**Unguarded Part 1: Discharged**

**By Bridget Balch**

Ora Lomax felt in her bones that her husband of 63 years would die that day.

Four days before Christmas, something in William Lomax had changed. He was praying and singing "This Little Light of Mine" and "Jesus Loves Me."

He must have felt death, she thought.

She couldn't stand to see it happen. But before she left him, he squeezed her hand and told her he loved her for the last time.

Just three months earlier, he'd been living with her in their small home near Virginia Union University. Ever since a car accident in 2016 left William, 87, with a brain injury, Ora, also 87, needed help from 24-hour home health aides to take care of him. She couldn't change him or help him out of bed because of her own physical limitations, but she was there to make sure the aides did.

He'd spent his final weeks in a nursing home where Ora said she frequently found him unwashed, cold and begging for water. He'd become agitated and inconsolable.

He was angry with her for leaving him in this place.

"You have forsaken me," he told her.

He didn't understand that she had no choice.

On Nov. 2, 2018, seven weeks before William's death, Ora sat in Richmond Circuit Court without a lawyer and watched as a judge took away her right to make decisions about her husband's care and treatment.

VCU Health System, where William had been a patient for just over a month ' ever since one of his home aides had called 911 because he was having trouble breathing ' had filed a petition with the court to have William declared incapacitated and have a guardian appointed to make decisions for him. His medical team at VCU Health System didn't think Ora should be the guardian because they said it wasn't safe for her to take William home again.

William, who was diagnosed with congestive heart failure, chronic kidney disease, dementia and a number of other health problems, had been admitted to VCU Health System 12 times in the past eight months, which doctors took as a sign that he wasn't getting adequate care at home. They said they believed that he would be better off in a nursing home.

The judge granted VCU Health System's request to have its attorney, R. Shawn Majette, appointed William's guardian, the person legally allowed to make medical and housing decisions on behalf of an incapacitated person, and his conservator, the person who controls his finances.

A yearlong investigation by the Richmond Times-Dispatch, which involved analyzing more than 250 court cases and interviewing nearly three dozen people, revealed that VCU Health System has taken hundreds of low-income patients to court over the past decade to remove their rights to make decisions about their medical care.

This process, which frees up hospital beds at VCU Health System and saves thousands in uncompensated costs, often results in sick, elderly or disabled patients being placed in poorly rated nursing homes, sometimes against the wishes of their own family members.

In these cases, VCU Health asks the court to grant an attorney at the ThompsonMcMullan law firm the power to make critical medical and life decisions for its patients. The court orders the attorney to represent the best interests of those patients, but the law firm continues to look out for the hospital's interests on dozens of guardianship cases each year.

At the same time, the hospital is often losing thousands of dollars every day the patients it takes to court stay in the hospital. It's an arrangement that calls into question the attorneys' abilities to independently advocate for the best interests of the patient, according to 10 people who specialize in guardianship, medical ethics, law and disability rights.

Representatives of two hospital systems in Virginia said they file guardianship cases against their patients, but don't allow their attorneys to serve as the guardian, calling the scenario an ethical conflict.

"What I see as the overall problem is that this efficient way for hospitals to discharge their patients is evading or avoiding all of the due process protections that are embedded in the Virginia guardianship code," said Sally Balch Hurme, a Virginia-based elder law attorney who served as chairwoman of the National Guardianship Network and helped write a model guardianship law for the Uniform Law Commission, after reviewing The Times-Dispatch's findings. (Hurme is not related to the reporter.) "There are a lot of things going wrong and they're all very distressing."

The law firm says there is no ethical conflict because the moment the court order is issued making the attorney a guardian, the attorney ceases to represent the hospital that paid the firm for the proceeding and is only focused on the well-being of the person under guardianship. VCU Health System has paid Thompson-McMullan $1,158,746.46 since 2007.

Some family members of people put under the law firm's guardianship at VCU Health System's request ' like Ora ' have felt that the system is stacked against them, unfairly cutting them out of their loved one's care. And those put under guardianship without any loved ones to look after them end up in a system with little oversight to ensure they are receiving proper care in exchange for taking away their rights to make health care decisions for themselves.

Majette and two of his colleagues at ThompsonMcMullan, Andrea Yoak and Paul Izzo, have been involved in more than 90% of guardianship cases filed by health care providers in Richmond since 2014. Majette has as many as 120 people under his guardianship at a time ' six times the caseload allowed for the state's public guardians ' and rarely visits them, even if he has had them placed in nursing homes that have a history of problems, according to annual guardianship reports he has filed.

Meanwhile, Virginia's $4.5 million public guardianship program is considered by guardianship experts to be a model for the nation, but it is plagued by insufficient funding, a long wait list, and inefficient processes that can take an average of six months to get someone enrolled.

The Richmond Circuit Court, charged by the state with upholding the laws intended to ensure vulnerable people receive due process before having some of their most basic rights taken away, regularly takes 15 minutes to hear guardianship cases involving Majette or one of his colleagues, without the patient being present or having a defense attorney to speak on their behalf.

The judges often trust the recommendation of the guardian ad litem, an attorney appointed by the court as a neutral party to represent the patient's best interests. The guardian ad litem ' frequently suggested to the court by Majette ' in nearly 90% of all VCU Health guardianship cases since 2014 was the same person, Henrietta Cannon, who was also paid by VCU Health for her work on its guardianship cases.

Once VCU's request to have its lawyer make decisions for William Lomax was approved, he was promptly discharged to ManorCare Health Services-Richmond on Hilliard Road, a nursing facility rated one out of five stars by the Centers for Medicare and Medicaid Services. The facility had 26 health citations on its latest inspection report in May, more than twice the Virginia average, including medication errors and failing to create a homelike environment.

"ManorCare Health Services-Richmond and ManorCare Health Services-Imperial strive to provide patient-centered quality care in a secure and homelike environment," said Kelly Kessler, a ManorCare spokesperson, in a statement, saying that the facility could not comment on specific cases because of patient privacy. "ManorCare Health Services-Richmond and ManorCare Health Services-Imperial are currently in compliance with regulations set by the department of health as determined by their most recent state surveys."

In the following weeks, Ora called Majette so frequently that she had his number memorized, but she said he didn't involve her in decisions about her husband's care. Majette said she called more than 250 times. He said the calls became so threatening that he believed her to be dangerous and reported her to the police.

When Ora discovered a bump on William's head that she suspected he suffered in a fall, she didn't have the authority to have him sent to the hospital for tests. She couldn't take him home or send him to a different nursing home. The nursing staff wasn't required by law to disclose medical information to her or ask her opinion.

And when William died on Dec. 21, 2018, she said ManorCare didn't call her.

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VCU Health System files about 30 guardianship petitions a year, a number that hospital officials say shows it is done very rarely ' out of the nearly 40,000 hospital stays they see each year ' and only as a last resort. Experts say the number of people who need guardians ' estimated across the country to be 1.5 million people ' is likely to rise as the population ages.

VCU hospital officials said all patients receive personalized discharge planning to help ensure they have a smooth and safe transition from the hospital to wherever they go next, whether that's home or a nursing home.

"When it comes to taking care of our patients, our mantra has been and continues to be safety first," said Dr. Ron Clark, chief medical officer of VCU Health System. "We look to do the best that we can for all patients who come in, not only while they're here, but after they go home."

Hospital officials would not speak about specific patient cases but said they would resort to guardianship against the wishes of a family member or friend only if they have serious concerns about the patient's safety under that person's care or if there is a dispute among relatives about the person.

When that does happen, they said they turn to someone with guardianship expertise.

Before hiring Thompson- McMullan in 2007, the hospital had its in-house attorney handle guardianship cases, but she became too overwhelmed with other legal matters to handle them all, Clark said. Majette was working on guardianship cases long before representing VCU Health System, taking on his first case in 1984 as a favor to the assistant city attorney at the time, Majette said.

"At the point I become the fiduciary [guardian], I am then focused on one thing, and that is that person," said Majette, whose guardianship cases are known as "limited" in court but give him financial and medical control.

Majette's firm hired Commonwealth PR, a local public relations firm, to coordinate an interview after The Times-Dispatch's third request to speak with him for this story.

He said his high caseload of people under his guardianship is a symptom of a system that fails vulnerable, poor people. He and the two other attorneys at his firm who serve as guardians and five support staff who help them are the only option to make sure these people are able to stay in the nursing homes where they are placed, Majette said.

"A day doesn't go by that we don't have those people [the law firm staff] here and making sure that every bill is paid, making sure that every penny is accounted for, making sure that the quarterly meetings that every nursing home is required to conduct ..." Majette said. "They all get attended to."

Majette said he doesn't always keep track of his visits to the nearly 100 people currently under his guardianship, although the reports he files contain a sworn statement that the information in the report is true and correct to the best of his knowledge. Because he doesn't regularly visit the people under his guardianship, he said he trusts the state departments of health and social services to ensure the licensed facilities where they are living are safe.

The state-funded public guardianship program is required by law to use what it calls a person-centered approach, limiting guardians to 20 people under their care at a time, requiring that they visit the person at least monthly to ensure they are properly cared for and encouraging the person under guardianship to define the direction of their life as much as possible.

Pamela Teaster, a gerontology professor at Virginia Tech who helped create the state's public guardianship system when she was a doctoral student in 1998, wrote in her testimony before the U.S. Senate Special Committee on Aging in 2018 that, "Some paid professional and public guardians have ratios of one to over 100 protected persons, a ratio far too high to afford an individualized and appropriate level of protection and care."

Clark, VCU Health System's chief medical officer, said Majette's caseload did not raise any red flags about the care that patients are getting after they are put under his guardianship.

"I've never had a concern brought to my attention about a patient we have engaged in that process to facilitate their safe care as an untoward outcome," he said. "I really leave that in the hands of the court to determine what is legal and ethical and appropriate in those matters."

Pam Lepley, vice president for university relations for VCU, said the hospital brings the case to court, but the final decision is up to the judge.

"We're actually legally out of it once the court appoints the guardian," Lepley said. "We're not in charge anymore."

The clerk of the Richmond Circuit Court, Edward Jewett, said the court is not responsible for guardianship oversight, and the chief judge, Joi Jeter Taylor, declined an interview.

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In the cases reviewed, 87% of the people appointed a guardian in health care provider-initiated guardianship proceedings were deemed by the court to be very poor and couldn't afford an attorney, meeting the state's definition of indigent. Many of them had complex mental health diagnoses, including symptoms of schizophrenia, bipolar disorder, dementia or traumatic brain injury. Many also had serious medical diagnoses, from diabetes to heart failure to paralysis. Some struggled with homelessness and substance abuse. Court records indicate that many had no family or friends willing or able to step in and help them.

But in some cases, hospitals pursue guardianship when a suitable caregiver is available, according to Veronica Williams, an elder law attorney based in Newport News with a special interest in what she calls "inappropriate hospital-sponsored guardianship petitions."

This decision can be influenced by a hospital's desire to move the patient out of an acute care bed, disagreement with the family's preference for treatment, or assumptions about the family's desire for community-based care over institutional care, Williams wrote in an article published by the Virginia Academy of Elder Law Attorneys.

In the Lomax case, the hospital argued that William would be safer in a nursing home than at home with Ora and that his many hospital stays showed Ora could not adequately care for him. But Williams, who decided to represent Ora for free after The Times-Dispatch contacted her for her expert opinion on the case, filed a petition with the court that said the hospitalizations showed that Ora sought medical attention for her husband when he needed it, "the hallmark of a good caregiver."

"When a '?non-family member' is appointed by the Court to serve as a patient's guardian, the family technically loses the authority to ask questions about the patient's condition, and the family also technically loses the authority to make medical care and treatment decisions for the patient (to include end of life type decisions)," Williams said in a statement. "In my opinion, it is not in the best interests of a patient for a caring and devoted family member(s), who always make a habit of being at the patient's bedside during a hospitalization, to lose the authority to ... make inquiries about the patient's condition and ... to make medical care and treatment decisions regarding the patient."

In 24 cases since 2013, including 18 initiated by VCU Health System, records indicate that there were family or friends willing to serve as a guardian, but the hospital's attorney was appointed the guardian. In at least 13 cases, Majette or another attorney was appointed guardian for the stated purpose of having the patient discharged to a nursing home, signed up for Medicaid or to ensure a bill was paid.

And in six cases, including five filed by VCU Health System, the guardian ad litem or a psychiatrist had believed the person to be mentally competent, but an attorney was still appointed the person's guardian.

"It is not a light matter for a non-family member to take over guardianship," Williams said. "It seems paternalistic [for the hospital to pursue guardianship over disagreement about care]. ... We always want to honor what the patient wants done."

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Ora and William Lomax met as two African American teenagers coming of age in a deeply segregated Richmond.

Ora would take the bus from where she was staying with her sister in Church Hill to her job downtown. When William boarded the bus a few stops later, he'd sit next to her.

William ' or Lomax, as Ora called him ' was a barber-in-training, a path he chose after shining shoes in a shop to make extra money while he attended Maggie L. Walker High School.

But then, with the Korean War raging overseas, William joined the Army.

When he returned home, he hadn't forgotten the pretty girl from the bus.

One day, he noticed her walking into a show at the Robinson Theater in Church Hill. He bought a ticket, sat right behind her and tapped her on the shoulder.

The couple married on July 3, 1955, at Great Hope Baptist Church in Union Hill.

Ora went on to be the first African American saleswoman at Raylass Department Store on Broad Street, selling furs and Estee Lauder to white women. When customers called her the N-word, she'd brush it off on the sales floor and then cry in the bathroom.

William opened his own barbershop on North Second Street, and Ora later opened a beauty salon next door.

The walls of their small home were lined with the many awards and plaques they'd received for their contributions to the community.

They spent decades mentoring youths, being active leaders in the NAACP and speaking up about the political issues of the day ' from opposing adding context to Confederate statutes instead of removing them, to protesting a $25 fee to hold meetings at the Richmond Public Library.

Through it all, they were together. Until a court order came between them.

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In the city, health care providers almost exclusively turn to one law firm for guardianship petitions. ThompsonMcMullan attorneys filed 257 guardianship petitions from 2013 through 2018. Majette, the guardian in the Lomax case, filed 83% of those. In the same time frame, the next most common attorney not affiliated with the firm filed six cases.

Majette said he makes a point to be appointed a limited guardian as opposed to a general guardian. This means his duties and responsibilities are limited to what is laid out in the court order.

The court orders that the judges sign appointing the Thompson-McMullan attorneys limited guardians generally give them the power to discharge the person from the hospital, have them admitted to and kept in a nursing home, consent to or withdraw any medical treatment, and control their finances, according to court records.

In the Lomax case, the order stated that Majette alone could determine what medical treatment or withdrawal of treatment was in William's best interests if William's wishes were unknown to Majette, stating that Majette's decision "shall not be subject to question by any person."

"We have a commitment to the community writ large," Majette said. "We pay our people to help us do this. But I'm not a general guardian and so I have to have some framework in which to serve. And the orders ' every one of them ' says exactly that. There are no tricks. There's no misrepresentation."

ThompsonMcMullan said it pays staff about $176,000 each year for all of the work they do maintaining guardianships that the fees collected from indigent clients don't cover. The firm said it receives an average monthly payment of $55.57 per person. Majette said the other private guardianships he does help bring in the revenue that allows the firm to take on a high number of indigent cases.

"We accept these costs as a part of our commitment to the ward and to the court," Majette said in a statement made through Commonwealth PR.

VCU Health System paid Majette's firm $1,137,015.62 for bringing the guardianship petitions to court since 2007. Most of the time, someone from the firm is also appointed guardian.

The result gives the attorney the power to discharge the patient at the hospital's request and place the person in a nursing home, even if it is against the person's or family members' wishes.

The scenario presents a potential conflict of interest problem, according to George Cohen, a professor who teaches professional responsibility at the University of Virginia law school.

"The interests of the hospital and the interests of the [ward] could certainly be in conflict," Cohen said after reviewing The Times-Dispatch's findings.

ThompsonMcMullan said it does not believe representing the hospital and serving as guardian to be a conflict of interest. To prove that, after the Richmond Times-Dispatch contacted the firm, it solicited an opinion from Bernard DiMuro, an attorney who was president of the Virginia State Bar in 2002 and chairman of the Virginia Supreme Court Disciplinary Board from 1992 to 1995.

"At the time that the court declares that the respondent is incapacitated and the appointment of a guardian is warranted, VCU/MCV's interests end and the Firm has no ongoing duties to the facility regarding the respondent," DiMuro wrote.

But Cohen said the fact that the firm regularly represents the hospital could bring into question the attorney's ability to independently look out for the interests of the person under guardianship.

"If [the law firm is] repeatedly representing the hospital, the concern is that they're going to be more likely to make decisions that the hospital is happy with because it will ensure they get this continuous ability to represent the hospital in other cases," Cohen said. "Whether to keep the person in the hospital [and] which place to refer them to could be unduly influenced."

In at least 13 cases, court records show that Majette or one of his colleagues at ThompsonMcMullan resigned from their duties as guardian, but reserved the right to resume authority to make medical and discharge decisions without further court order if that person should ever end up at VCU Health System again.

"I've never heard of a guardian resigning but holding out the opportunity to be automatically restored without in-court intervention," said Hurme, the Virginia attorney who helped write the uniform guardianship law and an international treaty for protecting vulnerable adults. "That clearly indicates to me that the guardian is serving the hospital, not serving the individual."

Majette said that in those cases, he resigned to give the incapacitated person a chance to live independently if the facility where the person had been living approved of the idea.

He said he retains the ability to resume guardianship of the person if "bad things happen to them" and they end up back at VCU Health System.

"I can step back in, if requested, and help with that discharge and to help that [person] get back into a nursing facility or an assisted living facility," Majette said.

Asked what would happen if the person were taken to a hospital other than VCU, such as Bon Secours St. Mary's Hospital in Henrico County, Majette said, "I don't represent St. Mary's. I do not represent ' I do not know what their discharge planning is. I do not know what their process is."

Majette's biography on the law firm webpage says, "Hospitals, nursing homes, assisted living facilities and other corporate clients often consult Shawn for innovative, efficient solutions to discharge and Medicaid problems."

"Oftentimes, hospitals want and may need to discharge people," said Erica Wood, assistant director of the American Bar Association Commission on Law and Aging, who has conducted national studies on public guardianship and guardianship monitoring. "We know that it's difficult to find placements for those people. Guardians can serve an important purpose, but at the same time it can become a pipeline. It can overemphasize institutionalization. It can give a lower priority to looking at less-restrictive options than it should have."

Guardianship reform movements across the country have been calling for a greater emphasis on less-restrictive options to guardianship, such as supported decision-making, which allows a person to retain their rights while receiving additional resources to help make decisions; the use of "person-centered" planning to ensure guardians are respecting the person's wishes rather than substituting their own; better data collection; and oversight of guardians.

When hospitals, like VCU Medical Center, have a patient who they believe needs a guardian and is racking up a hospital bill that they are unlikely to be able to pay, it is far quicker to hire an attorney and have a private guardian granted than to go through the process for public guardianship.

When ThompsonMcMullan files a guardianship petition, it's resolved in an average of two to three weeks, according to an analysis of court records, compared with the average six-month process for public guardianship.

Bon Secours Health System, which operates four hospitals in the Richmond area and three in Hampton Roads, and Sentara Healthcare, which operates 11 hospitals in Virginia, including six in the Norfolk region, also hire attorneys to bring guardianship petitions for their patients, but the systems don't allow those attorneys to serve as the patient's guardian.

"There's never a case where I would take on being the guardian. I solely represent the petitioner," said Debbie Holroyd, the attorney who handles Sentara's guardianship cases. "It's quite a task to take on the fiduciary responsibility to care for someone. If I did serve as a guardian for other people, I would not petition to appoint myself. That would be a conflict."

Instead, the hospital systems use community care or indigent care funds to pay a professional guardian at Commonwealth Catholic Charities or Jewish Family Services. Both organizations also work for the state's public guardianship program.

"We try to take an incremental approach. '? We don't want to seek guardianship," said Kelly Stuart, executive director of physician ethics for Bon Secours. "Except in emergencies, it's a bad idea to have a health system making decisions for you."

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On Sept. 28, 2018, Ora Lomax came home from one of her regular five-hour dialysis treatments to an empty house.

The home aide who had been looking after her husband hadn't called her when William was having trouble breathing. The aide had called an ambulance and left after it took William away.

Ora frantically dialed the hospitals in the area and finally discovered that he'd been admitted to the VCU hospital. When she spoke with William's medical care team, they told her that they wanted to operate on his heart. She asked if it would improve his health. They told her that, at his age, he probably wouldn't survive the surgery, she said.

Unwilling to risk her husband's life, she refused to give consent.

Within weeks, Ora had received notice that VCU was questioning her ability to make decisions for William and would contest her rights in court.

A guardian ad litem, Henrietta Cannon, was appointed by the court to investigate and make recommendations on what the court should do. In her report, she outlined VCU's concerns: that William had been admitted to VCU 12 times in the past eight months; that Ora had fired three home aides; that Adult Protective Services reports had been filed, although no action was taken; and that Ora failed to comprehend her husband's condition.

The report also detailed her short visit with William. She told him VCU was requesting that the court appoint a limited guardian and conservator for him and that VCU was proposing that person be a lawyer named R. Shawn Majette.

When Cannon asked him who he wanted contacted about his care, he said, "wife."

When she asked him what he thought about going to a nursing home, he said he wanted to "go home."

At home, Ora said she ensured the aides changed him, used the ointment that kept his skin soft and did the physical therapy exercises that had helped him stay mobile enough to get around with a walker. At home, the couple slept next to each other; ate bacon, eggs and grits for breakfast; and watched their favorite shows together.

In her report, Cannon wrote, "At this stage in the lives of both William A. Lomax and Ora Mae Lomax and with respect to their commitment to each other, it would seem only fair that the two of them be allowed to care for the other, to the best of their abilities, within the bounds of sound medical requirements."

Ora hand-wrote a letter to the court explaining her concerns about the care William was receiving at VCU. During her visits, she'd noticed that he smelled of urine and his adult diapers hadn't been changed, no one had applied the creams to prevent diaper rash, and he was not receiving the proper "ADL's," a professional caregiver acronym for Activities of Daily Living. She wrote about how the caregivers that she employed at her home would do therapy with him to build his strength and would use a gait belt, an assistive device to safely transfer a person from bed to a wheelchair, to prevent him from falling. She said the VCU medical staff refused to talk to her about her husband's care.

Ora told The Times-Dispatch in December 2018 that Cannon agreed to come and inspect their home to determine if it could be appropriate for William's care, but she never came. Ora said she had fired three home caregivers because one had hit William, one had come to work intoxicated, and the third had lied about her criminal record.

Still, Cannon decided that Ora was unable to accept her husband's impairments and was, therefore, not able to appropriately care for him. She suggested that perhaps Ora could move into the same nursing home as her husband.

Cannon died in May before the Richmond Times-Dispatch could contact her for this story.

On Nov. 2, five weeks after William's admission to VCU, the court appointed Majette his guardian and conservator. Majette agreed to place William in a nursing home close to Ora so she could visit him, Ora said.

William was placed at ManorCare Health Services-Richmond ' a 20-minute drive from their home. When she couldn't find a member of the local NAACP chapter to drive her, Ora had to spend $30 on taxi rides to and from the home to visit her husband.

In the weeks he was at ManorCare, Ora watched William decline.

Ora called the Virginia State Bar to complain about Majette. She called Adult Protective Services and the police to report what she saw as abuse and neglect of her husband, but it didn't make a difference.

Majette said it was clear Ora was bereaved, but she could not take care of William at home and had not made arrangements to have him placed in a better nursing home.

The in-home care was not working, he said, because "she just fired everybody. She would not let anybody in to take care of her husband."

He requested that an attorney who worked with Ora on some matters, but had refused to represent her in the guardianship case, write a letter about his opinion of the guardianship situation.

"She was getting to a point where she could not properly take care of herself and therefore there was no way she could take care of Willie," wrote John Janson, a South Hill-based attorney, in the letter to Majette. "Ora was quite stubborn however, and the reality of the situation did not agree with what she thought she could do."

According to the letter, Ora had incorrectly said he was her lawyer in the case and that she had made arrangements for William at a different nursing home.

Janson said the home aides were not always consistent and he believed William couldn't continue to live at home. He thought Majette and Cannon did great work on the Lomax case.

"I don't know how they do it or why they do it, because it's just thankless, difficult, emotional work," he said in an interview. "I couldn't imagine dealing with that every day. It takes a Mother Teresa-type that has a calling to do that work."

Williams, the Newport News elder law attorney, filed a petition with the court to modify William's guardianship order and restore Ora's rights to oversee her husband's care. The petition outlined how Ora had not been represented by an attorney in the guardianship proceedings, how she'd been cut out of her husband's care, how William had suffered head injuries and bedsores in his time under Majette's guardianship, and how Ora had hired a licensed social worker to prepare a suitable plan for at-home care.

Majette said he didn't see any "obvious signs" that William had fallen during his two visits with him in the seven weeks William was under his guardianship. He also did not recall whether there had been any record of William having bedsores. William was sent to Parham Doctors' Hospital for a day in early December but was discharged the same day, according to the firm.

Williams argued that the same facts that VCU Health said made Ora an unfit caretaker ' taking William to the hospital when he needed emergency care ' showed she was a diligent caretaker. She wrote that it was not in William's best interests to have Ora cut out of the decision to put him on hospice, which Majette had informed Williams he had done.

"Arguably, no individual would have more insight into his desires ... than ... Ora Mae Lomax, based upon her emotionally intimate relationship with him which spans in excess of their 62 years of marriage," Williams wrote.

Williams asked the court to reduce Majette's "current unilateral power" to place William on hospice because it was decided in a "paternalistic manner" and Ora was not given the opportunity to say what she believed William would want.

But it was too late. William died the same day the petition was filed.

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Hospitals have a strong financial incentive to initiate guardianship proceedings, according to a 2018 report to the Virginia General Assembly by the Department for Aging and Rehabilitative Services on the state Public Guardian and Conservator Program.

"Hospitals are trying to get folks under guardianship to get people discharged if they don't have a close family member because they want to get them out," said David Hutt, managing attorney for community integration at the National Disability Rights Network, a group that advocates for people with disabilities.

Majette said the research he is aware of says that "it's not a good use of resources and it's not a safe place for the person to be," to keep someone in a hospital.

The Centers for Medicare and Medicaid Services reimburses acute care hospitals not on the individual care provided to a patient, but instead using a formula that determines how much the hospital will be paid by classifying the patients into groups using a number of factors, including diagnosis, treatment and age of the patient.

"The hospital has an incentive to get the patient out as fast as possible," said Melony Goodhand, a health care management consultant and former CFO of Chicago-based Presence Health hospital system, now called AMITA Health. "It's a set amount based on the diagnosis. ... The hospital wants a short length of stay. It's the same payment whether it's two days or 15 days."

VCU Health System officials said the hospital losing money is never a consideration when they pursue guardianship proceedings.

"It's such a small population that it just really doesn't have an impact on our financials in any regard," said Lepley, the VCU spokeswoman.

The care coordinators at VCU, who work on discharge planning, have target lengths of stay for each patient, according to Ryan Raisig, associate vice president for coordinated care and post acute services for VCU Health System, but their performance evaluations do not track how often they fail to meet the targets.

The state and federal governments paid VCU Health System $108.7 million in fiscal year 2019 to cover uncompensated indigent care that the hospital provides. In fiscal year 2020, the public funding has dropped to $37 million, a reduction that factors in the anticipated impact of the additional Medicaid payments the hospital will receive as a result of the state's decision to expand Medicaid eligibility.

Still, if a person is uninsured or on Medicare or Medicaid, the hospital stands to lose thousands of dollars the longer the person stays in the hospital.

Some guardianship petitions filed by the hospital include the person's growing debt as one of the reasons to expedite guardianship and discharge, including one case where Richard Richardson, a 38-year-old quadriplegic man, owed the hospital $86,179. The petition said the patient's debt to the hospital was growing at a rate of $3,314 every day.

The hospital pays Thompson-McMullan about $4,000 per case to file for guardianship, Lepley said.

The petition asked that if the court did not find Richardson to be in need of a guardian, it instead permit the hospital to immediately discharge him without liability "to any public street, way or location off the premises."

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Ora Lomax stared at her knees and slumped in her wheelchair as a friend pushed her into the chapel at March Funeral Home on Jan. 10, 2019.

A couple dozen mourners filed in and scattered around the pews of the octagonal chapel as the soloist sang "What A Friend We Have in Jesus."

At the front of the room, William Lomax's remains lay in a casket draped in the American flag, a recognition of his service in the Army.

Friends stood up and read verses from William's well-worn Bible.

They spoke of how they remembered William: a skilled barber and caring person, a veteran dedicated to serving his country, an active community leader.

But most of all, a loving husband.

"We will never forget his love for his wife and the example they set," said the Rev. Robert Jones.

As the soloist led the congregation in singing "Amazing Grace," Ora's sobs rose above the voices, her hand reaching toward heaven.

She didn't want to go on without her Lomax.

Less than four months later, friends would gather in the same chapel, this time for Ora.

They'd then make the same drive to the Virginia Veterans Cemetery in Amelia County where, after seven months of sleeping apart, Ora and William would finally rest together.

**Unguarded Part 2: Power of Attorney**

**By Bridget Balch**

Shawn Majette stood in the nearly empty courtroom in his signature gray suit and bow tie and made small talk about Disney World with the few people there as they waited for the judge.

"All rise," the bailiff said as Richmond Circuit Judge W. Reilly Marchant entered the courtroom and took his seat.

"Good morning, Your Honor," Majette said. "I have the honor of representing Virginia Commonwealth University Health System."

Majette then asked the court to appoint a lawyer from his firm to serve as guardian of a patient at the hospital, giving the attorney the power to make decisions about the person's medical care, place of residence and finances. Like most of these guardianship cases, the patient was neither present at the hearing, nor did he have a lawyer to advocate for him. Instead, a guardian ad litem, appointed by the court as a neutral party, was there to represent the patient's best interests.

Over the past 35 years, Majette has carved out a niche in some of the toughest legal areas involving mental health, competency and guardianship proceedings. He's become adept at navigating the bureaucracy of Medicaid and creating special trusts for people with disabilities.

His expertise has made him the go-to person in Richmond for guardianship cases. He's taken on more than 200 such cases in the past five years alone ' 10 times the two second-most active guardianship lawyers in the city, who also work for his law firm.

A yearlong Richmond Times- Dispatch investigation that included analyzing more than 250 court case files and interviewing nearly three dozen people raises questions about the oversight of guardianship proceedings and the regulation of private, professional guardians. Court records show that Majette and his colleagues at ThompsonMcMullan law firm are authorized to take control of vulnerable people's decision-making rights at the request of the health care providers that pay them. Hospitals engage attorneys, who then are appointed as guardians, to have low-income people evicted from expensive acute care beds ' in some cases in disagreement with the wishes of the person or family members, according to court documents and interviews with family members.

Once patients are deemed by the court to be incapacitated, they usually end up on Majette's list of up to 120 wards ' six times the number allowed for state-funded public guardians ' or are assigned to one of two other lawyers in a department he oversees at ThompsonMcMullan. They'll ensure a prompt discharge from an expensive hospital bed and have the patients placed, in most of the cases recorded in court documents reviewed by the Richmond Times-Dispatch, in a nursing home that has received poor ratings from the Centers for Medicare and Medicaid Services.

Majette says his law firm performs a community service by taking on guardianship of dozens of low-income people, ensuring that they are admitted to a nursing home and get their bills paid.

"We do more I think for these folks '¦ than anybody I know of ' more than other people can do," he said in an interview last month.

But his work as both a lawyer for the health care provider and as guardian for the people he helps the hospital or nursing home declare incapacitated raises the question: Is he looking out for the best interests of people under his guardianship, or for the interests of the health care providers that pay him?

Ten experts in the fields of guardianship, medical ethics, law and disability rights said the arrangement of having the attorney representing hospitals and nursing homes also serving as guardian raises concerns about how independently he can look after the interests of the people placed under his guardianship.

"It is such blatant conflict of interest," said Sally Balch Hurme, a Virginia-based elder law attorney and author who has served on the board of directors for the National Guardianship Association and advised on the drafting of the Uniform Law Commission's model guardianship law, after reviewing The Times-Dispatch's findings. (Hurme is not related to the reporter.) "It's the same as an attorney who is drafting a will naming himself as the beneficiary of the will."

ThompsonMcMullan and two Virginia attorneys said the setup does not violate the Virginia State Bar's ethics rules to serve as both attorney for the petitioner and guardian because the attorney ceases to represent the health care provider as soon as a judge declares a person incapacitated, moments before he is appointed the guardian.

"I see zero ethics problems. ... We [attorneys] can't deprive any client of our zealous representation," said Thomas Spahn, an attorney specializing in ethics with McGuireWoods law firm, who spoke to The Times-Dispatch at the request of ThompsonMcMullan. "They [attorneys] don't let their judgment be affected. The fact that it might be affected, that can be true in every situation."

Bernard DiMuro, an attorney and former president of the Virginia State Bar, said in a statement solicited by ThompsonMcMullan after The Times-Dispatch reached out to the law firm, "As the Firm [ThompsonMcMullan] transitions from counsel to the petitioner [health care provider] to guardian for the ward after the court's determinations, the Firm is not representing two clients whose interests are directly adverse."

But Hurme said that argument is flawed.

"The hospital is the petitioning attorney's client who is in an adverse position to the guardian of the individual ' of the discharged patient," she said. "Let's say there had been some sort of malpractice or improvident discharge. The guardian would be in the position to sue the hospital, but if the attorney appointed as guardian was the attorney for the hospital '¦ they would not be able to adequately defend the interests and the rights of [the patient]."

George Cohen, a University of Virginia law professor, also said there were problems with the arrangement.

"The interests of the hospital and the interests of the guardian could certainly be in conflict," Cohen said after reviewing The Times-Dispatch's findings. "Suppose you had someone who had a loan to a bank. Would we say a lawyer for the bank could come and file one of these petitions and become the guardian? That would seem to be very troubling."

And some family members of the people Majette's charged with protecting say the change of loyalty is difficult to see in practice.

"The only interest Majette had was getting him the hell out of [VCU Medical Center]," Richelle Richardson-Hayes said of her brother, Richard Richardson, who was one of the dozens of VCU patients put under Majette's guardianship. "The only thing Majette cared about was his client. ... Shawn Majette is [VCU's] lawyer first, my brother's and everyone else's guardian second."

Majette asked a judge to either appoint him Richard's guardian or allow VCU Health System to put Richard, who was paralyzed from the shoulders down, out on the street.

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Virginia's public guardianship program, which serves 1,049 people, is held up as a model for the nation because it caps its guardians' caseloads at 20 people, requires monthly visits and emphasizes planning that encourages autonomy.

But it is overwhelmed.

Lack of funding and inefficient processes have left more than 85 people on a waiting list as of Nov. 13 and an unknown number of vulnerable, low-income people without an advocate, according to Patti Meire, the program's coordinator.

The result is that some poor people end up under the care of private, professional guardians, who are not subject to the same rules.

And experts say the number of guardianships ' currently estimated at 1.5 million nationwide ' is likely to rise as the population ages.

Nursing homes have employed Majette's firm to use guardianship to get bills paid, including, on one occasion, by taking power of attorney and medical decision-making authority away from the son of an elderly resident, Charles Ellis, because the son's attempts at applying for Medicaid had failed, according to court documents and an interview with the son.

And as long as the lawyers retain guardianship authority, they can apply for Medicaid benefits, pay the person's nursing home and, in many cases, step into medical treatment and discharge decisions at the hospital or nursing home's request, even while rarely visiting the people under their guardianship, according to annual guardianship reports filed by ThompsonMcMullan with the court.

ThompsonMcMullan said that because the public guardianship program is so overwhelmed, the people kept under the firm's guardianship would be helpless without help from its lawyers. The firm said it pays staff members about $176,000 each year for all of the work they do maintaining guardianships that the fees collected from indigent clients don't cover.

"I wish that we had funding like I understand public guardians do," Majette said. "They are paid, I think, several thousand dollars per slot. We are paid zero to do that. Nothing."

A spokeswoman with Commonwealth PR, a local public relations firm that ThompsonMcMullan hired in October after The Times-Dispatch's third request for an interview, said the firm collects an average monthly fee of $55.57 per indigent ward. Occasionally, the firm will find that the person has additional assets and can charge higher fees in the thousands per year, according to the firm and court documents.

VCU Health System, one of the ThompsonMcMullan's biggest guardianship clients, has paid the firm $1,158,746.46 since 2007 for guardianship work.

The state funds the public program $4.5 million annually and pays between $5,000 and $7,000 each year per person under public guardianship, according to a program spokesperson.

"The public guardianship program is wonderful," said Christopher Malone, president of ThompsonMcMullan. "It's a wonderful idea, but the limited number of slots that are available in the state ... the limited funding for the program, the fact that it could take six months from the beginning of a request for a public guardianship slot until one spot could be made available ... and meanwhile that person is trapped in a hospital."

Majette said he and his colleagues serve as limited guardians ' a role they say is mostly focused on getting the person admitted into a long-term care facility and relieves them of some of the responsibilities of general guardianship, such as visiting with the person.

The powers of the limited guardian are restricted to the areas laid out in the court order, but many of the orders reviewed by The Times-Dispatch grant the firm's attorneys significant powers over the lives of the patients. This includes the powers to consent to or withdraw any medical treatment, decide what facility patients will live in and how their money is spent.

"They're making placement decisions and they're making end-of-life decisions," said Hurme, the Virginia lawyer who advised on the drafting of the uniform law on guardianship. "That is not a limited guardian."

Majette and his colleagues rarely visit many of the people under guardianship, according to annual guardianship reports filed with Richmond Circuit Court. Many reports said the guardian had either never visited the person, had visited once while they were at VCU or had visited "several" times, without specifying how many.

"It would make me deliriously happy if we had the resources to become a general guardian and to do what the public guardian is ' again ' paid fairly substantial amounts [to do]," Majette said. "Do I wish we could do that? Yeah. I'm afraid we cannot do that."

Public guardians are required by law to visit those under their guardianship at least once a month, and the National Guardianship Association Standards of Practice say that a professional guardian "shall visit the person no less than monthly."

"As their advocate and decision maker, we need to make sure every person and every provider is providing the best service for this person," said Edward Richards, the manager for Senior Connections' public guardianship program that serves up to 40 people in the Richmond area and a guardian himself. "If your family member had to go to one of these places, what would you do? You would comb through whatever they were doing to make sure that they are being taken care of. We do that with our visits '¦ emails and phone calls and day-to-day interactions."

Majette said he counts on the state's Department of Health and local departments of social services, which are responsible for licensing long-term care facilities and investigating abuse and neglect complaints, to ensure the safety of his wards. He had 92 as of October.

"I don't register the visits that I do make because, as far as I'm concerned, I'm going to visit these people to do the best that I can do to make sure that if there's a concern it's addressed," Majette said. "I don't have a duty to do that because I have asked the court to appoint me as a limited guardian and rely upon one group of people to make sure that if for some reason there's something going wrong in that nursing home ' in the assisted living facility ' that that's being looked at, and that group is the commonwealth of Virginia through the licensing authority."

David Hutt, an attorney with the National Disability Rights Network, said a facility's state license doesn't guarantee that a person living there is treated as they should be.

"Relying on the state, history has shown, is not adequate to make sure the person is being taken care of," he said. "There have been a number of cases where private attorneys acting as guardians have hundreds of individuals [under their guardianship]. '¦ They can't be understanding what the needs are for the individuals."

Most of the nursing homes where Majette and his colleagues placed their low-income wards are poorly rated. They've also placed people in nursing homes that they have represented in guardianship petitions.

In 58% of the 122 nursing home placements that were recorded in court documents from 2013 through 2019, the nursing home is currently rated two or fewer stars out of five by the Centers for Medicare and Medicaid Services. In 30% of the cases, the facility does not have a rating, and in 11%, they are rated three stars or higher.

ThompsonMcMullan placed at least eight people in Envoy of Stratford Hills from 2013 to when it lost its Medicare funding in 2015 for failing to comply with CMS' standards, including by failing to follow sterile procedures with a tracheotomy patient and improperly storing medical supplies. From 2013 to 2018, the firm placed nearly two dozen people in Envoy of Westover Hills, one of the facilities Majette has represented and the only nursing facility in Virginia currently on the CMS Special Focus Facility list. That list includes nursing homes whose performances have been so bad that CMS has threatened to stop their Medicare funding if the facilities don't improve within two years.

A CMS inspection report of Envoy of Westover Hills documented dozens of violations and said that one resident's bedsore had a maggot in it. A spokesperson for Envoy of Westover Hills did not respond to requests for comment.

Majette and Malone, the law firm's president, said there is a shortage of nursing home beds in the state, particularly for low-income people who may have complex health care needs.

But Hurme said guardians should not be excused from ensuring their wards are properly cared for.

"A guardian has more of a responsibility than finding a nursing home and applying for Medicaid," Hurme said. "I'm a limited [guardian] therefore all I have to do is plop them into a nursing home and forget them?"

On at least 13 occasions, Majette or one of his colleagues suspended their rights and duties as guardian of a person, but retained the ability to step back in if the person ended up in VCU Health System and the hospital requested it.

Cohen, the UVA law professor who reviewed The Times-Dispatch's findings, said the resignation exception raises the question: "Are [the attorneys] serving the interests of the hospital more than the interests of the ward?"

"In what sense is that being done for the benefit of the person subject to guardianship?" Cohen said. "It has the appearance that this is being done because the lawyer is trying to protect the interests of the hospital. ... [The interests of the ward] are the same regardless of where they're going to be hospitalized. Why is this automatic process just for this one place and not for others?"

Majette said he resigned in some cases if the person under guardianship was believed to have the ability to live independently, but that he reserved the right to step back in if the person ended up back at VCU Medical Center so that he could have them discharged and admitted to a long-term care facility again.

Asked what would happen if the person were taken to another hospital besides VCU, such as Bon Secours St. Mary's Hospital in Henrico County, Majette said, "I don't represent St. Mary's. I do not represent ' I do not know what their discharge planning is. I do not know what their process is."

Bon Secours Health System pursues guardianship cases for its patients, but does not allow its attorney to be appointed guardian because it is unethical, according to Kelly Stuart, executive director of physician ethics. Instead, the hospital pays for Catholic Charities, which is part of the public guardianship program, to take on the guardianship of the patient after the discharge. Similarly, Sentara Healthcare, which runs several Virginia hospitals, pays Jewish Family Services, another public guardian agency, to take on its patients.

In interviews and court records, some family members of people placed under Majette's guardianship have complained that he has demonstrated disregard for the well-being and wishes of the wards and their loved ones. In one case, a man under Majette's guardianship complained that he could not afford to buy himself a coat with the $40 a month that Majette gave him for personal expenses.

The guardian ad litem, the attorney appointed by the court prior to a hearing to investigate the case, said in her report that the man did not want a guardian and that she didn't think the man was incapacitated.

Still, Majette, who had represented Chippenham Johnston-Willis Medical Center in the guardianship petition, was appointed his guardian. The man was discharged from the hospital to Envoy of Westover Hills and, two years later, asked that his friend become guardian instead of Majette. The guardian ad litem visited him again and said that, although he could take the bus to Walmart, feed himself, bathe himself and get in and out of bed from his wheelchair by himself, there was too much risk of him falling to allow him to live independently. The friend ultimately said she did not want to take on the responsibilities of guardianship and his case was dismissed.

"These are difficult situations where our hospitals manage and serve patients as best as they can on a case-by-case basis," said Malorie Burkett, spokeswoman for HCA Virginia, which runs Chippenham Johnston-Willis Medical Center, in a statement. "We have a rigorous process in place for when we deem guardianship necessary; it is a last resort when no other options are available. We remain dedicated to providing our community with the highest quality of health care and ensuring the safety and comfort of all our patients."

In another case, the aunt of a person under Majette's guardianship hired an attorney and filed a counterpetition for guardianship of her nephew. The petition said Majette had "failed to seek or maintain a relationship with family members," including the aunt, who had built an extra room onto her home to take in her nephew. It said Majette had "unnecessarily insulted" her and that she had tried to work with VCU Health System before guardianship was pursued, including telling staff about the addition to her home, "but she was treated as someone unworthy of involvement in decision making for his care," according to court records.

The aunt's case was dismissed.

VCU Health System declined to comment on specific patient cases, but said that it pursues guardianship of a person with an interested family member only if the medical care team believes it would be unsafe to allow that person to make decisions for the patient.

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VCU Health System always called Richelle Richardson-Hayes for permission whenever her younger brother, Richard Richardson, needed a procedure, she said. Although Richard was mentally stable, he'd been paralyzed after falling from a balcony on Thanksgiving 2014, when he was 35, and sometimes needed his sister to consent on his behalf. The VCU medical staff had called her when he needed a breathing tube inserted and when they wanted to give him a halo brace to support his neck and head.

That's why she was shocked when she found out from Richard that the hospital was discharging him to a nursing home in Petersburg without telling her.

Richard, then 38, had been staying at VCU for the past four months, ever since he'd been admitted from his nursing home for a worsening bedsore, complications with his catheter and excessive sweating, according to court records.

Richelle said the hospital staff had been getting impatient with her and Richard's two other sisters for not finding a place for Richard to go since he was ready to be discharged from the hospital.

According to his medical records, there had been no medical reason for him to stay in the hospital for the past month, but the VCU social workers told Richard that the only place that would accept him was a facility about 45 minutes away in Petersburg. Richard refused to go there. He said he wanted to be closer to his family in Henrico County.

Richard told a VCU psychiatrist that he knew he had to leave the hospital, but he wanted to go somewhere half-decent, unlike the places he'd been shuffled around to for the past three years, according to court records.

Richard's sister Jennifer, 35, and their mother, Jackie, 60, wanted to get a home where they could bring Richard and take care of him themselves. But it would take some time to get things in order.

One of the social workers said that if they didn't find a place to send Richard soon, VCU would put him on a stretcher and leave him out on the street, the sisters said.

Ryan Raisig, associate vice president for coordinated care and post acute services for VCU Health System, said the hospital never puts people out on the street.

But when VCU asked Majette to take Richard to court, the petition filed Oct. 20, 2017, requested permission to immediately discharge him, without liability, "to any public street, way or location off the premises" if the court didn't grant guardianship.

Richard owed the hospital $86,179. The petition said his debt to the hospital was growing at a rate of $3,314 every day.

The court assigned Henrietta Cannon to be Richard's guardian ad litem. She also had been the guardian ad litem in nearly 90% of all VCU Health System guardianship cases since 2014, usually at Majette's proposal, and was paid by VCU Health System on its cases.

On Oct. 31, 2017 ' 11 days later ' the Richmond City Circuit Court held a hearing, and, although both the guardian ad litem and a psychiatrist at VCU found that Richard was mentally competent, the judge granted VCU's request to have Majette made Richard's guardian.

Majette said his firm mailed out the hearing notices required by law to Richard's family members, but family members said they never learned of the hearing until after it was over.

Cannon, who was charged with speaking with family members and loved ones about the hearing in advance of the court date, said in her report to the court that she had called the number she had for Richard's older sister, Richelle, and had left a message with the person who answered but had not heard back.

Cannon died in May before The Times-Dispatch could reach out to her for this story.

Richelle said she never got the message. Even though she and her sisters took turns visiting Richard in the hospital every day and his medical team had their contact information, the family received no notice of the guardianship proceedings, she said.

Richard was able to address the judge through videoconference during the hearing, but did not have a lawyer.

In handwritten notes, the court order was made temporary, requiring that another hearing be held in 90 days to determine who Richard's long-term guardian should be.

In the meantime, Majette could have Richard discharged to the Petersburg nursing home against his will.

After Richelle heard from her brother that an attorney had been appointed his guardian, she got Majette's contact information from the hospital.

"What's going on?" she said she asked when he answered the phone. "How do I get guardianship of my brother?"

This is my personal number, Richelle said he told her, don't you ever call me on this number again.

Majette said he didn't recall the conversation with Richelle, but said he often asks people to call his office number rather than his personal number if the reason for the call is not an emergency.

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One Friday night this summer, the Senior Connections Public Guardianship Program emergency line rang. Edward Richards, the program manager, answered it and then hurried to the emergency room. Someone under his guardianship had been taken to the hospital because an infection on his finger had made it swell to twice its normal size.

Richards gave the hospital consent to give anesthesia to the man, who has an intellectual disability. He was also there to comfort him. Being in the hospital setting made the man under Richards' guardianship nervous, and he'd been alarmed and confused by all that was happening around him. Richards put some of his experience with social work to use to help ease the man's anxiety.

Richards is one of dozens of public guardians charged with advocating for some of the most vulnerable people in the state.

The Virginia Department for Aging and Rehabilitative Services contracts with 13 service providers scattered across the state to serve as guardians for the 1,049 public guardianship slots that the state General Assembly funds. About half of the slots are reserved for people with intellectual or developmental disabilities or a mental illness identified by the state's Department of Behavioral Health and Developmental Services. Many of these people have previously lived in a state-operated institution, with guardianship used as a way to transition them into a community care setting, such as a group home or nursing facility.

Richards makes a point of changing the timing of his client visits to make sure he's seeing how they are treated in different settings. He tries to get to know the person so that he can tell when something seems off. And he develops a rapport with the person's caretakers so he can effectively advocate for his client.

"Obviously, we don't just visit one time a month, but at minimum one time a month," Richards said. "When we do these visits, we look to see if there are any signs of abuse or neglect. Does a person have a new bruise we haven't seen before? Is behavior not what we're used to seeing before?"

On one recent afternoon, Richards visited one of the people under his guardianship living in a nursing home. He knew to look for the person in their usual hangout spot, watching TV in the dining room. The person eagerly caught Richards up on the latest gossip about the nursing home as he checked the person to make sure they were well-groomed and taken care of by the staff. Before heading off to his next visit of the day, he remembered that the person's right hand pained them and offered his left hand to shake as he said goodbye.

From Richards' perspective, having 20 clients under his care is a lot of responsibility to take on, but it's manageable.

Virginia's 1-20 ratio is "the envy of the country," according to Pamela Teaster, a gerontology professor at Virginia Tech who helped create the state's public guardianship system when she was a doctoral student in 1998. By comparison, Florida's ratio is 1-to-40.

But private guardians, like Majette, have no cap on how many people they can have under guardianship, nor are they required to visit their wards.

"Some paid professional and public guardians have ratios of one to over 100 protected persons, a ratio far too high to afford an individualized and appropriate level of protection and care," Teaster wrote in her testimony before the U.S. Senate Special Committee on Aging in April 2018.

Meire, the program's coordinator, said she's known of a guardian who woke up at 4 a.m. to go to a dentist appointment with a client who was afraid of getting her teeth pulled, another who brought their family to see the client perform in a theatrical production on a Saturday, and another who made sure the client was placed in the same home as her former foster sister.

"There's a lot of involvement with the client," Meire said.

But even so, Meire said the guardianship program should be a last resort, favoring restoring the person's rights or allowing a family member or friend to take over when possible.

"Guardianship is the nuclear option," she said.

Before guardianship proceedings are pursued, a volunteer panel of community leaders, including doctors, lawyers, health care administrators and social services representatives, review each case to make sure the person is an appropriate candidate for public guardianship, which is intended for someone who is indigent and "friendless," meaning there's no one in their life to help care for them.

The process takes time. A person is generally referred to the public guardianship program by a community services board ' a local entity tasked with providing mental health services ' someone in the community, or a health care provider. If the panel finds the person to be eligible, they must wait until a slot opens up in the program. Once the slot opens, the petition can be filed.

In many cases, the public guardianship program has struggled to find an entity or attorney willing to bring the case to court. The Attorney General of Virginia has declined to represent DARS as petitioner in guardianship cases unless the state legislature specifically allows his office to because the arrangement would be a conflict of interest, according to the 2018 report on public guardianship to the state General Assembly.

Majette said the state had no issue with his both representing the petitioner and serving as guardian in several cases in 2008 when then-Attorney General Bob McDonnell's office asked him to represent the Virginia Department of Medical Assistance Services on four guardianship cases when the state closed down a nursing home. A spokesperson for the Office of the Attorney General did not answer questions for this article after several requests.

The lack of a petitioner in public cases can further delay proceedings, although the state's behavioral health department and DARS will sometimes reimburse attorneys for petitioning to have someone placed under public guardianship, according to Meire.

It takes an average of six months for intellectual disability cases to move through the process. Richards has seen it take anywhere from three months to a year.

The programs also often run near or at capacity. There were 85 people on waiting lists in Virginia as of Nov. 13 just for the state-designated slots. Local programs maintain additional waiting lists for the slots that are not reserved for people leaving state-operated institutions. There are no regulations to address what happens to people while they are on the waiting list, Meire said.

DARS expects the need for public guardianship services to continue to grow, particularly as Virginia's population ages, with an anticipated 1.8 million people age 65 and older by 2030, and as the state works on moving people with intellectual disabilities out of state hospitals due to a settlement with the Department of Justice.

With the program already at capacity and dozens of people stuck on waiting lists, people can fall through the cracks. Sometimes that means falling under the guardianship of a private professional who isn't required to follow the same rules as the public program.

Teaster said she wasn't aware of any guardians maintaining 100 or more wards since a national report was done in 2010. "We don't see those numbers as high, or they're not telling anybody," she said.

But if there were guardians with that caseload, "[the wards] are not getting care and not having their needs met. That would be the antithesis of person-centered care."

Majette said he could not maintain the people under his guardianship without the help of his firm's support staff, which includes five people who assist the firm's attorneys to make sure bills are paid, paperwork and accountings are filed and that quarterly meetings held by nursing facilities where the people reside are attended via teleconference.

Teaster said Virginia's guardianship monitoring places a higher importance on making sure finances are accounted for than it does ensuring that the person under guardianship is getting the proper care.

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When Richard Richardson woke up at VCU Medical Center in November 2014 unable to move his arms and legs, he had no idea how he had gotten there.

He couldn't remember going to his sister's apartment on Thanksgiving and telling his family that he didn't think they loved him. He didn't remember climbing out on the balcony and attempting to go from the second floor to the third floor or the fall onto the ground below. He couldn't remember his sisters' screams or the ambulance rushing him to the emergency room.

His sisters would never know what had come over him that day.

Richard and his family were always close. He was an active father and uncle, often bringing his sons over to his sisters' homes to play with their cousins and taking the kids to the park.

He'd run into some trouble with the law on drug charges in his early 20s, but his sisters said he'd turned his life around since his last charge in 2004.

He treated his bike like his car, riding it from his home in downtown Richmond out to his sister's place in the suburbs. He worked as a roofer and practiced mixed martial arts in his free time.

Jennifer recalled a time Richard had fixed an elderly man's roof for free to keep rain from coming into his home.

But the accident changed him. Once his doctor told him he would never walk again, it was like a death sentence. It stole his hope, Jennifer said. Medicaid wouldn't pay for all the physical therapy he needed, and he was often told his prognosis wasn't good anyway.

Every now and then, his sisters would see some of his old personality shine through. He would light up with his nieces and nephews. He continued to follow his favorite football team, the Los Angeles Chargers, and watch Ultimate Fighting Championship matches on YouTube.

But they knew he was suffering and depressed. He'd been tossed from one place to another. His most stable living situation was when he lived with Jennifer for a year before he started having seizures. The last nursing home he'd been in landed him in the hospital yet again, this time for a bedsore. And he was afraid of where he might end up next.

Health care providers said he was noncompliant with care, according to court records and emails. His family said he sometimes did not want to be touched or given medication when he was in a bad mood or in pain, but more often his caretakers at the nursing homes offered substandard care, neglecting to turn him to prevent bedsores, giving him his medication late or forcing him to eat hot food before it cooled.

Richard's sisters had planned to rent a home together where his family could take care of Richard, but he had already been at VCU for months, and their time was up.

Once Majette was granted temporary guardianship and conservatorship of Richard on Halloween 2017, he had him discharged to Petersburg Healthcare Center, a nursing facility that had 13 health citations on its latest inspection report and was rated two out of five stars by the Centers for Medicare and Medicaid Services.

Richard often called Richelle and told her about how he hadn't been turned to prevent bedsores or that he hadn't eaten all day. Richelle emailed the nursing home administrators to complain. Eventually, they told the family Richard couldn't have a phone anymore, she said.

"That place is horrible! Why would you send somebody's family to a place like that?" said Phyllis Richardson, Richard's youngest sister. "Man! It's understaffed. I sat there days, like plenty of days and watched people's lights just blinking, blinking for 30 minutes. Like, I remember one day I went up to the nurses station and I went, '˜Ma'am, the person across from my brother's light has been going off for like 45 minutes, is somebody going to check on him?''‰"

"How long did my brother have to sit there and just lay there day after day in that place and [Majette] didn't even come and see him?" Phyllis said, crying.

Fred Stratmann, a spokesman for Petersburg Healthcare Center, said he couldn't speak about a specific case because of patient confidentiality but said the center always complies with federal regulations on staffing levels and encourages its administrators and staff to be sensitive to the needs of the residents.

He also said that although CMS gives the center an overall rating of two stars out of five, the center received a five-star rating for short-stay residents on "quality measures" such as hospitalizations, falls with major injury and bedsores. It received a three-star, or average, rating on quality measures for long-stay residents.

"The facility does have its issues and we're diligently working to correct those issues," Stratmann said.

Three months after the initial court proceedings, Richelle stood before a judge asking to take back the right to make decisions for her brother. Majette agreed to resign as Richard's guardian, but told the judge that he didn't think the family's plan to care for Richard at home was feasible. Richard's sister, Jennifer, and his mother, Jackie, were both on disability, so Majette doubted they'd be able to give Richard the care he needed, according to the sisters.

The court order that the judge signed that day made Richelle her brother's guardian, but with some conditions. Richelle would not be allowed to go against the advice of Richard's attending physician, whether at the Petersburg nursing home or at any future health care facility where Richard might be treated, according to court documents.

And although Richelle didn't realize it at the time, Majette could resume his authority, without further court order, at VCU's request.

**Unguarded Part 3: Best Interest**

**By Bridget Balch**

Days after what would have been Richard Richardson's 40th birthday, his three sisters stood in silence on a bridge in Bryan Park, where they'd played as kids, staring into the pond where they'd just scattered his ashes.

Around them, people were out enjoying the first cool day of October ' playing Frisbee, biking and jogging ' the kinds of things Richard hadn't been able to do in his final years.

Jennifer, the middle sister, remembered a time years ago when she and Richard had been here with their kids. She laughed thinking about how Richard had joked about throwing his nephew into the pond if he didn't behave.

That was before the accident, back when Richard was a fit, young father who rode his bike everywhere and practiced mixed martial arts.

But then, on Thanksgiving 2014, a fall from a second-floor balcony paralyzed him from the shoulders down.

Afterward, he had been shuffled from nursing home to hospital to nursing home. His serious medical needs and the fact that he was on Medicaid made it hard to find a decent place. He'd been most stable in the year he spent living with Jennifer, but after he started having seizures, he ended up back in the hospital.

"It was a terrible life for a person to have to live," said Richelle Richardson-Hayes, Richard's oldest sister.

He spent the last year of his life in a nursing home where, his sisters say, he often went hungry and was rarely moved out of his bed. They say the staff was rude to the family when they visited and spoke up for their brother.

It was a nursing home that he was sent to against his will.

While he was a patient at VCU Medical Center, he'd told the staff not to send him to the nursing home in Petersburg, about 45 minutes away from family who visited and looked after him. The sisters had been working on getting an apartment where Jennifer and their mother could take care of him again, but it was taking some time. And Richard already owed the hospital $86,000 that Medicare and Medicaid had refused to pay, according to court records.

So the hospital system petitioned Richmond Circuit Court to have Richard declared incapacitated and to have the attorney representing the hospital appointed his guardian, giving him the power to discharge Richard and have him admitted to the nursing home despite his objections.

The court appointed Henrietta Cannon as Richard's guardian ad litem, an attorney charged with investigating the case and representing the person's best interests. Cannon was the guardian ad litem in almost 90% of all VCU Health System guardianship cases from 2014 to June 2019. She died in May, before the Richmond Times-Dispatch could talk to her.

Richard insisted to Cannon that he was not mentally incapacitated and that he did not need a guardian. In her initial report to the court, Cannon said his medical records didn't indicate any mental incapacity, and a VCU psychiatrist said he seemed to have the ability to make his own decisions. Still, Cannon wrote that Richard's apparent inability to "execute a plan for his discharge" from the hospital did make him incapacitated and that he'd be helpless without a guardian.

Before Richard's court hearing, Cannon wrote in her report that she called Richelle and left a message with the person who answered the phone, but she never heard back. Richelle said she never got the message.

Without speaking to Richard's mother, three sisters or two adult sons, Cannon recommended that VCU's attorney, R. Shawn Majette, be appointed Richard's temporary guardian.

And so he was.

Majette had him promptly discharged to the Petersburg nursing home. When Richard died 16 months later, medical records show that he had heart failure, kidney failure, sepsis, malnutrition and at least nine bedsores.

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While Virginia guardianship law lays out certain protections intended to safeguard individual rights, a yearlong Richmond Times-Dispatch investigation has found that, in Richmond Circuit Court, these safeguards regularly falter as scores of people lose their rights to make decisions about their medical care, where they live and how their money is spent. In more than 150 cases over the past six years, those rights were given to an attorney with ThompsonMcMullan law firm, which represented 95% of health care providers asking the court to take away the patient's rights, often without the patient being present at the hearing or having a defense attorney to represent them in the brief court proceedings.

An analysis of more than 250 guardianship cases filed from January 2013 through June 2019 by health care providers in Richmond found that the city court exercises little oversight over private, professional guardians, both before and after the guardian is appointed.

In all guardianship proceedings, state law requires there be a guardian ad litem. The guardian ad litem is charged with visiting the person, informing them of the date and time of the hearing, and letting them know that the hearing could take away some of their most basic rights. The person must be told they have a right to court-appointed counsel, to request a jury trial and to be present at the hearing. The guardian ad litem may speak with any family members or friends before the proceedings.

The guardian ad litem then puts together a report giving a recommendation to the judge. This report holds significant weight with the judge, particularly in cases where neither the person whose capacity is in question nor family or friends attend the hearing.

Many hearings last no longer than 15 minutes, according to court records and observation of six hearings by The Times-Dispatch.

One case file included an email exchange between the secretary for the ThompsonMcMullan attorney and the judge's assistant regarding scheduling for the hearing. The attorney's secretary asked if they could switch the hearing to a different day to accommodate the guardian ad litem's schedule.

"That's fine," the judge's assistant wrote. "But there is a jury trial set at 10 a.m. so he has to be here promptly at 9 a.m. and it can't take more than 15 minutes (:"

ThompsonMcMullan always files a request to waive the legal requirement that the petitioner, in this case the health care provider, must mail a copy of the hearing notice and the petition to any known family of the allegedly incapacitated person at least seven days before the scheduled hearing, according to Majette, an attorney with the firm. This means that if a hearing date opens up within seven days, the hearing can be held within a week of mailing the notices.

The reason, he said, is that it's often difficult to schedule a hearing and the hospital has usually already been searching for and attempting to contact any family members before the petition is filed.

"Where we are at the point in this law firm of getting the call [from a hospital to file for guardianship] is at the end of the beginning," Majette said. "And by that, I mean we have had what I think ' in any of the clients that I serve ' [is] a superb effort to try every other alternative than this."

Still, court records show that some family members, like the Richardsons, say they didn't receive notice before the hearing impacting their loved one.

"[Richelle] said that she did not get notice and that's bad," Majette said. "I know we send it out every time. ... I'm sorry she didn't [but] I don't apologize for the post office. We did what the law requires us to do."

But Sally Balch Hurme, a Virginia-based elder law attorney and author who has served on the board of directors for the National Guardianship Association and advised on the drafting of the Uniform Law Commission's model guardianship law, said that regularly waiving the seven-day notice requirement was an inappropriate use of the exception to the law. (Hurme is not related to the reporter.)

"The waiver is only if there is a case of an emergency," Hurme said. "In this case, the emergency is only the hospital's emergency because they are no longer getting paid by this patient and they want to discharge them. The person is well cared for, the emergency is only of the hospital's own making, therefore, the waiver of the seven-day notice is inappropriate and I would say in violation of the statute and the intent of the statute."

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One morning in March, Majette and Cannon stood before Richmond Circuit Judge W. Reilly Marchant for a double-header of guardianship hearings.

The first case was to decide whether Majette, representing VCU Health System, would be appointed the guardian of a 38-year-old man who'd been admitted to the hospital after a motorcycle accident.

"We are trying our best to get him well enough to get discharged to a rehab hospital," Majette said.

Cannon, the guardian ad litem, told the judge that the 38-year-old had "a habit of alcohol and substance abuse," and that he might have been attempting to commit suicide when his motorcycle crashed. She said he was capable of making some decisions, but not the decision to go to a rehab facility.

"He doesn't have any family?" the judge asked.

"They're alienated," Cannon said. She recommended that Majette be appointed guardian so the man could be admitted to a physical rehab facility.

According to Cannon's written report, the man had asked if his friend, who was present at the hearing, could be granted his power of attorney instead of having a guardian appointed for him, but Cannon wrote that a power of attorney "might not be sufficient to help with the admission to a rehabilitative facility nor to the expedited goal of obtaining Medicaid benefits."

Virginia law says the court must consider less restrictive options to guardianship, including an advance directive and durable power of attorney, before resorting to guardianship. It also says that poor judgment alone is not sufficient reason to declare a person incapacitated.

Majette emphasized that the court order would give him complete discretion to resign if he saw fit. "I can file a Medicaid application, reimburse my client [VCU] to some degree and make him a more agreeable patient at the next hospital," Majette said.

Majette then called the man on FaceTime to speak with the judge.

"Do you understand what we're doing today?" the judge said, incorrectly telling the man that Cannon had been appointed his lawyer. "She's talked to me about your tragic accident. ... I think the proposal is we appoint Mr. Majette to be your temporary guardian and get you the medical care you need."

"I am agreeable to it," the man said.

"Mr. Majette does this frequently," the judge said. "They're very good lawyers and good people."

The judge signed the order. Reports filed with the court months later would show that, after being discharged from the hospital, the man would check into an Extended Stay America hotel and refuse Majette's services.

The next guardianship hearing began immediately.

"This is an ordinary ' if there is such a thing ' guardianship," said Majette, describing the patient, a 67-year-old man with substance abuse disorder who had been brought in to the hospital with frostbite and gangrene.

Majette said his plan was to have the man admitted to a rehab facility and then to a nursing home. He would also retain his right to suspend his duties as guardian. "I can't keep up with a fellow like that after he leaves the facility," Majette said.

"This was a too-easy case," Cannon told the judge. "He was not of this world. ... Could not tell me where he was from."

The judge said he always wondered what happened to the homeless people he often saw on the street. Cannon said the man had left his nursing home in a wheelchair to find a drink and had been begging on the street.

"Doesn't sound very encouraging," the judge said. "As long as you represent to me there's sufficient findings, that's fine."

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The guardian ad litem in 85% of all guardianship cases filed by a health care provider over the past 5½ years was Cannon, despite there being more than 50 attorneys certified to serve as guardians ad litem in Richmond.

Cannon's obituary, published in The Times-Dispatch after she died in May, said she served as guardian ad litem "for almost all of the guardianship cases for VCU Medical Center over the past 20-plus years." VCU accounted for 76% of all health care guardianship petitions filed in the Richmond area from 2013 to 2018.

Court records show Cannon was paid at a rate of $100 per hour for her work on VCU Health System cases. In those cases, the health system paid her bill. On other cases, she was paid by the commonwealth of Virginia at a rate of $55 an hour for out-of-court time and $75 an hour for in-court time, rates set by the state Supreme Court.

State law requires the petitioner, in these cases VCU Health System, to pay the guardian ad litem fees except in indigent cases, when the fee can be paid through the state Supreme Court. However, although almost all of the VCU Health System cases were indigent cases, VCU still footed the bill.

Pam Lepley, vice president of university relations for VCU, said that the health system followed the law and was saving the state money by paying Cannon's attorney fees.

"I would say ... that $100 an hour for a lawyer is very reasonable, especially a good lawyer," Lepley said.

VCU Health's chief medical officer, Dr. Ron Clark, said he had never met Cannon.

"I assume she was someone that was known and respected by the court that they turn to on a frequent basis," he said.

VCU Health System officials emphasized that it pursues guardianship for its patients rarely and only as a last resort and that, once the petition is filed, it is out of the hospital's hands.

"The court makes the appointment," Lepley said. "We don't."

Cannon frequently worked closely with the ThompsonMcMullan attorneys who represented not only VCU Health System, but Chippenham Johnston-Willis Medical Center and a number of nursing homes in the Richmond area. In most cases, she recommended that the health care provider's attorney be appointed guardian, even in cases where she thought a family member or friend could also be an appropriate guardian, according to court records.

"The guardian ad litem is supposed to be an independent person and should not be compensated by the petitioner," said Hurme, the Virginia lawyer who served on the board of the National Guardianship Association. "If the guardian ad litem is being paid by the hospital to grease the skids ' to make the appointment of the guardianship go without a hitch ' obviously the guardian ad litem is not going to recommend a need for counsel to represent the interests of the individual. You cannot serve two masters."

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Charles Ellis IV had never heard of guardianship before he got the notice in the mail that ManorCare Health Services-Imperial had petitioned Richmond Circuit Court to have a guardian appointed for his father, Charles Ellis III.

In the weeks before the hearing notice, Ellis had received a couple of threatening letters from his father's nursing home because the retirement income that he'd been collecting from his 30-year career as a city of Richmond firefighter had run dry. The letters said that if ManorCare didn't receive the $37,569.72 that was owed them soon, they would evict him.

Ellis reached out to an ombudsman to figure out what to do. He was his father's power of attorney and the agent of his advance medical directive. He'd tried applying for Medicaid twice, but both times was rejected because his father owned a home. It didn't matter that the home was in serious disrepair and had gone into foreclosure.

Before Ellis could come up with a plan, the nursing home had hired Paul Izzo, an attorney working for ThompsonMcMullan, to petition the court to become the older Ellis' guardian and conservator. Cannon was appointed the guardian ad litem. Ellis asked Cannon to allow him to continue to make his father's medical decisions. The advance directive that the older Ellis had signed said, "I intend to avoid the necessity of guardianship or conservatorship proceedings by the creation of" the life-planning document, according to a copy of the document filed in court records.

Still, Cannon recommended that the power of attorney be suspended until Medicaid benefits could be obtained.

Since Ellis couldn't attend the hearing, his aunt attended to speak up on the family's behalf. Ellis said she cried and pleaded with the judge to allow the family to retain the medical power of attorney.

But Ellis said the judge told her that it was going to be all or nothing. Izzo was appointed both guardian and conservator.

"That is the court serving as a debt collector," Hurme said of the Ellis case. "The use of the guardianship system to save hospitals money and to collect nursing home debts, in my view, is an abuse of the court process."

Majette said that, "No power of attorney is suspended unless there is cause shown."

A few months later, the older Ellis was taken to Bon Secours St. Mary's Hospital for pneumonia, his son said. He was in the intensive care unit for a few days before he was discharged back to the nursing home, but his son said he wasn't consulted or informed about the discharge.

Within days, the older Ellis died at the nursing home.

Ellis believes that Izzo may have been too quick to allow his father to leave the hospital. If he had had the power to make the decision, he would have wanted the doctors to continue to treat his father.

"At that point, it was out of my hands. I felt kind of helpless as a son not being able to speak on his behalf," Ellis said. "I have mixed feelings on it. I feel like somewhere the system ' whether that's the state or the federal government ' failed my dad."

Christopher Malone, the president of ThompsonMcMullan, said a judge could look at the facts of a case, determine that the power of attorney was not acting in the best interests of the incapacitated person and choose to appoint one of their attorneys instead.

"But that's not our job," Malone said. "It's the guardian ad litem [who] makes a recommendation and the court hears the evidence."

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Erica Wood, assistant director of the American Bar Association Commission on Law and Aging, has conducted national studies on public guardianship and guardianship monitoring. She said some courts and some states have implemented a guardian ad litem rotation to avoid the appearance of a conflict.

"If you just have the one guardian ad litem that's always got the cases, it gives an appearance of a lack of an arm's length relationship," she said. "The idea of broadening it and opening it up ' a rotation with some judicial discretion ' is something to think about."

In Florida, where every allegedly incapacitated person is appointed a defense attorney by law, there is a rotation in order to avoid the "pick my pal" scenario the courts have seen in the past, according to Ed Boyer, an elder law attorney who works guardianship cases there.

"When the same guardian ad litem pops up over and over, it looks like favoritism," Boyer said.

The attorneys at ThompsonMcMullan said Cannon was selected by the court to serve as guardian ad litem so frequently because she was trusted by the court.

"We do not in this firm, the hospital does not, the petitioner ... does not appoint the guardian ad litem. The court and only the court appoints the guardian ad litem," Majette said, while acknowledging that the court usually did so at his request. "We, practically, tell the court that we have a person that the court can use ... and the courts throughout the commonwealth decide who they know, who does a good job and who they are going to appoint. We propose, the court disposes. I don't make that decision."

Majette also said Cannon regularly made herself available to work at an hourly rate lower than what most attorneys are paid.

"Penny Cannon did phenomenally good work," Malone said. "I'd stack up her guardian ad litem report against any I've seen. '? You know when you have her on the case, you've got a 12-15 page report. I feel really good about that if I'm representing the hospital because I know that that job has been done well."

In one case in which Majette was appointed a man's guardian against the wishes of the man's aunt, the aunt later hired an attorney and filed a counterpetition to have her appointed her nephew's guardian. The petition also requested that the court appoint a guardian ad litem other than Cannon, who had been appointed for the first proceeding. "Preferably [one] who does not regularly work on cases where Mr. Majette is the proposed guardian and conservator," the petition said.

Majette filed a response defending Cannon, saying that she was familiar to the judges and that the aunt had "presented no basis to impugn the integrity of Ms. Cannon in the exercise of her duties as guardian ad litem for [the man] or any other individual."

The court appointed a different guardian ad litem, Robert Lesniak, who later took on most of VCU Health System's cases for a few months after Cannon died in May and was also compensated at the rate of $100 per hour, according to court documents.

Lesniak said Majette, whom he's known for about 25 years, asked him to fill in as guardian ad litem on his cases after Cannon died. He said it's difficult to find an attorney to work for $100 an hour, let alone the $55 to $75 an hour paid by the Supreme Court.

While Cannon's reports indicate that she always fulfilled her obligation to notify the person whose capacity was in question of their rights, she almost never recommended that they exercise them. None of the cases reviewed had a jury trial, and only a handful had defense attorneys. Only occasionally was the person whose capacity was in question present at the hearing, and even then, usually by teleconference.

In a 2015 case filed by Bon Secours Health System with the Henrico County Circuit Court with a different guardian ad litem, the hearing was held in the patient's hospital room at the guardian ad litem's request.

Once a guardian is appointed, Richmond Circuit Court does little to ensure that the guardian is fulfilling the responsibility to protect a person's best interests.

"For the most part, the clerk's office only receives filings and compiles the record, prepares bonds and gives oaths," said Edward Jewett, clerk of the Richmond courts, in an email. "We do not have any decision making powers in these cases. In the clerk's office, we do not do any monitoring of guardianship cases."

The chief judge of the Richmond Circuit Court, Joi Jeter-Taylor, declined to be interviewed through Jewett.

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It's also a long and difficult process to have a person's rights restored, according to Majette. "It takes a lot of time and it takes a lot of energy and it takes, sometimes ... a lot of money," he said.

The disAbility Law Center of Virginia, which advocates for the rights of people with disabilities, takes on about a dozen cases to help people have their rights restored each year, but Colleen Miller, the center's executive director, said there could be hundreds of people under a guardianship unnecessarily.

"We're really limited in how many cases we can take on," Miller said.

And the Virginia Indigent Defense Commission, which was created by state law to oversee public defenders and, according to its website, "to protect the Constitutional right to counsel for people who cannot afford to hire their own lawyer," is not involved in guardianship cases.

The law requires that all private guardians submit an annual report to the local Department of Social Services and that the report be filed with the court that granted the guardianship.

But annual reports were missing from court files in at least 50 court cases reviewed by The Times-Dispatch. Most of the reports that were filed contained little detail and often indicated that the private guardians had rarely or never visited their wards during the year.

The Richmond Department of Social Services has never identified an abusive or neglectful guardian based on reviewing annual guardianship reports and has not recommended to the court that a guardian be removed since at least January 2013, according to Shunda Giles, the department director.

Wood, of the American Bar Association, said Virginia's guardianship laws are strong on paper, but that it's the only state in the nation that does not require the guardianship reports be monitored directly by the court. Instead, they go to the local department of social services.

Across the state, social services workers have seen a 33% increase from 2014 to 2018 in the number of guardianship reports they are tasked with monitoring, according to the state Adult Protective Services 2018 annual report.

At the same time, the demand for attention and services has increased and funding has stayed almost static, said Paige McCleary, APS director.

The social workers are also limited in how much oversight they can provide based on the annual guardianship reports.

"The difficulty is these are self-reports by the guardian," said McCleary, adding that many times, the only way the worker can tell if there's abuse or neglect of a person under guardianship is if a complaint is made to APS.

Gail Nardi, who was previously director of APS for nearly a decade, said the lack of funding meant that many caseworkers have to juggle high caseloads and few have the time to closely monitor guardianship reports.

"I ' and anyone else who cares about the well-being of elders and adults with disabilities in our communities ' would hope that those reports get the scrutiny that they deserve," Nardi said. "It is not my experience that that is the case."

Pamela Teaster, a professor of gerontology at Virginia Tech and a national expert on guardianship, said the safeguards in Virginia law are lacking and that relationships within the court are too friendly to ensure due process.

It's a problem that faces almost every state in the nation.

"Unfortunately and too frequently, the fate of people under guardianship ... is poorly monitored in sufficient, meaningful, and diligent ways," Teaster wrote in her testimony before the U.S. Senate Special Committee on Aging in April 2018. "This inattention threatens to unperson them, leaving them open to exploitation, abuse, and neglect. The awesome power over highly vulnerable adults wielded by the guardianship system ... demands adherence to the accountability protections already in place, but that are not well implemented ... "

Although an estimated 1.5 million people in the U.S. were under guardianship in 2018 ' a number likely to grow as the population ages ' no state maintains a list of those people, making it "impossible to have an appropriate level of accountability for each person who has a guardian," according to Teaster.

The Senate Special Committee on Aging published a report in November 2018 outlining how states could strengthen their guardianship systems.

"Aside from incarceration or civil commitment, potentially no other court process infringes upon an individual's personal liberties more significantly than the appointment of a guardian," the report says. "In order to protect individuals subject to guardianship from abuse, exploitation, and neglect, governments and courts must be vigilant in their enforcement of laws and procedures that provide oversight of these relationships. While all states have laws designed to protect due process rights and to ensure that guardians are performing their fiduciary duties, these laws are not always consistently enforced, and more must be done to protect individuals subject to guardianship."

The report found that there was a lack of national and state data on guardianship, making it particularly difficult to identify trends and make policies to address problems.

Still, some states are trying to improve their oversight of guardianship cases.

Nevada enacted a wave of reforms in 2017 ' including requiring that the allegedly incapacitated person have a defense attorney ' after an article in The New Yorker exposed one professional guardian in the state who had used a court order to seize guardianship of an elderly couple and control of their assets without advance notice to them or their adult daughter, according to the Senate report.

The state now has a permanent guardianship commission that investigates problematic guardianship cases. Last year, the commission investigated 165 guardianship cases and identified $2 million in estates that were at risk of loss due to mishandling or exploitation, according to Kate McCloskey, Nevada's guardianship compliance manager.

In 2016, Texas established the Guardianship Compliance Project, a special office dedicated to auditing guardianship cases to determine the effectiveness of existing safeguards. The auditors found that 41% of cases were out of compliance with state law, including missing required annual reports and financial accountings.

Minnesota tracks all guardianship transactions. Texas passed a law in 2017 requiring all guardians to be registered in a central database. Pennsylvania is working to launch a statewide guardianship tracking system, and Indiana has a 60-county guardianship registry.

"The problem is not with the state of the law as written but as practiced," wrote Patricia M. Cavey, a Wisconsin-based elder law attorney, in a 2000 article for the Marquette Elder's Advisor Law Review. "I have had the opportunity to work as a social worker and lawyer in a state with very progressive mental health laws, yet for almost two decades, I have shared many experiences with attorneys and advocates in states with much less '?progressive' laws. Over the last 10 years, many states have modernized their guardianship and adult protective service statutes. Few states fail to provide the theoretical right to either a lawyer for the defendant or a guardian ad litem. However, the benefits of good model statutes or case law protections are not realized for defendants unless the participants in the process know, follow, and enforce the law."

In many places, like Richmond, whether a person is truly protected lies largely in the hands of the court system ' a system that the attorneys at ThompsonMcMullan know well.

"I think I have the confidence of most courts throughout the commonwealth," Majette said. "I hope I do."

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Once Richard Richardson's family found out that VCU Health System and the court had bypassed them to get Richard discharged from the hospital, they were furious. His sister Richelle contacted Cannon and asked her how she could get guardianship of her brother.

A second hearing was scheduled, and Cannon visited Richard again to decide what would be best for him.

This time, Richard asked to have an attorney appointed for him, but Cannon said in her report that, because his sister was planning to attend the hearing, she didn't think that was necessary.

"When you think about the gravity of having your rights taken away from you, I would think you'd need some legal representation," Richelle said. She said she didn't know that her brother had told Cannon that he wanted an attorney until months after Richard's death because she wasn't provided a copy of the report before or at the hearing.

Richard also told Cannon he'd like to be present for the hearing, but Cannon wrote in her report that transporting him to the courthouse "cannot be easily done" and that including him by telephone conference also wasn't possible "due to the present lack of a telephone adaptable for that purpose."

Cannon spoke with Richelle and wrote that she believed that Richelle basically had her brother's best interests at heart, but didn't think that her plan to eventually have her brother brought to live with her mother, Jackie, and sister, Jennifer, was advisable. She recommended that, if the judge should decide to appoint Richelle as guardian, the court order include a mandate that Richard remain in a nursing home unless Richelle could present the court with a "suitable" discharge plan.

When the court order was signed, Richelle was just relieved to be able to make decisions for her brother again. She wasn't a lawyer. She'd never been through guardianship proceedings before. In spite of how she felt she'd been treated by the hospital staff, she trusted that a health system like VCU would be fair, and that the judge would protect her brother's rights.

She didn't realize that the court order she'd signed said Majette could override her as guardian at VCU Health System's request, or that she wouldn't be allowed to make any medical decisions for Richard in disagreement with his attending physician at the nursing home where Richard would spend his final year.

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Advocates in Virginia and across the country have called for stronger protections for people brought to court for guardianship proceedings.

"Guardianship is the most restrictive option that we have for assisting somebody with a disability to make decisions," said Miller, from the disAbility Law Center of Virginia. "There are many, many other options available that don't have to take away their [rights]. '? We really believe that guardianship should be a last resort in every situation and we also think that that is what the law requires."

Miller said supportive decision-making ' allowing people to retain their rights but putting resources in place to help them make those decisions ' should be used more.

David Hutt, an attorney with the National Disability Rights Network, said national reform efforts are placing a greater emphasis on the guardian seeking out the interests and wants of the person under guardianship. This requires frequent interactions between the guardian and the person.

He said courts could do more to make sure people receive due process before they have any rights taken away, including ensuring there is advance notice to the appropriate people, that there is a fair hearing, that the judge sees the person, and that less restrictive alternatives are seriously explored.

"Courts are too quick to order guardians," Hutt said.

Wood said the American Bar Association approved a new model law on guardianship reform to use as an example for state legislatures two years ago, but only two states ' Maine and Washington ' have adopted it.

"There's a very strong emphasis on less restrictive options," Wood said of the model law. "The judge cannot find that an individual is incapacitated and order a guardian without fully examining less restrictive options."

Miller said the disAbility Law Center of Virginia supports efforts to better educate judges in the state about the limits of guardianship and the alternatives that exist.

In 2016, the Supreme Court of Virginia launched its Working Interdisciplinary Networks of Guardianship Stakeholders, or WINGS, a group that brings together representatives of the courts and community to work on improving guardianship practices and providing less restrictive decision-making options. The group has worked on improving state-level data collection on guardianships, creating a tutorial, FAQ document and pamphlet on the guardianship process to be given to people wishing to be appointed a person's guardian, and advocating for a change in the law enacted this year that now allows the court to issue a summons to a guardian if the annual report is not filed on time.

But according to Cavey, the Wisconsin elder law attorney, the only chance of truly protecting the rights of the vulnerable is to abandon the assumption that all parties in guardianship proceedings are looking out for the incapacitated person's best interests and to create an adversarial system with a strong emphasis on defense, much like in criminal court, according to her article, "Realizing the Right to Counsel in Guardianship: Dispelling Guardianship Myths."

"The only hope for a constitutionally sound guardianship system is to ensure that those with the most at stake, the guardianship defendants, are able to access real advocates," Cavey wrote. "For those of us who will age and be subject to this system, we hope that our lawmakers understand the conflicts and self-interest of those who advocate the [disassembling] of the adversary system. Since we all age, it is in the self-interest of practitioners and policy makers in the field to develop systems in which advocacy is fostered. Very good words on paper are just not enough. There is too much at stake to hope for self-activating justice because the '?help' we get isn't always the '?help' we need or want."

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Richard Richardson wasted away in his final months at Petersburg Healthcare Center.

He would complain to his sisters that he wasn't being turned to prevent bedsores, that he wouldn't be fed for hours, and that his roommate would crank up the heat and stifle him.

The staff wouldn't allow his wheelchair in the building, so he was often left in his bed, according to his sisters. Even when he seemed to be near death, the nursing staff would insist that only two people could visit him at a time, they said.

Fred Stratmann, a spokesperson for Petersburg Healthcare Center, said he couldn't speak about a specific case because of patient confidentiality, but said the center encourages its administrators and staff to be sensitive to the needs of the residents.

Richard would go back and forth about whether he wanted to start hospice.

Before his accident, he didn't believe in God. After he became paralyzed, he became a Christian for a while, but his faith waned again with the way he was treated by the hospitals and nursing homes.

He told Richelle he didn't really know what happened after death, but he thought anything had to be better than what he was going through.

But as he and his family discussed the possibility of stopping his life-sustaining treatment toward the end of 2018, he said he wasn't ready. He wanted to wait to see if his favorite football team, the Los Angeles Chargers, made it to the playoffs.

He held on to see them win one playoff game before losing to the New England Patriots in January.

Later that month, his condition worsened. The nursing home sent him to Southside Regional Medical Center in Petersburg.

In the beginning of February, Richard was nonresponsive, but he started to come back within a few days, Richelle said.

In his weeks at Southside Regional, Richelle felt like the hospital staff continually tried to exclude her from conversations about her brother's care. One time, a staff member said they'd already called Majette, who was listed on Richard's medical records as his next of kin, about treatment options. Richelle had been Richard's guardian for a year.

"How are y'all calling Shawn Majette?" Richelle asked. As far as she was concerned, Majette had been removed from speaking for Richard at the court hearing the year before when she was made his successor guardian.

Majette said he never acted as Richard's guardian after Richelle took over.

A spokesman for Southside Regional Medical Center said lawyers at Majette's firm have been appointed guardians of patients after the medical center has petitioned for guardianship on occasion, but he had "found no facts that support the narrative" that Richelle described.

Richelle sent the hospital a copy of her court order, but she still felt like her right to speak for her brother was not respected.

Richard's family decided to have him transferred to Retreat Doctors' Hospital in Richmond to be placed on hospice care so his family would be nearby to spend his final days with him. But before Richelle could complete the arrangements, the medical staff at Southside Regional put Richard on comfort care ' ceasing all efforts to keep him alive ' without her permission, she said.

When a doctor realized two days later that the family hadn't consented, he ordered the staff to restart Richard's regular medical care, Richelle said.

The same day, a hospital staff member called Richelle and told her that they would be transferring Richard to Retreat Doctors' Hospital.

Richard's mother, three sisters, sons, nieces and nephews had planned to meet him at the hospital that night, but they'd never get the chance to say goodbye.

He died on the way.

**The process of adult guardianship: An explainer**

The Office of the Executive Secretary of the Supreme Court of Virginia has a guide for guardianship proceedings that says the purpose of guardianship is "to ensure that the best interests of the incapacitated person are represented and accounted for."

Under Virginia law, anyone, either an individual or an institution, can file a petition to have a person declared incapacitated and have a guardian and conservator appointed. First, a guardian ad litem is appointed. The guardian ad litem is an attorney who is charged with investigating the case, notifying the person of the proceedings and their right to an attorney and a trial by jury, and coming up with a recommendation to the judge that serves the person's best interests.

A physician, psychologist or other skilled professional must submit a written evaluation of the person, reporting the person's diagnosis, condition, capacity and likelihood of recovery.

The evidence should show that the person is incapable of meeting their needs for health, care and safety, according to the Supreme Court guide.

"A finding that the individual displays poor judgment, alone, shall not be considered sufficient evidence that the individual is an incapacitated person," the guide says.

A judge then reviews the guardian ad litem's report and the capacity evaluation, and hears from the attorneys and any other interested parties attending the hearing. People who are declared incapacitated lose almost all their rights, including determining where they will live, what medical care they'll receive, what they can do with their money and property and even, in some cases, when and how they will die.

The law directs guardians to encourage their wards to participate in decisions, to consider their expressed desires and values, to maintain sufficient contact to know the person's needs and capabilities and to visit as often as necessary.

It goes further for the state's public guardianship program, which, in addition to requiring guardians to have no more than 20 patients whom they visit monthly, also requires that the guardian use "person-centered" planning, meaning they must learn and document as much about the person's preferences, values and goals as possible to help guide decision making on the person's behalf. Every year, a panel of people with different expertise, including medical, legal and administrative roles, reviews each ward's case to make sure they still require a guardian.

The purpose is to be respectful of the person who is under guardianship, said Patti Meire, who coordinates the public guardianship program for the state's Department for Aging and Rehabilitation Services. The guardian, Meire said, is not substituting his or her judgement for the person's, but rather advocating on their behalf.

**Unguarded: How we reported this story**

In a yearlong investigation, the Richmond Times-Dispatch requested guardianship petitions from around the state from the Supreme Court of Virginia, then identified more than 550 Richmond cases from the thousands of results from 2013 through June 2019.

Using case information available on the Richmond Circuit Court's website, we created a database to identify all guardianship petitions brought by a health care provider, including a hospital or nursing home, and to track attorneys representing the petitioner. We then spent several months at Richmond Circuit Court analyzing public documents related to the more than 250 guardianship cases filed by health care providers over the past 6½ years and created a database of details from the cases, including the time elapsed from filing the petition to the court order granting guardianship, whether family members or friends were active in the proceedings, how many annual guardianship reports were filed and how many visits were recorded in the reports, what fees were awarded, where the person was placed after guardianship was granted, how long the person was in the hospital before the petition was filed, and who was appointed guardian.

The Times-Dispatch also reviewed 11 cases filed by health care providers in Henrico County Circuit Court and 10 in Norfolk Circuit Court from the same time period to understand how cases play out with different petitioners and in different courts. We attended six guardianship hearings in Richmond, as well as the state's guardianship advisory board meeting.

We interviewed nearly three dozen people, including national guardianship experts, public guardians, attorneys, a court official, hospital administrators and family members of people put under guardianship, and researched guardianship law, history, practices and reform efforts nationally and in Virginia. Sources included the Code of Virginia, the National Guardianship Association Standards of Practice, Virginia's public guardianship program biennial report to the state General Assembly, the U.S. Senate Special Committee on Aging's 2018 report on guardianship, law review articles on guardianship procedures and practices, and various news reports on guardianship from around the country.

The Times-Dispatch spent three hours interviewing attorneys at Thompson- McMullan, and an hour interviewing officials with VCU Health System. We also spent hours with family members of people who had been under ThompsonMcMullan's guardianship. We reviewed email exchanges and medical records released by family members, visited the family members at their homes, and listened to their stories.

**Unguarded: Glossary of terms**

A guardian is someone appointed by the court to be responsible for the personal affairs of an incapacitated person, including making decisions about the person's support, care, health, safety, education, medical treatment and residence.

A guardian ad litem in Virginia is an attorney appointed by a judge to investigate a case for the court. In guardianship cases, the guardian ad litem is charged with providing independent recommendations to the court about an individual's best interests, but the guardian ad litem is not a lawyer working for the person being evaluated for guardianship. A guardian ad litem typically speaks to the person being evaluated as well as doctors and family members before writing a report for a judge.

A conservator is someone appointed by the court who is responsible for managing the estate and finances of an incapacitated person. The same person can serve as guardian and conservator.

An incapacitated person is an adult who has been found by a court to be incapable of receiving and evaluating information effectively or responding to surroundings and lacks the capacity to meet the essential requirements for health, care, safety or therapeutic needs without a guardian or to manage property or financial affairs or provide for support without a conservator. A finding that the individual displays poor judgment is not considered sufficient evidence that the individual is incapacitated, according to state law.

A limited guardian is someone appointed by the court whose only responsibilities are specified in the court order, rather than taking away all of the incapacitated person's rights. In some court orders, the limited guardian gains control of medical and residential decisions, but the person may retain the right to vote.

A public guardian is a person who works as a professional guardian for an agency that is paid by the state of Virginia. Public guardianship services are reserved for people who are indigent and friendless, meaning that they cannot afford to pay a guardian and they have no appropriate family member or friend to serve as guardian. Virginia law limits public guardians to 20 wards, requires public guardians to visit each person under guardianship at least monthly, requires an annual report be filed with the local department of social services, and holds public guardians to high standards for person-centered planning and encouraging wards to direct their own lives.

A private guardian is any person who is not compensated by the state for guardianship services. This can include a family member or friend as well as private professional guardians. Private guardians are required to submit an annual report to the local department of social services, but are not limited to a certain number of wards nor are they required to visit the ward a specific number of times.

*Sources: Code of Virginia and the Supreme Court of Virginia*