

Greater Wisconsin Agency on Aging Resources, Inc.

# The Guardian

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*The Guardian* is a quarterly newsletter published by the Greater Wisconsin Agency on Aging Resources' (GWAAR) Wisconsin Guardianship Support Center (GSC).

The GSC provides information and assistance on issues related to guardianship, protective placement, advance directives, and more.

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**Title:** *Thompson v. Thompson*

**Court:** Court of Appeals, District III

**Date:** January 15, 2019

**Citation:** 2018AP93 (unpublished)

**Case Summary:** Mark Thompson filed a petition under Wis. Stat. § 244.16 seeking an accounting and judicial review of his brother, Jeffrey Thompson, for his actions as power of attorney for finances for their mother. The circuit court had dismissed his petition for lack of subject matter jurisdiction and he appealed. The court of appeals affirmed.

### Case Details:

In September 2006, Mae Thompson executed a durable power of attorney for finances which named her son Jeffrey as her agent. Jeffrey acted as agent from 2009 until his mother's death in 2016. Jeffrey also served as successor trustee to his mother's revocable trust. In April of 2017, Mark filed a petition under Wis. Stat. § 244.16 alleging a breach of fiduciary duty because he failed to provide annual accountings. Jeffrey moved to dismiss for lack of subject matter jurisdiction arguing that it was the probate court that had exclusive jurisdiction over Mae's trust.

Wis. Stat. § 244.16(1) provides that certain persons "may petition the circuit court of the county where the principal is present or of the county of the principal's legal residence to construe a power of attorney or review the agent's conduct, and grant appropriate relief." "Principal" is defined as an individual who grants authority to an agent in a power of attorney. Wis. Stat. § 244.02(11). The petition was filed after

Mae's death so she was no longer a resident of the county or present in the county. Under the plain language of the statute, a petition to review the conduct of the agent cannot be filed after the death of the principal. The power of attorney terminates upon the principal's death and so there is no current agent's conduct which can then be reviewed. The court of appeals affirmed that Mark failed to state a claim.

**Title:** *Neighbors Rehabilitation Center, LLC v. US Department of Health and Human Services, Departmental Appeals Board and Centers for Medicare and Medicaid Services*

**Court:** U.S. Court of Appeals, 7<sup>th</sup> Cir.

**Date:** December 7, 2018

**Citation:** No. 18-2147

**Case Summary:** Neighbors Rehabilitation Center is a skilled nursing facility participating in Medicare and Medicaid. The Centers for Medicare and Medicaid (CMS) assessed a fine against Neighbors after determining they inadequately addressed sexual interactions between three cognitively impaired residents. CMS found their failure to act put the residents in "immediate jeopardy" and issued a \$83,800 fine. An administrative law judge affirmed and the Department of Health and Human Services Departmental Appeals board upheld the ALJ opinion. Neighbors sought review of the citation. The United States Court of Appeals affirmed the Agency's determination.

(Continued on page 3)





*(Case Law, continued from page 2)*

### Case Details:

Neighbors provides nursing care to residents, including those with dementia and Alzheimer's disease. This case is regarding three residents who will be referred to as R1, R2 and R3.

R1 was an 80-year-old male suffering from dementia and behavioral disturbances who functioned at a high level. In January 2014, his care plan was updated to indicate he was showing inappropriate and disruptive behaviors. R2 was a 65-year-old male suffering from Alzheimer's, dementia, behavioral disturbances and lower extremity cerebral vascular disease. He had significant cognitive and hearing impairments, trouble speaking, impaired vision and sexually inappropriate behaviors. R2 had made verbal threats and had physically acted out. R3 was a 77-year-old female resident with Alzheimer's, low cognitive functioning, severe hearing impairment and was prone to wandering.

R1 and R2 resided in separate rooms shared by a bathroom. On February 4, 2014, a nursing assistant noticed R1 in R2's room where a sexual act was occurring. No intervention was done as the nursing assistant did not see R2 objecting. The incident was documented but no further investigation was done. R2 did mention later to a nursing assistant that there were rumors going around that he was homosexual when he was not. On February 8, 2014, a nurse saw R1 in R2's room where a sexual act was occurring again. R2 was not objecting but the nurse told R1 to leave. When R1 and R2 were asked about this later, R1 denied it and R2 could not recall any interactions with R1. On multiple dates in February, R2 also sex-

ually touched R3 and made inappropriate comments to R3. On one instance R2 was moved away from R3 by an aide because R3 can't hear him, doesn't understand what he wants and it was necessary for her safety. This was the only intervention staff had with R2 and R3.

The Illinois Department of Public Health (IDPH) investigated and concluded that C.F.R § 483.25(h) was violated which provides that a facility must ensure that the environment is free of accidental hazards and that each resident receives adequate supervision and assistance to prevent accidents. The deficiency was classified as "immediate jeopardy". IDPH found that Neighbors allowed residents to have consensual sexual interactions and staff was not to intervene or report sexual interactions unless there were outward signs of non-consent. The total fine amounted to \$83,800. Neighbors challenged the citation and requested a hearing.

Neighbors argued that residents have rights and this includes the right to engage in consensual intimate relationship and that staff monitored the relationships as necessary. The Administrative Law Judge (ALJ) noted after testimony that Neighbors took "meager action" to determine whether R2 consented and that statements that had been made by R1 and R2 should have prompted further investigation. The ALJ concluded that Neighbors' policy of intervening only when outward signs of non-consent were apparent was insufficient to determine consent especially when the individual has significant cognitive deficits. The ALJ also concluded there was insufficient evidence of consent between R2 and R3. A finding of

*(Continued on page 4)*





(*Case Law*, continued from page 3)

immediate jeopardy does not require actual harm, only a likelihood of serious harm. The citation was affirmed.

Neighbors appealed to the Department of Appeals Board who concluded the ALJ's findings were free of legal error. The Board indicated that Neighbors' failure to do any sort of assessment supported the findings of the ALJ. The Court of Appeals review is limited to whether or not the Agency's conclusion is supported by substantial evidence.

Neighbors argued its policies were sufficient to monitor the sexual interactions and that they balanced the resident's need for privacy and dignity with safety.

Neighbors further argued that the residents were capable of showing non-consent due to previous behaviors noted (yelling, kicking, hitting). The Court of Appeals noted residents of long-term care facilities are entitled to maintain intimate relationships but when there are physical or cognitive impairments, care must be taken to ensure the relationships are consensual. Neighbors failed to exercise this care as staff only broke up the interactions twice and never investigated whether they were consensual or whether the residents had capacity to consent. The staff did not talk to the residents about the relationships, they did not document capacity or lack of capacity for consent, they did not discuss this with their doctors or request a medical assessment, they did not discuss with the families nor did they record any monitoring or make any care plans. The severe cognitive deficits of the residents provided an even greater need to investigate.

The Court noted that to presume consent as long as

there is no resistance would hold persons with dementia and Alzheimer's to a higher standard than the average person. See, e.g. *United States v. Johnson*, 743 F.3d 196, 199 n.1 (7<sup>th</sup> Cir. 2014) (noting that under IL law, resistance is not necessary to prove sexual assault). The Court of Appeals held that the citation, the amount of the citation and the immediate jeopardy categorization is supported by substantial evidence.

In determining if the amount of the citation was reasonable and supported by substantial evidence, the court looked at Neighbors history of noncompliance, ability to afford the penalty and their level of culpability.

**Title:** *Walsh v. Friendship Village of South County*

**Court:** United States District Court, E.D. Missouri, Eastern Division

**Date:** January 16, 2019

**Citation:** 4:18CV1222 JCH (unpublished)

**Case Summary:** Married lesbian couple was denied housing at a senior living community based upon the facility's religious beliefs. The couple filed suit under the federal Fair Housing Act and the Missouri Human Rights Act alleging discrimination based on sex. United States District Court Judge Jean C. Hamilton dismissed the case rejecting Plaintiff's argument that this discrimination was based on sex, drawing a line between sex and sexual orientation, and noting that sexual orientation is not a protected class under the relevant laws.

(Continued on page 5)





*(Case Law, continued from page 4)*

**Case Details:** Plaintiffs, Mary Walsh and Beverly Nance, are a married couple who applied for a senior apartment at Friendship Village (Defendants). The Plaintiffs visited the facility a number of times, submitted a deposit, and signed a waitlist agreement. Shortly thereafter, Defendants contacted the couple and learned that the couple was married. Defendants then rejected the couple's request to share a single unit based upon "biblical principles" and that they only allow spouses by marriage as that term is understood in the Bible.

Plaintiffs filed a housing discrimination complaint against Friendship Village with the U.S. Department of Housing and Urban Development ("HUD"). They then withdrew their complaint and filed suit in federal court alleging discrimination on the basis of sex in violation of both the Fair Housing Act ("FHA") and the Missouri Human Rights Act.

Specifically, they allege that each Plaintiff was "denied housing at Friendship Village 'because of her own sex (female) and because of the sex of her spouse (female), since if either Plaintiff had been a man married to a woman, they would not have been denied housing. Furthermore, Defendants denied Plaintiffs housing because they do not conform to traditional sex stereotypes, including that a married woman should be in a different-sex relationship; that a married woman's spouse should be a man; and that women should be attracted to and form relationships with men, not women.'"

Defendants filed a motion for judgment on the pleadings asserting Plaintiffs' claims must be dismissed for

failure to state a claim upon which relief may be granted. The court agreed with the Defendants and dismissed the case because sexual orientation is not a protected class under these relevant laws and the type of discrimination in this case is based upon sexual orientation and not sex.

Noting that these types of claims under the FHA are tested under the same framework as Title VII claims, the court drew distinctions between this case and cases where discrimination based on sexual orientation also crossed into discrimination based on sex-stereotyping, i.e. "stereotypical notions of femininity and masculinity." The court stated here that the Plaintiffs' allegations "make clear their theory of sex-stereotyping is based solely on their sexual orientation" and cited binding case law rejecting discrimination claims on this basis. The court, bound by this precedent, dismissed the Plaintiffs' case.

**Title:** *Marathon County v. C.M.L*

**Court:** State of Wisconsin Court of Appeals, District III

**Date:** February 26, 2019

**Citation:** 2017AP2220 (unpublished)

**Case Summary:** C.M.L. appealed a circuit court order for his involuntary commitment under Wis. Stat. ch. 51 arguing that the county failed to present sufficient evidence that he was dangerous to himself or others under Wis. Stat. § 51.20(1)(a)2. The appellate court

*(Continued on page 6)*





(*Case Law*, continued from page 4)

affirmed the circuit court's order based upon the findings of fact of the circuit court which included the testimony of two doctors who conducted evaluations. The appellate court agreed that the county met its burden to present clear and convincing evidence that the petitioner demonstrated a substantial probability of physical harm to other individuals pursuant to Wis. Stat. § 51.20(1)(a)2.b.

**Case Details:** C.M.L. was temporarily detained after law enforcement filed a statement of emergency detention. Shortly thereafter, the court held a final hearing for involuntary civil commitment, where two court-appointed examiners, psychologist James Black and psychiatrist Leslie Taylor, testified.

Dr. Black interviewed C.M.L. briefly at the Veterans Affairs ("V.A.") hospital in Madison where he diagnosed C.M.L. with treatable schizoaffective disorder based primarily upon his hospital records as C.M.L. quickly ended their interview. Dr. Taylor also diagnosed C.M.L. with treatable schizoaffective disorder and testified that the patient "was agitated. His thought was unorganized and tangential, and he presented as very paranoid; very, very irritable. At one point he sort of screamed out the word "commitment..." She also testified that she felt personally threatened by C.M.L.'s behavior. When Dr. Taylor left the room, C.M.L. followed her and continued to "rant" at her through the window. Dr. Taylor further testified that if she had continued with her questioning, it could have risen to the level of bodily harm to herself. The court found Dr. Taylor's testimony credible and consistent with C.M.L.'s aggressive behavior.

An involuntary civil commitment requires the petitioner to prove three elements by clear and convincing evidence: (1) that an individual is mentally ill; (2) that the individual is a proper subject for treatment; and (3) that the individual is dangerous within the meaning of one or more of the five statutory definitions of dangerousness in Wis. Stat., § 51.20(1)(a)2.a.-e. C.M.L. conceded the first two elements.

The circuit court found the testimony of both doctors credible and the appellate court deferred to that finding. The appellate court concluded that C.M.L. evidenced a substantial probability of physical harm to others as defined in Wis. Stat. § 51.20(1)(a)2.b. ☐

### Interested in Receiving *The Guardian*?

Do you know someone who would like to receive *The Guardian* newsletter?

Do you want more information about guardianship and related issues?

Signing up is easy with the link on the Guardianship Support Center Webpage: [Guardian Newsletter Sign-Up](#). You can also subscribe by emailing your name, email address, and organization to [guardian@gwaar.org](mailto:guardian@gwaar.org). ☐



# Helpline Highlights



On the state form for Power of Attorney for Finances and Property there is an optional section called an “Agent’s Certification as to the Validity of Power of Attorney for Finances and Property and Agent’s Authority.” Is the agent required to sign this when we are filling out the Power of Attorney document?

(An excerpt of this section is shown below)

*The following optional form may be used by an agent to certify facts concerning a power of attorney for finances and property:*

**AGENT’S CERTIFICATION AS TO THE VALIDITY OF  
POWER OF ATTORNEY FOR FINANCES AND PROPERTY AND AGENT’S AUTHORITY**

State of: \_\_\_\_\_

County of: \_\_\_\_\_

I, \_\_\_\_\_ (name of agent), certify under penalty of perjury that  
\_\_\_\_\_ (name of principal) granted me authority as an agent or  
successor agent in a power of attorney dated \_\_\_\_\_ .

I further certify that to my knowledge:

- (1) The principal is alive and has not revoked the power of attorney or my authority to act under the power of attorney, and the power of attorney and my authority to act under the power of attorney have not terminated.
- (2) If the power of attorney was drafted to become effective upon the happening of an event or contingency, the event or contingency has occurred.
- (3) If I was named as a successor agent, the prior agent is no longer able or willing to serve.

(4) \_\_\_\_\_  
(insert other relevant statements)

In the Power of Attorney for Finances (POA-F) statutes, Wis. Stat. § 244.19 there are certain protections for persons that are asked to accept and rely upon a notarized power of attorney. The person receiving a POA-F such as a financial institution can ask the agent to complete this certification under penalty of perjury regarding any factual matter concerning the principal, agent or power of attorney. The financial institution can then rely on that certification without conducting further investigation. Therefore, this section will be filled out upon request and is not required to be completed during the execution of a POA-F.

**I am co-guardian with my ex-spouse. Our adult child lives with my ex-spouse but our Letters of Guardianship list us as co-guardians. I am being told I cannot have access to our adult child’s medical records, make appointments or be involved in decision-making because my ex-spouse is the “custodial parent”. Is this correct?**

No. Under Wis. Stat. 54.46(2)(a), co-guardians that are appointed must agree or the decision is void. This applies unless it was otherwise ordered by the court. The court can structure co-guardianship so the co-guardians must agree with each other, may act independently or may act independently only in limited circumstances. How this is structured can be found in the Letters of Guardianship, which is excerpted on the next page. Regardless of how this is structured, a guardian should always have access to the ward’s medical records.

(Continued on page 8)



# Helpline Highlights



(*Helpline Highlights*, continued from page 7)

These Letters of Guardianship are effective on [Date] \_\_\_\_\_.

☐ You are appointed ☐ guardian ☐ co-guardian ☐ successor guardian of the person of the above-named ward.

☐ You are appointed standby guardian and your authority to act is limited to the following time period:  
[Starting date] \_\_\_\_\_ through [Ending date] \_\_\_\_\_.

☐ Power of Attorney for Health Care is ☐ revoked. ☐ limited as follows: \_\_\_\_\_

You are issued Letters of Guardianship of the Person with the following powers or limitations:

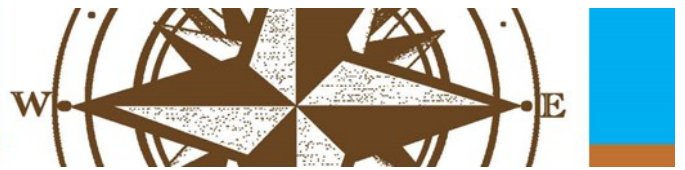
A. ☐ Co-guardians must agree with each other when making decisions on behalf of the ward.  
☐ Co-guardians may act independently when making decisions on behalf of the ward.  
☐ Co-guardians may act independently when making decisions on behalf of the ward only in these limited circumstances: \_\_\_\_\_

Sometimes when parents become guardians of an adult child the same terminology that had applied to a family court order of a minor are continued to casually be used for the adult child. However, adult guardianship is not an extension of parenthood and terminology does not have the same use or meaning as it would for a minor child. One of the powers a guardian may have is to have “custody” of the individual under guardianship. This term is not defined but it does not mean the same thing as having custody of a child. Custody probably refers more to duties to protect the person from harm and possibly limit some mobility and social decisions only when absolutely necessary and appropriate. For an adult guardianship, who the person resides with does not automatically correlate with that person being the sole decision-maker.

**I have been working with a male and female couple who have been living together for years but who recently broke up. One was serving as Power of Attorney for Health Care agent for the other and the POA had been activated. The Power of Attorney for Health Care statute indicates a POA-HC is revoked if there is a divorce, annulment or if the domestic partnership is terminated. Does their break up revoke the Power of Attorney?**

No. If a domestic partnership is terminated then the POA document naming a domestic partner as agent would be invalid. To qualify for domestic partnership, they would have had to sign and file a declaration of domestic partnership with the register of deeds. They must have been over 18, sharing a common residence, not be related and be members of the same sex. Wis. Stats. § 155.40, 770.01, 770.05. A male and female couple residing together would not qualify as a domestic partnership. ☐





## Points of Interest

### American Bar Association Survey on the use of Supported Decision-Making Later in Life

The American Bar Association Commission on Law and Aging is looking for examples of any uses or attempts to apply Supported Decision-Making to adults late in life who are experiencing a decline in memory and cognition. If interested, please answer the brief three-question survey at: [https://americanbar.qualtrics.com/jfe/form/SV\\_5jUowA5BbJ5pmSN](https://americanbar.qualtrics.com/jfe/form/SV_5jUowA5BbJ5pmSN)

The ABA uses the term Supported Decision Making (SDM) to mean a person-centered and person-driven model that empowers persons across the spectrum of ability and life experience to make their own choices to the greatest extent possible. SDM utilizes many possible strategies including the use of supporters, enhanced communication strategies, supported decision-making agreements, environmental supports, and a thorough exploration of resources and options.

### Removing the r-word from State Code

In 2012, legislation was signed by former Gov. Scott Walker that removed the term “mental retardation” from state statutes and replaced it with “intellectual disability”. This term however still appears in state administrative code today. Two Republican state senators are pushing for its removal from state administrative code and have recently introduced a bill to do so. Governor Evers has indicated he will sign the bill despite already issuing an Executive Order. The bill would remove the “r-word” from Public Service Commission as well as the departments of Health Services, Children and Families, Safety and Professional Services and Workforce Development codes. No one has spoken against the bill and two individuals with an intellectual disability spoke in favor of the bill highlighting how the offensive word has made them feel horrible. The Diagnostic and Statistical Manual of Mental Disorders 5 (DSM-5) revised the diagnostic term to “intellectual disability” in 2013. Read more [here](#).

### Governor Evers Establishes Task Force on Caregiving

The Task Force recognizes the stress and struggle family and professional caregivers are under. The Task Force will address numerous issues including strategies to attract and retain a strong direct care workforce, supports for families providing care, the need for a registry of home care providers and services and more attention to wages and health benefits for workers. In 2016, Wisconsin Survival Coalition conducted a statewide survey of over 500 people who rely on direct care services and their families and found that 95% had trouble finding workers, 85% did not have enough workers to cover all their shifts, 43% couldn't find a worker seven or more times per month, and 60% said they get sick more often when they do not have enough staff. Read the Executive Order [here](#). □





### What is the Guardianship Support Center able to help with?

The GSC is a neutral statewide informational helpline. We can provide information on topics such as Powers of Attorney, Guardianship, and Protective Placement. The GSC is unable to provide information on minor guardianships, wills, trusts, property division or family law. The GSC does not have direct involvement in cases nor are we able to provide legal representation.

### What are some other free or low-cost legal resources?

Other resources include the American Bar Association's website where members of the public can ask legal questions to volunteer attorneys. The website is <https://wi.freelegalanswers.org/>. An attorney can also be found through the Lawyer Referral Information Service (LRIS) or the modest means program if income qualifications are met. You can find more information on these programs at <https://www.wisbar.org/>. □

### **Upcoming Events and Noteworthy Dates That May Be of Interest:**

- ◇ Ready, Set, Retirement!, March 30<sup>th</sup>, April 27<sup>th</sup>, May 10<sup>th</sup>, 9:00 a.m.—12:30 p.m.  
Contact GWAAR at 608-243-2881 to register for this FREE event.
- ◇ Autism Society Conference, April 11<sup>th</sup>-13<sup>th</sup>, Kalahari
- ◇ National Healthcare Decisions Day, April 16<sup>th</sup>
- ◇ Calumet County Community on Transition, April 24<sup>th</sup>, Fox Valley Regional Center in Chilton
- ◇ Fond du Lac Guardianship Training, May 2<sup>nd</sup>, Fond du Lac Fairgrounds
- ◇ Circles of Life, May 2<sup>nd</sup>-3<sup>rd</sup>, Holiday Inn, Stevens Point
- ◇ Aging Advocacy Day, May 14<sup>th</sup>, [www.gwaar.org](http://www.gwaar.org)
- ◇ Alzheimer's Association Conference, May 19<sup>th</sup>- 21<sup>st</sup>, Kalahari
- ◇ WINGS Guardianship Summit, May 22<sup>nd</sup>, State Bar, Madison
- ◇ Senior Americans Day, June 4<sup>th</sup>, UW-Eau Claire □





## April 16<sup>th</sup> is National Health Care Decisions Day!

Celebrating [National Health Care Decisions](#) day is a great time to review your own advance planning documents or create advance planning documents if you have not already done so! Everyone over the age of 18 should be planning in the event incapacity would occur. Be sure to discuss your wishes with your agent or use this as an opportunity to have another conversation with them to ensure your wishes are clear!

The law on advance care planning documents and authority varies by state. In Wisconsin, practitioners typically recommend the following documents:

- Power of Attorney for Finances and Property
- Power of Attorney for Health Care
- Declaration to Physicians aka Living Will
- Authorization for Final Disposition (burial & funeral arrangements)

Advance planning documents can be executed with or without an attorney. While the basic forms are available online for free, an attorney can provide legal advice and counseling regarding the person's specific circumstances to ensure that their wishes are stated and carried out as desired. It is important that the power of attorney for health care is signed before two unrelated and disinterested witnesses. While the power of attorney for finances does not technically require witnesses, it is granted important protections under Wisconsin law if it is notarized when signed.

Powers of attorney provide authority for someone to make financial and health care decisions for another person. Unlike other states, Wisconsin is not a "next of kin" state, meaning that family members do *not* have the ability to make health care decisions on behalf of another person just by virtue of being a relative. Wisconsin law requires that a person be granted specific authority to act—either authority from the individual person (via a power of attorney document), or from a court (usually through a guardianship action). Power of attorney documents are valid once they are drafted and signed. When they are activated depends on the language within the document. Typically, a power of attorney for health care is activated by two physicians or a physician and a psychologist when the principal has an incapacity to make health care decisions. A power of attorney for finances is typically active upon signing, however, can be activated upon incapacity instead if those instructions are provided within the document.

A Living Will is a document which on its face may look similar to a power of attorney for health care; however, there are several important differences. In writing a Living Will a person is making a directive to his or her doctor regarding the person's end of life decisions. There is no authority given to another person to act as an agent on the principal's behalf, as is the case in the power of attorney documents. Additionally, a Living Will only applies in limited situations if you have a terminal condition or are in a persistent vegetative state. By contrast, a power of attorney for health care provides for an agent to have broad authority to make decisions in a wide range of situations. A person can have both a power of

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*(Health Care Decisions Day, continued from page 11)*

attorney for health care and a Living Will, if desired, or one or the other. If the documents are inconsistent, it will be the power of attorney for health care that takes precedence.

Finally, the Authorization for Final Disposition allows a person to indicate his or her funeral and burial preferences in writing and to appoint a representative to carry out those wishes upon the person's death. This document is recommended as part of a comprehensive estate plan because the authority under a power of attorney ends upon the principal's death. If no agent is appointed under an Authorization for Final Disposition form, Wisconsin law indicates that a surviving spouse, children, parent, or siblings (in that respective order) can make funeral and burial decisions on behalf of a decedent. If there are surviving children or siblings that are making the decision, the majority in that class must agree and that can potentially cause issues and delays.

Advance Directive forms can be found on the [Department of Health Services website](#). More information on advance directives and how to complete these forms are also available on our [website](#).

## **Myth-busting false beliefs about POA's:**

### **1. I do not need a POA because my spouse or family can make decisions on my behalf.**

- a. Wisconsin is not a "next of kin" state, meaning that family members do not have inherent authority to make decisions solely based on their relationship with you. Authority must be specifically given to a person through a POA document or a court order.

### **2. I do not need a POA until I am older or sick.**

- a. Too often, people wait until it is too late to do advance planning. If a person no longer has the capacity to execute a POA document, then a guardianship action in court may be needed. All adults over the age of 18 should consider creating advance directives.

### **3. Once I create a POA, I'm set for life.**

- a. POA documents are not locked in stone. They can be revoked at any time or re-executed if the principal is of sound mind. [Honoring Choices](#) recommends that advance planning documents be reviewed if any of the 4 "d's" occur:
  - i. **Death** (if any of the agents named in your POA pass away)
  - ii. **Decade** (if it has been more than 10 years since you drafted or reviewed your documents)

*(Continued on page 13)*





*(Health Care Decisions Day, continued from page 12)*

- iii. **Divorce** (if you subsequently get a divorce after drafting your POA—in Wisconsin, this invalidates your documents by law)
- iv. **Disease** (if you become sick or are diagnosed with an illness)

In reviewing your documents, you want to ensure that the agent(s) you chose would still be able and/or willing to serve, that the principal and witnesses signed on the same date, that the witnesses are not related to the principal, that the document still reflects your current wishes and that nothing is crossed out.

#### **4. I don't have a lot of money or property, so I don't need a Power of Attorney for Finance.**

- a. A Power of Attorney for Finance may be needed to apply for or manage insurance and public benefits like Medicaid.
- b. A Power of Attorney for Finance agent would be the one who could sign contracts regarding property, represent your interests in litigation or sign a lease.
- c. A Power of Attorney for Finance can establish a special needs or burial trust.
- d. You determine exactly what authority you want your agent to have or not have.

Find an event or participating organization in your area [here](#) and join us in celebrating National Health Care Decisions Day! ☐

#### **Completion of Annual Account of Guardian**

Annual Accounts are due to Probate by April 15<sup>th</sup>, unless otherwise indicated by the court. The Guardianship Support Center (GSC) is unable to provide legal advice or assistance with filling out forms.

If you need advice or assistance with completing an inventory or accounting, please consult with a private attorney or an accountant. We do have a publication on our website entitled “Guardian of the Estate: How to Complete an Account.” This is located at <https://gwaar.org/gsc> under “Find What You Need” and “Guardianship of the Estate”.

#### **Do-Not-Resuscitate Orders**

The GSC frequently receives calls about do-not-resuscitate orders. We have recently created a publication called “Decision-Makers and the Authority to Consent to a DNR Order” which is now available at our website. ☐





## **Court Forms Update**

### **Letters of Guardianship**

An updated Letters of Guardianship of the Person, GN-3200, has been added to the [circuit court forms website](#). The new form includes the addition of the following language from Wis. Stat. § 54.25(2)(d)3. regarding guardian authority and the rights of individuals under guardianship:

*When exercising powers as guardian of the person, you shall:*

- *place the least possible restriction on the individual's personal liberty and exercise of constitutional and statutory rights, and promote the greatest possible integration of the individual into his or her community.*
- *make diligent efforts to identify and honor the individual's preferences with respect to choice of place of living, personal liberty and mobility, choice of associates, communication with others, personal privacy, and choices related to sexual expression and procreation.*
- *take into account the individual's understanding of the nature and consequences of the decision, the level of risk involved, the value of the opportunity for the individual to develop decision-making skills, and the need of the individual for wider experience.*

### **Interstate Guardianship Transfers**

Wisconsin adopted in part the Uniform Adult Guardianship and Protective Proceedings Jurisdiction Act provisions regarding interstate transfer of guardianship which can now be found in Wis. Stat. ch 53. New court forms have been added to the circuit court forms website to accomplish transfer and registration of out of state guardianships:

GN-3901: Petition to Transfer Guardianship to Another State

GN-3902: Provisional Order on Petition to Transfer Guardianship to Another State

GN-3903: Final Order Confirming Transfer of Guardianship to Another State

GN-3904: Petition to Accept Guardianship Transferred to Wisconsin

GN-3905: Provisional Order on Petition to Accept Guardianship Transferred to Wisconsin

GN-3906: Final Order Accepting Guardianship Transferred to Wisconsin

GN-3907: Registration of Out-of-State Guardianship ☐





*Registration is now open!*

## Aging Advocacy Day!

*May 14, 2019, Madison, WI*

**10:00 a.m.\* – 3:00 p.m.**

Park Hotel, 22 S. Carroll St., Madison and the Wisconsin State Capitol

Join advocates from around the state to help educate state legislators about issues affecting older adults and care-givers in Wisconsin!

No experience necessary; training is provided prior to your meetings with state lawmakers at the State Capitol.

### **Schedule:**

- 9:00 a.m. Check-in and registration, Park Hotel
- 10:00 a.m. Issue briefing/advocate training  
District planning time & lunch
- 12:15 p.m. Cross the street to the State Capitol
- 12:30 p.m. Group photo
- 1:00 p.m.- Legislative visits, advocacy activities/networking,
- 3:00 p.m. debriefing and check-out



**WAAN** Advocacy  
Wisconsin Aging  
| Advocacy | Network

### **Make a Difference. Let Your Voice Be Heard!**

Aging Advocacy Day 2019 activities focus on connecting aging advocates with their legislators to share the WAAN priorities and discuss state policy solutions to improve the health and well-being of the state's older adults.

Registration begins February 26, 2019 at: <https://gwaar.org/AgingAdvocacyDay> or contact your local aging unit or ADRC. **Registration deadline is April 30, 2019.** #WIAgingAdvocacyDay #WIAAD.

*\* Registration and check-in begin at 9:00 a.m.*



# Volunteer with Wisconsin Senior Medicare Patrol

The SMP program helps those with Medicare prevent, detect, and report health care fraud. By doing so, we help preserve the integrity of the Medicare and Medicaid programs. Because this work often requires face-to-face contact to be most effective, SMPs nationwide rely on approximately 5,000 volunteers who are active each year to help in this effort.

We fully support and train interested volunteers.

## How You Can Help:

- Put your skills and experience to work
- Teach others how to spot Medicare fraud
- Deliver materials throughout your community
- Educate and empower consumers



## Contact us to learn more

Email: [smp-wi@gwaar.org](mailto:smp-wi@gwaar.org)

Phone: 888-818-2611

