

PREVENTATIVE MEDICINE: TAKING CARE OF YOURSELF, LEGALLY SPEAKING

By Robert Prior



We live in a litigious society. Each year, 15 million civil cases are filed in the United States. That should take your breath away. You can be sued for anything, at anytime, even if you did nothing wrong. For professionals like doctors, lawyers, architects, and business owners, lawsuits are even more likely. If a lawsuit results in a judgment against you, the plaintiff can seize your assets - your financial accounts as well as your home and business - to satisfy the judgment.

If you become disabled, incapacitated, or incompetent, someone else will have to make decisions regarding your finances, your personal care, and your medical treatment. If you plan properly, you can designate who will make those decisions and leave instructions on what you want done. When it comes to your legal health, an ounce of prevention is worth a pound of cure.

If you fail to plan, your spouse or children (or other interested persons) may be forced to file a petition in the local probate court to be appointed conservator (in charge of your property) and guardian (your caretaker). The process typically requires the persons desiring to be named hiring an attorney to prepare the petition, obtaining affidavits from court appointed doctors regarding your competency, and appointment of a guardian ad litem to represent your interests (typically an additional attorney). If there is disagreement, then contested hearings have to be held and the local probate judge makes the final decision. This can be a long and expensive process and may result in the last

person you would have selected becoming empowered to handle your finances and make decisions regarding your health care.

Regarding your finances, how your assets are titled will control who has the authority to manage them. A joint checking account with your spouse will be controlled by your spouse, but real estate or other assets held jointly may require additional documentation to manage. The preferred method to handle financial matters is a revocable living trust that holds title to all of your assets and designates a successor trustee to manage those assets. This could be supplemented with, and in some cases replaced by, a comprehensive financial power of attorney that is drafted to survive your incapacity and appoints an agent to make financial decisions on your behalf.

Regarding health care decisions, durable powers of attorney for health care and living wills may be used to specify your wishes regarding your health care matters and whether you want life support if you are in a condition to require it. These documents are often collectively referred to as health care directives or health care proxies.

A living will is a document that states your wishes regarding whether life sustaining or death delaying procedures, including food and water, should be withheld or withdrawn in certain limited circumstances. A living will is effective in the event you suffer from a terminal illness, a coma with no reasonable expectation of recovery, or a persistent vegetative state with no reasonable expectation of regaining significant cognitive function.

A durable power of attorney for healthcare appoints an agent to act on your behalf in matters relating to your personal care, medical treatment, hospitalization, and health care. These powers include an authorization to require, withhold, or withdraw any type of medical treatment or procedure. Unlike a living will which applies to end-of-life decisions, a health care power of attorney may apply to much broader situations in which a medical decision must be made.

Living wills and health care powers of attorney must be distinguished from Do Not Resuscitate (DNR) orders. A DNR order instructs medical professionals not to perform CPR if the patient's breathing or heartbeat stops. It is only about CPR and does not address any other treatment. DNR orders are typically used in a hospital or nursing home setting, or for patients at home. In the hospital setting, DNR orders tell the medical staff not to revive the patient if cardiac arrest occurs. In a nursing home or home setting, a DNR order tells the staff and emergency medical personnel not to perform emergency resuscitation and not to transfer the patient to a hospital for CPR.

The documents discussed above are generally not complex and do not take long to complete. Taking the time to handle these matters now can save your family chaos and uncertainty if they are ever needed. Consult with an estate planning attorney to ensure you are legally healthy.



Bob Prior is a partner in the Athens law firm of Prior, Daniel & Wiltshire, LLC. His practice is focused on estate planning and elder law. Mr. Prior is a former Marine infantry officer and JAG and has been in private practice for twenty years.

Estate Planning Elder Law

Robert T. Prior, Sr., J.D., LL.M.

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706.342.0606

bprior@pdwlawfirm.com