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BIFOCAL

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In the second half of 2018, I had the honor and pleasure of assuming the role of chair of the Commission on Law and Aging, taking the reins from my able and respected predecessor, Hon. Patricia Banks. I’ve stepped into this role at a time of great changes within the ABA that pose considerable challenges as well as opportunities for the Commission.

As the result of major financial and structural changes within the ABA, the Commission is now part of the ABA Center for Public Interest Law, which for the first time, combines almost all the domestic, grant-funded, public interest programs of the ABA under one administrative umbrella. This will provide opportunities for greater teamwork, synergy, and visibility for all the partners in the Center. At the same time, the ABA has significantly reduced core financial support for the Commission and many other programs, so the goal of long-range financial stability has risen as a major challenge and priority.

However, the accomplishments of the Commission during the past year and its current line-up of projects clearly demonstrate that, in our rapidly aging society, the impact of the Commission on Law and Aging in the realms of practice and policy is more important than ever.

Now in its 39th year, the Commission on Law and Aging has continued its mission to serve as a collaborative, interdisciplinary leader of the ABA’s efforts to strengthen and secure the legal rights, dignity, autonomy, quality of life, and quality of care of aging persons. It is this unique, holistic focus that produces the Commission’s singular impact.

This issue of BIFOCAL provides a snapshot of the Commission’s accomplishments over the past year. During this time, legal practitioners, advocates in aging, justice
institutions, public policy-makers, and the public have benefited through the work of the Commission and its professional staff in the areas of research, policy and practice development, professional education, technical assistance, and advocacy.

I hope you will enjoy reading the Year-in-Review compilation, follow and like us on social media and subscribe to our free e-journal BIFOCAL. Please consider ways you can support the important work of the Commission. Please visit our new, improved web site at https://www.americanbar.org/groups/law_aging/Donate/, to learn more about the work of the Commission, how it benefits you, and how you can support our work.

Wishing you a year full of joy, health, dignity and justice for all.

About the Author:

Louraine C. Arkfeld is the Chair of the Commission on Law and Aging. She has previously served as the Chair of both the ABA Senior Lawyers Division and the Judicial Division. She also served as the Judicial Member-at-Large of the ABA Board of Governors. She is a retired judge from Arizona where she served twenty-six years on the bench.

As 2019 goes forward, the Commission is developing alternative sustainability plans because of significantly declining ABA resources. Expanded grant, contract, and gifting initiatives will be at the forefront of our financial priorities. As part of the new ABA Center for Public Interest Law, the Commission benefits from the knowledge and synergy of close partners in public interest work and program management.
Advancing Elder Rights: Our Accomplishments in 2018

The Commission is Overhauling Guardianship and Supporting Decision-Making Rights

Every day individuals lose their decision-making rights to a guardianship system that too often, too quickly determines “incapacity.” Their personhood is stripped away, often without needed court accountability.

Every day some guardians offer needed care and protection, while others take advantage of their position of trust, exploiting instead of safeguarding assets.

Many guardians, both family members and professionals, are exemplary and dedicated, stepping in at crisis points to prevent abuse, while an unknown number of others may commit abuse or neglect.

Some individuals are alone, often indigent, and if there are no other options they may need a guardian’s help to live better lives. Other individuals are needlessly labeled “an incapacitated person” and are unable to extricate themselves – they may be over medicated, over-institutionalized, and without counsel or support.

In the U.S., we have not just one guardianship system, but more than 50 state and territorial processes. While many jurisdictions have passed laws strengthening rights and court oversight, it is hard to change common practices.

And there is very little data and research to shed light on the archaic judicial process of guardianship and its impact on people’s lives.

► Since the 1980s, the ABA Commission on Law and Aging has been pushing for guardianship change. We have consistently tracked state guardianship legislation each year and pointed the way toward improvements. We have been a clearinghouse for hundreds of requests for technical assistance — from attorneys to judges, from social workers to legislators and advocates.

► We are pushing for changes in legal practices to better support decision-making. For example, we published the PRACTICAL Tool for Lawyers: Steps in Supporting Decision-Making. In 2018 we got the word out through webinars, articles, legislative comments, trainings and alerts.

► We are advocating the use of other options for persons with diminished abilities that are not as restrictive as guardianship and don’t remove individual rights. For example, in 2018 we worked with the National Center for State Courts on a national guide that will help people choose such options.

► We are pressing for better education for guardians so they will more often honor people’s wishes and preferences. And we are pushing for courts to limit guardian orders to only those areas needed. For example,
we are actively advocating for state adoption of the new Uniform Guardianship, Conservatorship and Other Protective Arrangements Act that encourages guardians to ask the person what he or she wants in making decisions, and encourages courts to limit orders to only what is needed.

► We are championing better court oversight. For example, in 2018 we worked with the National Center for State Courts to publish a series of background briefs on conservator exploitation, describing monitoring approaches that work.

► We are enabling state stakeholders to work together strategically on guardianship improvement specific to their state, through Working Interdisciplinary Networks of Guardianship Stakeholders (WINGS). WINGS opens doors to communication that can lead to changes in practice. WINGS can drive changes that any single agency or organization could not. For example, thanks to WINGS, in 2018 Alaska has better guardian accounting forms, Idaho has a judicial bench card on guardianship and has court monitors in each judicial district; Oregon is jumpstarting the use of less restrictive options; Utah has permanent funding for its guardianship volunteer visitor program; and Florida is designing a curriculum for judges and attorneys to better support individual choices and ensure guardian accountability. The Administration for Community Living has supported our work in this important area.

► We are advocating for federal actions to strengthen state efforts toward change. In 2018 we submitted comments on behalf of the American Bar Association to the Senate Committee on Aging, advocating for federal support to help states fight guardianship abuse and honor individual rights.

The Commission is Combatting Elder Abuse, Neglect, and Financial Exploitation

The Commission continued its efforts to expand and strengthen the justice system’s role in preventing, detecting, and remedying the devastating and costly problem of elder abuse, neglect, and exploitation (“elder abuse”).

An estimated 10% of older adults experience some form of elder abuse, although the actual rate is likely much higher as research indicates that only 1 in 4 to 1 in 23 cases is reported. The annual costs to victims has been estimated at $2.9 billion to as high as $36.5 billion.

Elder abuse in any form significantly enhances the risk of hospitalization, nursing home admission, and premature death. The Commission continues to combat elder abuse on multiple fronts. In addition to the guardianship related efforts described above, the initiatives that follow represent cutting-edge research, education, and advocacy.

► We are strengthening elder abuse law, policy, and practice. In early 2018, the Commission began a new project to enhance and evaluate the capacity of elder abuse fatality review teams (EAFRTs) to improve the delivery of services to elder abuse victims. The project is funded by the U.S. Department of Justice, Office of Victims of Crime (DOJ/OVC).

Working with partners at the University of Texas Health Science Center at Houston, the Commission is surveying EAFRTs, collating and reviewing data, and assessing the
The results will be used to update and expand *Elder Abuse Fatality Review Teams: A Replication Manual* (ABA, 2005), which is available on the Commission’s website at [https://aemqa.americanbar.org/content/dam/aba/administrative/law_aging/fatalitymanual.pdf](https://aemqa.americanbar.org/content/dam/aba/administrative/law_aging/fatalitymanual.pdf), provide technical assistance and training, assess whether a more rigorous evaluation of the EAFRTs is possible, and inform development of future activities.

- We are developing recommendations to improve victim services and enhance public policies about financial exploitation by conservators. Working in collaboration with the National Center for State Courts, the Virginia Tech Center for Gerontology, and the Minnesota Judicial Branch, this effort produced a report with recommendations, now under review by Department of Justice Office of Victims of Crime, and eight issue briefs on the following subjects:
  - Examples of Conservator Exploitation: An Overview;
  - Conservator Exploitation in Minnesota: An Analysis of Judicial Response;
  - Detecting Exploitation by Conservators – Court Monitoring;
  - Detecting Exploitation by Conservators – Systemic Approach;
  - Court Actions Upon Detection of Exploitation;
  - Innovative Programs that Address Financial Exploitation by Conservators;
  - Data Quality Undermines Accountability in Conservatorship Cases; and
  - Supporting Victims of Conservator Exploitation.

You can find the documents on the NCSC website at [http://www.eldersandcourts.org/Other-Resources.aspx](http://www.eldersandcourts.org/Other-Resources.aspx).

- We are supporting federal, state, and community efforts to improve laws and practices related to elder abuse by providing technical assistance to Congressional committees, federal agencies, 26 state AARP offices as consultants to AARP’s State Advocacy and Strategy Integration Team, and to numerous state and local law and aging network providers.

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We are educating justice system and allied professionals to better detect, prevent, and remedy elder abuse.

- We are educating justice system and allied professionals to better detect, prevent, and remedy elder abuse. We provided continuing professional education to approximately 2,000 lawyers, judges, and other professionals through presentations at the National Aging and Law Conference, the National Adult Protective Services Association Conference, and National Center on Law and Elder Rights webinars. We also conducted the final continuing legal education pilot presentation for the Elder Investment Fraud and Financial Exploitation Prevention Program Legal, a partnership between the Commission and the Investor Protection Trust and Investor Protection Institute, at The Missouri Bar's Estate Trust and Elder Law Institute.

The Commission is Improving the Knowledge and Ability of Lawyers and Advocates in Delivering Legal Services.

Serving the law-related needs of older adults requires a broad appreciation of how law and policy interact with every aspect of aging, from health and long-term care, to financial security, housing, and the challenges to individual autonomy and social engagement. Training lawyers and aging advocates remains a core priority of the Commission.

- We serve as lead organizer of the annual National Aging and Law Conference (NALC). The NALC is the only legal conference specially designed for legal services lawyers and other advocates who serve older persons. It provides a critically needed service to this growing sector of the legal

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Aging in America Conference
April 15-18 | New Orleans, LA
[https://www.asaging.org/aging-in-america](https://www.asaging.org/aging-in-america)
profession. Since the 1980s, the Commission has partnered with other advocacy organizations supporting an annual conference, but in 2014, it assumed the role of lead partner in collaboration with ABA CLE and successfully expanded the ABA's leadership role in this arena.

The 2018 conference:

- Took place October 25 & 26 at the Crowne Plaza Old Town, Alexandria, Virginia. The 229 attendees came from 40 states, the District of Columbia, Puerto Rico, Canada and Nigeria. The largest number of attendees live or work in Washington DC, followed by Maryland, Connecticut, Virginia, Florida, New York, and Michigan. Attendees come from a variety of backgrounds, with the majority working in legal aid, government and non-profit. This year nearly 5% of attendees were members of the ABA Law Student Division.

- Featured four plenary sessions and 30 workshops arranged over two full days. A half-day pre-conference on legal advocacy skills on Wednesday was attended by 62 people. Over 80 expert speakers shared their expertise with attendees.

Planning is underway for the 2019 National Aging and Law Conference to be held October 31-November 1 at the Marriott Crystal Gateway in Arlington, Virginia.

- We partner in the National Center on Law and Elder Rights. For the 3rd year in a row we are a part of the Administration for Community Living-funded National Center on Law and Elder Rights (NCLER). We provide training, develop written resources, produce “alerts” on important topics, provide expert advice to professionals in law and aging, and spread the word about the NCLER. We are charged with being the NCLER experts on elder abuse, guardianship and guardianship reform, advance planning and supported decision making. This past year, the NCLER webinar series drew over 12,000 participants who attended the live webinars more than 22,000 times. The webinars, which are provided free of charge to attendees, help ensure that aging advocates have serve their clients with the highest level of knowledge and skills.

- We expand the knowledge and skills of the private bar through the ABA Elder Law Essentials Webinar Series. This series is presented in collaboration with ABACLE, on a pay-per-view basis and includes continuing legal education (CLE) credits). The CLE series delves into topics such as:
  - Ethical Challenges in Supporting Client Independence and Autonomy
  - Returning Clients Home from a Nursing Home: Nursing Home Transition Success Through Collaborative Advocacy
  - Building a Late-Life, Decision-Making Infrastructure For People Aging Alone
  - Evaluating Nursing Home Personal Injury Cases.

- We provide a place for law student interns and externs to gain a valuable footing in the field of law and aging. Law student volunteers are an essential part of developing and maintaining our substantive legal and policy database. We host up to two law students per semester with a dual goal of the development of the law student and moving our research agenda forward.

The Commission places a high priority on promoting law, policy, and practice that ensures the individual’s wishes are known and honored across the continuum of care from acute illness to chronic illness, advanced illness, and ultimately death. Despite the recognition of the individual’s right to make their own health care decisions, the care and treatment an individual may get is too often not the care and treatment they desire, especially at the end of life. This past year brought the culmination of two important projects and continued our efforts in tracking legislation and providing technical assistance.

▶ We convened legal and medical experts in advance care planning to identify ways to align the best practices of both professions. Under a grant from the John A. Hartford Foundation and the Borchard Foundation Center on Law and Aging, these experts developed a set of consensus best practice principles, a practice checklist for lawyers, and a resource compilation of tools that lawyers can give to clients to guide the discussions they need to have about values, priorities, and health care wishes. These are compiled in a free publication, *Advance Directives: Counseling Guide for Lawyers*.

▶ We published a quick reference guide for legal and clinical professionals on the decision-pathways for individual health care decision-making. Funded by the Retirement Research Foundation, *Pathways to Health Care Decision Making* explains the six ways that the locus of authority for health care decision making can change, in order of preference from by the Individual, to a court appointed fiduciary. The work nicely supplemented our extended research efforts on health care surrogate decision-making funded by the Foundation.

▶ We continue to provide technical assistance and track legislative developments both federally and across the states related to advance care planning. Our legislative charts cover several aspects of advance directive laws, default surrogate laws, physician orders for life-sustaining treatment (POLST), and related matters. Serving as an advisor to the POLST Paradigm initiative, we continue to press for high standards of structure and implementation nationally.

**The Commission Stands for Ensuring Access to Justice for All Older Persons**

The United Nations has described access to justice as the ability of people to seek and obtain a remedy through formal or informal institutions of justice, and in conformity with human rights standards. We know that achieving access to justice requires the existence of an adequate legal framework, accurate knowledge of one’s rights, access to representation, and access to institutions that can review and remedy wrongdoings. The extensive policy and programmatic work already described above relating to
guardianship, supported decision-making, elder abuse, and health care directly promote each of these elements. In addition:

▶ We have advocated for an International Convention on the Rights of Older Persons to ensure an adequate legal framework. The Commission led the effort this past year to establish an ABA policy in support of the drafting of a United Nations Convention on the Rights of Older Persons. Supporting the ABA liaison to the U.N.'s Open-Ended Working Group on Ageing, the Commission has helped the ABA to develop a leadership role in the discussions of the Working Group which has been examining ways to strengthen the rights and protections of older persons since 2011.

▶ We have shined a light on the pro bono legal assistance through emeritus programs by tracking the development of court emeritus rules and programs that tap the skills of retired lawyers.

▶ We support the systems development of state legal services developers and legal aid programs to expand access to legal information, advice, and representation for older persons.

▶ We provide background to the media and educational materials to the public to ensure accurate knowledge of the rights and needs of older persons. The Managing Someone Else's Money series, prepared by the Commission for the Consumer Financial Protection Bureau has surpassed one million copies distributed by the CFPB. Other consumer publications, especially those dealing with health-care decision-making continue to be widely used.

▶ We provide technical assistance to advocates and legislative analysis in guardianship, elder abuse, health decisions law, and other matters to ensure that the rule of law is supportive of the rights and needs of older persons.

Moving forward, elders in America face ever-growing challenges to their autonomy, independence, and engagement in family and society. With your help, the Commission will continue to draw upon the strengths of an aging society to identify and find solutions to its hazards and vicissitudes.

ABA TECHSHOW 2019 • Bringing Technology and Lawyers Together

Technology can make or break a law practice. Find the tools that are right for you at the ABA Tech Show. This expo and conference will be held February 27-March 2 at the Hyatt Regency in Chicago, IL. Experience three days of CLE, and over 60 sessions in 16 different tracks including Mac Track, Cybersecurity, Core Technology, Academic Track for law school faculty, reputation management, the gig economy and a 90-minute plenary session on Saturday morning, providing a recap of some of the best takeaways from the previous days' sessions. Learn more at www.techshow.com or #ABATECHSHOW
We are looking for proposals in the following areas:

- Participating in administrative fair hearings (with mock hearings)
- Preparing vulnerable witnesses (with role playing)
- Examining and cross-examining vulnerable witnesses (with role playing)
- Evidence and Objections Refresher, introducing business records, exhibits, photos, medical records, illustrations, qualifying experts and subpoenas 101. (demo, role plays, or game show.)
- Legal and interdisciplinary ethics (with case studies)
- Practical discovery, depositions, drafting admissions, drafting interrogatories. (demo, role plays, drafting exercises)

Submit proposals as Word Documents by e-mail to David.Godfrey@Americanbar.org if you need the Word template to submit a proposal.

Some workshop proposals may be selected for development as plenary sessions or for Rapid-Fire.

You can read the complete Call for Speaker Proposals on our web site. The web site also presents videos that provide helpful tips for creating better proposals.

The 2019 National Aging and Law Conference will be held at The Crystal Gateway Marriott Arlington, VA on October 31-November 1st.

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Submit proposals as Word Documents by e-mail to David.Godfrey@Americanbar.org. We are unable to accept pdfs or handwritten proposals.
The Commission on Law & Aging has always recruited and hosted exceptional interns, but the interns of 2018 were exceptional even by our standards.

**Kelly Crowe** is continuing her legal studies at Virginia’s George Mason University. In her role as Co-Vice President of Expansion for The VBA Pro Bono Society, she is bringing ABA values of service to her campus. Her organization is “dedicated to promoting public service among the students and faculty of George Mason University.” The Society’s website says that it aims to provide “an arena where students can begin to explore the ABA-recognized responsibility to provide legal services for those unable to afford them. We believe that by giving back to our community, we uplift both the law and the legal profession and help to create a better future for ourselves and those that follow.”

In her internship with COLA, Kelly compiled a table, *Statutory Provisions for Guardians ad Litem in Guardianship Proceedings* (BIFOCAL, v. 39, Issue 6)

**Gabriel Estridge** is continuing his legal studies at George Washington University in Washington, D.C. During his internship for us, Gabriel compiled three research documents:

- **Update of State Emeritas Pro Bono Rules** (BIFOCAL, Vol. 39, Issue 5)
- **Health Care Power of Attorney Chart Updated** (BIFOCAL, Vol. 40, Issue 1)

Our most recent intern, **Sasha Marseille**, just completed her third semester at The George Washington University School of Law. During her internship, she researched and produced a *Summary of Health Care Decision Statutes Enacted in 2018* (BIFOCAL, Vol. 40, Issue 2).

**Xiaomeng Zong**, our first intern from the People’s Republic of China, brought us rare and valuable cross-cultural and international insights about older people worldwide. After doing stellar work for us on analyzing and comparing laws regarding guardianship protection rights in America and Africa, and reviewing and comparing laws concerning health provider’s refusal in all 50 states, she accepted an internship at the United Nations.

In 2018, we also got word that **Teresa Yao**, who was an intern at The Commission on Law and Aging during the summer of 2016, was awarded a prestigious Borchard fellowship to create a free legal clinic as part of a Medical-Legal Partnership that will provide low-income older adults with holistic client-centered care that addresses both their legal and social needs in Chicago.

Our first intern for 2019, **Laura Ruppalt**, will start on Friday, January 18. Laura is a first-year evening student at the Antonin Scalia Law School, George Mason University, Fairfax, VA. Her background as an electrical engineer promises to bring a new level of enlightenment and energy to the Commission.
A chasm exists between the way lawyers and clinicians perceive and engage in health care advance planning with clients and patients, respectively. Both aim to ensure that the individual’s goals of care and wishes are known and clearly honored. But, their perspectives and processes used to reach those goals differ dramatically.

This article first examines their differing approaches and the practical problems resulting in creating advance directives. It then describes an interdisciplinary project undertaken by the ABA Commission on Law and Aging with key partners to develop a unified set of practice principles for both lawyers and clinicians and an advance care planning practice checklist specifically for lawyers that brings counseling practices more in alignment with the clinical realities clients face.

The Problem

Advance care planning research literature strongly identifies the process of repeated, meaningful reflection and discussion among patient and family and health care providers as a critical factor in effective advance care planning. While the existence of an advance directive makes a difference, the real driver for having patients’ wishes known and honored is the conversation before and during any clinical episode. In other words, advance directives documents, in and of themselves, without additional preparation and discussion, have minimal effect on end-of-life decision-making.

This is where the differing approaches between lawyers and clinicians causes a disconnect. Lawyers tend to see advance care planning primarily as a legal matter, centered on patient autonomy and the creation of legally recognized advance directives. Health care professionals see it as a clinical matter involving not only patient autonomy, but also pursuit of the patient’s best interests in light of evolving clinical facts, treatment options, often uncertain risks and benefits, and the goal of engaging whatever family unit is involved in the patient’s care.

The divergence in approaches has a historical root. Living wills or medical declarations emerged in legislation in the 1970s and health care powers of attorney in the 1980s. These laws created a legal transactional template for advance planning that focused on ensuring knowing and voluntary execution of the directive and imposing a multitude of legal formalities, ranging from detailed execution requirements to mandatory language and forms. Because the culture of medicine at that time was so heavily tilted toward using new technologies in pursuit of organ-sustaining measures at all costs, almost all advance directive legislation included the carrot of immunity for health care providers for complying with...
Since the early legislative enactments, some states have sought to ease up, at least partially, on the legal template applied to advance directives, while on the clinical side, consensus over best practices has changed dramatically. The clinical concept of advance care planning has evolved into an ongoing, holistic, shared communication process about goals of care, priorities, and wishes in the face of serious and eventually fatal illness. The clinical concept of advance care planning has evolved into an ongoing, holistic, shared communication process ...

In clinical practice, countless initiatives and protocols have emerged with the goal of supporting patient- and family-centered care, shared decision-making, and meaningful advanced care planning. Many of these initiatives have grown part and parcel with the growth of the discipline of palliative care. In practice, health care systems and professionals as a whole still have a long way to go to catch up to the state-of-the-art concepts and skills advocated by clinical leaders in advance care planning, but the wheels are in motion. In contrast, in the legal professional world, less progress is visible.

To impact legal advance care planning practices positively, the ABA Commission on Law and Aging, with key partners, set out to develop a unified set of usable, actionable, best practice principles for both lawyers and clinicians; and an advance planning practice guide specifically for lawyers that is in alignment with the best clinical practices and better addresses the realities clients will face in clinical setting.

The Project

The ABA Commission on Law and Aging collaborated with the American Academy of Hospice and Palliative Medicine, and partners from the University of California at San Francisco Medical School and the UC/Hastings Consortium on Law, Science & Health Policy to undertake this initiative. The project was funded by the John A. Hartford Foundation with supplemental funding from the Borchard Foundation Center on Law and Aging.

The project team identified a panel of legal practitioners, clinicians, and academics who are considered experts in advance care planning. The experts were invited to a one-day working summit to identify best practices to assist clients, patients and their families in meaningful and effective advance care planning.

Prior to the summit, the project team conducted telephone interviews with summit invitees individually. Interviewees were asked about their current practices in advance care planning and what they thought could be done to improve advance care planning and communication with the patient’s clinicians.

The interviews were recorded and summarized for the summit attendees. The one-day summit, which convened in March 2018, included 35 participants, equally divided between lawyers and clinicians, many of whom brought both practice and academic credentials. The resulting principles and guide were circulated to summit participants for review and comment, resulting in several changes to content and organization before a final version was completed.

Results

A key convergence of views was that practice guidelines are most needed for lawyers and that structuring them in the form of a practice checklist would be most effective. Based on the summit discussion and consensus points, the project team developed a set of practice principles applicable to both lawyers and clinicians; a lawyer’s checklist for counseling clients on advance care planning; and a resource list of self-help advance care planning tools to be made available to clients. These products have been combined in the project’s publication Advance Directives: Counseling Guide for Lawyers.

The Practice Principles

The advance care planning practice principles serve as the foundation for the checklist and resources. They provide a conceptual framework intended to align the practices of lawyers and health care professionals with the realities of health care decision-making in clinical settings. The principles, set forth below, are informed by current evidence of what makes advance care planning effective in healthcare settings and a growing body of health decisions literature.

1. Proxy Designation: The most important legal component of advance care planning is careful selection and appointment of a health care agent/proxy in a valid power of attorney for health care document. Persons who cannot or do not want to identify a proxy should delineate their wishes in an advance directive.
2. **Ongoing Process**: Advance care planning takes place over a lifetime. It changes as one's goals and priorities in life change through different stages of life and health conditions. Reflection, discussion, and communication with one's proxy and clinical professionals, along with family, friends, and advisors is essential to having one's wishes understood and honored. These discussions should occur with patients/clients of all ages at all stages of life and health.

3. **Values, Goals, and Priorities**: Discussion should focus on one's values, goals, and priorities in the event of worsening health rather than on specific treatments or clinical interventions for distant hypothetical situations.

4. **Advance Care Planning Tools**: Advance care planning tools and guides can provide structure and guidance to the process of reflection and discussion and help individuals identify their values, goals, and priorities, and ensure more authentic and useful conversations and advance directives.

5. **Advance Directive**: Instructions and guidance documented in an advance directive should result from the process of information sharing, reflection, discussion, and communication and provide enough flexibility in application to allow surrogate decision-makers to respond to new circumstances and complexities.

6. **More serious illness**: If individuals are facing serious diagnoses, such as cancer, or have been told they have a limited prognosis, the focus may then move to specific treatment preferences. In these cases, the person's primary/key health care provider should also meet with the client and/or their closest loved ones to create a care plan that aligns with the client's goals, values and preferences. For advanced illness, medical providers should consider introducing palliative care options and the option of providing medical orders such as Physician's Orders for Life Sustaining Treatment (POLST) to ensure the individuals wishes are translated by medical professionals into actionable medical orders.

7. **Sharing Documents**: Documentation of one's values, goals, and wishes in the form of an advance directive or other record should be shared with one's proxy, loved ones, significant others, and primary/key health care providers, and be included in the medical record, so that they are adequately informed before a crisis arises.

8. **Coordination**: Lawyers and health care professionals should aim for greater coordination of advance care planning efforts with the healthcare system/medical providers through congruent advice and practices in accordance with the principles above, greater willingness to reach out to one another with client/patient consent to obtain information when needed, and greater collaboration in joint continuing education programming.

**The Checklist**

The Checklist is divided into three stages: pre-meeting, first client meeting, and second client meeting. The Checklist is a counseling tool and not a checklist for drafting the client's advance directive. The latter task is too state-specific to prescribe in a nationally usable checklist.

The heart of the Checklist focuses on health care agent selection and client values, priorities, and wishes, borrowing from an online advance care planning tool developed by Rebecca Sudore, MD, and colleagues at the University of California San Francisco. Research on the tool, called *Prepare for Your Care*, has shown that it increases patient-reported engagement and documentation of advance care planning. However, a key emphasis of the Checklist is to encourage clients to do more on their own, because an extended meeting with legal counsel is not something most clients will pay for. The Guide recommends that lawyers offer clients one or more advance care planning tools to use on their own and in discussion with family and health care providers. The resource list included with the Checklist references a variety of effective tools, because no one tool will likely appeal to every client.

Also, part of the Checklist is a sample letter from the lawyer to the client's physician to serve as a model for connecting the planning process to the client's health care provider and getting the advance directive into the medical record. Many barriers prevent advance directives from being present in the medical record when needed, so this initial conveyance...
of the directive, which requires client consent, does not solve all problems. But it takes an important first step. In addition, providing multiple copies of the advance directive or an electronic copy to the client enables the client to share it with significant others.

A final key element of the Checklist is the emphasis on the continuing nature of advance care planning. Too often, when an advance directive is signed, the client assumes that the task is done. In reality, the planning process continues throughout life as health or living circumstances change, and as the individual experiences serious illness and deaths among one's friends and loved ones. Therefore, the Checklist uses a simple mnemonic to communicate this point. Clients should be encouraged to revisit their advance care plans and documents whenever any of the “six Ds” occur:

(1) You reach a new DECADE in age.
(2) You experience the DEATH of a loved one.
(3) You experience a DIVORCE.
(4) You receive a DIAGNOSIS of a significant health condition.
(5) You experience a significant DECLINE in your functional condition.
(6) You change your DOMICILE or someone moves in with you.

It is hoped that lawyers will use the guide, adapt it to their practices, and even improve it as they learn what works best for them. The full Guide is downloadable for free at https://www.americanbar.org/groups/law_aging/resources/health_care_decision_making/ad-counseling-guide. The web page also includes a Word version of the Checklist so that lawyers can incorporate the text into their own office systems and adapt it as desired. A published print version of the Guide can be purchased for $19.95 in the ABA Store (https://www.americanbar.org/products/inv/brochure/346598312/).
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Facebook: http://www.facebook.com/abalawandaging/

Discussion Lists: The Commission provides a forum for legal professionals to communicate and share ideas on three active discussion lists:

- **Elderbar**, an open discussion list for professionals in Law and Aging.
- **Collaborate**, a discussion list on aging, disability, and dispute resolution.
- **COLA-AgingSolo**. Topics related to those who qualify as solo older adults, including solos with capacity and those who lack capacity.

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