Inside the Commission

Commission on Law and Aging Wins “Most Innovative Presentation” for CLE Webinar

The ABA Commission on Law and Aging won the “Most Innovative Presentation” award for its CLE Webinar “Ethical Issues in Elder Law: Getting It Right.” The ABA Center for CLE’s first annual Partner Appreciation Awards recognized the Commission for utilizing technology to creatively enhance the webinar participants’ experience.

The award-winning CLE webinar centered around video vignettes of elder law ethical dilemmas, produced by Stetson University Law School, and incorporated multiple choice questions after each video to enable audience interaction with the faculty. The distribution of answers to each question was immediately shown in bar graph format.

Pictured are Jill Eckert McCall, director of the ABA center for CLE, and Charles P. Sabatino, director of the ABA Commission on Law and Aging.

Health Decisions

Speak Up This Holiday Season!

The holidays are a time to speak to each other about things that matter, not least of which are your plans for future health care decisions. Do you know who will speak for you if you become ill or injured and unable to speak for yourself?

Watch this short video on YouTube about why your planning decisions matter here.

The video is brought to you by National Health Decisions Day, held April 16 of each year. But that’s not the only day conversations need to take place.

Make sure you “have the conversation” this holiday season and then complete a power of attorney for health care or other advance directive for health care.

We’ll Help You Get Started

The ABA Commission on Law and Aging is including in this issue its new guide and easy-to-use legal form for all adults. Find Giving Someone a Power of Attorney for Your Health Care on page 34. Access the Spanish translation of the guide and form online here.

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First National Aging and Law Institute Draws 350 Advocates

By David Godfrey, Senior Attorney, ABA Commission on Law and Aging

The 2011 National Aging and Law Institute, held this year on November 10 - 12, in Boston, Mass., was the first year of the merger of the National Academy of Elder Law Attorneys’ fall advanced institute with the National Aging and Law Conference. The Institute drew more than 350 advocates.

The agenda included eight plenary sessions and twenty break out sessions. There were numerous special interest group meetings, including meetings of the National Association of Legal Services Developers and the National Association of Senior Legal Hotlines.

The Institute kicked off with an informative and entertaining look at changes in retirement benefits and tax laws presented by Natalie Choate. Ms. Choate has, literally, “written the book” on defined contribution retirement plans (see http://www.ataxplan.com/about_natalie/choate_bio.cfm).

A second plenary session provided an overview of the shifting landscape of Medicaid and Medicare in light of budget cuts and health care reform.

The Friday program’s keynote address was delivered by Hubert “Skip” Humphrey, III, the newly appointed head of the Office of Older Americans at the federal Consumer Financial Protection Bureau. Mr. Humphrey has spent his career working for consumers, first as a state senator and later as attorney general in Minnesota. In his address, he spoke about the financial challenges facing older Americans and the need to curb fraud and financial exploitation. He then opened the floor for input from
the audience on how the Bureau can meet the needs of older Americans.

Other plenary sessions featured the diagnosis and treatment of dementia; the relationship between Medicaid and veteran’s benefits; legal ethics; same sex marriage and domestic partnership; and the future of Social Security. The sessions were reported as excellent, the caliber of the speakers was superb, and all were well attended.

With only 20 slots for break-out sessions, the planning committee faced a herculean task to narrow the proposals. Selected sessions covered substantive topics, including advance health care directives using POLST; divorce with special needs children; preventing malpractice; stopping abusive debt collection; SSI; and special education law and special needs trusts.

Other sessions focused on service delivery and practice development, including Older Americans Act services, training the next generation of elder law attorneys, and operating a paperless office.

A third track covered policy and theory, including the topics of health care reform, minority health disparities, and Olmstead implementation.

Awards and Honors

The 2011 National Aging and Law Award was presented to Catherine V. Kilgore. Ms. Kilgore serves as the Elder Law Project Director for North Mississippi Rural Legal Services in Oxford, Mississippi. The award honors Ms. Kilgore’s long history of providing high-quality legal assistance to older Americans in a largely rural and very impoverished service area.

The National Academy of Elder Law Attorneys presented its Elder Leadership Award to Jo Rosen, of Palm Desert, California. The award recognized Ms. Rosen’s two decades of dedication to improving the quality of life for persons with Parkinson’s and their caregivers.

The NAELA 2011 Powley Elder Law Award was presented to Patricia L. Harrison, of Columbia, South Carolina, in recognition of her work as an advocate for the rights of older clients and clients with disabilities.

Pre-Conference Boot Camp

This year the Institute’s pre-conference agenda featured an advanced elder law boot camp as an optional conference add-on. The goal of the advanced boot camp was to prepare attendees to take the national certification exam to become a Certified Elder Law Attorney (CELA).

Topics in the advanced boot camp included: housing, insurance, age discrimination, employment, retirement, public benefits, fiduciaries, capacity, ethics, health and personal care planning, tax planning, advocacy, and special needs issues.

Planning is already underway for the 2012 National Aging and Law Institute, which will be held on November 8-10, 2012, at the Omni Shoreham Hotel in Washington, D.C.

A request for workshop proposals will be issued early in 2012. Mark your calendar now to join your colleagues in Washington for the 2012 National Aging and Law Institute “Post Election Special Edition!”

David Godfrey, senior attorney, ABA Commission on Law and Aging, is a co-chair of the planning committee. If you have program suggestions, don’t hesitate to e-mail him at David@Godfrey@americanbar.org.

The National Aging and Law Institute is a merger of the NAELA Advanced Fall Institute and the National Aging and Law Conference. It is hosted by the National Academy of Elder Law Attorneys and a coalition formed by the American Bar Association Commission on Law and Aging, the Center for Medicare Advocacy, the National Senior Citizens Law Center, the Center for Social Gerontology, the National Consumer Law Center, the AARP Foundation, and the National Association of States United for Aging and Disabilities.
Pro Bono

Pro Bono Summit Generates Ideas And Commitment

By David Godfrey, Senior Attorney, ABA Commission on Law and Aging

The ABA Standing Committee on Pro Bono and Public Service convened, on October 24-25, a National Pro Bono Summit in Washington. I was privileged to be invited to participate, along with more than 100 other leaders representing bar associations, Legal Service Corporation, legal aid providers, private law firms, national advocacy organizations, government agencies, and law schools.

Participants were surveyed prior to the meeting for ideas on innovative programs, proven best practices, challenges, and opportunities.

Summit participants were divided into five work groups, with each group concentrating on a single aspect of pro bono. The groups examined:

• components of best practices;
• creating an infrastructure;
• encouraging involvement and commitment;
• ensuring quality and evaluation; and
• strategic approaches.

Each group was given a list of questions to address during a series of two-hour brainstorming sessions. Hundreds of ideas were generated within each group, and then distilled into ideas that would fit onto one or two PowerPoint slides.

All of the notes and ideas generated at the Summit are being compiled and edited to guide the ongoing work of the participants. Summit participants were asked to commit to continue work on this effort over the coming year.

United States Attorney General Eric Holder was the Summit’s keynote speaker. He stressed the importance of pro bono volunteers in closing the justice gap in America. Attorney General Holder noted estimates that suggest more than 80 percent of the legal needs of low-income and at-risk Americans remain unmet by the current service delivery system.

Attorney General Holder reminded participants that the legal profession bears a sacred responsibility to provide access to the legal system. He urged attendees to “establish a path forward” and to build on the progress already made in pro bono development. He encouraged more attorneys to join in the effort to fulfill our country’s founding promise of equal justice under the law. Finally, Attorney General Holder asked participants to look beyond the traditional law firm pro bono model and include retired and inactive attorneys, corporate attorneys, and attorneys who are family caregivers in pro bono recruitment efforts.1

Over the course of the upcoming year Summit participants will produce recommendations for expanding pro bono opportunities and pro bono involvement. We will share those recommendations with you here in BIFOCAL and on the Elderbar list serve.

Note

1. See information on pro bono practice rules here.

Visit the Web page of the ABA Commission on Law and Aging at www.abanet.org/aging
Helpline Report Reveals New Data, Shares Stories of Elderly Who Have Been Helped

By Shoshanna Ehrlich, Center for Elder Rights Advocacy

The Senior Legal Helplines Annual Report for 2010 was commissioned by the Administration on Aging as a part of its Model Approaches to Statewide Legal Assistance Project. The report was produced by the Center for Elder Rights Advocacy, the National Legal Resource Center member responsible for technical assistance for legal helplines.

Beginning in 2009, AoA, in collaboration with CERA, the Center for Social Gerontology, and a workgroup of senior helpline managers and legal assistance developers, began a concerted effort to develop reporting guidelines for Model Approaches helplines/hotlines.

Model Approaches participating helplines for project years 2009 and 2010 were asked to voluntarily report data for their operations in 2010 to the extent possible. At CERA’s request to all the senior legal helplines, some participating helplines from other project years, as well as one non-Model Approaches helpline, also submitted data.

A n elderly man contacted the helpline for assistance in obtaining a property tax abatement from his town. He and his wife had resided in their home for over 30 years and never had difficulty paying the property taxes until 2008, when both had to stop working due to their declining health. The town recorded a tax lien on the property, and our client and his wife were facing an automatic foreclosure because they were unable to pay the full amount of the outstanding taxes. The client had applied for a tax abatement, but the town never responded to his application.

This man contacted the helpline because he did not know what else he could do to save his home. A helpline attorney researched the tax abatement statute and discovered that the town had failed to comply with the law. She spoke with a town official and argued that the town should review our client’s application again. The town official agreed, and upon a second review, the town granted a total abatement of the property taxes. As a result, the tax lien was discharged and our client and his wife were able to remain in their home.


Report Highlights

- Twenty reporting senior legal helplines served 47,351 unduplicated clients.
- Twenty reporting senior legal helplines closed 53,166 cases.
- Eighty-two percent of cases were closed with counsel, 13 percent were closed with limited action, and 5 percent were closed with extended services.
- The senior helplines were successful in targeting services to women, low-income, and African American seniors, as well as older seniors.
- The five most common problem codes were:
  - Collection issues at 16.1 percent of closed helpline cases;
  - Wills/Estates were 10.3 percent of closed cases;
  - Medicaid cases comprised 8.2 percent;
  - Powers of Attorney were 7.5 percent of cases;
  - Home Ownership cases were 7.5 percent of the total. (This problem code does not include foreclosures which accounted for an additional 1.8 percent of calls.)
- Twelve helplines reported their resources and expenditures in operating the senior legal helpline. The average cost per case was $76.
- Fifteen helplines were able to report staffing hours, enabling the calculation of the average number of cases a helpline advocate handled per hour. The average number of cases per hour was 0.8.

To see all the data and read the full report, go to: www.legalhotlines.org
Law Day 2012

What Are Your Plans For Elder Law Day?

May 1 is officially Law Day, recognizing the role of law in our lives and our fundamental rights under law. Since its proclamation by a joint resolution of Congress in 1961, it has been a day on which lawyers educate the public about legal rights.

The 2012 Law Day theme “No Courts, No Justice, No Freedom” highlights the serious underfunding of courts across America.

For some state and local elder bar sections and committees, this annual event is an opportunity to promote an Elder Law Day program to educate older people about their rights.

What are your plans for an Elder Law Day program in your community for May 1 (or May 2 or perhaps anytime in the month of May, which is also Older Americans Month)?

Reader Comment

After reading the August 2011 Bifocal article “Five Key Legal Issues of Older LGBT Adults” (32 Bifocal 6), a reader noted that on November 19, 2010, CMS issued a final regulation requiring all hospitals participating in Medicare and Medicaid to maintain written policies and procedures for visitation with Medicare and Medicaid patients. The policies need to include any medically reasonable basis for restricting or limiting visitation (see 75 FR 70831, http://edocket.access.gpo.gov/2010/pdf/2010-29194.pdf). This policy was in response to a White House Memo asking the Department of Health and Human Services to address issues of denial of visitation, especially by LGBT partners of hospital patients (see http://www.whitehouse.gov/the_press_office/presidential-memorandum-hospital-visitation).

The intent is that the policies will prevent denial of visitation by loved ones who fall outside the traditional definition of family, by allowing visitation by anyone chosen by the patient.

This policy also reinforces why it is essential that LGBT couples create valid advance directives, including desires on visitation (an issue not covered in the original article).

Special thanks to Sarah Richardson Fahrendorf, Health Insurance Specialist, CMS/OCSQ/CSG, for submitting this note!

Why Join the ABA?

ABA members enjoy a range of benefits that enhance their lives personally and professionally. Learn how the ABA can help you unlock your potential.

Benefits of Membership

- Professional Development: Joining the ABA is just the first step to professional fulfillment. Put us to work and take your career to the next level.
- Practice Management: Explore your entrepreneurial side with vital news and resources for maintaining a thriving practice.
- Public Service and Government Affairs: From pro bono opportunities to policy-shaping initiatives, the ABA salutes and supports those passionate about public service and government.
- Resources for Who You Are: We’ve cultivated a well-rounded set of resources to reflect our diverse membership—designed for attorneys of all ages, specialties, and backgrounds.
- Member Advantages: Everyone loves a good deal—and as an ABA member, you’re eligible for discounts on products, travel, and other services you need at work, at home, and at leisure.

New! Lawyers and judges in government or legal/public service, or a solo practitioner in private practice are eligible for a special dues rate. Find out more about the ABA’s membership rates here.

Invest in Your Future. Join the ABA Now at: http://www.americanbar.org/membership/join_the_aba.html
Guardianship

Third National Guardianship Summit Adopts Standards, Offers Recommendations

On October 13 – 15 the ten National Guardianship Network sponsoring organizations, with nine diverse cosponsors, convened the Third National Guardianship Summit at the University of Utah S.J. Quinney College of Law in Salt Lake City. With 93 delegates, observers, authors, funders, and facilitators participating, the Summit was a consensus conference on post-appointment guardian performance and decision-making for adults.

The Summit delegates adopted a far-reaching set of recommendations for guardian standards, as well as additional recommendations for action by courts, legislatures, and other entities. These documents from the Summit offer the groundwork for nationally recognized standards for guardians of adults.

The standards and recommendations were adopted by vote of the plenary session based on recommendations of the Summit’s seven interdisciplinary working groups.

In preparation for the Summit, the National Guardianship Network commissioned nine papers by 17 experts, which will appear in the Summer 2012 issue of the Utah Law Review.

In addition, the existing National Guardianship Association Standards of Practice, along with 12 summit issue briefs, helped to inform the attendees and spur thorough consideration of issues. The issue briefs included recommendations from a family guardian focus group convened by National Guardianship Network planners to promote family guardian input; and a summary by the National Organization to End Elder Abuse and Guardianship Abuse.

At www.guardianshipsummit.org you will find:

1. basic definitions used in the standards and recommendations;
2. the Summit’s “Guardian Standards;” and
3. the Summit’s “Recommendations for Action.”

For the standards, recommendations, issue briefs, paper authors, and topics, go to www.guardianshipsummit.org.

Resources

Online Volunteer Handbook For Courts Boosts Guardianship Oversight

Advocates and court officials know that monitoring of adult guardianships is important to manage risks, prevent abuse, assist guardians, and increase public confidence in the judicial system. But court budgets are stretched thin.

The ABA Commission on Law and Aging has a new online resource to help courts do exactly that! Updating a 20-year-old groundbreaking manual by Legal Counsel for the Elderly, Inc., of AARP, the ABA Commission has produced a concise, four-part readily accessible electronic handbook on volunteer guardianship monitoring. It guides court staff step-by-step in developing a volunteer guardianship monitoring and assistance program, recruiting and training volunteers, and compiling community information volunteers will need. Detailed forms and appendices are adaptable locally.

Find the handbook on the ABA Commission Web site here.

For additional resources from the ABA Commission on guardianship law and practice—including latest reports, state laws and policy charts, conferences, and video and other resources—on its Web site here.
Book Review

A Bitter Pill: How the Medical Care System Is Failing the Elderly

By John Sloan, MD
Greystone Books, 2009

Review by David Godfrey, Senior Attorney, ABA Commission on Law and Aging

“A Bitter Pill” tells of one doctor’s experience leaving behind a traditional hospital and office-based practice and developing an unconventional community-based practice providing in-home care to medically fragile patients.

The book describes lessons the author, Dr. Sloan, learns about conflicts between “best practices” medicine that focuses on prevention and rescue and the desires of many medically fragile patients. Medically fragile patients have multiple, chronic illnesses or health conditions that make them dependant on others for activities of daily living. Dr. Sloan found that for many of these patients the number one priority is not prevention or rescue, but being able to function on a daily basis.

The book does an excellent job of exploring how modern “best practices” medicine fails to meet the needs of a patient who has an incurable, unpreventable illness and who merely wants to do his or her best to enjoy the life they have remaining.

The author explains medical biology in understandable and lay terms. I found most useful an explanation of how patients with impaired liver or kidney function respond differently to drugs, requiring great care when treating with generally accepted prescribing standards.

Dr. Sloan goes farther to question the value of medical attempts to “control,” cholesterol, for one example, in a patient with multiple chronic conditions. He argues that these patients are beyond prevention or cure, but accepted best practices dictate treating to correct the numbers.

Dr. Sloan urges concentrating on the patient’s desires. If the patient wants every possible medical intervention, that should be the goal. But if the patient wants to live as normally as possible, while acknowledging that doing so may mean that they may live a shorter life, medical providers should empower the patient with treatment aimed at allowing maximum autonomy.

This is a book I wish I had read years ago. I would recommend it to anyone who works with fragile clients and their families. Health care decision-making is a multifaceted issue. This book offers a useful look into patient-centered palliative care.

Book Review

Turn of Mind

By Alice LaPlante
Atlantic Press, 2011

Review by Lori Stiegel, Senior Attorney, ABA Commission on Law and Aging

After spending my working hours thinking about elder abuse, it’s really not my intent to devote my non-working hours to reading books about that subject. So the last two novels I’ve read (see “Musings on ‘The Last Days of Ptolemy Grey’” in the November 2011 issue of Bifocal) surprised me. I knew they were about older characters, but none of the reviews I read indicated elder abuse was involved. That, sadly, does not surprise me.

Alice LaPlante’s first novel is an engrossing and disturbing tale of Dr. Jennifer White, a brilliant orthopedic surgeon who specialized in hands until she “retired” at age 64 following a dementia diagnosis. She is suspected of murdering and then amputating four fingers from her best friend.

Dr. White narrates most of the book, placing you in her head and causing you to experience her deepening confusion, as well as her periods of lucidity (or are they?). You feel her pain when she is constantly reminded about her best friend’s death and re-mourns it each time, while also having a disturbing feeling about it that she can’t quite bring to the surface of her memory (or can she?). You share her anger and frustration when she is sedated and restrained following episodes of agitation and violence. You fear for her when the police detective returns to ask more questions, when she can’t remember her adult children, when those children disagree about how to care for her and who should act for her, when she escapes from the assisted living facility—especially when she seems most incapable of fearing for herself. You shudder at her vulnerability and at the abuses that occur. Lest I dissuade you from reading this beautifully written and fascinating book, there are also moments of heartbreaking hilarity that will be familiar to anyone who has ever loved a person with dementia, delusions, or delirium.
Medicare’s Hospice Benefit for Beneficiaries with Alzheimer’s Disease

By Leslie Fried, Director, Medicare Advocacy Project

Alzheimer’s disease is the sixth leading cause of death in the United States, and the fifth leading cause of death among individuals who are age 65 or older. In 2009, more than 61,000 Medicare beneficiaries with Alzheimer’s disease elected to receive hospice services. The following is information on the Medicare hospice benefit for individuals with Alzheimer’s disease.

What is hospice care?
Hospice is a special way of caring for people who are terminally ill, and for their family. This care includes physical care and counseling. Hospice provides palliative or comfort care for an individual at the end of life. The primary purpose of hospice care is to manage the pain and other symptoms of the terminal illness, rather than provide treatment for the illness.

How does my father become eligible to receive hospice under Medicare?
Medicare covers hospice care if:
• Your father has Medicare Part A;
• His physician and a hospice medical director certifies that he is terminally ill—that is, his life expectancy is six months or less, if the illness runs its normal course; and,
• He chooses or elects to receive hospice care and waives the right for Medicare to pay for any other services to treat the terminal illness. Instead, Medicare pays the hospice and any related physician expenses. Medicare will continue to pay for your father’s care for any services not related to the terminal illness.

Are there guidelines to determine if someone with Alzheimer’s disease is terminally ill?
The National Hospice and Palliative Care Organization has published guidelines to identify which dementia patients are likely to have a prognosis of six months or less, if the disease runs its normal course. Remember, these are only guidelines to assist doctors in determining whether a patient may be appropriate for hospice care. Some Medicare contractors that are responsible for paying the hospice claims have specific rules for payment of hospice for dementia patients.

What services can my wife receive from a hospice under Medicare?
Under the hospice benefit, Medicare will pay for your wife’s:
• physician’s services
• nursing services
• physical, occupational, and speech therapy
• medical social services
• home health aide and homemaker services
• counseling services for your wife and your family
• short-term inpatient care
• respite care
• prescription drugs
• medical appliances and supplies
• bereavement counseling for your family.

Where can my mother receive these services?
Your mother can receive hospice care at home, in a free-standing hospice facility, or in a hospital or nursing facility. If your mother is a resident of a nursing facility, Medicare will only pay for the hospice services provided, not for her room and board.

What will hospice care cost my husband?
There will be no deductibles and only limited coinsurance payments for his hospice services. Your husband will have to pay 5 percent of the cost of a drug or biological, not to exceed $5. For respite care, there is a coinsurance payment of 5 percent of the Medicare payment for each respite care day.

How long can my wife receive hospice services?
Your wife may elect to receive benefits for two periods of 90 days each, and an unlimited number of periods of 60 days each. If at any time she changes her mind, she can decide to stop receiving hospice care and immediately begin to receive her other Medicare benefits.

For more information, visit these Web sites:
• Centers for Medicare and Medicaid Services: http://www.cms.hhs.gov
• Medicare Web site: http://www.medicare.gov
• National Hospice and Palliative Care Organization: http://www.nhpco.org
• Alzheimer’s Association: www.alz.org

The Medicare Advocacy Project is a collaborative effort of the Alzheimer’s Association and the American Bar Association Commission on Law and Aging. For more information, visit the ABA Commission on Law and Aging’s Medicare Advocacy Project Web site here.
Get Connected, Stay Connected on Elderbar

Join Elderbar, the listserv that brings together public and private sector legal advocates and the aging network. Elderbar is for you if you are an:

- Elder law attorney
- Title IIIB legal services provider
- Legal services developer
- Senior hotline attorney or staff
- Long-term care ombudsman
- Senior Health Insurance Benefits Program staff
- Area agency on aging staff
- State unit on aging staff
- OAA-funded elder rights advocate
- LSC, IOLTA-funded, or other non-profit or public sector legal services organization
- Law school elder law or clinical staff
- State or local bar association elder law section or committee
- Service provider in the aging network
- National law and aging advocate

Elderbar gives you the opportunity to communicate across the boundaries of the law and aging networks and the public and private legal sectors. Share ideas and information about programs, bar section and committee activities, and learn how others are responding to the increasing demand and finite funding for legal services for seniors.

Elderbar is a project of the ABA Commission as part of its role in the National Legal Resource Center, funded by the Administration on Aging. It is a closed list; messages can only be posted and read by members.

To get connected to Elderbar send your name, e-mail address, and professional affiliation to David Godfrey at david.godfrey@americanbar.org.

Online Resource

Advance Care Planning:
An Introduction for Public Health and Aging Services Professionals

An online course free of charge from CDC’s Healthy Aging Program, available at: http://www.cdc.gov/aging/advancecareplanning

This course will prepare and encourage public health and aging services professionals to accept their vital role in assisting older Americans to plan and document what should be done in the event they become seriously ill or lose decision-making capacity.

Three training modules explain key terms and provide information on:

- What advance care planning is and why it’s needed.
- How to initiate difficult, but essential conversations and document personal values and preferences.
- What public health and aging services professionals can do to leverage their unique position in the community to assist clients and constituents with advance care planning.
- Where to find reliable guidance and resources.

Course modules are self-paced; each one takes approximately one hour. Learners are encouraged to complete interactive exercises and explore additional resources. A worksheet is included which, if completed, will encourage and enable better collaboration and cooperation between public health and aging services networks and other key community-based partners.

This course was developed by the Centers for Disease Control in collaboration with the Center for Practical Bioethics and the directors of Health Promotion and Education.

Target Audience

This course is intended for professionals serving older adults and their families, particularly those who work in state and local health departments and in state units and area agencies on aging. In addition, the course may be useful to many other types of professionals who are in key positions to educate the public on the importance of advance care planning. Among such professionals are those providing case management services to older adults and persons living with lifelong disabilities.
You can still view the ABA Commission on Law and Aging’s 2011 CLE Elder Law Series webinars—now available from the ABA Web Store as a CD or MP4 download.

**Adding Elder Law to Your Practice: The Basics**

Describes the field of elder law; the aging network and resources to meet the non-legal needs of older persons; and the adaptations and skills needed to serve an aging clientele and their families. Originally presented April 5, 2011. Reg. $150. *Reduced rates for ABA members, gov’t and legal services attorneys.

**Ethical Issues in Elder Law**

This program enables attendees to recognize and respond appropriately to questions of who is the client, potential conflicts of interest, diminished capacity, justification for protective actions, and selected fiduciary dilemmas. Originally presented June 28, 2011. Coming Soon.

**What Every Lawyer Needs to Know About Elder Abuse**

This program will give attendees the basic knowledge and skills needed to understand the nature and extent of the problem as encountered in law practices, to spot elder abuse and neglect, to better arm clients against the risk of abuse, and to understand the civil and criminal resources available for responding to elder abuse. Originally presented September 13, 2011. Reg. $129; *Reduced rates for ABA members, government and legal services attorneys.

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This holiday season, please consider a tax-deductible gift to support the work of the ABA Commission on Law and Aging.

Your gift of any amount to the ABA Commission on Law and Aging will support the programs and research that help protect the rights of elders, ensure their access to the legal system, and educate lawyers, policy makers, professionals, and the public about the legal issues affecting older people.

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**Ways You Can Help**

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—**Write a Check**—

to the ABA Fund for Justice & Education. Designate the Commission on Law and Aging as the donee. Mail to ABA Commission on Law and Aging, 740 15th St., N.W. Washington, DC 20005

—**Donate Online**—

Go to the Fund for Justice and Education Web site [here](#).

—**Call the Commission**—

Discuss a specific gift of support. Call (202) 662-8688.

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Wishing you and yours a happy and healthy new year!
Giving Someone a Power of Attorney For Your Health Care

A Guide with an Easy-to-Use, Legal Form for All Adults

Prepared by

The Commission on Law and Aging
American Bar Association
This publication was produced by the Commission on Law and Aging, American Bar Association.

The mission of the ABA Commission on Law and Aging is to strengthen and secure the legal rights, dignity, autonomy, quality of life, and quality of care of elders. It carries out this mission through research, policy development, technical assistance, advocacy, education, and training. This publication provides information and tools individuals may use in preparing their own health care power of attorney. See: www.americanbar.org/aging

The ABA gratefully acknowledges the Archstone Foundation and the California HealthCare Foundation for their funding of this publication. See:

www.Archstone.org
www.CHCF.org

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This publication does not give legal advice and it does not substitute for an attorney, nor does it try to answer all questions about all situations you may encounter. If you need legal advice or other expert assistance, seek the services of an attorney or another competent professional person.

This booklet is intended for educational and informational purposes only. You must not reproduce it by any means for commercial purposes unless you receive written permission from the American Bar Association.
Giving Someone a Power of Attorney For Your Health Care

The form in this guide is a simple version of a Health Care Advance Directive. It allows you to choose someone to make health care decisions for you if you can’t. If you name a health care agent when you are healthy, you will make sure that someone you trust can make health care decisions for you if you become too ill or injured to make them yourself.

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<th>To properly use the form, you must do 3 things:</th>
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**Before you start, read this.**

## Can you use this form?

Generally, you can use this form wherever you live in the U.S. to name a health care agent or proxy. However, in some states you cannot use this form.

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Some states do not permit people to use a universal form. So, you cannot use this form if you live in:

- Indiana
- New Hampshire
- Ohio
- Texas
- Wisconsin

Some states have special requirements for witnesses in certain care facilities. So, you should not use this form if you live in a nursing home or any other care facility in:

- California
- Connecticut
- Delaware
- New York
- Vermont

But if you do not live in a nursing home or other care facility in these states, you can use this form.
Think carefully about the person you may choose to be your health care agent.

Your health care agent — or agent, for short — will have the authority to make life and death decisions for you according to your wishes. Make sure that the person you pick is willing to be your agent.

When you ask someone to be your health care agent, you should think about several things. For example, usually it is best to name one person as your first choice. Then choose at least one back-up agent, in case the first person is not available when needed.

Here are some other tips for choosing an agent:

<table>
<thead>
<tr>
<th>Choose a person who comes closest to meeting all these qualifications.</th>
</tr>
</thead>
<tbody>
<tr>
<td><strong>Choose someone who meets the legal requirements to act as an agent. (Some states call an agent a proxy or representative.)</strong></td>
</tr>
<tr>
<td>State requirements differ greatly, so to meet the combined requirements of every state, your health care agent should be an adult who is of sound mind, and NOT anyone in the following list:</td>
</tr>
<tr>
<td>- DO NOT choose your health care providers or the owner or operator of a health or residential care facility that is currently serving you.</td>
</tr>
<tr>
<td>- DO NOT choose a spouse, employee, or spouse of an employee of your health care providers.</td>
</tr>
<tr>
<td>- DO NOT choose anyone who professionally evaluates your capacity to make decisions.</td>
</tr>
<tr>
<td>- DO NOT choose anyone who works for a government agency that is financially responsible for your care (unless that person is a blood relative).</td>
</tr>
<tr>
<td>- DO NOT choose anyone that a court has already appointed to be your guardian or conservator.</td>
</tr>
<tr>
<td>- DO NOT choose anyone who already serves as a health care agent for 10 or more people.</td>
</tr>
<tr>
<td><strong>Choose someone who will talk with you now about your wishes, who will understand what you want and your priorities about health care, and who will do as you ask faithfully when the time comes.</strong></td>
</tr>
<tr>
<td><strong>Choose someone who lives near you or could travel to be with you, if needed.</strong></td>
</tr>
<tr>
<td><strong>Choose someone you trust with your life.</strong></td>
</tr>
<tr>
<td><strong>Choose someone who can handle conflicting opinions from family members, friends, and medical personnel.</strong></td>
</tr>
<tr>
<td><strong>Choose someone who can be a strong advocate for you if a doctor or institution is unresponsive.</strong></td>
</tr>
</tbody>
</table>

Once you have decided whom you would like to serve as your health care agents and they have agreed, involve them in step 2. You may also want to give them a guide that explains what it means to be a health care agent. One guide is *Making Medical Decisions for Someone Else: A How To Guide*, available free at: Ambar.org/AgingProxyGuide.
Think about what guidance you want to give your health care agent in making treatment decisions for you. Then talk about your decisions.

Talking about what you want is very important because your agent must try to make decisions the way you would.

Have a real conversation with your agent and with anyone else who could be involved in your care if you were seriously ill. This is not easy to do, so it is best to use resources to sharpen your thinking and to help guide you through the conversation.

The important thing — along with completing the form A Power of Attorney for My Health Care — is to have a serious conversation about end-of-life care with your agent and with anyone else who could be involved in your care if you were seriously ill. This process is called advance care planning.

To help make this difficult task easier, try using one of the guides listed on the right. They all aim to help you clarify what is important to you about your health care, what your current goals for your health care are, and what values and priorities you would want your agent to follow in making decisions for you. Plus, they create a record that you can refer to and change as your circumstances change.

You don’t have to spell out specific medical treatments that you want or don’t want. In fact, that is usually a bad idea to try to do, unless you are facing a situation now in which you need to decide about a specific plan of care. Even though the distant future is unpredictable for most of us, who we are as a person remains fairly stable.

Here are three free resources you should consider:

- **Consumer’s Tool Kit for Health Care Advance Planning**, by the ABA Commission on Law and Aging. Go to: Ambar.org/AgingToolkit

- **Caring Conversations Workbook**, published by the Center for Practical Bioethics. Go to: www.practicalbioethics.org/cpb.aspx?pgID=986

- **Advance Care Planning Conversation Guide**, plus other resources from the Coalition for Compassionate Care of California. Go to: http://www.coalitionccc.org/advance-health-planning.php

Many other resources are available for free or for modest cost. Go to the ABA Resource page: Ambar.org/AgingAdvancePlanning
The form has space so you can add any special instructions or limitations you wish to include. But remember, this form is a basic Health Care Power of Attorney. It is not meant for a lengthy statement of your wishes and preferences.

But everyone is different. You may want to have more detailed instructions in your health care directive. If you do, other forms include more detail.

Go to the ABA resource page:
Ambar.org/AgingAdvancePlanning

The form in this guide combines the many different state legal requirements into a “universal” legal form that is intended to meet the basic requirements in most states. However, since the requirements for four states do not fit within the guidelines of this form, you cannot use the form if you live in: Indiana, New Hampshire, Ohio, Texas, and Wisconsin.

Because state rules differ, this form combines all the state requirements for who can be your agent and who can be a witness. It should be easy to meet all of the requirements if you follow the instructions carefully.

You can also use a form that is written just for your own state. For links to state-specific forms, go to: Ambar.org/AgingStateForms

Remember, you should discuss your wishes and priorities directly with your agent and with others who are close to you. Use any of the resources mentioned previously to clarify and communicate your wishes.

Now what?

After you fill out your form, A Power of Attorney for My Health Care, give a copy to your agents and health care providers.

Then, in the future ...

If you want to cancel or change your document, the rules for how to do that depend on where you live. The safest way to do it — which will be valid everywhere — is to complete and sign a new form, destroy all copies of the old form that you have, and tell anyone else who has a copy that you’ve revoked the old form.
My name is: ____________________________________________________________
First Middle Last

Today’s date _____/____/____
Month / Day / Year

I am completing this form in:__________________________________
State

My birthdate _____/____/____
Month / Day / Year

Part 1: Who Will Be Your Health Care Agent?

Choose someone who is an adult of sound mind.

Do not choose anyone who:

- Provides health care to you, including an owner or operator of any health care facility that currently serves you (for example, a hospital, nursing home, residential or other community care facility).
- Is a spouse, employee, or spouse of an employee of your health care provider.
- Professionally evaluates your capacity to make decisions.
- Works for a government agency that is financially responsible for your care (unless that person is a blood relative).
- Has already been appointed by a court to be your guardian or conservator.
- Already serves as a health care agent for 10 or more people.

My agent’s name _____________________________________________
First Middle Last

Address _____________________________________________
Number Street

City State ZIP Code

Daytime phone (_______) _______—__________

Other phone (_______) _______—__________

Email _____________________________________________
### Part 2: Do You Want to Choose Back-Up Agents?

You do not have to name back-up agents, but it’s a good idea to do so. If you trust one or two people who would be willing and able to act for you if your first agent can’t, name them. They must meet the same requirements listed in Part 1: Who Will Be Your Health Care Agent?

If my first agent is unwilling or unable to act for any reason, then my next choice is:

<table>
<thead>
<tr>
<th>1st Back-up agent</th>
<th>First</th>
<th>Middle</th>
<th>Last</th>
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<tbody>
<tr>
<td></td>
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Address

<table>
<thead>
<tr>
<th>Number</th>
<th>Street</th>
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</tr>
</tbody>
</table>

<table>
<thead>
<tr>
<th>City</th>
<th>State</th>
<th>ZIP Code</th>
</tr>
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<td></td>
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</tbody>
</table>

Daytime phone (______) _______ — _______

Other phone (______) _______ — _______

Email ________________________________

If the first two agents are not willing or able to act for any reason, then my next choice is:

<table>
<thead>
<tr>
<th>2nd Back-up agent</th>
<th>First</th>
<th>Middle</th>
<th>Last</th>
</tr>
</thead>
<tbody>
<tr>
<td></td>
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</tr>
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<tbody>
<tr>
<td></td>
<td></td>
<td></td>
</tr>
</tbody>
</table>

Daytime phone (______) _______ — _______

Other phone (______) _______ — _______

Email ________________________________
**Part 3: What Will Your Agent’s Powers Be?**

*Part 3* gives your agent broad authority to make all health care decisions for you. Some states may limit your agent’s authority.

This form gives your agent authority that is as broad as possible, even over life and death decisions. Some states require physicians to certify certain diagnoses before your agent can make some decisions.

My agent knows my goals and wishes based on our conversations and on any other guidance I may have written. My agent has full authority to make decisions for me about my health care according to my goals and wishes. If the choice I would make is unclear, then my agent will decide based on what he or she believes to be in my best interests. My agent’s authority to interpret my wishes is intended to be as broad as possible, and includes the following authority:

1. To agree to, refuse, or withdraw consent to any type of medical care, treatment, surgical procedures, tests, or medications. *This includes decisions about using mechanical or other procedures that affect any bodily function, such as artificial respiration, artificially supplied nutrition and hydration (that is, tube feeding), cardiopulmonary resuscitation, or other forms of medical support, even if deciding to stop or withhold treatment could or would result in my death;*

2. To have access to medical records and information to the same extent that I am entitled to, including the right to disclose health information to others;

3. To authorize my admission to or discharge (even against medical advice) from any hospital, nursing home, residential care, assisted-living or similar facility or service;

4. To contract for any health care-related service or facility for me, or apply for public or private health care benefits, with the understanding that my agent is not personally financially responsible for those contracts;

5. To hire and fire medical, social service, and other support personnel who are responsible for my care;

6. To authorize my participation in medical research related to my medical condition;

7. To agree to or refuse using any medication or procedure intended to relieve pain or discomfort, even though that use may lead to physical damage or dependence or hasten (but not intentionally cause) my death;

8. To decide about organ and tissue donations, autopsy, and the disposition of my remains as the law permits;

9. To take any other action necessary to do what I authorize here, including signing waivers or other documents, pursuing any dispute resolution process, or taking legal action in my name.

---

**This first power is very important.** To clearly confirm your agent’s authority over decisions about life support and artificially supplied nutrition and hydration, write in your initials here: ________________

If you decide to limit your agent’s authority, simply cross out any paragraph you don’t like and initial it, or write any limitation on the next page in Part 4: Do You Have Special Instructions or Limitations for Your Agent?
Part 4: Do You Have Special Instructions or Limitations for Your Agent?

Use this space to add anything really important that you want in this document. If you need more space, attach a sheet to this form. Consider using one of the resources described in step 2 to help clarify and communicate your wishes to your agent and others.

Part 5: When Will This Power Be Effective?

Part 5 provides a very simple procedure for making your Power of Attorney for Health Care go into effect. Note that some states have a required procedure for certifying someone’s incapacity to make decisions, and those provisions may override this provision.

This Power of Attorney for My Health Care will become effective during any time in which, in the opinion of my agent and attending physician, I am unable to make or communicate a choice about a particular health care decision.

Part 6: Other Provisions

These administrative provisions help implement this document. Read them and make sure you understand them.

- Health care providers can rely on my agent. No one who relies in good faith on any representations by my agent or back-up agent will be liable to me, my estate, my heirs or assigns, for recognizing the agent's authority.

- I cancel any previous power of attorney for health care that I may have signed.

- I intend this power of attorney to be universal; it is valid in any jurisdiction in which it is presented.

- I intend that copies of this document are as effective as the original.

- My agent will not be entitled to compensation for services performed under this power of attorney, but he or she will be entitled to reimbursement for all reasonable expenses that result from carrying out any provision of this power of attorney.

Part 7: Sign Here

Sign and date this form in front of two witnesses who meet the qualifications listed on the next page and who actually see you sign the document. The list of people who should NOT be your witness is long because it represents all of the different state requirements.

Four states require that the form be notarized and witnessed: Missouri, North Carolina, South Carolina, and West Virginia.

I understand the contents of this document and the effect of granting powers to my agent.

My signature _______________________________________________

My printed name _______________________________________________

First Middle Last

Date _____/______/______

Month / Day / Year
A Statement by Your Witnesses

I declare that I personally know you — the person who signed this document — or I have adequate proof of your identity, and that you signed or acknowledged this Power of Attorney for My Health Care in front of me, and that you appear to be of sound mind and under no duress, fraud, or undue influence.

I am an adult and am NOT any of the following:

- Appointed as your agent or back-up agent
- Related to you by blood, marriage, domestic partnership, or adoption, nor a spouse of any such person.
- Your health care provider, including the owner or operator of a health, long-term care, or other residential or community care facility serving you
- An employee of your health care provider
- Financially responsible for your health care
- An employee of your life or health insurance provider
- A creditor of yours or entitled to any part of your estate under a will or codicil, trust, insurance policy, or by operation of intestate succession laws.
- Entitled to benefit financially in any other way after you die.

About Witness 1

Printed name  _____________________________________
First Middle Last
Signature  _____________________________________
Date _____/____/____
Month / Day / Year
Address _____________________________________
Number Street
_____________________________________
_____________________________________
City State ZIP Code

About Witness 2

Printed name  _____________________________________
First Middle Last
Signature  _____________________________________
Date _____/____/____
Month / Day / Year
Address _____________________________________
Number Street
_____________________________________
_____________________________________
City State ZIP Code

If you are a resident of Missouri, North Carolina, South Carolina or West Virginia, you must have this form notarized. It is optional for everyone else.

State of _______________________________ County of _______________________________

On this ________ day of _____________, 20___, the said Principal _______________________________ and Witnesses _______________________________ and _______________________________, known to me (or satisfactorily proven) to be the person named in the foregoing instrument and witnesses, respectively, personally appeared before me, a Notary Public, within and for the State and County aforesaid, and acknowledged that they freely and voluntarily executed the same for the purposes stated therein.

Signature_________________________________________________   My commission expires:_______________________________

A Power of Attorney for My Health Care ■ Page 5