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JOHN A. TOMASINO

MAR -6 2014

CLERK, SUPREME COURT

BY _____

APPENDIX A



BrokerCheck Report

ANTONY LEE TURBEVILLE

CRD# 1721014

Report #76703-32939, data current as of Monday, February 17, 2014.

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About BrokerCheck®



BrokerCheck offers information on all current and many former-FINRA-registered securities brokers, and all current and former FINRA-registered securities firms. FINRA strongly encourages investors to use BrokerCheck to check the background of securities brokers and brokerage firms before deciding to conduct, or continue to conduct, business with them.

- **What is included in a BrokerCheck report?**

BrokerCheck reports for individual brokers include information such as employment history, professional qualifications, disciplinary actions, criminal convictions, civil judgments and arbitration awards. BrokerCheck reports for brokerage firms include information on a firm's profile, history, and operations, as well as many of the same disclosure events mentioned above.

Please note that the information contained in a BrokerCheck report may include pending actions or allegations that may be contested, unresolved or unproven. In the end, these actions or allegations may be resolved in favor of the broker or brokerage firm, or concluded through a negotiated settlement with no admission or finding of wrongdoing.

- **Where did this information come from?**

The information contained in BrokerCheck comes from FINRA's Central Registration Depository, or CRD® and is a combination of:

- information FINRA and/or the Securities and Exchange Commission (SEC) require brokers and brokerage firms to submit as part of the registration and licensing process, and
- information that regulators report regarding disciplinary actions or allegations against firms or brokers.

- **How current is this information?**

Generally, active brokerage firms and brokers are required to update their professional and disciplinary information in CRD within 30 days. Under most circumstances, information reported by brokerage firms, brokers and regulators is available in BrokerCheck the next business day.

- **What if I want to check the background of an investment adviser firm or investment adviser representative?**

To check the background of an investment adviser firm or representative, you can search for the firm or individual in BrokerCheck. If your search is successful, click on the link provided to view the available licensing and registration information in the SEC's Investment Adviser Public Disclosure (IAPD) website at <http://www.adviserinfo.sec.gov>. In the alternative, you may search the IAPD website directly or contact your state securities regulator at <http://www.nasaa.org>.

- **Are there other resources I can use to check the background of investment professionals?**

FINRA recommends that you learn as much as possible about an investment professional before deciding to work with them. Your state securities regulator can help you research brokers and investment adviser representatives doing business in your state.



Using this site/information means that you accept the FINRA BrokerCheck Terms and Conditions. A complete list of Terms and Conditions can be found at

brokercheck.finra.org



For additional information about the contents of this report, please refer to the User Guidance or www.finra.org/brokercheck. It provides a glossary of terms and a list of frequently asked questions, as well as additional resources.

For more information about FINRA, visit www.finra.org.

Thank you for using FINRA BrokerCheck.

ANTONY L. TURBEVILLE**CRD# 1721014**

This broker is not currently registered with FINRA.

Report Summary for this Broker

This report summary provides an overview of the broker's professional background and conduct. Additional information can be found in the detailed report.

Broker Qualifications

This broker is not currently registered with FINRA.

This broker has passed:

- 1 Principal/Supervisory Exam
- 2 General Industry/Product Exams
- 1 State Securities Law Exam

Registration History

This broker was previously registered with the following FINRA firm(s):

BROOKSTONE SECURITIES, INC.
CRD# 13366
LAKELAND, FL
04/2005 - 06/2012

ARCHER ALEXANDER SECURITIES CORPORATION
CRD# 41555
KANSAS CITY, MO
01/2004 - 04/2005

NATIONS FINANCIAL GROUP, INC.
CRD# 44181
CEDAR RAPIDS, IA
12/2003 - 01/2004

Disclosure Events

All individuals registered to sell securities or provide investment advice are required to disclose customer complaints and arbitrations, regulatory actions, employment terminations, bankruptcy filings, and criminal or civil judicial proceedings.

Are there events disclosed about this broker? **Yes**

The following types of disclosures have been reported:

Type	Count
Regulatory Event	2
Investigation	1
Customer Dispute	1

Investment Adviser Representative Information

The information below represents the individual's record as a broker. For details on this individual's record as an investment adviser representative, visit the SEC's Investment Adviser Public Disclosure website at <http://www.adviserinfo.sec.gov>.

Broker Qualifications



Registrations

This section provides the self-regulatory organizations (SROs) and U.S. states/territories the broker is currently registered and licensed with, the category of each license, and the date on which it became effective. This section also provides, for every brokerage firm with which the broker is currently employed, the address of each branch where the broker works.

This broker is not currently registered with FINRA.

Broker Qualifications



Industry Exams this Broker has Passed

This section includes all securities industry exams that the broker has passed. Under limited circumstances, a broker may attain a registration after receiving an exam waiver based on exams the broker has passed and/or qualifying work experience. Any exam waivers that the broker has received are not included below.

This individual has passed 1 principal/supervisory exam, 2 general industry/product exams, and 1 state securities law exam.

Principal/Supervisory Exams

Exam	Category	Date
General Securities Principal Examination	Series 24	02/14/2005

General Industry/Product Exams

Exam	Category	Date
Investment Company Products/Variable Contracts Representative Examination	Series 6	08/18/1987
General Securities Representative Examination	Series 7	06/28/1996

State Securities Law Exams

Exam	Category	Date
Uniform Securities Agent State Law Examination	Series 63	04/10/2002

Additional information about the above exams or other exams FINRA administers to brokers and other securities professionals can be found at www.finra.org/brokerqualifications/registeredrep/.

Registration and Employment History



Registration History

The broker previously was registered with the following FINRA firms:

Registration Dates	Firm Name	CRD#	Branch Location
04/2005 - 06/2012	BROOKSTONE SECURITIES INC	13366	LAKELAND, FL
01/2004 - 04/2005	ARCHER ALEXANDER SECURITIES CORPORATION	41555	KANSAS CITY, MO
12/2003 - 01/2004	NATIONS FINANCIAL GROUP INC	44181	CEDAR RAPIDS, IA
04/2003 - 12/2003	ARCHER ALEXANDER SECURITIES CORPORATION	41555	KANSAS CITY, MO
08/2002 - 04/2003	GUNNALLEN FINANCIAL INC	17609	TAMPA, FL
05/2002 - 08/2002	GUNNALLEN FINANCIAL, INC	17609	TAMPA, FL
07/2000 - 05/2002	KOVACK SECURITIES INC	44848	FT. LAUDERDALE, FL
04/2000 - 07/2000	INTERFIRST CAPITAL CORPORATION	7659	LOS ANGELES, CA
06/1999 - 04/2000	SAN CLEMENTE SECURITIES INC	21895	SAN CLEMENTE, CA
01/1995 - 06/1999	1717 CAPITAL MANAGEMENT COMPANY	4082	NEWARK, DE
04/1994 - 02/1995	NORTH AMERICAN MANAGEMENT, INC.	624	SIOUX FALLS, SD
06/1993 - 04/1994	JACKSON NATIONAL FINANCIAL SERVICES, INC.	29604	SANTA MONICA, CA
09/1987 - 06/1991	FIRST AMERICAN NATIONAL SECURITIES INC	10111	DULUTH, GA

Employment History

Below is the broker's employment history for up to the last 10 years.

Please note that the broker is required to provide this information only while registered with FINRA and the information is not updated after the broker ceases to be registered. Therefore, an employment end date of "Present" may not reflect the broker's current employment status.

Employment Dates	Employer Name	Employer Location
04/2005 - Present	BROOKSTONE SECURITIES INC	LAKELAND, FL
01/2004 - 04/2005	ARCHER ALEXANDER SECURITIES CORPORATION	LAKELAND, FL

Registration and Employment History

User Guidance



Other Business Activities

This section includes information, if any, as provided by the broker regarding other business activities the broker is currently engaged in either as a proprietor, partner, officer, director, employee, trustee, agent or otherwise. This section does not include non-investment related activity that is exclusively charitable, civic, religious or fraternal and is recognized as tax exempt.

T SQUARED FINANCIAL GROUP, 100% OWNER, 5 HRS PER WEEK. AFTER HOURS ACTIVITY. PO BOX 8087, LAKELAND, FL 33892, PRESIDENT/CEO BEGAN 12/99 COMPANY IS CURRENTLY DORMANT.

PLATINUM FINANCIAL PLANNING, INC. 100% OWNER, NON-INVESTMENT RELATED. TIME SPENT 15 HOURS, PER WEEK DURING MARKET HOURS. PO BOX 8087, LAKELAND, FL, 33802, MEDICAID APPLICATION SERVICE FOR NURSING HOME RESIDENTS. PRESIDENT/CEO. COMPANY BEGAN 12/2000. DUTIES INCLUDE MEETING WITH CLIENTS CREATIVE SOLUTION TO QUALIFICATION PROBLEMS, REGULAR BOARD DUTIES.

BROOKSTONE CAPITAL MANAGEMENT, LLC. 100% OWNER. NO LONGER A MANAGING MEMBER AS OF 10/16/2011. DOES NOT REQUIRE ANY OF MY TIME. DOES NOT INTERFERE WITH TRADING. FIRM FOUNDED IN 2004.

COMMUNITY SOUTHERN BANK, FORMER CHAIRMAN OF THE BOARD, MINORITY STOCKHOLDER. 3 HOURS PER MONTH. AFTER HOURS ACTIVITY. RESIGNED FROM BOARD AS OF 7/7/11

BROOKSTONE NOTE SERVICES, LLC, PRESIDENT, 100% OWNERSHIP, AFTER HOURS ACTIVITY. PO BOX 8087, LAKELAND, FL 33811. OWNS THE BUILDING THAT HOUSES BROOKSTONE SECURITIES. COMPANY FOUNDED IN 11/2007. 0 HOURS PER MONTH DURING MARKET HOURS.

EASTERN KENTUCKY LAND & WILDLIFE, LLC, NON-INVESTMENT RELATED, OWNERSHIP 20%, AFTER HOURS ACTIVITY.

BROKERDEALERMATCH, LLC, NON-INVESTMENT RELATED, OWNERSHIP 100%, AFTER HOURS ACTIVITY.

FORWARD FUNDING PARTNERS LLC. NON-INVESTMENT RELATED. 20 HRS/WK DURING REGULAR MRKT HRS. 5 HRS DURING NON- MRKT HRS.

AMERICAN HERITAGE HARDWOODS, 1840 GIBSONIA GALLOWAY RD., SUITE 200, LAKELAND, FL 33811. IMPORTING HARDWOOD FLOORING FROM CHINA. MANAGING MEMBER - DISBURSEMENT OF FUNDS AND MANAGEMENT OF IMPORT PROCESS. 40 HOURS PER MONTH, NON-INVESTMENT RELATED.

BD SWITCH, LLC - 2920 DRANE FIELD ROAD, LAKELAND, FL 33811 (WWW.BDSWITCH.COM). RECRUITING FIRM FOR REGISTERED REPS/IAR'S. 20 HOURS PER WEEK DURING MARKET HOURS AND 3 HOURS PER WEEK OUTSIDE MARKET HOURS. COMPENSATION WILL CONSIST OF FEES EARNED FOR PLACING RR'S AND IARS AS WELL AS RETAINERS PAID BY BD'S AND RIA'S FOR MY RECRUITING EFFORTS.

Disclosure Events



What you should know about reported disclosure events:

1. All individuals registered to sell securities or provide investment advice are required to disclose customer complaints and arbitrations, regulatory actions, employment terminations, bankruptcy filings, and criminal or civil judicial proceedings.
2. **Certain thresholds must be met before an event is reported to CRD, for example:**
 - A law enforcement agency must file formal charges before a broker is required to disclose a particular criminal event.
 - A customer dispute must involve allegations that a broker engaged in activity that violates certain rules or conduct governing the industry and that the activity resulted in damages of at least \$5,000.
3. **Disclosure events in BrokerCheck reports come from different sources:**
 - As mentioned at the beginning of this report, information contained in BrokerCheck comes from brokers, brokerage firms and regulators. When more than one of these sources reports information for the same disclosure event, all versions of the event will appear in the BrokerCheck report. The different versions will be separated by a solid line with the reporting source labeled.
4. **There are different statuses and dispositions for disclosure events:**
 - A disclosure event may have a status of *pending*, *on appeal*, or *final*.
 - A "pending" event involves allegations that have not been proven or formally adjudicated.
 - An event that is "on appeal" involves allegations that have been adjudicated but are currently being appealed.
 - A "final" event has been concluded and its resolution is not subject to change.
 - A final event generally has a disposition of *adjudicated*, *settled* or *otherwise resolved*.
 - An "adjudicated" matter includes a disposition by (1) a court of law in a criminal or civil matter, or (2) an administrative panel in an action brought by a regulator that is contested by the party charged with some alleged wrongdoing.
 - A "settled" matter generally involves an agreement by the parties to resolve the matter. Please note that brokers and brokerage firms may choose to settle customer disputes or regulatory matters for business or other reasons.
 - A "resolved" matter usually involves no payment to the customer and no finding of wrongdoing on the part of the individual broker. Such matters generally involve customer disputes.

For your convenience, below is a matrix of the number and status of disclosure events involving this broker. Further information regarding these events can be found in the subsequent pages of this report. You also may wish to contact the broker to obtain further information regarding these events.

		Pending	Final	On Appeal
Regulator	Event	0	1	1



Customer Dispute

0

1

N/A

Investigation

1

N/A

N/A



Disclosure Event Details

When evaluating this information, please keep in mind that a disclosure event may be pending or involve allegations that are contested and have not been resolved or proven. The matter may, in the end, be withdrawn, dismissed, resolved in favor of the broker, or concluded through a negotiated settlement for certain business reasons (e.g., to maintain customer relationships or to limit the litigation costs associated with disputing the allegations) with no admission or finding of wrongdoing.

This report provides the information exactly as it was reported to CRD and therefore some of the specific data fields contained in the report may be blank if the information was not provided to CRD.

Regulatory - Final

This type of disclosure event may involve (1) a final, formal proceeding initiated by a regulatory authority (e.g., a state securities agency, self-regulatory organization, federal regulatory such as the Securities and Exchange Commission, foreign financial regulatory body) for a violation of investment-related rules or regulations; or (2) a revocation or suspension of a broker's authority to act as an attorney, accountant, or federal contractor.

Disclosure 1 of 1

Reporting Source:	Regulator
Regulatory Action Initiated By:	FINRA
Sanction(s) Sought:	Other: N/A
Date Initiated:	06/28/2010
Docket/Case Number:	<u>2009017275301</u>
Employing firm when activity occurred which led to the regulatory action:	BROOKSTONE SECURITIES, INC.
Product Type:	Equity Listed (Common & Preferred Stock) Promissory Note Other: UNSECURED BRIDGE NOTES/WARRANTS
Allegations:	FINRA RULE 2010, NASD RULES 2110, 3010(A) AND (B) - A MEMBER FIRM, ACTING THROUGH ANTONY L. TURBEVILLE, FAILED TO REASONABLY SUPERVISE A REGISTERED REPRESENTATIVE AND FAILED TO FOLLOW UP ON RED FLAGS THAT SHOULD HAVE ALERTED THEM TO THE NEED TO INVESTIGATE THE REPRESENTATIVE'S SALES PRACTICES AND DETERMINE WHETHER TRADING RESTRICTIONS, HEIGHTENED SUPERVISION OR DISCIPLINE WERE WARRANTED. DESPITE THE REPRESENTATIVE'S LACK OF EXPERIENCE AND THE HIGH RISK OF CERTAIN INVESTMENTS, TURBEVILLE DID NOTHING TO ENSURE THAT THE



REPRESENTATIVE WAS MAKING SUITABLE RECOMMENDATIONS. THE FIRM, ACTING THROUGH TURBEVILLE, FAILED TO ESTABLISH, MAINTAIN AND ENFORCE SUPERVISORY PROCEDURES REASONABLY DESIGNED TO PREVENT VIOLATIONS OF NASD RULE 2310 REGARDING SUITABILITY. TURBEVILLE FAILED TO TAKE STEPS TO ENSURE THAT THE CHIEF COMPLIANCE OFFICER HAD COMPLETED THE DUE DILIGENCE PROCESS REGARDING SECURITIES. TURBEVILLE WAS AWARE OF THE LACK OF SUPERVISORY CONTROLS TO PREVENT AND DETECT UNSUITABLE RECOMMENDATIONS RESULTING FROM EXCESSIVE TRADING, EXCESSIVE USE OF MARGIN AND OVER-CONCENTRATION AND THAT PRINCIPALS DID NOT REVIEW TRADES OR CORRESPONDENCE. THE FIRM'S ACCOUNT APPLICATION PROCESS WAS FLAWED SO THAT THE REVIEWING PRINCIPAL WAS UNABLE TO OBTAIN AN ACCURATE PICTURE OF CUSTOMERS' FINANCIAL STATUS, INVESTMENT OBJECTIVES AND INVESTMENT HISTORY WHEN REVIEWING TRANSACTIONS FOR SUITABILITY. THE FIRM'S PROCEDURES WERE UNREASONABLE BECAUSE THEY FAILED TO IDENTIFY SPECIFIC REPORTS THE COMPLIANCE DEPT. WAS TO REVIEW AND PROVIDED NO GUIDANCE ON THE ACTIONS OR ANALYSIS THAT SHOULD OCCUR IN RESPONSE TO REPORTS AND TURBEVILLE DID NOT TAKE STEPS TO ADDRESS THE INADEQUATE SYSTEM.

Current Status:	Final
Resolution:	Decision & Order of Offer of Settlement
Does the order constitute a final order based on violations of any laws or regulations that prohibit fraudulent, manipulative, or deceptive conduct?	No
Resolution Date:	09/27/2011
Sanctions Ordered:	Civil and Administrative Penalty(ies)/Fine(s) Suspension
If the regulator is the SEC, CFTC, or an SRO, did the action result in a finding of a willful violation or failure to supervise?	No



(1) willfully violated any provision of the Securities Act of 1933, the Securities Exchange Act of 1934, the Investment Advisers Act of 1940, the Investment Company Act of 1940, the Commodity Exchange Act, or any rule or regulation under any of such Acts, or any of the rules of the Municipal Securities Rulemaking Board, or to have been unable to comply with any provision of such Act, rule or regulation?

(2) willfully aided, abetted, counseled, commanded, induced, or procured the violation by any person of any provision of the Securities Act of 1933, the Securities Exchange Act of 1934, the Investment Advisers Act of 1940, the Investment Company Act of 1940, the Commodity Exchange Act, or any rule or regulation under any of such Acts, or any of the rules of the Municipal Securities Rulemaking Board? or



(3) failed reasonably to supervise another person subject to your supervision, with a view to preventing the violation by such person of any provision of the Securities Act of 1933, the Securities Exchange Act of 1934, the Investment Advisers Act of 1940, the Investment Company Act of 1940, the Commodity Exchange Act, or any rule or regulation under any such Acts, or any of the rules of the Municipal Securities Rulemaking Board?

Sanction 1 of 1

Sanction Type:	Suspension
Capacities Affected:	ANY PRINCIPAL CAPACITY
Duration:	THREE MONTHS
Start Date:	10/17/2011
End Date:	01/16/2012

Monetary Sanction 1 of 1

Monetary Related Sanction:	Civil and Administrative Penalty(ies)/Fine(s)
Total Amount:	\$10,000.00
Portion Levied against individual:	\$10,000.00
Payment Plan:	
Is Payment Plan Current:	Yes
Date Paid by individual:	10/11/2011
Was any portion of penalty waived?	No

Amount Waived:

Summary: WITHOUT ADMITTING OR DENYING THE ALLEGATIONS, TURBEVILLE



CONSENTED TO THE DESCRIBED SANCTIONS AND TO THE ENTRY OF FINDINGS; THEREFORE, HE IS FINED \$10,000 AND SUSPENDED FROM ASSOCIATION WITH ANY FINRA MEMBER IN ANY PRINCIPAL CAPACITY FOR THREE MONTHS. THE SUSPENSION IS IN EFFECT FROM OCTOBER 17, 2011 THROUGH JANUARY 16, 2012.

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Reporting Source: Broker

Regulatory Action Initiated By: FINRA

Sanction(s) Sought: Other: N/A

Date Initiated: 06/28/2010

Docket/Case Number: 2009017275301

Employing firm when activity occurred which led to the regulatory action: BROOKSTONE SECURITIES, INC.

Product Type: Equity Listed (Common & Preferred Stock)
Promissory Note
Other: UNSECURED BRIDGE NOTES/WARRANTS

Allegations: FINRA RULE 2010, NASD RULES 2110, 3010(A) AND (B) - A MEMBER FIRM, ACTING THROUGH ANTONY L. TURBEVILLE, FAILED TO REASONABLY SUPERVISE A REGISTERED REPRESENTATIVE AND FAILED TO FOLLOW UP ON RED FLAGS THAT SHOULD HAVE ALERTED THEM TO THE NEED TO INVESTIGATE THE REPRESENTATIVE'S SALES PRACTICES AND DETERMINE WHETHER TRADING RESTRICTIONS, HEIGHTENED SUPERVISION OR DISCIPLINE WERE WARRANTED. DESPITE THE REPRESENTATIVE'S LACK OF EXPERIENCE AND THE HIGH RISK OF CERTAIN INVESTMENTS, TURBEVILLE DID NOTHING TO ENSURE THAT THE REPRESENTATIVE WAS MAKING SUITABLE RECOMMENDATIONS. A MEMBER FIRM, ACTING THROUGH TURBEVILLE, FAILED TO ESTABLISH, MAINTAIN AND ENFORCE SUPERVISORY PROCEDURES REASONABLY DESIGNED TO PREVENT VIOLATIONS OF NASD RULE 2310 REGARDING SUITABILITY. TURBEVILLE FAILED TO TAKE STEPS TO ENSURE THAT THE CHIEF COMPLIANCE OFFICER HAD COMPLETED THE DUE DILIGENCE PROCESS REGARDING SECURITIES. TURBEVILLE WAS AWARE OF THE LACK OF SUPERVISORY CONTROLS TO PREVENT AND DETECT UNSUITABLE RECOMMENDATIONS RESULTING FROM EXCESSIVE TRADING, EXCESSIVE USE OF MARGIN AND OVER-CONCENTRATION AND THAT PRINCIPALS DID NOT REVIEW TRADES OR CORRESPONDENCE. THE FIRM'S ACCOUNT APPLICATION PROCESS WAS FLAWED SO THAT THE



REVIEWING PRINCIPAL WAS UNABLE TO OBTAIN AN ACCURATE PICTURE OF CUSTOMERS' FINANCIAL STATUS, INVESTMENT OBJECTIVES AND INVESTMENT HISTORY WHEN REVIEWING TRANSACTIONS FOR SUITABILITY. THE FIRM'S PROCEDURES WERE UNREASONABLE BECAUSE THEY FAILED TO IDENTIFY SPECIFIC REPORTS THE COMPLIANCE DEPT. WAS TO REVIEW AND PROVIDED NO GUIDANCE ON THE ACTIONS OR ANALYSIS THAT SHOULD OCCUR IN RESPONSE TO REPORTS AND TURBEVILLE DID NOT TAKE STEPS TO ADDRESS THE INADEQUATE SYSTEM.

Current Status:	Final
Resolution:	Acceptance, Waiver & Consent(AWC)
Does the order constitute a final order based on violations of any laws or regulations that prohibit fraudulent, manipulative, or deceptive conduct?	No
Resolution Date:	09/27/2011
Sanctions Ordered:	Civil and Administrative Penalty(ies)/Fine(s) Suspension
Sanction 1 of 1	
Sanction Type:	Suspension
Capacities Affected:	PRINCIPAL CAPACITIES ONLY
Duration:	3 MONTHS
Start Date:	10/17/2011
End Date:	01/16/2012
Monetary Sanction 1 of 1	
Monetary Related Sanction:	Civil and Administrative Penalty(ies)/Fine(s)
Total Amount:	\$10,000.00
Portion Levied against individual:	\$10,000.00
Payment Plan:	CREDIT CARD
Is Payment Plan Current:	Yes
Date Paid by individual:	10/11/2011



Was any portion of penalty waived? No

Amount Waived:

Summary:

MR. TURBEVILLE HAS SETTLED FINRA DISCIPLINARY PROCEEDING 200901725301 WITH A PAYMENT OF A \$10,000 FINE AND A 3 MONTH SUSPENSION (10/17/2011 - 1/16/2012) IN HIS PRINCIPAL CAPACITIES ONLY. HE AGREED TO THESE FAVORABLE SETTLEMENT TERMS TO AVOID FURTHER EXPENSES AND COSTS, INCLUDING THE ADDITIONAL LEGAL FEES AND EXPENSES THAT WOULD INEVITABLY RESULT FROM HAVING TO DEFEND THE ACTION ON THE MERITS, AND THE INCONVENIENCE, DISTRACTION AND VALUABLE TIME THAT WOULD BE LOST LITIGATING THE DISPUTE. MOREOVER, MR. TURBEVILLE AGREED TO SETTLE BECAUSE THE TERMS OF THE SETTLEMENT EXPLICITLY PROVIDED THE SETTLEMENT WAS NOT AN ADMISSION OF ANY OF THE ALLEGATIONS SET FORTH IN THE COMPLAINT OR THE "ENTRY OF FINDINGS". THE SETTLEMENT SPECIFICALLY STATES THAT "RESPONDENTS HAVE CONSENTED, WITHOUT ADMITTING OR DENYING THE ALLEGATIONS OF THE COMPLAINT" TO THE ENTRY OF FINDINGS AND VIOLATIONS CONSISTENT WITH THE ALLEGATIONS OF THE COMPLAINT. THE CIRCUMSTANCES LEADING TO THE DISCIPLINARY ACTION WERE RELATED TO THE ACTIVITIES OF A ROGUE BROKER, [THIRD PARTY]. [THIRD PARTY] WAS BRIEFLY REGISTERED WITH BROOKSTONE FROM 04/16/2008 TO 04/03/2009. MR. TURBEVILLE WAS THE CHIEF EXECUTIVE OFFICER DURING THAT TIME PERIOD AND NOT RESPONSIBLE FOR THE DIRECT SUPERVISION OF [THIRD PARTY].



Regulatory - On Appeal

This type of disclosure event may involve (1) a formal proceeding initiated by a regulatory authority (e.g., a state securities agency, self-regulatory organization, federal regulator such as the Securities and Exchange Commission, foreign financial regulatory body) for a violation of investment-related rules or regulations that is currently on appeal; or (2) a revocation or suspension of a broker's authority to act as an attorney, accountant, or federal contractor that is currently on appeal.

Disclosure 1 of 1

Reporting Source: Regulator

Regulatory Action Initiated By: FINRA

Sanction(s) Sought: Other: N/A

Date Initiated: 12/30/2009

Docket/Case Number: 2007011413501

Employing firm when activity occurred which led to the regulatory action: BROOKSTONE SECURITIES, INC.

Product Type: Other: COLLATERALIZED MORTGAGE OBLIGATIONS

Allegations: SECTION 10(B) OF THE SECURITIES EXCHANGE ACT, SEC RULE 10B-5, NASD RULES 2110, 2120, 2210(D)(1)(A), 2210(D)(1)(B), 2310(A), 3010(B) - ANTONY LEE TURBEVILLE, IN CONNECTION WITH THE PURCHASE OR SALE OF COLLATERALIZED MORTGAGE OBLIGATIONS (CMOS), DIRECTLY OR INDIRECTLY, BY THE USE OF MEANS OR INSTRUMENTALITIES OF INTERSTATE COMMERCE (INCLUDING BY TELEPHONE), OR OF THE MAIL, KNOWINGLY OR RECKLESSLY EMPLOYED DEVICES, SCHEMES OR ARTIFICES TO DEFRAUD; MADE UNTRUE STATEMENTS OF A MATERIAL FACT OR OMITTED TO STATE A MATERIAL FACT NECESSARY IN ORDER TO MAKE THE STATEMENTS MADE, IN LIGHT OF THE CIRCUMSTANCES UNDER WHICH THEY WERE MADE, NOT MISLEADING, CONCERNING CMO INVESTMENTS; OR ENGAGED IN ACTS, PRACTICES OR COURSES OF BUSINESS WHICH OPERATED, OR WOULD OPERATE, AS A FRAUD OR DECEIT UPON HIS CUSTOMERS. TURBEVILLE EFFECTED TRANSACTIONS IN, OR INDUCED THE PURCHASE OR SALE OF, SECURITIES BY MEANS OF MANIPULATIVE, DECEPTIVE OR OTHER FRAUDULENT DEVICE OR CONTRIVANCE. TURBEVILLE, KNOWINGLY, WILLFULLY OR RECKLESSLY, MADE MISREPRESENTATIONS OF MATERIAL FACTS AND OMITTED TO DISCLOSE MATERIAL FACTS IN CONNECTION WITH THE OFFERS AND SALES OF CMO INVESTMENTS TO CUSTOMERS. TURBEVILLE MADE MATERIAL MISREPRESENTATIONS AND OMITTED TO DISCLOSE MATERIAL INFORMATION AT LEAST NEGLIGENTLY, AND IN SO DOING, VIOLATED HIS



OBLIGATION TO OBSERVE HIGH STANDARDS OF COMMERCIAL HONOR AND JUST AND EQUITABLE PRINCIPLES OF TRADE. A MEMBER FIRM, ACTING THROUGH TURBEVILLE, RECOMMENDED HIGH-RISK CMO INVESTMENTS TO ELDERLY AND/OR RETIRED CUSTOMERS WITHOUT A REASONABLE BASIS FOR BELIEVING THAT THE INVESTMENTS WERE SUITABLE BASED ON THE CUSTOMERS' DISCLOSED AGE, INVESTMENT EXPERIENCE, INVESTMENT OBJECTIVES, FINANCIAL SITUATION AND/OR RISK TOLERANCE. TURBEVILLE MADE MISREPRESENTATIONS, OMITTED MATERIAL FACTS AND USED MISLEADING STATEMENTS IN LETTERS SENT TO CERTAIN CUSTOMERS WHO INVESTED IN THE CMOs. THE FIRM, ACTING THROUGH TURBEVILLE, FAILED TO ENFORCE ITS PROCEDURES REGARDING SAFEGUARDING CUSTOMER INFORMATION. TURBEVILLE WILLFULLY VIOLATED SECTION 10(B) OF THE SECURITIES EXCHANGE ACT, SEC RULE 10B-5, NASD RULES 2110, 2120.

Current Status: On Appeal

Action Appealed To: SRO

Date Appeal filed: 06/12/2012

Appeal Limitation Details:

Resolution: Decision

Does the order constitute a final order based on violations of any laws or regulations that prohibit fraudulent, manipulative, or deceptive conduct? No

Resolution Date: 05/31/2012

If the regulator is the SEC, CFTC, or an SRO, did the action result in a finding of a willful violation or failure to supervise? No



(1) willfully violated any provision of the Securities Act of 1933, the Securities Exchange Act of 1934, the Investment Advisers Act of 1940, the Investment Company Act of 1940, the Commodity Exchange Act, or any rule or regulation under any of such Acts, or any of the rules of the Municipal Securities Rulemaking Board, or to have been unable to comply with any provision of such Act, rule or regulation?

(2) willfully aided, abetted, counseled, commanded, induced, or procured the violation by any person of any provision of the Securities Act of 1933, the Securities Exchange Act of 1934, the Investment Advisers Act of 1940, the Investment Company Act of 1940, the Commodity Exchange Act, or any rule or regulation under any of such Acts, or any of the rules of the Municipal Securities Rulemaking Board? or



(3) failed reasonably to supervise another person subject to your supervision, with a view to preventing the violation by such person of any provision of the Securities Act of 1933, the Securities Exchange Act of 1934, the Investment Advisers Act of 1940, the Investment Company Act of 1940, the Commodity Exchange Act, or any rule or regulation under any such Acts, or any of the rules of the Municipal Securities Rulemaking Board?

Summary:

EXTENDED HEARING PANEL DECISION RENDERED MAY 31, 2012 WHEREIN TURBEVILLE IS BARRED FROM ASSOCIATION WITH ANY FINRA MEMBER IN ANY CAPACITY, ORDERED TO PAY RESTITUTION TOTALING \$440,600, JOINTLY AND SEVERALLY, TO CUSTOMERS AND ORDERED TO PAY COSTS OF \$27,047.55, JOINTLY AND SEVERALLY. APPEALED TO THE NAC ON JUNE 12, 2012.

Reporting Source: Broker
Regulatory Action Initiated By: FINRA

Sanction(s) Sought: Other: N/A

Date Initiated: 12/30/2009

Docket/Case Number: 2007011413501

Employing firm when activity occurred which led to the regulatory action: BROOKSTONE SECURITIES, INC.

Product Type: Other: COLLATERALIZED MORTGAGE OBLIGATIONS

Allegations: SECTION 10(B) OF THE SECURITIES EXCHANGE ACT, SEC RULE 10B-5, NASD RULES 2110, 2120, 2210(D)(1)(A), 2210(D)(1)(B), 2310(A), 3010(B) - ANTONY LEE TURBEVILLE, IN CONNECTION WITH THE PURCHASE OR SALE OF COLLATERALIZED MORTGAGE OBLIGATIONS (CMOS), DIRECTLY



OR INDIRECTLY, BY THE USE OF MEANS OR INSTRUMENTALITIES OF INTERSTATE COMMERCE (INCLUDING BY TELEPHONE), OR OF THE MAILES, KNOWINGLY OR RECKLESSLY EMPLOYED DEVICES, SCHEMES OR ARTIFICES TO DEFRAUD; MADE UNTRUE STATEMENTS OF A MATERIAL FACT OR OMITTED TO STATE A MATERIAL FACT NECESSARY IN ORDER TO MAKE THE STATEMENTS MADE, IN LIGHT OF THE CIRCUMSTANCES UNDER WHICH THEY WERE MADE, NOT MISLEADING, CONCERNING CMO INVESTMENTS; OR ENGAGED IN ACTS, PRACTICES OR COURSES OF BUSINESS WHICH OPERATED, OR WOULD OPERATE, AS A FRAUD OR DECEIT UPON HIS CUSTOMERS. TURBEVILLE EFFECTED TRANSACTIONS IN, OR INDUCED THE PURCHASE OR SALE OF, SECURITIES BY MEANS OF MANIPULATIVE, DECEPTIVE OR OTHER FRAUDULENT DEVICE OR CONTRIVANCE. TURBEVILLE, KNOWINGLY, WILLFULLY OR RECKLESSLY, MADE MISREPRESENTATIONS OF MATERIAL FACTS AND OMITTED TO DISCLOSE MATERIAL FACTS IN CONNECTION WITH THE OFFERS AND SALES OF CMO INVESTMENTS TO CUSTOMERS. TURBEVILLE MADE MATERIAL MISREPRESENTATIONS AND OMITTED TO DISCLOSE MATERIAL INFORMATION AT LEAST NEGLIGENTLY, AND IN SO DOING, VIOLATED HIS OBLIGATION TO OBSERVE HIGH STANDARDS OF COMMERCIAL HONOR AND JUST AND EQUITABLE PRINCIPLES OF TRADE. A MEMBER FIRM, ACTING THROUGH TURBEVILLE, RECOMMENDED HIGH-RISK CMO INVESTMENTS TO ELDERLY AND/OR RETIRED CUSTOMERS WITHOUT A REASONABLE BASIS FOR BELIEVING THAT THE INVESTMENTS WERE SUITABLE BASED ON THE CUSTOMERS' DISCLOSED AGE, INVESTMENT EXPERIENCE, INVESTMENT OBJECTIVES, FINANCIAL SITUATION AND/OR RISK TOLERANCE. TURBEVILLE MADE MISREPRESENTATIONS, OMITTED MATERIAL FACTS AND USED MISLEADING STATEMENTS IN LETTERS SENT TO CERTAIN CUSTOMERS WHO INVESTED IN THE CMOS. THE FIRM, ACTING THROUGH TURBEVILLE, FAILED TO ENFORCE ITS PROCEDURES REGARDING SAFEGUARDING CUSTOMER INFORMATION. TURBEVILLE WILLFULLY VIOLATED SECTION 10(B) OF THE SECURITIES EXCHANGE ACT, SEC RULE 10B-5, NASD RULES 2110, 2120.

Current Status:	On Appeal
Action Appealed To:	NATIONAL ADJUDICATORY COUNCIL ("NAC")
Date Appeal filed:	06/12/2012
Appeal Limitation Details:	
Resolution:	Decision



Does the order constitute a final order based on violations of any laws or regulations that prohibit fraudulent, manipulative, or deceptive conduct?

No

Resolution Date:

05/31/2012

Sanctions Ordered:

Bar (Permanent)
Restitution

Sanction 1 of 1

Sanction Type:

Bar (Permanent)

Capacities Affected:

ALL CAPACITIES

Duration:

PERMANENT

Start Date:

End Date:

Monetary Sanction 1 of 1

Monetary Related Sanction:

Restitution

Total Amount:

\$440,600.00

Portion Levied against individual:

\$440,600.00

Payment Plan:

NONE

Is Payment Plan Current:

Yes

Date Paid by individual:

05/31/2012

Was any portion of penalty waived?

No

Amount Waived:

Summary:

THE FINRA HEARING PANEL DECISION ISSUED ON MAY 31, 2012 IS NON-FINAL AND CURRENTLY UNDER APPEAL PURSUANT TO RESPONDENTS' NOTICE OF APPEAL FILED ON JUNE 12, 2012. WE BELIEVE THE APPEAL IS ULTIMATELY LIKELY TO SUCCEED AS, BASED UPON THE WRITTEN OPINION OF OUR OUTSIDE ATTORNEYS, THERE IS A REASONABLE BASIS FOR AN APPELLATE BODY, WHETHER THE NATIONAL ADJUDICATORY COUNCIL ("NAC") OR A HIGHER AUTHORITY, TO VACATE THIS DECISION ON THE GROUNDS THAT FINRA ENFORCEMENT DID NOT



SATISFY THE LEGAL REQUIREMENTS NECESSARY, IN SPITE OF THE PANELS DECISION TO ASSESS LIABILITY AGAINST MR. TURBEVILLE AND THE OTHER RESPONDENTS. TURBEVILLE CONTINUES TO REFUTE THE ALLEGATIONS ASSERTED BY FINRA AND ITS AGENTS. TURBEVILLE DISTRIBUTED CMO DISCLOSURE BOOKLETS REQUIRED BY FINRA (NASD) AND DISCLOSED THE KNOWN CHARACTERISTICS AND RISKS OF CMOS FULLY. ADDITIONALLY, TURBEVILLE ORALLY AND IN WRITING DISCLOSED THE RISKS ASSOCIATED WITH CMOS BEYOND THE REQUIREMENTS OF FINRA (NASD) AND THOSE DISCLOSURES WERE SIGNED BY ALL THE CLIENTS THAT CHOSE TO INVEST IN CMOS PRIOR TO THE EXECUTION OF A SINGLE CMO TRADE IN THEIR ACCOUNTS. MOREOVER, FINRA FAILS TO DISCLOSE IN ITS COMPLAINT THAT IT WAS FULLY AWARE OF TURBEVILLE'S CMO ACTIVITIES SINCE 2002 AND TOOK NO ACTION UNTIL THESE PRODUCTS BECAME A POLITICAL HOT-POTATO. AS NOTED IN NASD NOTICE TO MEMBERS 93-73: "PRINCIPAL PAYMENTS ON CMOS ARISE FROM BOTH THE REGULAR AMORTIZATION OF THE UNDERLYING MORTGAGES AND FROM PREPAYMENTS OF THOSE MORTGAGES DUE TO SALES OR REFINANCING. AS RECENT HISTORY SHOWS, WHEN INTEREST RATES DECLINE SUBSTANTIALLY, MANY HOMEOWNERS CHOOSE TO REFINANCE THEIR MORTGAGES. THIS ACTIVITY CAN RESULT IN CMOS PAYING OFF PRINCIPAL MORE RAPIDLY THAN HAD BEEN ANTICIPATED. THUS, A CMO INVESTOR MAY BE FACED WITH INVESTING HIS OR HER PRINCIPAL AT A CURRENT LOWER RATE. IN A RISING INTEREST RATE ENVIRONMENT, HOMEOWNERS MAY NOT REFINANCE OR SELL THEIR HOUSES AS QUICKLY: THUS, CMO INVESTORS MAY HAVE TO HOLD THEIR INVESTMENT FOR A LONGER TIME PERIOD. WHILE PRINCIPAL PAYMENTS MAY BE QUITE PREDICTABLE FOR CERTAIN TRANCHES OF A GIVEN CMO, OTHER TRANCHES OF THE SAME ISSUE MAY BE SIGNIFICANTLY LESS PREDICTABLE." WITH REGARD TO INVERSE FLOATERS, THE NOTICE TO MEMBERS FURTHER STATES: "AT WORST, RISING RATES WILL LOWER INTEREST PAYMENTS AND EXTEND RETURN OF PRINCIPAL BEYOND THE AVERAGE LIFE." ALL OF THESE RISKS WERE DISCLOSED TO THE CLIENTS BEFORE A SINGLE DOLLAR WAS INVESTED. LASTLY, WE NOTE THAT FINRA UNREASONABLY FOCUSES ONLY ON A PERIOD OF TIME THAT CAN EASILY BE DESCRIBED AS ONE OF THE MOST TURBULENT RISING INTEREST RATE CYCLES IN FIFTY YEARS AND EXCLUDES THE PERIOD OF TIME IMMEDIATELY PRIOR AND IMMEDIATELY AFTER; REASONABLE PEOPLE MIGHT QUESTION THE FAIRNESS OF SUCH A SKEWED APPROACH.

**Investigation**

This type of disclosure event involves any ongoing formal investigation by an entity such as a grand jury state or federal agency, self-regulatory organization or foreign regulatory authority. Subpoenas, preliminary or routine regulatory inquiries, and general requests by a regulatory entity for information are not considered investigations and therefore are not included in a BrokerCheck report.

Disclosure 1 of 1

Reporting Source: Regulator

Initiated By: FINRA

Notice Date: 07/03/2013

Details: WELLS EXAMINATION #20130375047: ON JULY 3, 2013, FINRA MADE A PRELIMINARY DETERMINATION TO RECOMMEND THAT DISCIPLINARY ACTION BE BROUGHT AGAINST ANTONY TURBEVILLE ALLEGING HE FILED A FALSE COMPLAINT AGAINST AND ATTEMPTED TO INTIMIDATE WITNESSES IN A FINRA DISCIPLINARY ACTION, IN VIOLATION OF FINRA RULE 2010.

Is Investigation pending? Yes



Customer Dispute - Award/Judgment

This type of disclosure event involves a final, consumer-initiated, investment-related arbitration or civil suit containing allegations of sales practice violations against the broker that resulted in an arbitration award or civil judgment for the customer.

Disclosure 1 of 1

Reporting Source: Regulator

Employing firm when activities occurred which led to the complaint: BROOKSTONE SECURITIES, INC.

Allegations: UNSUITABILITY; MISREPRESENTATIONS; MANIPULATION; BREACH OF FIDUCIARY DUTY; AND CHURNING

Product Type: Other: UNSPECIFIED CMOS

Alleged Damages: \$105,000.00

Arbitration Information

Arbitration/Reparation Claim filed with and Docket/Case No.: FINRA - CASE #08-02937

Date Notice/Process Served: 08/19/2008

Arbitration Pending? No

Disposition: Award

Disposition Date: 10/05/2009

Disposition Detail: RESPONDENT IS JOINTLY AND SEVERALLY LIABLE FOR UNSUITABILITY AND CHURNING AND SHALL PAY TO CLAIMANT COMPENSATORY DAMAGES IN THE AMOUNT OF \$50,000.

Reporting Source: Broker

Employing firm when activities occurred which led to the complaint: BROOKSTONE SECURITIES, INC.

Allegations: EXCESSIVE COMMISSIONS, FAILURE TO FOLLOW CLIENT INSTRUCTIONS, DISAPPOINTING INVESTMENT PERFORMANCE.

Product Type: Debt-Asset Backed

Alleged Damages: \$40,000.00



**Alleged Damages Amount
Explanation (if amount not
exact):**

**POORLY WORDED STATEMENT OF CLAIM MAKES EXACT STATEMENTS
DIFFICULT.**

Is this an oral complaint?

No

Is this a written complaint?

Yes

**Is this an arbitration/CFTC
reparation or civil litigation?**

No

Customer Complaint Information

Date Complaint Received: 09/02/2008

Complaint Pending? No

Status: Arbitration Award/Monetary Judgment (for claimants/plaintiffs)

Status Date: 06/28/2011

Settlement Amount: \$55,068.14

**Individual Contribution
Amount:** \$50,000.00

Arbitration Information

**Arbitration/CFTC reparation
claim filed with (FINRA, AAA,
CFTC, etc.):** FINRA

Docket/Case #: 08-02937

Date Notice/Process Served: 09/02/2008

Arbitration Pending? No

Disposition: Award to Customer

Disposition Date: 10/05/2009

**Monetary Compensation
Amount:** \$50,250.00

**Individual Contribution
Amount:** \$50,000.00

Civil Litigation Information

Type of Court: State Court

Name of Court: CIRCUIT COURT OF THE THIRTEENTH JUDICIAL CIRCUIT



Location of Court:

HILLSBOROUGH COUNTY, FL

Docket/Case #:

09-27869

Summary:

THE PETITION TO VACATE ARBITRATION AWARD DENIED AND AWARD CONFIRM ON 3/15/2011. IN RULING UPON THE MOTION TO VACATE THE ARBITRATION AWARD ENTERED AGAINST ME AND BROOKSTONE SECURITIES, THE FLORIDA CIRCUIT COURT JUDGE MADE THE FOLLOWING COMMENTS REGARDING [CUSTOMER], DVM, THE CLAIMANT IN THIS ARBITRATION: "...HE HAS CONSISTENTLY DEMONSTRATED THE INABILITY TO COGENTLY ARTICULATE A LEGAL THEORY FOR RECOVERY. INDEED, A REVIEW OF THIS FILE DEMONSTRATES THE NEED FOR INDIVIDUALS TO SEEK LEGAL COUNSEL. TO COMPOUND THE ISSUE, THE EVIDENCE PRESENTED ESTABLISHES THAT [CUSTOMER] ENGAGED IN EX PARTE COMMUNICATION, BY LETTER, WITH THE CHAIRPERSON OF THE ARBITRATION PANEL PRESIDING OVER HIS CASE. ... THE COURT ALSO NOTES THAT FINRA RULE 12210 PROHIBITS SUCH COMMUNICATION OUTSIDE THE PRESENCE OF ALL PARTIES IN THE PROCEEDING AND ALSO PROHIBITS A PARTY FROM SUBMITTING MATERIALS DIRECTLY TO ANY ARBITRATOR." NEVERTHELESS, THE COURT DETERMINED THAT THE LEGAL STANDARD FOR VACATING THE AWARD WAS NOT SATISFIED. (FOR A NO-COST COPY OF THE COURT'S DECISION OR OTHER RELATED COURT DOCUMENTS, PLEASE CONTACT ME AT 863.838.5802.)

THE ALLEGATIONS MADE BY [CUSTOMER] IN THIS ARBITRATION REGARDING THE SALE OF CMOS (COLLATERALIZED MORTGAGE OBLIGATIONS), IN PART, RESULTED IN A SUBSEQUENT INVESTIGATION BY FINRA. THIS INVESTIGATION BECAME THE BASIS FOR A PENDING FINRA DISCIPLINARY PROCEEDING. I AM VIGOROUSLY DEFENDING AGAINST THAT PROCEEDING AND ADAMANTLY DENY THE ALLEGATIONS MADE AGAINST ME.

End of Report



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 [Licensee Address Download](#)
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 [Terminated Appointment Download](#)

Licensee Details

2/16/2014

Demographic Information

Name of Licensee: TURBEVILLE, ANTONY LEE

License #: A269247

Business Location: LAKELAND, FLORIDA

Types and Classes of Valid Licenses

Type	Original Issue Date	Qualifying Appointment
LIFE INCL VARIABLE ANNUITY(0214)	6/13/1994	YES
LIFE INCL VAR ANNUITY & HEALTH (0215)	6/13/1994	YES
LIFE(0216)	2/20/1987	YES
LIFE & HEALTH(0218)	2/20/1987	YES
HEALTH(0240)	2/20/1987	YES

Types and Classes of Active Appointments

LIFE INCL VARIABLE ANNUITY(0214)

Company Name	Original Issue Date	Exp Date	Type	County
AXA EQUITABLE LIFE INSURANCE COMPANY	2/8/2007	4/30/2015	STATE	Polk
JOHN HANCOCK LIFE INSURANCE COMPANY U.S.A.	2/13/2012	4/30/2014	STATE	Polk

LIFE INCL VAR ANNUITY & HEALTH(0215)

Company Name	Original Issue Date	Exp Date	Type	County
LINCOLN NATIONAL LIFE INSURANCE COMPANY	2/22/2005	4/30/2015	STATE	Polk

LIFE(0216)

Company Name	Original Issue Date	Exp Date	Type	County
ELCO MUTUAL LIFE AND ANNUITY COMPANY	9/15/2013	4/30/2016	STATE	Polk

UNITY FINANCIAL LIFE INSURANCE COMPANY	12/5/2012	4/30/2015	STATE	Polk
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LIFE & HEALTH(0218)

Company Name	Original Issue Date	Exp Date	Type	County
METROPOLITAN LIFE INSURANCE COMPANY	8/7/1996	4/30/2015	STATE	Polk
ILLINOIS MUTUAL LIFE INSURANCE COMPANY	11/7/2008	4/30/2015	STATE	Polk
NATIONWIDE LIFE AND ANNUITY INSURANCE COMPANY	5/28/2009	4/30/2014	STATE	Polk

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Small Banks, Big Money.



The Ledger (Lakeland, FL)
April 30, 2006

Byline: Kyle Kennedy

Apr. 30--Bartow has one. So does Winter Haven -- and Frostproof. But there is no community bank headquartered in Lakeland, a fact that has not gone unnoticed in the city. A fact that will soon not be a fact anymore.

In late June, Community Southern Bank will open its temporary site at 3234 S. Florida Ave. in Lakeland.

You may not recognize the name, but this startup bank is home-grown. Board members include chairman Antony Turbeville, president and chief executive officer of Platinum Financial Planning in Lakeland; John Langford, president and owner of a citrus management and harvesting operation in Alturas; Lee Wroten Sr., president of Global Produce Sales in Lakeland; and Sandy Fortin, owner of the Lakeland Play It Again Sports and 27 other Florida locations of the sporting goods chain.

"We're really entrenched in this community. We want to be a community bank," Fortin said.

Community Southern has raised in excess of \$9 million, its set minimum offering, and officials hope to reach their cap of \$15 million, Fortin said. ...

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APPENDIX B



Law Office Of Emma Hemness, P.A.

ELDER LAW & SPECIAL NEEDS ATTORNEYS

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www.hemnesslaw.com
info@hemnesslaw.com

February 25, 2013

Via Email

Ms. Lori Holcomb
lholcomb@flabar.org
Mr. Jeffrey Picker
jpicker@flabar.org
UPL Department
The Florida Bar
651 East Jefferson Street
Tallahassee, Florida 32399-2300

Re: Written Testimony for UPL Hearing, Tampa, Florida
Held on February 22, 2013

Dear Ms. Holcomb and Mr. Picker:

I am submitting the following written testimony in support of the Elder Law Section's request for a Formal Advisory Opinion on the unlicensed practice of law by non-attorney Medicaid planners. In addition, I adopt the written testimony of Attorney Twyla Sketchley, Chair, Elder Law Section and Attorney John Frazier, Chair, Elder Law Section UPL Committee.

First and foremost, I make a sincere request that the Florida Bar UPL Committee undertake a careful study of the comprehensive planning and legal analysis involved in the unique practice area of law we refer to as "Medicaid Planning". This is one of the core areas of the field known as "Elder Law", and it is one of the core areas upon which the Florida Bar Board of Legal Specialization approves an attorney's grasp of specialized knowledge to achieve the designation as a Board Certified Specialist in Elder Law. With a complete understanding of an elder law attorney's role and responsibilities within the Medicaid Planning context, your Committee will be able to discern where most counseling to obtain these benefits involves the practice of law and cannot be delivered to the consumer without engaging in the unlicensed practice of law.

The leadership of the Florida Bar's Elder Law Section is more than ready to provide your Committee members with common (and uncommon) client scenarios so that each Committee member can fully understand the level of legal analysis involved in: 1) identifying all the Medicaid rules and regulations appropriate to the clients; 2) counseling these clients among the choices of the Medicaid rules and regulations applying to their circumstances; 3) aiding in understanding the pros and cons of the most

Estate Planning • Special Needs Trusts • Asset Protection Planning • Medicaid Qualification • Veterans Benefits
Incapacity & Guardianship • Exploitation of the Elderly • Probate • Trust Administration • Life Care Planning

**Certified in Elder Law by the Florida Bar Board of Legal Specialization, and National Elder Law Foundation as a Certified Elder Law Attorney*

appropriate Medicaid rules and regulations selected; 4) advising about potential repercussions associated with Medicaid planning, which includes but is not limited to identifying potential income tax implications and creditor rights; 5) coordinating and blending other legal considerations such as post-mortem desires or protection of spouses or disabled family members into the planning undertaken; and 6) implementing a plan designed specifically upon the legal analysis and application of the Medicaid rules to the clients' specific set of circumstances. If legal documents are drafted as a part of such a comprehensive plan, then such legal documents – such as a Durable Power of Attorney, deed of conveyance on a homestead, or Last Will and Testament containing a testamentary special needs trust – will be included in the normal pattern of legal representation by the elder law attorney. The failure or, merely the inability, to comprehensively address or identify legal outcomes regarding clients' circumstances may result in harm.

As a Board Certified Specialist in Elder Law, I believe that there is a significant amount of harm occurring to consumers about which the Florida Bar has not yet fully been made aware. As past Chair of the Elder Law Section in 2007-2008, I made mention of this concern regarding the unlicensed practice of law by non-attorney Medicaid Planners in October 2007 during my Section Chair's address to the Florida Bar Board of Governors. Since that time, the number of non-attorney Medicaid Planning firms has grown, and the experiences of consumer harm related to me personally have increased exponentially. One need only peruse the Florida Division of Corporations website, typing in "Medicaid ..." and nearly three (3) full pages, single space, appears, from "MEDICAID 4 U, LLC" to "MEDICAID AND RETIREMENT ADVISORS". (See Attachment A.)

Primary Example: If there would be one primary example of why the Florida Bar UPL Committee must issue an advisory opinion clearly defining the unlicensed practice of law (beyond simply the preparation of legal documents), it would be the case of former attorney, Linda Littlefield.

Ms. Littlefield was an attorney with a law practice in Osceola County. Her law practice included "Medicaid Planning" and she counseled an unknown number of her clients to transfer money into a Medicaid-exempt trust known as a pooled trust, which Ms. Littlefield had created and over which her husband was the Trustee. An investigation into the use of the funds deposited into the pooled trust came to the forefront by a wife who had deposited some \$50,000 into the pooled trust to allow for her Alzheimer's stricken husband to obtain Medicaid benefits. The investigation by authorities led to Ms. Littlefield's being charged, and then on or about June 25, 2010 booked into Osceola County jail. In addition, Ms. Littlefield was ordered to cease and desist from "Medicare Planning", although the more appropriate term should have been "Medicaid Planning". It is also understood that Ms. Littlefield accepted voluntary disbarment for a period of 10 years. And, she was ultimately given a sentence of 13 years probation for her criminal activities. (See attachment for public news story.)

The significance of the timing in this example is that Ms. Littlefield created a new company known as "MEDICAID BENEFITS EXPERTS INC." on July 23, 2010, less than one month from when she was booked into jail and while she was pending, or, had already accepted voluntary disbarment. (See attachment related to Florida Division of Corporations regarding date of formation). She further established an office under this company name, a couple counties away in Tampa, Florida. And, I personally became aware of her presence in the Tampa community when I picked up her brochure on or about November 15, 2010, which she (or her agent) had placed, without permission, in the lobby of the Johnnie Byrd Alzheimers Institute at the University of South Florida.

The importance of this [extreme] example is to create an understanding that it is absurd and unthinkable to be able to go from being an attorney one day – subjected to professional and ethical rules

and regulations to protect the end use consumer -- to allegedly performing the same functions ("Medicaid Planning") the next day, escaping any oversight of the Florida Bar. Without the Florida Bar's regulation over non-attorney Medicaid Planners, and defining those activities within Medicaid Planning that is indeed the practice of law, we can have such persons as Linda Littlefield continuing to harm the public without ramifications.

Secondary Example: A second example would be that of the practices of a firm known as Platinum Financial Planning Inc owned and operated by Tony Turbeville in Lakeland, Florida. This firm is well known among the local elder law attorney community as aggressively marketing its "Medicaid Planning" services to consumers and health care providers (nursing homes) who can direct consumers to its firm.

In other written testimony by my fellow elder law attorney colleagues, examples of this firm's practices have been provided to this Committee. In addition to those previously provided materials, I am including an attachment of a recent article appearing in the Lakeland Ledger on June 17, 2012 regarding \$3 million in fines and restitution ordered against Mr. Turbeville and his employees by the SEC. Also attached is a change in the Articles of Incorporation filed with the State of Florida dated July 6, 2012, changing the name of the corporation to Platinum Benefit Planning Inc.

Finally, with respect to this organization, I am providing a copy of a retainer agreement provided to one of its Medicaid Planning clients discussing its "recommendations" to follow Medicaid's rules applicable to the client's specific circumstances. The agreement further sets forth advice to avoid probate and advice to create a deed known as an enhanced life estate deed. It also mentions that a personal care contract must be executed and explains the purpose of this legal contract. And, although there may be other glaring examples of legal analysis and implementation of Medicaid's rules as it relates to this client's particular circumstances, the client never met with an attorney, spoke with an attorney, nor was advised that a meeting with an attorney would be necessary. Client has only ever paid the Medicaid planning fee required to this organization.

In conclusion, I am able to provide numerous other examples of entities and organizations that I believe have engaged in the unlicensed practice of law in the field of Medicaid Planning. I respect and acknowledge that not every aspect of Medicaid Planning can be deemed the practice of law. However, the majority of what a consumer requires within the framework of Medicaid Planning is indeed the practice of law and such should be clearly identified by this Committee to avoid further and future harm to the consumers.

Sincerely,



Emma Hemness

APPENDIX C

THE FLORIDA BAR
UNLICENSED PRACTICE OF LAW
STANDING COMMITTEE
PUBLIC HEARING
RE: Medicaid

DATE & TIME: Friday
February 22, 2013
9:30 to 11:40 a.m.

PLACE: Sheraton Tampa East Hotel
10221 Princess Palm Avenue
Salon 3
Tampa, Florida

REPORTED BY:
J. Gay Smith
Registered Professional Reporter
Registered Merit Reporter
Florida Professional Reporter
Notary Public, State of Florida

CLARK REPORTING SERVICE, INC.
Tampa Port Authority Building, Suite 303
1101 Channelside Drive
Tampa, FL 33601
813-229-3332

1 APPEARANCES:

2 UPL STANDING COMMITTEE MEMBERS PRESENT:

3 Carsandra D. Buie, Esq.

4 Stephen J. Potter

5 C.C. Abbott, Esq.

6 Barbara P. Burke, Esq.

7 Barry M. Crown

8 Amy Dawn Envall, Esq.

9 Rudolph Frei

10 Lawrence Gordon

11 Saidin M. Hernandez, Esq.

12 David Lanaux

13 Donald Matsuura

14 Herb Milstein

15 Nancy Murphy

16 David B. Norris

17 A. Renee Pobjecky, Esq.

18 Daniel J. Schevis

19 Kellie D. Scott, Esq.

20 Martin J. Sperry, Esq.

21 The Florida Bar:

22 Nancy Blount, Esq., Chairperson

23 Lori Holcomb, Esq., The Florida Bar

24 Jeffrey Picker, Esq.

25 Maria Torres, Esq.

1 MS. BLOUNT: Before we start with the hearing on
2 the unlicensed practice of law of Medicaid planning is
3 the question. I have a community statement that I'd
4 like to read for all of you who are going to be
5 testifying. Can you hear me back there? Sorry.
6 Okay.

7 During the time that the committee is considering
8 the question requesting advisory opinion, any
9 information that we learn at the hearing through your
10 testimony will not be deemed an admission or evidence
11 on the unlicensed practice of law. We will not
12 initiate any investigation of the activities of any
13 organization or individual testifying based solely on
14 the testimony.

15 However, any ongoing investigations will
16 continue. And if we receive a new unlicensed practice
17 of law complaint on any person present here today, we
18 will open a file.

19 If you are involved in an ongoing UPL
20 investigation or we receive a UPL complaint and open a
21 file, your testimony will not be held against you.
22 Your testimony will not be deemed an admission or
23 evidence of the unlicensed practice of law and will
24 not be sent to the circuit -- to a circuit committee.

25 The reason for this ruling by the Chair is to

1 encourage full and candid testimony so that the
2 committee can reach a determination in this area.

3 The hearing is being held pursuant to Rule 10-9
4 of the rules regulating The Florida Bar.

5 The question presented is whether it constitutes
6 the unlicensed practice of law for a nonlawyer to
7 engage in the following Medicaid planning activities,
8 which lead up to the Medicaid application; preparation
9 of personal service contracts; preparation and
10 execution of qualified income trusts; rendering legal
11 advice regarding the implementation of Florida law to
12 obtain Medicaid benefits.

13 The preparation of the application for Medicaid
14 benefits is not being considered.

15 This hearing came about as a result of our
16 receipt of a written request for a formal advisory
17 opinion from the Elder Law Section, UPL subcommittee.
18 Our standing committee reviewed this request and voted
19 to hold this hearing.

20 This hearing is the initial action of the
21 standing committee and does not guarantee the issuance
22 of an opinion.

23 Twyla Sketchley, Chair of the Elder Law Section,
24 as petitioner, will be the first to testify. We will
25 then take testimony from anyone here who wishes to be

1 heard. The floor would be open to the committee
2 members for questions. Please identify yourself for
3 the court reporter sitting up here.

4 If you have any written materials you want to
5 provide to the committee, they should be given to
6 Jeffrey Picker. Your testimony will be limited to ten
7 minutes.

8 As the committee has a full agenda, we will
9 consider this hearing until 11:30. At that time we
10 will decide whether to continue the hearing at a later
11 time or date.

12 Conflict of interest, we would ask the members to
13 address this issue of a conflict of interest. We will
14 take the time as the rules regulating The Florida Bar
15 states.

16 Committee members shall not participate in any
17 matter in which they have either a material or
18 pecuniary interest that would be affected by a
19 proposed advisory committee or committee
20 recommendation or any other conflict of interest that
21 should prevent them from participating.

22 However, no action of the committee will be
23 invalid where full disclosure has been made and the
24 committee has not decided that the member's
25 participation was improper.

1 At this time I ask any member of the committee to
2 indicate if they have anything they want to disclose
3 on the record or otherwise indicate they have a
4 conflict. Does anyone? No?

5 MS. HOLCOMB: I'm Lori Holcomb. I'm the director
6 of client protection. And we thought we would start
7 this -- and I know you can hear me from back there,
8 but I'm going to come forward anyway. Thought we
9 would start this with just a little introduction about
10 the process because sometimes there's confusion as to
11 who we are and what we're doing.

12 What we are here for today is we had a request
13 for a formal advisory opinion from the Elder Law
14 Section of The Florida Bar. They asked certain
15 questions, and those questions were considered by the
16 committee and the committee decided that we needed
17 more information. And that's why we're holding this
18 public hearing.

19 The public hearing is for the purpose of getting
20 factual information. What is Medicaid planning? How
21 does it work? How does a person get into that
22 position? What do they need? What don't they need?

23 You know, the issue as to whether it ultimately
24 is the unlicensed practice of law is something that
25 will be determined by this committee. So we're really

1 here in a fact finding capacity.

2 The committee has not discussed the issue, has
3 not debated the issue. We have no opinion at this
4 point because we need the facts from you. Again, this
5 is why we have the hearing.

6 The way the process works is once we've concluded
7 the testimony, the committee will then decide whether
8 they feel this is an issue where we should render a --
9 a formal proposed advisory opinion. If so, the
10 committee will give direction to staff as to what it
11 should say. We'll write it. It will come back to the
12 committee. The committee will read it, and then at
13 that point determine whether they want to file it. If
14 they do file it, it's filed with the Supreme Court of
15 Florida as a proposed opinion.

16 It's basically we think that this is what the law
17 is. The Court ultimately is the one that will tell us
18 whether we're right or wrong. And the Supreme Court
19 of Florida can adopt, reject or modify the opinion.

20 So this is just the preliminary step in the whole
21 process.

22 There's no guarantee if an opinion will be
23 issued. We don't have to after we hear the testimony.
24 We can say we don't need to do an opinion on this,
25 it's clear in existing law. And there's no

1 guarantee -- we don't know at this point what the
2 opinion, if one is issued, will say.

3 So, again, this is just a preliminary step in the
4 process. We are here for fact finding.

5 Okay? Thank you. And I think, hopefully we'll
6 be able to hear when you're going this way. So
7 hopefully the acoustics will be better.

8 MS. BLOUNT: I think that our first speaker is
9 Twyla Sketchley.

10 MS. SKETCHLEY: Madam Court Reporter, I'm giving
11 you my business card since my name is a bit hard to
12 spell.

13 MS. BLOUNT: And pronounce.

14 MS. SKETCHLEY: And pronounce, yes.

15 *Conflict* Madam Chair, Members of the Committee, I'm Twyla
16 Sketchley. I'm the Chair of the Elder Law Section.

17 We have formally petitioned you for an advisory
18 opinion on what constitutes the unlicensed practice of
19 law in Medicaid planning. I'm here today to urge you
20 to issue that advisory opinion.

21 *Not correct* An advisory opinion must not only address whether
22 the drafting and recommendation of legal documents is
23 the unlicensed practice of law, because there are
24 advisory opinions that do state that.

25 What we're also asking is that the advice given

1 by nonattorneys on what documents, strategies and
2 steps one must take in a particular case upon the
3 application of Medicaid law is the unlicensed practice
4 of law.

5 Medicaid eligibility, for those of you who are
6 not intimately familiar with Medicaid, and consider
7 that a blessing, trust me, it is a highly technical
8 set of federal and state statutes, regulations and
9 administrative hearings.

10 In Florida, that volume of law is well over 3,000
11 pages. The Medicaid eligibility, as part of Medicaid
12 planning, is the application of that highly technical
13 complex set of rules to an individual or couples'
14 particular set of facts.

15 Now, I have previously provided you written
16 testimony that includes information from Medicaid
17 planners' websites, as well as information from the
18 section. So I am not going to go over that. If you
19 have questions about it at the end of my testimony,
20 I'm happy to answer them, but I am not going to go
21 over that.

22 The Florida Bar's Unlicensed Practice of Law
23 Program was established by the Supreme Court to
24 protect the public from the harm caused by unlicensed
25 individuals giving legal advice and practicing law.

1 The Elder Law Section is asking you to protect
2 the public in the context of Medicaid planning.

3 This request comes from an overwhelming need for
4 The Florida Bar to protect a vulnerable population
5 from significant harm that can come from individuals
6 who have no training, no license and no regulation
7 whatsoever, giving legal advice on the strategies of
8 moving income and assets and doing other things in a
9 legal capacity to obtain Medicaid eligibility.

10 The population being advised on Medicaid planning
11 is one that is vulnerable in many ways, physically,
12 medically, mentally and financially.

13 Our senior citizens, when they're at the stage
14 where they believe they need Medicaid, they and their
15 families are frightened, confused and are seeking this
16 advice, the vast majority of the time in the biggest
17 crisis they will ever face in their life.

18 How many of you are prepared to pay between seven
19 and twelve thousand dollars a month for your care when
20 you have a spouse at home that might need to continue
21 to live? That is the circumstances in which this
22 advice is given.

23 As I pointed out in my written testimony, this
24 vulnerable population of Florida is one of the largest
25 in the nation and is a sitting target for unscrupulous

1 individuals.

2 Other than attorneys who do Medicaid planning,
3 the entire Medicaid planning industry is unregulated
4 in every way. There is no licensing requirements.
5 There is no education requirements. There is no
6 advertising requirements. And there is no government
7 entity or private entity through which you can file
8 complaints against the perpetrators in this industry,
9 other than to file unlicensed practice of law
10 complaints.

Civil & Criminal →
11 You can see from the volumes of testimony that
12 have already been submitted by the Elder Law Section,
13 that Medicaid planners, because of the lack of any and
14 all regulation whatsoever, are everything from
15 individuals who have lost their securities licenses
16 for fraudulent practices, to felons charged with
17 defrauding the elderly. These are the people that get
18 to give Medicaid advice.

19 You may have already heard in your investigation
20 that there are few UPL complaints, so there's not a
21 problem in this area.

22 Well, there are few -- there are few complaints
23 in this area because the population that would
24 complain cannot do so. Many of the victims of
25 nonattorney Medicaid planner bad advice are

1 cognitively impaired. They lack the ability to give
 2 you an accurate history of the wrong that was done to
 3 them or file a sworn affidavit through the complaint
 4 system.

Time for Atty's / Children

5 Many of the victims are confined to institutions,
 6 and the institution in which they're confined is the
 7 one that gave them the referral. If they complain,
 8 they fear retribution and eviction.

9 Imagine if you're confined to a bed and rely on,
 10 every day, someone to feed you, change your Depends
 11 and turn you in your bed, are you going to complain
 12 about the harm done through that institution's
 13 recommendation? Absolutely not.

14 All the victims have limited resources. That's
 15 why they're asking for Medicaid. This is a program
 16 for poverty stricken people. If they have resources,
 17 those resources were lost because of the bad advice
 18 from nonattorney Medicaid planners, or so restrictive
 19 that they can't be accessed.

20 Many of these victims don't know that they were
 21 the victim of unlicensed practice of law until they go
 22 to an attorney who has to fix the disaster created by
 23 nonattorney Medicaid planners giving legal advice.

24 Now, because the Medicaid system is so complex
 25 and there is no definition specific to this area,

*So
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1 prosecutors won't prosecute predators who use Medicaid
 2 planning as a way to attack the elderly in our state.

3 Like you, there's all kinds of questions about
 4 what really constitutes the practice of law. Is it
 5 the submission of a Medicaid application? Absolutely
 6 not. Federal law says that. But advice on
 7 restructuring your assets is. > *Not Incident*

8 Now, in order to file a complaint, these victims
 9 have to do very specific things. They have to file a
 10 sworn affidavit with The Florida Bar with their name,
 11 address and telephone number and specific facts. That
 12 complaint is sent to the predator that harmed them,
 13 and that predator gets to respond.

14 And that predator has access to all the financial
 15 information for this individual, may be in the
 16 facility with that individual, may be a care manager
 17 of that individual.

18 In the criminal system, if you were to file a
 19 complaint against someone who broke into your house
 20 and beat you, there would at least be a victim
 21 advocate available to assist you and the police could
 22 provide you with some form of protection. That is not
 23 the case in the UPL system of complaints.

24 The predators can call the victims once they
 25 receive the complaint. And they can leave retaliatory

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1 phone messages or intimidate them.

2 The UPL complaint system, through The Florida
3 Bar, by design, inhibits and prohibits this vulnerable
4 population from making complaints against those who
5 prey upon them.

6 It's not because that the system was designed on
7 purpose that way, but by design, this population
8 cannot make complaints without retribution.

9 The section is not just asking this committee to
10 issue an advisory opinion to protect the public from
11 the worst of the worst, which we are seeing a lot of.
12 You will see in your written testimony nonattorney
13 Medicaid planners preparing massive personal service
14 contracts with huge negative tax consequences and
15 Medicaid denials.

16 We're asking also for the protection of
17 nonattorney Medicaid planners who are also members of
18 the public and who do provide a service. We would
19 like you to issue clear guidelines on what the
20 practice of law is. There are some good nonattorney
21 Medicaid planners.

22 As you can see from the materials I submitted,
23 those people -- there are people out there who go into
24 this with an altruistic view of helping people who
went through the difficulties they did.

1 By issuing an advisory opinion, you give those
2 individuals clear guidelines about what they can and
3 cannot do to the vulnerable population they are
4 serving, and it will prevent them from having
5 unfounded complaints against them.

6 We're asking for an advisory opinion to help
7 prosecutors across the state so prosecutors have some
8 guidance on what is actually the unlicensed practice
9 of law in this context so they can criminally
10 prosecute these predators who harm our elderly.

11 Because right now there's nobody in this state that
12 can stop the harm in this context.

13 The harm caused by nonattorney Medicaid planners
14 is so significant you've already received volumes of
15 written testimony from attorneys across the state.

16 The damages are so significant that the Elder Law
17 Section has approached the Department of Children &
18 Families about this. Department of Children &
19 Families is the government entity that screens
20 Medicaid eligibility and determines it. They approve
21 all qualified income trust personal service contracts
22 and other legal documents for Medicaid eligibility.

23 Based on our interactions with them --

24 MS. BLOUNT: Let me just warn you that your ten
25 minutes are up, and if you could just wrap this up.

1 Thank you.

2 MS. SKETCHLEY: All right. This is such a
3 significant problem, the Department of Children &
4 Families has submitted a letter to you yesterday
5 saying they are reviewing their position on the -- on
6 who can submit documents.

7 I also would like to point out, since in the
8 interest of time, the committee has asked that a
9 massive number of elder law attorneys don't show up to
10 just say the same thing over and over again. I'm
11 going to ask all the elder law attorneys in the
12 audience to stand up.

13 UNIDENTIFIED SPEAKER: What if we don't agree
14 with you, do we still need to stand?

15 MS. SKETCHLEY: It's up to you. These are
16 members of our section. They have come here on their
17 own expense. They're here to provide you with
18 information if you want it. We have past chairs of
19 the National Academy of Elder Law Attorneys, the
20 Academy of Florida Elder Law Attorneys. We have
21 members and chairs of our Joint Public Policy Task
22 Force for the Elderly and Disabled here who, but for
23 time, would all testify for you.

24 In closing, I would like to point out that The
25 Florida Bar already considers legal advice in Medicaid

1 planning the practice of law.

2 In dealing with its own members, in order to be
3 an elder law -- board certified attorney in elder law,
4 you have to pass a competency exam and take CLEs that
5 extensively go into Medicaid planning.

6 If you don't issue an advisory opinion that
7 states Medicaid planning and the advice surrounding
8 the placement of assets is the practice of law, you're
9 holding the public to a dramatically different
10 standard than you're holding the dues paying mandatory
11 members of The Florida Bar.

12 MS. BLOUNT: Thank you very much. Are there any
13 questions of Ms. Sketchley before she sits down?

14 MR. ABBOTT: Hi, Twyla, Colin Abbott. I'm not
15 going to say your last name.

16 MS. SKETCHLEY: That's okay, just call me Twyla.

17 MR. ABBOTT: I've never been able to say your
18 last name.

19 We're going to get comments here from planners
20 who are going to say it's lawyers trying just to be
21 rich. Can you address that issue up front?

22 MS. SKETCHLEY: Oh, absolutely. We actually hear
23 this comment a lot, and my written testimony goes into
24 this. Medicaid planners get paid for what they do.
25 Period. Otherwise, they wouldn't do it. They're not

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1 a regulated industry, so they're not doing it for
2 altruistic reasons. So they're here to get paid as
3 well.

4 And Ms. Kobrin, who is someone who is in my
5 testimony, she actually sent an e-mail to nonattorney
6 Medicaid planners throughout the state making that
7 very comment, that we have to prevent you from having
8 a -- issuing an advisory opinion to protect their
9 industry.

10 Elder Law Section attorneys, we do a great number
11 of -- great amount of pro bono work in this area.
12 Many times, one of the things that individuals need to
13 obtain Medicaid eligibility is this pesky, irritating
14 and somewhat stupid thing called a Qualified Income
15 Trust.

16 It is a trust document that has to comply with
17 federal and state law, be signed in compliance with
18 state and federal law. And the sole purpose of it is
19 to artificially deflate the amount of income that an
20 individual has so they will meet the income cap.

21 Many of us do those on a pro bono basis. I won a
22 pro bono award in my circuit, so I'm very familiar
23 with how much pro bono work we do as elder law
24 attorneys. We're not here to make money. We spend a
25 great deal of our time correcting mistakes from that

1 nonattorney Medicaid planner who have already been
2 paid, and often we don't get paid for it. So we're
3 not here to protect ourselves. We're here to protect
4 the public.

5 MS. BLOUNT: Are there any other questions?

6 Thank you. I do want to say that our procedure is to
7 ask anyone who wants to testify to be sworn in. It's
8 not mandatory. If you do not want to be sworn in, you
9 still will be heard. So the second speaker, Carolyn
10 Norton. And we do have a court reporter here who can
11 swear you in.

12 THE REPORTER: Would you raise your right hand,
13 please, ma'am? Do you swear or affirm the testimony
14 you're about to give in this cause will be the truth,
15 the whole truth and nothing but the truth?

16 THE WITNESS: Yes.

17 THE REPORTER: Thank you.

18 MS. NORTON: My name is Carolyn Norton, I'm 84
19 years old, and I have been damaged by the unauthorized
20 practice of the law.

21 In October of 2007, I was becoming increasingly
22 concerned about my husband's advancing dementia. I
23 was concerned about protecting our assets in the event
24 that my husband needed long-term care.

25 I responded to an ad in the newspaper for a

1 seminar. While we did not attend the seminar, a man
2 who represented himself to me as a financial planner
3 for the elderly came to my home. He told me that I
4 could protect my savings of \$75,000 by investing
5 \$25,000 with him. I really did not understand how he
6 was going to protect the money.

7 In addition to investing with him, he also
8 convinced me to pay \$1,895 for a living trust package.
9 I never spoke with an attorney about this package. A
10 month later, he came to my home with a living trust
11 and other legal documents. He had me bring two of my
12 neighbors over and they witnessed the documents and
13 Mr. Filato (Phonetic) notarized them.

14 My home was the only asset that was ever
15 transferred to the trust, because I never understood
16 why I had the trust to begin with.

17 He also delivered me -- to me a single premium
18 life insurance policy, which was how he invested my
19 money. I now understand that the cash surrender value
20 of the policy is \$19,000 and some odd money. My
21 policy will not reach the value that I paid for it
22 until 2032. The maximum death benefit, no matter when
23 I die, is only \$27,544.

24 The worst part of this is that I now have found
25 out that I did not have to do anything to protect our

1 savings because I have less than the community spouse
2 resource allowance of \$115,920.

3 Mr. Filato duped me because I was afraid of
4 losing my life savings and I was desperate. Now I
5 don't have access to a third of my limited funds, and
6 I have legal documents that were never explained to me
7 and do not help with the situation that I now have.
8 Thank you.

9 MS. BLOUNT: Before you go, does anyone have any
10 questions of Ms. Norton?

11 MS. BUIE: I have one.

12 MS. BLOUNT: Identify yourself.

13 MS. BUIE: I'm sorry. Carsandra Buie.

14 How did you find out that the documents that you
15 obtained from this financial planner and the -- your
16 life insurance policy was basically no good for you?

17 MS. NORTON: I had to contact a lawyer when my
18 husband was getting ready to go into a nursing home.

19 MS. BUIE: And was it an elder law attorney?

20 MS. NORTON: Yes, it was an elder law attorney.

21 MR. ABBOTT: Colin Abbott.

22 I was wondering what kind of newspaper was it?
23 Was in a local flyer, was it an actual newspaper?

24 MS. NORTON: It was in the Naples Daily News.

25 MR. ABBOTT: Oh.

1 MR. LANAUX: David Lanaux.

2 Did -- were you explained as to who prepared
3 those documents that you were signing? I mean, did
4 they explain to you -- did the financial planner
5 prepare those documents or were they prepared in an
6 outside source?

7 MS. NORTON: I don't know exactly who prepared
8 them, because he took all the information and then he
9 came back with all this book full of papers for me to
10 sign.

11 MS. BLOUNT: Any further questions?

12 MS. POBJECKY: Renee Pobjecky.

13 At any time, did he advise you to see an attorney
14 or that he was not an attorney?

15 MS. NORTON: No.

16 MS. BLOUNT: Anybody else? Thank you,
17 Ms. Norton.

18 MS. NORTON: You're welcome.

19 MS. BLOUNT: Our third speaker is John Frazier.
20 Would you be sworn in, Mr. Frazier?

21 MR. FRAZIER: I can.

22 THE REPORTER: Would you raise your right hand,
23 please, sir? Do you swear or affirm the testimony
24 you're about to give in this cause will be the truth,
25 the whole truth and nothing but the truth?

1 THE WITNESS: Yes.

2 MR. FRAZIER: By way of background, my name is
3 Attorney John Frazier. I work in Largo, Florida. I'm
4 primarily an elder law and Medicaid planning attorney.
5 I've served on the Unlicensed of Practice Law
6 Subcommittee for the Elder Law Section for -- this is
7 the fourth year now. And I'm currently the chair of
8 that committee.

9 Twyla, I think, addressed most of the issues, if
10 not all of the issues, which I think are critical. I
11 just wanted to reiterate a few different points about
12 her testimony and everything that's going on here
13 today.

14 First of all, I wanted to mention that the
15 standing committee has received a large number of
16 written testimonies from various different
17 individuals, and I believe after -- I've reviewed most
18 of those, and I believe that they are representative
19 of the concerns that the Elder Law Section has.

20 So I think you're going to see a large number of
21 documents, written testimony, and I think it
22 accurately describes the concerns that the Elder Law
23 Section has.

24 And having served on this committee for a number
25 of years now, I can tell you that I've heard these

1 stories over and over again for the past several
2 years.

3 The other thing -- several other things I wanted
4 to mention. The advisory -- this advisory opinion, I
5 think, will serve the public very well in several
6 ways. We do have a population here in Florida of a
7 large number of retirees. And also we hear news
8 reports all the time about scams and various things
9 happening to retirees here in Florida. So I think
10 that we really want to pay special attention to this
11 population. And this advisory opinion is one way to
12 do that, I think.

13 Also as far as protecting the public, I think
14 this advisory opinion will also protect nonattorney
15 Medicaid planners, as Twyla has mentioned. There
16 don't seem to be that very many public guidelines in
17 terms of what a Medicaid planner can and can't do.

18 So I think that this advisory opinion will give
19 some helpful guidelines and parameters to the
20 nonattorney Medicaid planners who are interested in
21 following the rules and all they have to do is look at
22 this document, and that will give them some basic
23 guidelines as to what they need to do. Now those
24 guidelines do not exist, as far as I know.

25 There is the 2009 letter that was issued by this

1 committee. That was a great starting point, but I
2 don't believe that that letter fully covers all the
3 issues associated with Medicaid planning. And, also,
4 that that letter does not seem to be widely
5 publicized. It doesn't seem to me that the
6 nonattorney Medicaid planners seem to be even aware of
7 this letter.

8 So it has good guidelines, it's a good start, but
9 it doesn't have, sort of, the public recognition that
10 an advisory opinion would have. And I don't believe
11 that that letter is comprehensive enough to address
12 all the issues that are involved in nonattorney
13 Medicaid planning, although it was an excellent start.

14 Also, by way of history, I think it's important
15 to understand -- I think the increase in nonattorney
16 Medicaid planners started, from what I can tell, and
17 I've been practicing for a number of years now, I
18 think the big increase started in November of 2007
19 with a deficit -- Deficit Reduction Act, which went
20 into effect in Florida in 2007, November of 2007.

21 Prior to that date, what we typically saw were
22 insurance and annuity agents selling balloon-style
23 Medicaid qualifying annuities. As a result of this
24 law change, that financial product was no longer
25 available to the unmarried Medicaid applicant.

1 As a result of that, the insurance agents and
2 annuity agents who made their living primarily off of
3 these balloons-style Medicaid planning annuities lost
4 their source of income.

5 And we have seen a number of those individuals,
6 who were doing exclusively insurance and annuity
7 sales, move into Medicaid planning.

8 Since that time, we've also seen another
9 evolution in recent years. The evolution that we've
10 seen from just the insurance and annuity agents
11 becoming the nonattorney Medicaid planners, we've also
12 seen other individuals getting involved in this now.
13 We see geriatric care managers holding themselves out
14 as nonattorney Medicaid planners, social workers,
15 financial planners. Then there are individuals who
16 have no license at all.

17 I've heard of several reports, and these are all
18 public, there was one individual who was convicted
19 of -- a life insurance agent who was convicted of two
20 felonies, lost his life insurance license and now he's
21 a Medicaid planner.

22 There was another individual, it's my
23 understanding, who had his securities license
24 suspended. He's a Medicaid planner. Another
25 individual was a disbarred attorney. That person was

1 no longer able to practice law and then began doing
2 Medicaid planning. And then there's even been a
3 report of an attorney who has established a
4 nonattorney Medicaid planning company.

5 So across the board, we're seeing a large number
6 of individuals from various different backgrounds
7 getting involved in this. So we're just seeing a
8 great increase in the number of people who are doing
9 this.

10 Another point that I wanted to mention has to do
11 with personal services contracts that Twyla had
12 mentioned. I had a recent conversation with the
13 Department of Children & Families' supervisor for our
14 region in Pinellas County, and we were discussing the
15 unlicensed practice of law and nonattorney Medicaid
16 planners, and she pointed out to me that in her
17 experience, not always, but what she told me was that
18 it appears to her that a large number of their very
19 large personal service contracts seem to be somehow
20 associated with nonattorney Medicaid planners.

21 She didn't say that they were actually drafting
22 those contracts, but she did say that a large number
23 of those appear to be associated with nonattorney
24 Medicaid planners.

25 It doesn't mean that attorneys don't also

1 sometimes do large personal services contracts, but I
2 think that that also is a concern because I think it's
3 well established that a personal services contract is
4 a taxable event under Section 61 of the Internal
5 Revenue Code. And whether a nonattorney would be in a
6 position to give that kind of feedback on these
7 contracts, you know, I'm not sure if that -- if
8 they're really qualified to do that.

9 And we have seen situations where people have
10 executed these personal services contracts, not been
11 given any indication that it's a taxable event, then
12 they see a CPA long after the fact and they find out
13 that they owe tens of thousands of dollars in income
14 taxes. So I think that's another concern that there
15 is.

16 By way of just wrapping things up, I think also
17 in terms of issuing this advisory opinion, in weighing
18 the pros and the cons, I personally don't see any cons
19 associated with this advisory opinion.

20 So if you look at protecting the public, giving
21 nonattorneys parameters and guidelines on how to do
22 their job, versus what are the cons associated with
23 not issuing this advisory opinion. Well, I think the
24 public will not be served if the advisory opinion is
25 not issued. I think that the nonattorney Medicaid

1 planners will not have the guidelines that they need
2 in order to comply with the rules.

3 And, really, maybe the only con is that it's
4 going to take some time and effort to do this advisory
5 opinion. And I know that the Elder Law Section will
6 be happy to contribute in that process in any way that
7 we can.

8 Also we have the State of Ohio, which issued a
9 nonattorney Medicaid planning advisory opinion, I
10 believe it was in 2011. So we have parameters issued
11 in Ohio. I used to live in Ohio. I live in Florida
12 now. And I do believe that Florida is -- has a much
13 higher percentage of retirees than Ohio, yet Ohio has
14 taken the step to protect the public in Ohio.

15 The other thing that would help with this Florida
16 advisory opinion is that the Ohio advisory opinion
17 could be used as a model, and then that document could
18 ^{is} be tailored to the rules in Florida regarding personal
19 ^{or} services contracts and these other issues.
^{isn't it}

20 So I think that basically that's everything that
21 I had to comment on. Does anybody have any questions?

22 MS. HOLCOMB: Lori Holcomb.

23 I have two quick questions. One is you had
24 mentioned that there are people in the geriatric
5 industry that are engaged in Medicaid planning, and I

1 know you also mentioned life insurance agents.

2 My first question is I know life insurance agents
3 are licensed, but are any other individuals, who are
4 participating in this, licensed? And, if so, by whom?

5 And then the other question I have is we keep on
6 hearing about a personal services contract. What is
7 that? What's the purpose of it, what does it do?

8 MR. FRAZIER: Sure. The first question, could
9 you repeat?

10 MS. HOLCOMB: Yeah. Is there any licensure? I
11 know -- we had heard that life insurance agents are
12 involved in this. I know they're licensed to sell
13 life insurance. But you had mentioned people in the
14 geriatric facilities. Is there any licensing for
15 those individuals to do this type of work?

16 MR. FRAZIER: Well, I haven't actually researched
17 what the State of Florida issues for a geriatric care
18 manager, but I am assuming there is some sort of
19 licensure requirement to be a geriatric care manager.
20 Twyla Sketchley knows the answer to that, I'm sure.

21 MS. SKETCHLEY: Not that I'm aware of.

22 MR. FRAZIER: Oh, there is no --

23 MS. SKETCHLEY: No.

24 MR. FRAZIER: Oh. So I was kind of assuming
25 that. But I know, for example, to be a psychologist,

1 doctor, you know, a dentist, there's a large number of
2 licensed professions here in Florida. I was sort of
3 assuming that geriatric care managers needed a
4 license, but I don't know that.

5 MS. HOLCOMB: And what is a personal services
6 contract? What does it do? Why is it necessary?

7 MR. FRAZIER: Florida law allows a strategy, and
8 this would be used for an unmarried Medicaid
9 applicant, and I'm going to talk about a story I heard
10 about where a personal services contract was actually
11 used for a married Medicaid applicant, which makes no
12 sense whatsoever.

13 But a personal services -- you have a \$10,000
14 asset limit for an unmarried Medicaid applicant. So a
15 person applying for Medicaid, let's say they have a
16 \$200,000 house, they have a \$10,000 Toyota Camry, they
17 have \$100,000 in their checking account.

18 And there are three basic criteria for Medicaid
19 qualification. It's called the three-part test. You
20 have a health care criteria. So if you have a person
21 in a nursing facility, they have to meet what is
22 called the level of care.

23 Florida Department of Elder Affairs will go out
24 to the facility, visit with that individual, look at
25 their medical records and make sure that they have a

1 medical need to be in the nursing facility. So that's
2 your first criteria for Medicaid qualification.

3 The second criteria is a \$2,000 asset limit. And
4 outside of a house and car, a Medicaid applicant, as a
5 general rule, can have no more than \$2,000. So if you
6 have an individual with a hundred thousand dollars in
7 a checking account, you have to do something with that
8 \$100,000 to get them below \$2,000 in order to get them
9 qualified for Medicaid.

10 The reason you look to get qualified for Medicaid
11 is the average cost of nursing home care, as of last
12 year, anyway, was approximately \$7300 a month across
13 the board. So if you're looking at \$7300 per month,
14 times twelve, then \$100,000 is going to be gone within
15 a year.

16 If you are eligible for Medicaid, let's say that
17 the individual has only \$1,000 a month in Social
18 Security, what they would pay, instead of \$7300 a
19 month, is their gross Social Security minus \$35, which
20 is called personal needs allowance, minus anything
21 that they pay for health insurance. So let's say they
22 pay \$200 to Blue Cross Blue Shield.

23 So the whole reason people usually apply for
24 Medicaid, instead of paying \$7300 a month, if they
25 meet those other criteria, they will get that greatly

1 reduced Medicaid rate. In that fact pattern, \$1,000
2 minus \$35 personal needs allowance, minus the \$200
3 health insurance. So if you compare \$7300 to less
4 than 1,000, you're looking at saving, like, \$6,000 per
5 month.

6 Going back to what a personal services contract
7 is for, that \$100,000 that's in the checking account,
8 one of the ways that you can reduce that \$100,000
9 permissibly under Florida law, is to draft what is
10 called a personal services contract and pay one or
11 more individuals who are involved in the care of that
12 individual in the nursing facility.

13 So let's say that you have a child who has quit
14 their job and spends 30 hours a week in the nursing
15 home watching their mother in the nursing facility,
16 you can draft a personal services contract that would
17 be paid, forward looking, based on the nursing home
18 resident's life expectancy.

19 And those life expectancies are based on Social
20 Security Life Expectancy Tables. If you were to have
21 a 90-year-old, it might be somewhere in the range of a
22 3-year life expectancy; a 65-year-old, maybe 15 years.
23 I don't have them all memorized. But the basic
24 principle is the older you are, the shorter your life
25 expectancy.

1 So you can draft the personal services contract
2 based on the person's life expectancy and pay a lump
3 sum of money now.

4 So let's say that you have pay \$20,000 of that
5 \$100,000 to the family caregiver for the next three
6 years to be involved in that person's care. You've
7 taken \$20,000 away from the Medicaid applicant, put
8 it -- paid it to the caregiver, family member.

9 But that caregiver, family member doesn't get
10 that money as a gift, because under the Internal
11 Revenue Code, Section 61, clearly states, I think, and
12 I think the IRS will take this position too, that
13 that's going to be a taxable event. So it's not a
14 gift. You have a written caregiver contract, which
15 you have a payment to the family member. So that's
16 how -- that's the mechanics.

17 But that's just one of many, many strategies that
18 we use. So it's not just a personal services
19 contract. There's many, many different things we can
20 use. But that is a legal contract.

21 MS. HOLCOMB: Thank you.

22 MS. BLOUNT: Does anyone else have any questions
23 of Mr. Frazier?

24 MR. ABBOTT: Colin Abbott.

25 Attorney Frazier, one of the criteria we look at

1 when we meet as a committee -- I'll as soon start my
2 fifth year, and I was a part of the 2009 letter -- is
3 that there has to be a statewide importance. And, you
4 know, probably in the last five years, we've seen two,
5 three of these come to this level. I know that Twyla
6 addressed that issue, but could you address the issue
7 of why we're not getting complaints now, and is it out
8 there?

9 MR. FRAZIER: Oh, there's no question about it.
10 I think fear of retribution, certainly, is one of the
11 big reasons. And I think there's a historic
12 reluctance in the United States to file complaints,
13 going back to our founding fathers, I think. I don't
14 believe that anybody really wants to do that, in the
15 first place. So there's going to be a reluctance for
16 people, I think, generally speaking, to file any sort
17 of complaint as a general rule.

18 We also have a very vulnerable population. And
19 we're talking about individuals who are under
20 tremendous stress.

21 My practice area is primarily Medicaid planning.
22 We are dealing with individuals who are facing
23 financial crises, health care crises, interpersonal
24 family crises. The stress levels are just amazing in
25 these cases. And to throw a complaint, a UPL

1 complaint in on top of that where families have been
2 damaged, I think it would be more than most people
3 would want to deal with. There's no question about
4 it.

5 MS. BLOUNT: Carsandra.

6 MS. BUIE: Carsandra Buie.

7 Now, you stated that the 2009 letter does not
8 cover all the issues and it's not comprehensive
9 enough. Exactly what else do you think we need to
10 include?

11 MR. FRAZIER: A personal services contract, for
12 example. A personal services contract is not even
13 mentioned in that letter. And that is a very, very
14 common strategy. *it is mentioned in general*

15 Not only that, we're hearing many, many reports
16 of these personal services contracts being associated
17 with nonattorney Medicaid planners. We don't seem to
18 get clear information as to whether there's an
19 attorney behind the scenes drafting those or whether
20 the nonattorney Medicaid planner is drafting those.

21 But we hear reports of individuals, like, we saw
22 from the second speaker today, in the context of
23 personal service contracts. Individuals being
24 presented with a personal services contract by a
25 nonattorney. They've never met with any attorney, yet

1 they're given a legal document. So you have to wonder
2 what's going on there. Is the nonattorney preparing
3 the document, or is there an attorney behind the
4 scenes preparing the document for the nonattorney.
5 But it seems to be happening all the time. That fact
6 pattern seems to be happening all the time.

7 MS. BUIE: I have one more. Carsandra Buie
8 again.

9 Now, what -- you say give guidelines. What type
10 of guidelines are you saying? So what, in your
11 opinion, can a financial planner or a Medicaid planner
12 do?

13 MR. FRAZIER: Well, I think there's no question
14 that anyone can submit a Medicaid application, because
15 the nursing homes do it all the time. So there's no
16 question that that is permissible.

17 I think once you start talking about drafting
18 legal documents of any kind, clearly that should not
19 be permissible.

20 And then I think a judgment call probably needs
21 to be made with respect -- and I think the Ohio
22 advisory opinion has some very nice language in that
23 respect. That if you look at the Ohio advisory
24 opinion, it talks about, perhaps on a more of a case
25 by case type of analysis, where that might be

1 something that could be -- to look at the specific
2 language.

3 *Not* So there's going to be, probably, some gray areas
4 *Clear* there, I think, as far as the advice is concerned.
5 *Grudges*

6 But I think -- you know, and that's going to probably
7 have to be done somewhat on a case by case basis as
8 far as advice is concerned, per se. But I think any
9 sort of legal advice should be considered a problem.

10 MS. BLOUNT: Any further questions?

11 UNIDENTIFIED SPEAKER: Can I ask a question even
12 though I'm in the audience?

13 MS. BLOUNT: We don't take questions from anyone
14 other than the board at this time.

15 Thank, you Mr. Frazier.

16 The next speaker is Peggy Crabbe. Is it crab or
17 crabby?

18 MS. CRABBE: Hello.

19 MS. BLOUNT: Good morning.

20 MS. CRABBE: Good morning.

21 MS. BLOUNT: We would like to swear you in.

22 MS. HOLCOMB: Would you like to be sworn in?

23 MS. CRABBE: Sure.

24 THE REPORTER: Ma'am, if you'll raise your right
25 hand for me, please. Do you swear or affirm the
testimony you're about to give in this cause will be

1 the truth, the whole truth and nothing but the truth?

2 THE WITNESS: I do.

3 MS. BLOUNT: If you could speak up, because your
4 voice is going to have to carry behind you. You can
5 go ahead now.

6 MS. CRABBE: My husband, he has Lewy Body
7 dementia really bad. And since I've been watching
8 him, I had two heart attacks since Thanksgiving. And
9 we had him -- they took him from Brandon Hospital and
10 put him in a nursing home. And for some reason they
11 got access to -- we only had \$10,000 in the savings
12 account. And they said we couldn't get him out -- he
13 begged -- I thought he could come home and watch TV.
14 That's all he was doing in there. And I thought he
15 could do that at home.

16 But my goodness, when he got home, the devil got
17 him by the rearend and we couldn't handle him. And
18 I -- they said if we let him go back in there -- well,
19 he did get a bad kidney infection and he stayed in the
20 hospital for three days.

21 But while he was in that nursing home, they
22 cancelled his insurance. And they didn't leave
23 anything for me. Because I've never worked in my
24 life. I raised four kids. And I never worked outside
25 of the home. So I was counting on whatever he had,

1 you know.

2 And they -- they told us that I'd have to bring
3 them \$7,000. So we did. Then they said it would be
4 another thousand dollars. And we went and we paid
5 them the extra thousand dollars. And he said before
6 Thanksgiving I should get my -- they would just send
7 it back to me. Well, they didn't. It was in
8 December, and they -- and they took out \$900 for phone
9 calls that they had made, I imagine made them on my
10 behalf, but I could have called around the world for
11 that.

12 And I just don't think it's right that they do
13 people like that. I didn't -- I didn't know anything
14 about dementia or anything until then. But now I do.
15 And you cannot live with somebody who has got it, not
16 like he does.

17 MS. BLOUNT: We do have a question here.

18 MS. CRABBE: The VIP, they just -- they wouldn't
19 send -- do anything. I'm very disappointed with it.
20 I -- I've worked as hard as I could, you know. We
21 only have our house. And they called up and they
22 wanted to know if I had grave lots. I said, yes, I
23 do. I have one that my son is in. And they let that
24 one slide. They said, well -- I says, we're saving to
25 buy my husband and I a grave lot. They told me don't

1 worry about when I die, I have to worry about living.

2 And they want their money.

3 MS. BLOUNT: We do have a question here.

4 MS. HOLCOMB: Lori Holcomb.

5 I'm sorry, who is they who was telling you this?

6 Who was telling you this?

7 MS. CRABBE: The nursing home.

8 MS. HOLCOMB: So it was the people at the nursing
9 home that were giving you this advice?

10 MS. CRABBE: Yes.

11 MS. HOLCOMB: And you had said, I'm sorry, I
12 thought I heard you say something about VIP?

13 MS. CRABBE: Yes.

14 MS. HOLCOMB: And who was VIP?

15 MS. CRABBE: That was the ones that took his
16 insurance away from me.

17 MS. HOLCOMB: Was that at the nursing home or is
18 this a different entity?

19 MS. CRABBE: No. After -- I thought I could
20 handle him. I really give -- I'm blind, and I'm
21 crippled, and I have diabetes real bad, not making no
22 excuses. But I thought I could handle him, and I just
23 couldn't. And they took such a long time about
24 sending the money back.

25 MS. BLOUNT: Are you saying that you were given

1 bad, false information?

2 MS. CRABBE: Yes.

3 MS. HOLCOMB: By the nursing home, by VIP, by
4 both?

5 MS. CRABBE: I guess it was -- this is from the
6 office part of it.

7 MS. HOLCOMB: Of the nursing home?

8 MS. CRABBE: Yes. Her name was Teddy.

9 MS. BLOUNT: Yes? State your name.

10 MR. MILSTEIN: Herb Milstein.

11 You said -- we're talking about bad advice. Was
12 it that they gave you bad advice or they didn't give
13 you any advice?

14 MS. CRABBE: Well, really wasn't much -- it was
15 probably half and half of both because when we -- I
16 didn't know he was, you know, so violent, and he's so
17 vile. He said stuff to me -- we've been married for
18 57 years in November. And in that length of time, he
19 and I have never had a really bad argument or
20 anything, and he's never called me any bad names or
21 anything. It's just like the sewer opened up and
22 swallowed him, and he's spitting everything back at me
23 and my daughter. We are treated the worst. And I
24 didn't know people with dementia acted that way. And
25 so I don't know. It was just an awful thing.

1 Like I told you, I've -- I had a heart attack two
2 days before Thanksgiving, and I was going into my
3 kitchen and I had the heart attack as I went into the
4 kitchen. And I fell and I cut my face. They had to
5 put 16 stitches in my face for -- and he was crawling.
6 And he wouldn't, you know, talk to me. For five days
7 and nights he didn't close his eyes or his mouth. He
8 rattled on and on. And I was a nervous wreck.

9 MS. BLOUNT: Ms. Crabbe, if we could have -- Ms.
10 Crabbe --

11 MS. CRABBE: My son -- he worked at Brandon
12 Hospital, and he saved up enough money that he bought
13 himself a \$10,000 CD.

14 MS. BLOUNT: Ms. Crabbe, excuse me. I think we
15 had a question over here from David. Could you state
16 your name, David?

17 MR. LANAUX: David Lanaux.

18 My question is the essence of how all of this
19 came about. Who was involved at the beginning of the
20 advice that was given, I guess I'm trying to get to.
21 We have a nursing home that has, obviously, done some
22 things that may be right or wrong. You have a company
23 named VIP. But who is the Medicaid planner who got
24 involved in this situation with you from the
25 beginning? I guess I'm trying to understand is where

1 did this all begin.

2 MS. CRABBE: Well, they actually told me I didn't
3 need a lawyer.

4 MR. LANAUX: And who is they?

5 MS. CRABBE: At the nursing home.

6 MR. LANAUX: Okay.

7 MS. CRABBE: Because my son, like I told you, he
8 works at Brandon Hospital and he had -- he bought a
9 \$10,000 CD. Well, the CD kept -- he's never touched
10 it. And on the CD, it has his name and my husband's
11 name and my name. And they keep saying that that
12 money is ours. Me and my husband never put one penny
13 in that CD. And they're trying to make that boy cash
14 that CD in and they're going to take half of it. And
15 I don't think that's right because I never -- I never
16 put nothing in it, and I know he didn't. So how can
17 they take your money and it not even yours?

18 MS. BLOUNT: Herb?

19 MR. MILSTEIN: May I address a question?

20 MS. BLOUNT: State your name.

21 MR. MILSTEIN: Herb Milstein.

22 May I address a question for the woman's son who,
23 I assume, is sitting right back here? Is that
24 permissible?

25 MS. BLOUNT: Yes, that's permissible. Could you

1 stand and state your name also?

2 MR. ROSENKRANZ: My name is Jack Rosenkranz.
3 I've been practicing elder care law in the community
4 for the last 22 years.

5 This lady presented herself, had some issues
6 about the CD. She -- and when I explained about the
7 hearing, even though this is quite overwhelming for
8 her, she wanted to come here in person and talk about
9 how that CD issue and how the billing practices
10 occurred with what was involved.

11 I'll be glad to answer any questions and provide
12 written documentation to the committee to supplement
13 whatever comments she makes. Probably would be my
14 preferred way to make comments in this proceeding
15 because I think the documents will speak for
16 themselves.

17 MS. BLOUNT: I think that would be --

18 MR. LANAUZ: I understand she's got a terrible
19 problem, and I sympathize with you on all of this, I
20 really do. And I guess maybe you can answer.
21 Everybody keeps saying "They," it's the nursing home,
22 but isn't there -- we're here to --

23 MR. ROSENKRANZ: If I understand correctly, the
24 testimony I give right this second would be one that
25 is -- would hold me harmless; correct?

1 MS. BLOUNT: Yes, yes.

2 MR. ROSENKRANZ: Can I swear in, please?

3 MS. BLOUNT: Yes.

4 THE REPORTER: Do you swear or affirm the
5 testimony you're about to give in this cause will be
6 the truth, the whole truth and nothing but the truth?

7 MR. ROSENKRANZ: I do.

8 It's my understanding that referral fees are
9 being paid, I have no direct knowledge, from those
10 that are in the planning business to the social
11 workers and admissions people.

12 It's my understanding those referral fees are de
13 minimis, such as a \$25 gift card or something like
14 that. But if you refer enough, they add up. I have
15 no direct proof of this. It's just rumor that I've
16 heard.

17 It's my understanding that the company that
18 Ms. Crabbe used was referred to her by the nursing
19 home. It's my understanding that she was not given a
20 choice of providers, she was given only this provider.

21 It's my understanding, also, that Mrs. Crabbe was
22 informed unless they paid the bill to VIP that her
23 husband would not be discharged from the nursing home
24 to come back home.

25 It's my understanding, as well, that while this

1 was a jointly held asset that theoretically could
2 result in disqualification, two important legal facts
3 that were readily ascertainable in the manual, were
4 not given to Mrs. Crabbe or her family.

5 The first was that you had an opportunity to
6 rebut ownership. A legal ability to go to the
7 faceless government, DCF, Department of Children &
8 Families services, and submit to the government
9 rebuttal information that this was, in fact, owned by
10 the son.

11 Getting involved, as an attorney, I drafted
12 affidavits, created a statement of rebuttal, and we're
13 in the process this week of submitting it to the
14 government so his application will be approved.

15 The concern comes in is when you're dealing with
16 legal ownership with assets, you really have an issue
17 of who owns it. That's a legal question. And while
18 you may have blanket naked title that shows joint
19 ownership, most attorneys are aware there's a line of
20 cases talking about convenience accounts.

21 And this is a generation that used convenience
22 accounts time and time again when they put a spouse, a
23 family member or someone else on an account that
24 wasn't supposed to be that person's account.

25 But at the same time, you have people, for estate

1 planning purposes, because the more modest people
2 can't afford -- they don't think they can afford an
3 attorney, they will go forward, and as estate
4 planning, be advised by the bank teller or the
5 customer service rep to add a name on the account so
6 you can avoid probate.

7 So the challenge that Ms. Crabbe had, in
8 particular, was she was put in a situation where
9 independent advice was not able to give to her. That
10 people were making a legal decision, not on filling
11 out, necessarily, the box of the application, but
12 deciding what went in that box.

13 She received no form from VIP saying fill out
14 this form, we'll transcribe it for you. You can look
15 at the case law. That's purely permitted. You can do
16 that all day long. Instead, there were decisions
17 being made about ownership, titling, eligibility.
18 There's questions about how that work is being
19 directed. And I don't have the direct knowledge of
20 that.

21 And I've gone on longer than I should have, but
22 if y'all have any questions, I'll be glad to answer
23 them.

24 MS. BLOUNT: Herb?

25 MR. MILSTEIN: Herb Milstein.

1 For my own edification. Did the hospital
2 additionally give misinformation, or did it all come
3 about after the gentleman went into the nursing home?

4 MR. ROSENKRANZ: I believe the relationship with
5 the adviser occurred at the nursing home and not the
6 hospital.

7 MR. MILSTEIN: The adviser at the hospital?

8 MR. ROSENKRANZ: The adviser at the hospital
9 said, you're going to Brandon Nursing Home. That was
10 it, from my understanding.

11 It's my understanding that once he arrived in the
12 nursing home and he was on Medicare and Medicare was
13 coming to an end, there was insurance rights that she
14 had to either keep or maintain, and there was certain
15 asset issues dealing with Medicaid applications.

16 I'm not sure if I answered your question. I
17 think it occurred at the nursing home, and that's the
18 concern that I have. How that relationship is made;
19 how that referral is made; and how that business is
20 moved is really something that warrants some
21 investigation.

22 MS. BLOUNT: State your name, please.

23 MR. SPERRY: Martin Sperry.

24 Who was the Medicaid planning entity that was
25 involved in this case? Because we've heard the names

1 of several entities. But who was involved in doing
2 the Medicaid planning?

3 MR. ROSENKRANZ: I think it was VIP Care -- Care
4 Management Services.

5 MR. SPERRY: So VIP was the Medicaid planning
6 company?

7 MR. ROSENKRANZ: Yes. Yes, sir.

8 MR. MILSTEIN: Okay. As well as the insurance
9 company?

10 MR. ROSENKRANZ: They may hold insurance license,
11 sir, I don't know. I apologize.

12 MS. HOLCOMB: Lori Holcomb.

13 MR. ROSENKRANZ: Yes?

14 MS. HOLCOMB: So to follow up on those two
15 questions. So the nursing -- the nursing home got in
16 touch with VIP, is that what you're saying, that the
17 nursing home referred her, Ms. Crabbe; is that
18 correct?

19 MS. CRABBE: Right. ?
L

20 MS. HOLCOMB: Okay. Thank you.

21 MR. ROSENKRANZ: Do y'all have any questions for
22 Mrs. Crabbe? Thank you very much.

23 MS. BLOUNT: Thank you for helping with the
24 facts. Ms. Crabbe, thank you for your testimony. We
25 will be leaving this open for written testimony.

1 MS. HOLCOMB: Lori Holcomb.

2 We'll leave it open for two weeks from today,
3 which if my calendar is correct, until March 8th. So
4 if you want to submit additional written testimony,
5 you can send it to Mr. Picker. You can also e-mail
6 it. You can get with him after the hearing if you
7 need his mailing address or e-mail, if you don't
8 already have it. But if anyone in the audience, or
9 anyone, period, would like to submit additional
10 written testimony, we'll be happy to take that up
11 until the 8th. March 8th.

12 MS. BLOUNT: The next speaker is Emma Hemness.
13 Ms. Hemness, would you be sworn in, please?

14 THE REPORTER: Do you swear or affirm the
15 testimony you're about to give in this cause will be
16 the truth, the whole truth and nothing but the truth?

17 THE WITNESS: I do.

18 MS. HEMNESS: Good morning, everyone. My name is
19 Emma Hemness, and I am an elder law attorney. I have
20 been working in the field of elder law and have an
21 elder law practice here in Brandon, for about 17
22 years.

23 I am also past chair of the Elder Law Section.
24 And I remember distinctly giving -- taking my seven
25 minutes of fame and giving the Elder Law Section

1 address to The Florida Bar Board of Governors one year
2 back in 2007.

3 And one of the issues that I did present was I
4 felt as if in the field of elder law we were going to
5 face a challenge and that challenge was the unlicensed
6 practice of law.

7 And we have basically seen a proliferation, over
8 the last few years, of that concern I expressed back
9 in October of 2007. And I'm very pleased to see you,
10 as a committee, taking on this challenge because I do
11 not envy the position you are in.

12 Because in some ways, you're going to have to
13 develop, or we ask sincerely that you develop,
14 particular guidelines being able to, you know, sever
15 the sinew from the bone, so to speak, to give us where
16 financial planning or helpful advice on social issues
17 stops and the practice of law in this field of law
18 begins.

19 That's what we really, really desire as an elder
20 law bar, and that's a very, very sincere request on
21 our behalf. And it's going to take careful study.

22 And one of the things we want to offer
23 immediately, and I do adopt, specifically, the
24 testimony, written testimony of our chair section
25 leader, Twyla Sketchley, as well as John Frazier.

1 Both of them have spoken prior to me this morning.

2 But one of the -- one of the difficult aspects of
3 you being able to perform your function today is
4 having a good, comprehensive understanding of what the
5 practice of Medicaid planning is.

6 First of all, elder law -- and I'm going to take
7 just a few moments, please, to give you a big picture,
8 if I can. Elder law is a designated practice of law.
9 In The Florida Bar, we can actually become experts in
10 the field of the law. We can actually take a board
11 certification.

12 Now, one of the core areas we find in elder law,
13 along with incapacity determinations under
14 guardianship, end of life issues under living wills,
15 you know, the Terri Schiavo case, we have this
16 practice area known as Medicaid planning. And it is a
17 core area of our field as elder law attorneys.

18 I think helping you understand where the line
19 gets crossed when we are planning in that field of
20 Medicaid planning is going to be client scenarios.
21 We've already heard a few client scenarios. The
22 consumer coming up from Naples today to speak with you
23 previously, Ms. Crabbe that was here, those are client
24 scenarios.

25 And when you hear what their situation was and

1 you hear the advice that had been given to them and
2 what they had been told to do, when you apply a
3 Medicaid rule over here and you have a client specific
4 set and personal set of circumstances over here, when
5 you marriage these two columns and advice, and an
6 analysis and recommendations and they are supposed to
7 proceed with those recommendations, that's the
8 practice of law. And that's what we're looking for as
9 a clear distinction.

10 When you start with this column over here, where
11 you have Medicaid rules coming out of federal law,
12 coming out of Florida law, it's okay, we can open a
13 book, we can read that to somebody. That's not the
14 practice of law.

15 But when you have a client over here that has
16 specific issues, have assets, have concerns, have a
17 situation where there are pros and cons to making a
18 selection on how to apply this client's set of
19 circumstances to these rules, a whole bunch of rules,
20 very technical rules, when you pick and chose and then
21 you marry and then you analyze it and then you make a
22 recommendation and that client follows the
23 recommendation, that's the practice of law. That's
24 what we need to clarify.

25 So, again, seeing client scenarios is going to

1 help you the most. And any member of our leadership
2 currently, as well as any member of our Elder Law
3 Section would be willing to provide you with client
4 scenarios if you needed that to understand where we
5 may go from addressing just financial issues or
6 reading the law to somebody, so to speak, or saying,
7 hey, this is a rule you may want to think about over
8 here under the law, versus actually combining the two
9 and making a plan and having somebody follow that
10 plan.

11 Now, I mentioned the proliferation. What I did
12 in preparing my written testimony that I submitted
13 today -- which you will get a copy of, I'm a little
14 tardy in that regard -- but the proliferation, and I
15 just went to Sunbiz, the Florida Division of
16 Corporations, and I just typed in Medicaid. And there
17 are three pages, single spaced, of all the Medicaid
18 planning firms from Medicaid 4 U, to the other end of
19 the spectrum. But that's the proliferation of
20 nonattorney Medicaid planning firms. So we're seeing
21 more and more of this.

22 So the concern we have is we know that consumers
23 are not being -- all of their legal rights are not
24 being explained to them, which should not be without
25 the presence of an attorney. Or if they are given

1 some recommendations and we have crossed the line and
2 somebody is engaged in the practice of law, they're
3 not -- they are not necessarily advised as to the pros
4 and cons or whether they have a choice among a number
5 of different rules and regulations.

6 So, basically, let me give you a quick client
7 scenario, because this begins to address what may be
8 the analysis that we go into as elder law attorneys.

9 And, again, let me briefly say this complaint
10 driven process that we have right now, it doesn't
11 work. You're looking right now at a big chicken,
12 somebody who does not want to rock the boat. I am
13 aware of a number of problems. I'm aware of a number
14 of nonattorney Medicaid planning firms. I'm aware of
15 a number of my clients who have come to see me for
16 second opinions, but I don't want to complain. I
17 don't want to rock the boat.

18 I am -- I'm -- for heaven's sake, I chose elder
19 law because it's generally 99 percent nonadversarial.
20 I don't want to be that type of attorney. But I'm
21 very happy doing what I'm doing.

22 But nonetheless, real quick, let's say we're
23 presented with a husband and wife. Our husband and
24 wife -- it's the husband, let's just pick on the
25 husband because I like to do that most of the time.

1 We pick on the husband, poor husband, he's had a
2 stroke, he needs nursing home care. Wife is
3 contemporary in age. She cannot be -- she cannot
4 render him his long-term care in the home any longer,
5 so we do need the full level of care at the nursing
6 home.

7 And by the way, personal care agreements, they're
8 necessary for adult family members to be paid for the
9 services, because I don't know if you know it or not,
10 but nursing homes in Florida, under Florida law,
11 nursing homes are only required to give a little over
12 two hours per day per resident. So that leaves almost
13 22 hours of the rest of the day that that resident is
14 not getting personal hands-on care.

15 That's why personal care agreements, to be able
16 to allow an adult child to come in, be the eyes and
17 ears; be able to provide that intermediate care; be
18 able to do the laundry, those things, that's where the
19 personal care agreement is really very important in
20 that particular planning context.

21 But husband here in this scenario has had a
22 stroke. We have a wife who can't care for him.
23 Because one of the issues is, again, she's of his
24 similar age, but they also have a disabled child who
25 is grown up into adulthood.

1 Now, in that scenario, if a spouse and the ill
2 spouse, a well spouse and ill spouse, have assets in
3 excess of -- and the current rule is approximately
4 \$117,000, then they are not -- the husband will not
5 get the Medicaid benefit.

6 So if they have excess assets, then there are
7 opportunities to try to protect those excess assets,
8 to shelter them. And, really, the altruistic reason
9 for doing this is we've got wife still at home,
10 husband who is sick, we don't know what his longevity
11 is, but we certainly don't want to minimize her
12 standard of living. So we develop a plan to try to
13 protect assets.

14 One of the rules, one of the many technical
15 rules, is a transfer of excess assets, over that
16 allowance, to the disabled child. That's one of the
17 gimmies under our Medicaid rules. It's okay to do that
18 and still maintain eligibility.

19 *Not* However, in the analysis, yes, we understand that
20 *So* rule, but it's only within the purview of an elder law
21 *SSA* attorney to look at the analysis and say, okay, now we
22 *Not* have a disabled child, is that disabled child also
23 *Att* receiving government assistance benefits that may be
24 means tested. If we transfer those assets over to
25 him, are we going to blow his benefits? Or can we put

1 it into a special needs trust that would be held for
2 the benefit of the disabled child?

3 And after we do -- after we make a determination
4 along those lines as to how to take care of the excess
5 assets, let's go back to the well spouse. What if the
6 well spouse dies before the ill spouse? If you have a
7 simple "I love you, honey, will," last will and
8 testament, then the money is going over to the ill
9 spouse. The ill spouse eligibility is then blown.

10 So a necessary planning part of the process is
11 making sure that the well spouse develops an estate
12 plan that is made through a last will and testament
13 that creates a special needs trust for the benefit of
14 her ill spouse if she dies first.

15 Now, if I've just lost you -- and I'm wrapping it
16 up. If I've just lost you, that's only this much of
17 what we deal with in a very simple case. What I just
18 gave you was a simple client scenario and all the
19 things that can be involved in that.

20 So I'm imploring you, if you would, please take a
21 hard look at this.

22 And I will go ahead and wrap up here. And let me
23 see if I've missed anything.

24 I just want to make one other comment regarding
25 fees. I have had, in the past couple of years, I've

1 had a situation where a client has come for a second
2 opinion, and I would love to charge the fees that
3 nonattorney Medicaid planners charge. In this one
4 case, it was a simple case and none of the estate plan
5 documents were being performed, of course, or
6 provided, but they were charging \$6,000, and I
7 ordinarily would charge \$3,500.

8 Now, I hope that doesn't get me in trouble with
9 antitrust laws, but I wanted to give that to you as an
10 illustration. That it isn't about the fees. And
11 sometimes these nonattorney Medicaid planners are also
12 insurance licensed, and they may have a conflict and
13 they may sell an annuity and get a commission on top
14 of that, when an annuity would not necessarily be all
15 the planning opportunity that would exist under that
16 scenario.

17 Thank you so much. Any questions?

18 MS. BLOUNT: Before you leave, any questions?

19 MR. LANAUX: Yeah, I have one question.

20 MS. BLOUNT: Name, please.

21 MR. LANAUX: David Lanaux.

22 Who is the government entity that sets up
23 Medicaid planners, that gives them, you know, the
24 authority to do what they do?

25 Like, I'm in title insurance, we have a division

1 of Department of Financial Services that handles us
2 and guides us with bills and different things. Who do
3 the Medicaid planners have as their -- in Tallahassee,
4 who is guiding them?

5 MS. HEMNESS: There is no separate entity of any
6 form in the state of Florida that sanctions
7 nonattorney Medicaid planners. That's why we have the
8 problem with somebody giving themselves any title they
9 desire, leading the consumer into thinking that they
10 are better than the next guy, because they can call
11 themselves anything they want to.

12 Now, ultimately, they may have an insurance
13 license and then they're regulated through the
14 insurance license. But it is not an area that is
15 regulated by any specific entity in the state of
16 Florida.

17 MR. LANAUX: So anybody can become a Medicaid
18 planner?

19 MS. HEMNESS: Yes, absolutely.

20 MR. LANAUX: Without any experience?

21 MS. HEMNESS: Without any experience.

22 MR. LANAUX: Just because I want to?

23 MS. HEMNESS: Please read my testimony because I
24 talked about a disbarred attorney who, within ten
25 days, set up her own Medicaid planning firm and was

1 doing the same stuff, even after being -- taking
2 voluntary disbarment by The Florida Bar. So that is
3 the biggest, absurdest example of why this field is
4 not regulated. We can all quit being attorneys and go
5 and do Medicaid planning and do exactly what we were
6 doing before and not get in trouble for it.

7 MS. BLOUNT: I think you have a question over
8 here.

9 MR. ABBOTT: Yes.

10 MS. BLOUNT: Name?

11 MR. ABBOTT: Colin Abbott.

12 Attorney Hemness, I represent farm workers over
13 the whole state of Florida. We do a lot of Food Stamp
14 applications and appeals, and they're heard in front
15 of a hearing officer to ensure a fair hearing.

16 If someone applies for a Medicaid and gets denied
17 by DCF, do they get a hearing to be able to appeal the
18 denial? And if such, then would the planner do the
19 hearing? Because there's testimony held, there's case
20 law presented, you know it's a legal case. What would
21 happen then?

22 MS. HEMNESS: Under the rules right now that --
23 and I brought the Department of Children & Families'
24 supplemental letter to the one they issued last
25 Thursday on the 14th. Under the rules right now, a

1 designated representative needs to be qualified at the
2 fair hearing level. Qualified meaning showing a level
3 of knowledge. But that is not necessarily exclusively
4 within the purview of an attorney.

5 MR. ABBOTT: Okay.

6 MS. BLOUNT: I think, Lawrence, you had a
7 question?

8 MR. GORDON: Lawrence Gordon.

9 If I'm hearing all the attorneys who have spoken
10 properly, the only thing that would be acceptable to
11 you would be for a nonattorney to help fill out the
12 Medicaid form. If I am not hearing you correctly,
13 what else besides filling out the form would be proper
14 for a nonattorney Medicaid planner to do?

15 MS. HEMNESS: I agree that filling out the form
16 can be done by any person, whether they are licensed
17 as an attorney or not. That's the law. Filling out
18 the form.

19 But, again, the best example -- and this is why I
20 started my comments with, I do not envy your position.
21 Marrying the rules, going beyond a statement regarding
22 this is what the rule says, figure it out on your own,
23 and the client's circumstances or facts over here,
24 when you start talking and you apply these to and
25 actually make a recommendation, that's the practice of

1 law.

2 MR. GORDON: But my question is is there anything
3 acceptable to you that a nonattorney Medicaid planner
4 can do that would be okay? And if the answer is yes,
5 give me an example. If the answer is no, it's no.

6 MS. HEMNESS: I would say that there is. There
7 is something acceptable that a nonattorney can do in
8 this context. Anything related to general financial
9 issues, like this investment is less risky than that
10 investment; this is the rate of return on a CD, that's
11 just a general example of financial advice that does
12 not require a legal license.

13 And the way I have it in my mind, the way I
14 understand it would be, I would say Medicaid planning
15 is probably 80 percent practice of law and 20 percent
16 other. The other is the hard part.

17 MS. BLOUNT: Any further questions?

18 MR. LANAUX: David Lanaux.

19 So you're just stating the gathering, the
20 facilitating of gathering the information, the
21 documentation, the checkbook, whatever that needs to
22 be done is okay with you as long as they're not
23 rendering any sort of an opinion as to, you know, what
24 that means, what this particularly means in regards to
25 the family or another spouse or anything?

1 MS. HEMNESS: You would not want a nonattorney
2 Medicaid planner to start talking to you about how to
3 set up your accounts with beneficiary designations in
4 order to avoid probate, in order to have a --
5 create -- the recommendation to create a deed on your
6 homestead in order to avoid probate, known as an
7 enhanced life estate deed.

8 Getting into that application, you know, saying
9 this is the reason why you need to do this, and it has
10 a legal conclusion to it, yeah, that's crossing the
11 line in our opinion.

12 MS. BLOUNT: Carsandra?

13 MS. BUIE: That's okay.

14 MS. BLOUNT: Any other questions? All right.
15 Thank you very much.

16 The next speaker is Gerald Hemness. Would you be
17 sworn in?

18 THE REPORTER: Do you swear or affirm the
19 testimony you're about to give in this cause will be
20 the truth, the whole truth and nothing but the truth?

21 THE WITNESS: I do.

22 MR. HEMNESS: I'm the husband of the nice lady
23 that was just up here. And I'll tell you, she's an
24 awful lot smarter than I am. But I'm an awful lot
25 meaner than she is.

1 We practice together, but I don't touch the area
2 of law that she does except when a conflict arises
3 that needs to be sued on.

4 I was a state attorney for several years. I was
5 a policeman before that. I'm the litigator in the
6 firm. So I come in and I argue about things.

7 And the questions that you guys asked back at the
8 beginning of this hearing were why is a PSK UPL? Why
9 is a quid UPL? Why is giving legal advice UPL? The
10 third one really fascinates me. Why is the giving of
11 legal advice by a nonlawyer the unlicensed practice of
12 law? I mean, seriously, that's a question? If you're
13 giving legal advice, you're practicing law. If you're
14 not licensed, it's the unlicensed practice of law. I
15 don't understand how that's even an issue to be
16 discussed.

17 Perhaps what is within the definition of
18 practicing law would be a better way to say that.
19 Emma and Mr. Rosenkranz both pointed out the
20 complexities of this kind of case. I know what
21 they're talking about. I know what a PSK is, what a
22 quid is, how to asset plan.

23 But I also know that the part of what they do
24 that I don't touch is what Emma said. It's not
25 knowing how to hammer a nail, it's knowing when to use

1 a nail versus when to use a phillips head screw. If
2 you try to pound in a phillips head screw with a
3 hammer, you're going to get bad results. If you want
4 to remove the fastener later, you need to have a
5 hammer and a nail or a phillips head with a
6 screwdriver. And the hammer and the nail is harder to
7 pull out than the phillips head screwdriver is.

8 Figuring out which of the tools applies best is
9 the part that undoubtedly is the practice of law. I
10 know that because I consider myself really smart, but
11 they're way smarter than I am and I don't touch that
12 stuff because I don't know enough about it.

13 I'm not board certified. There's about 15 people
14 in this room who are. They know when a married person
15 needs this or when a single person needs that; when a
16 PSK is applicable; what the implications of a PSK are.

17 When you're interfering with estate planning by
18 doing Medicaid planning, be careful if you're
19 depriving an heir of a benefit and you're doing it for
20 a reason that doesn't fit under the probate law, you
21 have a problem. You've created a new problem down the
22 road.

23 When a bank teller says, why don't you put your
24 son on this account with you, that way you won't have
25 probate. That's fabulous legal advice, but it's legal

1 advice. Well, no, it's not, it's just saying to put
2 two people on an account.

3 Okay. If your son goes out, after being put on
4 your account, and runs over a bus stop full of Mensa
5 children and gets sued to the hilt, whose money are
6 they going to come take? Your son's. Oops. The
7 money you just put your son's name on is your money.
8 Well, no, it's not. And Mr. Rosenkranz is right,
9 there's great case law for a person like me to come in
10 court and say, unh, unh, unh, PI lawyer, hands off,
11 that's mom's money. Son was put on it for
12 convenience.

13 But as a litigator I tell people, when you're on
14 my side of the office, you've already lost. I cost
15 money, lots of money, to go into court and defend you
16 or to fix your problem. And if you have to call me to
17 fix your problem, you've already lost.

18 So when that bank teller opens their mouth and
19 starts saying, why don't you put your son on your
20 account so he can write checks, I stop and I say, why
21 don't you just give your son a power of attorney.
22 That's the right way to do it. There's a good answer
23 for this. Oh, that's right. You're not a lawyer.
24 Shut up. You're not supposed to be giving that
25 advice.

1 How about we transfer this asset or move that.
2 asset? How about a PSK? How about we question
3 whether or not you even need Medicaid planning? How
4 old is your spouse who is going in the nursing home?
5 How sick are they? How close to death's door have
6 they come? Because a PSK has got income tax
7 implications. It's a payment for services rendered.

8 Oops, the Medicaid planner didn't mention you're
9 supposed to fill out a 1099. And that if you don't,
10 you're committing fraud on the IRS. And that by the
11 way, at 34 percent tax bracket for \$100,000 PSK, you
12 just dropped \$34,000 in income taxes. Unless you
13 don't pay it, which is fraud on the IRS.

14 But you claimed it was a payment for services, so
15 later when the IRS comes back and says, where is my
16 \$34,000, you say, oh, no, it was a gift. Hold on, now
17 you've committed Medicaid fraud, because when you
18 applied for the Medicaid benefit, you said it was a
19 payment for services rendered. Which is it? That's
20 legal advice and it's complicated.

21 There are PSKs. There's incoming producing
22 property. There's spousal refusal. How about the
23 wife just says, I'm not going to pay my husband's
24 bill? Now he gets Medicaid, go away.

25 How about you've got a mortgage on your house and

1 you have \$120,000 and a \$140,000 balance on your
2 mortgage? You want to know what the best Medicaid
3 plan in the world in my opinion? Pay off your
4 mortgage. Houses are exempt.

5 Hold on, there's a whole lot more questions that
6 I would ask before I actually told somebody to do
7 that. But I wouldn't ask them those questions. I
8 would send them to her because I don't know how it all
9 tangles together.

10 I know how to pound a nail, but I don't know if a
11 nail is what's best for you. This is dangerous stuff.

12 You asked what can they do? There's some things
13 they can do. What's the rate of return on this
14 investment versus that investment? What are the odds
15 you're going to lose the money or not lose the money?
16 Is an annuity worth this return or that return?

17 Gather the paperwork, sure. A Medicaid applicant
18 is going to need to gather up all of their bank
19 statements, their income statements, medical
20 paperwork. Get that all together. And when you have
21 the pile of facts and there's anything other than a
22 person who clearly qualifies because they have less
23 than a thousand dollars, call a lawyer.

24 But you know what? Call a lawyer and make sure.
25 Because I can't tell you the number of times somebody

1 goes and applies for Medicaid and then comes back
2 later and says, well, nobody told us we had to tell
3 them about the CDs. Oops. That's what you needed a
4 lawyer for.

5 I wrote down a handful of things while people
6 were talking. Why is a PSK UPL? The PSK is a
7 contract. To know what a contract is and how it
8 works, that's interpreting a legal document. It's
9 giving legal advice. You can't write one, you can't
10 interpret one unless you're a lawyer. I'm sorry that
11 that means you have to go hire a lawyer to tell you
12 what it says.

13 But the rules are complicated, and we go to
14 school a long time to be able to read the rule book to
15 you, to tell you how the rules apply to your set of
16 circumstances, to think ahead and to see what you're
17 not thinking.

18 Medicaid planning, what about the VA? We're here
19 to talk about Medicaid planning. Oops. You just
20 missed the boat completely. I call it suicide
21 planning. If you think you're going to go into the
22 nursing home shortly and you do all of these transfers
23 for Medicaid planning, I don't know, are they going to
24 qualify you for the VA?

25 Flip it around. I can tell you for a fact the VA

1 doesn't care if you give all your money away. Give
2 all your money away, hundreds of thousands of dollars.
3 You two can correct me if I'm wrong, because I told
4 you, I don't do this stuff. I know the basics. But
5 my understanding is you give all the money away. You
6 can go and get your VA benefits. The VA doesn't mind.
7 Give it to your son, your daughter, whoever.

8 You can go get your VA benefits and the ALF and
9 take care of business. But a week later you fall down
10 the stairs and you have to go to the nursing home.
11 You want to know what your VA planning just did for
12 you? Completely disqualified you from any Medicaid
13 benefit. Oops. That's something a lawyer who has to
14 know -- the VA requires that they be certified to do
15 this stuff. I can't even talk about the VA to a
16 client. I haven't taken the class. Many of them
17 have.

18 Private pay. Why don't you just pay yourself?
19 If your husband is going to die in a few months and
20 you're going to spend \$20,000 Medicaid planning, and
21 he makes \$4300 a month, your Medicaid benefit is,
22 like, two grand. He's going to die in two, three,
23 four, five months. I'm sorry to talk bluntly about
24 people dying, but they do. And that's maybe now a
25 \$10,000 benefit.

1 Millionaires on Medicaid? What idiot millionaire
2 wants to get on Medicaid? Go invest your money
3 better. Get a better financial broker. You're not
4 going to make that much on Medicaid.

5 Are you married? Are you single? What's the
6 impact on your estate plan? The whole point of it is
7 it's complicated. It's way more complicated than just
8 doing a PSK or buying an annuity. And the analysis of
9 what's right for you is the part that's tough.

10 Why don't you hear more of this? Why aren't
11 there more reported cases? You know, the last I
12 checked, murder victims don't report that they've been
13 killed very often. And that's only partly meant to be
14 funny sarcastic. A lot of the people who are out
15 there don't know they got hurt.

16 People who get swindled all the time don't
17 realize that when they paid \$7,000 for something Emma
18 would have done for three -- I am here for the money.
19 I like to go on vacation. I like to have a new car.
20 I'm not here to be filthy rich at old people's
21 expense, but I am here for the money.

22 And it makes me sick to know that the former
23 Elder Law Attorney of the Year -- former Elder Law
24 Attorney of the Year for the Elder Law Section of
25 Florida, and former head of the Elder Law Section of

1 The Florida Bar, and former this and former that,
2 she's got more silly titles after her name, and I'm
3 just that other guy, is billing half what a person
4 with absolutely no credentials is billing so they can
5 screw it up. And then we have to be brought in to fix
6 it. Yes, ma'am?

7 MS. BLOUNT: I want to save some time for
8 questions.

9 MR. HEMNESS: Yes, ma'am. Fill out the form,
10 sure; gather the documents, yes. Like she said,
11 figure out whether you want a phillips head screw or a
12 nail. Stop. Decide if you're going to put someone
13 else's name on your bank account, stop. Decide what
14 investment is right. Okay, we've narrowed it down to
15 investing the money in a particular way, perhaps. But
16 if we're just investing the money as a plan, hold on.
17 There are bigger, broader implications.

18 So is it UPL -- PSK, qualified trusts, what are
19 they? Somebody asked, Ms. Holcomb it might have been
20 you, what is a PSK. We're all lawyers. If you don't
21 know what a PSK -- no offense, let me finish the
22 sentence before you take offense. If you don't know
23 what a PSK is, and we are lawyers, that kind of
24 suggests to me that we need a lawyer to be sure that
25 the PSK is appropriate, or what it does or how it

1 applies. The fact that we're asking the question
2 proves the question. I'll shut up.

3 MS. BLOUNT: Any questions?

4 MR. LANAUX: Respectfully --

5 MS. BLOUNT: Your name?

6 MR. LANAUX: We understand what UPL is --

7 MS. BLOUNT: David, your name?

8 MR. LANAUX: David Lanaux.

9 Respectfully, we understand what UPL is. That's
10 what we do here. And we're not here to attack the
11 Elder Law Section or the Medicaid planners at this
12 point. We don't understand, unless somebody on this
13 committee is a Medicaid planner, we're just trying to
14 fact find now.

15 MR. HEMNESS: Yes, sir.

16 MR. LANAUX: We're trying to understand what the
17 difference is, what they perform. We know what
18 attorneys perform, and we know the difference between
19 what renders an opinion and versus facilitating a
20 situation.

21 MR. HEMNESS: Yes, sir.

22 MR. LANAUX: But I haven't heard from anybody
23 from the medical planning department yet. All I've
24 heard is from elderly, right, attorneys?

25 MR. HEMNESS: I'm not an elderly attorney.

1 MR. LANAUX: I'm a nonattorney.

2 MR. HEMNESS: Not a problem. No, it's a common
3 thing.

4 MR. LANAUX: That's what we're here for, to fact
5 find and understand, and then we can put together what
6 we heard and say -- yes, I agree with this gentleman,
7 it is very complicated. You know, maybe it's a
8 consumer protection situation where they need to get
9 involved and say, wait a minute, these people are
10 taking advantage of the elderly and we need to do
11 something about it, and therefore, we need to find out
12 what is going on. That's what we're here to do.

13 MR. HEMNESS: Yes, sir.

14 MR. LANAUX: And I hear everything you're saying.
15 You're way smarter than I am in regards to what you're
16 talking about. But once we hear everybody, then we
17 should be able to come up with a reasonable opinion as
18 to what needs to be done. I think it caters towards
19 having something to be done if it isn't being.

20 MR. HEMNESS: And the urgency that we're
21 expressing is that, as a prosecutor, as a former
22 prosecutor, there's a tool on the table already out
23 there. UPL is a crime. UPL is a prosecutable crime.

24 Prostitution is an uncomplained crime. Most of
25 the times the johns in prostitution don't complain

1 about it. Murder, unless there's a third party
2 victim, you don't get a complaint about it. Drug
3 abuse is typically a victimless crime. Nobody
4 complains about it.

5 We have UPL out there, but because we've focused
6 in on this complaint driven system, it's like a hammer
7 that's never been picked up. And there are egregious
8 examples out there that everyone is aware of, but
9 because the victim is not going to come forward, they
10 may not even know to come forward, they may be afraid
11 to come forward, I don't know that that's such a big
12 category to me. But I think there's an awful lot of
13 people out there who got bad word and don't even know
14 it.

15 And we're here saying just because they don't
16 realize they were robbed, just because they're
17 suffering and perhaps they die before they're aware of
18 it, perhaps they thought it was a great deal and it
19 was a horrible deal.

20 MS. BLOUNT: We have one more --

21 MR. HEMNESS: Sorry.

22 MS. BLOUNT: Okay. No? No more questions? All
23 right.

24 MR. HEMNESS: Thank you for your time.

25 MS. BLOUNT: Thank you very much. The next

1 speaker is Amy O'Rourke from The Cameron Group. Ms.
2 O'Rourke, would you be sworn in?

3 MS. O'ROURKE: I will.

4 THE REPORTER: Do you swear or affirm the
5 testimony you're about to give in this cause will be
6 the truth, the whole truth and nothing but the truth?

7 THE WITNESS: I do.

8 MS. O'ROURKE: Hello. My name is Amy Cameron
9 O'Rourke. I'm the owner of a care management company
10 in Orlando, Florida. I'm not a lawyer. I'm a
11 Certified Care Manager. I have a master's in public
12 health, a master's in gerontology.

13 I came here out of curiosity. I've been in
14 business for thirteen years. We do care management
15 consulting. We do Medicaid and VA application work,
16 and we have a home care agency. And I work with a lot
17 of lawyers. And I'm very knowledgeable of the issue
18 of the unlicensed practice of law.

19 And when we receive clients in our office and
20 we're looking at what needs to be done, we believe we
21 make the appropriate referrals to do the financial
22 strategizing, et cetera, on these Medicaid and VA
23 applications.

24 So I came here not really knowing what I wanted
25 to say. But I do think that I can give you some facts

1 to help you all process the decisions that you need to
2 make.

3 And I think there's unscrupulous people in all
4 professions. We've received clients in our office
5 that have been -- had their applications done by
6 lawyers who were not Medicaid specialists, and they've
7 been botched, and we've gotten them over to lawyers
8 that really knew what they were doing.

9 And one of the reasons why you might not get
10 complaints is because the Medicaid planners, I
11 believe, are making a niche for themselves and
12 charging less than lawyers charge. And I don't like
13 to get involved in lawyer fees, but I've seen upwards
14 of ten, twelve, fifteen, twenty thousand dollars being
15 charged, and if a Medicaid planner comes in and
16 charges \$3500, that's going to be a draw, and the
17 person will feel like they've saved money because
18 they've gotten to a Medicaid planner.

19 We never make a referral to a financial planner,
20 ever. If a referral is going to be made from our
21 office out, it is always to an attorney.

22 But let me give you an example. There's a
23 qualified income trust, so if an older person is over
24 income, they have to get a qualified income trust, and
25 we make that referral to an attorney. So this person

1 has no money and they're over income by three or four
2 dollars, and they have to pay \$2,000 for a qualified
3 income trust, and we make this referral, but I can
4 tell you, nobody feels good about it at that scenario.
5 So they have to pay \$2,000 to get a qualified income
6 trust, and it feels bad. They don't have \$2,000.

7 So we're in the advocacy business, and I've got
8 to advocate for my client. I call the lawyers that I
9 work with and I say, would you do this pro bono. Most
10 of the time I hear yes. Or I call and I say, can you
11 give them a cut rate on this thing, and I hear yes.

12 Then we get approached by a nursing home, the
13 nursing home says, we do QITs all the time. Why
14 should they hire a lawyer? I can hear the lawyers
15 saying at my back, that's unlicensed practice of law,
16 and the nursing homes are saying they don't have any
17 money. It's an issue.

18 You have the middle income elder, they have
19 \$150,000, they have \$130,000. Then you look at
20 situational ethics, where you have situational law,
21 you have the law of relativity. You have \$140,000,
22 and the income limit for the community spouse is
23 \$117,000. So they've got \$20,000 to do something
24 with.

25 And we're in the advocacy business, and we have

1 to decide, we've got to send them to an attorney and
2 they're going to have to pay money to decide what to
3 do with that \$20,000. And I have this pressure of I
4 can't practice law without a license, but they're
5 going to go to the lawyer and they're going to pay
6 fees, and then if they find out that they paid fees on
7 something I could have told them, they're mad at me,
8 and they feel like I've taken advantage of them. So
9 it's a little broader. We try to do the right thing
10 and we call and we try to make it right.

11 We also get referrals from elder lawyers with a
12 client with \$40,000, and they say you help them. They
13 can't afford us. And that's great.

14 So I hope I've given you some facts that you can
15 look at it. I don't know what the right thing to do
16 is. We're an advocacy company and we want to advocate
17 for the elder.

18 We rarely have an older person like you saw today
19 in our office. We talk to the kids. The kids come in
20 with the parents. So you're not -- when you hear, oh,
21 the older person is getting taken advantage of. The
22 kids are with them. And, yes, older people do get
23 taken advantage of. But the kids are the ones that
24 are bringing it to the table, in my experience.

25 Are there any questions?

1 MR. POTTER: Steve Potter.

2 So the nursing home can draft a QIT?

3 MS. O'ROURKE: I have been told by nursing homes
4 that they have done QITs.

5 MR. POTTER: So how do they do that; with their
6 lawyers?

7 MS. O'ROURKE: I don't know. I've seen the
8 forms. I've seen the form.

9 MR. POTTER: Okay.

10 MS. O'ROURKE: And I know of two nursing homes
11 that told me they did it, and I saw their form.

12 MR. POTTER: Okay. One of the questions here is
13 this personal services contract.

14 MS. O'ROURKE: Yes.

15 MR. POTTER: How do you feel about that?

16 MS. O'ROURKE: The personal services contract is
17 a contract, and I don't know contracts.

18 MR. POTTER: So you would recommended an
19 attorney?

20 MS. O'ROURKE: We always recommend an attorney to
21 do a personal services contract.

22 MR. ABBOTT: Colin Abbott.

23 I guess one concern we have is we're not looking
24 at people like you, because people like you are doing
25 the right thing and using attorneys for the attorney's

1 business, and you're doing the nonattorney business.
2 In your years of thirteen years of work, have you seen
3 examples whereby it's so obvious that things have been
4 bad because you go to meetings where other planners
5 plan, you know, it's sort of -- we know -- as
6 attorneys, we meet and we know what's going down. So
7 what -- do you know -- is it predominant within the
8 field, not groups like you -- and how many people like
9 you are out there as a percentage of the total?

10 MS. O'ROURKE: I'm a care manager and I'm
11 certified. And in the profession of care management,
12 to have credibility in the community, you have to have
13 certification.

14 And by the way, with the referral fees, our
15 pledge of ethics is to never take referral fees. So
16 in terms of care management, that's just not done.

17 There is, in my opinion, a proliferation of
18 financial planners getting into the VA, Medicaid
19 market, and it's frightening. And they are selling
20 annuities and they are taking advantage of older
21 adults without the legal piece. And that's -- that
22 is -- has proliferated. I don't know if I heard 2007
23 or 2006, but that's about when I saw it kind of
24 erupting. Yes?

25 MS. BLOUNT: Name.

1 MS. BUIE: Carsandra Buie.

2 Do you think that we need to issue guidelines
3 regarding what effect Medicaid planners and financial
4 planners or anyone in this area can and cannot do?

5 MS. O'ROURKE: You know, I came in thinking that
6 what was happening wasn't right, and I changed my
7 mind. I do think there needs to be some clarity. I
8 think there needs to be some clarity because I do
9 believe, you know, I -- we're all educated in my
10 business, and care management companies have
11 education. And, you know, so I think we make better
12 referrals. But I do think that it's a problem that
13 clarification would help those of us that are trying
14 to do the right thing continue to do so.

15 Yes? Oh, I'm sorry. I didn't know who to call
16 on.

17 MR. LANAUX: David Lanau.

18 What sort of certification do you have? I mean,
19 does it deal with just Medicaid planning or --

20 MS. O'ROURKE: I'm certified as a care manager,
21 and that certification comes through the National
22 Academy of Certified Care Managers, which is -- you
23 have to have a bachelor's degree to even sit for two
24 years under supervision to then sit for a test that
25 certifies in care management, which is the profession

1 of advocating for the elder.

2 MR. LANAUX: Is your primary business Medicaid
3 planning, or do you have other aspects that you -- is
4 that the majority of your business, Medicaid planning?

5 MS. O'ROURKE: Medicaid -- I don't do Medicaid
6 planning. I don't call it Medicaid planning. It's
7 15 percent of my business. Fifteen.

8 MR. LANAUX: But there are companies that it's a
9 hundred percent of their business?

10 MS. O'ROURKE: Correct.

11 MR. LANAUX: Financial planners, things like
12 that?

13 MS. O'ROURKE: Yeah, and that's not primarily
14 care management companies. And, honestly, the
15 Medicaid planning companies, I don't know their
16 backgrounds. The backgrounds of people that I know
17 that have scared me that have come through my door is
18 the financial planning industry.

19 And I think there was a question. Did you have
20 another one? No.

21 MS. BLOUNT: Any further questions? Thank you,
22 Mrs. O'Rourke.

23 Our next speaker is Jeff Brown for VIP Care
24 Management.

25 MR. BROWN: My name is Jeff Brown.

1 MS. BLOUNT: Mr. Brown, would you be sworn in?

2 MR. BROWN: I am a member of The Florida Bar and
3 an officer of the court and would decline that
4 invitation.

5 MS. BLOUNT: All right. You can decline.

6 MR. BROWN: I am Jeff Brown, and I am here on
7 behalf of VIP. And also Ms. Kobrin who is one of the
8 owners of VIP.

9 We are here today to ask you that -- I do think
10 you have an envious position and that position is to
11 take a courageous stand and to resist the temptation
12 to issue an advisory opinion because one is not
13 necessary, though requested.

14 I am a member of The Florida Bar and from Boca
15 Raton, Florida, and have been a member of The Bar
16 since 1976.

17 In addition to that, I am a client of VIP. My
18 singlings are a client of VIP and my mother is a very
19 happy client of VIP. I am the past president of a
20 local bar association. I have served on The Florida
21 Bar grievance committees and chaired the grievance
22 committees on two occasions. Since you must take a
23 three-year leave of absence from being on the
24 grievance committee before you can re-become a member.

25 I'm asking you all to embrace the notion of

1 nonlawyer Medicaid assistance, helpers and people who
2 can do their nonlawyer job.

3 There are two things that are not in dispute.
4 And first let me tell you a little bit about VIP. We
5 serve individuals. We serve nursing homes. We see --
6 we serve hospices. And what we do is we identify
7 needs for clients. We evaluate those needs. We help
8 them determine eligibility. We also work with
9 attorneys. And one of our jobs also is to maintain
10 that managed care for the client.

11 And let me tell you what maintenance is. The
12 root word of maintenance is maintain. And what you
13 will come to learn in terms of facts is that if you
14 have eligibility, you need to maintain that year after
15 year. You need to remain eligible and maintain that
16 eligibility. That is a job for nonlawyer care
17 managers.

18 You need to set up bank accounts with the legal
19 documents. That is something they can do and can do
20 it very well. I would suggest to you, lawyers don't
21 often go to the banks with their clients. Lawyers
22 don't often continue to maintain eligibility as it
23 goes along.

24 In my personal case, I am being assisted with VA
25 benefits, and my mother is being assisted with her

1 Medicaid planning. She also has a lawyer. It is not
2 me, because I'm a little close to my mother, and I'm a
3 little close to my siblings.

4 So there are some things that are not in dispute.
5 What's not in dispute is lawyers -- and I am one --
6 there are legal documents that should be drafted by
7 lawyers only. There are laws in place to that effect.

8 Let me tell you what a legal document is. Okay.
9 Power of attorney. Let me tell you what another legal
10 document is, a personal services contract. A personal
11 service agreement and all of those legal documents
12 should be drafted and handled by lawyers only. We
13 don't dispute that. Lawyers don't dispute that. And
14 I'm hoping I convince you not to dispute that.

15 There's another thing that is not in dispute, and
16 that is our role. The nonlawyer caregiver's role.
17 And that role is to assist and to help. There is a
18 system in place. I've heard words about there's no
19 licenses, there's -- this is something gone rogue.
20 This is not the case.

21 We are community partners with DCF. We have just
22 had the compliment of having a DCF scanner brought to
23 our office and put in our office. We are very much
24 complimented by this scanner. This allows us to have
25 direct, what I call direct access to DCF. They came,

1 they asked if they could put it in there. We were
2 complimented and we accepted.

3 We are annually trained. We are annually
4 supervised. We have a liaison person in place to deal
5 with us, and we work very closely with DCF. That is
6 in place. That was in place in 2009 when The Florida
7 Bar has already talked about this, already issued a
8 letter, and the guidelines are in place. The system
9 is in place and the system is not broken.

10 There is even more regulation and more
11 liaisonship, more assistance and more training in
12 place than there has ever been.

13 We have had 100 percent of our applications
14 approved since 1993. We had 591 cases with DCF last
15 year. And the reason I know that is because they keep
16 statistics. We are community partners with them.
17 They keep statistics and we receive the reporting.
18 591 last year alone. We are under a -- community
19 partners with DCF.

20 Let me give you an example. Under the DCF forms,
21 to get approved, you need to identify and specify who
22 is your legal representative. This has to be filled
23 out to be approved. This is their form. I have the
24 photo of our scanner and I have a photo of the form if
25 anyone would like it, and I could provide it today or

1 any other time.

2 It has a block, the trust was executed by
3 individual, spouse, person, court representative.
4 Let's say you had a guardian. And then it says
5 Individual's legal representative, period, specify and
6 attach copy of documentation. And then you have a
7 checkmark. You are to tell them, and this is the DCF
8 lawyer, I think it's called DCF legal representative,
9 who must approve and sign off on all of these, and the
10 signature block is District Legal Counsel's Signature,
11 and dated.

12 So you have a lawyer, a member of The Florida
13 Bar, who is signing off on each and every one of these
14 applications. And it has to have it filled out,
15 including the name of your legal representative.

16 So let's talk about how that comes around. We
17 meet my mother, we meet your mother. And let me also
18 comment, it is oftentime, the children bringing in
19 their parent, maybe two children, maybe four children.
20 Maybe two people come in as husband and wife, if
21 they're lucky enough to both be living. In my case,
22 my father has passed, my mother hasn't.

23 So we go in, and the first question is do you
24 have a lawyer. That's important. Because if you have
25 a lawyer, then you can work with that lawyer. If they

1 don't have a lawyer, yes, VIP will recommend lawyers.
2 They will recommend lawyers who are specialized in
3 elder care, for folks like this. That is exactly a
4 good point. You want somebody who is specialized.
5 That is accurate.

6 We make referrals. My babysitter makes
7 referrals. My neighbor makes referrals. We can all
8 make referrals. We do not get one penny from those
9 referrals. We do not do a direct relationship with
10 those lawyers. Instead our contract says, and our
11 policy is just like the other lady said.

12 You will have a direct contract with your lawyer.
13 You will directly pay that lawyer. You will not pay
14 us. Pay the lawyer. We will not pay the lawyer as
15 part of our fees. It is a direct relationship between
16 me, the son, or my mom direct with the lawyer. Not a
17 penny to us.

18 Let's talk about annuities and life insurance.
19 We don't do it. If we sold Girl Scout cookies, we'd
20 have a different problem. We do not do life
21 insurance. We do not do annuities. Some lawyers do,
22 if they have dual licenses. We do not, we do not get
23 a penny for any of that. We do not get a penny from
24 the lawyer or anything else we send out. We
25 ethically, and do not take a penny from that.

1 So you then send them to the lawyer, they make
2 their direct contract and the lawyer does powers of
3 attorneys, personal service agreements and anything
4 else that is needed. This income trust we're talking
5 about, some nursing homes do it, whether they get it
6 off the internet, whether they think it's legal
7 advice, we don't take a position. We do not do those
8 documents, we do not do any legal documents. We agree
9 with the lawyers, and I am one, that is legal work,
10 and you folks are the arm which takes a look at that.

11 What they're asking you to do is to go overboard
12 and start worrying about this service. You will not
13 be able to get rid of the pedophiles in the Boy Scouts
14 or the pedophiles or the predators in The Florida Bar,
15 or the predators that are out there in the assisted
16 care facility.

17 These clients are oftentimes frustrated, confused
18 and very vulnerable. But that's in every area of the
19 life we live in, that's humanity. And you're not
20 going to be able to solve that.

21 So I do take offense, when they talked about,
22 well, a disbarred lawyer can do this or a convicted
23 felon can do that or a predator can be a predator of
24 the elderly. That's absolutely accurate. But I wish
25 you could fix all of that, but you cannot.

1 So using sensational terms like felons, predators
2 and disbarred lawyers is misleading, and I would ask
3 you not to go down that sensational road and turn it
4 into that kind of a witch hunt with sensational words.
5 That is not the issue today.

6 There are abuses by lawyers. There are abuses by
7 bad lawyers. There are abuses by criminal lawyers.
8 And then there are some of us that are very good
9 lawyers. There are nonlawyer assisted caregivers who
10 are very good. There are some who are not.

11 I think you used the term "People like you."
12 Well, we are people like you, and that's why we're
13 here. And Ms. Kobrin is here to answer any questions.
14 We're not under a rock. We're not hiding behind
15 anything. We're here to answer your questions. But
16 we are people like that.

17 And we are suggesting to you that the system that
18 was set in place in 2009 and the system with the DCF
19 overview and the way we work is in place. So we're
20 subject to the same criminal laws, the same
21 unauthorized practice of law that you folks, you
22 nonlawyer members, you members from the public, cannot
23 do the unauthorized practice of law. But you don't
24 have to come up here and defend yourself.

25 Yet we are here because they are talking about a

1 gray area. And I am suggesting to you there is not a
2 gray area. There is a black area -- I should call it
3 a white area. There is a white area for legal -- for
4 legal work, and that should not be done by nonlawyers.
5 And then there is a place for nonlawyer work, and that
6 can be done.

7 And there is no gray area, it was found in 2009.
8 The system is in place by your Florida Bar. And we
9 would ask that we would accept any questions and
10 simply tell you that we're here. Yes?

11 MS. BLOUNT: Thank you. Yes, I was going to ask
12 are there any questions? And could you state -- what
13 is your first name, Ms. Kobrin?

14 MS. KOBRIN: Sonja Kobrin.

15 MS. HOLCOMB: And can you spell it for the court
16 reporter?

17 MS. KOBRIN: S-O-N-J-A, K-O-B-R-I-N.

18 MS. BLOUNT: And we have a question over here.

19 MR. ABBOTT: Yes. Colin Abbott, attorney.

20 I guess my question would be three parts, and I
21 want to just we dialogue. The 2009 letter, which I
22 was one of the ones who was a party to that, do you
23 think there is any issues in there that would better,
24 if addressed now, could prevent the part of your group
25 that is predatory -- or I don't like the word

1 predatory either, but that is --

2 MR. BROWN: I didn't use it until I heard it. I
3 didn't use it until I heard it.

4 MR. ABBOTT: Okay.

5 MR. BROWN: I think a lot of things have to be
6 done case by case, because facts are -- and let me use
7 that comment. The suggestion that the unauthorized
8 practice of law is complaint driven skips the fact
9 that there are not many complaints, and I'll tell you
10 why, because there are not many problems. That speaks
11 volumes.

12 The system is in place. They can make
13 complaints. I can make a complaint as a son. My mom
14 can make the complaint as a mother. A lawyer can make
15 the complaint. That's why we're here. Oh, we have
16 concerns. Oh, we wonder what's going on. Oh, we see
17 these massive documents. That's fine, but I'm asking
18 you not to do more than you've done in that, which is
19 to set forth the black and the white.

20 I think a lot of things have to be done on a case
21 by case basis. And if somebody is practicing law
22 unauthorized, they should have to answer for it. If
23 someone is in a criminal setting, committing a crime,
24 being a predator on the elderly, there are elderly
25 laws in place and they can be prosecuted.

1 If they are receiving kickbacks, there is various
2 official language we have about official misconduct.
3 So all of those can be addressed in the criminal
4 system, in the Florida -- in your section of The
5 Florida Bar or any place else.

6 MR. ABBOTT: I guess question two is you said.
7 that since 1993 you had no denials through DCF. We do
8 DCF food stamps. Reality is you don't get many
9 denials anyway. What's the percentage of the state
10 applications for Medicaid? Do you know how many are
11 actually denied? Because I know you said none of
12 yours were denied. But per year, is it ten percent,
13 is it -- either one? And through the state, is it,
14 like, five percent, denial, twenty percent denial,
15 across the board?

16 MS. KOBRIN: I am not -- I am not privy to the
17 statistics, but I can tell you that many of the cases
18 that are referred to us by the nursing home
19 corporations are what we call, in our world, repair
20 and recovery. We are fixing a denied Medicaid that
21 was usually denied on a very small issue. And then
22 you provide that proof and then it's reopened and it's
23 okay again. It happens a lot.

24 MR. ABBOTT: And I guess my final question is --

25 MR. BROWN: Let me just comment briefly, if I

1 could, on that. Eligibility is a very interesting
2 component. And sometimes you can do things to create
3 eligibility. And many times lawyers need to come into
4 play to create personal service contracts so as to
5 enhance eligibility and then maintain eligibility.

6 MR. ABBOTT: And the last question is -- do you
7 request fair hearings when it's sent to you? How do
8 you get involved with the Medicaid? Do you put in
9 notice of, you know, that you're going to be now their
10 advocate to DCF? How do you get to DCF and say, okay,
11 now, the nursing home did bad or I'm -- in quotes.
12 And then you're going to help. So how do you let DCF
13 know, then, that you're going to help?

14 MS. KOBRIN: Okay. In the twenty years I've been
15 doing this, we've gone to a hearing two times. Both
16 times we had an attorney. I would not go to a hearing
17 without an attorney because I don't want to lose.
18 Okay. And, you know, if it gets that technical, we
19 need an attorney. Most of the time DCF will allow us
20 to reopen the case, provide the missing document,
21 which is usually the reason, and then we're good.

22 MR. ABBOTT: Okay. Thank you.

23 MR. BROWN: Let me just briefly comment on where
24 the lawyers fit in. Our brochure talks about that if
25 you have a lawyer, great, and if you need a referral,

1 that's great.

2 In any walk of life, if you know who is good in
3 the area, you'd like to use them. And as Ms. O'Rourke
4 said, if you called them up and you need some kind of
5 a favor, you could always ask for a favor.

6 And the same goes with banking relationships. We
7 work with certain banks because they can handle
8 something that I call nongarden variety. If I walk in
9 and I'm a single 25-year-old man and I have the proper
10 documentation, I can open up a million dollar banking
11 account as a single man. It's not quite so easy when
12 you're dealing with powers of attorney and elderly
13 mothers and professional service contracts and the
14 like.

15 So among the things they can do by way of your
16 fact finding is they can assist with banking
17 relationships in a way I would suggest lawyers either
18 don't have time for or would have a charge for that
19 conference traveling from their office to the bank and
20 back, and some of that is more cost effective if it's
21 nonlegal work.

22 MS. BLOUNT: Okay. We're going to have to
23 call -- unless it's very brief. So we have one more
24 and our time is getting close. So we want to thank
25 you, Mr. Brown. Appreciate it. And you too,

1 Ms. Kobrin.

2 MR. BROWN: Thank you for your attention and your
3 courage.

4 MS. BLOUNT: Next speaker, Helen Kelly.

5 Ms. Kelly? It looks like Kelly.

6 MS. HOLCOMB: Kelly from New Port Richey. Okay.

7 MS. BLOUNT: Okay. Well, with this we'll
8 conclude the hearing. And, certainly, you'll be able
9 to determine or find out what we do here today. And
10 we appreciate you coming. Thank you.

11 MS. HOLCOMB: For the committee, let's just take
12 a real quick, like, five-minute break or something and
13 then we'll hit the agenda running.

14 THEREUPON, the meeting concluded at 11:40 a.m.

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1 CERTIFICATE OF REPORTER

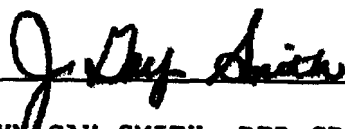
2 STATE OF FLORIDA :

3 COUNTY OF HILLSBOROUGH :

4 I, Jolyn Gay Smith, Registered Merit Reporter,
5 Notary Public in and for the State of Florida, do hereby
6 certify that I was authorized to and did stenographically
7 report the foregoing deposition; and that the foregoing
8 pages constitute a true and complete computer-aided
9 transcription of my original stenographic notes to the best
10 of my knowledge, skill and ability.

11 I FURTHER CERTIFY that I am not a relative,
12 employee, attorney, or counsel of any of the parties, nor
13 am I relative or employee of any of the parties' attorneys
14 or counsel connected with the action, nor am I financially
15 interested in the action.

16 IN WITNESS WHEREOF, I have hereunto set my hand
17 at Tampa, Hillsborough County, Florida, this 7th day of
18 March, 2013.

19
20 
21 JOLYN GAY SMITH, RPR-CP, RMR, FPR
22 Notary Public, State of Florida
23 My Commission Expires 2/18/17
24 Commission No. EE 851440
25