OUT OF THE WOODWORK

Written by:

Christina Lesher, B.S.W, J.D.
Law Office of Christina Lesher, PC
5615 Kirby Drive, Suite 412
Houston, Texas 77005

University of Texas CLE

Copyright 2020

Table of Contents

WHY SENIORS? 1

WHY FAMILIES? 1

WHO ARE THESE "PROFESSIONALS"? 1

- Professional #1- The Trusted Friend or Family Member 1
- Professional #2- The Trusted Caregiver 2
- Professional #3- "Failure-To-Launch Family Member" 3
- Professional #4- "Medicaid Planners" Acting Outside the Law 3
- Professional #5- "Senior" Financial Advisors 4
- Professional #6- "Senior" Financial Advisors + Strawman Attorney 5
- Professional #7- The Nursing Home 6
  - Requiring the family to guarantee payment 6
  - Making the family responsible for an outstanding medical bill 9
  - Discharging the Medicaid applicant for non-payment during the Medicaid application process 10
  - Exclusivity Agreements Between Nursing Homes, Financial Advisors and Attorneys 10
  - Violations of the Texas Disciplinary Rules of Professional Conduct 11
- Professional #8- Employees at Care Facilities 14
- Professional #9- Professional Care Managers Versus Placement Coordinators Versus Your Friend at Church/The Hair Salon 15
- Professional #10- The Usual Suspects 16
  - Powers of Attorney 16
  - Romance Scammers 17
  - Tech Support Scammers 17
  - Grandparent Scammers 17
  - Government Impersonation Scams 17
  - Sweepstakes, Charity, Lottery Scams 18
  - Home Repair Scams 18
  - TV/Radio Scam 18

ATTORNEY REPORTING OBLIGATIONS 18

CONCLUSION 19

OUT OF THE WOODWORK

Routinely we see professionals who profess to be senior "experts". These professional may genuinely want to help our clients or they want to manipulate our clients out of money, time, and emotion for their own benefit. This paper explores who these individuals are that are "helping" clients, the type of education or training they should have, and how to protect our clients.

Several years ago, I had an article in the Houston Chronicle about the practice of elder law. After the article was published, I was astonished by the number of calls I received from "professionals" wanting to meet with me who were "specialists" in "senior relocating/moving", "senior placement" , "senior in real estate", "senior financial planning", and "senior communication". It seemed any profession could be specialized by adding the word "senior" in front of it.

WHY SENIORS?

Why are these individuals so interested in our older clients? The population of older adults has increased. By 2014, 14.5% of the American population were aged 65 or older.[1] Older adults may not be close to family or friends and see these professionals as someone to trust, confide in and to have some kind of social interaction.

Older adults may also be more likely to reveal personal information to a person they do not know or do not know well from the fraud against them.[2] There is significant financial loss to seniors. Victims of telemarketing fraud, internet fraud, and other scams lose approximately $2.9 billion to these scammers masquerading as professionals. They may also be less likely to report the scam and have decreased cognitive function, thus making the actual number of financial scams, exploitation and abuse hard to track.

WHY FAMILIES?

Families caring for an older person are under immense stress and have a hard time finding resources. Families may not know the right professional to help them, are leery about working with attorneys, or trust someone that ends up hurting their loved one physically or financially.

WHO ARE THESE "PROFESSIONALS"?

Professional #1- The Trusted Friend or Family Member

One common way clients are being exploited, abused and neglected is by family friends who either don't understand the medical needs of the client and interfere with the efforts of the family and professionals, or use the client's diminished medical state to take

[1] U.S. CENSUS BUREAU, P25-1143, *Projections of the Size and Composition of the U.S. Population: 2014 to 2060*, *Current Population Reports* 6 (2015), https://www.census.gov/content/dam/Census/library/publications/2015/demo/p25-1143.pdf

[2] U.S. SECURITIES & EXCHANGE COMM'NN, OFFICE OF THE INVESTOR ADVOCATE, ELDER FINANCIAL EXPLOITATION (Jun 2018), https://www.sec.gov/files/elder-financial-exploitation.pdf

advantage of the client financially and emotionally.

The warning signs to look for are family members or friends who have not been in communication with the client and after a medical event or change in medical or cognitive abilities, suddenly shows up offering to "help" the client with their finances or health care decisions. The practitioner should also look for the family friend or family member who attempts to isolate the client from his or her family members or discourage the client from communicating with their family or remove them as beneficiaries of their estate.

I advise attorneys to review their client's financial records to look for activity that is unusual and atypical for the client. For example, if a client has typically not used the ATM or cash withdrawals, but all of a sudden starts to make cash withdrawals, then this may be a sign of a third party who is financially exploiting the client. The practitioner should also look for checks that are written on the client's account that are made out to cash or to an individual that is unknown.

Additionally, the practitioner should look for new powers of attorneys or estate planning documents, attorney "shopping" and doctor "shopping". Obtaining new powers of attorneys or testamentary documents are a way for the "friend" to gain additional control over the finances and decision making of the client.

Professional #2- The Trusted Caregiver

Many families will hire caregivers to provide care for their loved ones either at home or at a facility. There are many options to locate caregivers. Caregivers may be located by personal references, facility references or websites such as care.com (that match caregivers with families.) To provide care for an older adult, an individual needs no specialized training or a license. However, the best practice is to use a home health agency or have the care provider vetted by a trained care manager. These entities should at least run a background and criminal check on the caregiver, as well as check professional references.

The best practice is also to use a care provider that is a Certified Nurse's Aide (CNA). All CNAs are registered on various Texas Health & Human Services registries. Any member of the public can check the status of CNA's license using the state's "Employability Status Check Search."[3] The website does not check for criminal convictions. That information can be obtained from the Texas Department of Public Safety.

The family can also minimize the risk of abuse or neglect by using cameras to monitor the caregiver and the client. The family should also secure the client's check book, credit and debit cards, cash on hand and other valuables. Caregivers will need access to cash for miscellaneous expenses such as meal and activities, but a family can restrict access to limited amounts in various ways. For

[3] Employability Status Check Search, TEX. DEP'T OF HEALTH & HUMAN SERVICES, https://emr.dads.state.tx.us/DadsEMRWeb/emrRegistrySearch.jsp (DADS is a now defunct department within HHS but the database is still in use with its latest update on July 17, 2020)

UT LAW CLE THE UNIVERSITY OF TEXAS TEXASLAW

Find the full text of this and thousands of other resources from leading experts in dozens of legal practice areas in the UT Law CLE eLibrary (utcle.org/elibrary)

Title search: Out of the Woodwork

Also available as part of the eCourse
2020 Estate Planning, Guardianship, and Elder Law eConference

First appeared as part of the conference materials for the
22nd Annual Estate Planning, Guardianship and Elder Law Conference session
"Out of the Woodwork: Unethical Practices by Geriatric Professionals"