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COURT OF APPEALS DIV 1  
STATE OF WASHINGTON  
2014 JUN 12 PM 1:09

IN THE SUPREME COURT OF THE STATE OF WASHINGTON  
PETITION FOR REVIEW FROM

Gradinaru v. Washington State Department of Social and Health Services,  
Court of Appeals No. 70138-0-1

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Estera Gradinaru,

Petitioner,

v.

State of Washington  
Department of Social and Health Services

Respondent,

**FILED**  
JUN 17 2014

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PETITION FOR REVIEW

CLERK OF THE SUPREME COURT  
STATE OF WASHINGTON CRF

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**I. IDENTITY OF PETITIONER**

Estera Gradinaru, appellant below, asks this Court to accept review of the Court of Appeals decision terminating review designated in Part II of this petition.

**II. COURT OF APPEALS DECISION**

Estera Gradinaru requests review of the decision of the Court of Appeals, Division I, in Gradinaru v. State of Washington Department of Social and Health Services, filed March 24, 2014, No. 70138-0-I, affirming the Department of Social and Health Services' finding that she financially exploited a vulnerable adult in violation of RCW 74.34.020(6).

**III. ISSUES PRESENTED**

- A. Whether this Court should grant review because the Court of Appeals' construction of RCW 74.34.020(6) conflicts with this Court's statutory construction precedents?
- B. Whether this Court should grant review because the Court of Appeals' construction of the Abuse of Vulnerable Adults Act presents a question of substantial public interest?

**IV. STATEMENT OF THE CASE**

A. Procedural History

On May 2, 2011, the Department of Social and Health Services ("DSHS" or "Department"), Respondent, issued a Notice of Preliminary Findings advising Estera Gradinaru, Petitioner, that a DSHS investigation

had resulted in a “substantiated finding” of financial exploitation against her. See Certified Administrative Record (“CR”) at 103. <sup>1</sup>

Ms. Gradinaru timely requested an administrative hearing. A hearing was held before Administrative Law Judge (“ALJ”) Carolyn Pinkett on August 24, 2011. See Transcript (“TR”) at 1. On October 26, 2011, Judge Pinkett issued an initial order reversing the Department’s substantiated finding and dismissed the case against Ms. Gradinaru. See CR at 37.

The Department appealed to the Board of Appeals (“BOA” or “Board”). The BOA reversed Judge Pinkett’s initial order and issued a final order reinstating the substantiated finding against Ms. Gradinaru after concluding that she engaged in financial exploitation of a vulnerable adult in violation of RCW 74.34.200(2). See CR at 1. Ms. Gradinaru sought review of the Board’s order in the King County Superior Court. On March 1, 2013, the Superior Court, the Honorable Bruce Heller presiding, issued a decision affirming the Board’s order.

Ms. Gradinaru subsequently appealed to Division I of the Court of Appeals. On March 24, 2014, the Court of Appeals issued a decision dismissing Ms. Gradinaru’s appeal and affirming the agency’s decision.

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<sup>1</sup> The Certified Administrative Record is attached hereto as Appendix B. The Transcript of Proceedings is attached hereto as Appendix C.

The State's motion to publish the Court of Appeals decision was granted on May 14, 2014. Ms. Gradinaru now petitions this Court for review of the Court of Appeals' decision.

B. Facts

The formal findings of fact underlying the BOA's determination are not in dispute. Ms. Gradinaru was the co-owner of Bellevue Rose Adult Family Home. Findings of Fact ("FF") at 1. Ms. Gradinaru suffers from depression and has a history of suicidal ideation. See FF 4. Before the events leading up to the charges in this case, Ms. Gradinaru tried to commit suicide by ingesting her own prescription medications on two previous occasions. See id. Ms. Gradinaru had experienced a difficult divorce in 2009, and was recommended for partial-day hospitalization by physicians at Overlake Hospital as a result of her depression. See id. Unfortunately, Ms. Gradinaru could not participate in the program because she could not afford it. See id.

On October 12, 2010, Ms. Gradinaru's father, who also owned an adult family home, asked Ms. Gradinaru to pick up some medicine for one of his residents. See FF 7. Ms. Gradinaru was experiencing symptoms of depression and stress resulting from her divorce. See id. Ms. Gradinaru

took Elaine's<sup>2</sup> morphine and drove to a park-and-ride, where she attempted to commit suicide by ingesting one-half capful of concentrated morphine (approximately one cubic centimeter or 20 milligrams). See FF 7-8. Her father later found her at the park-and-ride and she was taken to Overlake Hospital where she was admitted to the emergency room and subsequently transferred to the psychiatric ward for suicidal ideation. See FF 7; CR at 95.

Katherine Ander, a DSHS investigator, testified that as a registered nurse, Ms. Gradinaru had the authority to possess patients' prescription medications and delegate duties relating to the administration of medications at the time the incident underlying this case occurred. See TR at 32. Ms. Ander explained that her investigation revealed that Ms. Gradinaru was in charge of medication administration in her own adult care home and in her father's adult care home (a common practice in adult care homes). See id. Ms. Ander also testified that there was no evidence that Ms. Gradinaru was addicted to morphine. TR at 23, 51. The morphine ingested by Ms. Gradinaru was prescribed to Elaine, the alleged victim, as part of a "comfort kit." FF 3. Testimony at the hearing established that Elaine did not require morphine during her stay at the

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<sup>2</sup> Elaine was a patient at Ms. Gradinaru's adult care home. FF 3. Elaine's last name has been omitted in order to protect her privacy.

home. Id. Ms. Ander concluded that Ms. Gradinaru’s use of Elaine’s morphine was an isolated incident and did not qualify as “drug diversion,” the practice of taking a patient’s prescription medications for personal use or distribution. See TR at 40, 51. Ms. Ander conceded on the record that there would have been no objective medical benefit to Ms. Gradinaru from taking the medication. TR at 49.

**V. ARGUMENT WHY RELIEF SHOULD BE GRANTED**

**A. The Court of Appeals’ Decision Conflicts with this Court’s Statutory Construction Precedents.**

This Court may accept a petition for review where the decision of the Court of Appeals is in conflict with a decision of the Washington Supreme Court. See RAP 13.4(b)(1). This Court should accept review of Ms. Gradinaru’s petition because the Court of Appeals decision in this case conflicts with this Court’s statutory construction precedents.

1. *The Court of Appeals’ Construction Conflicts with this Court’s Decisions Holding that a Statute is to be Construed in Accordance with its Plain Meaning.*

This Court has repeatedly held that where “a statute is clear on its face, its meaning [should] be derived from the language of the statute alone.” Densley v. Dep’t Ret. Sys., 162 Wn.2d 201, 219 (2007) (quoting Kilian v. Atkinson, 147 Wn.2d 16, 20 (2002)) (alteration in original). In other words, “courts should assume the Legislature means exactly what it says in a statute and apply it as written.” Id. (internal citation and

quotation marks omitted). Because the Court of Appeals construction of RCW 74.34.020(6) is contrary to the plain language of that statute, its decision conflicts with this Court’s decisions holding that, when a statute is interpreted by a court, the plain meaning of the language in the statute is controlling.

The ultimate question before the Court of Appeals in this case was whether Ms. Gradinaru’s ingestion of a vulnerable adult’s morphine in an attempt to commit suicide rose to the level of “financial exploitation” as that term is defined in the Abuse of Vulnerable Adults Act. RCW 74.34.020(6) defines the term “financial exploitation” as:

[T]he illegal or improper use, control over, or withholding of the property, income, resources, or trust funds of the vulnerable adult by any person or entity for person’s or entity’s *profit or advantage* other than for the vulnerable adult’s profit or advantage.

RCW 73.34.020(6) (emphasis added). The Court of Appeals adopted the following definition of the term “advantage”: “a more favorable or improved position or condition . . . benefit, profit, or gain of any kind.” App. A at 4. The court then went on to hold that Ms. Gradinaru gained an “advantage” by taking Elaine’s morphine because it enabled her to carry out her suicide attempt. Id.

The Court of Appeals’ conclusion is unsupported by the evidence and contrary to the plain text of the statute. Even if one adopts the Court

of Appeals' definition of the term "advantage," Ms. Gradinaru's conduct still does not fit within the scope of RCW 74.34.020(6). It is simply not reasonable to construe an attempt to commit suicide as an act taken for the *benefit, profit, or gain* of the actor. In fact, it is a crime in the State of Washington for a person to promote a suicide attempt. See RCW 9A.36.060. Moreover, the medical evidence before the court made clear that Ms. Gradinaru was not in any way advantaged by ingesting the morphine. Ms. Ander, the DSHS investigator, conceded on the record that no medical professional would classify a suicide attempt as an act carried out for the person's benefit. TR at 49. Because Ms. Gradinaru's suicide attempt did not bring about any "benefit" or "advantage" to Ms. Gradinaru under the plain meaning of those terms, the Court of Appeals' conclusion that Ms. Gradinaru committed financial exploitation is contrary to the plain language of RCW 74.34.020(6) and therefore contrary to the decisions of this Court. See Densley v. Dep't Ret. Sys., 162 Wn.2d at 219 (holding that a statute must be construed in accordance with its plain meaning).

2. *The Court of Appeals' Decision Conflicts with this Court's Holding in Dep't of Ecology v. Campbell & Gwinn, L.L.C.*

In Dep't of Ecology v. Campbell & Gwinn, L.L.C., 146 Wn.2d 1 (2001), this Court resolved a question of statutory construction previously unresolved in this state. Specifically, this Court held that the plain

meaning of words in a statute is derived not from the plain meaning of the words when viewed in isolation, but rather from the context in which the words are used and the statutory scheme as a whole. Id. at 11 – 12. In other words, the Court held that when applying the plain meaning rule, it is necessary to examine the “statute in which the provision at issue is found, as well as related statutes or other provisions of the same statute” and interpret the words in context. Id. In reaching its conclusion, this Court quoted the following passage from a leading treatise on modern statutory construction:

In the past, the plain meaning rule rested on theories of language and meaning, now discredited, which held that words have inherent or fixed meanings. These theories are unnecessary to the plain meaning rule, however, if the rule is interpreted to direct a court to construe and apply words according to the meaning that they are ordinarily given, taking into account the statutory context, basic rules of grammar, and any special usages stated by the legislature on the face of the statute. In addition, background facts of which judicial notice can be taken are properly considered as part of the statute’s context because presumably the legislature also was familiar with them when it passed the statute. Reference to a statute’s context to determine its plain meaning also includes examining closely related statutes, because legislators enact legislation in light of existing statutes.

Id. at 11 (quoting 2A Norman J. Singer, *Statutes and Statutory Construction* § 48A: 16, at 809 – 10 (6th ed. 2000)).



The Court of Appeals' decision in this case conflicts with this Court's holding in Campbell & Gwinn. Although the Court of Appeals claimed adherence to the plain meaning rule in reaching its decision in Ms. Gradinaru's case, it assigned a meaning to the term "advantage" that is completely inconsistent with the context in which the term is used in the Abuse of Vulnerable Adults Act. The Court of Appeals concluded that the term "advantage" as used in RCW 74.34.020(6) means "gain of any kind." Appendix ("App.") A (Court of Appeals Decision) at 4. This definition of the term "advantage" reads the term completely out of context. The term "advantage" in this case is being construed in the context of a statute aimed at preventing the *financial exploitation* of vulnerable adults. See RCW 74.34.005 (The legislature finds and declares that . . . [s]ome adults are vulnerable and may be subjected to abuse, neglect, *financial exploitation*, or abandonment by a family member, care provider, or other person who has a relationship with the vulnerable adult . . . ."). But, the Court of Appeals definition of the term "advantage" reads the word "financial" right out of RCW 74.34.020(6).

The word "financial" qualifies the word "exploitation" in RCW 74.34.020(6). The word "financial" is defined by Merriam-Webster's Dictionary as: "relating to finance or financiers." Merriam-Webster's Dictionary Online, <http://www.merriam-webster.com/dictionary/financial>.

The word finance is in turn defined as: “money or other liquid resources of a government, business, group, or individual.” Merriam-Webster’s Dictionary Online, <http://www.meriam-webster.com/dictionary/finance>. Thus, it is clear from the statute’s text that the type of exploitation that the legislature sought to prevent was exploitation related to a vulnerable adult’s finances, i.e., the vulnerable adult’s liquid resources, and that the *profit* or *advantage* gained by the other person must be quantifiable in monetary terms. See RCW 74.34.020(6). In other words, in the context of RCW 74.34.020(6), the term “advantage” means financial advantage.

This conclusion is supported by the examples of financial exploitation provided in the statute. One example of financial exploitation provided in the statute is “the use of deception . . . by a person or entity in a position of trust . . . to obtain or use the property, income, or trust funds of the vulnerable adult for the benefit of a person or entity other than the vulnerable adult.” RCW 74.34.020(6)(a). Another is: “the breach of a fiduciary duty, including, but not limited to, the misuse of a power of attorney, trust, or guardianship appointment that results in the unauthorized sale, or transfer of the property, income, resources, or trust funds of the vulnerable adult.” RCW 74.34.020(6)(b). It is evident from the foregoing examples that the individuals targeted by the statute are

trustees, fiduciaries, and other individuals who may pose a threat of misappropriating vulnerable adult's financial assets.<sup>3</sup>

Because the Court of Appeals' construction of the term "advantage" in this case is inconsistent with the context in which that term is used in RCW 74.34.020(6) its decision conflicts with this Court's decision in Campbell & Gwinn holding that words in a statute are not to be read out of context. 146 Wn.2d at 11 – 12.

3. *The Court of Appeals Decision is Inconsistent with this Court's Previous Applications of the Canons of Statutory Construction.*

The Court of Appeals decision also conflicts with this Court's previous applications of the canons of statutory construction. This Court has long recognized that a statute must not be interpreted in a way that leads to absurd results. See Hangartner v. City of Seattle, 151 Wn.2d 439, 448 (2004) ("We will not interpret a statute in a manner that leads to an absurd result."); State v. J.P., 149 Wn.2d 444, 450 (2003) ("[A] reading that results in absurd results must be avoided because it will not be presumed that the legislature intended absurd results.") (internal citation and quotation marks omitted). The Court of Appeals' decision runs

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<sup>3</sup> Although the examples of financial exploitation outlined in RCW 74.34.020(6)(a) and (b) were not part of the statute at the time of Ms. Gradinaru's suicide attempt, but this Court has previously held that it is appropriate to look to subsequent legislative amendments in determining the meaning of a statutory provision. See State v. Barr, 99 Wn.2d 75, 78 – 79 (1983).

contrary to the absurd results canon because the decision classifies a suicide attempt as an act that is taken for one's "advantage" as a matter of law. It is difficult to conceive of a more absurd result, especially in light of the fact that an attempt to help another person commit suicide would be a crime. See RCW 9A.36.060.

Moreover, the Court of Appeals decision conflicts with the canon against superfluity. This Court has established that "[i]t is a fundamental principle of statutory construction that courts must not construe statutes so as to nullify, void or render meaningless or superfluous any section or words of the statute." In re Dependency of K.D.S., 176 Wn.2d 644, 656 (2013); Taylor v. City of Redmond, 89 Wn.2d 315, 319 (1977). However, as discussed above, the Court of Appeals construction does exactly that by assigning absolutely no weight to the word "financial" as used in the statute and holding that the term "advantage" means more than financial advantage for purposes of RCW 74.34.020(6).

Because the decision of the Court of Appeals in this case conflicts with this Court's statutory construction precedents this Court should accept review pursuant to RAP 13.4(b)(1).

**B. This Court Should Grant Review Because Ms. Gradinaru's Case Presents a Question of Substantial Public Interest.**

This Court should grant Ms. Gradinaru's petition for review pursuant to RAP 13.4(b)(4) because her case presents a question of substantial public interest that should be decided by this Court. This Court has previously held that "suspected abuse of a nursing home patient" is a matter of public concern. White v. State, 131 Wn.2d 1, 11 (1997). According to the Seattle Times, there is an Adult Family Home in every city in Washington State. Michael J. Berens, *How the Aged and Frail are Exploited in Washington's Adult Family Homes*, Seattle Times (January 30, 2010). In 2010, there were 2,843 such homes in Washington with a total of approximately 11,200 residents. Id. These figures do not include individuals living in licensed nursing homes, hospitals, and with relatives. The enactment of the Abuse of Vulnerable Adults Act is in itself proof that the treatment of vulnerable adults is of great concern to the people of Washington. Since the Abuse of Vulnerable Adults Act was first enacted less than 20 years ago, there has been very little case law interpreting the Act.

Ms. Gradinaru's case presents a question of substantial public interest because it is a question of first impression and defines the limits of a caregiver's liability under the financial exploitation provision of the

Abuse of Vulnerable Adult's Act. A finding of financial exploitation under RCW 74.34.020 will permanently preclude a person from working with vulnerable adults in the State of Washington. See RCW 74.39A.056. This Court has previously provided guidance as to what constitutes "neglect" under RCW 74.34.020. See *Raven v. Dep't of Social and Health Services*, 177 Wn.2d 804 (2013). But, there is a dearth of authority on the meaning of the term "financial exploitation" under the Abuse Vulnerable Adults Act. The decision in this case will have a significant impact upon the rights vulnerable adults and caregivers alike, and it is therefore important for this Court to provide guidance to lower courts applying the financial exploitation provision of RCW 74.34.020 in the future.

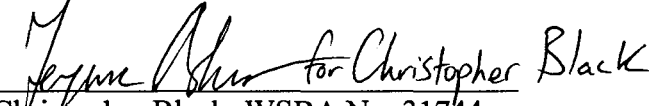
## **VI. CONCLUSION**


For the foregoing reasons, the Court should accept Ms. Gradinaru's petition for review and reverse the finding of financial exploitation issued by the agency.

DATED this 11<sup>th</sup> day of June, 2014.

Respectfully submitted,

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CERTIFICATE OF SERVICE

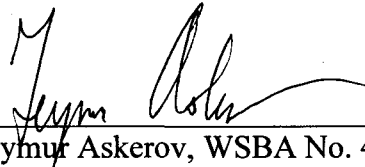
I hereby certify that on the date listed below, I served by United States Mail one copy of the foregoing and all appendices on the following:

Angela Coats McCarthy  
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DATED this 11<sup>th</sup> day of June, 2014.

Respectfully submitted,

LAW OFFICE OF CHRISTOPHER BLACK, PLLC



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# Exhibit A

IN THE COURT OF APPEALS OF THE STATE OF WASHINGTON  
DIVISION ONE

|                      |   |                       |
|----------------------|---|-----------------------|
| ESTERA GRADINARU,    | ) | No. 70138-0-1         |
|                      | ) |                       |
| Appellant,           | ) |                       |
|                      | ) |                       |
| v.                   | ) |                       |
|                      | ) |                       |
| STATE OF WASHINGTON  | ) |                       |
| DEPARTMENT OF SOCIAL | ) |                       |
| AND HEALTH SERVICES, | ) | UNPUBLISHED OPINION   |
|                      | ) |                       |
| Respondent.          | ) | FILED: March 24, 2014 |

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STATE OF WASHINGTON  
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VERELLEN, J. — When a caretaker uses a vulnerable adult’s property to further the caretaker’s own goal, even if self-destructive, such use constitutes financial exploitation as defined by former RCW 74.34.020(6) (2010). The Department of Social and Health Services (Department) did not err in concluding that Estera Gradinaru financially exploited a vulnerable adult when she used that adult’s morphine in a failed suicide attempt. We affirm.

FACTS

In October 2010, Gradinaru was the co-owner of an adult family home in Bellevue. Elaine, one of the residents of the home, was in hospice care and had been prescribed “comfort medications,” including liquid morphine, for end of life treatment.<sup>1</sup>

On October 12, Gradinaru was emotionally distressed and in physical pain. She took Elaine’s morphine with her to a park and ride and ingested one-half capful of the

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<sup>1</sup> The parties refer to Elaine only by her first name.

morphine, which made her feel sleepy. Her father arrived at the park and ride and Gradinaru was taken to Overlake Hospital. She was admitted to the psychiatric unit after she told the treating staff that she ingested the morphine in a failed suicide attempt.

The Department investigated and made a preliminary finding that Gradinaru financially exploited a vulnerable adult. On appeal, an administrative law judge issued an initial order reversing the Department's finding. The Department petitioned the Board of Appeals (Board) to review the initial order. In its review decision and final order, the Board concluded that Gradinaru financially exploited a vulnerable adult. Gradinaru appealed to King County Superior Court, which affirmed the Board's review decision and final order.

Gradinaru appeals.

### DISCUSSION

Gradinaru argues that her failed suicide attempt was not "financial exploitation" of a vulnerable adult as that term is defined in former RCW 74.34.020(6).<sup>2</sup> We disagree.

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<sup>2</sup> In 2011, the statute was updated. RCW 74.34.020(6) now states:

"Financial exploitation" means the illegal or improper use, control over, or withholding of the property, income, resources, or trust funds of the vulnerable adult by any person or entity for any person's or entity's profit or advantage other than for the vulnerable adult's profit or advantage. "Financial exploitation" includes, but is not limited to:

(a) The use of deception, intimidation, or undue influence by a person or entity in a position of trust and confidence with a vulnerable adult to obtain or use the property, income, resources, or trust funds of the vulnerable adult for the benefit of a person or entity other than the vulnerable adult;

(b) The breach of a fiduciary duty, including, but not limited to, the misuse of a power of attorney, trust, or a guardianship appointment, that results in the unauthorized appropriation, sale, or transfer of the property, income, resources, or trust funds of the vulnerable adult for the benefit of a person or entity other than the vulnerable adult; or

The Administrative Procedure Act (APA) governs our review of the Board's decision.<sup>3</sup> "The burden of demonstrating the invalidity of agency action is on the party asserting invalidity."<sup>4</sup> We will reverse if the Board "erroneously interpreted or applied the law."<sup>5</sup> The interpretation of "financial exploitation" raises a question of law and is reviewed de novo under the error of law standard.<sup>6</sup>

The Abuse of Vulnerable Adults Act (Act) was enacted to protect vulnerable adults who "may be subjected to abuse, neglect, financial exploitation, or abandonment by a family member, care provider, or other person who has a relationship with the vulnerable adult."<sup>7</sup> Former RCW 74.34.020(6) defines "financial exploitation" as "the illegal or improper use of the property, income, resources, or trust funds of the vulnerable adult by any person for any person's profit or advantage other than for the vulnerable adult's profit or advantage." A finding of financial exploitation prohibits an individual from being employed in a capacity that would allow him or her to have unsupervised access to vulnerable adults.<sup>8</sup>

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(c) Obtaining or using a vulnerable adult's property, income, resources, or trust funds without lawful authority, by a person or entity who knows or clearly should know that the vulnerable adult lacks the capacity to consent to the release or use of his or her property, income, resources, or trust funds.

<sup>3</sup> See RCW 34.05.570; Utter v. Dep't of Soc. and Health Servs., 140 Wn. App. 293, 299, 165 P.3d 399 (2007).

<sup>4</sup> RCW 34.05.570(1)(a).

<sup>5</sup> RCW 34.05.570(3)(d).

<sup>6</sup> RCW 34.05.570(3)(d); Life Care Ctrs. of Am., Inc. v. Dep't of Soc. & Health Servs., 162 Wn. App. 370, 374, 254 P.3d 919 (2011).

<sup>7</sup> RCW 74.34.005(1) (legislative findings).

<sup>8</sup> Former RCW 74.39A.050(8) (2011).

Gradinaru contends that her use of the morphine did not constitute an “advantage” to her because attempting suicide is not medically beneficial.

The term “advantage” is not defined in the Act. Undefined words in a statute are accorded their ordinary meanings.<sup>9</sup> The dictionary defines “advantage” as “a more favorable or improved position or condition . . . benefit, profit, or gain of any kind.”<sup>10</sup> In the context of this statute, a person engaging in the unauthorized use of a vulnerable adult’s property receives an advantage when that use benefits or facilitates the goals of the person using the property, whether or not that goal is wise or healthy.

Any attempt at suicide is troubling, but the question presented here is whether the use of Elaine’s property benefited Gradinaru by allowing her to further her goal, even if self-destructive, and thus was a use prohibited under the statute. Gradinaru’s goals were advanced by gaining access to Elaine’s morphine. Gradinaru did not have to spend her own money or time finding some other source of morphine. And it is undisputed that Gradinaru’s use of Elaine’s morphine did not profit or advantage Elaine.

Gradinaru argues that it is not reasonable to construe an attempt to commit suicide as an act taken for the benefit or gain of the actor because it results in medical harm. But nothing in the statute requires the court or the Department to consider whether the illegal or improper use of the victim’s medication was helpful or harmful to the individual who used the medication. The focus of the statute is to protect vulnerable adults. Allowing an exception for using a vulnerable adult’s property in a way that is

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<sup>9</sup> State v. Standifer, 110 Wn.2d 90, 92, 750 P.2d 258 (1988) (“Words are given the meaning provided by the statute or, in the absence of specific definition, their ordinary meaning.”).

<sup>10</sup> WEBSTER’S THIRD NEW INTERNATIONAL DICTIONARY 30 (2002).

harmful would lead to an absurd result.<sup>11</sup> For example, if a drug addict steals a vulnerable adult's medication for his own illicit use, he should not evade a finding of financial exploitation because his drug use is medically harmful to him.<sup>12</sup>

Gradinaru argues that the Board's interpretation leads to absurd results. Specifically, she contends that, under the Board's interpretation, any person who attempts to commit suicide using property stolen from a vulnerable adult (a gun, a rope, etcetera) will be liable for financial exploitation. But this result is consistent with the purpose of the statute: to protect a vulnerable adult who is unable to protect herself by penalizing an individual who improperly or illegally uses that vulnerable adult's property for her own purpose in a way that does not benefit the vulnerable adult.

Next, Gradinaru argues that the Board's interpretation of the statute is improper because it does not require a "financial" benefit to the user, as implicitly required by the term "financial exploitation." Gradinaru argues that "financial" extends only to a vulnerable adult's "liquid" resources.<sup>13</sup> But her argument ignores that "financial exploitation" is defined by the statute to expressly include the use of "property, income, resources, or trust funds." It is not limited to liquid assets. In this case, the morphine

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<sup>11</sup> Hangartner v. City of Seattle, 151 Wn.2d 439, 448, 90 P.3d 26 (2004) ("We will not interpret a statute in a manner that leads to an absurd result.").

<sup>12</sup> Gradinaru argues that comparison to a drug addict is inappropriate because (1) the drug addict benefits financially because he saves money by using stolen medications rather than buying them, and (2) the drug addict harms the vulnerable adult because those medications are no longer available for the vulnerable adult's use. Because she arguably benefited financially by using Elaine's morphine rather than buying her own and because her use of the morphine potentially deprived Elaine from using it in the future, Gradinaru's distinction is not persuasive.

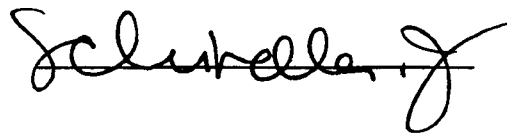
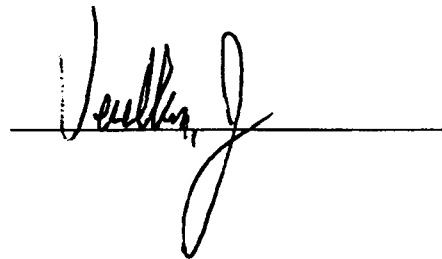
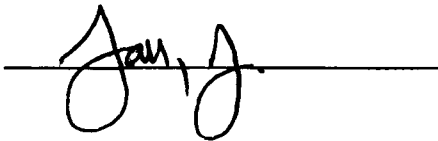
<sup>13</sup> Appellant's Br. at 9.

was Elaine's property. Whether Gradinaru chose to sell or use that property, it was to her own advantage rather than Elaine's advantage and constituted financial exploitation.

Finally, Gradinaru argues that the examples of "financial exploitation" provided in the statute support her argument that only use of "financial assets" is prohibited.<sup>14</sup> We note that the nonexclusive list of examples were not part of the statute when the Department determined that Gradinaru committed financial exploitation.<sup>15</sup> Even so, the examples include the use of a vulnerable adult's "property, income, resources, or trust funds," and are not limited to "financial assets."<sup>16</sup> Therefore, the recently added examples do not support a different result.

Financial exploitation extends to the illegal or improper use of a vulnerable adult's property to further a goal of the person who took that property. The Department did not err in concluding that Gradinaru's illegal taking and use of a patient's morphine was an act of financial exploitation as defined by the statute. We affirm.

WE CONCUR:



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<sup>14</sup> Appellant's Br. at 9-10.

<sup>15</sup> Loeffelholz v. Univ. of Washington, 175 Wn.2d 264, 271, 285 P.3d 854 (2012) (courts presume that a statute applies prospectively, unless the legislature intends otherwise or the amendment is remedial in nature).

<sup>16</sup> RCW 74.34.020(6)(c).

# Exhibit B



FILED

12 MAY 29 PM 12:43

KING COUNTY  
SUPERIOR COURT CLERK  
SEATTLE, WA

IN THE SUPERIOR COURT OF THE STATE OF WASHINGTON  
IN AND FOR THE COUNTY OF KING

MAILED

ESTERA GRANDINARU,

Petitioner,

v.

WASHINGTON STATE DEPARTMENT  
OF SOCIAL AND HEALTH SERVICES,

Respondent.

MAY 24 2012

No. 12-2-17504-7 SEA

DSHS  
BOARD OF APPEALS

TRANSMITTAL OF A CERTIFIED COPY OF  
THE ORIGINAL AGENCY RECORD FOR  
JUDICIAL REVIEW UNDER RCW 34.05.566

The State of Washington, Department of Social and Health Services, hereby files a certified copy of the original adjudicative proceeding under DSHS Docket No. 05-2011-L-1920 with the exception of a written transcript of the recorded oral proceedings. Redactions, if any, have been made to Social Security Numbers, Financial Account Numbers, Driver's License Numbers, minor children's names, birthdates and, in Child Support cases, party's addresses and telephone numbers.

The parties have been asked to advise us whether they are stipulating to a shortened record or whether they will need a transcript. If the parties determine that a transcript is necessary, the Department will file one at a subsequent date.

MAILED on May 24, 2012.



Ann V. Williams  
Legal Secretary

STATE OF WASHINGTON, DEPARTMENT OF SOCIAL AND HEALTH SERVICES

BOARD OF APPEALS

In Re: ) Docket No. 05-2011-L-1920  
          ) )  
ESTERA GRANDINARU ) REVIEW DECISION AND FINAL ORDER  
                          ) )  
Appellant ) Resident Protection Program (CNA)

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I. PROCEDURAL HISTORY

1. The Department of Social and Health Services (Department) received an allegation that the Appellant had financially exploited a vulnerable adult. After investigation and review, the Department determined that the allegation of financial exploitation was substantiated. The Appellant requested a hearing to contest the Department's substantiated finding of financial exploitation. Administrative Law Judge (ALJ) Carolyn Pinkett held an administrative hearing on August 24, 2011, and issued an *Initial Order* on October 26, 2011, wherein she reversed the Department's substantiated finding of financial exploitation.
2. The Department filed a *Petition for Review of the Initial Order* on November 16, 2011.
3. On November 23, 2011, the Appellant requested additional time in which to file a *Response* to the *Petition for Review of the Initial Order*. The Appellant was granted an extension in the timely response filing deadline until December 7, 2011.
4. On December 7, 2011, the Appellant filed a *Response* to the Department's *Petition for Review of the Initial Order*.

II. FINDINGS OF FACT

The undersigned has reviewed the record of the hearing, the documents admitted as exhibits, the *Initial Order*, the *Petition for Review of the Initial Decision*, and the *Response*. The following necessary findings of fact were relevant and supported by substantial evidence in the record.

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1. On May 3, 2011, DSHS served the Appellant with a *Notice of Preliminary Finding* which states, in part, that DSHS "has found that you financially exploited a vulnerable adult." On May 16, 2011, the Appellant filed a request for hearing to contest the financial exploitation finding. Her request for hearing states as follows: "*I took one drop of morphine. It never happened before or after and the patient didn't suffer, wasn't taking the morphine.*"

2. The *Notice of Preliminary Finding* stated that the financial exploitation finding was based upon the following facts:

*The Incident*

*You were the owner of Bellevue Rose Adult Family Home. You financially exploited a vulnerable adult who was a resident in your home on October 9, 2010 when you took the resident's morphine medication for your own use.*

3. In October 2010, the Appellant was the co-owner of the Bellevue Rose Adult Family Home (Bellevue Rose). Elaine was a resident of the home.<sup>1</sup> She was 91 years old, she suffered from dementia, and she was on hospice care. Elaine began hospice care on August 26, 2010. On September 26, 2010, her *Negotiated Care Plan* was amended, to note that her hospice nurse would now dispense her medications to her. These medications included "comfort medications," that were prescribed for end-of-life treatment. They were intended to address anxiety, agitation, shortness of breath, and pain. Included in the medication was a vial of liquid morphine. The prescribed dosage of morphine, if needed, was 1/4 to 1/2 cubic centimeter (cc). Elaine did not need any of the comfort medications that were prescribed for her, because her symptoms were well-managed without them.

4. The Appellant suffers from depression. In August of 2002, she was admitted to the psychiatric unit at Overlake Hospital after she tried to commit suicide by taking 23 Motrin tablets. She was hospitalized for one and a half days, and was discharged on her request. In October 2009, the Appellant was in the middle of divorce proceedings. She also had financial

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<sup>1</sup>The full name of the residents will not be used to protect their right to confidentiality.

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problems. And, she was very stressed because her husband had threatened to take their two young children from her when the divorce became final. On October 2, 2009, she was admitted to the psychiatric unit of Overlake Hospital, after she reportedly tried to commit suicide by taking an overdose of Oxycodone. The Appellant's treating physician encouraged her to delay her hospital discharge, and "strongly encouraged her to consider the partial-day hospitalization program." The Appellant declined, citing money concerns, and asked to be discharged on October 6, 2009.

5. The Appellant was discharged on October 6, 2009, with the following diagnoses:

Axis I: Major depressive disorder, recurrent, severe, without psychotic features.

Axis II: Deferred.

Axis III: Status - post cholecystectomy in May 2009, recent onset of abdominal cramping and pain in the upper quadrants, possible fatty infiltration.

Axis IV: Moderate stressors.

Axis V: Global assessment of functioning (GAF) is 50.

The Appellant was discharged with the following prescriptions: Wellbutrin, Omeprazole, and Sertraline. Wellbutrin is an anti-depressant. Omeprazole is prescribed to treat gastroesophageal reflux disease (GERD). Sertraline or Zoloft, is prescribed to treat depression.

6. On October 12, 2010, the Residential Care Services (RCS), Complaint Resolution Unit (CRU), received an anonymous complaint which alleged that the Appellant took some of her resident's medications in a "failed suicide attempt." Katherine Ander is a complaint investigator. On October 12, 2010, Ms. Ander was assigned to investigate the licensing complaint. On October 13, 2010, at 8:00 a.m., Ms. Ander went to the Bellevue Rose AFH to investigate. When Ms. Ander arrived, there were six residents in care. All of the residents 0 0 0 0 3 appeared to be well cared for. There was only one resident, Elaine, who was prescribed a narcotic drug, morphine, to address end-of-life issues. Ms. Ander looked at the vial of

prescription medication for his or her own use, or, to sell to others. In this case, the Appellant took Elaine's morphine and eased her own physical and emotional distress.

9. Mary Moran is the Complaint Investigator who was assigned to investigate the Resident and Client Protection Program complaint. Ms. Moran interviewed the Appellant, her father, and two caregivers who lived in the home. She also interviewed the Group Health hospice nurse who was assigned to Elaine. Finally, she reviewed Elaine's medical records, and various medical records related to the Appellant. Ms. Moran concluded that Elaine had been a victim of financial exploitation, when the Appellant ingested some of Elaine's morphine, because Elaine did not benefit or profit from the Appellant's actions.

### III. CONCLUSIONS OF LAW

1. The *Petition for Review* was timely filed and is otherwise proper.<sup>2</sup> Jurisdiction existed to review the *Initial Order* and to enter the final agency order.<sup>3</sup>

2. Pursuant to WAC 388-02-0220, ALJs and Review Judges must first apply the Department of Social and Health Services (DSHS) rules adopted in the Washington Administrative Code (WAC). If no DSHS rule applies, the ALJ or Review Judge must decide the issue according to the best legal authority and reasoning available, including federal and Washington State constitutions, statutes, regulations, and court decisions.

3. In an adjudicative proceeding involving a finding of financial exploitation of a vulnerable adult, the undersigned Review Judge has the same decision-making authority as the ALJ to decide and enter the *Final Order*, in the same way as if the undersigned had presided over the hearing.<sup>4</sup> This includes the authority to make credibility determinations and to weigh the evidence. Because the ALJ is directed to decide the issues *de novo* (as new), the undersigned has also decided the issues *de novo*. In reviewing the Findings of Fact, the undersigned has given due regard to the ALJ's opportunity to observe the witnesses, but has

<sup>2</sup> WAC 388-02-0560 through -0585.

<sup>3</sup> WAC 388-02-0215, -0530(2), and -0570.

<sup>4</sup> WAC 388-02-0217(3).

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otherwise independently decided the case.<sup>5</sup> The undersigned reviewing officer does not have the same relationship to the presiding officer as an Appellate Court Judge has to a Trial Court Judge; and the case law addressing that judicial relationship does not apply in the administrative hearings forum.

4. The Washington Administrative Procedure Act directs Review Judges to personally consider the entire hearing record.<sup>6</sup> Consequently, the undersigned has considered the adequacy, appropriateness, and legal correctness of all initial Findings of Facts and Conclusions of Law, regardless of whether any party has asked that they be reviewed.

5. It may help to explain briefly at the outset the unique characteristics and specific limitations of the administrative hearing process. An administrative hearing is held under the auspices of the *executive branch of government* and neither the ALJ nor the Review Judge enjoy the broad equitable authority of a Superior Court Judge within the *judicial branch of government*. It is well settled that administrative agencies, such as the OAH and the Board of Appeals, are creatures of statute, without inherent or common law powers, and, consequently, they may exercise only those powers expressly granted in enabling statutes or necessarily implied therein.<sup>7</sup>

6. Department regulations address what standard of proof is to be used in these types of hearings, providing that, "The ALJ shall decide if a preponderance of the evidence in the hearing record supports a determination that the alleged perpetrator committed an act of abandonment, abuse, financial exploitation, or neglect of a vulnerable adult."<sup>8</sup> The "preponderance of the evidence" standard is required under the regulations relevant to this proceeding. This standard means that it is more likely than not that something happened or

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<sup>5</sup> WAC 388-02-0600, effective March 3, 2011.

<sup>6</sup> RCW 34.05.464(5).

<sup>7</sup> *Skagit Surveyors & Eng'rs, L.L.C. v. Friends of Skagit County*, 135 Wn.2d 542, 558 (1998), and *Taylor v. Morris*, 88 Wn.2d 586, 588 (1977). See also WAC 388-02-0216 which provides, "The authority of the ALJ and the review judge is limited to those powers conferred (granted) by statute or rule. The ALJ and the review judge do not have any inherent or common law powers."

<sup>8</sup> WAC 388-71-01255(1).

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exists.<sup>9</sup>

7. Chapter 74.34 of the Revised Code of Washington (RCW) is titled "Abuse of Vulnerable Adults." The Department has implemented chapter 74.34 RCW by adopting WAC chapter 388-71-0100 through - 01280, entitled "Home and Community Services and Programs-Adult Protective Services." Administrative hearings conducted under these regulations are controlled by statutes and regulations found at RCW 34.05 and WAC 388-02, respectively.<sup>10</sup> Chapter 74.34 RCW establishes a system for reporting instances of financial exploitation of a vulnerable adult. "*Financial exploitation*" is specifically defined as the illegal or improper use of a vulnerable adult's property by any person, for any profit or advantage other than for the vulnerable adult's profit or advantage. Financial exploitation includes the use of a vulnerable adult's property without lawful authority, by a person or entity who knows that the vulnerable adult lacks the capacity to consent to the release or use of her property.<sup>11</sup> Although a *duty of care* is required to exist in finding abandonment or neglect of a vulnerable adult, it is not required in showing financial exploitation of a vulnerable adult. **Any person** can financially exploit a vulnerable adult, just as any person can sexually abuse a vulnerable adult.<sup>12</sup>

8. The statute defines "vulnerable adult" to include a person sixty years of age or older who has the functional, mental, or physical inability to care for himself or herself; a person found incapacitated under RCW 11.88; a person with a developmental disability as defined under RCW 71A.10.020; a person admitted to any facility; a person receiving services from a home care agency licensed under RCW 70.127; or a person receiving services from an individual provider.<sup>13</sup> Elaine was the alleged victim in this matter. She was a resident of *Bellevue-Rose Adult Family Home*, she was 91 years old, she suffered from dementia, and she

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<sup>9</sup> WAC 388-02-0485.

<sup>10</sup> WAC 388-71-01245.

<sup>11</sup> RCW 74.34.020(6).

<sup>12</sup> See RCW 74.34.020(2) as opposed to (1) and (9).

<sup>13</sup> RCW 74.34.020(13).

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was on hospice care. Therefore, it is concluded that she was a vulnerable adult during the time period at issue, as defined by the statute, and was entitled to the protections provided therein.

9. As stated above, RCW 74.34.020(6), defines "*Financial exploitation*" as the illegal or improper use of a vulnerable adult's property by any person, for any profit or advantage other than for the vulnerable adult's profit or advantage. Financial exploitation includes the use of a vulnerable adult's property without lawful authority, by a person or entity who knows that the vulnerable adult lacks the capacity to consent to the release or use of her property.<sup>14</sup> In this matter, the Department has proven by a preponderance of the hearing evidence that the Appellant financially exploited a vulnerable adult when she illegally used Elaine's morphine for her own advantage in a way that did not profit Elaine. Furthermore, this Appellant's actions clearly mirror the example listed in RCW 74.34.020(6)(c), wherein the Appellant used Elaine's prescription morphine without lawful authority, knowing that Elaine lacked the capacity to consent to the use of the morphine.

10. The undersigned is not persuaded by the Appellant's argument that she did not financially exploit a vulnerable adult, because the illegal use of Elaine's morphine conferred no profit or advantage to the Appellant. As defined in initial Conclusion of Law 9, "*advantage*" is a "*benefit, gain, especially benefit resulting from some course of action.*" Under this definition, the ALJ clearly erred in initial Conclusions of Law 10, wherein she stated that: "*The Appellant ingested Elaine R.'s morphine because she was depressed, and she wanted to commit suicide. This end result would not have been beneficial, or profitable, for the Appellant. Thus, the financial exploitation finding should not be upheld.*" The ALJ has incorrectly analyzed the Appellant's actions as to whether the ultimate result of those actions would have been to the Appellant's benefit when viewed by others. The theft of the morphine is more accurately analyzed through the Appellant's mindset at the time of the theft, and whether she anticipated any benefit or gain. At the time of the drug theft, the Appellant was in emotional and physical

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<sup>14</sup> RCW 74.34.020(6)(c).



pain and wanted to commit suicide. By stealing Elaine's morphine, she gained an opportunity to reduce her pain and carry out her suicide decision. Because the Appellant specifically acquired the morphine in order to gain this opportunity, it must be concluded that she financially exploited Elaine.

11. The undersigned has considered the *Initial Order*, the *Petition for Review of the Initial Decision*, the *Response to the Petition for Review of the Initial Decision*, and the entire hearing record. The initial Findings of Fact are modified and adopted as outlined above. Initial Conclusions of Law 1 through 9, cited and applied the governing law correctly and they are adopted and incorporated as conclusions for this decision. Initial Conclusion of Law 10 contained an error of law or was based on an erroneous Finding of Fact and is not adopted as part of this decision. Any arguments in the *Petition for Review of the Initial Decision* that are not specifically addressed have been duly considered, but are found to have no merit, or to not substantially affect a party's rights. The procedures and time limits for seeking reconsideration or judicial review of this decision are in the attached statement.

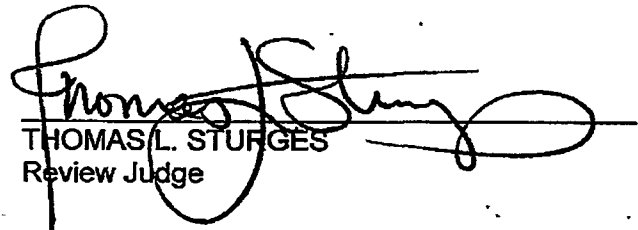
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IV. DECISION AND ORDER

1. The *Initial Order* is *reversed*.
2. The Department's determination that this Appellant *financially exploited* a vulnerable adult is *affirmed*.

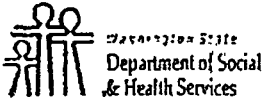
Mailed on the 16<sup>th</sup> day of April, 2012.

  
THOMAS L. STURGES  
Review Judge

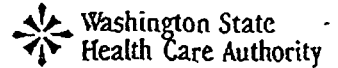
Attached: Reconsideration/Judicial Review Information

Copies sent to: Estera Gradinaru, Appellant  
Tim Leary, Appellant's Representative  
Angela Coats McCarthy, Department's Representative, MS: 40124  
Suzanne Plaja, Program Administrator, MS: 45600  
Robert McClintock, Program Administrator, MS: 45600  
Carolyn Pinkett, ALJ, Seattle OAH

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STATE OF WASHINGTON  
 DEPARTMENT OF SOCIAL AND HEALTH SERVICES  
 BOARD OF APPEALS  
**PETITION FOR RECONSIDERATION OF  
 REVIEW DECISION**



See information on back.

Print or type detailed answers.

|                                |      |               |                         |
|--------------------------------|------|---------------|-------------------------|
| NAME(S) (PLEASE PRINT)         |      | DOCKET NUMBER | CLIENT ID OR "D" NUMBER |
| MAILING ADDRESS                | CITY | STATE         | ZIP CODE                |
| TELEPHONE AREA CODE AND NUMBER |      |               |                         |

Please explain why you want a reconsideration of the Review Decision. Try to be specific. For example, explain:

- Why you think that the decision is wrong (why you disagree with it).
- How the decision should be changed.
- The importance of certain facts which the Review Judge should consider.

I want the Review Judge to reconsider the Review Decision because...

|                 |           |      |
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| PRINT YOUR NAME | SIGNATURE | DATE |
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|---|---|
| <u>MAILING ADDRESS</u><br>BOARD OF APPEALS<br>PO-BOX 45803<br>OLYMPIA WA 98504-5803 | <u>PERSONAL SERVICE LOCATION</u><br>DSHS / HCA Board of Appeals<br>Office Bldg 2 (OB-2), 1st Fl. Information Desk<br>1115 Washington St. SE, Olympia WA |
| <u>FAX</u><br>1-(360) 664-6187  | <u>TELEPHONE (for more information)</u><br>1-(360) 664-6100 or 1-877-351-0002   |

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RECONSIDERATION REQUEST

Page \_\_\_ of \_\_\_

If You Disagree with the Judge's Review Decision or Order and Want it Changed,  
You Have the Right to:

- (1) Ask the Review Judge to reconsider (rethink) the decision or order (10 day deadline);
- (2) File a Petition for Judicial Review (start a Superior Court case) and ask the Superior Court Judge to review the decision (30 day deadline).

**DEADLINE for Reconsideration Request - 10 DAYS:** The Board of Appeals must RECEIVE your request within ten (10) calendar days from the date stamped on the enclosed Review Decision or Order. The deadline is 5:00 p.m. If you do not meet this deadline, you will lose your right to request a reconsideration.

**If you need more time:** A Review Judge can extend (postpone, delay) the deadline, but you must ask within the same ten (10) day time limit.

**HOW to Request:** Use the enclosed form or make your own. Add more paper if necessary. You must send or deliver your request for reconsideration or for more time to the Board of Appeals on or before the 10-day deadline (see addresses on enclosed form).

**COPIES to Other Parties:** You must send or deliver copies of your request and attachments to every other party in this matter. For example, a client must send a copy to the DSHS office that opposed him or her in the hearing.

**Translations and Visual Challenges:** If you do not read and write English, you may submit and receive papers in your own language. If you are visually challenged, you have the right to submit and receive papers in an alternate format such as Braille or large print. Let the Board of Appeals know your needs. Call 1-(360)-664-6100 or TTY 1-(360) 664-6178.

**DEADLINE for Superior Court Cases - 30 DAYS:** The Superior Court, the Board of Appeals, and the state Attorney General's Office must all RECEIVE copies of your Petition for Judicial Review within thirty (30) days from the date stamped on the enclosed Review Decision or Order. There are rules for filing and service that you must follow.

**EXCEPTION:** IF (and only if) you file a timely reconsideration request (see above), you will have thirty days from the date of the Reconsideration Decision.

Refer to the Revised Code of Washington (RCW), including chapter 34.05, the Washington Administrative Code (WAC), and to the Washington Rules of Court (civil) for guidance. These materials are available in all law libraries and in most community libraries.

**If You Need Help:** Ask friends or relatives for a reference to an attorney, or contact your county's bar association or referral services (usually listed at the end of the "attorney" section in the telephone book advertising section). Columbia Legal Services, Northwest Justice Project, the Northwest Women's Law Center, some law schools, and other non-profit legal organizations may be able to provide assistance. You are not guaranteed an attorney free of charge.

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MAILED

STATE OF WASHINGTON, DEPARTMENT OF SOCIAL AND HEALTH SERVICES  
BOARD OF APPEALS

DEC 38 2011

In Re:

ESTERA GRANDINARU

Appellant

Docket No. 05-2011-L-1920

DSHS  
BOARD OF APPEALS

NOTICE OF RESPONSE TO REQUEST  
FOR REVIEW

Resident Protection Program (CNA)

The Appellant's Representative filed the attached to respond to the other party's request for review of the hearing decision or order. The parties do not have to take any further action at this time. A Review Judge will make a decision based on the record.

MAILED on December 8, 2011.



Ann V. Williams  
Legal Secretary

Attached: Response

Legal Authority: RCW 34.05.455(5); WAC 388-02-0590, -0595

Copies sent to: Estera Gradinaru, Appellant  
Tim Leary, Appellant's Representative  
Angel Coats McCarthy, Department's Representative; MS: 40124  
Robert McClintock, Program Administrator; MS: 45600  
Suzanne Plaja, Program Administrator; MS: 45600

|  |   |
|--|---|
| <p><b><u>MAILING ADDRESS</u></b><br/>Board of Appeals<br/>PO Box 45803<br/>Olympia WA 98504-5803</p> | <p><b><u>PERSONAL SERVICE LOCATION</u></b><br/>DSHS Board of Appeals<br/>Office Building 2 (OB-2), 1<sup>st</sup> Floor Information Desk<br/>1115 Washington Street SE<br/>Olympia WA</p> |
| <p><b><u>FAX</u></b><br/>(360) 664-6187</p>  | <p><b><u>TELEPHONE (for questions)</u></b><br/>(360) 664-6100 or toll free 1-877-351-0002</p>   |

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DEC 07 2011

DSHS  
BOARD OF APPEALS

BEFORE THE STATE OF WASHINGTON  
DEPARTMENT OF SOCIAL AND HEALTH SERVICES, BOARD OF APPEALS

In Re:

ESTERA GRADINARU

Appellant.

)  
) Docket No. 05-2011-L-1920  
)  
) Resident Client Protection Program  
)  
) APPELLANT'S RESPONSE TO THE  
) DEPARTMENT'S PETITION FOR  
) REVIEW OF INITIAL DECISION  
)  
)  
)

I. Introduction

In an ongoing case of overreaching, the Department of Social and Health Services (Department) attempts to characterize Estera Gradinaru's use of an adult family home resident's medication during a suicide attempt as an act of financial exploitation. It argues that the use of the medication was an act "conducive to [her] success" and constitutes financial exploitation. Its arguments are wholly without merit. Judge Carolyn Pinkett correctly held that the Department failed

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APPELLANT'S RESPONSE TO THE  
DEPARTMENT'S PETITION FOR  
REVIEW OF INITIAL DECISION - 1

Law Office of Tim Leary PLLC  
705 Second Ave, Suite 1111  
Seattle, WA 98101  
206-382-2401  
206-658-2401 fax

1 to meet its burden of proof. Ms. Gradinaru does not dispute that her actions were sad and unwise. The  
2 Department's continued attempts to characterize her actions as "financial exploitation" as defined by  
3 RCW 74.34.020(6) are unsupported by the facts or the law. A common sense application of the facts  
4 to the statute leads to only one logical conclusion – Judge Pinkett was correct in holding that the  
5 Department did not established that Ms. Gradinaru engaged in financial exploitation.

## 6 II. Facts

### 7 A. Procedural Facts

8 On August 24, 2011, a hearing was held in front of the Honorable Carolyn Pinkett,  
9 Administrative Law Judge. Ms. Gradinaru contested the Notice of Preliminary finding that she had  
10 financially exploited a vulnerable adult. On October 26, 2011, Judge Pinkett ruled that the  
11 Department failed to establish by a preponderance of the evidence that Ms. Gradinaru financially  
12 exploited Elaine R.

### 13 B. Substantive Facts

14 On October 9, 2010, Estera Gradinaru attempted to end her life. Ms. Gradinaru suffered  
15 from depression and had attempted suicide on multiple previous occasions. On this date, she was  
16 struggling with a failed marriage and concerns over an upcoming inspection of her adult family  
17 home. As the testimony at the hearing and the exhibits chronicled, she took a one cc dose of  
18 morphine that belonged to one of her residents. Fortunately she told her ex-husband what she had  
19 done and her family found her before it was too late. Her family took her to Overlake Hospital.  
20 She spent approximately a week in the hospital for a "suicide attempt by overdose on some of her  
21 adult family home patient's morphine." Exhibit D5 p.1.

22 Residential Care Services Investigator Katherine Ander testified that no evidence exists that  
23 Ms. Gradinaru was engaging in a practice of diverting residents' medication for her own benefit.

1 Her investigation revealed that this was a single incident, an incident that was a suicide attempt.

2 Ms. Ander concluded that the consumption was not the result of a drug addiction.

3 The Department endorsed Ms. Gradinaru's ex-husband, her therapist, her primary doctor,  
4 and the social worker at Overlake Hospital as witnesses but it elected to not call them to testify. See  
5 Department's Witness List filed on July 20, 2011 and August 8, 2001.

### 6 III. Argument

7 The Department's strained application of the financial exploitation statute to these facts  
8 defies common sense. The Department failed to satisfy its burden of establishing, by a  
9 preponderance of the evidence, that Ms. Gardinaru financially exploited a vulnerable adult. WAC  
10 388-76-11020(3). "Financial exploitation" is defined as

11 the illegal or improper use of the property, income, resources, or  
12 trust funds of the vulnerable adult by any person for any person's  
13 profit or advantage other than for the vulnerable adult's profit or  
14 advantage.

15 RCW 74.34.020(6). Applications of a statute should be construed to affect its purpose. *In re*  
16 *Personal Restraint of Andress*, 147 Wn.2d 602, 610, 56 P.3d 981 (2002). Strained, unlikely, or  
17 absurd consequences resulting from literal reading are to be avoided. *Id.* The Department has  
18 never alleged that Ms. Gradinaru profited from the use of the resident's medication or that the  
19 resident was deprived of her medication. Rather, the Department argues that Ms. Gradinaru's  
20 attempt to commit suicide was an act done for her "advantage." The Department's argument fails.

21 In analyzing what constitutes an "advantage," the Department continues to use a Webster's  
22 Dictionary Definition that defines it as a "factor conducive to success." Department's Petition for  
23 Review at 8. Its own definition of advantage only reinforces the conclusion that Ms. Gradinaru's  
24 attempt to commit suicide with a small portion of a resident's medication was not financial



1 exploitation. To deem Ms. Gradinaru's actions as advantageous or conducive to success is an  
2 argument that is simply illogical. In an attempt to bolster its case, the Department continues to  
3 attempt to draw an adverse inference from Ms. Gradinaru's decision to not call witnesses. Such an  
4 argument is wholly improper. The Department has the burden of proof. It may not attempt to shore  
5 up its case by commenting on Ms. Gradinaru's decision to not present a case. She has every right  
6 to hold the Department to its burden and assert that the facts, as presented by the Department, do  
7 not amount to financial exploitation. In its Petition for Review, it continues to use an argument that  
8 "Ms. Gradinaru neither testified nor called any witnesses despite requesting the appeal on May 11,  
9 2011." Department's Petition for Review at 8. The Department is not permitted to shift its burden  
10 to Ms. Gradinaru.

11 The Department repeatedly fails to recognize that it has the sole burden of proving that Ms.  
12 Gradinaru engaged in financial exploitation. Part of satisfying its burden, the Department must  
13 establish that Ms. Gradinaru's use of the morphine was done for her "profit or advantage" pursuant  
14 to RCW 74.34.020(6). The Department does not fully appreciate its obligation. It argues, "The  
15 Department, however, need not determine the purpose behind taking and ingesting Elaine's  
16 morphine." Petition for Review at 8. Such an argument is wholly without merit. Judge Pinkett  
17 properly concluded that Ms. Gradinaru's use of the morphine in an attempt to commit suicide was  
18 not an act done for her "profit or advantage." The department's own witness, Investigator Ander,  
19 conceded that Ms. Gradinaru's was not engaged in drug diversion. Simply put, the Department has  
20 not satisfied its burden of proof. The evidence presented at the hearing established that there was  
21 only one reason behind Ms. Gradinaru's consumption of the morphine: an attempt to take her own  
22 life. If the Department had questions about the circumstances surrounding the event, it could have  
23 called more witnesses identified on its witness list. Those witnesses included her ex-husband and

APPELLANT'S RESPONSE TO THE  
DEPARTMENT'S PETITION FOR  
REVIEW OF INITIAL DECISION - 4

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Seattle, WA 98101  
206-382-2401  
206-658-2401 fax

1 the social worker at Overlake Hospital. The Department chose to put on a narrow case at the  
2 hearing. It cannot now use the holes in its case to burden shift.

3 In arguing that its decision should be upheld, the Department sets up a false dichotomy. It  
4 cautions that unless the use of a resident's medications is held to constitute financial exploitation in  
5 all instances, it would be "an absurd legal result." Petition for Review at 8. The law does not  
6 require such rigidity. Rather each case must be considered on its individual merits. The issue here  
7 is whether the Department has proven that Ms. Gradinaru improperly used a resident's property for  
8 her advantage. See RCW 74.34.020(6). The use of a resident's medication in an attempt to commit  
9 suicide does not constitute an "advantage." What happens in drug diversion cases is irrelevant to  
10 whether the Department has satisfied its burden in this case.

11 Ms. Gradinaru's actions were unfortunate. It is not as if there were no consequences. She  
12 entered into a stipulation that surrendered her license to operate an adult family home. See Docket  
13 No. 12-2010-L-2274. Investigator Ander reported the incident to the Department of Health to see  
14 whether there was a basis to take action against her nursing license. See testimony of Investigator  
15 Ander. It is unclear why the Department is attempting to shoehorn these facts into the financial  
16 exploitation statute. The statute does not support it. Logic does not support it. Common sense does  
17 not support it. The unique facts here do not amount to financial exploitation under RCW  
18 74.34.020(6).

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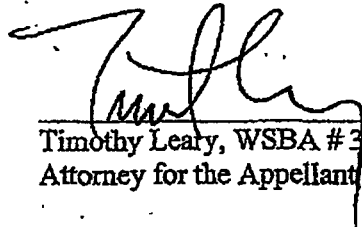
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IV. Conclusion

For the aforementioned reasons, the Department's finding that Estera Gradinaru committed financial exploitation is not supported by the facts or the law. Judge Pinkett's decision should be affirmed.

DATED this 7<sup>th</sup> day of December, 2011.

Respectfully submitted,



Timothy Leary, WSBA # 30355  
Attorney for the Appellant

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**CERTIFICATE OF SERVICE**

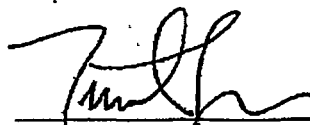
I, Tim Leary certify that I caused the above Appellant's Response to the Department's Petition for Review of Initial Decision to be filed with the Board of Appeals and served in the manner noted below a copy of the foregoing pleading on the following individuals:

|                                     |                                     |  |
|-------------------------------------|-------------------------------------|--|
| Angela Coats-McCarthy, WSBA # 35547 | <input type="checkbox"/>            | Via ECF, if opted in, and if not then: |
| Assistant Attorney General          | <input type="checkbox"/>            | Via Messenger                          |
| 7141 Cleanwater Dr SW               | <input checked="" type="checkbox"/> | Via Email                              |
| PO Box 40124                        | <input type="checkbox"/>            | Via FACSIMILE                          |
| Olympia, WA 98504-0001              | <input checked="" type="checkbox"/> | Via First Class Mail                   |
|                                     | <input type="checkbox"/>            | In person - dropped off at office      |

angelac3@atg.wa.gov

DATED: December 7<sup>th</sup>, 2011, at Seattle, Washington.

By:

  
 \_\_\_\_\_  
 Timothy Leary, WSBA #30355  
 Attorney for Appellant

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STATE OF WASHINGTON, DEPARTMENT OF SOCIAL AND HEALTH SERVICES  
BOARD OF APPEALS

MAILED

NOV 23 2011

DSHS  
BOARD OF APPEALS

In Re:

ESTERA GRADINARU

Appellant

Docket No. 05-2011-L-1920

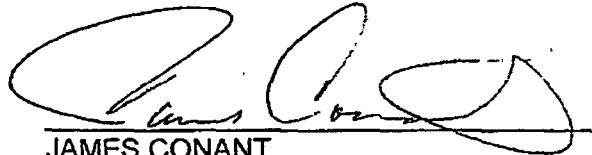
ORDER GRANTING MORE TIME TO FILE  
RESPONSE TO REQUEST FOR REVIEW

Resident Protection Program (CNA)

The Department's Representative timely filed a Request for Review. The Appellant's Representative then timely requested more time to file a response. The reason stated is attached.

The undersigned finds good cause and extends (delays) the filing deadline for that party to file a response to the request for review until 5:00 p.m. on December 7, 2011.

MAILED on November 23, 2011.



JAMES CONANT  
Review Judge

Legal Authority: RCW 34.05.464; WAC 388-02-0590

Copies sent to: Estera Gradinaru, Appellant  
Tim Leary, Appellant's Representative  
Angela Coats McCarthy, Department's Representative, MS: 40124  
Robert McClintock, Program Administrator, MS: 45600  
Suzanne Plaja, Program Administrator, MS: 45600

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| <b>MAILING ADDRESS</b><br>Board of Appeals<br>PO Box 45803<br>Olympia WA 98504-5803 | <b>PERSONAL SERVICE LOCATION</b><br>DSHS Board of Appeals<br>Office Building 2 (OB-2), 1 <sup>st</sup> Floor Information Desk<br>1115 Washington Street SE<br>Olympia WA |
| <b>FAX</b><br>(360) 664-6187  | <b>TELEPHONE (for questions)</b><br>(360) 664-6100 or toll free 1-877-351-0002   |

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BEFORE THE STATE OF WASHINGTON  
DEPARTMENT OF SOCIAL AND HEALTH SERVICES, BOARD OF APPEALS

|                  |   |                                    |
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| In Re:           | ) | Docket No. 005-2011-L-1920         |
|                  | ) | REQUEST FOR ADDITIONAL TIME        |
|                  | ) | TO RESPOND TO DEPARTMENT'S         |
| ESTERA GRADINARU | ) | REQUEST FOR REVIEW                 |
|                  | ) |                                    |
|                  | ) | Resident Client Protection Program |
|                  | ) |                                    |
|                  | ) | Appellant.                         |
|                  | ) |                                    |
|                  | ) |                                    |

The Appellant, Estera Gradinaru, respectfully requests an additional two weeks to respond to the Department's Petition for Review. Absent a request for an extension, Ms. Gradinaru's response is due tomorrow, on Thanksgiving, seven days after the notice was sent out on Thursday, November 17, 2011.

The Notice of Request for Review and Time to Respond was sent to counsel's old address and not the address on my Notice of Appearance in this case. Undersigned counsel did not receive 000022

REQUEST FOR ADDITIONAL TIME  
TO RESPOND TO DEPARTMENT'S  
REQUEST FOR REVIEW - 1

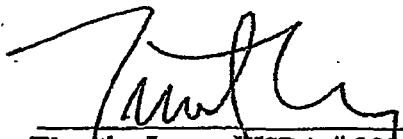
Law Office of Tim Leary PLLC  
705 Second Ave, Suite 1111  
Seattle, WA 98101  
206-382-2401  
206-658-2401 fax

1 the notice until today, November 23, 2011. Due to the shortened holiday week and deadlines with  
2 other cases, counsel will be unable to provide a response in the time permitted.

3 Ms. Gradinaru and counsel respectfully request that the Board of Appeals grant a two week  
4 extension to December 7, 2011. Ms. Gradinaru prevailed at the Office of Administrative Hearings  
5 and very much wants to respond to the Department's arguments to the Board of Appeals.

6  
7 DATED this 23<sup>rd</sup> day of November, 2011.

8 Respectfully submitted,

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11 \_\_\_\_\_  
12 Timothy Leary, WSBA # 30555  
13 Counsel for the Appellant  
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REQUEST FOR ADDITIONAL TIME  
TO RESPOND TO DEPARTMENT'S  
REQUEST FOR REVIEW - 2

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705 Second Ave, Suite 1111  
Seattle, WA 98101  
206-382-2401  
206-658-2401 fax

CERTIFICATE OF SERVICE

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I, Tim Leary certify that I caused the above to be filed with the Board of Appeals and served in the manner noted below a copy of the foregoing pleading on the following individuals:

Angela Coats-McCarthy, WSBA # 35547  
Assistant Attorney General  
7141 Cleanwater Dr SW  
PO Box 40124  
Olympia, WA 98504-0001

- Via ECF, *if opted in, and if not then:*
- Via Messenger
- Via Email
- Via FACSIMILE
- Via First Class Mail
- In person - dropped off at office

angelac3@atg.wa.gov

DATED: November 23<sup>rd</sup>, 2011, at Seattle, Washington.

By:   
\_\_\_\_\_  
Tim Leary, WSBA # 30335  
Attorney for Appellant

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REQUEST FOR ADDITIONAL TIME  
TO RESPOND TO DEPARTMENT'S  
REQUEST FOR REVIEW - 3

Law Office of Tim Leary PLLC  
705 Second Ave, Suite 1111  
Seattle, WA 98101  
206-382-2401  
206-658-2401 fax



STATE OF WASHINGTON, DEPARTMENT OF SOCIAL AND HEALTH SERVICES  
BOARD OF APPEALS

**MAILED**

NOV 17 2011

In Re:

**ESTERA GRADINARU**

Appellant

Docket No. 05-2011-L-1920

**NOTICE OF REQUEST FOR REVIEW AND  
TIME TO RESPOND**

Resident Protection Program (CNA)

DSHS  
BOARD OF APPEALS


The Department's Representative filed the attached to ask for a review of the hearing decision or order. Every other party has a right to respond or object in writing to the request for review or to any attached document. A response is optional and you do not need to respond if you filed the request. Any response must be filed at the Board of Appeals.

**To respond:** We must receive any response at one of the below addresses no later than seven (7) work days after the date we mailed this notice as stamped above. The deadline is 5:00 p.m. on the seventh day.

**If you need more time to respond:** You must ask to delay (extend) the deadline within seven (7) work days and show a good reason or your request will be denied.

**Copies:** You must also provide copies of your response to all other parties.

MAILED on November 17, 2011.

  
Shelley Tencza  
Legal Secretary

Attached: Request for Review  
Legal Authority: RCW 34.05.455, .464; WAC 388-02-0560 through -0595  
Copies sent to: Estera Gradinaru, Appellant  
Tim Leary, Appellant's Representative  
Angela Coats McCarthy, Department's Representative, MS: 40124  
Robert McClintock, Program Administrator, MS: 45600  
Suzanne Plaja, Program Administrator, MS: 45600

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| <p><b><u>MAILING ADDRESS</u></b><br/>Board of Appeals<br/>PO Box 45803<br/>Olympia WA 98504-5803</p> | <p><b><u>PERSONAL SERVICE LOCATION</u></b><br/>DSHS Board of Appeals<br/>Office Building 2 (OB-2), 1<sup>st</sup> Floor Information Desk<br/>1115 Washington Street SE<br/>Olympia WA</p> |
| <p><b><u>FAX</u></b><br/>(360) 664-6187</p>  | <p><b><u>TELEPHONE (for questions)</u></b><br/>(360) 664-6100 or toll free 1-877-351-0002</p>   |

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STATE OF WASHINGTON DEPARTMENT OF SOCIAL AND HEALTH SERVICES  
BOARD OF APPEALS

In Re:

NO. 05-2011-L-1920

ESTERA GRADINARU,

Appellant.

DEPARTMENT'S PETITION FOR  
REVIEW

The Resident and Client Protection Program (RCPP), a program within Residential Care Services (RCS), investigates allegations that adult family home residents have been abused, neglected, or financially exploited by individuals working in an adult family home. WAC 388-76-11000. If the allegations against an individual are substantiated, the Department makes a preliminary finding of abuse, neglect, or exploitation. See WAC 388 76-11005. Based on the RCPP's investigation, the Department found that Ms. Gradinaru financially exploited a resident of her adult family home when she took the resident's morphine medication for her own use. Exhibit (Ex.) D-7, p. 1.

The Department notified Ms. Gradinaru of the finding of abuse against her, and her right to appeal. Ms. Gradinaru appealed the findings to the Office of Administrative Hearings, and a hearing was held on August 24, 2011. An initial decision reversing the Department's finding of financial exploitation was issued on October 26, 2011. The Department is requesting Board of Appeals (BOA) review of the initial order because there are errors in both the findings of fact and the conclusions of law.

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I. STANDARD OF REVIEW

Pursuant to WAC 388-02-0600(1), a review judge has the same decision-making authority as the Administrative Law Judge (ALJ), but must give due regard to the ALJ's opportunity to observe the witnesses. A review of the record will reveal that there were errors in findings of fact and conclusions of law.

II. FINDINGS OF FACT<sup>1</sup>

The Department takes partial exception to Findings of Fact 8 and 9. Part of finding of fact 8 addresses the licensing complaint investigator's opinion regarding the term "drug diversion". Part of finding of fact 9 discusses the concept of "medical advantage" and states that suicide is not a medical advantage. These portions of finding of fact 8 and 9 are unnecessary to determine the outcome of this case. The Department has alleged that Ms. Gradinaru's behavior of taking a resident's morphine for her own consumption is financial exploitation; the Department is not trying to prove any definition "drug diversion", and there is no requirement that the Department prove that suicide is a "medical advantage." As such, these portions of findings of fact 8 and 9 are distracting from the facts that are central to the outcome of the case.

A review of the record will show these pertinent facts:

Estera Gradinaru, along with her husband, operated Bellevue Rose Adult Family Home since 2001. Ex. D-13, p. 2. The Bellevue Rose Adult Family Home is located at 212 153<sup>rd</sup> Place SE, Bellevue, Washington. *Id.* at p. 1. Ms. Gradinaru has a past history of depression and, on at least three occasions, has deliberately taken an overdose of medication. The first documented incident occurred in August 2002, when Ms. Gradinaru was hospitalized for ingesting 23 Motrin tablets after becoming depressed. Ex. D-6, p. 1. The second documented incident occurred in October 2009, when Ms. Gradinaru was

<sup>1</sup> The Department does not have a transcript of the hearing. Citations to testimony are based on a combination of notes, documentation, and recollection of Department personnel and counsel. 000027

1 hospitalized after ingesting seven Oxycodone tablets during a period of depression. *Id.* The  
2 most recent incident occurred in October 2010, when Ms. Gradinaru ingested an amount of  
3 liquid morphine that belonged to a resident in her adult family home. Ex. D-5, p. 1; Ex. D-8,  
4 p. 3; Ex. D-9; Ex. D-13, p. 2. In addition to her depression, Ms. Gradinaru has suffered from  
5 chronic pain related to pancreatitis since at least 2009. Ex. D-5, pp. 1-3; Ex. D-6, pp. 1-3;  
6 Ex. D-8, pp. 3-4; Ex. D-13, p. 2.

7 Ms. Gradinaru's adult family home is licensed to provide care for six residents.  
8 Ex. D-13, p. 2. In October 2010, Elaine was one of six residents receiving care in the  
9 Bellevue Rose Adult Family Home. *Id.* at p. 2; Ex. D-8, p. 6. Elaine was a 91-year-old  
10 woman with diagnoses of transient ischemic attack, corneal implant, hypoglycemia,  
11 depression with anxiety, and dementia with delusions. Ex. D-8, p. 2. Elaine was dependant  
12 with most aspects of care. Ex. D-10. On September 26, 2010, Elaine began receiving  
13 hospice care services. Ex. D-8. As part of Elaine's hospice care services, she was prescribed  
14 a "comfort care pack" of medications, which included morphine to be taken as needed  
15 for pain or shortness of breath.<sup>2</sup> *Id.*; Ex. D-12. Elaine did not need, nor did she receive,  
16 any morphine from the date hospice care services began through the end of October 2010.  
17 Ex. D 12.

18 On October 9, 2010, Ms. Gradinaru left the adult family home, taking Elaine's  
19 morphine with her. Ex. D-8, p. 3. Ms. Gradinaru admitted to Department staff that she had a  
20 number of personal problems, including pain from pancreatitis, ongoing depression following  
21 a recent divorce, and anxiety due to an upcoming inspection of the adult family home. *Id.*  
22 Ms. Gradinaru initially went to a nearby adult family home where her father was a caregiver  
23 and offered the morphine to her father, who had requested she deliver some morphine for one  
24 of his patients. *Id.* at p. 4. Ms. Gradinaru's father refused to take Elaine's morphine once he  
25

26 <sup>2</sup> Elaine was prescribed 30 ml of morphine, 20 mg/ml, to be placed under her tongue in doses of 0.25  
0.5 ml, as needed for pain or shortness of breath. Testimony of Kathy Ander; Ex. D-8. 000028

1 discovered it was prescribed to Elaine. *Id.* Ms. Gradinaru then left her father's adult family  
 2 home and ended up stopping at a park and ride lot, where she broke the seal on Elaine's  
 3 morphine and ingested approximately one ml of the morphine orally. *Id.*; *Testimony of Kathy*  
 4 *Ander*; *Testimony of Mary Moran.*

5 After ingesting Elaine's morphine, Ms. Gradinaru texted her ex-husband, informed  
 6 him that she had ingested Elaine's morphine, and asked him if she could "sleep it off" at his  
 7 apartment. *Id.* Ms. Gradinaru's ex-husband said no. *Id.* Later, while Ms. Gradinaru was  
 8 still at the park and ride lot, her father, apparently alerted by her ex-husband, arrived and  
 9 convinced Ms. Gradinaru to return to his home. *Id.* Once Ms. Gradinaru was at her father's  
 10 home, she passed out, and her brother took her to the emergency room as she stated her pain  
 11 had become worse. *Id.* Ms. Gradinaru was admitted to Overlake Hospital's inpatient  
 12 medical unit that day for pancreatitis and depression. Ex. D-5, p. 4. Then, on October 12,  
 13 2010, Ms. Gradinaru was admitted to Overlake Hospital's inpatient psychiatry unit because  
 14 of suicidal ideation. Ex. D-5, p. 1. Ms. Gradinaru remained there until October 18, 2010,  
 15 when she was discharged. *Id.* During her stay in the inpatient psychiatry unit, Ms.  
 16 Gradinaru's suicidal ideation diminished, however, she continued to receive medication for  
 17 chronic pain. *Id.* at pp. 2-3.

18 On October 13, 2010, Complaint Investigator Katherine Ander conducted an  
 19 unannounced on-site inspection of Bellevue Rose Adult Family Home after receiving a  
 20 complaint regarding Ms. Gradinaru's personal use of Elaine's morphine. Ex. D-13, p. 1;  
 21 *Testimony of Katherine Ander.* During her inspection, Ms. Ander observed that Elaine's vial  
 22 of morphine appeared to contain less than the full prescribed amount, despite the fact that  
 23 Elaine's medication record indicated she had not yet received any morphine since it was  
 24 originally prescribed. *Testimony of Katherine Ander*; Ex. D-13, p. 2. On October 18, 2010,  
 25 Ms. Ander interviewed Ms. Gradinaru, who admitted to taking Elaine's morphine.  
 26 *Testimony of Katherine Ander*; Ex. D-13, p. 2. Ms. Gradinaru also stated during the

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1 interview that on the date she took the morphine she was "in a lot of physical and  
2 emotional pain" and wanted the pain to "go away." *Id.*; *Testimony of Katherine Ander*. On  
3 November 4, 2010, after the conclusion of Ms. Ander's investigation, the Department issued  
4 a statement of deficiencies related to Ms. Gradinaru's adult family home license. Ex. D-13.  
5 Then, on November 5, 2010, the Department issued a notice to Ms. Gradinaru and her  
6 husband of a Stop Placement of Admissions, Revocation of License, and Imposition of  
7 Conditions, relating to the adult family home license. Ex. D-1.

8 On January 13, 2011, RCPP Investigator Mary Moran conducted an unannounced on-  
9 site visit to Bellevue Rose Adult Family Home to investigate Ms. Gradinaru's alleged  
10 financial exploitation of Elaine for taking her morphine. Ex. D-8, p. 1. During the  
11 inspection, Ms. Moran interviewed the nurse who provided hospice care services to Elaine.  
12 *Id.* at p. 3. The nurse stated that Elaine had not required any morphine recently and that the  
13 adult family home providers were instructed to contact the hospice team if Elaine did require  
14 morphine. *Id.* While in the presence of Ms. Moran, the nurse checked Elaine's vial of  
15 morphine and observed that the seal on the vial had been broken. *Id.* During the inspection,  
16 Ms. Moran also interviewed Ms. Gradinaru, who admitted she took Elaine's morphine on  
17 October 9, 2010 and ingested it. *Id.* at pp. 3-4. Ms. Gradinaru also stated that her physical  
18 pain had continued, and she had been hospitalized again just two weeks prior to Ms. Moran's  
19 interview for "severe pain." *Id.* at p. 3.

20 On May 2, 2011, after the conclusion of Ms. Moran's investigation, the Department  
21 issued a Notice of Preliminary Findings in which the Department found that Ms. Gradinaru  
22 had financially exploited Elaine by taking Elaine's morphine for her own use. Ex. D-7. On  
23 May 11, 2011, Ms. Gradinaru appealed the Department's finding of financial exploitation,  
24 stating "I took one drop of morphine. It never happened before or after and the patient didn't  
25 suffer, wasn't taking the morphine." Ex. D-9. On August 24, 2011, an administrative  
26 hearing was held. During the hearing, Ms. Gradinaru refused to answer questions from the

1 Department concerning the preliminary finding of financial exploitation by invoking her  
2 Fifth Amendment right to refrain from self-incrimination.

3 **III. CONCLUSIONS OF LAW**

4 **A. Resident Client Protection Program Findings**

5 Individuals who reside in adult family homes are often completely dependent upon the  
6 adult family home. The extreme vulnerability of adult family home residents has led to the  
7 development of requirements that are designed to protect and promote the physical, mental,  
8 emotional, and financial well-being of residents. A trust relationship exists between caregivers  
9 and providers of adult family homes and their vulnerable adult residents. Vulnerable adults are  
10 particularly susceptible to financial exploitation. RCW 74.34.020(6) creates a specific finding  
11 for financial exploitation because the resources, property, and income of vulnerable adults must  
12 be sufficiently protected from improper use or influence arising from this trust relationship.

13 A finding of financial exploitation prohibits an individual from being employed in a  
14 capacity that would allow him or her to have unsupervised access to vulnerable adults. RCW  
15 74.39A.050(8). Authority for findings of financial exploitation against Ms. Gradinaru is  
16 Chapter 74.34 RCW, the statute that deals with the protection of vulnerable adults.<sup>3</sup> The  
17 investigations of the adult family home and the individual are distinct, and the focus is  
18 different.

19 Any individual with access to a long-term care facility is eligible for a finding of  
20 abuse, neglect, exploitation, or financial exploitation, regardless of whether the individual is  
21 a licensed provider. WAC 388-76-11000. Specifically, a provider, an employee of the adult  
22 family home, an entity representative, anyone affiliated with a provider, and a caregiver, are  
23 all subject to such findings. *Id.* The Department made a finding of financial exploitation  
24 against Estera Gradinaru, the provider of Bellevue Rose Adult Family Home.

25 \_\_\_\_\_  
26 <sup>3</sup> Authority for an adult family home licensing action is Chapter 70.128 RCW, the adult family home  
licensing statute.

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1 B. Estera Gradinaru's Actions Constitute Financial Exploitation

2 RCW 74.34.020(6) defines financial exploitation as "the illegal or improper use of the  
3 property, income, resources, or trust funds of the vulnerable adult by any person for any  
4 person's profit or advantage other than for the vulnerable adult's profit or advantage." The  
5 Department contends that Ms. Gradinaru financially exploited Elaine, a vulnerable adult, by  
6 using Elaine's property – her morphine – for Ms. Gradinaru's own advantage.

7 Ms. Gradinaru was the provider, and a caregiver, of the Bellevue Rose Adult Family  
8 Home. Ms. Gradinaru was actively involved in Elaine's care. Ex. D-10; Ex. D-11; Ex. D-  
9 12. Ms. Gradinaru had updated and signed off on Elaine's Assessment and Care Plan as  
10 recently as July 9, 2010, and also Elaine's Negotiated Care Plan as recently as September 26,  
11 2010. Ex. D-10; Ex. D-11. Both plans included notes that Elaine was to receive medication  
12 from hospice services. *Id.* Further, during early October 2010, in the days leading up to  
13 Ms. Gradinaru's use of Elaine's morphine, Ms. Gradinaru was almost exclusively the only  
14 caregiver administering any medication to Elaine. Ex. D-12. As such, Ms. Gradinaru was in  
15 a position to know that Elaine's morphine would not likely be missed immediately, and also  
16 to be able to easily access the morphine without immediate detection.

17 Ms. Gradinaru admitted to hospital staff, and to both Ms. Ander and Ms. Moran during  
18 their respective investigations, that she took Elaine's vial of morphine and ingested a portion  
19 of it. Ex. D-5, p. 1; Ex. D-8, p. 3; Ex. D-9; Ex. D-13, p. 2. Ms. Gradinaru attempted to  
20 minimize the seriousness of her actions by stating in her Request for Hearing that she took  
21 "one drop of morphine," that it "never happened before or after," and that Elaine "didn't  
22 suffer." Ex. D-9.

23 During the hearing, Ms. Gradinaru refused to answer questions by invoking her Fifth  
24 Amendment right to refrain from self-incrimination. In a civil proceeding, as here, the ALJ  
25 may draw negative inferences when a witness refuses to answer on the grounds that her  
26 answer may tend to incriminate her. *Ikeda v. Curtis*, 43 Wn.2d 449, 458, 261 P.2d 68 (1955);

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1 | *State Farm Fire and Cas. Co. v. Huynh*, 92 Wn. App. 454, 462, 963 P.2d 854 (1998).  
2 | Ms. Gradinaru neither testified nor called any witnesses despite requesting the appeal on  
3 | May 11, 2011. Ex. D-9. The ALJ may infer, from Ms. Gradinaru's refusal to testify, that she  
4 | acquiesces to the factual allegations made against her. Further, the ALJ may infer that  
5 | Ms. Gradinaru acknowledges that her actions may have been illegal.

6 | Ms. Gradinaru contends, through counsel, that while she did take Elaine's morphine  
7 | and ingest it, her actions do not amount to "financial exploitation" as there is no "profit or  
8 | advantage" to Ms. Gradinaru. While there is no definition for "advantage" in chapter 74.34  
9 | RCW, one standard English definition for the word is "[a] factor conducive to success."  
10 | *Webster's II New Coll. Dictionary* (1995). Under this definition, Ms. Gradinaru's actions  
11 | clearly demonstrate that by taking Elaine's morphine, Ms. Gradinaru gained an advantage in  
12 | that she acquired a medication for which she had no prescription and used it for her own  
13 | purpose.

14 | Since Ms. Gradinaru refused to testify at the hearing, she did not clarify her precise  
15 | purpose for ingesting the morphine. The Department is left to guess between multiple  
16 | possible purposes, including suicide, an attempt to get attention, or to relieve physical pain.  
17 | The Department, however, need not determine the purpose behind taking and ingesting  
18 | Elaine's morphine. Whatever Ms. Gradinaru's purpose, taking and ingesting Elaine's  
19 | morphine furthered her purpose, or, in other words, was a "factor conducive to success" in  
20 | achieving that goal.

21 | To hold that willingly taking and ingesting a vulnerable adult's medication is not  
22 | financial exploitation in all instances would have an absurd legal result. For instance, the  
23 | Department's Board of Appeals routinely upholds findings of financial exploitation in "drug  
24 | diversion" cases where a caregiver is taking and ingesting a vulnerable adult's medication to  
25 | feed the caregiver's own substance abuse. If taking and ingesting a vulnerable adult's  
26 | medication for such a self-destructive purpose as substance abuse can lead to a finding of

1 financial exploitation, then certainly doing the same thing for the self-destructive purpose of  
2 committing suicide must qualify as a financial exploitation. Moreover, Ms. Gradinaru made  
3 multiple references to Department investigators regarding her physical pain as well. If pain  
4 relief was Ms. Gradinaru's purpose in taking and ingesting Elaine's morphine, then, clearly,  
5 her actions amount to financial exploitation as the actions advantaged Ms. Gradinaru in  
6 giving her the means by which to relieve her physical pain. Furthermore, Ms. Gradinaru's  
7 actions of taking the morphine then immediately calling her ex-husband may indicate that  
8 she was seeking attention as well.

9 The Department could speculate indefinitely on the infinite number of reasons  
10 Ms. Gradinaru chose to do what she did. Regardless of the reason, however, none were for  
11 Elaine's profit or advantage, and all, by default, would be for Ms. Gradinaru's own  
12 advantage, whatever that purpose may be.

### 13 C. The ALJ's Errors In The Conclusions Of Law

14 Conclusion of Law 9 and 10 are partially in error. In conclusion of law 9, the ALJ  
15 states "Thus, DSHS must prove, by a preponderance of the evidence, that when the Appellant  
16 took the morphine which belonged to Elaine R. in an attempt to commit suicide, her use of  
17 morphine was for her profit or advantage." In conclusion of law 10, the ALJ again assumes  
18 that the appellant was committing suicide. After making such a conclusion, she states "This  
19 end result would not have been beneficial, or profitable, for the appellant. Thus, the financial  
20 exploitation finding should not be upheld." These conclusions assume that Ms. Gradinaru  
21 was actually attempting to commit suicide. While suicide could have been Ms. Gradinaru's  
22 goal, she could also have been self-medicating her untreated pain or seeking attention.  
23 Ms. Gradinaru did not testify so no one knows her exact motivation. As described above,  
24 the Department's position is that there is no need to specify Ms. Gradinaru's exact  
25 motivation, the Department merely needs to prove that she used it for her own purposes that  
26 did not benefit the vulnerable adult. Her ultimate motivation could have been to commit

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1 suicide, self-medicate or seek attention. Regardless, she used the resident's medication to  
 2 further her own goals, not to benefit the vulnerable adult.

3 While it is unclear what Ms. Gradinaru's intent was on the day she ingested the  
 4 morphine, it is absolutely clear from the record that Ms. Gradinaru did in fact use morphine  
 5 that belonged to a vulnerable adult in her care. It is undisputed that Ms. Gradinaru took  
 6 morphine belonging to Elaine, a resident at Ms. Gradinaru's Adult Family Home, and  
 7 ingested some of Elaine's morphine. Ex. D-8, pp. 3-4; *Testimony of Kathy Ander*; *Testimony*  
 8 *of Mary Moran*. There is no evidence that Ms. Gradinaru ingested the morphine by  
 9 mistake or in error. Ms. Gradinaru voluntarily ingested Elaine's morphine. The mere  
 10 fact that she chose to ingest Elaine's morphine indicates Ms. Gradinaru acted to  
 11 "advantage" herself in some way and, clearly, did not act in a way that advantaged Elaine.  
 12 Thus, Ms. Gradinaru's admitted use of Elaine's morphine constitutes financial exploitation.

13 **IV. CONCLUSION**

14 The evidence presented by the Department at the hearing supports the finding that Ms.  
 15 Gradinaru financially exploited an adult family home resident. The initial order should be  
 16 overturned and the finding should be upheld.

17 DATED this 16<sup>th</sup> day of November, 2011.

18 ROBERT M. MCKENNA  
 19 Attorney General

20 *Angela Coats McCarthy*  
 21 ANGELA COATS MCCARTHY, WSBA#35547  
 22 Assistant Attorney General  
 Attorneys for Department of Social and Health Services

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PROOF OF SERVICE

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I certify under penalty of perjury under the laws of the state of Washington that the foregoing is true and correct.

DATED this 10 day of November, 2011, at Tumwater, WA.

  
\_\_\_\_\_  
Karen Mauceri, Legal Assistant

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BEFORE THE WASHINGTON STATE OFFICE OF ADMINISTRATIVE HEARINGS  
FOR THE DEPARTMENT OF SOCIAL AND HEALTH SERVICES

MAILED

OCT 26 2011

SEATTLE - OAH

In Re:

ESTERA GRADINARU

Appellant.

Docket No.: 05-2011-L-1920

Client ID# :

INITIAL ORDER

(Resident Protection Program (CNA))

A hearing was held before Administrative Law Judge (ALJ), CAROLYN L. PINKETT, on August 24, 2011. The Appellant, Estera Gradinaru, appeared. Ms. Gradinaru was represented by Timothy Leary, Attorney at Law. The Department of Social and Health Services (DSHS), was represented by Assistant Attorney General (AAG), Angela Coats-McCarthy. Katherine Ander and Mary Moran testified on behalf of DSHS. Travis Yonker and Justin Gillette observed the hearing.

ISSUE

The Appellant contests the *Notice of Preliminary Finding* which holds that she financially exploited a vulnerable adult.

RESULT

DSHS did not prove, by a preponderance of the evidence, that the Appellant financially exploited Elaine R., when the Appellant ingested Elaine R.'s prescription morphine without permission, in an attempt to commit suicide.

FINDINGS OF FACT

1. On May 3, 2011, DSHS served the Appellant with a *Notice of Preliminary Finding* which states, in part, that DSHS "has found that you financially exploited a vulnerable adult." Exhibit D-7, page 1. On May 16, 2011, the Appellant filed a request for hearing to contest the financial exploitation finding. Exhibit D-9. Her request for hearing states as follows: "I took one drop of morphine. It never happened before or after and the patient didn't suffer, wasn't taking the morphine." *Id.*

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2. The *Notice of Preliminary Finding* states that the financial exploitation finding is based upon the following facts:

The Incident

You were the owner of Bellevue Rose Adult Family Home. You financially exploited a vulnerable adult who was a resident in your home on October 9, 2010 when you took the resident's morphine medication for your own use.

Exhibit D-7, page 1.

3. In October 2010, the Appellant was the co-owner of the Bellevue Rose Adult Family Home (Bellevue Rose). Elaine R. was a resident of the home.<sup>1</sup> She was 91 years old, she suffered from dementia, and she was on hospice care. Exhibit D-10. Elaine R. began hospice care on August 26, 2010. Exhibit D-11. On September 26, 2010, her *Negotiated Care Plan* was amended, to note that her hospice nurse would now dispense her medications to her. *Id.* These medications included "comfort medications", that were prescribed for end-of-life treatment. They were intended to address anxiety, agitation, shortness of breath, and pain. Included in the medication was a vial of liquid morphine. The prescribed dosage of morphine, if needed, was 1/4 to 1/2 cubic centimeter (cc). Elaine R. did not need any of the comfort medications that were prescribed for her, because her symptoms were well-managed without them. See Exhibit D-12.

4. The Appellant suffers from depression. In August of 2002, she was admitted to the psychiatric unit at Overlake Hospital after she tried to commit suicide by taking 23 Motrin tablets. Exhibit D-6. She was hospitalized for one and a half days, and was discharged on her request. *Id.* In October 2009, the Appellant was in the middle of divorce proceedings. She also had financial problems. And, she was very stressed because her husband had threatened to take their two young children from her when the divorce became final. *Id.* On October 2, 2009, she was admitted to the psychiatric unit of Overlake Hospital, after she reportedly tried to commit suicide by taking an overdose of Oxycodone. *Id.* The Appellant's treating physician encouraged

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<sup>1</sup> The full name of the residents will not be used to protect their right to confidentiality.

her to delay her hospital discharge, and "strongly encouraged her to consider the partial-day hospitalization program." *Id.* The Appellant declined, citing money concerns, and asked to be discharged on October 6, 2009.

5. The Appellant was discharged on October 6, 2009, with the following diagnoses:

Axis I: Major depressive disorder, recurrent, severe, without psychotic features.

Axis II: Deferred.

Axis III: Status - post cholecystectomy in May 2009, recent onset of abdominal cramping and pain in the upper quadrants, possible fatty infiltration.

Axis IV: Moderate stressors.

Axis V: Global assessment of functioning (GAF) is 50.

Exhibit 6, page 2. The Appellant was discharged with the following prescriptions: Wellbutrin, Omeprazole, and Sertraline. *Id.* Wellbutrin is an anti-depressant. See *Physician's Desk Reference*, 6th ed., ©2006, at page 1579. Omeprazole is prescribed to treat gastroesophageal reflux disease (GERD). *Id.*, at page 2972. Sertraline or Zoloft, is prescribed to treat depression. *Id.*, at page 2581.

6. On October 12, 2010, the Residential Care Services (RCS), Complaint Resolution Unit (CRU), received an anonymous complaint which alleged that the Appellant took some of her resident's medications in a "failed suicide attempt." Exhibit D-8, page 2. Katherine Ander is a complaint investigator. On October 12, 2010, Ms. Ander was assigned to investigate the licensing complaint. On October 13, 2010, at 8:00a.m., Ms. Ander went to the Bellevue Rose AFH to investigate. When Ms. Ander arrived, there were six residents in care. All of the residents appeared to be well cared for. There was only one resident, Elaine R., who was prescribed a narcotic drug, morphine, to address end-of-life issues. Ms. Ander looked at the vial of morphine. There was dark brown liquid in the vial. Fifteen (15) ccs had been dispensed by the pharmacy. The seal on the vial was broken, and it appeared as if approximately one cc. 0 0 0 3 9

morphine was missing. Exhibit D-8, page 3. Katherine Ander interviewed Elaine R.'s hospice nurse on October 13, 2010, and she learned that Elaine R. did not need any of the comfort medications that had been prescribed for her.

7. Ms. Ander interviewed the Appellant on October 18, 2010, after she had been discharged from Overlake Hospital. On October 12, 2010, the Appellant was emotionally distressed about her divorce and she was in physical pain. She wanted her pain to stop. Her father, who is also a licensed adult family home owner, called her and asked her to go to the pharmacy to pick up some comfort medications for a resident in his home who was on hospice care. The Appellant took Elaine's morphine, and went to a local Park-and-Ride station. She took one-half capful of the morphine, which made her feel sleepy. She called her ex-husband, and asked if she could come to his home to sleep. He told her "no". Her father soon arrived at the Park-and-Ride station and took her back to his home. The Appellant was still in physical pain when she arrived at her father's home. Her brother then took her to Overlake Hospital. She was initially admitted to the hospital based upon her physical pain. After she advised the treating staff that she had taken the morphine in a "failed suicide attempt", she was admitted to the psychiatric unit.

8. Based upon the testimony of Ms. Ander, the undersigned finds that one-half capful of morphine would have eased the Appellant's physical pain and made her feel sleepy. It would not have killed her. The undersigned further finds, that the Appellant's physical pain is closely correlated to her psychological pain. For example, her signs of physical distress are exacerbated when she is emotionally distressed. Ms. Ander concluded, and the undersigned finds, that when the Appellant took Elaine R.'s morphine, it was not a "drug diversion." "Drug diversion" is a term of art used in the nursing profession to describe when a health care professional is unlawfully taking a patient's prescription medication for his or her own use, or, to sell to others. In this case, the Appellant took Elaine R.'s morphine to ease her own emotional distress.

9. Ms. Ander opined that the Appellant could have achieved a psychological benefit, or advantage, by ingesting Elaine R.'s morphine in an attempt to commit suicide - the



Appellant may have eased her emotional distress. Yet, the goal of medical care is to restore a person to health, within the parameters of their particular medical situation, and/or to mitigate a person's symptoms. Ms. Ander conceded that the Appellant would not have achieved a medical advantage if, on October 12, 2010, she had been successful in her suicide attempt.

10. Mary Moran is the Complaint Investigator who was assigned to investigate the Resident and Client Protection Program complaint. Ms. Moran interviewed the Appellant, her father, and two care givers who lived in the home. Exhibit D-8. She also interviewed the Group Health hospice nurse who was assigned to Elaine R. Finally, she reviewed Elaine R.'s medical records, and various medical records related to the Appellant. Ms. Moran concluded that Elaine R. had been a victim of financial exploitation, when the Appellant ingested some of Elaine R.'s morphine, because Elaine R. did not benefit or profit from the Appellant's actions.

#### CONCLUSIONS OF LAW

1. There is jurisdiction to hear this matter pursuant to Chapter 34.05 of the Revised Code of Washington (RCW), Chapter 74.34 RCW, and Chapter 388-76 of the Washington Administrative Code (WAC).

2. RCW 74.34.005(1) provides as follows:

#### **Findings.**

The legislature finds and declares that:

(1) Some adults are vulnerable and may be subjected to abuse, neglect, financial exploitation, or abandonment by a family member, care provider, or other person who has a relationship with the vulnerable adult[.] . . .

3. RCW 73.34.020(6) provides as follows:

(6) "Financial exploitation" means the illegal or improper use of the property, income, resources, or trust funds of the vulnerable adult by any person for any person's profit or advantage other than for the vulnerable adult's profit or advantage.

(Emphasis added).

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4. WAC 388-76-10000 defines "vulnerable adult" as follows:

"Vulnerable adult" includes a person:

- (1) Sixty years of age or older who has the functional, mental, or physical inability to care for himself or herself;
- (2) Found incapacitated under chapter 11.88 RCW;
- (3) Who has a developmental disability as defined under RCW 71A.10.020;
- (4) Admitted to any facility;
- (5) Receiving services from home health, hospice, or home care agencies licensed or required to be licensed under chapter 70.127 RCW;
- (6) Receiving services from an individual provider; or
- (7) With a functional disability who lives in his or her own home, who is directing and supervising a paid personal aide to perform a health care task as authorized by RCW 74.39.050.

5. WAC 388-76-11000 provides as follows:

**Resident protection program — Investigation of reports.**

- (1) The department may investigate allegations of abandonment, abuse, neglect, exploitation, and financial exploitation of a resident.
- (2) A department investigation may include an investigation of allegations about one or more of the following:
  - (a) A provider;
  - (b) Employee of the adult family home;
  - (c) Entity representative;
  - (d) Anyone affiliated with a provider; and
  - (e) Caregiver.

6. WAC 388-76-11015 provides as follows:

**Resident protection program — Disputing a preliminary finding.**

- (1) The individual may request an administrative hearing to challenge a preliminary finding made by the department.
- (2) The request must be made in writing to the office of administrative hearings.

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(3) The office of administrative hearings must receive the individual's written request for an administrative hearing within thirty calendar days of the date written on the notice of the preliminary finding.

(4) The written request for a hearing must include the individual's full legal name and current mailing address and should include:

- (a) The individual's telephone number;
- (b) A brief explanation of why the individual disagrees with the preliminary finding;
- (c) A description of any assistance needed in the administrative appeal process by the individual, including a foreign or sign language interpreter or any reasonable accommodation for a disability; and
- (d) The individual's signature.

7. WAC 388-76-11020 provides as follows:

**Resident protection program — Hearing procedures to dispute preliminary finding.**

(1) Chapters 34.05 and 74.34 RCW, chapter 388-02 WAC, and the provisions of this chapter govern any appeal regarding a preliminary finding.

(2) If a conflict exists between the provisions of this chapter and chapter 388-02 WAC, the provisions of this chapter prevail.

(3) If an administrative law judge within the office of administrative hearings determines that a preponderance of the evidence supports the preliminary finding that the individual abandoned, abused, neglected, exploited, or financially exploited a resident, then the administrative law judge will issue an initial order.

8. WAC 388-02-0485 provides as follows:

**What is the standard of proof?**

Standard of proof refers to the amount of evidence needed to prove a party's position. Unless the rules or law states otherwise, the standard of proof in a hearing is a preponderance of the evidence. This standard means that it is more likely than not that something happened or exists.

9. Neither Chapter 74.34 RCW nor Chapter 388-76 WAC defines "profit" or "advantage"<sup>2</sup> The common dictionary definition of "advantage", is "[a] benefit, gain, especially benefit resulting from some course of action." *Webster's Ninth New Collegiate Dictionary*, ©

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<sup>2</sup> WAC 388-76-10000 provides a definition of "financial exploitation" that is identical to the definition provided in RCW 74.34.020(6).

1987, at page 59. "Profit" is defined as "a valuable return: gain" or "to derive benefit." *Id.*, at page 939. Thus, DSHS must prove, by a preponderance of the evidence, that when the Appellant improperly took the morphine which belonged to Elaine R. in an attempt to commit suicide, her use of the morphine was to her profit or advantage.

10. Elaine R. is a "vulnerable adult". WAC 388-76-10000. DSHS argues that the Appellant financially exploited Elaine R., because she "gained an advantage in that she acquired a medication for which she had no prescription and used it for her own purpose." See *Department's Closing Brief*, at pages 7 and 8. The Appellant ingested Elaine R.'s morphine because she was depressed, and she wanted to commit suicide. This end result would not have been beneficial, or profitable, for the Appellant. Thus, the financial exploitation finding should not be upheld.

#### DECISION

DSHS did not prove, by a preponderance of the evidence, that Estera Gradinaru financially exploited Elaine R., when the Appellant ingested Elaine R.'s prescription morphine without permission, in an attempt to commit suicide.

SERVED on the date of mailing.



---

CAROLYN PINKETT  
Administrative Law Judge

CLP:jfk

Enclosure(s)

cc: Estera Gradinaru, Appellant  
Angela Coats McCarthy, Department Representative  
Tim Leary, Appellant Representative  
Robert McClintock, Program Admin.  
Suzanne Plaja, Program Admin.

**NOTICE TO PARTIES**

This decision becomes the final administrative decision unless a party files a petition for review. A petition must be received within 21 calendar days of the mailing date of this decision at the Board of Appeals. A petition form and instructions are attached.

[reversed]

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INITIAL ORDER- 9  
Docket No. 05-2011-L-1920

Office of Administrative Hearings  
One Union Square, Suite 1500  
600 University Street  
Seattle, WA 98101-3126  
(206) 389-3400 1-800-845-8830  
FAX (206) 587-5135

STATE OF WASHINGTON  
DEPARTMENT OF SOCIAL AND HEALTH SERVICES, BOARD OF APPEALS

MAILED

PETITION FOR REVIEW OF INITIAL DECISION

OCT 26 2011

SEE INFORMATION ON NEXT PAGE

SEATTLE - OAH

Print or type detailed answers. Add more pages if needed. You may use your own form.

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Name(s) [please print]

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Please explain why you want the initial decision or order changed. Try to be specific. For example, tell us:

- ▶ Why you think that the decision is wrong (why you disagree with it).
- ▶ If the findings of fact are wrong, based on what was presented at the hearing.
- ▶ How the decision should be changed.

I ask for a review of the initial decision because. . .

Check  I sent a copy to every other party

I have attached \_\_\_\_\_ (number) pages.

\_\_\_\_\_  
Signature

\_\_\_\_\_  
Date

**Deadline: Received on or before 21 days from mail date of Initial Decision**  
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Mail to: Board of Appeals  
PO Box 45803  
Olympia WA 98504-5803

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**If You Disagree With This Decision,  
You Can Appeal**

- ▶ **DEADLINE to Petition for Review:** The Board of Appeals must receive your appeal within twenty-one (21) calendar days from the mail date stamped on the initial decision. It must be received on that day or it will be late and may not be accepted. Please mail ahead of the deadline to allow time for delivery. If you miss the deadline, you may lose all rights to appeal the decision.
- ▶ **If You Need More Time:** The board of appeals can extend the deadline for good cause, but you must ask for more time within the twenty-one (21) day time limit.
- ▶ **Who May Ask for Review:** The parties in this case, including the Department.
- ▶ **HOW to Petition for Review:** Use the form on the previous page or make your own. You can mail your petition, deliver it or send it by fax with a copy mailed the same day to the Board of Appeals (locations below). Be sure to keep a copy.
- ▶ **COPIES to Other Parties:** You must send or deliver a copy of the appeal and any attachments to every other party in this matter.
- ▶ **What Happens Next:** The Board of Appeals will inform all parties when it receives a petition for review or a request for more time. If there is a problem with accepting the petition, you will be notified and given a chance to explain. If review is accepted, a Review Judge ("RJ") will read the papers and exhibits in the hearing file and will listen to the tape-recording or any transcripts of the hearing. The RJ will NOT hold a new hearing. The RJ will decide whether to consider new evidence that was not offered at the hearing. The RJ will consider the law and the arguments of the parties and may agree with or change the initial decision. The RJ may also order a new hearing and/or a new decision by the Office of Administrative Hearings (OAH). The RJ will write a review decision or order to explain the result of your appeal and the Board of Appeals will mail it to all parties. *If you disagree with the review decision or order, you may ask for reconsideration or appeal to superior court, or do both. You will receive more information about the next level of appeal with the review decision.*
- ▶ **If You Need Help:** Ask friends or relatives for referral to an attorney, or contact your county bar association or referral service (usually listed in the "attorney" section in the telephone book advertising section). Columbia Legal Services, Northwest Justice Project, the Northwest Women's Law Center, some law schools and non-profit legal organizations may be able to provide assistance. **You are not guaranteed an attorney free of charge.**
- ▶ **Language and Visual Challenges:** If you do not read and write English, you may submit and receive papers in your own language. If you are visually challenged, you may submit and receive papers in an alternate format such as braille or large print.

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|---|---|
| <b>Send or deliver your Appeal (Request for Review) to the BOARD OF APPEALS:</b>            |   |
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**SEATTLE OFFICE OF ADMINISTRATIVE HEARINGS  
FOR THE DEPARTMENT OF SOCIAL AND HEALTH SERVICES**

In re:  
**ESTERA GRADINARU,**  
Appellant.

**NO. 05-2011-L-1920**  
**DEPARTMENT'S REPLY BRIEF**

The Department relies on the substantive and factual statements in the Department's Closing Brief that is already submitted in this case on September 12, 2011, and offers the following response to additional issues raised in the Appellant's Closing Argument.

Ms. Gradinaru, in her closing argument, attempts to convince this tribunal that the determining factor for financial exploitation is not the fact that a caregiver used a vulnerable adult's property for her own advantage, but the reason the caregiver offers to justify the use of the vulnerable adult's property. In this case, the record does not establish the actual reason for Ms. Gradinaru's actions, nor is the Department obligated to prove the actual subjective reason for her actions. Instead, the Department must show – and has shown – that Ms. Gradinaru deliberately took and ingested morphine belonging to a vulnerable adult to whom Ms. Gradinaru was providing care.

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1 **A. The Testimony At The Hearing Did Not Establish The Reason Estera Gradinaru**  
 2 **Ingested the Morphine**

3 In her closing argument, Ms. Gradinaru states that at hearing, the testimony  
 4 established "that there was only one reason behind Ms. Gradinaru's consumption of the  
 5 morphine: an attempt to take her own life." Appellant's Closing Argument, p. 4. This  
 6 statement is inaccurate. Investigator Katherine Ander testified that Ms. Gradinaru had  
 7 both physical and emotional pain at the time and wanted the pain to "go away." *Testimony*  
 8 *of Katherine Ander*. This ambiguous statement by Ms. Gradinaru indicates that there  
 9 may have been multiple reasons for ingesting the morphine, not just suicide.

10 Further, it is undisputed that Ms. Gradinaru ingested approximately one cc of  
 11 morphine. Such a small dosage is not a lethal dose of morphine. *Testimony of Katherine*  
 12 *Ander*. Ms. Gradinaru, as a registered nurse, presumably knew this fact at the time she  
 13 ingested the morphine. Ms. Gradinaru may have reported to various individuals that she  
 14 had attempted to commit suicide, but that does not mean that suicide was her one and  
 15 only intent. Only Ms. Gradinaru knows her true intent, but she refused to testify at the  
 16 hearing.

17 **B. Any Deliberate Use By Ms. Gradinaru Of The Morphine Constitutes Financial**  
 18 **Exploitation**

19 While it is unclear what Ms. Gradinaru's intent was on the day she ingested the  
 20 morphine, it is absolutely clear from the record that Ms. Gradinaru did in fact use morphine  
 21 that belonged to a vulnerable adult in her care. It is undisputed that Ms. Gradinaru took  
 22 morphine belonging to Elaine, a resident at Ms. Gradinaru's Adult Family Home, and  
 23 ingested some of Elaine's morphine. Ex. D-8, pp. 3-4; *Testimony of Kathy Ander*; *Testimony*  
 24 *of Mary Moran*. There is no evidence that Ms. Gradinaru ingested the morphine by  
 25 mistake or in error. Ms. Gradinaru voluntarily ingested Elaine's morphine. The mere  
 26 fact that she chose to ingest Elaine's morphine indicates Ms. Gradinaru acted to

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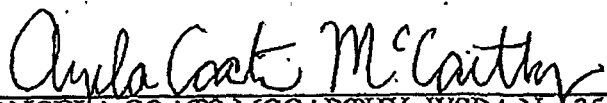
1 "advantage" herself in some way and, clearly, did not act in a way that advantaged Elaine.  
2 Thus, Ms. Gradinaru's admitted use of Elaine's morphine constitutes financial exploitation.

3 CONCLUSION

4 The Department maintains that it presented an accurate statement of the facts in its  
5 closing argument and requests that this tribunal affirm the finding of financial exploitation  
6 against Ms. Gradinaru.

7 DATED this 27th day of September, 2011.

8 ROBERT M. MCKENNA  
9 Attorney General

10   
11 \_\_\_\_\_  
12 ANGELO COATS MCCARTHY, WSBA No. 35547  
13 Assistant Attorney General  
14 Attorneys for Department of Social and  
15 Health Services/Resident Client Protection Program  
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I certify that I served a copy of this document on all parties or their counsel of record on the date below as follows;

Thomas Huber Grimm  
Attorney at Law  
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Seattle, WA 98101-3034

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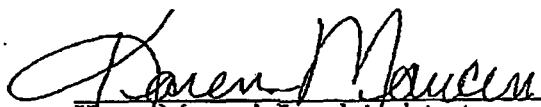
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I certify under penalty of perjury under the laws of the state of Washington that the foregoing is true and correct.

DATED this 27<sup>th</sup> day of September, 2011, at Tumwater, WA.

  
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Karen Mauceri, Legal Assistant

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BEFORE THE STATE OF WASHINGTON OFFICE OF ADMINISTRATIVE HEARINGS  
FOR THE DEPARTMENT OF SOCIAL AND HEALTH SERVICES

In Re:

ESTERA GRADINARU,

Appellant.

)  
) Docket No. 05-2011-L-1920  
)  
)  
)  
) APPELLANT'S CLOSING  
) ARGUMENT  
)  
) Resident Client Protection Program  
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**I. Introduction**

In a clear case of overreaching, the Department of Social and Health Services (Department) attempts to characterize Estera Gradinaru's use of an adult family home resident's medication during a suicide attempt as an act of financial exploitation. It argues that the use of the medication was an act "conducive to [her] success." Unbelievable. Ms. Gradinaru does not dispute that her actions were sad and unwise. She does vigorously dispute that her actions constituted "financial exploitation" as

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1 defined by RCW 74.34.020(6). A common sense application of the facts to the statute inextricably  
2 leads to the only logical conclusion – the Department has not established that Ms. Gradinaru engaged  
3 in financial exploitation.

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## 4 II. Facts

5 On October 9, 2010, Estera Gradinaru attempted to end her life. Ms. Gradinaru suffered  
6 from depression and had attempted suicide on multiple previous occasions. On this date, she was  
7 struggling with a failed marriage and concerns over an upcoming inspection of her adult family  
8 home. As the testimony at the hearing and the exhibits chronicled, she took a one cc dose of  
9 morphine that belonged to one of her residents. Fortunately she told her ex-husband what she had  
10 done and her family found her before it was too late. Her family took her to Overlake Hospital.  
11 She spent approximately a week in the hospital for a “suicide attempt by overdose on some of her  
12 adult family home patient’s morphine.” Exhibit D5 p.1.

13 Residential Care Services Investigator Katherine Ander testified that there was no evidence  
14 that Ms. Gradinaru was engaging in a practice of diverting residents’ medication for her own  
15 benefit. Her investigation revealed that this was a single incident, an incident that was a suicide  
16 attempt.

17 The Department endorsed Ms. Gradinaru’s ex-husband, her therapist, her primary doctor,  
18 and the social worker at Overlake Hospital as witnesses but it elected to not call them to testify. See  
19 Department’s Witness List filed on July 20, 2011 and August 8, 2011.

## 20 III. Argument

21 The Department’s strained application of the financial exploitation statute to these facts  
22 defies common sense. The Department has the burden of establishing, by a preponderance of the  
23

1 evidence, that Ms. Gardinaru financially exploited a vulnerable adult. WAC 388-76-11020(3).

2 "Financial exploitation" is defined as

3 the illegal or improper use of the property, income, resources, or trust  
4 funds of the vulnerable adult by any person for any person's profit or  
advantage other than for the vulnerable adult's profit or advantage.

5 RCW 74.34.020(6). Applications of a statute should be construed to affect its purpose. *In re*  
6 *Personal Restraint of Andress*, 147 Wn.2d 602, 610, 56 P.3d 981 (2002). Strained, unlikely, or  
7 absurd consequences resulting from literal reading are to be avoided. *Id.* The Department has  
8 never alleged that Ms. Gradinaru profited from the use of the resident's medication or that the  
9 resident was deprived of her medication. Rather, the Department argues that Ms. Gradinaru's  
10 attempt to commit suicide was an act done for her "advantage." The Department's argument fails.

11 In analyzing what constitutes an "advantage," the Department uses a Webster's Dictionary  
12 Definition that defines it as a "factor conducive to success." Department's Closing Brief at 7. Its  
13 own definition of advantage only reinforces the conclusion that Ms. Gradinaru's attempt to commit  
14 suicide with a small portion of a resident's medication was not financial exploitation. To deem Ms.  
15 Gradinaru's actions as advantageous or conducive to success is an argument that is simply illogical.

16 In an attempt to bolster its case, the Department draws an adverse inference from Ms.  
17 Gradinaru's decision to not call witnesses. Such an argument is wholly improper. The Department  
18 has the burden of proof. It may not attempt to shore up its case by commenting on Ms. Gradinaru's  
19 decision to not present a case. She has every right to hold the Department to its burden and assert  
20 that the facts, as presented by the Department, do not amount to financial exploitation. In its  
21 closing brief, it remarked that "Ms. Gradinaru neither testified nor called any witnesses despite  
22 requesting the appeal on May 11, 2011." Department's Closing Brief at 7. The Department is not  
23 permitted to shift its burden to Ms. Gradinaru.

1 The Department repeatedly fails to recognize that it has the sole burden of proving that Ms.  
2 Gradinaru engaged in financial exploitation. It has not satisfied its burden of proof. However, it  
3 attempts to turn the issue on its head with arguments like “[t]he Department is left to guess between  
4 multiple possible purposes, including suicide, an attempt to get attention or to relieve pain.”  
5 Department’s Closing Brief at 8. The testimony at the hearing established that there was only one  
6 reason behind Ms. Gradinaru’s consumption of the morphine: an attempt to take her own life. If the  
7 Department had questions about the circumstances surrounding the event, it could have called more  
8 of the witnesses on its witness list. Those witnesses included her ex-husband and the social worker  
9 at Overlake Hospital. The Department chose to put on a narrow case at the hearing. It cannot now  
10 use the holes in its case as a reason to not hold it to its burden.

11 In arguing that its decision should be upheld, the Department sets up a false dichotomy. It  
12 cautions that unless “all instances” of use of a resident’s medications are held to constitute financial  
13 exploitation, it would be “an absurd legal result.” Department’s Closing Brief at 8. The law does  
14 not require such rigidity. Rather each case must be considered on its individual merits. The issue  
15 here is whether the Department has proven that Ms. Gradinaru improperly used a resident’s  
16 property for her advantage. *See* RCW 74.34.020(6). The use of a resident’s medication in an  
17 attempt to commit suicide does not constitute an “advantage.” What happens in “drug diversion”  
18 cases is irrelevant to whether the Department has satisfied its burden in this case.

19 Ms. Gradinaru’s actions were unfortunate and sad. It is not as if there were no  
20 consequences. She entered into a stipulation that surrendered her license to operate an adult family  
21 home. *See* Docket No. 12-2010-L-2274. Investigator Katherine Ander reported the incident to the  
22 Department of Health to see whether there was a basis to take action against her nursing license 55  
23 *See* testimony of Ms. Ander. It is unclear why the Department is attempting to shoehorn these facts

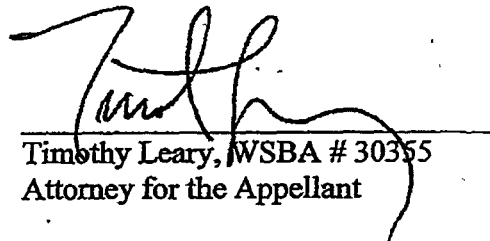
1 into the financial exploitation statute. The statute does not support it. Logic does not support it.  
2 Common sense does not support it. The unique facts here do not amount to financial exploitation  
3 under RCW 74.34.020(6).

4 **IV. Conclusion**

5 For the aforementioned reasons, the Department's finding that Estera Gradinaru committed  
6 financial exploitation is not supported by the facts or the law. The decision should be reversed.

7  
8  
9 DATED this 19<sup>th</sup> day of September, 2011.

10 Respectfully submitted,

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13 \_\_\_\_\_  
14 Timothy Leary, WSBA # 30355  
15 Attorney for the Appellant  
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CERTIFICATE OF SERVICE

I, Tim Leary certify that I caused the above closing argument to be filed with the Office of Administrative Hearings and served in the manner noted below a copy of the foregoing pleading on the following individuals:

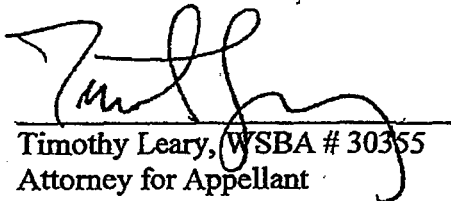
Angela Coats-McCarthy, WSBA # 35547  
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- Via Messenger
- Via Email
- Via FACSIMILE
- Via First Class Mail
- In person - dropped off at office

angelac3@atg.wa.gov

DATED: September 19<sup>th</sup>, 2011, at Seattle, Washington.

By:

  
 Timothy Leary, WSBA # 30355  
 Attorney for Appellant

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SEATTLE OFFICE OF ADMINISTRATIVE HEARINGS  
FOR THE DEPARTMENT OF SOCIAL AND HEALTH SERVICES

In Re:  
ESTERA GRADINARU,  
Appellant.

NO. 05-2011-L-1920  
DEPARTMENT'S CLOSING BRIEF

This matter is before the Office of Administrative Hearings (OAH) on an appeal by Estera Gradinaru. The Department of Social and Health Services' (Department or DSHS) Resident and Client Protection Program (RCPP) investigated Ms. Gradinaru. On May 2, 2011, RCPP issued a preliminary finding of financial exploitation against Ms. Gradinaru pursuant to chapter 74.34 RCW. Exhibit (Ex.) D-7, p. 1. Ms. Gradinaru appealed that finding. Ex. D-9. The hearing on this matter took place on August 24, 2011. Ms. Gradinaru was represented by counsel at the hearing.

I. FACTS<sup>1</sup>

Estera Gradinaru, along with her husband, has operated Bellevue Rose Adult Family Home since 2001. Ex. D-13, p. 2. The Bellevue Rose Adult Family Home is located at 212 153<sup>rd</sup> Place SE, Bellevue, Washington. *Id.* at p. 1. Ms. Gradinaru has a past history of depression and, on at least three occasions, has deliberately taken an overdose of medication.

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<sup>1</sup> The Department does not have a transcript of the hearing. Citations to testimony are based on a combination of notes, documentation, and recollection of Department personnel and counsel.

1 The first documented incident occurred in August 2002, when Ms. Gradinaru was  
 2 hospitalized for ingesting 23 Motrin tablets after becoming depressed. Ex. D-6, p. 1. The  
 3 second documented incident occurred in October 2009, when Ms. Gradinaru was  
 4 hospitalized after ingesting seven Oxycodone tablets during a period of depression. *Id.* The  
 5 most recent incident occurred in October 2010, when Ms. Gradinaru ingested an amount of  
 6 liquid morphine that belonged to a resident in her adult family home. Ex. D-5, p. 1; Ex. D-8,  
 7 p. 3; Ex. D-9; Ex. D-13, p. 2. In addition to her depression, Ms. Gradinaru has suffered from  
 8 chronic pain related to pancreatitis since at least 2009. Ex. D-5, pp. 1-3; Ex. D-6, pp. 1-3;  
 9 Ex. D-8, pp. 3-4; Ex. D-13, p. 2.

10 Ms. Gradinaru's adult family home is licensed to provide care for six residents.  
 11 Ex. D-13, p. 2. In October 2010, Elaine was one of six residents receiving care in the  
 12 Bellevue Rose Adult Family Home. *Id.* at p. 2; Ex. D-8, p. 6. Elaine was a 91-year-old  
 13 woman with diagnoses of transient ischemic attack, corneal implant, hypoglycemia,  
 14 depression with anxiety, and dementia with delusions. Ex. D-8, p. 2. Elaine was dependant  
 15 with most aspects of care. Ex. D-10. On September 26, 2010, Elaine began receiving  
 16 hospice care services. Ex. D-8 As part of Elaine's hospice care services, she was prescribed  
 17 a "comfort care pack" of medications, which included morphine to be taken as needed for  
 18 pain or shortness of breath.<sup>2</sup> *Id.*; Ex. D-12. Elaine did not need, nor did she receive, any  
 19 morphine from the date hospice care services began through the end of October 2010. Ex. D-  
 20 12.

21 On October 9, 2010, Ms. Gradinaru left the adult family home, taking Elaine's  
 22 morphine with her. Ex. D-8, p. 3. Ms. Gradinaru admitted to Department staff that she had a  
 23 number of personal problems, including pain from pancreatitis, ongoing depression following  
 24 a recent divorce, and anxiety due to an upcoming inspection of the adult family home. *Id.*

25 \_\_\_\_\_  
 26 <sup>2</sup> Elaine was prescribed 30 ml or morphine, 20 mg/ml, to be placed under her tongue in doses of 0.25 -  
 0.5 ml, as needed for pain or shortness of breath. Testimony of Kathy Ander; Ex. D-8.

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1 Ms. Gradinaru initially went to a nearby adult family home where her father was a caregiver  
2 and offered the morphine to her father, who had requested she deliver some morphine for one  
3 of his patients. *Id.* at p. 4. Ms. Gradinaru's father refused to take Elaine's morphine once he  
4 discovered it was prescribed to Elaine. *Id.* Ms. Gradinaru then left her father's adult family  
5 home and ended up stopping at a park and ride lot, where she broke the seal on Elaine's  
6 morphine and ingested approximately one ml of the morphine orally. *Id.*; *Testimony of Kathy*  
7 *Ander*; *Testimony of Mary Moran.*

8 After ingesting Elaine's morphine, Ms. Gradinaru texted her ex-husband, informed  
9 him that she had ingested Elaine's morphine, and asked him if she could "sleep it off" at his  
10 apartment. *Id.* Ms. Gradinaru's ex-husband said no. *Id.* Later, while Ms. Gradinaru was  
11 still at the park and ride lot, her father, apparently alerted by her ex-husband, arrived and  
12 convinced Ms. Gradinaru to return to his home. *Id.* Once Ms. Gradinaru was at her father's  
13 home, she passed out, and her brother took her to the emergency room as she stated her pain  
14 had become worse. *Id.* Ms. Gradinaru was admitted to Overlake Hospital's inpatient  
15 medical unit that day for pancreatitis and depression. Ex. D-5, p. 4. Then, on October 12,  
16 2010, Ms. Gradinaru was admitted to Overlake Hospital's inpatient psychiatry unit due to  
17 suicidal ideation. Ex. D-5, p. 1. Ms. Gradinaru remained there until October 18, 2010, when  
18 she was discharged. *Id.* During her stay in the inpatient psychiatry unit, Ms. Gradinaru's  
19 suicidal ideation diminished, however, she continued to receive medication for chronic pain.  
20 *Id.* at pp. 2-3.

21 On October 13, 2010, Complaint Investigator Katherine Ander conducted an  
22 unannounced on-site inspection of Bellevue Rose Adult Family Home after receiving a  
23 complaint regarding Ms. Gradinaru's personal use of Elaine's morphine. Ex. D-13, p. 1;  
24 *Testimony of Katherine Ander.* During her inspection, Ms. Ander observed that Elaine's vial  
25 of morphine appeared to contain less than the full prescribed amount despite the fact that  
26 Elaine's medication record indicated she had not yet received any morphine since it was

1 originally prescribed. *Testimony of Katherine Ander*; Ex. D-13, p. 2. On October 18, 2010,  
 2 Ms. Ander interviewed Ms. Gradinaru, who admitted to taking Elaine's morphine.  
 3 *Testimony of Katherine Ander*; Ex. D-13, p. 2. Ms. Gradinaru also stated during the  
 4 interview that on the date she took the morphine she was "in a lot of physical and emotional  
 5 pain" and wanted the pain to "go away." *Id*; *Testimony of Katherine Ander*. On November  
 6 4, 2010, after the conclusion of Ms. Ander's investigation, the Department issued a statement  
 7 of deficiencies related to Ms. Gradinaru's adult family home license. Ex. D-13. Then, on  
 8 November 5, 2010, the Department issued a notice to Ms. Gradinaru and her husband of a  
 9 Stop Placement of Admissions, Revocation of License, and Imposition of Conditions,  
 10 relating to the adult family home license. Ex. D-1.

11 On January 13, 2011, RCPP Investigator Mary Moran conducted an unannounced  
 12 on-site visit to Bellevue Rose Adult Family Home to investigate Ms. Gradinaru's alleged  
 13 financial exploitation of Elaine for taking her morphine. Ex. D-8, p. 1. During the  
 14 inspection, Ms. Moran interviewed the nurse who provided hospice care services to Elaine.  
 15 *Id.* at p. 3. The nurse stated that Elaine had not required any morphine recently and that the  
 16 adult family home providers were instructed to contact the hospice team if Elaine did require  
 17 morphine. *Id.* While in the presence of Ms. Moran, the nurse checked Elaine's vial of  
 18 morphine and observed that the seal on the vial had been broken. *Id.* During the inspection,  
 19 Ms. Moran also interviewed Ms. Gradinaru, who admitted she took Elaine's morphine on  
 20 October 9, 2010 and ingested it. *Id.* at pp. 3-4. Ms. Gradinaru also stated that her physical  
 21 pain had continued, and she had been hospitalized again just two weeks prior to Ms. Moran's  
 22 interview for "severe pain." *Id.* at p. 3.

23 On May 2, 2011, after the conclusion of Ms. Moran's investigation, the Department  
 24 issued a Notice of Preliminary Findings in which the Department found that Ms. Gradinaru  
 25 had financially exploited Elaine by taking Elaine's morphine for her own use. Ex. D-7. On  
 26 May 11, 2011, Ms. Gradinaru appealed the Department's finding of financial exploitation,

1 stating "I took one drop of morphine. It never happened before or after and the patient didn't  
2 suffer, wasn't taking the morphine." Ex. D-9. On August 24, 2011, an administrative  
3 hearing was held. During the hearing, Ms. Gradinaru refused to answer questions from the  
4 Department concerning the preliminary finding of financial exploitation by invoking her  
5 Fifth Amendment right to refrain from self-incrimination.

## 6 II. CLOSING ARGUMENTS

### 7 A. Preponderance Of The Evidence Is The Appropriate Standard Of Proof To Apply 8 In Reviewing A Finding Of Financial Exploitation

9 The proper standard to apply on review of a preliminary RCPP finding in an adult  
10 family home is specifically addressed in Department rule, which states:

11 If an administrative law judge within the office of administrative hearings  
12 determines that a preponderance of the evidence supports the preliminary  
13 finding that the individual abandoned, abused, neglected, exploited, or  
14 financially exploited a resident, then the administrative law judge will issue an  
15 initial order.

16 WAC 388-76-11020(3). The scope of legal authorities an Administrative Law Judge (ALJ)  
17 may consider in an administrative hearing is limited. When Department rules apply to an issue  
18 on administrative appeal, an ALJ is required to apply those rules exclusively. WAC 388-02-  
19 0220.

### 20 B. Resident Client Protection Program Findings

21 Individuals who reside in adult family homes are often completely dependent upon the  
22 adult family home. The extreme vulnerability of adult family home residents has led to the  
23 development of requirements that are designed to protect and promote the physical, mental,  
24 emotional, and financial well-being of residents. A trust relationship exists between caregivers  
25 and providers of adult family homes and their vulnerable adult residents. Vulnerable adults are  
26 particularly susceptible to financial exploitation. RCW 74.34.020(6) creates a specific finding  
for financial exploitation because the resources, property, and income of vulnerable adults must  
be sufficiently protected from improper use or influence arising from this trust relationship.

1 A finding of financial exploitation prohibits an individual from being employed in a  
 2 capacity that would allow him or her to have unsupervised access to vulnerable adults. RCW  
 3 74.39A.050(8). Authority for findings of financial exploitation against Ms. Gradinaru is  
 4 Chapter 74.34 RCW, the statute that deals with the protection of vulnerable adults.<sup>3</sup> The  
 5 investigations of the adult family home and the individual are distinct, and the focus is  
 6 different.

7 Any individual with access to a long-term care facility is eligible for a finding of  
 8 abuse, neglect, exploitation, or financial exploitation, regardless of whether the individual is  
 9 a licensed provider. WAC 388-76-11000. Specifically, a provider, an employee of the adult  
 10 family home, an entity representative, anyone affiliated with a provider, and a caregiver, are  
 11 all subject to such findings. *Id.* The Department made a finding of financial exploitation  
 12 against Estera Gradinaru, the provider of Bellevue Rose Adult Family Home.

13 **C. Estera Gradinaru's Actions Constitute Financial Exploitation**

14 RCW 74.34.020(6) defines financial exploitation as "the illegal or improper use of  
 15 the property, income, resources, or trust funds of the vulnerable adult by any person for any  
 16 person's profit or advantage other than for the vulnerable adult's profit or advantage." The  
 17 Department contends that Ms. Gradinaru financially exploited Elaine, a vulnerable adult, by  
 18 using Elaine's property – her morphine – for Ms. Gradinaru's own advantage.

19 Ms. Gradinaru was the provider, and a caregiver, of the Bellevue Rose Adult Family  
 20 Home. Ms. Gradinaru was actively involved in Elaine's care. Ex. D-10; Ex. D-11; Ex. D-  
 21 12. Ms. Gradinaru had updated and signed off on Elaine's Assessment and Care Plan as  
 22 recently as July 9, 2010, and also Elaine's Negotiated Care Plan as recently as September 26,  
 23 2010. Ex. D-10; Ex. D-11. Both plans included notes that Elaine was to receive medication  
 24 from hospice services. *Id.* Further, during early October 2010, in the days leading up to

25 \_\_\_\_\_  
 26 <sup>3</sup> Authority for an adult family home licensing action is Chapter 70.128 RCW, the adult family home  
 licensing statute.

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1 Ms. Gradinaru's use of Elaine's morphine, Ms. Gradinaru was almost exclusively the only  
2 caregiver administering any medication to Elaine. Ex. D-12. As such, Ms. Gradinaru was in  
3 a position to know that Elaine's morphine would not likely be missed immediately, and also  
4 to be able to easily access the morphine without immediate detection.

5 Ms. Gradinaru admitted to hospital staff, and to both Ms. Ander and Ms. Moran  
6 during their respective investigations, that she took Elaine's vial of morphine and ingested a  
7 portion of it. Ex. D-5, p. 1; Ex. D-8, p. 3; Ex. D-9; Ex. D-13, p. 2. Ms. Gradinaru attempted  
8 to minimize the seriousness of her actions by stating in her Request for Hearing that she took  
9 "one drop of morphine," that it "never happened before or after," and that Elaine "didn't  
10 suffer." Ex. D-9.

11 During the hearing, Ms. Gradinaru refused to answer questions by invoking her Fifth  
12 Amendment right to refrain from self-incrimination. In a civil proceeding, as here, the ALJ  
13 may draw negative inferences when a witness refuses to answer on the grounds that her  
14 answer may tend to incriminate her. *Ikeda v. Curtis*, 43 Wn.2d 449, 458, 261 P.2d 68 (1953);  
15 *State Farm Fire and Cas. Co. v. Huynh*, 92 Wn. App. 454, 462, 963 P.2d 854 (1998).  
16 Ms. Gradinaru neither testified nor called any witnesses despite requesting the appeal on May  
17 11, 2011. Ex. D-9. The ALJ may infer, from Ms. Gradinaru's refusal to testify, that she  
18 acquiesces to the factual allegations made against her. Further, the ALJ may infer that  
19 Ms. Gradinaru acknowledges that her actions may have been illegal.

20 Ms. Gradinaru contends, through counsel, that while she did take Elaine's morphine  
21 and ingest it, her actions do not amount to "financial exploitation" as there is no "profit or  
22 advantage" to Ms. Gradinaru. While there is no definition for "advantage" in chapter 74.34  
23 RCW, one standard English definition for the word is "[a] factor conducive to success."  
24 Webster's II New Coll, Dictionary (1995). Under this definition, Ms. Gradinaru's actions  
25 clearly demonstrate that by taking Elaine's morphine, Ms. Gradinaru gained an advantage in  
26



1 | that she acquired a medication for which she had no prescription and used it for her own  
2 | purpose.

3 |         Since Ms. Gradinaru refused to testify at the hearing, she did not clarify her precise  
4 | purpose for ingesting the morphine. The Department is left to guess between multiple  
5 | possible purposes, including suicide, an attempt to get attention, or to relieve physical pain.  
6 | The Department, however, need not determine the purpose behind taking and ingesting  
7 | Elaine's morphine. Whatever Ms. Gradinaru's purpose, taking and ingesting Elaine's  
8 | morphine furthered her purpose, or, in other words, was a "factor conducive to success" in  
9 | achieving that goal.

10 |         To hold that willingly taking and ingesting a vulnerable adult's medication is not  
11 | financial exploitation in all instances would have an absurd legal result. For instance, the  
12 | Department's Board of Appeals routinely upholds findings of financial exploitation in "drug  
13 | diversion" cases where a caregiver is taking and ingesting a vulnerable adult's medication to  
14 | feed the caregiver's own substance abuse. If taking and ingesting a vulnerable adult's  
15 | medication for such a self-destructive purpose as substance abuse can lead to a finding of  
16 | financial exploitation, then certainly doing the same thing for the self-destructive purpose of  
17 | committing suicide must qualify as a financial exploitation.

18 |         Moreover, Ms. Gradinaru made multiple references to Department investigators  
19 | regarding her physical pain as well. If pain relief was Ms. Gradinaru's purpose in taking and  
20 | ingesting Elaine's morphine, then, clearly, her actions amount to financial exploitation as the  
21 | actions advantaged Ms. Gradinaru in giving her the means by which to relieve her physical  
22 | pain. The Department could speculate indefinitely on the infinite number of reasons  
23 | Ms. Gradinaru chose to do what she did. Regardless of the reason, however, none were for

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Elaine's profit or advantage, and all, by default, would be for Ms. Gradinaru's own advantage, whatever that purpose may be.

DATED this 12<sup>th</sup> day of September, 2011.

ROBERT M. MCKENNA  
Attorney General

  
ANGELA COATS MCCARTHY, WSBA #35547  
Assistant Attorney General  
Attorneys for Department of Social and Health Services

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PROOF OF SERVICE

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I certify that I served a copy of this document on all parties or their counsel of record on the date below as follows:

US Mail Postage Prepaid via Consolidated Mail Service  
Timothy Leary  
Law Office of Tim Leary, PLLC  
705 Second Avenue, Suite 1111  
Seattle, WA 98101

ABC/Legal Messenger

Facsimile (206) 652-8290

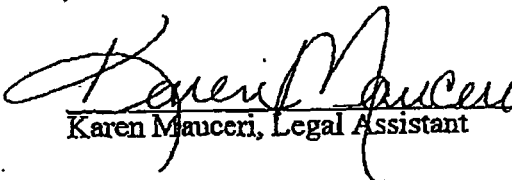
FED-EX Overnight Mail

State Campus Delivery

Hand delivered by \_\_\_\_\_

I certify under penalty of perjury under the laws of the state of Washington that the foregoing is true and correct.

DATED this 12<sup>th</sup> day of September, 2011, at Tumwater, WA.

  
\_\_\_\_\_  
Karen Mauceri, Legal Assistant

0000671

BEFORE THE WASHINGTON STATE OFFICE OF ADMINISTRATIVE HEARINGS  
FOR THE DEPARTMENT OF SOCIAL AND HEALTH SERVICES

MAILED

AUG 25 2011

SEATTLE-OAH

In Re:

ESTERA GRADINARU

APPELLANT

Docket No. 05-2011-L-1920

SCHEDULING ORDER

Resident Protection Program (CNA)

The parties are planning to submit written closing arguments.

IT IS ORDERED that the following filing deadlines are imposed:

**September 12, 2011:** The Department of Social and Health Services' (DSHS's) memorandum must be filed with the Office of Administrative Hearings (OAH) and served on the Appellant;

**September 19, 2011:** The Appellant's memorandum must be filed with OAH and served on DSHS;

**September 27, 2011:** If DSHS plans to file a rebuttal, the rebuttal must be filed with OAH and served on the Appellant.

The record will close on **September 27, 2011**.

SERVED on the date of mailing.



Carolyn Pinkett  
Administrative Law Judge  
Office of Administrative Hearings

A copy was sent to:

Estera Gradinaru, Appellant (425) 417-3840  
Angela Coats McCarthy, Department Representative (360) 586-6484  
Timothy Leary, Appellant Representative (206) 382-2401  
Robert McClintock, Program Admin  
Suzanne Plaja, Program Admin

000068

SCHEDULING ORDER  
Operator: jfk

Office of Administrative Hearings  
One Union Square, Suite 1500  
600 University Street  
Seattle, WA 98101-3126  
(206) 389-3400 1-800-845-8830  
FAX (206) 587-5135

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**RECEIVED**  
AUG 17 2011  
OAH SEATTLE

**BEFORE THE STATE OF WASHINGTON OFFICE OF ADMINISTRATIVE HEARINGS  
FOR THE DEPARTMENT OF SOCIAL AND HEALTH SERVICES**

|                   |  |   |
|-------------------|--|---|
| In Re:            |  | Docket No. 05-2011-L-1920                         |
|                   |  |   |
| ESTERA GRADINARU, |  |   |
| Appellant.        |  | NOTICE OF APPEARANCE AND<br>REQUEST FOR DISCOVERY |
|                   |  | Resident Client Protection Program                |
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|                   |  |   |
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|                   |  |   |

*HAT 8-18-11*

**TO: THE HONORABLE CAROLYN PINKET, ADMINISTRATIVE LAW JUDGE (ALJ);  
ROB MCKENNA, ATTORNEY GENERAL FOR THE STATE OF WASHINGTON;  
AND ANGELA COATS-MCCARTHY, ASSISTANT ATTORNEY GENERAL.**

**YOU AND EACH OF YOU WILL PLEASE TAKE NOTICE** that Timothy Leary is  
appearing as counsel for the Appellant, Estera Gradinaru.

**YOU ARE REQUESTED** to provide a copy of all of the pleadings and filings that were  
previously submitted to the ALJ.

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NOTICE OF APPEARANCE AND  
REQUEST FOR DISCOVERY- 1

Law Office of Tim Leary PLLC  
705 Second Ave, Suite 1111  
Seattle, WA 98101  
206-382-2401  
206-658-2401 fax

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**YOU ARE HEREBY REQUESTED** to preserve all physical evidence relating to the alleged incident that gave rise to this action. This includes, but is not limited to, investigator notes, photographs, e-mail communications, audio and/or video recordings, all evidence gathered in connection to this case until final disposition of this cause or until further order of the ALJ. This request is made pursuant to State v. Boyd, 29 Wn. App. 584 (1981) and U.S. v. Agrus, 427 U.S. 97 (1976).

**YOU ARE FURTHER REQUESTED**, the State of Washington, Department of Health and Human Services, Residential Care Services, and the Washington State Attorney General's Office, to promptly provide discovery of the following materials, so that a timely decision may be made regarding the disposition of this case:

1. The names, addresses, telephone numbers and other contact information of persons whom the Attorney General's Office to call as witnesses at the hearing or trial, together with any written or recorded statements and the substance of any oral statements of such witnesses.
2. Any written or recorded statements and the substance of any oral statements made by the appellant, current or former residents of Bellevue Rose AFH, or current or former staff of Bellevue Rose AFH.
3. Any reports or statements of experts made in connection with this case, including results of physical or mental examinations and scientific tests, experiments or comparisons.
4. Copies of any reports, treatises, studies, or articles that the expert relied upon in forming his/her opinions regarding this case.
5. Any books, papers, documents, photographs or tangible objects which the Attorney General intends to use in the hearing or trial or which were obtained from or belonged to the appellant.
6. Any search warrants, and accompanying affidavits, requested/executed as a part of the investigation of this case.

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NOTICE OF APPEARANCE AND  
REQUEST FOR DISCOVERY- 2

Law Office of Tim Leary PLLC  
705 Second Ave, Suite 1111  
Seattle, WA 98101  
206-382-2401  
206-658-2401 fax

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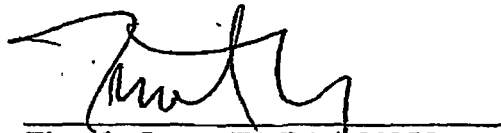
- 7. Any information available to the State regarding electronic surveillance, including but not limited to, wiretapping of the appellant, the appellant's premises, or conversations to which the appellant was a party.
- 8. All materials, affidavits and/or summaries presented to a special inquiry judge as a part of the investigation of this case.
- 9. Any record of prior criminal convictions, known to the Attorney General, of the appellant and of persons whom the Attorney General intends to call as witnesses at the hearing or trial.
- 10. Any ER 404(b) evidence known to the Attorney General regardless of his/her intention to use such evidence at trial and any ER 404(a)(2) evidence known to the Attorney General.
- 11. All information or material known to the Attorney General which tends to mitigate or negate appellant's culpability as to allegations alleged.
- 12. All reports, statements, logs, documents, internal memoranda, notes, and any other written materials prepared by the police or investigating agencies during the course of investigation of the appellant upon this and any other related charges or potential charges.
- 13. All medical records pertaining to the injuries allegedly sustained by the resident.

**YOU ARE FURTHER REQUESTED** to produce all expert witnesses at trial.

The above discovery requests are an ongoing request throughout the pendency of this case. It is requested that the State promptly provide any additional discovery to the appellant once it becomes known to the Attorney General, Residential Care Services, DSHS, the investigator, the licensor, police, prosecutor or other State actor.

DATED this 17<sup>th</sup> day of August, 2011.

Respectfully submitted,



Timothy Leary, WSBA # 30355  
Attorney for the Appellant

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### CERTIFICATE OF SERVICE

I, Tim Leary certify that I caused the above notice of appearance to be filed with the Office of Administrative Hearings and served in the manner noted below a copy of the foregoing pleading on the following individuals:

|                                     |                                     |   |
|-------------------------------------|-------------------------------------|---|
| Angela Coats-McCarthy, WSBA # 35547 | <input type="checkbox"/>            | Via ECF, <i>if opted in, and if not then:</i> |
| Assistant Attorney General          | <input type="checkbox"/>            | Via Messenger                                 |
| 7141 Cleanwater Dr SW               | <input checked="" type="checkbox"/> | Via Email                                     |
| PO Box 40124                        | <input type="checkbox"/>            | Via FACSIMILE                                 |
| Olympia, WA 98504-0001              | <input checked="" type="checkbox"/> | Via First Class Mail                          |
|                                     | <input type="checkbox"/>            | In person - dropped off at office             |

angelac3@atg.wa.gov

DATED: April 17<sup>th</sup>, 2011, at Seattle, Washington.

By:   
 \_\_\_\_\_  
 Tim Leary, WSBA # 30355  
 Attorney for Appellant

NOTICE OF APPEARANCE AND  
REQUEST FOR DISCOVERY- 4

000072  
 Law Office of Tim Leary PLLC  
 705 Second Ave, Suite 1111  
 Seattle, WA 98101  
 206-382-2401  
 206-658-2401 fax



8/24

9:00

RECEIVED

AUG 17 2011

OAH SEATTLE

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BEFORE THE STATE OF WASHINGTON OFFICE OF ADMINISTRATIVE HEARINGS  
FOR THE DEPARTMENT OF SOCIAL AND HEALTH SERVICES

In Re:

ESTERA GRADINARU,

Appellant.

)  
) Docket No. 05-2011-L-1920  
)  
)  
) MOTION TO CONTINUE DEADLINE  
) TO FILE PREHEARING  
) MEMORANDUM  
)  
) Resident Client Protection Program  
)  
)  
)  
)

**I. Relief Requested**

The Appellant, Estera Gradinaru, and the Department jointly request that the deadline for the filing of the pre-hearing memorandum be extended to Monday, August 22, 2011.

**II. Statement of Facts**

Previously, the Appellant was pro se. Tim Leary is filing a Notice Appearance and will be representing Ms. Gradinaru at the hearing. Counsel for Ms. Gradinaru spoke with counsel for the

MOTION TO CONTINUE DEADLINE  
TO FILE PREHEARING MEMORANDUM - 1

Law Office of Tim Leary PLLC  
1111 Third Ave, Suite 2230  
Seattle, WA 98101  
206-382-2401  
206-652-8290 fax

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AUG 17 2011

**OAH SEATTLE**

1 Department, Angela Coats-McCarthy for the first time this morning regarding this case. Ms. Coats  
2 McCarthy indicated that she had no objection to the extension and agreed that it would be a joint  
3 request.

4 **III. Argument**


5 The request of the parties is reasonable given the Appellant counsel's late entry into the case.  
6 It is the parties desire to not continue the August 24, hearing date. The requested continuance is not an  
7 attempt to delay the proceedings. The time is necessary to so that pre-hearing memorandum can  
8 clearly identify the issues for the hearing. The additional time would be appreciated.

9 **IV. Conclusion**

10 For the aforementioned reasons, the parties respectfully request an extension of the deadline to  
11 file the prehearing memorandum to August 22, 2011.

12  
13 DATED this 17<sup>th</sup> day of August, 2011.

14 Respectfully submitted,

15  
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17 \_\_\_\_\_  
18 Timothy Leary, WSBA # 30355  
19 Attorney for the Appellant  
20  
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000074

MOTION TO CONTINUE DEADLINE  
TO FILE PREHEARING MEMORANDUM - 2

Law Office of Tim Leary PLLC  
1111 Third Ave, Suite 2230  
Seattle, WA 98101  
206-382-2401  
206-652-8290 fax

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**CERTIFICATE OF SERVICE**

I, Tim Leary certify that I caused the above motion to be filed with the Office of Administrative Hearings and served in the manner noted below a copy of the foregoing pleading on the following individuals:

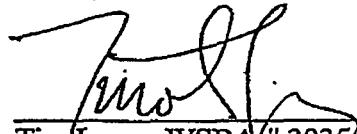
Angela Coats-McCarthy, WSBA # 35547  
Assistant Attorney General  
7141 Cleanwater Dr SW  
PO Box 40124  
Olympia, WA 98504-0001

- Via ECF, *if opted in, and if not then:*
- Via Messenger
- Via Email
- Via FACSIMILE
- Via First Class Mail
- In person - dropped off at office

angelac3@atg.wa.gov

DATED: August 17, 2011, at Seattle, Washington.

By:

  
 \_\_\_\_\_  
 Tim Leary, WSBA # 30354  
 Attorney for Appellant

MOTION TO CONTINUE DEADLINE  
TO FILE PREHEARING MEMORANDUM - 3

000075  
 Law Office of Tim Leary PLLC  
 1111 Third Ave, Suite 2230  
 Seattle, WA 98101  
 206-382-2401  
 206-652-8290 fax

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JUL 15 2011  
OAH SEATTLE

MAILED  
JUL 20 2011  
SEATTLE-OAH

SEATTLE OFFICE OF ADMINISTRATIVE HEARINGS  
FOR THE DEPARTMENT OF SOCIAL AND HEALTH SERVICES

In Re:  
**ESTERA GRADINARU,**  
  
Appellant.

NO. 05-2011-L-1920  
**[PROPOSED]  
AGREED PROTECTIVE ORDER**

The undersigned parties having agreed to the following Protective Order, NOW,  
THEREFORE,

It is ORDERED that:

1. Pursuant to RCW 74.04.060, RCW 70.128.050, RCW 74.34.095, RCW 34.05.446 and WAC 388-76-11040, and other applicable laws, all information and records of the Department of Social and Health Services (Department) or Bellevue Rose Adult Family Home relating to current or former clients of the Department or residents of Bellevue Rose Adult Family Home shall be kept confidential and shall be disclosed only as necessary for purposes directly related to this administrative proceeding.

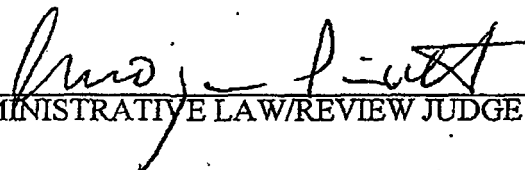
2. Pursuant to this Protective Order, and unless otherwise prohibited by law, any documents produced relating to this administrative proceeding may be produced to a party without redacting the names or other confidential information relating to Department clients or adult family home residents.

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1 3. If any party or counsel of record submits any document covered by this  
2 Protective Order for admission into evidence at the hearing, such submission shall be made in  
3 redacted form by deleting the names and other personally identifying information about the  
4 Department clients or adult family home residents. Personally identifying information about a  
5 Department client or adult family home resident shall not otherwise be disclosed on the record  
6 without the client's or resident's consent. However, the inadvertent disclosure of a client's or  
7 resident's identity on the record by a party, attorney, witness, or officer of the court shall not  
8 operate as a waiver of this Protective Order.

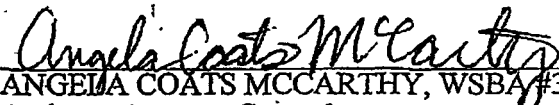
9 4. This Protective Order shall be binding on the parties and their counsel of record  
10 and may only be amended by written agreement of the parties or by order of the court.

11 DATED this 20 day of July 2011, at Seattle, WA.  
12


13   
14 ADMINISTRATIVE LAW/REVIEW JUDGE

15 Presented by:

16 ROBERT M. MCKENNA  
17 Attorney General

18   
19 ANGELOA COATS MCCARTHY, WSBA #35547  
20 Assistant Attorney General  
21 Attorneys for Respondent

22 Approved for Entry:

23   
24 ESTERA GRADINARU  
25 Pro Se  
26

000077

BEFORE THE STATE OF WASHINGTON OFFICE OF ADMINISTRATIVE HEARINGS  
FOR THE DEPARTMENT OF SOCIAL AND HEALTH SERVICES

In Re:

ESTERA GRADINARU  
APPELLANT

DOCKET NO. 05-2011-L-1920

NOTICE OF HEARING

(Resident Protection Program (CNA))

Your hearing will be held on: **August 24, 2011**

At: **9:00 AM Pacific Time**

or as soon thereafter as an Administrative Law Judge is available.

LOCATION: Office of Administrative Hearings (Hearing Room 3)  
One Union Square  
600 University St., Suite 1500  
Seattle, WA 98101  
(206) 464-7095 FAX (206) 587-5135

MAILED  
JUL 13 2011  
SEATTLE-OAH

**NOTE: ALL PARTIES MUST CHECK IN WITH RECEPTIONIST BEFORE PROCEEDING TO HEARING ROOM.**

Firearms and other dangerous weapons are prohibited at hearings and in all Office of Administrative Hearings offices. WAC 10-20-010

This hearing is held pursuant to Chapter 74.34 RCW and Chapter 388-76 WAC on the issues raised in the appeal filed on 05/16/2011.

The hearing will be held in person. You should be at the hearing location 10 minutes early. You may bring an attorney or other person to help you. You may present evidence and witnesses. If you do not appear, you will lose your appeal and may not be able to appeal this problem again.

Direct all communications to the Hearings Office at the address listed below. If your address listed above is incorrect or you move while the hearing is pending, you must notify that Hearings Office.

If you wish to postpone the hearing and show good reason, the Administrative Law Judge (ALJ) may order the hearing continued. The ALJ will want to know if the department agrees with or opposes your request. To learn this, contact the department representative at the address or phone number listed below.

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NOTICE OF HEARING - Page 1

Operator:  
JFK

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Office of Administrative Hearings  
One Union Square, Suite 1500  
600 University Street  
Seattle, WA 98101-3126  
(206) 389-3400 1-800-845-8830  
FAX (206) 587-5135

If a limited English speaking or hearing impaired party or witness needs a translator, one will be appointed at no cost. If you need a translator, fill out the enclosed form and mail it to the Hearings Office address listed at the bottom of this page.

SERVED on the date of mailing.



Carolyn L. Pinkett  
Administrative Law Judge  
Office of Administrative Hearings

**NOTE:** WAC 10-08-130(3) provides:

(3) Following the prehearing conference, the presiding officer shall issue an order reciting the action taken at the conference, the amendments allowed to the pleadings, and the agreements made by the parties concerning all of the matters considered. If no objection to such notice is filed within ten days after the date such notice is mailed, it shall control the subsequent course of the proceeding unless modified for good cause by subsequent order.

A copy was sent to:

Estera Gradinaru, Appellant (425) 417-3840  
Angela Coats McCarthy, Department Rep (360) 586-6565  
Robert McClintock, Program Admin  
Suzanne Plaja, Program Admin

NOTICE OF HEARING - Page 2

Operator:  
JFK

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Office of Administrative Hearings  
One Union Square, Suite 1500  
600 University Street  
Seattle, WA 98101-3126  
(206) 389-3400 1-800-845-8830  
FAX (206) 587-5135

BEFORE THE STATE OF WASHINGTON OFFICE OF ADMINISTRATIVE HEARINGS  
FOR THE DEPARTMENT OF SOCIAL AND HEALTH SERVICES

In Re:

ESTERA GRADINARU  
APPELLANT

DOCKET NO. 05-2011-L-1920

ORDER ON PREHEARING CONFERENCE  
Resident Protection Program (CNA)

Administrative Law Judge (ALJ) Carolyn Pinkett held a telephone prehearing conference in Seattle, Washington, on July 7, 2011. The Appellant, Estera Gradinaru, appeared and represented herself. The Department of Social and Health Services (DSHS), was represented by Angela Coats-McCarthy, Assistant Attorney General.

Discovery has not yet been exchanged. DSHS anticipates that the process can be completed rather quickly, once an Agreed Protective Order has been issued. This case involves some of the same facts that are alleged in an adult family home revocation hearing that is scheduled for August 24, & 25, 2011.

IT IS ORDERED as follows:

**July 22, 2011:** DSHS shall file with OAH proof of service of the Preliminary Finding letter, dated May 2, 2011.

IT IS FURTHER ORDERED that the following filing deadlines are imposed:

**1. August 10, 2011:** The parties shall file with the OAH and exchange proposed exhibits and an exhibit list. **This means that the exhibits must be received by OAH and the other party, by the date noted.** The exhibit list should assign a number to each separate document submitted by a party (whether one page or multiple pages). The exhibit list should also provide a short description of each document. DSHS should label the Department's exhibits as follows: Exhibit D1, D2, etc. The Appellant should label her exhibits as follows: Exhibit AP1, AP2, etc.

**NOTE:** Failure of either party to comply with this order may result in the exclusion of the party's exhibits. WAC 10-08-140(2)(b).

**NOTE:** Proposed exhibits submitted pursuant to this Order shall be "deemed authenticated" unless a written objection to the exhibit is filed with the OAH and served on the other party at least one (1) week before the hearing date. WAC 10-08-140(2).

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Prehearing Conference Order - Page 1  
Operator: jfk

MAILED

JUL 13 2011

SEATTLE-OAH

Office of Administrative Hearings  
One Union Square, Suite 1500  
600 University Street  
Seattle, WA 98101-3126  
(206) 389-3400 1-800-845-8830  
FAX (206) 587-5135




2. **August 10, 2011:** The parties shall file with the OAH and exchange witness lists. This means that the witness list must be received by OAH and the other party, by the date noted. The witness list shall include a brief description of each witness's anticipated testimony along with a telephone number where the witness can be reached.

**NOTE:** Failure of either party to comply with this order may result in the exclusion of testimony. The witness lists shall also indicate whether there are any accommodation or safety issues that need to be addressed by the undersigned before the day of hearing.

3. **August 17, 2011:** If either party plans to file a pre-hearing memorandum, the memorandum shall be filed with the OAH and served on the other party.

**Default.** A party who fails to appear or participate in a hearing or other stage of an adjudicative proceeding may be held in default in accordance with RCW 34.05.440.

SERVED on the date of mailing.



Carolyn Pinkett  
Administrative Law Judge  
Office of Administrative Hearings

**NOTE:** WAC 10-08-130(3) provides:

(3) Following the prehearing conference, the presiding officer shall issue an order reciting the action taken at the conference, the amendments allowed to the pleadings, and the agreements made by the parties concerning all of the matters considered. If no objection to such notice is filed within ten days after the date such notice is mailed, it shall control the subsequent course of the proceeding unless modified for good cause by subsequent order.

A copy was sent to:

Estera Gradinaru, Appellant (425) 417-3840  
Angela Coats McCarthy, Department Rep (360) 586-6565  
Robert McClintock, Program Admin  
Suzanne Plaja, Program Admin

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**PROOF OF SERVICE**

I certify that I sent a copy of this document to all parties or their counsel of record on the date below as follows for signature and return for filing:

US Mail Postage Prepaid

Estera Gradinaru  
212 153<sup>rd</sup> Place SE  
Bellevue, WA 98007

ABC/Legal Messenger

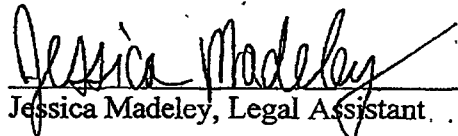
Federal Express

VIA/ facsimile

Hand delivered by \_\_\_\_\_

I certify under penalty of perjury under the laws of the state of Washington that the foregoing is true and correct.

DATED this 24 day of July, 2011, at Tumwater, WA.

  
\_\_\_\_\_  
Jessica Madeley, Legal Assistant.

000082

BEFORE THE STATE OF WASHINGTON OFFICE OF ADMINISTRATIVE HEARINGS  
FOR THE DEPARTMENT OF SOCIAL AND HEALTH SERVICES

In Re:

ESTERA GRADINARU  
APPELLANT

DOCKET NO. 05-2011-L-1920

NOTICE OF PREHEARING CONFERENCE

(Resident Protection Program (CNA))

**Prehearing Conference:** Pursuant to Revised Code of Washington (RCW) 34.05.431 and Washington Administrative Code (WAC) 388-02-0195, a telephone prehearing conference will be held on: **July 7, 2011 at 8:30 AM**, or as soon after that time as an Administrative Law Judge is available.

Administrative Law Judge Carolyn Pinkett has been assigned to this case.

The prehearing conference will consider:

- a. Simplification of issues;
- b. The necessity or desirability of amendments to the pleadings;
- c. The possibility of obtaining stipulations, admissions of fact and admissions of the genuineness of documents which will avoid unnecessary proof;
- d. Limitations on the number and consolidation of the examination of witnesses;
- e. Procedural matters;
- f. Distribution of written testimony and exhibits to the parties prior to the hearing;
- g. The time and date of the hearing; and
- h. Such other matters as may aid in the disposition or settlement of the proceeding.

MAILED  
MAY 27 2011  
SEATTLE-OAH

**You must provide the Office of Administrative Hearings with a phone number where you can be reached. The parties should discuss the case prior to the conference. If your telephone will not accept blocked calls, you must unblock the telephone for the prehearing conference.**

**Hearing:** A date and location for your hearing will be set at the prehearing conference.

**Representation:** You may be represented by an attorney, paralegal, friend, relative or other person at the prehearing conference and any other stage of this hearing.

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NOTICE OF PREHEARING CONFERENCE

PAGE 1

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Operator: VKL

Office of Administrative Hearings  
One Union Square, Suite 1500  
600 University Street  
Seattle, WA 98101-3126  
(206) 389-3400 1-800-845-8830  
FAX (206) 587-5135

**Applicable rules:** This hearing is held pursuant to Chapter 34.05 of the Revised Code of Washington (RCW), Title 71A of RCW, Chapter 388-02 of the Washington Administrative Code (WAC) and WAC Chapter 388-101 WAC, on the issues raised in the appeal filed on 05/16/2011.

**Addresses:** Direct all communications to the Administrative Law Judge (ALJ) at the address listed below. Copies of anything sent to the ALJ must also be sent to the other party. If you change your mailing address while the hearing is pending, you must notify the Office of Administrative Hearings.

**Postponements:** The ALJ may allow you to postpone the prehearing conference if you have a good reason for the postponement. The ALJ will want to know if the other party agrees or disagrees with your request. To learn this, contact the other party. The department's representative may be reached at the address or phone number listed below.

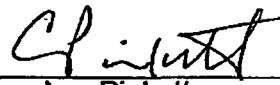
**Interpreters:** If a limited English speaking or hearing impaired party or witness needs an interpreter, one will be appointed at no cost. If you need an interpreter, fill out the enclosed form and mail it to the Office of Administrative Hearings at the address listed at the bottom of this page.

**Equal Access Policy:** See "Your Hearing Rights" pamphlet.

**Default:** If you fail to appear or participate in the prehearing conference, hearing, or any other scheduled stage of these proceedings, you may lose your right to a hearing as described in RCW 34.05.440.

**Record:** Prehearing conferences will be recorded. The hearing may be recorded by a court reporter.

SERVED on the date of mailing.

  
\_\_\_\_\_  
Carolyn Pinkett  
Administrative Law Judge  
Office of Administrative Hearings

Attached: Legal Services List  
"Your Hearing Rights" Pamphlet  
Hearing Request

A copy was sent to:

Estera Gradinaru, Appellant -- (425) 417-3840  
Angela Coats McCarthy, Department Rep -- (360) 586-6565  
Robert McClintock, Program Admin  
Suzanne Plaja, Program Admin

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NOTICE OF PREHEARING CONFERENCE  
PAGE 2  
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Operator: VKL

Office of Administrative Hearings  
One Union Square, Suite 1500  
600 University Street  
Seattle, WA 98101-3126  
(206) 389-3400 1-800-845-8830  
FAX (206) 587-5135

# Resident and Client Protection Program

Department of Social and Health Services (DSHS)

Office of Administrative Hearings

Request for Hearing

RECEIVED

MAIL THIS FORM TO: Office of Administrative Hearings  
PO Box 42488  
Olympia, WA 98504-2488  
Or FAX to this number: (360) 664-8721

MAY 16 2011

HEADQUARTERS OFFICE OF  
ADMINISTRATIVE HEARINGS

I hereby request a hearing concerning the DSHS preliminary finding against me. The reason I am disputing the DSHS preliminary finding is:

I took one class of vocational training. I never  
was notified of the DSHS preliminary finding and the patient  
did not follow through with the information.

I was notified of the DSHS preliminary finding on 5/3/11  
Date

Please print:

Name: ESTER GRANINARU

Address: 2215 1st Ave

City, State, Zip Code: Bellevue WA 98007

Phone Number: 425 417 3840

You must notify the Office of Administrative Hearings if your address changes

Do you need any assistance, an interpreter or an accommodation due to a disability for the hearing?  
 Yes  No

If yes, what language or assistance?

It will be represented by:

Name \_\_\_\_\_ Phone \_\_\_\_\_

Address \_\_\_\_\_

My representative is:  An attorney  Other person  Myself

Your signature: Ester Graninaru

Date: 5/11/11

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SEATTLE OFFICE OF ADMINISTRATIVE HEARINGS  
FOR THE DEPARTMENT OF SOCIAL AND HEALTH SERVICES

In Re:  
ESTERA GRADINARU,  
Appellant.

NO. 05-2011-L-1920  
NOTICE OF APPEARANCE

RECEIVED  
MAY 25 2011  
OAH SEATTLE

TO: OFFICE OF ADMINISTRATIVE HEARINGS;

TO: ESTERA GRADINARU, Appellant.

YOU, AND EACH OF YOU, will please take notice that the Washington State Department of Social and Health Services (DSHS) hereby enters its appearance in the above-entitled action by and through its attorneys, ROBERT M. MCKENNA, Attorney General, and ANGELA COATS MCCARTHY, Assistant Attorney General, and requests that further papers and pleadings, except process, be served upon said attorneys at their office address given below.

DATED this 25<sup>th</sup> day of May, 2011.

ROBERT M. MCKENNA  
Attorney General

*Angela Coats McCarthy*  
ANGELA COATS MCCARTHY, WSBA #35447  
Assistant Attorney General  
Attorney for Department of Social and Health Services

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I certify that I served a copy of this document on all parties or their counsel of record on the date below as follows:

US Mail Postage Prepaid via Consolidated Mail Service

Estera Gradinaru  
212 153<sup>rd</sup> Place SE  
Bellevue, WA 98007

ABC/Legal Messenger

Facsimile

FED-EX Overnight Mail

State Campus Delivery

Hand delivered by \_\_\_\_\_

I certify under penalty of perjury under the laws of the state of Washington that the foregoing is true and correct.

DATED this 26<sup>th</sup> day of May, 2011, at Tumwater, WA.

  
\_\_\_\_\_  
Karen Manceri, Legal Assistant

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OAH SEATTLE

SEATTLE OFFICE OF ADMINISTRATIVE HEARINGS  
FOR THE DEPARTMENT OF SOCIAL AND HEALTH SERVICES

In Re:  
**ESTERA GRADINARU,**  
Appellant.

NO. 05-2011-L-1920  
DEPARTMENT'S SUPPLEMENTAL  
WITNESS LIST

The Department of Social and Health Services (Department) may call the following individuals as witnesses during the hearing in the above-referenced case.

10. **Claudia Jones, ARNP, Group Health, 216<sup>th</sup> Ave, Bldg. CWB-F, Seattle, WA 98112, (206) 510-6912.**

Ms. Jones may testify about her knowledge of the victim's condition and medical needs.

11. **Nina Popova, Caregiver Bellevue Rose AFH, 212 153<sup>rd</sup> Place SE, Bellevue, WA 98007, (253) 426-8609.**

Ms. Popova may testify about her knowledge of the victim's condition and conditions at the Facility.

12. **Kim Motais, Hospice Registered Nurse, Group Health Hospice Care, 2100 124<sup>th</sup> Ave NE, Suite 110, Bellevue, WA 98005, (425) 556-6300.**

Ms. Motais may testify about her knowledge of the necessary care and treatment of hospice patients.

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1           13.     **Bonita (Bonnie) Sykes, RN, 4635 Lake Washington Blvd NE, Kirkland, WA**  
2     98033, (206) 713-2420.

3           Ms. Sykes may testify about her knowledge of the necessary care and treatment of  
4 hospice patients.

5           14.     **Mary Moran, Investigator, Department of Social and Health Services, Resident**  
6 and Client Protection Program, WA 98504-5600 (360) 725-3214.

7           Ms. Moran will testify as to her investigation of the complaint concerning appellant.  
8 She will testify as to the results of that investigation, and her findings as to the allegations of  
9 abuse. She will further testify as to her conversations with appellant, caregivers and other  
10 staff in the agency; conversations with collateral contacts; her knowledge of the care needs of  
11 the residents and opinion regarding the care they received; and as to the factual and legal  
12 basis for the enforcement action taken by DSHS.

13           15.     **Paula Sanz, RN, BSN, Field Manager, Resident and Client Protection**  
14 Program, 4500 10<sup>th</sup> Ave SE, Lacey, WA 98504-5600, (360) 725-3218.

15           Ms. Sanz may testify about the Resident and Client Protection Program policy and  
16 procedures, the investigation, the RCPP process, abuse and neglect standards, and the  
17 preliminary finding.

18           16.     **Robert Ogolsky, Compliance Specialist, ADSA/RCS, 4500 10<sup>th</sup> Ave SE,**  
19 Lacey, WA 98504-5600, (360) 725-2384.

20           Mr. Ogolsky may testify about the Resident and Client Protection Program policy and  
21 procedures, the investigation, the RCPP process, abuse and neglect standards, and the  
22 preliminary finding.

23           17.     **Estera, Gradinaru, Appellant.**

24           Ms. Gradinaru may testify about her training, experience, background and actions  
25 subject to this investigation.

26           The Department reserves the right to call the Appellant's witnesses.

000089

1 DATED this 2 day of August, 2011.

2 ROBERT M. MCKENNA  
3 Attorney General

4 *Angela Coats McCarthy*  
5 ANGELO COATS MCCARTHY, WSBA #35547  
6 NATALIE K.A. COOPER, WSBA #43168  
7 Assistant Attorney General  
8 Attorneys for Department of  
9 Social and Health Services  
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7 **SEATTLE OFFICE OF ADMINISTRATIVE HEARINGS**  
8 **FOR THE DEPARTMENT OF SOCIAL AND HEALTH SERVICES**

9  
10 In Re:

11 **ESTERA GRADINARU,**

12 Appellant.

**NO. 05-2011-L-1920**

**DEPARTMENT'S  
SUPPLEMENTAL EXHIBIT LIST**

13  
14 The Department of Social and Health Services (Department) intends to submit the  
15 following exhibits for admission into evidence at the hearing in the above matter.

16 **D7.** Department's Notice of a Preliminary Finding of Neglect regarding Estera  
17 Gradinaru dated May 2, 2011 (3 pages).

18 **D8.** Investigator's Report regarding Estera Gradinaru, dated March 22, 2010 (6  
19 pages).

20 **D9.** Estera Gradinaru's Request for Hearing, Received by Office of Administrative  
21 Hearings (OAH) on May 16, 2011 (1 page).

22 **D10.** AFH Negotiated Care Plan, Elaine R., dated September 26, 2010 (5 pages).

23 **D11.** Assessment and Care Plan for Elaine R., dated July 9, 2010 (1 pages).

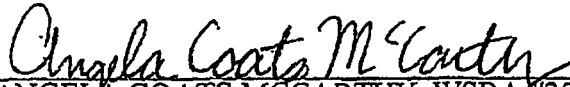
24 **D12.** Medication Record for Elaine R., dated October 31, 2010 (1 page)  
25  
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1 The Department reserves the right to submit additional exhibits in response to the  
2 Appellant's exhibits. This list incorporates by reference all exhibits submitted by the  
3 Department.

4 DATED this 8<sup>th</sup> day of August, 2011.

5 ROBERT M. MCKENNA  
6 Attorney General

7   
8 ANGELA COATS MCCARTHY, WSBA #35547  
9 NATALIE K.A. COOPER, WSBA #43168  
10 Assistant Attorney General  
11 Attorneys for Department of  
12 Social and Health Services  
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I certify that I served a copy of this document on all parties or their counsel of record on the date below as follows:

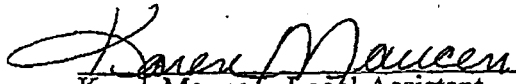
- US Mail Postage Prepaid via Consolidated Mail Service
- ABC/Legal Messenger
- Facsimile
- Fed Ex Overnight Mail

Estera Gradinaru  
212 153<sup>rd</sup> Place S.E.  
Bellevue, WA 98007

- State Campus Delivery
- To be Hand delivered by: \_\_\_\_\_

I certify under penalty of perjury under the laws of the state of Washington that the foregoing is true and correct.

DATED this 9<sup>th</sup> day of August, 2011, at Tumwater, WA.

  
\_\_\_\_\_  
Karen Mauceri, Legal Assistant

000094

ADMISSION DATE: 10/12/2010  
DISCHARGE DATE: 10/18/2010  
ACCOUNT NUMBER: V00040700387  
PHYSICIAN: Patrick L Mathiasen, MD

HISTORY OF PRESENT ILLNESS:

This is a 38-year-old Caucasian female initially admitted to Overlake Hospital Inpatient Medical Unit, Status post suicide attempt by overdose on some of her adult family home patient's morphine. Please see my admission note for full details. The patient was medically cleared, and then referred to our inpatient psychiatry unit. On admission, the patient complained of increasing anxiety, depression, and endorsed positive neurovegetative symptoms. She endorses suicidal ideation. She was able to contract for no harm here on the unit. I will briefly summarize this patient's admission diagnoses, her evaluation, and hospital course.

ADMISSION DIAGNOSES:

The patient was admitted with the following diagnoses:

1. Major depressive episode, recurrent, severe-without psychosis.
2. History of pancreatitis-possibly idiosyncratic versus secondary to selective serotonin reuptake inhibitor.
3. History of cholecystectomy, 7 years ago.
4. Chronic low-grade right upper quadrant pain.
5. History of gastroesophageal reflux disease.
6. Status post cesarean section x2.
7. Possible psoriasis.
8. Status post morphine medication overdose-the patient medically cleared.

LABORATORY DATA:

Abdominal ultrasound showed absent gallbladder. No evidence of biliary dilatation. MRCP negative. No evidence of pancreatic duct obstruction or biliary duct obstruction. On 10/13/2010, serum pregnancy test negative. TSH normal 1.140 (0.465-4.680). CMP showed elevated AST and ALT. Lipase within normal limits. UA negative.

HOSPITAL COURSE:

GRADINARU, ESTERA

000341355

DISCHARGE SUMMARY

OVERLAKE HOSPITAL MEDICAL CENTER

Page 1 of 4

000095

EXHIBIT D5

The patient was admitted to Overlake Hospital Inpatient Psychiatry Unit. She was entered into group and milieu therapy. The patient was discussed at length with treatment team, including nursing supervisor, Barb Berkau, RN, and medical director, Dr. Kelan Koenig. We discussed the patient's diversion of morphine and social worker carefully explored the indications for replacing this patient to professional nursing board, as well as adult protective services. Barb Berkau, RN pursued this with risk management here at Overlake Hospital. It was felt eventually that there was no indication for reporting this patient to either nursing board or adult protective services as the diversion had been explored and reported to DSHS who made a visit to the Adult Family Home and the patient on 10/13/2010. The patient reported this was her second overdose in her life. The patient agreed to referral to divorce lifeline as one of the major issues with loss of her marriage.

In terms of psychiatric treatment, subsequent to admission, the patient was pleasant and cooperative. She was somewhat subdued and her affect was blunted. She had been changed from the SSRI Zoloft to Wellbutrin to avoid the possibility that the SSRI was causing/exacerbating pancreatitis. I discussed this with the patient at length, which she agreed to this change.

We offered the patient the option of our partial day hospital program, but because of financial reasons she declined this option. She did agree to outpatient psychiatric followup.

I eventually increased the patient's Wellbutrin XR to 300 mg p.o. daily and initiated treatment with Seroquel 25 mg p.o. b.i.d., targeting the patient's anxiety and depression. The patient was seen on the weekend of 10/16/2010 and 10/17/2010 by Dr. Kelan Koenig. On 10/16/2010, the patient reports she was still quite well with her ex-husband, but acknowledged this was difficult for her emotional health. Her divorce had been finalized. Dr. Koenig noted the patient was stabilizing. On 10/17/2010, the patient reported a health program had been quite helpful. She felt ready for discharge, but agreed to remain in the hospital until Monday, 10/18/2010.

I did also prescribe low-dose scheduled Tylenol 650 mg p.o. t.i.d. targeting her right upper quadrant pain, which had been evaluated by the hospitalist prior to have admission here. With

GRADINARU , ESTERA  
000341385  
DISCHARGE-SUMMARY

OVERLAKE HOSPITAL MEDICAL CENTER



this, the patient reported the pain was manageable. She tells me she is ready for discharge today. She denies any suicidal ideation or intent.

DISCHARGE DIAGNOSES:

AXIS I: Major depressive episode, recurrent, severe-without psychosis.

AXIS II: Deferred.

AXIS III:

1. History of pancreatitis-idiopathic versus secondary to selective serotonin reuptake inhibitor.
2. History of cholecystectomy several years ago.
3. Chronic lower-grade right upper quadrant pain.
4. History of gastroesophageal reflux disease.
5. Rule out psoriasis.
6. Status post cesarean section x 2.
7. Status post morphine overdose-patient medically cleared.

AXIS IV: Severe. The patient has limited support system. She is divorced. She has 2 young girls.

AXIS V: Admit global assessment of functioning equal to 25. Discharge global assessment of functioning equal to 62.

PLAN:

1. Discharge from Overlake Hospital inpatient psychiatry unit.
2. The patient has outpatient psychotherapy followup with Rideou, MA on 10/19/2010 at 10 a.m.
3. The patient has outpatient primary care followup with Dr. Brumm today, 10/18/2010 at 3:30 p.m.
4. The patient was given phone contact number for Dr. Michael Lance for outpatient psychiatric followup.
5. The patient was given the phone number for divorce lifeline for help and assistance and managing her feelings regarding her divorce.

DISCHARGE MEDICATIONS:

Include prescriptions for a 14-day supply of the following medications:

1. Wellbutrin XR 300 mg p.o. q.a.m.
2. Seroquel 25 mg p.o. b.i.d.
3. Metamucil 1 packet p.o. daily.
4. Prilosec 20 mg p.o. q.a.m.
5. DOS 250 mg p.o. daily.

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GRADINARU, ESTERA

000341385

DISCHARGE SUMMARY

OVERLAKE HOSPITAL MEDICAL CENTER

6. Ambien 10 mg p.o. at bedtime p.r.n. insomnia. May repeat x1.

I have carefully urged the patient to follow up with her outpatient psychotherapy referral and primary care physician and to pursue the referral to Dr. Michael Lance for outpatient psychiatric followup.

At this time, the patient denies suicidal ideation or intent and is in good behavioral control.

In terms of additional laboratory data, the following had been obtained: On 10/15/2010-CBC within normal limits. CMP notable for ALT 89 (9-52), AST 56 (14-36), alkaline phosphatase and total bilirubin normal. TSH normal 1.140 (0.465-4.680). Serum pregnancy test negative.

Of note, the patient had been admitted here to the medical service at Overlake Hospital from 10/09/2010 to 10/11/2010 under the care of Dr. Carolyn McHugh. Please see her diagnoses, which included pancreatitis as outlined above.

Dictated by:

Patrick L Mathiasen, MD

MLS: 89609

D: Mon Oct 18 12:19:06 2010 EST T: Tue Oct 19 00:02:23 2010

EST DOCUMENT: 25457296

CC: Constance J. Brumm, MD Fax #425-454-8188, Michael D Lance, MD

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GRADINARU, ESTERA

000341385

DISCHARGE SUMMARY

OVERLAKE HOSPITAL MEDICAL CENTER

Page 4 of 4

**Dictation and Reports [Continued]**

**Correspondence**

10/25/2010

**Note Text:**

Conversation with DSHS licensing department. They are investigating Estera's recent use of a dose of morphine. Talked a bit about Estera and her depression. They may want to see records. Will get a release to do this.

Author: Constance J. Brumm, M.D.

**Hospital Discharge/Transfer Report**

10/06/2009

OHMC

**IDENTIFICATION:**

This is a 37 year old woman admitted to the inpatient psychiatric unit on Friday, 10/02/2009, with suicidal ideation. She also had reported an overdose on 7 oxycodone tablets, 1 week prior to admission.

**ADMIT MEDICATIONS:**

1. Wellbutrin 300 mg p.o. daily.
2. Sustained release Paxil 20 mg p.o. daily.

**ADMIT LABS:**

Complete blood count within normal limits. Urinalysis is unremarkable. Serum pregnancy test was negative. Complete metabolic profile was unremarkable.

At the time of this dictation, there are other studies which are pending including an abdominal ultrasound. Actually, the abdominal ultrasound done today on 10/06/2009, demonstrates echogenic prominent liver measuring 18.2 cm, likely secondary to mild fatty infiltration. No focal liver mass is evident. No biliary ductal dilatation was seen. This ultrasound was done due to the patient's complaint of acute right upper quadrant abdominal pain and hospitalist consultation was obtained. Urine tox screen was negative. Urinalysis is unremarkable. Lipase was within normal limits. Followup liver panel was unremarkable.

**HOSPITAL COURSE:**

Depression, suicidal ideation. Please refer to Dr. Karakus' psychiatric history and physical for more presenting information. Briefly, Estera is a 37 year old woman admitted to the inpatient psychiatric unit with multiple psychosocial stressors, depression, and suicidal ideation. She did report overdosing on 7 oxycodone tablets prior to admission. The patient had seen her medical nurse practitioner on the day of admission who referred her to the emergency department. She was subsequently psychiatrically admitted. The patient actually had been treated at Overlake in August, 2002. She at that time had an argument with her husband, became depressed, and had impulsively overdosed on 23 Motrin tablets. She remained on the psychiatric unit for a brief period of time. At that time, was on Paxil and Wellbutrin. She actually requested discharge after just a day and a half in the hospital. According to Dr. Karakus, the patient described multiple stressors. She is divorcing from her husband. He is still living in their home which is also a business. It is an adult family home. The patient describes multiple stressors with her husband stating he is verbally demeaning, his parents live in the home, they frequently argue. She also states that her husband has run up large debt and threatens to take their children if they proceed with the divorce. He has also had affairs on the patient. The patient's Paxil was transitioned to Zoloft during her stay. With prompting, Estera did engage in treatment groups and did find it quite helpful. The patient did report marked decrease in her levels of depression, anxiety, and hopelessness prior to discharge. I assumed care for the patient on 10/05/2009. I have encouraged her to remain in the hospital until 10/07/2009, and also strongly encouraged her to consider the partial day hospitalization program. The patient is declining that stating that her father is against it, "they just want your money." I have explained the potential benefits of participating in the day program, but the patient is declining and is requesting discharge today on 10/06/2009. The patient had been receiving prescriptions from Dr. Constance Brumm, her primary care provider. She also has an outpatient therapist is Genevieve who she had recently started to see again. The patient is tolerating her medications. She was having some difficulty sleeping. Did not tolerate trazodone. I initiated Ambien which the patient states caused her to see double and hear a little girl's voice after taking the medication. The patient prefers on not continuing hypnotic medications stating she needs to be able to awaken at home since she is managing an adult family home. We have talked, however, about the problems with chronic sleep

[This record is continued on the following page]

EXHIBIT D6

**Dictation and Reports [Continued]**

**Hospital Discharge/Transfer Report [Continued]**

10/06/2009

deprivation including exacerbating depression. The patient is apprehensive about going home, stating she is concerned her husband may not have "done things right" at home, so is requesting discharge. She states her appetite remains somewhat low. The patient does have good eye contact, is well engaged, verbal, and calm and cooperative. She denies suicidal thinking.

**DSM IV DISCHARGE DIAGNOSES:**

AXIS I: Major depressive disorder, recurrent, severe, without psychotic features.

AXIS II: Deferred.

AXIS III: Status post cholecystectomy in May 2009, recent onset of abdominal cramping and pain in the upper quadrants, possible fatty infiltration.

AXIS IV: Moderate stressors.

AXIS V: Global assessment of functioning is 50.

**DISCHARGE MEDICATIONS:**

1. Wellbutrin SR 150 mg 2 tablets p.o. q.a.m.
2. Omeprazole 20 mg p.o. q.a.m.
3. Sertraline 100 mg p.o. daily.

The patient is written a 14-day supply of her medications.

**DISCHARGE INSTRUCTIONS:**

1. The patient was instructed on risks, benefits, and side effects of her medications. She understands alternative treatments are available. She is competent to consent to the medications. We discussed the rationale of continuing Zoloft for a full trial of follow up outpatient psychiatric care. The patient does understand the rationale of treatment and related issues.
2. Estera describes a number of psychosocial stressors including marked conflict with her estranged husband. She is requesting discharge today stating she has an appointment with her attorney. There is no evidence of current or past physical domestic violence per the patient's report.
3. The patient is physically stable. Dr. Boswell has consulted regarding the patient's right upper quadrant pain. Dr. Boswell will see the patient today prior to discharge. He does feel possible causes are musculoskeletal discomfort, gastroesophageal reflux disease, atypical pancreatitis, biliary colic. Patient's ultrasound does demonstrate fatty infiltration. Lab work is unremarkable. The patient will follow up with Dr. Brumm as well and has been started on omeprazole for an empiric trial. The patient also has been prescribed low potency triamcinolone for the patient's mild itchy rash. The patient reports a history of psoriasis.

**SAFETY ASSESSMENT:**

The patient admitted to the inpatient psychiatric unit with safety risk factors. She had overdosed on oxycodone impulsively a week prior to presentation. She describes depression and suicidal ideation. She has a number of psychosocial stressors including pending divorce and significant debt. She likely does have passive dependent personality features. She has been ambivalent regarding adequate treatment here on the inpatient unit. She declines treatment in the day program. Treatment interventions focused on changing to a different antidepressant to more aggressively decrease depressive symptoms. She worked with the treatment team on adaptive coping skills, safety, and other treatment goals. Her medical complaints were addressed. She has close medical and psychiatric follow up care. She is encouraged to consider the day program. At discharge, denies suicidal ideation or access to a firearm. She has completed her treatment and safety plan which she agrees to follow. Reports reduction in her levels of depression and anxiety and denies suicidal thinking. She is sleeping adequately, is casually groomed and dressed.

Kelan R Koenig, MD

Copy(s) of this note sent to: Rebecca M. McKanna, ARNP

Author: Carmen Nelson for: Rebecca M. McKanna, ARNP

000100

### Dictation and Reports [Continued]

Est Office Visit

10/18/2010

|  |                              |
|--|------------------------------|
| Patient Name: GRADINARU, ESTERA (06/28/1972) | Type: Established Patient    |
| Provider: Constance J. Brumm, M.D.           | Opened: 10/18/2010 15:49     |
| Date of Service: 10/18/10                    | By: Michelle Olson, MA       |
| Type of Service: Office Visit                | Close: 10/24/2010 11:27      |
| Note Type: Est Office Visit                  | By: Constance J. Brumm, M.D. |
| History Source: Patient                      |                              |

**CHIEF COMPLAINT:**  
F/u depression.

**HISTORY:**

She was recently in ER with pancreatitis and depression. She had discontinued her Wellbutrin last April. Her depression had been getting worse so she recently restarted sertraline. She developed some RUQ pain, which improved with BM, and also some epigastric pain. The pain is gone now. Ultrasound in ER showed no gallstones. Lipase was 900. It was presumed that the SSRI had somehow precipitated the pancreatitis. She was then transferred to psych unit. Started on Wellbutrin 150 mg BID and Seroquel 25 mg BID. She is feeling a bit groggy at times. Her mood is a lot better. She was discharged from hospital at noon today. She has appointment with counselor, Genevieve Rideout, tomorrow.

She was given a prescription from Overlake for DOSS, Metamucil, Prilosec, Ambien 10 mg HS, Wellbutrin IR 150 mg BID, and Seroquel 25 mg BID which was not signed. She feels strongly that the SR form of Wellbutrin does not agree with her and she does better with the "regular" form that she has to take more often.

**MEDS/ALLERGIES:**

**MEDICATIONS:**

Ambien 10 mg tablet 1 PO QHS prn sleep  
Seroquel 25 mg tablet 1 PO BID  
Budeprion SR 150 mg tablet, extended release TAKE 1 TABLET BY MOUTH TWICE DAILY  
Omeprazole 20 mg enteric coated tablet 1 tab(s) PO once a day

**ALLERGIES:**

Paxil -- Depression  
amoxicillin -- NAUSEA

**VITALS:**

10-18-2010 15:28 Weight: 210 lbs Pulse: 84 BPM BP: 135 / 79 [arm - sit]

**EXAM:**

Alert and oriented. No apparent distress.  
Affect is good. Color is good.  
VSS.

**ASSESSMENT:**

|        |                                    |             |
|--------|------------------------------------|-------------|
| 296.33 | Major depression, recurrent severe | Recurrent   |
| 577.0  | PANCREATITIS-ACUTE                 | New Problem |
| V62.84 | Suicidal Ideation                  | Recurrent   |
| 300.00 | ANXIETY                            | Recurrent   |

000101

[This report is continued on the following page]

Dictation and Reports [Continued]

Est Office Visit [Continued]

10/18/2010

COMMENT:

Will rewrite Rx's since the one she has is not signed.  
 We'll try bupropion 100 tid instead of the 150 SR BID.

PLAN:

MEDICATION MANAGEMENT:

START: buPROPion 100 mg oral [tablet] 1 po TID (Disp# 100 tab(s) Refills - 0)  
 START: Prilosec 20 mg oral [delayed release capsule] 1 PO q AM (Disp# 30 cap(s) Refills - 0)  
 REFILL: Seroquel 25 mg 1 PO BID (Disp #: 60 / Refills: 0) FAXED TO: Walgreens/Bellevue 140th  
 REFILL: Ambien 10 mg 1 PO QHS prn sleep (Disp #: 30 / Refills: 0) PRINTED

Plan Comments:

RTO 3 weeks to re-evaluate dose of medications.  
 RTO 4-6 weeks for fasting labs.  
 Keep appointment with Gen Rideout tomorrow.

Signed off by: Constance J. Brumm, M.D. On: 10/24/10 at 11:27

Author: Constance J. Brumm, M.D.

000102



STATE OF WASHINGTON  
DEPARTMENT OF SOCIAL AND HEALTH SERVICES  
AGING AND DISABILITY SERVICES ADMINISTRATION  
PO Box 45600 - Olympia, WA 98504-5600

NOTICE OF PRELIMINARY FINDING  
May 2, 2011

Certified Mail 7010 3090 0000 2116 0868

Estera Gradinaru  
212 - 153<sup>rd</sup> Place SE  
Bellevue, WA 98007

After a Resident and Client Protection Program investigation, the Department of Social and Health Services has found that you financially exploited a vulnerable adult. Before this finding becomes final, you have a right to appeal. [WAC 388-76-11015]

If the preliminary finding becomes final, your ability to work will be significantly affected.

The Incident

You were the owner of Bellevue Rose Adult Family Home. You financially exploited a vulnerable adult who was a resident in your home on October 9, 2010 when you took the resident's morphine medication for your own use.

RCW 74.34.020 (6). "Financial exploitation" means the illegal or improper use of the property, income, resources, or trust funds of the vulnerable adult by any person for any person's profit or advantage other than for the vulnerable adult's profit or advantage.

Your Hearing Rights

You have a right to request a hearing on the preliminary finding. [WAC 388-76-11015]. You must request the hearing in writing within 30 days of the date of this notice. A form is enclosed for your use in requesting your appeal. Your request must be addressed to:

Office of Administrative Hearings  
PO Box 42488  
Olympia, WA 98504-2488

If you request a hearing, it will be scheduled at a place and time convenient to you. You may be represented at the hearing by an attorney at your own expense. The enclosed blue sheet lists some referral sources for attorneys.

If you ask for a hearing within the required 30 days and the administrative law judge (ALJ) upholds this preliminary finding, and any subsequent appeals also uphold this finding, it will become a final finding and your name will be retained on the Residential Care Services Registry (Registry). If the ALJ reverses this preliminary finding and the department does not appeal the

000103

decision, that the department will change this preliminary finding in its records consistent with the ALJ's decision and will not report it to the Registry.

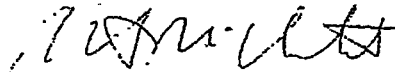
If you do not ask for a hearing within the required 30 days, this preliminary finding will become a final finding and your name will be placed on the Registry. DSHS may disclose a final finding and your identity if it receives a request for this information.

State law prohibits long-term care facilities from employing individuals who have a finding concerning abuse, neglect, mistreatment of residents or financial exploitation of vulnerable adults. [74.39A.050(8) RCW]. Vulnerable adults are individuals who cannot care for themselves because of their age, illness or other disability or are admitted to any facility. [74.34.020(13)(d)].

This preliminary finding is separate from any action(s) including licensing actions taken by the Department of Social and Health Services, the Department of Health, law enforcement, or any other agency.

If you have any questions about this notice you may call Paula Sanz, Field Manager at (360) 725-3218.

Sincerely,



Robert H. McClintock  
Quality Assurance Administrator  
Residential Care Services

Enclosure

cc: Paula Sanz, RCS  
Linda Moss, RCS  
Department of Health

0001041



U.S. Postal Service  
**CERTIFIED MAIL RECEIPT**  
(Domestic Mail Only; No Insurance Coverage Provided)

For delivery information visit our website at [www.usps.com](http://www.usps.com)

**OFFICIAL USE**

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|---|----|
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| Return Receipt Fee<br>(Endorsement Required)      |    |
| Restricted Delivery Fee<br>(Endorsement Required) |    |
| Total Postage & Fees                              | \$ |

5/2/11  
Postmark Here

Sent To: Estera Gradinaru

Street, Apt. No., or PO Box No. \_\_\_\_\_  
 City, State, ZIP+4 \_\_\_\_\_

9990 9112 0000 0808 0107

| SENDER: COMPLETE THIS SECTION  | COMPLETE THIS SECTION ON DELIVERY   |
|--|---|
| <ul style="list-style-type: none"> <li>Complete items 1, 2, and 3. Also complete item 4 if Restricted Delivery is desired.</li> <li>Print your name and address on the reverse so that we can return the card to you.</li> <li>Attach this card to the back of the mailpiece, or on the front if space permits.</li> </ul> | <p>A. Signature<br/> <input checked="" type="checkbox"/> Agent<br/> <input type="checkbox"/> Addressee</p> <p>B. Received by (Printed Name) _____</p> <p>C. Date of Delivery<br/> <u>5/2/11</u></p> <p>D. Is delivery address different from item 1? <input type="checkbox"/> Yes<br/>       If YES, enter delivery address below: <input type="checkbox"/> No</p>                |
| <p>1. Article Addressed to:<br/> <u>Estera Gradinaru</u><br/> <u>213 153rd Pl SE</u><br/> <u>Bellevue WA 98007</u></p>   | <p>3. Service Type<br/> <input checked="" type="checkbox"/> Certified Mail    <input type="checkbox"/> Express Mail<br/> <input type="checkbox"/> Registered    <input type="checkbox"/> Return Receipt for Merchandise<br/> <input type="checkbox"/> Insured Mail    <input type="checkbox"/> C.O.D.</p> <p>4. Restricted Delivery? (Extra Fee) <input type="checkbox"/> Yes</p> |
| <p>2. Article Number<br/> <small>(Transfer from service label)</small></p>   | <p><u>7010 3090 0000 2116 0868</u></p>  |

PS Form 3811, February 2004 Domestic Return Receipt 10255-02-11-1540

000105

INVESTIGATOR'S REPORT

Report Date: 3/22/11  
Investigation 1/13/11-3/22/11  
Complaint Number: 10-10-28602  
Investigator: Mary Moran  
Facility: Bellevue Rose Adult Family Home  
212 153<sup>rd</sup> PL SE  
Bellevue, WA 98007  
Suspect Information:  
Name: Estera Gradinaru  
Title: Registered Nurse/Owner  
AFH Licensed: 5/24/01  
License Revocation: 11/5/10

**Definitions:**

RCW 74.34.020 (6) "Financial exploitation" means the illegal or improper use of the property, income, resources, or trust funds of the vulnerable adult by any person for any person's profit or advantage other than for the vulnerable adult's profit or advantage.

RCW 74.34.020 (5) "Facility" means a residence licensed or required to be licensed under chapter 70.128 RCW, adult family homes; ...

RCW 74.34.020(16) "Vulnerable adult" includes a person (d) Admitted to any facility;

The victim was a vulnerable adult because she was admitted to an adult family home.

**Summary:** The suspect (an RN) was the owner of the adult family home with her spouse who was the co-owner. On 10/9/10, the suspect was admitted to Overlake Hospital Emergency Room for ingesting Morphine that belonged to the victim. The suspect told the Social Worker (SW) at the hospital that ingesting the morphine was an attempted suicide. The suspect admitted to this investigator that she had in fact, taken the victim's medication for her own use.

**Recommendation:**

Based on the information obtained during the investigation the suspect financially exploited the victim on 10/9/10 when she took the victim's morphine medication for her own use.

Refer to Quality Assurance Administrator to review for a preliminary finding of financial exploitation.

000106

**Investigation:**

On 1/13/11, I conducted an unannounced on-site visit to the adult family home and reviewed and obtained copies of pertinent portions of the victim's medical record and the suspect's licensing information. I interviewed witnesses in person and by telephone as set forth below.

**Victim Information**

The victim was 91 years old and had diagnoses including transient ischemic attack (TIA), corneal implant, hypoglycemia, depression with anxiety, and dementia with delusions. She had both short and long term memory problems. The victim could not bear weight and required a two person transfer to/from wheelchair for all mobility, and had visual and hearing impairments. She required assistance with medication administration and all activities of daily living. Due to lack of appetite, weight loss and consistent decline in overall health the victim received hospice care services starting 9/26/10. The victim was prescribed Zoloft, Remeron and Risperidone for depression as well as Aricept for dementia. Morphine (30 ml, 20 mg/ml by mouth, place 0.25 ml — 0.5 ml under tongue as needed for pain or shortness of breath) was included in the victim's comfort care pack provided by the hospice team and available in the AFH.

Review of her records showed t the victim did not require the use of Morphine during the month of October 2010 and was unaware of the stolen Morphine.

**Victim in person 1/13/11:** The victim was not interviewed due to her dementia.

**Excerpt from the Hospital Social Worker's statement 10/12/10:** (The) RN (provider told ER staff) *she ingested morphine belonging to (the victim) in a failed suicide attempt. Currently has a condition on her license that she is not to deliver medications to residents...*

**Caregiver 1 (CG 1) in person 1/13/11:** CG 1 worked the day shift at the suspect's AFH for approximately nine months. CG 1 was often assigned to the victim's care. She described the victim as a nice lady who required hospice care services that she received at least two times per week. CG 1 was aware that the victim was prescribed morphine as needed however the victim appeared to be comfortable and had not required use of morphine. CG 1 remembered that on 10/9/10, the suspect's father came to the AFH and explained that the suspect was admitted to the hospital. CG 1 assumed the suspect was sick.

**CG 2 in person 1/13/11:** CG 2 was a live-in caregiver and generally worked the day shift with CG 1. He stated the suspect had told both he and CG 1 on 10/9/10 she had to go the pharmacy. A couple of hours later, the suspect's father came to the AFH and explained he would be filling in for the suspect as she had been admitted into the hospital earlier that day. He was not surprised to find she was admitted to the hospital because she had been ill recently.

000107

Hospice Registered Nurse (RN) in person 1/13/11: The hospice RN arrived at the home on 1/13/11 and stated the suspect had just stated that she was being investigated for taking the victim's morphine. The hospice RN had not previously known. She stated the victim was prescribed a vial of morphine for the past 4 months, however the victim received Lorazepam which kept her pain well managed. The Hospice RN said she had not checked the vial of morphine recently because it had a shelf life of 12 months and because the victim had not required any morphine recently; there was no reason for her to have checked the medication. The AFH was instructed to call the hospice team should the victim require morphine. The vial of morphine contained 20 mg intensely concentrated morphine. A syringe was included for administration. During the interview with this investigator the hospice RN checked the victim's medication care pack and stated that the syringe was not there. She also noted that the seal on the morphine was broken.

Suspect's Father in person 1/13/11: The suspect's father was also a provider of an adult family home (AFH) in the neighborhood. The father had been concerned for the suspect because two weeks previously she had been to the hospital for undiagnosed pain. The suspect told him she had pancreatitis. On 10/09/10, the suspect stopped by his AFH and told him she was on her way to the pharmacy. It was a brief visit. The suspect told her father she was not feeling well. He stated she had not looked sick, but he believed her depression exaggerated her physical pain. The suspect was depressed over her recent divorce proceedings. The suspect left her father's AFH and he assumed she went to the pharmacy. They had not had any discussion about morphine prescriptions. He could not remember exact times but recalled several phone calls exchanged with his son and the suspect's ex-husband in an attempt to locate the suspect. The suspect was located in a park 'n ride lot. The father drove to the park 'n ride lot and found the suspect in her car. The suspect appeared to be in pain but was able to operate the car. She followed him to her father's home then was transported to the hospital and admitted. The father spoke to the hospital Social Worker and was told the suspect admitted to ingesting morphine that she had taken from the victim in a failed suicide attempt. The suspect was admitted to the behavioral health unit of the hospital for one week.

Suspect in person 1/13/11: The suspect said she was in pain from pancreatitis and depression. She was very distressed that her husband had left her last year with household accounts and two young daughters. The suspect explained that one year ago she had taken Hydrocodone to commit suicide over her divorce. She was admitted for 4 days on the psychiatric unit. She then began to see a mental health therapist once per week and was prescribed an anti-depressant. The suspect stopped seeing the therapist and stopped taking her anti-depressant medication in December, 2009 when her insurance ran out.

Two weeks ago she went to an urgent care at a hospital due to severe pain. The hospital was unable to diagnose her pain.

On 10/9/10, in the early afternoon, she took the victim's morphine. The suspect stated that the victim did not need her morphine. The suspect described being distraught because her ex-husband would not help her prepare for an upcoming inspection of the AFH. She took the victim's morphine and placed it in her pocket. She then went to her

000108

father's home. The suspect said her father had asked her for some morphine for one of his residents. When she arrived her father told her no, no, he did not want another resident's morphine. The suspect told him she was on her way to the pharmacy. The suspect left her father's home and drove towards the pharmacy. On the way she saw the park 'n ride and stopped in that lot. She texted her ex-husband. He did not answer. The suspect said she broke the seal and poured some of the morphine into the cap and ingested it, it tasted bitter. The suspect then texted her ex-husband again and told him she had taken and ingested the victim's morphine medicine. She asked if she could sleep it off in his apartment. He responded no, he could not help her. The suspect attempted to sleep in the car. She said her ex-husband must have called her father because her father arrived and told her he would follow her to his house. The suspect arrived at her father's and passed out. She said the pain became worse and she needed to go the emergency room. Her brother took her to the hospital. She said she admitted to taking the morphine from the victim and ingesting it. The suspect stated she did not remember telling the ER staff she ingested the morphine in a suicide attempt.

000189:

Complaint I District 2 / S45  
Identification List  
~~Social Worker (SW) Overlake Hospital ER~~

Suspect

Suspect's Father

Caregiver 1

Caregiver 2

Hospice Registered Nurse

Victim

~~Ariel Esterlein~~

K. Ander CP

Estera Gradinaru

8/24/11

John Puravet

Nina Popova

Vasile Precup

Kim Motais

Elaine R. [REDACTED]

000110

**Suspect Information Sheet**

Complaint No. 10-10-288602  
Suspect Name: Estera Gradinaru  
Aliases: Unknown  
Suspect Address(es): 212 153<sup>rd</sup> Place SE  
Bellevue, WA: 98007  
Phone Number(s): (425) 746-2273  
Social Security Number:  
Date of Birth [REDACTED] 72  
Provider License: 547100

000111

# Resident and Client Protection Program

Department of Social and Health Services (DSHS)  
Office of Administrative Hearings  
Request for Hearing

RECEIVED

MAIL THIS FORM TO: Office of Administrative Hearings  
PO Box 42488  
Olympia, WA 98504-2488  
Or, FAX to this number: (360) 664-8721

MAY 16 2011  
HEADQUARTERS OFFICE OF  
ADMINISTRATIVE HEARINGS

I hereby request a hearing concerning the DSHS preliminary finding against me. The reason I am disputing the DSHS preliminary finding is:

I took one drop of morphine. It never happened before and after and the patient didn't suffer, wasn't taking the morphine.

I was notified of the DSHS preliminary finding on 5/3/11  
Date

Please print:

Name: ESTERA GRADINARU  
Address: 212 153<sup>RD</sup> PL SE  
City, State, Zip Code: Bellevue WA 98007  
Phone Number: (425) 417-3840

RECEIVED  
MAY 17 2011  
OAH SEATTLE

You must notify the Office of Administrative Hearings if your address changes

Do you need any assistance, an interpreter or any accommodation for a disability for the hearing?  Yes  No

If yes, what language or assistance? \_\_\_\_\_

I will be represented by: \_\_\_\_\_  
Name Phone

Address \_\_\_\_\_

My representative is:  An attorney  Other person  Myself

Your signature: Estera Gradinaru Date: 5/11/11

RECEIVED  
MAY 25 2011  
OFFICE OF THE ATTORNEY GENERAL  
SOCIAL & HEALTH SERVICES DIV

000112



SAMPLE  
AFH NEGOTIATED CARE PLAN

|   |  |  |   |    |
|---|--|--|---|----|
| RESIDENT NAME<br><i>ELAINE [REDACTED]</i>   |  | PROVIDER NAME<br><i>ESTERA GRADINARU</i> |   |    |
| CURRENT DATE<br><i>10/28/2007 / 1/14/09</i>   |  | DATE ENTERED<br><i>9/29/2007</i>         | DATE DISCHARGED                                     |    |
| DATE OF BIRTH<br><i>[REDACTED] 1919</i>   | AGE<br><i>89</i>   | SSN<br><i>[REDACTED]</i>                 | PRIMARY LANGUAGE<br><i>ENGLISH</i>                  |    |
| NAME & ADDRESS OF INTERESTED PARTY (GUARDIAN, POA, FAMILY)<br><i>Adelle C. [REDACTED], daughter</i> |  |  | HOME PHONE<br><i>(425) [REDACTED]</i>               |    |
| PRIMARY DR.<br><i>P BOJKO GROUP HEALTH FACTORIA (425) 562-1316</i>                                  |  |  | WORK PHONE (cell)<br><i>(425) [REDACTED]</i>        |    |
| NAME OF PHYSICIAN OR MEDICAL GROUP<br><i>GROUP HEALTH, Ruth Mathison</i>                            |  | PHONE<br><i>(425) 883-5677</i>           | FAX<br><i>(425) 562-4602</i>                        |    |
| PHARMACY NAME<br><i>GROUP HEALTH Behavioral Science</i>   |  | PHONE<br><i>(425) 883-5151</i>           | FAX<br><i>Claudia Jones ARNP</i>                    |    |
| NAME OF DENTIST OR DENTAL GROUP<br><i>DR MECCA</i>  |  | PHONE                                    | FAX<br><i>House calls (206) 326-9518</i>            |    |
| ADVANCE DIRECTIVE   | YES<br><input checked="" type="checkbox"/>   | NO<br><input type="checkbox"/>           | IF YES, SPECIFY TYPE(S)                             |    |
| LEGAL DOCUMENTS   | YES<br><input checked="" type="checkbox"/>   | NO<br><input type="checkbox"/>           | IF YES, SPECIFY TYPE(S)<br><i>POWER OF ATTORNEY</i> |    |
| CURRENT MEDICAL STATUS: <i>Dementia, Hospice</i>  |  |  |   |    |
| MEDICAL HISTORY: <i>TIA, Corneal Implant, hypoglycemia, depression<br/>Dementia with Delusions</i>  |  |  |   |    |
|   | YES  | NO                                       | COMMENTS  |    |
| SPECIALTY NEEDS   | <input type="checkbox"/>   | <input checked="" type="checkbox"/>      |   |    |
| DEMENTIA  | <input checked="" type="checkbox"/>  | <input type="checkbox"/>                 | <i>with delusions</i>                               |    |
| MENTAL HEALTH   | <input checked="" type="checkbox"/>  | <input type="checkbox"/>                 | <i>depression</i>                                   |    |
| DEVELOPMENTAL DISABILITY  | <input type="checkbox"/>   | <input checked="" type="checkbox"/>      |   |    |
| EMERGENCY EVACUATION  |  |  | YES   | NO |
| LEVEL 1   | Physically & mentally capable of traversing, including the ascent and descent of stairs, without assistance. | <input type="checkbox"/>                 | <input checked="" type="checkbox"/>                 |    |
| LEVEL 2   | Physically and mentally capable of traversing, but requires physical assistance with stairs.                 | <input type="checkbox"/>                 | <input type="checkbox"/>                            |    |
| LEVEL 3   | Physically and mentally capable to walk on level surfaces, but requires physical assistance on stairs.       | <input type="checkbox"/>                 | <input type="checkbox"/>                            |    |
| LEVEL 4   | Physically and mentally capable to walk on level surfaces, but requires physical assistance on stairs.       | <input type="checkbox"/>                 | <input type="checkbox"/>                            |    |
| LEVEL 5   | Physically and mentally capable to walk on level surfaces, but requires physical assistance on stairs.       | <input type="checkbox"/>                 | <input type="checkbox"/>                            |    |
| SPECIAL INSTRUCTIONS:<br><i>Wanna DNR Estera Gradinaru 9/26/10</i>                                  |  |  |   |    |

*Estera Gradinaru RN 4/7/10*

*Estera Gradinaru 1/14/09*

RESIDENT NAME: *Estera Gradinaru 1/14/10*

000113

SAMPLE  
AFH NEGOTIATED CARE PLAN

411000

Exhibit D10  
Page 2 of 6

| CARE AND SERVICES   | RESIDENT STRENGTHS/WHAT RESIDENT PREFERS TO DO INDEPENDENTLY   | WHAT PROVIDER/CAREGIVER/SUPPORT PERSON DOES/WHEN & HOW  |
|---|--|---|
| <b>COMMUNICATION: SPEECH/HEARING/VISION</b>   |  |   |
| Problems with speech<br>Describe:   | Yes <input checked="" type="checkbox"/> No <input type="checkbox"/>  | Usually able - difficulty finding words or finishing thoughts   |
| Hearing problems<br>Describe/aid:   | Yes <input checked="" type="checkbox"/> No <input type="checkbox"/>  | Difficulty when not in quiet setting  |
| Visual problems<br>Describe/aid:  | Yes <input checked="" type="checkbox"/> No <input type="checkbox"/>  | wears glasses. keep clean and in good repair  |
| Telephone Use<br><input type="checkbox"/> Independent <input checked="" type="checkbox"/> Assistance <input type="checkbox"/> Dependent                           | 1/14/09 Able to make simple requests, but sometimes verbalizes at random with no track of thought, out of context  | Give client ample time to communicate. do not rush<br>Keep volume down on TV when trying to communicate<br>Place glasses at bedside<br>Use simple directions<br>One-step instructions<br>2/7/10 Total dependence with telephone |
| Language: English<br>Describe   | 2/26/10 very little verbal communication (sleepy)  |   |
| <b>MEDICATION MANAGEMENT: SELF ADMINISTRATION (Check all that apply)</b>  |  |   |
| <input checked="" type="checkbox"/> Oral<br><input type="checkbox"/> Topical<br><input type="checkbox"/> Eye drops/ointments<br><input type="checkbox"/> Inhalers | <input type="checkbox"/> Sprays<br><input type="checkbox"/> Injections<br><input type="checkbox"/> Allergy Kits<br><input type="checkbox"/> Keep Own Meds  | Needs assistance with one or more medications. Able to swallow pills whole with fluids. Requires supervision & crushing 1/14/09   |
| <b>SELF MEDICATION W/ASSISTANCE</b>   |  |   |
| <input checked="" type="checkbox"/> Oral<br><input type="checkbox"/> Topical<br><input type="checkbox"/> Eye drops/ointments<br><input type="checkbox"/> Inhalers | <input type="checkbox"/> Sprays<br><input type="checkbox"/> Allergy Kits<br><input type="checkbox"/> Meds Organizer<br><input type="checkbox"/> Equipment: | 2/7/10 Oral meds crushed.<br>7/9/10 Cannot self-medicate with assistance  |

RESIDENT NAME: Estera Cradman 9/26/10 Page 2 MARCH 2005

Estera Cradman, RN 2/7/10 Estera Cradman, RN 7/9/10

Grafman, Estera  
Seattle OAH # 05-2011-L-1920  
RCPP-00000033

SAMPLE  
AFH NEGOTIATED CARE PLAN

0001151

Exhibit D10  
Date: 3/1/05

| CARE AND SERVICES   | RESIDENT STRENGTHS/WHAT RESIDENT PREFERS TO DO INDEPENDENTLY   | WHAT PROVIDER/CAREGIVER/SUPPORT PERSON DOES/WHEN & HOW  |
|---|--|---|
| <b>ADMINISTRATION</b>   |  |   |
| Nurse Delegated? <input type="checkbox"/> Yes <input checked="" type="checkbox"/> No<br>9/7/10<br><input checked="" type="checkbox"/> Oral<br><input type="checkbox"/> Topical<br><input type="checkbox"/> Eye drops/ointments<br><input type="checkbox"/> Inhalers<br><input type="checkbox"/> Sprays<br><input type="checkbox"/> Allergy Kits<br><input type="checkbox"/> Meds Organizer<br><input type="checkbox"/> Equipment: | 7/9/10<br>Nurse delegation for crushing the medicines  | Esther, RN can do the nurse delegation for the other caregivers<br>9/26/10 Hospice provides the medicines |
| Injections <input type="checkbox"/> Yes <input checked="" type="checkbox"/> No<br>If yes:<br><input type="checkbox"/> Surrogate<br><input type="checkbox"/> By family<br><input type="checkbox"/> Licensed professional   |  |   |
| Medication plans when resident not in home:<br>If resident with daughter, daughter will administer her meds<br>2/1/10   |  |   |
| <b>TREATMENT/PROGRAMS/THERAPIES</b>   |  |   |
| Health issues to monitor: Yes No  | 2/7/10 Poor appetite and sleeping more losing weight.<br>7/1/10 More weight loss. Eating a good meal every other day. the rest of the time drinking ensure & juice & water |   |
| Oxygen Use  |  |   |
| Pain  |  |   |
| Weight Loss/Gain  |  |   |
| Programs the resident attends, such as adult day health   |  |   |
| Nursing Consultation/Treatments Yes No  |  |   |
| RN Delegation   | X  | X   |
| What tasks:<br>crushing medicines   |  |   |
| Consent   | yes  |   |
| Physical Enablers:  |  |   |

RESIDENT NAME: Esther Gradman, RN      Esther Gradman      9/26/10

Chrysis Esther Gradman  
Page 3      MARCH 2005      1/1/05

Gradman, Estera  
Seattle OAH # 05-2011-L-1920  
RCPP-00000034



SAMPLE  
AFH NEGOTIATED CARE PLAN

000117

| CARE AND SERVICES  | RESIDENT STRENGTHS/WHAT RESIDENT PREFERS TO DO INDEPENDENTLY   | WHAT PROVIDER/CAREGIVER/SUPPORT PERSON DOES/WHEN & HOW                                    |
|--|--|---|
| <b>MOBILITY</b><br>In room & immediate living environment:<br><input type="checkbox"/> Independent <input checked="" type="checkbox"/> Assistance <input type="checkbox"/> Dependent     | Supports own weight when walking, with assistance devices; needs steadying.                                    | Provider will standby the client when walking.  |
| Outside of immediate living environment (to include outdoors):<br><input type="checkbox"/> Independent <input checked="" type="checkbox"/> Assistance <input type="checkbox"/> Dependent | 1/14/09 Due to use of blood thinner (Asgrenox) bruising may be present at times due to bumping into furniture. | Provide clutter-free environment.   |
| Equipment:<br>4-wheel walker / 2/7/10 Wheelchair   |  | #1910 2 person transfer.  |
| Preferences/Choices:<br>2/7/10 No longer weight bear.  | #2/26/10 no longer mobile. Resident transfers with a little assistance.  | Special wheelchair.   |
| <b>BED MOBILITY/TRANSFER</b><br><input type="checkbox"/> Independent <input checked="" type="checkbox"/> Assistance <input type="checkbox"/> Dependent                                   |  | #2/26/10 change & dress in bed. Caregiver standby at night when she goes to the bathroom. |
| Skin care due to inability to position self: none  |  |   |
| Equipment/supplies:<br>2/7/10 lots of pillows for comfort  |  |   |
| Risk for falls: if she takes Tamoxifen sleep.  |  |   |
| Preferences:<br>(she hasn't taken it to prevent falls)   | Praxidol controls anxiety and helps her go to sleep 1/14/09  | Help her to put her legs up into bed when she asks. She can do by herself when alone.     |
| Enablers:  |  | When someone present she'll eat the rest of dinner.                                       |
| Safety assessment, alternatives explored; how to keep resident safe:<br>4-wheel walker / 2/7/10 wheelchair   | #1910 Lot of pillows around her at night to keep her from falling off the bed.                                 |   |
| Night time care needs:   |  |   |
| <b>EATING</b><br><input type="checkbox"/> Independent <input checked="" type="checkbox"/> Assistance <input checked="" type="checkbox"/> Dependent                                       |  |   |
| Special diet/supplements:<br>Ensure 2x/day for anorexia  | Requires monitoring, encouragement and cueing.   | - Encourage to eat more & start with the main course instead of the dessert.              |
| Eating habits:<br>Good appetite lately 1/14/09   | Dess Doesn't like soups very much.   | Feed her as long as she is awake. If she falls asleep try again.                          |
| Food allergies: NONE   | 2/7/10 Can hold small plastic glass and drink by myself.   |   |
| Preferences/equipment:<br>9/26/10 eats blended foods and ensure  | #1910 total dependence with eating.  | 1/14/09 when under the table.   |

RESIDENT NAME: Ester Gradinaru, RN 2/7/10 Ester Gradinaru, RN Ester Gradinaru, RN

Exhibit D10  
Gradinaru, Estera  
Seattle OAH # 05-2011-L-1920  
RCPP-00000036

Assessment and Care Plan for ELAINE A. R. [REDACTED]

— Completed by Bonita Sykes R.N C.C.M on 9/28/2007 —

Treatments, Therapies, Medicines and Appointments

Therapies

- Speech
- Occupational
- Physical *new wheelchair PT coming to assess*
- Mental Health *AT&WP through Group Health effectiveness*
- Respiratory
- Cardiovascular *8/26/10 Hospice nurse comes once a week*
- Daily management of pain
- Health monitoring *Daily*
- Range of motion and/or strength
- Pressure ulcers
- Nebulizer
- Other issues *Hx of Hypocalcemia - See Additional Information*

Medical Treatments *Signs & Symptoms of GAD Bats pg 1A - Call MD PRN*

- Alcohol and/or drug *1/9/09 resolved*
- Wound care *2 Resolutions*
- Feeding tube *8/26/10 No medical treatments*
- Chemotherapy *Hospice Comfort Care only*
- Radiation
- Dialysis
- Suctioning
- Tracheotomy care
- IV medications
- Injections
- Oxygen
- Intake/output monitoring
- Catheter care
- Sliding scale insulin *1/9/09*
- Blood glucose monitoring *Per MD Order - not monitored at this time; resolved*
- Other issues

*Ester Gradinaru, RN 11/8/10 Senior Assistance by Bonita*  
*7/9/10*  
*1/9/09* *Friday, September 28, 2007*

0001181

9  
0001000

### MEDICATION RECORD

| PAGE 1   | Name: Elaine R. [REDACTED]       | Address: [REDACTED] | Doctor: [REDACTED] | Vital Signs | WT |   |   |   |   |   |    |    |    |    |    |    |    |    |    |    |    |    |    |    |    |    |    |    |    |    |    |    |  |
|--|----------------------------------|---------------------|--------------------|-------------|----|---|---|---|---|---|----|----|----|----|----|----|----|----|----|----|----|----|----|----|----|----|----|----|----|----|----|----|--|
| Month and Year   | Date of Birth: [REDACTED] 1/1/79 | Phone: [REDACTED]   | B/P                | R           |    |   |   |   |   |   |    |    |    |    |    |    |    |    |    |    |    |    |    |    |    |    |    |    |    |    |    |    |  |
| October 2010   | Medical #: [REDACTED]            | Fax: [REDACTED]     | P                  | T           |    |   |   |   |   |   |    |    |    |    |    |    |    |    |    |    |    |    |    |    |    |    |    |    |    |    |    |    |  |
| Medication / Dose / Frequency / Reason for Medication  | Time                             | 1                   | 2                  | 3           | 4  | 5 | 6 | 7 | 8 | 9 | 10 | 11 | 12 | 13 | 14 | 15 | 16 | 17 | 18 | 19 | 20 | 21 | 22 | 23 | 24 | 25 | 26 | 27 | 28 | 29 | 30 | 31 |  |
| Enure 2 cans per day   | 08:00 AM                         | E                   | E                  | E           | E  | E | E | E | E | E | E  | E  | E  | E  | E  | E  | E  | E  | E  | E  | E  | E  | E  | E  | E  | E  | E  | E  | E  | E  | E  | E  |  |
| Risperidone 1mg tab, take 1/2 q am and 1 tab PM  | 08:00 AM<br>20:00                | E                   | E                  | E           | E  | E | E | E | E | E | E  | E  | E  | E  | E  | E  | E  | E  | E  | E  | E  | E  | E  | E  | E  | E  | E  | E  | E  | E  | E  | E  |  |
| Mirtazapine 15 mg tab, take 1 tab qd pm  | 8pm                              | E                   | E                  | E           | E  | E | E | E | E | E | E  | E  | E  | E  | E  | E  | E  | E  | E  | E  | E  | E  | E  | E  | E  | E  | E  | E  | E  | E  | E  |    |  |
| Acetomenophen 500 mg tab, take 2 tab BID   | 08:00 am<br>20:00                | E                   | E                  | E           | E  | E | E | E | E | E | E  | E  | E  | E  | E  | E  | E  | E  | E  | E  | E  | E  | E  | E  | E  | E  | E  | E  | E  | E  | E  |    |  |
| Sertraline 50 mg tab, take 1/2 tab BID   | 08:00:00 AM<br>08:00:00 PM       | E                   | E                  | E           | E  | E | E | E | E | E | E  | E  | E  | E  | E  | E  | E  | E  | E  | E  | E  | E  | E  | E  | E  | E  | E  | E  | E  | E  | E  |    |  |
| Acetomenophen 650 mg rectal, 1 supp every 4-6 hrs PRN for fever or discomfort  |                                  |                     |                    |             |    |   |   |   |   |   |    |    |    |    |    |    |    |    |    |    |    |    |    |    |    |    |    |    |    |    |    |    |  |
| Haloperidol 1 mg tab PO, take 1 tab Q 6 hrs PRN for agitation or hallucination or nausea   |                                  |                     |                    |             |    |   |   |   |   |   |    |    |    |    |    |    |    |    |    |    |    |    |    |    |    |    |    |    |    |    |    |    |  |
| Bisacodyl 10 mg rectal, 1 supp PRN for constipation  |                                  |                     |                    |             |    |   |   |   |   |   |    |    |    |    |    |    |    |    |    |    |    |    |    |    |    |    |    |    |    |    |    |    |  |
| Lorazepam 0.5 mg tab PO, take 1-2 tabs Q 4 hrs PRN for anxiety, seizures, SOB  |                                  |                     |                    |             |    |   |   |   |   |   |    |    |    |    |    |    |    |    |    |    |    |    |    |    |    |    |    |    |    |    |    |    |  |
| Atropine 1% OPH, use 1-2 drops under tongue Q 2 hrs PRN for moist or noisy breathing   |                                  |                     |                    |             |    |   |   |   |   |   |    |    |    |    |    |    |    |    |    |    |    |    |    |    |    |    |    |    |    |    |    |    |  |
| Morphine 30 ml, 20 mg/ml po, place 0.25 ml-0.5 ml under tongue PRN Q 1-4 hrs for pain or SOB   |                                  |                     |                    |             |    |   |   |   |   |   |    |    |    |    |    |    |    |    |    |    |    |    |    |    |    |    |    |    |    |    |    |    |  |
| CAREGIVERS: Please sign your name and initials in this space. Document medication refusals, holds or incidents on the back of this page. |                                  |                     |                    |             |    |   |   |   |   |   |    |    |    |    |    |    |    |    |    |    |    |    |    |    |    |    |    |    |    |    |    |    |  |
|  |                                  |                     |                    |             |    |   |   |   |   |   |    |    |    |    |    |    |    |    |    |    |    |    |    |    |    |    |    |    |    |    |    |    |  |
|  | ESTERA GRADNARU                  |                     |                    |             |    |   |   |   |   |   |    |    |    |    |    |    |    |    |    |    |    |    |    |    |    |    |    |    |    |    |    |    |  |
|  | REFUSED                          |                     |                    |             |    |   |   |   |   |   |    |    |    |    |    |    |    |    |    |    |    |    |    |    |    |    |    |    |    |    |    |    |  |
|  |                                  |                     |                    |             |    |   |   |   |   |   |    |    |    |    |    |    |    |    |    |    |    |    |    |    |    |    |    |    |    |    |    |    |  |

Cough pack

\* Caregivers, For all PRN medications document the reason you gave the medication and how effective it was. (Did the pain go away? Did they have a BM? Etc.)



STATE OF WASHINGTON  
DEPARTMENT OF SOCIAL AND HEALTH SERVICES  
AGING AND DISABILITY SERVICES ADMINISTRATION  
20425 72nd Avenue S, Suite 400, Kent, WA 98032-2388

|   |  |                                     |
|---|--|-------------------------------------|
| Statement of Deficiencies/<br>Plan of Correction<br>Page 1 of 3 | License #: 547100<br>BELLEVUE ROSE ADULT FAMILY HOME | Completion Date<br>November 2, 2010 |
|---|--|-------------------------------------|

You are required to be in compliance with all of the licensing laws and regulations at all times to maintain your adult family home license.

The department has completed data collection for the unannounced on-site complaint investigation of: 10/13/2010  
BELLEVUE ROSE ADULT FAMILY HOME  
212 153RD PL SE  
BELLEVUE, WA 98007

This document references the following complaint number: 101028602

The department staff that inspected / investigated the adult family home:  
Katherine Ander, MN, RN, Complaint Investigator

From:  
DSHS, Aging and Disability Services Administration  
Residential Care Services, Region 4, Unit B  
20425 72nd Avenue S, Suite 400  
Kent, WA 98032-2388  
(253)234-6020

As a result of the on-site visit(s) the department found that you are not in compliance with the licensing laws and regulations as stated in the cited deficiencies in the enclosed report.

*Chris Resman*  
Residential Care Services

11/4/10  
Date

I understand that to maintain an adult family home license I must be in compliance with all the licensing laws and regulations at all times.

000120

\_\_\_\_\_  
Provider (or Representative)

\_\_\_\_\_  
Date



WAC 388-76-10020 License--Ability to provide care and services. The provider must have the:

(1) Understanding, ability, emotional stability and physical health necessary to meet the psychosocial, personal, and special care needs of vulnerable adults; and

This requirement was not met as evidenced by:

Based on observation, interview and record review the provider demonstrated that she lacked the emotional stability necessary to meet the psychosocial, personal, and special care needs of vulnerable adults by ingesting Morphine (narcotic medication) dispensed for a resident (#1) in an attempt to take her own life. Findings include:

Department records show that the home was licensed since 2001 to care for 6 residents. The home is licensed to 2 providers (A and B). Provider A is a registered nurse (RN). Provider B is a spouse co-provider.

#### HISTORY:

Provider A was first licensed as a provider in 2001. Medical record review and interview found that Provider A took excessive amount of medications in a suicide attempt twice before. Medical records identified that the first attempt was in 2002 (8 years prior) when she overdosed on 23 Ibuprofen (over the counter anti-inflammatory medication). The second attempt was October 2009 (1 year prior) when she overdosed on 7 Hydrocodone (narcotic pain reliever). The provider was hospitalized on the inpatient psychiatry unit after each prior attempt to take her own life.

#### CURRENT SITUATION:

Observation on 10-13-10 at 8:00 a.m. found 6 residents with significant care needs living in the home. Medication record review found that 1 resident (#1) was receiving Hospice services, which included medications prescribed to manage end-of-life symptoms.

Observation found that comfort medication included a narcotic, liquid Morphine 20 mg/ml .25 to 0.5 ml every 1-4 hours for pain or shortness of breath. Pill count and medication record review found that Resident #1 had received no comfort medications yet. The vial of Morphine was ¼ full.

On 10-13-10 Residents were attended by Caregiver D and E, who stated that medications were given to residents by Caregiver C or Provider A. Caregiver C arrived after 15 minutes, and stated that Provider A was in the hospital for pain related to a medical condition and depression. According to Caregiver C, Provider A was taken to the emergency room with significant pain on Saturday 10-09-10 and was still hospitalized.

On interview 10-18-10 Provider A stated: She went to the hospital Saturday 10-09-10 because she was in a lot of physical and emotional pain. The provider had Resident #1's vial of Morphine in her pocket. The provider stopped at a local Park-and-Ride and ingested a half cap-full of Resident #1's Morphine and then texted Provider B on her cell phone about what she had done. Provider B called Caregiver C who came to the Park-and-Ride and took her back to his AFH. The pain was so severe that she passed out and was taken to the hospital by her relative.

Provider A used a resident's narcotic medications to treat her own emotional and physical pain

000121

instead of developing and using appropriate coping strategies and resources.

WAC 388-76-10490 Medication disposal -- Written policy--Required. The adult family home must have and implement a written policy addressing the disposal of unused or expired resident medications. Unused and expired medication must be disposed of in a safe manner for:

- (1) Current residents living in the adult family home; and
- (2) Residents who have left the home.

This requirement was not met as evidenced by:

Based on observation, interview and record review the provider failed to follow facility policy regarding disposal of medications for 1 of 6 sample residents (#2). This placed the resident at risk for ingesting expired medication. Findings include:

Facility policy states that unused medications should be taken to a local pharmacy or safely disposed with specific directions on how to do that.

Observation on 10-13-10 at 09:20 a.m. noted a 1/2 full bottle of Promethazine with Codeine dispensed 03-10-08 (discard by 03-10-09) prescribed to Resident #2 in the locked medication cabinet. Promethazine is used to treat allergy symptoms such as itching, runny nose, sneezing, itchy or watery eyes, hives, and itchy skin rashes. Codeine is a narcotic pain medication which can be used to suppress cough.

On interview 10-18-10 the provider stated that she usually cleans out the medication drawer of old/expired medication twice yearly, but she must have missed Resident #2's cough syrup.

**Attestation Statement**

I hereby certify that I have reviewed this report and have taken or will take active measures to correct this deficiency. By taking this action, BELLEVUE ROSE ADULT FAMILY HOME is or will be in compliance with this law and / or regulation on (Date) \_\_\_\_\_. In addition, I will implement a system to monitor and ensure continued compliance with this cited deficiency.

\_\_\_\_\_  
Provider (or Representative)

\_\_\_\_\_  
Date

0001221

# Exhibit C

**FILED**

12 JUL -2 PM 4:04

KING COUNTY  
SUPERIOR COURT CLERK  
SEATTLE, WA

IN THE SUPERIOR COURT OF THE STATE OF WASHINGTON **MAILED**

IN AND FOR THE COUNTY OF KING

JUN 29 2012

ESTERA GRADINARU,

Appellant

v.

STATE OF WASHINGTON,  
DEPARTMENT OF SOCIAL  
AND HEALTH SERVICES,

Respondent.

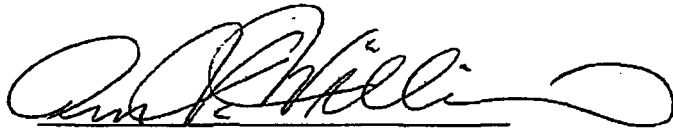
DSHS  
BOARD OF APPEALS

Cause No. 12-2-17504-7 SEA

**NOTICE OF FILING VERBATIM REPORT  
OF TAPE RECORDED PROCEEDINGS**

The Respondent, State of Washington, Department of Social and Health Services, hereby files the attached Verbatim Report of Tape Recorded Proceedings for DSHS Docket No. 05-2011-L-1920 for the hearing held on August 24, 2011 in the above-entitled matter.

*MAILED on June 29, 2012.*



Ann V. Williams  
Legal Secretary

Board of Appeals  
Dept. of Social & Health Services  
PO Box 45803  
Olympia WA 98504  
(360) 664-6100

BEFORE THE WASHINGTON STATE OFFICE OF ADMINISTRATIVE HEARINGS  
FOR THE DEPARTMENT OF SOCIAL AND HEALTH SERVICES

IN RE:

ESTERA GRADINARU,

APPELLANT.

**ORIGINAL**

DOCKET NO.: 05-2011-L-1920

VERBATIM REPORT OF PROCEEDINGS  
(FROM TAPED PROCEEDINGS)

BE IT REMEMBERED that the foregoing proceedings were taken from the hearing in the above-referenced matter heard on August 24, 2011 before Administrative Law Judge Carolyn L. Pinkett.

Appellant Estera Gradinaru appeared and was represented by Timothy Leary, Attorney at Law.

Angela Coats-McCarthy, Assistant Attorney General, appeared on behalf of the Department of Social and Health

Services.

Travis Yonker and Justin Gillette observed the hearing.

Appearing as witnesses were: Kathy Ander and Mary Moran.

Proceedings Transcribed by: Marisa Walker

WHEREUPON, the following proceedings were had and done, to wit:

EXHIBITS

|                           | <u>ID</u> | <u>AD</u> | <u>REJ</u> |
|---------------------------|-----------|-----------|------------|
| Ex. 5 through 12          | 6         | 8         |            |
| Ex. 13                    | 37        | 38        |            |
| Statement of Deficiencies |           |           |            |

WITNESSES

|                             | <u>Pages</u> |
|-----------------------------|--------------|
| {ESTERA GRADINARU}          |              |
| Direct Examination (Dept)   | 15-16        |
| {KATHERINE ANDER}           |              |
| Direct Examination (Dept)   | 17-34        |
| Cross Examination (Appl)    | 34-52        |
| Redirect Examination (Dept) | 52-55        |
| {MARY MORAN}                |              |
| Direct Examination          | 56-68        |
| Cross-Examination           | 68-70        |



1 JUDGE PINKETT: We're on the record in the matter of  
2 the Bellevue Rose Adult Family Home, 12-2010-L-2274, and  
3 Estera Gradinaru. Docket Number 05-2011-L-1920. Today is  
4 August 24, 2011. My name is Carolyn Pinkett. I'm an  
5 Administrative Law Judge. I work for the Office of  
6 Administrative Hearings. The parties in both cases are  
7 appearing at the Office of Administrative Hearings in  
8 Seattle, Washington. Present today are the Appellant,  
9 Estera Gradinaru. She is represented by attorney, Timothy  
10 Leary. Also present in the room is Angela Coats-McCarthy,  
11 an Assistant Attorney General, Justin -- who is  
12 representing the client -- Agency in this case, Justin  
13 Gillette, a law clerk who is observing the proceeding,  
14 Travis Yonker, an AAG, who is observing the proceeding, and  
15 Mary Moran who is here as the State's client --  
16 representation of the State -- worker's administrative  
17 client.

18 So I was handed some paperwork this morning related to  
19 the adult family home case. And it's a stipulation and an  
20 Order of Dismissal. Do either one of you have the original  
21 with you, or was that mailed?

22 MS. COATS-MCCARTHY: Your Honor, I -- I believe that  
23 was mailed --

24 JUDGE PINKETT: Okay.

25 MS. COATS-MCCARTHY: -- so I think Lisa Peterson has

1 the original.

2 JUDGE PINKETT: Yeah. Lisa Peterson is the AG?

3 MS. COATS-MCCARTHY: Correct.

4 JUDGE PINKETT: And she has my name as Barbara  
5 Pinkett. I'll be talking to her. Okay. So it appears  
6 that one case has been resolved by agreement of the  
7 parties. And I will issue an order on that case. And  
8 we're here today on the CNA, or resident client protection  
9 case, which ends in 1920, is that correct, Ms. Coats-  
10 McCarthy and Mr. Leary?

11 MS. COATS-MCCARTHY: Yes, Your Honor.

12 MR. LEARY: Yes, Your Honor.

13 JUDGE PINKETT: So with that in mind, I'd like to  
14 first, um, ensure that Mr. Leary and his client have  
15 received the State's exhibits, um, and supplemental witness  
16 list for 1920. The Exhibits are identified as seven,  
17 eight, nine, ten, eleven, and twelve. And had you also for  
18 that case number, planned to submit the exhibits One  
19 through Six?

20 MS. COATS-MCCARTHY: Uh, some of them, Your Honor.  
21 Mr. Leary and I discussed what exhibits would be necessary  
22 for this case, and have come to an agreement on exhibits.

23 JUDGE PINKETT: Okay. And that is?

24 MS. COATS-MCCARTHY: Exhibits Five through Twelve.

25 JUDGE PINKETT: Okay. So you have no objection if

1 five through twelve are admitted, Mr. Leary?

2 MR. LEARY: Sort of. Well -- well, here's -- I  
3 understand it's hearsay that (Inaudible) came to the  
4 proceedings, and that Your Honor's decision can't rest  
5 solely on something that is established by hearsay.

6 JUDGE PINKETT: Uh-huh.

7 MR. LEARY: So I understand these exhibits are  
8 admissible. There is certain portions of it that are  
9 completely hearsay without a hearsay exception to it. Um,  
10 so I would just -- rather than objecting to hearsay, I  
11 don't have any objection if the foundation to witnesses is  
12 referenced, and I don't believe that the decision is going  
13 to rest solely on exhibits, but I just like putting that on  
14 the record.

15 JUDGE PINKETT: Uh-huh.

16 MR. LEARY: You know? I believe that the State's --  
17 the Department's case will be established through Mary  
18 Moran and Kathy Ander, and they will reference those  
19 exhibits. So I just put that out there. I don't have an  
20 objection formally to the exhibits.

21 JUDGE PINKETT: Okay. So it sounds like what you're  
22 telling me is you don't have an objection to their  
23 admissibility, but you would be making an argument at the  
24 end as to the weight I should be giving some of these .  
25 exhibits because of the hearsay they contain.

1 MR. LEARY: Exactly.

2 JUDGE PINKETT: All right.

3 MR. LEARY: (Inaudible).

4 JUDGE PINKETT: Five through twelve are admitted. So  
5 here's my question. It doesn't appear that the facts are  
6 objected to. Why don't I have stipulations. Mr. Leary?  
7 Ms. Coats-McCarthy?

8 MS. COATS-MCCARTHY: I don't know, Your Honor, why we  
9 don't have a stipulation in this case.

10 JUDGE PINKETT: It -- it -- it appears that --

11 MS. COATS-MCCARTHY: I mean --

12 JUDGE PINKETT: -- the crux of the State's case, when  
13 I look at their letter, which is Exhibit Seven, is the  
14 incident. "You were the owner of the Bellevue Rose Adult  
15 Family Home. You financially exploited a vulnerable adult  
16 who was a resident in your home, when you took the  
17 resident's morphine medication for your own use."

18 MR. LEARY: There is, I believe, additional facts I  
19 want to elicit. There is -- I believe the State is calling  
20 two witnesses. There's additional -- I don't anticipate it  
21 taking very long, but I think that there is a dispute as to  
22 whether or not the facts, which are in large agreement,  
23 from our position, still do not amount to financial  
24 exploitation.

25 JUDGE PINKETT: And that's my second question. It

1 seems like a legal argument. Even if the facts in the  
2 letter are true, where's the law to support this use of  
3 financial exploitation. I'm interested in legislative  
4 history. I'm interested in case law. I'm interested in  
5 having briefs, especially from the Department that support  
6 the use of this incident to claim that the Appellant  
7 financially exploited the resident in her home.

8 MR. LEARY: The parties had talked about doing written  
9 closing arguments. And so that would be our request to be  
10 able to, uh, provide that information to Your Honor.

11 JUDGE PINKETT: Okay. So it seems like it would make  
12 more sense to have the Appellant go first.

13 MS. COATS-MCCARTHY: Well, I -- Your Honor, I -- the -  
14 - the Appellant did not submit any witness, or an exhibit  
15 list. Actually, Mr. Leary misstated the -- what the  
16 State's presentation of the case, and certainly the State  
17 planned on calling Ms. Gradinaru as their first witness.  
18 You're right.

19 MR. LEARY: And we had also previously discussed the  
20 fact that Ms. Gradinaru does have a 5th Amendment  
21 privilege, given the allegations that she would be -- and I  
22 gave advance notice saying that she would be exercising her  
23 5th Amendment privilege to not testify.

24 MS. COATS-MCCARTHY: And that's correct, Your Honor.  
25 I just want to get it on the record that that's what she

1 chooses to do.

2 JUDGE PINKETT: Okay. So that's true as of January  
3 3rd. There could be a problem there. Although this is --  
4 I'm looking for -- a year ago. Do you know whether it's  
5 being investigated by the prosecutor's office?

6 MR. LEARY: It -- it's still within the statute of  
7 limitations.

8 JUDGE PINKETT: Okay. Okay. Just a second. Then it  
9 makes sense why there's no stipulation. Okay. Um, what  
10 witnesses -- I have your supplemental witness list. Mr.  
11 Leary indicates that it appears that you are just planning  
12 to call two witnesses?

13 MS. COATS-MCCARTHY: Uh, yes, Your Honor.

14 JUDGE PINKETT: And that would be Ms. Moran, would be  
15 one.

16 MS. COATS-MCCARTHY: Ms. Moran and also Kathy Ander.

17 JUDGE PINKETT: Uh-huh.

18 MS. COATS-MCCARTHY: The absence of her testimony will  
19 be admission by a party opponent, Ms. Gradinaru, that she  
20 made to them.

21 JUDGE PINKETT: Okay.

22 MS. COATS-MCCARTHY: And that would be the focus of  
23 her testimony.

24 JUDGE PINKETT: Okay. Let's see. All right. Um,  
25 would either party like to make an opening statement?

1 MS. COATS-MCCARTHY: Sure, Your Honor.

2 JUDGE PINKETT: You don't have to. You can waive it,  
3 but --

4 MS. COATS-MCCARTHY: No, I -- just -- just to explain  
5 what the, um -- how the State intends to proceed in this  
6 case.

7 JUDGE PINKETT: Okay.

8 MS. COATS-MCCARTHY: It -- the finding is for  
9 financial exploitation. What the evidence is going to show  
10 is that Ms. Gradinaru admitted to taking the medicine of  
11 Elaine, who was a resident of her adult family home at the  
12 time that she took the medication. She admitted to  
13 multiple state investigators that she did, then -- ingested  
14 the medication. There might be some dispute as to her  
15 reason for why she ingested that medication, but the  
16 State's position is that it does not matter for the finding  
17 of financial exploitation, which is the (Inaudible) of  
18 illegal or improper use of the property of a vulnerable  
19 adult by any person for that person's profit -- or for any  
20 person's profit or advantage if it's not for the vulnerable  
21 adult's profit. And that definition is spelled out in  
22 Exhibit D7, the Department's Notice letter.

23 The -- I think the evidence will be pretty  
24 straightforward. As Mr. Leary stated, the State has been  
25 notified that Ms. Gradinaru will be taking the 5th

1 Amendment -- asserting her 5th Amendment right, which as --  
2 as you know, in a civil hearing, is a negative inference  
3 against Ms. Gradinaru relative to the facts. And when all  
4 the facts are considered, misconduct, while (Inaudible),  
5 does equate to the definition of financial exploitation  
6 under RCW 74-34-0207.

7 JUDGE PINKETT: Okay. And Mr. Leary, did you wish to  
8 make an opening?

9 MR. LEARY: Yes, Your Honor. From the Appellant's  
10 perspective, this has nothing to do with financial  
11 exploitation. The Department granted the resident RCS in  
12 the adult family home licensing proceeding, talked about  
13 care and services, and whether or not Ms. Gradinaru was  
14 appropriate and able to handle running an adult family  
15 home. There was no discussion of theft or financial --  
16 based on these very same facts. I think that the statute,  
17 as applied by the resident client protection program,  
18 applying financial exploitation simply does not fit these  
19 facts. If the medication was not taken for Ms. Gradinaru's  
20 profit or advantage, I just don't see how any application  
21 of the facts gets you there. With respect to the negative  
22 inference, you know, oftentimes when there is a dispute as  
23 to what happened, and there's conflicting theories, there  
24 can be a negative inference drawn from somebody exercising  
25 5th Amendment privilege. Here, there isn't -- that



1 negative inference doesn't amount to anything because there  
2 really is little in dispute. She was admitted into a  
3 psychiatric hospital after this incident. I think it's  
4 very clear what was going on. There's a history  
5 demonstrated in Exhibit Six of previous suicide attempts,  
6 and so while I understand the Department's position to want  
7 to protect vulnerable adults, this simply does not fall  
8 into the purview of the Resident Client Protection Program.  
9 Theft of medication in other context, um, could potentially  
10 fall within this, but given these facts, it is  
11 misapplication, and the findings should not stand.

12 JUDGE PINKETT: Okay. Did you wish to call your first  
13 witness?

14 MS. COATS-MCCARTHY: Your Honor, in terms of -- in  
15 terms of -- I think --

16 JUDGE PINKETT: You do.

17 MS. COATS-MCCARTHY: I do. I would like to call Ms.  
18 Gradinaru just to have it be official on the record that  
19 she is asserting her 5th Amendment right.

20 JUDGE PINKETT: I think that's the procedure, but I --

21 MS. COATS-MCCARTHY: So I would like to call Ms.  
22 Estera Gradinaru.

23 JUDGE PINKETT: Okay. Ms. Gradinaru, could you raise  
24 your right hand please? Do you swear or affirm the  
25 testimony given today will be the truth?

1 MS. GRADINARU: Yes. I'm taking the 5th.

2 JUDGE PINKETT: I think you -- it's been a long time,  
3 but I think the procedure is, is that Counsel asks you  
4 questions, and then you can privately confer with Mr. Leary  
5 about how you should respond, and he will probably advise  
6 you as to how you should respond. And I think it -- isn't  
7 it each question, or is it just a blanket? Uh, she has to  
8 ask the questions for this to work.

9 MR. LEARY: I mean, I think that she has a 5th  
10 Amendment coverage for every single question as to --

11 JUDGE PINKETT: What her name is?

12 MR. LEARY: Well, beyond -- she's already answered  
13 what her name was, or I thought she already did. But in  
14 terms of involvement in the home, access, and that, I mean,  
15 virtually everything is going to potentially (Inaudible).  
16 So I mean, we could go through the exercise, you know, for  
17 half-an-hour, or whatever. There's 27 questions, and  
18 (Inaudible) each one. But I think for speed purposes, I  
19 think she has a 5th Amendment privilege to just about  
20 everything that is a relevant question beyond her name.

21 JUDGE PINKETT: But she has to assert it, and I --  
22 it's been a long time since I've had the 5th asserted in a  
23 -- a administrative hearing, but I believe the State gets  
24 to ask the question, and she has to assert the privilege.  
25 Am I wrong on the law here?

1 MS. COATS-MCCARTHY: Your Honor, I -- I think that's  
2 the way that it's typically done, and I -- I do believe  
3 that there's probably going to be a point in questioning  
4 where probably any further question that I ask would likely  
5 be covered, and certainly I don't want to drag this out.  
6 But in terms of, you know, basic questions of is Ms.  
7 Gradinaru an adult family home provider, what's her  
8 qualifications for that, you know, I don't think that that  
9 alone is covered by the 5th Amendment. Now, certainly --  
10 you know, I -- I'm -- if -- if -- if that -- if (Inaudible)  
11 is that it's covered, then I guess I just want to make it  
12 very clear that every single set of questions -- you know -  
13 - but he -- his position is that every single question that  
14 I would ask, even in that vein, would be covered by the 5th  
15 Amendment.

16 JUDGE PINKETT: So why don't we make clear for the  
17 record who you're questioning first.

18 MS. COATS-MCCARTHY: Okay.

19 DIRECT EXAMINATION

20 BY MS. COATS-MCCARTHY:

21 Q. Are you Estera Gradinaru?

22 A. Yes. (Inaudible).

23 Q: Ms. Gradinaru, can you please state and spell your  
24 name?

25 A: E-S-T-E-R-A and Gradinaru, G-R-A-D-I-N-A-R-U.

1 Q: Ms. Gradinaru, are you familiar with the Bellevue Rose  
2 Adult Family Home?

3 MR. LEARY: I think she has some (Inaudible).

4 JUDGE PINKETT: Okay. Okay.

5 Q: So you think that that's going by the (Inaudible)?

6 MR. LEARY: I do.

7 Q: Okay. It -- it -- I mean, obviously, if -- if that  
8 basic of a question is going to have the 5th Amendment  
9 asserted, Your Honor, I -- I think we should just accept  
10 the 5th Amendment as a blanket assertion for every question  
11 I'm going to ask.

12 JUDGE PINKETT: Okay.

13 Q: If we can't even address the adult family home.

14 JUDGE PINKETT: All right. I'm not going to require  
15 her to testify, and possibly incriminate herself, since the  
16 alleged facts on -- if memory serves, could result in a  
17 criminal charge. So you can argue at the end of the day  
18 how that effects the Appellant's position.

19 MS. COATS-MCCARTHY: Let me just see if Kathy Ander is  
20 here, Your Honor.

21 JUDGE PINKETT: Okay.

22 MS. COATS-MCCARTHY: Well, actually, it's -- I'm  
23 assuming that Ms. Gradinaru is excused from the witness  
24 stand?

25 JUDGE PINKETT: She is excused. Now I need to find a

1 place for Ms. Ander. Could you two scoot down, please?

2 MR. LEARY: Sure.

3 MS. COATS-MCCARTHY: I told Ms. Ander 9:30, so she'll

4 --

5 JUDGE PINKETT: Oh. All right.

6 MS. COATS-MCCARTHY: -- (Inaudible).

7 JUDGE PINKETT: I'm going to go off the record for a  
8 couple minutes.

9 (OFF THE RECORD)

10 JUDGE PINKETT: We're back on the record in the matter  
11 of Estera Gradinaru, Docket Number ending 1920. Joining us  
12 in the hearing room is Katherine Ander. No discussion of  
13 the case occurred in my presence while we were off the  
14 record. Are you, Ms. Coats-McCarthy, planning to call Ms.  
15 Ander to testify at this time?

16 MS. COATS-MCCARTHY: Yes, Your Honor.

17 JUDGE PINKETT: Okay. Ms. Ander, could you raise your  
18 right hand, please? Do you swear or affirm the testimony  
19 given today will be the truth?

20 MS. ANDER: I do.

21 JUDGE PINKETT: Okay. Go ahead.

22 DIRECT EXAMINATION

23 BY MS. COATS-MCCARTHY:

24 Q: Ms. Ander, can you please state and spell your name for  
25 the record?

1 A: My name is Katherine Ander, K-A-T-H-E-R-I-N-E A-N-D-E-  
2 R.

3 Q: Ms. Ander, where are you currently employed?

4 A: I work for the Department of Social and Health Services  
5 in the Residential Care Services Program, which is a  
6 subsidiary under Aging and Disability Services.

7 Q: What are your job duties with Residential Care  
8 Services?

9 A: I'm a community complaint investigator. That means I  
10 investigate complaints that come through our hotline for  
11 our licensed boarding homes, and adult family homes.

12 Q: Are you familiar with Estera Gradinaru?

13 A: Yes.

14 Q: How are you familiar with her?

15 A: I investigated a complaint at her licensed adult family  
16 home.

17 Q: And what is the name of her licensed adult family home?

18 A: Bellevue Rose.

19 Q: Okay. Now, in terms of her position at the Bellevue  
20 Rose Adult Family Home, what is Ms. Gradinaru's position at  
21 the Bellevue Rose Adult Family Home?

22 A: She's the licensed adult family home provider.

23 Q: Now, when you -- uh, what complaint were you assigned  
24 to investigate at the adult family home?

25 A: I received a complaint from our hotline that reported

1 that Ms. Gradinaru had ingested medication that belonged to  
2 a resident in a failed suicide attempt.

3 Q: What -- how did you initiate your investigation?

4 A: All investigations that are assigned are initiated in  
5 the same way, is that I look at the history of the home  
6 (Inaudible) with the license administering. I make an  
7 investigation plan. By that, I identify what I'm going to  
8 observe, what records I'll review, and what questions I'll  
9 ask of staff and residents. And so I formalize that in a  
10 written document. I then plan an unannounced visit,  
11 generally during the working business hours, unless there's  
12 extenuating circumstances. So I received this report on  
13 the 12th of October of 2010, and visited the home at 8:00  
14 a.m. the 13th of October.

15 Q: Okay. When you went to the home on the 13th, what did  
16 you observe?

17 A: I observed six residents present with two caregivers  
18 and staff. And the investigative complaint what I was  
19 wanting to observe mainly is there any resident that  
20 appears to be in pain that might not be receiving pain  
21 medication. At the point I receive a complaint, I don't  
22 know what the circumstances are, so I'm trying to determine  
23 is this a drug diversion? Typically that's what -- what is  
24 -- the -- when this type of complaint comes in that a  
25 provider is using medications, what -- we are thinking

1 there might be an addiction issue, and you're -- you're  
2 looking is their drug diversion, so are the residents not  
3 receiving care? So first off, I wanted to make sure that  
4 the residents were receiving care, and were -- you know,  
5 hygienic, and -- and not in pain. Uh, I wanted to identify  
6 for my sample any residents that have prescribed narcotic  
7 medication, so that I could sample those residents and make  
8 sure, for the pills, were the proper amounts dispensed,  
9 used for that person, and not used for another person.  
10 Anyway, that's how I devise a sample. And so when I --  
11 what I discovered in the home that all the residents  
12 appeared cared for. Two caregivers were in attendance, and  
13 there was one resident that was prescribed narcotics that  
14 were dispensed in-home. None of the other five residents  
15 had even prescriptions.

16 Q: Now, in these proceedings, I -- I'd like you to only  
17 use the first name of the resident (Inaudible) that we  
18 might reference. And that one resident who was prescribed  
19 narcotics, what was her name?

20 A: Elaine.

21 Q: What type of narcotics was she prescribed?

22 A: Elaine was a resident that was on hospice services. So  
23 what she was prescribed -- they're what's called comfort  
24 medications. These are medications that are used to  
25 mitigate the end of life symptoms that might -- in -- in



1 the process of actively dying. For example, shortness of  
2 breath, anxiety medication. So there's a -- a range of  
3 medications that are prescribed. The narcotic that's  
4 generally prescribed is morphine. This is generally liquid  
5 morphine in a concentrated form that's to be put under the  
6 tongue. Usually people that are actively dying can't  
7 swallow, or take a pill, or -- it's what you want  
8 (Inaudible), and a (Inaudible) morphine will get to the  
9 bloodstream when it's under the tongue right away, as  
10 opposed to chopping up a pill, and (Inaudible).

11 Q: Was Elaine prescribed morphine?

12 A: She was.

13 Q: Did you observe Elaine's comfort medication?

14 A: Yes.

15 Q: Okay. What did you see upon observing those  
16 medications?

17 A: It appeared that the comfort medications were unopened  
18 except for the morphine. There was, I think, 16 cc  
19 dispensed, which is not a very large amount, but it's a  
20 concentrated form. I believe it was 20 mg/mL. The  
21 prescribed dose was 1/4 to 1/2 of a cc/mL under the tongue  
22 as needed. And then I observed there was pretty much that  
23 amount. I -- I -- the vial was -- it was a dark brown  
24 vial. It wasn't graduated, so I could see, oh, there's a  
25 cc missing, or three cc missing. It was simply a vial that

1 was to have the liquid in the bottle.

2 Q: Okay. Now, you -- you stated that it was -- did you  
3 look into whether Elaine had required any morphine?

4 A: I did.

5 Q: What did you -- uh, what did you find?

6 A: She did not require any of her end of life medication,  
7 and I confirmed that by looking at the medication record  
8 (Inaudible) had been documented as given. I observed the  
9 resident to see if she was having any pain or discomfort  
10 that would have necessitated a medication dose. And I  
11 talked to the hospice nurse, and the caregiving staff, just  
12 in general, "How -- how's she doing, and so forth."  
13 Because I'm just there for giving a snapshot in time. But  
14 no, she had not required any. And then I spoke with the  
15 provider, and she confirmed that Elaine had not required  
16 any of her comfort medications yet.

17 Q: Now, when you state that you talked to her provider,  
18 who are you referring when you use the term her provider?

19 A: Ms. Gradinaru.

20 Q: Now, after going to the home, and observing the home,  
21 what did you do next in the course of your observation?

22 A: Well, Ms. Gradinaru was hospitalized. She'd had a  
23 distressing event. She'd had a -- a failed suicide  
24 attempt. She was in receiving some mental health services.  
25 And so I needed to get some specific information from her

1 to find out, well, did she take the morphine, or not take  
2 the morphine? What were the circumstances? Why was that  
3 done? And I -- I could -- really want to get that  
4 information by speaking to her, and I elected to not bother  
5 her while she was hospitalized, receiving mental health  
6 services. I thought that that was unwarranted. I wanted  
7 to wait until she was discharged from the hospital so she  
8 could focus on her recovery. I determined from my initial  
9 investigation that there was not a drug diversion. I  
10 wasn't worried that there was resident care issues. I just  
11 needed to figure out what happened with the allegations.  
12 So I waited until her discharge, and then I spoke with Ms.  
13 Gradinaru on the telephone.

14 Q: And what did Ms. Gradinaru tell you?

15 A: Ms. Gradinaru said that she was in distress. She  
16 started out by talking about her divorce, and that she had  
17 physical pain from pancreatitis, and she was hurting, and  
18 she wanted the hurt to stop. So she had -- it -- it was an  
19 odd story, to tell you the truth, because what she said is  
20 that her father owns and operates an adult family home,  
21 which is just down the street, and he had had a patient who  
22 was actively dying, and was using the comfort medication,  
23 and he was running out. And so she -- he asked her to go  
24 to the pharmacy to obtain more morphine for his patient how  
25 was actively dying. So what she did is she put the

1 morphine from Elaine's comfort kit in her pocket, and then  
2 went to the pharmacy. Before getting to the pharmacy, or -  
3 - she wasn't clear about where -- I found out later it was  
4 at a Park and Ride, but she said that she was in a parking  
5 lot, and she ingested some of Elaine's morphine, about a  
6 cc. Not very much, but a cc, which would have been about  
7 20 mg, which is a good solid dose of morphine -- and then  
8 texted her ex-husband to say that she'd done this.

9 The ex-husband then called the father, John, and he  
10 came to get his daughter. And then she went back to the  
11 home. (Inaudible) went back to the adult family home,  
12 where she replaced Elaine's morphine in the comfort kit,  
13 and then was in quite severe pain, when she collapsed, or  
14 fell to her knees, or -- in -- in the driveway, and her  
15 brother took her to the hospital.

16 Q: Okay. How much did -- how much morphine did Ms.  
17 Gradinaru tell you that she took?

18 A: She took -- she said she took a half a capful, or about  
19 one cc --

20 Q: Okay.

21 A: -- which would be 20 mg.

22 Q: Thank you. How -- what is 20 mg relative to the dose  
23 prescribed for the dying patient?

24 A: That's twice.

25 Q: So it was at least double the dose?

1 A: Yes. And so you remember that the dying person can  
2 only tolerate a little bit of liquid in their mouth, so the  
3 -- that's why -- that's a concentrated form of morphine,  
4 and so what -- the prescription is for 1/4 to 1/2 of a cc.  
5 And then Ms. Gradinaru took about twice that much for a  
6 total of 20 mg of morphine, which is a good, significant  
7 dose of oral morphine. It's not enough to cause death, but  
8 it's a -- it -- it is a -- it will make you freaky, and  
9 will certainly address any pain you have.

10 Q: Now, Ms. Ander, I don't believe I -- I -- I touched on  
11 this earlier, but what are your qualifications for this  
12 positioned

13 A: Uh, I obtained a registered nursing license in 1980. I  
14 had, at that time, an Associate's Degree in nursing from  
15 Bellevue College. I then completed a Bachelor of Science  
16 in Nursing from University of Washington in 1990, a  
17 Master's Degree in community health nursing from the  
18 University of Washington School of Nursing in 1993. I then  
19 completed an advanced practice private nurse certificate  
20 from the University of Washington private nursing program  
21 in 2009. I also have training in basic investigative, um,  
22 techniques, as well as advanced complaint investigative  
23 training, as well as I attend annual conferences and  
24 education events to keep myself current. I've had  
25 department training in healthcare as well as in the --

1 relevant facilities care. Actually, not (Inaudible) care.

2 Q: Now, you -- you've spoken several times about different  
3 doses of morphine. How are you familiar, uh -- or are you  
4 familiar with morphine as a drug?

5 A: Yes, uh, that -- the first 13 years in my career, I  
6 worked in a hospital setting, and that was ranging from  
7 pediatric to adult care, uh, in adult medical-surgical  
8 area. And so I'm so old that when we started we were doing  
9 hypodermic shots, and at that time, it was -- ten to  
10 fifteen mg by intramuscular injection would be a standard  
11 postoperative dose. I've also worked in pediatric care,  
12 and so forth. Of course, it's -- it's graded on the weight  
13 of the child.

14 Q: Now, after, uh, you spoke with the provider, uh, and  
15 she told you, uh, her version of events, what did you do  
16 next in the course of your investigation?

17 A: What I did is I spoke to my supervisor, (Inaudible)  
18 Rasmussen, and I we spoke to the -- the enforcement office  
19 with Janice Sherman, to talk about what should be done  
20 because this is -- I was able to confirm the allegation,  
21 which was that the provider did ingest morphine that  
22 belonged to a resident in her care. And, uh, in addition,  
23 it was an emotion -- that she took it, not for an addiction  
24 reason, but for emotional distress. And that was an  
25 alarming on, uh, just a number of levels, is that it's not

1 a -- the standard, or -- or healthy coping mechanism. She  
2 had full access to the range of medications in that home.  
3 If this was a gesture, then she would have full access to  
4 complete such a, um, intent. She, uh, also -- this speaks  
5 to somebody who's had distress emotionally, and is  
6 responsible for the care of six vulnerable adults. It  
7 doesn't, uh -- we were concerned about that, and that is  
8 she fully present and able to address those resident's care  
9 needs when she, personally, was so distressed. And what we  
10 did is we put a temporary condition on the license pending  
11 the (Inaudible) investigation that she not have -- she be  
12 supervised at all times in the home because she lived in  
13 the home. She lives in the basement of the home, and the -  
14 - the care occurred on the main level of the home -- the  
15 street level of the home, but she lives with her family in  
16 the lower level. So she needs to have somebody in  
17 attendance 24 hours a day, and that she not have access to  
18 medication.

19 So that was -- that's what we did.

20 Q: And after you -- you said you got (Inaudible)  
21 completion of your investigation, what did you do next in  
22 your investigation?

23 A: Well -- well, what I wanted to do is get specific  
24 information about Ms. Gradinaru's medical history, or  
25 psychiatric history in relation to this gesture -- this

1 event -- where she took the resident's morphine, so that I  
2 could -- we could find out all -- we're concerned again  
3 with resident safety. So we need to know how safe was Ms.  
4 Gradinaru, what was her mental health conditions  
5 (Inaudible) professionals. That's not the work that we do.  
6 Her doctor will do that, so I needed to look at some  
7 medical records. And so I went to the home a second time  
8 on the 19th, and obtained a written consent, so that I  
9 could go to the hospital and review her medical records.  
10 And when I reviewed her medical record, I found that this  
11 is not the first attempt. This is the third attempt. This  
12 is the first time Ms. Gradinaru has used a resident's  
13 medication, but she had previously used her own medications  
14 twice in suicidal gestures.

15 Q: Could you, please, turn in the exhibit notebook in  
16 front of you to Exhibit 5? Do you recognize this document?

17 A: I do.

18 Q: What is it?

19 A: This is the medical record from Estera Gradinaru from  
20 Silver Lake Hospital with the admission date of 10/12,  
21 discharge date of 10/18, and her doctor's name, and then it  
22 talks about the history (Inaudible).

23 Q: What -- you said that you, uh, reviewed some of the  
24 various medical records. What was this particular medical  
25 record in reference to?



1 A: When Ms. Gradinaru had taken the resident's morphine,  
2 and her brother drove her to the hospital, she was at first  
3 admitted medically, since there was a suspicion of  
4 pancreatitis, or -- or some medical issue, and it was there  
5 that she spoke to the hospital staff about her psychiatric  
6 distress, and that she'd injected the medicine in a -- in a  
7 suicide attempt. So she was from there admitted to the  
8 mental health ward. And so this is what's called a History  
9 and Physical. This is generally what I ask for when I'm  
10 asking for medical records because it summarizes the  
11 hospital event. So this is the hospitalization from this  
12 event.

13 Q: And by this event, are you referring to the incident  
14 that you were investigating where Ms. Gradinaru ingested  
15 the morphine of a resident?

16 A: Yes.

17 Q: Okay. Will you please turn to, uh, document six? Do  
18 you recognize this document?

19 A: Yes.

20 Q: What is it?

21 A: This is a dictated report for Ms. Gradinaru. It's  
22 dated -- two dates -- 10/25/2010, which is a note, and it's  
23 also 10/6/2009, which is from a year earlier when Ms.  
24 Gradinaru had had a suicidal ideation, and had a -- taken  
25 an overdose, it says, of seven oxycodone tablets. This is

1 a narcotic medication -- pain medication. Uh-huh.

2 Q: How did this particular medical document inform your  
3 investigation?

4 A: This is the particular information around previous  
5 events where Ms. Gradinaru has been psychically distressed,  
6 and used an overdose of medication to address that. And it  
7 speaks to her, um -- you know, the -- the Department is  
8 concerned about the -- the physical as well as the  
9 emotional health of providers to meet the needs of  
10 vulnerable adults in their care. And this speaks to Ms.  
11 Gradinaru's emotional health.

12 Q: Now, after you reviewed these medical records, how did  
13 you complete your investigation?

14 A: Well, I spoke to Ms. Gradinaru again, and -- well, I  
15 actually talked to her because when I -- when I heard about  
16 the three attempts, I thought, "Oh, I need to know more  
17 about that (Inaudible)." And she had mentioned, I think,  
18 that she had taken ibuprofen, and had taken Wellbutrin,  
19 which is an antidepressant, in these previous attempts.  
20 And when I got the medical records it was, "Oh, this is  
21 oxycodone." That's a narcotic pain medication, not your  
22 antidepressant medication, which (Inaudible) from the  
23 verbal report and the medical report. So I wanted to speak  
24 to her again, and clarify those things. So I -- I spoke to  
25 Ms. Gradinaru again. Uh, I spoke to her father, John

1 Curtis, because, um, there is a -- a legal side of the  
2 investigation, so I wanted to make sure that this is not a  
3 common practice in their homes to share morphine between  
4 patients, which would be absolutely not acceptable. And he  
5 assured me that this had never happened. It was never his  
6 intent, and it was Ms. Gradinaru's choice to put the  
7 morphine in her pocket. It was not his. He did not  
8 request her to do this.

9 So I had a side investigation into, uh -- I spoke to  
10 family members because I wanted to find out, um, how Ms.  
11 Gradinaru, uh, presented in the home. The residents in the  
12 home -- I spoke to one. And he was a lovely gentleman, but  
13 he just was -- due to dementia -- wasn't able to really  
14 give me specific information, and the other residents were  
15 quite cognitive-impaired. So I couldn't rely on resident  
16 reports of how Ms. Gradinaru functions. So then I talked  
17 to family members. I spoke with family about -- and  
18 Melissa, the hospice nurse, and about is she cheerful in  
19 the home? Would she provide care? I mean, what is -- what  
20 is demeanor. And that -- I wanted to find out again about  
21 her emotional health and ability to provide care and  
22 services. So, um, I made those kinds of calls, and then  
23 put everything together. The rewrite of the document  
24 (Inaudible) deficiencies. And what it does is reference  
25 the regulations, and then how the provider failed to meet

1 the regulations. And so what -- what generally happens  
2 with the writing process, you start in one direction, and  
3 then you write, and it's reviewed, and it's revised. And  
4 so I went through that process. And so I was doing those  
5 kinds of activities to complete the investigation.

6 Q: Okay. So once the investigation was completed, and the  
7 Statement of Deficiencies was reviewed and finalized, what  
8 was the result of your investigation?

9 A: The result was the Department revoked the adult family  
10 home license, and placed a condition with regards to Ms.  
11 Gradinaru's contact with medications in the home. Ms.  
12 Gradinaru is a registered nurse. And so that license  
13 allows her to delegate the nursing tasks, like medication  
14 administration and treatment. And she had done that for  
15 her home, and I believe her father's home as well. And  
16 it's a -- a common practice in adult care homes. So, uh,  
17 we did not want her delegating to her staff in regards to  
18 medications, because that would put her in contact again  
19 with p.r.n. narcotics if they're prescribed.

20 So she had a condition that was placed on the license,  
21 the revocation, and stop placing of admission --  
22 admissions, which goes hand-in-hand with pain medication.  
23 You can't be admitting people to a home that's been  
24 revoked.

25 Q: And the -- what was your role in terms of revocation?

1 A: I wrote the Statement of Deficiencies. Generally  
2 speaking, I don't go to the home to deliver them. It's  
3 usually done by my supervisor and another staff person.  
4 And that's the point is to -- to deliver the document, and  
5 talk calmly about the -- the Department's action, and what  
6 happens when the investigator goes, sometimes there can be  
7 some emotional like, "What did you do to me? You closed my  
8 business." And that's not where the focus needs to be.  
9 Our focus is to the residents, with their safety, and that  
10 this is a Department action, and this is just the  
11 information presented.

12 Q: Are you part of the program called the Resident Client  
13 Protection Program?

14 A: Yes.

15 Q: Okay. What is the relationship between your role as a  
16 licenser and the Resident Client Protection -- Protection  
17 Program.

18 A: Um, actually, I'm a complaint investigator, not a  
19 licenser.

20 Q: Oh, sorry.

21 A: You know, there are --

22 Q: Sorry.

23 A: That's okay. Um, with -- with RCPP, it's that they  
24 specifically investigate caregivers in relation to an event  
25 in the home. So our department looks at the license, and

1 the license requirements, and writes deficiencies related  
2 to that for the -- the overall scope of care in the home.  
3 The RCPP Program specifically focuses on the individual  
4 involved, and their conduct, their action in the -- in  
5 relation to their licenser sometimes, I think. But mostly,  
6 um, the licensing department helps in the -- if they are  
7 registered, or they have an R.N. License, they have a  
8 separate investigation, but RCPP talks about their actions,  
9 and whether it met the standard of neglect that (Inaudible)  
10 findings against that person.

11 Q: I have no further questions at this time.

12 JUDGE PINKETT: Okay.

13 MR. LEARY: Good morning.

14 JUDGE PINKETT: Mr. Leary?

15 MR. LEARY: Thank you, Your Honor.

16 CROSS-EXAMINATION

17 BY MR. LEARY:

18 Q: Good morning, Ms. Ander. Did you make a referral

19 A: Good morning.

20 Q: Did you make a referral to (Inaudible) as a part of  
21 your investigation?

22 A: I probably did.

23 Q: And then did you make a referral to Department of  
24 Health, given that she was a registered nurse?

25 A: I -- most likely I did. And I -- that's my general

1 practice, and certainly R.N.s -- I like to speak from --  
2 not that (Inaudible), but it will be in my notes, and --  
3 and I -- either I did, or my supervisor did, so yes, we  
4 certainly did.

5 Q: Okay. So there's a theory that depending on -- you  
6 know, if someone's not a nurse, you wouldn't refer them to  
7 Department of Health, correct?

8 A: Well, it depends if they have any kind of registration  
9 of licensure. For example at Department of Health you can  
10 have certified -- be a certified nursing assistant, or a  
11 registered nursing assistant, which is simply a registered  
12 with DOH, but if you have any contact, or credential from  
13 DOH, it's referred there.

14 Q: So it's safe to say that you're confident that a  
15 referral was made, either by you, or somebody at RCS --

16 A: Yes.

17 Q: -- to Department of Health to address her nursing  
18 license?

19 A: Yes.

20 Q: Okay. And that was based on the information you  
21 gathered in the -- the part of -- your fall 2010  
22 investigation into the morphine issue?

23 A: Yes.

24 Q: The Resident Client Protection Program and Residential  
25 Care Services are both within DSHS, is that correct?

1 A: Yes.

2 Q: And are they on the same level, or different levels --

3 JUDGE PINKETT: What do you mean by levels?

4 Q: Is one higher than another? Does one have more  
5 authority, or are they just simply different missions, and  
6 overlap occasionally?

7 A: Different missions (Inaudible).

8 Q: Um, but you don't -- Resident Client Protection doesn't  
9 supervise RCS, or vice versa?

10 A: No.

11 Q: Okay.

12 JUDGE PINKETT: Well, if it's part of RCS --

13 A: They're both part of RCS. They both -- within  
14 Residential Care Services, there would be two branches.

15 Q: Okay.

16 A: And they just, quite simply, have different  
17 jurisdictions, but they may have overlapping  
18 investigations.

19 Q: Okay. So both the part that you work for, and Resident  
20 Client Protection Program is within RCS?

21 A: Yes.

22 Q: Okay. And it's safe to say that your investigation  
23 preceded Resident Client Protection Program?

24 A: Yes.

25 Q: And you wrote a Statement of Deficiencies?



1 A: Correct. Yes, I did.

2 Q: You, uh -- I spoke with Ms. Coats-McCarthy.

3 A: Uh-huh.

4 Q: Ms. Peterson had intended to include the Statement of  
5 Deficiencies as Department Exhibit -- I believe three or  
6 four. And it has been duplicated and left off. Um, it  
7 attached to the settlement, and so we would ask that you  
8 can refer to the plan of -- Statement of Deficiencies  
9 that's included in the settlement.

10 JUDGE PINKETT: Okay. It needs to be marked and  
11 admitted as an exhibit if it's going to be referred to.

12 MS. COATS-MCCARTHY: Your Honor, I'd be happy for the  
13 settlement agreement to be marked and admitted as an  
14 exhibit in this hearing.

15 MR. LEARY: No objection.

16 JUDGE PINKETT: Um, that might be just the easiest  
17 way. Let me review. Okay. What I have attached to the  
18 settlement agreement is, um, a three-page Statement of  
19 Deficiencies with a completion date of November 2nd signed  
20 by Ms. Rasmussen on November 4, 2010. Um, I'm going to  
21 hand this to -- I'm going to mark it as proposed Exhibit  
22 Thirteen.

23 MS. COATS-MCCARTHY: Your Honor, if I -- I may be so  
24 bold, if you could just mark the entire settlement  
25 agreement.

1 JUDGE PINKETT: I'm not including the settlement  
2 agreement.

3 MS. COATS-MCCARTHY: Okay. That's fine.

4 JUDGE PINKETT: It's totally irrelevant what happened  
5 on that case.

6 MS. COATS-MCCARTHY: Okay. That's fine.

7 JUDGE PINKETT: So I'm going to mark the factual  
8 document as an exhibit for identification, and hand it to  
9 Ms. Ander, and have her review it.

10 Q: Do you recognize Exhibit Thirteen?

11 A: I do.

12 Q: What is Exhibit Thirteen?

13 A: Exhibit Thirteen is the Statement of Deficiencies for -  
14 - for Bellevue Rose Adult Family Home of November 2, 2010,  
15 investigation date 10/13/2010.

16 JUDGE PINKETT: So that is your report, ma'am?

17 A: Yes, it is.

18 JUDGE PINKETT: Okay. And neither one of you object  
19 if it's admitted?

20 MS. COATS-MCCARTHY: No objection.

21 JUDGE PINKETT: Okay. So thirteen is admitted.

22 Q: And you cited two Washington Administrative Code  
23 deficiencies, correct?

24 A: Yes.

25 Q: Um, one being the ability to provide care and services,

1 and the second being medication disposal, is that correct?

2 A: Yes.

3 Q: Um, you have a whole host of citations that you can  
4 cite to, if appropriate, correct?

5 A: Yes.

6 Q: And so if a provider steals money from, um, a resident,  
7 what would be a revocation for theft?

8 A: That --

9 Q: Well, I'm not -- not the specific numbers, but do you  
10 know, would cite the same care and services?

11 MS. COATS-MCCARTHY: Your Honor, I'm going to object  
12 at this point to relevance of this line of questioning.  
13 Um, we're not talking about the licensing investigation,  
14 uh, and I -- I believe it's already been stated with RCPP  
15 Program and the licensing aspect, uh, are different, and  
16 have separate missions.

17 JUDGE PINKETT: Okay. So -- the question -- just a  
18 second. The question posed was if, uh, a licensee steals  
19 money, um, from a resident, what WAC section would you  
20 cite. And I did not -- I should have said I'm objecting to  
21 asking Ms. Ander that question. Um, she is not a -- first,  
22 I suspect she hasn't memorized the entire, uh, chapter, but  
23 also, you're asking her for information that I don't think  
24 would be relevant to me. Is the question you wanted to  
25 pose, if a client steals money from a resident, can she be

1 cited for that as a licensing violation? And then I'll  
2 deal with your objection.

3 Q: The heart of my question is in terms of your  
4 investigation, Ms. Ander, is -- was this dealt with in  
5 terms of being a theft, or was this in response to, um, her  
6 use of the morphine?

7 MS. COATS-MCCARTHY: Objection. Relevance.

8 Q: It's a -- they are both part of DSHS. They have  
9 differing approaches. Ms. Ander testified that she had  
10 questions -- well, she testified on direct she had  
11 questions as to whether or not this was a -- a case of  
12 theft in terms of narcotic dependence, and she had  
13 concluded that it wasn't, and I'm following up on that line  
14 of questioning.

15 JUDGE PINKETT: She used the term drug diversion,  
16 which I didn't understand what that meant. So why don't we  
17 have her define that.

18 Q: Okay.

19 JUDGE PINKETT: What is drug diversion?

20 A: Drug diversion is where you use prescribed medications  
21 fro one person for your -- a -- a different use. So the  
22 kinds of examples of drug diversion that exist are that if  
23 somebody's a -- a patient is prescribed a narcotic  
24 medication for pain, and then you divert, or use their  
25 medication to your own use, or you divert, and you take

1 that medication and sell it.

2 JUDGE PINKETT: Okay. Just a second. And is drug  
3 diversion a term of -- used in the nursing profession?

4 A: Yes.

5 JUDGE PINKETT: Okay. Just a second. So your  
6 response to the question was that it's irrelevant.  
7 Correct, Ms. Coats-McCarthy?

8 MS. COATS-MCCARTHY: Yes, Your Honor -- Your Honor.

9 JUDGE PINKETT: Um, I don't think it's relevant to me  
10 whether or not what's alleged here was financial exploit --  
11 when what's alleged is, is this financial exploitation, I  
12 don't think it's relevant to me to hear Ms. Ander testify,  
13 uh, about, um, what she might have done. I think, uh, I'm  
14 going to sustain the objection, and -- but I'll ask Ms.  
15 Ander this. Did you think you did a thorough investigation  
16 --

17 A: Yes.

18 JUDGE PINKETT: -- of the facts alleged?

19 A: Yes.

20 JUDGE PINKETT: And is it your job as a complaint  
21 investigator for boarding homes and adult family homes,  
22 after completing an investigation, to make sure that all of  
23 the licensing regulations that pertain to adult family  
24 homes, if they have been violated, that you note that? So  
25 if a -- if -- if -- is that a yes?

1 A: Could you repeat the question?

2 JUDGE PINKETT: When you go in to -- to conduct an  
3 investigation, and you find that there have been fifteen  
4 violations of the regulations, would cite all of them, or  
5 only some of them?

6 A: I do not cite all of them. I only cite some of them.

7 JUDGE PINKETT: And why is that?

8 A: For a -- a variety of reasons. One is that there are  
9 sometimes overlapping regulations, and so for example,  
10 there's a -- several regulations that speak to a negotiated  
11 care client --

12 JUDGE PINKETT: Right.

13 A: -- et cetera. So I might pick one. I also -- we try  
14 to stick to the heart of the matter, and there's always, in  
15 the department, this struggle between documenting it  
16 appropriately for the appropriate regulation versus  
17 documenting it thoroughly for all the regulations. And the  
18 pendulum swings back and forth whether we cite everything,  
19 or do we just stick to what the -- you know, what the  
20 bigger issue is.

21 JUDGE PINKETT: When you're trying to revoke a  
22 license, are you telling me -- is your testimony that in a  
23 revocation action (Inaudible) would not cite everything  
24 that has been violated?

25

1 A: That's correct. Sometimes because -- I'll tell you why  
2 is that sometimes in a revocation is that if -- if I have  
3 20 citations, and you get a 25-page doc, and some of them  
4 are -- there's not a signature on the care plan --

5 JUDGE PINKETT: Uh-huh.

6 A: -- and some of it is (Inaudible). And then you have  
7 major care violations, the care violations get lost with  
8 all that other diddly stuff. So sometimes we just get  
9 right to the heart of the matter.

10 JUDGE PINKETT: Okay.

11 A: So that's one reason. The other thing is that there's  
12 a -- there's a timeframe because we don't want to spend a  
13 month writing up a very, very thorough Statement of  
14 Deficiencies to cite everything possible because you have  
15 to take the action in a timely manner.

16 JUDGE PINKETT: Okay.

17 A: And it's not that you can work on one case at a time.

18 JUDGE PINKETT: Right.

19 A: It's multiple cases. The other piece is that the --  
20 the strength of those revocations was about their  
21 provider's emotional stability in relation to a -- a  
22 variety of things, but these multiple (Inaudible) that this  
23 -- unable to have adequate coping that isn't healthy, and  
24 for care of the vulnerable adult, as well as the misuse of  
25 resident property.

1 JUDGE PINKETT: Uh-huh.

2 A: So -- no -- could I have cited that? I suppose I  
3 could.

4 JUDGE PINKETT: And what would the citation have been?

5 A: It would have been a -- a resident rights violation..  
6 And I can't tell you which one --

7 JUDGE PINKETT: Okay.

8 A: -- at this time, but I had a --

9 JUDGE PINKETT: That's okay. I don't expect you to  
10 memorize the chapter.

11 A: Okay.

12 JUDGE PINKETT: Um, just a second.

13 A: I can tell you sometimes I'll write a -- a revocation  
14 Statement of Deficiencies, and I'll put in the kitchen sink  
15 --

16 JUDGE PINKETT: Uh-huh.

17 A: -- is what I call it. I put every -- write everything  
18 up, and then I let headquarters decide what they're going  
19 to take out -- narrow it down.

20 JUDGE PINKETT: Because you, um, stated that you, um -  
21 - you wrote your Statement of Deficiencies, and it -- then  
22 you sent it up -- your -- to your supervisors, and then it  
23 came back to you for revisions, correct?

24 A: Correct.

25 JUDGE PINKETT: And I noted that -- note -- noted that



1 Ms. Rasmussen's signature is the signature on -- on the  
2 Statement of Deficiencies. Is that correct?

3 A: That is correct.

4 JUDGE PINKETT: And don't you also sign it?

5 A: I don't.

6 JUDGE PINKETT: Okay. Um,

7 A: I can tell you why.

8 JUDGE PINKETT: I'm assuming you're not supposed to,  
9 but that's okay. All right. So I sustain the Department's  
10 objection with regard to on -- on asking Ms. Ander, um --  
11 what was the question?

12 Q: I can --

13 JUDGE PINKETT: Yeah, you --

14 Q: -- move on.

15 JUDGE PINKETT: Yeah.

16 Q: To your -- best of your recollection, Ms. Ander, were  
17 any citations removed from this Statement of Deficiencies?

18 A: I don't recall.

19 Q: Um, I want to talk about the morphine prescribed to  
20 residents only. You described it as a liquid in a bottle,  
21 correct?

22 A: Yes.

23 Q: And you said 15 cc had been dispensed. Was that by the  
24 pharmacy?

25 A: Yes.

1 Q: Or whoever provided it?

2 A: Correct. The provider.

3 Q: Okay. And so you weren't able to tell exactly how much  
4 had been taken out?

5 A: Correct.

6 Q: But it appeared to you that approximately one cc was  
7 missing?

8 A: It's feasible that one cc could be missing.

9 Q: Okay. And so that, um -- I'm just trying to get a  
10 sense of -- so when you look at the bottle, it was  
11 prescribed as a 15 cc dose?

12 A: No.

13 JUDGE PINKETT: No.

14 Q: Or a -- a 15 -- a 15 cc amount total in the bottle?

15 A: Correct.

16 Q: Okay. And could you estimate how much was left in the  
17 bottle? I mean, was it half full, a quarter full, only  
18 approximately one cc missing?

19 A: It was more like only one cc missing. And remember  
20 when I saw it, this is at the -- before I had spoken with  
21 Ms. Gradinaru, but it looked like 15 cc were dispensed, and  
22 it was -- I couldn't see that there was a lot missing.

23 Q: Okay.

24 A: There was no -- there as no way to tell that without  
25 pouring it out, and measuring it, and then you'd -- it

1 clings to the side of the jar. It was -- I mean, if you  
2 poured it into a medicine cup to sort of look at it, you're  
3 going to lose a few drops, and it's too -- I was -- was not  
4 going to do that.

5 Q: Okay. It wasn't an empty bottle?

6 A: No, it was not.

7 Q: Okay. Um, and you indicated that you felt that this  
8 was not a drug diversion? And so what did you mean by  
9 that?

10 A: When I think of drug diversion, which was the -- the --  
11 my initial thought about what could be going on, and why a  
12 provider would use a resident's medication, generally  
13 speaking, there's issues of addiction, or as I mentioned,  
14 selling, or diverting that medication for a friend, or  
15 family member. So it's -- it's -- they -- by diversion I  
16 mean using that medication for your own gain. I suppose  
17 that this could qualify for a diversion because it's taking  
18 a prescribed medication for one person, and using it for  
19 your own personal gain.

20 JUDGE PINKETT: Is killing yourself a gain?

21 A: It is a --

22 JUDGE PINKETT: Would any doctor think that -- use  
23 that term for committing suicide? That the patient is  
24 gaining something by doing that?

25 A: I t

1 think she was gaining -- she was treating her psychic pain?

2 JUDGE PINKETT: In a suicide attempt?

3 A: Yes.

4 JUDGE PINKETT: And do you think any medical  
5 professional would describe, uh, trying to kill yourself as  
6 personally trying to gain something?

7 A: Psych relief. Yes.

8 JUDGE PINKETT: That isn't the question that I asked  
9 you.

10 A: Oh, I'm sorry.

11 JUDGE PINKETT: Do you think any medical person,  
12 nurse, doctor, would consider someone who tried to kill  
13 themselves with that act, uh, by ingesting medication, was  
14 a gain to the patient, medically speaking?

15 A: Well, it's not a gain medically because you wouldn't  
16 cease and desist.

17 JUDGE PINKETT: Yeah.

18 A: It's not that you're gaining, but in treating your  
19 psychic pain, that's what you're attempting to do. You're  
20 -- you're --

21 JUDGE PINKETT: I'm talking --

22 A: -- obtaining relief.

23 JUDGE PINKETT: -- specifically in terms of medical  
24 gain.

25 A: A physical --

1 JUDGE PINKETT: Is there a medical gain to trying to  
2 kill yourself in any doctor or nurse term -- trying to kill  
3 yourself as trying to gain something where you would gain  
4 medically not psychically? Because that's subjective to  
5 the patient, isn't it?

6 A: It -- it is.

7 JUDGE PINKETT: Treating psych (Inaudible) objective  
8 to the patient. Would you agree?

9 A: Well, psychic --

10 JUDGE PINKETT: Would a psychiatrist say that that was  
11 a psychic gain for the patient to try to kill his or  
12 herself? A psychiatrist?

13 A: You know, I'm going to speak for myself. I'm a -- I'm  
14 a registered nurse, and in terms of my experience, is that  
15 people use drugs to treat psychic pain. And --

16 JUDGE PINKETT: I'm saying, as a registered nurse, if  
17 you had a patient who tried to kill him or herself, would  
18 you, as a nurse, say that this would be a medical gain for  
19 the patient?

20 A: It's not a medical gain.

21 JUDGE PINKETT: Okay. So it's --

22 A: To treat --

23 JUDGE PINKETT: What the -- what the person is trying  
24 to do, that's subjective to them, but as an objective  
25 medical provider -- as a nurse, in your profession, would

1 you view that as a medical gain for the patient?

2 A: I'm not trying to be difficult, but you've got to  
3 understand a lot of people when they're in terrible pain, I  
4 -- and like -- they feel that they're gaining from  
5 committing suicide.

6 JUDGE PINKETT: That's subjective. As the nurse, if  
7 you had a patient -- I don't know what the law is in  
8 Washington now. If you had a patient who said, "I'm in  
9 physical pain, and psychic pain, can you OD me on morphine  
10 -- morphine, so I can be out of my pain," would you do --  
11 could you do it?

12 MS. COATS-MCCARTHY: I'm going to object as to  
13 relevance.

14 JUDGE PINKETT: Well, I'm trying to get Ms. Ander to  
15 testify as to not the subjective state of the patient, but  
16 as a nurse, who was given this information, would you, as a  
17 nurse, say that that's a medical gain for the patient?  
18 Medically?

19 MS. COATS-MCCARTHY: She's --

20 JUDGE PINKETT: No. I'm overruling you. I hear your  
21 objection. She testified that she supposed it could be a  
22 gain. So my question of her is, as a nurse, if you had a  
23 patient who tried to kill him or herself because they were  
24 in psychic pain, could you, as a medical professional say,  
25 "Well, that's a medical gain for that patient. The patient

1 has gained medically by doing that."

2 A: No, they're not gaining medically.

3 JUDGE PINKETT: Okay.

4 Q: And so in your investigation, you had no evidence that  
5 Ms. Gradinaru was selling the morphine, correct?

6 A: Correct.

7 Q: And no information that she had a -- a previous  
8 addiction to the morphine?

9 A: Correct.

10 Q: And no indication that she was selling it, or trading  
11 it, or providing it to friends, or family members, correct?

12 A: Yes.

13 Q: And there was no indication that she was terminally  
14 ill, um, and that this was a -- a treatment for, you know,  
15 terminal illness?

16 A: Correct.

17 Q: All the information that you received indicated that  
18 this was a suicide attempt, correct?

19 A: Yes. Well, when you say all information, the medical  
20 records (Inaudible), her medical providers talk about a  
21 suicidal gesture -- gesture. Ms. Gradinaru would talk  
22 about the physical pain. And she said her physical -- she  
23 often has physical pain when she's stressed.

24 Q: And she had been admitted psychiatrically to the  
25 hospital after the event?

1 A: Yes.

2 Q: For suicidal ideation?

3 A: Yes.

4 Q: And the records talk specifically about an attempt to  
5 commit suicide using the resident's morphine, correct?

6 A: Yes.

7 Q: No further questions.

8 JUDGE PINKETT: Redirect?

9 MS. COATS-MCCARTHY: Yes, Your Honor.

10 REDIRECT EXAMINATION

11 BY MS. COATS-MCCARTHY:

12 Q: Ms. Ander, the Judge was using the term medical gain  
13 with you. When you hear the term medical gain, what were  
14 you defining that as, when you answered the question?

15 A: Generally speaking medical care is meant to -- to  
16 restore a person to health for the -- the optimum health  
17 that they can achieve, given their medical condition. And  
18 so that's why I was struggling with answering the question.  
19 It's because sometimes with a treatment it's supposed to be  
20 -- or sometimes you don't know if the disease is worse than  
21 medical treatment, but the attempt is always to gain health  
22 --

23 Q: Okay.

24 A: -- or remission of symptoms, or to feel better somehow.  
25 And so what -- is it a medical gain to die? I -- I -- for



1 some people, I suppose that they think so, and the Judge  
2 suggested that that's perhaps a -- a subjective feeling.  
3 But the goal of medical treatment is to, as I said,  
4 mitigate symptoms, restore health. Sometimes palliative  
5 care, which -- which just helps the person be comfortable.  
6 So, uh, it -- it -- that's why it's very, very difficult to  
7 answer that.

8 Q: Now, is there a medical gain for using, uh, illegal  
9 drugs like cocaine?

10 A: No. That would be other -- other things, but the way  
11 people use drugs, as -- in the addiction arena is that  
12 they're -- no, it's not a medical gain at all. I -- it --  
13 (Inaudible) your health, as well as your psychological  
14 life.

15 Q: Now, in terms of, um -- in your answer to the question  
16 about all the information you received, you went through  
17 and talked about what was in the hospital records,  
18 references (Inaudible), and then you said that the, uh --  
19 Ms. Gradinaru talked about physical pain.

20 A: Yeah.

21 Q: Okay. Could you please state exactly what Ms.  
22 Gradinaru told you about physical pain?

23 A: Ms. Gradinaru said that she had terrible pain, uh, from  
24 the pancreatitis, and that she just wanted her pain to  
25 stop. And that when you're feeling good you don't -- can't

1 imagine if you're feeling bad -- when you're feeling you  
2 want to do anything you can to feel better. She talked  
3 about -- she -- she alternated with --

4 JUDGE PINKETT: Can I interrupt -- I'm -- I'm sorry.  
5 My exhibit list --

6 A: In -- in talking about her pain, it was very intermixed  
7 with psychic as well as the physical pain. You know, when  
8 I -- when I first spoke to her on the phone, she said, "I'm  
9 just having so much trouble with the divorce." And then  
10 she talked about the physical pain. And then she -- and it  
11 -- and it would back and forth, and it -- it was all mixed  
12 together. And at one of our conversations she said, "When  
13 I have -- when I'm emotionally upset -- when I'm stressed,  
14 I have physical pain. I feel it physically." And she  
15 talked about feeling better in the mental health treatment  
16 ward. She talked about, "I feel physically better. I  
17 don't have as much pain."

18 Q: When you were having this conversation with her about  
19 the pain, when was it relative to, um, Ms. Gradinaru's  
20 treatment at the, uh, mental health -- her mental health x?

21 A: Well, I -- I spoke to her twice on -- on the 18th, the  
22 -- the day she was going through the --

23 JUDGE PINKETT: Excuse me, would that be the 18th of  
24 October?

25 A: Yes. October 2010. So I talked to her then. I talked

1 to her several days later. So I talked to her two different  
2 times about -- about her pain -- could you repeat the  
3 question, please?

4 Q: What -- when did you talk with her about her pain  
5 relative to her, um, inpatient mental health treatment?

6 A: Um, well, I talked to her at both times. I think there  
7 was a second conversation when she talked about what I said  
8 in my last testimony. You know, her psychic pain, and her  
9 -- her physical pain are very intermixed. But in both  
10 conversations we had, both elements were present.

11 Q: No further questions.

12 JUDGE PINKETT: Recross?

13 MR. LEARY: None, Your Honor.

14 JUDGE PINKETT: All right. Thank you, Ms. Ander.

15 A: Thank you.

16 JUDGE PINKETT: Do both of you have copies of Exhibit  
17 Thirteen?

18 MR. LEARY: I do.

19 MS. COATS-MCCARTHY: I do not, Your Honor.

20 JUDGE PINKETT: I'll make a copy.

21 MS. COATS-MCCARTHY: Thank you, Your Honor.

22 JUDGE PINKETT: Did you wish to call Ms. Moran at this  
23 time?

24 MS. COATS-MCCARTHY: Yes, Your Honor.

25 JUDGE PINKETT: Ms. Moran?

1 MS. MORAN: Is it -- is it better just to tuck that  
2 down?

3 JUDGE PINKETT: It is. Uh-huh.

4 MS. MORAN: Okay. (Inaudible) we should have been.

5 JUDGE PINKETT: Could you raise your right hand,  
6 please? Do you swear or affirm the testimony given today  
7 will be the truth?

8 MS. MORAN: I do.

9 JUDGE PINKETT: Okay.

10 DIRECT EXAMINATION

11 BY MS. COATS-MCCARTHY:

12 Q: Ms. Moran, can you please state and spell your name for  
13 the record?

14 A: Mary Moran, M-A-R-Y M-O-R-A-N.

15 Q: Ms. Moran, where are you currently employed?

16 A: With the Resident and Client Protection Program.

17 Q: What are your job duties at the Resident Client  
18 Protection Program?

19 A: I'm an investigator.

20 Q: What are your job duties as an investigator?

21 A: Um, I investigate individuals who have an allegation  
22 of, um, abuse, neglect, exploitation, or financial  
23 exploitation against them.

24 Q: What are your qualifications for your position?

25 A: Um, well, I have, um -- so prior to this position, I,

1 um, worked at an intermediate care facility for, um, the  
2 severely diagnosed developmentally disabled and mentally  
3 ill patients for 20 years. And I, um -- I was an  
4 administrator there, and I did, uh -- uh, a lot of my work  
5 involved, um, in-house facility investigations.

6 Q: How long have you been doing investigations for the  
7 Resident Client Program Protection Program of abuse,  
8 neglect, and exploitation?

9 A: Since 2004.

10 Q: How many investigations would you estimate that you've  
11 done on abuse, neglect, and exploitation?

12 A: Well, I don't have a count, but, um, it seems like  
13 thousands. But I would say rough -- 1000 would be close.

14 Um, I'm not sure.

15 Q: Now, when you -- are you familiar with Estera  
16 Gradinaru?

17 A: Yes.

18 Q: How are you familiar with her?

19 A: Um, I received a -- a complaint that was assigned to me  
20 through my field manager, and it had come into the  
21 complaint resolution unit.

22 Q: Okay. Now, what was, uh, the complaint that you were  
23 starting to investigate?

24 A: Um, that, uh, Ms. Gradinaru was the, uh -- she had an  
25 allegation against her of, um, financial exploitation for

1 taking a resident's morphine.

2 Q: When, um -- how did you investigate this allegation?

3 A: Um, well, I, um -- a (Inaudible), uh, was planned, um,  
4 and I went on-site, which means to the adult family home  
5 itself. Um, and I -- I interviewed Ms. Gradinaru in  
6 person. Her father was there, um -- uh -- uh, he was -- he  
7 was in the home supervising the two caregivers that were  
8 also present. And so I interviewed him as well, and the  
9 two caregivers. And during the -- my time in the home, um  
10 -- the, um, hospice nurse came by for a visit. And so I  
11 interviewed her as well. Um, I obtained, uh, (Inaudible)  
12 to the, um -- Elaine -- she's the resident -- her medical  
13 records, and various other documents in the home that were  
14 relevant to the investigation.

15 Q: Now, could you please -- uh, when you interviewed the -  
16 - what did you learn from your interview of the hospice  
17 nurse?

18 A: Well, the -- I was actually really -- reviewing records  
19 at the time when the hospice nurse came into the home, and,  
20 um, Ms. Gradinaru had told her that she was being  
21 investigated, um, by me. And, uh, so the group health  
22 nurse came -- came to me, and she told me that -- you know,  
23 she was curious as to why I was there. So I took that  
24 opportunity to, um, interview that nurse, who had -- went  
25 with me to the medication area, and that's where she

1 discovered the, um, vial -- or bottle -- of the liquid  
2 morphine, and the seal had been broken. And she wasn't  
3 aware of the incident beforehand because this particular  
4 resident hadn't required the use of the morphine, and had -  
5 - had she required it, um, group health hospice nurses  
6 wanted to be notified. And they hadn't been notified.

7 Q: Now, did you actually see the, uh -- the vial with the  
8 morphine in it?

9 A: I did.

10 Q: Okay. And did you observe the broken seal?

11 A: I did.

12 Q: Okay. Now, you said that you spoke with Ms. Gradinaru  
13 in person?

14 A: I did.

15 Q: What did Ms. Gradinaru tell you about the incident you  
16 were investigating?

17 A: Um -- uh, well, she had told me that, um, she was in  
18 pain because of her, um, pancreatitis, and, um, depression  
19 -- that she was experiencing depression because her ex --  
20 her ex -- well her husband had left her a year ago, and she  
21 was -- she was distraught over the divorce proceedings, and  
22 that she was having an upcoming -- licensing was coming to  
23 do a review, and she had asked her ex-husband to, um,  
24 assist her in preparing for that. And he said no. She was  
25 upset because he had left her with some household accounts,

1 and they had two -- two daughters. Um, and she had also  
2 explained to me there, um -- she had an, uh -- I'm sorry, I  
3 can't remember the exact date, but she had attempted to  
4 commit suicide during this whole divorce, but she had taken  
5 her own narcotic medication, and she was seeing a mental  
6 health therapist, and taking anti -- um, depressant  
7 medication, but then in December of 2009 her insurance had  
8 run out, so she stopped both the therapy, and the  
9 depression medication. Um, she explained that, um, the  
10 morning of October 9, um, she had taken the vial of, um,  
11 morphine from the medication cabinet from Elaine's  
12 particular medication. And she put it in her pocket. And  
13 she had discussed with her father over the phone, who was  
14 also an adult family home provider in -- in the  
15 neighborhood, um, that she was going to the pharmacy, and  
16 she had said that he had asked her if he could borrow  
17 morphine for one of his residents. So she went over to his  
18 house, and -- and -- and then she had told me that her  
19 father said, "No. No. It's -- she misunderstood on that,  
20 that's not what" -- he didn't want the morphine. And so  
21 she (Inaudible), and she was going to the pharmacy, and on  
22 the way she stopped at the Park and Ride, and she was upset  
23 about -- with her ex-husband, that he wasn't helping her  
24 with this inspection that was forthcoming. So she had said  
25 that she, um -- she poured some of the morphine into the



1 cap, and, um -- and she took it, and it tasted very bitter.  
2 And she had texted her ex-husband asking if she could go to  
3 his apartment to sleep it off, and he said no. And he  
4 didn't want to help her. Um, and so she tried to sleep in  
5 the car, and she had assumed that her ex-husband must have  
6 called her dad, because her father arrived at the Park and  
7 Ride, and he told her, um, according to her, that he had  
8 asked her to follow him to his home. And she did, and she  
9 proceeded to get -- she -- she was in a lot of pain, and  
10 she had said she passed out, and her brother came, and took  
11 her to the emergency room.

12 Um, and Ms. Gradinaru could -- she couldn't remember  
13 if she had told the emergency room staff that it was an  
14 attempt at suicide or not.

15 Q: After your investigation, did you write a report  
16 memorializing it?

17 A: I did.

18 Q: Okay. Could you please turn to Exhibit Eight? Do you  
19 recognize this document?

20 A: I do.

21 Q: Is this -- what is it?

22 A: This is my investigator's report.

23 Q: Is this report an accurate, uh, summary of your  
24 investigation?

25 A: Is it -- well, there -- there are two, um, summaries,

1 which the (Inaudible) and I apologize for them, but I'll be  
2 happy to send them out.

3 Q: Okay. Can you please point out those two inaccuracies?

4 A: Yes. On page two --

5 Q: Uh-huh.

6 A: -- where it says it's the -- there's an italicized, uh,  
7 statement --

8 Q: Uh-huh.

9 A: -- meaning that the person wasn't interviewed, but I  
10 had come upon a statement. And I attributed this to -- as  
11 an excerpt from the hospital social worker's statement of  
12 10/12, um, but it -- it really was Katherine Ander, the,  
13 um, facility practice investigator.

14 JUDGE PINKETT: So the excerpt is from Katherine  
15 Anders Statement of Deficiencies?

16 A: No, it's from the complaint -- from the complaint  
17 resolution unit. Um, the -- the social worker from the  
18 hospital was the original complainant on this case, and on,  
19 um, 10/19 -- it -- it's a running narrative of what this  
20 person is, um, alleging had happened. And, um, on the  
21 second or third page of that same complaint, there was a --  
22 a supplemental by Katherine Ander on 10/19. And it was  
23 actually, um -- this is what she had stated to, um, CRU  
24 when she made the referral to RCPP.

25 JUDGE PINKETT: So Katherine Ander made a referral to

1 RCCP, and in the referral to the complaint -- that came  
2 through the Complaint Resolution Unit -- so her referral  
3 was through CRU, correct?

4 A: Correct.

5 JUDGE PINKETT: Okay. Just a second. And was it a  
6 written referral?

7 A: Um, no. Uh, well, um --

8 JUDGE PINKETT: Or is this --

9 A: It -- it was a --

10 JUDGE PINKETT: -- what a secretary at CRU wrote down?

11 A: No. So what happened was, um, the original complaint  
12 was with the social worker, and there's a narrative that's  
13 attached of what the social worker was alleging happened.

14 JUDGE PINKETT: Right. It's -- I'm a little bit  
15 familiar, uh, with this process. A person calls in CRU  
16 hotline, correct?

17 A: Correct.

18 JUDGE PINKETT: So that's staff who takes the call,  
19 and types it up, correct?

20 A: Correct.

21 JUDGE PINKETT: So that creates the written document  
22 you're referring to, correct?

23 A: Correct.

24 JUDGE PINKETT: In that written document, there's an  
25 addendum where Katherine Ander called in?

1 A: Yes. What she had done is she had -- I believe she had  
2 emailed, um, the director of the Complaint Resolution Unit  
3 to provide this supplemental information, and to have it  
4 referred to the Resident and Client Protection Program.

5 JUDGE PINKETT: So she emailed the Complaint  
6 Resolution -- Resolution supervisor, then you believe the  
7 supervisor cut and pasted her email onto this narrative?

8 A: That is that they typically do.

9 JUDGE PINKETT: Okay. But you're not sure on this  
10 case?

11 A: I -- sometimes they -- they -- I looks exactly like the  
12 email, and sometimes it's just the narrative of the email.

13 JUDGE PINKETT: Okay.

14 A: And --

15 JUDGE PINKETT: Just a second.

16 A: Okay. I do recall that this particular time it was not  
17 a cut and paste. It was the narrative of the email.

18 JUDGE PINKETT: Okay. So that suggests to me that the  
19 supervisor, then, copied what Katherine Ander wrote to her  
20 onto the -- as an addendum onto the complaint that was  
21 originally called into the hospital social worker?

22 A: Correct.

23 JUDGE PINKETT: (Inaudible) assigned?

24 A: Correct.

25 JUDGE PINKETT: Okay. Just a second. All right.

1 Q: So Ms. Moran, if I can --

2 JUDGE PINKETT: Go ahead.

3 Q: -- make sure that I understand these corrections.

4 Looking at page two of Exhibit D8, were the -- is it --

5 based on what you testified, should it be corrected to say,

6 "Excerpt from, uh, the CRU report of Katherine Ander," and

7 the date should be changed to October 19, 2010?

8 A: That's correct.

9 Q: Okay. Any other changes that need to be made to the  
10 accuracy of this report?

11 A: Yes. So on, um, page five --

12 Q: Uh-huh.

13 A: -- under the identification list, it's sort of -- it's

14 should say, um, Katherine Ander in that area after

15 (Inaudible).

16 Q: Uh-huh.

17 A: Katherine Ander was the, uh, complaint investigator for

18 District Two.

19 JUDGE PINKETT: That's DSHS when you said District

20 Two?

21 A: Yeah. I'm sorry.

22 JUDGE PINKETT: No. No. No problem. Go ahead.

23 Q: Now, after you, uh, complete a report, uh, what happens

24 next?

25 A: Um, I, um, submit it to my field manager for review.

1 And, um, she may or may not ask for additional information  
2 or clarification, um, and then it is, um, reviewed by our  
3 quality assurance administrator, and he makes the  
4 determination if this should be a preliminary (Inaudible).

5 Q: Well, on the front page of your report this area that -  
6 - that says, "Recommendation." Do you see where I'm --

7 A: I do.

8 Q: Okay. Who makes this recommendation?

9 A: I do.

10 Q: What was your recommendation in this case?

11 A: Um, to have a, um, finding -- finding for financial  
12 exploitation.

13 Q: What was the basis for your recommendation?

14 A: Um, well, the basis of it was, um, based on -- on the  
15 investigation, and, um, the -- the definition of financial  
16 exploitation, I felt that it fit the definition because,  
17 um, it is to me -- financial exploitation is the illegal or  
18 improper use of property, income, resources, et cetera of a  
19 -- of a vulnerable adult by any person for that person's  
20 profit or advantage, other than the vulnerable adult's  
21 profit or advantage, and the -- the -- there was no profit  
22 or advantage to the vulnerable adult.

23 Q: Okay. When you, um -- well, have you investigated  
24 other cases that involve -- well, actually, Kathy Ander  
25 used the term drug diversion.

1 A: Yes.

2 Q: Okay. And you heard her definition of it?

3 A: Yes.

4 Q: Okay. Now, when you, uh, have other cases where  
5 individuals have taken medication that belonged to  
6 residents for their own use, is it typical that it's cited  
7 under financial exploitation?

8 MR. LEARY: Objection. That's irrelevant.

9 JUDGE PINKETT: Just a second. I have to think. Um,  
10 Ms. Coats-McCarthy, we are -- it -- it seems like, um, part  
11 of the case that Ms. Gradinaru's trying to -- to use that  
12 this is unusual, or somehow unheard of that, uh -- uh,  
13 finding a financial exploitation would be for someone who  
14 takes a resident's medications for their own use. And, um,  
15 the position of the Department would be that that's not  
16 atypical, and in fact typically what happens in cases like  
17 that.

18 Q: Um' --

19 MR. LEARY: Your Honor?

20 JUDGE PINKETT: I'm sustaining the objection.

21 Q: Ms. Moran, at any time in the course of your  
22 investigation, did Ms. Gradinaru claim that she did not  
23 take the -- the morphine?

24 A: No, she admitted that she took the morphine.

25 Q: After, uh, you made your recommendations -- or what was

1 the ultimate, uh, outcome of your recommendation?

2 A: Um, that it was a -- a breach of (Inaudible) for  
3 financial exploitation.

4 Q: Could you please turn to Exhibit D7? Do you recognize  
5 this document?

6 A: I do.

7 Q: Okay. What is it?

8 A: It's the Notice of a Preliminary Finding.

9 Q: Who is this Notice to?

10 A: Ms. Gradinaru.

11 Q: Could you please turn to Exhibit D9? Do you recognize  
12 this document?

13 A: I do.

14 Q: Okay. And what is this particular document?

15 A: It's, uh, Ms. Gradinaru's Request for a Hearing.

16 Q: I have no further questions at this time.

17 JUDGE PINKETT: Mr. Leary?

18 MR. LEARY: Thank you, Your Honor.

19 CROSS-EXAMINATION

20 BY MR. LEARY:

21 Q: You would agree with the Appellant that there's no  
22 suggestion that she profited from the use of the morphine,  
23 correct?

24 A: I don't know if she profited or not. She had told me  
25 that she did take the morphine.



1 Q: But you don't have -- there's no evidence, that you're  
2 aware of, that -- that there as a profit -- she profited  
3 from taking the morphine?

4 A: Well, I -- I don't know how to respond to that without  
5 giving my own personal opinion, or a --

6 Q: Well, I'm looking at -- you cited her for financial  
7 exploitation.

8 A: Uh-huh.

9 Q: And the end of the definition says, uh, "For the  
10 person's profit or benefit." You're not asserting that she  
11 profited from the morphine, are you? She didn't sell it.

12 A: No, I -- I'm asserting that the vulnerable adult in  
13 this case certainly didn't profit (Inaudible) by her taking  
14 --

15 Q: Okay.

16 A: -- that person's medication.

17 Q: Okay. Now, you saw Department's Exhibit Five, correct?

18 A: I'm sorry. I don't know where it is.

19 Q: Well --

20 JUDGE PINKETT: If I -- it --

21 Q: Oh.

22 JUDGE PINKETT: Thank you. So for the record, Ms.  
23 Coats-McCarthy is showing Ms. Moran a copy of what's been  
24 admitted as D5, the medical record from Overlake Hospital  
25 dated 10/12/2010.

1 A: I did. Yes.

2 Q: Okay. And did you see that during your investigation?

3 A: Yes.

4 Q: Um, So while it's not clear whether she told the ER  
5 that there was a suicide attempt, clearly there was  
6 discussion with Overlake, as evidenced by this record of a  
7 suicide attempt, correct?

8 A: Correct.

9 Q: And that she was admitted to the psych unit because of  
10 that suicide attempt, correct?

11 A: Correct.

12 MR. LEARY: No further questions.

13 JUDGE PINKETT: Any redirect?

14 MS. COATS-MCCARTHY: No, Your Honor.

15 JUDGE PINKETT: Thank you, Ms. Moran. I guess you're  
16 not really stepping down. You're just walking around the  
17 table.

18 A. Okay.

19 JUDGE PINKETT: All right. Um, does the State rest?

20 MS. COATS-MCCARTHY: Yes, Your Honor.

21 JUDGE PINKETT: Okay. Does the Appellant --

22 MR. LEARY: Appellant rests.

23 JUDGE PINKETT: Okay. All right. Um, I've told both  
24 of your lawyers in the beginning what I see as the crux of  
25 this case. I'll be curious to read what (Inaudible). Um,

1 and I hope it's extensive.

2 MR. LEARY: How does Your Honor want that. The  
3 attorneys --

4 JUDGE PINKETT: Well --

5 MR. LEARY: -- submitting jointly --

6 JUDGE PINKETT: Yes.

7 MR. LEARY: -- response --

8 JUDGE PINKETT: Usually, I have the State submit their  
9 closing arguments, and I have -- give the Appellant --  
10 delay a day maybe a week after, and I give the State a  
11 final opportunity if they want to present a rebuttal to  
12 your closing, so that the State, since they have the  
13 burden, um, gets to have the final say. Um, and then the  
14 record will close. So I'll issue an order, setting out a  
15 timeline for when I expect these briefs to be filed. Um,  
16 that timeline really depends on what your work life looks  
17 like.

18 So I'll entertain -- I mean -- you know, up to a point  
19 of reasonableness, will entertain when -- when you think  
20 it's possible for you first, Ms. Coats-McCarthy, um, to  
21 submit. This doesn't need to be on the record since this  
22 is procedural. I'm going to go off the record. The case -  
23 - testimonial record of the case is closed.

24 (OFF THE RECORD)

25 We're back on the record. We've looked at the

1 calendar, uh, for September. The State's closing argument  
2 will be due by 5:00 p.m. on September 12, 2011. The  
3 Appellant's responsive brief will be due by September 19,  
4 2011, at 5:00 p.m., and then finally if the State has a  
5 rebuttal to file it is due September 27th by 5:00 p.m., and  
6 I'll issue an order closing the record that restates all of  
7 that. If there are problems, you just need to call  
8 Victoria Wilson, who's my scheduler, and she'll get the  
9 message to me. Talk amongst yourselves first, and then  
10 she'll get a message to me.

11 All right. If there's nothing further, we're --

12 MS. COATS-MCCARTHY: Your Honor, may I get a copy of  
13 Exhibit Thirteen?

14 JUDGE PINKETT: You didn't get it. I'll get a copy of  
15 that to you before you leave. We're -- we're done.

16 Thanks.

17 (END OF RECORDING)

18

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C E R T I F I C A T E

STATE OF OREGON            )  
                                  )  ss.  
County of POLK    )

I, the undersigned in and for the State of Washington,  
do hereby certify:

That the foregoing Audio Transcription of the above  
was transcribed under my direction; that the transcript is  
a full, true and complete transcript of the proceedings,  
including all questions, objections, motions and  
exceptions; except for those portions shown as Inaudible,  
if any;

That I am not a relative, employee, attorney or  
counsel of any party to this action or relative or employee  
of any such attorney or counsel, and that I am not  
financially interested in the said action or the outcome  
thereof; That I am herewith delivering the same to the  
Clerk of the above-entitled Court.

IN WITNESS WHEREOF, this 8th Day of June, 2012.

/s/ Marisa Walker  
Marisa Walker, Residing  
At Dallas, Oregon.

# Exhibit D

**RCW 74.34.020****Definitions.**

The definitions in this section apply throughout this chapter unless the context clearly requires otherwise.

(1) "Abandonment" means action or inaction by a person or entity with a duty of care for a vulnerable adult that leaves the vulnerable person without the means or ability to obtain necessary food, clothing, shelter, or health care.

(2) "Abuse" means the willful action or inaction that inflicts injury, unreasonable confinement, intimidation, or punishment on a vulnerable adult. In instances of abuse of a vulnerable adult who is unable to express or demonstrate physical harm, pain, or mental anguish, the abuse is presumed to cause physical harm, pain, or mental anguish. Abuse includes sexual abuse, mental abuse, physical abuse, and exploitation of a vulnerable adult, which have the following meanings:

(a) "Sexual abuse" means any form of nonconsensual sexual contact, including but not limited to unwanted or inappropriate touching, rape, sodomy, sexual coercion, sexually explicit photographing, and sexual harassment. Sexual abuse includes any sexual contact between a staff person, who is not also a resident or client, of a facility or a staff person of a program authorized under chapter 71A.12 RCW, and a vulnerable adult living in that facility or receiving service from a program authorized under chapter 71A.12 RCW, whether or not it is consensual.

(b) "Physical abuse" means the willful action of inflicting bodily injury or physical mistreatment. Physical abuse includes, but is not limited to, striking with or without an object, slapping, pinching, choking, kicking, shoving, prodding, or the use of chemical restraints or physical restraints unless the restraints are consistent with licensing requirements, and includes restraints that are otherwise being used inappropriately.

(c) "Mental abuse" means any willful action or inaction of mental or verbal abuse. Mental abuse includes, but is not limited to, coercion, harassment, inappropriately isolating a vulnerable adult from family, friends, or regular activity, and verbal assault that includes ridiculing, intimidating, yelling, or swearing.

(d) "Exploitation" means an act of forcing, compelling, or exerting undue influence over a vulnerable adult causing the vulnerable adult to act in a way that is inconsistent with relevant past behavior, or causing the vulnerable adult to perform services for the benefit of another.

(3) "Consent" means express written consent granted after the vulnerable adult or his or her legal representative has been fully informed of the nature of the services to be offered and that the receipt of services is voluntary.

(4) "Department" means the department of social and health services.

(5) "Facility" means a residence licensed or required to be licensed under chapter 18.20 RCW, assisted living facilities; chapter 18.51 RCW, nursing homes; chapter 70.128 RCW, adult family homes; chapter 72.36 RCW, soldiers' homes; or chapter 71A.20 RCW, residential habilitation centers; or any other facility licensed or certified by the department.

(6) "Financial exploitation" means the illegal or improper use, control over, or withholding of the property, income, resources, or trust funds of the vulnerable adult by any person or entity for any person's or entity's profit or advantage other than for the vulnerable adult's profit or advantage. "Financial exploitation" includes, but is not limited to:

(a) The use of deception, intimidation, or undue influence by a person or entity in a position of trust and confidence with a vulnerable adult to obtain or use the property, income, resources, or trust funds of the vulnerable adult for the benefit of a person or entity other than the vulnerable adult;

(b) The breach of a fiduciary duty, including, but not limited to, the misuse of a power of attorney, trust, or a guardianship appointment, that results in the unauthorized appropriation, sale, or transfer of the property, income, resources, or trust funds of the vulnerable adult for the benefit of a person or entity other than the vulnerable adult; or

(c) Obtaining or using a vulnerable adult's property, income, resources, or trust funds without lawful authority, by a person or entity who knows or clearly should know that the vulnerable adult lacks the capacity to consent to the release or use of his or her property, income, resources, or trust funds.

(7) "Financial institution" has the same meaning as in RCW 30.22.040 and 30.22.041. For purposes of this chapter only, "financial institution" also means a "broker-dealer" or "investment adviser" as defined in RCW 21.20.005.

(8) "Incapacitated person" means a person who is at a significant risk of personal or financial harm under RCW 11.88.010(1) (a), (b), (c), or (d).

(9) "Individual provider" means a person under contract with the department to provide services in the home under chapter 74.09 or 74.39A RCW.

(10) "Interested person" means a person who demonstrates to the court's satisfaction that the person is interested in the welfare of the vulnerable adult, that the person has a good faith belief that the court's intervention is necessary, and that the vulnerable adult is unable, due to incapacity, undue influence, or duress at the time the petition is filed, to protect his or her own interests.

(11) "Mandated reporter" is an employee of the department; law enforcement officer; social worker; professional school personnel; individual provider; an employee of a facility; an operator of a facility; an employee of a social service, welfare, mental health, adult day health, adult day care, home health, home care, or hospice agency; county coroner or medical examiner; Christian Science practitioner; or health care provider subject to chapter 18.130 RCW.

(12) "Neglect" means (a) a pattern of conduct or inaction by a person or entity with a duty of care that fails to provide the goods and services that maintain physical or mental health of a vulnerable adult, or that fails to avoid or prevent physical or mental harm or pain to a vulnerable adult; or (b) an act or omission by a person or entity with a duty of care that demonstrates a serious disregard of consequences of such a magnitude as to constitute a clear and present danger to the vulnerable adult's health, welfare, or safety, including but not limited to conduct prohibited under RCW 9A.42.100.

(13) "Permissive reporter" means any person, including, but not limited to, an employee of a financial institution, attorney, or volunteer in a facility or program providing services for vulnerable adults.

(14) "Protective services" means any services provided by the department to a vulnerable adult with the consent of the vulnerable adult, or the legal representative of the vulnerable adult, who has been abandoned, abused, financially exploited, neglected, or in a state of self-neglect. These services may include, but are not limited to case management, social casework, home care, placement, arranging for medical evaluations, psychological evaluations, day care, or referral for legal assistance.

(15) "Self-neglect" means the failure of a vulnerable adult, not living in a facility, to provide for himself or herself the goods and services necessary for the vulnerable adult's physical or mental health, and the absence of which impairs or threatens the vulnerable adult's well-being. This definition may include a



vulnerable adult who is receiving services through home health, hospice, or a home care agency, or an individual provider when the neglect is not a result of inaction by that agency or individual provider.

(16) "Social worker" means:

(a) A social worker as defined in RCW 18.320.010(2); or

(b) Anyone engaged in a professional capacity during the regular course of employment in encouraging or promoting the health, welfare, support, or education of vulnerable adults, or providing social services to vulnerable adults, whether in an individual capacity or as an employee or agent of any public or private organization or institution.

(17) "Vulnerable adult" includes a person:

(a) Sixty years of age or older who has the functional, mental, or physical inability to care for himself or herself; or

(b) Found incapacitated under chapter 11.88 RCW; or

(c) Who has a developmental disability as defined under RCW 71A.10.020; or

(d) Admitted to any facility; or

(e) Receiving services from home health, hospice, or home care agencies licensed or required to be licensed under chapter 70.127 RCW; or

(f) Receiving services from an individual provider; or

(g) Who self-directs his or her own care and receives services from a personal aide under chapter 74.39 RCW.

[2013 c 263 § 1; 2012 c 10 § 62. Prior: 2011 c 170 § 1; 2011 c 89 § 18; 2010 c 133 § 2; 2007 c 312 § 1; 2006 c 339 § 109; 2003 c 230 § 1; 1999 c 176 § 3; 1997 c 392 § 523; 1995 1st sp.s. c 18 § 84; 1984 c 97 § 8.]

## Notes:

**Application -- 2012 c 10:** See note following RCW 18.20.010.

**Effective date -- 2011 c 89:** See note following RCW 18.320.005.

**Findings -- 2011 c 89:** See RCW 18.320.005.

**Intent -- Part headings not law -- 2006 c 339:** See notes following RCW 70.96A.325.

**Effective date -- 2003 c 230:** "This act is necessary for the immediate preservation of the public peace, health, or safety, or support of the state government and its existing public institutions, and takes effect immediately [May 12, 2003]." [2003 c 230 § 3.]

**Findings -- Purpose -- Severability -- Conflict with federal requirements -- 1999 c 176:** See notes following RCW 74.34.005.

**Short title -- Findings -- Construction -- Conflict with federal requirements -- Part headings and captions not law -- 1997 c 392:** See notes following RCW 74.39A.009.

**Conflict with federal requirements -- Severability -- Effective date -- 1995 1st sp.s. c 18: See notes following RCW 74.39A.030.**