



Elder Counselor

A newsletter for professionals serving seniors and those who love them.

VOLUME 6, ISSUE 3

MAY 2015

UPCOMING EVENTS

June 9 - July 14, Tuesdays
**Powerful Tools for
Caregivers ELET Workshop**
*with Connie Taylor, LCSW and
Dr. Michael Mailahn*
903 N. Hall of Fame Dr.
Call 951-2410 to register.

June 9, 6:00-7:00 pm
"Elder Law & Planning for
the Future"
with Attorney Sarah Malia
UT Medical Center Muscular
Dystrophy and ALS
Support Group
1924 Alcoa Highway

June 16, 6:00-7:30 pm
"How to Get & Pay for
Care"
with Attorney Amelia Crostwell
Victorian Square Assisted
Living and Memory Care
Community
241 S. Chamberlain Avenue,
Rockwood, TN 37854
865-354-1133 (office),
865-591-3421 (cell)

Sept. 1, 10:00-11:00 am
"Legal Issues for Caregivers"
with Attorney Amelia Crostwell
Adult Day Services
600 N Daisy Street
Morristown, TN

*For more information about lo-
cations and participating in
events, contact **Connie Taylor** at
951-2410 or
connie@elderlawetn.com.*

Dementia and Sexual Consent

Introduction

Sex and the elderly (specifically those with dementia) has been getting a lot of attention lately due to the April 2015 resolution of the sexual assault case State of Iowa v. Henry Rayhons. This case raises important questions regarding the intimate relationships of those who develop memory debilitating diseases and their loved ones.

Former Iowa state legislator Henry Rayhons and Donna Rayhons were married in 2007. It was a second marriage for both of them, and they both had adult children. According to friends and family, they were very much in love. However, within two years of marriage Donna was diagnosed with early onset Alzheimer's and was placed in a nursing home by her adult daughters in early 2014.

According to various news reports that covered the trial, Donna was evaluated by a facility doctor, who advised Henry in writing that Donna did not have capacity to consent to sex. Eight days after being advised of this doctor's opinion, Henry visited Donna in her room, which she shared with an 86 year old female roommate. It was later alleged that during this visit Henry had engaged in sexual acts with his wife.

In May 2014, based on a report made by Donna's roommate and physical evidence gathered at the scene, the State of Iowa charged former state legislator Henry Rayhons with sexual assault of his wife. He faced a possible ten year sentence if found guilty of this felony.

The Verdict

In order to prove its case, the prosecution had to prove two facts beyond a reasonable doubt: (1) that Henry and Donna Rayhons had engaged in sexual relations on the night in question; and (2) that Donna Rayhons was unable to consent to those activities. A jury determined that the prosecution did not prove these two facts beyond reasonable doubt and found Henry "not guilty." It is unclear whether the jury delivered a "not guilty" verdict based on lack of evidence that sexual acts had occurred or based on Donna's ability to consent to sexual acts.

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Powerful Tools for Caregivers Workshop

with *Connie Taylor, LCSW & Dr. Michael Mailahn*

This educational program helps unpaid family caregivers take care of themselves while caring for a relative or friend. You will benefit from this class whether you are caring for a parent, spouse, or friend who lives at home, in a nursing home, or across the country.

Series meets once a week for six weeks. You may register for either the morning or afternoon session. Light lunch will be served. Class size is limited. Register with Connie:

951-2410 or

connie@elderlawetn.com.

Elder Counselor is a bi-monthly publication serving professionals in elder law, senior service providers, and caregivers and families of the elderly and disabled.

To subscribe to our e-newsletter, send an e-mail to info@elderlawetn.com with the subject "NEWSLETTER." We will not share your contact information with other parties.

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Lingering Questions

Regardless of the jury's rationale, the case brought up many concerns and questions for professionals working with seniors and for couples. One of the main concerns this case brings up is the necessity of physical touch and intimacy for all people, especially the elderly and those with dementia. Sexual intimacy is one form of human contact that many adults take for granted. However, when one goes to live in an assisted living or nursing home facility, that right may be altered or even taken away.

The Hebrew Home, a well-known nursing home facility located in New York, is considered one of the best in the country. Twenty years ago, it became the first facility to implement a "sexual expressions" policy for its residents. However, few facilities have followed suit. In fact, most facilities nationwide do not have a policy concerning their residents' rights to have sex with a spouse or any other person. The conversation started by the Rayhons case may encourage facilities to look into developing such policies.

Another question that was thrust into the national spotlight by the Rayhons case is whether or not a patient with dementia can consent to sex, or at what point a person with dementia is no longer able to consent. In the Rayhons case, the prosecutor focused on the incapacity of Donna Rayhons. The prosecutor compared Donna to a twelve-year-old child who is unable to consent simply because the child lacks capacity to consent. Similarly, the prosecution argued, Donna Rayhons' Alzheimer's disease made her incapable of consenting to sex whether she "wanted" to or not. This question of how to determine whether or not an adult can consent to sex, especially with a spouse, is a difficult one and is far from being resolved.

The fact that dementia patients have varying levels and moments of capacity makes consent an even trickier issue from an ethical and legal standpoint. Many suffering from dementia have "good" days and "bad" days - even "good" hours or minutes and "bad" hours or minutes. In such cases, how is capacity measured? Is it best to say that once a person has been diagnosed with dementia and has moments of lacking capacity they should no longer be able to consent to sexual activity? Even if it is decided that dementia patients do continue to have a legal right to consent to sex even though they have the disease, the questions don't stop there.

Unfortunately, there may come a point when a person with advanced Alzheimer's may be unable to recognize a spouse or loved one. This is excruciating for the unrecognized loved one, and we imagine it is confusing, frustrating and isolating for the patient. What if that same patient begins to find another patient at the facility attractive and begins to flirt or even fall in love? One such situation made national news several years ago due to an incident involving Supreme Court Justice O'Connor's husband, who suffered from advanced dementia. A [New York Times](#) article written at the time suggested that sexual activity among older adults is an issue nursing homes will be forced to face.

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ELDER LAW OF EAST TENNESSEE

Elder Law of East Tennessee uses a unique approach to Elder Law called Life Care Planning. Attorney Amelia Crotwell and Elder Care Coordinator Connie Taylor, LCSW, work as a team to address legal issues while designing a comprehensive long-term care plan that maximizes quality of life and independence for the older adult.

Caring and planning for the future can be burdensome and overwhelming, but Elder Law of East Tennessee can help in many ways. A consultation with Elder Law of East Tennessee is your first step toward the assurance that only a specialized Life Care Plan can provide.

Call 865-951-2410 or visit our [website](#) to get started today. Elder Law of East Tennessee is conveniently located at 903 N Hall of Fame Dr., Knoxville, TN 37917.

QUICK LINKS

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[Blog: Elder Law Insights](#)
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Legal Protections of Sexual Rights in Tennessee

In Tennessee, some minimal protections of sexual rights are in place for nursing home residents. Under section TCA §68-11-901(2), every nursing home resident/patient has the right, if married, to visit in private with their spouse, and, if not medically contraindicated and if space is available, to have conjugal visits with their spouse and to share a room with their spouse.

Tennessee law also provides that a nursing home resident has the right to visit in private with any person or persons during reasonable hours, subject to the right of the administrator to refuse access to the facility to any person, if the presence of that person in the facility would be injurious to the health and safety of a resident or the staff, or would threaten the security of the property of the resident, staff or facility. TCA §68-11-902(3).

However, Tennessee state law does not directly address the issue of capacity. Certainly, dementia might be considered a "medical contraindication" - and therefore grounds for prohibiting conjugal visits by spouses. Nursing facilities must create their own policies, or if none are in place, staff members are left with the responsibility of making this difficult call.

Legal Solutions

Many couples who now face a situation in which one partner suffers from dementia may have never discussed how they would like it handled. The Rayhons case has brought the issue of intimate contact to light and now gives couples an opportunity to discuss and decide in advance how they would like to proceed if one later develops dementia or any other mentally disabling disease.

When a couple is completing their estate plan with the help of an attorney, they may choose to add or modify their legal documents so as to address many of these issues. For example, additional provisions may be added to a durable power of attorney or health care document that address issues of companionship, facility choice, and personal relationships. "Compassion contracts" are also being discussed as a possibility for couples to consider. With a "compassion contract" a couple can agree in advance that each will allow and hold the other harmless for seeking companionship from a third party when one of them no longer recognizes the other. With the help of a qualified attorney, any variation of such an agreement can be made by the couple to guide them in this unfamiliar territory.

While there are no clear-cut answers to the questions that have been raised by the Rayhons case, it has given the Elder Law community an opportunity to seek better solutions for all. If you or someone you know would benefit from speaking to an Elder Law attorney about the issues raised in this newsletter or any other legal issues, please do not hesitate to contact us. We are always happy to hear from you.