



Elderlaw Attorney Conversation (Podcast Transcript)

Barry: Welcome to Senior Care Corner. I'm Barry.

Kathy: And I'm Kathy. Thanks for joining us!

Barry: You'll find us online at SeniorCareCorner.com with solutions, tools and information for families and other caregivers of senior adults.

We've got what we think is another great episode for you today! We've got an interview coming up in a few minutes with Victoria Collier, a certified elder law attorney, who's got some great tips for family caregivers.

Before we get there though, Kathy, I believe you have some news items today?

Kathy: I do as always, our first news item:

Social Networking and Successful Aging

Researchers are developing a new Facebook application in Australia known as Au SON short for Australian Seniors' Online Network that will help shed light on how seniors are using social networks.

Data on how seniors are using social networks to connect with friends and family and how this engagement will impact successful aging is being collected now.

The lead researcher Dr. Heather Booth says "understanding how online social networking can contribute to successful aging is critically important" especially as the population ages and the health and welfare policy will be challenged.

Because social isolation is a significant inhibitor to health in later years, social networks offer a potential means to overcome this isolation.

In Australia, there is a National Broadband Network being implemented that will allow more people access to online resources. With the creation of this new Facebook application, researchers will automatically collect information as well as allowing the seniors to provide additional information including health information so that researchers can learn how these interactions will influence successful aging.

Well Barry, you've been saying for some time that we all need to provide means and opportunity for our seniors to connect online and now you'll get some hard data to show the benefits. We'll look for more information about their results in the future.

Barry: Yeah, that will be something to look for, can't wait!

Kathy: Alright our second news item:

Videotaping Shows Most Falls among Elderly Due to Incorrect Weight-shifting

Because falls are a major cause of disability and even death in seniors, researchers are studying what happens in the split-second before a fall in order to prevent these harmful falls.

They used strategically placed video cameras in long term care facilities to record the falls of residents and analyzed the mechanics of a variety of falls in order to improve interventions for prevention.

Falls are the number one cause of injury for elders including 90% of hip fractures and 60% of head injuries for older adults not to mention injury related deaths.

Video cameras were set up in the hallways, dining halls and lounges in long term care residences and captured 227 falls. Researchers then separated the falls into three stages-initiation, descent and impact.

They found that 20% were as a result of trips and 10% were bumped by someone else or were hit by a door closing. The majority of falls, 70%, resulted from a failed attempt to do an activity such as walking, sitting down and even just standing.

Most often the falls occurred by incorrect weight shifting according to this analysis. The older person leaned too far past the center of gravity causing a loss of balance. It also happened when standing up from a sitting position without gaining a stable final position.

Many elders are able to get their arms out to protect themselves however often lack the strength to have this movement be effective to prevent injury.

Many were found to trip on table legs and even the legs of their walkers. Researchers wish to explore community falls which account for half of all elderly falls. Learning more about the cause of falls, intervening where able and encouraging strength and balance training in older adults will help seniors remain independent as long as possible and keep them injury free.

Barry: That's very interesting. Look forward to seeing what can be done in that regard to help minimize the number of falls.

Kathy: I agree. Alright, our third news story today:

Nearly Half of US Adults with High Blood Pressure have it Under Control

Nearly half of US adults with high blood pressure had it under control according to researchers reporting in the American Heart Association Journal Circulation.

They stated that improved control of high blood pressure is likely a result of multiple drug combinations now being used.

From 2001-2010, over 9,000 people were interviewed who have hypertension. 47% were found to have controlled blood pressure up to 10 years, which is up from 29%.

Many were found to be using two or more medications to control their blood pressure. Researchers also state that the lower cost of medications, generic forms of medications available, and well as increased awareness of the need for blood pressure management all contributed to better control.

The co-author of the study said that nearly half of those with hypertension are not receiving multiple drug therapies at this time. Different segments of the population in particular are not being treated at all for high blood pressure including older Americans with only single drugs.

Barry: Well that is kind of a glass half full story but it really is the other half that we need to be focusing on.

Kathy: Right. We need to target those people with something we know works, and that's the multiple drug therapies that they're using.

Alright our fourth and final story today:

Study IDs Four Key Habits of Successful Aging

According to a new study, health habits in midlife can improve the chances that you will remain healthy as you age.

Researchers followed 5,100 men and women from 42-63 years for over 16 years. 950 of those were classified as successfully aging.

Successfully aging is defined as maintaining good mobility, lung function, mental health, thinking and memory skills, having no chronic disease or disability at the age 60 or over.

They found that having four types of healthy habits--not smoking, moderate alcohol consumption, regular exercise and eating fruits and vegetables, all were associated with successful aging.

These successful agers also were married and more likely to have a higher level of education as well.

Researchers state the more healthy habits and behaviors, the greater the benefit for health. A combined impact led to the substantial likelihood of reaching old age disease-free and fully functional.

Barry: Another interesting article. Thank you Kathy, you really did a great job this time. I guess, as always!

Kathy: Well thank you.

Barry: Well moving into our feature segment now, and we get a lot of inquiries and a lot of visitors to our website who want to learn more about legal issues associated with aging and especially with end of life legal issues. And we're not talking about estate planning here, which is wills and planning your finances for after you're gone. But really the issues associated with the later years of your life.

We were very fortunate to find Victoria Collier, who was willing to come and talk with us some and share some information with us. And without any further ado...we'll go ahead and play the interview now.

Start Recording

We're pleased to have joining us at Senior Care Corner today, Victoria Collier who is a certified elder law attorney; certified by the National Elder Law Foundation.

Victoria, welcome to Senior Care Corner. Thank you for joining us.

Victoria: Thank you Barry and Kathy for having me.

Barry: We're glad to have you join us today because we do get so many inquiries from visitors to our site wanting to know more about elder law issues, especially a lot of end of life issues. We get a lot of visitors via Google searches on end of life issues. So we really want to give them a legal prospective that we simply can't provide. So we're fortunate to have you with us today.

Victoria: Thanks. You know as an elder law attorney we certainly see that issue on a daily basis.

Barry: Before we ask you some questions about our subject matter, may we ask a little personal question. We find that many of the people that we interview get into dealing with seniors and elder care, that sort of subject matter, because of something in their personal background that really gave them that interest. Is the same true with you?

Victoria: Well it is. When I was seventeen, I moved out of my house, even before I graduated high school and one of the jobs that I had that I took was as a nurse's aide in a nursing home providing hands on care to people who were, at that time, called the critical patient who needed total care. And I was young, but really influenced by that experience. And I did not really grow up with grandparents being around me or accessible to me a lot. And so being in that environment with senior citizens who I could not only help but also listen to their stories and learn from them, which is really instrumental to me and it's always stuck with me.

I also did home health care and as a second job while I was in the Air Force to supplement my income so that I could go to college. And doing the home health care was very much, you know, in line with what I had done as a nurse's aide in a nursing home. And just, you know, that is the population because of those experiences that I get the most joy out of being able to be around and also to be able to help.

Kathy: Well, that's definitely front line view point, isn't it?

Victoria: It is! You know I do have the caregiver's view point. You know when I put my legal plans in place, I obviously am looking at the best interest for my client who is the senior citizen but I come from an aspect of being a caregiver as well.

Barry: Well speaking of your legal prospective, I guess the question we have, what differentiates an elder law attorney from another attorney?

Victoria: Well, you know first of all, people think that there's just too many attorneys out there, unless of course you need one and then it's difficult to find the right kind. And there is a big difference between an elder attorney and all other attorneys. But specifically I'd like to highlight there's a difference between estate planning attorney and elder law attorneys as well, which are the ones that are most like our cousins.

And so with regard to that, estate planning attorneys focus on putting your documents in order so that you can basically retire well, and you know, live and distribute your property upon death. So the question thru estate planning is "what do you want to happen when you die?" In converse to that, an elder law attorney is NOT asking what happens when you die, we ask a different question and that is "what happens if you keep living?" So how do we create a plan for you so that you can maintain your quality of life while you live, while you have increased need for healthcare, which also means increased expenses? How do we put a plan in place so that you can afford it and you don't have to compromise your quality of life in order to do it? And that's the primary difference.

Kathy: Can you describe the challenges that this experience, working with not only as a frontline caregiver but also an elder attorney; how does that, how do you work together with the family caregivers and the seniors themselves?

Victoria: Well, the number one key in my opinion as far as success of any planning as we age is communication. And often times, caregivers, they see a need to step in and help but in their desire to do so, sometimes the senior citizen's opinion, or the elderly person's opinions or thoughts kind of get pushed to the side because maybe they're a little slower to convey those thoughts; maybe they want to think about it a little bit more. Whereas the caregiver, they just; it's like a CEO of a company, you identify the problem, you outline the plan and you start working on it. And sometimes it just, we need to slow down a little bit and communicate those issues with the seniors. And then have them be part of the planning process.

The other side too is sometimes seniors don't want to talk about anything and they want to avoid, you know, thinking about what's going to happen next because it doesn't matter who you are, you can be 100 years old and still go into, for example an assisted living facility with people who are 80 years old. And the 100 year old person will say "I'm not like them". You know, they just don't see themselves as other people, you know, may see them.



And so with all that, it's understanding that through communication you can achieve a lot more versus direction and dictation; if that makes sense.

Kathy: Right, so what your role is then to help the seniors and their family members' transition through their aging.

Victoria: Correct, correct. And hopefully with the education of what the different paths are going to potentially be and how to protect themselves and their assets as they go down the different paths. And how to, how they can then chart the way for their caregiver, so their caregiver doesn't feel lost, lonely and stressed out if they don't have the road map put in front of them by the elderly person.

Barry: Well, what would typically prompt someone to contact you for assistance?

Victoria: Well, what our society has trained, or what elder law attorneys have trained society to think is when someone needs a nursing home, for example, call the elder law attorney so that they can save us money. You know, from nursing home costs. Help us save money and get on Medicaid for example.

Well, we actually do a lot more than that. But what does cause people to call us is essentially, they're starting to see that someone needs help, that they are going to have to pay for it and they do want to know how they can stretch that money, how they can get outside resources like Veterans Benefits or Medicaid to help pay for the cost so that they don't have to deplete all their assets which then gives them limited options on healthcare and quality of life.

Barry: Well given that, at what point should a senior, or if they don't do it, their family member contact you to be able to put you in a position to provide them with the greatest assistance?

Victoria: What I tell people in the community is that the best time to contact us is when the elderly individual, the senior citizen starts to ask for some assistance on the smallest scale; such as grocery shopping or assistance in just writing out the bills, even if they are still signing the checks themselves. Or if they start to add family member to their bank accounts for convenience.

That's an indication that they are saying "I'm slowing down, I need a little assistance, but YET I'm still independent". When someone comes to us, it's very helpful if they are still competent mentally to be able to sign documents outline, you know, to share what their desires are so we can outline the best plan for them. So that's what I would say the BEST time to come.

Kathy: So some of the things...

Victoria: Go ahead. I'm sorry.

Kathy: Go ahead.

Victoria: I was just going to say that sometimes they wait for a crisis and then it's reacting instead of you know, putting a plan in place to begin with.

Kathy: Right, and if they're still no longer; if they're no longer competent then that's a real difficulty for family members.

Victoria: It certainly can be because now we're talking about a whole different process which is, you know, often times some of the greatest challenges which is going to the court system to get guardianship or conservatorship; which is, you know, legally deeming that person incapacitated, not able to do anything for themselves and if we can avoid that process, it's certainly a lot less stressful for caregiver, a lot less stressful for the elderly person. And you know it just makes for a smoother transition if we can avoid that.

Kathy: Mhm. So if you, if I was a family caregiver and I'm starting to get concerned about my senior, I would come to an elder law attorney such as yourself to perhaps put in place a healthcare proxy or a power of attorney or a living will, that type of, those types of legal documents?

Victoria: Right, which are called advanced directives. In the general term of advanced directives, most people think about that in the healthcare sense. Just like the ones you were talking about, the healthcare proxy, naming someone else to be able to make healthcare decisions, if and when that person's not able to make them for themselves.

The key is the documents have to be done in advance of incapacity. It's one of the issues that we have with the elderly. They're like "I don't need that. I don't need that." Well you may not need it right now, but when you do need it, if you don't have it in place then it's too late. So that's part of our education.

Kathy: Alright, so and then same thing with their living will or their wishes?

Victoria: Correct.

Kathy: Going into aging.

Victoria: Correct. And like a do not resuscitate order and even a financial power of attorney. Which in our legal opinion, the financial power of attorney; which is an advanced directive for finances, should not be comingled with the healthcare powers of attorney or advanced directives because they have two different purposes and they operate very differently.

Kathy: Right. I see a lot of family members thinking they've got this financial arrangement where they can help with their banking and they can transfer titles of cars and et cetera; that really doesn't have anything to do with the healthcare side. They have to have legalities in both realms.

Victoria: Correct. And like for example the financial power of attorney dies when the principal dies; the person who created it. Whereas the healthcare power of attorney does not, it survives. And because there are other decisions that have to be made after death and so even the duration of those two documents are different.

Where we see a lot of confusion is whether or not you need a healthcare power of attorney like a proxy, if you need a living will, I mean if you have a living will; and I think what's important for people to understand is that a living will is just an expression as to whether or not that person wants live support if they're in a certain condition like a coma or a vegetative state. Or a terminal illness with no reasonable expectation of survival without life support. But that document itself is just an expression as to whether they want care at the end of life in those three circumstances. It does NOT name an agent to be able to make healthcare decisions that are not within those three conditions. So regular day to day decisions, also where you're going to live if you can't live at home by yourself, also what kind of medication you may take, and access to medical records, if you want to be buried or cremated; that's what the healthcare power of attorney does.

Most people don't have a healthcare power of attorney because when you go to the hospital, you go to your doctor; they ask you if you have a living will because that actually protects the doctor. They don't have, they don't ask you if you have a healthcare power of attorney because that actually protects you and your caregiver.

And so I'm a big advocate on trying to let everyone understand that there is a very big difference between those two documents. And the one that provides the most protection to the elderly person as well as the caregiver is actually the healthcare proxy. The healthcare...

Barry: That's a great point. That's a great point. That's something we're, I think we're going to highlight for people so they understand the difference.

Kathy: I think sometimes what I see is, people in a traumatic situation sort of feel like the well the next of kin is just going to take care of things, without any really clear guidelines.

Victoria: Mhm. Right and while that can work in many situations, often the next of kin are three children and it's not the oldest of the three, it is THE THREE children. And unless they ALL agree on ALL decisions, then the court is going to decide who has the final say; and that again is through the guardianship process. And you know, when we do talk about next of kin, everyone does just assume that it's just the spouse. Sometimes we have estranged spouses. Or my children, and it's the oldest child; but that's not what the law says.

Kathy: Right and also, that's a good point. What we also seem to forget though is sometimes the spouse is not competent to make decisions.

Victoria: Right.

Kathy: And you can have more than one sibling and then it really gets muddy when you need an immediate answer in a trauma situation and you just don't have anyone to step forward.

So these documents are so important to get them executed early on while people are able to make their choices known and then everyone in the family knows.

Victoria: Right. And if you will, I have one other example that with regard to the healthcare advanced directive, the power of attorney. In some states, like in Georgia where I am, a person if they want to be cremated, for example, versus buried; if they do not have a healthcare power of attorney, who they've nominated to make that decision, it DOES rely on the next of kin. And in the state of Georgia for example, let's say that you have three children, and you're died and you wanted to be cremated but you did not make prearrangements for that, your next of kin, ALL three children will get to decide what happens. If they don't all three agree, then by law, in Georgia, you will be buried regardless of what your desire was. But if you have the advanced directive that appoints someone to make that decision, then that takes priority over next of kin. So that's another example of what's so important even after death.

Barry: Interesting. So effectively one child could veto your wishes if you haven't made them legally binding.

Victoria: Yes.

Barry: You mentioned several times about legal documents and things and we are very much now a "do-it-yourself" society. Now this may be a bad question to ask an attorney, but what are the pitfalls of trying to do-it-yourself?

Victoria: What we have seen most often as far as the pitfalls is that the documents that you can get off the internet that are from Office Depot or in a kit somewhere, is that first of all you don't know the questions to ask to make sure that the right provisions are in there for YOUR situation. An example of that would be protecting assets for a child who has disabilities versus one who doesn't have disabilities.

Another pitfall is that they don't sign the documents properly. In some states you need three witnesses; in other states you only need two. Sometimes you need a notary and sometimes you don't need a notary. So, if it's not signed properly then it's not valid.

Another pitfall that I see regularly when people draft their own wills is that they don't actually name like who the executor is or who the beneficiary is. They'll say that you know, "I want my oldest son to be the executor and take care of everything" but then they didn't actually outline who gets what.

So oftentimes it's just not filling out the forms properly but more importantly it's not knowing the specific issues to fill it out based on their circumstance and they have unintended

consequences. So one of those unintended consequences is it's often more expensive to fix bad documents or a bad plan than it is to get a good plan in place from the beginning.

Barry: Well I would imagine too that not only is it expensive to fix it but you might not be able to fix it in time to accomplish its desired goals.

Victoria: Right.

Barry: Especially if there is an emergency situation.

Victoria: Right. Because they assume that what they have is good until they run into the wall and it doesn't work for them. Right.

Barry: Well let me ask this, you mentioned and we see that you're located in Georgia; are you able to provide services to people around the country or is this something that the laws are really state by state specialized?

Victoria: The laws are state by state and lawyers can only provide legal advice to clients in states where they are licensed. And so for example I'm only licensed in Georgia. Now certain types of benefits we assist with like veteran's benefits; that's a federal law and so I could technically assist people with veteran's benefits across the nation. However, when putting a plan in place to qualify for veteran's benefits for example, we often still have to draft documents so it would still be necessary to have an attorney in the state where the client lives to put things into place.

The laws are so different it would be difficult to know the laws of all the different states. So it's good to specialize and stay with one person who knows the laws in a state where they live.

Barry: How would our listeners go about finding a qualified attorney in their state?

Victoria: There is a national organization of elder law attorneys called the National Academy of Elder Law Attorneys. And the website for that is www.NAELA.org. And so a person could go there and look up their state and it'll pull up all the attorneys in their state. Now I will have one caveat to that; that is a starting place. Anyone who pays their membership fee can be listed on the directory. So as a good consumer, they would still want to go to that attorney's website and see what percentage of law they do that's elder law and hope that it's more than 50% of their practice.

And then there is; there are certified elder law attorneys that are listed. And they have a CELA at the end of their name.

When I'm doing research for a client that's out of state, I always go to that website first. I always look for the certified elder law attorneys first because that means that they've been a member for a certain amount of time and they've actually taken a test and passed it and put forth more effort, I guess I should say. And so that's where I would start.

And then you CANNOT, you CANNOT overlook the value of referrals from your own community, friends, coworkers, people who have already used an elder law attorney and were pleased with the outcome.

Barry: Well thank you, we're going to go ahead and get a link in our show notes so that it's there and people don't have to worry about writing it down. But I guess once you've found somebody on a list, even if it's with a personal referral, are there a couple of good questions to find out if this is the right attorney for me?

Victoria: So number one, I would also go to the state bar website and see if that attorney has any disciplinary action against them. Because there are attorneys who are practicing who do have disciplinary action against them. So I would do that first.

Second, the questions I would ask them are, as far as elder law is: How long have you been practicing in this area? What other types of law do you do? For example if they're doing criminal law or you know real estate, then they may not really focus on this area.

Two, three would be: Do they have experience in filing Medicaid applications and doing appeals? And then also if they are a veteran, not if the lawyer's a veteran but if the client is a veteran and could benefit from veterans benefits; is the lawyer accredited through the VA? Because that is a requirement for any lawyer who helps with veterans benefits is that they must be accredited through the Veterans Affairs.

Barry: Is that accreditation the sort of thing you would find normally on an attorney's website?

Victoria: Not usually. It is a new law that came into place approximately two years ago. And most lawyers don't put it on their website. But it is something that if someone knew how to search the VA website, which is not easy, they could find out on the VA website. So that's why they have to ask when they're calling. You have to ask them.

Barry: Yes.

Victoria: And if the, and if the person who answers the phone doesn't know what they're talking about. Then that's a good indication that maybe that's not the lawyer for you.

Barry: What makes the needs of a senior who's a veteran different from those of one who isn't?

Victoria: The needs are not different, the benefits are different. So for example, the typical client used to call and say "my spouse or my mother is going in a nursing home, how do we preserve assets and get on Medicaid?" Now the typical caller calls and says "my mother or my spouse need home healthcare or assisted living facility care, Medicaid may not be available in those environments, are there any other resources?" So the question to them is: Are you a veteran or the widow of a veteran? And if the answer is yes, then the second question is: Did they serve during a war time period? If the answer is yes, then you say "there's an additional up to \$24,000

of tax free income that your loved one can get to help pay for home healthcare, can help pay for assisted living care and keep them out of the nursing home longer if possible because now they have additional money to help pay for that level of care”.

Kathy: So their plan would be different and formulated differently based on their available assets?

Victoria: Yes.

Barry: Well that’s very interesting because I think that now more than ever we’ve got a lot of parents and grandparents who are veterans with children and grandchildren who aren’t and don’t understand that there may be special considerations out there for them.

Victoria: Many people don’t understand that these veterans’ benefits are available for them and that’s one reason why I wrote the book called “47 Secret Veterans’ Benefits for Seniors”, which is available on Amazon.com, because while this benefit is there it can be so instrumental in providing care at home and assisting living facilities, but the majority of people don’t even know it exists.

Barry: Well, we’ll go ahead and add a link to the book in Amazon in the show notes as well so people can go...

Victoria: Thank you.

Barry: That is something, it’s a very enticing title but you probably don’t have to do anything to make it enticing because it is something that you have to search for.

Victoria: You do have to search for it, unfortunately. While the VA website has become very good over the last few years, it has become too good. There’s too much information, and unless you know exactly what you’re looking for and where, you’re not going to find it.

Barry: Well this has been very interesting and we really appreciate you taking your time. Is there anything that we haven’t asked that you think would be especially helpful to our listeners?

Victoria: Your interview was very thorough, I think you’ve covered most of what the listeners need to hear. Which is, start the communication early on both sides, you know, from the elderly down to the caregivers and from the caregivers to the elderly. And make sure your documents are in place because that’s going to be the one thing that ensures that your own desires are carried through as you age.

Barry: Well that’s a good point with which to leave everyone here. Really again, really appreciate you spending time with us. We’ve found this very informative and I know our listeners will as well.

Kathy: Thank you.

Victoria: Thank you Kathy and Barry. I appreciate it and I've enjoyed it.

Barry: Well thank you. Appreciate your time and thank you for joining us at Senior Care Corner.

END RECORDING

Well we really appreciate what Victoria was able to share with us and as we said there all those links we mentioned are in the show notes. So if you weren't taking notes when you listened to her, we've got it right there.

And Kathy you want to finish us off with a quick tip?

Kathy: I indeed do! Our quick tip today:

What to do if you're Suddenly the Caregiver for a Loved One

Over 65 million Americans, primarily women with men increasing in numbers rapidly, provide unpaid care. Many take over these duties as a result of a traumatic event such as an illness, or a new diagnosis or hospitalization.

Here are some tips that we are reminded about by author Tory Zellick in an article published by the Huffington Post.

1. Build a team: form your network of people who can assist you with caregiving duties, household chores or emotional support. Being a good caregiver starts with knowing when and who to ask for help.
2. Get organized: you will be buried in a mountain of paperwork including insurance information, medical forms, bills and medication lists. Creating a system to keep it all straight and accessible will help you in the long run.
3. Take care of yourself! We can't say that enough. Get enough sleep, eat nutritious foods, stay connected with other parts of your life besides your caregiving duties and seek out ways to relieve your stress. Caring for yourselves allows you to care for others.

Check out our bookstore on the Senior Care Corner website to find resources to help you learn about your new role and to cope with the situations that you'll be encountering.

Barry: Great quick tip Kathy! Kind of summarizes a lot of what we talk about using a lot more words at other times doesn't it?

Well that's it for this episode folks. We're glad you've joined us and we hope you've found this especially informative. Again we appreciate Victoria Collier joining us. And we look forward to providing you more information along those lines in the future. Again, hope you'll stop by and see us at SeniorCareCorner.com or look for us on Facebook at Senior Care Corner. And take a



look at our bookstore where we have Victoria's book as well as others at SeniorCareCornerBookstore.com. Of course you can find a link right on our website there. Until we see you next time at Senior Care Corner, we hope you have a great day!