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# Bifocal

A Journal of the  Commission on Law and Aging  
Vol. 37, No. 6, July – August 2016

*Medical-Legal Partnerships*

Six Situations in Which  
Elder Law Attorneys  
and Physicians  
Caring for Older Patients  
Need Each Other

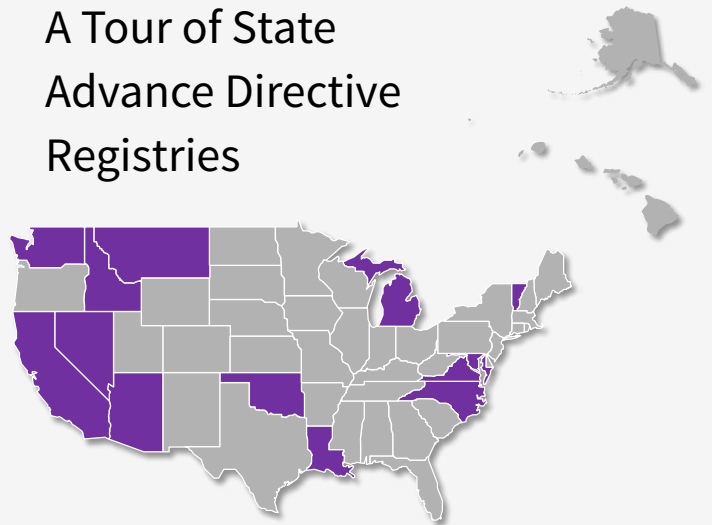


Key Changes of the  
Older Americans Act  
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A Tour of State  
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## *Medical–Legal Partnerships*

# Six Situations in Which Elder Law Attorneys and Physicians Caring for Older Patients Need Each Other

by Marshall B. Kapp, Shenifa M. Taite,  
and Gregory Turner



There are many situations in which an older person needs the services of both an attorney and a physician and communication and collaboration between members of those two professions would be highly advantageous to the older patient/client's well-being. Unfortunately, the record thus far of interprofessional collaboration on behalf of the shared older patient/client in such circumstances generally is deficient and needs to be improved. The first step in the direction of remedying this deficiency must be recognition by both elder law attorneys and physicians (and other health care professionals) of situations in which positive engagement with each other would be valuable for everyone concerned. Many examples of such situations exist; this paper outlines six of the most major contexts for fruitful attorney/physician collaboration on behalf of shared older patients/clients.

### **1. Decisional Capacity Issues**

Most older individuals—in fact and as presumed by the law—retain sufficient cognitive and emotional ability, if provided with adequate information, to make autonomous, authentic decisions about important aspects of their own lives. Sometimes, however, an older person's capacity to make and express valid choices about personal (including medical or residential) or financial matters is questionable and/or questioned by others. Capacity is decision-specific rather than global and the distinction between adequate and inadequate capacity to make a particular decision often lacks a bright line demarcation. Assessing decisional capacity, determining the causes and extent of capacity impairment in individuals, figuring out a plan of action that supports or assists the individual's meaningful involvement in decisions

even when significant impairment is present (especially when the individual has no available family or friends), and properly documenting the various components of the assessment and possible intervention processes are all professional tasks with important medical and legal consequences.

The elder law attorney needs physician involvement to help recognize when decisional capacity may be compromised and to quantify the existence, degree, and reversibility or alterability (for example, through medication management) of decisional impairment. The physician could benefit by working with an elder law attorney who can identify and delineate the potential legal implications of the older person's decisional impairment and then evaluate the authority for, limits of, and policy advisability of possible interventions such as guardianship, less formal types of decision making such as supported decision-making arrangements, or reliance on previously-created or implied advance directives or other prospective patient/client instructions.

### **2. Elder Mistreatment**

Many older individuals, particularly those compromised by cognitive decline, are vulnerable to the risks of physical, psychological, and financial mistreatment at the hands of family members or others. In the health care sphere, elder mistreatment often takes the form of a pattern of acts or omissions, rather than a single instance. In addition to abuse and exploitation, elder mistreatment may be manifested in the form of neglect. These acts or omissions often occur in the older person's home or that of a relative with whom the older victim resides.

The associated set of problems is compounded by the reluctance of many older persons to cooperate in reporting and investigating their own arguable mistreatment. For example, a decisionally-capable but physically-vulnerable older adult may passively accept physical or emotional abuse, financial exploitation, or neglect of basic needs like hygiene or medications at the hands of a family caregiver out of fear that making a report to Adult Protective Services (APS) might result in removal from the home environment to a nursing home.

Situations involving actual or potential neglect, exploitation, or abuse of an older person raise a constellation of medical-legal issues calling for interprofessional cooperation. The input of the patient's physician to recognize and evaluate, as well as to medically treat, signs and symptoms of elder neglect, exploitation, or abuse is essential in the consideration and effectuation of legally permissible options or required actions.

Legal issues pertain to health care professionals' responsibility to monitor the quality and safety of home care provided by family caregivers or others, the duty (or at least permissibility) of various professionals to report instances of suspected neglect, exploitation, or abuse to APS or other authorities, confidentiality considerations, the legal ramifications of failing to report, and what legal immunities attach to reporting or other interventions. These are all matters calling for legal advice by the elder law attorney that should benefit both the physician and the older patient/client.

### 3. Self-Neglect

Mistreatment of older persons by others is a serious problem. Both the medical and legal conundrums became more complicated, and thus even more amenable to interprofessional collaboration, when self-neglect is entailed. A significant percentage of older adults, mainly living alone, do not regularly attend to their own needs or well-being regarding health care, hygiene, nutrition, and other matters. The majority of cases reported to APS agencies by health and social service professionals and family members are triggered by suspected self-neglect. The health care system expends considerable efforts trying to intervene in these situations to prevent increased rates of hospitalization, nursing home placement, and even death.

In situations involving suspected elder self-neglect, the physician's role is vital in recognizing the potential problem, characterizing the nature and seriousness of the risk posed, and trying to identify clinically and socially viable intervention strategies. Among other concerns, decisional capacity issues almost always arise in these cases. The physician may look to an attorney for advice about legal reporting requirements or options, as well as the legal boundaries within which interventions may be designed and implemented in a manner that best respects the older person's dignity and autonomy while protecting the vulnerable at-risk individual from undue foreseeable, preventable self-generated harm.

### 4. Medical Payment Issues

An unavoidable element in attaining appropriate medical and rehabilitative care for older patients is assuring that payment for needed services will be available. For the majority of people over age 65, this will mean working with the Medicare bureaucracy, although a specific state Medicaid program and/or private insurance policies also may be involved in particular circumstances. A number of issues potentially interfering with Medicare payment for a patient's services, thereby jeopardizing the continuity of that patient's care and well-being, may develop. Some of the most salient of these issues concern older patients who have entered hospitals through emergency departments and been held in Observational Status rather than admitted as in-patients prior to being transferred to nursing facilities, as well as hospital discharge and readmission practices that may jeopardize coverage for subsequent rehabilitation services. Other prominent issues involve the interpretation and application of Medicare rehabilitation payment policy regarding the standard of need for services rather than continuing potential



for benefit, plus various aspects of coordinating benefits under Medicare with those services covered concurrently in whole or part by other third-party payers.

The elder law attorney seeking to obtain payment for an older client's medical or rehabilitative care in the face of resistance by a governmental or private third-party payer needs the assistance of the patient's physician to provide and/or augment documentation, and to clarify and argue questions regarding the older person's medical condition, needs, prognosis, and potential when payment eligibility turns on those factors. Conversely, even when the older patient's medical condition, needs, prognosis, and potential are known to the physician, prospectively assuring or subsequently obtaining reimbursement for appropriate services may require the assistance of an elder law attorney to assert and advocate for the rights of the older person.

## **5. Family Issues**

In many situations, professional services of the medical or legal variety provided to older individuals are necessarily entwined with family issues. Families often act as caregivers (sometimes on a compensated basis but more frequently as volunteers) for older relatives lacking full independence. Looking at families functioning in that capacity, medical professionals are important in recognizing and trying to ameliorate problems of caregiver burden that may endanger both the caregivers and the person who is dependent upon their caring. The elder law attorney can inform the parties involved, including the patient's physician, about public or private sources of financial or other kinds of support for family caregivers, such as any availability of benefits under the federal Family and Medical Leave Act and/or state counterparts.

For older individuals with significantly reduced decisional capacity, family members may be acting as surrogate decision makers making choices on behalf of the older person or as helpers to a person who is capable of exercising supported decision making. In either event, when decisions concern medical care, the physician must be centrally involved in providing information and recommendations to the family, as well as supporting them in the decision making and implementation process. The elder law attorney may be involved in working with currently decisionally capable individuals and their families in the advance health care planning process, for example counseling

them about advance directive options and helping the client-family unit to effectuate its wishes and values. The elder law attorney may be useful to the physician by helping to delineate legally empowered surrogate decision makers or to employ the legal system to clarify questions regarding legal authority. The physician and attorney may work collaboratively in presenting cases to an institutional ethics committee or ethics consultant when there are serious disagreements among family members, between family members and patient preferences, or between families qua patient surrogates and professional caregiver opinions about the patient's best interests.

Tying in to the earlier discussion of self-neglect, the family may be confronted with an older loved one who refuses to acknowledge mental decline and the need for help. That family, and ultimately their loved one, may benefit from the delineation and possible pursuit of more or less intrusive options identified through the collaborative efforts of the physician and attorney.

Sometimes, families have interests that conflict with those of a vulnerable older person and they seek to act upon their own interests to the detriment of that older person. In those situations, the physician may be the one to call the problem to the attention of the individual's attorney and/or provide contextual information about the conflict and its consequences. The attorney, in turn, may initiate or threaten legal action to protect the rights and welfare of the older person in a manner that also serves the ethical and legal interests of the person's physician.

## **6. Confidentiality**

Intertwined with each of the issues already discussed, as well as many others, are concerns about the permissible handling of personal information that the physician or attorney learns about a particular older patient/client solely as a direct result of the formal relationship between professional and older patient/client. For example, what are the confidentiality ramifications of a physician's suspicion that an older patient is being neglected, exploited, or abused? The physician can educate the attorney about the kinds of health care information collected pertaining to a client, how and where that information is documented and stored, how to interpret the meaning of documentation, the clinical uses to which the information may be devoted, and who normally has access to that information (and under what circumstances). The attorney can educate and



counsel the physician about the legal parameters of information collection, maintenance, and sharing under common law confidentiality principles, state statutes and regulations, and the federal Health Insurance Portability and Accountability Act (HIPAA), among other legal provisions. For example, the attorney can explain differing expectations and rules for protecting patient privacy applicable to members of different professions, such as when a social worker employed as staff in an elder law office suspects elder mistreatment and may be subject to reporting requirements that do not compel action by the attorney.

Enhanced interprofessional communication about confidentiality can be beneficial to the older patient/client. Accurately informed physicians and attorneys are well-positioned to protect the legitimate autonomy and privacy interests of older persons to whom they owe fiduciary duties, while at the same time facilitating the permissible and salutary transmission of relevant person-specific information to authorized recipients so that the continuity of service provision is optimized.

## CONCLUSION

The foregoing discussion describes some of the key needs and opportunities for physician/attorney cooperation and collaboration in contexts involving older patients/clients whom the members of the two professions both serve. Other examples abound, such as managing situations involving unsafe driving by an older person who resists voluntarily restricting personal use of the motor vehicle. It is incumbent on the medical and legal professions to take advantage of the enumerated available collaborative opportunities to serve both their own prudential self-interests and

the ethical obligations that they owe their patients/clients as practicing members of learned professionals.

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## 2016-2017 Commission on Law and Aging

Each September 1, a new roster of commissioners is appointed by the ABA president. Most commissioners serve for multiple years with a handful of new faces starting in any given year. This year, we have four new commissioners; you will find them to be a diverse and highly expert group in their individual disciplines. The full roster of this year's Commission is below, with short biographies of our new additions to run in the next issue.

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# Key Changes of the Older Americans Act Reauthorization Act of 2016

by Teresa Yao

On April 19, 2016, President Obama signed the Older Americans Act (OAA) Reauthorization Act of 2016<sup>1</sup> into law to further improve access and quality of comprehensive services to older adults in our country.<sup>2</sup> Originally, the Older Americans Act of 1965 was enacted by Congress during the Johnson Administration, with the goal of providing a diverse range of services for older Americans with the greatest social or economic need. However, as technology and society have changed, Congress periodically updates the law to keep pace with ever-changing needs and priorities. Here are a few of the key changes to the OAA in the 2016 reauthorization, which will be effective from FY 2017 to FY 2019.<sup>3</sup>

For the Aging and Disability Resource Centers (ADRCs), the OAA reauthorization focused on improving the coordination with Area Agencies on Aging to promote independent living, and home and community-based services.<sup>4</sup> The Assistant Secretary is responsible for implementing ADRCs to provide accessible assistance regarding long-term care options, navigating Medicare and Medicaid programs, and informing individuals about available home and

community-based services so that older adults retain broad discretion in choosing their care.<sup>5</sup>

Regarding elder abuse, the reauthorization updated definitions to parallel the Elder Justice Act.<sup>6</sup> Furthermore, the statute focuses on efforts to detect elder abuse cases through multiple entry points, such as requiring the Director of the state Long-Term Care (LTC) Ombudsman Program to collect and promote best practices for responding to elder abuse in all its forms;<sup>7</sup> asking state agencies to submit data on elder abuse, neglect, and exploitation;<sup>8</sup> requiring the Assistant Secretary on Aging to include training for service providers and other aging professionals;<sup>9</sup> and increasing area agency efforts to raise public awareness about elder abuse.<sup>10</sup>

The OAA reauthorization also repeals three Title IV demonstration projects: computer training, multidisciplinary centers and multidisciplinary systems, and ombudsman and advocacy demonstration projects.<sup>11</sup> These changes largely cleaned up out of date language in the statute. The provision on computer training had lost relevance with the growth of technology use among older adults. Some of the demonstration projects have completed, others have become permanent in other parts of the Act.

The 2016 OAA reauthorization also made multiple changes and clarifications to the LTC Ombudsman

<sup>1</sup> Older Americans Act of 1965, 42 U.S.C. 3001-58 (2016).

<sup>2</sup> Statement from Assistant Secretary for Aging Kathy Greenlee on Older Americans Act Reauthorization Signed into Law, Dep't Health and Human Serv. Press Office (April 19, 2016), <http://www.hhs.gov/about/news/2016/04/19/statement-assistant-secretary-aging-kathy-greenlee-older-americans-act-reauthorization.html>.

<sup>3</sup> *Older Americans Act Reauthorization Act of 2016*, Admin. Aging, Admin. Comty. Living, U.S. Dep't of Health and Human Serv., [http://www.aoa.acl.gov/AoA\\_Programs/OAA/reauthorization/2016/index.aspx](http://www.aoa.acl.gov/AoA_Programs/OAA/reauthorization/2016/index.aspx) (last visited July 13, 2016).

<sup>4</sup> 2016 *Older Americans Act (OAA) Reauthorization Act (P.L. 114-144)*, Admin. Comty. Living, U.S. Dep't of Health and Human Serv. (2016), [http://www.aoa.acl.gov/AoA\\_Programs/OAA/reauthorization/2016/docs/OAA-Summary-Final.pdf](http://www.aoa.acl.gov/AoA_Programs/OAA/reauthorization/2016/docs/OAA-Summary-Final.pdf).

<sup>5</sup> See 42 U.S.C. 3012(b)(8).

<sup>6</sup> See note 4, at p. 2.

<sup>7</sup> 42 U.S.C. 3011(d)(3)(M).

<sup>8</sup> 42 U.S.C. 3058i(b)(5).

<sup>9</sup> 42 U.S.C. 3012(d)(4)(g).

<sup>10</sup> 42 U.S.C. 3026(a)(6)(H).

<sup>11</sup> See note 6. See also 42 U.S.C. 3002.



Program authorized under Title VII of the Act.<sup>12</sup> Specifically, the LTC Ombudsman Program is now required to serve and protect all residents of long-term care facilities without age limitations.<sup>13</sup> Many of the changes clarify the programs' responsibilities and their procedures for protecting confidentiality.<sup>14</sup> Each ombudsman participating in the state ombudsman program is also required to undergo training provided by the National Ombudsman Resource Center.<sup>15</sup>

With regards to mental health, the OAA now includes "behavioral health" to better incorporate the Aging Network's recognition of substance abuse and suicide prevention within the topic of mental health.<sup>16</sup>

Finally, the 2016 reauthorization addresses improvements to transportation for older people and people with disabilities by requiring the Assistant Secretary of Aging to provide assistance to states

<sup>12</sup> See note 10. at p. 2-3.

<sup>13</sup> See note 4. See also 42 U.S.C. 3058(f)(6).

<sup>14</sup> See note 4, at p. 3.

<sup>15</sup> 42 U.S.C. 3058g(h)(4).

<sup>16</sup> See note 15.

relating to "efficient, person-centered transportation services."<sup>17</sup>

A list of all key changes are available on ACL's website and in PDF format:

- [http://www.aoa.acl.gov/AoA\\_Programs/OAA/reauthorization/2016/index.aspx](http://www.aoa.acl.gov/AoA_Programs/OAA/reauthorization/2016/index.aspx)
- [http://www.aoa.acl.gov/AoA\\_Programs/OAA/reauthorization/2016/docs/OAA-Summary-Final.pdf](http://www.aoa.acl.gov/AoA_Programs/OAA/reauthorization/2016/docs/OAA-Summary-Final.pdf)

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<sup>17</sup> *Id.*

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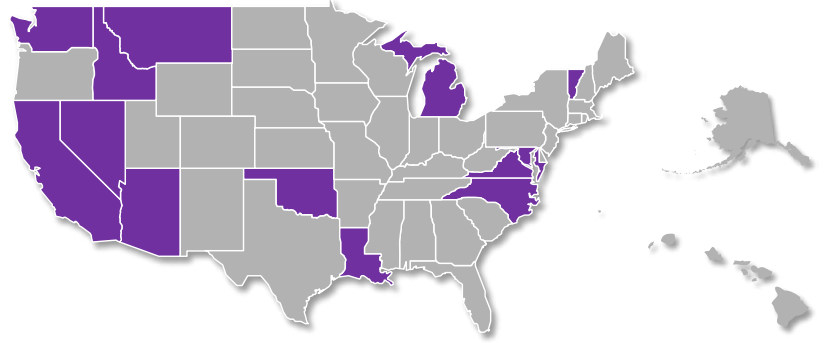
The Commission provides background to the media on a range of issues relating to law and aging, including:

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- Health care decision-making and advance directives
- Medicare, Medicaid, and long-term care
- Elder law and the delivery of legal assistance to older persons

Contact the Division for Media Relations and Communication Services for expert contacts at [abanews@americanbar.org](mailto:abanews@americanbar.org) or (202) 662-1090.

# A Tour of State Advance Directive Registries

by Preston Holmes



Health-care advance directive registries have been authorized by statute in a dozen states since Louisiana became the first state to establish a registry in 1991. The intended purpose of registries is to enable secure storage and quick access to one's advance directive by health care providers or by anyone given access to the registry by the maker of the advance directive. Registries may provide a convenient way for health-care providers to ascertain patient wishes when patients cannot communicate their wishes and a directive is not already in the provider's immediate record. Studies of the population penetration and efficacy of advance directive registries are non-existent, so we really do not know the extent to which registries achieve their intended purpose.

The summary below provides thumbnail descriptions of state advance directive registries, as of July 2016, based solely on a review of state law and state registry web pages. Additional research is needed on the operational success of these registries. This review does NOT include registries exclusively for Physician Orders for Life-Sustaining Treatment (POLST) or its variations.

Private registries have also been in existence for at least two decades, but little is known about their operational outcomes, since such information is largely proprietary. States will sometime contract with a private registry to run the state registry, as is done in Washington, Vermont, and Oklahoma (in process). Private registries include:

- America Living Will Registry ([www.alwr.com](http://www.alwr.com))
- DocuBank (<http://www.docubank.com>)

- U.S. Living Will Registry ([www.uslwr.com](http://www.uslwr.com))
- MedicAlert Foundation (<https://www.medicalert.org/join/advance-directives.htm?selected=MedicAlert+Membership+Advance+Directive>)
- MyDirective. This is the first website ([www.MyDirective.com](http://www.MyDirective.com)) that walks one through the process of creating an advance directive online, enables digital signatures, and registers it in their database which is accessible by health care providers.

Outlined below are states that administer legislatively authorized health care advance directive registries:

## Arizona



- **Administrator:** The Secretary of State
- **Website:** <http://www.azsos.gov/services/advance-directives>
- **Legislation:** Ariz. Rev. Stat. § 36-3291, enacted 2004.
- **Eligible documents:** Health care advance directives only—i.e., Medical/Health Care Power of Attorney; Mental Health Care Power of Attorney, Living Will
- **How to file:** Must submit a copy by mail or in-person with a signed registration agreement. Registrant then receives by mail a registry wallet card and password and verification request. Once verification is returned by mail to the registry, the registered document becomes active.

- **Access:** Online by anyone with user ID and password.
- **Updates:** Registrant's responsibility. Process is same as initial registration.
- **Cost:** Free to registrants. The secretary of state may accept gifts, grants, donations, bequests and other forms of voluntary contributions to support, promote and maintain the registry.


## California

- **Administrator:** The Secretary of State
- **Website:** <http://www.sos.ca.gov/registries/advance-health-care-directive-registry/>
- **Legislation:** Cal. Prob. Code §§ 4800, enacted 2000.
- **Eligible documents:** Health care advance directives only (i.e. Medical/Health care Power of Attorney and Living Wills).
- **How to file:** The form should be entered into the registry by mail along with the Registration of Written Advance Health Care Directive form which details information regarding the advance health care directive.
- **Access:** Secretary of State's office does not provide online advance directive registry access for residents. Successful registrants receive an Advance Health Care Directive Registry identification card indicating a successful deposit in the registry. The registry will be available, in a central information center, upon request from any health care provider, the public guardian, or the legal representative of the registrant and the need must be stated in the request.
- **Updates:** The same form can be used to amend information on a previously filed registration form. Registrants wishing to revoke their advance directive may do so by checking the applicable boxes when amending the document. Registrants must re-register in the Secretary of State's system when executing a subsequent advance directive.
- **Cost:** There is a \$10 filing fee for registrants. There is no fee for filing an amendment with the Secretary of State's office.

## Idaho

- **Administrator:** The Secretary of State
- **Website:** <http://www.sos.idaho.gov/hcdr/index.html>
- **Legislation:** Idaho Code Ann. § 39-4515, enacted 2006.
- **Eligible Documents:** Health care Durable Power of Attorney and Living Wills or revocation of health care directives along with completing and submitting a required informational registration form. Idaho Physician Orders for Scope of Treatment (POST) forms are accepted as well. Although it's not required, notarization and witnesses for these documents are recommended.
- **How to File:** Mail or deliver the completed registry form along with the Health Care Directive to the Idaho Secretary of State's office, and must provide a return address for mailing purposes.
- **Access:** Successful registrants shall receive a wallet-sized registration card with an individual filing number and password for online access. The Secretary of State and health care providers are granted access to the registry for the purposes described in § 39-4515.
- **Updates:** The registrant or appointed authorized agents are responsible for updating new information to the online registry system.
- **Costs:** There is no fee for filing documents with the registry.
- **Additional Notes:** Neither the secretary of state nor the state of Idaho shall be subject to civil liability for any claims or demands arising out of the administration or operation of the health care directive registry.


## Louisiana

- 
- **Administrator:** The Secretary of State
  - **Website:** <http://www.sos.la.gov/OurOffice/EndOfLifeRegistries/Pages/default.aspx>
  - **Legislation:** La. Rev. Stat. Ann. 40:1151.2, enacted 1991
  - **Eligible Documents:** Living Will declarations
  - **How to File:** Must send a written living will declaration by mail to the Louisiana Secretary of State. The Secretary of State's office accepts the original, a multiple original, or a certified copy of the declaration, either from the declaring person or his/her authorized attorney.
  - **Access:** Registrant receives a laminated wallet ID card and an engraved "DNR" bracelet to indicate the living will is on file. Copies of declarations are also provided when requested by any attending physician or health care facility.
  - **Updates:** Registrants or authorized appointees are responsible for any updates to the living will document.
  - **Costs:** The filing fee for registrants is \$20. Filing a notice of revocation of a declaration is \$5 and a certified copy of a living will declaration is \$10.


The Secretary designates authorized access the registrants, registrant's designees, and representatives of the health care facility in which the registrant is receiving care.

- **Updates:** The registrant must notify the electronic advance directive service if there has been an amendment or revocation of the advance directive.
- **Costs:** There is no current filing fee.
- **Additional Notes:** The Maryland Advance Directive Registry was repealed. The Department of Health and Mental Hygiene and Maryland Health Care Commission established the Advance Directive Program to replace the registry and refers readers to sign-up using MyDirectives.com

## Michigan

- 
- **Administrator:** The Department of Community Health
  - **Website:** <https://www.mipeaceofmind.org/Default.aspx>
  - **Legislation:** Mich. Comp. Laws Ann. 400.105d(1)(g), enacted 2014.
  - **Eligible Documents:** Registrants can file a health care advance directive in the form of a durable power of attorney for health care or an advance directive for mental health care.
  - **How to File:** Those who wish to register can create an online account and submit their advance directives to Peace of Mind Registry. The Peace of Mind Registry is a free and voluntary statewide registry. This registry will maintain a copy of your advance directive and allows healthcare providers to access it if needed. Once registrants have successfully created an account they receive individual usernames and passwords to access their account for changes. Registrants can also mail their advance directives to Gift of Life Michigan. After successful registration log-in materials will be sent to the registrants.
  - **Access:** Registrants receive, in the mail, a wallet sized card including an ID number and password to access their online registry account.

## Maryland

- 
- **Administrator:** Department of Health and Mental Hygiene, Maryland Health Care Commission
  - **Website:** <http://mhcc.maryland.gov/consumerinfo/longtermcare/AdvanceDirectiveInformation.aspx>
  - **Legislation:** 2016 Maryland Laws Ch. 510 (H.B. 1385), enacted May 10, 2016
  - **Eligible Documents:** Registrant may file health care advances directives such as a living will and durable power of attorney.
  - **How to File:** May register online with the electronic advance directive service recognized by the Maryland Health Care Commission.
  - **Access:** The registry will be an online database that can be accessed 24/7 by the registrant.

- **Updates:** Registrants are responsible for updating or changing their advance directive. Advance directives can be replaced with a new directive, at no cost to those who are registered.
- **Costs:** The registry is free for Michigan residents.
- **Additional Notes:** “Peace of Mind Registry” is developed and maintained through donations by Michigan’s Gift of Life Foundation.

## Montana

- **Administrator:** Office of the Attorney General
- **Website:** <https://dojmt.gov/consumer/end-of-life-registry/>
- **Legislation:** Mont. Code. Ann. 50-9-501, enacted 2005.
- **Eligible Documents:** Registrants can file health care advance directives such as living wills and health care medical powers of attorney.
- **How to File:** Must file advance directive to the registry by mail. Registrants cannot file or change their registered advance directives online. Montana requires a completed advance directive to be mailed along with an End-of-Life Consumer Registration Agreement. The Consumer Registration form allows residents to specify the advance directive’s level of privacy.
- **Access:** The registry is designed to be accessible by entering a name and access code on the website maintained by the attorney general or by use of a confidential password for attending physicians, nurses and department staff. There are two privacy options; the first is the standard option which allows access to the advance directive by the person who filed the directive, registered health care providers and anyone with the registrants SSN, birth date or mother’s maiden name and access code. The higher privacy option allows access only by the person who filed the directive, registered health care providers and anyone with the access code.
- **Updates:** Those who wish to change their advance directive will mail the Office of Consumer Protection the new advance

directive and a Montana End-of-Life Consumer Registration Agreement indicating a wish to revise the current advance directive.

- **Costs:** There is no cost for the Montana registry.
- **Additional Notes:** The attorney general may accept gifts, grants, donations, bequests, and other types of voluntary contributions to help support, maintain, and promote the registry and revocation of the advance directive is free of charge.

## Nevada

- **Administrator:** The Secretary of State
- **Website:** <http://www.nvsos.gov/index.aspx?page=217>
- **Legislation:** Nev. Rev. Stat. Ann. 449.920, enacted 2007
- **Eligible Documents:** Any Nevada resident may file an advance directive in the form of a declaration governing the withholding or withdrawal of life-sustaining treatment, durable power of attorney for health care decisions, and DNR orders.
- **How to File:** A person who wishes to register an advance directive must submit through mail or facsimile to the lockbox of the Secretary of State a signed Registration Agreement along with a copy of the advance directive.
- **Access:** Once the registrants advance directive has been registered, a wallet sized registration card will be given containing information for accessing the documents. N.V. Rev. Stat. 629.031 address organizations such as health care providers who are authorized to access an individual’s lockbox which include any hospital, doctor, skilled nursing facility, nursing facility, home health care agency/provider, ambulatory surgery facility, hospice, or any authorized employee, contractor, agent, or any other person believed charged with giving effect to a registrant’s advance directive or assisting in same.
- **Updates:** If the registrant wishes to make any changes to the advance directive, they should notify the lockbox by filling out an Authorization to Change form and provide the

lockbox with a copy of the new or changed documents.

- **Costs:** There is no cost for storing an electronic advance directive in the Nevada registry.

### North Carolina

- **Administrator:** The Secretary of State
- **Website:** <https://www.sosnc.gov/ahcdr/Message.aspx>
- **Legislation:** N.C. Gen. Stat. Ann. § 130A-465, enacted 2002.
- **Eligible Documents:** Any North Carolina resident may file an advance directive in the Secretary of State's registry. Documents for registration include an Advance Instruction for Mental Health Treatment, Advance Directive for Natural Death, Healthcare Power of Attorney, Declaration of an Anatomical Gift, and a registration form. Remove forms are also included for the withdrawal of directive information from the online database.
- **How to File:** To file an advance directive in North Carolina, resident must print a registration sheet and fill in the required information along with one cover sheet for each directive to be filed and mail to the attention of Advance Health Care Directive Registry.
- **Access:** Registrants who have successfully registered will receive a registry card that contains a file number and password to access the documents on-line. North Carolina registrants may make copies of the card and information in case another person needs to access their advance directive.
- **Updates:** Changes to the advance directive are the responsibility of the registrants and those authorized to access the registry. There is no fee for revocation or amendment to the registry.
- **Costs:** The fee for filing an advance directive with the Secretary of State is \$10.

### Oklahoma

- **Administrator:** State Department of Health
- **Website:** <https://www.ok.gov/health/Organization/Procurement/>

### Procurement - 2016 RFP Advanced Directive Registry.html

- **Legislation:** 63 Okla. Stat. Ann. § 3102.1, enacted 2009, revised 2015.
- **Eligible Documents:** Oklahoma residents can register health care advance directives such as health care durable power of attorney, living wills and anatomical gifts.
- **How to File:** The form must be signed by the declarant and two witnesses to be successfully submitted for the registry. Guidelines on the filing procedure will be given when the registry is contracted.
- **Access:** The registry will be a secure online database that can be accessed by the registrant, the agents named in the advance directive, any person related to the registrant within the fourth degree of consanguinity or affinity, and a health care provider providing care to the registrant.
- **Updates:** The registrant is responsible for making any changes or updates to the advance directive. Revocation of the advance directive may be executed in whole or in part at any time.
- **Costs:** There is no current filing fee for registering an advance directive.

### Vermont

- **Administrator:** The Department of Health
- **Website:** <http://www.healthvermont.gov/vadr/>
- **Legislation:** 18 Vt. Stat. Ann. § 9719, enacted 2005, revised 2011. Vt. Admin. Code 12-5-15:8
- **Eligible Documents:** Vermont residents can file advance directives with the Vermont Department of Health. Documents for the registry include health care durable power of attorney forms and living wills.
- **How to File:** Mail a copy of the completed advance directive form along with the registration agreement which gives the Department of Health permission to send a copy of the advance directive and emergency contact information to those authorized to access them.

- **Access:** After Vermont residents have registered their advance directives they will receive a confirmation letter, registration ID number, and instructions for accessing the registry to view and make changes, if necessary.
- **Updates:** Registrants are contacted annually for information verification or updates pertaining to their advance directives with the U.S. Living Wills Registry. Each registrant is responsible for changes and updates to their advance directives. To change the advance directive the registrant should notify the registry in writing and mail or fax a newly executed form along with an Authorization to Change form.
- **Costs:** Registration is free for Vermont residents.
- **Additional Notes:** Vermont's Department of Health contracts with U.S. Living Wills Registry in Westfield, NJ, to provide the online registry system for residents. Each year the Vermont Advance Directive Registry will contact the registrant to confirm the information.

## Virginia

- **Administrator:** Department of Health, Connect Virginia Exchange
- **Legislation:** Va. Code Ann. § 54.1-2994, enacted 2008.
- **Website:** <http://www.vdh.virginia.gov/Administration/AHCDR/index.htm>
- **Eligible Documents:** Documents for submission to the registry include living wills, anatomical gifts and health care powers of attorneys and must be notarized.
- **How to File:** Registration is done online through the Connect Virginia website. Completion of all required fields, acceptance of the terms and conditions, and the upload of documents satisfy the registry requirements.
- **Access:** Registrants have access to their registries along with anyone given the account information on the wallet ID card. Health care providers who are giving care to the registrant have access to the registry information as well.

- **Updates:** Registrants are responsible for the changes, updates or revocation that occurring on the database.
- **Costs:** Registration for filing an advance directive is free.

## Washington



- **Administrator:** U.S. Living Wills Registry
- **Legislation:** Wash. Rev. Code Ann. § 70.122.130, enacted 2006
- **Website:** <http://www.uslivingwillregistry.com/>
- **Eligible Documents:** Residents may submit health care advance directives in the form of health care durable powers of attorney, POLST and psychiatric advance directives along with a health care directive form.
- **How to File:** Once a registrant has completed the advance directive forms they can access the on-line store to purchase registration.
- **Access:** Registrants will receive notifications by mail with labels to attach to their drivers license and insurance card to indicate registration with the U.S. Living Wills Registry. The registrant and health care providers (hospitals, doctors, skilled nursing facilities, nursing facilities, home health agencies, providers or home health care, ambulatory surgery centers, and hospices) will have access to the on-line registry with confidentiality maintained at all times.
- **Updates:** Registrants are contacted annually for information verification or updates pertaining to their advance directives with the U.S. Living Wills Registry.
- **Costs:** There is no filing fee for registration.

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*Preston Holmes is a rising third-year law student at the Pennsylvania State University, Dickinson School of Law in University Park, PA, and was a 2016 summer intern at the ABA Commission on Law and Aging. Prior to attending law school, Mr. Holmes was an undergraduate at Auburn University, where he graduated with a B.S. in Economics. ■*

*ABA Senior Lawyers Division's  
2016 John H. Pickering  
Award of Achievement*

## Edward D. Spurgeon: Key Innovator in Law and Aging

*Edward D. "Ned" Spurgeon is the recipient of this year's American Bar Association Senior Lawyers Division's John H. Pickering Achievement Award, which honors the life and accomplishments of John H. Pickering, an outstanding lawyer who was involved in various pro bono activities and law-related societal issues affecting older people. Ned Spurgeon's unparalleled efforts in addressing the law-related needs of older persons crossed numerous domains: legal education, scholarly research, the delivery of legal services, innovative programming, and policy development.*

Spurgeon's remarkable contributions, foresight and dedication to elder rights has greatly impacted the field by increasing its visibility and vitality. Initiatives spearheaded by Spurgeon forged a momentous and continuing path of justice for older persons, especially those in poverty.

As a practitioner, academic leader, advocate, and visionary in law, particularly in the field of aging, Spurgeon epitomizes the highest ideals of the John H. Pickering award. He has demonstrated throughout his career outstanding legal ability, compiled a distinguished record of dedicated service to the profession and the community at large, and made significant contributions to the furtherance of access to justice.

As President of the Albert and Elaine Borchard Foundation, Spurgeon founded The Borchard Foundation Center on Law and Aging in 1998 and serves as its Co-Director. The Center is the only law-



Left to right: Charlie Sabatino (Commission on Law and Aging Director), Hon. Patricia Banks (Commission on Law and Aging Chair), Edward Spurgeon (Award recipient), Hon. Louraine C. Arkfeld (Senior Lawyer Division Chair).

related foundation whose central mission is to help improve the quality of life for older persons through education, research and service – especially for those who are impoverished or otherwise isolated by lack of education, language, culture, disability, or other barriers.

Spurgeon practiced law for 15 years, including 12 years as an associate and partner with Paul, Hastings, Janofsky and Walker, before beginning his career in legal education. He earned his undergraduate degree in English from Princeton University, his law degree from Stanford University Law School, and a Master of Laws degree from New York University Law School.

Currently, Spurgeon serves on the Board of Directors and is past president of Justice in Aging (formerly the National Senior Citizens Law Center). Beginning in 1991, he also forged a lasting relationship with the American Bar Association Commission on Law and Aging, serving as active member, special advisor, and collaborator on many initiatives. Spurgeon was co-founder of the Utah Legal Services Senior Lawyer Volunteer Project, and is also a member of the American Bar Foundation (Utah Chapter).

Since 1980, Spurgeon has been a legal educator, with faculty and administrative appointments as Professor of Law at the University of Utah College of Law and the University of Georgia School of Law; and as visiting Professor of Law at New York University, Stanford University, and Pacific McGeorge School of Law, where he was the first holder of the Gordon



D. Schaber Chair in Health Law and Policy. He also served as Dean of the law schools at University of Utah and the University of Georgia. His teaching and writing have focused on law, public policy and aging; taxation of gifts, estates and trusts; and estate planning. His recent scholarship includes *Federal Taxation of Trusts, Grantors and Beneficiaries* (with Prof. John Peschel, 3d ed., 1997; supplements 1998-2010), as well as selected law and aging articles.

### **Advancing the Law and Aging Field**

His level of dedication has far exceeded the ordinary and customary role of individuals in similar positions. He exhibited a remarkable penchant for attracting talented, committed young lawyers to the law and aging field; he has gone the extra mile to guarantee sustainability by nurturing and cultivating these lawyers' interest and growth.

Under Spurgeon's leadership the Borchard Foundation Center on Law and Aging created a Fellowship Program for recent law school graduates interested in or pursuing an academic and/or professional career in law and aging. The program provides the opportunity to pursue research and professional experiences for one year. The Fellowship Program, the only such program dedicated to supporting new lawyers pursuing careers in elder law, has funded some 30 fellows to work in across the country since 1999. Fellows have helped forge new and ongoing programs to assist seniors with a range of legal problems including access to Medicare, Medicaid, and Supplemental Security Income, and other vital benefit programs. Many fellows continue to contribute to the field of law and aging today and represent the next generation of law and aging leaders.

The Center also has provided stipends to a substantial number of law student interns, many of whom served summer internships with programs such as the ABA Commission on Law and Aging, Justice in Aging, Utah Legal Services, and the University of Georgia School of Law. The internships directed career paths, leading them toward public service and in many instances toward various aspects of elder law.

Beyond these formal means of support for catalyzing the law and aging field, Spurgeon has served as a personal mentor to a number of young lawyers entering the field. He enables connections that open doors for new opportunities, provides ongoing guidance, and maintains an ongoing relationship that sparks excitement about key legal issues.

### **A Planter and a Visionary**

With respect to his support of access to justice for older persons, he has planted many seeds of justice. The continuous production and growth of these seeds are evidenced by his accomplishments. Seventeen years ago, Spurgeon recognized a need to pilot imaginative new approaches to legal resources for older people. In 1999, he proposed a *Partnerships in Law and Aging Program* to be jointly funded by the ABA Commission on Law and Aging and the Borchard Foundation Center on Law and Aging. For 11 years, the program awarded "mini-grants" designed to encourage new, collaborative, community-based projects to enhance the legal awareness of older persons and to improve their access to the legal system. Over this time period, nearly 100 mini-grants totaling \$730,000 were awarded to local non-profit law-related organizations to enhance the rights of older persons. The Partnerships Program was one of very few grant programs in this funding range specifically targeted to legal services for older persons. In some cases, the funding triggered ongoing efforts that benefit older people today.

### **Addressing Complex Legal Issues in Aging**

Spurgeon led the Borchard Foundation Center in providing annual academic research grants of up to \$20,000 to scholars in multiple disciplines. These grants were to further scholarship on new or improved public policies, laws and/or programs that will enhance the quality of life for older persons; each grant recipient must publish an article on their research in a top journal. Some 60 scholars in multiple disciplines have received grants since 2000.

Additionally, from the early 1990s to the present, Spurgeon has supported a collaborative symposium model of problem-solving calculated to address emerging policy and practice issues facing older persons. Under Spurgeon, the Borchard Center has co-funded and conducted several working symposia that produced major policy and practice recommendations, reflected in special issues of collaborating law schools' law reviews.

Each of these working consensus conferences brought together key leaders from around the country to make recommendations on complex legal issues; and resulted in policies used to impact law, policy, and practices affecting older persons on both a state and federal level. ■

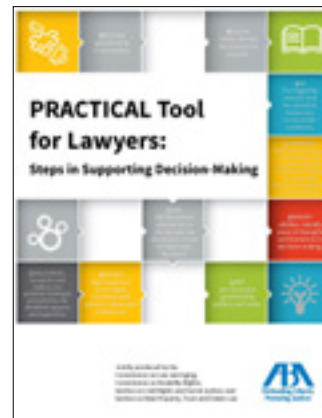
## Free Archived CLE Webinar Now Available

### Finding Options Less Restrictive Than Guardianship: A New Tool for Lawyers

A free webinar held June 28 featured the ABA's PRACTICAL Tool; an archived version of the webinar is now available online. This webinar presented the new PRACTICAL tool to help lawyers identify and consider decision-making options for persons with disabilities that are less restrictive than guardianship, as required by most state statutes.

The speakers summarized each of tool's nine steps, and gave examples of their use in practice. They also described how the tool can blend in with the case interview process and assist in case analysis, and how it can help lawyers in a variety of roles.

Visit <http://ambar.org/practicaltool> to learn more. ■



### Understanding the Four C's of Elder Law Ethics

This consumer-friendly brochure explains the "Four C's" of elder law ethics—client identification, conflicts of interest, confidentiality, and competency. It helps family members understand the relationship between a lawyer and an older client.

- [Free PDF download](#)
- [Purchase hard copies](#)

To learn more, use the links above or visit the Commission's website at [http://www.americanbar.org/groups/law\\_aging/publications/ethics\\_pubs.html](http://www.americanbar.org/groups/law_aging/publications/ethics_pubs.html). ■

- The Washington Post blog post from columnist Michelle Singletary "**How to help when it's not your money**" (<http://wapo.st/2c0eUCM>) notes that a series of guides authored by the ABA Commission on Law and Aging and published by the Consumer Financial Protection Bureau (CFPB) have been selected for her Color of Money Book Group in September. Singletary, along with Naomi Karp, a senior policy analyst in the CFPB Office of Older Americans, hosted an online discussion about money matters and the Guides at on Sept. 1 at <https://live.washingtonpost.com/color-of-money-live-20160901.html>. (And, the total distribution of the guides—national and state, hard copy and downloads—to date is almost one million! Learn more and download or request your own copies at: <http://bit.ly/2byJ128>.)
- Read the "**What is a Guardian Supposed to Do, Anyway?**" **blog post** from our Assistant Director Erica Wood on the National Center on Elder Abuse's blog at <http://bit.ly/2aBFkZw>.
- Our new chart provides an overview of **health care decisions statutes state-by-state** for 2015-2016: <http://ambar.org/healthdecisions>.
- Our new chart lists **professionals named to conduct capacity assessments for adult guardianship** (state-by-state with citations) at: <http://ambar.org/guardianship>.
- Did you miss the mid-August **#NCEAnow Twitter chat on guardianship** with our Assistant Director Erica Wood? Check out the highlights on this Storify page: <http://bit.ly/2c219W8>. ■



## CFPB and Meals on Wheels Partner to Offer Elder Fraud Avoidance Placemats

The Consumer Financial Protection Bureau (CFPB) launched a campaign in May to celebrate Older Americans Month and help prevent elder fraud and exploitation. They created a placemat with simple tips for avoiding common predatory consumer scams. Now, the placemat is available in Spanish. And, Meals on Wheels America is helping to distribute these consumer protection placemats on meal trays nationwide.

Those who are interested in distributing placemats to a senior center, meal program, or to loved ones, visit the CFPB's free publications website to place your order. (Under the "Special Populations" section). You can read more about this effort on the CFPB blog: <http://bit.ly/2begJd4>. ■



## Nationwide Victim-Service Data-Collection Efforts Underway

The National Census of Victim Service Providers (NCVSP) and the National Survey of Victim Service Providers (NSVSP) are nationwide data collection efforts designed by and to be implemented by the U.S. Bureau of Justice Statistics (BJS), in collaboration with the U.S. Office for Victims of Crime (OVC). BJS is supported by a technical team led by the RAND Corporation, NORC at the University of Chicago, and the National Center for Victims of Crime (NCVC).

The ABA Commission on Law and Aging's Senior Attorney Lori Stiegel is an original member of the Project Input Committee for the NSVSP.

The NCVSP and the NSVSP will be conducted in two phases. The NCVSP is the first phase. It is a short census of all victim service providers on the lengthy roster the project team has assembled (approximately 31,000 providers). The goal of this census is to get a clearer picture of the field of victim services. While there are many directories in place, and many lists of organizations serving specific types of victims, they are not all inclusive and many are not routinely updated. This short census will provide a clearer picture of victim service providers in the sample, including where they are based (free-standing, part of a nonprofit, part of a criminal justice agency) and what type(s) of crime victims they are serving.

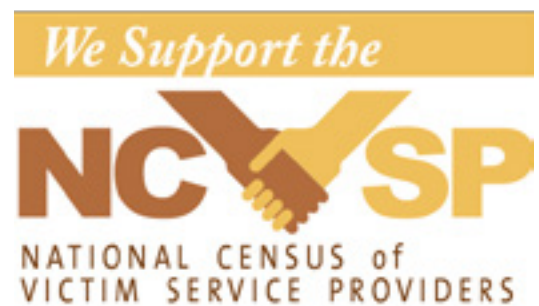
Using information from the census, BJS will then conduct the NSVSP, a longer survey that will reach a representative number of victim service providers.

This longer survey will reveal more about the victims who are receiving services, the types of services they are receiving, the staffing of victim service programs, the types of funding that support these programs, technological capabilities, and range of other information.

By gathering empirical evidence about the work of victim service providers and the extent of unmet need, the NCVSP and NSVSP will allow for justification of current federal funding in a tight budget climate, assessing where limited resources are best served, and demonstrating the need for increased funding.

### Current Status of the Survey

The technical team has completed pilot testing of the census instrument. It is anticipated that the full Census of Victim Service Providers will begin in the summer of 2016. Visit <http://www.rand.org/jie/justice-policy/projects/nsvsp.html> to learn more. ■



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#### Panel Highlights:

- Understanding Transitions from the Health Insurance Marketplace to Medicare
- Justice for All: Legal and Policy Updates for Diverse Elders
- Medicaid Fair Hearing Appeals, Judicial Review and Advocacy Options
- The ABCs of Medicare Parts A, B, C . . . and D (one of three basics programs)
- Supported Decision Making for Persons with Changes in Memory and Cognition
- Knowing the Right Questions to Ask is Half the Ethics Answer (one of three ethics programs)
- Recent Developments in Understanding and Combating Senior Financial Exploitation
- Information Please! Coordinating Meaningful Federal and Statewide Legal Services Reporting
- Plugging Holes in Medicaid Home and Community-Based Services ■

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