Virginia Guardianship Association

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A Message from the President

Fletcher Cooke

I am somewhat reluctant to report on bills before the General Assembly, because by the time this newsletter is distributed, the bills will have been altered, amended, deferred until next year, or died in one committee or another. Having said that, it may be helpful to let you good readers know what is being considered by the General Assembly regardless of the outcome, so I will briefly comment on three separate bills under consideration by the 2010 Virginia General Assembly.

- First, the Uniform Adult Guardianship and Protective Proceeding Jurisdiction Act (SB80) proposed to establish a mechanism for resolving multistate disputes regarding adult guardianships and conservatorships. This Act has been adopted in 12 states and the District of Columbia, but it has been carried over to the 2011 Virginia General Assembly in the Senate Courts of Justice Committee.
- After substantial revisions were made to Advance Medical Directives by the 2009 Virginia General Assembly, some additional revisions have been proposed in Senate Bill 275. One change authorizes a public guardian program in Virginia to admit an incapacitated person to a mental facility under certain circumstances, just as a private guardian was authorized to do in the revisions of 2009. The bill introduces the term ”capacity reviewer” as the person providing the second certification that a person is unable to make an informed medical decision, and this person can be a licensed physician, clinical psychologist, nurse practitioner or clinical nurse specialist who is qualified by training or experience to assess whether a person is capable of making an informed medical decision. Another proposed change would eliminate the requirement of certification by a capacity reviewer, a second physician, or a licensed clinical psychologist if the patient “. . . is unconscious or experiencing a profound impairment of consciousness due to trauma stroke, other acute psychological condition.” With respect to the hierarchy of those persons authorized to make medical decisions for a patient who has not executed an advance medical directive, and who has been certified as unable to make an informed medical decision, an additional and last category of persons authorized to make a medical

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Cathy Speaks . . .

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Recently, I was asked by one of the social workers that I consult for to do an assessment on a 92-year-old woman. I was specifically asked to assess her capacity to make major life decisions and decisions regarding money management. For background information I was told that she is "legally blind" and incontinent….and "not taking good care of herself". She has several co-morbidities for which she has been treated over the years including coronary artery disease, diabetes, and arthritis (the latter making ambulation difficult; she uses a wheelchair and a walker). She does have a primary care provider who she sees infrequently; he renews her prescription for insulin. She takes no other medications except for an occasional "Tylenol." She is somewhat estranged from her family except for a granddaughter, who she raised as a young child and teenager and has supported as an adult. As with all clients I was interested in her story.

When I arrived at her subsidized rental apartment I was pleasantly surprised; it was orderly, not overly clean and well kept but not bad either, for a woman who can no longer read and had difficulty seeing how many fingers I held in front of her. The client was in the kitchen preparing a peanut butter and jelly sandwich; it was evident she has done this many times before and the table, utensils and dishes were all readily accessible to this woman as she sat in her wheelchair. At one point during the interview and assessment, the client began to tell me about not leaving her apartment and wanting to go somewhere for the holidays and then, almost in the same breath, she told me that she didn't want to go anywhere. I asked her what this was all about . . . that on the one hand she says she wants to go somewhere because it is the holidays but yet she doesn't want to go anywhere. Her subdued response was "Well, I have a problem." I responded, "Tell me about that." With a little effort she told me about the incontinence that she had had for years (actually about 30 years, even before she stopped working as a domestic). This brief story aroused compassion in me because women in my age group (late-middle years) experience incontinence frequently; it is a topic of concern and there are challenges in managing it.

As she related some of the facts about her incontinence she also told me about a helping professional who had chastised at her for "smelling" and not keeping herself clean (she also had spilled some food down the front dress and didn't know it was there). That latter incident had happened recently and it was humiliating. During my visit, the client stated several times that she had come to the end of her life, and she hoped it would be over soon. She was very clear that she had lived long enough. Although she has always been self-sufficient, the advancing blindness coupled with the mobility problem made it very difficult for her to perform all of her activities of daily living, including toileting herself and changing her "Depends."

I know I was more sensitive to this client's incontinence problem because I had recently observed one of my colleagues struggle with temporary incontinence that resulted from a surgical procedure. Over a period of several weeks, my colleague had to get new undergarments and confront using incontinence pads. (Did you know that Poise pads come in five different absorbencies from pantiliner to "ultimate" pad?), going out in public, going to the office, the commute on the metro (she couldn't stand too long for fear of

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Cathy Speaks (continued)

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becoming wet through her clothes) and the frequency of toileting. In discussing this with my colleague, she related that the entire experience was very depressing, and she found herself staying at home whenever possible and avoiding exercise (she is an avid walker). The client that I was assessing had been doing some form of incontinence management for 30+ years and she was still managing although not as efficiently as she once did. And herein lies the message for this month's column. Very frequently there is a thin line between managing effectively and simply managing. As elders become frail, their management strategies will have to adapt to accommodate loss of physical and cognitive function. It is very easy for us to conclude during infrequent visits with frail elders that they are not coping any longer. We must look closer.

While the client in this story has used some questionable judgment in allowing her granddaughter to manage some aspects of her money (buying groceries, buying personal items and taking money for her own expenses with no accounting of how and why the money is spent), there remains a functional side to this 92-year-old woman that is very much intact. For example, while a helping professional may have been upset that the client urinated in a large kitchen garbage can, the location and the size of the can made it ideal for her to do just that. Her arthritis makes it difficult for her to get on and off the toilet; it is easier for her just to stand and straddle the trash can. She can also tell when she is centered over it because the height of it allows her to feel the edges of it on the insides of her thighs. The kitchen cabinet located right beside the trashcan is very stable and a good support for her to hold on to while she is standing. This is very good problem-solving on her part.

The spilled food on the client's clothes is really not a cause for alarm. It happens to all of us, and it does not signal that the client is not taking care of herself. Even with intact vision, at 92 years of age she might very well not see when she spilled some food on the front of her dress because it would no longer be in her visual field (a normal occurrence in aging is the loss of some peripheral vision in all quadrants). For this client, the situation is complicated by documented visual problems that have left her permanently disabled. It would be more to the point to ask what does she do when she finds out that she has soiled her clothes; at issue would be whether she constructively deals with the soiling or whether she just ignores it. In other words, does she problem solve how to take care of her basic needs?

As for the money management . . . she admitted that sometimes her granddaughter takes money. She knows she shouldn't allow her to do that but then, according to her thinking, maybe the granddaughter deserves it. After all, if the granddaughter doesn't purchase the groceries and personal items and do some light housekeeping, who will? And, there is the relationship to consider. The client knows that some aspect of her relationship with her granddaughter is based upon money and yet, it is the only significant relationship that she has. She also knows the aspects of her relationship with her granddaughter better than anyone else who comes in to assist her.

And so, I urge you to consider that although many frail elderly clients have experienced multiple physical and cognitive losses, they also have many strengths; it is our job to determine what these are and utilize them. We function in a fast-paced world that changes daily. The "norms" that we have in our mind for adequate, safe functioning are shaped and molded by this world in which we function. But for many of our clients, particularly the elderly ones, change was not as fast or as evident as it is today. As function declines, these clients become more restricted in the clothes they wear, the amount of living space they utilize, where they will travel to and who they talk to. When we talk to and assess them, we have to slow down and do our best to enter into the world in

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Message from the President (continued)

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decision for that patient has been proposed in this bill. This proposed new category of persons is "Any adult, except any director, employee, or agent of a health care provider currently involved in the care of the patient, who (i) has exhibited special care and concern for the patient and (ii) is familiar with the patient's religious beliefs and basic values and any preferences previously expressed by the patient regarding health care, to the extent that they are known." Whether a person meets these criteria is to be determined by a health care decision review committee in the facility if it exists or two physicians not involved in the care of the patient. This is significant in that it would establish a category of persons who are not related to the patient to make medical decisions for the patient. This bill has passed the Senate and has been referred to the House Committee on Health, Welfare, and Institutions.

- Finally, Bill HB719 seeks to establish in the *Virginia Code* the Uniform Power of Attorney Act (UPOAA) that was adopted by the National Conference of Commissioners on Uniform State Laws in 2006. This bill provides default rules that can be modified if the principal desires. For example, powers of attorney are presumed to be durable unless drafted to expire at a point in time or upon a certain event. Definitions of terms used in and relating to powers of attorney are set forth in the bill. Significantly, liability is established for refusal by a third party to accept a power of attorney under certain specified circumstances. Acts requiring a specific grant of authority are set forth in the bill as opposed to those acts authorized under a general grant of authority for real property and intangible personal property. The authority of an agent to deal with banking institutions, stocks, bonds, business operations, insurance, annuities, trusts, and estates are all addressed in the bill. This bill has passed the House and has been referred to the Committee for Courts of Justice, Civil subcommittee.

It would be remiss of me to close without thanking all those organizations and individuals who have contributed funds and services to the upcoming 2010 Joint Conference on Guardianship, Elder Rights and Disability Services on April 26 and 27 at the Sheraton Richmond West Hotel in Richmond. Many thanks to each of you. I look forward to seeing you in Richmond.

VGA Membership . . .

VGA Membership runs according to the calendar year, and it is time to renew your membership for 2010. There is a convenient place to renew on the conference registration form. As a member, you also save on your registration fee. There is also a separate membership form on the website if you prefer: www.VGAVirginia.org

Other Announcements of Interest . . .

Southern Gerontological Society 331st Annual Meeting
The Jefferson Hotel in Richmond, VA
April 7-10, 2010
www.southerngerontologicalsociety.org

16th Annual VCPEA Conference
Virginia Beach Resort and Conference Center
June 3-4, 2010
www.vcpea.org

VGA/VERC Conference Sponsors 2010 . . .

This program was made possible in part by Geriatric Training and Education (GTE) funds appropriated by the General Assembly of Virginia and administered by the Virginia Center on Aging at Virginia Commonwealth University. GTE funds will come to us on a one-time only basis based on a submitted RFP. We are very grateful for their receipt, and our program will be enhanced. However, all our conference sponsors and vendors are depended upon to support our efforts every year. The agencies and individuals below make our conference possible at the professional level with 19 choices for workshops as well as a keynote on a major issue and luncheon speakers and awards. We also sponsor a workshop for the Virginia Public Guardianship Program.

Thank you to our Sponsors and Vendors. Without you there would be no conference.

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Virginia Association for Home Care and Hospice
Virginia Chapter National Academy of Elder Law Attorneys
Virginia Coalition for the Prevention of Elder Abuse
Virginia Elder Rights Coalition
Virginia Network of Private Providers

Cathy Speaks (continued)

which they live. We must see it through their eyes. Certainly, if dementia has taken over and the client is in the moderate or late stages of dementia, reasoning will be impaired. However, many of our clients simply lead a restricted life to accommodate their frailty and their losses.

In closing, I am reminded of my dad; he was a simple, kind man who had great respect for the elders in the village I grew up in. His parents' generation walked everywhere or took the buckboard and the horse. So as cars came about (his first was a Model-T Ford), he would often stop and offer them a ride. As a young child, when I was with him in the car, he never passed an older person without stopping and asking them if they needed a ride. And he always made certain that they got back home (and inside the front door). He also made a point of talking to them and asked them how they were doing. Sometimes it would take extra time, and I was impatient because I wanted to get home to play. Dad would always say, "Someday girl, you'll be old too and someone will have to slow down for you." Dad knew most of the older people's stories, and he knew when they were sick because he listened. As a geriatric nurse practitioner, I cannot assess a person's problems and know their strengths (both of which are necessary to do effective case management and plan care) unless I slow down, listen and view the world through the client's eyes. Maybe the greatest gift we give to our clients is compassionate openness that allows us to see what is possible rather than the impossible.

The Importance of Person-Centered Practices For Guardians and Conservators . . .

Guest Article—This document was developed by a work group of the Community Integration team under the auspices of the Governor's Office of Community Integration in December of 2009.

Appointment of a Guardian (Guardianship) or Conservator (Conservatorship) is a serious matter because it removes individuals' rights to make their own decisions. Therefore, it should be considered only when no other alternatives to support decision-making are available. There are a number of alternatives to Guardianship and Conservatorship that help protect the rights of individuals to make their own decisions to the maximum extent possible. For information on these alternatives, please see http://www.vda.virginia.gov/altguardianship.asp.

What are Person-Centered Practices?

Person-Centered Practices involve both person-centered thinking and person-centered planning. The essence is captured in the words themselves, ***Person-Centered***. To be person-centered means treating individuals with dignity and respect; building on strengths gifts and talents; fostering community connections in which individuals can develop relationships; promising to listen and to act on what the individual communicates; taking time to know and understand individuals, their culture, ethnicity, belief system, and any other factors that make them unique. Person-centered thinking is rooted in a profound respect for individuals and their equality. Person-centered planning involves a process and approach for determining, planning for, and working toward the preferred future of an individual with a disability.

Guardians and other substitute decision-makers play a critical role in the lives of those for whom they are entrusted to make life decisions in whole or in part. To effectively fulfill this important responsibility, all substitute decision-makers should have exposure to and engage in person-centered thinking and practices.

What is a Guardian?

A Guardian is a person appointed by a Circuit Court to protect an individual who has been declared to be *incapacitated*. Usually, Guardians will make personal and health care decisions. They may also be responsible for other matters, such as where an individual lives or the activities in which he or she engages. Circuit Courts can limit the types of decisions a Guardian is allowed to make if the individual is able to make some decisions on his or her own or care for some of his or her own needs. This is called ***Limited Guardianship***. Under a limited guardianship an individual can maintain his or her civil rights, such as the right to vote. Under a full guardianship, the individual is no longer permitted to vote, drive a motor vehicle, or carry a firearm unless specifically authorized by the Circuit Court and included in the court order. Protection of an individual's civil rights is another reason that appointing a guardian should be a decision of last resort.

What is a Conservator?

A Conservator manages only an individual's financial resources. The authority of a Conservator may also be limited, depending on the needs of the individual. Only a Circuit Court judge or jury can appoint a Conservator.

Employing Person-Centered Practices in Decision-Making by Guardians and Conservators

What is determination of incapacity?

Being declared incapacitated involves a legal decision by a Circuit Court, based on facts and law, that an individual is not able to make certain decisions. This is not the same as having bad judgment or

The Importance of Person-Centered Practices For Guardians and Conservators (continued)

being forgetful or even foolish. There are differing degrees of capacity and incapacity. This determination results from a complex assessment and can be affected by many factors such as the time of day, reaction to various medications (or being overly medicated) and temporary situations such as an automobile accident rendering a person comatose or unconscious. According to Virginia law, there are situations in which Adult Protective Services (APS) can determine that an individual is incapacitated in order for APS to investigate a report that the individual is being abused, neglected, or exploited or in order to provide services to stop an individual from being abused, neglected or exploited. However, only a Circuit Court judge or jury can appoint a Guardian or Conservator based on a court-determination of incapacity.

When the Guardians or Conservators know the wishes of the individual who has been declared incapacitated, they should, to the greatest extent possible, make the same decision(s) that the individual would make. This is called substitute ***decision making***. This type of decision-making is consistent with ***person-centered practices*** as described below.

There are two basic standards of decision-making. One is the ***substituted judgment standard.*** The other is the ***best interest standard***. The substituted judgment standard is most consistent with person-centered practices. It means that the guardian, as substitute decision-maker, makes the decision that the individual would make if she or he had not been determined an incapacitated individual. The *best interest* standard is when the Guardian makes the decision that he or she believes is in the best interest of the individual regardless of whether it is consistent with the individual's choice. For example, the Guardian might decide that it is in the best interest of the individual not to eat red meat, even though the individuals enjoy eating beef. It is improper for Guardians or Conservators to override and ignore an individual's wishes using the best interest standard. This is inconsistent with person-centered practices.

The general principals of ***person-centered practices*** (PCP) should always be used by Guardians or Conservators. PCP is rooted in **what is important to the individual** while taking into account all other factors that affect his or her life, including the effects of a disability, issues of health and safety, and the views of those who know and care about the individual PCP principles include:

- *Listening*: The individual's choices, ideas, and description of a good life are respected and followed.
- *Community*: Relationships with families, friends and people in the community are very important and at the center of planning.
- *Self Determination*: Personal choice and control are supported.
- *Talents and Gifts*: The experience, talents, and contributions of individuals are strengthened and supported.
- ***Responsibility***: There is shared responsibility for supports and choices.

As noted above, the need of an individual for a Guardian or Conservator, also referred to as ***substitute decision-makers***, does not negate the right to have his or her voice heard; to have his or her rights and dignity respected at all times; and to have his or her choices honored to the maximum extent possible. This is the responsibility of a good substitute decision-maker, and it can happen only if the substitute decision-maker takes the time to develop a relationship with the individual and those who support him or her. PCP principles are an excellent way to ensure that this happens.

Information taken from the *Virginia Person-Centered Practices Leadership Team—Virginia Systems Transformation Grant Resource Team*
More information about PCP is available at www.vcu.edu/partnership/.

THE TIME TO REGISTER FOR THE CONFERENCE IS NOW!!

MONDAY, APRIL 26, 2010

AND

TUESDAY, APRIL 27, 2010

SHERATON WEST – RICHMOND, VA

Our conference is key for professionals serving the disabled and elderly because of:

- The great quality of our speakers:
- Our Keynote Address will be conducted by a panel of experts who served on the advance directives drafting committee of the Supreme Court's Commission on Mental Health Law. Their topic: *Demystifying the New Health Care Decisions Act: What Does it Mean For You and Your Clients?*
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  - ◊ Health Care Reform,
  - ◊ A panel on the CMS Nursing Home Rating System,
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- Our new efforts to accommodate training budget realities
- Our ability to meet mandatory training requirements for National Association of Social Workers, The Virginia State Bar, Supreme Court of Virginia, and National Association of Long Term Care Administrators.

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Remember to register by March 31st to get the early-bird reduced fee. Our members' fee of under $200 including membership is extremely reasonable considering the length and breadth and the ability to offer continuing education credits.

Please also forward this opportunity to other appropriate professionals on your contact lists. Help us continue a great tradition of excellent educational conferences that have been an annual event since 1992 for professionals serving our disabled and elder population.

Virginia Guardianship Association

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Check out the VGA website at www.vgavirginia.org.

Handbooks

The 4th edition *Handbook for Guardians and Conservators* is available through the VGA Web site. Please go to *www.vgavirginia.org*, click on “Publications” in the left rail, and download an order form.