

Whose “Will” Should be Carried Out Alzheimer’s, Competency and Autonomy¹

Case Study for “Ethics at the End of Life” Seminar for the Society of Philosophers in America

BACKGROUND

You have a friend, John Smith, who has a family history of Alzheimer’s Disease. Increasingly, he has become confused, suffering from short term memory loss. He is living alone near the Jefferson, Mississippi Square, and his children live out of state. He likes to frequent local bars because he likes to be around people, particularly young people. Because you are known as a friend of his, you have been called to take him from a bar when he has gotten confused or when he has had too much to drink. Because of his short term memory issues, John does not always know how much he has had to drink. In addition, John has never liked doctors and has not seen a physician or dentist in several years. He does not keep himself clean. He has never really been a neat person, but his living conditions have become increasingly dirty.

John has a friend, Cathy Jones, who used to work with him and who has assisted him in his financial affairs. John likes Cathy’s company and frequently gives her and her family gifts. Because he has always been frugal, John has substantial assets. Though John does not appear to spend money, as he appears to lose his faculties, he has increasingly offered those around him large amounts of money to do small favors. Previously, he would never talk about money but now John likes to tell folks about all the wealth he has. John’s family has not questioned these gifts or their father’s finances because their father has never discussed his finances with them. They are concerned that if Cathy learns of any questions they might raise that they will be cut off from any relationship with their father. The children have communicated these concerns to you, and you are unsure of their true motives, whether it be for their father’s welfare or their inheritance.

John receives pensions, retirement and social security through his checking account and has added Cathy as a signatory on the account. You are concerned that due to John’s medical condition, he is susceptible to being taken advantage of by others, particularly Cathy Jones. You are concerned that John needs someone to handle his financial affairs, and Cathy has done this for him. In the small town of Jefferson, Mississippi, where you both live, you have heard of John being taken to his local bank repeatedly by Cathy Jones to get cash, but you have only heard of those occasions and have not seen them for yourself. John has indicated that he does buy lunch for Cathy and that he enjoys her company.

John has told you that he plans to give Cathy a power of attorney, change his will and sign a durable power of attorney for healthcare. In addition, John has told you that he intends to give a

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large piece of real estate to Cathy for all she has done for him and that he may change his will to help her and her family out for all that they have done for him. John tells you that he is going to live with Cathy since he does not want to live by himself, but before he moves in, Cathy is going to take John to a local lawyer who will prepare documents so that he does not have to worry anymore. After talking with another friend of John's, you agree you need to meet with him, have him talk to another attorney that he has used in the past and convince John to see a doctor. When you call John the next day, he is not at home. You go to his house and he is not there, but his things are still there. You can't get Cathy to answer her phone.

QUESTIONS FOR THE FRIEND OF JOHN SMITH

1. What do you do?
2. How can you tell whether Cathy Jones is just a friend who wants to help John or is a person who is trying to take advantage of his circumstances?
3. How can you tell whether John's family is concerned and wants to do what is best for him or whether they are concerned about their inheritance?
 - a. Does it matter what you think of his family's intentions in light of Cathy's actions?
4. If John wants to give his assets to Cathy, why can't he? How do you know you are not just meddling in John's affairs?
5. Assuming that Cathy is taking advantage of John's situation and mental status, could this be considered "abuse"? If so, do you have an obligation to report the abuse to any authority?
6. At what point should a reasonable person be concerned about their friend's ability to handle his affairs, and assuming that they are concerned, what are the best steps to take?

QUESTIONS FOR THE FAMILY OF JOHN SMITH

You live out of town and your father is beginning to show signs of dementia and confusion. You have heard stories from some of the people in the town where your father lives that Cathy Jones, his friend and former co-worker, may be taking advantage of your father. When you have asked your father about Ms. Jones, he reports that she is "just a friend," that he enjoys her company and that she helps him with some of his errands. But recently, you have heard rumors that your father is considering changing his Will and giving Ms. Jones a power of attorney to handle his affairs and make healthcare decisions for him if he is unable to do so. You are afraid to talk directly with your father because finances are something that you never really discussed growing up and are afraid that he will get mad. You are afraid to talk with Ms. Jones for fear that she may convince your father that you are only concerned about your inheritance and that she may turn him against you.

1. What do you do you do? What are your options?
2. How can you obtain competent counsel for your father without endangering your relationship with him and/or your inheritance?
3. Who pays for the services of an attorney, counselor or doctor? How?

QUESTIONS FOR THE ATTORNEY

Cathy Jones brings John Smith in to your office to prepare documents for Mr. Smith's signature. These documents will give power of attorney to Cathy Jones, will set up a healthcare power of attorney where Cathy Jones will have say in what happens to Mr. Smith if he is unable to make healthcare decisions for himself and will change Mr. Smith's Will so that Ms. Jones and her family will now receive an inheritance.

1. What are your obligations to Ms. Jones? To Mr. Smith? To Mr. Smith's heirs under his current Will?
2. Who is your client?
3. How can you best make sure that you determine what the client's wishes are and effectively carry them out?

You have been Mr. Smith's long time attorney. His friends and family have talked to you about his current mental status and his relationship with Ms. Jones. The friends and family want you to meet with him to discuss/dissuade him from changing his Will to include Ms. Jones and her family and giving her power of attorney and healthcare power of attorney to make decisions for him.

1. What are your obligations to Mr. Smith? To Mr. Smith's family? What should you do?
2. Who is your client?
3. How can you best make sure that you determine what the client's wishes are and effectively carry them out?
4. What can you do if you suspect that Mr. Smith is being taken advantage of by Ms. Jones?
5. What can you do if Mr. Smith has already made changes to the Will and given a power of attorney and healthcare power of attorney to Ms. Jones?

QUESTIONS FOR THE TREATING PHYSICIAN

You have recently become involved in the care of Mr. Smith. You have diagnosed him with Alzheimer's Disease, and he does have short term memory loss. Currently, Mr. Smith has periods of time where he is very lucid, but he also has periods of time where he experiences confusion, dementia and loss of other mental faculties. Mr. Smith reports that he has a "friend," Ms. Jones, who helps him with his finances and that his children live out of town. He also tells you of his plan to give Ms. Jones power of attorney, execute a healthcare power of attorney in favor of Ms. Jones and change his Will. You are unsure if Mr. Smith has the mental faculties to make these decisions for himself.

1. What should you do?
2. You have an obligation to Mr. Smith from a medical standpoint, but what are your obligations to Mr. Smith with respect to his financial health and well-being?
3. Should you, and if you should, can you communicate with his friends and family and/or his attorney about his current mental status?