

Special Report on Safe Driving

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Disclaimer

This monograph is intended to convey information by which you may better understand the legal issues affecting your business and personal life. It is not intended as *personal* legal advice. Personal legal advice may be provided only after an examination of your objectives and of the pertinent facts and law.

Introduction

Life forces a number of life adjustments as time goes, especially for those with Alzheimer s and Parkinson s Disease. Included among them is the need to consider adjustments by which to avoid legal liabilities. Here, we deal primarily with the conflict between your need for independence (expressed by the ability to drive yourself around town) and the risk you pose to yourself and others because of deteriorating ability to see and react to traffic, pedestrians and weather conditions.

If you have one of these diseases, you may someday be faced with a recommendation that you restrict your driving privileges. Your doctor may write a prescription that says, Do not drive. Family members may begin to notice effects of the disease on your memory, judgment and attention, effects of which you may be unaware.

Those mental abilities are of critical importance to safe driving. In the early stages of Alzheimer s Disease, it may take months before such problems become apparent. At some point, however, you will begin to lose your way, misjudge the speed of oncoming traffic or fail to notice stop signs or other signals. You may be driving *legally*—that is, you have a valid driver s license—but perhaps *not responsibly*. The last thing you want is to cause a traffic collision or run over a child. Almost as importantly, such an accident could impose enormous financial burdens on you and your family.

The independence that driving affords you is difficult to give up. Even thinking about it may cause you to lose self-esteem. In our culture, driving is important to us. No one wants our transportation needs to be a burden on others. For all these reasons, you will find it difficult to admit that your driving skills are waning.

All that, however, is less important than the safety of others on the road. Government studies

have found that, particularly as you move into the latter stages of the disease, you are twice as likely to cause or be involved in traffic collisions as drivers of the same age *without* that condition.

The American Psychiatric Association recently published guidelines for restricting driving privileges of those with Alzheimer s Disease. Under those guidelines, all *severely* impaired Alzheimer s victims pose unacceptable risks on the road, as do those with *moderate* impairment; *e.g.*, those who cannot cook or perform simple household tasks. In the early stages, some people are able to drive safely for as long as two or three years after diagnosis. Others, however, cannot drive even for short distances without endangering themselves or others. Discuss this issue openly with your family members and doctor. Trust them to tell you when to turn over your car keys.

California Drivers

In 2000, the California legislature directed its Department of Motor Vehicles to collect input from any interested party for the purpose of evaluating the effects of physical conditions, ailments and other factors on the ability to safely operate a motor vehicle. The report was to be presented by July 15, 2001, and was to include in its evaluation indicators and predictors relating to the impairment of the ability to drive safely, including, but not limited to driving records. (*Vehicle Code* /12814.1) This indicates concern by the legislature that code health restrictions alone may be insufficient to prevent unsafe drivers from operating vehicles in this state. The time for producing the report has expired and, at this writing, no new legislation has yet resulted.

A driver s license may be non-renewed if the driver appears unable to understand traffic signs or signals or ... does not have a reasonable knowledge of the [Vehicle Code or]... is unable to safely operate a motor vehicle (*Vehicle Code*/12805(b)(c))

A doctor, police officer, family member, employer, neighbor or anyone else who questions a driver s ability may send a letter expressing concern to the California Director of the Department of Motor Vehicles. If so, it will ordinarily lead to a request for medical information and a road test. You should, for the sake of your own dignity, make that decision yourself. Such letters are sent to:

California Department of Motor Vehicles
Office of Information Services
Public Operations Unit G199
P.O. Box 944247
Sacramento, California 94244-2470

Continuing Care

As Alzheimer s and Parkinson s Disease progresses, the care you need increases. In the early stages, you may be able to continue living independently at home or with help from family members or home health aides. Other possibilities include adult day care or respite care. With adult day care, you are in a supervised program during the day, then return home at night. Respite care programs provide substitute caregivers to temporarily relieve family members or other who usually help you with daily activities.

Another possibility is the need for a long term care facility. That is because these diseases require long term care more than any other. You and your family should be aware of the following legal issues concerning the continuing care of an Alzheimer s or Parkinson s Disease patient:

– **Conservatorship Proceeding.** By the time you need long term care—if ever—you will probably be unable to make decisions about financial matters or health care. If you have not executed a durable power of attorney for property and one for health care, you will require a court-appointed conservator to attend to those needs. The conservator of the person steps into your shoes to decide where you will live and to make your medical decisions. The conservator of the estate takes control of your assets, collects your income, pays your bills, invests any surplus funds, and accounts periodically to the probate court. The court must approve each accounting and authorize any fees before they are paid. Any actions taken without court authorization or ratification leaves the conservator exposed to liability for any resulting damages to you or your estate.

– **Legal Rights of a Long Term Care Resident.** You will be entitled to personal and appropriate care, guided by your care plan. The care plan is a contract created by a team that includes you, your physician, the facility staff and anyone else you want to involve. It details your medical, psychological and social needs, and an action list for maintaining or improving your health.

Long term care admissions often take place during a period of high family stress. As a result, you and the family are inclined to agree to whatever conditions the facility presents. Resist it. Some facilities request illegal or unfair conditions which, if accepted, will come back to haunt you and the family. Following are some examples:

– A long term care facility is not permitted to designate certain beds as Medi-Cal beds.

– A long term care facility is not permitted to require that you pay the private patient rate for a certain period of time.

– A long term care facility is not permitted to require that you pay a deposit as a condition of admission *unless* you will receive *no* assistance from Medicare or Medi-Cal.

– A long term care facility is not permitted to require that a family member or friend become personally liable for the costs of care. (*Podolsky vs National Medical Enterprises* (1996) 50 CA4th 632, 58 CR2d 89)

Quality of care issues are extensive. They include duties of the facility: to help you improve your condition; to develop and implement the plan of care; to assure that your daily needs (*e.g.*, bathing, dressing, grooming, walking, eating, talking, tooth-brushing and bathroom use) are met; to avoid the use of restraints unless unavoidable; to provide necessary rehabilitation services; to prevent or treat pressure sores; to help with bladder control; to avoid discrimination in the level of care given public assistance versus private pay patients; to assure full participation by your attending physician; to serve at least three balanced meals daily; to carry out these duties without requiring that you adhere to the same schedule as other residents; and to staff at the level necessary to carry out these duties.

Discharge issues may arise. There are five *proper* reasons for discharging you from the facility: it cannot meet your needs, you get well, your presence endangers others, you are a private pay patient and fail to pay your room and board costs, or it is going out of business. It cannot, however, discharge you because you became a Medi-Cal participant unless it is not certified for that program.

Legal Assistance

For California eligibility planning strategies, order *When Health is Lost* at www.bentleymooney.com. To find a specialist in each of the other 49 states, contact the National Academy of Elder Law Attorneys at www.naela.org.