The Weekly Scenario: Health Care Directives

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A common mistake is to assume that estate planning is solely about ‘death’ planning and writing wills (and trusts) to make sure that your property is distributed according to your wishes after your death. Planning for incapacity or disability planning is often overlooked, but it can be essential because it addresses what happens if you are unable to make medical decisions or handle your financial affairs because of an injury or medical condition.

In most states, your wishes regarding your medical treatment may be made known by executing an advance directive to express your healthcare wishes.

A healthcare directive often contains both healthcare Power of Attorney provisions in addition to a “Living” Will.

Healthcare directives will allow you to express which kinds of medical treatments should be withheld. For example, you may specify that you would not want surgery, respirators, or other life-prolonging procedures to be used if there is no reasonable expectation of your recovery. Once you have executed a healthcare directive, you have the option to change it or revoke it at any time. Living wills take effect when your death can no longer be significantly delayed by treatment. Healthcare directives, in contrast, will generally become effective as soon as you are unable to speak for yourself due to a terminal or end-stage medical condition or coma.

The healthcare Power of Attorney allows you to appoint an agent to make healthcare decisions on your behalf should you become unable to communicate your healthcare wishes yourself. You can specify that your agent must make healthcare wishes according to what is stated in your healthcare directive. If your healthcare directive does not address a particular situation, or your desire is to give your agent authority to make all medical decisions for you, you can direct your agent to decide based on the preferences you have expressed to that person (within or outside the document).

In addition to making healthcare decisions on your behalf, your agent can be empowered to:

- Check you in and out of hospitals and medical facilities
- Hire and fire medical staff responsible for your care
- Receive information concerning your care
- Review your medical records
- Speak to insurance providers

It is essential to have a medical directive as part of any estate plan.

As always, if you have any questions or would like to learn more, please contact Steve Shane at sshane@offitkurman.com or 301.575.0313.