WHO SHOULD I BE TALKING TO?

A CLOSER LOOK AT ATTORNEY IN FACT, HEALTH CARE AGENT, TRUSTEE, REP PAYEE AND OTHER FIDUCIARY RELATIONSHIPS?

EMERALD CREST memory care a ministry of cassia

Sponsored by:

cassia

parks' place memory care Redefined
by our family · for your family

PRESENTED BY MARY FRANCES M. PRICE, JD,
VA ACCREDITED ELDER LAW ATTORNEY

HOSTS – CHRISTINE DRASHER EMERALD CREST MEMORY CARE

Intelligent Memory Care
With four locations in Burnsville, Minnetonka, Shakopee and Victoria, Minnesota, Emerald Crest memory care communities are truly inspired by residents and families. **Emerald Crest** offers a specialized assisted living setting for seniors with Alzheimer's-related conditions. Our expertise allows us to create opportunities for your loved ones that go beyond conventional notions of memory care.

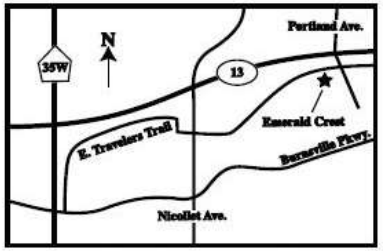
EMERALD CREST MEMORY CARE MODEL

The Emerald Crest philosophy is rooted in the belief that individuals with dementia are unique and can flourish in an environment that provides them with opportunities for positive relationships, participation in their daily care and meaningful activities that promote success. Emerald Crest is solely dedicated to memory care and offers unique programming to meet residents' needs:

- Serene environments that are easy to navigate
  - 12-15 residents per house; 2-5 houses per location
  - Rooms surround common space, no long hallways
- Focus on ability rather than disability
  - Houses are designated by stages to provide specific programming and socialization
- Personalized care plan tailored to residents' unique needs
  - Developed by Registered Nurses and Occupational Therapists
- Comprehensive employee training program with qualified professional staff; those with direct care duties must undergo even further training and staff also receives on-going education annually

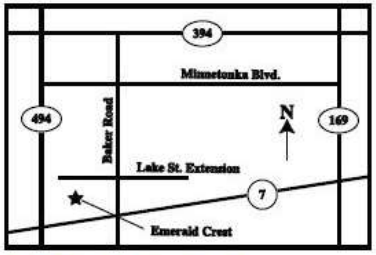
EMERALD CREST LOCATIONS

Burnsville



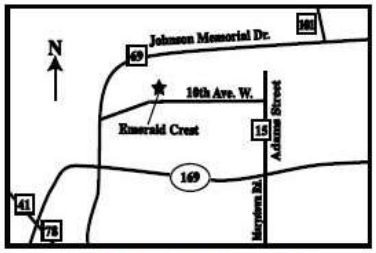
451 E. Travelers Trail

Minnetonka



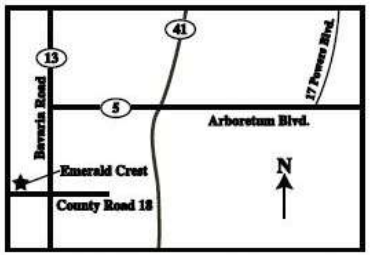
13401 Lake St Extension

Shakopee



1855 10th Ave W

Victoria



8150 Bavaria Road

EMERALD CREST
memory care a ministry of cassia

www.EmeraldCrest.com ~ 952-908-2215

HOSTS – KAITLIN KELLY
PARKS' PLACE MEMORY CARE

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PARKS' PLACE MEMORY CARE – PLYMOUTH MN

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CONVENIENT LOCATED ON 101 & MEDINA ROAD:

18040 MEDINA ROAD
PLYMOUTH MN 55446

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www.ParksPlaceMemoryCare.com
763-710-8484

SPEAKER – MARY FRANCES PRICE LONG, REHER, HANSON & PRICE PA

Mary Frances Price is a shareholder at Long, Reher, Hanson & Price PA. She is a graduate of Mitchell Hamline College of Law and received her undergraduate degree from Purdue University in West Lafayette, Indiana. Mary Frances has been licensed to practice law since 2005 and has counseled and advised hundreds of clients on their estate and elder care plans.

Mary Frances focuses her practice on serving individuals and families who are establishing an estate plan, revising an existing estate plan or dealing with the legal, medical and financial impacts of aging, chronic illness and disability. She has been accredited to practice before the Department of Veterans Affairs since 2008. Since that time, she has counseled and advised veterans and their families on accessing state and federal VA benefits. She is the author of the chapter on Veterans Benefits for the Elder Law Handbook published by Minnesota Continuing Legal Education since 2012. Accordingly, her peers have recognized her as a leader in planning for veteran's benefits.

Mary Frances is a frequent speaker and community educator on a range of estate and elder law issues, including estate planning, asset protection, medical assistance planning and veteran's benefits. She has been a guest presenter for Mt. Olivet Day Services, University of Minnesota, North Memorial, Minnesota Veterans Home, Cargill, Best Buy, Park Nicollet, 7500 York Cooperative in Edina, Park Nicollet Memory Club, the Alzheimer's Association and many others.

WHO CONTROLS VARIOUS DECISIONS?

LEGAL AND FINANCIAL

- Attorney in Fact (Appointed in a Power of Attorney)
- Trustee (Appointed in a Trust document)
- Representative Payee ("Vetted" by the Social Security Administration
- Conservator
- Fiduciary Appointee (Appointed by Dept. of Veterans Affairs)

HEALTH AND WELLNESS

- Health Care Agent (Named in a Health Care Directive)
- "Care Act" appointee (Appointed on admission to hospital)
- Guardian (Legally Appointed by a Court)
- Legal Next of Kin (Governed by MN Law)

POWER OF ATTORNEY

- Document by which the "principal" appoints someone to manage finances
- Can be used for a specific purpose or for general use
- Can be effective immediately or may "spring" to life
- Examples of power of attorney duties: bill paying, signing contracts, ordering distributions from retirement accounts.

WHAT IS A "DURABLE" POWER OF ATTORNEY?

- Continues to be valid even after the principal is unable to make decisions or give directions.

- Must specifically state that it is durable and must contain language such as: "This power of attorney shall continue to be effective if I become incapacitated or incompetent."

MINNESOTA STATUTORY SHORT FORM POWER OF ATTORNEY

- Set out in Minnesota Statutes §523.23-24
- Easily recognizable by banks, county recorder, driver and vehicle services and other institutions
- Built-in legal protections for enforcement and non-acceptance
- May be durable or non-durable
- Gifting limited to $15,000 per person in a calendar year
- Statutory limits against "self-dealing"
- Does not give authority to manage "digital assets" including online accounts, Facebook and other social media
- May need to supplement with a Common Law Power of Attorney

COMMON LAW POWER OF ATTORNEY

- Minnesota Statutes §523.02 "Common Law, Preexisting and Foreign Powers of Attorney/"
- Broader drafting flexibility
- Gifting Authority ****May be critical for asset protection planning for Veterans Benefits and Medical Assistance***
- Creation of Trust
- Changing Beneficiary Designations
- Can include other powers not included in the Statutory Short Form Power of Attorney

RESPONSIBILITIES OF ATTORNEY-IN-FACT

- NO LEGAL DUTY TO ACT!!
- Must be prudent.
- Must have the interest of the principal utmost in mind.
- Must keep complete records of all transactions.
- Must render an accounting if requested by the principal or required by power of attorney.

LIABILITY OF ATTORNEY-IN-FACT

- Personally liable to anyone injured by an action taken in bad faith.
- CHOOSE WISELY who will act for you.

PROS AND CONS OF POWERS OF ATTORNEY

PROS	CONS
• Easy • Low cost • Revocable • Enforcement	• Subject to abuse: not court-supervised • Attorney-in-fact is not required to act for the principal

HEALTH CARE DECISIONS

- Documents may include all or a combination of the following:
  - **Health Care Directive** (Sometimes referred to as "living will" or "health care power of attorney"). Correct term in Minnesota is Health Care Directive; or
  - **DNR/DNI** Form
  - **POLST** (Provider Order for Life Sustaining Treatment)

In order to execute a valid health care directive under Minnesota Statute § 145C.03 the document must

(1) be in writing

(2) be dated

(3) state the principal's name

(4) include a health care instruction, health care power of attorney, or both

(5) be executed by a principal with capacity to do so

(6) be signed by the principal or person directed to sign by the principal

(7) and contain certification of the principal's signature either by a notary public or by two witnesses . **Decision making capacity is "the ability to understand the significant benefits, risks, and alternatives to proposed health care and to make and communicate a health care decision."** Minn. Stat. § 145C.01 subd. 1(b). Absent clear and convincing evidence to that contrary the principal is presumed to have the capacity required to execute a HCD and to revoke a HCD. Minn. Stat. § 145C.10(a). Under Minnesota law it is the principal's attending physician, and not the attorney, who determines whether the principal lacks decision-making capacity. Minn. Stat. §§ 145C.02, 145C.06.

HEALTH CARE DIRECTIVES

HCDS are authorized under Minnesota Statute § 145C

-Valid when signed by the principal (or someone directed by the principal) in the presence of a notary public OR two witnesses

- Health care directives come in many different forms, all of which are acceptable so long as they meet the requirements of a properly executed directive.

DO NOT RESUSCITATE
DO NOT INTUBATE

- Can be included in a Health Care Directive
- May be signed as separate orders outside of the directive even if the Health Care Directive does not elect DNR/DNI
- Why use this in addition to or instead of a HCD?

MORE ABOUT DNR/DNI

- A DNR/DNI is a doctor's order specifying the emergency treatment preferences of a patient. The patient is typically one who is in a long-term care residential setting.
- It was developed in the 1980's in an effort to better communicate the "Code Status" of long-term care patients who did not want to receive certain types of life-sustaining treatment.
- There is no statutory basis for a DNR/DNI but in order to be recognized it must be signed by a patient with capacity or his or her agent, a witness and/or the physician (is this correct) and it is effective upon execution. There is no standard form but whatever form is used should specify which types of treatment the patient does or does not consent to including: CPR, resuscitation, intubation, and comfort care in an emergency situation.
- This document is typically used by residents of long-term care facilities or hospitals that want to make their code status known pursuant to the policies of the particular facility in which they reside. If a DNR/DNI has not been executed health care professionals will provide medical treatment aimed at preserving the individual's life when medically appropriate. It may be revoked or modified at any time by the same person who put the original order in place or by the patient.

POLST: PROVIDER OVER FOR LIFE SUSTAINING TREATMENT

- The purpose of a POLST is to allow a medical provider to communicate a patient's end of life treatment preferences with other medical providers.
- It is used when a patient has a chronic health condition or terminal condition and he or she wants to make his or her preferences regarding life sustaining treatment known to emergency responders.
- It is most often used by those who are nearing the end of their lives and wish to die at home without any intervening medical treatment.
- In order to be followed by emergency personnel a Minnesota POLST Form must be signed by a physician or medical provider. The form was developed by a Minnesota Medical Association task force in 2008 to assist in communicating end of life preferences between providers. Because there is no statutory authority regarding these forms medical providers are not legally required to honor them. It is effective upon execution and can be revoked at any time by a patient with capacity or the patient's health care agent.

THE CARE ACT

- Minnesota Statute § 144.6522 Designation of a Caregiver
- In 2016 the Minnesota legislature passed the Designation of a Caregiver legislation. This new law became effective on January 1, 2017, and requires a hospital to provide a patient or a patient's agent with an opportunity to designate a caregiver within 24 hours of the patient's admission to the hospital or within 24 hours of regaining consciousness or capacity.
- If a caregiver is designated, the hospital is then required to notify that individual of the patient's discharge or transfer (or reasonably attempt to notify) and must provide the caregiver with the patient's discharge plan and instructions for providing aftercare.

THE CARE ACT

- The designated caregiver is not obligated to actually provide any aftercare to the patient.
- Any individual over the age of 18 may be designated as the patient's caregiver so long as he or she is capable to providing aftercare assistance to the patient according to the professional opinion of the patient's health care provider.
- When the patient designates a caregiver the caregiver's contact information and relationship to the patient is recorded in the patient's medical file. The hospital is permitted to share the patient's medical information with the caregiver as if the patient had provided written consent to share that information. The patient or the patient's agent may change or revoke the designated caregiver at any time. The new law requires that the hospital consult with the patient and the designated caregiver regarding the discharge plan prior to discharging the patient. The plan must describe the patient's aftercare needs and instructions regarding how to provide the needed care.
- It is important to note that the new law does not authorize the caregiver to make any medical decisions on behalf of the patient and does not interfere with the powers of a health care agent operating under a valid HCD.

CASE STUDY: SECOND HUSBAND VS. DAUGHTER

- Patient is married to second husband of 20+ years. She executed a HCD in 2012 naming her daughter (a nurse) as her health care agent. Husband is always the person at medical appointments and is always the first family member in attendance for hospitalizations. During a recent stay at TCU, patient is not capable of making a decision about where to transition after rehab. Husband and daughter attend a care conference and seem to have a difference of opinion about where to move the patient. Who gets to decide?

CASE STUDY: DAUGHTER IS HEALTH CARE AGENT, SON IS ATTORNEY IN FACT

- Resident has been living in ALF for about 6 months. Recently daughter was called because staff noticed changes in resident and said a new services evaluation was necessary. Resident was found to be in need of additional services to ensure her health and safety. Daughter agrees to increased care level. Son receives the invoice for the first month following the new care level. He is questioning the increased cost and refuses to pay. What happens?

CASE STUDY: HUSBAND IS HEALTH CARE AGENT, DAUGHTER IS ATTORNEY IN FACT

- Patient is living in memory care and is recently certified for hospice. After 3 years of private pay, husband determines he want to bring his wife home because he is sick of paying $10,000 per month and determines wife would rather die at home. Daughter is the successor agent. She reports that mom and dad, although living together, have hated each other for years. She is worried that dad resents the money he's had to spend on mom's care and is making the decision to move mom simply because of money. Dad gets angry and tells the provider that they can no longer give any information to daughter. Who gets to decide? What, if anything, can be done?

CASE STUDY: RESIDENT HAS A REVOCABLE TRUST AND AN IRA

- Resident in memory care has a revocable trust with investment and bank accounts. The trustee is son #1.
- Resident also has an IRA (retirement account).
- Resident has a POA naming son #2 as attorney in fact.
- Son #2 refuses to pay for care. Son #1 says the trust requires retirement assets to be depleted before the trust assets can be used to pay for care. Son #1 alleges that Son #2 may have changed the beneficiary on the IRA to himself and that is why he refuses to distribute anything more than the annual RMD.
- What happens here?

CASE STUDY: INCAPACITATED RESIDENT WITH NO FAMILY

- Resident cannot manage legal and financial decisions and does not have family. There is a neighbor who was appointed Rep Payee. What can this person do and can they access the other accounts to help resident pay for assisted care?

QUESTIONS AND THANK YOU

- Presented by: Mary Frances M. Price, J.D., VA Accredited Elder Law Attorney
  - www.mnelderlaw.com
  - 952-929-0622 (phone)
  - Meetings available through phone, Zoom, Skype, Google Meet and FaceTime.

COPIES OF THIS PRESENTATION WILL BE SENT VIA EMAIL

(If you do not receive please email Christine.Drasher@cassialife.org)