

Neglect of Older Persons: An Introduction to Legal Issues Related to Caregiver Duty and Liability

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I. Introduction

This article is an introduction to legal issues related to liability for neglect of older persons. It aims to provide information on the duty and liability of caregivers to program administrators, policy makers, legislators, researchers, and others.

This paper discusses case law on two issues: (1) whether there is a duty to care for an older person and (2) whether such a duty has been breached. It is important that readers understand the limitations of case law. Case law is:

the term for judicial opinions that are reported in court annals and serve as precedent for decision in future cases ... Decisions rendered by state trial judges are often not reported. Trial court decisions that are appealed to a higher court and result in opinions issued by appellate court judges are usually reported. In other words, most cases that are brought to the courts are not reported and do not become part of a body of case law.⁴

The National Center on Elder Abuse (NCEA) defines neglect as the “[r]efusal or failure by those responsible to provide food, shelter, health care or protection for a vulnerable elder.”⁵ The NCEA definition is general and is derived from a review of state adult protective services (APS) laws in the 1990s. State laws on elder neglect vary widely. The APS laws of all states, the District of Columbia, and all territories except Puerto Rico include and define neglect, either distinctly or as part of a different definition (e.g., abuse). For more information about these laws, see the “Types of Abuse: Comparison Chart of Provisions in Adult Protective Services Laws, by State” chart⁶ and the “Types of Abuse: Provisions and Citations in Adult Protective Services Laws, by State” chart⁷ on the ABA Commission on Law and Aging Web site. Some states also have laws that make elder neglect a crime, or they may have other laws that relate to elder neglect. This paper does not discuss neglect statutes, except as part of an analysis of a reported case.

⁴ Lori Stiegel, *The Changing Role of the Courts in Elder-Abuse Cases*, XXIV(II) *Generations* 59, 60 (Summer 2000).

⁵ Nat’l Ctr. on Elder Abuse, *Frequently Asked Questions*, (2008) http://www.ncea.aoa.gov/NCEARoot/Main_Site/FAQ/Questions.aspx.

⁶ Lori Stiegel & Ellen Klem, *Types of Abuse: Comparison Chart of Provisions in Adult Protective Services Laws, by State* (2007), <http://www.abanet.org/aging/about/elderabuse.shtml>.

⁷ Lori Stiegel & Ellen Klem, *Types of Abuse: Provisions and Citations in Adult Protective Services Laws, by State* (2007), <http://www.abanet.org/aging/about/elderabuse.shtml>.

While it may be easy to argue that an individual has a moral obligation to provide care for an elder who cannot care for himself or herself, it is more difficult to argue that an individual has a legal duty to do the same. Generally, no one has a legal duty to a person in peril. An affirmative duty, or a duty to act to aid another person, arises only in certain situations. The situations relevant to elder neglect include the following:

- A duty to act could be based on a contract, such as that between a long-term care facility and a resident, between a home care services agency and a consumer, or between individuals.
- Statutes may impose a duty to act to aid another person. For example, thirty states, in what are known as “filial responsibility statutes,” impose a legal duty on adult children to care for and protect their elderly parents.⁸ Other statutes also may impose a duty.
- A duty to act may arise between certain people due to the nature of their relationship or situation. For example, an individual may voluntarily assume the role of caregiver even though there is no legal obligation to do so. However, it is a long-standing theory of the law that a person who voluntarily provides care to someone in need of care has a duty to continue providing care or seek help from others in providing that care rather than abandon the care recipient.⁹

Determining whether a duty exists under these situations is not always simple. The resolution depends on the facts of the case, the court’s awareness and interpretation of those facts, and the court’s application of the law to those facts.

If a duty to do something exists, then the next question is whether that duty was violated. The published court decisions related to elder neglect do not focus per se on the issue of whether a duty to provide care was violated as that is an issue of fact and issues of fact are decided by trial courts. Instead, they focus on legal issues related to the merits or enforcement of a law establishing that duty. As the consequences for neglecting one’s duty to an older person may include civil liability for monetary damages, criminal penalties, and denial of the right to work with older or vulnerable persons, state agencies charged with investigating and confirming allegations of neglect (which include APS and law enforcement agencies) and the courts must be careful to make findings based on substantial evidence and conform to constitutionally-mandated

⁸ Seymour Moskowitz, *On Golden Pond: Integrating Legal Issues of the Elderly into Family Law*, 30 Stetson L. Rev. 1427, 1453 (2001).

⁹ Restatement (Third) of Torts § 42 cmt. a (Proposed Final Draft No. 1, 2007)

due process protections. Therefore, the court decisions generally address some or all of the following three areas:

- Was the statute that was allegedly violated unconstitutional because it was so vague that it failed to provide notice of the behavior considered unlawful?
- Was the statute that was allegedly violated enforced in a non-arbitrary and non-discriminatory manner?
- Were due process requirements followed?

II. Caregiver Duty

Statutes generally impose a legal duty regarding elder neglect in one of two ways. Civil statutes, such as the APS laws, usually define elder neglect as a caregiver's failure to act. Criminal statutes typically prohibit an elder's caregiver from knowingly or intentionally causing the elder to suffer harm that could result from actions or omissions. To determine whether a duty exists under these statutes, one must assess whether the alleged neglecter is actually a caregiver. Such an assessment is not necessarily a simple matter.

In states where there is no statutory definition of caregiver, the courts may be called on to determine whether an individual accused of neglect in a civil or criminal case is actually a caregiver.¹⁰ Even in states that have a statutory definition of caregiver, the courts may be asked to interpret the definition and decide whether the facts of the case before it meet that definition. Case analysis demonstrates that courts consider three different factors to determine who is a caregiver.

A. Caregiver Relationship Exists Due to Contract

Courts will likely first approach the question by determining whether there is a contractual relationship between the elder and the alleged neglecter. In cases where an individual has been paid to perform duties or has entered into a contract with an older person to provide care, courts are not reluctant to conclude that the individual is a caregiver. To illustrate, in a Pennsylvania case the court determined a defendant was the victim's caregiver under the neglect statute because he entered into a contract to provide care for the victim and received payment for his services. The court also noted that the defendant described himself as the victim's sole caregiver. *Commonwealth v. Waskovich*, 805 A.2d 607 (Pa. Super. Ct. 2002).

¹⁰ Lori Stiegel & Ellen Klem, *Caregiver Definitions: Provisions and Citations in Adult Protective Services Laws*, by State (2007), <http://www.abanet.org/aging/about/elderabuse.shtml>.

B. Caregiver Relationship Based on Statute

Caregiver relationships also may be established by statute.

Filial responsibility statutes place a duty of financial support on adult children to care for their impoverished aging parents. Financial obligations of the adult offspring vary from state to state, but most impose the duty to provide “necessities” (e.g., food, shelter) to an impoverished elderly parent. Thirty states have filial responsibility statutes but very few of those states enforce the law. In fact, in eleven states with filial responsibility statutes, the law has never been enforced.¹¹ Due to the lack of enforcement, case law imposing a duty to act on an adult child under a filial responsibility statute is non-existent.

Some courts have concluded that caregiver relationships exist under other statutory provisions, however. In an Illinois case, a husband and wife were charged with neglect of the wife’s uncle who lived in their home. The husband claimed his wife was the uncle’s sole care provider. The court determined evidence showed that the defendant-husband clearly fell within the language of the statute defining a caregiver as a relative or someone related by marriage who resides with, or resides in the same building with and regularly visits with, the elderly person. *People v. Simester*, 678 N.E.2d. 710 (1997). In a similar case in Florida, two brothers were convicted of neglecting their mother who lived with them. One of the brothers appealed the conviction, claiming he was not his mother’s caregiver as defined by the statute even though he lived in the same house as his mother and brother, visited with his mother, and knew his brother neglected their mother. The appellate court upheld the conviction and stated that the definition of caregiver in the applicable statute included adult children who live in the same home as the victim and people who should reasonably know the elderly person is unable to care for himself or herself, which clearly included the defendant. *Peterson v. Florida*, 765 So.2d 861 (2000).

C. Caregiver Relationship Exists Due to the Nature of the Relationship or Situation

If there is no contract between the alleged neglecter and the elder, then the courts may examine the nature of the relationship or situation between the alleged neglecter and the elder. If the alleged neglecter clearly took on the role of caregiver, for example by moving in with the elder or moving the elder into the perpetrator’s home, a court will likely conclude that the alleged neglecter was a caregiver. In one such case, the defendant testified that she “took upon

¹¹ Matthew Pakula, *A Federal Filial Responsibility Statute: A Uniform Tool to Help Combat the Wave of Indigent Elderly*, 39 Fam. L. Q. 859, 862 (2005).

herself” the responsibility to care and provide for her mother; was her mother’s sole provider; bathed, diapered, and fed her mother; and never called anyone else for help, advice, or medical care. The Supreme Court of Florida concluded that the defendant was her mother’s caregiver and was guilty of neglect. According to the court, her failure to adequately care for her mother or to seek assistance from others fell within the realm of conduct prohibited by the statute under which she was prosecuted. *Sieniarecki v. Florida*, 756 So.2d 68 (2000).

In a similar case, an Indiana court upheld a defendant’s felony conviction on neglect charges. The defendant appealed the criminal conviction, arguing there was insufficient evidence to support his conviction for neglect. Testimony in the case demonstrated that the defendant’s mother was released from a nursing home and went to live with the defendant. Subsequently, home care nurses began visiting to treat a hematoma (a blood-filled swelling or tumor) and ulcers on one of the mother’s legs. The nurses were concerned about the condition of the leg and repeatedly told defendant to take his mother to a physician or an emergency room, but he did not take his mother to the emergency room until a week later. Doctors concluded that the hematoma and other problems had resulted from an untreated broken leg (mother reported that the defendant had twisted it). Due to the lack of treatment, amputation was necessary. The appellate court determined there was sufficient evidence to support the trial court’s conclusion that defendant had taken on the role of his mother’s caregiver and then knowingly or intentionally placed his mother in a situation that endangered her life by failing to obtain proper medical attention for her during the time she was in his care. *Walgamuth v. Indiana*, 779 N.E.2d 533 (2002).

In another similar case, the defendant was convicted of the involuntary manslaughter of her mother after her mother starved and froze to death in the home they shared. The Virginia Supreme Court concluded the defendant had a legal duty to care for her mother and rejected the defendant’s argument that she was a volunteer because evidence offered at trial demonstrated the defendant accepted sole responsibility for her mother and made it her full-time job to take care of her. The court stated that the Virginia Department of Social Services had even recognized the defendant’s “job” as her mother’s caregiver by giving the defendant food stamps and exempting her from the requirement of registering from outside employment as a condition of receiving those food stamps. *Davis v. Commonwealth*, 230 Va. 201 (1985).

The California case of *People v. McKelvey*, 230 Cal.App.3d 399 (1991), also illustrates how the courts look at circumstances to determine if a caregiver relationship exists. In this case, the defendant and his sister lived with their mother, who was paralyzed and unable to walk, use a wheelchair, or maintain her own personal hygiene. The siblings had an arrangement for caring for their mother; the defendant cooked and maintained the home and his sister was responsible for their mother's hygiene. The sister became overwhelmed and left the home after telling her mother that she was leaving. Four days later the defendant called emergency assistance about his mother. Firefighters responding to the call found defendant's mother in a hospital bed lying in excrement and covered with maggots, ants, and other insects. She died four days after that. Both siblings were charged with neglect. The sister pled guilty. The defendant was convicted. He appealed and argued that he was not his mother's caregiver because (1) that was his sister's responsibility; (2) his mother refused to let him care for her hygiene; and (3) his mother was alert, in command of the household, and had a telephone next to her bed that she could have used to call for help if she had been suffering. The appellate court stated that the evidence demonstrated that the mother had no hygienic care during the four days before emergency services were called, that her condition indicated that she was not able to seek help on her own behalf, and that the defendant was "the only physically able, competent adult in the household after (his sister) left" and therefore was responsible for his mother's care. The court concluded that there was sufficient evidence that defendant had "care and custody" of his mother and had violated the neglect statute by permitting her to suffer and become injured, and rejected the defendant's appeal.

III. Caregiver Liability

Liability for elder neglect is predicated upon a caregiver relationship between the neglecter and the victim, and the neglecter's failure to fulfill the obligation to provide care. Being held responsible for failing to act can have a variety of consequences, including civil liability for monetary damages, criminal penalties, and denial of the right to work with older or vulnerable persons. Individuals accused of neglect and facing consequences under civil or criminal statutes often argue that their rights under the due process clause of the U.S. Constitution have been violated. The due process clause of the U.S. Constitution prohibits the government from unfairly or arbitrarily depriving a person of life, liberty or property—rights so fundamentally important that they require compliance with standards of fairness and justice.

These standards include: (1) notice and the right to a fair hearing before a tribunal with the power to decide the case; and (2) legislation that is fair and reasonable in content and that furthers a legitimate governmental objective. Arguments based on violations of due process in neglect cases have been couched in several different ways including whether the perpetrator had adequate notice of: the perpetrator's status as caregiver to the victim, the victim's membership in the population protected by the statute, or the prohibition of the conduct or neglect.

As discussed earlier, not all court cases result in written judicial opinions that are reported and become part of case law. Trial court cases in which elder neglect was alleged are not likely to be reported, but if those cases are appealed to a higher level court because of claims that the U.S. Constitution was violated then there probably will be a reported written judicial opinion. That is why the published cases on liability for neglect are (a) so few in number and (b) generally arise in cases that focus on due process issues related to listing an individual in an abuse registry and denying him or her the right to work with certain populations or in certain settings.

A. Challenges because the Statute is Vague

It is common for defendants to claim that a statutory definition of caregiver is so vague as to deny them "due process" when the alleged neglecter doesn't clearly occupy a caregiver role for the victim. In other words, if the circumstances of the defendant and victim don't clearly match a statutory definition of caregiver or result from a contract, a defendant may claim that he or she did not have adequate notice that the law treated him or her as a caregiver with a duty to prevent neglect.

The California case of *People v. Heitzman*, 37 Cal.Rptr.2d 236 (Cal. 1994) illustrates that claim. The California elder abuse statute at issue in this case imposed liability on two classes of people: (1) the elder's "caretaker or custodian who willfully causes or permits injury to his or her charge, or who willfully causes or permits the elder to be placed in a dangerous situation," and (2) "any person who willfully causes or permits an elder to suffer, or who directly inflicts, unjustifiable pain or mental suffering on any elder." In this case the courts debated whether Heitzman, the victim's daughter who was no longer living with or providing care for her father, could be prosecuted under the statute. The trial court determined that the second clause of the statute was unconstitutionally vague because it imposed a general duty on all citizens to aid an elderly person in need. The trial court also determined that Heitzman was not her father's

caretaker or custodian, and therefore no liability could be imposed under the first clause of the statute. Charges against Heitzman were dismissed, and the State appealed. The court of appeals (a higher court) disagreed with the trial court and ruled that Heitzman could be found criminally liable for neglecting her father because she was under a duty to act and had failed to do so. This duty to act stemmed, according to the court of appeals, from the fact that Heitzman visited her father's house often and knew about the threat to her father's well-being. However, the California Supreme Court disagreed with the court of appeals. The court determined a legal duty to prevent abuse falls only on those persons who have an existing legal duty to control the conduct of a third party because of a special relationship. Consequently, the court determined Heitzman was not guilty of neglecting her father, even though she visited her father's home frequently and was fully aware of the deplorable conditions in which her father was living, because she had no special relationship with—and thus no legal duty to control—her brothers, who were her father's caregivers. *People v. Heitzman*, 37 Cal.Rptr.2d 236 (1994).

B. Challenges because the Statute is Enforced in an Arbitrary or Discriminatory Manner

In addition to challenges based on vague statutes, defendants in neglect cases have brought due process challenges based on a statute's failure to provide definite guidelines to prevent arbitrary or discriminatory enforcement. Challenges have focused on, among other things, whether the statute provided sufficient guidance to determine whether the alleged neglecter's conduct violated the statute to state agencies charged with maintaining a registry of perpetrators of abuse, neglect, or exploitation and law enforcement.

The *Heitzman* case also demonstrates the potential for claims of arbitrary or discriminatory enforcement of a statute criminalizing elder neglect. Once again, the issue stems from the second clause of the statute (“any person who willfully causes or permits an elder to suffer, or who directly inflicts, unjustifiable pain or mental suffering on any elder”). Heitzman and her two brothers were the only individuals charged with neglect of their father, but other family members either lived in the home or frequently visited the home where their father lived. Another sibling and three nephews also lived in the home. One of those nephews, Richard, Jr., was Heitzman's boyfriend. For the last six weeks before her father's death, Heitzman had routinely visited her father's home to spend time with Richard, Jr. One month before the decedent died, Heitzman spoke with Richard, Jr. about the possibility of taking her father to the

doctor. However, Richard, Jr. was never arrested or charged with elder neglect even though he lived in the home and knew whatever Heitzman knew about her father's deteriorating condition. Another sibling, Lisa, did not live in the home but, like Heitzman, Lisa was also well aware of her father's condition—she visited the home five weeks before his death and was present when Heitzman entered their father's room for the last time and discovered a hole where the mattress had rotted through. Unlike Heitzman, however, Lisa was not arrested and charged with neglect. After weighing the evidence regarding which family members were arrested and charged, the court determined the statute prohibiting neglect failed to provide a clear standard to guide those responsible for enforcing the law. *People v. Heitzman*, 37 Cal.Rptr.2d 236 (1994).

C. Challenges because of the Lack of Administrative Due Process

The courts are not the only entities responsible for determining whether individuals have a duty to protect an older person from neglect. State agencies may have similar administrative responsibilities for the purpose of substantiating (confirming) an allegation of abuse, neglect, or exploitation and including the perpetrator in an abuse registry. For example, state agencies that license health care facilities have authority to investigate allegations about abuse, neglect, or exploitation that may have occurred in licensed facilities. If a state agency substantiates the allegations, there may be consequences to the perpetrator. Federal regulations require that all states:

establish and maintain a registry of nurse aides, which includes information on any finding by the State survey and certification agency of abuse, neglect, or misappropriation of property involving the elderly.¹² [The Centers for Medicare and Medicaid Services] prohibits facilities from employing individuals who have been found guilty by a court of law or who have had a finding entered into the registry for abuse, neglect, or mistreatment of residents or misappropriation of their property.¹³

Some states maintain abuse registries for other health care workers or for other types of individuals, as well, to preclude certain individuals who are found to have committed abuse,

¹² 42 CFR § 483.156 (2007).

¹³ *Abuse of Our Elders: How We Can Stop It: Hearing before the S. Spec. Comm. on Aging*, 110th Cong. 4 (2007) (statement of Gregory E. Demske, Office of Counsel to the Inspector General, U.S. Department of Health and Human Services).

neglect, or exploitation from employment in settings that give them access to older or other vulnerable persons.¹⁴

The right to work in a chosen profession is a constitutionally protected property right, so individuals alleged to have committed abuse, neglect, or exploitation are entitled to certain protections under the due process clause of the constitution before that right can be taken away (these are collectively known as “administrative due process”). Individuals are entitled to an administrative hearing on the allegations and an opportunity to appeal the result of an administrative hearing. After having an administrative hearing, an individual may ask a court to review the decision resulting from the administrative hearing(s). If a review is granted, the court will review the case for due process violations or for a lack of substantial evidence or findings to support the administrative agency’s decision. Several cases in which a person accused of neglect sought judicial review of an administrative decision are discussed below.

In a Florida case, a certified nurse’s aide appealed a Department of Health and Rehabilitative Services (HRS) decision that confirmed a finding that he had neglected an aged person and ordered that his name be placed on the state’s abuse registry. The issue was not whether he was a caregiver, but whether the evidence supported the administrative finding of neglect. The evidence showed that after bathing a resident, helping her into a shower chair, and placing a soft restraint around her waist, the aide discovered there were no towels for drying the resident. After trying to get a nurse to bring him some towels, the aide left the resident unattended while he went to get towels. While unattended, the resident fell from the chair and fractured her wrist. The court that reviewed the HRS decision concluded that acts or omissions of a caregiver must be judged against an objective standard, which may be defined by rule or by proof of general acceptance within the nursing home industry. The court determined HRS failed to show that leaving the resident unattended was either contrary to generally accepted nursing standards or a violation of an HRS promulgated rule. In other words, the court determined HRS failed to make a sufficient factual finding of neglect. The court reversed the final agency order and directed HRS to remove the aide’s name from the abuse registry. *A.O. v. Dep’t. of Health Rehab. Servs.*, 696 So.2d 1358 (1997).

¹⁴ Lori Stiegel & Ellen Klem, *Abuse Registries: Comparison Chart of Provisions in Adult Protective Services Laws with Citations, by State* (2007), <http://www.abanet.org/aging/about/elderabuse.shtml>.

In another Florida case, a court reversed a state agency's decision that an assisted living facility (ALF) operator was guilty of neglect for failing to give a prescribed sedative to a resident. The sedative in question was prescribed before the resident entered the facility and there was no evidence that the ALF operator was given instructions regarding the medication. The resident's wife complained to the state agency that her husband was not getting his medications. During the ALF operator's administrative hearing, the operator argued that without instructions otherwise, it was reasonable for her to use her training as a nurse and common sense to decide when to give the resident his sedative. She testified she did not see any reason to give him the sedative because he was drowsy and sat in his wheelchair all the time. The administrative law judge (ALJ) determined it was essential to the resident's well-being to receive all of his prescribed medications and that the operator's failure to give the resident his medication was neglect. However, the ALJ also found the resident had not suffered any ill effect from the lack of the sedatives. A court reviewed the ALJ's decision and concluded that there was not substantial evidence to support the finding of neglect. The court stated the mere fact that the medication was prescribed was not sufficient to support the finding of neglect where the ALF operator was given no direction as to when or how often it should be given. The court concluded that there was no evidence given during the administrative hearing that a prudent person would consider the sedative essential for the resident's well-being, and that, to the contrary, the ALJ found that the resident had suffered no ill-effect as a result of not receiving the medication. The court ordered the ALF operator's name removed from the abuse registry. *C.B. v. Dep't. of Children and Family Servs.*, 763 So.2d 356 (1998).

Not all judicial reviews of administrative hearings on neglect concern health care facility employees. A Minnesota case about a family member who was alleged to have neglected her mother also illustrates the need for an agency to make clear factual findings to support a substantiation of neglect. In this case, a woman sought review of a Minnesota Department of Human Services (DHS) decision affirming a county community services department decision that she was the caregiver for and had neglected her 78-year-old mother. The woman's mother fell and hurt her ankle and cut her head. After the injury, both the woman and her mother decided there was no need to go to the hospital. Later the woman's mother was taken to the hospital where health care workers discovered she had three broken bones in her foot, was malnourished and dehydrated, and appeared to be a victim of neglect. The woman argued that

DHS's determination that she was her mother's caregiver at the time of the injury was not supported by substantial evidence. The reviewing court determined DHS did not make any factual findings that the woman was her mother's caregiver and as such there was not sufficient evidence to support DHS's conclusion that a duty to provide care had been breached. The court instructed DHS to conduct further evidentiary proceedings on whether the woman was her mother's caregiver. *In re appeal of O'Boyle*, 655 N.W.2d 331 (2002).

Finally, a certified nurses' aide working in a nursing facility argued a violation of due process stemming from an incident in which she left a resident unattended while the resident was eating and the resident fell. The Florida Department of Health and Rehabilitative Services (HRS) investigated, and confirmed that the aide was a perpetrator of neglect of an aged person and placed her name on the central abuse registry. The aide's employment was terminated after the investigation. The aide appealed the HRS decision and argued that placing her name on the abuse registry at HRS caused her to be terminated from her job, and that the statute unconstitutionally denied her due process rights because it did not provide for an opportunity to have a hearing until after the confirmation of allegations by HRS. She also argued that HRS failed to prove that her action of leaving the resident unattended in the dining room was neglect within the meaning of the statute prohibiting neglect. The court disagreed with HRS's position that placing the aide's name on the abuse registry did not cause her to lose her job. The court determined HRS's actions in classifying the report of alleged neglect as confirmed and placing the aide's name on the abuse registry before the aide had notice and opportunity to be heard on the matter constituted denial of due process. The court also determined that HRS had failed to prove the aide's single act of leaving the resident unattended constituted neglect as defined by the statute. The confirmation of neglect was reversed and the aide's name was removed from the registry. *K.M.T. v. Dep't. of Health and Rehab. Servs.*, 608 So.2d 865 (1992).

IV. Analysis

This paper has focused on two legal issues related to neglect of older persons: (1) whether there is a duty to care for an older person and (2) whether such a duty has been breached.

An affirmative duty to care for an older person arises only in certain situations. These situations are:

1. when there is a contract for care;

2. when a statute establishes a duty to care for an older person; or
3. when the nature or circumstances of a relationship demonstrate that one person is a caregiver for another.

Assessing whether a contract for care exists is generally fairly simple. Assessing whether a caregiver relationship exists under statute or due to the nature and circumstances of the relationship is more complex. Some statutes provide a definition of caregiver, but others do not. Even if a definition of caregiver is provided, courts may need to determine whether the facts of a case fit within the statutory definition. If a statute does not define caregiver and no contract exists, then the courts will examine the nature or circumstances of the relationship between the alleged neglecter and the victim to determine if there was a caregiver relationship. Reported judicial opinions reveal that courts have considered such factors as whether the parties live together; what tasks the alleged neglecter performed; whether the alleged neglecter described himself or herself as a caregiver to others, including the trial court; whether other people were asked for help or involved in providing care; and whether third parties viewed the alleged neglecter as a caregiver.

Liability for neglect may have civil, criminal, and administrative consequences. Due to the nature of the judicial process, reported judicial opinions on the issue of whether a caregiver breached the duty to provide care to an older person are focused on legal issues of due process instead of the facts of the case. A California court has determined that a portion of a neglect statute was unconstitutionally vague because it attempted to impose a duty on people who were not caregivers for a neglected elder or in a position to control the activities of the caregiver. In the same case, the court concluded that the statute was enforced in an arbitrary manner because evidence demonstrated that other family members in a similar situation to the defendant were not arrested or prosecuted. Courts have overturned administrative agency decisions that a caregiver had neglected an older person because those decisions were not based on sufficient evidence or were made without giving the alleged neglecter an opportunity for a hearing.

V. Conclusion

Successful challenges to accusations of elder neglect can be troubling for legislators, program administrators, policy makers, researchers, and others concerned about liability for elder neglect. Legislators can help prevent a court decision that a statute is unconstitutional by drafting neglect statutes that provide adequate notice to defendants and definite guidelines in

order to preclude arbitrary and discriminatory enforcement. State agencies charged with investigating allegations of neglect should ensure they make findings based on substantial evidence and allow the alleged neglecter the opportunity for a hearing before confirming allegations of neglect.