

# How 1.3 million Americans became controlled by conservatorships

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(HealthDay)—Pop singer Britney Spears was at the height of her fame in

2008 when, through a series of arcane legal maneuverings, her father gained conservatorship over her and took control of her personal and financial affairs.

Spears' plight and the #FreeBritney movement has shone a bright spotlight on America's guardianship system, which experts say is shrouded in secrecy, ripe for abuse and in desperate need of reform.

About 1.3 million guardianship or conservatorship cases are active at any given time in the United States, managing assets that total at least \$50 billion for people whose rights have essentially been stripped from them, according to the National Council on Disability.

Most guardianships are run by [family members](#) and benefit the person who's been placed under one, but high-profile cases like Spears' have shown the potential for financial exploitation under such arrangements, Dr. Sam Sugar, founder of Americans Against Abusive Probate Guardianship, said in an interview with *HealthDay Now*.

The system "has been perverted from the laws that were supposed to help people into laws that are subverted into a money-making scheme, because guardianship is all about money—particularly professional guardianships that result in the abuse and exploitation of the very people who are vulnerable," Sugar said.

Spears' father, Jamie Spears, convinced a judge to place her in a conservatorship following a series of public outbursts from the singer that left some questioning her judgment.

The California state paperwork noted "dementia" as the cause for Spears' conservatorship, but "I think it was more about the tail end of her making what was deemed inappropriate choices in terms of how she was spending her money, who she was spending her time with," said Jasmine

Harris, a professor at the University of Pennsylvania Carey School of Law and an expert on disability law.

Spears' father controlled her career and her finances until early this month, when a judge ordered that he be suspended from her conservatorship.

## **Spears case shines new light**

Spears had fought her conservatorship for years, but only months ago had been allowed to speak for herself in court, Harris noted.

"We're only talking about this because in June, Britney Spears had the opportunity to speak to the public and the court directly," Harris told *HealthDay Now*. "That transparency and accountability is vital in an institution like guardianship."

Most Americans who wind up in a guardianship are suffering from [medical problems](#) that could impair their decision-making ability, Harris and Sugar said.

These include young adults with developmental or intellectual disabilities, seniors afflicted with dementia or Alzheimer's disease, and people suffering from severe mental illness.

"The state has this interest in protecting the interests of people deemed to lack legal capacity. That could be children. That could be older adults. Most often, people with disabilities," Harris said.

Many times, a guardianship is placed on a special education student who turns 18, after their school district suggests the move to a parent, Harris said.

The districts say, "Look, your child is reaching the age of majority [turning 18], if you want to stay involved in their health and education you need to go to court and ask for a guardianship," Harris said.

But people also are placed in guardianships for more vague reasons related to their personal decisions and actions, Harris added.

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"Sometimes just the precipitating event is that they're making decisions that are not deemed in others' eyes to be appropriate," Harris said.

Three-fourths of the time, the people appointed as guardians are friends, family or acquaintances of the person, the National Council on Disability says. Professional or public guardians are placed in charge of the financial and medical decisions of the rest.

"These guardianships are designed to last a lifetime, and they almost always do," Sugar said. "Getting out of them is nearly impossible."

There are very few requirements for becoming a guardian. For example, 60% of courts don't review the credit histories of potential guardians, and about four in 10 don't bother conducting criminal background checks, according to the National Council on Disability.

Sugar said Floridians can become certified as a professional guardian by taking a weekend course.

"Basically, almost anyone can become a guardian, and the system of monitoring and supervision of guardians across the country including Florida is highly, highly suspect," Sugar said. "It just doesn't work very well because it depends on reports from the public to activate what little monitoring and supervision is available."

Sugar became an activist after his mother-in-law's estate fell into a professional guardianship following a family dispute over her care.

A probate judge "decided that no one in the family should actually be able to take care of this beloved maternal figure, and instead appointed a for-profit company that billed a minimum of \$85 per hour for anything remotely having to do with her existence or care," Sugar said.

"They can get away with it because as guardians, they owned that human being," he continued. "As long as there was a signature of a judge over what they planned to do, no one else's opinion mattered."

The family became concerned when the professional guardian started to isolate Sugar's mother-in-law from her loved ones, Sugar said.

"Being told that the ward would not be able to receive visitors without express permission of the guardian; would not be allowed to leave her apartment to play bingo, for example, without the express permission; was not able to go out to have ice cream or lunch or dinner," Sugar said.

### **Always last resort**

"What followed was the financial exploitation, specifically guardian fees at a ridiculous rate and ridiculous number of hours and the endless legal fees that have consumed millions and millions of dollars in this case and have notoriously consumed entire huge estates with endless years of litigation," Sugar continued.

A decade later, litigation continues over her essentially bankrupt estate, even though she died in 2013, Sugar said.

"Guardianships are supposed to be the absolute last resort when family isn't available, when a person is completely alone and very vulnerable,"

Sugar said. "Often that does not happen, in particular when there are large amounts of money in question."

The essential problem with guardianship is that people "are not given what's called the dignity of risk," Harris said. "The dignity of risk is in my eyes one of the most beautiful poetic ways to describe what we're all given, which is the right to make bad choices and good choices, and to learn from them."

Harris and Sugar agree that the best guardianship is none at all.

"The best type of guardianship is the one that never happens," Harris said. "We have to reimagine the types of community supports that we have in place to provide the scaffolding that I was talking about, that makes guardianship unnecessary."

The National Council on Disability has called for reform of guardianship laws to allow:

- Better oversight of guardianships across the nation.
- More support for people who could make their own decisions if they had proper assistance.
- Improved measures to make sure people have due process in guardianship proceedings.
- Clearer standards for determining whether someone lacks the capacity to make their own decisions.
- Requirements that courts try less-restrictive alternatives like supported decision-making before resorting to a guardianship.

In the meantime, families can avoid a member falling into a guardianship by ironing out issues between themselves and never resorting to legal fights over a loved one, Sugar said.

"Fix your family problems. Solve your discrepancies and your disputes so you never have to walk through the door of a probate court," Sugar said.

People also should prepare paperwork for themselves that limit the ability of a judge to impose a guardianship.

"We recommend strongly that you have your advanced directives perfectly drawn up to include a statement that you do not wish to have a guardianship unless absolutely no other options are available," Sugar said.

**More information:** National Council of Disability reports on guardianship can be found [here](#) and [here](#).

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