

Nov. 3, 2004
Elder Law Class
Fact Situation For Development

A 35 year old single man comes to see you about his parents. The father has Alzheimers, and is losing weight and not eating well. The mother is overwhelmed with his care, would rather be doing housework or bowling, and is not getting him to eat. The mother has never been the financial manager of the family, and they have just moved to an independent retirement apartment and are selling the home. The potential client is the only child, unmarried, and overwhelmed with his responsibility for helping his folks. The facility manager has had a conference with him and his parents, and told his mother that she had to see to it that the father began eating more regularly.

What further basic information do you need?

Interview the Teacher/Volunteer Student selected and Write the Answers on a sheet of paper to discuss in class.

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Further Facts for Development

John Jones, the son, is married and his wife Susan Jones comes in with him. A brother, Phil Jones, has been living with the parents. Phil does not work, and the parents have been supporting him. Phil has problems, and John is concerned about how the parents' decline will affect him, and hopes Phil leaves the home next week as promised before the home sale closes.

What further inquiry topics will you need to explore?

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Alternate Facts for Development

Mom never did a power of attorney or advance directive, and there is no will. The father did a medical directive, but no power of attorney and there is no will. Father and mother are both incapacitated at this time. They have \$120,000 in liquid assets and investments, and will receive \$200,000 from sale of the home in two weeks. The father's income is \$1,000/month social security and \$750/month pension; the mother's income is \$451/month from social security.

What further inquiry should you make?

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The son, Phil Jones, who has been living with them, has a gambling problem and creditors, including child support obligations he has not met. Phil Jones has used approximately \$45,000 of the parents' funds in the past year for his own needs. The use of funds was accomplished by cash withdrawals from the parents account, or checks written on the accounts signed by the demented father.

What further inquiry would you make?

How does this set of facts affect the care options and health care cost options for the parents?

Mother and Father each have financial powers of attorney with the following language:

1. **I authorize my spouse to protect our assets, whether owned by me alone, my spouse alone, or by us together as husband and wife, so that my spouse's impoverishment because of my health care costs can be avoided, by whatever techniques might be available at the time of any health catastrophe.**
2. **To convert jointly held real or personal property assets into sole ownership of the other joint tenant, and also to liquidate any jointly held assets and to direct the investment holder to make the check to liquidate the distribution to the benefit of only one of the joint owner.**
3. **To convert any interest I may have in the home located at 999 Jennings Drive, Milwaukie, Oregon, to the sole ownership of my Spouse in the event I incur catastrophic health care costs from which my Spouse should be protected.**

If the mother alone has the following FPOA language how does it affect her planning and care cost options?

I authorize my agent to continue my plan to preserve assets, whether owned by me alone, or with my husband, HUSBAND NAME, together as husband and wife, so that my impoverishment because of my husband's health care costs can be avoided, by whatever techniques might be available at the time of any health catastrophe.

How does this alternate gifting language affect planning and care options?

44. Gifts & Caregiving Child Authority My agent has authority to make gifts and consent to split gifts on my behalf, whether outright, in trust, or in custodianship, of whole or partial, undivided interests or temporal interests, to or for the benefit of my two now living children. I particularly commend to my agent possible gifts of an interest in the home to my caregiving child, my son PHIL JONES, to permit the home to be saved from my health care costs, and acknowledge that without the assistance of my son in the home, I could not have lived there and would be institutionalized. My agent should consult with an elder law attorney about the exercise of this discretion to make a gift of the home to a caregiving child, under 42 U.S.C. 1396p(c)(2)(A)(iv).

Gifts made under this paragraph other than the authorized gift to a caregiving child shall be limited to the amount eligible for exclusion from taxable gifts under Section 2503 of the Internal Revenue Code or any successor statute and, as so limited, includes the power to make gifts to or for the benefit of my Agent, my Agent's estate, my Agent's creditors, the creditor's of my Agent's estate, or any person whom my Agent has a legal duty to support.

Father has a POLST form, and names his wife as his health care representative in an advance directive, and his son as a successor health care representative. The Father has additional instructions attached to his health care advance directive as follows:

WHEN TO STOP LIFE SAVING TREATMENT

I do not wish to receive medical care to keep me living if the health care representative concludes that I have permanently lost, because of physical and cognitive conditions, the following abilities, and I therefore cannot give informed consent to treatment and have lost the ability to direct my care or end treatment which might keep me alive after I have suffered the losses described below:

- (1) If I have lost the abilities to do for myself, and arrange for my day to day care, and need 24 hour custodial care, or higher levels of care,**
- (2) AND the losses have lasted at least six months (*Enter time period*).**

THEN I want to let nature take its course should any further infection, illness, or progression of illness be life-threatening.

After I have been in the above state for the designated period of time, I expect to receive basic care that provides for my comfort - oral and body hygiene, reasonable efforts to offer food and fluids by mouth, medications (for comfort -- not to treat the life-threatening condition, that is, for example, no antibiotics for treatment of pneumonia). I want comfort measures only, as described on Oregon's POLST form, including positioning, warmth, appropriate lighting, measures to relieve pain and suffering, and the personal, caring presence of others.

I hope my trained professional care givers can help my loving family and friends understand that under these conditions I want my death to occur sooner rather than later, and that the suffering that comes with death can be somewhat (but not wholly) relieved.

What further inquiries are appropriate?

If Father changes his mind about these instructions, in discussion with his doctor, what are the rules about end of life care that will apply?