

UVM Project ECHO Dementia Diagnosis and Care for the Primary Care Team

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Didactic presentation is recorded. Registered participants will receive the link.

Session Agenda

- Welcome
- Objectives
- Didactic Presentation (20-30 min)
 - Q&A
- Case presentation(s)
 - Clarifying questions
 - Discussion
- Closing Announcements
 - Topic and cases for next session
 - Feedback and evaluation



ECHO Model: All Teach, All Learn



Cohort-based learning on ZOOM

- Have your camera on as much as possible, especially when joining the meeting and during discussions
- Questions and comments are welcome – use the “raise hand” feature or put them in the chat
- This is not a webinar! Participation is key

Case-based learning

- 1-2 participant cases each session using provided template
- Contact Mary Val Palumbo to present a case

Series Objectives

Learning objectives for this ECHO series include the ability to:

1. Describe the current standard of care for screening, diagnosis, treatment, and care of patients with cognitive impairment, AD and other dementias
2. Identify resources for family caregivers including caregiver supports and assistance in management of caregiver stress
3. List non-pharmacological and pharmacological approaches to delay disease progression and manage behavioral issues, including adverse effects
4. Discuss Vermont-specific rules regarding driving, guardianship, and the benefits and process for Advance Directives

CMIE Disclosures

In support of Improving patient care, The Robert Larner College of Medicine at The University of Vermont is jointly accredited by the Accreditation Council for Continuing Medical Education (ACCME), the Accreditation Council for Pharmacy Education (ACPE), and the American Nurses Credentialing Center (ANCC), to provide continuing education for the healthcare team.

The University of Vermont designates this live activity for a maximum of 1.5 *AMA PRA Category 1 Credit(s)*[™]. Physicians should claim only the credit commensurate with the extent of their participation in the activity.

This program has been reviewed and is acceptable for up to 1.5 Nursing Contact Hours.

As a Jointly Accredited Organization, The Robert Larner College of Medicine at the University of Vermont is approved to offer social work continuing education by the Association of Social Work Boards (ASWB) Approved Continuing Education (ACE) program. Organizations, not individual courses, are approved under this program. State and provincial regulatory boards have the final authority to determine whether an individual course may be accepted for continuing education credit. The University of Vermont maintains responsibility for this course. Social workers completing this course receive 1.5 general continuing education credits.

This activity was planned by and for the healthcare team, and learners will receive 1.5 Interprofessional Continuing Education (IPCE) credit for learning and change.

CMIE Disclosures

Interest Disclosures: As an organization accredited by the ACCME to sponsor continuing medical education activities, UVMCMIE is required to disclose any real or apparent conflicts of interest (COI) that any speakers may have related to the content of their presentations.

Meeting Disclaimer: Regarding materials and information received during this educational event, the views, statements, and recommendations expressed during this activity represent those of the authors and speakers and do not necessarily represent the views of the University of Vermont.

Legal Issues of Guardianship, Competency and Power of Attorney

November 9, 2023

Office of Public Guardian

Heather Allin, Director

Sarah Nussbaum, Intake & Diversion Specialist

Legal Issues of Guardianship, Competency and Power of Attorney

Session Objectives:

1. Increase understanding of adult guardianship in Vermont, particularly medical guardianship.
2. Enhance appreciation of limitations of guardianship and reasons guardianship should be avoided.
3. Increase awareness of alternatives to guardianship and the role health care providers can play in avoiding the need for guardianship.

Office of Public Guardian

- Housed within the Department of Disabilities, Aging, and Independent Living (DAIL) with staff of 29 (24 full time guardians)

- Serves “persons in need of guardianship” when there is no private guardian available:
 - ❖ Adults with DD (596 people in SFY 23) and
 - ❖ “Older Vermonters” who are 60+ with some other impairment such as dementia, mental illness, stroke, etc. (136 people in SFY 23)

- Provides:
 - ❖ Guardianship
 - ❖ Education about guardianship and alternatives
 - ❖ Representative Payee service (314 people in SFY 23)
 - ❖ Assistance to private guardians
 - ❖ Arrangement of court-ordered guardianship evaluations

What is Adult Guardianship?

- The appointment of a guardian for an adult is a **legal proceeding** that restricts an individual's rights to make decisions and practice self-determination.
- The appointment is made when the court determines that (a) the individual's **decision-making capacity is impaired** and (b) the need to protect the individual's personal and/or financial safety and well-being **outweighs his or her fundamental right** to autonomy in exercising choices and making critical life decisions.
- The guardian becomes a **substitute decision-maker** charged with making decisions that protect the individual's personal and/or financial wellbeing while affording as much self-determination as is feasible.

Well-intentioned but Misguided Reasons People Pursue Guardianship Over Others

- Belief that the person is making or will make “bad” decisions
- Belief that guardianship will protect the person from themselves and others
- Belief that guardianship is required to obtain "placement"
- Belief that guardianship will transfer liability in a difficult situation
- Belief that involuntary guardianship can facilitate involuntary treatment/medications/services

Powers of Guardianship

- Orders may include some or all of the following powers:
 - General Supervision
 - Medical/Dental
 - Financial
 - Contracts
 - Sale and Encumbrance of Property
 - Legal

VT Adult Guardianship Laws

Title 18 Chapter 215

- Family Court
- Public Guardianship (OPG)
- Adults with Developmental Disabilities
- Involuntary
- No Financial Power
- Non-emergent

Title 14 Chapter 111

- Probate Court
- Private & OPG (60+ not DD)
- Adults with cognitive impairments of any cause
- Involuntary & Voluntary
 - Involuntary = Title 14, Chapter 111
 - Voluntary = 14 VSA § 2671 (no OPG)
- Includes Financial Power
- Can order Emergency Guardianship

Who is in need of guardianship?

According to 14 V.S.A, “a person in need of guardianship” is defined as a person who:

- (A) is at least **18** years of age; and
- (B) is **unable to manage**, without the supervision of a guardian, some or all aspects of his or her personal or financial affairs as a result of:
 - (i) **significantly subaverage intellectual functioning** which exists concurrently with deficits in adaptive behavior; or
 - (ii) a **physical or mental condition** that results in significantly impaired cognitive functioning which **grossly impairs judgment, behavior, or the capacity to recognize reality**.
- (2) "**Unable to manage his or her personal care**" means the inability, as evidenced by recent behavior, to meet one's needs for medical care, nutrition, clothing, shelter, hygiene, or safety so that physical injury, illness, or disease has occurred or is likely to occur in the near future.
- (3) "**Unable to manage his or her financial affairs**" means **gross mismanagement**, as evidenced by recent behavior, of one's income and resources which has led or is likely in the near future to lead to financial vulnerability.

Who May Act as Guardian?

- Must be at least 18 and competent
- Cannot be person who is paid to operate home of person
- Must undergo background checks
- Court considers
 - ✓ Preferences of person
 - ✓ Geographic location (although can be out of state)
 - ✓ Relationship with person
 - ✓ Ability to carry out duties
 - ✓ Willingness to communicate with/respect wishes of person
 - ✓ Potential conflict of interest
- Does not need to be able to be primary caregiver
- OPG is guardian of last resort (use sparingly)

Duties and Responsibilities of a Guardian

- Respect wishes, values, preferences of person
- Exercise least restrictive approach
- Maintain close contact
- Assure all benefits and services are received
- Keep court informed of changes in health status and living arrangements; obtain permission as required
- File annual and other reports required by court

Guardianship Process (Title 14)

Person is 60+ and cognitively impaired

Guardian needed emergently

File guardianship petition and emergency motion in Probate Court.

If the absence of a guardian will cause serious and irreparable harm, the court may appoint a guardian before an evaluation.

Temporary guardian appointed.

Court orders evaluation by a trained and competent evaluator.

Private guardian identified

File guardianship petition in Probate Court.

Court orders evaluation by a trained and competent evaluator.

Public guardian needed. OPG contacted.

Guardianship Process (Title 14) (cont.)

After evaluation complete, the court holds a hearing on the guardianship petition. A lawyer is appointed to represent the person.

Guardianship petition denied.
Person found not to be in need of guardianship.

Private guardian appointed for person in need of guardianship with powers identified by the Court.

Public guardian appointed for person in need of guardianship with powers identified by the Court.

Guardian submits annual reports to the court and returns to court as needed for guidance.

Capacity vs Competency

- The term “competency” is not used in VT guardianships.
- “Capacity” is the term used in VT guardianship statutes.
- A determination by the court of capacity or incapacity is a legal not a medical finding.
- **“Capacity to make medical decisions”** means an individual's ability to make and communicate a decision regarding proposed health care based upon having a basic understanding of the diagnosed condition and the benefits, risks, and alternatives to the proposed health care.

How is Capacity Assessed?

1. Does the individual understand the need for—and have the ability to obtain—requisite knowledge to make reasoned decisions?
2. Does the individual appreciate the consequences of making decisions? Is he or she able to appraise *realistically* the outcome of a decision and justify his or her choice?
3. Does the individual express his or her decisions in a way that is consistent and aligns with his or her values and preferences?
4. Does the individual evidence the capacity to identify the actions that are necessary to achieve his or her goals when making a decision?

Sources of Information for Guardianship Evaluation

- Clinical interview with person
- Information gathered from persons with knowledge of the individual such as family, friends, neighbors, service providers, etc.
- Review of medical records, previous evaluations, etc.

Medical Guardianship Defined & Limited

(2) The power to **seek, obtain, and give or withhold consent** to the initiation or continuation of medical or dental treatment, subject to the provisions of section 3075 of this title and any constitutional right of the person under guardianship to refuse treatment, provided that the **court in its discretion may place limitations** on the guardian's powers under this subdivision if appropriate under the circumstances, including requiring prior court approval for specific surgeries, procedures, or treatments.

Additional Limitations on Medical Power

§ 3074. Commitment, sterilization, involuntary treatment, and involuntary medication

Nothing in this chapter shall give the guardian of a person authority to:

- (1) place that person in a State school or **hospital** except pursuant to 18 V.S.A. § 7601 et seq. or 18 V.S.A. § 8801 et seq.
- (2) consent to an **involuntary treatment or medication** petition pursuant to 18 V.S.A. chapter 181.
- (3) consent to sterilization or to a petition for involuntary sterilization pursuant to 18 V.S.A. chapter 204.
- (4) consent to a petition for custody, care, or habilitation filed pursuant to 18 V.S.A. chapter 206.

End of Life Decision-Making for People Under Guardianship

- Individuals under guardianship, or being evaluated for guardianship, cannot complete Advance Directive forms.
- If the person under guardianship executed a medical Advance Directive before becoming cognitively impaired, the authority of the agent/guardian and the instructions contained therein shall remain in effect unless the court orders otherwise.
- Individuals must be involved in decision making to the greatest extent possible.
- For those individuals under Title 14 guardianship, all requests for DNR/DNI's must be approved by the Probate court, unless there is advance directive in place which indicates person's choice DNR/DNI.

Physician Letter to the Court RE: DNR/DNI

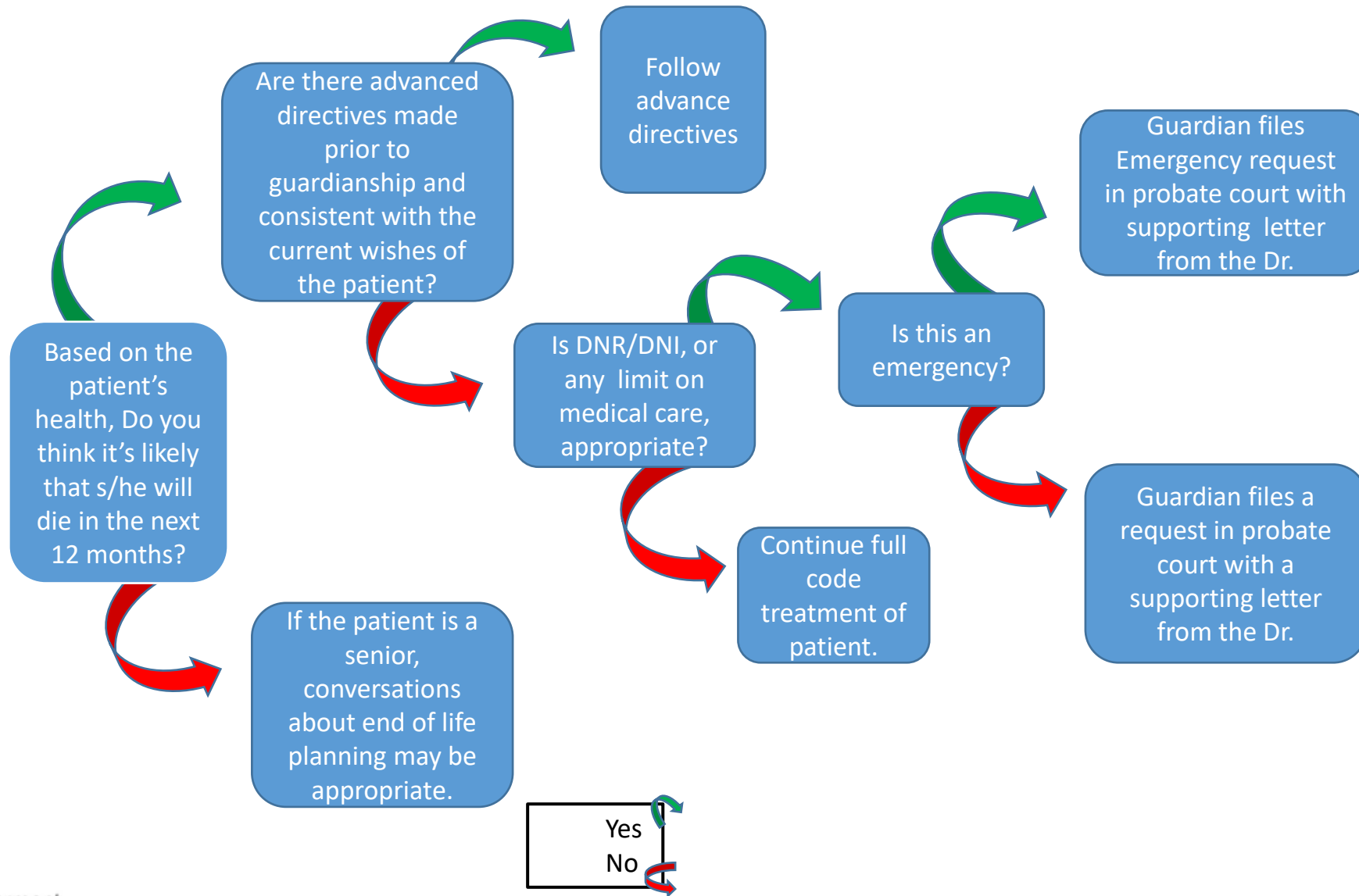
Probate Courts require a **Statement from the patient's physician(s)**, including the:

- **Nature of person's medical conditions** and determination of whether the person has an **irreversible and/or terminal condition**;
- **Physician's recommendation re: code status** (meaning, the use of, or foregoing of, CPR upon cessation of heartbeat and respiratory function) and the **reasons for this recommendation**, including a description of what the effects of a **particular intervention** may be on this **specific person** and **why the intervention would be appropriate or inappropriate**;
- **Physician's recommendation re: the use of other life-sustaining treatments** that might reasonably be considered for a person with this condition, which might include the use of mechanical ventilatory support (ventilator, BiPap), hospitalization, use of a feeding tube, dialysis, and others; description of what the **effects of a particular intervention** may be on this specific person and why intervention would be appropriate or inappropriate.

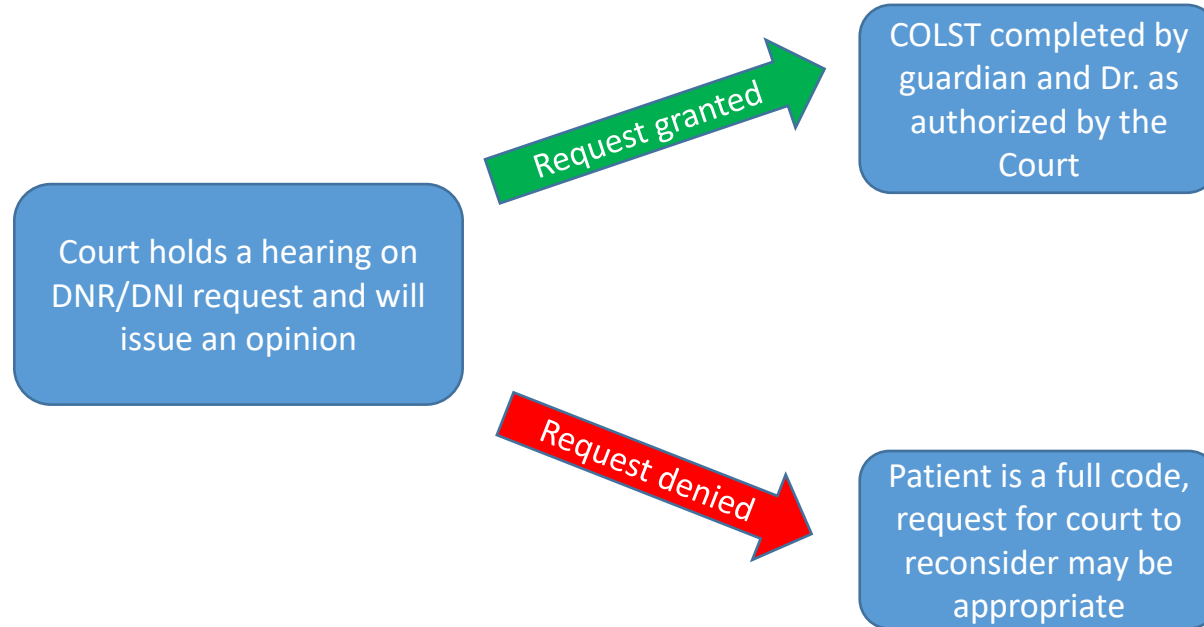
Why Should Guardianship Be Avoided If Possible?

- Restriction of rights
- Disempowering for the individual
- May negatively impact relationships
- Burdensome and expensive legal process
- Requires continuous interactions with court
- Guardianship doesn't actually solve every problem

Getting a DNR/DNI in place for a patient with a guardian



Getting a DNR/DNI in place for a patient with a guardian, cont.



Assessing Appropriateness/Necessity for Guardianship

- Will guardianship actually make any difference in this situation?
- Is guardianship the right tool to address the issues?
- Does the person have a network of supporters who could be expanded, and a Supported Decision-Making pursued?
- Have we assisted the person to develop the skills to make choices and decisions for themselves?
- Is it too late for POA and AD/HCA?
- Has every alternative to guardianship been tried?

Vermont Law Protects the Right of Self-Determination

Title 14

• § 3060. Policy

Guardianship shall be utilized **only as necessary** to promote the well-being of the individual and to protect the individual from violations of his or her human and civil rights. It shall be designed to encourage the development and maintenance of **maximum self-reliance and independence** in the individual and only the **least restrictive** form of guardianship shall be ordered to the extent required by the individual's actual mental and adaptive limitations. The State of Vermont recognizes the **fundamental right** of an adult with capacity to determine the extent of health care the individual will receive.

Rights of Adults Under Guardianship

- In VT, people under guardianship retain many legal and civil rights. Examples:
 - The Right to Vote
 - The Right to Procreate
 - The Right to Visit with Persons of their Choosing
 - The Right to Refuse Treatment
 - Involuntary guardianship does not equal involuntary treatment/commitment

Limitations of Adult Guardianship

- Unlike child custody, guardians have no compulsory authority over the adults they serve.
 - Guardians cannot compel people to do/not do anything against their will.
 - **Person with a guardian can ignore a guardian's decisions.**
- VT law requires that adult guardianship be provided in the least restrictive manner possible, and with maximum input from the person.
- Guardianship does not include the powers of:
 - Magic
 - Force
 - Involuntary treatment or medication
- Guardianship does not include any automatic structures or expectations for residential placement. Living circumstances depend on the individual. Examples include:
 - Adult Family Care Home
 - Independent living or arrangements with family/friends
- Guardians can't force a noncompliant person to live in a specific place or manner.

Alternatives to Guardianship

- Releases of Information (Medical)
- Support Services (paid and unpaid)
- Banking Services (direct deposit, bill autopay, spending limits)
- Advance Directives for Health Care/identified health care agent
- Supported Decision Making
- Power of Attorney for Financial
- Representative Payee (Social Security Benefits only)
- Trust

Helping Your Patients Avoid Guardianship

- Start advance care planning conversations early
- Encourage Health Care Agent for patients of all ages (agent must agree to role)
- Assist with Advance Directives
- Suggest Power of Attorney for finances
- Recommend completion of Long Term Care Medicaid Application
- Be transparent about diagnosis & prognosis
- Review ADs, HCA, and POA regularly for continued relevance given advancing age/disease

Resources

- <https://www.vermontjudiciary.org/sites/default/files/documents/Guardian%20Booklet.2018.pdf>
- [Public Guardianship for Adults with Developmental Disabilities \(18 VSA Chapter 215\)](#)
- [Public Guardianship for Mentally Disabled Adults age 60 or over \(14 VSA Chapter 111\)](#)
- [Private Guardianship for Mentally Disabled Adults and Adults with Developmental Disabilities \(14 VSA Chapter 111\)](#)
- [Voluntary Guardianship 14 VSA 111/2671](#)
- <https://vtethicsnetwork.org/>

Questions?

Case Presentation

Bringing Knowledge to Action through interactive, case-based discussions

Participant presents the case and poses the question(s) for the group



Clarifying questions about the case from group to case presenter



Ideas, suggestions, recommendations from participants



Ideas, suggestions, recommendations from ECHO faculty team



Full group discussion



Summary and wrap-up by facilitator



Case Presentation



DO NOT INCLUDE:

Names, Address, DOB, Phone/Fax #, Email address, Social Security #, Medical Record #

Consider the level of detail necessary. Go with less when possible.

The discussion and materials included in this conference are confidential and privileged pursuant to 26VSA Section 1441-1443. This material is intended for use in improving patient care. It is privileged and strictly confidential and is to be used only for the evaluation and improvement of patient care.

Case

Case presentation during ECHO session

2023 FALL SERIES – Thursdays from 7:30AM to 9:00AM

WHO SHOULD ATTEND?	DATES	DIDACTIC TOPICS (In addition to case review)
<p>The target audience is primary care teams, including providers, nurses, and social workers/case managers, from Vermont.</p>	September 14	<p>Early Evaluation of Cognitive Complaints <i>John Taylor, MD, UVMC Memory Program Co-Director</i></p>
	September 28	<p>Dementia and Driving <i>Heather Zuk, OTR, CDRS, CDI, UVMC Driver Rehab</i></p>
	October 12	<p>Caregiver Resources and Supports <i>Rhiannon Champagne, LICSW, UVMC Memory Program</i></p>
	October 26	<p>Approaches to Physical Aggression During Episodes of Care <i>Jennifer Hall, DO, Geriatric Psychiatry</i></p>
	November 9	<p>Legal Issues of Guardianship, Competency, and Power of Attorney <i>Heather Allin, M.S.A., N.C.G, Director, Office of Public Guardian Vermont Department of Disabilities, Aging and Independent Living Sarah Nussbaum, Public Guardian</i></p>

SAVE THE DATE:

2024 Spring Series – Advanced Topics in Dementia Care for Primary Care – begins Feb. 8, 2024

Advanced topics include treatment updates, prevention, covering calls from nursing homes and end of life care.

Registration will open in December for the spring series.

2024 SPRING Series – Advanced Topics in Dementia for Primary Care

Thursdays from 7:30AM to 9:00AM

Dates	Topics
Feb 8	Updates on Anti-Amyloid Treatments for Alzheimer’s Disease John Steele Taylor, MD, UVMCC Memory Program Co-Director
Feb 22	MIND-ful Eating and Cognitive Health Diet Amy Nickerson, MS, RDN, UVM Nutrition and Food Sciences
March 7	The Challenges of Polypharmacy and Dementia; Tools for Deprescribing Amelia Gennari MD, UVMCC Geriatric Services and Marci Wood, PharmD
March 21	End of Life – Maximizing Advanced Directives Stephen Berns, MD, Director of Education for Palliative Medicine and the UVMCC Palliative Care Team

February 8 to March 21, 2024

Registration opens: Monday, December 11, 2023

Registration closes: Friday, January 26, 2024

Series information and registration link: will be posted and sent by email in early December

Closing Announcements

- Slides are posted at www.vtahec.org
- Recording of didactic portion will be sent by email to the full cohort
 - **All recordings are for the use of registered participants only**
- Please complete the evaluation survey
- CMIE information and session QR code auto-send after evaluation
- Please contact us with any questions, concerns, or suggestions:
 - Mary.Palumbo@med.uvm.edu
 - Patti.Smith-Urie@uvm.edu