

**S211793**

IN THE  
**Supreme Court**  
OF THE STATE OF CALIFORNIA

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SUPREME COURT  
**FILED**

OCT 16 2013

KATHLEEN A. WINN, *et al.*,  
*Plaintiffs and Appellants,*

Frank A. McGuire Clerk

v.

Deputy

PIONEER MEDICAL GROUP, INC., *et al.*,  
*Defendants and Respondents.*

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After a Published Decision by the Court of Appeal,  
Second Appellate District, Division Eight  
Case No. B237712

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**REQUEST FOR JUDICIAL NOTICE;  
DECLARATION OF COUNSEL**

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JAMES CHINUK LEE, D.P.M., and STANLEY LOWE, D.P.M

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## REQUEST FOR JUDICIAL NOTICE

Pursuant to Evidence Code sections 452 and 459, and California Rules of Court, rules 8.252, subd. (a), and 8.520, subd. (g), defendants Pioneer Medical Group, Inc., Emerico Csepanyi, M.D., James Chinuk Lee, D.P.M., and Stanley Lowe, D.P.M., hereby request the Court take judicial notice of the following Bill Analyses as legislative history of the Elder Abuse and Dependent Adult Civil Protection Act ("Elder Abuse Act") (Welf. & Inst. Code, § 15600, et seq.):

- A. Assembly Republican Caucus, Analysis of Assembly Bill No. 2611 (2003-2004 Reg. Sess.) as amended Aug. 9, 2004 (Aug. 24, 2004).**
- B. Assembly Republican Caucus, Analysis of Senate Bill No. 2199 (1997-1998 Reg. Sess.) as amended Apr. 28, 1998 (June 26, 1998).**

This motion is supported by the following memorandum of points and authorities and the attached documents.

## **MEMORANDUM OF POINTS AND AUTHORITIES**

### **A. Judicial Notice Of The Bill Analyses Is Permissible**

Pursuant to Evidence Code sections 452 and 459, the Court may take judicial notice of “Official acts of the legislative, executive, and judicial departments of the United States and of any state of the United States.” The Assembly Republican Bill Analyses of Assembly Bill 2611 and Senate Bill 2199 are official acts of the legislative department of the State of California. Reports of this type have been cited by this Court as indicative of legislative history. (See, *e.g.*, *Delaney v. Baker* (1999) 20 Cal.4th 23, 30, 33, 35-36 [relying on Assembly Subcom. on Admin. of Justice, Analysis of Sen. Bill No. 679 (1991-1992 Reg. Sess.) as amended July 16, 1991, in interpreting the Elder Abuse Act]; *Kaufman & Broad Communities, Inc. v. Performance Plastering, Inc.* (2005) 133 Cal.App.4th 26, 36 [“Analyses by Legislative Party Caucuses (e.g. Senate Democratic and Republican)” constitute cognizable legislative history].)

### **B. The Bill Analyses Are Relevant To This Proceeding**

The Bill Analyses are relevant to the interpretation of the Elder Abuse Act because they reflect the legislative history of the Act. (See *Delaney v. Baker, supra*, 20 Cal.4th at 30-36.) The interpretation of the Act is at issue in this case. Defendants contend that the Elder Abuse Act does not provide enhanced civil remedies for cases of professional negligence. (See Opening Brief on the Merits, pp. 13, 39.)

**C. The Bill Analyses Were Not Presented To The Trial Court Or The Court Of Appeal, But Are Raised Now At The First Proper Opportunity**

The Bill Analyses were not presented to the trial court or the Court of Appeal. Defendants now proffer the documents in this Court at its first opportunity to respond to the Court of Appeal majority's opinion regarding the scope of the Elder Abuse Act and its intent. Defendants contend that the Majority Opinion unduly expands liability under the Act beyond its legislative intent. It is in support of that contention, made by defendants in the Opening Brief on the Merits at pages 13 and 39, that defendants now request judicial notice of the Bill Analyses.

**D. The Bill Analyses Do Not Relate To Matters That Occurred After The Opinion That Is The Subject Of This Proceeding**

The Bill Analyses do not relate to matters that occurred after the Opinion that is the subject of this proceeding.

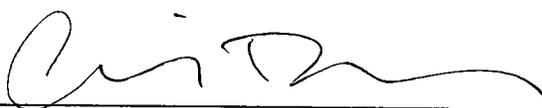
## CONCLUSION

For the foregoing reasons, defendants hereby request this Court take judicial notice of the Bill Analyses attached hereto as Exhibits A and B.

DATED: October 15, 2013

CARROLL, KELLY, TROTTER,  
FRANZEN & MCKENNA  
and  
COLE PEDROZA LLP

By



Curtis A. Cole  
Kenneth R. Pedroza  
Matthew S. Levinson  
Cassidy C. Davenport  
Attorneys for Defendants  
and Respondents  
PIONEER MEDICAL GROUP,  
INC., EMERICO CSEPANYI, M.D.,  
JAMES CHINUK LEE, D.P.M., and  
STANLEY LOWE, D.P.M.

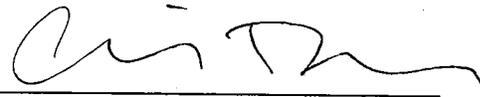
## CERTIFICATION

Appellate counsel certifies that this document contains 556 words. Counsel relies on the word count of the computer program used to prepare the brief.

DATED: October 15, 2013

CARROLL, KELLY, TROTTER,  
FRANZEN & MCKENNA  
and  
COLE PEDROZA LLP

By



Curtis A. Cole  
Kenneth R. Pedroza  
Matthew S. Levinson  
Cassidy C. Davenport  
Attorneys for Defendants  
and Respondents  
PIONEER MEDICAL GROUP,  
INC., EMERICO CSEPANYI, M.D.,  
JAMES CHINUK LEE, D.P.M., and  
STANLEY LOWE, D.P.M.

## DECLARATION OF CASSIDY C. DAVENPORT

I, Cassidy C. Davenport, declare and state as follows:

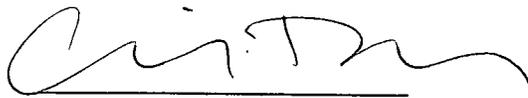
1. I am an attorney duly admitted to practice law in the State of California and am an attorney with Cole Pedroza LLP, co-counsel of record for defendants Pioneer Medical Group, Inc., Emerico Csepanyi, M.D., James Chinuk Lee, D.P.M., and Stanley Lowe, D.P.M. The following information is within my personal knowledge, and if called upon to testify as a witness in this matter, I could and would testify to the following.

2. Attached as Exhibit A is a copy of the Assembly Republican Caucus Analysis of Assembly Bill No. 2611 (2003-2004 Reg. Sess.) as amended Aug. 9, 2004 (Aug. 24, 2004).

3. Attached as Exhibit B is a copy of the Assembly Republican Caucus Analysis of Senate Bill No. 2199 (1997-1998 Reg. Sess.) as amended Apr. 28, 1998 (June 26, 1998).

4. I obtained the attached Bill Analyses from Legislative Intent Service, Inc. L. Karen Harrison, an attorney employed by Legislative Intent Service, Inc., undertook to locate and obtain the documents. Her declaration identifying the documents was attached to the Bill Analyses.

I declare under penalty of perjury that the foregoing is true and correct. Executed this 15th day of October 2013, at Pasadena, California.



Cassidy C. Davenport

**EXHIBIT A**

AB 2611 (SIMITIAN)

ELDER AND DEPENDENT ADULT ABUSE.

Version: 8/9/04 Last Amended

Vote: Majority

Oppose

Vice-Chair: Lynn Daucher

Tax or Fee Increase: No

Eliminates the \$250,000 cap on damages for noneconomic losses in an action for injury against a health care provider in elder and dependent adult abuse cases. Lowers the burden of proof for financial abuse of elder or dependent adults for purposes of allowing recovery of attorney's fees, costs and damages. Eliminates, in cases involving physical abuse, neglect or financial abuse of an elder or dependent adult, the requirement that the defendant knew or should have known that the victim was an elder or dependent adult. Raises the threshold from \$400 to \$800 for financial abuse against an elder/dependent adult. Permits a court to require counseling as part of a sentence for a violation of these provisions.

This bill was amended 7/6/04 after the bill was re-referred to the Senate Appropriations Committee to eliminate the cap on non-economic damages of \$250,000 against physicians in elder/dependent adult abuse in suits that allege both malpractice and abuse. There has been enormous growth in civil actions filed against physicians that allege both malpractice and elder/dependent adult abuse. The prospect of unlimited non-economic damages will make adult and dependent abuse cases even more attractive to personal injury attorneys.

A discussion of this amendment was not included in the Senate Floor Analysis despite the reference in the analysis to a letter from California Association of Professional Liability Insurers (CALPI) clearly stating that they were opposed to this amendment. The Senate Floor Analysis referred to only one of CALPI's two reasons for opposing the bill, namely that lowering the burden of proof for financial abuse would only exacerbate the increasing growth of civil actions against physicians.

The 7/6/04 version of the bill eliminated the \$250,000 in an obscure reference on the last page of an eleven-page bill, which easily could have gone unnoticed by someone who is not an attorney or does not have a background in the California Medical Injury Compensation Reform Act (MICRA). The Senate Republican Caucus analysis had a support position on the bill due to the fact that the bill eliminated the requirement in elder/dependent adult abuse cases that the defendant knew or should have known the victim was an elder or dependent adult, which strengthens penalties against elder/dependent adult abuse. This analysis had a "none" position, which would have remained on the bill had not CALPI called this office to alert us to the provision eliminating the \$250,000 cap.

Assembly Republican Aging Votes (3-2) 4/12/04

Ayes: None

Noes: Daucher, Nakanishi

Assembly Republican Public Safety Votes (4-2)

4/20/04

Noes: La Suer, Benoit

Abs. / NV: None

Assembly Republican Floor Votes (16-5) 5/19/04

Noes: Runner, Bates, Daucher, Haynes, Keene

Abs. / NV: None

Assembly Republican Floor Votes (70-4) 5/26/04

Ayes: All Republicans Except

Noes: Campbell, Daucher, Haynes, Richman

Abs. / NV: Dutton, La Malfa, Runner, Samuelian

Senate Republican Floor Votes (31-1) 8/23/04

Ayes: All Republicans, Except

Noes: Hollingsworth

Abs. / NV: Battin, Johnson, Margett, Oller, Poochigian

Policy Question

1. Should the \$250,000 cap on non-economic damages be removed on medical malpractice suits involving elder/dependent adult abuse?
2. Should the standard for liability for financial elder abuse be lowered for purposes of allowing recovery of attorney's fees, costs and damages?
3. Should the crime for elder and dependent a abuse be expanded to eliminate the requirement that the defendant knew or should have known the victim was an elder or dependent adult?
4. Should the threshold for elder financial abuse be raised from \$400 to \$800 to reflect inflation?



## Assembly Republican Bill Analysis

## AB 2611 (Simitian)

### Summary

As this bill left the Assembly it revised the standard for imposing penalties of elder abuse regardless of whether the defendant had knowledge the victim was an elder or dependent adult and lowered the burden of proof for elder/dependent financial abuse. Amendments were taken to remove the provisions in the bill making financial employees, including bank tellers, mandated reporters of elder abuse to get the bill out of Assembly Appropriations Committee.

### Arguments In Support of the Bill

Will make it easier for the plaintiff to recover attorney fees in civil cases of financial abuse cases by lowering the standard to a preponderance of evidence for cases that involve only financial abuse of elder or dependent adults.

### Arguments In Opposition to the Bill

According to the California Association of Professional Liability Insurers:

First, while it might appear that lowering the burden of proof for financial abuse would not normally affect physicians providing health care, we have seen claims of such abuse alleged against facilities, where the financial fraud is alleged with respect to obtaining money for services knowing the services would be provided in a substandard manner. Often, it is alleged against health care providers that they had promised to provide the "best" care available, but knew their care was substandard. These types of claims are in combination with other causes of action for professional negligence, elder abuse, fraudulent misrepresentation etc. **The lower burden of proof in the bill will invite plaintiff attorneys to argue a breach of promise to provide care in order to get attorney fees and unlimited damages. See below.**

The July 6 amendments to AB 2611 eliminate the current cap on non-economic damages, set by law at \$250,000. **The prospect of unlimited non-economic damages will make these cases even more attractive to personal injury attorneys, and will increase the plaintiff's leverage in settlement discussions, particularly when financial abuse causes of actions are included in omnibus pleadings all stemming from the same set of facts.** The ultimate result will be that the defense of health care providers will be more expensive, and provider premiums will increase.

### Fiscal Effect

As amended in the Assembly Appropriations Committee on May 19, 2004:

**SIGNIFICANT STATE COST** to change the standards for prosecuting suspected elder abuse.

### Fiscal Comments:

1. The 2004-05 Budget includes over \$115 million (\$61 million General Fund) to fund Adult Protective Services activities at the local level.
2. This bill could increase investigative and enforcement costs, likely offset by increased penalties. The net effect of this measure is not known but presumed to be significant.

**This bill was substantially amended in the Senate to do the following:**

1. Eliminate the \$250,000 cap on non-economic damages be removed on medical malpractice suits involving elder/dependent adult abuse.
2. Raise the threshold of \$400 to \$800 for the imposition of fine and imprisonment when theft, embezzlement, forgery, fraud or identity theft is perpetrated against an elder or dependent adult only if AB 2705 is enacted and becomes effective on or before January 1, 2005. (AB 2705 would raise the threshold for the crime of grand theft from \$400 to \$800 to reflect inflation since the current thresholds were enacted in 1982.)
3. Provide that in any case in which a person is convicted of violating these provisions of this bill, the court may order as a condition of probation that the defendant be placed in an appropriate counseling program. Require the defendant to pay the expense of participation in the counseling program, as specified.
4. Make conforming and clarifying changes.

### Support

As of 6/28/04:

AARP California; Advisory Council to the Sonoma County Area Agency on Aging; California Alliance for Retired Americans; California Advocates for Nursing Home Reform; California Geriatric Education Center; California Senior Legislature; County Welfare Directors Association of California; Congress of California Seniors; Attorney General; Gray Panthers; Older Women's League of California; Peace Officers Research Association of California; Santa Clara County Board of Supervisors; Santa Cruz Board of Supervisors; Sonoma County Area Agency on Aging; Triple-A Council of California

### Opposition

As of 6/28/04:

California Attorneys for Civil Justice; California Association of Professional Liability Insurers; Beta Healthcare Group.

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**Comments**

We have seen an enormous growth in civil actions filed against physicians which allege both malpractice and elder/dependent adult abuse. Since the latter action has a provision for attorney fees beyond those specified in MICRA, this is perhaps not surprising. The routine pleading of elder/dependent adult abuse is contributing to rising malpractice premiums. Legislation, such as AB 2611, that would make these claims even more attractive to trial attorneys will exacerbate the situation.

**Author's Statement for the prior version of the bill:** "AB 2611 is an omnibus bill package designed to combat the growing problem of elder abuse in California. The provisions in this bill came from people on the front lines of elder abuse. County counsels, district attorneys, adult protective services, the Bureau of Medi-Cal Fraud and Abuse - all gave more than six hours of testimony in hearings held in San Jose and Santa Cruz. AB 2611 toughens the law with respect to reporting and prosecuting elder abuse. It requires financial institutions to report suspected cases of financial abuse to local law enforcement authorities, and gives prosecutors stronger tools to go after elder abusers and recoup financial losses to an elder."

**Senate amendments that raise the threshold for embezzlement, forgery, fraud or identity theft committed against an elder or dependent adult and double-join this bill to AB 2705 (Goldberg), which would raise the threshold for grand theft from \$400 to \$800.** As noted by Gary Olson in his analysis of AB 2709, "[r]aising the threshold is the author's attempt to raise the bar so that fewer criminals will face a felony charge and potential sentence under the Three Strikes Law. While at some point it might be reasonable to increase fines/penalty thresholds in a number of areas to reflect the impact of inflation, AB 2705 simply seeks to decrease penalties for theft."

In percentage terms, the bill raises the bar quite high and, if 1982 is used as the base year, as calculated in the Assembly Public Safety Committee's analysis, the bill overshoots the dollar figure necessary to correct for the effects of inflation. "Expressed another way, goods with a value of \$400 in 1983 are worth \$748 today."

Given the prevalence of elder financial abuse against a population that is particularly vulnerable, Senate amendments to raise the threshold for felony elder financial abuse from \$400 to \$800 will undermine the effort to protect elderly and dependent adults from financial predators.

**Current Law**

1. Provides that any person who, under conditions likely to produce great bodily harm or death,

willfully causes or permits any elder or dependent adult to suffer, or inflicts unjustifiable physical pain or mental suffering, or having the care or custody of any elder or dependent adult to be placed in a situation in which his or her person or health is endangered to be punished by:

- a term of imprisonment in a county jail not to exceed one year;
- by a fine not to exceed six thousand dollars (\$6,000);
- by both a fine and imprisonment in a county jail; or
- by imprisonment in the state prison for two, three, or four years.

Requires that any person who, under conditions other than those likely to produce great bodily harm or death, willfully causes or permits any elder or dependent adult to suffer, or inflicts unjustifiable physical pain or mental suffering, or having the care or custody of any elder or dependent adult to be placed in a situation in which his or her person or health is endangered is guilty of a misdemeanor.

2. Requires that any person subsequently violates this subdivision to be punished by:
  - a fine not to exceed two thousand dollars;
  - by imprisonment in a county jail not to exceed one year; and,
  - or by both a fine and imprisonment.
3. Provides that any non-caretaker who violates any provision of law proscribing theft, embezzlement, forgery, or fraud, when the value of the crime is more than \$400, is subject to imprisonment in county jail for up to one year or in state prison for 2, 3, or 4 years.
4. Provides that any non-caretaker who violates any provision of law proscribing theft, embezzlement, forgery, or fraud, when the value of the crime is less than \$400, is subject to a fine of up to \$1,000 and/or imprisonment in county jail for up to one year.
5. Provides that any caretaker who violates any provision of law proscribing theft, embezzlement, forgery, or fraud, when the value of the crime is more than \$400, is subject to imprisonment in county jail for up to one year or in state prison for 2, 3, or 4 years.
6. Provides that any caretaker who violates any provision of law proscribing theft, embezzlement, forgery, or fraud, when the value of the crime is less than \$400, is subject to imprisonment in county jail for up to one year and/or a fine of up to \$1,000.
7. Provides that the time within which prosecution for various criminal offenses must begin, and prohibits the extension of these time limits except under certain circumstances.
8. Defines financial abuse of an elder or dependent adult as:



## Assembly Republican Bill Analysis

## AB 2611 (Simitian)

- taking real or personal property with the intent to defraud; and,
  - assisting in taking real or personal property with the intent to defraud.
9. Provides that a person shall be deemed to have acted in bad faith if the person knew or should have known that the elder or dependent adult had the right to have the property transferred or made readily available to the elder or dependent adult or to his or her representative.
10. Includes provisions that award attorney's fees and costs, damages to a plaintiff, when it is proven by clear and convincing evidence that the defendant is liable for physical abuse, neglect, or financial abuse and the defendant has also been guilty of recklessness, oppression, fraud, or malice in the commission of the abuse.

control officers, environmental health and code enforcement workers, firefighters, and clergy members and made these individuals subject to the same sanctions for failure to report as other mandated reporters.

**AB 109 (Alquist)** of 2001, as introduced, required "any officer, trustee or employee of a bank or savings and loan association" to report financial abuse of an elder. The bill was subsequently amended to require the state Department of Social Services (DSS) to implement a pilot program in four counties to train employees of financial institutions such as banks to recognize and report financial abuse of elder and dependent adults.

**AB 2107 (Scott)**, Chapter 442, Statutes of 2000, revised and recast the definition of financial abuse for the purpose of reporting and prosecuting elder abuse.

**SB 1742 (Hughes)**, Chapter 813, Statutes of 2000, authorizes public guardians in qualified counties to place short-term holds on the property of an elder in cases where a specially trained peace officer makes a determination that there exists a significant danger that the elder person will lose all or a portion of his or her property as a result of fraud or misrepresentation or the mental incapacity of the person.

**AB 2253 (Jackson)** of 2000 which would have authorized, but not required, employees or agents of financial institutions to report suspected financial abuse against an elder or dependent adult, went to the Assembly Inactive file. In addition to providing immunity for voluntary reporting, the bill would have required employees of financial institutions to receive training in recognition of financial abuse.

### Burden of Proof

As noted above, this bill will create a lower standard of proof, a preponderance of evidence, for the recovery of attorney fees as opposed to a higher standard, clear and convincing evidence, for awarding punitive damages. This is in line with existing law where higher standards of proof are required for higher penalties.

### Related Legislation

**AB 2474 (Wolk)** was amended in the Senate to establish a 3-year elder and dependent adult financial abuse reporting rewards program to assist financial institutions in increasing the voluntary reporting of elder and dependent adult financial abuse. This bill died in the Senate Judiciary Committee.

**AB 255 (Zettel)**, Chapter 54 of 2002, expanded the list of mandated reporters of elder and dependent adult abuse to include humane society and animal

**Policy Consultant:** Mary Bellamy/Gary Olson 8/24/04

**Fiscal Consultant:** Julianne Huerta 05/25/04

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**EXHIBIT B**

**Human Services Committee**

**None**

**SB 2199 (LOCKYER)  
ELDER AND DEPENDENT ADULT ABUSE.**

**Version:** 4/28/98 As Proposed to be Amended  
**Vote:** Majority  
**None**

**Vice-Chair:** Tom Woods  
**Tax or Fee Increase:** No  
Provides greater protections for victims of elder abuse.

The "none" recommendation on this bill is based on the fact that this bill may go too far for some members. The bill contains a provision whereby elders will be liable if they do not make sure that they feed themselves.

**Policy Question**

Should the protections for elders be enhanced so as to provide more protection?

**Summary**

1. Broadens and redefines the terms "abuse," "adult protective services," "neglect" and "care custodian" in the Penal Code.
2. Expands the definition of fiduciary crimes.
3. Expands the duty to report by mandated reporters.
4. Implements expanded adult protective services programs, dependant on funding in the budget.

**Support**

Advocacy Group; Alameda County Board of Supervisors; Alliance for the Mentally Ill of San Mateo County; American Association of Retired Persons; California Commission on Aging; California Senior Legislature; California Peace Officers' Association; California Police Chiefs' Association; Marin Commission on Aging; SEIU.

**Opposition**

California Association of Health Facilities; California Healthcare Association; California

**Senate Republican Floor Votes (37-0) 5/28/98  
PASS**

Ayes: All Republicans Except  
Noes: None  
Abs. / NV: Craven, Lewis

**Assembly Republican Public Safety Votes (7-0)  
6/23/98**

Ayes: Cunneen, Bowler, House  
Noes: None  
Abs. / NV: None

**Assembly Republican Human Services Votes (0-0)  
7/1/98**

Ayes: None  
Noes: None  
Abs. / NV: None

**Assembly Republican Votes (0-0) 1/1/98**

Ayes: None  
Noes: None  
Abs. / NV: None

Attorneys for Criminal Justice.

**Arguments In Support of the Bill**

This bill provides greater protections for the elderly. This bill would provide greater resources, subject to the Budget Act, to counties to provide services to elder and dependent adults. The author states that only 45 percent of counties do not provide case management services in APS; that 62 percent of counties do not provide counseling; that 64 percent of counties do not provide a 24-hour hotline; and 96 percent of counties do not provide diagnostic treatment services. This bill would help create, in all 58 counties, fully functioning adult protective services programs with statewide minimum standards to protect the elderly.

**Arguments In Opposition to the Bill**

1. The California Medical Association argues that doctors should not be responsible for the acts or omissions of another, and this bill will make them responsible in this regard. However, this argument is flawed in that the only doctors who will be liable under this law will be either those with direct supervision of the elder or doctors in charge of facilities or others with supervision over the elder. The doctor will be held to the standard of "a reasonable doctor in the same or similar circumstances," which is not a high standard and will not place doctors in jeopardy of being arrested unless they acted unreasonably.
2. This bill goes too far. It even makes it a crime for an elder to abuse himself or herself.

**Fiscal Effect**

Unknown.

**Comments**

1. **EXISTING LAW.** Makes it an alternate felony/misdemeanor for a person with the custody or care of an elder to willfully cause or permit the person or health of the elder or dependent adult to be placed in a situation where the elder's person or health is endangered.
2. "Neglect" in this bill is defined as the negligent

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**Assembly Republican Bill Analysis**

**SB 2199 (Lockyer)**

- failure of the person themselves to exercise that degree of care that a reasonable person in a like position would exercise. This is the current definition used in Penal Code section 7.
3. This bill makes it a crime for an elder to become dehydrated due to their own neglect. Apparently, the elder would then be liable for an alternate felony/misdemeanor.
  4. This bill would place caregiver status to agencies providing publicly funded nutrition and community-based support services. Thus,

the bill would hold "Meals-on-wheel" responsible if they were late and did not get food to an elder on time.

5. Mandated reporters would be required to report incidents of abandonment, isolation, financial abuse or neglect. There also would be an expanded permission to report. While the duty to report would not be expanded, the permission to report would.

**Policy Consultant:** Jean Huston/Debby Rogers 6/26/98 JS  
**Fiscal Consultant:**

LEGISLATIVE INTENT SERVICE (800) 666-1917



## PROOF OF SERVICE

I am employed by Cole Pedroza LLP, in the County of Los Angeles, State of California. I am over the age of 18 and not a party to the within action. My business address is 200 S. Los Robles Ave., Suite 300, Pasadena, California 91101.

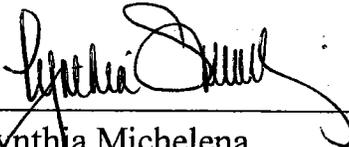
On the date stated below, I served in the manner indicated below, the foregoing document described as: REQUEST FOR JUDICIAL NOTICE; DECLARATION OF COUNSEL on the parties indicated below by placing a true copy thereof, enclosed in a sealed envelope addressed as follows:

Clay Robbins III  
MAGANA, CATHCART &  
MCCARTHY  
1801 Avenue of the Stars, Suite 600  
Los Angeles, CA 90067-5899  
Tel: (310) 553-6630  
Fax: (310) 407-2295

Attorneys for Plaintiffs and  
Appellants KATHLEEN A.  
WINN, et al.

By United States Postal Service – I am readily familiar with the business's practice for collecting and processing of correspondence for mailing with the United States Postal Service. In that practice correspondence would be deposited with the United States Postal Service that same day in the ordinary course of business, with the postage thereon fully prepaid, in Pasadena, California. The envelope was placed for collection and mailing on this date following ordinary business practice.

I declare under the penalty of perjury under the laws of the State of California that the foregoing is true and correct. Executed this 15th day of October, 2013.

  
\_\_\_\_\_  
Cynthia Michelena