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INTRODUCTION TO *THE KINDNESS OF STRANGERS*

Alison Barnes

Our Health and Elder Law Conference this year continues a trend in past conferences to examine access, quality, and finance of long-term care for elders and people with disabilities. Adequate access must include a range of community and institutional choices, and the potential to pay for them without an endgame about fear of exclusion. The failure to better address this need is nothing less than mystifying. Models for universal or needs-based funding exist.[1] Models for better care than that dictated by command and control regulation also exist.[2] Don't we have the will for our elders to be decently cared for?

Without doubt, one source of problems is the growing impact of profit motives in full force in the United States. Investors can buy, or buy stock in, nursing facilities, as Larry Polivka mentioned.[3] Their interests divert assets that might be used for care by a good non-profit, or even to holding companies that obscure the tracing of profits. In such a structure, a patient harmed by poor care – even unconscionably poor care – cannot reach the assets of the facility. Investors and holders so far can deny responsibility for care. They are not the license-holders, who have virtually no assets.

This is bogus and must be ended. Courts, however, have not yet traced worthless care to true owners who ultimately are

1. *See, e.g.*, Robert L. Kane, M.D., *Making Better Long-Term Care Decisions*, 10 ELDER'S ADVISOR 55, 71 (2009).

2. *See* Eric M. Carlson, *Negotiating for Resident-Centered Care*, 10 ELDER'S ADVISOR 21, 21-33 (2009).

3. *See* Larry Polivka, *Closing the Gap Between Knowledge and Practice in the U.S. Long-Term Care System*, 10 ELDER'S ADVISOR 75, 87-88 (2009).

responsible. The dynamic is underfunding and chronic poor staffing, including poor management and overloaded direct care workers.

The limited initiatives to combat this relatively recent business model of long-term care for the extremely impaired involve a few health care fraud initiatives that generally might be criticized as overbroad and ill-defined. A number of new laws and regulations have been thrown at health care fraud in very recent years, but until the language is linked to worthless care, they are not helpful. The civil and criminal pursuit of fraud in the courts using older laws with more general language for interpretation, on the other hand, is timely and might bear fruit in the context described.[4]

This symposium pursues the new models of quality care, the impediments to achieving even minimally humane and responsible care, and bridges from our current human and financial failings.

I hope you will indulge in personal commendations with regard to the speakers at this symposium. This is in many ways my dream symposium. I believe 10:1 will be the best issue of Elder's Advisor to date, a tall stretch after these many years and 26 issues.

This issue includes Larry Polivka, who has worked in elder law for all my career and whom I know from pre-law elder care in Florida a couple of decades ago; Marshall Kapp, my dear friend of many years whose work in health and elder law is most similar to my intentions; and Bob Kane, grand old fellow of elder issues, whom I have read all my life. We also have new friends: Dave Hoffman, on fraud; Eric Carlson, for the National Senior Citizens Law Center. On the panels, colleagues from the Wisconsin Bar, and two excellent geriatricians, Drs. Fox and Moore. This is not to exclude, our speakers were outstanding, all.

Please note that next year we have a new format and a cutting-edge topic: The Intersect of Elder and Disability Law. This conference is designed to create dialogue between and

2. *See* David R. Hoffman, *Failing to Care: How Effective Compliance Prevents Institutional Elder Neglect*, 10 ELDER'S ADVISOR 1, 7-11 (2009).

among invited experts from academics, policymaking, and practice, to bring together these fields thus far treated mostly separately by law and lawyers.