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Emerald GEMS® State

Legal or Diagnostic Tool?

by Louis Levenson, Attorney

As a lawyer and longtime contributor to the *Online Dementia Journal*, and as a supporter of Teepa and her work with Positive Approach®, it is always important to contribute legal guidelines making sure that the readers understand the differences between the diagnostic tools set forth by Teepa using the [GEMS State Classification](#) and legal criteria.

For example, this month we are asked to focus on Emerald as a GEMS state. According to the full diagnostic tools set forth by the Positive Approach team, the Emerald state is one in which the person is naturally flawed, just like an emerald. Though there are moments of clarity, there are also periods of loss in logic, reason, and perspective. Language is vague and often repetitive. Awareness of time, place, and situation will not always match reality.

One legal observation worth making and digesting is that when a family member or loved one has reached the Emerald state they are usually not (depending on the law of a given state) legally competent to draft or understand a power of attorney. Per the GEMS model, an Emerald may not fully be aware of the rights they are giving up. That is the test. The moral to the story is that if you understand the Emerald state as defined by Positive Approach and you understand where the Emerald state fits in the constellation of other diagnostic levels, it is crucial to take steps such as healthcare proxies, general powers of attorney, deeds and legal documents, transfers of homes, applications for Social Security disability, and other steps at a time when the family member is competent to read and understand those documents. Though it may be that a person in this Emerald state is capable of providing some assistance with and to family members, albeit with limited awareness of changes in ability, the legal criteria will not allow that person to make voluntary and intelligent decisions. It's also important to identify the unique brain changes and abilities for the individual living with dementia before comparing the Emerald criteria with legal competency in your state.

When you understand the various GEMS state and their characteristics, you are able to be proactive and have the person living with dementia participate in the decision-making of his or her own care while his or her GEMS state allows for it. Otherwise they reach a condition or GEMS state that will deprive them of the legal authority to control their destiny. A person in an Emerald state will need more support when communicating their likes, wants, and needs with everyday decisions, let alone with important legal decisions.

Study both the GEMS states and your state's legal criteria AND consult legal counsel.