

## **MSBA ELDER LAW SECTION E-NEWSLETTER JANUARY 27, 2009**

### **E-Newsletter Editorial Staff:**

**Newsletter Committee Chair:** Laurie Hanson, Esq.

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### **PERSONAL CARE ASSISTANTS – REPORT RECOMMENDS CHANGES**

The Minnesota Office of the Legislative Auditor released a report on the administration of Personal Care Assistant (“PCA”) services on Friday, January 23, 2009. PCAs help individuals living in non-institutional settings with daily living activities or other health-related tasks. Most PCA services are funded by Medical Assistance. The Minnesota Department of Human Services administers the PCA program, often relying on over 500 PCA agencies for supervision and reporting. Prompted by concerns over the growing number of PCAs (over 45,000) and the increase in the amount spent on the services (now over \$400 million), the report recommends several improvements in the administration and accountability of the program. The report is available at: <http://www.auditor.leg.state.mn.us/ped/2009/pca.htm>.

### **REMINDER: FIRST VULNERABLE ADULT COMMITTEE MEETING**

Thursday, January 29, 2009, at noon, marks the first Elder Law Section Vulnerable Adult Committee Meeting (see announcement below). Please contact co-chairs Ken LaBore at [klabore@prslegal.com](mailto:klabore@prslegal.com) or Joel Smith at [joel@koslawfirm.com](mailto:joel@koslawfirm.com) with interest.

### **ELDER LAW NEWS**

Medicaid rate cut threatens access to care

<http://www.bannergraphic.com/story/1494668.html>

Journal Editorial: New nursing home ratings help empower consumers

[http://www.mlive.com/opinion/flint/index.ssf/2009/01/journal\\_editorial\\_new\\_nursing.html](http://www.mlive.com/opinion/flint/index.ssf/2009/01/journal_editorial_new_nursing.html)

Minnesota's in-home care system ripe for fraud, audit says

[http://www.twincities.com/ci\\_11542057?IADID=Search-www.twincities.com-www.twincities.com;](http://www.twincities.com/ci_11542057?IADID=Search-www.twincities.com-www.twincities.com;)

<http://www.startribune.com/politics/state/38255764.html?page=1&c=y>

Albert Lea / Two nursing home workers charged with abusing residents

[http://www.twincities.com/ci\\_11521435?IADID=Search-www.twincities.com-www.twincities.com](http://www.twincities.com/ci_11521435?IADID=Search-www.twincities.com-www.twincities.com)

## **UPCOMING EVENTS AND CLE PROGRAMS**

### **ABCs of Will and Trust Drafting Plus Planning for Dementia & Incapacity**

#### **Live Presentation**

February 6, 2009, 9:00 am – 4:15 pm

Contact Information: <http://www.minncle.org/SeminarsSearch.asp> or 1 800-759-8840.

### **Medical Assistance and Long Term Care 2009**

#### **Live Presentation**

March, 16, 2009, 8:30 am – 4:30 pm

Contact Information: <http://www.minncle.org/SeminarsSearch.asp> or 1 800-759-8840.

### **Hospice Minnesota's 2009 End-of-Life Conference**

Mystic Lake Casino Hotel, Prior Lake, MN

April 6 - 7, 2009

Contact Information:

<http://www.mnhospice.org/displaycommon.cfm?an=1&subarticlenbr=197> or 651-659-0423.

## **ELDER LAW SECTION ACTIVITIES**

**VULNERABLE ADULTS COMMITTEE MEETING:** The new VA Committee will meet for the first time on January 29, 2009, at Noon, at the offices of Pearson, Randall, Schumacher & LaBore, P.A., Fifth Street Towers, 100 South Fifth Street, Suite 1025, Minneapolis, MN 55402; 612.767.7500. Please contact Ken LaBore ([klabore@prslegal.com](mailto:klabore@prslegal.com)) or Joel Smith ([joel@koslawfirm.com](mailto:joel@koslawfirm.com)) with interest.

**GOVERNING COUNCIL MEETING:** The next meeting of the Elder Law Section Governing Council will be at 3:30 p.m. on Friday, February 13, 2008, at the MAO offices, 2021 E. Hennepin, Suite 200, Minneapolis. All members are welcome to attend. To participate by phone, please contact Karla Nelson with Schmitz & Schmidt, P.A., at 651-291-2405.

## **MINNESOTA CASES**

*Following are two Minnesota Court of Appeals unpublished decisions released on January 20, 2009.*

A07-2063

**Jessica Pittman, Relator, vs. Dakota County Community Development Agency, Respondent.**

SHUMAKER, Judge

On appeal from respondent's ruling terminating her eligibility to receive public housing assistance, Relator argues that the record does not support the determination that she allowed an unauthorized adult to live in her housing unit, that the respondent failed to consider all the relevant evidence, and that the ruling did not contain sufficiently specific findings, such as whether the unauthorized adult was a "visitor" or "resident" of the home. Because respondent failed to make findings of fact to support its decision to terminate Relator's public housing benefits and because the legal basis for termination is unclear, we reverse and remand.

The decision is available at:

<http://www.mncourts.gov/opinions/coa/current/opa072063-0120.pdf>

A08-0842

**Angela Sue Saurdiff, Relator, vs. Minnesota Commissioner of Health, Respondent.**

STAUBER, Judge

Relator challenges a decision by the Minnesota Commissioner of Health to disqualify her from providing direct contact services to patients due to a criminal background check that revealed Relator was convicted on two counts of misdemeanor theft in the past. Because the commissioner's conclusion that Relator poses a risk of harm to those in her care is not supported by substantial evidence, but rather Relator's supervisors support a set aside of the disqualification and Relator herself has taken remedial measures, we reverse.

The decision is available at:

<http://www.mncourts.gov/opinions/coa/current/opa080842-0120.pdf>

*Unpublished opinions may not be cited except as provided by Minn. Stat. Section 480A.08, Subd. 3 (2006).*

**STATUTES, REGULATIONS, BULLETINS**

*No statutes, regulations or bulletins to report for this week.*

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**DON'T FORGET THAT THE ELDER LAW WEBSITE IS A GREAT RESOURCE.** Here's what you can find on the Website: Links under "What's New" to the DHS Health Care Programs Manual, the updated Income and Asset Eligibility Figures for Minnesota Health Care Programs, the DHS Bulletin on treatment of uncompensated transfers, the Minnesota Bankers Association Compliance Bulletin on Powers of Attorney, and a legislative summary; Practice Links to organizations such as NAELA, ABA Commission on Law and Aging, Minnesota Senior Federation; Links to Federal and State Government Agencies, Statutes, and Regulations; Meeting Notices, Listings of Officers and Council Members, Section Bylaws, and more.

**To access the ELDER LAW SECTION WEBSITE**

Click here: <http://www2.mnbar.org/sections/elder-law/index.asp>

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Please send eNewsletter contributions by noon on Saturday of each week to Suzy Scheller at [sscheller@prslegal.com](mailto:sscheller@prslegal.com).

If you do not wish to receive this eNewsletter, send your request to be removed from the mailing list to Kim Basting at [kbasting@statebar.gen.mn.us](mailto:kbasting@statebar.gen.mn.us).