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The Role of the Attorney in Geriatric Care

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Without question our elderly population continues to grow at record pace. In Allegheny County alone, at least 17% of the total population of 1.3 million people are aged beyond 65 years, according to the national census report. Compare that to well-known retirement destination Dade County, Florida where only 13% of the population of 1.9 million are age 65 years or older.

The complexities of growing old from tax laws to insurance and geriatric care options, are expanding at a similar rate. Is it any wonder, for instance, that the National Academy of Elder Law Attorneys (NAELA), a 3,000-member non-profit association that assists attorneys and other professionals who work with the elderly, now recognizes a sizeable 21 areas of "elder law"--not the least of which includes traditional estate planning, probate, disability, Medicare and Medicaid issues?

The combination of a rapidly expanding elderly population and the growing complexities of elder law have made one thing all too clear to me: The role of elder law and planning attorneys has become critical to the overall arena of geriatric care.

Indeed, geriatric care managers today are finding themselves consulting more and more with elder law attorneys, sharing a growing cooperative role in tending to the needs of both the elderly and the families caring for them. In fact, the trend toward close cooperation has become so prevalent that NAELA recently held its 1996 annual conference in conjunction with the National Association of Professional Care Managers, a 10-year old national organization with about 1,000 members.

Geriatric care managers are licensed professionals, typically with advanced degrees in social work or nursing, who serve as surrogate caregivers to the elderly. They take care of everything from simple daily chores for the elderly to hiring medical and legal help, and finding--and negotiating for--assisted living or nursing home care.

The Importance of Working with Other Advisors

The combined experience of professional care managers and attorneys is often necessary to deal with complex issues such as capacity, elder abuse, crisis management, long-term

care and Medicaid planning, estate planning and family conflict. This cooperative effort also may translate into new business opportunities for the attorneys. Individuals want to be confident that their trusted advisers are able to creatively meet their changing needs. Others in the community will observe the special concern attorneys demonstrate toward their clients, and will be more likely to refer business their way.

Working with the elderly and their families will always remain an emotional, sometimes heated situation as families face debilitating diseases, disabilities, mental competency issues, powers of attorney, estate planning and other challenges. Today's elder law and estate planning attorneys, thanks in part to the growing role of the geriatric care manager, will find themselves right in the middle of the situation. Here is what to expect:

Before attorneys begin to work with other advisers in geriatric care management, they need to understand that they more than likely will be working as part of a team. This team relationship requires compatibility of philosophy, which should begin with the agreement that, whatever they do, the client's needs must be placed ahead of anything else. It also requires mutual respect.

Clearly, the attorney and geriatric care manager should do everything in their power to avoid adversarial roles that put them in competition with one another. Such competition will serve only to undermine the confidence of their client and the client's family in what they are doing to help them. All-around trust is of the utmost importance, between the attorney and elderly client, between the attorney and the client's family, and between the attorney and the geriatric care professional. Elder law attorneys and geriatric care managers who work well together generally have enhanced success in having the client actually follow through on recommended care and legal actions.

Typically, when geriatric care managers look for a qualified elder law attorney for their clients, they look for those who are members of NAELA and who have basic knowledge of all 21 identified areas of practice as well as an in-depth knowledge of four to six of these areas. Attorneys who practice elder law full-time also are preferred mainly because full-time practitioners tend to stay more current about regulatory changes that affect elder law.

Keep in mind that geriatric care managers often are asked to recommend an attorney. Because the client's best interests are at stake, they must be confident that the attorney is knowledgeable and will make sound recommendations. Geriatric care managers know they can face liability actions in recommending an attorney who doesn't perform as required.

The Competency Evaluation

Once brought into geriatric cases, elder law attorneys will find themselves active in any number of situations. But perhaps the most difficult and emotionally charged issue is when a client reaches a point when his or her competency begins to diminish. Since the determination of competency is a legal issue, attorneys are the ones who must decide whether the client is able to make his or her own decisions, or at least which decisions he or she is capable of making.

Therefore, elder law attorneys must not only become intimately involved with the client's financial affairs, but also with the client's health and other personal affairs. That is where the geriatric care manager comes into the picture.

Attorneys benefit from working closely with the geriatric care manager—who usually spends considerable time helping the client and is aware of his or her physical or functional capacity—to complete a full, qualified evaluation of competence that is unbiased and which takes into consideration the client and family.

Geriatric care managers are in an excellent position to keep attorneys apprised of such factors as medical condition, functional abilities, psychological condition, environment and the demands made on that client by that particular environment.

Consider the following questions: Can attorneys, with the help from geriatric care managers, easily identify the condition or disorder that is interfering with a client's ability to make or communicate decisions? Does the client struggle to perform particular functions of daily living? Is the personal able to make rational judgments concerning his or her finances? Does the client face abuse from financial advisers or non-professionals who are providing care because of diminished functional capacity?

However, attorneys should not assume a lack of competence simply because the client disagrees with them or makes mistakes in making a decision. The question is whether the client is capable of even evaluating reasonable alternatives and the consequences of the ultimate decisions.

In addition, both attorneys and geriatric care managers must handle any perceived financial abuse by family members or others working with the client, but be aware that adult protective services are reluctant to intervene, particularly when the client is found to be competent. Attorneys can get involved, however, if geriatric care managers are able to convince the client to seek legal advice.

Just as importantly, attorneys look to geriatric care managers to help them determine who should be appointed the power of attorney. Attorneys should take advantage of the fact that care managers, in working daily with clients and their families, can gain an understanding of which family members truly would look out for the clients' interests and not take advantage of their diminished competence. Attorneys need that kind of insight to make the best possible decision on behalf of clients. Still, it is the attorney's ultimate responsibility to appoint the most appropriate "attorney-in-fact."

Occasionally, in dealing with the delicate matter of competency, elder law attorneys will face battling family members, who dispute the attorneys' decisions. Attorneys who work with geriatric care managers typically can expect the managers to serve as expert witnesses and testify on a client's behalf concerning any competency determination and back up the attorneys' final decisions.

Estate Planning Considerations

In most cases, elder law attorneys are the ones who address any estate planning issues. However, since estate planning more often must take into consideration critical elements such as whether the client ultimately will require long-term care and medical attention, attorneys benefit from working closely with geriatric care managers and the clients'

families. Together they can anticipate the amount of care required and thus, make sure such care can be financed adequately.

If such care isn't affordable, they will have to explore Medicaid's long-term care program, which can be extraordinarily complicated. Medicaid is the only alternative available for many people who require nursing home or other long-term assisted care. But it requires a major reduction in assets. The elder law attorneys (those with Medicaid expertise), with help from geriatric care managers, should consider such Medicaid-funded care requirements early in the planning process. The earlier they initiate the process, the more advantageous the results can be for their clients and families.

Attorneys also can expect to look to geriatric care managers for their knowledge of available community resources—and their ability to efficiently corral those resources on behalf of the client—when making any estate planning decisions. This includes knowledge of available services and their costs, as well as the ability to negotiate with those resources to get the most cost-effective, yet high-standard services for the client.

Whatever the case, elder law attorneys should find some ever-more-interesting opportunities in the area of elder law as long as they are prepared to handle the growing number of special practices—and work with other professional advisers. In the end, those cooperative efforts will have the most profound effect on the most important people in the entire process: the elderly clients themselves.



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