objections of the plaintiffs in the case, the court held that the auditors in essence could act as "court and jury" and arrive at a solution that benefits both parties to be submitted to the court. The judge reasoned that this was well within the auditor's authority because "if a dispute arose as to the law applicable to any particular, and the auditors were not instructed by the court upon it, it was not improper for them to state what they supposed the law to be, and their conclusion of fact upon the hypothesis that their opinion of the law was correct." This granted the auditors broad authority to not only assume the law, but to base their resolution on the law even if such law was baseless. This advantage allows a party to move through the accounting process with ease, and without objections from the opposing party. *Richie v. Levy*, 6 S.W. 685 (Tex. 1887).

4. TRCP Rule 172 Benefits through TRE 706

The use of rule 172 rarely if ever, runs into admissibility issues under the Texas Rules of Evidence. TRE 706 deals with audits in civil cases and states that verified reports of auditors pursuant to TEX. R. CIV. PROC. 172 *shall* be admitted in evidence when offered by any party even if the reports would otherwise not be admissible.

These were intended to include auditor's reports that contain summaries, opinions or embrace an ultimate issue to be decided by the trier of fact. This is an advantage because the party opposing the admission of the auditor's report usually cannot exclude it. The court gives special exceptions to auditor's reports because it places value on the accuracy and truthfulness of parties in an accounting dispute.

VI. PREJUDGMENT GARNISHMENT

A prejudgment writ of garnishment is considered an extraordinary remedy under the Texas Civil Practices and Remedies Code. "A writ of garnishment impounds the alleged money, property, or credits of the debtor, even before a judgment is obtained against him in the main suit." *Beggs v. Fite*, 106 S.W.2d 1039, 1042 (Tex. 1937).

This remedy allows a party to collect money that belongs to a garnishment debtor that is in possession of another party. Though a somewhat harsh remedy, it is beneficial to a moving party who has a valid claim and has adhered to certain statutory requirements in order to collect on that claim.

A. Procedure & Requirements are Statutory

A garnishment application shall comply with all statutory requirements and shall state grounds for issuing the writ and the specific facts relied upon by the plaintiff to warrant the required findings by the court. The requirements for a prejudgment writ of garnishment are strictly statutory, meaning the applicant must adhere to the rules laid out in the TEX. R. CIV. PROC. 661 in order for the application to avoid being facially defective. TEX. R. CIV. PROC. 661 requires that the form of the writ meet certain statutory qualifications.

Any applicant seeking a prejudgment writ of garnishment must first post a bond which is payable to the defendant in a fixed amount. This bond protects the defendant in the event that the court determines that the plaintiff wrongfully sought out the writ of garnishment. *See* TEX. R. CIV. PROC. 661.

The plaintiff then enlists the assistance of a sheriff or constable to serve the writ on the defendant. The defendant must be served with the writ, application and any accompanying affidavits and orders. Also, in ten point type that would be noticeable to the defendant must be written the following:

> "To _____, Defendant: "You are hereby notified that certain properties alleged to be owned by you have been garnished. If you claim any rights in such property, you are advised: "YOU HAVE A RIGHT TO REGAIN POSSESSION OF THE PROPERTY BY FILING A REPLEVY BOND. YOU HAVE A RIGHT TO SEEK TO REGAIN POSSESSION OF THE PROPERTY BY FILING WITH THE COURT A MOTION TO DISSOLVE THIS WRIT."

Being that the garnishment is strictly statutory, and the potential consequence to the defendant is harsh, garnishment proceedings must adhere strictly to the Texas Rules of Civil Procedure. The failure to comply will not be viewed by the judge as a mere irregularity. *Walnut Equip. Leasing Co. v. J-V Dirt & Loam, a Div. of J-V Marble Mfg., Inc.*, 907 S.W.2d 912, 915 (Tex. App. — Austin 1995, writ denied).

B. Strategic Advantages

1. Abuse of Discretion Standard on Appeal

One advantage to a moving party for a prejudgment writ of garnishment is that the court of appeals reviews the trial court's ruling on a motion to dissolve writ of garnishment on an abuse of discretion standard. It is therefore difficult for a garnishment debtor to overcome a writ of garnishment on review because the court has to find that the trial court acted without reference to guiding rules and principles or in an arbitrary or unreasonable manner. *See Gen. Elec. Capital Corp. v. ICO, Inc.*, 230 S.W.3d 702, 705 (Tex. App. — Houston [14th Dist.] 2007, pet. denied); Downer *v. Aquamarine Operators, Inc.*, 701 S.W.2d 238, 241–42 (Tex. 1985).

In *Cosentino v. Peters*, the appellant ex-husband and garnishment debtor attempted to overcome the abuse of discretion standard after a trial court found that he was in contempt of court pursuant to a divorce decree and was indebted to ex-wife Peters in the amount of $172,870.86. 2012 WL 2469858 (Tex. App. --- Corpus Christi 2012, pet. denied) (not designated for publication). Peters was awarded a pre-judgment writ of garnishment and Cosentino asserted on appeal that the trial court abused its discretion because Peters did not comply with the Texas Rules of Civil Procedure. Specifically, Cosentino argued that the trial court abused its discretion in denying the motion to dissolve because Peters' order erroneously named Cosentino as the garnishee rather than Compass Bank. The court, however, held that the trial court did not abuse its discretion in amending the order for issuance of pre-judgment writ because it was within its authority to do so upon a proper motion by Peters. Because TEX. R. CIV. PROC. 679 allows clerical errors in the affidavit, bond, or writ to be amended so long as such amendment is in furtherance of justice, Peters prevailed on her prejudgment writ of garnishment. *See Id.* The court also found that even though Peters had initially improperly drafted her bond, because she remedied the errors by signing it before her second amended order for issuance of prejudgment writ of garnishment, the issuance of the writ was not an abuse of discretion. *See Id.*

Therefore, even if a movant does not strictly adhere to the above statutory requirements, as long as the movant amends the order before the scheduled hearing, the court will find no abuse of discretion. The benefit to the moving client is that he can essentially change or alter an affidavit as many times as necessary before a hearing and the motion to dissolve will not defeat the writ because of a defect on the face of the order. This standard creates a difficult obstacle for a garnishment debtor. *See Id.*

2. Secures Funds Prior to Final Judgment

Prejudgment garnishment is a remedy that assures that the debtor will have the funds available to satisfy the final judgment. It is beneficial in situations where it is unclear that the debtor will have the funds or property at the time that final judgment is rendered. A pre-judgment writ of garnishment is only available if the debt is for a liquidated amount, meaning the amount owed can be ascertained at the time the garnishee's answer is filed. Essentially what this means for the movant is that the judgment will result in funds that are ready to be distributed, which is a huge advantage to the applicant. *See Fogel v. White*, 745 S.W.2d 444, 446-47 (Tex. App. — Houston [14th Dist.] 1988, no writ); *see also Waples-Platter Grocery Co. v. Texas & Pac. Ry. Co.*, 68 S.W. 265, 266 (Tex. 1902).

3. Interlocutory Appeals not an Option

A writ of garnishment is an interlocutory order that is not appealable and a court will unequivocally conclude that it lacks jurisdiction to hear a supporting argument. The general rule is that interlocutory orders are not appealable unless specifically made so by statute.

In *Bowden v. Hunt*, a partnership filed an appeal from an order which initially denied its motion to quash a writ of garnishment. 571 S.W.2d 550, 551 (Tex. Civ. App. 1978). The partnership first argued that the denial

of the right to appeal stripped it of its constitutional due process rights. The court reasoned however, that whether or not due process was complied with was not material to the court's jurisdiction.

The partnership then made the argument that a prejudgment writ of garnishment is appealable because it is in effect a "backhanded temporary injunction" in that the garnishee is required to freeze funds. The court disagreed with this argument stating that writs of garnishment are inherently distinct from temporary injunctions, and that in general, appellate courts have steered away from construing interlocutory orders concerning control or disposition of property pending litigation as temporary injunctions. *See id.*

VII. RECEIVERS

The Texas Civil Practices and Remedies Code section 64.001 allows for the appointment of a receiver by a court of competent jurisdiction when the lawsuit involves:

- An action by a vendor to vacate a fraudulent purchase of property;
- An action by a creditor to subject any property or fund to his claim;
- An action between partners or others jointly owning or interested in any property or fund;
- An action by a mortgagee for the foreclosure of the mortgage and sale of the mortgaged property;
- A corporation that is insolvent, is in imminent danger of insolvency, has been dissolved, or has forfeited its corporate rights, or
- Any other case in which a receiver may be appointed under the rules of equity.

See TEX. CIV. PRAC. &. REM. CODE § 64.001.

Receiverships can also be used in probate to protect estate assets when there are no other less restrictive remedies available. They operate to essentially place estate property into the hands of a disinterested third party for safekeeping. The main advantage to an applicant who is granted a receivership is that the property is held for the remainder of the lawsuit.

A. Procedure

It is a rare occurrence that a court appoints a receiver on its own, however it does happen occasionally. The most common way to get a receiver appointed is to file an application in the proper court. Notice and opportunity to be heard is afforded to all parties interested in the matter. The receiver then takes an oath to faithfully execute his duties and he must file a bond with the clerk.

B. Strategic Advantages

1. Relaxed Qualifications for Receiver

The qualifications to be a receiver are not stringent in Texas. The appointee must only be a citizen of the state, be a qualified voter in Texas at the time of his appointment, and must not be a party, attorney, or other person interested in the action. These relaxed qualifications help to ensure that finding a suitable party to act as receiver will not cost the party more time than is necessary.

2. Receivers Preserve Assets of Estate

The primary advantage in an appointment of a receiver is that the receiver can protect and preserve the assets of an estate. The receiver may actually take possession of the property to ensure that the property is not destroyed or altered by a party. Therefore, when it is time for distribution of the estate, and the receiver is discharged from his duties, the estate is intact and inheritances are not affected.

Along with the power to possess the property, the receiver has the right to also receive rents, make transfers and recover assets that were wrongfully transferred out of the estate. All of this is subject to court approval to ensure that the receiver is operating within the bounds of his power. A receiver therefore, can be a huge advantage to a party who is seeking to recover these assets when litigation ceases.

Receiverships are also one of many remedies available to beneficiaries of a trust who believe a trustee is in breach of his fiduciary duty. In breach of trust cases, a receiver can take possession of trust property as he would in a standard receivership. This receiver can then administer the trust as a benefit to the moving party assuring that party that the property will be distributed according to the trust and in accordance with fiduciary duties.

3. Corporate Executor and Trustee Receivers

Trust companies can also be executors of an estate and are usually referred to as corporate executors. Their primary function is to manage and distribute larger than average estates.

Trustee receivers are companies that specialize in liquidation and the winding down of businesses; they can also manage large properties that are subject to bankruptcy proceedings.

Corporate executors and trustee receivers operate similarly. They are both equipped to deal with complex and oftentimes very large estates that require precise management. The benefits of having either is that they are able to properly manage and distribute larger than normal estates, and can do so in a detached and neutral manner that can be helpful in emotionally charged or dysfunctional estates.

VIII. MASTER IN CHANCERY/SPECIAL MASTERS

In a judicial system where judges are becoming more inundated with cases and support staff is being stretched to the limit, special masters have become a viable form of conflict resolution. Special Masters or Masters in Chancery are appointed to deal with a specific issue in litigation that either the Court is unable or unwilling to deal with. The most common circumstance where a special master is appointed is in a discovery dispute.

A. Procedure TEX. R. CIV. PROC. 171

1. Appointment

There are three avenues for the appointment of a master in chancery: either under TEX. R. CIV. PROC. 171, by certain statutes, or by consent of the parties. *Simpson v. Canales*, 806 S.W.2d. 802, 810-11 (Tex. 1991). TEX. R. CIV. PROC. 171 states that a court can appoint a master in chancery that "shall perform all of the duties required of him by the court, and shall be under orders of the Court, and have such power as the master of chancery has in a court of equity." The main requirements for a master in chancery are that they are a citizen of the state of Texas, they may not have any relationship to the parties, and not an attorney for any party involved in the case before the court. *See* TEX. R. CIV. PROC. 171.

2. Motion for Referral to a Master

a. In Writing

The motion needs to be in writing. The parties can, if they choose, suggest candidates for special master. Special masters however, are usually attorneys.

b. Contents

The motion requesting the appointment of a master must state the following: the specific matter in which the master is to be appointed but should not request a global request that all present and future issues be referred to the master. *Academy of Model Aeronautics, Inc. v. Packer*, 860 S.W.2d. 419, 419 (Tex. 1993). The motion must also show that the specific matter has some exceptional component that requires the appointment of a master. *Simpson v. Canales*, 806 S.W.2d. 802, 811 (Tex. 1991)., Finally it must make a showing of good cause. TEX. R. CIV. PROC. 171.

c. Order of Reference

When a master is appointed without the consent of the parties, the court must make a finding that the matter is exceptional and there is good cause for the appointment of a master. *Simpson v. Canales*, 806 S.W.2d. 802, 811 (Tex. 1991). The order should specify the master's powers, what issues that the master should report to the court, the master's duties, the time and place for the hearing and when and how the master's report should be filed. TEX. R. CIV. PROC. 171.

B. Strategic Advantages

Masters benefit parties because they operate to resolve complex issues that a judge cannot or is not able to resolve. These problem solvers are not as frequently utilized in disputes because many in the field of jurisprudence simply do not know they exist. They not only resolve disputes, for the most part, without the assistance of a judge, they also free up judges who are overburdened with complex litigation.

A lot of the work that lends itself to a master involves pretrial matters such as discovery. Because masters are usually attorneys (though there is no requirement that they be) and are familiar with the process of requests for production, admissions, and interrogatories, they are able to distinguish between what is privileged information and what is fair game in complex litigation. This expedites the process for both sides in a dispute who want to come to some sort of resolution.

If all parties are cooperative, and a settlement is reached, a special master can finalize that settlement in his capacity as a "quasi- judge," which can save the parties money by avoiding a long drawn out trial. Special masters may resolve a dispute in its entirety or one aspect of a complex suit, depending on what he or she has been appointed to do. *See* David B. Keller, "Court-Appointed Special Masters: Dispute-Resolvers?", *Mediate.com.* (Oct. 2015), http://www.mediate.com/articles/kellerC.cfm>

IX. ELECTRONIC DISCOVERY

Electronic discovery, or e-discovery is discovery specifically addressing discovery of electronic documents or information. Electronic discovery can includes emails, documents, presentations, databases, voicemails, audio and video files, websites and even social media. It is a means of collecting information valuable to a suit that significantly alters the way information and data are collected.

A. Strategic Advantages

1. Simplification Process of Reviewing Documents

One advantage to electronic discovery is that it makes the process of gathering and reviewing legal documents simpler. By using emails, audio clips or video clips, the process of complying with requests for production is made easier. The process of mailing or hand delivering discovery to an opposing party can be time consuming, expensive and unproductive. By comparison, electronic discovery can be less expensive. While this is a win for the client in terms of keeping costs down, the advantage to attorneys is that they are

able to increase the output of completed work and can take on new clients expeditiously.

2. Simplifies Search and Documenting the Chain of Custody

Printing and filing is still utilized as a "back up" procedure that provides attorneys easy access to files. However, it is almost impossible to determine where a document originated when this method is used alone. The advantage of e-discovery is that support staff can determine who last viewed the document, as well as determine from whom and where it originated. Once the manual process is eliminated, attorneys can simply view the electronic files with a click of the mouse, which saves time and expenses.

3. "Reasonably Available"

The Texas Rules of Civil Procedure provide that when a request for data that is electronically stored is made, "[t]he responding party must produce the electronic or magnetic data that is responsive to the request and is reasonably available to the responding party in its ordinary course of business." TEX. R. CIV. PROC. 196.4. This is a benefit to the responding party because it prevents the requesting party from being able to make outrageous or overbroad requests while in the discovery phase.

X. COMMON LAW AND STATUTORY DUTIES OF DISCLOSURE

A. Trustees

1. General Duty of Disclosure

Trustees generally owe a duty of disclosure to the beneficiaries of the trusts. This means that trustees have an affirmative duty to fully disclose any material information that might affect the rights of the beneficiaries. The trustee therefore has the fiduciary duty to disclose to beneficiaries any important matters concerning the trust. *Montgomery v. Kennedy*, 669 S.W.2d 309, 313 (Tex.1984).

Trustees have an affirmative duty to provide this information, which means that disclosure of information does not require prompting or requests for information from beneficiaries. *Fiduciary Duty to Disclose*, Fiduciary Litigation: Beyond the Basics Course 2011, ch. 6.1, pp. 1-3 (State Bar of Texas, December 1-2, 2011).

In the context of obtaining information from a trustee this means that a party with a right to such information from a trustee, such as the beneficiary, need not engage in the usual discovery process. Since the trustee's duty to disclose certain information to a beneficiary is affirmative, the usual discovery process, with its potentially protracted nature and defensive maneuvers is unavailable to a trustee seeking to deny a release of such information to a beneficiary. In practical terms this gives an attorney representing a beneficiary an opportunity to demand information from a trustee with relatively little constraint. Any failure by a trustee to hand over information subject to the trustee's affirmative duty to disclose will automatically make the trustee in breach of such a duty, giving a beneficiary more leverage in any contested situation.

2. Strategic Advantages in Litigation

The trustee has a duty to keep beneficiaries informed and to disclose all material facts with respect to the beneficiaries' rights under the trust. 2 Tex. Prac. Guide Wills, Trusts and Est. Plan. § 5:388.

No Texas cases directly on point address a trustee's common law fiduciary duties to beneficiaries to inspect the records of a trust, but judicial precedent exists that explicitly recognizes the existence of this duty in the discussion of the analysis for various decisions. *Montgomery v. Kennedy*, 669 S.W.2d 309, 313-14 (Tex. 1984); *Shannon v. Frost National Bank*, 533 S.W.2d 389, 392 (Tex. Civ. App. --- San Antonio 1975). Furthermore it has been held that a trustee is required to keep organized, complete, and precise records concerning the condition of the trust corpus and of all actions taken in the name and administration of the trust. *Beaty v. Bales*, 677 S.W.2d 750, 754 (Tex. Civ. App. --- San Antonio 1984).

If a trustee does not fully comply with the fiduciary duty of full disclosure, such breach of the duty is the same as if the trustee had fraudulently concealed such facts from the trust beneficiaries. *Willis v. Maverick*, 760 S.W.2d 642 (Tex. 1988). In bringing an action against a trustee for non-disclosure in breach of this fiduciary duty a beneficiary has no burden to even prove the elements of fraud. *Archer v. Griffith*, 309 S.W.2d 735, 740-47 (Tex. 1965). Nor does a beneficiary have to show reliance on the trustee's duty to disclose information to the beneficiary. *Johnson v. Peckham*, 120 S.W.2d 786 (Tex. 1938). It is self-evident that this gives a trust beneficiary or their representative a potent stick to wield in any action or contested issue involving a trustee.

Moreover, this fiduciary duty to disclose all material facts exists independently of the rules of discovery and applies even where no litigious dispute exists between the trustee and the beneficiaries. *Huie v. DeShazo*, 922 S.W.2d 902, 923 (Tex. 1996). Thus the duty of full disclosure is not limited by any communications by the trustee with an attorney that may be protected by the attorney-client privilege. *Id.*

In *Huie v. DeShazo*, the court settled the issue of whether attorney-client privilege protects communications between a trustee and his or her attorney relating to trust administration from discovery by a trust beneficiary. *Id.* at 921. The plaintiff beneficiary alleged that a trustee breached his fiduciary

duty and sought to compel discovery from an opposing attorney of communications by a trustee to the attorney relating to trust administration. *Id.* at 920.

The court reasoned that while attorney client privilege protects from disclosure of confidential communications between a client and his attorney, this protection is limited to communications "made for the purpose of facilitating the rendition of professional legal services." *Id.* at 922.

The court concluded that though this communication may be protected, it does not protect the trustee from disclosing all material facts that affect the beneficiaries' rights. Simply stated, "applying the attorney client privilege does not limit this duty." *Id.* at 923.

B. Corporations and Partnerships

Corporate directors and officers have a duty to fully disclose all material facts within their knowledge that relate to the corporation's affairs. *Imperial Croup (Texas), Inc. v. Scholnick*, 709 S.W.2d 358, 363 (Tex.App. — Tyler 1986, writ ref'd n.r.e).

This duty, arising out of common law is not just limited to corporate directors and officers. Shareholders and partners are often held to the same fiduciary standard. Directors of Delaware corporations have a fiduciary relationship with both the stockholders and the corporation upon whose board they serve. *Malone v. Brincat*, 722 A.2d 5, 10 (Del. 1998). The director's fiduciary duty to both the corporation and its shareholders is a "triad: due care, good faith, and loyalty." *Id.; see also Johnson v. Peckham*, 120 S.W.2d 786, 787 (Tex. 1938)

Corporate fiduciary duties include the following:

- The duty of care; to act with the care an ordinarily prudent person in a like position would exercise;
- The duty of informed judgment;
- The duty of disclosure, which includes the duty to disclose all materials or information that is important to shareholders or members;
- The duty of confidentiality; and
- The duty of loyalty (to act in the best interest of the corporation, company, or partnership).

The duty of disclosure lends one large strategic advantage to an opposing party seeking information: the rule essentially circumvents the need to conduct formal discovery, saving the party time, money, and the labor of having to compel answers.

Therefore, if you represent a party in a corporate litigation dispute, all information pertinent to discovery is readily available to you. *See* "Fiduciary Duties: The Who, What, When, Where, and Why of Fiduciary Duties in Small Businesses and Corporations." C*orporatedispute.com*. Business and Corporate Disputes. 23 May 2015. Web. 11 November 2015.

It is also important to note that in the context of a corporation and certain other business entities that a number of legislatively created duties of disclosure and inspection exist, as do certain rights of a beneficial interest owner to information regarding the business entity.

The Texas Business Organizations Code has adopted statutory requirements for business entities. Section 3.151 requires entities to maintain books and records including:

- Books and records of accounts;
- Minutes of proceedings held by owners, members, governing authority, and committees of such entity;

A current record of the name and mailing address of each owner or member of the entity; and

- Any other books and records required by the Texas Business Organizations Code.

See TEX. BUS. ORGS. CODE § 3.151.

Partnerships and limited liability companies are not required to maintain minutes of proceedings held by owners, members, governing authority and committees unless otherwise required by the entity's governing document.

As to rights of inspection Texas Business Organizations Code Section 3.152 provides that all "governing persons" are entitled to examine books and records that the entity is required to maintain pursuant to Section 3.151. *See* TEX. BUS. ORGS. CODE § 3.152.

However this right of inspection and examination is actually quite limited in some respects – the "governing person's" right to examine the books and records must be for a purpose reasonably related to the individual's role as a "governing person" of the entity. *See id.* If a refusal occurs in regards to a "governing person's" demand for examination, he/she or his/her successor(s), may request that a court of competent jurisdiction direct the entity to open its books and records for inspection upon a showing of proof that:

- The individual is a governing person of the entity;
- The governing person has demanded to inspect such books and records;
- The purpose for inspecting such books and records is related to the individual's governing role; and
- The entity has refused to allow the governing person's good faith demand to review the books and records. The court may also award the governing person attorney's fees and any other proper relief to require an entity to open its books and records.

See id.

Members and owners are similarly entitled to "governing persons" under Texas Business Organizations Code Section 3.151 to examine such other business records the entity is required to maintain pursuant to its governing document and any Texas statutory requirements.

The great limitation of the right of members and owners to examine records is that the Texas Business Organizations Code provides no mechanism to force compliance as it does for a "governing member". The Texas Supreme Court has gone some distance in establishing precedent to fix this issue in that it has held that "a method for the enforcement of the right of inspection or examination of the books and records of a corporation is by mandamus." *See Uvalde Rock Asphalt CO. v. Loughridge*, 425 S.W.2d 818, 820 (Tex. *1968*).

Much like "governing persons" owners and members still must demonstrate by a showing of proof that they have a proper purpose for inspecting the books and records of an entity. At least some courts have held that an entity contesting an owner or member's right to examination of records are entitled to a jury determination of whether such purpose is proper. *See In re Dyer Custom Installation, Inc*., 133 S.W. 3d 878, 881 (Tex. App. — Dallas 2004, orig. proceeding); *Accounting Search Consultants, Inc. v. Christensen*, 678 S.W.2d 593, 595 (Tex. App. —Houston [14th Dist.] 1984, no writ.)

XI. CONCLUSION

Litigating in probate and fiduciary cases comes with its own specialized set of tactics that can be utilized by attorneys in pretrial. Any of the aforementioned pre-trial processes and procedures can be used to increase your chances of success at trial while administering to your client the best representation possible. While the pre-judgment procedures are ordinarily designed to protect assets and provide resolve for clients, they can also be used as a strategic advantage to exhaust the opposing party and win favor with the judge adjudicating the dispute.

Stealth Euthanasia:
Health Care Tyranny in America

(Hospice, Palliative Care and Health Care Reform)

HTML/web version

Published by Hospice Patients Alliance, Inc.
www.hospicepatients.org
4680 Shank Street, NE
Rockford, MI 49341

For more information: Tel. 616-866-9127

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Dedication

This book is dedicated to the vulnerable who have been targeted for stealth euthanasia.

This book is being provided free of charge in the web version as a public service of the Hospice Patients Alliance.

This book contains the most-censored story in America **and we cannot guarantee that this information will be available in the future. There are many who do not want you to learn what is contained in this web-book. With several hundred references listed, it is likely the most-well-researched and astonishing book on these issues you have ever read.**

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As events occurring in real-time are discussed in this book, it will be updated from time-to-time, so check back here periodically for updated versions. Let others know about this vital information!

Introduction

There are numerous books about the history of euthanasia and eugenics proposals in our society. This book is not one of those. It offers a rare glimpse from my experience within the end-of-life industry, my work as a patient advocate, and includes the revelations of hundreds and hundreds of people as they have recounted it to me. This book explains how we got where we are today and provides statements by many of our nation's leaders in health care, government and patient advocacy, that taken altogether form the pieces of the puzzle that reveal what has been hidden from the American public for decades: stealth euthanasia is being practiced throughout the United States and elsewhere.

I have many friends within the hospice industry who confirm what I recount here in this book, so I urge you to read through to the very end, as you have never heard all that I am about to share with you. Some of it may surprise and shock you. Some of it will trouble you, but all of it will affect what happens to you, your family and our society in the days to come.

This is the story of the intentionally "below-the-radar" changes that have been aggressively pursued in our society for decades. Because these changes are not covered by the major media in any coherent, connected way,

or at all, the public has difficulty "putting a finger" on what is happening and why. They see changes here and there as situations arise in their lives, especially in health care. They hear stories about what is happening and mistakenly assume they are isolated incidents. Sometimes, they just can't believe the changes that have already been made. They seem so "foreign" to what American society is all about, and the reason they seem "foreign" is they do not arise from American Constitutional values.

Some people are frightened by these changes, changes that seem to be imposed upon society without the approval of the majority of citizens. They question the wisdom of abandoning the traditional values that formed the foundation for American life. They question the declining percentages of Americans who support the traditional value of a family (husband, wife and children), marriage (husband and wife), sanctity of life, faith in God, the value of work and the opportunity to get ahead in a free society. They wonder how we have strayed so far. They question whether we are still truly free to express our religious faith in a public setting, or even whether the dedication to "do no harm" within health care is the prevailing mindset. Shockingly, often it is not.

If you want to know what all that "death panel" talk is really all about, this is the book that explains exactly what is going on and will be going on.

There are no ***formal*** "death panels," but there are bureaucrats in government, HMOs, and private health insurance companies whose decisions knowingly result in denied tests, denied treatments and certain death in many cases. This has been well-documented. However, when the federal government becomes the big HMO itself, test and treatment denials ***will*** be the equivalent of death sentences for some, even many. The new health care reform law creates several methods that are likely to result in rationed care. For example, the "Independent Payment Advisory Board" ("IPAB") is supposedly not allowed to make recommendations that *directly* result in rationing care, but it can exert overwhelming pressure on providers by reducing how much they get paid to provide a service.

Politicians say, "we are not going to ration care." But they will set in motion many processes that reduce reimbursement under the guise of "limiting expenditures," or "keeping costs down," and these processes will result in rationing care. Ultimately, many services will simply not be provided, because physicians, hospitals, and others cannot afford to provide them at the steadily decreasing reimbursement levels determined by the bureaucrats who run Medicare, Medicaid and other government-controlled health services.

Those on Medicare and Medicaid are already on a government-run plan and are experiencing the effects of decisions made by unelected bureaucrats in Washington, DC. We need to remember that Medicare passed into law in 1965 and is nominally a "voluntary" program. However, to assure participation by all seniors, then President Lyndon Johnson pressured all private health insurers to cancel all policies available to seniors. If seniors want to completely opt-out of Medicare, they have to give up their Social Security benefits and then pay privately for all services they receive. Only the very wealthy can do that.

Since there is no private health insurance available for seniors in the United States, we cannot say that participation in Medicare is truly voluntary. Seniors must accept whatever those running Medicare decide regarding their treatment options. Certainly, there are many who would have no health coverage without Medicare, and millions have benefited from the program. Many seniors are comfortable with Medicare the way it has been up to the present time. ***What needs to be recognized is that changes are coming no matter what political party or agenda controls those changes***, with or without the new health care reform law. One political party will accuse the other of threatening the well-being of senior citizens and vice-versa. But both will silently promote the stealth euthanasia already begun in this nation. The generous benefits of Medicare over the past are going to be phased out selectively to streamline the program and make it more "efficient." The idea that the future Medicare will be like what we've had till now is quite mistaken and those that trust in the promises being made by either party need to wake up to the realities.

Former Federal Reserve Chairman Alan Greenspan has said, "***telling America's aging population that its entitlement programs such as Social Security and Medicare will survive without significant changes is dishonest***." The debate about the health care reform law or other proposals are important, but like some demonstrations of illusion and "magic," you never see what's really happening. Misdirection and skill fool all except those trained in the art. While we focus on the public debate, drastic changes are being made quietly without fanfare. "The Obama administration has released a report saying that health reform will save $575 billion in the Medicare program over 10 years." All while the number of Medicare patients will grow exponentially. Isn't it obvious what is happening?

The health care reform law (H.R.3590) has already modified how Medicare will be run. Under Section 3021, "Establishment of Center for Medicare and Medicaid Innovation," the Secretary of HHS "shall adjust the payments made to an eligible safety net hospital system or network from a fee-for-service payment structure to a global capitated payment model." [H.R.3590 p.205] **Going from a Medicare and Medicaid reimbursement system that *pays fees for each service* provided *to a system that has a cap on payments made for all services* provided to a patient is one of the most significant changes to Medicare ever made and will**

certainly result in drastic changes. Just think about how hospitals will change what tests, surgeries and treatments they provide if they know the amount they will be paid is capped for each patient they serve! And if the patient has already used up the cap amount, do you think the hospital will continue to provide services for free?

In addition, once the government takes over management of our nation's *entire* health care system under H.R. 3590, as it already has in the Medicare and Medicaid programs, it acquires control over how care is delivered, what care is available, and who receives that care or not. It controls how much the providers are paid, and by deciding to pay providers less than service costs and capping total costs paid out, it is driving some physicians to leave the field and will discourage the young from entering the field. Some hospitals will close their doors, reducing the total number of hospital beds available to those in the community. On average, physicians train until they're close to 30 years old, graduate with $150,000 to $250,000 in debt for their education, and are subject to being sued on any given day.

When the nation's supply of physicians lags behind the growing elderly population and hospitals have to serve that increasing number of patients, health care services will certainly be limited. According to the Association of American Medical Colleges. "America will face a shortage of more than 90,000 doctors in 10 years." There is no question that, in order to keep health care costs down, patients will see more physician-assistants and nurse practitioners providing primary care. Actually getting to see the physician will become increasingly difficult over time. For example, "employment of physician assistants is expected to grow by 39 percent from 2008 to 2018." To cut costs even more, if a patient is chronically ill, with more than one diagnosis, or very elderly, and enters the hospital more than once, that patient will likely be referred for hospice or palliative care services to prevent more costly acute care hospital admissions.

You may not realize this, but leaders in government of both political parties are promoting palliative and hospice care as *the* destination, your destination ... the end of the road in a patient's health care journey. There is no need for something to be called a "death panel." Rationed care will result in destabilization and consequent death for many of the chronically ill, elderly and disabled. Interventions and treatment options, as well as denials, can be manipulated so that death is made to happen.

There is no one place to point the finger and say, "he" alone is responsible, or "that group" or "that government department" alone is responsible. It is much more sophisticated and complicated than that. There are webs and webs of interconnected efforts that have resulted in a massive wave sweeping over our land, something that has not happened overnight, though it may seem so. It's been coming for over seventy years. Americans have been quietly "asleep" while those who have made war on American values achieved success after success.

We don't want to think about "death and dying" even if some have been shouting the "death and dying" talk from the rooftops. There have been thousands of news articles and speakers all across the country promoting the wonders of end-of-life care, and there is much good that can be done when dedicated professionals make their best effort to relieve suffering at the end-of-life. However, there are some who have dedicated their lives to move American society away from its traditional values, and they have not been asleep. They've been very busy for over seventy years working in the background, training others and teaching in the universities, arranging to have their ideas inserted into public school curricula.

They've written sections of textbook after textbook or controlled the slant of content used to train physicians, nurses, other health care professionals, attorneys, and therefore some of the justices who eventually serve on the courts, until they have succeeded in changing how the powerful-to-be think and act ... how they view the world from deep within. And now the indoctrinated are the powerful. They've even gotten rid of the Hippocratic Oath for graduating physicians in most medical schools (contrary to what we Americans assume). They are accomplishing the last acts of their grand project: changing completely how Americans die and how Americans view death and dying.

When physicians, attorneys and judges as well as other leaders of our society no longer affirm the sanctity of life, and when leaders within health care no longer pledge to "do no harm," there is no obstacle to the devaluation of selected lives and the discarding of those lives.

Before the advent of widely available hospice services in the 1980s, most Americans died in acute care hospitals in a "medicalized" environment where death, just like birth, was reserved for doctors and nurses. It was hidden from view, something that otherwise has been quite unusual over the course of human history.

The modern hospice movement with its openness to caring for the dying with family present, with its recognition of the opportunity for healing in family relationships at the end-of-life, and its focus on working to do a better job at pain and symptom management has been a wonderful thing. It incorporated the very best of the latest medical advances in symptom management with a more natural atmosphere for those facing death. But ***this positive step has been negated in many segments of the industry due to financial or utilitarian concerns***.

Although many of us would like to think otherwise, there has always been a side of American society that has had a utilitarian streak. We will explore how this has affected health care and especially end-of-life care as well as what it means for you. There has been a very slick, sophisticated and well-financed campaign to completely twist the positive contributions of hospice into something the public would never openly accept.

Because most people in our modern society do not have the background or experience within the health-care industry, they don't have the information to understand what is really planned for us when it comes to health care reform or entitlement reform. And many of those who work within health care still do not know about many of the changes that have been put in place within the end-of-life care industry. Even among those who work in hospice or palliative care, most do not know the history of the industry and who is directing its continuing development. This book contains the essentials needed to truly understand the monumental changes being planned for our society and how it is being accomplished in our time.

The issues discussed in this book will affect American society whether the health care reform law is upheld, declared unconstitutional on appeal, repealed or not, or nullified through various efforts by some of the states. How health care is provided to the elderly and disabled is being modified, significantly. ***Efforts to make Medicare and Medicaid services more efficient and less costly will affect many, and the changes made are not being made solely to make them more efficient. There is something else going on***.

Many worry that a government-run health care system will do away with the freedom to choose one's own physician, treatment center or treatment. Others have noted that some physicians are "opting out" of Medicare and Medicaid protesting that the reimbursement is often lower than the costs of providing services. "By 2013, less than one-third of U.S. physicians are expected to remain in private practice and patients may increasingly find that being treated by physicians in private, small practice settings may be a thing of the past." Many wonder if patients will be able to find the care they need or if they will have to wait months to get to see the doctor or have a needed surgery. With the budgetary pressures on our nation, many worry how this will impact end-of-life care for the vulnerable.

Through the years, many people have called the Hospice Patients Alliance (and many other patient advocacy organizations), pleading for help, reporting problems they have encountered, like the failure of the hospice agency to provide services as needed, reporting that the staff prevented them from giving food or liquids to their loved one when he or she could still take them in and benefit. They sometimes report that their loved one was literally killed in a health care setting. I've listened and carefully thought about the depth of the problems.

Through the years, the accounts given by these family members are eerily similar. When family members recount what hospice staff said to them, the language and phrases used sometimes are exactly the same, the actions taken exactly the same, the outcome exactly the same. The reason? The staff at different agencies across the country are being trained in the same way, and the actions taken were quite contrary to what the patient and family expected. The services and treatment provided are not what the American people have come to expect from hospice.

Those who report to us are not uneducated in the ways of medicine and health care. Many of those who call in are themselves physicians, nurses, social workers, ministers and lawyers. Yet, even with their training, some are unable to resolve problems encountered or to even prevent the hastened death of their own family member.

Those who are quite familiar with the standards of care in health care are often surprised at the wanton disregard for adherence to the standards by some hospice agencies and staff. They often cannot believe that the violation of the standards could ever be so knowingly and willingly done. This is not to say that all hospice and palliative care units violate standards. Certainly not! But, there are too many that do, and there is a reason for it. There is a reason why government regulators surprisingly do nothing about it as well.

Hospice Patients Alliance's outreach to the public was designed to bypass the media censorship and that's how we have continued to work, to get information out to the people directly and to work individually with them as problems arise. Our website has had millions of visitors through the years. Those who need information are getting it because of what we provide.

It is strange that of the thousands of websites maintained by all the hospice agencies, ours is the only one that has all the standards of care and laws set out for the public to access easily, along with easily understood explanations of what should be expected. Yet, it simply confirms what I noticed back in 1998: there was no place for the public to get complete information about what is going on in hospice and palliative care, what the standards of care are, what to do when problems arise, and what others are experiencing in this largely unregulated niche of health care. Except for our organization, there still is no place for the public to get complete access to the standards of care with easily understood explanations, honest information about what problems do exist, and what can be done about them.

Why should the realities be hidden from the patients and families that end up using these services? With about

40% of all American deaths now occurring in hospice, the public certainly has a right to know! Why do the media's editors censor the truth so people are repeatedly blind-sided and taken by surprise when their loved one is medically killed in a hospice, hospital or nursing home? I know that if you've had a positive experience with hospice and palliative care, you may be shocked and upset to read this, but just because you had a positive experience does not mean that all others will as well.

You might conclude that I am against hospice and palliative care, but that would be completely untrue. I care very much about the field of end-of-life care and have the greatest respect for those who work in this field and dedicate themselves to relieve suffering while allowing a death in its own natural timing. We've worked hard to encourage the highest standards in end-of-life care and have worked with many in the field through the years. Yet, we believe that it's important for the public to know the hidden truth about end-of-life care as well, because each of us will be confronted with these issues sooner or later.

Whether you are a person of faith, an agnostic or atheist, this book provides a rare glimpse of the realities of health care in America that you will find nowhere else. There is much material here that you do need to know so you can see exactly what is happening, how it is happening, when it started and why.

There is a lot of material covered, but bear with me and read on, because this book explains why you have not been informed about the hidden realities in the industry, why the major media is censoring one of the most important stories of our time, and why the realities of end-of-life care are not what the media portrays them to be. This book is our way of reaching out to the public directly, bypassing the big media censorship, the government's silent complicity, and the industry's own deception.

Our nation was founded upon principles that many of us still hold dear. It is true that some ridicule these principles ... such as a right to life, free speech (which is not limited to "politically correct" speech) and freedom from an overbearing and oppressive government. Some are rejoicing that a socialized health care system may be implemented, while others are absolutely horrified.

While there are court challenges to the health reform law, changes are being implemented anyway. No law is required for government administrators to modify some of Medicare and Medicaid's internal administrative rules. The Centers for Medicare Services already has authority to change many things. With the threat of drastic changes in private health insurance, some private insurance companies may go out of business. Other insurers are making changes that drastically affect how they do business, and as the trend continues, many changes will be irreversible.

By the time some of you read this, the high court may have already ruled, however, businesses around the country have been scrambling to try to comply with the regulations of a law that will comprise thousands of pages with all the administrative regulations included. Small businesses don't know what to do and must consult attorneys, tax accountants, and other experts to plan what to do, further bogging down productivity and economic recovery. Same thing for large corporations. The uncertainty of "what the federal government will do" is like a cloud over every business in America. The certainty of changes already made is depressing business as well.

With economic pressures mounting, deficit spending completely out-of-control in a manner never before witnessed in America, and international leaders urging that the world abandon the U.S. dollar as the world's global reserve currency, citizens worry that our nation is spiraling out of control and that our basic way of life is seriously threatened. It clearly is! We live in especially "historic times," I tell my son. And, "there has never been anything similar in American history." We pray that our beautiful and inspiring American experiment in representative democracy will find its way back to the values that allowed it to create and maintain a stable and free society.

When what our elected leaders have done through the years to endanger our nation's economic security is fully known, Bernie Madoff (the convicted Ponzi scheme investment leader) will seem like a saint. Our national trade, tax and regulatory policies have decimated the manufacturing base in this country, sent jobs and corporations overseas, and made us debtors to the world. A once proud nation is imperiled, teetering on the edge of bankruptcy, and the health and economic well-being of its citizens is imperiled with it.

Nations are discussing returning to a worldwide gold standard, rather than the American dollar being the global reserve currency. Even if the gold standard is not adopted, simply downgrading the U.S. dollar and "removing America's 'AAA' status would make it more expensive for the world's largest economy [the U.S.] to borrow money on the international money markets. On Aug 5, 2011 Standard & Poor downgraded the U.S. dollar to AA+. This may eventually trigger austerity measures in the U.S. far more drastic than its current deficit reduction plans ...." And yes, that means cuts in health care spending of all sorts.

Threats of terrorist attacks on our people are taken very seriously, but nobody really knows what to do to stop them. We must trust the government to protect us; that is what the government is supposed to do. **But when the**

government itself makes changes that are inconsistent with our values and Constitutional freedoms, the people become alarmed, awakened and move to block those changes and re-assert the foundational freedoms of our nation. That is the beauty of our nation's regularly and freely held elections

When it comes to health care, there are numerous arguments about what solution can be found for the problems of rapidly rising costs, people who can't access care, and how best to distribute tax dollars for health care. Those of us who are focused on health care hear about "evidenced-based medicine," but in the major media there is little or no discussion of the potential misuse of evidence-based medicine. We hear about "comparative effectiveness research," but in the major media there is little or no discussion of the potential misuse of "comparative effectiveness research." We hear about the "complete lives system" of leading national health care advisors, as well as the rationing of health care, but the major media reports downplay any concerns being raised.

Why have we not had an open dialog about the benefits of, or problems with, the ideas that are changing the way health care will be delivered? Why do most people have no idea what these three concepts involve and how they will dramatically affect their lives and those they love?

Evidence-Based medicine is:

> "the conscientious, explicit and judicious use of current best evidence in making decisions about the care of the individual patient. It means integrating individual clinical expertise with the best available external clinical evidence from systematic research."
>
> ["Introduction to Evidence-Based Practice," Duke Univ Medical Center Library and Health Sciences Library, UNC-Chapel Hill - Dr. David Sackett, a pioneer in evidence-based practice, 1996]

Probably most physicians today want their decisions to reflect the latest medical science and the evidence. It makes sense. But anyone who knows anything about medical studies knows that different studies result in different outcomes and conclusions. The design of the studies, the number of subjects, the controls used, and so many other factors effect what conclusions are reached. Sometimes, if you want a certain result, you can be sure to get it if you design the study just so. In fact, there are well-respected physicians debating the whole idea of "evidence-based medicine. A November 2008 seminar was entitled, "The Evidence Never Lies? Critical Debates in Evidence-Based Medicine" with leading physicians, bioethicists and professors of philosophy debating the pros and cons of this whole field of endeavor. Topics included: "What's right and what's wrong with evidence-based medicine?" "What is the role of clinical research evidence in medical practice?" and "What is the patient's role in medical decision-making?"

If evidence-based medicine is used to ration care and decide what treatments are offered citizens under Medicare, Medicaid or a possible national health system, who decides what evidence and what studies are used? Who decides what the conclusions should be? Will the physician and patient decide or will a bureaucrat somewhere in the government, a PPO, HMO or other managed care company decide?

When it comes to the care of the elderly, disabled and chronically ill, many questions remain. Even among those who respect and value life, there is a lack of information about what is going on in the end-of-life care arena, what the hospice leadership is doing, what the successor organizations of the Euthanasia Society Of America are doing, who the major players are and how they operate. I'm sorry to say that many leaders of the culture of life, pro-lifers, have no idea what is going on, really, even if many of them think they do. They have been misinformed or intentionally kept in the dark completely. I realize that may offend some, but our role is to serve and inform and provide complete information so that citizens can influence the course of our nation knowing all that is at stake.

Many supporters of the sanctity of life simply do not know how deep this all goes and how successful the heirs of the original Euthanasia Society of America have been in our nation. ***They do not know how the Euthanasia Society is connected with the largest segment of the hospice industry in America***, and when some have finally understood it, they have been shocked. Most of those who affirm the sanctity of life view hospice as the rightful alternative to euthanasia and assisted suicide; they would be correct in some cases, but wrong in many others! Those who affirm the value of each life have been outmaneuvered by those who hold a utilitarian worldview, and when some of them encounter a hospice that does not respect the sanctity of life and hurries death along, they realize bitterly that they have been betrayed.

Did you know that the largest hospice organization in our nation is the successor organization to the Euthanasia Society of America? Did you know that according to the most prominent hospice leaders in the world, many hospices in the United States today have no reservations about hastening death through a method called "terminal sedation," (also "palliative sedation" or "total sedation")? Did you know that the federal regulations governing hospice are far fewer in number than those protecting patients in nursing homes or

hospitals, or that state agencies inspect hospices less frequently than nursing homes or hospitals? Did you know some hospices may go years without being inspected at all? Did you know that because of the HIPAA privacy regulations, nobody interested in researching what is actually going on in hospice can get access to the data, so hospices that have an agenda can act without any outside interference or supervision?

This is how Robin Love's father who was not terminal was hauled off to hospice, deprived of food and water and was given large doses of morphine and sedatives. He died shortly thereafter. Wendy Ludwig, RN reports that a Catholic priest she knew was hastened to his death as well. Some hospices have gone eight years without ever being inspected, except for the initial inspection when they opened their doors! What the public thinks about hospice is a carefully constructed image. In some cases, that image is fulfilled in practice, but sad to say, in many cases, it is not. We have reports of young infants being hastened to their death in peri-natal hospice because they didn't die "soon enough!"

You could say that our society has been manipulated, maneuvered, even "conditioned" to think in ways that are completely contrary to the way Americans thought for the past two centuries. And millions and millions of dollars have been spent to achieve this. The proverbial example of the frog in the pot of water applies here. Although there is debate about what really happens, if you put the frog in lukewarm water, he won't jump out. If you put him in hot water (not boiling), he will jump out, and will definitely notice that he's in "hot water." Our society is like that. Slowly, but surely, the "temperature" has been "turned up" toward "culture of death" thinking and we don't even notice how "hot" it is anymore.

You may be surprised but today, many people have adopted the "quality of life" ethic where it's "ok" to end someone's life because they are "*seriously* disabled," "*very* elderly," have dementia or any number of other reasons. In a very real sense, many of us have become numb to the killings so that we accept an increasingly larger category of lives that may be ended in a medical setting. And many times, we don't call them "killings." We say, "We let him go." "It was time." And to "let go" is certainly appropriate when someone is truly at the end-of-life, but when someone is not imminently dying and they end up dead, it really is a "medical killing."

If there were no medical murders, books like *Caring To Death: A Discursive Analysis of Nurses who Murder Patients* (by John Field, PhD; where over 50 cases of nurse killers from around the world are discussed) would not be written. That book is about the sensational cases that leaked out into the media and the killer nurses were apprehended and convicted. Articles like, "Angels of mercy: The dark side" would not exist. ***Stealth Euthanasia: Health Care Tyranny in America*** is about the policies and actions that result in imposed death and are not leaked out into the media and are given the government's complete stamp of approval: death on demand, or "stealth euthanasia." ***In stealth euthanasia, policymakers, nurses, doctors and others, whose actions or decisions cause death, are not apprehended and they certainly are not prosecuted***.

Not so very long ago when sanctity of life was the mainstream ethic for our society, we recognized that we are here to care for each other, not to kill each other. Now magazine articles promote hospice as the "other way" to make someone die on demand.

Bobby Schindler, Jr., Terri Schiavo's brother, reminds us all when he says,

> **"Terri and others like her should be a constant reminder to all of us that caring for the disabled is never a burden, but is instead an act of God's unconditional love."**
>
> ["The dehydration death of a nation," by Bobby Schindler March 30, 2007]

We've been conditioned to think otherwise. We've been conditioned to think that caring for the disabled is an exercise in foolishness, that the disabled and very elderly are "better off dead." Over and over, we hear stories about the suffering of the disabled who are dependent on others, but rarely do we hear about the loving interaction between the disabled and those around them who care for them. We hear less and less about the blessings that come to those who serve and care for the severely disabled and dependent, the changes brought about in those who serve, or the blessings to those who are served.

Whether openly conveyed or subliminally imprinted upon us, the message for decades has increasingly been, "let them die," they are "better off dead," "let go," "kill them." The message may not be conveyed openly in those words, but that's the message, ... from health care facility staff, newspaper articles, TV shows or wildly successful movies like "Million Dollar Baby" (about the woman boxer who becomes a quadriplegic and wants to be killed) or the highly successful television series, "House." The show's main character Dr. House is portrayed as an obnoxious, arrogant, but strangely likable genius who serves as a platform for promoting the quintessential secular bioethical view; he is a skeptic and a utilitarian who ridicules people of faith, denies God and casually approves abortion and euthanasia. He exalts in his own intelligence without giving credit to anyone else for his abilities. The secular devaluation of life pervades our society and its messengers are getting shriller and less tolerant of other views each day. The major media outlets do promote hastened death in many ways.

Our society is almost "schizophrenic" when it comes to how it approaches these issues. On the one hand, almost everybody openly praises the Special Olympics, and applauded how actor Christopher Reeve fought to regain function through rehabilitation therapy after he became a quadriplegic due to a horseback riding accident. Yet, there are many who would say that Reeve should have committed assisted-suicide or that those competing in the Special Olympics should never have been born!

Killing a congenitally disabled baby before birth is applauded as the "right decision" by leaders and especially many doctors in our society. While under existing law, killing a baby a few days after birth is technically still a homicide, many in our society view the killing of a severely disabled baby or child, or a very elderly disabled person, as a "mercy killing." We have organizations like Final Exit Network with its euthanasia proponents selling "helium hoods" and other devices for people to kill themselves, and promoting the "right-to-die." In 2011 they started putting up billboards all over the country with the message, "My Life. My Death. My Choice."

Many praise those who care for the disabled but hide their wish that many of the disabled not be alive at all. Health care reform, whether implemented through the new law or through changes to Medicare and Medicaid, will bring rationing of treatment in that spirit. It will have life-changing and life-ending effects, and we will see exactly how. Many disability advocates favor government-provided health care, universal health care, but like pro-lifers looking to hospice for an alternative to euthanasia, they will be disappointed when the government uses a heavy hand to limit expenditures for the disabled, elderly and chronically-ill.

We can get a taste of what is coming by looking at the United Kingdom's socialized National Health Service where the disability rights group, "Scope, found that 70 percent are 'concerned about pressure being placed on other disabled people to end their lives prematurely'" if assisted-suicide is legalized there.

Anyone who has read the book, *To Kill A Mockingbird*, by Harper Lee, knows it is a modern classic dealing with race relations. It portrays the struggle of attorney Atticus Finch who heroically defends a falsely-accused black man in a racist society. Yet, there is a parallel theme considering the societal attitudes toward the mentally-ill or disabled. The mentally-ill but good-hearted character, Boo Radley, shuns any public interaction, but manages to watch over and save Atticus' children from harm. Author Harper Lee says that Atticus is a model for Christian honor and conduct who treats the town recluse Boo Radley with kindness and gentleness. Her message is that we all do the same. People like Atticus Finch still exist, however there are some today who are less tolerant of the mentally-ill. Some view the mentally-ill as less than fully human and less worthy to even be here. Members of our society are quite divided in how they regard the disabled, the mentally-impaired or ill, and about how they should be treated. Not all would look upon Boo Radley with the same loving-kindness of an Atticus Finch.

The vulnerable are among us, but are often not so visible. I have written this to help us remember what it means to be a humane society, to save the vulnerable and re-establish a just society, to make a difference in your life and the lives of your friends and family. If it is not shared widely with others, then it will not have satisfied my goal to alert people throughout our nation.

We are distributing this book online for free so that all can benefit from the information being shared, and our hope is that the book or links to it will be re-distributed virally by email throughout your own circle, posted on your own websites, social-networking sites, blogs, or printed out and shared with those who do not have access to the internet. Some tell me that people won't appreciate this book if we give it away. Some tell me that I should not mention much about abortion ("it's too controversial") or have too many religious quotes in here ("people will get turned off"), and I've thought, "well, they're right, some people won't appreciate this because it's free. And some people won't read this because I have faith and share it a little here and there. And some say I should leave the controversial abortion topic till later in the text. But I've thought about it and the material is presented in the context of how changes arose in the United States historically which makes the most sense if you truly wish to understand how we got to where we are today and where we really are today.

I can't promise to please all the people, and I know if it's the truth, it will really offend some. Some people oppose euthanasia and assisted suicide yet approve of abortion. It seems that I can't help offending some. I have to "call it the way I see it." Take what you can from it, and leave the rest, as they say. I do promise to give you the truth, and give it freely as the dear Lord has given so much to me. I never set out to be where I am today, sharing this information which is so troubling to me and so many others. I just couldn't turn away and say "no" to those who were and are now suffering. I knew that I had to do something, and this book is part of that effort.

There is no question about the direction our nation's health care is being taken. Ezekiel Emanuel, MD, who our President appointed Health Advisor, promotes the "Complete Lives System" that is being implemented to ration care. Donald Berwick, who our President appointed administrator of the Centers for Medicare and Medicaid Services, is a strong proponent of Comparative Effectiveness Research which will also be used to ration care. Under the new law, "Accountable Care Organizations" are set up which will force very aggressive rationing practices by medical groups. Cass Sunstein, who our President appointed "Regulatory Czar," states that unless you specifically record your wish *not* to donate organs, doctors should be able to harvest your organs (should

you be declared "brain dead") for donation on the basis of "presumed consent," even if you never actually give consent. He also has stated that an economic crisis can be "used to usher socialism into the United States." Susan Rice, who our President appointed Ambassador to the United Nations states that we must *increase* the role of the United Nations in world affairs.

Regarding end-of-life care within the health care system, as we shall see, the nation's most prominent hospice physicians (such as Joanne Lynn, MD and Ira Byock, MD) are proponents of terminal sedation to hasten death. Willard Gaylin, MD, co-founder of the Hastings Center is a proponent of euthanasia who applauds the efforts to expand the definition of "death" in order to overcome obstacles to legally performing euthanasia. Gaylin is widely accepted in the mainstream media and policymaking circles, and the Hastings Center is one of the organizations that has most influenced the modern American hospice industry to betray its original mission to care, not kill.

To top it off, our President appointed John Holdren "Science Czar." Holdren is the co-author of the 1977 book, *Ecoscience* that promotes ideas like forced sterilizations and abortions to limit population growth, compelling single mothers to give up their children to others, putting chemicals in water supplies to prevent births, and a planetary world government that would implement these ideas for the good of the world. Although Holdren is a man-made global warming alarmist in the present (necessitating dramatically increased government-imposed regulations), in the late 1970s he was warning about disastrous global *cooling* (necessitating dramatically increased government-imposed regulations). It is not a mistake that these specific leaders were chosen to shape our society and our nation's policies. Each of them has at one time or another stated that he is not what the record shows him to be: an advocate of a much bigger government role in our lives. Their public reassurances and denials of the obvious are not credible.

Taken all together, it is certain that increased government-control of our lives and health care based upon a utilitarian philosophy is being promoted. America will certainly be changed by their collective efforts. The new health care reform law has created agencies such as the Independent Payment Advisory Board (IPAB) and the Patient-Centered Outcomes Research institute (PCORI), whose main activities will result in rationed care. The role of secular culture-of-death hospice and palliative care within the health system will be expanded dramatically.

So, it is right to be wary about the changes being proposed: we are swiftly moving toward a utilitarian-controlled and callous society that will victimize many. It is already happening to many at the end-of-life. This book will explain exactly what is happening, how it's being accomplished, who is responsible, and why it is being done. The book will also explain what must be done to truly reform the health care industry, our government and how to restore the American respect for life. We cannot rely on the government to respect the sanctity of life at any stage of life, even though respect for an individual life is central to traditional American values and our Constitutional system. Respect for life is central to preventing harm to patients, patients who could be *your* loved ones.

Health care professionals who have a reverence for life view their work as a mission and an opportunity to express their love for each patient. Those with faith, view their work as an opportunity to glorify the Giver of life through service to those who are most vulnerable.

However, federal law and Congressional budgetary expenditures approved by the Presidents (current and past) encourage abortion, eugenics and stealth euthanasia. You will understand exactly how after reading this book. The simple truth is that we are entering an extremely dangerous period in American history ... dangerous for those who are the most vulnerable of all and dangerous for our society as a whole. If people contemplate and really see the sanctity of life, their quality of life arguments fall away and they will understand that we are here to care for each other, not to kill each other. Caring, and not convenience, is the sign of a civilized and just society!

I - Trends in American Society

Although the health care reform law was opposed by many who value our freedoms, utilitarians know that their decades-long activities shaped the thinking of our leaders and made it possible. **The "Patient Protection and Affordable Care Act's" enactment represents a coup by elites who believe they know better than most Americans what is best for Americans.** Sold to many in America as a way to bring coverage to those who had none, it represents the assumption by government of 1/6 of the American economy and therefore, a huge increase in the size of government and its role in every American's life. **It may be hard to believe, because nobody has been speaking about it, but it represents a "fait accompli" for the Euthanasia Society of America's descendants in this generation.** You may find such a statement completely shocking, especially if you think that government is the answer to most of our society's problems. And you will reject the statement if you believe some of the language in the law without reading all of the law.

We have to remember that it is the people who implement the technical details and interpretation of the law that will have the greatest impact on what really happens. Many segments of the law have vague language such as, "the Secretary ("Secretary of Health and Human Services") shall establish ...." "The Secretary shall promulgate regulations ...." "The Secretary shall develop standards ...." What is clear is that many of the details are going to be filled in with "administrative rules," ... regulations that are just as much "the law of the land," but which are created not by our Congressmen, but by bureaucrats in the federal government.

For example, if you read the following segment of the law, and take it literally, you may come to believe that a utopian health care heaven has suddenly emerged and taken shape in America:

> "In defining the essential health benefits under paragraph (1), the Secretary shall-
>
> .... (D) ensure that health benefits established as essential not be subject to denial to individuals

against their wishes on the basis of the individuals' age or expected length of life or of the individuals' present or predicted disability, degree of medical dependency, or quality of life;

[Patient Protection and Affordable Care Act; HR p 46]

Ah, the devil's in the details. What exactly are "essential" health benefits? And who will receive them? The language is made to sound as if everyone is going to get the essential services that would reasonably be expected to be provided. Yet, the man our President appointed Health Advisor, Ezekiel Emanuel, MD, has stated,

"***services provided to individuals who are irreversibly prevented from being or becoming participating citizens are not basic and should not be guaranteed***." [Emphasis added]

This is not surprising since Dr. Emanuel is a fellow at the Hastings Center ... the same Hastings Center co-founded by the euthanasia proponent, Willard Gaylin, MD ... the same Hastings Center whose other co-founder, Daniel Callahan, explained in 1983 that taking all food and fluid away from vulnerable patients was probably the only way to make sure certain patients actually die (without legalization of euthanasia in America). This is the same Hastings Center that has worked side-by-side with hospice industry leaders to transform hospice and palliative care into the practical laboratory where its utilitarian, pro-euthanasia ideas are implemented, practices we now know as stealth euthanasia and direct euthanasia.

Utilitarians, like Dr. Emanuel, refer to individuals who are not working, not producing goods or not providing services for society, as non-participating citizens. These are the dependent individuals who society normally cares for or assists with the activities of daily living. It is very clear that those who are brain-injured, cognitively-impaired, developmentally-disabled or very elderly fall into the category Dr. Emanuel is referring to. ***If there is to be no "discrimination" resulting in "denials of care based on their age," or "disability" why would Dr. Emanuel categorically state that the disabled or very elderly (those who are "irreversibly prevented from being or becoming participating citizens") should not be guaranteed services?*** Why would the government set up the mechanisms for rationing care known as the "Patient-Centered Outcomes Research Institute (PCORI) where "comparative effectiveness research" will be done and committees will decide what treatments are appropriate or effective for different populations of patients? Shouldn't such decisions be made by a physician and the patient? Not according to the new health care reform law. Not according to those who will run the government-run health system.

Shining a light on how services can be denied, "Dr. Richard Della Penna, M.D., a former Kaiser physician and one of America's leading medical experts in Elder Care and the treatment of Special Needs Patients (SNP'S) has filed suit against Kaiser Permanente, [et. al.], ... as a result of Kaiser's calculated plan to deny legally mandated proper treatment to approximately 57,000 seriously disabled and chronically ill patients in California, Colorado and Georgia because it just didn't want to spend the money." An example of such denied treatment? Laura Shumaker, the mother of an autistic child, writes that in 2009, she "received [her] first set of denials associated with basic treatment for my son's disorder. They denied Applied Behavior Analysis (ABA), Speech therapy, and Occupational therapy. To deny these treatments to children with autism is the equivalent of denying insulin to a diabetic or chemotherapy to a cancer patient."

These are examples of the callous hand of rationing for profit in real life. When it's your loved one being impacted, you understand how evil it can get. CEOs of these corporations make millions of dollars per year, but basic treatment for many of the disabled and chronically ill is denied! All in the name of rationing or having "effective" practices. There is a difference between making health care more efficient while making a profit and unethical exploitation.

What is Comparative Effectiveness Research?

"Comparative effectiveness research is designed to inform health-care decisions by providing evidence on the effectiveness, benefits, and harms of different treatment options. The evidence is generated from research studies that compare drugs, medical devices, tests, surgeries, or ways to deliver health care.

There are two ways that this evidence is found:

* Researchers look at all of the available evidence about the benefits and harms of each choice for different groups of people from existing clinical trials, clinical studies, and other research. These are called research reviews, because they are systematic reviews of existing evidence.

* Researchers conduct studies that generate new evidence of effectiveness or comparative effectiveness of a test, treatment, procedure, or health-care service."

[From the U.S. Department of Health & Human Services's Agency for Healthcare Research and Quality - Effective Health Care Program]

With the U.S. Patient-Centered Outcomes Research Institute, a non-elected committee will be making recommendations that will likely be accepted by the Centers for Medicare and Medicaid Services in deciding what treatments it will or won't cover. If treatments are not covered, they won't be available to anyone, or they won't be available to "selected" groups within the American population!

Those promoting "controlled death," "death with dignity," or outright "euthanasia," know what it all means, what the implications are for changes to come in the future, even if those on the side of life still don't fully "get it." The bottles of champagne have been uncorked by those favoring eugenics, euthanasia, assisted-suicide and utilitarian government. And while the major media produces programs and prints articles that ridicule those who criticize the law as "right wing nuts," the aggressive rationing of health care it involves will eventually, directly and negatively impact the lives of you and your family.

The "Patient Protection and Affordable Care Act" enshrines into law a system diametrically opposed to what most Americans believe. It creates a system where government bureaucrats (not the public) determine whether care is provided or not. Its mandate that all Americans buy into the government-approved system negates the basic freedom that Americans have always had to choose whether to buy something or not. "Pro-choice" does not apply here. "No choice" is the new policy. While promising to extend health care coverage to all, they intend to limit care that is provided to the elderly, disabled and chronically ill. How do we know this is their intent? The leaders the administration has put in place to design and administer the program have told us what they think, what their goals are and how they will implement them. It is clear they will achieve some of their goals by limiting reimbursements to those who provide medical services.

We know that rationing is on its way when we see that reimbursement to medical providers will be limited severely. The American Medical Group Association, whose members provide care for "roughly 1 in 3 Americans" has analyzed the regulations regarding accountable care organizations ("ACOs") created under the new health care reform law. The AMGA's member medical groups include the Mayo Clinic, Cleveland Clinic and many other well-known leading hospital and medical group practices. The AMGA regards the regulations as, "overly prescriptive, operationally burdensome, and the incentives are too difficult to achieve." They fear that complying with the regulations will cause significant financial loss for the hospitals and medical groups. And we know that when reimbursements are limited, the medical groups will take steps to limit services and treatments to minimize their losses, i.e., health care rationing. The AMGA also warns that, " if ACOs are not successful," they are "concerned that the only alternative to future delivery system "reform" will be ***draconian cuts*** across the provider spectrum." [Emphasis added]

Government officials and bureaucrats may not target you or your loved ones individually, but they definitely will target government's reimbursements to providers for specific groups of individuals, and then, medical providers will allow or deny access to treatment based on government-designated reimbursements for these categories of the population. There is no need for the so-called "death panels" for lives to be shortened. Bureaucratic "decision trees" will guide paper-pushers (either in private medical groups or a future government-run program) who issue determinations about whether diagnostic tests, treatment, surgeries and so on will be provided, or not. Needed treatment when denied equals shortened lives.

If it is government-run, health care will replicate the "cost-efficiency" practices of private health insurers, with outright treatment denials impacting the lives of those most vulnerable. And if it is privately-run, insurers will follow managed care models of care (as they already do) and continue to evolve along these lines promoting profit beyond what can reasonably be accomplished if the members of the health plans are to be given the health care they need and pay for.

When it comes to "patient protection," protecting citizens from treatment denials, the health care reform law fails completely. The law may only make health care "affordable" for the government through aggressive rationing of care provided. It will not make it "affordable" for many. There is no protection for the patient's right to choose a private health insurance plan over the long run. In fact, over time, private health insurance as we have known it will completely end. More private insurance companies will ration care aggressively or may go out of business as time moves forward. Health insurance plans in America are already being forced to change in ways that have caused an increase in insurance premiums. In the long run, those health insurance companies that survive will be either government-run or government-controlled.

In America, we have mainly had a privately-delivered health care system along with safety nets provided for those who could not purchase health care on their own. The safety net in years past could simply have been free clinics, free services at hospital emergency rooms for those without insurance, charitable giving from the neighbors in the community, a doctor who would treat someone for free if they were unable to pay, or an extended family that stood ready to provide bedside care as needed.

Today, Medicare and Medicaid represent the biggest government-run safety net, yet the character of the services to be provided will be drastically changed. For those who are not on Medicare or Medicaid, with implementation of the health care reform law, we will see "a dramatic decline in employer-provided health insurance -- with as many as 78 million Americans forced to find other sources of coverage." Where will these employees find coverage? Clearly, the main, or only, provider will be a government-run or government-controlled program.

There certainly are problems with our current system, and there is no question it should and can be improved. Under any system there will probably always be some who "fall through the cracks." Yet, our health care system is internationally known to offer the highest quality health care in the world. People come from all over the world to get care here under the private health care system we have had.

Private charities and government programs have helped many who are in need. The state Medicaid programs provide access to health care for millions. Numerous charities provide services to the poor, hungry, and ailing. In an effort to help some (the purported aim of the health care "reform"), the ability of many to access care is likely to be destroyed, especially when it comes to the elderly and the disabled. Sure, if their illness is easily treated, they'll get care just as they always did, but when seriously ill, treatment will be hard to obtain.

As we begin to wonder if the freedoms which make up the American way of life will disappear right before our eyes, we also wonder what are the government and media not telling us about the realities of "health care reform?" Why was a bill that provided for the government seizing control of 1/6 of our economy not read before the Congress voted on it? Why wasn't there extensive open debate about the pros and cons of such reform if the best interests of America were to be determined? Why wasn't input from all sides of society on this extremely important issue reflected in the law? How has our society seemingly been split down the middle?

When it comes to our own private lives, our own health, people have good reason to ask questions about what will happen under a government-run health care system. We don't know what will result from having a government-run or privately-run health care system that is heavily-influenced to do certain things, provide certain treatments or not, and what the government's influence will have on our lives. But we can already see the direction those pushing "health care reform" are taking us. We must understand who is running the show and how they think.

Today, "quality of life" has been substituted for "sanctity of life." The short section of the law quoted above even mentioned the phrase, quality of life, not sanctity of life. When you disregard sanctity of life and focus on quality of life exclusively, in the language of the Nazis, those "unworthy of life" with a poor quality of life are, in the name of mercy, going to be hastened to an early death. In fact, the Nazis used the phrase, "giving a merciful death."

You may say, "Oh, that's going too far!" But all we have to do is look at the case of Terri Schiavo to understand that in some cases, yes, a living, human being can be made to die in a hospice by court order, with the approval of the federal, state and local government as well as the police in that area.

I can hear some say, "oh, here we go again." "I've heard enough about that case and don't want to hear anymore." "I already know what happened." In most cases, you didn't hear the complete truth and you don't know what happened. Some things were never published anywhere.

Of course, many said she was "brain dead," "already dead," "better off dead" and the like. And it is clear that almost everyone has a very, very strong opinion about the case and believes they know a lot about it. They may have even read dozens of articles about it and discussed it at length.

I have spoken directly with Terri's parents and family, nurses who cared for her and others who saw her themselves. And, after reading numerous letters to the editor, online posts, hearing all sorts of discussions about the case, and reading hundreds of articles, it is clear to me that most of the people in this country have no idea what her real condition was, what really happened with her so-called "collapse," what was involved in her death, who was behind it and what the agenda was.

Almost no people really think about her admission to ***hospice*** as being central to what really occurred there! Almost nobody thinks about the euthanasia movement in this country and what that has to do with her court-ordered death. But the euthanasia movement working within the hospice industry was the force that manipulated her into hospice for the purpose of imposing death upon her.

The major media stories about the case provided absolutely false information about her. By the end of this book, you will know how and why they lied. This is easily proved for anyone who takes the time to truly research the case, read the actual court and medical records as well as speak directly with some of the nurses who cared for her, doctors who examined her, and with the family as I have.

Sometimes, there is a financial motive to deny treatment to an individual. People say, "life support is too expensive." In Terri's case, like many others who today are hastened to their death, she was not on any "life support" at all but was merely getting food and water through a tube.

On the other hand, there are some very expensive medical procedures, surgeries and/or medications that do cause people to think, "We need to determine who best should receive this." Decisions are made every day about who gets an organ transplant, and that is a form of "rationing." It's something that is necessary, and because the lives of patients can depend upon it, health care decision-making needs to be done fairly, ethically, and humanely. We can all agree on that. But then the question arises, "what determines if an action is "fair?" How do we know if the decision is "ethical" or "right?" What does it mean to be "humane?"

These questions are answered in different ways by those who hold different worldviews and values. Some who have religious faith would decide one way. Many who are agnostic or atheistic would decide another way. How do we determine what is ethical and right? If society discards the Judeo-Christian values which are the acknowledged foundations for much of America's laws as well as the Constitution, what will be substituted for them? Anyone who's been around for more than a few decades knows that one day the experts tell us it's "bad to eat this or that." A few years later, they tell us there's new research and what they told so authoritatively *before* no longer applies. People just don't know what to think.

In business, especially health care, every ten years it seems there's a new "system" of management being implemented in the hospitals (those who work in them know what I'm talking about), ... a new "modern," "progressive" way of doing things. The same type of regular change holds true in terms of what the latest thinking about societal issues is. With no societal "anchor" to keep us stable, we would be going through chaotic change every decade. Just think about what happened in 1960s Communist China with the Cultural Revolutions there. One moment the Red Guard was killing "counter-revolutionaries," and a few years later, another group was killing the "old" Red Guard (calling them "counter-revolutionary," and on and on it went with millions dying in the chaos. If we don't have a stable societal "anchor" in our values, then one "crackpot" philosopher, bioethicist or politician will come along and later, another will come and change it all over again.

A stable nation cannot exist without a stable system of values and traditional beliefs. Our traditional American values are founded in the Judeo-Christian traditions which have given rise to our many freedoms: freedom of religion, freedom of expression, freedom of assembly, freedom of the press and so many others that have made our nation a model for the world.

So, we need a stable set of values that help to preserve the freedoms that are part of what America is all about. When it comes to these freedoms, freedom from discrimination is a passionately-defended right, a Constitutionally-guaranteed right. Those of us who are of different ethnic groups want to be free to live our lives without being subjected to unfair discrimination. Those of us who are ill and need an organ transplant or medical procedure, also do not want to be subject to unfair discrimination. Today, transplants may be distributed to those who are waiting on the list and those who have waited longest, who are first on the list, get the organ. It seems fair and can make sense, but sometimes, decisions are made that negatively impact a patient because people believe they are less worthy of living at all.

Some people suffer much due to illness or disability, but that does not mean they are less worthy of life itself or that they want to be killed. Utilitarians do not agree; they believe some of us are expendable, better off dead, and if not dead, then relegated to the deplorable conditions found in many nursing facilities and left there to die.

In hospitals, the elderly may be treated very differently than a middle-aged or young adult. Families have told me so many times of the difficulties they have getting physicians in the hospital to treat their loved one with simple medical care that meets the standards of care. For example, a 90 year-old who has some stable but chronic condition may be under or over treated for a condition, with the intent of causing death. Sometimes, powerful antibiotics or other medicaitons are given when they are not needed at the same time the patient is not taking in fluids, in order to damage the kidneys and cause death. Sometimes, an anti-coagulant such as Coumadin is given in a large dose while lab tests to see if the blood levels are within the acceptable range are intentionally put off for weeks, with the intent that the patient have a stroke due to bleeding and die. Sometimes the patient is kept on an I.V. solution of saline water at a very low rate with no nutrients for days on end, with the intent that the patient destabilize and eventually die.

Sometimes, blood glucose levels are not maintained in the normal range in a diabetic patient, so that the patient dies. Sometimes, something as simple as leaving the blankets off a patient overnight is done so that the patient goes into hypothermia and dies. I've heard from families where three or four of these methods have been used to make their elderly parent die. Don't believe it? Believe it!

Just as " in some instances, medical personnel in hospital emergency rooms and physicians' offices have reported parents to state child social services agencies for child medical neglect for refusing to vaccinate their children," hospital staff may threaten the family member (who has the power-of-attorney) with a complaint

against them with adult protective services if the POA doesn't go along with whatever the hospital is doing, just to intimidate them and shut them up. And we have reports that when families refuse to go along, hospital staff *do* use the social service agencies to get their way and remove the caring family members from the picture (even the member with the POA).

Hospital staff may intimidate family members into signing a Do-Not-Resuscitate order and then put their loved one into hospice. It happens every day, because some doctor in the hospital decided "it's time" for that patient to die. In nursing homes, neglect and abuse can cause death as well.

There have been Congressional hearings on abuse, neglect and severe harm to residents of many nursing homes for decades, yet nothing of significance is ever done to improve the conditions in these facilities. And while some facilities do a good job, too many maintain horrendous conditions. In August 2009, Congress's "investigational arm," the General Accounting Office reported that, "the Most Poorly Performing Homes, ... tend to Be Chain Affiliated and For-Profit." [GAO-09-689] Just think what happens to the patients there when they are enrolled in hospice at these for-profit nursing homes!

There have been extended, decades-long campaigns by millions of people to achieve the civil rights blacks enjoy today. There have been decades-long campaigns by millions to achieve equal rights for women. There have been decades-long efforts to stop the killings of babies in the womb and yes, decades-long efforts to continue that practice. There have been many efforts made for years to achieve rights for immigrants, illegal immigrants, gays, migrant workers and others. There have been all sorts of marches and political efforts and protests throughout our history.

Where are the millions, or even thousands, speaking out for the rights of the disabled, the very elderly, even those deemed "terminally ill?" Many do not really know how terrible the conditions are for some of the very disabled, elderly and those who are terminally ill. Many not only do not march for the rights of the disabled, elderly and terminally ill, many think they don't really have a problem. They like to believe that they are well-cared for if they think of them at all. Others, who have seen patients suffer under the conditions at some facilities, simply block out the thought of their existence and their problems. These are society's forgotten, the voiceless.

There are reams of documents detailing the abuse, neglect and harm being done to these very elderly and the disabled, but no marches. Yet, the numbers of elderly and disabled individuals victimized is in the tens of millions through the years. No action. No marches. No civil rights movement. No justice.

"Civil rights" are not restricted to the struggle of any one group of people! We all have civil rights. The trend is to "write off" this group and give them a one-way ticket out of here. It is the greatest civil rights struggle in America, yet the voices of the vulnerable are censored. If their voices reach out somehow, they are quickly silenced and ignored. It as if our society is "lynching the elderly and disabled" and nobody comes to rescue them.

If a movie were made about this civil rights struggle, it might be entitled, "What if there were a civil rights struggle, and nobody came?" It could show a blank screen with intermittent flashes of some patient advocates or organizations who've dedicated their lives to speaking out on behalf of the voiceless. But very little response from the public. No "movement" to rescue the voiceless.

While there is life, we must care for and respect it!
Monday, June 27, 2011

We must do more. Every day, courts, guardians, people with a health care "power of attorney," doctors, nurses, agencies and others, make decisions that may result in the harm or death of some patients. Sometimes, the decisions are made in accordance with the patient's actual well thought-out wishes. Sometimes, they are not. There are many articles about such cases, some of them actually called "mercy killings."

People are beginning to see the trends. What is being planned today is unlike anything that has ever been done in America before, and we will see that the foundation for today's "reform" has quietly been built over decades while Americans simply looked the other way. We didn't pay attention when a change here and a change there occurred. A change in the law here, a court ruling there, and after a while, the changes add up. We now have a completely different approach among health care professionals and the courts. What is planned for our society is obvious to those who understand the history of the culture of death and the "flavor" of hospice and palliative care promoted by the culture of death. Most people don't realize there even is a different type of hospice and palliative care.

Talk of managing scarce health care resources must be balanced with the Constitutional rights and basic human rights of citizens living within a just and civilized society, and the vulnerable are still citizens of our nation! Their struggle is in numbers the greatest civil rights struggle in our history. Yet, if health care rationing is carried

out on a utilitarian basis, it can become the preferred "tool" for a tyrannical exercise of power, actually eliminating many individuals and threatening the basic fabric of our society.

The Fourteenth Amendment to the Constitution of the United States:

> No "State [shall] deprive any person of life ... without due process of law.

Of course, the original context when that was written had to do with punishment for crimes against society. But the idea of ***not*** executing someone, not ending their life without "due process" under the law has been an obstacle that the Euthanasia Society of America had to overcome. Over the course of seventy years, the Euthanasia Society (and its successor organizations) has made war on this central Constitutional right to life expressly stated in the 14th Amendment. They have made war on the American way of life. Through like-minded legislators along with justices of the Supreme Courts of the states and of the United States, they have succeeded. It is now possible to deprive a person of life without due process in the United States! You will see how here.

The successors of the Euthanasia Society of America are now proceeding with their plan to implement stealth euthanasia for citizens whose "quality of life" is deemed "unworthy of life." These are the last acts of this lethal society. And who will be their target? The elderly and severely disabled. In every state and county. Affecting your family and you. And they don't have to be the "very" elderly or "very" disabled. I've heard of the "not-so-elderly" (even 60 years old) or disabled being placed in hospice and dying shortly thereafter, even though they had no terminal illness at all. Others have warned about these developments:

> "In an era of cost control and managed care, patients with lingering illnesses may be branded an economic liability, and decisions to encourage death can be driven by cost. As Acting U.S. Solicitor General Walter Dellinger warned in urging the Supreme Court to uphold laws against assisted suicide: "The least costly treatment for any illness is lethal medication."
>
> [USCCB, Secretariat of Pro Life Activities]

In addition to what I share with you directly from my own experience and knowledge gathered from people all around the country and around the world, I've chosen to include extensive quotes from experts in relevant fields so you are presented with a collage of ideas and information, reference sources that allow you to see how the American respect for life has been devalued over seventy years. This book is presented less as a "literary work" and more as a practical tool you can use to understand completely where we are at today when it comes to stealth euthanasia, medical killings "under the radar" that are becoming increasingly common. You will understand the real significance of the changes in health care being implemented today and what needs to be done to protect those you care about.

Because some people become extremely offended that anyone would dare to write something critical of "those wonderful hospice people," let me respond before people get worked up. I have worked in hospice and know many wonderful professionals working in the field. Through the years, some people regularly write in and suggest that we post many positive stories about hospice. There are literally thousands of websites promoting the good that is done, some of it true. And at a hospice that is run by those who adhere to the mission, there are many benefits to the patients and their families. Yes, there ***are*** extremely dedicated professionals working in the field.

And, we have hundreds of pages of information on the Hospice Patients Alliance website detailing all the helpful services that hospice and palliative care units should be providing, how good end-of-life care is provided and the regulations governing hospice agencies. We certainly know the difference that good end-of-life care can make.

For over a decade I've said that:

> **serving hospice patients and their families is one of the greatest privileges and trusts a health care professional could ever be granted. Only those staff with great love, sensitivity, and compassion understand the real mission of hospice. Really, it is a calling.**

Health care professionals are taught to be detached and not get too involved. But those of us who view our work as a spiritual calling believe in simply loving them unconditionally, being with them, treating them as we would be want to be treated. Unfortunately, there is another side to the story that must be presented!

This book is an urgent wake-up call to Americans and people around the world, because what is happening in the United States is also happening in other nations as well. Worldwide influences are impacting what happens here in our country and around the globe. No nation is untouched by what happens in the other parts of the world. With the internet and so many forms of communication, with the ease of traveling around the world,

groups from one nation can network with those on the other side of the globe. The European Institute of Bioethics has been warning about these developments for many years.

This book is not written for any one particular group of Americans, or any one particular religious group. We are all people, and people everywhere want the same things: the ability to provide for their families, and to live a fulfilling life. All people want the lives of their loved ones to be respected and normally do not want their lives ended in an untimely and involuntary manner.

Yet, global influences and exchange can be a blessing or a curse. The World Federation of Right-to-Die Societies, for example, has had much influence on what is happening here in the United States (such as in Oregon, Washington, and other states where efforts are being made to legalize assisted-suicide). It also promotes legalization of medical killing in other nations.

When it comes to hospice and end-of-life care, hospice and palliative care leaders from around the world network through the International Association for Hospice & Palliative Care Organization. Information about improvements in end-of-life care can rapidly be shared and implemented. And then, America's hospice trade group, the National Hospice & Palliative Care Organization helps to shape how many hospice agencies deliver care in the United States. It is the nation's main end-of-life care industry lobbying group. ***That would all be fine if the National Hospice & Palliative Care Organization was not the final successor organization to the Euthanasia Society of America. Unfortunately, it is!***

Whether we consider end-of-life care or health care in general, how care is delivered can be shaped by worldviews that may not be in harmony with our U.S. Constitutional values. Health care reform efforts being made today in our country are very much influenced by models of health care in place (and trends) in the United Kingdom, Canada, France and other nations. And with that influence comes much talk about health care rationing, legalization of euthanasia and assisted-suicide and other problems. Health care rationing is directly linked with the end-of-life care industry, yet this connection has not been appropriately explored. Perhaps it is because those who cannot access care, who may be denied treatment, will be placed in end-of-life care clinical settings or at home, even if they are not "terminal" in the sense we have come to understand.

In the United Kingdom, Dr Howard Martin stated on February 11, 2011 that, "giving morphine to terminally-ill patients in hospital to end their lives was a regular occurrence."

At the highest levels of policy-making in government and the corporate world, stakeholders shut out those who respect the "right to life, liberty and the pursuit of happiness" for all citizens at any stage of life. How do we respond to this? Do we really want politicians, bureaucrats and ideologues making decisions that impact our lives and our loved ones' lives? As most Americans have little trust for what politicians say, in general, why would we ever want them to have such an intrusive impact on the most personal decisions of our families' lives? ... on our health care?

For those who must enroll in Medicare, there is no choice but to have politicians, bureaucrats and ideologues making decisions that impact their lives. On the other hand, some with private insurance may have nameless claims adjusters who seem to whimsically deny treatment in the name of "managed care," something HMOs have specialized in. Whether you call it a "treatment denial" or "rationing," it still has the same effect, and after you look at the patterns, you know that it mostly has to do with money, but sometimes there's something else going on.

Only those who are more concerned with quality of life than sanctity of life are taken seriously at the government decision-making "table." And however many committees arrive at consensus, policies that arise out of a quality of life mindset will always end up victimizing the vulnerable, often causing shortened lives.

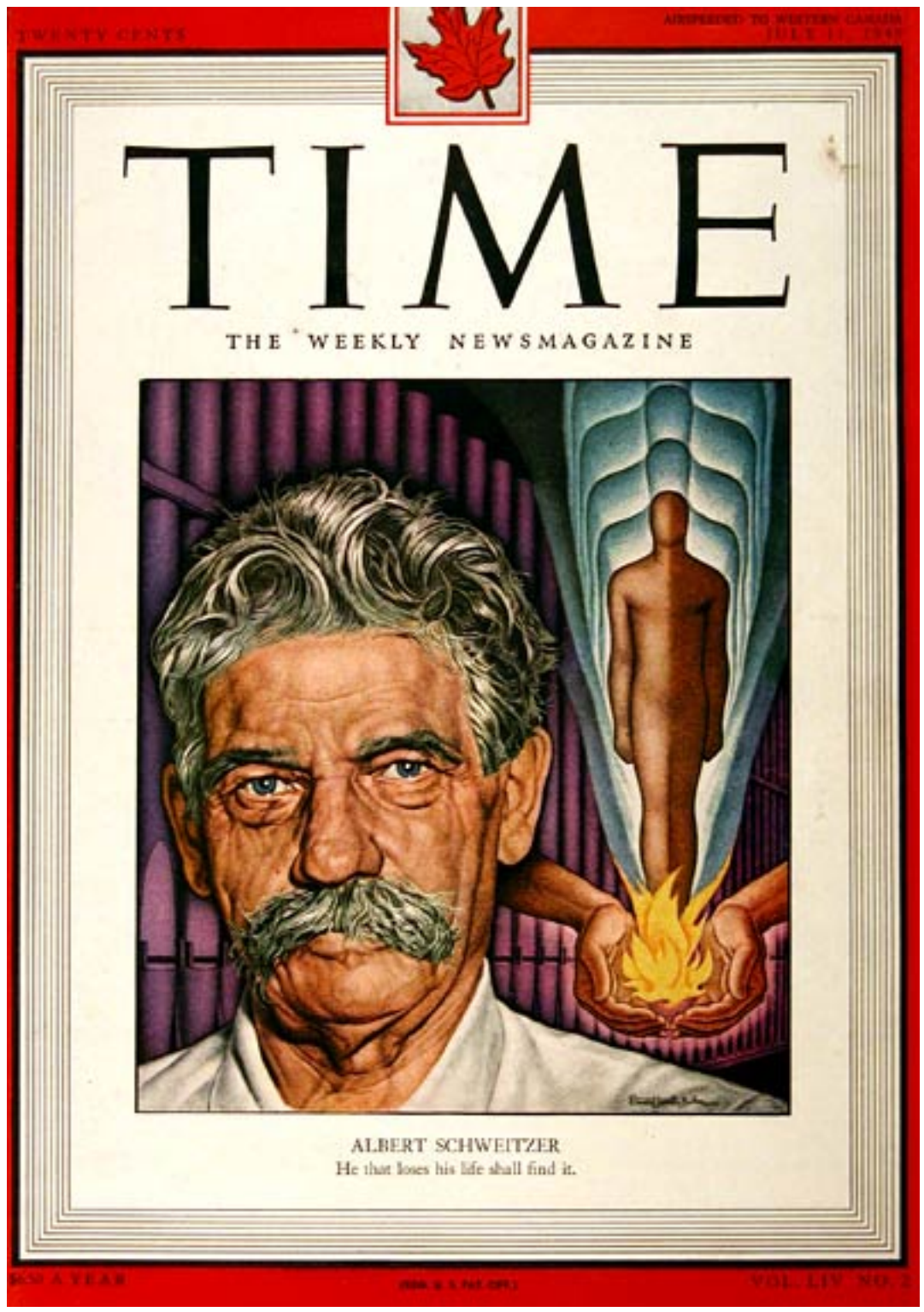
However, we must remind ourselves what the medical missionary, humanitarian and 1952 Nobel Peace Prize recipient Albert Schweitzer's life was all about: reverence for life! He said:

> "Reverence for Life is a philosophy that says that the only thing we're really sure of is that we live, and want to go on living. And this is something that we share with everything else that lives - from elephants to blades of grass. ***So we are brothers and sisters to all living things, and nothing else, neither race nor colour nor religion nor sex, should be more important than this one deepest, most extraordinary thing connecting us.***
>
> "The whole world, indeed the whole universe, has evolved to give us life - you and me and the rest of the living world.
>
> "But only humans are aware of all this. This is some responsibility. Because we also have the ability to neglect, to destroy, to cause suffering and death. And indeed some suffering and death is inevitable. ....

"For life is extraordinary. Every scientific advance tells us this. We now know the billion to one chances ever since the Big Bang that have enabled life to develop and then to survive on this planet, and the extreme rarity of it in the universe. More than ever, we have good reason to feel reverence for it."

["The Discovery & Meaning of Reverence for Life" - Albert Schweitzer; Emphasis added]

We have forgotten so much. Reverence for life is the remedy we need to heal our nation's descent into the abyss of imposed death and stealth euthanasia. Reverence for life brings sanity back into the discussion of these issues. When we have reverence for life, the question of imposing death does not arise. We simply love and care, allowing for a natural death when it truly approaches on its own. We can honor life, loving all the way from life to death.



This Thing Called Hospice

Hospice is about caring for those approaching death, whether they are young or old. People say they would like to live "forever," but when illness, old age or major disability hit, the majority begin to let go of their attachments here and think about what, if anything, comes next. They go through a process of leaving behind everything they love and finishing whatever they have left to do, and then they must let go altogether. Hospice

professionals help them with these transitions, the most important they will ever go through. Hospice is a hybrid of medical, spiritual and emotional caregiving for the terminally ill and his or her loved ones.

Hospice and palliative care (symptom management) services are provided when curative treatments are no longer effective, when the patient's death is foreseeable. Under the traditional Medicare hospice benefit, patients are enrolled in the hospice benefit when the physician certifies that death is likely to occur within six months or less. Often, the physician-ordered diagnostic tests reveal cancer, heart disease or other illnesses have progressed to what is called the "end-stage" and medical treatment can no longer prevent further deterioration of the patient's health.

Large percentages of those admitted to hospice care are in the winter of their lives and also experience what many elderly face: isolation, loneliness and depression. Even for those terminally ill who are younger, visitors may be infrequent if they come at all. People don't know how to act around the dying, and tend to stay away even if they wish to visit.

Elderly patients may already be "shut-in" in their homes, living off of their retirement funds (if they have any) and Social Security. They may not be well enough to travel out to the stores to shop and depend upon other family members, neighbors and programs that serve shut-ins to help them.

With failing eyesight, decreased coordination, flagging energy levels and forgetfulness on the rise, seniors struggle to do the ordinary tasks of life, the "activities of daily living" such as bathing, dressing, cooking and cleaning. Their spouse or other family members may also be frail and are often unable to help them adequately. Being terminally ill, all of these tasks become even more difficult. In the early stages, programs like "Meals on Wheels" can continue to help the elderly enjoy a cooked meal from time to time. There are also many forms of assistance available through home health agencies. Hospice agencies offer many of these same services. As disease progresses, there is a recognition that the patient will be able to do less and less.

Home care aides may help with bathing and dressing when they are available. Nurses visit to make sure patients take their medications for the week and to check on the senior's health status. Social workers inspect the overall environment, helping to make sure the senior citizen is accessing all the support networks available to make the living arrangements work. They also offer counseling to help resolve problems the senior may be experiencing and to cope with the challenge of facing approaching death.

If the patient's medical condition has interfered with their abilities to carry out the activities of daily living, physical therapists are also available to help with movement and strength conditioning, occupational therapists can help with detailed tasks involved in daily life, speech-language therapists assess and offer help with swallowing and speech problems.

Sometimes, elders may not be able to safely function on their own and need placement in a facility where more supportive services are provided. Whether elders are living in a facility or not, they may not know others around them and may experience a feeling of complete isolation. They may feel out of place, out of touch, forgotten and alone. The young staff seem like little children, even though they may be twenty to forty (or more) years old! Some elders adjust well as they age and are able to make new friends, learn new things and participate actively in the world. Others simply can't. And as they age into the very elderly category, memory problems may increasingly interfere with their lives.

Having worked with the elderly, the disabled and the dying for many years, I've seen first-hand how difficult it can be for these individuals. The smallest tasks may have become extremely difficult, and emotionally, they face the grief of losing everything, not only their possessions, friends and family, but their very lives as death approaches.

The supportive care that a good hospice provides can make a big difference to those approaching death. Knowing that you will be cared for when everything seems to be closing in and having your family with you are what most of the dying want most. They want to be able to say things that were left unsaid, to share the love they have in their hearts, to patch up problems that may have arisen over the years and to say goodbye this last time.

And while curative measures are no longer effective, there is much that good end-of-life care can do to help the patient live more fully and comfortably till the end comes. This is what has made the idea of hospice and palliative care so appealing to many. As the days pass, the patients and families may become very attached to the hospice professionals who spend time with them. There are many opportunities for staff and patients or families to speak, share stories and get to know each other. All present share a very intense, intimate and special period in their lives. Patients and family alike often have their "guard down" and speak openly about all sorts of things that normally, they'd never share with anyone. It is a time like no other, and people know that. In many societies, there is the idea of "keeping vigil" with the dying, being there for him or her, supporting them as they make the transition from this life to the next.

This is the story of hospice, palliative care, and health care reform. It is also my story, and whether you know it or not, it is your story too, because every family in our nation will be touched in one way or another by hospice, palliative care, or the reforms being implemented. The government plans on having each of us die within hospice (or palliative care) eventually. That means you and your family members. This concerns you!

Most of the public thinks there is one "thing" called hospice all over the country. Mostly, they really don't think about it, and don't know how it's set up or how it works. The hospice industry has carefully promoted this false image of the hospice industry and carefully avoided portraying themselves as separate individual business entities, i.e., "corporations," providing services.

"Hospice is a philosophy!" exclaim some websites (run by hospice business entities). "Hospice is the place" for compassionate care, exclaim many others (business entities). Is it a philosophy? Is it a place? I can tell you that for about thirty years it's been a business! It's corporate! And it's big, getting bigger every year!

Most of the public does not know that "hospice" is not that big, warm, fuzzy thing they imagine when they think of hospice. It's not what they've been led to believe.

Hospice has always been a business aside from the purely volunteer hospices that dominated the field completely in the 1970s. There are still a couple of hundred volunteer hospices in the country, but they are not what we're discussing here. The volunteer hospices in the country do much good, and do not pose the threat that some big hospice corporations do.

In 1983, the federal government implemented the Medicare hospice benefit and that's when all the non-profit (and a very few for-profit) hospice corporations started being created around the country. Some volunteer hospice organizations simply re-formed, incorporated under their state's nonprofit regulations and started providing services while billing to Medicare for reimbursement. For-profit hospice agencies really weren't much of a factor back then. Yet, even non-profit hospice agencies (business entities) take in revenue and pay their staff and administrators salaries.

You would get the impression that there were no problems in hospice as an industry if you considered most of the articles written over the years. There are literally thousands of articles touting the wonders of hospice, the good they do, and how families and patients are so well-served. If you read any paper in the country, you must have seen some of these "feel-good" stories, promoting hospice services. The only problem is that picture is completely unbalanced. Because the major media's editors have chosen to censor the other side of the story for decades, we have chosen to provide the information the public needs.

I remember six years ago when the hospice was dehydrating Terri Schiavo to death. ABC Worldwide radio had contacted me to come on the air and be interviewed about the case. I brought my son along to the WOOD AM Radio station high up in the Monroe Center office building in downtown Grand Rapids, Michigan. It was exciting and upsetting at the same time. The radio technicians told us where to sit and counted down as we "went live" and I was on the air answering a question posed. As soon as the words were out of my mouth, they had Michael Schiavo and George Felos, his attorney, on to counter what I said, though they were not telling the truth, and there was no opportunity given for me to respond and explain that there was abundant proof to confirm what I had said. They didn't want to hear about it. They were just interested in a sound bite, not the truth.

It's similar to the ongoing cover-up in the 1995 bombing of the Murrah Federal Building in Oklahoma City. Everyone who paid attention to the news at the time knows they were looking for "John Doe #2." And then suddenly, they *weren't* looking for "John Doe #2." People forget, but the truth is that the investigative reporter, Jayna Davis, found him fairly quickly, even though the FBI and federal government painted the story that Tim McVeigh and Terry Nichols acted alone. They weren't interested in finding him. In her book, *The Third Terrorist: The Middle East Connection to the Oklahoma City Bombing*, Jayna Davis shares conclusive proof showing that Saddam Hussein's Republican Guard was behind it. It is clear that sometimes what is presented as "reality" by the government and the media is absolutely not.

The realities of hospice are just as "covered-up." Have you read any major newspaper exposé about hospice recently? I'm sure you haven't. Not every agency or facility provides that supportive care the public has been led to believe hospice is about. Not all hospices are managed with an eye on assuring the very highest standards of care for their patients. Some are run as competitive, money-making machines. Some have committed health care fraud. Some do not honor the sanctity of life. These are why I call them "rogue hospices." Rogue hospices are much more common than people think. Most people don't even know they exist. The shocking and unfortunate truth is they do, and we shall see what they have been doing in America and how that affects all of us.

Over the years, I've been interviewed by USA Today, CNN, the Washington Post, Washington Times, Chicago Tribune and many others. Yet in almost all cases, the reporters use me to educate them about hospice and end-of-life care. They question me for hours by phone and email. Then when the article comes out, they quote one

sentence from me, leaving out the major thrust of what I was emphasizing. That's the reality of "news" coverage in many cases. They have editors and an angle on a story they want to print. So, they gather material and then shape it to appear how they want it to appear, not how the reality is.

While there are some wonderful hospices, rogue hospices are something else. Like all other industries, hospice has problems of some sort. Because the mission of hospice is unique and because these patients are among the most vulnerable of all, I believe that the public needs to be informed and to know how to deal with and correct those problems. I do not want another family to go through tragedies that others endured during the most emotionally-charged time of their lives.

After witnessing serious violations of the standards of care at the Hospice of Michigan where I worked, I formed the Hospice Patients Alliance in 1998. We are a nonprofit, all-volunteer, patient advocacy organization, providing the most complete information about hospice and the standards of care on the internet, what services are to be provided, how to get the best care and how to resolve problems when they do occur. Hospice Patients Alliance promotes the type of hospice and palliative care that respects the life of those served, providing the best in professional end-of-life care till a natural death occurs in its own timing.

People often have no idea how to get help when they have real problems with a rogue hospice agency. When problems do arise, hospice administrators and staff have become expert at giving patients and families the supreme "runaround" with evasive answers, stalling techniques and even intimidation techniques to shut them up. Eventually, families search for an organization that can help them and they find us. We give them the answers they need to get the best care for their loved ones.

In my own hospice work, I have been confronted with situations at work where I had to ask myself:

What do you do when you've been shaken to your core by what you've seen, something so profoundly antithetical to everything you believe in? I saw administrators and other staff lie to the patients and families, exploit them for gain and deprive them of needed services.

I had to consider, "what will happen if I do not get involved?" I asked myself, "What will happen if I do not run to the rescue of those who are utterly defenseless?" And if I did run to their rescue, "what price will I pay?" I did act and intervene, and I have paid the price. There are many whistleblowers and patient advocates in the country like me who have paid a steep price for remaining loyal to the duty we owe to our patients. Doors close, career paths change, finances take a hit. Plans are changed.

In 1997, there was the case of Jose Alvarez who had a terminal illness. The only thing Jose wanted was to be able to die at home, and the hospice in Michigan, seeking to gain financially, prevented Jose from staying at home or going home once they manipulated him into their facility to charge extra room and board fees. Jose's family came to all the staff for help. I helped them and they shared their concerns with the public and filed a complaint with the State of Michigan. Their complaint was corroborated by evidence that the Hospice of Michigan had violated the standards by not providing the care needed.

Since then I've received hundreds of calls about all sorts of problems in hospices around the country. Grieving families call and report that hospice staff and physicians actually yelled at them! In many cases, family members have even been banned from being at their own mother's or father's side (or other family members' side), simply because they objected to the patient receiving an overdose of morphine or other un-needed medications. I remember being called by a man who told me that ***he*** was the terminal hospice patient and was afraid they were going to kill him. He had end-stage heart failure, though he was in his late 40s. We talked quite a while a few times, and then I heard nothing more from him. He had told me they were taking away his regular heart medications, thereby making his condition worse. He didn't want to be in hospice. He just wanted to be cared for and allowed to die a natural death when it came, not when they decided he should die.

In many cases, the Adult Protective Service system is even used to intimidate those who truly care about the patient and object to clinically unnecessary or harmful interventions. These can be as common as giving morphine when there is no pain, sedating a patient who is not agitated, depriving the patient of needed medications when they are still benefiting from them or not providing food and fluids as needed when they patient is still benefiting from them. We have received many calls from families who tell us the hospice falsely accused them of being a threat to their own loved one and called APS when they voiced their objections to the death-protocols being implemented at the hospice. So we have those who truly care about the patient being accused of being a threat, and those who hasten death in charge of the agency entrusted to care for the patient!

Back in 2001, Pam Yates called about her son Sean Reynolds who had died in hospice care. Due to a medication error, he ended up having terrible seizures when a needed medication was not given as ordered. Bob Davis of USA Today covered this story he titled "Family sues hospice over son's suffering." The problems in hospice can be from a myriad of causes, too little intervention or medication, too much intervention or medication, inappropriate interventions or medications and so on. Pam, like any mother, suffered terribly as her son came

closer to death and then passed away. She wrote about a spiritual transformation that she underwent in her book, *The Gift of More: Lessons of Faith and Love from a Life Cut Short*, which tells the story in her own words. For those who doubt that miracles can still happen, read Pam Yates' book.

In other cases, staff members have berated family members who request that a patient who is not imminently dying be given food and water, or treatment for a urinary tract infection. Hospice professionals have derided family members for not believing that their loved one had "terminal cancer," because the referring physician ***said*** the patient had "terminal cancer," even though there were no lab results, biopsies or testing of any sort to confirm it, and upon autopsy no cancer at all was found. They yell at family members when they object to strong doses of morphine or sedatives being given when the patient has no uncontrolled pain or agitation.

Most families who experience the callousness, unresponsiveness and sometimes outright cruelty of some hospice administrators and staff are completely shocked. They never expected it and could never have imagined it happening to anyone, let alone to their loved one and their family. Others do not believe hospice staff could ever act this way. Many wonderful nurses and doctors, as well as others, who work with those at the end-of-life are not aware of the havoc and harm being caused by some others in the industry. They cannot imagine anyone doing what they themselves would not do, and they get very upset reading about these realities of the rogue hospices.

Anyone who has seen their own family member die knows how traumatic and upsetting it can be. With good end-of-life care it doesn't have to be that way, but sometimes it is. It is intense, and each family member has to come to grips with their own mortality, the loss of their loved one and the pain experienced when watching someone you love decline in health and die. The last thing they need is to have a palliative care or hospice professional act rudely or worse to them. Adjusting well to the dying and death of a loved one is so important to the mission of end-of-life care services, yet families whose loved one has been hastened to death against their will cannot grieve properly. They are wounded by the victimization of their loved one and suffer endlessly.

Having spoken with hospice staff, administrators, physicians, therapists, patients and families from all over the country for years, I've gained insight into what is really happening in this industry. While there are other leaders in the hospice industry who know what is truly occurring, they are not sharing that information with the public. They know very well how they are turning this industry upside down while maintaining the appearance that nothing has changed except that they are "better and improving every day." They withhold the truth from the public they serve. They won't reveal how the hospice mission has been twisted intentionally into something it was never meant to be. They especially don't share the truth with those hospice leaders and staff who are pro-life. They don't want them to know that they are infiltrating the industry.

If you read the language used by some of the hospice leaders or listen to them speak, you will quickly realize they sound almost exactly like the hospice leaders who remain committed to providing the very best end-of-life care. Probably you'll think they're the "real thing." They're slick and very convincing. Their websites sound like they promote the very best in end-of-life care. If you've ever met a really good con-man, you'll understand what I'm talking about. But these hospice leaders do not go out of their way to condemn the hastened death of the elderly or seriously disabled. They do not commit themselves to promoting the sanctity of life. Their salaries are obscene, beyond what anyone with a conscience could accept knowing that some patients are not getting the care they need so that salary can be paid out.

While the leaders of what I call "rogue" hospices withhold the truth from the public, we do reveal what is going on: the good and the bad. We think it is necessary to reveal the truth. If people are given the necessary information, they are empowered to make the best decisions for themselves and their loved ones. They are also empowered to understand what is really going on with health care reform, end-of-life care and what their own family will face soon if our nation remains on this course. Of course, we've been attacked by those who wish to hide the changes seeping into end-of-life care. We've also been attacked by pro-life hospice leaders and staff who adhere to the original mission we also support. They don't want to admit that any problems exist in the industry or that it has been heavily infiltrated by culture of death professionals with an agenda contrary to the mission they support. These professionals feel threatened by the truth and find ways of explaining away the repeated accounts of wrongdoing at the end-of-life.

Just as our society is experiencing clashes between those with different values and worldviews, the world of hospice is experiencing internal struggles that are completely unknown to the general public. There are actually two diametrically opposing visions of what hospice (and health care in general) should be and what type of services should be provided. Even though there are religious differences, traditional Judeo-Christian, Muslim, Hindu, or Buddhist individuals respect the life of the individual. They expect hospice to allow a natural death in its own timing, and when that is not done, they realize their values are being disregarded (no matter how much "talk" there is in hospice circles about respecting everyone's religious values).

I've received calls from people of several different religions who are horrified by what they've witnessed happen to their own family members. They only too late realize that respect for the sanctity of their loved one's life has

been replaced with a secular utilitarian view, often mixed with an eye toward increased revenue, resulting in a hastened death. For those who think this is an issue only for Christians or Jewish people, the Koran states, for example, "....take not life which Allah has made sacred" (Chapter 6, verse 151)." American physician Mahjabeen Islam, MD states, "there is no confusion about playing God for the Qur'an states clearly that it is God alone that decides the moment and the mode of death."

Whatever the religious faith of the patient, when they first receive word from the physician that they have been diagnosed with a terminal illness, they don't suddenly decide that they want someone to kill them. They are thinking about living, and about the end of living. They're thinking about what death will steal from them, the lost opportunities to be with loved ones, to accomplish goals, to live. If they have faith, they will be thinking a lot about what comes next. For most people, they are thinking about how they might live longer, how to improve their chances, what they can do in the time they have left. The ailing need people around them who support their beliefs and affirm the value of their life.

We need to understand that when decisions about our loved ones' care and future are concerned, those coming from different worldviews and values may arrive at completely different conclusions. Sometimes, the worldview may be a secular, utilitarian one, and that is one of the main problems in how health care is delivered (or not delivered) today. A physician, nurse or even a health insurance company (and its claims adjusters) who respects and values the lives of those being served will provide or allow for better care than those physicians, nurses or health insurance company (and its claims adjusters) who look upon the patient as a number and not a person, as an excuse to bill for services, an opportunity to profit, or even an unwanted cost.

Removing the spiritual element from health care is a dangerous step that has introduced all sorts of problems into the industry. The mission to serve is truly a spiritual mission, and those who are called to serve, serve according to the gifts given to them.

When I went to Raleigh, NC to speak at the 2010 Annual Life Conference, I was asked whether hospice and palliative care is pro-life or culture of death. The short answer is that it can be both, depending upon the hospice agency or palliative care unit and staff providing care. However, the culture of death "flavor" of end-of-life care is becoming much more dominant, and we will see why.

Although a hospice agency, as a business, must assure revenue in order to provide services, when a health care agency such as a hospice views the patient as an opportunity to profit or solely to bring in revenue, it has strayed far from the original mission that was so widely well-received in this country. When the hospice agency is run by a corporation rather than an individual person, it can become unaccountable to the patients it serves. To understand what is happening today in hospice, we need to understand how the hospice movement got started and what has happened to businesses in general.

Three Hospice "Giants"

There are three individuals who have had the greatest impact on end-of-life care in America: Physician Dame Cicely Saunders, Dean of Nursing (at Yale) Florence Wald, RN, MN and Elizabeth Kubler-Ross, MD:

Dame Cicely Saunders is the visionary pioneer who founded the first modern hospice in 1967 in London, England: St. Christopher's Hospice, named after the saint who, legend has it, helped carry travelers to the other side of a dangerous river.

"Born 22 June 1918 in Barnet, Hertfordshire, Dame Cicely trained as a nurse, a medical social worker and finally as a physician. Involved with the care of patients with terminal illness since 1948, she lectured widely on this subject, wrote many articles and contributed to numerous books."

"Dame Cicely founded St Christopher's Hospice in 1967 as the first hospice linking expert pain and symptom control, compassionate care, teaching and clinical research. St Christopher's has been a pioneer in the field of palliative medicine, which is now established worldwide.

"Through her single-minded vision, and the clinical practice and dissemination of her work through St Christopher's teaching and outreach, Dame Cicely has revolutionized the way in which society cares for the ill, the dying and the bereaved. Dame Cicely is recognized as the founder of the modern hospice movement and received many honours and awards for her work.

" .... Dame Cicely Saunders recognized the inadequacy of the care of the dying that was offered in hospitals. So often, patients and families were told that "there was nothing more that could be done" a statement that Dame Cicely refused to accept.

"Throughout her time at St Christopher's her watchword has been "there is so much more to be done." Pioneering research on the use of morphine as an effective drug for pain control was carried out at St Christopher's, along with other detailed studies of new approaches to symptom control. Dame Cicely also understood that a dying person is more than a patient with symptoms to be controlled. She became convinced of the paramount importance of combining excellent medical and nursing care with "holistic" support that recognized practical, emotional, social, and spiritual need. She saw the dying person and the family as the unit of care and developed bereavement services at St Christopher's Hospice to extend support beyond the death of the patient."

Saunders was dedicated to improving care for the dying and their families. She recognized the value in a person's life up till the very end, and her vision of end-of-life care is what was so inspiring to many Americans who came to embrace the new way of caring for the dying.

And so, Americans have enthusiastically accepted hospice as it was envisioned by and practiced by Dame Cicely Saunders: a service that relieves suffering at the end-of-life but does not hasten death in any manner.

Elizabeth Kubler-Ross & Stages of Grieving

No discussion of end-of-life care and hospice would be even marginally complete without mentioning Elizabeth Kubler-Ross's contribution to society's popular understanding of the grieving process. While working at Billings Hospital in Chicago, The Swiss psychiatrist wrote her classic book, *On Death and Dying*, which describes five stages of grieving at the end-of-life: denial, anger, bargaining, depression, and acceptance. Grief is something that must be confronted and processed by the patient, the family and friends. Understanding the sometimes intense emotions being experienced and the stages some patients go through may be helpful for all those working with the dying and their families.

> Elisabeth Kubler-Ross' crusade to convince Americans that the dying should be honored, rather than ignored, changed the last days of millions.

Her 1969 classic book, *On Death and Dying*, and her advocacy work following it, gave the public permission to talk about death and grieving and taught doctors that the terminally ill should not be neglected.

[Obituary: "Her work brought dignity to the dying" - August 26, 2004 *St. Petersburg Times*]

Kubler-Ross's work helped professionals be much more sensitive to the range of emotions patients may go through as they near death. Her work helped our society think more about the quality of life of the patient going through the dying process. Although she observed "stages" terminally ill ***patients*** experienced, these stages were later applied to *families* grieving the loss of their loved one.

Although her work was widely accepted, recent studies show that not all families go through her now-classic "five stages" of grieving. A 2007 Journal of the American Medical Association article, "An Empirical Examination of the Stage Theory of Grief" reported that Yale researchers found that most bereaved individuals actually accept the death of their loved one from the beginning and did not necessarily go through "anger or depression," two of Kubler-Ross's stages. See *Time Magazine*, January 24, 2011.

It may be that the widely accepted application of Kubler-Ross's stages of grief (that some *patients* undergo), to the grief of the bereaved, rather than just for the patient himself, is a mistaken approach not borne out by current research. In any case, hospices and palliative care units often provide bereavement counseling services, as do funeral homes and grief counseling centers that have sprung up. Bereavement counseling has been required by government regulations in all licensed hospices for decades, yet its provision may be most needed by the 15% or so who experience "prolonged grief disorder." Based on some of the latest research, most adjust quite well over time. A 2002 study published in *Journal of Personality and Social Psychology* indicated that for most of us, the worst symptoms associated with grieving diminish within six months. ["Good News About Grief," *Time Magazine*, January 24, 2011]

Florence Wald, RN, MN

The third "giant" influence on hospice in America is certainly not "third" in her impact. In 1974, Florence Wald, RN, MN stepped down as Dean of Yale University School of Nursing to create the Connecticut Hospice, the first American hospice. From that time, Wald devoted her life to hospice in America. Though she wasn't the only worker in the field, she is the most famous leader of the modern American hospice movement. As productive and influential as she was, she sharply disagreed with Saunders' life-affirming approach to end-of-life care and said:

> "**I know that I differ from Cicely Saunders, who is very much against assisted suicide. I disagree with her view on the basis that there are cases in which either the pain or the debilitation the patient is experiencing is more than can be borne, whether it be economically, physically, emotionally, or socially. For this reason, I feel a range of options should be available to the patient, and this should include assisted suicide.**"
>
> [Emphasis added. From: "Hospice Care in the United States: A Conversation With Florence S. Wald"
> M.J. Friedrich *JAMA*. 1999;281(18):1683-1685]

Think about that for a minute! **What does it mean that assisted-suicide should be available to patients for *economic* reasons?** Whose economics? Surely not the patient's. So, is assisted-suicide supposed to be made available for society's economic needs? Or the family's (who stand to inherit the estate) economic needs? We need to let that sink in and really understand the significance of her revealing statement.

The American people have had no idea that the most prominent leader of hospice ***in America***, Florence Wald, was pro-euthanasia and pro-assisted suicide. Wald's pro-euthanasia flavor of hospice is what is being delivered in many parts of this country, though many hospice professionals will strongly deny that.

Those who do remain faithful to Saunders life-affirming vision, who relieve the suffering of the dying until a natural death occurs in its own timing, will say they do not hasten death. Those who do hasten death will say the

same. The public often has no way of knowing which type of hospice their loved one will experience.

So, here you have two leaders at opposite ends of the spectrum regarding "assisting suicide" or "imposing death," etc. Saunders and Wald may have agreed on the rest of what hospice should do, but adding in a "service" to hasten death is antithetical to everything Saunders cared about and is antithetical to the very mission of hospice. If you accept the idea of hastening death, imposing death at the end-of-life, you will not make providing good services the top priority, and if you do provide services, who decides when "time is up," and services end, and assisted suicide begins?

Many hospice leaders have spoken out and voiced their opposition to assisted-suicide or euthanasia, because if you kill the patient, you clearly can't care for them in hospice while allowing a natural death in its own timing. Hospices for decades would loudly proclaim that they never hasten death. The facts today tell a different story, as we shall see.

There is one practice that is sweeping through hospices and being very widely used: terminal or palliative sedation. This involves permanently sedating the patient, allowing the patient to dehydrate and die. It looks outwardly peaceful as the patient is made to sleep in a medically-induced coma, but the patient's death is the result.

Terminally-sedating the patient is something that can be done in hospice that doesn't outwardly appear like euthanasia where a lethal agent is given. It also doesn't outwardly appear like assisted suicide where a patient takes a lethal medication prescribed by a physician. Terminal sedation is more subtle and deceptive. It allows the hospice to keep a patient for a week or two and bill for services rendered until death occurs. With the baby-boomer generation entering the target zone (suitable for hospice), there is always another patient waiting in the wings to be served.

Surprising to many, terminal, palliative or "total" sedation is so commonly used today to hasten death (a method of stealth euthanasia) that it is defined by the pro-euthanasia Compassion and Choices's "*Good to Go Resource Guide*" glossary. They define it as: "the continuous administration of medication to relieve severe, intractable symptoms that cannot be controlled while keeping the patient conscious. This treatment renders the patient unconscious and relieves suffering by inducing an artificial coma. The unconscious state is maintained until death occurs."

Saunders' caring, life-affirming view is the "flavor" of hospice marketed to the public by all hospices. It's the public image of hospice and palliative care. However, there are hospices that impose death through terminal sedation or other means, like wolves in sheep's clothing; these hospices are dangerous, even lethal to approach. Once admitted to these hospices, it can be almost impossible to get a patient out. They pose as caring hospice but provide treatment with an agenda that blindsides the patient and family and results in an untimely death, to the ever-lasting regret of those family members that cared.

Hospices that remain true to the life-affirming mission will not hesitate to proclaim the sanctity of life while they intervene to relieve suffering at the end-of-life. Hospices that are willing to hasten death normally do not speak about the sanctity of life and they do not teach their staff to never impose death, in fact, their training results in quite the opposite.

Hospice as the industry has marketed itself as a vague, compassionate "thing" that exists all over the country, filled with angelic hospice staff that care and work the kind of wonders that Cicely Saunders encouraged. And the staff at many hospices do care. There are thousands of articles and hundreds of books about the good work these staff do. Many patients and families have benefited from them. They have Cicely Saunders to thank for that. I, and others who work with the dying and their families, we understand that to work in this field is a privilege and a sacred trust.

This is the mission so many of us care about: relieving the many forms of suffering that occur at the end-of-life, supporting the patient and family on many levels, supporting the family even after death occurs, and especially, affirming the sanctity of that life all the way till the very end when death occurs naturally in its own timing. And those who have experienced this type of hospice are deeply grateful.

However, what will happen with health care reform? Economic pressures push government officials to try to reduce health-care spending through rationing. Rationing care on a utilitarian basis means denial of certain types of care which will precipitate a medical crisis for many, especially the elderly. Where will these elderly end up? Hospice and palliative care units. Hospice corporations already in existence are gearing up for increased revenue as additional formerly chronically-ill, non-terminal patients are sent their way. Each year, new hospices are springing up all over the country to enroll them.

The Hospice Interdisciplinary Team Approach to End-of-Life Care

Hospice care has pioneered the use of an interdisciplinary approach to providing health care. Accessing the expertise of a team of professionals, the patient's needs are discussed from a multi-disciplinary perspective and a plan of care is created and updated on a weekly basis. The interdisciplinary team (the "IDT") is composed of nurses (both registered nurses and licensed practical nurses), home health aides, home service aides, medical social workers, chaplains, counselors, dietitians, therapists, volunteers, hospice medical director (supervision of your medical care), and the pharmacist (if the hospice has its own pharmacy and pharmacist).

Any member of the hospice IDT can bring up concerns at the weekly IDT meetings and members of the team can brainstorm to find solutions to the problems that are confronting the patient and their family. While the patient's own attending physician in the community gives the orders for medications and treatments, the hospice medical director reviews these orders and can consult with the attending physician to make sure that the patient's needs are met, sometimes educating the local physician on better ways of relieving pain or other extreme symptoms that arise at the end-of-life period.

Not all physicians have experience in treating extreme end-of-life symptoms, even though most think that they can handle it. It sometimes causes terrible problems for the patients when a physician without adequate training in pain management attempts to find the right dosage for the patient and does not know the standard protocols for titrating (adjusting) these opioid medications. Nurses are often extremely frustrated if a physician refuses to order adequate pain medication.

While the team approach has its advantages, it also has some disadvantages. In a rogue hospice where corners are cut, services are not always provided and revenue is often the first priority, the team meeting can be an opportunity to intimidate or indoctrinate staff into "how things are done" at that hospice. Some members may be afraid to speak up after experiencing disapproval from the team. Prolife nurses who object to a patient getting unnecessary medications have found themselves the target of retaliation, harassment, even false accusations or outright termination. There is a wide variation in how receptive management and other team members may be to objections about the way care is being provided in the end-of-life care setting.

If the hospice management, the interdisciplinary team and especially the medical director do not respect the sanctity of life, they may prevent treatment that will help the patient live while initiating a variety of treatment decisions that will tend to hasten death. Some interdisciplinary team meetings are merely a formality to rubber-stamp whatever the director decides. For example, commonly prescribed medications that stabilize the patient are commonly removed prematurely even though the patient is still deriving benefit from them. This is all part of "manipulating death" that shortens the lives of patients.

Volunteer, Nonprofit and For-profit Hospice Corporations

Hospice began as a completely volunteer effort in America. The first volunteer hospices were staffed by doctors, nurses, social workers and lay people who simply wished to provide care for the dying that was focused in a wholistic way to relieve the suffering at the end-of-life. They were inspired by the work of Dame Cicely Saunders and recognized that the traditional health care system was simply not responsive to the needs of the patients. They saw that it often failed to provide good pain relief, and sometimes used the patient to prove what medicine could do in an alienating acute care hospital setting, rather than focusing on respecting the patient's own wishes. They tried to bring about an awakened insight into the needs of the dying, and over time, their efforts succeeded.

Currently, the volunteer hospices belong to the Volunteer Hospice Network, which:

> "is an affinity group of volunteer organizations that provide a wide variety of free services to the seriously and terminally ill, their families and those who are grieving. VHN members include volunteer hospices, grief support programs, and many other volunteer groups that care for the dying, regardless of whether they are called "hospice." A few volunteer hospices provide medical care but most focus on practical, respite, emotional and bereavement support. VHN values include respect for diversity, love of community and protection of local solutions. The VHN serves as a central communication link among these organizations - the only Forum at the national level devoted exclusively to volunteer hospices and their special needs."

Over time, volunteer hospice leaders and some of the first hospice corporations in America realized that to be able to serve a larger segment of the community, and to offer all that modern medical science can offer, they would need to operate with reliable funding sources (rather than operating on a donation-only basis as volunteer hospices do). Several hospices and their leaders worked with the government to convince them to fund end-of-life services through hospice agencies. One such hospice,

> "Vitas [Hospice] was instrumental in leading a bipartisan effort to add hospice to the healthcare payment system. As a result of these efforts, Medicare pays for hospice services. Many states have established Medicaid coverage for hospice, and virtually all private insurers and managed care plans provide coverage for hospice care."

With the implementation of the Medicare Hospice Benefit in 1983, federal funding for hospice services to the dying was assured. Studies on the financial benefits of using hospice services were completed, demonstrating that overall, hospice services result in significant reductions in expenditures by the federal government. Some volunteer hospices incorporated as nonprofit hospice agencies under their state nonprofit laws while other volunteer hospices continued to serve on a purely volunteer basis. Nonprofit hospice corporations began to spread all over the country. Over time, some for-profit hospice corporations also were formed. While the legal structure is different for the nonprofit and the for-profit agencies, the mission remains the same and the federal standards of care are the same.

"Palliative Care" and Its Approach to End-of-Life Care

Well, not only are the people confused about what hospice is, they are even more confused about what palliative care is. I've heard from people who say hospice is the greatest thing for the dying, while others say that hospice is evil and killed their loved one. Same thing for palliative care. Hospice is not the same as palliative care, but they are very closely associated.

Really, hospice is the place (whether in a home or facility) where a certain approach to caring for the dying is provided. That approach involves the total philosophical mission presented by Dame Cicely Saunders. It is an approach that affirms the life of the patient, though they are in the end-stages of a terminal illness, and it promotes the relief of distressing symptoms throughout, until a death occurs in its own natural timing.

Saunders' basic message can be summed up:

> **"You matter because you are you, and you matter to the end of your life. We will do all we can not only to help you die peacefully, but also to live until you die."**

This is the type of care that encourages, cares for and supports those nearing death, and warms the hearts of those who think about how to care for the dying.

However, palliative care is not exclusively practiced in a hospice. It's not a place or a philosophy. It is a niche within the field of medicine that specializes in the relief of distressing symptoms of any serious illness at any stage of life, whether of the terminally ill or not. The World Health Organization states that:

> "Palliative care is an approach that improves the quality of life of patients and their families facing the problem associated with life-threatening illness, through the prevention and relief of suffering by means of early identification and impeccable assessment and treatment of pain and other problems, physical, psychosocial and spiritual."

Palliative medicine is the field of medicine that most effectively empowers hospice professionals to be able to relieve the suffering of the dying. Palliative medicine guides the administration of medications that can relieve pain, swelling, inflammation, seizures, spasms, fever, intestinal difficulties, respiratory afflictions and many other problems encountered at the end-of-life. It is clinically precise and is administered uniquely for each and every patient that is served.

That being said, there is something else masquerading as palliative care just as there is something else masquerading as hospice care in this country. When every patient in a facility is "sedated, because all patients who come there are agitated" (as I've heard more than once from staff around the country), that is not palliative care or the clinically-precise application of palliative medicine. It is a perversion of hospice as well as palliative care. It is a deliberate railroading of patients to an imposed death, a hastened death through what is called "palliative" or "terminal" sedation.

Many of the state organizations of hospices in the United States changed their names to "Name of State -- state-hospice and palliative care organization." This move reflects the reality that not all end-of-life care is provided in an actual hospice agency. Sometimes, care is provided in specially designated palliative care areas of a hospital or nursing home.

There has been a lengthy effort to transform and twist the way death is perceived by the public and how Americans die. The patient, loving, reverent approach that Dame Cicely Saunders practiced and gave to the world was too religious and too "pro-life" for the leaders of the industry in this country, because they did not and do not adhere to Judeo-Christian values, traditional American values, and are not pro-life in any sense.

Many leaders at the top of the American hospice industry are not like Dame Cicely Saunders, though they pretend to be. They are utilitarians mostly concerned with expanding the industry's influence and making profit in the end-of-life care arena. The leaders at the top of the National Hospice & Palliative Care Organization ("NHPCO") are the Euthanasia Society of America's heirs and benefactors philosophically. The NHPCO is legally and corporately the final successor organization of the Euthanasia Society in the very strictest sense of the terms.

From Euthanasia Society of America to the National Hospice & Palliative Care Organization (1938-2004)

1938	Euthanasia Society of America formed to legalize euthanasia
1967	Euthanasia Educational Fund created: soon renamed the Euthanasia Educational Council (EEC) (Living Wills created to "promote discussion of euthanasia")
1974	The Connecticut Hospice (first American hospice) formed by assisted-suicide proponent, Florence Wald, RN, MSN, FAAN (and honorary doctorate from Yale), considered the most influential force in the development of hospice in *America*
1975	Euthanasia Society of America changed its name to the Society for the Right to Die
1978	National Hospice Organization (NHO) formed
1979	Euthanasia Educational Council became known as Concern for Dying
1990	Society for the Right to Die + Concern for Dying announce merger and become in 1991 the
1991	"National Council for Death and Dying" ... later in yr. name changed to Choice in Dying
1995	Robert Woods Johnson Foundation begins Last Acts Program
2000	National Hospice Organization name-change to National Hospice & Palliative Care Organization (NHPCO); Partnership for Caring becomes national program office of Last Acts
2001	Choice in Dying merges into Partnership for Caring (March 14, 2001)
2004	(January) Partnership for Caring and Last Acts merge to form Last Acts Partnership
2004	(later in year) Last Acts Partnership closes (due to financial "anomalies"), National Hospice & Palliative Care Organization acquires all legal rights and copyrights of Last Acts Partnership and becomes successor organization to it and all of its predecessors (The Euthanasia Soc of America ....) and forms "Caring Connections" a program of the NHPCO and continues services of predecessors: all the advance care planning resources: (advanced directives, living wills, advanced care planning). There is no further need for "Euthanasia Society of America" (or its successors) as the NHPCO is carrying on its work.
2010	NHPCO lobbies to have Health Care Reform Law include language instructing physicians to counsel patients about "advanced care planning," to encourage advanced directives, living wills, P.O.L.S.T. forms, hospice & palliative care referrals. This language is first included, then taken out due to public outcry that government should not insert itself between physician and patient. Language is re-inserted by administrator of Centers for Medicare & Medicaid Services (Donald Berwick, MD)
2011	(Jan 2011) Language is removed again due to public outcry.

"This advanced care planning language, and all the forms created by the Euth Soc of Amer & its successor organizations, are designed to limit care and will surely be re-introduced sometime in the not too distant future."

– Ron Panzer, Pres. Of Hospice Patients Alliance

Dates of time-line information:	International Task Force (now "Patients Rights Council") http://www.internationaltaskforce.org/rpt2005_I.htm Caring Connections Timeline (NHPCO): http://www.caringinfo.org/i4a/pages/index.cfm?pageid=3402 Timeline provided by Hospice Patients Alliance, Inc. (2011) www.hospicepatients.org

It is this direct lineage of euthanasia-supporting organizations that gave us the Advance Directives and the Living Wills, and now the P.O.L.S.T. forms (Physician Orders for [Limiting] Life-Sustaining Treatment) which are spreading across the country.

Anyone who doubts that the Living Will which is urged upon all Americans comes from the Euthanasia Society can read the main article proposing its adoption written by attorney, Luis Kutner in 1969 entitled, "Due Process of Euthanasia: The Living Will, A Proposal," [Indiana Law Journal v. 44, 1969, p. 549] There you have it! The Living Will was written to create a due process of euthanasia. In addition, in 1970, the Euthanasia Society of America distributed 60,000 living wills. They knew where they were leading American society, even if Americans did not!

What is a patient's "due process of euthanasia" but having the government create a patient right under the law to be medically-killed. In other words, Kutner's intention in creating the Living Will was to provide a way that governmental authorities could allow a form of euthanasia. The living wills were "sold" to the public as patients

determining what type of care they would or would not want, but their main effect is to limit care that might allow them to live longer, an ***incremental step*** toward open euthanasia.

Even though the public today never thinks they are agreeing to "euthanasia" when they make out a Living Will, the effect of filling one out can interfere with getting treatment if you change your mind and want care. For example, some physicians will "write off" patients who have a Do Not Resuscitate order or a Living Will and simply provide "comfort care" while refusing to treat easily-treated infections. Not treating such infections results in an early death.

While "palliative care" in its purest form is made possible by advances in medical science and practice and is applied to relieve suffering at any stage of life, there are palliative care leaders who seek to use this newer specialty within medical practice to further an agenda that takes our society further away from affirming the value of human life and "doing no harm." Ione Whitlock of The LifeTree Organization tells us that:

> "Thanks to Big Death - a collection of heavily funded non-profit hospice and palliative care groups - the line between palliative care (pain relief; symptom management) and imposed death has become blurred."

Transitions in Business

Understanding what is happening in hospice and end-of-life care today can only be fully understood by considering how businesses have evolved over time. Today's hospice agencies are corporate business entities, whether for-profit or nonprofit. The change from personally-owned businesses to corporately-run businesses does affect how end-of-life care is provided.

We all know that through the years people bought from local farmers, local markets, and local shops. With industrialization came the ability to produce more goods, sometimes better goods, and cheaper goods. Buyers flocked to buy the cheaper goods. However, as a result, many small shopkeepers and makers of goods went out of business. "Progress." They had to adapt to survive. Things changed.

Over time local farmers, markets, craftsmen and shops became bigger local shops, bigger groups of craftsmen, bigger farms, but they were still local. If a craftsman made shoddy goods, you could always go down the street to the other craftsmen for quality work. Good quality work was (and still is in many cases) rewarded by people buying those goods, foods, and services.

Competition among different providers of goods and services resulted in efforts to maintain high standards. Providers with good values and integrity keep to those standards while still trying to find ways to make things, grow food, serve at a lower price. Why not? Lower prices bring more buyers, and eventually more profit if it is done right. Nothing wrong with that -- everyone's happy.

When everyone's generally following moral, ethical guidelines, it works well. Those who violate the laws and standards eventually get caught, exposed, and punished. It's a self-correcting system. Small or big, the providers of good services or products are rewarded and the providers of lower quality are not. We've all heard this before. But what's this got to do with you? Or me? Or hospice? Plenty.

What happens if the society and providers of goods and services no longer care about the quality of what they provide, or even about dealing honestly? What if all they care about is profit? If they are a monopoly, the only source of what they have to sell, they can raise their prices, lower their quality and people will have to buy what they can get from them. They will suffer exploitation without remedy, at least for a while. And we all know that has happened at times, for ages.

What if there's no monopoly, but many or most of the providers no longer care about top quality goods? The quality available goes down. People won't be able to buy the highest quality goods or services anymore except ordering it at a high price perhaps from afar, if what they want is still available somewhere.

When a business, farm or shop is run and owned by an individual person or small group of persons, they are

more directly interested in what the customer wants. They are more likely to be sensitive to complaints and want to create satisfied customers with every business transaction.

However, when the businesses are no longer controlled by individual persons, but are run by a board of directors and the business is no longer the responsibility of one man or woman (or a small group of individuals) decisions may be made for different reasons. If the businesses become legal entities with a life of their own, corporations that get funding from investors who buy stock in the corporation, the corporation's administrators no longer answer directly to the customers. The administrators answer to the stockholders, even though they will say, "the customer always comes first."

The corporation is loyal to and controlled by what the investors, or usually the most powerful investors, want. The investors' goal is a return on their investment. How much do they want and how soon do they want it? Do they want long-term growth or short-term growth? If they want short-term growth, do they care so much about it that they are willing to let the corporation's agents provide fewer services or goods, lower quality services or goods, even cheat, steal, commit fraud or worse?

If you've gotten this far, you may still be wondering what this has to do with end-of-life care, hospice or the dying. Good question!

When the hospice corporation is for-profit, clearly the investors' eye on profit controls many decisions. This leads to cost-cutting, denial of services to patients and many problems in the end-of-life care setting, and more hospices are now run by for-profit corporations than nonprofit! When the hospice corporation is nonprofit, many problems can still arise. The hospice corporation's administrators may be there for reasons other than serving the dying, as we shall see.

In areas that have a state-limited number of hospice providers for any one geographical region, the hospice corporation has a virtual monopoly. For example, in states like Florida, there is a "certificate of need" system where the state determines how many hospices may operate in one area. Often, only one hospice is "certified" to conduct business in an area. That state-determined monopoly status allows the hospice to do things it would not do if it had competition.

On the other hand, in states where there is no "certificate of need" system, the state allows as many hospices in as wish to operate, sometimes as many as 60 hospices in a metropolitan area. Competition for patients is fierce, something the public never sees. That competition for business dollars has many consequences, often damaging to small hospices with greater dedication to the mission of hospice as envisioned by Dame Cicely Saunders, the mission people expect to be reflected in the services provided to their loved one.

II - Hospice Today

The Business of Hospice

The largest and incredibly profitable hospice corporations don't provide hospice services the same way as those who run hospices with a real dedication to the mission. Many of the CEOs of very large hospice corporations have expanded their size by using cut-throat tactics that shut out smaller hospices, sometimes stealing patients from them, sometimes putting them out of business. Some are being destroyed by shutting them out of hospice referrals or being bought up by the larger hospice corporations.

One way of "cornering" the market in an area is to find a way to get more referrals or to "grab" patients before other hospice agencies have a chance to enroll them. I've repeatedly been told about some of these big hospices placing hospice admission nurses right in the halls of acute care hospitals, literally "trolling" for terminally ill patients to enroll.

You might think that the HIPAA Privacy Rule would prevent a hospice nurse from accessing information that her hospice is not involved in and that she does not have a direct professional relationship with; you would be wrong. There are hospitals allowing hospice nurses to access records and know who is likely to be discharged to a hospice, and these trolling hospice admission nurses scoop them up for the big hospice they serve, even though the patient has the right to choose their own hospice.

Physicians may refer their hospitalized patient to a particular hospice because it provides really good end-of-life care, and what happens? The family that has been told a hospice representative will show up at the hospital mistakenly thinks that there is only one "thing" called "hospice." When the big-hospice agency nurse arrives, the

family thinks she is from the hospice the physician wanted them to go to and signs their loved one up with the wrong hospice. This happens a lot, and many hospice administrators know about this scam.

Competition can really be fierce for hospice patients. That's what Hospice of the Sunrise Shore's CEO, Gerry Habermehl told me back in 1998. I put Chuck Babcock, investigative reporter for the *Washington Post* in touch with Gerry and this is what he wrote back in 1998:

> "... an aging U.S. population and the financial pressures of modern health care have brought the marketing tactics of corporate America into the cancer ward and cardiology unit."
>
> "Things have changed so much in hospice since I started 10 1/2 years ago," said Geraldyne Habermehl, manager of Hospice of the Sunrise Shore in Alpena, Michigan. "It was pure hospice then. Now it's dog-eat-dog, dirty, competitive fighting. It was a service thing before. Now it's a money deal."
>
> The "money deal"--which has resulted in a doubling of Medicare payments for hospice care in the past four years--has lured increasing numbers of for-profit operations to a field that once was universally non-profit...."

Babcock also wrote about Vitas' marketing efforts:

> "Each patient also means money for ... nearly 100 Vitas agents earning commissions by recruiting the doomed."

Vitas said that they had discontinued the practice of paying agents finder's fees for bringing in new dying patients.

> ["Hospices Big Business, Thanks to Medicare" "Exploitation of Some Patients is Alleged" June 14, 1998]

The 1998 *Washington Post* article continues:

> "Small Operators at Risk
>
> Darla Schueth [a small hospice's administrator] views change in the hospice business from a somewhat different perspective than Westbrook [head of Vitas Hospice, the largest for-profit hospice corporation], with his 4,500 patients a day and operations in nine states. As executive director of Hospice Care of D.C., Schueth is struggling to stay in business as her patient census has ebbed in recent years by more than half, to about 40. Even as hospice care grows in the United States, competition for patients and the federal money they bring in, "is driving small hospices out of business," she said.
>
> Likewise, Ken Nicholls and Pat Kelley of the Montgomery Hospice Society said they have seen their average patient load dwindle to about 50 a day. The Montgomery hospice, begun by volunteers in a church basement in 1981, is building an in-patient facility to complement at home service. But competition continues to increase; the Maryland licensing board has approved four new hospices for Montgomery County, three of them for-profit.
>
> Westbrook believes economies of scale are necessary to make hospice care viable. "You can't cover costs if you have under 75 to 80 patients a day," he said. "Most hospices are under 50. A lot of them are being subsidized by philanthropic dollars."
>
> Vistacare's Smith agreed. The hospice field, he said, has been "largely filled with moms and pops, good hearted, wonderful people who lack' the capital or information systems" needed -- and who are vulnerable to competition from bigger operations.
>
> Andrew Parker of American Hospice Management said the for-profits will lead a necessary consolidation in the industry. A brochure from Parker's company states: "Hospice represents an excellent opportunity for providers in many areas of the country to enhance revenue, expand service profiles, and conserve resources." The key to making money in hospice is "volume, volume, volume," Parker says.
>
> "The whole environment of health care has changed; dollars are being squeezed," said David English, president of Hospice of Northern Virginia, the largest in greater Washington, with more than 350 patients. "Each institution is trying to maximize its revenue, hold onto the patient a little

bit longer."

> That means competition among hospitals, physicians, nursing homes and hospices for the cash the desperately ill can bring in. In some complicated cases, including those requiring in-patient care, the federal hospice reimbursement rate is more than $400 a day."

That was then in 1998. In fiscal year 2009 the hospice reimbursements were:
$622.66 for "general in-patient" level of care, routine home care was reimbursed at $139.97, inpatient respite care at $144.79 and continuous care in the home at $816.94

For good reason: the continuous care in the home requires that an R.N. or L.P.N. provide care for the patient one-half of the hours the continuous care team is in the home, anywhere from 8 to 24 hours a day. Patients who are placed in the higher levels of care demand much more services, because they have extreme symptoms which are uncontrolled. The greater intensity of care helps get those symptoms back under control and costs a lot more to provide.

However, some hospices have refused to provide the required continuous care level of care even though they had all the staff to provide that care. After the Alvarez family filed a public complaint to express their concerns and later expressed their desire to speak with reporters, I put Babcock in touch with Jose Alvarez' family. The family's goal in going public was to prevent such problems from happening to other families in the future. Babcock interviewed Jose's family and wrote:

> "Carole Alvarez of Grand Rapids, Michigan, for example, said she felt anger and guilt upon learning, too late, that Hospice of Michigan ... could have provided round-the-clock nursing service at home to her late husband, Jose, who had wanted to die there rather than in an institution. "I just broke down and started crying, asking why I didn't explore it more. I trusted them so much," Alvarez said in an interview.
>
> "Barbara Lewis, a spokeswoman for Hospice of Michigan, said the company erred in not making the service available. The [U.S. Dept. Of] HHS Inspector General is investigating several complaints against the company, according to documents."

"Erred?" The hospice in Michigan purposely refused to provide care in the home in order to bolster their financial status. Jose Alvarez's family wanted the public to know what happened to them and wrote:

> "When the hospice staff came out, they told us that Jose was so sick that they had to take him to their facility. Jose said he wanted to stay at home, and we begged the hospice to try to keep him home with us. Couldn't they bring some nurses in the home, like we had heard they do? "No," they said. They had to bring him to the hospice's own facility, because there were "no nurses available" to take care of him at home. We had no choice but to move him to the facility, ...where he didn't want to be, where he didn't want to go."
>
> ".... Every day at the hospice care facility, Jose begged to go home. "Let me go home," he said, over and over. But no one at the hospice did anything to bring him home. At least, until we spoke with one nurse [Ron Panzer]. He listened and told us he'd ask the hospice management what they could do to bring Jose home. We wrote a letter which was given to the hospice management and placed in the chart as well."
>
> "But the hospice management never responded. They ignored us, and ignored Jose's wish to go home, even though he begged to go home every day. Did the hospice management care? No, not at all."

The hospice not only ignored the family and Jose, they ignored me even after I directly confronted them and questioned their illegal policy. I simply asked them to follow the standards of care within hospice that allow the patient to choose for himself. Dying at home is very important to many patients. Carole Alvarez was devastated and told the *Washington Post*:

> "We felt terrible that we couldn't bring Jose home. And later we learned that the hospice had lied to us! Because Jose's symptoms were so severe, the hospice was required to help us at home and try to control his symptoms, but they never tried at all. Of course, now we know that they were billing for room and board at their facility and getting money from our insurance company for the hospice services too. It was all about money, nothing about what was right for Jose."

In Jose's case, the hospice in Michigan was making sure to keep all their beds filled at their two free-standing facilities so they could charge for room and board there. In addition, they could bill at the higher rates for patients with uncontrolled severe symptoms (either "continuous care" or "general inpatient" level of care). The

hospice was attempting to acquire funds they had been ordered to repay Medicare due to past "inappropriate billing" (fraud) they had committed.

When they told Jose Alvarez and his family "there are no nurses" available for continuous care at home, they lied. I was on the continuous care team and we all knew we were available to provide care in the patient's home. It really bothered me that the hospice in Michigan cared nothing for the standards of care or the patients.

Well, money is what allows a hospice to provide services. Problems arise when money becomes the first priority and service comes second. Aside from billing for services rendered, hospices often use fundraising campaigns to bolster their revenue. Nonprofit and for-profit hospices accept donations and bequests from the public. "Donate to hospice." "Support hospice." "Hospice: compassionate care."... That's what the public hears. They don't hear "Donate to this ***business*** "Hospice of the so-and-so Region." The public doesn't know where all the money goes or how it is used!

Of course, those hospices that do provide the full range of required and needed services absolutely need those donations to help provide the best care. Many charitable nonprofit hospices also take in patients who do not have health insurance and cannot pay for the services. Donating to these charitable hospices helps them provide care for the most needy.

But hospice administrators who are in it for the money don't advertise that the public's donations, "go to support the administrators of this business, 'Hospice of the so-and so Region." Top administrators can use contributions to help themselves to $200,000 or $300,000 or more as their annual salary, plus benefits and other perks. I know of administrators that not only get the big bucks, they get all the health insurance, retirement benefits, fancy cars and much more, and these are CEOs of "non"-profit hospice agencies!

For example, Hospice of the Florida Suncoast, Inc. ("Suncoast Hospice"), the largest nonprofit hospice in the U.S., reports it paid $320,347 in 2009 to its CEO, Mary Labyak.

The Hospice of Michigan, Inc., the second largest nonprofit hospice in the U.S., reports it paid $447,008 in 2009 to its CEO, Dorothy Deremo.

Hospice of the Western Reserve, Inc., the third largest nonprofit hospice in the U.S., reports it paid $323,740 in 2008 to its CEO, David Simpson.

Clearly, hospice is big business. We still hear about hospices that provide doctors with incentives of various sorts to refer patients to that hospice exclusively, just like pharmaceutical companies "wine and dine" physicians or give them all sorts of gifts, paid seminars and trips in efforts to get them to prescribe certain medications. These are forms of kickbacks and in many cases are not acceptable incentives and are not legal. Would you want your loved one to be referred to a particular hospice just because the hospice was paying your physician to do so?

You get the idea. Never in a thousand years would these hospices want the public to know about these obscene salaries. At $25 per donation each, it might take about 10,000 - 17,000 people to donate enough just to pay one of these CEO's salary! Just think about that when you think of donating to these hospices! Or willing your estate

to them. Where is your money really going to? Well, now we know.

Let's get a reality check here: whether for-profit or nonprofit, the top administrators at many big hospice businesses are paid hundreds of thousands of dollars each year. But the public doesn't have a clue. The hospice agencies that really need the donations most are the nonprofit hospices that affirm the sanctity of life, abide by the standards of care and provide all the services the patients really need. There are some smaller for-profit hospices that work hard to provide good care, but not all hospices do that. Several of the really large for-profit and nonprofit hospice corporations have been found to be committing Medicare fraud by the Justice Department.

Even though hospice corporations take in donations, they are funded mostly by the federal government's Medicare and state Medicaid programs, with much less coming from private health insurance. Why would the federal government do that? Because "hospice" saves big bucks over acute hospital care. This has been proved many, many times, study after study. Hospice lobbyists brag about that to the feds so they can keep the funding flowing in:

The biggest hospice industry lobbying group is the National Hospice & Palliative Care Organization. They write:

> "Does Hospice Save Money?"
>
> "Findings of a major study demonstrated that hospice services save money for Medicare and bring quality care to patients with life-limiting illness and their families. Researchers at Duke University found that hospice reduced Medicare costs by an average of $2,309 per hospice patient. Additionally, the study found that Medicare costs would be reduced for 7 out of 10 hospice recipients if hospice was used for a longer period of time. ...." [National Hospice & Palliative Care Organization "NHPCO Facts & Figures: Hospice Care in America 2010" Taylor DH Jr, Ostermann J, Van Houtven CH, Tulsky JA, Steinhauser K. What length of hospice use maximizes reduction in medical expenditures near death in the U.S. Medicare program? Soc Sci Med. 2007 Oct;65(7):1466-78.]

But when hospice reaches their corporate hands to the public, they don't brag about the money they save the government's Medicare and Medicaid programs. They only talk about "compassionate care for the dying." They don't mention the obscene salaries the CEOs, VPs, and others are getting at these larger hospice businesses.

Some administrators of the "Hospice of the so-and-so Region" are more concerned about the money, i.e., "please insert your retirement accounts here and make sure to leave your estate and life-insurance payout at the door when you enter. We'd really appreciate it." And here they get real specific: "Please make your checks out to Hospice of the So-and-So," not "hospice" all over the country.

Every couple of years I get a call from someone around the country asking how to donate to "hospice," because "hospice" gave such great to care to Aunt Arlene, and they want to make sure it gets to the right people. But, they don't know who the "right people" are, and I have to explain to them that it was a unique, specific "hospice" business that provided care and they have to donate to "that" hospice. I end up looking up the information and letting them know what the hospice's address is so they can mail the check. People are just very confused, and it's been planned to be that way as part of a long-term "feel-good about this thing called hospice" strategy of the hospice industry.

Top administrators at these large hospices are usually more interested in their own annual salary increase than an individual patient's needs. I've heard about hospices denying something as simple as a certain type of over-the-counter medication to a patient whose family had paid many thousands of dollars for room and board over a long time, all to save on the cost of medications ... while at the same time, the CEO was earning over $200,000. There's the "mission of hospice," and there's the "business of hospice." Many staff really care about the mission. The administrators of the huge hospices? Safe to say they care more about the business of hospice: revenue, profit and what they can bring home for themselves.

In the 1980s, there were a few hundred nonprofit hospices and the number of for-profit hospices was almost nonexistent. In 1992, there were about 1,000 nonprofit and a couple hundred for-profit hospices. In 2009, about 1,400 of the hospices were nonprofit and more were for-profit, about 1,800, some of these with several branches in a region.

The ratio of nonprofits to for-profits has completely switched with growth in for-profit hospices leaping far ahead. This is a clear sign that from the business perspective, hospice is looked upon as an opportunity to make money, and I know that when hospice corporations are making a lot of money, there is major fraud involved. And for-profit hospices still receive donations. Where does the money go?

artwork by Vickie Travis, design by Ron Panzer and Vickie Travis

artwork by Vickie Travis, design by Ron Panzer and Vickie Travis

Medscape Today reports that "Patients Receive Fewer Services From for-Profit Hospice Providers" than from nonprofit hospice providers. This is not encouraging news for those facing enrollment in a hospice which is more and more likely to be a for-profit hospice.

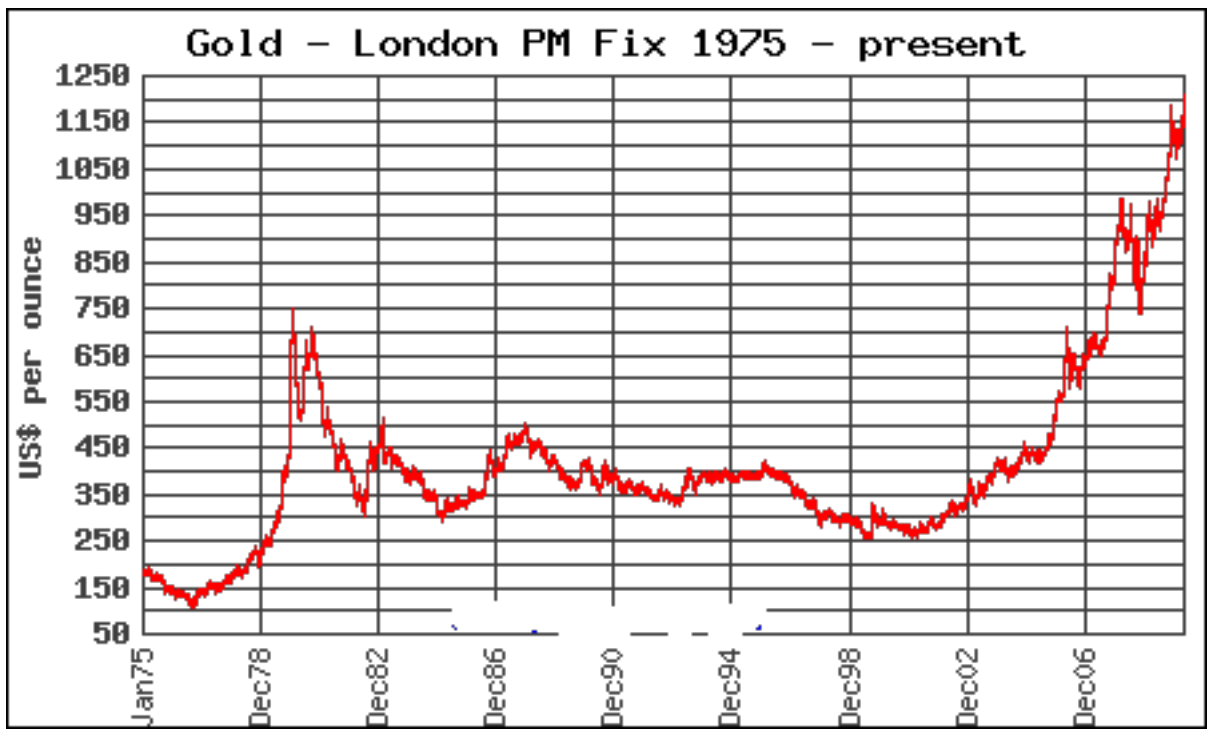
Now don't get me wrong. There are some really good hospices (hospice entities) that put their patients first and provide a full range of services to the terminally ill. I worked with some really great hospice professionals. I trained with Mary C., RN who had been a cardiac care specialist at a major big-city hospital medical system. She demonstrated the highest level standard of care for hospice nursing. And there are other wonderful nurses and doctors serving in this field.

But let's get back to the business of "hospice." "Hospice" is like an investors' dream (if we're talking for-profit hospice). And even a large non-profit can rake in the dough for the chosen few at the top. A recent article focuses on the business angle where for-profits scoop up the less demanding patients and let the smaller nonprofits deal with the more difficult cases, so the for-profits make even more profit.

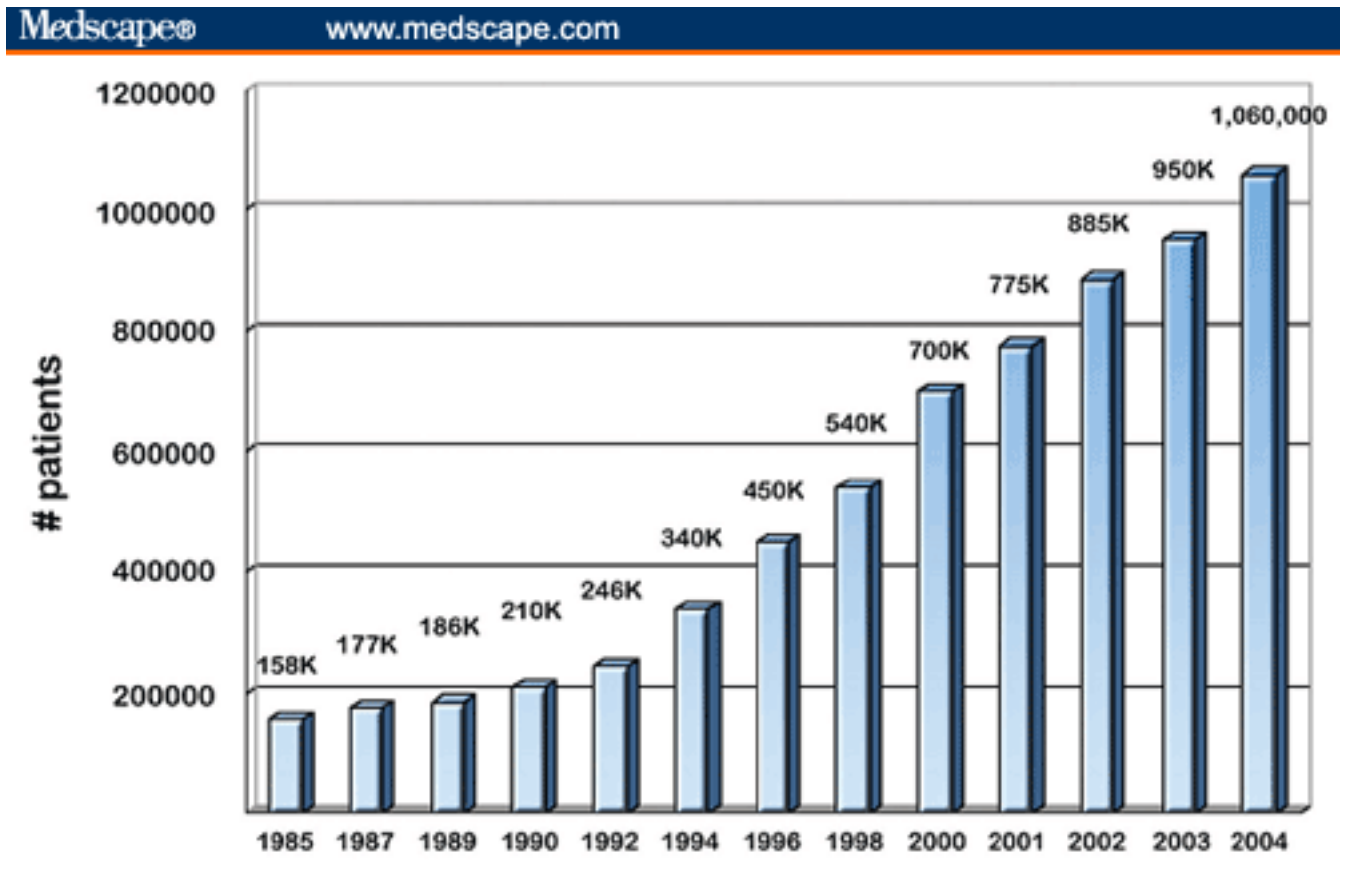
> "Without changes to the current reimbursement structure, coupled with measures to ensure greater accountability in the use of these benefits, we are concerned about the potential for a more dominant hospice provider to serve selectively a higher percentage of patients with a non-cancer diagnosis. The patient population at such a hospice could thereby average significantly longer and more lucrative periods of time during which the provider would realize a great return on the Medicare per diem payments for those patients, while potentially shifting a disproportionate share of the more costly short-term patients to hospice providers with a broader commitment to a community beyond those with an ownership interest.
>
> [In the Business of Dying: Questioning the Commercialization of Hospice; J Law Med Ethics. 2011 Jun;39(2):224-34]

If you look at the "business" outlook for the United States economy or world economy, it's pretty glum right now. But if you look at the business outlook for "hospice," (i.e., "Hospice of the so-and-so Region" all across the country) it's better than finding oil on "Uncle Jed Clampett's" Tennessee swamp (think "Beverly Hillbillies"). It's a lot better than the meteoric rise of and future forecast for gold prices. No wonder that 8 out of the 9 largest hospice corporations in America are for-profit.

Gold prices through the years look like this:

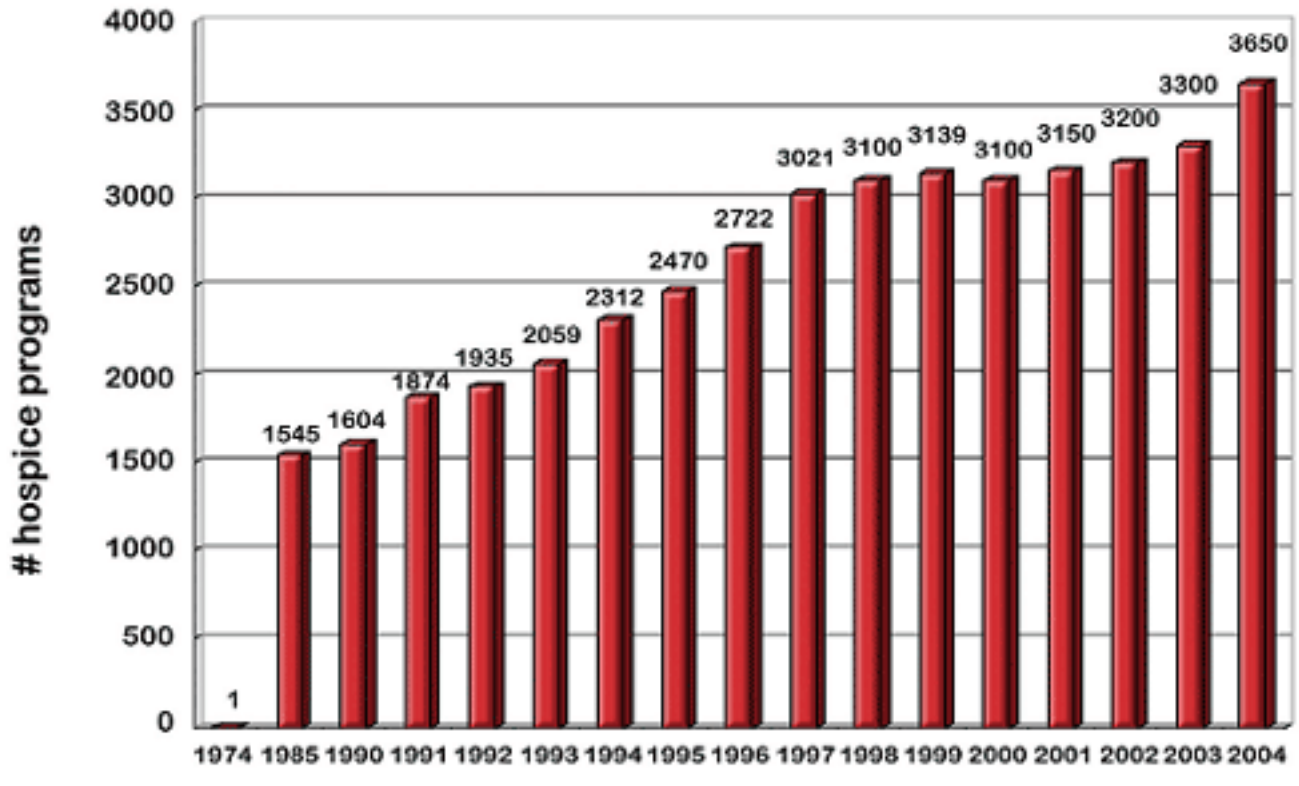


The number of hospice patients being served through the years looks like this:
from www.medscape.com/viewarticle/549702_2



Number of hospice agencies through the years looks like this:

from www.medscape.com/viewarticle/549702_2



In 1985, there were about 1,545 total hospices; in 1994 about 2,312; in 2004 about 3,650; now there are about 5,000 total hospice providers.

Other sources differ on the exact numbers, but the trend is there.

The expansion of hospice as an industry looked at by the number of patients served, number of agencies serving patients is much more impressive from an investors' perspective than the rise in gold prices over the past few decades!

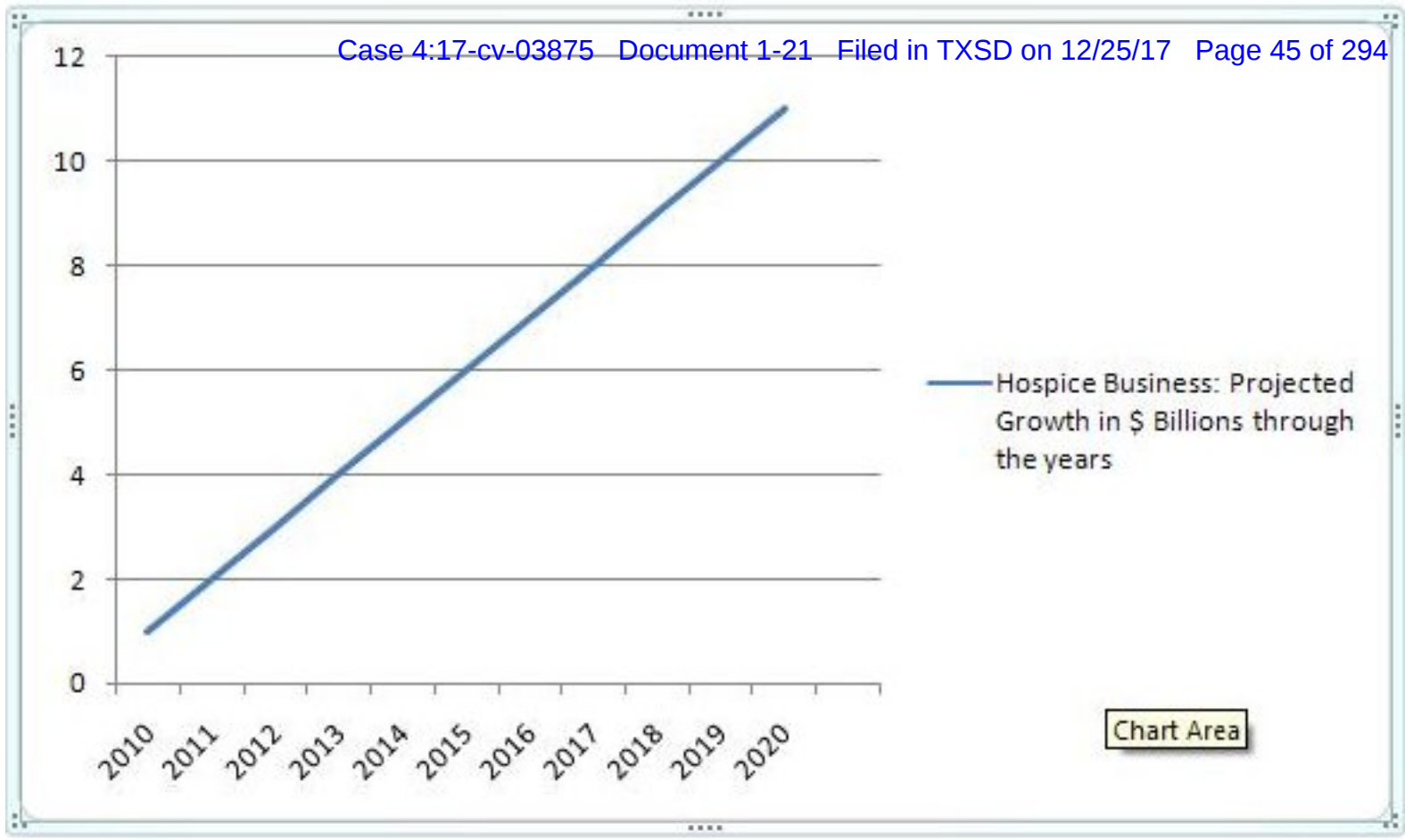
From the government perspective:

"Expenditures for the Medicare hospice benefit have increased approximately $1 billion per year. In fiscal year (CY) 1998, expenditures for the Medicare hospice benefit were $2.2 billion, while in CY 2008, expenditures for the Medicare hospice benefit were $11.2 billion."

[Source: Health Care Information System (HCIS)]." -- Hospice Data 1998-2008 - Centers for Medicare Services]

Well, if you know any other industry where the funding is increasing by $1 billion each year, let me know. The federal government obviously has big plans for hospice and its future role in the American health care system and in your life and your family's lives. Think health care reform!

"There were more than twice as many Medicare hospice patients in 2008 than in 1998." -- Hospice Data 1998-2008 - Centers for Medicare Services With the number of patients, i.e., "customers," increasing by 10% every year, without fail, I project the likely trend for the industry could be something like this:



I'm certain it's going to be more than 10% growth in some years to come! With the baby-boomers moving into the elderly category, more and more of them are developing acute and chronic conditions. Some of them are dying. The pressure to shunt them into hospice will become massive as the health care budget is being squeezed for whatever can be gotten out of it. The federal government has refused for decades to deal seriously with rampant Medicare fraud (their protests to the contrary). Rather than stop the theft, officials will argue that services need to be slashed and people need to go into hospice much, much sooner than ever before.

In 2009, only about 40% of hospice patients were cancer patients. However, in the 1980s, almost all of them were! Think about it. Why the change?

In 2009, 13% were in hospice simply because they were weak ("debility"), 11% were in hospice because they had "dementia" of some sort (and that can be a true dementia or simply mild forgetfulness). When patients enter hospice simply because they are elderly, weak or forgetful, it is a red flag that something definitely is not right. Just because someone is elderly, weak or has dementia does not mean they are imminently dying at all, or that they are going to die naturally even within the year or a few years. Many elderly individuals are weak and have dementia to some degree. Does that mean we should kill them? Some clearly believe the answer to that is "yes." Sometimes, the elderly are neglected intentionally and not given the close attention they require. And their health declines because of that neglect. This type of neglect can occur in the patient's own home or in a nursing home.

How would you feel if it was your grandmother or grandfather, or mother or father, who was targeted in this way? Or your children's grandmother or grandfather? They still have their dreams of seeing your children grow up or even seeing them at all. Just because they're elderly doesn't mean they don't have any dreams of their own, that they don't want to live. Who decides that this doctor or administrator has the right, the moral authority to end someone's life? ... to cancel your dreams for that life? ... to cancel his or her dreams? Why do "they" get to play God and decide?

Artwork by Graffiti artist Banksy

My own mother-in-law was neglected and malnourished, even emaciated. My wife and I took her into our home when she was visiting and cared for her, made sure she ate and bathed and got all her medications. She had not been getting her B-12 injections for pernicious anemia nor had she gotten her medications for high blood pressure where she had been living. It was a miracle she was still alive. But once we had her here, she gained about 30 pounds and was at her optimum weight and health, even though the family had told us she had "failure to thrive" and "could not gain" weight. All she needed was decent food, common medications and loving care. If she had remained where she was, she would very likely have been sent to hospice, continued to be deprived of the simple blood pressure medications she needed and her B-12 injections, and died at least three years earlier. She lived another few years with us till she died a natural death. And yes, a good hospice was involved, then, at the end.

What is happening with the change in the type of diseases that "get someone admitted into hospice" in America? It's a complete transformation of what normally happens at the end-of-life. In the past, most patients had incurable cancer as an admitting diagnosis and entered hospice. Now, dementia, the simply elderly or "weak" patients make up a large percentage, and they die sooner rather than later ... by design, and it's been in the works for a long time.

The plan is for close to 100% of Americans to die in hospice rather than an acute care hospital. Some private insurers are creating "Advanced Illness" programs where patients are admitted for care by a hospice agency even though they are not expected to die within six months. This appears to be a move to save money by having patients die sooner with fewer or no hospitalizations, thereby saving the private insurance company (and the government) significant expenditures and increasing profit (helping to reduce the budget deficit).

They may not achieve total utilization for hospice or palliative care, but they will increasingly narrow the gap toward their goal. Hospice and palliative care will figure in almost every American's life at the end, and certainly, it will handle one or more members of every American family, your family.

If you were a betting man, you couldn't find a better bet than hospice and palliative care. As sure as anything, we know the federal government has, is, and will promote "hospice" and "palliative care." They're increasing Medicare funding for hospice alone by $1 billion each year! We know the media editors will promote "hospice." Literally thousands of heart-warming stories about hospice have been written. We know that the economic pressures of the times will force greater utilization of hospice. What form that hospice will take is being shaped by those who don't care about you and me. When you understand who has been shaping end-of-life care for their own agenda, you may be very concerned about health care reforms coming to your neighborhood. You should be.

There are disturbing trends that are washing over the industry. The largest nonprofit hospice in the country,

Hospice of the Florida Suncoast immediately comes to mind. That hospice's CEO, Mary Labyak, has told her staff, "We've got to corner the market."

What kind of statement is that when hospice is supposed to be a caring place where the focus is on serving patients at the end-of-life? How does that statement jive with the idea that hospice is a philosophy of caring well for the dying as well as for their families? And Labyak? She's regularly been placed on the board of directors of the nation's largest hospice lobbying group, the National Hospice & Palliative Care Organization. She's the one with a salary of $320,347 in 2009 at her nonprofit Hospice of the Florida Suncoast.

Why Hospice Is a "Protected" Industry

Well, it's pretty clear that hospice is being promoted at every level of government and by every major player in society, including the major media, big business, hospitals, nursing homes, policymakers, budget analysts and others. We've seen that hospice has been proved to save money over acute hospital care. The savings amount to billions of dollars.

"In 2009, an estimated 1.56 million patients received services from hospice." "Researchers at Duke University found that hospice reduced Medicare costs by an average of $2,309 per hospice patient."

2009 figures for hospice savings:

1,560,000 hospice patients per year
X $ 2,309 (savings/patient) per year
_____ _____ _____
= $ 3,600,000,000 savings per year

> "Hospitals across the United States now have Palliative Care Units, where physicians and staff specialize in the care of the seriously ill. The choice to have these units has nothing altruistic about it; it is driven by the bottom line. Studies have shown that the cost incurred on a patient in the last few days of hospitalization when they are in the Palliative Care Unit is one quarter of what it is when they are in a non-Palliative Care Unit."
>
> ["Selectively Erring on the Side of Life" by Dr. Mahjabeen Islam, Toledo, Ohio April 08, 2005]

The top level policymakers have decided that people will die in hospice or palliative care units, and that they will be pushed into hospice through a wide variety of means. ***$3.6 billion saved in one year. Think that motivates the government? That's nothing compared to the savings when the people placed into hospice doubles in the years to come***. That's the plan. If patients are hurried along toward death, the savings skyrocket!

We may not wish to think about it, but the U.S. Department of Public Health has long looked at the American population as a "herd," in other words, as a total group to be managed. They do not think of what is best for a particular person or even thousands of people. They do what they decide is best for the whole population.

For example, when the U.S. Dept. of Public Health wanted to protect the "herd" of American people from polio, they used oral polio vaccine that had been weakened, but still contained live virus. A health department physician I contacted told me the idea was to promote "herd" immunity by exposing not only those who were vaccinated to the attenuated virus in the vaccine, but also those who refused to take the vaccine to the live virus floating around in the community due to many having been vaccinated. The rate of polio cases declined dramatically shortly after the polio vaccine was introduced in the 1950s.

That some people could develop actual full-blown polio did not stop them from using the live virus vaccine. That some people had chosen not to be exposed to the live virus did not stop them from exposing them to the live virus involuntarily (through contact with others who had been vaccinated). Predictably, some people did become quadriplegics due to having been exposed to the vaccine, either directly through vaccination or otherwise. In the case of Griffin v. United States, we see that in 1963, Mrs. Griffin was vaccinated and she became a permanent quadriplegic. "Dominick Tenuto was stricken with polio in 1979 after coming into contact with his daughter's stool while changing the diaper. The infant had been given the ... vaccine, ... which contained a live virus."

Thirty years after Mrs. Griffin got polio back in 1963, they were still using live virus in the oral polio vaccine. In 1993, I had to fight the local county health department to have my own son get the inactivated, "dead" polio vaccine safely used in Europe for over a decade. I didn't want him to unnecessarily risk contracting polio. After several refusals by the health department, I stood my ground against very strong efforts to intimidate me into using the live oral vaccine. Finally, the physician "magically" produced the version of the vaccine that we wanted, that was safer individually for him, and administered it to my son. They had it all along, but only wanted to use the live oral polio vaccine as it promoted herd immunity.

We can understand the thinking behind the government's program. They wanted to expose the non-vaccinated to the live virus to help immunize the entire U.S. population. The Centers for Disease Control states:

> "Polio was one of the most dreaded childhood diseases of the 20th Century in the United States. There were usually about 13,000 to 20,000 cases of paralytic polio reported each year in the US before the introduction of Salk inactivated polio vaccine (IPV) in 1955. Polio peaked in 1952 when there were more than 21,000 reported cases." [and]
>
> "The last cases of naturally occurring paralytic polio in the United States were in 1979, when an outbreak occurred among the Amish in several Midwestern states. From 1980 through 1999, there were 152 confirmed cases of paralytic polio cases reported. Of the 152 cases, eight cases were acquired outside the United States and imported. The last imported case caused by wild poliovirus into the United States was reported in 1993. The remaining 144 cases were vaccine-associated paralytic polio (VAPP) caused by live oral polio vaccine."

144 people contracted polio from the live polio vaccine from 1980 to 1999. So, to prevent 13,000 to 20,000 cases, they risk 144 acquiring the disease. Seems logical, but could they do better? The 144 would not have gotten polio if they had gotten the inactivated polio vaccine, but they were given the live version due to Public Health Department policy. So, who should decide? The government or you? When it's your child, should you decide or the government? The government's leaders decided they will decide for you.

The policymakers at the U.S. Public Health Department recognize that some individuals will either die or have severe reactions to vaccines that they mandate be administered to the general population. Children are mandated to have many vaccinations to prevent the spread of disease and only those given a waiver can be excused from receiving the vaccine and still attend school. There is even a table of vaccinations and likely serious consequences some individuals may suffer. The Code of Federal Regulations's "Vaccine Injury Table" lists the time periods within which someone receiving a vaccine has to manifest symptoms in order to be compensated for their death, injury, disability or condition. If you don't manifest "death, injury, disability or some other condition" *soon enough* according to the table, then you're not likely to get compensation.

> "The following is a table of vaccines, the injuries, disabilities, illnesses, conditions, and deaths resulting from the administration of such vaccines, and the time period in which the first symptom or manifestation of onset or of the significant aggravation of such injuries, disabilities, illnesses, conditions, and deaths is to occur after vaccine administration for purposes of receiving compensation under the [National Vaccine Injury Compensation] Program." [42 CFR, vol. 1, chapter I, Subchapter J, "Vaccines," part 100.3 Subtitle 2 of title XXI of the Public Health Service (PHS) Act]

While most people may not suffer much or at all from a vaccination, in rare cases some do suffer severe, immediate, life-changing consequences, chronic illness, disability or death. I've met people who were perfectly normal at birth, received a vaccination, and then within days had severe neurological damage and became permanently developmentally-disabled (mentally retarded). The "one-out-of-a-million" chance; it happens to someone, somewhere.

Another example of how government leaders think and the consequences of government-promoted vaccinations?

> "The HPV vaccine Gardasil, which is being vigorously pushed on unsuspecting young girls and women to theoretically guard against cervical cancer still has never been proven to actually prevent

cancer. On the contrary, evidence suggests that under certain circumstances the vaccine increases your risk of precancerous lesions by nearly 45 percent, and an ever increasing number of girls are being seriously injured by this unnecessary vaccine.

"As of December 13, 2010, 20,915 adverse reactions had been reported in the United States alone, including 89 deaths, 297 miscarriages or stillbirths, and 370 reports of abnormal pap smears post vaccination.

"*All of this from a vaccine that has only been on the market for four years*." [Emphasis added]

and:

"Contaminated Polio Vaccine Responsible for Human Cancer Cases"

In 2002, the journal Lancet published compelling evidence that contaminated polio vaccine was responsible for up to half of the 55,000 non-Hodgkin's lymphoma cases that were occurring each year.

What was it contaminated with?

SV40, a cancer-causing monkey virus. The puzzle began in 1994, when Dr. Michele Carbone, a Loyola University researcher, found the virus SV40, which had never before been detected in humans, in half of the human lung tumors he was studying. Since then, 60 different lab studies have confirmed the results, and SV40 has been found in a variety of human cancers, including lung-, brain-, bone-, and lymphatic cancer.

At first no one could fathom how the virus had been transmitted into the human population.

But in the censored interview with Dr. Maurice Hilleman ..., Hilleman admits Merck's responsibility in unleashing this virus via their polio vaccine, as well as the likelihood that there was an importing and spreading the AIDS virus in the same manner.

Just who is Dr. Maurice Hilleman?

Now, for those of you who may think Dr. Hilleman was just another crackpot (he passed away in 2005), think again. He was, and still is, the leading vaccine pioneer in the history of vaccines. He developed more than three dozen vaccines. More than any other scientist in history and was the developer of Merck's vaccine program.

He was a member of the U.S. National Academy of Science, the Institute of Medicine, the American Academy of Arts and Sciences, and the American Philosophical Society, and received a special lifetime achievement award from the World Health Organization.

[from: "60 Lab Studies Now Confirm Cancer Link to a Vaccine You Probably Had as a Child" Dr. Mercola February 18, 2011]

But can you sue and win in court? Not really. In order to encourage manufacturers to continue to make vaccines, Congress enacted:

> the National Childhood Vaccine Injury Act of 1986 [that] created a so-called "vaccine court" to address safety claims in an attempt to ease the threat of lawsuits in state courts against pharmaceutical companies and insure against them pulling out of what they claim is an unprofitable vaccine marketplace completely.
>
> Under the law, people injured by vaccines are eligible for compensation for medical care, rehabilitation, counseling, special education, and vocational training expenses; diminished earning capacity; pain and suffering; and $250,000 for vaccine-related deaths.
>
> ["Supreme Court Sides With Vaccine Maker" By Emily P. Walker MedPage Today February 22, 2011]

The intent here is not to scare anyone, though we do need to carefully think about what we do medically. **The intent is to show *how government policy-makers think and how policy is implemented***. They are willing to sacrifice some who are healthy in order to carry out the vaccination programs. If they can prevent the spread of terrible diseases, they would argue it's worth it. They take chances with our lives and are willing to

experiment upon us with what they mandate we take. There may be safer ways to do the work. And even though vaccine manufacturers take credit for the reductions in deaths from certain communicable diseases, others say that vaccination is not really the only explanation. Improved nutrition and water quality, sanitation and sewer services as well as improvements in medical care are also important contributing factors.

On February 22, 2011, the Supreme Court ruled in Bruesewitz v. Wyeth that "the NationalChildhood Vaccine Injury Act preempts all design-defect claims against vaccine manufacturers brought by plaintiffs who seek compensation for injury or death caused by vaccine side effects." Now, "increasingly, pediatricians are refusing to treat children who are not fully vaccinated. We need to understand that this same type of thinking flourishes among the policymakers at the top levels of government. When they wish to, they use government authority to mandate the results they seek.

Aside from vaccination, government can use other methods to prevent the spread of infectious diseases. The government has "emergency powers" that set aside and void normal Constitutional procedures. When a serious epidemic threatens to spread to larger areas of the population, the U.S. Health Department, the President and the Governors in each state are involved. Decisions they make are based upon what they deem best to prevent that spread. However, it may include the imposition of martial law in specific areas. It all sounds fine theoretically until it affects you and your family. In between the rule of law and completely implemented martial law there are steps that have been taken that increase the power of the government at the expense of individual rights.

Quarantine policy is based on these same principles: what is best for the "herd" or total population. The government will sacrifice many if it saves a larger percentage of the total population. Entire cities can be quarantined, with the military surrounding the city limits to enforce the quarantine zone with threat of lethal force if necessary. While some may think these things only happen in movies, it is realistic to consider these scenarios might happen at some time in the future.

Why do I raise these issues? It's to get a rare glimpse into how the stakeholders create policy at the very highest levels of government today. How they think. It's the same type of thinking with current health care reform, reform that's already begun for Medicare and Medicaid, utilitarian rationing of health care (which already happens in managed care organizations all over the country), and the push to have patients enter hospice or palliative care units earlier. There is nothing wrong with making health care systems more efficient and doing away with truly ineffective treatments, but utilitarian rationing (which is what we're talking about in this book) has an agenda behind the decision-making.

The government and its agents and providers of care will do whatever the elite policymakers deem "best" for the entire country (not what is best necessarily for you and your family). All the state and local county health departments will follow suit. In addition, all licensed physicians (or any health care professionals) who wish to retain their license, will toe the line should a federal policy tell them they have to do this or that, or not do this or that. Physicians will be directed to order a patient into hospice under certain circumstances. Or, **treatment pathways that are open now will be closed, so hospice or palliative care becomes the *only* available "treatment!" The patient's right to choose will be extremely limited.**

Good and Bad Hospices

One of the more common questions that we've heard through the years is, "how can I find a good hospice?" "How do I know which hospice will provide the care my loved one needs?" There really is no one certain answer to these questions. Often, the recent experience of someone in the same town or city who has used a particular hospice is very revealing, but someone else's "wonderful" experience with a hospice is no guarantee that the next person will have the same level of care.

Recommendations from health care professionals who are in your family or from those you trust can be very valuable, but again, they are no guarantee. Do these health care professionals share your values about how care should be provided? Do they value the sanctity of life or do they think it is "ok" to end life (one way or another) to relieve suffering? Do they believe in quality of life as the main determinant of whether a life has value? Someone who thinks quality of life is the main factor to consider may rate a hospice very highly even though they hastened a patient to an early death. If you get a recommendation from someone who recognizes the

sanctity of life, that would be a good sign.

Sometimes, the patient and family simply have to call different hospices and get a feel for how the hospices present themselves, how committed they are to the mission of service to the dying and then, take a shot and try one. If things go well, good. If not, the patient and family need to listen to their instincts about what is happening. When medications are given that are not clinically indicated, when services that should be provided are not being provided, when it's hard to get in touch with staff that can help, then we need to see these as "red flags" and have another agency manage a transfer to their care, or get care in a home health care setting. Sometimes, that is the only option if there are few or no other hospice agencies in the area.

Some hospice leaders are just now forming a new Hospice Life Association of America, which will help form more pro-life hospices, where all the hospice agency members affirm the sanctity of life and share the Hospice Life Pledge with their employees. Member agencies are committed to the pro-life mission and will never hasten or impose death unnaturally. If you know that a hospice agency actively promotes a pro-life message, that it honors the sanctity of life and will not impose death, but allows for a natural death in its own timing, then that is probably the best choice for those who wish to protect their loved one from exploitation, inadequate service or staffing, or outright hastened death.

Hospice Reimbursement: Is it a Problem?

The Medicare hospice benefit, instituted in 1983, was a boon to the expansion of hospice in America. It provides for a per-diem payment for every day the patient is enrolled in the hospice agency. Hospice administrators have told me over the years that the reimbursement is frugal, but that with good business practices a hospice agency can break even and make enough to pay for all services required to be provided under the federal and state standards of care. The nonprofit agencies often receive donations from the public to help them provide services, but it's not always easy!

The cap on reimbursement, is it a problem? Most people have no idea there even is a "cap" or limit on how much the hospice corporations get per patient each year. Well, over 500 hospice agencies have joined together to fight the government's hospice cap formula. They call themselves the National Alliance for Hospice Access. They think reimbursement is a huge problem.

They have a lot of data showing that the cap does not pay for all the services required and are working hard to either change the formula or do away with the cap as it exists now completely. There is a lot of merit to the claims that the reimbursement system leaves much to be desired and should be updated to assure hospices have the funds to provide the very best care.

All hospice corporations would welcome increased reimbursement per patient each year. However, the per-patient reimbursement is not likely to be increased much (or at all) if the economic strains on our economy continue. Although we may wish that funding should be provided adequately for each patient's end-of-life care, other health care agencies, hospitals and corporations are going to be fighting for every federal dollar they can get. This does not mean that overall spending on hospice as an industry will not grow; it will ... due to the increase in the number of hospices and total patients served.

To admit a patient into hospice, a physician must certify a patient as "terminally ill" indicating the patient is likely to die within six months. But, physicians cannot always accurately predict how long a patient is going to live, and patients often do live beyond six months. What is the result of having a patient live longer or require services beyond what the reimbursement cap will pay? When the patient lives beyond a certain time period, the patient's cost of services becomes a "net-negative" to the corporation. Although hospices with integrity balance out the revenue from some patients to help pay for services to others, problems arise when top administrators wish to use the hospice as a vehicle to pad their own income. They twist the hospice into a "rogue" hospice.

CEOs of hospice agencies can manipulate boards of directors to raise their salaries into the hundreds of thousands of dollars, while staff struggle with increased case loads and patients suffer from fewer visits, fewer services being provided and a failure to meet their very urgent needs at the end-of-life. This is a problem common to all health care agencies, whether hospitals, nursing homes, assisted-living centers or hospice

agencies. However, hospice's reimbursement is quite unique. There are four levels of care: the routine home care level, the respite level, the general inpatient care level and the continuous care level of care, all with different reimbursement payments.

As we have seen, from October 2010 through the next year, the routine Home Care level is reimbursed at $146.82 per day; Continuous Home Care is reimbursed at $856.12 per day or $35.67 per hour; Inpatient Respite Care is reimbursed at $159.65 per day; General Inpatient Care is reimbursed at $652.27 per day.

What does this mean? It means that at the lower level of service, routine home care, hospice agencies provide routine nursing visits 1-3 times per week, aide visits 1-5 times per week, and a social worker visit occasionally as needed, and so on. If the caregiver is exhausted from caring for the patient, the hospice can take the patient into a hospice facility and provide respite care for about five days. If the patient develops extreme symptoms out-of-control, then the hospice can provide more intensive services.

If these more intensive services are provided in the home, it's called "continuous care." If these services are provided in a facility, it's called "general inpatient care." All of this can work very well if the hospice agency is dedicated to the mission. When that happens, hospice services can be a real blessing to the patient and family. The hospice makes adjustments to the plan of care as the patient's needs change and provides those services. Good clinical intervention which is tailored to the unique needs of the patient and their very specific clinical condition can make a huge difference in the lives of the patient and his or her family.

However, a rogue hospice looks at the hospice reimbursement arrangement completely differently. They don't think, "Mission first" and "how are we going to provide all the services needed?" Rogue hospice administrators think about "cornering the market," driving other hospices out of business or reducing the other agency's slice of the local business. Rogue administrators think of how much they can earn personally if they cut this or that service. They think about how they can build a hospice "empire" and not about reasonably restricting their own pay to meet the needs of the patients. Administrators who have created a rogue hospice agency view hospice as an opportunity to exploit Medicare, Medicaid, private insurance and families as well. They plunder these resources for all the money they can seize, even committing fraud or other criminal activities.

Administrators of rogue agencies will arrange kickback arrangements with nursing homes, physicians and hospital administrators in their area. They will use their political connections to "grease the wheels" moving their agency to the top of the list in their area while working to actually harm and diminish the role of other hospices in their area. I've heard from several hospice administrators through the years who have related the dirty tactics that these rogue hospice administrators use to further their selfish ends.

Administrators of the rogue hospice agencies are basically dishonest, yet they are often hailed as very successful business leaders! The ones I've met have an incredible ability to lie to your face with a smile. They have no conscience, or appear not to have one, and they think nothing of the harm their actions cause the patients, families and the staff. The ones I've met care nothing about the standards of care, morality, or the law. They use the hospice reimbursement levels to increase the revenue to their hospice and themselves while decreasing services to the patients.

Over the years, I have heard from hospice staff around the country about "inner-circle parties" at some big hospices with the abuse of drugs, alcohol and casual sexual relations of all types among these rogue hospice administrators and some of their "inner circle" staff. They just do not respect traditional morality at all.

The administrators of rogue hospices proudly dress very professionally and outwardly appear to the public to be the very picture of dedicated public servants. We need only look at their individual salaries and actions to see the hypocrisy. When they make sure that some innocent patients will be medically killed (by using staff training to misinform them about the effects of medications), encouraging the casual administration of morphine to COPD patients, not allowing oxygen for patients who need it, encouraging staff to remove needed medications from the patients they admit or to terminally sedate the patients, or actually sending "closers" to end their lives, they never let the public know what really is going on. In these cases, they always lie and pretend to honor the caring, supportive hospice services the public has come to respect.

Hospice and Health Care Industry Fraud

Mary Labyak's Hospice of the Florida Suncoast was cited in 1996 for overbilling $14.8 million from Medicare. The administrators: selfless servants? Hardly. The staff? Many have been dedicated nurses, many of whom leave once they see the cut-throat nature of pro-euthanasia Labyak's approach to the business of hospice.

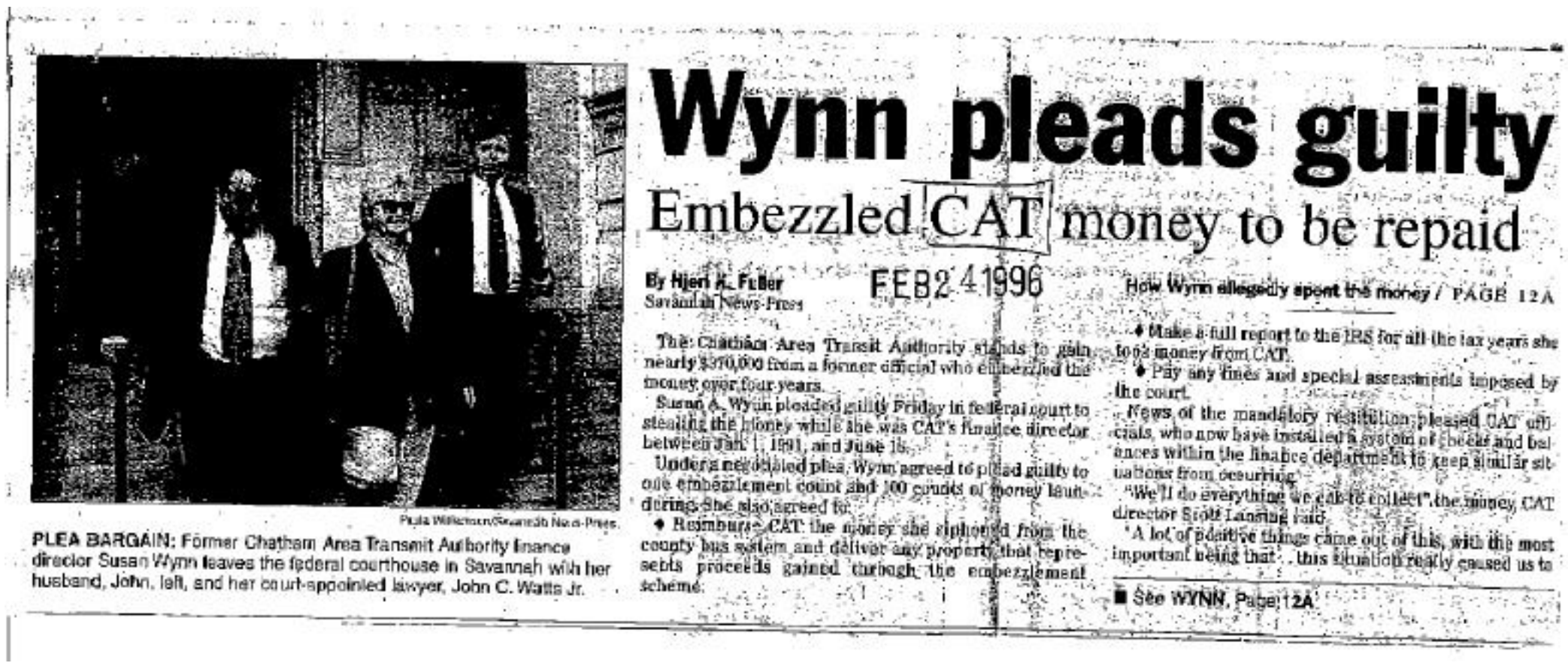
And what kind of actions does this hospice take to create its success in Florida? I've written dozens of articles over the years about this hospice, but basically, most of what they do is hidden from the public. You have to do some digging to learn about the strange choices they make and you immediately understand who they are and what kind of people they are.

Hospice of the Florida Suncoast hired Susan Wynn, a convicted felon who embezzled $370,000 and was found guilty of over 100 counts of money laundering. Not only did they hire her, they hired her first thing, the moment she was released from jail. The *St. Petersburg Times* reported that:

> "Wynn, ... works as administrative assistant to the nonprofit's vice president of finance."

Astounding! But true. They did hire her into the finance department! And:

> "federal prosecutors in Savannah accused Wynn of writing checks to herself from 1991 to 1995 using a transit authority account. She pleaded guilty to the criminal charges."



Paula Wilkinson/Savannah News-Press

PLEA BARGAIN: Former Chatham Area Transit Authority finance director Susan Wynn leaves the federal courthouse in Savannah with her husband, John, left, and her court-appointed lawyer, John C. Watts Jr.

Wynn pleads guilty

Embezzled CAT money to be repaid

FEB 24 1996

By Hjeri K. Fuller
Savannah News-Press

The Chatham Area Transit Authority stands to gain nearly $370,000 from a former official who embezzled the money over four years.

Susan A. Wynn pleaded guilty Friday in federal court to stealing the money while she was CAT's finance director between Jan. 1, 1991, and June 15.

Under a negotiated plea, Wynn agreed to plead guilty to one embezzlement count and 100 counts of money laundering she also agreed to:

♦ Reimburse CAT the money she siphoned from the county bus system and deliver any property that represents proceeds gained through the embezzlement scheme.

How Wynn allegedly spent the money / PAGE 12A

♦ Make a full report to the IRS for all the tax years she took money from CAT.

♦ Pay any fines and special assessments imposed by the court.

News of the mandatory restitution pleased CAT officials, who now have installed a system of checks and balances within the finance department to keep similar situations from occurring.

"We'll do everything we can to collect" the money, CAT director Scott Lanning said.

"A lot of positive things came out of this, with the most important being that ... this situation really caused us to

■ See WYNN, Page 12A

That's not all. In June 2003, The *St. Petersburg Times* reported that the hospice hired yet another felon into its finance department. The paper announced, "2nd felon gets 2nd chance at hospice."

> Sunday, February 06, 2011
>
> ".... Karen D. Langan [pled] guilty to felony grand theft in 2001 and [after] being sentenced to five years of probation, Langan was looking for a new job.
>
> Hospice of the Florida Suncoast gave her one, even after learning of her criminal history. Langan now works in the hospice's payroll department."

Knowing that they hired these two felons directly into the Finance Department, Wynn (the embezzler) to assist the head of Finance, and Eckerd (the thief) in payroll, it's perfectly clear, without any exaggeration, they value felons' expertise and wanted that expertise for their own. If it were fiction it might make for an interesting story, but it is tragically true. This is how the largest nonprofit in our nation is run, and it is very revealing indeed

about what kind of people run it.

This hospice is very big and powerful in Pinellas County, Florida. Founded in 1977, it's among the earlier hospices in the country. And like many hospices, its board members consist of some of the most prominent leaders in town, the executives of some local businesses, a few county commissioners and other wealthy citizens. The hospice brings in huge amounts of money from donations in addition to the government's reimbursements. While the hospice itself is nonprofit, it has a for-profit subsidiary, Suncoast Solutions that produces hospice management software. Some of the board members of the nonprofit hospice have also served on the board of the hospice foundation as well as the for-profit subsidiary.

A class action lawsuit was filed in February of 2003 against the Hospice of the Florida Suncoast. The lawsuit was brought against the hospice for disclosing private information about patients including their names, addresses, diagnoses and telephone numbers. I personally went online and saw the Suncoast Solutions "ftp" website where the data was publicly accessible (1, 2, 3) and verified that personal information was being released on the ftp site as well as within software help screens, contrary to patient privacy protections. The "publicly accessible ftp" site was not password-protected and contained files that could be downloaded that contained the information. The lawsuit also was brought alleging that the hospice (run by CEO, Mary Labyak) diverted funds (that had been donated to the nonprofit) to the for-profit subsidiary:

> "the nonprofit loaned $1.9-million in donated money to its for-profit software company in 2001, calling it an investment in hospice's financial future. Documents and interviews show the money was used to buy out a Louisiana corporation that worked with hospice to develop software. The company is headed by the son of Labyak's friend Jo-Ann Mueller."

["Hospice defends software deal" May 12, 2003 Homehealthprovider.com]

My friend, Christina Brundage, RN, a very experienced and dedicated nurse has told me and others about some of her experiences working at that Hospice of the Florida Suncoast:

> "They were working on all these ways to get more patients in that weren't terminal, they were going to have all these new programs - a palliative care program, a home health program .... like they were trying to bring in more and more people and fought so hard to keep any competition out. It became money oriented rather than patient oriented."

These initiatives were done under the leadership of hospice CEO, Mary Labyak, who received "the Healthcare Architect Award from the National Hospice Foundation" in 2011. What kind of health care is she designing when she approves of euthanasia and terminal sedation? And why would the National Hospice Federation let her chair their board of trustees and honor her in this way? Is this the type of leadership our nation's hospices need to protect the vulnerable? What Christina Brundage, RN witnessed shows how Labyak has twisted the hospice mission and demonstrates what Labyak and others are doing all around the nation.

I met Christina Brundage, RN in the years when so many of us were working to try to save Terri Schiavo.

Christina exemplifies the dedicated hospice professional who is horrified by the changes in the industry, just as I am. She left the Hospice of the Florida Suncoast before Terri Schiavo was enrolled there, because of what she saw, how the primary focus on caring was lost. She stepped up to become a tireless volunteer for the Schindlers, the Terri Schindler Schiavo Foundation, Hospice Patients Alliance and the pro-life movement in general. Some time after she left the hospice, she was visiting a friend in a hospice facility and saw for herself how a patient could be hastened to his death.

American hospice as an industry, led by cut-throat corporations like the Hospice of the Florida Suncoast (that want to "corner the market"), is not the pure "thing" that they market themselves to be. We've got really huge for-profit corporations like Vitas, Odyssey, Gentiva, Vistacare, and "Golden Living" that acquired the infamous mega-corporation Beverly Enterprises in 2006.

How big are these for-profit mega-hospices like Vitas? The Vitas website tells us:

> "Vitas Healthcare Corporation (Vitas), based in Miami, Florida, is the nation's largest provider of hospice services with about a 7% share of the U.S. hospice market. Vitas commenced operations in 1978 and incorporated in 1983 as a for-profit organization."

1983: ... the year Vitas and others convinced the federal government to create the Medicare hospice benefit. Vitas saw the government's Medicare reimbursement as a profit-making opportunity, just as *Washington Post* reporter Chuck Babcock wrote in 1998:

> "Vitas Healthcare currently provides services to almost 9,000 patients from 44 hospice programs in 11 states. These areas include California, Connecticut, Delaware, Florida, Georgia, Illinois, New Jersey, Ohio, Pennsylvania, Texas and Wisconsin. Over half of Vitas' patients receive care in their homes. Approximately 40% of patients receive care in skilled nursing and assisted living facilities. ...."
>
> "The capital required to establish a single hospice facility is currently estimated at between $300,000 and $500,000. As a result, competition notwithstanding the not-for-profit providers, which constitute more than 72% of all hospices, is significant (albeit highly fragmented)."

That "72%" figure is from 1998. And the amounts needed to start up a single hospice facility are much higher now. **The current stats show there are more *for-profit* corporations running hospices than nonprofit corporations!**

> "A large number of hospice programs are owned by, or are part of, a larger healthcare delivery system, typically not-for-profit hospitals. In addition to not-for-profit service providers, the industry is also characterized by a high number of small regional operators. However, *nine of the top 10 providers, as measured by average daily census (ADC), are for-profit*. Average daily census refers to the total number of patients, regardless of the level of service. The major publicly traded hospice industry players, which include Vitas, Odyssey, VistaCare, and Manor Care, collectively only account for approximately 15% of the market. While the relatively low absolute capital requirements represent a low barrier to entry, the regulatory complexity associated with establishing a Medicare-licensed hospice location remains a significant barrier. In addition, hospice referral sources are largely dependent on relationships and reputations established over time through the provision of high-quality care and service." [Emphasis added]

Vitas Hospice was acquired by Chemed, the corporation that also owns Roto-Rooter plumbing services! Notice that this thing called hospice is discussed as a "market" and that competition among hospice agency providers for patients is very intense. For-profit hospice is an investment opportunity that is not being ignored by those who know anything about health care or making money in the stock market.

For example, Beverly Enterprises, now Golden Living, owned many, many hospices and nursing facilities around the country. Odyssey Health Care owned many hospices and has now been acquired by Gentiva Health Services, another for-profit corporation:

> "August 17, 2010
>
> "Gentiva(R) Health Services Closes Odyssey HealthCare Acquisition Company Ranks as Nation's Largest Combined Home Health and Hospice Services Provider"
>
> "Gentiva Health Services, Inc. (Nasdaq: GTIV) ("Gentiva" or "the Company"), a leading provider of home health and hospice services, today announced the closing of its acquisition of Odyssey HealthCare, Inc. (Nasdaq: ODSY) ("Odyssey") in an all cash transaction for a price of $27 per share of Odyssey common stock, without interest, for an aggregate purchase price of approximately

$1.0 billion, including fees and expenses."

> "The combination of Gentiva and Odyssey creates the largest US healthcare provider of home health and hospice services based on revenue. Annualized pro forma revenues for the twelve months ended July 4, 2010 exceeded $1.88 billion, of which approximately 59% related to home health services and approximately 41% related to hospice services. The combined hospice operations of Odyssey and Gentiva provide care to an average daily patient census of approximately 14,000 in 30 states. Gentiva raised approximately $1.1 billion in new debt financing to fund the purchase price and refinance existing debt." [PRNewswire via COMTEX News Network]

$1 billion was paid to purchase Odyssey health care. $1 *billion*! If you think hospice is all about compassionate care for the dying, you are very mistaken. It's big business! And if you think I'm kidding when I talk about "profit" in the health care industry, take a look at Gentiva:

> "Gentiva continues to expect 2010 full-year net revenues to be in the range of $1.42 billion to $1.45 billion and adjusted income from continuing operations to be $2.75 to $2.80 on a diluted per share basis."
>
> "For 2011, Gentiva expects full-year net revenues to be in the range of $1.90 billion to $1.95 billion and adjusted income from continuing operations to be $2.70 to $2.80 on a diluted per share basis. Gentiva's 2011 outlook includes the full-year impact of its Odyssey HealthCare, Inc. acquisition...."

Gentiva: $1.42 to $1.45 billion in *net* revenue!

What about Beverly? Before being acquired by Golden Living, Beverly ran many hospices and nursing homes as well. Now "Golden Living" does the job. "Golden Living" sounds so wonderful. At least that's what they want us to think. There are other huge hospice corporations out there, too. Let's discuss Beverly because they were the poster boy for what's wrong with health care in America today.

Beverly, for those who know, ran one of the nation's largest chains of nursing homes around the country, and you know how "great" the care is at many nursing homes. Beverly had 82,000 employees with sales of $2.98 billion in 1994.

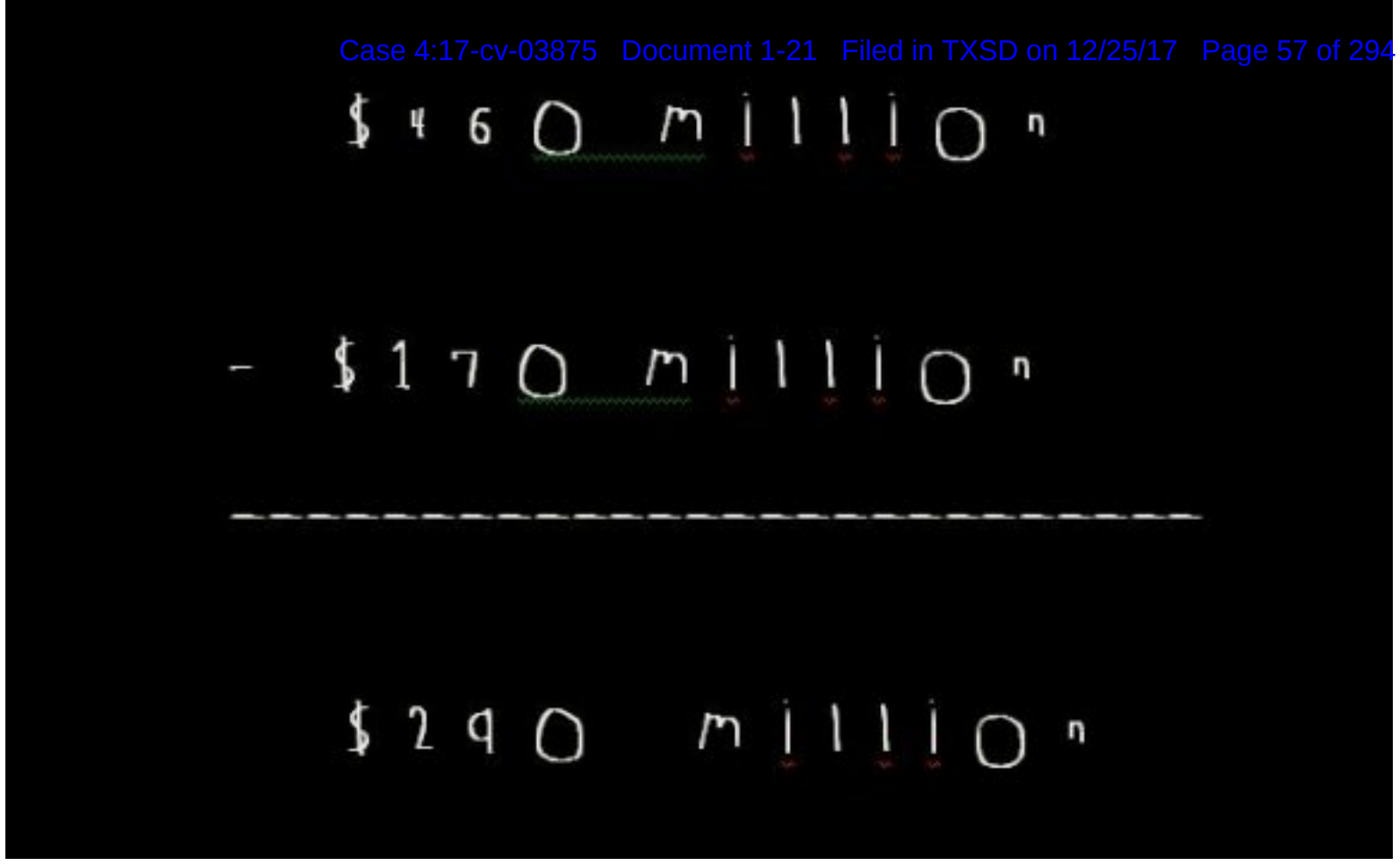
Beverly had some problems with the federal government, big problems. The U.S. Justice Department investigation found that Beverly had defrauded the U.S. Government to the tune of $460 million!

How? By billing for services not rendered, asking to be paid for work not done. A good scam if you ask me, one that many other health care corporations are doing as well, so don't think Beverly is the only one. When I spoke with the U.S. attorneys' office, they told me they had thousands of health care fraud cases pending that they couldn't even get to. Sometimes it takes three years to process one of these fraud cases.

It's easier to rob the federal government through Medicare than to commit what we've come to think of as the "real" crimes, like bank robbing. Why risk your life when white-collar crime pays so well, and you can be assured that the federal government will reward you for the effort? Reward you? Let me explain. The feds found Beverly had fraudulently billed:

> ".... Four hundred sixty million ($460,000,000), for engaging in the following conduct during the period from 1992 through 1998: submitting Medicare skilled nursing facility cost reports, for cost report years 1992-1998, that overstated the costs attributable to the facilities' Medicare certified units by allocating labor hours to the Medicare certified units that were not actually incurred ...."

In other words, Beverly requested reimbursement for services they didn't provide and got paid for six years without being caught. The U.S. Justice Department and Beverly did come to a settlement. "Beverly Enterprises agree[d] to pay to the United States One Hundred Seventy Million Dollars ($170,000,000)." I think even "little Johnny" can come to the blackboard and do the arithmetic. Department of Justice arithmetic is very simple:



Think about that again:

Beverly steals	**$ 460 million**
- Beverly pays back	**$ 170 million**
Beverly gets to keep	**$ 290 million**

Does that make sense to you? It doesn't make sense to me. When someone robs the corner store for $500 and gets sent to jail for fifteen years, you know that felon is going to be out-of-work for at least fifteen years. And bank robbers often are ordered to make restitution, paying back what they stole. A health care corporation robs close to $500 million and nobody goes to jail, plus they get to keep $290 million? You know they're going to just keep on doing it. You couldn't design a more ineffective policy at the Justice Department than what they do. It encourages the opposite of what they say they are doing: "curbing health care fraud." What could be more rewarding than raking in all that money for free and not suffering any significant consequences?

It's the same kind of thing you see with environmental protection enforcement. Say some corporation really pollutes somewhere and they get caught as well as convicted of violating the law. The law says the E.P.A. can slap them with up to a million dollar fine or something like that. The company that brings in billions every year looks at that fine as just a "cost of doing business" and pays the fine without even blinking. There's no deterrence in these fines to such huge corporations, and there's no deterrence to fraud in how the U.S. Justice Department deals with health care fraud.

In fact, let me tell you about the U.S. Justice Department. They often just *don't* make the health care corporations that steal from the government (our tax dollars) pay everything back. Do you wonder why?

Back in 1997 when I worked at the Hospice of Michigan, the hospice had defrauded Medicare. A year earlier, they had been ordered by the federal government to repay more than a million dollars "wrongly billed." They thought they'd get away with it of course. It was in all the Michigan newspapers at the time.

I remember speaking with Raja Mishra, *Detroit Free Press* reporter who later wrote in his article, "A Business of Death and Dollars," November 7, 1997:

> "the federal government demanded that Hospice of Michigan repay almost $1.5 million ...."

That's obviously a huge sum of money. So what brilliant strategy did the hospice in Michigan figure out to do in order to "correct" their "wrong" billing of $1.5 million? They fired 80 employees, cut costs and decided to commit other violations to get the money to pay the feds back. This involved depriving patients of required services while making sure all the beds in their two hospice facilities were filled, (this is why Jose Alvarez didn't get to die at home as he wished) thereby collecting more room and board.

The hospice administrators also ordered the nurses (me included) to record continuous care (a higher level of care) as being provided, even though there was no extra nursing staff on hand. When I saw this, I realized that

they could receive millions of dollars more each year for services not provided if they billed at the higher rate of reimbursement. I guess they were not good at "learning" the lessons the feds wanted to teach them.

The top administrators of the large Hospice of Michigan knew they were violating the standards for hospice and so did the Vice-President of the corporation. When I confronted management first in a detailed confidential letter and later in person about the needs of the patients not being met, about the exploitation of patients and the violations of the standards, the Vice-President walked me into an office, closed the door securely and just laughed in my face and told me, "Ron, you're absolutely right! This is a violation of the standards of care, but we're not going to stop." "We will get cited, sure." "We'll get a "deficiency. But, they won't shut us down." And that's exactly what happened.

When I spoke to the U.S. attorney managing the case against the Hospice of Michigan, I asked him, "Why don't you have them pay back all the money?" I also wondered why they didn't prosecute the administrators. His answer? "Well, if we did that, the business would be shut down and we can't do that."

If the people of this country, the taxpaying people of this country, had to come up with a policy for those who commit fraud, they wouldn't say, "we can't do that." They'd shut them down if they were repeat white-collar criminals, throw the administrators who designed the fraud into jail and make them pay back 100% of what they stole. I know that the real reason health care fraud is so rampant and out-of-control is this one policy of the U.S. Justice Department.

It is extremely rare for any administrator to be prosecuted, let alone serve jail time. The so-called "corporate integrity agreements" the dishonest corporations enter into with the Justice Department only make them "promise to be good," ... show on paper a plan of how they will "prevent" fraud from happening at their business ("hospice" or other agency), and then pay back a portion of what they stole, plus or minus a few million here and there. Doubt it? Head to the Department of Health & Human Services, Office of Inspector General ("OIG") website and read them for yourself:

The Office of Inspector General ("OIG") works with the U.S. Justice Department in its investigations and eventually a settlement is often arranged with the offending business ("hospice," "hospital," or other business entity). As we've seen, the hospice industry does commit Medicare fraud, thereby bolstering the revenue they bring in. I remember the director of a state Medicaid Fraud Control Unit that called me almost ten years ago asking questions about hospice. She was just beginning her evaluation of what hospices were doing in her state. In response to her questions, I explained how hospices commit fraud and she was stunned. She didn't believe me at first, but we continued speaking on and off. Several months later, she called me to report her investigations had found widespread fraud in hospice in her state.

What about one of the largest for-profit hospice chains in the USA, Odyssey Health Care? They settled with the U.S. Justice Department by paying $13 million. In 2006, they had 82 hospice agencies located in thirty different states! I've been contacted by Odyssey hospice nurses who told me about the fraud being committed there. They felt terrible that the patients were suffering because they were not getting the care they needed.

I also got calls from some therapists that had contracted with Odyssey Hospice to provide therapy services and complained that they were just listed as the hospice therapists, but were not allowed to go out and really provide service. So, they told me, when Odyssey billed for full service, they provided less, and therefore, Odyssey made more profit. Just like at some of the other hospices committing fraud.

> July 11, 2006 -- "Odyssey HealthCare, Inc. (Nasdaq:ODSY), the second largest provider of hospice care in the United States, today announced that it has entered into final agreements with the United States Department of Justice and United States Department of Health and Human Services, Office of Inspector General ("OIG") to resolve previously-disclosed federal investigations arising from two whistleblower actions filed under the federal civil False Claims Act. As previously announced, under the terms of the Settlement Agreement, the Company agreed to pay $13.0 million without acknowledging any wrongdoing. The Company recorded the $13.0 million charge in the fourth quarter of 2005."
>
> "As part of the settlement, Odyssey worked closely with the OIG to negotiate a corporate integrity agreement ("CIA") that will enhance the Company's already robust compliance program."

"Robust" compliance program? They make it sound like the administration never knew about the fraud going on. They make it sound as if the top administrators truly care about running a completely honest operation. Fraud of this magnitude can never occur without the knowledge of top administrators. These corporate integrity agreements allow those who initiated and then carried out the fraud to plan on paper how they will "prevent" future fraud. What would the public think if we had every bank robber write down a plan for how he is not going to rob banks in the future? And then release him from custody with half the money he stole from the bank? How many bank robberies would that stop?

We need to understand that intentional fraud committed by the administrators of these hospice corporations is really organized crime, crime intended from the top levels of the corporation with policies set in place that guarantee fraud continues. Even one of these rogue hospices steals many millions of dollars each year. This is white-collar crime on a scale that boggles the mind. I know from my own experience that some of the most well-known leaders in the hospice industry are basically white collar criminals that belong in jail. Yet, they lead the national hospice organizations and are hailed as great business "successes."

You think Odyssey and Hospice of the Florida Suncoast are the only ones? Not even close.

What about Vitas, the largest hospice provider in the country? Now, Vitas is a special case, a very interesting case.

Based in Miami, Florida and founded by Hugh Westbrook, the hospice is, as we've seen, a for-profit hospice chain (now owned by Chemed Corporation), just like Odyssey, VistaCare, Beverly (now "Golden Living") and others. Vitas was under investigation during the Clinton administration for Medicare fraud with $50 million in "disputed federal payments."

As we've seen, the reporter who broke the first national story about hospice wrongdoing in the country was *Washington Post* senior investigative reporter Chuck Babcock. That was the reason he called me. He was working on the story and wanted to get my reaction to the Vitas case and also to research hospice and get more information. His article, "Hospices Big Business, Thanks to Medicare; Exploitation of Some Patients Is Alleged" contains references to problems I told him about at the Hospice of Michigan where I had worked, problems that confirmed that hospice had become a big business, with the potential to create terrible problems for patients.

Who was U.S. Attorney General when Vitas was being investigated? Miami resident Janet Reno. This same Janet Reno had been a state attorney for what is now Miami Dade county and certainly knew Hugh Westbrook, CEO of the Vitas Health Care Corporation based on her home turf. Westbrook was and is a huge Democrat supporter, fundraiser and friend of Bill Clinton. And Janet Reno was a huge supporter of Democrat politics.

The Justice Department investigation of Vitas Health Care? When I contacted Chuck Babcock a few years later (now at Bloomberg News), he told me that the case was just closed, no explanation. It just mysteriously disappeared under the Janet Reno Justice Department! This is how the system works. Remember that old saying? "It's not what you know ... It's who you know....!" I guess Hugh Westbrook, Bill Clinton and Janet Reno would all agree.

This is not "being negative." It just is reality. When I was younger, I never wanted to believe it. The more you see, the more you experience, and it becomes obvious. And the crooks keep stealing when nothing serious is done to stop them. As just one example, "the Texas Attorney General's Office and U.S. Department of Justice are investigating" Vitas again for committing Medicare and Medicaid fraud.

Of course, the public doesn't think about Vitas's or Odyssey's fraud when they think about hospice. They don't think of Beverly Enterprises, the Hospice of Michigan or the Hospice of the Florida Suncoast. They just think warm, fuzzy thoughts about comfort care and relieving suffering at the end-of-life. End-of-life service should be what they are thinking, and sometimes it is, but it isn't always that way. It can be a real mess, a mixture of very good care in some cases and very bad care in other cases.

The public doesn't know that leaders at such large hospices such as Hospice of the Florida Suncoast, the Hospice of Michigan, Vitas, VistaCare, and Odyssey also serve on the board of the National Hospice & Palliative Care Organization, the largest hospice lobbying and trade organization.

But we're getting ahead of ourselves. Back to the Hospice of Michigan where I worked: just like all the big hospice corporations, it has a big law firm on retainer. I'm certain they may have told them about the Justice Department policy, that they didn't require corporations to pay everything back. It's public knowledge this is the U.S. Justice Department policy. So it pays hospices and other health care corporations to commit fraud, and then wait and see what happens.

I get some of the industry seminar and leadership conference announcements. One year I had to laugh when I saw a picture and announcement that one of the hospice in Michigan's administrators was going to give a lecture at the big conference on how to prevent fraud in hospice. I imagine that behind the scenes "tricks of the trade" are shared in how to defraud Medicare and Medicaid, but can't be sure. What the public doesn't know!

What kind of fraud is the most common in hospice? Usually it's admitting patients who don't require a lot of services, like chronically ill but stable patients with a wide variety of conditions. These are patients that are properly enrolled in home health care agency services with a visiting nurse to keep an eye on their medications and condition.

Sometimes dementia patients who are not at the very end-stage of the disease are also admitted. Why admit them? Well, the hospice agency doesn't have to send out lots of staff, but they bill every day for services. Hospice is funded on a per-diem basis. Every day a patient is enrolled is a day they can bill. The less service-intensive patients balance out for the patients who require a lot of intervention and staff.

Like we've seen, good hospice administrators I've met through the years tell me that providing all the required services can be done under the reimbursement structure, but it's "tight." Whenever I hear about a hospice corporation making a lot of profit, or paying hundreds of thousands of dollars to its administrators, I know they are committing fraud of one sort or another.

As a regular part of their work, the Medicaid and Medicare fiscal intermediaries investigate bills for reimbursement from the hospices, determining if bills should or should not be paid, whether patients qualify for hospice or not. Hospices may or may not be committing fraud when the fiscal intermediaries request further information and are looking more closely at a particular hospice. Several law firms specialize in helping hospices get out of trouble with the fiscal intermediaries or even with the OIG or U.S. Attorneys' offices.

How the hospice fraud game is played is simple: they admit non-terminal patients and bill for services for several months or longer. There are other methods as well.

Kaiser Permanente's Oregon Unit is just another example of this common method. They paid $1.8 million over "billing flaws" in 2009.

> .... to settle charges of false billing brought by the federal Medicare program.
>
> The U.S. Justice Department said Kaiser's hospice program billed for services without obtaining written certifications of terminal illness required by federal regulations."

Of course, Kaiser denies any wrongdoing, but the Justice Department investigated for a few years and found false billing had been committed. In the old days, in order to avoid detection, hospices committing fraud would actually discharge the patient from hospice after several months saying the patient was not "declining" or not showing evidence they were coming closer to death (they wouldn't because they weren't "terminal").

Nowadays, it's done differently. They're more willing to be in-your-face pushing imposed deaths upon those patients that are inconvenient to them. A patient who lives too long is a liability, a legal embarrassment. The Medicare fiscal intermediaries look at every case that's billed and if a patient has lived too long, it becomes a "red flag." They look into it, looking for possible fraud.

Well, do you think the U.S. Justice Department "solved" the problem and got these hospice businesses to shape up and stop committing criminal fraud? No way! In 2011, Vitas, Vistacare, Gentiva and other for-profit hospices are in the news again, and it just continues, with serious repercussions for patients. Peter Waldman of Bloomberg News writes, "Preparing Americans for Death Lets Hospices Neglect End of Life."

Of course, there are patients who truly are terminally ill and happen to live longer, but if the pattern is widespread, it's fraud. Killing off the patient, falsifying the medical record to show the patient died of "natural causes" "proves" on paper that the patient died of his terminal illness and that the hospice was "not" doing fraud (although they were). Simple.

Hospice Kickback Arrangements

The bigger the hospice, the bigger the pressure is to keep patients coming their way. In March of 1998, the U.S. Office of Inspector General (DHHS) warned a second time about fraud in hospice, but it has also warned about kickback arrangements being used. It has specifically warned about kickbacks occurring between nursing homes and hospices, but illegal kickback arrangements can occur between hospice and other providers as well.

"... arrangements between nursing homes and hospices are vulnerable to fraud and abuse because nursing home operators have control over the specific hospice or hospices they will permit to provide hospice services to their residents. An exclusive or semi-exclusive arrangement with a nursing home to provide hospice services to its residents may have substantial monetary value to a hospice. In these circumstances, some nursing home operators and/or hospices may request or offer illegal remuneration to influence a nursing home's decision to do business with a particular hospice."

"Hospice patients residing in nursing homes may be particularly desirable from a hospice=s financial standpoint. First, a nursing home's population represents a sizeable pool of potential hospice patients. Second, nursing home hospice patients may generate higher gross revenues per patient than patients residing in their own homes because nursing home residents receiving hospice care have, on average, longer lengths of stay than hospice patients in their homes. Also, there may be some overlap in the services that the nursing homes and hospices provide, thereby providing one or the other the opportunity to reduce services and costs. A recent OIG report found that residents of certain nursing homes receive fewer services from their hospice than patients in their own homes. Since hospices receive a fixed daily payment regardless of the number of services provided or the location of the patient, fewer services may result in higher profits per patient."

"However, a hospice's access to nursing home patients depends on the nursing home operator. Nursing home operators may restrict residents to one or two hospice providers."

> "While an exclusive or semi-exclusive arrangement can promote efficiency and safety by permitting the nursing home operator to coordinate care, screen hospice caregivers, and maintain control of the premises, it also enhances the value of the nursing home operator's decision. In these circumstances, some nursing home operators or hospices may request or offer illegal inducements to influence the selection of a hospice."

Kickback arrangements can be made between hospices and physicians, hospices and nursing homes, hospices and hospitals, even hospices and funeral homes. Let your imagination run wild and you will be sure to figure out what benefit it would be to a nursing home or a physician to get kickbacks for referring exclusively to one particular hospice. If a particular hospice is getting all the referrals, the other hospices are financially damaged. The bigger hospice just gets bigger and bigger, and more powerful. Word of mouth spreads that this hospice is "the one" to use and it "corners the market."

What if a particular funeral home pays kickbacks to one hospice so that the hospice makes sure the dead are sent to that funeral home exclusively? Other funeral homes are shut out, and sometimes destroyed. Some of those who died that had prepaid funeral plans with one funeral home have had their bodies sent to another funeral home favored by the hospice. I've been contacted regularly by funeral home directors who report this scam occurring in their area. The public is unaware of these illegal activities.

What does the National Hospice & Palliative Care Organization have to say about this publicly? Nothing. Does the NHPCO take a stand against hospice nurses trolling the halls for patients and stealing them from the smaller hospices? No, they don't even mention it. Do they make a big fuss about kickback arrangements that are occurring? Do they specifically condemn the fraud or violations of standards of care that occurred at the Hospice of the Florida Suncoast, Odyssey Hospice, or the Hospice of Michigan? No. They elect CEOs of those hospices to the NHPCO board of directors. They certainly don't make it a mission to encourage the respect for life in the hospice industry.

Other big hospices are also playing the game:

> "…. the number of health care companies and individuals who are willing to try to defraud the Medicare and Medicaid hospice benefits programs is on the rise."
>
> "A recent example of hospice fraud involving a South Carolina hospice is Southern Care, Inc., a hospice company that in 2009 paid $24.7 million to settle an FCA case. The defendant operated hospices in 14 other states, too, including Alabama, Georgia, Indiana, Iowa, Kansas, Louisiana, Michigan, Mississippi, Missouri, Ohio, Pennsylvania, Texas, Virginia and Wisconsin."

Hospices are increasingly involved with nursing home patients, and some hospices have taken advantage of the opportunities for fraud that exist. Recently, a November 2010 Atlantic Information Services newsletter stated that the:

> "OIG reported finding major issues with hospice claims. Specifically, *82% of hospice claims for*

beneficiaries in nursing facilities failed to meet at least one Medicare coverage requirement, costing a total of $1.8 billion, according to an August 2009 OIG report (OEI-02-06-00221). All but 1% of the unsupported claims pertained to plans of care, election statements, services or certifications of terminal illness." [Emphasis added]

"O divine art of subtlety and secrecy! Through you we learn to be invisible, through you inaudible; and hence we can hold the enemy's fate in our hands."

The Art of War by Sun Tzu Chapter VI, verse 9

III - The Culture of Death: Covert Operations

Hastening Death at the End-of-Life

The "culture of death" that promotes imposing death through euthanasia, assisted-suicide or the Third Way in hospice (terminal sedation) views the pro-life movement as "the enemy." In fact, they view traditional American society as "the enemy," something to be manipulated and defeated so that their goals can be achieved. It is clear that traditional American values are pro-life. The Declaration of Independence mentions specifically the right to life!

> "We hold these truths to be self-evident, that all men are created equal, that they are endowed by their Creator with certain unalienable Rights, that among these are Life, Liberty and the pursuit of Happiness.

The founders of our nation recognized, and said that everyone understood that these rights were given to us by God. Charles Galloway shows in his book, *Christianity and the American Commonwealth* that every original colony in America had founding documents that openly give thanks to God for the blessing of being able to live in freedom here. Had they not been persecuted for their faith when in Europe, most colonists would never have risked everything to come here. The right to live free from coercion, the right to choose how they practiced their faith, and certainly, the right to life itself were sacred to them, not something taken casually at all!

Though it is convenient for some to criticize the strict codes of the Puritans and others of that time, they were much more lenient and freedom-loving than any of the societies that they left behind in Europe. We owe much to the original colonists for the freedoms we enjoy today. Because the colonists established societies that treasured the rights of individuals in a free society, the founders of our nation said that the rights were "self-evident" and needed no explanation.

Today, however, the culture of death crowd does not agree. The Jack Kevorkians of our world do not believe that society is elevated when people make their best effort to serve each other and honor life throughout life. The Jack Kevorkian style assisted-suicide advocates of our world believe in death-on-demand. They believe suicide shoud not be restricted in any way! They sell their agenda by appealing to the public's concern for the suffering of the terminally-ill. However, contrary to the media's portrayal of Kevorkian, he was a ghoulish and bizarre character. "At least 60 percent of Kevorkian's suicide patients were not terminal. At least 17 could have lived indefinitely and, in 13 cases, the people had no complaints of pain." Though Jack Kevorkian is dead, the harm he and other assisted-suicide proponents have done to traditional American values is only increasing over time. Where assisted-suicide has been legalized such as in Oregon, suicide rates have increased.

The inner prohibition against killing oneself is actively being eroded and many in society are just fanning the flames for those troubled souls who need encouragement, counseling and love. The suicide advocates do not respect the right to live for those they deem unworthy of life, or as they suggest, "better off dead." Many of them support the ability to access assisted-suicide for any reason. So, we find patients who are not terminal but are mentally disturbed, perhaps in deep depression, killing themselves in Oregon and elsewhere. We also find Final Exit Network groups around the country encouraging suicide and providing information to people on how to commit suicide.

Derek Humphry, founder of the former Hemlock Society and chairman of the Advisory Committee for Final Exit Network says that the reason Oregon was the first to legalize assisted-suicide is that "fewer Oregonians go to church" and more Oregonians are unaffiliated with any religion at all. Reverence for life goes along with faith, while devaluation of life and approval for assisted-suicide goes along with atheism and utilitarianism.

The assisted-suicide and euthanasia advocates are, therefore, at war with America's traditional values themselves, at war with you and those you love. Hospice, which has many representatives of both the pro-life and pro-death movements, is truly divided, though the public would never know. Mixing intentional killing with hospice is like throwing gasoline on a fire: it can only cause an explosion, injury and even death to many. Just because hospice deals with those who are dying does not mean health care workers should cause death intentionally!

I worked with reporter Susan Brinkmann, *Catholic Standard & Times* Correspondent who researched the topic and wrote in her March 2005 article, "Managed Death: Hospice's 'Civil War'"

> "Where the culture of death exerts its influence is in the potential for the misuse of pain-killers to hasten death, rather than merely to control pain.
>
> "This practice is even considered acceptable by some ethicists and doctors, who say they consider "terminal sedation" (TS) to be a legal alternative to assisted suicide. TS is defined as a deliberate "termination of awareness" - usually with morphine - that renders the patient unconscious, so that all treatment, including food and water, can be withdrawn.
>
> "That they should die in comfort is clearly the goal - and I would argue the legitimate goal - of terminal sedation," Erich Loewy, a medical ethicist at the University of California-Davis, contends in "Terminal Sedation, Self-starvation and Orchestrating the End of Life."
>
> "This is not the opinion of hospice founder Dame Saunders. She has said the goal of hospice care is "to make it possible for people who are dying to live fully until they die."
>
> "Nor is it the Vatican's belief.
>
> "Its 1994 Charter for Health Care Workers specifically warns against depriving the dying of the "possibility of living his own life, by reducing him to a state of unconsciousness not worthy of a human being. This is why ***the administration of narcotics for the sole purpose of***

depriving the dying person of a conscious end is a truly deplorable practice."

> "According to Terre Mirsch, Vice President of Holy Redeemer Home Health and Hospice Services, a good hospice should do a lot more than administer pain medication: "Symptoms come from not just physical manifestations, but from the psychological and spiritual implications of illness and the dying process. We need to treat the whole person, not just focus on physical care or giving medications."
>
> "Holy Redeemer's team approach addresses all of a patient's needs, so that "patients are able to die comfortably," Mirsch said. "They are able to die with dignity, and don't feel the need to request interventions such as assisted suicide and euthanasia."
>
> "During her 15 years in hospice work, Mirsch said, she found that what patients fear most is dying in pain: "Once they see that we'll do everything in our power to alleviate their pain and suffering through appropriate medical and emotional care ... people want to live, and are able to live as fully as possible. They're able to spend meaningful time with friends and family, and focus on what's really important." [Emphasis added]

The idea of a "culture of death" contrasts starkly with the affirmation of life and its value by those who adhere to a belief in the sanctity of life. A culture of death encourages the deaths of many, whether unborn, newly born, disabled or ill, orphans, the very poor, the elderly, the otherwise "expendable." Rather than seeing life as arising from the dear Lord, with meaning at all stages of life, adherents of the culture of death view life as an accident of chance, an amalgamation of cells that give rise to "life" without any Creator or ultimate meaning at all.

To better understand the "culture of death" at the end-of-life, we need to understand the "culture of death" approach to ending life at the beginning of life. We need to understand how certain lives can be devalued, mistreated, manipulated and harmed by those with an agenda. Those who seek to promote the culture of death trade in deception, sometimes using what may seem as "sensible" language to hide their intent.

For example, in the guise of promoting "choice" and a "woman's right to choose," *the culture of death has denied the right of the child to choose to live*. All living things seek to live. Self-preservation is perhaps the strongest instinct of all. Biological science is filled with examples of self-preservative behaviors by animals of all sorts. Although babies at all stages of their development are dependent completely, they nevertheless show their choice of life in everything they do. Once born, they seek nourishment and warmth. Their cries alert the mother to their needs. This demonstrates the instinctive choice of life by the child throughout the day, throughout their lives. If we must speak only of "women's" right to choose, what about the little women's right to choose life? Abortion is used to end the lives of more girls than boys, so any talk of women's choice is an appalling deception.

Even before birth, babies filmed in the womb during an abortion instinctively recoil away from lethal probes used to end their lives. In her new book, unPlanned, Abby Johnson, former director of a Planned Parenthood clinic tells how horrified she was when she watched the ultrasound monitor and saw a baby in the womb frantically move away from an abortionist's tool. She realized that they had lied to her when they told her that babies "feel no pain" during an abortion, or that a "fetus" is not a human being. She realized that when she had counseled others, she had also misled them into ignoring their instinctive knowledge that they were killing a real human baby, their baby.

It was the same technology that convinced one of the leading original proponents of legalizing abortion to completely change his position and come to the conclusion that a baby, in utero, was truly a complete human person.

Abortionist Bernard Nathanson, MD, "co-founder of the pro-abortion vanguard group NARAL," says,

> "... as a result of all of this [new] technology - looking at this baby, examining it, investigating it, watching its metabolic functions, watching it urinate, swallow, move and sleep, watching it dream, which you could see by its rapid eye movements via ultrasound, treating it, operating on it - I finally came to the conviction that this was my patient. This was a person! I was a physician, pledged to save my patient's lives, not to destroy them. So I changed my mind on the subject of abortion."
>
> ".... In 1985, intrigued by the question of what really happens during an abortion in the first three months of a pregnancy, Nathanson decided to put an ultrasound machine on the abdomen of a woman undergoing an abortion and to videotape what happens.
>
> "We got a film that was astonishing, shocking, frightening," he says. "It was made into a film called 'The Silent Scream.' It was shattering, and the pro-abortion people panicked. Because at this point, we had moved the abortion debate away from moralizing, sermonizing, sloganeering and

pamphleteering into a high-tech argument."

[p192-193, *The Marketing of Evil* by David Kupelian; WND Books, Nashville, TN]

Nathanson also reveals how years earlier ***he and others purposefully distorted the facts in order to gain public support for legalization of abortion***. In other words, they lied to achieve their goals.

> "Knowing that if a true poll were taken, we would be soundly defeated, we simply fabricated the results of fictional polls. We announced to the media that we had taken polls and that 60 percent of Americans were in favor of permissive abortion. This is the tactic of the self-fulfilling lie. Few people care to be in the minority. We aroused enough sympathy to sell our program of permissive abortion by fabricating the number of illegal abortions done annually in the U.S. The actual figure was approaching 100,000, but the figure we gave to the media repeatedly was 1 million.
>
> "Repeating the big lie often enough convinces the public. The number of women dying from illegal abortions was around 200-250 annually. The figure we constantly fed to the media was 10,000. These false figures took root in the consciousness of Americans, convincing many that we needed to crack the abortion law."

It is important for us to understand that the "big lie" strategy Nathonson mentions is used also by those using end-of-life care to end life prematurely through euthanasia, assisted-suicide and Third Way palliative sedation killing. They tell us that the patient is better off dead, that it's time to "let go," and use many other manipulative and deceptive phrases to get people to go along with their agenda. They mean something other than the "letting go" that should occur when death arrives in its own natural timing. Margaret Sanger, the founder of Planned Parenthood, lied frequently in order to achieve her goals. What were her goals?

> "Margaret Sanger spoke of sterilizing those she designated as "unfit," a plan she said would be the "salvation of American civilization."
>
> [From "The Truth about Margaret Sanger" January 20, 1992 edition of *Citizen* magazine], and
>
> "It was in 1939 that Sanger's larger vision for dealing with the reproductive practices of black Americans emerged." After the January 1939 merger of her Clinical Research Bureau and the ABCL to form the Birth Control Federation of America, Dr. Clarence J. Gamble was selected to become the BCFA regional director for the South. Dr. Gamble, of the soap-manufacturing Procter and Gamble company, was no newcomer to Sanger's organization. He had previously served as director at large to the predecessor ABCL."

This is the same time that the Euthanasia Society of America was just getting started.

> "Gamble lost no time and drew up a memorandum in November 1939 entitled "Suggestion for Negro Project." Acknowledging that black leaders might regard birth control as an extermination plot, he suggested that black leaders be placed in positions where it would appear that they were in charge as it was at an Atlanta conference.
>
> "It is evident from the rest of the memo that Gamble conceived the project almost as a traveling road show. A charismatic black minister was to start a revival, with "contributions" to come from other local cooperating ministers. A "colored nurse" would follow, supported by a subsidized "colored doctor." Gamble even suggested that music might be a useful lure to bring the prospects to a meeting.
>
> "Sanger answered Gamble on Dec. 10,1939, agreeing with the assessment. She wrote:
>
> **"We do not want the word to go out that we want to exterminate the Negro population, and the minister is the man who can straighten that idea out if it ever occurs to any of their more rebellious members."**

So, Margaret Sanger, the founder of what became Planned Parenthood, was racist, a leading eugenics proponent (having written many articles on the subject) and considered birth control the true method of eliminating those deemed "unfit" or as the Nazis said, "unworthy of life." It was the same thinking in the same time period leading up till Nazi rule in Germany and the second World War. Hitler bragged about being up-to-date on the latest eugenics ideas circulating in America.

Sanger was willing to engage in deception to get blacks to accept birth control on a widespread basis. The goal, reduction in the black population. The result? Contrary to Sanger's plans, as birth control was more widely adopted, sexual activity actually increased. With increased sexual activity, there were more births among unmarried nonwhite women:

> "In 1940, nonwhite women aged 18 to 19 experienced 61 births per 1,000 unmarried women. In 1968, the corresponding figure was 112 per 1,000, a 100 percent jump. What other factor could account for the increased rate of sexual activity than wider access to birth control, with its promise of sex without tears and consequences?"

While Sanger's promotion of birth control among the black population backfired and did not decrease the population, it did create heartache and pain for them and a huge business opportunity for her organization, later called "Planned Parenthood." What is the fruit of Sanger's efforts? Well, one merely has to look at the statistics in any large city (places where a larger percentage of blacks Sanger and Planned Parenthood targeted live). The January 7, 2011 headline from CBS New York screams,

> "39 Percent Of NYC Pregnancies Result In Abortion"
>
> "The city health department last month released statistics that showed 39 percent of pregnancies ended with induced termination in 2009.
>
> ".... In 2009, there were 225,667 pregnancies in the City with 126,774 resulting in live births and 87,273 resulting in abortions. ...."
>
> "Forty-six percent of all births in the Bronx result in abortions - the highest among the five boroughs, according to the report.
>
> "Blacks had the highest number of abortions with 40,798 with Hispanics having the second highest at 28,364, according to the report."

That there were more births, not fewer, was not her goal. In order to achieve her goal, she promoted abortion and specifically focused those efforts on black neighborhoods. So, what do we see today? The largest percentage of Planned Parenthood clinics are in predominantly black neighborhoods. Access to "birth control" obviously doesn't prevent pregnancies in many cases, even though that's what that access is said to do. Access to birth control increases casual sexual relations and therefore, when it eventually fails, it increases the overall pregnancy rates. "Failure rates for most of these methods are higher for teens than adults because teens are more fertile than older couples, and they are less likely to use the methods consistently and correctly."

Access to birth control certainly has increased the rate of unmarried women becoming pregnant and then having abortions, or becoming single mothers. Who provides the most abortions today? Planned Parenthood. One of its slogans is that they seek to make abortions rare by providing birth control and counseling. The reality is their efforts increase the rate of abortions, and Abby Johnson reveals that she was pressured to increase the number of abortions performed at her Planned Parenthood clinic. She realized they were a business taking in most of their revenue from abortions, so she quit.

> "Abortion advocates often promote contraception by claiming that as contraception use increases, the number of "unwanted" pregnancies and therefore abortions will decrease. But a new study out of Spain has found the exact opposite, suggesting that contraception actually increases abortion rates."
>
> "The authors, who published their findings in the January 2011 issue of the journal *Contraception*, conducted surveys of about 2,000 Spanish women aged 15 to 49 every two years from 1997 to 2007. They found that over this period the number of women using contraceptives increased from 49.1% to 79.9%."
>
> "Yet they noted that in the same time frame the country's abortion rate more than doubled from 5.52 per 1,000 women to 11.49." ["Contraception linked to massive rise in abortion rate" by Patrick B. Craine Jan 05, 2011 LifeSiteNews.com]

So, we get more lies from those who promote abortion, contraception as well as euthanasia and Third Way hospice killings. Planned Parenthood likes to claim it provides "many" services for "women's health," yet, "***Planned Parenthood is the nation's largest abortion provider and 96% of its services for pregnant women are abortions***." Clearly, Planned Parenthood is almost totally about providing abortions! Seeing how Planned Parenthood and other organizations like it work helps us understand the culture of death seeking to end life at any stage of life. What does Dr. Martin Luther King's niece, Alveda King, have to say about Planned Parenthood?

> "Planned Parenthood is the largest provider of abortions in the United States and that here is a link between abortion and breast cancer."

"I said, 'Isn't it funny that Susan G. Komen for the Cure is raising money to find a cure for breast cancer while at the same time giving millions of dollars to an organization that performs abortions on women and provides birth control both of which have been linked to breast cancer."

".... What a scheme. Planned Parenthood does abortions and provides birth control pills which are linked to breast cancer and then Susan G. Komen for the Cure raises money to give to Planned Parenthood to do mammograms. They make you sick then raise money to treat you and then butcher you with breast surgery. Does anyone see anything wrong with this picture?"

[and]

"Following Margaret Sanger's strategy to dupe "colored ministers" Planned Parenthood selected Dr. King and other Black Leaders for awards. Dr. King supported natural family planning, called the "rhythm method" in his day. He would never agree to mass murder by abortion, and chemical birth control that is linked to illness. Planned Parenthood also lied to me, telling me that my babies were "blobs of tissue" and that "abortion wouldn't hurt as bad as having teeth pulled." It was to be "our secret." I was abortion vulnerable, and they took advantage of that. They lied then, to my uncle and to me. They still lie. Planned Parenthood, stop using my uncle to promote your injustice!"

-- Alveda C. King

Today, the widespread killing of African American babies continues:

"It has been estimated that since 1973 Black women have had about 16 million abortions. Michael Novak had calculated "Since the number of current living Blacks (in the U.S.) is 36 million, the missing 16 million represents an enormous loss, for without abortion, America's Black community would now number 52 million persons. It would be 36 percent larger than it is. Abortion has swept through the Black community like a scythe, cutting down every fourth member." "A highly significant 1993 Howard University study showed that African American women over age 50 were 4.7 times more likely to get breast cancer if they had had any abortions compared to women who had not had any abortions."

"In a 1921 article in the *Birth Control Review*, Sanger wrote, 'The most urgent problem today is how to limit and discourage the over-fertility of the mentally and physically defective.' Reviewers of one of her 1919 articles interpreted her objectives as 'More children from the fit, less from the unfit.' Again, the question of who decides fitness is important, and it was an issue that Sanger only partly addressed. 'The undeniably feebleminded should indeed, not only be discouraged but prevented from propagating their kind,' she wrote."

"Sanger advocated the mandatory sterilization of the insane and feebleminded."

The forced sterilization of the mentally ill and others deemed "unfit" was carried out in Nazi Germany, along the same lines of thinking that Sanger promoted in the United States.

Just as Sanger lied to promote birth control mostly among the black population since she wanted to eliminate them, or at least decrease the size of their population, the abortion proponents of the 1960s lied to achieve legalization in New York State in 1969 (before the Supreme Court ruling of Roe v Wade). "In 2009 60 % of the pregnancies of African-American women in New York ended in abortion."

Euthanasia and assisted-suicide proponents lie just the same. And there are many who tell people to place their elderly parents in hospice so that "they will get better care," and "access to a wide range of services." Well, that is true in some hospices, but many families who have called me have reported they didn't get better care or a wide range of services. They report that once their loved one was enrolled in hospice, his or her death was hastened even when death was not expected in the near future.

Aborting a baby in the womb, medically killing a patient through euthanasia, "assisting" a patient to commit suicide by providing a lethal drug? Medical killing is medical killing, technicalities apart. A human life is just that, something to be respected, nurtured and shared, not killed. Yet, those intent on killing keep on keeping on. They have never stopped pushing their agenda. Philip Nitschke, MD, Australia's "Doctor Death" has said,

"It is often difficult to know what constitutes assisting suicide.
The best advice is to do it and say you didn't."

[Philip Nitschke, MD, Australia's "Doctor Death"
quoted in "A practical guide to suicide" By Greg Roberts in Townsville
The *Sydney Morning Herald*, December 2, 2002]

Hastening death at the end-of-life is done in many ways, and deception is often used, just as it is used with the promotion of contraception, abortion, and sterilization. We hear reports of hospices that take away the oxygen given to patients who are chronically ill and dependent upon the oxygen for their well-being. Years ago, and in hospices with integrity today, oxygen is considered a necessary and ordinary treatment to maintain the well-being and comfort of the patient. Take it away, and a stable patient is destabilized, falling into an acute crisis from which they are not allowed to recover. They are often chronic obstructive pulmonary disease ("COPD") patients who are especially sensitive to morphine and other opioids. When they are given these medications, they quickly fall into a medically-induced coma and their breathing is stopped due to their very weak respiratory effort. Yet, hospice staff all across the country tell these patients that "morphine will help your breathing," even though it causes the breathing to stop in these patients! The trusting family members don't understand whether their loved one died of their terminal illness, or if an overdose of an opioid medication caused the death.

Other methods of hastening death include giving medications that are not needed. "The FDA has linked off-label prescribing of antipsychotic drugs [like Zyprexa, Abilify, Risperdal, and Seroquel] to an increased risk of death in the elderly." Also, "the use of benzodiazepines [like Ativan] among elderly patients has been associated with intellectual and cognitive impairment." The elderly may never recover from these adverse effects and then be labeled "dementia" patients. "**Overdose symptoms may include extreme drowsiness, confusion, muscle weakness, fainting, or *coma***." And what do we see when patients routinely get unneeded high doses of Ativan in many hospices? They are intentionally placed in a medically-induced coma (terminal sedation) and then die in less than two weeks.

Sometimes unneeded laxatives are given to promote uncontrolled diarrhea and contribute to life-threatening dehydration. Removing the medications used to treat chronically-ill patients precipitate an intentional acute crisis from which they are not allowed to recover. Patients with heart or blood pressure conditions no longer are given their medications and they die shortly thereafter. The lie told is that the patient "no longer needs these medications." As usual, **the deception is to apply something that may be true at another time, at an *inappropriate* time**. Patients who are already at the very, very end, *active phase of dying* do not need their regular medications, as these medications can no longer help at that time. The patient's organs and organ systems are already failing.

But **withholding the patient's regular medications, way before the patient reaches the end, active phase of dying, pushes the patient into a crisis. The patient then *appears* to be "*actively* dying" and is then either sedated, given morphine and other opioids, or both, and that un-needed cocktail of medications completely destabilizes the patient, who then dies**. The trusting family doesn't know what happened.

Manipulation of patients and families occurs by mixing some things that may be true at the wrong timing or with the wrong patient. This intentional manipulation results in hastened deaths, and there are many, many deceptions we have heard about through the years. Only an experienced hospice physician or nurse would be able to know that the professional-sounding advice was not appropriate at that time or for that particular patient. Similar deceptions happen in an acute hospital setting when the patient has been selected for stealth euthanasia. Certain patients are denied treatment, forced to sign a DNR order, and manipulated into hospice; the pattern is becoming more and more common.

When is a Person a "Person?"

It is also convenient for proponents of the culture of death to deny that in addition to having a material body and rational mind, humans have a soul. They deny the spiritual purpose of life and all life involves. In addition to denying the "soul," they often ascribe all mental processes and the experiences of life to chemical processes in the brain. In other words, there is no "love," just a chemical process in the brain. There is no "purpose," just a chemical process in the brain. For them, there is no such thing as a "person," separate from what goes on materially in the body of a human being. For them, our experiences, thoughts, feelings and relationships are just a chemical process in the brain and the result of some hormonal influence.

Proponents of the culture of death attempt to create false distinctions in a myriad of ways, using a myriad of different phrases, using bogus "science" and distortions to convince the public that imposing death or even performing experiments on innocent human beings is morally acceptable. Yet, they assert that those of faith are "unscientific" when the reality is exactly the opposite.

Science confirms what faith reveals.

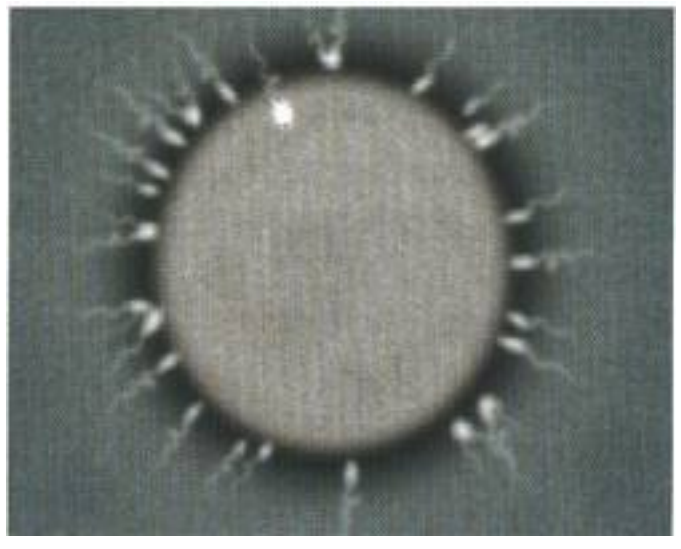
In 1991 Dianne Irving, M.A., Ph.D., wrote in her Georgetown University PhD dissertation, "Philosophical and Scientific Analysis of the Nature of the Early Human Embryo" Linacre Quarterly Feb 1993, 60:1:18-46

> "...violations of the dignity of these early human beings are usually accompanied by the use of erroneous science and deceptive linguistic jargon in the attempt to justify these immoral actions. This use of contrived rhetoric to refer to the newly created human embryo or fetus is now amazingly extensive; for example: a pre-embryo vs. an embryo; a being on the way vs. an already existing one; a seed vs. an organism; ... a possible or potential human being vs. an actual human being; a possible or potential person vs. an actual human person; an object vs. a subject; ... a ball of cells vs. an organism. Politicized terms such as spare or left-over embryos or products of conception are often used."

Each of us may not have even heard of these "bioethical" distinctions proposed by the culture of death, but enough of them may "ring a bell" to recognize that the value we place in human life has been persistently attacked by those in academia who embrace the culture of death.

Dr. Irving tells us in her article, "When do human beings (normally) begin?" "scientific" myths" and scientific facts that:

> "The fusion of the sperm (with 23 chromosomes) and the oocyte (with 23 chromosomes) at fertilization results in a live human being, a single-cell human zygote, with 46 chromosomes--the number of chromosomes characteristic of an individual member of the human species."



Dr. Irving cautions that a correct understanding of scientific facts is necessary to begin to properly think about what a "human being" is and when that human being's life ***normally*** begins:

> "One of the most urgent yet least discussed medical dilemmas today is access to the correct basic scientific information regarding the human embryo - scientific information which demonstrates empirically that **normally** every human being begins to exist at fertilization in the woman's fallopian tube as a single-cell embryo, the zygote."
>
> "Indeed, fertilization is the beginning of the existence of the human being, the human embryo, the human organism, the human individual, and the "embryonic period." Without this correct scientific information, we are all precluded from forming our consciences correctly or making morally correct medical decisions about abortion or other related current medical and scientific issues. The use of the correct science is the starting point for thinking about all of this."
>
> "To know that the human embryo is a personal human being is central to forming our consciences correctly, and therefore to knowing what actions are right or wrong in a specific medical or research situation. While conscience is the subjective norm in philosophical natural law theory, it must be a correctly formed conscience - one in accord with objective reality and objective truth - starting with and including this objective scientific truth."

> [From Dr. Irving's speech at the International Conference: The Future of Obstetrics and Gynaecology, International Federation of Catholic Medical Associations (FIAMC) and MaterCare International in Rome, Italy, June 18, 2001, "The Impact of International Bioethics on the 'Sanctity of Life Ethics', and the Ability of OB Gyn's to Practice According to Conscience"; emphasis added]

Well, the science is not tentative. It is an accomplished, accepted fact without any scientific dispute. And of course, human life can ***naturally*** occur during "twinning" (asexually for the *2nd* twin) and the zygote again has 46 chromosomes, ... human chromosomes, a human life begun. We must realize that today there are many alternative methods of scientifically manipulating life whether it be "in vitro" fertilization of egg and sperm or very high-tech methods of extracting genetic material and combining it, even cloning techniques, embryonic stem cell research and other methods. Prof. Irving has mentioned some of the following methods: "SCNT, germ line cell nuclear transfer (GLCNT), twinning (blastomere separation, blastocyst splitting, embryo multiplication, pronuclei transfer, mitochondria transfer, and dozens of other genetic engineering techniques." The new life does not have to "wait" until implantation in the uterus to be a unique, human life.

Technology has succeeded in complicating the normal answer about when life begins and how it begins. Technology changed all that:

> "... with the biological revolution and the emergence of new reproductive technologies. The development of In Vitro Fertilization technologies ["IVF"] came only after human beings grew accustomed to reproductive control through The Pill. If medical technologies could be harnessed to avoid pregnancy, surely new technologies could allow couples to have long-wanted children who had not come by natural means.
>
> "The public was assured that the use of these technologies would not bring about a moral revolution, since the availability of these new technologies would be limited to married couples. But, of course, this was a false promise, and it should have been seen as such from the start. The Pill was at first prescribed only for married couples, but the plain fact is that a far greater demand for contraceptives existed among the non-married. By the early 1970s, The Pill was available to all.
>
> "The same story applied to the use of IVF, as well. If there were thousands of potential users among married couples, these were vastly outnumbered by non-married persons and non-heterosexual couples. The development of IVF and the revolutions made possible by egg and sperm donation and surrogate motherhood made parenthood, though redefined, now available to virtually any adult and any couple."
>
> ["Where did I come from? - it's no longer a simple question" by Albert Mohler January 3, 2011 LifeSiteNews.com]

Dr. Irving has stated:

> "International agreement and documentation by the experts in human embryology and human molecular genetics make the following perfectly clear. The new single-cell human embryo formed sexually at the beginning of the process of fertilization (when the sperm makes first contact with the oocyte) is a new living human being. ***The new human embryo formed asexually by various natural or artificial reproductive techniques (such as one of every two identical twins) is a new living human being. They are not 'eggs.'*** [Emphasis added]
>
> ["Scientific Response to Criticism of the California Human Rights Amendment as "Protecting Fertilized Eggs" by Dianne Irving, PhD and C. Ward Kischer December 9, 2009]

However, in order to "sell" abortion, contraception (which are abortifacients in many cases by preventing implantation), embryonic stem cell research, cloning, etc., people are indoctrinated to believe the clearly mistaken idea that a human being does not exist as a person until the baby is born, or is implanted in the womb, or is a certain number of days, weeks or months old, or whatever the secular "bioethicist" fancies at the time.

Those marketing the lies necessary to accept abortion, contraception, infanticide, or experimentation on innocent human individuals do so for financial gain or because they are "true believers" in the agenda, the culture of death. These industries are huge, representing billions of dollars in revenue each year. ***The motivating force behind the leaders of the culture of death is not "the good of society" but rather profit outright or death that they demand***. They truly hate that some of us are alive and they will lie to achieve their aims.

Those lies told by those promoting the culture of death have been accepted by a large portion of our society, so much so, that those who fight for the victims of this "culture of death" are mocked as extremists, even though they are upholding the basic values upon which our nation was founded.

Those marketing the lies also attack the people who respect life and accept the scientific facts about human life. They ridicule those who respect the sanctity of life. Sometimes ridicule (or the attack "ad hominem") is the only method they can use successfully, since the facts are on the side of those who respect life and understand that a human life *normally* begins truly, at the beginning, at the moment the sperm and oocyte merge and a unique human individual is created.

Lies are also used to promote devaluation of the lives of the vulnerable. Lies are told in arguments given to promote assisted-suicide, euthanasia and/or terminal sedation of the elderly, chronically-ill, disabled, and/or cognitively impaired.

Most of the names of these organizations are based on lies, even the phrase "right-to-die" at the end-of-life is not what it's about. At the beginning of life, "pro-choice" has nothing to do with being concerned about choice in principle; otherwise, those who are "pro-choice" would respect the baby's right to choose to live. Thus, they are more accurately called the "anti-choice to live" movement.

If the "anti-choice to live" movement cared about choice, they would not be working to eliminate a health care professional's right to choose *not* to perform an abortion.

If they respected everyone's right to choose, they would also respect the medical students' right to choose not to learn to perform abortions. However, they have regularly been working to make abortion training mandatory in

medical schools! For example, the Abortion Rights Coalition in Canada is pressing for "mandatory education in abortion and contraception for all medical students, and mandatory training in abortion techniques for all Ob/Gyn residents." And the "medical students for choice" in the U.S. and elsewhere also is working to make abortion training "a part of standard medical education and residency training." That means that all medical students would be forced to perform abortions and those that are pro-life and refused might be thrown out of medical school.

"Right-to-die" proponents tell us that "only" those seeking assisted-suicide and/or euthanasia will be hastened to their death. Research in the Netherlands and Belgium conclusively shows the opposite: patients are involuntarily killed. We will see further on that the more frank statements of the euthanasia proponents in earlier years tell us this is their goal.

We know that involuntary medical killing occurs when euthanasia is legalized. The studies in the Netherlands reported, "There were one thousand cases [of euthanasia] without explicit and persistent request in 1990, and nine hundred cases in 1995." And that was 1,000 cases a year in such a tiny country. Just imagine how many medical killings that would equal in the United States if the same rate applied here. I believe that we are experiencing that rate of involuntary medical killings (of many sorts), all hidden behind the HIPAA privacy shield. No one should have the right to make that decision for you.

In 2007, Belgium research showed patients have been killed ("euthanized") often without their knowledge or permission. "Researchers found that a fifth of nurses admitted being involved in the assisted suicide of a patient." Of those, one-half admitted that the so-called "assisted suicide" was "without consent." If there is no consent, no permission, no knowledge on the part of the patient, how can you call that "assisted suicide?" It's involuntary medical killing, plain and simple, and 10% of the nurses in Belgium admit to doing it. 10 percent! That's where euthanasia is legal, but has "safeguards" for its strict practice only under professional guidelines. We see how effective those "safeguards" are.

"Right-to-die" proponents tell us that the reason they seek legalization of assisted-suicide and euthanasia is to end unbearable pain in the case of terminally ill patients. We know, however, that modern medical science can relieve and reduce all sorts of pain and that pain is absolutely not the reason they seek legalization. So why do they keep lying saying it's all about relief of "pain?" Achieving legalization under this pretense is viewed as a stepping-stone to complete legalization of euthanasia and/or assisted-suicide for a variety of reasons. In fact, some of these groups wish to legalize suicide outright, whether for medical purposes or not.

Prof. Peter Singer of Princeton University has made a name for himself arguing that fetuses, embryos, even newborns are not real "persons" until they develop and actually exercise higher reasoning capacity. He even suggests that some higher primates or other animals may be "more" of a person, than a newborn baby, toddler, or fetus.

Steven Ertelt wrote in 2006 for *Lifenews*.com that "Peter Singer Defends His Views on Killing Disabled Babies Via Infanticide" saying:

> "...from the point of view of ethics rather than the law, there is no sharp distinction between the fetus and the newborn baby," Singer explained.
>
> However, Singer's view is that, instead of legal protection, both disabled babies and the unborn deserve death.
>
> As he wrote in *Rethinking Life and Death*, "Human babies are not born self-aware or capable of grasping their lives over time. *They are not persons*. Hence their lives would seem to be no more worthy of protection that the life of a fetus." [Emphasis added]

Singer has admitted that infanticide has always been an aspect of his work, part of what he promotes.

So, once a human being is no longer considered a "person," then it is "morally acceptable" (according to culture of death proponents) to experiment on or kill that whatever-it-is (but is not a "person").

What people believe sometimes is determined by ulterior motives. We may wish to relieve our guilt over aborting a baby by telling ourselves it wasn't a "real" baby. It's not a "person." Soldiers in war may do something similar rather than really think about killing people (the "enemy") who is the son or daughter, father or mother with a family. Often, derogatory names are given to the "enemy" that makes killing easier psychologically.

When a baby is wanted and valued, the "fetus" is considered anything but a "thing," and there is no doubt it is fully "human," and there is no question about it at all. Everybody knows this! The mental gymnastics that are necessary for people to lie to themselves, even with Supreme Court sanction, are truly monumental. Truth is

truth and science shows us what the truth is. A baby, even a human at the zygote stage, is not a tadpole, not a baby dog, cat, horse or cow; it's a human, a unique person.

The same thing applies to human life at the end-of-life. Even though a person is extremely ill, they are still a "person." Even if they are imminently "dying," they are not "dead." They are always a living person from the beginning till real physical death (no heart beat, no breathing, and no organs functioning.

It is sad to say that I have seen cases where adult children stood before their dying parent and argued about who would inherit this or that possession, while the dying parent lay in bed, helplessly watching the uncaring children, unable to say, "I am still here!"

Sometimes, the patient may still be able to speak and say those words, but the patient is still ignored. The patient may no longer be considered a "person" because they can't actively reason or speak up for themselves. How cruel! Say we are recovering from surgery and are in a medically-induced coma; we can't speak for ourselves. Does that mean we are not "persons?" What about if we are temporarily brain-injured from a car accident, for example, and cannot say a word? Are we not persons? When we can speak up later after receiving rehabilitative therapy, are we then "persons?"

What about babies, two year olds, four year olds? Where does one draw the arbitrary line?

How many times is a patient talked about as if he were not even in the room or a useful participant in a discussion? This unfortunately happens often with the dying.

We should remember that truly, we are all dying; it's just a question of when each of us will die. And that is something most people avoid thinking about. Even if a person is cognitively impaired, or a child, or imminently dying, they are still completely human and still "a person." Yet, there are those who take it upon themselves to end the lives they are supposed to care for. They believe they "know better" and act on that basis. A February 2011 *Canadian Medical Association Journal* article states that, "In Quebec last year, 81% of [physician] ... specialists surveyed said they had seen "euthanasia" practised...." And that is in Quebec where euthanasia is illegal.

The culture of death's fabrications and propaganda (continually presented to members of our society) have convinced many that certain categories of our population are not "worthy of life" because they are not "real" persons. This is exactly the thinking promoted by the Nazis in Germany during World War II. And the moment one mentions the example of the Nazis, the objection is raised, "how dare you compare us to those evil monsters?" I dare, because what we are doing to the vulnerable is what they did, and that is a fact. We are doing it based upon the same line of reasoning as they used.

While human history is filled with a never-ending succession of dictatorial governments, brutality, violence, and genocide, what the Nazis did was unique in recent history. They exalted involuntary experimentation on human subjects as "medical science" and perfected methods of medical killing through a variety of methods. Some of the methods of medical killing perfected by the Nazis are being used today, right here in the United States! Some involuntary medical experimentation is also being done in the United States, even today.

The dark worldview that was the basis for all they did has not been extinguished. It lives on and is being implemented today. To understand what is happening today, to the ailing, elderly and disabled, we must review what happened in Nazi Germany and understand how it began and what exactly occurred.

In Nazi Germany, the Nazis began to implement their eugenics and extermination program by executing the frail, the mentally ill, the terminally ill and other chronically ill by order of the federal German government:

> "The campaign to remove unwanted children from the community was not only the result of Nazi racial biology and eugenics, it was part and parcel of the effort to impose control and conformity on the entire German population."
>
> ["*Hitler's Unwanted Children*" by Sally M. Rogow]
>
> "The coming of the war made the implementation of the most radical eugenic policies possible. The demand that institutionalized patients suffering from hereditary diseases be killed had first been advocated in 1920. Such eugenic killings were called "destruction of life unworthy of life," but the euphemism mercy killing, that is, "euthanasia," was also used. But even the Nazi regime did not at first dare to execute such a radical policy. The attack on the handicapped during the 1930s thus involved only compulsory sterilization, unremitting propaganda, and a consistent reduction of all expenditures. This was, however, only the beginning. Already in 1935 Adolf Hitler had told Gerhard Wagner that if war came he would implement the killing of the handicapped."
>
> "Nazi genocide started in the winter of 1939-1940 with the murder of the handicapped."
>
> "... it was the chancellery official Viktor Brack who designed and directed the euthanasia killing program. .... Brack recruited administrators and physicians to evolve the method of selecting the victims. They in turn recruited the physicians, nurses, policemen, and workers needed to record, transport, and kill the victims. For the killing of infants and small children T4 installed numerous so-called children's wards at hospitals throughout Germany; there physicians and nurses killed by administering an overdose of common medications. But for the killing of the larger number of adults T4 created six killing centers ... which were to serve as prototypes for the larger extermination camps later established in the East. Each center was equipped with a carbon monoxide gas chamber to kill the victims and a crematorium to dispose of the corpses. And in these centers the T4 staff developed the technique of mass murder that would be applied later in the camps in the East." [And,]
>
> "the T4 physicians ... [selected] persons for the killing operation. ... their life-and-death decisions were based only on ... forms and they never examined the patients. Once the decision was made, the selected persons were transported from their institution to one of the six killing centers and there gassed and cremated. But as this process had to remain secret, the T4 bureaucracy generated a vast

> amount of fraudulent paperwork. ... The most elaborate subterfuge involved handicapped Jewish patients who were collected at several hospitals serving as assembly centers and from there transported to their death during summer and fall 1940. .... In fact, these Jewish patients, the first Jewish victims of Nazi genocide, were all murdered in the T4 killing centers located inside the borders of the German Reich."

The numbers are astounding. According to Milton Meltzer:

> "Between December 1939 and August 1941, about 50,000 to 60,000 Germans--children and adults--were secretly killed by lethal injections or in gassing installations designed to look like shower stalls. It was a foretaste of Auschwitz. The victims were taken from the medical institution and put to death... [See: Never to Forget: The Jews of the Holocaust, New York: HarperCollins, 1976:131].
>
> Robert J. Lifton makes the following assessment:
>
> "Of the number of people killed in the T4 and the 14f13 projects, the following statistics are usually given: adult mental patients from institutions, 80,000 to 100,000; children in institutions, 5,000; special action against Jews in institutions, 1,000; concentration camp inmates transported to killing centers (14f13), 20,000 (Klee estimated that at the end of 1941, some 93,521 `beds' had been emptied for other uses [70,000 patients gassed, plus over 20,000 dead through starvation and medication] - in other words approximately one-third of the places for the mentally ill.) But these figures may well be too low; twice these numbers of people may have perished. [Emphasis added]
>
> "The fact is that we do not know and shall probably never know. Elements of deception, imposed chaos, and the destruction of many records make anything like an accurate estimate impossible.

20,000 dead through "starvation and medication" in Nazi Germany! What can terminal sedation misused to impose death be other than the exact same thing? The patient is not given any nutrition. The patient is not given fluids. And the patient is medicated in a variety of ways, often using liquid morphine and a sedative like Ativan (lorazepam). Taking the mentally ill to be executed during the Nazi era is the same thing as taking the dementia patients from wards where care is provided to them and then moving them to hospice for disposal. The language seem too harsh? Please tell me how it is different.

Death was certain when Hitler ordered the extermination of the mentally ill, mentally retarded and very ill. Death is certain today for those given unnecessary medications, something as simple as antipsychotic drugs:

> "The Food and Drug Administration in 2005 mandated that drug makers issue warning labels on atypical antipsychotics, noting that the drugs - which are generally FDA-approved for treating schizophrenia and bipolar disorder - ***increase the risk of death for elderly patients with dementia***. Yet when the government examined 1.4 million Medicare claims from 2007 for atypical antipsychotics for elderly nursing home residents, the government found that ***88 percent of the time, the drugs were prescribed to individuals diagnosed with dementia*** [Emphasis added].
>
> "Highlighting Drug Industry Influence, Watchdog Says Overmedication in Nursing Homes Is Troubling" by Marian Wang ProPublica May 10, 2011

Can it be any clearer? The drugs cause death in dementia patients and they are given to dementia patients ... stealth euthanasia! Death is also certain when patients are placed into hospice and terminally-sedated, as is being done all around the country already. Dying from terminal sedation or an overdose is not "dying a natural death."

And "aiding" a completely dependent, cognitively-disabled patient to commit "assisted-suicide" is nothing more than medical killing, cloaked in deceptive language. Cognitively-disabled patients who are mentally-retarded, brain-injured, in a "PVS" or "minimally-conscious" state cannot choose or agree to commit suicide. "Surrogate" decision-makers who choose "assisted-suicide" for the vulnerable are merely "choosing" to "euthanize" the same class of people that Hitler chose to exterminate. Whatever you think about the circumstances of the disabled, those with Down's syndrome or the mentally-ill, they are vulnerable people who need protection and care. Treatment denial for these vulnerable individuals is designed to encourage an early death.

A United Kingdom review of the literature tells us that "about 90 percent of pregnant women who are given a Down syndrome diagnosis have chosen to have an abortion." Maura Butler, a mother of a special-needs child, wrote in Lifenews.com, "none of us is perfect; some of us just have more visible crosses than others." "But none of us could ever imagine our life without her, without her smile, her laughter, her hugs and (extra wet) kisses.

Our courts have greased the wheels for medical killing of the vulnerable to move forward. This is how it happened: in 1997, the United States Supreme Court in Washington v Glucksberg 521 U.S. 702:

> "stated that a statutory ban on assisted suicide does not infringe any constitutional privileges because the "right to commit suicide" is not a fundamental liberty interest and thereby not protected by the Due Process Clause of the Fourteenth Amendment."
>
> "On the same day, the Chief Justice issued a second opinion, Vacco v. Quill, which affirmed the validity of a New York statute prohibiting assisted suicide and reversed the judgment of the Second Circuit Court of Appeals. In Vacco, the Court held that the New York statute does not violate the Equal Protection Clause of the Fourteenth Amendment."

However, here is where they "greased the wheels" for medical killing to move forward. **The Supreme Court in the same case (Vacco v Quill**):

> **tacitly endorsed terminal sedation as an alternative to physician-assisted suicide**, thus intensifying a debate in the legal and medical communities as to the propriety of terminal sedation and setting the stage for a new battleground in the "right to die" controversy.
>
> ["Terminal sedation: Palliative care for intractable pain, post Glucksberg and Quill" by Rob McStay, *American Journal of Law and Medicine*, January 1 2003]

That ruling allowed for the "principle of double-effect" to be used to justify terminally-sedating or giving high doses of pain medications so long as the *intent* is not to cause death. Well, who's checking? When the patient is terminally-sedated or given high doses of an opioid for valid clinical reasons, then fine. But if the intent is to kill, the treatment is the same but the patient has no need for the medications. What happens? The patient dies. No surprise. *The "intent" of the physician or nurse is not going to be checked, so widespread use of high doses of an opioid or terminal sedation is now being practiced in hospice and palliative care units across the country*.

This is the "Invisible Holocaust" I have been warning about for a decade.

> "... we must be wary of those who are too willing to end the lives of the elderly and the ill. If we ever decide that a poor quality of life justifies ending that life, we have taken a step down a slippery slope that places all of us in danger. There is a difference between allowing nature to take its course and actively assisting death. The call for euthanasia surfaces in our society periodically, as it is doing now under the guise of "death with dignity" or assisted suicide. Euthanasia is a concept, it seems to me, that is in direct conflict with a religious and ethical tradition in which the human race is presented with "a blessing and a curse, life and death," and we are instructed '...therefore, to choose life." I believe "euthanasia" lies outside the commonly held life-centered values of the West and cannot be allowed without incurring great social and personal tragedy. This is not merely an intellectual conundrum. This issue involves actual human beings at risk..."
>
> "While the terror of state-sponsored euthanasia may never grip America as it once did Germany, ***it is possible that the terror of the euthanasia ethic*** - tolerated by medicine and an indifferent public and practiced by a few physicians - ***may grip many invisible and vulnerable Americans***. Over fifty years ago, German doctors and courts collaborated to identify millions of people who were labeled 'devoid of value'. Some Americans are labeled the same today: members of a racial or ethnic 'underclass', a sidewalk screamer ... an illegal alien ... a nursing home resident with Alzheimer's disease ... an abandoned migrant worker ... or anyone too old or weak or poor to help himself or herself. For two millennia the Hippocratic tradition has stood for the 'sanctity' of human life. We can alleviate the unbearable in life better than ever before. We can do that and not eliminate life itself. As I have said many times, medicine cannot be both our healer and our killer." -- C. Everett Koop, M.D. [Emphasis added]
>
> [quoted at euthanasia.com and taken from the book *KOOP, The Memoirs of America's Family Doctor* by C. Everett Koop, M.D., Random House, 1991.]

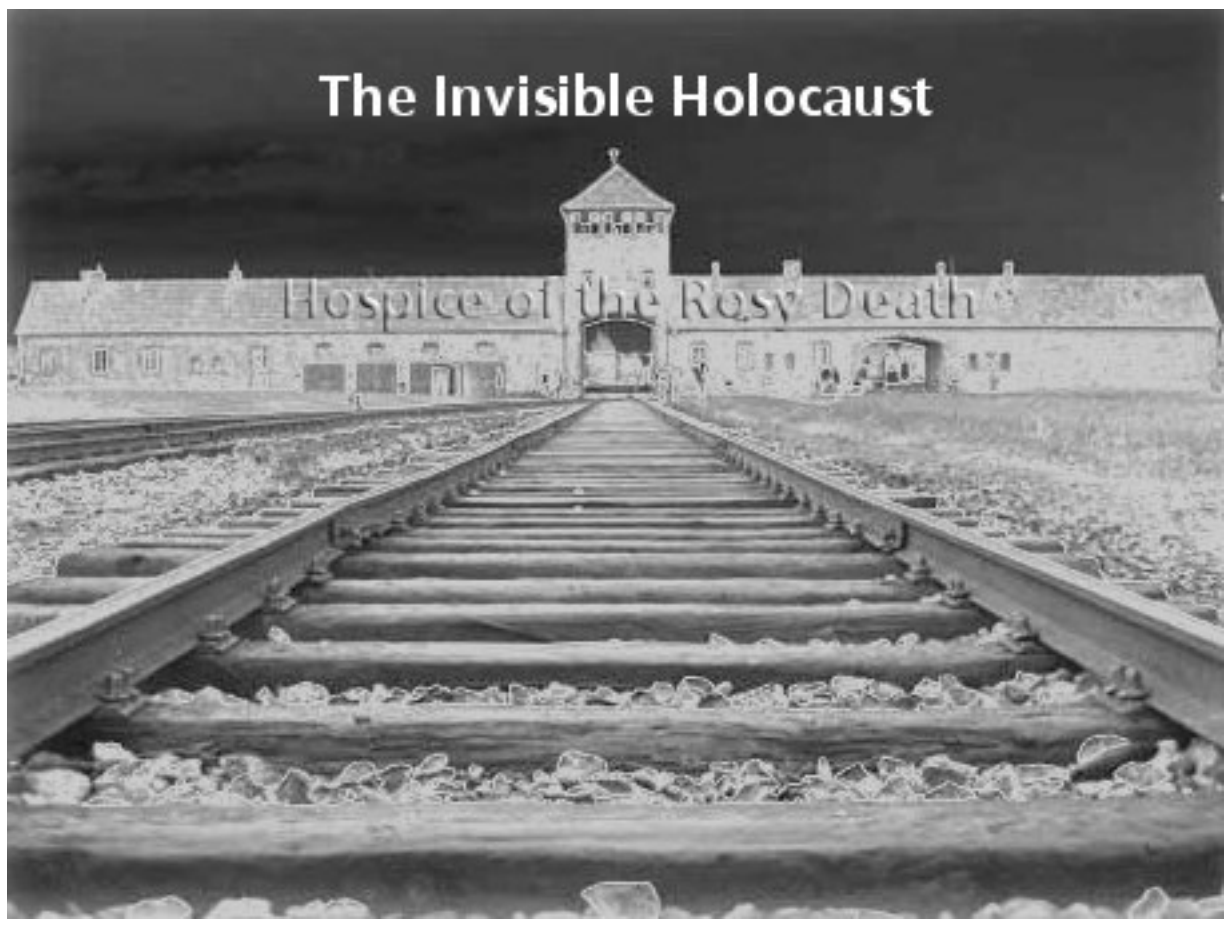
At the site of the three Auschwitz death camps, a plaque reminds us that over one million people, mostly Jews, were murdered there. Additional millions were murdered throughout Europe and at other camps during the Holocaust (Shoah). As Jews, Gypsies, some homosexuals, political dissidents and the intellectually and physically disabled were *selected* to be murdered by the Nazis, ***the elderly, disabled and those deemed "better off dead" are being selected for stealth euthanasia***.

The Nazis kept detailed records of every individual selected for death at the camps, but we can be sure that today's records of those victimized by stealth euthanasia are always falsified to reflect a natural death. The

patient's diagnosed condition (or an improvised diagnosis) is listed as the cause of death. "Stealth euthanasia" is never listed as the cause of death. Morphine overdose or terminal sedation is almost never listed as the cause of death. In today's Invisible Holocaust, stealth euthanasia has and will result in the murders of unknowable numbers of the vulnerable, because they are killed in separate locations, by separate people, and the killings are hidden behind the privacy regulations in place. The staff who perpetrate these crimes falsify the medical records to justify whatever method was used to hasten death. I estimate that easily over 100,000 vulnerable patients may be hastened to their death through a variety of means each year in the United States alone.

Just as there have been many "Holocaust deniers" who attempt to deny the reality of Nazi genocide or minimize its impact, there are those who vehemently deny that many (or any) patients are being hastened to their death in America and elsewhere around the globe. Research definitively shows that patients are being involuntarily medically killed in the Netherlands and Belgium. In the United States, we have those who adhere to the standards of care who are deeply offended by the idea that anyone would commit these egregious crimes, and they frantically attack those who expose the realities in the end-of-life care industry, even when they repeatedly hear the same type of stories from separate sources over and over again. And we have others (who are casually implementing the culture of death and hastening death) doing everything possible to hide the truth so that their agenda can continue to be implemented and expanded. We also have many in our society who simply know the truth, that the health care system can be, and is being, "wielded" just like a gun, to medically kill some of the vulnerable. Some of them take advantage of the medications available in hospice and the terminal sedation protocol available in hospice, to impose death, and the hospice staff often go right along with the plan.

However, even though many segments of society do not want the truth to come out, as Martin Luther King has said "***a time comes when silence is betrayal***." The realities of the horrors committed continue to surface, no matter how hard the deniers suppress and censor the truth. Year after year, people call here and to other patient advocacy organizations, seeking recognition of the medical violence that took their loved ones from them. They seek justice and reform. Family members who cry out after a hospice or palliative care staff member imposed death upon their loved one demand justice, but the Halls of Justice have been completely shut off from them, just as it is so often shut off from those who are victimized by racism, ethnic-cleansing, war, murder and genocide. The anguish of the people who are victimized cannot be hidden forever!



artwork (c) by Vickie Travis, design by Ron Panzer and Vickie Travis

The proponents of the culture of death are emboldened by these court rulings and they are brazen in their actions. They know that prosecutors will do nothing to stop them, that imposing death within a hospice will not even be investigated, let alone prosecuted. Why will prosecutors do nothing? Because they know what the Supreme Court ruled in Washington v Glucksberg as well as in Vacco v Quill. They know that they would have to be "mind-readers" to prove the physician or nurse is lying when they say they "intended only to relieve pain" when they administered the drugs. It's a very hard thing to prove in court. When you have several hospice nurses, the social worker and the hospice medical director all swearing that the patient was in extreme pain or suffering terribly, the family's testimony is easily disregarded. In many cases, the hospice manipulates the

patient and family to give up the patient's attending physician and only have access to the hospice medical director. If there ever was a conflict of interests in a rogue hospice, the hospice medical director has one: as an employee of the hospice and promoter of the hospice, he or she has to look to the financial interests of the corporation. That is what happens in a rogue hospice. The patient's needs and best interests are secondary concerns for the culture of death workers.

Prosecutors refuse to act in these medical killings for another reason: prosecutors know that the federal and state governments save many millions of dollars when people die sooner rather than later. They know that hospice is being promoted by the federal and state governments. They also know that their own political future would be damaged if they went after the local respected physician or hospice and brought negative attention to the protected industry: hospice.

Yes, you can prove that the doses of morphine are massive, that the doses of sedatives are massive, and you can have two or more doctors who swear under oath that nobody should require that high a dose. The problem? The hospice agency will hire two or ten physicians who swear just the opposite, so you have a "he said-she said" type scenario where nobody is believed for sure. Families that wish to take the case to court have no access to either the criminal or civil courts when a patient is hastened to their death. And so, stealth euthanasia continues to sweep across our nation and the Invisible Holocaust swallows up more victims.

How did this problem arise? You have two completely different worldviews, value systems, caught in a battle right in front of us. The traditional American values respecting life and the utilitarian materialistic view that devalues life. Adherents to either worldview are going to say the exact opposite things about the exact same case!

We can say that "Hitler did this" or "the Nazis did that" and people just turn off and say, "that was then," "what they did was unheard of before and will never be heard of again," or, "that's not to be compared with what is going on now." "Hyperbole!" Well, eugenics is eugenics. Euthanasia is euthanasia. They did it then; they're doing it now. Instead of piling bodies up in mountains or mass graves or incinerators, they're separately handled one-by-one, sometimes with color-coordinated decorating at the facilities. So, if medical killing is done one-by-one, in a cheerful and relaxing setting, then it's not the same medical killing? Today, the justification is given that it's all being done for the good of the suffering patient. Guess what? The Nazis *did* use exactly that language!

In the Netherlands, "eugenic" medical killing of babies is practiced under the Groningen Protocol - Euthanasia in Severely Ill Newborns:

> "life-ending procedures for newborns may be carried out only in rare circumstances and in accordance with very strict criteria: the prognosis and diagnosis must be certain, untreatable disease, severe and unbearable suffering that cannot be alleviated, a second medical opinion, the full consent of both parents."
>
> "There are also a number of less objectively measurable preconditions that touch on *questions such as the child's prospects for quality of life*. Each case must be reported to a committee of medical, legal and ethical experts ...." [from: "Murder or health care: the Groningen Protocol" By Marijke van der Meer February 17, 2008; emphasis added]

So, doctors and the courts decide who lives and who dies, and when. In the United States, we have peri-natal hospice, so we don't necessarily need the "Groningen Protocol" legalized here, and court can be avoided if the parents accept peri-natal hospice for their ailing newborn. When the newborn is truly dying, making sure the infant is kept comfortable makes sense, but nurses who work in peri-natal hospice have confessed that in some cases, "the baby just didn't die soon enough." (Maybe, the baby would have lived if cared for.) So, the peri-natal staff, "made sure the baby died using morphine." How would anyone know if peri-natal hospice has been misused to hasten death of newborns that fit the criteria used in the Netherlands for infanticide under the Groningen Protocol? Who is checking? Nobody. And the methods used in peri-natal hospice can be the same as used on adults: increasing doses of morphine and other opioids, and sedatives (if necessary), and definitely deprivation of nutrition and fluid (Third Way killing: terminal sedation).

Anita Catlin, DNSc, FNP, FAAN one of the "founders" of the peri-natal hospice work has written about "Five Incredible Babies, Five Paradigm Cases That Greatly Influenced Neonatal Ethics What Do Their Parents Say Today?" Barbara Farlow (a mother of a child whose life was taken in peri-natal hospice) wrote about her experience in an article called "Misgivings." ***Peri-natal hospice is fast becoming the "2nd net" to "catch" and kill any babies with congenital abnormalities that weren't aborted pre-birth.***

The use of terminal sedation as the Third Way to medically kill (aside from direct euthanasia or assisted-suicide) began to accelerate in the 1990s and now is at an epidemic level. Of course, there are also outright overdoses

administered in hospices which is direct euthanasia, but who's supervising in private settings? Nobody that cares to enforce laws prohibiting euthanasia.

Staff who work in a rogue hospice do not think they work in a rogue hospice; they think they're providing very professional care according to the latest, "most progressive" ethics. How do the administrators regard the suffering? They are looked at as pathetic remnants of something that might have been a "person" years ago. They are looked at as a means to bill for services, a "ticket" to continued revenue, and certainly "better off dead." Let's face it, as shocking as it may be to those of you who admire the good work of many in hospice, the hospice industry is being converted, within the rogue hospices around the country, into killing fields!

In a hospice that respects the sanctity of life, these things are unheard of. That is why pro-life hospices that do not impose death work hard to educate their staff and make sure the focus is on serving the patients, relieving suffering at the end-of-life and allowing for a natural death in its own timing. However, pro-life hospices are becoming rarer as time moves on, due to competition from rogue agencies that steal patients, use kickbacks and other unethical methods to "corner the market."

Respecting Life vs. Ending Life in Hospice

While the industry may promise to provide the very best for all patients they serve, something else will be delivered at those hospices that no longer adhere to the original mission of hospice which respected life. Any hospice that is engaging in Medicare or Medicaid fraud is certainly not adhering to the original standards of care. In rogue hospices in America, it's becoming common-place for many, if not all patients, to be sedated unnecessarily.

One hospice volunteer with twenty years' experience called me in tears a while back. She had started working at a new hospice home and every patient was sleeping continuously. Being an experienced hospice volunteer, she knew this was quite unusual. Hospice volunteers can do much good for the patients, but not when they are all in a medically-induced coma. In fact, it just doesn't happen at all naturally. She was familiar with good end-of-life care and how important patient and family interactions were at the end-of-life, how much "unfinished business" could be accomplished, and what a blessing good care could be for the patients as well as the families.

When she asked the charge nurse why everyone was sleeping, the nurse said, "Everyone who comes here is agitated, so everyone is sedated." And when she said, "sedated," she meant permanently sedated. It was terminal sedation, something that used to be restricted to only those patients who had "terminal agitation" or even "terminal psychosis." These patients are in extreme distress and may also have uncontrolled pain. Sometimes, sedating them can help with control of very extreme pain and agitation. Some are having terrifying hallucinations and are actually violent or may injure themselves.

Terminally-sedating a patient who is not agitated and not psychotic is a decision to end that patient's life, because they don't take in fluids or food by mouth: they're asleep. Assisted-suicide and euthanasia are just two main categories of ways to openly and obviously impose death, but the most prevalent form of ending life in America is the Third Way, this misuse of terminal sedation.

"A clever general, therefore, avoids an army when its spirit is keen, but attacks it when it is sluggish and inclined to return. This is the art of studying moods."

"According as circumstances are favorable, one should modify one's plans."

The Art of War by Sun Tzu Chapter I, verse 17

Euthanasia Society: Covert Operations in the Health Care & Hospice Industry

Let's review again the succession of name changes the Euthanasia Society of America has gone through:

From Euthanasia Society of America to the National Hospice & Palliative Care Organization (1938-2004)

1938	Euthanasia Society of America formed to legalize euthanasia
1967	Euthanasia Educational Fund created: soon renamed the Euthanasia Educational Council (EEC) (Living Wills created to "promote discussion of euthanasia")
1974	The Connecticut Hospice (first American hospice) formed by assisted-suicide proponent, Florence Wald, RN, MSN, FAAN (and honorary doctorate from Yale), considered the most influential force in the development of hospice in *America*
1975	Euthanasia Society of America changed its name to the Society for the Right to Die
1978	National Hospice Organization (NHO) formed
1979	Euthanasia Educational Council became known as Concern for Dying
1990	Society for the Right to Die + Concern for Dying announce merger and become in 1991 the
1991	"National Council for Death and Dying" ... later in yr. name changed to Choice in Dying
1995	Robert Woods Johnson Foundation begins Last Acts Program
2000	National Hospice Organization name-change to National Hospice & Palliative Care Organization (NHPCO); Partnership for Caring becomes national program office of Last Acts
2001	Choice in Dying merges into Partnership for Caring (March 14, 2001)
2004	(January) Partnership for Caring and Last Acts merge to form Last Acts Partnership
2004	(later in year) Last Acts Partnership closes (due to financial "anomalies"), National Hospice & Palliative Care Organization acquires all legal rights and copyrights of Last Acts Partnership and becomes successor organization to it and all of its predecessors (The Euthanasia Soc of America ....) and forms "Caring Connections" a program of the NHPCO and continues services of predecessors: all the advance care planning resources: (advanced directives, living wills, advanced care planning). There is no further need for "Euthanasia Society of America" (or its successors) as the NHPCO is carrying on its work.
2010	NHPCO lobbies to have Health Care Reform Law include language instructing physicians to counsel patients about "advanced care planning," to encourage advanced directives, living wills, P.O.L.S.T. forms, hospice & palliative care referrals. This language is first included, then taken out due to public outcry that government should not insert itself between physician and patient. Language is re-inserted by administrator of Centers for Medicare & Medicaid Services (Donald Berwick, MD)
2011	(Jan 2011) Language is removed again due to public outcry.

"This advanced care planning language, and all the forms created by the Euth Soc of Amer & its successor organizations, are designed to limit care and will surely be re-introduced sometime in the not too distant future."

– Ron Panzer, Pres. Of Hospice Patients Alliance

Dates of time-line information:	International Task Force (now "Patients Rights Council") http://www.internationaltaskforce.org/rpt2005_l.htm Caring Connections Timeline (NHPCO): http://www.caringinfo.org/i4a/pages/index.cfm?pageid=3402 Timeline provided by Hospice Patients Alliance, Inc. (2011) www.hospicepatients.org

Anyone who looks at the history of these groups and the legal succession, one to the next, will understand how clever these organizations became. ***There are legal strategies used to avoid liability in business, sometimes involving changing the structure of the corporation or even dissolving one corporation and starting another. There are also legal strategies used to avoid recognition, to create a different public "face."*** Early on, the Euthanasia Society was quite open about its goals, in its name

and in its proposals.

But, the Euthanasia Society of America changed names after repeated failures to legalize euthanasia from 1939 through 1975. They became "Society for the Right to Die." The Euthanasia Society proposed killing the unfit to live, those deemed defective. "Society for the Right to Die?" That's a completely different approach. The change of names effectively confused Americans, so the euthanasia society members could operate in stealth mode, to work "under the radar" and subvert the traditional American respect for life.

Americans have been strong defenders of the "rights" of citizens. So, the Euthanasia Society/for the Right to Die tapped into this "fight for rights." Ever since then, they've framed the debate in terms of a "right" to end life at the time of one's own choosing: "death on demand."

Every name change thereafter has been even more "confusing" to the American public, with a more "compassionate ring" to it: "National Council for Death and Dying" (1991) what does that mean to most Americans? "Choice in Dying?" (1991) Again, what does that mean? What kind of choice? And Americans always want the right to choose!

Even better: "Partnership for Caring" (2001). That sounds like we're all working together and caring, nothing about euthanasia in the name. "Last Acts Partnership (2004)?" That's totally unrecognizable as to what it's about. And lastly, the NHPCO's "Caring Connections" (2004). That's as far from "Euthanasia Society of America" as you can get. But the National Hospice and Palliative Care Organization's "Caring Connections" project is the successor of all these organizations! ... the final successor organization to the Euthanasia Society of America.

From the very beginning, the euthanasia, eugenics and birth control leaders were of one mind. Medical killing ("euthanasia") would be used to accomplish the eugenics proponents' goals of eliminating unwanted, "defective," "useless" individuals. Who? The elderly, disabled, and seriously ill. With economic pressures rising every day, rationing health care services is certain in a federally-run health care system or in the Medicare and Medicaid systems. Rationing care will become much more aggressive, just as it has been done by HMOs and managed care systems.

How will the change in services be presented to the public? "Choice." "The right-to-die." The freedom to decide."

In 1962,

> "theologian Joseph Fletcher ... [became] the chief philosopher of the euthanasia movement ... [who] "fashion[ed] a new rationale for euthanasia based primarily on the notion of patient autonomy."

Patient "autonomy." "Patient Self-Determination." Haven't we heard that before? We have. Again, this is the language being used today to justify legalization of assisted-suicide, the "right to die," and has been one of the three principles of the federal ethics set forth by the Congressionally-created Belmont Commission in 1978.

Also, in 1962,

> "Pauline Taylor became president of the Euthanasia Society of America (ESA).
>
> "Taylor...began the ESA's soul-searching process that led to a major shift in the philosophy for the entire American euthanasia movement. She believed the ESA in the past had overemphasized the soundness of an individual's decision to have his or her life ended if terminally ill and in unbearable pain ... ***Taylor concluded that the time was ripe to ... begin convincing the public that letting someone die, instead of resorting to extreme measures, was both humane and ethically permissible***." [Emphasis added]
>
> [Ian Dowbiggin, PhD "A Merciful End: The Euthanasia Movement in Modern America," 2003. From Euthanasia ProCon.org "History of Euthanasia and Physician-Assisted Suicide"]

"*Letting someone die*." It's become common to hear that from our own family members. People will die all on their own, naturally. It's inevitable, but what "letting someone die" really means is what the Euthanasia Society of America meant: hastening death one way or another.

We heard often from the early 1970s onwards about the "horrors" of 90 year-old patients getting cracked ribs from doctors pounding on their chest doing CPR, or being forced onto terrible machines, being on "life support" that kept them alive against their wishes, being treated by doctors who cared more about themselves and what they could prove than their patients. We heard about physicians who made decisions to treat when patients had refused, when very elderly patients were ready to die, but were not being allowed to die naturally.

The newspapers published stories about patients wrongly being kept alive under "horrible" circumstances in the hospitals. Yes, there may have been some cases, even several cases, and there was a need to care for the dying in a much more sensitive way, a way that relieved their suffering, didn't force treatment on those who truly were imminently dying. But much of it was hype. There was an agenda behind it, a method to the messages we were being fed.

Nancy Valko, RN tells us in her Women for Faith & Family 2001 article, "Of Living Wills and Butterfly Ballots" that:

> "Very few people signing "living wills" and other advance directives have any idea of how such documents became a universal aspect of health care today."
>
> "In the early 1970s when I was a young nurse, we had never heard of the "living will". When a patient was confused or comatose and appeared to be dying, we discussed such possibilities as "do not resuscitate" (DNR) orders with families. Often, aggressive or useless treatments were discouraged because such measures were considered futile or excessively burdensome in that situation. But one thing we didn't do was offer to withhold or withdraw treatments like antibiotics or feedings to cause or hasten the patient's death."
>
> "This all began to change with the advent of the "living will" and the increasing acceptance of the newly manufactured, so-called "right to die"."
>
> "Actually, the "living will" was originally invented in 1967 by two groups, the Euthanasia Society of America and Euthanasia Education Council, and was touted as a first step in gaining public acceptance of euthanasia. These groups had been struggling for years to get "mercy-killing" bills (which would allow doctors to give disabled or dying patients lethal overdoses) passed in various state legislatures. The "living will" opened up the new strategy of an incremental approach."
>
> [Nancy Valko, RN is an intensive care nurse, long-time advocate for patients with disabilities, president of Missouri Nurses for Life, and spokesman for the National Association of Pro-life Nurses]

The rest is history, our history. The living will which was designed to limit treatments provided was widely accepted. Again, it was "sold" to the public under the guise of "patient autonomy," the patient getting to decide what treatments he or she wants or does not want. However, in the case of a patient who is not able to express their wishes at the time, what is considered "patient autonomy" by a group of secular bioethicists is not the same as what others who have reverence for life would decide.

More and more people filled out advanced directives or living wills expressing their wishes. However, all the while, the euthanasia proponents were working to expand their use, knowing that once the public accepted limitations of care at the end-of-life, it would only be a short step to limiting treatment that would end up hastening death, and then directly imposing death. The Do Not Resuscitate ("DNR") forms also became universally accepted over time, and the elderly and disabled are often pressured to sign a DNR form in health care settings.

Burke J. Balch, J.D. writes:

> "In the early years, pro-euthanasia forces very effectively joined the rhetoric of respect for personal or family autonomy to that of advocating making decisions based on the quality of life. Once both voluntary and nonvoluntary denial of treatment, and food, and fluids were widely accepted, however, the autonomy argument was reversed.
>
> Soon leading bioethicists were arguing that if a competent patient, or the guardian of an incompetent patient, wanted lifesaving treatment, food and fluids, that request should nevertheless be denied if the patient's quality of life was too poor or the cost or burden to society was too great. In 1992, Virginia became the first state explicitly to authorize health care providers to deny treatment or assisted feeding against the will of patients or their surrogates.
>
> In 1996, the Journal of the American Medical Association published an article about hospital practices in Houston, Texas. Under the procedures it described, when two doctors agree a patient should die against his will or that of his family, the patient is given 72 hours either to transfer out of the hospital or to prepare to appear before a hospital ethics committee. After hearing both sides the committee makes the life or death decision; if it is for death, the lifesaving treatment is terminated involuntarily and immediately.
>
> ["Euthanasia In the 25 Years Since Roe" By Burke J. Balch, J.D., Director, National Right to Life

Committee, Department of Medical Ethics]

The adoption of Living Wills, the DNR forms and most importantly, the reclassification of food and water as "medical treatment" pushed forward the incremental steps towards legalized euthanasia. Rita Marker, PhD and Wesley J. Smith, JD, J.D. of the Patient Rights Council tell us:

> "In l983, reflecting on the possible outcome of the debate, Daniel Callahan, then director of the Hastings Center, wrote that:
>
> "***...a denial of nutrition, may, in the long run, become the only effective way to make certain that a large number of biologically tenacious patients actually die***."
>
> [Daniel Callahan, "On Feeding the Dying," Hastings Center Report, October 1983, p. 22]
>
> He further predicted, "***Given the increasingly large pool of superannuated, chronically ill, physically marginal elderly, it could well become the nontreatment of choice***." [Emphasis added]
>
> [From the *Duquesne Law Review* Vol. 35, No. 1 (Fall 1996) pp. 81-107 "The Art of Verbal Engineering"] article redistributed at the Patient Rights Council website as "Words, Words, Words."

And it now is the "nontreatment of choice," implemented in many hospices, hospitals, and nursing homes around the country making "sure" patients who just *won't* die "soon enough" actually die. To make it seem more humane, sedation is added.

Note that Callahan calls the elderly "superannuated" which means "obsolete," "too old for further service," and the implication is that they are ready to be discarded, like some worn out, useless tool ... and that's exactly what he means. As a utilitarian, the old who don't contribute actively providing goods or services are "useless eaters" as we've heard before. Callahan's predicted removal of food and fluids combined with sedation is the "palliative" or "terminal sedation" practiced widely in America today.

Euthanasia advocates knew that once food and water were classified as medical treatment, then withholding it would become the easy way to impose death. The public did not truly realize the significance of this change. Those who work with the dying know that there comes a time when death is imminent, in what is called the "active phase of dying," where the patient no longer wants to eat and also cannot eat, where their system is shutting down. They begin to mouth-breathe, their breathing patterns often change, organs and systems shut down, their tongue and mouth dry up. Good end-of-life care seeks to help the dying with the discomfort that can accompany this process, and there are many things that can be done.

However, those who wished to further the agenda of legalizing euthanasia realized they could "use" what naturally happens at the end-of-life to their advantage. They realized that because patients naturally stop eating as much, and then stop altogether, they could simply move up the timeline, withholding food and fluids before the patient was actively dying and death would occur from dehydration. Marker and Smith continue:

> However, by the time that [the Nancy] Cruzan [case] was decided [1990], some ethicists and right-to-die advocates had already begun to expand the boundaries of "treatment" once again -- this time to include oral feeding as a medical intervention that could be withheld or withdrawn ethically. The spotlight had now shifted from the method by which food and fluids were provided to the actual food and fluids, no matter how provided.
>
> It is no longer unusual to observe a dispassionate discussion among ethicists and medical professionals about the withdrawal of oral feeding from frail, elderly or brain damaged, but non-dying patients. Such discussions take place at many conferences, and can also be observed on the Internet. They certainly take place in the clinical setting.
>
> [From the *Duquesne Law Review* Vol. 35, No. 1 (Fall 1996) pp. 81-107 "The Art of Verbal Engineering"] article redistributed at the Patient Rights Council website as "Words, Words, Words."

In the end-of-life care setting, the way that the provision of food and fluids is halted is quite simple: the patient is sedated, then food and fluids cannot be given orally.

Misapplying terminal sedation of the patient makes the whole process of withholding food and liquids look "peaceful" to the family at the bedside. They tell the family members that the patient "can't" eat or drink, before the patient really is unable to eat, and so, accomplish the permission to terminally sedate and dehydrate the patient, and then impose death in this way.

I've regularly heard from families that say the hospice staff sedated the patient, then gave them food or water when they were lethargic, almost asleep, and when the patient coughed, having trouble swallowing, they say, "he can't take fluids by mouth. He has a swallowing problem." And they make the patient "NPO," which means "nothing by mouth" is to be given. And without fluids, the patient dehydrates. This could be done to anyone, including you or me. It is a prescription for death.

And it's deceptive. This is not formal euthanasia or assisted-suicide, but accomplishes death just as effectively. It is the most widely-practiced form of euthanasia in America today, and is allowed by law enforcement, the district attorneys and the courts. They have chosen not to get involved, so the killings continue.

A little lie here, a little lie there, and families are fooled. Of course, if a patient has fluid building up in their lungs or extreme swelling throughout their body, giving large amounts of fluid can cause problems. Normally, diuretics are given to relieve fluid in the lungs or body; sometimes a very low dose of morphine is given with a diuretic for end-stage heart failure with pulmonary edema. But that's not the same as giving a large dose of morphine with no diuretic when there is no pain. Giving large doses of morphine with no diuretic when there is no uncontrolled pain, but there is a fluid buildup is a sure sign that death is being hastened.

In other words, what can be done appropriately medically, if done at the wrong time, can become a method of imposing death. In health care, every intervention needs to be done in a certain way to be done safely for the patient's welfare. Done in a certain way, when actually needed, interventions relieve suffering and help the patient. Done intentionally in the wrong way, at the wrong time, and the patient dies. Hospice and palliative care staff who work to impose death are expert in manipulating the family through deceptive language and information. They are also expert in manipulating the interventions so that the patient destabilizes and dies.

Marker and Smith conclude:

> "The success or failure of political or social revolutions often depends on the terms used in the debate. If the movement is in accord with accepted values as expressed by language, success is often the result.
>
> But what if the existing lexicon and traditional understanding of words and phrases hurt the cause and bog down the movement? The answer is simple: If the people don't want to follow where you want to take them, make the destination appear more attractive. This is precisely what proponents of the "right to die" have done. By using fuzzy euphemisms, by blurring vital distinctions, by using imprecise phraseology, and by redefining well-understood concepts and ethical principles, they created an Alice Through the Looking Glass World, where previously understood concepts no longer apply. It's as if "up" were now "down" and "hot" were now "cold." Words only mean what the speaker intends them to mean, regardless of the understanding of the listener.
>
> Terms like "killing" and "suicide" which have precise definitions but negative connotations have become outcasts, replaced by subjective, feel-good, meaningless phrases such as "gentle landing," "deliverance," "chosen death," or the ubiquitous "death with dignity." Thus the ongoing revolution in ethics and values was preceded by a radical shift in the use of language, all intended to beckon us to embark on a journey to radical social change.
>
> That direction may or may not be where we, as a society, will want to go. But one thing is certain. We need to use clear definitions and accurate terminology if we are to truly understand what awaits us at the end of that road.
>
> [from the *Duquesne Law Review* Vol. 35, No. 1 (Fall 1996) pp. 81-107 "The Art of Verbal Engineering"] article redistributed at the Patient Rights Council website as "Words, Words, Words."

One example of a mind-boggling changed definition is basic food and water. Everyone normally considers this just "ordinary" care. If a baby or a dependent elderly person is hungry, you feed them. You help them drink. Same thing with the disabled. If they needed a feeding tube and wanted to be fed that way, it was provided without question. However, something big happened in Florida in 1999. It has everything to do with the rogue Hospice of the Florida Suncoast.

Michael Schiavo sought out the local pro-euthanasia attorney, George Felos, ***who was chairman of the board of the hospice***, seeking to have Terri's life ended. Attorney Felos saw to it that his client's wife, Terri was accepted to the hospice though under the law Terri could not legally have been admitted into the hospice; she didn't have any terminal illness. She was not in a persistent vegetative state. Her own physician testified she had no illness that would cause her to die in the near future. The hospice admitted her anyway, expressly for the purpose of ending her life, and we shall see exactly what was done to make it happen.

In April 1999, the state law was changed to allow Terri's life (and those like her) to be ended. Florida Statutes

Title XLIV, Chapter 765.101 was changed to reclassify nutrition and fluids provided by tube feedings as a "life-prolonging procedure," not ***ordinary*** care.

> "Life-prolonging procedure" means any medical procedure, treatment, or intervention, including artificially provided sustenance and hydration, which sustains, restores, or supplants a spontaneous vital function. The term does not include the administration of medication or performance of medical procedure, when such medication or procedure is deemed necessary to provide comfort care or to alleviate pain.

Also, see: "Anatomy of right-to-die law - Proponents, hospice industry given rare authority to change Florida statute" by Diana Lynne, WorldNetDaily Reporter.

This was exactly the change desired by those promoting the euthanasia agenda within hospice and palliative care circles. Remember that **back in 1983, Daniel Callahan predicted "...a denial of nutrition, may, in the long run, become the only effective way to make certain that a large number of biologically tenacious patients actually die."** And finally, this pro-euthanasia movement which has worked so long to change how Americans die, got the type of law they wanted all along.

It is interesting to note that when this specific change was made, the language just "magically" appeared in the proposed bill and not one person or group stood up to say they wrote it, proposed it and were responsible! Staff in state government suggested that "it might have come from hospice," but they wouldn't go on the record about it. In any case, that language was put in, voted on, and passed into law, and Terri was killed by withholding food and water as authorized by the new law that said food and water is not "ordinary" care but "life-prolonging" care.

With this type of logic, all of those who are fed through tube feedings, many of them in nursing homes, may be considered to be undergoing "life-prolonging procedures," not "being fed." And "life-prolonging procedures" can be withdrawn according to one's advance directive or the guardian's or surrogate decision maker's wishes. Food and water are no longer food and water if they are given by tube feeding. This change in status was a monumental success for the stealth euthanasia movement in America, what many in the hospice industry wanted, what many in the health care community wanted and what many people wanted ... all of whom no longer believe that food and water should be provided to the disabled, the very elderly, the "unworthy of life."

Robert Woods Johnson Foundation, Last Acts & Last Acts Partnership

The Robert Woods Johnson Foundation ("RWJF") has been involved in all sorts of end-of-life initiatives, funding projects over many years. They want the public to think that they are solely focused on "improving health care" and being a benefit to the community. But if we look closely at what they are funding and what projects they have thrown their weight behind, we get a different picture. The direction of their contributions is aimed at changing how Americans think about dying and changing how Americans die. That doesn't just mean promoting greater acceptance of hospice and palliative care, as they would like the public to think. It means really changing society from a sanctity of life culture to a quality of life culture.

Lifetree's Timeline lists the three pronged strategy used by Last Acts:

> Daniel Callahan's 3 bullet points, modified slightly by an Institute of Medicine (IOM) recommendation, became the strategy for Last Acts Objectives and included:
>
> - change American death-denying culture to death-accepting culture;
>
> - normalize withholding/withdrawing nutrition & hydration;
>
> - provide avenue for hastening death by use of opioids.

Soros [Project on Death in America] PDIA scholars were principal investigators for many of the RWJF-funded projects."

Carey Goldberg of the *Boston Globe* reported in 2003 "After 10 years, $200m effort on dying reaches its own end"

> "The Project on Death in America, financed by billionaire George Soros and the [RWJF] poured more than $200 million over the last decade into end-of-life programs and research.
>
> "But now the Project on Death is itself dying, and the Robert Wood Johnson Foundation is phasing out almost all related projects and shifting toward childhood obesity and the nursing shortage.
>
> "The great stream of money that helped bring so much more attention to the dying in hospitals, in hospice care, and in public discourse is slowing to a trickle. Specialists in end-of-life issues are concerned that though a great deal has been done, much remains to do -- and say the controversy over the Terri Schiavo case in Florida illustrates their point. They fear that progress in physician training and research could stop or even backslide.
>
> ".... The two foundations are not going to abandon the field totally: The Soros project plans to act as a resource center to encourage other donors to support death-and-dying causes; and Weisfeld said the Robert Wood Johnson Foundation plans to follow the field and watch for backsliding. From the dying patient's point of view, work is still needed on items as simple as convincing doctors that they should immediately prescribe anti-anxiety medication when they deliver a terminal diagnosis, said Laura Schmidt-Pizzarello."

The writer confuses "specialists in end-of-life care" with those who promote hastened death at the end-of-life. Even the founder of the hospice movement, Dame Cicely Saunders, would not be considered a "specialist in end-of-life care" if one has to favor hastening death or imposing death outright. There are professors of palliative medicine who strongly opposed the medical killing of Terri Schiavo. It is revealing that the culture of death specialists view those who sought to protect Terri Schiavo from being medically killed as forces opposed to "progress." Their goal is obvious: imposing death on patients like Terri should be normalized and a regular part of end-of-life care services! They say that keeping the severely disabled alive is to be discouraged. Physician Frank J. Mongillo III, M.D. says that "hospice has 'become abortion for the elderly', and he is only one of many physicians who know this can be the case.

Robert Woods Johnson Foundation is still making grants and supporting the work to change how Americans think about dying and how they die. They are funding the National Hospice & Palliative Care Organization's "Caring Connections" program. This is the successor to the Euthanasia Society as we've seen.

Last Acts Rallying Points Regional Centers & What Their Selection Tells Us

It is confusing to the public when hospice industry leaders speak about the good works they are involved in and then hear about euthanasia advocates in the hospice industry. Elizabeth Wickham, PhD of the Lifetree Organization tells us:

> "In 1996, Robert Woods Johnson Foundation ("RWJF") formed Last Acts, a coalition of over 100 professional and consumer organizations. The first Last Acts Leadership Conference on March 12, 1996 brought 140 national leaders to Washington, DC. In a special supplemental report by the Hastings Center which summarized the conference, Daniel Callahan described their three-pronged strategy moving forward:
>
> 1. Change the education of health care professionals
>
> 2. Change health care institutions and public policies and regulatory apparatus

3. Engage the public to gain support

RWJF began financing and coordinating statewide end-of-life coalitions or Community-State Partnerships using established state ethics committees, networks and centers in more than 20 states.

The National Program Office for the C-SPs (Community-State Partnerships) was Midwest Bioethics Center (now known as Center for Practical Bioethics), a bioethics "think tank" in Kansas City. Each grant recipient received a sizable $450,000 from RWJF and an additional $150,000 in matching funds. These [end-of-life] EOL statewide coalitions pursued the primary goals of educating, training, advocating and changing statutes at the state level."

It is important to note how the Hastings Center was in the thick of things, releasing the official report on the conference that resulted in concrete plans to change America. Yet, the Hastings Center was founded by Daniel Callahan and Willard Gaylin, MD in 1969. Callahan was a member of the American Eugenics Society. Willard Gaylin, MD was a self-proclaimed communist.

For example, Last Acts had a project called Rallying Points" and selected the Hospice of the Florida Suncoast as a regional center representing excellence in end-of-life care. The Last Acts website said,

"Rallying Points is a major initiative of the Last Acts campaign to improve care and caring near the end of life.

Two of its other Rallying Points Regional Centers were the Life's End Institute in Missoula, Montana and the Midwest Bioethics Center (now the Center for Practical Bioethics) in Kansas City, Missouri. The Center for Practical Bioethics tells us about its mission:

Our vision: A society in which the dignity and health of all people is advanced through ethical discourse and action.

Our mission: To raise and respond to ethical issues in health and healthcare.

Our core value: Respect for human dignity. We believe that all persons have intrinsic worth, and we express this belief by promoting both autonomy and social justice in health and healthcare.

Our Guiding Principles:

* To lead and promote the leadership of others
* To think critically and listen actively
* To address ethical issues unfettered by special interests
* To collaborate with others who share our values
* To work diligently toward our mission

The only problem with all that flowery very nice sounding language is, who is considered a "person" to have "intrinsic worth?" Does "*practical*" bioethics mean bioethics that allows for imposing or hastening death? ... as if bioethics that respect the sanctity of life are no longer practical? Does "person" include those who are very elderly, disabled, cognitively-impaired or who have Down's syndrome, for example? What is meant by "autonomy?" Does that mean that a baby should have the right to choose life and to not be aborted? And what is "social justice?" Does that include not having your life snuffed out as is happening in the Netherlands and Belgium where "safeguards" written into the euthanasia laws are routinely ignored? Is their idea of "social justice" the same as your idea of "social justice" or not? It's not about the sanctity of life given as a gift from God!

The other Rallying Points regional centers were the Hospice of the Florida Suncoast in St. Petersburg, Florida and the National Resource Center on Diversity in Washington, D.C.

The National Resource Center on Diversity End-of-Life Care (NRCD) committed to improving the provision of and access to quality culturally appropriate care for all individuals with terminal illnesses.

Our goals are:

* To serve as a national clearinghouse and "gathering/ networking place" for communities and researchers as they improve care and caring near and at the end-of-life for the almost 100 million Americans who are people of color.

* To interface with networks and learn from existing EOLC initiatives which are working with

diverse communities around the country.

* To create, test and help identify on-going funding support for new models/frameworks for sustainable community-based and professional leadership within minority communities.

* To provide existing EOLC programs, Last Acts Partners and Coalitions with information about culturally appropriate and effective communications materials, and other resources that they can use to increase their ability to engage diverse residents in conversations about, planning for and improving end-of-life-care in their communities.

In 2003, the Life's End Institute (the work of pro-terminal sedation physician and co-founder of Partnership for Caring, Ira Byock MD) posted an article by Dr. Byock about getting quicker access to one's living wills and advanced directives through the "Choices Bank" that was created. That may sound good. Get the documents when they are needed, but what is not mentioned is what happens if the patient requests that care be provided at the hospital or hospice and the staff members don't agree? The patient's wishes can be overridden. The documents do not protect wishes to receive care; they protect choices to limit care, a one-way street. It all sounds very professional and well-meaning.

That's the pattern: use language that many can agree with while slipping in an agenda item. People like the idea of their wishes being honored at the end-of-life and euthanasia advocates have capitalized on that. However, the "honoring of patient wishes" is tainted by efforts to make sure treatment is not provided if the hospital or hospice don't agree. "Ethics committees" can override the patient's wishes. Byock was also co-founder of the successor organization of the Euthanasia Society of America: Partnership for Caring. It's starting to make sense now, isn't it?

What does the disability rights organization, Not Dead Yet have to tell us about Last Acts? They write:

"NO APPLAUSE FOR LAST ACTS"

The Problem: Last Acts, the end of life care "experts," are increasingly influencing health care policy toward people with disabilities, but excluding the disability voice. They call it "end-of-life," but increasingly often, it's really disability policy they're talking about. Last Acts is now promoting beliefs, policies, and practices that are in direct opposition to those of advocacy organizations run by and for people with disabilities. We are especially concerned about policies pertaining to infants with life-threatening disabilities, older people with cognitive disabilities, and anyone who is technology-dependent. The problem is, the real experts on disability are excluded from Last Acts ....

The Last Acts Website - Last Act's web page also has a section devoted to pediatric issues, including two scenarios given related to "end of life" decisions for newborns. The message of these scenarios is that if a doctor tells you it's best for your child to die quickly, cooperate or you'll regret it. It perpetuates the myth that medical professionals are your best "objective" source for a prognosis in the case of newborns. This flies in the face of decades of research that indicate medical professionals are much more likely to feel that certain disabilities are fates worse than death, and feel free to manipulate parents to cooperate with the phobic recommendations they make to "let nature take its course."

It's not surprising that Last Acts is drifting this way. In recent years, organizations such as Compassion in Dying and Death with Dignity National Center have gained prominence within Last Acts. These organizations share a primary mission to promote legalization of assisted suicide and euthanasia based on disability. They've used the Last Acts Bandwagon to promote their own status and respectability. They call their agenda "compassion," but it's really contempt.

"STRAW MEN" AND THE ELEPHANT IN THE LIVING ROOM

The Midwest Bioethics Center, which is also the home for the Last Acts "Rallying Points" Regional Resource Center for the Midwest, makes it clear that disability is the "elephant in the living room" of surrogate decision-making and "ending life" care. The "elephant in the living room" dominates a room, but nobody acknowledges its presence.

The case study on the current Midwest Bioethics Center website involves a man with Down's syndrome who becomes brain-injured and experiences prolonged unconsciousness. The man did not have an advanced directive and had never discussed his health care preferences. The "case study" portrays a "worst-case" scenario of a man we might suppose is in a "vegetative state" (although that label is never used), and strongly suggests withdrawing food and water is the appropriate thing to do.

.... [There are] well- financed policy groups currently defining "end-of-life" care in a way that allows the intentional killing of disabled people, especially cognitively disabled people, through the denial of basic, non-extraordinary care such as food, water and antibiotics. Under the radar, our constitutional rights are being trampled as health care providers rule that our lives are too burdensome, while the "experts" of Last Acts deny us a place at the table where our rights are being negotiated away.

It's time for Last Acts Partners to end the lie that they are only addressing "end-of-life care" and admit they're taking charge of health care policy for people with disabilities while excluding disability advocate groups.

This is discrimination without representation. Worse, it's extermination without representation.

[Nothing About Us Without Us from the Not Dead Yet disability rights website]

So, we've learned something about Last Acts and Last Acts Partnership, but what happened after Last Acts Partnership was absorbed by the National Hospice & Palliative Care Organization in 2004? What was the final really big "last act" of the Rallying Points center, Hospice of the Florida Suncoast? Of course, it was the implementation of their agenda: the ending of a life they deemed "unworthy of life," Terri Schiavo's life, at the hospice in front of the whole world by court order. They didn't "terminally-sedate" Terri; they just stopped giving her food and liquids and had police making sure not one drop of water or an ice chip was given to relieve her thirst. But it was essentially a Third Way killing. It wasn't direct euthanasia with a lethal drug, nor was it "assisted suicide" by providing a lethal drug. It was dehydration and the consequent circulatory collapse, and that's what happened to Terri.

George Soros' Project on Death in America

Elizabeth Wickham, PhD, Executive Director of Lifetree explains how billionaire George Soros has shaped American culture:

Soros' Open Society Institute/ Project on Death in America began funding a Faculty Scholars Program which provided a leadership base for promotion of palliative care into mainstream medicine. PDIA Faculty Scholars in over 50 medical schools developed into a network of colleagues and now the second generation of scholars are committed to institutional change.

Among their first projects directed at professionals were EPEC (Education for Physicians on End of Life Care) and ELNEC (a similar program for nurses). Some of the other projects were directed at changing the general culture including RC EPEC (tailored to Roman Catholics) and APPEAL (tailored to African-Americans).

".... With funding from Soros and others, symptom management for the individual patient became broadened to a larger social dimension-ethical decision making, conflict resolution, and spiritual guidance orchestrated by a multidisciplinary team.

The great palliative care marketing achievement is reflected in the evolving nature of the definition of palliative care. Today's officially defined palliative care is far more than managing a person's symptoms and alleviating pain. Today's palliative care is an approach or a process guided by a trained and certified palliative care team to help the family determine at what point there should be a shift in the goals of care, putting the patient on a different track, away from cure and on towards death.

Recall again what Daniel Callahan said in 1983 about solving the problem of making biologically tenacious patients actually die by withholding food and water. Imposed death is being repackaged as better quality of life.

["Repackaging Death as Life - The Third Path to Imposed Death" By Elizabeth D. Wickham, Ph.D. Presented at the 2nd Annual Life Conference in Raleigh, North Carolina, October 23, 2010]

"Hence, when able to attack, we must seem unable; when using our forces, we must seem inactive; when we are near, we must make the enemy believe we are far away; when far away, we must make him believe we are near."

The Art of War by Sun Tzu Chapter I, verse 19

End-Run Around Right-to-Life:
Hospice No Longer is Safe Alternative to Euthanasia & Assisted Suicide

With all we've covered, it should be clearer that hospice and palliative care is not a "safe alternative" to euthanasia, unless it is an openly pro-life, sanctity-of-life protecting hospice and palliative care provider. How many are? Certainly not the majority of hospice and palliative care units in the United States today! We're having a hard time finding hospices that will openly affirm the sanctity of life and work with other pro-life hospices to serve the public as they so desperately need.

Euthanasia proponents seemingly "went away" after decades of open warfare on American values, but they only pretended to be unable to move their agenda forward. They acted as if they were doing nothing, but they became more active than ever, focused on incremental steps that were not recognized by the general public.

They've entered the end-of-life industry. What better niche of health care to ply their trade? What better disguise than to pretend to provide the very best of care while pushing stealth euthanasia? Yet, the National Right to Life Committee has not made much comment at all about the ***widespread*** infiltration of hospice by the Euthanasia Society of America's heirs and successor organizations such as the National Hospice & Palliative Care Organization.

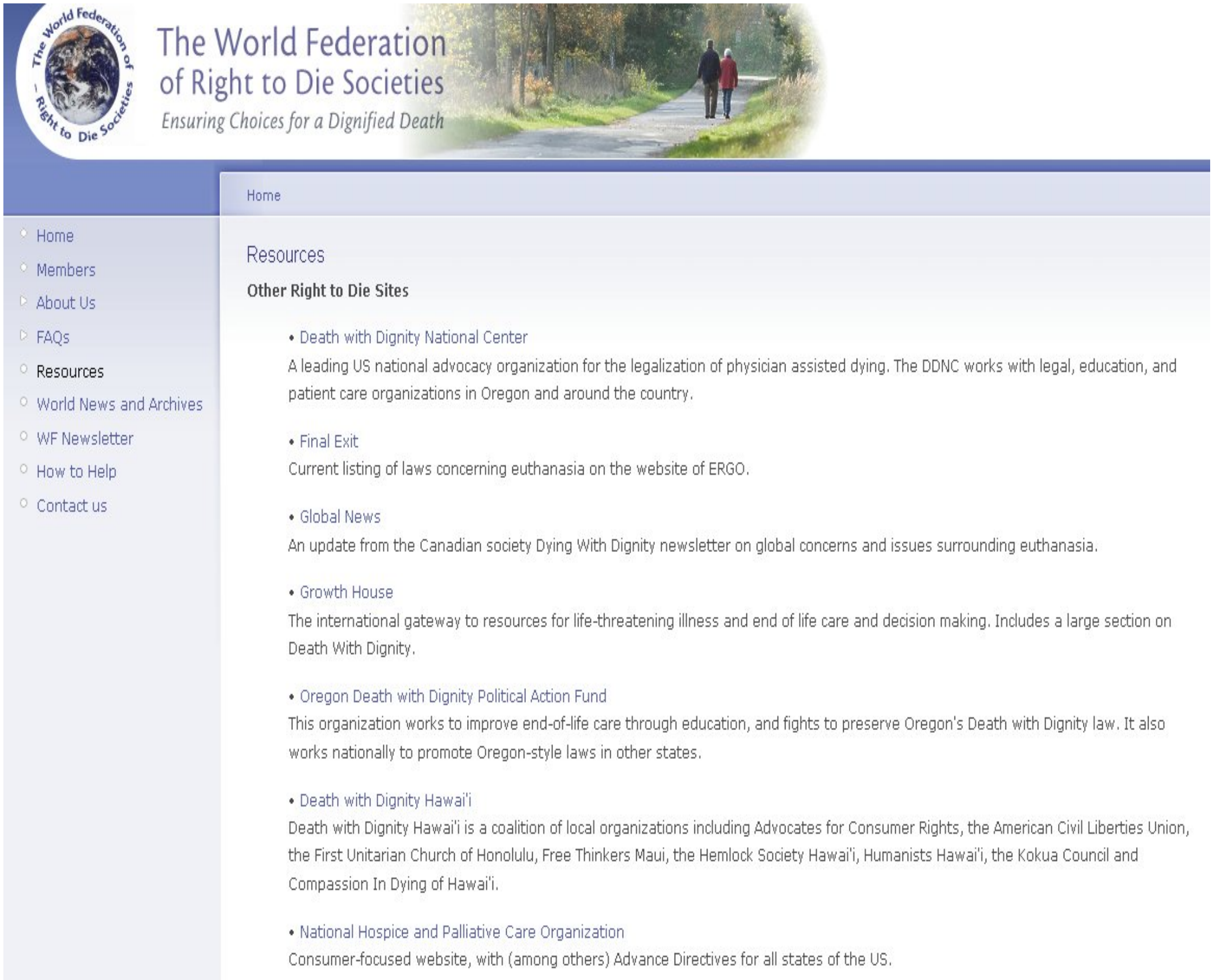
Why would they if the National Right to Life Committee "bought into" the lie that hospice was only run as a pro-life end-of-life care industry that allowed a natural death in its own timing? Some hospice and palliative care units do not hasten death. Some. Many do hasten death I'm sad to say. Twenty years ago, that would not have been true. But such dramatic work and millions of dollars have been poured into transforming the industry into "euthanasia heaven." "Two Decades to an American Culture of Death" is what it's taken to taint the industry.

Most "right-to-life" organizations promote hospice, work with hospice and believe that hospice just about everywhere is "pristine and pure" just as Dame Cicely Saunders talked about years ago. And so many who work in hospice pretend that there are absolutely no major problems in hospice today. They vehemently deny wrongdoing. They frantically explain away the massive evidence of stealth euthanasia in case after case.

According to them, the hospice industry is staffed mostly with perfect individuals who never make efforts to hasten death and any questions that are asked are raised because people "just don't understand" what happens at the end-of-life. When physicians, nurses and others call me and tell me their loved one was medically killed in a hospice, it's very hard to write everything they say off as "not understanding." Especially, when the accounts of such medical killings continue day after day, year after year. Or are we just supposed to say, "these things couldn't be true," just as the world said when Nazis hauled off millions to the extermination camps.

Right-to-life groups act as if they are totally "in the dark" when it comes to the realities of the end-of-life care industry! They are. And their choice to blind themselves to the realities allows the killings to continue virtually unopposed!

They don't want to know the truth. Perhaps some of them experienced wonderful care at some hospices. That's great, but they need to wake up. The evidence of who's running the national scene is overwhelming, and 80 percent of hospices in the US are members of the NHPCO, the successor organization of the Euthanasia Society of America. ***The World Federation of Right-to-Die Societies lists the National Hospice & Palliative Care Organization's website as a "Right-to-Die" site!***



Well, clearly there's been a lot of change since the first hospices started up. You probably didn't expect to see that and don't want to believe the National Hospice & Palliative Care Organization is a "right-to-die" resource, but that is what the World Federation of Right-to-Die Societies says. And, NHPCO is the successor organization of the Euthanasia Society of America, as clear as can be!

We must realize that the "universe" of hospices is not solely pro-life like it was with Dame Cicely Saunders' St. Christopher's Hospice. It took me a long time to accept this, because it was contrary to what I had been taught. I also didn't want to believe that the mission has been hijacked by corporations that have taken over, many of them for-profit. And fraud is widespread in rogue hospices. Even worse for the patients, those who are true believers in euthanasia and assisted suicide manage many of these hospices or palliative care units. They run the National Hospice and Palliative Care Organization. They're on the board of directors. They train the staff, perpetuating twisted clinical practice and interpretations of the hospice and palliative care mission.

Hospice has become a playground for the right-to-die zealot!

Except for those of faith, the sanctity of life is viewed as nothing more than an obscure phrase spouted by "right-wing zealots." Quality of life is almost universally promoted by those in the mainstream media, by most bureaucrats running the government, the schools and universities. If any of them were to start speaking openly about the "sanctity of life," they'd be fired for "violating the separation of church and state," something that is part of communist constitutions (as in the former USSR), or Communist China, but is not part of the U.S. Constitution. We have the First Amendment's prohibition against establishing a ***government-mandated religion***, but we have no prohibition about individuals having a religious faith or expressing their reverence for each life. The Constitution and Declaration of Independence are based upon reverence for individual life.

For the modern secular culture, when a person's quality of life is seen to be declining, the value of that life is now also viewed as declining. When it gets bad enough, ***ending the life of the patient is seen by many as the best way to resolve the problem of suffering***. Allowing the person to live and go through the dying process till a natural death occurs is seen as meaningless, cruel and uncompassionate! Though they don't openly say it, killing the patient to end suffering is what is meant by "death with dignity." This is the belief of the Euthanasia Society of America's heirs who are now entrenched within our health care and hospice industry. They are more "mainstream" in health care management and policymaking circles than people of faith who honor and revere life. Pro-life health care professionals "butt heads" with these secular health care bullies every day in the workplace.

The James Bond theme song written by Paul McCartney, "Live and Let Die" expressed the transition very well:

> "When you were young and your heart was an open book
> You used to say live and let live ....
> But if this ever-changing world in which we live in
> Makes you give in and cry
> Say 'live and let die'

In other words, in earlier times when you were "young and open," you forgave and turned the "other cheek" allowing the offending party to live, but now. after suffering in the world and you became bitter, you should no longer believe in the value of forgiveness. You should say, "live and let die." And in the context of the Bond films, "let die" obviously means "kill." Though the Bond films can be tremendously entertaining, the coarsening of our society is clearly reflected. ***People of faith do not view the suffering which comes with life as a justification to become bitter, withhold forgiveness or kill, but those who are secular and utilitarian do***. They do not respect the biblical moral imperative, "you shall not murder" and think nothing about imposing death upon the vulnerable.

For those who revere the life given to each of us, "death with dignity" means respecting the sanctity of each person's life, all through life, caring for those in need lovingly, relieving suffering as best can be done, but allowing death to occur in its own natural timing. With regard to the patient, David Mills writes:

> "Lying in a hospice bed, in the very last situation he would have chosen for himself, my father taught me that ***to die with dignity means to accept what God has given you and deal with it till the end. It means to play the hand God has dealt you, no matter how bad a hand it is, without folding. It means actually to live as if the Lord gives, and the Lord takes away, and in either case blessed be the name of the Lord***.
>
> "It's dignity of a different sort than the corruptingly euphemistic slogan 'death with dignity' suggests. There is a great - an eternal - dignity in accepting whatever indignities you have to suffer to remain faithful to God and to do what He has given you to do. A man can be humiliated and yet noble, and the humiliations make the nobility all the more obvious. My father died with dignity, though the advocates of euthanasia and the clean, quick, controlled exit might not think so." [Emphasis added]
>
> ["Real Death, Real Dignity - Dying with dignity is not the 'death with dignity' many propose" *First*

Things February 2011]

Many churchgoing people of faith believe, want to believe, that hospice is the alternative to euthanasia. It's the "simple" solution that seemed to answer the need of the times. It was and is too simple.

The right-to-kill crowd got to the hospice industry and overpowered the influence of those who remained true to a sanctity of life ethic. They created and duplicated rogue hospices that pretend to be like Dame Cicely Saunders' hospice but are nothing at all like what she demonstrated. They have hijacked the industry and are leading them and our society into disaster.

No, many of the hospices today model themselves after Florence Wald, RN, MN's vision where assisted suicide would be available for economic reasons or just about any other reason! The euthanasia proponents, knowing Americans' traditional opposition to medical killing, have pretended to be powerless to do anything. Yes, they have pretended to be far away, as if they weren't even acting here in America, except for the "overt" euthanasia proponents run by what some people would think were "loonies" like Derek Humphry of the Hemlock Society.

But, the euthanasia proponents have been very slick, operating behind the scenes in high places, sitting down "at the table" where stakeholders make policy for the nation, sitting down "at the table" when textbooks are written, shaping our children's worldview so that sanctity of life becomes something to be mocked or considered a "throwback" to the "dark ages" when the United States was dominated by Christian "oppressive" values. They also specifically have targeted medical and nursing students for re-education through the rewriting of textbooks. The re-education was not restricted to simply promoting hospice and palliative care as the public expects it to be; it promoted the secular culture-of-death flavor of end-of-life care favored by Florence Wald, RN, Joanne Lynn, MD and Ira Byock, MD. They have never stopped working to make changes in our society and especially hospice, and they refuse to honor the sanctity of life. They have succeeded in perverting the practice of end-of-life care, so it is no longer a "safe" alternative. The public has no way to know who to trust when they enter a hospice or palliative care unit. Only a hospice that affirms the sanctity of life is truly safe for any patient, and how will you know which one is which?

"Hold out baits to entice the enemy. Feign disorder, and crush him."

The Art of War by Sun Tzu Chapter I, verse 20

IV - The Culture of Death: Overt Operations

Euthanasia Society of America (early decades)

> "On January 16th, 1938 Charles Francis Potter announces the founding of the National Society for the Legalization of Euthanasia (NSLE), which is soon renamed the Euthanasia Society of America (ESA).
>
> According to TIME magazine, "he and a sizable group of other notable men believe[d] so strongly in the right of an incurably diseased individual to have his life terminated gently that they... organized a National Society for the Legalization of Euthanasia... its trustees included Dr. Clarence Cook Little of the American Society for the Control of Cancer and of the American Birth Control League, and Secretary Leon Fradley Whitney of the American Eugenics Society." TIME Magazine "Potter and Euthanasia," www.time.com, Jan. 31, 1938
>
> [From Euthanasia ProCon.org "History of Euthanasia and Physician-Assisted Suicide"

With hindsight, we can see that they changed their tactics. Studying their words, speeches, and activities, we see that after defeat after defeat in the late 1930s and thereafter, they decided to move incrementally, getting the public to accept changes in what was expected in health care, all in the name of "patient rights." Their "enemy," the American people's opposition to medical killing, was too strong to overcome.

The Euthanasia Society membership was relatively quite small with respect to the entire country, but they had two things on their side: their willingness to persist for decades and their willingness to deceive the American public. They avoided open confrontation with the American public when they saw they could not win.

After World War II, many around the world were so appalled by the Nazi atrocities. It is no surprise that in 1950:

> "The World Medical Association vote[d] to recommend to all national medical associations that euthanasia be condemned 'under any circumstances.'
>
> "In the same year, the American Medical Association issues a statement that the majority of doctors do not believe in euthanasia."
>
> "When an opinion poll in 1950 asked Americans whether they approved of allowing physicians by law to end incurably ill patients' lives by painless means if they and their families requested it, only 36 percent answered 'yes,' approximately 10 percent less than in the late 1930s."
> Ian Dowbiggin, PhD "A Merciful End: The Euthanasia Movement in Modern America," 2003
> [From Euthanasia ProCon.org "History of Euthanasia and Physician-Assisted Suicide"]

So, when the Euthanasia Society of America was formed, about 46 percent of the American public favored legalization. After World War II, support dropped precipitously. For seventy years, they have never stopped. In the 1940s and 1950s, the cultural "tides" were against the Euthanasia Society, but ***they kept trying to legalize medical killing, something they call "mercy."*** A Nov 2, 1946 *Stars & Stripes* newspaper article, "N.Y. Doctors Seek Legal Mercy Killing" tells us they kept trying. That article could have been written in 2011 just the same. The cartoon included with the story demonstrates *their idea of mercy*.

IS THEIR JUSTIFICATION FOR TAKING LIFE UNDER ANY CIRCUMSTANCES?

The dear Lord certainly did not mean the same thing when He said,

"Blessed are the merciful, for they shall obtain mercy."

Sermon on the Mount: *Matthew* 5:7

Are we to believe the message of the Lord or the advocates of 1) assisted-medical killing, 2) direct medical killing or 3) the third way: terminal sedation killing?

The Hemlock Society and Compassion & Choices: Overt Operations in America

There have always been two main groups of euthanasia proponents: the covert operators and overt operators. The covert operators are those who used the "walk, don't run" strategy after the failure by the Euthanasia Society of America to openly legalize euthanasia in the 1930s through 1960s. They decided to work incrementally by encouraging the use of living wills and advanced directives, helping more and more people use the "DNR" forms, putting their ideas into the universities that train the doctors, nurses and attorneys that manage the health care setting. The National Hospice and Palliative Care Organization's "Caring Connections" program continues this work.

The other camp remained stuck on "kill" and went for open legalization of euthanasia and assisted-suicide in different states. In fact, the idea of "assisted-suicide" is merely an incremental step to legalization of euthanasia. By appealing to those who didn't want to suffer at the end-of-life, they have gained acceptance for the idea of killing oneself at the end-of-life when a patient has a terminal condition. They always promote their idea as the "right-to-die," but everyone dies, so it's not about the "right" to die, it's about the right to determine the timing of one's death (or the timing of the death of someone you have guardianship over as a surrogate decision-maker).

Traditionally, the timing of one's death has been recognized as within God's hands, that we have a purpose in life and a time for being brought into this world and time to pass on to the next world. The euthanasia proponents do not look on life in this way. Leaders of this movement are mostly secular, atheist, socialist and utilitarians. For them, life has no meaning other than what can be accomplished or enjoyed in this world.

The Hemlock Society is a grim organization that has promoted all sorts of ways of killing oneself. Debi Vinnedge, Executive Director of Children of God for Life, says:

> In 1980, euthanasia advocate Derek Humphry founded the Hemlock Society of America in Santa Monica, California. It grew to over 50,000 members with 90 U.S. chapters. Humphry's group provided substantial financing for physician- assisted suicide legislation, including the eventual enactment of Oregon's 1997 law. But to advance euthanasia nationwide, a more subtle approach would be needed.
>
> In 2003, Hemlock chapters across the country renamed themselves Death with Dignity, Compassion & Choices, Caring Friends, Compassion in Dying and End of Life Choices. While their names changed, their motives most certainly did not. Consider Humphry's words from a 2004 speech:
>
> > "For too long, the Judeo-Christian religions have dominated ethical thinking in the West... Unfortunately, Anglo-American law makes no distinction on these grounds: A person cannot ask to be killed. We must get this modified."
>
> Vinnege continues:
>
> "In the background another quietly sinister group became formal advisors to the End of Life Panel. Known as Project Grace, their board members include none other than Mary Labyak, Schiavo attorney George Felos and one more link in the Florida corruption: Sister Pat Shirley, O.S.F., officially representing the St. Petersburg diocese.
>
> "Project Grace's motive was to use religion and the clergy to convince the patient or family that withdrawal of medical care, including food and water, was morally acceptable, even in non-terminal patients."
>
> ["Hospice care delivers Hemlock nightcap"]

Wesley J. Smith, JD says this about the Hemlock Society:

Groups like the old Hemlock Society published how-to-commit-suicide newsletters and promoted wacko suicide paraphernalia like the "Exit Bag" (which had Velcro straps sewn in to ensure "a comfortable fit"). The movement's public face was the ghoulish Jack Kevorkian....

Not that the old guard has entirely disappeared. Derek Humphry, Hemlock's founder, runs an entity called NuTech that researches and promotes various methods of suicide. He's also on the advisory board of the Final Exit Network, which counsels "hopelessly ill" people on ending their lives with helium and plastic bags [link added]. (Several FEN members were recently arrested for this activity.)

.... Today, the most important assisted-suicide advocates tend to be affluent and well-tailored liberal women who travel the country pitching "aid in dying" to elite society and the mainstream media. They and their groups are well funded, by organizations such as the leftist Tides Foundation. (Compassion & Choices operates with a seven-figure annual budget.)

Changing the movement's image has made a difference in its results. Two states have legalized assisted suicide - Oregon and Washington by voter referendum, and in a third, the "Montana supreme court rule[d that] physician assisted suicide [was] not banned by state law. States from Hawaii to Vermont have experienced protracted legislative battles over the issue, the tide in favor of assisted suicide rising incrementally with each failed attempt.

These advances would not have happened but for a powerful myth promoted by assisted-suicide advocates and helped along by a compliant media: the notion that Oregon's experiment with legalized assisted suicide has been a success, in which problems and abuses are rare or nonexistent. It is true that the annual statistical reports published by the Public Health Division (henceforth OPHD) of Oregon's Department of Human Services have revealed very few problems. But there's a reason for that: The reporting system was designed by the authors of the assisted-suicide legislation to be incapable of vigorous policing and in-depth data gathering. [Emphasis added]

> As a result, nobody knows precisely what is going on in Oregon. The data in the state-published reports are based overwhelmingly on self- reporting by death-prescribing doctors - who are as likely to admit violating the law on this matter, as they are to tell the IRS that they have cheated on their taxes.
>
> ["A Myth Is as Good as a Mile: Why the assisted-suicide movement is winning" Sept 2009]

Smith explains that the success in legalization of assisted-suicide in Oregon has emboldened euthanasia advocates to push for legalization of the "Third Way" of ending life, through terminal sedation of the patient in an end-of-life care setting:

> .... Even as they were pushing explicit assisted-suicide legalization in Washington and Montana, advocates opened a second front in their quest to legalize death-hastening acts by doctors. Two members of the California assembly with close ties to Compassion & Choices had twice unsuccessfully attempted to legalize assisted suicide in the Golden State. Thwarted in that effort, they introduced Assembly Bill 2747, a bill they said required doctors only to inform their terminally ill patients about their end-of-life options. In actuality, as first proposed, the legislation would have permitted euthanasia by the back door.
>
> Here's how: The bill would have transformed a legitimate but rarely required pain-control technique known as "palliative sedation" from its legitimate use - putting a patient who is near death, and whose suffering cannot otherwise be controlled, into an induced coma - into a method of intentionally causing death, by, in the words of the bill, "making the patient unaware and unconscious, while artificial food and hydration are withheld, during the progression of the disease leading to the death of the patient." It would have allowed a dying patient with months left to demand that his doctor sedate and dehydrate him to death - regardless of whether sedation was actually needed to control pain and suffering. And, again quoting the bill, if a doctor didn't "wish to comply with his or her patient's choice of end-of-life options," the doctor would be required to "refer or transfer [the] patient to an alternative health care provider" who would do the deed.
>
> These provisions were ultimately gutted from AB 2747. But it is worth noting that the law requires physicians to provide information about all options - ranging from hospice to palliative sedation (properly defined) - to terminally ill patients, or to refer them to expert organizations - such as Compassion & Choices - capable of counseling them on these options. This may seem innocuous. It isn't: The walkback of AB 2747 marked the beginning of an attempt by Compassion & Choices to

change its public image from that of a zealous assisted-suicide advocacy organization to that of a supposedly dispassionate patient- education group.

It's no coincidence that a similar provision popped up in the notorious Section 1233 of H.R. 3200, the House version of Obamacare.

As part of their compensated end-of-life counseling for Medicare recipients, physicians and nurses could refer patients to expert outside groups. And guess which organization claims credit for playing a prominent part in creating Section 1233? From the Compassion & Choices website, on July 27, 2009: "Compassion & Choices and its supporters have worked tirelessly with supportive members of congress [sic] to include in proposed reform legislation a provision requiring Medicare to cover patient consultation with their doctors about end-of- life choice (section 1233 of House Bill 3200)."

Given its involvement in AB 2747 and Section 1233, Compassion & Choices clearly wants to become the Planned Parenthood of assisted suicide, no doubt hoping one day to receive public funds and medical referrals for end-of-life counseling, and, where legal, to facilitate assisted suicide. (It has already done the latter in Oregon.)

["A Myth Is as Good as a Mile: Why the assisted-suicide movement is winning" Sept 2009]

Although the mandatory counseling sessions for Medicare recipients has been inserted into and taken out of the law twice, something along those lines will eventually be implemented; it's in line with the direction the stakeholders are moving, promoting hospice and palliative care, reducing health care expenditures by rationing care, promoting advanced directives, DNRs, and the new P.O.L.S.T. forms.

What Wesley J. Smith, JD means by the "Compassion & Choices" organization wanting to become the "Planned Parenthood of assisted suicide" is clear when you consider that Planned Parenthood "took in $2.02 billion from government grants and programs" from 2002 - 2008; Compassion & Choices wants the federal funding and recognition as a "legitimate national player" and the consequent expanded role in our society. Societally, Compassion & Choices, a pro-euthanasia, pro-assisted suicide, pro-Third-Way medical killing organization would never be accepted as a "legitimate" player on the national scene by a large majority of the American people, especially those of faith. Yet, they're just a Congressional decision away from being funded by the federal government!

If the Congress chooses to fund Compassion & Choices in the same way as Planned Parenthood, it will show its open bias toward promoting hastened death, just as the federal government has done for Planned Parenthood.

Compassion & Choices' name itself involves deception. They promote the choice to medically kill or to medically kill oneself, but allowing suicide or euthanasia is not compassion.

> "Those who advocate euthanasia do so in the name of compassion. In this they are undoubtedly sincere, but misguided. ***Compassion is derived from Latin and means to 'suffer with', and in the context of dying persons, it translates as walking the rest of life's journey beside them, seeking their comfort at every stage. To kill them is a form of abandonment, precisely because the journey is too tough on others....***" [Emphasis added]
>
> [Euthanasia: Should We Kill the Dying? by Brian Pollard, M.D., retired anaesthetist, founded and directed one of Australia's first palliative care services, bioethicist]

Anyone who has worked with the dying knows what is meant by "walking the rest of life's journey beside them, seeking their comfort at every state." This is the work of hospice and palliative care: to be with them, to relieve their suffering as best we can, to encourage them, to sit with them, to love them, to pray with them, to listen and witness ... to keep vigil and honor their life!

Compassion & Choices, the new face of the overt camp of euthanasia advocates has its own "business tagline" to push its deceptive campaign. Every page of the website shouts: "Too many suffer needlessly. Too many endure unrelenting pain. Too many turn to violent means. You have choices, and it's your decision." Their tagline really is misleading. Good end-of-life care can relieve almost all suffering and in extreme cases, can make pain bearable. Those who seek assisted-death do not choose that option because of pain.

> "Edward J. Larson and Darrel W. Amundsen summarise: "As a result of work by Cicely Saunders and other experts in the field of pain management, nearly all terminally ill patients can obtain sufficient relief from their physical pain. That is the purpose of hospice - and it works. Based on her years of experience treating dying patients with proper pain management at her hospice in London, Saunders reports that none of them have asked for physician-assisted suicide or euthanasia." (A

Different Death: Euthanasia and the Christian Tradition, 1998, p.188)."

No, those who seek assisted-suicide do so because of the fear of being dependent or a burden on others, as well as to choose the timing of their own death (or the death of someone who has been categorized as "not competent" to make their own decisions . Even though the Compassion & Choices organization deceives with its tagline, it (and others) has been very successful in shaping American thought. Our culture has drifted further and further away from traditional American values that affirm the respect for the sanctity of life.

Global Influences

While each of us may know some of the groups promoting suicide as a "choice" at the end-of-life in our state, we must recognize that there are global influences affecting our nation. When it comes to promoting euthanasia and suicide at any stage of life, we need to be aware of The World Federation of Right To Die Societies (which "consists of 44 right to die organizations from 25 countries." The World Federation of Right To Die Societies states that it

> "strongly believe[s] that the manner and time of dying should be left to the decision of the individual, ... and that the voluntarily expressed will of individuals, ... should be respected by all concerned as an expression of intrinsic human rights."

They make it clear that the manner and timing of one's death should be up to the individual, not God, and they cloak this dark agenda in the language of a "human right" to kill oneself or be killed. WFRTDS lists other resources that are working to make it legal for people to kill themselves or to be killed medically. Some of them include the familiar names such as "Final Exit," Oregon's "Death with Dignity" Center, but surprise, surprise, ... listed prominently is the successor organization of the Euthanasia Society of America, not Society for the Right to Die, Choice in Dying, Partnership for Caring or Last Acts Partnership, but the familiar hospice organization, the National Hospice & Palliative Care Organization!! And how do they list the largest hospice industry group in the country? As one of the "Right to Die Sites!" Confirmation! Yes, NHPCO is the friend of the World Federation of Right to Die Societies and is prominently listed as such.

The World Federation of Right To Die Societies is behind some of the groups working in this country and all around the world. It is interesting to note that some of its officers are also board members of the U.S.-based pro-euthanasia organization Final Exit Network. Ted Goodwin is a co-founder of Final Exit Network and also President of the World Federation. So, when any one state has an initiative pushed forward by the local right-to-kill group (Compassion & Choices, Final Exit, or some other) they can get money from other state organizations, George-Soros organizations or the World Federation and outspend the people in the state who are pro-life and respect the sanctity of life. That's what happened in Washington where pro-lifers were outspent in the campaign to legalize assisted-suicide (killing) there.

What about other global influences? What can be more global or influential than the World Health Organization? There is no doubt that W.H.O. has promoted palliative care, but which type of palliative care is it promoting? Those health care professionals who respect life tell me about all the good expert palliative care can do for patients, however others point out the spread of "palliative sedation" among providers around the world. Which is it?

WHO's list of palliative care leadership is revealing. For example, Kathleen M. Foley, MD is the medical director of the International Palliative Care Initiative of the Open Society Foundations Public Health Program, working to advance palliative care globally. This is the George Soros-funded group that together with Robert Woods Johnson Foundation financed much of the extreme changes in end-of-life care through the 1990s and up

to the present time. In fact, the booklet, "the solid facts, palliative care" edited by Elizabeth Davies and Irene Higginson, distributed by W.H.O. was supported by the Floriani Foundation with collaboration of, yes, the Soros-funded Open Society Institute! Other members of WHO's palliative care leadership team include, among others, Joanne Lynn, MD. Elizabeth Wickham, PhD encourages us to:

> "... Look back to a June, 1997 *NY Times* story to get a better description of what Lynn believes about total sedation and withholding and withdrawing life sustaining treatment. **"When a patient is ready to die, I can stop nutrition and hydration, I can stop insulin and ventilation, I can sedate them."**

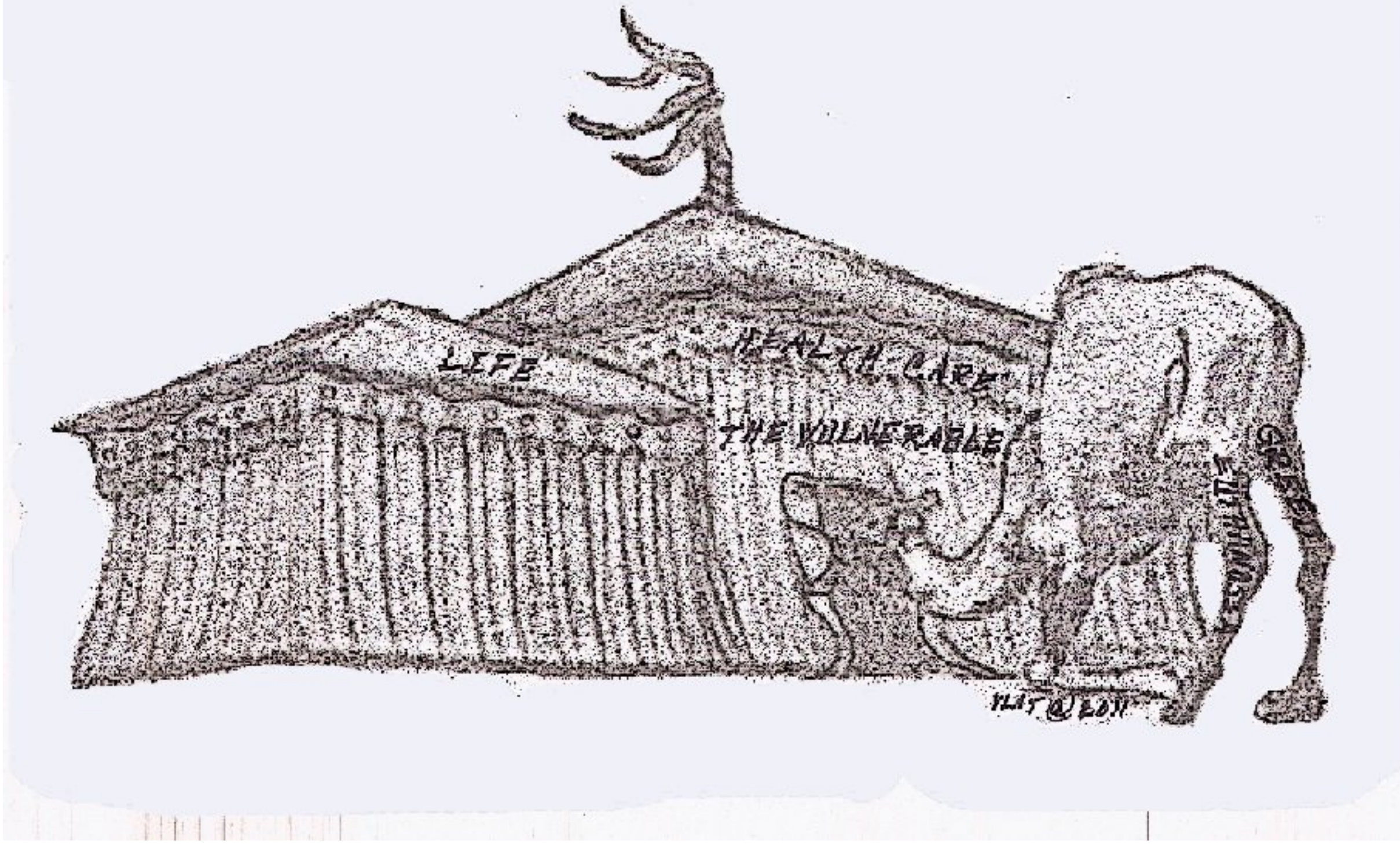
When a patient is "ready to die" is not the same as "imminently dying." When a patient is imminently dying, they naturally do not eat or drink. A patient might be "ready to die" months or even years before a natural death occurs. However, under Joanne Lynn's approach, we can terminally (totally) sedate the patient and withhold and withdraw life-sustaining treatment. We've seen this before, but notice she is talking about limiting life-sustaining treatment. And Dr. Lynn represents very mainstream medical thought in the United States today. Her suggestion that life-sustaining treatment is to be limited is exactly what's spreading across the country with the new P.O.L.S.T. forms that are physician orders limiting life-sustaining treatment. Terminal sedation plus P.O.L.S.T. equals a formidable one-two punch working to impose death on the vulnerable, elderly and disabled.

This is why pro-euthanasia Compassion & Choices promotes the P.O.L.S.T. forms as part of the incremental steps to hasten death, what they call being "Good to Go." Their Good to Go Resource Guide specifically encourages each of us to have our doctor fill out the P.O.L.S.T. form, while they admit that if the physician does not agree with our views, he may refuse to fill it out for us. In the case that you want to be treated in the hospital, and the physician disagrees, he can refuse to fill out the form designating your wishes. And because they are truly *medical orders* (not just a patient's statement of his or her wishes), he can write whatever he wishes to, according to his medical opinion.

So, two of the global influences that are having the most impact on American end-of-life care are the World Health Organization and World Federation of Right-to-Die Societies. W.H.O. chooses to name Kathleen M. Foley, MD (working for a George Soros organization) and Joanne Lynn, MD (who has been with the Rand Corporation). Not only does Dr. Lynn *not* condemn Third Way medical killing, she proudly emphasizes that she can hasten death through withdrawal of food and fluids along with implementing total sedation.

V - The Courts: Removing Barriers to the Culture of Death

While we may agree or disagree with the rulings in the following cases, it is clear that these cases form a legal foundation for changes in how our society deals with decisions that will result in death. Court rulings, changes in standards within the medical community and new laws have completely changed the landscape regarding life, death and imposing death in America. While the court rulings may make "sense" to some, they have paved the way for the widely-practiced Third Way of killing used in hospices today. It's exactly like the "camel's nose in the tent." Once you give in a little way, you lose the entire battle.



These court decisions have chipped away at the legal protections for life itself in America. They have paved the way for the likely eventual legalization of euthanasia in our country, unless a major restoration of American values and faith occurs. Judges who truly are committed to the values enshrined in our Constitution would never have gone down this path. We need to elect Presidents that will appoint judges who respect the Constitution and revere the life the dear Lord gives us. The founders of our nation acknowledged Him. So should we, and so should our leaders. The freedoms we have enjoyed in our nation are based on the respect for all lives, all citizens. Once that respect for life was diminished, the door was opened to health care tyranny in America.

The 1965 Griswold v. Connecticut, 381 U.S. 479 Supreme Court ruling established the "right to marital privacy" for use of contraceptives

The 1973 **Roe v Wade Supreme Court ruling**, 410 U.S. 113 expanded the prior Griswald decision to recognize Constitutional "right to privacy," determined that a fetus is not a "person" separate from the mother, therefore killing the fetus is "legal" and completely up to the mother to decide for herself.

Most people think of Roe v Wade as being about the "right to privacy" and that is what gave a legal justification for abortion. That is what those promoting the culture of death would like us to believe. No, privacy is not the problem. Although I'm not an attorney or a judge, it seems to me that clearly ***when the Supreme Court in the Roe decision ruled that a fetus is not a person, not separate as an individual from the mother, that is where the problem was created and set into legal stone***. It's absurd for them to have stated that the unique human life, the fetus, is not a person. Yes, the life is within the mother, but just as it's said, "within the mother" indicates that it is other than the mother. And common sense tells us the fetus, the baby, is a new human life. ***Redefining life is a habitual technique of the culture of death in their quest to be able to kill whatever category of life they wish***. They redefine the baby and say it's not a human life, not a unique individual, even though it is; therefore, killing the baby, the fetus or embryo, is not "killing."

The same thing happens when they redefine the brain-injured person and say he or she is legally dead ("brain dead") or in a "persistent vegetative state" or the quality of life is so poor that they can be "let go" and they are made dead through a variety of means.

The 1976 Quinlan case heard before the New Jersey Supreme Court.

While it is true that there are times when patients are subjected to treatments, even surgeries that are unwanted, or put on machines when they don't want them, it is also true that sometimes treatments can be helpful and patients may recover, even after physicians "determine" that the patient is "brain dead." What physicians "know" about the brain and its function (however much we admire what they've learned so far) is limited and sometimes mistaken.

In the 1960s, concerns were raised about these unwanted treatments. And it certainly makes sense that patients should not be subjected to unwanted treatments. Elderly dying patients should not be subjected to treatments that have no purpose and are not going to help the patient. Everyone can understand that, but when you take something as simple as that and misuse it to hasten death by not providing helpful treatment, you've changed the entire purpose of the DNR. In one case, you are honoring the patient's wishes. In another, you can manipulate the treatments to hasten and impose death, even involuntarily or without the patient's knowledge completely.

Karen Ann Quinlan was one of the patients whose condition was used to push forward the Do Not Resuscitate protocol and patient rights to determine their own course of treatment. In 1975, she had been drinking heavily, took some drugs and her heart and breathing stopped. She was resuscitated, taken to the hospital and placed on a ventilator. When it was clear that Karen was severely brain-injured, but not "brain-dead." Her father wanted the ventilator removed.

> Quinlan's doctor refused, claiming that his patient did not meet the Harvard Criteria for brain death. Based on the existing medical standards and practices, a doctor could not terminate a patient's life support if that patient did not meet the legal definitions for brain death. According to the Harvard Criteria, Quinlan could not be declared legally dead, and medical experts believed she would die if the respirator were removed.
>
> [From: "Court and the End of Life - The Right To Privacy: Karen Ann Quinlan"]

Initially, the lower courts denied the father's requests, but in the landmark case heard by the New Jersey Supreme Court, the father's wishes prevailed and the ventilator was removed. However, she continued breathing on her own until she died of an infection in 1985.

Before the Quinlan case, such decisions about withdrawing treatment were completely between a patient and the physician.

> "The decision to terminate life support, which was once a private matter between the patient's family and doctor, became an issue to be decided by the courts. The New Jersey Supreme Court ruling on this case became the precedent for nearly all right-to-die cases nationwide." [And]
>
> "In March 1976 the New Jersey Supreme Court ruled that, if the hospital ethics committee agreed that Quinlan would not recover from irreversible coma, her respirator [ventilator] could be removed. Furthermore, all parties involved would be legally immune from criminal and civil prosecution."
>
> [From: "Court and the End of Life - The Right To Privacy: Karen Ann Quinlan"]

There were several other cases that moved the "right to die," withdrawal of treatment theme along, especially the Cruzan and Schiavo cases.

In the **1990 Cruzan Case**, the Supreme Court affirmed that a surrogate decision-maker has authority to exercise a patient's right to refuse lifesaving procedures (for a patient in persistent vegetative state) consequently causing death through withdrawal of treatment. There is no difference between the withdrawal of needed treatments in passive euthanasia and this court-approved "patient refusal" of lifesaving procedures (actually decided by someone else). Death is intended and accomplished just the same.

In the **2005 Terri Schindler Schiavo Case**:

Terri is said to have "collapsed" with brain-injury in 1990. Medical records show that *after that night*, she had marked injury to her neck and an L-1 injury to her spine, a posterior rib fracture and other injuries not explainable by simply having "collapsed." . No police attempted-homicide investigation was ever done. Nobody has ever explained why not. She was later examined to be in a "minimally-conscious state by physicians," but

pro-euthanasia physician Ronald Cranford, MD conveniently declared Terri was in a persistent vegetative state which suited the agenda. Rehabilitation therapy had been forbidden for many years by order of guardian Michael Schiavo, and she was later admitted to hospice fraudulently since Terri did not meet the criteria for hospice; she was not "terminal." Her own physician testified under oath that she was in good health. Terri was not on any "life support" at all but had tube feedings.

Terri was selected by euthanasia advocate Mary Labyak (CEO of the Hospice of the Florida Suncoast) and euthanasia advocate George Felos (Chairman of the Board of the Hospice and Michael Schiavo's attorney) for the express purpose of expanding the legal foundation for medical killing and chose to do that in the hospice setting. Felos had earlier been involved in another precedent-setting case: In Re: Guardianship of Estelle M. Browning. In Terri's case, the local Judge Greer refused to hear much evidence or to have Terri tested properly, although the pretense that everything had been done was carefully orchestrated. After a long court battle, the court ordered that the guardian's wishes were to be acted upon and Terri was deprived of food and fluids. None of the appeals and other courts re-evaluated Judge Greer's findings of fact; they simply reviewed the legal decisions flowing from his findings of fact. Her medical killing gave the public yet another example where the courts ordered the removal of simple tube feedings, forbade any oral nutrition to be given, in order to cause death within a hospice setting.

VI - Physicians: Redefining Death to Remove Barriers to the Culture of Death

From the 1960s onward, physicians have pushed newer and more permissive definitions of "death" for purposes other than scientific truth. On Aug 5, 1968, the "Ad Hoc Committee of the Harvard Medical School to examine the definition of brain death" released their report, "a definition of irreversible coma." [*JAMA*. 1968 Aug 5;205(6):337-40]

> "The report defines "irreversible coma" as a new criterion for death, lists steps to be taken by physicians to diagnose this condition, and mentions two early instances of the concept's appearance in judicial rulings."

Many people think of the life-saving effects of organ transplantation, and remember the first heart transplant in South Africa (1967) (with another one performed three days later in Brooklyn, NY on a recently born baby).

The recipient of a donated heart goes on to live a much fuller life after coming very close to dying. It is a life-changing surgery that brings prolonged life for the recipient.

But with the proliferation of organ transplant teams, the prestige and status accorded to hospitals that perform such operations, the big money made for performing such operations, is there anything else going on here aside from a pure, altruistic motive to save the life of the desperate patient who will die without a donor organ? In some cases, there is something else going on.

Clearly, physicians didn't want to openly state the obvious, that they kill the patient to get vital organs for transplantation (such as a heart or both lungs). In the same way that babies have been re-labeled "just an embryo" or "fetus," and "not a person," to justify "aborting," killing the baby, a patient who is seen as a prospective donor is re-labeled "brain dead" so it is easier to kill him and take the organs. Of course, many today think that is perfectly fine. They have been taught to believe that the patient is "already dead," or better off "truly dead" and think they are doing that patient a favor while saving the life of the patient who receives the organs. However, some patients would and do recover if given more time.

As we've seen above, the definition of "brain death" was set at "irreversible coma." Yet, Professor Paul A. Byrne, MD and Walt F. Weaver, MD explain that "brain death" is not "death." When everybody knew what "death" was before 1968, why talk about "brain death," and later equate "brain death" with "death?" Well, before "brain death" became a criterion for "death," states such as "Kansas defined that a person was dead once all of his or her organs were dead, making some transplants impossible."

We know that transplanting organs "saves lives," but what about the person whose organs have been taken? As Paul A. Byrne, MD has explained, a heart donor cannot truly be "dead," because that would mean the heart and all organ systems had stopped functioning, and all tissues and cells had begun already to break down. Such a heart would be unsuitable for transplantation. Obviously, donors are "alive," but *considered* "not alive" for transplantation purposes. What happens if a patient is determined to be "brain dead" but later recovers? According to what we've been led to believe, that should never happen, but there have been such cases. Physicians do make mistakes, and sometimes even if they haven't made a mistake, patients have still recovered. Sometimes, physicians are not really interested in whether or not the donor patient might recover.

A May 13, 2009 article by Verheijde, Rady & McGregor gets right to the point:

"Brain death, states of impaired consciousness, and *physician-assisted death* for end-of-life organ donation and transplantation." [Emphasis added]

The title says it all. It points out, without any pretension or deception, that physicians do impose death, i.e., they kill the patient, in order to get the organs used. It's very simple to understand. So, imposing death upon patients to facilitate organ transplantation must be considered one aspect of the euthanasia movement. Whether they are considered "brain dead," in a "persistent vegetative state," organ procurement organizations want those organs. Modern society may scoff at the idea that patients are being killed, but these doctors admit it, right in the title of the article. It's what's been done all along since "brain death" became an alternative definition of actual "death.

With regard to those in what has come since 1972 to be termed a "persistent vegetative state," Professor B. Jennett states:

> "this state is frequently temporary, the original term persistent vegetative state is potentially misleading as it suggests irreversibility."
>
> [J Neurol Neurosurg Psychiatry 2002;73:355-357 doi:10.1136/jnnp.73.4.355]

What will happen to patients thought to be in a "persistent vegetative state" as the push to grab organs for donation moves into "high-speed?" It's just a small step from "brain death" being used as a justification to take organs, to using "persistent vegetative state" as a justification. What about mental retardation, Down's syndrome, or other cognitive impairments like dementia? Some physicians already advocate taking organs from the cognitively impaired of all categories.

With the Uniform Anatomical Gift Act ("UAGA") Revised in 2006 and 2009, the default rule for patients who are considered "brain dead" is that the patient is presumed to have given consent to prepare his body for donation of his or her organs for transplantation. Preparing the body for transplantation is not a reversible process!

Dr. Paul A. Byrne explains in his article: "Do Your Organs Belong to the Government?" that once the patient's organs are deemed suitable for transplantation, and because of the "presumed consent" to prepare for harvesting of the organs, the transplant team is legally allowed to flood the body with fluids which destroys the brain and any chance of recovery, while preserving the vital organs such as the heart, lung, liver, kidneys and so on. While all of this is going on, the organ procurement team "seeks to make contact" with a relative, friend or other "class" of people who can give "consent" for the "deceased" patient to be made really dead by taking his vital organs.

What if the doctors are wrong? Are they ever wrong? Chauncey Crandall, MD is the Yale-educated chief of the cardiovasular transplant program at Palm Beach Cardiovascular Clinic, Florida. Dr. Crandall reports that on October 20, 2006 he had ***pronounced Jeff Markin dead*** ***forty minutes earlier*** and was finishing up paperwork when he felt a call to pray for the patient and try again to get his heart started. He ordered the staff to

give one more shock with a defibrillator. Markin is alive today because the doctor listened, prayed and did not give up. Dr. Crandall is the author of *Raising the Dead: A Doctor Encounters the Miraculous*.

Dr. Paul A. Byrne mentioned the case of Zack Dunlap: "Pronounced dead, man takes 'miraculous' turn -- Doctors can't explain why 21-year-old Zack Dunlap recovered from accident." March 24, 2008 and Val Thomas: "Woman Wakes After Heart Stopped, Rigor Mortis Set In" May 23, 2008, both of whom were officially "pronounced" dead ("brain dead") by the doctors and who came back to life from the "dead" to full consciousness and interaction and functioning here in this world. Clearly, the docs are not infallible and may be rushing the whole "brain death" determination in many cases!

On May, 2011, the Australian Gloria Cruz was officially pronounced "brain dead" and her case "hopeless." Medical professionals pressured her husband to have the ventilator turned off immediately, but he resisted and delayed the physicians. When the ventilator was eventually turned off a few weeks later, Gloria continued breathing on her own and woke up completely three days later. Doctors were stunned and said, "it's a miracle." Perhaps doctors need some humility in realizing that they still do not understand all that there is to know.

For more information, see "Dealing Death -- A Pro-Life Nurse Looks at Dangerous Developments in Organ Procurement" by Deborah Sturm, R.N. Deborah Sturm is a registered nurse and serves as the secretary of the National Association of Pro-Life Nurses.

Dr. Byrne has told us about some of his own patients who were considered "brain dead" and went on to live complete and normal lives, functioning in the community, working, and raising children.

Makes you think twice about what is going on, doesn't it? It should! In July, 2011, a Quebec woman, Madeleine Gauron, woke up after being declared brain dead, and immediately recognized her family.

Texas does not require the patient's own declaration of intent to donate when it comes to *non*-visceral organs. See: Texas's Health and Safety Code, Title 8, chapter 693. In Texas, "non-visceral" organs refer to something like a cornea that might be removed without consent to donate. This is the desired outcome for the organ procurement industry. Who was appointed to head the President's Office of Information and Regulatory Affairs? Cass Sunstein, "Obama Regulation Czar [who has] Advocated Removing People's Organs Without Explicit Consent."

> Cass Sunstein ... has advocated a policy under which the government would "presume" someone has consented to having his or her organs removed for transplantation into someone else when they die unless that person has explicitly indicated that his or her organs should not be taken.
>
> Under such a policy, hospitals would harvest organs from people who never gave permission for this to be done.
>
> Outlined in the 2008 book "*Nudge: Improving Decisions About Health, Wealth, and Happiness*," .... Under this policy, all citizens would be presumed to be consenting donors ...."

Well, it can't be plainer where they want to take us! Earl E. Appleby, Jr. director of Citizens United Resisting Euthanasia quotes Hastings Center co-founder Willard Gaylin, MD and writes:

> "Over the years, physicians have practiced euthanasia," Dr. Willard Gaylin, of the infamous Hastings Center, acknowledges in *Harvesting the Dead*. "They have withheld antibiotics or other simple treatments when it was felt that a life did not warrant sustaining, or pulled the plug on the respirator when they were convinced that what was being sustained no longer warranted the definition of life."
>
> The staged debate among its sundry sects notwithstanding, the real question posed by the brain-death cult is not whether its victims are dead but whether they have a right to life. We are, in Gaylin's words, "faced with the task of deciding whether that which we have kept alive is a human being, or, to put it another way, whether that human being . . . should be considered alive.'" "The problem," he concludes, "is well on its way to be resolved by what must have seemed a relatively simple and ingenious method. **As it turned out, the difficult issues of euthanasia could be evaded by redefining death**." (emphasis added)

China has taken it a step further. The government there has ruled that the organs of those to be executed do belong to the government, and they harvest the organs at the moment of execution! The March 2009 MailOnline (U.K.) article, "China's hi-tech 'death van' where criminals are executed and then their organs are sold on black market" reveals:

> In chilling echoes of the 'gas-wagon' project pioneered by the Nazis to slaughter criminals, the

> mentally ill and Jews, [those sentenced to death] ... will be handcuffed to a so-called 'humane' bed and executed [by lethal injections] inside a gleaming new, hi-tech, mobile 'death van.' .... [and]
>
> According to undercover investigations by human rights' groups, the police, judiciary and doctors are all involved in making millions from China's huge trade in human body parts. Inside each 'death van' there is a dedicated team of doctors to 'harvest' the organs of the deceased. The injections leave the body intact and in pristine condition for such lucrative work. After checking that the victim is dead, the medical team first removes the eyes. Then, wearing surgical gowns and masks, they remove the kidney, liver, pancreas and lungs. Little goes to waste, though the heart cannot be used, having been poisoned by the drugs. The organs are dispatched in ice boxes to hospitals in the sprawling cities of Beijing, Shanghai and Guangzhou, which have developed another specialist trade: selling the harvested organs.
>
> .... With more than 10,000 kidney transplants carried out each year, fewer than 300 come from voluntary donations. ....

That's less than 3% that are voluntary donations. The rest of China's donated kidneys are harvested involuntarily! Wesley J. Smith, commenting on the latest health care trends, tells us that "once a society decides that some of its members have a life of such low quality that it is acceptable for doctors to kill them, and once these patients - many of whom already feel like burdens - learn that they can save lives by their suicides, the seductive pull of asking for euthanasia/organ harvesting could reach gravitational strength." Couple the financial motivation of physicians and hospitals who do transplants with the disdain many utilitarians hold for those who are disabled, and you have a lethal prescription for the Perfect Storm about to hit American health care settings. The vulnerable are not only suffering; they must now worry that pressure will be brought to have them end their so-called "meaningless" lives and donate their meaningful organs to others who are considered more important than they are.

You may think that what happens in China is so irrelevant to what will happen here in America, but you would be mistaken. We live in a very inter-connected world and Chinese influence in the world is only growing along with its booming financial assets which are mostly controlled by the Chinese Communist government. In the early 1970s I was taught about the hypothesized threat from Communist China as its population grew bigger and bigger over time. The reality of China's growing population has only continued, however, back in the 1970s nobody was talking about China as the financial success it has become. And closer to home, a Communist China-controlled corporation plans on buying and then building a 50 square mile property in the United States south of Boise, Idaho. What

> "... they have decided to do is to buy up pieces of the United States and set up "special economic zones" inside our country from which they can continue to extend their economic domination. .... the 10,000 to 30,000 acre "self-sustaining city" that is being planned would essentially belong to the Chinese government. The planned "self-sustaining city" in Idaho would include manufacturing facilities, warehouses, retail centers and large numbers of homes for Chinese workers. Basically it would be a slice of communist China dropped right into the middle of the United States."
>
> ["China Wants To Construct A 50 Square Mile Self-Sustaining City South Of Boise, Idaho" TheAmericanDream.com June 8, 2011]

Nothing against the Chinese (or any) people, but the Communist Chinese leaders and the form of totalitarian government there do not share our American values, they prohibit the truly free exercise of religion, having imprisoned many for participating in various religions, including Christianity, and they do not have any sense of the reverence for life that is implicit in our nation's Declaration of Independence and our Constitution. "Through a system of "re-education through labour, - the Chinese government detains hundreds of thousands each year in work camps without even a court hearing. There are more Christians in prison in China than any other country in the world."

With America's economy in a man-made disastrous condition and China's government in control of vast sums, Chinese corporations acting within the U.S. are positioned to buy up several or even many sites to build Chinese cities within the United States of America. Our Congressmen as well as state leaders are allowing these plans to move forward, though during the Cold War, we would never have thought of allowing the Soviet Union to buy up sections of America. These settlements would house mostly Chinese citizens in the U.S. and can only grow with the families living here over time. While some may doubt that these are realistic threats to American sovereignty, as years pass, the real nature of these developments will become more apparent.

How long can our nation survive as a sovereign nation when our leaders betray their duty to protect our nation from all threats to our national security? When the Chinese harvest organs involuntarily from executed prisons, they demonstrate their values. When they take aborted fetuses and use their remains to create medications they demonstrate their values. These are the same utilitarian values they will bring to America when they settle here,

not to become Americans and live the American dream, but to create mini-Communist China zones here, something quite the opposite! China is not the only possible threat to the U.S. The re-establishment of something like the Soviet Union is another possible factor and moves to consider European law in our own Supreme Court decisions is a move away from reverence for life and towards utilitarian secularism.

We also have radical terrorists bent on destabilizing the West and especially the United States. It seems that as our nation responds to these threats, the government is assuming a larger and larger role in daily life, threatening the basic Constitutional freedoms it is supposed to protect. If that government is no longer dedicated to the founding principles of a citizen's right to life and liberty, how can vulnerable patients be expected to remain safe? If transplant physicians are desperate to obtain organs for their patients, they will look to euthanasia as a means to organ harvesting.

Dr. Paul A. Byrne has explained where we're at today when it comes to organ transplantation, what our own elite in the medical community and the government have been up to, and whether you are likely to keep your internal organs or not should you unfortunately be found in a modern hospital with a severe brain injury. He knows the answer to the question:

"Do Your Organs Belong to the Government?"

By Paul A. Byrne, MD

June 2008

Recent news reports of responses in persons declared "brain dead" should have alerted everyone that "brain death" is not true death. These observed responses prevented the organ transplantation protocols from going further. ***Zack Dunlap later reported how he could hear discussions of his death, but he could not respond at that time. Val Thomas had flat brain waves for 17 hours before her response was observed*** [Emphasis added]. While these might be of only passing interest to many, it ought to be of grave concern to every citizen of the United States of America, and the rest of the world.

We are continually bombarded with ads to be an organ donor. We are told that we are giving the "gift of life" in organ donation. We are led to believe that organs are taken for transplantation after true death, i.e., after the heart and circulation stops and there is no known way to restore them. We are seldom, if ever, made aware that after true death, the heart, liver, and other vital organs are not suitable for transplantation.

True death is when the soul separates from the body. Certainly when the person is living, the soul has not separated from the body. The heart, liver and other vital organs are suitable for transplantation only when there is circulation and respiration albeit supported by a ventilator. After true death, the ventilator cannot support circulation and respiration. After true death, vital organs

cannot be transplanted from a corpse.

The Federal Government is much involved with obtaining organs for transplantation. During the Clinton Presidency the Secretary of Health issued an edict that when death is imminent all medical records must be sent to the Organ Procurement Organization (OPO) to determine suitability for transplantation. The secretary's edict has been updated and placed into Statute within the HIPAA Regulations (The Health Insurance Portability and Accountability Act of 1996). ***While many believe that HIPAA Regulations protect your privacy, there is a list of 14 reasons why the Federal Government can obtain and use your medical information without your permission. Organ donation is one of them*** [Emphasis added]. [See: 45 CFR Section 164.512]

If the OPO determines that your organs are suitable, a "designated requestor" is sent to the hospital to seek permission from relatives, close friends or a government official. This is done under the Uniform Anatomical Gift Act (UAGA) that was passed in all 50 States in 1968. The Revised UAGA of 2006 has already been placed into Statute in 30 states [author's note: 45 states as of Jan, 2013], and has been introduced in 10 more states just this year. This current Revised Act makes everyone a "prospective donor," meaning it is presumed that you intend to be an organ donor unless you have signed a refusal.

Whenever attempts are made to add or delete words from an existing statute, someone has a reason for doing so. Previously the UAGA required you to be "of sound mind" to be an organ donor. That requirement has been removed. A person who gives any sort of medical or legal consent to anything ought to be "of sound mind" in order for the consent to be valid. So, why drop "sound mind" from the existing statute? Could it be that the drafters of the Revised UAGA are concerned that a person under the influence of sedatives, or with a brain injury, might not be considered to be of sound mind, yet they still want to be able to get his/her signature or verbal consent to organ donation?

The revised UAGA empowers 15 ½ year old persons (in some states, 14 year old persons) to sign to be an organ donor when they apply for a learner's permit to drive. This is a time when a teenager might be easily intimidated. Parents can override a minor child's refusal to be a donor prior to age 18. What is the purpose of permitting a child to sign or refuse to give an anatomical gift if it can be overridden? What does it mean, "if a parent is reasonably available?" Do you think the search for a parent will be as diligent when a child has consented to be a donor as the search for a parent of a child who has refused to be a donor?

The Revised UAGA's Section 8 recognizes that some decisions of a donor are inherently ambiguous, making it appropriate to adopt rules that favor the making of anatomical gifts. Thus, the Revised Act clarifies to facilitate and insure that suitable organs are obtained. For example, a donor's revocation of a gift of a body part is not to be construed as a refusal for others to make gifts of other body parts. Likewise, a donor's gift of one part is not to be construed as a refusal that would bar others from making gifts of other parts from that same patient, absent an express, contrary intent. Section 8 is designed to firmly state the rule that a donor's autonomous decision regarding the making of an anatomical gift is to be honored and implemented and is not subject to change by others. Section 8 not only continues the policy of making lifetime donations irrevocable but also is restated to take away from families the power, right, or authority to consent to, amend, or revoke anatomical donations made by donors during their lifetimes (even though alert, fully informed relatives might make a different decision).

The Revised UAGA sets forth a prioritized list of classes of persons who can make an anatomical gift of a decedent's body or body part if the decedent was neither a donor nor had signed a refusal. The list is more expansive than under previous versions of this Act. It includes persons acting as agents at the decedent's death, "adult grandchildren, and close friends." It goes through a descending class of persons to give permission, proceeding from one class to the next by going through those "reasonably available." As stated in the revised Act, "Reasonably available means able to be contacted by a procurement organization without undue effort." Undue effort is not defined; could it mean not getting a response to a telephone call is sufficient to go to the next class of persons?

The revised Act has language that does not protect the life of the prospective donor and does not benefit ordinary citizens. For instance, does this bill not discriminate by looking so hard at facilitating the obtaining of organs for transplantation, that it overrides the fully and explicitly informed consent of the donor? Then there is the word "surviving" used to describe the "decedent's" relatives who can make an anatomical gift on behalf of the "decedent" after the so-called "decedent's" so-called "death." This is ludicrous, since a dead relative, to state the obvious, could not be "reasonably available."

In the Revised Act, what are "measures necessary to ensure the medical suitability of an organ for transplantation or therapy"? I am concerned about this because the bill states that "unless the donor's declaration (living will) expressly provides for the contrary," the proposed law "prohibits" these measures from being withheld or withdrawn from a prospective donor. A "prospective donor," according to this bill, may be someone who is "near death" and yet the organ procurement medical team can initiate measures that may actually do harm to the still living potential donor-such as increasing fluids to a head-injured patient, administering heparin and Regitine, etc., in order to "ensure the medical suitability of an organ." It is absolutely appalling to think that once a person is identified as a potential donor, organs for transplant become more important than the person to whom they belong!

The Revised Act states that a revocation of an anatomical gift "does not equal a refusal." So, if you change your mind, you not only have to revoke your prior anatomical gift, but also issue a formal refusal. Isn't this close to an opt-out or presumed consent system? Such a system presumes fulfillment of all legal requirements for consent to take organs unless a person has opted out by a formal witnessed documentation of refusal. Eight European countries have such a presumed consent, opt-out system. Such a bill has been introduced in Delaware; it has not been acted upon as yet.

In some States, the Revised Act requires that "The anatomical gift must be renewed upon renewal of each [driver's] license . . . but when a license expires and is not renewed, the anatomical gift does not expire."

Organs for transplantation are primarily obtained from those declared "brain dead." This is labeled as DBD. These are patients who have disease or injury to their brain manifested by altered functioning of their brain. They typically have a beating heart, normal blood pressure, respiration supported by a ventilator, and they move and squirm when cut into without first being administered a paralyzing drug or an anesthetic.

The Harvard Criteria (on brain death) was published in 1968. Thirty more disparate sets of criteria were published by 1978; there have been many more published since. There is no general agreement or consensus as to which set of criteria to use to declare a person "brain dead." Consequently, a person could be dead by one set, but not fulfill other sets, thus they are living! Every set includes an Apnea Test. This test is done by taking away the life-supporting ventilator for up to 10 minutes. This is medical strangulation. The patient can only get worse with this test. This test is commonly done without requesting permission. If this isn't enough to draw attention, when a patient does not fulfill any of these differing brain related criteria, but the desire is to get the organs, a Do-Not-Resuscitate order (DNR) is obtained. Then the ventilator, i.e., life support, is removed. When the patient is without a pulse (but not without a heart beat) for 2-5 minutes, this becomes the signal to take the organs. This is labeled Death by Cardiac Death (DCD).

Yes, much is being done to get your organs. For an organ to be suitable for transplantation, it must be healthy and it must come from a living person. Please wake up! Organ excision does not benefit the person from whom the organs are taken, it causes their death!

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[About the writer: Dr. Paul A. Byrne, a Neonatologist, is Director of Neonatology and Director of Pediatrics at St. Charles Mercy Hospital in Oregon, Ohio, is Clinical Professor of Pediatrics University of Toledo College of Medicine, Board Certified in Pediatrics and Neonatal-Perinatal Medicine, Member of Fellowship of Catholic Scholars.

Dr. Byrne is past-President of the Catholic Medical Association (USA), formerly Clinical Professor of Pediatrics at Creighton University School of Medicine in Omaha, NE, and at St. Louis University School of Medicine in St. Louis, MO. He is author and producer of the film "Continuum of Life" and author of the books "*Life, Life Support and Death,*" "*Beyond Brain Death*," and "*Brain Death Is Not Death*." Dr. Byrne has presented testimony on "life issues" to eight state legislatures beginning in 1967.]

[Note: As of February 17, 2011, 44 states have now enacted the Revised UAGA and 2 have bills in process to adopt it. See the "Revised UAGA Enactment Status Map."]

In the quest to grab organs for transplantation, physicians may withhold treatments from treatable patients who could recover. They may mislead family members about their loved one's medical condition in order to get organs for transplantation. We have already seen that some doctors are very eager to pronounce a patient "brain dead" and begin the pre-harvesting protocol, flooding the body with fluids. But new research is confirming that exactly the opposite is required for recovery:

> "New data from multiple ***studies suggest that clinicians are pulling the plug too early*** in patients who suffer an out-of-hospital cardiac arrest, especially among patients treated with therapeutic hypothermia. In one study, investigators showed that arbitrarily withdrawing life support 72 hours after an out-of-hospital cardiac arrest prematurely "terminates life" in as much as 10% of patients.
>
> "What is challenging for me, as a clinician who has spent 20 years trying to increase survival rates and to get people alive to the hospital, is to think that we are losing them because we don't know what to do with them," lead investigator Dr Keith Lurie (University of Minnesota, Minneapolis) told "Heartwire," "It suggests there is a huge opportunity to improve survival. I'm thinking, in absolute terms, of 5% to 10% for any patient who comes into the hospital with a pulse--they have a 5% to 10% greater likelihood of walking out intact if we give them time."
>
> ".... In addition to that report, Drs Shaker Eid and Nisha Chandra (John Hopkins University School of Medicine, Baltimore, MD) also provide data suggesting that care for cardiac-arrest patients treated with therapeutic hypothermia is withdrawn too soon. In that analysis, ***no cardiac-arrest patient who was treated with hypothermia was alert and conscious after 72 hours, whereas one-third of these patients had regained alertness by day seven***." "At this stage, the data are too premature to make any formal recommendations, but we do believe there needs to be a deliberate evaluation of these patients," Chandra told "Heartwire" . "***To withdraw support, or the idea of making a pronouncement about the degree of neurologic recovery on day three, needs to be revisited***." ".... [a] patient, not alert and unconscious 72 hours following cardiac arrest, was sent to a nursing home, only to wake up two weeks later "feeling fine," but confused about his surroundings." ["Give It Some Time! Plug Pulled Too Soon in Hypothermia-Treated Cardiac-Arrest Patients" from "Heartwire" November 14, 2010 Michael O'Riordan]

Nancy Valko, RN, President of Missouri Nurses for Life and spokeswoman for the National Association of Prolife Nurses comments:

> "... one of the biggest differences between medical care today and that of 30 years ago is time. In the "old days", critically ill or injured patients were not rushed into a determination of hopelessness soon after the illness or injury so that life-sustaining treatment could be withdrawn. Because of that gift of time, we were surprised and humbled when many of these "hopeless" patients survived and even recovered. Now, especially with non-heartbeating organ donation, the "right to die" and economics, there is a lot of pressure to determine when to quit on a patient as soon as possible. This article is an important counter to that view."

Even harvesting the organs of the injured is not enough for some physicians. They are looking to plunder the organs from disabled people who are euthanized. In Belgium, it's already been done:

> "A group of Belgian doctors are harvesting "high quality" organs from patients who have been euthanized. ...."
>
> "This seems like the ultimate in utilitarian compassion: make paralysed people feel useful by killing them for their organs."
>
> ["Belgian doctors harvest high quality organs from euthanized patients" by Michael Cook Jan 24, 2011 Mercator.net]

Here is a sampling of some of the major steps our society has taken with regard to "brain-death," organ transplantation, the "wall of silence," and devaluation of life, as well as some landmark court rulings. Even though some of these decisions may "make sense" to you, they amount to steps down the slippery slope, and we are now at the bottom of that slope as we shall see.

1965 Griswold v. Connecticut, 381 U.S. 479
Established Constitutional right to marital privacy (use of contraceptives)

1967 (Dec 1) First heart transplant: South Africa (Christiaan Barnard)
Demonstrates technical feasibility of transplanting human hearts

Dec 3, 1967, 2nd heart transplant Brooklyn, NY, USA
The beating heart was cut out of 3 day old baby and transplanted into 18 day-old baby. At end of day, 2 babies had been killed by the surgeon (KIantrowitz) These transplants were immoral and illegal, therefore Harvard Committee was appointed. See Report in *JAMA* 1968 (below)

1968 First "brain death" article, *JAMA*
"Irreversible coma" used as new criterion for "death," those in "irreversible coma" not alive, not persons, allow harvesting of organs

1968 Uniform Anatomical Gift Act ("UAGA") Simplified the Process of Organ Donation

1970 First "brain death" law (Kansas)
brain-dead are not "alive" persons so "brain death" allows killing of "brain dead" to harvest organs for transplantation

1973 Roe v Wade 410 U.S. 113 (1973)
Supreme Court affirmed prior Griswald decision and expanded Constitutional "right to privacy" to include abortion; fetus is not a "person" separate from mother, therefore killing baby is "legal;" up to the mother to decide

1972 "Persistent Vegetative State"
Set up the justification for substituted decision-making; "surrogate" such as guardian able to direct care; set the stage for brain-injured to have life-support (such as ventilator-assisted breathing) withdrawn legally

1976 Karen Ann Quinlan
N.J. Supreme Court affirms patient's right to refuse life-sustaining treatment, quotes the Pope that individuals may refuse "extraordinary means;" Ct determines removing life-support of the incompetent not considered homicide (the incompetent's wishes are determined by the "surrogate" who makes decisions on his or her behalf; case encourages adoption of advance directives; Karen lives nine more years without the ventilator (tube-fed); feeding is "ordinary care" and not to be removed

1981 Uniform Determination of Death Act ("UDDA")
made brain death a legal criterion for death in the United States, "brain dead" are not alive persons so organs can be harvested and patient killed in process

1981 Introduction of Cyclosporine
the first immunosuppressant that could effectively fight rejection of organs. Except between identical twins, kidney transplants were largely unsuccessful before introduction of this drug.

1984 National Organ Transplant Act
sets up Organ Procurement and Transplantation Network

1990 Patient Self Determination Act ("PSDA")
patient rights to informed consent, to participate in decisions, to accept or refuse treatment, to fill out an advance directive to guide decision-making should the patient become incapacitated; all facilities must note that patients are given information about advance directives

1990 Nancy Cruzan Case
Nancy Cruzan was brain-injured after a car accident; suffered anoxia for 12-14 minutes, heart and lungs had stopped, was resuscitated; diagnosed as being in PVS state; only on tube-feeding (no ventilator); 497 US 261, 1990; U.S. Supreme Court rules Constitution does not prohibit a state (Missouri in this case) from requiring convincing evidence that an incompetent person wants life-sustaining treatment withdrawn. 3 friends come forward with new testimony that Cruzan would not wish to live in this condition; Missouri court allows tube-feeding to be stopped and Cruzan dies 12 days later. Widely-publicized case promotes advance directives

1996 Health Insurance Portability and Accountability Act ("HIPAA")
sets up Privacy Rule, protected health information ("PHI") cannot be shared with those not involved in patient's case; sets up initial Wall of Silence; allows for sharing of PHI for several reasons including notifying the "Organ Procurement Organization" so a team can immediately come and harvest organs from "brain-dead"

2003 HIPAA Privacy Rule Takes Effect
Initial Wall of Silence by individuals implemented; intimidation of health care workers strengthened

2005 Terri Schiavo Case
Terri was selected by euthanasia advocates Mary Labyak (CEO of the Hospice of the Florida Suncoast) and attorney George Felos (Chairman of the Board of the Hospice) and admitted to the hospice, though she was not terminal, then denied food and fluids which was permitted due to a new Florida law allowing removal of simple tube-feedings that reclassified them as "life-prolonging treatment"

2006 and 2009 Revised Uniform Anatomical Gift Act ("UAGA")
created the default rule of presumption of intent to donate organs for transplantation except for individuals with documented refusal of organ donation; allows transplant teams to "prepare body for transplantation" by flooding body with fluids (which is opposite of treatment needed to relieve brain-injury) and several other methods in order to protect other vital organs; allows for several "classes" of persons to be contacted to make sure physicians get "consent" of patient to harvest organs (if relatives not "available" then friends or others can give "consent")

2009 Hitech Act modified HIPAA Privacy Rule: Increased Penalties
Creates three-tiered levels of fines and punishments for violations of Privacy Rule; fines dramatically increased to $50,000 and up plus one year or more (depending upon nature of violation); Creates Wall of Silence

2010 (Feb) HITECH Act's Increased HIPPA Violation Penalties Go Into Effect
Wall of Silence completed; intimidation of health care workers complete.

The word of the LORD came to Jonah son of Amittai:
"Go to the great city of Nineveh and preach against it,
because its wickedness has come up before me."

[Jonah 1:1-2]

VII - What Happens in Rogue Hospices

We know that leaders of rogue hospices care nothing about the standards of care. They only care about the

appearance of complying with the standards of care. They commit Medicare and Medicaid fraud regularly. Their tactics are very well-planned and staff are manipulated to carry out the administration's "dirty work." Rogue hospice leaders do not respect the sanctity of life; they promise not to impose death, but they absolutely do.

Rogue hospice administrators sometimes have two sets of "books" and sometimes more. They can have a set of books to show the internal revenue service and auditors. And they can have a set of books that shows what they are really doing financially.

They can have one set to show the state department of health when it's time to determine their "certificate of need." And they can have another set of books to record what is really occurring. If they are one of the exclusive providers to a geographic area, showing they are meeting the needs of the geographic area and that no other competing hospice is "needed" allows them to operate as a monopoly. The public has nowhere else to go. For example, Florida is a "certificate of need" state where one hospice can be approved by the state as the sole provider to serve a geographic area. In other states, many hospices may operate in a geographic area in a fiercely competitive "dog-eat-dog" clash to grab patients and patient referrals.

Rogue hospice administrators may hire people with experience in committing fraud into their finance departments. They admit patients who are not terminal to bolster their revenue stream or to kill. They fail to provide services needed by the patients and their families, and they focus above all on increasing their revenue, whether they are organized as a nonprofit corporation or a for-profit corporation.

A recent Journal of The American Medical Association article shows that for-profit hospices enroll patients who are less likely to have cancer and more likely to have dementia, requiring fewer services. This is something you may wish to think about when considering which hospices may tend to be "rogue" and which hospices are trying to perform the service it's all supposed to be about:

> "Compared with nonprofit hospice agencies, for-profit hospice agencies had a higher percentage of patients with diagnoses associated with lower-skilled needs and longer lengths of stay."
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> ["Association of Hospice Agency Profit Status With Patient Diagnosis, Location of Care, and Length of Stay" *JAMA*. 2011;305(5):472-479. doi: 10.1001/jama.2011.70]

The federal government has had a huge role in expanding hospice and especially rogue hospice. The creation of the Medicare Hospice benefit in 1983 was the start of the big push to increase utilization of hospice in the last year of life, the last six months. Government funding for and promotion of hospice has increased each year as we've seen. Many programs have been implemented to increase utilization of hospice and palliative care and the stakeholders who create national policy have included hospice and palliative care as part of the national strategy on health care. They view the end-of-life care industry as a vital part of the "solution" to out-of-control spending in health care. And while good end-of-life care can save compared to acute hospital treatment for patients who are terminal, there is more going on.

The U.S. Justice Department continues to refuse to make Medicare and Medicaid thieves pay back 100% of what they steal, and they refuse to put the administrators of the rogue hospices that steal millions into jail. Instead of punishing these thieves who run huge rogue hospice corporations, they encourage them to sit in on national policy-making committees and serve as consultants to the government.

Medicare/Medicaid Hospice Reimbursement Cap & Hastening Death

Well, the reimbursement cap on what hospices receive for services is supposed to rein in the costs of hospice services, keeping the total government disbursement per patient down. The total cap on reimbursement is an average amount paid to the hospice agency for each patient and is roughly the daily routine home care rate times 180 (days) to equal what would be paid out in six months ... since the terminal patient is supposed to have six months or less to live. The main thing about the cap is that there is a limit to the total revenue a hospice takes in per patient over the course of the year. It's supposed to balance out somehow with reimbursements coming in for those patients who require fewer services allowing the hospice to use those funds to help pay for patients who require a lot of services. With a hospice that has integrity, the system works as planned, but as we have seen before, the reimbursement is not huge and a hospice will just break even if they provide all services that are supposed to be provided.

What happens in a rogue hospice is something else altogether. They see the reimbursement cap as an obstacle to their profit (or the revenue stream in a nonprofit hospice corporation). We've heard from families that tell us their loved one was in hospice for several months and then all of a sudden things changed. Years ago, if a patient was not declining, the hospice would discharge the patient as the government regulations require that the hospice be able to document "decline" in the patients health status. And in good hospices, the hospice will discharge a patient who is doing well and stabilizes. The rogue hospice often will not discharge; they often will end the life of the patient once their usefulness as a reason to bill for reimbursement ends (the cap is reached). When no more money is coming in for a particular patient, the rogue hospice sees the patient as a net-negative, and acts accordingly. New patients, who are readily available, start the flow of money again, often the same day.

With economic pressures on the horizon for many years, if hospice reimbursements are limited even more (and this may very well be the case), then many hospices will not be able to provide the services traditionally provided in hospice. Those with integrity will increasingly depend upon donations. Rogue hospices will become something else, and much worse. Our national debt and continued deficit spending, combined with very likely inflation (after about $2 trillion is "*created*" when the Federal Reserve "purchases" that amount in U.S. "treasuries" by June, 2011. Economics matters. For some in government, worrying about how to pay for the care of the dying will be the last thing on their list of concerns!

Hospice Can Use "Closers" to End Lives

When a patient lives "too long" with respect to the "six month rule," the hospice may be losing money due to the annual cap on reimbursement they get for each patient. Sometimes a hospice will send in a closer to take care of the problem.

If a hospice patient gets really sick and unstable, well, yes, the hospice can put them on a higher level of care like continuous care or general inpatient care to justify billing at that higher rate to get more money. But if they don't have the staff to provide Continuous care or a bed at a facility for inpatient care, what to do? Or again, if the patient has required services that equal or exceed the annual cap on reimbursement, the hospice may "allow" the patient to be hastened to death. They can assign the "closers" to the case who make sure the patient "goes peacefully in their sleep," preferably really, really soon.

In some cases, there are health insurance systems that include the full range of health care services within its own facilities, such as clinics, urgent care centers, hospitals, and hospices. Some of these are HMO systems. They take in premiums for services to be provided as needed, but do not always wish to provide expensive services, or prolonged services. Removing a patient, who requires expensive services to be provided, is a way to manage expenses and increase revenue.

Years ago, without knowing it at first, I met a "closer" at a hospice. Those of us who are just interested in providing good end-of-life care wouldn't even imagine imposing death, but these guys? That's all they're about. Standards of care mean nothing to them, and they can be very sneaky. Falsifying the medical record is an ordinary way of practice for them. Remember: the medical record is the legal record of what happens in health care.

Falsify the medical record and whatever you actually did is covered up, unless someone else can "prove it." Remember, in health care, your license to practice requires you to chart truthfully and completely. If you charted something, then that is assumed to be the truth, just as someone in court "under oath" is assumed to be telling the truth. If the "closer" lies when he charts, the lie is assumed to be the truth!

And "proving" what really happens takes an investigation, a serious sincere effort to get to the truth, the whole truth and nothing but the truth, something that is done when someone kills someone violently with a gun, for example. Justice involves just such an investigation and then a sincere effort to prosecute the criminal "closer" and hold him or her accountable. But the government officials want to promote hospice utilization. They do not

want hospice wrongdoing to be widely reported or known. Therefore, there are no serious police investigations, no prosecutions by the district attorneys and no consequences for hospice "closers."

So, if the "closer" says the patient was in pain, even if she was not, then he can give huge doses of morphine, and when she dies the physician can write that she died of her terminal illness. He can write that he attempted to relieve her terrible pain (when she had none), and thereby cover his tracks, minimizing his liability. He knows that those who evaluate a case are going to look for evidence the patient was in pain. If there's lot of charting showing specifics about how she expressed her pain, they'll think the administration of morphine was appropriate.

Those who are willing to lie about anything can get away with a lot, unless someone can show they're lying. And who's going to do that? Hospice management? The other nurses? Not going to happen. The family? Even if they testify giving all sorts of evidence with other witnesses, they can be said to be "grieving" and "in denial," or "don't understand end-of-life care." We've heard it hundreds of times through the years. And there's often a family member who wanted death imposed so he or she gets to inherit part of the estate sooner rather than later (or for some other reason). They'll back up the "closer" and say everything was done wonderfully and the patient had "terrible" pain, even though there was none.

The family members who object to what happened can (with some effort) get medical records later on after the patient dies, but then it's a "he said, she said" case of who to believe. Usually, the nurses and other professionals are going to be believed, not the family, about clinical matters. When "about half of nonphysician health professionals support euthanasia or Physician-Assisted Suicide in some circumstances," many of the hospice staff will not be willing to expose the agenda. And the police do not get involved in these cases anyway, so who's going to do anything about it? Nobody.

The "closer" I met a few times did some strange things. One time was on a case that was extremely expensive to handle for the hospice. It involved a patient getting I.V. medications. The "closer" brought out a morphine cartridge used for intravenous administration of morphine, but the concentration he brought out was over twice the concentration of what was ordered for this patient. If other nurses hadn't caught it and stopped it, the patient would have died that night. Because of several things this nurse did, all of which tended toward hastening death, I now realize it was not a "mistake" that he brought out that cartridge with double the concentration of morphine in it, especially since he normally did not work on that case. It is clear now he was sent out to end the case by ending the life of the patient.

Another time, he was probably just eager to leave a case he was assigned to. Even though the patient was clearly going to die within an hour or so, he pulled the patient up really high in bed so the blood rushed away from her heart and vital organs; she died on the spot. While that wouldn't save money for the hospice, it demonstrated his insensitivity to the family and the patient and his willingness to manipulate death.

Hospice Patients Alliance board member, Vickie Travis knows about "closers." Vickie states that on September 11, 2000 a "closer" named Dennis ____ was involved with her father's death in California.

After careful analysis of her father's case was performed by consultants (physicians, hospice experts, attorneys, and others) she knows much about how her father was medically killed. The series of mis-steps that she reports were done would make any good hospice professional's head turn. For example, she reports observing the nurse use dirty technique when sterile technique was required, giving potassium (when it was not needed according to physician consultants).

HMO/Hospice Intimidation to Force DNR Status and HMO Abuse Begins

Vickie writes,

"The hospice nurse, Dennis ____, RN, repeatedly terrified my father. Who could blame him for being afraid after the treatment that he had already received? The nurse yelled at him, "you're going to die" and "you'll never walk again." During this time, Kaiser staff intensively pressured us to make my father's status DNR, or "do not resuscitate." This was against my father's and our family's firm convictions. He, and all of us as well, wanted him to receive all medical treatment that would be appropriate when necessary and under all circumstances to resuscitate him. This was documented in writing several times."

"For the entire time my Dad was enrolled in Kaiser's hospice "program," his nurse refused to change the foley urinary catheter and he would not change the trach tube. Dennis ____, RN also told us that he was a PA (physician's assistant) which was not true. These urinary drainage catheters are usually changed a minimum of once per month and sooner if they become blocked. The nurse also told the family in the presence of our father that if we wanted the g-tube changed that he would have to stand over our father on his bed and rip it out of his stomach without any anesthesia and then use an hard object to shove in a new one. Kaiser even refused to provide an adult-size wheel chair for our father, but they did provide a small, child size one that my father was obviously unable to use."

"I repeatedly requested physical therapy assistance for my Dad and was told several times that they had been billing Medicare for physical therapy, but no one performed any physical therapy on my Dad other than myself and other family members. Kaiser said that they did in fact have a report from a physical therapist. If they had a report, it would be fiction, because no physical therapist ever came out to work with my father, even though they were billing the government for therapy services. He was also supposed to have a respiratory therapist, and they did bill for that also. But there was none."

"There was a man that came out to check the equipment twice, but that is all. As for assistance with bathing, there was a health aide that every fifteen days or so would call and say she would be out to help us. She seldom showed up. I was his bather and again it was an honor to serve my father."

"Of course we complained to Kaiser about their not honoring their contract with our father. We were always informed that they had budget and scheduling problems and "nothing could be done" to help us."

"Still, we as a family continued to go forward and our father kept getting healthier and much stronger. After one of the physically painful incidents that my father had to endure under the care of Dennis ____, R.N., I finally told him that I knew Medicare fraud was being committed and that I was going to talk. The following week Kaiser officially upgraded my father's health and they commented that it certainly didn't look like he was going to die any time soon. He was to be transferred to the palliative section of the Kaiser/Sunset home health department, but not until they actually formed a palliative section or department, so we patiently waited while he received no medical care from Kaiser."

HMO/Hospice Nurse Causes Fatal Septic Infection

Vickie continues:

> **"When they finally got this department created for their patients, Dennis ____, R.N. was ordered by Kaiser to finally change our father's catheter and trach in order to finalize his work and complete his reports. He came out to the house under duress, informing me that he was acting as a "Closer", and without washing his hands nor wearing gloves he proceeded to change the foley catheter immediately after using the bathroom where he did not wash his**

hands. Then, still without washing his hands, or wearing gloves, he attempted to change the trach tube. After a lot of blood being spread around, the nurse informed me that he was unable to change the trach tube because it was stuck and it was now a detriment to our father's health if he continued to try to change it."

> "We later were informed that the HMO's rules require two nurses to change a trach tube. My father did develop an infection, and to us, it is obvious it resulted from the complete failure to follow sterile technique required to change an indwelling foley urinary catheter and the tracheostomy tube."

To stop that kind of bad ending, you have to have an expert in end-of-life care at your side just to reevaluate everything they tell you or that they did. Even then, you may fail to save your loved one. Some of these "closers" are very devious and very effective. If an agency is using them intentionally, they manage to pay them bonuses for the work they do (and the money they save the corporation).

Hospice Can Withhold Ordinary Treatments to End Lives

There are all sorts of scenarios that play out in palliative care units and hospice agencies. While, again, not all hospices do these things, it is quite common among the type of rogue hospice promoted by the culture of death. Patients and families have regularly reported being pressured to withhold ordinary treatments for a urinary tract infection or other infections, even when the terminal illness is not thought to be likely to cause death in the near future.

A decision not to treat ordinary infections is a decision to have the patient die from that infection, not from the terminal illness. Of course, many physicians look at some infections if they occur when the patient is very elderly and weak, as a "good thing," and a way that the patient will die sooner and not have to suffer. Everyone has their own opinion, but there are many patients who do not desire to die, who just want to have pain and distressing symptoms managed, just like hospices and palliative care experts say they do.

When they don't get their symptoms managed, but are treated to a death-inducing protocol, they are terrified and families are distraught. Death can be, and often is, manipulated. Patients who need rehabilitation can be placed in hospice, denied their rehabilitation, and then killed. This is what happened in a recent 2010 case that was reported to me: "What I Saw at the Hospice House."

> "My boyfriend showed none of the physical signs of impending death during his initial stay at Hospice. His heart, lungs, kidneys, respiratory system, and all important bodily functions were working well. Something had happened to his brain. In my opinion, the very quick diagnosis of Lewy Body Dementia could very well have been inaccurate, especially since there were no tests that proved he ever had it and, they never gave him a chance to recover or see how he would do."

This patient had no terminal diagnosis but was given repeated doses of morphine and Ativan till he eventually died after three months of that treatment. When he wished to eat, he was sedated so that he would sleep instead.

Robin Love reports that the same type of mistreatment occurred with her father who had Parkinson's but was not terminal:

> "My father had Parkinson's disease; he had been diagnosed 5 years earlier. He had lost his ability to swallow well and had opted to have a feeding tube inserted in May of 1998. Other than that, he was quite stable and was certainly not terminal. I heard from a caregiver on the day before he was to go into hospice that my mother was considering placing him in a nursing home. I went to speak with my mother, to let her know that my father could live with us, in my home, and she became irrational and very defensive and was screaming and carrying on, so I left her house with my 9 year old who had been there over night.

"The following day I received a call that he was going to hospice in 1 hour and I went back over. My father grabbed my hand and began crying and acknowledged that he did not want to go. He feared that he would somehow die if he went into the hospice.

".... My mother had decided to put Dad in the hospice against his wishes and mine. What was my Dads prognosis? He had Parkinson's and was stable. ....So, my father was being dehydrated and starved intentionally by the hospice, even though my Dad wasn't even terminally ill. Plus, he was sedated with Haldol to put him into a coma and then given morphine to push him over the edge and kill him by shutting down his breathing. All of this, totally against his wishes!

This horrific story is retold by many people around the country experiencing the same type of death protocol. This is not caring; it's killing, plain and simple.

Hospice Can Misinform Patients and Families to End Lives

I've had numerous calls from families as you know. Sometimes the call goes like this, "I think I killed my Dad." They go on to say the hospice nurse told them to give this medication "every two hours" or something like that "without fail." They often tell me the nurse will say things like, "you don't want him to suffer, do you?" or "it would be cruel to not give him this pain relief!" The family member will then often go on to say, "My Dad didn't really have pain issues, but I was told to give it anyway."

What happens in these cases is the manipulation of the family to be the instrument of death. When a patient has no pain issues, giving powerful opioids like morphine can rapidly kill the patient. Sometimes a patient who is only taking a Tylenol for minor aches of old age is suddenly given 20 mg or morphine every four hours, then every two hours (which doubles the circulating dose in the bloodstream). Patients who are "opioid naive," not having taken these types of medication before, react with the worst adverse effects: lowered blood pressure, coma, lowered respiratory rate, periodic cessation of breathing (apnea), complete cessation of breathing and consequent death.

When hospice or palliative care staff misinform families, they are violating the standards of care which specify that all patients (and the family member with power of attorney) have the right to "informed consent" and should be given complete information about the treatments being offered, all options available, the reason for the treatment and what consequences may arise from the treatment. Failing to provide complete information is a violation of this central principle in health care. Unfortunately, it is extremely common.

I've gotten calls from weeping 80 year-olds saying, "The nurse arrived at the home and then said she was going to give my husband something to 'help him sleep." He was in his bedroom lying down. This morning, my husband was walking, talking, eating, drinking, and we even went shopping today. He wasn't expected to die soon at all, but one-half hour after the nurse left, I went in to check on him and he was dead!"

There is no "informed consent" here, quite the opposite. Families report overhearing conversations between two hospice nurses (who thought no family member was there to listen): "the nurse said, 'I'm just like Jack Kevorkian, but I do it with morphine and get away with."

Hospice Can Ignore Your Power of Attorney and Create a New One

We are hearing more and more about adult children who favor using hospice to hasten death, either getting the elderly parent to sign a health care power of attorney appointing them as patient advocate, or, bringing the parent to the hospice where a new power of attorney is made out at that time. This method completely subverts the legal process which would respect an individual's carefully thought-out decisions delineated in the "designated advocate" section of their health care power of attorney document, their living will or advance directive.

Just think about it! You can appoint someone you are sure will respect your rights, and then when you are frail, you can be dragged to a hospice, have a new form filled out and signed by you perhaps when you are sleepy, drugged, or confused, under duress and manipulation.

See Chapter XII, "How Things Work: Typical Hospice Scenarios for Hastening Death" for a case that demonstrates this increasingly common ploy to make sure a patient is first admitted to hospice and then hastened to his or her death.

Hospice Can Misinform Staff to End Lives

I can't tell how many times through the years family members will call and tell me how their loved one was overdosed with morphine. Often, they report that the hospice nurse will tell them, "Morphine helps the breathing." That specific line is repeated over and over again, all across the country, so I know the staff are being trained to believe this.

Why do hospice professionals sometimes tell patients and the families "morphine helps breathing?" Because they are being mis-educated to believe it:

Kaiser Health Plan instructs its patients and nurses that morphine helps breathing, which is false. From a Kaiser Permanente leaflet titled and having to do with an Emergency Medical Kit provided:

> "…. The onset of action and ease of breathing should occur in 10-15 minutes and will persist for 4 hours. The patient may become sleepy. If the patient must arise always provide competent assistance as dizziness may occur.
>
> CONCERNS ABOUT TAKING MORPHINE
>
> "Overdosing, there is a good safety margin with these medicines when given in the manner described. Even a sizable accidental over dosage usually causes only sleepiness and unsteadiness."

Charles Phillips, MD, patient advocate and former Kaiser Permanente physician, comments:

> "Morphine is a miracle drug to relieve pain, very effectively in most cases. However, if given inappropriately it is a loaded gun. The ... information is a recipe for MURDER!
>
> Morphine is a deadly drug in cases of COPD or emphysema and should not be given unless specifically warranted for that patient if ordered by a physician or trusted nurse that has actually assessed the patient in person. Oxygen is the preferred treatment for shortness of breath.
>
> No family should rely on such general instructions. Morphine is like a loaded gun which is so

powerful that can kill a patient by lowering their blood pressure and stopping the breathing."

Family after family has called here through the years of just such cases where the patient was given morphine and they died very soon thereafter, even though they did not have the usual signs for being in the active phase of dying. In some cases, it is possible to differentiate between a morphine-induced death and a gradual decline from a terminal illness.

When patients have breathing difficulties, the first thing a professional would do is try to assess what's causing the problem. Sometimes helping the patient sit up more in bed is a big help. A fan in the room is sometimes used and oxygen that is provided is a big help. If there is fluid in the lungs, medications can be given to reduce that fluid in many cases. Nebulizer treatments can help open the airways for a patient who needs them. These are the main ways to help with a patient's breathing difficulties. If the patient is anxious due to their very limited ability to breathe, for example, with end-stage chronic obstructive pulmonary disease (COPD), a low dose of anti-anxiety medication can be given.

But morphine? Morphine slows down the breathing. It does not increase the respiratory effort at all. In the case of a patient who is anxious, morphine is not the right choice. Not only does it sedate, in large doses, or doses that are not needed, it shuts breathing down completely and can cause death. And conveniently for those who wish to hasten death, the signs of morphine overdosage are the same as some of the signs of imminent death: sharply decreased blood pressure and much slower breathing, sometimes stopping at times (apnea).

Those nurses who have been mis-educated to believe that morphine is the "solution" for breathing problems see the outward signs of the morphine overdosage but interpret them as showing the patient is dying. They believe in what they've been taught and give morphine freely for breathing!

Kaiser misinforms the patients and families that, in the case of "overdosing, there is a good safety margin with these medicines when given in the manner described. Even a sizable accidental over dosage usually causes only sleepiness and unsteadiness." This is irresponsible in the worst way, because, as we have seen, morphine can be fatal when an overdose is given. Some people are even more sensitive to it than others, and so require careful monitoring to make sure they do not have tragic responses. Every pharmaceutical insert from every manufacturer of morphine says it, because it is absolutely true. Kaiser's instructions (and the similar instructions many hospice nurses are getting) encourage overdoses, and if the patient dies, the family and staff are led to believe the patient died of their illness, not the morphine (that is the last thing the hospice or Kaiser wants them to believe).

The other scenario where hospice nurses are taught to give morphine is very rapid breathing that is caused by metabolic changes at the end-of-life. Well, it is true that morphine can slow the breathing, and is given for this purpose, but in patients whose breathing is extremely fast (sometimes more than 40 breaths per minute) due to those metabolic changes, morphine is not really that effective in slowing the breathing. Usually, it's given more for the benefit of the family that is often alarmed by the very fast breathing, with the idea that "something" is being done. Sometimes, the metabolic changes of the dying process take over and there is not much to be done for the wide variety of abnormal breathing patterns observed at the end-of-life.

A Miseducated Hospice Nurse

I recently received vitriolic emails from just such a mis-educated hospice nurse. "Stephen M," a Registered Nurse with special certification in Palliative Care who works in a hospice wrote to Hospice Patients Alliance on November 29, 2010:

> "Morphine is not what kills people you morons. It is their time to go and god takes them when he is ready. Liquid morphine has a halflife of 45 minutes even if it is 20mg, which is the standard dose. You or anyone could drink the entire Roxanol (liquid morphine) bottle which had 30ml in it. That is a large amount and you would not DIE!"

That, from a *certified* hospice professional. If it were true that morphine is not really dangerous even if misused,

the baby daughter of Stephanie Greene would not have died from morphine in her mother's breast milk. That morphine cannot be dangerous if misused is similar to what Kaiser would have told him if he worked at their hospice (from what they say in their instructional booklets ... it just causes "sleepiness"). Hmm. Of course, any good hospice nurse or physician will tell you that the half-life of morphine is not 45 minutes; it's 1 1/2 or 2-4 hours. They would also tell you that although it is a great pain reliever, it can cause death if given in excess.

The maker of morphine states:

> "Acute overdosage with morphine is manifested by respiratory depression, somnolence progressing to stupor or coma, skeletal muscle flaccidity, cold and clammy skin, constricted pupils, and, sometimes, bradycardia, hypotension and death."

In other words, if a patient is given too much morphine, when they don't need it, they die, plain and simple. Like many medications, the administration of the medication is carefully monitored by physicians and nurses to make sure it is done safely. But how many hospice nurses are out there that think like Stephen M, RN (real hospice nurse) who doesn't care what the package insert says, or what the manufacturer (Purdue Pharma L.P.) says, or what the U.S. Public Health Department says. He is not representative of all hospice nurses, but he is representative of many, perhaps hundreds of mis-educated hospice nurses.

Where did Stephen M, RN, get his ideas? From hospice management, just like in many other hospice agencies. They promote this type of misinformation which all tends toward hastening the death of the patient, and the staff who have been misinformed have no idea that they are hastening death. Proper protocols for the titration of the medication must be followed and then overdosage can be avoided. That is what good hospice professionals do; it is the clinical standard of care.

Hospice Can Miseducate Physicians to Facilitate Ending Lives

The system wasn't supposed to work the way it does in these cases, but clever hospice managers and administrators across the country have chosen to "game" the system by miseducating physicians. You see, originally, the patient's own attending physician was always supposed to remain involved throughout the process, giving the medical orders and supervising the care given. The nursing staff that are on the scene report back to the attending physician just as in any other niche of health care. The hospice medical director was seen as someone who oversaw the hospice from a medical point-of-view and provided input on all the cases at the interdisciplinary team meetings. The hospice medical director is specifically supposed to assure a high quality of care for the patient by serving as a check on what the attending is doing, perhaps giving input and making sure that adequate pain medication is given when truly needed and so on.

In a hospice that respects the standards of care, they are not going to force the patient's own attending physician out of the picture. However, in many cases, the hospice agencies have mis-educated the local attending physicians to believe that when a patient enters hospice, the hospice's own medical director completely takes over and *has to* take over. This intentional deception feeds right into the reality of most physicians' over-scheduled lives: some physicians don't have the time to make minute adjustments in medications throughout the day, and some of them like the idea that the hospice medical director will take over.

> "A recent study showed that physicians often end all contact with patients once they refer them for hospice care."

Patients whose attending physicians have been with them through thick and thin have tremendous faith in and respect for them. They often feel like they've been abandoned if their attending physicians just hands over the case to the hospice. The patients often have a difficult time making the adjustment and don't understand what happened. They shouldn't have to lose their attending physician in order to access end-of-life care and the standards of care do not require that they do so. In fact, the standards demonstrate the value in having the patient's own physician with the medical director as a backup protection. Patients that are manipulated into

forfeiting their right to keep their own attending physician lose a valuable asset in assuring proper care is provided.

In any case, once the patient enrolls in hospice, whether the attending physician or hospice medical director is making the orders, there are standing orders for all sorts of medications that can be given if necessary, and nurses can impose death and the attending (or even the hospice medical director) may have no idea what went on. Nurses report the conditions of the patients to the physician and record their assessment in the medical chart. A dedicated attending physician will make efforts to ferret out a clear description of the patient's condition and sometimes speak to a family member or the patient directly, so that orders given are clinically appropriate. In rare cases today, the physician actually visits the patient, but the day-to-day supervision of the care is managed by the registered nurse who reports to the physician.

When the attending physician's essential role has been eliminated, or when the attending just acquiesces to whatever the nurse requests, a nurse with an agenda can report the patient having severe, uncontrolled pain (when the patient is not in pain) thereby justifying the use of high doses of morphine which can end the life of the patient. I've had calls from hospice nurses who believe this is the right thing to do. I remember being called not too long ago by a former hospice medical director who was enraged when he found out that he had been lied to and that his medical orders were misused to end the lives of patients. He resigned, because he felt he could not be sure that his orders would be based upon accurate reporting by the nurses in the field.

You see, nurses in hospice have a unique practice environment. The public has no idea that the nurses, armed with the long list of standing orders, can give just about anything needed, or unneeded, to the patient. The physicians are truly almost never at the bedside, and if they visit, it's just that, "a visit." Other than those extremely rare moments, the nurses are on their own, and some nurses really "get into" their independent practice. Not having a doctor or other supervisor standing over their shoulder allows them to do things they could never do in a hospital (unless management was involved).

Some nurses have "right-to-die" agendas and are true believers in the utilitarian view that when quality of life is poor, ending the life of the patient is the compassionate thing to do. A very few are serial-killer types that get a kick out of killing, plain and simple. These are in the Jack Kevorkian category, but hospice nurses don't get sent to jail. Hospice is a playground for such killer nurses.

Often, we will get calls from family members and somewhere along the way, they'll say, "our doctor was completely shocked that he (the patient) died. He wasn't that far along, and death was not at all expected this soon." And the doctors call here sometimes and say they believe the patient must have died of a morphine overdose. They would be right. Naturally, because in many hospices every patient is given a sedative like Ativan (lorazepam) and an opioid like Roxanol (liquid morphine sulfate), even if they don't need it.

If every patient, no matter what their disease process is given the same treatment, then the clinically-precise wonderful interventions that can alleviate suffering at the end-stages of many diseases ... are all "thrown to the wind," and hospice is reduced to a death mill. Providing Ativan and Morphine to every patient is not quality care and not even close to meeting the clinical standards of care for hospice and palliative care.

If hospice is reduced to giving all patients sedatives and opioids, then there is no need for The Oxford Textbook of Palliative Nursing (with over 1,400 pages) or the End-of-Life Care Clinical Practice Guidelines. What does a hospice nurse need to know more than giving Ativan and morphine if this practice is to dominate the industry?

Most end-stage terminal illnesses have a "predictable" course, meaning you see different clinical signs and symptoms as the disease progresses. In most diseases, the patient doesn't unexpectedly die (except in the case of AIDS patients for the most part).

Palliative Sedation or Terminal Sedation to Hasten Death

Ira Byock, MD is one of those promoting the use of palliative sedation to intentionally end life within hospice. It is no mistake that he is one of the founders of Partnership for Caring which had merged with the successor organization of the Euthanasia Society of America (Choice in Dying). He was head of the Last Acts Rallying Points Regional Center "Life's End Institute" in Missoula, Montana. He presents himself as promoting good end-of-life care. In fact, his major book on end-of-life care is entitled, "Dying Well." He wants to re-define what "dying well" means to Americans. He may agree with many good hospice professionals about much of the treatment needed at the end-of-life, but he adds in that push toward death called "terminal sedation." When he urges more people to fill out living wills or advanced directives, many would ask, "What's the problem with that?" The problem is that his brand of end-of-life care twists what the public thinks end-of-life care is into something completely different, a vehicle to impose death without formal euthanasia or assisted-suicide.

Ione Whitlock, Lifetree Organization researcher writes about Byock in her November 2009 article entitled, "The Current Health Care "Reform" Legislation: How it will make rationing and death hastening the law of the land"

> In Progressive politics, Death frequently comes in packages labeled "Life."
>
> And so it is with legislation such as that which is now before the Senate [in 2009]. Think you are supporting pain relief and hospice legislation in order to prevent assisted suicides? Wrong. Thanks to Big Death - a collection of heavily funded non-profit hospice and palliative care groups - the line between palliative care (pain relief; symptom management) and imposed death has become blurred.
>
> One Big Death "thought leader" who has helped create the confusion between life-affirming palliative care and imposed death is Ira Byock, Dartmouth physician and hospice guru. In a blog at the New America Foundation this summer, he illustrated our point. He suggests, using the example of one senior citizen, that we might improve seniors' lives simply by giving them "reliable transportation ... to the local Senior Center [where they would] share nutritious group lunches and noon-time discussions on advance directives for health care". In other words, he wants to sell seniors a free trip to the Center for a fulfilling and healthy life ... to persuade them to focus on death, of course.

Ione has it exactly right when she writes about the confusion between "life-affirming palliative care and 'imposed death" which now masquerades as "palliative care." How this has come to pass is a very lengthy and complicated story, but it has been set out in all its complexity at the LifeTree website "Two Decades to An American Culture of Death." Also, see the shorter version timeline and the longer, very detailed version.

Elizabeth Wickham, PhD, founder of the LifeTree organization has written:

> "some palliative care groups are now training physicians to introduce palliative care (comfort care rather than cure) very early in the diagnosis of a chronic condition or terminal illness. This trend blurs the distinction between ordinary pain control and end-of-life care (palliative care). Moreover, terminal sedation and withholding hydration (see below) are often part of the mix.
>
> When should food and water be withheld?
>
> Death by starvation and dehydration is painful and inhumane. Withholding food and hydration is imposed death, unless the food/water cannot be assimilated, as when death is imminent - when the patient is actively dying, and death is expected within 24 -48 hours.
>
> Nancy Valko, RN, notes:
>
> "When people are truly [actively] dying and the body's organs begin to shut down, we often see people lose their appetite and desire to drink much. This is a process that can protect a person from suffering from fluid overload at the end and the dying person remains comfortable. But this is very different from a deliberate decision to 'fast' to death."

Wickham continues:

> "Originally billed as "symptom management at the end of life," palliative care is now aggressively marketed as everything from pain relief for the public, to a cost-saving tool for hospitals, nursing homes and insurance companies.
>
> "Many pro-life advocates had hoped that palliative care would prove to be the ultimate antidote to the assisted suicide movement. The theory was sound: if patients are offered adequate pain and symptom relief, they will not request assisted suicide as a means to alleviate discomfort. Traditional palliative care - symptom relief when death is imminent - might have accomplished that mission.
>
> "However, over the past ten years, palliative care training and certification has been gradually co-

opted by the very same right-to-die advocates that palliative care was meant to counter."

And how does this "new" twisted version of palliative care operate? It continues to enroll patients with the traditional "terminal" illnesses: cancer, end-stage heart failure, end-stage chronic obstructive pulmonary disease, end-stage diabetes and so on. But they also round up patients who formerly were cared for at home or in facilities: the chronically ill (but not projected to die on their own within six months or longer), those with dementia from various causes, the severely disabled, the congenitally disabled or ill. If it sounds like the type of people that Hitler would have and did round up in his eugenics and euthanasia campaigns, that's because it is.

Some may think that is an extreme statement, but patients really are being hastened to their death in many ways across this nation and elsewhere.

"In 1998, the number one diagnosis ... was lung cancer .... In 2008, the number one diagnosis was non-Alzheimer's dementia."

What does this say about what we are doing with non-Alzheimer's dementia patients? Are they getting care or they being disposed of somewhere along the way? Patients who have dementia may be cared for at home by loving spouses or adult children. It is a difficult and heart-breaking work, but one that many families undertake because they continue to love the patient. Over time, even years, it may become physically impossible for the family member to continue caring. Perhaps they have their own issues as they age; perhaps they need to work and cannot physically be there twenty-four hours a day. And with the isolation of families from other relatives, sometimes living several states away from each other, it becomes very difficult indeed. Sometimes, a transfer to a facility is unavoidable.

When dementia patients are transferred to skilled nursing facilities or even specialized care units that work with Alzheimer's' and other dementia patients, they may become even more disoriented than before. Adjustments are very difficult for many to make. Because dementia itself is not normally the "cause of death," patients may live several more years and eventually they lose the ability to feed themselves, swallow and do other common activities of daily living. These facilities that care for dementia patients usually have waiting lists that can be quite long, perhaps years long before a space opens up. What is an administrator to do?

If the administrators are ethical, they will continue to care for each patient until the time their death naturally occurs. That's the way it was done all over the country until fairly recently. Now, however, there is a move to bring in hospice or have the patients transferred to a hospice facility. One nurse called me to alert us about all dementia patients being transferred eventually to the hospice nearby, even though the patients were absolutely not terminal, not showing signs of a terminal illness, and then within two weeks, the patients were dead. The nurse was horrified about what was occurring, but didn't know who to contact, who would listen or even believe her. Remember, the police and district attorneys will not get involved in these cases as they consider them "health care matters" and leave them to the state departments of health.

What do some other hospice doctors think? They're having seminars to discuss how to help patients die who are not terminal, and where the line is between sedation and active euthanasia. They are trying really hard to make a distinction between terminally sedating someone to death and killing them with a lethal drug. The University of Wisconsin Medical School is hosting the Third Annual Bioethics Symposium on April 7, 2011 and will cover topics like, "Terminal Sedation and Active Euthanasia: What are the Boundaries?" by Gretchen Schwarze, MD, MPP, facilitator, University of Wisconsin School of Medicine and Public Health. And the familiar promoter of terminal sedation to end life, Timothy Quill, MD, will be giving a talk on "Boundary Issues in *Helping* Patients Die." He's interested in *helping* people die, not allowing a natural death in its own timing. The seminar will also feature a talk on "***Helping Patients Die Who Are Not Terminally Ill***," Carl by Weston, MD, Hospice Physician, HospiceCare, Inc. It couldn't be more obvious that we're talking about stealth euthanasia.

Whether they received palliative sedation or an outright overdose ("direct euthanasia"), when prosecutors refuse to act, the facilities as well as those seeking to hasten death learn that they can violate the laws against assisted-suicide or euthanasia with impunity so long as they kill within a health care setting! After doctors euthanized patients in New Orleans during Hurricane Katrina, prosecutors chose not to bring charges at all. Commenting about these medical killings, Nancy Valko, RN writes:

> "Note this quote: 'The bodies of 45 patients were discovered at Memorial Medical Center after the August 2005 storm, far more than at any other hospital, and some doctors subsequently acknowledged that they had injected patients with drugs to hasten their deaths. No criminal charges were brought. Last year, a relative of a patient who died filed a civil claim of euthanasia against a Memorial doctor. It was dismissed and is on appeal.' "This is a travesty of justice and shows how that even laws to protect patients from euthanasia/assisted suicide are useless unless utilized by the authorities."
>
> [Comment from Nancy Valko, RN regarding March 20, 2011 New York Times article, "Trial to

When prosecutors refuse to act when confronted with obvious medical killing, that killing of vulnerable patients is de facto legalized! And palliative sedation assures death just as certainly as a lethal drug. A study of physician specialists in Quebec, Canada notes that "48% [of physicians surveyed] said that palliative sedation "can be likened to a form of euthanasia." Really.

"If the enemy leaves a door open, you must rush in."

The Art of War by Sun Tzu Chapter XI, 65

Hospice's Third Way: Quill & Byock Promote Palliative Sedation to Hasten Death

Any discussion of terminal or palliative sedation would not be complete without mentioning Timothy Quill, MD and Ira Byock, MD. Both are experts in palliative care and are well-respected leaders in the industry. In the early 1990s, Byock voiced his opposition to legalization of assisted-suicide, but his writings and actions indicated he was not a friend of Cicely Saunders' vision of end-of-life care. He created the Partnership for Caring organization to promote changes to society and how the hospice industry operated in America, and had Choice in Dying (the successor organization of the Euthanasia Society of America) merge with the new organization. Why would he choose to merge his organization with the successor to the Euthanasia Society if he was truly against assisted-suicide and euthanasia?

While "Partnership for Caring" sounds less threatening than "Choice in Dying" (which is obviously a "right-to-die" advocacy organization) he did choose to merge the two. His repeated protestations that he is truly against assisted-suicide ring hollow to me based on this action. Blurring the lines between openly right-to-die organizations and hospice caring at the end-of-life is something Byock has excelled at.

He has also helped confuse the public about what is good medical care at the end-of-life and what is actually harmful to the patient and destructive to the mission of hospice. I'm sure he truly believes he is doing the "right thing." But then again, so did those committing euthanasia in Belgium, the Netherlands and wartime Germany. They all believed they did the right thing, but look at the end results: involuntary medical killings.

Byock has encouraged the hospice industry to widely implement terminal sedation as a way to end life within the hospice setting. Terminal or palliative sedation does not strictly come under the prohibition of open euthanasia and it's not a direct agent to cause death that a patient might take, so it avoids both the legal prohibitions against euthanasia and those against assisted-suicide. It is a right-to-die advocate's dream solution: clever, devious, and legally "do-able" throughout the health care system, especially in "hospice."

In 2000, he co-authored an article with Timothy Quill, MD in the *Annals of Internal Medicine*, "Responding to intractable terminal suffering: the role of terminal sedation and voluntary refusal of food and fluids." Byock, with Quill, writes:

> "some of these patients request that death be hastened. [He] ... presents terminal sedation and voluntary refusal of hydration and nutrition as potential last resorts that can be used to address the needs of such patients.

In the case of assisted-suicide, the patient asks the physician for a medication that will cause death and then takes it himself or herself. In the case of the request for terminal sedation to hasten death, the patient is requesting an imposed death, just the same as assisted-suicide, only the timeframe is modified slightly to bypass the laws against intending death and imposing death (euthanasia). In this Third Way medical killing by terminal sedation, it is the physician and the nurses who give the sedatives that cause the patient to enter a medically-induced coma permanently. Death is the certain outcome and the intent is that the patient die. That is what Byock means by, "terminal sedation ... can be used to address the needs of such patients" "that death be hastened." It is simply a delayed, prolonged euthanasia, a passive euthanasia, but euthanasia just the same.

Byock and Quill's article was one of the "break-through" articles that promoted hastening death through terminal sedation. Before this time, hastening death through terminal sedation was something whispered about quietly behind closed doors. Terminal sedation was never intended for this purpose; it was intended to be selectively and extremely rarely used for clinically agitated patients at the end-of-life whose pain and agitation could not otherwise be managed. This twisting of the appropriate clinical use of terminal sedation is a perversion of end-of-life care.

To openly promote terminal sedation in this way, using it to hasten death, was a "giant leap" into the abyss of the culture of death, right-to-die agenda. But Byock is more well-known to the public as the author of his book, ***Dying Well***. Byock does not share the vision of Dame Cicely Saunders or of the original hospice mission to relieve suffering at the end-of-life while never hastening death. He openly encourages hastening death through terminal sedation and because of his and others' efforts, terminal sedation is widely taught and practiced in many hospices as a method of hastening death. Some nurses who are trained to sedate patients may not even realize the goal of their education and practice is to hasten the death of large numbers of elderly, disabled and chronically-ill, but the effect is just the same.

Quill is President-elect (2011) of the American Academy of Hospice and Palliative Medicine (AAHPM) and is a board member of Death with Dignity National Center that promotes the legalization of physician-assisted suicide around the country. The AAHPM has taken a "neutral" position on physician-assisted suicide, however Quill is certainly not neutral and favors having assisted-suicide as an option for the terminally-ill. And taking a neutral position is the equivalent of giving a nod to the pro-assisted-suicide folks. That Terminal/palliative sedation can result in hastened death is acknowledged by AHHPM and they do not expressly oppose it for that purpose.

Have you heard of any studies that the National Hospice & Palliative Care Organization (or other organizations) has done to see how many hospices misuse terminal sedation to end life prematurely? Obviously, you haven't. They don't do the studies, because they don't want the answers. Their membership consists of hospice corporations that have and control the medical records. They have access to the records for study, but they won't study them for this purpose, because they already know how widespread it is, and they are pleased with the changes.

What has another end-of-life care leader, Joanne Lynn, MD said about hospice providers? As far back as 2001, she indicated very clearly that:

> ***Hospice providers have been supportive of discontinuing life-sustaining treatments and of providing terminal sedation***, **but in my experience, hospice teams generally have opposed efforts to legitimize physician-assisted suicide."**
>
> ["Serving Patients Who May Die Soon and Their Families: The Role of Hospice and Other Services" by Joanne Lynn, MD; *JAMA*. 2001;285(7):925-932; Emphasis added]

Well, there it is as plain as day! ***One of the most influential and knowledgeable hospice and palliative care leaders in the world plainly states that most hospice providers do provide "terminal sedation," which is Third Way killing!*** Of course, the hospices are nominally against assisted-suicide and euthanasia! If the patient commits suicide, then they're dead immediately and there are no days and days of billing for "services rendered." It's not that rogue hospices are in principle against euthanasia or assisted suicide; it's all about the money. It's not profitable to the hospice industry to support medical killing that results in instant death.

Hospices that respect the sanctity of life do not terminally-sedate their patients, nor do they impose death in any

way. They allow a natural death in its own timing. They recognize the moral boundaries for human action. They recognize that murder, intending the death of a patient is wrong. Medical killing is murder. Many in society have forgotten this simple truth. We need to remember the Lord's words and choose life, so long as it is given to us:

"... I have set before you life and death,
... therefore choose life, that both thou and thy seed may live.
That thou mayest love the Lord thy God,
and that thou mayest obey His voice,
and that thou mayest cleave unto Him:
for He is thy life, and the length of thy days"

[Deuteronomy30:19-20]

When health care professionals choose to medically kill, they are choosing to shorten the days given to each of us by the dear Lord. At these times, they deceive family members and tell them the patient is "dying," but the innocent and vulnerable patient is actually being killed if medications that are not clinically necessary are given or if the patient is terminally-sedated when they are not agitated. These hospice or palliative care professionals do not acknowledge the Lord, nor do they acknowledge that we are not to decide when a life is to be ended. It is not our role. Yet, they persist as part of the culture of death and betray the mission others work so hard to serve.

There are six things the Lord hates,
seven that are detestable to him:

haughty eyes, a lying tongue,
hands that shed innocent blood,
a heart that devises wicked schemes,
feet that are quick to rush into evil,
a false witness who pours out lies
and a man who stirs up dissension among brothers.

[Proverbs 6:16-19]

Hospice: Expanding Its Turf to the Non-terminal & Hastening Their Death

Today the hospice industry is making a huge push to expand its turf so they can get more patients, more health care "territory," so-to-speak. They want to legally be able to admit patients who are not traditionally "terminal" and to be able to "care" for them (bill for them). This is something that hospices committing fraud have already been doing. It allows them to bill for a full range of services while actually providing very minimal services to a patient that doesn't need much assistance. Patients who aren't really terminal love the extra attention they get, but it doesn't cost the hospice much to just send a nurse out once or twice a week. They get to keep more revenue from Medicare or Medicaid.

Private health insurers are getting on the bandwagon, too. Calling it an "Advanced Illness" program, these insurers are signing up hospice agencies to participate in these new programs. The agencies admit patients who do not fit the traditional "six month" prognosis with a terminal illness. What's in it for the private insurers? Well, follow the money! If patients who are not "terminal" enter hospice and get the "hospice death protocol," they will die sooner, requiring much less reimbursement from the private insurers, whether PPOs or HMOs. And since the insurance company does not have to pay for services that would have been provided, they get to keep more revenue, too!

As we have seen, "in 1998, the number one diagnosis ... was lung cancer .... In 2008, the number one diagnosis was non-Alzheimer's dementia." We must really appreciate what this means. Originally, hospice agencies were caring only for the truly dying. Now, in addition to caring for the dying, they may be caring for those who are simply elderly, disabled, chronically ill or put into hospice for other reasons, and again, not likely to die within six months.

The hospice industry is arguing that there is a legitimate need for expanding the criteria to get into hospice. They want to include the nonterminal, those who are simply getting older, and they've been arguing this way for long.

Yet, they are not the only ones. Elected Congressional leaders and bioethicists have long promoted a type of "phasing out" of health care benefits for the elderly while shunting them over to an expanded type of "hospice benefit" with limited access to hospitals or emergency care.

Back in 1994, hospice physician, Joanne Lynn, MD was testifying before the Senate Committee on Finance. She explained that the elderly want to be:

> "…. protected against most surgeries unless it is going to relieve them of pain. They want to stay out of hospitals if at all possible."
>
> "*These people need something like a hospice benefit. But unlike hospice, they cannot promise to die soon. So they need a hospice benefit that is tailored to the possibility that they may live six or eight or 10 years. What we are looking for then is to work on the innovations that would allow a flexible benefit that would not make resuscitation and surgery a high priority, but would instead make supportive services and enabling services a high priority.*" [Emphasis added]
>
> [Senate Hearing. 1-3-1008, "End of Life Issues and Implementation of Advance Directives Under Health Care Reform," Hearing before the Comm. on Finance, U.S. Senate 103rd Congress, 2nd session, May 5, 1994; p.41

Not having a patient go into the hospital when they are terminally ill makes sense, because curative care simply doesn't work at that point. But if you take people who might benefit from acute hospital care and deny them access to the acute hospital care, some of them will die even though a helpful treatment was available at the acute hospital center. They may die years sooner than they would have, and this is what rationing is all about.

The hospice industry leadership doesn't like having to limit admissions to just the terminal who are likely to die within six months. Why not expand their turf, their census, their business and revenue?

And they don't like the reimbursement they get for each patient being "capped." The public doesn't know that there are limits to how much the hospice corporations get for each patient. The public may know they get a certain amount each day the patient is enrolled, but there is a limit. According to the Hospice Association of America:

> "Medicare payments to hospices are subject to an overall aggregate per patient "cap amount." The Medicare fiscal intermediary calculates each hospice's cap amount by multiplying the adjusted cap amount by the number of Medicare beneficiaries who elected to receive hospice care from that hospice during the cap period, beginning November 1 and ending October 31 of the following year. Each hospice must refund Medicare payments in excess of this aggregated cap amount. The cap amount is adjusted annually for inflation or deflation. For the year ending October 31, 2009, the cap amount is $23,014.50."

The main thing to be understood is that if the patient lives beyond a certain period (the equivalent of the cap amount being used up) or requires services that cost more than the "cap amount" allowed each year, the hospice corporation is losing money every day the patient lives beyond that time. Dividing $23,014 by 180 days (six months times 30 days per month) equals about $128. This is roughly the level of reimbursement that is paid for the most common, routine home care level of care.

In 2009, the hospice got about $142 each day the patient is enrolled. You can see that if they live beyond six

months, the hospice is paying out for services and they will not get further reimbursement. So, if the physician accurately "predicts" that the terminally ill patient will actually die within the six months period which makes him fit the definition of being "terminally ill," the hospice will do more or less, "ok" financially. If the patient's condition is service-intensive, or lives longer however, the hospice corporation will find the "cap" amount running out and begin to look upon that particular patient as a financial liability. They may even send in the "closers" to "speed things up."

Aside from getting those who have not yet reached "terminal status" into hospice sooner, the policy-makers are experimenting with getting those being treated into hospice before they "give up" and seek "comfort care" exclusively. Up till this time, patients had to give up regular benefits in order to enter hospice. If they can still undergo treatment while entering hospice, they've got one foot in the door and one outside. Eventually, they're going to decide to continue treatment or give up. With hospice personnel working with them regularly, they're going to be given messages that hospice is there for them should they decide to forego curative treatment. After a while, many will see hospice as the way to go. And if enough of them choose comfort care only, sooner, the government will save more money.

American Medical News reports on this new project: "Medicare to test allowing more than palliative care in hospice"

> "The health reform law enacted in March directs state Children's Health Insurance Programs and Medicaid plans to immediately cover "concurrent care" -- a combination of curative efforts and hospice care -- for children with terminal illnesses. The Congressional Budget Office estimates that the expanded coverage will cost $200 million over 10 years.
>
> The law also calls on the Health and Human Services secretary to conduct a three-year, budget-neutral demonstration project of concurrent care for Medicare patients at 15 hospice-care sites." [and]
>
> "The median length of stay in hospice is less than three weeks, and one-third of hospice patients die within a week of being admitted, said J. Donald Schumacher, president and CEO of the National Hospice and Palliative Care Organization. He said that Medicare paying for concurrent care could make it easier for patients and families to move from aggressive treatment to palliative care.
>
> "You go from one phase to the next phase with something to hold on to as you make that transition," Schumacher said. "Many people say, 'I wish I'd come to hospice sooner.' "
>
> Getting patients into hospice earlier gives them access to expert advice to help decide whether curative efforts are worth pursuing further, Schumacher said. "We believe involving hospice sooner will help people forgo nonproductive treatment."
>
> The demonstration project will test whether paying for concurrent care helps patients and saves Medicare money. Then the HHS secretary will recommend to Congress whether to change the hospice-care payment policy."

Whatever they say about better circumstances for those facing a terminal illness, if there were no projected savings to the federal and state governments, they wouldn't even be looking at expanding the admission criteria for entering hospice. Schumacher revealed the real goal, having "people forgo nonproductive treatments." They are testing whether "offering" concurrent services within hospice will get patients to switch from acute hospital care to hospice sooner. The idea of offering "concurrent" services is the enticement to draw patients and families in, while all along providing them with counseling that suggests that aggressive treatment is not the way to go. That may be true in some, or even many, cases, but knowing the history and trends involved, the stage is being set for a continuum of care throughout the health care system, and once patients' care becomes quite expensive, they will be shunted over into hospice and have no choice about it, whether they have a "terminal" illness or not. Whenever you hear about hospice utilization being expanded, or the need for that expansion, when the government budget is concerned, it's all about the money.

The benefits of forgoing aggressive treatment are real when aggressive treatments no longer help, cause much discomfort and are unwanted. And providing relief from the symptoms that accompany the end-stage of a terminal illness is the important and valuable service of palliative care at the end-of-life. Let's not confuse the benefits of hospice care or palliative medicine with the economic motivators pushing changes in our system.

How Hospices Hide the Killings (HIPAA Misdirection & Hospice Fraud)

People often ask, "Why would hospices kill if they are paid on a per-diem basis?" The answer is that there is a never-ending supply of elderly, chronically-ill and disabled to draw from. Hospices that are rogue hospices are not having trouble getting patients. They are having trouble getting enough staff, as there is a severe nursing shortage, and that shortage is even more severely felt in hospice agencies. However, as end-of-life care is being mainstreamed into nursing education, that shortage may be resolved over time.

In addition, if the hospice is part of an HMO or a vertically-integrated regional health care system, money is the motive. An HMO may wish to limit services and expenditures to those who are most service intensive. A vertically-integrated regional health care system has hospitals, pharmacies, labs, nursing homes, clinics, assisted care living centers and hospices, that are all part of the same health care system. If there is any type of HMO or private insurance system in place that integrates all these services under one corporate umbrella, the early death of a patient saves the health care system a lot of money.

Then people ask, "Well, if there are so many killings, why wouldn't we have heard about them in the news?" The answer is that this is the most censored story in America. The Soviet Union's powerful censorship agency, GLAVLIT, could not have kept the truth from the people any more effectively. The major media editors and managers are supportive of hospice and pro-assisted suicide and euthanasia. I know of thousands of articles reciting the wonders of hospice services at the end-of-life. I can count off with the fingers on one hand the sum of all stories printed by the major media exposing something problematic about the hospice industry.

There is a reason the major media refuses to publish the truth about hospice, palliative care, health care reform and stealth euthanasia. Most of the major media outlets like the Washington Post, ABC News, CNN and others have direct connections to those who support the culture of death approach: George Soros and others. Soros has poured millions into the major media and active journalists are on the boards of directors of Soros-funded organizations. In addition, many journalists support the Third Way stealth euthanasia practiced in many hospice and palliative care units (just "let him go") and the legalization of euthanasia and assisted-suicide. This is clear from the regular and distorted major media coverage of cases like the killing of the abused and neglected woman Terri Schiavo and others like her as well as the regular refusal of the major media to cover the topic of stealth euthanasia and Third Way killing at all. Even though they know about it and have investigated and confirmed it exists (after contacting us here at HPA), they continue to censor coverage of this dark reality of American society.

Not part of the "major" media, the *WorldNetDaily* magazine, "*Whistleblower*," did expose what is going on in end-of-life care in their May 2005 edition entitled, "Who Lives, Who Dies? Welcome to the brave new world of euthanasia, assisted suicide and 'futile care'"

HIPAA Misdirection

Well, people may accept that the story has been censored somewhat, but they still can't believe they wouldn't hear about it at all. Remember, HIPAA was "sold" to the public with the idea it would protect patient's private personal information.

"All warfare is based on deception."

The Art of War by Sun TzuChapter I, verse 18

What was not emphasized is that HIPAA forms a complete wall of silence about what goes on behind closed curtains in doctor's offices, hospitals, in hospice agencies, nursing homes, assisted living and any clinic of any sort.

In 2009, the "HITECH" Act modified the HIPAA Privacy Rule to give it dramatically increased penalties:

> [42 USC Section 1320d-6(a)] 20. Wrongful Disclosures - Section 13409 Clarification of Application of Wrongful Disclosures Criminal Penalties of Section 1177(a) of the Social Security Act (42 U.S.C. 1320d-6(a)) is amended by adding at the end the following new sentence: "For purposes of the previous sentence, a person (including an employee or other individual) shall be considered to have obtained or disclosed individually identifiable health information in violation of this part if the information is maintained by a covered entity (as defined in the HIPAA privacy regulation described in section 1180(b)(3)) and the individual obtained or disclosed such information without authorization." This provision clarifies that an individual does not need to be a HIPAA covered entity to be subject to the criminal penalties in 42 U.S.C. § 1320d-6(a)

And what might those "criminal penalties be? Absolutely devastating fines and jail time. And, to clinch it and make sure agencies report such violations, the agencies themselves face fines if they don't report and "correct" the violation within 30 days. So, you have truly terrified health care agencies paranoid about violating HIPAA, and you have truly terrified health care professionals paranoid about being accused of violating HIPAA. Even if an agency/employer wished to "go soft" on an employee who made a mistake, their attorneys will advise them that they have to report in order to avoid severe penalties for covering up an incident. In addition, HITECH creates three "tiers" or levels of fines to be imposed depending on the willfulness or knowing intent of the violator of patient privacy.

Health care professionals learned, as I did in early 2010, that we can face up to a $50,000 fine (or much more) and jail time for violating the HIPAA Privacy Rule. And the obvious: we would lose our job, our family finances would be devastated, and basically, the federal government would destroy our lives as we know them.

> "*The base penalty for violation is a $50,000 fine, imprisonment for not more than one year, or both*. For offenses committed under false pretenses, the fine is not more than $100,000, imprisonment for not more than five years, or both. And if the offense is committed with the intent to sell, transfer, or use individually identifiable health information for commercial advantage, personal gain, or malicious harm, the fine is not more than $250,000, imprisonment for not more than 10 years, or both." [Emphasis added]

The "base penalty" is $50,000! You think I'm exaggerating? In June 2010, Amednews.com reported a surgeon's "HIPAA violation leads to jail time"

> The case, involving a former UCLA employee, is the first to result in incarceration for unauthorized access of patient medical records.
>
> .... Huping Zhou, a licensed cardiothoracic surgeon in China who was working at the UCLA School of Medicine as a researcher in 2003, was sentenced in late April to four months in jail after pleading guilty to charges related to looking at patient medical records he was not authorized to view.
>
> .... "There's no question that this is sending a message," said Stephen Aborn, executive director of Andrews International, a Valencia, Calif.-based investigative and security services provider. That message: Health care organizations, and their employees, can't afford to be complacent about privacy of patients' electronic data.
>
> "This would be an example of [the government] demonstrating, 'Yes, we are *serious about making sure you all understand we will exercise this authority with respect to employees*,' " said John Christiansen, a Seattle-based attorney who advises clients on information technology matters.
>
> [Emphasis added]

Yes, they will exercise their authority to penalize employees. This is new. Never before have the agencies and employees felt so intimidated by the threat of fines or jail time! This is the creation of a strengthened "wall of silence," behind which the stealth euthanasia is proliferating.

I personally filed the first HIPAA complaint on April 14, 2003 against Hospice of the Florida Suncoast for violating the privacy of many patients, releasing actual patient names, addresses, phone numbers and diagnoses. The U.S. Office of Civil Rights ("OCR") that enforces HIPAA did nothing. The hospice was not an employee to be silenced, so the US Office of Civil Rights sat on my complaint for years. To this date, almost eight years

later, nothing has been done. Nobody went to jail. OCR never even talked to me once.

DEPARTMENT OF HEALTH & HUMAN SERVICES OFFICE OF THE SECRETARY
Voice – (404) 562-7886, (800) 368-1019 TDD – (404) 562-7884, (800) 537-7697
(FAX) – (404) 562-7881 http://www.hhs.gov/ocr/

Office for Civil Rights, Region IV
61 Forsyth Street, S. W.
Atlanta Federal Center, Suite 3B70
Atlanta, GA 30303-8909

February 1, 2006

Ron Panzer
Hospice Patients Alliance
4541 Gemini Street
Rockford, MI 49341

The Hospice of the Florida Sun Coast
Betty Oldanie – Privacy Officer
300 East Bay Drive
Largo, FL 33770

Our Reference number: 08020

Dear Mr. Panzer and Ms. Oldanie:

On April 14, 2003, the U.S. Department of Health and Human Services (HHS), Office for Civil Rights (OCR) received your complaint alleging a violation of the Federal Standards for Privacy of Individually Identifiable Health Information (45 C.F.R. Parts 160 and 164, Subparts A and E, the Privacy Rule). Specifically, the complaint alleges that The Hospice of the Florida Sun Coast impermissibly disclosed protected health information identifying its patients to purchasers of its software package. This allegation could reflect a violation of 45 C.F.R.§164.502.

OCR enforces the Privacy Rule, and also enforces Federal civil rights laws which prohibit discrimination in the delivery of health and human services because of race, color, national origin, disability, age, and under certain circumstances, sex and religion.

OCR has reviewed this matter and has determined that the issues raised in this complaint fall under the jurisdiction of the Centers for Medicaid and Medicare Services (CMS). Accordingly, OCR has referred this matter to CMS for further review and investigation. OCR's determination as stated in this letter applies only to the allegations in this complaint that were reviewed by OCR.

Under the Freedom of Information Act, we may be required to release this letter and other information about this case upon request by the public. In the event OCR receives such a request, we will make every effort, as permitted by law, to protect information that identifies individuals or that, if released, could constitute a clearly unwarranted invasion of personal privacy. If you have any questions, please contact Carla Carter, Investigator, at (404) 562-7869 (Voice), (404) 331-2867 (TDD).

Sincerely,

R. A. Barbour, III

Roosevelt Freeman
Regional Manager

HIPAA is not about silencing agencies. It's about silencing staff that see what goes on. Employees. Health care workers are *not* going to talk about problems in health care with the public (say through a news story), unless they wish to risk everything on a casual comment. Agencies will act quickly to shut down any breach of the HIPAA Privacy Rule since the agency corporation will itself be held responsible and possibly fined if they are found to be at fault. In Tucson, the Arizona Daily Star reports, "3 [University Medical Center] workers [were] fired for records access"

> "The hospital has terminated three clinical support staff members this week for inappropriately accessing confidential electronic medical records, in accordance with UMC's zero-tolerance policy

on patient privacy violations," says a statement issued by UMC officials this morning."

"Zero tolerance" is what it's all about. If it's about protecting patient privacy, good. But that's not what it's about.

Ok, but I can hear you saying, "Surely a staff member can report a crime to the police if someone is killed in a hospice!" Yes, you can report it to law enforcement. Many staff and families have reported it. We know from years of speaking with nurses and families: the police will not investigate reports of killings in the hospice. They universally say, "Report it to the State Health Department." And when people report it to the State, nothing is done. The state inspectors will indicate they "could not substantiate the allegations." End of story.

With the strengthened fines and threat of jail time, employees will think twice about reporting to anyone. They are *not* told by their employers about the provisions that allow them to report crimes committed in the workplace. Why would an employer mention that? It just wants to make sure the agency does not run afoul of HIPAA and get fined itself!

Again, you will say, "but if you go to the police and carefully explain how serious it is, they must investigate." You would be wrong.

This is how it will play out under the new HIPAA Privacy Rule. You *can* report to the police *if* you believe a crime has been committed. The summary of the HIPAA Privacy Rule says that HIPAA allows covered entities (health care workers or agencies) to report crimes to law enforcement officials *if* there is a violation of the law:

> (5) Public Interest and Benefit Activities. The Privacy Rule permits use and disclosure of protected health information, without an individual's authorization or permission, for 12 national priority purposes .... [two of which are:]
>
> "Law Enforcement Purposes. Covered entities may disclose protected health information to law enforcement officials for law enforcement purposes under the following ... circumstances, and subject to specified conditions: .... (4) to alert law enforcement of a person's death, if the covered entity suspects that criminal activity caused the death"

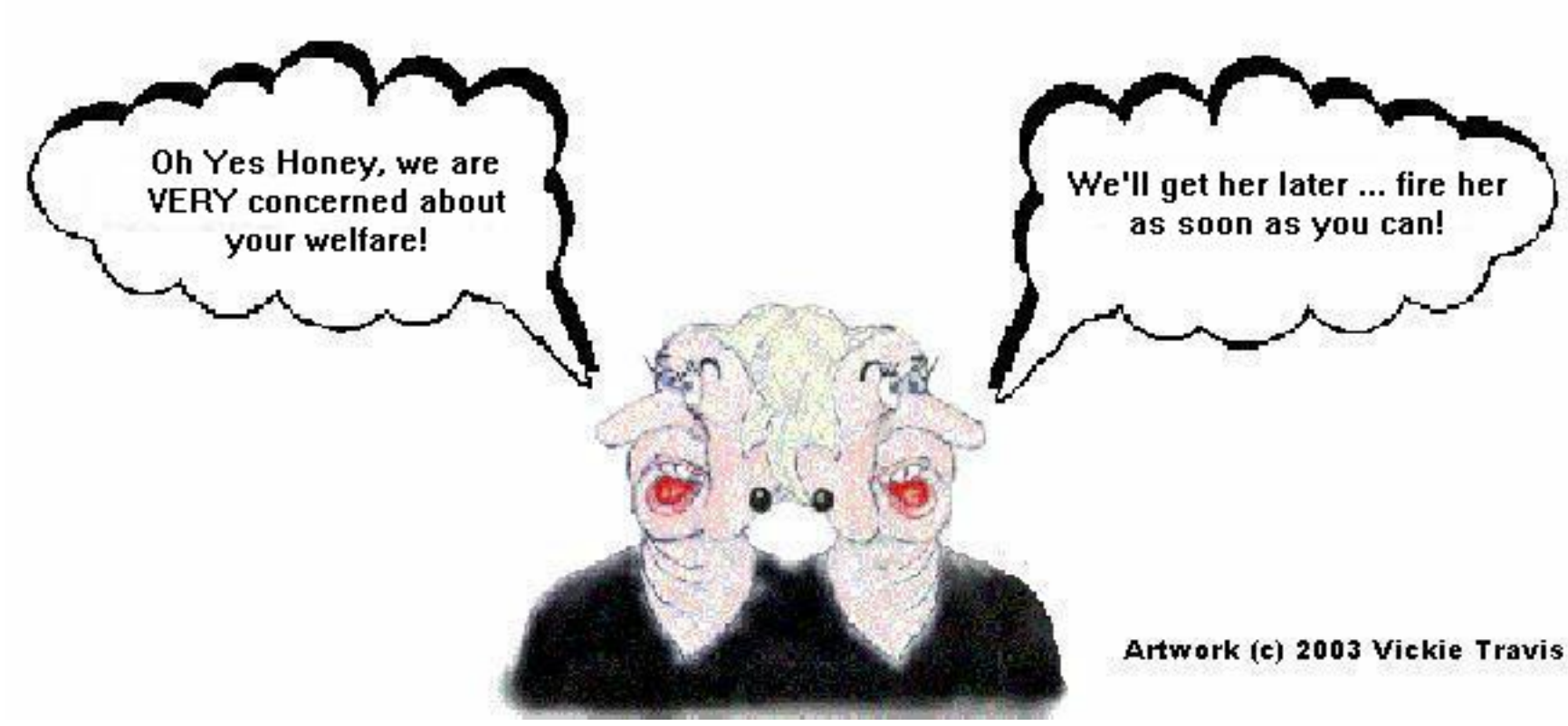
The only problem with that is if a health care worker goes to the police and tells them that in the ordinary course of the agency's business, crimes are regularly being committed, or even committed once, they will absolutely be fired. Why? Because they would be acting "against the corporation's interests," damaging the reputation of the corporation, which is a common reason giving for terminating a troublemaker's employment. If a crime had taken place, the corporation will deny it anyway.

This is exactly what happened to R.N. Carla Sauer-Iyer in 1996 when she reported suspected abuse of Terri Schiavo at the nursing home where Sauer-Iyer was charge nurse. Her report was allowed under privacy rules, but the facility terminated her employment the next day! The lesson learned by all the nurses in the country who heard about what happened to Carla Sauer-Iyer, RN? Intimidation. "Shut up!" "Keep your head down and just do your work!" "It's not worth it!" Just as effective as the whips used on slaves hundreds of years ago. "If you act up, you'll be punished!"

Two, they could be falsely accused by the employer of breaching any standard of care. Retaliation is a well-known reaction to whistleblower employees in many industries. Nurses have been "set up" to appear to have done wrong when they haven't done anything wrong and have been fired. Debbie Blevins, LVN was fired August 2010 after reporting violations of HIPAA and other violations at the Tyler Cardiovascular Consultants. Everybody thinks that "whistleblower protection laws" would prevent such things. Again, you would be wrong. Health care corporations can violate the laws protecting whistleblowers and then let the "chips fall where they may."

This is exactly what happened to two nurses in Texas. They didn't actually report to law enforcement, but reported to the State Board of Medicine which is allowed under the HIPAA Privacy Rule. HIPAA says it allows reports to all sorts of agencies for the welfare of society. Two nurses trying to protect patients in Texas were allowed under state law and under the HIPAA law to report a doctor they believed to be endangering patients.

What happened? In the September 2009 Scienceblogs.com article, "Report a bad doctor to the authorities, go to jail?" we learn that the physician was given a copy of the complaint which included hospital code numbers to indicate which patients the nurses had included in their complaint information. The physician went to the local Sheriff and filed a complaint saying he was being harassed. The sheriff, with a little bit of investigatory work, found out who had filed the "completely confidential" complaint to the State Board of Medicine. The two nurses were fired and arrested sixty days after the complaint went in ("less than sixty days" being the period of time within which the employer's action could be construed (under the law) as "retaliation" against the nurses).



artwork by Vickie Travis, design by Ron Panzer and Vickie Travis

The State Board of Medicine wrote to the prosecutor's office protesting the prosecution of the nurses saying the Board relied on sometimes confidential complaints and that whistleblowers should not be prosecuted as they were protected by the laws. The nurses lost their jobs just the same, and the prosecutor's office did not withdraw their case against all of the nurses! After a period of time, however, the District Attorney withdrew charges against one of the nurses, but still pursued the case against the other, Anne Mitchell, RN.

Although the Texas Nurses Association reported February 11, 2010 that the jury acquitted the Winkler county nurse of all charges, nobody should ever have to go through such an ordeal when they are just doing their job and trying to assure good care for patients.

Many nurses all across the country heard about this case and again, the message was "Keep your head down!" "Just do your job!" "Mind your own business!" "Don't go up against the powerful!"

If a corporation wrongfully terminates an employee who reports wrongdoing, corporations are willing to gamble that either the employee won't sue or they won't have the funds to hang in there and continue the legal fight for long. The corporations also figure they'll be able to win in court somehow, even with fabricated testimony.

First, the agency has (compared to the employee) unlimited funds to hire the best attorneys and pursue their legal actions against the employee should the agency decide to make false accusations about the employee to discredit him or her. They also have virtually unlimited funds to defend against an employee-brought lawsuit for wrongful termination.

A health care professional who is out-of-work, is out of luck and will have a hard time paying for an attorney. In the case of those two nurses, the Texas State Nurses Association and the American Nurses Association raised money through a legal fund set up just for that purpose. Most employees are not going to be saved by a state or national professional organization.

If the employee scrapes some money together or gets an attorney to take it on a contingency basis, it will likely be a year or more before any ruling in the case. Why? The standard tactic is for the agency to delay, delay, and delay until the employee's funds run out or they tire and want to settle for a small amount. If they hang in there and even win in court, what happens then? The corporation may appeal to higher courts, which could literally involve years, with the attorneys stalling with all sorts of delays created by the agency's attorneys. Meanwhile, the worker still does not have their former job, and other agencies may decide they don't want a troublemaker in their midst. In other words, the worker is "blackballed." It happens.

Back to HIPAA Privacy Rule violations. If you are reported to the Office of Civil Rights for a HIPAA violation, there is no jury trial where you and your attorney get to present your side and prevent immediate termination. You will probably be fired first by your employer, and then there will be a hearing (months or more later) before the administrative judge at OCR before the fine and possible jail time is imposed.

Will your case be heard with impartiality and complete fairness if you are exposing the *government's* own

stealth euthanasia program? At your agency? I don't think so!

And while the life you've had up till then and your career rests in the hands of an administrative judge, have you considered what type of "justice" is administered in governmental administrative hearings?

I've been there. Back in 1997, I filed a complaint to the federal and state government. At the state level, the inspectors refused to even investigate several allegations I brought. I appealed to the state Office of Legal Affairs in Lansing, Michigan (a step most complainants never make after not getting justice from the state health department). Several months later, I went to the hearing before an administrative law judge. It was absolutely a "kangaroo court" with the judge refusing to listen to my evidence and to hear the testimony of witnesses about wrongdoing at the hospice I worked at in Michigan. He even said he wouldn't even entertain several allegations. He wouldn't hear anything about them, though I had proof.

Being a whistleblower can involve going up against the agency *and* the government that is in collusion with the agency at the same time (which was the case in Michigan). In my whistleblower case, the administrative law judge took a recess and was standing around joking with the administrators of the corporation and then later, he refused to listen to my allegations or evidence. It was a complete mockery of "justice." The judge and the administrators laughed at me, because they knew the game was rigged. My proof, the truth, meant nothing. The only thing that mattered is what the state did, and what they did was protect the agency by covering up their fraud, patient exploitation and violations of many standards of care.

Whistle blowing under HIPAA against crimes of euthanasia at your agency? When the government is encouraging the hastened deaths of patients? They'll go after you and destroy you. In the meantime, you have no income, no job, nothing.

See: The HIPAA summary.

Privacy Rules? If it's about protecting your privacy? I'm all for it. If it's about creating an impenetrable wall of silence behind which health care tyranny can be implemented, then it's the harbinger of terrible things to come. The Nazis in Germany didn't advertise their death camps and kept a tight lid on what was really going on. Anyone who spoke out about what was going on was shot. Anyone who didn't report violations of the Nazi laws or who harbored a person considered an enemy of the state was shot. The HIPAA Privacy Rule's penalties are so severe, they are the equivalent of being "shot" career-wise! The HIPAA Privacy Rule establishes everything that is needed to carry out a stealth euthanasia campaign with no word at all getting out.

Remember, there are three branches of government and the media is supposedly like a "fourth branch" or protective mechanism to keep government honest. ***When the media cannot be informed properly by employees and families are either intimidated into silence or hushed-up with a settlement and gag order, the media is simply out of the picture. Stealth-euthanasia is assured to be 100% stealth***.

If we're talking about a rogue hospice, it will be very difficult for employees to come forward to law enforcement and report what they've seen. Fear of losing their job, being black-balled, fines based on trumped-up charges have a very, very sobering effect on all health care workers. With the weakness of the whistleblower protections and HIPAA's imposed secrecy, there now truly is a cloak of invisibility shielding the public from learning what is going on in the health care system. By design!

The wall of silence in health care is more impenetrable than the "blue wall of silence" among the police that so many have documented as existing in some areas. It's understandable that police will protect their own, just as physicians will protect their own. But the wall of silence involved in HIPAA is not based on loyalty as the blue wall among some policemen is, or the physicians' loyalty to each other is. ***The wall of silence in HIPAA is based on fear, and the government officials have made sure that the fear is tangible, real, and extreme, so extreme that almost nobody except a fool would dare to violate the HIPAA Privacy Rules. The agenda cannot be completed without a wall of silence, almost absolute secrecy, and they have accomplished that***.

The Washington State "Death With Dignity Act" allows physicians to write prescriptions for a lethal drug and orders the medical examiners to falsely list the cause of death as the illness the patient was suffering from, rather than the lethal drug they took to kill themselves. Falsification of death certificates is nothing new, but openly ordering the medical examiners to lie is new. We hear about falsification of death certificates often from families who report their loved one was killed in a hospice or palliative care setting and then the cause of death is listed as cancer, Alzheimers or some other illness. Just as in the case of falsification of medical charts: **whatever is officially listed (as the cause of death) *is* the truth, because it *says so***. It doesn't matter that it's all a complete lie. If everyone in government simply accepts what the record says, that is what the "official" truth is. Something that could have come right out of the Soviet Union's propaganda machine.

Of course, people still ask, "How is it possible that what you're talking about is really happening?" Can they really hide killings? "It just isn't believable." "Surely, the medical charts would show something was wrong and the state would come in and prosecute."

Well, if you've been a whistleblower like me, you'd know the state actually doesn't enforce regulations in health care that much. They make a big effort to appear to do so. Every year they may go after an especially run-down, hell-hole of a nursing home, even shutting one down from time to time, just so the state Attorney General can get a headline demonstrating how he or she is protecting the vulnerable and doing such a great job. Standards of care in health care (if they are followed) are mostly voluntarily complied with and there are huge efforts by corporations to meet the standards, but that doesn't mean there aren't violations. Some corporations, like rogue hospices, are rogue corporations. Rogue hospitals, health care systems, HMOs, managed care organizations and so on. If they want to violate standards or laws, they'll figure out a way.

If rogue hospices want to hide medical killings, they can falsify medical records. How? Simple. The staff chart what is going on. If they chart or record that the patient had pain when they didn't, the record shows the patient did have pain. And the chart is the *legal* medical record. I like to tell people it's something like a bank robber leaving a note saying he didn't rob the bank, even if he stole a million. And, the police (the state department of health) look at the note and say, "hmm, there is a note saying nothing was stolen, so no crime occurred." "We're shutting down our investigation." The state inspectors look mostly at the charts, but they also look at the facilities and inspect, a little. The problem is, the dates of the inspections are usually leaked to the agencies so every year or so when the inspection is scheduled at a nursing home, the facility management gets the staff to "clean up their act" and be on their toes. Hospices are inspected much less frequently.

Management often brings in extra staff to help make the care provided look much, much better than what it normally is. When I worked for a temporary staffing agency, I actually was called in to a nursing home to help out for a few days during a state inspection. It was obvious they were gearing up to make it look like the facility was "top notch." We knew better. We knew that at other times, the staffing there was terrible. During the inspection, they had many more staff on hand.

Medical charts can be falsified and the appearance of what is going on can be altered to fool the inspectors. Every health care professional who's worked for even a few years knows this kind of thing goes on. When you see the same handwriting on a chart where more than one nurse entered her notes, you know it's falsified. I saw that years ago in one of the hospice settings where I worked.

The U.S. DHHS Office of Inspector General ("OIG") specifically mentions false documentation as one of the means of committing fraud by hospices:

> [Note: 26] "OIG investigations have revealed that certain hospices have falsified patient medical records and plans of care to exaggerate the negative aspects regarding a hospice patient's condition to justify reimbursement."

That would be done by rogue hospices that admit non-terminal patients to bolster their revenue stream through health care fraud.

> "False dating of amendments to medical records; [see note 37]
>
> [*Federal Register* / Vol. 64, No. 192 / Tuesday, October 5, 1999 / Notices 54031]

This is done for a variety of purposes, whether to "clean up" the medical record in order to make it appear to comply with the standards of care or to "cover up" wrongdoing, substandard care or worse. I remember being asked to be a "chart auditor" to look for incomplete charting and all sorts of omissions in charting at a hospice where I worked. Later on, I remember seeing someone I didn't know taking charts into a little room alone. Normally, the nurses took charts into their own office space, but never into that room. I later saw charts with entries that had one person's handwriting for several different nurses' notes on the same page. It took me a little while to figure out what was going on with the "chart auditing" they asked me to do. They probably really appreciated my diligence. Little did I know what it was being used for! Believe me, falsification of charting in health care is done, has been done for a long time and is a major way of covering up fraud, bad charting, or even medical killings in hospice, whether through overdose or terminal sedation.

How else are the medical killings hidden? Well, this is obvious for those of us who have been following the hospice industry closely. We know the U.S. Justice Department has found fraud being committed by many hospices, bringing in patients who were not terminal, so they'd be able to bill for every day a patient is enrolled in the hospice, but not have to provide much service at all. It pads the revenue stream and makes for a "healthy profit." What happens to the stats in this case?

People who are not terminal don't die on their own, for the most part. They live, and sometimes they live for a

long time. When you average in a bunch of patients who live a long time, helping the rogue hospice collect more revenue, with patients who have been hastened to death, you get "acceptable" "length-of-stay" stats. You can even brag that hospice helps patients live longer, not shorter! However, only hospices that respect the sanctity of life and never impose death truly lengthen the lives of the terminally ill.

In a rogue hospice, you may have patients dying the day or week they are admitted, even when they are not clinically close to death. We've heard from numerous families about these sudden, unexpected deaths at hospices all over the country. Many attending physicians have stated that they didn't expect a patient to die, but when the patient went into hospice, "boom," they were dead. Another variation on the theme is to admit patients (terminal or even non-terminal), chart that they are on continuous care to justify billing at the higher reimbursement rates while not providing the actual continuous care services ... then medically kill them after a few days or a week or so. The death "proves" they were "terminal" to the fiscal intermediaries who review the cases looking for fraud, and the hospice gets to rake in millions if they have just a few of these non-continuous care (but billed as continuous care) cases going throughout the year. It appears that administrators of the rogue hospices decided that if they're going to commit fraud they might as well "make the most of" the opportunity and not just to commit fraud at the minimal routine home care level of reimbursement, but to get several hundred dollars more each day while they commit fraud.

Let's do the math: $700 extra reimbursement per day (for a patient billed as continuous care for whom no extra nursing services are provided) x ten patients = $7,000 extra per day. Multiply that by 30 days gives $210,000, times 12 months = $2.52 million taken fraudulently by just one hospice in one year. A larger hospice can easily have ten cases going where they are billing fraudulently at the higher continuous care rate without providing extra services at all.

When these patients die (are medically killed), the physicians tell me and others, they know the patient must have been overdosed with morphine or terminally-sedated, because their disease process just wasn't at the very end-stage of imminent death. When this kind of thing happens over and over again, physicians and patient advocates know that deaths are being hastened. Autopsies have shown massive morphine overdoses or severe dehydration, yet district attorneys refuse to prosecute. Medicare and Medicaid fraud, where non-terminal patients are brought in to pad the revenue stream, clearly skews the stats so the hospice appears to have patients living longer than they actually do.

That is how the rogue hospice industry is hiding the killings. It's that simple. Of course, the industry groups like the National Hospice & Palliative Care Organization never point this out, even though fraud is rampant in the industry. It's too damaging to their reputation which they guard zealously. They would never wish the public to know what is going on. Of course, the government officials know all about it, are in favor of it, and do nothing about it, or at least, nothing that will stop it. The government saves billions when many die. It has a conflict of interest. Fulfill its duty to protect the citizens? Or, exploit the opportunity to reduce cost expenditures (by allowing the continued early/hastened deaths of many)? That's an easy choice the government has already made: reduce cost expenditures.

Let's look at one last reason you haven't heard about the killings: access to the courts. When families call me, they often say that they can't find one attorney to take their case. There are thousands and thousands of families that would sue if they could. They report that the attorneys say, "You have a great case, but we decline to take the case at this time." This happens all across the country, and has been like this for years. Why? When you sue in civil court, any judgment is a monetary award to "make you whole" or compensate for a wrong done.

In the eyes of the court, the value of a person's life is determined by their earning capacity and affect on other people. The terminally ill have no expected earning capacity so even if there is a ruling that the death was a "wrongful death," "they were going to die anyway." If you have autopsy and medical record evidence as well as expert testimony to prove your case, and win, you can still only expect a nominal amount to be awarded. The value of a terminally ill person is nil in the eyes of the courts.

Expert witnesses can cost several thousand dollars each. So, the cost of bringing a legal action is more than the likely award should you win the case. Attorneys know this, so they don't bring actions dealing with the terminally ill, unless a family is independently wealthy and can pay out of their own pocket for the attorney's fees. Most families cannot do that at all. No access to the courts. No justice. And, the media has no lawsuit to wrap the story around. No news coverage.

If a patient dies a week, a month, or even a year earlier than expected, nobody in the government raises an eyebrow. It's all routine now. They've heard it before and do nothing. It is the public that has not heard it before, or is powerless to do anything about it when it happens to their loved one!

**"If he is secure at all points, be prepared for him.
If he is in superior strength, evade him."**

The Art of War by Sun Tzu Chapter I, verse 21

VIII - Why Hospice Became the "Sacred Cow" of Health Care

While hospice was being embraced as a great solution for end-of-life care by right-to-life organizations as well as right-to-die organizations, the Euthanasia Society's successor organizations saw it as the vehicle to advance their cause. They knew that once America changed its view of dying and changed its expectations about how people died, they would be more than half of the way to widespread practice of euthanasia, however hidden that practice would be. Their infiltration of the end-of-life care industry has been accomplished just like the Greek hero Odysseus entered the city of Troy with the famous Trojan Horse. The citizens of Troy never knew the Greeks had secretly entered the city hidden in the horse until it was too late. And, most Americans do not know that the proponents of euthanasia have entered the end-of-life care arena and are shaping it to their own purposes.

"Speak up for those who cannot speak for themselves, for the rights of all who are destitute. Speak up and judge fairly; defend the rights of the poor and needy."

Proverbs 31:8-9

The Government Loves Hospice

The elected officials that control the actions of our national and state governments love this thing called hospice and want to promote hospice. The Congressional leaders chose to create the Medicare hospice benefit and help

fund state Medicaid hospice benefits. It's a good way to manage the population. It helps balance the budget by providing care at a cheaper price than acute hospitals can. Even better? It will be the chosen vehicle to provide hastened deaths for the disabled, the dementia patients and others selected for end-of-life treatment. If Ezekiel Emanuel, MD's "Complete Lives System" (designed to ration organs for transplantation and vaccines that are in short supply), is applied to rationing care for the elderly, hospice will be their destination.

Daniel Callahan (with Sherwin Nuland) suggests that "less money [be spent], ... for late-life technological interventions and more for preventive measures and independent living. Some people may die earlier than now, but they will die better deaths." What is planed could not be more plainly stated. Again, hospice will be the destination of those who die earlier, but "better" according to euthanasia-advocates like Callahan.

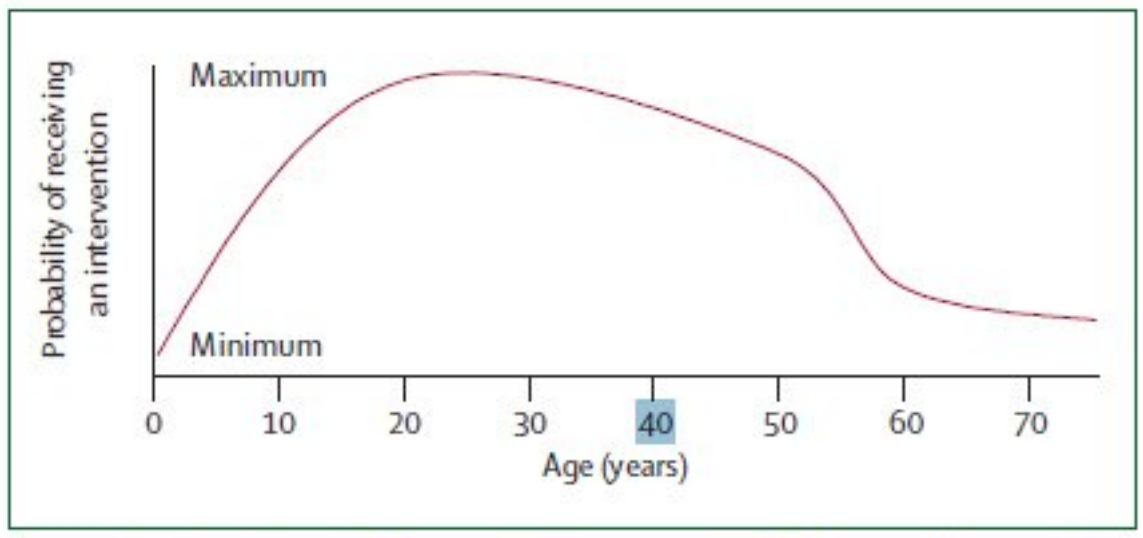


Figure: Age-based priority for receiving scarce medical interventions under the complete lives system

["Principles for allocation of scarce medical interventions" The Lancet, Volume 373, Issue 9661, Pages 423 - 431, 31 January 2009 - Govind Persad, BS, Alan Wertheimer, PhD, Ezekiel J Emanuel, MD]

Denying that he is advocating widespread rationing, Dr. Emanuel stated, "I think that over the last five to seven years ... ***I've come to the conclusion that in our system we are spending way more money than we need to, a lot of it on unnecessary care.*" *"If we got rid of that care we would have absolutely no reason to even consider rationing except in a few cases.***"

Of course, ***even when they deny that they will ration care, they confirm that they will***. Who determines what is "unnecessary care?" It was Dr. Emanuel who offered what he called an "obvious example" of "not guaranteeing health services to patients with dementia ...." This is what he deems "unnecessary care." He has also stated:

"***services provided to individuals who are irreversibly prevented from being or becoming participating citizens are not basic and should not be guaranteed***." [Emphasis added]

[See: "Where Civic Republicanism and Deliberative Democracy Meet" Ezekiel Emanuel, MD; The Hastings Center Report, Nov-Dec 1996)

Clearly, not providing services to those the elite decide are not worthy of care is rationing! Remember the language we saw earlier in the Health Care Reform Law? ... about the Secretary of Health making sure that "health benefits established as *essential* not be subject to denial to individuals?" Again, who determines what are "essential health benefits?" Dr. Emanuel or those trained to think like him? Yes, the President's former health advisor absolutely asserts that many services to the disabled, those with dementia or cognitive impairment should not be provided. He clearly asserts that such services are not "essential." Who else is he referring to when he mentions those of us who are "prevented from being or becoming participating citizens?" They will essentially be given a lethal "long walk off a short plank."

And of course, we know where they will be directed for "care." When federal funding for the hospice industry has increased by $1 billion every year, you know the Congress is *guaranteeing* the expansion of the hospice industry! And if the government builds it, "they" will come. They will be made to come, by the millions.

Several years ago, Senator Charles Grassley told one of our Hospice Patients Alliance board members that the U.S. Congressmen know about the medical killings. They are not going to stop these medical killings. He said

they know that the government saves at least $100,000 for every person that dies early (and that was in 2005 or so). Today, the savings are much more!

For a long time, Senator Grassley has been a champion of patients' rights in the Congress and has worked to improve patient care in America. Yet, I must finally ask publicly, "when will he or any Senator or Representative speak out on behalf of the vulnerable who are being victimized in hospice or palliative care units? When will he, or any of them, openly admit to the country that medical killings are going on across the country?" Not one has done so!

There are many Congressmen that have a utilitarian worldview and are quite happy that there is an assisted suicide law in Oregon and Washington (and wherever else it may be legalized). They are happy that parents can medically-kill unwanted babies. They are happy that Terri Schiavo's life was ended. They don't care that she was fraudulently admitted or that she wasn't terminal at all. They believe in eliminating the "unworthy of life."

On the other hand, there may be a few Congressmen that individually respect the sanctity of life, but not one has stood up and publicly exposed what they know about the medical killings in this country. They have not said one word about the medical killings in hospice! Their silence has resulted in its continuation. I imagine that they have been told to never mention it, or their career would be finished. I guess they care more about their careers than the people of the United States!

In the end, neither side of the aisle has done anything yet of significance to stop the medical killing of the terribly vulnerable, very young, very old, or disabled and ailing. There may be hearings about conditions in the skilled nursing facilities. There may be posturing, but nothing serious has been done to protect them. And yes, these individuals are absolutely being killed in very large numbers.

The Congressmen know this, but it's like the old story of the Emperor with no clothes: nobody dares to speak the truth about the matter publicly. They hope that the "obvious goes unseen" by the public. They know it and they are glad for it. They know that the large number of lives ended will help reduce expenditures for Social Security, Medicare, Medicaid and other services to the elderly and disabled.

The Presidents have known about it but also have done nothing about it, no matter how much any of them profess their faith. No matter how powerful the Congressmen and the Presidents have been, and no matter how much talk they've given about these issues, their shiny black shoes have not walked the walk into the halls of skilled nursing facilities that hold the abandoned, desperate and utterly vulnerable.

It's the un-mentionable dark "secret" that the government officials know about, many in the media know about, many of the health care industry administrators, owners and professionals know about, yet most of the public does *not* know about at all! The people who most need to know about it are purposefully kept in the dark! Why? So, they can walk unprepared into the health care setting and have this happen when they are vulnerable and unable to fight back, when it's too late!

Rationed care and hastened death are here already. HMOs already ration care in order to promote "efficiency" and there are many steps where physicians are restricted as to what they are supposed to mention as options for care or what diagnostic testing or treatments they're supposed to order. The HMO/managed care organization can deny approval for requested tests and procedures. If the physicians go against the guidance of the HMO and order certain treatments anyway, on a regular basis, they risk being disqualified from participating as an "in-network" provider with that private HMO or insurance company. If they lose their classification as an "in-network" physician, they lose patients and income, and can be financially devastated.

So, many of the physicians just do whatever the HMOs/managed care organizations say to do, never telling the patients that there are other effective medical treatments even if the treatment option is denied. If the physician had at least told the patients (or their families) they might find a way to raise the money or go elsewhere to get it, but many physicians remain in "HMO mode" and remain silent, betraying their patients in the process.

How can these treatment denials and failures to inform the patients be so effective? Well, physicians are above average in intelligence if not ethics (they're people just like anyone else). They are very good at doling out "plausible explanations" that the patients will just accept since they trust their physician. Sometimes, it may take years before a patient or family learns that a treatment had been available, but it may be too late for it to help by then.

If private insurers deny coverage or treatment to a patient (and the patient knows about it), patients can appeal to government regulators or arbitrators. If there is only a single government-controlled health system, there will be no effective place to appeal to. And as they say, "you can't fight City Hall." Try fighting the federal government. It's much worse than "not easy." It's virtually impossible. This is the situation in the United Kingdom where the National Health Service is the source of thousands of complaints and horror stories, almost all that result in no relief.

If the health care reform plan goes into full effect, "regulators," "bureaucrats," Medicare/Medicaid fiscal intermediaries will decide. These are the nameless government workers who will decide *not* to fund Grandma Suzie's hoped-for, needed pacemaker or medication. They're going to do their part to "balance the budget" for these government programs without any fuss or fanfare. They probably will pride themselves on what a "good" job they are doing and consider themselves "patriots."

How they do their job will be decided by elite-level management, according to a secular, utilitarian approach. And the head of that elite group will be the Secretary of Health & Human Services, Kathleen Sebelius. Secretary Sebelius is a pro-abortion rights advocate and has been endorsed by Planned Parenthood, though we should recognize she increased resources for adoption when she served as Governor of Kansas 2003-2009. What else do we know about the woman who will decide about our health care regulations? She vetoed bans on late-term abortions more than once in Kansas. Medical science allows babies who are premature to survive and live. Even though many are told that abortion "ends a pregnancy," and is just a medical procedure, there is no question abortion ends the human life carried within the womb. Science even allows us to take pictures of the clearly human features of the babies in the womb. When someone can use their power to make sure that killing a fully-formed viable baby is allowed by law, I have to question his or her morality, ethics, and basic decency. How could she veto legislation in order to perpetuate the killing of defenseless babies and then say she considers life sacred?

I realize that many of you believe that abortion should be readily available for women to end an unwanted pregnancy so that the woman does not become a mother when the circumstances are not right. And I do understand that many who support abortion rights have good intentions and believe they are protecting women from harm. Many believe that contraception leads to reduced numbers of pregnancies and reduced numbers of abortions. However, the statistics tell another story.

It is clear there are many good-hearted people on both sides of the debate. There are many reasons women choose to abort their babies, and yes, there are often many difficult situations women find themselves in. However, science clearly demonstrates to us that a woman who is pregnant and chooses to abort is ***already*** a mother; because the human life began at conception, the moment of fertilization as every medical embryology textbook states. I believe that many, if not all, women recognize that the baby is alive and that they are now "a mother," and this is one of the reasons there is so much hesitation and heartache for those who seek to end the life of their child. A mother instinctively acts to protect the life she carries within her, so, it is my belief, aborting a baby in the womb is contrary to the natural role of the new mother and her conscience.

I'm not writing this to debate abortion with you, but to explain that the devaluation of a baby at any stage is not far removed from the devaluation of an unwanted infant, special needs child, severely disabled, very ill or elderly person. There is a continuum of devalued lives across the full spectrum of life.

When we begin to accept the devaluation and killing of one human life, it is so much easier to accept and kill another. These are things we must think about seriously in order to understand why involuntary medical killings happen in our society. Even if you are in favor of legalized abortions, read on and see how we have gotten to where we are today: involuntary medical killings occurring all over America. When it's your loved one whose life is ended prematurely, what will you think? With health care reforms already being implemented, lives will end sooner and we shall see exactly how.

The Secretary of Health, Kathleen Sebelius, is the one who will manage the creation of many details of the health care reform law. Perhaps this is what was really meant when former Speaker of the House Nancy Pelosi said, "we have to pass the law so you can find out what's in the law!" So, to understand the law, we need to look at more than the language of the law. We need to look at the people who wrote the law, the people who are behind it and in powerful leadership positions in the Department of Health & Human Services, and the stakeholders that mold national policy proposals and their implementation.

The staff throughout the department will go about their jobs. Publicly, they will talk about the need to cut costs, reduce expenditures, and spend money "wisely." "Doesn't that make sense?" they'll argue from an entirely utilitarian approach. But their decisions may be based on what is "best" for society as *they* see it, not what is best for Grandma's survival.

When the subject of entitlement reform is raised in order to balance the budget, the President and the Congressional leaders will be looking at making changes to Medicare, Medicaid and Social Security. These entitlement programs that Americans have come to expect comprise more than 50% of the federal budget. Americans have paid taxes for both Medicare and Social Security. The public expects to receive Medicare benefits. They expect to receive Social Security payments when they are eligible. None of our elected representatives wants to be the first one who raises the idea of cutting these programs (and be blamed for cuts to needed programs). With health care reform, tens of millions of people will be added to the federal government health care program. Cuts or changes will be made to help accommodate the influx of patients, and it will especially impact the elderly, disabled and chronically ill.

When the decisions are announced, we will ask, "why?" "Who does this benefit? Grandma Suzie will have her own idea of a "wise" decision when the doc informs her "sorry, Medicare no longer will fund a pacemaker for elderly people like you." "But don't feel bad! It's not personal." "It's not discriminatory." "Everyone above 65 years is being treated the same way."

"Suzie, I'd like you to consider hospice," will be the frequent line physicians will be dishing out (because of the changes in Medicare coming). The doc won't tell Suzie that the government pays him to strongly encourage her to make out an Advance Directive (that limits care to be provided), to ask to be put on "DNR" status ("don't resuscitate me," "make sure I die" status) or to encourage her to consider admission to hospice.

For example, "kidney specialists are pushing doctors to be more forthright with elderly people who have other serious medical conditions, to tell the patients that even though they are entitled to dialysis, they may want to decline such treatment and enter a hospice instead."

On the physician side of health care reform, with payments to physicians being reduced by the federal, state and even private insurers, physicians are being squeezed on all sides. Medicare may pay only 80% or even 50% of what a private health insurance company would pay them. You may think it's a picnic, that physicians are all "rich," but they pay huge sums just to go through school for so many years. They often have hundreds of thousands of dollars in student loans when they graduate. Some lawyers are just waiting to sue any physician who makes any mistake, or even appears to have made a mistake, so physicians have to pay huge premiums for liability insurance. (And yes, there are a small percentage of physicians that contribute to most of the malpractice in the industry who need to be stopped.) Physicians also have to pay the costs of operating their practice, the "overhead." Some close their practices and retire early. Some of those who aspire to be physicians never enter the field.

While physicians are subject to the ever-present threat of a lawsuit, how many attorneys are? With 1,180,386 licensed attorneys in the United States in 2008, and 661,400 physicians, there's about two attorneys for every physician out there. And each attorney has to find some way to bring in income in an increasingly crowded field.

Some attorneys, motivated by the hope of getting their cut of a big settlement, bring frivolous medical malpractice cases and do society a disservice. When the patient has been the victim of *actual* medical malpractice, the attorney's service may be the only way a family or victim can get a semblance of justice. Errors and malpractice do occur and there are many egregious mistakes that lead to permanent pain, injury or even death. *An attorney's service may be the only way to prevent future harm to other patients*.

Clearly, attorneys and physicians wield tremendous power in our society and their actions can dramatically change the lives of those they serve. So, they have a tremendous duty to act in accordance with the established standards for practice and to act in the public's best interest.

A really talented attorney or physician may seem to be "worth his or her weight in gold" when the need arises. However, it is not always so easy for the attorneys or physicians, as some may imagine.

Some physicians complain that there is too much "red tape" in meeting all the requirements of government-regulated health care. Others warn that prices of health care are terribly high because the physicians must practice "defensive medicine" in order to avoid becoming victimized by frivolous lawsuits.

Physicians may be forced to settle a lawsuit, even if they do nothing wrong, because the medical malpractice insurance company decides, "it's cheaper" than taking the fight to court. Physicians must follow the insurance company's decision or they are "on their own." In this way, the system rewards the plaintiffs and the attorneys who bring frivolous lawsuits with the settlement money. So, physicians continue to order those unnecessary tests and procedures that increase the cost of health care for everyone.

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This is why there have been repeated calls for "tort reform" to reduce costs within the healthcare industry. However, making it harder to bring legal actions or placing limits on monetary awards may embolden health care industry HMOs, PPOs or others. Knowing that there are limits to their liability, they may act in ways that harm patients after determining that the cost of any award is less than the cost of providing appropriate diagnostic evaluation and treatment. This type of activity has been well-documented to occur within some HMOs, managed care organizations and PPOs. Finding an answer to the problems of malpractice in health care, while also reducing those legal actions that are frivolous is a difficult task that is being worked out in the courts and legislatures around our nation.

It would be wiser for the state medical boards to take a strong stand against those physicians who do not live up to the high standards needed for safe medical practice, thereby policing their own. However, state medical boards have historically been extremely lenient with physicians. Even when they censure a physician or remove the license to practice, it is usually a temporary measure and the dangerous physician continues to practice after a relatively short "probationary" period. In some cases, a dangerous physician may simply move to another state and start up again. Each state licenses their own physicians and actions taken by medical boards in other states do not necessarily apply!

However, most physicians do meet the standards of care. Today, they struggle with the high costs of maintaining a practice. Physicians are looking for any revenue source they can get to stay afloat. If the government's Medicare or Medicaid program will pay them to push hospice, or advanced directives, that's what many will do. The doc won't tell Grandma Suzie that the administrators at the HMO or our elected leaders in government don't want to pay for services she needs or that they really prefer she just die! It's all about the numbers, budgetary numbers for the HMO, the PPO, or the state and the federal government.

When patients enter hospitals or hospices, they are required to sign forms to consent to treatment, but they are also handed advanced directives to sign that are often written in such a way as to encourage limiting care in many circumstances, even limiting food and water. One of America's more popular living wills, "Aging with Dignity's 'Five Wishes document" has vague terms like "support treatment" ... "should death be near." What is "support treatment?" And what is meant exactly by death being "near?"

As time moves on, doctors will more regularly greet every elderly patient each and every year with an "end-of-life counseling" session where they will ask him or her, "don't you think you should have a "Do Not Resuscitate" ("DNR") Form filled out, or an "Advance Directive" or "Living Will" (that limits care and does not help get care if you want it). "Let's fill out this P.O.L.S.T. form, ok?" We cannot assume that somehow the government won't require these counseling sessions in the future, just because the section of the health care reform law dealing with these counseling sessions was removed.

What the public doesn't realize is that the DNR, the Advance Directive, the Living Will, and now the P.O.L.S.T. form all were promoted originally by the successor organizations of the Euthanasia Society of America such as Society for the Right to Die and Choice in Dying. And the courts have gone right along in allowing a shift in the ethics guiding American law from sanctity of life to a secular quality of life ethic. The P.O.L.S.T. form spreading around the country came from Oregon, right after people there managed to get assisted-suicide legalized in that state. It's the "next step" for all of us.

What the public doesn't realize is that one of the biggest pro-assisted-suicide groups in the country, Compassion & Choices (formerly the "Hemlock Society") helped write the language in the health care reform law that pertains to these strongly encouraged "counseling" sessions with the elderly.

Since physicians are screaming about funding cuts by Medicare, if the government does decide to fund these counseling sessions, they will be sure to provide "end-of-life counseling" to get more revenue from Medicare coming into their practices. They may suggest, "Don't you think hospice is a good option for you?" Eventually incentives will be built into the government's system (just like HMOs already do) so that doctors who order fewer tests, treatments, surgeries or other services, will get paid more each year. They will know that the government plan won't approve certain surgeries or treatments for the elderly. They will know that it won't make any sense to even try to get certain procedures approved for the elderly. They'll know that at a very advanced age, the only thing that will be approved is hospice.

Betsy McCaughey, former Lieutenant Governor of the State of New York, states that the new counseling sessions:

> "Would make it mandatory absolutely that every five years people in Medicare have a required counseling session," she said. "They will tell [them] how to end their life sooner."
>
> The proposal specifically calls for the consultation to recommend "palliative care and hospice" for seniors in their mandatory counseling sessions. Palliative care and hospice generally focus only on pain relief until death.

Well, going into hospice could be a good option if the patient is actually terminally ill. It could be a good option if the hospice that is eventually used respects life and does not hasten death through misuse of terminal sedation or other means. And yes, for those of us who have been paying attention, the advanced care planning sessions that the government said would *not* be included in the law was added back on November 29, 2010, taken out, then added back in and then taken out yet again after public protest.

It comes down to this: care will be rationed, whether by an HMO, PPO or government program, and those who are "rationed-care rejects" will be pushed into hospice. The government will find a way to make sure the

counseling sessions or a simple conversation of some sort will take place in order to get the advanced directives or P.O.L.S.T. forms completed.

One way or another, the elderly will be told, "hospice and palliative care is the 'right' choice for you!"

The Media Loves Hospice

People might wonder what I mean by saying "the media loves hospice." It's clear the editors do. After seeing thousands of positive "feel good" articles written about the wonders of hospice and palliative care, and knowing personally about many of the types of problems that exist, hearing about them from families and health care professionals, knowing about so many family members who have been unable to get a newspaper to cover their complaints about hospice, knowing that there are many documentable cases that the media has refused to mention, it is clear to me that "the media" chooses to promote an unrealistically positive image of the hospice industry while completely censoring accounts of the serious problems that are occurring all over this country.

I know there are problems in the industry just as serious as those found say, in the nursing home industry. It's not like the people in the hospice industry are "perfect" and incapable of errors or causing problems. Yet, that is the impression one would get from the major media's coverage of the industry for decades. However, knowing that the people in hospice are human, imperfect just like the rest of us in any industry, there are problems, there are errors, there are terrible problems that need to be exposed and corrected.

The media has published many, many articles detailing major problems in nursing homes. They've sent out investigative reporters to put a story together. They've done undercover investigative pieces. Why haven't they chosen to do that with hospice?

Hospice is the "sacred cow" of health care and criticism of it is discouraged, strongly. High-level editors in the media know not to release information damaging to hospice's reputation. Actually, negative news about hospice is censored by every level of the major media. Years ago, I used to try to reach the media and have them cover these urgent problems and publish stories about what's really happening in hospice. After a while, I gave up, realizing they weren't interested in investigating or covering the story. It didn't matter if we had physicians or nurses who would go on record about the issues. It didn't matter if there were autopsy results showing a morphine overdose caused death. Facts didn't matter. They weren't interested.

Yes, many reporters have called me through the years and many stories have been printed, but after they "pick my brain" for a few hours, sometimes for several days, they end up printing a "fluff piece" promoting hospice and throw in one quote of mine leaving out the main points I discussed with them.

In 1998 when I contacted them and provided detailed information, AARP's magazine editors were not interested. AARP's editors would not broach the topic of hospice fraud or imposed deaths (though they later interviewed me a couple of years ago about some other aspects of hospice care published in their AARP newsletter).

The media sometimes doesn't know what they're going to get, especially if they contact Hospice Patients Alliance. They wanted something of interest, but got more than they wanted to handle. For example, years after I gave up trying to get the media to listen, ABC TV's Diane Sawyer's Primetime Show producers had their investigative reporter (Tami Sheheri) contact me. In 2007, NBC TV producer Alan Maraynes called me. It was his idea to investigate these problems since he had seen some things for himself, and he then had his investigative reporter, Maite Amorebieta, contact me. The *Washington Times* had reporter Dan Gabriel contact me.

In each of these cases, the investigative reporter would interview me and several families who had their loved ones killed at a hospice. The reporters told me they had investigated and confirmed the details and were going to their editors. Dan Gabriel spoke with me many times and said he had completely written his story and was submitting it for publication. But just as in the other news outlets, after two months of investigating, more or less, the editors killed the story. They just shut it down.

As this has happened several times, and it may be hard to believe, that the media is censoring such an important story, I am showing here a copy of an email from NBC's investigative reporter, Maite Amorebieta. Here is proof that NBC, as just one example, was investigating the story:

-------- Original Message --------

Subject: RE: the Mary Morris case, now being investigated by the Justice Department accdg to Vickie Travis

Date: Wed, 9 Jan 2008 18:48:47 -0500

From: Amorebieta, Maite (NBC Universal)<Maite.Amorebieta@nbcuni.com>

To: rpanzer@hospicepatients.org

Hi Ron,

Thank you for all your tips. [redacted]

Please know I am keeping a list and will follow up with all your gracious and courageous people who are willing to share their tragic stories.

Also, this is very much a long term story that we are interested in investigating, so please continue to send along your thoughts.

We hope we can get to the bottom of this

thanks and best

Maite

-----Original Message-----
From: Ron Panzer [mailto:rpanzer@hospicepatients.org]
Sent: Saturday, December 29, 2007 1:56 PM
To: Amorebieta, Maite (NBC Universal)
Subject: the Mary Morris case, now beirg investigated by the Justice Department accdg to Vickie Travis

Hi Maite,

Hope you had a wonderful Christmas holiday!

Here is some information on the Mary Morris case, forwarded to us by

Vickie Travis.
- Ron P.
****
The family is trying to get an investigation regarding the murder of her mother - Mary Morris of Fresno, California. Mary had rheumatoid arthritis and for a short time was in Beverly Healthcare. Mary was a Private Investigator and worked with the police. She was documenting illegal activities when she was suddenly killed with muscle relaxants according to the autopsy. Mary was 61 years old. Currently the family is attempting to obtain the phone records to the Fresno PD as Mary was in contact with them prior to the overcose.
The pathologist in this case was told to not contact DEA by Detective Hernandez of Fresno PD. This is the same detective that refuses to investigate the Harmon arsenic murder case.

And here is proof that they stopped investigating the story:

-------- Original Message --------

Subject: RE: Story you are working on

Date: Mon, 12 May 2008 15:51:11 -0400

From: Amorebieta, Maite (NBC Universal)<Maite.Amorebieta@nbcuni.com>

To: patientadvocates@hospicepatients.org

Hi Ron,

I understand your frustration and oftentimes share it.

We are not pursuing this project right now at all.

If you do have significant developments, please do let me know and I can run it by my bosses again.

Thanks for reliving the heartbreaking stories for me and for all of your insight.

I wish you the best of luck
Maite

-----Original Message-----
From: Hospice Patients Alliance
[mailto:patientadvocates@hospicepatients.org]
Sent: Monday, May 12, 2008 3:47 PM
To: Amorebieta, Maite (NBC Universal)
Subject: Re: Story you are working on

Amorebieta, Maite (NBC Universal) wrote:
> Hi Ron,
>
> Hope you are well.
>
> For now, we are not working on this story.
>
> I thank you for your time and information. Please keep me posted of
> any significant developments
>
> Thanks and Best
> Maite
>

Hi Maite,

Thanks for letting us know. If it is at all possible to tell us, has
the story been stopped completely, or is it that you are simply working

on other topics. Do you anticipate that it may be restarted in earnest in the near future?

We have been through this so many times, and it is so sad that no major network has been willing to do the story, even though there are literally thousands of cases of problems in hospice each year, and yes, anguished complaints of loved ones being intentionally killed within hospice, or other problems. We never hear about it.

I hope that some day, the media will shine a light on this topic, as the media is the real protector of the public when the government will do nothing.

Thanks again!

Ron Panzer
Pres., Hospice Patients Alliance

Some may say that there "isn't enough proof" for the media to publish the story, but there are families with medical records and proof of what happened. If they wanted more proof, they could keep investigating and get what they need. They have chosen not to! They have done exactly the opposite of what is needed. They have refused to distribute the information they already have. The managers and editors of the major media have demonstrated they don't want to find out what the truth is. They know the truth already, and are avoiding it like the third rail of journalism. I imagine they know that if they actually print the truth and let it out to the public, they may lose their job.

There are thousands who know what is going on. Any doctor in America knows what can happen. Attorneys know what can happen. Families and health care professionals stand ready to go on record. I can't imagine a more urgent public-interest story about the health care industry than this, yet the investigations are just shut down.

The well-respected Cokie Roberts is just one example of a journalist who is an annual participant in national conferences promoting hospice. One of the only news outlets to investigate and then print something negative (and true) about hospice was the *Washington Post*

and Chuck Babcock knew what he wanted: he wanted to learn about fraud and exploitation at hospices and as we've seen, he got what he came for. The other news outlet was CBS 60 Minutes II in 1999 in their article, "A Question of Homicide." For over eleven years, nobody in the major media has even touched the topic at all, not even CBS!

Some Surgeons and Doctors Love Hospice

Who else loves hospice? They won't tell you, but surgeons love hospice. It's useful from time to time. Well, only if they screw up and have a potential lawsuit against them for malpractice. You don't think surgeons would lie outright to patients? Well, ethical ones wouldn't, but you know, every industry has some unethical individuals who might lie and surgeons are no different (even though we wouldn't wish to believe it).

I have witnessed surgery where the patient was sent in because another physician said he had cancer. When the surgeon opened the patient up, he muttered (and we all heard it), "oh, S____"). He saw that there was no cancer, but because he feared a lawsuit, he took part of the organ out, sent it to the pathologist who confirmed there was no cancer, and they sewed the patient back up.

His conversation with the other doctors in the surgical suite indicated that he felt, "if I don't operate, it will be something hanging over my head" and the patient might come back years later to sue him, because he "didn't get the cancer out," when he could have. It was all based upon fear of litigation, not good medicine, and it certainly wasn't good for the patient. I'm sure he didn't go out to the patient and say, "I just removed part of your ____, even though there was no reason to do so." I'm sure he just said, "the surgery was a success!"

So, what do some surgeons do when things go bad in a different way, when they mess up the surgery? Some lie to the patient and family and say, "we found lung cancer" or whatever, and your "Uncle Joe only has six months to live." They dump the patient into hospice. Hospice has been a real life-saver for some surgeons.

Joe goes home to hospice care or straight to a hospice free-standing facility. The hospice staff, believing Joe really has cancer, start medicating him with morphine for the certain pain his "cancer" would cause. They don't understand that the pain Joe is experiencing is from the surgery, whatever went wrong then, not from cancer. Guess what? Joe dies. No lawsuit. Problem solved.

If the family later requests the medical records and wants to sue? Charles Phillips, MD reveals that the hospital may stall for time, delaying so long that the statute of limitations is passed, or sending incomplete or improperly copied records so vital information is not disclosed. [USA Today, "Patients often struggle for access to medical records" 4/29/2008]

Through the years, I've had calls from families whose loved one was found upon autopsy to never have had any cancer. They were placed in hospice because a surgeon told them the patient had "inoperable cancer" and died supposedly from that (nonexistent) cancer there very soon. The cause of death listed on the death certificate? "Lung cancer" or something like that. The real cause of death? Hospice care. Not Cicely Saunders' hospice care. Not pro-life hospice care, but Florence Wald's and Ira Byock's and Timothy Quill's type of hospice. The type of "hospice care" the Euthanasia Society of America would endorse. The type of "hospice care" the National Hospice & Palliative Care Organization (the Euthanasia Society's successor organization) would approve and says nothing about today.

Hospital Administrators Love Hospice

Who else loves hospice? Those administrators running the hospitals. If hospital staff can save someone and look successful, great! Years ago, acute care hospitals did everything imaginable within the realm of medical possibility to save the patient. They were out to prove what they could do. Progress was saving the patient's life.

Now, it is, and it's not. If something goes wrong, or if they simply can't save the patient, they make sure to dump the patient into hospice care before the patient dies. Even if it's not a surgical error, perhaps a medication error that caused irreversible damage, they can use hospice to solve their "problem." "We're sorry, there is nothing we can do, but hospice can help. You've heard of hospice, haven't you?"

Why would the hospital administrators want to get rid of the patient? Can't they bill for another day or two

while the patient goes downhill? In some cases they can, but if the patient represents probable unreimbursed or incompletely reimbursed services, the hospital is losing money and they'll refer to hospice. A December, 2001 NHPCO/CAPC report, "Hospital-Hospice Partnerships in Palliative Care; "Creating a Continuum of Service" admits that "Hospitals and other healthcare providers are beginning to appreciate the positive financial impact of avoiding costly end-of-life activities at their institutions, and have been more open to early admissions by hospices." In addition, when patients leave for hospice, they don't die in the hospital, improving the hospital death rate statistics. Hospital death-rate stats are important criteria in rating hospitals, even if they're bogus stats.

So, if fewer patients die in the hospital, they "must" be providing superior care. They "must" have improved the quality of their care. They "must" be really "top-notch." At least it looks that way on paper and in marketing. Higher success rates and lower death rates translate into big bucks in donations, grants and prestige, ... all things the bigwigs running the hospital care about.

Even if there is no malpractice, hospitals may use hospices to take on patients who have been denied treatment by the hospital ethics committee (sometimes called a "futile care protocol committee." In cases where the patient wants care, but the hospital doesn't want to continue to provide care, the patient has a limited amount of time to find care at another facility. Often there is no other facility and the patient is going to be discharged. Where to? Hospice. Treatment denial equals very imminent death.

Nursing Home Owners Love Hospice

This may be confusing to some, but residents of nursing homes can be "enrolled" in hospice at the same time they are living at the nursing home. It actually isn't that complicated; the hospice assumes the primary provider role and coordinates the end-of-life care for the terminally ill patient. As primary provider, the hospice gives some of the funds received from Medicare, Medicaid or private insurance to the nursing home.

Why would nursing home administrators and owners love hospice? Well, nursing homes have been under a lot of scrutiny for decades. Their regulations are much stricter than hospice regulations and cover just about every aspect of running the facilities. When a patient needs higher doses of opioids like morphine, staff at a nursing home may be afraid of administering large doses, especially if they have not had much experience with the dying or managing their pain. Good hospice staff can educate the staff at the nursing home about how to give these medications and how to manage different problems that arise with patients at the end-of-life.

If a patient at a nursing home develops severe health problems, hospice can be called in. If the patient had developed severe stage IV bedsores (decubitus ulcers) due to neglect, having hospice come in can help the nursing home escape detection. If the patient dies fairly soon, the evidence (the patient) is destroyed, often through cremation.

Another reason nursing home owners love hospice? They have long waiting lists, and patients may wait two, three years or more to get into some facilities. When hospice is called in, a patient's death may be hastened, and a bed is opened up for those on the waiting list. Being able to say that they can accept new patients when needed is good public relations. Making patients on the waiting list, and their families, happy is also good public relations.

But on the financial side, nursing homes are constantly looking at their revenue stream, just like any business. While there are ways to safely "spend down" one's retirement funds to avoid having to pay them out to a nursing home, and have Medicaid pick up the tab, many people fail to make the proper arrangements. Nursing homes have private pay patients and Medicaid patients. While you will hear that there should be no difference between the care provided to private pay patients and Medicaid pay patients, the factor not mentioned is "what" facility the resident enters. Those with very large retirement accounts or adequate long-term care insurance may be able to choose a facility that has exquisite qualities.

What happens when the resident spends enough of their private funds or insurance benefits to qualify for Medicaid? Well, Medicaid takes over. However, Medicaid payment rates are usually low, so the nursing homes

rely on revenue from private paying residents and any other sources to cover costs. In other words, a resident who moves from "private pay" status to "Medicaid pay" status can change from a "revenue-positive" resident to a "revenue negative" resident. Are "revenue-negative" residents the most "desirable" type from the financial perspective? Clearly not. And with states facing:

> "a collective $55.4 billion shortfall in fiscal year 2011, and a combined $136.1 billion in deficits over fiscal years 2010 to 2012." This is simply not an eldercare financing crisis that can be papered over or pushed to the policy back burner,"
>
> [From The National Association of State Budget Officers, reported by Alan G. Rosenbloom, president of The Alliance for Quality Nursing Home Care]
>
> "...Rosenbloom observed, "The fundamental health policy dilemma requiring resolution is the fact Medicaid is almost wholly dependent upon Medicare and other funding sources to augment its increasing inability to adequately serve vulnerable populations in need of care. Coupled with federal Medicare cuts and regulatory changes totaling nearly $27 billion in funding reductions over 10 years, there is no light at the end of the tunnel for seniors and those who provide their care."
>
> ["Popular support opposes funding cuts" by Bob Gatty, August 2010; *Long Term Living Magazine*]

OK, so what happens? Medicaid doesn't pay enough. The residents don't have any more funds. The facility/corporation wants to "optimize" their income stream. What to do? Call in hospice if there's any possible scenario the resident qualifies. Hospice can serve as the "clean up squad" and remove residents that are no longer "desired," for whatever reason. Sounds cold, and it is, lethally.

We know that there is widespread abuse, neglect and even direct harm to residents at times, at many nursing homes. Marie-Therese Connolly, J.D. a lead prosecutor for the U.S. Justice Department, has written:

> Historically, law enforcement rarely has been involved in matters relating to abuse and neglect in long term care. Reports of grave and wide-spread abuse and neglect in such facilities have persisted for decades, receiving attention in fits and starts. Despite some improvements over time, recent reports continue to cite serious ongoing problems, including that **an estimated one third to one quarter of nursing homes provide seriously deficient or potentially life-threatening care; that almost one third of all nursing homes are cited for abuse-related deficiencies; and that an estimated 50% to 90% of all nursing homes are understaffed at levels that have been shown to harm residents**.
>
> ["Federal Law Enforcement in Long Term Care" *University of Maryland Journal of Health Care Law and Policy*; 4 J. Health Care L. & Pol'y 230 (2002) by Marie-Therese Connolly, J.D., Senior Trial Counsel, U.S. Dept. of Justice, Coordinator of the Department's Nursing Home and Elder Justice Initiatives; emphasis added]

When abuse, neglect or harm to a patient is discovered by management, they have a few options. They can report their own violations of the law and standards or they can cover it up. Are they going to report themselves? Absolutely not! What to do?

As we've seen, nursing homes and hospices have been found in some cases to have kickback arrangements with each other that work out financially to their mutual benefit. Since nursing homes are subject to more scrutiny than hospices, and they are also subject to more lawsuits than hospices (hospices have almost no lawsuits against them because attorneys refuse to take these cases), what better way to cover up for abuse, neglect and actual direct harm to patients, than getting hospice in there as quickly as possible after an incident and hastening death, preferably with the patient's body being cremated to destroy evidence? There are reports of such scenarios. Some of the "nonterminal" patients that research shows are enrolled in hospice must come from this "undesired resident" group.

There are others who love hospice. Guardians! At least the plentiful supply of estate-plundering guardians who bill at exorbitant rates for this or that and who generate a truly healthy income for themselves. Plan: get guardianship, siphon off the money, and send dear old whomever off to hospice ... time to move on to another victim. The supply of vulnerable victims is almost endless, especially now with the baby-boomers aging into senior status. Some guardians are taking advantage of their power.

> "Over the years, a growing uncaring and unjust judicial system has helped convert guardianship/conservatorship from an appropriate law to one which, if misused, is damaging to the general public. At present, it operates to ensnare the most vulnerable people in a larger and larger trawling net, now including those merely physically "incapacitated"! it has become a feeding trough for unethical lawyers and other "fiduciaries" appointed by the courts to protect, but many of whom become nothing more than predators."
>
> Wards, instead of being protected by the system, are victimized by it. Strangers are given total and absolute control of life, liberty, and property of their wards. Wards of the state lose all rights involving self-determination, including:
>
> - the right to contract, including the right to choose a lawyer;
> - the right to control their assets and make financial decisions;
> - the right to remain in their own home and protect it from sale;
> - the right to protect and enjoy their personal property;
> - the right to choose where to live;
> - the right to accept or refuse medical treatment, including psychotropic drugs;
> - the right to decide their social environments and contacts;
> - the right to assure prompt payment of taxes and liabilities;
> - the right to vote;
> - the right to drive;
> - the right to marry; and
> - the right to complain.
>
> "After being stripped of all their rights, wards are left defenseless and subject to exploitation by the very people chosen to protect them; they are now invisible and voiceless."
>
> "Uncaring/corrupt judges misuse the law and engage in blatant due process, civil/human rights violations. Victims aren't always given notice of hearings at which their competence will be adjudicated, aren't always allowed to attend, and often don't have lawyers. If the court does appoint lawyers, often they are too closely affiliated with other professionals who make their living in this special area; and do not properly represent the victims' interests. Corrupt judges do not apply the required evidentiary standards in making adjudications of incompetency, and frequently fail to obey the protective statutes, or include specific findings of fact.
>
> Homes are sold to insiders at below market! Contents - family heirlooms, jewelry, photographs, etc. - disappear, either stolen outright or sold at auction. Estate assets are rapidly paid out to the fiduciaries in exorbitant "fees" and "commissions" until there is nothing left!
>
> "Fiduciaries" are given power of life and death, burying their wards in nursing homes where they are kept chemically restrained with unnecessary and dangerous drugs; family members are denied any say in their care, and sometimes denied visitation, except under guard at their own expense!"
> From: StopGuardianAbuse.org

I have heard of similar stories for years, and I'm not the only one. Every patient advocacy organization in the country has heard about the guardianship scams and the terrible exploitation of the vulnerable. Again, the Terri Schiavo case is a classic.

Here was an abused woman who was denied rehabilitation. Nurse, Carla Iyer has testified she often:

> "... witnessed Terri say, "Mommy, help me", and "pain", and would also interact with the nurses and visitors. Iyer maintained that there exists over 4 hours of videotape from '95 and '96 proving this, but that it was placed under gag-order, including her own testimony about Michael Schiavo's treatment of Terri."
>
> "....[Iyer also] informed the police and her superiors of Palm Garden of Largo Convalescent Center in Largo, Florida that she believed Michael Schiavo attempted to kill his wife with insulin injections. She claims she discovered needle marks on Terri, and found that Terri's blood sugar was

so dangerously low that her levels would not register on a glucometer."

["Nurse Who Testified Against Michael Schiavo Has Nursing License Revoked" By LifeSiteNews.com Jun 30, 2006] The nurse appealed and later the board of nursing found she had done nothing wrong. Her license was returned to her.

For years, Terri was isolated and was denied visitors except her family. The money won to provide her with lifelong care was used to pay lawyers to help have her life ended in the hospice.

I know there are major problems with the system. Friends of residents in various facilities not only grieve for their friends, but are outraged that this society tolerates these abuses and crimes. They are outraged that society, by doing nothing, in effect condones them. This is clearly understood after police, district attorneys, and the rest of the government choose to do nothing significant to change the system. The ongoing abuse of the elderly residents of nursing homes has long been documented. Article after article have been written about horrendous conditions in one facility after another. Congressional hearings have been held regularly decade after decade with no reform of the industry.

"The law protects children from neglect that results in death, but is nearly silent on similar cases involving the elderly.

The state Legislature, more than a decade ago, recognized that neglect of children that results in death is a more serious crime than a misdemeanor. Lawmakers amended the law to make such cases a second-degree felony carrying a 10-year maximum sentence. That charge would be in addition to murder or manslaughter charges neglectful adults could possibly face in such cases.

That no such protection exists for the elderly seems like a serious hole in the law. Current elder abuse laws address only neglect by caretakers paid to care for the elderly -- not family members.

Elderly people who are dependent upon others for their well-being deserve the same protection under the law as children, who are also dependent upon others for their well-being."

I've also heard from hospice nurses who witnessed the plundering of patient's estates in rogue hospices, without an actual guardian being appointed. Sometimes hospices will sign up an isolated, elderly patient without notifying the patient's family. In one case, the hospice deliberately refused to contact the patient's family, listed the physician as the "family," omitted any family contact information from the medical record, and arranged to plunder the estate of the patient. They brought in an attorney to the very elderly and wealthy patient who was not legally "competent" to sign legal documents due to her dementia. Nevertheless, the attorney, with hospice administrators at his side, had the patient sign over millions of dollars to the hospice. Only later was the patient's family notified and after legal action and a settlement arrangement, the family recovered only a portion of what had been taken from the patient's estate. The hospice got to keep millions that remained. The elderly do need the protections that are afforded to children, and families need to stay in close touch with their elderly relatives in order to effectively protect them.

But the elderly do not have the same protections as children, and the elderly often do not have regular contact with their families. They can be exploited from many sides: adult children, other relatives, court-appointed guardians, health care professionals with an agenda, owners of facilities who care more about filling beds than appropriate placements, even adult protective service representatives who have an agenda. Surprising? But true. Sometimes the agency designated to protect the elderly can harm the elderly, ripping them from a loving family member who is properly caring for them and providing all they need. If hospice is brought in when the patient is not terminal, sometimes hospice care itself is the cause of death. We know that many hospice professionals will strongly object to that, but it is the truth in some hospice locations. Undeniable.

Some Adult Children & Spouses Love Hospice

There are others who love hospice. It's like the wish-fulfilling tree that gives without taking a dime. Greedy children or spouses who can't wait to get their hands on the money, the house, the estate ... love hospice! Get a doctor to suggest hospice and bingo! ... financial problems solved. It's amazing how quick they can cash in. While there are so many adult children and relatives that truly do care about their loved ones and would never consider "wielding" hospice to hasten death, there sadly are some adult children who do manipulate the system to achieve an early death for an ailing and usually very elderly parent.

Just get the legal power of attorney and you can siphon off the retirement accounts in days. If you siphon off the money before the patient dies, there is no probate to worry about. Get the medical power of attorney and you can make sure dear old Dad, or Mom, or whomever, doesn't have an opportunity to get out of the trap. Just make sure that hospice keeps him "comfortable." "*Really*" comfortable. Since when does being "comfortable" mean "dead?" Since when does, "no, I don't want any morphine!" mean "inject me with morphine."

Of course, good hospice staff would never give a medication that wasn't needed or that the patient didn't want. Problem is, not all hospice businesses are good. Not all staff follow the standards of care for titrating (adjusting) the dose of opioid medications. Not all honor the patient's right to refuse a medication.

Some have an agenda and are "true believers" in the idea that patients are better off dead if their quality of life is poor (in their subjective opinion). I spoke with Hospice Director, Doug A, RN who stated: he "supports a patient's right to kill himself in hospice" and that the reason why he supports that right is because he supports that right of a patient to kill himself in hospice!" He just kept asserting his belief without a logical reason to support his position.

Adult children or spouses who wish to "hurry" their loved ones along, "letting them go" as they say, certainly appreciate the strange ideas nurses like Doug A, RN have about patients killing themselves in hospice, or Stephen M, RN (the misinformed nurse) about liquid morphine (Roxanol) not being able to kill anyone. The effect of their ideas is that patients get higher doses, more frequently, and obviously, they die quite soon.

I've heard many times from family members about hospice nurses who were dosing their loved one with morphine that was not needed since the patient didn't have pain. They report that when they objected to the unneeded morphine, the hospice nurses would loudly proclaim, even yell at the family: "He's dying," thereby denying any possibility that the morphine might be causing the outward signs that seemed to indicate the patient was dying of their terminal illness. These nurses don't recognize that their own misuse of morphine (administered just because the patient twitched a toe, raised an eyebrow, or tried to speak) was killing the patient.

Yes, there are times when family members really don't understand how opioid medications are given and how they can be given safely by good hospice professionals. But, I've heard these stories from nurses and even physicians who were not able to prevent the medical killing of their loved one (because they didn't have the guardianship or power of attorney for decision-making). ***If you've never heard a physician crying hysterically about how their loved one was killed, please listen, I have***.

Adult children, relatives or spouses of the patient get what they want: death at the cheapest price. Free. They don't even have to buy a gun. They can "wield" hospice to kill. This is their quickest pathway to strike it rich. The mal-practicing surgeon gets what he wants: escape from lawsuit hell at the cheapest price. The hospitals and health systems, HMOs and managed care systems get what they want: service at the cheapest price (more profit when they don't provide other possible treatments). The guardians get what they want: elimination of the victim (potential witnesses to the embezzlement or other crimes) at the cheapest price.

If someone shoots an old man? They go to jail. Death by gunshot? "Horrible!"

Someone puts an elderly person in hospice with the intent that they die, wielding hospice to kill? They hit the jackpot. Death by morphine? "He did the 'right' thing!" It was "time to let go." (even though Gramps wasn't ill at all, just old).

Scary? Yes. Is it that way in all cases? No. Does it have to be that way? No, but there is a "Perfect Storm" of economic, social and moral, i.e., "immoral" reasons why things are getting worse, real fast.

Caller: "My sister killed my father by using hospice!" That from a trained Registered Nurse with two decades of experience. "He wasn't terminal!" This is part of how I know what adult children are doing to their elderly parents. They "wield" hospice as a weapon, and hospice staff in these cases, violating everything Dame Cicely Saunders stood for, willingly comply. And so it begins again. The invisible Holocaust. Nobody knows how many are killed this way. Those who wield hospice to kill aren't going to complain. Those who complain aren't being listened to. And the hospice that did everything to help kill that vulnerable father? They're not going to admit to anything. We regularly hear of falsified notes in the medical records from the families. The staff remain silent, just as some Nazi doctors remained silent during the Nuremberg trials. They don't want to lose their jobs.

Or, they will say, "I just did what I was told." As if that excuses their participation in the killings!

The Right-to-Die/Kill Crowd Loves Hospice

At those "Hospices of the so-and-so Region" that are providing good care, it won't be this way. but the trend is there. Hospice, as the industry, has been taken over by the right-to-die ("kill") crowd, and the National Hospice & Palliative Care Organization is the successor organization to the former Euthanasia Society of America. They *are* hospice, at least that's what they would have us believe. More accurately, they represent most of the hospice corporations in the country. The public doesn't know that and they don't know the connection between euthanasia and the NHPCO. Hospice won't broadcast that. No, that would be bad marketing!

Ione Whitlock, researcher for the LifeTree Organization has laid out for all to see the many details that link the two in the Timelines posted on the Lifetree website.

The NHPCO proudly announces that it has all the successor rights to Choice In Dying/Last Acts/Last Acts Partnership (later incarnations of the Euthanasia Society of America) at its "Caring Connections" web pages. Here is a screenshot of their timeline on that page:

To make sure we understand that NHPCO is the successor organization of Choice in Dying, Last Acts, Partnership for Caring and Last Acts Partnership, NHPCO explains all of this on the same "Caring Connections" webpage as their timeline shown above. Here is a screenshot of NHPCO's explanation on that same page:

The National Hospice and Palliative Care Organization (NHPCO), a nonprofit organization, is the leading voice for quality hospice, palliative and the broader continuum of care for people living with a serious illness. The National Hospice Foundation (NHF), a nonprofit organization and an affiliate of NHPCO, raises funds for NHPCO to support end-of-life care.

Partnership for Caring (formerly Choice in Dying) was the national program office for Last Acts, a program that was funded by the Robert Wood Johnson Foundation. In early 2004 Partnership for Caring and Last Acts were reorganized as a merged entity entitled Last Acts Partnership. In 2004, the Last Acts Partnership ceased operations. Immediately thereafter, NHPCO acquired virtually all of the physical and intellectual assets of the Last Acts Partnership.

NHPCO continued the enduring programs of Partnership for Caring and Last Acts including all the advance care planning resources. These programmatic continuations and extension were made possible by additional funding from the Robert Wood Johnson Foundation to NHPCO. With the exception of the liabilities associated with Last Acts Partnership, for all intents and purposes, NHPCO became a successor organization of Last Acts Partnership (and its predecessor entities).

Even today, NHPCO continues this work, by providing consumers with free state-specific advance directives and offering consumer support through the HelpLine (two services that Choice in Dying/Partnership for Caring had provided). In addition, NHPCO works with other national consumer groups advocating for advance care planning and improved care for dying persons and their families (see www.caringinfo.org).

NATIONAL HOSPICE AND PALLIATIVE CARE ORGANIZATION

Support for this Web site was provided by a grant from The Robert Wood Johnson Foundation, Princeton, New Jersey. www.rwjf.org

"NHPCO continues this work." Yes. That is exactly what they're doing. We've seen the direct connection between NHPCO and the Euthanasia Society of America, but NHPCO doesn't go back that far in their timeline showing the direct legal linkage to the Euthanasia Society. They show their connections going back to "Choice In Dying," something much more palatable to the public. To let the complete corporate "lineage" out would undo the results of decades-long public relations efforts that misdirect the public (selling them on Dame Cicely Saunders' vision while providing them with Florence Wald, RN's vision including the provision of assisted-suicide even for economic or social reasons). That they are using Third Way terminal sedation rather than "assisted-suicide" makes no difference. Legalization of assisted-suicide has resulted in dozens of deaths per year in Oregon for example. Terminal sedation and other means of imposing death have easily resulted in over 100,000 deaths per year. It's "bait and switch." Truth sometimes doesn't sell well when you've got a dirty secret to hide.

The members of the World Federation of Right-to-Die Societies demonstrate their love for hospice by naming the National Hospice & Palliative Care Organization website on its list of "right-to-die" websites. It can't be more obvious that they recognize mainstream secular hospice and palliative care as working to further their goals.

With respect to the so-called "right-to-die," I see that often it is the right to end a life. In the United States, the Last Acts Regional Rallying Points center, Hospice of the Florida Suncoast was the hospice that carried out the order to end Terri Schiavo's life.

I ask, "What was Terri Schiavo's crime that her life had to be ended?" The Schindlers were willing to care for her forever. Money was not an issue since there were wealthy people who pledged to pay for her care. No, the guardian, a/k/a "husband" wanted her dead, publicly saying "she didn't want to live that way," but one girlfriend, Cindy Shook testified that Michael told her that he had no idea what Terri wanted. She also described his bizarre controlling, angry, and abusive behavior, and that he had stalked her and ran her off the road. He is described as having episodes of terrible, uncontrolled angry outbursts. That's Cindy Shook's experience with Michael Schiavo.

Trudy Capone's sworn affidavit states the same: Michael stated repeatedly that he never knew what Terri would have wanted.

I mention the Schiavo case many times, because it is the most well-known hospice killing case of our time. It contains all the elements of a typical guardianship abuse case and the use of the patient to further the aims of the euthanasia movement. It also demonstrates the role of the courts and the legislators to facilitate the killing of the vulnerable. It is the case that tipped the scale for many Americans in favor of imposing death upon the

vulnerable cognitively-impaired, or others. Just look at the major media's coverage and the large percentage of the public that therefore favored ending her life. You can say that Michael Schiavo used the hospice and attorney Felos, but Felos and the hospice used him and Terri as well.

We cannot underestimate the effect the Schiavo case had on the public. People saw that and later on said to themselves, "if they did it with Terri, I can do it with dear old Dad," or "Mom" or "Grandpa," "Grandma ...." It showed them the way. A long drawn-out lethal soap opera played out for all the world to digest. It's similar to the "lesson" Bill Clinton taught the younger generation about oral sex: "it's not 'real' sex." "The President said so!" Really? Well, many young men and women today believe Bill, and their behavior reflects his casual attitude toward it all. When such widely-covered stories are imprinted on the younger generations, it affects their values and beliefs. The Schiavo case was a great victory for the euthanasia movement, legally, publicly, and generationally. The medical killing *all* happened within hospice! And just like Bill Clinton's "lesson" for the world, the euthanasia proponents have taught that hospice killing is "not real killing."

I will never forget the anguish, the sadness in Bob Schindler's voice as he spoke to me, father to father. Why should a father ever have to be put in the position of seeing his own daughter killed through dehydration and not be able to do one thing to stop it? I know that with Terri's medical killing, a part of Bob just died. He was a man of faith, but faith does not erase what was done to Terri and to her family. It helps those who remain, go on, and work to prevent such tragedies, as her family has done. The Terri Schiavo Life & Hope Network works to protect the vulnerable around our country and has helped many.

Bob Schindler died Aug. 29, 2009, but it seems like yesterday. The media never printed much of what the Schindlers really said about some of the details of Terri's condition and Michael's actions. They limited their coverage, stating as authoritative euthanasia advocate Felos' statements, and continually implying that the Schindlers were "in denial" about Terri's condition.

It seems like yesterday when the woman Terri Schindler Schiavo was executed. If I wrote, "such and such" young woman was gunned down March 31, 2005," people would be shocked and horrified. If I write that "Terri Schiavo" was gunned down March 31, 2005, people would shrug their shoulders and say, "She was brain dead." "She had a heart attack, a "collapse," an "eating disorder," "she couldn't communicate or respond." All of those statements would be untrue.

We should remember what Bobby Schindler, Jr., Terri's brother, said upon seeing Terri on the floor of her apartment February 25, 1990:

> "When I got to Terri, she was face down, arms bent under her torso with her hands up by her neck, lying in the hallway. ... I could hear her breathing, almost like she was snoring ... loudly."

Yet, Michael Schiavo has stated repeatedly that he found her "face up," and held her, but the police report clearly states the paramedics found Terri face down, just as Bobby Schindler, Jr. reported. Why would she be "face down" if Michael had attempted CPR if she had had "heart failure" or if "her heart stopped" as was widely erroneously reported? Why would her hands be up by her neck? Why was Michael clearly "nervous" and terribly "frightened" when the paramedics arrived.

[from the book: Our Fight4 Terri, p 19,20; Ford & Craddock]

The only facts that are undisputed by all sides is that Terri Schindler Schiavo had no neck injury before her "collapse" on February 25, 1990 and after February 25, 1990, she had a permanent neck injury that made it impossible for her to move her head much to one side. Her father, Bob Schindler said that the "medical evidence [shows] that she had a neck injury. And as the doctor said, she had no heart attack. And her ribs and parts of her body suffered fractures." You just don't get such injuries from "collapsing" in your own apartment onto the floor.

Terri had *many* specific injuries, including a posterior rib fracture which is universally considered a "red flag" that abuse and trauma has occurred. Fracture of the ribs toward the back of the body ("posterior") is known to occur with abuse and trauma. After extensive medical and forensic analysis, a description of exactly how all Terri's injuries could have occurred is given starting at page 373 of the book, Our Fight4 Terri by Ford & Craddock. The explanation is the only one that makes sense taking all her injuries into consideration. It includes known behavior patterns of Michael Schiavo, such as in years past, coming from behind and putting his brothers into "head locks" with his arm bent around the neck.

> One physician, "after studying the bone scan (world-renowned forensic pathologist Michael Baden) posed an explosive theory on Fox News Channel's "On the Record" hosted by Greta van Susteren. *WorldNetDaily* reported Baden, who is co-director of the Investigative Unit of New York State Police in Albany and former chief medical examiner for New York City, ruled out potassium imbalance and a heart attack as factors in Terri's mysterious collapse and pointed to head trauma and bone injuries as a more likely cause."

"Neurologist Hammesfahr testified in the 2002 evidentiary hearing that Terri was admitted to the hospital after her collapse with a "suspiciously rigid neck" and that he'd only seen "this peculiar constellation of injuries," referencing her rigid neck and cardiac arrest, in a case of attempted strangulation."

I've spoken with some of the nurses who cared for Terri in the years she was at the nursing home. The case is in the public domain. Everything's been discussed at some point somewhere. Some of these nurses spoke to me as well as under oath about the malevolent air around Michael Schiavo, how the staff was terrified by him, how he forbade any rehabilitation at all, Nurse Sauer-Iyer explained he forbade basic range of motion. Like many reports I get from families around the country, he is an example of a spouse who used hospice to end his wife's life. Nurses and her parents say he attempted to end her life in the nursing homes years earlier, sometimes through refusal to treat easily-treated infections.

Nurse Carla Iyer and other staff feared losing their jobs, because the nursing directors had told all the staff that if they did anything at all to displease him, they'd be terminated. Heidi Law, C. Johnson, LPN and Carla Sauer Iyer, RN described bizarre interactions with Michael Schiavo at the nursing homes.

In December 2003, January 2004, I interviewed nurse Carla Sauer Iyer, along with Terri's sister Suzanne Vitadamo and Cheryl Ford, RN about the "The Conspiracy to Kill Terri Schindler-Schiavo" on the Highway2Health internet radio show. Iyer found that Terri's blood glucose level was undetectable after a visit from Michael and only with her intervention was her life saved. The day after nurse Sauer-Iyer reported to the police that she found needle marks on Terri and that her glucose level was so low it didn't register, she was fired from the nursing facility! So much for whistleblower protections!

Many nurses objected to the many things he did and how he treated Terri. Even though Iyer made a report to the police about Michael's interactions with Terri, the police did nothing. She testified that Michael would be thrilled if Terri had an infection and stated he was "going to get rich." The idea of inheriting when the guardian's ward dies is common. It is also common in the case of many adult children of the vulnerable.

In 2000, when Michael had her transferred to the Woodside hospice facility of the Hospice of the Florida Suncoast, denial of rehabilitation continued. Violations of the standards of care and the law continued. I'm sorry to say that if nurses had truly objected, they could have left the hospice, but they stayed and participated in it and are therefore also partly responsible. Otherwise, you could say, "nobody" was responsible, because they were "just doing their job," just as we know that on a much larger scale, nurses and doctors actively participated in the euthanasia campaign during Nazi Germany's T-4 euthanasia campaign.

Robert Jay Lifton documents all of this in his book, *"The Nazi Doctors: Medical Killing and the Psychology of Genocide."* There were many Nazi physicians and nurses who said they were "just doing their job," or they "had to do it," but there also were nurses and doctors who believed in ending "lives unworthy of life."

I've got a lot of reasons to be concerned about the welfare of good staff, patients and their families in this country. There are a lot of things happening that endanger them in one way or another, and I haven't mentioned all or even most of them. With regard to the Schiavo case, some things you just don't print, and so there are other things that have never been printed anywhere about the case, that are not in any affidavit or record at all.

There are still unanswered questions. For example, what happened to the two EMS workers who originally found Terri? Where is their account of what they really saw and what they really think about the case? Why were injuries to Terri's neck and bones not investigated by the police? When I interviewed Dr. Hammesfahr, January 2004, he stated Terri never had a heart attack as widely reported in the major media, she also never even had a cardiac arrest (her heart never stopped)! Dr. Hammesfahr also stated that Terri had marked injury to her neck and an L-1 injury to her spine, which he stated is common among persons being thrown against a table. Almost nothing about the case followed what would be considered a normal police response and investigation.

Did the *Associated Press* ever publicize Terri's injuries? the wide range of broken bones and trauma that was noted in her medical records? The posterior rib fracture which is a clear sign of abuse and trauma? No. Or that Terri wanted a divorce and that there was a huge fight the night of her "collapse?" Or that friends saw "pinch marks" on Terri? No, the public never learned about that. Did the police ever seriously consider Michael Schiavo as a suspect in the neck injury to Terri Schiavo? No. Why not? The only source that provides all of the testimony of expert witnesses, relevant medical records and never-before revealed details about the case is included in the book by Cheryl Ford, RN and J.E. Craddock, DDS, Our Fight4 Terri. Terri's Family has now released a moving documentary account of *The Terri Schiavo Story* on DVD, hosted by Joni Eareckson Tada.

Though the major media had access to all the police reports, medical reports, hospital medical records and sworn affidavits of numerous nurses, doctors and friends of both Terri and Michael, they went with the story line given by euthanasia proponent and attorney, George Felos, Michael's attorney. The *Associated Press* repeated literally thousands of times (considering all the articles printed) absolute falsehoods that are easily

disproved upon an even cursory review of the records. Why would they do that? Isn't it obvious? The "fix" was in; she *couldn't* be allowed to live. Terri's case was the next step for attorney Felos (chairman of the board of the hospice) and hospice CEO Labyak to implement much more widely-practiced "Third Way" killing within the hospice setting, ridding society of those they deemed to be "unworthy of life."

> **"All effective propaganda must be limited to a very few points and must harp on these in slogans until the last member of the public understands what you want him to understand." - Adolf Hitler**

Let's look at Bobby Schindler, Jr.'s experience with Michael:

> **"One experience that I had with Michael was at the beginning of his relationship with Terri, around 1984. ... we got into a very heated disagreement in the family room ... I remember distinctly that Michael got so upset that he suddenly snapped, and grabbed me by the throat and threw me down on the couch, had one hand around my neck and the other was in the air ready to punch me in the face. I couldn't move and I don't know what would have resulted if it weren't for Terri and my girlfriend screaming at him to let me go.**
>
> **".... I often wonder what would have happened if I would have paid more attention with what happened that day."**
>
> [Our Fight4 Terri by Ford & Craddock, p 122.]

Those who think they know about her, that she had "no brain," do not understand that experimental surgically-implanted platinum electrodes were left in her brain for several years with [per Michael Schiavo] no follow-up care or maintenance (or removal) and that contrary to all standards of care no effort was made to manage a consequent hydrocephalic condition which would tend to make her deteriorate even further through the years. Radiologist Thomas Boyle, MD states that CT scans show all the classic signs of hydrocephalus, with pressure from fluid buildup pressing on her brain, yet, her guardian chose not to have it relieved. He chose to forbid rehabilitation and to have her life ended in hospice. This type of failure to provide rehabilitation is typical of many guardianship situations.

It is exactly this type of decision to end life rather than care for the disabled that is the road the NHPCO and its leaders like Mary Labyak are taking this country down. They not only want to make it possible to end the lives of those "unworthy of life," they want to change how hospice provides end-of-life care. They want to change how Americans die, how you or I die.

Hospices involved in hastening the deaths of those they consider "lives unworthy of life" won't call it killing, but the result will be just the same: the patient will die, but not from a terminal illness. This case has disturbed and horrified good hospice professionals all over the country. They can't believe it happened in hospice, don't want to believe it, but it happened undeniably in full view of the world.

It's something so widely known it's inescapably true that hospice can kill a non-terminal disabled woman. You wouldn't know that from the slant the media gave to this story. They never emphasized this was a hospice killing. They mentioned that she was at the Woodside Hospice facility. The implication was that Terri was on life-support when all she was "on" was food and water through a tube-feeding.

Hospice nurses who send me angry letters saying that "hospice doesn't kill" have chosen to forget Terri and that she was killed in one of the most famous, biggest, most powerful hospices in the country, the Hospice of the Florida Suncoast. They forget the anguish of her mother and father Bob & Mary, her brother Bob Schindler, Jr. and sister Suzanne. I never will. We must never forget. Otherwise, it will just get worse. It is getting worse, and we keep hearing from family members whose loved ones were killed by hospice staff, often with a family member's encouragement!

Those who say that discussing the Terri Schiavo case is "rehashing an old case," don't understand what it was all about. It was, and is, all about making the ending of patients' lives in hospice the new "normal," the routine protocol. According to the sworn affidavit of Trudy Capone among others, Michael Schiavo admitted Terri never told her she would rather die than live like that (even though Michael said he was fulfilling her wishes by having her killed). Yet, her court-ordered execution was based upon the assertion she had told him she would not wish to live in that condition. The case demonstrated that all a surrogate decision-maker or guardian has to do is *say* the patient "did not wish to live like that," and the courts will approve his or her execution through removal of food and water, often while sedated (Third Way killing). Euthanasia by another name, just as lethal.

IX - HMO/Managed Care Approach to Hastening Death

You've heard the saying, "the devil's in the details," right? Well, sometimes we have to pay attention to the details to understand how things are manipulated to reduce costs, increase profit or, in the case of Medicare and Medicaid, reduce expenditures. What has happened in HMOs hasn't stayed in HMOs. In other words, health care systems, whether PPO, HMO, or other, have been watching what HMOs have done to reduce costs. At any one time, there's only a small percentage of "members" in a PPO, HMO or other health system arrangement that require services for serious illness. Reducing services without the public knowing is the name of the game. How do they do it? And how does that relate to hospice and palliative care? We'll find out here, but I'm asking you to be patient and pay attention to some details, to digest them and realize how incredibly damaging some tactics of HMOs and managed care can be to you and your family. Whether you are enrolled in an HMO, PPO, or government program, you may be confronted with these tactics.

Delayed Access

Well, if you can't get in to see the doctor, that's a start. For example, "Kaiser Made It Hard to See an MD, Critics Say" Its own internal documents showed it was making it hard for patients to see the physician.

> "Kaiser-Bellflower[HMO]'s policy was to keep patients waiting in the emergency room until they left without treatment," .... "Between 1999 and 2006, more than 5,000 patients were sent home without receiving medical screening exams."

Delayed access, delayed treatment, greater likelihood of more severe illness and consequent serious, even terminal illness! That is how it works.

Fabricated "Normal Ranges" To Avoid Treating You

If you do get in to see the doctor, and he orders tests, can you rely on how he interprets the tests? Maybe, maybe not. You may need to go online or to the library to refer to a medical dictionary's reference tables for standard human lab values. Some HMO's "create" their own "normal" ranges out of thin air. Charles Phillips, MD reveals "The Manipulation of HMO Medical Testing" showing how treatment can be delayed by widening the stated "normal" ranges so high or low "normals" (actually abnormal lab values) are excuses to do nothing when the patient has a serious condition. See "Kaiser: Misinforming the Public About "Normal" Human Lab Values to Limit Treatment and End Lives" below for more details.

Business tactics Used to Limit Treatment

Linda Peeno, MD reminds us in her article, "The Second Coming of Managed Care" that

> "Twenty-first century managed care is best defined as the organizational practices of any health care entity using business strategies to influence or control access to and availability of medical services for economic gain. Patients can become victims of systems that lead to too much care as well as too little, and they now risk danger from corporations as much as from individual agents.
>
> This should not surprise anyone, since the provision of health care, from for-profit insurance companies to nonprofit government organizations, still works on a simple principle: Financial

success and "savings" depend on maximizing the gap between money taken in and money paid out. Its face may change, but managed care is not going away.

She adds:

> "...Almost every medical treatment or service is so systematized that little independent medical judgment enters into the review for many managed care organizations. In one case, a company made the conditions for approval of a hysterectomy so narrow that they would have required conservative treatments to fail and the patient to have suffered a recurrence of invasive carcinoma before she could have the surgery. In other situations, managed care organizations applied outdated or wrong criteria and manipulated criteria inappropriately to justify a denial.
>
> Although "evidence-based medicine" is the new buzz phrase, there is a difference between legitimate clinical criteria that have been developed through research and peer review, and proprietary protocols developed by commercial companies using pseudo-scientific processes.
>
> Exclusions for "experimental and investigational" treatments. When managed care was first established, health plans often relied on prevailing clinical and government standards to determine whether a requested treatment was experimental. With advancements in technology and research, the exclusion grew to include investigational procedures. Now, definitions that used to be only a couple of sentences long extend for pages. Some plans try to exclude standard therapies simply because they are part of a researcher's data collection and study.

What Linda Peeno, MD Told the Congress About Managed Care in 1996 and 2009

On May 30, 1996, Linda Peeno, MD testified before Congress and gave her testimony entitled, "Managed Care Ethics: The Close View"

[prepared for U.S. House of Representatives Committee on Commerce, Subcommittee on Health and Environment, Michael Bilirakis, Chair]

> ".... I have educated myself not only with the books, but with the stories of people who suffer. I have painfully dissected every experience of my own from the inside out, until I understand the ways they represent industry practice, their ethical implications, and how it is possible to go awry. I have taken every penny "earned" from my work in this and folded it back into work to benefit those affected by an increasingly heartless health care system."
>
> "I do this because I know the system inside and out. I know where the dangers are. Although many persons are quick to extol the ease and affordability of their plan, the real tests come when someone needs something expensive. Like a bucolic pasture turn battlefield, the landmines start exploding everywhere. (I know because I have helped set more than a few.) These landmines were part of my ordinary armamentarium -- including some of the below:
>
> * benefits restriction, or making the covered benefits as narrow as the market would allow (sneaking in a few exclusions that most consumers would not be knowledgeable enough to understand, e.g. in one of my plans we had regular meetings to determine what our highest costs were and how we could redesign benefits to control them);
> * exclusions, which would multiply every year, and would rarely be known to the member or a treating physician until pulled out by plan to justify a denial;
> * pre-existing exclusions, to ensure that persons with known conditions would either forgo our plan, or give us the mechanism to avoid payment for services, creating a game of wits to figure out

ways to make current needs connect with some prior diagnosis;
* evasive and uninformed marketing so individuals in groups we wanted would only know the attractive elements of the plan, but none of the potential problem areas; in addition members would never know the exact coverage limits and rules of the plan until after the enrollment period when they would receive their benefit booklet;
* underwriting, or selection of the "best" groups, which meant that medical information of individuals and groups were reviewed in detail, with projections made about economic liability to the plan; making these kinds of predictions often put me, as a physician, into the role of "bookie" for the plan;
* contract design, especially for physicians; it is common knowledge in the health care business that few physicians read, much less understand, most of the terms of the contracts they would sign for us; furthermore we would exploit their economic vulnerability by telling them they could either sign or be excluded;
* maze of rules for authorizations, referrals and network availability created in order to make "technical" denials possible (e.g. failing to go through convoluted procedures set out in a "certificate of coverage," which we knew few persons ever read, would be grounds for denial of payment);
* claims of authority to extract compliance from members and physicians for the desired economic outcomes, e.g. offering a grievance process but making it a sham in its results or eliciting certain practice patterns by threats to de-selection; and finally
* denials for "medical necessity," whether prospectively or retrospectively, determining that something is not "medically necessary," according to criteria that is non-standard and rarely developed along accepted clinical methods, becomes the ultimate weapon for the plan, the "smart bomb" for "cost-containment."

> "I am the evidence that managed care is inherently unethical, in the areas of both medicine and business. Had my experiences been the result of merely local aberrations, I would not have had anything to do for the past six years. On the contrary, I discovered that my experiences are standard practice and quite ordinary for the managed care business. This fuels my work in ethics. The greatest irony to me is how the words "quality" and "outcome" have come to be industry buzz words, yet neither is ever applied to the managed care practice itself. We have enough stories of maleficence by managed care to fill tomes, and yet we continue to allow the industry to claim that these occurrences are simple anecdotes. As long as we accept that rationale, we sanction a system that is functioning with virtually no checks and balances -- ethical or legal. At a time when nearly every other human endeavor faces ethical scrutiny, how can we allow a particular industry to escape -- especially one with so much potential harm?"

In September 2009, Dr. Peeno was back in front of Congress and gave her testimony, "Between You and Your Doctor: the Private Health Insurance Bureaucracy"

> "I come back here today with 13 years of additional insider experience from work on over 150 legal cases against managed care companies, as well as extensive knowledge gained by helping thousands fight for needed care. I am here today representing no special interest group, and without any agenda except to urge you to force open the black box of corporate health insurance and to hold them accountable for the practices that destroy the lives of patients, families and communities, and the health professionals who must bear the consequences of their damaged care.
>
> "Things have never been worse for patients. The corporate machines are well-developed and expertly operational. The methods are more insidious, covert and devious. In addition to outright denials of care, new tactics proliferate to avoid, delay, limit, substitute, and manipulate care for the maximization of profits. The difference between the kinds of denials I testified about in 1996 and the current system is akin to the difference between surgery with a kitchen knife and a scalpel. Cost-cutting, -saving, and -making tactics have never been so expert and deadly.
>
> - There is an abyss between what insurance companies say and what they do....
>
> - There are new "agents" of denial....
>
> - The dirty work of denial and other cost-cutting practices are increasingly outsourced ....
>
> - Adverse insurance actions cause harm and death to real individuals - these are not statistics or "mere anecdotes" ....
>
> - The terms "medical necessity" and "experimental/investigational" are proprietary business tools supported through the huge medical guideline/criteria/evidence-based medicine industry ....

- Health insurance companies operate in an ethical and legal void ....

I suggest that you read the entire article for an eloquent and detailed analysis of the inner workings of the private health insurance industry affecting you and your family. Yet, while this appears to be aimed at private health insurance as an industry, the same type of cost-cutting and decision-making occurs in government-run programs. It is too easy to rail and complain about "private insurance companies" on the one hand, or the coverage denials of Medicare or Medicaid, or any government plan. Simplistic solutions will not solve anything. Lambasting "capitalistic" profiteers in health care while overlooking the failures of socialized or semi-socialized health care systems simply allows us to jump from the "frying pan into the fire." We need to understand the total picture and not succumb to the urge to find an easy "fix."

Kaiser Health Plan

More details about ways to hasten death. Vickie Travis's father was in the Kaiser Health Plan (Managed Care/HMO) out in California, and ended up in the Kaiser hospice in Los Angeles. You may have heard of the "Kaiser Family Foundation" and vaguely remember they do some good charitable work, or fund this or that, but the Foundation is a separate corporate entity. The Kaiser HMO has the reputation that they basically "own" the politicians out there; Kaiser is so wealthy, powerful and well-connected.

Kaiser Health Plan (HMO) is the public, nonprofit front for the health care system. What most people don't think about is ***Kaiser Permanente, the very much for-profit physicians' group*** there. Kaiser Permanente is officially known as The Permanente Medical Group or TPMG. In an HMO, the physicians make the orders about what treatments are going to be done, what medications are given, and so on, so long as they toe the line of the HMO that allows them to provide physician services in the system. And that "line" can prevent them from providing appropriate and timely medical diagnostic tests or treatment or medications, with the result that patients may suffer the failure to diagnose a condition at all or a diagnosis too late to properly treat. If inadequate treatments are provided, they can have "treatment failure" with no improvement of an actually treatable condition. If they don't get the medication they need, they can be harmed or even die. Kaiser has been the subject of many legal actions, yet it has contracts with the government to run some of their public health programs in California, for example. Let's see how the HMOs in our country got their start with Kaiser.

The Nixon Administration, HMO/Managed Care and E.R.I.S.A. Legal Immunity Shield

Speaking about the idea of HMOs, Erlichman told President Nixon:

> **"All the incentives are toward less medical care, because-the less care they give them, the more money they make."**

- [Mr. Erlichman quoting Edgar Kaiser to President Nixon on February 17, 1971 From: Miller Center of Public Affairs - University of Virginia - White House Tapes.org tape rmn_e450c]

On the very next day, Mr. Nixon had a message for Congress proposing a National Health Strategy:

> "The most important advantage of Health Maintenance Organizations is that they increase the value of the services a consumer receives for each health dollar. This happens, first, because such organizations provide a strong financial incentive for better preventive care and for greater efficiency."

So, **right after hearing that the HMO concept Edgar Kaiser was pushing in 1971 would provide LESS medical care, Nixon tells the public HMOS will "increase the value of services a consumer receives for each health dollar**." Exactly the opposite of what is planned by the HMOs. Well, they did create legislation to allow HMOs and we now know that many HMOs (or managed care organizations) do limit care, just as Erlichman told Nixon in private forty years ago.

What happened next? The President pushed his agenda and Congress later passed "The Health Maintenance Organization Act of 1973" into law (United States Code, TITLE 42 - PUBLIC HEALTH, CHAPTER 6A, SUBCHAPTER XI - HEALTH MAINTENANCE ORGANIZATIONS).

This law:

> "provided grants and loans to provide, start, or expand a Health Maintenance Organization (HMO); removed certain state restrictions for federally qualified HMOs; and required employers with 25 or more employees to offer federally certified HMO options IF they offered traditional health insurance to employees. It did not require employers to offer health insurance. "HMOs" were defined simply, as plans that: specified list of benefits to all members, charged all members the same monthly premium, and were structured as a nonprofit organization."
>
> From a summary of the Health Maintenance Organization Act of 1973.

What is an HMO?

> "A health maintenance organization (HMO] is a type of managed care organization (MCO) that provides a form of health care coverage in the United States that is fulfilled through hospitals, doctors, and other providers with which the HMO has a contract. .... Unlike traditional indemnity insurance, an HMO covers only care rendered by those doctors and other professionals who have agreed to treat patients in accordance with the HMO's guidelines and restrictions in exchange for a steady stream of customers."

To make matters worse, the Congress passed the Employee Retirement Income Security Act of 1974 ("E.R.I.S.A."): 29 USC chapter 18, which was signed into law by President Gerald Ford.

One organization working to make HMOs and managed care organizations more responsible to the public they serve is:

> "The Health Administration Responsibility Project H.A.R.P. [which]:
>
> "[is] ... concerned that in the headlong rush to "efficient" medical care, the organizations involved are losing sight of the "quality" of the care they provide."
>
> "As more and more "incentives" to cut back on medical care are put in place by the new class of medical entrepreneurs, the patient often suffers. ... counter-incentives must be applied, and they must be financial. The only such counter-incentives available under our system are lawsuits for damages caused by excessive cost-cutting measures."
>
> "However, many obstacles protect corporate providers from being held responsible for their acts. ERISA drastically limits the remedies available to injured workers, as well as preempting State regulations designed to control the more egregious problems. Rigged Mandatory Arbitration gives injured patients the illusion of justice. Strict application of state Tort laws holds doctors responsible for actions forced on them by Managed Care Organizations, which themselves escape liability."

So, the HMO or managed care organization gets doctors to do what they require, no matter how devious or harmful to the patient, yet only the doctor or other health professionals are held responsible. How did this situation arise?

The Health Administration Responsibility Project tells us in its "E.R.I.S.A. Outline"

"If the Managed Care Organization is "related to" an Employee Benefit Plan (EBP), the requirements of ERISA ... and its regulations are of overriding importance, and severely restrict patient rights.

No employer is obligated to establish an EBP. In order to encourage them to do so, Congress has given them, their plans, their HMOs and Insurers, and their administrators substantial immunities from liability.

State Regulation of HMOs administered by self-insured EBPs is Preempted by ERISA, so employees cannot be protected by those state laws which limit the excesses of other HMOs, not subject to ERISA.

Any case 'relating to' an EBP falls under Federal Jurisdiction and may be removed from state to federal court.

There the patient will find that the usual state law Tort Claims are also preempted by ERISA, so any claims against the HMO or EBP for medical malpractice, wrongful death, fraud, etc. will be summarily dismissed.

True, he may sue for a benefit denied him, but the decision of the plan administrator may often be reversed only if it was found to have been Arbitrary and Capricious, a very difficult standard to meet.

> Even if that is proven, ERISA limits damages to delivery of the benefit, but it may then be too late. If the patient has died or experienced further injury because of the wrongful denial of care, neither he nor his survivors may be compensated, nor will the HMO be punished in any way. If the plaintiff wins the case, the court has discretion to award him his Attorneys Fees.
>
> ERISA plans are construed according to federal common law, but federal common law in the 9th Circuit borrows many California rules of interpretation, including contra-insurer. See Padfield v. AIG Life Ins. Co., 290 F.3d 1121 (9th Cir. 2002), and Kunin v. Benefit Trust and Life Ins. Co., 910 F.2d 534 (9th Cir. 1990).
>
> In setting up or continuing the plan, the employer has no Fiduciary responsibility to its employees at all. If an employee develops AIDS, for example, it is perfectly legal, under ERISA, for the employer to subsequently amend the plan so as to eliminate coverage for AIDS. See McGann v. H & H Music. Fiduciary responsibility applies only to the Administration of the plan, not to determination of which benefits will be offered.
>
> HMOs even produce training films to teach their claims managers that they don't have to do a reasonable investigation for ERISA claims - just deny them. ....
>
> [For more information, see ... the H.A.R.P. website]

All health care today is influenced by the "managed care" style of doing business which involves "cost-efficiencies" and decision-making based upon maximizing profit. This is what Charles Phillips, MD, H.A.R.P. and Linda Peeno, MD have revealed.

HMOs and the managed care approach to administering private health insurance companies exert huge influence over how a physician practices, often giving very significant bonuses to doctors for cutting Plan costs by limiting the treatments, labs and procedures they order for their patients. In other words, a physician who does "everything possible" for a patient may be in hot water with the Plan, while a physician who does the least for his patients may be honored by the HMO for meeting his "quota" of not ordering tests and treatments, thereby reducing costs.

So, the HMOs and managed care organizations are protected in various legal ways from taking big financial "hits" when a legal action is brought. They can cut corners and their costs, injuring patients and have nothing of significance happen to them as a result. Whether nonprofit HMO or for-profit managed care, as many of them are, their cost-cutting results in what could normally be considered outright criminal negligence, yet there is little legal recourse for the public.

Even though Kaiser HMO is nonprofit, the physicians' group, Kaiser Permanente is for-profit, and that explains a lot. When you know how profit is distributed, then you will understand more about Kaiser physicians. Charles Phillips, MD explains the 50-50 split at Kaiser:

> "***at Kaiser Permanente ... the physicians get 50% of every dollar that is collected from patients and government and not spent. This is really the split of "profits" though***

> ***Kaiser uses every possible word to cover-up the use of such a word - net revenue, operating margin, etc. .... The creation of profits for the physicians is the single most import principle at the mammoth HMO and guides every decision.*** [Emphasis added]

Kaiser has been involved in a lot of controversy that end up in arbitration. Patients report malpractice, abuse, wrongful deaths. You may recall that a lot of health care businesses now have "mandatory arbitration clauses" that say, "if there is a dispute that needs legal resolution" arbitration is the only remedy. It can't be litigated in court. Patients or families that seek legal recourse have been seriously damaged in one way or another. They want an honest court or arbitration process, because they seek just decisions.

Mandatory arbitration is encouraged in many industries as the courts are stretched already with too many cases to hear in a timely manner. When a case involves serious bodily harm or death in a health care setting, people really expect a just assessment of the facts and a just decision. The public expects fair arbitrations if it must seek justice, but the public is not aware of an important aspect of the Kaiser-physician contractual relationship.

When a physician comes on board at Kaiser Permanente, they also sign The "Kaiser Permanente Retirement Plan for Physicians Serving Members of Kaiser Foundation Health Plan." The Plan contains some clauses that have a tremendous effect on what Kaiser physicians do, say or don't say, to a patient, to a family, to a court or arbitration committee.

Kaiser physicians don't usually have a separate practice or income to fall back upon if things go wrong. They commit to the Kaiser way and after two years, they get vested into the for-profit corporation, Kaiser Permanente. They enjoy many benefits as "Kaiserized" physicians, including very nice retirement fund arrangements and other financial incentives. Their future standard of living depends upon remaining in good standing with Kaiser. Messing that up is the last thing they want to do.

Now, just imagine you are the physician. The retirement plan contract tells you that so long as you provide services as a physician and refrain from any "improper activity" you'll get regular payments through your retirement years. And that's important for anyone on a pension.

The "Disqualification" section of the contract explains that "improper activities" occur if:

> [Clause] G. 6(a) "The Participant [the physician] performs any act or engages in any activity, the principal purpose of which is to damage or discredit Health Plan or physicians serving Members [the patients], or to restrict Health Plan in the legitimate operation and expansion of the hospital and medical service plans it now offers or may hereafter offer"

"Any" act that "discredits" the "Health Plan" or "physicians serving Members." So, if a physician were to speak the truth about another physician (or other Kaiser staff member) who had made some mistakes or done something that was not up to the standards of medical practice, the physician who spoke the truth could lose his entire retirement income forever.

It's not up to him to decide what is "inappropriate" or what "discredits" Kaiser. It's up to the "Administrative Committee" appointed by the Health Plan. If they decide that a physician has "discredited" Kaiser, for any reason, that's it. Entire retirement income erased, with all the repercussions that has on his future and his family. You can imagine the absolute fear physicians have of falling into disfavor with the "Administrative Committee." They're sure to "toe the line" and be extremely cautious in anything they say or do.

Therefore, even if it is the truth, a Kaiser physician cannot speak the truth without risking everything. When a patient or patient's family goes into arbitration and a Kaiser physician is called to testify, you can count on it that he or she is not going to say anything negative about Kaiser. It doesn't mean they are going to lie outright. Maybe they'll pull the "I can't remember routine" or give some vague responses that are as positive as they can under the circumstances.

This type of "disqualification clause" which basically delists the physician from the HMO and punishes the physician in many ways is commonly used in other managed care organizations.

> [Clause] G. 3: "The disqualification of a Participant [physician] cancels, forfeits and forever terminates any and every interest and claim of Interest the Participant had in or under the Plan at the time of Disqualification. On and after Disqualification of a Participant, no Retirement Income or other payment of any kind is owed to the Participant or his or her Joint retirement Income Recipient or Beneficiary ...."

"Retaliation" or "Disqualification?" Only the courts can decide. If a Kaiser physician tries to improve things by speaking out, the contract says you can be disqualified from the retirement plan or worse. Kaiser has done just that to many physicians and other staff. What happens depends upon the circumstances. The income faucet is

shut off forever!

Thinking about that is like a physician having Damocles' sword hanging over his head by a thread. The only thing he can think about is that sword, ... that if he says the wrong thing, does the wrong thing, he is going to "get it" (get "disqualified" from the Retirement plan) and all those he loves are also going to be seriously hurt financially.

It would hurt the physician's children's chances of paying for college, the wife or husband might seek a divorce, he might have a hard time getting hired elsewhere if his reputation is damaged in the process. Humiliated, shamed, and unable to do anything to stop it. The physician has worked too hard, for too many years to let that happen. He's not going to say anything negative about Kaiser, that's for sure!

Only a very few have stood up to Kaiser knowing they would risk everything in so doing. The case of Michael Martinucci, MD, a dedicated patient advocate who was terminated after he made efforts to improve the quality of Kaiser services, shows how Kaiser treats those who try to assure quality patient care (possibly reducing profits):

> "Doctor stands up for patient care, wins case in the Courts," By Amy Lynn Sorrel, AMNews staff Feb. 2, 2009.
>
> The fear of retaliation often looms large for physicians wanting to speak out about subpar patient care. California radiologist Michael Martinucci, MD, said that fear was realized when he was fired

from a Kaiser Permanente group after trying to make improvements at one of its radiology facilities.

He knew that proving his case would be no easy task. But his legal battle paid off when a jury in December 2008 levied an $11.4 million verdict against Kaiser, $7.5 million of which came in punitive damages.

"When you see people constantly disregarding good quality patient care, you get to a level where it's just no longer acceptable," Dr. Martinucci said. "I could have let the retribution go, but then you say to yourself, that's not what I got into medicine for."

".... Jurors ... concluded that Dr. Martinucci's advocacy efforts were a "motivating factor" in Kaiser's decision to terminate him and that hospital leaders acted with "ill will."

Another physician, Dean Kevin Lurie, M.D. filed suit against Kaiser Permanente in 2006:

"Dr. Lurie repeatedly attempted to raise the quality of care standards within the Mid-Atlantic Kaiser Permanente system. In retaliation, he was accused of padding his time records. A[n] age discrimination suit has followed his sudden termination by the Permanente with charges of padding his time. He had served the Kaiser patient population for nearly 17 years. Since leaving the Permanente Group, said Group has consistently interfered with Dr. Lurie's private practice in an attempt of further employment retaliation. Kaiser has severed his pension plan."

What if the HMO harmed you or your loved one, or if they deny treatment, what can you do? These HMOs have mandatory arbitration clauses, meaning you don't sue in a district court; you take your complaint to an arbitration hearing with one arbitrator who hears all evidence and rules on your complaint. In the "Los Angeles Lawyer Journal," Dec 2004, Attorney Michael Brown states that arbitrators sometimes do not reveal that they have major conflicts of interest in cases before them, and when they don't reveal these conflicts, it constitutes fraud and destroys the fabric of the justice system. In the case of a treatment denial or injury, it may mean you or your family don't get the medical treatment you need, even though you pay your premiums every month. It may mean you don't get any financial compensation for injuries, even if your claim is valid.

We could say that when Congress legalized the HMOs during the Nixon-Ford era, and passed the E.R.I.S.A. laws, they created the health care industry's way to achieve legal immunity from much wrongdoing while maximizing its profit. It's been downhill ever since. Millions of patients have been harmed in so many ways. Vickie Travis has gathered much evidence about the Kaiser Health Plan and Kaiser Permanente at the Kaiserpapers.org website.

Kaiser: A Model HMO?

Even if you don't have a Kaiser HMO plan in your area, you should know that Kaiser is an HMO of HMOs. It's not only big. It's well-connected at the state level, especially in California, and some of its administrators have visited the White House. Kaiser's health care empire resulted from our entry into World War II:

The Japanese attack on Pearl Harbor resulted in a need to build a new Pacific Fleet, and Henry Kaiser liked a challenge and offered speed of building; the workers poured into the Kaiser shipyards and had the single choice of Kaiser clinics, the latter built by the Navy and given as a gift to Kaiser at the end of the war.

So, the connection between Kaiser and the federal government is more than "strong." We know they're being looked at to determine what they do that might be implemented under the health care reform law, just as other big HMOs and private insurance companies are consulted to provide input.

On March 4, 2009, NBC report[ed] that Kaiser Permanente's: "Docs on the clock could be key to health reform." "many experts agree that Kaiser Permanente, a giant group practice system where 14,000 salaried physicians care for 8.6 million Americans, presents a possible model for health care reform." [from NBC's Robert Bazell reports - MSNBC video] On June 21, 2010, "George Halvorson, CEO of Kaiser Permanente, the nation's largest nonprofit health plan, discusse[d] health care with CNBC." [MSNBC video: "Revolutionizing Health Care"]

The ways Kaiser streamlines treatment in efforts to be more "efficient," i.e., cut services for patients and bring in more revenue for the Kaiser Permanente group) are reported to be very creative. Again, the public sometimes doesn't know that very creative methods used may be contrary to the standards and could be unsafe.

And the Permanente physicians of Kaiser Permanente are much more than - salaried. - They get $.50 of every $1 created in - excess income - each year, e.g. in 2007 $1 billion of the $2 billion. This is on top of a good salary with great benefits. The whole - non-profit - or - not for profit - label is a trick on a gullible public. And $45 million a year in "Thrive Ads" keeps replacing Kaiser patients as they leave the HMO each year - many through quick hospice experiences.

Dr. Phillips Reports that Kaiser Misinforms the Public About "Normal" Human Lab Values to Limit Treatment

I'll explain one "clever" and creative method reportedly used by Kaiser to make itself a lot of money by saving on treatments that would be provided by others elsewhere. You know that medical scientists all around the world have established what are called "standard lab values" for human physiology, things like "serum creatinine," "blood urea nitrogen" or the normal number of red blood cells, white blood cells, how much hemoglobin that should be found in a complete blood count, and so on.

These lab values are taught in all the medical schools around the world. Because the human physiology, though it varies from person to person, is pretty much the same all around the world, the ranges for these values don't vary from health system to health system, or from one doctor's office to another; they are scientific fact. They are used universally by all hospitals and physicians. Right. Of course!

Well, if you think that you'd be wrong. Use your imagination with an eye on economics and profit-making. What would happen if the docs didn't use the standard ranges of values, but they fudged the ranges? That could make for some serious repercussions in the management of patients and what types of treatments those patients would get or not get.

For example, let's think about white blood cell counts. If you widened the scientifically-accepted "normal" range, patients who came in with abnormal white blood cell differential counts might now be considered still "normal," at least with Kaiser lab value ranges.

Charles Phillips, MD (former Kaiser physician) has revealed that Kaiser has arbitrarily changed what is considered normal human lab value ranges to be used in patient diagnostic lab work!

Vickie Travis states that Dr. Phillips' report, "Manipulation of HMO Medical Testing" [prepared in 2003] was prepared at the request of Senator Chuck Grassley, via his assistant Emelia DeSanto, so we know that the Congress knows all about these HMO practices! Yet, the Congress does almost nothing to outlaw such medical deception with its potential for serious harm!

> Dr. Phillips has worked with Senator Grassley's Finance Committee regarding HMOs that withhold clinical testing in 2003 and Lumetra deficiencies in 2008. He was a medical consultant and

reviewer for *USA TODAY* first on "pill splitting" as a prime source in 2002 and later on "Medical Record tampering after bad outcome" in 2008. Within two days after he was quoted in the medical tampering article that appeared on April 29, 2008, Patients often struggle for access to medical records - USATODAY.com, he was advised by two hospitals that his clinical privileges were in imminent jeopardy.

This retaliation was also reported later within ["Physicians, Legal Experts, & Advocates to Testify Before Congress" May 14, 2008]

Dr. Phillips told me that after the hospitals threatened him with retaliation for working free with the *USA TODAY*, they backed down when he asked them to consider what kind of publicity they would get nationally if they acted against him in retaliation. Now back to the Manipulation of lab testing.

You may be tempted to quickly skim over this section because it is not immediately apparent what is going on or why it is important. Please carefully think about the details of this section, as what Dr. Phillips has revealed is one of the most sinister, deceptive and lethal tricks "in the book" to manipulate patients and assure an early death. It could mean you or your loved one dying when you could have lived had you been given proper diagnostic testing and subsequent treatment.

Withholding of clinical testing is something the public may suspect, but may not know about with certainty. How would a lay person know they should have a certain test or not? They are not medically-trained. In general, the people using the HMO have no idea they are being denied diagnostic testing, and the media is not educating the public about how their own health care providers can betray them in the very worst way, leading to deaths that could have been avoided with proper medical care. Dr. Phillips mentions he found the problem in many levels of testing: complete blood counts, kidney function testing, Lyme Disease screening, cardiac stress tests, etc. For example in complete blood counts (one of the most common tests in medicine):

"White blood counts - The value of the normal white blood count should not shift in any particular hundred years. But Kaiser alters what is normal. See table below.

	KP – 1995 - SC	KP – 1998 - SC	KP –2001-SC	KP – 1997 -NC
WBC	4,800 -10,800	4,000 11,000	4,000 11,000	3.500 12,500

Kaiser Permanente Blood Count Chart

This table shows that in 1995 Kaiser physicians in Southern California were using the normal range of white blood count to be 4,800 to 10,800 (Exhibit 7a).

LABORATORY
OUTPATIENT SUMMARY REPORT
(CHART COPY

RESULTS AS OF: 11-DEC-95

HEMATOLOGY HEM

ACC #: 042173679-5 COLLECTED: 07-DEC-95 09:18 LAB:151 ORDERING MD: ENGEL, GLORIA R. MD

PROCEDURE		RESULT ABNORMAL	RESULT *NORMAL*	REF-RANGE	UNITS
8501500 CBC W/PLATELETS (CMPLT BLD CT)					
WBC	:		7.0	4.8-10.8	thou/mcl
RBC	:		4.95	4.7-6.1	mil/mcl
HGB	:		16.3	14.0-18.0	g/dl
HCT	:		48.3	42-52	%
MCV	:			80-94	fl
MCH	:	HI 32.9		27-31	pg/cell
MCHC	:		33.7	33-37	g/dl
RDW	:		12.7	11.5-14.5	%
PLT CT	:	HI 406		130-400	thou/mcl
MPV	:	LO 6.7		7.4-10.4	fl
LYMPH%	:		30.2	20.5-51.1	%
MONO%	:		8.1	1.7-9.3	%
GRAN%	:		56.8	42.2-75.2	%
EOS%	:		3.5	0.0-10.0	%
BASO%	:	HI 1.4		0.0-0.8	%

SEROLOGY SERO

ACC #: 046708414-8 COLLECTED: 07-DEC-95 09:28 LAB:956 ORDERING MD: ENGEL, GLORIA R. MD

PROCEDURE		RESULT ABNORMAL	RESULT *NORMAL*	REF-RANGE	UNITS
9855300 HUMAN IMMUNDEF. VIRUS ANTIBODY					
HIV-1 ANTIBODY	:		NEG		

CR-CRITICAL VALUE LO-ABNORMAL LOW HI-ABNORMAL HIGH

DIR, REG. LAB: MICHAEL O'CONNELL, MD
956(SM) - 11668 SHERMAN WAY, NORTH HOLLYWOOD, CA 91605
DIR, FONTANA: D. RANKIN, MD
151(FN) - 9961 SIERRA AVENUE, FONTANA, CA 92335

Then, by 1998, Kaiser physicians in Southern California were using the normal 4,000-11,000 (Exhibit 7b).

LABORATORY
OUTPATIENT SUMMARY REPORT
CHART COPY

RESULTS AS OF: 18-NOV-1998

HEMATOLOGY

ACC #: 075183015-2 COLLECTED: 16-NOV-98 09:33 LAB:157 ORDERING MD: KUMANOTO, GRACE MD

PROCEDURE	RESULT ABNORMAL	RESULT *NORMAL*	REF-RANGE UNITS
8501500 CBC W/PLATELETS (CMPLT BLD CT)			
WBC		8.0	4.0-11.0 THOU/MCL
RBC		4.80	4.7-6.1 MIL/MCL
HGB		16.4	14.0-18.0 G/DL
HCT		46.4	42-52 %
MCV			80-94 FL
MCH		34.1	27-35 PG/CELL
MCHC		35.3	32-37 G/DL
RDW		12.7	11.5-14.5 %
PLATELET		355	130-400 THOU/MCL
MPV	LO 6.7		7.4-10.4 FL
LYMPH %		25.5	20-51 %
MONO %		6.4	1-12 %
GRAN %		68.1	42-75 %

CR-CRITICAL VALUE LO-ABNORMAL LOW HI-ABNORMAL HIGH * -ABNORMAL

DIR- HIGH DESERT: DONALD R RANKIN, MD.
157(FV) - 14011 PARK AVENUE, VICTORVILLE, CA. 92392

SOUTHERN CALIFORNIA PERMANENTE MEDICAL GROUP
OUTPATIENT SUMMARY
(CHART COPY) FONTANA CHSP

PAGE
HEM-HEM

The same Southern California Permanente Group kept this white blood cell count definition into 2001 (Exhibit 7c),

LABORATORY
INPATIENT FINAL SUMMARY REPORT
OUTPATIENT CHART COPY

[redacted]

ADMITTED: 12-FEB-2001 11:15
DISCHARGED: 26-FEB-2001 12:00

[redacted] 54 SEX: M

DR. LIM, DAVID B.

COMMON LAB TESTS

		LAST RESULT	COLLECTED DATE/TIME	REQUESTOR
CBC W/PLATELETS (CMPLT BLD CT)				
1.WBC	4.8-11.0thou/mcL(RI)	H 17.7	25-FEB 03:00	DR.LIM, DAVID B.
2.RBC	4.7-6.1mil/mcL(RI)	5.01		
3.HB	14.0-18.0g/dL(RI)	16.2		
4.HEMATOCRIT	42-52%(RI)	47.8		
5.MCV	80-94fl(RI)	H 95.3		
6.MCH	27-35pg/cell(RI)	32.4		
7.MCHC	32-37g/dL(RI)	34.0		
8.RDW	11.5-14.5%(RI)	13.6		
9.PLT COUNT	130-400thou/mcL(RI)	149		
10.MPV	7.4-10.4fl(RI)	7.7		
11.LYMPHS	20-51%(RI)	L 8.4		
12.MONOS	1-12%(RI)	6.1		
13.GRAN	42-75%(RI)	H 85.1		
[redacted]S	0-10%(RI)	0.3		
[redacted]SO	0-3%(RI)	0.1		

COMMENTS:
10.DIFFERENTIAL WILL FOLLOW ON CBC ORDERS IF
NOT INCLUDED

		LAST RESULT	COLLECTED DATE/TIME	REQUESTOR
1.SODIUM	135-146mmeq/L(RI)	L 134	25-FEB 03:00	DR.LIM, DAVID B.
2.POTASSIUM	3.6-5.0mmeq/L(RI)	4.3		
3.CHLORIDE	101-111mmeq/L(RI)	L 100		
4.CO2	21-33mmeq/L(RI)	29		
5.BUN	7-18mg/dL(RI)	H 27		
6.CREAT-SER	0.7-1.3mg/dl(RI)	0.9		

C-CRITICAL VALUE L-ABNORMAL LOW H-ABNORMAL HIGH - -ABNORMAL

DIR: RIVERSIDE LAB: DONG QUACH, MD
501(RI) - 10800 MAGNOLIA AVE, RIVERSIDE, CA 92505

[redacted]

SOUTHERN CALIFORNIA PERMANENTE MEDICAL GROUP
INPATIENT FINAL SUMMARY REPORT PAGE 1
OUTPATIENT CHART COPY

[redacted]

and presumably also at this time. This would mean that on the low side, white blood cell depression from a chemotherapeutic agent would not be noticed as early as before. And on the high side, bacterial infection would not be caught as early.

But the Permanente Medical Group, Inc. (TMPG) *in Northern California* got even more aggressive and changed the normal value of the white blood count from 3,500 to 12,500 ... a spread meant to discover less illness.

KAISER PERMANENTE

The Permanente Medical Group, Inc.

Ordering Prov: MORAN, G K MD FRS/GYN
Copy To:
Performing Lab: FRS

[redacted]

IMMUNOASSAY CHEMISTRY

Collect Date: 05/07/97
Day of Week: WED
Collect Time: 1713

		UNITS	REFERENCE
Endocrine Functions			
FSH	5	mIU/mL	
(01/27/97 -- Current)			
Reference Ranges for FSH:			
MALE:	3 - 19 mIU/mL		
FEMALE:	1 - 25 mIU/mL		
Post menopausal:	>26 mIU/mL		

Please note new Reference Ranges for FSH effective January 27, 1997.

HEMATOLOGY

05/07/97 1713

Automated Blood Count			REFERENCE	Automated Differential			REFERENCE
WBC	8.6	K/uL	[3.5-12.5]	Segs/Grans	67	%	[50-70]
RBC	3.20*	M/uL	[3.60-5.10]	Lymphocytes	24	%	[20-50]
Hemoglobin	9.0C	g/dL	[11.0-15.0]	Monocytes	8	%	[0-11]
Hematocrit	28.6C	%	[34.0-46.0]	Eosinophils	1	%	[0-4]
MCV	89*	fL	[80-100]	Basophils	1	%	[0-2]
Platelet	308	K/uL	[140-400]				
Diff Method	INDX RVW						
RBC/WBC Morphology							
Plt Estimate	ADEQUATE						
Plt Morphology	NORMAL						
Anisocytosis	2+						
Polychromasia	1+						
Hypochromasia	3+						
Macrocytes	1+						
Microcytes	3+						
Ovalocytes	1+						
Teardrop Cells	1+						

C&C Order Comm: Critical results, phoned/faxed to DR. BARTLETT ext 5300 time 05/07/97 18:31 by FRSDFF.
Test repeated and confirmed.
Slide reviewed on 5/8/97 by Pathologist.

Legend
* = Low, * = High, C = Critical, * = Abnormal

Continued...

.... Fewer low and high white blood cell changes from normal would be caught by this method.

Meanwhile, other hospitals outside of Kaiser, like Victor Valley in California, have chosen not to alter human physiology and to continue to use the 4,800 to 10,800 range. .... This is more ethical.

[from the testimony of Charles Phillips, MD see "Physicians, Legal Experts, & Advocates to Testify Before Congress" May 14, 2008]

We have also had reports of completely falsified or nonexistent lab results being used (saving the costs of actually running the tests). Another method of fraud used is the writing of renewable prescriptions with several refills so the patient does not need to see the physician, but recording "visits" that never occurred and billing for them!

So, patients in the Northern California branch of the Kaiser HMO (The Permanente Medical Group or TPMG - the largest unit) might be told, "well, you're blood count is still in the normal range when it's not! A conscientious physician might say, "but it's at the high end; we're going to keep a close watch on that and re-evaluate at your next year's appointment." Such concerns in an HMO are rare.

Well, white blood cell count differentials can tell a physician a lot. They can alert the physician to problems the

patient may have with certain diseases, even leukemia or cancer. Let's say the patient does have leukemia for example, treatable leukemia. If the laboratory range is wider than accepted medical ranges, the patient is not immediately started on chemotherapy, expensive chemotherapy. They wait. Things get worse. After a year, the patient obviously has something terribly wrong and then they find what? Leukemia! But it's too far gone to treat. "Sorry, I have bad news for you. Your wife has untreatable leukemia and has six months left to live." "We're recommending hospice."

If the patient got treatment a year earlier, expensive treatment to provide, they may have lived. Now they die, the patient never knows that they could have been treated earlier and the family never knows they were deceived. And the HMO reduces costs, increasing profit for the physicians group!

But what does the U.S. National Library of Medicine, U.S. Department of Health and Human Services, and the National Institutes of Health consider normal lab values for white blood cell counts? "4,500-10,000 white blood cells per microliter (mcL)."

That's a much smaller range from low to high than what Dr. Phillips reports Kaiser uses! It is only a matter of time before false science is used elsewhere by managed care organizations or the federal government. When you can't even trust the "normal" ranges for lab values printed on your diagnostic tests, you can't trust the system at all!

Did Congress become wary of Kaiser in light of this 2 inch thick, 2003 report by Dr. Phillips? No. In fact, Kaiser's Associate Executive Director for the Permanente Medical Group of Northern California, Sharon Levine, MD, is on the board that will run the new U.S. health system's Patient-Centered Outcomes Research Institute (PCORI). She is also on the California Medical Board in what Dr. Phillips calls the Kaiser-fornia; she is among the top ten MDs in Kaiser.

As we have seen, the Institute will conduct comparative effectiveness research (CER); They will decide what treatments or interventions shall or shall not be provided to you, me, your father, mother, grandfather, grandmother, relatives, friends and other citizens of the United States! This is just one of many reasons how we know that the federally-mandated health care system is being "Kaiserized" and will ration health "care."

Kaiser may even convince them to change normal lab values to either create or erase diseases as fits physician retirement profits Dr. Phillips warns. Finally, Dr. Phillips has studied Kaiser into its hospice tactics and has warned people about the "ABC Kit" that can sedate patients quickly to death - Tuesday being a convenient day for the system. Occasionally, the Phenobarbital suppositories - meant for seizures - can be introduced so as to give the high morphine dose lethal effect. He also reported on one patient who had two morphine prescriptions only one of which was being charted.

CNN reports that Kaiser has admitted rigging "its electronic medical records system to conceal abnormal lab test warnings." The obvious result of not getting notice of abnormal lab tests is the failure by the HMO to treat the patient in a timely manner, the likelihood that the patient's health declines and becomes untreatable and death. And the lab test ranges Kaiser uses are sometimes distorted already, as we've seen above. Sounds to me like a conspiracy to make sure the patient does not get treated and does die, maximizing profits.

Linda Peeno, MD - On May 30, 1996, Linda Peeno, MD provided testimony to a subcommittee on Health and Environment of the U.S. House of Representatives entitled, "Managed Care Ethics: the Close View." She said:

> "As a former medical director, I have done the dirty work of managed care. This prompted me to leave and work aggressively for health care ethics. Because I know how the "system" works, I am best able to identify its ethical transgressions and suggest corrections."
>
> "Health care is a special category of business in that every decision, whether clinical or economic, has an ethical component. The ethical issues for "managed care" fall into four major categories of concern: professional, medical, business, and social. Some of the more important areas for attention include: the lack of professional code of ethics for physician executives; interference with the principles of informed consent and patient autonomy; violation of consumer rights; and social maleficence in obstruction to access and delivery."
>
> "I contend that "managed care," as we currently know it, is inherently unethical in its organization and operation. Furthermore, I maintain that we have an industry which can exist only through flagrant ethical violations against individuals and the public. Based on my experience, a health plan's resistance to ethical correctives will be proportionate to its reliance on ethical transgressions for its "success." We must not sanction their unethical practices at the expense of individual rights and public good will."
>
> "Although the "managed care" industry is quick to defend its actions with high-sounding

justifications, their claims break down under examination. For example, can they really support the argument that the effects of "managed care" are necessary for the "good of society." What does this mean? Who should decide this? Can this be appropriately determined by the entity who stands to benefit the most from an economic definition of this "good?"

"The systemic ethical problems in managed care require urgent correction in several areas: the monitoring of denials of care; the elimination of certain contracting arrangements with physicians; the requirement for full disclosures of financial arrangements, cost-cutting strategies, and consumer information; the development of open and reported grievance procedures; and the mandate of ethical guides and processes. How could the industry object? After all, this is just a way for "managed care" to apply its own processes of "quality management" and "outcome analysis" to itself?"

"Nothing less than the life and well-being of our society depends upon this. We have gone too far under our current system called "managed care." How much more harm and death must occur before we have the courage to do something about it?"

When patients are harmed due to managed care treatment denials, they can be sent to hospice agencies with the line, "there is nothing we can do for you, but you may wish to consider hospice." Many doctors who are "in-network" with an HMO/managed care company are given huge financial incentives to not disclose all medical options available to patients so that the average cost per patient in their practice is reduced, and consequently the cost to the HMO/managed care organization is reduced, maximizing revenue.

X - The Federal Government's Approach to Hastening Death

There are many ways the federal government is encouraging the hastening of death, as outrageous as that may sound to some. We've discussed some of that. The federal government has done nothing about the reports from thousands of families coming in to the Congressmen, to the President, the various agencies entrusted with enforcing the law in the U.S. Justice Department. When imposed deaths or "medical killings" are reported, a complete run-around is given to the families who complain. I've heard from families that have literally spent years trying to get someone in government to listen. Yes, I know, many will say, "this is not believable," if it was really happening, the police would act. That's exactly the problem; the police do not act, universally. The district attorneys don't act. The state attorneys general do not act. The U.S. Attorney General does not act. The U.S. Drug Enforcement Agency does not act. I've spoken to some of the agents at the D.E.A. who admit they don't get involved. It was clear to me that they either don't want to get involved or have been told by superiors not to get involved.

In other words, the "fix" is in, the officials in government know what's going on, but the public is being kept in the dark. Hidden behind the veil of secrecy created by HIPAA's Privacy Rule, anyone can be killed in a health care setting and the police will not get involved. Of course, if there's some psycho-serial killer going around killing people in a hospital when it's not "approved" by management at the facility, and if it causes embarrassment or threat of a lawsuit (loss of dollars) for the hospital or other facility, then the police will be brought in and the psycho-serial killer nurse (usually) will be charged and prosecuted.

Some of the more famous cases include Charles Cullen, RN, a "N.J. Nurse Sentenced [in 2006] to Life for

Other prominent cases include

> "March 1984: Nurse Robert Diaz [was] convicted of killing 12 elderly patients with lethal doses of a heart drug in March and April 1981."
>
> "August, November 1987: Donald Harvey, former nurse's aide, pleaded guilty to at least 34 murders in Ohio and Kentucky."
>
> ["Hospitals failed to report nurse's spotty background" December 2003]

But for every psycho serial-killer out there like these, there are literally thousands of physicians and nurses who may use subtle ways of *encouraging* death sooner rather than later. It's common practice. And they get away with it. The "slow code" used on the elderly in nursing homes or hospitals is not the only way to assure someone dies.

The federal government saves billions when many patients go into hospice all across the country and die sooner rather than later (had they gone into the acute care hospital and been treated). And it is appropriate at a certain point to let go and allow a natural death, but the point where staff give up is arriving earlier and earlier, to the dismay of many patients and families. Sometimes, it can be as simple as intentionally not providing rehabilitation after a minor stroke or not prescribing the appropriate common medication or dosage to effectively control high blood pressure or manage a heart condition. When proper treatment is not provided, the patient ends up in the hospital, in hospice, or dies outright much sooner than they would have.

I've seen for myself (and heard of many cases where) disabled patients are given relatively weak antibiotics for very serious infections without testing for effectiveness of the medication ("culture and sensitivity" tests). Yet, had the patient been a non-disabled young patient, they would have instantly been placed into the hospital, given more effective intravenous antibiotic therapy and, of course, given the tests to determine what antibiotic would be effective. It is clear that the physicians have different standards as to how they provide services to the disabled and elderly, and if the disabled or elderly die sooner, the physicians may be pleased. It is often a family member who, year after year, remains the only patient advocate standing in the way of the disabled or elderly patient's manipulated, premature death.

There is very little difference between passive euthanasia (where a needed treatment or medication is withheld to make a patient die) and intentional rationing that the bureaucrats know will result in death. Rationing is the withholding of treatments or medications. Going even further, in the United Kingdom, the government is providing the school children with more information about euthanasia and assisted-suicide:

> "School children as young as 14 are being taught about euthanasia and assisted-suicide in a new educational video featuring notorious euthanasia promoter Dr. Philip Nitschke, known by many as 'Dr. Death.'
>
> In the 20-minute film, produced by Classroom Video, Nitschke, the Australian founder and director of the euthanasia group 'Exit International,' demonstrates the use of his suicide machine that dispenses lethal injections."
>
> ["UK Marketing Assisted-Suicide Educational Videos for 14-year-olds" by Rebecca Millette Apr 20, 2011 LifeSiteNews.com)

The United Kingdom's National Health Service, a socialized medical system, is a window into our future, should our nation's health care reform law be implemented completely. It is not difficult to see that the governments with socialized medical systems promise health "care," but increasingly promote euthanasia and assisted-suicide to limit expenditures. It is likely school children in the United States will be fed similar "educational" films promoting euthanasia and assisted-suicide as a utilitarian "rational option" at the end-of-life.

When we look to government to provide health care (as is the case for Medicare, Medicaid and with health care reform), we relinquish control to the government. When citizens lose control over their own health care options, they lose freedoms and ultimately the right to their own life. Ken Skuba asks:

> "what happens under a socialized health care system that places higher value on budgets than human life.
>
> Rationing, delays in treatment, and abuse of power (can we say murder?) are the logical outcome. In Belgium, socialized medicine and legalized euthanasia have emboldened some health care professionals to become medical vigilantes.

> A study found that a high proportion of deaths classified as euthanasia in Belgium involved patients who did not ask for their lives to be ended. .... ***Containing costs by euthanizing patients, legal or not, is tempting in a state-run, taxpayer-funded system***."
>
> ["Euthanasia -- a Product of Government-run Health Care" by Ken Skuba July 15, 2010 StandardSpeaker.com

Any rationing of health care done by a federal health system will have a certain and huge impact on the longevity of many patients. Many will simply die if they don't get treatment or an organ transplant. When the federal government promotes hospice, rogue hospice, they know that some, even many, patients will die sooner. Rationing of health care will be the biggest boost to the hospice industry ever seen. Their growth will be exponential and utilization of hospice will move as it already has, steadily upwards. Now about 40%, it will approach 100% in the years to come!

Physician Orders Limiting Life-Sustaining Treatments to Hasten Death

Well, I've mentioned these before, but let's get into the details. The "Physician Orders for Life-Sustaining Treatment" ("P.O.L.S.T.") forms are being implemented in many states around the country and will likely soon be made available in every state. P.O.L.S.T. is considered a "paradigm" by those promoting them. The "paradigm" is the model way of thinking about and implementing orders that limit life-sustaining treatments at the end-of-life. And that is the key thing about these forms: they are *medical* orders, not "a patient's wishes," and a physician is supposed to fill them out after considering the patient's wishes.

As I've titled this section, they are physician orders *limiting* life-sustaining treatments. But the idea that they *limit* life-sustaining treatments is not emphasized in the name given or the discussion with the public. The physician fills out the form which becomes part of the medical chart, just like a DNR form which is prominently noted in a medical chart. It is within the physician's power to write in whatever he wants in a P.O.L.S.T. form.

It reminds me of a call I got about seven years ago about a hospital registered nurse in a Northwestern state who noticed a physician writing "Do Not Resuscitate" "DNR" on dozens and dozens of charts all at one sitting. She knew these patients on her wing of the hospital and knew they were not dying and were certainly capable of recovering. She knew they had *not* requested to be placed on DNR status. When she went up to the physician to ask him what he was doing, he became infuriated and yelled at her, trying to intimidate her.

When she went up the chain of command, her complaints were ignored by the hospital and she was blackballed as a nurse and left the field. It's also very safe to say that this is not the only case where physicians have written "DNR" on patient charts without the patient's approval or request.

There is a huge opportunity for physicians who have an agenda to misuse the tremendous power a P.O.L.S.T. form gives them. Unlike years ago when more physicians respected the sanctity of life, today a large percentage of physicians are focused on "quality of life." It sounds reasonable, but the consequences can be lethal.

You see, even though the public has heard about DNR forms, Advanced Directives, Power of Attorney forms and others, they are often not actually created by many patients. People put off having these documents made. People don't like to sign away their rights and they don't like to think about their own decline and death. So, those interested in limiting treatments to the elderly, disabled and terminally ill created the P.O.L.S.T. forms so that physicians can accomplish the same thing anyway, without the patient's signature! It will be quite easy for the physicians around the country to fill them out and have almost universal utilization of these forms.

The P.O.L.S.T. paradigm incorporates the shared values of the health care community focusing on quality of life and the need to limit care at a certain point in disease progression. Although there are spaces and boxes to indicate a patient wants "full treatment," the thrust of the entire paradigm is limiting or eliminating treatment entirely at some point. It is specifically promoted to be used for patients who have at least one of the following

"medical" conditions: they are "close to death, permanently unconscious, [or have] advanced progressive illness, [or] extraordinary suffering." These are exactly the same types of conditions where the pro-euthanasia groups want the ability to impose death through direct euthanasia, assisted-suicide or Third Way killing.

Take note that these criteria are quite subjective and could be interpreted differently by different physicians, or patients or families. The P.O.L.S.T. paradigm considers "extraordinary suffering" one of the "medical" conditions, yet "extraordinary" suffering is not defined in the "guidance" provided. However, the P.O.L.S.T. website guidance clarifies when P.O.L.S.T. should be implemented with persons who have disabilities.

The P.O.L.S.T. website directs that, especially with patients who have some form of cognitive impairment, the physician should ask these questions:

> "Does the person have a disease process (not just their stable disability) that is terminal; Is the person experiencing a significant decline in health (such as frequent aspiration pneumonias); Is the person in a palliative care or hospice program; and/or Has this person's level of functioning become severely impaired as a result of a deteriorating health condition when intervention will not significantly impact the process of decline?"

This is a sample P.O.L.S.T. form from Oregon:

Page One:

HIPAA PERMITS DISCLOSURE TO HEALTH CARE PROFESSIONALS & ELECTRONIC REGISTRY AS NECESSARY FOR TREATMENT

Physician Orders
for Life-Sustaining Treatment (POLST)

First follow these orders, then contact physician, NP, or PA. These medical orders are based on the person's **current** medical condition and preferences. Any section not completed does not invalidate the form and implies **full treatment** for that section.

Last Name/ First/ Middle Initial

Address

City / State / Zip

Date of Birth (mm/dd/yyyy) ____ / ____ / ____ | **Last 4 SSN** ☐☐☐☐ | **Gender** ☐ M ☐ F

A *Check One*

CARDIOPULMONARY RESUSCITATION (CPR): **Person has no pulse and is not breathing.**

☐ Attempt Resuscitation/CPR ☐ Do Not Attempt Resuscitation/DNR (Allow Natural Death)

When not in cardiopulmonary arrest, follow orders in **B, C** and **D.**

B *Check One*

MEDICAL INTERVENTIONS: **Person has pulse and/or is breathing.**

☐ **Comfort Measures Only** Use medication by any route, positioning, wound care and other measures to relieve pain and suffering. Use oxygen, suction and manual treatment of airway obstruction as needed for comfort. ***Patient prefers no transfer to hospital for life-sustaining treatment. Transfer if comfort needs cannot be met in current location.***

☐ **Limited Additional Interventions** Includes care described above. Use medical treatment, IV fluids and cardiac monitor as indicated. Do not use intubation, advanced airway interventions, or mechanical ventilation. May consider less invasive airway support (e.g. CPAP, BiPAP). ***Transfer to hospital if indicated. Avoid intensive care.***

☐ **Full Treatment** Includes care described above. Use intubation, advanced airway interventions, mechanical ventilation, and cardioversion as indicated. ***Transfer to hospital if indicated. Includes intensive care.***

Additional Orders: _____

C *Check One*

ANTIBIOTICS

☐ No antibiotics. Use other measures to relieve symptoms.
☐ Determine use or limitation of antibiotics when infection occurs.
☐ Use antibiotics if medically indicated.

Additional Orders: _____

D *Check One*

ARTIFICIALLY ADMINISTERED NUTRITION: **Always offer food by mouth if feasible.**

☐ No artificial nutrition by tube.
☐ Defined trial period of artificial nutrition by tube.
☐ Long-term artificial nutrition by tube.

Additional Orders: _____

E

REASON FOR ORDERS AND SIGNATURES

My signature below indicates to the best of my knowledge that these orders are consistent with the person's **current** medical condition and **preferences** as indicated by **discussion with:**

☐ Patient ☐ Health Care Representative ☐ Surrogate for patient with developmental disabilities or significant mental health condition (Note: Special requirements for completion. See reverse side.)
☐ Parent of Minor ☐ Court-Appointed Guardian
☐ Other _____

Print Primary Care Professional Name	Office Use Only
Print Signing Physician / NP / PA Name and Phone Number ( )	
Physician / NP / PA Signature (mandatory) / Date	

ORIGINAL TO ACCOMPANY PERSON IF TRANSFERRED OR DISCHARGED. SUBMIT COPY TO REGISTRY

and

Page Two:

HIPAA PERMITS DISCLOSURE TO HEALTH CARE PROFESSIONALS & ELECTRONIC REGISTRY AS NECESSARY FOR TREATMENT

Information for Person Named on this Form Person's Name (print) _____

This voluntary form records your preferences for life-sustaining treatment in your **current** state of health. It can be reviewed and updated by your health care professional at any time if your preferences change. If you are unable to make your own health care decisions, the orders should reflect your preferences as best understood by your surrogate.

Signature of Person or Surrogate

Signature	Name (print)	Relationship (write "self" if patient)

Opt Out ☐ **Check box if you do not want this form included in the electronic POLST registry.**

Contact Information

Surrogate (optional)	Relationship	Phone Number	Address

Health Care Professional Preparing Form (optional)	Preparer Title	Phone Number	Date Prepared

PA's Supervising Physician	Phone Number

Directions for Health Care Professionals

Completing POLST

- Should reflect current preferences of persons with advanced illness or frailty. Encourage completion of an Advance Directive.
- Verbal / phone orders are acceptable with follow-up signature by physician/NP/PA in accordance with facility/community policy.
- Use of original form is encouraged. Photocopies, faxes, and electronic registry forms are also legal and valid.
- A person with developmental disabilities or significant mental health condition requires additional consideration before completing the POLST form, refer to *Guidance for Health Care Professionals* at http://www.ohsu.edu/polst/programs/docs/guidance.pdf.

Sending to POLST Registry (Required unless "Opt Out" box is checked)

- For the POLST Registry, the following information on the other side of the form must be completed:
  - Person's full name
  - Date of birth
  - Section A
  - Physician / NP / PA Signature and date signed
- Send a copy of both sides of this POLST form to the POLST Registry.
  - FAX or eFAX: (503) 418-2161 **Date**____/____/____
  - or
  - Mail: Oregon POLST Registry **Date**____/____/____
    Mail Code: CDW-EM
    3181 SW Sam Jackson Park Road
    Portland, OR 97239

Reviewing POLST

This POLST should be reviewed periodically and if:

- The person is transferred from one care setting or care level to another, or
- There is a substantial change in the person's health status, or
- The person's treatment preferences change.

PUT REGISTRY ID STICKER HERE:

Voiding POLST

- A person with capacity, or the valid surrogate of a person without capacity, can void the form and request alternative treatment.
- Draw line through sections A through E and write "VOID" in large letters if POLST is replaced or becomes invalid.
- Send a copy of the voided form to the POLST Registry as above (Required).
- If included in an electronic medical record, follow voiding procedures of facility/community.

ORIGINAL TO ACCOMPANY PERSON IF TRANSFERRED OR DISCHARGED, SUBMIT COPY TO REGISTRY

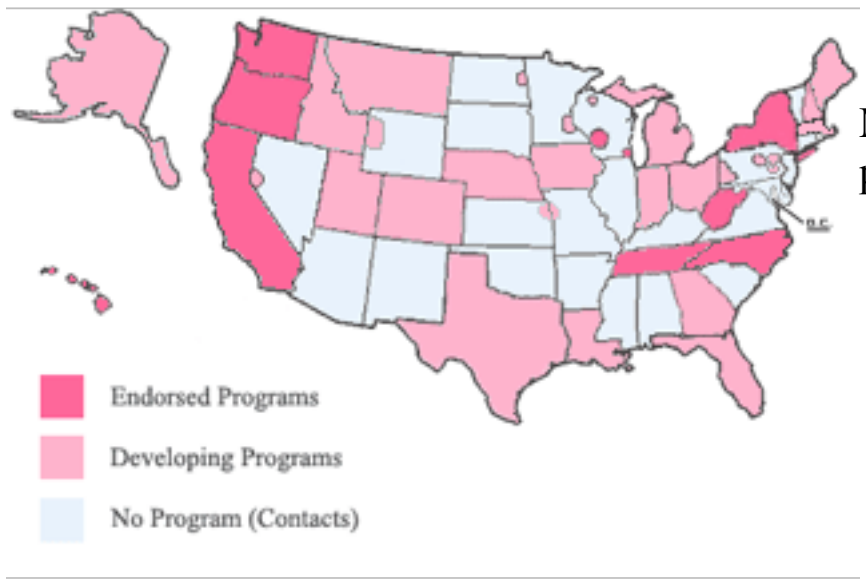
The[National Association of Pro-life Nurses sums up the form]:

> "Sections on the paradigm are three or four (depending on the state) in which the patient can choose his or her desired medical intervention. These areas are 1) CPR, 2) antibiotics, 3) "artificially" administered nutrition, and 4) medical intervention. The medical intervention section is further divided into three choices
>
> 1) "Comfort Measures Only" is self explanatory, but does include the option of transfer to a hospital if suffering cannot be alleviated at home.
>
> 2) "Limited Medical Interventions" may also include IV fluids and antibiotics.
>
> 3) "Full Treatment". Under this section a patient may decide to limit the type of IV meds or the

length of time for effectiveness of treatment.

Elizabeth Wickham, PhD, head of the LifeTree Organization states that:

> "... P.O.L.S.T. is much more likely to LIMIT life-sustaining treatment. The P.O.L.S.T. form becomes part of doctor's orders and is prominently displayed in the patient's medical record wherever the patient goes."
>
> "P.O.L.S.T. was tested in Oregon in the early 90s and was launched in 1995, one year after Oregon passed legislation legalizing physician assisted suicide. Now, in 2010, over 30 states have endorsed or are developing P.O.L.S.T. programs."



Map of the states that already have implemented or are planning P.O.L.S.T. programs.

Dr. Wickham continues:

> [Some of the P.O.L.S.T. forms] ".. can override your Health Care Power of Attorney agent. The form has a lengthy series of boxes to check indicating levels of treatment. Boxes include "Comfort Measures Only," "No Antibiotics," "No IV Fluids," and "Do Not Attempt Resuscitation"
>
> "A trained facilitator, using carefully designed curricula such as the "Respecting Choices" program, may assist in filling out the form which then becomes part of doctor's orders, although it can come into effect with neither the patient's nor a physician's signature."
>
> "... the "consulting sessions" between physician and patient that [were to be] federally funded [under the Health Care Reform Law] involved filling out the P.O.L.S.T. form."

Under the new health care reform law, physicians will be rated for "quality of performance" and one of the things the government is insisting on is that the physician complete the P.O.L.S.T. forms, which are the new DNR forms. Under a section called, "Physician Quality Reporting Initiative," there will be:

> quality measures on end of life care and advanced care planning .... Such measures shall measure both the creation of and adherence to [Physician] Orders for Life-Sustaining Treatment."

In other words, doctors will be rated higher if they make sure the patient fills out advanced directives, living wills and/or DNR forms. The doctor will be rated higher if he or she has recommended hospice or palliative care for the elderly person. He will be rated higher if he has filled out the P.O.L.S.T. form .

It really doesn't matter whether the health care reform law is overturned by the courts or repealed by Congress; the P.O.L.S.T. paradigm is being welcomed with open arms in medical policymaking circles across the country. They *will* be implemented for Medicare recipients and made available throughout the country whether we have a private or publicly-run health care system, or a mix of those. The P.O.L.S.T. paradigm represents one of the most powerful tools those who do not affirm the sanctity of life will have to shunt elderly, disabled and chronically-ill into hospice or palliative care units and have their deaths hastened through *limiting* treatments that are needed.

Those who are pushing reform forward believe strongly in the need for entitlement reform. They will ration health care through the "Complete Lives System," "Cost Efficiency Research", and by encouraging physicians with financial incentives to get elders into hospice and palliative care sooner than they have been doing.

The President appointed Donald Berwick, the director of the Centers for Medicare and Medicaid Services ("CMS"). Berwick has a long history of supporting health care reform including the rationing of care. In 1994, he wrote "Eleven Worthy Aims for Clinical Leadership of Health System Reform" and suggested that:

"**Most metropolitan areas in the United States should reduce the number of centers engaging in cardiac surgery, high-risk obstetrics, neonatal intensive care, organ transplantation, tertiary cancer care, high-level trauma care, and high-technology imaging.**"

[*JAMA*. 1994;272(10):797-802.]

Yes, you read that correctly! Most of us would be thinking we should be building *more* top-level hospital care centers. Rationers think the exact opposite. Their thinking is something like those managing a herd of gazelle that is periodically attacked by cheetahs (disease, old age, disability) across the African Savanna. Who lags behind and is hunted down? The older, slower, ailing gazelle, and the herd is thinned, leaving the fittest to live another day. In other words, if there are fewer top regional health care centers and hospitals, then people will die sooner. This is the thought process of the appointed Director of the Centers for Medicare and Medicaid Services, Donald Berwick: reduce the quality of care and fewer people will live to old age! The opposite of what any sane individual American would want.

Eugenics proponents would have the weaker newborn removed from the human herd. It is clear that "Darwinism gave rise to the eugenics philosophy. Eugenics is 'the science of improving the stock.'" Eugenic thought existed throughout history, but Darwinism gave it a huge boost. For those at the end of life, euthanasia advocates wish to be able to legally impose death on the terminally ill.

We also need to consider the steadily growing fields of genetic research, biotechnology, nanotechnology and other technological developments that are offered as ways to eliminate many diseases and conditions. Genetic research and amniocentesis allow for prenatal testing to detect many conditions. The presumed, "approved treatment," is abortion, for those individuals who are found to have a genetically-detectable condition. In the search to improve the lives of humanity, medical scientists, eugenicists, think nothing of completely eliminating the lives of those who may not be "perfect" in their eyes. In other words, medical eugenicists prefer to eliminate life to end suffering, and mothers being intimidated to have a "voluntary" abortion is but one step away from coercive eugenics.

Kristan Hawkins, Executive Director of Students for Life cautions:

> "... will prenatal genetic tests eventually move from being voluntary to mandatory, in the name of

> cost-savings? Down the road, will abortions be encouraged by the state or even forced on those children who will have special needs or will need life-long medical care?

> [and] "...Today, in America, this rationing is already happening to many babies born with Trisomy 18 and 13" "[Eugenics in 2010: Obama Officials Follow Gattaca Movie, Genetic Discrimination" by Kristan Hawkins March 31, 2010 Lifenews.com

The same type of thinking dominates when it comes to the elderly and disabled: "eliminate the patient" to end their suffering. Of course, the old, ailing and disabled die, and Nature takes its course in its own timing, but we are not animals to be euthanized like dogs. A civilized society cares for its elderly, ailing and disabled; it does not go out of its way to avoid caring for them or intentionally impose death!

Well, the administrator of the Centers for Medicare and Medicaid Services, Donald Berwick doesn't agree. Obviously if Berwick gets his way, major metropolitan areas will have fewer advanced, high-tech, cutting-edge medical services, and the costs of providing care in America will be reduced (the elderly, ailing and disabled will die much sooner). Berwick's "worthy aim" to reduce the number of these regional centers would basically destroy the very excellence of medical care that America is noted for!

Not only that, Julian Pecquet wrote in his July, 2010 (The Hill) article, "GOP says Obama avoiding questions about CMS head's ties to industry."

> Berwick's Institute for Healthcare Improvement received more than $9 million in "gifts" in 2008 and 2009 from unknown donors, according to Grassley's office, at the same time that Berwick was being paid a $2.4 million salary as CEO.

If anyone has questions about whether there really are "death panels" envisioned in the new health care reform law, Joe Wolverton, II entitled his July, 2010 article, "Donald Berwick: "One Man Death-Panel" citing:

> "The executive director of the National Right to Life organization, David Osteen, [who] described Berwick as a "one-man death panel."
>
> "President Obama's appointment of this open advocate of rationing to implement his health care law underlines the need for repeal before untold numbers of vulnerable Americans suffer death from denial of life-saving treatment," Osteen continued.

Berwick stated very plainly in a 2009 interview, "Rethinking Comparative Effectiveness Research" that he supports its use to ration care and bring costs down:

> "The decision is not whether or not we will ration care--the decision is whether we will ration with our eyes open."

The real question is whether decisions made by Big Government about the availability of the care you need will be in your interests or the interests of an impersonal government evaluation of what "people of your age" should have access to. Remember, "Comparative Effectiveness Research" may sound reasonable at some point, but when coupled with Ezekiel Emanuel, MD's "Complete Lives System," it's a recipe for disaster. And these types of ways of thinking, so shocking to ordinary citizens, have been promoted for many years. They will be pushed forward by many of the elite whether or not the health care reform law is declared unconstitutional by the Supreme Court.

The Independent Payment Advisory Board (IPAB), (also mentioned in the health care reform law as the "Independent Medicare Advisory Board") with its Presidentially-appointed 15 members, can amass unimaginable power to limit care provided to Medicare recipients. Mark Hemingway has written an April 14, 2011 article, "Obama's Medicare Plan: Rationing by Bureaucrats -- The president's big plan for Medicare involves unelected bureaucrats making life or death decisions." Hemingway states that "***any recommendations IPAB makes about Medicare spending automatically become law***," and that "***IPAB is more and more likely to be a Trojan Horse for the serious command-and-control rationing***."

Prior to the enactment of the health care reform law, we had "the sustainable growth rate ("SGR") [that] was a well intentioned effort to slow the increase in Medicare payments to more closely match the rate of inflation." The forerunner of IPAB, "MedPAC (the Medicare Payment Advisory Commission) plays an advisory role in establishing SGR, but it requires the action of Congress to institute it." Contrary to Constitutional law, the new IPAB has powers only Congress had beforehand and its directives will become law if Congress fails to get three-fifths of its members to vote to override IPAB's recommendations.

James Capretta, a former top health official at the Office of Management and Budget says:

> "The only thing they [IPAB members] can really do is change what those who are providing

services to the patients get paid. And of course, what they're going to get paid under this kind of proposal is less and less and less over time," Capretta said.

"***When you bring payment rates down, people say, 'I can't provide that service at that price,' and they stop doing so. That's when you end up with the situation of, frankly, rationing, price rationing***." [Emphasis added]

[Obama Seeks Stronger Hand for Medicare Panel by James Rosen April 22, 2011 FoxNews.com]

IPAB is part of the executive branch, but its recommendations become law and can only be countered by the Congress with that three-fifths majority vote. Some say IPAB is unconstitutional because they have a legislative function, but are in the executive branch. It is clear that IPAB could exert tremendous power to limit care and available treatments over time. Many government proposals that started very small have grown through the years. For example, the 16th Amendment was enacted in 1909 and allowed the federal government to levy an income tax with about 1% of the population paying about 1% in taxes in 1913. Now, at least 53% pay income taxes and the rates vary from about 10% to 35%. Another example? When Medicare started in 1966 it cost $3 billion, and they projected it would cost $12 billion in 1990. But it actually cost $107 billion in 1990, almost ten times what was estimated. The federal government's programs and powers just seem to keep growing every year!

The American Medical Association is strongly opposed to IPAB. The AMA writes, "The 15-member IPAB is a presidentially appointed board comprised of health care experts and economists who are tasked with developing Medicare spending cuts in years during which spending exceeds a target growth rate...."

The AMA goes on to explain **one of the most revealing aspects (for our purposes here) of the IPAB cuts:** "**rate reductions for hospitals and *hospices are explicitly excluded until 2020***, yet, estimates from the Congressional Budget Office calculate a reduction in Medicare spending of approximately $15.5 billion from 2010 to 2019, raising concerns that only a few providers, including physicians, will bear the brunt of the cuts." [Emphasis added] ***There could be no more obvious proof that hospice is being promoted with the full force of the federal government: the hospice industry is shielded from the IPAB cuts in reimbursements for almost ten years!***

How Government Can Work: Involuntary Sterilization, Experimentation and Hastened Death

What does involuntary sterilization have to do with hospice and end-of-life care? Well, it again demonstrates "how people in government think" and what they are capable of. It demonstrates how the eugenics and euthanasia proponents are willing to treat those they deem "unfit" and "unworthy of life." Involuntary sterilization in America? Unheard of! Not really. Involuntary sterilization actually had widespread public support in America and continued into the 1950s. The idea of eliminating the unwanted includes eugenic restrictions on who is born, sterilization to prevent the unwanted from reproducing, and euthanasia to make those who are unwanted die at any stage of life, all part of the culture of death.

> "Although the eugenics movement in the United States flourished during the first quarter of the 20th Century, its roots lie in concerns over the cost of caring for "defective" persons, concerns that first became manifest in the 19th Century. The history of state-supported programs of involuntary sterilization indicates that this "surgical solution" persisted until the 1950s. A review of the archives of prominent eugenicists, the records of eugenic organizations, important legal cases, and state reports indicates that public support for the involuntary sterilization of insane and retarded persons was broad and sustained. During the early 1930s there was a dramatic increase in the number of sterilizations performed upon mildly retarded young women."
>
> [Q Rev Biol. 1987 Jun;62(2):153-70. Involuntary sterilization in the United States: a surgical

solution. Reilly PR.]

The public "face" of our federal government is something other than the reality, and while it provides many services and benefits to the public, it also is responsible for much harm. We have a dark history of performing forced sterilizations and experiments on the mentally handicapped. See "Eugenics: Compulsory Sterilization in 50 American States"

American prisoners and other people were subjected to all sorts of involuntary experiments through the years. The history of medical experimentation on prisoners, soldiers, the elderly and the general population is very well-documented. As a current example, Robert Finney, Ph.D. and patient advocate writes that "for decades, Kaiser Permanente doctors have conducted a medical 'experiment' on unwitting patients to determine the cost and progression of kidney failure and its complications, when diagnosis and treatment are intentionally withheld."

You think the government would never experiment upon our brave young men and women who enter the military? Here are just a few of many cases:

> 1944 U.S. Navy uses human subjects to test gas masks and clothing. Individuals were locked in a gas chamber and exposed to mustard gas and lewisite.
>
> 1944: Manhattan Project injection of 4.7 micrograms of plutonium into soldiers at Oak Ridge.
>
> 1947: The CIA begins its study of LSD as a potential weapon for use by American intelligence. Human subjects (both civilian and military) are used with and without their knowledge.
>
> 1953-1970: U.S. Army experiments with LSD on soldiers at Fort Detrick, Md.

What about patients to be cared for? Would the government experiment on them? Absolutely! A few cases are listed here:

> 1945: Manhattan Project injection of plutonium into three patients at Billings Hospital at University of Chicago.
>
> 1946-1953: Atomic Energy Commission sponsored study conducted at the Fernald school in Massachusetts. Residents [mentally-retarded children] were fed Quaker Oats breakfast cereal containing radioactive tracers.
>
> 1953 Newborn Daniel Burton rendered blind at Brooklyn Doctor's Hospital due to high oxygen study on RLF.
>
> 1953-1957: Oak Ridge-sponsored injection of uranium into eleven patients at Massachusetts General Hospital in Boston.

Involuntary experiments on the general public?

> 1949: Intentional release of radiodine 131 and xenon 133 over Hanford Washington in Atomic Energy Commission field study called "Green Run."
>
> 1950: U.S. Army secretly used a Navy ship outside the Golden Gate to spray supposedly harmless bacteria over San Francisco and its outskirts. Eleven people were sickened by the germs, and one of them died.

There are dozens and dozens of cases like these, but you probably think these things only happened many years ago, right? Wrong.

> 1997. U.S. government sponsored placebo-controlled experiment withholds treatment from HIV infected, pregnant African women. *NY Times*, Sept. 18.
>
> 1998: *Boston Globe* (four part) series, "Doing Harm: Research on the Mentally Ill" shed light on the mistreatment and exploitation of schizophrenia patients who have been subjected to relapse producing procedures in unethical experiments.

There are many other cases, and experiments continuing into the present, sometimes now done on people in other countries who have nobody to protect them and don't understand what is being done to them:

> 2000: The *Washington Post* (6 part) series, "Body Hunters" exposes unethical exploitation in experiments conducted by U.S. investigators in underdeveloped countries. Part 4 dealt with U.S.

government funded, genetic experiments conducted by Harvard University in rural China.

2001: A biotech company in Pennsylvania asks the FDA for permission to conduct placebo trials on infants in Latin America born with serious lung disease though such tests would be illegal in U.S.

When we focus on these involuntary sterilizations, drug trials, radiation exposures, and experiments of all sorts, in most cases it is the poor, the uneducated, minority groups, foster children or mentally-ill who are victimized. These are some of the same groups that the Nazis rounded up for experimentation or elimination. The U.S. House Committee on Oversight is investigating drug manufacturer Wyeth for promoting off-label use of the anti-organ-rejection drug, Rapamune, despite the *increased risk of death* to recipients of the drug. Using a drug for off-label uses without properly informing the patients and getting permission amounts to involuntary experimentation on the unsuspecting patient. In addition, Wyeth is being investigated in particular for targeting African-Americans for this experimental use of the drug. You might respond by saying these are limited cases, not applied to the general population, and therefore, it "doesn't concern us." We need to remember that all people deserve respect and humane treatment and, any group that today is not subject to discrimination or mistreatment might be subject to another type of harm in the future. Remember:

"In Germany, they came first for the Communists,
And I didn't speak up because I wasn't a Communist;

And then they came for the trade unionists,
And I didn't speak up because I wasn't a trade unionist;

And then they came for the Jews,
And I didn't speak up because I wasn't a Jew;

And then . . . they came for me . . .
And by that time there was no one left to speak up."

[Martin Niemöller, prominent German anti-Nazi theologian and pastor]

Involuntary hastened death? Well, as we've seen that's already happening! We have the medical killings in the hospices, hospitals, nursing homes and elsewhere going on and government officials refuse to act, refuse to investigate or prosecute. Medical killing is de facto legal throughout the United States. The victims are not people who wanted to act upon a supposed "right to die." These are people who were deprived of life. Elderly, mentally-handicapped, disabled, even those in need of rehab ... manipulated into hospice one way or another, or another health care setting, and terminally-sedated, overdosed or "made to die" through a variety of means.

When the President, the Congress and state and local government officials choose year after year to *not* act on medical killings, they choose to allow involuntary medical killings. Not one Senator, Congressional Representative or one of the Presidents has spoken out about these medical killings and made a serious effort to stop them!

We need not go back to the times when our federal government supported the evil of slavery to see its brute force in action. As recently as 1972, the U.S. Public Health Service was involved in one of the most disgraceful involuntary experiments on human subjects ever conducted, the Tuskegee Syphilis Experiment. "The Tuskegee Syphilis Experiment: The U.S. government's 40-year experiment on black men with syphilis" by Borgna Brunner tells us that:

> "For forty years between 1932 and 1972, the U.S. Public Health Service (PHS) conducted an experiment on 399 black men in the late stages of syphilis. These men, for the most part illiterate sharecroppers from one of the poorest counties in Alabama, were never told what disease they were suffering from or of its seriousness. Informed that they were being treated for "bad blood," their doctors had no intention of curing them of syphilis at all."
>
> ".... By the end of the experiment, 28 of the men had died directly of syphilis, 100 were dead of related complications, 40 of their wives had been infected, and 19 of their children had been born with congenital syphilis."

> ".... The experiment continued in spite of the Henderson Act (1943), a public health law requiring testing and treatment for venereal disease, and in spite of the World Health Organization's Declaration of Helsinki (1964), which specified that "informed consent" was needed for experiments involving human beings."

Along these lines, who did President Obama name as his "Science Czar?" John Holdren. Who is he? The Director of the White House Office of Science and Technology Policy, Assistant to the President for Science and Technology, and Co-Chair of the President's Council of Advisors on Science and Technology -- informally known as the United States' Science Czar.

Holdren co-authored the 1977 book, *Ecoscience*, with his close colleagues Paul Ehrlich and Anne Ehrlich, and wrote:

> * Women could be forced to abort their pregnancies, whether they wanted to or not;
>
> * The population at large could be sterilized by infertility drugs intentionally put into the nation's drinking water or in food;
>
> * Single mothers and teen mothers should have their babies seized from them against their will and given away to other couples to raise;
>
> * People who "contribute to social deterioration" (i.e. undesirables) "can be required by law to exercise reproductive responsibility" -- in other words, be compelled to have abortions or be sterilized.
>
> * A transnational "Planetary Regime" should assume control of the global economy and also dictate the most intimate details of Americans' lives -- using an armed international police force.

This was not some simple paperback "quick read." It was 1,051 pages long and was a quite serious text promoting these and other utilitarian, eugenic ideas. With the passage of the years, these elitists have not abandoned their ideas, but have slowly but surely worked to implement them incrementally. Though Holdren and the Ehrlichs now incredibly say they "never" advocated the coercive methods mentioned in the book, just "discussed" them, it is hard to swallow their denials when they continue putting forth "doom and gloom" predictions requiring governmental action. Why would they write such a serious book, over 1,000 pages long if they did not believe what they were writing? It was not a work of fiction. Holdren still is a big proponent of the man-made global warming scam and is promoting methods to "shoot pollution particles into the upper atmosphere to reflect the sun's rays and cool the earth." He is now famous for making predictions that have not come true.

Harvard-educated Jerome Corsi, Ph.D (in political science) wrote for *WorldNetDaily*, July 10, 2010, "Obama science czar: Surrender to 'planetary regime' Urges U.S. to give up sovereignty to U.N.-controlled world supergovernment"

And what is Susan Rice, the United States Ambassador to the United Nations saying now? Rice, appointed by President Obama, stated at the World Affairs Council of Oregon, Portland, Oregon, that "our challenge today is to strengthen [the United Nations] and in doing so, to make America more secure. Significant that she was at the "World Affairs Council" in the state that also gave us legalized assisted-suicide!

Continuing on about our Science Czar, Holdren:

> "The authors argued that involuntary birth-control measures, including forced sterilization, may be necessary and morally acceptable under extreme conditions, such as widespread famine brought about by "climate change."
>
> "They recommended the creation of a "planetary regime" created to act as an "international superagency for population, resources and environment."
>
> and
>
> "Holdren acknowledged the United States would have to surrender sovereignty to the planetary regime and that the regime would have to have military arms for the envisioned supergovernment to succeed.
>
> "He clearly specified the planetary regime would be charged with global population control.
>
> "Holdren wrote: "The Planetary Regime might be given responsibility for determining the optimum population for the world and for each region and for arbitrating various countries' shares within

> their regional limits. Control of population size might remain the responsibility of each government, but the Regime should have some power to enforce the agreed limits."

Those are not my words. They are the words of the Science Czar appointed by our President! Yet for all of Holdren and the Ehrlichs scare tactics, "overpopulation is a myth: plenty of food and space exists."

Seem a little hard to believe these views of those who are running our government? Well, let's consider "Project Paperclip," a project of the United States Government. Attorney and human rights activist, John W. Whitehead, Esq. writes in "Nazis in America," December 28, 2010:

> "After a lawsuit and pressure from private interest groups, the Justice Department finally released a 617-page report detailing how the American government not only welcomed but employed Nazis after World War II ... enlist[ing] them in subjecting Americans to all manner of experiments, what are they capable of doing to us now?"
>
> "Take Project Paperclip, for example. Few have heard of it because the U.S. government has successfully concealed most of the facts surrounding the project. The government has passed it off as a short-term operation limited to an innocent investigation of Germany's scientists after World War II. In reality, Project Paperclip was the largest and longest-running operation involving Nazis in the history of the United States, and its effects are still being felt today."
>
> [One example out of many given] ".... Kurt Blome, a high-ranking Nazi scientist, told U.S. interrogators in 1945 that he had experimented with plague vaccines on concentration camp prisoners. He was tried in the Nuremberg War Trials -- but acquitted -- on charges of extermination of sick prisoners and conducting experiments on humans. .... Blome was hired by the U.S. Army Chemical Corps to work on chemical and biological warfare."
>
> ".... Edgewood Arsenal, located near Baltimore, MD., is the most secret military base in the country. Paperclip scientists worked there between 1947 and 1966 conducting experiments on American citizens. Initially, their main efforts were to test the poison gases that had been invented by the Nazis during the war. Soon, the testing turned to LSD and other mind-control agents. Nazi science that was reminiscent of concentration camp experimentation was used as the basis for research in the United States on Americans.
>
> "MKULTRA, for example, is the name of the mind control experiments conducted on U.S. soldiers under Project Paperclip. Reviewing the experiments in the late 1950s, one CIA auditor wrote of them: "Precautions must be taken not only to protect operations from exposure to enemy forces but also to conceal these activities from the American public in general. The knowledge that the agency is engaging in unethical and illicit activities would have serious repercussions."
>
> ".... Nazis went unpunished and federal law was violated. Worst of all, as Linda Hunt has documented, Nazi attitudes toward research on human subjects were imported and adopted by various U.S. officials."

A February 27, 2011 *Washington Post* article, "AP IMPACT: Past medical testing on humans revealed" reviews the history of involuntary medical experimentation in the United States. The article implies that unethical medical experimentation in the United States ended in the 1970s due to reforms here, and that scientists interested in conducting such unethical experiments went elsewhere to other countries. While that is true, some involuntary medical experimentation has continued in the United States. We hear reports of patients being injected with various substances against their wishes, often without their knowledge. This is a one of the well-censored stories in America, just like the widespread medical killings, the stealth euthanasia victimizing many, many thousands.

Although many believe otherwise, the modern origin of the eugenics and euthanasia movement was not Germany. It was Britain, America and especially California. .... Edwin Black wrote in November of 2003 about "The Horrifying American Roots of Nazi Eugenics"

> "Eugenics was the racist pseudoscience determined to wipe away all human beings deemed "unfit," preserving only those who conformed to a Nordic stereotype.
>
> Elements of the philosophy were enshrined as national policy by forced sterilization and segregation laws, as well as marriage restrictions, enacted in twenty-seven states. .... Ultimately, eugenics practitioners coercively sterilized some 60,000 Americans, barred the marriage of thousands, forcibly segregated thousands in "colonies," and persecuted untold numbers in ways we are just learning. Before World War II, nearly half of coercive sterilizations were done in California, and even after the war, the state accounted for a third of all such surgeries.

"California was considered an epicenter of the American eugenics movement. ...."

"Eugenics would have been so much bizarre parlor talk had it not been for extensive financing by corporate philanthropies, specifically the Carnegie Institution, the Rockefeller Foundation and the Harriman railroad fortune. They were all in league with some of America's most respected scientists hailing from such prestigious universities as Stanford, Yale, Harvard, and Princeton. These academicians espoused race theory and race science, and then faked and twisted data to serve eugenics' racist aims."

"Stanford president David Starr Jordan originated the notion of "race and blood" in his 1902 racial epistle "Blood of a Nation," in which the university scholar declared that human qualities and conditions such as talent and poverty were passed through the blood."

"In 1904, the Carnegie Institution established a laboratory complex at Cold Spring Harbor on Long Island that stockpiled millions of index cards on ordinary Americans, as researchers carefully plotted the removal of families, bloodlines and whole peoples. From Cold Spring Harbor, eugenics advocates agitated in the legislatures of America, as well as the nation's social service agencies and associations."

"The Harriman railroad fortune paid local charities, such as the New York Bureau of Industries and Immigration, to seek out Jewish, Italian and other immigrants in New York and other crowded cities and subject them to deportation, trumped up confinement or forced sterilization."

> "The Rockefeller Foundation helped found the German eugenics program and even funded the program that Josef Mengele worked in before he went to Auschwitz."
>
> "Much of the spiritual guidance and political agitation for the American eugenics movement came from California's quasi-autonomous eugenic societies, such as the Pasadena-based Human Betterment Foundation and the California branch of the American Eugenics Society, which coordinated much of their activity with the Eugenics Research Society in Long Island. These organizations--which functioned as part of a closely-knit network--published racist eugenic newsletters and pseudoscientific journals, such as Eugenical News and Eugenics, and propagandized for the Nazis."

And who was one of the main leaders in the effort to include advance care planning "counseling" in the health care reform law? "Senator John D. Rockefeller IV of West Virginia, [who] had urged the administration to cover end-of-life planning as a service offered under the Medicare wellness benefit." Rockefeller, from the same family that (as we just read above) "helped found the German eugenics program and funded the program that Josef Mengele worked in before he went to Auschwitz."

Utilitarian Care Rationing: Health Care Reform, The Government's "Complete Lives System" and Hastened Death

When President Obama was elected, he chose Chicago politician Rahm Emanuel as his White House Chief of Staff, and later named Rahm's brother, Ezekiel Emanuel, MD, PhD as his Health Care Advisor. Dr. Emanuel, Chair of the Clinical Center Department of Bioethics for the U.S. National Institute of Health is a leader in medicine and bioethics. A graduate of Harvard Medical School and professor of medicine there, the list of his accomplishments is truly impressive.

For many years, he has asserted his opposition to the legalization of euthanasia and assisted suicide, preferring good end-of-life care as the best choice for the terminally ill. Just as Dr. Byock has done. What could be wrong then? Why has his name been mentioned as related to "death panels?" He certainly is upset that his views, in his opinion, have been misrepresented.

As recently as January, 2009, in a *Lancet* medical journal article, Dr. Emanuel advocated using what he and his colleagues call the "Complete Lives System".

["Principles for allocation of scarce medical interventions" The *Lancet*, Volume 373, Issue 9661, Pages 423 - 431, 31 January 2009 - Govind Persad, BS, Alan Wertheimer, PhD, Ezekiel J Emanuel, MD]

The discussion of the "Complete Lives System" was within the context of allocating scarce medical resources for liver transplant patients or vaccine recipients (in the case that there was not an adequate supply of vaccines or organs for transplantation). The authors explain their view that patients who are younger would benefit more from a liver transplant, have longer use of the organ and that giving the organ to the younger patient is the "right" way to go. This is not a far cry from the old, traditional cry, "women and children first" when saving passengers on a sinking ship.

Triage in a hospital or health care system also involves choosing who best will benefit from care. If there's a scarce supply of organs to donate, then doctors need to think about who gets the organs when they become available. How to choose?

While Dr. Emanuel may assert that his "system" is intended "only" for application in the case of vaccine scarcity or organ scarcity, but can we trust Dr. Emanuel that the "system" won't be used for general rationing of health care? I don't think Dr. Emanuel can control how his "system" is used. He certainly has many accomplishments in medicine, but he may have done much harm as well.

Whatever "learned" discussion he may have among scholars, debating the ethical nature of this or that medical decision ... when it comes to implementing Obamacare or reforms to Medicare (without the health care reform law), there are not going to be long-winded debates. There will have to be entitlement reforms with the current national budget crisis. The "Complete Lives System" will *not* be restricted to just those cases that Dr. Ezekiel Emanuel was referring to (vaccine distribution and organ distribution). His system will be used to decide how to ration all available services for the elderly across the board in many, many situations. And even limiting it to vaccine distribution and organ transplantation may not be fair or ethical either.

With current organ transplant networks, a patient gets "on the list" for an organ transplant and waits till they arrive at the front of the line and when an organ is available, they get it. Under Dr. Ezekiel Emanuel's system, the elderly could be prevented from ever getting an organ no matter how long they wait! Using this system, the elderly would die, whereas with the current system, they could wait just like any other person and get an organ when it is available.

The Wall Street Journal's December 29, 2010 article, "Death Panels Revisited - The left won't admit that Sarah Palin had a point about rationed care" provided this assessment:

> "Under highly centralized national health care, the government inevitably makes cost-minded judgments about what types of care are "best" for society at large, and the standardized treatments it prescribes inevitably steal life-saving options from individual patients."

That already happens under Medicare and Medicaid. Ask any doctor. Now, in 2011, Dr. Ezekiel Emanuel has left the administration post and gone back to work at the National Institute of Health. Why was he brought in? And why is he leaving now? It's clear that the job he was brought in to do is done. He helped shape the thinking of those implementing health care reform, whether through administrative actions in the Department of Health and Human Services, the Centers for Medicare and Medicaid Services, or in the reform law. His input is no longer needed. Rationing will happen in Medicare, Medicaid and if implemented, a national health care system.

The *New York Times* published an editorial on rationing and organ transplants suggesting exactly what we've been reviewing here:

> The number of kidneys available for transplants falls far short of the need, so there is no choice but to ration them. ...."
>
> There are nearly 90,000 people on waiting lists to receive kidney transplants, and in 2009 there were only some 10,400 kidneys from dead donors to give them. And about 6,300 kidneys were transplanted from living people who donated one of their two kidneys and usually specified the recipient.
>
> Currently the kidneys from dead donors are provided, through an organ procurement and transplantation network, to people who have been waiting the longest. That may seem fair since many transplant candidates wait for years, and some die while waiting.
>
> But the system has serious shortcomings. Some elderly recipients get kidneys that could function far longer than they will live and that could have done more good for a younger recipient. Some

younger recipients get kidneys that will fail and will need to be replaced, using up another scarce kidney.

These problems could be eased through a proposal under consideration at the transplant network to better match the likely longevity of the patient with the likely functional life of the kidney.

The patients and kidneys would each be graded separately. About 20 percent of the kidneys predicted to have the longest functional lives would be provided to the youngest and healthiest patients. The other 80 percent of kidneys would go to patients who are no more than 15 years older or younger than the donor.

The approach seems likely to make it harder for elderly people to get a kidney. But when kidneys are already scarce and apt to get scarcer as much of the population ages and sickens it is a rational choice.

["Transplants and Rationing," *New York Times* Editorial February 27, 2011]

There in a nutshell is the rationing of care for the elderly argument. It's going to hit the elderly from every side, whether organs for transplantation, medications, surgeries, or diagnostic tests. Wherever the elderly turn, they're going to increasingly face this type of discrimination. If the public doesn't wake up soon, it will be legalized discrimination that results in much earlier deaths for the elderly, and it will affect all Americans as they age. It will be accomplished by suggesting this is the "rational way to go." That it is discrimination, that it will result in earlier deaths for one group of citizens, that it is contrary to the respect for the individual's rights under the Constitution (to be treated equally under law), that it is the same "logic" used by the Nazis will not be mentioned.

Government Health Care Reform Law & the former Hemlock Society (Compassion & Choices)

Compassion & Choices (formerly the "Hemlock Society") brags about writing the language in the health care reform law that pertains to these strongly encouraged paid physician "counseling" sessions with the elderly, counseling sessions that specifically were to include making out an advanced directive or living will, talking about hospice and palliative care, and specifically filling out the P.O.L.S.T. form.

Why would the chief "overt" pro-euthanasia organization in the country care about these counseling sessions? Well, being that they are pro-euthanasia, they realize just as the "covert" euthanasia groups do, that any forms (advanced directives, living wills, DNRs, and the P.O.L.S.T. forms) that limit care will result in hastened deaths, the push into hospice, where the "Third Way" terminal sedation can be applied. The elite leaders of the euthanasia movement believe in the agenda: eugenics and euthanasia go hand-in-hand. Euthanasia and "culling the herd" of those "unworthy of life." Culling the herd of those whose quality of life they say is "too low."

They believe the lives of these vulnerable individuals have no value. Yet, parents of the disabled know differently. The Christian minister, Kathryn Kuhlman, relates the story of a Mrs. Fischer who gave birth to a baby with severe congenital hydrocephalus and was told by several physicians that the little girl, Billie, would without a doubt be permanently retarded if it functioned at all. The baby was completely nonresponsive, and the physicians advised her to institutionalize the baby, but Mrs. Fischer said,

> "No. I can't ever send her away from me. I love her too much. And if she isn't aware of anything else in this whole world, she must somehow feel this love. As long as God gives me the strength to take care of her, I'm going to do it."

Mrs. Fischer and her 12 year-old daughter, Helen, fasted and prayed for little Billie's healing and their prayers were answered! The size of little Billie's head began to reduce in size till she became quite normal and later on became a perfectly normal girl and an "A student" in school. See *I Believe in Miracles* by Kathryn Kuhlman,

1965. p. 77-84.

Euthanasia advocates do not recognize the possibility of miracles, spiritual healing or the value of the lives of the severely disabled. The euthanasia advocates at Compassion & Choices know that rogue hospice which has been given a free pass to hasten death by all levels of government, will accomplish their goals of bridging the gap between where we are today and their "final solution." Now, direct euthanasia is illegal throughout the country and assisted-suicide is legalized only in a few states.

Once the P.O.L.S.T. forms or advanced directives are filled in for almost all patients, and health care rationing is stepped up through the government Medicare or Medicaid systems, or rationing done by private managed-care organizations, when a personal health crisis arises, the elderly and severely disabled will have no option other than going into hospice and/or palliative care; treatment will not be available because funding will be cut off for other treatments!

Rogue hospices will accomplish what the Euthanasia Society's elite never could do: euthanize the unwanted, elderly, severely disabled and/or medically-complex chronically-ill. You won't hear about it happening, though. Thanks to HIPAA's Privacy Shield, the wall of silence will prevent widespread reporting. You will only hear about someone here or there who "went into hospice." It's all been very well thought-out to reduce public outcry.

The Euthanasia Society's representatives through the years tell us that the severely disabled and very elderly "would not wish to live" in those conditions, but research tells us differently. Even among those who are totally "locked-in" and cannot move their bodies at all (except to blink an eyelid), many have communicated that they are happy and do not wish for assisted-suicide or euthanasia.

After several years, it will be easier to pass legalization of euthanasia. Economic pressures are already mounting very quickly. States are in emergency cost-cutting mode and Medicaid is going to be cut. The federal budget is even worse. There is no question that Medicare is going to be cut back eventually. They may not tell the public in so many words, but it will be cut. The legalization of euthanasia will become hard to resist for Congressional Representatives struggling to balance a budget that is way out-of-control.

In fact, having a budgetary crisis that is way out-of-control gives the government the excuse to impose cost-cutting at all levels of health care, especially at the end where the elderly are concerned. As the President's former chief of staff, Rahm Emanuel (Ezekiel's brother), has said, "***Never let a serious crisis go to waste***." Private insurers are already famous for their treatment denials. If there is a war involving an attack on the United States, if the dollar is discarded as the world global reserve currency, if the federal government keeps printing trillions of dollars, the economic pressure to hasten the death of the vulnerable will be incalculable. The dollar will lose its status as the world's reserve currency, causing devaluation of its worth, inflationary pressures, a lowering of the standard of living in the United States, and more pressure on the federal government in paying interest on the debt. Not to alarm you, but these factors may very well cause a national emergency of some type, and there will be no alternative but to implement widespread reductions in the entitlement programs: Medicare, Medicaid, and Social Security.

As we have seen, when Germany was economically devastated after WW I, the Nazis seized control and implemented changes to get the German economy back on track. And, remember: "Already in 1935 Adolf Hitler had told Gerhard Wagner that if war came he would implement the killing of the handicapped." Of course, our economic situation would be unique, but the pressures would, in the eyes of the utilitarians, justify widespread implementation of euthanasia.

Michael Pryce, MD has read the law and has this to say about what really is in the law:

> " If one carefully reads the bill, and it just may take a doctor to elucidate this, the beginnings of medical killings are clearly laid out for the future. The authors of the law cleverly and strategically placed a disclaimer in the law to head off any criticism. The disclaimer states that "individuals or institutions refusing to participate in 'assisted suicide, euthanasia, or mercy killing' may not be discriminated against by government, entities receiving federal financial assistance under this Act, or health plans created under this Act." (p. 141, section 1533). Enough said? The government and others cannot persecute or presumably prosecute a doctor or a health care institution for refusing to conduct clearly defined medical killing.
>
> The readers must ask themselves why are those terms even included in a "health care" bill? Reading on in the law, "This protection, however, explicitly does not apply to or affect any limitation relating to (1) the withholding or withdrawing of medical treatment or medical care; (2) the withholding or withdrawing of nutrition or hydration; (3) abortion; or (4) the use of any item for the

purpose of alleviating pain even if such use may increase the risk of death as long as such an item is not furnished with the purpose of causing, or the purpose of assisting in causing, death, for any reason." So the law unbundles the terms "assisted suicide, euthanasia, and mercy killing" into individual events that in and alone would be enough to cause death. Although they claim protection against the unbundled terms like euthanasia, they can and will persecute and prosecute if the health care providers refuse to withdraw, medications, medical treatments and procedures, fluids and/or nutrition.

["How to Get ObamaCare Repealed Overnight" By Michael Pryce, on Mar 6, 2011]

Remember, we've had decades-long civil rights marches for many causes. Nobody's marching year after year en masse for the elderly, the forgotten, the "to-be discarded." They are truly expendable in the eyes of the government policymakers and elite. And more and more, they are regarded as expendable to significant portions of our society! That's why the government has done nothing significant to change their plight. When an elder dies, the government saves money; that's it. And allowing this to continue currently has no effect on who the public votes for. If people don't object, they don't lose votes, and the elected officials are happy to continue the "status quo," business as usual.

Government Action When There is A Question of Homicide

Every county district attorney and police department in the country has received reports of wrongdoing, even wrongful deaths in a hospice. They almost universally refuse to even investigate, let alone prosecute medical killing at a hospice. Their inaction only demonstrates their abandonment of their duty to serve and protect the people. They say, "it's a health care matter." "Take your complaint to the state health department." I've heard this story from families across the country for years.

When hospice directors hear such complaints from families, they usually tell them, "you are clearly having a difficult time grieving, let me get you in touch with our grief counselor." Or, they'll tell the family that the patient was in pain and the morphine was given to relieve that pain (even if the family knows the patient had no uncontrolled pain). Offering to provide a hospice grief counselor to a family member who believes the hospice staff killed their loved one is a real slap in the face. It's highly condescending and offensive. The hospice directors and staff act as if they had no hand in what happened, and portray the family member as a "troublemaker" or as someone who simply "doesn't understand."

If the family members complain while the patient is being "treated" to life-ending interventions such as morphine overdoses, or, anti-psychotic and sedative medication overdoses, the hospice staff may actually threaten the family member, labeling them as "violent," or "a danger to staff and the patient." They have them escorted out of the building and sometimes banned from visiting their loved one at all. I've heard these stories numerous times through the years, and not just from lay people who do not know what is clinically-appropriate. I've heard these reports from physicians, nurses, social workers, attorneys and others who were not able to protect their loved one in a hospice setting.

What happens when the family says it was homicide and the coroners' office actually listened? Almost unheard of, but in hospice industry history there is one case. CBS 60 Minutes II reported in their June 1999 article, "A Question of Homicide" about just such a case. It occurred in Volusia County, Florida, back in 1998. The county Coroner's Office officially ruled nineteen hospice deaths as homicides through morphine overdosage, and forwarded the cases to the county district attorney for prosecution, what happened?

The district attorney refused to prosecute, contacted the state attorney general who appointed a panel of hospice physicians to review the hospice cases. The panel ruled all deaths were natural. The two physicians in the coroners' office were terminated and the third forensic scientist told me that because he was a civil servant and was protected by county regulations from being terminated without cause, he was harassed until he fled the

state.

It's not an easy thing for a coroners' office to formally, officially rule a case as a homicide and refer it to the district attorney for prosecution. It's even harder for them to rule 19 deaths as homicides. They had to be sure. When they're looking at cases from the local, respected hospice, those coroners went over every detail many times to be sure. They had no doubt. But it was all covered up. The prosecutors refused to enforce the laws and prosecute the cases! Hospice is a protected industry. We've seen this over and over again as in the United Kingdom where the

> "Director of Public Prosecutions has declined to bring charges against at least 20 people suspected of helping others to commit suicide...."
>
> "The disclosure provoked fury from anti-euthanasia groups. They accused [The Director of Public Prosecutions] Mr. Starmer, who is in charge of all criminal prosecution decisions, of single-handedly rewriting the law on suicide."

What happens if a nurse puts in a complaint to the state department of health? Aside from losing her job by being harassed out or retaliated against, she may be blackballed completely from the industry. Blackballing of nurses (making them un-hireable) happens!

Some nurses have had their licenses attacked at the state board of nursing with fabricated charges against them. And the result of their complaint? In almost all cases, the state inspectors "fail to corroborate" or fail to investigate the "allegations" in a timely manner and therefore no action at all is taken.

As an example, back in 2005, the California "Health department was sued to force it to follow the law:

> "Exasperated by what they say are years of state indifference to nursing home complaints, two San Jose-area women and a watchdog group are suing the Department of Health Services in hopes that the courts can force the agency to follow its own rules."
>
> "State law requires nursing home complaints -- written or oral -- to be acknowledged within two days and investigated within 10 days. That seldom happens, say critics of the department. And a department spokeswoman said Tuesday that in only about 40 percent of the less serious cases -- those that do not involve an immediate threat to life -- are investigations begun within 10 days."
>
> "More and more complaints are not investigated at all, or not on a timely basis," said Patricia McGinnis, head of California Advocates for Nursing Home Reform, one of the plaintiffs in the lawsuit."

What happened with the lawsuit? California Advocates for Nursing Home Reform won the case.

> "The Department was ordered to comply with the statutory requirements and to complete investigation of the "backlogged" complaints within a specified period of time."

But forcing the inspectors to respond to complaints in a more timely basis has not led to better care.

> "Charlene Harrington, lead author of a University of California at San Francisco study that was released [in May 2008 said]: "The study found that the number of complaints about poor quality of care increased, as did documented deficiencies and citations."
>
> "The quality of nursing home care has been a serious problem in California and nationwide for many years," Harrington said.

Professor Harrington is correct. Problems in nursing home care as well as care in other agencies are extremely severe in many cases all over the country. When families, patients or staff complain, the state departments of health do not respond in an effective way to force compliance with regulations that protect patients.

In March 2002, Bee Becker, former HPA Board member testified before Congress about her mother-in-law's murder in a nursing home, yet nothing has changed within the industry. The Congressional investigations confirm over and over again that patients are still abused, neglected and directly harmed, Congressman Waxman's 2001 investigation being just one of many through the decades. Here is Bee Becker's testimony to Congress, even more relevant today as conditions worsen:

Statement of Barbara Becker
to United States Senate - Special Committee on Aging
March 4, 2002

Mr. Chairman, Members of the Committee, I am Barbara Becker from Indiana. Thank you for allowing me to represent my mother-in-law, 83-year-old Helen Becker Straukamp, homicide victim.

According to the facility, Helen had been "injured"; the hospital was informed that she suffered a "fall", but an employee later told us of the assault. An eyewitness reported that Helen was picked up by her arms from a standing position, lifted off the floor and slammed into a wall and handrail, falling to the floor unconscious.

Helen was never even able to stand again and died 22 days later. The coroner ruled her death a homicide.

I discovered on my own in Louisville that the perpetrator of this assault was a male mental patient with a decades-long, violent history which included 4 shootings, SWAT teams, prison time, etc. None of this was mentioned in the investigations.

I found documents signed by the nursing home showing that they knew of his history. After the assault on Helen, this resident was soon given his usual access to the entire population of the facility. He threatened to castrate a wheelchair-bound resident while a surveyor was in the facility. He attempted to assault yet another elderly female resident, and the administration of the facility did nothing. I notified a detective and the prosecutor. A judge issued an order for involuntary removal to a psychiatric unit where he had to be placed in total lockdown and charged with involuntary manslaughter, pending a competency hearing.

My experiences with regulatory agencies, law enforcement, etc., are as follows:

Due to my dogged determination for accountability, I contacted elected representatives including the Governor, the state and U.S. attorneys, CMS, HHS, and the GAO. Four investigations resulted in 42 pages covering six years of previously 'undiscovered' violations from the date of this man's admission. No immediate jeopardy level was imposed due to Helen's death. HCFA overrode the state's flat fine and imposed a $1,000/day fine, but the scope and severity level was unchanged. Still out of compliance on a revisit, the CMP continued and total fines amounted to $60,800; by not appealing, they were granted an automatic 35% federal discount to $39,520, regardless of the homicide. To this day, the facility's record on the CMS website appears very favorable. The entire experience with the state regulatory agency was adversarial from the first meeting. There was absolutely no doubt who was being protected, and it wasn't the residents. In my first meeting with an IDOH official, I was personally told "well, this wasn't like a beating"; the former assistant commissioner refused to discuss the case with me.

Law enforcement investigated, but only the perpetrator.

I contacted Adult Protective Services three times, only to be told that they don't handle nursing home cases. They are barred from investigating nursing home cases without orders from the DOH; DOH rarely uses this resource.

I contacted the Peer Review Organization, Health Care Excel and received only a letter and brochure, declining to even investigate.

The Medicaid Fraud Unit completed a very thorough investigation and validated every piece of evidence I had provided. I pushed the completed case through the AG's office (who took no action) and on to my local prosecutors. They declined to investigate or prosecute. There has yet to be any justice for a homicide.

All I hear from the industry are labels of "isolated incidents", which must by now number in the hundreds of thousands; "frivolous lawsuits", no matter how horrific the case; I hear whining for

"more money", "less regulation" and what I refer to as tort 'DE-form'. The 'system' leaves no alternative for victims.

I could have provided reams of evidence today, until I realized that countless victims and family members like me have stood here before you, evidence in hand. Countless Congressional Reports, GAO Reports and studies have been presented to Congress for years. The evidence is already in....those with the power to stop these atrocities know exactly what is happening. You have seen thousands of certificates of unnatural deaths, thousands of pictures of the bodies of victims of our 'system'.

At least 15 of the 25 largest nursing home chains have been accused, found guilty or have admitted to Medicare fraud of multimillions of taxpayer dollars. To my knowledge, not one owner/operator has gone to prison. They are not even required to pay back all the defrauded funds.

Negligent homicide and elder abuse within my home or the community, is treated as criminal; not so inside a nursing home. It's a regulatory offense with no criminal accountability.

I am from a long line of patriots and veterans from W.W.I through Desert Storm. Yet veterans referred to as the "Greatest Generation" are enduring these same nursing home atrocities and treated as those least deserving of our country's respect. Yet there is considerable concern for the Afghan detainees in Cuba, and it's a felony to euthanize a mockingbird here in Washington.

Helen's homicide was included in Congressman Waxman's Report to Congress July 30, 2001, on reported abuse in one-third of our nursing homes and has received nationwide media attention.

It's long past time to restore the Civil and Constitutional Rights of nursing home residents.

Thousands are waiting to hear the results of today's hearings.

When will we have justice?

With all due respect, what will I be able to tell everyone across the country when I return home?

- Barbara Becker

And, yes, many patients are being abused, neglected and directly harmed in these facilities. If that's not enough, some are medically killed in locations around the country, and sometimes it is the adult child or the spouse who puts the patient into hospice, sometimes it is a nursing home or hospital that encourages enrollment in hospice, though the patient is not terminal, and the patient dies within a week or two. The "death protocol" is well-rehearsed and 100% effective.

Just look at the changes in the hospice population of patients:

> "The percentage of Medicare hospice patients with lung cancer dropped from 16% in 1998 to 9% in 2008. In addition, we are seeing a notable increase in the number of neurologically-based diagnoses. We are also seeing a marked increase in non-specific diagnoses such as "Debility, Not Otherwise Specified", and "Adult Failure to Thrive". -- Hospice Data 1998-2008 - Centers for Medicare Services

When a patient is admitted to hospice for "debility," "failure to thrive" or "not otherwise specified," I get concerned. I've seen cases where an elderly patient was labeled "failure to thrive," but when a family member got involved and made sure the patient got the medications they needed, had good food to eat that they liked, took the time to make sure they ate, and showed that they loved them, the patient came around, gained weight and returned to full health. I've also seen cases where they ended up dead, because they didn't get the kind of care that used to be common-sense and ordinary.

I remember the Jan 10, 2000 Archives of Internal Medicine study of Oregon physicians, "Attitudes and Practices Concerning the End of Life - A Comparison Between Physicians From the United States and From the Netherlands" that showed they would increase the dosage of morphine if the patient was very weak (debility), thought their life was meaningless or if they thought they were a burden on their families.

* When severe weakness and debility of the patient were involved, 36% approved of increasing the dosage of morphine; 37% approved of Physician-Assisted Suicide ("PAS"); and 14% approved of euthanasia.

* When patients felt that they were a burden on their families, 24% of the physicians approved of increasing the morphine dosage; 24% approved "PAS"; 7% approved of euthanasia.

* When patients felt that their lives were meaningless, 20% of the physicians approved of increasing the morphine dosage, 22% approved of "PAS", and 7% approved of euthanasia.

These doctors are not talking about increasing the dosage of morphine to relieve pain which is what morphine is for. This is increasing the dose when there is no need for morphine.

Increasing the dose of morphine when there is no uncontrolled pain is certain to cause all the predictable adverse effects: a lower respiratory rate, lower blood pressure, cessation of breathing and death.

So, increasing the dose of morphine when the patient has no extreme pain, but has weakness, felt his or her life is meaningless, or thought they were a burden? That is clearly a decision to end the life of the patient.

Reassuring, isn't it?

We know that in 2007, there were 2,423,712 total resident deaths recorded in the United States.

In Belgium where euthanasia is legalized, "the incidence of euthanasia in Flanders in 2007 was ... estimated as 1.9% of all deaths." if we were to estimate the number of intended, active euthanasias in the United States using this percentage, 46,050 patients would have been medically killed by outright active euthanasia. Many other imposed deaths occur through other means such as withdrawal of needed treatments, refusal to treat, failure to provide food and fluids, terminal sedation and others. Of course, any form of euthanasia is illegal in the United States. You could say there aren't "any" legal euthanasias being performed.

But I know there are euthanasias in this country. Many families have called here reporting intentional overdoses of morphine being given or patients being sedated against their will and dehydrated over the course of a week or two (terminal sedation). You could then say, "they're lay people, non-medical individuals; they don't know anything." But we've had confirmation from palliative care professionals, hospice nurses, doctors, social workers and others who testify to what they've seen.

There are many ways of imposing death, whether "actively" through a lethal medication, or "passively" through withholding a needed treatment, food or fluids. If you don't treat an easily treatable urinary tract infection and it then goes septic, causing death, that could be seen as "passive euthanasia." If you don't provide food or liquids, that's "passive euthanasia." If you don't provide extra oxygen for a patient that needs it, and he dies, that's "passive euthanasia." If you know there are some simple measures you could take to re-stabilize a patient, but you choose not to do them, you are choosing to have that patient die.

These methods are used in the United States all the time. That's why many *Associated Press* articles written at the time the Terri Schiavo debate was raging quoted physicians as saying, "I don't know what the fuss is. We do this sort of thing every day."

And remember those Oregon physicians who were studied back in 2000? 20-36% of them would increase the dose of morphine for non-pain-related reasons (causing death obviously). Can we look at this objectively? Physicians are willing to end patients' lives through lethal agents like morphine.

This speaks volumes about what is going on. It's the "untold story" of physician practice. The kind of stuff that most major media outlets are not going to share with us (because they generally favor legalization of assisted-suicide, euthanasia and health care rationing).

So, when the hospice industry talks about expanding services for the non-terminal and providing them through hospice, I see "red flags" of all sorts. I think about what they're not saying. They are not talking about how the leadership has been infiltrated by those who believe in euthanasia of the terminal, the disabled, the chronically ill, those with dementia and other categories of illnesses. They are not mentioning that the ethics that will be used to provide these services will not be based on Constitutional law or rights, or based on the sanctity of life, but on secular utilitarian ethics. They will not reveal that the government officials are interested in culling the population of patients who have repeat acute hospital admissions; they don't want to pay for it.

Patients with dementia may have higher risks for injuries and complications requiring hospitalizations or surgeries of various sorts. Those who qualify as "failure to thrive" are on the way to requiring some sort of intervention at the hospital, perhaps with repeat admissions costing many tens of thousands of dollars. If they continue to go downhill, Medicare is certain to pay for a lot of services before the time comes when they are "officially" labeled "terminal" and eligible for hospice. The data shows that they want these patients to enter hospice sooner, perhaps a year or more sooner, and everyone knows they're going to die sooner, too.

The Federal "Ethics" Used to Decide Who Lives and Whose Death is Hastened

Dr. Emanuel and the scholarly colleagues at NIH are not going to personally make these decisions. The nameless bureaucrats running "Obamacare," under the new "Patient Protection and Affordable Care Act" of 2010 will make these decisions. Medicare, Medicaid and any government-run healthcare system will include forms of rationing based upon a secular ethical system.

Those who decide will not necessarily be physicians, scholars or even "bioethicists." They will be made up of utilitarian, secular-minded bureaucrats who are only interested in doing what they are told to do. They may not even have advanced degrees or any college degrees at all. They will follow the decision-trees handed down from "above" by those at the highest levels of power within the bureaucracy.

Everything about the President's policies has been about re-shaping American society according to his vision. He shows little propensity to listen to those of faith who object to the plan.

While Dr. Emanuel is supposed to be the best, "chief" bioethicist in the country, what bioethics will he apply? When considering the effects of legalization of euthanasia or physician-assisted suicide, he writes:

> "Ultimately, the ethical question we should consider is: Will legalizing-or permitting-euthanasia and PAS promote-or thwart-a good death for the 2.3 million Americans who die each year in the United States? Will people who die be helped or harmed by having euthanasia or PAS available to them? In confronting this question, we must first acknowledge that figuring out the benefits and harms of permitting euthanasia or PAS is speculative, at best."
>
> ["What is the Great Benefit of Legalizing Euthanasia or Physician-Assisted Suicide?" Ezekiel J. Emanuel, MD *Ethics*, Vol. 109, No. 3. (Apr., 1999), pp. 629-642.]

His phrasing of the question and his suggestion that "figuring out the ... harms of permitting euthanasia or physician-assisted suicide is speculative, at best" is very revealing. No matter how "learned" the discussion, it is clear that bioethicists like him have lost their way and no longer affirm the sanctity of life at all. ***Our nation's chief "bioethicist" states that we have to guess what harm may come from legalizing the killing of the patient***! Obviously, the harm is that the patient is dead! And of course, there are many other ripple effects from that: family and friends who are deprived of the time with the patient at the end, the opportunities for healing relationships, the "unfinished business" that is left unfinished, the devaluing of the life given, the playing God that is done when one medically kills, the coarsening and darkening of our society if we allow such evils, the likelihood that more and more categories of those "suitable" for euthanasia will be allowed, and the likely deterioration of end-of-life care services.

Dr. Emanuel asks (in the conclusion of this same article):

> "Will legalization of euthanasia and PAS significantly improve the care of the 2.3 million patients in the United States who die each year? There is no compelling evidence that the answer is in the affirmative. And the focusing of so much attention and energy on debating, campaigning, litigating, and studying euthanasia and PAS is beginning to detract from the primary goal of improving end-of-life care."

If you think about it, it's quite amazing to think that killing the patient could in any way "improve the care" of

that patient. Yet, this is what our chief bioethicist is thinking about. At least, let's hope that the primary goal *is* to improve end-of-life care, but what type of improvements will be made? While some improvements in end-of-life care are encouraged through health care reform, will they also include Third Way killing through palliative sedation? Definitely. And therefore, the "harm" Dr. Emanuel apparently "avoids" when he suggests not legalizing euthanasia and assisted-suicide remains.

Over and over again, we see physicians and bioethicists taking a stand against euthanasia and assisted suicide and promoting palliative care and hospice. And when they do, the pro-lifers enthusiastically applaud, not realizing they are not going to get what they think. These same physicians and bioethicists allow for Third Way killing in palliative care or hospice settings that accounts for many, many thousands of imposed deaths each year. The problem with Dr. Ezekiel's (and others') discussions lies in what ethical considerations and assumptions are used when deciding what reforms to implement.

And we know that the ethics to be applied to any health care reforms won't be in line with any religion: that would be "unconstitutional" according to the anti-religious mainstream today. We know what it will be. It will be run according to "Federal Ethics," established by an elite group of individuals selected by Congress (not the "people of the United States") and derived from what became known as the Belmont Report. The group was originally commissioned by Congress in 1974 to establish guidelines for research on fetuses.

> "Based on the Belmont Report and other work of the National Commission, HHS revised and expanded its regulations for the protection of human subjects in the late 1970s and early 1980s. The HHS regulations are codified at 45 CFR part 46, subparts A through D. The statutory authority for the HHS regulations derives from 5 USC. 301; 42 USC. 300v-1(b); and 42 USC. 289.
>
> "The regulations found at 45 CFR part 46 are based in large part on the Belmont Report and were written to offer basic protections to human subjects involved in both biomedical and behavioral research conducted or supported by HHS. In 1991, 14 other Federal departments and agencies joined HHS in adopting a uniform set of rules for the protection of human subjects, identical to subpart A of 45 CFR part 46 of the HHS regulations. This uniform set of regulations is the Federal Policy for the Protection of Human Subjects, informally known as the "Common Rule."

As Prof. Dianne Irving, PhD says in her article, "What is Bioethics?"

> ".... these bioethics principles of autonomy, justice and beneficence have been used -- as originally defined -- as the explicit basis for many major public policies, governmental regulations, private sector and industry guidelines, even international guidelines still in use today - e.g., the federal OPRR regulations on the use of human subjects in medical research, The Common Rule, Institutional Review Board Guidebooks, Hospital Ethics Committee Guidebooks, most policies for hospitals and other health care facilities, the international CIOMS/WHO [World Health Organization] Guidelines for the use of human subjects in Third World countries, etc."
>
> "That is, these bioethics principles are explicitly defined in these documents in the same way as they were defined in The Belmont Report .... These bioethics principles also now literally redefine the "ethics" of other disciplines, e.g., business ethics, and ethics in engineering. Even our country's military schools have restructured their ethics courses and have essentially reduced them to courses in bioethics (often using many of these same bioethicists as their professors). Many colleges and universities already require a course in bioethics in order to graduate, and most medical and nursing schools have incorporated it in their curricula. Bioethics is even being taught now in the high schools. And what is being taught as bioethics are the Belmont principles, or renditions of one or more of these principles as defined in Belmont terms. ...."
>
> "Bioethics has also influenced the law and the media."

This is not bio-"ethics" as you or I might want it. It does not conform to the Hippocratic Oath that the public has long assumed physicians affirm upon graduation from medical school, including the physician's promise:

> "I will do no harm or injustice to [my patients]."
>
> and
>
> "I will not give a lethal drug to anyone if I am asked, nor will I advise such a plan; and similarly I will not give a woman a pessary [medical device] to cause an abortion."
>
> [Physicians "Hippocratic Oath"]

The National Institutes of Health states that:

> "Contrary to popular belief, the Hippocratic Oath is not required by most modern medical schools, although some have adopted modern versions that suit many in the profession in the 21st century. It also does not explicitly contain the phrase, "First, do no harm," which is commonly attributed to it.

Well, we can see the slant the N.I.H. wishes to push, clearly implying "modern" medicine has "outgrown" the "obsolete" restriction of the Oath such as to "do no harm." NIH implies that the phrase "do no harm" is not in the Oath, saying the phrase, "first, do no harm" is not "explicitly" in the Oath, but we just read (from the same NIH web page) that the oath clearly includes the phrase, "I will do no harm." Yes, it does not have the word, "First," before the "do no harm," but why imply "do no harm" isn't in the oath? It is!

What do the right-to-kill groups have to say? The World Federation of Right to Die Societies posts this about the Hippocratic Oath:

> "Although the Oath laid the foundation for the ethical ideals to which medical practitioners should aspire, its detailed wording, relevant to social conditions prevailing 2400 years ago, is not appropriate to the practice of modern medicine."
>
> [from The World Federation of Right To Die Societies member, South Australian Voluntary Euthanasia Society]

"Do no harm" is not appropriate? "I will give no lethal drug" is not appropriate? "I will not give a woman a pessary to cause an abortion" is not appropriate? What about those "modern versions" of physician oaths the NIH mentions?

> "The oath most often employed by medical schools today is "the Lasagna Oath.

That surprised me. The "Lasagna" Oath? What's that? Well, it's called the physician's "modern oath." What is most alarming about this modern version is the following section:

> ".... Most especially must I tread with care in matters of life and death. If it is given me to save a life, all thanks.
>
> **But it may also be within my power to take a life;**
>
> this awesome responsibility must be faced with great humbleness and awareness of my own frailty.
>
> Above all, I must not play at God."
>
> ["The Hippocratic Oath: Modern Version" Written in 1964 by Louis Lasagna, Academic Dean of the School of Medicine at Tufts University]

It may "be **within my power to *take* a life**...." What does that mean? I would like to think it meant that in the ordinary course of medicine, some people might die. We can all understand that, but that is not the language most carefully chosen by the author. "Take a life" is not the same as "lose" a life! And just before stating that one must "not play at God," the oath states they may "take a life." What else is "taking" a life but "playing God?" There is no prohibition against abortion or giving a lethal drug as was included in the Hippocratic Oath. There is no prohibition against "doing harm." In fact, the word, "harm" is not contained in the modern physician's oath. Of course, each medical school chooses what oath to use, and:

> ".... In 1993, a large-scale study of the oaths administered by almost 150 North American medical schools was undertaken to determine the popularity and content of modern oaths.
>
> As it turns out, the oaths given in this day and age have changed substantially from the original. Fourteen percent ban euthanasia. Eleven percent invoke a higher power. Eight percent oppose abortion.
>
> ["Is the Oath Outdated?" Jackie Rosenhek, Dec 2009, Doctor's Review]

Only 14 percent ban euthanasia and only 8 percent "oppose" (but do not "ban") abortion! It used to be 100% banning abortion or doing the "harm" of euthanasia with the Hippocratic Oath. So, we've come a "long way" down the wrong way. The ethics held by physicians and other medical-legal professionals today is nothing like the clear respect for life held by physicians of old. Perhaps that is why many physicians look with contempt upon those of us who still respect life.

It was only four years after the new physicians' oath was written that in 1968, the Ad Hoc Committee of the Harvard Medical School to examine the definition of brain death" released their report, "a definition of

irreversible coma. Abandoning the Hippocratic Oath to "do no harm" goes right along with creating a new definition of death and the killing of the not really dead patient to get the organs for donation.

The issue becomes clearer when we consider why in 2007, "Italian doctors want[ed] to scrap [the]'outdated' Hippocratic Oath"

> "Senior medical figures in Italy are campaigning to scrap the Hippocratic Oath for doctors on the ground that the passages forbidding abortion and euthanasia are outdated."
>
> [Richard Owen in Rome, *The Times Online*]

Why is Italy so far "behind the times?" While America has been sleeping, most U.S. med schools trashed the Hippocratic Oath long ago! Well, 87 percent of Italy's population is Catholic. It's been difficult for the "new" secular bioethics to move forward there with the Catholic Church's unmoving opposition to medical killing of any form.

The secular bioethics (Professor Irving has explained to us) is nothing like the ethics supported by the founders of our nation. It is not the ethics you may have adopted as a Christian, Jew, Muslim, Hindu, Buddhist or person of some other faiths. It's secular, non-pro-life "bioethics" as the government instituted back in 1978: the "Common Rule" of the Belmont Commission. And it's not really, "new." Secular utilitarianism has been around for a very long time indeed!

Any way you look at the principles of the U.S. Congress-created Belmont Commission, they are utilitarian and an establishment of a system of ethics foreign to the founding of our nation, directly opposed to the principles embodied in the U.S. Constitution, and contrary to the faith of most Americans. "Autonomy," "beneficence," and "justice" as defined in the Belmont Report are just not in the Constitution. The insertion of these principles into most aspects of our society has been a wedge to twist much of what our government and health care institutions do and turn it toward utilitarianism. These principles are in stark contrast with our nation's life-affirming tradition of respecting the rights of "the individual" citizen under Constitutional law! In July, 2011, the National Institute of Health proposed modifying the regulations that protect human research subjects to make it easier to conduct studies. Some warn that this will allow more abuse, rather than less.

Like most hospitals in the United States today, the Flagstaff Medical Center's ethics committee in Arizona uses similar secular bioethics principles to guide its decision-making: "patient autonomy; beneficence, ... justice, involving fair use of limited resources; and nonmaleficence - the goal of doing no harm." How "autonomy, beneficence, justice and nonmaleficence" are defined depends upon your worldview. Nurses who object to the decisions being made are "encouraged" to realize they must "set them aside when needed, because other considerations in an ethics case may trump personal beliefs." Almost all hospital ethics committees use the same principles to guide their decisions. And when a staff member holds pro-life beliefs contrary to the secular and "politically correct" tyranny, they are often not invited to be or remain on these committees.

In other words, pro-life professionals must go along with decisions that hasten or impose death, remain silent, or risk losing their jobs, because decisions made by the hospital's ethics committee represent its official policy. Any employee fighting that decision is acting contrary to the corporation's secular mission, is viewed as a troublemaker, and the corporation may use that to justify terminating the employee or finding another reason to terminate the employee.

As far as health care is concerned and its "reform," we are being catapulted ahead into a health care system administered completely by people who follow utilitarian, socialist, secular values. They do not value the lives of the elderly, disabled and chronically ill and are finding ways to deny treatments, shunt them over into hospice and have their lives ended. The elite will determine who lives and who dies sooner. It will no longer be government of the people, by the people and for the people; it will be government by secular mandates imposed on the people, especially the ailing.

The Justice Department's move to prosecute pro-life protesters who simply hand out information peacefully outside of abortion clinics is a move to stifle pro-life free speech, not just to protect the rights of individual women to access abortion clinics to end the life of their baby.

The secular utilitarian principles will govern what decisions are made about *your* loved one or yourself when the time comes, either when you need medical care or when you simply fit the "profile" of who is not to get certain care and who is. Interesting that "profiling" is forbidden when detecting those terrorists who would kill Americans, so all Americans have to be treated like criminals at the airport security lines.

Does this make sense? No profiling for terrorists, but profiling will be used to discriminate against all Americans of a certain type, the elderly and disabled. Why? Because according to "the elite" you have lived "complete lives," "long enough" in their estimation, and you no longer deserve services because you are a

"nonparticipating citizen," no longer working or contributing to society, or your "quality of life" is poor. You no longer need treatment or care in their view; you only need "comfort care" that will peacefully end your life. Even if you do need real care, you will be denied that care. You are no longer "worthy" of that care according to the "elite" who will decide. You and your loved ones will die sooner rather than later, for sure, if you needed that care! Why? Because you fit "the profile."

Economist and *New York Times* columnist, Paul Krugman, said:

> ***"Some years down the pike, we're going to get the real solution, which is going to be a combination of death panels***
>
> "and sales taxes. It's going to be that we're actually going to take Medicare under control, and we're going to have to get some additional revenue, probably from a VAT [a "value added tax"]. But it's not going to happen now." - From ABC TV's November 14, 2010 roundtable discussion on "This Week with Christiane Amanpour"

It's getting quite in-your-face and obvious what they intend to do. Even if there is all this talk of compassionate care, it's "comfort care" combined with rationing care, and that doesn't always mean clinically-appropriate end-of-life care as we would expect. Paul Krugman, Ezekiel Emmanuel, MD, PhD, many other physicians and some politicians have openly told us what to expect.

In an Aspen Institute interview, Microsoft Chairman, Bill Gates indicated:

> ... medical costs are dominating state and federal budgets in the form of Medicare and other payments. Fewer funds are available for education. Tuition is soaring at many public universities, pricing out many would-be students.
>
> "The access that used to be available for the middle class is just rapidly going away," Gates said. "That's a trade-off that society is making because of very, very high medical costs."
>
> The country has demonstrated an unwillingness to question if "spending $1 million on the last three months" of a person's life is a cost-effective direction, especially considering the same amount of money can keep 10 teachers employed. Gates called for the nation to do a better job of examining the benefits of costly end-of-life medical care.
>
> "***That's called the death panel and you're not supposed to have that discussion***," Gates said, taking a jab at critics of the health care bill that Congress considered earlier this year."

Gates forgets to mention that even though "more than $100 billion may be lost in ***health care*** fraud, waste and abuse" each year, only $11 billion is used to fund all Medicare hospice payments each year. If even ten percent of the health care fraud, waste and abuse that occur each year were recovered, it would fund an entire year of care to the elderly at the end-of-life. And that is not even beginning to count all the fraud, waste and abuse of our tax dollars throughout the entire federal budget, covering many areas of the economy.

Sure, some hospital admissions are not wise, because the patient truly is dying and the acute care hospital may not be able to do anything to help. In those cases, good end-of-life care is ideal. But, the idea that we need to ration care for the elderly to the extreme is nonsense. If it is the last three months of a person's life, as Gates mentioned, we can provide good hospice & palliative care that does not impose death and that respects their life. Caring for the vulnerable, not killing, is the sign we are a civilized society. Gates clearly has a different vision for American society.

If we choose to impose death upon the elderly (one way or another), then we'll be just like the Nazis, because that's what they did with their seriously ill citizens. And they thought they were at the forefront of what was "progressive" and "civilized." Not too long after World War II, Leo Alexander, M.D. wrote in 1949 in *The New England Journal of Medicine*, pages: 39-47, "Medical Science Under Dictatorship" about the motivation some Nazi physicians had to commit their crimes against humanity:

> "The important lesson here is that this motivation, with which one is familiar in ordinary crimes, applies also to war crimes and to ideologically conditioned crimes against humanity-namely, that fear and cowardice, especially fear of punishment or of ostracism by the group, is often more important motives than simple ferocity or aggressiveness."

Dr. Alexander continues discussing the Nazi crimes against humanity:

> "The Early Change in Medical Attitudes

"Whatever proportions these crimes finally assumed, it became evident to all who investigated them that they had started from small beginnings. The beginnings at first were merely a subtle shift in emphasis in the basic attitude of the physicians.

It started with the acceptance of the attitude, basic in the euthanasia movement, that there is such a thing as life not worthy to be lived.

This attitude in its early stages concerned itself merely with the severely and chronically sick. Gradually the sphere of those to be included in this category was enlarged to encompass the socially unproductive, the ideologically unwanted, the racially unwanted and finally all non-Germans.

But it is important to realize that the infinitely small wedged-in lever from which this entire trend of mind received its impetus was the attitude toward the nonrehabilitable sick."

This is exactly where we're at today: the rationing of care for the very elderly, disabled and chronically ill, the devaluing of their lives, the encouragement of death-hastening methods when quality of life is deemed to be inferior, the outright imposition of death through many means within the health care system.

Physicians today do not face execution if they do not follow the orders of the "Fuhrer," but they do face ostracism from their colleagues if they are openly pro-life, refuse to participate in what is considered "standard" quality of life decision-making which hastens death. Nurses, pharmacists and doctors who question what is going on all around them do stand to be blackballed, even fired from their positions in many hospitals, nursing homes, and especially hospices.

If they refuse to perform an abortion, there have been laws supposedly protecting their conscience rights. If a pharmacist refuses to dispense drugs like the "emergency contraceptive Plan B" that kill newly conceived babies, there have been conscience rights laws. These minimal protections do not always protect those who revere the sanctity of life.

Bill Saunders of *Lifenews* writes about the former protections :

"Under the Bush rule, recipients of federal healthcare funds are required to certify that they are in compliance with three existing federal conscience protection laws: the Church amendment, the Public Health Service Act Section 245, and the Weldon Amendment (which is passed annually as part of Congressional appropriations). Each of the laws covers different areas, but all relate to whether a healthcare professional can be required to participate in medical procedures or research activities against his or her religious beliefs or moral convictions.

"Concerned that these laws were not being honored, and that illegal discrimination was occurring, HHS proposed the conscience clause rule in August 2008 in order to provide a regulatory vehicle to enforce the three conscience laws. The rule was finalized December 19, 2008 and took effect January 20, 2009."

With the change in administration, the new protections have now been taken away just two years after they were made effective:

"... the Obama administration on Friday finally ***rescinded most of a federal regulation designed to protect those who refuse to provide care they find objectionable on moral or religious grounds***.

".... "Any weakening of conscience protections opens the door that much further to discrimination against life-affirming health-care professionals and institutions," said Jonathan Imbody, vice president for government relations at the Christian Medical Association. "With many areas already facing critical shortages of professionals and institutions, this is no time to be risking the further loss of health-care access for poor patients."

["Obama administration replaces controversial 'conscience' regulation for health-care workers" By Rob Stein *Washington Post* Staff Writer February 18, 2011]

The removal of the protections for pharmacists will force them to dispense the so-called "emergency contraception" called "Plan B." Is "Plan B" only a "contraceptive?" Does it only prevent conception? The drug's description clearly shows it is not:

"... This medication ... causes changes in your cervical mucus and uterine lining, making it harder for ... ***a fertilized egg*** to attach to the uterus. Levonorgestrel emergency contraceptive is used to

prevent pregnancy."

Katie Walker of the American Life League writes:

> "Planned Parenthood and the birth control industry would have you believe Plan B One-Step cannot cause an abortion. That is a lie."
>
> "In 1965, the American College of Obstetricians and Gynecologists issued a Terminology Bulletin that 'officially' changed the definition of 'conception' from the union of sperm and egg to implantation. As a result, the medical establishment does not call the killing of a human being prior to implantation an abortion. But that is just semantics."
> "Plan B One-Step works like any other abortifacient drug: It can alter (thin) the lining (endometrium) of the mother's uterus so that the newly-formed baby cannot implant and thus dies. Plan B One-Step's product information itself states, 'It may inhibit implantation (by altering the endometrium).' Direct abortion is the willful ending of a preborn human being's life. Plan B One-Step is thus a direct abortion method. Women should not allow themselves to be misled by sales representatives for Plan B and Plan B One-Step, who claim that these products will not terminate an existing pregnancy."
>
> "Unfortunately, the birth control industry and Planned Parenthood - the nation's largest abortion chain - have tricked many women into aborting their tiny children. Plan B One-Step, Plan B, the birth control pill, IUD and other hormonal birth control products can all cause abortions. Period."
>
> ["Don't be Fooled: Plan B One-Step Causes Abortion" July 30, 2009 - By Katie Walker]

We need society and our elected leaders as well as those in industry to use scientifically accurate language and definitions. Redefining life so that lives can be ended is evil. By saying that conception has not occurred until implantation is ridiculous. Obviously, conception occurs when the sperm penetrates the oocyte and the two unite. Plan B does not prevent that; it kills the new life formed. We need a culture of life that does not punish those who simply wish not to kill human beings or participate in that killing in some way within a health care setting. Why should we be forced to kill, participate in killing in some way, or facilitate it, or if we refuse, lose our careers?

What will happen to nurses or doctors who refuse to participate in euthanasia, even if it is "Third Way" euthanasia. When the major media, the government and the health care administrators in the end-of-life arena do not even recognizes the medical killing as killing, how can the nurse object? How can she even assert an objection? If she is fired for objecting, who is going to care? And what legal remedy will she have? None at present. It's just like those who say no conception occurs (when it does) and therefore there is no ending of the tiny new human life.

Add to this the rationale for decision-making made by health care providers that are absolutely for-profit. The Kaiser Permanente physician group (absolutely "for" profit) has its own:

> "... "group ethic," which is Kaiser's attempt to all but replace the Hippocratic Oath; suddenly the "group" of physicians have to watch out for each other financially and the "group" of patients are supposedly willing (uninformed consent) to sacrifice individual high cost care to the purpose of keeping each individual's premium down."
>
> ["Permanente Medicine: Navigating a Course to Our Sustainable Future" and "Permanente Medicine: The Permanente Medicine Map" by Jon Stewart, Assoc. Editor of the *Permanente Journal*, Winter 2000, vol 4, No 1]

No matter that the individual supposedly "served" by "the group" is denied care that could save their life or cure their condition or at least stabilize it properly! The profit motive in health care is not a substitution of another set of moral values; it is the substitution of no moral values, just an eye on what brings in more net profit to "the group," the "HMO" or Preferred Provider Organization ("PPO"). Today's PPOs have come to resemble the HMOs, with the managed-care model of decision-making, treatment denials or roadblocks put in the way, incentives for physicians to decrease diagnostic tests, treatments and cost of medications. The profit motive that dominates a health insurer's policies and subsequent treatment denials (at the expense of quality care) is the equivalent of anarchists being in charge of the government.

Health "care" ceases to even be "care" if decisions are no longer based upon what is medically appropriate.

When the government controls the system, health "care" ceases to be "care," and becomes a budgetary consideration. And government controls Medicare and Medicaid, the health care systems in which the elderly

and disabled find themselves.

Some of the leadership of the National Hospice & Palliative Care Organization is composed of pro-euthanasia advocates like Mary Labyak, CEO of the Hospice of the Florida Suncoast. Why would this organization elect her or others like her to such prominent positions if the organization cared about promoting the sanctity of life? They don't. They are absolutely promoting a secular, utilitarian "progressive" vision that includes hastening death through the misuse of terminal sedation. Whether they admit it or not matters not. What matters is the direction they are steering health care and end-of-life care in particular.

Powerful leaders of the largest hospices in the country are in a position to dominate the national organization. When you want to understand why, remember the old maxim, "follow the money." Each hospice that is a member of the National Hospice & Palliative Care Organization pays $8 for every hospice patient they have each year. If they serve 2,000 patients per year, they pay several thousand dollars in dues while some small hospices may have 100 patients a year. There's a big difference between $800 and several thousand dollars in dues-based revenue to the national organization. They pay more; they have a bigger seat at the table.

Government Rationing Health Care through Cost Effectiveness Research

> "Overview of the Patient-Centered Outcomes Research Institute"
>
> "The Patient Protection and Affordable Care Act, the health reform bill recently signed into law by President Obama, establishes a private, non-profit entity called the Patient-Centered Outcomes Research Institute [PCORI]. The Institute will spearhead efforts to prioritize and fund comparative effectiveness research (CER) using a largely stakeholder-driven process. This initiative builds upon the strong foundation laid in 2009 by the $1.1 billion in funding for CER in the American Recovery and Reinvestment Act (ARRA)."

This so-called "Patient-Centered" outcomes research and its "comparative effectiveness" research is so important to health care "reform" that:

> "The Institute will be funded through the Patient-Centered Outcomes Research Trust Fund (PCORTF), which will consist of funding streams from general revenues, an annual $2 fee per Medicare beneficiary transferred from the Medicare Trust Fund, and an annual $2 fee per-covered-life assessed on private health plans. The Medicare Trust Fund transfer and annual fee on insured and self-insured plans does not take effect until 2013. By 2015, total annual funding for the Institute will reach nearly $500 million."

That's half a billion dollars! It must be important. Why would the federal government spend half a billion dollars on this? Because "Comparative Effectiveness" research will save much, much more. It's all about deciding what care will not be provided, what care is determined to be "ineffective" and therefore no longer "approved," and therefore not reimbursable by Medicare, Medicaid or any vestigial private insurance company that remains if the federal health insurance system achieves complete control.

Spending half a billion dollars could be seen as a "good investment" if it saves billions more through denials of care across the board, affecting just about every citizen of the United States! It will certainly affect the elderly and disabled on Medicare.

If you think this is all about making the health system more effective and cost-efficient while preserving quality of care, you are quite mistaken. Any treatments or interventions denied may result in earlier deaths. Any treatments not "denied" but not "approved" may result in earlier deaths. Treatments that are "not approved" won't even be considered as an option to be offered or denied.

Why will they result in earlier deaths? Because when you don't treat a condition, the condition is likely to worsen, resulting in a cascade of harmful changes. Treatments not "approved" will not be provided by private

insurers (if the federal health system takes over) as well as Medicare and Medicaid. Again, treatments will not be received by patients who may need them.

Our current health care system with all its faults and wonders has never before allowed one entity to completely control who gets and who does not get a particular type of health care. People from all over the world come to the United States to get some of the best care available anywhere in the world. If the so-called health care reform is fully implemented, the finest aspects of our health care system may be dismantled. The federal government has denied that care will be rationed, or that "death panels" will be created, but we have only to look to other nationalized health care systems to see the devastating consequences of giving one entity, especially the federal government, complete control over U.S. citizens, complete control of our health care and whether we receive it or not.

The federal government will assure you that the people running P.C.O.R.I. and its cost-effectiveness research (CER) have great "integrity" and are well-intentioned. They must have "your welfare in mind" when they make their decisions. "Government knows best" is the new motto, but can we trust "Big Government?" Who is the Obama administration putting in charge of your health care? in charge of your mother and father's health care? or your relatives and friends? Or yours? Among some others:

> "Who is running PCORI? The answer was revealed today. The PCORI Board of Governors includes:
>
> * Associate Executive Director for the ***Permanente Medical Group of Northern California***
>
> * CEO of Empower, LLC,
>
> * Researchers from [among other ... universities]: Dartmouth"

Yes, they list it as "Permanente Medical Group of Northern California," but that is "KAISER" Permanente Medical Group of Northern California, the same medical group that Dr. Phillips states gives its patients devious, distorted and widened lab ranges that are not consistent with other lab values used in many other health care systems, in the medical schools or textbooks or around the world.

To review: Dr. Phillips states "... the Permanente Medical Group, Inc. (TMPG) in Northern California got even more aggressive and changed the normal value of the white blood count from 3,500 to 12,500."

KAISER PERMANENTE

The Permanente Medical Group, Inc.

Ordering Prov: MORAN, G K MD FRS/GYN
Copy To:
Performing Lab: FRS

[redacted]

IMMUNOASSAY CHEMISTRY

Collect Date: 05/07/97
Day of Week: WED
Collect Time: 1713

		UNITS	REFERENCE
Endocrine Functions			
FSH	5	mIU/mL	
(01/27/97 -- Current)			
Reference Ranges for FSH:			
MALE:	3 - 19 mIU/mL		
FEMALE:	1 - 25 mIU/mL		
Post menopausal:	>26 mIU/mL		

Please note new Reference Ranges for FSH effective January 27, 1997.

HEMATOLOGY

05/07/97 1713

Automated Blood Count			REFERENCE	Automated Differential			REFERENCE
WBC	8.6	K/uL	[3.5-12.5]	Segs/Grans	67	%	[50-70]
RBC	3.20*	M/uL	[3.60-5.10]	Lymphocytes	24	%	[20-50]
Hemoglobin	6.0C	g/dL	[11.0-15.0]	Monocytes	8	%	[0-11]
Hematocrit	19.6C	%	[34.0-46.0]	Eosinophils	1	%	[0-4]
MCV	60*	fL	[80-100]	Basophils	1	%	[0-2]
Platelet	308	K/uL	[140-400]				
Diff Method	INDX RVW						
RBC/WBC Morphology							
Plt Estimate	ADEQUATE						
Plt Morphology	NORMAL						
Anisocytosis	2+						
Polychromasia	1+						
Hypochromasia	3+						
Macrocytes	1+						
Microcytes	3+						
Ovalocytes	1+						
Teardrop Cells	1+						

C&C Order Comm: Critical results, phoned/faxed to DR. BARTLETT ext 5300 time 05/07/97 18:31 by FRSDFF.
Test repeated and confirmed.
Slide reviewed on 5/8/97 by Pathologist.

Legend
* = Low, * = High, C = Critical, * = Abnormal

Continued...

FINAL REPORT Outpatient

Admit: 05/07/97 Discharge:

001688

To review: what does the U.S. National Library of Medicine, U.S. Department of Health and Human Services and National Institutes of Health consider normal lab values for white blood cell counts?

> "Normal Results
>
> 4,500-10,000 white blood cells per microliter (mcL)."

So, the people who widen the normal range of lab values in order to intentionally detect disease later on, when it may be too late to treat, these are the people we should trust with our very lives under a government-mandated health "care" system?

And who is at Dartmouth University, especially overseeing end-of-life care, something the new rationed version of health care is very-much interested in? Ira Byock, MD, the same Ira Byock, MD who created the hospice lobbying group Partnership for Caring which absorbed Choice in Dying, the successor organization of the Euthanasia Society of America, and the same Ira Byock, MD who along with Timothy Quill, MD promotes wide implementation of palliative sedation (or "terminal sedation") as a means to hasten death (Third Way killing). This does not encourage me and it should not encourage you to trust the federal government's new "Patient-Centered Outcomes Research Institute."

So, who is running the Patient-Centered Outcomes Research Institute?

* Associate Executive Director for the ***Permanente Medical Group of Northern California***

* CEO of Empower, LLC

* Chairperson of Friends of Cancer Research

* Chief Medical Officer of the Pfizer Medical Division

* Chief Science and Technology Officer for Johnson & Johnson

* Director of Strategic Partnerships and Alliances at the Xerox Corporation

* Executive Vice President of The Regence Group

* President and CEO of the American Association of People with Disabilities

* President of BJC Health Care

* Program Director for the Health Technology Assessment program at the Washington State Health Care Authority

* Principal Deputy Under Secretary for Health and National Program Director for Cardiology, Department of Veterans Affairs

* Researchers from the following universities: Dartmouth, Harvard, Mississippi, North Carolina, UCLA, and Yale

* Senior Vice President of Medtronic, Inc.

And while the feds can point to the "President and CEO of the American Association of People with Disabilities," that's just one person among dozens of other representatives of corporate interests such as Johnson & Johnson, Kaiser, Xerox, and BJC Health Care. Why isn't the list dominated by representatives of and advocates for the elderly, the disabled, the chronically ill or just plain American citizens all across the land? Why aren't representatives from National Right to Life or church leaders included? What about all the patient advocacy groups and disability advocacy groups?

Why do the corporate interests have a major role in deciding who gets care and who doesn't (because this is what it's all about)? Does this make sense to you as an American citizen, a taxpayer, or even as a human being who needs access to health care now or in the future?

Government Protection of Hospice and Many Health Care Facilities

I tried back in 1997 to bring about reform and to help patients get the care the federal regulations required the hospice to provide. With inside information about terrible treatment of patients, detailed accounts and witnesses from various part of the state, the state department of health inspectors refused to even look into many of the separate violations listed. It was a shock to me, but looking back, I understand how it happened.

Due to budgetary concerns, inadequate numbers of state inspectors are hired in the first place. State inspectors are understaffed and overworked. Higher managers may be appointed by the Governor (either directly or through intermediaries who do the appointing) and these selected managers are put there for a purpose: to make sure the regulatory agencies don't get "out-of-control," don't go after friends of the Governor (or other elected

officials). These managers let staff know that they do not go after "protected" corporations. And they will certainly let them know which agencies and facilities are on the "list" to be protected. We have to remember the huge sums of money industry sends to state elected officials' campaigns or PACs of various sorts.

Those nursing homes you read about every year that the state attorney general went after? Their owners probably didn't pay enough "protection money" to the elected officials' campaign funds. They are used in many states to give the public the idea that the state attorney general is really "doing his job" and making sure that "bad" facilities are either shut down or fixed. They give the impression that the elderly can rely on the State Attorney Generals (in each state) to make sure the residents of these facilities get good care. The reality is quite the opposite. Have you visited one recently? Any thinking adult in the United States has heard some horror story about what happens in these skilled nursing facilities.

"At most [nursing] homes, staffing [is] below federal guidelines." Richard Halstead *The Mercury News* 06/22/2008

> "Inadequate staffing is the Achilles heel of most nursing homes, said Steve Garcia, a Long Beach-based lawyer who has sued nursing homes for providing substandard care."
>
> "These people on the floor, they're not doing it to get rich," Garcia said. "They could work at McDonald's and make the same amount of money. They do it because they care. But when you ask one person to do the job of three people, there is going to be problems."

And why is there inadequate staffing? In many cases, it's because the owners of the nursing homes view it as an investment opportunity to take in as much profit personally or corporately as they can, and then they move on. Sometimes, they close down one corporate owner and reopen under a new corporate ownership several times to avoid being held liable for damages in lawsuits brought by patients and families. Just a little more staffing could make the lives of patients and staff infinitely more humane, but owners simply will not budge.

When owners of facilities complain about funding, we must remember the profits being made by corporations like Gentiva Health and others. Remember, their 2010 net revenue is expected to be about $1.42 Billion! Large chains own many hospices, and even large nonprofit agencies still pay their top administrators in the hundreds of thousands of dollars range. Short-staffing is a decision made by those at the top to fill their pockets first and consider patient and staff needs last.

Now, you may say that your hospice agency provided great care and all of this is insulting and offensive to even read. Well, just because you experienced great, wonderful care for your loved one, doesn't mean there aren't problems at other hospices. I know there are good hospices and very dedicated hospice professionals all over the country. I also know there are some terrible hospice agencies and professionals, because I've seen them and met them personally.

Hospice as an industry reminds me of what it must have been like hundreds of years ago for strangers traveling in foreign lands with a language barrier.

You see a different culture, people with different values, and you don't know whether those you meet are friendly or hostile, whether they will welcome you or kill you. As you approach cautiously, they motion for you to come nearer, and you don't know what to do; you're afraid, but hungry. They make signs that they are peaceful, and they even show you the way to a tent where they motion for you to stay.

Food is brought to you and you wonder, "is this ok to eat?" or "are they going to poison me and take my money?" You really don't know. The bowl of soup looks really good, smells good, and has lots in it. But you know, the best meal with just a tiny bit of cyanide is still poisonous and will kill you! You have to throw the whole thing out and start over if there's poison in the soup!

Hospice is like that. Something that was widely provided with integrity and self-sacrifice, and real dedication to a mission is now a mixture. Some hospice businesses are run with integrity and some are not. It's a gamble today, and it is tragic that families have no idea whether they're going to get Dame Cicely Saunders' version of hospice that respects life, or if they're going to get Florence Wald's version. Remember, Wald said that "assisted suicide should be available" for all sorts of reasons including economic reasons.

When you're searching for a hospice are you going to check the U.S. Department of Justice website and see if there was a conviction of the hospice (or its administrators) you plan on using? Are you going to call the Department of Health at your state capitol and check and read all the complaints against that hospice to decide if it's a good hospice to go to?

Which kind of hospice is it going to be? Families have no idea. In fact, one of the most frequent questions we receive is, "how can I find the best hospice? one that will provide the full range of services and not hasten

death?" It's a difficult question to answer, because there is no one way to be sure about hospices all around the country. There may be hospice agencies that one hears about nearby, because your neighbor or family used their services, and this is one of the answers we give, "if you know someone who has recently used a hospice, ask them how it went." Reputation is based partly on actual experiences out there and much can be learned from others in the community.

On the other hand, just because someone else had a good experience with a particular hospice agency does not mean it will be the right one for you, or that it won't hasten death. People who are pro-assisted-suicide and have used a hospice that imposed death will rave about the hospice, how "compassionate they were," and how everything they did was "top-notch," but if you don't know their views on assisted-suicide, the recommendation will come back to bite you.

Also, a hospice that may hasten death in various ways certainly does not do that with everyone. They will be certain to provide wonderful care for those who are prominent in the community and many others, even many that are not prominent. They cannot afford to be universally-recognized as a place where patients are hastened to their death, even if they are of that mind and believe in: the elimination of patients who use scarce resources in order to save money in the health care system ... or, the elimination of patients who are better off dead because they are suffering, because their quality of life is poor.

Because finding a hospice that honors the life of the patient is becoming difficult to do, some hospice leaders are in the process of forming a new association of hospice agencies and staff around the country that respect the mission envisioned by Dame Cicely Saunders and also subscribe to the Hospice Life Pledge. The Hospice Life Association of America will gather together the pro-life hospice agencies and staff to help them prosper and fulfill their mission of service.

The Hospice Life Pledge

I affirm the value of all human life regardless of age, disability, or the disease process involved, and reject the prevailing notion that some lives are less worthy to be lived than others.

I reject the practice of assisting a suicide, performing euthanasia, or terminally-sedating a patient (who has no extreme agitation or extremely severe, uncontrollable pain) with the intent to impose death in health care.

I affirm that supportive medical care must be provided to all individuals.

✦ ✦ ✦

Nutrition and hydration, and other treatments such as antibiotics, x-rays, bone-setting, etc., are basic human needs (ordinary palliative care), and provision for those needs sometimes requires medical expertise and technology.

These basic human needs should not be withheld or withdrawn unless they cannot be absorbed or are unusually burdensome for an individual, an individual is in the final stage of a terminal condition, the individual's death is truly imminent, and not intended.

Palliative care and hospice programs that respect life and do not intentionally hasten death must address the proper care of the dying individual. Palliative care and hospice programs which serve those nearing the end-of-life should be encouraged.

These programs should provide medical, informational, emotional, psychological, and spiritual support as well as the management of symptoms in order to make that individual's last days as normal and comfortable as possible.

4680 SHANK STREET, NE • ROCKFORD MI 49341 • PHONE 616.866.9127
www.hospicepatients.org

Any hospice agency, staff member or professional who subscribes to this vision and wishes to promote the sanctity of life at the end-of-life should contact us by email or Dr. Cristen Krebs, DNP of the new Hospice Life Association of America for more information about this encouraging work. If you wish to start a pro-life hospice agency that demonstrates reverence for life in action yet do not know how to begin, contact Cristen. Hospice agencies are encouraged to share this pledge with all employees and use it in their own training programs. Reform and rededication to the mission begins with one person and one agency at a time. You have more power than you know; just take a step in the direction of life with us.

Government: Controlled by Corporate Interests

All one needs to do to understand how much government is influenced is to think about the billions of dollars that are spent overall by all industries in the country and outside the country, trying to get Congress or the President to act in ways favorable to each particular industry. Just about everyone understands that lobbying is "how it's done" in Washington and all the state capitols. Money pours into the campaign funds for elected officials every election. Just enter the name of any Congressional Representative or Senator at the Open Secrets Organization website, and you'll see that industries do have tremendous influence over what the officials do. Large industries can't afford to have seriously adverse rulings or laws put in place that might even destroy their industry. So, they lobby.

In addition, government officials who are voted out of office often end up working as lobbyists as soon as the law allows them to do so. They know the ropes, how government works. They're personal friends with those who managed to hold onto political office. They have the connections. So, the lobbyists who influence the government often were in the government.

Elected officials also know that large corporations provide jobs in their districts. Doing what is favorable to the corporation is a way of telling the public, "We're protecting jobs at home." "See how I'm working for you!" But they're protecting themselves and the corporations first. Politicians unfortunately look to retention of power as one of the single most important goals of their lives. Just imagine the effort that goes into working for years to become a Senator or Congressional Representative. You don't want to do anything that would jeopardize that. And money is the fuel that powers your campaign engine. Money from political action committees, from the political party you're affiliated with, money from donations. If the corporations can somehow deliver money to pay for ads, influence votes in your favor, you're going to help them. If they've already helped you, you will help them. It's the old "big boy network" on steroids.

Corporatism and Socialism

As the corporations gain power, becoming heavy-weight players on the national and even international scene, the government has also gained power through creeping regulation of just about every aspect of business. The "Commerce Clause," Article I, Section 8, Clause 3 of the Constitution declared:

> The Congress shall have Power .... To regulate Commerce ... among the several States ...."

"Regulation-minded progressive leaders of the early twentieth century sought to evoke judicial rulings that

would expand the sweep of the clause." As the decades have come and gone, the scope of Congressional action now appears to be unlimited, and states and local governments have also expanded their regulatory activity. There are so many laws and regulations that nobody could conceivably be aware of them all. More laws and regulations on the books mean that government is more and more involved in our everyday affairs, especially those of businesses across the land. While corporate influence over government has increased, the role of government has also increased. The socialists of the Frankfurt school of socialism contemplated this change:

> ".... The overall process, behind the state's oscillating policies of responding to over- and under-accumulation, is a greater and greater involvement, and the movement of ever larger portions of the economy from the realm of the market to the realm of state administration."
>
> "Theoretically, there is no limit. The state can continue to solve crises of over- and under-accumulation by shifting costs and revenues from the market to the political sphere indefinitely, until the final result is a privately owned corporate economy in the same position relative to the working and taxpaying population as the ruling class in the Asiatic mode. The role of commodity exchange and realization in the market will steadily decline until the capitalists are the state, and the economy is a single giant, slave-operated latifundium. Owners of the corporate economy operate directly through the state, as in feudalism or Asiatic mode, to exploit population at large through entirely political means."
>
> "Some members of the Frankfurt school saw fascism as an attempt to do just that. ... Nazism reflected an evolution in which capitalists increasingly acted through the state. ... such a society might, in future, altogether abandon commodity production and the law of value. At some point, in that scenario, the market would be superseded by state administration, and the capitalists would extract a surplus from labor directly through the state. When that point was reached, the market would have been completely transformed into a state-owned and state-managed economy, and the capitalists would no longer be capitalists. Instead, they would be owners of the state economy by virtue of their control of the state."
>
> ["The Frankfurt School: Fascism and Abandonment of the Law of Value"]

As we have seen, the people behind the corporations who are behind the politicians do control the actions of the government. And they also control hospice and health care policymaking and regulation.

Societal leaders especially from the late 1950s and into the 1960s have cultivated secular, utilitarian philosophies in an effort to spread socialism. The Frankfurt School of socialist philosophy (and others like them) had an enormous effect on this country, influencing the professors in the universities that encouraged the rejection of all traditional values in our society. The 1960s "Counterculture" movement is directly tied into the Frankfurt School of philosophers and writers as well as other socialists who achieved their goals: a greater rejection of marriage, family, religion, and a rejection of any "absolute values" of "right" and "wrong." They encouraged a secular moral relativism so that people came to believe that "if it felt ok, then it was good to do," without thinking about the long-term consequences of their actions.

Writer-philosophers like Erich Fromm, Wilhelm Reich and Herbert Marcuse were influential in transforming our society, from the university, to the students, to the culture at large. Their writings were widely read, assimilated and had tremendous impact on American culture. And part of those changes is the transformation of traditional male and female roles. Our culture no longer reinforces the traditional type of hero who demonstrates strong, "macho" decisiveness. The culture encourages "consensus" as a means of finding a solution, rather than an individual affirming his idea of what is absolutely "right" and what is absolutely "wrong."

In fact, anyone who asserts that there even are "absolute" values such as "right" and "wrong" is frowned upon as a religious fanatic, bigot, homophobe, sexist, capitalist, Christian, Jew, or whatever label they choose to affix to him. Any label but "socialist or communist" will do. Today, because of "political correctness," we are not allowed in many social situations to accurately respond and state that someone's position is "communist" or "socialist" for fear of being called a "McCarthyite" and slanderer. In other words, the moment one accurately assesses a position as "socialist," personal attacks begin.

Government officials that do not honor the Constitutional right to live do not want a people that believes in "right or wrong" or in "sanctity of life." **Government officials that are utilitarian and often socialist want a people educated to believe in *quality of life* as the determining factor when it comes to health care decision-making.** They want children educated to believe in sacrificing individual rights and freedoms for the "greater good of society." This is a position 100% contrary to the American principles of freedom that recognize the reality: only when the individual is free can a society be free and just. They want government to be able to decide when a patient dies within the health care system.

The elite leaders redesigning our society's health care system embrace moral relativism where "anything goes,"

so imposing death is not actually wrong and is "good" if "the quality of life" is low. That is the language of the utilitarian side of hospice and health care.

Those interested in promoting socialism, have promoted "reaching consensus," sharing information and gathering input from others. It's fine to share information, but when individuals cannot make decisions on their own in organizations, it can lead to a tyranny of the "politically correct," where nobody has the nerve to stand up and speak out against a "group" decision (which can be manipulated by individuals within the group). "Consensus" is thought to be the ideal way of making a decision-making. It's "safe," and thought to lead to a "wiser," "better," decision. That assumption is false and dangerous, because it only takes one individual with an agenda to manipulate the group in the "politically correct" direction. Others in the group will express their "agreement," even when they don't, out of fear. We have become a nation of "sheep" where people are just afraid to say the wrong thing, do the wrong thing, or to be thought "politically incorrect."

Seeking to fulfill a "group" agenda can lead to tyranny. In Nazi Germany, independent thinkers were not only discouraged, they were executed. These were considered "troublemakers." Intimidation through violence was one of the most powerful weapons Nazis used to subjugate and control the people.

We in the United States are not at that point, but intimidation of those who object to the agenda is very intense. The intimidation of the people is the main reason problems in health care (and hospice especially) continue. People are afraid to stand up and be counted among those who protest, who speak the truth, who say, "No more!" We're not being shot on the spot as was done in Germany, but people are terrified to speak out.

I've talked to hundreds and hundreds of people over the years who promised to help, to fight the abuse that happened in their own family, and they almost universally do nothing at all. And so it continues. They will not put their name out there and say, "I experienced this. They killed my loved one, and it is wrong, and I am dedicating my life to stopping it." Even those who desperately wish to stop the killings refuse to *publicly* name names of the staff or hospices involved, or even have their own names used. HMOs, managed care organizations, regional medical systems and pharmaceutical companies as well as hospices count on the fear people have. They use that and profit from it.

Now, there are moves to have U.S. citizens spy on each other. Just as the governments in Nazi Germany, Communist China, Cambodia, Vietnam and the Soviet Union (and elsewhere) encouraged people to report suspicious behavior to the authorities, we are seeing the beginning of a climate of fear. We may think that it is necessary due to the threat of terrorist attacks in this country, but it is clear that we are but one step away from becoming a society tyrannized by an all-powerful government. Now there is "The iPhone 'Patriot App' to help people report others to the federal government: Who is to say what will be deemed "patriotic" in the future?

There are others who warn that attempts to protect our nation from terrorism through the Patriot Act have inadvertently given too much power to the government to violate traditional freedoms guaranteed in the Bill of Rights, such as the Fourth Amendment guaranteeing freedom from unlawful search or seizure without probable cause and a court order. Others warn about "Big Government" creating national databases on all citizens. The new database being created by the Executive branch of our government will include:

> "a computerized system to track all Americans from cradle to grave by cross-linking all their school and college academic and extra-curricular records, including tests and appraisals by supervisors and peers, with health, welfare, employment and income data. .... Social Security numbers, family income, medical exams, and criminal and administrative penalties, ...[as well as] preschool experience, prenatal care, daycare, early childhood education and after-school activities. [and] information not only from the Department of Education, but also from the Department of Health and Human Services (which would include Head Start, WIC, Parents as Teachers and after-school programs) and from the Department of Labor."
>
> ["Obama's desire for data on your kid" by Phyllis Schlafly Worldnetdaily.com May 24, 2011]

Combine that kind of database with the move to have nationally-recognized state driver's license/ID cards that include biometric identifiers and the HIPAA/HITECH Act-created national medical record database and you have government officials and numerous bureaucrats having access to and knowing an incredible amount of information about each of us that used to considered private. Under H.R. 1, The American Recovery and Reinvestment Act of 2009,

> "***The Secretary shall ... invest in the infrastructure necessary to allow for and promote the electronic exchange and use of health information for each individual in the United States***."

It can't get clearer than that. The goal is to link databases together. State health information exchanges become national health information exchanges that follow a person wherever they are in the country. State "enhanced"

ID cards become national ID cards because they will be recognized nationwide. "Whoa!" I can hear you saying to yourself right now! "This guy's gone off the deep end?" "This is too much!" But these are just the facts. There is no wild "conspiracy theory." This is what is already happening. Big government, big corporations, together controlling what happens to individuals in our society. What really is "corporatism" or "corporate fascism?" It meant one thing years ago in Italy and Germany during WW II, but for our discussion, it can mean the control of government by the very powerful and ultra-rich; today that means the corporations. It's a type of fascism that does not involve nationalism.

Whether health care corporations, hospice corporations or other, the government is clearly heavily-influenced by lobbyists who can buy time with our representatives. An ordinary citizen cannot buy that time and will not get that time with the Senator from "this-or-that state." The Senator is going to give special treatment to the lobbyist from the industry that managed to contribute the most to his political action committee, campaign fund or to the political action committee of his national political party. Big donors get big access. Small donors or non-donors do not, and if they get time, it will be minimal in most cases.

I remember back in 1997 traveling to the state capitol to meet with one the state senators about the corruption in the hospice in Michigan where I worked. I did get to meet with Michigan State Senator Joe Schwarz for a few minutes and spoke to him about the exploitation of the patients, the violations of the standards of care, the harm being done. He listened and he ignored what I had to say, even though it was terribly important to the people of Michigan as well as United States taxpayers. He did nothing. Listening to a resident of the state (or the country) is not the same as acting for their welfare. It became clear that listening to a resident of a state has become the equivalent of humoring an uninvited and unwanted guest at the table of government! We're seen as an "annoyance" to the elected officials. And at the same time we are viewed in this way, our state and federal elected officials consistently act on behalf of the corporations and individual benefactors that helped finance their way to elected office.

Barack Obama in June, 2009 while speaking to the American Medical Association physicians about health care reform:

> "no matter how we reform health care, we will keep this promise: If you like your doctor, you will be able to keep your doctor. Period. If you like your health care plan, you will be able to keep your health care plan. Period. No one will take it away. No matter what. My view is that health care reform should be guided by a simple principle: fix what's broken and build on what works."

But the truth is exactly the opposite:

> "As many as 80 to 100 million people will not have the option of keeping the coverage they have now, contrary to President Obama's promise. According to analyst Allisa A. Meade of McKinsey & Company, they will be switched into other policies after the insurance mandates take effect in 2014 ?-- whether they like it or not."

As far as nobody taking away citizens' current health care plans:

> "Government has the authority to destroy the private insurance market by preventing insurers from earning a reasonable return. If companies charge "unreasonable" premiums, as determined by Health Sec. Kathleen Sebelius, she can block them from participating in a huge sector of the market -- as she already has threatened to do. Michael Barone calls this "gangster government."

And when the private health insurers are destroyed outright, so changed as to be unrecognizable compared to what they were, or taken over completely, the citizens' current health plans won't even exist. Clearly, we won't be able to "keep them," as the President promised. In addition, many employers will no longer offer health insurance when the reforms are fully implemented. Employees at these companies will have no choice but to find insurance with the government plan.

President Obama has repeated his claim that we will be able to keep our doctors and our current health plans many, many times. However, it is absolutely untrue. If it were true, why would the federal government be willing to spend half a billion dollars on the Patient-Centered Outcomes Research Institute?

Phrases such as "patient-centered outcomes" immediately bring to mind George Orwell's book, Nineteen Eighty-Four, where the Ministry of Truth deals with lies, the Ministry of Peace deals with war and the Ministry of Love deals with torture. The public relations campaign for this health care "reform" law is similar to the campaign waged to promote HIPAA. We have to repeatedly hear how HIPAA actually protects our private health information (PHI) when we know that it does not: many in government and certain corporations will have access to our health information. And when all the health records are transferred to electronic form and the connections are made between all the providers, there will be a centralized database or a way to access the information wherever it is. Good computer hackers will be able to find whatever they want, and those who can

pay will get whatever information they want. It will not be "private."

"Acceleration in the use of electronic medical records may lead to an increase in personal health information theft, according to a new study that shows there were more than 275,000 cases of medical information theft in the U.S." in 2009. Weren't we told that the new electronic records and HIPAA would protect the privacy of our medical records? Exactly the opposite is occurring. As with all things, things go wrong, and so will "privacy" and "patient-centered outcomes."

"Patient-Centered?" More likely: "Corporate" and/or "Government-centered." Although the rationale for the institute sounds good: "we will research and find those treatments that are most effective and the best use of the taxpayer dollars," I can hear government representatives reciting over and over. It will be more like, "we will find ways to reduce costs by denying treatment to those individuals whose lives are not productive for society, and for the 'greater good' we will eliminate them." It is already happening.

The President's statements? Propaganda? Absolutely. The reality? The private health insurers are either going to go out of business or simply comply with the federal government regulations and control, not only of the coverage provided, but the premiums they charge. If the health reform law is not repealed and not declared unconstitutional, the private insurers will become an extension of the federal government, not an independent business at all. And the people will not be able to keep the policies they have because they will no longer exist; the government has mandated so many changes to health care coverage that the entire industry is in turmoil, feverishly trying to adapt and comply with the massive number of regulations.

Two things are undeniable: government's role in virtually every industry in the country is expanding, and, corporate influence on government officials is also expanding.

Ralph Nader says we have been on "The Road to Corporate Fascism"

> "Ralph Nader exclaims that the central political issue of our time is giant corporate power and its takeover of our government, plus the spread of commercial values into every nook and cranny of our culture including the commercialization of childhood, the universities and almost everything these large corporations touch."

and

> "Nader declared that the United States is running under a corporate fascist economic system. 'We're living in a country whose democracy is beyond the breaking point. The extent of corporate control has developed into corporate fascism,' Nader said."
>
> "He said only small businesses still practice capitalism, 'We don't have a capitalist economic system - it's corporate fascism. Every major tenet of capitalism is violated by corporate power. Only small businesses still practice capitalism. We used to be able to challenge corporate influence in Washington, but they have so much power now that we can't. The corporations are laughing at us. They're daring us to try to take away their power."

How Government Can Work: The Food & Drug Administration & Corporate/Industry Lobbying

Just one example of how government can work to benefit an industry is the U.S. Food & Drug Administration. They regulate the pharmaceutical industry as well as agriculture and foods. The players in the industries regulated are mega-corporations. Corporations like Monsanto, Glaxo Smithkline, and Merck ... billion dollar industries. And they're in it for profit, not that profit's bad; it's what greases the wheels of the economy. But if profit is used to pervert the regulatory obligations of the government, the public suffers.

When we're talking about "profit," we mean big profit. Glaxo SmithKline had 9.257 billion GBP in operating profit as of 2009 (that's $14 Billion profit in U.S. dollars) Glaxo SmithKline is the maker of Avandia that has been linked to fatal heart attacks and strokes, yet the drug is still marketed heavily to the public. GSK spends millions on lobbying the federal government. With that much money being spent on lobbying, it surely has had a major impact, on how the laws and regulations are implemented by the government's regulatory bodies, especially the Food & Drug Administration. And GlaxoSmithKline is only one of dozens of pharmaceutical corporations.

The pharmaceutical industry also pours millions of dollars into medical schools, research and ongoing physician education, definitely promoting their own products in the process. How much do physicians promote health through methods that are non-pharmaceutical? ... that may take months but really change the person's life? Or do most physicians simply prescribe a drug or do surgery?

We know that there are many studies (even done in the U.S.) that show exercise, diet and many other methods may help promote health or alleviate suffering, even lessen the symptoms of those who suffer from many conditions, but this is not emphasized. Physicians who make promotion of health a major part of their practice are sometimes viewed as quacks. Of course, natural methods may not work in all cases, but that's true of medications being ordered all over the world. Sometimes they work and sometimes they don't.

I've seen a lot, as has anyone in health care (if they were willing to tell you), and if you read the drug reference books, you'll know that every medication has adverse effects, and that some are quite severe. We are told "take this," or "take that," but often the risks are not fully shared with the patient even though the principle of "informed consent" is basic to ethical practice of health care. While the TV screens flash images of girls smiling and dancing across the screen and the announcer tells all the ladies to buy such-and-such contraceptive, I cannot forget the young woman I cared for as a nurse who lay in a bed, totally paralyzed from a severe, major stroke after taking a contraceptive years ago.

The ads from pharmaceutical companies always speak very quickly at the end and say something like: "may cause heart attack, stroke, or death." And they only have that warning, because they're forced to do so by regulations. I know all the girls will ignore the warning. "Try 'Yazz' or whatever contraceptive entice the ads. Have fun! I remember that girl lying in the bed.

Friends say I'm being too harsh when I tell them the U.S. Food & Drug Administration has a revolving door between pharmaceutical industry scientists, lobbyists and their own members or that donations from industry to elected officials influences the FDA decision-making process. I remind them of articles like:

"FDA nears decision on genetically engineered salmon" which explains that "agribusiness has spent $350 million lobbying Washington since 2008."

or

> "Daschle and Democrats to Get a Dose of Pharma's Medicine" By Lindsay Renick Mayer on January 8, 2009
>
> "Most [pharmaceutical] industry players this year will be fighting off increased regulation and may oppose a requirement that drug companies disclose all of their gifts and payments to doctors. They'll also be trying to prevent the FDA from being able to ban direct-to-consumer advertising for new drugs. The pharmaceutical industry has been sending representatives to knock on Congress member's doors, spending $171.7 million on lobbying in the first nine months of 2008. When the year-end lobbying reports come in for 2008 on Jan. 20, they will likely show that the industry spent more in '08 than the $225.9 million it spent the year prior."
>
> "The health sector as a whole could find this a year of many changes, and doctors, nurses, insurance companies and hospital execs are also making sure they're heard on Capitol Hill. The health sector spent $150 million on campaign contributions in the 2008 election cycle, more than the $123.7 million it spent in 2003 and 2004. It spent $365.1 million on lobbying in the first three quarters of 2008."

The amount of money being thrown around by agribusiness, the pharmaceutical industry and others is obviously buying influence, tainting the democratic process in our nation. And when it is likely that:

"Prescription Drugs [are] More Deadly Than Cocaine, Heroin, Amphetamines" May 06 2009 why would an intelligent person assume that prescription drugs are truly safe or that what we are being told about them is the "whole truth?" According to "the Journal of the American Medical Association (*NY Times*), an estimated 1.9 million adverse drug reactions occur each year, and up to 180,000 of them could be life threatening or even fatal." "58,226 American soldiers ... died in the Vietnam War or are missing in action." Let's see, 58,226 Americans died in Vietnam and the country is up in arms, with the most divisive cultural debate in modern times. But 180,000 Americans have life-threatening or even fatal reactions to prescribed medications and there is absolutely no overall American outrage. Does this make sense?

And what happens when patients have life-threatening drug reactions that cause serious and permanent damage to the patient's health? If they can be saved from death outright, they often become chronically-ill patients who are then shunted into hospice if they are going in and out of the acute care hospital. That's what Congress created the Medicare hospice benefit for: saving the federal government by avoiding patient admissions into acute hospital care.

When I tell my friends the FDA's actions can sometimes be corrupt, allowing unsafe drugs to be marketed because they're heavily lobbied by the big Pharma industry, they think I've gone off the deep end. The facts are on my side. I point to articles like, "FDA Panel Doles Out Bad Medicine For Lobbying Heavyweight GlaxoSmithKline" By Andrew Kreighbaum on July 14, 2010 posted at Open Secrets

> "A 33-member advisory panel to the federal Food and Drug Administration voted today to seriously restrict the labeling and possibly the sale of the controversial diabetes drug Avandia, the *New York Times* reports. The FDA will consider this recommendation when it makes its final ruling at a later date."
>
> "A negative FDA ruling will likely affect the bottom line of a company that spent $8.7 million on federal lobbying in 2009 and has already spent $2.2 million in the first quarter of this year. GlaxoSmithKline, the drug's manufacturer, has much more than that at stake. It earned $1.1 billion from the drug in 2009, Fortune reports." A 2006 article in *The New England Journal of Medicine* said that patients taking Avandia had a much greater risk of heart disease than patients on alternative drugs."
>
> "A ruling that pulled the drug from the market could result in more litigation against GlaxoSmithKline, *Fortune* reported, but the drug accounts for only 2 percent of the company's profits."
>
> "GlaxoSmithKline is a major political player in Washington and ranks seventh for lobbying expenditures among all pharmaceutical and health product companies this year."

How many people have to die because they take Avandia before the FDA pulls the drug? If they don't die, but are "just" irreversibly harmed? They can be sent to hospice! I can understand the reluctance to remove a drug from the list of safe medications, because millions of dollars have gone into researching and developing that drug, but if it's not safe, it's not.

The evidence of collusion between the FDA and the industry is overwhelming. Drugs that are not safe continue to be sold, even though studies show the dangers are significant. Just think about the Vioxx case. For years, they knew Vioxx and other drugs like it could and did cause heart attacks, but the FDA allowed it to stay on the market.

When unsafe drugs, doctors, hospitals or other agencies harm patients and the patient sue them, they settle with the patient out of court, basically using gag orders to pay for the patient and their family's silence. And so it goes, on and on, and the public never learns the full extent of the harm done.

Has our government under any administration really acted consistently to protect the public from unsafe drugs? There's more focus on limiting care for the elderly than protecting them from drugs that harm them.

The Government's Conflict of Interest

When you have the government disbursing tax revenue to pay for Medicare, Medicaid or even health care in a nationalized single-payer health care system, it has to look directly to controlling expenditures, reducing the number of tests, treatments, surgeries and other services provided. In other words, they will become the "mother of all HMOs."

> "Rep. John Conyers (D-Mich.), the ranking member of the House Judiciary Committee ... [stated] that the health-care law ... is a platform for building a single-payer health care system in the United States.
>
> ["Conyers: Obamacare Is 'Platform' for Creating Single-Payer System" CNSnews.com March 14, 2011 By Nicholas Ballasy]

They will use the "Complete Lives System" promoted by Ezekiel Emanuel, MD and not limit its application to deciding who gets a vaccine or an organ for transplantation. They will use the "Cost-Effectiveness Research" results (interpreted however they wish) of CMS Administrator Donald Berwick, MD. They will make sure the P.O.L.S.T. forms are universally used. They will ration care.

What does that mean for getting the care you want and need? In some cases, you may get the care you want, but when it comes to the elderly, the disabled, or even the young but very sick, you may find the recommended treatment is denied. That's the system HMO/managed care corporations have used to make sure they run "in the black" and make profit. For the government-run system, it will be about holding down costs while they dish out billions to other questionable projects for the purpose of "pork-barrel" spending to make sure the votes keep coming in.

If some form of nationalized health care system moves forward, taxes will certainly rise to cover costs. When the taxpaying public is taxed even more, they have less disposable income to contribute to charity. The nonprofit sector's contribution to society is diminished just as government's role increases. Either the money is in private hands or in the government's "hands." Either nonprofit charities are encouraged to help provide a safety net for the vulnerable or government provides whatever services bureaucrats and elected officials decide will be provided, or not.

There is no question a government-run health care system will involve a conflict of interest. Promising everything, but delivering much less, with problems hidden behind the HIPAA Privacy Rule Wall of Silence. Privately-run or government-run, palliative Care units or hospice will be the pre-determined destination for us all.

XI Where We are Headed

It should be clear by now, we are already far along the way toward stealth euthanasia widely implemented for those who require costly health care services, especially the very elderly, disabled and seriously ill. Organ donation will probably be made mandatory for the brain-injured not too many years down the road. In other words, patients who are brain-injured may have organs plundered without an opportunity to recover, as is already happening in too many cases.

With health care reform, rationing of health care, comparative effectiveness research, the complete lives system, budgetary crises, the baby-boomers entering the winter of their lives, it's obvious what is going to happen and everyone knows it, but doesn't want to admit it. Just like that old story of "The Emperor's New Clothes." It just takes a little child to say the obvious: "the "emperor's" "wonderful new clothes" don't exist! And everybody suddenly realizes that they've known the truth all along. Instead of "health care reform," we're going to get health care rationing and hastened death. Once you start making the federal government the "HMO of all HMOs," the conflict of interest is there, interfering with the sincere intent to provide health "care."

It's like the analogy of letting the camel's nose get into the tent: once the nose is in, the rest will follow, and then the tent will be trampled. Health care, whether run by "managed care" or government "managed care" is going to interfere with the provision of health care! They can promise the world, but they can't deliver on those promises to everyone. Many are going to suffer!

Patients who are brain-injured but not suitable for organ harvesting will be placed in palliative care and hospice to be disposed of. Others will have services withdrawn as economic pressures mount and also will be placed in hospice or palliative care. We are already seeing steep cuts in Medicaid funding for the disabled which directly threatens the viability of their obtaining needed services. Once we as a society have looked to the government for these services, other networks fade away, and it is very difficult to wean society off of government entitlement programs. We've forgotten in some ways how to provide services for ourselves. Our income is taxed to provide funds for government programs, but what happens when the government squanders much of what is taxed, allows much to be stolen through fraud, abuse and waste? What happens when due to mismanagement at the government level, services that were provided are suddenly shut down? We no longer have the extended family support, the community support or the spirit of sacrifice in large enough numbers to be willing to care for those in need without government-paid services.

The states are facing severe budgetary crises, and they're making steep cuts in funding for many programs. Talk to any parents of severely disabled children and ask them about their state's Medicaid cuts. They've been occurring regularly around the country. If the children don't get needed services, they will decline in one way or another, and may acquire illnesses they would have avoided had they been cared for well. Eventually, earlier deaths will result. Some families can carry on, but some just cannot manage on their own without extensive professional nursing help. Instead of nursing care, the states will begin offering hospice and palliative care. If budgetary crises worsen, Medicaid programs will see sharp decreases (per capita) in government funding.

The elderly will have treatments, medications and surgeries denied based upon their age, not their physical suitability for a particular treatment. With those denials will inevitably come a decline in health status, a worsening of conditions and entry into hospice or palliative care.

As J. Donald Schumacher, NHPCO president and CEO says, "The trends for increased usage of hospice are expected to continue as we see an aging generation of baby-boomers face end-of-life situations for themselves and their parents...." He should know. But it won't just "continue." It is going to be massive.

The Removal of Pro-life Physicians and Other Health Care Professionals

We will also see the removal one way or the other of pro-life physicians and other health care professionals. This is already happening as pro-life nurses and doctors are "set up" for retaliation, harassment and termination of employment when they don't go along with the agenda. When a secular government system is in full operation, physicians or nurses who don't "go along" with the system will be shown the door. There is no doubt the system will be secular and not pro-life. There will be no room for those who disagree with the agenda of the stakeholders' policies being implemented. As with the 1993 Health Security Act ("Hillary Care") that did not pass into law, providers who are not part of the system may be outlawed.

Pro-life nurses, doctors and other professionals will have to leave the country in order to practice with respect to life when the system is fully transformed by the "culture of death" agenda. Some are already leaving nursing or the practice of medicine. Or, they can practice "under the radar," fearing that at some point, their pro-life views or actions will be discovered and their employment terminated.

And as we've seen, the current administration moved two years ago to rescind "conscience rights" laws thereby removing the protections in place for physicians and other health care professionals who refuse to participate in abortion.

What would be the consequences of removing all pro-life nurses and physicians, as well as all other pro-life staff? Clinically appropriate hospice and palliative end-of-life care would be completely eliminated. We have only to remember the Nazi T-4 program from 1939 to see what is possible:

> "Between December 1939 and August 1941, about 50,000 to 60,000 Germans - children and adults - were secretly killed by lethal injections or in gassing installations designed to look like shower stalls. It was a foretaste of Auschwitz. The victims were taken from the medical institution and put to death...." (Never to Forget, New York:HarperCollins, 1976:131.)
>
> Robert J. Lifton makes the following assessment:
>
> Of the number of people killed in the T4 and the 14f13 projects, the following statistics are usually given: adult mental patients from institutions, 80,000 to 100,000; children in institutions, 5,000; special action against Jews in institutions, 1,000; concentration camp inmates transported to killing centers (14f13), 20,000 (Klee estimated that at the end of 1941, some 93,521 `beds' had been emptied for other uses [70,000 patients gassed, plus over 20,000 dead through starvation and medication] - in other words approximately one-third of the places for the mentally ill.) But these figures may well be too low; twice these numbers of people may have perished. The fact is that we do not know and shall probably never know. Elements of deception, imposed chaos, and the destruction of many records make anything like an accurate estimate impossible.
>
> The same is true concerning the total number of people murdered at specific killing centers. Hartheim victims of both ordinary `euthanasia' and 14f13 are variously estimated from 20,000 (by Dr. Georg Renno, Lonauer's successor as director), to 400,000 (by Franz Ziereis, the former commandant of Mauthausen, on his deathbed); 30,000 is believed to be the best estimate. While these figures may seem unimpressive when placed next to the millions killed in the Final Solution, they represent the murder of shockingly large numbers of people - all in places characterized as hospitals." (*The Nazi Doctors: Medical Killing and the Psychology of Genocide*. London: Papermac, 1986 (Reprinted 1990) p. 142).

We have to remember that the same type of thinking that justified the killing of these patients in 1939 is used by those reforming our health care system today. We know that to be true. Eugenics - selection of the "unwanted" to be aborted? That's widely promoted and practiced! Euthanasia of the "unworthy of life?" What else is happening to PVS patients, brain-injured patients, patients said to be "brain dead?" The elderly? They're being hauled off in many cases. The disabled? We've seen that, too. Just think of Robin Love's father who had Parkinson's disease. He wasn't terminal, just disabled. No, there's too much information showing that those in charge are aligned with the same utilitarian philosophy that devalues life and is willing and able to destroy life with no reservations at all.

Assisted Suicide and Euthanasia May be Legalized

And yes, it is possible that we may see assisted-suicide, euthanasia and "third-way" killing legalized across the country if a return to traditional American values does not occur. I certainly hope not, but "why not?" say the utilitarians. If we don't affirm traditional values of reverence for life, anyone can be killed, anyone can commit suicide, so long as it is done through a government-approved agency. In Oregon, physician-assisted suicide is legal, yet anyone other than a physician aiding the suicide of a person commits a crime. As we know, patients may be involuntarily medically-killed as in the Netherlands, Belgium and elsewhere. Supposed "safeguards" built into the new laws written by euthanasia proponents will be violated with impunity and prosecutors will refuse to act, just as they refuse to prosecute medical killings in the end-of-life care arena (or elsewhere). And without enforcement, the practice of medical killing is applied to a wider group of victims.

When commenting on proposition 161 which was a failed attempt at legalizing euthanasia in California in 1992, California's then Attorney General Daniel E. Lungren stated,

> **"This measure would result in some unknown savings due to decreased utilization of the state Medi-Cal program and other public programs, including county programs."**

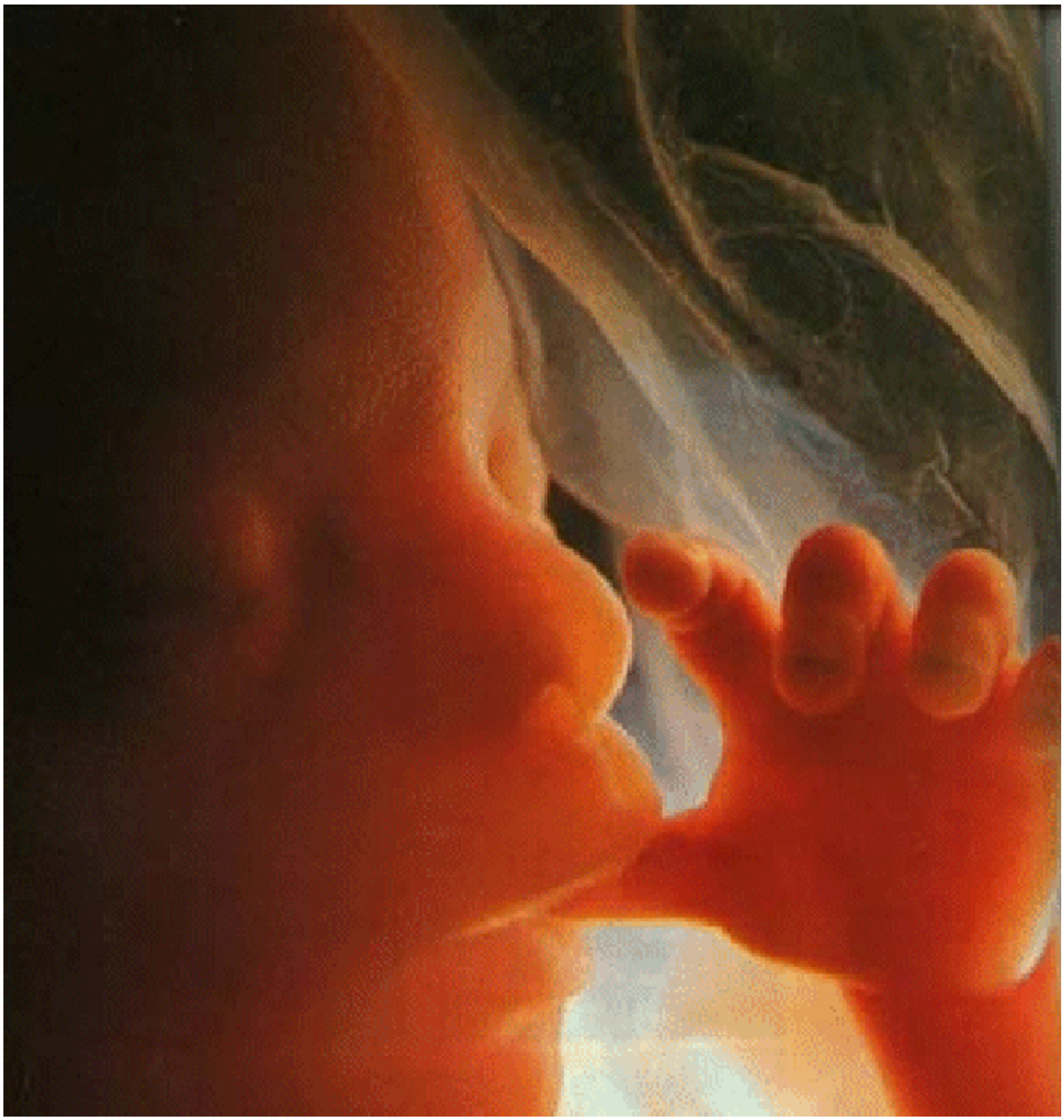
Yes, killing the patient does save money. Dead people do not "utilize" services! Killing the patient involuntarily is monstrous, but any form of euthanasia, assisted-suicide or Third Way killing saves even more money than providing end-of-life care in a hospice or palliative care setting.

XII - Where We're at Today

So, can't you see what is happening? We've come full circle and our society is now acting like Germany of the 1930s and early 1940s. It is happening again. We've forgotten as a people to love, to cherish life, to value life and savor the blessedness of each one. Now, life is cheap, expendable, and throwaway, just like paper plates. When society's done with us, it just discards us.

Sanctity of life has become a phrase that is sneered at by the elite, the media and many in government. Those of us who have faith, do consider life sacred, a gift from God. The utilitarians believe they have the right to end life at any time they deem appropriate for the "good of society." People of faith believe we do not have the right to end life, that life has a purpose, a meaning beyond what someone in a federal health system treatment board could see. If life has a meaning and purpose, then it is not even our own right to end our life. Our life is seen as resting in God's hands and its end something allowed within God's timing, not our own. Our life is seen as

dedicated to the purpose of our lives, a service while on this Earth, and something that can still be useful to God, others and ourselves up till the time we take our very last breath.



"I knew you were the one,
The day I looked into your eyes.
Oh, you are a miracle,
You're sweeter than I ever dreamed.
You're so much more than beautiful!
How can it be that you belong to me?

[from "You Belong to Me" by Michael W. Smith album: "Wonder"]

When we look at an elderly person, when we love and truly "see" the person ... we see the life, the being, just as alive and real as a newborn baby. The complete spark is still there. It may be hidden to some, but that does not mean it is not there. Till the last breath is taken, that life is there. I remember so many of the elderly patients that I worked with. I took the time when I could, each time I went in to their rooms trying to treat them with respect, speak to them with respect and look them in the eye and acknowledge them as a "person." When you do that, they recognize it and are nourished, like a wilting flower that craves water, and is revived with that love. Our elderly need the water of love, that only a caring touch can provide!

> "The fundamental attitude of reverence is the basis for all moral conduct toward our fellowmen and toward ourselves. ....
>
> "How could one really love another person, how could he make sacrifices for him, if he sensed nothing of the preciousness and plenitude which is potentially enclosed in man's soul, if he had no reverence for this being ...."
>
> "Reverence for our neighbors is the basis for all true community life, for the right approach to marriage, the family, the nation, the state, humanity, for respect of legitimate authority, for the fulfillment of moral duties toward the community as a whole and toward the individual members of it. The irreverent man splits and disintegrates community."
>
> [*The Art of Living* by Dietrich and Alice von Hildebrand, p 9-10.

But now we've got such large corporations bent on making profit ... like HMOs, managed care health insurance companies, regional health systems, vertically-integrated retirement communities and pharmaceutical companies. Profit comes first, even though they have so many services and benefits, just as the pharmaceutical companies have wonder drugs that have saved so many lives. When patients become expensive, they may be undesirable to the corporation. Yes, so much good is done, but much opportunity for mischief exists.

With Medicare and Medicaid cutting reimbursements for certain services, physicians feel squeezed under the system. Some are opting out of the system completely. We are heading for a tiered system of delivery. We've got the "Federal Employees Health Benefits Program, or FEHBP ... [that] insures 8 million federal workers, retirees and their families and members of Congress," the elderly on Medicare, the poor on Medicaid, and many on private insurance (if it survives health care "reform"). However, many physicians who opt out of government-reimbursed programs are creating a private-pay "concierge plan" system (like the old days before Medicare and Medicaid were created) that those with extra "disposable" income can afford.

Health care reform, rationing of health care for the elderly, the economic pressures of the federal and state budgets, the infiltration into hospice by the euthanasia zealots, ... all of this is hurting people. The federal government has never created a policy that would stop the fraud, waste and abuse that rob our treasury of funds needed to provide services. The U.S. Justice Department, though it professes to fight fraud, abuse and waste, is still controlled by political forces behind it. Elected Presidents and Congressmen will not tolerate the Justice

Department seriously going after huge industries that contribute to their campaigns, even if they are committing fraud. We can see that the Justice Department's ineffective policies will continue, so those seeking to increase the funds available in the budget will look to hospice, palliative care and euthanasia as a way out.

It's already happening. People call regularly to report that patients are being involuntarily euthanized in America. People are dying after being inappropriately terminally-sedated or overdosed. Their deaths: hidden behind the Privacy Rule. They cry out for help, but who is helping them? Not the government, not the corporations, not the agencies, not the police or others.

The elderly and disabled have nobody to save them in many cases. They need strong advocates at their side who wield the "Power of Attorney" wisely and can navigate through the manipulations of those who would take the patient's life.

The young adults don't want to think about the elderly, disabled or chronically ill unless they have a career working with them. Many middle-aged adults are too busy in their own careers to think about the vulnerable. And the elderly? They are already deprived of whatever power they had when they were younger. A retired judge, retired physician, retired elite, retired official has no power to order anyone about. Many of them end up being victimized by the same system that they chose to ignore while capable of making a difference, and yes, I've heard stories of such cases.

Seventy years ago, my people cried out and help didn't come for them. Because the world did not want to believe the truth. It wanted to "mind its own business." It wanted to go on as if nothing was happening. It wanted to pretend, and it believed the lies of those who said, "There are no killings," "There are no camps," "The people are only being sent for 're-education," "All is well."

But underneath, inside, the world knew and let it happen, just as people now know that there are medical killings, and they let it happen. All sorts of excuses are spewed forth, but it doesn't justify the crimes being committed. People pretended to themselves it wasn't happening. People today pretend it isn't happening.

People, lots of people, even most people, looked the other way, didn't want to get involved. They were afraid. Even some of the police were afraid. Some of the soldiers were afraid. But they did the unthinkable, because they figured they were going to save their *own* "skin." If it meant sacrificing others to survive, they did it. It was "everyone for himself." And today, it's the same: people look the other way and choose not to get involved, because they're afraid. They don't want trouble. I've listened to hundreds of people over the years and so many are horrified by what is going on. On the other hand, most of them do nothing, because they are terrified of speaking out.

To speak out is an act of faith,
a demonstration of one's resolve to stop the evil,
an act that leads to an unknown destination.

To speak out is to express your humanity in a way
that comes from deep within and transforms you.

To speak out is to risk being vulnerable yourself,
to leave the comfort of the familiar.

Yet, in speaking out,
we are given an inner strength
so we may help another.

As young civil rights advocate, John Lewis, said in Selma, Alabama in 1965:

"If not us, then who? If not now, then when?"

In wartime Germany, many people were terrified of speaking up. They feared they would join others that Hitler's troops had shot in front of them or that they would be sent off to the "concentration camps" to die. So, they remained silent.

However, there were some who overcame their fears, decided it was time to act and that if they didn't act, lives would be lost. They risked their lives to save Jews and others being persecuted by the Nazis. Due to their efforts many were saved! Corrie ten Boom and her family in Holland created The Hiding Place in their home where

people could be safe during the raids.

"By protecting these people, Casper and his daughters, Corrie and Betsie, risked their lives. This non-violent resistance against the Nazi-oppressors was the ten Booms' way of living out their Christian faith. This faith led them to hide Jews, students who refused to cooperate with the Nazis, and members of the Dutch underground resistance movement."

"....Four ten Booms gave their lives for this family's commitment, but Corrie came home from the death camp. She realized her life was a gift from God, and she needed to share what she and Betsie had learned in Ravensbruck:

"There is no pit so deep that God's love is not deeper still"

and

"God will give us the love to be able to forgive our enemies."

The HIPAA Privacy Rule: Wall of Silence

The abuse of those enrolled in hospice or receiving palliative care is especially unlikely to be documented. Why? Because the federal and state government officials want utilization of hospice to increase each year. They don't want any negative news about hospice to see the light of day. Another reason abuse is unlikely to be documented is the Privacy Rule of the HIPAA regulations. It prevents outside organizations from accessing the necessary documents or contacting the families around the country to investigate what is really happening.

It is difficult to do any evaluation of what is happening in health care around the country, because of the Privacy Rule. The Privacy Rule supposedly protects a patients' own data, but it definitely protects health care corporations, physicians, nurses, and agencies. Who can open that impregnable safe except those who hold the keys? The federal and state government agencies could, but they don't want that type of information. Patients who die earlier save the federal and state government billions each year.

And those others who hold the keys are those who have secrets to hide, liability to minimize, risk to reduce or eliminate. That's part of what those "Risk Management Departments" do at the hospitals, hospices, and skilled nursing facilities.

"Investigating doctors' performance can cause problems of consent and confidentiality" is the title of a *British Medical Journal* article from April 2002. "Doctors' Dirty Little Secrets: The Dark Side of Medical Privacy" is the title of a 1998 *Washburn Law Journal* article. A 2001 *American Journal of Law & Medicine* article, "An eHealth Diptych: The Impact of Privacy Regulation on Medical Error and Malpractice Litigation." The titles say it all. It's obvious that HIPAA was not solely created to protect the privacy of the patient, even though every single business in the country is burdened with the HIPAA regulations under threat of devastating fines that could destroy individuals there or the business itself should the feds choose to act.

Fear! That's what HIPAA is all about. Employees are terrified of breaching the Privacy Rule and losing their jobs and having devastatingly huge fines imposed. Fear was intentionally created in Nazi Germany in order to subdue and control the people. So, many became "sheep." People in our country have also become like sheep, afraid that their slightest move to speak out will find them out of a job and fined.

The *North Country Gazette* reported that the Florida Board of Nursing acted to revoke Carla Sauer Iyer, RN's

license because she spoke publicly about the Schiavo case, yet had only mentioned matters that were already in the public domain. ["Florida DOH To Revisit License Issue of Schiavo Nurse" By June Maxam Aug 16, 2006]

This Board of Nursing action was based upon the HIPAA and state privacy rule. Nurses know that if they speak about confidential matters in public, even to protect those being victimized, they may lose their career. The board later reversed its decision in August of 2006 allowing Sauer-Iyer to continue to practice as a nurse, saying she had done nothing wrong. But many people never learned about that; they learned she had been targeted for speaking out.

Now, nurses, doctors and others are liable for fines up to $50,000 or more for certain HIPAA violations. These fines would destroy many of them financially. Some would lose their jobs.

"Be afraid to speak up!" That is the message of the Florida Board of Nursing to nurses everywhere. And the word gets around. "Look what happened to Carla Sauer Iyer, RN."

But what about the privacy rights of the patients? They should be protected. AIDS patients, cancer patients, and many other patients may not want the world to know what disease they are suffering from. Every effort should be made to protect their information, but is HIPAA really about protecting patient confidentiality?

I remember when I filed the first HIPAA complaint in the U.S., because the HIPAA law went into effect that day. I naively thought that the federal government would do something about the terrible violation of the privacy of hundreds of patients committed by the Hospice of the Florida Suncoast.

I had learned that, incredibly, its subsidiary, Suncoast Solutions, used real patient data in the help screens and elsewhere for the hospice management software they sold and distributed to many hospices around the country. They also posted this information online.

Suncoast Solutions had been warned about these violations of patient confidentiality many times, and had refused to remove the actual patient data. They could have simply changed the data to resolve the problem. It was an easy-to-fix problem, but they refused to do anything at all. When I heard about it, I really couldn't believe it. I get a lot of phone calls and not everything I hear is believable. Sometimes, people are confused. Sometimes they don't understand something or have other motives.

I investigated, saw the patient data posted on the Suncoast Solutions site (it was not password-protected), and I was floored! There, for all the world to see, were patients' real names, real addresses, real phone numbers, real diagnoses. I still could not believe it. "They can't be that stupid," I remember thinking. So, half-heartedly I called some of the patients listed as having HIV or whatever, and guess what? They were real people; actual names were used in the software. I talked to them. It was shocking!

I waited for April 14, 2003 and faxed in my complaint just after midnight April 13th, just when April 14th began, so I know it was the first complaint sent in. The United States Department of Health & Human Services, Office for Civil Rights ("OCR") is where I sent it (by mail also). I did receive acknowledgement from the OCR that they received it on April 14, 2003. Then three years went by.

I guess OCR didn't know what to do. They probably were upset to get a complaint about an agency, not an individual, and they just filed it away to be ignored for as long as possible. It wasn't what they expected, I'm sure. And they certainly did not wish to go after that Hospice of the Florida Suncoast which is extremely politically well-connected both at the capitol in Tallahassee, Florida and the capitol of our nation in Washington, DC.

They delayed three years till 2006 when they decided to send it over to the Center for Medicaid and Medicare Services since they said they thought that would be a "more appropriate" place for the HIPAA complaint to be handled.

It didn't make sense at all, if OCR really wanted to enforce the HIPAA Privacy Rule and protect patients' privacy. I handed them a perfect case to demonstrate they were serious.

The Centers for Medicaid and Medicare Services does not investigate HIPAA complaints. OCR does! OCR is the government agency specifically authorized to investigate HIPAA complaints. That was the last I heard from them. You would think that at least the first complaint they got, they would pay attention, do something, and levy a hefty fine.

I never read about a huge HIPAA fine being levied against Suncoast Solutions. Maybe I missed it? I don't think so. OCR never even contacted me once to ask any questions about the details of the case, not even once.

And to "find" such a huge violation of the privacy of over a hundred patients, and to act to protect those patients'

privacy? That would have made a great news story for OCR to tout, showing how effective they were.

But OCR was not eager to act at all in this case. Think of it; you're at OCR, entrusted with doing a great job, enforcing this new law that had been announced with so much fanfare. What do you do with such a big case? Nothing. It doesn't add up if you believe HIPAA is about privacy rights. To delay three years after obviously doing nothing at all, and then send it to CMS that has nothing to do with enforcing HIPAA?

Waiting for three years assured only one thing: all the terminally ill patients whose information was leaked would have died. If OCR had acted sooner (or at all), they would have been forced to make a "finding" that the Hospice had violated HIPAA and that could be used against the hospice, meaning hundreds of patients (or their families) would likely win their lawsuits. Waiting until they all died protected the hospice. It is a very, very well-connected business!

OCR's refusal to act on the very first HIPAA complaint where hundreds of patients' confidentiality was violated demonstrates the reality behind HIPAA. Their refusal to act only adds up if you realize HIPAA is only about keeping secrets or hiding information from the public, intimidating health care professionals and businesses and enlarging government's intrusion into the lives of every American. Everything that happens in the health care system is now hidden behind the powerful veil of privacy created by HIPAA's Privacy Rule.

With the creation of the national electronic database, the government bureaucrats will have access to every patient's medical records, including yours.

When a patient is exploited or abused or even killed, the staff cannot speak out openly, for fear of being brought up on charges of violating HIPAA's regulations, charges that could cost them their job and their family's financial well-being, especially with fines over $50,000. Even though HIPAA's Privacy Rule has exceptions for staff to report to the police, and other governmental agencies, look what happened to Carla Sauer Iyer, RN who was only trying to protect Terri Schiavo from abuse that Carla reported actually endangered her life.

The feds at OCR refused to act on the case I reported to them involving over a hundred patients, but, they say they are doing a great job:

> Re: HIPAA Enforcement at OCR:
>
> [The Department of Health & Human Services,] "HHS' Office for Civil Rights is responsible for enforcing the Privacy and Security Rules. Enforcement of the Privacy Rule began April 14, 2003 for most HIPAA covered entities. Since 2003, OCR's enforcement activities have obtained significant results that have improved the privacy practices of covered entities."

Significant results? Really? Really???

We must understand that **HIPAA does not completely *prevent* the release of private health information or your medical records**. Nothing can absolutely prevent the release of this information. What HIPAA and the HITECH Act do is exert pressure to prevent individual staff or agencies from releasing information ***while creating the electronic database for all medical records***. Many physicians state that their "immediate concern with putting all that medical data on a nationwide computer network is privacy." They rightly understand that creating the electronic database actually lends itself to release of your confidential medical information (the opposite of what you have been told).

If HIPAA were all about really assuring the privacy of our medical records, why would physicians have this concern about privacy? To make it even more obvious, consider that in December, 2010, the New York City Health and Hospitals Corporation's North Bronx Healthcare Network had a breach of private healthcare information for 1.7 million patients. A month later in January, 2011, Health Net had a breach that involved 1.9 million patients where entire computer hard drives have been lost! And there are many agencies where the confidentiality of information has been breached.

The health care agencies and providers responsible for "breaches affecting 500 or more individuals" are collectively responsible for releasing information from *millions* of patients. The breach of confidential information is *not* absolutely prevented! **The nationwide electronic database *is* being created**. With so many having access to the information (as permitted by the government regulations) comes an even greater risk for breach of confidential information, and any computer system is vulnerable to hacking and even physical theft of the hard drives, as we have seen. Under HIPAA, individual staff *are* prevented from revealing what really is happening to individual patients. This allows for widespread treatment denials for the vulnerable elderly and severely disabled without any specific details released by those health care professionals who see it firsthand, and it creates the environment where stealth euthanasia can be widely practiced.

Hospice Wrongdoing May Never be Properly Evaluated

The Privacy Rule affects those of us who would like to do studies on what's really happening in the hospice industry. We would like to do research on the number of patients terminally-sedated, or overdosed with opioids that were not needed. We don't have access.

The hospices themselves will never do a study of themselves showing what they've done that is in violation of the law. They want to cover all that up. And they alone have the medical records. If a family member requests and gets the medical record for their loved one, it's "only one case." The government will not do a study of these abuses, because it is working in every way possible to encourage greater use of hospice at the end-of-life.

Any report that makes it into public view will be "anecdotal," and therefore discounted by those in power, in the "scientific" circles that evaluate what is happening in health care. They'll just be individual reports from people, over and over again, all over the country. Even if there are millions of such complaints, they will all still be considered "anecdotal," and therefore considered, unreliable reports. They will be discounted until the epidemic of "anecdotal" reports becomes the "elephant in the room" and everybody realizes the reports are true and they've been true all along.

How do I know? Because I've been receiving these anecdotal reports for years, and so has every patient advocacy, disability rights organization, and pro-life organization in the country.

We know; we've heard it all before over and over. No matter how many complaints go to the police, the district attorneys, the State legislators or State Attorney General, the federal government with all its web of thousands of regulatory bodies, nothing has been done and nothing will be done. At least, nothing will be done until something really major changes with our country's entire approach to health care, ethics and enforcement of the laws when it comes to the elderly, disabled and ailing. Only when the public becomes awakened and outraged with the epidemic of killings and abuses will the elected officials act. If they think it may affect their electability, they'll act, but not until then.

Family Members are Afraid to Speak Out

But how many people today have the courage of Corrie ten Boom and her family? Family members are afraid to speak out.

They are afraid to speak up against another family member who had the medical power of attorney and arranged for hospice to come in and make "sure" the patient was kept "very comfortable" till they died. They don't want to cause an irreversible rift in the family. They value family and hope for the best, but know what their relative did to manipulate death and impose it upon their loved one. The rift occurs anyway and families have been torn apart ever after. So, why not speak up?

Family members are afraid to speak out publicly against the hospice, fearing the hospice will sue them for slander. They know that the hospice staff may lie saying that the patient had severe pain when they did not, in order to justify the high doses of morphine or other opioid given. But no hospice is going to sue the bereaved family member. They may explain away their statements saying, "they're having a difficult time coping." But suing them? I don't think so. So, why not speak up?

Family members are afraid to speak out against any one particular nurse or doctor, again fearing they will be sued. It is a very strange thing to witness the victims being afraid to speak out against the killers. If family members spoke up about particular hospice staff members, a hospice that was run with integrity would learn about it and be able to get rid of these individuals. If the hospice approves of the "death protocol" the "closer" nurses implement, then the family members will learn that and know who they are dealing with. At least they'll have spoken the truth, tried to prevent it from happening to others and exposed the nurse and the agency for what they are. Doing nothing only allows the hospice to continue to medically kill patients.

But people are afraid.

Thwarting Appeals to Action

We can report each other to the federal government, but if health care professionals see any sort of abuse, even murder, within health care, we can't speak publicly about it due to fear of the federal government prosecuting us for violating the HIPAA Privacy Rule. We may be able to report what we believe to be a crime to our superiors in the health care system, but they won't act if they condone the hastening of death.

We may be able to contact the police or the county district attorney as well. But in just about every case around the country, the police and local prosecutors refuse to investigate or prosecute (if there is conclusive proof of the murder of a patient in hospice). Hospice is the "sacred cow" and is protected. Until a generation of our citizens objects, until the population becomes awakened and outspoken, unafraid to put their name out there and say that they object to these evils, the evils will spread and more patients will be either abused, neglected, harmed or even hastened to their death.

Nurses, who are known to go into the profession not just for money, but because they care to serve, are often afraid and intimidated in the workplace. Management knows exactly how to push the buttons of nurses who challenge the system. Even non-profit corporations running facilities can create problems for the staff. Either way, the old "divide and conquer" strategy is used over and over again in health care whether hospitals, nursing

homes or hospices.

The financial vulnerability of many nurses makes them even less likely to report problems in health care. Many nurses' incomes are essential to the financial well-being of their families, and many are single mothers who are raising a family on their own. They are terrified of losing their jobs, their health benefits (if they have any), and worry about their children. That is why the health care industry is one of the most backward and exploitive fields in America. Those with dollar-signs in their minds administer many of the facilities and those with hearts of gold perform the real work of caring for those who need so much.

Although there are some good for-profit corporations in health care, I truly believe it would be better for non-profits to dominate the health care industry. Health care is a mission of service and whatever funds are used to provide care should be going to care and services, not to others profiting off of the system. It seems that years ago, people recognized this spiritual mission of health care, but as our society has mostly assumed a secular world-view, health care has become just another industry to be exploited.

How Things Work: The Legal Environment for Nurses

That brings to mind the whole legal arena. When you're hired, management tells you that not only do they have health insurance for full-time employees (usually with significant employee contributions), and the short-term disability, the workers' comp, but they also tell you they have liability insurance. They say, "whatever happens," "we're here; we have all these benefits and you have nothing to worry about that." "We'll be there for you." "You don't need your own liability insurance." Well, again, all is not as it seems to the new, naive, trusting employee who is full of faith in the system (as I was back when I was a new nurse).

If the hospital (or other health care agency) is actually sued, the hospital's risk management department and its attorneys will size up the situation. The corporation's attorneys will assess the liability and the best course of action to protect the *hospital*! If that includes protecting you and defending your actions, they will protect you and help you. However, if they believe they can most easily win their case by throwing you to the wolves and "parting ways," they will not defend *you* and they may actual terminate you from employment. They may actually sue you as well. That's why many nurses carry their own liability insurance. If you have your own insurance, the attorneys that are hired work on your behalf, and what they do may or may not be beneficial to the corporation.

I've received tearful reports from nurses who were fired at hospice agencies, because they refused to overdose a patient with morphine in a hospice, at the express direction of the greedy adult son of the patient who did not care a bit about the patient, just how soon he could get his hands on the estate. I've received calls from nurses who spoke up about the inappropriate use of terminal sedation to impose death; they were harassed, retaliated against and were either fired or quit.

Many good nurses are leaving the field of hospice care, because they know they will be discriminated against and possibly lose their license. Some malicious managers at these hospices have gone after the licenses of the nurses who respect the sanctity of life. It is exactly the same as what happens to nurses who refuse to participate in an abortion at a hospital: they can be fired for not helping in the procedures. "Protections" for the conscience rights of the health care professionals who are pro-life are not effective. And the current administration has rescinded some of the protections that were in place and might theoretically "protect" a worker after they had been fired or discriminated against. The prohibitions against retaliation or harassment of a "troublesome" employee are not respected by management and management knows it can get away with treating an employee that way. Even if they later lose a lawsuit, they know that most employees will not sue and most cannot hang on for the long delays the corporation's attorneys will create, draining the limited resources of former employees

struggling just to make ends meet.

How Things Work: Typical Hospice Scenarios for Hastening Death

The following hospice cases represent typical scenarios used in end-of-life settings. Although many will protest that these stories are rare exceptions or anecdotal stories, after hearing similar stories from families all across the country for a decade, I know that these are widespread methods being used. Perhaps more than anyone in the United States, I know, because I've heard from families and spoken with them for hours, asking specific questions to clarify exactly what happened. Having worked in hospice and spent the last 13 years focused on end-of-life care hours every day, I don't believe everyone who calls saying this or that happened.

They have to have the details of what happened, what medications were given, dosage, frequency of administration and so on. Sometimes, and even many times, I have told a family member, "I think the hospice was really trying to help your loved one; it sounds like they did the best possible and followed the correct procedures." That would surprise many, but it is true. If a patient is really in pain, giving increasing doses of the appropriate medication to be used for that type of pain is indicated.

However, the other stories about problems in hospice and palliative care units, whether in hospitals, nursing homes or elsewhere just keep coming in. Every patient advocacy group in the country has heard some of these stories. But because we are hospice and palliative-care oriented, we get calls from the staff in the industry: medical directors, nursing directors and staff working in hospice, who confirm what we are saying and sharing with you. These are the censored stories. For every story that follows below, there are hundreds, even thousands just like them all across the country. It is not an East-coast or West-coast thing. These problems exist in middle-America, the Midwest, North and South, all around.

I've heard from professionals teaching hospice & palliative care standards of care who have also confirmed serious, even criminal problems exist in this industry. I am sharing the reports of the following family members with details so you can read what happened in their own words. The details matter. Many are well-educated professionals, some with masters' degrees or other advanced degrees or training. They are speaking from experience and knowledge. These are their stories.

Lucid, Poor, Elderly Veteran Euthanized Against His Will

Note: the following is the account given by two daughters in the involuntary euthanasia of their father. Names have been withheld to maintain confidentiality.

December, 2000

Letter to authorities:

My sisters and I believe that the circumstances surrounding the death of our father are suspicious and unusual, and therefore fall within the criteria of deaths designated by the (name of state) Death Investigation Act which warrant investigation. We also believe an investigation into the facts and circumstances surrounding our father's death is warranted by those agencies responsible for enforcing state and federal regulation compliance and investigating criminal activity, medical malpractice, and Medicare fraud. Because of the complexities and broad scope of this matter, we are addressing this letter to U.S Attorney and the District Attorney for the __th Judicial Circuit, State of _____.

Our own investigation thus far has produced evidence supporting the allegations asserted herein, and we are concerned that the hospice, doctor, nurses and others involved may alter, destroy or otherwise dispose of any medical and-or other records in their possession and/or under their control before their records can be subpoenaed, if not already altered or destroyed. However, we have copies of medical records which prove most aspects of the fraud and other criminal allegations we will be describing in this letter. The various allegations we are asserting include criminal homicide, conspiracy to commit homicide, Medicare fraud, Title II Controlled Substance Act violations, medical malpractice and many other violations of the Code of Federal Regulations ("CFR") and the Official Code of (name of state).

I will address the Medicare fraud, i.e., our father's Hospice certification, first, not because it is the most blatant violation committed, but because it was while under Hospice care that he suffered the damages and, ultimately, his death, which are the subject of this letter. In Dr. (name of doctor)'s capacity as our father's private physician, he certified to Medicare that our father was terminally ill with lung cancer in order to qualify him for Hospice benefits through Medicare. (name of doctor), it turns out, is also the Medical Director of this Hospice, that he recommended our father to sign up with (name of corporation/hospice) Hospice. There is no medical evidence whatsoever confirming such a diagnosis - no pathology reports, no x-rays, no lab reports. Nor is there any medical evidence of any other type of cancer. (name of doctor) was well aware at the time of Medicare certification, and at all times subsequent thereto, that all tests conducted on our father for any type of malignancy returned negative or inconclusive results.

During the course of our father's care under (name of corporation/hospice) Hospice, the following violations were committed by (name of doctor) and (name of corporation/hospice).

1. He was given a drug for which his medical records reveal he was allergic to, although at least four alternative drugs were available on the market, resulting in his death.

2. He was given a drug which he was told was specifically for his COPD, but actually was medically contraindicated for his primary illness of COPD, resulting in his death:

Note: Of concern: All of our father's medications were obtained through the VA hospital, both those prescribed by his VA physician and (name of doctor). However, (name of doctor) obtained the morphine from a private, local pharmacy, altogether bypassing the VA. This is because my father's VA hospital records are replete with notations with regard to his morphine allergy and his diagnosis of COPD. (name of doctor) knew he would not be able to get the morphine from the VA, because it would have been red flagged by VA pharmacy.

3. His regular medications were withheld from him, against his will. This included Lasix for his COPD and his medications for blood pressure (which is evidence that the morphine could not have been administered with the intent to aid and assist his breathing). Morphine, in low dosages in combination with a diuretic such as Lasix, may be used to decrease pulmonary edema (usually in very end-stage heart failure).

4. He was denied his right to change his course of treatment when he both wrote and verbally requested that the drug be stopped. He was allergic to this drug and he stated the morphine was making him sicker. His instructions were ignored and the administering of the drug was continued by both Hospice and (name of doctor):

5. Food and water was denied him via abuse, neglect and later on, due to the comatose state caused by the above described drug (terminal sedation).

6. (name of doctor) falsified my father's death certificate by incorrectly stating the cause of death to be lung cancer, by incorrectly stating the time of death to be two hours later than it occurred (right after an IV was given), and as for the other two causes of death listed by (name of doctor), i.e., pleural effusion and COPD, it will be shown that these were causes of death only because of his intentional hastening of these illness (by not providing appropriate care) to the point of his death.

7. Several months before his death, my father was given a vial of morphine by a nurse at (name of corporation-hospice) and was told to keep it in his bedside stand to "think about". It is doubtful that this vial of morphine was prescribed and legally dispensed by a pharmacist because there was no pharmacy label on it, just the manufacturer's label. It is not legal to dispense unlabeled morphine (or medications of any kind) and especially

not without a specific doctor's order. The implications of this action by (name of corporation/hospice) are in direct violation of Hospice regulations and all basic standards of care.

8. When advised by family members that our father wanted the morphine stopped, (name of doctor) failed to contact our father to verify his wishes about the morphine.

9. (name of doctor) and (name of corporation/hospice) prescribed dosages exceeding those necessary for my father's symptoms, and utilized methods of administering the morphine in contradiction to the standards of care for his condition, used excessive amounts of drug, and had them given to him by injection rather than a standard method of oral, subcutaneous or IV pump.

10. He was illegally discharged from Hospice care and then reinstated a week later, suffering severe mental distress from such action by (name of doctor) and (name of corporation/hospice), in violation of Hospice guidelines and regulations as outlined in the CFR:

11. He was denied his final arrangements with regard to his children due to the inadequacy of the "spiritual counselor" assigned to him.

12. (name of doctor) and (name of corporation/hospice) made only one brief visit to our father during a 6-day stay at the (name of hospital) Hospital (this was only a few weeks before his death), contrary to Medicare Hospice regulations.

13. Various other violations of the laws and standards of care were committed, including, but not limited to, violations of basic standards of care and misleading family members about the effects of the morphine, causing them to submit to and assist in the assault and battery on our father, i.e., forcing him to take morphine injections against his wishes and convincing family members to ignore his wishes, as well and administer the morphine injections.

14. The hospice violated our father's wishes to remain alert and oriented. The hospice's actions placed our father in a medically induced coma, despite the fact that he stringently denied experiencing any pain whatsoever during this time. He had not been comatose until given the morphine directly against his wishes.

15. (name of doctor) and (name of corporation/hospice) did not provide continuous 24 hour nursing care for our father during the crisis symptoms resulting from the overdosage of morphine, (during the last days of his life) when he needed professional care the most. 16. (name of doctor) and (name of corporation/hospice) rendered our father helpless through the administration of the morphine, and that is how he died, and he did not die with dignity as Hospice is supposed to provide for.

With regard to the fraudulent diagnosis and fraudulent cause of death, please be advised that we are in possession of our father's medical records from the VA Hospital (name of hospital), where any and all tests for cancer were performed. (name of doctor) advised certain family members three days before our father's death that he, himself, possessed no medical evidence of lung cancer, and that he had made his diagnosis based on the medical records of the VA Hospital and on what our father told him.

The VA Hospital could not have provided him with any evidence of lung cancer because no such records exist and secondly, physicians cannot legally or ethically diagnose and certify a terminal illness simply upon a patient's unsubstantiated fears. And the fact that the doctor admitted having our father's VA Hospital records means the doctor was fully aware of our father's allergy to morphine and also, that our father had COPD, for which morphine is generally contraindicated. Morphine depresses and slows down the respiratory rate, and especially in COPD patients can lead to death when the breathing is made to stop.

I should also mention that the doctor had treated him for his COPD during the three years he was his medical doctor, so he was aware of all his different illnesses, including renal insufficiency, which also made morphine contraindicated for him because it prevents adequate elimination of the morphine from the body.

Also not receiving his Lasix caused the fluid buildup (pleural effusion) in his lungs to escalate. The morphine induced coma also resulted in his inability to cough, preventing him clearing his airways when in the medically induced coma. This resulted in more fluid buildup in his lungs.

When (name of doctor) prescribed the morphine, he did not prescribe an emergency kit to be kept near his bedroom which could reverse any respiratory suppression caused by the morphine. He knew he would have a severe adverse reaction: and, he knew that with his renal insufficiency, failure to get Lasix and COPD, he could overdose very quickly on the morphine and that the antagonist Naloxene should have been available in case of an allergic reaction or overdose. As it happened, he did have an adverse reaction and he did overdose...dying shortly after receiving the IV morphine.

For the reasons stated above, a copy of this letter is being forwarded to (name of State) Drugs and Narcotics

Agency for further investigation into the misuse and abuse of a Title II controlled substance and the actions of (name of doctor) who is registered with the US Drug Enforcement Agency to prescribe and administer narcotics in accordance with the Controlled Substance Act.

On the first day of administering morphine to our father, the hospice nurse advised family members who were present to contact all family members so we could visit our father while he would still know us, because within a few days he would be comatose, and then he would die. In other words, the treatment plan was actually an involuntary euthanasia plan, because our father had been alert, oriented, and mobile up to this point, and demonstrated no symptoms of a person facing imminent death from illness. The Doctor literally described the onset and progression of an intentional morphine overdose.

On the third day of the morphine program, our father's wife contacted the Hospice nurse and advised that our father was unable to swallow his usual medications. She was advised by the Hospice nurse that his difficulty in swallowing was a result of the morphine and if he could not swallow his medications, not to worry about giving them to him. Our father was faithful in taking his medications, including his vitamins, because he intended to live as long a life as possible and to be as healthy as possible throughout the length of his life. Because of the dire necessity of certain medications, i.e., medications for pleural effusion, blood pressure and heart condition, it is another suspicious and unusual circumstance that these medications would be discontinued with no concern on the part of (name of doctor) or (name of corporation/hospice).

According to the pharmacist that dispensed the morphine injections, he was not aware of our father's allergy to morphine and stated that the doctor had not informed him of past adverse reactions to the morphine.

At one point, during the 10-days my father was on morphine, our father could not be awakened by family members or the Hospice nurse and (name of doctor) was notified of our father's condition by the Hospice nurse. Rather than have the hospice nurse call local emergency medical personnel, (name of doctor) traveled from his county of residence, to my father's home to examine him himself. It is more curious that during the visit, before leaving our father's home, (name of doctor) authorized the hospice nurse to increase the dosage and/or frequency of morphine injections being administered to our father and advised family members who were present at the time that his dosage could be increased. This, even though our father had no complaint of pain at all.

Our father, on another day, awoke from his comatose state, but due to his inadequate food and fluid intake and in the absence of receiving his regular medications, was extremely weak and ill. At this point, he found a pen and paper and managed to write a note of his own free will and accord, in the presence of not less than three family members stating that he wanted the morphine discontinued because it was making him sicker. The morphine was continued against our father's will.

The family member who wanted to control daddy's treatment plan., (name of son) took the note from our father, and in a display of anger, slapped the note between his hands and told our father, "we are going to continue as planned." A local minister visited with our father that evening, and our father repeatedly told the minister that he did not want to be given any more morphine.

To ascertain our father's mental state and awareness of what he was saying, the minister asked our father a series of questions, to which he answered all correctly, e.g., "who is the President of the United States," "what is your birthday," "how old are you," etc. The minister, however, had been told by the hospice nurse emphatically that the morphine was necessary to help our father's breathing difficulties and urged our father to continue the morphine injections. This minister was made a victim, herself, in that she will have to live with the fact that she unwittingly contributed to the calculated murder of a good man for the rest of her life: Our father relied on this minister's word (who had relied on the nurse's promise that our father needed the morphine), and therefore our father subsequently submitted to the morphine (although he had previously vehemently refused them over and over again).

The following day, our father managed to sign a medical release form for his medical records from the VA Hospital, directing his medical records be sent to him in care of his daughter (name). He stated to another of his daughters that he wanted all of his children to know the truth if he died. Sadly, the records did not arrive until two weeks after his death; too late to get an injunction to stop the morphine from being administered to him, and too late to save his life.

Our father drifted in and out of consciousness for another day and was then rendered completely comatose by the morphine. For two days, at a minimum, he received no fluids or food and remained comatose. No IV fluids were administered to prevent premature death by dehydration and starvation. A statement obtained from one family member who was present at our father's bedside during the last two days of his life stated that by the last day of his life, our father was receiving morphine injections on an hourly basis. He did not revive, again, and passed away on _____, 2000.

The following are several significant facts which should be considered in an investigation into our father's death: Our father was nearing the time when he would need to be re-certified in order to continue with Hospice. Some family members had begun to question the cancer diagnosis (which lab tests or other medically scientific tests failed to diagnose at all). Our father had related to several family members that (name of corporation/hospice) nurses had told him that the hospice was in financial difficulty and that was why they were shorthanded and could not be more available to him. (This financial difficulty was a self-created situation since the hospice was signing on more patients in order increase its profit.)

Approximately one month prior to his death, our father had called 911 and went to the hospital for breathing difficulties while under hospice care without notifying hospice in advance, allegedly contrary to their hospice rules. Our father called 911 to get emergency medical assistance because his many calls to hospice for medical assistance were not returned at all! It is my understanding that, according to Medicare guidelines, hospice would be responsible for payment of any hospital expenses incurred by our father for medical care for symptom control. If our father were to continue to use 911 as an alternate emergency avenue when the hospice failed to provide the promised 24 hour nurse on call, as it so often had in the past, it would have resulted in a great expense for the hospice.

Our father advised several of his children that immediately after his visit to (name of hospital), the hospice nurse advised him that they had a meeting and decided to discharge him, because he had gone to the hospital against hospice rules. Actually, the hospice had been responsible to provide emergency symptom management, but failed to do so, and to retaliate against our father when he simply wanted medical care for his illness, is the opposite of what hospice is supposed to do. The mental distress this caused our father was enormous. One week later, (name of corporation/hospice) accepted him back into their care, and a few days later they started him on morphine and ten days later he was dead.

Another curiosity is that during our father's more than one week stay in (name of hospital), and subsequent overnight stay in the VA Hospital, he did not once complain of experiencing any pain whatsoever. If our father was then, two weeks later, in dire need of medication for unbearable pain associated with cancer, that seems odd indeed. Again, there was no medical proof he had cancer, no lab tests, no formal diagnosis (except on the falsified hospice enrollment forms and death certificate) and no pain.

One more curious and suspicious incident is that on the last day of our father's life, in the last hour of his life, a hospice nurse arrived with an IV pump. She said it was a morphine pump. She had great difficulty in getting the IV needle inserted properly into our father's veins because of his physical dehydration and deterioration by that time. Within a few minutes of getting the IV going, she came out of his bedroom and announced his death to the family. This incident absolutely demands investigation.

We know that nothing we do can bring our father back. We also know we are not going to let this matter rest until our father's death certificate is corrected in all respects, and those responsible for his death are held accountable.

Sadly, our father is representative of those at greatest risk of becoming victims of involuntary euthanasia - he was a veteran who proudly served his country. He was poor, elderly, disabled, and disadvantaged. Our father fought with all the abilities he had at his disposal to hold on to life. His determination to live had seen him through medical crises before, to go on to long term recoveries, but his extraordinary determination was not able to overcome the forces of a doctor and a hospice equally determined to end his life.

Our father, though elderly, ill, and, at times, very lonely, was a caring and beloved person, respected by those in the community, who never did one thing to harm anyone, yet he suffered a death less dignified and a thousand times more painful, emotionally, physically, and mentally, than a murderer on death row receives.

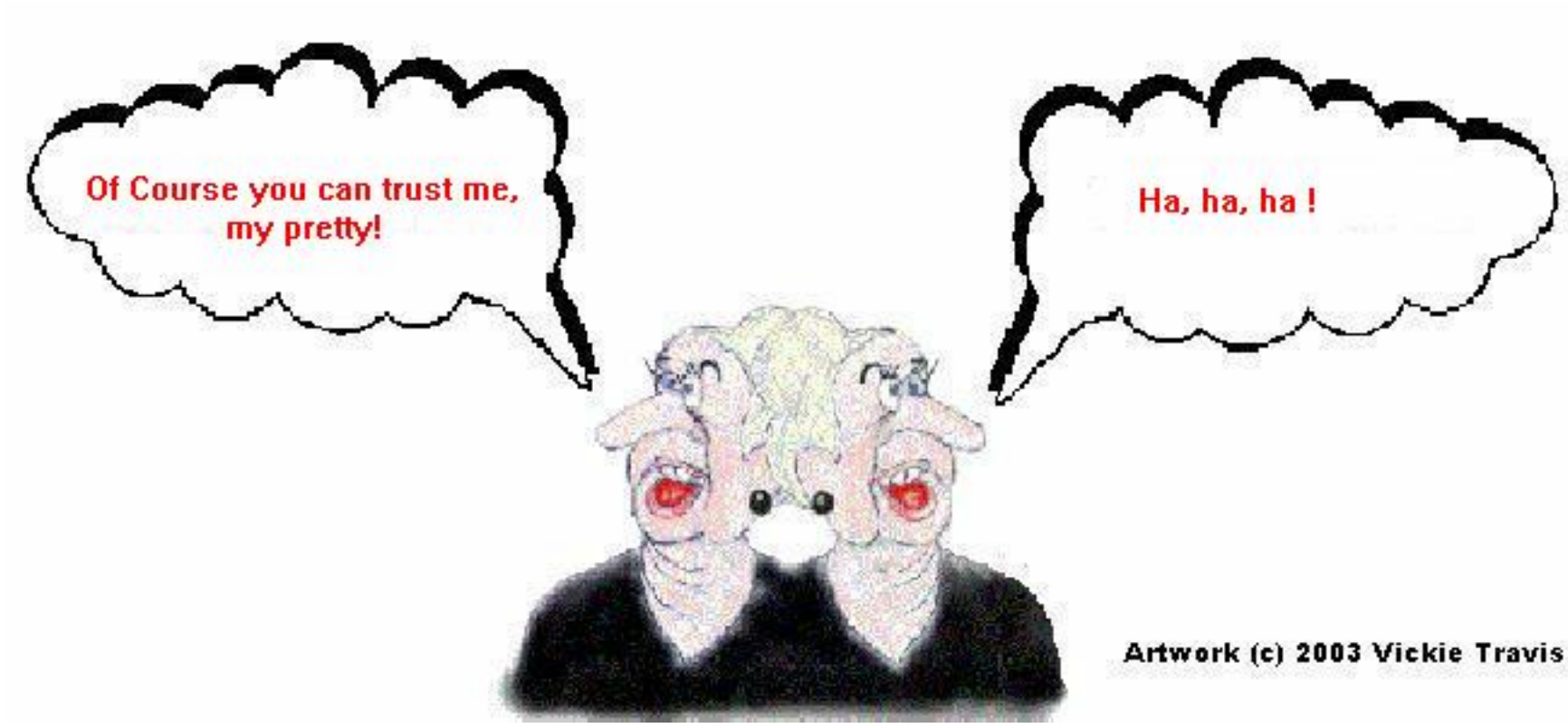
I hope the information contained in this letter and the enclosed medical records and statements are sufficient to initiate an investigation into the death of our father. If there is any further information you need please give me a call at the number provided at the top of this letter.

Sincerely,

(name of daughter)

[Daughter's Note: This case was reported to the State and local authorities who have to date done nothing. The state and local DA's office have had several months to investigate, but have conducted no such investigation. Further, the hospice and the hospice doctor have separate continuing business relations with the county coroner

who would do part of the investigation for the DA's office. The DA's office has not investigated. They plan no action at all. We wish to know if hospices have a license to kill. It is evident, that in our father's case they did.]



Mother Killed by Hospice with Morphine Overdose

[Note: the following is the account given by a daughter showing how her mother was medically killed by a hospice, its medical director and its nurses: involuntary euthanasia. Names have been withheld to maintain confidentiality.]

My mother was recently a hospice patient in _____. She had chronic lung disease (C.O.P.D.) which we all expected would eventually take her life. However, while under hospice care she died of "acute morphine intoxication." This has been confirmed by an autopsy by the coroner's office, and now is being investigated by the county D.A.

Since she was under hospice, and also considered terminal, I don't know how serious it will be taken. However, I now know that this is not an isolated case, and feel that it's probably happening to others as well. What I find particularly disturbing is that my mother did not want to take the Roxanol (liquid morphine), and that's what caused her death.

The hospice nurses kept insisting that it would help her breathe, although everything we read stated that morphine would actually slow down her breathing and could even stop it completely. The nurses claimed that in small doses, morphine actually would make her breathing much easier. Consequently, she finally agreed to take it, and my brother and myself were encouraging her to do so, based on what the hospice kept telling us. We trusted them! Throughout the patient records, it mentions our concerns regarding the Roxanol.

My mom agreed to become a hospice patient primarily because she totally depended on bottled oxygen to breathe. It was difficult transporting her to and from physicians. It also appeared they actually did little besides adjust her medications.

Since hospice claims to have "physician services" available, and her attending physician appeared to be in favor of her signing up for hospice, she agreed. Initially, we began to have problems getting the proper medications. Many of the meds she took for breathing problems did not appear to be on the hospice "formulary". This appeared quite odd since the meds she took were standard for her condition. I also had been told that the hospice handled all supplies, i.e. underpads, gloves (for dressing changes), etc. Whenever, we asked for anything, they were always out. They also claimed falsely that these items were not generally covered. I finally spoke with

their social worker assigned to the case for a clarification to determine what was covered. After that, they supplied all necessary items. However, I did request a written list of items covered, they could not supply.

Although my mother had difficulty breathing, she was completely alert and aware at all times. After we finally received her medical records from the hospice after her death, it was noticed that they had written "comfort measures only" to be supplied. However, they did not see to it that my mother was kept comfortable. They denied her the basic medications which would have helped her manage her C.O.P.D. symptoms!

I'm still trying to determine exactly what hospice does supply, since they supplied so little. Through the duration of her hospice care, there were many issues which we felt needed physician input. We had no contact whatsoever with either the attending or the hospice physician regarding my mom's care. (I did meet with the attending physician at his request to try to resolve who should be responsible for prescribing her medications. At the end of the meeting, he told me that the hospice has their own physicians and they should be handling her case.)

Approximately one month after we initially signed with the hospice, a home health aide who was assisting my mom get back into bed, cut her leg quite severely with her acrylic fingernails. The vein was actually exposed. We have a friend who is a dermatologist who felt the wound was bad enough that a wound care specialist should be contacted. We requested a physician visit from the hospice. They initially ignored the request. When we became persistent about having a physician evaluate the wound, they arranged for their hospice physician to stop by our home. He evidently stopped in front of the house, then received a page from the hospital and left. Throughout her care, we never saw or spoke to him.

Several weeks after the leg wound incident, her breathing became much more labored. We told the hospice nurse we suspected pneumonia since she'd had that before with similar symptoms. We were told by the nurse it absolutely couldn't be pneumonia since there was no fever present. We once again asked for a physician to evaluate our mother, but once again the request was ignored.

Approximately two weeks prior to her death, her right hand swelled and the fingers became very sore and puffy. The nurse suspected either an infection or a bite. It was extremely painful. We once again requested a physician, and once again the request was ignored. Instead, they ordered an antibiotic in case it was an infection. My mom refused to take it without speaking to a physician.

Since her breathing was becoming more labored, the hospice nurse began to really push the Roxanol. My mom finally relented and began to take small doses of 5 mg every 4-6 hours or many times less frequently. (The prescription on the bottle allowed for 10mg). Since my mom was extremely petite (she weighed approximately 75-80 lbs.), she was very concerned of overdosing on medications.

The day before her death, the hospice nurse came into our home, and said that the attending physician said my mom could have 20mg of the Roxanol every 2 hours. That was 4 times the amount we had been giving her. Since her breathing was still labored, and the prior doses didn't appear to be helping her much, the nurse administered the larger dose (the medical records now state that she gave her 10mg, although at the time, she said it was 20). The last thing I remember my mom ever saying was "but I just had some". She had been alert and aware prior to the dose being administered.

She went into a coma that afternoon. I immediately paged the hospice nurse and was told that the coma was part of her "actively dying" and that the morphine had nothing to do with it. We wanted to call 911, but when you are with hospice, you are instructed to contact the nurse instead. We also knew that she did not want to be placed on a ventilator and were afraid that would happen if we called 911. At the time, neither my brother nor I had any idea there was a drug to counteract a morphine overdose. Nor did the nurse volunteer any such information.

The nurse never came out that day. The following morning while my mom was still in a coma, the hospice nurse returned. She insisted that my mom needed some more Roxanol. My mother's breathing rate had slowed down considerably and I vehemently said "no," telling the nurse that I still felt as though the morphine had caused the coma. She denied that and even stated that morphine can go "in and out of the system quite quickly." She said my mom was actively dying, and that it had nothing to do with the morphine. The nurse told me that "it was "inhumane" to allow her to struggle for breath as she was. The morphine would only help make her breathing easier." I finally reluctantly agreed to a very small dose. I'm not certain of the amount given, but my mom died later that evening. Now I know that the morphine killed my Mom.

The coroner was not called as is the rule in the area we live. My brother and I began looking more into the morphine issue, and contacted the coroner's office. The autopsy report took 10 weeks, but confirmed our suspicions. The coroner confirmed that my mother had bilateral pneumonia, which never was treated.

The physician who prescribed the increased morphine level to be given was the hospice physician. He had never seen or spoken to my mom. There was absolutely no contact with the family. It is my understanding that in

_____, it is illegal for a physician to write a narcotic for a patient he has never evaluated. We are contacting the medical board on this issue.

I also began looking up some information on Roxanol/morphine, and how it's utilized with COPD patients. What I found in every journal I looked at was that Roxanol is "contraindicated for use with COPD patients". Consequently, we don't really know why it was given. She did not have cancer, and was not in severe pain.

I also attempted to get her records from the hospice. They have been absolutely impossible to work with. It's nearly impossible to get them to respond on any issues. They refused to release records to me until I filed a complaint about it with the county department of health services. When they did send out my Mom's records, they did not send the complete record and were careful to actually remove certain pages from the record that were particularly incriminating. When I again requested specific documents which I learned had to be part of the record, they sent some, but again, failed to send everything. They still make it extremely difficult.

This story goes on and on. The bottom line is that my mother was "euthanized" against her will and against our wishes by the hospice, its physician and nurse who were supposed to be helping her live out her remaining days to the fullest, not kill her!

The hospice has continued to insist that the morphine had nothing to do with her death, and that my mother died from her lung disease. According to the official coroner's findings, my mother's morphine levels were extremely high. The morphine intoxication was the only cause of death. It had nothing to do with her lung disease.

This has been extremely hard on my whole family. We all had hoped and prayed that we would have Nana with us for another Christmas. The sad part is that without hospice, we probably would have. I had brought her to live with us, thinking that we could help extend her life, and allow her to be around loved ones. Instead, she was overdosed on morphine by those we entrusted to help with her care.

As I mentioned before, I don't believe this is an isolated case, and would like to do whatever I can to prevent this from happening to another nana somewhere.

signed - Name of daughter

Note: There are several issues involved in this case. The Hospice was required to provide the supplies needed for this patient's care related to her terminal illness. Also, morphine is contraindicated generally with C.O.P.D. patients and especially in an elderly patient, medications do not "go in and out of the system quickly" as the nurse incorrectly stated. Every nurse and physician knows that the elderly do not metabolize or excrete medications as quickly as the younger patients. In this case, the breathing rate became quite slow, according to the daughter's report, and yet, the hospice nurse still gave the morphine, knowing it would slow the breathing down more and then stop the breathing.

The attending physician had told the daughter that the hospice has its own physicians, and that the hospice medical director should handle the case. That is completely incorrect. Most physicians are not well informed about the specifics of hospice regulations. The hospice regulations actually envision a check and balance system with the attending physician making the orders for medical care and the hospice medical director serving as a check to make sure that the patient's symptoms are managed well.

For a hospice to remove the C.O.P.D. patient's medications for breathing management is absolutely abominable and the opposite of standard hospice care regulations. The C.O.P.D. symptoms were the symptoms that were causing discomfort to the patient, not pain, such as in cancer, so the patient would have been much more comfortable receiving the medications her attending physician had ordered. It is obvious from the daughter's account, that the hospice had no intention of managing the patient's C.O.P.D. symptoms but was bent on euthanizing her by giving her morphine when her breathing had slowed down below acceptable standards. Hospice Patients Alliance has received this report from a daughter who is devastated by the medical killing of her mother (involuntary euthanasia). HPA does not take a position on any specific hospice, but condemns the abominable lack of even minimal compliance with the most basic of health care standards, resulting in the needless death of this family's mother and thousands of other helpless patients throughout the US. We condemn the hospice's violation of human rights and patient's rights described in this actual case history.

Father of Robin Love Killed by Hospice with Morphine Overdose

Note: the following is the account given by a daughter showing how her father was medically killed by a hospice, its medical director and its nurses: involuntary euthanasia. Names have been withheld to maintain confidentiality.

Robin Love reports:

I was the only one of the children living in the area and I would visit with my father, at home, at least twice per week. My children were very close to both of my parents so I always felt it was very important that they saw their family on a regular basis. My mother had medical power of attorney. And I believe she knew I was going to go to court to be named guardian and that is why everything had been done very sneaky and that I was kept away from hospice for the same reasons.

There were too many people who would be able to show that my mother wasn't very capable of making rational decisions on many levels, not just regarding my father's care. My father wasn't able to speak but could communicate with his eyes and hands. He had 6 caregivers (2 full time and 4 part time) who were able to understand him. And he was aware of everything going on around him. My father wasn't terminal.

My father had Parkinson's Disease; he had been diagnosed 5 years earlier. He had lost his ability to swallow well and had opted to have a feeding tube inserted in May of 1998. Other than that, he was quite stable and was certainly not terminal. I heard from a caregiver on the day before he was to go into hospice that my mother was considering placing him in a nursing home. I went to speak with my mother, to let her know that my father could live with us, in my home, and she became irrational and very defensive and was screaming and carrying on, so I left her house with my 9 year old who had been there over night.

The following day I received a call that he was going to hospice in 1 hour and I went back over. My father grabbed my hand and began crying and acknowledged that he did not want to go. He feared that he would somehow die if he went into the hospice. My husband and 3 of my father's caregivers were also there to witness his distress and obvious wish not to enter hospice. All of this planning had been done unknowingly to any other family members. I visited with my Dad twice and the third day was told that I was not allowed to be there. Nor were any of his caregivers or his own sister!

My mother had decided to put Dad in the hospice against his wishes and mine. What was my Dad's prognosis? He had Parkinson's and was stable. All of his internal organs were functioning, it was just the feeding tube that seemed to have disturbed my mother. However, with the feeding tube in place, he was not having any other medical problems.

I kept track of the cans of formula that my Dad had. The hospice didn't use any of them! My father was being starved to death intentionally, against his will. In addition, The nurses at the hospice told me my father was not being medicated at the end. However, my husband glanced at the chart and wrote down the info and I called his sister (who is a nurse) and she told me that it was morphine and the other was a sedative. In addition, I witnessed an aide administering morphine and she "accidently?" left the book open, which indicated that my father had received five doses of morphine that very day.

I just find all of this so unethical! And later on when I requested a meeting, the "Hospice Ethics Committee" meeting was re-scheduled 3 times, then completely cancelled. The hospice had no interest in speaking with me about the involuntary euthanasia they were committing.

So, my father was being dehydrated and starved intentionally by the hospice, even though my Dad wasn't even terminally ill. Plus, he was sedated with Haldol to put him into a coma and then given morphine to push him over the edge and kill him by shutting down his breathing. All of this, totally against his wishes!

Now I wonder how this can happen in the United States. I just don't understand it, and the local district attorneys have not done anything yet to bring charges against the hospice. It seems like they can do anything and nobody in authority cares to stop them. After doing research and speaking with others, I've realized that there are many other cases like my Dad's, and it is just horrifying to know that this is going on.

I have reported this to the state Attorney General's office, the state Office of Health Quality and the U.S. Drug

Enforcement Administration, but none of them have acted. They all say they don't handle this type of case. I was informed that the US Drug Enforcement Administration does not deal with this issue. There is basically NO ONE to oversee what drugs are issued to hospice patients.

Father Killed by Hospice with Morphine Overdose

by Pat Bridwell and Jane Kennedy September 13, 2004

This is about a man who loved life, cherished each day as a gift, and whose iron will to live was an inspiration to all who knew and loved him. He was intelligent, a hardworking career man into his 70's, and a veteran of World War II who loved his country. He adored family and friends, and his name is Dewey _____. He is my Dad. He was 81.

In 1991 he had heart bypass and carotid artery surgery and had remained on heart and blood pressure meds since that time. Dad developed hardening of the arteries in the last few years. His blood pressure was kept extremely low. Occasionally, his legs ached due to poor circulation, but Dad kept going despite his declining health. He was never homebound or bedridden.

On July 5th Dad was hospitalized with nausea, diarrhea, vomiting, and weakness. CT scans and a colonoscopy revealed that part of his colon had died due to improper blood flow. He needed surgery but doctors chose not to operate. He was weak, and they feared he would not survive the risk. He was treated with IV fluids, antibiotics, potassium, and was also given a blood transfusion because he had some bleeding from his colon. He was released a week later, and at no time did his condition require pain medication. The only discomfort Dad ever complained about was gas pain after eating or his leg/neck aches from lying in bed.

He regained his appetite and bounced back with unusual energy. On July 28th and August 8th, the diarrhea returned. Both times he was hospitalized for dehydration and given IV fluids. He was given antibiotics again on the August 8th visit. Still, his condition did NOT require pain medication. The doctor who had seen Dad in the E.R. on August 8th told my step mom that Dad's condition was irreversible and on a downhill spiral. He obviously felt Dad had six months or less and recommended that she seek help from Hospice. On August 10th, Dad was ready to come home and had every hope of regaining his strength and recovering. Giving up or giving in to the problem was not an option for him.

I was ignorant, naive, trusting and knew very little about Hospice. I had only heard good things about how they come to the homes of dying cancer patients in agonizing pain to provide comfort and care. I never knew in-house Hospice facilities existed before now.

Tuesday, August 10th: My step mom had Dad transported that afternoon from the hospital to _____ Hospice Facility in _____, Georgia. I went there immediately after work. Dad was sitting up in bed, in very good spirits, and said he was starving. I went to the office and asked for a tray. He ate/drank most everything on the tray and sent me for another buttered roll. Afterward, he had a diet coke and candy bar for dessert. I helped him out of bed, and he walked to the bathroom. There was no light in there, but he managed. I found someone, who later turned out to be the Chaplain, and requested a light bulb be installed. Dad asked what I thought about the place, and I told him the truth. I didn't know yet. He said, "I don't know yet either." Dad was doing real well that evening.

I can only mark the following as the worst three days of my life....the darkest hours... a shocking experience, horrifying discovery.. and a devastating and painful memory.

Wednesday, August 11th: By the time I arrived after work, Dad was lying there and was definitely not himself. He was always happy to see people, greeted them with a smile, and was ready to talk. This time was different...Dad seemed agitated, not interested in conversation and just wanted to rest. This was totally out of character for him, even when he wasn't feeling well. My stepmom said he had had a busy day with a lot of visitors (his brothers and sisters). She informed me that the staff doctor would be meeting with us the next morning. I had a bad feeling... I hugged and kissed Dad, as always, and left so that he could rest. That night I

called my aunt. She was elated that Dad was doing so good and knew he was feeling much better. She talked about what a good time they all had during the visit and how Dad was sitting up in bed, laughing, joking, and even singing a song.

Later that evening I called my family doctor on the phone. When I told him Dad was in that facility, he asked why. He paused for a while and then said, "if your Dad's in that place, it's only a matter of days. Those people have the license to kill." I turned sick to my stomach and called my step mom. Dad trusted her judgment completely, and I knew I had to handle the situation with caution and respect. Without repeating the words of my doctor, I told her that I was not happy with Dad being in that place and I believed they were drugging him with morphine. She said he would get better care there than in the hospital. She reminded me that she had told them not to give Dad any narcotics and had planned to bring him home when he gets stronger. All I could do was pray.

Thursday morning, August 12th: That morning I found Dad lying there like a zombie. He had a weird expression on his face and appeared not to know or care that he was in the world. His breathing was labored. I shook him and tried to make him talk, but it was useless. I marched into the nurses' room and told them who I was. This was the conversation:

"My Dad can't even speak to me today, and he was out of it yesterday when I came. What kind of medicine did you give him? "Roxanol and Ativan," she said. "For what?" I asked. She picked up his chart. "Says here that he got out of bed last night, complained with his legs aching, and he was agitated." "My step mom told you NO narcotics, I said. How much did you give him?" "20 milligrams; he's on the lower end of the dosage" she replied. "How often?" I asked. "As needed," she answered very sharply and defensively. Her behavior gave new meaning to the word, "agitated." I walked away in anger.

Afterward, we met with the doctor. He spoke very calmly, seemed well rehearsed, and implied that he "thought" Dad had gotten worse since he arrived there on Tuesday. "How do you know?" I asked. He said he could tell that Dad was in pain because of the expression on his face and that he had started rubbing his abdomen. He "suspected" that Dad had developed a blockage in his abdomen or that he "may be developing an infection." Dad has just finished antibiotics in the hospital a few days before. I told him Dad had not mentioned any pain to me, that he had been "out of it" for the last two days, and that I wanted to be able to talk to him. He told me I was being selfish. My skepticism and objection to their agenda was obvious to them. They had the speech and the drill "down-pat." I knew I was living a nightmare, and that Dad's death was certain.

I walked into Dad's room, shook him, and aroused him long enough to ask if he was in pain. "No, he said, just pressure" and pointed to his abdomen. Dad's bowels had not moved since he arrived there on Tuesday. Despite his weakness, he was restless and moved side-to-side. He kept wanting to sit or pull himself up. Every time we raised his head, they would lower it, indicating he could breathe better lying flat!

Friday morning, August 13th: I called at 5:00 a.m. and asked to speak to Dad's nurse. She was a night nurse that I had never spoken to. She was very kind and said Dad had slept well on his own without medication. He was still weak and groggy but alert enough to speak. She put the phone to his ear. I said, "hey sweetie, it's so good to finally talk to you." I asked if he had a good night, and he said, "I think so; I just feel real tired." He said, "Pat, thank you for loving me so much." I said the same to him in tears and told him I was on my way. My sister and I arrived at 6:00 a.m. We hugged him and exchanged "I Love You's," but he kept drifting off, rather than engaging in conversation. My step mom arrived around 7 a.m.

My sister and I were in and out of Dad's room, as were the Hospice staff. We heard one of them say it would be 12 hours or less. At one point, my step mom tried to talk to him. They scolded her, telling her not to get him agitated. Each time we went back into the room, Dad was more pale and his respirations shorter. Dad was dying, as my sister and I stood over him. One of the nurses came in with morphine. We asked how often they were giving that stuff to my Dad, and she said every 15 minutes. We ran her out of the room. Dad drew his last breath at 4:30...

These were skilled morphine experts with a mission that excluded my Dad's wish to live, that denied him the right to communicate with friends and loved ones, and experience life in the time he had left - a mission that went against what every Hospice is suppose to represent. There was "no dignity" in his death, and it was "not a natural death in its own time."

I never knew about Hospice Patient Alliance until my sister located the web site. We think about the other 17 who were there in that facility. We think about the countless other victims of Hospice and their families all over the country... the stories we've read so similar to this. We are deeply grateful to know there are people like you who care about the rights and violations of vulnerable people, who expose the truth about bad Hospice, and who disclose the government for turning a blind eye to this evil, dark trend to hasten death, and who realize that every day left with a loved one is precious beyond words. Because of you, we know there is hope for others. The education came too late for my sister and I to help Dad, but we are here to help you. God Bless each of you.

What I Saw at the Hospice House

[Note: The following is the account given by a professional whose boyfriend was denied rehabilitation and death imposed upon him in a hospice house. Because she was not named as power-of-attorney for health-care decision-making, she was unable to stop the process.

The patient here was not considered "terminal" but was in need of some rehabilitation therapy. Rather than provide therapy, he was placed in a hospice agency and his life was ended prematurely. He did not choose to enter this agency and his wishes were to have rehabilitation. When patients who experience disability, confusion or illness of various sorts are hastened to death, rather than getting the therapy they need, what does this say about our society and those who directly instigated the imposed death?]

Summer, 2010

When my boyfriend retired recently, we had been together for nearly nine years. He was sixty years old and wanted to return to his home town so that he could spend time with his elderly mother who is in a nursing home. He had lived away from family for more than twenty years. He went back and moved into his sister's home temporarily, with the intention of making plans for the next phase of his life in which he also wanted to return to teaching.

In the Fall of 2009, he came to visit me. We were discussing our future plans. About 2 weeks into his visit, he received an emotionally-charged phone call from his sister saying she wanted him out of her house. Her call was baffling. He was devastated, and explained that he had never seen that side of her before. He also disclosed to me that he suspected his sister, and possibly her husband as well, was abusing prescription drugs.

In the last several years, she had regularly borrowed significant amounts of money from him for various reasons, one time supposedly to pay the mortgage, and there were other reasons she gave. He told me she had a history of mismanaging her own finances despite the fact that at one time she had a well paying job. Because he cared for her and had the money, he gave it to her.

He said they were close as children and he always willingly helped her during times of need. Because of the relationship he thought they had, he also named her as his power of attorney. My partner had a sizeable estate and as power of attorney, she had access to all his bank accounts and his lock box. He was very concerned after her call.

He then asked me to serve as his power of attorney (should anything happen). I regret not accepting his offer, but I was concerned that we were not married and wanted to avoid conflict with his family. He then decided to appoint his more stable older brother as power of attorney.

Because he was really upset by her call, he flew back right away to straighten things out legally. When he got there, his sister completely changed her behavior and said she didn't want him to leave her home.

My boyfriend had struggled with depression during his life but it never interfered with his career. He was highly successful, talented musically and theatrically, and had amazing achievements. In 2010, he suffered a Major Depressive, possibly Bi-Polar episode that put him in the hospital for 3 days and they put him on Risperidone. His older brother told me that upon his discharge, the sister took him to the lawyer's office and had him re-name her as power of attorney. He seemed to stabilize for a while.

After a while, his sister reported that his behaviors were becoming odd and he had stopped taking his medication. She took him to the hospital and he was admitted for treatment. He signed himself into the hospital, was aware of what was happening, and had been driving earlier that week.

For reasons that are unclear, they changed his medication to Zyprexa (known for potential to cause strokes) and within 24 hours of being there, he could not articulate words, move his limbs, or swallow, and became

incontinent. Initially, his sister would not tell family members which hospital he was at! His brothers were concerned about the motives of their sister and didn't trust that she would get him the proper care. After several days of testing, they had begun to diagnose him with Dementia.

The sister then told her brothers the name of the hospital, and she called me to find out more about his medical history. She told me they thought he had alcohol-induced dementia, and I said that didn't make sense since he rarely had a drink. My boyfriend was a man who had been in impeccable health, was an avid runner until he moved back to his home town, was extremely health conscious in his eating and drinking habits and did not like to take any medication at all.

Shortly after my conversation with his sister, he was diagnosed with Lewy Body Dementia. They started him on Ativan to decrease anxiety and the Exelon patch (for dementia). At the end of May, 2010 the hospital discharged him to a rehabilitation center, but when he got there he was dehydrated so they sent him back to another local hospital. I flew out to be with him and see for myself how he was doing. He recognized me immediately, was thrilled to see me, and began discussing things with me that were very relevant to our life together.

In our discussions that night he told me that he could not move his legs and that he thought he had had a stroke. The next day the family arrived at the hospital; the sister and her husband seemed very uncomfortable with me being there. They would not leave me alone with my boyfriend unless it was very late at night after they went home.

He began eating ice cream and some soft foods while he was in the hospital and spoke a bit more clearly. The hospital discharged him to the rehab center after approval by the insurance company. We arrived there in the afternoon and got him settled in a room. A doctor came to the room and I asked questions about his diagnosis and medications. His sister exploded at me and told me that I needed to stop. At that point, I learned the sister was asking for a meeting with the Hospice House Coordinator.

I was stunned and asked her why she would be considering hospice. She said that she was just getting information and promised me that she would follow through with the 30 days of rehab. Finally, they sat him up in a chair for the first time since May and the speech therapist came in to assess him for speech and his ability to swallow. She barely touched his neck and he began to swallow normally. He also had begun to move his limbs again. I felt relieved at this point that we would at least have the 30 days to assess his abilities and he was already showing slight signs of improvement.

During this time at the rehab, the sister and her husband went to meet with their lawyer about my partner's finances. She described him to me as a "fast track lawyer." She would disclose other things to me such as cutting up my partner's credit cards and closing his cell phone account, etc., all this before he had a chance to be assessed and helped at the rehabilitation center. She obviously had made some decisions about what would happen to my boyfriend.

On Friday afternoon of June 4, 2010, the brothers arranged to take me to the nursing home for a visit with their mother who had been asking to see me. The brothers were very much aware of my concerns that my boyfriend would get the proper treatment and they seemed to be on board with me.

While we were visiting their mother at the nursing home, the sister called the oldest brother and told him that she was moving my partner to Hospice House that day. I was shocked, confused, and horrified. He didn't have a terminal illness! Why would the hospital recommend rehab if he was dying? He wasn't dying!

His mother asked about him, but the family limited the information they gave to her, and told me they didn't want her upset. They forbade me from telling his mother what was really going on with him.

Upon returning to the rehab, his sister looked at me so smugly, picked up her purse and without saying a word left to go to Hospice House. Everyone followed but her husband who seemed to be keeping a watch on me with my partner. I asked him what the plan was and he told me my partner had 8 days to live. I was shocked! I told him that I felt like I was watching Perry Mason and that I never needed anything from my boyfriend but his love.

At that point, he stormed out of the room and did not talk to me the rest of the time I was there. The ambulance was busy and hospice said they were too busy to admit him that night. The staff at the rehab center said they would not move him until the next day. I was relieved.

However, shortly afterwards, a nurse came back in and said his sister insisted that he be moved that night. I began crying and my partner lifted his arm to wipe the tears from my face. The sister's haste in arranging my partner's affairs was alarming.

The ambulance arrived at 10:00 pm to move him. My partner said, "Where are they taking me now?" My heart

was broken. The paramedics asked if I would be following them over to Hospice House, and I told them I did not agree with the sister's decision to take him there and I would not be going that night. They were very understanding and kept the intravenous fluids going.

I was devastated as they took him away and the nurses and staff at the rehab came to be with me. They told me they did not agree with the sister's decision. They said they have seen many miracles occur during rehab. They took me to the chapel and stayed with me until I was able to drive back to my hotel.

The next day, I called my partner's nurse at Hospice House hoping to get some support and to find out my partner's room number. I also asked if I might talk to a social worker thinking they might be able to help me. It was Saturday so the social workers were not readily available. I met with the nurse when I got to Hospice. From the beginning, it was clear that she was not going to be in my camp.

Alarms were going off inside and my instinctive sense of danger told me something was really wrong. I became mistrustful of the staff and knew that I needed to be careful of what I said. Surprisingly, the nurse said that my partner met the criteria for being there. "How could that be?" I thought. She also said that clearly there was something neurological going on. I asked her where his intravenous fluids were and she said they took the IV out. She said that hospice does not think IVs are good for patients because of the edema they cause.

The hospice nurse explained to me that he would not get any kind of rehab but that he would receive "comfort care." She told me his sister was very concerned about me and let the staff know that I did not agree with her decision. Apparently, she had told them I was in "denial" about his so-called "terminal condition." At that point, I decided that the social worker most likely was not going to be an ally either.

I worked hard to get my partner to eat and drink to get him stronger. I went out and bought things I knew he liked and would eat. Within a week he was eating more, drinking lots of fluids, was articulating his words almost normally, and knew when he had to use the bathroom. They had put a catheter in and a pad on the bed for bowel movements.

He would ask things like, "Isn't there any real food around here?" They were primarily giving him ice cream cups and yogurt. He began to eat full breakfasts and dinners. But then the sister would say that he was agitated and ordered the drops of Ativan under his tongue even though I did not witness any agitation. It would immediately put him to sleep and then he would not eat or drink.

The hospice staff also never sat him up, dangled his legs, or got him out of the bed. I kept asking about this fearing he would get pneumonia or blood clots; everyone looked at me with a vacant stare and ignored my questions.

They were also giving him drops for pain now even though he told me he wasn't in pain except for lying in the bed. One of the young nurses said to me, "We look for the furrow in his brow and that tells us he is in pain and needs medication." It was unbelievable!

Although he may have had a minor stroke or "TIA", or even had dementia, there may have been adverse effects of the medications he had been on, and that was never investigated. Whatever his condition, he was able to have many coherent, intelligent conversations with me. He told his family three different times that he may have had a stroke and they would just negate it and tell him that he didn't.

I talked to the student doctor who was taking care of him and asked her about the need for the Ativan as it was putting him to sleep and about my concern that he could not eat or drink if he was always sleeping. Rather than respond to my concerns about his nutritional intake and need for fluids, the student doctor asked if I was unhappy with what they were doing at Hospice House. Although I had many misgivings, I told her they were probably doing what they were supposed to in hospice (I didn't know what to think) but that I thought it was very premature to put him in hospice, and that he did not belong there at all.

His sister flew out of the room and exploded in a rage at me again. I felt so shaken that I had to leave the facility for a while. I tried to ask nurses (when I would catch them without a family member present) if the medical staff noticed my partner's improvements with eating, drinking, moving his body as well as his conversation. I asked if they could recommend another placement beside Hospice. I got a variety of answers, such as, "you need to talk to the doctor and the family," or "Lewy Body Dementia is a very aggressive dementia," to which I replied that research showed that patients can live several years. That didn't make any difference.

Other hospice staff would just react blankly and tell me he just "needs to be at Hospice." I asked another doctor who told me that because he was responding to nutrition he would probably live "a few extra days" at Hospice.

I became more and more concerned. At his sister's request, they were giving him Ativan and pain medicine (which I then learned was morphine) much more often and he was sleeping more and more, and eating and

drinking less. I was very concerned!

During this time, I called Right to Life who consulted with their attorney and they told me that I could do nothing because the sister was the legal POA. The tensions with the sister continued to get worse, plus I had a job that I needed to return to. So I flew back home with the intention that I would be back soon.

I began calling the night nursing station to avoid the family during the day and asked to talk with him almost daily. There were times he was very communicative and we had several relevant conversations. Then they began telling me he was sleeping so I couldn't speak to him.

One of the nurses let me know that they had put an intravenous port in that day so they could administer the Ativan and morphine that way rather than under the tongue. I questioned her on the need for such a severe measure in his case. Soon after that, they told me they were too busy for me to call at night and I needed to call during the day when the family was present. I was not comfortable having contact with the sister so that ended my phone communication with my partner.

My anxiety and concern increased greatly when I learned of the port for the medications. I made a series of phone calls trying to access help for my partner. I spoke with Elder Abuse and they told me they would not investigate it because the sister had the POA. I called Hospice Patients Alliance, Legal Aid, and Priests for Life (which also referred me to) the National Catholic Bioethics Center. The response was the same about the POA. They were very compassionate and supportive of my situation.

However, the man I spoke with at the Bioethics Center told me that I had to get my conscience right because this was not going to have a good outcome for my partner. He told me to make one last plea to his sister to get him the proper treatment, and I wrote her a letter asking her to do so. I also told her that I did not believe that her brother would be making this decision to go to Hospice under these circumstances.

Immediately after that, her husband sent me the most vicious letter I have ever read, telling me that I was venomous, in denial, that my partner knew not to make me POA and that I should not contact their family again.

It was a horror to be away from my boyfriend not knowing what was happening to him. I began checking the obituaries daily and thought I would try to learn from the social worker at the Hospice House about his condition only to find out that they had changed the pass code which gave them permission to discuss the patient's condition with me, so that I could no longer get any information.

A month or so later, I received an e-mail from the oldest brother's wife letting me know that my partner had passed away that night. That was it.

My beloved man had been in a bed for 3 full months with only morphine and Ativan treatment, their so called "comfort care." In my presence, I can tell you that he was anything but comfortable and he was so confused about what was happening to him.

It was agonizing to witness this and a nightmare to even think about. Whether he had Lewy Body Dementia or not, it is impossible for me to fathom that anyone who truly loved another and cared about their life would not offer them the opportunity of 30 days of rehab to assess their abilities, or try ordinary medical treatments.

I would never have imagined the collusion of the Hospice House medical staff in hastening my partner's death. There was no one there who questioned anything going on but me. My partner showed none of the physical signs of impending death during his initial stay at Hospice. His heart, lungs, kidneys, respiratory system, and all important bodily functions were working well. Something had happened to his brain. In my opinion, the very quick diagnosis of Lewy Body Dementia could very well have been inaccurate, especially since there were no tests that proved he ever had it and, they never gave him a chance to recover or see how he would do.

In any case, his sister denied him the 30 days of rehab he needed to properly evaluate his condition and help him recover. His brothers would not challenge the sister's decisions. Although we were originally told he had "8 days left," my partner lived a few months longer, which tells me this man I loved was healthier than they said. And the question remains, "what medical condition, if any, ended his life?

Before this, I never would have believed that "comfort care" means we leave you to die because you no longer are "worthy" to live.

This experience has been horrifying to me. It has awakened me to the possible future of so many. To have my loved one's life snuffed out in this manner has been extremely life changing for me. I will never be the same.

Hospice Ignores Actual Power of Attorney Gives Drug Cocktail to Assure Death of Mother

[Note: The following is the account given by an R.N. whose mother was placed in hospice against her will. The R.N. who was the named power-of-attorney for health-care decision-making was ignored and the hospice made a new POA document with a sibling of this R.N. Her mother was given multiple sedatives as well as morphine, Ativan and Haldol, though none of these were wanted by the patient and had been refused by the R.N. who had the POA.]

By Mary ____, R.N. October, 2010

It was not God's time...

As a Registered Nurse, I spent most of my nursing career in the specialty of Labor and Delivery. With every new life brought forth, I stood in awe of God's miraculous work.

As a nursing student, I also had the opportunity to care for a middle-aged woman dying of leukemia. She had no hospice care or family with her at that time. She died as I held her, and knew this was a chosen assignment.

Many years later, my father-in-law was also dying in an upstate New York hospital. In 1993, he was placed on a hospice floor there. He was put on a morphine drip through the night and he left us the next morning after having a violent seizure, which was agonizing for my mother-in-law to see. These were her last moments with her husband, images she carried with her the 3 years she lived without him.

Two and a half years ago, I brought my Mom to Oklahoma from New York, so that she could spend time with her older sister who lives in Texarkana. My brother had placed my Mom on hospice care in the home for several months prior, since Mom had difficulty controlling her salt intake and would have episodes of leg edema that at times required hospitalization.

Mom and Dad regularly traveled back and forth between New York, Oklahoma, and Texas, and Mom had spent the better part of thirty years with us. Mom and Dad had seven children, but I was her main caregiver when she needed it. I brought her to Oklahoma for her aortic valve replacement six years ago, when cardiologists essentially wrote her off, in upstate New York. They told us she was "too high risk," for at that time she weighed 260 lbs as a geriatric patient.

Since I also have a disabled special needs son, who has bravely faced ten surgeries over the course of his precious life, I called my son's heart surgeon, who gave us hope. He told me to bring Mom to him, and God healed her through his gifted hands! She did beautifully, was so strong, and eventually over the course of time lost 130 lbs, which was a healthy weight for her.

In 2008, the hospice nurses in New York told us she had "less than six months to live." It wasn't so. In two months, I was able to nurse her back to health. Mom was very sensitive to medications, as is our son. She had other medical issues that some physicians don't address, even though these are common conditions: adrenal weakness, lymphedema, and pernicious anemia to name a few. Her blood pressure ran very low and I had to exercise great caution when giving her medications.

I also had our naturopathic physician treat her with the necessary nutritional supplements we lack as we age. At this time, the only service hospice was providing for us, was some of her medications. I provided all her care including monitoring her vital signs.

One day I had a problem with what the hospice social worker did. While I was attending to our son in another room, the social worker gave my Mom a "Do Not Resuscitate" form to sign (a "DNR"). I was not happy that she chose to give this to my Mom to sign without me being present in the room. The hospice staff loved to use the line "It's the patient's decision." I told the social worker after questioning my Mom in front of her, that my Mom did not understand what she was signing.

I explained to my Mom, to have IV fluids and nutrition withheld from her, was a very painful way to die, as was the case for Terry Schiavo. I also stated to both of them, that my Mom should not be signing anything without

discussing it first with my Dad. The social worker said we could rescind the form anytime.

We called my Dad that night and rescinded the form the next day. About two weeks later, my Mom fell in the bathroom fracturing her tibia & fibula (right leg), after taking half of a sleeping pill. I knew as a nurse, that if that DNR form had been in place, some physicians wouldn't have worked hard to save Mom (or any of their patients with DNRs). This had been God's protection for my Mom.

She then spent several months recovering in the hospital and in rehab, requiring wound care and did well.

Hospice discharged her when she was admitted to rehab. A complication did arise just as we were about to get her back home. Her potassium level dropped and her heart rhythm started to fail. She then received treatment at the hospital, and a pacemaker was inserted. We were happy to learn that her heart's efficiency was back to normal. She continued to gain ground and had a strong immune system. After eleven months, she traveled back to be near Dad in New York.

Mom, like many elderly people, also suffered from some other conditions that were successfully treated. Still and all, she was a fighter at 80 years of age. At this point, her primary care physician wanted her to have rehabilitation therapy again.

My brother decided to have hospice care for her at his home instead. This was a major turning point for Mom.

Since he worked all day and believed that hospice would provide everything she needed, he felt this was the best option to provide for her needs. The young doctor from hospice was kind, and came to see her regularly. Mom felt comfortable with the nurse and aide who cared for her. I interceded from afar when I was able to over the phone, but the communication with my brother was strained.

I soon found myself also needing naturopathic treatment for exhaustion, from years of caring for our special needs son and Mom (when she had been here), along with so many other family responsibilities. In April of this year, my Dad required emergency surgery and four days later, our daughter underwent an emergency C-section with the baby being born early. At the same time, my husband and son had viral bronchitis, and I discovered the same week that my Mom was severely dehydrated from increased diuretics hospice staff had given her.

I was able to intercede via phone and changes were made. She was then admitted to the hospice palliative care facility where she stayed for four weeks. After that, she came back to my brother's house and we were able to hire a nurse for several months to help with extra hours of care for her. She certainly didn't fit the "six months" prognosis required to be in hospice. I know she would have benefited from rehabilitation therapy.

My brother (who lives out of state), came to help my Mom and Dad as well, while I helped family members recover at our home. After six weeks, I was finally able to get away and flew up to New York for three weeks. I met with the hospice physician and nursing team while there. The hospice physician was very honest with me, telling me he was nervous about meeting me, since he heard I was a "naturalist". He thought I was against my Mom taking any medication. I explained that I was not against necessary meds for her medical conditions, but that I also embraced nutritional and naturopathic supplementation that she needed, for all the above reasons. (Our son's heart surgeon led us in this direction for our son). The hospice physician said he was fine with her taking calcium and magnesium, vitamin B12 and vitamin D, etc., but that originally she had told him she didn't want to take them" because there were just too many pills to take."

I did want the hospice physician to take her off the Wellbutrin (an anti-depressant) and Klonopin (an anti-anxiety and anti-seizure medication) he had started her on several months before. She was having tremors, which is a side effect of the Klonopin, and she almost burned herself lifting a coffee cup. He was hesitant, since she had been depressed and he said it was difficult to get patients off these meds once they are started on them. (Looking back, my husband and I believe many of her neurological symptoms she had at this time, were due to the fact she was not taking the required vitamin B12 for her pernicious anemia & staff were not making it a priority to implement).

I asked the nurses if they did patient teaching with my Mom concerning her diet and salt intake. They said they did, but ultimately (again), "it is the patient's decision." When the hospice physician said my Mom was suffering from heart failure, I told him her heart had recently been evaluated in the hospital and it was functioning normally. I also suggested that tests be done to evaluate her heart if he really felt that was a problem. He said that if they did them, Mom might not meet hospice criteria and services would end.

At this point, I also discovered my name was not listed on the hospice's health care proxy form (where the health care power of attorney was named), only my brother's name was! Mom had previously specifically appointed me to serve as power of attorney (health care agent) and I had the legal documents to prove it, but the original documents were not given to hospice by my brother. Hospice to my knowledge, did not ask if any previous proxy was in place for my Mom & have indicated to family members in the past, they like to have

someone local to confer with.

My other brother had been visiting nursing homes near Dad, looking for some that might be good for Mom, but was not pleased with the care he witnessed in any of the Medicaid facilities. Mom was requiring twenty-four hour supervision, and I believe again, it was due to her not getting her vitamin B12 supplementation for the pernicious anemia. If untreated, patients with pernicious anemia and vitamin B12 deficiency often develop dementia, but many get their memory back when B12 is provided again. The physician did tell Mom that if she got better she could go back to her primary physician and I do believe he was trying to help her get better.

Part 2:

What happens next is the hard part. By July, there was no extra money for nursing care in the home, and my brother wanted to get back home. He had been in New York three months at this point and was handling financial affairs for my Dad, including paying his bills. He didn't know what to do in light of Mom's ongoing care and was basically at a standstill.

About that time when he was hoping to return home, the Medicaid social worker called to tell him that a bed had opened up at the local hospice house. He felt this was an answer and shared with most of the family how wonderful this would be for Mom.

I was skeptical (because of my past experiences with hospice), but hospice houses are not available everywhere, so I really wasn't sure how this would go. I asked lots of questions, and my brother told me it was a beautiful place (only ten beds) and she could stay there indefinitely with one-on-one care. They told me she could even travel to come see us, working out details with the physician there. It sounded too good to be true.

The next day, my brothers packed up Mom and admitted her to this facility. She was afraid, because she never wanted to be placed anywhere but in a home with her own family. Family dynamics came into play and other siblings were unwilling or physically couldn't provide twenty-four hour care for Mom. I was torn, exhausted, wanting to have her with me, but also knowing I could not separate her from Dad again, as they needed each other. The real power-of-attorney form was also not being honored or respected, which had named me Mom's health care agent.

As I prayed and sought whatever way I could to help my Mom, it became apparent that I was in the midst of a major spiritual battle. One of the most damaging statements my brother said to my Mom when he admitted her there was: "This is where you're going to stay until the Lord takes you home."

Several days later, she told her sister over the phone: "They've put me here to die." When I heard this, I told her he should never have told her that; that she could get better and come see us and her new great-granddaughter soon with Dad. I called her often, and the first few weeks she began to tell me she just didn't feel right. She felt "off." Just a month before (when I saw her last), she still had much life in her.

I believe some of the beginning "hospice protocol" meds were already being administered to her. On the phone, the nurses told me she hadn't lost any ground the first three weeks, but at the same time I could hear my Mom in the background say she didn't want a medication she was being given.

I again questioned the nurse and learned it was Roxanol. The nurses didn't say they were giving her morphine, but that's what Roxanol is, liquid morphine. I then proceeded to get into a heated argument with the nurse. She told me she had to give it, because it was a standard ordered medication. I told her to write on her chart that the patient and the patient's family requested she not be given this. She insisted again that she had to give it. I then told her if I needed to do something legally I would, since we essentially had no rights where their protocol was concerned and that this was wrong.

That night, I faxed some important medical information to the nurse practitioner overseeing my Mom's care (concerning her meds, diet, and nutritional supplements). I was kind, grateful, and knew my Mom's medical issues better than anyone, having cared for her so many years. In the pamphlet hospice gives to patients and their families, it stated that they welcome any information from family, to better help the patient. I would soon find out: they didn't truly welcome it from me.

The hospice supervisor left a message for me the next day requesting a conference call with my two brothers and me. Instead, I flew to New York again at the request of my brothers to meet with the hospice team. At this point, my Mom was definitely showing signs of all the major side effects of the liquid morphine.

Staff members told us what I'd already figured out, that "she's not going to want to eat" "she'll be sleeping more during the day," "she will have trouble breathing," and "she won't make a lot of sense when she talks," so "talk with her while you still can." They said it was all part of the decline with her disease.

I knew as a nurse and knowing my Mom so well, these scenarios were not going to come to pass because of any hereditary disease she had, but because of the deadly effects of the drugs being given.

The meeting was very difficult. From the beginning, it was obvious the nurse practitioner disliked me and felt threatened by me, even though she had never even met me before! I shared my concerns and was direct and honest with the team.

I told them I believe older people are often "written off" too soon and that my Mom deserved the chance to get better. I told them, I wanted my Mom to go when God decided, not when a staff member expedited her death. They asked if I thought they were doing this and I said, "yes," I do, and that I had never seen this happen in any other area of medicine other than in abortion clinics and hospice, where a patient's and the family's rights were not honored.

The hospice staff became quite offended, and I clarified that I was not attacking them personally, just the hospice philosophy as I had seen it practiced. The nurse practitioner then said, "Maybe this isn't what you want for your Mom" and that "you should talk this over as a family." She did agree to stop the Roxanol at bedtime, but said my Mom's body would determine what they would give her.

At the meeting, my brother also defended his bringing Mom salted foods, which I reminded him would make her swell. I knew they would just give her even more medication for pain and the whole cycle would start all over. When the meeting ended, the nurse practitioner refused to shake my hand and unprofessionally even turned her back to me.

When the family talked afterwards, I received resistance from my brother who had been on the phone during the conference call meeting. He needed to defend his initial decision to put Mom in this facility. I wanted to move Mom to a hospital, but my brothers would not agree to work together with me, to do this. On my own, I tearfully visited a nursing facility near my parents' house. The nursing supervisor truly wanted to help me, but had no beds available until November. All things considered, I had no choice but to spend what time I could with Mom, come home, and try to recover. I was exhausted from the lack of sleep, the tension with the hospice staff and family, and the incomprehensible resistance to get even common-sense things done for Mom. This spiritual battle I was engaged in, was intense. I prayed with Mom and put all into the Lord's hands for the time being, trusting Him to give us strength to get through this.

As the weeks went by, it was more difficult for Mom to talk. I was desperately trying to gain some ground physically at home, as well as care for our special needs' son and beautiful new granddaughter. By October, Mom was asking to go to her own home in New York. Dad wanted this, too, but he couldn't do anything, because he was not on the "hospice-recognized" "version" of the health care proxy either.

I remember when Mom was in palliative care, the physician was not interested in what my Dad wanted, ... only what my Mom had signed. This wasn't right and only created family division, especially since the elderly can sometimes be confused and can be manipulated by suggestions from staff. "Why wouldn't a spouse have any input?" I thought. I questioned in my heart what we'd ultimately come to. While home, I had no peace in my spirit and cried out in anguish to God for my Mom. I saw our primary physician who had cared for Mom over the years, and asked him if we could safely wean Mom off the Wellbutrin and Klonopin (meds for depression). He said that we could.

I once again faxed the nurse practitioner this information in hopes of turning Mom around, and also included medical information we had recently learned through our naturopathic physician, regarding our son and the pernicious anemia most of my family have, including me. I requested that my Mom be given methylcobalamin (a specific form of B12 for the pernicious anemia). Without this, I explained her ability to metabolize medications and food would be greatly hindered and neurological damage would continue to ensue (mental clarity, inability to get out of bed, weakness, etc.)

My brother did try to give her the methylcobalamin that I had sent for her. It had been by her bedside, but she would forget to take it, or was too weak to take it on her own. The staff at this hospice agency would only be responsible for the medications. They saw no need for any supplements, which in this case was critical and something the nurse practitioner should have known.

As one might assume by the way all was unfolding, I heard nothing back from the nurse practitioner, but my Dad received a call from the hospice social worker asking him what funeral home we were planning on using for Mom. He was very upset and told her she had no business asking him such a thing and that he believed in Divine intervention. She then apologized to him.

At this point, with all the drugs they were giving her, Mom wasn't eating much and was definitely weakening. My brother kept trying to get her up into her chair and took whatever opportunity he had to encourage her to eat. She wasn't talking much and she was sleeping most of the time. After a few weeks, my Dad called and asked all

of us to come and be with Mom. He said he wasn't giving up his belief that God could intervene. He just wasn't sure she was going to make it, since she was so weak. I packed once again and set off for New York with my brother (who lived out of state).

When I arrived at the hospice house, my Mom was not doing well at all. I had no time to assess her condition, for upon entering her room, the nurse practitioner pounced upon me. She was determined to prove everything I had shared with her was wrong. She claimed the blood test she ran on my Mom showed her B12 level was too high and she didn't want us giving her anymore B12.

I tried to explain what she did not know, regarding how the body stores excess B12 and that she needed to run an MMA test which is more specific. This was all research our naturopathic physician had medical documentation to support. The nurse practitioner just shook her head and then told me she would be stopping some of Mom's meds the next day and starting some others, and walked out of the room. That was the last time I saw her.

At this time, Mom was terribly dehydrated. My brother and I tried to get anything we could into her. She actually was able to swallow some pudding and ice chips, but we were scolded by an evening nurse who said that she couldn't swallow. I knew the game and they had to chart this to carry out their ending-life protocol.

Later, the nurse (the one that I had had words with over the phone) yelled at me. I expressed my concerns again about the medications being given and how they can kill patients. I explained that I did not believe she was dying from heart failure. I knew that her heart was functioning well and had recently been tested by the cardiologist, her last hospitalization. Then the nurse yelled at me: "She's dying!" right in front of Mom!

I told her that I believe in miracles, and she told me, "well, you're not going to get one." She also told me that natural treatments do nothing, because her grandson died of cancer and suffered without drugs.

It was becoming very clear to me that the more I fought, the more they would retaliate against me, and the more they were trying to prove me wrong. They had no respect for what I knew about my Mom's condition. They had no respect for my training and experience as an R.N. They had no respect for my values or my faith, and they certainly didn't care that they were hastening my Mom's death. They did not respect the sacredness of her life, to me, our family and to God.

I finally did obtain a list of medications my Mom was being given, which had been kept from me earlier. It took twenty-four hours to obtain, for my brother had to sign a release for them to give me the list. I suspect the staff had meetings discussing how to deal with me. I told Mom that I was so sorry this was happening to her, that I was fighting for her and would continue to fight for her.

When I received the list, I was absolutely appalled by what I read!

There were eight sedating medications (Ativan, Klonopin, Haldol, Methadone, Lortab, Restoril, Seroquel and Morphine) all being given at bedtime! She also had a Scopolamine patch in place. My Mom could normally only take half a sleeping pill, because of her normally low blood pressure. Her heart was very strong with her pacemaker, and her urine output was still adequate. They knew it would take this unbelievable lethal amount of medications to end her life. I felt as though I was in the middle of hell.

I called my dear friend who loved Mom, and is a nursing instructor. She has worked with hospice with her students (at a very different agency), and told me how she had never seen anything like this given before. I also called another friend who is an attorney, trying to see if a previous health care proxy (the original one my Mom wanted) with my name on it, could be a way I could get Mom into a hospital. This is what I wanted to do months earlier with my brothers, but they wouldn't agree to it.

At this point, I went down to the nurses' station and started calmly asking more questions. The nurse who had yelled at me earlier that evening became very nervous. She said only the hospice health care proxy was valid, even though I then told her I was listed on my mom's prior health care proxy. This original proxy was signed by my mother when she was in good physical and mental health.

When I shared with her what my friend had told me regarding the eight medications, she said they had stopped all her meds that night. I asked: "all her meds?" Then she said, "all but the Ativan, Haldol and the Morphine." In response, I asked: "so you've started the [death] cocktail, then".. I then asked where their license was posted and what agency they were under. She said the State of New York and that I would have to wait until tomorrow to get any more information that was locked up. She claimed there was no one I could talk to that night, and time was clicking away.

She then told me she was going to walk down the hall to ask my brother (who lived out of state), if she could

call security on me. I was shocked and terribly hurt, especially when my brother agreed! Even though I had never raised my voice and had only asked questions because I loved my Mom, they called security.

The security guard came as I was kissing my Mom, with my Dad by my side. I told the guard I had done nothing wrong. He told me to take my time, that he didn't get involved with anything at the nurses' station and that he would even give me the name of the manager overseeing the facility that I could talk to. He was God's reminder that I wasn't entirely alone there.

I confronted my brother as he walked behind us out of the building. My youngest brother was on his way, driving from Texas. He was in total agreement with me in my fight for Mom. He called our other brother and the nurses' station in defense of me, as well. Mom knew my youngest brother was on his way and she was waiting for him...

That night, I remembered what my friend had asked me about earlier, concerning whether there was any kind of an advocacy group that could help me. It came to mind that I had read an article last year regarding Hospice Patients Alliance. I called my husband and he found their number. I called it at 3 a.m. and received a call back just an hour and a half later. It was the greatest blessing!

I was told that it was very important to implore my brother (who was on the hospice health care proxy), to get her transferred to an agency that would honor Mom's wishes; that any narcotic effect could be reversed with a medication, and that this was the best approach to try first. If not, I would have to get an attorney to show that Mom's wishes were that I be power of attorney, where her health care decisions were concerned.

I had prayed for a miracle and God had made a way to help my Mom. The next day, I didn't go see Mom, for I was working hard seeking legal advice, should I need a court order (which would take days), should my brother not be on board to move my Mom to a hospital.

God provided a young man working on my Dad's porch, whose mother was a nurse at a hospital I called. They even put me through to a Hospitalist who was very compassionate and willing to care for her. I then called my brother who was on the health care proxy but he again, still refused to work with me to get Mom to the hospital.

He told me, "no, I don't believe she can get better." It was what the hospice staff had told him. My heart sank, but I was still hopeful. My youngest brother was driving as fast as he could to get to New York, and he planned to attempt to convince my other brothers to move Mom.

He arrived in the early afternoon that next day (Sunday). He picked me up at the hotel I was staying at and when we arrived at hospice, all my family (Dad, and five of the seven siblings) were gathered around Mom's bed. The other two were present by phone. It was obvious she had only hours to live.

As horrific as it sounds, the truth is, this wasn't my Mom. She looked like a euthanized animal, dying from the very thing I fought years before - starvation and dehydration. My youngest brother told me later he felt as though he was watching someone on death row.

We all prayed together and talked to Mom as her breathing became more difficult. There was reconciliation with family members, something Mom had wanted for some time. The last four hours she had were ones of surrender for me. Many family members left the room for a time.

My youngest brother, I and the brother who did not want her moved, along with his girlfriend, were with Mom. I told her, "I'm not leaving you!" I was determined to do spiritual warfare and not let the enemy steal anymore than he already had. I didn't allow one moment of somber silence to ensue, that she might be afraid.

I asked my brothers to hoist her up and I got into bed with her. I held her in my arms with her back against my chest. I put our special needs' son on the phone with her and he sang to her. My husband, daughter and Mom's sister and my cousin all talked to her, as well. Then I sang to her every song God gave me of praise and glory to Him.

I prayed over her and we just talked to God with every precious moment. She even received a call from Ron Panzer, of the Hospice Patients Alliance six minutes before she passed. This was a gift, as she knew people really valued her life and were fighting for her. My youngest brother said, "God told me that Mom is a picture of Jesus." She was dying for a bigger purpose, as Jesus did.

I felt as though my back was the cross. I know God shortened her last hours, as He did with His son. Like Jesus, she was a lamb that had been led to the slaughter. What our Savior said on the cross came to my mind: "Father, forgive them for they know not what they do." My younger brother cried and thanked Mom for waiting for him. That was when she took her last breath and gave up her spirit. The only comfort I could truly take at that moment was that she was no longer being harmed.

I don't know why God allowed her to go under these wrongful circumstances, especially since He did provide us the miracle I had prayed for. I only know He is not finished yet and can use it all as He sees fit to unfold His never-ending plan, for nothing can separate us from the love of Christ.

I leave you with a scripture the Lord gave me a short time before my Mom's home-going:

"Rescue those who are unjustly sentenced to death;

don't stand back and let them die. Don't try to avoid

responsibility by saying you didn't know about it.

For God knows all hearts, and He sees you.

He keeps watch over your soul, and He knows you knew!

And He will judge all people according to what they have done."

Proverbs 24:11-12

I pray our story will bring hope to those who are vulnerable, and comfort to all who are suffering from this most traumatic and complicated grief. Know that you are not alone. -- Mary

Note: Colleen Meland describes what happened to her mother August 27th through September 3, 2007. She writes that:

"I intended to forward my own testimonial before now, three years later, but my investigative undertakings, and unfruitful effort to take action against parties responsible for her mistreatment, as well as the continued emotional pain I endure reflecting on the ugly progression of events that prematurely took my mother's life, caused me to postpone sharing this information sooner. I finally feel the inclination to bring some closure to this difficult phase of my life and want to validate the work Hospice Patients Alliance pursues to educate and warn individuals about the current practices and trends in terminal and end-of-life medical care."

Colleen Meland Reports: My Mother who had COPD
Was Given Large Doses of Morphine and Terminally-Sedated to Death!

When I began documenting my concerns about the questionable quality of care my mother received under hospice care the last week of her life, (immediately following her release from the hospital in improved physical condition from when she was admitted) I wondered, "Are there not other individuals in my situation, feeling that a loved one's best interests were neglected, in being provided legitimate medical care to allow continued survival and a natural, more extended, digression towards death from the terminal disease?"

I did an internet search and discovered the Hospice Patients Alliance website. This website validated my fears and suspicions that my mother was likely the victim of foul hospice practices.

When I read the testimony about a "Mother Killed by Hospice with Morphine Overdose," I felt as though I was reading a commentary by someone mirroring my personal experience, but realized that my experience actually mirrored hers because her account preceded mine. It was disturbingly unsettling to read her quoting statements made to her by hospice caretakers that verbatim reflected statements made to me by the hospice nurses caring

for my mother prior to her quick death.

> "My mother was recently a hospice patient in _____, she had chronic lung disease (C.O.P.D.) which we all expected would eventually take her life. However, while under hospice care she died of acute morphine intoxication."
>
> "Since she was under hospice, and also considered terminal, I don't know how serious it will be taken. However, I now know that this is not an isolated case, and feel it's probably happening to others as well. What I find particularly disturbing is that my mother did not want to take the Roxanol and that's what caused her death."

Hospice similarly insisted that my mother, in the absence of severe pain and not gasping for air, be given routine, not "PRN" (as needed) doses of Morphine in the form of Roxanol. I trust that were my mother's body exhumed and an autopsy performed, similar evidence of morphine overdose would be presented

Terminal Sedation of My Mother

I have become increasingly aware that deceptive means are practiced by medical caregivers, particularly within hospice organizations to end the lives of the vulnerable. Sedation without hydration is used to intentionally cause death. Misapplication of a treatment occurs imposing death without the outward appearance that killing is occurring. As was the case of my mother's hospice treatment, she as the patient was too sedated to question, and family members such as me realized within three days too late what had happened.

I have since read that sedation given with no hydration causes the circulatory system to collapse for lack of fluid. British physician Dr. Gillian Craig, MD has warned about the practices of sedation without hydration in her book," Challenging Medical Ethics: No Water — No Life." To administer potentially lethal medication when there is no complaint of pain, even increasing its doses, is in my opinion and that of many others, an act of murder.

When my mother was released from the hospital, August 27th, she was not actively dying due to the natural disease process. Her sedation, and dehydration lending to her circulatory collapse was imposed death, involuntary euthanasia!

I have since become informed that the diet of Morphine and Ativan are a lethal combination. "If one won't kill you, the other will." (Ron Panzer, lifeissues.net) Morphine administered without food or water causes an overdose, sending the blood pressure plummeting and slowing breathing. Without water given to the patient, fluid volume in the blood decreased, blood pressure drops more and the circulatory system collapses.

My mother had not been experiencing terminal agitation, delirium, or severe anxiety related to her respiratory disease at the time the lead nurse recommended administering Roxanol, and at the time three days later when her morphine dosage was increased. I have no doubt, now, that it led to her quick physical deterioration and death within less than 72 hours.

It is my understanding that hospice is to neither hasten death, nor attempt to cure the underlying terminal illness. The Hospice Pledge (accompanying) in my opinion was violated in my mother's case.

> "Hospice nurses kept insisting that it would help her breathe... The nurses claimed that in small doses, morphine actually would make her breathing much easier."

Precisely what I was told!

> "Consequently, she ... agreed to take it, and" I encouraged "her to do so based on what the hospice kept telling" me. I "trusted them!"
>
> "My mom agreed to become a hospice patient primarily because she totally depended on bottled oxygen to breathe." ... "Since hospice claims to have "physician services" available and her attending" hospital "physician appeared to be in favor of her signing up for hospice, she agreed."

My own mother's introduction of Roxanol was initiated by the first shift hospice nurse, who simply shoved it into her mouth.

My mother began having respiratory irregularities within 16 hours of the morphine regimen being introduced to her system. I was never advised that respiratory suppression and difficulties were a symptom of overdose and that the morphine administration should be discontinued in the event these conditions developed. Nor was I aware that an antidote drug to counteract a morphine overdose ["Narcan"] existed.

I had been told how very sick my mother was by the hospice nurse, so thought her decline was because of her

being sicker than I perceived her to be at the time she was released from the hospital in seemingly improved, good condition. I didn't suspect or recognize my mom's declining conditions as being the symptoms of overdose. The nurses attending to my mother did nothing to counteract the effects of her overdose condition. In fact, I had been told to administer an additional dose of the Roxanol were she to exhibit respiratory distress, that it would help her through the episode.

Two days before my mother died, when her ability to chew and swallow diminished as she attempted to eat lunch, and soon after at which time the nurse discontinued any effort to continue introduction of both food and fluids to her (the reason given that she might aspirate on them). No I.V. treatment was suggested nor provided for her. It was implied to me that she was actively dying (a surprise to me, as the day before, prior to her morphine dose being increased, I was told she no longer justified continuous care support).

From information disclosed to me within days of her death, I have no doubt now that she was deliberately overdosed in the face of my naiveté and ignorance all the while being led to believe her physical decline was a natural progression because of her very sick condition.

I know now, having reviewed her hospital records from her care just prior to her release into the hospice care, that her condition was definitely stable and certainly not of serious concern to doctors Rae and Sheldon who attended to her while in the hospital. Dr. Sheldon even recommended follow-up care in his office following her release from the hospital and return home.

I feel strongly that my mother was overdosed on morphine by those I trusted to help me with her care. I am willing to have her body exhumed to verify this contention. Furthermore, I feel that I was betrayed and duped. It is personally devastating for me to realize that I unknowingly had a hand in administering the medication that contributed to my mother's premature, not natural death. It had been my ongoing effort to provide the very best medical and physical care for my mother. I now feel I failed her miserably.

Although I had concerns about the morphine being given to my mother in the absence of intolerable discomfort, I had no knowledge at the time the Roxanol treatment was recommended by hospice, to supposedly "help her breathe easier," that morphine tends to be contraindicated with C.O.P.D. patients, especially the elderly. Had I known this fact, I certainly would have refused its administration, and would have seriously considered terminating the agency's services at that time.

My first impression of the hospice care was negative. I had developed personal reservations about the agencies ulterior motives, after the disturbing remarks of ***the first shift hospice nurse who was eager to drug her up. He stated that my mother was very sick, recommended discontinuing her regular medicine regimen to go straight to the end-of-life packet, and told my mother's personal caretaker that my mother would be dead in a week***. I was then erroneously reassured by the team's lead nurse, and an agency nurse I spoke to over the telephone, that it wasn't the agency's objective to intentionally push my mother to her end sooner than later.

My mother's personal caretaker (who was present daily between 8 a.m. until 6 p.m. daily throughout the entire week while hospice was present caring for my mother) can verify my assertions. I kept her informed about what I discussed at the dining room table with the hospice team leader, when she wasn't present to hear the discussion herself (times she was in the bedroom near my mother).

- Colleen Meland

About the Current Health Care Reform"

I think about all these things. The patient and their families, the nurses and doctors who struggle to do the right thing in often difficult circumstances. I think about those who care nothing for those same patients but look at all of this work as simply a business opportunity. They don't see the sacredness of the lives before them. There is no reverence for life as Dr. Albert Schweitzer demonstrated for all the world. They only see dollar signs.

"Death panels?" Yes, they are already here, but as we have seen, it is not like you may have imagined at all. Bureaucrats who make decisions to limit payments, deny treatments, hospital committees that deny treatment, staff who choose to hasten death in various ways .... Private insurance companies, managed care organizations and HMOs ration care when they choose to. Government health insurance programs will do the same, but you won't have anywhere to appeal to if the federal government is the only game in town. When expenditures are limited, rationing is certain. And ***when there is no right to appeal and no right to correct actions that are extremely harmful, even lethal, that is health care tyranny***. Many of those trusting and naive citizens who supported these changes through the years will be very bitter in the end.

Congressmen and Congresswomen, Senators and the President himself all talk about health care reform. They're not interested in real health care reform. They know about the problems, the abuse, the neglect, the rapes of some of the elderly and disabled in the nursing homes. It's well-known. The felons sometimes hired into the nursing homes who beat and terrorize the residents.... Or residents who are criminally insane or violent, being housed in the same facilities as other elderly and disabled....

The abuse, neglect and direct harm to residents of skilled nursing facilities have been well-documented and it's been happening around the country for many decades. But our elected officials all get donations from the industry owners and administrators, just like Hugh Westbrook (CEO of Vitas Hospice when it was being investigated by the Justice Department) donated to Bill Clinton's campaign and the investigation just "went away." Like they say, "don't bite the hands that feed you!" Politicians are not going to bite the hands that feed them.

Health care will never be reformed properly until the money flowing from the industry stops flowing into the election campaign accounts of those running, or re-running for office. We just had campaign finance "reform" and the money is flowing just as fast as ever.

And health care fraud will never stop until the United States government, through the Justice Department, changes its policies that reward health care fraud that accounts for over $100 billion in stolen funds:

The Justice Department informs us that:

> Health Care Fraud Schemes Are Diverse
>
> Health care fraud schemes can be simple or complex. Unscrupulous health care providers target public as well private health insurance plans. Billing Frauds
>
> The Department continues to bring criminal and civil charges against those providers who knowingly submit false bills to health care payors:
>
> * billing for services or equipment not rendered
>
> * billing for services or equipment not medically necessary
>
> * double billing for the same service or equipment
>
> * upcoding (e.g., billing for a service or equipment reimbursed at a higher rate than was provided)
>
> * unbundling (e.g., billing separately for services or equipment included in a global rate)
>
> * billing frauds in cost reports from hospitals or nursing homes, to obtain reimbursement when not permitted or at a higher rate of reimbursement than permitted.
>
> Kickbacks
>
> Another too common fraudulent scheme is the payment and receipt of kickbacks in return for influencing the provision of health care. Kickbacks are pernicious because they corrupt medical

providers' decision making, often replacing profit for patient welfare. Kickbacks can lead to grossly inappropriate medical care, including unnecessary hospitalization, surgery, tests, and equipment.

The Consequences of Health Care Fraud Are Severe

"While no one has an exact figure, ***the General Accounting Office estimates that health care fraud, waste and abuse may account for as much as 10 per cent of all health care expenditures. As health care expenditures now exceed one trillion dollars each year, more than $100 billion may be lost in fraud, waste and abuse annually***."

If there's that much fraud, waste and abuse annually, just within the health care industry, then with a sincere effort to clean it up (meaning putting criminals in jail for once! and making the crooks in all industries pay back every dime) those funds could be used to care for those who need it most.

People say, "we can't afford to pay for services for the terminally ill." "Better off to provide assisted-suicide, euthanasia or terminally-sedate them to death." The entire amount spent by Medicare for hospice services is between $11 billion and $12 billion! The amount of health care fraud in this country is ten times that amount! The money is there to care for each and every vulnerable patient and provide the very best of end-of-life care. The money is there. It is the government's policies and its "federal ethics" that devalues life and rewards criminals sucking the system dry that are the problem. The government does not wish to truly fix the health care fraud problem. They can say otherwise forever. I will never believe that.

US DOJ JUNE 26, 2003

LARGEST HEALTH CARE FRAUD CASE IN U.S. HISTORY SETTLED HCA INVESTIGATION NETS RECORD TOTAL OF $1.7 BILLION

WASHINGTON, D.C. - "HCA Inc. (formerly known as Columbia/HCA and HCA - The Healthcare Company) has agreed to pay the United States $631 million in civil penalties and damages arising from false claims the government alleged it submitted to Medicare and other federal health programs, the Justice Department announced today."

"This settlement marks the conclusion of the most comprehensive health care fraud investigation ever undertaken by the Justice Department, working with the Departments of Health and Human Services and Defense, the Office of Personnel Management and the states. The settlement announced today resolves HCA's civil liability for false claims resulting from a variety of allegedly unlawful practices, including cost report fraud and the payment of kickbacks to physicians."

"Previously, on December 14, 2000, HCA subsidiaries pled guilty to substantial criminal conduct and paid more than $840 million in criminal fines, civil restitution and penalties. Combined with today's separate administrative settlement with the Centers for Medicare & Medicaid Services (CMS), under which HCA will pay an additional $250 million to resolve overpayment claims arising from certain of its cost reporting practices, the government will have recovered $1.7 billion from HCA, by far the largest recovery ever reached by the government in a health care fraud investigation."

"Health care providers and professionals hold a public trust, and when that trust is violated by fraud and abuse of program funds, and by the payment of kickbacks to the physicians on whom patients and the programs rely for uncompromised medical judgment, health care for all Americans suffers," Robert D. McCallum, Jr., Assistant Attorney General for the Civil Division said. "This settlement brings to a close the largest multi-agency investigation of a health care provider that the United States government has ever undertaken and demonstrates the Department of Justice's ongoing resolve and commitment to pursue all types of fraud on American taxpayers, and health care program beneficiaries."

"Let this case be a continuing reminder to all that in the fight against health care fraud this office will not be deterred," said Acting Principal Deputy Inspector General Dara Corrigan. "Medicare dollars paid to provide ever more expensive health care services to the country's taxpayers should never be fraudulently diverted. This is our job and our trust and we take these duties very seriously," Corrigan concluded."

We've already discussed how the industry leaders' funds are pouring into the campaigns of the elected officials. We know the US DOJ's policy is to only force the crooks to pay back a portion of what they steal. Rarely does even one executive go to jail and if so, not for very long. Senators like Bill Frist (whose family controlled Columbia/HCA, now HCA, Inc.) have millions of dollars of stock in these corporations. Their fortunes are tied to the industries. Other Senators and Congressmen's fortunes are tied to other industries. Government is often

run by those who seek to protect their vested interests and certain industries. What the people want or need is often ignored and the corporate interests served first.

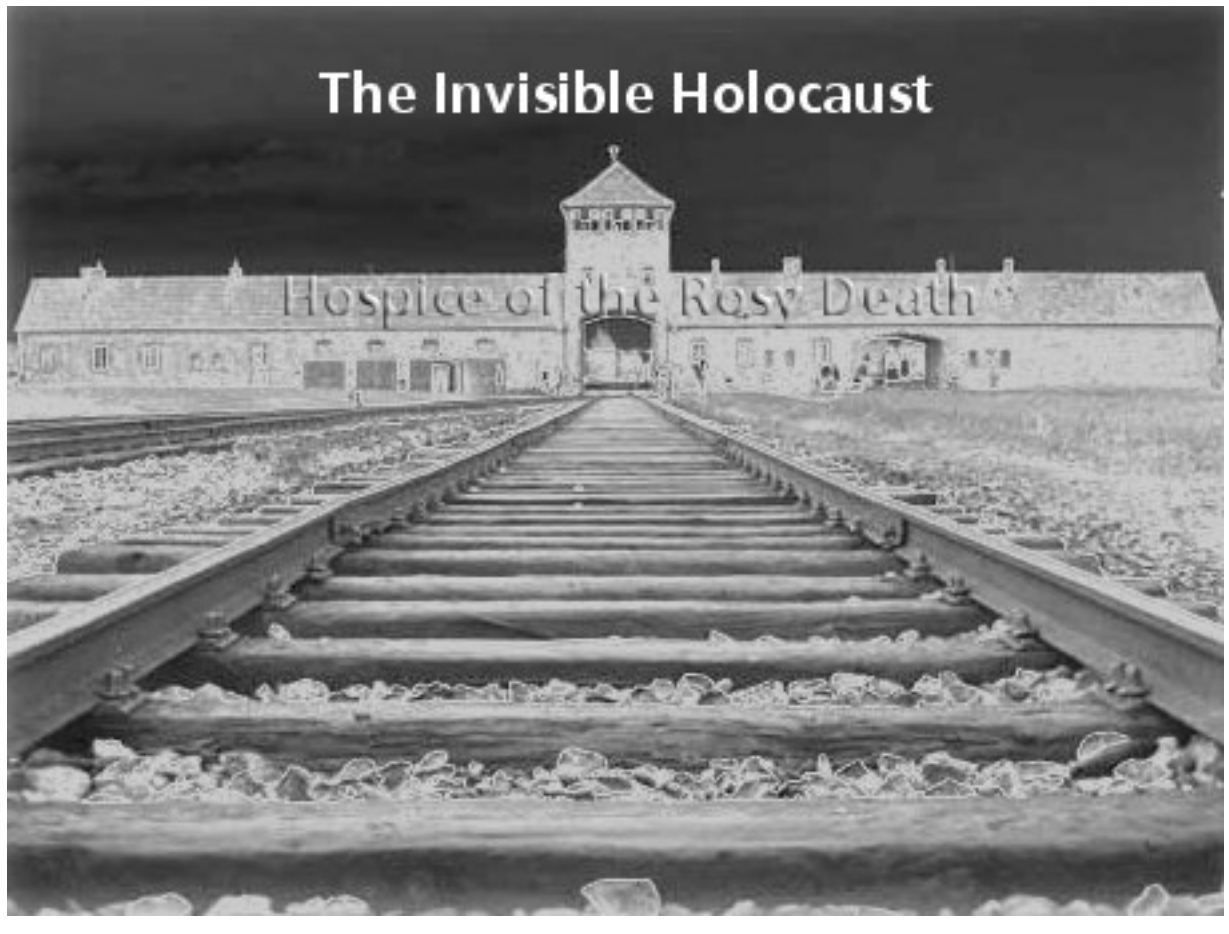
Some of the industry leaders and elected officials lie through their teeth while they smile, just as some of the people I've met over the years who told me they cared about the patients. With health care reform, there is no need for "death panels," or for rationing care the way it will be implemented. We are seeing, and will see, many articles promoting the idea of "letting go" when we or family members become elderly or disabled and we have a major chronic illness. If the illness or condition is expensive to treat, the pressure to "let go" is often overwhelming.

An August, 2010 New Yorker article, "Letting Go -- What should medicine do when it can't save your life?" by Atul Gawande emphasizes the distress of medical treatments: "In the previous three months, almost nothing we'd done to Sara-none of our chemotherapy and scans and tests and radiation-had likely achieved anything except to make her worse. She may well have lived longer without any of it." And that's the point: we've turned the corner in health care. We are no longer trying to prove what medicine can do in every case. We are trying to limit care and not do for patients if they fit the profile of being unworthy of medical care: the elderly, the disabled, the chronically ill. Hospice and palliative care can be a good fit for patients with incurable illnesses, but if treatments exist that could stabilize them, the move to hospice (and the decision not to treat) may be a decision to hasten their death. In other words, society has decided, "times up."

So, hospice and palliative care is a very mixed bag. And health care "reform" is a mixed bag. But there are too many negatives when we consider all of the changes being pushed ahead. We have extremely dedicated professionals doing the very best to relieve suffering at the end-of-life and have administrators raking in the dough, using hospice to fill their pockets. What to do? Round up the crooks and put them in jail; shut down the chronically fraudulent hospices that just can't get enough free money; give the money to hospices with integrity that respect life, do not impose death, and offer clinically appropriate interventions for each patient's unique condition.

Hospice is a free Medicare benefit. What kind of hospice will it be when health care reform kicks in full-blast? As we've seen, reform to Medicare is happening on a yearly basis. We don't hear much discussion at all about the reforms that will be made no matter what happens with the health care reform law.

With any reform that is likely to occur, hospice care will continue to be free to those on Medicare and Medicaid. And people think, "Oh, thank God Grandma can get all the services they promise. I get the calls from them later on when the therapy is not provided as required, nurses don't come out when needed, aides are not scheduled enough, or on the other hand, they're railroading the patient on an express train to death with terminal sedation or outright morphine overdoses.



artwork by Vickie Travis, design by Ron Panzer and Vickie Travis

Then, they wonder, "what happened to all those services we were promised?" And they don't know what hit them. They have been caught up in the ""***Invisible Holocaust***." They didn't have a clue what was going to happen.

Those of us who were sold on the idea of "health care reform" and want lower health care premiums as well as eventually, "free" health care? Just like those "free" electric wheelchairs advertised on TV, nothing is truly free. "Free" to the elder, but paid for by our tax dollars. "Free" to the patient who is determined to be "terminally ill," but he may pay for it with a shortened life. We've heard about that scenario many times through the years. **The following two quotes from Joanne Lynn, MD tell you in less than 30 seconds what many hospices are willing to do and doing:**

> **"When a patient is ready to die, I can stop nutrition and hydration, I can stop insulin and ventilation, I can sedate them."**
>
> [and]
>
> **"Hospice providers have been supportive of discontinuing life-sustaining treatments and of providing terminal sedation, but in my experience, hospice teams generally have opposed efforts to legitimize physician-assisted suicide."**

Yet, we are told:

> **"Whoever destroys a soul, it is considered as if he destroyed an entire world. And whoever saves a life, it is considered as if he saved an entire world."**
>
> **from the *Talmud*, Sanhedrin 4:8 (37a)**

I spoke with Dr. Lynn several years ago. Not knowing the history of her involvement and her approach, I thought she would be supportive of my concerns about patients being hastened to their death within hospice and palliative care settings. I really was naive, just as when I spoke with Dr. Byock. I knew they were leaders within the hospice movement and thought they would be receptive. Dr. Lynn was very courteous and respectful, patiently listening to me and even suggested that we might "do a study" to see what was going on, but nothing ever came of it. Why would she want to show that people were being hastened to their death using methods she has openly admitted occur widely in hospice and that she has proposed as suitable methods of bringing about the end of a patient's life?

We must understand that when the leaders in health care and especially end-of-life care speak, they don't use language the same way, and they don't freely explain their real views to the public. Sometimes, we can catch their meaning when they're speaking to like-minded end-of-life care industry leaders. Dr. Lynn has an organization called Americans for Better Care of the Dying formed at exactly the same time I started Hospice

Patients Alliance. But I wonder, what does she mean when she says "better care of the dying?"

"Death with dignity," even "dying well," (the title of Dr. Byock's book) do not mean what we mean when we use those terms. But terminal sedation? Is this the "good death" hospice has sold to the public?

Is There An Attack Against the Pro-Life Hospices?

In Pennsylvania, Highmark Blue Cross/Blue Shield is requiring all licensed hospice and palliative care providers to become members of NHPCO in order to be approved as an "in network" Blue Cross provider of end-of-life care advanced illness services. Dues for NHPCO cost thousands of dollars, and pro-life hospices that know NHPCO is the current successor organization of the Euthanasia Society of America will object to joining. The question remains: is the National Hospice & Palliative Care Organization working with private insurance companies all around the country to make sure all hospices become members?

Even though Highmark Blue Cross in Pennsylvania has been made aware of pro-life hospices objections to its policies, Highmark Blue Cross is not backing down. Leaders of pro-life hospices say that it is contrary to their religious beliefs and that of their employees to join an organization like NHPCO due its culture of death "flavor" of providing end-of-life care services.

While such pro-life nonprofit hospices work hard to provide services that respect the sanctity of life, these hospices will be damaged, because they are being shut out of providing services to Blue Cross members. And Blue Cross members who are pro-life and want to access the pro-life hospice services are being prevented from doing so (Blue Cross won't pay if the hospice is not a member of NHPCO) by Blue Cross's arbitrary policies.

It's something like a physician being told he cannot be an "in network" provider if he doesn't join the American Medical Association which is just a trade organization, a lobbying group, just like NHPCO! In effect, Highmark Blue Cross is saying to those hospice agencies who don't join NHPCO, "we don't want you," and "if you're financially damaged, we really don't care!" In addition, Highmark Blue Cross is saying to its pro-life members, "we don't care if you can't access services at the pro-life hospices!"

Just as pro-life physicians' and pharmacists' conscience rights are being rescinded by the current administration, possibly forcing them to either participate in abortion, or lose their license if they refuse, the pro-life hospices are facing damaging financial tactics to force them to join a culture of death organization that the World Federation of Right to Die Societies labeled a "Right to Die Site," the National Hospice & Palliative Care Organization.

So, you see, the battle is being waged. Even though you're not hearing about these struggles in the major media, if you care about the sanctity of life, these are urgent matters! If Highmark Blue Cross and other private insurers continue along these lines, many of the pro-life hospice agencies will be financially damaged while culture of death, rogue hospices will be rewarded.

You may ask, "what's in it for Highmark Blue Cross?" ... or all the other Blue Crosses or other private insurers who are doing the same thing? "Why would they implement such a discriminatory policy?" Well, as they say, "follow the money!" When culture of death end-of-life care is "provided," the elderly, disabled and seriously ill die much sooner than usual, saving the private insurers millions. Highmark Blue Cross obviously cares more about saving money than having the highest quality pro life services accessible to its members from a hospice that respects the sanctity of life!

Jonah went to Nineveh and warned the city that if they didn't repent and change their ways, the city would be destroyed in 40 days. What surprised him was that the city really did change its ways.

"When God saw what they did and how they turned from their evil ways, he had compassion and did not bring upon them the destruction he had threatened."

[Jonah 3:10]

XIII - A Purpose In My Life and Yours

You may think this description of health care reform and the hospice industry is extremely negative, but this is the dark underbelly of the industry, not all of it. There's always the good and the bad. I'm not jaded. I'm experienced, and throughout this book, I've labored to include references that confirm everything that is mentioned here. Even more than two decades ago when I worked in homes for developmentally disabled (mentally retarded) adults, I saw things that just weren't right and worked to improve conditions for the residents. There's always room for improvement in an industry and hospice and palliative care is no exception.

Yet, it's not all about the end-of-life care industry, hospice, palliative care, advanced illness programs or health care reform. What is happening with those could not happen unless something was amiss with our society, unless we had gotten "off course" and lost our way. We've all made mistakes, but when they add up collectively over the course of decades, spread across our entire land, we become something other than we have aspired to be. We can be proud of much that is American, but we cannot be proud of many things that we do as a society and as individuals. We need something more than a "New Years' Eve" resolution to "be good." We need reform within ourselves as well as in society. Where is our heart? Where is our mind? What occupies our attention? What do we value and do our actions reflect those values?

We have chances and chances to reform, to change, to return to the way that brings life. Sometimes, there is something we need to do. We feel it inside, an urging, a need, a calling. Sometimes, we are called to serve. Our work is not yet done. Will you make an effort to bring some joy into the lives of the vulnerable who are often alone? Or help to fight the culture of death? Or create an extended "family" around you that works together to help those in need? There are so many opportunities to serve and so little time left. Sometimes, there is no time left, but for God's grace.

One night after working there (February 12, 1989), coming home after the 4 p.m. to 12 midnight shift, the roads were clear, but it was freezing cold. I was coming down a hill at 45 miles per hour, just like everyone else. A car approached from the other direction and I decided to move slightly over to the right, away from the centerline. That's when I realized the entire road was covered with "black ice." My little movement to the side was enough to put my car into a total skid. I remember skidding sideways passenger door-side first across the centerline

toward the left, across that lane, down a ditch, and then flipping over with the roof of my car sliding across three parked cars in the used car lot!

My car landed upside down on the other side of those three cars, and I crawled out. I felt something wet on my head and saw it was blood, and stumbled out to wave down a car. Although it was an incredible accident, and the owner of that used car lot must have just shook his head in the morning when he looked at his cars in the lot, I had just a few scratches and a small scar. I have to believe that God saved me for some reason. He later gave my wife and me our beautiful son and life went on.

I have to believe that my life was spared for a purpose, perhaps to become a nurse, form Hospice Patients Alliance and help people around the country, write this and other articles, share some of the many experiences I've had through the years, open the eyes of people around the country to what is happening. I couldn't turn my back on those who were being exploited or hurt, never imagining what a crazy ride I'd have over the years. But I've made some good friends all over, and I'm grateful for the opportunity to make a difference.

When you see people suffering and you know you can do something, can you turn your back on them? Can you walk away? While everyone has to pick their own battles, we must help each other when we can. ***Anguish has many faces and inaction can only allow conditions to get worse***. That's what happened in Germany during the 1930s and 1940s. There were many warning signs of what was about to happen, and things started to happen. People didn't want to get involved. They were caught up in their own concerns, their own businesses, their own lives. What happened to someone else, of a different ethnic background didn't matter to them .... until they were being hauled off to the camps.

We've been lulled into a lethargic apathy. About 10% of Americans are on antidepressant drugs. The average American spends about 4.5 hours watching TV, 1.5 to 2.5 hours using the computer, and about 1.5 hours playing video games. That's 7.5 to 8.5 hours each day. If we work 8 hours a day, and sleep 8 hours a day, then a huge amount of our "free time" is taken up with TV, computer and video games. Of course, some people use computers, TV and even video games at work, but the reality is we are not "living our own lives" in the "real" world as much today as in the past. People escape into the entertainment world rather than paying attention to what is happening right here in our country.

We need not only be concerned with our own generation and young adults, but also the children that may not be fully "integrated" into the real, physical world, who live vicarious lives on the internet.

> "Children are often happier with their online lives than they are with reality, a survey has revealed. They say they can be exactly who they want to be and as soon as something is no longer fun they can simply hit the quit button."
>
> "....Psychotherapist Peter Bradley, who is also deputy director of Kidscape, said that the desire for so many to adopt a different identity online was a cause for concern because the children were being divorced from reality. He added: 'These findings suggest that children see cyberspace as detachable from the real world and a place where they explore parts of their behaviour and personality that they possibly would not show in real life. We can't allow cyberworlds to be happier places than our real communities, otherwise we are creating a generation of young people not functioning adequately in our society.'"
>
> ["Generation net: The youngsters who prefer their virtual lives to the real world" By Liz Thomas February 8, 2011]

And "hitting the quit button" on your computer is not something you can do in the real world, with real problems, especially when problems drag on for months and months, when you need to be a responsible adult and care for others who are ailing and dependent on you for the long term. When it comes to caring for the ailing and disabled, the impatience learned through spending much of one's time in a virtual world of gaming and internet experience will only contribute to a readiness to abandon those who are in need, making imposed death the "quick" solution the younger generation has come to expect. They may not be learning the patience needed to truly care for others long-term.

In the past, there wasn't a "virtual world" of television, computer or video gaming entertainment to escape to. When parents today look at their children, they often see individuals who do not spend as much time with friends and playmates as in the past. Or, when friends get together, they may watch TV or play video games together, rather than playing games with real things in this world. This is new and it is having a tremendous effect on society. Taken altogether (the antidepressants and other medications, the escape into TV, computer and video gaming) it is easy to come to the conclusion that we are not really focused on "this world." We're living vicariously through television, movie, video gaming and computer entertainment. Are we becoming lulled into complacency where we as a society don't really care what happens to others, especially the vulnerable? Especially with the amount of realistic depictions of horrific violence throughout the video gaming, movie and

television world, people are becoming hardened to terrible things. It is almost impossible to shock people anymore; they've seen it all through entertainment. So, when people hear about people being medically killed, will they care? Not unless it's already happened to them, and then it's too late.

In his book, Brave New World, Aldous Huxley warned about the dangers of being lulled into a distracted state while government's power to oppress increased dramatically. He imagined a society under totalitarian rule where the citizens were lulled into a hypnotic state through the drug he called, "Soma."

> "Soma is a hallucinogen that takes users on enjoyable, hangover-free "holidays", developed by the World State to provide such inner-directed personal experiences .... as a self-medicating comfort mechanism in the face of stress or discomfort, thereby eliminating the need for religion or other personal allegiances outside or beyond the World State."
>
> "Recreational sex is an integral part of society. According to The World State, sex is a social activity, rather than a means of reproduction, and sexual activity is encouraged from early childhood. The few women who can reproduce are conditioned to use birth control ... The maxim "everyone belongs to everyone else" is repeated often, and the idea of a "family" is considered pornographic; sexual competition and emotional, romantic relationships are rendered obsolete because they are no longer needed. Marriage, natural birth, parenthood, and pregnancy are considered too obscene to be mentioned in casual conversation. Thus, society has developed a new idea of reproductive comprehension."
>
> ".... In The World State, people typically die at age 60, having maintained good health and youthfulness their whole life. Death isn't feared; anyone reflecting upon it is reassured by the knowledge that everyone is happy, and that society goes on. Since no one has family, they have no ties to mourn." [review of Brave New World, Answers.com]

Does this sound familiar? Does it remind us of what we see when we look around us at the current state of our society? And when we are lulled into a hypnotic state of complacency, when we don't care what happens to others, why would the federal and state government officials actually protect the vulnerable that they privately prefer die?

Constitutional rights, though existent on paper, matter nothing at all if there is almost no, or no, enforcement of the laws when it comes to the vulnerable elderly, disabled, acutely or chronically ill. Their rights are violated every day in one way or another throughout the country, in many of our health care settings. Do our elected officials believe that society is so complacent, they need not assure compliance with standards that exist on paper only?

When government's size, power and intrusive influence spreads like poison over the land, society has already been tainted. Your freedom and the very lives of the vulnerable are directly threatened. February 17, 2011, the Treasury Secretary, Tim Geithner said that the current proposed budget is "unsustainable," because the interest on the debt was so massive ... that we as a nation could not pay it in years to come.

> "During the Senate Budget Committee hearing, Sen. Jeff Sessions (R-Ala.) asked the Treasury secretary, 'Under your budget, the interest increases each year. It was $187 billion in 2009. Under your proposal, it increases to $844 billion.'
>
> "Geithner responded, 'Senator, absolutely, it is an excessively high interest burden, it's unsustainable.'"
>
> [Treasury Secretary: Obama's Budget Leads to 'Unsustainable Obligations' Feb 17, 2011 CNSNEWS.com]

Why would the administration propose a budget that borrowed so much money to spend that it literally jeopardized our nation's financial stability? Proposing a budget that absolutely must lead our nation into economic disaster is not the action of a responsible person. It is either insane or nefarious. One might theorize that those proposing such deficit levels are ignorant and unintelligent. However, we know they are not.

So, we have to understand that there is a reason for everything proposed. ***When a policy is proposed that when implemented would, with certainty, create a severe threat to our nation's integrity, survivability and security, it can only have been done in order to implement other radical changes***. A fiscal crisis of unprecedented levels would result in a move by government to rein that crisis in through heavy-handed governmental action. It would certainly create calls for the implementation of emergency governmental measures, something akin to martial law, or if not that exactly, simply a more totalitarian government. In other words, the form of our government would be changed into something completely contrary to the Constitutional Representative Republic known as the United States of America. That is what "change"

means in this context.

Recently, to illustrate how government can expand its reach, the U.S. Justice Department threatened to shut down all flights over Texas when the Texas legislature was about to pass a law that "would have made it illegal for Transportation Security Administration agents to perform hand searches at airport security checkpoints unless there was probable cause." Normally, the federal government and Texas state government would litigate the issue in court without such threats. But the U.S. Justice Department threat, if acted upon, would have cost Texas billions of dollars and caused financial havoc in the state. Due to the federal bullying tactic, Texas legislators backed down. ***What is to stop a similar federal threat from being used to nullify the Constitutionally-guaranteed right of state legislatures to independently create any future state law?*** The same type of financial threat bullies states and local school districts into complying with federal education requirements and curricula in the schools. We have come very far from the time when the local schools, school districts, and even state departments of education, chose their own books and curricula for the courses taught free of federal government influence.

As such bullying tactics continue, the size and reach of the federal government only increases, with individuals and state officials alike feeling intimidated. As planned financial pressures worsen with intentionally-created, unsustainable federal expenditures, the funds allocated for care of the elderly and severely disabled will be cut drastically. If we stay on the current course, conditions will only get worse for the vulnerable.

Our national "ship of state" is like a gorgeous ocean liner filled with passengers. It moves so swiftly through the water and is admired by so many. We would never wish to think that it could ever be in danger, but the ship is tilting so far over to the left that the deck is almost touching the water. A little more and the entire ship will go under in an instant. When it does, what has been the American form of government will end. The traditional American freedoms and rights enjoyed will end if they are not defended and protected at every step of the way. A little step to the left, to the left and left again, and the government will have seized control of so much that we will be stuck. There will be survivors, and those of us who are able will all need to help others find their way again. What will happen to the vulnerable will not be pretty.

Those who work in health care, and really care, know about the plight of the vulnerable. They've seen many cases, troubling cases. But what do we do? Do we wring our hands and say, "we can't do anything about it?" or escape into our work or into the virtual worlds available in video games, the computer or television? Do we turn away while people are harmed? People are being hurt. Real people's lives are being snuffed out! I get the calls and so does every patient advocacy organization in the country. They call and ask, "why did this happen to my father?" How could this happen?" They don't understand what we've reviewed here. Patient advocates know the exploitation and medical killings are really happening, but society as a whole just keeps on going as if nothing is happening.

Seventy years ago, in the Jewish ghettos in Germany and elsewhere in Europe, fathers and mothers' tears streamed down their face as their children were being ripped from their arms forever by Nazi soldiers. Do we really register and understand what happened? Children cried out as their fathers and mothers were led away. Husbands and wives were separated and then killed in groups. In our own times, the evidence of Bob and Mary Schindler's tears for daughter Terri were always evident on their faces. Look at many of the pictures taken of them when their daughter's life was on trial. Anguish, silent or screaming out loud, is still anguish, and it doesn't go away easily. The people who call me and other advocates are in terrible pain, because those they love have been taken away from them and were not allowed to die a natural death. Some are medically killed years before their time!

Listen. The dear Lord gives us life. Health care professionals should not be involved in taking life. Yet, as we've seen, contrary to what most of you have believed all along, most physicians do not swear to "do no harm." Most do not take an oath to never give a lethal drug. Most of them actually take an oath that acknowledges they may actually "take a life" (not "lose" a life). Years ago, there would be no question about how wrong these killings are. Just about everybody knew that physicians should not be medical killers. Now, people think they should. How strange a society we have become! How dark a society we have become!

Before the American counter-cultural revolution of the 60s, the mainstream medical thinking did not consider faith to contradict science. The two were viewed as being mutually beneficial to the patient and not mutually exclusive:

> Dr. Elmer Hess, President-elect of the American Medical Association said that "any doctor who lacks faith in the Supreme Being has no right to practice medicine." The Erie, PA, urology specialist assailed those practitioners who are seeking only money, saying that, "a physician who walks into a sickroom is not alone. He can only minister to the ailing person with the material tools of scientific medicine - his faith in a higher power does the rest."
>
> [Des Moines Still College of Osteopathy & Surgery Logbook, January, 1954]

Today, any physician who, like Dr. Hess, openly professes his faith (outside of religiously-affiliated organizations) is greeted with scorn and is likely to be denied many opportunities for advancement. Some are even attacked by those with hostility to those physicians who have faith. In the United Kingdom, a member of an openly Christian medical group has had a complaint filed against him by the mother of an adult patient. Though the patient has no objections, his mother filed the complaint against Richard Scott, MD who is a Cambridge-educated British physician, for simply mentioning that he personally found faith in Jesus helpful. That the physician provided all expected and approved medical testing and procedures beforehand and had the patient's permission to discuss his faith does not matter. Now, the physician must defend his actions or risk losing his license to practice medicine. The situation in the United States is becoming similar.

What a contrast between Elmer Hess, MD, the President of the American Medical Association, affirming the need for physicians to have faith in God, and physicians (and others) now being persecuted for so much as mentioning their faith at all. Has our society become what we once detested? Has it slowly been intentionally poisoned? Are we repeating the horrific errors of years past? Clearly, our society has lost its way. We have forgotten too much!

"Remember!" survivors of the Holocaust warn us. "Never again!" they cry out. They have cried out for seventy years since the Nazi era. And now it's begun again in a time of economic uncertainty, just like in Germany. "Never again" has not lasted forever. It started there with the vulnerable, and it's starting here with the vulnerable in exactly the same way and for the same reasons.

Back in 1977, I lived in Germany for months and met Germans who were young men and women during the Nazi era.

I saw the shame and sadness in their eyes when I asked them, "did you know?" They looked away sadly. They knew.

And you know what is happening here now. Intolerance for those of the Jewish and Christian faiths is spreading around the world in many places (though you wouldn't know it from the coverage on TV). And while we fear terrorist threats from radical Muslims, many Muslims suffer violent attacks as well. We are all endangered in some ways by the lack of tolerance, the willingness to use violence and war to achieve an end, the readiness to discard some lives to achieve a goal.

Those who respect life and take stands against abortion and euthanasia are mocked, ridiculed and harassed in many ways. The atheists complain about those of faith "imposing their beliefs" on others, yet the historically-rare freedoms enjoyed in our modern society are based on respect for the individual found in the Judeo-Christian traditions. And where eugenics and euthanasia policies are legal, there is little tolerance for the vulnerable. Many are involuntarily killed, as we have seen.

The freedom to express one's faith in public is being systematically whittled away in the name of "not offending" this or that group, with the net effect that people cannot express their faith in public without being condemned. Yet, there is nothing in the American Constitution that says nobody should ever be offended. When there is freedom of expression, real freedom to express yourself, someone is guaranteed to be offended, and they can then respond freely as well. That is the American way. Trying to assure nobody is offended is certain to offend some, and the effort to prevent offensive speech destroys freedom of speech.

In this country, some have lost their jobs because they expressed their faith. Around the world, many have lost jobs as well as their lives for expressing their faith. Intolerance for those of faith goes hand-in-hand with the ruthlessness of those who would impose death upon those they consider unworthy of life, whose quality of life is questioned.

Even in this country, people, especially the elderly, literally are taken away to be medically-killed. They're not always being transferred voluntarily. Robin Love's non-terminal father was hauled off to hospice at the direction of his wife, with tears streaming down his face, begging not to be sent there. I receive similar reports from families around the country regularly ... families using hospice to end the life of the vulnerable family member.

When someone is taken away and then finally dies, there may be a sweet obituary, even online, with a photograph: "so-and-so died peacefully on October 24, 2010." "Post your thoughts here." "Send donations to 'Hospice of the So-and-So Region."

Of course, when this thing called "hospice" or palliative care honors life, it's good, really good. But when it dishonors life, destroys life, it's bad, really bad. Ten years ago, I warned that hospice could become the "killing fields" of America. The implementation of widespread terminal sedation has made that a reality. With the HIPAA Privacy Rule's absolute wall of silence, everything is ready for that outcome, and it's already started.

"Therefore, take care to follow the commands, decrees and laws I give you today."

- Deuteronomy 7:11

"'Do not seek revenge or bear a grudge against one of your people, but love your neighbor as yourself. I am the LORD.

- Leviticus 19:18

True Reform that Protects Citizens

True reform of the health care system can never occur when methods of hastening death or directly imposing death are included in the mix. Respect for the patient's life and clinically excellent end-of-life care are not possible when euthanasia, assisted-suicide and/or palliative sedation are used to impose death. They are mutually exclusive.

> "Mark Boughey, director of palliative medicine at St. Vincent's Hospital in Melbourne [Australia], ... [reminds us that] under palliative care, doctors, nurses and other health professionals treat the symptoms and ease the pain of the terminally ill, making them more comfortable and helping them lead a dignified life until death. **The goal is not to "cure" the patient, but it's also not to expressly hasten that person's death.**" [Emphasis added]
>
> [At the 18th International Congress on Palliative Care, Oct 18, 2010 in Montreal], "he [also stated] ... that in the Northern Territory [of Australia where physician-assisted suicide was temporarily legal], [many] patients who had opted for physician-assisted suicide ... were deprived of palliative care that could have eased their suffering."

> "Boughey noted that in Oregon (where the Death with Dignity Act has legalized physician-assisted suicide under certain circumstances) private HMOs are increasingly promoting the euthanasia option."

As we have seen before, efforts to increase revenue (undertaken by HMOs, for-profit corporations and even non-profit health care corporations) or reduce government expenditures, twist the provision of health care into something that uses patients as a means to a financial end, something completely contrary to what is beneficial to the patient. Paying for a lethal agent to end a patient's life is much cheaper than providing a full range of hospice or palliative care services until the patient dies a natural death. The billions in savings that hospice already provides annually to the health care budget (compared to acute care hospital admissions) are apparently now "not enough" for those exploiting patients for gain.

"Says philosophy professor Mark Foreman: "According to a study of the British Medical Association, the state of palliative care and hospice care in Holland is very poor. ***Where euthanasia is an accepted medical solution to patients' pain and suffering, there is little incentive to develop programs which provide modern effective pain control for patients***."

Ironically,

> "Ira Byock, [now] director of palliative medicine at Dartmouth-Hitchcock Medical Center in New Hampshire, urged physicians at the [same] conference to focus on suicide prevention with some of their terminally ill patients."

> "Byock recounted the examples of a couple of his patients who had expressed a desire to end their lives, but who then changed their views when provided with more comprehensive palliative care."

Byock has gone around for years and years urging the avoidance of assisted-suicide and/or euthanasia, *while promoting another method, palliative sedation, that achieves the same end* however deceptively.

And the major media outlets give physicians like Ira Byock, MD and Joanne Lynn, MD the royal treatment in terms of coverage. Their words are "the voice" of hospice in America today. In the "Before I Die" television special on death and dying hosted by the late Tim Russert of NBC, Byock and Lynn are both included (representing hospice and palliative care) among the 14 presenters. Karen Stanley, RN, MSN, AOCN (from yes, Kaiser Permanente in Fontana, California) speaks as does Arthur Caplan, PhD (one of the leading secular bioethicists in America). Willard Gaylin, MD, the self-proclaimed communist, euthanasia advocate, and co-founder of the Hastings Center is also included. What does that tell you? And, the program is funded by, no surprise here: The Robert Woods Johnson Foundation that funded the Last Acts initiatives (naming Hospice of the Florida Suncoast a Rallying Points regional hospice center), that has funded many of the educational programs to change how Americans die and think about dying, promoting the quality of life ethic, not the sanctity of life ethic.

Jesus gave us the key to understand what is happening here when He said:

> **Either make the tree good and its fruit good, or make the tree bad and its fruit bad; for the tree is known by its fruit.**
>
> **You brood of vipers, how can you, being evil, speak what is good? For the mouth speaks out of that which fills the heart.**
>
> **The good man brings out of his good treasure what is good; and the evil man brings out of his evil treasure what is evil.**
>
> **- *Matthew* 12:33-35**

If the "fruit" of Byock, Quill and other renowned palliative leaders' efforts (like Joanne Lynn, MD) is hastened

deaths for the vulnerable through Third Way killing, we know that however respected they may be, however knowledgeable they may be, however powerful they may be, however wonderful their words sound, it is tainted, to be thrown away and replaced with good "fruit." They "talk the talk" all the time, but they only "walk the walk" some of the time. Lay people who are not educated in the ways, and the ways, of hospice and palliative care are very easily fooled.

When hospice agencies, palliative care units and "advanced illness" provider organizations are based upon a vision that honors the life of those in their care, then they will provide wonderful services and be a true blessing to the dying and their families. This "fruit" arises from seeds planted by physician and hospice founder Dame Cicely Saunders, who loved the dear Lord, recognized the sanctity of life and based her work on respecting that life. Hospice services based upon respect for the sanctity of life are never forgotten and those who receive them are grateful for the rest of their lives.

We have to recognize that when a family member dies, that memory is etched in the mind of the surviving families' memories forever. They never forget what happened, and if hospice did everything to make those days better; the family will remember that. These family members cannot understand why anyone would ever criticize what hospice or palliative care professionals do, but they really don't understand the full scope of what hospice or palliative care really is, only what they experienced. I can understand their confusion. But you understand now, both the good and the bad. And you understand more about how the government works, how the HMOs and managed care health insurance companies work. Linda Peeno, MD has explained that:

> **"In order to change or resolve problems, we must have an accurate understanding of the ways in which systems work and how they influence the lives of individuals, communities and society."**

With that proper understanding of everything behind what we are seeing in our society and health care, we can see the direction real reform of the system needs to move. Learning about these problems without considering how to reform the system, would simply leave us with extremely troubling information about abuse, neglect, harm and exploitation with the health care system.

So I asked myself, and I ask you: what will you do when you've been shaken to your core by what you've seen, or learned, something so profoundly damaging to the lives of patients and completely antithetical to everything you believe?

What will happen to you as a person were you to consider not getting involved? ... not running to the rescue of those who are utterly defenseless?

Have you ever seen something like that, where you asked yourself, "should I get involved?" Should I help reform the system, society, the government? Can I help with those around me in my community?

Your answer speaks to who you are as a man, as a woman, as a human being. It doesn't matter if you're black or white, "green" or "blue." What matters is what you do!

And God knows! Yes, He knows. And you know, don't you?

A civilized society cares for the poor, the cold, the needy, and the hungry. It cares for the sick and the dying.

We need to re-assert our American values: real freedom of speech, freedom to offend or not, and freedom to speak back as well. That's what we're about.

We need to re-assert our belief in the sanctity of life and be vocal, and never stop affirming it.

We need to get away from being "politically correct," because conforming to what is politically correct is equivalent to abdicating our moral responsibility to our nation and its people, to each other. The "politically correct" way is not the American way! The Supreme Court has ruled that even offensive speech is protected under the Constitution. Political correctness is intolerance of differing views. Political correctness is tyranny. Political correctness labels the pro-life view as "offensive!"

We need to re-affirm the value of the family, with a father and mother, as research shows the children do best when they live within a traditional family (political correctness does not negate this truth!). Winston Churchill said, "There is no doubt that it is around the family and the home that all the greatest virtues, the most dominating virtues of human society, are created, strengthened and maintained." It is certain that the family meant by Churchill as an ideal to aim for was the traditional family, not a kaleidoscope arrangement so prevalent in our disintegrating society. And what the utilitarian socialists have so successfully attacked for several decades are the traditional Judeo-Christian family and values. Their idea of what is good or virtuous is the opposite of traditional American society's values.

We need to be willing to, and actually give some of our time, energy, funds, and talents, to help others.

At the beginning of this book, I mentioned "evidence-based medicine," "comparative effectiveness research," and the "complete lives system" which are being used to change how health care is delivered in this nation and around the world. They all can sound very professional and sensible, however, *how* these tools for optimizing care and rationing care are implemented will be affected by the worldview and ethical considerations of those at the top policy-making levels of our government. You now know what can be involved with these "high-sounding" excuses to ration care and encourage stealth euthanasia.

That worldview and those ethical considerations are not pro-life and do not affirm the sanctity of life. It is certain these nice-sounding concepts will be misused to justify limiting care to those deemed less worthy of life and therefore, less worthy of treatment and services. With all we've reviewed so far, you can see the direction it all is moving. There is no doubt about it.

Real reform of what is happening in health care can only happen when we swallow our pride and are willing to listen to others in our extended families and care for them when they need us, even if we don't always get along.

We must rebuild the safety net of a traditional American life when the immediate family, extended family and local communities all worked together to help each other. When a barn burnt down, for example, the community got together and with many laborers, a new barn was constructed in a short time. That's the spirit we need in America. Not the spirit of asking government to provide everything, do everything and be everything, because it can't. Every dollar that is taken from private citizens and businesses in taxes, are dollars that can't be used to privately benefit others. The lower the taxes, the more money there is to buy things and support the local economies, and the charities that demonstrate what is truly best in America, which is the foundation of our nation. Government does not create jobs (except government jobs).

We must demand that white-collar criminals in health care settings be prosecuted to the full extent permitted by law and then sentenced to be imprisoned for many years.

We must demand that the laws be changed to prevent private HMOs, PPOs, or any sort of managed care organization from exploiting or mistreating patients. Giving them immunity from prosecution (such as happened with the E.R.I.S.A. law and HMO laws) has only resulted in widespread exploitation and gaming of the system for revenue.

We must demand that Boards of Medicine and Nursing not be allowed to give a mere slap on the hand to physicians or nurses who seriously harm patients intentionally. If the very small percent of troublesome physicians, nurses or others are prevented from causing further harm, there would be a great decrease in the number of consequent lawsuits.

However, as we have seen, much of what has happened till now has proceeded according to the plan of those who do not respect the sanctity of life as well as those who are plundering the system. The elitists are ecstatic that their plans for transforming our society are right on schedule and the media is cooperating 100% in "pulling the wool over the eyes" of the public.

Patients and patient advocates have something else to say. They have a different message. Will we listen to their voices? We say that in serving others, even the disabled, the chronically ill and those at the end-of-life, we receive the gift of service, the opportunity to love and care, the opportunity to grow as a human being and as a child of God. Life itself is a school with many lessons to be learned: how to love, how to care, how to humble ourselves to wash another's feet, and see to the needs of those who are truly dependent.

We must ask ourselves if we will work to help others or only be concerned about ourselves and our own families. If we abandon the concern for others, we will soon find out that we have likewise been abandoned by others to our detriment. This is the question that confronted those who tried to survive in Nazi-occupied territories during World War II while doing nothing to stop the increasing power of the National Socialist political party there.

It's not like it was there in Nazi Germany, yet, here in America. They're not shooting us on the spot, so what's stopping us from protecting the vulnerable among us? or speaking up? or caring at all?

My focus has been hospice, but you can't go around inspecting hospice agencies like a visitor to a nursing home. You won't get in, and much hospice and palliative care is provided in a patient's own home. The industry is insulated by its unique setup. It is also insulated by the HIPAA Privacy Rule which throws a veil of secrecy behind which hospices can do just about whatever they want. Enforcement in the industry is almost nil, especially compared with how hospitals or nursing homes are inspected and regulated. The rogue hospices can do much damage without any word getting out to the public at all. We've seen how that can happen. And our society is definitely being harmed by the perversion of hospice and palliative care by rogue hospices or

corporations that seek to exploit end-of-life care for profit.

By now you must realize that this is something that can't be solved with a simple phone call, letter or email. Even a health care policy proposal is not enough to change this.

We need to remember what happened incrementally in Nazi Germany before the millions were killed in the concentration camps. We have to remember how it started there. There have been many tyrannical dictatorships throughout history, but Nazi atrocities were uniquely vicious, perverted, and outright evil. We have taken too many steps down a road leading to where they were and we need to turn back toward life.

We must pay attention to what is happening behind the HIPAA secrecy veil.

We must make sure our elected representatives act to protect the vulnerable.

We need to make sure everybody in America knows the truth about what is going on. And sharing the truth with others one by one may be the most important step you can take. Plant seeds of thought and inquiry. We never know what will come of it, but sharing the truth can change the world. Telling one or two other people can save lives, perhaps hundreds of lives.

You still may prefer to ascribe what I've been discussing to a few isolated incidents here and there .... and write it all off as insignificant. It's not! If you know anything about how things work, you'll know it's not isolated or insignificant. Many in hospice deny that there are any serious problems in the industry as we've seen, yet if that were true, then hospice would be unique in all of human history, and clearly, that is not the case. There are problems, epidemic problems that need to be corrected. And in the face of regular reports of serious problems in the industry, hospice professionals that deny these problems exist must be part of the problem. They certainly cannot help resolve the problems that exist when they work so hard to stamp out the slightest bit of news about the realities in the industry from getting out.

To reach the public and get that information out, I've shared what I've learned through the years and the story of hospice and palliative care. We've read the accounts of involuntary euthanasia that occurred right here in America, in hospices from different parts of the country. We've seen together how stealth euthanasia can be done and is being done. There *is* a stealth attack on our American way of life. This dark cloud over our nation represents the beginnings of a health care tyranny, with or without nationalized health care and "reform!"

This threat is very real, and it's very important for everyone in our nation to recognize this. It affects every family in America. We've discussed aspects of hospice, health care and the effect of corporations on our society.

It's up to each of you to decide what to do about it, whether you'll keep on pretending it's not true or not "as bad" as some make it out to be. You may decide to do something, and if you do, I encourage you to speak up to your elected officials at every turn, at town hall meetings, at their offices (local, state and federal), to write letters and never stop speaking up. And speak with each other in your extended "families," in your "blessed communities," in your churches, mosques, and temples, in the classroom and elsewhere.

The government "coming to the rescue" is not the answer. But government changing its direction would be a big help in correcting these problems. Those directing government today really believe that rationing care, depriving patients of their lives, eliminating some or many of the vulnerable is the "solution." Like the "final solution" in Germany, we're dealing with the engineering of a population: before birth through selective abortion, at birth through infanticide and misuse of peri-natal hospice to eliminate the unwanted, at any stage in life through medical rationing and selective failure to treat or outright acts of harm and at the end-of-life through Third Way stealth euthanasia as well as active medical killing.

We need people who value the sanctity of life to enter government and represent the people with integrity and show that caring for the vulnerable is the solution. All the original American colonies had government representatives that were dedicated to the respect for life and freedom from oppression and coercion. We need not only be wary of open coercive eugenics and euthanasia as was practiced in Nazi Germany. We need also to be alert to the poisonous practice of outwardly "voluntary" eugenics and euthanasia ... where the parents choose to abort their baby or, an elderly or disabled person asks to be euthanized. What is voluntary for the parent is absolutely involuntary for the defenseless baby, and the elderly and disabled patient are among the most likely to be manipulated into assisted-suicide or euthanasia. That manipulation can come from a big private health insurer or government-run Medicare or Medicaid program, limiting the options and help available to those in need.

Big government is part of the problem, as are many big Corporations that have forgotten the customers (patients) they serve. Many have been focusing on the revenue they bring in while forgetting the customers being served, the patients. Yes, some would like to exclusively blame government. Others would like to exclusively blame big corporations and health insurers. There is enough blame to go around and certainly,

everyone's right that the government and the corporations need major reform. But the answer rests in all of us. The people in government, the people in the corporations and the people wherever they live. The choices we make, wherever we are, matter. The people are the answer.

We need to establish strong families, extended families and "blessed communities" that can support and care for each other especially in the tough times that many are going through, in the tough times that may come in the future. And out of such strong families, extended families and communities will arise strong individuals, leaders who can create true reform of health care or government, whatever shape they assume as time moves forward. The power of the people is much stronger than most people think, but it must be awakened, given voice and acted upon.

A free society is always only one step away from tyranny. A free society requires the active participation of its citizens. You, me, all of us. We can all do something and make our contribution to society. Otherwise, the vulnerable may experience the effects of tyranny in their lives the moment they enter the health care system, as many already have.

We who consider our practice as a spiritual mission remember what the dear Lord Jesus said:

For I was hungry, and you gave Me something to eat;

I was thirsty, and you gave Me something to drink;

I was a stranger, and you invited Me in;

naked, and you clothed Me;

I was sick, and you visited Me;

I was in prison, and you came to Me.'

Then the righteous will answer Him,

'Lord, when did we see You hungry, and feed You,

or thirsty, and give You something to drink?

And when did we see You a stranger,

and invite You in, or naked, and clothe You?

When did we see You sick, or in prison, and come to You?'

The King will answer and say to them,

'Truly I say to you, to the extent that you did it to one of these brothers of Mine,

even the least of them, you did it to Me.'

- *Matthew* 25:35-40

Who is our "neighbor?" ... that we should care? Everyone we meet. Every elderly, disabled or chronically ill patient. We must care for them.

We need to wake up! The storm is upon us. It's been planned for several decades and now we're seeing right in front of us the impact of it all. It seems like society is being transformed overnight, but it's been changing incrementally for decades.

It's time to speak up and protect the vulnerable who cannot speak for themselves. No more "Bob and Mary Schindlers" should have to suffer the untimely death of their daughters. No more "Vickie Travises" or "Robin Loves" should have to see their father's life snuffed out by a hospice "closer."

Hospice and palliative care needs renewal, and reform. Health care cannot be truly reformed if we do not address the problem of end-of-life care. While the government allows the whole-sale theft of taxpayer funds through Medicare fraud and other government payouts to the white-collar criminals, the pressure to medically kill many of the elderly is only increasing. More and more leaders are bringing up the topic:

"Medicare Bound to Bust as First Boomers Hit 65," screams the headline:

What do people who have been in charge of the U.S. government's funds have to say?

> "David Walker, former U.S. comptroller general" [reports that] "the retirement of the baby boom generation will bring a tsunami of spending that will cause a severe problem for the federal government's budget over time,"
>
> ".... Take Medicare, health care for the elderly and disabled:
>
> - The number of people eligible will nearly double from 46 million to 80 million by the time all the boomers reach 65.
>
> - It's estimated the cost will grow from $500 billion a year today to $929 billion by 2020.
>
> - The number of workers supporting each senior will fall."

Walker cautions:

> "Ultimately we're going to have to make tough choices about how much health care can we afford and sustain and how are we going to change our payment systems to make sure that it doesn't bankrupt the country .... Because if there's one thing that could bankrupt the United States, it's out-of-control health care costs."

Already, the blame for the fiscal crisis is going to health care spending, when there's been billions and billions of dollars going to "pork-barrel" spending and unidentified people or organizations. Although health care is a huge portion of the budget, there is a huge amount of fraud just in that industry, as well as fraud in many other government-funded industries. The article alerts us that "Medicare is already underfunded by at least $23 trillion. That's the difference between the benefits promised and the taxes actually being paid into Medicare. It could go bankrupt as early as 2017."

We can be sure that there will be increasingly agitated declarations that legalization of euthanasia is "absolutely necessary." And at the same time, almost nothing will be done about the billions and billions of dollars somehow "disappearing" into the pockets of hundreds of nameless beneficiaries of the government's largess and the U.S. Justice Department's failure to go after those plundering the national treasury through fraud of all sorts. Several factors are simultaneously impacting our society that will push toward imposing death upon the vulnerable. And many people will believe the lie.

What about the promised increased services under health care reform? Where will the funds for that come from at exactly the same time people are complaining about how much the elderly are costing and will cost? Services that are increased will clearly be balanced by drastic cuts in services to the severely disabled, especially Medicaid, and by drastic cuts for some of the elderly as they require care that simply will not be approved. Let's remember what the Nazis did in just the same way:

> "Generous family allowances and public health care was provided from monies taken from special schools and institutions, welfare agencies, health insurance, guardianship courts, municipalities, private charities, and from families with children who had any type of disability (Aly, 1993)."
>
> ["*Hitler's Unwanted Children*" by Sally M. Rogow]

So, when you think of all the wonderful services that may be provided, as promised, remember the disabled and the elderly, remember what happened in the past. **Extra benefits for some will come at the cost of others, and many will die much sooner than they would have because of it**. Extra benefits for some will buy votes and support for the government programs and rationing, while the vulnerable are victimized. Of course, some won't

care, until it happens to someone in their family.

I also think about the residents of the nursing homes. While some are receiving good care, there are so many that languish, neglected, abused, assaulted or worse. I think about the patients who ended up in hospices that condone imposed death through terminal sedation or overdoses. Listening to them crying out, hearing the reports of their families, I am reminded of the plea of David, son of Jesse:

I cry aloud to the LORD; I lift up my voice to the LORD for mercy.

I pour out before Him my complaint; before Him I tell my trouble.

When my spirit grows faint within me, it is You who watch over my way. In the path where I walk people have hidden a snare for me.

Look and see, there is no one at my right hand; no one is concerned for me. I have no refuge; no one cares for my life.

I cry to You, LORD; I say, "You are my refuge, my portion in the land of the living."

Listen to my cry, for I am in desperate need; rescue me from those who pursue me, for they are too strong for me.

Set me free from my prison, that I may praise Your name. Then the righteous will gather about me because of Your goodness to me.

***Psalms* 142**

Think about the afflicted, the vulnerable, those who are dependent on others for care. This is not just the voice of David. It is the voice of the afflicted wherever they may be. We must protect them, serve them, care for them, and love them.

We need to listen to the voice of Dame Cicely Saunders who said,

"Anything which says to the ill that they are a burden to their family and that they are better off dead is unacceptable. What sort of society could let its old folk die because they are in the way?"

When economic pressures and utilitarian philosophies are used by those running our health care agencies and insurance systems to justify what they do, we need to remind them of our heritage that affirms the value of life, the respect for the elderly, the need to care for those who are vulnerable. It will take everything we've got to battle for the lives of the vulnerable, if we are to succeed in protecting them. But, if America stood for anything, it stood for taking care of our own, and we need to take care of the vulnerable!

No one person can fix the problems we have discussed here. The people, government officials, interests, corporations and organizations that have intentionally created this culture of death with a ready-made killing mill, hidden behind the HIPAA Privacy Rule, ... they're not going away. Those family members among us who "wield" hospice or palliative care to end the lives of the vulnerable need to hear from us. They need to remember what shame means. They think they can do anything. We need to show them that we see them for what they are. Remaining silent to "keep the peace" only allows the killing to continue on and on.

We need people from all walks of life and all sorts of professional abilities to get involved where they are, in their own community, state and on the federal level as well. All of us have different abilities, gifts and areas of influence.

As Mother Teresa of Calcutta has said,

"What I do you cannot do
but what you do, I cannot do.
The needs are great, and none of us,
including me, ever do great things.
But we can all do small things, with great love,
and together we can do something wonderful."

Yes, she showed the way. We can care for those who need care so long as we *choose* to care for them! We *can* fix the system. But "the system" is a reflection of what we, as a society, allow.

Reforming Government: Rebuilding America

Many ask, what can I do to help? How can we fix this problem? The solution is right before us. Shining a light where formerly there was darkness is the simple answer. The darkness does not exist unto itself. The lack of knowledge about the realities in health care and especially, end-of-life care, is removed by seeing and understanding the truth. Once we have the facts, we can no longer be fooled, even if those with an agenda try. Empowered with the truth, Americans and those around the world can re-affirm their commitment to the sanctity of life and demand that the governments, elected officials and bureaucrats remove this evil from the Earth. Devaluing life is the beginning of a tragic road that has lead to this Invisible Holocaust, now revealed to you.

Stealth euthanasia can only exist when the public is uninformed and therefore allows it to continue. That is why this is the most censored story in America. It "must" remain the most censored story in America for it to continue. You can prevent that from happening. Bypass the major media and those who would withhold the truth about end-of-life care and share this information with those around you.

People want an answer such as, "Who do I call?" "Where do I write?" "What government department handles this?" This is way beyond any one person, one official or department of the government. No one person has all the answers. These problems will only be resolved when American men and women are not afraid to stand up and say, "I believe this is wrong." "This happened to me." "This is not acceptable." And use their own name when they take a stand for life, for the vulnerable.

I cannot tell you how many people have called here or written to us complaining about what is going on. Every patient advocacy organization in the country has heard from them. They are outraged, often crying, and terribly troubled. But when I ask them if they will stand up and do something, many say:

"I want to, but I can't speak out, because I don't want to cause a rift in my family."

"I can't speak up, because I'm employed at this or that corporation."

"I can't speak up, because I work for the government."

"I can't speak up, because I'll lose my job."

"I can't speak up, because they may sue me."

"I can't speak up, because I settled with the corporation and have a gag order forbidding any discussion of what happened.

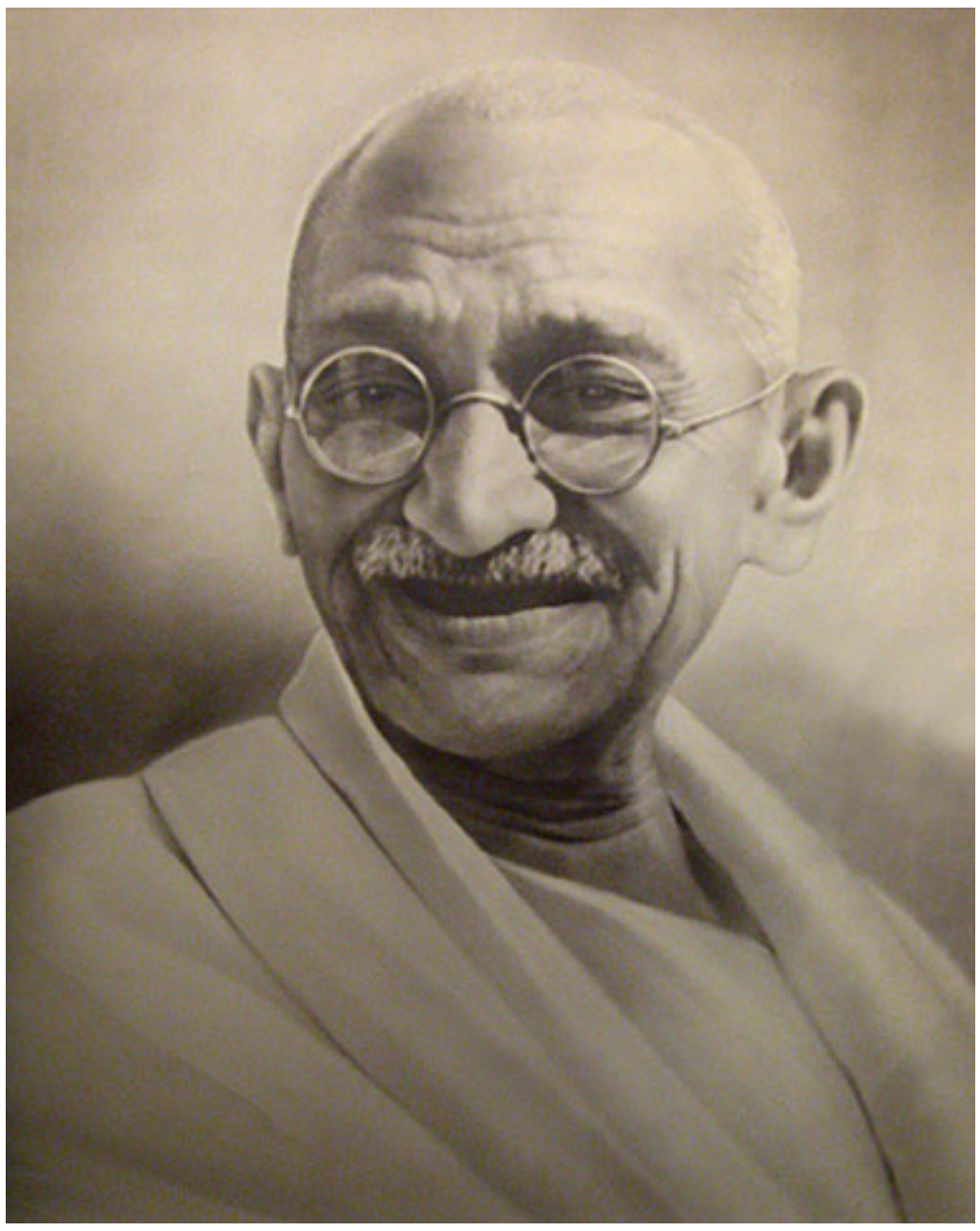
"I can't speak up, because I'm afraid."

"I can't speak up, because I don't want to dwell on this. I just want to put it all behind me and forget."

And so many times I have said to them:

> **"You know, I've had many others contact me, saying exactly the same things you are saying, and many of them promised to do something, but did nothing. If all the people who have called me had done something, your loved one would probably be alive today."**
>
> If you do something, others may live!

How many people have to be killed before *you* do something? Within your own circle, within your own community, begin where you can. Are you able to awaken the strength within you to take a stand? To contribute by caring for someone in your area?



In my humble opinion, non-cooperation with evil is as much a duty as is cooperation with good.

- Mahatma Gandhi

Decide whether you are willing to help solve this problem or not. If not, then tragically, you are contributing to the problem. When evil is on the move, we no longer have the luxury of inaction.

Silence is lethal! Silence is the same as acquiescing to the evil. Silence is what allowed the evil in Nazi Germany to grow until it was in complete control of German society, where many good people lived and lived in fear. I understand people don't want to believe things have gotten so bad. I understand people don't want to have to sacrifice a "comfortable" life. But that is exactly the point. Do what you can do.

We cannot look at the past or even the present and throw up our hands in dismay. We must look at where we are, learn from where we've been and work to create a bright future for those who are yet to come. This is our job, our sacred duty. There is terrible suffering in the world. There always has been some form of suffering in the world. We may not wish to swallow what seems to be a terribly bitter pill. Yet, we are here to spread our love and demonstrate the caring spirit that affirms each and every one's life. Wherever we are, however little we think we can contribute to the mission, let us give of ourselves for the good of all.

Even if you think there is nothing you can do, you can pray, you can share the truth, you can honor the lives of those who are now vulnerable. Pray for those who work to help the vulnerable. Pray for those who remain true to the mission of serving those at the end-of-life. For those of you who work in the pro-life work, I hope that some of you will consider helping out advocating for those at the end-of-life and for those who are disabled and vulnerable. The need is great, but the workers are very few.

Some of us have forgotten what the word "sacrifice" means and why one sacrifices. Parents sacrifice their lives to raise, care for and prepare their children for "the world." They spend time with them, love them, and raise them up in the ways of goodness. If parents are faithful to their mission, caring for the children, then their lives change irreversibly when a child is born. Children, when they become adults, go out into the world and make their own way, yet they also have a duty to their parents and their own children. So, each generation makes sacrifices to care for the other generations young and old. This is the way, from generation to generation.

We may sacrifice much of our lives or even give our life itself to save those around us. Those who do so are sometimes called "heroes," but giving of our lives in service to those around us is what makes us civilized. Giving our life for the sake of others is the testament to our love.

Jesus said:

"Greater love has no man than this,
that a man lay down his life for his friends."

***John* 15:13**

Remember why we have been a haven for people of all nations. It is not just because we have been a great power in the world. Otherwise they would be going by the millions to China. No, it is because we are the land of the free. A land of opportunity. Have we forgotten this? Have our elected officials forgotten this when they make laws that oppress the people? Have our court justices forgotten this when they make rulings that eventually result in the death of millions? (Roe v Wade, Quinlan, Vacco v Quill, Schiavo ...)

Return America to a righteous commitment to the right to life at all stages of life. Demand that the Congressmen pass a "personhood" law that affirms the scientific fact that "normally every human being begins to exist at fertilization in the woman's fallopian tube as a single-cell embryo, the zygote," or upon twinning (*or when scientists clone a human life*). Demand that the vulnerable be respected, cared for and allowed relief from distressing symptoms at the end-of-life while allowing a natural death in its own timing. Protest the killings! Picket the district attorneys in every county that refuse to prosecute the medical killings. Picket the state legislators and governors who do nothing! Picket the state attorney generals who do nothing.

One essential part of the answer to these widespread medical killings is something most of us may find difficult to accept. It has to do with the dwindling number of traditional families as well as extended families. When there are strong traditional families and extended families, there are many family members able to help with the children, to help with anyone who is sick, especially the elderly and disabled. One of the things I hear so often is, "We just don't know what to do. We have to work." "I'm taking care of my kids, working, but caring for

"Mom" or "Dad" is just too much." "We've had to consider putting him or her in a facility." Hospice staff cannot always be there, so, what do families do? They put their loved one in a facility or in some cases, they hasten his or her death at home, because they don't want to be "burdened" with caring for the patient anymore. How did we get to this point?

It began with industrialization and the move to the big cities for employment in the factories. As we all know, people left the local village or town, often leaving behind their extended families. And when they did that, they abandoned their natural safety net, the extended family. The original solution. Sometimes, men or women would travel alone to the city and work, so they did not even have the traditional family as a safety net. Without the safety net of the traditional or extended family, who could one turn to? Charities or the government. As time has moved on, it's mostly the government. The government became the provider of the safety net, the resource people turn to. And once you turn to government as the safety net, you give power to the government over your life and the lives of those you love. And then, the elite policymakers can decide, who gets care and who doesn't and consequently "who lives and who dies."

Something as simple as your entire extended family staying near to each other and being there for each other when needed can make a world of difference! If that's not possible, creating an extended "family" of friends and others of a like mind can accomplish the same thing. It may not always "take a village," but it does take an extended family or community to provide the "round the clock" attention that a terminally ill, very elderly or severely disabled person may need.

Help to create that community! Where you are. In your community, your circle. It's not that the vulnerable always need constant intervention, but they need someone to be accessible to provide help at any time, to be available to assist them. To be there. Create your extended family now. Get together with those of a like mind, in your church, temple or other group. Speak about these things and agree to help each other and count on each other, and you'll find that you can "weather the storm" and get through trying times with each other's support. You can count on each other and pro-life professionals, but you can not count on the NHPCO-controlled hospices or palliative care units to provide the care you need and allow a natural death in its own timing. When it comes to support, you need an extended "family," whether they are your own relatives, a "family" of believers or simply like-minded friends.

Remember, Karl Mark and Frederick Engels described the goals they had in the Communist Manifesto, and abolition of the traditional family is one of the major goals they listed. They knew that when there is a strong family life, the allegiance people feel is to their family, to God, to country, but not "country first" at the *expense of* love for God, family and the respect for the individual. Marx and Engels wanted individuals to be loyal to the government first and foremost. That is why what we see encouraged today in our modern society is "family" defined as anything involving children, but specifically not restricted to the "traditional family" described by Marx as "bourgeois," something to be discarded in his socialist utopia.

When our children are often not warned about the dangers of communism and socialism through history, we must ask why not? Why is it not "politically correct" to teach the dark history of communism and socialism wherever it has been practiced? We have to at some point ask ourselves, "whose politics is deciding what is "politically correct?" That's the key to understanding all of this. It's not just because of the endless investigations by Joe McCarthy into "who is a communist?" back in the 1950s. It's that there really are those who want America to become socialist or communist, and many of them are already in government. Some may not openly use these terms, but the goals are the same. And some in the labor movement and unions openly denounce capitalism and the free market economy of the United States.

They truly do not support the sacrament of marriage between a man and a woman or, of having a traditional family with one father and one mother as the "ideal," even though research study after research study has shown that children do best when they have a loving father and mother in the home, a traditional family. Many of those who push socialist agendas forward edit the major media newspapers and television programming. It is clear, when we look at the policies they promote, at their editorial "opinion" pages and the programming they create, and the messages within the programs that are transmitted to our children, you find that Marx and Engels would be pleased.

What was another major goal listed in the Communist Manifesto? Public education, nationally-controlled education with indoctrination of the children. And we have that today. Nominally, the states have control of the public schools within their borders, however the federal government has tremendous influence through many laws and programs and initiatives. The public school system is only nominally under local school board control.

The federal government manipulates the states to comply with the current administration's agenda by threatening to withhold funds from the states unless they buckle under and agree with whatever the federal government is pushing. For example, the Indiana state government recently passed a law that cuts off funding for Planned Parenthood, the nation's largest abortion provider, through any state-run Medicaid program. In response, the current administration has threatened to cut off the $4.3 billion federal contribution to the state's

Medicaid program unless the state allows the money to go to kill babies. This is just one example of many in which states are fighting to retain some semblance of states' rights and in this case, stop supporting taxpayer-funded baby killing.

In addition, the editors of public school textbooks shape how American history is taught (and not taught) and what values are transmitted (and not transmitted) to the children. Often, the public school "message" is contrary to the instruction the children receive at home and church or temple, and eventually, the public school system's agenda wins over many to a moral relativism. The universities are full of those who promote a secular, utilitarian worldview, along with secular bioethics, all of it contrary to the American spirit, to our roots and our faith. And research has shown that a majority of college graduates end up more socialist-leaning than when they entered college.

While the evils of unrestrained capitalism may result in exploitation, and we have seen what it does when applied to health care, HMOs, managed care and even PPOs, there are other things we need to beware of. Public school students are frequently reminded of the problems with unrestrained capitalism, but the evils of communism, socialism and Nazi socialism are often not explored at length. Are our schools teaching about the evils of Nazi Germany or what America stands for? A survey of 17 year-olds in America conducted by Common Core finds that:

> "Nearly a quarter cannot identify Adolf Hitler, with ten percent thinking Hitler was a munitions manufacturer."
>
> ".... A third do not know that the Bill of Rights guarantees the freedom of speech and religion."
>
> ["Survey of 17-Year-Olds Finds a Nation Still at Risk. Students Earn "D" When Tested on History and Literature," February 20, 2008 Common Core Press Release]

If students don't know who Adolf Hitler was, what do they know about the Nazis? They certainly don't know much about the atrocities committed by the Nazis or the Communists under Stalin in the former U.S.S.R. Many students in the U.S. think our country is the enemy, that we are "the bad guys." They often think that our brave young soldiers are the "enemy," rather than realizing that it is our soldiers who have given their lives for centuries so that we all enjoy the freedoms so unique to our American experiment in representative democracy. They believe that free enterprise is an evil, rather than a vehicle for the free "pursuit of happiness" within a free society. Many believe that an expanded government role is the answer to most of society's problems, rather than a threat to the freedoms all oppressed peoples seek, and which we have enjoyed for so long.

I ask why? And immediately, the answer becomes obvious. A secular, utilitarian and socialist agenda is being promoted throughout our society: in the public schools, universities, the major media, government and health care. There are many individuals and groups that are working separately to accomplish these goals. When the public (especially the young) forgets the millions killed by the "National Socialists" in Nazi Germany or the communists in the U.S.S.R. (Union of Soviet ***Socialist*** Republics), Vietnam, Cambodia, North Korea and China, then they may be rallied to socialist causes in our nation. They may also be deceived into believing that utilitarian methods of dealing with the elderly, the disabled and terminally ill are the "efficient" way to "handle" them, just as was done by the Nazis. It is no mistake that many of the goals of the Communist Manifesto have been implemented in the United States already. It is no mistake that many who would have been called "communists" decades ago simply call themselves people who are interested in "progress." In most cases, they don't go around announcing themselves.

When these covert socialists mean "progress," they mean leaving behind the Judeo-Christian values of traditional America and embracing the big government models used in Europe and elsewhere. Respect for the individual and his or her rights is one thing that is central to our Judeo-Christian values in traditional America. Many of the socialist governments in Europe simply place the government's power and interests higher than the individual. While one can point out a benefit here and there of the European governments, none of them provide the full range of freedoms enumerated in our Constitution, our Bill of Rights, our Representative Democracy and free enterprise system. That's why people from all over the world have come to America knowing that they can make a better life for themselves and that their children can have an even better life than they do. That's why we have been known as the land of the free.

President Ronald Reagan reminded us:

> "You know, four years ago on the 40th anniversary of D-Day, I read a letter from a young woman writing of her late father, who'd fought on Omaha Beach. Her name was Lisa Zanatta Henn, and she said,
>
> "We will always remember, we will never forget what the boys of Normandy did."
>
> Well, let's help her keep her word. ***If we forget what we did, we won't know who we are.***"

["Ronald Reagan's Farewell Address to the Nation," January 11, 1989]

Many young people today have forgotten what those "boys of Normandy did," and they don't know who we are! They've been helped to forget. They've been helped to have never even known what those boys of Normandy did. They have been helped to not know who we are. We must remind ourselves, remind all of us, collectively, who we are as a people. Remind ourselves what we are, as the best of what we've been, not the worst. Every country has its faults. We need to remember the ideals we hold dear in our unique American experiment with representative democracy. We've striven to correct our errors through the Civil War and the civil rights movement and its successes. We must carry on!

When we fought the Nazis during World War II, we weren't just fighting a warmongering nation; we were fighting a worldview filled with evil. As we have seen so thoroughly here, that worldview has come to our shores. Now we have to fight it again!

With the baby-boomer generation just entering the elderly range, with more to come, with the economic crisis being worsened by out-of-control deficit spending, elimination of the elderly, disabled and terminally ill will be, and already has been, suggested as "necessary" by those who hold the utilitarian worldview. We are looking at a "T-4" program much larger than Hitler's. Our government may not be rounding up an ethnic group, but government programs like Medicare, Medicaid and a possible nationalized health care system will funnel the vulnerable into the NHPCO/euthanasia-flavored "end-of-life care" with "Third Way" killing widely practiced, and conveniently hidden by the HIPAA wall of silence.

In order to create more and more supporters of the utilitarian agenda, proponents call for earlier and earlier "pre-school" programs, just the type of "education" Marx and Engels would applaud. Early pre-school reduces the parental role in educating (indoctrinating) the children. The goal for socialists is to indoctrinate the children at so early an age that they would not acquire "bourgeois" religious faith, morality and Judeo-Christian values. They end up disrespecting all traditional values and know nothing but self-indulgence and think nothing of acting in ways that hurt others if it furthers their own momentary focus. It ends in anarchy that government elites can manipulate and exploit to their own ends.

"Give me the child for seven years, and I will give you the man." is the famous quote attributed to the Jesuits. Many have recognized this truth. Plato wrote:

> "And when children are born, the offspring of the brave and fair will be carried [off]; .... care however must be taken that none of [the mothers] recognise their own offspring;
>
> [*The Republic*, by Plato]

Plato suggested that the nation's indoctrination could be most successful when the parental influence was removed. However, just because we are taught to admire Plato's philosophical achievements and intellect, his ideas and proposals are not necessarily "right," fair or humane. Some of his ideas clearly clash with the values that have made for our American way of life. Marx and Engels agreed with Plato, though. So did Hitler and his National Socialist collaborators:

> "Schools were a primary target for control and their administration was placed in the hands of the party faithful. By 1938, the German school system was brought under the total control of the central government and removed from the jurisdiction of the individual states ... (Huebner, 1962). .... The entire educational system was politicized, but primary and special schools received the most attention, secondary schools reached only about a quarter of German students and were more difficult to change (Mayer, 1966). New textbooks and curriculum guides were full of Nazi propaganda, hateful racist stereotypes and myths of Aryan superiority (Mosse, 1966). .... Early childhood and kindergarten systems were also brought under government control and church and privately sponsored kindergartens were banned. .... It was a common sight to see three year olds marching and waving flags in a military parade."
>
> ["*Hitler's Unwanted Children*" by Sally M. Rogow]

Just because the open language of Marx and Engels, or Plato, or the Nazis, is no longer used, doesn't mean that the same goals are not being pursued incrementally, whether in kindergarten, pre-school and now even in "early preschool." What is our country's Secretary of Health & Human Services doing? "She has teamed up with [others] to raise the quality of early childhood education programs." And while it all sounds great "for the sake of the children," there is something else going on. It is absolutely not all about the children. It's about growing government's role in controlling people's lives, the lives of our children, the indoctrination of our children and

reducing the parental role.

There are state-approved "birth to three" programs being implemented around the country, and while parents have a role, it's one more incremental step that may be used to lessen parental influence while increasing governmental influence in a child's development, beliefs, values and faith (or lack of faith). A little change to the curriculum here and there, year after year, shapes the mind and conscience of the young. Parents have been protesting some of the content of public school curricula for years. We know what it's about, and it has nothing to do with supporting the parents' values or worldview!

The founders of our nation envisioned free public schooling for children provided at the local community level, with local community values, not nationally-imposed values. When the federal government began providing funding to the states for education and many other programs, the states ceded control of their schools and programs to the federal government to a large extent. And when local schools started accepting funding from the state, they ceded control to the state. To a large extent, local control of the public school curriculum has been eliminated, no matter how much parent teacher councils and local school boards do; their choices are limited.

Homeschooling, private schools and the school voucher program (to give parents a choice) are some of the solutions to the indoctrination going on in public schools. There may be wonderful teachers in the public schools, yet the textbooks and curricula used are often designed by those wishing to shape the attitudes of the next generation of leaders. Parents who are actively involved with their children and regularly discuss the issues with them will be better able to raise independent-minded children who will blindly accept the values and beliefs shared with them in school.

It's clear that the ever expanding sphere of Big Government in our society is absolutely contrary to the limited role envisioned by our founders. When it involves early education, it is antithetical to the faith-based upbringing that can be provided by a traditional family with the support of an extended family. It is antithetical to the upbringing given to Americans for most of our history. Again, there is no need for state-influenced early preschool or preschool when the traditional family, extended family and local community is there as a support network for all sorts of purposes, including education of the children at an early age. The bigger the role of government, the more parental rights are violated and nullified. "Schools [even] arrange secret abortions" without notifying the parents at all. On Aug. 31, 2011, the California legislature enacted a law that allows "a minor who is 12 years of age or older [to] consent to medical care related to the prevention of a sexually transmitted disease." What does a 12 year old know about the adverse effects of vaccines? And what does this new "power" given to 12 year-olds do to their respect for the authority of their own parents? The vaccine makers make billions selling mandated vaccines, have no liability for their harmful effects, all while government intrustion into private medical decisionmaking accelerates at an exponential rate.

What will our children be taught, and how will it affect our society as a whole? We need not look far:

> "Law, morality, religion, are ... so many bourgeois prejudices ...."
>
> [*The Communist Manifesto* by Karl Marx and Frederick Engels]

They're not talking about the "law" they would institute. They're talking about law based on Judeo-Christian principles. "Morality" according to the Communist Manifesto is just a "bourgeois prejudice." Clearly, they reject all scriptural instruction regarding values that are considered absolute. On the other hand, what would Marx and Engels think about today's moral relativism? Where "anything goes?" What would they think about public school sex education that promotes the idea that "everybody's doing it" (when research shows that is not true), and children can be given birth control without a parent's consent, where a child can be operated upon to kill her baby without even informing a parent?

What would they think about entertainment where sexual promiscuity is elevated and shown every night on TV, where those of faith are mocked as "fanatics," where the hero figures of days gone by are mostly nonexistent, where men are ridiculed as ineffective, stupid and unfaithful, where woman are portrayed as mostly unfaithful, uncommitted, against marriage, where suicide is considered a "right," even though expressly forbidden by natural law, Judeo-Christian ethics as well as the ethics of many major faiths? Marx and Engels would be pleased. We've come a long way down the path they showed the world. Cass Sunstein, the communist-leaning administration-appointed "Regulatory Czar," says that marriages should not be recognized by the government, rather they should be "strictly private matters."

Many have assumed that the "communist threat" is no longer a factor in America. The truth is quite the opposite. The American way of life has been attacked from within by several forces. Those promoting euthanasia, eugenics, utilitarianism as well as socialism have never stopped working to shape the young in the schools, the universities and society as a whole. Our society has largely abandoned traditional Judeo-Christian values, American values, even though lip service is given in order to continue the collective self-delusion. This is part of the poison that has allowed our society to go so far astray.

Remember Willard Gaylin, MD? The co-founder of the Hastings Center that had a pivotal role in shaping how Last Acts worked to change America's view of death and dying and changing how Americans die? Right. Gaylin is a "clinical professor of psychiatry at Columbia College of Physicians and Surgeons, specializing in the private practice of psychiatry and psychoanalysis. He is presently serving on the board of directors of several organizations including: **Planned Parenthood** Federation of America, Inc., ... and The Hastings Center." So, one of the leaders who has shaped how America dies and thinks about dying (and helped twist Dame Cicely Saunders' vision of hospice into the culture of death) sits on the board of the largest killer of babies in the world, Planned Parenthood.

Those who promote a secular, utilitarian view of the world are in charge of our government's approach to health care. We've discussed several influential leaders and advisors shaping how our society moves steadily toward a culture of death. One memorable example is Daniel Callahan, PhD, the other founder of the Hastings Center:

> Dr. Callahan is an elected member of the Institute of Medicine, National Academy of Sciences; a former member of the Director's Advisory Committee, the Center for Disease Control and Prevention, and of the Advisory Council, Office of Scientific Responsibility, Department of Health and Human Services.

Yes, the same Callahan who was a member of the American Eugenics Society, founder of the Hastings Center that worked with Last Acts to change how Americans think about dying and how they die, and, most famous for his quote, "***a denial of nutrition, may, in the long run, become the only effective way to make certain that a large number of biologically tenacious patients actually die***. This is the guy that advises the United States Department of Health and Human Services "Office of Scientific Responsibility." How does that strike you? Is he the person you would want to decide whether you live or die, or whether your loved one lives or dies?

The contrast between those pushing the culture of death and those who affirm the sanctity of life is like night and day. To fix the problem, we've got to simply turn around, get off this road, a path designed by the utilitarian, socialist, anti-life culture of death. Many of them control what is happening at the government level, both state and federal. They know about the medical killings. They want them to happen. But we must remember that they are not wiser, smarter, better qualified in any sense to decide that America must resemble Nazi Germany in how it treats the most vulnerable of us all. You are wiser and together the people can be more powerful than any elite group. Whatever they set out to destroy: religion, family, traditional values and morality .... these are the things that we need to strengthen.

I know that many of you (if you have experienced tragic medical killings in your family) have hoped that you could call or write to some person, organization or government agency to get justice for your loved one or prevent it from happening to others. It is clear that the answer is not so simple. Many have tried to get justice or have the problem corrected by government without any response at all. Some have tried for years. The answer to these problems is simple, but it is not going to happen by calling any person or by contacting any governmental department. This is a societal problem that now exists in just about any level of government and a large percentage of our society, even throughout the world. These problems will only be corrected through great effort applied over time, as long as it takes for our elected officials, judges, physicians and a majority of the people honor life and understand how precious it is. This is what we have collectively forgotten.

Do not despair! Do not give up! Whenever all hope seems lost, remember He is there to see us through. May the Lord bless us all and keep all of us safe from those who would do harm.

There have always been challenges, fears and threats to our nation and its people. Do not think for a moment that we cannot turn our nation around. Each of you, each of us, has a power within that knows no bounds. Simply start with what you can do and see where it leads. You may be afraid. You may doubt, but with faith you can achieve wonders! It may be the "boy scout" in me (yes, I was in the scouts for a few years, but my brother was the Eagle scout), but as I was taught, we need to leave the world a better place because we passed through here. Each of us can do that. The new generation of Students for Life of America is working to make our society a better place. Others are also joining the work.

Together, we must fight the corporatism dominating our government, influencing our elected officials. They are elected to represent us. They are not elected to act as puppets for the corporations, whether multinational or not.

We must elect leaders who remember their duty to the people! We cannot afford to sit back any longer.

We must elect leaders who remember all the people, even the tiniest of emerging lives and the fading elders who should be respected and cared for.

We must demand that the U.S. Justice Department start enforcing the full force of the anti-fraud statutes and require 100 percent repayment of all funds stolen from the U.S. government, from

the people! We must demand that the U.S. Justice Department prosecute and imprison those who defraud the government. We can no longer afford to reward those who steal millions!

Once we do, and once our elected representatives know how strongly we feel about life, they will have no choice but to return to the right path. Those who are pro-life have remained silent for far too long about end-of-life matters. We can no longer sit back and assume that government is going to "do the right thing," or that we can just "trust them." Our collective silence has cost many, many thousands of lives! Our silence and apathy has come at a terrible cost, one that will eventually touch every family in America. We must speak out loudly! We must not back down!

Perhaps most of us have been too comfortable in this nation having relatively little concern that someone we love may be taken away from us through illness. Due to improvements in water quality, hygiene and sanitation as well as advances in medicine, most of our children no longer die from formerly lethal childhood diseases. We have forgotten how dear and fragile life is and apparently can only learn the lesson when it is too late. When there are tragic losses of life, the people will regain their understanding of what life is all about. ***We must proclaim the sanctity of life again and again, never stopping to think that "that's all we need to do."*** It is something that must be taught to our children and to all the generations, otherwise our nation is lost. We must reclaim America's heritage and reaffirm our collective reverence for and gratitude for life.

During the widely publicized battle to save Terri Schiavo's life, thousands of people protested, wrote letters, emails, went to Washington and the state capitol in Florida, protested outside the Woodside hospice facility of the Hospice of the Florida Suncoast. After all the legal wrangling and court decisions were done, Terri was killed. Many thought that was the end of it, but as we've seen, her execution was the public "show" execution put on for the "benefit" of the world, to demonstrate that the disabled *can* be killed and *should* be killed. That image, deliberately imprinted onto our minds, was the desired result of the "show" execution. The major media writers did not give voice to those disability rights activists who protested for years. They parroted the words of the euthanasia advocates in the hospice industry.

After Terri's death, many went "away," back to their regular lives. For others, the work to save the vulnerable has never stopped. Day after day, night after night, we labor to save the vulnerable in whatever way we can. Getting the truth out is one of the biggest tools we have to fight back. That is why the overall context of what we've discussed in this book has been omitted from the major media coverage of the issues. This book contains the most-censored story in America, the story the editors of the newspapers refused to share with you. The story that liberal newspapers refused to print. The story that even conservative newspapers refused to print! The story that officials in government, health care, and policymaking circles do not want you to know.

Since Terri's death, there have been thousands of "Terris" put to death out there, some of them very elderly, some them disabled, some brain-injured, some just vulnerable in one way or another. As Dr. Byrne cautions, patients who are brain-injured are being looked upon as donors, rather than patients in some cases and being treated to preserve the organs, not to help the patient recover. It is important to make sure that you advocate for the patient so they get care that optimizes their chances for recovery.

Terri's family, brother Bobby, sister Suzanne, mother Mary and Bob, Sr. continued the work to help others and prevent future imposed deaths through the Terri Schiavo Life & Hope Network. Other patient advocates have been watching the developments unfold through the years, and we are alarmed by what we see. If I could ride through the streets of America shouting, "the redcoats are coming," I'd do that, but there are no "redcoats" coming. There is, however, a tidal wave of death-dealing coming our way. This book is my way of warning you and your loved ones. There is no more time to "sleep."

Even a small light on the shore can alert sailors guiding our ship of state to the dangers of running aground. It is in this spirit that I offer this to you, to our nation, and to people everywhere.

March 31, 2011 marks six years since Terri died. Her death was a wakeup-call to America. And it still matters! We cannot forget. The Lord cares what happens to the ailing, the poor, the disabled, elderly and abandoned:

"This is what the Sovereign LORD says:

"You have not strengthened the weak or healed the sick or bound up the injured.

"Therefore, ... I myself will search for my sheep and look after them.

***Book of Ezekiel* 34:2,4,7,11,16**

H.A.L.O. - Hospice Advocacy & Leadership Organization

Dr. Cristen Krebs, DNP has started an end of life advocacy organization called HALO (Hospice Advocacy & Leadership Organization) to begin educating patients and their families about their end of life rights, the Medicare hospice benefit, and the standards of care before patients are admitted to hospice. She says, "a little education can go a long way to encouraging the very best in end-of- life practices and outcomes." The HALO project will create local end-of-life support groups starting in Pittsburgh and elsewhere around our nation. This is an integral part of renewing the pro-life end-of-life care mission in America.

Hospice Life Association: Respecting Life at the End-of-Life

Some dedicated, visionary leaders in the hospice industry are beginning the formation of a new organization to restore the mission Dame Cicely Saunders brought to the world and to renew the industry from within and without. A new Hospice Life Association that promotes respect for life at the end-of-life will create a safe haven for those hospice and palliative care providers and staff that honor the lives of the vulnerable. It will promote a renewed industry more in line with traditional American values. End-of-life providers, whether "hospice" or "palliative care" or even the new "advanced illness" providers, all of those who recognize the sanctity of life can join and promote a professional, clinically advanced service for those needing care. My friend and one of my inspirations, Dr. Cristen Krebs, DNP is the founder of the Catholic Hospice of Pittsburgh. She is fighting the fight for the needy.

The Catholic Hospice of Pittsburgh is one shining example of a pro-life hospice that affirms the sanctity of life and the Hospice Life Pledge. They are currently raising money to build a pro-life hospice facility and expand their services to the public, so they can serve many patients and families from all over who come there for end-of-life care, ... care that affirms the value of each and every patient. This is the type of hospice we need to support and encourage around the country, wherever we may find them.

Cristen Krebs is also working to create a new Hospice Life Association of America as well as working with other pro-life leaders in the Pro-life Healthcare Alliance to create pro-life hospices and facilities. Through the new Hospice Life Association of America, people will be able to find a place that will provide the services they expected and need so desperately ... hospices or palliative care providers who will say, as did Dame Cicely Saunders,

> "***You matter because you are you, and you matter to the end of your life. We will do all we can not only to help you die peacefully, but also to live until you die.***"

Hospice and palliative care administrators, agencies, professionals, and lay people, any who are pro-life, can get more information about helping to create pro-life hospices in their area, and work to associate through a Hospice Life Association of America, from Cristen at the Catholic Hospice in Pittsburgh, PA. The Association is a membership organization that will provide a safe haven for those working to provide end-of-life care that affirms the sanctity of life. People can also get information about the pro-life hospice services and the new pro-life hospice facility they are planning by telephoning: 866-933-6221.

Pro-life Healthcare Alliance: Renewing Reverence for Life

We must all remember that loving never ends within the culture of life. All creation speaks to us of this truth. Everything we are to do is based upon this never-ending sacrificial love. This is the heart of the moral law. This is the guiding principle that establishes reverence for life within the healthcare mission. This is how patients and their families may truly be kept safe and properly cared for within healthcare settings.

In 2012, a group of pro-life leaders got together at the Stealth Euthanasia Conference held in Minneapolis, MN hosted by the Human Life Alliance and formed the Pro-life Healthcare Alliance ("PHA"). PHA is an international program of Human Life Alliance dedicated to promoting the culture of life within healthcare and society, to creating a network of pro-life organizations, individuals and healthcare providers so that safe healthcare settings are created, to support the work of the pro-life movement and especially to renew reverence for life and for God, which is the foundation for the primary mission of healthcare.

The mission and primary purpose of the Pro-life Healthcare Alliance is to promote the pro-life healthcare philosophy and to encourage the growth, availability, and provision of pro-life healthcare services for all human beings, including those who are preborn, that never hastens or imposes death. PHA is a true *alliance*of many pro-life organizations working together, supporting each other's missions to promote the culture of life. PHA can bring a conference on these issues to your area as well as offering educational resources for you and your community.

If you wish to make a difference in our society, help patients to be safe, and stop the medical killings, visit the Pro-life Healthcare Alliance website: www.prolifehealthcare.org and get involved. Only when we all renew our relationship with the dear Lord and practice reverence for life will we see a change in our society. Only when we put into practice the *ethics of life* will our actions truly protect the people. We must learn about the ethics of life in order to be better prepared to serve our neighbors in our community.

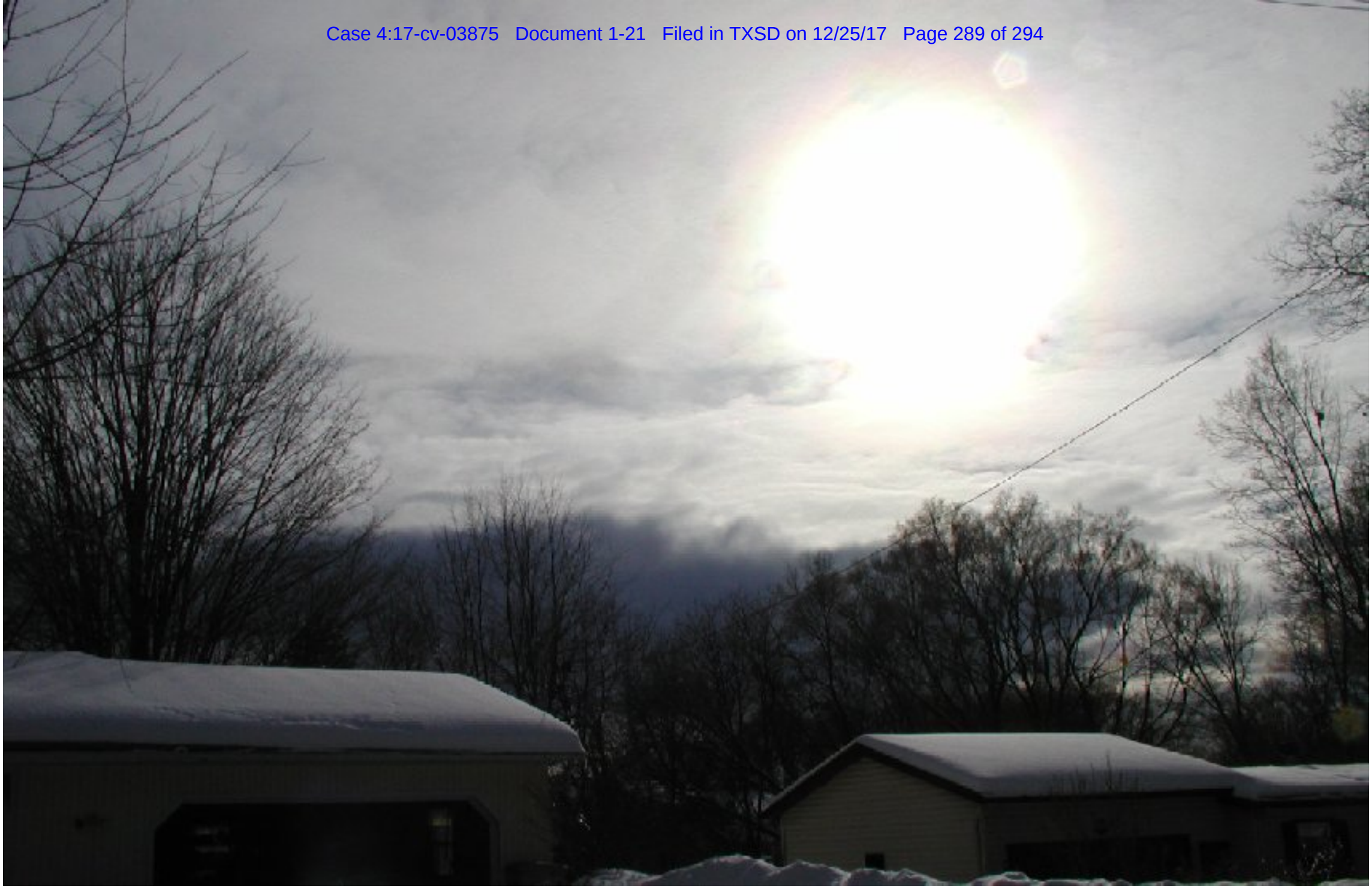
Those of you who wish to help, contact Hospice Patients Alliance, Human Life Alliance and the Pro-life Healthcare Alliance. Support them by volunteering your time, energy and donations for their nonprofit mission. Together, we can change our society for the better!

For those family members who are in anguish because you witnessed the medical killing of your loved one: do not blame yourself! Now you understand how and why it happened. Help prevent it from happening to other patients and their families.

The culture of death has infiltrated many aspects of society, but there are still rays of light peeking out, burning brightly. There are many who recognize the sanctity of life and we must join together. We must remember that those who were concerned about similar changes in pre-war Nazi Germany faced horrific obstacles, yet they stood true to life, to our God and saved many. Ultimately, the Light prevails dispelling all darkness. Accurate information itself is a source of great power. That is why what we've reviewed here has been the most-censored story in America. No more! This book is a gift to you and people around the world, to empower you so you may help the vulnerable around you. Share it with those around you.

Applying this knowledge, guided by your caring heart, conditions will certainly improve over time. Turning our society toward life will not be an easy task, but with prayer and dedication, a way will be found. Many will come to join us in the affirmation of life. Young and old from all walks of life will reach out to help. It is no small matter. This is all about our survival as a moral society that respects the lives of the vulnerable. It's most directly and urgently about their survival. As long as we are here, alive, we can do something in our own lives to make a difference. This is our mission. Perhaps, Terri said it best,

"Where there's life, there's hope."



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Suggested Reading: *The Ethics of Life in Healthcare and Society* (renewing reverence for life) by Ron Panzer. See: www.prolifehealthcare.org/ethics-of-life.html.

Acknowledgements

I would like to acknowledge the tremendous support and help received through the years from so many. Just a few of those many whom I especially wish to thank for helping out, volunteering, educating and informing me are listed below. Each has made many sacrifices to be a voice for life in this world. To list each of their accomplishments and credentials would require pages for each, but briefly:

Vickie Travis, HPA Board member, Pres. - The Managed Care Reform Council, creator - The Kaiser Papers,

researcher for Hospice Patients Alliance, graphic artist, daughter of Adam Wesley Arnold who was a man who became a patient and therefore died a hastened death

Lisa Brenner, HPA Board member, prolife advocate

Jane St. Clair, HPA Board member, author of *Walk Me to Midnight*, journalist, prolife advocate, editor. Jane gave me a lot of good tips to get me on track when writing this book.

Joanne Lestone, HPA Board member, prolife advocate

Barbara "Bee" Becker, retired HPA Board member for several years, long-term nursing home patient advocate, testified before Congress regarding her mother-in-law's murder in a nursing home, Bee has helped locate thousands of articles about patient issues through the years, sharing them with all. She has worked tirelessly for many years to improve the conditions of the vulnerable.

Christina Brundage, RN, dedicated prolife volunteer, former hospice nurse, one of the few hospice nurses in this country willing to speak the truth openly.

Paul A. Byrne, MD, Director of Neonatology and Director of Pediatrics at St. Charles Mercy Hospital in Oregon, Ohio, Clinical Professor of Pediatrics University of Toledo College of Medicine, head of the Life Guardian Foundation, prolife patient advocate, pioneer in the field of neonatology, former President Catholic Medical Association, author, inventor of one of the first oxygen masks for babies, an incubator monitor, and a blood-pressure tester for premature babies, which he and a colleague adapted from the finger blood pressure checkers used for astronauts

Charles Phillips, MD, patient advocate, testified before Congress, prepared testimony for Senator Grassley's Finance Committee" Manipulation of HMO Medical Testing," emergency and family physician, whistleblower, author

Prof Dianne Irving, PhD, Professor of the History of Philosophy, and of Medical Ethics (Georgetown University, Catholic University of America, and The Dominican House of Studies), Christian Bioethicist, author of numerous articles on bioethical issues, career-appointed bench research biochemist/biologist (NIH, NCI, Bethesda, MD), who has dedicated her life to providing the world with scientifically-pristine and logically-sound analysis of the bioethical issues that confront our world. I am grateful she has managed to teach me just a little bit of all she has to offer the world.

Elizabeth Wickham, PhD, Prof. of Economics, Executive Director LifeTree Organization, and Ione Whitlock, chief researcher for Life Tree Organization, both prolife advocates who have done the world an immeasurable service through the meticulous explanation of how the culture of death has infiltrated the hospice and palliative care industries, especially their detailed timelines that leave no doubt how it all happened. Their research on the new P.O.L.S.T. paradigms shows how the railroading of patients will be implemented.

Mary C, RN, a nurse who still cared enough to speak up for the standards of care at the end-of-life, who taught me clinically-precise pro-life hospice care, former cardiac care nurse specialist

Matt Abbott, pro-life journalist. regular columnist at RenewAmerica.com

Nancy Valko, RN, Pres. Missouri Nurses for Life, Spokeswoman for National Assoc. Prolife Nurses. Nancy has shared many articles with us over the years and has offered her keen insight on the issues from the perspective of an experienced nurse, mother and pro-life leader.

Cheryl Ford, RN, patient advocate, author of *Our Fight4 Terri*, the most detailed book about Terri Schiavo written, co-authored with Dr. J.E. Craddock

Linda Peeno, MD, former HMO medical reviewer and hospital ethics committee chair who became a moral crusader against the abuses found in the health insurance industry such as HMOs, PPOs and "managed care." Dr. Peeno testified before Congress twice; her struggle for health care justice is portrayed in the movie, "Damaged Care."

Dr. Cristen Krebs, DNP, founder and administrator of the prolife - Catholic Hospice of Pittsburgh, co-founder of the new pro-life national hospice agency and professional organization: Hospice Life Association of America, co-founder of the H.A.L.O. Project (Hospice Advocacy and Leadership Organization, a patient and family hospice support network)

The Schindler Family and the Terri Schiavo Life & Hope Foundation all of whom are working to protect the most vulnerable among us.

Judie Brown, President and cofounder the American Life League. The American Life League is perhaps the only national pro-life organization to openly recognize the danger that rogue hospices pose to the public and publicized the hospice killings that do occur in many hospice settings around the country.

Earl E. Appleby, Jr., Director, Citizens United Resisting Euthanasia

Rita Marker, JD, Exec. Director - Patients Rights Council (formerly International Task Force on Euthanasia and Assisted Suicide, attorney, author and patient advocate. The Patients Rights Council has a wealth of information on assisted-suicide and euthanasia, their history in the United States and legislative efforts in America.

Steven Ertelt, Editor and CEO of Lifenews.com, long-time pro-life leader who has done so much over many years to further the cause of life. Steve and his staff at Lifenews have brought together many in the pro-life community and helped the public access the facts and stories that are often ignored in the major media.

Alex Schadenberg of the Euthanasia Prevention Coalition who has tirelessly worked to help protect the lives of the vulnerable in Canada and the United States.

Wesley J. Smith, JD, Bioethicist and attorney for Patient Rights Council, patient advocate, author

Ila Swan, long-term nursing home patient advocate, former HPA Board member. Ila is a patient advocates who has truly inspired me.

Craig Dykgraaf, DC, one of the original incorporators of Hospice Patients Alliance, a friend to all, patient advocate and a voice of inspiration.

Larry Pawl, MD, oncologist, patient advocate, former medical director Hospice of Greater Grand Rapids, for encouragement when I first began the Hospice Patients Alliance

Harvey Frey, M.D., Ph.D., J.D. Director - Health Administration Responsibility Project, patient advocate

Vera Sharav of the Alliance for Human Research Protection for many years of hard work promoting responsible and ethical medical research practices, warning the public about what really is happening in the vaccine and research niches of modern American health care.

Many have helped teach me to see the realities as they are, including numerous journalists, writers, scholars and health care professionals whose public (and private) writings and speech shed light on the truth. Many hospice professionals have shared their insights with me. A very few journalists and editors have had the courage to share the truth in an effort to alert the public to dangerous forces that threaten the people of this nation and our spectacular and unique representative Republic. Though almost no journalists have publicly discussed the matters contained in this book, they have explained how powerful forces work. Journalists have told me how (mostly due to corporate ownership as well as the profit motive) the major media has abandoned its role as a type of fourth pillar of government, no longer serving as a check on government when the government's own checks and balances fail to preserve freedom and Constitutional justice.

I also must thank all the wonderful friends who make up the Hospice Patients Alliance around the world who have shared so much with us through the years: their comments and encouragement, insights, experiences, news articles and the problems they've observed. We could not do the work without you, your support and encouragement!

As always, my beautiful wife, Dorothy and son, Jonathan who have been so understanding and supportive of the work and whose love has brought me so much joy!

About the Author:

Ron Panzer is President of Hospice Patients Alliance, a patient advocate and member of the National Association of Pro-life Nurses. More information about Mr. Panzer can be found at the Hospice Patients Alliance website, by email. Hospice Patients Alliance services are made possible through donations from the general public. Mr. Panzer may be contacted at:

Hospice Patients Alliance
4680 Shank Street, NE
Rockford, MI 49341
Tel. 616-866-9127

What Others Have to Say About This Book:

"Ron Panzer's knowledge of the health care industry -- and its dark side -- is exceptional. Equally exceptional is his dedication to authentically pro-life hospice care. Every person who works in health care, and particularly those who deal with end-of-life issues, would do well to read Ron's new e-book Stealth Euthanasia: Health Care Tyranny in America. Dare I say that many of them are in for a wake-up call!"

Matt Abbott, Catholic pro-life journalist

"To know the truth means you won't always wonder why.
To understand the why provides the tools to stop the damage that is being done.

"This book provides the tools to stop the killing of innocent people in a medical setting.
For the first time, how and why patients are quietly being killed is explained by someone with an inside view of the industry.

Use this extensively-researched book as a tool to protect yourself, your loved ones and future generations.

Vickie Travis
President - The Managed Care Reform Council and creator of The Kaiser Papers

This book is being provided free of charge in the *web* version as a public service of the Hospice Patients Alliance.

***This book contains the most-censored story in America* and we cannot guarantee that this information will be available in the future. There are many who do not want you to learn what is contained in this web-book.**

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Note: The people of our nation urgently need this information to understand what is happening to our society and how their way of life is being threatened. We encourage everyone to share it. Some names and/or details have been changed to protect the privacy of some individuals mentioned. If you believe that any account given here reflects something that happened in your family or a case that you know about, the similarities are coincidental. There are thousands and thousands of cases like these each year in the United States.

Hospice Patients Alliance is a charitable nonprofit organization working to promote the very best in end-of-life care and renew the pro-life mission of hospice that encourages people to live their lives fully until they die. Hospice Patients Alliance is only supported by donations from the public, people like you.

We need your donations to continue our work. Please donate to support this vital mission!

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NO. 456,059

IN RE GUARDIANSHIP OF	§	**IN PROBATE COURT**
	§	
MURIEL LUBA MINTZ	§	**NUMBER FOUR 2 OF**
	§	
AN INCAPACITATED PERSON	§	**HARRIS COUNTY, TEXAS**

PLEA TO THE JURISDICTION, MOTION TO VACATE WITH TEMPORARY RESTRAINING ORDER & REQUEST FOR INJUNCTIVE RELIEF

TO THE HONORABLE JUDGE OF SAID COURT:

COMES NOW BARBARA LATHAM, hereafter Movant, and files this Plea to the Jurisdiction, Motion to Vacate the SHOW CAUSE ORDER and ORDER TO PRODUCE DOCUMENTS *with respect to documents related to the Mintz Family Trust IN THIS GUARDIANSHIP CASE for improper venue, want of jurisdiction, lack of standing and fraud on the court by Michele Goldberg and Donald Mintz (with his attorneys)* in knowingly misrepresenting the MINTZ FAMILY TRUST to be a revocable trust benefitting the proposed ward or subject to the control of MURIEL MINTZ, when both knew that the trust was not part of the guardianship estate, (such that it should never have been the subject of any court order in this case), when GOLDBERG had no standing to demand bank account documents related to the MINTZ FAMILY TRUST or LATHAM'S personal bank accounts.

MOVANT further seeks a TEMPORARY RESTRAINING ORDER AND TEMPORARY INJUNCTION AGAINST DONALD MINTZ AND HIS ATTORNEYS

OR ANYONE ACTING IN CONCERT WITH HIM, AND MICHELE GOLDBERG or any person acting in concert with her ("enjoined persons"), to stop the unauthorized taking or freezing of LATHAM'S funds or funds belonging to the MINTZ FAMILY TRUST in this case in the absence of further COURT ORDERS authorizing such action expressly by this Judge; ordering by mandatory injunction that all enjoined persons return all fees taken from LATHAM OR THE MINTZ FAMILY TRUST within 72 hours, CEASE ANY AND ALL further attempts to freeze any of LATHAM'Spersonal accounts or the trust accounts; ORDERING that the enjoined persons and parties to this case refrain from disturbing the peace of LATHAM, NELSON OR MURIEL, blocking visitation, access to the proposed ward or access to medical information and staff communications concerning MURIEL'S medical condition and status, mandating that GOLDBERG execute HIPPAA releases for all records and medical information to all three children of MURIEL MINTZ, engaging in any deception or making false statements to this court or anyone else in this case; or engaging in any of the list of prohibited acts listed below while mandating compliance with all mandatory provisions of the Court's TRO and Order for injunctive relief.

FACTUAL BACKGROUND AND HISTORY

Without any evidentiary hearing having occurred to find that LATHAM engaged in malfeasance or self-dealing or violated the trust in any way, or took her mother's assets in violation of any law, Michelle Goldberg removed $6063.05 from LATHAM'S personal checking account with Bank of America ending in 7007, knowing that the trust assets did

not contain MURIEL'S estate assets by the express terms of the trust (and no knowledge to suggest MURIEL was impaired when she created the trust or intended to defraud the federal government by making such intervivos gift), and having no standing to demand trust documents or personal documents related to such trust given it was irrevocable, the beneficiaries are her children only and the trustees were LATHAM AND MINTZ, with MURIEL relinquishing all right title and interest to the same. Ostrom Morris' Stacy Kelly improperly obtained an order enjoining Bank of America from releasing (by freezing funds) in LATHAM'Spersonal IRA accounts ending in 4167 and 7907 given venue is mandatory in Brazoria County, Texas due to the fact that LATHAM resides and manages the trust from Brazoria County, pursuant to the mandatory venue provision of Texas Trust Code 115.002.

MICHELE GOLDBERG spent substantial billable time reviewing the terms of the IRREVOCABLE MINTZ FAMILY TRUST, researching relevant issues, and is a trust attorney involved in approximately 300 cases in Harris County probate court. *See Goldberg's billing and request for fees of over $18,000 in which she admits reviewing the trust several times, researching and then spending substantial time drafting a show cause motion and order to compel BARBARA LATHAM to produce documents related to the IRREVOCABLE MINTZ FAMILY TRUST, which she knew MURIEL MINTZ created two years ago to benefit her three children exclusively and relinquished all control, right and title to any assets in that trust to co-trustees BARBARA LATHAM AND DONALD MINTZ,*

with the only other beneficiary being ESTELLE NELSON. See Mintz Family Trust, produced by DONALD MINTZ in Cause No. 462505 11/27/17; for which this Judge signed GOLDBERG'S show cause order specifically forcing LATHAM to produce trust documents related to bank accounts to which she had no standing or right to demand in this case.

DONALD MINTZ'S attorneys realized before November 27, 2017 that the guardianship court lacked jurisdiction over the MINTZ FAMILY TRUST in Cause No. 456059 as evidenced by them filing Cause No. 462505 (trust case), knowing that this court had no jurisdiction to attach the trust to this guardianship and that the alleged torts and breaches of LATHAM with respect to such trust were subject to mandatory arbitration and could not be filed in a court of law other than to compel arbitration.

Yet, they continue to seek relief to which they are not entitled in this court and which this court has no authority to grant—based on fraudulent statements—some of which were perjured, such as Donald Mintz's affidavit swearing the trust was revocable and belonged to the estate of MURIEL MINTZ. As stated herein, the trust was settled in 2015 for the exclusive benefit of MURIEL MINTZ'S CHILDREN by DONALD MINTZ'S efforts to have it drafted with him choosing the terms so he knew that MURIEL relinquished all right title and control to the assets and was not a beneficiary. He also knew the trust was irrevocable which was the opposite he swore to in order to get the court to seize it.

MINTZ chose the terms of the trust, rendering it akin to a contractual agreement, but he also accepted benefits of the trust in at least $14,000 so he is estopped from denying the mandatory arbitration clause and it is an abuse of discretion for any court to refuse to compel arbitration. *See Original Petition, Application for Removal of Trustee, and for injunctive relief attached hereto and incorporated fully by reference with the Mintz Family Trust attached. See also Texas Trust Code 115.002, Texas Arbitration Act and Rachal vs. Retiz (Tex. 2013). Yet, MINTZ and his attorneys pursued a separate trust case once they realized that the trust was not properly invoked in this guardianship and deceived the Court once more by failing to disclose that this case is subject to mandatory arbitration with mandatory venue in Brazoria County under Texas Trust Code Section 115.002.*

MANDATORY BRAZORIA COUNTY VENUE
TEXAS TRUST CODE SECTION 115.002

MINTZ admitted that he ceased to manage the trust as co-trustee, abdicating all responsibility as a fiduciary to me the only remaining co-trustee, which he disingenuously refers to me as a purported trustee and himself as a trustee, after admitting he relinquished control of the trust to me. *See Cause No. 462 505; Trust lawsuit filed November 27, 2017.* He knew that venue is MANDATORY IN BRAZORIA COUNTY because the sole acting trustee, LATHAM, lives in BRAZORIA COUNTY and that is the situs of the trust's management. MINTZ deceives the Court with mere semantics by stating that he ***relinquished control and then denying that he resigned***. MINTZ cannot walk away from his duties as trustee and breach and then decide to return to his post. He also misrepresented

his access to the trust, insisting that LATHAM blocked him from serving as trustee and access to the trust when GOLDBERG told the Court and parties that MINTZ met her at the bank and provided full access to the accounts he claims to have been denied access to. On top of this outrageous claim, he accuses her of breaching duties when her actions were intended to protect the assets from improper seizure and malfeasance which MINTZ was consistently involved in to exploit MURIEL MINTZ. *See Affidavit of Barbara Latham*. He cannot identify any means by which LATHAM has exceeded authority granted in the trust, rendering his lawsuit frivolous, despite the fact that it doesn't belong in court and certainly not in Harris County regardless.. Tex. Prop. Code. 115.001 et seq. *See previously filed MOTION TO TRANSFER VENUE TO BRAZORIA COUNTY, VERIFIED AND GENERAL DENIAL & MOTION TO COMPEL ARBITRATION; filed in Cause No. 462505 filed in this Court November 27, 2017.*

MANDATORY ARBITRATION

MINTZ and his attorneys know that the trust action they filed is **expressly prohibited** by the TRUST instrument itself because arbitration is mandatory under its express terms and Texas Supreme Court authority as announced in the 2013 case of RACHAL VS. RETIZ IN 2013 that any arbitration clause in an intervivos trust is strictly enforceable pursuant to the Texas Arbitration Act, Trust Instrument, estoppel by benefit, and the fact that he is the one who chose the terms, rendering it akin to an agreement to arbitrate. 403 S.W.3d at 842.

REQUEST TO SET ASIDE ORDERS REGARDING TRUST AND PERSONAL BANKING DOCUMENTS PENDING MANDATORY ARBITRATION UPON TRANSFER TO MANDATORY VENUE

LATHAM respectfully requests that the Court set aside the SHOW CAUSE ORDER issued November 10, 2017 and ORDER TO PRODUCE documents PERTAINING TO TRUST DOCUMENTS OR PERSONAL BANK DOCUMENTS OF BARBARA LATHAM RELATED TO TRUST TRANSFERS because: (1) mandatory venue of any motion to compel arbitration is in BRAZORIA COUNTY, TEXAS, not HARRIS COUNTY, TEXAS under Texas Trust Code 115.002, (2) Michele Goldberg lacked standing to file a show cause order or seek the order to produce documents RELATED TO THE MINTZ FAMILY TRUST, a trust which she knew was not part of the guardianship estate and (3) this case was initiated by the fraudulent perjured affidavit of DONALD MINTZ with GOLDBERG knowing that the trust should never have been part of this proceeding after billing thousands to read the trust, researching issues a trust lawyer should already know, drafting a 73 page show cause motion and order that she had no standing to demand, and obtaining an order that is likewise void because she had no standing to demand it;

SET ASIDE OF TEMPORARY RESTRAINING ORDER & GRANTING MANDATORY AND PROHIBITIVE TRO IN LATHAM'S FAVOR

LATHAM seeks a temporary restraining order and temporary injunction in Cause No. 462505; mandating that GOLDBERG, KELLY, OSTROM MORRIS, MINTZ and all

associates or persons acting in concert remove their restrictions on BARBARA LATHAM'S personal accounts and the trust accounts, as well as return any funds taken from the same and further comply with the ORDER submitted herewith, the items are listed in this MOTION.

RELEVANT FACTS AND HISTORY

On March 8, 2017, Donald Mintz filed an Application for Guardianship of the Person and Estate of Muriel Mintz in Harris County Probate No. 2. In the application Donald Mintz swore under oath via affidavit to the following, when he knew that it was false;

> *"The Proposed Ward's Estate consists of bank accounts containing approximately $108,764* ***and a revocable living trust containing approximately $116,000. Although the Proposed Ward is not the Trustee of this Trust, she does have the power to appoint its assets or demand distributions."***

Donald Mintz was the person who sought out longtime friend, Jim Moulder, to prepare the MINTZ FAMILY TRUST with the intention of funding it with MURIAL MINTZ'S assets solely for the benefit of her three children, naming as co-trustees BARBARA LATHAM AND DONALD MINTZ, and expressly omitting MURIEL MINTZ as a beneficiary, trustee or interested person having any power to modify its provisions in any way by making it IRREVOCABLE. MINTZ knew in 2015 that this trust was irrevocable and NOT REMOTELY PART OF MURIEL MINTZ'S ESTATE. He also

knew that MURIEL MINTZ had no power to appoint or modify the irrevocable trust in any way and that she was not a beneficiary of the trust by his express design and request, yet he defrauded the court by the foregoing sworn, perjured statement. *See Application for Guardianship of Estate and Person of Muriel Mintz filed by Donald Mintz*. Proof that MINTZ'S attorneys have known that the MINTZ FAMILY TRUST is not part of the guardianship estate and should not have been part of any court order in the guardianship case lies in the fact that his attorneys filed an entirely new case, Cause No. 462505 for breach of trust, as they attached a copy of the MINTZ FAMILY TRUST with their pleading filed on the 27th day of November 2017, which unambiguously reveals the foregoing.

In Donald Mintz's "Application for Removal of Trustee", filed November 27, 2017, in No. 462505, he exhibits a copy of the Mintz Family Trust, the Trust at issue. One can clearly see at page 3, that Donald Mintz signed the Certificate of Trust on the day the Trust was created and has personal knowledge of its content. The only beneficiaries are Donald Mintz, Estelle Mintz Nelson, and Barbara Latham. The initial co-trustees are Donald Mintz and Barbara Latham. The trust was created irrevocable at inception, and Muriel Mintz disclaimed all right, title and interest in both the principal and the income retaining no powers of appointment what-so-ever. *Donald Mintz Affidavit is clearly false*. All of the effort to seize this inter vivos Trust under the presumption that it contained "estate "assets and all of the efforts to force disclosures from the Active Trustee are based upon Donald Mintz knowingly **perjured Affidavit**. **Based upon the contradictory evidence and**

claims between the two separate filings, a presumption of validity can no longer be indulged in favor of Donald Mintz assertions. Filing that false affidavit is a felony that resulted in the improper abduction of Muriel Mintz, the improper seizure of her assets and the improper efforts to seize the assets in a Trust Donald Knows full well does not contain assets belonging to the estate of Muriel Mintz.

The Guardianship pleadings clearly state that Donald relinquished control and dumped all the fiduciary obligations and administration responsibilities on Barbara Latham. One can only interpret that statement as an admission that Donald either refused or ceased to serve. Under the Property Code beneficiaries can request a full true complete accounting but Donald Mintz cannot bring an action to enforce a right that has not been proven to have been interfered with, nor can he ask the court to presume malfeasance where none has been shown.

Not only has Donald and his counsel been disingenuous with the Court, by his own admissions he is in breach of his fiduciary duties and any breach that Barbara committed, if any, would be a liability she would share with her co-trustee, co-beneficiary. A reading of the Trust however, indicates a great deal of latitude is given to the trustee and without a full true and complete accounting, allegations of impropriety would appear to be premature. The trust code itself mandates that a request for accounting be made first before a suit to compel a trust accounting can be filed. Donald skipped past both of these steps and the accounting he produced is false by stating that he never had control of assets and

laughable on its face. *See Affidavit of Barbara Latham, check to Donald Mintz and accounting of Mintz vs. Accounting of Goldberg.*

Goldberg's Show Cause Motion states at page 3 item 6, *"Although Donald has not resigned as Co-Trustee, he has relinquished management to Respondent, who is the other Co-Trustee". The Motion* does not explain exactly how this relinquishment of management to Respondent transpired but the claims in the Application for Removal of Trustee" allege that Barbara has refused to allow Donald to participate as a co-trustee. Goldberg proved this was false by disclosing that she met Donald at the bank and he provided her full access to all accounts at issue. Proof that she had access to accounts lies in the fact that she even seized over $6000 from Barbara Latham's personal account without any notice to Barbara or proof of wrongdoing—or COURT ORDER authorizing GOLDBERG to seize LATHAM'S money.

An Inventory of the Estate" of Muriel Mintz was filed on November 3, 2017 and approved by the Court on November 6, 2017. According to the "Approved Inventory" the "Estate" of Muriel Mintz contains assets worth $107,381.48. Given that Donald's Affidavit states the Estate worth at $108,764 and that his estimate of Muriel's Estate was fairly accurate when compared to the approved inventory, it is difficult to believe that Donald has been kept in the dark, or anything else he claims for that matter.

MICHELE GOLDBERG billed for reviewing the trust and performing research to interpret the MINTZ FAMILY TRUST and determine its relevance in the guardianship

proceeding in October of 2017, but continued to pursue the SHOW CAUSE ORDER dated November 10, 2017 (approximately one month later) to force BARBARA LATHAM to produce documents concerning the trust when she had no standing to demand the same, no standing to demand an accounting, and knew without any shadow of a doubt that the trust was not part of the estate of MURIEL MINTZ. As an experienced attorney, it is nearly impossible to think this was an oversight.

Further, the Temporary Guardian states:

> *"Since her date of qualification, Movant has tried to take possession of Ward's accounts in any known financial institutions, but is having difficulty gathering needed information to locate and secure such assets."*

This would make sense given that she is inquiring about assets that are not property belonging to the estate. Moreover, the attorneys that filed the Trust exhibit one day and then argued in favor of the TRO in the Guardianship proceeding the next, perpetrated a fraud upon the court knowing that assets in the Mintz Family Trust are not property belonging to the estate of Muriel Mintz and do not come within the subject matter jurisdiction of the Guardianship Court. They demonstrated their awareness of this fact in filing *Cause No. 462505; In re Mintz Family Trust on November 27, 2017, albeit in the improper mandatory venue and in violation of the arbitration clause, which is mandatory and precludes litigation such as these two cases as it concerns trust assets.*

Donald Mintz's Counsel knowingly filed that Trust as an exhibit in a separate action and withheld it from the eyes of this Court, while arguing in the TRO proceeding what they knew full well was untrue. In the action for removal of Barbara as Trustee, Donald argues

that he is a co-trustee with the right to participate in the administration of the Trust and that he should be the trustee to the exclusion of Barbara. In the Guardianship proceeding he is arguing the assets in the Trust belong to the estate and that the temporary guardian has the right to seize control of those assets. These arguments are mutually exclusive. If one is true, the other cannot be.

The only evidence relating to a trust in the guardianship case appears to be the Affidavit filed with the original guardianship application. Donald's' own copy of the trust filed in No. 462505 makes it obvious that Donald Mintz does not understand **the duty to speak truthfully under oath and is not qualified to be a witness**. **The jurisdiction of the court was invoked by a perjurer's affidavit and yet all of the actions of the Court and the Temporary guardian look to that falsehood for their legitimacy.** This Temporary guardian and Donald Mintz Attorneys have apparently also seized and improperly converted private assets belonging to Barbara Latham and/or shared by her and Muriel without following lawful procedures and without using lawful process.

Donald Mintz signature on the certificate of trust also indicates his approval of the creation and transfer of assets at the time the trust was created. Muriel left herself more than sufficient resources for her end of years care when she intentionally protected those assets from the very people who now seek to seize them for purposes far removed from any consideration to Muriel's needs. Had the temporary guardian not spent the past months and $18,000+ of MURIEL MINTZ'S annual income pursuing a trust which she had no

right to seize or demand information concerning by the very terms of the instrument, which she admits reading, researching and writing a Show Cause Motion to force Latham to turn over private trust information and personal banking documents. It is inconceivable that any of these parties and/or counsel simply made a mistake rather than intentionally devised this fraudulent scheme to seize Muriel Mintz, her estate, the Mintz family trust improperly and even Latham's personal funds—while using "tricks and traps" to deprive Latham of the opportunity to defend herself by improperly freezing her IRA funds of approximately $92,000+. These actions were not legal and were in bad faith for the purpose of harassment, meriting sanctions under Rules 10 and 13. Tex. R. Civ. P. 10, 13.

GOLDBERG HAD NO STANDING TO PURSUE THE SHOW CAUSE ON A TRUST WHICH WAS CLEARLY NOT AN ASSET OF MURIEL MINTZ

Michelle Goldberg's bill indicates that she spent more than sufficient time in October reviewing the Mintz Family Trust. Goldberg is an experienced trust attorney and knows how to read a trust. She therefore knows that Mintz is not a beneficiary. Yet, she claims otherwise. She is not a beneficiary and is not acting on behalf of any beneficiary and thus, has no standing to ask this court for a show cause hearing on the matter. The trust does not include GOLDBERG or MURIEL as a party who has standing to pursue any legal remedies regarding the actions of trustees and The Texas Trust Code expressly limits parties with standing to interested parties defined as beneficiaries:

> Sec. 115.011. PARTIES. (a) Any interested person may bring an action under Section 115.001 of this Act.

> (b) Contingent beneficiaries designated as a class are not necessary parties to an action under Section 115.001. The only necessary parties to such an action are:
>
> a beneficiary of the trust on whose act or obligation the action is predicated; a beneficiary of the trust designated by name, other than a beneficiary whose interest has been distributed, extinguished, terminated, or paid; a person who is actually receiving distributions from the trust estate at the time the action is filed; **and the trustee, if a trustee is serving at the time the action is filed.**

GOLDBERG HAS NO STANDING

This section addresses two types of standing in trust matters: 1) standing to bring a trust action; and 2) standing to compel an accounting under Tex. Prop. Code § 113.151. The ability to bring an action related to a trust is limited – the Texas Trust Code explicitly limits standing in such actions to "interested persons" – in other words, persons with some threshold interest in the trust. TEX. PROP. CODE § 115.011(a) ("any interested person may bring an action under § 115.001 of this Act"). An "interested person" is defined in the Property Code as:

> A trustee, beneficiary, or any other person having an interest in or claim against the trust or any person who is affected by the administration of the trust. **Whether a person, excluding a trustee or named beneficiary, is an interested person may vary from time to time and must be determined according to the particular purposes and matter involved in the proceeding**. Tex. Prop. Code § 111.004(7) (emphasis added).

A "beneficiary" is defined as "a person for whose benefit property is held in trust, regardless of the nature of the interest." Tex. Prop. Code § 111.004(2).

In *Moon v. Lesikar* 230 S.W.3d 800 (Tex. App. -- Houston [14th Dist.] 2007, pet. denied) the trust was settled by Lesikar, and his daughter Carolyn, sued over transactions Lesikar made with the trust. The court determined Carolyn was not an "interested person" as long as Lesikar was alive because he could revoke the trust at any time, which would remove Carolyn as a beneficiary. Since Carolyn was not an "interested person," the court found she did not have standing to sue regarding the trust. *Moon v. Lesikar 2*30 S.W.3d 800, 804 (Tex. App. --Houston [14th Dist.] 2007, pet. denied). If a person has no right to sue to revoke a trust, as in the case of Muriel Mintz, the same reasoning would apply and aside from the lack of Muriel Mintz in the trust document as a beneficiary or trustee, the Code would agree that she is not an interested person entitled to enforce any rights with respect to the MINTZ FAMILY TRUST. If MURIEL MINTZ has no right or standing to sue, neither does MICHELE GOLDBERG on her behalf. For this reason, GOLDBERG'S Show Cause Order, Order granting show cause, and Order commanding LATHAM to produce documents demanded therein is void and must be set aside.

STANDARD FOR LATHAM'S REQUEST FOR TEMPORARY RESTRAINING ORDER AND TEMPORARY INJUNCTION

Due to the fraud on the court mentioned herein, the guardianship action is tainted with perjured affidavits and knowing falsities in a clear full frontal assault on BARBARA LATHAM and the MINTZ FAMILY TRUST, which has damaged LATHAM by freezing upwards of $92,000+ in IRA retirement accounts that are LATHAM'S personal retirement,

emptying LATHAM'S personal account of over $6000, and inflicting severe mental anguish and emotional distress which caused her to emotionally and physically crater and become ill to the point she was incapable of fighting the onslaught further or caring for her mother as she has done this past 8 months+ with no complaints from the temporary guardian or accusations that LATHAM was not appropriately caring for MURIEL. These accusations appear to be made in retaliation for LATHAM'S criticism of GOLDBERG AND MINTZ, which was not lodged in malice but to notify the Court that the witch hunt and total inquisition of her every move by the police, adult protective services, and GOLDBERG as she combs through accounts she has no right to access in an outright fishing expedition seeking any bit of ammunition she can use against LATHAM.

Goldberg's vendetta and hostility has now extended to ESTELLE NELSON, who is likewise being blocked from accessing her mother, speaking to medical professionals in the middle of an emergency regarding her mother's potential cracked spine, which occurred within days of GOLDBERG assuming her care—because she was not given appropriate supervision and is nearly blind, causing her to fall at the nursing home which GOLDBERG placed her against her wishes – a fact known to DONALD MINTZ for the past 20 years or more. Given both sisters are registered nurses with advanced certifications detailed in the affidavit of Barbara Latham, this is dangerous and creates an imminent danger of harm or death to MURIEL MINTZ and must be immediately enjoined for her safety and well-being. It would be gross negligence or worse to continue to permit this to occur and one has to

wonder how blocking her daughters, medical professionals, access to medical professionals treating their mother, is in MURIEL'S best interests.

Likewise, how is spending half of her annual income fishing for ammunition, rather than conducting a legitimate investigation into assets over which GOLDBERG actually had authority—in the best interest of MURIEL MINTZ, especially if the court is concerned about her finances and ability to fund care for the rest of her life? It categorically is not and is further a violation of the ward's bill of rights. For the foregoing violations of BARBARA LATHAM AND MURIEL MINTZ'S RIGHTS as well as ESTELLE NELSON'S rights, LATHAM seeks injunctive relief to be issued immediately in this guardianship case and for GOLDBERG to be ordered to (1) cease interfering with LATHAM AND NELSON'S access to their mother or ability to communicate freely with any medical professionals treating her, (2) remove any and all freezes or holds on LATHAM'S or the MINTZ'S family trust accounts, (3) return any and all funds taken from LATHAM'S account within 72 hours and (4) cease engaging in any of the foregoing acts without a court order against NELSON, MURIEL, OR LATHAM from this point forward. LATHAM prays that the same relief be granted to LATHAM, NELSON AND MURIEL MINTZ against DONALD MINTZ, his attorneys and anyone acting in concert with MINTZ.

TEMPORARY RESTRAINING ORDER & INJUNCTION

Texas law provides for a restraining order to be issued where there is proof

of Imminent, irreparable injury that cannot be compensated for at law, or in damages. TEX. R. CIV. P. 681. RULE 681 provides, "No temporary restraining order shall be granted without notice to the adverse party unless it clearly appears from specific facts shown by affidavit or by the verified complaint that immediate and irreparable injury, loss, or damage will result to the applicant before notice can be served and a hearing had thereon."

BARBARA LATHAM SEEKS EMERGENCY ORDERS OF THIS COURT VIA TEMPORARY RESTRAINING ORDER, TEMPORARY INJUNCTION AND PERMANENT INJUNCTION AGAINST DONALD MINTZ, MICHELE GOLDBERG, attorneys for MINTZ, or anyone acting in concert with the foregoing individuals, hereinafter referred to as ENJOINED PERSONS OR ENJOINED PARTIES, enjoining them from the foregoing acts in this matter by an ORDER:

a. Mandating that DONALD MINTZ, MICHELE GOLDBERG, attorneys or persons acting in concert with either MINTZ OR GOLDBERG immediately cease and desist from attempting in any manner to interfere with LATHAM OR NELSON'S access to their mother, MURIEL MINTZ or free communication with medical professionals or staff treating or caring for their mother;

b. Ordering the ENJOINED PERSONS to immediately cease and desist from threatening or taking adverse action with law enforcement, government agencies, banks, or otherwise without prior order of this court with findings of fact and

conclusions of law to justify such actions;

c. Prohibiting the ENJOINED PERSONS from Falsifying information concerning MURIEL MINTZ'S PERSON OR ESTATE OR THE MINTZ FAMILY TRUST;

d. ORDERING the ENJOINED PERSONS to remove all encumbrances from the personal accounts or funds of BARBARA LATHAM, THE MINTZ FAMILY TRUST, pursuant to the SHOW CAUSE ORDER, SHOW CAUSE MOTION, OR ORDER TO PRODUCE issued in this case; and deposit any funds taken from LATHAM OR THE TRUST within 72 hours.

e. PROHIBITING THE ENJOINED PERSONS from placing any ORDERS to freeze BARBARA LATHAM OR THE MINTZ FAMILY TRUST'S funds wherever they may be without an ORDER of the arbitrator or Court;

f. Ordering the ENJOINED PARTIES to refrain from disturbing the peace of LATHAM, MURIEL MINTZ, ESTELLE NELSON during the pendency of any proceeding in this court involving the parties;

g. Ordering GOLDBERG to secure 24-hour supervision by a sitter for MURIEL MINTZ to protect her from future falls to the extent she does not return to LATHAM'S home at which time LATHAM will provide 24-hour care for her mother with MURIEL MINTZ'S funds used to pay for any sitter directly;

h. Ordering all parties to return to this Court for hearing on the Application for Temporary Injunction by LATHAM on the ____ day of _____, 2017

at _____.

i. ORDERING the ENJOINED PERSONS, their employees, contractors, representatives, agents or assigns cease and desist from harassment of LATHAM, MURIEL OR ESTELLE;

j. ORDERING MICHELE GOLDBERG to execute HIPPAA medical releases to share all medical information concerning MURIEL MINTZ with her three children so that her care is not impaired and she is not subjected to medical battery by the inability of the temporary guardian to provide informed consent for lack of MURIEL'S medical history;

k. ORDERING MICHELE GOLDBERG to permit all three children of MURIEL MINTZ to have input into all healthcare decisions and placement decisions made concerning MURIEL MINTZ and to further consult MURIEL REGARDING THESE DECISIONS;

l. ORDERING MICHELE GOLDBERG to adhere to all advanced directives and related documents executed by MURIEL MINTZ related to her medical care, including DO NOT RESCUSITATE directives as indicated by MURIEL MINTZ'S estate planning documents;

m. ORDERING the ENJOINED PARTIES to cease and desist from any and all interference with LATHAM AND NELSON'S right to access their mother and medical information or staff involved in her care without a court order stating

otherwise;

n. ORDERING the ENJOINED PERSONS to cease and desist from violating any of MURIEL'S rights as listed in the Ward's bill of rights or placing any arbitrary restrictions upon her without a written order of this court;

o. ORDERING MICHELE GOLDBERG to immediately notify all of MURIEL'S CHILDREN of any change in her health or concern affecting her health and well-being within 2 hours;

p. LATHAM submits that she is entitled to the foregoing relief in this case as argued herein and in the MOTION TO TRANSFER VENUE filed beforehand with verification and supporting affidavits of Barbara Latham, as well as exhibits referenced in this Plea to the Jurisdiction and the Motion to Transfer Venue of the Mintz Family Trust. LATHAM respectfully requests all other and further relief to which she may be justly entitled and for a declaration that the SHOW CAUSE ORDER is vacated, as well as the ORDER TO PRODUCE DOCUMENTS in this case, such that no finding of contempt will issue in this guardianship.

Respectfully submitted,

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FOR BARBARA LATHAM

CERTIFICATE OF SERVICE

This is to certify that a true and correct copy of the foregoing Motion for Substitution of Counsel was served upon all counsel of record this 8th day of December 2017 by e-file and e-mail.

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CAUSE NO. 462505

IN RE:	§	**IN THE PROBATE COURT**
	§	
THE MURIEL MINTZ	§	**HARRIS COUNTY, TEXAS**
FAMILY TRUST	§	
	§	**COURT NO. 2**

VERIFIED MOTION TO TRANSFER VENUE, VERIFIED & GENERAL DENIAL & MOTION TO COMPEL ARBITRATION UPON TRANSFER

BARBARA LATHAM, files this Verified motion to transfer venue, verified & general denial, and motion to compel arbitration upon transfer to the County of Mandatory venue, Brazoria County, pursuant to the TRUST instrument, Texas Aribtration Act, and Supreme Court decision, *Reitz vs. Rachal* (Tex. 2013), Texas Trust Code Section 115.002, Texas Rules of Civil Procedure 92 and 93. In support of the foregoing, BARBARA LATHAM asserts the following:

I. MOTION TO TRANSFER VENUE

BARBARA LATHAM first files this MOTION TO TRANSFER VENUE of this trust case under the mandatory venue provision of the Texas Trust Code, Section 115.002b, which states that venue for trust disputes is determined by the character and location of operation of the trustee. Tex. Trust Code Ann. 115.002b. TTC §115.002(b) states that "the action **shall be brought in the county in which (1) the trustee resides or has resided at any time during the four-year period preceding the date the action is filed or (2) the situs of administration of the trust is**

maintained or has been maintained at any time during the four-year period preceding the date the action is filed. TTC §115.002 is a "mandatory venue" statute, so a suit under the TTC must be filed in a county of proper venue.

II. VERIFIED DENIAL OF PROPER VENUE

Pursuant to Texas Rule of Civil Procedure 93, BARBARA LATHAM files a verified denial and special exception to DONALD MINTZ'S Original Petition and Motion for Temporary Restraining Order and Injunctive Relief, swearing that pursuant to TTC 115.002b, Harris County is not the county of mandatory venue, but Brazoria. LATHAM therefore requests that the Court transfer this case to Brazoria County, Texas where RESPONDENT will pursue mandatory arbitration required by the Trust and Texas law. Tex. R. Civ. P 93 (stating that an assertion of improper county of suit must be verified under Rule 93). Given Harris County statutory probate court must transfer this action to the county of mandatory venue under the foregoing Trust Code section, the Court's TEMPORARY RESTRAINING ORDER and any other ORDER concerning the MINTZ FAMILY TRUST, whether in Cause No. 462505 (Mintz Family Trust) or 456059 (Guardianship of Muriel Mintz) must be severed and transferred or simply transferred to Brazoria County, Texas at which time RESPONDENT intends to seek an ORDER compelling mandatory arbitration from the Court.

III. GENERAL DENIAL TRCP 92

Pursuant to Texas Rule of Civil Procedure 92, LATHAM asserts a general denial of all allegations made against her by DONALD MINTZ, denies each and every allegation of MINTZ against her, and demands that each and every element of his claims be established by strict proof according to the standard required by law. Tex. R. Civ. P. 92. LATHAM further asserts that DONALD MINTZ has colluded with MICHELE GOLDBERG, temporary guardian, committing fraud upon the court by making knowingly false statements of fact to the Court to force guardianship upon MURIEL MINTZ by false pretenses with the agenda of seizing all of her assets and the MINTZ FAMILY TRUST assets which both DONALD AND MICHELE knew was not an asset subject to the jurisdiction of the guardianship court, MURIEL'S ownership or control. Given fraud vitiates everything it touches and the foregoing individuals' unclean hands, the guardianship was initiated by fraud and should be dismissed. There are less restrictive alternatives to this "most restrictive" guardianship in which family access to MURIEL is already being denied illegally.

IV. IMMINENT DANGER OF IRREPARABLE HARM NEGATES BEST INTEREST

Given MURIEL is in imment danger by the appointment of a stranger with virtually no understanding of MURIEL'S medical history and conditions at the

age of 93, MICHELE GOLDBERG is not qualified and incapable of giving informed consent to medical care, such that all treatment given to MURIEL as a result of MICHELE'S purported consent—constitutes medical battery and is likely criminal. GOLDBERG'S retaliation based upon false accusations against ESTELLE NELSON AND BARBARA LATHAM violates the Ward's bill of rights, Texas Human Resource Code Section 102.003, and constitutes reckelessness and/or gross negligence.

Goldberg's refusal to allow MURIEL'S daughters to speak with medical personnel concerning her medical history and treatment at St. Luke's for a fall suffered within days of Michele Goldberg assuming responsibility for her care is placing her life in imminent danger for which no adequate remedy at law exists. LATHAM seeks injunctive relief in the appropriate venue for the same.

This is evidence that this appointment is NOT in the best interest of MURIEL MINTZ and indeed there has been hardly an attempt to define how this guardianship has been in the best interest of MURIEL MINTZ financially or to her person.

V. FRAUD ON THE COURT AND UNCLEAN HANDS

MICHELE GOLDBERG just submitted a bill for half of MURIEL'S annual pension income, approximately $18,000 and most of these charges would never have been incurred had DONALD MINTZ AND MICHELE GOLDBERG not

perpetrated deception upon the tribunal. Fraud on the Court justifies dismissal of this case and unclean hands is an equitable basis which adds to the justification for dismissal. Had MINTZ and his attorneys or GOLDBERG simply follows the law they know or should know applies on a mandatory basis, this case would never have been filed nor would the guardianship case have been "expanded" in terms of GOLDBERG'S authority to harass and intimidate BARBARA LATHAM and unlawfully threaten LATHAM with jail for contempt for failing to provide GOLDBERG access to sensitive financial account information that GOLDBERG had no right or standing to request and knew was not relevant to the guardianship and her authority therein because MURIEL MINTZ had no control, authority, ownership, or beneficial interest in the trust, which was a separate instrument--inter vivos gift to her three children made while she was presumed competent two years ago with no evidence to the contrary to suggest the transfer was fraudulent or can be undone by any court of law. In fact, the trust prohibits any dispute arising from the MINTZ FAMILY TRUST NOT BE LITIGATED IN COURT, BUT MEDIATED OR ARBITRATED.

VI. FAILURE TO SATISFY CONDITIONS PRECEDENT AND VIOLATIONS OF TRUST TERMS

Aside from filing this case in the wrong county as opposed to the county of mandatory venue and seeking arbitration instead of litigation, with knowledge that

litigation of disputes involving the trust are prohibited in favor of mandatory arbitration, DONALD MINTZ has caused a wasting of personal and trust assets through frivolous litigation by failing to satisfy known conditions precedent before even seeking to enforce the aribtration provision of the trust to which he is bound by agreement and accepting benefits of the trust. The most egregious failures include the following:

1. Failing to seek an accounting after relinquishing his role as trustee before making unsubstantiated slanderous accusations against LATHAM which have caused extreme stress, an unnecessary prolonged campaign of harassment and threats to LATHAM for not producing documents demanded by a temporary guardian with no standing to force LATHAM to turn them over; Texas law requires that a beneficiary FIRST demand an accounting as a condition precedent to filing suit for an accounting and DONALD MINTZ ignored the Code's requirements, rendering this lawsuit frivolous and in bad faith for purposes of harassment, such that Rule 91a mandates dismissal, transfer or abatement;
2. Violating Section 10.03 by attempting to have this trust set aside in the guardianship by fraudulently mischaracterizing the MINTZ FAMILY TRUST as a revocable asset of MURIEL MINTZ'S estate in order to have GOLDBERG or the Court seize it and invade the corpus for which he forfeits his share of the proceeds by commencing the guardianshp and/or trust lawsuits.
3. Falsely accusing LATHAM of malfeasance for closing accounts and moving trust property to other accounts knowing she was acting to protect the trust assets from his various and sundry underhanded attempts to self-deal and usurp the trust and MURIEL'S estate for his own use and benefit to the exclusion of ESTELLE NELSON and/or BARBARA LATHAM, with knowledge that Section 10.04 expressly authorized LATHAM to do this.

4. Falsely accusing LATHAM of wrongdoing by exercising her authority to defend the trust by employing attorneys, accountants, consultants, advisors, agents or other professionals to advise her or assist her in the performance of her duties, provided reasonable compensation is paid from the income or principal of the trust—in a scam that is actually listed in OSTROM MORRIS' article "Prejudgment processes and procedure to level the playing field--Tricks and Traps and opportunities from a litigator and judicial perspective" which outrageously outlines the very below the belt tricks being used against LATHAM to cripple her ability to defend herself against fraudulent accusations which were knowingly false when made for the purpose of securing an unfair advantage which violates the express terms of the trust.
5. The procedures mentioned include PREJUDGMENT restraining orders, garnishments, freezing and blocking a party's access to funds they would otherwise be entitled to use to defend themselves or for their minimum support needs to survive, which is unconscionable. The article admits that the procedures chosen are geared to squeeze out their opponent and force them to settle on your terms by impairing their ability to hire an attorney;
6. MINTZ fraudulently obtained injunctive relief with no evidentiary hearing or proof of actual breach and possibly not even proof of an anticipatory brief after his attorney acknowledges that Texas Property Code 114.008 requires that an actual breach be proven to enjoin a trustee; Not only was there a failure to prove irreparable injury, no adequate remedy at law or that the equities were in favor of injunctive relief as mandated for the TRO, but there was no evidentiary hearing at all and GOLDBERG / MINTZ actually demonstrated that they had an adquate remedy by seizing or freezing LATHAM'S IRA and personal funds in the amount of approximately $100,000 and seizing over $100,000 of MURIEL'S estate while spending $18,000 to persecute the only trustee actually complying with her duties to the trust and beneficiaries out of sheer malice;
7. Falsely accusing LATHAM of breaching fiduciary duties when the trust permits her to use discretion in authorizing disbursements according to each beneficiaries' need for health, education, maintenance and support, LATHAM provided each beneficiary the $14,000 annual disbursement and provided additional support permitted by the trust, hiding nothing from

MINTZ, who decided unilaterally to relinquish control and authority for decisions under the Trust to LATHAM while breaching his duties, such that if any tort was committed, he is jointly liable;

8. Falsely accusing LATHAM of malfeasance in closing accounts and moving funds to secure accounts to protect the trust when section 9.04 on banking powers expressly authorizes her to "establish any type of bank account in any banking institution" that she chooses, knowing she has the right to authorize withdrawals from any account in any manner, open accounts with or without disclosing fiduciary capacity, may open accounts in the name of the trust and has wide discretion in management of the trust and the decisions on the use of the funds; with Section 4.09 expressly stating that unequal distributions are permitted.

9. Failing to identify any means by which LATHAM actually VIOLATED the trust, knowing that the trust's express terms govern prior to the application of the trust code, which comes into play only in the event of ambiguity, which has further not been identified.

VII. **MANDATORY ARBITRATION**

Any competent lawyer who read the trust, such as MICHELE GOLDBERG (who read it multiple times, researched questions about its provisions and filed a 73 page show cause motion and order, followed by an order comanding LATHAM to produce documents referenced in the show cause motion), STACY KELLY, JASON OSTROM, and/or OSTROM MORRIS would know and certainly did know that this trust prohibits disputes arising thereunder from being litigated in court, in Section 8.04, which states:

"My Trustee shall administer the trust…with freedom from court intervention" and further mandating mediation and if necessary arbitration in accordance with the

Unfirom arbitration act, with each interested party selecting an arbitrator to resolve any disputes between the parties. Section 8.04. The Supreme Court case of Reitz vs. Rachal held in 2013 that this very language mandates arbitration and it is an abuse of discretion for a court to refuse to compel arbitration where the beneficiary accepted benefits of the trust (estoppel), much less was a signatory to the instrument as MINTZ was here. DONALD MINTZ has violated the trust's provisions in so many ways and caused his mother to be placed in a nursing home that he promised he would accomplish 20 years ago knowing she was adamantly opposed to being placed in a nursing home and had more than sufficient resources and support from her daughters, registered nurses, to not ever need a nursing home.

MOTION TO COMPEL ARBITRATION

In *Rachal v. Reitz*, 403 S.W.3d 840 (Tex. 2013), the Texas Supreme Court upheld a trust's mandatory arbitration clause. What's most interesting about this case is that the court upheld the arbitration clause on testamentary-intent grounds — in the absence of a specific authorizing statute. By accepting a share of the estate, the beneficiaries also accept the strings attached to that gift, including the mandatory arbitration clause. In a unanimous opinion, the Texas Supreme Court reversed the appellate court and concluded that the arbitration clause was enforceable against John for two reasons. First, *as the settlor, John's father determined the conditions attached to his gifts, and the father's intent in this case was to arbitrate any disputes*

over the trust. Second, the Texas Arbitration Act requires enforcement of written agreements to arbitrate. Although such an agreement requires mutual assent and a party typically manifests his assent by signing an agreement, the *Rachal* court recognized that assent may be proven by the beneficiary's acceptance of the benefits of the trust and/or his suit to enforce the terms of the trust.

Andrew Francis Reitz established the A.F. Reitz Trust in 2000, naming his sons, James and John, as sole beneficiaries and himself as trustee. The trust was revocable during Andrew's lifetime and irrevocable after his death. Upon Andrew's death, Hal Rachal, Jr., the attorney who drafted the trust, became the successor trustee. In 2009, John Reitz sued Rachal individually and as successor trustee, alleging that Rachal had misappropriated trust assets and failed to provide an accounting to the beneficiaries as required by law. Reitz sought a temporary injunction, Rachal's removal as trustee, and damages.

Rachal generally denied the allegations and later moved to compel arbitration of the dispute under the TAA, relying on the trust's arbitration provision. That provision states:

> Arbitration. Despite anything herein to the contrary, I intend that as to any dispute of any kind involving this Trust or any of the parties or persons concerned herewith (e.g., beneficiaries, Trustees), arbitration as provided herein shall be the sole and exclusive remedy, and no legal proceedings shall be allowed or given effect except as they may relate to enforcing or implementing such arbitration in accordance herewith.

> Judgment on any arbitration award pursuant hereto shall be binding and enforceable on all said parties.

Rachal moved to compel arbitration under the TAA, which provides that a "written agreement to arbitrate" is enforceable if it provides for arbitration of either an existing controversy or one that arises "between the parties after the date of the agreement." Tex. Civ. Prac. & Rem.Code § 171.001(a). As a threshold matter, a party seeking to compel arbitration must establish the existence of a valid arbitration agreement and the existence of a dispute within the scope of the agreement. Meyer v. WMCO–GP, LLC, 211 S.W.3d 302, 305 (Tex.2006).

Based upon Texas law which has always tried to give effect to the settlor's intent, from the four corners of unambiguous trusts and the theory that a benficiary who receives a benefit from the trust is estopped to deny the arbitration clause within it even though the arbitration clause may not have been part of an agreement in which the beneficiary was a signatory (unlike this case where Donald Mintz created the language and picked the arbitration clause himself). Frost Nat'l Bank of San Antonio v. Newton, 554 S.W.2d 149, 153 (Tex.1977); see also Huffman v. Huffman, 161 Tex. 267, 339 S.W.2d 885, 888 (Tex.1960)

Noting that in this case, the settlor unequivocally stated his requirement that all disputes be arbitrated and arbitration would be "the sole and exclusive remedy"

for "any dispute of any kind involving this Trust or any of the parties or persons connected herewith (e.g., beneficiaries, Trustees)," the Court held that the settlor's intent must be enforced, if the arbitration provision is valid and the underlying dispute is within the provision's scope. Meyer, 211 S.W.3d at 305.

The TAA provides that a "written agreement to arbitrate is valid and enforceable if the agreement is to arbitrate a controversy that: (1) exists at the time of the agreement; or (2) arises between the parties after the date of the agreement." Tex. Civ. Prac. & Rem.Code § 171.001(a) (emphases added). The TAA further states that a "party may revoke the agreement only on a ground that exists at law or in equity for the revocation of a contract." Id. § 171.001(b) (emphasis added).

Noting that the Court has found assent by nonsignatories to arbitration provisions when a party has obtained or is seeking substantial benefits under an agreement under the doctrine of direct benefits estoppel, the Court held that an express contract to arbitrate was not needed.

Applying estoppel by direct benefits, such as the $14,000 check Donald Mintz received to the facts in Reitz, the Court noted that a beneficiary may disclaim an interest in a trust. See Tex. Prop.Code § 112.010; see also Aberg v. First Nat'l Bank, 450 S.W.2d 403, 407 (Tex.App.-Dallas 1970, writ ref'd n.r.e.) (stating the well-

settled rule that a trust beneficiary who has not manifested his acceptance of a beneficial interest may disclaim such interest).

Concluding that it would not be fair or equitable to hold the trustee to the terms but not the beneficiaries, the Court stated that Reitz both sought the benefits granted to him under the trust and sued to enforce the provisions of the trust and never disclaimed any interest in the trust, much like MINTZ. See Tex. Prop.Code § 112.010 (presuming a beneficiary accepts an interest in a trust and establishing time period to disclaim that interest). Reitz also sued to enforce the trust's provisions against the trustee.

Like Mintz, Reitz claimed Rachal "has materially violated the terms of the Trust and his fiduciary duty by failing to account to the beneficiary and . has materially violated th[e] terms of the Trust by his conversion of the Trust assets which has resulted in material financial loss to the Trust." In accepting the benefits of the trust and suing to enforce its terms against the trustee so as to recover damages, Reitz's conduct indicated acceptance of the terms and validity of the trust, so the doctrine of direct benefits estoppel applied to bar Reitz's claim that the arbitration provision in the trust was invalid. See Weekley Homes, 180 S.W.3d at 131–32; Kellogg Brown & Root, 166 S.W.3d at 739–40; FirstMerit Bank, 52 S.W.3d at 755–56.

The only two questions are whether the arbitration provision is enforceable against the person seeking to sue and whether the dispute and accusations fall within the scope of the provision. As in Reitz, in this case the answer is a resounding yes such that this action cannot continue and must be dismissed, transferred or abated and arbitration compelled immediately with no further court action. 211 S.W.3d at 305. The court reversed the appeals court decision denying the motion to compel, stating that direct benefits estoppel and the fact that the facts and accusations were within the scope of the arbitration clause dictated that arbitration must occur and not litigation. See Rachal, 403 S.W.3d at 842.

VIII. CONCLUSION AND PRAYER

For the reasons stated herein and based upon the actions of DONALD MINTZ AND MICHELE GOLDBERG, which have are not in the best interest of the trust or the ward and have only served to persecute LATHAM with no evidence of wrongdoing but instead, proof that she was authorized to engage in the very distributions and activities complained about by MINTZ when he was in breach of his duties as trustee by simply walking out and relinquishing control of the trust to BARBARA LATHAM without objection, lying to this Court in stating that LATHAM prohibited his access when GOLDBERG freely admits he provided full access to the accounts to her in violation of the trust, LATHAM prays for this Court

to transfer venue of this case to Brazoria County where she will seek to compel arbitration as the mandatory remedy for any dispute arising under the trust instrument. LATHAM seeks all other and further relief to which she may be justly entitled at law or in equity, including immediate dissolution of the temporary restraining order against her based upon fraud on the court, which vitiates everything it touches and unclean hands. *See affidavits of Barbara Latham, Estelle Nelson, Accounting of Donald Mintz, documents produced to temporary guardian pursuant to void court order by a court lacking mandatory venue, show cause order and motion, order to produce documents, ADA request for accomodation which was denied (violating LATHAM'S right to the statutory period to complete an accounting prior to making claims in a suit for accounting or otherwise), Michele Goldberg's bill for over $18,000, Donald Mintz's $14,000 cashed check to show he received benefits and is estopped, Mintz's application for guardianship in which he defrauded the court by stating the trust assets belonged to Muriel Mintz and the trust was revocable when he knew that neither were true, Reitz vs. Rachal Supreme Court case; Email from Schwager to Goldberg explaining the reasons for Latham's seeming non-compliance and that she feels harassed and terrorized; Mintz Family Trust and attached TRO.*

Respectfully,

Candice Schwager

CANDICE SCHWAGER
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Fax: 713.456.2453
candiceschwager@icloud.com
SCHWAGER LAW FIRM
FOR BARBARA LATHAM

CERTIFICATE OF SERVICE

This is to certify that a true and correct copy of the foregoing Motion for Substitution of Counsel was served upon all counsel of record this 8th day of December at 2:15 p.m. 2017 by e-file and e-mail.

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Houston, Texas 77057
713.863.8891
713.863.1051 E-Fax
Attorneys for Donald M. Mintz

Candice Schwager

Candice Schwager

CAUSE NO. 462505

IN RE:	§	**IN THE PROBATE COURT**
	§	
THE MURIEL MINTZ FAMILY TRUST	§	**HARRIS COUNTY, TEXAS**
	§	
	§	**COURT NO. 2**

VERIFICATION OF BARBARA LATHAM

STATE OF TEXAS §

COUNTY OF BRAZORIA §

BEFORE ME PERSONALLY APPEARED, BARBARA LATHAM, WHO TESTIFIED UNDER OATH AS FOLLOWS:

"My name is BARBARA LATHAM. I am over the age of 21, of sound mind, and am in all ways competent to execute this affidavit. It is all based upon my personal knowledge and true and correct. ALL STATEMENTS IN MY MOTION TO TRANSFER VENUE, PLEA IN ABATEMENT, MOTION TO COMPEL ARBITRATION, SPECIAL EXCEPTIONS AND GENERAL DENIAL are true and correct based upon my personal knowledge. I have neer been convicted of a felony or crime involving moral turpitude.

I am the sole remaining trustee of the MINTZ FAMILY TRUST given my brother and former co-trustee DONALD MINTZ admits that he relinquished control (effectively resigned and breached his fiduciary duty to the trust and beneficiaries) to BARBARA LATHAM (me) as he fraudulently alleges that he has been blocked

from participating by me, when MICHELE GOLDBERG admits that he met her at the bank and provided full access to the accounts related to the trust.

I reside and have resided for the past 4 years in Brazoria County, Texas and the situs of the trust's operation is in Brazoria County, Texas. I conduct all banking at the Pearland Bank of America where trust funds have been kept and I manage the trust alone exclusively in Brazoria County, Texas. My mother is not a beneficiary and relinquished all control and assets in the trust in 2015 while completely competent and having sufficient time to make an independent, deliberate choice to transfer these assets to the trust to benefit her children, deciding that she did not personally need the funds for her own support, maintenance or care. DONALD MINTZ is the person who set up this trust and obtained the attorney who he allegedly knew since school. He selected an irrevocable trust and asked my mother to sign it, appointing me and himself as co-trustees while she relinquished all right title and control to the assets therein.

DONALD has never had any confusion that the trust was IRREVOCABLE OR WHO THE BENEFICIARIES AND TRUSTEES WERE AND ARE. Yet he perjures himself in affidavits to this court by stating otherwise in order to attach the trust to the guardianship proceeding and seize control of it wrongfully with unproven accusations that I committed breaches of fiduciary duty simply for moving the funds when he knows that I have complete discretion to do this, make any disbursements

I deem necessary or appropriate even beyond the annual $14,000, and he also chose to deliberately limit disputes involving the trust to arbitration to avoid getting sued, yet he pretends not to be aware of the arbitration clause which he effectively consented to in participating in the preparation of the instrument for MURIEL MINTZ to sign. He cannot agree to arbitrate and accept benefits of trust, as he took the benefit of funds, including the $14,000 annual disbursement I provided (a cancelled check has been produced as evidence) while trying to avoid the mandatory arbitration required of the trust.

DONALD'S breach of fiduciary duty / breach of trust lawsuit filed against me without evidence of any wrongdoing, but only evidence that I was fulfilling my duty to protect the trust assets from improper seizure or malfeasance that Donald was consistently engaged in—seeks injunctive relief and damages including a constructive trust and surcharge action "in the wrong court" and in litigation that is prohibited by the arbitration clause. Though frivolous and false, his accusations are nonetheless squarely within the scope of the arbitration agreement and Supreme Court authority as announced in Reitz vs. Rachal in 2013. His attorneys are experienced in trust litigation which necessarily means that they unambiguously know that they wrongfully sued me in a court of law rather than pursuing mandatory arbitration of this dispute and they know they filed this in the wrong jurisdiction. DONALD and his lawyers also lie in referring to DONALD as co-trustee and me as

"purported co-trustee" when I have never relinquished control of the trust walked away from my duties as trustee, resigned or been removed and he admits that he relinquished control of the trust to me and falsely states that I have blocked his particpation in order to be the victim to this court that he knows he is not.

While I deny any and all wrongdoing, if I committed any breach or tort, he would necessarily be a joint tortfeasor by abdigating his responsibilities to the trust and beneficiaries and then having the audacity to criticize my management of the trust when he walked away from his duties. A trustee cannot delegate his duties to me or anyone else, and had the responsibility to protect trust assets and even seek a replacemwent before merely walking away from his duties, but he did the opposite. Now, he wants to blame me for his neglect and breach of duty. DONALD has repeatedly defrauded this court by taking knowingly false positions in the guardianship and this case and swearing to them. Further affiant sayeth not."

SIGNED THIS 08 DAY OF DECEMBER, 2017 BY MY HAND UNDER SEAL:

Barbara Latham
BARBARA LATHAM

YANET SALAZAR
Notary Public
STATE OF TEXAS
My Comm. Exp. 04-24-19
Notary ID # 13020401-8

Yanet Salazar
Notary Public In and
For the State of Texas

NO. 456,059

GUARDIANSHIP OF	§	**IN THE PROBATE COURT**
	§	
MURIEL LUBA MINTZ,	§	**NUMBER TWO (2) OF**
	§	
AN INCAPACITATED PERSON	§	**HARRIS COUNTY, TEXAS**

APPLICATION FOR GUARDIAN AND ATTORNEY'S FEES

September 19, 2017 through December 1, 2017

MICHELE K. GOLDBERG ("Applicant") files this Application for Guardian and Attorney's Fees under Section 1155.052 of the Texas Estates Code.

I.

Applicant was appointed Temporary Guardian Pending Contest in the Guardianship of the Person and Estate of MURIEL LUBA MINTZ, An Incapacitated Person ("Ward"), by Order of this Court on September 19, 2017, and qualified to act as such in accordance with the laws of the state of Texas on September 25, 2017.

II.

Applicant is billing this Estate at two rates: $100.00 per hour for fiduciary work; and, $325.00 per hour for attorney work. Applicant is an attorney duly licensed to practice law in the State of Texas since November, 1995, and has extensive experience in guardianship and probate work. Her requested fees comply with the standards established by the four Probate Court Judges of Harris County, Texas. Applicant presents to this Court that since her appointment as Temporary Guardian Pending Contest (Temporary Guardian), she has expended significant time to care for the Ward and her estate because of the difficulties in obtaining the needed information to take possession of and secure all accounts in financial institutions, to establish a monthly

budget, to assess the Ward's need for appropriate residential placement, and to respond to repeated allegations lodged by one of Ward's daughters. Applicant also had to spend more time than usual in attempting to arrange for Ward and her family to have access to each other because the same daughter had sequestered the Ward from such family members, and (during Thanksgiving weekend) for emergency residential placement.

Applicant has performed the attorney services required to defend this guardianship in the amount of $16,789.80, fiduciary services in the amount of $1,325.00, and expenses in the amount of $256.25, and is therefore entitled to the payment of fees and expenses in the total sum of $18,370.83 for the period of September 19, 2017 through December 1, 2017; a detailed invoice is attached hereto as Exhibit "A" and incorporated herein by reference. Such sum is reasonable, necessary, and incurred in the best interest of the Ward. The Ward's estate has sufficient funds to pay Applicant's requested fiduciary and attorney's fees and expenses.

Since the inception of this Guardianship, Applicant has received no compensation for services rendered or expenses incurred.

WHEREFORE PREMISES CONSIDERED, Applicant asks this Court to enter an Order authorizing the payment of Guardian and Attorney's fees in the total amount of $18,370.83 to Michele K. Goldberg to be paid from funds belonging to the Estate of MURIEL LUBA MINTZ, an Incapacitated Person.

Respectfully submitted,

MICHELE K. GOLDBERG
TBC # 00793819
6750 West Loop South, Suite 615
Bellaire, Texas 77401
Tel: 713-218-8800
Fax: 713-839-0142
lawmkg@sbcglobal.net

TEMPORARY GUARDIAN PENDING CONTEST

CERTIFICATE OF SERVICE

I hereby certify that the foregoing notice was served to all parties and counsel of record according to the Texas Rules of Civil Procedure on this the 5th day of December, 2017.

MICHELE K. GOLDBERG

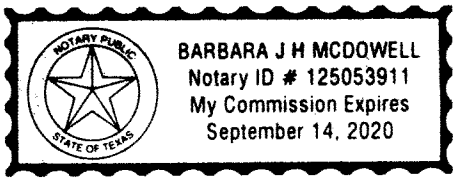
STATE OF TEXAS §
§
COUNTY OF HARRIS §

BEFORE ME, the undersigned authority, on this day personally appeared MICHELE K. GOLDBERG, Applicant in the foregoing Application for Guardian and Attorney's Fees, known to me to be the person whose name is subscribed to the above and foregoing Application and stated under oath that such Application contains a correct and complete statement of the facts and matters to which it relates and all the contents thereof are true, complete and correct to the best of Applicant's knowledge and that all legal services were performed from September 19, 2017 through December 1, 2017, that all fees submitted are reasonable and were necessary for the proper presentation of the Ward's interests; that all just and legal offsets, payments, and credits known to the Affiant have been allowed and are reflected in the attached invoice; that any work performed by legal assistants was done under the direction and supervision of the attorney; and that Affiant has made and presented this application and affidavit to the court for the purpose of obtaining court review and approval of such fees and expenses and their payment.

Michele Goldberg
MICHELE K. GOLDBERG

SWORN AND SUBSCRIBED TO BEFORE ME on this the 4th day of December, 2017.

Barbara J H McDowell
Notary Public, State of Texas



Michele K. Goldberg
Attorney & Counselor at Law
6750 West Loop South, Suite 615
Bellaire, Tx 77401

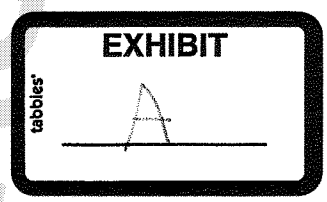
Invoice submitted to:
Muriel Luba Mintz

Invoice Date	*Invoice Number*	*Last Bill Date*
December 03, 2017	11449	

In Reference To: Guardianship of Muriel Mintz;
Cause No. 456,059;
In the Probate Court No. Two of Harris County, TX

Professional Services

		Hrs/Rate	Amount
9/19/2017	Receive appointment as Temp G Pending Contest; cursory review of on-line court file, call w. bonding agent; re: arrange for bond, fill out application, trip to bonding agent's office to execute bond	2.00 325.00/hr	650.00
9/20/2017	Send payment to bonding agent; instructions to staff; letter to all counsel; re: introduction & list of questions and requested documentation; call w. Stacy Kelly; re: background of case	1.75 325.00/hr	568.75
9/21/2017	Set up file, prepare bond for filing with court, order certified copies	0.50 100.00/hr	50.00
9/24/2017	Home visit with Ward, her 2 daughters & a son in law, gather details of case; follow up file work	3.00 325.00/hr	975.00
9/28/2017	Call from Donald Mintz; re: he gave his version of problems with family and concerns for mother; file review	0.75 325.00/hr	243.75
9/29/2017	e-mails w. Ward's daughter; call w. AAL; re: background case & concerns; e-mail to all counsel and Barbara Latham; re: set visit w. Ward and son in my office	0.75 325.00/hr	243.75
10/2/2017	E-mails w. Ward's daughter; re: visitation with brother; call w. Ward's grandson; re: concerns	0.50 100.00/hr	50.00
10/3/2017	Call from Mark Liss, Ward's "boyfriend"; re: his perspective and concerns; e-mails with AAL; re: status	0.25 100.00/hr	25.00
	Review financial information	1.00 100.00/hr	100.00



		Hrs/Rate	Amount
10/6/2017	Review & organize financial information; meeting with Donald and Scott (son & grandson); re: discuss concerns; meeting w. Ward and son & grandson; correspondence to all counsel; re: needed financial information and make visitation arrangements	2.50 325.00/hr	812.50
10/10/2017	Trip to Clarewood House; re: meet with admissions officer and view possible housing for Ward;	2.50 100.00/hr	250.00
	correspondence to Barbara Latham's attorney; re: need for information from client	0.25 325.00/hr	81.25
10/12/2017	Trip to BOA; re: take possession of bank accounts, review account history; call w. clerk's office; re: BOA will not accept Certificate of Appointment without embossed seal; arrange for delivery of copies to clerk's office; review previous years bank statements; correspondence to Barbara Latham & all counsel; re: need to set visitation times next week for Ward to see her son, grandchildren, and companion	2.00 325.00/hr	650.00
10/16/2017	Trip to BOA to open guardianship account & research transactions; still not done	2.00 325.00/hr	650.00
10/17/2017	Prepare Notice of Hearing of a Status Conference, file with court, send copy to all counsel	0.50 100.00/hr	50.00
	Set scheduling conference; numerous e-mails with Barbara Latham's attorneys	0.50 325.00/hr	162.50
10/18/2017	Multiple e-mails and phone calls; re: Ward's accounts in financial institutions, visits with family members, administrator of Clarewood House; review Muriel Mintz Family Trust	2.00 325.00/hr	650.00
10/19/2017	Trip to BOA with Donald Mintz, Trustee, to see trust account transactions; review trust; correspondence to Barbara Latham's counsel; re: needed information	2.00 325.00/hr	650.00
10/22/2017	Draft Motion to expand authority to take possession of Ward's trust	1.00 325.00/hr	325.00
10/23/2017	File Motion and Order to Expand Authority, put file in order	0.25 100.00/hr	25.00
10/24/2017	E-mails with counsel, review WF account statements, prepare and file motion & order to extend time for inventory	1.00 325.00/hr	325.00
	review and organize financial information from all sources	3.00 100.00/hr	300.00
10/25/2017	continue review and organizing financial data, draft inventory, prepare and file Notice of Hearing	3.00 100.00/hr	300.00
10/27/2017	trip to TDECU -Ward's credit union- to take possession of accounts	2.00 325.00/hr	650.00

		Hrs/Rate	Amount
10/27/2017	Meeting in office with Ward's son & granddaughter, Barbara did not bring Ward as promised; numerous e-mails to Barbara & her counsel; re: meeting she didn't attend	1.00 100.00/hr	100.00
10/28/2017	Review Dr Poa's fee Order & pay	0.25 100.00/hr	25.00
10/30/2017	Review financial information & draft inventory	1.00 250.00/hr	250.00
10/31/2017	Court Appearance -follow up review & organization of financial records	2.00 325.00/hr	650.00
11/1/2017	Review Muriel Mintz Family Trust; re: beneficiary designations & purpose of trust; numerous attempts to communicate with Barbara Latham; re: visits with family and needed financial information	0.50 325.00/hr	162.50
	Review Muriel Mintz Trust, research certain provisions, review current matters in case to organize needed documentation	1.00 250.00/hr	250.00
11/2/2017	Call from Pearland Police; Barbara accused me of stealing Ward's money and other allegations; research how to draft show cause to obtain requested financial information; e-mail to Barbara's counsel; re: police investigation & need for detail monthly expense list	1.50 325.00/hr	487.50
11/3/2017	Review and revise inventory	0.25 325.00/hr	81.25
	Finalize Inventory and file with court, put file in order	0.50 100.00/hr	50.00
11/6/2017	Research, review financial records, and draft Motion to Show Cause	3.83 250.00/hr	958.33
11/8/2017	Receive and review status conference transcript; work on Motion for Show Cause	2.00 325.00/hr	650.00
11/9/2017	File Motion and Order to Show Cause	0.25 100.00/hr	25.00
	Review CPRC sections on requirements for TRO; revise and finalize Motion for Show Cause & TRO, instructions to & work with staff to organize exhibits for filing	1.00 325.00/hr	325.00
11/10/2017	phone calls with clerks office regarding the issuance of citation	0.25 100.00/hr	25.00
	Call w. court; re: schedule show cause hearing; call w. process server; re: instructions for personal service of citation & after service call; re: Barbara Latham called Pearland Police after service of citation	0.75 325.00/hr	243.75

		Hrs/Rate	Amount
11/13/2017	Call w. Ward's current CPA; re: inform her of my appointment, of the situation and court requirements	0.25 325.00/hr	81.25
11/17/2017	Numerous e-mails with Barbara Latham and her attorneys; re: schedule visitation with family & explain again which financial records are needed; office visit (unexpected) with Ward's "boyfriend"; re: he asked to see her	0.75 100.00/hr	75.00
11/21/2017	Office visit with Ward's son & grandson; re: wait for Ward to visit; communication with Barbara Latham; re: why she didn't bring Ward to office; correspondence to all counsel; review nursing board regs for licensure (Barbara is RN & took compensation for nursing services); review IRS returns	1.50 325.00/hr	487.50
11/22/2017	trip to Social Security office; re: change representative payee and bank account for direct deposit	3.50 100.00/hr	350.00
11/24/2017	Make emergency pick-up arrangements for Ward; call with The Gardens of Bellaire admissions; re discuss placement; review current medical and financial information; review Motion for Show Cause to prepare for hearing	1.50 325.00/hr	487.50
	Numerous phone calls & e-mails; re: need urgent removal of Ward from Barbara Latham's home, make arrangements to get Ward and place her	3.00 100.00/hr	300.00
11/26/2017	Numerous e-mails; re: Ward's status & placement needs; send letter to Donald Mintz; re: authorization and insurance information	0.50 325.00/hr	162.50
11/27/2017	Draft Order for Show Cause; research and draft Reply to Motion for Continuance	4.00 250.00/hr	1,000.00
11/28/2017	Court Appearance- follow up work	2.50 325.00/hr	812.50
11/29/2017	Review and fill out admissions application for The Gardens of Bellaire, deliver same	1.75 325.00/hr	568.75
11/30/2017	Appointment at The Gardens of Bellaire; re: meet with director, fill out and sign various admissions documents (financial forms previously signed), tour facility, see room and approve rental of furniture	1.50 325.00/hr	487.50
12/1/2017	Letter to The Gardens; re: visiting instructions & restrictions; trip to USPS; re: change address; review e-mail correspondence	1.50 100.00/hr	150.00
12/3/2017	Review file and finalize Motion to Expand Authority	0.25 325.00/hr	81.25
	For professional services rendered	73.58	$18,114.58
	Additional Charges :		
9/20/2017	Filing fee: File original bond/oath with the court		5.00
9/25/2017	5 Certified copies of Order Appointing Temp Guardian and Certificate of Appointment		50.00

		Amount
10/17/2017	Filing fee: file Notice of Hearing of a Status Conference	5.39
10/20/2017	Filing fee: File Motion and Order to Expand Authority	7.45
10/24/2017	Filing fee: file Application for Extension to file Inventory	7.45
10/25/2017	Filing fee: file Notice of Hearing for Status Conference	5.39
11/3/2017	Filing fee: File Inventory	5.39
11/9/2017	Filing fee: file Motion and Order to Show Cause with request to issue citation	60.18
11/10/2017	Service Fee-citation personally served on Barbara Latham	110.00
	Total costs	$256.25
	Total amount of this bill	$18,370.83
	Balance due	$18,370.83

Timekeeper Summary

Name	Hours	Rate	Amount
Barbara McDowell. Legal Assistant	9.25	100.00	$925.00
Julie M. Dallison, Associate Attorney	9.83	250.00	$2,458.33
Michele K. Goldberg, Attorney at Law	41.25	325.00	$13,406.25
Michele K. Goldberg, Attorney at Law	13.25	100.00	$1,325.00

No. 456,059

IN THE GUARDIANSHIP OF	§	**IN THE PROBATE COURT**
	§	
MURIEL LUBA MINTZ,	§	**NO. TWO (2)**
	§	
AN INCAPACITATED PERSON	§	**HARRIS COUNTY, TEXAS**

ORDER APPROVING ATTORNEY'S FEES

On this day, the Court considered the foregoing Application for Guardian and Attorney's Fees and the Court finds that MICHELE K. GOLDBERG, Temporary Guardian Pending Contest of MURIEL LUBA MINTZ, An Incapacitated Person ("Ward"), has rendered necessary services on behalf of the Ward, and that such attorney's fees in the total amount of $16,789.80, fiduciary fees in the amount of $1,325.00, and expenses in the amount of $256.25, totaling $18,370.83, are reasonable and just, and should be paid.

It is therefore ORDERED, ADJUDGED, AND DECREED that the above fees are approved and taxed as costs in this cause and that payment in the amount of $18,370.83 shall be paid to MICHELE K. GOLDBERG, Temporary Guardian Pending Contest, out of funds belonging to the Estate of MURIEL LUBA MINTZ.

SIGNED this _____ day of _____, 2017.

_____

JUDGE PRESIDING

SEND CONFORMED COPY TO:
Michele K. Goldberg
TBC# 00793819
6750 West Loop South, Suite 615
Bellaire, TX 77401
lawmkg@sbcglobal.net

http://www.chron.com/news/houston-texas/article/Millionaire-84-died-fleeing-Harris-probate-court-1664166.php

Millionaire, 84, died fleeing Harris probate court

Perry Whatley battles probate court to the end
When probate court threatened to take away his assets, Perry Whatley gave up and fled — and ultimately died far from his home

By Lise Olsen **Published 5:30 am, Monday, June 25, 2007**

Prior to leaving Texas to flee his legal troubles, Perry Whatley expressed a desire to stay in Baytown. "I've lived in the same neighborhood for years," he said, months before his death in Arizona.

Perry "Bit" Whatley, 84, a former Baytown refinery worker and lifelong Texan, spent his final days in self-imposed exile, a fugitive from a more than two-year-old fight with the state probate courts.

Whatley was living in Arizona when he died, but it was not where he wanted to be, away from his home, cut off from his family and his $2 million fortune.

It was an unlikely, but perhaps unavoidable, end for the retired machinist, a frugal man who had wisely invested his savings in Humble Oil, which became Exxon, then Exxon Mobil. The investment made him a millionaire nearly twice over, and yet for 20 years after his retirement he lived a simple life in a simple Baytown bungalow until last summer, when he fled the jurisdiction of Harris County Probate Court.

Whatley died Feb. 14 in a rental home in Tempe in the company of his longtime caregiver, Dawn Johnson Whatley, 63, whom he married in a bedside ceremony in January 2005. His wife was his sole heir.

The Whatleys, both seniors with serious health problems, abandoned their own home and went into hiding together last summer. They left to avoid a hearing and,

later, orders issued by Probate Judge Mike Wood that declared Whatley incapacitated, took away control of his assets and could have forced him into a nursing home.

Perry Whatley's sad saga started out as a dispute between his niece and his new wife, two people who professed devotion to him and who also sought control over his fortune, his health care and his basic life decisions.

But the fight, taken to court in April 2005 by Whatley's niece, morphed quickly into a twisted legal free-for-all and a near-infamous example for critics who claim Texas probate courts have run amok. It also underscores how worries over a loved one — seemingly simple at first — can escalate into a costly and chaotic legal conflict.

It took decades for Whatley to make his money.

In less than two years, nearly $1.5 million has been spent on legal bills and court-authorized expenses for his probate case and related litigation, based on case documents.

And though Whatley is gone, the fight over what remains of his money is far from over.

To understand how the drama unfolded is to understand the fragile will of one old man and the determination of two women who loved him.

One is Jeannie Anderson, his niece from Baytown, his only brother's daughter, the person he turned to after his first wife died, the one he gave power of attorney over his complex financial portfolio. Whatley had no children of his own.

The other is Dawn Johnson, Perry Whatley's longtime housekeeper and caregiver, a twice-divorced grandmother who also helped his first wife and his mother-in-law, both now deceased. A few months after suffering a stroke in 2004, Whatley revoked his niece's power of attorney and turned increasingly to Johnson for advice.

In January 2005, the two married in a home ceremony presided over by an ordained Baptist minister. At the time, Whatley was bedbound by a hip injury, though later he graduated to a wheelchair.

Anderson wasn't invited.

When she heard about the wedding weeks later, it alarmed her. Anderson told the Houston Chronicle she didn't trust Johnson, who she believed had been trying to influence her uncle to give her gifts, including his own home.

In an interview last year, Whatley said he married because Dawn Johnson Whatley already was living with him as his caretaker and he "was just used to being married." The two had known each other for a decade.

"She's always helped us," he said. "She figured I needed help, and she helped."

Whatley said his niece, though well-meaning, was trying to control too much and wanted to move him to a nursing home.

Anderson said she worried her uncle was being manipulated and his money was being spent too quickly — more than $100,000 had been spent in a few months.

Dawn Johnson Whatley said she was simply paying for 24-hour care and for renovations that would make Perry Whatley more comfortable.

Whatley's niece decided to seek legal protection for her uncle. In April 2005, she asked the Harris County Probate Court to declare her uncle incapacitated and grant her legal guardianship. Such a declaration would strip her uncle of his basic rights and give a guardian control over his money.

Whatley's wife countered by saying no guardianship was necessary, but, if one should be imposed, she should be named.

That's when the once-simple life of Perry Whatley started to careen out of control, when his future and his fate became an official court case.

"It just goes down in the annals of probate history as one of those cases that just dumbfounded everyone," Anderson told the Chronicle.

Soon after the filing of the guardianship case, the Whatleys withdrew $500,000 from an annuity, incurring an early withdrawal penalty. They gave most of the money to their own newly hired attorneys to fight the guardianship. Those attorneys now say the costs for the fight have grown to nearly $1 million.

In Harris County Probate Court, Wood, who also claimed he was trying to protect Whatley as a disabled Harris County resident, eventually authorized payments of $360,000 from Whatley's money to four lawyers, three he appointed and one hired on behalf of Whatley's niece. They have not yet provided final accounting of how much of Whatley's money was spent.

The judge openly attacked opposing attorneys as unorthodox renegades who abused the system and instigated Whatley's disappearance. In one court appearance last summer, he said he might have to order Whatley into court "in chains" and that it would be the fault of Whatley's legal team.

However, Whatley's hired attorneys remain adamant in their claims that Wood prejudged their client — without ever meeting Perry Whatley — and demonstrated his bias in a series of comments and rulings that threatened Whatley's savings, his independence and his marriage.

Anderson has another view. She believes those hired attorneys "raped my uncle of his estate."

Just a few months after the guardianship case began, Whatley's privately hired lawyers say they began to suspect that the court had already made up its mind — even before hearing Whatley's side.

The Whatleys left Texas for the first time on Sept. 13, 2005 — days before their originally scheduled hearing date. They apparently knew they were dodging the hearing but went to Boston anyway to seek special medical care for Whatley's diabetes.

Harris County officials alerted Massachusetts authorities; the Whatleys asked Massachusetts courts for help.

With the Whatleys still out of state, Wood, the probate judge, imposed a temporary guardianship on Sept. 29, 2005. He ruled that Whatley was incapacitated based mostly on a court-appointed physician's examination that concluded Whatley was impaired by dementia, diabetes, a broken hip and strokes.

Wood chose neither Whatley's niece nor his wife and instead appointed attorney Mylus J. "Jimmy" Walker Jr. as guardian. Walker is a partner at Dinkins Kelly Lenox Lamb & Walker, one of the top-earning probate firms in Harris County probate court.

In court that day, Wood discussed the telephone conversation he'd had with a Massachusetts judge simultaneously reviewing the case.

According to transcripts, the Massachusetts judge told Wood that she had "been advised she has no jurisdiction at all. But she said that it would be appropriate, she thought, for me to order the temporary guardian to take possession and custody of Mr. Whatley and bring him back to Harris County."

Still, neither judge had actually met Whatley.

Wood ordered Walker, the newly appointed guardian, to physically bring Whatley back to Texas.

With the Texas court order signed by Wood, Walker personally flew to Boston to retrieve Whatley and placed him in a Bellaire nursing home nearly 40 miles from Baytown.

At Walker's request, Wood ordered payment of nursing home bills of $5,000 a month and, at first, $10,000 a month for "extra supervision," court records show. His wife initially was not told of his whereabouts, though Wood later approved monitored visits.

Anderson, his niece, moved him back to a Baytown nursing home, where she felt he thrived. Walker, though, continued to control her uncle's money as guardian of his estate.

In the meantime, Whatley's personal lawyers continued to do everything they could to stall or reverse Wood's decisions.

They appealed to federal court.

They repeatedly tried to get Wood recused for bias. They also challenged other judges assigned to hear the recusal motions against Wood. Most of those efforts were unsuccessful.

They even filed a complaint against Wood to the state judicial conduct commission in March 2006. "The bottom line is that Mike Wood had no jurisdiction to bring this horror into this couple's life in their golden years," Susan Norman, one of Whatley's hired attorneys, wrote.

Norman herself was given a year's probation by the State Bar for professional misconduct in September after she used a client's credit card with permission but failed to promptly repay the debt.

In June 2006, the Whatley legal team had its first big victory. The 14th Court of Appeals issued an order in Whatley's favor, saying Wood's guardianship appointments were void because of the mishandling of one recusal petition, largely a paperwork error.

The decision stripped Whatley's niece and Walker of their authority. It also put hundreds of thousands of dollars in legal payments in limbo.

The same day, Dawn Johnson Whatley drove her blue handicapped van to a Baytown nursing home to bring Perry "Bit" Whatley back home.

Just after he was wheeled inside, Whatley declared he had no complaints about the nursing home but that he was grateful to be back in his own living room. He could eat home-cooked meals. Pet his cat. His brother could regularly visit.

The reprieve would not last.

Citing his own duty to protect Harris County's elderly and disabled, Wood scheduled another guardianship hearing. As the trial date approached, Wood insisted that the Whatleys be brought to court for him to question.

Whatley's lawyers resisted.

In an interview with the Chronicle held at a church last summer, Dawn Johnson Whatley said she had been deeply troubled by the judge's actions and words. Perry Whatley seemed confused but said he, too, was upset about the probate court.

Whatley said he preferred to be in Baytown. "I'd rather live here. I've lived in the same neighborhood for years."

For a second time, the Whatleys left home. Neither process servers, nor appointees nor other family members could find them. For months, their lawyers refused to say where the Whatleys had gone.

"I have never in 35 years had lawyers say, 'I don't know where my clients are,' " Wood said in one courtroom confrontation.

Whatley's attorneys decided to personally sue the judge, his appointees and others in an attempt to freeze spending of Whatley's assets. The lawsuit accused the judge and others of fraud, conspiracy and breach of fiduciary duties and asked for $15 million in damages.

Wood has called the suit frivolous and insisted he should be granted judicial immunity.

On Oct. 16, back in a Texas probate court, Wood again declared Whatley incapacitated. The judge relied on evidence from a four-hour trial that included a doctor who had examined Whatley twice, a nurse, Whatley's niece and the guardian Wood had appointed, all of whom described Whatley as mentally and physically impaired.

For the first time, Wood also heard from Whatley himself.

In a written affidavit, the ex-Marine and Pearl Harbor survivor complained that the court's appointee had deprived him of access to his bank accounts, his annuities, his cash and even his Social Security and retirement checks.

"He has left me destitute," Whatley said.

Afterward, Wood reappointed Walker.

But Walker was unable to find Whatley. And because another judge froze most of Whatley's remaining assets as part of the civil suit, Walker lacked control over Whatley's money, though he did visit his empty home and change the locks.

Walker was among 11 attorneys present at a February hearing in the civil case in which one of Whatley's attorneys unexpectedly announced that the vortex of contention — Perry "Bit" Whatley — had died.

And though the guardianship matter ends, legal challenges continue.

His niece just wishes it would stop. To her, it all seems meaningless with her uncle dead.

She fears "Bit" Whatley spent his last days in confusion, likely wishing to go home to Texas. She's troubled that his wife did not call when Whatley lay dying. "She gave no one in my family the opportunity to say goodbye to my uncle."

After two years of costly conflict, no one has won.

And an old man has died in Arizona more than 1,000 miles from home.

lise.olsen@chron.com

"Grave" Problems in Texas: Looting Assets of the Dead and Disabled

January 25, 2008

Lou Ann Anderson
December 2007
US~Observer
http://www.usobserver.com/archive/dec-07/texas-grave-problems.htm Grave robbers. Tomb raiders. Cronies who plunder and rape estates. These are characterizations used to describe experiences with the Texas probate system. Guardianships, trusts and wills are vehicles commonly used to perpetrate Involuntary Redistribution of Assets (IRA) actions. Trusts and wills can lead to modern day grave robbing, guardianships can allow looting of an individual's assets during their lifetime.

It can happen outside a legal venue or with full oversight of the courts. As people get older or incapacitated, the potential for IRA targeting increases. IRA practitioners can be a known, trusted family member or friend or a stranger who works their way into a person's life gaining their confidence along the way. It can involve lawyers, accountants, "professional" administrators or guardians and others.

People knowledgeable of the Texas probate business tell how making a living off the extraction of estate assets is an organized industry. How tragic to realize a lifetime spent accumulating assets and then clearly designating their final distribution can position one's rightful heirs as targets for Involuntary Redistribution of Assets practitioners. Incapacitation or death should not signal "open season" on assets. It should not mean that when a person can no longer speak for him/herself, their wishes should be disregarded with the fruits of their labor awarded to parties unconstrained by ethics and adept at manipulating our legal system.

"Proper estate planning" is not an IRA inoculation. Those commissioned to document and execute final wishes sometimes become key figures in asset looting. An estate with limited resources provides no immunity. Wealth is relative. Modest estates can be appealing as IRA practitioners value parties who can be intimidated or convinced the prospect of a legal battle is cost prohibitive.

Prior to the 80th Texas Legislature, the Texas Senate Committee on Jurisprudence held an October 11, 2006, public hearing to solicit testimony regarding potential probate code reforms. The day's focus was to hear

recommendations regarding the jurisdiction of statutory county courts and ways to improve oversight of court-appointed fiduciaries in trust and estate administration cases.

Guy Herman, Texas' Presiding Statutory Probate Court Judge and Travis County Probate Judge, along with other probate court judges and attorneys testified their system is well functioning, not in need of major reform and characterized litigation losers as predictable sources of unflattering stories regarding probate experiences. The committee also heard hours of citizen testimony telling abuses of power by probate court judges and court-appointed personnel. A common sentiment expressed was how the Texas probate system is a cottage industry that steals from the dead, steals from estates and it happens because the average person fails to realize the money to be made.

During testimony, Russell Verney, former Texas director of Judicial Watch, suggested the legislature convene a special investigative body to look into "not just the four or five that came up today, but the hundreds of cases that would like to tell you about what happened to them." Judge Mike Wood of Harris County Probate Court No. 2 discussed how "people with money" have recourse including writing books or going to the media while he as a judge cannot do so. In describing an experience with a Montgomery County probate case, Jon Sisco testified that without proper funds for a court battle, "the only thing the working man – the public's got – is to get it (their case) exposed." During the hearing, Senator Mario Gallegos, Jr. commented that as the abuses being described were related to court cases, one has to wonder how many similar situations are occurring with estates not involved in litigation.

The Austin American Statesman and The Houston Chronicle are providing increased coverage to Involuntary Redistribution of Assets situations. Several witnesses at the Jurisprudence Committee hearing credited KTRK, Houston's Channel 13, as instrumental in creating awareness for their cases. The internet also has a mounting presence of IRA victims sharing experiences and strategies. A web site, www.estateofdenial.com, was created by a Texas woman and her teenage daughter in response to both being targeted by IRA practitioners. While their story remains the web site's inspiration, their blog provides a forum for IRA discussions and promotes awareness to hopefully influence public policy regarding this important property rights issue.

Involuntary Redistribution of Assets cases often stem from a guardianship, trust or will. Appointment of a guardian to oversee an individual's affairs is a common IRA starting point. Per the National Association to Stop Guardian Abuse, "In seeking to navigate the guardianship system, families too often experience frustrations in attempts to find assistance and to obtain justice in a seemingly unjust legal system. Legislative statutes are totally ineffective when judges and law enforcement agencies ignore them. Government organizations as well as many attorneys are inexperienced in this fairly new area of law. Many lawyers are also unable or unwilling to take on seemingly futile cases in which the client has little or no money to pay fees while the guardian is draining the same family's assets to pay for their own legal representation."

Our legal system is "pay to play" with advantage going to those who subsidize the court system. IRA participants can incite a court case, lose and still "win" by collecting attorney and administrative/management fees "legitimately" generated during judicial proceedings. Family members learn it's often useless to exhaust themselves emotionally and financially while trying to fight a legal system which is supposed to protect the people it's destroying.

Attorneys tout living trusts as flexible estate planning documents and a means by which to minimize legal fees. If commitment to executing the trust founder's stated wishes is absent, today's legal system and moral environment offer opportunity for IRA "gamesmanship." In this context, estate arrangements, final wishes or asset bequests can undergo a complete redistribution in no way reflective of the founder's plan.

A trust is generally a private legal instrument receiving no court oversight. Trust "theory" uses language that

outlines the trustee's fiduciary responsibilities to the beneficiaries. Trust management validity is commensurate to the trustee's integrity and desire for honest interaction. If a trustee is viewed as having breached his/her responsibilities, beneficiaries can initiate a legal proceeding. Again, trustee expenses are paid from the trust, beneficiaries pay their own. The financial and emotional toll can be brutal. Throughout extended legal action, IRA practitioners can also use trust assets to compensate themselves for time spent on efforts arguably contrary to the beneficiaries' interests.

Estates or trusts of any amount can be attractive to IRA practitioners. As prolonged litigation easily runs into six-figure expenditures for each side, IRA targets often recognize the absence of cost effectiveness in going to court. Much can be spent with little or nothing gained. Involuntary Redistribution of Assets practitioners target and maximize these opportunities.

Death doesn't necessarily bring closure nor does it ensure honoring a decedent's wishes. In a December 2006 special report entitled "Breach of Trust," Austin American-Statesman reporter Tony Plohetski wrote how "Texas estate laws make stealing from the dead a relatively easy crime." Citing postmortem IRA cases, he described not only the alleged estate theft activities of Austin attorney Terry Erwin Stork, but also detailed how Texas probate laws do little to ensure people's belongings reach those designated in a decedent's will. Stork surrendered his law license in May 2007, but it is unknown if heirs of estates handled by Stork will recover any assets left to them.

S.B. 593 was passed during the 80th Texas Legislative session. Per the Texas Senate Research Center, it requires the personal representative of a decedent's estate, within a certain time period of an order admitting a will to probate, to give notice to each beneficiary named in the will whose identity is known or, through reasonable diligence, can be ascertained, and to file an affidavit with the court listing the beneficiaries notified. The bill also sets out what the notice must contain. Despite this helpful step, IRA practitioners routinely ignore laws and bypass normal business/professional courtesies so any measure of progress remains to be seen.

Estates outlined in the AAS article belonged to people who took proper steps to ensure the orderly distribution of their assets. They fell victim to IRA due to apparent betrayal by a trusted attorney and, when engaged, additional betrayal by the legal system theoretically designed to serve as a safeguard.

Involuntary Redistribution of Assets (IRA), a process in which unscrupulous individuals use death or disability to gain control of assets for "redistribution" in a manner contrary to the property owners' intentions, can happen during the person's lifetime or posthumously. As more cases occur and affect people throughout the economic spectrum, "shining light on the dark side of estate management" is an important move toward serious and impactful public dialogue that will hopefully lead to policy changes designed to shut down IRA practitioners and return integrity to the arena of estate management and the probate process.

Lou Ann Anderson is an advocate working to create awareness (www.EstateofDenial.com) regarding the Texas probate system and its surrounding culture. She may be contacted at info@estateofdenial.com.

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IN THE UNITED STATES DISTRICT COURT
FOR THE SOUTHERN DISTRICT OF TEXAS
HOUSTON DIVISION

Carolyn James, Individually and as "Next Friend" of Mary Olive Calkins	§	
vs.	§	
Richard Stephen Calkins, Trustee of the Mary Olive Calkins 2007 Revocable Trust & Individually,	§	**Case 4:16-CV-01910**
vs.	§	**Senior Judge, David Hittner**
Carolyn James, Phillip C. Strauss, Maurice Bresenhan, Jr., Michael James Wood a/k/a "Mike Wood," Christine Riddle Butts, Guy Herman, Ann P. Greene in her individual and employee capacity for Harris County, Texas, Harris County, Texas, and Ken Paxton, Attorney General of the State of Texas in his Official Capacity, only	§	

CALKINS' AMENDED COMPLAINT FOR DECLARATORY, INJUNCTIVE, AND MONETARY RELIEF

TO THE HONORABLE JUDGE OF SAID COURT:

THIS IS A REMOVED CASE. MOST REMOVED CASES TAKE TIME TO DEVELOP A RECORD; NOT SO IN THIS CASE. IN THIS CASE, AFTER THIRTY-ONE (31) JUDICIAL PROCEEDINGS SPANNING ALMOST NINE (9) YEARS, THE STATE COURT RECORD IS EXHAUSTIVE AND COMPLETE. THE ONLY REAL ISSUE TO BE LITIGATED, WHICH IS TIMELY, IS THE CONSTITUTIONALITY OF H. B. 1438.

Richard Stephen Calkins, Trustee of the Mary Olive Hull Calkins 2007 Revocable Trust ("2007 Trust") and beneficiary of the 2007 Trust ("Richard"), pursuant to 28 U.S.C. § 2201; 28 U.S.C. § 1983; 28 U.S.C. § 1988, and pendent state claims under the Texas Property Code, files this Amended Complaint against Maurice Bresenhan, Jr., Individually, as a Purported Temporary Administrator of the Estate of Mary Olive Calkins [1]; as a Partner in, and against Zukowski, Bresenhan & Piazza, LLP ("Bresenhan"); against Michael James Wood, a/k/a/ "Mike Wood," Christine Riddle Butts, Guy Herman, and against Carolyn James ("James") and Phillip Strauss (hereinafter sometimes "Strauss"), as beneficiaries of the Mary Olive Hull Calkins 2007 Revocable Trust. In addition, Calkins brings claims against Ann P. Greene in her individual and employee capacity for Harris County, Texas, [2] Harris County, Texas, and the Attorney General of the State of Texas, Kenneth Paxton, in his

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[1] There is no "estate" of Mary Olive Calkins as per the pleadings on file in this court that were removed from the state court on June 29, 2016.

[2] Ann P. Greene is the staff attorney for Michael James Wood and an employee of Harris County, Texas. Greene, who sits as some kind of unelected "judge;" routinely conducts secret hearings without a record being made; removes filed public documents from the actual record that do not suit her or Wood's agenda; issues secret rulings, then passes her rulings onto Wood who simply rubber stamps them; and then Greene sends an *ex parte* fax on Harris County letterhead to the chosen recipient. This conduct is illegal and unconstitutional and Calkins seeks permanent injunctive relief against Greene and Harris County, Texas to permanently enjoin these practices. No doubt Greene will try to claim that she enjoys "judicial immunity" from suit based on Wood telling her what to do. However, since Wood does not have judicial immunity, no one acting at Wood's behest has it either, and, Greene is being sued as an employee of Harris County, Texas, pursuant to their unconstitutional policies.

official capacity as mandated by Federal Law. [3]

PRELIMINARY STATEMENT

1. The enmity in this case of Mike Wood, Ann Greene, Guy Herman, and Harris County, and their due process violations of the rights of Richard Stephen Calkins and Mary Olive Calkins (Susan Norman's clients) had its beginnings years ago and arose out of the *Whatley* and *Alpert* cases.

2. The *Whatley* and *Alpert* cases became inextricably intertwined when Robert Alpert (an Arizona businessman who had never met Susan Norman's clients, Perry Lee and Dawn Whatley) heard of Mike Wood's and Guy Herman's due process abuses of Perry and Dawn in Mike Wood's court – including Wood's threat to bring Perry and Dawn to court in chains. (This was similar to Wood's issuing, in the *Whatley* case, a no-bond writ of attachment for Michael Easton, Professor Peter Riga's assistant). Alpert, himself, was experiencing much the same abuses as the Whatleys in Mike Wood's court, but Alpert was in a much stronger position to protect himself – Wood had not been able to strip him of his assets as Wood did to Perry and Dawn.

3. Only because of Robert Alpert's unimaginable generosity of spirit and bravery,

---

[3] Because a constitutional challenge is being made to state statute, Paxton, as Texas' Attorney General charged with enforcing all state statutes, is named in that capacity. No monetary relief is sought against Paxton, nor is he charged with any individual misconduct in connection with this case.

were Perry and Dawn able to escape being brought in chains to Wood's court – as Wood had promised he was seeking to do. Alpert provided Perry's and Dawn's means of escaping from Wood to Arizona. Dawn's subsequent successful 42 U.S.C. § 1983 litigation (detailed later in this complaint) exposed the due process abuses of the "guardianship standard operating procedure"which would later be heaped on Susan Norman's new clients – Calkins and his mother – by Wood, Greene, Herman, Harris County, and now Riddle Butts, all facilitating James' and now Bresenhan's and ZBP's joining in their due process violations.

4. Herman's and Wood's outrage at losing control of the *Whatley* and *Calkins* cases arose when Whatley and Calkins used the prior recusal statutes passed to protect litigants when confronted with judges such as Wood and Herman. Their outrage at loss of control led to Herman's continued – and finally successful – efforts to create legislation and having it passed, allowing Herman to now use and enforce legislation he, himself, had created – finally putting Herman in control of recusals of statutory probate judges.

A. JURISDICTION

5. Pursuant to Title 28 U.S.C. § 2201 and Title 42 U.S.C. §1983, this Court has jurisdiction over all the parties and claims made herein. Since it was Carolyn James, not Richard, who invoked the jurisdiction of the district court prior to removal, Richard brought this matter regarding the 2007 Trust under the Texas Property Code

in the district court and is not required to bring these claims in the probate court.

B. PARTIES AND SERVICE

6. All parties have been served and/or appeared, with the exception of Ann P. Greene and Harris County, Texas. Attorney General Paxton is before the Court. Greene will be served pursuant to F.R.C.P. 4 at 201 Caroline Street, 6th Floor, Houston, Texas, 77002. [4] Harris County, Texas, will be served pursuant to F.R.C.P. 4 by serving the County Judge, Ed Emmett, at 1001 Preston Street, 9th Floor, Houston, Texas, 77002.

C. RELIEF SOUGHT / NATURE OF THE CASE

7. Calkins seeks monetary relief of over $1,000,000 against: James, Bresenhan in all capacities; Zukowski, Bresenhan, & Piazza, LLP ("ZBP"); Wood, Butts, Herman, Greene, and Harris County, Texas. No monetary relief is sought against the State of Texas, save and except that permitted by statute.

8. Calkins brings an individual and a facial challenge to the constitutionality of H. B. 1438, as being unconstitutional as applied to him individually, as the statute was "ghost" written, drafted, worked on and "submitted" by Guy Herman as pure and simple retaliation in response to Calkins' exercising his rights under the predecessor statute.

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[4] Although requested to accept service on behalf of defendants Ann P. Greene and Harris County to preclude costs of service, counsel Countiss has not yet agreed to do so, and Calkins will serve Ann P. Greene and Harris County as required.

9. In addition, Calkins launches a facial challenge to the statute in that the statute was actually written by Guy Herman at the time that Herman held a judicial position, so that Herman – its actual author – **could then pass on its constitutionality**, an act that on its face violates the separation of powers doctrine.

10. Calkins also brings this action against Harris County, Texas, based on its pervasive, unrelenting, and tolerated policy of letting anyone employed in the probate courts abuse anyone they wish in violation of the Fourteenth Amendment, with no remedy to the injured party.

D. GENESIS, AND THE "GANG OF 18" [THE BUSINESS OF PROBATE]

11. ***"In the beginning. . . . ,"*** there was man named Robert Alpert from Scottsdale Arizona, the President of Danro Corporation. By all accounts, Alpert was a hard-working and very successful businessman with two sons, who, according to the probate regulars, needed to sue their father over some trusts that he set up for his sons. Armed with nothing more than a desire to relieve Mr. Alpert and his sons of their money, Mike Wood put together a "posse" of his regular appointees to sue Alpert, and litigation commenced that would enrich the appointees beyond their wildest expectations. [5] The only problem that Wood faced was that Alpert's sons did

[5] Hundreds of thousands of Alpert's dollars later, and, after Mike Wood openly berated the jurors that found in Alpert's favor, the First Court of Appeals ruled that Wood had NO JURISDICTION over the Alpert trusts.

not want to sue their father and did not want their trusts depleted.

12. The statutory probate courts in Texas consist of only 18 judges for the entire state, forming an "elite club" run by Guy Herman as presiding administrative statutory probate judge. Contrast this "elite club" to the hundreds of district and county court judges in the state supervised by the nine presiding administrative judicial district judges who assure the parties can seek relief through them if the facts warrant dismissing a particular judge from a case. This Gang of 18 has never found fault with each other, and in fact, have never recused one another from a case, because as Herman puts it, "we know what's best."

13. In 2005, a man named Perry Lee Whatley married his long-time friend (and care-giver) over the objections of his relatives – a niece and nephew. Incensed by the fact that Mr. Whatley had made a decision they could not control, the niece and nephew initiated a guardianship in Mike Wood's court. Wood "went to town," finding people to appoint to take control of Mr. Whatley's person and his assets. When Mr. Whatley objected through counsel Susan Norman, Wood determined that he was no longer of sound mind, and appointed a temporary guardian over him without even serving him with process. (Perry Whatley never appeared in Wood's court.)

14. When Mr. Whatley went to Massachusetts to seek the best medical treatment for his condition, another Wood regular, Harris County employee Valerie Milholland,

acting at Wood's direction and pursuant to Harris County's policy of allowing unlawful seizures of people and property, commenced a secret, separate *ex parte* guardianship in Wood's court. [6] Milholland and Wood then carried out an out-of-state guardianship by contacting the probate regulars in Boston, who, again acting at Wood and Milholland's direction, commenced yet another guardianship against the Whatleys in Boston, Massachusetts.

15. Seeking the protections afforded to him under the United States Constitution, the Whatleys invoked the jurisdiction of the federal courts, and declared their intention to remain in Massachusetts.

16. Of course, the Whatleys' opposition did not sit well with Wood, who dispatched his appointees to Massachusetts to retrieve Mr. Whatley – using the Whatleys' own monies which Wood and his appointees had seized. Wood's appointee, Mylus James "Jimmy" Walker, ventured to Massachusetts only to discover that the federal courts were dead serious about civil rights, and were serious about enforcing their orders. Senior U.S. District Judge Nathaniel Gorton, sitting for Chief U.S. District Judge Patti Saris, issued an order to Walker that Mr. Whatley was not to be removed from "The Commonwealth" without the permission of the federal

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[6] The Court will hear about Valerie Milholland and Ann P. Greene as prime examples of the abuse that Harris County "dishes out" day in and day out against its most vulnerable citizens – the elderly and the infirm – along with the supporting cast, the friends of Michael James Wood, a/k/a/ Mike Wood.

courts. This, too, did not sit well with Wood who took umbrage at being told how to behave by a federal judge.

17. To remedy that situation, Wood did what he is now famous for doing, he contacted (over the weekend) the federal judge in Massachusetts to convey that his appointees were the "good guys," and that the Whatleys' lawyers were nothing more than thieves, as was Mrs. Whatley.

18. The Monday following Wood's call, with a class of students from Harvard Law School as the guests of Judge Saris watching this national tug-of-war between Wood and the federal courts play out, Judge Saris disclosed that Wood had contacted her and had made highly disparaging remarks about Mrs. Whatley and her legal team, inviting anyone who thought it was appropriate to move to recuse her. [7]

19. Given Judge Saris' disclosures and her honesty, Mr. and Mrs. Whatley declined to recuse Judge Saris. At the end of the day, however, because the Whatleys brought the case into federal court via a counterclaim, Judge Saris determined that the federal court lacked jurisdiction and the case was remanded.

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[7] The Court will hear overwhelming, compelling, and damning evidence: that when any honest judge is presiding over a case where that court and Wood may have conflicts or interaction, Wood will call the judge to pervert and skew the process. And, if that does not work, Wood will berate the judge for failing to follow his directives – thereby assuring that judicial independence ceases to exist. During *Whatley*, portions of which were in the United States District Court for the Southern District of Texas, Wood contacted at least three of judges in this courthouse to influence the outcome.

20. Before the Whatleys could re-file an original case, Wood contacted the state probate judge who issued an unconstitutional order extraditing Mr. Whatley and removing him from Massachusetts. [8] Wood's appointee, Walker, went to Massachusetts, and under the cover of darkness removed Mr. Whatley while Mrs. Whatley slept – not even telling Dawn Whatley that her husband was gone. The cost of the airline tickets, hotels, and rental cars incurred by Walker and another Wood appointee who was "authorized" by Wood to go on this road trip, was taken out Mr. and Mrs. Whatley's monies.

21. Now back in Texas, [9] Mr. Whatley was removed from his home, separated from his wife, his assets taken, and he was placed in a Bellaire nursing home chosen by Wood's appointee and Harris County employee, Valerie Milholland. While in Massachusetts, despite Mr. Whatley's needing hip surgery, Wood's appointee

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[8] Courts and commentators focus on the importance of insulating Judges from Congress and the Executive Branch. But as Chief Judge Kaufman noted, **"it is equally essential to protect the independence of the individual Judge, even from incursions by other Judges. The heart of judicial independence, it must be understood, is judicial individualism, and giving one Judge power over another chills judicial individualism."** Irving R. Kaufman, *Chilling Judicial Independence*, 88 Yale L.J. 681, 713 (1979). A Judge must be free to decide a case according to the law as he sees it, without fear of personal repercussion or retaliation from any source. And, as Justice Felix Frankfurter so aptly put it: "A timid judge, like a biased judge, is intrinsically a lawless judge." *Wilkerson v. McCarthy,* 336 U.S. 53, 65, 69 S. Ct. 413, 419 (1949).

[9] Mr. Whatley was not wanted by law enforcement when he was extradited, nor was a Governor's warrant presented that would have authorized what Wood did.

decided that at Mr. Whatley's age, it would be too much money to "waste," which really meant less money for the appointee. This, in turn incurred Judge Saris' wrath, leading to her reciting what the meaning of human dignity meant – with a directive to transmit it verbatim to Wood's appointees.

22. Perceiving that the Texas judicial system must have some safeguards in place to protect its citizens from this type of tyranny, both Whatley and Alpert filed motions to recuse Mike Wood from their cases. What both Whatley and Alpert discovered would lead to changes in Texas law that Wood and Herman were not about to let stand: namely that honest judges would hear about them [statutory probate judges], pass judgment on their behavior, **and for the first time ever, remove them from these cases.**

23. The Whatleys subsequently filed 42 U.S.C. § 1983 litigation against Wood and all his appointees, leading to Wood's once again "working the telephones" with any judge that could be assigned to the case. After the district court judges kept recusing themselves from the Whatley case, Judge Olen Underwood, in his wisdom, appointed a retired Chief Justice from Houston's Fourteenth Court of Appeals. In brave and courageous fashion this retired Chief Justice found that Wood "lacked all subject matter jurisdiction" during the times complained of and was not immune from suit; that Wood's appointees did not have immunity from suit; that Wood's appointees would no longer be allowed to spend the Whatleys' monies to defend themselves; and

that they and Wood must stand trial. [10]

E. A NEW DAWN IN TEXAS?

24. In 2006, through a combined effort spearheaded by Alpert, among others, the Texas legislature convened and took evidence about Mike Wood, Guy Herman, Gladys Burwell, and the Gang of 18. [11] A crucial witness was unable to attend because Wood, after taking direction from Herman, issued a no-bond arrest warrant for that witness when Wood discovered that this witness was assisting the Texas senate in re-writing the statute that would strip Wood, Herman, and Burwell of their ability to "police" themselves. During that same time period, and while Wood and Herman were actively looking for Mr. Whatley to end his life in despair, Mr. Alpert ordered his private jet to land at Hobby Airport, picked up the Whatleys, and flew them to his home in Arizona where Mr. Whatley established legal residence in the State of Arizona. Mr. Whatley passed away on Valentine's day, February 14, 2007, as a citizen of Arizona, with his wife at his side, and outside of the grip of Herman and Wood.

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[10] One by one, each of Wood's appointees settled to protect Wood, and to keep the very lucrative appointments wheel in Wood's court turning in their direction – the last appointee settling during jury selection after the [retired] Chief Justice denied their last attempt to stop the trial.

[11] The Gang of 18 would also attract the attention of the United States Court of Appeals for the 5th Circuit.

25. Because of the disturbing nature of what the Texas Senate heard regarding Herman, Wood, and Burwell, Tex. Govt. Code 25.00225 went into effect on September 1, 2007, stripping Herman, Wood, and Burwell of their power to hear and determine any motions to recuse brought against the Gang of 18. Immediately, a phenomenon began taking place: honest judges appointed to hear the motions to recuse regarding the Gang of 18 began recusing them left and right including, but not limited to, the *Alpert* and *Whatley* cases. To say or suggest that Wood and Herman were furious would be an understatement, and they were not going to take honesty lying down either.

26. Beginning in the next legislative session, Herman – abdicating his role as a probate judge – set out to overturn the new law, and actually re-wrote the statute and handed it to a probate lawyer in Austin named Elliott Naishtat to sign off on. On April 15, 2013, Herman appeared before the legislature lobbying on behalf of the Gang of 18. As Naishtat spoke – clueless as to what his own legislation contained – it became obvious to all that Herman was behind the bills. Needing a senator to co-sponsor Naishtat's mischief proved more difficult for Herman, however, because no Travis County Senator would agree to it. Naishtat then recruited a Dallas senator named Royce West to co-sponsor Herman's bill. After West received a telephone call or two from a former Texas legislator inquiring as to why a Dallas County senator would be co-sponsoring a Travis County house member's bill, West let his

bill die in the Senate. Herman, more furious than ever, swore that he would be back to try again in the next session [and, more importantly, would use Richard Stephen Calkins' removal of Mike Wood in his cases to accomplish the task.] [12]

27. Calkins alleges and re-alleges paragraphs 1 through 26 as if set forth verbatim, and will show that H.B. 1438, as passed into law, can be traced back to Guy Herman, and that it was passed to directly harm Calkins and others similarly situated for the exercise of their rights under the United States Constitution. In addition, as Calkins can prove that Herman did these acts to harm him with no case before him, Herman is not entitled to judicial immunity. [13]

F. H.B. 1438 - GUY HERMAN: THE LEGISLATOR, THE LOBBYIST, AND THE JUDGE

28. It is one thing for a judge in his official capacity to examine a statute for constitutionality; it is wholly another for the same judge to write the statutes and then find them constitutional. And so it is with the Gang of 18, whose activities and actions would embarrass even an Art. III judge who, in his official duties, is called

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[12] This time around, Herman induced Naishtat to pass off his work to Senfronia Thompson of Harris County, who represents a district where guardianship is virtually non-existent. When His Honor questions Thompson for two minutes about "her" H.B. 1438, it will take His Honor about two seconds to figure out who did what, and why.

[13] Calkins adopts and incorporates by reference as if set forth verbatim his response to Herman's, Wood's, and Riddle Butts' motions to dismiss filed today concomitant with this amended complaint, showing that each manufactured their own jurisdiction to later claim judicial immunity.

upon to pass upon the constitutionality of statutes on a daily basis – none of which they went to Congress to write, or, dishonestly asked a United States Congressman or Senator to pass off as his own work.

29. Calkins moves the Court to find that:

1. H.B. 1438 is unconstitutional as applied retroactively to him individually;

2. H.B. 1438 is unconstitutional as being violative of the separation of powers doctrine; and

3. H.B. 1438 is unconstitutional as it was passed to protect the Gang of 18 and their appointees – to the detriment of nineteen million citizens of the State of Texas.

Calkins moves the Court to enjoin H.B. 1438 – either its provisions separately as the court may find, or as a whole.

G. CLAIMS AGAINST JAMES, BRESENHAN, ZBP, WOOD, HERMAN, RIDDLE BUTTS, GREENE, AND HARRIS COUNTY, TEXAS

30. Calkins alleges and re-alleges paragraphs 1 through 29 as the factual background that leads up the following claims under Title 42 U.S.C. § 1983 against James, Bresenhan, Greene, Wood, Riddle Butts, Herman, and the policies of Harris County, Texas.

31. On December 24, 2007, Mary Olive Calkins appointed Richard Stephen Calkins as a Trustee (along with Mary Olive) of the Mary Olive Hull Calkins 2007 Revocable Trust (the "2007 Trust") and appointed Richard as Executor of the 2007

Last Will and Testament of Mary Olive Calkins (the "2007 Will") revoking all prior Wills. The 2007 Trust included all property then-owned by Mary Olive, and upon Mary Olive's death the 2007 Will "poured over" all of Mary Olive's residuary property, if any, into the 2007 Trust.

32. Subsequently, on or about December 24, 2007, Mary Olive transferred the title to her residential property at 2521 Pelham Dr., Houston, Texas 77019, into the Mary Olive Hull Calkins 2007 Revocable Trust.

33. As of December 24, 2007, and as of the date of this filing,

A. the Mary Olive Hull Calkins 2007 Revocable Trust is the owner of 2521 Pelham Dr., Houston, Texas 77019, and all personal property of Mary Olive Calkins ("the Property");[14]

B. Richard is the Trustee of the 2007 Trust, and as Trustee is entitled to retain exclusive possession of the Trust Property;

C. Richard's authority as Trustee of the 2007 Trust in the Property is primary and superior to any claims of possession of the Property by the purported Temporary Administrator, Bresenhan, or any other person or party in this case; and

D. Bresenhan's attempt to exercise possession of the Property by virtue of the order entered February 2, 2016, purporting to appoint him as Temporary Administrator, is an attempt to deprive the Trustee of property and rights under color of state law.

14

Because the *res* is in this Court, and was first in the district court, there is NO ESTATE for Wood and his appointees to carve up among themselves.

34. Mary Olive Calkins **died on July 8, 2015 at 12:30 p.m. CDT**. Carolyn James **filed a previously revoked will for probate 36 minutes before Mrs. Calkins was declared legally dead.** Thus, as a matter of law, there is no will contest, no estate, no appointees, and no probate court jurisdiction. As Trustee, and Executor under the 2007 Will – the only Will not revoked – Richard Stephen Calkins is demonstrably the holder of any and all assets of Mary Olive Calkins. Carolyn James, with the assistance of G. Wesley Urquhart and Kenneth Zimmern, filed an application containing false statements of fact to probate a fraudulent copy of a revoked 2002 Will. In addition, by failing to follow the law and the statutory requirements of the Estates Code, James wholly failed to invoke the jurisdiction of any probate court, much less of Probate Court No. 2.

35. At a hearing based on James' void filing in Probate Court No. 2, Calkins renewed his prior objections to Wood: that on March 5, 2009, Judge Olen Underwood had granted a motion to disqualify Judge Wood from dealing with James, Mary Olive, and Richard Calkins, objecting to Mike Wood's continuing to [corruptly] exercise jurisdiction over the probate case and appoint a temporary administrator. On January 21, 2016, Bresenhan, a partner in Zukowski, Bresenhan & Piazza, LLP, and a life-long friend of James' ex-husband, was putatively appointed by Mike Wood as Temporary Administrator of Mary Olive's "estate."

36. An amended order of appointment was issued on February 2, 2016, said order prepared and drafted by Kenneth Zimmern, which among other things, now made Wood a criminal district court judge with the powers granted only to district and county judges under the Texas Code of Criminal Procedure. The original non-filing was assigned to Probate Court No. 4, Riddle Butts presiding. As stated previously, that filing is and was VOID and does not exist in the eyes of the law. Thus, any orders entered by Riddle Butts, Wood, or Herman in connection with that filing are also VOID.

37. On March 9, 2016, pursuant to James' request, and acting under color of state law and the void order of Mike Wood putatively appointing him as Temporary Administrator, Bresenhan ordered an autopsy of Mary Olive Calkins – who, upon **James' demand, had been kept unburied for over nine (9) months despite Richard's efforts to bury his Mother**. [15]

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[15] Despite Mr. Zimmern's and Mr. Urquhart's valiant attempts to forum-shop the case into Michael James Wood's court, the case was assigned to Court 4. The clerk struck through Zimmern and Urquhart's "assignment" to Wood and lodged the case into Court 4. When Judge Butts refused to order an autopsy of Mrs. Calkins – something she legally could never do, anyway, by statute – Bresenhan, "armed" with nothing but VOID paper did for Urquhart and Zimmern what the judges refused to legally do – he ordered Mrs. Calkins be cut up, after **denying her a burial from July 8, 2015, until April 12, 2016, a period of 280 days. This outrage, that of denying that woman a burial, stands against the very word of God handed down from the Sacred Torah to all civilization**. Calkins sues all the defendants both jointly and severally for the state law tort of intentional infliction of emotional distress, as their behavior is, and was, beyond the bounds of all decency.

38. James accomplished the cold storage of Mary Olive's body for over nine months and the desecration of her body by Zimmern's composing a "/s/G. Wesley Urquhart" letter threatening the funeral home with litigation if they buried Mrs. Calkins.

39. On March 14, 2016, Bresenhan notified Calkins that the autopsy of Mary Olive Calkins had been performed [in violation of Texas law, by Bresenhan's persuading Wood to exercise his authority in a corrupt manner and in total bad faith]. In addition, Bresenhan has intercepted and continues to intercept all the mail from the United States Postal Service directed to 2521 Pelham and Calkins.

40. On March 30, 2016, Bresenhan, in his putative capacity as Temporary Administrator, acting under color of state law, sent a letter to Richard through counsel, in which Bresenhan attempted to take possession by April 1, 2016, of the Trust Property, both real and personal, for the Estate of Mary Olive Calkins — an estate which does not own either the real or personal property Bresenhan seeks to control for the benefit of co-conspirator, Carolyn James.

41. Bresenhan's attempt to use his void appointment issued under color of state law violates Trustee's property rights in the 2007 Trust and Richard's rights as beneficiary of the 2007 Trust. Bresenhan's attempt was made possible by Wood, Riddle Butts, and Herman all colluding to manufacture jurisdiction – where as a

matter of law, NONE EXISTED. [16]

42. To accomplish this end, Wood and Herman recruited Christine Riddle Butts – who had recused herself from the probate case – to "unrecuse" herself, and then "recuse" herself again over a month later, so that Wood and Herman could manufacture jurisdiction where the law allows none. Thus, neither Wood, Butts, nor Herman derive the protections of the doctrine of judicial immunity, as the record will bear out that:

(1) Butts was recused and removed from the case in July of 2015;

(2) Wood was already constitutionally disqualified from the subject matter in March of 2009; and,

(3) Herman was purporting to act in an administrative capacity, not a judicial one,

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"Void" in the strictest sense means that an instrument or transaction is nugatory and ineffectual so that nothing can cure it; voidable exists when an imperfection or defect can be cured by the act or confirmation of him who could take advantage of it." (Emphasis in original) **Black's Law Dictionary 812 (abridged 5th ed. 1983).** "Void" therefore may properly be used only when the action or subject matter it describes is of no effect whatsoever, and is incapable of confirmation or ratification. "Voidable," on the other hand, describes an action or subject matter which nonetheless operates to accomplish the thing sought to be accomplished, until the fatal flaw is judicially ascertained and declared. Into this analysis, the term "void *ab initio*," means literally "void from the beginning" and denotes an act or action that never had any legal existence at all because of some infirmity in the action or process. It is readily apparent that "void *ab initio*" has essentially the same meaning as "void." In fact, "void *ab initio*" is perhaps preferable because it more vividly underscores that concept which represents the significance of the difference between the term "voidable" and the terms "void" and "void *ab initio*." The former describes an act or subject matter that, although flawed in some respect, is not beyond retrieval; the latter describe an act whose flaw renders the act irretrievable and without effect.

notwithstanding that the law in effect on July 30, 2015, specifically excluded Herman and Wood and specifically deprived both of any jurisdiction to manipulate Calkins' case into Wood's court.

43. In addition, and because of the policies put in place by Harris County, Texas, Ann Greene, a staff attorney for Mike Wood purporting to act as an "associate" judge, convened a secret and closed door hearing where she "appointed" Bresenhan to be the permanent administrator of this non-existent "estate" – without giving Calkins any notice or an opportunity to be heard. Wood then signed off on the order while lacking all subject matter jurisdiction because – as Wood himself admitted – all of the Calkins property was in trust, and was in a district court [now in this court], not a probate court. But for the abuses of Harris County for among other things, policies of locking the doors to the courtrooms as Gladys Burwell does when Herman assigns her to hear motions to recuse, Calkins and the public suffered and will continue to suffer injury. [17]

44. On April 28, 2016, Bresenhan filed in the probate court his "Temporary Administrator's Emergency Motion to Transfer Case [Cause No. 2008-75812], out

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[17] Compounding Greene's and Harris County's abuse was the fact that the signing of the secret order making Bresenhan the permanent administrator was obtained and faxed by Greene only to Bresenhan, using Harris County's fax machine, and only after Greene did additional legal work for Bresenhan. The order was kept off the public docket so that no one could see or find the order. Calkins moves the Court to enjoin Greene, Burwell, and Harris County, Texas from the policy of conducting secret hearings in secret tribunals, and from locking the doors to keep the public out of the courtrooms.

of the 61st District Court to Mike Wood," setting it for hearing on May 3, 2016. On May 3, 2016, or shortly thereafter, Wood – directing Bresenhan to do the same for the benefit of James – contacted the judge of the 61st Judicial District, Judge Erin Lunceford, by telephone and persuaded her to exercise her jurisdiction in a likewise corrupt manner. All this was done as part of the conspiracy to violate Richard's rights under the First and Fourteenth Amendments to the United States Constitution: namely, the right to a fair and impartial judge; a tribunal with jurisdiction; and a tribunal that does the people's business with its doors open.

H. CIVIL CONSPIRACY TO VIOLATE CIVIL RIGHTS

45. Calkins alleges and re-alleges paragraphs 1 through 44 as the factual background that leads up the following claims against James, Bresenhan, Greene, Wood, Riddle Butts, Herman, and Harris County, Texas.

46. Mary Olive Calkins appointed Richard Stephen Calkins as a Trustee of the 2007 Trust on December 24, 2007. Calkins' right to administer the Trust pursuant to its terms and to manage the Trust Property is clear.

47. All the parties knew, or should have known that the real property of 2521 Pelham Dr., Houston, Texas 77019 is owned by the 2007 Trust.

48. Despite Bresenhan's knowing that the 2007 Trust owns the Property, he has attempted – adversely to Richard's right of administration of the Trust – to take possession of the Property as Temporary Administrator of an estate which does not

own the property.

49. Richard has the only lawful right to possession of 2521 Pelham Dr., Houston, Texas 77019, owned by the 2007 Trust.

50. Despite Bresenhan's being on actual and constructive notice that:

a. James failed to invoke the jurisdiction of the probate court in the first instance; and that

b. Wood's "order" issued under color of state law was issued by a judge against whom a motion to disqualify on constitutional grounds was granted in 2009 – with the full agreement and urging of James –

Bresenhan has stated his intent to physically, intentionally, and voluntarily violate the Trustee's right of possession and to enter the Trust Property by authority purporting to exist under the Order Appointing Temporary Administrator.

51. Bresenhan's intended trespass will cause injury to Richard and the Trust.

52. James' original petition in this case was filed on Dec. 29, 2008, in the 61st District Court. On March 5, 2009, the Hon. Olen Underwood granted the motion to disqualify Mike Wood, Probate Court No. 2, from presiding over matters involving Mary Olive Calkins, Richard Stephen Calkins, and Carolyn James. Judge Underwood also found that James joined in the motion to disqualify. The guardianship case was re-assigned to Probate Court No. 4, and the Hon. Patrick Sebesta—the judge James requested in writing that Judge Underwood appoint to Cause Nos. 378,993 and 275,123—was assigned to the case.

53. Even after that disqualification of Mike Wood on March 5, 2009, James for years still attempted to force judges to move the cases in which she appears as "Carolyn James, as Next Friend of Mary Olive Calkins," into Probate Court No. 2, so that Mike Wood could preside over those cases.

54. After the Hon. Patrick Sebesta did not rule as James wished, James sued the Hon. Olen Underwood and Hon. Sebesta for not doing "their job." James' case against Judge Underwood and Judge Sebesta was dismissed for her lack of standing and capacity to appear as, and for, Mary Olive Calkins. Judge Sebesta then voluntarily recused himself, leaving the guardianship case in Probate Court No. 4 with no judge presiding, as the presiding judge of Probate Court No. 4, Christine Butts, had already recused herself from the guardianship case in March, 2011.

55. After Mary Olive's death July 8, 2015, James filed a motion on July 29, 2015, to recuse Judge Butts from presiding over Cause No. 441,165, the probate of Mary Olive's estate. Judge Butts complied with James' request and recused herself on July 30, 2015.

56. Then, at the urging of Herman and Wood, Butts "un- recused" herself, and then recused herself yet again on Sept. 2, 2015 – coincidently ONE DAY after the recusal statute changed on Sept. 1, 2015. Using that changed statute, Judge Herman "transferred" Cause No. 441,165 to Judge Mike Wood, just as James demanded and Wood, Butts, and Herman agreed to.

57. After Bresenhan's appointment at James' request, Bresenhan, with the full approval and support of James and her lawyers, began conspiring with, and persuaded, Mike Wood to corruptly exercise authority over matters involving Mary Olive Calkins, her estate, the 2007 Trust, Richard Stephen Calkins, and Carolyn James.

58. Because Mike Wood and / or Bresenhan contacted the judge of the 61st District Court before a scheduled hearing, it was plain and obvious that the judge of the 61st was predisposed to find for Wood and his co-conspirators, while all the time keeping silent herself and not disclosing the *ex parte* communications from one or more of these defendants.

59. All the acts complained of by Richard Calkins were, and are, being done under color of state law, by all the defendants acting either jointly or severally, and/or pursuant to Harris County, Texas' policies thereby violating Richard's civil rights under the First, and Fourteenth Amendments to the United States Constitution, for which Richard now sues.

PRAYER FOR RELIEF

WHEREFORE, PREMISES CONSIDERED, Richard Stephen Calkins prays for the following relief:

60. That the Court find H.B. 1438 unconstitutional as applied to him by Herman and Wood, as it was put in place as direct retaliation against him, in addition to

finding H.B. 1438 unconstitutional under the separation of powers doctrine and having so found, ENJOIN IT;

61. That Richard be awarded a permanent injunction against Harris County, Texas' policies of closed doors and secret tribunals;

62. a. Recovery of Calkins' actual and economic damages;

b. Recovery of Calkins' mental anguish damages.

c. Recovery of exemplary damages.

63. Richard seeks attorneys' fees, costs of court, and all other relief, both specific and general, at law and in equity, to which he may be entitled pursuant to Title 42 U.S.C. § 1983, and § 1988, against James; Greene; Harris County, Texas; Bresenhan; Zukowski, Bresenhan & Piazza, LLP; Wood; Butts; and Herman, both jointly and severally.

Respectfully submitted,

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CERTIFICATE OF SERVICE

On this the 24TH day of August, 2016, I certify that I have served all lead counsel with this document by electronic service.

/S/ *Susan C. Norman*
Susan C. Norman

IN RE: Robert ALPERT

Court of Appeals of Texas,Houston (1st Dist.).

IN RE: Robert ALPERT, Roman Alpert, and Daniel Alpert, Relators.

No. 01-08-00804-CV.

Decided: December 04, 2008

Panel consists of Justices JENNINGS, HANKS, and BLAND.Bobbie G. Bayless, Bayless & Stokes, Joseph A. Scamardi, Houston, for Appellants. Martha J. Stone, David L. Miller, Miller, Scamardi & Carrabba, P.C., Sharon B. Gardner, Crain, Caton & James, P.C., Edward J. Hennessy, Hennessy, Gardner & Barth, Houston, for Appellees.

OPINION

This proceeding arises from related underlying trust management lawsuits pending in Harris County probate court. Robert Alpert, Roman Alpert, and Daniel Alpert ("the Alperts") seek mandamus relief, requesting that the Presiding Judge of the Statutory Probate Courts, the Honorable Guy Herman, vacate six orders reassigning the lawsuits to a new judge, following recusal proceedings. The Alperts further request that we order the Presiding Judge of the Second Administrative Region, the Honorable Olen Underwood, to make the assignments.[1] The Alperts contend that Judge Herman's appointment orders are void because Rule 18a of the Texas Rules of Civil Procedure vests the authority to reassign cases following recusal proceedings to the regional presiding judge, not the presiding judge of the probate courts. We conclude that the appointment orders are void, but that Judge Underwood has not demonstrated a refusal to make the assignments. Accordingly, we grant mandamus relief in part and deny it in part.

BACKGROUND

In 1999, Roman and Daniel Alpert, the beneficiaries of the trusts giving rise to the litigation, sued the court-appointed receiver, Karen S. Gerstner, and her law firm, Davis Ridout Jones and Gerstner, L.L.P., for breach of fiduciary duty.[2] The trial court clerk assigned number 305,232-404 to the cause ("the Gerstner Proceeding"), with the Honorable Mike Wood, Judge of the Harris County Probate Court Number Two, presiding. The Alperts moved to recuse Judge Wood on January 7, 2008. Judge Wood declined to recuse himself and referred the motion to Judge Underwood, the appropriate regional presiding judge. Judge Underwood assigned the Honorable Lisa Burkhalter, Former Judge, County Court at Law, to hear the recusal motion. The order of assignment stated, "This assignment shall continue as may be necessary for the assigned Judge to make such orders, including those orders for interim or ancillary relief, or until this assignment is terminated by the Presiding Judge." After conducting a hearing, Judge Burkhalter granted the Alpert's motion to recuse.

On April 14, Judge Herman signed a minute order reassigning the Gerstner Proceeding to Harris County Probate Court Number 3, the Honorable Rory Olsen presiding. The minute order stated, in part,

Pursuant to the provisions of Section 25.0022 of the Texas Government Code, and a[sic] pursuant to the order of recusal signed by Judge Lisa Burkhalter on March 28, 2008, a necessity exists for the appointment of a Statutory Probate Judge to preside for the Honorable Mike Wood . It is further ordered that Docket No. 305,232-404 . is reassigned to Harris County Probate Court No. 3 under section 4.3 of the Local Rules for the Probate Courts of Harris County.

The Alperts objected to Judge Herman's reassignment and asked Judge Underwood to reassign the case pursuant to Texas Rule of Civil Procedure 18a. Within a month of the reassignment, Judge Olsen sua sponte recused himself. Following Judge Olsen's recusal, Judge Herman issued a second minute order that reassigned the case to Harris County Probate Court Number 1, the Honorable Russell Austin presiding, "[p]ursuant to the provisions of Section 25.0022" and "section 4.3 of the Local Rules for the Probate Courts of

Harris County." The Alperts again objected and requested that Judge Underwood reassign the case.

Judge Austin died unexpectedly. Thereafter, Judge Herman signed a third minute order, assigning the Gerstner Proceeding to the Honorable Joe Loving, to preside in Harris County Probate Court Number One. The Alperts again objected and requested that Judge Underwood reassign the case.

On June 11, 2008, the Alperts moved to recuse Judge Wood in the main trust litigation cause number, 305,232-401, from which the dispute with the court-appointed receiver arose. Judge Wood granted the motion to recuse in that cause number and further voluntarily recused "from all other cases and controversies involving 1. Robert Alpert, Roman Merker, Daniel James Alpert and/or Mark Riley, individually or 2. any entity in which any of those individuals is involved as grantor, settlor, trustee, or beneficiary." Judge Herman then signed a fourth minute order, reassigning cause number 305,232-401 to Judge Loving. The Alperts once again objected and requested that Judge Underwood reassign the case.

Citing the voluntary recusal of Judge Wood, Judge Herman signed a fifth minute order reassigning cause numbers 305,232-001, 305,232-402, and 305,232-403 to Judge Loving. The Alperts objected to the reassignments and requested that Judge Underwood also reassign these cases. On August 13, 2008, Judge Herman amended his fifth minute order by assigning an additional cause number, number 305,352, to Judge Loving. The Alperts objected to this sixth and final minute order. Each minute order cited section 25.0022 of the Texas Government Code. Excluding the third minute order, each minute order also cited section 4.3 of the Local Rules for the Probate Courts of Harris County.

Standard of Review

Mandamus relief is available to correct a "clear abuse of discretion" when no adequate remedy by appeal exists. Walker v. Packer, 827 S.W.2d 833, 839 (Tex.1992) (orig. proceeding). Mandamus is proper if a trial court issues an order beyond its jurisdiction. In re Sw. Bell Tel. Co., 35 S.W.3d 602, 605 (Tex.2000) (orig. proceeding). Cases involving void orders present a circumstance warranting mandamus relief. In re Dickason, 987 S.W.2d 570, 571 (Tex.1998) (orig. proceeding). A trial court has a ministerial duty to consider and rule on motions properly filed and pending before the court and mandamus may issue to compel the judge to act when a judge has refused to do so. Safety-Kleen Corp. v. Garcia, 945 S.W.2d 268, 269 (Tex.App.-San Antonio 1997) (orig. proceeding). A relator need not prove that appellate remedy is inadequate for mandamus relief to issue if an order is void. Sw. Bell Tel. Co., 35 S.W.3d at 605.

DISCUSSION

A. Rule 52.3

As an initial matter, Gerstner contends that the Alperts have failed to comply with Texas Rule of Appellate Procedure 52.3 by providing a noncompliant affidavit to verify the facts alleged in their petition for a writ of mandamus. Rule 52.3 provides: "All factual statements in the petition [for a writ of mandamus] must be verified by affidavit made on personal knowledge by an affiant competent to testify to the matters stated." Tex.R.App. P. 52.3. At the end of the petition, Alpert's counsel avers: "I certify, pursuant to Tex.R. Civ.App. P. 52.3(j), that I have reviewed the Petition for Writ of Mandamus and concluded that every factual statement is supported by competent evidence included in the appendix or record." We hold that the verification substantially complies with Texas Rule of Appellate Procedure 52.3, as the relief requested in this case is based exclusively on matters contained in the judicial record.

B. Void Orders

The resolution of this proceeding rests on the interplay between Texas Rule of Civil Procedure 18a, part (f), Texas Government Code section 25.00255, and Texas Government Code section 25.0022. Rule 18a sets forth the procedure to use for recusal proceedings in civil cases. Tex.R. Civ. P. 18a. Section 25.00255 of the Texas Government Code covers recusal motions much like Rule 18a, but does not treat the procedural aspects of the assignment of another judge following recusal. Tex. Gov't Code Ann. § 25.00255 (Vernon 2004 & Supp.2008). Texas Government Code section 25.0022 addresses the selection and duties of a presiding and assistant presiding probate judge. Tex. Gov't Code Ann. § 25.0022 (Vernon 2004 & Supp.2008). The Alperts contend that Judge Herman's six minute orders are void because Texas Government Code section 25.00255 vests Judge Underwood with the exclusive power to assign a judge to hear a recusal motion, and Texas Rule of Civil Procedure 18a(f) vests Judge Underwood with the exclusive power of reassignment once a recusal is granted pursuant to such an assignment. Gerstner responds that, nevertheless, Judge Herman also has implied authority to make the assignment under Texas Government Code section 25.0022.

We begin with the relevant language of Rule 18a and the two statutory provisions. First, Rule 18a establishes the procedure trial courts must use for hearing a motion to recuse when the judge to whom the motion is directed declines to recuse:

(d) If the judge declines to recuse himself, he shall forward to the presiding judge of the administrative judicial district, in either original form or certified copy, an order of referral, the motion, and all opposing and concurring statements. Except for good cause stated in the order in which further action is taken, the judge shall make no further orders and shall take no further action in the case after filing of the motion and prior to a

hearing on the motion. The presiding judge of the administrative judicial district shall immediately set a hearing before himself or some other judge designated by him, shall cause notice of such hearing to be given to all parties or their counsel, and shall make such other orders including orders on interim or ancillary relief in the pending cause as justice may require.

(f) If the motion is denied, it may be reviewed for abuse of discretion on appeal from the final judgment. If the motion is granted, the order shall not be reviewable, and the presiding judge shall assign another judge to sit in the case.

Tex.R. Civ. P. 18a (emphasis added). Rule 18a(f) expressly confers the authority to reassign a case following a recusal to the regional presiding judge of the administrative judicial district.

Second, Section 25.00255 of the Texas Government Code directs the presiding judge of the probate courts to forward a motion to recuse in probate cases to the regional administrative judge for handling:

(f) Before further proceedings in a case in which a motion for the recusal or disqualification of a judge has been filed, the judge shall:

(1) recuse himself or herself; or

(2) request the assignment of a judge to hear the motion by forwarding the motion . to the presiding judge of the statutory probate courts as provided by Subsection (h).

(g) A judge who recuses himself or herself:

(1) shall enter an order of recusal and request that the presiding judge of the statutory probate courts request the assignment of a judge to hear the motion for recusal or disqualification as provided by Subsection (I); and

(2) may not take other action in the case except for good cause stated in the order in which the action is taken.

(h) A judge who does not recuse himself:

(1) shall forward to the presiding judge of the statutory probate courts, in either original form or certified copy, an order of referral, the motion for recusal or disqualification, and all opposing and concurring statements; and

(2) may not take other action in the case during the time after the

filing of the motion for recusal . except for good cause.

(i) After receiving a request under Subsection(g) or (h), the presiding judge of the statutory probate courts shall immediately forward the request to the presiding judge of the administrative judicial district and request that the presiding judge of the administrative judicial district assign a judge to hear the motion for recusal or disqualification. On receipt of the request, the presiding judge of the administrative judicial district shall:

(1) immediately set a hearing before himself or herself or a judge designated by the presiding judge, except that the presiding judge may not designate a judge of a statutory probate court in the same county as the statutory probate court served by the judge who is the subject of the motion;

(2) cause notice of the hearing to be given to all parties or their counsel to the case; and

(3) make other orders, including orders for interim or ancillary relief, in the pending case.

Tex. Gov't Code Ann. § 25.00255 (emphasis added). Section 25.00255 is silent as to who shall appoint the new judge to preside after a recusal is granted-the regional administrative judge or the presiding probate judge, or either, but contemplates that it is the regional administrative presiding judge who shall "make other orders" in the case.[3]

Third, section 25.0022 of the Texas Government Code addresses probate courts and the types of judges who may hear probate cases:

(h) A judge or a former or retired judge of a statutory probate court may be assigned to hold court in a statutory probate court, county court, or any statutory court exercising probate jurisdiction when:

.

(2) a statutory probate judge is absent, disabled, or disqualified for any reason.

.

(6) a motion to recuse the judge of a statutory probate court has been filed.

Tex. Gov't Code Ann. § 25.0022(h). Gerstner relies upon section 25.0022 to support the validity of the orders reassigning these cases.

This reliance is misplaced. Though section 25.0022 speaks generally as to whom a case may be assigned, it does not identify the judge who is to decide the assignment. Rule 18a, however, expressly does so. Rule 18a(f) instructs that, if a motion to recuse is granted, the administrative judicial district judge shall assign the new judge to sit in the case. Tex.R. Civ. P. 18a(f). It is section 25.00255 and Rule 18a, not section 25.0022, that address the proper assignment procedure following a recusal. See Guilbot v. Estate of Gonzalez y Vallejo, 267 S.W.3d 556, 561-62 (Tex.App.-Houston [14th Dist.] 2008, no pet. h.). Thus, section 25.0022 does not support the orders in question.

Local Rule 4.3 for the Probate Courts of Harris County likewise cannot support these orders. Rule 4.3 states, "If a judge voluntarily recuses himself, or if a motion to recusal [sic] or disqualification is granted by any judge, the case shall be re-assigned by the Harris County Clerk by random assignment to another Harris County probate court." Harris County Probate Courts Loc. R.. 4.3. But a local rule may not conflict with a Texas Rule of Civil Procedure. Tex.R. Civ. P. 3a(1) ("Each administrative judicial region, district court, county court, county court at law, and probate court may make and amend local rules governing practice before such courts, provided: (1) that any proposed rule or amendment shall not be inconsistent with these rules or with any rule of the administrative judicial region in which the court is located."); Polk v. Sw. Crossing Homeowners Ass'n, 165 S.W.3d 89, 93 (Tex.App.-Houston [14th Dist.] 2005, pet. denied). In cases in which an order of recusal follows a formal motion to recuse, the local probate rule conflicts with Rule 18a(f); hence, we disregard the former and follow the latter. Tex.R. Civ. P. 3a(1).

Gerstner contends that Local Rule 4.3 and section 25.00255 of the Texas Government Code are complementary in that Local Rule 4.3 fills a gap created by section 25.00255 with regard to who may reassign a case once recusal is granted. But, Gerstner's contention ignores Texas Rule of Civil Procedure 18a(f), which fills any gap in section 25.00255 by designating the presiding judge of the administrative judicial district to reassign the case after a motion to recuse is granted. Tex.R. Civ. P. 18a(f). Because Rule 18a(f) identifies the proper judge to perform the function of reassignment, the local probate rule may not do so. See Tex.R. Civ. P. 3a(1).

Gerstner further contends that Rule 18a conflicts with section 25.0022 of the Texas Government Code, and, because Rule 18a was adopted before section 25.0022, the statute prevails. See Johnstone v. State, 22 S.W.3d 408, 409 (Tex.2000) ("[W]hen a rule of procedure conflicts with a statute, the statute prevails unless the rule has been passed subsequent to the statute and repeals the statute as provided by Texas Government Code section 22.004."). But the two do not conflict. Unlike Rule 18a, section 25.0022 does not address who decides the reassignment of a case to a new judge following a recusal, but instead addresses the types of judges who are qualified for the assignment to hear a probate case.

Finally, Gerstner contends that Rule 18a "does not apply to motions to recuse probate judges, because the Legislature has elected to specify different recusal procedures for the statutory probate courts." On the contrary, Rule 18a applies to probate judges. See Guilbot, 267 S.W.3d at 561-62; In re Norman, 191 S.W.3d 858, 860 (Tex.App.-Houston [14th Dist.] 2006) (orig. proceeding); Parker v. Parker, 131 S.W.3d 524, 529 (Tex.App.-Fort Worth 2004, pet. denied) ("Furthermore, the trial court record does not reflect that the probate judge entered an order of recusal or requested that another judge be assigned to the case as required by rule 18a.").

Both the Texas Government Code and Texas Rules of Civil Procedure vest the "presiding judge of the administrative judicial district" with the authority to assign a judge to hear a motion for recusal. Tex. Gov't Code Ann. § 25.00255; Tex.R. Civ. P. 18a. Judge Underwood complied with this procedure by assigning Judge Burkhalter to hear the recusal motion. Unlike the Texas Government Code, which is silent on the issue of who may reassign a case after recusal is granted, the applicable Rule of Civil Procedure designates the presiding administrative judicial district judge-or, in some cases, the Chief Justice of the Texas Supreme Court-to undertake that particular task. Tex.R. Civ. P. 18a(f). We hold that Judge Herman's first minute order is void because Rule 18a vests Judge Underwood with the power to assign a new judge to hear the underlying case. Judge Herman's second and third minute orders, issued in response to Judge Olsen's sua sponte recusal and Judge Austin's death, stem from the first void order and are likewise void. The fourth, fifth, and sixth minute orders were prompted by Judge Wood's voluntary recusal on matters related to the Alpert proceedings, after the Alperts formally moved for recusal. Therefore, Judge Wood's recusal also is within the purview of section 25.00255 and Rule 18a(f). Tex. Gov't Code Ann. § 25.00255(g)(1), (i); Tex.R. Civ. P. 18a(f). Section 25.00255 and Rule 18a both empower Judge Underwood, not Judge Herman, to reassign the case when a judge recuses himself on a party's motion. Id. Minute orders four, five, and six are void.

We hold that the authority to reassign cases after a party has moved for recusal vests with Judge Underwood as the regional administrative presiding judge, and not Judge Herman, as the presiding judge of the statutory probate courts. Tex.R. Civ. P. 18a. Accordingly, the minute orders are void, and we direct Judge Herman to vacate them.

C. Reassignment

Finally, the Alperts contend that Judge Underwood, "though required to make the reassignment pursuant to Tex.R. Civ. P. 18a, continues to refuse to do so in the face of Judge Herman's unauthorized actions in these cases." A trial court has a ministerial duty to consider and rule on motions properly filed and pending before

the court, and we may issue mandamus to compel the judge to act. Garcia, 945 S.W.2d at 269. A judge, however, has a reasonable time in which to act. Barnes v. State, 832 S.W.2d 424, 426 (Tex.App.-Houston [1st Dist.] 1992) (orig. proceeding). The circumstances of the case determine whether a judge has failed to act within a reasonable amount of time. Id.; Stoner v. Massey, 586 S.W.2d 843, 846 (Tex.1979) ("There are three requisites to a mandamus: a legal duty to perform a nondiscretionary act, a demand for performance, and a refusal.").

Here, the Alperts' assertion that Judge Underwood has refused to perform the reassignments is unpersuasive. The circumstances indicate that Judge Herman reassigned these cases as the presiding judge of the statutory probate courts, and that confusion existed as to which judge should make the assignment following recusal. Although the Alperts repeatedly have demanded that he act, Judge Underwood has never refused to do so. See Tex.R. Civ. P. 18a; Id. Now that the law has been clarified, we are confident that Judge Underwood will reassign the cases according to the procedures in Rule 18a and in compliance with the Government Code. See Tex. Gov't Code Ann. § 25.00255; Tex.R. Civ. P. 18a. Accordingly, we deny the Alpert's request for mandamus relief as to Judge Underwood.

CONCLUSION

We hold that Texas Rule of Civil Procedure 18a vests the appropriate regional presiding administrative judge, not the presiding administrative judge for the statutory probate courts, with the duty to reassign probate cases once a motion to recuse has been granted. Accordingly, the orders in question are void, and we direct the presiding administrative judge for the probate courts to vacate them. We further hold that the relator has not shown any abuse of discretion on the part of the regional administrative presiding judge, and thus deny the request for a writ of mandamus against him.

FOOTNOTES

1. The underlying cases are In Re: The Roman Markus Trust, The Daniel James Alpert Trust, And The Robert Alpert 1996 Childrens Trust, Nos. 305,232,001; 305,232-401; 305,232-404; 325,013; 305,232-402; 305,232-403; 305,352 in the First Probate Court of Harris County, Texas, the Hon. Joe Loving, presiding.

2. Karen S. Gerstner and Davis Ridout Jones and Gerstner, L.L.P. (collectively, "Gerstner") are the real parties in interest.

3. The Texas Legislature amended section 25.00255 in 2007 to vest the presiding judge of the administrative judicial district with the sole power to assign a judge to hear a motion for recusal. Tex. Gov't Code Ann. § 25.00255 (Vernon Supp.2008).

BLAND, Justice.

MURIEL L. MINTZ FAMILY TRUST DOCUMENTS

MULDER LAW GROUP, P.C.

50 Briar Hollow Lane, Suite 210W Houston, TX 77027 Ph: 713.461.9699 Fx: 1.866.274.8369

MULDER LAW GROUP, P.C.

James C. Mulder
Board Certified in Estate Planning
and Probate Law, and in Tax Law
by the Texas Board of Legal Specialization.
Jcm@mulderlawgroup.com

THE ESTATE PLANNING DOCUMENTS CONTAINED HEREIN ARE *SIGNED ORIGINALS* OF VERY IMPORTANT LEGAL PAPERS.

♦ *IT IS RECOMMENDED THAT*

THESE ORIGINAL SIGNED DOCUMENTS

BE KEPT IN A PROTECTED LOCATION.

A complete set of copies of these Estate Planning documents is located:

_____

_____

_____

_____

In addition to the aforementioned copies of our Estate Planning documents, the firm that assisted us in developing our estate plan holds another set of copies. They will be able to assist at the appropriate times and should be contacted immediately:

- ***Before*** **nursing home confinement; or**
- **Upon incapacitation; or After death**

The person to contact is: James C. Mulder

Mulder Law Group, P.C.
50 Briar Hollow Lane, Suite 210W
Houston, Texas 77027
(713) 461-9699 (866) 274-8369 *fax*
jcmulder@wealthkeepers.net

Certification of Trust for the Muriel L. Mintz Family Trust

This Certification of Trust is signed by all the currently acting Trustees of the Muriel L. Mintz Family Trust dated October 28, 2015, who declare as follows:

1. The Settlor of the trust is Muriel L. Mintz. The trust is irrevocable and unamendable by the Settlor.
2. The Trustees of the trust are Barbara Mintz Latham and Donald M. Mintz.
3. The tax identification number of the trust is 47-7373284.
4. Title to assets held in the trust shall be titled as:

   Barbara Mintz Latham and Donald M. Mintz, Trustees of the Muriel L. Mintz Family Trust, dated October 28, 2015.

5. Any alternative description shall be effective to title assets in the name of the trust or to designate the trust as a beneficiary if the description includes the name of at least one initial or successor trustee, any reference indicating that property is being held in a fiduciary capacity, and the date of the trust.
6. The powers of the Trustee include the power to acquire, sell, assign, convey, pledge, encumber, lease, borrow, manage and deal with real and personal property interests. The Trustee may buy, sell, trade, and otherwise deal in stocks, bonds, investments companies, mutual funds, common trust funds, commodities, options and other securities of any kind and in any amount, including short sales.
7. The terms of the trust provide that a third party may rely upon this Certification of Trust as evidence of the existence of the trust and is specifically relieved of any obligation to inquire into the terms of this trust or the authority of my Trustee, or to see to the application that my Trustee makes of funds or other property received by my Trustee.
8. The trust has not been amended or judicially reformed in any way that would cause the representations in this Certification of Trust to be incorrect.

October 28, 2015

Barbara Mintz Latham

Barbara Mintz Latham, Trustee

Donald M. Mintz

Donald M. Mintz, Trustee

STATE OF TEXAS
COUNTY OF HARRIS

Before me, the undersigned, Notary Public, on this day personally appeared Barbara Mintz Latham and Donald M. Mintz, known to me to be the persons whose names are subscribed to the foregoing instrument and, being by me first duly sworn, declared that the statements therein contained are true and correct.

Given under my hand and official seal this day, October 28, 2015.

Notary Public, State of Texas

JAMES C. MULDER
MY COMMISSION EXPIRES
June 4, 2016

THE MURIEL L. MINTZ FAMILY TRUST

October 28, 2015

MULDER LAW GROUP, P.C.
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Fax: (866) 274-8369

The Muriel L. Mintz Family Trust
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The Muriel L. Mintz Family Trust

Article One
Establishing the Trust

The date of this Irrevocable Trust Agreement is October 28, 2015. The parties to the agreement are Muriel L. Mintz (the "Settlor"), and Barbara Mintz Latham and Donald M. Mintz, jointly (collectively, my "Trustee").

I intend that this agreement create a valid trust under the laws of Texas and under the laws of any state in which any trust created under this agreement is administered. The terms of this trust agreement prevail over any provision of Texas law, except those provisions that are mandatory and may not be waived.

I may not serve as Trustee of any trust created under this agreement at any time.

Section 1.01 Identifying My Trust

My trust may be referred to as "Barbara Mintz Latham and Donald M. Mintz, Trustees of the Muriel L. Mintz Family Trust dated October 28, 2015."

For the purpose of transferring property to my trust, or identifying my trust in any beneficiary or pay-on-death designation, any description referring to my trust will be effective if it reasonably identifies my trust. Any description that contains the date of my trust, the name of at least one initial or successor Trustee and an indication that my Trustee is holding the trust property in a fiduciary capacity will be sufficient to reasonably identify my trust.

Section 1.02 Reliance by Third Parties

From time to time, third parties may require documentation to verify the existence of this agreement, or particular provisions of it, such as the name or names of my Trustee or the powers held by my Trustee. To protect the confidentiality of this agreement, my Trustee may use an affidavit or a certification of trust that identifies my Trustee and sets forth the authority of my Trustee to transact business on behalf of my trust in lieu of providing a copy of this agreement. The affidavit or certification may include pertinent pages from this agreement, such as title or signature pages.

A third party may rely upon an affidavit or certification of trust that is signed by my Trustee with respect to the representations contained in the affidavit or certification of trust. A third party relying upon an affidavit or certification of trust shall be exonerated from any liability for actions the third party takes or fails to take in reliance upon the representations contained in the affidavit or certification of trust.

A third party dealing with my Trustee shall not be required to inquire into the terms of this agreement or the authority of my Trustee, or to see to the application of funds or other property received by my Trustee. The receipt from my Trustee for any money or property paid, transferred or delivered to my Trustee will be a sufficient discharge to the person or persons

paying, transferring or delivering the money or property from all liability in connection with its application. A written statement by my Trustee is conclusive evidence of my Trustee's authority. Third parties are not liable for any loss resulting from their reliance on a written statement by my Trustee asserting my Trustee's authority or seeking to effectuate a transfer of property to or from the trust.

Section 1.03 An Irrevocable Trust

This Trust is irrevocable, and I cannot alter, amend, revoke, or terminate it in any way.

Section 1.04 Transfers to the Trust

I transfer to my Trustee the property listed in Schedule A, attached to this agreement, to be held on the terms and conditions set forth in this instrument. I retain no right, title or interest in the income or principal of this trust or any other incident of ownership in any trust property.

By execution of this agreement, my Trustee accepts and agrees to hold the trust property described on Schedule A. All property, including life insurance policies, transferred to my trust after the date of this agreement must be acceptable to my Trustee. My Trustee may refuse to accept any property. My Trustee shall hold, administer and dispose of all trust property accepted by my Trustee for the benefit of my beneficiaries in accordance with the terms of this agreement.

Section 1.05 Statement of My Intent

I am creating this trust with the intent that assets transferred to the trust be held for the benefit of my trust beneficiaries on the terms and conditions set forth in this agreement. In order to maximize the benefit to my trust beneficiaries, I give my Trustee broad discretion with respect to the management, distribution and investment of assets in my trust. My specific objectives in creating this trust include, but are not limited to:

Any gift made to the trust be treated as a completed gift for federal estate and gift tax purposes;

Any property contributed to the trust be treated as a gift of a present interest, if the property is subject to a beneficiary's right to withdraw as set forth in this agreement;

The assets of the trust estate, including life insurance proceeds, be excluded for federal estate tax purposes from my gross estate and the gross estates of my trust beneficiaries except to the extent that the grant or exercise of a power of appointment is treated as a general power of appointment; and

The assets in this trust not be subject to the claims of my creditors and any beneficiary's creditors.

All provisions of this agreement are to be construed to accomplish these objectives. Any beneficiary has the right at any time to release, renounce or disclaim any right, power or interest that might be construed or deemed to defeat these objectives.

Section 1.06 Grantor Trust Provisions

I intend that I be taxed as owner of this trust for federal income tax purposes for those periods during which I or any other person holds one or more of the powers described in Sections 671-678 of the Internal Revenue Code. All provisions of this trust will be construed to carry out this intent. Notwithstanding any provision of this trust that may seem to be to the contrary, the following provisions apply in the administration of the trust.

(a) Power of Substitution

During my lifetime, I reserve the right to reacquire any trust property by substituting other property of equivalent value. I may not reacquire any property that would cause me to have an incident of ownership, as defined in Section 2042 of the Internal Revenue Code, with respect to any insurance policy on my life held as part of the trust property. Furthermore, I may not exercise this power with respect to any stock treated as voting stock under Section 2036(b) of the Internal Revenue Code.

My Trustee has a fiduciary obligation to ensure my compliance with the terms of this power by satisfying itself that the properties acquired and substituted by me are in fact of equivalent value.

I may not exercise this power in any manner that shifts benefits among the beneficiaries. In consideration of this limitation, during any time I hold this power of substitution:

No provision in this agreement is to be construed in any manner that limits my Trustee's power to reinvest trust corpus for the benefit of the beneficiaries, and

My Trustee has a fiduciary duty to act impartially toward all trust beneficiaries.

It is my intention that the provisions of this subsection comply in all respects with Revenue Ruling 2008-22 as amplified by Revenue Ruling 2011-28, and that this subsection must be interpreted to ensure compliance with these rulings.

I may at any time, by written notice to my Trustee, release and relinquish this right.

(b) Nonfiduciary Capacity

Except as otherwise specifically provided to the contrary in this Section, the powers described in this Section are exercisable solely in a nonfiduciary capacity without approval or consent of any person acting in a fiduciary capacity.

Article Two
My Beneficiaries

I have three children. They are:

Donald M. Mintz;

Estelle Mintz Nelson; and

Barbara Mintz Latham.

All references in this agreement to "my children" are references to these children.

References in this agreement to "my descendants" refer to my children and their descendants.

The "lifetime beneficiaries" of my trust are my children.

Article Three
Trustee Succession Provisions

Section 3.01 Resignation of a Trustee

A Trustee may resign by giving written notice to me. If I am incapacitated or deceased, a resigning Trustee shall give written notice to the Income Beneficiaries of the trust and to any other then-serving Trustee.

Section 3.02 Trustee Succession

This Section governs the removal and replacement of my Trustees.

(a) Appointment of Successor Trustees

Barbara Mintz Latham and Donald M. Mintz shall have the right to appoint a successor individual Trustee by an instrument in writing, such appointment to take effect upon the death, resignation or incapacity of the appointing Trustee. An appointment may be changed or revoked until it takes effect. If Barbara Mintz Latham and/or Donald M. Mintz have named a successor or successors to the appointing Trustee in this Agreement, the appointment of a successor under this paragraph shall take effect only if and when all Trustees that Barbara Mintz Latham and/or Donald M. Mintz have appointed fail to qualify or cease to act.

Except as expressly provided to the contrary elsewhere in this Agreement, Trustees shall be entitled to serve based on the following rules:

- First, each Trustee who is a party to this Agreement shall be entitled to serve;
- Second, a then-serving Co-Trustee effectively appointed by another Trustee shall be entitled to continue serving;
- Third, a successor Trustee effectively appointed by another shall be entitled to serve.

(b) Power to Appoint Successor Trustees After Beneficiary of Separate Trust Becomes Sole Trustee

The Primary Beneficiary of a separate trust created in this agreement, when serving as sole Trustee, shall have the power to appoint any person or entity to act as additional or successor Trustees of his or her trust upon such time, terms and conditions as such beneficiary shall specify in writing, and to change the order of priority in which all Trustees shall serve of his or her trust. Such appointment(s), terms and conditions and/or changes are to be evidenced by a written, signed and acknowledged document but require no other formality. Further, any Primary Beneficiary of a trust created in this agreement, after having served as sole Trustee and then resigned or otherwise ceased to serve as Trustee may reappoint himself or herself as sole Trustee at any time.

(c) Removal of a Trustee

A Trustee may be removed only for cause, which removal must be approved by a court of competent jurisdiction upon the petition of an interested party.

Except as provided in (a) and (b) above, after the Settlor's death, any beneficiary may remove a Trustee only for cause, which removal must be approved by a court of competent jurisdiction. The petition may only subject the trust to the jurisdiction of the court to the extent necessary to make the appointment and may not subject the trust to the continuing jurisdiction of the court.

The right to remove a Trustee under this subsection is not to be interpreted as a grant to the person holding that right any of the powers of that Trustee.

If a beneficiary is a minor or is incapacitated, the parent or legal representative of the beneficiary may act on behalf of the beneficiary.

(d) Default of Designation

If the office of Trustee of a trust created under this agreement is vacant and no designated Trustee is able and willing to act, the Primary Beneficiary of the trust may appoint an individual or corporate fiduciary as successor Trustee.

Any beneficiary may petition a court of competent jurisdiction to appoint a successor Trustee to fill any vacancy remaining unfilled after a period of 30 days. The petition may only subject the trust to the jurisdiction of the court to the extent necessary to make the appointment and may not subject the trust to the continuing jurisdiction of the court.

If a beneficiary is a minor or is incapacitated, the parent or legal representative of the beneficiary may act on behalf of the beneficiary.

Section 3.03 Notice of Removal and Appointment

Notice of removal must be in writing and delivered to my Trustee being removed, along with any other then-serving Trustees. The notice of removal will be effective in accordance with its provisions.

Notice of appointment must also be in writing and delivered to my successor Trustee and any other then-serving Trustees. The appointment will become effective at the time of acceptance by my successor Trustee. A copy of the notice should be attached to this agreement.

Section 3.04 Appointment of a Co-Trustee

Any individual Trustee may appoint an individual or a corporate fiduciary as a Co-Trustee. That Co-Trustee will serve only as long as my Trustee who appointed my Co-Trustee (or, if my Co-Trustee was named by more than one Trustee acting together, by the last to serve of those Trustees) serves, and my Co-Trustee will not become a successor Trustee upon the death, resignation, or incapacity of my Trustee who appointed my Co-Trustee, unless so appointed under the terms of this agreement. Although my Co-Trustee may exercise all the powers of my appointing Trustee, the combined powers of my Co-Trustee and my appointing Trustee cannot exceed the powers of my appointing Trustee alone. My Trustee appointing a Co-Trustee may revoke the appointment at any time with or without cause.

Section 3.05 Corporate Fiduciaries

Any corporate fiduciary serving under this agreement as a Trustee must be a bank, trust company, or public charity that is qualified to act as a fiduciary under applicable federal and state law and that is not related or subordinate to any beneficiary within the meaning of Section 672(c) of the Internal Revenue Code.

Any corporate fiduciary must:

Have a combined capital and surplus of at least Ten Million Dollars; or

Maintain in force a policy of insurance with policy limits of not less than Ten Million Dollars covering the errors and omissions of my Trustee with a solvent insurance carrier licensed to do business in the state in which my Trustee has its corporate headquarters; or

Have at least One Hundred Million Dollars in assets under management.

Section 3.06 Incapacity of a Trustee

If any individual Trustee becomes incapacitated, it will not be necessary for my incapacitated Trustee to resign as Trustee. A written declaration of incapacity by my Co-Trustee, if any, or, if none, by the party designated to succeed my incapacitated Trustee, if supported by a written opinion of incapacity by a physician who has examined my incapacitated Trustee, will terminate the trusteeship. If my Trustee designated in the written declaration refuses to sign the necessary medical releases needed to obtain the physician's written opinion of incapacity within 10 days of a request to do so, the trusteeship will be terminated.

The provisions of Section 10.05(c) of this agreement govern the determination of a Trustee's incapacity by a physician and my Trustee's obligations to submit to examination and provide necessary releases.

Section 3.07 Appointment of Special Trustee

If for any reason the Trustee of any trust created under this agreement is unwilling or unable to act with respect to any trust property or any provision of this agreement, the Trustee shall appoint, in writing, a corporate fiduciary or an individual to serve as a Special Trustee as to such property or with respect to such provision. The Special Trustee appointed may be an Independent Trustee or Interested Trustee as the circumstances dictate.

A Special Trustee shall exercise all fiduciary powers granted by this agreement unless expressly limited elsewhere in this agreement or by the Trustee in the instrument appointing the Special Trustee. A Special Trustee may resign at any time by delivering written notice of resignation to the Trustee. Notice of resignation shall be effective in accordance with the terms of the notice.

Section 3.08 Rights and Obligations of Successor Trustees

Each successor Trustee serving under this agreement, whether corporate or individual, will have all of the title, rights, powers and privileges granted to my initial Trustees named under this agreement. In addition, each successor Trustee is subject to all of the restrictions imposed upon, as well as all obligations and duties, both discretionary and ministerial, given to my initial Trustees named under this agreement.

Article Four
Administration During My Lifetime

During my lifetime, my Trustee shall administer the trust as provided in this Article.

Section 4.01 Beneficiaries' Right to Withdraw Contributions

Immediately following a contribution to the trust, each living lifetime beneficiary not excluded under Section 4.02 (referred to in this Article as a "demand right beneficiary") will have the absolute present right to withdraw the lesser of:

A proportionate share of the total amount of the contribution, determined by dividing the amount of the contribution by the number of demand right beneficiaries; or

The amount of the federal gift tax annual exclusion under Section 2503(b) of the Internal Revenue Code less the amount of prior annual exclusion gifts to the demand right beneficiary by the same donor during the same calendar year.

The withdrawal right will be subject to the limitations and qualifications as provided in subsequent provisions of this Article.

Section 4.02 Power to Limit or Exclude Beneficiaries' Withdrawal Rights

Prior to or concurrent with the making of a contribution to the trust, a donor may, by a written instrument delivered to my Trustee, limit or exclude one or more lifetime beneficiaries from having withdrawal rights over all or any portion of the contribution or any future contribution or both. A donor may not, however, limit or alter any rights resulting from prior contributions.

Section 4.03 Exercise of Right to Withdraw by Lifetime Beneficiaries

A beneficiary holding a withdrawal right may exercise that right by a written request delivered to my Trustee. If a demand right beneficiary is unable to exercise a right to withdraw because of minority or incapacity, the demand right beneficiary's parent or Legal Representative may exercise the right to withdraw. If there is no Legal Representative, my Trustee shall designate an appropriate adult individual who may exercise the demand right beneficiary's right to withdraw. Under no circumstances may a person who has contributed property to the trust or may I exercise any demand right beneficiary's right to withdraw.

Any property distributed to the Legal Representative of a minor or incapacitated demand right beneficiary or individual designated to make the withdrawal on behalf of the demand right beneficiary must be held for the use and benefit of the demand right beneficiary and may not be used by the person who exercised the withdrawal right on behalf of the demand right beneficiary to discharge that person's legal obligation of support. My Trustee may pay any money or property distributed to a minor pursuant to the exercise of a right to withdraw to a custodian for the minor under the Uniform Transfers to Minors Act or Uniform Gifts to Minors Act of any state.

Section 4.04 Notice by My Trustee of the Right to Withdraw

Following any contribution to the trust, my Trustee shall promptly notify each demand right beneficiary, or the person authorized to exercise the demand right beneficiary's right to withdraw, of the existence of the right to withdraw and the conditions under which the right may be exercised.

Section 4.05 Lapse of Right to Withdraw

Each demand right beneficiary's right to withdraw a contribution to the trust lapses 30 calendar days following the notice by my Trustee of the contribution to which it relates, whether or not the lapse occurs within the same calendar year in which the contribution was made. The amount of withdrawal rights held by a demand right beneficiary that lapses in any calendar year, however, must not exceed the maximum amount under Section 2514(e) of the Internal Revenue Code to which the lapse of the power to withdraw is not considered a release of the power to withdraw.

That portion of a withdrawal power held by a demand right beneficiary, the lapse of which would exceed this limitation, will continue to be exercisable, and lapses to the greatest extent possible within this limitation on February 1 of each year in which it remains exercisable.

A demand right beneficiary's vested withdrawal right will not terminate by reason of the demand right beneficiary's death. The personal representative of the demand right beneficiary's estate will have the right to exercise the vested withdrawal right on behalf of the demand right beneficiary's estate.

If the personal representative of a deceased demand right beneficiary's estate does not exercise the withdrawal right, my Trustee may distribute to that personal representative cash or other property in an amount equal to the deceased demand right beneficiary's unlapsed vested withdrawal amount.

Following my death, a demand right beneficiary's right of withdrawal will continue against any subsequent trust shares established after my death as to which the demand right beneficiary is a beneficiary and to whom my Trustee may pay income or principal, until the withdrawal right is exercised or lapses in accordance with the terms of this Article.

Section 4.06 Satisfaction of Demand Right by My Trustee

My Trustee may satisfy a demand right beneficiary's exercise of a withdrawal right by distributing cash, other assets or fractional interests in other assets, as my Trustee may determine to be appropriate. Unless my Trustee has actual knowledge of other annual exclusion gifts prior to making distributions to satisfy a demand right beneficiary's exercise of the demand right, my Trustee may assume that no other gifts have been made to the demand right beneficiary.

My Trustee shall retain sufficient cash or other assets or a line of credit against which to borrow, or a combination thereof in order to satisfy the withdrawal rights that are then outstanding. I grant a line of credit to my Trustee to borrow from me, at the applicable federal rate, for a period of up to one day less than three years, such amounts as may be necessary to satisfy withdrawal rights that are exercised to the extent that other property is not available to satisfy the withdrawal rights.

Section 4.07 Definition of Contribution

For purposes of this Article, "contribution" means any cash or other assets transferred to my Trustee to be held as part of the trust funds in a manner that constitutes a completed gift for Federal gift tax purposes. The amount of a contribution is its Federal gift tax value.

Section 4.08 Discharge of My Trustee Upon a Distribution

The receipt of a distribution by a demand right beneficiary, or the demand right beneficiary's Legal Representative, to whom my Trustee makes a distribution in satisfaction of the exercise of a demand right is a sufficient discharge of my Trustee to the extent of the payment or distribution. My Trustee has no duty to see to the actual application of amounts paid or distributed for the benefit of the demand right beneficiary.

Section 4.09 Distribution of Income and Principal

During my lifetime, my Trustee shall retain all property held under this agreement in a single trust for the benefit of the lifetime beneficiaries. Subject to the limitation that my Trustee at all times retain sufficient property in the trust to satisfy a pending right to withdraw set forth in Section 4.06, my Trustee shall administer the trust as follows:

(a) Distribution of Income and Principal

My Trustee may distribute income or principal of the trust to the lifetime beneficiaries, as follows:

(1) Distribution of Income and Principal to the Trust Beneficiaries

My Independent Trustee may distribute any portion of trust property to or for the benefit of any lifetime beneficiary as my Independent Trustee determines advisable for any purpose. If there is no Independent Trustee, my Trustee may distribute as much of the trust property to or for the benefit of any lifetime beneficiary as my Trustee determines is necessary or advisable for the beneficiary's health, education, maintenance or support. In making distributions, my Trustee may distribute net income, principal, or both.

In determining the advisability or necessity of making distributions, my Trustee may consider other income or resources that are available to the beneficiaries outside of the trust and are known to my Trustee.

(2) Unequal Distributions Authorized

My Trustee may make distributions to or for the benefit of one or more trust beneficiaries to the complete exclusion of the other beneficiaries. My Trustee may make distributions to beneficiaries in equal or unequal amounts according to their respective needs.

Before making any distribution or allocation of income or principal to a beneficiary, my Trustee may require a refunding agreement or may withhold any portion of the distribution or allocation until final determination or release of any claim or lien against the beneficiary.

(b) Allocation of Distributions to Lifetime Beneficiaries

If any distribution is made to or for the benefit of a lifetime beneficiary, the amount of the distribution will be charged against the trust as a whole, and not against any individual benefit the beneficiary may ultimately receive. But if a distribution of principal is made to a lifetime beneficiary who holds a presently-exercisable power of withdrawal, the distribution will be deemed to be an exercise of the beneficiary's power to withdraw to the extent of the distribution. The beneficiary's remaining power to withdraw, if any, will be reduced by the amount of the distribution.

Any net income not distributed is to be accumulated and added to the principal of the trust.

(c) No Discharge of a Legal Obligation

Under no circumstances may my Trustee make any distribution to any beneficiary in a manner that would discharge any of my legal obligations.

Section 4.10 Administration Upon My Death

Upon my death, my Trustee shall administer the remaining trust property as provided in the Articles that follow.

Article Five
Administration of Remaining Trust Property

My Trustee shall administer the remaining trust property as provided in this Article.

Section 5.01 Division of Remaining Trust Property

My Trustee shall divide the remaining trust property into the following shares, for each of the following beneficiaries:

Name	Relationship	Share
Donald M. Mintz	son	1/3
Estelle Mintz Nelson	daughter	1/3
Barbara Mintz Latham	daughter	1/3

My Trustee shall administer the share of each beneficiary as provided in the subsequent Sections of this Article.

Section 5.02 Distribution of the Share for Donald M. Mintz

My Trustee shall administer Donald M. Mintz's share in trust under the provisions of this Section.

(a) Distributions of Income and Principal

The Trustee may distribute to Donald M. Mintz as much of the income and principal of his trust as the Trustee determines is necessary or advisable for his health, education, maintenance or support.

Any undistributed net income shall be accumulated and added to principal.

(b) Distribution Upon the Death of Donald M. Mintz

If Donald M. Mintz dies after the establishment of his trust, but before the complete distribution of his trust, the Trustee shall distribute the remaining trust property *pro rata* to the trusts created for the other beneficiaries in this Article. If there are no other living beneficiaries the Trustee shall distribute the remaining trust property under the terms of Article Six.

(c) Distribution if Donald M. Mintz is Deceased

If Donald M. Mintz should die before the establishment of his trust, the Trustee shall distribute Donald M. Mintz's share *pro rata* to the trusts created for the other beneficiaries in this Article. If there are no other living beneficiaries the Trustee shall distribute the remaining trust property under the terms of Article Six.

Section 5.03 Distribution of the Share for Estelle Mintz Nelson

My Trustee shall administer Estelle Mintz Nelson's share in trust under the provisions of this Section.

(a) Distributions of Income and Principal

The Trustee may distribute to Estelle Mintz Nelson as much of the income and principal of her trust as the Trustee determines is necessary or advisable for her health, education, maintenance or support.

Any undistributed net income shall be accumulated and added to principal.

(b) Distribution Upon the Death of Barbara Mintz Latham

If Estelle Mintz Nelson dies after the establishment of her trust, but before the complete distribution of her trust, the Trustee shall distribute the remaining trust property *pro rata* to the trusts created for the other beneficiaries in this Article. If there are no other living beneficiaries the Trustee shall distribute the remaining trust property under the terms of Article Six.

(c) Distribution if Estelle Mintz Nelson is Deceased

If Estelle Mintz Nelson should die before the establishment of her trust, the Trustee shall distribute Estelle Mintz Nelson's share *pro rata* to the trusts created for the other beneficiaries in this Article. If there are no other living beneficiaries the Trustee shall distribute the remaining trust property under the terms of Article Six.

Section 5.04 Distribution of the Share for Barbara Mintz Latham

My Trustee shall administer Barbara Mintz Latham's share in trust under the provisions of this Section.

(a) Distributions of Income and Principal

The Trustee may distribute to Barbara Mintz Latham as much of the income and principal of her trust as the Trustee determines is necessary or advisable for her health, education, maintenance or support.

Any undistributed net income shall be accumulated and added to principal.

(b) Distribution Upon the Death of Barbara Mintz Latham

If Barbara Mintz Latham dies after the establishment of her trust, but before the complete distribution of her trust, the Trustee shall distribute the remaining trust property *pro rata* to the trusts created for the other beneficiaries in this Article. If there are no other living beneficiaries the Trustee shall distribute the remaining trust property under the terms of Article Six.

(c) Distribution if Barbara Mintz Latham is Deceased

If Barbara Mintz Latham should die before the establishment of her trust, the Trustee shall distribute Barbara Mintz Latham's share *pro rata* to the trusts created for the other beneficiaries in this Article. If there are no other living beneficiaries the Trustee shall distribute the remaining trust property under the terms of Article Six.

Article Six
Remote Contingent Distribution

If at any time no person or entity is qualified to receive final distribution of any part of my trust estate, this portion of my trust estate must be distributed to those persons who would inherit it had I then died intestate owning the property, as determined and in the proportions provided by the laws of Texas then in effect.

Article Seven
Distributions to Underage and Incapacitated Beneficiaries

Section 7.01 Supplemental Needs Trust

If under any provision of this trust my Trustee is directed to distribute to or for the benefit of any beneficiary when that person is receiving or applying for needs-based government benefits, my Trustee shall retain and administer the trust property as follows:

(a) Distributions for Supplemental Needs

In its sole, absolute, and unreviewable discretion, my Trustee may distribute discretionary amounts of net income and principal for supplemental needs of the beneficiary not otherwise provided by governmental financial assistance and benefits, or by the providers of services.

Supplemental needs refers to the basic requirements for maintaining the good health, safety, and welfare when, in the discretion of my Trustee, these basic requirements are not being provided by any public agency, office, or department of any state or of the United States.

Supplemental needs will also include medical and dental expenses; annual independent checkups; clothing and equipment; programs of training, education, treatment, and rehabilitation; private residential care; transportation, including vehicle purchases; maintenance; insurance; and essential dietary needs. *Supplemental needs* may include spending money; additional food; clothing; electronic equipment such as radio, recording and playback, television and computer equipment; camping; vacations; athletic contests; movies; trips; and money to purchase appropriate gifts for relatives and friends.

My Trustee will have no obligation to expend trust assets for these needs. But if my Trustee, in its sole, absolute and unreviewable discretion, decides to expend trust assets, under no circumstances should any amounts be paid to or reimbursed to the federal government, any state, or any governmental agency for any purpose, including for the care, support, and maintenance of the beneficiary.

(b) Objective to Promote Independence of the Beneficiary

While actions are in my Trustee's sole, absolute, and unreviewable discretion, all parties to this trust should be mindful that my wish is that the beneficiary live as independently, productively, and happily as possible.

(c) Trust Assets Not to be Considered Available Resource to the Beneficiary

The purpose of the provisions of this Section 7.01 is to supplement any benefits received, or for which the beneficiary may be eligible, from various governmental assistance programs, and not to supplant any benefits of this kind. All actions of my Trustee shall be directed toward carrying out this intent, and my Trustee's discretion granted under this instrument to carry out this intent is sole, absolute, and unreviewable.

For purposes of determining the beneficiary's eligibility for any of these benefits, no part of the trust estate's principal or undistributed income will be considered available to the beneficiary for public benefit purposes. The beneficiary must not be considered to have access to the trust's principal or income, or to have ownership, right, authority, or power to convert any asset into cash for his or her own use.

My Trustee shall hold, administer, and distribute all property allocated to this trust for the exclusive benefit of the beneficiary during his or her lifetime. All distributions from this trust share are in the sole, absolute, and unreviewable discretion of my Trustee, and the beneficiary is legally restricted from demanding trust assets for his or her support and maintenance.

In the event my Trustee is requested to release principal or income of the trust to or on behalf of the beneficiary to pay for equipment, medication, or services that any government agency is authorized to provide, or to petition a court or any other administrative agency for the release of trust principal or income for this purpose, my Trustee is authorized to deny this request and to take whatever administrative or judicial steps are necessary to continue the beneficiary's eligibility for benefits. This includes obtaining legal advice about the beneficiary's specific entitlement to public benefits and obtaining instructions from a court of competent jurisdiction ruling that neither the trust corpus nor the trust income is available to the beneficiary for eligibility purposes. Any expenses incurred by my Trustee in this regard, including reasonable attorney fees, will be a proper charge to the trust estate.

(d) Distribution Guidelines

My Trustee shall be responsible for determining what discretionary distributions will be made from this trust, and may use a Care Manager in accordance with the provisions of this Section. My Trustee may distribute discretionary amounts of income and principal to or for the benefit of the beneficiary for those supplemental needs not otherwise provided by governmental financial assistance and benefits, or by the providers of services. Any undistributed income will be added to principal. In making distributions, my Trustee must:

consider any other known income or resources of the beneficiary that are reasonably available;

consider all entitlement benefits from any government agency, including Social Security disability payments, Medicare, Medicaid (or any state Medicaid program equivalent), Supplemental Security Income (SSI), In-Home Support Service (IHSS), and any other supplemental purpose benefits for which the beneficiary is eligible;

consider resource and income limitations of any assistance program;

make expenditures so that the beneficiary's standard of living will be comfortable and enjoyable;

not be obligated or compelled to make specific payments;

not pay or reimburse any amounts to any governmental agency or department, unless proper demand is made by this governmental agency or reimbursement is required by the state; and

not be liable for any loss of benefits.

(e) Use of Care Manager

My Trustee shall have the option of utilizing the services of a Care Manager to advise on how best to provide for the beneficiary's needs. The primary objective of the Care Manager will be to assist my Trustee in carrying out the intentions of this trust to ensure that the beneficiary maintains a safe living situation, receives counseling services when appropriate, and lives as independently as possible.

A Care Manager must be a professional Licensed Clinical Social Worker, Professional Conservator, or care management agency with experience in the field of assessment of conditions similar to those of the beneficiary, and familiarity with the public benefits to which the beneficiary may be entitled.

(f) Distribution Advisement

If my Trustee uses a Care Manager, the Care Manager will advise my Trustee concerning discretionary distributions to be made from the trust that are helpful and appropriate for the beneficiary's needs, including payment for medical care, counseling services, and daily support.

(g) Care Manager Account for Periodic Payments

If my Trustee uses a Care Manager, the Care Manager may establish periodic payments for part or all of the payments authorized under this trust and maintain a separate bank account for disbursement by the Care Manager. Any account must be carried in the trust's name and must have the trust's federal tax identification number. At least monthly, the Care Manager shall provide information on receipts and disbursements from this account to my Trustee. This account must contain no more than an amount reasonably necessary for the beneficiary's needs for a period of 60 days.

My Trustee will not be held liable for any actions of the Care Manager, unless my Trustee has actual knowledge of and consented to the Care Manager's proposed actions before the actions were actually taken. The Care Manager must not make any distributions that may cause a reduction of public benefits unless my Trustee has consented to the distribution.

(h) Annual Care Plan

If my Trustee uses a Care Manager, the Care Manager shall provide a written care plan for purposes of evaluation of the beneficiary's medical and psychosocial status to my Trustee at least annually. The care plan must include recommendations concerning resources and services beneficial to the beneficiary.

(i) Quarterly Assessments

If my Trustee uses a Care Manager, the Care Manager shall visit the beneficiary at least quarterly to assess his or her physical and emotional needs, including the appropriateness of the present placement, attendant care, access to required resources, reliability for making and keeping medical appointments, and access to socialization activities.

(j) Compensation of the Care Manager

If my Trustee uses a Care Manager, the Care Manager will be entitled to fair and reasonable compensation for the services he or she provides. The compensation amount will be for the customary and prevailing charges for services of a similar nature during the same time and in the same geographic locale.

(k) The Resignation of a Care Manager

Any Care Manager may resign by giving 30 days' written notice to my Trustee.

(l) Replacement of Care Manager

My Trustee may terminate the Care Manager without cause and name a replacement. If a Care Manager cannot serve for any reason, my Trustee may name a replacement, who may begin to serve immediately. A successor Care Manager must also be a professional Licensed Clinical Social Worker, Professional Conservator, or care management agency with experience in the field of assessment of conditions similar to those of the beneficiary, and familiarity with the public benefits to which the beneficiary may be entitled.

(m) No Seeking of Order to Distribute

For purposes of determining the beneficiary's state Medicaid program equivalent eligibility, no part of the trust estate's principal or undistributed income may be considered available to the beneficiary. My Trustee shall deny any request by the beneficiary to:

> release trust principal or income to or on behalf of the beneficiary to pay for equipment, medication, or services that the state Medicaid program equivalent would provide if the trust did not exist; or
>
> petition a court or any other administrative agency for the release of trust principal or income for this purpose.

In its sole, absolute, and unreviewable discretion, my Trustee may take necessary administrative or legal steps to protect the beneficiary's state Medicaid program equivalent eligibility. This includes obtaining a ruling from a court of competent jurisdiction that the trust principal is not available to the beneficiary for purposes of determining state Medicaid program equivalent eligibility. Expenses for this action, including reasonable attorney fees, will be a proper charge to the trust estate.

(n) Indemnification of Trustee When Acting in Good Faith

My Trustee will be indemnified from the trust property for any loss or reduction of public benefits sustained by the beneficiary as a result of my Trustee exercising the authority granted to my Trustee under this Section in good faith.

(o) Termination and Distribution of the Supplemental Needs Trust

If my Trustee, in its sole, absolute, and unreviewable discretion, determines that the beneficiary is no longer dependent on others and is able to independently support himself or herself, my Trustee shall distribute or retain the remaining property according to the other provisions of this trust as though the provisions of this Section 7.01 had not been effective.

If the other provisions of this trust do not provide for the remaining property's distribution or retention, then my Trustee shall distribute the remaining property to the beneficiary outright and free of trust.

Independently support is satisfied when the beneficiary has been gainfully employed for 33 months of the 36-month period immediately preceding the decision to terminate the trust share.

The terms *gainful employment* and *gainfully employed* mean the full-time employment that produces sufficient net income to enable the beneficiary to contribute not less than 100% of the funds (exclusive of other revenue sources) that are necessary to provide for the beneficiary's independent care, support, maintenance, and education. In its sole, absolute, and unreviewable discretion, my Trustee shall determine whether or not the beneficiary has satisfied the condition of gainful employment.

(p) Distribution upon the Death of the Beneficiary

Upon the beneficiary's death, my Trustee shall distribute or retain the remaining property according to the other provisions of this trust as though the provisions of this Section 7.01 had not been effective. If the other provisions of this trust provide for the beneficiary's share to be held in trust, then those provisions will be interpreted as though the beneficiary died after the establishment of that trust.

If the other provisions of this trust do not provide for the distribution or retention of the remaining property, then the beneficiary will have the testamentary limited power to appoint all or any portion of the principal and undistributed income remaining in the beneficiary's trust at his or her death among one or more persons or entities. But the beneficiary may not exercise this limited power of appointment to appoint to himself or herself, his or her estate, his or her creditors or the creditors of his or her estate.

I intend to create a limited power of appointment and not a general power of appointment as defined in Internal Revenue Code Section 2041.

If any part of the beneficiary's trust is not effectively appointed, my Trustee shall distribute the remaining unappointed balance *per stirpes* to the beneficiary's descendants. If the beneficiary has no then-living descendants, my Trustee shall distribute the unappointed balance *per stirpes* to the then-living descendants of the beneficiary's

nearest lineal ancestor who was a descendant of mine or, if there is no then-living descendant, *per stirpes* to my descendants.

If I have no then-living descendants, my Trustee shall distribute the balance of the trust property as provided in Article Six.

Section 7.02 Underage and Incapacitated Beneficiaries

If my Trustee is authorized or directed under any provision of this trust to distribute net income or principal to a person (1) who has not yet reached 21 years of age or (2) who is incapacitated as defined in Section 10.05(c) or (3) who in my Trustee's sole and absolute judgment is involved in substance abuse, or is financially irresponsible, or is mentally or emotionally unstable, or is otherwise not suited to receiving distributions at that time, my Trustee may make the distribution by any one or more of the methods described in Section 7.03. Alternatively, my Trustee may retain the trust property in a separate trust to be administered by my Trustee under Section 7.04.

My Trustee may request that any beneficiary submit to medical testing and provide medical or financial records to my Trustee, and my Trustee may consider the results of such investigation, together with the beneficiary's cooperation, in making this determination. Refusal to cooperate by a beneficiary may be considered by my Trustee to be the equivalent of failing a substance abuse test, or having a pattern of financial irresponsibility, or other similar failure to qualify for distribution of benefits.

I request that before making a distribution to a beneficiary, my Trustee consider, to the extent reasonable, the ability the beneficiary has demonstrated in managing prior distributions of trust property.

Section 7.03 Methods of Distribution

My Trustee may distribute trust property for any beneficiary's benefit, subject to the provisions of Section 7.02 in any one or more of the following methods:

My Trustee may distribute trust property directly to the beneficiary.

My Trustee may distribute trust property to the beneficiary's guardian, conservator, parent, other family member, or any person who has assumed the responsibility of caring for the beneficiary.

My Trustee may distribute trust property to any person or entity, including my Trustee, as custodian for the beneficiary under the Uniform Transfers to Minors Act or similar statute.

My Trustee may distribute trust property to other persons and entities for the beneficiary's use and benefit.

My Trustee may distribute trust property to an agent or attorney in fact authorized to act for the beneficiary under a valid durable power of attorney executed by the beneficiary before becoming incapacitated.

Section 7.04 Retention in Trust

My Trustee may retain and administer trust property in a separate trust for any beneficiary's benefit, subject to the provisions of Section 7.02 as follows.

(a) Distribution of Net Income and Principal

My Trustee, other than an Interested Trustee, may distribute to the beneficiary as much of the net income and principal of any trust created under this Section as my Trustee may determine advisable for any purpose. If there is no then-serving Trustee that is not an Interested Trustee, my Trustee shall distribute to the beneficiary as much of the net income and principal of the trust created under this Section as my Trustee determines is necessary or advisable for the beneficiary's health, education, maintenance or support. Any undistributed net income will be accumulated and added to principal.

(b) Right of Withdrawal

When the beneficiary whose trust is created under this Section either reaches 21 years of age or is no longer incapacitated, the beneficiary may withdraw all or any portion of the accumulated net income and principal from the trust.

(c) Distribution upon the Death of the Beneficiary

Subject to the terms of the next paragraph, the beneficiary whose trust is created under this Section may appoint all or any portion of the principal and undistributed net income remaining in the beneficiary's trust at the beneficiary's death among one or more persons or entities, and the creditors of the beneficiary's estate. The beneficiary has the exclusive right to exercise this general power of appointment.

The beneficiary may not exercise this power of appointment to appoint to the beneficiary, the beneficiary's estate, the beneficiary's creditors, or creditors of the beneficiary's estate from the *limited share* of the beneficiary's trust. For purposes of this power of appointment, the *limited share* of the beneficiary's trust is that portion of the beneficiary's trust that has an inclusion ratio for generation-skipping transfer tax purposes of zero or that without the exercise of the power of appointment, would not constitute a taxable generation-skipping transfer at the beneficiary's death. If the generation-skipping tax does not then apply, the limited share will be the beneficiary's entire trust.

If any part of the beneficiary's trust is not effectively appointed, my Trustee shall distribute the remaining unappointed balance *per stirpes* to the beneficiary's descendants. If the beneficiary has no then-living descendants, my Trustee shall distribute the unappointed balance *per stirpes* to the then-living descendants of the beneficiary's nearest lineal ancestor who was a descendant of mine or, if there is no then-living descendant, *per stirpes* to my descendants.

If I have no then-living descendants, my Trustee shall distribute the balance of the trust property as provided in Article Six.

Section 7.05 Application of Article

Any decision made by my Trustee under this Article is final, controlling, and binding upon all beneficiaries subject to the provisions of this Article.

Article Eight
Trust Administration

Section 8.01 Distributions to Beneficiaries

Whenever this trust authorizes or directs my Trustee to make a net income or principal distribution to a beneficiary, my Trustee may apply any property that otherwise could be distributed directly to the beneficiary for his or her benefit. My Trustee is not required to inquire into the beneficiary's ultimate disposition of the distributed property unless specifically directed otherwise by this trust.

My Trustee may make cash distributions, in-kind distributions, or distributions partly in each, in proportions and at values determined by my Trustee. My Trustee may allocate undivided interests in specific assets to a beneficiary or trust in any proportion or manner that my Trustee determines, even though the property allocated to one beneficiary may be different from that allocated to another beneficiary.

My Trustee may make these determinations without regard to the income tax attributes of the property and without the consent of any beneficiary.

Section 8.02 Trust Decanting; Power to Appoint in Further Trust

Whenever an Independent Trustee may distribute assets to or for the benefit of a beneficiary, my Trustee may appoint the property subject to my Trustee's power of distribution in trust for the benefit of one or more beneficiaries of any trust created under this instrument under the terms established by the Independent Trustee. Any trust established by the Independent Trustee and funded by the exercise of the power granted under this Section must meet these requirements:

the trust must not reduce any fixed income, annuity, or unitrust right provided by this trust instrument to any beneficiary;

the trust must provide for one or more of the beneficiaries of a trust created under this instrument; and

the interests of remainder beneficiaries of the trust created under this instrument must not be accelerated under the terms of the new trust.

An Independent Trustee may not use the powers granted under this Section to extend the term of the new trust beyond the period of perpetuities provided under the governing law of this instrument.

Any trust created under this provision must not contain any provision that, if applicable, would cause the trust to fail to qualify for the marital deduction or charitable deduction, fail to qualify any gift to the trust for any gift, estate, or generation-skipping transfer annual exclusion, or disqualify the trust as a qualified subchapter S corporation shareholder.

If any beneficiary holds a presently exercisable right to withdraw property from this trust, that right may not be defeated by the exercise of the Independent Trustee's powers granted under this Section.

Section 8.03 Beneficiary's Status

Until my Trustee receives notice of the incapacity, birth, marriage, death, or other event upon which a beneficiary's right to receive payments may depend, my Trustee will not be held liable for acting or not acting with respect to the event, or for disbursements made in good faith to persons whose interest may have been affected by the event. Unless otherwise provided in this trust, a parent or Legal Representative may act on behalf of a minor or incapacitated beneficiary.

My Trustee may rely on any information provided by a beneficiary with respect to the beneficiary's assets and income. My Trustee will have no independent duty to investigate the status of any beneficiary and will not incur any liability for not doing so.

Section 8.04 No Court Proceedings

My Trustee shall administer this trust with efficiency, with attention to the provisions of this trust, and with freedom from judicial intervention. If my Trustee or another interested party institutes a legal proceeding, the court will acquire jurisdiction only to the extent necessary for that proceeding. Any proceeding to seek instructions or a court determination may only be initiated in the court with original jurisdiction over matters relating to the construction and administration of trusts. Seeking instructions or a court determination is not to be construed as subjecting this trust to the court's continuing jurisdiction.

I request that any questions or disputes that arise during the administration of this trust be resolved by mediation and, if necessary, arbitration in accordance with the Uniform Arbitration Act. Each interested party involved in the dispute, including any Trustee involved, may select an arbiter and, if necessary to establish a majority decision, these arbiters may select an additional arbiter. The decision of a majority of the arbiters selected will control with respect to the matter.

Section 8.05 No Bond

My Trustee is not required to furnish any bond for the faithful performance of the Trustee's duties unless required by a court of competent jurisdiction, and only if the court finds that a bond is needed to protect the beneficiaries' interests. No surety will be required on any bond required by any law or court rule, unless the court specifies its necessity.

Section 8.06 Exoneration of My Trustee

No successor Trustee is obligated to examine the accounts, records, or actions of any previous Trustee. No successor Trustee may be held responsible for any act, omission, or forbearance by any previous Trustee.

Any Trustee may obtain written agreements from the beneficiaries or their Legal Representatives releasing and indemnifying the Trustee from any liability that may have arisen from the Trustee's acts, omissions, or forbearances. If acquired from all the trust's living beneficiaries or their Legal Representatives, any agreement is conclusive and binding on all parties, born or unborn, who may have or who may later acquire an interest in the trust.

My Trustee may require a refunding agreement before making any distribution or allocation of trust income or principal, and may withhold distribution or allocation pending determination or release of a tax or other lien.

Section 8.07 Trustee Compensation

An individual serving as Trustee is entitled to fair and reasonable compensation for the services provided as a fiduciary. A corporate fiduciary serving as Trustee will be compensated by agreement between an individual serving as Trustee and the corporate fiduciary. In the absence of an individual Trustee or an agreement, a corporate fiduciary will be compensated in accordance with the corporate fiduciary's current published fee schedule.

A Trustee may charge additional fees for services provided that are beyond the ordinary scope of duties, such as fees for legal services, tax return preparation, and corporate finance or investment banking services.

In addition to receiving compensation, a Trustee may be reimbursed for reasonable costs and expenses incurred in carrying out the Trustee's duties under this trust.

Section 8.08 Employment of Professionals

My Trustee may appoint, employ, and remove investment advisors, accountants, auditors, depositories, custodians, brokers, consultants, attorneys, advisors, agents, and employees to advise or assist in the performance of my Trustee's duties. My Trustee may act on the recommendations of the persons or entities employed, with or without independent investigation.

My Trustee may reasonably compensate an individual or entity employed to assist or advise my Trustee, regardless of any other relationship existing between the individual or entity and my Trustee.

My Trustee may compensate providers of contracted services at the usual rate out of the trust's income or principal, as my Trustee deems advisable. My Trustee may compensate an individual or entity employed to assist or advise my Trustee without diminishing the compensation the Trustee is entitled to under this trust. A Trustee who is a partner, stockholder, officer, director, or corporate affiliate in any entity employed to assist or advise my Trustee may still receive the Trustee's share of the compensation paid to the entity.

Section 8.09 Collection of Proceeds after the Death of an Insured

After the death of an insured under any policy of life insurance forming a part of the trust principal, my Trustee shall make a reasonable effort to collect all amounts payable directly to my Trustee or the trust. My Trustee may exercise any of the settlement options available to my Trustee under the policy's terms. My Trustee will not be liable to any beneficiary for the settlement option ultimately selected.

My Trustee may refuse to enter into or maintain any proceeding, administrative or otherwise, with respect to any life insurance policy, until my Trustee has been satisfactorily indemnified against all expenses and liabilities that my Trustee believes may be involved in the proceeding.

My Trustee may compromise and adjust claims arising out of any insurance policy upon the terms and conditions as my Trustee determines prudent. My Trustee's decisions are conclusive on all persons.

Section 8.10 Insurance Carrier Protected in Dealing With The Trustee

An insurance carrier may presume that my Trustee is properly exercising its powers as Trustee under this trust at all times. The insurance provider and its agents are not required to examine any of the provisions of this trust to determine if my Trustee has the power to act or is properly exercising its power, or to verify my Trustee's management of any proceeds paid to my Trustee.

My Trustee's receipt of the insurance proceeds will relieve the insurance carrier of any further liability with respect to payment of the proceeds.

Section 8.11 Determination of Principal and Income

My Trustee shall determine how all Trustee fees, disbursements, receipts, and wasting assets will be credited, charged, and apportioned between principal and income in a fair, equitable, and practical manner.

My Trustee may set aside from trust income reasonable reserves for taxes, assessments, insurance premiums, repairs, depreciation, obsolescence, depletion, and the equalization of payments to or for the beneficiaries. My Trustee may select appropriate accounting periods for the trust property.

Section 8.12 Trust Accounting

Except to the extent required by law, my Trustee is not required to file accountings in any jurisdiction. The annual accounting must include the receipts, expenditures, and distributions of income and principal and the assets on hand for the accounting period. A copy of the federal fiduciary tax return filed for a trust during the accounting will satisfy this reporting requirement.

In the absence of fraud or obvious error, assent by all Income Beneficiaries to a Trustee's accounting will make the matters disclosed in the accounting binding and conclusive upon all persons, including those living on this date and those born in the future who have or will have a vested or contingent interest in the trust property. In the case of an Income Beneficiary who is a minor or incapacitated, the beneficiary's natural guardian or Legal Representative may give the assent required under this Section.

A beneficiary may object to an accounting provided by my Trustee only by giving written notice to my Trustee within 60 days after my Trustee provides the accounting. Any beneficiary who does not submit a timely written objection is considered to assent to the accounting.

My Trustee must make the trust's financial records and documents available to beneficiaries at reasonable times and upon reasonable notice for inspection. My Trustee is not required to furnish any information regarding my trust to anyone other than a beneficiary. My Trustee may exclude any information my Trustee determines is not directly applicable to the beneficiary receiving the information.

In all events, a beneficiary's Legal Representative may receive any notices and take any action on behalf of the beneficiary as to an accounting. If any beneficiary's Legal Representative fails to object to any accounting in writing within 60 days after my Trustee provides the accounting, the beneficiary's Legal Representative will be considered to assent to the accounting.

Section 8.13 Action of Trustees and Delegation of Trustee Authority

If two Trustees are eligible to act with respect to a given matter, they must agree unanimously for action to be taken unless the express terms of the Trustees' appointment provide otherwise. If more than two Trustees are eligible to act with respect to a given matter, the Trustees must agree by majority for action to be taken.

If my Trustees are unable to agree on a matter for which they have joint powers, I request that the matter be settled by mediation and then by arbitration, if necessary, in accordance with the Uniform Arbitration Act. Each of my Trustees may select an arbiter and these arbiters may select an additional arbiter, if necessary to establish a majority decision. The decision of a majority of the arbiters will control with respect to the matter.

A nonconcurring Trustee may dissent or abstain from a decision of the majority. A Trustee will be absolved from personal liability by registering the dissent or abstention in the trust records. After doing so, the dissenting Trustee must then act with my other Trustees in any way necessary or appropriate to effect the majority decision.

Notwithstanding the limitations set forth in this Section, unless a Trustee elects otherwise in a written instrument delivered to the other Trustees, if two or more Trustees are then serving, any one Trustee may sign any checks, agreements, or other documents on behalf of the trust with the same effect as if all Trustees had signed. Persons dealing with the signing Trustee in good faith may rely upon the signing Trustee's authority to act on behalf of the trust without inquiry as to the other Trustees' agreement.

Subject to the limitations set forth in Section 9.21, any Trustee may, by written instrument, delegate to any other Trustee the right to exercise any power, including a discretionary power, granted to my Trustee in this trust. During the time a delegation under this Section is in effect, the Trustee to whom the delegation is made may exercise the power to the same extent as if the delegating Trustee has personally joined in the exercise of the power. The delegating Trustee may revoke the delegation at any time by giving written notice to the Trustee to whom the power was delegated.

Section 8.14 Trustee May Disclaim or Release Any Power

Notwithstanding any provision of this trust to the contrary, any Trustee may relinquish any Trustee power in whole or in part, irrevocably or for any specified period of time, by a written instrument. The Trustee may relinquish a power personally or may relinquish the power for all subsequent Trustees.

Section 8.15 Trustee May Execute a Power of Attorney

My Trustee may appoint any individual or entity to serve as my Trustee's agent under a power of attorney to transact any business on behalf of my trust or any other trust created under this trust.

Section 8.16 Additions to Separate Trusts

If upon the termination of any trust created under this trust, a final distribution is to be made to a person who is the Primary Beneficiary of another trust established under this trust, and there is no specific indication whether the distribution is to be made in trust or outright, my Trustee shall

make the distribution to the second trust instead of distributing the property to the beneficiary outright. For purposes of administration, the distribution will be treated as though it had been an original part of the second trust.

Section 8.17 Authority to Merge or Sever Trusts

My Trustee may merge a trust created under this trust with any other trust, if the two trusts contain substantially the same terms for the same beneficiaries and have at least one Trustee in common. My Trustee may administer the merged trust under the provisions of the instrument governing the other trust, and this trust will no longer exist if it merges into another trust. Accordingly, in the event another trust is merged into this trust or a trust created under the provisions of this trust document, my Trustee may shorten the period during which this trust subsists to comply with Section 10.01, if necessary, to effect the merger. But if a merger does not appear feasible, my Trustee may consolidate the trusts' assets for purposes of investment and trust administration while retaining separate records and accounts for each respective trust.

My Trustee may sever any trust on a fractional basis into two or more separate and identical trusts, or may segregate a specific amount or asset from the trust property by allocating it to a separate account or trust. The separate trusts may be funded on a *non pro rata* basis, but the funding must be based on the assets' total fair market value on the funding date. After the segregation, income earned on a segregated amount or specific asset passes with the amount or asset segregated. My Trustee shall hold and administer each severed trust upon terms and conditions identical to those of the original trust.

Subject to the trust's terms, my Trustee may consider differences in federal tax attributes and other pertinent factors in administering the trust property of any separate account or trust, in making applicable tax elections and in making distributions. A separate trust created by severance must be treated as a separate trust for all purposes from the effective severance date; however, the effective severance date may be retroactive to a date before my Trustee exercises the power.

Section 8.18 Authority to Terminate Trusts

My Independent Trustee may terminate any trust created under this trust at any time, if my Independent Trustee, in its sole and absolute discretion, determines that administering a trust created under this trust is no longer economical. Once distributed, my Trustee will have no further responsibility with respect to that trust property. My Trustee will distribute the trust property from a terminated trust in this order:

to the beneficiaries then entitled to mandatory distributions of the trust's net income, in the same proportions; and then

if none of the beneficiaries are entitled to mandatory distributions of net income, to the beneficiaries then eligible to receive discretionary distributions of the trust's net income, in the amounts and shares my Independent Trustee determines.

Section 8.19 Merger of Corporate Fiduciary

If any corporate fiduciary acting as the Trustee under this trust is merged with or transfers substantially all of its trust assets to another corporation, or if a corporate fiduciary changes its name, the successor will automatically succeed to the trusteeship as if that successor had been originally named a Trustee. No document of acceptance of trusteeship will be required.

Section 8.20 Funeral and Other Expenses of Beneficiary

Upon the death of an Income Beneficiary, my Trustee may pay the funeral expenses, burial or cremation expenses, enforceable debts, or other expenses incurred due to the death of the beneficiary from trust property. This Section only applies to the extent the Income Beneficiary has not exercised any testamentary power of appointment granted to the beneficiary under this trust.

My Trustee may rely upon any request by the deceased beneficiary's Legal Representative or family members for payment without verifying the validity or the amounts and without being required to see to the application of the payment. My Trustee may make decisions under this Section without regard to any limitation on payment of expenses imposed by statute or court rule and without obtaining the approval of any court having jurisdiction over the administration of the deceased beneficiary's estate.

Article Nine
My Trustee's Powers

Section 9.01 Introduction to Trustee's Powers

Except as otherwise specifically provided in this trust, my Trustee may exercise the powers granted by this trust without prior approval from any court, including those powers set forth under the laws of the State of Texas or any other jurisdiction whose law applies to this trust. The powers set forth in the Texas Trust Code are specifically incorporated into this trust.

My Trustee shall exercise the Trustee powers in the manner my Trustee determines to be in the beneficiaries' best interests. My Trustee must not exercise any power inconsistent with the beneficiaries' right to the enjoyment of the trust property in accordance with the general principles of trust law.

My Trustee may have duties and responsibilities in addition to those described in this trust. I encourage any individual or corporate fiduciary serving as Trustee to obtain appropriate legal advice if my Trustee has any questions concerning the duties and responsibilities as Trustee.

Section 9.02 Execution of Documents by My Trustee

My Trustee may execute and deliver any written instruments that my Trustee considers necessary to carry out any powers granted in this trust.

Section 9.03 Investment Powers in General

My Trustee may invest in any type of investment that my Trustee determines is consistent with the investment goals of the trust, whether inside or outside the geographic borders of the United States of America and its possessions or territories, taking into account the overall investment portfolio of the trust.

Without limiting my Trustee's investment authority in any way, I request that my Trustee exercise reasonable care and skill in selecting and retaining trust investments. I also request that my Trustee take into account the following factors in choosing investments:

the potential return from the investment, both in income and appreciation;

the potential income tax consequences of the investment;

the investment's potential for volatility; and

the role the investment will play in the trust's portfolio.

I request that my Trustee also consider the possible effects of inflation or deflation, changes in global and US economic conditions, transaction expenses, and the trust's need for liquidity while arranging the trust's investment portfolio.

My Trustee may delegate his or her discretion to manage trust investments to any registered investment advisor or corporate fiduciary.

Section 9.04 Banking Powers

My Trustee may establish any type of bank account in any banking institutions that my Trustee chooses. If my Trustee makes frequent disbursements from an account, the account does not need to be interest bearing. My Trustee may authorize withdrawals from an account in any manner.

My Trustee may open accounts in the name of my Trustee, with or without disclosing fiduciary capacity, and may open accounts in the name of the trust. When an account is in the name of the trust, checks on that account and authorized signatures need not disclose the account's fiduciary nature or refer to any trust or Trustee.

Section 9.05 Business Powers

If the trust owns or acquires an interest in a business entity, whether as a shareholder, partner, general partner, sole proprietor, member, participant in a joint venture, or otherwise, my Trustee may exercise the powers and authority provided for in this Section. The powers granted in this Section are in addition to all other powers granted to my Trustee in this trust.

(a) No Duty to Diversify

Notwithstanding any duty to diversify imposed by state law or any other provision of this trust, my Trustee may acquire or indefinitely retain any ownership interest in or indebtedness of any closely held or nonpublicly traded entity in which the trust, myself, my descendants, and the spouses of my descendants have an ownership interest (the *business interests*), and even though any business interest may constitute all or a substantial portion of the trust property. I specifically authorize my Trustee to invest or indefinitely retain all or any part of the trust property in these business interests, regardless of any resulting risk, lack of income, diversification, or marketability. I waive any applicable prudent investor rule, as well as the Trustee's standard of care and duty to diversify with respect to the acquisition or retention of these business interests.

I recognize that the value of a noncontrolling interest in a business entity may be less than the underlying value of the entity's net assets. Nevertheless, I authorize my Trustee to acquire or retain any noncontrolling business interests.

(b) Specific Management Powers

My Trustee has all power and authority necessary to manage and operate any business owned by the trust, whether directly or indirectly, including the express powers set forth in this Subsection. My Trustee may participate directly in the conduct of the business, by serving as a general partner of a limited partnership, a member, manager or managing member of a limited liability company, or a shareholder of a corporation, or may employ others to serve in that capacity.

My Trustee may participate in the management of the business and delegate management duties and powers to any employee, manager, partner, or associate of the business, without incurring any liability for the delegation. To the extent that the business interest held by the trust is not one that includes management powers (such as a minority stock interest, limited partnership interest, or a membership interest in a limited liability

company), my Trustee has no obligation to supervise the management of the underlying assets, and no liability for the actions of those who do manage the business.

My Trustee may enter into management trusts and nominee trusts in which my Trustee and the trust may serve as the exclusive manager or nominee of property or property interests on behalf of any limited partnership, limited liability company, or corporation.

My Trustee, individually, or if my Trustee is a corporate fiduciary, then an employee of my Trustee, may act as a director, general or limited partner, associate, or officer of the business.

My Trustee may participate with any other person or entity in the formation or continuation of a partnership either as a general or limited partner, or in any joint venture. My Trustee may exercise all the powers of management necessary and incidental to a membership in the partnership, limited partnership, or joint venture, including making charitable contributions.

My Trustee may reduce, expand, limit, or otherwise adjust the operation or policy of the business. My Trustee may subject the trust's principal and income to the risks of the business for any term or period, as my Trustee determines.

For any business in which the trust has an interest, my Trustee may advance money or other property, make loans (subordinated or otherwise) of cash or securities, and guarantee the loans of others made to the business. My Trustee may borrow money for the business, either alone or with other persons interested in the business, and may secure the loan or loans by a pledge or mortgage of any part of any trust property.

My Trustee may select and vote for directors, partners, associates, and officers of the business. My Trustee may enter into owners' agreements with a business in which the trust has an interest or with the other owners of the business.

My Trustee may execute agreements and amendments to agreements as may be necessary to the operation of the business, including stockholder agreements, partnership agreements, buy-sell agreements, and operating agreements for limited liability companies.

My Trustee may generally exercise any powers necessary for the continuation, management, sale, or dissolution of the business.

My Trustee may participate in the sale, reorganization, merger, consolidation, recapitalization, or liquidation of the business. My Trustee may sell or liquidate the business or business interest on terms my Trustee deems advisable and in the best interests of the trust and the beneficiaries. My Trustee may sell any business interest held by the trust to one or more of the beneficiaries of this trust or to any trust in which a majority of the beneficiaries are beneficiaries of this trust. My Trustee may make the sale in exchange for cash, a private annuity, an installment note, or any combination of those.

My Trustee may exercise all of the business powers granted in this trust even though my Trustee may be personally invested in or otherwise involved with the business.

(c) Business Liabilities

If any tort or contract liability arises in connection with the business, and if the trust is liable, my Trustee will first satisfy the liability from the assets of the business, and only then from other trust property as determined by my Trustee.

(d) Trustee Compensation

In addition to the compensation set forth in Section 8.07, my Trustee may receive additional reasonable compensation for services in connection with the operation of the business. My Trustee may receive this compensation directly from the business, the trust or both.

(e) Conflicts of Interest

My Trustee may exercise all of the powers granted in this trust even though my Trustee may be involved with or have a personal interest in the business.

Section 9.06 Contract Powers

My Trustee may sell at public or private sale, transfer, exchange for other property, and otherwise dispose of trust property for consideration and upon terms and conditions that my Trustee deems advisable. My Trustee may grant options of any duration for any sales, exchanges, or transfers of trust property.

My Trustee may enter into contracts, and may deliver deeds or other instruments, that my Trustee considers appropriate.

Section 9.07 Common Investments

For purposes of convenience with regard to the trust property's administration and investment, my Trustee may invest part or all of the trust property jointly with property of other trusts for which my Trustee is also serving as a Trustee. A corporate fiduciary acting as my Trustee may use common funds for investment. When trust property is managed and invested in this manner, my Trustee will maintain records that sufficiently identify this trust's portion of the jointly invested assets.

Section 9.08 Environmental Powers

My Trustee may inspect trust property to determine compliance with or to respond to any environmental law affecting the property. For purposes of this trust *environmental law* means any federal, state, or local law, rule, regulation, or ordinance protecting the environment or human health.

My Trustee may refuse to accept property if my Trustee determines that the property is or may be contaminated by any hazardous substance or is or was used for any purpose involving hazardous substances that could create liability to the trust or to any Trustee.

My Trustee may use trust property to:

conduct environmental assessments, audits, or site monitoring;

take remedial action to contain, clean up, or remove any hazardous substance including a spill, discharge, or contamination;

institute, contest, or settle legal proceedings brought by a private litigant or any local, state, or federal agency concerned with environmental compliance;

comply with any order issued by any court or by any local, state, or federal agency directing an assessment, abatement, or cleanup of any hazardous substance; and

employ agents, consultants, and legal counsel to assist my Trustee in these actions.

My Trustee is not liable for any loss or reduction in value sustained by the trust as a result of my Trustee's decision to retain property on which hazardous materials or substances requiring remedial action are discovered, unless my Trustee contributed to that loss through willful misconduct or gross negligence.

My Trustee is not liable to any beneficiary or to any other party for any decrease in the value of property as a result of my Trustee's actions to comply with any environmental law, including any reporting requirement.

My Trustee may release, relinquish, or disclaim any power held by my Trustee that my Trustee determines may cause my Trustee to incur individual liability under any environmental law.

Section 9.09 Loans and Borrowing Powers

My Trustee may make loans to any person including a beneficiary, as well as an entity, trust, or estate, for any term or payable on demand, and secured or unsecured. But my Trustee may only make loans to me with adequate interest and security.

My Trustee may encumber any trust property by mortgages, pledges, or otherwise, and may negotiate, refinance, or enter into any mortgage or other secured or unsecured financial arrangement, whether as a mortgagee or mortgagor. The term may extend beyond the trust's termination and beyond the period required for an interest created under this trust to vest in order to be valid under the rule against perpetuities.

My Trustee may borrow money at interest rates and on other terms that my Trustee deems advisable from any person, institution, or other source including, in the case of a corporate fiduciary, its own banking or commercial lending department.

My Trustee may purchase, sell at public or private sale, trade, renew, modify, and extend mortgages. My Trustee may accept deeds instead of foreclosing.

Section 9.10 Nominee Powers

My Trustee may hold real estate, securities, and any other property in the name of a nominee or in any other form, without disclosing the existence of any trust or fiduciary capacity.

Section 9.11 Oil, Gas and Mineral Interests

My Trustee may acquire, maintain, develop, and exploit, either alone or jointly with others, any oil, gas, coal, mineral, or other natural resource rights or interests.

My Trustee may drill, test, explore, mine, develop, extract, remove, convert, manage, retain, store, sell, and exchange any of those rights and interests on terms and for a price that my Trustee deems advisable.

My Trustee may execute leases, pooling, unitization, and other types of agreements in connection with oil, gas, coal, mineral, and other natural resource rights and interests, even though the terms of those arrangements may extend beyond the trust's termination.

My Trustee may execute division orders, transfer orders, releases, assignments, farm outs, and any other instruments that it considers proper.

My Trustee may employ the services of consultants and outside specialists in connection with the evaluation, management, acquisition, disposition, and development of any mineral interest, and may pay the cost of the services from the trust's principal and income.

Section 9.12 Payment of Property Taxes and Expenses

Except as otherwise provided in this trust, my Trustee may pay any property taxes, assessments, fees, charges, and other expenses incurred in the administration or protection of the trust. All payments will be a charge against the trust property and will be paid by my Trustee out of income. If the income is insufficient, then my Trustee may make any payments of property taxes or expenses out of the trust property's principal. My Trustee's determination with respect to this payment will be conclusive on the beneficiaries.

Section 9.13 Purchase of Assets from and Loans to My Probate Estate

Upon my death, my Trustee may purchase at fair market value and retain in the form received any property that is a part of my probate or trust estate as an addition to the trust. In addition, my Trustee may make secured and unsecured loans to my probate or trust estate. My Trustee may not be held liable for any loss suffered by the trust because of the exercise of the powers granted in this Section.

My Trustee may not use any trust property for the benefit of my estate as defined in Code of Federal Regulations Title 26 Section 20.2042-1(b), unless the property is included in my gross estate for federal estate tax purposes.

Section 9.14 Qualified Tuition Programs

My Trustee may purchase tuition credits or certificates or make contributions to an account in one or more qualified tuition programs as defined under Internal Revenue Code Section 529 on a beneficiary's behalf for the purpose of meeting the beneficiary's qualified higher education expenses. With respect to an interest in any qualified tuition program, my Trustee may act as contributor, administering the interest by actions including:

designating and changing the designated beneficiary of the interest in the qualified tuition program;

requesting both qualified and nonqualified withdrawals;

selecting among investment options and reallocating funds among different investment options;

making rollovers to another qualified tuition program; and

allocating any tax benefits or penalties to the beneficiaries of the trust.

Notwithstanding anything in this provision to the contrary, the designated beneficiary must always be a beneficiary of the trust from which the funds were distributed to establish the interest in the qualified tuition program. Investment in a qualified tuition program will not be considered a delegation of investment responsibility under any applicable statute or other law.

Section 9.15 Real Estate Powers

My Trustee may sell at public or private sale, convey, purchase, exchange, lease for any period, mortgage, manage, alter, improve, and in general deal in and with real property in the manner and on the terms and conditions as my Trustee deems appropriate.

My Trustee may grant or release easements in or over, subdivide, partition, develop, raze improvements to, and abandon any real property.

My Trustee may manage real estate in any manner considered best, and may exercise all other real estate powers necessary to effect this purpose.

My Trustee may enter into contracts to sell real estate. My Trustee may enter into leases and grant options to lease trust property, even though the term of the agreement extends beyond the termination of any trusts established under this trust and beyond the period that is required for an interest created under this trust to vest in order to be valid under the rule against perpetuities. My Trustee may enter into any contracts, covenants, and warranty agreements that my Trustee deems appropriate.

Section 9.16 Residences and Tangible Personal Property

My Trustee may grant life estate to a beneficiary of a trust created herein in such real estate as it shall determine.

My Trustee may acquire, maintain, and invest in any residence for the beneficiaries' use and benefit, whether or not the residence is income producing and without regard to the proportion that the residence's value may bear to the trust property's total value, even if retaining the residence involves financial risks that Trustees would not ordinarily incur. My Trustee may pay or make arrangements for others to pay all carrying costs of any residence for the beneficiaries' use and benefit, including taxes, assessments, insurance, maintenance, and other related expenses.

My Trustee may acquire, maintain, and invest in articles of tangible personal property, whether or not the property produces income. My Trustee may pay for the repair and maintenance of the property.

My Trustee is not required to convert the property referred to in this Section to income-producing property, except as required by other provisions of this trust.

My Trustee may permit any Income Beneficiary of the trust to occupy any real property or use any personal property owned by the trust on terms or arrangements that my Trustee determines, including rent free or in consideration for the payment of taxes, insurance, maintenance, repairs, or other charges.

My Trustee is not liable for any depreciation or loss resulting from any decision to retain or acquire any property as authorized by this Section.

Section 9.17 Retention and Abandonment of Trust Property

My Trustee may retain any property constituting the trust at the time of its creation, at the time of my death, or as the result of the exercise of a stock option, without liability for depreciation or loss resulting from retention. My Trustee may retain property, notwithstanding the fact that the property may not be of the character prescribed by law for the investment of assets held by a fiduciary, and notwithstanding the fact that retention may result in inadequate diversification under any applicable Prudent Investor Act or other applicable law.

My Trustee may hold property that is not income producing or is otherwise nonproductive if holding the property is in the best interests of the beneficiaries in the sole and absolute discretion of my Trustee. On the other hand, my Trustee will invest contributions of cash and cash equivalents as soon as reasonably practicable after the assets have been acquired by the trust.

My Trustee may retain a reasonable amount in cash or money market accounts to pay anticipated expenses and other costs, and to provide for anticipated distributions to or for the benefit of a beneficiary.

My Trustee may abandon any property that my Trustee considers of insignificant value.

Section 9.18 Securities, Brokerage and Margin Powers

My Trustee may buy, sell, trade, and otherwise deal in stocks, bonds, investment companies, mutual funds, common trust funds, commodities, and other securities of any kind and in any amount, including short sales. My Trustee may write and purchase call or put options, and other derivative securities. My Trustee may maintain margin accounts with brokerage firms, and may pledge securities to secure loans and advances made to my Trustee or to or for a beneficiary's benefit.

My Trustee may place all or any part of the securities held by the trust in the custody of a bank or trust company. My Trustee may have all securities registered in the name of the bank or trust company or in the name of the bank's nominee or trust company's nominee. My Trustee may appoint the bank or trust company as the agent or attorney in fact to collect, receive, receipt for, and disburse any income, and generally to perform the duties and services incident to a custodian of accounts.

My Trustee may employ a broker-dealer as a custodian for securities held by the trust, and may register the securities in the name of the broker-dealer or in the name of a nominee; words indicating that the securities are held in a fiduciary capacity are optional. My Trustee may hold securities in bearer or uncertificated form, and may use a central depository, clearing agency, or book-entry system, such as The Depository Trust Company, Euroclear, or the Federal Reserve Bank of New York.

My Trustee may participate in any reorganization, recapitalization, merger, or similar transaction. My Trustee may exercise or sell conversion or subscription rights for securities of all kinds and descriptions. My Trustee may give proxies or powers of attorney that may be

discretionary and with or without powers of substitution, and may vote or refrain from voting on any matter.

Section 9.19 Settlement Powers

My Trustee may settle any claims and demands in favor of or against the trust by compromise, adjustment, arbitration, or other means. My Trustee may release or abandon any claim in favor of the trust.

Section 9.20 Subchapter S Corporation Stock Provisions

During any period the trust is not treated as a grantor trust for tax purposes under Internal Revenue Code Section 671, this trust or any trust created under this trust may hold any S corporation stock held as a separate *Electing Small Business Trust*, or as a separate *Qualified Subchapter S Trust*, as provided in this Section.

For purposes of this Section, *S corporation stock* means all capital stock issued by a corporation (or other entity taxable as a corporation for federal income tax purposes) that is treated or is intended to be treated under Section 1361(a) as an *S corporation* for federal income tax purposes.

(a) Electing Treatment as an Electing Small Business Trust

If my Trustee elects under Internal Revenue Code Section 1361(e)(3) to qualify any portion of the trust as an *Electing Small Business Trust*, my Trustee shall:

apportion a reasonable share of the unallocated expenses of all trusts created under this trust to the Electing Small Business Trust under the applicable provisions of the Internal Revenue Code and Treasury Regulations; and

administer the trust as an Electing Small Business Trust, under Internal Revenue Code Section 1361(e).

(b) Electing Treatment as a Qualified Subchapter S Trust

If the current Income Beneficiary of the trust makes an election under Section 1361(d)(2) to qualify the trust as a Qualified Subchapter S Trust within the meaning of Section 1361(d)(3), my Trustee shall:

refer to the Qualified Subchapter S Trust using the same name as the trust to which the stock was originally allocated, plus the name of the current Income Beneficiary of the trust, followed by the letters QSST;

administer the Qualified Subchapter S Trust in accordance with the same provisions contained in the trust to which the Trustee allocated the S corporation stock, as long as the provisions of this Subsection control the trust administration to the extent that they are inconsistent with the provisions of the original trust; and

maintain the Qualified Subchapter S Trust as a separate trust held for the benefit of only one beneficiary as required in Section 1361(d)(3).

My Trustee shall recommend that the current Income Beneficiary of the trust make a timely election to cause federal tax treatment of the trust as a Qualified Subchapter S Trust.

(1) Current Income Beneficiary

The *current Income Beneficiary* of a Qualified Subchapter S Trust is the person who has a present right to receive income distributions from the trust to which the Trustee has allocated the S corporation stock. A Qualified Subchapter S Trust may have only one current Income Beneficiary.

If, under the terms of the trust, more than one person has a present right to receive income distributions from the trust originally holding the S corporation stock, my Trustee shall segregate the S corporation stock into separate Qualified Subchapter S Trusts for each of these people.

(2) Distributions

Until the earlier of the death of the current Income Beneficiary or the date on which the trust no longer holds any S corporation stock (the *QSST termination date*), my Trustee shall distribute at least annually all of the trust's *net income*, as defined in Internal Revenue Code Section 643(b) to the current Income Beneficiary.

The terms of the trust to which the S corporation stock was originally allocated govern distributions of principal from the Qualified Subchapter S Trust. But until the QSST termination date, my Trustee may distribute principal only to the current Income Beneficiary of the Qualified Subchapter S Trust and not to any other person or entity.

If the Qualified Subchapter S Trust terminates during the lifetime of the current Income Beneficiary, my Trustee shall distribute all assets of the Qualified Subchapter S Trust to the current Income Beneficiary outright and free of the trust.

(3) Allocation of Income and Expenses

My Trustee shall characterize receipts and expenses of any Qualified Subchapter S Trust in a manner consistent with Internal Revenue Code Section 643(b).

(4) Trust Merger or Consolidation

Notwithstanding any other provision of this trust that may seem to the contrary, my Trustee may not merge any Qualified Subchapter S Trust with another trust's assets if doing so would jeopardize the qualification of either trust as a Qualified Subchapter S Trust.

(c) Governance of the Trusts

The following additional provisions apply to any separate trust created under this Section.

(1) Protection of S Corporation Status

My Trustee must not administer a trust holding S corporation stock in a manner that would cause the termination of the S corporation status of the entity whose stock is held as part of the trust. Therefore, during any period that the trust holds S corporation stock, my Trustee must construe the terms and provisions of this

trust in a manner that is consistent with the trust qualifying as an Electing Small Business Trust or as a Qualified Subchapter S Trust. My Trustee must disregard any provision of this trust that cannot be so construed or applied.

(2) Methods of Distribution

My Trustee may not make distributions in a manner that would jeopardize the trust's qualification as an Electing Small Business Trust or as a Qualified Subchapter S Trust.

(3) Disposition of S Corporation Stock

If my Trustee believes the continuation of any trust would result in the termination of the S corporation status of any entity whose stock is held as a part of the trust property, my Trustee, other than an Interested Trustee, in addition to the power to sell or otherwise dispose of the stock, has the power to distribute the stock to the person who is then entitled to receive the income from the trust.

Section 9.21 Limitation on My Trustee's Powers

All powers granted to Trustees under this trust or by applicable law are limited as set forth in this Section, unless explicitly excluded by reference to this Section.

(a) An Interested Trustee Limited to Ascertainable Standards

An Interested Trustee may only make discretionary decisions when they pertain to a beneficiary's health, education, maintenance, or support as described under Internal Revenue Code Sections 2041 and 2514.

(b) Interested Trustee Prohibited from Acting

Whenever this trust specifically prohibits or limits an Interested Trustee from exercising discretion or performing an act, then any Interested Trustee serving as my Trustee is prohibited from participating in the exercise of that discretion or performance of that act. If there is no Trustee serving who is not an Interested Trustee, then a Special Trustee may be appointed under the provisions of Section 3.07 to exercise the discretion or perform the act.

(c) Exclusive Powers of My Independent Trustee

Whenever a power or discretion is granted exclusively to my Independent Trustee, then any Interested Trustee who is then serving as my Trustee is prohibited from participating in the exercise of the power or discretion. If there is no Independent Trustee then serving, then a Special Trustee may be appointed under the provisions of Section 3.07 to exercise the power or discretion that is exercisable only by my Independent Trustee.

(d) No Distributions in Discharge of Certain Legal Obligations

My Trustee may not exercise or participate in the exercise of discretion with respect to the distribution of income or principal that would in any manner discharge a legal obligation of my Trustee, including the obligation of support.

If a beneficiary or any other person has the power to remove a Trustee, that Trustee may not exercise or participate in the exercise of discretion with respect to the distribution of income or principal that would in any manner discharge a legal obligation of the person having the power to remove the Trustee, including that person's obligation of support.

(e) Insurance Policy on the Life of My Trustee

If the trust holds a policy that insures the life of a Trustee, that Trustee may not exercise any powers or rights with respect to the policy. Instead, a Co-Trustee or a Special Trustee must exercise the powers and rights with respect to the policy.

If any rule of law or court decision construes the ability of the insured Trustee to name a Special Trustee as an incident of ownership of the policy, then a majority of the then current Income Beneficiaries (excluding the insured Trustee if he or she is a beneficiary) will select the Special Trustee.

(f) Insurance Policy on a Beneficiary's Life

If the trust holds a policy that insures a beneficiary's life, the beneficiary, individually or as Trustee, may not exercise any power over the policy, its cash value, or its proceeds. This denial of power is intended to prevent an insured beneficiary from holding any power that would constitute an incident of ownership of the policy.

The limitations of this Subsection do not apply if, upon the beneficiary's death, the policy's proceeds would otherwise be included in the beneficiary's gross estate for federal estate tax purposes.

Article Ten
General Provisions

Section 10.01 Maximum Term for Trusts

Notwithstanding any contrary provisions or unless terminated earlier under other provisions of this trust, each trust created under this trust document will terminate 21 years after the death of the last to die of the descendants of my paternal and maternal grandparents who are living at the time this agreement is signed.

At that time, the remaining trust property will vest in and be distributed to the persons entitled to receive mandatory distributions of the trust's net income, in the same proportions. If no beneficiary is entitled to mandatory distributions of net income, the remaining trust property will vest in and be distributed to the beneficiaries entitled to receive discretionary distributions of the trust's net income, in equal shares *per stirpes*.

Section 10.02 Spendthrift Provision

No income or principal payable or to become payable under any trust created by this instrument shall be subject to anticipation or assignment, by a beneficiary, or to attachment by or to the interference or control of any creditor of any beneficiary, or to be taken or reached by any legal or equitable process in satisfaction of any debt or liability of any beneficiary prior to its actual receipt by such beneficiary. Any attempted sale, conveyance, transfer, assignment, mortgage, pledge or encumbrance of the trust estate, or any part thereof, or any interest therein, by a beneficiary hereunder, prior to the actual distribution as herein provided, shall be absolutely and wholly void. Any beneficiary of a trust created hereunder may renounce his or her interest, in whole or in part, at any time. My Trustee shall not make any distributions whatsoever to a beneficiary in the event that such beneficiary is insolvent as defined in the Uniform Fraudulent Conveyance Act; or should a beneficiary have judgments, claims, suits, or be involved in any bankruptcy proceedings, then my Trustee shall not make any distributions whatsoever to the beneficiary during pendency thereof; or should any creditor or claimant of a beneficiary attempt or threaten to attach any right, title or interest that a beneficiary may have in any trust or in any income or principal distributions from any trust contained herein, then during the pendency thereof, a beneficiary so affected shall not be distributed any principal or income from any trust by my Trustee or any other person, party, or court. The Trusts created by this document are spendthrift trusts. No beneficiary or third party or any creditor of a beneficiary may force any distribution or payment from any trust created by this document.

This Section does not restrict a beneficiary's right to disclaim any interest or exercise of any power of appointment granted in this trust. In addition, this Section does not limit the ability of an Independent Trustee to appoint property in further trust for any beneficiary as provided in Section 8.02.

Section 10.03 Contest Provision

If any person attempts to contest or oppose the validity of this trust or any amendment to this trust, or commences, continues, or prosecutes any legal proceedings to set this trust aside, then

that person will forfeit his or her share, cease to have any right or interest in the trust property, and will be considered to have predeceased me for purposes of this instrument.

Section 10.04 Changing the Governing Law and Situs of Administration

At any time, my Trustee may change the governing law of the trust; change the situs of the administration of the trust; and remove all or any part of the property from one jurisdiction to another. My Trustee may elect, by filing an instrument with the trust records, that the trust will then be construed, regulated, and governed by the new jurisdiction's laws. My Trustee may take action under this Section for any purpose my Trustee considers appropriate, including the minimization of any taxes in respect of the trust or any trust beneficiary.

If considered necessary or advisable by my Trustee, my Trustee may appoint an Independent Trustee to serve as Trustee in the new situs.

If necessary and if my Trustee does not appoint an Independent Trustee within 30 days of my Trustee's action to change the governing law or situs of the trust, the beneficiaries entitled to receive distributions of the trust's net income may appoint a corporate fiduciary in the new situs by majority consent. If a beneficiary is a minor or is incapacitated, the beneficiary's parent or Legal Representative may act on the beneficiary's behalf.

Section 10.05 Definitions

For purposes of this trust, the following terms have these meanings:

(a) Education

The term *education* is intended to be an ascertainable standard under Internal Revenue Code Sections 2041 and 2514 and includes:

enrollment at private elementary, junior, and senior high school, including boarding school;

undergraduate and graduate study in any field at a college or university;

specialized, vocational, or professional training or instruction at any institution, as well as private instruction; and

any other curriculum or activity that my Trustee considers useful for developing a beneficiary's abilities and interests including athletic training, musical instruction, theatrical training, the arts, and travel.

The term *education* also includes expenses such as tuition, room and board, fees, books, supplies, computers and other equipment, tutoring, transportation, and a reasonable allowance for living expenses.

(b) Good Faith

For the purposes of this trust, a Trustee has acted in good faith if:

an action or inaction is not a result of intentional wrongdoing;

the Trustee did not make the decision to act or not act with reckless indifference to the beneficiaries' interests; and

an action or inaction does not result in an improper personal benefit to the Trustee.

Further, all parties subject to the provisions of this trust will treat any action or inaction made in reliance on information, consent, or directions received from the Personal Representative of my estate as made in good faith for the purposes of this Section, except for cases of willful misconduct or malfeasance on the Trustee's part.

(c) Incapacity

Except as otherwise provided in this trust, a person is considered incapacitated in any of the following circumstances.

(1) The Opinion of Two Licensed Physicians

An individual is considered to be incapacitated whenever two licensed physicians give the opinion that the individual is unable to effectively manage his or her property or financial affairs, whether as a result of age; illness; use of prescription medications, drugs, or other substances; or any other cause. If an individual whose capacity is in question refuses to provide necessary documentation or otherwise submit to examination by licensed physicians, that individual will be considered incapacitated.

An individual is considered restored to capacity whenever the individual's personal or attending physician provides a written opinion that the individual is able to effectively manage his or her property and financial affairs.

(2) Court Determination

An individual is considered incapacitated if a court of competent jurisdiction has declared the individual to be disabled, incompetent, or legally incapacitated.

(3) Detention, Disappearance, or Absence

An individual is considered to be incapacitated whenever he or she cannot effectively manage his or her property or financial affairs due to the individual's unexplained disappearance or absence for more than 30 days, or whenever he or she is detained under duress.

An individual's disappearance, absence, or detention under duress may be established by an affidavit of my Trustee, or by the affidavit of any beneficiary if no Trustee is then serving. The affidavit must describe the circumstances of the individual's disappearance, absence, or detention, and may be relied upon by any third party dealing in good faith with my Trustee.

(d) Include, Includes, Including

In this document, the words include, includes, and including mean include without limitation, includes without limitation and including without limitation, respectively. Include, includes, and including are words of illustration and enlargement, not words of limitation or exclusivity.

(e) Income Beneficiary

The term *Income Beneficiary* means any beneficiary who is then entitled to receive distributions of the trust's net income, whether mandatory or discretionary.

Unless otherwise provided in this trust, the phrase *majority of the Income Beneficiaries* means any combination of Income Beneficiaries who would receive more than 50% of the accrued net income if that income were distributed on the day of a vote. For purposes of this calculation, beneficiaries who are eligible to receive discretionary distributions of net income receive the imputed income in equal shares.

References to a *majority* refer to a majority of the entire trust collectively until my Trustee allocates property to separate trusts or trust shares. After my Trustee allocates property to separate trusts or trust shares, references to a *majority* refer to a majority of each separate trust or trust share.

(f) Independent Trustee

The term *Independent Trustee* means any Trustee who is not an Interested Trustee as defined in Subsection (h) and includes a Special Trustee appointed under the provisions of Section 3.07.

(g) Instrument

The term *this instrument* means this trust, and includes all trusts created under the terms of this trust.

(h) Interested Trustee

The term *Interested Trustee* means a Trustee who:

is a transferor or beneficiary;

is related or subordinate to a transferor or beneficiary;

can be removed and replaced by a transferor with either the transferor or a party who is related or subordinate to the transferor; or

can be removed and replaced by a beneficiary with either the beneficiary or a party who is related or subordinate to the beneficiary.

For purposes of this Subsection, *transferor* means a person who transferred property to the trust, including a person whose disclaimer resulted in property passing to the trust. *Beneficiary* means a person who is or may become eligible to receive income or principal from the trust under the terms of the trust, even if this person has only a remote contingent remainder interest in the trust, but not if the person's only interest is as a potential appointee under a power of appointment. *Related or subordinate* is used as defined in Internal Revenue Code Section 672(c).

(i) Internal Revenue Code and Treasury Regulations

References to the *Internal Revenue Code* or to its provisions are to the Internal Revenue Code of 1986, as amended, and any corresponding Treasury Regulations. References to the *Treasury Regulations*, are to the Treasury Regulations under the Internal Revenue

Code in effect. If a particular provision of the Internal Revenue Code is renumbered or the Internal Revenue Code is superseded by a subsequent federal tax law, any reference is considered to be made to the renumbered provision or to the corresponding provision of the subsequent law, unless to do so would clearly be contrary to my intent as expressed in this trust. The same rule applies to references to the Treasury Regulations.

(j) Legal Representative or Personal Representative

As used in this trust document, the term *Legal Representative* or *Personal Representative* means a person's guardian, conservator, executor, administrator, Trustee, attorney in fact under a Durable Power of Attorney, or any other person or entity representing a person or the person's estate. In the case of a minor beneficiary, the beneficiary's parent or another adult with custody of the beneficiary, except for any transferor to a trust created under this instrument, will be considered the beneficiary's Legal Representative for purposes of this trust.

(k) Primary Beneficiary

The *Primary Beneficiary* of a trust created under this trust is that trust's oldest Income Beneficiary, unless some other individual is specifically designated as the Primary Beneficiary of that separate trust.

(l) Shall and May

Unless otherwise specifically provided in this trust or by the context in which used, I use the word *shall* in this trust to impose a duty, command, direct, or require, and the word *may* to allow or permit, but not require. In the context of my Trustee, when I use the word *shall* I intend to impose a fiduciary duty on my Trustee. When I use the word *may* I intend to empower my Trustee to act with the Trustee's sole and absolute discretion unless otherwise stated in this trust. When I use the words *may not* in reference to my Trustee, I specifically mean my Trustee *is not permitted to.*

(m) Settlor

Settlor has the same legal meaning as *Grantor*, *Trustor* or any other term referring to the maker of a trust.

(n) Trust

The terms *this trust, this document, instrument,* and *this trust document* refer to this trust and all trusts created under the terms of this trust.

(o) Trustee

The terms *my Trustee* and *Trustee* refer to the Initial Trustees named in Article One and to any successor, substitute, replacement, or additional person, corporation, or other entity that ever acts as the Trustee of any trust created under the terms of this trust. The term *Trustee* refers to singular or plural as the context may require.

(p) Trust Property

The term *trust property* means all property acquired from any source and held by a Trustee under this trust.

Section 10.06 General Provisions and Rules of Construction

The following general provisions and rules of construction apply to this trust.

(a) Multiple Originals; Validity of Paper or Electronic Copies

This trust may be executed in any number of counterparts, each of which will be considered an original.

Any person may rely on a paper or electronic copy of this trust that the Trustee certifies to be a true copy as if it were an original.

(b) Singular and Plural; Gender

Unless the context requires otherwise, singular words may be construed as plural, and plural words may be construed as singular. Words of one gender may be construed as denoting another gender as is appropriate within the context. The word *or*, when used in a list of more than two items, may function as both a conjunction and a disjunction as the context requires.

(c) Headings of Articles, Sections, and Subsections

The headings of Articles, Sections, and Subsections used within this trust are included solely for the convenience of the reader. They have no significance in the interpretation or construction of this trust.

(d) Governing State Law

This trust is governed, construed, and administered according to the laws of Texas, as amended except as to trust property required by law to be governed by the laws of another jurisdiction and unless the situs of administration is changed under Section 10.04.

(e) Notices

Unless otherwise stated, any notice required under this trust will be in writing. The notice may be personally delivered with proof of delivery to the party requiring notice and will be effective on the date personally delivered. Notice may also be mailed, postage prepaid, by certified mail with return receipt requested to the last known address of the party requiring notice. Mailed notice is effective on the date of the return receipt. If a party giving notice does not receive the return receipt but has proof that he or she mailed the notice, notice will be effective on the date it would normally have been received via certified mail. If the party requiring notice is a minor or incapacitated individual, notice will be given to the parent or Legal Representative.

(f) Severability

The invalidity or unenforceability of any provision of this trust does not affect the validity or enforceability of any other provision of this trust. If a court of competent jurisdiction determines that any provision is invalid, the remaining provisions of this trust are to be interpreted as if the invalid provision had never been included.

I have executed this trust on October 28, 2015. This Irrevocable Trust Agreement is effective when signed by me, whether or not now signed by a Trustee.

Muriel L. Mintz, Settlor

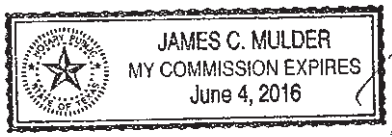
Barbara Mintz Latham, Trustee

Donald M. Mintz, Trustee

STATE OF TEXAS
COUNTY OF HARRIS

Before me, the undersigned, Notary Public, on this day personally appeared Muriel L. Mintz, as Settlor, Barbara Mintz Latham , as Trustee, and Donald M. Mintz, as Trustee, known to me to be the persons whose names are subscribed to the foregoing instrument and, being by me first duly sworn, declared that the statements therein contained are true and correct.

Given under my hand and official seal this day, October 28, 2015.



Notary Public, State of Texas

Schedule A

Proceeds from sale of home located at 7950 N. Stadium Dr. Apt. 247, Houston, TX 77030

All cash from bank accounts other than IRA.

FILED
11/27/2017 4:43 PM
Stan Stanart
County Clerk
Harris County
Harris County - County Probate Court No. 3

Cause No. 462505

IN RE:	§	IN THE PROBATE COURT
	§	
	§	NO. TWO (2) OF
	§	
THE MURIEL L. MINTZ FAMILY TRUST	§	HARRIS COUNTY, TEXAS

ORIGINAL PETITION, APPLICATION FOR REMOVAL OF TRUSTEE, AND APPLICATION FOR INJUNCTIVE RELIEF

1 Pers TRO by In 11/28/17

TO THE HONORABLE JUDGE OF SAID COURT:

NOW COMES, Donald M. Mintz ("Plaintiff") to file this, his Original Petition, Application for Removal of Trustee, and Application for Injunctive Relief, and in support thereof would respectfully show the Court as follows:

I. Discovery Level

1. Plaintiff requests that discovery be conducted pursuant to Level 2 of the Texas Rules of Civil Procedure.

II. Introduction and Parties

2. This case involves the Muriel L. Mintz Family Trust (the "Trust"), established by a trust agreement on October 28, 2015, attached hereto as Exhibit "A." The Trust was created by Muriel L. Mintz, who is the subject of a guardianship pending in this Court under Cause Number 456,059 ("Muriel").

3. Plaintiff is Donald M. Mintz, Co-Trustee of the Trust, and individually as a beneficiary of the Trust. Plaintiff is also the son of Muriel Mintz.

4. Defendant is Barbara Latham ("Defendant"), individually, as purported Co-Trustee of the Trust, and as agent and attorney-in-fact for Muriel under a purported statutory durable power of attorney. Defendant is also a beneficiary of the Trust and Muriel's daughter. Defendant may be

served through her attorneys of record, Erinn G. Brown, 4606 W. Walnut, Pearland, Texas 77581, and Candice Schwager, 1417 Ramada Dr., Houston, Texas 77062.

III. Background Facts

5. On or about October 28, 2015, Muriel L. Mintz created the Muriel L. Mintz Family Trust.

6. Plaintiff and Defendant are the Co-Trustees of the Trust.

7. Muriel suffers from Major Neurocognitive Disorder, Unspecified, Moderate Severity, the previous name for this was Dementia Not Otherwise Specified. A guardianship proceeding (the "Guardianship") has been filed to appoint an independent third-party guardian of Muriel's person and estate under Cause No. 456,059; *In the Guardianship of Muriel Luba Mintz, an Incapacitated Person;* In the Probate Court No. Two (2) of Harris County, Texas.

8. Bank of America held account(s) explicitly in the name of the Trust.

9. Bank of America also holds an account in the name of Barbara Latham, individually, said account number ending in 7007.

10. The Application to appoint a guardian for Muriel was filed on March 8, 2017.

11. Between March 15, 2017 and September 12, 2017, Defendant transferred Trust assets from the Bank of America Account No. xxxx-xxxx-5966 to her personal account at Bank of America, xxxx-xxxx-7007 in the amount of $92,398.96.

12. Defendant has added herself as the "Trustee" on the Trust accounts held through Bank of America, without consulting or seeking permission of the other Co-Trustee. She is using her supposed position to control the Trust assets to the exclusion of Plaintiff and the other beneficiaries.

13. Defendant is also acting as Muriel's agent pursuant to a purported statutory durable power of attorney. Using her position as Muriel's purported agent and/or as Trustee, upon information and belief, Defendant is transferring Trust accounts to herself. These changes have been made without Muriel's knowledge or approval (Muriel lacks the mental capacity to approve such actions) and are contrary to Muriel's wishes as evidenced by the terms of the Trust. *See* Ex. A.

IV. Jurisdiction and Venue

14. This Court has jurisdiction and venue pursuant to Tex. Prop. Code §§ 115.001 and 115.002; Tex. Est. Code §§ 32.006 and 33.002; and Tex. Civ. Prac. & Rem. Code § 15.002.

V. Cause of Action

15. Plaintiff incorporates by reference all preceding paragraphs.

16. To establish a claim for breach of fiduciary duty, a plaintiff must prove: (1) the existence of a fiduciary relationship; (2) the defendant's breach of the fiduciary duties accompanying the relationship; and (3) the breach of the duty either injured the plaintiff or benefited the defendant. *Jones v. Blume*, 196 S.W.3d 440, 447 (Tex. App. –Dallas 2006, pet. denied).

17. A fiduciary relationship exists as a matter of law between a trustee and the beneficiary of a trust. *Huie v. DeShazo*, 922 S.W.2d 920, 923 (Tex. 1999). Defendant breached his fiduciary duties to Plaintiff in numerous ways, including (but not limited to):

a. Failing to cooperate or consult with the other Co-Trustee; and

b. Self-dealing by transferring Trust assets to herself.

18. Defendant's breaches of fiduciary duty have proximately caused injury to the Plaintiff by reducing the value of his interest (as well as the other beneficiaries' interest) in the

Trust. Defendant's breaches have also proximately caused injury to the Trust itself, which Plaintiff represents as Co-Trustee. Defendant has also improperly benefitted financially from her breaches of fiduciary duty.

19. For the foregoing reasons, Plaintiff requests that Defendant be held liable for her breaches of fiduciary duty; that Defendant be ordered to pay damages to Plaintiff; and that a constructive trust be imposed over all property misappropriated by Defendant.

VI. Application for Removal of Trustee

20. Plaintiff incorporates by reference all preceding paragraphs.

21. It would be in the best interest of the beneficiaries and the Trust for this Court to remove Defendant from her position as Co-Trustee of the Trust because she has "materially violated or attempted to violate the terms of the trust[s] and the violation or attempted violation result[ed] in a material financial loss to the trust[s]." Tex. Prop. Code § 113.082(1)." Defendant has failed to cooperate with his Co-Trustee, and transferred Trust assets to herself. Defendant should therefore be removed as Co-Trustee for these violations and attempted violations of Trust terms.

22. It would further be in the beneficiaries' best interest for this Court to remove Defendant from her position as Co-Trustee of the Trusts because of her breaches of fiduciary duty, described above and incorporated herein as if fully restated. "A trustee may be removed…if (4) the Court finds other cause for removal." Tex. Prop. Code § 113.082(4). The Court has discretion to determine whether a Trustee should be removed, thereby "insur[ing] that the grounds of removal are not expressly limited to those enumerated, but may include others that the trial court, in its discretion, deems proper." *Lee v. Lee*, 47 S.W.3d 767, 791 (Tex. App.—Houston [14th Dist.] 2001, pet. denied).

23. Moreover, Defendant's misconduct as Muriel's agent evidences her unsuitability to serve in a fiduciary role. It would be in the beneficiaries' best interest to remove Defendant as Co-Trustee based on her disloyalty to her principal under the power of attorney.

24. For the foregoing reasons, Plaintiff requests that this Court remove Defendant as Co-Trustee of the Trusts.

VII. Application for Ex Pare Temporary Restraining Order and Temporary Injunction

25. Plaintiff incorporates by reference all preceding paragraphs.

26. Plaintiff requests this Court issue a temporary restraining order and thereafter a temporary injunction against Defendant and Bank of America, restraining them from the actions set forth below. *See* Tex. R. Civ. P. 680 *et seq*.

27. The facts alleged in this petition have been verified by the Verification of Donald M. Mintz, attached to this petition. Plaintiff is entitled to injunctive relief pursuant to the laws of the State of Texas and the principles of equity.

A. Entitlement to Injunctive Relief

28. Plaintiff is entitled to injunctive relief against Defendant and Bank of America because: 1) Plaintiff has a valid cause of action against Defendant; 2) Plaintiff has a probable right to relief; and 3) probable, imminent, and irreparable harm will occur in the interim for which there is no adequate remedy at law.

29. ***Valid Cause of Action.*** As shown above, Defendant has engaged in wrongful conduct, giving rise to Plaintiff's cause of action for breach of fiduciary duty as well as the need to remove Defendant as Co-Trustee of the Trust. Therefore, Plaintiff has a valid cause of action which will support injunctive relief.

30. ***Probable Right to Relief.*** A party seeking injunctive relief must demonstrate a probable right to relief upon final trial. To demonstrate a probable right to relief, Plaintiff need only show a probable right to recovery; she "is not required to establish that [s]he will ultimately prevail in the suit." *Liberty Mut. Ins. Co. v. Mustang Tractor & Equip. Co.*, 812 S.W.2d 663, 665 (Tex. App.—Houston [14th Dist.] 1991, no writ). Plaintiff is only required to "allege a cause of action and offer evidence that tends to support the right to recover on the merits…because the ultimate merits of the case are not before the trial court." *Dallas Anesthesiology Associates, P.A. v. Texas Anesthesia Group, P.A.*, 190 S.W.3d 891, 896-97 (Tex. App.—Dallas 2006, no pet.) The only question before the Court at this time is whether Plaintiff is entitled to preserve the status quo pending trial on the merits, which is defined as "the last, actual, peaceable, non-contested status which preceded the pending controversy." *In re Newton*, 146 S.W.3d 648, 651 (Tex. 2004) (orig. proceeding) (internal citations omitted).

31. As stated above, Defendant has refused to cooperate with Plaintiff regarding the Trust, and transferred Trust assets to herself. Further investigation and discovery will likely reveal additional evidence of Defendant's wrongdoing. Plaintiff will be able to meet his burden of proof to show Defendant's breaches of fiduciary duty. Plaintiff will also be able to meet his burden of proof regarding Defendant's removal as Co-Trustee. Therefore, the facts set forth herein establish a probable right to relief against Defendant.

32. ***Probable, Imminent, and Irreparable Injury.*** The following facts and arguments demonstrate that probable, imminent, and irreparable injury will occur unless a temporary restraining order, and upon hearing, a temporary injunction, are imposed:

a. *Probable, Imminent Harm.* Temporary injunctive relief is proper when the harm sought to be prevented is imminent or immediate. *Crawford Energy, Inc. v.*

Texas Indus., Inc. 541 S.W.2d 463, 467 (Tex. Civ. App.—Dallas 1976, no writ). Without immediate restrictions on Defendant's acts and Bank of America's ability to change and/or transfer accounts according to Defendant's wishes, Defendant will be able to freely convert Trust assets. Defendant's past actions such as transferring assets to herself individually, demonstrate that she poses an ongoing danger to Trust assets.

b. *Irreparable Injury.* The legal test for determining whether an injury will be irreparable is whether the injury is such that the injured party cannot be adequately compensated in damages, or is one for which damages cannot be measured by any pecuniary standard. Damages here cannot be measured because it is as of yet unknown—and unknowable—which assets Defendant has already converted, or will seek to convert. Moreover, it is unknown and unknowable what effect Defendant's refusal to cooperate with Plaintiff as Co-Trustees will have on the effective and profitable operation of the Trust. Furthermore, Defendant's acts are of a recurrent and continuous nature such that Plaintiff would otherwise be required to file successive actions. Finally, Defendant's removal as Co-Trustee is a remedy which is not measurable by, and cannot be substituted with, monetary damages.

For the foregoing reasons, Plaintiff has demonstrated that probable, imminent, and irreparable injury will occur if Defendant and Bank of America are not enjoined.

B. Requests for Injunctive Relief

33. ***Parties and Actions to be Restrained.*** Plaintiff requests that this Court grant a temporary restraining order, set a hearing on her application for temporary injunction within

fourteen (14) days after the entering of the temporary restraining order, and after said hearing issue a temporary injunction prohibiting:

a. Defendant Barbara Latham, individually, as Co-Trustee of the Muriel L. Mintz Family Trust, and as agent and attorney-in-fact for Muriel L. Mintz, or any person or entity purporting to be acting as an officer, agent, servant, employee, and/or acting in concert or participation with same, from attempting to withdraw, conceal, spend, transfer, pledge, deposit, encumber, transfer, gift, or otherwise remove or dispose of any funds or other assets held in any account belonging to, at any time, Muriel L. Mintz, and/or the Muriel L. Mintz Family Trust.

b. Defendant Barbara Latham, or any person or entity purporting to be acting as an officer, agent, servant, employee, and/or acting in concert or participation with same, from attempting to withdraw, conceal, spend, transfer, pledge, deposit, encumber, transfer, gift, or otherwise remove or dispose of any funds which were transferred to Barbara Latham between March 15, 2017 and September 12, 2017, specifically funds in the amount of $92,398.96 which were at one point held by Bank of America in the name of Barbara Latham, Account number xxxx-xxxx-7007, and to hold any such funds or assets acquired by her pending the disposition of this case or future order of this Court; and

c. Bank of America or any person or entity purporting to be acting as an officer, agent, servant, employee, and/or acting in concert or participation with same, from transferring, converting, removing, or disposing of any funds or assets

held in any accounts belonging to, at any time, Muriel L. Mintz, and/or the Muriel L. Mintz Family Trust.

d. Bank of America or any person or entity purporting to be acting as an officer, agent, servant, employee, and/or acting in concert or participation with same, from transferring, converting, removing, or disposing of any funds or assets transferred to Barbara Latham between March 15, 2017 and September 12, 2017, specifically funds in the amount of $92,398.96 which were at one point held by Bank of America in the name of Barbara Latham, Account number xxxx-xxxx-7007.

34. ***Bond.*** Plaintiff is willing to post a bond, if required by this Court.

35. ***Request for Temporary Restraining Order.*** For the foregoing reasons, Plaintiff requests that this Court impose a temporary restraining order as stated above to preserve the status quo and prevent the transfer, removal, or spending of funds held in Bank of America and/or other accounts and any further damage to the Trust.

36. ***Request for Temporary Injunction.*** For the foregoing reasons, Plaintiff further requests that this Court set his application for temporary injunction for hearing within fourteen (14) days of the entering of the temporary restraining order, and upon said hearing, issue a temporary injunction against Defendant and Bank of America to enjoin them in the manner stated above, pending the resolution of this and any other related, relevant lawsuit.

VIII. Other Requests for Relief

37. ***Interest.*** Plaintiff further requests that this Court award him any and all pre- and post-judgment interest to which he may be entitled.

38. ***Attorney's Fees.*** Plaintiff further requests that he be awarded attorney's fees and costs pursuant to the Texas Trust Code.

39. ***Conditions Precedent.*** All conditions precedent to Plaintiff's requests for relief have been met.

40. ***Rule 193.7 Notice.*** Defendant is hereby notified that Plaintiff intends to use all documents produced by Defendant in discovery at the trial of this cause, and therefore requests that Defendant assert any objections to the authenticity of any document produced by her within ten (10) days of its production. Tex. R. Civ. P. 193.7.

IX. Conclusion and Prayer

WHEREFORE, PREMISES CONSIDERED, Plaintiff Donald M. Mintz respectfully requests: 1) that this Court grant a temporary restraining order prohibiting the acts stated below, set a hearing on his application for temporary injunction within fourteen (14) days after the entering of the temporary restraining order, and after said hearing issue a temporary injunction prohibiting:

a. Defendant Barbara Latham, individually, as Co-Trustee of the Muriel L. Mintz Family Trust, and as agent and attorney-in-fact for Muriel L. Mintz, or any person or entity purporting to be acting as an officer, agent, servant, employee, and/or acting in concert or participation with same, from attempting to withdraw, conceal, spend, transfer, pledge, deposit, encumber, transfer, gift, or otherwise remove or dispose of any funds or other assets held in any account belonging to, at any time, Muriel L. Mintz, and/or the Muriel L. Mintz Family Trust.

b. Defendant Barbara Latham, or any person or entity purporting to be acting as an officer, agent, servant, employee, and/or acting in concert or participation with same, from attempting to withdraw, conceal, spend, transfer, pledge, deposit, encumber, transfer, gift, or otherwise remove or dispose of any funds which were transferred to Barbara Latham between March 15, 2017 and September 12, 2017, specifically funds in the amount of $92,398.96 which were at one point held by Bank of America in the name of Barbara Latham, Account number xxxx-xxxx-7007, and to hold any such funds or assets acquired by her pending the disposition of this case or future order of this Court; and

c. Bank of America or any person or entity purporting to be acting as an officer, agent, servant, employee, and/or acting in concert or participation with same, from transferring, converting, removing, or disposing of any funds or assets held in any accounts belonging to, at any time, Muriel L. Mintz, and/or the Muriel L. Mintz Family Trust.

d. Bank of America or any person or entity purporting to be acting as an officer, agent, servant, employee, and/or acting in concert or participation with same, from transferring, converting, removing, or disposing of any funds or assets transferred to Barbara Latham between March 15, 2017 and September 12, 2017, specifically funds in the amount of $92,398.96 which were at one point held by Bank of America in the name of Barbara Latham, Account number xxxx-xxxx-7007;

2) that Defendant Barbara Latham be cited to appear and answer, and that upon final hearing Plaintiff have judgment against her as requested above; and 3) any and all other relief, at law or in equity, to which Plaintiff may show himself justly entitled.

Respectfully submitted,

OSTROM MORRIS, PLLC

By: _____

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KENNETH A. SCOTT
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Attorneys for Donald M. Mintz

STATE OF TEXAS §
§
COUNTY OF HARRIS §

BEFORE ME, the undersigned authority, on this day personally appeared Donald M. Mintz, known to me to be the person whose name is subscribed to the above and foregoing Application, and stated under oath and after being duly sworn, the following:

> I am the Plaintiff and Applicant in the foregoing Original Petition, Application for Removal of Trustee, and Application for Injunctive Relief; that such instrument contains a correct and complete statement of the facts and matters to which it relates; and that the contents thereof are within my personal knowledge and are true, complete, and correct to the best of my personal knowledge.

Donald M. Mintz

Donald M. Mintz

SWORN TO AND SUBSCRIBED BEFORE ME by Donald M. Mintz on this the 27th day of November, 2017.

(seal)

KRISTI IRICK
My Notary ID # 129010238
Expires June 4, 2020

Kristi Irick
NOTARY PUBLIC IN AND FOR
THE STATE OF TEXAS

129010238
Notary ID #:

CERTIFICATE OF SERVICE

I hereby certify that on this 27th day of November, 2017, a true and correct copy of the foregoing has been served on all the parties of record in this cause according to the Texas Rules of Civil Procedure by hand delivery, electronic mail, first class mail, certified mail return receipt requested or facsimile:

VIA EMAIL:

Erinn G. Brown
4606 W. Walnut
Pearland, TX 77581
erinn@ebrownlaw.net

Teresa K. Pitre
12808 W. Airport STE 255C
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Donald Mintz
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Michele Goldberg
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lawmkg@sbcglobal.net

Candice Schwager
1417 Ramada Dr.
Houston, Texas 77062
candiceschwager@icloud.com

Stacy L. Kelly

Cause No. _____

IN RE:	§	IN THE PROBATE COURT
	§	
	§	NO. TWO (2) OF
	§	
THE MURIEL L. MINTZ FAMILY TRUST	§	HARRIS COUNTY, TEXAS

TEMPORARY RESTRAINING ORDER

CAME ON TO BE HEARD this day the verified Application for Temporary Restraining Order filed by Plaintiff Donald M. Mintz ("Plaintiff"). After considering the Application, the facts of the case, and arguments of counsel, the Court finds that there is sufficient evidence:

1. That Plaintiff and the Muriel L. Mintz Family Trust ("Trust") will suffer imminent irreparable harm unless injunctive relief is granted;
2. That Defendant Barbara Latham ("Defendant") 1) refuses to cooperate with Plaintiff as Co-Trustees, proximately causing injury to Plaintiff and the Trust; and 2) has committed or will commit self-dealing by transferring Trust assets to herself;
3. That such injuries would be irreparable, and Plaintiff cannot be adequately compensated in damages, because 1) it is unknown and unknowable which assets Defendant has already converted or will seek to convert, which could result in numerous incalculable damages; 2) it is unknown and unknowable what effect Defendant's refusal to cooperate with Plaintiff as Co-Trustees will have on the effective and profitable operation of the Trust, which could result in numerous incalculable damages; 3) Defendant's acts are of a recurrent and continuous nature such that Plaintiff would otherwise be required to file successive actions; and 4) Defendant's removal as Co-Trustee is a remedy which is not measurable by, and cannot be substituted with, monetary damages;

4. That the foregoing findings also demonstrate that unless this Court issues this Temporary Restraining Order immediately, and thereafter a temporary injunction, it is reasonably foreseeable that Defendant will attempt and perhaps succeed in dissipating and depleting substantial amounts of Trust assets to the detriment of Plaintiff and the Trust beneficiaries; and
5. That Bank of America holds and manages the known account(s) which would be subject to this Temporary Restraining Order, and should also be enjoined in order to preserve the status quo.

Based on the foregoing findings and according to the principles of justice and equity, it is therefore

ORDERED that Defendant Barbara Latham, individually, as Co-Trustee of the Muriel L. Mintz Family Trust, and as agent and attorney-in-fact for Muriel L. Mintz, or any person or entity purporting to be acting as an officer, agent, servant, employee, and/or acting in concert or participation with same, is hereby ENJOINED and PROHIBITED from attempting to withdraw, conceal, spend, transfer, pledge, deposit, encumber, transfer, gift, or otherwise remove or dispose of any funds or other assets held in any account belonging to, at any time, Muriel L. Mintz, and/or the Muriel L. Mintz Family Trust, and that any such funds or assets acquired by her from these accounts are held in trust pending the disposition of this case or future order of this Court. It is further,

ORDERED that Defendant Barbara Latham, or any person or entity purporting to be acting as an officer, agent, servant, employee, and/or acting in concert or participation with same, is hereby ENJOINED and PROHIBITED from attempting to withdraw, conceal, spend, transfer, pledge, deposit, encumber, transfer, gift, or otherwise remove or dispose of any funds which were transferred to Barbara Latham between March 15, 2017 and September 12, 2017, specifically

funds in the amount of $92,398.96 which were at one point held by Bank of America in the name of Barbara Latham, Account number xxxx-xxxx-7007, and to hold any such funds or assets acquired by her pending the disposition of this case or future order of this Court. It is further

ORDERED that Bank of America or any person or entity purporting to be acting as an officer, agent, servant, employee, and/or acting in concert or participation with same, is hereby ENJOINED and PROHIBITED from transferring, converting, removing, or disposing of any funds or assets held in any accounts belonging to, at any time, Muriel L. Mintz, and/or the Muriel L. Mintz Family Trust. It is further

ORDERED that Bank of America or any person or entity purporting to be acting as an officer, agent, servant, employee, and/or acting in concert or participation with same, is hereby ENJOINED and PROHIBITED from transferring, converting, removing, or disposing of any funds or assets transferred to Barbara Latham between March 15, 2017 and September 12, 2017, specifically funds in the amount of $92,398.96 which were at one point held by Bank of America in the name of Barbara Latham, Account number xxxx-xxxx-7007. It is further

ORDERED that this Temporary Restraining Order shall not be effective unless and until Plaintiff executes and files with the clerk a bond, in conformity with the law, in the amount of ___ _____. It is further

ORDERED that the Clerk of this Court shall issue notice to Defendant Barbara Latham that the hearing on Plaintiff's Application for Temporary Injunction is set for the _____ day of December, 2017, at _____a.m/p.m before the Hon. Judge Wood, Harris County Probate Court No. Two (2), 201 Caroline, 6th Floor, Houston, Texas 77002, the purpose of which shall be to determine whether this Temporary Restraining Order should be made a temporary injunction pending a final trial on the merits. It is further

ORDERED that this Temporary Restraining Order expires on the _____ day of December, 2017, such date being within fourteen (14) days from the date of this Temporary Restraining Order.

SIGNED this 28th day of November, 2017, at _____a.m/p.m.

_____
JUDGE PRESIDING

APPROVED AS TO FORM:

OSTROM MORRIS, PLLC

By: _____
STACY L. KELLY
State Bar No.: 24010153
stacy@ostrommorris.com
KENNETH A. SCOTT
(TBA #00791629)
kscott@ostrommorris.com
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Houston, Texas 77057
713.863.8891
713.863.1051 E-Fax

Attorneys for Donald M. Mintz

STAN STANART
COUNTY CLERK, HARRIS COUNTY, TEXAS
PROBATE COURTS DEPARTMENT

County Probate Court No. 2

SERVE INSTANTER
WRIT FOR TEMPORARY RESTRAINING ORDER

The State of Texas { **Docket No. 462505** Receipt No. PB-2017-91207 11-28 $75
{
County of Harris { **In the Estate of: The Muriel L. Mintz Family Trust**

To any Sheriff or Constable of any County in the State of Texas

Greetings:

Barbara Latham, by and through her Attorney of record Candice Schwager, 1417 Ramada Dr., Houston, Texas 77062.

Whereas, Donald M. Mintz, filed a Petition in the County Probate Court No. 2, of Harris County on **November 27, 2017**, in a suit numbered 462505 on the docket of said court, wherein Donald M. Mintz, is plaintiff, and Barbara Latham, is defendant, and wherein plaintiff alleges that **(see attached)** all of which is more fully shown by a true and correct copy of plaintiff's petition which is attached hereto: and upon presentation of said petition to her and consideration thereof the Honorable Mike Wood, Judge of said court, made the following order and fiat thereon: **(see attached)** and whereas, the said; Donald M. Mintz has executed and filed with the clerk of said court a bond, which has been approved in the sum of One Thousand dollars ($1,000.00), payable and conditioned as required by law and the order of the Judge:

You are therefore commanded to desist and refrain from **(see attached)** until and pending the hearing of such petition upon plaintiff's Application for a Temporary Injunction, before the Judge of said court at **1:30 p.m.**, on **December 12, 2017**, in County Probate Court No. 2, at the Courthouse in the City of Houston, Harris County, Texas, when and where you will appear to show cause why injunction should not be granted upon such petition effective until Final Decree in such suit.

Herein fail not, but have you then and there before said court this Writ, with your return thereon, showing how you have executed the same.

Issued and given under my hand of said court, at Houston, Texas, on this the 28th day of November, 2017.

(Seal)

Stan Stanart, County Clerk
County Probate Court No. 2
201 Caroline, Room 800
Harris County, Texas

_____
Allen Hurley
Deputy County Clerk

Attorney: Stacy L. Kelly
6363 Woodway, Suite 300
Houston TX 77057
713-863-8891

PROBATE COURT #2

462505

Cause No. 456,053

IN RE:	§	IN THE PROBATE COURT
	§	
	§	NO. TWO (2) OF
	§	
THE MURIEL L. MINTZ FAMILY TRUST	§	HARRIS COUNTY, TEXAS

TEMPORARY RESTRAINING ORDER

CAME ON TO BE HEARD this day the verified Application for Temporary Restraining Order filed by Plaintiff Donald M. Mintz ("Plaintiff"). After considering the Application, the facts of the case, and arguments of counsel, the Court finds that there is sufficient evidence:

1. That Plaintiff and the Muriel L. Mintz Family Trust ("Trust") will suffer imminent irreparable harm unless injunctive relief is granted;
2. That Defendant Barbara Latham ("Defendant") 1) refuses to cooperate with Plaintiff as Co-Trustees, proximately causing injury to Plaintiff and the Trust; and 2) has committed or will commit self-dealing by transferring Trust assets to herself;
3. That such injuries would be irreparable, and Plaintiff cannot be adequately compensated in damages, because 1) it is unknown and unknowable which assets Defendant has already converted or will seek to convert, which could result in numerous incalculable damages; 2) it is unknown and unknowable what effect Defendant's refusal to cooperate with Plaintiff as Co-Trustees will have on the effective and profitable operation of the Trust, which could result in numerous incalculable damages; 3) Defendant's acts are of a recurrent and continuous nature such that Plaintiff would otherwise be required to file successive actions; and 4) Defendant's removal as Co-Trustee is a remedy which is not measurable by, and cannot be substituted with, monetary damages;

4. That the foregoing findings also demonstrate that unless this Court issues this Temporary Restraining Order immediately, and thereafter a temporary injunction, it is reasonably foreseeable that Defendant will attempt and perhaps succeed in dissipating and depleting substantial amounts of Trust assets to the detriment of Plaintiff and the Trust beneficiaries; and
5. That Bank of America holds and manages the known account(s) which would be subject to this Temporary Restraining Order, and should also be enjoined in order to preserve the status quo.

Based on the foregoing findings and according to the principles of justice and equity, it is therefore

ORDERED that Defendant Barbara Latham, individually, as Co-Trustee of the Muriel L. Mintz Family Trust, and as agent and attorney-in-fact for Muriel L. Mintz, or any person or entity purporting to be acting as an officer, agent, servant, employee, and/or acting in concert or participation with same, is hereby ENJOINED and PROHIBITED from attempting to withdraw, conceal, spend, transfer, pledge, deposit, encumber, transfer, gift, or otherwise remove or dispose of any funds or other assets held in any account belonging to, at any time, Muriel L. Mintz, and/or the Muriel L. Mintz Family Trust, and that any such funds or assets acquired by her from these accounts are held in trust pending the disposition of this case or future order of this Court. It is further,

ORDERED that Defendant Barbara Latham, or any person or entity purporting to be acting as an officer, agent, servant, employee, and/or acting in concert or participation with same, is hereby ENJOINED and PROHIBITED from attempting to withdraw, conceal, spend, transfer, pledge, deposit, encumber, transfer, gift, or otherwise remove or dispose of any funds which were transferred to Barbara Latham between March 15, 2017 and September 12, 2017, specifically

funds in the amount of $92,398.96 which were at one point held by Bank of America in the name of Barbara Latham, Account number xxxx-xxxx-7007, and to hold any such funds or assets acquired by her pending the disposition of this case or future order of this Court. It is further

ORDERED that Bank of America or any person or entity purporting to be acting as an officer, agent, servant, employee, and/or acting in concert or participation with same, is hereby ENJOINED and PROHIBITED from transferring, converting, removing, or disposing of any funds or assets held in any accounts belonging to, at any time, Muriel L. Mintz, and/or the Muriel L. Mintz Family Trust. It is further

ORDERED that Bank of America or any person or entity purporting to be acting as an officer, agent, servant, employee, and/or acting in concert or participation with same, is hereby ENJOINED and PROHIBITED from transferring, converting, removing, or disposing of any funds or assets transferred to Barbara Latham between March 15, 2017 and September 12, 2017, specifically funds in the amount of $92,398.96 which were at one point held by Bank of America in the name of Barbara Latham, Account number xxxx-xxxx-7007. It is further

ORDERED that this Temporary Restraining Order shall not be effective unless and until Plaintiff executes and files with the clerk a bond, in conformity with the law, in the amount of ___ $1,000. . It is further

ORDERED that the Clerk of this Court shall issue notice to Defendant Barbara Latham that the hearing on Plaintiff's Application for Temporary Injunction is set for the 12 day of December, 2017, at 1:30 a.m./p.m. before the Hon. Judge Wood, Harris County Probate Court No. Two (2), 201 Caroline, 6th Floor, Houston, Texas 77002, the purpose of which shall be to determine whether this Temporary Restraining Order should be made a temporary injunction pending a final trial on the merits. It is further

ORDERED that this Temporary Restraining Order expires on the 12 day of December, 2017, such date being within fourteen (14) days from the date of this Temporary Restraining Order.

SIGNED this 28th day of November, 2017, at 11:42 a.m./p.m.

JUDGE PRESIDING

APPROVED AS TO FORM:

OSTROM MORRIS, PLLC

By: _____
STACY L. KELLY
State Bar No.: 24010153
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KENNETH A. SCOTT
(TBA #00791629)
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713.863.1051 E-Fax

Attorneys for Donald M. Mintz

FILED
2017 NOV 28 PM 12:28
COUNTY CLERK
HARRIS COUNTY, TEXAS

AA

FILED
7/18/2017 1:35 PM
Stan Stanart
County Clerk
Harris County
Harris County - County Probate Court No. 2

Cause No. 456,059

IN THE GUARDIANSHIP OF	§	**IN THE PROBATE COURT**
	§	
MURIEL LUBA MINTZ,	§	**NUMBER TWO (2) OF**
	§	
AN INCAPACITATED PERSON	§	**HARRIS COUNTY, TEXAS**

APPLICATION FOR APPOINTMENT OF THIRD-PARTY GUARDIAN OF THE PERSON AND ESTATE

TO THE HONORABLE JUDGE OF SAID COURT: 2 Per by IN

NOW COMES, Donald M. Mintz, ("Applicant"), and makes and files this Application for Appointment of a Third-Party Guardian of the Person and Estate of Muriel Luba Mintz, an incapacitated person, ("Proposed Ward") pursuant to Section 1101.001 of the Texas Estates Code, and would respectfully show the Court the following:

I.

That Proposed Ward is a female who is 92 years old, having been born on September 5, 1924. The Proposed Ward currently resides at Clarewood House located at 7400 Clarewood Drive #518, Houston, Harris County, Texas 77036. The Proposed Ward is not currently under a guardianship.

Barbara Latham, whose address is 1022 Northwick Drive, Pearland, Brazoria County, Texas 77584, holds a Statutory Durable Power of Attorney signed by the Proposed Ward.

II.

The names, addresses, and relationships to the Proposed Ward of those relatives required to be listed in this Application by Section 1101.001(11) of the Texas Estates Code, to the best of the Applicant's knowledge are as follows:

Name:	Donald M. Mintz
Address:	3519 Yupon St. Houston, TX 77006
Relationship to Proposed Ward:	Son
Name:	Barbara Latham
Address:	1022 Northwick Dr. Pearland, TX 77584
Relationship to Proposed Ward:	Daughter
Name:	Estelle Claire Mintz Nelson
Address:	1333 Eldridge Pkwy. #816 Houston, TX 77077
Relationship to Proposed Ward:	Daughter
Name:	Patrick Pheifer
Address:	7400 Clarewood Dr. Houston, TX 77036
Relationship to Proposed Ward:	Executive Director of Clarewood House

III.

Applicant is the son of the Proposed Ward and his address is 3519 Yupon St., Houston, Harris County, Texas 77006. Applicant desires to have a third party appointed Guardian of the Person and Estate of Proposed Ward which Estate is valued over $10,000.00, including any compensation, pension, insurance, or allowance to which the Proposed Ward may be entitled. Applicant's interest in the appointment of a third-party guardian is as a relative of the Proposed Ward.

IV.

This Court has venue over these proceedings because Muriel Luba Mintz resides in this county.

V.

Proposed Ward is an adult, and is incapacitated because of a mental condition. The nature of her incapacity is a major neurocognitive disorder, the degree of her incapacity is total, and the severity of her incapacity is the Proposed Ward is able to assist in her activities of daily

living; however, she cannot perform them independently. Proposed Ward is totally without capacity, as provided by the Texas Estates Code, to care for herself, to manage her property and financial affairs, to operate a motor vehicle, to vote in a public election, and to establish legal domicile for herself. Alternatives to guardianship and available supports and services to avoid guardianship were considered and no alternatives to guardianship or supports and services are available to the Proposed Ward or are feasible to avoid the need for a guardianship.

VI.

Applicant requests the Court appoint a third party as Guardian of the Person and Estate of Muriel Luba Mintz, to see to the care of all of Proposed Ward's personal and physical needs and manage all of Proposed Ward's financial affairs and the assets of her Estate.

Applicant prays that a hearing on this Application be set; that a third party be appointed Guardian of the Person and Estate of Muriel Luba Mintz, an incapacitated person; that the Court Order appointing a third party as Guardian be effective upon their taking the Oath and giving a bond as required by law; that upon the Guardian's qualification, the Clerk of this Court shall issue Letters of Guardianship to the third-party Guardian; that the Court appoint an attorney and/or guardian ad litem, if they have not already been appointed, to represent the Proposed Ward's Person and Estate; and that the Court enter any other Orders it deems necessary.

Respectfully submitted,

OSTROM MORRIS, PLLC

By: Stacy L. Kelly wlp

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stacy@ostrommorris.com
Keith Morris
State Bar No.: 24032879

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Jason B. Ostrom
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713.863.8891
713.863.1051 E-Fax
Attorneys for Donald M. Mintz

STATE OF TEXAS §
§
COUNTY OF HARRIS §

BEFORE ME, the undersigned authority, on this day personally appeared Donald M. Mintz, Applicant in the foregoing Application for Appointment of Guardian of the Person and Estate of Muriel Luba Mintz, an incapacitated person, known to me to be the person whose name is subscribed to the above and foregoing Application and stated under oath that such Application contains a correct and complete statement of the facts and matters to which it relates and all the contents thereof are true, complete and correct to the best of Applicant's knowledge.

Donald M. Mintz

Donald M. Mintz, Applicant

SWORN AND SUBSCRIBED TO BEFORE ME on this the 13th day of July, 2017.

STEVE ONINA
NOTARY PUBLIC STATE OF TEXAS
MY COMM. EXPIRES 10/10/2020
NOTARY ID 13085818-5

Notary Public, State of Texas

CERTIFICATE OF SERVICE

I hereby certify that on this 18th day of July, 2017, a true and correct copy of the foregoing has been served on all the parties of record in this cause according to the Texas Rules of Civil Procedure by hand delivery, electronic mail, first class mail, certified mail return receipt requested or facsimile:

VIA EMAIL:

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THE UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF TEXAS
HOUSTON DIVISION

BARBARA LATHAM, Individually And as Durable / Medical Power of Attorney for MURIEL MINTZ, ESTELLE NELSON, next friend Of MURIEL MINTZ and Individually & MURIEL MINTZ, by and through BARBARA LATHAM AND/OR ESTELLE NELSON	§	No. _____

AFFIDAVIT OF BARBARA LATHAM

STATE OF TEXAS §

COUNTY OF BRAZORIA (Harris) §

BEFORE ME PERSONALLY APPEARED, BARBARA LATHAM, WHO TESTIFIED UNDER OATH AS FOLLOWS:

"My name is BARBARA LATHAM. I am over the age of 21, of sound mind, and am in all ways competent to execute this affidavit. It is all based upon my personal knowledge and true and correct. I have never been convicted of a felony or crime involving moral turpitude. All statements in my ORIGINAL COMPLAINT, APPLICATION FOR TEMPORARY RESTRAINING ORDER, DECLARATORY JUDGMENT, PRELIMINARY INJUNCTION, PERMANENT INJUNCTION AND DAMAGES are true and correct based upon my personal knowledge.

I am writing this affidavit to save my mother's life, who was placed in Hospice less than one month by her court appointed temporary guardian, MICHELLE GOLDBERG (a trust lawyer with no medical training or knowledge of my mother's

medical history who was appointed in a proceeding tainted by fraud and abuse of authority) completely disregarding the pre-planned documents my mother executed in 2006 and 2016, naming me as her medical and durable power of attorney, health care surrogate, guardian in the event of need, and attorney in fact. Michele Goldberg, knows nothing about my mother's medical conditions or history so that she could provide informed consent and also appears clueless concerning medical issues in general common to the elderly. She asked me what a bedsore was when I revealed that my mother had a bedsore which developed since GOLDBERG took over her care.

Michelle Goldberg has been abusive and hostile to me and ESTELLE, my sister, banning us from visiting our mother and blocking our access to any and all medical information through hospital or hospice staff, nurses or personnel. GOLDBERG has refused our requests for information and medical records, which I believe caused my mother to decline spiraling down to near death by whatever she is hiding and depriving us of the opportunity to likely save her life. My sister and I both have advanced training as registered nurses and over 30 years of experience and I have advanced certifications, including a master's in psychiatric nursing and I am an inactive clinical nurse specialist and advanced nurse practitioner. My sister, Estelle's specialty is geriatric home health nursing as an R.N.

Given our advanced training in the medical field, we should never have been denied access to medical information and records concerning our 93-year-old mother as we are forced to watch GOLDBERG hasten her death deliberately through starvation, dehydration, drugs, and immobility as well as apparent deprivation of critical medications

to manage her history of congestive heart failure. On November 24, 2017, I attempted to explain in detail my mother's medication schedule and the necessity that all medications be given on time. She expressed no interest whatsoever and appeared to not even pay attention. Her billing indicates a similar lack of regard for the "person" over whom she took guardianship, with only 13 hours devoted to my mother and approximately 51 hours devoted to seizing my mother's assets along with mine as she engaged in a fraudulent hunt for every dime she could find in a trust that she knew was not part of MURIEL'S estate, nor subject to the Court's jurisdiction, but solely the property of MURIEL'S three adult children. As an experienced trust lawyer with approximately 300 cases, her $16789.80 bill to scour for every dollar she could find in a trust over which she had no standing or right to access information is abject FRAUD.

Along with constant harassment in her pursuit to seize my assets and a trust she had no right to take, she harassed and retaliated against me to the point I became physically exhausted and ill, unable to care for my mother as I had easily done the past 8 months before she terrorized my life and my mother's. GOLDBERG'S constant threats to take my mother upset her greatly, compounding the stress I was subjected to. GOLDBERG and my brother's illegal taking of thousands of dollars from my personal accounts, freezing my IRA's, valued at more than $100,000, persistent threats of jail for contempt nearly immobilized me. Her terror campaign left me in a state nearing post-traumatic stress disorder.

I was repeatedly victimized by slander and psychological abuse and torment at the hands of the DEFENDANTS for 8 months until I finally gave up. The stress hit a high I

have rarely experienced when I suddenly found out my attorneys were colluding with Donald's attorneys and Goldberg, trashing me to the Judge behind my back, violating their duties to me as a client in unimaginable ways. I have been in constant fear that GOLDBERG intended to steal my entire retirement, rendering me hardly able to function, when I have always functioned at a very high level. Now, I am devastated by having to watch my mother starve to death before my eyes or be banned from seeing her at all with trespass threats, when "I" did nothing to deserve this cruelty. My husband mistakenly and unintentionally carried his firearm on the premises not realizing he had done so, but I WAS NEVER AWARE HE HAD THE WEAPON ON HIS PERSON AND SHOULD NOT BE BANNED AND THREATENED WITH TRESPASS AS MY MOTHER DIES, depriving me of the opportunity to even say goodbye or have closure as my mother passes.

My brother and his children have lashed out at me with threats, accusations, slander and the silent treatment, treating Estelle the same way, creating an unbearably hostile situation. Despite the social worker's assurance that Donald and his family would be made to exit my mother's room so that Estelle and I could visit her in peace, he refuses and hovers over me – pacing nervously the floor all day long. My brother's constant calls to GOLDBERG to instigate more retaliation has risen to a level that is unbearable. DONALD has acted unnatural and suspiciously nervous for days, suggesting he is part and parcel to this despicable conspiracy to deprive my mother of life.

I had no idea that GOLDBERG would lack even minimal competence in the care of an elderly woman, given her extensive history of appointments as a guardian in Harris County probate courts. I am outraged that the County cares so little for the elderly and

disabled that they would appoint a totally incompetent person whose sole mission is extracting tens of thousands of dollars from my mother's estate and our trust—feigning concern for my mother's welfare when her abusive, deceptive actions prove otherwise.

If my mother was simply given food, water, and minimal medical treatment rather than toxic drugs that hasten death, I believe she would recover given the 92 years of excellent health she has enjoyed and lack of any discernable problems during her stay with me the past 8 months. My mom in St. Luke's over 3 weeks when this is unheard of as a length of stay. I now believe that her long stay there was in preparation for her eventual move to hospice. Having been denied access until Wednesday the 19th of December, it seems quite obvious that she has been intentionally denied nutrition and hydration denied critical medications while pumped full of narcotics to hasten her death—and this is criminal. Her age renders her incapable of metabolizing these dangerous drugs, which compounded by starvation and dehydration. Once the conditions were created that would justify admission to hospice she was transferred. Michele also claims that my mother has aspiration pneumonia when my sister and I thoroughly examined her and she exhibits absolutely NO SIGNS of this yet. Undoubtedly, Michele's plans are to induce organ shut down, pneumonia, sepsis and death and these lies are merely preparation for her imminent death. With a diagnosis of respiratory insufficiency, distress, pneumonia or any respiratory complication you would certainly see or hear some type of signs or symptoms. I saw no evidence not even so much as a cough or change in respiratory rate.

When we got there yesterday her speech was barely intelligible and it was not until the evening that I realized no food or hydration had been provided all day. I asked the nurse

for food telling her that mom had requested food and water. I was told the kitchen was closed and no food other than applesauce and soup was available. But there had been no food provided to her all day or night. She was continuously asking for water and asked to leave with Estelle and began to beg Mark Liss, a male companion, to please take her with him. We went out and got her a burger which she wolfed down. Within a few minutes there was a noticeable improvement in her overall condition. I never saw or heard anything that would indicate any of the conditions Michele listed in her email.

Stealth euthanasia is now accomplished by no longer administering drugs that cause immediate death but by causing the CONDITIONS that result in death. The withholding of nutrition and hydration along with medications that can cause serious side effects in the elderly because of their inability to metabolize. Michele has also claimed that Muriel's lungs continued to fill up with fluid as a reason to hasten her death in hospice and it is my strong suspicion that IF HER LUNGS TRULY WERE FILLING WITH FLUID, IT WAS DIRECTLY CAUSED BY WITHHOLDING CRITICAL MEDICATIONS PRESCRIBED FOR CONGESTIVE HEART FAILURE AND ATRIAL FLUTTER. If the facility withheld these medications for more than a day, this would be the exact result of this criminal act.

To be clear, withholding nutrition and hydration for the amount of time she was hospitalized at St. Luke's without notice to BARBARA LATHAM AND I, whom Michele understands have advanced medical credentials, would cause immediate rebound symptoms of congestive heart failure—with death not far behind. Her unusually long stay at St. Luke's from the end of November to December 19, 2017 (another fact which Houston

Hospice lied to me about, claiming that MURIEL had been a patient at their facility several days and continued to refuse food and water—a fact I knew to be PATENTLY FALSE because my attorney's husband (who is an intercessory prayer minister with Praise Chapel) Richard Schwager visited MURIEL at ST. LUKE'S EPISCOPAL HOSPITAL on the evening of December 19, 2017, the night before these deliberate lies were uttered to me—with the conversation occurring December 20, 2017. The only other day I was permitted access to my mother at Houston Hospice was Thursday, December 21, 2017.

I offered my mother peanut butter and crackers because she was ravenous as if she was starving to death. Michele Goldberg was not present and fabricated the story of her sitter supposedly taking the crackers/peanut butter before my mother could eat it. By dehydrating her and withholding food for what may have been weeks, she would have met the criteria for hospice—the conditions of death clearly present, and Michele could easily have concealed the fact that my mother was not terminally ill from chronic or acute illness caused by anything other than foul pray, including but not limited to withholding critical medications required to manage congestive heart failure, forced dehydration and starvation, and administering toxic opiate drugs her body could not effectively metabolize. My sister and I observed unmistakable signs that she was drugged with opiates, such as pinpoint pupils, labored speech almost indecipherable (which rapidly changed once she was fed and hydrated). Due to our attorney putting Michele on notice that she lacked the ability to provide informed consent, rendering her decisions criminal medical battery, she was desperate to conceal the truth. This is the only rational explanation for Michele's fabricated stories that Estelle and I supposedly engaged in abusive, aggressive, threatening

and disruptive behavior – is that Michele is terrified that Estelle and I already know what she is doing to our mother. December 5th was the first day we were notified where our mother was hospitalized and given a small window of time to visit her. In textbook fashion, MICHELE'S lies and threats were issued the very next day and both Estelle and my visitation were restricted for no legitimate reason other than concealing the truth.

I observed nurses disclosing health information openly to my brother Donald Mintz at St. Luke's and Houston Hospice and inexplicably prohibited Estelle and I from any access to information concerning my mother's medical status. This was a repeated pattern EVEN AFTER JUDGE MIKE WOODS verbally admonished MICHELLE to ensure Estelle and I had access to information regarding my mother's health and as much access to visit her as possible. My brother's visitation was never restricted in the least nor was his daughter's access to Muriel or information we were denied. If the foregoing is not outrageous enough to shock the conscience of a reasonable person, MICHELLE even denied my mother access to a few minutes of prayer. Michele's disparate treatment of my brother and his family as compared to Estelle and me was night and day.

While Estelle and I were strictly prohibited from any access to health information concerning my mother's prognosis or condition and I was forced to leave the premises for merely asking a staff member for a blank HIPPAA form, whereas my brother deliberately lied to St. Luke's staff, claiming to be MURIEL'S court appointed guardian, knowing full well that Michele was the only person purportedly appointed by Judge Mike Woods. Based upon Michele's prior prohibition against me using my power of attorney for any reason whatsoever (without notice that her temporary purported appointment could have

invalidated the POA), Michele should have EXPELLED DONALD from St. Luke's and restricted his visitation also, but did not. I never once observed Michele being anything but cordial with my brother, in sharp contrast to her immediate hostility and unprovoked attacks against me and Estelle.

I have little doubt that foul play is at work because there is no rational justification for a stranger to imprison and isolate a vulnerable, blind, 93-year-old woman or threaten her daughters against even asking for medical information which might save her life. My brother's complicit behavior in hastening my mother's death shocks my conscience, leaving me powerless to save her because he is working so hard to end her life with attorneys who have one goal in mind—money. I have cried out to every resource I can find, including Right to Life groups, State and Federal agencies, the Department of Justice (ADA), DADS, and the court charged with "protecting" Muriel, rather than sanctioning criminal acts against her through abject refusal to intervene when I pled for mercy via Temporary Restraining Order. I pled for Judge Mike Woods to enjoin MICHELLE GOLDBERG from denying my sister and I access to information and our mother and he refused.

MICHELLE GOLDBERG, my brother DONALD, his children, and corrupt lawyers have imprisoned my mother and subjected her to abuse akin to torture, while having the audacity to suggest what they are doing is humane or just. MICHELLE GOLDBERG has repeatedly lied along with hospital and/or hospice staff doing her bidding to keep ESTELLE and I in the dark. Clearly, the objective is to prevent us from having even a window of opportunity to intervene. MICHELLE demonstrated conscious disregard for

my mother's safety and life by placing her in assisted living without 24-hour supervision—with knowledge via the County's medical expert that MURIEL had to have 24-hour supervision and care to prevent severe injury or death, given she is a high fall risk. GOLDBERG has been so dishonest with ESTELLE, my attorney, and I catching her in so many lies we have no confidence that anything she reports is true. I no longer believe that my mother suffered the "fall" MICHELLE alleges, which was shocking given MICHELE had custody of my mother less than one week. It seems more likely a cover up for the opiates my mother is being sedated with to hasten her death. Strangely, almost immediately after my mother was hospitalized, Michele no longer mentioned the alleged fall and my sister and I observed no visible signs that this was even true.

My attorney asked MICHELLE to be transparent which has not remotely occurred. She further asked the Court to mandate that MICHELE sign releases for access to my mother's medical records and denying two nurses who know her medical history access to this critical information in the midst of an emergency MAY VERY WELL BE THE CAUSE OF HER DEMISE. Criminal negligence and manslaughter come to mind if this is true. The Court rode the fence on the issue of transparency in an apparent attempt to protect Michele and those conspiring with her to harm my mother and retaliate against my sister and I.

If the Court had any interest in transparency, my request for medical records would have been granted. In fact, if the Court respected civil rights and dignity at all, it would not have usurped control of every aspect of MURIEL'S life and instead respected her estate planning and powers of attorney / medical directives created over a decade ago. She named

me as guardian in the event of need as well and the Court has violated every known request and preference my mother carefully set forth in 2006. Texas law mandates that powers of attorney and medical directives be honored as the least restrictive alternative but the reality is far from this. Guardianship is the most horrific institution I ever imagined possible, reminiscent of the Holocaust in Nazi Germany. It abuses and traumatizes families shamelessly while they are going through the most difficult circumstance of their life, contemplating the loss of a parent.

I ask the Court for an emergency injunction to provide my mother with due process and equal protection of the law prior to being deprived of life in a grotesque and inhumane manner. I plead with the Court to intervene and not allow this senseless crime to occur against my mother, who is helpless to stop it. Her only hope is that the federal court will intervene before it's too late. I believe she will be dead in 24-48 hours maximum absent this Honorable Judge's relief. I also pled for the Judge to enjoin DONALD'S corrupt attorney and GOLDBERG from illegally emptying my bank account and mandate by court order that they cease their illegal takings of my bank funds, insured by the FDIC. My pleas fell on deaf ears of the Judge and my attorney was not even allowed to cross examine witnesses before the Judge issued yet another void order.

My sister and I have no idea why we have been denied all access to any information on my mother's condition, banned from visitation throughout most of this past month (seeing my mother approximately 4x), as MICHELLE constantly moved her room to undisclosed locations with no ability to find her given GOLDBERG'S secret registration of my mother to conceal her whereabouts as her condition deteriorated. Every time I

visited, MICHELLE lied and fabricated false accusations of misconduct against ESTELLE AND I to block further visits or abruptly terminate the few visits we were afforded. Hospital staff treated us with contempt, stating that they were following the guardian's instructions. MICHELLE is concealing my mother's whereabouts and condition, permitting only a few individuals chosen by MICHELLE to visit MURIEL, even turning away prayer ministers having nothing but benevolent intentions.

After experiencing the abuse and scorched earth retaliation at the hands of MICHELLE GOLDBERG, colluding with my brother and his lawyers, I do not believe my mother is terminal, was injured, or should be on hospice. Our family is suffering in ways I never imagined possible and for this reason, I ask this Honorable Judge for a reprieve in the form of injunctive relief so that we can obtain a second opinion which was demanded by my attorney to GOLDBERG and refused. The Constitution cannot permit a stranger to hold the power of life and death over an innocent elderly mother, but mandates that MURIEL not be deprived of life itself without due process of law and equal protection. Further affiant sayeth not."

SIGNED BEFORE ME ON THIS December 22, 2017 DAY OF DECEMBER 2017 BY MY HAND UNDER SEAL

Barbara Latham
BARBARA LATHAM

Jennifer M. West
NOTARY PUBLIC IN AND FOR STATE OF TEXAS

Cause No. 456,059

IN THE GUARDIANSHIP OF	§	**IN PROBATE COURT OF**
	§	
MURIEL LUBA MINTZ	§	**NUMBER 2**
	§	
AN INCAPACITATED PERSON	§	**HARRIS COUNTY, TEXAS**

EMERGENCY MOTION FOR CONTINUANCE
FOR LACK OF TIMELY NOTICEM OR AMBUSH

COMES NOW, BARBARA LATHAM, by and through COUNSEL of record, who has deprived of 10-days notice of this SHOW CAUSE proceeding by virtue of the Court's refusal to sign her order substituting in, for which a continuance under TRCP 252 and 251 must be granted. *See Affidavit of Schwager Law Firm*. With no disrespect to the court but only the persons abusing the process by not following state and federal laws, COUNSEL shows her entitlement to a continuance on many other grounds and a suggestion that this predatory guardianship should be dismissed, in what appears to be a textbook witch hunt by the same "players" who routinely engage in these sham proceedings designed to create adverse interests instead of legitimately discover those that actually exist. Jason Ostom, the fee churning lawyer writes *in* ***Tricks and Traps*** about how to exhaust your opponent's finances while gaining favor with the judge, this is more of the same. *See article attached which provides serious questions about whether this dishonest lawyer who has repeatedly committed fraud on courts and tried to take monies not rightfully his and churn files by filing motions appropriate for appointees*.

Donald Mintz and his exploitative counsel would wish to exploit his mother's finances for reasons disclosed herein. Donald Mintz has apparently calculated his mother

would live about 10 more years and calculated how much he would profit from it hence the scandalous accusations against his sister and sudden withdrawal as trustee with an acknowledgment, that he has had no control of her finances to exempt himself from the witch hunt when he should be a suspect.

The Court should ask him about trusts he created and about the $14,000 check he cancelled from the family trust. Let's pull out Donald Mintz's finances and determine why he is working for a *vacations online service* and see who the true malfeasant is and why he suddenly has *no income from being a dentist but is selling vacations to go*. *Then we may see his motive for filing this ill-advised guardianship not authorized by statute.* ***This explains his ill-advised APS and police reports that have fallen flat on their face.*** Evidence will be produced if and when this poorly thought out proceeding are set. Donald Mintz should be subject to the witch hunt too because his inventory is false and we have documents to show diversion of funds and receipt of $14,000 from the family trust fund made while Muriel was competent, which is not the court's province;

This speaks nothing of the fact that the district court, rather than this court, has jurisdiction over living trusts, *which Mintz has admitted the trust is*. Moreover, if Muriel Mintz consented to transfers long before this Court has any evidence of incapacity it would be illegal age discrimination to now go back 2 years and try to seize her assets in violation of the **4th Amendment guarantee against unconstitutional searches and seizures** of her property absent evidence of exploitation and incapacity. **It is age discrimination otherwise and violates 42 U.S.C. 1983. This guardianship further violates the very**

laws that govern these proceedings by doing almost nothing in order as required by the code by haphardousely throwing it together in violation of her rights.

Schwager recently came across very pertinent articles which need to be reviewed. She has also had no time to review bank records and determine the propriety of the seizing of Mintz's assets on the less than credible accusations of Donald Mintz alone, whose dental practice has all but ceased in favor of him allegedly **selling vacations to go**, which provides a significant motive for him to get in control of his **mother's money because he has financial troubles by all outward indications.**

Counsel would point the parties to the attached documents including but not limited to:

- Rico lawsuit against Jason Ostrom for significant malfeasance in which he lied to Judge Butts and outrageously told her that Candice Curtis suffered special needs and needed trust funds in the amount of $40,000 which he planned to pocket given Candy knew nothing about it until obtaining the transcript he hid;
- Jason Ostrom double crossed his own client in violating a federal injunction and dragging a case back to probate for which he is now being sued by Rico, questioning why this court prefers his services as a potentially corrupt lawyer
- **The Actions of these so-called fiduciaries violate the ward's bill of rights egregiously**

- There was no danger as evidenced by APS finding no harm to her for which this sham proceeding was initiated when it was really about Donald Mintz taking control of his mother's money—for which Goldberg might dig into his bank accounts
- Goldberg has been advised that she will not be given access to private accounts of the trust or of my client and seeks to threaten arrest and sanctions to illegally violate the Federal Banking Privacy Act, rendering the Texas purported law allowing this judge to invade a person's bank account with law enforcement void.
- Given this probate court is not a federal law enforcement agency authorized by the Federal Bankruptcy Privacy act, nor is this a law enforcement investigation, this inquisition is a violation of Latham's rights and the Court can refer it to the appropriate authorities or abandon the witch-hunt:
- Second, this proceeding is replete with the failure of participants to even try to follow the Estates Codes with respect to notice and service for conducting invasive examinations and illegal actions in far expanse of the code's allotment.. Schwager hasn't yet finished reviewing the pleadings and needs time to do that, as well as the bank documents which Goldberg seeks to invade my client's privacy rights.
- Furthermore, with Goldberg filing her inventory and appraisment and this court accepting it, isn't it moot?
- See attached periodicals on relevant issues for show cause, proposed ward's bill of rights, guardianship study, propriety of temporary guardianship hardly established by lies of Jason Ostrom or his disingenuous client;

Sec. 309.051. INVENTORY AND APPRAISEMENT. (a) Except as provided by Subsection (c) or Section 309.056 or unless a longer period is granted by the court, before the 91st day after the date the personal representative qualifies, the representative shall prepare and file with the court clerk a single written instrument that contains a verified, full, and detailed inventory of all estate property that has come into the representative's possession or of which the representative has knowledge. The inventory must:

(1) include:

(A) all estate real property located in this state; and

(B) all estate personal property regardless of where the property is located; and

(2) specify which portion of the property, if any, is separate property and which, if any, is community property.

(b) The personal representative shall:

(1) set out in the inventory the representative's appraisement of the fair market value on the date of the decedent's death of each item in the inventory; or

(2) if the court has appointed one or more appraisers for the estate:

(A) determine the fair market value of each item in the inventory with the assistance of the appraiser or appraisers; and

(B) set out that appraisement in the inventory.

(c) The court for good cause shown may require the personal representative to file the inventory and appraisement within a shorter period than the period prescribed by Subsection (a).

(d) The inventory, when approved by the court and filed with the court clerk, is for all purposes the inventory and appraisement of the estate referred to in this title.

Sec. 309.054. APPROVAL OR DISAPPROVAL BY THE COURT. (a) On the filing of the inventory, appraisement, and list of claims with the

court clerk, the judge shall examine and approve or disapprove the inventory, appraisement, and list of claims.

(b) If the judge approves the inventory, appraisement, and list of claims, the judge shall enter an order to that effect.

(c) If the judge does not approve the inventory, appraisement, or list of claims, the judge:

(1) shall enter an order to that effect requiring the filing of another inventory, appraisement, or list of claims, whichever is not approved, within a period specified in the order not to exceed 20 days after the date the order is entered; and

(2) may, if considered necessary, appoint new appraisers.

- Procedural defects identified to date according to the time constraints allowed are as follows which violate federal and state law and will form the basis of such complaints, such as those brought by Sherry Johnston on behalf of Willie Jo Mills, Richard Calkins, Perry Whatley, Candice Curtis which is being appealed for Jason Ostrom's corruption among others) and counsel would hope the court would consider these.
- No motion for temporary guardianship filed but only an order without findings to justify it
- No IME may be conduct by Rule 204 and Jason Ostrom, desiring to churn the file or not, is not the proper party to ask for it; The GAL should have asked for it but wasn't appointed and the AAL did nothing, questioning the need for her warming the probate seat;
- **Dr. Edward Poa is impressive but missed the obvious fact that Muriel Mintz's vision and severe hearing impairment contributed to poor results rendering the tests invalid.**

- **Muriel Mintz as on tape expressed her disdain for her son, will be presented to the court; Yet Latham is blamed.**
- **When did Goldberg receive the power of the KGB to seize Muriel against her will?**
- Donald Mintz has used APS and the Police much like Goldberg's witch hunt of Latham to create adverse interests where none exists in favor of Jason Ostrom's corrupt client who has calculated how long his mother has to live to take her money and repeatedly gone to banks with Muriel secrecy to change beneficiaries lying about it.
- Latham's attorneys threw her under the bus in their ineptness and failure to communicate when SCHWAGER has no such problem and suspects rather than assuming responsibility for their own ineptness, they read Jason's "tricks and traps" article to demonize their own client which is despicable. See transcript from October, which is offensive.
- There is nothing illegal about managing your own money or your mother's money with a valid power of attorney or trying to protect her from financial penalties Goldberg has appeared to incur by removing IRA funds and incurring penalties and interest without any court order permitting this;
- **Demanding to see Latham's personal or trust accounts is a fishing expedition that violates the Federal Banking Secrecy Act**. **If there is evidence of criminal wrongdoing, only the District Attorney can access accounts against a person's**

will and if there's a crime, demand is made for referral to the appropriate agency. Otherwise the intimidation is requested be stopped.

- No emergency existed to initiate this predatory guardianship clearly intent on taking Mintz's estate, like the Whatley and Calkins cases which have yet to be explained or funds taken by Harris County given back.
- Jason Ostrom's actions are textbook as they were in Candy Curtis' RICO case
- The Court is required to randomly appoint but Goldberg is appointed every time there is big bucks and there's proof the random appointment statute is being violated;
- Goldberg appears to have acted with gross negligence in removing funds from an IRA of Muriel Mintz which will subject her to penalties –without cause
- **Muriel Mintz was competent when she signed every document for every transfer she made and this Court has no authority to order 2 years of accounting in the absence of a finding of incompetence dating back that far. As it stands the report is June 9, 2017**
- The trust matter belongs in the district Court
- Donald Mintz conveniently resigned to set up his sister for his own malfeasance
- **Michelle's inventory swears it is complete and the Judge signed it so the matter is done according to the Texas Estates Code**
- **The guardianship was initiated according to the Court for the person but immediately all eyes were on her finances**

- **How many hundreds of thousands Muriel has is not relevant to whether she is incapacitated;**
- **Muriel was not found even to have probable cause to be incapacitated before funds were seized showing that no respect is given to any laws;**
- This court filed an order sua sponte and the temporary guardianship had no findings of fact to justify temporary guardianship and is expired
- Michele Goldberg in textbook aggressive intimidation fashion as with Elizabeth is creating the adverse situation by the orchestrated witch hunt against Barbara Latham and will be used in the textbook fashion these courthouse regulars do the bidding to accomplish the objectives of violating civil rights.
- **The end result is Muriel Mintz will be deprived of liberty and property without due process of law and placed in lock down like *Willie Jo Mills* or worse, have Mintz in charge when he is financially strapped and planned this out based upon his calculation of how long she would live**
- **Muriel Mintz is happy and wants to be left alone, but nobody respects that portion of the code**
- **The Facebook witch hunt evidences a lack of respect for the constitutional rights of Barbara Latham or her mother; It is reminiscent of the case of Lynn Lasher where Stacy Kelly did nothing to defend her and I had to submit a brief protecting her right to free speech because apparently intimidation was the goal**

- **Where do court officials get the legal authority to stalk family members and deprive them of the opportunity to show photographs of the with their loved ones and how is it exploitation. See Lynn Lasher intimidation.**
- There has been no discussion of what alternatives were considered despite the prematurity of the same and why these alternatives are not feasible
- This violates the Olmsted Act and Texas Human Resources Code 102.003 and many other provisions of the Americans with Disabilities Act of 1990 and 2008 and 2016 Amendments and should be dismissed.
- The foregoing are the only violations that have been gleaned by counsel's rushed cursory and incomplete review of the file and to the extent inaccuracies exist, they are due to the time constraints and will be amended. In the interim continuance or reconsideration of this ill advised proceeding is requested immediately.

Wherefore premises considered, all respect is shown to the court and the proponent of this motion means no disrespect to the court but only to those not acting in accordance with law to advise the court.

Respectfully Submitted,

Candice Schwager

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FOR BARBARA LATHAM

CERTIFICATE OF SERVICE

This is to certify that a true and correct copy of the foregoing was served upon all counsel of record this 26th day of November, 2017 by e-file.

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PROBATE COURT 2

Cause No. 456,059

IN THE GUARDIANSHIP OF	§	**IN THE PROBATE COURT**
	§	
MURIEL LUBA MINTZ,	§	**NUMBER TWO (2) OF**
	§	
AN INCAPACITATED PERSON	§	**HARRIS COUNTY, TEXAS**

ORDER APPOINTING Temporary **THIRD-PARTY GUARDIAN OF THE PERSON AND ESTATE** Pending Contest

On this 12th day of September, 2017, came on to be heard the Application, filed by Donald M. Mintz ("Applicant"), for Appointment of Temporary Third-Party Guardian of the Person and Estate of Muriel Luba Mintz, an Adult Pending Contest ("Proposed Ward"), whose presence was determined to be not necessary by the Court. After considering said Application, the Court finds by clear and convincing evidence that Proposed Ward is an incapacitated person; that it is in the best interest of Proposed Ward to have the Court appoint a Temporary Third-Party Guardian of the Person and Estate of Proposed Ward; and that the rights of Proposed Ward and the proposed ward's property will be protected by the appointment of a guardian.

The Court further finds by a preponderance of the evidence that this Court has venue of this matter under the provisions of Section 1023.001 of the Texas Estates Code because Muriel Luba Mintz resides in this county; that the Court has jurisdiction of this matter; that Proposed Ward has no permanent legal Guardian of the Person and Estate; that Proposed Ward is an adult, and is incapacitated because of a mental condition; and that Proposed Ward is totally without capacity, as provided by the Texas Estates Code, to care for herself, to manage her property and financial affairs, to operate a motor vehicle, to vote in a public election, and to establish legal domicile for herself.

The Court further finds that Applicant has proven each element required by the Texas

Estates Code to create a guardianship; that due notice of said Application has been given as required by law; that Proposed Ward is a female, who is 92 years old, having been born on September 5, 1924; that professional services were rendered in this matter by an attorney under Sections 1054.005, 1054.201 of the Texas Estates Code; that an examination of Proposed Ward's Estate indicates that no funds are available to pay for such services; that there is no necessity for the appointment of appraisers; that Muriel Luba Mintz is totally incapacitated and a full guardianship over the Person and Estate of the incapacitated person should be granted; that this determination of incapacity was based on evidence of recurring acts or occurrences within the preceding six-month period and not isolated instances of negligence or bad judgment; **that alternatives to guardianship and available supports and services to avoid guardianship were considered and no alternatives to guardianship or supports and services are available to the Proposed Ward or are feasible to avoid the need for a guardianship;** and that this Application should be granted.

NOTICE TO ANY PEACE OFFICER OF THE STATE OF TEXAS: YOU MAY USE REASONABLE EFFORTS TO ENFORCE THE RIGHT OF A GUARDIAN OF HE PERSON OF A WARD TO HAVE PHYSICAL POSSESSION OF THE WARD OR TO ESTABLISH THE WARD'S LEGAL DOMICILE AS SPECIFIED IN THIS ORDER. A PEACE OFFICER WHO RELIES ON THE TERMS OF A COURT ORDER AND THE OFFICER'S AGENCY ARE ENTITLED TO THE APPLICABLE IMMUNITY AGAINST ANY CIVIL OR OTHER CLAIM REGARDING THE OFFICER'S GOOD FAITH ACTS PERFORMED IN THE SCOPE OF THE OFFICER'S DUTIES IN ENFORCING THE TERMS OF THIS ORDER THAT RELATE TO THE ABOVE-MENTIONED RIGHTS OF THE COURT-APPOINTED GUARDIAN OF THE PERSON OF THE WARD. ANY PERSON WHO KNOWINGLY

PRESENTS FOR ENFORCEMENT AN ORDER THAT IS INVALID OR NO LONGER IN EFFECT COMMITS AN OFFENSE THAT MAY BE PUNISHABLE BY CONFINEMENT IN JAIL FOR AS LONG AS TWO YEARS AND A FINE OF AS MUCH AS $10,000.

IT IS THEREFORE ORDERED by this Court that ~~Michelle~~ Michele Goldberg is appointed Temporary Guardian of the Person and Estate of Muriel Luba Mintz, An Incapacitated Person, Pending Contest with all of the duties, powers, and limitations hereby granted to a guardian by the laws of this state; that Letters of Guardianship be issued to ~~Michelle~~ Michele Goldberg upon the filing of an Oath of office and giving a bond in the sum of $ 250,000, payable and conditioned as required by law, and the Clerk is hereby directed to issue Letters of Guardianship to the said ~~Michelle~~ Michele Goldberg upon qualification according to law.

IT IS FURTHER ORDERED by this Court that this Guardianship shall be a full guardianship and that the Ward shall be declared totally incapacitated without the authority to exercise any rights or powers for herself or her Estate.

EB ~~**IT IS FURTHER ORDERED** that Teresa K. Pitre, Attorney Ad Litem, is hereby discharged~~.

IT IS FURTHER ORDERED that the term of this guardianship shall be until the Ward is restored to full legal capacity, dies, or until the Court determines this matter shall be terminated.

SIGNED on this 19 the day of September, 2017.

JUDGE PRESIDING

FILED
2017 SEP 19 AM 11:16
Stan Stanart
COUNTY CLERK
HARRIS COUNTY, TEXAS

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RECORDER'S MEMORANDUM:
At the time of recordation, this instrument was found to be inadequate for the best photographic reproduction because of illegibility, carbon or photo copy, discolored paper, etc. All blockouts, additions and changes were present at the time the instrument was filed and recorded.

Cruzan v. Dir., Mo. Dep't of Health

Supreme Court of the United States

December 6, 1989, Argued ; June 25, 1990, Decided

No. 88-1503

Reporter
497 U.S. 261; 110 S. Ct. 2841; 111 L. Ed. 2d 224; 1990 U.S. LEXIS 3301; 58 U.S.L.W. 4916

CRUZAN, BY HER PARENTS AND CO-GUARDIANS, CRUZAN ET UX. v. DIRECTOR, MISSOURI DEPARTMENT OF HEALTH, ET AL.

Prior History: CERTIORARI TO THE SUPREME COURT OF MISSOURI.

Disposition: *760 S. W. 2d 408*, affirmed.

Core Terms

patient, medical treatment, incompetent, artificial, decisions, terminate, cases, persistent vegetative state, nutrition, liberty interest, life-sustaining, hydration, suicide, wishes, circumstances, clear and convincing evidence, rights, best interest, individual's, removal, irreversible, respirator, tube, vegetative state, unwanted, pain, procedures, withdrawal, feeding, die

Case Summary

Procedural Posture

Petitioners, parents suing on their behalf and on behalf of their daughter, appealed a decision of the Supreme Court of Missouri which denied their petition for a court order directing the withdrawal of their daughter's artificial feeding and hydration equipment.

Overview

Petitioners, parents suing on their behalf and on behalf of their daughter, requested a court order directing the withdrawal of their daughter's artificial feeding and hydration equipment after she was rendered vegetative in an auto accident. The appellate court denied their petition holding that petitioners lacked authority to effectuate the request because there was no clear and convincing evidence of the daughter's desire to have life-sustaining treatment withdrawn as required under the Missouri Living Will statute, *Mo. Rev. Stat. § 459.010 et seq.* (1986). The United States Supreme Court affirmed. It said that the *Due Process Clause, U.S. Const. amend. XIV*, did not require the state to repose

judgment on matters concerning the right to refuse treatment with anyone but the patient herself. The Court held that a state could choose to defer only to the patient's wishes rather than confide the decision to close family members.

Outcome

The Court affirmed the judgment denying a court order directing the withdrawal of petitioners' daughter's artificial feeding and hydration equipment because the U.S. Constitution did not require the state to repose judgment on matters concerning the right to refuse treatment with anyone but the patient herself.

LexisNexis® Headnotes

Healthcare Law > Medical Treatment > General Overview

Healthcare Law > Medical Treatment > Patient Consent > General Overview

Healthcare Law > Medical Treatment > Patient Consent > Informed Consent

Healthcare Law > Medical Treatment > Patient Consent > Right to Refuse Treatment

HN1 No right is held more sacred, or is more carefully guarded, by the common law, than the right of every individual to the possession and control of his own person, free from all restraint or interference of others, unless by clear and unquestionable authority of law. This notion of bodily integrity has been embodied in the requirement that informed consent is generally required for medical treatment. Every human being of adult years and sound mind has a right to determine what shall be done with his own body; and a surgeon who performs an operation without his patient's consent commits an assault, for which he is liable in damages. The informed consent doctrine has become firmly entrenched in American tort law. The logical corollary of the doctrine of informed consent is that the patient generally possesses the right not to consent, that is, to refuse treatment.

Constitutional Law > Substantive Due Process > Privacy > General Overview

Healthcare Law > Medical Treatment > End-of-Life Decisions > Life Support

Healthcare Law > Medical Treatment > Patient Consent > General Overview

HN2 A person has a right of privacy grounded in the Federal Constitution, *U.S. Const. amend. XIV*, to terminate treatment. Recognizing that this right is not absolute, however, courts balance it against asserted state interests. The state's interest weakens and the individual's right to privacy grows as the degree of bodily invasion increases and the prognosis dims.

Constitutional Law > ... > Fundamental Rights > Procedural Due Process > General Overview

Constitutional Law > Substantive Due Process > Privacy > General Overview

Constitutional Law > Equal Protection > Disability

Healthcare Law > Medical Treatment > End-of-Life Decisions > General Overview

Healthcare Law > Medical Treatment > End-of-Life Decisions > Lifesaving Treatment

Healthcare Law > Medical Treatment > Failures & Refusals to Treat > General Overview

Healthcare Law > Medical Treatment > Incompetent, Mentally Disabled & Minors > General Overview

Healthcare Law > Medical Treatment > Patient Consent > General Overview

HN3 It cannot be disputed that the *Due Process Clause, U.S. Const. amend. XIV*, protects an interest in life as well as an interest in refusing life-sustaining medical treatment. Not all incompetent patients will have loved ones available to serve as surrogate decisionmakers. And even where family members are present, there will, of course, be some unfortunate situations in which family members will not act to protect a patient. A state is entitled to guard against potential abuses in such situations. Similarly, a state is entitled to consider that a judicial proceeding to make a determination regarding an incompetent's wishes may very well not be an adversarial one, with the added guarantee of accurate factfinding that the adversary process brings with it.

Constitutional Law > Substantive Due Process > Privacy > General Overview

Healthcare Law > Medical Treatment > End-of-Life Decisions > Life Support

HN4 A state may properly decline to make judgments about the "quality" of life that a particular individual may enjoy, and simply assert an unqualified interest in the preservation of human life to be weighed against the constitutionally protected interests of the individual.

Constitutional Law > ... > Fundamental Rights > Procedural Due Process > General Overview

Constitutional Law > ... > Fundamental Rights > Procedural Due Process > Scope of Protection

Evidence > Inferences & Presumptions > General Overview

Evidence > Burdens of Proof > Clear & Convincing Proof

HN5 The function of a standard of proof, as that concept is embodied in the *Due Process Clause, U.S. Const. amend. XIV*, and in the realm of factfinding, is to instruct the factfinder concerning the degree of confidence our society thinks he should have in the correctness of factual conclusions for a particular type of adjudication. An intermediate standard of proof - clear and convincing evidence - is mandated when the individual interests at stake in a state proceeding are both particularly important and more substantial than mere loss of money.

Constitutional Law > Substantive Due Process > General Overview

Evidence > Inferences & Presumptions > General Overview

Labor & Employment Law > ... > Disability Discrimination > Evidence > General Overview

HN6 There is no reason why important individual interests should be afforded less protection simply because the government finds itself in the position of defending them.

Evidence > Inferences & Presumptions > General Overview

HN7 Not only does the standard of proof reflect the importance of a particular adjudication, it also serves as a societal judgment about how the risk of error should be distributed between the litigants. The more stringent the burden of proof a party must bear, the more that party bears the risk of an erroneous decision.

Constitutional Law > Substantive Due Process > Privacy > General Overview

Evidence > Inferences & Presumptions > General Overview

Healthcare Law > Medical Treatment > End-of-Life Decisions > Life Support

HN8 A state may apply a clear and convincing evidence standard in proceedings where a guardian seeks to discontinue nutrition and hydration of a person diagnosed to be in a persistent vegetative state.

Constitutional Law > ... > Fundamental Rights > Procedural Due Process > General Overview

Constitutional Law > Substantive Due Process > Privacy > General Overview

Healthcare Law > Medical Treatment > End-of-Life Decisions > Life Support

Healthcare Law > Medical Treatment > Failures & Refusals to Treat > General Overview

Healthcare Law > Medical Treatment > Patient Consent > General Overview

Healthcare Law > Medical Treatment > Patient Consent > Right to Refuse Treatment

HN9 The *Due Process Clause, U.S. Const. amend. XIV*, does not require a state to repose judgment on matters concerning refusal of medical treatment with anyone but the patient herself. Close family members may have a strong feeling - a feeling not at all ignoble or unworthy, but not entirely disinterested, either - that they do not wish to witness the continuation of the life of a loved one which they regard as hopeless, meaningless, and even degrading. But there is no automatic assurance that the view of close family members will necessarily be the same as the patient's would have been had she been confronted with the prospect of her situation while competent. A state may choose to defer only to the patient's wishes, rather than confide the decision to close family members.

Lawyers' Edition Display

Decision

Missouri requirement that incompetent's wishes as to withdrawal of life-sustaining treatment be proved by clear and convincing evidence held not violative of due process.

Summary

In January 1983, a woman lost control of her car as she traveled down a Missouri road. The car overturned, and a state trooper discovered the woman, lying face down in a ditch, without detectable respiratory or cardiac function. Paramedics who arrived at the accident scene were able to restore the woman's breathing and heartbeat, and the woman was then transported to a hospital in an unconscious state. An attending neurosurgeon diagnosed the woman as having sustained probable cerebral contusions compounded by significant oxygen deprivation, or anoxia. The estimated length of the period of her anoxia was 12 to 14 minutes; permanent brain damage generally results, the trial court later found, after 6 minutes in an anoxic state. The woman remained in a coma for approximately 3 weeks, and then progressed to an unconscious state in which she was able to orally ingest some nutrition. In order to ease feeding and further the woman's recovery, surgeons implanted a gastrostomy feeding and hydration tube with the consent of her then husband. In October 1983, the woman was admitted to a state hospital. Subsequent rehabilitative efforts proved unavailing. After it became apparent that the woman had virtually no chance of regaining her mental faculties, her parents--who had been appointed as her coguardians--asked employees of the state hospital to terminate the artificial nutrition and hydration procedures. The employees refused to honor the request without court approval. The parents then filed a declaratory judgment action in a Missouri trial court, in which they sought judicial authorization of their request. A guardian ad litem was appointed for the woman. The trial court, following a hearing, entered an order directing the employees to cause the parents' request to be carried out, based upon its findings that (1) the woman (a) had unassisted respiration and circulation function within the normal limits of a 30-year-old female, (b) was oblivious to her environment except for reflexive responses to sound and perhaps to painful stimuli, (c) suffered anoxia of the brain resulting in a massive enlargement of the ventricles filling with cerebrospinal fluid where the brain had degenerated, and cerebral cortical atrophy which was irreversible, permanent, progressive, and ongoing, (d) exhibited her highest cognitive brain function by grimacing, perhaps in recognition of ordinarily painful stimuli, which indicated the experience of pain and apparent response to sound, (e) was a spastic quadriplegic, (f) suffered contracture of her four extremities, with irreversible muscle and tendon damage, and (g) had no cognitive or reflex ability to swallow food or water to maintain her daily essential needs, and would never recover such ability; (2) a person in the woman's condition had a fundamental right under the Missouri and Federal Constitutions to refuse or direct the withdrawal of "death prolonging procedures"; and (3) the woman's expressed thoughts at age 25, in somewhat serious conversation with her housemate, that if sick or injured, she would not wish to continue her life unless she could live at least halfway normally, suggested that the woman

would not wish to continue on with her nutrition and hydration given her present condition. Both the state and the guardian ad litem appealed. The Supreme Court of Missouri, reversing, expressed the view that (1) although the woman was in a "persistent vegetative state," she was neither dead within the meaning of Missouri's statutory definition of death nor terminally ill; (2) the woman's right to refuse treatment--whether such right proceeded from a constitutional right of privacy or a common-law right to refuse treatment--did not outweigh Missouri's strong policy favoring the preservation of life, as embodied in the Missouri living will statute; (3) the woman's conversation with her housemate was unreliable for the purpose of determining her intent, and thus insufficient to support the parents' claim to exercise substituted judgment on the woman's behalf; and (4) no person could assume the choice of terminating medical treatment for an incompetent person in the absence of either the formalities required under the living will statute or "clear and convincing, inherently reliable evidence," which was absent in the case at hand (*760 SW2d 408*).

On certiorari, the United States Supreme Court affirmed. In an opinion by Rehnquist, Ch. J., joined by White, O'Connor, Scalia, and Kennedy, JJ., it was held that (1) the due process clause of the *Federal Constitution's Fourteenth Amendment* did not forbid a state from requiring that evidence of an incompetent individual's wishes as to the withdrawal of life-sustaining treatment be proved by clear and convincing evidence, and thus a state could apply such standard in proceedings where a guardian sought to discontinue nutrition and hydration of a person diagnosed to be in a persistent vegetative state, because (a) a state could legitimately seek to safeguard the personal element of the choice between life and death of an incompetent individual through the imposition of heightened evidentiary requirements, since a state was entitled (i) to guard against potential abuses in situations such as where family members either were unavailable to serve as surrogate decisionmakers or would not act to protect a patient, (ii) to consider that a judicial proceeding to make a determination regarding an incompetent's wishes might very well not be an adversarial one, and (iii) to assert an unqualified interest in the preservation of human life, which interest would be weighed against the constitutionally protected interests of the individual, and (b) a state could place an increased risk of an erroneous decision on those seeking to terminate an incompetent individual's life-sustaining treatment, since (i) the interests at stake were more substantial, on both the individual and societal level, than those involved in a run-of-the-mine civil dispute, and (ii) an erroneous decision not to terminate would result in a maintenance of the status quo, while an erroneous decision to withdraw life-sustaining treatment was not susceptible of correction; (2) the Missouri Supreme Court did not commit constitutional error in deciding that the woman's desire to have hydration and nutrition withdrawn was not proved at trial pursuant to the standard of clear and convincing evidence enunciated by that court in its decision, where the testimony adduced at trial consisted primarily of (a) the woman's statement to

her housemate, and (b) other observations to the same effect, which observations did not deal in terms with withdrawal of medical treatment or of hydration and nutrition; and (3) since the due process clause did not require a state to repose the right to judge whether an incompetent patient wishes to have life-sustaining medical treatment withdrawn with anyone but the patient herself, a state was not required to repose a right of substituted judgment as to such decision with close family members of the patient, and it could choose to defer to only the patient's wishes.

O'Connor, J., concurring, joined the court's opinion, and also expressed the view that (1) the liberty guaranteed by the due process clause protected an individual's personal decision to refuse medical treatment, including the artificial delivery of food and water, and (2) nothing in the court's decision (a) precluded a future determination by the United States Supreme Court that the Federal Constitution required the states to implement the decisions of incompetent individuals' duly appointed surrogates, or (b) prevented the states from developing other approaches for protecting such individuals' liberty interest in refusing medical treatment.

Scalia, J., concurring, joined the court's opinion, and also expressed the view that (1) it would have been preferable for the United States Supreme Court to announce that the federal courts have no business in the field of preserving life, insofar as (a) American law had always accorded states the power to prevent suicide--including suicide by refusing to take appropriate measures necessary to preserve one's life--by force if necessary, and (b) the Federal Constitution had nothing to say about the subject; (2) what was sought in the woman's case was indistinguishable from ordinary suicide; and (3) even when it was demonstrated by clear and convincing evidence that a patient no longer wished certain measures to be taken to preserve her life, it was up to the citizens of Missouri to decide, through their elected representatives, whether such wish would be honored.

Brennan, J., joined by Marshall and Blackmun, JJ., dissenting, expressed the view that (1) the woman had a fundamental right, under the due process clause, to be free of unwanted artificial nutrition and hydration; (2) such right was not outweighed by Missouri's asserted interest in the preservation of life, since (a) a general interest in someone's life which was completely abstracted from the interest of the person living that life could not outweigh the person's choice to avoid medical treatment, (b) an inability to withdraw life-sustaining treatment absent clear and convincing evidence might discourage starting such treatment, which would impair rather than serve the state's interest, and (c) in any event, such interest was not even well supported by Missouri's own enactments; (3) the evidentiary standard imposed by the Missouri Supreme Court impermissibly burdened the woman's right to avoid further medical treatment, since such standard neither enhanced the accuracy of a determination of the woman's wishes nor was consistent with an accurate determination; (4) in concluding that no clear and convincing, inherently reliable evidence had been

presented to show that the woman would want to avoid further treatment, the Missouri Supreme Court failed to consider (a) the woman's statements to her housemate and to family members, (b) testimony from the woman's mother and sister that they were certain that the woman would want to discontinue artificial nutrition and hydration, and (c) the conclusion of the guardian ad litem that there was clear and convincing evidence that the woman would want to discontinue medical treatment and that such discontinuance was in the woman's best interests; and (5) the due process clause--while it permitted a state to insure that a person making the decision to refuse medical treatment on behalf of an incompetent patient be one whom the patient would have selected to do so, and to exclude from consideration anyone having improper motives--generally required that the state either repose the choice with the person whom the patient would most likely have chosen as proxy or leave the decision to the patient's family.

Stevens, J., dissenting, expressed the view that (1) the Federal Constitution required Missouri to care for the woman's life in a way that gave appropriate respect to the woman's own best interests; (2) focusing the entire inquiry as to whether an incompetent person would refuse medical treatment on the person's prior unambiguous expressions of intent while competent afforded no protection to children, young people who were victims of unexpected accidents or illnesses, or elderly persons who either failed to decide or failed to explain how they would want to be treated; (3) there was no reasonable ground for believing that the woman had any personal interest in the perpetuation of what the state had decided was her life; (4) the failure of Missouri's policy to heed the woman's interests with respect to private matters was ample evidence of the policy's illegitimacy; and (5) the court's deference to such policy was patently unconstitutional, insofar as it seemed to derive from the premise that chronically incompetent persons had no constitutionally cognizable interests at all, and so were not persons within the meaning of the Constitution.

Headnotes

CONSTITUTIONAL LAW §514 > due process -- intent of incompetent person -- withdrawal of life-sustaining treatment -- clear and convincing evidence -- > Headnote:

LEdHN[1A] [1A]***LEdHN[1B]*** [1B]***LEdHN[1C]*** [1C]***LEdHN[1D]*** [1D]***LEdHN[1E]*** [1E]***LEdHN[1F]*** [1F]

The due process clause of the *Federal Constitution's Fourteenth Amendment* does not forbid a state from requiring that evidence of an incompetent individual's wishes as to the withdrawal of life-sustaining treatment be proved by clear and convincing evidence, and thus a state may apply such standard in proceedings where a guardian seeks to discontinue nutrition and hydration of a person diagnosed to be in a persistent vegetative state; consistent with the due process clause--which protects an interest in life, as well as an interest in refusing life-sustaining medical treatment--a state may legitimately seek to

safeguard the personal element of the choice between life and death of an incompetent individual through the imposition of heightened evidentiary requirements, because a state is entitled (1) to guard against potential abuses in situations such as where family members either (a) are unavailable to serve as surrogate decisionmakers, or (b) will not act to protect a patient, (2) to consider that a judicial proceeding to make a determination regarding an incompetent's wishes may very well not be an adversarial one, and thus that such proceeding lacks the added guarantee of accurate factfinding that the adversarial process brings with it, and (3) to decline to make judgments about the quality of life that a particular individual may enjoy, and simply assert an unqualified interest in the preservation of human life to be weighed against the constitutionally protected interests of the individual; under the due process clause, a state, by requiring proof by clear and convincing evidence, may place an increased risk of an erroneous decision on those seeking to terminate an incompetent individual's life-sustaining treatment, since the interests at stake are more substantial, on both the individual and societal level, than those involved in a run-of-the-mine civil dispute, and since an erroneous decision not to terminate results in a maintenance of the status quo--creating at least the potential that a wrong decision will eventually be corrected, or its impact mitigated, by subsequent developments such as advancements in medical science, the discovery of new evidence regarding the patient's intent, changes in the law, or simply the unexpected death of the patient despite the administration of life-sustaining treatment--while an erroneous decision to withdraw life-sustaining treatment is not susceptible of correction. (Brennan, Marshall, Blackmun, and Stevens, JJ., dissented from this holding.)

EVIDENCE §918 > sufficiency -- intent of incompetent person -- withdrawal of nutrition and hydration -- > Headnote:

LEdHN[2A] [2A]***LEdHN[2B]*** [2B]

A state's highest court does not commit constitutional error in deciding that the desire of an incompetent patient--diagnosed to be in a persistent vegetative state--to have hydration and nutrition withdrawn was not proved at trial pursuant to a standard of clear and convincing evidence enunciated by that court in its decision, where the testimony adduced at trial consisted primarily of (1) the patient's statements to a housemate, about a year before an automobile accident in which the patient sustained severe injuries which rendered her incompetent, that the patient would not want to live should she face life as a "vegetable," and (2) other observations to the same effect, which observations did not deal in terms with withdrawal of medical treatment or of hydration and nutrition. (Brennan, Marshall, Blackmun, and Stevens, JJ., dissented from this holding.)

CONSTITUTIONAL LAW §528.5 > due process -- refusal of medical treatment -- > Headnote:

LEdHN[3] [3]

Pursuant to the due process clause of the *Federal Constitution's Fourteenth Amendment*, a competent person has a constitutionally protected liberty interest in refusing unwanted medical treatment.

CONSTITUTIONAL LAW §525 > due process -- liberty interest -- balancing test -- > Headnote:

LEdHN[4] [4]

The determination that a person has a liberty interest under the due process clause of the *Federal Constitution's Fourteenth Amendment* does not end the inquiry as to whether the person's constitutional rights have been violated; such liberty interest must then be balanced against the relevant state interests.

CONSTITUTIONAL LAW §101.3 > due process -- refusal of medical treatment -- right of privacy -- > Headnote:

LEdHN[5A] [5A]***LEdHN[5B]*** [5B]

The issue whether a person's right to refuse medical treatment is protected by the Federal Constitution is properly analyzed in terms of the person's liberty interest under the *due process clause of the Fourteenth Amendment*, rather than in terms of a generalized constitutional right of privacy.

INCOMPETENT PERSONS §1 > right to refuse medical treatment -- necessity of surrogate -- > Headnote:

LEdHN[6] [6]

Because an incompetent person is not able to make an informed and voluntary choice to exercise a hypothetical right to refuse treatment--or any other right--such right must be exercised for her, if at all, by some sort of surrogate.

CONSTITUTIONAL LAW §829 > EVIDENCE §869 > Headnote:

LEdHN[7] [7]

The function of a standard of proof, as that concept is embodied in the due process clause of the *Federal Constitution's Fourteenth Amendment* and in the realm of factfinding, is to instruct the factfinder concerning the degree of confidence society thinks he should have in the correctness of factual conclusions for a particular type of adjudication.

CONSTITUTIONAL LAW §829 > EVIDENCE §869 > Headnote:

LEdHN[8A] [8A]***LEdHN[8B]*** [8B]

An intermediate standard of proof--that of "clear and convincing" evidence--may be mandated by the due process clause of the *Federal Constitution's Fourteenth Amendment* when the individual interests at stake in a state proceeding are both particularly important and more substantial than mere loss of money; such standard not only reflects the importance of a particular adjudication, but also serves as a societal judgment about how the risk of error should be distributed between the litigants, given that the more stringent the burden of proof a party must bear, the more that party bears the risk of an erroneous decision.

CONSTITUTIONAL LAW §514 > due process -- protection of individual interests -- > Headnote:

LEdHN[9A] [9A]***LEdHN[9B]*** [9B]

In determining whether an individual's important interests are protected by the due process clause of the *Federal Constitution's Fourteenth Amendment*, there is no reason why such interests should be afforded less protection simply because the government finds itself in the position of defending them.

EVIDENCE §551 > parol evidence rule -- > Headnote:

LEdHN[10] [10]

At common law and by statute in most states, the parol evidence rule prevents the variations of the terms of a written contract by oral testimony.

STATUTE OF FRAUDS §1 > oral contracts -- > Headnote:

LEdHN[11] [11]

The statute of frauds makes oral contracts to leave property by will unenforceable.

CONSTITUTIONAL LAW §8 > effect on general rules -- > Headnote:

LEdHN[12] [12]

The Federal Constitution does not require general rules of law to work faultlessly.

CONSTITUTIONAL LAW §528.3 > due process -- incompetent person -- family's right of "substituted judgment" -- > Headnote:

LEdHN[13] [13]

The due process clause of the *Federal Constitution's Fourteenth Amendment* does not require a state to repose the right to judge whether an incompetent patient wishes to have life-sustaining treatment withdrawn with anyone but the patient herself; thus, a state is not required to repose a right of "substituted judgment" as to such decision with close family members of a patient, and may choose to defer to only the patient's wishes, since there is no automatic assurance that the view of close family members will necessarily be the same as the patient's would have been had she been confronted with the prospect of her situation while competent.

CONSTITUTIONAL LAW §347.5 > equal protection -- incompetent persons -- > Headnote:

LEdHN[14A] [14A]***LEdHN[14B]*** [14B]

A state is warranted, under the *equal protection clause* of the *Federal Constitution's Fourteenth Amendment*, in establishing rigorous procedures for the class of cases involving a choice made for an incompetent person by someone else to refuse medical treatment, which procedures do not apply to the class of cases involving a choice made by a competent person to refuse medical treatment, given the obvious differences between such choices.

Syllabus

Petitioner Nancy Cruzan is incompetent, having sustained severe injuries in an automobile accident, and now lies in a Missouri state hospital in what is referred to as a persistent vegetative state: generally, a condition in which a person exhibits motor reflexes but evinces no indications of significant cognitive function. The State is bearing the cost of her care. Hospital employees refused, without court approval, to honor the request of Cruzan's parents, copetitioners here, to terminate her artificial nutrition and hydration, since that would result in death. A state trial court authorized the termination, finding that a person in Cruzan's condition has a fundamental right under the State and Federal Constitutions to direct or refuse the withdrawal of death-prolonging procedures, and that Cruzan's expression to a former housemate that she would not wish to continue her life if sick or injured unless she could live at least halfway normally suggested that she would not wish to continue on with her nutrition and hydration. The State Supreme Court reversed. While recognizing a right to refuse treatment embodied in the common-law doctrine of informed consent, the court questioned its applicability in this case. It also declined to read into the State Constitution a broad right to privacy that would support an unrestricted right to refuse treatment and expressed doubt that the Federal Constitution embodied such a right. The court then decided that the State Living Will statute embodied a state policy strongly favoring the preservation of life, and that Cruzan's statements to her housemate were unreliable for the purpose of determining her intent. It rejected the argument that her parents were entitled to order the termination of her medical treatment, concluding that no

person can assume that choice for an incompetent in the absence of the formalities required by the Living Will statute or clear and convincing evidence of the patient's wishes.

Held:

1. The United States Constitution does not forbid Missouri to require that evidence of an incompetent's wishes as to the withdrawal of life-sustaining treatment be proved by clear and convincing evidence. Pp. 269-285.

(a) Most state courts have based a right to refuse treatment on the common-law right to informed consent, see, *e. g.*, *In re Storar, 52 N.Y.2d 363, 420 N.E.2d 64, 438 N.Y.S.2d 266*, or on both that right and a constitutional privacy right, see, *e.g.*, *Superintendent of Belchertown State School v. Saikewicz, 373 Mass. 728, 370 N.E.2d 417*. In addition to relying on state constitutions and the common law, state courts have also turned to state statutes for guidance, see, *e.g.*, *Conservatorship of Drabick, 200 Cal. App. 3d 185, 245 Cal. Rptr. 840*. However, these sources are not available to this Court, where the question is simply whether the Federal Constitution prohibits Missouri from choosing the rule of law which it did. Pp. 269-278.

(b) A competent person has a liberty interest under the Due Process Clause in refusing unwanted medical treatment. Cf., *e. g.*, *Jacobson v. Massachusetts, 197 U.S. 11, 24-30, 49 L. Ed. 643, 25 S. Ct. 358*. However, the question whether that constitutional right has been violated must be determined by balancing the liberty interest against relevant state interests. For purposes of this case, it is assumed that a competent person would have a constitutionally protected right to refuse lifesaving hydration and nutrition. This does not mean that an incompetent person should possess the same right, since such a person is unable to make an informed and voluntary choice to exercise that hypothetical right or any other right. While Missouri has in effect recognized that under certain circumstances a surrogate may act for the patient in electing to withdraw hydration and nutrition and thus cause death, it has established a procedural safeguard to assure that the surrogate's action conforms as best it may to the wishes expressed by the patient while competent. Pp. 278-280.

(c) It is permissible for Missouri, in its proceedings, to apply a clear and convincing evidence standard, which is an appropriate standard when the individual interests at stake are both particularly important and more substantial than mere loss of money, *Santosky v. Kramer, 455 U.S. 745, 756, 71 L. Ed. 2d 599, 102 S. Ct. 1388*. Here, Missouri has a general interest in the protection and preservation of human life, as well as other, more particular interests, at stake. It may legitimately seek to safeguard the personal element of an individual's choice between life and death. The State is also entitled to guard against potential abuses by surrogates who may not act to protect the patient. Similarly, it is entitled to consider that a judicial proceeding regarding an incompetent's wishes may not be adversarial, with the added guarantee of accurate factfinding that the adversary process brings with it. The State may also properly decline to make judgments about the "quality"

of a particular individual's life and simply assert an unqualified interest in the preservation of human life to be weighed against the constitutionally protected interests of the individual. It is self-evident that these interests are more substantial, both on an individual and societal level, than those involved in a common civil dispute. The clear and convincing evidence standard also serves as a societal judgment about how the risk of error should be distributed between the litigants. Missouri may permissibly place the increased risk of an erroneous decision on those seeking to terminate life-sustaining treatment. An erroneous decision not to terminate results in a maintenance of the status quo, with at least the potential that a wrong decision will eventually be corrected or its impact mitigated by an event such as an advancement in medical science or the patient's unexpected death. However, an erroneous decision to withdraw such treatment is not susceptible of correction. Although Missouri's proof requirement may have frustrated the effectuation of Cruzan's not-fully-expressed desires, the Constitution does not require general rules to work flawlessly. Pp. 280-285.

2. The State Supreme Court did not commit constitutional error in concluding that the evidence adduced at trial did not amount to clear and convincing proof of Cruzan's desire to have hydration and nutrition withdrawn. The trial court had not adopted a clear and convincing evidence standard, and Cruzan's observations that she did not want to live life as a "vegetable" did not deal in terms with withdrawal of medical treatment or of hydration and nutrition. P. 285.

3. The Due Process Clause does not require a State to accept the "substituted judgment" of close family members in the absence of substantial proof that their views reflect the patient's. This Court's decision upholding a State's favored treatment of traditional family relationships, *Michael H. v. Gerald D., 491 U.S. 110, 105 L. Ed. 2d 91, 109 S. Ct. 2333*, may not be turned into a constitutional requirement that a State must recognize the primacy of these relationships in a situation like this. Nor may a decision upholding a State's right to permit family decisionmaking, *Parham v. J. R., 442 U.S. 584, 61 L. Ed. 2d 101, 99 S. Ct. 2493*, be turned into a constitutional requirement that the State recognize such decisionmaking. Nancy Cruzan's parents would surely be qualified to exercise such a right of "substituted judgment" were it required by the Constitution. However, for the same reasons that Missouri may require clear and convincing evidence of a patient's wishes, it may also choose to defer only to those wishes rather than confide the decision to close family members. Pp. 285-287.

Counsel: William H. Colby argued the cause for petitioners. With him on the briefs were David J. Waxse, Walter E. Williams, Edward J. Kelly III, John A. Powell, and Steven R. Shapiro.

Robert L. Presson, Assistant Attorney General of Missouri, argued the cause for respondent Director, Missouri Department of Health, et al. With him on the brief were William L. Webster, Attorney General, and Robert Northcutt.

Thad C. McCanse, pro se, and David B. Mouton filed a brief for respondent guardian ad litem.

Solicitor General Starr argued the cause for the United States as amicus curiae urging affirmance. With him on the brief were Acting Assistant Attorney General Schiffer, Deputy Solicitor General Merrill, and Brian J. Martin. *

Judges: REHNQUIST, C. J., delivered the opinion of the Court, in which WHITE, O'CONNOR, SCALIA, and KENNEDY, JJ., joined. O'CONNOR, J., post, p. 287, and SCALIA, J., post, p. 292, filed concurring opinions. BRENNAN, J., filed a dissenting opinion, in which MARSHALL and BLACKMUN, JJ., joined, post, p. 301. STEVENS, J., filed a dissenting opinion, post, p. 330.

Opinion by: REHNQUIST

Opinion

[*265] [*234] [**2844]** CHIEF JUSTICE REHNQUIST delivered the opinion of the Court.

LEdHN ***LEdHN*** Petitioner Nancy Beth Cruzan was rendered incompetent as a result of severe injuries sustained during an automobile accident. Copetitioners Lester and Joyce

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* Briefs of amici curiae urging reversal were filed for the AIDS Civil Rights Project by Walter R. Allan; for the American Academy of Neurology by John H. Pickering; for the American College of Physicians by Nancy J. Bregstein; for the American Geriatrics Society by Keith R. Anderson; for the American Hospital Association by Paul W. Armstrong; for the American Medical Association et al. by Rex E. Lee, Carter G. Phillips, Elizabeth H. Esty, Jack R. Bierig, Russell M. Pelton, Paul G. Gebhard, Laurie R. Rockett, and Henry Hart; for the Colorado Medical Society et al. by Garth C. Grissom; for Concern for Dying by Henry Putzel III and George J. Annas; for the Evangelical Lutheran Church in America by Susan D. Reece Martyn and Henry J. Bourguignon; for the General Board of Church and Society of the United Methodist Church by Thomas S. Martin and Magda Lopez; for Missouri Hospitals et al. by Mark A. Thornhill, E. J. Holland, Jr., and John C. Shepherd; for the National Hospice Organization by Barbara F. Mishkin and Walter A. Smith, Jr.; for the National Academy of Elder Law Attorneys by Robert K. Huffman; for the Society of Critical Care Medicine et al. by Stephan E. Lawton; for the Society for the Right to Die, Inc., by Fenella Rouse; for Wisconsin Bioethicists et al. by Robyn S. Shapiro, Charles H. Barr, and Jay A. Gold; for Barbara Burgoon et al. by Vicki Gottlich, Leslie Blair Fried, and Stephanie M. Edelstein; and for John E. McConnell et al. by Stephen A. Wise.

Briefs of amici curiae urging affirmance were filed for Agudath Israel of America by David Zwiebel; for the American Academy of Medical Ethics by James Bopp, Jr.; for the Association of American Physicians and Surgeons et al. by Edward R. Grant and Kent Masterson Brown; for the Association for Retarded Citizens of the United States et al. by James Bopp, Jr., Thomas J. Marzen, and Stanley S. Herr; for the Catholic Lawyers Guild of the Archdiocese of Boston, Inc., by Calum B. Anderson and Leonard F. Zandrow, Jr.; for the District Attorney of Milwaukee County, Wisconsin, by E. Michael McCann, pro se, and John M. Stoiber; for Doctors for Life et al. by David O. Danis and Gerard F. Hempstead; for Families for Life et al. by Robert L. Mauro; for Focus on the Family et al. by Clarke D. Forsythe, Paul Benjamin Linton, and H. Robert Showers; for Free Speech Advocates et al. by Thomas Patrick Monaghan and Jay Alan Sekulow; for the International Anti-Euthanasia Task Force et al. by Jordan Lorence; for the Knights of Columbus by James H. Burnley IV, Robert J. Cynkar, and Carl A. Anderson; for the National Right to Life Committee, Inc., by James Bopp, Jr.; for the New Jersey Right to Life Committee, Inc., et al. by Donald D. Campbell and Anne M. Perone; for the Rutherford Institute et al. by John W. Whitehead, James J. Knicely, David E. Morris, William B. Hollberg, Amy Dougherty, Thomas W. Strahan, William Bonner, John F. Southworth, Jr., and W. Charles Bundren; for the United States Catholic Conference by Mark E. Chopko and Phillip H. Harris; for the Value of Life Committee, Inc., by Walter M. Weber; and for Elizabeth Sadowski et al. by Robert L. Mauro.

Briefs of amici curiae were filed for the American Nurses Association et al. by Diane Trace Warlick; and for the SSM Health Care System et al. by J. Jerome Mansmann and Melanie DiPietro.

Cruzan, Nancy's **[**2845]** parents and coguardians, sought a court order directing the withdrawal of their daughter's artificial feeding and hydration equipment after it became apparent that she had virtually no chance of recovering her cognitive faculties. The Supreme Court of Missouri held that because there was no clear and convincing evidence of Nancy's desire to have life-sustaining treatment withdrawn under such circumstances, her parents lacked authority to effectuate such a request. We granted certiorari, *492 U.S. 917 (1989)*, and now affirm.

[*266] On the night of January 11, 1983, Nancy Cruzan lost control of her car as she traveled down Elm Road in Jasper County, Missouri. The vehicle overturned, and Cruzan was discovered lying face down in a ditch without detectable respiratory or cardiac function. Paramedics were able to restore her breathing and heartbeat at the accident site, and she was transported to a hospital in an unconscious state. An attending neurosurgeon diagnosed her as having sustained probable cerebral contusions compounded by significant anoxia (lack of oxygen). The Missouri trial court in this case found that permanent brain damage generally results after 6 minutes in an anoxic state; it was estimated that Cruzan was deprived of oxygen from 12 to 14 minutes. She remained in a coma for approximately three weeks and then progressed to an unconscious state in which she was able to orally ingest some nutrition. In order to ease feeding and further the recovery, surgeons implanted a gastrostomy feeding and hydration tube in Cruzan with the consent of her then husband. Subsequent rehabilitative efforts proved unavailing. She now lies in a Missouri state hospital in what is commonly referred to as a persistent vegetative state: generally, a condition in which a person exhibits motor reflexes but evinces no indications of significant cognitive function. [1] The State of Missouri is bearing the cost of her care.

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[1] The State Supreme Court, adopting much of the trial court's findings, described Nancy Cruzan's medical condition as follows:

". . . (1) Her respiration and circulation are not artificially maintained and are within the normal limits of a thirty-year-old female; (2) she is oblivious to her environment except for reflexive responses to sound and perhaps painful stimuli; (3) she suffered anoxia of the brain resulting in a massive enlargement of the ventricles filling with cerebrospinal fluid in the area where the brain has degenerated and [her] cerebral cortical atrophy is irreversible, permanent, progressive and ongoing; (4) her highest cognitive brain function is exhibited by her grimacing perhaps in recognition of ordinarily painful stimuli, indicating the experience of pain and apparent response to sound; (5) she is a spastic quadriplegic; (6) her four extremities are contracted with irreversible muscular and tendon damage to all extremities; (7) she has no cognitive or reflexive ability to swallow food or water to maintain her daily essential needs and . . . she will never recover her ability to swallow sufficient *[sic]* to satisfy her needs. In sum, Nancy is diagnosed as in a persistent vegetative state. She is not dead. She is not terminally ill. Medical experts testified that she could live another thirty years." *Cruzan v. Harmon, 760 S.W.2d 408, 411 (Mo. 1989)* (en banc) (quotations omitted; footnote omitted).

In observing that Cruzan was not dead, the court referred to the following Missouri statute:

"For all legal purposes, the occurrence of human death shall be determined in accordance with the usual and customary standards of medical practice, provided that death shall not be determined to have occurred unless the following minimal conditions have been met:

"(1) When respiration and circulation are not artificially maintained, there is an irreversible cessation of spontaneous respiration and circulation; or

"(2) When respiration and circulation are artificially maintained, and there is total and irreversible cessation of all brain function, including the brain stem and that such determination is made by a licensed physician." *Mo. Rev. Stat. § 194.005* (1986).

Since Cruzan's respiration and circulation were not being artificially maintained, she obviously fit within the first proviso of the statute.

[*267] [*235] [**2846]** After it had become apparent that Nancy Cruzan had virtually no chance of regaining her mental faculties, her parents asked hospital employees to terminate the artificial nutrition and hydration procedures. All agree that such a **[*268]** removal would cause her death. The employees refused to honor the request without court approval. The parents then sought and received authorization from the state trial court for termination. The court found that a person in Nancy's condition had a fundamental right under the State and Federal Constitutions to refuse or direct the withdrawal of "death prolonging procedures." App. to Pet. for Cert. A99. The court also found that Nancy's "expressed thoughts at age twenty-five in somewhat serious conversation with a housemate friend that if sick or injured she would not wish to continue her life unless she could live at least halfway normally suggests that given her present condition she would not wish to continue on with her nutrition and hydration." *Id.*, at A97-A98.

The Supreme Court of Missouri reversed by a divided vote. The court recognized a right to refuse treatment embodied in the common-law doctrine of informed consent, but expressed skepticism about the application of that doctrine in the circumstances of this case. *Cruzan v. Harmon, 760 S.W.2d 408, 416-417 (1988)* (en banc). The court also declined to read a broad right of privacy into the State Constitution which would "support the right of a person to refuse medical treatment in every circumstance," and expressed doubt as to whether such a right existed under the United States Constitution. *Id., at 417-418*. It then decided that the Missouri Living Will statute, *Mo Rev. Stat. § 459.010 et seq.* (1986), embodied a state policy strongly favoring the preservation of life. *760 S.W.2d at 419-420*. The court found that Cruzan's statements to her roommate regarding her desire to live or die under certain conditions were "unreliable for the purpose of determining her intent," *id., at 424*, "and thus insufficient to support the co-guardians[']claim to exercise substituted **[***236]** judgment on Nancy's behalf." *Id., at 426*. It rejected the argument that Cruzan's parents were entitled to order the termination of her medical treatment, **[*269]** concluding that "no person can assume that choice for an incompetent in the absence of the formalities required under Missouri's Living Will statutes or the clear and convincing, inherently reliable evidence absent here." *Id., at 425*. The court also expressed its view that "broad policy questions bearing on life and death are more properly addressed by representative assemblies" than judicial bodies. *Id., at 426*.

Dr. Fred Plum, the creator of the term "persistent vegetative state" and a renowned expert on the subject, has described the "vegetative state" in the following terms:

"'Vegetative state describes a body which is functioning entirely in terms of its internal controls. It maintains temperature. It maintains heart beat and pulmonary ventilation. It maintains digestive activity. It maintains reflex activity of muscles and nerves for low level conditioned responses. But there is no behavioral evidence of either self-awareness or awareness of the surroundings in a learned manner.'" *In re Jobes, 108 N.J. 394, 403, 529 A.2d 434, 438 (1987)*.

See also Brief for American Medical Association et al. as *Amici Curiae* 6 ("The persistent vegetative state can best be understood as one of the conditions in which patients have suffered a loss of consciousness").

We granted certiorari to consider the question whether Cruzan has a right under the United States Constitution which would require the hospital to withdraw life-sustaining treatment from her under these circumstances.

At common law, even the touching of one person by another without consent and without legal justification was a battery. See W. Keeton, D. Dobbs, R. Keeton, & D. Owen, Prosser and Keeton on Law of Torts § 9, pp. 39-42 (5th ed. 1984). Before the turn of the century, this Court observed that "no ***HN1*** right is held more sacred, or is more carefully guarded, by the common law, than the right of every individual to the possession and control of his own person, free from all restraint or interference of others, unless by clear and unquestionable authority of law." *Union Pacific R. Co. v. Botsford, 141 U.S. 250, 251, 35 L. Ed. 734, 11 S. Ct. 1000 (1891)*. This notion of bodily integrity has been embodied in the requirement that informed consent is generally required for medical treatment. Justice Cardozo, while on the Court of Appeals of New York, aptly described this doctrine: "Every human being **[**2847]** of adult years and sound mind has a right to determine what shall be done with his own body; and a surgeon who performs an operation without his patient's consent commits an assault, for which he is liable in damages." *Schloendorff v. Society of New York Hospital, 211 N.Y. 125, 129-130, 105 N.E. 92, 93 (1914)*. The informed consent doctrine has become firmly entrenched in American tort law. See Keeton, Dobbs, Keeton, & Owen, *supra*, § 32, pp. 189-192; F. Rozovsky, Consent to Treatment, A Practical Guide 1-98 (2d ed. 1990).

[*270] The logical corollary of the doctrine of informed consent is that the patient generally possesses the right not to consent, that is, to refuse treatment. Until about 15 years ago and the seminal decision in *In re Quinlan, 70 N.J. 10, 355 A.2d 647*, cert. denied *sub nom. Garger v. New Jersey, 429 U.S. 922, 50 L. Ed. 2d 289, 97 S. Ct. 319 (1976)*, the number of right-to-refuse-treatment decisions was relatively few. [2] Most of the earlier cases involved patients who refused medical treatment forbidden by their religious beliefs, thus implicating *First Amendment* rights as well as common-law rights of self-determination. [3] More recently, however, **[***237]** with the advance of medical technology capable of sustaining life well past the point where natural forces would have brought certain death in earlier times, cases involving the right to refuse life-sustaining treatment have burgeoned. See *760 S.W.2d at 412, n.4* (collecting 54 reported decisions from 1976 through 1988).

In the *Quinlan* case, young Karen Quinlan suffered severe brain damage as the result of anoxia and entered a persistent vegetative state. Karen's father sought judicial approval to

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[2] See generally Karnezis, Patient's Right to Refuse Treatment Allegedly Necessary to Sustain Life, *93 A. L. R. 3d 67 (1979)* (collecting cases); Cantor, A Patient's Decision to Decline Life-Saving Medical Treatment: Bodily Integrity Versus the Preservation of Life, 26 Rutgers L. Rev. 228, 229, and n.5 (1973) (noting paucity of cases).

[3] See Chapman, The Uniform Rights of the Terminally Ill Act: Too Little, Too Late?, 42 Ark. L. Rev. 319, 324, n.15 (1989); see also F. Rozovsky, Consent to Treatment, A Practical Guide 415-423 (1984).

disconnect his daughter's respirator. The New Jersey Supreme Court granted the relief, holding that ***HN2*** Karen had a right of privacy grounded in the Federal Constitution to terminate treatment. *In re Quinlan, 70 N.J. at 38-42, 355 A.2d at 662-664*. Recognizing that this right was not absolute, however, the court balanced it against asserted state interests. Noting that the State's interest "weakens and the individual's right to privacy grows as the degree of bodily invasion increases and the prognosis dims," the court concluded that the state interests had to give way in that case. *Id., at* ***[*271]*** *41, 355 A.2d at 664*. The court also concluded that the "only practical way" to prevent the loss of Karen's privacy right due to her incompetence was to allow her guardian and family to decide "whether she would exercise it in these circumstances." *Ibid.*

After *Quinlan*, however, most courts have based a right to refuse treatment either solely on the common-law right to informed consent or on both the common-law right and a constitutional privacy right. See L. Tribe, American Constitutional Law § 15-11, p. 1365 (2d ed. 1988). In *Superintendent of Belchertown State School v. Saikewicz, 373 Mass. 728, 370 N.E.2d 417 (1977)*, the Supreme Judicial Court of Massachusetts relied on both the right of privacy and the right of informed consent to permit the withholding of chemotherapy from a profoundly retarded 67-year-old man suffering from leukemia. *Id., at 737-738, 370 N.E.2d at 424*. Reasoning that an incompetent person retains the same rights as a competent individual "because the value of human dignity extends to both," the court adopted a "substituted judgment" standard whereby courts were to determine what an incompetent individual's decision would have been under the circumstances. *Id., at 745, 752-753, 757-758, 370 N.E.2d at 427, 431, 434*. Distilling certain state interests from prior case law -- the preservation of life, the protection of the interests **[**2848]** of innocent third parties, the prevention of suicide, and the maintenance of the ethical integrity of the medical profession -- the court recognized the first interest as paramount and noted it was greatest when an affliction was curable, "as opposed to the State interest where, as here, the issue is not whether, but when, for how long, and at what cost to the individual [a] life may be briefly extended." *Id., at 742, 370 N.E.2d at 426*.

In *In re Storar, 52 N.Y.2d 363, 420 N.E.2d 64, 438 N.Y.S.2d 266*, cert. denied, *454 U.S. 858, 70 L. Ed. 2d 153, 102 S. Ct. 309 (1981)*, the New York Court of Appeals declined to base a right to refuse treatment on a constitutional privacy right. Instead, it found such a right "adequately **[*272]** supported" by the informed consent doctrine. *Id., at 376-377, 420 N.E.2d at 70*. In *In re Eichner* (decided with *In re Storar, supra*), an 83-year-old man who had suffered brain damage from anoxia **[***238]** entered a vegetative state and was thus incompetent to consent to the removal of his respirator. The court, however, found it unnecessary to reach the question whether his rights could be exercised by others since it found the evidence clear and convincing from statements made by the patient when competent that he "did not want to be maintained in a vegetative coma by use of a respirator." *Id., at 380, 420 N.E.2d at 72*. In the companion *Storar* case, a 52-year-old man suffering from bladder cancer had been profoundly retarded during most of his life.

Implicitly rejecting the approach taken in *Saikewicz, supra*, the court reasoned that due to such life-long incompetency, "it is unrealistic to attempt to determine whether he would want to continue potentially life prolonging treatment if he were competent." *52 N.Y.2d at 380, 420 N.E.2d at 72*. As the evidence showed that the patient's required blood transfusions did not involve excessive pain and without them his mental and physical abilities would deteriorate, the court concluded that it should not "allow an incompetent patient to bleed to death because someone, even someone as close as a parent or sibling, feels that this is best for one with an incurable disease." *Id., at 382, 420 N.E.2d at 73*.

Many of the later cases build on the principles established in *Quinlan*, *Saikewicz*, and *Storar/Eichner*. For instance, in *In re Conroy, 98 N.J. 321, 486 A.2d 1209 (1985)*, the same court that decided *Quinlan* considered whether a nasogastric feeding tube could be removed from an 84-year-old incompetent nursing-home resident suffering irreversible mental and physical ailments. While recognizing that a federal right of privacy might apply in the case, the court, contrary to its approach in *Quinlan*, decided to base its decision on the common-law right to self-determination and informed consent. **[*273]** *98 N.J. at 348, 486 A.2d at 1223*. "On balance, the right to self-determination ordinarily outweighs any countervailing state interests, and competent persons generally are permitted to refuse medical treatment, even at the risk of death. Most of the cases that have held otherwise, unless they involved the interest in protecting innocent third parties, have concerned the patient's competency to make a rational and considered choice." *Id., at 353-354, 486 A.2d at 1225*.

Reasoning that the right of self-determination should not be lost merely because an individual is unable to sense a violation of it, the court held that incompetent individuals retain a right to refuse treatment. It also held that such a right could be exercised by a surrogate decisionmaker using a "subjective" standard when there was clear evidence that the incompetent person would have exercised it. Where such evidence was lacking, the court held that an individual's right could still be invoked in certain circumstances under objective "best interest" standards. *Id., at 361-368, 486 A.2d at 1229-1233*. Thus, if some trustworthy evidence existed that the individual would have wanted to terminate treatment, but not enough to clearly establish a person's wishes for purposes of the **[**2849]** subjective standard, and the burden of a prolonged life from the experience of pain and suffering markedly outweighed its satisfactions, treatment could be terminated under a "limited-objective" standard. Where no trustworthy evidence existed, **[***239]** and a person's suffering would make the administration of life-sustaining treatment inhumane, a "pure-objective" standard could be used to terminate treatment. If none of these conditions obtained, the court held it was best to err in favor of preserving life. *Id., at 364-368, 486 A.2d at 1231-1233*.

The court also rejected certain categorical distinctions that had been drawn in prior refusal-of-treatment cases as lacking substance for decision purposes: the distinction between actively hastening death by terminating treatment and passively **[*274]** allowing a person

to die of a disease; between treating individuals as an initial matter versus withdrawing treatment afterwards; between ordinary versus extraordinary treatment; and between treatment by artificial feeding versus other forms of life-sustaining medical procedures. *Id., at 369-374, 486 A.2d at 1233-1237*. As to the last item, the court acknowledged the "emotional significance" of food, but noted that feeding by implanted tubes is a "medical procedure with inherent risks and possible side effects, instituted by skilled health-care providers to compensate for impaired physical functioning" which analytically was equivalent to artificial breathing using a respirator. *Id., at 373, 486 A.2d at 1236*. [4]

In contrast to *Conroy*, the Court of Appeals of New York recently refused to accept less than the clearly expressed wishes of a patient before permitting the exercise of her right to refuse treatment by a surrogate decisionmaker. *In re Westchester County Medical Center on behalf of O'Connor, 72 N.Y.2d 517, 531 N.E.2d 607, 534 N.Y.S.2d 886 (1988) (O'Connor)*. There, the court, over the objection of the patient's family members, granted an order to insert a feeding tube into a 77-year-old **[*275]** woman rendered incompetent as a result of several strokes. While continuing to recognize a common-law right to refuse treatment, the court rejected the substituted judgment approach for asserting it "because it is inconsistent with our fundamental commitment to the notion that no person or court should substitute its judgment as to what would be an acceptable quality of life for another. Consequently, we adhere to the view that, despite its pitfalls and inevitable uncertainties, the inquiry must always be narrowed to the patient's expressed intent, with every effort made to minimize the opportunity for error." *Id., at 530, 531 N.E.2d at 613* (citation omitted). The court held that the record lacked the requisite clear and convincing evidence of the patient's expressed intent to **[***240]** withhold life-sustaining treatment. *Id., at 531-534, 531 N.E.2d at 613-615*.

Other courts have found state statutory law relevant to the resolution of these issues. In *Conservatorship of Drabick, 200 Cal. App. 3d 185, 245 Cal. Rptr. 840*, cert. denied, *488 U.S. 958 (1988)*, the California Court of Appeal authorized **[**2850]** the removal of a nasogastric feeding tube from a 44-year-old man who was in a persistent vegetative state as a result of an auto accident. Noting that the right to refuse treatment was grounded in both the common law and a constitutional right of privacy, the court held that a state probate statute authorized the patient's conservator to order the withdrawal of life-sustaining treatment when such a decision was made in good faith based on medical advice and the conservatee's best interests. While acknowledging that "to claim that [a patient's]

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[4] In a later trilogy of cases, the New Jersey Supreme Court stressed that the analytic framework adopted in *Conroy* was limited to elderly, incompetent patients with shortened life expectancies, and established alternative approaches to deal with a different set of situations. See *In re Farrell, 108 N.J. 335, 529 A.2d 404 (1987)* (37-year-old competent mother with terminal illness had right to removal of respirator based on common law and constitutional principles which overrode competing state interests); *In re Peter, 108 N.J. 365, 529 A.2d 419 (1987)* (65-year-old woman in persistent vegetative state had right to removal of nasogastric feeding tube -- under *Conroy* subjective test, power of attorney and hearsay testimony constituted clear and convincing proof of patient's intent to have treatment withdrawn); *In re Jobes, 108 N.J. 394, 529 A.2d 434 (1987)* (31-year-old woman in persistent vegetative state entitled to removal of jejunostomy feeding tube -- even though hearsay testimony regarding patient's intent insufficient to meet clear and convincing standard of proof, under *Quinlan*, family or close friends entitled to make a substituted judgment for patient).

'right to choose' survives incompetence is a legal fiction at best," the court reasoned that the respect society accords to persons as individuals is not lost upon incompetence and is best preserved by allowing others "to make a decision that reflects [a patient's] interests more closely than would a purely technological decision to do whatever is possible." [5] **[*276]** *Id., at 208, 245 Cal. Rptr. at 854-855*. See also *In re Conservatorship of Torres, 357 N.W.2d 332 (Minn. 1984)* (Minnesota court had constitutional and statutory authority to authorize a conservator to order the removal of an incompetent individual's respirator since in patient's best interests).

In *In re Estate of Longeway, 133 Ill. 2d 33, 549 N.E.2d 292, 139 Ill. Dec. 780 (1989)*, the Supreme Court of Illinois considered whether a 76-year-old woman rendered incompetent from a series of strokes had a right to the discontinuance of artificial nutrition and hydration. Noting that the boundaries of a federal right of privacy were uncertain, the court found a right to refuse treatment in the doctrine of informed consent. *Id., at 43-45, 549 N.E.2d at 296-297*. The court further held that the State Probate Act impliedly authorized a guardian to exercise a ward's right to refuse artificial sustenance in the event that the ward was terminally ill and irreversibly comatose. *Id., at 45-47, 549 N.E.2d at 298*. Declining to adopt a best interests standard for deciding when it would be appropriate to exercise a ward's right because it "lets another make a determination of a patient's quality of life," the court opted instead for a substituted judgment standard. *Id., at 49, 549 N.E.2d at 299*. Finding the "expressed intent" standard utilized in *O'Connor, supra*, too rigid, the court noted that other clear and convincing evidence of the patient's intent could be considered. *133 Ill. 2d at 50-51, 549 N.E.2d at 300*. The court also adopted the "consensus opinion [that] treats artificial nutrition and hydration as medical treatment." *Id., at 42, 549 N.E.2d at 296*. Cf. **[***241]** *McConnell v. Beverly Enterprises-Connecticut, Inc., 209 Conn. 692, 705, [*277] 553 A.2d 596, 603 (1989)* (right to withdraw artificial nutrition and hydration found in the Connecticut Removal of Life Support Systems Act, which "provid[es] functional guidelines for the exercise of the common law and constitutional rights of self-determination"; attending physician authorized to remove treatment after finding that patient is in a terminal condition, obtaining consent of family, and considering expressed wishes of patient). [6]

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[5] The *Drabick* court drew support for its analysis from earlier, influential decisions rendered by California Courts of Appeal. See *Bouvia v. Superior Court, 179 Cal. App. 3d 1127, 225 Cal. Rptr. 297 (1986)* (competent 28-year-old quadriplegic had right to removal of nasogastric feeding tube inserted against her will); *Bartling v. Superior Court, 163 Cal. App. 3d 186, 209 Cal. Rptr. 220 (1984)* (competent 70-year-old, seriously ill man had right to the removal of respirator); *Barber v. Superior Court, 147 Cal. App. 3d 1006, 195 Cal. Rptr. 484 (1983)* (physicians could not be prosecuted for homicide on account of removing respirator and intravenous feeding tubes of patient in persistent vegetative state).

[6] Besides the Missouri Supreme Court in *Cruzan* and the courts in *McConnell, Longeway, Drabick, Bouvia, Barber, O'Connor, Conroy, Jobes*, and *Peter*, appellate courts of at least four other States and one Federal District Court have specifically considered and discussed the issue of withholding or withdrawing artificial nutrition and hydration from incompetent individuals. See *Gray v. Romeo, 697 F. Supp. 580 (RI 1988)*; *In re Gardner, 534 A.2d 947 (Me. 1987)*; *In re Grant, 109 Wash. 2d 545, 747 P.2d 445 (1987)*; *Brophy v. New England Sinai Hospital, Inc., 398 Mass. 417, 497 N.E.2d 626 (1986)*; *Corbett v. D'Alessandro, 487 So. 2d 368 (Fla. App. 1986)*. All of these courts permitted or would permit the termination of such measures based on rights grounded in the common law, or in the State or Federal Constitution.

[2851]** As these cases demonstrate, the common-law doctrine of informed consent is viewed as generally encompassing the right of a competent individual to refuse medical treatment. Beyond that, these cases demonstrate both similarity and diversity in their approaches to decision of what all agree is a perplexing question with unusually strong moral and ethical overtones. State courts have available to them for decision a number of sources -- state constitutions, statutes, and common law -- which are not available to us. In this Court, the question is simply and starkly whether the United States Constitution prohibits Missouri from choosing the rule of decision which it did. This is the first case in which we have been squarely presented with the issue whether the United States Constitution grants what is in common parlance referred to as a "right to die." We follow the judicious counsel of our decision in *Twin City Bank v. Nebeker, 167 U.S. 196, 202, 42 L. Ed. 134, 17 S. Ct. 766 (1897)*, where we said that in deciding "a question **[*278]** of such magnitude and importance . . . it is the [better] part of wisdom not to attempt, by any general statement, to cover every possible phase of the subject."

[3] [3]The *Fourteenth Amendment* provides that no State shall "deprive any person of life, liberty, or property, without due process of law." The principle that a competent person has a constitutionally protected liberty interest in refusing unwanted medical treatment may be inferred from our prior decisions. In *Jacobson v. Massachusetts, 197 U.S. 11, 24-30, 49 L. Ed. 643, 25 S. Ct. 358 (1905)*, for instance, the Court balanced an individual's liberty interest in declining an unwanted smallpox vaccine against the State's interest in preventing disease. Decisions prior to the incorporation of the *Fourth Amendment* into the *Fourteenth Amendment* analyzed searches and seizures involving the body under the Due Process Clause and were thought to implicate substantial liberty interests. See, *e.g.*, *Breithaupt v. Abram, 352 U.S. 432, 439, 1 L. Ed. 2d 448, 77 S. Ct. 408 (1957)* ("As against the right of an individual that his person be held inviolable . . . must be set the interests of society . . .").

[*242]** Just this Term, in the course of holding that a State's procedures for administering antipsychotic medication to prisoners were sufficient to satisfy due process concerns, we recognized that prisoners possess "a significant liberty interest in avoiding the unwanted administration of antipsychotic drugs under the *Due Process Clause of the Fourteenth Amendment*." *Washington v. Harper, 494 U.S. 210, 221-222, 108 L. Ed. 2d 178, 110 S. Ct. 1028 (1990)*; see also *id., at 229* ("The forcible injection of medication into a nonconsenting person's body represents a substantial interference with that person's liberty"). Still other cases support the recognition of a general liberty interest in refusing medical treatment. *Vitek v. Jones, 445 U.S. 480, 494, 63 L. Ed. 2d 552, 100 S. Ct. 1254 (1980)* (transfer to mental hospital coupled with mandatory behavior modification treatment implicated liberty interests); *Parham v. J. R., 442 U.S. 584, 600, 61 L. Ed. 2d 101, 99 S. Ct. 2493 (1979)* ("[A] child, in common with adults, has a substantial liberty **[*279]** interest in not being confined unnecessarily for medical treatment").

[4] [4]***LEdHN*** But determining that a person has a "liberty interest" under the Due Process Clause does not end the inquiry; [7] "whether respondent's constitutional rights have been violated **[**2852]** must be determined by balancing his liberty interests against the relevant state interests." *Youngberg v. Romeo, 457 U.S. 307, 321, 73 L. Ed. 2d 28, 102 S. Ct. 2452 (1982)*.See also *Mills v. Rogers, 457 U.S. 291, 299, 73 L. Ed. 2d 16, 102 S. Ct. 2442 (1982)*.

Petitioners insist that under the general holdings of our cases, the forced administration of life-sustaining medical treatment, and even of artificially delivered food and water essential to life, would implicate a competent person's liberty interest. Although we think the logic of the cases discussed above would embrace such a liberty interest, the dramatic consequences involved in refusal of such treatment would inform the inquiry as to whether the deprivation of that interest is constitutionally permissible. But for purposes of this case, we assume that the United States Constitution would grant a competent person a constitutionally protected right to refuse lifesaving hydration and nutrition.

Petitioners go on to assert that an incompetent person should possess the same right in this respect as is possessed by a competent person. They rely primarily on our decisions in *Parham v. J. R., supra*, and *Youngberg v. Romeo, supra.* In *Parham*, we held that a mentally disturbed minor child had a liberty interest in "not being confined unnecessarily for medical treatment," *442 U.S. at 600*, but we certainly did not intimate that such a minor child, after commitment, would have a liberty interest in refusing treatment. In *Youngberg*, we held that a seriously retarded adult had a liberty **[*280]** interest in safety and freedom from **[***243]** bodily restraint, *457 U.S. at 320*. *Youngberg*, however, did not deal with decisions to administer or withhold medical treatment.

LEdHN ***[6]*** [6]The difficulty with petitioners' claim is that in a sense it begs the question: An incompetent person is not able to make an informed and voluntary choice to exercise a hypothetical right to refuse treatment or any other right. Such a "right" must be exercised for her, if at all, by some sort of surrogate. Here, Missouri has in effect recognized that under certain circumstances a surrogate may act for the patient in electing to have hydration and nutrition withdrawn in such a way as to cause death, but it has established a procedural safeguard to assure that the action of the surrogate conforms as best it may to the wishes expressed by the patient while competent. Missouri requires that evidence of the incompetent's wishes as to the withdrawal of treatment be proved by clear and convincing evidence. The question, then, is whether the United States Constitution forbids the establishment of this procedural requirement by the State. We hold that it does not.

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[7] ***LEdHN***

Although many state courts have held that a right to refuse treatment is encompassed by a generalized constitutional right of privacy, we have never so held. We believe this issue is more properly analyzed in terms of a ***Fourteenth Amendment*** liberty interest. See *Bowers v. Hardwick, 478 U.S. 186, 194-195, 92 L. Ed. 2d 140, 106 S. Ct. 2841 (1986)*.

Whether or not Missouri's clear and convincing evidence requirement comports with the United States Constitution depends in part on what interests the State may properly seek to protect in this situation. Missouri relies on its interest in the protection and preservation of human life, and there can be no gainsaying this interest. As a general matter, the States -- indeed, all civilized nations -- demonstrate their commitment to life by treating homicide as a serious crime. Moreover, the majority of States in this country have laws imposing criminal penalties on one who assists another to commit suicide. [8] We do not think a State is required to remain neutral in the face of an informed and voluntary decision by a physically able adult to starve to death.

[*281] ***LEdHN*** But in the context presented here, a State has more particular interests at stake. The choice between life and death is a deeply personal decision of obvious and overwhelming finality. We believe Missouri **[**2853]** may legitimately seek to safeguard the personal element of this choice through the imposition of heightened evidentiary requirements. ***HN3*** It cannot be disputed that the Due Process Clause protects an interest in life as well as an interest in refusing life-sustaining medical treatment. Not all incompetent patients will have loved ones available to serve as surrogate decisionmakers. And even where family members are present, "there will, of course, be some unfortunate situations in which family members will not act to protect a patient." *In re Jobes, 108 N.J. 394, 419, 529 A.2d 434, 447 (1987)*. A State is entitled to guard against potential abuses in such situations. Similarly, a State is entitled to consider that a judicial proceeding to make a determination regarding an incompetent's wishes may very well not be an adversarial one, with the added guarantee of accurate factfinding that the adversary **[***244]** process brings with it. [9] See *Ohio v. Akron Center for Reproductive [*282] Health, 497 U.S. 502, 515-516*. Finally, we think ***HN4*** a State may properly decline to make judgments about the "quality" of life that a particular individual may enjoy, and simply assert an unqualified interest in the preservation of human life to be weighed against the constitutionally protected interests of the individual.

LEdHN [7] [7]***LEdHN LEdHN*** In our view, Missouri has permissibly sought to advance these interests through the adoption of a "clear and convincing" standard of proof to govern such proceedings. ***HN5*** "The function of a standard of proof, as that concept is

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[8] See Smith, All's Well That Ends Well: Toward a Policy of Assisted Rational Suicide or Merely Enlightened Self-Determination?, 22 U. C. D. L. Rev. 275, 290-291, and n.106 (1989) (compiling statutes).

[9] Since Cruzan was a patient at a state hospital when this litigation commenced, the State has been involved as an adversary from the beginning. However, it can be expected that many disputes of this type will arise in private institutions, where a guardian ad litem or similar party will have been appointed as the sole representative of the incompetent individual in the litigation. In such cases, a guardian may act in entire good faith, and yet not maintain a position truly adversarial to that of the family. Indeed, as noted by the court below, "the guardian *ad litem* [in this case] finds himself in the predicament of believing that it is in Nancy's 'best interest to have the tube feeding discontinued,' but 'feeling that an appeal should be made because our responsibility to her as attorneys and guardians *ad litem* was to pursue this matter to the highest court in the state in view of the fact that this is a case of first impression in the State of Missouri.'" *760 S.W.2d at 410, n.1*. Cruzan's guardian ad litem has also filed a brief in this Court urging reversal of the Missouri Supreme Court's decision. None of this is intended to suggest that the guardian acted the least bit improperly in this proceeding. It is only meant to illustrate the limits which may obtain on the adversarial nature of this type of litigation.

embodied in the Due Process Clause and in the realm of factfinding, is to 'instruct the factfinder concerning the degree of confidence our society thinks he should have in the correctness of factual conclusions for a particular type of adjudication.'" *Addington v. Texas, 441 U.S. 418, 423, 60 L. Ed. 2d 323, 99 S. Ct. 1804 (1979)* (quoting *In re Winship, 397 U.S. 358, 370, 25 L. Ed. 2d 368, 90 S. Ct. 1068 (1970)* (Harlan, J., concurring)). "This Court has mandated an intermediate standard of proof -- 'clear and convincing evidence' -- when the individual interests at stake in a state proceeding are both 'particularly important' and 'more substantial than mere loss of money.'" *Santosky v. Kramer, 455 U.S. 745, 756, 71 L. Ed. 2d 599, 102 S. Ct. 1388 (1982)* (quoting *Addington, supra, at 424*). Thus, such a standard has been required in deportation proceedings, *Woodby v. INS, 385 U.S. 276, 17 L. Ed. 2d 362, 87 S. Ct. 483 (1966)*, in denaturalization proceedings, *Schneiderman v. United States, 320 U.S. 118, 87 L. Ed. 1796, 63 S. Ct. 1333 (1943)*, in civil commitment proceedings, *Addington, supra*, and in proceedings for the termination of parental rights, *Santosky, supra.* [10] **[***245]** Further, **[*283]** this level of proof, "or an even higher one, has traditionally been imposed in cases involving **[**2854]** allegations of civil fraud, and in a variety of other kinds of civil cases involving such issues as . . . lost wills, oral contracts to make bequests, and the like." *Woodby, supra, at 285, n.18*.

LEdHN LEdHN We think it self-evident that the interests at stake in the instant proceedings are more substantial, both on an individual and societal level, than those involved in a run-of-the-mine civil dispute. But ***HN7*** not only does the standard of proof reflect the importance of a particular adjudication, it also serves as "a societal judgment about how the risk of error should be distributed between the litigants." *Santosky, supra, at 755*;*Addington, supra, at 423*. The more stringent the burden of proof a party must bear, the more that party bears the risk of an erroneous decision. We believe that Missouri may permissibly place an increased risk of an erroneous decision on those seeking to terminate an incompetent individual's life-sustaining treatment. An erroneous decision not to terminate results in a maintenance of the status quo; the possibility of subsequent developments such as advancements in medical science, the discovery of new evidence regarding the patient's intent, changes in the law, or simply the unexpected death of the patient despite the administration of life-sustaining treatment at least create the potential that a wrong decision will eventually be corrected or its impact mitigated. An erroneous decision to withdraw life-sustaining treatment, however, is not susceptible of correction. In *Santosky*, one of the factors which led the Court to require proof by clear and convincing

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[10] ***LEdHN***

We recognize that these cases involved instances where the government sought to take action against an individual. See *Price Waterhouse v. Hopkins, 490 U.S. 228, 253, 104 L. Ed. 2d 268, 109 S. Ct. 1775 (1989)* (plurality opinion). Here, by contrast, the government seeks to protect the interests of an individual, as well as its own institutional interests, in life. We do not see any ***HN6*** reason why important individual interests should be afforded less protection simply because the government finds itself in the position of defending them. "We find it significant that . . . the defendant rather than the plaintiff" seeks the clear and convincing standard of proof -- "suggesting that this standard ordinarily serves as a shield rather than . . . a sword." *Id., at 253*. That it is the government that has picked up the shield should be of no moment.

evidence in a proceeding to terminate parental rights was that a decision in such a case was final and irrevocable. *Santosky, supra, at 759*. The same must surely be said of the decision to discontinue hydration and nutrition of a patient such as Nancy Cruzan, which all agree will result in her death.

[*284] ***[10]*** [10] ***[11]*** [11] ***[12]*** [12]It is also worth noting that most, if not all, States simply forbid oral testimony entirely in determining the wishes of parties in transactions which, while important, simply do not have the consequences that a decision to terminate a person's life does. At common law and by statute in most States, the parol evidence rule prevents the variations of the terms of a written contract by oral testimony. The statute of frauds makes unenforceable oral contracts to leave property by will, and statutes regulating the making of wills universally require that those instruments be in writing. See 2 A. Corbin, Contracts § 398, pp. 360-361 (1950); 2 W. Page, Law of Wills §§ 19.3-19.5, pp. 61-71 (1960). There is no doubt that statutes requiring wills to be in writing, and statutes of frauds which require that a contract to make a will be in writing, on occasion frustrate the effectuation of the intent of a particular decedent, just as Missouri's requirement of proof in this case may have frustrated the effectuation of the not-fully-expressed desires of Nancy Cruzan. But the Constitution does not require general rules to work faultlessly; no general rule can.

LEdHN In sum, we conclude that ***HN8*** a State may apply a clear and convincing **[***246]** evidence standard in proceedings where a guardian seeks to discontinue nutrition and hydration of a person diagnosed to be in a persistent vegetative state. We note that many courts which have adopted some sort of substituted judgment procedure in situations like this, whether they limit consideration of evidence to the prior expressed wishes of the incompetent individual, or whether they allow more **[**2855]** general proof of what the individual's decision would have been, require a clear and convincing standard of proof for such evidence. See, *e.g.*, *Longeway, 133 Ill. 2d at 50-51, 549 N.E.2d at 300*;*McConnell, 209 Conn. at 707-710, 553 A.2d at 604-605*;*O'Connor, 72 N.Y.2d at 529-530, 531 N.E.2d at 613*;*In re Gardner, 534 A.2d 947, 952-953 (Me. 1987)*;*In re Jobes, 108 N.J. at 412-413, 529 A. 2d, **[*285]** at 443*;*Leach v. Akron General Medical Center, 68 Ohio Misc. 1, 11, 426 N.E.2d 809, 815 (1980)*.

LEdHN The Supreme Court of Missouri held that in this case the testimony adduced at trial did not amount to clear and convincing proof of the patient's desire to have hydration and nutrition withdrawn. In so doing, it reversed a decision of the Missouri trial court which had found that the evidence "suggested" Nancy Cruzan would not have desired to continue such measures, App. to Pet. for Cert. A98, but which had not adopted the standard of "clear and convincing evidence" enunciated by the Supreme Court. The testimony adduced at trial consisted primarily of Nancy Cruzan's statements made to a housemate about a year before her accident that she would not want to live should she face life as a "vegetable," and other observations to the same effect. The observations did not deal in terms with withdrawal of medical treatment or of hydration and nutrition. We

cannot say that the Supreme Court of Missouri committed constitutional error in reaching the conclusion that it did. [11]

Petitioners alternatively contend that Missouri must accept the "substituted judgment" of close family members even in the absence of substantial proof that their views reflect **[*286]** the views of the patient. They rely primarily upon our decisions in *Michael H. v. Gerald D., 491 U.S. 110, 105 L. Ed. 2d 91, 109 S. Ct. 2333 (1989)*, and *Parham v. J. R., 442 U.S. 584, 61 L. Ed. 2d 101, 99 S. Ct. 2493 (1979)*. But we do not think these cases support their claim. In *Michael H.*, we *upheld* the constitutionality of California's favored treatment of traditional family relationships; such a holding may not be turned around **[***247]** into a constitutional requirement that a State *must* recognize the primacy of those relationships in a situation like this. And in *Parham*, where the patient was a minor, we also *upheld* the constitutionality of a state scheme in which parents made certain decisions for mentally ill minors. Here again petitioners would seek to turn a decision which allowed a State to rely on family decisionmaking into a constitutional requirement that the State recognize such decisionmaking. But constitutional law does not work that way.

[13] [13] ***LEdHN*** No doubt is engendered by anything in this record but that Nancy Cruzan's mother and father are loving and caring parents. If the State were required by the United States Constitution to repose a right of "substituted judgment" with anyone, the Cruzans would surely qualify. But we do not think ***HN9*** the Due Process Clause requires the State to repose judgment on these matters with anyone but the patient herself. Close family members may have a strong feeling -- a feeling not at all ignoble or unworthy, but not entirely disinterested, **[**2856]** either -- that they do not wish to witness the continuation of the life of a loved one which they regard as hopeless, meaningless, and even degrading. But there is no automatic assurance that the view of close family members will necessarily be the same as the patient's would have been had she been confronted with the prospect of her situation while competent. All of the reasons previously discussed for allowing Missouri to require clear and convincing evidence of the patient's wishes lead us to conclude that the State may **[*287]** choose to defer only to those wishes, rather than confide the decision to close family members. [12]

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[11] The clear and convincing standard of proof has been variously defined in this context as "proof sufficient to persuade the trier of fact that the patient held a firm and settled commitment to the termination of life supports under the circumstances like those presented," *In re Westchester County Medical Center on behalf of O'Connor, 72 N.Y.2d 517, 531, 531 N.E.2d 607, 613, 534 N.Y.S.2d 886 (1988) (O'Connor)*, and as evidence which "produces in the mind of the trier of fact a firm belief or conviction as to the truth of the allegations sought to be established, evidence so clear, direct and weighty and convincing as to enable [the factfinder] to come to a clear conviction, without hesitancy, of the truth of the precise facts in issue." *In re Jobes, 108 N.J. at 407-408, 529 A.2d at 441* (quotation omitted). In both of these cases the evidence of the patient's intent to refuse medical treatment was arguably stronger than that presented here. The New York Court of Appeals and the Supreme Court of New Jersey, respectively, held that the proof failed to meet a clear and convincing threshold. See *O'Connor, 72 N.Y.2d at 526-534, 531 N.E.2d at 610-615*; *Jobes 108 N.J. at 442-443*.

[12] We are not faced in this case with the question whether a State might be required to defer to the decision of a surrogate if competent and probative evidence established that the patient herself had expressed a desire that the decision to terminate life-sustaining treatment be made for her by that individual.

LEdHN

The judgment of the Supreme Court of Missouri is

Affirmed.

Concur by: O'CONNOR; SCALIA

Concur

JUSTICE O'CONNOR, concurring.

I agree that a protected liberty interest in refusing unwanted medical treatment may be inferred from our prior decisions, see 497 U.S. at 278-279, and that the refusal of artificially delivered food and water is encompassed within that liberty interest. See *ante*, at 279. I write separately to clarify why I believe this to be so.

As the Court notes, the liberty interest in refusing medical treatment flows from decisions involving the State's invasions into the body. **[***248]** See *ante*, at 278-279. Because our notions of liberty are inextricably entwined with our idea of physical freedom and self-determination, the Court has often deemed state incursions into the body repugnant to the interests protected by the Due Process Clause. See, *e.g.*, *Rochin v. California, 342 U.S. 165, 172, 96 L. Ed. 183, 72 S. Ct. 205 (1952)* ("Illegally breaking into the privacy of the petitioner, the struggle to open his mouth and remove what was there, the forcible extraction of his **[*288]** stomach's contents . . . is bound to offend even hardened sensibilities"); *Union Pacific R. Co. v. Botsford, 141 U.S. 250, 251, 35 L. Ed. 734, 11 S. Ct. 1000 (1891)*. Our *Fourth Amendment* jurisprudence has echoed this same concern. See *Schmerber v. California, 384 U.S. 757, 772, 16 L. Ed. 2d 908, 86 S. Ct. 1826 (1966)* ("The integrity of an individual's person is a cherished value of our society"); *Winston v. Lee, 470 U.S. 753, 759, 84 L. Ed. 2d 662, 105 S. Ct. 1611 (1985)* ("A compelled surgical intrusion into an individual's body for evidence . . . implicates expectations of privacy and security of such magnitude that the intrusion may be 'unreasonable' even if likely to produce evidence of a crime"). The State's imposition of medical treatment on an unwilling competent adult necessarily involves some form of restraint and intrusion. A seriously ill or dying patient whose wishes are not honored may feel a captive of the machinery required for life-sustaining measures or other medical interventions. Such forced treatment may burden that individual's liberty interests as much as any state coercion. See, *e.g.*, *Washington v. Harper, 494 U.S. 210, 221, 108 L. Ed. 2d 178, 110 S. Ct. 1028 (1990)*; *Parham v. J. R., 442 U.S. 584, 600, 61 L. Ed. 2d 101, 99 S. Ct. 2493 (1979)* ("It is not

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Petitioners also adumbrate in their brief a claim based on the ***Equal Protection Clause of the Fourteenth Amendment*** to the effect that Missouri has impermissibly treated incompetent patients differently from competent ones, citing the statement in *Cleburne v. Cleburne Living Center, Inc., 473 U.S. 432, 439, 87 L. Ed. 2d 313, 105 S. Ct. 3249 (1985)*, that the Clause is "essentially a direction that all persons similarly situated should be treated alike." The differences between the choice made *by* a competent person to refuse medical treatment, and the choice made *for* an incompetent person by someone else to refuse medical treatment, are so obviously different that the State is warranted in establishing rigorous procedures for the latter class of cases which do not apply to the former class.

disputed that a child, in common with adults, has a substantial liberty interest in not being confined unnecessarily for medical treatment").

[2857]** The State's artificial provision of nutrition and hydration implicates identical concerns. Artificial feeding cannot readily be distinguished from other forms of medical treatment. See, *e.g.*, Council on Ethical and Judicial Affairs, American Medical Association, AMA Ethical Opinion 2.20, Withholding or Withdrawing Life-Prolonging Medical Treatment, Current Opinions 13 (1989); The Hastings Center, Guidelines on the Termination of Life-Sustaining Treatment and the Care of the Dying 59 (1987). Whether or not the techniques used to pass food and water into the patient's alimentary tract are termed "medical treatment," it is clear they all involve some degree of intrusion and restraint. Feeding a patient by means of a nasogastric tube requires a physician to pass a long flexible tube through the patient's **[*289]** nose, throat, and esophagus and into the stomach. Because of the discomfort such a tube causes, "many patients need to be restrained forcibly and their hands put into large mittens to prevent them from removing the tube." Major, The Medical Procedures for Providing Food and Water: Indications and Effects, in By No Extraordinary Means: The Choice to Forgo Life-Sustaining Food and Water 25 (J. Lynn ed. 1986). A gastrostomy tube (as was used to provide food and water to Nancy Cruzan, see 497 U.S. at 266) or jejunostomy tube must be surgically implanted into the stomach or small intestine. Office of Technology Assessment **[***249]** Task Force, Life-Sustaining Technologies and the Elderly 282 (1988). Requiring a competent adult to endure such procedures against her will burdens the patient's liberty, dignity, and freedom to determine the course of her own treatment. Accordingly, the liberty guaranteed by the Due Process Clause must protect, if it protects anything, an individual's deeply personal decision to reject medical treatment, including the artificial delivery of food and water.

I also write separately to emphasize that the Court does not today decide the issue whether a State must also give effect to the decisions of a surrogate decisionmaker. See *ante*, at 287, n.12. In my view, such a duty may well be constitutionally required to protect the patient's liberty interest in refusing medical treatment. Few individuals provide explicit oral or written instructions regarding their intent to refuse medical treatment should they become incompetent. [1] **[*290]** States which decline to consider any evidence other than such instructions may frequently fail to honor a patient's intent. Such failures might be avoided if the State considered an equally probative source of evidence: the patient's appointment of a proxy to make health care decisions on her behalf. Delegating the authority to make medical decisions to a family member or friend is becoming a common method of planning for the future. See, *e. g.*, Areen, The Legal Status of Consent Obtained from Families of Adult Patients to Withhold or Withdraw Treatment, 258 JAMA 229, 230

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[1] See 2 President's Commission for the Study of Ethical Problems in Medicine and Biomedical and Behavioral Research, Making Health Care Decisions 241-242 (1982) (36% of those surveyed gave instructions regarding how they would like to be treated if they ever became too sick to make decisions; 23% put those instructions in writing) (Lou Harris Poll, September 1982); American Medical Association Surveys of Physician and Public Opinion on Health Care Issues 29-30 (1988) (56% of those surveyed had told family members their wishes concerning the use of life-sustaining treatment if they entered an irreversible coma; 15% had filled out a living will specifying those wishes).

(1987). Several States have recognized the practical wisdom of such a procedure by enacting durable power of attorney statutes that specifically authorize an individual to appoint a surrogate to make medical treatment decisions. [2] Some state courts have suggested that an agent appointed pursuant **[**2858]** to a general durable power of attorney statute would also be empowered to make health care decisions on behalf of the patient. [3] See, *e. g.*, *In re Peter, 108 N.J. 365, 378-379, [*291] [***250] 529 A.2d 419, 426 (1987)*; see also 73 Op. Md. Atty. Gen. No. 88-046 (1988) (interpreting *Md. Est. & Trusts Code Ann. §§ 13-601 to 13-602* (1974), as authorizing a delegatee to make health care decisions). Other States allow an individual to designate a proxy to carry out the intent of a living will. [4] These procedures for surrogate decisionmaking, which appear to be rapidly gaining in acceptance, may be a **[*292]** valuable additional safeguard of the patient's interest in directing his medical care. Moreover, as patients are likely to select a family member as a surrogate, see 2 President's Commission for the Study of Ethical Problems in Medicine and Biomedical and Behavioral Research, Making Health Care Decisions 240 (1982), giving effect to a proxy's decisions may also protect the "freedom of

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[2] At least 13 States and the District of Columbia have durable power of attorney statutes expressly authorizing the appointment of proxies for making health care decisions. See *Alaska Stat. Ann. §§ 13.26.335*, *13.26.344*(*l*) (Supp. 1989); *Cal. Civ. Code Ann. § 2500* (West Supp. 1990); *D. C. Code Ann. § 21-2205* (1989); *Idaho Code § 39-4505* (Supp. 1989); Ill. Rev. Stat., ch. 110 1/2, PP804-1 to 804-12 (Supp. 1988); *Kan. Stat. Ann. § 58-625* (Supp. 1989); *Me. Rev. Stat. Ann., Tit. 18-A, § 5-501* (Supp. 1989); *Nev. Rev. Stat. § 449.800* (Supp. 1989); *Ohio Rev. Code Ann. § 1337.11 et seq.* (Supp. 1989); *Ore. Rev. Stat. § 127.510* (1989); Pa. Stat. Ann., Tit. 20, § 5603(h) (Purdon Supp. 1989); *R. I. Gen. Laws § 23-4.10-1 et seq.* (1989); *Tex. Rev. Civ. Stat. Ann., Art. 4590h-1* (Vernon Supp. 1990); *Vt. Stat. Ann., Tit. 14, § 3451 et seq.* (1989).

[3] All 50 States and the District of Columbia have general durable power of attorney statutes. See *Ala. Code § 26-1-2* (1986); *Alaska Stat. Ann. §§ 13-26-350 to 13-26-356* (Supp. 1989); *Ariz. Rev. Stat. Ann. § 14-5501* (1975); *Ark. Code Ann. §§ 28-68-201 to 28-68-203* (1987); *Cal. Civ. Code Ann. § 2400* (West Supp. 1990); *Colo. Rev. Stat. § 15-14-501 et seq.* (1987); Conn. Gen. Stat. § 45-69*o* (Supp. 1989); Del. Code Ann., Tit. 12, §§ 4901-4905 (1987); *D. C. Code Ann. § 21-2081 et. seq.* (1989); *Fla. Stat. § 709.08* (1989); *Ga. Code Ann. § 10-6-36* (1989); *Haw. Rev. Stat. §§ 551D-1 to 551D-7* (Supp. 1989); *Idaho Code § 15-5-501 et seq.* (Supp. 1989); Ill. Rev. Stat., ch. 110 1/2, P802-6 (1987); *Ind. Code §§ 30-2-11-1 to 30-2-11-7* (1988); *Iowa Code § 633.705* (Supp. 1989); *Kan. Stat. Ann. § 58-610* (1983); *Ky. Rev. Stat. Ann. § 386.093* (Baldwin 1983); *La. Civ. Code Ann., Art. 3027* (West Supp. 1990); *Me. Rev. Stat. Ann., Tit. 18-A, § 5-501 et seq.* (Supp. 1989); *Md. Est. & Trusts Code Ann. §§ 13-601 to 13-602* (1974) (as interpreted by the Attorney General, see 73 Op. Md. Atty. Gen. No. 88-046 (Oct. 17, 1988)); Mass. Gen. Laws §§ 201B:1 to 201B:7 (1988); *Mich. Comp. Laws §§ 700.495*, *700.497* (1979); *Minn. Stat. § 523.01 et seq.* (1988); *Miss. Code Ann. § 87-3-13* (Supp. 1989); *Mo. Rev. Stat. § 404.700* (Supp. 1990); *Mont. Code Ann. §§ 72-5-501 to 72-5-502* (1989); *Neb. Rev. Stat. §§ 30-2664 to 30-2672*, *30-2667* (1985); *Nev. Rev. Stat. § 111.460 et seq.* (1986); *N. H. Rev. Stat. Ann. § 506:6 et seq.* (Supp. 1989); *N. J. Stat. Ann. § 46:2B-8* (West 1989); *N. M. Stat. Ann. § 45-5-501 et seq.* (1989); ***N. Y. Gen. Oblig. Law § 5-1602*** (McKinney 1989); *N. C. Gen. Stat. § 32A-1 et seq.* (1987); *N. D. Cent. Code §§ 30.1-30-01 to 30.1-30-05* (Supp. 1989); *Ohio Rev. Code Ann. § 1337.09* (Supp. 1989); Okla. Stat., Tit. 58, §§ 1071-1077 (Supp. 1989); *Ore. Rev. Stat. § 127.005* (1989); Pa. Stat. Ann., Tit. 20, §§ 5601 *et seq.*, 5602(a)(9) (Purdon Supp. 1989); *R. I. Gen. Laws § 34-22-6.1* (1984); ***S. C. Code Ann. §§ 62-5-501 to 62-5-502*** (1987); ***S. D. Codified Laws § 59-7-2.1*** (1978); *Tenn. Code Ann. § 34-6-101 et seq.* (1984); *Tex. Prob. Code Ann. § 36A* (Supp. 1990); *Utah Code Ann. § 75-5-501 et seq.* (1978); *Vt. Stat. Ann., Tit. 14, § 3051 et seq.* (1989); *Va. Code Ann. § 11-9.1 et seq.* (1989); ***Wash. Rev. Code § 11.94.020*** (1989); *W. Va. Code § 39-4-1 et seq.* (Supp. 1989); Wis. Stat. § 243.07 (1987-1988) (as interpreted by the Attorney General, see Wis. Op. Atty. Gen. 35-88 (1988)); *Wyo. Stat. § 3-5-101 et seq.* (1985).

[4] Thirteen States have living will statutes authorizing the appointment of health care proxies. See *Ark. Code Ann. § 20-17-202* (Supp. 1989); *Del. Code Ann., Tit. 16, § 2502* (1983); Fla. Stat. § 765.05(2) (1989); *Idaho Code § 39-4504* (Supp. 1989); Ind. Code § 16-8-11-14(g)(2) (1988); *Iowa Code § 144A.7(1)(a)* (1989); *La. Rev. Stat. Ann. §§ 40:1299.58.1*, *40:1299.58.3(C)* (West Supp. 1990); *Minn. Stat. § 145B.01 et seq.* (Supp. 1989); *Tex. Health & Safety Code Ann. § 672.003(d)* (Supp. 1990); Utah Code Ann. §§ 75-2-1105, 75-2-1106 (Supp. 1989); *Va. Code Ann. § 54.1-2986(2)* (1988); 1987 Wash. Laws, ch. 162, § 1(1)(b); *Wyo. Stat. § 35-22-102* (1988).

personal choice in matters of . . . family life." *Cleveland Board of Education v. LaFleur, 414 U.S. 632, 639, 39 L. Ed. 2d 52, 94 S. Ct. 791 (1974)*.

Today's decision, holding only that the Constitution permits a State to require clear and convincing evidence of Nancy Cruzan's desire to have artificial hydration and nutrition withdrawn, does not preclude a future determination that the Constitution requires the States to implement the decisions of a patient's duly appointed surrogate. Nor does it prevent States from developing other **[**2859]** approaches for protecting an incompetent individual's liberty interest in refusing medical treatment. As is evident from the Court's survey of state court decisions, see 497 U.S. at 271-277, no national consensus has yet emerged on the best solution for this difficult and sensitive problem. Today we decide only that one State's **[***251]** practice does not violate the Constitution; the more challenging task of crafting appropriate procedures for safeguarding incompetents' liberty interests is entrusted to the "laboratory" of the States, *New State Ice Co. v. Liebmann, 285 U.S. 262, 311, 76 L. Ed. 747, 52 S. Ct. 371 (1932)* (Brandeis, J., dissenting), in the first instance.

JUSTICE SCALIA, concurring.

The various opinions in this case portray quite clearly the difficult, indeed agonizing, questions that are presented by the constantly increasing power of science to keep the human body alive for longer than any reasonable person would want to inhabit it. The States have begun to grapple with these problems through legislation. I am concerned, from the tenor of today's opinions, that we are poised to confuse that **[*293]** enterprise as successfully as we have confused the enterprise of legislating concerning abortion -- requiring it to be conducted against a background of federal constitutional imperatives that are unknown because they are being newly crafted from Term to Term. That would be a great misfortune.

While I agree with the Court's analysis today, and therefore join in its opinion, I would have preferred that we announce, clearly and promptly, that the federal courts have no business in this field; that American law has always accorded the State the power to prevent, by force if necessary, suicide -- including suicide by refusing to take appropriate measures necessary to preserve one's life; that the point at which life becomes "worthless," and the point at which the means necessary to preserve it become "extraordinary" or "inappropriate," are neither set forth in the Constitution nor known to the nine Justices of this Court any better than they are known to nine people picked at random from the Kansas City telephone directory; and hence, that even when it *is* demonstrated by clear and convincing evidence that a patient no longer wishes certain measures to be taken to preserve his or her life, it is up to the citizens of Missouri to decide, through their elected representatives, whether that wish will be honored. It is quite impossible (because the Constitution says nothing about the matter) that those citizens will decide upon a line less lawful than the one we would choose; and it is unlikely (because we know no more about "life and death" than they do) that they will decide upon a line less reasonable.

The text of the Due Process Clause does not protect individuals against deprivations of liberty *simpliciter*. It protects them against deprivations of liberty "without due process of law." To determine that such a deprivation would not occur if Nancy Cruzan were forced to take nourishment against her will, it is unnecessary to reopen the historically recurrent debate over whether "due process" includes substantive restrictions. Compare *Murray's Lessee v. Hoboken Land and Improvement Co., 59 U.S. (18 How.) 272, 15 L. Ed. 372 (1856)*, with *Scott* ***[*294]*** *v. Sandford, 60 U.S. (19 How.) 393, 450, 15 L. Ed. 691 (1857)*; compare *Tyson & Brother v. Banton, 273 U.S. 418, 71 L. Ed. 718, 47 S. Ct. 426 (1927)*, with *Olsen v. Nebraska ex rel. Western Reference & Bond Assn., Inc., 313 U.S. 236, 246-247, 85 L. Ed. 1305, 61 S. Ct. 862* ***[***252]*** *(1941)*; compare *Ferguson v. Skrupa, 372 U.S. 726, 730, 10 L. Ed. 2d 93, 83 S. Ct. 1028 (1963)*, with *Moore v. East Cleveland, 431 U.S. 494, 52 L. Ed. 2d 531, 97 S. Ct. 1932 (1977)* (plurality opinion); see Easterbrook, Substance and Due Process, 1982 S. Ct. Rev. 85; Monaghan, Our Perfect Constitution, 56 N. Y. U. L. Rev. 353 (1981). It is at least true that no "substantive due process" claim can be maintained unless the claimant demonstrates that the State has deprived him of a right historically and traditionally protected against state **[**2860]** interference. *Michael H. v. Gerald D., 491 U.S. 110, 122, 105 L. Ed. 2d 91, 109 S. Ct. 2333 (1989)* (plurality opinion); *Bowers v. Hardwick, 478 U.S. 186, 192, 92 L. Ed. 2d 140, 106 S. Ct. 2841 (1986)*; *Moore, 431 U.S. at 502-503* (plurality opinion). That cannot possibly be established here.

At common law in England, a suicide -- defined as one who "deliberately puts an end to his own existence, or commits any unlawful malicious act, the consequence of which is his own death," 4 W. Blackstone, Commentaries *189 -- was criminally liable. *Ibid.* Although the States abolished the penalties imposed by the common law (*i. e.*, forfeiture and ignominious burial), they did so to spare the innocent family and not to legitimize the act. Case law at the time of the adoption of the *Fourteenth Amendment* generally held that assisting suicide was a criminal offense. See Marzen, O'Dowd, Crone, & Balch, Suicide: A Constitutional Right?, 24 Duquesne L. Rev. 1, 76 (1985) ("In short, twenty-one of the thirty-seven states, and eighteen of the thirty ratifying states prohibited assisting suicide. Only eight of the states, and seven of the ratifying states, definitely did not"); see also 1 F. Wharton, Criminal Law § 122 (6th rev. ed. 1868). The System of Penal Law presented to the House of Representatives by Representative Livingston in 1828 would have criminalized assisted suicide. E. Livingston, A System of Penal Law, Penal Code 122 (1828). The Field Penal Code, **[*295]** adopted by the Dakota Territory in 1877, proscribed attempted suicide and assisted suicide. Marzen, O'Dowd, Crone, & Balch, *supra*, at 76-77. And most States that did not explicitly prohibit assisted suicide in 1868 recognized, when the issue arose in the 50 years following the *Fourteenth Amendment's* ratification, that assisted and (in some cases) attempted suicide were unlawful. *Id.*, at 77-100; *id., at 148-242* (surveying development of States' laws). Thus, "there is no significant support for the claim that a right to suicide is so rooted in our tradition that it may be deemed 'fundamental' or 'implicit in the concept of ordered liberty.'" *Id.*, at 100 (quoting *Palko v. Connecticut, 302 U.S. 319, 325, 82 L. Ed. 288, 58 S. Ct. 149 (1937)*).

Petitioners rely on three distinctions to separate Nancy Cruzan's case from ordinary suicide: (1) that she is permanently incapacitated and in pain; (2) that she would bring on her death not by any affirmative act but by merely declining treatment that provides nourishment; and (3) that preventing her from effectuating her presumed wish to die requires violation of her bodily integrity. None of these suffices. Suicide was not excused even when committed "to avoid those ills which [persons] had not the fortitude to endure." 4 Blackstone, *supra*, at *189. "The life of those to whom life has become a burden -- of those who are **[***253]** hopelessly diseased or fatally wounded -- nay, even the lives of criminals condemned to death, are under the protection of the law, equally as the lives of those who are in the full tide of life's enjoyment, and anxious to continue to live." *Blackburn v. State, 23 Ohio St. 146, 163 (1873)*. Thus, a man who prepared a poison, and placed it within reach of his wife, "to put an end to her suffering" from a terminal illness was convicted of murder, *People v. Roberts, 211 Mich. 187, 198, 178 N.W. 690, 693 (1920)*; the "incurable suffering of the suicide, as a legal question, could hardly affect the degree of criminality . . . ." Note, 30 Yale L. J. 408, 412 (1921) (discussing *Roberts*). Nor would the imminence of the patient's death have **[*296]** affected liability. "The lives of all are equally under the protection of the law, and under that protection to their last moment. . . . [Assisted suicide] is declared by the law to be murder, irrespective of the wishes or the condition of the party to whom the poison is administered . . . ." *Blackburn, supra, at 163*; see also *Commonwealth v. Bowen, 13 Mass. 356, 360 (1816)*.

[2861]** The second asserted distinction -- suggested by the recent cases canvassed by the Court concerning the right to refuse treatment, 497 U.S. at 270-277 -- relies on the dichotomy between action and inaction. Suicide, it is said, consists of an affirmative act to end one's life; refusing treatment is not an affirmative act "causing" death, but merely a passive acceptance of the natural process of dying. I readily acknowledge that the distinction between action and inaction has some bearing upon the legislative judgment of what ought to be prevented as suicide -- though even there it would seem to me unreasonable to draw the line precisely between action and inaction, rather than between various forms of inaction. It would not make much sense to say that one may not kill oneself by walking into the sea, but may sit on the beach until submerged by the incoming tide; or that one may not intentionally lock oneself into a cold storage locker, but may refrain from coming indoors when the temperature drops below freezing. Even as a legislative matter, in other words, the intelligent line does not fall between action and inaction but between those forms of inaction that consist of abstaining from "ordinary" care and those that consist of abstaining from "excessive" or "heroic" measures. Unlike action versus inaction, that is not a line to be discerned by logic or legal analysis, and we should not pretend that it is.

But to return to the principal point for present purposes: the irrelevance of the action-inaction distinction. Starving oneself to death is no different from putting a gun to one's temple as far as the common-law definition of suicide is concerned; the cause of death in both cases is the suicide's conscious **[*297]** decision to "put an end to his own existence."

4 Blackstone, *supra*, at *189. See *In re Caulk, 125 N.H. 226, 232, 480 A.2d 93, 97 (1984)*; *State ex rel. White v. Narick, 170 W. Va. 195, 292 S.E.2d 54 (1982)*; *Von Holden v. Chapman, 87 A.D.2d 66, 450 N.Y.S.2d 623 (1982)*. Of course the common law rejected the action-inaction distinction in other contexts involving the taking of human life as well. In the prosecution of a parent for the starvation death of her infant, it was no defense that the infant's **[***254]** death was "caused" by no action of the parent but by the natural process of starvation, or by the infant's natural inability to provide for itself. See *Lewis v. State, 72 Ga. 164 (1883)*; *People v. McDonald, 49 Hun 67, 1 N.Y.S. 703* (5th Dept., App. Div. 1888); *Commonwealth v. Hall, 322 Mass. 523, 528, 78 N.E.2d 644, 647 (1948)* (collecting cases); F. Wharton, Law of Homicide §§ 134-135, 304 (2d ed. 1875); 2 J. Bishop, Commentaries on Criminal Law § 686 (5th ed. 1872); J. Hawley & M. McGregor, Criminal Law 152 (3d ed. 1899). A physician, moreover, could be criminally liable for failure to provide care that could have extended the patient's life, even if death was immediately caused by the underlying disease that the physician failed to treat. *Barrow v. State, 17 Okla. Crim. 340, 188 P. 351 (1920)*; *People v. Phillips, 64 Cal. 2d 574, 414 P.2d 353, 51 Cal. Rptr. 225 (1966)*.

It is not surprising, therefore, that the early cases considering the claimed right to refuse medical treatment dismissed as specious the nice distinction between "passively submitting to death and actively seeking it. The distinction may be merely verbal, as it would be if an adult sought death by starvation instead of a drug. If the State may interrupt one mode of self-destruction, it may with equal authority interfere with the other." *John F. Kennedy Memorial Hosp. v. Heston, 58 N.J. 576, 581-582, 279 A.2d 670, 672-673 (1971)*; see also *Application of President & Directors of Georgetown College, Inc., 118 U.S. App. D.C. 80, 88-89, 331 F.2d 1000, **[*298]** 1008-1009* (Wright, J., in chambers), cert. denied, *377 U.S. 978, 12 L. Ed. 2d 746, 84 S. Ct. 1883 (1964)*.

The third asserted basis of distinction -- that frustrating Nancy Cruzan's wish to die in the present case requires interference with her bodily integrity -- is likewise inadequate, because such interference is impermissible only if one begs the question whether her refusal to undergo the treatment on her own is suicide. It has always been lawful not **[**2862]** only for the State, but even for private citizens, to interfere with bodily integrity to prevent a felony. See *Phillips v. Trull, 11 Johns. 486 (N. Y. 1814)*; *City Council* v. *Payne*, 11 S.C. L. 475, 2 Nott & McC. 475 (S. C. 1821); *Vandeveer v. Mattocks, 3 Ind. 479 (1852)*; T. Cooley, Law of Torts 174-175 (1879); Wilgus, Arrest Without a Warrant, 22 Mich. L. Rev. 673 (1924); *Restatement of Torts § 119* (1934). That general rule has of course been applied to suicide. At common law, even a private person's use of force to prevent suicide was privileged. *Colby v. Jackson, 12 N.H. 526, 530-531 (1842)*; *Look v. Choate, 108 Mass. 116, 120 (1871)*; *Commonwealth v. Mink, 123 Mass. 422, 429 (1877)*; *In re Doyle, 16 R.I. 537, 539, 18 A. 159, 159-160 (1889)*; *Porter v. Ritch, 70 Conn. 235, 255, 39 A. 169, 175 (1898)*; *Emmerich v. Thorley, 35 A.D. 452, 456, 54 N.Y.S. 791, 793-794 (1898)*; *State v. Hembd, 305 Minn. 120, 130, 232 N.W.2d 872, 878 (1975)*; 2 C. Addison, Law of Torts § 819 (1876); Cooley, *supra*, at 179-180. It is not even reasonable,

much less required by the Constitution, to maintain that although the State has the right to prevent a person from slashing his wrists, it does not have the power to apply physical force to prevent him from doing so, nor the power, should he succeed, to apply, coercively if necessary, medical measures to stop the flow of blood. The state-run hospital, I am certain, is not liable under *42 U. S. C. § 1983* **[***255]** for violation of constitutional rights, nor the private hospital liable under general tort law, if, in a State where suicide is unlawful, it pumps out the stomach of a person who has intentionally **[*299]** taken an overdose of barbiturates, despite that person's wishes to the contrary.

The dissents of JUSTICES BRENNAN and STEVENS make a plausible case for our intervention here only by embracing -- the latter explicitly and the former by implication -- a political principle that the States are free to adopt, but that is demonstrably not imposed by the Constitution. "The State," says JUSTICE BRENNAN, "has no legitimate general interest in someone's life, completely abstracted from the interest of the person living that life, that could outweigh the person's choice *to avoid medical treatment*." 497 U.S. at 313 (emphasis added). The italicized phrase sounds moderate enough and is all that is needed to cover the present case -- but the proposition cannot *logically* be so limited. One who accepts it must also accept, I think, that the State has no such legitimate interest that could outweigh "the person's choice *to put an end to her life*." Similarly, if one agrees with JUSTICE BRENNAN that "the State's general interest in life must accede to Nancy Cruzan's particularized and intense interest in self-determination *in her choice of medical treatment," post*, at 314 (emphasis added), he must also believe that the State must accede to her "particularized and intense interest in self-determination *in her choice whether to continue living or to die*." For insofar as balancing the relative interests of the State and the individual is concerned, there is nothing distinctive about accepting death through the refusal of "medical treatment," as opposed to accepting it through the refusal of food, or through the failure to shut off the engine and get out of the car after parking in one's garage after work. Suppose that Nancy Cruzan were in precisely the condition she is in today, except that she could be fed and digest food and water *without* artificial assistance. How is the State's "interest" in keeping her alive thereby increased, or her interest in deciding whether she wants to continue living reduced? It seems to me, in other words, that JUSTICE BRENNAN's position ultimately rests upon the proposition that it is none of the State's **[*300]** business if a person wants to commit suicide. JUSTICE STEVENS is explicit on the point: "Choices about death touch the core of liberty . . . . Not much may be said with confidence about death unless it is said from faith, and that alone is reason enough to protect the freedom to conform choices about death to individual conscience." *Post*, at 343. This is a view that some societies have held, and that our States are free to adopt if they wish. But it is not a view imposed by our constitutional traditions, **[**2863]** in which the power of the State to prohibit suicide is unquestionable.

What I have said above is not meant to suggest that I would think it desirable, if we were sure that Nancy Cruzan wanted to die, to keep her alive by the means at issue here. I assert only that the Constitution has nothing to say about the subject. To raise up a constitutional

right here we would have to create out of nothing (for it exists neither in text nor tradition) some constitutional principle whereby, although the **[***256]** State may insist that an individual come in out of the cold and eat food, it may not insist that he take medicine; and although it may pump his stomach empty of poison he has ingested, it may not fill his stomach with food he has failed to ingest. Are there, then, no reasonable and humane limits that ought not to be exceeded in requiring an individual to preserve his own life? There obviously are, but they are not set forth in the Due Process Clause. What assures us that those limits will not be exceeded is the same constitutional guarantee that is the source of most of our protection -- what protects us, for example, from being assessed a tax of 100% of our income above the subsistence level, from being forbidden to drive cars, or from being required to send our children to school for 10 hours a day, none of which horribles are categorically prohibited by the Constitution. Our salvation is the *Equal Protection Clause*, which requires the democratic majority to accept for themselves and their loved ones what they impose on you and me. This Court need not, and has no authority to, inject itself into every field of human activity **[*301]** where irrationality and oppression may theoretically occur, and if it tries to do so it will destroy itself.

Dissent by: BRENNAN; STEVENS

Dissent

JUSTICE BRENNAN, with whom JUSTICE MARSHALL and JUSTICE BLACKMUN join, dissenting.

> "Medical technology has effectively created a twilight zone of suspended animation where death commences while life, in some form, continues. Some patients, however, want no part of a life sustained only by medical technology. Instead, they prefer a plan of medical treatment that allows nature to take its course and permits them to die with dignity." [1]

Nancy Cruzan has dwelt in that twilight zone for six years. She is oblivious to her surroundings and will remain so. *Cruzan v. Harmon, 760 S.W.2d 408, 411 (Mo. 1988)*. Her body twitches only reflexively, without consciousness. *Ibid.* The areas of her brain that once thought, felt, and experienced sensations have degenerated badly and are continuing to do so. The cavities remaining are filling with cerebrospinal fluid. The "'cerebral cortical atrophy is irreversible, permanent, progressive and ongoing.'" *Ibid.* "Nancy will never interact meaningfully with her environment again. She will remain in a persistent

[1] *Rasmussen v. Fleming, 154 Ariz. 207, 211, 741 P.2d 674, 678 (1987)* (en banc).

vegetative state until her death." *Id., at 422*. [2] Because she cannot swallow, her nutrition and hydration are delivered through a tube surgically implanted in her stomach.

A grown woman at the time of the accident, Nancy had previously expressed her wish to forgo continuing medical care under circumstances such as these. Her family and her **[*302]** friends are convinced that this is what she would want. See n.20, *infra*. A guardian ad litem appointed by the trial court is also convinced that this is what Nancy would want. See *760 S.W.2d at 444* (Higgins, J., **[***257]** dissenting from denial of rehearing). Yet the Missouri Supreme Court, alone among state courts deciding such a question, has determined that an irreversibly vegetative **[**2864]** patient will remain a passive prisoner of medical technology -- for Nancy, perhaps for the next 30 years. See *id., at 424, 427*.

Today the Court, while tentatively accepting that there is some degree of constitutionally protected liberty interest in avoiding unwanted medical treatment, including life-sustaining medical treatment such as artificial nutrition and hydration, affirms the decision of the Missouri Supreme Court. The majority opinion, as I read it, would affirm that decision on the ground that a State may require "clear and convincing" evidence of Nancy Cruzan's prior decision to forgo life-sustaining treatment under circumstances such as hers in order to ensure that her actual wishes are honored. See 497 U.S. at 282-283, 286-287. Because I believe that Nancy Cruzan has a fundamental right to be free of unwanted artificial nutrition and hydration, which right is not outweighed by any interests of the State, and because I find that the improperly biased procedural obstacles imposed by the Missouri Supreme Court impermissibly burden that right, I respectfully dissent. Nancy Cruzan is entitled to choose to die with dignity.

I

A

"The timing of death -- once a matter of fate -- is now a matter of human choice." Office of Technology Assessment Task Force, Life Sustaining Technologies and the Elderly 41 (1988). Of the approximately 2 million people who die each year, 80% die in hospitals and long-term care institutions, [3] **[*303]** and perhaps 70% of those after a decision to forgo life-sustaining treatment has been made. [4] Nearly every death involves a decision whether to undertake some medical procedure that could prolong the process of dying. Such decisions are difficult and personal. They must be made on the basis of individual values, informed by medical realities, yet within a framework governed by law. The role of the

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[2] Vegetative state patients may *react reflexively* to sounds, movements, and normally painful stimuli, but they do not *feel* any pain or *sense* anybody or anything. Vegetative state patients may appear awake but are completely unaware. See Cranford, The Persistent Vegetative State: The Medical Reality, 18 Hastings Ctr. Rep. 27, 28, 31 (1988).

[3] See President's Commission for the Study of Ethical Problems in Medicine and Biomedical and Behavioral Research, Deciding to Forego Life Sustaining Treatment 15, n.1, and 17-18 (1983) (hereafter President's Commission).

[4] See Lipton, Do-Not-Resuscitate Decisions in a Community Hospital: Incidence, Implications and Outcomes, 256 JAMA 1164, 1168 (1986).

courts is confined to defining that framework, delineating the ways in which government may and may not participate in such decisions.

The question before this Court is a relatively narrow one: whether the Due Process Clause allows Missouri to require a now-incompetent patient in an irreversible persistent vegetative state to remain on life support absent rigorously clear and convincing evidence that avoiding the treatment represents the patient's prior, express choice. See 497 U.S. at 277-278. If a fundamental right is at issue, Missouri's rule of decision must be scrutinized under the standards this Court has always applied in such circumstances. As we said in *Zablocki v. Redhail, 434 U.S. 374, 388, 54 L. Ed. 2d 618, 98 S. Ct. 673 (1978)*, if a **[***258]** requirement imposed by a State "significantly interferes with the exercise of a fundamental right, it cannot be upheld unless it is supported by sufficiently important state interests and is closely tailored to effectuate only those interests." The Constitution imposes on this Court the obligation to "examine carefully . . . the extent to which [the legitimate government interests advanced] are served by the challenged regulation." *Moore v. East Cleveland, 431 U.S. 494, 499, 52 L. Ed. 2d 531, 97 S. Ct. 1932 (1977)*. See also *Carey v. Population Services International, 431 U.S. 678, 690, 52 L. Ed. 2d 675, 97 S. Ct. 2010 (1977)* (invalidating a requirement that bore "no relation to the State's interest"). An evidentiary rule, just as a substantive prohibition, must meet these standards if it significantly burdens a fundamental liberty interest. Fundamental **[*304]** rights "are protected not only against heavy-handed frontal attack, but also from being stifled by more subtle governmental **[**2865]** interference." *Bates v. Little Rock, 361 U.S. 516, 523, 4 L. Ed. 2d 480, 80 S. Ct. 412 (1960)*.

B

The starting point for our legal analysis must be whether a competent person has a constitutional right to avoid unwanted medical care. Earlier this Term, this Court held that the *Due Process Clause of the Fourteenth Amendment* confers a significant liberty interest in avoiding unwanted medical treatment. *Washington v. Harper, 494 U.S. 210, 221-222, 108 L. Ed. 2d 178, 110 S. Ct. 1028 (1990)*. Today, the Court concedes that our prior decisions "support the recognition of a general liberty interest in refusing medical treatment." See 497 U.S. at 278. The Court, however, avoids discussing either the measure of that liberty interest or its application by assuming, for purposes of this case only, that a competent person has a constitutionally protected liberty interest in being free of unwanted artificial nutrition and hydration. See *ante*, at 279. JUSTICE O'CONNOR'S opinion is less parsimonious. She openly affirms that "the Court has often deemed state incursions into the body repugnant to the interests protected by the Due Process Clause," that there is a liberty interest in avoiding unwanted medical treatment, and that it encompasses the right to be free of "artificially delivered food and water." See *ante*, at 287.

But if a competent person has a liberty interest to be free of unwanted medical treatment, as both the majority and JUSTICE O'CONNOR concede, it must be fundamental. "We are

dealing here with [a decision] which involves one of the basic civil rights of man." *Skinner v. Oklahoma ex rel. Williamson, 316 U.S. 535, 541, 86 L. Ed. 1655, 62 S. Ct. 1110 (1942)* (invalidating a statute authorizing sterilization of certain felons). Whatever other liberties protected by the Due Process Clause are fundamental, "those liberties that are 'deeply rooted in this Nation's history and tradition'" are among them. *Bowers v. Hardwick, **[*305]** 478 U.S. 186, 192, 106 S. Ct. 2841, 92 L. Ed. 2d 140 (1986)* (quoting *Moore v. East Cleveland, supra, at 503* (plurality opinion). "Such a tradition commands respect in part because the Constitution carries the gloss of history." *Richmond Newspapers, Inc. v. Virginia, 448 U.S. 555, 589, 65 L. Ed. 2d 973, 100 S. Ct. 2814 **[***259]** (1980)* (BRENNAN, J., concurring in judgment).

The right to be free from medical attention without consent, to determine what shall be done with one's own body, *is* deeply rooted in this Nation's traditions, as the majority acknowledges. See 497 U.S. at 270. This right has long been "firmly entrenched in American tort law" and is securely grounded in the earliest common law. *Ante*, at 269. See also *Mills v. Rogers, 457 U.S. 291, 294, n.4, 73 L. Ed. 2d 16, 102 S. Ct. 2442 (1982)* ("The right to refuse any medical treatment emerged from the doctrines of trespass and battery, which were applied to unauthorized touchings by a physician"). "Anglo-American law starts with the premise of thorough-going self determination. It follows that each man is considered to be master of his own body, and he may, if he be of sound mind, expressly prohibit the performance of lifesaving surgery, or other medical treatment." *Natanson v. Kline, 186 Kan. 393, 406-407, 350 P.2d 1093, 1104 (1960)*. "The inviolability of the person" has been held as "sacred" and "carefully guarded" as any common-law right. *Union Pacific R. Co. v. Botsford, 141 U.S. 250, 251-252, 35 L. Ed. 734, 11 S. Ct. 1000 (1891)*. Thus, freedom from unwanted medical attention is unquestionably among those principles "so rooted in the traditions and conscience of our people as to be ranked as fundamental." *Snyder v. Massachusetts, 291 U.S. 97, 105, 78 L. Ed. 674, 54 S. Ct. 330 (1934)*. [5]

[*306] [2866]** That there may be serious consequences involved in refusal of the medical treatment at issue here does not vitiate the right under our common-law tradition of medical self-determination. It is "a well-established rule of general law . . . that it is the patient, not the physician, who ultimately decides if treatment -- any treatment -- is to be given at all. . . . The rule has never been qualified in its application by either the nature or purpose of the treatment, or the gravity of the consequences of acceding to or foregoing it." *Tune v. Walter Reed Army Medical Hospital, 602 F. Supp. 1452, 1455 (DC 1985)*. See also *Downer v. Veilleux, 322 A.2d 82, 91 (Me. 1974)* ("The rationale of this rule lies in the fact

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[5] See, *e. g.*, *Canterbury v. Spence, 150 U.S. App. D.C. 263, 271, 464 F.2d 772, 780*, cert. denied, ***409 U.S. 1064, 34 L. Ed. 2d 518, 93 S. Ct. 560 (1972)*** ("The root premise" of informed consent "is the concept, fundamental in American jurisprudence, that 'every human being of adult years and sound mind has a right to determine what shall be done with his own body'") (quoting *Schloendorff v. Society of New York Hospital, 211 N.Y. 125, 129-130, 105 N.E. 92, 93 (1914)* (Cardozo, J.)). See generally *Washington v. Harper, 494 U.S. 210, 241, 108 L. Ed. 2d 178, 110 S. Ct. 1028 (1990)* (STEVENS, J., dissenting) ("There is no doubt . . . that a competent individual's right to refuse [psychotropic] medication is a fundamental liberty interest deserving the highest order of protection").

that every competent adult has the right to forego treatment, or even cure, if it entails what for him are intolerable consequences or risks, however unwise his sense of values may be to others"). [6]

[*307] [*260]** No material distinction can be drawn between the treatment to which Nancy Cruzan continues to be subject -- artificial nutrition and hydration -- and any other medical treatment. See 497 U.S. at 288-289 (O'CONNOR, J., concurring). The artificial delivery of nutrition and hydration is undoubtedly medical treatment. The technique to which Nancy Cruzan is subject -- artificial feeding through a gastrostomy tube -- involves a tube implanted surgically into her stomach through incisions in her abdominal wall. It may obstruct the intestinal tract, erode and pierce the stomach wall, or cause leakage of the stomach's contents into the abdominal cavity. See Page, Andrassy, & Sandler, Techniques in Delivery of Liquid Diets, in Nutrition in Clinical Surgery 66-67 (M. Deitel 2d ed. 1985). The tube can cause pneumonia from reflux of the stomach's contents into the lung. See Bernard & Forlaw, Complications and Their Prevention, in Enteral and Tube Feeding 553 (J. Rombeau & M. Caldwell eds. 1984). Typically, and in this case (see Tr. 377), commercially prepared formulas are used, rather than fresh food. See Matarese, Enteral Alimentation, in Surgical Nutrition 726 (J. Fischer ed. 1983). The type of formula and method of administration must be experimented with to avoid gastrointestinal problems. *Id., at 748*. The patient must be monitored daily by medical personnel as to weight, fluid intake, and fluid output; blood tests must be done weekly. *Id., at 749, 751*.

Artificial delivery of food and water is regarded as medical treatment by the medical **[**2867]** profession and the Federal Government. [7] According to the American Academy of Neurology: **[*308]** "The artificial provision of nutrition and hydration is a form of medical treatment . . . analogous to other forms of life-sustaining treatment, such as the use of the respirator. When a patient is unconscious, both a respirator and an artificial feeding device serve to support or replace normal bodily functions that are compromised as a result of the patient's illness." Position of the American Academy of Neurology on Certain

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[6] Under traditional tort law, exceptions have been found only to protect dependent children. See *Cruzan v. Harmon, 760 S.W.2d 408, 422, n.17 (Mo. 1988)* (citing cases where Missouri courts have ordered blood transfusions for children over the religious objection of parents); see also *Winthrop University Hospital v. Hess, 128 Misc. 2d 804, 490 N.Y.S.2d 996 (Sup. Ct. Nassau Cty. 1985)* (court ordered blood transfusion for religious objector because she was the mother of an infant and had explained that her objection was to the signing of the consent, not the transfusion itself); *Application of President & Directors of Georgetown College, Inc., 118 U.S. App. D.C. 80, 88, 331 F.2d 1000, 1008* (blood transfusion ordered for mother of infant), cert. denied, ***377 U.S. 978, 12 L. Ed. 2d 746, 84 S. Ct. 1883 (1964)***. Cf. *In re Estate of Brooks, 32 Ill. 2d 361, 373, 205 N.E.2d 435, 441-442 (1965)* (finding that lower court erred in ordering a blood transfusion for a woman -- whose children were grown -- and concluding: "Even though we may consider appellant's beliefs unwise, foolish or ridiculous, in the absence of an overriding danger to society we may not permit interference therewith in the form of a conservatorship established in the waning hours of her life for the sole purpose of compelling her to accept medical treatment forbidden by her religious principles, and previously refused by her with full knowledge of the probable consequences").

[7] The Missouri court appears to be alone among state courts to suggest otherwise, *760 S.W.2d at 419* and 423, although the court did not rely on a distinction between artificial feeding and other forms of medical treatment. *Id., at 423*. See, *e. g., Delio v. Westchester County Medical Center, 129 A.D.2d 1, 19, 516 N.Y.S.2d 677, 689 (1987)* ("Review of the decisions in other jurisdictions . . . failed to uncover a single case in which a court confronted with an application to discontinue feeding by artificial means has evaluated medical procedures to provide nutrition and hydration differently from other types of life-sustaining procedures").

Aspects of the Care and Management of the Persistent Vegetative State Patient, 39 Neurology 125 **[***261]** (Jan. 1989). See also Council on Ethical and Judicial Affairs of the American Medical Association, Current Opinions, Opinion 2.20 (1989) ("Life-prolonging medical treatment includes medication and artificially or technologically supplied respiration, nutrition or hydration"); President's Commission 88 (life-sustaining treatment includes respirators, kidney dialysis machines, and special feeding procedures). The Federal Government permits the cost of the medical devices and formulas used in enteral feeding to be reimbursed under Medicare. See Pub. L. 99-509, § 9340, note following *42 U. S. C. § 1395u*, p. 592 (1982 ed., Supp. V). The formulas are regulated by the federal Food and Drug Administration as "medical foods," see *21 U. S. C. § 360ee*, and the feeding tubes are regulated as medical devices, *21 CFR § 876.5980 (1989)*.

Nor does the fact that Nancy Cruzan is now incompetent deprive her of her fundamental rights. See *Youngberg v. Romeo, 457 U.S. 307, 315-316, 319, 73 L. Ed. 2d 28, 102 S. Ct. 2452 (1982)* (holding that severely retarded man's liberty interests in safety, freedom from bodily restraint, and reasonable training survive involuntary commitment); *Parham v. J. R., 442 U.S. 584, 600, 61 L. Ed. 2d 101, 99 S. Ct. 2493 (1979)* (recognizing a child's substantial liberty interest in not being confined unnecessarily for medical treatment); *Jackson v. Indiana, 406 U.S. 715, 730, 738, 32 L. Ed. 2d 435, 92 S. Ct. 1845 (1972)* (holding that Indiana could not violate the due process and equal protection rights of a mentally retarded deaf mute by committing him for an indefinite amount of time simply because he was incompetent to stand trial on the criminal charges filed against **[*309]** him). As the majority recognizes, 497 U.S. at 280, the question is not whether an incompetent has constitutional rights, but how such rights may be exercised. As we explained in *Thompson v. Oklahoma, 487 U.S. 815, 101 L. Ed. 2d 702, 108 S. Ct. 2687 (1988)*: "The law must often adjust the manner in which it affords rights to those whose status renders them unable to exercise choice freely and rationally. Children, the insane, and *those who are irreversibly ill with loss of brain function, for instance, all retain 'rights*,' to be sure, but often such rights are only meaningful as they are exercised by agents acting with the best interests of their principals in mind." *Id., at 825, n.23* (emphasis added). "To deny [its] exercise because the patient is unconscious or incompetent would be to deny the right." *Foody v. Manchester Memorial Hospital, 40 Conn. Supp. 127, 133, 482 A.2d 713, 718 (1984)*.

II

A

The right to be free from unwanted medical attention is a right to evaluate the potential benefit of treatment and its possible consequences according to one's own values and to make a personal decision whether to subject **[**2868]** oneself to the intrusion. For a patient like Nancy Cruzan, the sole benefit of medical treatment is being kept metabolically alive. Neither artificial nutrition nor any other form of medical treatment

available today can cure or in any way ameliorate her condition. [8] **[***262]** Irreversibly vegetative patients are devoid of thought, **[*310]** emotion, and sensation; they are permanently and completely unconscious. See n.2, *supra*. [9] As the President's Commission concluded in approving the withdrawal of life support equipment from irreversibly vegetative patients:

> "Treatment ordinarily aims to benefit a patient through preserving life, relieving pain and suffering, protecting against disability, and returning maximally effective functioning. If a prognosis of permanent unconsciousness is correct, however, continued treatment cannot confer such benefits. Pain and suffering are absent, as are joy, satisfaction, and pleasure. Disability is total and no return to an even minimal level of social or human functioning is possible." President's Commission 181-182.

There are also affirmative reasons why someone like Nancy might choose to forgo artificial nutrition and hydration under these circumstances. Dying is personal. And it is profound. For many, the thought of an ignoble end, steeped in decay, is abhorrent. A quiet, proud death, bodily integrity **[*311]** intact, is a matter of extreme consequence. "In certain, thankfully rare, circumstances the burden of maintaining the corporeal existence degrades the very humanity it was meant to serve." *Brophy v. New England Sinai Hospital, Inc., 398 Mass. 417, 434, 497 N.E.2d 626, 635-636 (1986)* (finding the subject of the proceeding "in a condition which [he] has indicated he would consider to be degrading and without human dignity" and holding that "the duty of the State to preserve life must encompass a recognition of an individual's right to avoid circumstances in which the individual himself would feel that efforts to sustain life demean or degrade his humanity"). Another court, hearing a similar case, noted:

> "It is apparent from the testimony **[***263]** that what was on [the patient's] mind was not only the invasiveness of life-sustaining systems, such as the [nasogastric] tube, upon the integrity of his body. It was also the utter helplessness of the permanently

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[8] While brain stem cells can survive 15 to 20 minutes without oxygen, cells in the cerebral hemispheres are destroyed if they are deprived of oxygen for as few as 4 to 6 minutes. See Cranford & Smith, Some Critical Distinctions Between Brain Death and the Persistent Vegetative State, 6 Ethics Sci. & Med. 199, 203 (1979). It is estimated that Nancy's brain was deprived of oxygen from 12 to 14 minutes. See 497 U.S. at 266. Out of the 100,000 patients who, like Nancy, have fallen into persistent vegetative states in the past 20 years due to loss of oxygen to the brain, there have been only three even partial recoveries documented in the medical literature. Brief for American Medical Association et al. as *Amici Curiae* 11-12. The longest any person has ever been in a persistent vegetative state and recovered was 22 months. See Snyder, Cranford, Rubens, Bundlie, & Rockswold, Delayed Recovery from Postanoxic Persistent Vegetative State, 14 Annals Neurol. 156 (1983). Nancy has been in this state for seven years.

[9] The American Academy of Neurology offers three independent bases on which the medical profession rests these neurological conclusions:

"First, direct clinical experience with these patients demonstrates that there is no behavioral indication of any awareness of pain or suffering.

"Second, in all persistent vegetative state patients studied to date, postmortem examination reveals overwhelming bilateral damage to the cerebral hemispheres to a degree incompatible with consciousness . . . .

"Third, recent data utilizing positron emission tomography indicates that the metabolic rate for glucose in the cerebral cortex is greatly reduced in persistent vegetative state patients, to a degree incompatible with consciousness." Position of the American Academy of Neurology on Certain Aspects of the Care and Management of the Persistent Vegetative State Patient, 39 Neurology 125 (Jan. 1989).

comatose person, the wasting of a once strong body, and the submission of the most private bodily functions to the **[**2869]** attention of others." *In re Gardner, 534 A.2d 947, 953 (Me. 1987)*.

Such conditions are, for many, humiliating to contemplate, [10] as is visiting a prolonged and anguished vigil on one's parents, spouse, and children. A long, drawn-out death can have a debilitating effect on family members. See Carnwath & Johnson, Psychiatric Morbidity Among Spouses of Patients With Stroke, 294 Brit. Med. J. 409 (1987); Livingston, Families Who Care, 291 Brit. Med. J. 919 (1985). For some, the idea of being remembered in their persistent vegetative **[*312]** states rather than as they were before their illness or accident may be very disturbing. [11]

B

Although the right to be free of unwanted medical intervention, like other constitutionally protected interests, may not be absolute, [12] no state interest could outweigh the rights of an individual in Nancy Cruzan's position. Whatever a State's possible interests in mandating life-support treatment under other circumstances, there is no good to be obtained here by Missouri's insistence that Nancy Cruzan remain on life-support systems if it is indeed her wish not to do so. Missouri does not claim, nor could it, that society as a whole will be benefited by Nancy's receiving medical treatment. **[*313]** No third party's situation will be improved and no harm to **[***264]** others will be averted. Cf. nn. 6 and 8, *supra*. [13]

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[10] Nancy Cruzan, for instance, is totally and permanently disabled. All four of her limbs are severely contracted; her fingernails cut into her wrists. App. to Pet. for Cert. A93. She is incontinent of bowel and bladder. The most intimate aspects of her existence are exposed to and controlled by strangers. Brief for Respondent Guardian Ad Litem 2. Her family is convinced that Nancy would find this state degrading. See n.20, *infra*.

[11] What general information exists about what most people would choose or would prefer to have chosen for them under these circumstances also indicates the importance of ensuring a means for now-incompetent patients to exercise their right to avoid unwanted medical treatment. A 1988 poll conducted by the American Medical Association found that 80% of those surveyed favored withdrawal of life-support systems from hopelessly ill or irreversibly comatose patients if they or their families requested it. New York Times, June 5, 1988, p. 14, col. 4 (citing American Medical News, June 3, 1988, p. 9, col. 1). Another 1988 poll conducted by the Colorado University Graduate School of Public Affairs showed that 85% of those questioned would not want to have their own lives maintained with artificial nutrition and hydration if they became permanently unconscious. The Coloradoan, Sept. 29, 1988, p. 1.

Such attitudes have been translated into considerable political action. Since 1976, 40 States and the District of Columbia have enacted natural death Acts, expressly providing for self-determination under some or all of these situations. See Brief for Society for the Right to Die, Inc., as *Amicus Curiae* 8; Weiner, Privacy, Family, and Medical Decision Making for Persistent Vegetative Patients, 11 Cardozo L. Rev. 713, 720 (1990). Thirteen States and the District of Columbia have enacted statutes authorizing the appointment of proxies for making health care decisions. See 497 U.S. at 290, n.2 (O'CONNOR, J., concurring).

[12] See *Jacobson v. Massachusetts, 197 U.S. 11, 26-27, 49 L. Ed. 643, 25 S. Ct. 358 (1905)* (upholding a Massachusetts law imposing fines or imprisonment on those refusing to be vaccinated as "of paramount necessity" to that State's fight against a smallpox epidemic).

[13] Were such interests at stake, however, I would find that the Due Process Clause places limits on what invasive medical procedures could be forced on an unwilling comatose patient in pursuit of the interests of a third party. If Missouri were correct that its interests outweigh Nancy's interest in avoiding medical procedures as long as she is free of pain and physical discomfort, see *760 S.W.2d at 424*, it is not apparent why a State could not choose to remove one of her kidneys without consent on the ground that society would be better off if the recipient of that kidney were saved from renal poisoning. Nancy cannot feel surgical pain. See n.2, *supra*. Nor would removal of one kidney be expected to shorten her life expectancy. See The American Medical Association Family Medical Guide 506 (J. Kunz ed. 1982). Patches of her skin could

[2870]** The only state interest asserted here is a general interest in the preservation of life. [14] But the State has no legitimate general interest in someone's life, completely abstracted from the interest of the person living that life, that could outweigh the person's choice to avoid medical treatment. "The regulation of constitutionally protected decisions . . . must be predicated on legitimate state concerns *other than* disagreement with the choice the individual has made. . . . Otherwise, the interest in liberty protected by the Due Process Clause would be a nullity." *Hodgson v. Minnesota, 497 U.S. 417, 435, 111 L. Ed. 2d 344, 110 S. Ct. 2926* **[*314]** (opinion of STEVENS, J.) (emphasis added). Thus, the State's general interest in life must accede to Nancy Cruzan's particularized and intense interest in self-determination in her choice of medical treatment. There is simply nothing legitimately within the State's purview to be gained by superseding her decision.

Moreover, there may be considerable danger that Missouri's rule of decision would impair rather than serve any interest the State does have in sustaining life. Current medical practice recommends use of heroic measures if there is a scintilla of a chance that the patient will recover, on the assumption that the measures will be discontinued should the patient improve. When the President's Commission in 1982 approved the withdrawal of life-support equipment from irreversibly vegetative patients, it explained that "an even more troubling wrong occurs when a treatment that might save life or improve health is not started because the health care personnel are afraid that they will find it very difficult to stop the treatment if, as is fairly likely, it proves to be of little benefit and greatly burdens the patient." President's Commission 75. A New Jersey court recognized that families as well as doctors **[***265]** might be discouraged by an inability to stop life-support measures from "even attempting certain types of care [which] could thereby force them into hasty and premature decisions to allow a patient to die." *In re Conroy, 98 N.J. 321, 370, 486 A.2d 1209, 1234 (1985)*. See also Brief for American Academy of Neurology as *Amicus Curiae* 9 (expressing same concern). [15]

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also be removed to provide grafts for burn victims and scrapings of bone marrow to provide grafts for someone with leukemia. Perhaps the State could lawfully remove more vital organs for transplanting into others who would then be cured of their ailments, provided the State placed Nancy on some other life-support equipment to replace the lost function. Indeed, why could the State not perform medical experiments on her body, experiments that might save countless lives, and would cause her no greater burden than she already bears by being fed through the gastrostomy tube? This would be too brave a new world for me and, I submit, for our Constitution.

[14] The Missouri Supreme Court reviewed the state interests that had been identified by other courts as potentially relevant -- prevention of homicide and suicide, protection of interests of innocent third parties, maintenance of the ethical integrity of the medical profession, and preservation of life -- and concluded that: "In this case, only the state's interest in the preservation of life is implicated." *760 S.W.2d at 419*.

[15] In any event, the state interest identified by the Missouri Supreme Court -- a comprehensive and "unqualified" interest in preserving life, *760 S.W.2d at 420, 424* -- is not even well supported by that State's own enactments. In the first place, Missouri has no law requiring every person to procure any needed medical care nor a state health insurance program to underwrite such care. *Id., at 429* (Blackmar, J., dissenting). Second, as the state court admitted, Missouri has a living will statute which specifically "allows and encourages the pre-planned termination of life." *Ibid.;* see *Mo. Rev. Stat. § 459.015(1)* (1986). The fact that Missouri actively provides for its citizens to choose a natural death under certain circumstances suggests that the State's interest in life is not so unqualified as the court below suggests. It is true that this particular statute does not apply to nonterminal patients and does not include artificial nutrition and hydration as one of the measures that may be declined. Nonetheless, Missouri has also not chosen to require court review of every decision to withhold or withdraw life support made on behalf of an incompetent patient. Such decisions are made every day, without state participation. See *760 S.W.2d at 428* (Blackmar, J., dissenting).

[*315] [2871]** III

This is not to say that the State has no legitimate interests to assert here. As the majority recognizes, 497 U.S. at 281-282, Missouri has a *parens patriae* interest in providing Nancy Cruzan, now incompetent, with as accurate as possible a determination of how she would exercise her rights under these circumstances. Second, if and when it is determined that Nancy Cruzan would want to continue treatment, the State may legitimately assert an interest in providing that treatment. But *until* Nancy's wishes have been determined, **[*316]** the only state interest that may be asserted is an interest in safeguarding the accuracy of that determination.

Accuracy, therefore, must be our touchstone. Missouri may constitutionally impose only those procedural requirements that serve to enhance the accuracy of a determination of Nancy Cruzan's wishes or are at least consistent with an accurate determination. The Missouri "safeguard" that the Court upholds today does not meet that standard. The determination needed in this context **[***266]** is whether the incompetent person would choose to live in a persistent vegetative state on life support or to avoid this medical treatment. Missouri's rule of decision imposes a markedly asymmetrical evidentiary burden. Only evidence of specific statements of treatment choice made by the patient when competent is admissible to support a finding that the patient, now in a persistent vegetative state, would wish to avoid further medical treatment. Moreover, this evidence must be clear and convincing. No proof is required to support a finding that the incompetent person would wish to continue treatment.

A

The majority offers several justifications for Missouri's heightened evidentiary standard. First, the majority explains that the State may constitutionally adopt this rule to govern determinations of an incompetent's wishes in order to advance the State's substantive interests, including its unqualified interest in the preservation of human life. See 497 U.S. at 282-283, and n.10. Missouri's evidentiary standard, however, cannot rest on the State's own interest in a particular substantive result. To be sure, courts have long erected clear

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In addition, precisely what implication can be drawn from the statute's limitations is unclear given the inclusion of a series of "interpretive" provisions in the Act. The first such provision explains that the Act is to be interpreted consistently with the following: "Each person has the primary right to request or refuse medical treatment subject to the state's interest in protecting innocent third parties, preventing homicide and suicide and preserving good ethical standards in the medical profession." *Mo. Rev. Stat. § 459.055(1)* (1986). The second of these subsections explains that the Act's provisions are cumulative and not intended to increase or decrease the right of a patient to make decisions or lawfully effect the withholding or withdrawal of medical care. *§ 459.055(2)*. The third subsection provides that "no presumption concerning the intention of an individual who has not executed a declaration to consent to the use or withholding of medical procedures" shall be created. *§ 459.055(3)*.

Thus, even if it were conceivable that a State could assert an interest sufficiently compelling to overcome Nancy Cruzan's constitutional right, Missouri law demonstrates a more modest interest at best. See generally *Capital Cities Cable, Inc. v. Crisp, 467 U.S. 691, 715, 81 L. Ed. 2d 580, 104 S. Ct. 2694 (1984)* (finding that state regulations narrow in scope indicated that State had only a moderate interest in its professed goal).

and convincing evidence standards to place the greater risk of erroneous decisions on those bringing disfavored claims. [16] In such cases, however, the choice to discourage **[*317]** certain claims was a legitimate, constitutional policy choice. In contrast, Missouri has no such power to disfavor a choice by Nancy Cruzan to avoid medical treatment, because Missouri has no legitimate **[**2872]** interest in providing Nancy with treatment until it is established that this represents her choice. See *supra, at 312-314*. Just as a State may not override Nancy's choice directly, it may not do so indirectly through the imposition of a procedural rule.

Second, the majority offers two explanations for why Missouri's clear and convincing evidence standard is a means of enhancing accuracy, but neither is persuasive. The majority initially argues that a clear and convincing evidence standard is necessary to compensate for the possibility that such proceedings will lack the "guarantee of accurate factfinding that the adversary process brings with it," citing *Ohio v. Akron Center for Reproductive Health, 497 U.S. at 515-516* (upholding a clear and convincing evidence standard for an *ex parte* proceeding). 497 U.S. at 281-282. **[***267]** Without supporting the Court's decision in that case, I note that the proceeding to determine an incompetent's wishes is quite different from a proceeding to determine whether a minor may bypass notifying her parents before undergoing an abortion on the ground that she is mature enough to make the decision or that the abortion is in her best interests.

[*318] An adversarial proceeding is of particular importance when one side has a strong personal interest which needs to be counterbalanced to assure the court that the questions will be fully explored. A minor who has a strong interest in obtaining permission for an abortion without notifying her parents may come forward whether or not society would be satisfied that she has made the decision with the seasoned judgment of an adult. The proceeding here is of a different nature. Barring venal motives, which a trial court has the means of ferreting out, the decision to come forward to request a judicial order to stop treatment represents a slowly and carefully considered resolution by at least one adult and more frequently several adults that discontinuation of treatment is the patient's wish.

In addition, the bypass procedure at issue in *Akron, supra*, is *ex parte* and secret. The court may not notify the minor's parents, siblings, or friends. No one may be present to submit evidence unless brought forward by the minor herself. In contrast, the proceeding to determine Nancy Cruzan's wishes was neither *ex parte* nor secret. In a hearing to

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[16] See *Colorado v. New Mexico, 467 U.S. 310, 81 L. Ed. 2d 247, 104 S. Ct. 2433 (1984)* (requiring clear and convincing evidence before one State is permitted to divert water from another to accommodate society's interests in stabile property rights and efficient use of resources); *New York v. New Jersey, 256 U.S. 296, 65 L. Ed. 937, 41 S. Ct. 492 (1921)* (promoting federalism by requiring clear and convincing evidence before using Court's power to control the conduct of one State at the behest of another); *Maxwell Land-Grant Case, 121 U.S. 325, 30 L. Ed. 949, 7 S. Ct. 1015 (1887)* (requiring clear, unequivocal, and convincing evidence to set aside, annul, or correct a patent or other title to property issued by the Government in order to secure settled expectations concerning property rights); ***Marcum v. Zaring, 406 P.2d 970 (Okla. 1965)*** (promoting stability of marriage by requiring clear and convincing evidence to prove its invalidity); *Stevenson v. Stein, 412 Pa. 478, 195 A.2d 268 (1963)* (promoting settled expectations concerning property rights by requiring clear and convincing evidence to prove adverse possession).

determine the treatment preferences of an incompetent person, a court is not limited to adjusting burdens of proof as its only means of protecting against a possible imbalance. Indeed, any concern that those who come forward will present a one-sided view would be better addressed by appointing a guardian ad litem, who could use the State's powers of discovery to gather and present evidence regarding the patient's wishes. A guardian ad litem's task is to uncover any conflicts of interest and ensure that each party likely to have relevant evidence is consulted and brought forward -- for example, other members of the family, friends, clergy, and doctors. See, *e. g.*, *In re Colyer, 99 Wash. 2d 114, 133, 660 P.2d 738, 748-749 (1983)*. Missouri's heightened evidentiary standard attempts to achieve balance by discounting evidence; the guardian ad litem technique achieves balance by probing for additional evidence. Where, as here, the family members, **[*319]** friends, doctors, and guardian ad litem agree, it is not because the process has failed, as the majority suggests. See 497 U.S. at 281, n.9. It is because there is no genuine dispute as to Nancy's preference.

The majority next argues that where, as here, important individual rights are at stake, a clear and convincing evidence standard has long been held to be an appropriate means of enhancing accuracy, citing decisions concerning what process an individual is due before he can be deprived of a liberty interest. See 497 U.S. at 283. In those cases, however, this Court imposed a clear and convincing standard as a constitutional minimum on the basis of its evaluation that one **[**2873]** side's interests clearly outweighed the second side's interests and therefore the second side should bear the risk of error. See *Santosky v. Kramer, 455 U.S. 745, 753, 766-767, 71 L. Ed. 2d 599, 102 S. Ct. 1388 [***268] (1982)* (requiring a clear and convincing evidence standard for termination of parental rights because the parent's interest is fundamental but the State has no legitimate interest in termination unless the parent is unfit, and finding that the State's interest in finding the best home for the child does not arise until the parent has been found unfit); *Addington v. Texas, 441 U.S. 418, 426-427, 60 L. Ed. 2d 323, 99 S. Ct. 1804 (1979)* (requiring clear and convincing evidence in an involuntary commitment hearing because the interest of the individual far outweighs that of a State, which has no legitimate interest in confining individuals who are not mentally ill and do not pose a danger to themselves or others). Moreover, we have always recognized that shifting the risk of error reduces the likelihood of errors in one direction at the cost of increasing the likelihood of errors in the other. See *Addington, supra, at 423* (contrasting heightened standards of proof to a preponderance standard in which the two sides "share the risk of error in roughly equal fashion" because society does not favor one outcome over the other). In the cases cited by the majority, the imbalance imposed by a heightened evidentiary standard was not only acceptable but required because the standard was deployed to protect an individual's **[*320]** exercise of a fundamental right, as the majority admits, 497 U.S. at 282-283, n.10. In contrast, the Missouri court imposed a clear and convincing evidence standard as an obstacle to the exercise of a fundamental right.

The majority claims that the allocation of the risk of error is justified because it is more important not to terminate life support for someone who would wish it continued than to honor the wishes of someone who would not. An erroneous decision to terminate life support is irrevocable, says the majority, while an erroneous decision not to terminate "results in a maintenance of the status quo." See *ante*, at 283. [17] But, from the point of view of the patient, an erroneous decision in either direction is irrevocable. An erroneous decision to terminate artificial nutrition and hydration, to be sure, will lead to failure of that last remnant of physiological life, the brain stem, and result in complete brain death. An erroneous decision not to terminate life support, however, robs a patient of the very qualities protected by the right to avoid unwanted medical treatment. His own degraded existence is perpetuated; his family's suffering is protracted; the memory he leaves behind becomes more and more distorted.

[*269]** Even a later decision to grant him his wish cannot undo the intervening harm. But a later decision is unlikely in any event. "The discovery of new evidence," to which the majority **[*321]** refers, *ibid.*, is more hypothetical than plausible. The majority also misconceives the relevance of the possibility of "advancements in medical science," *ibid.*, by treating it as a reason to force someone to continue medical treatment against his will. The possibility of a medical miracle is indeed part of the calculus, but it is a part of the *patient's* calculus. If current research suggests **[**2874]** that some hope for cure or even moderate improvement is possible within the lifespan projected, this is a factor that should be and would be accorded significant weight in assessing what the patient himself would choose. [18]

B

Even more than its heightened evidentiary standard, the Missouri court's categorical exclusion of relevant evidence dispenses with any semblance of accurate factfinding. The court adverted to no evidence supporting its decision, but held that no clear and convincing, inherently reliable evidence had been presented to show that Nancy would want to avoid further treatment. In doing so, the court failed to consider statements Nancy

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[17] The majority's definition of the "status quo," of course, begs the question. Artificial delivery of nutrition and hydration represents the "status quo" only if the State has chosen to permit doctors and hospitals to keep a patient on life-support systems over the protests of his family or guardian. The "status quo" absent that state interference would be the natural result of his accident or illness (and the family's decision). The majority's definition of status quo, however, is "to a large extent a predictable, yet accidental confluence of technology, psyche, and inertia. The general citizenry . . . never said that it favored the creation of coma wards where permanently unconscious patients would be tended for years and years. Nor did the populace as a whole authorize the preeminence of doctors over families in making treatment decisions for incompetent patients." Rhoden, Litigating Life and Death, *102 Harv. L. Rev. 375, 433-434 (1988)*.

[18] For Nancy Cruzan, no such cure or improvement is in view. So much of her brain has deteriorated and been replaced by fluid, see App. to Pet. for Cert. A94, that apparently the only medical advance that could restore consciousness to her body would be a brain transplant. Cf. n.22, *infra*.

had made to family members and a close friend. [19] The **[***270]** court also failed to consider testimony **[*322]** from Nancy's mother and sister that they were certain that Nancy would want to discontinue artificial nutrition and hydration, [20] even after the court found that Nancy's family was loving and without malignant motive. See *760 S.W.2d at 412*. The court also failed to consider the conclusions of the guardian ad litem, appointed by the trial court, that there was clear and convincing evidence that Nancy would want to **[*323]** discontinue medical treatment and that this was in her best interests. *Id., at 444* (Higgins, J., dissenting from denial of rehearing); Brief for Respondent Guardian Ad Litem 2-3. The court did not specifically define what kind of evidence it would consider **[**2875]** clear and convincing, but its general discussion suggests that only a living will or equivalently formal directive from the patient when competent would meet this standard. See *760 S.W.2d at 424-425*.

Too few people execute living wills or equivalently formal directives for such an evidentiary rule to ensure adequately that the wishes of incompetent persons will be honored. [21] While it might be a wise social policy to encourage people to furnish such

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[19] The trial court had relied on the testimony of Athena Comer, a longtime friend, co-worker, and housemate for several months, as sufficient to show that Nancy Cruzan would wish to be free of medical treatment under her present circumstances. App. to Pet. for Cert. A94. Ms. Comer described a conversation she and Nancy had while living together, concerning Ms. Comer's sister who had become ill suddenly and died during the night. The Comer family had been told that if she had lived through the night, she would have been in a vegetative state. Nancy had lost a grandmother a few months before. Ms. Comer testified: "Nancy said she would never want to live [in a vegetative state] because if she couldn't be normal or even, you know, like half way, and do things for yourself, because Nancy always did, that she didn't want to live . . . and we talked about it a lot." Tr. 388-389. She said "several times" that "she wouldn't want to live that way because if she was going to live, she wanted to be able to live, not to just lay in a bed and not be able to move because you can't do anything for yourself." *Id., at 390, 396*. "She said that she hoped that [all the] people in her family knew that she wouldn't want to live [in a vegetative state] because she knew it was usually up to the family whether you lived that way or not." *Id., at 399*.

The conversation took place approximately a year before Nancy's accident and was described by Ms. Comer as a "very serious" conversation that continued for approximately half an hour without interruption. *Id., at 390*. The Missouri Supreme Court dismissed Nancy's statement as "unreliable" on the ground that it was an informally expressed reaction to other people's medical conditions. *760 S.W.2d at 424*.

The Missouri Supreme Court did not refer to other evidence of Nancy's wishes or explain why it was rejected. Nancy's sister Christy, to whom she was very close, testified that she and Nancy had had two very serious conversations about a year and a half before the accident. A day or two after their niece was stillborn (but would have been badly damaged if she had lived), Nancy had said that maybe it was part of a "greater plan" that the baby had been stillborn and did not have to face "the possible life of mere existence." Tr. 537. A month later, after their grandmother had died after a long battle with heart problems, Nancy said that "it was better for my grandmother not to be kind of brought back and forth [by] medical [treatment], brought back from a critical near point of death . . . ." *Id., at 541*.

[20] Nancy's sister Christy, Nancy's mother, and another of Nancy's friends testified that Nancy would want to discontinue the hydration and nutrition. Christy said that "Nancy would be horrified at the state she is in." *Id., at 535*. She would also "want to take that burden away from [her family]." *Id., at 544*. Based on "a lifetime of experience [I know Nancy's wishes] are to discontinue the hydration and the nutrition." *Id., at 542*. Nancy's mother testified: "Nancy would not want to be like she is now. If it were me up there or Christy or any of us, she would be doing for us what we are trying to do for her. I know she would, . . . as her mother." *Id., at 526*.

[21] Surveys show that the overwhelming majority of Americans have not executed such written instructions. See Emmanuel & Emmanuel, The Medical Directive: A New Comprehensive Advance Care Document, 261 JAMA 3288 (1989) (only 9% of Americans execute advance directives about how they would wish treatment decisions to be handled if they became incompetent); American Medical Association Surveys of Physician and Public Opinion on Health Care Issues 29-30 (1988) (only 15% of those surveyed had executed living wills); 2 President's Commission for the Study of Ethical Problems in Medicine and Biomedical and Behavioral Research, Making Health Care Decisions 241-242 (1982) (23% of those surveyed said that they had put treatment instructions in writing).

instructions, no general conclusion about a patient's choice can be drawn from the absence of formalities. The probability of becoming irreversibly vegetative is so low that many people may not feel an urgency to marshal formal evidence of their preferences. Some may not wish to dwell on their own physical deterioration and mortality. Even someone with a resolute determination to avoid life support under circumstances such as Nancy's would still need to know that such things as living wills exist and how to execute one. Often legal help would be necessary, especially given the majority's apparent willingness to permit States to insist that a person's wishes are not truly known unless the particular medical treatment is specified. See 497 U.S. at 285.

[*324] As a California appellate court observed: "The lack of generalized public awareness of the statutory scheme and the typically human characteristics of procrastination and reluctance to contemplate the need for such arrangements however makes this a tool which will all too often go unused by those who might desire it." *Barber v. Superior Court, 147 Cal. App. 3d 1006, 1015, 195 Cal. **[***271]** Rptr. 484, 489 (1983)*. When a person tells family or close friends that she does not want her life sustained artificially, she is "expressing her wishes in the only terms familiar to her, and . . . as clearly as a lay person should be asked to express them. To require more is unrealistic, and for all practical purposes, it precludes the right of patients to forego life-sustaining treatment." *In re O'Connor, 72 N.Y.2d 517, 551, 531 N.E.2d 607, 626, 534 N.Y.S.2d 886 (1988)* (Simons, J., dissenting). [22] When Missouri enacted a living will statute, it specifically provided that the absence of a living will does not warrant a presumption that a patient wishes continued medical treatment. See n.15, *supra*. **[*325]** Thus, apparently not even Missouri's own legislature believes that a person who does not execute a living will fails **[**2876]** to do so because he wishes continuous medical treatment under all circumstances.

The testimony of close friends and family members, on the other hand, may often be the best evidence available of what the patient's choice would be. It is they with whom the patient most likely will have discussed such questions and they who know the patient best. "Family members have a unique knowledge of the patient which is vital to any decision on his or her behalf." Newman, Treatment Refusals for the Critically and Terminally Ill: Proposed Rules for the Family, the Physician, and the State, 3 N. Y. L. S. Human Rights

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[22] New York is the only State besides Missouri to deny a request to terminate life support on the ground that clear and convincing evidence of prior, expressed intent was absent, although New York did so in the context of very different situations. Mrs. O'Connor, the subject of *In re O'Connor*, had several times expressed her desire not to be placed on life support if she were not going to be able to care for herself. However, both of her daughters testified that they did not know whether their mother would want to decline artificial nutrition and hydration under her present circumstances. Cf. n.13, *supra*. Moreover, despite damage from several strokes, Mrs. O'Connor was conscious and capable of responding to simple questions and requests and the medical testimony suggested she might improve to some extent. Cf. 497 U.S. at 301. The New York Court of Appeals also denied permission to terminate blood transfusions for a severely retarded man with terminal cancer because there was no evidence of a treatment choice made by the man when competent, as he had never been competent. See *In re Storar, 52 N.Y.2d 363, 420 N.E.2d 64, 438 N.Y.S.2d 266*, cert. denied, ***454 U.S. 858, 70 L. Ed. 2d 153, 102 S. Ct. 309 (1981)***. Again, the court relied on evidence that the man was conscious, functioning in the way he always had, and that the transfusions did not cause him substantial pain (although it was clear he did not like them).

Annual 35, 46 (1985). The Missouri court's decision to ignore this whole category of testimony is also at odds with the practices of other States. See, *e. g.*, *In re Peter, 108 N.J. 365, 529 A.2d 419 (1987)*; *Brophy v. New England Sinai Hospital, Inc., 398 Mass. 417, 497 N.E.2d 626 (1986)*; *In re Severns, 425 A.2d 156 (Del. Ch. 1980)*.

The Missouri court's disdain for Nancy's statements in serious conversations not long before her accident, for the opinions of Nancy's family and friends as to her values, beliefs and certain choice, and even for the opinion of an outside objective factfinder appointed by the State evinces a disdain for Nancy Cruzan's own right to choose. The rules by which an incompetent person's wishes are determined must represent every effort to determine those wishes. The rule that the Missouri court adopted and that this Court upholds, however, skews the result away from a determination **[***272]** that as accurately as possible reflects the individual's own preferences and beliefs. It is a rule that transforms human beings into passive subjects of medical technology.

> "Medical care decisions must be guided by the individual patient's interests and values. Allowing persons to determine their own medical treatment is an important way in which society respects persons as individuals. **[*326]** Moreover, the respect due to persons as individuals does not diminish simply because they have become incapable of participating in treatment decisions. . . . It is still possible for others to make a decision that reflects [the patient's] interests more closely than would a purely technological decision to do whatever is possible. Lacking the ability to decide, [a patient] has a right to a decision that takes his interests into account." *Conservatorship of Drabick, 200 Cal. App. 3d 185, 208, 245 Cal. Rptr. 840, 854-855*, cert. denied, *488 U.S. 958 (1988)*.

C

I do not suggest that States must sit by helplessly if the choices of incompetent patients are in danger of being ignored. See 497 U.S. at 281. Even if the Court had ruled that Missouri's rule of decision is unconstitutional, as I believe it should have, States would nevertheless remain free to fashion procedural protections to safeguard the interests of incompetents under these circumstances. The Constitution provides merely a framework here: Protections must be genuinely aimed at ensuring decisions commensurate with the will of the patient, and must be reliable as instruments to that end. Of the many States which have instituted such protections, Missouri is virtually the only one to have fashioned a rule that lessens the likelihood of accurate determinations. In contrast, nothing in the Constitution prevents States from reviewing the advisability of a family decision, by requiring a court proceeding or by appointing an impartial guardian ad litem.

There are various approaches to determining an incompetent patient's treatment choice in use by the several States today, and there may be advantages and disadvantages to each and other approaches not yet envisioned. The choice, in largest part, is and should be left to the States, so long as each State is seeking, in a reliable manner, to discover what the

patient would want. But with such momentous interests in the balance, States must avoid procedures that will prejudice **[*327]** the decision. "To err either **[**2877]** way -- to keep a person alive under circumstances under which he would rather have been allowed to die, or to allow that person to die when he would have chosen to cling to life -- would be deeply unfortunate." *In re Conroy, 98 N.J. at 343, 486 A.2d at 1220*.

D

Finally, I cannot agree with the majority that where it is not possible to determine what choice an incompetent patient would make, a State's role as *parens patriae* permits the State automatically to make that choice itself. See 497 U.S. at 286 (explaining that the Due Process Clause does not require a State to confide the decision to "anyone but the patient herself"). Under fair rules of evidence, it is improbable that a court could **[***273]** not determine what the patient's choice would be. Under the rule of decision adopted by Missouri and upheld today by this Court, such occasions might be numerous. But in neither case does it follow that it is constitutionally acceptable for the State invariably to assume the role of deciding for the patient. A State's legitimate interest in safeguarding a patient's choice cannot be furthered by simply appropriating it.

The majority justifies its position by arguing that, while close family members may have a strong feeling about the question, "there is no automatic assurance that the view of close family members will necessarily be the same as the patient's would have been had she been confronted with the prospect of her situation while competent." *Ibid.* I cannot quarrel with this observation. But it leads only to another question: Is there any reason to suppose that a State is *more* likely to make the choice that the patient would have made than someone who knew the patient intimately? To ask this is to answer it. As the New Jersey Supreme Court observed: "Family members are best qualified to make substituted judgments for incompetent patients not only because of their peculiar grasp of the patient's approach to life, but also **[*328]** because of their special bonds with him or her . . . . It is . . . they who treat the patient as a person, rather than a symbol of a cause." *In re Jobes, 108 N.J. 394, 416, 529 A.2d 434, 445 (1987)*. The State, in contrast, is a stranger to the patient.

A State's inability to discern an incompetent patient's choice still need not mean that a State is rendered powerless to protect that choice. But I would find that the Due Process Clause prohibits a State from doing more than that. A State may ensure that the person who makes the decision on the patient's behalf is the one whom the patient himself would have selected to make that choice for him. And a State may exclude from consideration anyone having improper motives. But a State generally must either repose the choice with the person whom the patient himself would most likely have chosen as proxy or leave the decision to the patient's family. [23]

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[23] Only in the exceedingly rare case where the State cannot find any family member or friend who can be trusted to endeavor genuinely to make the treatment choice the patient would have made does the State become the legitimate surrogate decisionmaker.

IV

As many as 10,000 patients are being maintained in persistent vegetative states in the United States, and the number is expected to increase significantly in the near future. See Cranford, *supra* n.2, at 27, 31. Medical technology, developed over the past 20 or so years, is often capable of resuscitating people after they have stopped breathing or their hearts have stopped beating. Some of those people are brought fully back to life. Two decades ago, those who were not and could not swallow and digest food, died. Intravenous solutions could not provide sufficient calories to maintain people for more than a short time. Today, various forms of artificial feeding have been developed that are able to keep people metabolically alive for years, even decades. See Spencer & Palmisano, Specialized Nutritional Support of **[*329]** **[**2878]** Patients -- A Hospital's Legal Duty?, 11 Quality Rev. Bull. 160, 160-161 **[***274]** (1985). In addition, in this century, chronic or degenerative ailments have replaced communicable diseases as the primary causes of death. See R. Weir, Abating Treatment with Critically Ill Patients 12-13 (1989); President's Commission 15-16. The 80% of Americans who die in hospitals are "likely to meet their end . . . 'in a sedated or comatose state; betubed nasally, abdominally and intravenously; and far more like manipulated objects than like moral subjects.'" [24] A fifth of all adults surviving to age 80 will suffer a progressive dementing disorder prior to death. See Cohen & Eisdorfer, Dementing Disorders, in The Practice of Geriatrics 194 (E. Calkins, P. Davis, & A. Ford eds. 1986).

"Law, equity and justice must not themselves quail and be helpless in the face of modern technological marvels presenting questions hitherto unthought of." *In re Quinlan, 70 N.J. 10, 44, 355 A.2d 647, 665*, cert. denied, *429 U.S. 922 (1976)*. The new medical technology can reclaim those who would have been irretrievably lost a few decades ago and restore them to active lives. For Nancy Cruzan, it failed, and for others with wasting incurable disease, it may be doomed to failure. In these unfortunate situations, the bodies and preferences and memories of the victims do not escheat to the State; nor does our Constitution permit the State or any other government to commandeer them. No singularity of feeling exists upon which such a government might confidently rely as *parens patriae*. The President's Commission, after years of research, concluded:

> "In few areas of health care are people's evaluations of their experiences so varied and uniquely personal as in their assessments of the nature and value of the processes associated with dying. For some, every moment of life is of inestimable value; for others, life without **[*330]** some desired level of mental or physical ability is worthless or burdensome. A moderate degree of suffering may be an important means of personal growth and religious experience to one person, but only frightening or despicable to another." President's Commission 276.

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[24] Fadiman, The Liberation of Lolly and Gronky, Life Magazine, Dec. 1986, p. 72 (quoting medical ethicist Joseph Fletcher).

Yet Missouri and this Court have displaced Nancy's own assessment of the processes associated with dying. They have discarded evidence of her will, ignored her values, and deprived her of the right to a decision as closely approximating her own choice as humanly possible. They have done so disingenuously in her name and openly in Missouri's own. That Missouri and this Court may truly be motivated only by concern for incompetent patients makes no matter. As one of our most prominent jurists warned us decades ago: "Experience should teach us to be most on our guard to protect liberty when the government's purposes are beneficent. . . . The greatest dangers to liberty lurk in insidious encroachment by men of zeal, well meaning but without understanding." *Olmstead v. United States, 277 U.S. 438, 479, 72 L. Ed. 944, 48 S. Ct. 564 (1928)* (Brandeis, J., dissenting).

I respectfully dissent.

[*275]** JUSTICE STEVENS, dissenting.

Our Constitution is born of the proposition that all legitimate governments must secure the equal right of every person to "Life, Liberty, and the pursuit of Happiness." [1] In the ordinary case we quite naturally assume **[**2879]** that these three **[*331]** ends are compatible, mutually enhancing, and perhaps even coincident.

The Court would make an exception here. It permits the State's abstract, undifferentiated interest in the preservation of life to overwhelm the best interests of Nancy Beth Cruzan, interests which would, according to an undisputed finding, be served by allowing her guardians to exercise her constitutional right to discontinue medical treatment. Ironically, the Court reaches this conclusion despite endorsing three significant propositions which should save it from any such dilemma. First, a competent individual's decision to refuse life-sustaining medical procedures is an aspect of liberty protected by the *Due Process Clause of the Fourteenth Amendment*. See 497 U.S. at 278-279. Second, upon a proper evidentiary showing, a qualified guardian may make that decision on behalf of an incompetent ward. See, *e. g., ante,* at 284-285. Third, in answering the important question presented by this tragic case, it is wise "'not to attempt, by any general statement, to cover every possible phase of the subject.'" See *ante,* at 278 (citation omitted). Together, these considerations suggest that Nancy Cruzan's liberty to be free from medical treatment must be understood in light of the facts and circumstances particular to her.

I would so hold: In my view, the Constitution requires the State to care for Nancy Cruzan's life in a way that gives appropriate respect to her own best interests.

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[1] It is stated in the Declaration of Independence that:

"We hold these truths to be self-evident, that all men are created equal, that they are endowed by their Creator with certain unalienable Rights, that among these are Life, Liberty and the pursuit of Happiness. That to secure these rights, Governments are instituted among Men, deriving their just powers from the consent of the governed, -- That whenever any Form of Government becomes destructive of these ends, it is the Right of the People to alter or to abolish it, and to institute new Government, laying its foundation on such principles and organizing its powers in such form, as to them shall seem most likely to effect their Safety and Happiness."

I

This case is the first in which we consider whether, and how, the Constitution protects the liberty of seriously ill patients to be free from life-sustaining medical treatment. So put, the question is both general and profound. We need not, however, resolve the question in the abstract. Our responsibility as judges both enables and compels us to treat the problem as it is illuminated by the facts of the controversy before us.

[*332] The most important of those facts are these: "Clear and convincing evidence" established that Nancy Cruzan is "oblivious to her environment except for reflexive responses to sound and perhaps to painful stimuli"; that "she has no cognitive or reflexive ability to swallow food or water"; that "she will never recover" these abilities; and that her "cerebral cortical atrophy is irreversible, permanent, progressive and **[***276]** ongoing." App. to Pet. for Cert. A94-A95. Recovery and consciousness are impossible; the highest cognitive brain function that can be hoped for is a grimace in "recognition of ordinarily painful stimuli" or an "apparent response to sound." *Id.*, at A95. [2]

[2880]** After thus evaluating Nancy Cruzan's medical condition, the trial judge next examined how the interests of third parties would be affected if Nancy's parents were allowed to withdraw the gastrostomy tube that had been implanted in **[*333]** their daughter. His findings make it clear that the parents' request had no economic motivation, [3] and that granting their request would neither adversely affect any innocent third parties nor breach the ethical standards of the medical profession. [4] He then considered, and rejected, a

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[2] The trial court found as follows on the basis of "clear and convincing evidence":

"1. That her respiration and circulation are not artificially maintained and within essentially normal limits for a 30 year old female with vital signs recently reported as BP 130/80; pulse 78 and regular; respiration spontaneous at 16 to 18 per minute.

"2. That she is oblivious to her environment except for reflexive responses to sound and perhaps to painful stimuli.

"3. That she has suffered anoxia of the brain resulting in massive enlargement of the ventricles filling with cerebrospinal fluid in the area where the brain has degenerated. This cerebral cortical atrophy is irreversible, permanent, progressive and ongoing.

"4. That her highest cognitive brain function is exhibited by her grimacing perhaps in recognition of ordinarily painful stimuli, indicating the experience of pain and her apparent response to sound.

"5. That she is spastic quadriplegic.

"6. That she has contractures of her four extremities which are slowly progressive with irreversible muscular and tendon damage to all extremities.

"7. That she has no cognitive or reflexive ability to swallow food or water to maintain her daily essential needs. That she will never recover her ability to swallow sufficient to satisfy her needs." App. to Pet. for Cert. A94-A95.

[3] "The only economic considerations in this case rest with Respondent's employer, the State of Missouri, which is bearing the entire cost of care. Our ward is an adult without financial resources other than Social Security whose not inconsiderable medical insurance has been exhausted since January 1986." *Id.*, at A96.

[4] "In this case there are no innocent third parties requiring state protection, neither homicide nor suicide will be committed and the consensus of the medical witnesses indicated concerns personal to themselves or the legal consequences of such actions rather than any objections that good ethical standards of the profession would be breached if the nutrition and hydration were withdrawn the same as any other artificial death prolonging procedures the statute specifically authorizes." *Id.*, at A98.

religious objection to his decision, [5] and explained why he concluded that the ward's constitutional "right to liberty" outweighed the general public policy on which the State relied:

> "There is a fundamental natural right expressed in our Constitution as the 'right to liberty,' which permits an individual to refuse or direct the withholding or withdrawal of artificial death prolonging procedures when the person has no more cognitive brain function than our Ward and all the physicians agree there is no hope of further recovery while the deterioration of the brain continues with further overall worsening physical contractures. To the extent that the statute or public policy prohibits withholding or withdrawal of nutrition and hydration **[***277]** or euthanasia or mercy killing, if such be the definition, under all circumstances, arbitrarily and with no exceptions, it is in violation of our ward's constitutional rights by depriving her of liberty without due process of **[*334]** law. To decide otherwise that medical treatment once undertaken must be continued irrespective of its lack of success or benefit to the patient in effect gives one's body to medical science without their *[sic]* consent.
>
> . . . .
>
> "The Co-guardians are required only to exercise their legal authority to act in the best interests of their Ward as they discharge their duty and are free to act or not with this authority as they may determine." *Id.*, at A98-A99 (footnotes omitted).

II

Because he believed he had a duty to do so, the independent guardian ad litem appealed the trial court's order to the Missouri Supreme Court. In that appeal, however, the guardian advised the court that he did not disagree with the trial court's decision. Specifically, he endorsed the critical finding that "it was in Nancy Cruzan's best interests to have the tube feeding discontinued." [6]

That important conclusion thus was not disputed by the litigants. One might reasonably suppose that it would be dispositive: If Nancy Cruzan has no interest in continued treatment, and if she has a liberty interest in being free from unwanted treatment, and if the cessation of treatment would have no **[**2881]** adverse impact on third parties, and if no reason exists to doubt the good faith of Nancy's parents, then what possible basis could the State have for insisting upon continued medical treatment? Yet, instead of questioning or

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[5] "Nancy's present unresponsive and hopeless existence is not the will of the Supreme Ruler but of man's will to forcefully feed her when she herself cannot swallow thus fueling respiratory and circulatory pumps to no cognitive purpose for her except sound and perhaps pain." *Id.*, at A97.

[6] "Appellant guardian ad litem advises this court:

"'we informed the [trial] court that we felt it was in Nancy Cruzan's best interests to have the tube feeding discontinued. We now find ourselves in the position of appealing from a judgment we basically agree with.'" *Cruzan v. Harmon, 760 S.W.2d 408, 435 (Mo. 1988)* (Higgins, J., dissenting).

endorsing the trial court's conclusions about Nancy Cruzan's interests, the State Supreme Court largely ignored them.

[*335] The opinion of that court referred to four different state interests that have been identified in other somewhat similar cases, but acknowledged that only the State's general interest in "the preservation of life" was implicated by this case. [7] It defined that interest as follows:

> "The state's interest in life embraces two separate concerns: an interest in the prolongation of the life of the individual patient and an interest in the sanctity of life itself." *Cruzan v. Harmon, 760 S.W.2d 408, 419 (1988)*.

Although the court did not characterize this interest as absolute, it repeatedly indicated that it outweighs any countervailing interest that is based on the "quality of life" **[***278]** of any individual patient. [8] In the view of the state-court majority, **[*336]** that general interest is strong enough to foreclose any decision to refuse treatment for an incompetent person unless that person had previously evidenced, in a clear and convincing terms, such a decision for herself. The best interests of the incompetent individual who had never confronted the issue -- or perhaps had been incompetent since birth -- are entirely irrelevant and unprotected under the reasoning of the State Supreme Court's four-judge majority.

The three dissenting judges found Nancy Cruzan's interests compelling. They agreed with the trial court's evaluation of state policy. In his persuasive dissent, Judge Blackmar explained that decisions about the care of chronically ill patients were traditionally private:

> "My disagreement with the principal opinion lies fundamentally in its emphasis on the interest of and the role of the state, represented by the Attorney General. Decisions

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[7] "Four state interests have been identified: preservation of life, prevention of homicide and suicide, the protection of interests of innocent third parties and the maintenance of the ethical integrity of the medical profession. *See* *Section 459.055(1), RSMo 1986*; *Brophy, 497 N.E.2d at 634*. In this case, only the state's interest in the preservation of life is implicated." *Id., at 419*.

[8] "The state's concern with the sanctity of life rests on the principle that life is precious and worthy of preservation without regard to its quality." *Ibid.*

"It is tempting to equate the state's interest in the preservation of life with some measure of quality of life. As the discussion which follows shows, some courts find quality of life a convenient focus when justifying the termination of treatment. But the state's interest is not in quality of life. The broad policy statements of the legislature make no such distinction; nor shall we. Were quality of life at issue, persons with all manner of handicaps might find the state seeking to terminate their lives. Instead, the state's interest is in life; that interest is unqualified." *760 S.W.2d at 420*.

"As we previously stated, however, the state's interest is not in quality of life. The state's interest is an unqualified interest in life." *Id., at 422*. "The argument made here, that Nancy will not recover, is but a thinly veiled statement that her life in its present form is not worth living. Yet a diminished quality of life does not support a decision to cause death." *Ibid.*

"Given the fact that Nancy is alive and that the burdens of her treatment are not excessive for her, we do not believe her right to refuse treatment, whether that right proceeds from a constitutional right of privacy or a common law right to refuse treatment, outweighs the immense, clear fact of life in which the state maintains a vital interest." *Id., at 424*.

about prolongation of life are of recent origin. For most of the world's history, and presently in most parts of the world, such decisions would never arise because the technology would not be available. Decisions about medical treatment have customarily been made by the patient, or by those closest to the patient if the patient, because of youth or infirmity, is unable to make the decisions. This is nothing new in substituted decisionmaking. The state is seldom called upon to be the decisionmaker.

"I would not accept the assumption, inherent in the principal opinion, that, with **[**2882]** our advanced technology, the state must necessarily become involved in a decision about using extraordinary measures to prolong life. Decisions of this kind are made daily by the patient or relatives, on the basis of medical advice and their conclusion as to what is best. Very few cases reach court, and **[*337]** I doubt whether this case would be before us but for the fact that Nancy lies in a state hospital. I do not place primary emphasis on the patient's expressions, except possibly in the very unusual case, of which I find no example in the books, in which the patient expresses a view that all available life supports should **[***279]** be made use of. Those closest to the patient are best positioned to make judgments about the patient's best interest." *Id., at 428*.

Judge Blackmar then argued that Missouri's policy imposed upon dying individuals and their families a controversial and objectionable view of life's meaning:

"It is unrealistic to say that the preservation of life is an absolute, without regard to the quality of life. I make this statement only in the context of a case in which the trial judge has found that there is no chance for amelioration of Nancy's condition. The principal opinion accepts this conclusion. It is appropriate to consider the quality of life in making decisions about the extraordinary medical treatment. Those who have made decisions about such matters without resort to the courts certainly consider the quality of life, and balance this against the unpleasant consequences to the patient. There is evidence that Nancy may react to pain stimuli. If she has any awareness of her surroundings, her life must be a living hell. She is unable to express herself or to do anything at all to alter her situation. Her parents, who are her closest relatives, are best able to feel for her and to decide what is best for her. The state should not substitute its decisions for theirs. Nor am I impressed with the crypto-philosophers cited in the principal opinion, who declaim about the sanctity of any life without regard to its quality. They dwell in ivory towers." *Id., at 429*.

[*338] Finally, Judge Blackmar concluded that the Missouri policy was illegitimate because it treats life as a theoretical abstraction, severed from, and indeed opposed to, the person of Nancy Cruzan.

"The Cruzan family appropriately came before the court seeking relief. The circuit judge properly found the facts and applied the law. His factual findings are supported by the record and his legal conclusions by overwhelming weight of authority. The

> principal opinion attempts to establish absolutes, but does so at the expense of human factors. In so doing it unnecessarily subjects Nancy and those close to her to continuous torture which no family should be forced to endure." *Id., at 429-430*.

Although Judge Blackmar did not frame his argument as such, it propounds a sound constitutional objection to the Missouri majority's reasoning: Missouri's regulation is an unreasonable intrusion upon traditionally private matters encompassed within the liberty protected by the Due Process Clause.

The portion of this Court's opinion that considers the merits of this case is similarly unsatisfactory. It, too, fails to respect the best interests of the patient. [9] It, too, relies on what is tantamount to a waiver rationale: The dying patient's best interests are put to one side, and the entire inquiry is focused on her prior expressions **[***280]** of intent. [10] An innocent person's constitutional right to be free from unwanted medical treatment is thereby categorically limited to those patients who had the foresight to make an unambiguous **[**2883]** statement **[*339]** of their wishes while competent. The Court's decision affords no protection to children, to young people who are victims of unexpected accidents or illnesses, or to the countless thousands of elderly persons who either fail to decide, or fail to explain, how they want to be treated if they should experience a similar fate. Because Nancy Beth Cruzan did not have the foresight to preserve her constitutional right in a living will, or some comparable "clear and convincing" alternative, her right is gone forever and her fate is in the hands of the state legislature instead of in those of her family, her independent neutral guardian ad litem, and an impartial judge -- all of whom agree on the course of action that is in her best interests. The Court's willingness to find a waiver of this constitutional right reveals a distressing misunderstanding of the importance of individual liberty.

III

It is perhaps predictable that courts might undervalue the liberty at stake here. Because death is so profoundly personal, public reflection upon it is unusual. As this sad case shows, however, such reflection must become more common if we are to deal responsibly with the modern circumstances of death. Medical advances have altered the physiological conditions of death in ways that may be alarming: Highly invasive treatment may perpetuate human existence through a merger of body and machine that some might reasonably regard as an insult to life rather than as its continuation. But those same advances, and the reorganization of medical care accompanying the new science and technology, have also transformed the political and social conditions of death: People are

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[9] See especially 497 U.S. at 282 ("We think a State may properly decline to make judgments about the 'quality' of life that a particular individual may enjoy, and simply assert an unqualified interest in the preservation of human life to be weighed against the constitutionally protected interests of the individual"); *ante*, at 282, n.10 (stating that the government is seeking to protect "its own institutional interests" in life).

[10] See, *e. g., ante*, 497 U.S. at 284.

less likely to die at home, and more likely to die in relatively public places, such as hospitals or nursing homes. [11]

[*340] **[***281]** Ultimate questions that might once have been dealt with in intimacy by a family and its physician [12] have now become the concern of institutions. When the institution is a state hospital, **[*341]** as it is in this case, the **[**2884]** government itself becomes involved. [13] Dying nonetheless remains a part of "the life which characteristically has its place in the home," *Poe v. Ullman, 367 U.S. 497, 551, 6 L. Ed. 2d 989, 81 S. Ct. 1752 (1961)* (Harlan, J., dissenting). The "integrity of that life is something so fundamental that it has been found to draw to its protection the principles of more than one explicitly granted Constitutional right," *id., at 551-552*, and our decisions have demarcated a "private realm of family life which the state cannot enter." *Prince v. Massachusetts, 321 U.S. 158,*

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[11] "Until the latter part of this century, medicine had relatively little treatment to offer the dying and the vast majority of persons died at home rather than in the hospital." Brief for American Medical Association et al. as *Amici Curiae* 6. "In 1985, 83% of deaths [of] Americans age 65 or over occurred in a hospital or nursing home. Sager, Easterling, *et. al., Changes in the Location of Death After Passage of Medicare's Prospective Payment System: A National Study*, 320 New Eng. J. Med. 433, 435 (1989)." *Id., at 6, n.2*.

According to the President's Commission for the Study of Ethical Problems in Medicine and Biomedical and Behavioral Research:

"Just as recent years have seen alterations in the underlying causes of death, the places where people die have also changed. For most of recorded history, deaths (of natural causes) usually occurred in the home.

"'Everyone knew about death at first hand; there was nothing unfamiliar or even queer about the phenomenon. People seem to have known a lot more about the process itself than is the case today. The "deathbed" was a real place, and the dying person usually knew where he was and when it was time to assemble the family and call for the priest.'

"Even when people did get admitted to a medical care institution, those whose conditions proved incurable were discharged to the care of their families. This was not only because the health care system could no longer be helpful, but also because alcohol and opiates (the only drugs available to ease pain and suffering) were available without a prescription. Institutional care was reserved for the poor or those without family support; hospitals often aimed more at saving patients' souls than at providing medical care.

"As medicine has been able to do more for dying patients, their care has increasingly been delivered in institutional settings. By 1949, institutions were the sites of 50% of all deaths; by 1958, the figure was 61%; and by 1977, over 70%. Perhaps 80% of all deaths in the United States now occur in hospitals and long-term care institutions, such as nursing homes. The change in where very ill patients are treated permits health care professionals to marshal the instruments of scientific medicine more effectively. But people who are dying may well find such a setting alienating and unsupportive." Deciding to Forego Life-Sustaining Treatment 17-18 (1983) (footnotes omitted), quoting Thomas, Dying as Failure, 447 Annals Am. Acad. Pol. & Soc. Sci. 1, 3 (1980).

[12] We have recognized that the special relationship between patient and physician will often be encompassed within the domain of private life protected by the Due Process Clause. See, *e. g.*, *Griswold v. Connecticut, 381 U.S. 479, 481, 14 L. Ed. 2d 510, 85 S. Ct. 1678 (1965)*; *Roe v. Wade, 410 U.S. 113, 152-153, 35 L. Ed. 2d 147, 93 S. Ct. 705 (1973)*; *Thornburgh v. American College of Obstetricians and Gynecologists, 476 U.S. 747, 759, 90 L. Ed. 2d 779, 106 S. Ct. 2169 (1986)*.

[13] The Court recognizes that "the State has been involved as an adversary from the beginning" in this case only because Nancy Cruzan "was a patient at a state hospital when this litigation commenced," 760 S.W.2d at 281, n.9. It seems to me, however, that the Court draws precisely the wrong conclusion from this insight. The Court apparently believes that the absence of the State from the litigation would have created a problem, because agreement among the family and the independent guardian ad litem as to Nancy Cruzan's best interests might have prevented her treatment from becoming the focus of a "truly adversarial" proceeding. *Ibid.* It may reasonably be debated whether some judicial process should be required before life-sustaining treatment is discontinued; this issue has divided the state courts. Compare *In re Estate of Longeway, 133 Ill. 2d 33, 51, 549 N.E.2d 292, 300, 139 Ill. Dec. 780 (1989)* (requiring judicial approval of guardian's decision), with *In re Hamlin, 102 Wash. 2d 810, 818-819, 689 P.2d 1372, 1377-1378 (1984)* (discussing circumstances in which judicial approval is unnecessary). Cf. *In re Conservatorship of Torres, 357 N.W.2d 332, 341, n.4 (Minn. 1984)* ("At oral argument it was disclosed that on an average about 10 life support systems are disconnected weekly in Minnesota"). I tend, however, to agree with Judge Blackmar that the intervention of the State in these proceedings as an *adversary* is not so much a cure as it is part of the disease.

166-167, 88 L. Ed. 645, 64 S. Ct. 438 (1944). The physical boundaries of the home, of course, remain crucial guarantors of the life within it. See, *e. g.*, Payton v. New York, 445 U.S. 573, 589, 63 L. Ed. 2d 639, 100 S. Ct. 1371 (1980); Stanley v. Georgia, 394 U.S. 557, 565, 22 L. Ed. 2d 542, 89 S. Ct. 1243 (1969). Nevertheless, this Court has long recognized that the liberty to make the decisions and choices constitutive of private life is so fundamental to our "concept of ordered liberty," Palko v. Connecticut, 302 U.S. 319, 325, 82 L. Ed. 288, 58 S. Ct. 149 (1937), that those choices must occasionally be afforded more direct protection. **[*342]** See, *e. g.*, Meyer v. Nebraska, 262 U.S. 390, 67 L. Ed. 1042, 43 S. Ct. 625 (1923); Griswold v. Connecticut, ***[***282]*** 381 U.S. 479, 14 L. Ed. 2d 510, 85 S. Ct. 1678 (1965); Roe v. Wade, 410 U.S. 113, 35 L. Ed. 2d 147, 93 S. Ct. 705 (1973); Thornburgh v. American College of Obstetricians and Gynecologists, 476 U.S. 747, 772-782, 90 L. Ed. 2d 779, 106 S. Ct. 2169 (1986) (STEVENS, J., concurring).

Respect for these choices has guided our recognition of rights pertaining to bodily integrity. The constitutional decisions identifying those rights, like the common-law tradition upon which they built, [14] are mindful that the "makers of our Constitution . . . recognized the significance of man's spiritual nature." Olmstead v. United States, 277 U.S. 438, 478, 72 L. Ed. 944, 48 S. Ct. 564 (1928) (Brandeis, J., dissenting). It may truly be said that "our notions of liberty are inextricably entwined with our idea of physical freedom and self-determination." 760 S.W.2d at 287 (O'CONNOR, J., concurring). Thus we have construed the Due Process Clause to preclude physically invasive recoveries of evidence not only because such procedures are "brutal" but also because they are "offensive to human dignity." Rochin v. California, 342 U.S. 165, 174, 96 L. Ed. 183, 72 S. Ct. 205 ***[**2885]*** (1952). We have interpreted the Constitution to interpose barriers to a State's efforts to sterilize some criminals not only because the proposed punishment would do "irreparable injury" to bodily integrity, but because "marriage and procreation" concern "the basic civil rights of man." Skinner v. Oklahoma ex rel. Williamson, 316 U.S. 535, 541, 86 L. Ed. 1655, 62 S. Ct. 1110 (1942). The sanctity, and individual privacy, of the human body is obviously fundamental to liberty. "Every violation of a person's bodily integrity is an invasion of his or her liberty." Washington v. Harper, 494 U.S. 210, 237, 108 L. Ed. 2d 178, 110 S. Ct. 1028 (1990) (STEVENS, J., concurring in part and dissenting in part). Yet, just as the constitutional protection for the "physical curtilage of the home . . . is surely **[*343]** . . . a result of solicitude to protect the privacies of the life within," Poe v. Ullman, 367 U.S. at 551 (Harlan, J., dissenting), so too the constitutional protection for the human body is surely inseparable from concern for the mind and spirit that dwell therein.

It is against this background of decisional law, and the constitutional tradition which it illuminates, that the right to be free from unwanted life-sustaining medical treatment must be understood. That right presupposes no abandonment of the desire for life. Nor is it

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[14] See 497 U.S. at 269, 278. "No right is held more sacred, or is more carefully guarded, by the common law, than the right of every individual to the possession and control of his own person, free from all restraint or interference of others, unless by clear and unquestionable authority of law." Union Pacific R. Co. v. Botsford, 141 U.S. 250, 251, 35 L. Ed. 734, 11 S. Ct. 1000 (1891).

reducible to a protection against batteries undertaken in the name of treatment, or to a guarantee against the infliction of bodily discomfort. Choices about death touch the core of liberty. Our duty, and the concomitant freedom, to come to terms with the conditions of our own mortality are undoubtedly "so rooted in the traditions and conscience of our people as to be ranked as fundamental," *Snyder v. Massachusetts, 291 U.S. 97, 105, 78 L. Ed. 674, 54 S. Ct. 330 **[***283]** (1934)*, and indeed are essential incidents of the unalienable rights to life and liberty endowed us by our Creator. See *Meachum v. Fano, 427 U.S. 215, 230, 49 L. Ed. 2d 451, 96 S. Ct. 2532 (1976)* (STEVENS, J., dissenting).

The more precise constitutional significance of death is difficult to describe; not much may be said with confidence about death unless it is said from faith, and that alone is reason enough to protect the freedom to conform choices about death to individual conscience. We may also, however, justly assume that death is not life's simple opposite, or its necessary terminus, [15] but rather its completion. Our ethical tradition has long regarded an appreciation of mortality as essential to understanding life's significance. It may, in fact, be impossible to live for anything without being prepared to die for something. Certainly there was no disdain for life in Nathan Hale's most famous declaration or in Patrick Henry's; **[*344]** their words instead bespeak a passion for life that forever preserves their own lives in the memories of their countrymen. [16] From such "honored dead we take increased devotion to that cause for which they gave the last full measure of devotion." [17]

These considerations cast into stark relief the injustice, and unconstitutionality, of Missouri's treatment of Nancy Beth Cruzan. Nancy Cruzan's death, when it comes, cannot be an historic act of heroism; it will inevitably be the consequence of her tragic accident. But Nancy Cruzan's interest in life, no less than that of any other person, includes an interest in how she will be thought of after her death by those whose opinions mattered **[**2886]** to her. There can be no doubt that her life made her dear to her family and to others. How she dies will affect how that life is remembered. The trial court's order authorizing Nancy's parents to cease their daughter's treatment would have permitted the family that cares for Nancy to bring to a close her tragedy and her death. Missouri's objection to that order subordinates Nancy's body, her family, and the lasting significance of her life to the State's own interests. The decision we review thereby interferes with constitutional interests of the highest order.

To be constitutionally permissible, Missouri's intrusion upon these fundamental liberties must, at a minimum, bear a reasonable relationship to a legitimate state end. See, *e. g.*, *Meyer v. Nebraska, 262 U.S. at 400*; *Doe v. Bolton, 410 U.S. 179, 194-195, 199, 35 L. Ed.*

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[15] Many philosophies and religions have, for example, long venerated the idea that there is a "life after death," and that the human soul endures even after the human body has perished. Surely Missouri would not wish to define its interest in life in a way antithetical to this tradition.

[16] See, *e. g.*, H. Johnston, Nathan Hale 1776: Biography and Memorials 128-129 (1914); J. Axelrad, Patrick Henry: The Voice of Freedom 110-111 (1947).

[17] A. Lincoln, Gettysburg Address, 1 Documents of American History 429 (H. Commager ed.) (9th ed. 1973).

2d 201, 93 S. Ct. 739 (1973). Missouri asserts that its policy is related to a state interest in the protection of life. In my view, however, it is an effort to define life, rather than to protect it, that is the heart of Missouri's policy. Missouri insists, without regard to Nancy Cruzan's own interests, upon **[*345]** equating **[***284]** her life with the biological persistence of her bodily functions. Nancy Cruzan, it must be remembered, is not now simply incompetent. She is in a persistent vegetative state and has been so for seven years. The trial court found, and no party contested, that Nancy has no possibility of recovery and no consciousness.

It seems to me that the Court errs insofar as it characterizes this case as involving "judgments about the 'quality' of life that a particular individual may enjoy," 497 U.S. at 282. Nancy Cruzan is obviously "*alive*" in a physiological sense. But for patients like Nancy Cruzan, who have no consciousness and no chance of recovery, there is a serious question as to whether the mere persistence of their bodies is "*life*" as that word is commonly understood, or as it is used in both the Constitution and the Declaration of Independence. [18] The State's unflagging determination to perpetuate Nancy Cruzan's physical existence is comprehensible only as an effort to define life's meaning, not as an attempt to preserve its sanctity.

This much should be clear from the oddity of Missouri's definition alone. Life, particularly human life, is not commonly thought of as a merely physiological condition or function. [19] **[*346]** Its sanctity is often thought to **[**2887]** derive from the impossibility of any such reduction. When people speak of life, they often mean to describe the experiences that

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[18] The Supreme Judicial Court of Massachusetts observed in this connection: "When we balance the State's interest in prolonging a patient's life against the rights of the patient to reject such prolongation, we must recognize that the State's interest in life encompasses a broader interest than mere corporeal existence. In certain, thankfully rare, circumstances the burden of maintaining the corporeal existence degrades the very humanity it was meant to serve." Brophy v. New England Sinai Hospital, Inc., 398 Mass. 417, 433-434, 497 N.E.2d 626, 635 (1986). The *Brophy* court then stressed that this reflection upon the nature of the State's interest in life was distinguishable from any considerations related to the quality of a particular patient's life, considerations which the court regarded as irrelevant to its inquiry. See also In re Eichner, 73 A.D.2d 431, 465, 426 N.Y.S.2d 517, 543 (1980) (A patient in a persistent vegetative state "has *no* health, and, in the true sense, no life, for the State to protect"), modified in In re Storar, 52 N.Y.2d 363, 420 N.E.2d 64, 438 N.Y.S.2d 266 (1981).

[19] One learned observer suggests, in the course of discussing persistent vegetative states, that "few of us would accept the preservation of such a reduced level of function as a proper *goal* for medicine, even though we sadly accept it as an unfortunate and unforeseen *result* of treatment that had higher aspirations, and even if we refuse actively to cause such vegetative life to cease." L. Kass, Toward a More Natural Science 203 (1985). This assessment may be controversial. Nevertheless, I again tend to agree with Judge Blackmar, who in his dissent from the Missouri Supreme Court's decision contended that it would be unreasonable for the State to assume that most people *did* in fact hold a view contrary to the one described by Dr. Kass.

My view is further buttressed by the comments of the President's Commission for the Study of Ethical Problems in Medicine and Biomedical and Behavioral Research:

"The primary basis for medical treatment of patients is the prospect that each individual's interests (specifically, the interest in well-being) will be promoted. Thus, treatment ordinarily aims to benefit a patient through preserving life, relieving pain and suffering, protecting against disability, and returning maximally effective functioning. If a prognosis of permanent unconsciousness is correct, however, continued treatment cannot confer such benefits. Pain and suffering are absent, as are joy, satisfaction, and pleasure. Disability is total and no return to an even minimal level of social or human functioning is possible." Deciding to Forego Life-Sustaining Treatment 181-182 (1983).

comprise a person's history, as when it **[***285]** is said that somebody "led a good life." [20] They may also mean to refer to the practical manifestation of the human spirit, a meaning captured by the familiar observation that somebody "added life" to an assembly. If there is a shared thread among the various opinions on this subject, it may be that life is an activity which is at once the matrix for, and an integration of, a person's interests. In **[*347]** any event, absent some theological abstraction, the idea of life is not conceived separately from the idea of a living person. Yet, it is by precisely such a separation that Missouri asserts an interest in Nancy Cruzan's life in opposition to Nancy Cruzan's own interests. The resulting definition is uncommon indeed.

The laws punishing homicide, upon which the Court relies, 497 U.S. at 280, do not support a contrary inference. Obviously, such laws protect both the life *and* interests of those who would otherwise be victims. Even laws against suicide presuppose that those inclined to take their own lives have *some* interest in living, and, indeed, that the depressed people whose lives are preserved may later be thankful for the State's intervention. Likewise, decisions that address the "quality of life" of incompetent, but conscious, patients rest upon the recognition that these patients have *some* interest in continuing their lives, even if that interest pales in some eyes when measured against interests in dignity or comfort. Not so here. Contrary to the Court's suggestion, Missouri's protection of life in a form abstracted from the living is not commonplace; it is aberrant.

Nor does Missouri's treatment of Nancy Cruzan find precedent in the various state-law cases surveyed by the majority. Despite the Court's assertion that state courts have demonstrated "both similarity and diversity in their approaches" to the issue before us, *none* of the decisions surveyed by the Court interposed an absolute bar to the termination of treatment for a patient in a persistent vegetative state. For example, *In re Westchester County Medical Center on behalf of O'Connor, 72 N.Y.2d 517, 531 N.E.2d 607, 534 N.Y.S.2d 886 (1988)*, pertained to an incompetent patient who "was not in a coma or vegetative state. She was conscious, and capable of responding to simple questions or requests sometimes by squeezing the questioner's hand and sometimes verbally." **[*348]** *Id., at 524-525, 531 N.E.2d at 609-610*. Likewise, *In re Storar, 52 N.Y.2d 363, 420 N.E.2d 64, 438 N.Y.S.2d 266 (1981)*, involved a conscious patient who was incompetent because "profoundly retarded with a mental age of about 18 months." *Id., at 373, 420 N.E.2d at 68*. When it decided *In re Conroy, 98 N.J. 321, 486 A.2d 1209 (1985)*, the New Jersey Supreme Court noted that "Ms. Conroy was not brain dead, comatose, or in a chronic vegetative state," *98 N.J. at 337, 486 A.2d at 1217*, and then distinguished *In re Quinlan, 70 N.J. 10, 355 A.2d 647 (1976)*, on the ground that Karen Quinlan had been in a "persistent vegetative or comatose state." *98 N.J. at 358-359, 486 A.2d at 1228*. By contrast, an unbroken stream of cases has authorized procedures for the cessation of

[20] It is this sense of the word that explains its use to describe a biography: for example, Boswell's Life of Johnson or Beveridge's The Life of John Marshall. The reader of a book so titled would be surprised to find that it contained a compilation of biological data.

treatment of patients in **[**2888]** persistent **[***286]** vegetative states. [21] Considered **[*349]** against the background of other cases involving patients in persistent vegetative states, instead of against the broader -- and inapt -- category of cases involving chronically ill incompetent patients, Missouri's decision is anomalous.

[*350] In short, there is no reasonable ground for believing that Nancy Beth Cruzan has any *personal* interest in the perpetuation of what the **[***287]** State has decided is her life. As I have already suggested, it would be possible to hypothesize such an interest on the basis of theological or philosophical conjecture. But even to posit such a basis for the State's action is to condemn it. It is not within the province of secular government to circumscribe the liberties of the people by regulations designed wholly for the purpose of establishing a sectarian definition of life. See *Webster v. Reproductive Health Services, 492 U.S. 490, 566-572, 106 L. Ed. 2d 410, 109 S. Ct. 3040 **[**2889]** (1989)* (STEVENS, J., dissenting).

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[21] See, *e. g.*, *In re Estate of Longeway, 133 Ill. 2d 33, 549 N.E.2d 292, 139 Ill. Dec. 780 (1989)* (authorizing removal of a gastrostomy tube from a permanently unconscious patient after judicial approval is obtained); *McConnell v. Beverly Enterprises-Connecticut, Inc., 209 Conn. 692, 705, 553 A.2d 596, 603 (1989)* (authorizing, pursuant to statute, removal of a gastrostomy tube from patient in a persistent vegetative state, where patient had previously expressed a wish not to have treatment sustained); *Gray v. Romeo, 697 F. Supp. 580 (RI 1988)* (authorizing removal of a feeding tube from a patient in a persistent vegetative state); *Rasmussen v. Fleming, 154 Ariz. 207, 741 P.2d 674 (1987)* (en banc) (authorizing procedures for the removal of a feeding tube from a patient in a persistent vegetative state); *In re Gardner, 534 A.2d 947 (Me. 1987)* (allowing discontinuation of life-sustaining procedures for a patient in a persistent vegetative state); *In re Peter, 108 N.J. 365, 529 A.2d 419 (1987)* (authorizing procedures for cessation of treatment to elderly nursing home patient in a persistent vegetative state); *In re Jobes, 108 N.J. 394, 529 A.2d 434 (1987)* (authorizing procedures for cessation of treatment to nonelderly patient determined by "clear and convincing" evidence to be in a persistent vegetative state); *Brophy v. New England Sinai Hospital, Inc., 398 Mass. 417, 497 N.E.2d 626 (1986)* (permitting removal of a feeding tube from a patient in a persistent vegetative state); *John F. Kennedy Memorial Hospital, Inc. v. Bludworth, 452 So. 2d 921 (Fla. 1984)* (holding that court approval was not needed to authorize cessation of life-support for patient in a persistent vegetative state who had executed a living will); ***In re Conservatorship of Torres, 357 N.W.2d 332 (Minn. 1984)*** (authorizing removal of a permanently unconscious patient from life-support systems); *In re L. H. R., 253 Ga. 439, 321 S.E.2d 716 (1984)* (allowing parents to terminate life support for infant in a chronic vegetative state); *In re Hamlin, 102 Wash. 2d 810, 689 P.2d 1372 (1984)* (allowing termination, without judicial intervention, of life support for patient in a vegetative state if doctors and guardian concur; conflicts among doctors and the guardian with respect to cessation of treatment are to be resolved by a trial court); *In re Colyer, 99 Wash. 2d 114, 660 P.2d 738 (1983)*, modified on other grounds, *In re Hamlin, 102 Wash. 2d 810, 689 P.2d 1372 (1984)* (allowing court-appointed guardian to authorize cessation of treatment of patient in persistent vegetative state); *In re Eichner* (decided with *In re Storar), 52 N.Y.2d 363, 420 N.E.2d 64, 438 N.Y.S.2d 266* (authorizing the removal of a patient in a persistent vegetative state from a respirator), cert. denied, ***454 U.S. 858 (1981)***; *In re Quinlan, 70 N.J. 10, 355 A.2d 647* (authorizing, on constitutional grounds, the removal of a patient in a persistent vegetative state from a respirator), cert. denied, ***429 U.S. 922 (1976)***; *Corbett v. D'Alessandro, 487 So. 2d 368 (Fla. App. 1986)* (authorizing removal of nasogastric feeding tube from patient in persistent vegetative state); *In re Conservatorship of Drabick, 200 Cal. App. 3d 185, 218, 245 Cal. Rptr. 840, 861 (1988)* ("Life sustaining treatment is not 'necessary' under Probate Code section 2355 if it offers no reasonable possibility of returning the conservatee to cognitive life and if it is not otherwise in the conservatee's best interests, as determined by the conservator in good faith") (footnote omitted); *Delio v. Westchester County Medical Center, 129 A.D.2d 1, 516 N.Y.S.2d 677 (1987)* (authorizing discontinuation of artificial feeding for a 33-year-old patient in a persistent vegetative state); *Leach v. Akron General Medical Center, 68 Ohio Misc. 1, 426 N.E.2d 809 (1980)* (authorizing removal of a patient in a persistent vegetative state from a respirator); *In re Severns, 425 A.2d 156 (Del. Ch. 1980)* (authorizing discontinuation of all medical support measures for a patient in a "virtual vegetative state").

These cases are not the only ones which have allowed the cessation of life-sustaining treatment to incompetent patients. See, *e. g.*, *Superintendent of Belchertown State School v. Saikewicz, 373 Mass. 728, 370 N.E.2d 417 (1977)* (holding that treatment could have been withheld from a profoundly mentally retarded patient); *Bouvia v. Superior Court of Los Angeles County, 179 Cal. App. 3d 1127, 225 Cal. Rptr. 297 (1986)* (allowing removal of lifesaving nasogastric tube from competent, highly intelligent patient who was in extreme pain).

My disagreement with the Court is thus unrelated to its endorsement of the clear and convincing standard of proof for cases of this kind. Indeed, I agree that the controlling facts must be established with unmistakable clarity. The critical question, however, is not how to prove the controlling facts but rather what proven facts should be controlling. In my view, the constitutional answer is clear: The best interests of the individual, especially when buttressed by the interests of all related third parties, must prevail over any general state policy that simply ignores those interests. [22] Indeed, the only apparent *secular* basis for the State's interest in life is the policy's persuasive impact upon people other than Nancy and her family. Yet, "although the State may properly perform a teaching function," and although that teaching may foster respect for the sanctity of life, the State may not pursue its project by infringing constitutionally protected interests **[*351]** for "*symbolic* effect." *Carey v. Population Services International, 431 U.S. 678, 715, 52 L. Ed. 2d 675, 97 S. Ct. 2010 (1977)* (STEVENS, J., concurring in part and concurring in judgment). The failure of Missouri's policy to heed the interests of a dying individual with respect to matters so private is ample evidence of the policy's illegitimacy.

Only because Missouri has arrogated to itself the power to define life, and only because the Court permits this usurpation, are Nancy Cruzan's life and liberty put into disquieting conflict. If Nancy Cruzan's life were defined by reference to her own interests, so that her life expired when her biological existence ceased serving *any* of her own interests, then her constitutionally protected interest in freedom from unwanted treatment would not come into conflict with her constitutionally protected interest in life. Conversely, if there were *any* evidence that Nancy Cruzan herself defined life to encompass every form of biological persistence by a human being, so that the continuation of treatment would serve Nancy's own liberty, then once again there would be no conflict between life and liberty. The opposition of life and liberty in this case are thus not the result of Nancy Cruzan's tragic accident, but are instead the artificial consequence of Missouri's effort, and this Court's willingness, to abstract Nancy Cruzan's life from Nancy Cruzan's person.

[*288]** IV

Both this Court's majority and the state court's majority express great deference to the policy choice made by the state legislature. [23] That deference is, in my view, based **[*352]**

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[22] Although my reasoning entails the conclusion that the best interests of the incompetent patient must be respected even when the patient is conscious, rather than in a vegetative state, considerations pertaining to the "quality of life," in addition to considerations about the definition of life, might then be relevant. The State's interest in protecting the life, and thereby the interests, of the incompetent patient would accordingly be more forceful, and the constitutional questions would be correspondingly complicated.

[23] Thus, the state court wrote:

"This State has expressed a strong policy favoring life. We believe that policy dictates that we err on the side of preserving life. If there is to be a change in that policy, it must come from the people through their elected representatives. Broad policy questions bearing on life and death issues are more properly addressed by representative assemblies. These have vast fact and opinion gathering and synthesizing powers unavailable to courts; the exercise of these powers is particularly appropriate where issues invoke the concerns of medicine, ethics, morality, philosophy, theology and law. Assuming change is appropriate, this issue demands a comprehensive resolution which courts cannot provide." *760 S.W.2d at 426*.

upon a severe error in the Court's constitutional logic. The Court believes that the liberty interest claimed here on behalf of Nancy Cruzan is peculiarly problematic because "an incompetent person is not able to make an informed and voluntary choice to exercise a hypothetical right to refuse treatment **[**2890]** or any other right." 497 U.S. at 280. The impossibility of such an exercise affords the State, according to the Court, some discretion to interpose "a procedural requirement" that effectively compels the continuation of Nancy Cruzan's treatment.

There is, however, nothing "hypothetical" about Nancy Cruzan's constitutionally protected interest in freedom from unwanted treatment, and the difficulties involved in ascertaining what her interests are do not in any way justify the State's decision to oppose her interests with its own. As this case comes to us, the crucial question -- and the question addressed by the Court -- is not what Nancy Cruzan's interests are, but whether the State must give effect to them. There is certainly nothing novel about the practice of permitting a next friend to assert constitutional rights on behalf of an incompetent patient who is unable to do so. See, *e. g.*, *Youngberg v. Romeo, 457 U.S. 307, 310, 73 L. Ed. 2d 28, 102 S. Ct. 2452 (1982)*; *Whitmore v. Arkansas, 495 U.S. 149, 161-164, 109 L. Ed. 2d 135, 110 S. Ct. 1717 (1990)*. Thus, if Nancy Cruzan's incapacity to "exercise" her rights is to alter the balance between her interests and the State's, there must be some further explanation of how it does so. The Court offers two possibilities, neither of them satisfactory.

The first possibility is that the State's policy favoring life is by its nature less intrusive upon the patient's interest than any alternative. The Court suggests that Missouri's policy "results in a maintenance of the status quo," and is subject to reversal, while a decision to terminate treatment "is not susceptible **[*353]** of correction" because death is irreversible. 497 U.S. at 283. Yet, this explanation begs the question, for it assumes either that the State's policy is consistent with Nancy Cruzan's own interests, or that no damage is done by ignoring her interests. The first assumption is without basis in the record of this case, and would obviate any need for the State to rely, as it does, upon its own interests rather than upon the patient's. The second assumption is unconscionable. Insofar as Nancy Cruzan has an interest in being remembered for how she lived rather than how she died, the damage done to those memories by the **[***289]** prolongation of her death is irreversible. Insofar as Nancy Cruzan has an interest in the cessation of any pain, the continuation of her pain is irreversible. Insofar as Nancy Cruzan has an interest in a closure to her life consistent with her own beliefs rather than those of the Missouri Legislature, the State's imposition of its contrary view is irreversible. To deny the importance of these consequences is in effect to deny that Nancy Cruzan has interests at all, and thereby to deny her personhood in the name of preserving the sanctity of her life.

The second possibility is that the State must be allowed to define the interests of incompetent patients with respect to life-sustaining treatment because there is no procedure capable of determining what those interests are in any particular case. The Court points out various possible "abuses" and inaccuracies that may affect procedures authorizing the

termination of treatment. See *ante*, at 281-282. The Court correctly notes that in some cases there may be a conflict between the interests of an incompetent patient and the interests of members of his or her family. A State's procedures must guard against the risk that the survivors' interests are not mistaken for the patient's. Yet, the appointment of the neutral guardian ad litem, coupled with the searching inquiry conducted by the trial judge and the imposition of the clear and convincing standard of proof, all effectively avoided that risk in this case. Why such procedural safeguards should not **[*354]** be adequate to avoid a similar risk in other cases is a question the Court simply ignores.

Indeed, to argue that the mere possibility of error in *any* case suffices to allow the State's interests to override the particular interests of incompetent individuals in *every* case, or to argue that the interests of such individuals are unknowable and therefore **[**2891]** may be subordinated to the State's concerns, is once again to deny Nancy Cruzan's personhood. The meaning of respect for her personhood, and for that of others who are gravely ill and incapacitated, is, admittedly, not easily defined: Choices about life and death are profound ones, not susceptible of resolution by recourse to medical or legal rules. It may be that the best we can do is to ensure that these choices are made by those who will care enough about the patient to investigate his or her interests with particularity and caution. The Court seems to recognize as much when it cautions against formulating any general or inflexible rule to govern all the cases that might arise in this area of the law. *Ante*, 497 U.S. at 277-278. The Court's deference to the legislature is, however, itself an inflexible rule, one that the Court is willing to apply in this case even though the Court's principal grounds for deferring to Missouri's Legislature are hypothetical circumstances not relevant to Nancy Cruzan's interests.

On either explanation, then, the Court's deference seems ultimately to derive from the premise that chronically incompetent persons have no constitutionally cognizable interests at all, and so are not persons within the meaning of the Constitution. Deference of this sort is patently unconstitutional. It is also dangerous in ways that may not be immediately apparent. Today the State of Missouri has announced its intent to spend several hundred **[***290]** thousand dollars in preserving the life of Nancy Beth Cruzan in order to vindicate its general policy favoring the preservation of human life. Tomorrow, another State equally eager to champion an interest in the "quality of life" might favor a policy designed to ensure quick **[*355]** and comfortable deaths by denying treatment to categories of marginally hopeless cases. If the State in fact has an interest in defining life, and if the State's policy with respect to the termination of life-sustaining treatment commands deference from the judiciary, it is unclear how any resulting conflict between the best interests of the individual and the general policy of the State would be resolved. [24]

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[24] The Supreme Judicial Court of Massachusetts anticipated this possibility in its *Brophy* decision, where it observed that the "duty of the State to preserve life must encompass a recognition of an individual's right to avoid circumstances in which the individual himself would feel that efforts to sustain life demean or degrade his humanity," because otherwise the State's defense of life would be tantamount to an effort by "the State to make decisions regarding the individual's quality of life." *398 Mass. at 434, 497 N.E.2d at 635*. Accord, *Gray v. Romeo, 697 F. Supp. at 588*.

I believe the Constitution requires that the individual's vital interest in liberty should prevail over the general policy in that case, just as in this.

That a contrary result is readily imaginable under the majority's theory makes manifest that this Court cannot defer to any state policy that drives a theoretical wedge between a person's life, on the one hand, and that person's liberty or happiness, on the other. [25] The consequence of such a theory **[*356]** is to deny the personhood of those whose lives are defined by the State's interests **[**2892]** rather than their own. This consequence may be acceptable in theology or in speculative philosophy, see *Meyer, 262 U.S. at 401-402*, but it is radically inconsistent with the foundation of all legitimate government. Our Constitution presupposes a respect for the personhood of every individual, and nowhere is strict adherence to that principle more essential than in the judicial branch. See, *e. g.*, *Thornburgh v. American College of Obstetricians and Gynecologists, 476 U.S. at 781-782* (STEVENS, J., concurring).

V

In this case, as is no doubt true in many others, the predicament confronted by the healthy members of the Cruzan family merely adds emphasis to the best interests finding **[***291]** made by the trial judge. Each of us has an interest in the kind of memories that will survive after death. To that end, individual decisions are often motivated by their impact on others. A member of the kind of family identified in the trial court's findings in this case would likely have not only a normal interest in minimizing the burden that her own illness imposes on others, but also an interest in having their memories of her filled predominantly with thoughts about her past vitality rather than her current condition. The meaning and completion of her life should be controlled by persons who have her best interests at heart -- not by a state legislature concerned only with the "preservation of human life."

The Cruzan family's continuing concern provides a concrete reminder that Nancy Cruzan's interests did not disappear with her vitality or her consciousness. However commendable may be the State's interest in human life, it cannot pursue that interest by appropriating Nancy Cruzan's life as a symbol for its own purposes. Lives do not exist in abstraction **[*357]** from persons, and to pretend otherwise is not to honor but to desecrate the State's

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[25] Judge Campbell said on behalf of the Florida District Court of Appeal for the Second District:

"We want to acknowledge that we began our deliberations in this matter, as did those who drafted our Declaration of Independence, with the solemnity and the gratefulness of the knowledge 'that all men are . . . endowed by their Creator with . . . Life.' It was not without considerable searching of our hearts, souls, and minds, as well as the jurisprudence of this great Land that we have reached our conclusions. We forcefully affirm that Life having been endowed by our Creator should not be lightly taken nor relinquished. We recognize, however, that we are also endowed with a certain amount of dignity and the right to the 'Pursuit of Happiness.' When, therefore, it may be determined by reason of the advanced scientific and medical technologies of this day that Life has, through causes beyond our control, reached the unconscious and vegetative state where all that remains is the forced function of the body's vital functions, including the artificial sustenance of the body itself, then we recognize the right to allow the natural consequence of the removal of those artificial life sustaining measures." *Corbett v. D'Alessandro, 487 So. 2d at 371*.

responsibility for protecting life. A State that seeks to demonstrate its commitment to life may do so by aiding those who are actively struggling for life and health. In this endeavor, unfortunately, no State can lack for opportunities: There can be no need to make an example of tragic cases like that of Nancy Cruzan.

I respectfully dissent.

References

22A Am Jur 2d, Death 632, 633, 635, 636, 650, 655; *30 Am Jur 2d, Evidence 1167*

USCS, *Constitution, Amendment 14*

US L Ed Digest, Constitutional Law 830.7; Evidence 918

Index to Annotations, Euthanasia and Right to Die; Incompetent and Insane Persons; Medical Care and Treatment; Presumptions and Burden of Proof; States

Annotation References:

Supreme Court's views as to concept of "liberty" under *due process clauses of Fifth* and *Fourteenth Amendments*. *47 L Ed 2d 975*.

Tortious maintenance or removal of life supports. *58 ALR4th 222*.

Judicial power to order discontinuance of life-sustaining treatment. *48 ALR4th 67*.

Homicide: physician's withdrawal of life supports from comatose patient. *47 ALR4th 18*.

Patient's right to refuse treatment allegedly necessary to sustain life. *93 ALR3d 67*.

Power of courts or other public agencies, in the absence of statutory authority, to order compulsory medical care for adult. *9 ALR3d 1391*.

End of Document

Westport Wow
Welcome to Local Stories

The wealth exchanges in Probate courts are greater than the wealth exchanges on Wall Street.

Posted on December 27, 2014 by admin

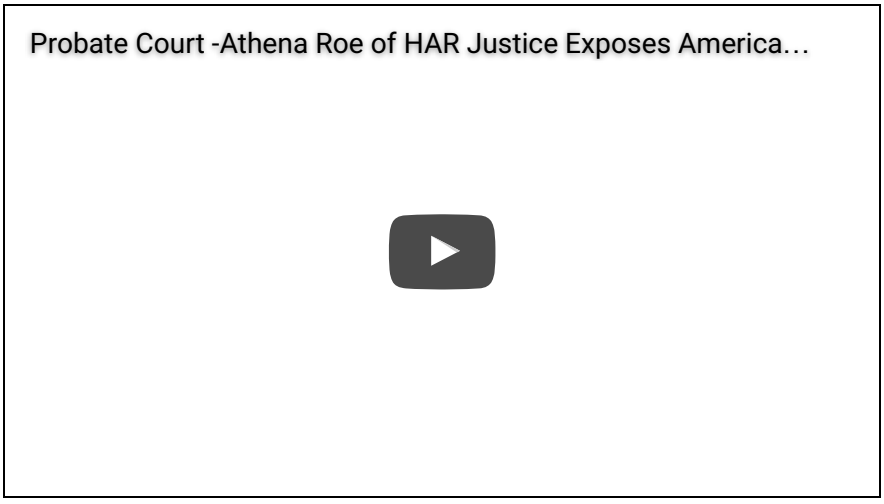
This is a must see short film about the greed, corruption, and unseemly transfers of America's wealth through probate courts and frivolous civil litigation. This film exposes corruption between lawyers, banks, judges and your PROPERTY RIGHTS! To depict what can fairly be characterized as "The Economic Rape of America," Har Justice has released a documentary entitled America's Secret Wealth Exchanges that provides an important look at the greed, corruption and unseemly transfers of America's wealth occurring through probate courts and frivolous civil litigation.

> *Athena Roe "In Part 2, there will be guest appearances by many community leaders who are working to fix the broken judicial systems. The U.S. Chamber of Commerce, Institute for Legal Reform estimates frivolous litigation costs America $254 billion dollars per year, factor in $50 billion dollars for the divorce industry, over $1.5 billion dollars just for legal fees in probate (and growing significantly each day due to death) and we have financial waste at greater than $351 billion dollars per year! This is at the expense of the vulnerable and the legal system is one of the greatest contributors to economic waste and poverty".*
>
> *Athena Roe "For our loyal audiences and new viewers, the widow is conferring with three federal lawyers and FBI to investigate racketeering charges between the probate lawyers and the commercial real estate group. Where enterprises are covertly set up to delay probate and extort money from families, you will need to pursue attorney malpractice and fraud charges in federal courts. The judicial system is creating poverty in our country and the lawyers are extorting the widow's savings and retirement in a fee churning racketeering scheme".*
> *HAR Justice*
>
> *6 hours ago (edited)*
>
> *In probate, these are the players in the enterprise to steal your property and estate assets: all real estate people, residential and commercial, asset management companies, lawyers, banks, judges, public administrators. Even trust instruments can be abused. Again, never sign a personal guaranty on a real estate lease. The property managers will intentionally keep you from finding a tenant, not show the space, and fail to mitigate damages to STEAL your assets as in the widow's case. Make sure your home is in a trust. Make sure you have POD and TOD on every single asset. These entities collude, trade your asset information, cut deals with each other*

essentially, "dealing your lawyers in" to see how much they can extort from your family, your inheritance, and leave you living in grinding poverty or asking for government assistance. Probate and frivolous litigation are forcing our nation's families into poverty and must be stopped. Call your law makers and demand reform now!

Be prepared to name a beneficiary upon death. *Property that lists a transfer on death beneficiary (TOD), or a pay on death beneficiary (POD), passes directly to the named beneficiary, avoiding probate. You may name anyone you choose as a TOD or POD on your financial accounts, vehicle titles, and in some states, your real property. When property passes to a joint owner, TOD, or POD, it passes* outside *of your estate.*

- *Your estate consists of all other property, not jointly owned or listing a TOD or POD. To avoid probate, you must ensure that all of your property passes outside of your estate, directly to a beneficiary or joint owner.*
- *What's the difference between TOD and POD? It's mainly a difference in the type of account each applies to.*[1] *Although they are essentially the same, they are used in different circumstances.*



This documentary is a must see for all Americans. America must demand probate reform so that the pillaging of estates by lawyers and non beneficiaries ends. America must wake up and demand better watch dogging of the judicial system which allows for an unfettered abuse of power. Produced and Directed by Athena Roe, J.D. of theharcompany.org in collaboration with Shaun T. Lally of Still Focus Media. Source: HAR Justice presents, The Economic Rape of America's Secret Wealth Exchanges

Bogutz and Gordon - How to Avoid Probat…

This entry was posted in Probate, Social justice. Bookmark the permalink.

3 Responses to *The wealth exchanges in Probate courts are greater than the wealth exchanges on Wall Street.*

Athena Roe *says:*
February 22, 2015 at 11:20 PM

Thank you for supporting probate reform! Part 2 is still being edited.

The events leading to the widow's husband's death will be uploaded.

Then another segment will disclose the conspiracy to commit fraud against the estate by lawyers and the crooks of the asset management company.

Reply

Athena Roe *says:*
November 4, 2015 at 8:48 AM

Families demand probate reform
by Athena Roe, J.D.

"If we desire respect for the law, we must first make the law respectable."
–The Honorable Louis D. Brandeis

The dangers facing a largely unsuspecting public looms large as families find their assets and civil liberties being high jacked and trampled by the legal industry via probate courts. Historically probate courts were specialized courts that handled the administration of estates, ensuring that the decedent's wishes were carried out.

Today, probate courts have become venues for instant liquidation of assets, pillaging, legal abuse and other atrocities. Probate lawyers work with banks and realtors and are quick to jump in the game. Beneficiaries are denied due process rights and are threatened and harassed as their inheritance is depleted.

All too often there are bribes to public officials and law enforcement "looks the other way." Lawyers devise schemes to defraud estates and others sell off property to their groups of cronies for pennies on the dollar. Families are destroyed, estates pillaged, inheritance depleted, careers shattered, as protracted litigation bankrupts the brightest and the best. Just ask the forty families who came forward to share their "horror stories of probate" at the state Capitol in July 2015.

This dirty little secret comes as a surprise to vulnerable family members facing the loss. Although public awareness is slowly growing, resistance to change plagues the industry. According to financial expert Juliette Fairley probate is big business topping nearly $41 trillion annually, double the energy industry.

For those of us who have legally abused by court appointed and estate lawyers xperienced threats, corruption, forced to sign non-disclosure agreements to conceal the lawyers schemes and fraud, legal fee churning, and other abuses, life is never the same. New media websites like the Estate of Denial, F.A.C.E.U.S. (Denver), the National Association to Stop Guardian Abuse, and HAR Justice's, "The Economic Rape of America" along with online radio programs have done their part to "highlight" the issue, yet this ugly reality persists.

Senator Laura Woods of Colorado (District 19) has been the "people's champion" on the topic of legal abuse and reform. Recently, Senator Woods held a well attended meeting at the state's Capitol to discuss the topic. Members from the Colorado Bar Association, CBS and the Denver Post listened as families told their stories. Ideas flowed as ways to stop this predatory and wide-spread legal epidemic were presented.

Senator Woods remarked, "I have sat across from family after family who tell the horror stories of guardianship, conservator ships, and receiverships. Literally these families have lost everything. Some are in bankruptcy, some are homeless, and it is truly heart-wrenching. 'Protected Persons' have lost their family possessions, photo, treasures, because a guardian who is supposed to be looking out for them, got involved and liquidated everything. And all of this is happening in America under

the watchful eye of the judiciary. Unbelievable!"

Dr. Karin Huffer, Professor at John Jay College of Criminal Justice in Manhattan describes this type of legal abuse as "the number one public health threat of the 21st Century." Dr. Huffer's describes "protracted litigation as a public health risk" and labels this type of traumatic stress legal abuse syndrome (LAS). Frivolous litigation in probate courts can literally drain your family's wealth. Lawyers invent ways to keep the estate in limbo and share the spoils in the end.

Senator Wood's "Bill" is focused on civil court appointed fiduciaries. Senator Woods stated "court appointees are forced on a family without the family asking for it. Private attorneys can be fired by a family, but court-appointees are there until the judge removes them so they are the ones the legislation will concern itself with."

While it is true that a family can fire a private attorney, it costs thousands of dollars to get a new attorney up to speed, and all too often the family gets a carbon copy of the previous racketeer/abuser. Nearly every family had "attorney shopped" after being sold out in probate courts. Good lawyers are hard to find and some activist lawyers have been punished for speaking out against legal corruption.

Richard Fine, a dapper Beverly Hills lawyer and former attorney at the Department of Justice experienced 14 months of solitary confinement for exposing the bribes in the California judiciary. Cole Stuart, a prominent San Diego attorney was falsely arrested for protesting the corruption in California's family courts. Today, Stuart is suing the California Bar Association and Supreme Court for over $10 million dollars with the help of Dean Webb a Vancouver, Washington RICO lawyer. Numerous Colorado lawyers have fled the state when threatened to expose the corruption in Colorado courts.

Senator Woods hopes to have an outside review committee look at any "court-appointee's behavior" at the request of a "family member or a judge." The language of the Bill will specifically state that an "outside review HAS to happen if any interested party request it." The Bill supports the review committees "jury of your peers" not simply another judge or another lawyer. Senator Woods has the support of other Senators and hundreds of Colorado's families.
Attorney, Candice Schwager said, "Probate lawyers have special sets of rules that they draft to suit their flesh and line their own pockets, with the same lawyers who practice in these courts drafting the legislation to benefit themselves."

Essentially, the same political machine that drives the careers of our judges, political attorneys, attorney generals, district attorneys, mayors, and governors drives the law of law enforcement for the white collar fraud and abuses in our probate courts.

It is not acceptable to the public that there remains no oversight, accountability, or transparency of such an empowered system. The good news is, if we all unite today, pressure our government for reform, we have no where to go but up. The hearing with Senator Woods and our united front in Colorado have shed light on the abuse and offer the citizens of our state the opportunity to change the system.

Reply

Athena Roe *says:*
December 24, 2015 at 12:55 PM

Please visit our new website at: http://www.harjustice.org and thank you Westport Wow for you amazing website! Please go to "What we do" and see that all viewers can conveniently click on this website to read more about probate.

Reply

Westport Wow

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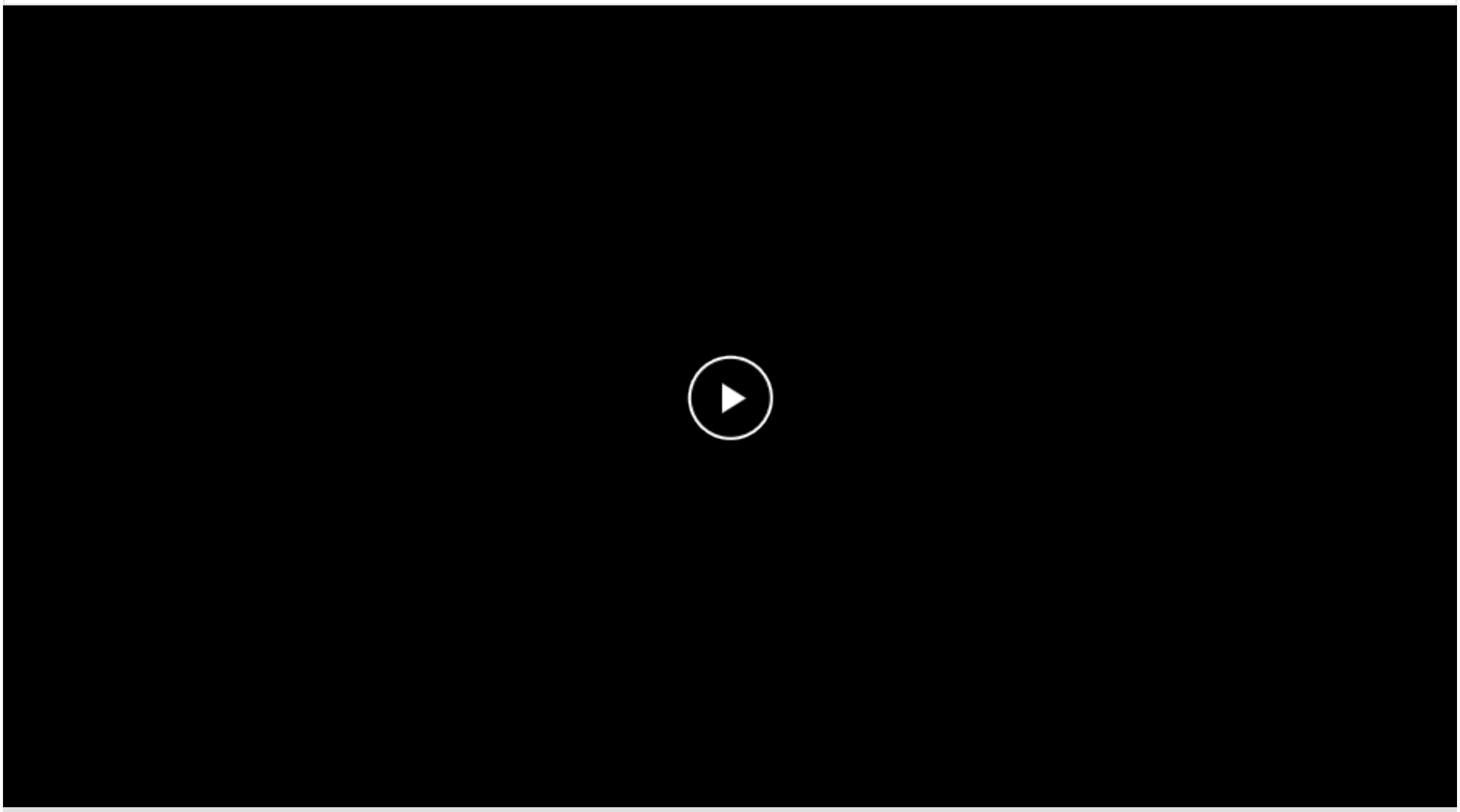
Elderly woman claims guardianship program holding her hostage



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Elderly woman fighting for her right to go home, Miya Shay reports. (KTRK)

By Miya Shay

Tuesday, March 29, 2016

HARRIS COUNTY (KTRK) -- At 87 years old, Doris Davis planned on enjoying her golden years in her own home, the house she built more than 60 years ago. But these days, she can't even make decisions for herself.

"You done worked and saved your money," said the retired nurse. "And they walk into a place and tell you , you don't have no money, you don't have no house, and you don't have nowhere to live."

In May 2014, Davis says she had a bad headache, wasn't feeling well, and called an ambulance. She somehow ended up at Memorial Hermann Hospital. One thing led to another, and the hospital discharged her to a nursing home. The specific details of how she ended up in a nursing home is murky, but what is clear is that until then,

Davis had lived in her own house. During her stay in the nursing home, a doctor at that facility signed papers declaring she was incapacitated. That began a process to place Davis under the guardianship of Harris County, something she never wanted. Almost two years later, she's still there.

"I feel like the system failed her," said Monica Shaw, a neighborhood activist who is trying to help Davis.

Shaw was shocked to learn that Harris County planned to sell Davis's home in order to pay for the guardianship she never wanted.

"That hurt me very deeply, because you know, I built that house, from the very beginning. And you know how I did, I had to pay $10 a month on a lot," recalled Davis, who first moved into the house in the 1950s.

Shaw stopped sale action, and recently got another physician to examine Davis. Court records show that the doctor determined Davis doesn't need a guardian and is not demented. Shaw says it's now up to the probate judge to rule that Davis can go home.

"He has signed the order to place her in this program. So if he signs the new order, she can go home," she said.

However, things are not so simple.

ABC13 talked to Probate Judge Mike Wood over the phone. He says he's waiting for an independent doctor's evaluation. Davis' court appointed attorney says he is still trying to arrange that independent evaluation.

Meanwhile, Harris County says the guardianship program has served county residents in need since 1992. However, it can't comment on specific guardianship cases.

For Davis, that means she must return to the nursing home, and wait.

"I don't want to be there, no."

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Judge Wood slapped again

RICK CASEY, Copyright 2008 Houston Chronicle **Published 5:30 am, Friday, June 6, 2008**

For years families bogged down in Harris County probate courts have accused judges of bleeding estates of tens of thousands of dollars to pay high-priced lawyers for unnecessary work.

On Thursday, a Houston appeals court ruled that probate Judge **Mike Wood** improperly awarded what may turn out to be more than $2 million in fees to a trustee and his lawyers over the objections of a wealthy father who set up three trusts for his sons.

The trustee, lawyer **Mark Riley**, had sued the father, **Robert Alpert**, accusing him of stock dealings that cost the trust money.

The appeals court decision may be most painful for the prominent law firm of **Crain Caton** & James, which represented Riley in the suit and may have to pay back more than $1 million in fees that Wood authorized.

Wood has said the fact that many years ago he was a member of that firm is irrelevant.

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A judge's contempt

It was the second rebuke of Wood in the last two months for his handling of the case. In April a visiting judge ordered Wood recused from a related lawsuit after hearing a jury member in this case testify that Wood came into the jury room after the trial was over and expressed his contempt of Alpert to the jury.

The appeals court was brutal in its 46-page opinion. It ruled for a variety of reasons that Wood was wrong to grant a judgment of $1.9 million against Alpert while ordering the trusts to pay about $500,000 in fees to Crain Caton for representing Riley.

Among the errors, said the court, were these:

•Wood was wrong to rule as a matter of law that Riley was actually the trustee of three trusts Alpert set up for his sons. Riley clearly was not the trustee of one of them, the court ruled. In the other two, the question should have been put to a jury because some evidence was against Riley.
•Wood was wrong to rule that Alpert had breached his duty to the trust. As the person who put the money into the trust, the court said, he owed no duty as to

how the trust was managed. This is a widely acknowledged principle of trusts. Donors put money into a trust and give up control of it partly so they will not be liable for how it is handled.

•Riley accused Alpert of selling some stock in one of his companies to the trust to take a tax loss, but thereby caused a tax liability to the trust. The appeals court ruled, however, that the law doesn't even allow Riley to bring the claim.

The reason is that only Riley, not Alpert, had the power to buy the stock from Alpert, and "the trustee alone is responsible as a fiduciary if he allows (Alpert) to mismanage trust property to the detriment of the trust."

This, again, is something a probate judge should know.

•The appeals court ruled that Judge Wood also erred in overruling the jury's finding that Riley had violated his duties to the trust and the two sons in a variety of ways.

In other words the judge, not the jury, "convicted" the wrong man.

This could become important if a jury someday finds that Riley was the trustee of two of the trusts, since violating his duties could mean his lawyers could not be paid from the trust.

•The appeals court ruled Judge Wood awarded Riley tens of thousands of dollars in fees from the trusts in clear violation of language in them saying the trustee would earn no fees.

•The appeals court said the lower court should, based on its ruling, consider making Riley pay the legal fees for Alpert and his sons.

•The court ruled that even if a jury decides Riley was the legitimate trustee for two of the trusts, a new state law that went into effect in 2005 prohibits a trustee from pressing any lawsuit over the objections of the beneficiaries. Since the two sons ordered him in April 2006 to drop the suit, he was required to do so. Any of Riley's legal fees after that cannot be charged to the trusts.

The new law is not coincidental. The Alpert family lobbied the Legislature for it and won, even though Wood testified against it at a hearing.

The new law also raises the issue of whether Riley can appeal this ruling to the **Texas Supreme Court**. With as much as $1 million in fees at stake, Crain Caton may pursue the appeal at no charge. (**Sharon Gardner**, the firm's lead lawyer on the case, said Thursday she had not seen the ruling and could not comment.)

All in all, the decision, without specifically saying so, describes Judge Wood as brazenly ignoring the law while liberally doling out the trusts' money to high-paid lawyers.

You can write to **Rick Casey** *at P.O. Box 4260, Houston, TX 77210, or e-mail him at* **rick.casey@chron.com**.

PROBATE COURT 2

NO. 456,059

GUARDIANSHIP OF	§	**IN THE PROBATE COURT**
	§	
MURIEL LUBA MINTZ;	§	**NUMBER TWO (2) OF**
	§	
AN INCAPACITATED PERSON	§	**HARRIS COUNTY, TEXAS**

ORDER TO SHOW CAUSE

ON THIS DAY, the Court considered the Motion filed by Movant, MICHELE K. GOLDBERG, Temporary Guardian of the Person and Estate Pending Contest, asking this Court to Order Respondent, BARBARA LATHAM, to produce certain documents and evidence of the current status and location of funds belonging to the Ward, Muriel Luba Mintz; and, after considering the pleadings and evidence presented, this Court finds that it is in the best interest of Muriel Luba Mintz to GRANT such Motion.

IT IS THEREFORE ORDERED that BARBARA LATHAM shall appear in person before Harris County Probate Court No. Two, 201 Caroline, Houston, Texas 77002, on November 28 Tuesday, 2017, at 10:00 am/pm, and Show Cause why she should not produce to MICHELE K. GOLDBERG, Temporary Guardian of the Person and Estate Pending Contest, the documents and other evidences set forth in the Motion to Show Cause.

SIGNED on November 10, 2017.

JUDGE PRESIDING

FILED
2017 NOV 14 AM 11:09
Stan Stanart
COUNTY CLERK
HARRIS COUNTY, TEXAS

FILED
2017 NOV 10 AM 9:41
Stan Stanart
COUNTY CLERK
HARRIS COUNTY, TEXAS

Signed NOV 14 2017

Judge Presiding

Houston probate judge found in "error"

June 6, 2008

Judge Wood slapped again
Rick Casey (rick.casey@chron.com)
June 5, 2008
Houston Chronicle
http://www.chron.com/disp/story.mpl/metropolitan/casey/5821892.html

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IN THE UNITED STATES DISTRICT COURT
FOR THE SOUTHERN DISTRICT OF TEXAS
HOUSTON DIVISION

SHERRY LYNN JOHNSTON,	§	
	§	
Plaintiff,	§	
	§	
v.	§	CIVIL ACTION NO. H-16-3215
	§	
DAVID DEXEL, *et al.*,	§	
	§	
Defendants.	§	

MEMORANDUM AND OPINION

Sherry Johnston's elderly mother, Willie Jo Mills, died in a nursing home. Johnston alleges that Mills received improper and negligent care that led to her death. Johnston asserts a long list of legal claims against a long list of defendants, all of whom she alleges played some role in Mills's death. The defendants moved to dismiss, Johnston responded, and the defendants replied. (Docket Entries No. 17, 18, 20, 21, 24, 25, 27, 28, 31).

Based on the complaint, the motions and responses, and the applicable law, the motions to dismiss are denied in part and granted in part. The following claims are dismissed with prejudice: all currently pleaded claims against Judge Christine Butts and Sherry Fox (though Johnston may amend her complaint to allege a claim under Section 1201.003 of the Texas Estate Code on Judge Butts's bond); and all claims under 42 U.S.C. § 1983 against David Dexel, Ginger Lott, GSL Care Management, LLC, and Clarinda Comstock.

The following claims are dismissed without prejudice and with leave to amend: the claims under § 1983 against Harris County; all claims for disability discrimination and retaliation under the

Americans with Disabilities Act and the Rehabilitation Act; all of the Texas state-law claims against Harris County and Clarinda Comstock; the claim for civil conspiracy to breach fiduciary duties; the claim for intentional infliction of emotional distress; the claim for wrongful death against David Dexel; and any claims that Johnston intended to assert for fraud, defamation, violation of statutory duties, or commission of "ultra vires" illegal acts.

The claim for breach of fiduciary duty is adequately pleaded as to Dexel and Lott, and may proceed. The claim for wrongful death is adequately pleaded as to Lott, and may also proceed. Any amended complaint must be filed by September 18, 2017.

The reasons for these rulings are explained in detail below.

I. Background

This factual recitation is drawn from Johnston's complaint. The well-pleaded factual allegations are taken as true for the purposes of the motions to dismiss. In 2008, Johnston and her sister, Cindy Pierce, sued their brother for conversion of Mills's property and financial assets. A June 2008 report by a court investigator found that Johnston was Mills's preferred guardian. A year later, the presiding probate judge appointed Howard Reiner as Mills's attorney ad litem and David Dexel as Mills's temporary guardian of the person and estate. The parties to that litigation signed a settlement agreement. The probate court appointed Dexel as Mills's guardian of the person on a continuing basis. Reiner was discharged as attorney ad litem.

Dexel hired Ginger Lott and GSL Care Management, LLC,[1] to manage Mills's care. Between

[1] All parties appear to treat Lott and GSL Care Management as interchangeable. Lott and GSL filed a joint motion to dismiss, and the motion does not make any effort to distinguish the two entities (one natural, one legal) from each other for liability purposes. This opinion refers to Lott and GSL collectively as "Lott."

2009 and 2012, Johnston frequently visited Mills at Silverado, the nursing home where Mills resided. In 2012, Silverado changed management. Johnston perceived a decline in the quality of Mills's care after the change. Beginning in 2012 and into 2013, Johnston complained to Dexel about her mother's care. Mills was hospitalized on several occasions with urinary tract infections during that time. Johnston complained that the infections resulted from poor medical care. Dexel refused to move Mills to a different nursing home. As a result, Johnston and Dexel's relationship deteriorated.

In May 2013, Dexel moved Mills to a different section of Silverado, for residents who required a higher level of care. According to the complaint, this section's residents had behavioral issues and were aggressive toward Mills. During the same month, Johnston's complaints about Silverado's treatment of Mills led it to ban Johnston from the premises. Johnston alleges that Dexel "worked with" Silverado to ban Johnston. In June 2013, Mills fell out of her wheelchair, breaking several bones in her right leg. Dexel discontinued Mills's physical therapy during her recuperation. Johnston alleges that this made Mills's muscle problems worse. That same month, Dexel allegedly made a "secret, *ex parte*, oral motion" (which he filed in writing with the court three days later) to have Clarinda Comstock appointed as Mills's guardian ad litem. Judge Butts, the presiding probate judge, granted this motion and instructed Comstock to investigate Mills's condition and treatment and report to the court. Dexel allegedly failed to notify both Johnston and Pierce of his intention to seek Comstock's appointment.

Mills's condition continued to deteriorate. By September 2013, she could no longer hold a cup or fork, had lost 30 to 40 pounds, and suffered from recurring urinary tract infections. Johnston continued to demand that Dexel move Mills to a different nursing home, and she threatened to ask

the court to replace Dexel. In response, Dexel filed an application to resign and to have the court appoint a successor guardian for Mills. On September 13, 2013, Dexel notified interested parties—including Johnston—of a hearing set for September 24, 2013. On September 16, 2013, Comstock filed her report about Mills's condition and treatment. Johnston alleges that the following day—one week before the hearing date—Dexel, Lott, Comstock, and Judge Butts had a "secret, *ex parte* meeting/hearing" during which Judge Butts appointed Lott as Mills's successor guardian, replacing Dexel.

In October 2013, Lott moved Mills from the Silverado nursing home to the Hampton nursing home. In December 2013, Johnston filed an emergency application for a temporary restraining order with Sherrie Fox, Judge Butts's Court Coordinator. She alleges that Mills was "dehydrated, not eating, weak, and . . . declin[ing] fast." Ten days later, Judge Butts held a status conference. Both Johnston and Pierce testified. They were able to reach an agreement with Lott, including bringing outside food into the Hampton nursing home, scheduling a regular swallow test, placing a drop camera and phone apparatus in Mills's room, and reinstating Johnston's visitation rights.

Johnston alleges that, in March 2014, Mills's doctor advised Lott that Mills needed to see a cardiologist and an endocrinologist, but Lott failed to follow the doctor's orders. Judge Butts reappointed Reiner as Mills's attorney ad litem. The following month, April 2014, Johnston texted Lott that Mills "was delirious and unresponsive with pus in her catheter" and needed to go to the emergency room immediately. Lott did not respond to Johnston's text, so she called 911. Lott allegedly told Hampton's personnel to send the paramedics away when they arrived, and called a separate ambulance. Although Lott was the only person with legal authority to sign Mills in to the hospital, Lott allegedly never went to the hospital, leaving Mills to sign herself in. During the next

month, Johnston and Pierce filed applications for guardianship, triggering Reiner's termination as attorney ad litem.

Johnston continued to investigate the Hampton's alleged mistreatment of Mills. Johnston alleges that Lott allowed Mills's caretakers to put two diapers on her, even though she had a history of urinary tract infections. She also alleges that Lott used an out-of-hospital do-not-resuscitate order to have the Hampton withhold nutrition and hydration from Mills, even though the hospital had found no swallowing problems. Unfortunately, on September 27, 2014, Mills passed away. Johnston alleges that Mills died of starvation after Lott ordered the nursing home staff to withhold food and give Mills nothing but water.

On December 19, 2016, Johnston filed this suit. She asserted 11 causes of action, which are summarized as follows:[2]

1. All defendants allegedly violated the Americans with Disabilities Act (ADA), specifically, 42 U.S.C. § 12132, 29 C.F.R. § 35.130, and 29 U.S.C. § 790 *et seq.*, through their "habit, pattern, and practice of disability discrimination."
2. All defendants allegedly violated 42 U.S.C. § 12203, the ADA provision prohibiting retaliation.
3. Dexel, Lott, Comstock, Reiner, Judge Butts, and Fox allegedly violated Johnston's

[2] In addition to the list of claims that follows, the introduction to Johnston's complaint makes a passing reference to a cause of action for fraud. However, that is the only reference to fraud; it is not identified or pleaded against any defendant at any other point in the complaint. A brief mention in an introductory paragraph, unaccompanied by detailed pleading in the body of the complaint, is not sufficient to state a claim for relief. To the extent that Johnston intended to plead a fraud claim, it is dismissed without prejudice. The complaint contains similar passing references to defamation (in the form of slander or libel), without formally asserting a cause of action for defamation or pleading facts supporting the elements of that cause of action. To the extent that Johnston intended to plead a cause of action for defamation, it too is dismissed without prejudice.

and Mills's First Amendment rights, specifically, freedom of speech and freedom of association, and therefore violated 42 U.S.C. § 1983.

4. Harris County and its agents, Dexel, Lott, Comstock, and Reiner, allegedly violated Mills's Fifth Amendment right to due process through their deliberate ignorance of necessary food, nutrition, and medical attention for Mills, and therefore violated § 1983.

5. Harris County and its agents, Dexel, Lott, Comstock, and Reiner, allegedly violated Mills's Fourteenth Amendment right to due process, and therefore violated § 1983.

6. Unspecified defendants conspired to violate unspecified persons' civil rights, in violation of 42 U.S.C. § 1985.[3]

7. Reiner, Dexel, Comstock, Lott, Judge Butts, and Fox allegedly conspired to, and did, breach their fiduciary duties to Mills.

8. All defendants allegedly intentionally inflicted severe emotional distress on both Johnston and Mills by retaliating against them and denying their right to association.

9. All defendants allegedly caused Mills's "wrongful[,] premature death" through their "wrongful [and] deliberately indifferent care or lack of care."

10. All defendants allegedly "fail[ed] to fulfill statutory duties."[4]

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[3] This cause of action is a bare heading, reading in its entirety "Seventh Cause of Action - Conspiracies to Violate Civil Rights - 42 U.S.C. § 1985." It is titled the seventh cause of action rather than the sixth because earlier in the complaint, the numbering jumped. Other than this heading, the complaint does not evince an intent to bring a claim under this statute. To the extent that Johnston intended to press a claim under § 1985, it is dismissed, without prejudice and with leave to amend, for failure to state a claim.

[4] Once again, this cause of action is a bare heading without accompanying factual allegations as to the elements of a claim. The complaint does not identify what statutory duties were breached or which defendants breached them. To the extent Johnston intended to plead a claim for the breach of some

11. Dexel, Lott, Comstock, Fox, Judge Butts, and Reiner allegedly engaged in a long list of "*ultra vires* illegal, criminal, and wrongful acts."

The defendants moved to dismiss, Johnston responded, and the defendants replied. After the motions and replies were filed, Johnston stipulated to Reiner's dismissal with prejudice and the court dismissed Reiner from the case. (Docket Entry No. 29, 30). The claims as to each remaining defendant and the grounds urged for dismissal are examined below.

II. The Legal Standard

Rule 12(b)(6) allows dismissal if a plaintiff fails "to state a claim upon which relief can be granted." In *Bell Atlantic Corp. v. Twombly*, 550 U.S. 544, 555 (2007), the Supreme Court confirmed that Rule 12(b)(6) must be read in conjunction with Rule 8(a), which requires "a short and plain statement of the claim showing that the pleader is entitled to relief," FED. R. CIV. P. 8(a)(2). To withstand a Rule 12(b)(6) motion, a complaint must contain "enough facts to state a claim to relief that is plausible on its face." *Id.* at 570; *see also Elsensohn v. St. Tammany Parish Sheriff's Office*, 530 F.3d 368, 372 (5th Cir. 2008). In *Ashcroft v. Iqbal*, 556 U.S. 662 (2009), the Supreme Court elaborated on the pleading standards discussed in *Twombly*. The Court explained that "the pleading standard Rule 8 announces does not require 'detailed factual allegations,' but it demands more than an unadorned, the-defendant-unlawfully-harmed-me accusation." *Id.* at 678 (quoting *Twombly*, 550 U.S. at 555). *Iqbal* explained that "[a] claim has facial plausibility when the plaintiff pleads factual content that allows the court to draw the reasonable inference that the defendant is liable for the misconduct alleged." *Id.* (citing *Twombly*, 550 U.S. at 556).

"[I]n deciding a motion to dismiss for failure to state a claim, courts must limit their inquiry

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unidentified statutory duty, the claim is dismissed, without prejudice and with leave to amend.

to the facts stated in the complaint and the documents either attached to or incorporated in the complaint." *Lovelace v. Software Spectrum, Inc.*, 78 F.3d 1015, 1017 (5th Cir. 1996). A court may "consider documents integral to and explicitly relied on in the complaint, that the defendant appends to his motion to dismiss, as well as the full text of documents that are partially quoted or referred to in the complaint." *In re Sec. Litig. BMC Software, Inc.*, 183 F. Supp. 2d 860, 882 (S.D. Tex. 2001) (internal quotation marks omitted). Consideration of documents attached to a defendant's motion to dismiss is limited to "documents that are referred to in the plaintiff's complaint and are central to the plaintiff's claim." *Scanlan v. Tex. A & M. Univ.*, 343 F.3d 533, 536 (5th Cir. 2003) (citing *Collins v. Morgan Stanley Dean Witter*, 224 F.3d 496, 498–99 (5th Cir. 2000). The court can also consider government documents and similar matters of public record without converting the motion into one seeking summary judgment. *See Funk v. Stryker Corp.*, 631 F.3d 777, 780 (5th Cir.2011); *Isquith v. Middle S. Utils., Inc.*, 847 F.2d 186, 193 n.3 (5th Cir. 1988) (quoting 5 WRIGHT & MILLER, FEDERAL PRACTICE AND PROCEDURE § 1366); *Jathanna v. Spring Branch Indep. Sch. Dist.*, No. CIV.A. H-12-1047, 2012 WL 6096675, at *3 (S.D. Tex. Dec. 7, 2012).

III. Analysis

A. The Claims Against Judge Butts and Sherry Fox

The claims against Judge Butts and Sherry Fox must be dismissed. Judge Butts performed the actions that form the basis of this suit in her judicial capacity. *Twilligear v. Carrell*, 148 S.W.3d 502, 505 (Tex. App.—Houston [14th Dist.] 2004) (probate judges' actions in conducting guardianship proceedings "are both judicial acts and within the jurisdiction of the probate judges by whom they are required . . . ."). She is presumptively entitled to absolute immunity for performing those acts. *Stump v. Sparkman*, 435 U.S. 349, 355–56 (1978). While there are exceptions to

absolute immunity for actions taken outside of the judicial capacity or "in the complete absence of all jurisdiction," *id.*, Johnston does not allege or argue that either of these exceptions applies. Instead, she makes two unpersuasive arguments for why Judge Butts is not entitled to immunity.

First, Johnston argues that judicial immunity does not apply to Texas statutory probate judges. She does not cite cases or any other authority to support this proposition, and the court's research did not reveal any. The ordinary test for judicial immunity is easily met here. "In the Fifth Circuit, the test is whether: '(1) the precise act complained of . . . is a normal judicial function; (2) the events involved occurred in the judge's chambers; (3) the controversy centered around a case then pending before the judge; and (4) the confrontation arose directly and immediately out of a visit to the judge in his official capacity.'" *Odonnell v. Harris Cty.*, 227 F. Supp. 3d 706, 757 (S.D. Tex. 2016), *reconsideration denied*, No. CV H-16-1414, 2017 WL 784899 (S.D. Tex. Mar. 1, 2017) (quoting *Harper v. Merckle*, 638 F.2d 848, 858 (5th Cir. 1981)). Managing a guardianship is a core judicial responsibility for a judge with jurisdiction over guardianship matters. *Twilligear*, 148 S.W.3d at 505 (applying the federal standard). Mills's case was before Judge Butts, the decisions were made in her court, and the dispute arose from those decisions. The fact that Judge Butts is a Texas statutory probate judge rather than a constitutional county judge is of no moment.

Johnston's other argument is closer to the mark but still fails, at least on the current complaint. Johnston claims that Texas waived immunity for probate judges in § 1201.003 of the Texas Estate Code. Section 1201.003 provides that a "judge is liable on the judge's bond to those damaged if damage or loss results to a guardianship or ward because of the gross neglect of the judge to use reasonable diligence in the performance of the judge's duty under this subchapter." The section creates a "a limited waiver of judicial immunity, allowing recovery for losses directly tied

to the judge's duties under" the subchapter. *James v. Underwood*, 438 S.W.3d 704, 714 (Tex. App.—Houston [1st Dist.] 2014). The subchapter imposes on probate judges a set of duties plausibly related to this case, including the "use of reasonable diligence to determine whether an appointed guardian is performing the required duties," annual inspection of the well-being of each ward, ensuring that guardians have posted solvent bonds, and the like. *Id.* The immunity waiver is limited. It applies only to actions on the judge's bond for gross neglect of the duties imposed in the subchapter, and only to the extent of the bond's value. It does not, contrary to Johnston's arguments, open judges to generalized liability for violations of other statutes or common-law duties. And Johnston did not sue under this section or assert that Judge Butts violated any of the specific statutory duties that it contains.

The claims against Judge Butts in the current complaint are dismissed with prejudice, and without leave to amend, because Judge Butts is entitled to absolute judicial immunity and amendment would be futile. However, Johnston has leave to amend her pleading to state a single claim on Judge Butts's bond under § 1201.003 for Judge Butts's alleged violations of her duties under that subchapter of the Texas Estates Code. The claim against Judge Butts must clearly and explicitly plead specific facts about Judge Butts's actions; identify the specific statutory duties that these actions violated; and clarify that Johnston seeks only to recover against, and up to the amount of, Judge Butts's bond.

Sherry Fox, Judge Butts's Court Coordinator, is entitled to derivative absolute immunity, which protects court personnel who are sued for their actions taken in the course of "assisting the judge in carrying out" the judge's judicial functions. *Mitchell v. McBryde*, 944 F.2d 229, 230–31 (5th Cir. 1991); *Norris v. Warder*, No. 3:02-CV-412-P, 2002 WL 31415920, at *2 (N.D. Tex. Oct.

21, 2002). Fox is not subject to the narrow waiver of immunity in § 1201.003, which applies only to judges and only to the extent of their bond. The claims against Fox are dismissed with prejudice, and without leave to amend, because amendment would be futile.

B. The Claims Under § 1983 and § 1985 Against the Other Defendants

"Section 1983 provides a remedy against 'any person' who, under color of state law, deprives another of rights protected by the Constitution." *Collins v. City of Harker Heights, Tex.*, 503 U.S. 115, 120 (1992). Local governments are not vicariously liable under § 1983 for their employees' or agents' violations of federal constitutional rights. It is only "when execution of a government's policy or custom, whether made by its lawmakers or by those whose edicts or acts may fairly be said to represent official policy, inflicts the injury that the government entity is responsible under § 1983." *Monell v. New York City Dept. of Soc. Servs.*, 436 U.S. 658, 691 (1978). To allege a plausible claim under § 1983 against a municipality, "a plaintiff must show that (1) an official policy (2) promulgated by the municipal policymaker (3) was the moving force behind the violation of a constitutional right." *Peterson v. City of Fort Worth*, 588 F.3d 838, 847 (5th Cir. 2009).

The § 1983 claims against the court-appointed guardians—Dexel, Lott, and Comstock—are dismissed with prejudice, and without leave to amend. Court-appointed guardians and attorneys ad litem are not state actors for purposes of § 1983. In *Polk County v. Dodson*, 454 U.S. 312 (1981), the Supreme Court held that a public defender does not act under color of state law in representing a defendant merely because he or she is a public defender rather than in private practice. The Court began by observing that "a person acts under color of state law only when exercising power 'possessed by virtue of state law and made possible only because the wrongdoer is clothed with the authority of state law.'" *Id.* at 317–18 (quoting *United States v. Classic*, 313 U.S. 299, 326 (1941)).

While the source of the attorney's paycheck was "certainly a relevant factor," the public defender did not act under color of state law simply by virtue of his position. Public defenders, unlike other state employees, have independent professional obligations to their clients, taking them out of the "state actor" category for § 1983 purposes. *Id.* at 321.

Following *Dodson*, courts have held that guardians and attorneys ad litem are not state actors merely by virtue of their appointment by courts. *Kirtley v. Rainey*, 326 F.3d 1088, 1095 (9th Cir.2003) (per curiam) (a child's appointed guardian ad litem did not act under color of state law solely by virtue of being court-appointed); *Meeker v. Kercher*, 782 F.2d 153, 155 (10th Cir.1986) (same); *Parkell v. South Carolina*, 687 F. Supp. 2d 576, 587 (D.S.C. 2009) ("Guardians ad litem are not state actors for purposes of § 1983, because they give their 'undivided loyalty to the minor, not the state.'"); *Nelson v. Kujawa*, No. 07–C–741, 2008 WL 2401260, at *2 (E.D. Wis. June 11, 2008) ("[S]tate-appointed guardians ad litem are not state actors subject to liability under 42 U.S.C. § 1983."); *Schiavo ex rel. Schindler v. Schiavo*, 358 F.Supp.2d 1161, 1164–65 (M.D. Fla.2005) ("Contrary to Plaintiffs' argument, Michael Schiavo, as court appointed guardian for Theresa Schiavo, was not acting under color of state law."); *Chrissy F. ex rel. Medley v. Miss. Dep't of Public Welfare*, 780 F. Supp. 1104, 1116 (S.D. Miss.1991), *rev'd on other grounds*, 995 F.2d 595 (5th Cir.1993). This court reached the same conclusion in *Hall v. Dixon*, No. CIV A. H 09-2611, 2010 WL 3909515, at *40 (S.D. Tex. Sept. 30, 2010), *aff'd sub nom. Hall v. Smith*, 497 F. App'x 366 (5th Cir. 2012).

Johnston does not respond to the guardian defendants' argument on this point. Because the cases clearly reject the analysis that would allow a conclusion that Dexel, Lott, or Comstock acted under color of state law, the § 1983 claims against them fail as a matter of law. These § 1983 claims

are dismissed with prejudice and without leave to amend, because amendment would be futile.

The claims against Harris County fail for a different reason. "[U]nder § 1983, local governments are responsible only for their own illegal acts. They are not vicariously liable under § 1983 for their employees' actions." *Connick v. Thompson*, 563 U.S. 51, 60 (2011). Plaintiffs seeking to impose liability on a local government under § 1983 must allege that "'action pursuant to official municipal policy' caused their injury." *Id.* The allegations must include specific facts describing the policy or custom and tying it to the constitutional violation alleged. *George*, 2012 WL 2744332, at *16. The plaintiff must identify, at minimum: (1) an official policy or custom with force of policy; (2) promulgated by a policymaker; (3) that caused the violation of a constitutional right. *Peterson*, 588 F.3d at 847.

Johnston's complaint fails because she has not plausibly alleged the existence of a policy or a custom with the force of policy, promulgated by a Harris County policymaker. The only allegation that comes close is the barebones statement that "Harris County has a habit and practice of violating the due process rights of wards in guardianship by not allowing them access to justice in the form of attending hearings at which their rights are compromised." (Docket Entry No. 10 at 33). This allegation is conclusory and, under the applicable law, clearly insufficient. "The description of a policy or custom and its relationship to the underlying constitutional violation . . . cannot be conclusory; it must contain specific facts." *Spiller v. City of Tex. City Police Dept.*, 130 F.3d 162, 167 (5th Cir.1997). Nor may a plaintiff "infer a policy 'merely because harm resulted from some interaction with a government entity,' and instead must identify the policy or custom that caused the violation." *Batiste v. Theriot*, 458 F. App'x 351, 358 (5th Cir. 2012) Johnston's complaint does not identify instances of similar conduct by Harris County actors. A single course of conduct against

the plaintiff in a particular case is generally insufficient as a matter of law to support an inference of a pattern or practice. *George*, 2012 WL 2744332, at *16. Johnston's allegation does not satisfy the requirements of the applicable law. Absent allegations of a policy or custom, a decisionmaker, and a clear causal relationship between the policy or custom and the injury that Mills suffered, Johnston's claim cannot survive a motion to dismiss. The § 1983 claim against Harris County fails as a matter of law and must be dismissed. The dismissal is without prejudice and with leave to amend.

The complaint mentions § 1985 in a heading, but does not allege any facts or legal basis for a cause of action under that statute. To the extent that the complaint alleges a claim under § 1985 at all, the claim fails. It is dismissed, without prejudice and with leave to amend.

C. The Disability-Discrimination Claims

Johnston alleges that all of the defendants engaged in illegal disability discrimination and retaliation, in violation of the Americans with Disabilities Act and § 504 of the Rehabilitation Act. Claims under these statutes are evaluated using the same framework and legal standards. *Frame v. City of Arlington*, 657 F.3d 215, 223 (5th Cir. 2011). To state a prima facie case of discrimination under either statute, the plaintiff must allege that: (1) she has a qualifying disability; (2) she was denied benefits or otherwise discriminated against; and (3) the discrimination was because of her disability. *Hale v. King*, 642 F.3d 492, 499 (5th Cir. 2011). To show discrimination on the basis of a disability, a plaintiff may either show disparate treatment—that the defendant treated her worse than a similarly situated but non-disabled person—or that the defendant failed to reasonably accommodate her disability. *Arce v. Louisiana*, 226 F. Supp. 3d 643, 651 (E.D. La. 2016). Johnston alleges that Mills was mistreated, not that the defendants failed to make reasonable requested

accommodations.

Johnston does not plead facts that, if proven, would show that the defendants' alleged mistreatment was because of Mills's disability. Failing to provide medical care to a disabled person is not enough, on its own, to allege disability discrimination. The allegations must include facts showing that the plaintiff was treated differently than other similarly situated individuals who did not have a disability. *Nottingham v. Richardson*, 499 F. App'x 368, 377 (5th Cir. 2012). Johnston has not alleged any facts that support a plausible inference that Mills was treated worse than a similarly situated non-disabled elderly person. The complaint alleges in general terms that Mills was disabled, that Mills was mistreated, and that both Johnston and Mills were mistreated in retaliation for their advocacy against that mistreatment. The complaint does not allege a plausible causal connection between Mills's disabilities and the defendants' actions. Despite the fact that the defendants raised this problem in their motions to dismiss and briefed it in detail, Johnston's response does not even mention the issue. The disability-discrimination claim fails as a matter of law. The retaliation claim fails for the same reason: Johnston has not made nonconclusory factual allegations that would plausibly support the conclusion that she and her mother were treated worse than otherwise similarly situated individuals on account of their advocacy or other protected conduct protesting actions against Mills.

The disability discrimination and retaliation claims are dismissed, without prejudice and with leave to amend.

D. The Texas State-Law Claims

1. The Immunity Defenses

The state-law claims against Harris County must be dismissed, because the Texas law on

sovereign immunity shields the County from liability. "Subject to certain exceptions, sovereign immunity protects local government entities such as Harris County from liability from state-law tort claims." *Brown v. Harris Cty., TX*, No. CIV.A. H-07-0644, 2010 WL 774138, at *13 (S.D. Tex. Mar. 2, 2010), *aff'd sub nom. Brown v. Harris Cty., Texas*, 409 F. App'x 728 (5th Cir. 2010) (citing *General Servs. Comm'n v. Little-Tex Insulation Co.*, 39 S.W.3d 591, 594 (Tex. 2001)); *see also Harris Cty. v. Sykes*, 136 S.W.3d 635, 638 (Tex. 2004). That sovereign immunity protects the State from liability even for its agents' intentional torts. TEX. CIV. PRAC. & REM. CODE § 101.057; *Taylor v. Gregg*, 36 F.3d 453, 457 (5th Cir. 1994) (per curiam), *overruled in part on other grounds by Castellano v. Fragozo*, 352 F.3d 939, 949 (5th Cir. 2003) (en banc). Johnston's argument that Texas's sovereign immunity does not protect Harris County because sovereign immunity only protects states and not their political subdivisions is contrary to well-established law. *E.g.*, *Brown*, 2010 WL 774138, at *13. Johnston does not plead or otherwise identify exceptions to the immunity doctrine that would justify liability here, and the court is not aware of any. However, out of an abundance of caution, the court will allow Johnston an opportunity to amend her complaint to allege an exception to Texas's sovereign immunity, consistent with Rule 11 of the Federal Rules of Civil Procedure. The claims against Harris County are dismissed, without prejudice and with leave to amend.

Comstock, who served as Mills's guardian ad litem, is similarly shielded from liability under Texas law. Section 1054.056 of the Texas Estate Code provides that guardians ad litem are "not liable for civil damages arising from a recommendation made or an opinion given in the capacity of guardian ad litem." There are exceptions to this immunity rule for recommendations or opinions that are "wilfully wrongful"; those given "with conscious indifference to or reckless disregard for the

safety of another"; "with malice" or "in bad faith"; or those that are "grossly negligent." *Id.* Johnston does not allege that Comstock acted outside her role as a guardian ad litem. The complaint does not make any nonconclusory factual allegation that Comstock made recommendations or gave opinions that fall into any of the immunity exceptions.

To be sure, Johnston liberally peppers the allegations with the language of purposeful impropriety. Johnston alleges that Comstock's work was "replete" with misrepresentations; "deliberately mischaracterized" Johnston's understanding of her mother's health problems with "gross exaggerations"; and attempted to "malign" Johnston. (Docket Entry No. 10 at 21). But the complaint does not allege facts sufficiently specific to make the conclusory language a basis to plead a plausible claim. The allegations lack facts from which the court could infer that Comstock acted willfully, maliciously, or with the "conscious indifference" to Mills's welfare that is required to find gross negligence. *See Burk Royalty Co. v. Walls*, 616 S.W.2d 911, 920 (Tex. 1981) (gross negligence is "that entire want of care which would raise the belief that the act or omission complained of was the result of a conscious indifference to the right or welfare of the person or persons to be affected by it."). The fact that a guardian ad litem's report contains falsehoods is not sufficient. There must be factual allegations showing that the guardian was either affirmatively aware that the statements were false or made the statements with reckless, conscious indifference to their truth. That in turn requires factual allegations what information the guardian knew and how that differed from what the guardian's report represented. The closest the complaint comes to pleading around immunity is the allegation that Comstock "never called key witnesses, such as Willie Jo Mills' primary caretaker, who would have confirmed the neglect and dangerous conditions at Silverado . . . ." (Docket Entry No. 10 at 20-21). This factual allegation may plausibly support

an inference of negligence. But Johnston does not include factual allegations that would justify an inference that Comstock was *grossly* negligent—that her failure to contact a given witness was the product of an "entire want of care" showing "conscious indifference" to Mills's well-being. *Burk Royalty Co.*, 616 S.W.2d at 920.

The Texas-law claims against Comstock are dismissed, without prejudice and with leave to amend. To survive a subsequent motion to dismiss, Johnston must plead specific facts—not labels, descriptions, or conclusions—from which the court could infer that her characterizations of Comstock's state of mind are plausible.

2. The Remaining Claims and Defendants

a. The Claims for Breach of Fiduciary Duty and Civil Conspiracy

The claims against the remaining individual defendants require more detailed evaluation. The first Texas-law cause of action charges that the only remaining individual defendants—Dexel and Lott—conspired to, and did, breach their fiduciary duties to Mills. Under Texas law, "[t]he elements of breach of fiduciary duty are (1) the existence of a fiduciary relationship, and (2) a breach of duty by the fiduciary (3) that causes damages to the client or improper benefit to the fiduciary." *First State Bank of Mesquite v. Bellinger & Dewolf, LLP*, 342 S.W.3d 142, 150 (Tex. App.—El Paso 2011, no pet.). Each defendant's arguments for dismissal are considered in turn.

Dexel argues that Johnston has not pleaded a plausible causal link between his conduct and harm to Mills. Dexel argues that the fact that he was discharged as Mills's guardian more than a year before she died means that he is not liable for her death. He insists that the fact that the court (rather than Dexel) appointed Lott as a successor guardian breaks any causal link between his acts and Mills's deterioration. These arguments are unpersuasive. Johnston's complaint, construed as a

whole and taking all factual allegations as true, plausibly alleges that before Dexel's discharge as guardian, he breached his duties to Mills by repeatedly disregarding warnings about the Silverado nursing home's alleged mistreatment of Mills and about Mills's deteriorating physical condition and by ending Mills's physical therapy. (Docket Entry No. 10 at 12-13). Johnston alleges that, as a result of Dexel's actions, Mills suffered broken bones and a rapid and preventable decline in her physical condition that left her unable to feed herself, which contributed to her malnutrition. (*Id.*). Dexel's causation argument, which focuses on events after he was discharged and on Mills's death, does not address these alleged breaches and injuries.

Dexel also argues that Johnston's failure to link her factual allegations to the elements of a claim for breach of fiduciary duty means that the complaint fails. Dexel's complaint stems from the structure of Johnston's complaint, which includes an extensive and sometimes muddled set of factual allegations as to each defendant, and in a different section, gives a conclusory recitation of the elements of the causes of action. Dexel is correct that Johnston's complaint is not a model of clear pleading. Johnston must clarify the relationship between her factual allegations and the elements of the causes of action she asserts in any future amended complaint. In each cause of action, Johnston should state the specific factual allegations she believes support a given element of her claim. Johnston's current approach requires the defendants and the court to sift through her lengthy complaint looking for factual allegations to map onto the elements of a cause of action. This violates the requirement that a complaint provide a short, plain, and clear statement of the claim. Nonetheless, under applicable law, the court must "view[] the complaint as a whole, rather than any one statement in isolation." *Causey v. Sewell Cadillac–Chevrolet, Inc.*, 394 F.3d 285, 289 (5th Cir. 2004). The court has already explained why, viewed as a whole, the complaint states a breach of

fiduciary duty claim against Dexel.

Finally, Dexel claims that self-dealing is a critical part of a claim for breach of fiduciary duty. He argues that a plaintiff must plausibly allege that the fiduciary personally benefitted from the breaches of his or her duties. In support, he cites *Kimleco Petroleum, Inc. v. Morrison & Shelton*, 91 S.W.3d 921, 923 (Tex. App.—Fort Worth 2003, pet. denied). That case does state the proposition that an improper benefit is part of a breach of fiduciary duty claim. But this does not appear to be the general rule in Texas cases. Instead, the persuasive weight of authority is that *either* an injury to the party to whom the fiduciary duties are owed *or* an improper benefit to the fiduciary is sufficient to state a claim. *E.g.*, *Anderton v. Cawley*, 378 S.W.3d 38, 51 (Tex. App.—Dallas 2012, no pet.); *PAS, Inc. v. Engel*, 350 S.W.3d 602, 610 (Tex. App.—Houston [14th Dist.] 2011, no pet.); *Jones v. Blume*, 196 S.W.3d 440, 447 (Tex. App.—Dallas 2006, pet. denied).

Kimleco's discussion focuses on claims against attorneys. The court drew a line between legal malpractice claims and breach of fiduciary duty claims against an attorney by pointing to self-dealing as an important distinguishing feature. Other cases that recite propositions similar to *Kimleco* similarly focus on "the attorney-client context . . . ." *E.g.*, *Neese v. Lyon*, 479 S.W.3d 368, 386 (Tex. App.—Dallas 2015, no pet.). It is interesting to note that, even though *Neese* states that "a fiduciary-duty claim focuses on whether the attorney's conduct involved his or her integrity and fidelity, *and whether the attorney obtained an improper benefit from representing the client*," the case's statement of the elements acknowledges that "injury to the plaintiff" is sufficient to make out a claim. *Id.* Texas law does not appear to require an improper benefit to the fiduciary to state a claim that the fiduciary breached his duties. Johnston has adequately pleaded an injury to Mills. Dexel's arguments fail.

Lott advances several arguments. First, she argues that issue preclusion bars Johnston's claim for breach of fiduciary duty. Lott points to the order discharging her from service as Mills's guardian. The probate court found that Lott had fulfilled her duties in good faith and made decisions based on proper medical advice, and stated that Lott should be discharged from her duties with no further liability. (Docket Entry No. 24-1). Issue preclusion is an affirmative defense on which Lott bears the burden. Issue preclusion, or collateral estoppel, bars

> . . . a party from litigating an issue already raised in an earlier action between the same parties only if: (1) the issue at stake is identical to the one involved in the earlier action; (2) the issue was actually litigated in the prior action; and (3) the determination of the issue in the prior action was a necessary part of the judgment in that action.

Petro–Hunt, L.L.C. v. United States, 365 F.3d 385, 397 (5th Cir. 2004) (footnotes and citation omitted). "Collateral estoppel does not preclude litigation of an issue unless both the facts and the legal standard used to assess them are the same in both proceedings." *Copeland v. Merrill Lynch & Co., Inc.*, 47 F.3d 1415, 1422 (5th Cir.1995) (citation omitted). Lott provides neither argument nor authority explaining why the probate court's discharge order satisfies these conditions. It is not clear whether Johnston was a party to the prior proceeding in the relevant sense ("an earlier action between the same parties"). Lott has not demonstrated that the issue of whether she executed her duties in good faith involved the same issues, facts, or legal standard as the present action. Nor has she shown that the issue was actually litigated in the probate court or that it was necessary to the order discharging her as Mills's guardian. Lott is free to reurge this argument at a later stage in the proceedings. And Dexel, to the extent that he believes that his own discharge order has a preclusive effect here, may also raise this defense at a later stage in the proceedings. The present record, however, does not justify dismissing the claims against either Lott or Dexel on the basis of

preclusion.

Lott next argues that the complaint does not adequately allege a causal link between her actions as guardian and the harms Mills allegedly suffered during Lott's guardianship. This argument is unpersuasive. The complaint alleges that Lott disregarded medical advice that she take steps to see that Mills received certain care; obstructed Johnston's efforts to get Mills emergency care during a medical crisis; disregarded evidence that the Hamptons nursing home was neglecting Mills's medical needs; and inappropriately relied on a do-not-resuscitate order to withhold food from Mills, contributing to her death. (Docket Entry No. 10 at 17-19). These allegations state a claim for a breach of fiduciary duty. The breach of fiduciary duty claim against Lott may proceed.

Johnston also alleges civil-conspiracy liability for these breaches of fiduciary duty. "A civil conspiracy is a combination of two or more persons to accomplish an unlawful purpose or to accomplish a lawful purpose by unlawful means." *Goldstein v. Mortenson*, 113 S.W.3d 769, 778-79 (Tex.App.—Austin 2003, no pet.) (citing *Massey v. Armco Steel Co.*, 652 S.W.2d 932, 934 (Tex.1983)); *see also Schlumberger Well Surveying Corp. v. Nortex Oil & Gas Corp.*, 435 S.W.2d 854, 856 (Tex.1968). A civil conspiracy claim involves two or more persons, who agreed on an object to be accomplished or a course of action; the commission of one or more unlawful, overt acts; and damages as the proximate result. *Juhl v. Airington*, 936 S.W.2d 640, 644 (Tex. 1996) (quoting *Massey*, 652 S.W.2d at 934). "Once a conspiracy is proven, each co-conspirator 'is responsible for all acts done by any of the conspirators in furtherance of the unlawful combination.'" *Carroll v. Timmers Chevrolet*, 592 S.W.2d 922, 926 (Tex.1979) (quoting *State v. Standard Oil Co.*, 130 Tex. 313, 329, 107 S.W.2d 550, 559 (1937)). "[C]ivil conspiracy requires specific intent. For a civil conspiracy to arise, the parties must be aware of the harm or wrongful conduct at the inception of

the combination or agreement." *Triplex Commc'ns, Inc. v. Riley*, 900 S.W.2d 716, 719 (Tex. 1995). A common intent to accomplish a given goal, plus a tort in furtherance of that goal, are not enough. The parties must have agreed to accomplish an unlawful goal or to accomplish a lawful goal by unlawful means. *Juhl*, 936 S.W.2d at 644.

The conspiracy allegations fail. Even assuming that the other elements are met, Johnston has not adequately alleged the required agreement, or meeting of the minds. Johnston's only factual allegation on this point is that, on September 17, 2013, Dexel, Lott, Comstock, and Judge Butts had a "secret, *ex parte* meeting/hearing . . . in which Judge Butts appointed Lott as successor guardian to Dexel . . . ." (Docket Entry No. 10 at 14, 17). This is far from a factual allegation that those present at that meeting reached an agreement to deny Mills proper medical care and hasten her death. Nor is it a basis from which the court could infer such an agreement. The claim for conspiracy to breach fiduciary duties is dismissed, without prejudice and with leave to amend. To survive a subsequent motion to dismiss, Johnston must allege specific facts that, if proven, would support a plausible inference that the defendants entered into an agreement with the specific intent to pursue an unlawful goal or to unlawfully pursue a lawful goal relating to Mills's care.

b. The Claim For Intentional Infliction of Emotional Distress

To recover damages for intentional infliction of emotional distress, a plaintiff must plead factual allegations showing that: (1) the defendant acted intentionally or recklessly; (2) the defendant's conduct was extreme and outrageous; (3) the defendants actions caused the plaintiff emotional distress; and (4) the resulting emotional distress was severe. Extreme and outrageous conduct is conduct "'so outrageous in character, and so extreme in degree, as to go beyond all possible bounds of decency, and to be regarded as atrocious, and utterly intolerable in a civilized

community.'" *Twyman v. Twyman*, 855 S.W.2d 619, 621 (Tex.1993). "Generally, liability for intentional infliction of emotional distress has only been found in those cases in which a recitation of the facts to an average member of the community would lead him to exclaim, 'Outrageous!'" *Foye v. Montes*, 9 S.W.3d 436, 440 (Tex. App.—Houston [14th Dist.] 1999). "The mere fact that a defendant's conduct is tortious or otherwise wrongful does not, standing alone, necessarily render it 'extreme and outrageous.'" *Bradford v. Vento*, 48 S.W.3d 749, 758 (Tex. 2001). Whether a defendant's conduct is "extreme and outrageous" is a matter of law for the court to decide. *Id.*; *see also Brewerton v. Dalrymple*, 997 S.W.2d 212, 216 (Tex. 1999).

The defendants argue that the complaint allegations do not describe behavior that any civilized person would regard as "outrageous" or "beyond all possible bounds of decency." Therefore, they say, Johnston has not adequately alleged a claim for intentional infliction of emotional distress. Johnston did not respond to this argument. Her response to the motions to dismiss does not address her intentional infliction of emotional distress claim at all. Johnston appears to have abandoned the claim. *Black v. N. Panola Sch. Dist.*, 461 F.3d 584, 588 n.1 (5th Cir. 2006). Even assuming that Johnston still intends to press the claim, the defendants' argument is persuasive. The allegations against the defendants, taken as true, clearly allege tortious and blameworthy acts. But that is not "extreme and outrageous." The complaint does not allege the level of depraved or heinous conduct necessary to impose liability for intentional infliction of emotional distress. The claim is dismissed, without prejudice and with leave to amend.

c. The Wrongful Death Claim

"In a wrongful death action" under Texas law, "a plaintiff must show (1) wrongful or negligent conduct of the defendant, and (2) the proximate cause resulting in death." *Schippers v.*

Mazak Properties, Inc., 350 S.W.3d 294, 298 (Tex. App.—San Antonio 2011). The defendants' arguments focus on causation.

Dexel argues that the complaint does not allege proximate cause for two reasons: because he was discharged over a year prior to Mills's death, and because the complaint affirmatively alleges that it was Lott who caused Mills's death by improperly relying on a do-not-resuscitate order to prevent medical personnel from feeding Mills, causing her to starve to death. Johnston's brief response—unaccompanied by additional argument or authority—is that she does not allege "that Dexel, himself, starved Mills to death—he simply recruited Lott to slide into his place and let her take over." (Docket Entry No. 25 at 24).

Texas law supports Dexel's argument. "Even where a defendant's actions would be considered a substantial factor and a but-for cause of harm, the defendant may be relieved of liability where there is a 'superseding cause'—a third party or a force that is beyond the defendant's anticipation or control, which intervenes and destroys the causative chain between the defendant and the harm." *Walters v. Allways Auto Grp., Ltd.*, 484 S.W.3d 219, 22-26 (Tex. App.—Corpus Christi 2016). An intervening tort by a third party is typically such a superseding cause. The critical inquiry is whether the third party's actions were foreseeable. *E.g.*, *Davis-Lynch, Inc. v. Asgard Techs., LLC*, 472 S.W.3d 50, 64 (Tex. App.—Houston [14th Dist.] 2015), *reh'g overruled* (Aug. 27, 2015); *Dyess v. Harris*, 321 S.W.3d 9, 14 (Tex. App.—Houston [1st Dist.] 2009).

Johnston's argument that there is no superseding cause because Lott simply continued Dexel's neglect is undermined by her complaint allegations. Johnston repeatedly, explicitly, and affirmatively alleges that Mills died because Lott denied her food, causing her to starve to death. (Docket Entry No. 10 at 18-19; 38; 40; 46-47). There is no allegation, much less a well-pleaded and

plausible allegation, that Lott's alleged action was a continuation of Dexel's alleged misconduct that was foreseeable to Dexel. The wrongful death claim against Dexel is dismissed, without prejudice and with leave to amend. To survive a subsequent motion to dismiss, the amended complaint must allege specific facts about what Dexel knew about Lott or the circumstances that would make Lott's decision, months later, to withhold food foreseeable to Dexel.

Lott similarly argues that the complaint does not plausibly allege that she proximately caused Mills's death. This argument is unpersuasive given the complaint's repeated, specific, and detailed allegations that Mills's death was a direct result of Lott's decision to deny Mills food. (Docket Entry No. 10 at 18-19; 38; 40; 46-47). That is a factual allegation, not a legal conclusion. On a motion to dismiss, it must be taken as true. Lott's causation argument fails.

Lott also advances what appears to be a limitations argument. She argues that, when "a decedent's own cause of action was barred by governmental immunity, or statute, or release, or res judicata, or any other affirmative defense, there is no wrongful death action to accrue," and urges that the wrongful death claim against her must be dismissed. (Docket Entry No. 24 at 18). If Lott is arguing that the order discharging her as guardian is preclusive as to the wrongful death claim, that argument fails for the reasons Lott's similar preclusion argument addressed earlier failed. If Lott is arguing that Mills could not have sued her, the basis for that argument is unclear at best. Second, citing the Texas medical malpractice statute, Lott argues that the wrongful-death cause of action accrued at the time of the alleged tortious conduct, not when Mills died. As a result, Lott argues, the claim is untimely because it was filed more than two years after Lott allegedly began denying Mills food. This argument is also unpersuasive. Lott cites § 73.251 of the Texas Civil Practice & Remedies Code, but this statute applies only to tort claims against healthcare providers and related

professionals. The statute does not purport to apply to tort claims against guardians. The wrongful-death claim that Johnston asserts accrued on the date Mills died—September 27, 2014—and was filed in Texas state court exactly two years later—September 27, 2016. The claim is timely under Texas law. *Union Carbide Corp. v. Synatzske*, 438 S.W.3d 39, 63 (Tex. 2014) (the statute of limitations for wrongful death actions is two years).

The wrongful death claim against Lott is adequately pleaded and can proceed.

d. "Ultra Vires" Acts

The final heading in Johnston's complaint is "*Ultra Vires* Illegal, Criminal, and Wrongful Acts." (Docket Entry No. 10 at 46). The heading is followed by two and a half pages of vague allegations that the defendants' actions amounted to: criminal injury to the elderly; unauthorized practice of medicine and pharmacy; and criminal recklessness. The complaint does not allege any specifics as to the statutes or regulations that the defendants' conduct violated, identify any private causes of action stemming from the asserted violations, identify the elements of any causes of action, or plead specific facts plausibly alleging a cause of action. To the extent that Johnston intended to assert any specific cause of action against a particular defendant in this section, the claim is dismissed for failure to state a claim. The dismissal is without prejudice and with leave to amend.

IV. Conclusion

For the reasons stated in this opinion, the defendants' motions to dismiss are granted in part and denied in part. The following claims are dismissed with prejudice:

- all claims against Judge Christine Butts and Sherry Fox (save that Johnston may amend her complaint to allege a claim under Section 1201.003 of the Texas Estate Code on Judge Butts's bond);

- all claims under 42 U.S.C. § 1983 against David Dexel, Ginger Lott, GSL Care Management, LLC, and Clarinda Comstock.

The following claims are dismissed without prejudice and with leave to amend:

- the claims under § 1983 against Harris County;
- the claims for disability discrimination and retaliation under the Americans with Disabilities Act and the Rehabilitation Act;
- all of the Texas-law claims against Harris County and Clarinda Comstock;
- the claim for civil conspiracy to breach fiduciary duties;
- the claim for intentional infliction of emotional distress;
- the claim for wrongful death against David Dexel; and
- any claims that Johnston intended to assert for fraud, defamation, violation of statutory duties, or commission of "ultra vires" illegal acts.

The claim for breach of fiduciary duty is adequately pleaded as to Dexel and Lott, and may proceed. The claim for wrongful death is adequately pleaded as to Lott, and may also proceed.

Any amended complaint must be filed by **September 18, 2017.**

SIGNED on August 18, 2017, at Houston, Texas.

Lee H. Rosenthal
Chief United States District Judge

THE UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF TEXAS
HOUSTON DIVISION

BARBARA LATHAM, Individually	§	
And as Durable / Medical Power of	§	
Attorney and Health Care Surrogate for	§	
MURIEL MINTZ, and MURIEL MINTZ	§	
Individually	§	
	§	
VS.	§	
	§	… No. _____
	§	
JUDGE MIKE WOOD, Individually and	§	
Official Capacity as Statutory Probate	§	
Judge of Harris County, HARRIS COUNTY	§	
MICHELE GOLDBERG, Individually & Officially	§	
STACY KELLY, TERESA PITRE,	§	
Individually & Officially, DONALD MINTZ &	§	
HOUSTON HOSPICE	§	

ORDER GRANTING PLAINTIFFS' EMERGENCY MOTION FOR TEMPORARY RESTRAINING ORDER, SETTING PRELIMINARY INJUNCTION HEARING

On the ____ day of December, 2017, the Court came to consider PLAINTIFFS' EMERGENCY MOTION FOR TEMPORARY RESTRAINING ORDER (TRO), SETTING PRELIMINARY INJUNCTION HEARING. Based upon the sworn testimony provided, exhibits, and documentary evidence and any response thereto, the Court finds that such MOTION FOR TRO has MERIT and should be GRANTED to save the life of MURIAL MINTZ.

The Court further ORDERS that PLAINTIFFS' MOTION FOR PRELIMINARY INJUNCTION be set for the _____ day of _____, 2017 at _____ at the following address: _____.

The Court hereby ORDERS that PLAINTIFF be GRANTED AN EMERGENCY TEMPORARY RESTRAINING ORDER AGAINST the named defendants herein and nay

persons acting in concert with them and rules that DEFENDANTS are immediately:

1. ENJOINED from being within 200 years of BARBARA LATHAM, MURIEL MINTZ or the residence they reside;

2. ENJOINED from depriving MURIEL MINTZ of food, water, hydration, adequate medical care, critical medication, or necessary medical curative care;

3. ENJOINED from the administration of dangerous sedating drugs or opiates commonly used in hospice which pose a risk of bodily injury,

4. ENJOINED from further deprivations of privileges and immunities guaranteed to MURIEL MINTZ AND BARBARA LATHAM by Articles I and V of the Texas Constitution, ADA and ADAAA, 42 U.S.C. 12101, Section 504 of the Rehabilitation Act of 1973, 29 USC 794, 42 USC 1983, the 1st, 4th, 5th, 6th, 7th, 8th, and/or 14th Amendments of the United States Constitution, or any State or Federal law granting MURIEL rights of protection against deprivations of right, abuse, neglect, or exploitation;

5. MANDATING that GOLDBERG return all funds she seized from MURIEL MINTZ, BARBARA LATHAM, THE MINTZ FAMILY TRUST, or any account in connection with this case;

6. MANDATING DEFENDANTS cease and desist from taking any property that belongs to BARBARA LATHAM, MURIEL MINTZ or the MURIEL L . MINTZ FAMLY TRUST;

7. MANDATING that DEFENDANTS immediately remove all encumbrances placed on any account of BARBARA LATHAM, MURIEL MINTZ OR THE MINTZ FAMILY TRUST, irrespective of fiduciary designations;

8. DECLARING ALL ORDERS issued in the guardianship of MURIEL MINTZ NULL AND VOID AND ENJOINING ENFORCEMENT;

9. MANDATING DEFENDANTS return any and all funds seized or taken from BARBARA LATHAM, MURIEL MINTZ, THE MINTZ FAMILY TRUST or any account associated with the foregoing; returning such funds to the accounts they were taken from;

10. MANDATING DEFENDANTS CEASE AND DESIST from efforts and/or attempts to contact or communicate with MURIEL MINTZ OR BARBARA LATHAM by phone, email, text message, mail or any other means, including through a third party;

11. MANDATING HOUSTON HOSPICE IMMEDIATELY RELEASE MURIEL MINTZ TO BARBARA LATHAM, durable and medical power of attorney, health care surrogate, and guardian in the event of need and *comply with any directive by LATHAM* regarding transport of her mother to a hospital for emergency medical care;

12. MANDATING THAT DEFENDANTS REMOVE ANY AND ALL HOLDS OR INJUNCTIONS upon the funds of BARBARA LATHAM OR MURIEL MINTZ as well as the MURIEL MINTZ FAMILY TRUST AND CEASE AND DESIST FROM ATTEMPTS TO ENCUMBER THE SAME;

13. ENJOINED from any and all attempts to place holds upon, freeze or seize assets belonging to BARBARA LATHAM OR MURIEL MINTZ.

14. ENJOINED from taking any trust funds from any account wherever found;

15. MANDATING that GOLDBERG return all funds she seized from MURIEL MINTZ, BARBARA LATHAM, THE MINTZ FAMILY TRUST, or any account in connection with this case;

16. MANDATING DEFENDANTS cease and desist from taking any property believed to belong to BARBARA LATHAM OR MURIEL MINTZ or the MURIEL L . MINTZ FAMLY TRUST;

17. MANDATING that DEFENDANTS immediately remove all encumbrances placed on any financial account of BARBARA LATHAM, MURIEL MINTZ OR THE MINTZ FAMILY TRUST, irrespective of further fiduciary designations;

18. DECLARING ALL ORDERS issued in the guardianship of MURIEL MINTZ NULL AND VOID; ENJOINEDTHEIR ENFORCEMENT;

19. MANDATING DEFENDANTS CEASE AND DESIST from efforts and/or attempts to contact or communicate with MURIEL MINTZ OR BARBARA LATHAM by phone, email, text message, mail or any other means, including through a third party;

20. ORDERING AN EMERGENCY HEARING BE SET ON PLAINTIFFS' PRELIMINARY INJUNCTION TO REVIEW ALL ISSUES IN THIS MATTER TO BE SET ON THE _____ DAY OF _____, 2017.

_____
PRESIDING JUDGE