

Avoid Guardianships and Family Disharmony with Healthcare Planning

By Wesley E. Wright and Molly Dear Abshire, as published in the Houston Chronicle Senior Living Section on October 1, 2002.

Advances in modern medical technology are prolonging the lives of the elderly beyond the life spans of previous generations. Today, senior citizens are at greater risk than ever before of eventually facing serious incapacitating medical conditions, such as Alzheimer's or Parkinson's disease. Traditionally, attorneys have only helped clients plan their estates and decide who would make financial decisions for them if they were to become incapacitated. Now, attorneys must also help clients address healthcare issues that could arise in the future.

The law makes it clear that everyone has a right to make decisions regarding his or her own body and to choose the type of medical treatment that will be performed in case of illness or injury. It is important for attorneys to learn the elderly client's wishes concerning life-prolonging technology. Once this is understood, a plan can be developed and the legal tools put in place that can be relied upon, if needed, to carry out the client's healthcare choices and end-of-life decisions.

Difficulties can arise when no such documents are available. Without well-coordinated planning, someone else must make decisions for the person who no longer has the ability to manage his or her own personal or financial affairs. The formal method used to appoint the alternate decision maker is called a guardianship. Guardianship, which requires court involvement, is sometimes an undesired, yet unavoidable, solution for the management of an incapacitated person's life. The guardianship proceeding that only seeks to appoint a guardian to make personal and healthcare decisions for the incapacitated person is known as a guardianship of the person. In this case, the court appoints either a spouse, adult child, other relative or friend to act in personal and health-related matters on behalf of the incapacitated person, who then becomes the guardian's ward." A guardian of the person has a great deal of control over the ward's life and is obligated to act in the ward's best interest.

For various reasons, guardianships can cause conflict among family members. It is not uncommon, for example, for siblings to disagree about who will be appointed guardian. Money can be another source of contention, since guardianships can be expensive. Typical costs include attorneys' fees for setting up the guardianship and assisting in the preparation of yearly reports. If a guardian of the estate is also appointed, attorney's fees can become substantial. To reduce the risk of potential disharmony and to have a better opportunity to avoid guardianship, it is wise to prepare a coordinated plan that includes advance directives.

Advance planning ensures that appropriate healthcare decisions are made. Planning techniques include the medical power of attorney and living will. The medical power of attorney allows the person to choose an agent to make healthcare decisions in the event of his or her incapacity without giving control to the court. This power of attorney allows the agent to carry out the client's wishes and exercise discretion as needed. It also gives the agent the authority to respond to medical emergencies, consult directly with physicians, and hire or fire medical professionals.

The living will, also called a directive to physicians, addresses end-of-life decisions. This document explains a patient's wishes in case the patient's condition becomes terminal while he or she is incapacitated. This document explains when and under what circumstances life-sustaining measures should be withheld or withdrawn.

As America grows older, there is a stronger need than ever before to adequately plan for making healthcare decisions in case of incapacity. Simply put, advance directives make the incapacitated person's choices known beforehand and may lessen the risk of family disharmony. Next month we will take a more in-depth look at the medical power of attorney.