

## Spring 2011

In this issue: Client Comments, Powers of Attorney and Guardianship, Online Education Opportunities

### What our Clients are Saying

We've had a great response to our **2011 Client Satisfaction Survey**.

Here are some of the comments we've received...

*I found Accountable Aging Care Management to be a wonderful worry-free solution to managing the care of a loved one.*

June S.

*After six years of caring for Mom, new issues continue to come up, and there is always more to learn. Our care manager is intelligent, educated, objective, and efficient. In my absence, I would trust her with very important decisions. It's like having a sister for back-up who actually pays attention and is ready to step in and help at any time. It is reassuring to know I can turn to her with any question, and she can provide answers and recommend resources.*

Cathy H.

*Helping us find a quality nursing home with caring staff was immeasurable. This wasn't the newest home, but the staff is stable, knows the residents, and surprisingly, greets us by name when we visit.*

Larry R.

*Your services have provided a tremendous peace of mind for our entire family to include all my siblings and my mother and father especially. The person that we work with knows just what pitfalls to look out for and provides that extra touch to ensure that Mom & Dad are treated like individuals who matter.*

Sara Y.

**More comments are available online on "The Company" page of our website.**

### Who will speak for you, when you can't?



When we are young, and in good health, most of us don't like to think about a future in which we are neither. Sure, we know we ought to prepare for the future—such as preparing a will if we care what happens to our money and our "stuff" when we're gone. We might even think about telling someone what we want on our tombstone or where to spread our ashes. If we have concerns about what happens when we're no longer living, it's obvious we have to make those wishes known while we live.

Unfortunately, many of us overlook what is, perhaps, even more important than expressing post-life wishes: planning for potential incapacity. When a crisis occurs, and we are not able to make decisions (legal or otherwise) or to convey our desires, do we have someone in place who can legally serve on our behalf, and with our best interests in mind?

Designating a "power of attorney" is essential, if a person wants a choice in who will act on their behalf, if the need arises. If a power of attorney has not been named, establishing a "guardianship" may be required, and this is often a less desirable and more difficult process.

In this issue, we will examine both durable power of attorney and elder guardianship. We have included two articles on the topics; the first is an excerpt from the Elder Law Answers website ([www.elderlawanswers.com](http://www.elderlawanswers.com)), and the second is from two experts in dementia and guardianship education.

As care managers, we are often called in crisis situations where there has been poor or no planning in this particular area. We hope this information will better help you, your family, or your clients to plan well for a potential incapacity. And as always, we invite you to contact us with further questions. As a multi-disciplinary team, Accountable Aging Care Management can draw on a broad range of expertise to serve families facing tough eldercare issues.

## Page 2 – Powers of Attorney

Designating a power of attorney well ahead of a crisis situation offers a person the most options. The following excerpts (emphasis added) are from the Estate Planning section of "Elder Law Answers" ([www.elderlawanswers.com](http://www.elderlawanswers.com)). This website is also an excellent resource for information on other elder-law related concerns, including insurance, veteran's benefits, and retirement planning.

### Your Durable Power of Attorney

For most people, the durable power of attorney is the most important estate planning instrument available--even more useful than a will. *A power of attorney allows a person you appoint -- your "attorney-in-fact" -- to act in your place for financial purposes when and if you ever become incapacitated.*

In that case, the person you choose will be able to step in and take care of your financial affairs. *Without a durable power of attorney, no one can represent you unless a court appoints a conservator or guardian.* That court process takes time, costs money, and the judge may not choose the person you would prefer. In addition, under a guardianship or conservatorship, your representative may have to seek court permission to take planning steps that she could implement immediately under a simple durable power of attorney.

*A power of attorney may be limited or general.* A limited power of attorney may give someone the right to sign a deed to property on a day when you are out of town. Or it may allow someone to sign checks for you. A general power is comprehensive and gives your attorney-in-fact all the powers and rights that you have yourself.

*A power of attorney may also be either current or "springing."* Most powers of attorney take effect immediately upon their execution, even if the understanding is that they will not be used until and unless the grantor becomes incapacitated. However, the document can also be written so that it does not become effective until such incapacity occurs. In such cases, *it is very important that the standard for determining incapacity and triggering the power of attorney be clearly laid out in the document itself.*

**A note of caution:** Some attorneys have reported their clients experiencing increasing difficulty in getting banks or other financial institutions to recognize the authority of an agent under a durable power of attorney. A certain amount of caution on the part of financial institutions is understandable: When someone steps forward claiming to represent the account holder, the financial institution wants to verify that the attorney-in-fact indeed has the authority to act for the principal. Still, some institutions go overboard, for example requiring that the attorney-in-fact indemnify them against any loss. Many banks or other financial institutions have their own standard power of attorney forms. To avoid problems, you may want to execute such forms offered by the institutions with which you have accounts.

### Capacity Requirements

Proper execution of a legal instrument requires that the person signing have sufficient mental "capacity" to understand the implications of the document. While most people speak of legal "capacity" or "competence" as a rigid black line--either the person has it or doesn't--in fact it can be quite variable depending on the person's abilities and the function for which capacity is required.

One side of the capacity equation involves the client's abilities, which may change from day to day (or even during the day), depending on the course of the illness, fatigue and the effects of medication. On the other side, greater understanding is required for some legal activities than for others. For instance, the capacity required for entering into a contract is higher than that required to execute a will.

*While the standards may seem clear, applying them to particular clients may be difficult.* The fact that a client does not know the year or the name of the President may mean she does not have capacity to enter into a contract, but not necessarily that she can't execute a will or durable power of attorney. The determination mixes medical, psychological and legal judgments. It must be made by the attorney (or a judge, in the case of guardianship and conservatorship determinations) based on information gleaned by the attorney in interactions with the client, from other sources such as family members and social workers, and, if necessary, from medical personnel.

*Doctors and psychiatrists cannot themselves make a determination as to whether an individual has capacity to undertake a legal commitment. But they can provide a professional evaluation of the person that will help an attorney make this decision.*

Because you need a third party to assess capacity and because you need to be certain that the formal legal requirements are followed, it can be risky to prepare and execute legal documents on your own without representation by an attorney.

**“Do the planning sooner, rather than later,  
or end up paying more, rather than less.”**

- Carol Bertsch, elderlaw attorney (<http://www.assistingseniors.com/>)

At Accountable Aging Care Management, we believe designating a power of attorney is generally the more preferable option when planning for potential incapacity (which can be a short-term need in the case of temporary hospitalization, or long-term as is often the case with dementia). If a power of attorney has not been designated, or if the designee has become incapacitated or otherwise unavailable, a guardianship may need to be established.

We've invited specialists in dementia education and guardianship, Martha Leatherman and Katherine Goethe, of Dignity First in San Antonio to share their expertise in the following article.

### **Elder Guardianship**

**Martha E. Leatherman, M.D. & Katherine E. Goethe, Ph.D.**  
**Dignity First, Inc.**

It is no secret that the population of the United States (and indeed, the world) is aging. In 2006 there were 37.3 million persons 65 years or older in the United States and these numbers will keep increasing so that by 2030 that number is expected to almost double. With this rapid growth in a vulnerable population, physicians are often met with questions about competency. It is a complicated area of medical and legal convergence, often misunderstood by physicians. Knowledge is the key to helping a potentially vulnerable elder with questionable competence. Guardianship may be necessary for younger persons with disabilities, but this article will focus on elder guardianship.

#### **What is guardianship?**

Often an adult child who has power of attorney, or who simply cares for an elder thinks of himself as the “guardian,” however guardianship has a specific legal meaning. Whereas power of attorney is a self-initiated, private process in which one voluntarily confers decision-making authority to a designee, guardianship is an other-initiated, public process in which one’s decision-making authority is given against one’s will to a designee. Unlike power of attorney, a guardianship is very difficult to reverse and requires judicial involvement, and most states (including Texas) require a physician’s opinion before a guardianship is established.

Guardianship is not necessarily an “all or none” proposition. There may be permanent *versus* temporary and partial *versus* full guardianships. As participants in the process (including judges, physicians, advocates, guardians, and wards) have become more experienced, they have crafted innovative solutions to certain problems posed by guardianship. Because of the many ways of crafting guardianships, it is very important for physicians to carefully examine a proposed ward (person being considered for guardianship) so as to fully identify areas in which the person might be able to function independently. For example, an elder who may no longer be able to drive or manage his or her finances may still be able to live independently if assisted with transportation and banking.

#### **The Physician’s Role in the Guardianship Process**

Often, physicians are asked to provide an informal opinion as to the cognitive status of their own patients. Occasionally this request comes from a court or attorney, but usually, a family member asks for “just a letter” to “use to help Mom with her finances.” Unfortunately, such requests cause a conflict of interest for the physician which serves no one in the process. Physicians have a duty of confidentiality to patients, and releasing information to legal authorities breaches that confidentiality. In addition, patients so betrayed might never return to their physician for needed medical care--or in fact trust another physician. It is the best practice to have an independent physician evaluate a person being considered for guardianship. In this way no such conflict will interfere with the physician/patient relationship.

### What Is Important in the Medical Examination?

Unlike most medical examinations, the examination for guardianship is not designed so much to diagnose and **treat** as it is to diagnose and estimate **function**. For example, a diagnosis of dementia is not sufficient to justify a guardianship. The diagnosis has to link to the person's functional disabilities. So, does the dementia allow him or her to make decisions about residence, but not handle finances? An adequate medial opinion will answer multiple questions regarding functionality as related to a diagnosis. The court needs to know in what manner the diagnosis intersects with functioning.

After understanding the way the diagnosis informs functionality, the court must know prognosis, or expectation of improvement. For example, with functional incapacity arising from a diagnosis of depression or delirium, a guardianship would be necessary only until the proposed ward recovered from the incapacitating episode. On the other hand, dementia is most likely to be irreversible and progressive, so the court would need to have information that would help in crafting a guardianship to meet the needs of the proposed ward for the present and for the foreseeable future.

It is very important that the physician performing the examination have sufficient knowledge about psychiatric illnesses affecting elders--especially diseases such as dementia, depression, and delirium. Many forms of dementia cause significant impairment in independent functioning, but do not show the "classic" symptoms usually associated with dementia such as memory loss. Neuropsychological testing might be indicated in evaluating cognitive capacity, but is not always required. Again, it is important to choose a neuropsychologist with experience and expertise in cognition in the elderly.

### How Does One Seek Guardianship?

The best place to start is with an experienced elder attorney. There are many attorneys who specialize in guardianship, and the local bar association can be a good place to start looking for one.

### Glossary

<b>Guardianship</b>	a legal arrangement wherein one individual (the guardian) possesses the legal right and duty to care for another individual (the ward) and his or her property (2) --also termed "conservatorship" in some states
<b>Proposed Ward</b>	an individual who is the subject of a proposed guardianship (3) --also termed "respondent," "allegedly incapacitated person," and "proposed conservatee"
<b>Power of attorney</b>	a document giving someone authority to act on behalf of the grantor --also used to designate the holder of the document (i.e. the decision maker)
<b>Attorney ad litem</b>	attorney appointed by court to act on behalf of the proposed ward and to represent his interests
<b>Guardian ad litem</b>	person appointed by the court to act in the best interest of the the person with diminished capacity and give their opinions to the court as to whether a guardianship should be imposed
<b>Applicant</b>	a person requesting that a guardianship be imposed on another
<b>Limited guardianship</b>	something less than a full guardianship in which the removal of rights of a ward are tailored to his or her functional disabilities (3)
<b>Temporary guardianship</b>	time-limited guardianship

### REFERENCES

1. United States Department of Health and Human Services Administration on Aging. Aging Statistics. August 19, 2009. Available at: [http://www.aoa.gov/AoARoot/Aging\\_Statistics/index.aspx](http://www.aoa.gov/AoARoot/Aging_Statistics/index.aspx). Accessed October 8, 2009.
2. Associated Press (1987, September). Guardians of the elderly: An ailing system
3. Quinn MJ. Guardianships of adults: achieving justice, autonomy, and safety. New York: Springer Publishing Company Inc.; 2005.
4. Simon RI, Shuman DW. Clinical manual of psychiatry and law. Washington DC: American Psychiatric Publishing Inc.; 2007.

As the old NBC public safety announcements used to say, “The More You Know...”, the more you know. At Accountable Aging Care Management, we want to be your “go-to” resource for understanding and managing tough eldercare issues, but we are also strong advocates for excellent consumer education.

We’d like to recommend two courses that can be viewed anytime, free, online at [www.mmlearn.org](http://www.mmlearn.org):

***Who Will Decide When You Can’t: Advanced Directives***: Carol Bertsch, an elder law attorney, outlines what older adults—and all of us—need to do to see that our wishes are followed when we can’t make a decision about our medical care, finances and other issues.

***From My Position: Advance Care Planning from a Legal and Personal Perspective***: Judge Polly Jackson Spencer shares from her experience as a probate judge and as a legal guardian for a daughter with disabilities.

These courses, and more, are offered by **Morningside Ministries**, a trio of retirement communities in San Antonio. In addition to providing traditional residential services for seniors, Morningside Ministries offers a wealth of free **online educational courses** for care givers, healthcare providers and others. The mission of the Ministry is to provide online training and education that improves the quality of care received by older adults. Through the **mmlearn.org** website, Morningside Ministries provides extensive information and support services to health care professionals, personal caregivers, family members and pastoral care providers using distance learning technology.

A sample of the free courses for family caregivers include: *Families Coping with Dementia; Identify Theft, Protect Yourself; How to BE with someone who is dying*. For healthcare providers, there are online courses that qualify for CEUs, such as *Dehydration in Long-Term Care* and *The Nurse’s Role in Guiding the Interdisciplinary Team*.

Later this year, AACM will also be featured in an online video describing our services and how care management can help families. In the meantime, check out the wonderful resources at [www.mmlearn.org](http://www.mmlearn.org). And please pass these valuable videos on to family, friends and colleagues. No price can be placed on advance care planning and what it can mean to families—our families.



### Accountable Partners®

AACM regularly makes recommendations to clients for services they need such as facilities, home health care, and personal assistance services. If you are not in our Accountable

Aging Partners Program (it’s free), you may be missing out on valuable referrals. Please go to our website now and [fill out a survey](#). Having the most current information on your business helps us refer the right kind of clients to you. If you’d like to see what a sample Accountable Partners Report looks like, access a [Sample Profile](#).



**Because referrals are the lifeblood of our business, the best way you can thank us, as a satisfied client, is by referring a friend, neighbor or colleague to us! We appreciate all your referrals.**

## AACM says Farewell and Good Luck!

At the end of June, Accountable Aging will say farewell to Ruth Rivette, our favorite office manager and "Ruth-of-all-Trades." She'll be saying good-bye to sunny Texas and hello to mountainous Colorado.

Ruth was hired in November 2004 as our first regular employee and administrative staff. She skillfully handled all the behind-the-scenes needs of running a care management office, and eventually, became the coordinator of our Bill-Paying Service.

We will sorely miss Ruth, and we wish her the best of luck on her new adventures in Colorado. And since most of us here at the office like to vacation in Colorado, we're pretty sure we'll be seeing her again... And who knows, perhaps we'll just have to open an AACM branch in Denver?!



## AACM Co-Sponsors 2011 Team No Más



Accountable Aging was again a co-sponsor of **Team "No Más"** which is a group of friends that love to ride and want to make a difference for folks living with Multiple Sclerosis. The team goals are pretty simple: make a significant impact for people living with MS and have fun doing it.

**Mick Koffend** was one of the No Más team cyclists who participated in the 180 mile ride from Houston to Austin the weekend of April 17 & 18. Over \$35,500 was raised (their goal was \$30,000).

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Accountable Aging Care Management is an eldercare consulting and care management firm.

Accountable Aging is a single source for seniors and their families to attain knowledge, resources and on-going assistance with the challenges related to aging or caring for an elder loved one. We serve seniors in Austin, Dallas, San Antonio and the surrounding areas.

With this newsletter, our aim is to provide a trusted conduit for eldercare information and resources and to highlight the services we offer that meet the needs of senior adults and their families.

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