

# Elder Abuse of Margarita Zelada:

## Perpetrated by the Monterey County Public Guardian

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10/22/2013

Margarita Zelada is a victim of ongoing elder abuse by the Monterey County Public Guardian. Since March 2013, the Public Guardian has unlawfully confined and isolated Margarita, causing her to experience severe mental suffering. Those acts are crimes under both state and federal law.

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## Executive Summary

San Francisco resident Margarita Zelada was a physically active and intellectually engaged woman until she was victimized by the Pacific Grove Police Department and the Monterey County Public Guardian. Margarita worked forty-one years as a registered nurse. She owns a home in San Francisco, and she traveled independently to South America in 2012. A prudent and frugal woman by nature, she had ample assets to provide for a comfortable retirement.

Margarita's estate plan names her only child, Patricia Conklin, as her power of attorney and health care agent. Patricia's name was on all of Margarita's assets, and Patricia was designated trustee of Margarita's trust. The estate plan was extremely clear that Margarita never wished to be placed in a facility.

While visiting her daughter in Pacific Grove, Margarita's world turned into a nightmare of violations of rights and denial of due process. A month after Margarita returned from visiting family in her native Peru, the Monterey County Public Guardian made allegations that Margarita's daughter, Patricia, financially abused Margarita. Allegations were found to be unsubstantiated. No charges were filed. However, the Public Guardian retained control of Margarita's estate valued at about \$1.5 M. With assets voluntarily co-mingled for the past several years, both Margarita and Patricia found themselves with no access to funds.

Not willing to release the estate to its rightful owners, the Public Guardian found their opportunity in early March 2013. Margarita had an accidental fall while cooking lunch in Patricia's kitchen. Margarita clearly stated to multiple witnesses that the fall was an accident. Injuries were minor, and recovery was quick. Margarita stayed at Windsor Monterey Care Center for a few days and then demanded to go home. She met Patricia halfway to the door of the facility. Margarita had her bags packed and ready to leave, but Windsor staff physically restrained her from leaving. Margarita's private care nurse, Tara Robinson, LVN witnessed the incident along with Patricia.

Attempting to maintain their control over Margarita and her estate, the Public Guardian reported to the Monterey Police Department that Patricia was unlawfully removing Margarita from the facility. The responding officer reviewed all relevant documents and stated that Margarita had a right to leave the facility and go home as she wished. The officer stated that Patricia was not violating any law or court order in taking Margarita home. Patricia took a hungry and frustrated Margarita home to Pacific Grove and tucked her into bed with her favorite dog, Jack. LVN Robinson accompanied them and saw to Margarita's personal needs.

The nightmare turned to terror later that night. Ten Pacific Grove police officers forced their way into Patricia's home. Guns were drawn and leveled at Patricia. According to LVN Robinson, a female officer "barrel-chested" Patricia with a duty pistol and pushed down her into a chair. Officers dragged Margarita from her bed screaming, and they forced her into a waiting ambulance. As she was dragged away, Margarita cried "Leave me alone" and "Put me down." LVN Robinson said Margarita's screams

were the most horrible sounds she ever heard. Robinson had nightmares for three nights after the siege.

Patricia asked the Pacific Grove police to show a warrant authorizing their entry into her home and their forced removal of Margarita. The officers refused to present a warrant or any written authorization for their actions. A female officer told Patricia to go to the court house the following week and search for a warrant after it became available as a public record.

The Public Guardian seized Patricia's assets, her home, her car, and all personal property inside her home. Patricia had no funds for an attorney to defend Margarita against the Public Guardian's petition for conservatorship. Margarita vehemently opposed the conservatorship, but her rights and wishes were ignored by the Public Guardian and the court-appointed attorney. Margarita's niece, Colonel Bonnie Lind, requested a continuance to allow Lind to file a petition for conservatorship. Lind's request was ignored. The Public Guardian was appointed temporary conservator of Margarita's person and her estate.

Margarita was unlawfully confined and isolated in a residential care facility for the elderly. With no access to funds, no representation, and no way to communicate her wishes to the court; Margarita had no means to oppose the conservatorship proceedings against her. Her right to oppose was ignored. The Public Guardian was appointed general conservator.

In their bid for control of the combined Zelada/Conklin estate, the Public Guardian made many unfounded allegations of elder abuse against Patricia. With no access to funds, Patricia was unable to retain competent defense counsel or post bond after arraignment. Patricia was incarcerated in Monterey County Jail for six months, waiting for trial. The Public Guardian removed the family's rescue dogs and will not disclose their location or condition.

The Public Guardian confiscated Patricia's computers and cameras containing evidence that could be used in her defense. Witnesses Tara Robinson, LVN and Patricia's renter Jim Kramer stated the Public Guardian threatened they would also be prosecuted if they gave testimony in favor of Patricia. Denied access to competent counsel, with evidence destroyed, and with witnesses intimidated by the Public Guardian; Patricia received an eight-year suspended sentence for elder abuse. She was released from jail on September 27, 2013.

The Court ordered that Margarita is allowed supervised visitation with Patricia, and Patricia desperately wishes to see Margarita. The Public Guardian is tasked with facilitating those visits. Patricia sends the Public Guardian daily requests to see her mom. To date, the Public Guardian has denied Margarita any contact with her only child. Mother and daughter have not seen each other for seven months.

The Public Guardian also denied Margarita access to elder advocates seeking to conduct a welfare check. On Sunday, October 19, 2013, advocates Dr. Robert Fettgather and Linda Kincaid, MPH, found Del Rey Oaks Senior Paradise had doors locked (with three locks) in violation of licensing regulations. It is ironic that Patricia's three locks on her back door were used as evidence of an unsafe environment,

due to difficulty of egress during a fire. Yet, the Public Guardian confines and isolates Margarita in a facility that utilizes three locks on the front door to prevent residents escaping.

When Fettgather and Kincaid visited Senior Paradise, Margarita was not allowed to leave the building, and no one was allowed to enter. Those restrictions are gross violations of licensing regulations, and such restrictions constitute criminal elder abuse. Administrators Margaret Eldred Camara and Judith Pardo-Soto stated their violations of Margarita's rights were perpetrated on instructions from Deputy Public Guardian Jennifer Empasis. The administrators stated Empasis gave the facility instructions to call the police if **anyone** asked to visit Margarita.

Kincaid and Fettgather filed a police report with the Del Rey Oaks Police Department. Sergeant Christopher Bourguin was very professional and courteous. He assured the advocates that he would conduct a welfare check on Margarita, review all relevant documents, and file a detailed incident report.

As of this date, the Public Guardian retains control of Margarita and all of her assets, including the family home in San Francisco. The Public Guardian changed the locks on the San Francisco home and will not allow Patricia to enter. The home sits vacant, while the Public Guardian bleeds Margarita's estate to pay for keeping her imprisoned.

Margarita has not been allowed contact with Patricia, her only child, since March 2013. The Public Guardian will not disclose any information concerning Margarita's condition. Family has no information about the location or condition of their five rescue dogs.

The Public Guardian also retains control of Patricia's home in Pacific Grove, her car, her other assets, and her personal possessions. At this time, Patricia is dependent on the charity of friends as she attempts to advocate for her mother's rights.

## Introduction

Our country was founded on the precept that all individuals have the right to life, liberty, and pursuit of happiness. Both California and federal law support those civil rights. Rights can only be removed by due process in a court of law. Any restriction of those rights by a conservator or other person is a violation of law carrying both civil and criminal penalties. This report will direct you to the following authorities in support of Margarita Zelada's right to visitation:

- Title 22: Residents rights in residential care facilities for the elderly
- Judicial Council form GC-342: Notice of Conservatee's Rights
- *Handbook for Conservators*
- Welfare and Institutions Code 15610
- Legislative analysis of Assembly Bill 937
- Penal Code 368
- 18 USC 242

This report will also direct you to media coverage by ABC7 in San Francisco. Conservatee Gisela Riordan was similarly confined and isolated by the Santa Clara County Public Guardian. The Public Guardian similarly ordered a San Jose residential care facility to call police when visitors attempted to establish contact with Gisela. In the aftermath of the story airing on ABC7, the abusive Deputy Public Guardian retired. His replacement does not engage in confinement or isolation of conservatees. Director of Department of Aging Lee Pullen resigned from county employment citing personal reasons.

## Personal Rights in RCFEs

All residential care facilities for the elderly (RCFEs) are subject to licensing regulations in Title 22. Those regulations include specific personal rights that are accorded to all residents in those facilities. Rights enumerated in 22 CCR 87468(a)<sup>1</sup> include:

*(6) To leave or depart the facility at any time and to not be locked into any room, building, or on facility premises by day or night. This does not prohibit the establishment of house rules, such as the locking of doors at night, for the protection of residents; nor does it prohibit, with permission of the licensing agency, the barring of windows against intruders.*

*(11) To have his/her visitors, including ombudspersons and advocacy representatives permitted to visit privately during reasonable hours and without prior notice, provided that the rights of other residents are not infringed upon.*

*(14) To have reasonable access to telephones, to both make and receive confidential calls. The licensee may require reimbursement for long distance calls. (Emphasis added)*

Around noon on October 19, 2013, Robert Fettgather and Linda Kincaid attempted to visit Margarita Zelada at Del Rey Oaks Senior Paradise.

- Senior Paradise had doors locked (with three locks) in violation of 22 CCR 87468(a)(6).
- Margarita was not allowed to leave the building, which is a violation of 22 CCR 87468(a)(6).
- Administrators Margaret Eldred Camara and Judith Pardo-Soto stated that Margarita is not allowed any visitors without approval from Deputy Public Guardian Jennifer Empasis, which is a violation of 22 CCR 87468(a)(11). Empasis instructed the administrators to call police if anyone asked to visit Margarita.
- Margarita's relatives state that phone calls to Margarita are often blocked, which is a violation of 22 CCR 87468(a)(14).

The Personal Rights<sup>2</sup> notification has been a required part of every RCFE resident's file since 2005. There is no justification for any facility violating the rights enumerated above.

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<sup>1</sup> <http://www.dss.cahwnet.gov/ord/entres/getinfo/pdf/rcfeman3.pdf>

<sup>2</sup> <http://www.dss.cahwnet.gov/Forms/English/LIC613C.PDF>

## Notice of Conservatee's Rights & Right to Visitation

The Notice of Conservatee's Rights<sup>3</sup> (Judicial Council form GC-341) was implemented on January 1, 2008. The fourth bullet point on page 2 states to right to:

*Receive visits from family and friends.*

The Notice of Conservatee's Rights has been a required part of each conservatee's court file since January 1, 2008. There is no justification for the Public Guardian violating the rights enumerated in that document.

## Handbook for Conservators & Right to Visitation

The conservatee's right to visitation is further clarified in the *Handbook for Conservators*<sup>4</sup>. The Handbook was developed by the Judicial Council of California in 2002. Page 61 of the Handbook states in part:

***When a person becomes a conservatee, he or she does not lose the right to visit with friends or family. Encourage the conservatee to keep in touch with family members, friends, and neighbors.***

***Do not isolate the conservatee by keeping friends or family away.*** (Emphasis added)

The *Handbook for Conservators* clearly states that conservatees retain the right to visitation. An understanding of the Handbook has been required for all conservators since 2002. There is no justification for the Public Guardian violating the rights described in that document.

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<sup>3</sup> <http://www.courts.ca.gov/documents/gc341.pdf>

<sup>4</sup> <http://www.courts.ca.gov/documents/handbook.pdf>



## Welfare and Institutions Code & Isolation as Elder Abuse

Under California's Welfare and Institutions Code, isolation and causing mental suffering constitute elder abuse.

WIC 15610.07<sup>5</sup> states:

*"Abuse of an elder or a dependent adult" means either of the following: (a) Physical abuse, neglect, financial abuse, abandonment, **isolation**, abduction, or other treatment with resulting **physical harm or pain or mental suffering.**(b) The deprivation by a care custodian of goods or services that are **necessary to avoid physical harm or mental suffering.** (Emphasis added)*

WIC 15610.43<sup>6</sup> defines isolation.

*(a) "Isolation" means any of the following:*

*(1) Acts intentionally committed for the purpose of preventing, and that do serve to prevent, an elder or dependent adult from receiving his or her mail or telephone calls.*

*(2) Telling a caller or prospective visitor that an elder or dependent adult is not present, or does not wish to talk with the caller, or does not wish to meet with the visitor where the statement is false, is contrary to the express wishes of the elder or the dependent adult, whether he or she is competent or not, and is made for the purpose of preventing the elder or dependent adult from having contact with family, friends, or concerned persons.*

*(3) **False imprisonment**, as defined in Section 236 of the Penal Code.*

*(4) **Physical restraint** of an elder or dependent adult, for the purpose of **preventing the elder or dependent adult from meeting with visitors.***

The Welfare and Institutions Code leaves no doubt that isolation and causing mental suffering constitute elder abuse. A Public Guardian who isolates a conservatee, causes mental suffering, commits false imprisonment or physical restraint may be held liable for civil damages.

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<sup>5</sup> <http://www.leginfo.ca.gov/cgi-bin/displaycode?section=wic&group=15001-16000&file=15610-15610.67>

<sup>6</sup> <http://www.leginfo.ca.gov/cgi-bin/displaycode?section=wic&group=15001-16000&file=15610-15610.67>

## Assembly Bill 937 & Conservatee's Right to Visitation

Although the Notice of Conservatee's Rights, the Handbook for Conservators, and the Welfare and Institutions Code all speak to an individual's right to visitation, some Public Guardians continue to violate the rights of conservatees.

Assembly Bill 937 was introduced in part because of prolonged isolation abuse of my mom in San Bernardino County and Gisela Riordan in Santa Clara County. I was involved in drafting the legislative analysis, and I was invited to speak before the Senate Judiciary Committee. I will direct you to the analysis prepared for the Senate Judiciary Committee.

AB 937 legislative analysis states in the first paragraph:

*This bill would clarify that a conservatee retains personal rights, including, but not limited to, the right to receive visitors, telephone calls, and personal mail, unless specifically limited by court order. (Emphasis added)*

The legislative analysis goes on to state on page 2:

*This bill would clarify that, although a conservator has the care, custody, and control of the conservatee, this control does not extend to personal rights retained by the conservatee, including, but not limited to, the right to receive visitors, telephone calls, and personal mail, unless specifically limited by court order. (Emphasis added)*

AB 937 legislative analyses clearly clarifies that conservatees retain their personal rights, including the right to visitation. Those inalienable rights can only be removed by an order of the court, not by the whim of a Public Guardian seeking to simplify case management.

## Penal Code 368 & Mental Abuse

Causing an elder to experience mental suffering is violation of Penal Code 368<sup>7</sup>, which prohibits false imprisonment and mental abuse of elders and dependent adults. Penal Code 368(c) states:

*(c) Any person who knows or reasonably should know that a person is an elder or dependent adult and who, under circumstances or conditions other than those likely to produce great bodily harm or death, **willfully causes or permits any elder or dependent adult to suffer, or inflicts thereon unjustifiable physical pain or mental suffering, or having the care or custody of any elder or dependent adult, willfully causes or permits the person or health of the elder or dependent adult to be injured or willfully causes or permits the elder or dependent adult to be placed in a situation in which his or her person or health may be endangered,** is guilty of a misdemeanor. A second or subsequent violation of this subdivision is punishable by a fine not to exceed two thousand dollars (\$2,000), or by imprisonment in a county jail not to exceed one year, or by both that fine and imprisonment. (Emphasis added)*

Penal Code 368 clearly defines causing mental suffering and false imprisonment of an elder as criminal elder abuse. Public Guardians who cause mental suffering or commit false imprisonment may be subject to prosecution.

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<sup>7</sup> <http://www.leginfo.ca.gov/cgi-bin/displaycode?section=pen&group=00001-01000&file=368-368.5>

## 19 USC 242 & Deprivation of Rights under Color of Law

The Board of Supervisors may wish to review Title 18 of the United States Code Section 242<sup>8</sup>, which states in part:

*This statute makes it a **crime for any person acting under color of law, statute, ordinance, regulation, or custom to willfully deprive or cause to be deprived from any person those rights, privileges, or immunities secured or protected by the Constitution and laws of the U.S. ... Punishment varies from a fine or imprisonment of up to one year, or both...*** (Emphasis added)

This federal statute against deprivation of rights under color of law applies to actions by the Public Guardian that serve to deprive conservatees of their rights. Deprivation of rights under color of law is a federal crime that is investigated by the FBI.

## ABC7 & Right to Visitation

The Santa Clara County Public Guardian engaged in isolation of conservatees until fall of 2012. ABC7 I-Team investigated and exposed the practice on network news. Santa Clara County Public Guardian no longer isolates their conservatees. Numerous county employees, including the former Director of the Department of Aging, have elected leave their positions with the county. See *Public guardian under fire for isolating elderly*<sup>9</sup> by investigative reporter Dan Noyes.

## Conclusion

Isolation of Margarita Zelada is a violation of RCFE residents' personal rights, a violation of the Notice of Conservatee's Rights, and a violation of the Handbook for Conservators. The Welfare and Institutions Code defines elder abuse to include isolation and causing mental suffering. The Penal Code states that false imprisonment and causing mental suffering constitute criminal elder abuse. The US Code states that deprivation of rights under color of law is a federal crime. ABC News has covered guardianship abuse around the country and continues to investigate new cases.

Family and friends of Margarita Zelada request the Board of Supervisors require appropriate oversight and accountability for the Public Guardian. We ask the Public Guardian be required to honor Margarita's right to visit with her daughter and with any other individuals she chooses to see. We further request a full investigation into the heinous abuse and deprivation of rights that occurred in your county.

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<sup>8</sup> <http://www.fbi.gov/about-us/investigate/civilrights/federal-statutes/#section242>

<sup>9</sup> <http://abclocal.go.com/kgo/story?id=8870462>