Preventing Elder Investment Fraud: Assessing for Vulnerability to Financial Exploitation

George Taffet, MD
Professor and Chief of Geriatrics
Baylor College of Medicine

Gerald Rome, JD, Acting Securities Commissioner
Division of Securities, Colorado Department of Regulatory Agencies

Denver, Colorado, March 20, 2014

Elder Investment Fraud and Financial Exploitation (EIFFE) Prevention Program

• The EIFFE Prevention Program utilizes CME courses to educate health care professionals about elders’ vulnerability to investment fraud due to MCI and other conditions, how to recognize EIFFE in their patients, referral routes for further medical screening and where to report suspected fraud

• The program is currently running in 28 U.S. states and jurisdictions and has reached over 6500 professionals.
EIFFE Prevention Program

- A collaboration between:
  - Investor Protection Trust
  - Investor Protection Institute
  - Baylor College of Medicine
  - National Adult Protective Services Association
  - North American Securities Administrators Association
  - State Securities Regulators

- In cooperation with U.S. medical associations and their local chapters including:
  - American Academy of Family Physicians
  - National Area Health Education Center Organization
  - National Association of Geriatric Education Centers

Acknowledgements of Project Team

- Bob Roush, EdD, MPH, Principal Investigator
- Aanand Naik, MD, Co-PI
- George Taffet, MD, Chair, Internal Advisory Group
- Larry McCullough, PhD, Member, IAG
- Nancy Wilson, LMSW, Member, IAG
- Mark Kunik, MD, Member, IAG
- Whitney Mills, PhD, Assistant Project Director
- Elisa Rodriguez and Kristin Cassidy, Former Assistant Project Directors
- Jennifer Moye, PhD, Elder Capacity Assessment Consultant
- Janet Pinner, RN, PGCM, Nursing Continuing Education
- Wayne Howell, JD, Investor Education Consultant
- The physicians, nurses, social workers and investor educators in focus groups whose opinions and suggestions guided our efforts
Disclosure

• The presenter discloses some of his faculty received funding from the non-profit Investor Protection Institute

• Development of the Clinician Pocket Guide was made solely by members of the Baylor College of Medicine project group

Special thanks to…

• Colorado University School of Medicine Section of Geriatrics

• Division of Securities, Colorado Department of Regulatory Agencies
Learning Objectives

Attendees should be able to…

• List key factors that increase an older person’s vulnerability to elder investment fraud and financial exploitation
• Describe common financial exploitation schemes and practices
• Describe when to and where to refer patients deemed high risk to appropriate sources of assistance

Part 1: Goals…

• Raise clinical awareness of elder investment fraud and financial exploitation (EIFFE)
  – it’s a serious, growing problem
  – what you can do about it
• Provide information and resources that can help you
  – based on your personal knowledge of a patient or client
  – but unclear how to ask about it or types of referral sources
Elder Fraud

• Annual financial loss by victims of elder financial abuse estimated at least $2.9 billion dollars, 2011
  – 12% increase from the $2.6 billion estimated in 2008.

• Who commits the fraud?
  – Strangers: 51%
  – Family, friends, and neighbors 34%
  – Business sector 12%
  – Medicare and Medicaid fraud 4%

• Why are old people special?


Figure 1. Conceptual Schematic of Progressive Decline in Financial Capacity in a Person With Alzheimer Disease (AD)

Widera, E. et al. JAMA 2011;305:698-706

Copyright restrictions may apply.
Normal Changes with Age Increase Risk

• Important Age-Related Differences in Learning from Positive Feedback versus Negative feedback
  • “… the salience of negative feedback seems reduced with age.”
  • “older adults are less affected by negative feedback and rely more on positive feedback during learning”

• Iowa Gambling Test
  – Four Fixed Decks of Cards, Two Decks initially positive, but rapidly turn negative
  – Optimal strategy is to switch to other decks
  – Many older people never switch.

• Correlate loosely with Age-Related Changes in Serotonin and Dopamine

• Think Spanking
NeuroEconomics, A Field in Its Infancy--Science is Lagging Behind the Bad Guys

• Age Differences Lead to Changes in Decision Making about Money Issues
NeuroEconomics, Implications of Not Learning from Losses are Huge

• Age Differences Lead to Changes in Decision Making about Money Issues
• Nigerian scams where despite losing almost his entire estate, person puts up that last dollar to the scammer
• Slot machine payout settings
• Findings in cognitively normal elders; dementia clearly increases vulnerability

Prevalence of Cognitive Problems

• 35% (8.8 million) of Americans over the age of 71 have either
  – mild cognitive impairment (MCI)
  – dementia
  – changes in executive cognitive functions*

Prevalence of Depression and Substance Abuse in 65+ Population
> Risk of Financial Exploitation

- 14 to 20 % of the elderly population – have 1 or more mental health conditions or problems stemming from substance misuse or abuse.
- Depressive disorders and psychiatric symptoms are common.


Epidemiology of Elder Abuse

- Of all elder abuse cases reported, 30% were for financial exploitation
  (National Elder Abuse Study, 1998)

- Two nationally representative studies found 4-5% of older adults in the US have been victims of financial abuse
  (Acierno et al., 2010; Laumann et al., 2008)
  - similar prevalence to heart attacks and higher than systolic heart failure (1-2%)

http://www.nanocorthx.com/Articles/HeartDiseaseStrokeStatistics.pdf
“To those seniors and especially elderly veterans like myself, I want to tell you this: You are not alone and you have nothing to be ashamed of. If elder abuse happened to me, it can happen to anyone.”

Mickey Rooney
Testimony to Senate Special Committee on Aging, March 2, 2011

• Mickey Rooney’s caretaker and step-son embezzled millions of dollars and created a management corporation to funnel his dollars to them
• Film Documentary about Elder Fraud Called: "LAST WILL AND EMBEZZLEMENT"
• Highlights Mickey Rooney’s story
Raising Awareness (1)

• Why addressing this issue is so important…
  – vulnerable population is large and growing
  – financial health affects overall health
    • financial loss impacts available food, medication, and other health services

Raising Awareness (2)

• Almost a third of elders live within 150% of the poverty level

• Average savings of 50 year old boomers is about $50,000
Raising Awareness (3)

• Even older adults with savings in the low millions can’t afford to lose substantial amounts, as they don’t have the time to make it up
• Current resources exist for patients only after harm occurs to them; little is available to prevent EIFFE
• Many aspects of normal aging and disease can contribute to older adults’ vulnerability to EIFFE

What can you do to help prevent EIFFE?

• Simple office-based assessments of potential vulnerability to EIFFE
  – checklist of situations associated with high risk
  – assessment questions
  – referral sources for those deemed potentially at high risk
  – recent paper on office-based assessments by E. Widera et al. JAMA, Feb. 16, 2011
    http://jama.ama-assn.org/content/305/7/698.full
Adding Financial Exploitation to the Geriatric Checklist

EIFFE Prevention Program Materials

Clinician’s Pocket Guide

Patient Education Brochure

See all EIFFE program materials at this web page on the IPT’s site:
http://www.investorprotection.org/ipt-activities/?fa=eiffe-pp
Important Areas of Consideration for EIFFE Cases

Ask Yourself:

- Vulnerability [risk] factors
- Financial capacity issues
- Investment and financial knowledge
- Undue influence of others

Vulnerable Older Adults

- An older adult is vulnerable if he/she demonstrates characteristics or performs behaviors that are associated with subsequent morbidity, disability, or death

Financial Capacity

- “The ability to make and execute decisions consistent with personal preferences and values regarding finances”


Investment Fraud and Financial Exploitation

- “The illegal or improper use of another individual’s resources for personal profit or gain”

Adult Protective Services: http://www.ncea.aoa.gov/NCEAroot/Main_Site/FAQ/Basics/Types_Of_Abuse.aspx
Undue Influence

• “When exploiters, whether family, acquaintances, or strangers, use their power to deceptively gain control over the decision making of a victim. Often involves financial exploitation.”


Case Scenario 1

• Mr. Allen is an 83-year-old man who lacks financial capacity due to Mild Cognitive Impairment (MCI). Mr. Allen has involved his son Steven in some financial decisions. While Mr. Allen is a conservative investor, Steven likes to take risks. He invests a large portion of his father’s retirement funds in a risky stock. Soon afterwards, the stock falls dramatically. Out of embarrassment, Steven doesn’t tell his father what he has done. (Is this fraud?)
Case Scenario 2

- Mrs. Hartford is an 86-year-old recent widow. Her daughter, Mae, hires a caregiver, Susan, to help around the house. Mae notices that Susan is acquiring lots of new things. Then Mae discovers she cannot access her mother’s accounts anymore. She visits her mother; Susan is no where to be found.

- Susan had unduly influenced Mrs. Hartford into signing a durable power of attorney. She then depleted Mrs. Hartford’s retirement funds. Once Mae realized what was happening, Susan took what was left of Mrs. Hartford’s savings and fled. (Is this fraud?)

Case Scenario 3

- A 79-year-old man allows his financial advisor to purchase an equity-indexed annuity* in the hopes that this will provide him economic security should he live to 85 and not have the same level of resources he presently has. The advisor does not disclose the “shrouded” information that the annuity doesn’t begin until age 90 nor the high percentage surrender fee should the gentleman decide to change his mind. (Is this fraud?)

*Sold by insurance agents regulated by state Departments of Insurance
Common EIFFE Schemes by Responsible Party (1)

- Caregivers or family members
  - use older adult’s personal materials for own gain, such as: retirement funds, social security checks, etc.

Common EIFFE Schemes by Responsible Party (2)

- Trusted financial advisors
  - sells inappropriate annuities or front-end loaded mutual funds, then churns them to generate inordinately high fees that can result in decumulation of assets
- Strangers
  - scams by phone, email, or mail
  - Think fly by night roofers
Responsible Party Characteristics

• Traits
  – caregiver
  – male, usually relative
  – living with the patient
  – economically dependent on the patient
  – history of mental illness, including substance abuse and antisocial behavior or other health problems

Tueth, M (Am J Geriatr Psychiatry 8:2. Spring 2000)

Relationship Between Undue Influence and Vulnerability

• An increase in dependency on others
  – arises from vulnerability
  – increases chances of being unduly influenced by others
Part 2: Clinical Assessment of Vulnerable Older Adults

- Simple office-based assessment of potential vulnerability to EIFFE
  - recommended questions you can add to patient’s waiting room paperwork
  - assessment questions clinician asks during visit using Clinician’s Pocket Guide

Red Flags in Patient/Client History

- Social isolation
- Bereavement
- Dependence on another to provide care
- Financially responsible for adult child or spouse
- Alcohol or drug abuse
- Depression or mental illness (see next slide on prevalence)
Prevalence of Depression

• 20% of older adults have Major Depressive Disorder (MDD) or some symptoms of depression.

• Depression as a risk factor: older adults who are abused tend to be depressed compared to those who aren’t.

• Depression as a consequence: older adults can develop depression as a result of being abused or exploited.
  – leaves them open to even more exploitation

NIH Senior Health: http://nihseniorhealth.gov/depression/aboutdepression/04.html
NCEA: http://www.ncea.aoa.gov/NCEArool/Main_Site/Library/Statistics_Research/Research_Reviews/emotional_distress.aspx

Red Flags from Clinical Observations (2)

• Change in ability to perform activities of daily living, including self care, daily finances, medication management

• Accompanied by caregiver who is overly protective; dominates patient/client

• Change in appearance, poor hygiene
Red Flags from Clinical Observations

ANY COGNITIVE IMPAIRMENT
Functional disability key feature of dementia – starts with impairment in IADLS
MCI patients are 4 times more likely to make errors on a validated financial capacity instrument*
Damage to the prefrontal cortex makes affected elders less risk averse, i.e., willing to gamble**


MCI and Financial Exploitation

• MCI patients are 4 times more likely to make errors than controls*

• Damage to the prefrontal cortex makes affected elders less risk averse, i.e., willing to gamble**

Introducing the Issue to Your Patient

• “We find that some older adults worry about money; may I ask you a few questions about this?” or

• “I just read a NY Times article about elders being financially exploited and thought I ought to talk to my mother and my patients, too.”

• What other opening questions do you think would be good ones?

Questions You Can Ask (1)

• Who manages your money day to day? How is that going?

• Do you run out of money at the end of the month?
Questions You Can Ask (2)

• Do you regret or worry about financial decisions you’ve recently made?
• Have you given power of attorney to another person?
• Do you have a will? Has anyone asked you to change it?

Do I probe deeper or refer?

• If answers raise suspicion:
  – go to four referral sections in Clinician’s Pocket Guide or
  – probe for further details (See Financial Concerns Checklist which may be added to the patient/client information packet and completed during intake.)
Financial Concerns Checklist (1)

• Are you having any of the following common concerns?
  – I have trouble paying bills because the bills are confusing to me
  – I don’t feel confident making big financial decisions alone
  – I don’t understand financial decisions that someone else is making for me
  – I give loans or gifts more than I can afford
  – My children or others are pressuring me to give them money or change my will

Financial Concerns Checklist (3)

• People are calling me or mailing me asking for money, lotteries

• Someone is accessing my accounts or money seems to be disappearing
What types of referral may be needed? (1)

• Help with managing money or other care tasks
  – poor resource management or limited resources available; needs assistance with finances, meals, transportation, ADLs

• Legal advice or protection
  – needs assistance with financial planning or legal documentation

What types of referral may be needed? (2)

• Fraud and exploitation may have occurred
  – needs legal counsel

• Further medical evaluation
  – needs assessment for cognitive, neurological, or other conditions
Ethical Considerations

- Concerns about calling any local or state regulatory agency, even though it is mandatory and failure to do so is unlawful
- Literature suggests talking to the patient and the possible responsible party individually

Interactions with Possible Responsible Party (1)

- Use non-confrontational demeanor
- Ask about relationship to the patient
- Discuss patient’s daily activities and routines
- Discuss any of patient’s special needs

Tueth, M (Am J Geriatr Psychiatry 8:2, Spring 2000)
Interactions with Possible Responsible Party (2)

- Observe for following behaviors:
  - demeaning comments about the patient
  - defensive, suspicious attitude
  - hostility about your inquiries
  - threat to change doctors

Tueth, M (Am J Geriatr Psychiatry 8:2, Spring 2000)

Referral Sources Where You Practice (1)

- United Way – 211 local hotline
  www.211.org

- National Association of Professional Geriatric Care Managers
  www.caremanager.org

- Case Management Society of America
  www.cmsa.org

- National Academy of Elder Law Attorneys (NAELA)
  www.naela.org
Referral Sources Where You Practice (2)

- Colorado Department of Regulatory Agencies, Division of Securities, 303-894-2320
  http://www.dora.state.co.us
- Find Colorado’s Adult Protective Services contact information at
  http://www.apsnetwork.org/Abuse/index.html
- Colorado Attorney General’s Office
- Colorado Department of Insurance
- Local District Attorney’s Office

Part 3: What You Can Say to Your Patients …

- Be aware of our own vulnerability
- Be aware of who wants your money
- Be aware of how you can protect yourself
- Be aware of who can help you
Immunize Your Patients from Bad Financial Decisions

• Chapters 17 and 18 in geriatrician Mark Lachs’ book deal with aging and money issues.

• Citing works like this helps patients and their caregivers appreciate your concerns.

Investor Education and Protection
Investment Fraud Affects Everyone

In the United States, BILLIONS of dollars are lost each year to investment fraud and scams.

These scams affect both the rich and poor; the sophisticated and the unsophisticated; the timid, the greedy, and the elderly.

Role of the State Securities Regulator

• Each State has a Securities Regulator to protect its citizens from investment fraud.

• Colorado’s State Securities Regulator is Gerald Rome, JD, Acting Commissioner Colorado Division of Securities 1560 Broadway, Suite 900 Denver, CO 80202 Phone: 303.894.2320 http://www.dora.state.co.us
Role of the State Securities Regulator

• The Colorado Securities Division:
  – Licenses investment professionals and clears securities offerings
  – Investigates investor complaints and potential cases of investment fraud
  – Enforces securities laws
  – Examines brokerage and investment adviser firms
  – Provides information to investors about an adviser or broker’s license, prior disciplinary history and background
  – Supports investor education and outreach programs

Investment Products and Vehicles

• A Security is a financial instrument entitling the owner to specified types of financial benefits

• Products commonly referred to as securities:
  – Stocks, bonds, notes, options, debentures, convertible certificates and variable annuities

• Products not commonly referred to as securities, but still subject to the laws governing securities:
  – Interests in mineral/oil rights, limited partnerships, investment contracts and promissory notes
What is Investment Fraud?

- Investment fraud, also known as stock and/or securities fraud, violates securities laws. It occurs when investors are induced to make purchase or sale decisions on the basis of false information, frequently resulting in losses.
- Securities laws also prohibit the sale of unsuitable investments and unregistered products, and transactions by unlicensed advisers/brokers and theft or misappropriation of funds.

Who Needs to be Registered to Sell Securities?

- Brokerage Firms
  - Also known as broker-dealers
  - Investors maintain their securities accounts with these firms. Brokers are not fiduciaries
- Securities Salespersons
  - Also known as stockbrokers; work for brokerage firms
  - Individuals with whom investors deal directly when effecting transactions in their accounts
  - They typically receive commissions when investors purchase or sell securities
Who Needs to be Registered to Sell Securities?

• Investment Advisers
  – a person or business entity engaged in the business of providing advice, making recommendations or furnishing analysis regarding securities. Advisers are fiduciaries (client’s best interest is first)

• Things to consider with an Adviser:
  – fee-based only, commission only

What You Should Expect from an Advisor

• Full Disclosure: You are entitled to complete and accurate information about an advisor and any securities they recommend to you

• Information on risks, obligations, and costs

• Investment to be suitable based on experience, finances, age

• Monthly account statements

• Timely access to your funds

• Prompt attention to problems and complaints
Common Advisor Scams and Schemes

- Unsuitable investments and “know your customer”
- Unauthorized transactions (power of attorney abuse)
- Margin trading
- Churning
- Unreasonable expectations
- Complex investments
- High fees and expenses

Common Types of Fraud

- Investment Fraud
  - Affinity fraud
  - Theft in brokerage accounts
  - Internet and email investment scams
  - Ponzi and pyramid schemes
  - Oil & gas schemes
  - Coins & precious metals
- Caregivers/Family/Friends
  - Power of Attorney
  - Change of last will and testament
  - Property conversion
  - Account abuse
How To Spot a Con Artist

• Promise no risk with high rewards/returns
• High pressure sales techniques
• Spelling and grammatical errors
• Offer is for you only or a “select group”
• Pressure for an immediate response
• Requires an advance payment
• “Cash only” or checks made out personally
• Promises to provide paperwork “later”
• Often ask for personal information
• Ask you to sign blank forms or documents
• Inability to contact an independent company representative
• Discourage checking with regulators
• Offers that are too good to be true

Self-Defense Tips

• Before you buy, check the background of anyone trying to sell you securities with your State Securities Regulator
• Don’t accept statements from your manager alone – verify with the brokerage firm
• Don’t send money directly to the manager – make out checks to the third-party independent brokerage account
• Never invest based on reputation or word of mouth
• Monitor your investments and ask tough questions
• Look for trouble retrieving your principal or profits
• Don’t let embarrassment keep you from reporting fraud
• Read & understand your monthly statement – report problems to your broker or his/her manager
• Unknown caller offering investment product: “HANG UP THE PHONE”
Investigate Before You Invest!

- Check out your broker/advisor and any securities before committing any money or signing any paperwork
- Deal only with registered individuals and reputable firms; ask questions; obtain, keep and read documentation
- Colorado Securities Division
- Check on licensing or registration status, disciplinary history or pending arbitration and employment history for the past 10 years through the Central Registration Depository (CRD) at: www.finra.org/Investors/ToolsCalculators/BrokerCheck/

How Your Patient Can File a Complaint Form

- Facts generate outcomes
  - How did the victim learn about the opportunity
  - Who was there during the meeting
  - When and where did the meeting take place
  - Why did the victim decide to purchase the investment
  - Names, addresses, and telephone numbers
- You can download/complete a complaint form online at: http://cdn.colorado.gov/cs/Satellite/DORA-SD/CBON/DORA/1251624412827
Complaint Form – What Should Be Attached

- Always keep a paper trail
  - Business card or other information that lists the name and company of the individual who may have sold investments to the client
  - Any monthly statements
  - Documentation (e.g. prospectus)
  - Website address

Additional Investor Education Resources

Video on the IPT Website

IPT Investor Education Booklets

www.investorprotection.org
Future Directions: What’s Next?

• Additional CME Programs in 2014

• Web-based EIFFE Education 2014-2015
  – Free web version available now at www.eiffeprevention.org

• Continued 6-month follow-up evaluation

References


Contact Information

• George Taffet, MD, FACP, Professor & Robert J. Luchi, MD, Chair in Geriatric Medicine, Baylor College of Medicine Head, Division of Geriatrics, Houston Methodist Hospital gtaffet@bcm.edu

• Gerald Rome, JD, Acting Securities Commissioner, Division of Securities, Colorado Department of Regulatory Agencies 1560 Broadway, Ste. 900, Denver, CO 80202, 303-894-2320; Fax 303-861-2126; gerald.rome@state.co.us

• Bob Roush, EdD, MPH, Director, Texas Consortium Geriatric Education Center, Huffington Center on Aging, Baylor College of Medicine, Houston, Texas  rroush@bcm.edu

• Don Blandin, MPA, President and CEO, Investor Protection Trust/Investor Protection Institute, Washington, D.C. blandin@investorprotection.org