

WAUPACA COUNTY CORPORATION COUNSEL

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August 1, 2013

Attorney General Van Hollen  
123 West Washington Avenue  
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RE: Request for an Opinion of the Attorney General regarding the Legality of Physician's Orders for Life-Sustaining Treatment (POLST)

This request is for an opinion of the Attorney General, made pursuant to Wis. Stat. § 165.015, § 165.25 and § 59.42(1)(c) (2011-2012), regarding the legality of Physician's Orders for Life-Sustaining Treatment (POLST):

Are POLST documents illegal and invalid ab initio because they do not comply with the requirements of Wisconsin law governing health care decisions?

Are POLST documents illegal and invalid ab initio because their creation and implementation does not comply with Wisconsin's informed consent law?

It has come to my attention that "Physician's Orders for Life-Sustaining Treatment (POLST)" documents (See Appendix 1) are being distributed and completed for use in Waupaca County, and in other counties in Wisconsin. I will be called upon to make a determination as to the legality of this document and to raise this issue in numerous court proceedings. I will also be called upon to address the county's obligations and liability if persons protectively placed by the County or residents of the County's nursing home arrive with POLST documents. Having the Attorney General issue an opinion which answers these two questions will prevent further use of these documents if they are illegal, and further, prevent repetitive analysis and litigation of the legality of POLST documents and possibly inconsistent rulings throughout the state.

The undersigned, Jeffrey J. Siewert, serves as Waupaca County Corporation Counsel. In the course of my duties as Corporation Counsel, I represent the public in filing Involuntary Commitment for Treatment (mental commitments) under Chapter 51 of the Wisconsin Statutes, guardianship cases under Chapter 54 of the Wisconsin Statutes, and protective placement and protective services cases under Chapter 55 of the Wisconsin Statutes. These actions are filed pursuant to referrals made by a member of the public to the Crisis Unit of the Waupaca County Department of Health and Human Services. The referral will report that an elderly, mentally ill, or developmentally disabled person is in need of an involuntary mental commitment, a guardianship or a protective placement because they are at risk of serious harm to themselves or others, or unable to make personal and medical decisions for themselves due to an impairment.

In addition, I may join or be requested to join guardianship, protective placement and protective services actions filed by private parties. The Corporation Counsel is an "interested party" in all guardianship actions filed in Waupaca County and those filed in other counties if the proposed wards are Waupaca County residents. Wis. Stat. §§ 54.01 (17)(a)(9) and 54.38. Likewise, the Corporation Counsel may be required by a court or may otherwise assist in conducting protective services and placement proceedings under Chapter 55. Wis. Stat. § 55.02(1)(a) and (3).

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The public also reports suspected cases of financial exploitation and/or physical abuse and neglect to the Crisis Unit of Health and Human Services Department. They conduct investigations, and if appropriate, refer cases to my office for filing of a guardianship case, a protective placement or protective services case, or for other appropriate actions.

Some of the referrals to my office include cases where Power of Attorney agents or nominated guardians financially or physically, abuse or neglect elderly, developmentally disabled, or mentally ill individuals. These persons, due to cognitive deficits, are unable to defend themselves or comprehend the physical or financial abuse or neglect. In these cases, frequently the exploitation is by a relative or friend who transfers the property of the incompetent person to themselves, depleting the person's assets, or by spending liquid assets. In the case of an adult child, relative, or beneficiary under a will or trust of an incompetent person, there is the reality that hastening the death of the incompetent person will often result in financial gain to the adult child, relative, or beneficiary.

In the course of filing these actions, as Corporation Counsel, I evaluate the legality of any Power of Attorney Documents for Health Care and/or Advance Directives executed by the proposed ward in the guardianship and/or protective placement action. If the documents do not comply with the statutory requirements of Chapter 154, Advance Directives, and Chapter 155, Power of Attorney for Healthcare, the court routinely invalidates the document. I am also called upon to evaluate the legality of such documents when questioned by employees of our county nursing home or of our protective services agency.

Some of the research and other documents I found relevant to these questions are enclosed.

Sincerely,

A handwritten signature in black ink, appearing to read "Jeffrey J. Siewert". The signature is fluid and cursive, with a long horizontal stroke extending to the right.

Jeffrey J Siewert  
Waupaca County Corporation Counsel