



## Wisconsin Council on Mental Health

1 W. Wilson, Room 851  
PO Box 7851  
Madison, WI 53707-7851  
Voice: 608-266-2712  
Fax: 608-267-7793

March 21, 2012

Senator Mary Lazich  
Representative Sandy Pasch  
Co-Chairs, Legislative Council Study Committee on Chapter 51

Dear Senator Lazich and Representative Pasch:

The Wisconsin Council on Mental Health (WCMH), the Governor-appointed advisory council on mental health issues, has been following the proceedings of the Legislative Council Study Committee on Chapter 51 with great interest. We are writing to you about the proposal that was introduced to create a new statutory section on power of attorney (POA) for mental health care (WLC 0094/1). The Council recommends that the study committee not recommend approval of this new chapter at this time.

While we understand that current law is somewhat unclear about certain issues related to the use of power of attorney for people who have mental health issues, especially as it relates to individuals with dementia, we think that it may be possible to address these under the current power of attorney statutes. The Legislative and Policy Committee of the WCMH has looked at legislation from other states that has not been reviewed by the study committee and which could inform the discussion. Additionally, consent to treatment involves constitutionally protected rights, even when an individual's capacity to make and/or communicate decisions is impaired. We do not believe that the Committee, as it is currently structured, has the correct representation to properly address these issues. We believe that a separate committee with the correct composition, which might be organized through the Legislative Council, or could be organized through a state agency, would be a better venue for exploring this issue. The WCMH would like to be involved in addressing this issue along with mental health consumers, attorneys who have litigated POA cases, and the Elder Law Section of the Wisconsin Bar Association.

Furthermore, addressing POA or psychiatric advanced directives was not a charge to this Committee. We feel that the Committee needs to focus on the specific issues in its charge, most of which have not yet been finalized.

Thank you for considering our recommendation. Please feel free to contact me at 608-250-4368 or [shelgross@tds.net](mailto:shelgross@tds.net) if you would like to discuss this further.

Sincerely,



Shel Gross, Chair  
Wisconsin Council on Mental Health

CC: WCMH membership  
Rep. Joan Ballweg, Co-Chair, Joint Legislative Council  
Michael Bachhuber, Member Legislative Council Study Committee on Chapter 51  
Kit Kerchensteiner, Member Legislative Council Study Committee on Chapter 51  
Laura Rose, Legislative Council staff  
Linda Harris, Administrator, Division of Mental Health and Substance Abuse Services  
Joyce Allen, Director, Bureau of Prevention, Treatment and Recovery  
Kenya Bright, Supervisor, Integrated Services, Bureau of Prevention, Treatment and Recovery