

76 Park Ave. Ext.
Arlington, MA 02474
June 1, 2009

Rep. Edward Markey
5 High St, Ste. 101
Medford District Office
Medford, MA 02155

Re: Elder Abuse by Court Appointed Guardians and Home Health Care Agencies, and Pending Legislation

Dear Rep. Markey:

I am writing to you and other representatives to ask for your support to help confront a national epidemic of elder abuse and financial exploitation against some of our most vulnerable citizens such as my mother and to address problems in adult guardianships that provide an opportunity for abuse and exploitation.

“It was once said that the moral test of government is how that government treats those who are in the shadows of life, the sick, the needy and the handicapped (Hubert Humphrey).” How will we be measured if we cannot do more to protect our elderly and vulnerable citizens?

Too often our Judicial System and Protective Agencies established to protect victims of abuse fail to do so and cases have been known to be passed off to the guardianship systems in Probate or similar Courts instead of being dealt with, as in my mother’s situation.

In guardianships, professional guardians, who can be predatory in their case acquisition and retention, take control of a person’s life leaving victims and their families, who desire alternative family-based solutions, at either the mercy of a fee-for-service professional or faced with the exorbitant financial and emotional cost of a legal battle, as in my mother’s situation.

Willing and capable family members are often removed from consideration due to unproven accusations, innuendos and insinuations. These calculated strategies are designed and used to denigrate and deny family guardianships in lieu of the “professionals” seeking to profiteer from an elderly person’s loss of liberty and rights. We have been subjected to such “calculated strategies.”

Instead of objective due diligence, subjective attorney input is a routine criteria used by judges in guardianships to appoint a stranger to take control of an elderly person’s life – of course, at the expense of that elderly person. **Family members quickly learn not to speak out for fear of losing the right to even visit their loved one when they are most vulnerable.** We have been so threatened by the “guardian” Lisa Cukier/Burns & Levinson.

Citizens declared “incapacitated” in this living probate system can lose all of their civil rights and liberties and end up with less rights than death row prisoners. Health Care Agents or fiduciaries designated by an elderly person in documents they prepared are often cast aside or simply ignored and cases exist where Living trusts and similar instruments, once thought impenetrable, are broken making room for the fee-for-service professionals/attorneys **in a system with little if any checks and balances.**

There appears to be too little concern about the high cost of guardianship to a ward. Cases exist in which an elderly individual with significant assets appears to have been targeted for guardianship based primarily on their ability to pay. After all, when the money runs out, the American Taxpayers will pick up

the tab for Medicaid, Social Security dollars and other applicable tax-payer funded programs. This appears to be the mind set of “guardian” Lisa Cukier/Burns & Levinson as indicated to us in word and deed.

Most family and friends find fighting for their loved one cost prohibitive and those who do try end up in a legal battle which becomes a prolonged life-altering ordeal, expensive on both financial and emotional fronts and usually ending only when one side’s money runs out.

There seems to be separate rules for private citizen guardians and professional fee-for-service guardians. Private guardians usually cannot withdraw from a guardianship appointment, many courts require a family member to hire an attorney even when a ward has no money, and getting bonded can be costly if possible at all. In recent cases attorneys have been know to come after the personal assets of a family guardian for payment of their fees after the ward’s money runs out contrary to Guardianship Protection Statutes. This adds further emotional and financial cost of lending a helping hand to a loved one in need.

Guardianship cases can be hostile and torturous for family and friends; they can result in abuse of an elderly victim and all too often become home to unscrupulous attorneys, unethical professional guardians, and uncaring judges. Documentation pertaining to these issues has been provided under separate cover.

There is absolutely no excuse (regardless of how or why a guardianship petition is filed) for it to take a battery of lawyers and guardians (all paid from the estate of the ward) and months if not years for a matter to be resolved. Sometimes it seems that the number of fee-for-service professionals involved is directly proportional to the value of an incapacitated person’s estate. One only needs to look at prominent cases like the Astor case in New York, the Glasser case, the Anna Nichole case, the Judge Philips case and many other cases to draw this conclusion.

This country was based in part on the concepts of individual liberty and property rights. Guardianships can destroy not only these freedoms, but also the spirit in which they were established. For all of these reasons and more we need:

- A Family Members’ Bill of Rights ensuring family members a “seat at the table” and a voice for their loved ones as they age and become vulnerable.
- A functional, federally-based guardianship system that includes national oversight, legislation and accountability with proper checks and balances.
- National reform that ensures justice and reduces the cost of giving a “helping hand” to family, friend or neighbor.

Legislation is presently before the House or the Senate that will address many of the problems with Elder Abuse and Victimization. These Bills include:

- The Elder Abuse Victims Act – H.R. 448,
- The Elder Justice Act – S. 795 and H.R. 2006, and
- The Community Choice Act – S. 683 or H.R. 1670.

Additionally, such states as Massachusetts have legislation presently before its House of Representatives and Senate that will address certain problems with Elder Abuse and Victimization, such as:

- Ⓢ An Act Relative to Establishing MultiDisciplinary Teams With District Attorneys To Investigate Elder Abuse – House No. 542, and
- Ⓢ An Act Relative to In-Home Personal Care Service Agencies – Senate No.68.

I ask you to not only support the applicable legislation but also to recognize that amendments or additional legislation is needed to:

- 1) **INSIST ON** – accountability and reform of failing Adult Protective Agencies before they get more funding and send more people into guardianship courts where they can be exploited and abused.
- 2) **INSIST ON** – a national investigation of the state conservatorship and guardianship laws analyzing their effectiveness and failures in a comprehensive study that includes input from victims and family members. Insist that this study results in legislative reform driven by the people, for the people and not driven only by the stakeholders.
- 3) **INSIST ON – guardianships that put family first in line as guardians – and that EVERY STATE** have a mandate in its guardianship statutes clearly stating that when family and friends are willing and able to help a loved one and when there is no legal basis (documented and proven on the record which the family member can defend against) for denying them the opportunity to do so that a person in need shall **NEVER** be declared incapacitated and forced into guardianship. If safeguards are needed, institute the safeguards but do not take away these dear people’s rights and further perpetrate their destruction by taking them from their families.
- 4) **INSIST ON** – a support system that encourages and helps the elderly stay in their home with loved ones, that keeps families connected and that supports the family petitioner and guardians with proper legal and educational support.

If we do not do something today to stop this travesty in America, then tomorrow when we are old and weak, we will reap the benefits of our inaction when any one of us could become a victim of this national shame. TODAY IS THE TIME FOR CHANGE. Please help us make the change we seek a reality.

Sincerely,

Sharyn Eklund

cc: Senator Edward Kennedy
State Rep. Jay Kaufman
State Rep. Bruce Ayers