

# GATEKEEPER

Gatekeepers are people who come into contact with elders and other vulnerable adults through their jobs and everyday activities. They are crucial eyes and ears in our community, a vital means of finding those most at risk of abuse.

## March 2010

Dear Gatekeeper Readers:

The Elder Abuse Prevention program (EAP) thanks you for reading and contributing to Gatekeeper eNewsletter. We hope you find the topics and resources listed here useful in your work. Please feel free to contact us with any suggestions or feedback you have as we continue our efforts to improve the quality, usability, and pertinence of Gatekeeper.

Sincerely,

*Talitha Guinn*  
Elder Abuse Services Manager

*Mary Grant*  
Institute on Aging (IOA) Volunteer

## Dispatches from the Field

### Elder Abuse Prevention Program (EAP)

#### Train the Trainer - Seniors

Last year the EAP developed and hosted a hands-on elder abuse training for volunteer educators. This year we plan to do the same thing, only this time we are looking to train seniors who are interested in partnering with us to provide elder abuse education at senior centers as a part of our May Elder Abuse Prevention Month activities. If you or someone you know would like to participate, contact Talitha Guinn [tguinn@ioaging.org](mailto:tguinn@ioaging.org) or (415) 750-4180 ext. 222



**FREE trainings on elder abuse prevention!** We tell seniors that if it sounds too good to be true, it probably is...but not in this case! The Elder Abuse Prevention Program offers FREE trainings on the topic of elder abuse and mandated reporting AND we can come to you. Wouldn't a training be a great way to bolster your May Elder Abuse Prevention Month activities or your June 15th World Elder Abuse Awareness Day advocacy efforts? We think so! We will tailor our presentation to the needs of your staff, team, or community. Call or email the EAP today to calendar your event. (415) 750-4180 ext. 222 or [tguinn@ioaging.org](mailto:tguinn@ioaging.org)

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### Gatekeeper Submissions

Gatekeeper eNewsletter is published quarterly by Institute on Aging, Elder Abuse Prevention Program.

Want to include your event in our next publication?

Contact us:

[eap@ioaging.org](mailto:eap@ioaging.org)  
(415) 750-4180 ext. 222

## In The News



### **San Francisco Elder Law Attorney Prescott Cole Honored by California Lawyer**

Prescott Cole, Esq., California Advocates for Nursing Home Reform Senior Staff Attorney, was selected by California Lawyer as a 2010 Clay award recipient and Lawyer of the Year for spearheading the Reverse

Mortgage Elder Protection Act; "landmark state legislation that helps protect elderly consumers who are contemplating reverse mortgages from being bilked by aggressive and abusive marketing tactics." Please join us in congratulating Mr. Cole, one of the hardest working attorneys in the field of elder law, for this well deserved recognition. [Read the Article](http://canhr.org)  
<http://canhr.org>

### **Man Sentenced to Six Years in State Prison for Defrauding 86-Year-Old Woman**

San Francisco District Attorney Kamala D. Harris announced that John McTaggart, age 46, was sentenced to six years in state prison on a felony charge of first-degree burglary for his role in stealing \$140,000 from an 86-year-old San Francisco woman as part of an annuity scam. The first-degree burglary conviction is considered a "strike" under California's three-strikes law.



[Read the Article](#) and [Press Release](#)

### **Follow up on the Brooke Astor case - Astor's Son Sentenced**

The late Brooke Astor's son, Anthony D. Marshall, 85, was recently sentenced to one to three years in prison after being found guilty of first-degree grand larceny for altering her will to steal millions of dollars from her estate. One of Mrs. Astor's attorneys was also convicted of the same charge. Both posted personal bonds and remain free pending appeal. Mrs. Astor died of dementia in 2007 at the age of 105. [Read the Article](#)

This is a clear case of elder financial abuse; however, no elder abuse charges were filed. The elder Justice Act seeks to remedy many of the barriers to achieving elder abuse prosecutions. Want to learn more? Follow this link: <http://elderjusticenow.org/>

Ms. Astor's grandson will be speaking locally. See the Calendar of Events section for more information or [Click Here](#).

### **Predatory Lending**

Giuseppa Bagnarol of Redwood City was 82 years of age when she died of dementia in August of last year. Predatory lenders succeeded in selling her a series of loans in her final days that eventually resulted in foreclosure of the property consisting of three homes on sprawling acreage situated near one another where children and grandchildren also live. Mrs. Bagnarol's daughter has filed several lawsuits against Myriad Lenders. Wells Fargo Bank is working with the family to bring mortgage

payments up to date. AARP notes that 70% of senior citizens nationwide have been solicited to take out new mortgages. [Read the Article](#)

## Fraud and Scam Alerts

### **Elderly Man Duped Into Work-at-home Scheme**

**7 on Your Side - ABC 7 - KGO TV**

**By Michael Finney**

**January 25, 2010**

*Text provided by ABCLocal website*

With unemployment at its highest level in decades, many people are tempted by work-at-home offers. But these offers are likely to cost you more than you'll ever earn. If any prospective employer requires you to give money before (or after) you begin work and if anyone claims you'll get rich fast, beware! Unfortunately for one elderly gentleman, a work-at-home job cost him much of his life savings. [Read the Article](#)



## Scam Alerts from Scamnot.org

### **Google Warns of Scam Ads**

A new scam has been detected that uses Google's name in a get-rich-quick scheme.

"Making easy money with Google" has been circulating for some time, and in the last few weeks a new wave of such scams has emerged using Google's reputation to sell "working-from-home" kits that claim Google is hiring people. Misleading ads try to take advantage of consumers in the midst of a difficult economy. Thousands of people have been tricked into sending payment information, and are being charged hidden fees by questionable operators.

[Read the Article](#)

### **FDA Warns Public of Continued Extortion Scam by FDA Impersonators**

The U.S. Food and Drug Administration is warning the public about criminals posing as FDA special agents and other law enforcement personnel as part of an international extortion scam.

The criminals call the victims who in most cases previously purchased drugs over the Internet or via "telepharmacies," and who identify themselves as FDA special agents or other law enforcement officials. The criminals inform the victims that purchasing drugs over the Internet or the telephone is illegal, and law enforcement action will be pursued unless a fine or fee ranging from \$100 to \$250,000 is paid. Anyone receiving a telephone call from a person purporting to be an FDA or other law enforcement official who is seeking money to settle a law enforcement action for the purchase of drugs over the Internet should refuse the demand and call the FDA's Office of Criminal Investigations Metro Washington Field Office at (800) 521-5783 to report the crime. [Read the Article](#)



## Spotlight

### **Reverse Mortgage Abuse Study**

Reverse mortgages have become popular financial tools in the current economy, and were specifically designed by Congress to serve our senior population by enabling elders to remain at home while converting their equity into cash. However, since many profit sources have dried up, many of the same lenders who were at least partly responsible for the current economic downturn have turned to reverse mortgages as a new source for generating large fees. Reverse mortgages are complex and while counseling is mandatory for all federally insured reverse mortgages, few states require full disclosure on all reverse mortgage programs.

The National Consumer Law Center has just published an important study highlighting lender financial abuse in the senior citizen sector of the mortgage industry. Find out more about the study, titled *Subprime Revisited: How Reverse Mortgage Lenders Put Older Homeowners' Equity at Risk*, by Tara Twomey and Rick Jurgens. [Read More](#)

### **Brain Research on Fraud Susceptibility - University of Iowa Study**

Researchers have presented three studies testing the theory that normal older adults have defective reasoning and decision making abilities due to dysfunctional neural systems (lesions) in the brain. The study is titled *The Orbitofrontal Cortex, Real-World Decision Making and Normal Aging*, by Natalie L. Denburg et al., published by the National Institute of Health, and is thought to be the first of its kind. The authors also present compelling evidence that these seniors are "more likely" to fall victim to deceptive advertising and fraud due to physical injury to a specific region of the brain. [Read More](#)

## Legislative & Policy News

### **Legal First - Triple Damages for Elder Abuse**

Bruce Kelly of *Investment News* reported that a Beverly Hills financial services firm and two of its brokers have been ordered to pay 95-year old David Wolfson over \$1.5 million, of which \$960,000 represents damages for elder abuse. Mr. Wolfson had a 20-year relationship with the discount brokerage firm that attempted to sell him a reverse mortgage, which was his last remaining asset. Reverse mortgages are discussed elsewhere in this issue.



Institute on Aging contacted Steve Riess, Esq., who had this comment:

FINRA (Financial Industry Regulatory Authority) is a private industry regulatory organization; that is, it is a nongovernmental organization funded by the securities industry but which also serves a quasi-public regulatory function under Securities and Exchange regulations. It is extremely pro-industry. One of FINRA's functions is to provide private

arbitration services. Major brokerages require all customers to sign account agreements in order to use their services. These agreements contain mandatory arbitration clauses that divert to arbitration any claims against the firm or its representatives. The arbitration is then conducted by FINRA. Under its rules, the arbitrators are not required to apply state law (and because the special protections afforded by state law are not required, some advocates have successfully avoided arbitration on public policy arguments). In any event, in the case described in the article, it appears that the arbitration panel awarded in favor of the individual (in and of itself somewhat unusual!) and also trebled damages. Proving elder financial abuse under California law does not in and of itself result in treble damages. Rather, a separate statute (CC §3345) permits the court to treble damages under circumstances that might, but do not necessarily, include elder financial abuse. Essentially, damages may be trebled when the law otherwise authorizes the imposition of a discretionary fine or civil penalty and when especially egregious circumstances are present. (The application of CC §3345 is currently being considered by the California Supreme Court.)

[Read the Article](#)

<http://www.riesslaw.com/>

**Benson Nadell , The SFLTC Ombudsman Coordinator, Family Service Agency of San Francisco comments on the report *California's Elder Abuse Investigators: Ombudsman Shackled by Conflicting Laws and Duties* prepared for the California Senate Rules Committee (November 3<sup>rd</sup>, 2009).**

Benson Nadell , The SFLTC Ombudsman Coordinator, Family Service Agency of San Francisco reads the Hill Report:

In the wake of the total elimination of State funding to the Local Ombudsman Programs, The Subcommittee on Aging and Long term care requested that a report be made to look at the role of Ombudsmen in abuse investigations. The methodology behind the report was for the authors to interview key persons at different levels about the effectiveness of the Local Programs in functioning as abuse investigators. A few days after the Governor line-item vetoed all State General Fund dollars to the Long Term Care Ombudsman Programs, he signed AB 2100 which would require the Local LTO Programs to disclose cases to the Local District Attorney. This contradictory message to the Ombudsmen is really at the heart of this Report. The Report captures key vulnerabilities of the Local Ombudsman Programs in carrying out the Federal and State mandated duties. Some of the findings are as follows:

- There have never been adequate resources to effectively pursue both the Federal mandate to visit and identify complaints made by or on behalf of residents of long term care facilities, and the more challenging abuse investigations resulting from the reception of reports of abuse from mandated reporters.
- Federal Law restricts disclosure of identity and pertinent confidential findings to licensing agencies and law enforcement.
- Only those residents able and willing to consent to disclosure can have their cases referred to the appropriate enforcement agency.
- The State Ombudsman Office, within the Department of Aging, has made a very conservative interpretation of the Federal Statute.
- Since the budget was eliminated, visits and complaints pertaining to Residential care have plummeted.

There are 11 recommendations. The key recommendations include:



- Shifting the abuse investigation responsibility to either Adult Protective Services, or to the licensing agencies.
- Changing the law to require mandated reporters to report to both Ombudsman and law enforcement.
- Having the Office of the State Ombudsman, within the Department of Aging , draft regulations to help clarify confidentiality and disclosure guidance to the local Programs, to allow for the ability to disclose identity and case findings to law enforcement for those who are unable to consent.
- Complex investigations of abuse not be handled by volunteers.

The Local Ombudsman Programs are, with few exceptions, all opposed to shifting the responsibility of conducting abuse investigations to APS, citing that the Ombudsmen know the residents, the regulatory structure, the issues of care, and that APS would want an enhancement of their budget statewide. The Ombudsman Programs are not supportive of the licensing agencies taking the lead on abuse investigations. This position is drawn from years of frustration with licensing agencies in not conducting investigations which are not reflected in the regulations. There are many issues not addressed in the Report, which include:

- The report does not focus directly on the role of the ombudsman role in investigating abuse against dependent adults. Lack of consistency between jurisdictions and lack of clarity in the Welfare and Institutions Code about whether ombudsmen or APS should investigate financial abuse.
- Collaborative approaches between Local Ombudsmen and APS in Elder Death Reviews, Forensic Teams, and other working MDT
- Lack of in-depth studies of volunteer recruitment and retention

There is wide (although not unanimous) agreement among Local Ombudsman Programs on the following points:

- Funding is crucial to any effectiveness of the Ombudsman roles. The State General fund, which was eliminated in September 2008, was set at base line funding for 1985 with an 1992 augmentation increase to key funding to the number of beds. The Institute of Aging Study on the Ombudsman had recommended funding of 1: FTE to 2000 beds. The Ombudsman program was never separately funded for abuse investigations stemming from WIC mandatory reporting law.
- Most local Ombudsman Programs agree with CANHR, that the Office of the State Ombudsman, embedded in the State Agency, in its strict interpretation of the Federal Law, actually obstructs the process of referral of abuse cases to the enforcement agencies.
- It is false to overly dichotomize the advocacy role from the role of investigating abuse cases; the roles blend together to the benefit of the resident.
- To return to a volunteer based program statewide in the absence of state dollars is to be blind to the challenges facing residents in both nursing home and residential care settings. Most local Ombudsman Programs want to maintain a degree of competent professionalism.
- Federal law on disclosure to be amended to allow for disclosure of identity and case related information of those residents unable to

consent due to mental incapacity.

- The recommendation to transfer the responsibility to investigate abuse cases to licensing or to APS ignores the basic reality that funding would have to be allocated to those agencies to carry out those additional set of duties. Why not just fund the Ombudsmen and preserve the infrastructure, which has been established at the local level over the last 20 years?

#### **Lean More**

[Ombudsman Senate Report](#)

[CANHR Statement](#)

#### **Elder Justice Act**

##### **What is the Elder Justice Act?**

(Information taken from the [Elder Justice Coalition website](#).)

The Elder Justice Act creates a combined law enforcement and public health approach to study, detect, treat, prosecute and, most importantly, prevent elder abuse, neglect, and exploitation. After 25 years of congressional hearings on elder abuse without a legislative response, the Elder Justice Act marks the beginning of new horizons in the detection and prevention of elder abuse. The bill would:

- 1) Coordinate efforts and develop leadership at the national level by creating an Office of Elder Justice within the Department of Justice and the Department of Health and Human Services, creating a federal home and securing funding for adult protective services activities at the federal level, and creating a public and private Elder Justice Coordinating Council to assure coordination of efforts at all levels, including funding and assisting such entities at the state and local levels.
- 2) Create an "Elder Justice Research Center" and library to
  - educate the public and to provide information on the prevention of elder abuse and best practices in addressing the problem to interested entities throughout the country
  - fund research entities throughout the country to better develop our knowledge base on the issue
  - include the area of "at risk" elders, providing a focus on the development of forensic capacity in the area of elder abuse, and increasing the capacity of prosecutors throughout the country to bring elder abuse charges
- 3) Develop resources to protect consumers, increase collaboration and prevent abuse in long-term care settings; and
- 4) Evaluate funded projects and research to identify successful approaches to elder abuse prevention, prosecution, and victim services.

#### **Advocacy Efforts and Further Information**

[Elder Justice Coalition](#)

[Witness - Elder Justice Act](#)

[Care for Elders](#)

## Calendar of Events

### **Consortium Events**

The Consortium hosts regular educational and networking meetings detailed below. For further information please contact the EAP

program: [eap@ioaging.org](mailto:eap@ioaging.org) or (415) 750-4180 ext. 222

### **Multidisciplinary Team Meeting (MDT)**

Professionals from the fields of aging meet to review complex abuse cases and to learn about new services and resources.

**When:** 4/15, 6/3, 7/29, 9/16, 11/4, 12/30

**Where:** 1650 Mission St. 4th floor

### **IOA Events**

IOA's Education Department provides numerous professional trainings, seminars, and continuing education (CE Credits) opportunities each year.

For more information go to: [education.ioaging.org](http://education.ioaging.org)

### **IOA Monthly Professional Training**

Topic: Elder Abuse - What Can We Really Do About it?

Presenter: Erika Falk, PsyD, Director, Geriatric Services, Institute on Aging, and Director, San Francisco Elder Abuse Forensic Center

**When:** May 6th, 2010, 3:00pm - 4:30pm

**Where:** IOA's Adult Day Health Center  
3600 Geary Blvd. in San Francisco (at Palm)

**Register Online:** [education.ioaging.org/monthly\\_training.html](http://education.ioaging.org/monthly_training.html)

May is Elder Abuse Awareness month in California. This session is an opportunity for a wide range of professionals to refresh their understanding about mandated reporting requirements, but more importantly to get updates on legislative efforts, policy, and emerging practices in the field of elder abuse advocacy and intervention. You will leave the session with practical knowledge, connections, and inspiration.

### **Elder Abuse Prevention Training**

The EAP is available to provide in-service training on topics of elder abuse and neglect and mandated reporting. We also provide a limited training series located at the IOA offices.

**Info:** email [eap@ioaging.org](mailto:eap@ioaging.org) or call (415) 750-4180 x222

### **Other Community Events**

Please contact event host individually for more details.

### **Aging in America**

2010 Annual Conference of the National Council on Aging and the American Society on Aging

**March 15-19 in Chicago, IL**

The NCOA-ASA Conference, with 4,000 attendees, is recognized as a showcase for programs and projects that can be replicated, a forum for policy discussion and advocacy, and a prime source of information on new research findings in aging. It is the largest gathering of a diverse, multidisciplinary community of professionals from the fields of aging, healthcare and education, along with business leaders from across the United States.



Attendees come from around the country and abroad to find the answers, the experts, the research, the best practices, and the most comprehensive educational offerings available to professionals. It is the place to be if you want to learn about what's new, what works, and how



you can make it work to respond to the ever-growing demands of serving an aging population. The conference provides attendees with the opportunity to network with new and old friends, gain insight from voices from the front line and find new grassroots and national partners for advocacy.

#### **Contact Information**

**Phone:** (415) 974-9600

**Fax:** (415) 974-0300

**Email:** [info@asaging.org](mailto:info@asaging.org)

[http://www.agingconference.org/AiA10/general\\_info.cfm](http://www.agingconference.org/AiA10/general_info.cfm)

#### **Elder Financial Protection Network's 6th Annual Call to Action:**

San Francisco Conference and Awards Ceremony

Dedicated to the Prevention of Elder Financial Abuse

**When:** March 25th, 2010

**Where:** Holiday Inn ~ Golden Gateway - 1500 Van Ness Avenue, San Francisco, CA

This Call to Action brings together hundreds of professionals representing financial institutions, law enforcement, social services, elder justice advocates, and the legal community to share best practices and to express our collective determination to prevent elder financial abuse.

Keynote Speaker: Philip Marshall, Grandson of Brooke Astor

Featured Panel: Elizabeth Loewy, Esq., Assistant District Attorney of the New York County District Attorney's Office, presenting America's Landmark Case: Brooke Astor.

Special Guest and Master of Ceremonies: Honorable Kim Hubbard, Judge, Superior Court of Orange County.

#### **Contact Information**

**Phone:** (415) 956-5556

<http://www.bewiseonline.org/pro/calltoaction/index.shtml>

## Elder Abuse Resources

The EAP has put together a list of resources that we find valuable when working on issues of elder abuse. While this is not an exhaustive list, we hope you will find it useful. To view these resources visit:

<http://www.ioaging.org/professionals/gatekeeper>

If you have resources that you would like to see added to this list, please email [tguinn@ioaging.org](mailto:tguinn@ioaging.org)

## Consortium Members

Institute on Aging \* Department of Aging & Adult Services \* SF Department of Public Health \* SF District Attorney's Office \* SF Ombudsman Office \* SF Police Department, Fraud/Domestic Violence Units \* Rape Treatment Center SFGH \* Alzheimer's Association \* Asian Women's Shelter \* Bay Area Legal Aid \* Bernal Heights Neighborhood Center \* Bethany Center Senior Housing \* California Advocates for Nursing Home Reform \* Canon Kip Senior Center \* Catholic Charities \* Debra J. Dolch Fiduciary Services \* Edgewood Center for Children & Families \* Family Caregiver Alliance \* Family Service Agency \* Francis of Assisi Community \* Glenn Hammel, Ph.D. \* HGA Personal Care Consultants \* Hearing Society for the Bay Area \* Home Sweet Home Care \* Independent Living Resource Center \* IHSS Public Authority \* IHSS Consortium \* Italian-American Community Services Agency \* Jewish Family & Children's Services \* Kaiser Hospital \* La Casa de las Madres \* Laguna Honda Hospital \* Lakeside Senior Medical Center \* Legal Assistance to the Elderly \* Little Brothers - Friends of the Elderly \* Marchi & Smith \*

Meals on Wheels of S.F. \* National Council on the Aging \* Network for Elders \* New Leaf Outreach to Elders \* Asian Pacific  
Islander Legal Outreach \* Planning for Elders in the Central City \* Recreational Center for the Handicapped \* Riley Center \*  
Russian American Community Services \* St. Anthony Foundation \* St. Francis Hospital \* San Francisco Adult Day Support \* San  
Francisco SAFE \* Self-Help for the Elderly \* Shalom Bayit \* UCSF Mt. Zion Home Care \*University Mound Ladies Home \*  
Volunteer Legal Services Program/Bar Association of San Francisco \* Woman, Inc.

**General Consortium Information at IOA: (415) 750-4180 x222**

Institute on Aging  
415-750-4111  
[www.IOAging.org](http://www.IOAging.org)