

# Navigating the Medical-Legal Concerns in the Care of Older Adults

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# Kicking & Screaming





# STATISTICS ABOUT AGING

That Could Change Your Life

*Home* Helpers®

**Approximately 10,000 Americans  
turn 65 each day.**

**Cancer incidence increases with  
aging.**

**1 in 2 men and 1 in 3 women will  
get cancer in their lifetimes.**

# AGING WELL

**THE AMERICAN MEDICAL  
WOMEN'S ASSOCIATION GUIDE TO  
AGING AND  
WELLNESS**

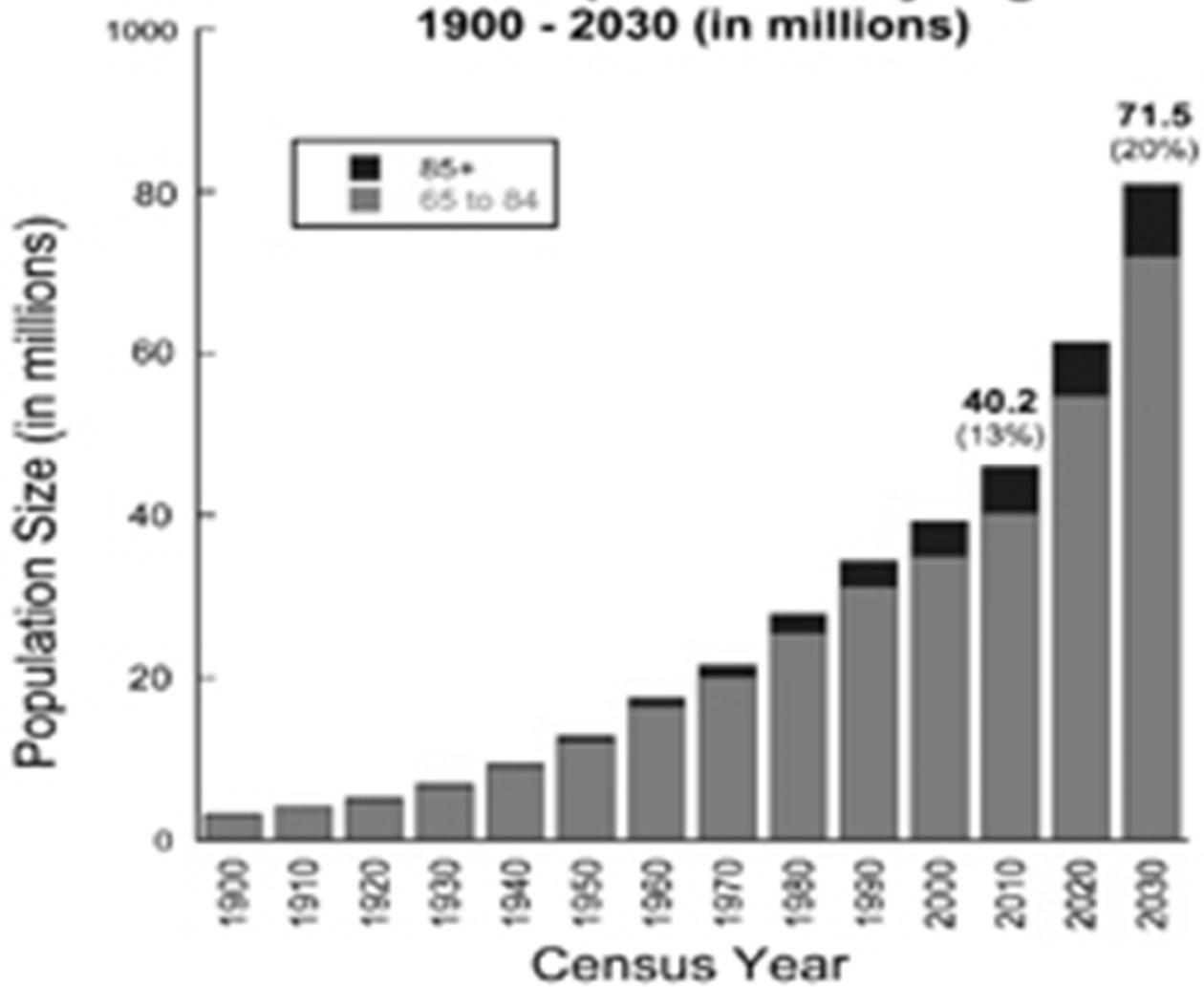
American  
Medical  
Women's  
Association, Inc.

- The best nutrition and exercise to keep fit, active, and attractive
- Guidelines for preventing heart disease: the #1 killer of women
  - Facts about sexuality and emotional well-being
  - Warnings about common medications and aging
- Good news about preventing osteoporosis and more!

**BY THE FOREMOST AUTHORITY IN  
WOMEN'S HEALTH TODAY—  
UP-TO-THE-MINUTE MEDICAL  
INFORMATION BY WOMEN FOR WOMEN**



## Older Population by Age 1900 - 2030 (in millions)



DEPARTMENT  
OF  
HEALTH

CHRIS  
MADDEN



"We're launching a campaign to get people to take up smoking again!"



GLOBAL anti-aging market =  
**\$300 billion**

[View High Resolution Image](#)



By 2020, for the first time in history,  
**people aged 60+ will outnumber children younger than 5 years.**



Normal  
Score 10



Mild  
Cognitive  
Impairment  
(Numbers error  
and  
placement  
of hands)  
Score 8



Moderate  
Cognitive  
Impairment  
Score 4



Severe  
Cognitive  
Impairment

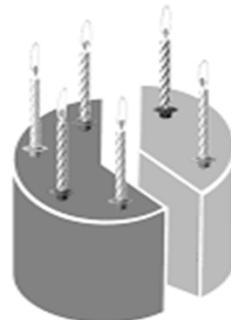
### Anti Aging Market

Global Industry Analysis, Size  
Growth, Trends & Forecast,

[Click here to View High Resolution Image!!](#)

HELLO  
my name is

Baby  
Boomer



**61%**

increase in the  
number of over  
65s in the UK  
by 2032

Britain's over 65s  
already outnumber  
its under 16s

**65** YEAR  
OLDS  
HAVE

AN AVERAGE  
LIFE EXPECTANCY  
OF AN ADDITIONAL  
**18.8 YEARS**

(20 YEARS FOR FEMALES AND 17.2 YEARS FOR MALES)

uniform





# FEDERAL LAW

- **Federal laws are rules that apply throughout the United States**
- ***Federal law* originates from the Constitution**
- **The supremacy clause (article VI, Clause 2 of the Constitution)**

# **SUPREMACY CLAUSE**

- **Establishes that the Constitution, federal laws made pursuant to it, and treaties made under its authority constitute the supreme law of the land.**
- **It provides that state courts are bound by the supreme law; in case of conflict between federal and state law, the federal law must be applied.**

## OLDER WORKERS A NEW WILL TO WORK

AGE		2001	Workforce participation	2011	Workforce participation
60-64	Men	184,000	47%	366,000	62%
	Women	90,000	22%	268,000	44%
65-69	Men	62,000	19%	155,000	33%
	Women	28,000	8%	87,000	18%

# FAMILY MEDICAL LEAVE ACT

- Federal law.
- Guarantees up to 12 weeks off per year to take care of a seriously ill family member (parent, child, or spouse).
- Applies to companies with at least 50 employees.
- Employee keeps their health insurance benefits

# COBRA

- Consolidated Omnibus Budget Reconciliation Act-federal law, enacted 1985; revised 1999.
- Extends health insurance coverage.
- Most people can keep it for up to 18 months.

1-800-318-2596 or [healthcare.gov](http://healthcare.gov).

# COBRA

- **Must have a qualifying event (reduced hours, laid off or fired (not gross misconduct)).**
- Within **14 days** of getting the *qualifying event notice* (above), the employer or health plan administrator must give the person who is about to lose health insurance written notice (*election notice*) of his or her COBRA rights.

BRING YOUR  
*libra* brave.

# **WOMEN'S HEALTH AND CANCER RIGHTS ACT (WHCRA)**

- Federal Law- October 21, 1998.
- Monitored by the US Departments of Labor & Health and Human Services.
- Protects women with breast cancer who choose to have breast reconstruction post mastectomy.
- Requires group insurance plans that cover mastectomies to cover breast reconstruction.

# WHCRA

- Applies to group health plans starting on or after October 1, 1998.
- Applies to group health plans, health insurance companies, and health maintenance organizations (HMOs) that cover medical and surgical costs for mastectomy.

# **WHRCA**

## **(What's covered?)**

Breast reconstruction post mastectomy.

Breast reconstruction of the non-involved breast to ensure symmetry and balance.

Any external breast prostheses needed before or during the reconstruction.

Any physical complications at all stages of mastectomy, including lymphedema.

# DISABILITY





“Sorry the dementia statistics are not ready, they keep losing count.”

# **Americans with Disabilities Act (ADA)**

- **Federal Law- July 26, 1990 by President George H.W. Bush.**
- **Protects the civil rights of people with disabilities (similar protections as the Civil Rights Act of 1964).**
- **Applies to employers with 15 or more employees.**
- **Does not cover federal employees (EEOC).**

# **ADA**

## **(What are disabilities?)**

- **Physical or Mental problem that substantially limits one or more of “major life activities.”**
- **There is a record of the person having had such a problem in the past.**
- **Other people think the person has such a problem, even if they do not actually have it.**

# **ADA Amendments Act of 2008**

- **Federal Law- went into effect on January 1, 2009.**
- **Changed the way the definition of disability had been interpreted under the original ADA.**
- **Covers disabilities in the mind and body, such as immune system function, cell growth, and the digestive, urinary, central, respiratory, circulatory, endocrine, and reproductive systems.**

COVERAGE FOR 30 MILLION  
UNINSURED. THOSE WITH  
PRE-EXISTING CONDITIONS  
COVERED. CAN'T BE  
DROPPED IF THEY GET  
SICK. FREE PREVENTIVE  
CARE...

OBAMACARE  
UPHELD

MIKE UKKONEN  
2010 DECEMBER 19

I'M SURE.

OBAMACARE  
UPHELD

# **Affordable Care Act (ACA)**

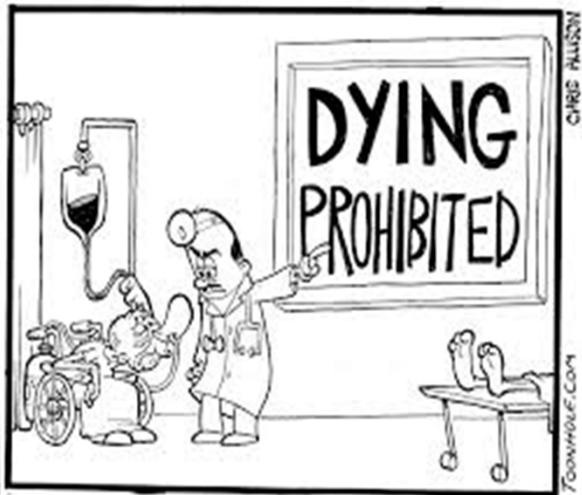
## **(aka Obamacare)**

- **Federal Law- signed into law March 23, 2010.**
- All health plans sold in new health insurance marketplaces must cover essential benefits, including cancer screening, treatment, and follow-up care.
- Cannot be refused care due to pre-existing conditions.

# **Affordable Care Act (ACA)**

## **(aka Obamacare)**

- **No cost cancer screenings and other preventive care (New plans, Medicare, new Medicaid enrollees).**
- **Medicare covers a yearly check-up to discuss disease prevention.**
- **Covers training for healthcare professionals to treat pain and provide other supportive care.**
- **Covers patients who participate in clinical trials.**



# **DPOA-HC**

- **Appoints an Agent and includes these or similar words:**
- **“This power of attorney shall not be affected by the subsequent disability, incompetence or incapacity of the principal.”**
- **"This power shall become effective upon the incapacity, incompetence or disability of the principal."**

# **DPOA-HC**

- **Choose an agent who is honest, has good judgment, and one who will respect and support your preferences.**
- **Choose someone whom you have known well for a long time and who appears to take good care of his/her own affairs.**

# Living Will

- **Document signed by you (you must be of sound mind) that tells your physician that if you have a terminal or irreversible condition and you are unable to make medical decisions, and death is imminent that your physician and your family will carry out your wishes.**





CARTOONSTOCK.com

Search ID: tcnn41

"HE'S COMPETENT IN EVERY REGARD, EXCEPT TO STAND TRIAL."

**HIPAA PERMITS DISCLOSURE OF POLST TO OTHER HEALTH CARE PROVIDERS AS NECESSARY**



EMSA #111 B  
(Effective 4/1/2011)

**Physician Orders for Life-Sustaining Treatment (POLST)**

First follow these orders, then contact physician. This is a Physician Order Sheet based on the person's current medical condition and wishes. Any section not completed implies full treatment for that section. A copy of the signed POLST form is legal and valid. POLST complements an Advance Directive and is not intended to replace that document. Everyone shall be treated with dignity and respect.

Patient Last Name:	Date Form Prepared:
Patient First Name:	Patient Date of Birth:
Patient Middle Name:	Medical Record #: (optional)

**A CARDIOPULMONARY RESUSCITATION (CPR):** *If person has no pulse and is not breathing. When NOT in cardiopulmonary arrest, follow orders in Sections B and C.*

**A**  
Check One

- Attempt Resuscitation/CPR (Selecting CPR in Section A **requires** selecting Full Treatment in Section B)
- Do Not Attempt Resuscitation/DNR (Allow Natural Death)

**B MEDICAL INTERVENTIONS:** *If person has pulse and/or is breathing.*

**B**  
Check One

- Comfort Measures Only** Relieve pain and suffering through the use of medication by any route, positioning, wound care and other measures. Use oxygen, suction and manual treatment of airway obstruction as needed for comfort. **Transfer to hospital only if comfort needs cannot be met in current location.**
- Limited Additional Interventions** In addition to care described in Comfort Measures Only, use medical treatment, antibiotics, and IV fluids as indicated. Do not intubate. May use non-invasive positive airway pressure. Generally avoid intensive care.  
 **Transfer to hospital only if comfort needs cannot be met in current location.**
- Full Treatment** In addition to care described in Comfort Measures Only and Limited Additional Interventions, use intubation, advanced airway interventions, mechanical ventilation, and defibrillation/ cardioversion as indicated. **Transfer to hospital if indicated. Includes intensive care.**

Additional Orders: \_\_\_\_\_

**C ARTIFICIALLY ADMINISTERED NUTRITION:** *Offer food by mouth if feasible and desired.*

**C**  
Check One

- No artificial means of nutrition, including feeding tubes. Additional Orders: \_\_\_\_\_
- Trial period of artificial nutrition, including feeding tubes. \_\_\_\_\_
- Long-term artificial nutrition, including feeding tubes. \_\_\_\_\_

**D INFORMATION AND SIGNATURES:**

Discussed with:  Patient (Patient Has Capacity)  Legally Recognized Decisionmaker

Advance Directive dated \_\_\_\_\_ available and reviewed → Health Care Agent if named in Advance Directive:  
Name: \_\_\_\_\_  
 Advance Directive not available Phone: \_\_\_\_\_  
 No Advance Directive

**Signature of Physician**  
My signature below indicates to the best of my knowledge that these orders are consistent with the person's medical condition and preferences.

Print Physician Name:	Physician Phone Number:	Physician License Number:
Physician Signature: (required)		Date:

**Signature of Patient or Legally Recognized Decisionmaker**

By signing this form, the legally recognized decisionmaker acknowledges that this request regarding resuscitative measures is consistent with the known desires of, and with the best interest of, the individual who is the subject of the form.

Print Name:	Relationship: (write self if patient)
Signature: (required)	Date:
Address:	Daytime Phone Number: Evening Phone Number:

**SEND FORM WITH PERSON WHENEVER TRANSFERRED OR DISCHARGED**

# ELDER ABUSE & NEGLECT



**“intentional act or failure to act by a caregiver or another person in a relationship involving an expectation of trust that causes or creates a serious risk of harm to an older adult.”**

Centers for Disease Control, National Center for Injury Prevention and Control, Division of Violence Prevention. (2016). *Elder Abuse Surveillance: Uniform definitions and recommended core data elements.*

# **ELDER ABUSE & NEGLECT**

- **Abuse is often driven by care-giver burden and the uncertainty of the cancer prognosis.**
- **1 in 10 elders are victims of abuse each year.**
- **Only 1 in 14 elder abuse cases are reported.**
- **Elder neglect accounts for 55% of cases.**
- **90% of perpetrators are family members.**
- **67% of victims are women.**
- **66% of victims are Caucasian.**

# **IDENTIFYING VICTIMS- WHAT TO LOOK FOR**

- **Fearfulness toward the caregiver.**
- **Poor eye contact.**
- **Hesitation to talk openly.**
- **Poor hygiene and Weight loss.**
- **Hematomas, bruises, pressure sores.**
- **Multiple fractures in various stages of healing.**
- **Confusion, paranoia, anxiety, anger, or low self-esteem.**

# **ELDER ABUSE & NEGLECT**

- **In all states, elder abuse and neglect statutes are designed to protect elders from abuse, neglect and abandonment.**
- **Neglect includes failure to provide medical care for physical and mental needs.**
- **Criminal prosecutions are allowed.**

# **ELDER ABUSE & NEGLECT**

- **In June 2001, a California jury decided that a doctor's failure to manage an elderly cancer patient's pain violated the state's elder abuse statute and awarded \$1.5 million to the patient's family.**
- *Bergman v. Eden Medical Center*, Cal. Super. Ct., No. H205732-1, June 13, 2001.



# **REPORTING ELDER ABUSE**

- **Mandated Reporters**
- **Is there a penalty for reporting in error?**
- **Is there a penalty for NOT reporting?**

# **INFORMATION AND REPORTING MECHANISMS**

- **National Center on Elder Abuse (NCEA).**
- **U.S. Administration on Aging hotline at 1-800-677-1116.**
- **Adult Protective Services in your state.**

**SPENDING DOWN**

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**Cancer care costs are on the rise in the USA, with the average yearly cost for recently introduced FDA approved cancer drug treatment exceeding \$100,000.**

**IMS Institute for Healthcare Informatics**



# **SPENDING DOWN**

- **Defined as reducing one's assets to qualify for Medicaid (usually \$2000 worth of liquid asset).**
- **A qualifying patient must have a certain amount of medical bills or “deductible.”**
- **The patient meets the spend-down amount by getting medical bills in the amount of the spend-down.**

# **SPENDING DOWN**

- **Encourage your older cancer patient to keep copies of all medical bills, prescription receipts, and records of other medical expenses.**
- **Once the patient has enough bills to meet the spend-down, they should send copies of the bills to a caseworker at the local DHS office; a medical card will be issued post-processing.**

# **LOOKING BACK AND PLANNING AHEAD**

- **Gifts must be done 5 years before spending down.**
- **The "look-back" period for Medicaid eligibility is up to 60 months or 5 years.**
- **Cancer patients need to plan ahead and consider transferring assets into a trust long before the need arises.**

# **EXEMPTIONS FROM SPEND-DOWN**

- **A home with spouse or a disabled child.**
- **Furnishings and other personal belongings.**
- **One car for personal use.**
- **Pre-paid burial assets.**
- **Life insurance policy with a face value < \$1,500.**
- **The spouse can maintain his/her own retirement accounts to stave off poverty.**

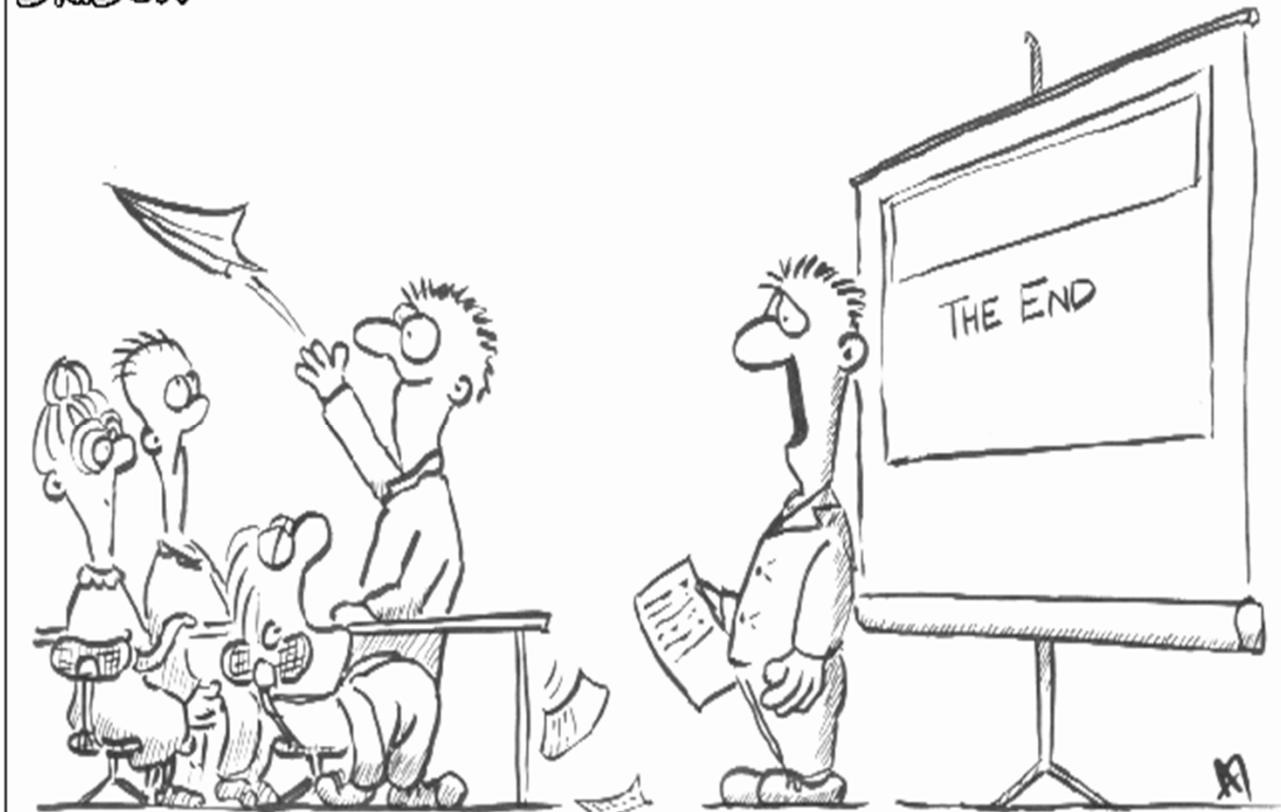
**Cancer patients are 2.5 times more likely to file bankruptcy than healthy individuals.**

# **CANCER LEGAL RESOURCE CENTER**



**DR. DUD**

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AND ON THAT EXCITING NOTE...

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