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47. There are many federal and state laws that protect the AIP (Alleged Incapacitated Person). This includes common sense, morals and ethics by the guardians. But, all of that is ignored in guardianship corruption. Corrupt judges and lawyers for guardians and lawyers that do guardianships, pretend those laws, rules and ethics do not exist and try to convince the victim and their families they don't either.
48. Explaining ADA.
49. Olmstead is explained.
50. What the petitioner must do to prove a person is incapacitated.
51. Benefits of exercise. Mother's guardian "owners", including jaskowiak did not care that Mother's only exercise was walking about 30 feet to get her meals and back to her cage in solitary confinement.
52. Exercise benefits and alzheimers.
53. Lonliness is very dangerous to people in nursing homes. Mother's mafia kept her locked up and all visitors, phone and ministers were denied to see her, especially me.
54. Various types of abuse to elders by their families and guardians.
55. " ."
56. What an honest court can do to corrupt guardians.
57. A elder lawyer saying how important visits by family and friends are. My mother was denied that by this mafia.
58. A PBI seminar for lawyers on guardianship that states the person who filed the petition must PROVE, beyond all doubt the person needs guardianship. My sister never proved so in court in any way and never brought in any of the professionals (doctors, investment people, etc) to say Mother was not doing or ignoring normal activities, like hygiene, writing bad checks, dirty house, driving carelessly, etc.
59. Those rules for a lawyer were totally ignored by jaskowiak.
60. Title 20, S. 5521- the guidelines for every guardian but are always ignored by them if they are corrupt.
61. Proving incapacitation.
62. Every one of those items were totally ignored by my Mother's court appointed lawyer jaskowiak. He and the others in this guardianship mafia only wanted her money.
63. My sister, who filed her petition on Mother only for he money and assets, never wanted any of those options listed, she only wanted total guardianship, person and estate, of Mother.
64. Jaskowiak never tried to protect or defend Mother against guardianship. He wanted her to be guardianized for this mafia. Mother had more than enough money for her own lawyer who would defend her against guardianship.
65. Sister ignored those requirement and her lawyer, who wrote the petition, ignored those requirements for the mafia.

The ADA Protects People with Disabilities

A person with a disability is someone who:

- has a physical or mental impairment that substantially limits one or more major life activities,
- has a history or record of such an impairment (such as cancer that is in remission), or
- is perceived by others as having such an impairment (such as a person who has scars from a severe burn).

If a person falls into any of these categories, the ADA protects them. Because the ADA is a law, and not a benefit program, you do not need to apply for coverage.

What does *substantially limits* mean?

The term “substantially limits” is interpreted broadly and is not meant to be a demanding standard. But not every condition will meet this standard. An example of a condition that is not substantially limiting is a mild allergy to pollen.

What does *major life activities* mean?

Major life activities are the kind of activities that you do every day, including your body’s own internal processes. There are many major life activities in addition to the examples listed here. Some examples include:

- Actions like eating, sleeping, speaking, and breathing
- Movements like walking, standing, lifting, and bending
- Cognitive functions like thinking and concentrating
- Sensory functions like seeing and hearing
- Tasks like working, reading, learning, and communicating
- The operation of major bodily functions like circulation, reproduction, and individual organs

What Qualifies as an ADA Disability?

According to the ADA Amendments Act of 2008, covered entities should interpret the ADA broadly to include as many disabilities as possible and protect as many people as possible.

Under the ADA, an impairment needs to be a physiological or mental disorder. Depression, stress, and similar conditions are only sometimes considered impairments under the ADA. Whether depression and stress are considered impairments depends on if they result from a documented mental or physiological disorder or if they result from personal life or job pressures. The impairment must substantially limit at least one major life activity.

What is a Protected Disability?

Under most employment legislation, such as Age Discrimination in Employment Act or Title VII, it is fairly obvious whether a person is a part of a protected class. However, under the ADA, it is a bit more complicated to determine whether a person is part of a protected class.

A person is protected under the ADA against discrimination for employment opportunities. State and local government and other public entities apply the title II to labor unions and help people with disabilities.

Definition of Disability under ADA

The ADA's first definition of disability states that **a disabled person is someone who has a mental or physical impairment that prevents participation in major life activities**. If an individual has a record or history of such an impairment, he is considered disabled. Finally, if the individual is regarded as having a mental or physical impairment, the individual is considered disabled under the ADA's first definition of disability.

The ADA has a three-pronged definition of disability. If any of the three prongs are satisfied, the individual counts as disabled. The definition of disability of the ADA is based on the Rehabilitation Act's definition of "handicap." A judgment under the Rehabilitation Act or the ADA is considered a precedent for the other.

Physical or Mental Impairment

The ADA defines a **physical impairment** as a physiological disorder or condition, anatomical loss, or cosmetic disfigurement that impacts one or more of these body systems.

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About *Olmstead*

**DOJ *Olmstead*
Technical
Assistance**

**DOJ *Olmstead*
Enforcement by
Circuit Court**

**DOJ *Olmstead*
Enforcement by
Case or Matter**

***Olmstead* Press,
Speeches &
Testimony**

**Filing an
Olmstead
Complaint**

**Faces of
*Olmstead***

About *Olmstead*

The story of the *Olmstead* case begins with two women, Lois Curtis and Elaine Wilson, who had mental illness and developmental disabilities, and were voluntarily admitted to the psychiatric unit in the State-run Georgia Regional Hospital. Following the women's medical treatment there, mental health professionals stated that each was ready to move to a community-based program. However, the women remained confined in the institution, each for several years after the initial treatment was concluded. They filed suit under the Americans with Disabilities Act (ADA) for release from the hospital.

The Decision

On June 22, 1999, the United States Supreme Court held in *Olmstead v. L.C.* that unjustified segregation of persons with disabilities constitutes discrimination in violation of title II of the Americans with Disabilities Act. The Court held that public entities must provide community-based services to persons with disabilities when (1) such services are appropriate; (2) the affected persons do not oppose community-based treatment; and (3) community-based services can be reasonably accommodated, taking into account the resources available to the public entity and the needs of others who are receiving disability services from the entity.

The Supreme Court explained that its holding "reflects two evident judgments." First, "institutional placement of persons who can handle and benefit from community settings perpetuates unwarranted assumptions that persons so isolated are incapable of or unworthy of participating in community life." Second, "confinement in an institution severely diminishes the everyday life activities of individuals, including family relations, social contacts, work options, economic independence, educational advancement, and cultural enrichment."

Faces of *Olmstead*

The personal stories of a few of the thousands of people whose lives have been improved by the *Olmstead* decision and the Department's *Olmstead* enforcement work.

49.

COLETTA HILL

1972, June 30, P.L. 508, No. 164, § 2, eff. July 1, 1972. Amended 1992, April 16, P.L. 108, No. 24, § 10, effective in 60 days.

20 Pa.C.S. § 5518

To establish incapacity, the petitioner must present testimony, in person or by deposition from individuals qualified by training and experience in evaluating individuals with incapacities of the type alleged by the petitioner, which establishes the nature and extent of the alleged incapacities and disabilities and the person's mental, emotional and physical condition, adaptive behavior and social skills. The petition must also present evidence regarding the services being utilized to meet essential requirements for the alleged incapacitated person's physical health and safety, to manage the person's financial resources or to develop or regain the person's abilities; evidence regarding the types of assistance required by the person and as to why no less restrictive alternatives would be appropriate; and evidence regarding the probability that the extent of the person's incapacities may significantly lessen or change.

Section 5518 - Evidence of incapacity

Current through P.A. Acts 2022-166

UNITED STATES DISTRICT COURT
 DISTRICT OF MICHIGAN
 IN RE: [Name]
 DEBILITATED PERSON

1. NAME OF DEBILITATED PERSON: [Name]

2. DATE OF DEBILITY: [Date]

3. NAME OF PETITIONER: [Name]

4. ADDRESS OF PETITIONER: [Address]

5. ADDRESS OF DEBILITATED PERSON: [Address]

6. PETITIONER'S RELATIONSHIP TO DEBILITATED PERSON: [Relationship]

7. PETITIONER'S OCCUPATION: [Occupation]

8. DEBILITATED PERSON'S OCCUPATION: [Occupation]

9. DEBILITATED PERSON'S EDUCATION: [Education]

10. DEBILITATED PERSON'S MARITAL STATUS: [Status]

11. DEBILITATED PERSON'S SOCIAL SECURITY NUMBER: [Number]

12. DEBILITATED PERSON'S DATE OF BIRTH: [Date]

13. DEBILITATED PERSON'S SEX: [Sex]

14. DEBILITATED PERSON'S RACE: [Race]

15. DEBILITATED PERSON'S ETHNICITY: [Ethnicity]

16. DEBILITATED PERSON'S RELIGION: [Religion]

17. DEBILITATED PERSON'S POLITICAL AFFILIATION: [Affiliation]

18. DEBILITATED PERSON'S MILITARY SERVICE: [Service]

19. DEBILITATED PERSON'S VETERAN STATUS: [Status]

20. DEBILITATED PERSON'S OTHER INFORMATION: [Information]

Even a few minutes of daily light exercise can lower depression risk

JULY 12, 2023 1 COMMENT



by John Anderer

LIMERICK, Ireland — There are some days when many of us just want to stay in bed from morning to night or remain glued to the couch indefinitely. While lounging can certainly be a good time every once in a while, researchers from the University of Limerick have uncovered yet another reason for everyone to prioritize a little bit of movement — especially older individuals. Their study finds modest amounts of physical activity each day can reduce the risk of depression.

This research, conducted in collaboration with Trinity College Dublin, reports that a “dose” equal to just 20 minutes per day (for five days a week) of moderate-intensity physical activity (brisk walking, for example) displayed an association to less risk of depressive symptoms and chances of major depression.

Depression, of course, is an increasingly common condition among older adults. Meanwhile, depression is also linked to a host of significant risk factors for major chronic conditions like cognitive decline, cardiovascular disease, chronic pain, and even an increased risk of death and suicide.

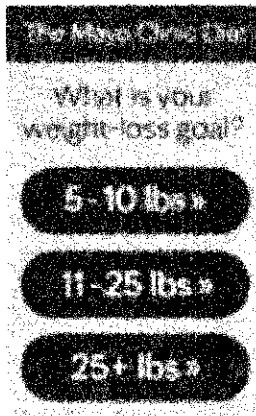
All in all, estimates show that depression causes around five to 10 percent of the burden of all diseases in Europe. Meanwhile, the economic cost of depression in the United States alone is approximately more than \$210.5 billion! Therefore, zeroing in on



51.

Alzheimer's disease: Can exercise prevent memory loss?

Products and services



Can exercise prevent memory loss and improve cognitive function?

Answer From Jonathan Graff-Radford, M.D.

Possibly. Exercise has many known benefits for both physical and mental health, including reducing the risk of cardiovascular disease and diabetes, strengthening the bones and muscles, and reducing stress.

It also appears that regular physical activity benefits the brain. Studies show that people who are physically active are less likely to experience a decline in their mental function and have a lowered risk of developing Alzheimer's disease. Physical activity is one of the known modifiable risk factors for dementia. Plus, regular exercise helps combat other Alzheimer's disease risk factors, such as depression and obesity.

Exercising several times a week for 30 to 60 minutes may

- Keep thinking, reasoning and learning skills sharp for healthy individuals
- Improve memory, reasoning, judgment and thinking skills (cognitive function) for people with mild Alzheimer's disease or mild cognitive impairment
- Delay the start of Alzheimer's for people at risk of developing the disease or slow the progress of the disease
- Increase the size of the part of the brain that's associated with memory formation (hippocampus)

Physical activity seems to help your brain not only by keeping the blood flowing but also by increasing chemicals that protect the

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52.

Loneliness and social isolation in older adults are serious public health risks affecting a significant number of people in the United States and putting them at risk for dementia and other serious medical conditions.

A report [\[1\]](#) from the National Academies of Sciences, Engineering, and Medicine (NASEM) points out that more than one-third of adults aged 45 and older feel lonely, and nearly one-fourth of adults aged 65 and older are considered to be socially isolated.¹ Older adults are at increased risk for loneliness and social isolation because they are more likely to face factors such as living alone, the loss of family or friends, chronic illness, and hearing loss.

Loneliness is the feeling of being alone, regardless of the amount of social contact. Social isolation is a lack of social connections. Social isolation can lead to loneliness in some people, while others can feel lonely without being socially isolated.



Social isolation was associated with about a 50% increased risk of dementia and other serious medical conditions.

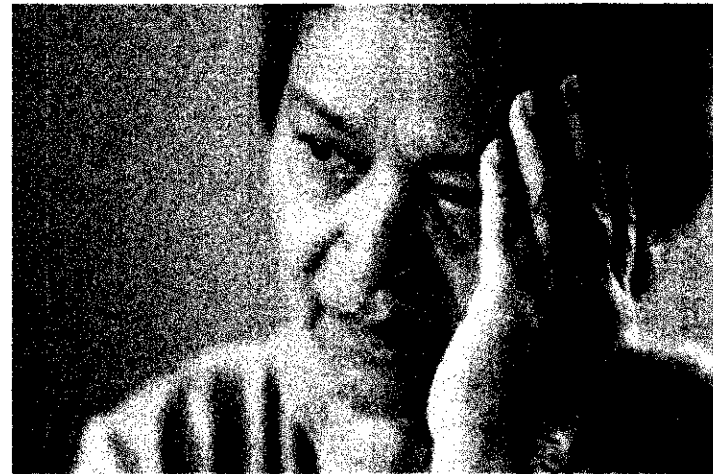
Health Risks of Loneliness

Although it's hard to measure social isolation and loneliness precisely, there is strong evidence that many adults aged 50 and older are socially isolated or lonely in ways that put their health at risk. Recent studies found that:

- Social isolation significantly increased a person's risk of premature death from all causes, a risk that may rival those of smoking, obesity, and physical inactivity.¹
- Social isolation was associated with about a 50% increased risk of dementia.¹
- Poor social relationships (characterized by social isolation or loneliness) was associated with a 29% increased risk of heart disease and a 32% increased risk of stroke.¹
- Loneliness was associated with higher rates of depression, anxiety, and suicide.
- Loneliness among heart failure patients was associated with a nearly 4 times increased risk of death, 68% increased

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- **Physical abuse** happens when someone causes bodily harm by hitting, pushing, or slapping. This may also include restraining an older adult against his/her will, such as locking them in a room or tying them to furniture.



- **Emotional abuse**, sometimes called psychological abuse, can include a caregiver saying hurtful words, yelling, threatening, or repeatedly ignoring the older adult. Keeping that person from seeing close friends and relatives is another form of emotional abuse.
- **Neglect** occurs when the caregiver does not try to respond to the older adult's needs. This may include physical, emotional, and social needs, or withholding food, medications, or access to health care.
- **Abandonment** is leaving an older adult who needs help alone without planning for his or her care.
- **Sexual abuse** involves a caregiver forcing an older adult to watch or be part of sexual acts.
- **Financial abuse** happens when money or belongings are stolen from an older adult. It can include forging checks, taking someone else's retirement or Social Security benefits, or using a person's credit cards and bank

<https://www.nia.nih.gov/health/elder-abuse>

Financial abuse is becoming a widespread and hard-to-detect issue. Even someone you've never met can steal your financial information using the telephone, internet, or email. Be careful about sharing any financial information over the phone or online — you don't know who will use it.

In addition to the theft of an older person's money or belongings, financial abuse also includes:

Financial neglect occurs when an older adult's financial responsibilities such as paying rent or mortgage, medical expenses or insurance, utility bills, or property taxes, are ignored, and the person's bills are not paid.

Financial exploitation is the misuse, mismanagement, or exploitation of property, belongings, or assets. This includes using an older adult's assets without consent, under false pretense, or through intimidation and/or manipulation.

Health care fraud can be committed by doctors, hospital staff, or other health care workers. It includes overcharging, billing twice for the same service, falsifying Medicaid or Medicare claims, or charging for care that wasn't provided. Older adults and caregivers should keep an eye out for this type of fraud.

How can the courts with jurisdiction over guardianship cases respond to abuse?

A court with jurisdiction over a guardianship case might uncover evidence of abuse through monitoring, or a person or government agency might need to file a complaint or petition the court to respond to the mistreatment. These courts can take the following types of actions:

- **Freeze assets and/or restrict accounts** – Courts may take these actions to limit a guardian's access to money and property while investigating a case or preparing to take another protective step.
- **Investigate allegations of malfeasance** – Once allegations of abuse have been made, courts can appoint a guardian ad litem, investigator or visitor to investigate. A court can also audit an individual's assets or order an accounting by an external entity such as a certified public accountant.
- **Order repayment for lost assets or property** – Such orders might restore lost assets but, in many cases, the only way to recover funds is through a bond that the guardian obtained upon appointment. Sometimes courts do not require bonding when the guardian is appointed, making it more difficult to obtain repayment for losses at the hands of the guardian.
- **Enforce statutory rights to communication and visitation** – When abusive guardians use isolation tactics, family members and others may be able to seek orders enforcing state laws that define the rights of people subject to guardianship to interact with others of their choosing.
- **Appoint a co-guardian or limit the powers of the guardian** – This strategy may help deter or stop mistreatment by a guardian.
- **Remove the guardian** – Removal may be the best way to stop guardian malfeasance, and petitioners might suggest a willing and suitable replacement.
- **Terminate the guardianship** – Less restrictive options or changed circumstances might lead a court to terminate the guardianship entirely.

As an elder care attorney in Chester County, PA, one of the reasons I often get calls for guardianship (and one of the most challenging situations legally) is the right for family to visit an impaired older adult. Often one family member, the agent under a power of attorney (or the caregiver of the parent), is restricting access to the parent. Sometimes it is because the agent has nefarious motives and is harming or taking advantage of the older adult and sometimes it is because the family member wants to visit does so only to manipulate the older adult. Sometimes the limitation is because the older adult does not want to see or speak to someone for right on wrong reasons. So what are the rights in this situation?

First, an adult has no obligation to see his or her children, or anyone he or she does not want to see. This right applies even if the older adult is cognitively impaired. An impaired person can make decisions, even bad ones, until a judge takes away his or her ability to make decisions. However, if cognitive impairment is affecting judgment, it may be in the older adult's best interest to seek the appointment of a guardian so that the older adult's care can be managed in a safe and beneficial manner.

57.

For some older adults, access to family and friends is the only thing they live for. Even impaired older adults, isolation and socialization of seeing and interacting with family benefits them mentally and physically. Isolation often hastens cognitive and physical decline and vulnerability to being exploited.

RULE 14.1(b) Proceedings for Adjudication of Incapacity and Appointment of a Guardian

- **No default judgment.**
- This differs from the Rules of Civil Procedure which have generally been adopted in Orphans' court matters.
- Petitioner's counsel must understand that the fact that the Alleged Incapacitated Person's failure to respond does not mean that the Petitioner or that *pro se* parties cannot oppose a finding of incapacity.

Pennsylvania Statutes Title 20 Pa.C.S.A. Decedents, Estates and Fiduciaries § 5521. Provisions concerning powers, duties and liabilities

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(a) Duty of guardian of the person.--It shall be the duty of the guardian of the person to assert the rights and best interests of the incapacitated person. Expressed wishes and preferences of the incapacitated person shall be respected to the greatest possible extent. Where appropriate, the guardian shall assure and participate in the development of a plan of supportive services to meet the person's needs which explains how services will be obtained.

The guardian shall also encourage the incapacitated person to participate to the maximum extent of his abilities in all decisions which affect him, to act on his own behalf whenever he is able to do so and to develop or regain, to the maximum extent possible, his capacity to manage his personal affairs.

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Current through P.A. Acts 2022-166

Section 5518 - Evidence of incapacity

To establish incapacity, the petitioner must present testimony, in person or by deposition from individuals qualified by training and experience in evaluating individuals with incapacities of the type alleged by the petitioner, which establishes the nature and extent of the alleged incapacities and disabilities and the person's mental, emotional and physical condition, adaptive behavior and social skills. The petition must also present evidence regarding the services being utilized to meet essential requirements for the alleged incapacitated person's physical health and safety, to manage the person's financial resources or to develop or regain the person's abilities; evidence regarding the types of assistance required by the person and as to why no less restrictive alternatives would be appropriate; and evidence regarding the probability that the extent of the person's incapacities may significantly lessen or change.

20 Pa.C.S. § 5518

1972, June 30, P.L. 508, No. 164, § 2, eff. July 1, 1972. Amended 1992, April 16, P.L. 108, No. 24, § 10, effective in 60 days.

CHECKLIST FOR AIP COUNSEL

1. Is the petition legally sufficient?
2. Emergency guardianship necessary?
3. IME?
4. Timetable for plenary hearing?
5. Should client testify?
6. Should the proceedings be closed?
7. Is there a less restrictive alternative?
8. Who should be the guardian?

Options to Guardianship:

- Substitute (Surrogate) Decision-Making Other than Guardianship
 - Health Care
 - Health Care Agents
 - Mental Health Care Agents
 - Health Care Representatives
 - MH/ID Providers
 - Financial
 - Representative Payees
 - Financial Agents
 - Trustees

Does the AIP Have a Right to Counsel

- Guaranteed by Pa. C.S. §5511
- ➔ • Need to advocate AIP's position
- AIP not required to speak
- ➔ • County pays if resources are insufficient.

RULE 14.2 -- PETITION CONTENTS

Additional requirements of note:

→ **14.2(a)(9):** Reasons why guardianship is sought

→ **14.2(a)(13):** Steps taken to find a less restrictive alternative than guardianship

Note: If POA nominates a person to serve as a guardian, Court must appoint nominee as guardian, except for good cause or disqualification

Note: Notice required by rule to all heirs even if not Pennsylvania residents – differs from statute section 5511(a)

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