

Legally Speaking

Healthy Estate Plan Is No Accident

Over the past few months, I have addressed two important estate planning documents: the Will and Statutory Durable Power of Attorney. Both documents relate to one's financial affairs, but each takes effect at different times. The Will states how an individual's property is to be distributed after death, and the Statutory Durable Power of Attorney provides for the management of an individual's property while they are living. A healthy estate plan will also include two other documents – the Medical Power of Attorney and the Directive to Physicians and Family or Surrogates, both of which deal with health matters only. All too often, estate plans lack these documents, forcing family members into legal battles, or to stand by helplessly as very difficult decisions are made on behalf of their loved ones.

The **Medical Power of Attorney** allows the principal to appoint an agent to make health care decisions on his or her behalf. This document becomes effective if the principal is unable, due to some temporary or more long-term incapacity, to make a medical decision when one is required. In such instance, the agent may make any health care decision on the principal's life that the principal could make on his or her own life, including approving or withholding the authority to perform tests, procedures and/or surgeries of any kind. While this document is important, it doesn't go far enough. It is a good idea for a Medical Power of Attorney to state that the agent shall act consistently with and shall direct any attending physician to act consistently with any validly executed Directive to Physicians and Family or Surrogates.

The **Directive to Physicians and Family or Surrogates** is a document which allows you to choose how you would like your life to end if you are diagnosed with either a terminal or irreversible condition. You can elect to be given pain medication and kept comfortable or to be kept alive using available life-sustaining treatment. The point in time at which an agent's authority under a Medical Power of Attorney ends and the Directive to Physicians and Family or Surrogates must be followed would appear to be a gray area. That is why it is important to state that the agent acting under a Medical Power of Attorney must honor the Directive to Physicians and Family or Surrogates.

A copy of both the Medical Power of Attorney and the Directive to Physicians and Family or Surrogates should be given to one's physicians. A copy of the Directive to Physicians and Family or Surrogates should also be given to family members who are entrusted to follow this document.

Regardless of their estate's value, my clients all have one thing in common -- they are deeply concerned about how their life will end, especially if they no longer have quality of life. If you ever doubt the seriousness of these decisions and issues, you only need look to the State of Florida where since 1990 Terri Shindler-Schiavo's life has been the subject of a life or death battle between her husband and her parents. To avoid

this situation, you should ensure your intentions and desires are well verbalized and documented to all physicians and family members.

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