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SENIORS AND MEDICATION: THE EFFECTS ON CAPACITY

An essay on a subject of interest and importance to many seniors appeared in a recent issue of a bulletin distributed to members of the National Academy of Elder Law Attorneys (NAELA). Steven E. Hitchcock, RPh, JD, discusses how to recognize the symptoms of over-medicating seniors and the impact it can have on their decision-making capacity.

Elders are particularly at risk of diminished capacity to conduct their legal affairs, due to cognitive impairment brought on by the use of multiple prescription and non prescription medications.

Mrs. Jane Johnson, a 70 year old widow, comes to her attorney's office one morning to review her estate plan. He notices, as she is shown into his office, that she walks with a cane and is unsteady on her feet. The lawyer has known Mrs. Johnson for many years and recalls that she was always a strong woman, both physically and mentally, but this time she is markedly weak. He offers her some tea and they sit down. Questions flood the lawyer's mind as to her condition. Has she had a stroke? A heart attack? Is she in the beginnings of Alzheimer's? She tells him that she was her regular old self until a couple of months ago, when she fell in the kitchen and twisted her ankle. She hasn't been right ever since, and was feeling that it was time to make sure her affairs were in order because she has been "slipping" mentally lately, forgetting things and misplacing things. He asks about the ankle and she says it is fine. "Then why are you using a cane?" he asks. "Because I am so unsteady these days. I guess I am just getting old" she says. He then begins to interview Mrs. Johnson regarding her current situation. Should he ask about her medications? What should he ask and what should he do with the information he obtains?

On average, the elder population takes more medication than the younger population. In many instances, an elder may take as many as ten to fifteen different medications. This poly-pharmacy, defined as the use of multiple-medications by a patient, may play a significant role in a

client's capacity. The term poly-pharmacy is also used to describe the issues arising from drug interactions between these multiple medications. Obviously, the more medications a person takes, the greater the chances that the combination of medications will cause problems. There could be enhanced side effects, direct adverse drug interactions, or the medications may act counterproductively. Due to many different factors, the elderly are more susceptible to the adverse effects of many medications as well.

The initial assessment of the client should begin with the interview. The interview with the client must include an assessment of whether the client is competent to undertake the desired representation. As the competence of the client may be affected by medical conditions and/or medication, this interview should include questions about the client's current

medical status and the medications the client takes.

The attorney should, however have a basic understanding of the client's medical picture. However, this interview must be undertaken with the utmost tact, as many elderly will not understand why they are being asking detailed or pointed health questions. Many elders may be too embarrassed to answer questions regarding their declining health or may be in denial of it altogether. Still, the lawyer should obtain as complete and accurate information as possible, including at a minimum:

- The name, address and telephone number of all of the client's physicians
- The name and address of the client's

pharmacy(s)

- A list of the client's medical conditions
- A list of medications, prescription and over the counter (OTC).

The attorney might also have the client execute a HIPAA compliant release to obtain a medical summary from each physician and/or a list of medications from each pharmacy. Information from the client's physician should be the most complete, but the pharmacy can be an excellent source of information, which can be obtained quickly. It is important



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to identify each physician and pharmacy. In each case, there may be several.

An important step in the interview should be asking the client what the purpose of each medication is. This seemingly simple question goes, for many elders, to the root of the problem of poly-pharmacy. Many do not know why they take a particular medication. Multiple physicians may be prescribing conflicting medications. The question also enables the attorney to assess the client's intelligence and ability to comprehend and articulate what medications he or she is taking and why, all within one series of questions.

There are other warning signs that a client may be at risk for problems due to poly-pharmacy:

Multiple Physicians: With the ever-increasing specialization of the medical profession, many clients will go to several different physicians. For example, a client with a multitude of medical problems may see a general practitioner, cardiologist, gastroenterologist, podiatrist, ophthalmologist, and pain management specialist. Each of these professionals will prescribe some medications, discontinue others, recommend OTC preparations etc. In many instances a physician may not know that a client is seeing another physician for an unrelated problem. This can lead to problems of poly-pharmacy.

Multiple Medications for the Same or Similar Diagnosis: This happens when a client identifies multiple or similar medications being taken for the same problem. This may especially be a problem when they are prescribed by different physicians. It should be noted, however, that there are many instances where multiple medications for the same diagnosis are completely appropriate, as is often the case in a diabetic client, for example.

Medications in the Same Class (Family) Used for Different Purposes: A class of medication is, generally, a group of medications that are chemically similar and have a similar effect on the body. For example one class of medications is the benzodiazepines, which includes Valium (diazepam). In this class there are approximately 15 distinct different drug entities available in the United States. Many clients will be on a benzodiazepine anti-anxiety medication for use during the day and also on another benzodiazepine to help them sleep at night. The client might not realize that they are in the same family and potentially should not both be used at the same time.

Potential Drug Interactions: In many instances two or more medications in combination directly conflict to produce an undesired effect. This is known as a drug interaction. This can be a problem even when each medication is properly prescribed and would not, by itself, present a problem. What can or should the attorney do if the elder is not exactly sure why she took a couple of her medications and he wants to determine if the medication she is taking is potentially causing her to be "slipping" mentally?

The obvious first choice would be to contact the client's physician. If the client has provided a HIPAA compliant release, the physician may be the best source of information regarding the client's status. The physician can also review the

medications to determine if any changes need to be made due to adverse poly-pharmacy issues. If the attorney cannot contact the physician, such as when the client refuses to give a release, there are many other resources.

Pharmacists may be the best resource for this review. Just as a physician is highly trained in his or her area of specialization, pharmacists are also specializing. Many pharmacists have completed extended courses of study in areas such as consultant pharmacy (providing services to institutions - primarily nursing homes such as medication review, and review of patient outcomes), and clinical pharmacy (recommending medications and providing information and consultation to physicians on the therapeutic use of medications in specialized areas of practice).

Nurses can review a client's medical information as well. They have been utilized for this purpose for years in areas such as medical malpractice and worker's compensation litigation.

A wealth of information is available to assist in the evaluation of a client's competency issues potentially related to poly-pharmacy. Situations such as Mrs. Johnson's may be related to her medications or it may be entirely unrelated. A lawyer should not expect to understand every aspect of a client's medical profile, but he or she should be able to recognize when a potential problem may exist, then use the tools, resources, and health professionals available to make a preliminary evaluation and determine the proper course of action for the client's representation.

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