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Commission to Study the Creation and Administration of Guardianship
Nevada Supreme Court
701 Carson Street
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Dear Chief Justice James W. Hardesty and Commissioners:

This is a supplement to my officially submitted statement of October 19, 2015. Now, more than ever, reforming Guardianship in Nevada must include stressing "Collaborative and Supportive Decision-Making". The recognition of Powers of Attorney, Physician Directives, and Living Wills, all must be considered in selecting a guardian. Equally important is monitoring the performance of the guardian and replacing the guardian.

Current developments have reminded us that "Collaborative or Supportive" decision- making processes can assist our family courts. Our judges and guardians are being asked to make important medical determinations. Recently, the Nevada Supreme Court was thrust into a guardianship case and was asked to examine "How do we determine brain death"? It was also asked to opine to who can or cannot take a ward off of life support, and what Neurology guidelines are "accepted medical standards" in Nevada.

Family Courts must understand Nevada Uniform Brain Death Act (NRS 451. 007), as discussed in *In the Matter of the Person and Estate of Aden Hailu*, 131 Nev. Adv. Op. 89 (2015); filed November 16, 2015.

This Commission needs to assist our family courts in determining what resources must be made available to them for Brain Death cases as well as how to apply Nevada's Uniform Act on Rights of the Terminally Ill, codified NRS 449. 535 to 449.690. (See *Estate of Maxey,* 187 P.3d 144 (2005)).

In *Brophy v. New England Sinai Hospital Inc.*, 497 N.E. 626, 627 (n.3) (Mass 1986) the President's Commission on Deciding to forgo life-Sustaining Treatment noted the leading causes of death in our later years and that medical technology and medical intervention can delay the moment of death. Thus raising the question of when is it or is it not appropriate to intervene in end of life treatment. Therefore, in a guardianship case, an additional issue becomes, who should exercise this intervention. The question of should a guardian terminate medical treatment must be made in team setting. When our family courts address these issues they must utilize

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collaborative processes which recognize that "Death" is a medical condition requiring treatment and when necessary the termination of treatment.

In *Durante v. Chino Community Hospital,* 85 Cal. Rptr. 2d 521 (Ct. App. 1999); a physician refused to terminate life support when the patient was in PVS but not brain dead. Are our family courts ready to engage in this discussion? I think they are not.

How can a lay person obtain multiple evaluations regarding cognitive impairment and dementia?[1]

As previously mentioned in my October material, The Journal of the American Bar Association Commission on Law and Aging, *Bifocal,* discussed Health Care Decision-making as a Collaborative approach. However, Nevada statutes provide that the appointed guardian trumps a health care agent whose appointment by a power of attorney appears to express the ward's wishes. Nevada statutes that need to be reviewed include NRS 449.691 to 449-697, (POLST), NRS 162A. 800(2), and NRS 169.079(b).[2]

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[1] Marie-Florence Shadlow, MD and Eric Larson, MD, *Evaluation of cognitive impairment and dementia,* Up to Date, August 17, 2015 http://www.uptodate.com/contents/evaluation-of-cognitive-impairment-and-dementia;
Po-Haong Lu , PsyD, The mental status examination in adults, Up to Date, July 23, 2014 http://www.uptodate.com/contents/the-mental-status-examination-in-adults;
Katherine T. Ward, MD and David B. Reuben, MD, *Comprehensive geriatric assessment,* Up to Date, August 17, 2015, http://www.uptodate.com/contents/comprehensive-geriatric-assessment

[2] Dara Valanejad, Health Care Decision-Making Authority of Guardians and Agents: An Update, 36 Bifocal [July-August Issue 2015] pages 125-127;
Charles Sabatin, Myths and Facts about Health Care Advance Directives, 37 Bifocal [Oct.-Nov. Issue 2015].