

## Old, Sick, and Unbefriended

January 18, 2008

FARMERS SORT fruit into different grades with more care than the Massachusetts legal system uses to appoint guardians for some frail elders. Reformers know what to do, but they are going gray themselves trying to get the Legislature to act.

On Sunday, the Globe reported on the grim world of "unbefriended elders" - seniors who, after seeking medical treatment, are deemed too addled to make their own decisions but have no relatives to advocate for them. They are dished out to guardians without benefit of sound medical documentation or legal representation. Judges push through about 300 such cases a year on the advice of doctors in hospitals or nursing homes.

In one reported case, an elderly woman who entered Massachusetts General Hospital for a heart condition found herself just days later declared mentally ill and transferred involuntarily to a nursing home. Her hearing in Suffolk Probate Court lasted about 2 minutes. But she had enough sense to engage a lawyer. A subsequent, more detailed evaluation convinced the original judge to void the guardianship and restore her freedom. Another guardianship case from that hospital ended with a declaration of mental illness based largely on a six-word diagnosis.

Guardianship laws in Massachusetts dishonor frail elders. Many seniors need help to make medical and financial decisions. But the state's anachronistic Guardians of Insane Persons and Spendthrifts statute has become a tool, in some cases, to strip them of their assets and dignity. Most other states now follow a uniform probate code designed to balance protection with a chance to live in settings less restrictive than nursing homes.

Courts in Massachusetts function adequately in guardianship cases where loved ones assume legal responsibilities for aging relatives. But no such assumption exists for those without reliable family or friends. Under current law, judges assign unregulated guardians, often lawyers or social workers, based on flimsy diagnoses. Little effort is made to establish the proper level of care. The result is often a total loss of liberty. And guardians routinely ignore parts of the law, such as a requirement for a timely inventory of the ward's assets.

Bar associations and legal aid attorneys have been pushing for more than a decade to reform the system. The latest version of a proposed bill would require a clear clinical diagnosis that fully explains why a potential ward is unable to manage basic needs. Even then, it would ensure that a guardian had power only to address the specific needs of the incapacitated person. No more shoving people into nursing homes who might thrive in a freer setting. And wards would be given benefit of legal counsel.

Paula Carey, the new chief justice of the Massachusetts Probate and Family Court, appears eager to bring the state's laws out of the dark ages. There is no reason other than indifference or indolence preventing lawmakers from giving her the means.▣