

**MSBA ELDER LAW SECTION E-NEWSLETTER**  
**July 5, 2011**

**Vol. 4, No. 26**

**E-Newsletter Editorial Staff:**

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**ITEM OF INTEREST**

**Supreme Court Denies Review of *Perrin***

On June 28, 2011, the Minnesota Supreme Court denied the petition of the Commissioner of Human Services to review the Court of Appeals' decision in *Estate of Richard L. Perrin*, Appellate Court Docket No. A10-1352. The Court of Appeals held that the District Court did not err in applying the doctrine of collateral estoppel to disallow and deny in full Hennepin County's MA claim to recover from the estate of a community spouse the medical assistance benefits paid on behalf of the community spouse's predeceased spouse. The community spouse's estate, at the time of his death, did not include any property owned by the pre-deceased spouse at the time of her death. At issue in the appeal was 1) whether Minn. Stat. § 519.05 (2008), the general spousal liability statute, provided a separate and independent basis of recovery of medical assistance benefits paid on behalf of the predeceased spouse; and 2) whether the District Court erred by applying the holdings in *In re Estate of Barg*, 752 N.W.2d (Minn. 2008) and the doctrine of collateral estoppel to disallow and deny Hennepin County's claim in full. The Commissioner sought review on the grounds that the silence in the Supreme Court's opinion in *Barg* meant that the availability of § 519.05 as an alternative theory allowing recovery had not been finally decided and that the Probate Court should have decided the issue on its merits rather than apply collateral estoppel to bar the claim. The Court of Appeals affirmed the District Court on all issues. Here is the link to the Court of Appeal's decision: <http://www.lawlibrary.state.mn.us/archive/ctappub/1104/opa101352-0419.pdf>.

The Supreme Court denied the Commissioner's Petition without explanation. The Commissioner's Petition included the following warning to the Court: Review by this Court is necessary to clarify this significant unanswered question of law. Even though section 519.05(a) was amended in 2009 to clarify its application to estate recovery claims, **the Court of Appeals' holding will likely result in further litigation** because the State cannot know with certainty that section 519.05(a) is preempted under [the Supreme Court's opinion in the *Barg* case] until a court actually addresses that argument--but the decision below will likely result in other district courts accepting collateral estoppel defenses and thereby foreclosing the possibility of ever having a clear holding

on the status of section 519.05(a) with regard to estate recovery matters. (emphasis added)

It would appear, from the denial of the Commissioner's Petition for Review, that the Minnesota Supreme Court believes that the Commissioner's question regarding the availability of 519.05(a) as an alternative theory of recovery was answered in the negative in the *Barg* case. Whether the Commissioner accepts that result should become known soon. The Commissioner appealed the *Barg* case all the way to the U.S. Supreme Court with no success. It appears likely that further attempts to delay the finality of the Court of Appeals' decision in *Perrin* will prove equally futile. While we wait to see the Commissioner's next step, other cases held in abeyance while *Perrin* moved through the appellate courts will likely resume their progress in the Probate Courts, and the Court of Appeals decision will be cited in those cases as controlling. Cases involving medical assistance recipients who die on or after July 1, 2009, will be affected by the 2009 amendments to Minn. Stat. §§ 256B.15 and 519.05. Challenges to the constitutionality of the 2009 amendments are likely to surface in various Probate proceedings in the coming months.

*The Estate of Perrin* continues to be represented by Attorney David E. Culbert of Edina, Minnesota, and the Commissioner of Human Services and Hennepin County continue to be represented by Assistant Attorney General Cynthia Jahnke.

Submitted by Julian J. Zweber, Esq.  
[julianzweber@qwestoffice.net](mailto:julianzweber@qwestoffice.net).

### **LINK OF THE WEEK**

Medical Assistance eligibility numbers change in January and July of each year. You will find the July numbers on the chart which is on our website under Elder Law Forms and Documents. Interestingly, the SAPSNF (Statewide Average Payment for a Skilled Nursing Facility) was reduced from \$5,372 to \$5,340 for the first time in the history of the SAPSNF. You can find the link on our website at: <http://www.mnbar.org/sections/elder-law/form.asp>.

Information about the SAPSNF is at  
[http://hcopub.dhs.state.mn.us/hcpmstd/19\\_40\\_30ar3.htm](http://hcopub.dhs.state.mn.us/hcpmstd/19_40_30ar3.htm).

Submitted by Laurie Hanson, Esq.  
[lhanson@mnelderlaw.com](mailto:lhanson@mnelderlaw.com)

### **ELDER LAW NEWS**

Judge's ruling relieves senior care givers

<http://minnesota.publicradio.org/collections/special/columns/shutdown/archive/2011/06/judges-ruling-relieves-senior-care-givers.shtml>

St. Mark's quality concerns

<http://www.austindailyherald.com/2011/06/28/st-marks-quality-concerns/>

Medicare Will Cover Prostate Cancer Drug

<http://minnesota.cbslocal.com/2011/06/30/medicare-will-cover-prostate-cancer-drug/>

Minnesota's budget and shutdown scorecard

<http://minnesota.publicradio.org/display/web/2011/06/29/shutdown-scorecard/>

Minnesota Shutdown Hits Poor; Aid Groups Scramble

<http://www.npr.org/2011/07/01/137559319/minnesota-shutdown-hits-poor-aid-groups-scramble?ps=cprs>

Nursing homes to receive funding

<http://www.albertleatribune.com/2011/06/29/nursing-homes-to-receive-funding/>

### **ELDER LAW CASES**

*There are no Minnesota Cases to report this week.*

### **STATUTES, REGULATIONS, BULLETINS**

*There are no Statutes, Regulations, or Bulletins to report this week.*

### **UPCOMING EVENTS AND CLE PROGRAMS**

#### **Minnesota State Bar Association**

#### **2011 Elder Law Institute**

#### **SAVE THE DATE: October 6 and 7, 2011**

The Elder Law Institute (ELI), a collaboration between the MSBA's Elder Law Section and Minnesota Continuing Legal Education, is an annual conference designed to provide educational and networking opportunities for attorneys and others interested in the practice of Elder Law. The ELI offers a wide range of educational programming, ranging from discussions of nursing home and Medical Assistance issues to legislative updates

and policy analysis. ELI Attendees receive from nine to eleven Continuing Legal Education credits, depending upon the length of the conference.  
*Stay tuned for more information and online registration.*

**ELDER LAW SECTION ACTIVITIES**

**MA COMMITTEE MEETING:** The next MA Committee meeting will be at 3:30 p.m. on Tuesday, August 16, 2011. Topics for the meeting may be submitted to MA Committee Chair, Cathryn Reher, at [creher@mnelaw.com](mailto:creher@mnelaw.com), or faxed to 952-542-9201. For directions, or to attend by phone, please contact Tracie Fenske with Long, Reher & Hanson, P.A. at 952-929-0622. Please be reminded that the meeting location is: Estate & Elder Law Services (formerly MAO Legal Services), Monroe Village, 1900 Central Avenue NE, Suite 106, Minneapolis, Minnesota 55418. There are a few parking spaces behind the building and lots of street parking. People should walk to the back of the building and come to the back door which faces directly into the meeting room.

**GOVERNING COUNCIL:** The next meeting of the Elder Law Section Governing Council will be 3:30 p.m. on Friday, August 19, 2011. The meeting will be held at Estate & Elder Law Services (formerly MAO Legal Services), Monroe Village, 1900 Central Avenue NE, Suite 106, Minneapolis, Minnesota 55418. There are a few parking spaces behind the building and lots of street parking. People should walk to the back of the building and come to the back door which faces directly into the meeting room. For further information, please contact Suzy Scheller, Chair, at: [suzy@schellerlegalsolutions.com](mailto:suzy@schellerlegalsolutions.com).

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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 to the DHS Health Care Programs Manual, the DHS Bulletin on treatment of uncompensated transfers, the Minnesota Bankers Association Compliance Bulletin on Powers of Attorney, legislative summary; Practice Links to organizations such as NAELA, ABA Commission on Law and Aging, 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://www.mnbar.org/sections/elder-law/index.asp>

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Please send E-Newsletter contributions by 10 p.m. on Sunday of each week to Marjorie Austin at [mj@mjaustinlaw.com](mailto:mj@mjaustinlaw.com).

If you do not wish to receive this E-Newsletter, send your request to be removed from the mailing list to Elyse Farnsworth at [efarnsworth@statebar.gen.mn.us](mailto:efarnsworth@statebar.gen.mn.us).

Current and prior E-Newsletters are posted on the website for the MSBA Elder Law Section and are available at: <http://www2.mnbar.org/sections/elder-law/newsletter.asp>.