

# UPDATE ON THE LAW CAPACITY

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## What is Capacity?

Capacity is the uncomfortable marriage of legal and medical concepts. Medically, doctors and psychologists consider capacity when discussing diseases like Dementia, Alzheimer's and strokes. The legal world discusses capacity when an attorney evaluates a client's ability to sign a contract, deed, will or trust. An attorney is looking at someone's ability to perform a legal action, while the medical community is evaluating the impact on health and daily life.

While attorneys can't diagnose a person, they are often called upon to make a judgment about a client's ability to sign a document. This determination may impact the validity of a document and the ability to complete a legal transaction.

For attorneys, the definition of capacity may change depending on what action is being taken. For example someone signing a Will must be able to identify their family, identify what is in their estate, who would be the natural beneficiary of their bounty AND hold all of this together at one time. In a Guardianship, the law may find that one is partially incapacitated or totally without capacity, depending on one's ability to manage one's property and care for one's self.

While the definitions may be straight forward, applying the definition to specific circumstances may be difficult.

## Effects of Incapacity

Different parts of the brain are responsible for different functions of our thinking and body. Thus depending on what part of the brain is affected by a disease, injury, alcohol, aging or many different factors, the effect on one's skills, thinking or ability to care for one's self may vary. For example if the front part of the brain is affected, one's ability to plan, make judgments and carry out a plan are effected. This may mean accomplishing simple tasks like planning a meal, cleaning house or paying bills can become quite difficult. Damage to other parts of the brain may cause memory loss. Still others control our reflexes.

Capacity is not simply memory. This is why someone may have great memory and know what their bank balance is and where they bank, but be unable to pay the bills. The complexity of the brain often makes it very difficult for family and friends to recognize that someone is no longer able to manage parts of their daily life.

Depending on the cause of the loss, incapacity may be permanent or temporary. For example the effect of a medication may cause a temporary incapacity, while Alzheimer's disease will cause a permanent incapacity.

All of this makes it very difficult for non-medical or psychological people to determine if someone has lost the ability to take legal actions or to care for themselves.

## **What are signs of incapacity?**

Signs may vary depending on the part of the brain that is affected and what is causing the problem. Some common signs to watch for are:

- ~ **Forgetting** to do routine things like paying the bills, remember birthdays or important family events.
- ~ **Inability to organize** the home. (Stacks of papers, bills and mail with no apparent organization.)
- ~ A good housekeeper who is **no longer able to do routine things**.
- ~ **Poor hygiene**, inappropriate dress
- ~ **Repeating questions** and comments frequently
- ~ **Difficulty finding words** or vague language, **trouble staying on topic**.
- ~ **Inability to explain simple things** that could have been explained easily in the past.
- ~ **A change in the ability** to compare alternatives, adjust to change and make decisions.
- ~ **Confusion** about the time of year and season.
- ~ **Moods that change quickly** from laughter to tears.

Only a physician or psychologist can truly diagnose the problem. But recognizing some of these symptoms may lead to early intervention and treatment and prevent larger problems.

If you are concerned, look for changes in someone's routine and patterns. Is a formerly good housekeeper's home stacked with papers, mail and clutter? Is someone who could once navigate easily with a map unable to do so? Is the person who planned meals unable to make the grocery list for the meal? Is the person who always paid the bills on time now having the electricity turned off for lack of payment? Is the usually decisive person unable to make a simple decision about their day?

Depending on the severity of the

change any of these could be warning signs that something is wrong. If the person experiencing the changes has not been to a doctor try to help them do so. Find out if there is something 'organic' like a new medication, an infection or if it is something more severe like dementia. Some changes may be reversible or slowed with good medical care.

## **What can be done?**

If you or someone you know has been diagnosed with a chronic disease which causes the loss of one's mental functions and capacity, it is extremely important to make provisions for someone else to handle business or medical affairs. This is a very sensitive subject. Consult with an attorney. Have a legal check up to make sure you have your Will, Power of Attorney, Medical Power of Attorney, Directive to Physician and Pre-Need Declarations of Guardianship in place. Preventative planning is always cheaper. One client said that very few of us 'get out of life neatly.' For this reason it is important for everyone to consider who and how will someone step in to help if you cannot care for yourself.

## **UPCOMING EVENTS....**

K.T. Whitehead will speak at the following events:  
March 22, *noon, When Powers of Attorney Fail*, at Hamilton House.

K.T. has been practicing in San Antonio since 1992. To receive additional copies of this newsletter, permission to reprint a portion, or to make arrangements for an in-service or community talk please contact

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