

From: Angus, Catherine <cangus@aging.sc.gov>
To: Watson, Daledwatson@aging.sc.gov
Date: 11/18/2013 1:43:55 PM
Subject: Follow Up on Issue from Tamie Ward via Tony Kester

Dale,

I am in receipt of the copy of the email sent from Tamie Ward to Tony Kester following up the conversation he had with Ms. Ward on Friday, 11/8.

I spoke with Ms. Ward prior to her conversation with Tony. He contacted me after his conversation with her to confirm what he had told her and to discuss what I had told her. I am going to document what I told her in my conversation with her for the record.

LaWandra came to see me on 11/7/13 and told me that Ms. Ward had called, but was not happy with the answers that LaWandra gave her and asked if I would call and discuss.

Ms. Ward told me that she had been the POA for her Father-in-law back in 2010 and that she had made a complaint to the Charleston Ombudsman's Office about the care he was receiving at a facility. He passed away in 2011 and she has been appointed Personal Representative of the Estate. She asked Patti Lobik (who investigated the complaint), for copies of the complaint records, but Patti would not release them.

We had a lengthy discussion. I learned that she was POA, but that her father-in-law was never declared incapacitated. He did have some cognitive issues, and she (she said "we" so I assume her husband was also involved) filed a petition with the Charleston Probate Court to have her father-in-law declared incapacitated. He hired an attorney and fought them on the issue, and the case was closed without appointment or declaration of incapacity.

She told me that Patti told her that she would release the records if the State Long Term Care Ombudsman approved it. During discussion, after I told her (see below) that you could not release records, she said that she only wanted you to have Patti give her the records.

I explained the following information to Ms. Ward:

While she was her Father-in-law's POA, he was never declared incapacitated and she was not his guardian/conservator. This means that he had the ability to speak for himself and make his own decisions. I explained that all case files are confidential and sealed, so to speak. They can only be released in one of two ways: the person who has legal standing can release the information or a judge can issue a court order to release the information. Because the father-in-law was not incapacitated, further confirmed by the fact that he was not placed under guardianship, he was responsible for his own affairs, and so he was the one who had to sign a consent to investigate and he was the one who had to release any records of the investigation.

As POA, while she could conduct business on his behalf, she could not supersede his judgment on what he wanted and that as POA, her obligation was to act in accord with his wishes, as he would act for himself. The Father-in-law was the only person who could release those records to anyone else, and he did not give permission for them to be disclosed to her, so we cannot release the information.

She told me she could send us a Certificate of Appointment. I explained that being PR of the estate does not allow her to gain access to those records now. The investigation was closed, over and done before he died, so the status at the time of the investigation prevails. Now that Mr. Ward is deceased, obviously he cannot sign a release to give permission.

The LTC Ombudsman program falls under federal law in terms of what is protected and what can be released. Further, the SLTCO (you) cannot violate law and cannot and will not release records without release from the person (not possible) or under court order. Technically, you are the owner of those records and you cannot, under law, direct

anyone to release records. You have to do. Freedom of Information Act requests will not obtain the records either. At this point, because Mr. Ward has passed away, the only release would be under court order.

She stated that she was POA at the time, so that power would allow her to receive the information. I again explained that she did not have the authority then because it resided with Mr. Ward, and the powers of the agent under a POA end at time of death.

She asked if we would release the records to the police in an investigation. I told her that we work with Law Enforcement whenever an investigation requires it, but that investigative records are also sealed and that the records could not be released to her that way. Further, for us to release records in an investigation would result in charges of impeding or interfering with an investigation and we can't do that. I told her that only a court order might help her.

I never told her that anything was a waste of her time.

After the conversation, I debriefed the issues with LaWandra (who was in my office during the call and heard the entire discussion, btw).

Then I went on the internet and did some research. The records of the guardianship that was closed without appointment are there. There are several POAs that have been filed with Ms. Ward as the Agent in Fact, by folks who may or may not be related to her but who do not share any common names. Those POAs were created so that she could handle real estate transactions (sales) for them. There is no POA on file for Mr. Francis Ward, however, so there is another issues implied here. If he had capacity, he could make his own decisions, so he had to give consent. If he did NOT have capacity, the POA would not in effect because it was not filed in the probate court as required by law.

I did not learn about those records until after the call was completed.

This documents the situation as it occurred and what I said to Ms. Ward.

Mr. Kester called about her call to him and we discussed. He basically told her the same things I told her.

This is for your documentation of what actually transpired in the phone conversation.

Thanks,
Cat

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