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Medical facility can be liable if it helps patients with powers of attorney

The Supreme Court of Nevada recently ruled that a medical facility that assisted a patient to complete a Power of Attorney document was liable as the patient was then placed at risk of financial exploitation (see Elder Law Answers, www.elderlawanswers.com). You might say that this case happened in Nevada and does not apply here, but this situation could happen here in Pennsylvania with the same results.

In the Nevada case, Gayle Savage was found confused and wandering; she was subsequently admitted to Senior Bridges of Sparks Family Hospital, an elder care facility. She was diagnosed with Alzheimer's disease, and her doctors recommended a guardianship in order to name someone to make medical and financial decisions for her. It appears that a guardian was appointed. Peggy Violat Six offered to care for Ms. Savage upon her discharge provided that Ms. Savage execute a Power of Attorney document in favor of Ms. Six. Senior Bridges provided a standard Power of Attorney form, Ms. Savage signed it, an employee verified it, and it was notarized. Ms. Savage was discharged, and Ms. Six proceeded to allegedly misappropriate money, real estate and other assets from Ms. Savage.

When the court appointed guardian discovered this, the guardian filed a negligence action against Senior Bridges. Senior Bridges stated that they could only be held responsible for providing competent medical care, but the state's highest court found that the facility had a duty to exercise reasonable care in the facilitation of the Power of Attorney and subsequent discharge from the facility. Ms. Savage suffered damages albeit not necessarily medical in nature.

When a person has been adjudicated incapacitated, in most states, that person cannot legally sign a Power of Attorney document. A guardian is appointed by the court who determines that no other less restrictive action, such as a Power of Attorney, will serve the alleged incapacitated person's needs (ward). The court then "watches over" the guardian by requiring regular reports of the finances and other decisions made on the ward's behalf. Certain decisions require prior approval of the court. Of course, a Power of Attorney is much simpler, but a person who no longer understands what she is signing and what powers she is granting to another person cannot sign such a document.

Sometimes, the personnel in hospitals, nursing homes and other such facilities believe that they are helping families with caring for their loved ones by recommending that they obtain standard forms from office supply stores or the internet, and by having the patient sign the form. Some are even so helpful, as in the Nevada situation, as to witness the form and supply a notary. Unfortunately, it is important that the person signing the document (the principal) be competent to sign, and most non-lawyers are not in a position to determine competency. The end result can be what happened to Ms. Savage in that a seemingly concerned person steps forward and gains control over the finances, and proceeds to use those finances for his or her benefit.

Medical personnel should be careful not to overstep their authority in their zeal to help their patients, and families and other caregivers should seek the proper assistance to avoid problems with appointed agents. The cost of a properly prepared Power of Attorney at the appropriate time can be far less than dealing with the consequences.