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Where Do Families Go From the Discussions of the Problems with Dementia to Solutions?

by Louis Levenson, Attorney

Step One: Why are you calling a lawyer? Something that perplexes and often frustrates lawyers and judges when contacted to deal with the legal ramifications of aggressive (fast) or progressive (slow) dementia in a family member is this: the need for family to articulate a goal, more specifically, a legal goal. Lawyers are not medical practitioners and cannot prescribe anything but legal “Band-Aids.” Perhaps the goal would be to get the lawyer to help with goal formation and management of expectations.

So often as the lawyer who receives a cold-call from someone who has been referred (sometimes your author is the recipient of the call) and who listens somewhat patiently, at least for a while, during a lengthy and often rambling recitation of information with not a moment for the lawyer to even say “uh huh” or to ask a question, the client does not even come close to identifying why a lawyer has been called. When I say, “you are calling a lawyer so at some point I expect you want to hear my point of view,” the client or clients (usually multiple family members call me via conference call) still want to express the various concerns each one has for mom, dad, or a sibling with dementia, but still don’t want to let me talk or tell them what can be done. Therefore, the first step in the family’s work, before you speak to a lawyer, should be this (assuming you don’t know the legal remedies such as trusts, powers of attorney, guardianships, or conservatorships), please truly listen and ask questions of the lawyer and seek the lawyer’s guidance in laying out the alternatives legally available to the clients (who most of the time are the closest of the family members). One size does not fit all. Perhaps, before contacting the lawyer with questions about what is usually an emergency, *gotta have it now*, answers, the family could even go online and check issues relevant in the state where the person with dementia is located or resides so that you, the client, can get an overview of the legal issues and challenges in that state and understand what is available under the law in that state. The lawyer will then be able to point you to forms, research about legal cases, or even send you a limited scope engagement letter to help you understand what the lawyer can do and how much it will cost. In these situations, it is crucial for the family, once the nature of the person with dementia is laid out for the attorney, who their kin is, where they are living, who is taking care of them, their other medical conditions, duration of medical care, and from whom, who has medical records, including medications, age, full legal name, etc., to turn ask what can we, lawyers in the system, do. Let the lawyer help you formulate a tailored plan. Let the lawyer help you. Let the lawyer who is experienced do his or her thing. Do this by letting the lawyer know, after this information is exchanged, what specific help you want for mom, dad, or another person. That does not necessarily mean that the needs you have laid out can be achieved in the system as it exists in your state. But knowledge here is power to use the system to its best advantage for your mom or dad.

Step Two: What happens if you must go to the probate court? This is where the pathway narrows even further. Courts are uniquely goal oriented. Statutes in this area are

very limited in what they can do. That means there are only so many things the Courts can do and many things they cannot do. So, to get to the goal, you must check all the boxes, so to speak, with a competent lawyer by getting their view of what tool to use to accomplish that, even if the goal is less than everything to be hoped for. If the lawyer has done this a few hundred times before, you are in good hands. But even then, the lawyer is limited in what remedies most Courts can give. For example, in my state (Georgia), when people call me with complaints about mom or dad wandering off from their homes or assisted living facilities, what I usually say is that Georgia can provide **some** protection in the form of the Court appointing a child or a spouse as the guardian and/or conservator (the conservator takes care of the person's finances), but the Court cannot provide all protections. For example, the Order appointing you as guardian does not permit you to *lock-up* mom or dad and confine them like prisoners. If they wander off again, even after Court intervention, there is often a need to repeat some Court procedure, possibly even temporary involuntary commitment for a period for evaluation to protect mom or dad from himself/herself. Again, the lawyer is the best guide in this area. Be prepared for limited goals being achieved via Probate or Surrogate Courts and try to tailor such results to what will improve, but not mend, all complaints. Again, though this may seem like such a general piece of advice, the key to the brilliance of Teepa Snow is her Positive Approach®, which to this lawyer means, do what you can to provide as many legal avenues and opportunities for improvement, until there is either a medical cure or a change in the laws, neither of which will happen quickly.

Free to [contact my office](#) if you have any questions about these issues.

Louis Levenson was admitted to practice in Georgia in 1978. He has specialized for the last 35 years or more in general trial practice but with particular emphasis in areas of wills, trusts, fiduciary accounting, probate, and estate litigation.

For ten years Mr. Levenson served the Fulton County Probate Court as the Assistant Fulton County Administrator and Assistant Fulton County Guardian, having been appointed by the Probate Judge of Fulton County to this public fiduciary role.

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