

April 18, 2007

Pat Benabe

patb42@sbcglobal.net

Dear Ms. Benabe:

This is in response to your e-mail message addressed to Stacy Merritt in Elder Rights. It is our understanding that Ms. Merritt had previously spoken to you by telephone. Your message appears to concern your mother, Helen Woichowski, who is under guardianship; her court-appointed guardian, Lutheran Services Florida; and your daughter, Dana L. Guarscio, who has felony charges of exploiting her grandmother pending. You indicate that you were advised to contact the Department of Elder Affairs (DOEA) to ask for a court appointed assistant. You state that Lutheran Ministries has not been willing to speak with you for a year about your mother. You also express dissatisfaction that the court has appointed a guardian for your mother. In a subsequent message, you also ask for an investigation into this situation. In addition, you mention that it is your understanding that the facility where your mother resides is under new management or ownership, and you are concerned that she may be moved.

DOEA attempts to assist elders, their families and their friends with information about the law and how to resolve complaints, as well as information about where to find appropriate legal assistance when necessary. Legal assistance generally refers to elder law attorneys who are familiar with the special needs of elders. However, it is our understanding that your request for a "court appointed assistant" may be on behalf of your daughter, Dana Guarscio.

You should be aware that pursuant to Section 27.51, Florida Statutes, an individual who is charged with a crime and indicates that he or she cannot afford legal counsel can be appointed legal counsel by the court. This usually means the local "public defender". Section 27.52, Florida Statutes, requires that the individual make application to the clerk of the court. To review this statute, go to the Internet site of the Florida Legislature, Online Sunshine, at www.leg.state.fl.us and select "Florida Statutes" from about mid-page. Select "Title V" from

the left column to display the link to Chapter 27. Part III of Chapter 27 pertains to public defenders.

You should be aware that the primary purpose of guardianship in Florida is to help protect an individual who has been determined by a Florida court to lack the capacity to manage at least some of his or her property, or to lack the capacity to meet some of his or her health and safety requirements. The appointment of a guardian is intended to assist such a person “...in meeting the essential requirements for their physical health and safety, in protecting their rights, in managing their financial resources, and in developing or regaining their abilities to the maximum extent possible.” The law is not criminal in nature, although legal counsel is appointed to represent the proposed ward during the proceedings pursuant to Section 744.331, Florida Statutes.

To review the most current version of Chapter 744, Florida Statutes, again go to www.leg.state.fl.us and select “Florida Statutes” from about mid-page. Select “Title XLIII” from the left column to display the link to Chapter 744. You should be aware that there are also “Rules of Guardianship” established by the Florida Supreme Court that also govern the guardianship process.

Section 744.3215, Florida Statutes, addresses the rights of persons determined to be incapacitated. It specifies the right to receive visitors and communicate with others, as well as the right to privacy. It is our understanding that telephone calls from you, and certain others, to your mother have been restricted. This was reportedly based on a medical decision due to the volume and upsetting nature of calls made to your mother. In addition, we understand that the facility and the court-appointed guardian asked you not to call due to abusive language.

Despite these circumstances, we understand that your written communications to your mother, such as cards and letters, are still welcomed. Your mother may communicate with you if she elects to do so. It is also our understanding that your daughter, Dana Guarscio, was restricted to supervised visitations after she attempted to remove her grandmother from the facility without authorization.

You should also be aware that federal and state privacy laws can restrict the type and amount of information that a guardian may provide about a ward. This includes information released to family members unless the court has specifically instructed the guardian to provide such information in the appointment order. Such a request may also include access to annual reports filed with the court by the guardian. Many families request that the courts issue such instructions, but must do so with the assistance of legal counsel. A ward may also indicate to the court whether or not he or she wishes information to be released.

In Part VI of Chapter 744, Florida Statutes, you will also find the procedures for both the restoration of a ward's rights as well as for the appointment of a successor guardian. Although you indicate that you do not have resources to hire counsel at this time, you are still free to contact the court directly about any complaints that you may have about the judicially appointed guardian. Your mother also has this right.

The court has the authority to review actions of a guardian. The Internet site for the Clerk of the Court for Sarasota County is www.sarasotaclerk.com. You may also go to the Internet site of the Twelfth Judicial Circuit Court at <http://12circuit.state.fl.us/> and select "Contact Agencies/Judicial" found under the "General" heading at the top of the page.

Regarding the facility where your mother currently resides, a simple change in ownership or management of the facility should not have any affect on her residency. It appears that her guardian, Lutheran Ministries, has the authority to determine her place of residency. If your mother is moved, you may always write to her through her guardian. Again, your mother may decide whether she wishes to respond.

If you have a specific complaint or a question concerning the facility, Heron East, you may contact the Agency for Health Care Administration (AHCA) by calling the Consumer Hotline at 1-888-419-3456. You may also visit the AHCA Internet pages by going to www.myflorida.com and selecting "find an agency" from the top of the page. Then select "Health Care Admin." from the alphabetical list of

state agencies, and click on the agency name again inside the “title” box. AHCA licenses and regulates health care facilities in Florida.

We hope that this information helps. If we can assist you further, please let us know.

Sincerely,

LINDA WHITEFEATHER
Staff Counsel
Office of the General Counsel
Florida Department of Elder Affairs
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