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Hospice Care and Planning

Overcoming Objections to Giving Power of Attorney

As an elder law attorney, I think everyone should have financial and health care powers of attorney in place.

From my perspective, it's a "no-brainer." If I ever become incapacitated, I want to have as much say-so as possible regarding the important health care and financial decisions that are going to have to be made on my behalf. Mind you, I don't relish the idea of becoming incapacitated. I hope it never happens. But I want to be prepared, just in case.

As I write this, my fiancée', Laura, is scheduled for brain surgery tomorrow. The surgery has a 98% success rate, and she has the support of a whole bunch of prayers, and so I'm confident that everything will go well. Still, brain surgery is brain surgery.

I was surprised to learn, a couple weeks ago, that Laura, who is 52, did not have powers of attorney in place. I suggested that "of course" she would want to get that done before the surgery. Laura is a very bright woman, and I knew that, being engaged to a lawyer, she wouldn't have to deal with the irrational – but too often present – "fear of going to see a lawyer." I figured she would immediately agree, and that it would get done right away.

I'm happy to report that she signed her powers of attorney yesterday. But not, mind you, without first engaging in some serious wailing and gnashing of teeth.

The process afforded me some insight into the concerns people have, and the excuses they give, for not putting powers of attorney in place. I want to address them here, in hopes that this will get passed along to people who need to get this done, but keep putting it off.

"This will alarm my family." It really won't. The fact that you're going on hospice, or that you've been diag-

nosed with cancer, or that you're having major surgery, or even that you've decided to vacation in Pakistan – now those are things that will alarm your family. The message you will send them by putting powers of attorney in place is that you have your wits about you, and want to be prepared, because you care. That's comforting, not alarming.

"Everything's going to be fine, so there's no need."

First of all, I certainly hope so. But think about that one for a minute. If you want to live in denial of the fact – yes, it's a fact – that bad things sometimes happen, you might as well go ahead and cancel your homeowner's insurance, pull the safety guards off your appliances and cross streets without looking. This isn't about "keeping a positive attitude." It's about taking reasonable precautions.

"By naming one family member, I'm going to offend the ones I don't name."

First, I can tell you from experience that that's much less true than what you fear. You're not handing out goodies here; you're assigning chores. More often than not, when I talk to the family members who aren't named, they pull me aside and say "I'm glad I'm not the one who got stuck with that responsibility."

Second, this one's easy to deal with, in a couple of ways. We can include a provision that says "In acting under this power of attorney, my attorney-in-fact shall consult with my other living children [or other family members, as the case may be] to the greatest extent reasonably possible, so as to reflect shared decisions." Also, it works wonders to just say "The lawyer said I needed to name one person as first choice as power of attorney. I chose your brother, but don't read anything bad into that. I love you every bit as much. I always have, and always will. Come here, and let me give you a big hug." It's hard to take offense at somebody who just told you they loved you and gave you a big hug.

“If I do this and don’t name [fill in name here], he’ll cause trouble.” If you’re incapacitated and unable to speak or act for yourself, and it turns out that there is a “trouble-maker” in the family, signing powers of attorney will be one of the best things you will have ever done. It will put someone in charge, who can get things done on your behalf immediately. Without powers of attorney in place, no one will be able to speak or act on your behalf without first going to court to be appointed as guardian or conservator. That will involve a lawsuit in which the trouble-maker will have the legal right to hold up the works by claiming that he or she should be appointed. Those battles often get decided by mud-slinging contests played out in court.

The point is this: there’s no way to completely stop a trouble-maker from trying to cause trouble. But signing powers of attorney will assure that you’ll get the right person in charge, who will be able to represent you, without delay, in making the important health care and financial decisions that will need to be made.

“None of the choices about life-sustaining treatment on the health care power of attorney form really reflect my thoughts and feelings.” There’s no way any form can exactly express any human being’s wishes on a subject that complex. The main thing you accomplish in signing a health care power of attorney is to give the person you name the authority to express your wishes to your health care provid-

ers and to make decisions on your behalf that reflect those wishes. You don’t need or want to just rely on the form. You should sit down with the person you name, and talk about what you would want to happen.

“I can’t afford it.” Helping people with powers of attorney is one of the least expensive services that lawyers provide. By contrast, court proceedings to establish a guardianship or conservatorship cost at least ten times as much, even if they’re uncontested. Contested proceedings can cost the proverbial “arm and a leg.”

Moreover, there was a study done about 20 years ago that compared the cost of a final hospitalization of people who had powers of attorney in place and those who didn’t. It was around \$31,000 for the ones who did, and around \$95,000 for the ones who didn’t. I recall doing a newsletter back then referring to the question whether someone had powers of attorney in place as “the \$64,000 question.” Nowadays, it would probably be more like “the \$200,000 question.” *Spending a little and saving a lot is a good thing.*

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The e-mail newsletter will give you immediate access to our websites www.CoulsonLawGroup.com, www.QualifyForMedicaid.com, and

A Few Changes @ The Coulson Law Group

The Coulson Law Group welcomed two new staff members at the conclusion of 2007.

Steve Held has assumed the position of Education and Outreach Manager. Steve comes to us from the SIUE School of Nursing where he served as the Director of Enrollment Management. His 17 years of higher education experience included time at Saint Louis University where he worked with the Nursing school and the School of Medicine. Steve is an SIUE alumnus and lives in Edwardsville with his wife, who is a Developmental Therapist, and two school-aged children. Steve will visit facilities, make contact with key individuals, and plan and execute educational programming. If you would like to arrange a presentation, workshop, or seminar you can reach Steve via email at steve@coulsonlawgroup.com or by calling either of our offices.

The second addition is Cindy Ruecker, our new Legal Secretary. Cindy and her husband are recent transplants from San Diego, California. Cindy worked for law firms in San Diego in addition to raising a family, which include two current college students and a would-be graduate student. We’re happy that Cindy has joined us—though it might take her a little while to get used to the Midwestern climate.

“YOUR LIFE, YOUR LEGACY” NEWSLETTER TO LAUNCH NEXT MONTH

We will be consolidating the Medicaid Planning and Hospice newsletters into a single newsletter, “Your Life, Your Legacy,” to reflect that, as elder law attorneys in the 21st Century, our practice increasingly involves helping people at a much earlier stage of life than when they are facing the immediate prospect of nursing home placement or dealing with end-of-life issues.

More and more people are turning to us for planning assistance at the first onset of a disease that might eventually result in nursing home placement or death. Moreover, more and more people are coming to the wise realization that the best approach of all is to deal with these potential issues as an important element of their overall estate plan, so that they will be prepared for whatever life may bring their way.

We don’t just help people deal with situations when they reach the point that “something needs to be done” although we still help many people in those situations. We also help them to prepare for, and help guide them through, the legal/social/medical processes associated with aging that can, for many people, be a source of great uncertainty and worry.

We want our newsletter to open people’s eyes to all of the ways in which we can help them, and to realize that planning isn’t just a one-time event, but rather a continuing process that can evolve to best meet our needs

Hospice Care and Planning is written by the attorneys of The Coulson Law Group, Wesley J. Coulson and Joseph Ilges, and is published as a service of The Coulson Law Group, 1001 Craig Road, Suite 224, St. Louis, Missouri 63146; 101 Southpointe Drive, Suite B, Edwardsville, Illinois 62025. This is for general informational purposes only and does not constitute legal advice. For specific questions, you should consult a qualified attorney.

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