FOR IMMEDIATE RELEASE

HUMAN RIGHTS AUTHORITY- CHICAGO REGION

REPORT 14-030-9009
Magnolia Care Guardianship

Case Summary: The HRA substantiated the complaint that the company does not meet the Probate Act requirements when staff are not familiar with or protect visitation and disability rights guaranteed by the Nursing Home Care Act and the Mental Health and Developmental Disability Code, and promoted by the National Guardianship Association. The HRA issued 11 recommendations and one suggestion. The provider response is attached.

INTRODUCTION

The Human Rights Authority of the Illinois Guardianship and Advocacy Commission opened an investigation after receiving a complaint of possible rights violations at Magnolia Care Guardianship (Magnolia). It was alleged that the company does not meet the Probate Act requirements when staff are not familiar with or protect visitation and disability rights guaranteed by the Nursing Home Care Act and the Mental Health and Developmental Disability Code, and promoted by the National Guardianship Association. If substantiated, this would violate the Mental Health and Developmental Disabilities Code (405 ILCS 5) and the Nursing Home Care Act (210 ILCS 45).

Magnolia Care is a private guardianship and case management company.

To review these complaints, the HRA conducted a site visit and interviewed two Managing Directors of Magnolia Care, and two attorneys for Magnolia Care. Relevant company records were reviewed, and records were obtained with the consent of the recipient.

COMPLAINT SUMMARY

The complaint indicates that the recipient, a 92 year old male, was deprived of his right to visitation or communication with his family upon the directive of his guardian and improperly admitted to a geriatric behavioral health care unit by his guardian. The complaint states that the guardian did not make decisions based upon the ward's preferences and/or best interests in accordance with the his rights as outlined in the Nursing Home Care Act, Mental Health and Developmental Disabilities Code and the Probate Act.

FINDINGS

The record shows that the recipient, a 92 year old, was experiencing behaviors related to dementia, and required almost constant care. The recipient also had extensive and somewhat complicated financial interests and assets. His three children disagreed on the care of the recipient and his finances and it was recommended that the family pursue guardianship for the recipient and court appointment of the private guardianship company, Magnolia Care. The record shows that the attorney for one of the recipient's children recommended Magnolia. Court records as well as the recipient's report indicated that the relationship between the recipient and Magnolia deteriorated when the guardians removed the recipient's cell phone and would not allow his family to visit him without supervision.

The record contains an Independent Medical Evaluation performed by a physician on 2/14/13. In the conclusion of the report it states, "Accordingly, based on my interview of [the recipient] and upon my expertise as a Board certified Geriatric Psychiatrist is my opinion beyond a reasonable degree of medical certainty that [the recipient]: 1. Is partially capable of making his own personal decisions, and 2. Is partially capable of making his own financial decisions."

The record shows that on 6/13/13, the court appointed Magnolia Care as the limited guardian of the person for the recipient in a court order which states in part,

1. Magnolia Care is appointed the Limited Guardian of the Person of [the recipient].

2. As Limited Guardian of the Person, the authority specifically conferred on Magnolia Care is as follows:

a. In accordance with the provision of the Health Insurance Portability and Accountability Act (HIPAA), Magnolia Care shall have the authority to:
i. Execute releases and consents in order to access any and all of [the recipient's] medical records, including but not limited to, psychiatric records; and
ii. Communicate with all of [the recipient's] health care providers in order to assist [the recipient] with obtaining necessary medical care, and applying for all appropriate private insurance and/or public government benefits.

b. Magnolia Care shall have the authority to act as health care surrogate decision maker for [the recipient] under the Illinois Health Care Surrogate Act, 755 ILCS 40/1 et seq., at any time [the recipient's] Attending Physician and/or Health Care Provider, as defined under 755 ILCS 40/10, determines that [the recipient] lacks decisional capacity as defined under 755 ILCS 40/10, to make medical decisions.

c. Magnolia Care shall have authority to apply for any and all private, public, and/or government benefits on behalf of [the recipient].

d. Magnolia Care shall have the authority, in consultation with [the recipient], to procure any home, and/or home health services for [the recipient].

e. In the event that [the recipient] is no longer able to remain in his home at…because of medical or financial reasons, Magnolia Care shall have the authority to explore alternative

living arrangements for [the recipient], including but not limited to, an assisted living facility, supportive living facility, or an apartment. Magnolia Care shall consult with [the recipient] regarding proposed alternate living arrangements and shall ensure that [the recipient] has the opportunity to inspect any and all placements, if feasible. If [the recipient] objects to the proposed alternate living arrangements, Magnolia Care shall bring the matter before the Court pursuant to 755 ILCS 11a/14.1 of the Probate Act on the issue of placement.

On 7/18/13 the guardian's attorney petitioned the court to restrict the recipient's visitation with his family and presented an agreed order that was subsequently signed by the judge:

It is hereby ordered that:
1. Visitation and all contact with [the recipient] is limited to family/blood relatives only.
2. All of the children and [the recipient's] other family members are prohibited and ordered to refrain from communicating in any way with [the recipient] about any aspect of this case or his business, and the family has been further advised that the Limited Guardianship of the Person shall follow the procedure that has been specified in the letter dated 7/12/13 of [the attorney of the guardian] (attached hereto) with respect to all visitation, telephone calls and any other communication with [the recipient] and all visitation and telephone calls will be monitored
3. It is further ordered that said petition is denied without prejudice.

It is further Ordered:
That all visits with [the recipient] shall be scheduled in advance with Magnolia Care and all visits shall be supervised and monitored as detailed herein. Supervision shall be monitored by the caregivers or representatives of Magnolia Care as they shall direct.

The letter referenced to above, is included in the record. It states:

Dear Counselors,

My office represents the Limited Guardian of the Person of [the recipient], Magnolia Care Solutions, LLC ("Magnolia"). As you know, on June 13, 2013, all parties entered an agreed order appointing Magnolia as the Limited Guardian of [the recipient's] person.

As Guardian, Magnolia must act in the best interest of [the recipient]. It has come to my attention that despite admonishment from the Court on June 28, 2013, [the recipient's] children and [the recipient's former caregiver] continue to discuss and communicate matters relating to the guardianship proceedings with [the recipient], which have caused him unnecessary stress and agitation. Matters relating to the guardianship proceedings include discussing [the recipient's] properties, business entities, and finances belonging to his estate.

Judge [of the guardianship proceeding] was extremely clear that no person was to discuss any matters relating to the guardianship proceedings with [the recipient], other than his attorney. Any concerns related to [the recipient's] person or estate should be directed to the respective Guardians.

In light of these continued behaviors, Magnolia is now implementing a new component to [the recipient's] care plan. In addition to the agreed Court Order, dated June 28, 2013 stating that caregivers shall be present at all visits between [the recipient] and others, caregivers will also be monitoring all telephone calls between [the recipient] and outside callers. The caregivers will identify themselves on the telephone at the beginning of each call. Accordingly, caregivers will be monitoring all communications between [the recipient] and others to ensure that conversations relating to the guardianship proceedings are not discussed with him, other than with his attorney.

Further, upon hearing any conversations relating to the guardianship proceedings by the family or [the former caregiver], all caregivers are now instructed to complete an 'incident report' detailing the person, time, mode, and content of the conversation. Incident reports will be immediately sent to Magnolia, informing it of illicit communications. Upon receiving an Incident report, Magnolia will immediately terminate visitation and all telephone privileges of the offending party. It shall be made clear that this action will only take place if the illicit communications are heard and/or witnessed personally by the caregivers or guardian.

As a result of this order, the recipient's caregiver (all caregivers were secured by the guardian) initiated monitored phone calls of the recipient's phone, however, he had been issued a cell phone by his family so he would have easy access to a phone and contact numbers and this was replaced with two landline phones so that caregivers were able to hear all conversations.

Magnolia Client and Case Entries Report notes (progress notes) were provided for the investigation. They begin on 6/13/13 when the company was appointed guardian of the person for the recipient. The first entry regarding the recipient's access to a phone is described in an entry dated 7/22/13 and it states, "Obtained spending cash for ward. Visit with ward who was in a good mood, laughing and joking about court related matters. Easily redirectable to discuss other matters. Provided spending cash for Cosco. Collected information to forward to GOE [guardian of the estate]. Took ward's cell phone due to issues with calls. Collected incident reports." The above referenced Incident Reports written by the caregiver regarding the recipient's calls are as follows:

7/20/13. Conversation between the recipient and his daughter. "[Daughter] called. They talked about [the recipient's son]. [The recipient] replied, "Really? My lawyer can't do anything about it?"
7/20/13. Conversation between the recipient and his daughter. "[Daughter] called. The [recipient] asked her who ordered the restraining order to [the caregiver]. She answered 'we’re not suppose to talk about the case. But it's your son and your guardian. I'm not suppose to talk about the case. But yes it was [the recipient's son]."
7/21/13. "He woke up at 10:00 p.m. and told me that his daughter called, saying that she is not allowed to call or talk to him."
7/21/13. Conversation between the recipient and his daughter. "They're talking on the phone in other language. [Recipient] asked her to ask her lawyer if they can throw his son out of the company. She answered in other language."
7/21/13. Caller unknown to guardian. "[Caller] called 'your children are not allowed to call or visit you because [guardian] told them, [guardian] ordered [the recipient's daughter] not to come

over, or call you. That's why they want me to tell you because I'm the only one allowed to call you, some thing with [the recipient's daughter], the blond girl who ordered me to go out from the court room, that crazy [guardian] who worked for … ordered a restraining order to your kids, that's why they are crying now because they can't even call you.'"

The record indicates that the recipient was taken to an emergency room (ER) in McHenry County on 8/28/13 at approximately 3:19 p.m. ER notes written at 3:21 p.m. state, "ER MD and social worker at bedside with pt, guardian, and caregiver. Pt immediately angry when sees guard. and care giver, states, 'some joke you played on me'." At 3:48 p.m. progress notes state, "Pt takes valium without difficulty. Points to caregiver and states, 'he's the one who called the ambulance. He's with that Magnolia Corporation. Have you heard of them?"' The record indicates that at approximately 5:48 p.m. the recipient was evaluated by a McHenry County crisis worker. The Crisis Intervention and Disposition Summary states, "Assessed Pt. Pt. states that he does not know why he was brought to the ED via ambulance. Pt. reports that he does not want to go home with these people, referring to his caregiver and guardian. Pt. reports that he is scared to go home and that he has not been allowed to have a telephone for 4 weeks and that his caregiver fixes the door so pt. cannot leave the house. Pt. denies suicidal and homicidal ideation and reports that all basic needs are being met. Consulted with guardian. Guardian reports that Pt. has been agitated since last night when visited by his daughter and granddaughter who reportedly were providing Pt. with alcohol [There is no mention of this event in the guardian progress notes]. Guardian reported that Pt. attempted to leave his apartment via a window and today during transport to his other apartment he was punching the window of the car and attempted to open the door to the car while moving two times. Guardian reports that Pt. is unable to visit with his daughters without supervision. Guardian contacted [Chicago hospital] and reported acceptance to Pt. with transfer. Nurse verified this information and found [hospital] to have no beds available for Pt. Nurse verified and found that [hospital] requires face sheet, petition, and other information before considering placement for Pt.

Asked guardian to petition as crisis worker did not have sufficient observation or information to complete one. Guardian indicated she had previously completed a petition and did not need assistance. Guardian contacted her facility's attorney multiple times to consult how to complete a petition. Guardian claimed she had never seen a petition like the one presented before. Crisis worker assisted Guardian in completion of petition.

Contacted [staff] at Senior Services regarding current suspicions of mistreatment of Pt. based on Guardian's statements and observations made by crisis worker. [Staff] states that she is familiar with Pt. and his case that resulted in the placement of guardian. Crisis worker explained that guardian appears to be looking for placement for Pt. without following protocol, is refusing to transport Pt. to his home, Pt.'s reports of being denied a telephone upon request, Pt.'s reports of being unable to leave his home and other abnormal statements and behaviors by Guardian. [Staff] stated that long term placement cannot be sought for Pt. without court order and the petition will only allow for a 72 hour hold. [Staff] stated that follow up by an elder abuse worker is warranted given provided information. [Staff] asked for placement information if placement is found for an elder abuse worker to follow up."

On 8/28/13 at 8:00 p.m. while at the same hospital, the guardian completed a petition for involuntary admission for the recipient to be admitted as a psychiatric services recipient. The reason given for the need for immediate hospitalization states, "Changed mental status beginning the evening of 8/27/13. Attempted to leave apartment through window at approx. 4:30 a.m. Refused medication and meals. Attempted to exit a moving car, attempted to break car window. Through [sic] drinking glass across apartment." The petition does not indicate whether a certificate is attached and indicates that the guardian does not want to be notified if the voluntary application has been accepted. The petition does not state that the recipient was given a copy of it within 12 hours and the Rights of Admittee section does not indicate that the recipient received rights information. A certificate is included in the record, completed by a physician on 8/28/13 at 9:00 p.m. and the reason given for the need for immediate hospitalization is stated as, "Change in mental status refuse to get in vehicle making threats to caregiver." During this time the guardian contacted several hospitals in an attempt to transfer the recipient and after several calls, found a hospital where he could be moved. The guardian remained at the hospital until the ambulance arrived to transport the recipient to another emergency room, and then she left. The recipient was transferred, alone, to a Chicago area hospital, where he was admitted unaccompanied by a guardian or family member on 8/28/13 at 11:57 p.m.

The record contains another petition, completed on 8/29/13 at 3:30 p.m. by a registered nurse at the Chicago area hospital emergency department where the recipient had been transferred. The reason for the hospitalization is given as: "Pt became agitated following a visit with his daughters. Per reports, he attempted to jump out a window. He refused medications and to eat. He also attempted to jump out a moving vehicle." The petition does not indicate that the recipient received a copy of it within 12 hours after admission. It does not include a statement that the recipient received a copy of his Rights of Individuals Receiving Mental Health and Developmental Services or his Rights of Admittee information. A certificate is included, dated 8/29/13 at 3:45 p.m., and it states, "Mr… is diagnosed with dementia and is unable to make fully responsible decisions. Recently upon a visit with his daughters, he became anxious and agitated and attempted to jump out a window. He was refusing all medications and nutrition. When caregivers attempted to drive him to his apartment in the city, he attempted to jump out of the vehicle."

The record contains an Application for Voluntary Admission completed on 8/29/13 at midnight. The section which indicates that the applicant refused to sign the form but accepted voluntary admission is checked, however the form appears to have been signed by the recipient. It also indicates that the recipient did not want anyone notified of his admission. The recipient's name, birthdate, social security number, and address are not completed on the form. The recipient's voluntary admission application was accepted on this date and he was admitted into the Geriatric Behavioral Health Care Unit.

The record contains an informed consent for medication document. It indicates that the recipient was prescribed the following psychotropic medications: Depakote, Zyprexa, Seroquel, and Haldol (dosages not given). On the signature line for the Patient/Legal Representative it states, "Patient gave verbal consent to receive medication" and it states, "Guardian aware of medications."

The record contains a form titled, Geriatric Behavioral Health Care Unit Verbal Information Release for Telephone and Visitation Consent, written 8/28/13- not completed by the recipient. It shows that the recipient wished to receive telephone and visitation from his guardian, caregiver, personal physician, and personal attorney. This form is not signed by the recipient but by someone writing for the guardian ad litem and states, "client attorney per guardian [name]." On the bottom of this document is written: "No family allowed. Daughters are not allowed to visit or call or get information per [guardian]." Two entries in the progress notes for 8/29/13 also state, "[The guardian] states that the patient's daughters are not allowed to visit or call the patient." The record also contains a Geriatric Behavioral Health Care Unit Consent for Release of Information. This form authorizes friends and family members to receive information regarding the recipient's admission and status. It specifies the guardian as the sole family member and states on the signature line: "Per guardian [name], all info to be addressed to her only. Pt daughters are not to be given any information or any other family members …

Progress Notes from 8/29/13 state, "SW received phone call from pt.'s daughter. She is making allegations that pt is being mistreated by the guardian. SW advised daughter to make an abuse report with the Department on Aging. Guardian has said that we are not allowed to give information to the family. SW then received voicemail message from Magnolia Care, pt.'s guardian, to have pt transferred to [another facility]. SW called office and spoke with [staff at Magnolia] who confirmed that they would like pt transferred. SW received call from [staff] at [an elder assistance agency] who has been assigned to investigate abuse allegations. SW informed her that pt is most likely being transferred. SW faxed pt clinicals and was making arrangements when phone call was received from [the other hospital] that they will be unable to accept pt. SW left voicemail with [staff] that [the hospital] has declined pt."

Progress Notes from 8/30/13 state, "Patient very confused this evening; patient wandering around on the unit unable to find his own room and had to be redirected on many occasions. Patient was pleasant at the beginning of the shift; however, as the evening progressed, patient became anxious and irritable. Patient wanted staff to call his daughter (but patient did not know her phone number); patient wanted staff to call him a cab because patient wanted to go home, and when oriented to reality (that patient could not go home and was not able to care for himself), patient became agitated, angry, and irritable."

Progress Notes from 8/31/13 at 2:26 p.m. state, "Chaplain brought family of patient to visit pt, they told, that have the rights to visit pt. Security notified. [Nursing Supervisor] notified, family was not allowed to let in. Nursing Supervisor called explained the situation, she said that she is coming to help, social worker notified." The notes also indicate that the family was knocking on unit doors at 2:15 and escorted off of the unit by hospital security at 7:00 p.m. A Pastoral Care Progress Note made on 8/31/13 states, "The chaplain met the family on 3W looking for the patient whom they said was on GBH unit. On the way to the unit the family consisting of a son, a daughter and granddaughter said they have a court order allowing them to see the patient and prior to coming they had gone to police department who told them if they could not see the patient they should call the Police Department. When the chaplain and the family asked to be allowed in to see the patient the nurse said the family was not allowed to see the patient. The family became a little agitated and said they would call the Police; the chaplain calmed them down and requested the intervention of the Nursing Supervisor. The Nursing

Supervisor came and with the chaplain tried to address the family's concerns. She asked to see the court order and asked the family to be patient and wait. The family left to get something to eat while the documents the family provided were examined by the Nursing Manager, Social Worker, Chaplain, Asst. Nurse Manager and another nurse. The Nursing Supervisor was called to a Code in Surgery and left instructions for the Asst. Nurse Manager to call the Administrator on call as well as the psychiatrist overseeing the patient's care. Shortly after the Chaplain was called to attend to the family of the surgery patient."

A psychiatrist's Neuropsychological Evaluation completed at the above hospital on 9/01/13 indicates that the recipient suffered from middle stage dementia and describe the patient's Emotional Functioning: "The patient's emotional status is characterized by depression and anxiety. He is adamant that he does not belong in the hospital and is sad that he had to be brought here. He states it is like a jail. He admits to feeling sad all the time and he has a negative outlook about himself and his future. He reports feelings of guilt and worthlessness. He report increased crying, agitation, and irritability. He has lost interest in other people. He has difficulty making decisions and difficulty concentrating. He has been sleeping less lately and his level of energy is subjectively diminished. He is getting tired more easily than he used to. Appetite is reportedly good. He denies suicidal ideation and thoughts of death. He is clearly confused but he denies any periods of confusion. He reports that his guardian and caregiver are mistreating him and stealing from him. Elder Abuse is investigating his situation at home. He denies any auditory or visual hallucinations or other psychotic symptoms. He denies being in any pain. He obtained a score of 21 on the Beck Depression Inventory- II, which is in the Moderate range on this self-report measure." The recipient's diagnosis is listed as middle stage Dementia and Depressive Disorder NOS. In the Formulation section of the psychiatrist's evaluation it states, "Competency: patient was competent to sign a voluntary."

Progress Notes from 9/01/13 state, "Pt very anxious about seeing MD today. Wanted to know if we contacted his lawyer to see about his family coming to visit. Stated he hates guardian and wants to fire them. Explained to pt that we will get in touch with the lawyer and Guardians by Tuesday after the holiday weekend. Tried to redirect pt to watch tv and relax before bed."

Progress Notes from 9/03/13 state, "SW spoke with [staff] from [the elder abuse agency] and faxed her results of neuropsych evaluation. SW also received phone call from Magnolia Guardianship. SW updated her on pt progress and faxed her results of neuropsych evaluation. SW and [Magnolia staff] weighed pros and cons of pt's family visiting while pt is in the hospital. [Magnolia staff] would like [attending physician's] input and possibly a letter from him to support his opinion for their file. SW to discuss issues with [attending physician]."

A Geriatric Behavioral Social Work Assessment 9/03/13 states, "Magnolia reports that patient is found to have dementia. Patient's children have argued over his care and the judge appointed Magnolia as a neutral party to make decisions, again per Magnolia. Reports indicate that patient believes the child that he last spoke with and is easily agitated when Magnolia must make decisions which conflict with that of that particular child. At this time, Magnolia has restricted all visitation and phone calls with his family while he is admitted. Once discharged, the judge has indicated pt may see his family only when supervised by Magnolia."

Progress Notes from 9/05/13 state, "Alert, verbal coherent enough to express and understand questions, communicating needs. Withdrawn, quiet, expresses that he wants to go home."

Progress Notes from 9/05/13 state, "SW spoke with [staff] from Magnolia, guardian of pt. She received the letter that SW faxed yesterday. SW let her know that [recipient's attending physician] is on staff at [nursing home where guardian wants to place recipient upon discharge] and could follow pt there if agency would like pt to go there upon discharge. [Magnolia staff] indicated that that would be a wonderful idea and agreed to have SW contact [the nursing home] to facilitate discharge planning…."

Progress Notes from 9/06/13 state, "Patient refused HS meds, stating, 'I will not take any medicine and I will not eat any more until I get home.'"

Progress Notes from 9/07/13 state, "Pt upset today. Complains to nurse that he is not getting right medications and also verbalizes concerns about his current situation regarding his family and guardian."

Progress Notes from 9/09/13 state, "SW received phone call from guardian at Magnolia. Nurse liaison from [nursing home] will be here Wednesday to evaluate pt for admission. [Guardian] would like SW to discuss with [recipient's attending physician] if he thinks pt is stable enough to have family visit with supervised visits."

Progress Notes from 9/10/13 state, "SW received phone call from [guardian] at Magnolia. SW explained that per [recipient's attending physician], pt is to have no family visitors until he is discharged and at the new placement for 2 weeks."

Progress Notes from 9/11/13 state, "Pt calm, pleasant, ate breakfast well, pt mentioned my daughters supposed to visit me yesterday."

Progress Notes from 9/17/13 reflect a visit from the Human Rights Authority with the recipient. In an interview with the recipient, he expressed fear and hopelessness regarding his guardians' actions regarding the removal of his cell phone. He stated that the staff at the hospital were very nice but that they made him take medication he did not want. He also indicated he was brought in an ambulance against his will. He stated, "I survived the Nazis but got caught by the medical system."

The recipient was discharged to a nursing home not of his choice on 9/18/13.

The record contains emails from the recipient's family requesting visitation with their father/grandfather. The first is a letter prepared by the recipient's granddaughter and sent to her grandfather's attorney:

"My name is… and I am the granddaughter of [the recipient] who I understand is your client in a Guardianship Proceeding Case No... I have become aware of some events that are

very troubling to me to say the least. I live in Malibu, California and was recently visiting my mother,…, in the Chicago area, and on two occasions was able to visit my grandfather in person. The last time I visited him was Tuesday, August 27th, between 3:15 p.m. and 4:30 p.m.

To be frank I have many concerns with the way Magnolia Health Care Service has been executing their role as Guardian of the Person as it relates to the health of my Grandfather, but this most recent development is what I would like to address in this email.

I understand that in a short time after I saw my Grandpa in person, he attempted to make a phone call and call my mother and his care takers would not only not allow him that simple liberty, but somehow that act precipitated a call to have him taken to a psych ward via ambulance.

Further Magnolia's attorney is saying the family can't speak to him because he needs to be 'stabilized.' However my mother called the hospital to speak to the doctor to understand her father's condition that necessitated such drastic measures and she was told that per Magnolia's directive, the doctor could not update her on her father's condition?!

Mr…., this is completely absurd to me and does not appear to me to be within the parameters of the law. I am a licensed attorney in the state of California, currently on inactive status since the time my kids were born, and there is no court order as I understand it giving Magnolia plenary power over the care of my Grandfather to the exclusion of Grandpa himself as well as the entire family concerning his care and treatment. However that is just what they are doing and it is nothing short of a travesty!

I visited with him this past Tuesday and his mental faculties were as good as ever. The ONLY problem he had was that he did not understand Magnolia's presence in his life and he didn't like the fact that it was there. He asked me personally several times to get rid of them because he said he felt like a prisoner. But because of some convoluted 'rules' that I was told about previously, the scope of which did not make sense to me, I did not respond at that time to his plea.

However this new sequence of events that occurred 24 hours later, where Magnolia completely stripped him of all his liberties, completely isolated him from his family, instructed the doctors taking care of him to not discuss his care (not the case, but his care) with the familty and the rationale given for this extreme move is that he was ‘disoriented’ because he didn't know where he was or why he was there Is crazy-- pun intended! He didn't try to hurt himself, no family member attempted to hurt him, a 93 year old man was merely temporarily disoriented and he is now confined to a psych ward? And his family can't see him or get information on his care? Is this conduct sanctioned by the court?

I am further concerned that the conclusion of the email below from Magnolia's attorney represents that they are seeking a plan for permanent care in a facility for him. That is ludicrous to me. I saw him just a few days ago and he was the way I have always known him to be. He may not be as sharp at 93 years old as he has been in the past, but he should not be in a ward of any kind. The reasons given in the email for this confinement is based on 'his inability to accept

assistance from caregivers.' I have known my Grandpa a long time and when he doesn't want something he can be very contentious. That is just who he is and has always been. He made it very clear to me during my visits with him that he did not want Magnolia. His stubbornness to refuse the help he is being given is simply because he does not want help from them.

Since you are his attorney I am asking you on his behalf to remove Magnolia as the Guardian of his person. I am not against my Grandfather getting proper medical care but it should be done with his input if possible and the input of the family as well. There is no good reason, that I can see, to keep him completely confined and separated from his family. Finally, any medical provider in charge of his mental health care should recognize that he has been ornery and stubborn his whole life and this behavior is NOT a result of some kind of diminished capacity and he should not be treated as such. Moreover I understand that my aunt would like to be the Guardian of his person. I further understand the entire family supports that decision. She is perfectly capable to get her father adequate care and I see no reason to take that basic right away from the family.

Mr…., my Grandpa does not have much time left, and thus it is criminal to me to think that his life and liberty would be compromised during his remaining time with us. It may appear to you or others that this family does not care about him but I am writing to tell you that this is not the case. Family dynamics are complex but at the end of the day, I and the rest of the family love him very much and he us. Please give him back his freedom and his family access to not only his person but knowledge of his medical treatment as well."

On 9/05/13 an attorney for Magnolia wrote an email to the recipient's attorney, the recipient's daughter's attorney, and nine others (however no family members) regarding the plans for the recipient:

Dear Counsel:

Mr… continues to remain in the geriatric psychiatry unit at … Hospital. His medical team is providing on-going assessment and treatment. Magnolia has received numerous inquiries from family members as to when [the recipient] can receive visitors. As of now, until [the recipient] is stabilized, his psychiatrist is not recommending family visits. Magnolia will immediately alert all involved parties when supervised visits can occur. There are no plans for discharge at this time. Magnolia will continue to work with [the recipient's] medical team and send out email updates as developments occur."

Later the same day the recipient's granddaughter again wrote to the recipient's attorney:

"Mr…., I just received word that my Grandfather continues to be held against his will in psychiatric care at …. Hospital. This is very distressing to me. I understand that my grandfather attempted to 'escape' from the care that Magnolia is providing, but I personally saw him 24 hours prior to this action and it clear to me that this action is not intended to harm himself but rather escape feeling like a prisoner. He made that perfectly plain to me; and, when my sister saw him approximately a week before, he broke down sobbing asking she help him get his 'freedom' back. This feeling is what is driving him to be non-compliant with Magnolia's care, nothing else.

Again, as I stated in my first email, I want my grandfather to receive adequate and proper medical care, but I feel very strongly that his case is being mismanaged. I strongly believe that keeping him imprisoned with heavy drugs may be the easiest way to 'handle' him, but I do not believe that it is the most humane because it is NOT necessary. Further, anyone who thinks so is lacking pertinent information on his basic nature. This man, in his youth, literally escaped the Nazis. He has a very strong will at his core to put it mildly. He will continue the same 'behavior' that Magnolia believes needs to be 'stabilized' out of him because that is who he is. It is only when he believes in his mind that he is free from control will he stop trying to 'escape.' Anyone that knows him understand that NOTHING upsets him more than being 'controlled.' He will NEVER cooperate with Magnolia unless they keep him imprisoned and medicated like they are doing now. I cannot stand for that and I implore you as his attorney to stand up for him and fight for him. You told me you would oppose any permanent placement of my grandfather but unfortunately that is the only way Magnolia can continue their control over him. This man has lived almost 93 years on this planet. He has seen and fought against events in his life we can only imagine. It continues to be my opinion that it is not only criminal to allow Magnolia to keep him medicated against his will, it is against human decency! He turns 93 on September 18th of this year. He should be at peace and 'free' at home with his family far before this date to celebrate this milestone. Again, I implore you to take action immediately."

On the same day the recipient's daughter wrote her third email to the recipient's guardian requesting visitation:

"Please let me know when I can see my father?"

On 9/06/13 the recipient's daughter emailed the guardian with the following message:

"I understand that my father is well enough to see his attorney. I assume he is well enough to see his family. Please let me know what time I can see him tomorrow? Also I spoke to the nurse I was told the medical staff does allow it but Magnolia does not want the family to visit which is against the court order. If the nurse spoke incorrectly please forward the statement from a doctor that seeing his family is detrimental to his health and related hospital policies stating that family cannot see him."

Later the same day the guardian responded to this email:

"Magnolia is aware this is your 4th request to see your father. We have responded to each of those requests. I am once again forwarding our attorney's update, which was sent yesterday afternoon, for your reference."

On 9/16/13 the recipient's daughter sent an email to all parties:

"Tomorrow is my father's birthday. I am requesting to see father tomorrow afternoon. Will 2 pm work for you?" The guardian then forwarded the following response:

"Please see the email below sent by our attorney on Friday, September 13th."

The email referred to in the above message states:

"[The recipient] is scheduled to be discharged from [the psychiatric unit] on Wednesday, September 18th. After consulting with his medical team, Magnolia believes it is in [the recipient's] best interest to be discharged to [an assisted living facility] for a short-term, 30 day respite stay.

Due to [the recipient's] inability to accept a live-in caregiver prior to his hospitalization, Magnolia does not feel comfortable having him discharged home at this point in time. Magnolia believes [the recipient] will benefit from a routine, predictable schedule and programming geared to wards individuals with dementia in a secure, home-like environment. [The recipient's] psychiatrist is not recommending family visits for the first two weeks following his admission to [the assisted living facility]. Magnolia will continue to update all parties on a regular basis and will send out a follow-up email at the end of next week regarding [the recipient's] admission and adjustment to [the facility]. In the event of an emergency, Magnolia will contact the family immediately and schedule visits accordingly."

On 9/23/13 Magnolia Care petitioned the court to resign as limited guardian of the recipient. The recipient's daughter was then made plenary guardian of her father.

COMPANY RESPONSE

The HRA met with two of the three guardians from Magnolia Care who were the guardians of the recipient in this case. Also present were the company's two attorneys, who handled all questions and inquiries.

Magnolia staff were asked if they are certified under the National Guardianship Association (NGA) and they indicated that they are. They were asked if they were aware of the National Guardianship Standards for Agencies and Programs Providing Guardianship Services which states, "Program design and operation shall follow the tenets of the NGA "Model Code of Ethics' and the NGA Standards of Practice." They were not familiar with this. Staff were asked if they have policy regarding a written grievance procedure which is mandated by the same standards and they stated that they do not. The attorney indicated that all rights are outlined in the Probate Act and any grievances would be handled by the recipient's guardian ad litem. The attorney did not recognize the Mental Health Code as a mandate for the rights of wards in their decision making within mental health settings. Staff were asked about the stringency of the restrictions placed on the recipient. The HRA pointed out that the Illinois Guardianship and Advocacy Commission, the largest public guardian agency in the country, was consulted for the investigation and we indicated that even in extreme cases of abuse, the family would still be allowed phone contact with the ward. The attorneys for the guardian asked the HRA to review the court documents and this would make clear the rationale for their decision-making.

The Magnolia attorney indicated that Magnolia Care was appointed guardian of the recipient and as guardian, was completely within its right and duty to make decisions for the recipient. He stated he disagreed with the "limited" authority of the guardianship and felt that the

recipient more appropriately required a plenary guardianship. Additionally, the attorney for Magnolia stated that he disagreed with the psychiatrists' evaluations which indicated the recipient was partially capable of making his own personal and financial decisions and he stated that felt that the psychiatrist had not interviewed the recipient face-to-face.

Magnolia staff were interviewed about the recipient's restrictions on his communication/visitation rights. The attorney responded that after Magnolia was appointed guardian, the recipient's children continued to argue over the guardianship and the recipient's finances. They were constantly manipulating the recipient to gain favor with him, and they vied for power and control over his finances. The guardians felt that the recipient was so distressed and upset by this constant badgering, that they petitioned for and received the restrictions which were ordered by the court. Despite this directive, the attorney stated, the family continued to call the recipient and attempt to manipulate and influence him. The attorney also indicated that the recipient's right to communicate was not restricted- he was allowed to speak about anything he wished, however his family was not allowed to speak about the guardianship or their father's business. The HRA stated that we had spoken with the recipient and he wanted very much to speak about his finances, of which he was very proud, and it was actually difficult to keep him off this topic. The attorney then stated that the recipient's children were asked to redirect his conversation when these topics came up. The recipient initially was allowed to make phone calls on his phone, but this could not be properly monitored by the caregiver, so two landline phones were provided so that all calls were monitored. The HRA asked about the Incident Reports that were generated from this directive, and asked how the caregiver/monitor could have known what the recipient was saying when he was speaking in German. The attorney confirmed that the caregiver/monitor did not speak German.

Magnolia staff were interviewed about the recipient's first visit to an emergency department and the subsequent petition for involuntary admission. The attorney stated that the recipient's behavior had been escalating for days before this event. On the day he was taken to the hospital the staff indicated that he was becoming increasingly angry and his behavior more erratic. He indicated that staff were actually frightened of the recipient. The HRA asked about the crisis worker's notes which indicated that the recipient was not suitable for involuntary admission and the attorney responded that the recipient was properly petitioned and then a certificate was completed. Staff were asked about the second hospitalization the next day at a Chicago hospital. Magnolia staff indicated that they were not present for this admission. The HRA asked about the recipient's restrictions to his visitation/communication and the attorney indicated that this was a doctor's order and not the responsibility of the guardian. The HRA asked about the directive written on the Release for Telephone and Visitation Consent form that stated, "No family allowed. Daughters are not allowed to visit or call or get information per [guardian]." The guardians did not know who completed this form, indicating that the recipient had been admitted with no assistance from his guardian or family. Staff were asked if they received Notice of Restriction of Rights for the recipient’s communication restrictions and they were not aware of what a Notice was. Additionally, the attorney objected to the overlaying of the Mental Health Code on the Probate Act, stating that the recipient did not have the rights outlined in the Code and the other attorney suggested that perhaps there is a conflict between the two.

Magnolia staff were interviewed about the effects of isolation on persons with dementia and if they were aware that dementia is accelerated by isolation and lack of social interaction. They were asked if they thought that it would frighten a 92 year old dementia patient to have to sign himself in to a psychiatric unit alone, without realizing why he had been sent there by ambulance. The guardians did not respond to this but the attorney indicated that perhaps the HRA was taking this situation personally.

STATUTES

The Mental Health and Developmental Disabilities Code states, "No recipient of services shall be deprived of any rights, benefits, or privileges guaranteed by law, the Constitution of the State of Illinois, or the Constitution of the United States solely on account of the receipt of such services (405 ILCS 5/2-100)." Additionally, it states, "A recipient of services shall be provided with adequate and humane care and services in the least restrictive environment, pursuant to an individual services plan. The Plan shall be formulated and periodically reviewed with the participation of the recipient to the extent feasible the recipient's guardian, the recipient's substitute decision maker , if any, or any other individual designated by the recipient. The facility shall advise the recipient of his or her right to designate a family member or other individual to participate in the formulation and review of the treatment plan. In determining whether care and services are being provided in the least restrictive environment, the facility shall consider the views of the recipient, if any, concerning the services being provided (405 ILCS 2-102a)."

The Mental Health Code states that when a person is asserted to be in need of immediate hospitalization, any person 18 years of age or older may complete a petition (5/3-600), which specifically lists the reasons (5/3-601). The petition is to be accompanied by the certificate of a qualified examiner stating that the recipient is in need of immediate hospitalization. It must also indicate that that the qualified examiner "personally" examined the recipient not more than 72 hours prior to admission. It must contain the examiner's clinical observations and other factual information that was relied upon in reaching a diagnosis, along with a statement that the recipient was advised of certain rights (3-602), including that before the examination for certification the recipient must be informed of the purpose of the examination, that he does not have to speak with the examiner, and that any statements he makes may be disclosed at a court hearing to determine whether he is subject to involuntary admission (5/3-208). Upon completion of one certificate, the facility may begin treatment, however at this time the recipient must be informed of his right to refuse medication (3-608). As soon as possible, but no later than 24 hours after admission, the recipient must be examined by a psychiatrist or released if a certificate is not executed (5/3-610). Within 12 hours after his admission, the recipient must be given a copy of the petition (5/3-609). Also, within 24 hours, excluding Saturdays, Sundays and holidays, after the recipient's admission, the facility director must file 2 copies of the petition, the first certificate, and proof of service of the petition and statement of rights upon the recipient with the court in the county in which the facility is located. Upon completion of the second certificate, the facility director must promptly file it with the court. Upon the filing of the petition and first certificate, the court shall set a hearing to be held within 5 days, excluding weekends and holidays, after receipt of the petition (5/3-611).

The Mental Health Code also provides guidelines for the administration of psychotropic medication:

"(a-5) If the services include the administration of…psychotropic medication, the physician or the physician's designee shall advise the recipient, in writing, of the side effects, risks, and benefits of the treatment, as well as alternatives to the proposed treatment, to the extent such advice is consistent with the recipient's ability to understand the information communicated. The physician shall determine and state in writing whether the recipient has the capacity to make a reasoned decision about the treatment. The physician or the physician's designee shall provide to the recipient's substitute decision maker, if any, that same written information that is required to be presented to the recipient in writing. If the recipient lacks the capacity to make a reasoned decision about the treatment, the treatment may be administered only (i) pursuant to the provisions of Section 2- 107 or 2-107.1 or (ii) pursuant to a power of attorney for health care under the Powers of Attorney for Health Care Law [FN1] or a declaration for mental health treatment under the Mental Health Treatment Preference Declaration Act. [FN2] A surrogate decision maker, other than a court appointed guardian, under the Health Care Surrogate Act [FN3] may not consent to the administration of authorized involuntary treatment. A surrogate may, however, petition for administration of authorized involuntary treatment pursuant to this Act. If the recipient is under guardianship and the guardian is authorized to consent to the administration of authorized involuntary treatment pursuant to subsection (c) of Section 2-107.1 (court ordered medication) of this Code, the physician shall advise the guardian in writing of the side effects and risks of the treatment, alternatives to the proposed treatment, and the risks and benefits of the treatment…" (405 ILCS 5/2-102).

The Mental Health Code states, "An adult recipient of services, the recipient's guardian, if the recipient is under guardianship, and the recipient's substitute decision maker, if any, must be informed of the recipient's right to refuse medication. The recipient and the recipient's guardian or substitute decision maker shall be given the opportunity to refuse generally accepted mental health or developmental disability services, including but not limited to medication. If such services are refused, they shall not be given unless such services are necessary to prevent the recipient from causing serious and imminent physical harm to the recipient or others and no less restrictive alternative is available. The facility director shall inform a recipient, guardian, or substitute decision maker, if any, who refuses such services of alternate services available and the risks of such alternate services, as well as the possible consequences to the recipient of refusal of such services" (405 ILCS 5/2-107). Additionally, the Code states that whenever any rights of the recipient of services are restricted, notice must be given to the recipient, a designee, the facility director or a designated agency, and it must be recorded in the recipient's record (ILCS 405 5/2-201).

The Mental Health Code states, "Any person 16 or older may be admitted to a mental health facility as a voluntary recipient for treatment of a mental illness upon the filing of an application with the facility director of the facility if the facility director deems such person clinically suitable for admission as a voluntary recipient" (405 ILCS 5/3-400). "The application for admission as a voluntary recipient may be executed by: the person seeking admission, if 18 or older; or any interested person, 18 or older, at the request of the person seeking admission; or a minor, 16 or older, as provided in Section 3-502. The written application form shall contain in large, bold-faced type, a statement in simple nontechnical terms that the voluntary recipient may be discharged from the facility at the earliest appropriate time, not to exceed 5 days, excluding Saturdays, Sundays and holidays, after giving a written notice of his desire to be discharged, unless within that time, a petition and 2 certificates are filed with the court asserting that the recipient is subject to involuntary admission" (5/3-401). The Code also states, "No physician, qualified examiner, or clinical psychologist shall state to any person that involuntary admission may result if such person does not voluntarily admit himself to a mental health facility unless a

physician, qualified examiner, or clinical psychologist who has examined the person is prepared to execute a certificate under Section 3-602 and the person is advised that if he is admitted upon certification, he will be entitled to a court hearing with counsel appointed to represent him at which the State will have to prove that he is subject to involuntary admission" (5/3-402).

The Probate Act of 1975 states that "Guardianship shall be utilized only as is necessary to promote the well-being of the disabled person, to protect him from neglect, exploitation, or abuse, and to encourage development of his maximum self- reliance and independence. Guardianship shall be ordered only to the extent necessitated by the individual's actual mental, physical and adaptive limitations (755 ILCS 5/11a-3)." According to Section 5/11a-17a, the duties of the guardian of the person are described as follows: "To the extent ordered by the court and under the direction of the court, the guardian of the person shall have custody of the ward … and shall procure for them and shall make provision for their support, care, comfort, health, education and maintenance, and professional services as are appropriate." Also, "Decisions made by a guardian on behalf of a ward shall be made in accordance with the following standards for decision making. Decisions made by a guardian on behalf of a ward may be made by conforming as closely as possible to what the ward, if competent, would have done or intended under the circumstances, taking into account evidence that includes, but is not limited to, the ward's personal, philosophical, religious and moral beliefs and ethical values relative to the decision to be made by the guardian. Where possible, the guardian shall determine how the ward would have made a decision based on the ward's previously expressed preferences, and make decisions in accordance with the preferences of the ward" (11a-17 e). The Act describes the process for determining the type of guardianship warranted and states in Section 11a-12 b that "If the respondent is adjudged to be disabled and to lack some but not all of the capacity as specified in Section 11a-3, and if the court finds that guardianship is necessary for the protection of the disabled person, his or her estate, or both, the court shall appoint a **limited guardian** for the respondent's person or estate or both. The court shall enter a written order stating the factual basis for its findings and specifying the duties and powers of the guardian and the legal disabilities to which the respondent is subject." Furthermore, with regard to a limited guardianship, the Act (755 ILCS 11a-14a,b,c) states that " (a) An order appointing a limited guardian of the person under this Article removes from the ward only that authority provided under Section 11a-17 which is specifically conferred on the limited guardian by the order. (b) An order appointing a limited guardian of the estate under this Article confers on the limited guardian the authority provided under Section 11a-18 not specifically reserved to the ward. (c) The appointment of a limited guardian under this Article shall not constitute a finding of legal incompetence." The Act addresses residential placements in Section 11a-14.1:

> *No guardian appointed under this Article, except for duly appointed Public Guardians and the Office of State Guardian, shall have the power, unless specified by court order, to*

place his ward in a residential facility. The guardianship order may specify the conditions on which the guardian may admit the ward to a residential facility without further court order. In making residential placement decisions, the guardian shall make decisions in conformity with the preferences of the ward unless the guardian is reasonably certain that the decisions will result in substantial harm to the ward or to the ward's estate. When the preferences of the ward cannot be ascertained or where they will result in substantial harm to the ward or to the ward's estate, the guardian shall make decisions with respect to the ward's placement which are in the best interests of the ward. The guardian shall not remove the ward from his or her home or separate the ward from family and friends unless such removal is necessary to prevent substantial harm to the ward or to the ward's estate. The guardian shall have a duty to investigate the availability of reasonable residential alternatives. The guardian shall monitor the placement of the ward on an on-going basis to ensure its continued appropriateness, and shall pursue appropriate alternatives as needed.

The Act also states, "A guardian of the person may not admit a ward to a mental health facility except at the ward's request as provided in Article IV of the Mental Health and Developmental Disabilities Code and unless the ward has the capacity to consent to such admission as provided in Article IV of the Mental Health Code" (Sec. 11a-17 a).

The Mental Health Code states, "Except as provided in this Section, a recipient who resides in a mental health or developmental disabilities facility shall be permitted unimpeded, private, and uncensored communication with persons of his choice by mail, telephone, and visitation. The facility director shall ensure that correspondence can be conveniently received and mailed, that telephones are reasonably accessible, and that space for visits is available. Writing materials, postage, and telephone usage funds shall be provided in reasonable amounts to recipients who reside in Department facilities and who are unable to procure such items. …Unimpeded, private, and uncensored communication by mail, telephone, and visitation may be reasonably restricted by the facility director only in order to protect the recipient or others from harm, harassment, or intimidation, provided that notice of such restriction shall be given to all recipients upon admission. When communications are restricted, the facility shall advise the recipient that he has the right to require the facility to notify such affected party when the restrictions are no longer in effect… (5/2-103)."

The Health Care Surrogate Act (755 ILCS 40/20) requires that medication decisions made by an surrogate decision maker should conform “as closely as possible to what the patient would have done or intended under the circumstances, taking into account evidence that includes, but is not limited to, the patient's personal, philosophical, religious, and moral beliefs and ethical values relative to the purpose of life, sickness, medical procedures, suffering, and death.” Furthermore, the Act states that “patient or surrogate decision maker is presumed to have decisional capacity in the absence of actual notice to the contrary without regard to advanced age. With respect to a patient, a diagnosis of mental illness or an intellectual disability,

of itself, is not a bar to a determination of decisional capacity. A determination that an adult patient lacks decisional capacity shall be made by the attending physician to a reasonable degree of medical certainty. The determination shall be in writing in the patient's medical record and shall set forth the attending physician's opinion regarding the cause, nature, and duration of the patient's lack of decisional capacity. Before implementation of a decision by a surrogate decision maker to forgo life-sustaining treatment, at least one other qualified physician must concur in the determination that an adult patient lacks decisional capacity. The concurring determination shall be made in writing in the patient's medical record after personal examination of the patient. The attending physician shall inform the patient that it has been determined that the patient lacks decisional capacity and that a surrogate decision maker will be making life-sustaining treatment decisions on behalf of the patient. Moreover, the patient shall be informed of the identity of the surrogate decision maker and any decisions made by that surrogate. If the person identified as the surrogate decision maker is not a court appointed guardian and the patient objects to the statutory surrogate decision maker or any decision made by that surrogate decision maker, then the provisions of this Act shall not apply."

The Nursing Home Care Act states, "Every resident shall be permitted unimpeded, private and uncensored communication of his choice by mail, public telephone, or visitation. ….Unimpeded, private and uncensored communication by mail, public telephone, or visitation may be reasonably restricted by a physician only in order to protect the resident or others from harm, harassment, or intimidation, provided that the reason for any such restriction is placed in the resident's clinical record by the physician and that notice of such restriction shall be given to all residents upon admission" (210 ILCS 45/2-108).

NATIONAL GUARDIANSHIP ASSOCIATION STANDARDS

Although not codified in Illinois, the National Guardianship Association's standards provide guardians with a resource for ethical standards of practice. The National Guardianship Association's (NGA) Standards of Practice #4- The Guardian's Relationship with Family Members and Friends of the Person states, "The guardian shall promote social interactions and meaningful relationships consistent with the preferences of the person under guardianship. The guardian shall encourage and support the person in maintaining contact with family and friends, as defined by the person, unless it will substantially harm the person. The guardian may not interfere with established relationships unless necessary to protect the person from substantial harm. The guardian shall make reasonable efforts to maintain the person's established social and support networks during the person's brief absences from the primary residence." NGA Standard #6 states, "Decisions made by the guardian on behalf of the person under guardianship shall be based on the principle of Informed Consent. Informed Consent is an individual's agreement to a particular course of action based on a full disclosure of facts needed to make the decision intelligently." Standard #7 states, "The guardian shall identify and advocate for the person's goals, needs, and preferences." Standard #8 states, "The guardian shall carefully evaluate the alternatives that are available and choose the one that best meets the personal and financial goals, needs, and preferences of the person under guardianship while placing the least restrictions on his or her freedom, rights, and ability to control his or her environment."

The National Guardianship Association (NGA) Standards for Agencies and Programs Providing Guardianship Services states that, "Program design and operation shall follow the tenets of the NGA 'Model Code of Ethics' and the NGA Standards of Practice. Agency/program management staff will assure that these principles guide program design and day-to-day services." Also, "The agency/program managers shall have a written grievance procedure that includes:

1. The process to be followed including contact names and addresses;
2. Reasonable accommodations including interpreters for those who speak a language other than English or who have communication impairments;
3. Provision for the grievant to obtain an advocate;
4. Time limits for filing and responding to grievances;
5. A written response to the grievant;
6. Contact information for the appointing court."

COMPANY POLICY

The guardians were asked if they have policy regarding a grievance procedure as recommended by the National Guardianship Association Standards and they do not.

CONCLUSION

The original order of guardianship in this case was a limited one, giving the guardian the right to execute leases and consents in order to access the recipient's medical records, communicate with health care providers, act as surrogate decision makers under the Healthcare Surrogate Act when the recipient lacks decisional capacity, apply for government benefits for the recipient, procure any home or health services (in consultation with the recipient), and explore living arrangements, in consultation with the recipient, if the recipient is no longer able to remain in his home (in consultation with the recipient) but returning to court if the recipient objects to placement arrangements. This order sufficed for approximately one month at which time another order was prepared by the guardian’s attorney and issued by the court which stated that all visitation and all contacts would be limited to blood relatives only. All of the recipient's children were however, prohibited from communicating in any way with the recipient about any aspect of his guardianship or his business. Additionally, all visitation and telephone calls would be monitored and all visits scheduled in advance by the guardian. Any violations of these rules would result in an Incident Report, which was to be completed by the caregiver, hired by the guardian. After five Incident Reports were completed, the guardian then tightened the rules on the recipient’s communication in the letter dated 6/12/13. The final order lasted until the recipient was hospitalized on 8/28/13 at which time, by the direct order of the guardian, not the court, no family was allowed access to their father, no one was able to visit or call, and most upsetting, no one could get information regarding their loved one. So at the point that the family's 92 year old father was admitted to a hospital psychiatric unit, no one in the family was able to find out what had happened. This action was in conflict with the court order which restricted communication, but which never limited the family's ability to discuss medical, health, safety and mental health issues with the recipient or hospital personnel.

The severe restrictions of the recipient's communication rights began after the completion of five Incident Reports by the recipient's caregiver. These Incident Reports are herein presented to demonstrate the guardians' unreasonable and unwarranted reaction to some meaningless and other seemingly harmless phone calls between a father and his children. Given that the family was struggling to settle complex estate and care issues regarding the recipient, it is baffling that the guardians felt that the recipient's isolation from his family would help the situation. The HRA wonders why the guardian did not enlist the help of a mediator, or counselor, to intervene. Instead, against the stated objections of the recipient, the guardian restricted the recipient's rights to communicate in a way that did not conform to his preferences or practices. The record shows that from this time onward the recipient voiced his objection to both the guardians and their restrictions to whomever he was able to speak.

The recipient's hospitalizations present additional concerns. The recipient was taken involuntarily to a McHenry County emergency department, where he was evaluated, and the staff there determined he was not appropriate for involuntary mental health treatment. The guardian, however, continued to call hospitals until she was able to secure a placement for the recipient at a Chicago area hospital, where he was taken in an ambulance for evaluation nine hours later. The guardian herself completed a petition for involuntary admission at the first hospital at 8:00 p.m. on 8/28/13, after the recipient had been detained for four and a half hours. Another petition was completed on 8/29/13 at 3:30 p.m. by hospital staff at the second hospital, where the recipient was admitted to the Geriatric Behavioral Health Unit. This violates the statutory timeline for the involuntary admission of persons for mental health treatment, given that the timeline begins upon the completion of the first petition. This timeline cannot be reset by additional petitions. Additionally, the Probate Act states a guardian may not admit a ward to a mental health facility except at the ward's request, which the record clearly demonstrates was not the case.

The hospital record then shows that the recipient was accepted as a voluntary admittee at the second hospital, additionally, it is noted that the recipient was evaluated by a geriatric psychiatrist and determined to have partial decisional capacity. Nevertheless, the record does not indicate that the recipient was given the right to consent to or refuse medications, was not given the right to complete a list of contacts for his visitation or communication, and was not able to take part in the development of his treatment plan nor allowed to designate persons whom he wished to participate in his treatment plan development, all of which were determined by his guardian. Additionally, by order of the guardian, the recipient was not able to communicate with his family and his family was not able to contact him or the hospital representatives in order to determine what had happened to their father. The HRA believes this was not just overly restrictive and did not honor the wishes of the recipient, but was inhumane as well.

The HRA notes that the guardians have no grievance process by which their wards can object to decisions and practices of the guardian.

Finally, the HRA notes that the advocacy for this recipient begins and ends with the order prepared by the guardian and signed by the judge to restrict the recipient's rights to such an extent that they not only exerted a strangle hold on his ability to communicate with and visit his family, but they also exacerbated a power struggle between the family and the guardian which

was never in the best interest of the recipient. Given the recipient's advanced age, the complexity of his finances, and the fact that he was suffering from dementia, his restrictions only made a bad situation worse, and his hospitalizations were disastrous. Only a personal understanding of dementia, and the fear and uncertainty that accompanies it, can offer an insight into the pain and confusion of isolation that was caused by this man being removed by ambulance to a hospital psychiatric unit and prevented from communicating with his family. We hope that the guardians and all the attorneys and family members who agreed to the original court order restricting the recipient's communication gain this understanding.

The HRA substantiates the complaint that Magnolia Care does not meet the Probate Act requirements when staff are not familiar with or protect visitation and disability rights guaranteed by the Nursing Home Care Act and Mental Health and Developmental Disability Code, and promoted by the National Guardianship Association.

RECOMMENDATIONS

1. Ensure that staff follow guardianship court orders and that the court-identified guardianship authority is not exceeded. For the individual in this case, the court ordered a "limited guardianship" which, according to the Probate Act, does not constitute legal incompetence. The limited guardianship identified the guardian's specific authority based on the individual's needs and required consultation with the individual over service provision and residential placement. Furthermore, the court order referenced the Health Care Surrogate Act with regard to decisional capacity for medical decisions but Health Care Surrogate Act provisions for determining decisional capacity did not appear to be addressed. If the guardian believes that a limited guardianship is insufficient for meeting the individual's needs, it should return to court and seek a guardianship modification.

2. Train staff in the Mental Health Code law which states, "A recipient of services shall be provided with adequate and humane care and services in the least restrictive environment pursuant to an individual services plan."

3. Train staff in the Mental Health Code law as it applies to involuntary and voluntary admission to a mental health facility.

4. Train staff in the Mental Health Code law as it applies to psychotropic medication.

5. Train staff in the Mental Health Code law as it applies to communication by mail, phone and visitation.

6. Train staff in the National Guardianship Association Standards for Agencies and Programs Providing Guardianship Services and also the Standards of Practice.

7. Develop a policy which enables wards to submit grievances and a process which addresses these grievances.

8. Train staff in all aspects of the Probate Act, including the various types of guardianship and their limitations/authority as well as the Probate Act section which states that "Guardianship shall be utilized only as necessary to promote the well-being of the disabled person, to protect him from neglect, exploitation, or abuse, and to encourage development of his maximum self- reliance and independence." Ensure that decisions made by the guardian on behalf of the ward "shall be made by conforming as closely as possible to what the ward, if competent, would have done or intended under the circumstances."

9. Train staff on the Health Care Surrogate Act and requirements related to determining decisional capacity.

10. Train staff on rights associated with the Nursing Home Care Act.

11. Provide staff with training related to the experience of dementia, and the importance of social interaction in its treatment.

SUGGESTION

1. Consider policy development to address procuring appropriate services, including mental health services, residential placement, restrictions, visitation and staff training.

RESPONSE

Notice: The following page(s) contain the provider response. Due to technical requirements, some provider responses appear verbatim in retyped format.

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Nicole Erickson
Chairperson
Human Rights Authority – Chicago Region
Guardianship & Advocacy Commission
West Suburban Regional Office
P.O. Box 7009
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Re: Response to Report 14-030-9009
Magnolia Care Solutions, LLC

Dear Ms. Erickson:

Please be advised that our office represents Magnolia Guardianship Inc. ("Magnolia"). Magnolia is in receipt of the Human Rights Authority's ("HRA") Report regarding Complaint No. 14-030-9009. Magnolia strives to uphold their standard of exceptional case management and professional guardianship services. To that end, they take every complaint and concern regarding the services they provide very seriously. Thank you for bringing the Complaint to their attention.

While we appreciate the HRA's investigation, as a preliminary matter Magnolia must address certain concerns with the way in which the Report was prepared and the information upon which the Report relies to establish the findings and recommendations. First, the Report repeatedly refers to "the record," yet the Report does not list the sources that make up the record and did not provide "the record" to Magnolia so that the organization could assess the documents and adequately respond. Notably, the HRA chose not to discuss or highlight certain parts of what should have been included in the record, such as portions of the probate proceedings that reveal the significant conflict among the recipient's family members, specifically his children, and the negative effect such conflict and resulting communications were having on the recipient. Yet, as part of "the record," the Report included and relied upon such documents as correspondence from persons without first-hand knowledge of the matter.

Additionally, the Report uses the National Guardianship Association Standards as a source for substantiating findings against Magnolia. The Report's use of these standards to form the basis of the HRA's substantiated findings is improper. As the Report itself states, the standards are not codified in Illinois and are instead a "resource" for ethical standards. They are not law, and they do not guarantee enforceable rights to recipients upon which the HRA can make substantiated findings. Magnolia believes in and uses the standards as a resource. However, as a matter of law, the Report's reliance on the standards for its findings is inappropriate. Yet even if the HRA were able to rely on them, the Standards highlighted in the Report *allow* guardians to interfere in family relationships when necessary to protect the recipient from substantial harm, as was the case here.

The Report also demonstrates apparent unfamiliarity with certain court procedures and attorney actions, incorrectly drawing negative inferences or relying on facts that have no relevance to the Complaint. For example, the Report discusses an email regarding the recipient's hospitalization that the limited guardian's counsel sent to the recipient's attorney, the recipient's daughter's attorney, and others. The Report gives weight to the fact that the attorney did not send the email directly to family members. However, many of the recipient's family members, specifically his children, were represented by their own counsel. The Rules of Professional Conduct for attorneys do not allow attorneys to communicate directly with individuals represented by counsel in the matter.

The Report emphasizes the fact that the Probate Court's order restricting communication was written by the attorney for the limited guardian, implying that the limited guardian's attorney created the order, and the judge simply signed the order as written. As is often the case in court proceedings, the judge hears the matter, provides her ruling verbally, and has an attorney of record prepare the written order based on her ruling. The judge reviews and signs the written order only if it accurately reflects the verbal order she entered at the bench. To imply that the limited guardian controlled the court's orders is an inaccurate characterization of the judicial process.

Finally, and perhaps most concerning, is the fact that the Report faults the limited guardian, as well as the probate judge and other involved parties, for not having "a personal understanding of dementia." The Report draws the improper assumption that decisions in the probate proceedings were made without anyone having a "personal understanding" of dementia, and the recipient was harmed as a result. First, the HRA has absolutely no knowledge as to whether agents of the limited guardian, the attorneys, or the judge have any personal experience with dementia. Second, even if the HRA had such knowledge, it is entirely irrelevant to an HRA Complaint and any basis for making substantiated findings. Notably, the Report failed to include that the limited guardian has extensive *professional* experience providing case management and

professional guardianship services to persons with dementia, regularly addressing the complex and sensitive issues that come with such a disease.

As to the substance of the specific allegations in the Complaint, the HRA Report focused on two areas of concern: communication restrictions involving the recipient's family members and the recipient's hospitalizations. Magnolia provides its response to these specific issues below and addresses the Report's recommendations.

Communications Restrictions

The HRA Report is correct that significant restrictions were placed on family members' visits and communications with the recipient. However, the Report does not give sufficient weight to both the court order that established the restrictions and the jurisdiction of the Probate Court to enter orders restricting communication to protect the recipient.

Under the Illinois Probate Act, the subject of a guardianship proceeding is entitled to vigilant protection from the probate court. Accordingly, the probate court may enter orders as necessary to protect its wards from harm. Adult children have no substantive due process rights to visitation with their parents, and the court can restrict communication and visitation in the court's discretion, or allow a guardian to do so, when necessary for the ward's protection.

The probate record clearly demonstrated that the recipient's children disagreed over who should serve as their father's representative and manage his assets and took unfair advantage of opportunities to vie for their father's support. The recipient was harmed as a result of certain family members discussing guardianship and business issues with him and attempting to manipulate and badger him into choosing sides or stating a certain position. The probate court regularly orders that arguing family members not discuss the proceedings and other sensitive issues with an alleged disabled person because of the improper influence that such family members may have. Indeed, the probate court routinely appoints a Guardian ad Litem to neutrally discuss such issues with the alleged disabled person and report the person's thoughts and opinions to the court. Not only did the court appoint a Guardian ad Litem for the recipient in this case, but the Court also appointed personal counsel for the recipient to advocate for the recipient's position.

As the probate record showed, the court became very concerned after family members violated the Court's directive to refrain from discussing their father's guardianship case or business issues with him for his protection. Only after such directives were violated did the Court enter a more restrictive visitation and communication order. Among other things, the court order provided that the limited guardian would monitor phone calls and supervise visits. The order provided that the limited guardian would complete incident reports for violations, and

offending parties would be immediately prohibited from further communication with the recipient.

The HRA Report takes issue with this order, questioning its appropriateness. The Report speculates that conversations about the recipient's guardianship matter and assets were "meaningless" and "seemingly harmless." The probate court clearly disagreed. Unlike the HRA, the probate judge had the benefit of hearing from all parties at the time the concerning communications were occurring and observing the negative effect such communications were having on the recipient. The HRA may not like the order, but it cannot fault the limited guardian for following it.

The progress notes from the recipient's hospitalization evidenced that although the limited guardian was well within its authority to prohibit visits and calls from any family members who had violated the court's order regarding communications, the limited guardian was willing to keep working with family members regarding visitation. The limited guardian asked that the attending physician determine whether the recipient was stable enough to have family members visit. The Report fails to acknowledge that *family visitation was restricted by the patient's attending physician*, who prohibited family visitors until after the recipient was discharged and in his new placement for two weeks. The Report also fails to consider that the recipient asked in his application for voluntary admission that no one be notified of his admission.

The Report repeatedly discusses the effects of isolation on patients with dementia, and Magnolia acknowledges these concerns. But the Report ignores the harmful effects of manipulation, intimidation, and badgering on a person with dementia. Magnolia witnessed these effects and acted out of an overriding concern for the recipient throughout their representation as limited guardian.

Recipient's Hospitalizations

Although not clearly explained, the Report appears to substantiate the allegation that the recipient was improperly admitted to a geriatric behavioral health unit. Yet the Report fails to demonstrate how *Magnolia* was at fault for any such improper admission. The Mental Health and Developmental Disabilities Code explicitly allows a guardian to complete a petition for involuntary admission, which Magnolia did on August 28, 2013. A physician completed a certificate at the hospital on that same day. The admitting facility, not Magnolia, was responsible for making the clinical determination as to whether or not to admit the recipient. The admitting facility, not Magnolia, was responsible for providing any notice of rights or other documents to the recipient and certifying that such documents were provided and/or completed.

The admitting facility, not Magnolia, decided to keep the recipient at the facility and complete a second petition and certificate. The admitting facility, not Magnolia, made all treatment and medication administration decisions upon the recipient's admission. The admitting facility, not Magnolia, was in charge of documenting actions and decisions regarding the recipient's admission and treatment. The admitting facility, not Magnolia, decided to obtain and accept the recipient's application for voluntary admission. The Report fails to make clear that Magnolia did not complete the application for voluntary admission on the recipient's behalf or otherwise attempt to have him admitted as a voluntary recipient.

The Report appears to confuse the responsibility of Magnolia, the limited guardian, with the responsibility of the admitting facility, faulting Magnolia for errors the HRA apparently found in the facility's admission process. Any violation of the statutory timeline for involuntary admission cannot be held against Magnolia.

Recommendations

The Report includes recommendations for Magnolia, one of which relates to creating a grievance policy and most of which relate to providing training to staff.

Grievance policy. The Probate Act already provides the grievance procedure for wards of the court and their guardians. During the guardianship proceedings, respondents receive written notice that includes the judge's name and phone number and a rights form that contains the court's address for written correspondence. Respondents are informed that they can contact the court through any means. Any person with concerns about the guardian's actions may also notify the court. In addition, recipients have a guardian ad litem to advocate for their best interests and may also have a personal attorney to advocate for their wishes, as was the case here.

The recipient, his attorney, the Guardian ad Litem, or anyone else could have informed the probate court at any time if they believed the guardian acted inappropriately. As suggested by the HRA, Magnolia will consider reiterating this grievance procedure in a written policy.

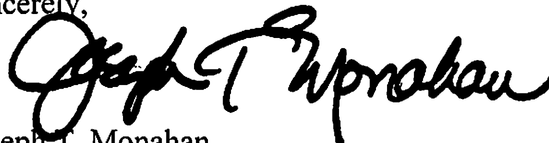
Training. Several of the recommendations that suggest training are not applicable to Magnolia and do not relate to the issues addressed in the Complaint. For example, Recommendation #9 suggests training on decisional capacity under the Health Care Surrogate Act. However, decisional capacity is a clinical determination that must be made by the attending physician. Magnolia is not involved in and does not make determinations regarding decisional capacity. Recommendation #1 also discusses decisional capacity determinations, which again, Magnolia does not, and cannot, make.

As to Recommendation #4, the admitting facility, not Magnolia, determined whether to administer or not administer psychotropic medication to the recipient. The facility records cited by the HRA indicate that the recipient gave informed consent regarding medication, as clinically determined by the admitting facility. If the recipient objected at any later point, the facility was responsible for appropriately responding to the objection. The Report provides no evidence that Magnolia did not comply with the law regarding psychotropic medication. The recommendation is therefore irrelevant. As to Recommendation #2, the admitting facility, not Magnolia, was in charge of providing care at the facility and creating an individual services plan. Indeed, it is unclear as to why many of the recommendations were suggested given Magnolia's role as the limited guardian, not the admitting facility.

As a professional guardianship agency, Magnolia staff has received extensive training and collectively, they have over 50 years experience working and advocating for people with special needs and assisting clients with dementia. Staff members have also received advanced training as a result of their education and certifications, including training as licensed social workers, licensed counselors, and/or national certified guardians. Magnolia will continue to ensure staff remains current on licensing and continuing education requirements and will train staff as appropriate on issues that relate to the services it provides. Magnolia is always willing to provide training to staff when appropriate and will consider the HRA's recommendations to provide additional training in probate, guardianship, and related issues.

Should you have any questions or wish to discuss our response in more detail, please feel free to contact me.

Sincerely,



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