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VOLUME 1, ISSUE 5

MAY 2007

Hospice Care and Planning

Financial Powers of Attorney: A Short Primer

One of the most important legal documents an adult can put into place is a Durable Power of Attorney for Property and Finances. This document, which can be signed by anyone age 18 or older, allows individuals to name someone to handle all of their financial decisions if they are ever unable to make them for themselves.

Most people mistakenly assume a spouse or adult child can step in and take care of these decisions if an accident or debilitating illness leaves their loved one without capacity. In fact, there are only two ways to obtain the right to handle the finances of another. One involves petitioning the courts for the right to act on behalf of a loved one and then providing the courts with an annual accountings of how funds were handled. The other is simply signing a Durable Power of Attorney before capacity is lost.

As simple as a Power of Attorney is to sign, the document should never be taken lightly. The person granting this power (the "Principal") gives the recipient (the "Agent") broad and sweeping power to handle their financial affairs. So, it is extremely important that the Principal really trust their Agent.

Someday, that person may be making all of the decisions about your money and your property. This means your Agent can sell real estate or spend and invest your money without notifying you or getting your approval. Depending on the way it is drafted, these powers can be used as soon as the document is signed or they can be withheld until after the Principal becomes incapacitated.

Laws in both Illinois and Missouri do allow for what is known as a "springing" Power of Attorney. This document does not grant the agent any authority until one (or two) doctors declare the Principal incompetent to make decisions personally. While this does have some advantages in certain situations, there are pitfalls.

An individual who is not incapacitated may nevertheless be bedfast, confined to a nursing home or even away on a long vacation. There are definite advantages to having someone with the legal authority to handle your financial matters, handle bill payments,

make trips to the bank or oversee and authorize home repairs. A "springing" Power of Attorney does not give authority in those situations.

You have the right to limit your Agent's powers. You also have the right to revoke or take back a Durable Power of Attorney at any time as long as you are of sound mind. But, again, it is important to select an Agent you trust.

So, what are the responsibilities of an Agent? Anyone who takes on this role for a loved one has a duty (called a "fiduciary duty") to exercise prudence and caution when dealing with the Principal's assets. The Agent must act in the Principal's best interest at all times.

The Agent can be held liable for any damages resulting from a breach of their duties. That means an Agent should keep very concise and accurate financial records. An Agent must not take any actions with regards to the Principal's finances unless clearly authorized to do so.

An Agent is not entitled to use the Principal's money for their own benefit, nor can they make gifts of the Principal's money unless the Power of Attorney document specifically authorizes this. So, it's important that the Agent always be clear when signing any document that they are acting on the Principal's behalf. For example, sign "Jane Doe, by her attorney-in-fact, John Doe." This avoids personal liability for the Agent. An Agent should carefully read the Power of Attorney to see what it does and does not authorize, and should consult with an attorney before taking any "non-routine" action that the document does not clearly authorize.

The power of an Agent ends upon the death of the Principal. The Agent does not have the authority under a Durable Power of Attorney to handle the estate of their loved ones. This power must be granted in a Last Will and Testament or by the Probate court.

Before signing a Power of Attorney, it is important to consult a knowledgeable estate planning attorney to make sure the proper language is put in place to best suit your particular needs.

Ask the Expert . . .

Easing the Mind - You Have Choices and You Have Benefits

By: Jennifer Trudeau
Bethesda Hospice Care

For our loved ones and ourselves, we go to significant measures to prepare, anticipate and acknowledge the natural progression of aging. We plan financially, emotionally and physically. However, very few plan or dare to speak of how we wish to or how we plan to embrace life limiting illnesses or declining health.

For years, hospice professionals have passionately shared the many wonders and truth about what hospice really means. People in general hear the word hospice and still think of "a place" or of someone dying of cancer, or that hospice means "death".

The comforting truth is, hospice is about living each day to its fullest when faced with a life limiting illness. The fact is hospice is a wonderful program that has extensive coverage under Medicare and Medicaid. Hospice is available for many illnesses such as heart, lung, liver, kidneys and the many forms of dementia. Professional hospice caregivers go wherever the patient may reside for services and treat and manage pain for the patient and the family as a unit physically, emotionally, and spiritually. When people and their families feel informed and choose hospice, they choose an expert compassionate team to help manage their discomfort, address their fears, and celebrate their lives in the most dignified loving way possible.

Would you like to be added to our mailing list for *Hospice Care and Planning* or be a guest columnist? If so, please contact our Director of Community Education and Outreach, Beth Frame, at (314) 567-9292 or (618) 659-9292, or email to beth@coulsonlawgroup.com to be included.

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Consultation in palliative care: The relevance of clarification of problems

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Journal: European Journal of Cancer 2007; Jan 43 (2): 316-22

Palliative Care Consultation (PCC) teams have been primarily organized by palliative care professionals using a multidisciplinary approach with the aim to advise and support medical professionals who have less experience in the care of patients with symptoms due to an advanced, or terminal, stage of their disease. Some teams are based in hospitals, others in primary care settings. The patient's problems are presented to the PCC team by a medical professional. During this meeting other problems may then emerge.

The PCC team's consultation may be performed by phone with no contact with the patient or at the bedside in the presence of the consulting professional.

The aim of this study is to verify the type and frequency of newly identified problems during the consultation with a PCC team using a process of clarification and exploration of the problems described by the professionals.

A theory states that new problems identified by the PCC team were frequently psychosocial or spiritual and were not considered problems by the professionals.

During the period between 1st March 2001 and 1st March 2003, twenty-three PCC teams participated in this descriptive study.

The following data were collected: the characteristics of the medical professional and the patients; the initial list of problems of the patients for whom the consultation was requested; the newly identified list of problems.

There were 3,416 patients in the study. Because of the different geographical regions involved in the study, bedside consultations varied from 4% to 44%. General practitioners required more frequent consultations (83% in region 5 compared to 48% in region 2).

The initial number of patient-related problems was 6001 and was increased by 7854 after clarification and investigation by the experts resulting in a total number of 13855 identified problems. Fifty-seven percent of these problems were newly identified.

Of the new problems, 53% had to do with physical problems, 70% had to do with the psychosocial sphere and 52% were connected with management problems. Most of the new problems (69.5%) were identified at the bedside consultation through clarification and 47.4 % were recognized by telephone consultation.

Pain and constipation were the most frequent identified new physical problems and were related to the dosage of medication.

Acceptance of illness (75.1%) and grief (79.5%) were the newly identified problems in the psychosocial and spiritual realm.

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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; 107 Southpointe Drive, Suite 2, Edwardsville, Illinois 62025. This is for general informational purposes only and does not constitute legal advice. For specific questions, you should consult a qualified

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