

# ESTATE PLANNING:

What doctors  
should know for  
work and for  
home

**Brought to you by:**

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# Disclaimer

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I do not have a conflict of interest in presenting to OOA

# What will be covered today

- Estate Planning documents you might experience in practice
  - Medical power of attorney/Healthcare proxy
  - Advanced healthcare directive
- Your role in the implementation of these documents
- What estate planning should look like for you and your family

# Medical Power of Attorney/HC Proxy

What a Medical Power of Attorney or Healthcare Proxy may do:

1. Consent or refuse consent to any care, treatment, service, or procedure to maintain, diagnose, or otherwise affect a physical or mental condition;
2. Select or discharge health care providers and facilities; and
3. Sign a do-not-resuscitate consent.

# Advanced Healthcare Directive

- This document that allows an individual to instruct their attending physician whether or not they wish to be given life-sustaining treatments and/or artificially administered nutrition and hydration and to give other medical directions that impact the end of life – this is the “Living Will Declaration”
- Allows appointment of a Healthcare Proxy
- Indicate preference for organ donation
- Grants of HIPAA Authorization

# Living Will

- Allows you specify what your wishes are, in the event that you become incapacitated, and unable to make decisions regarding your health care.
- Individuals are able to decide what to do in three scenarios and are able to make three decisions on what to do in those scenarios
  - Terminal Condition
  - Persistently unconscious
  - End Stage Condition

# Living Will – Scenarios

- Terminal Condition is caused by an illness or injury that is incurable and cannot be reversed. In order to be considered terminal, two physicians must agree that, even with medical treatment, death will likely occur within six months.
- Persistently Unconscious State or Persistent Vegetative State (PVS) is a deep and permanent unconsciousness. Patients in this condition may have open eyes, but they have very little brain activity and are capable only of involuntary and reflexive movements. Confirming a diagnosis of PVS requires many tests that may take several months to complete. Unlike patients with other types of coma-like conditions, patients in PVS will never “wake up” or regain health. Patient in PVS cannot feel hunger, thirst or pain.

# Living Will – Scenarios cont.

- End-Stage Condition is a condition caused by injury, disease or illness that results in a gradual and irreversible loss of mental and physical abilities. A person with an end-stage condition may be unable to speak or walk, may be unable to control bowel and bladder functions, may have decreased appetite and difficulty swallowing and eating, and may not recognize loved ones. Examples of end-stage conditions include dementia caused by Alzheimer's disease or severe stroke. Medical treatments of these conditions will not improve the patient's chances of recovery.
- Oklahoma law requires that both your attending physician and another physician who has examined you determine that you are incapable of making an informed decision. This determination has to become part of your medical record.



# Living Will – Choices

- Life-sustaining treatment: any kind of medical treatment designed to prolong a patient's life. For example, a ventilator, feeding tube, or dialysis can assist the body to function if the body's natural systems fail.
- No Life sustaining Treatment except for Artificial nutrition and hydration
- No Life sustaining Treatment: If there is no chance of recovery, life-sustaining treatment may be withheld or withdrawn to allow a natural death. However, you will still receive pain treatment to keep you as comfortable as possible.

# Advanced Healthcare Directive v. DNR

- A DNR consent form deals only with the subject of cardiopulmonary resuscitation (CPR) in the event of a cardiac or respiratory arrest. In such a document, a person can state that the person does not consent to the administration of CPR in the event the person's heart stops beating or the person stops breathing.
- An advance says that if you have a certain medical condition, you do want, or do not want, life-sustaining treatment, food, or water.

# Why you should make an Estate Plan

- Saves Money
- Saves Heartache
- Saves on Taxes
- Provides Predictability
- Leaves a roadmap, not a mess

# What your plan should consist of

- Trust AND Will
- Nomination of Guardian
- Advanced Healthcare Directive
- Durable Power of Attorney

# Trust v. Will

## Trust

- Makes your wishes known
- Avoids probate, is private
- Can provide creditor protection for beneficiaries
- Effective in Life
- Allows for control beyond the grave
- Plans around mixed family

## Will (on its own)

- Makes your wishes known
- Must go through a public probate
- Only effective upon death

# Revocable/Living Trusts

## Can be amended!

- Allows control over timing and terms of distributions to beneficiaries
- Often used to protect assets from creditors of a beneficiary (person receiving from the trust after the grantor has passed)
- Assets are still subject to creditor claims of the grantor/testator (who established the trust)
- Allows for estate tax planning and savings especially for married couples (Marital and Family Trusts)

May be established during your lifetime and paired with a “pour-over” will as your primary estate planning document

# Irrevocable Trusts

## Can not be amended by the donor after creation

- Any property placed into the trust may only be distributed by the trustee
- Actions can only be taken if provided for in the trust document itself
- Assets cannot be moved after placed into an irrevocable trust
- Often used by individuals with a high level of liability (Doctors, Lawyers, CPAs, etc.)
- Used to help reduce or defer high value assets such as life insurance

# Domestic Asset Protection Trust

This is an irrevocable trust that provides a higher level of protection from lawsuits or creditors.

- This type of trust locks your assets away, managed by a trustee for your benefit and goes to your spouse and children if you pass away.
- Specifically recommended for individuals in high-risk professions with a large amount of assets that could be sought through a lawsuit.
- DAPT Trust assets typically include: (1) cash, (2) securities, (3) limited liability companies (LLCs), (4) business assets like intellectual property, inventory and equipment, (5) real estate, and (6) recreational assets such as aircraft and boats



# Power of Attorney

- Authorizes a designated person to act on your behalf in making financial/legal decisions
- Used when authorized or when you are incapacitated
- Avoids guardianships/conservatorships
- Important for anyone over the age of 18

# Nomination of Guardian

- A nomination of guardian form allows a parent to choose who would take care of their child, should they no longer be able to care for them
  - Avoids lengthy guardianship hearings
- This nomination is also available for adults, and can be made through their Power of Attorney

# Other Important EP Documents

- Deeds
  - Effective in life and after death.
  - Can be held by the trust, but without a trust TOD is just as effective.
- Disposal of Remains documents
  - Effective on death
  - Avoids arguments surrounding method of Burial
- Beneficiary Designations (on financial assets)
  - Effective at death
  - Avoid Probate

# QUESTIONS?

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