

IMPAIRED BABY BOOMER CLIENTS - MARCHMAN ACT AND GUARDIANSHIP PROCEEDINGS: HOW DO FAMILIES HELP THEIR SUBSTANCE ABUSE IMPAIRED ELDERLY MEMBERS

By Joseph M. Considine, P.A.

An elderly man in his late 60s, a husband and father of adult children, has been abusing alcohol daily for many months in his retirement and is beginning to experience memory and cognition issues. He is admitted to the hospital with delirium tremens and it is suspected that he may have some form of dementia associated with Wernicke Korsakoff as a result of not getting the necessary medical assistance while having the DTs. The impaired husband has recently made questionable decisions regarding his finances and his wife is very concerned that he will be taken advantage of financially. His wife and adult children need to know a course of action to get him the help he needs for his alcohol abuse and to prevent him from recklessly and unwisely spending his money.

The family faces a number of difficult issues. Are the memory and cognition issues secondary to the alcohol abuse or the product of an independent, organic process of dementia? How do they know if the cognitive and memory deficits are temporary, related to the abuse of substances, or more permanent? What if dad is unwilling to voluntarily go to treatment or to let a family member take over the finances for a while?

The foregoing questions and many more questions are faced daily by families of elderly substance abusers. Many elderly patients do not want to admit they need help or are unwilling to admit there is a substance abuse problem. Many adult children do not want to confront the reality that their parent is an alcoholic or an addict. Nor do these adult children want to risk the wrath of the elderly parent which can lead to them possibly being written out of the will for taking action to protect that parent. Nevertheless, action needs to be taken if the elderly alcoholic is to have a chance at a remaining productive and happy life.

It is clear that without some type of intervention, the elderly impaired individual, especially one with initial cognitive deficits will only get worse, never better. The consequences of not intervening on an elderly individual is life threatening.

In the event, the man (in our example) is unwilling to go to treatment or to get help; the family has little choice but to file a Marchman Act proceeding in Florida under Chapter 397, Florida Statutes. The Marchman Act allows a family to ask the Court to order a loved one to substance abuse treatment for an initial period of time - up to 90 days with further extensions of time in treatment being permitted, if necessary. In such a case as described herein, the court will in all likelihood enter a treatment order requiring inpatient residential care for no less than sixty (60) days. The court can later add time to that order for a step down in the level of care if indicated and to require a sober living environment if a return to residence is not appropriate.

At the same time, the family must consider filing for the appointment of an emergency temporary guardian ("ETG") to take temporary control of the impaired elderly individual's assets and over his person. In Florida, such a proceeding is governed by the Probate and Guardianship Code, Chapter 744. The court can appoint a limited guardian of the person's financial affairs or may appoint a plenary guardian over his person and his financial affairs.

In a Petition For Appointment of an Emergency Temporary Guardian, a family member must allege sufficient facts, including in many instances, the pertinent facts from the Marchman Act petition which would indicate to the court the severity of elderly person's impairment and cognitive and memory losses. The court will enter an order for the appointment of an emergency temporary guardian If the court finds the matters alleged establishes that there exists an imminent danger that the physical and mental



health or safety of the individual will be seriously impaired or that the property of the person is in danger of being wasted, misappropriated or lost unless immediate action is taken. Such an order will delegate to the ETG the financial and personal decisions of the impaired person including treatment and medical care decisions. Because the order for an ETG will deprive the person of certain rights to manage his affairs pending further hearing and order of the court, ETG appointments are only for 90 days. The Court will conduct a hearing shortly after 90 days to determine whether the person should be determined to have capacity or not, and if the person needs a more permanent guardian. The evidentiary burden is significant for the family trying to establish the need for an emergency temporary guardian because the relief sought deprives the individual of rights.

The family will have a better idea in 90 days of treatment and abstinence from substances as to whether or not the elderly loved one's cognitive and memory issues are improving or not. In cases where there is marked improvement, the guardianship case can be dismissed and the elderly person's rights restored.

Joe Considine has practiced law in South Florida since 1983. His practice is limited to family law and addiction related law including the Marchman Act. Joe has handled over 1500 litigation cases in his career, appearing in courts throughout Florida. Joe works extensively with families whose loved ones have substance abuse and mental health problems as an attorney. He lectures throughout Florida on family law matters including the Marchman Act and other substance abuse related issues. Joe grew up and lives in West Palm Beach, has three adult children and loves mountain biking. His website is: www.joeconsidinelaw.com Telephone is 561-655-8081 Email address is joe@joeconsidinelaw.com