Is the POST something done as a matter of standard care to be completed well in advance of a crisis?

Yes. In fact, the goal is to avoid a crisis in regard to the proper treatment response. The POST was developed principally to address end-of-life treatment decisions for persons with chronic conditions, and in particular to ensure that health care providers honor the wishes of individuals who do not want aggressive care and life-prolonging procedures when they are in a terminal condition. The POST works hand-in-hand with the advance directive, often ensuring, through the physician's order limiting the "scope of treatment" (for example, specifying palliative care instead of aggressive treatment), that the wishes of the patient as set out in the advance directive are honored. (I should note that people who do want aggressive care in these situations can also tell their doctors this, and they can set this out in their advance directive in the event they later become incapable of making their own decisions about care.) (See virginiapost.org for more information.)

When talking to clients who may ask about approx costs involved with guardianship do you have an approx. $$$ amount to complete this process?

The answer can vary significantly, depending upon the circumstances. If the person is involved with the local adult protective services unit (because of concerns about self-neglect, for example), the investigating agency might file the guardianship petition (utilizing the local county or city attorney's office, or, if it's in the agency's budget, a local attorney paid by the agency). If the family has to hire a private attorney to seek appointment of a guardian, the costs can range from several hundred dollars to three thousand dollars or more. If the guardianship is contested, costs will go up from there. It's important for the family to ask the attorney up front about fees. Virginia Code Section 64.2-2009 does authorize the Court to direct that the costs of the guardianship case – including the attorney's fees and related costs incurred by the petitioner – be paid from the incapacitated person's estate, so that the family members do not bear this financial burden. But it's still a financial burden to someone.

Can you please remind us about the difference between Guardianship and Conservatorship? Thank you

In Virginia, conservatorship refers to appointment of a person to manage the property and finances of the incapacitated individual, while a guardianship refers to appointment of a person to manage the care of the incapacitated individual (medical care, place of residence, participation in activities, etc.).

If someone is listed as the agent on the advance directive and the person has dementia - can the agent dictate who can visit and can the agent restrict visitation?

A person, in their advance directive, can give the agent the authority to determine who can and cannot visit. (The person can also give instructions in the advance directive about visitation, but, when this is done, every change of mind about those visitation instructions requires amending or re-making the advance directive.) This only became

part of the law in Virginia in July of 2009, so an agent appointed under an advance directive executed before July of 2009 does not have this authority (unless the advance directive was later amended to specifically include it). Please note: The "model" advance directive set out in Va. Code Section 54.1-2984 specifically grants to the agent the authority to make decisions about visitation. It is my opinion that an advance directive would have to specifically grant this authority to the agent, or specifically incorporate the powers listed in Section 54.1-2984, by reference, for the agent to have this power. In addition, this power is still subject to the visitation rules of the facility involved (just as the person, if still capable, would have to comply with facility visitation rules).

What is difference in advance directive and psychiatric advance directive?

A "psychiatric advance directive" ("PAD") in most jurisdictions is a set of instructions that an individual provides regarding the care that the person wishes to receive, and the care the person refuses (for example, certain medications) in the event the person becomes incapable of making informed decisions about psychiatric care. The Virginia General Assembly, based on the recommendations of the Mental Health Law Reform Commission, chose not to create a separate legal category in Virginia law of "psychiatric advance directive". Instead, the advance directive is intended to include both general health care instructions and mental health care instructions. Because Virginia law does not require that an advance directive take a particular form (other than including the signature of the person making the directive and the signatures of two adult witnesses), and does not dictate what health care issues a person must address in their advance directive, anyone is free to develop and execute a PAD that is valid in Virginia. (A Virginia-based PAD is on the www.virginiaadvancedirectives.org website.) The "long form" advance directive that we included in the handouts includes a great deal of specific information about mental health care that is typical of the PAD, along with the end-of-life care instructions that are typical of most advance directives. In addition, unlike the PAD, the Virginia advance directive also includes provisions for appointing and setting out the powers of the health care agent.

Were the patient populations in the "evidence of clinical utility" inclusive of both medical as well as mental illness?

This research actually involved psychiatric advance directives (PADs) that were completed with the help of facilitators in a study carried out by Duke University researchers in North Carolina. So, the "clinical utility" review refers only to mental health care.

Is the expanded VA AD recognized in other states?

The answer is the same for both the "standard" AD and the "expanded" AD: it depends.

Each state has its own standards for recognizing advance directives from other states. Virginia's "reciprocity" statute on this (Section 54.1-2993) states that advance directives from other states will be honored here if they were made in compliance with the laws of

Virginia or with the laws of the state where they were executed. North Carolina has similar language in its "reciprocity" statute, so an advance directive that is executed in Virginia and is valid here is also valid in North Carolina, even though North Carolina has more stringent standards for its advance directives (for example, they must be notarized when executed in North Carolina). You will need to check the "reciprocity" statutes of the states that are a concern for you. We are working on a form that has all the "formalities" (notary statement and signature, witness statements, and other requirements) to comply with the requirements of (almost) all of the states.

We should also note that not all states specifically recognize the right of a person to appoint an agent for purposes of making mental health care (including psychiatric hospitalization) decisions, and very few (Vermont is the only one I can confirm right now) include the "protest" provision that Virginia provides to enable a person to give the agent the authority to consent to treatment over the person's objection. So, it's possible that, if an agent attempts to make decisions for an incapacitated person when that person is receiving treatment in another state, the treatment providers in that other state may not (be able to) recognize all of the decision-making powers that the agent would have if the person were receiving treatment in Virginia.

Is there a requirement to include the Ulysses clause?

No.

Can one presenter review capacity versus competency?

The language in Virginia's statutes has evolved over the years to the point that "capacity" and "competency" are highly overlapping and essentially identical concepts. The main area where the concept of "competency" is most frequently used today is in regard to competency to stand trial, which is a narrow concept relating to a criminal defendant's capacity to understand the charges, understand the nature of the criminal proceedings, and assist legal counsel in defending against the charges and participate in the hearing.

The term "mentally incompetent" is also used in Article II, Section 1, in the Virginia Constitution, which provides that no person who has been adjudicated to be "mentally incompetent" shall have the right to vote until competency is restored. Under Virginia's guardianship statute, the Court has to find (by clear and convincing evidence) that a person is "incapacitated" before appointing a guardian (and/or conservator) for that person. Under Section 64.2-2009 of the Virginia Code, if the Court finds that a person Is "incapacitated", that finding is deemed to be a finding that the person is "mentally incompetent" as set out in Article II, Section 1 of the Virginia Constitution (with the result that the person loses the right to vote) *unless* the Court specifically provides that the finding of incapacity shall not be deemed to be a finding of mental incompetence.

What is the legal minimal age to be considered an adult in Virginia? 18 or 21 years old?

In Virginia, you're an adult at 18. You still can't legally buy alcohol until age 21, but you're legally an adult.
(Note: Virginia law (Section 54.1-2969(E)) treats minors as adults for certain limited purposes. For example, a minor is "deemed an adult" for purposes of consenting to outpatient mental health and substance abuse treatment; birth control, pregnancy and family planning services; and treatment of venereal disease and other infectious/contagious diseases.)

What happens when there are 2 guardians appointed and they don't agree on the action needed?

If you have co-guardians with the same decision-making authority, then their disagreement results in a stalemate. That is why it is best to have one guardian. We strongly encourage people to also have a "successor" guardian, who can act when the primary guardian is unavailable or unwilling to act. (Note: there is no legal requirement that a person appointed as guardian actually carry out the powers of the guardian. That person can walk away from the job at any time. That's why it's also important to ensure that the person appointed is willing and able to do the job.)