

ELDERS Update

Fall Edition 2013, Volume III, Issue 3

This is a publication of the Elder Law & Disability Rights Section of the State Bar of Michigan. All opinions are those of the respective authors and do not represent official positions of the Elder Law & Disability Rights Section or the State Bar of Michigan. Comments or submissions should be directed to Christine Caswell, Managing Editor, at christine@caswellpllc.com.

Save the Date

March 14, 2014

Don't miss the 12th Annual Spring Conference sponsored by the Elder Law and Disability Rights Section. This one-day conference will be held at the Inn at St. John's in Plymouth, Michigan, on Friday, March 14, 2014. Registration starts at 8:30 a.m., and the main program begins at 9 a.m.

Message from the Chair



Hello, I wanted to take a moment to introduce myself. My name is Rosemary Buhl and I am your 2013-14 Chair of the Elder Law and Disability Rights Section. As Chair, I wanted to encourage and invite you to become active in the section; it thrives and grows through the participation of our members. I recently had the opportunity to meet at the State Bar of Michigan with many leaders of the other sections. Our day-long orientation encouraged the sections to work together and to learn from each other. I also learned that in comparison to many other sections, the ELDR Section is very active. I think this activity, specifically the contribution and camaraderie of our members, allows all of us to better serve our clients. Being a member of the section means that resources are available to you. However, as the saying goes, the more you put into it, the more you get out of it.

There are many ways you can increase your involvement within the section. Here are a few:

- Post and comment on our Listserv. This convenient Listserv allows us all to be in touch with the many resources we, as a collective group, have at our fingertips.

- Become active on committees. Roll up your sleeves and become active in the mission of the section by joining a committee, which will allow you to meet new people and contribute tremendously to the section.
- Submit an article for our quarterly newsletter. Contact Christine Caswell, our managing editor, at christine@caswellpllc.com.
- Attend our Spring and Fall conferences.
 - Our 2014 Spring Conference is scheduled for March 14, 2014 at the Inn at St. John's in Plymouth. This daylong conference brings together speakers on hot topics and provides section members with opportunities to learn and network.
 - Our 2014 Fall Conference is scheduled for October 1-3 at Mission Point Resort on Mackinac Island. This three-day interdisciplinary conference brings you amazing networking opportunities with your fellow ELDRS members, together with an opportunity to enjoy presentations on a variety of topics in the aging and disability fields. We usually have national keynote speakers in addition to our Michigan experts. Hotel reservations for 2014 can be made now by calling group reservations at (800) 833-7711.
- Attend Council meetings:
 - Find out what is really going on behind the scenes.
 - Be in-the-know for important legislation that will affect you, your clients and your practice.
 - Have your voice heard on issues important to you.

Council meetings are usually held on the first Saturday of the month at 10 a.m. Here is the 2013-2014 schedule with locations:

- **December 7, 2013**, Bassett & Associates PLLC, 45 Hogback Road, Ann Arbor
- **January 4, 2014**, Chalgian & Tripp Law Offices PLLC, 1019 Trowbridge Road, East Lansing
- **February 1, 2014**, Barron, Rosenberg, Mayoras & Mayoras PC, 1301 West Long Lake Road, Suite 340, Troy
- **March 1, 2014**, Chalgian & Tripp Law Offices PLLC, 1019 Trowbridge Road, East Lansing
- **April 5, 2014**, Caroline Dellenbusch PLC, 2944 Fuller Avenue NE, Suite 100, Grand Rapids
- **May 3, 2014**, Barron, Rosenberg, Mayoras & Mayoras PC, 1301 West Long Lake Road, Suite 340, Troy
- **June 7, 2014**, Bassett & Associates PLLC, 2045 Hogback Road, Ann Arbor
- July - no meeting
- **August 2, 2014**, Steward & Sheridan PLC, 205 South Main Street, Ishpeming
- **September 6, 2014**, Caroline Dellenbusch PLC, 2944 Fuller Avenue NE, Suite 100, Grand Rapids

But wait, there's more! Not only do you get all of those wonderful tips and resources, you also get to know some really great people who are in this field for all the right reasons. If you're interested in more information, feel free to contact me at rhbuhl@lawrhb.com. I'm looking forward to working with you for another great year for ELDRS.

2013 ELDRS' Annual Meeting & Election Notes

The following is a summary of the annual meeting of the Elder Law & Disability Rights Section, held on October 4, 2013 at Crystal Mountain Resort, in Thompsonville, Michigan.

- I. A Legislative Update was presented by Capitol Services Inc., which summarized a number of issues relevant to the ELDRS, including Medicaid Expansion (PA 107 of 2013), the Pooled Trust Bill (HB 4013), the Mental Health and Wellness Commission Hearings, and SB 510 and HB 4959, which address no-fault coverage and individuals over age 65.
- II. The Bylaws for the Elder Law and Disability Rights Section were amended by unanimous vote. (For a complete version of the amendments, see <http://michbar.org/elderlaw/pdfs/summer13.pdf>.)
- III. An election was held with the following results:

New Officers:

- Chair - **Rosemary H. Buhl**
- Chair-Elect - **Patrick J. Bond**
- Secretary - **John B. Payne**
- Treasurer - **Michele P. Fuller**
- Past-Chair - **Bradley A. Vauter**

New Council Members:

- **Maria R. Messina**
- **Robert D. Mannor**

Re-elected Council Members:

- **C. Jill Goodell**
- **J. David Kerr**
- **Sara A. Schimke**

In addition the Returning Council members (not up for re-election) are:

- **Robert J. Longstreet**
- **Michael A. Mestelle**
- **Kelly J.M. Quardokus**
- **Christopher M. Smith**
- **James B. Steward**
- **Beth A. Swagman**
- **Jane A. Bassett**
- **William D. Lucius**
- **Christine Caswell**
- **Erma Yarbrough-Thomas**

- IV. Bradley A. Vauter, the outgoing Chair, was recognized for his leadership and hard work for the section during his chairship.
- V. 2014 Fall Conference is slated for October 1-3 at Mission Point on Mackinac Island. A conference committee is being established.
- VI. In memoriam—a short remembrance was presented on the late Brian G. Holt, of St. Joseph, Michigan who passed away at age 44 on September 9 after battling cancer.
- VII. The next meeting is scheduled for November 2, 2013 at the State Bar Building in Lansing.

Legislative Update

By Ellen Hoekstra and Todd Tennis, Capitol Services, Inc.

Implementation of Medicaid Expansion

PA 107 of 2013, formerly House Bill 4714 (Rep. Matt Lori-R, Constantine), will extend Medicaid coverage to 477,000 Michiganians earning up to 133% of the federal poverty level (\$15,282 for individuals). However, because the legislation did not get immediate effect in the Senate, the coverage will not take effect until around April 1, 2014. We are still waiting to hear what happens to an application from a person who will be eligible under PA 107 during this interim period. Under PA 107, those enrolled in the Healthy Michigan plan will have no copayments for preventative services. However, enrollees will have greater cost-sharing expenses than “traditional” Medicaid recipients. Additionally, they will be enrolled in plans similar to health savings accounts, under which the accounts can be used to pay for a portion of services.

ELDRS supported the expansion of Medicaid in Michigan, and we are grateful to Governor Snyder and the Michigan Legislature for making it happen.

Pooled Trust Legislation on House Floor

Rep. Heise (R-Plymouth) and Rep. Poleski (R-Jackson) continue to be very strong allies in the Section's efforts to clarify access to pooled trusts for individuals with disabilities who are 65 and older. House Bill 4013 has been awaiting action on the House floor since the spring, and we are working towards a vote of the House. We have had several meetings with administration officials in efforts to find common ground.

We are continuing to emphasize that pooled trusts are attractive only to individuals of modest means and that there is no pattern of misuse by pooled trust beneficiaries who are under the age of 65. Members are encouraged to contact their State Representatives and ask them to support HB 4013.

Mental Health and Wellness Commission Moving to Drafting Phase

The Mental Health and Wellness Commission recently held its final hearing in Detroit. Members of the Section have commented during a number of the hearings of the Commission and at least one of its workgroups (Editor's Note: See "Thanks to Everyone Who Supported the Mental Health Committee" below). The Commission's report will be completed before the end of the year, and we expect legislation to emanate from it next year.

No-Fault Auto Insurance Reform Update

Earlier this year, the House Insurance Committee voted out House Bill 4612, a bill that would make sweeping reforms to Michigan's No-Fault auto insurance system. While that bill has yet to move on the House Floor, a recent report released by the Citizens Research Council attempts to kick-start the issue. The CRC report claims that Michigan's No-Fault system leads directly to higher health care costs. Its methodology and conclusions were disputed during a recent joint hearing between the House and Senate Insurance Committees. It's too early to tell if this study will move the needle on HB 4612.

In other no-fault news, SB 510 (Sen. Rick Jones, R-Grand Ledge) and HB 4959 (Rep. Jeff Farrington, R-Utica) were recently introduced and would exempt individuals who are 65 or older from having to maintain personal injury protection on their no-fault auto insurance. SB 510 was referred to the Senate Insurance Committee, and HB 4959 was referred to the House Insurance Committee.

Do-Not-Resuscitate Legislation Headed to Governor

A three-bill package aimed at DNR orders passed the Senate on October 23 and is now heading for the Governor's desk. House Bills 4382 (Rep. Cotter, R-Mt. Pleasant), 4383 (Rep. LaFontaine, R-Columbus) and 4384 (Rep. Kurtz, R-Coldwater) make several changes as to who can execute a DNR order and where it applies. Some of the changes made by the bills are:

- Allow a guardian with the authority to issue a DNR order under EPIC to execute a DNR order on behalf of a ward;
- Require a declarant's patient advocate to sign a declarant's DNR order;
- Allow a patient advocate or guardian to revoke a DNR order on behalf of a declarant;
- Require that the word "VOID" be written on every page of a revoked DNR order rather than requiring the order to be destroyed;

The bills will be presented to the Governor in late October for his signature.

Thanks to Everyone Who Supported the Mental Health Committee

By Christine Caswell, Caswell Law PLLC, ELDRS Mental Health Committee Chair

A special thank you to everyone from the ELDRS Council who testified at the legislative hearings mentioned in the "Legislative Report" above regarding mental health issues. Those who spoke at the hearings include:

- **Caroline Dellenbusch**
- **Jill Goddell**
- **John Payne**
- **Christopher Smith**
- **Bradley Vauter**

Mental health issues fall under the "Disability" heading of the section, so support on behalf of this underserved population is greatly appreciated.

2013 ELDRS Fall Conference Notes

ELDRS members review some of the highlights of the 2013 Fall Conference held at the Crystal Mountain Resort in Thompsonville, Michigan, Oct. 2-4.

King Holds Court at Fall Conference

By Gregory Bator, Bator Gwinn, P.C., Birmingham

The Fall Conference attendees were treated to an enthusiastic and energetic presentation from California attorney Robert King. King's niche legal practice concentrates on the legal requirements and risks inherent in the hiring and payment of private caregivers. He held court on three topics in two well-attended sessions.

King quickly dispelled the notion that hiring workers "under the table" is good practice for anyone. He pointed to the myriad ways good employee/employer relationships can turn into bad ones and expose the employer to costly and embarrassing consequences. King gave little credit to the belief that home caregivers could legitimately be called independent contractors. He brought the topic home by revealing the IRS dangers of filing a false tax return and the risks that licensed professionals incur.

After a day filled with northern Michigan's colorful splendor (King reportedly four-wheeled the trails), he returned with renewed excitement to thrill everyone with the uncertainties of the Affordable Care Act. King also had time to look ahead to January 2015 and explain the overtime pay obligations that home care employers will face.

Robert King's legal work focuses on wage and hour requirements for individuals hiring personal home workers and home care/nanny agency employers. His website, www.legallynanny.com, provides useful information on these topics. I had the pleasure of interviewing King on this important topic for a future Graceful Aging show that will air across the nation through community access stations. King was an enjoyable conference speaker and guest who, after missing his California return flight due to Traverse City fog, hurried back to share spaghetti, camaraderie and collegiality at the Chalgian & Tripp evening soiree.

Fall Conference Delivers Again

By Sally Babbitt, Chalgian & Tripp Law Offices, PLLC, East Lansing

As in previous years, the 2013 ELDRS' Fall Conference delivered an exceptional experience. One of the unique features of this conference is the variety of topics and disciplines that are covered. Technical and substantive legal issues, mental health issues, and practice tips are just a few of the topics available.

The conference opened with a plenary session featuring the keynote speaker Robert King of Legally Nanny in Irvine, California. King discussed the legal consequences of directly hiring in-

home care providers rather than hiring them through an agency. This has become an increasingly important topic not only because of the increasing use of home care for the elderly, but also because the Affordable Health Care Act will have a large impact on this industry. The conclusion that I drew from this presentation was that, like legal work itself, home care issues are better left to the professionals.

The remaining conference was split into smaller group sessions with each attendee having a choice of two or three topics at any given time. This literally allows the conference to offer something for everyone, and, in fact, sometimes makes it hard to choose which small session to attend. The variety of topics covered at this conference is quickly apparent by scanning the list of speakers and noting the wide variety of their backgrounds. Madelon Krissoff, M.D. spoke on the medical issues of the elderly, especially those with dementia, while Jeanne Hannah, author of *Taking Charge: Good Medical Care for the Elderly and How to Get It* addressed issues that families have to deal with when caring for the elderly, such as falls, medication errors, dehydration and dealing with the medical community. Clare Lutz, Ph.D., explained what “ageism” is, how we contribute to it, and how we can combat it.

The conference also has a talented faculty of attorneys who share their expertise on some of the more intricate areas of practice, such as taxation, Veteran’s benefits, the Mental Health Code, litigation, Medicaid, DOMA implications, and HIPAA rules, while others offered practical advice on some ancillary issues elder law attorneys deal with such as conflict resolution, end of life conversations, communication with elderly clients, ethical challenges, assessing competency, and finding quality long term support and services.

The pace of the conference is well planned, also. With two half-day programs and one full day, you can stay focused and engaged without burning yourself out. In addition, the breaks in between sessions give ample opportunity to walk, stretch, refuel, and check in with the office. While there is an abundance of material provided in both written and oral formats, you will not feel overwhelmed by information overload. The written materials are so full of valuable resources, you will find yourself incorporating many of them into your practice and referring back to them multiple times throughout the years.

No conference would be complete without social opportunities, too. This conference is generally attended by a close-knit group of professionals who work together during the year and truly enjoy the opportunity to get together outside the workplace setting. The atmosphere of this conference is relaxed and welcoming and one of collegial fellowship. If you have not attended before, add it to your calendar now and plan on joining us October 1-3, 2014, when we will meet and mingle on beautiful Mackinac Island.

Calendar

- Nov. 12 - Medicare Advocacy for Home Health and Hospice Benefits, www.icle.org
- Nov. 13 - Document Assembly Systems for Estate Planners, www.icle.org
- Nov. 15 - National Webinar Developments after Windsor - What It Means, NAELA, www.naela.org
- Dec. 7 - ELDRS Council Meeting, Bassett & Associates PLLC, 45 Hogback Road, Ann Arbor
- Dec. 10 - Planning Techniques for the Taxable Estate, www.icle.org
- Jan. 4, 2014 - ELDRS Council Meeting, Chalgian & Tripp Law Offices PLLC, Trowbridge Road, East Lansing
- Jan. 23 - Drafting Estate Planning Documents, Grand Rapids, www.icle.org
- Feb. 1 - ELDRS Council Meeting, Barron, Rosenberg, Mayoras & Mayoras PC, 1301 West Long Lake Road, Suite 340, Troy
- Feb. 13 - Drafting Estate Planning Documents, Plymouth, www.icle.org
- Feb. 10 – Drafting an Estate Plan for an Estate under \$5 Million, Plymouth, www.icle.org
- March 14 – ELDRS Spring Conference, Inn at St. John’s, Plymouth