

MSBA ELDER LAW SECTION E-NEWSLETTER MARCH 17, 2009

E-Newsletter Editorial Staff:

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DATABASE OF FAIR HEARINGS DECISIONS ADDED TO DHS WEB SITE

A searchable database of fair hearing decisions is now available on the DHS Web site. The archive includes a keyword search function, and is available to members of the public interested in seeing how the appeals process has addressed particular issues. The database is available at: <http://appeals.dhs.state.mn.us/AppealsSearch.aspx>

More information about state appeal hearings is available at:

http://www.dhs.state.mn.us/main/idcplg?IdcService=GET_DYNAMIC_CONVERSION&dDocName=id_008649&RevisionSelectionMethod=LatestReleased

ELDER LAW NEWS

4 Ways to Cover the Cost of Long-Term Care: Out of your pocket. Medicaid. Other options are long-term care insurance and a reverse mortgage

<http://health.usnews.com/articles/health/best-nursing-homes/2009/03/11/4-ways-to-cover-the-cost-of-long-term-care.html>

Doctor's house calls: Back to the future: A Twin Cities doctor says the past carries some lessons for improving care for the elderly.

<http://www.startribune.com/lifestyle/health/40903862.html?elr=KArks:DCiU1OiP:DiiUiD3aPc:Yyc:aUU>

Study debunks long-term care Medicaid 'myth,' researchers say

<http://www.mcknights.com/Study-debunks-long-term-care-Medicaid-myth-researchers-say/article/128422/>

Dakota Co. woman accused of stealing \$1.1M from mom

http://www.twincities.com/dakota/ci_11900961?nclick_check=1

Wrestling legend Vern Gagne won't be charged in homicide at Bloomington care facility

http://www.twincities.com/ci_11901301?IADID=Search-www.twincities.com-www.twincities.com

Beltrami County: Marchel responds to growth in program to help elders, disabled

<http://www.bemidjipioneer.com/articles/index.cfm?id=22126§ion=news>

Hospitals' use of 'observation stay' is questioned: Patients aren't admitted to the hospital so insurance may not cover some expenses

<http://www.chicagotribune.com/features/lifestyle/health/chi-observation-caremar09,0,7516443.story>

The Prognosis for Electronic Health Records

http://www.pcworld.com/article/161239/the_prognosis_for_electronic_health_records.html

UPCOMING EVENTS AND CLE PROGRAMS

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

Video Replay

March 19, 2009 – St. Cloud

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

Medical Assistance and Long Term Care 2009

Video

April 6 & 21, 2009 – Minneapolis

April 24, 2009 – Mankato

April 29, 2009 – Moorhead

May 7, 2009 – St. Cloud

May 29, 2009 - Duluth

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

Hot Topics in Elder Law

HCBA Presentation

March 23, 2009, Noon

Contact Information: <http://www.hcba.org/intus/Event3/event.asp> or 612-752-6600.

Tools of the Trade – Strategic Planning in Elder Law

HCBA Video Presentation

March 25, 2009, 8:30 am

Contact Information: <http://www.hcba.org/intus/Event3/event.asp> or 612-752-6600.

Hospice Minnesota's 2009 End-of-Life Conference

April 6 - 7, 2009

Mystic Lake Casino Hotel, Prior Lake, MN

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

Elder Law: Long Term Care and Financial Planning

RCBA Live Presentation

April 15, 2009, 3:00 – 5:00 p.m.

Contact Information: <http://www.ramseybar.org/calendar.html> or 651-222-0846

Probate & Trust Law Section Conference

June 8 - 9, 2009

Saint Paul RiverCentre

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

ELDER LAW SECTION ACTIVITIES

GOVERNING COUNCIL MEETING: The next meeting of the Elder Law Section Governing Council will be at 3:30 p.m. on Friday, April 17, 2009, 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.

VULNERABLE ADULT COMMITTEE MEETING: The next meeting of the Vulnerable Adult Committee will be Thursday, April 30, at Noon, at the offices of Pearson, Randall, Schumacher & LaBore, P.A., 100 S. 5th Street, Suite 1025, Minneapolis, 612.767.7500. Contact co-chairs Ken LaBore at klabore@prslegal.com or Joel Smith at joel@koslaw.com for more information.

ELDER LAW SECTION ANNUAL MEETING: The annual meeting of the Elder Law Section will be on June 9, 2009. More details to follow.

MINNESOTA CASES

Following is a Minnesota Court of Appeals unpublished decisions released on March 10, 2009.

A08-0372

Nicole Fyksen, Relator, vs. Dakota County Community Development Agency, Respondent.

HALBROOKS, Judge

Relator Nicole Fyksen seeks review of the termination of her Section 8 housing-assistance benefits by respondent Dakota County Community Development Agency (DCCDA), arguing that (1) the evidence does not support the decision to terminate based on misrepresentation, (2) DCCDA failed to consider mitigating circumstances, and (3) the hearing officer failed to comply with applicable law in making her decision. Because we conclude that the evidence does not support the termination decision, we reverse.

The decision is currently available at:

<http://www.courts.state.mn.us/opinions/coa/current/opa080372-0310.pdf>

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

Note: Web links to Minnesota Court of Appeals cases posted in the E-Newsletter are only available through the Tuesday following the release of the decision. Thereafter, the posted link is no longer valid and users will need to access the Minnesota Court of Appeals archive database at: <http://search.state.mn.us/lawlibrary/> and searching for the specific case.

The following is a U.S. District Court-Minnesota Opinion filed March 4, 2009

Civil No. 08-5874

Bernstein v. Extencicare Health Svcs., Inc. (DWF/JSM) (D. Minn. 3/4/2009)

DONOVAN W. FRANK, Judge of United States District Court

Court's introduction:

This matter is before the Court upon a Motion to Dismiss brought by the Defendants Extencicare Health Services, Inc. and Extencicare Homes, Inc. ('Defendants'). For the reasons set forth below, the Court grants Defendants' motion [without prejudice].

Excerpts:

"Plaintiff Laura Bernstein ('Plaintiff') is a resident in the Texas Terrace Nursing Home owned by Defendants and located in Minnesota. Plaintiff has asserted claims against Defendants under Minnesota law for alleged violations of the Prevention of Consumer Fraud Act, Minn. Stat. §§ 325F.68-.70, the Deceptive Trade Practices Act, Minn. Stat. §§ 325D.43-.48, and the False Statement in Advertisement law, Minn. Stat. § 325F.67.. . The Court concludes that Plaintiff fails to state a claim upon which relief may be granted.

Statements that a nursing home will comply with or exceed 'applicable laws,' or that it has established 'rigorous standards,' are similar to statements that services provided will be 'high quality.' These statements are puffery. Further, the statement in the admissions agreement that services will be provided 'as required by law' is a redundancy. Nursing homes are required by law to provide certain services under a comprehensive regulatory scheme. The admission agreement's recitation of that fact does not create a promise independent of the legal obligations already imposed by State and Federal laws and regulations.

It is possible that the Defendants are violating state laws and regulations and are not providing adequate care to residents. Plaintiff may have rights and remedies available to her under applicable laws for any such violations. A consumer protection action simply is not the path to resolution of those issues and neither the Plaintiff's original Complaint, nor her Amended Complaint, state a cause of action.

The Court agrees that there are complicated and vexing issues regarding the quality of care provided to elderly and infirm persons, especially those who are indigent, and that these are matters of great concern. The Court also notes that Plaintiff, along with other nursing home residents, is entitled to be treated with respect and dignity. It may be that serious scrutiny regarding Plaintiff's care should be applied by the Minnesota Departments of Health and Human Services."

NOTE: Plaintiff plans to appeal the Court's decision and plans to file a personal injury action in this case.

The decision is available on the PACER system (with login information) at:
<https://ecf.mnd.uscourts.gov/doc1/10112490743>

STATUTES, REGULATIONS, BULLETINS

Proposed legislation currently in the Minnesota House of Representatives:

Taxable market value increase prohibited for certain homesteads owned by persons age 65 years or older. (HF1661)

https://www.revisor.leg.state.mn.us/bin/getbill.php?number=HF1661&session=ls86&version=list&session_number=0&session_year=2009

Communities for a lifetime criteria specified, and Minnesota Board on Aging and commissioner of employment and economic development required to develop recommendations on the designation of communities for a lifetime. (HF0936)

https://www.revisor.leg.state.mn.us/bin/getbill.php?number=HF0936&session=ls86&version=list&session_number=0&session_year=2009

Elderly living facilities provided as exempt from property taxation, and an exemption provided for the purchase of materials and supplies used in the construction of elderly living facilities from sales taxation. (HF1019)

https://www.revisor.leg.state.mn.us/bin/getbill.php?number=HF1019&session=ls86&version=list&session_number=0&session_year=2009

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>

Please send eNewsletter contributions by noon on Saturday of each week to Suzy Scheller at 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.