

# PARENTS, AGING & LEGAL ASPECTS OF COGNITION

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# CAPACITY OR INCAPACITY?

## Capacity

- ✓ **Cooks or buys fresh food**
- ✓ **Cleans the house, even with help**
- ✓ **Buys groceries, even with a little help**
- ✓ **Manages and attends medical appointments**
- ✓ **Arranges transportation**
- ✓ **Orders Medication**
- ✓ **Able to give himself/herself medication on a timely basis**
- ✓ **Communicates needs and wishes**
- ✓ **Managers Own Care**
- ✓ **Bathes and wears clean clothes**
- ✓ **Pays bills timely**
- ✓ **Manages own assets**
- ✓ **Good judgment**
- ✓ **Understands consequences**
- ✓ **Understands quantities**

# LACK OF CAPACITY

## Signs of Decline

- Forgets to bathe
- Does not change clothes or wash clothes
- No fresh food in the house
- House is dirty or there is hoarding
- Medications not ordered

## More....

- Refuses Medications
- Lacks judgment
- Does not understand quantities
- Leaves stove on
- Piles of unopened mail
- Many unpaid bills
- People trying to take advantage of him/her

# LEGAL PROTECTION WHEN THERE IS CAPACITY

## LEGAL DOCUMENTS

- Power of Attorney for Asset Management
- Advance Health Care Directive or Health Care Power of Attorney
- POLST (Life Sustaining Physicians' Orders)
- Capolst.org
- Added Protection:
  - Living Trust
  - Will
- Even More Protection
  - Irrevocable Trusts

# LEGAL PROTECTION WHEN THERE IS NO CAPACITY

## CONSERVATORSHIP OF PERSON

- Conservator takes care of the personal affairs of a disabled or elder adult
- Making medical appointments
- Arrange for caregivers
- Arrange for food, and medication
- Determine where the disabled adult will live
- Notice to all relatives is needed
- Relatives and other interested persons can object
- Suitability is a big issue
- Dementia Medication Orders
- Needs a Doctor's Declaration re Lack of Capacity

# FINANCIAL PROTECTION WHEN THERE IS NO CAPACITY

## CONSERVATORSHIP OF ESTATE

- Conservator of Estate pays the bills
- Collects Income
- Collects all assets
- Keeps assets separate than the assets of the Conservator
- Court required Bond
- Conservator files an accounting in court
- Court Investigator is appointed
- Suitability is a big issue
- Conflicts of interest can result in objections
- Any interested person can object
- Conservator can sue for elder abuse and to recover property or defend lawsuits
- Wills & Trusts can be created with a special court order

# SPECTRUM OF PARENT'S COGNITIVE CHANGE

- ACCEPTS HELP
- UNDERSTANDS THE NEED TO PLAN FOR THE FUTURE
- CAN MODERATE MOOD
- DOES NOT ACCEPT HELP
- DENIES THE NEED TO PLAN FOR THE FUTURE
- BECOMES ANGRY

# PROS & CONS OF CONSERVATORSHIPS

## PRO

- Court supervised proceeding
- Prevents Elder Abuse in Many cases
- Prevents people from selling and elder's home without a court order
- Conservator must account

## Con

- Takes a long time
- Expensive



# WHAT TO DO WHEN YOU SUSPECT THAT AN ELDER NEEDS HELP

- Offer help informally
- Get a Capacity Declaration from our office and have the physician complete it.
- Call our office for an appointment:
  - Mina Sirkin: 818.340.4479
- Bring a list of your concerns
- Bring a list of your parents' assets to discuss
- Ask us for guidance on housing, caregiving, and legal protection

# WHY HIRE US?

## EXPERIENCE

- Mina N. Sirkin is Certified as a Specialist Attorney in California in Estate Planning, Probate and Trust Law.
- B.A. Political Science/  
Public Law U.C.L.A. 1988
- J.D. Whittier Law School
- L.L.M Taxation Golden Gate University Law School
- Admitted to California State Bar in 1992.
- Instructor on Conservatorships & Elder Abuse in many courses for attorneys and paralegals in Los Angeles.
- Rated 10/10 Avvo
- PVP Attorney Panel Member
- Settlement Officer