WILLMS, S.C.

LAW FIRM

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TO: Clients and Friends of Willms, S.C.

FROM: Jessica A. Liebau

DATE: November 27, 2013

RE: A Discussion of Health Care Powers of Attorney

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Introduction

We frequently receive questions from our clients regarding health care documents. Most people understand they need them, but have questions regarding what the documents actually can or should do. This brief article identifies and answers some of the most frequently-asked questions we receive, and will be part of an ongoing series on health care decision-making.

Frequently-Asked Questions

What is a health care power of attorney?

A health care power of attorney is a legal document by which a principal (the person creating the document) nominates a health care "agent," i.e. a person to act on his or her behalf in making health care decisions. The document includes what the agent is and is not allowed to do in making health care decisions for the principal.

Why do I need a health care agent?

While you are alive and well, and of sound mind, your health care agent generally does not make any decisions for you. However, it is likely during your lifetime that you will at some point experience an illness or injury. If an important medical decision needs to be made and you aren't able to make it because you are sick, injured, or otherwise incapacitated, someone needs to be able to act on your behalf and make important health care decisions.

If such a situation arises and you have not appointed a health care agent to make decisions for you, a guardian must be appointed for you by the courts. This means spending substantially more time and money than you would to create a power of attorney. Even more importantly, you lose the ability to nominate your own agent and say what they can and cannot do for you. In other words, you lose control.

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What can my health care agent do?

In general, your health care agent is given the power to make medical decisions for you on your behalf. They must act in your best interest. They are given the power to consult with your health care providers, and to make an informed decision based on the information they receive.

There are also powers that you may or may not give your agent. For example, you can direct that your agent has the power to admit you to a nursing home for long-term care if that becomes necessary. If you do not specifically grant your agent this power, they cannot do so. Similarly, you can specify that your agent has the power to make end-of-life decisions for you in relation to artificial nutrition and hydration. If you do not specifically give your agent this power, they may not make such decisions. Many people, instead of granting their agent the sole authority to make end-of-life decisions, specifically state their end-of-life intentions in a Declaration to Physicians document.

How do I know that my health care agent and doctors will respect my wishes?

Executing a health care power of attorney where you specifically state your intentions is one step in taking control of your health care decisions. However, it is not the only step.

Along with creating and executing a health care power of attorney, you need people to know it exists! That means distributing the document to your agents and health care professionals, or at least having a copy readily available in an emergency situation. It also means talking to the people you have appointed as agents, as well as anyone else such as doctors and family members who may be involved in the process, and explaining what your intentions are and how you want them carried out. These people need to know what they are being asked to do, and you need to know that they are willing and able to do it.

Conclusion

In the future, we will be providing additional information on health care decision-making. If you have questions about the information above, or if you are having trouble developing a proper way to communicate your health care intentions, please let us know. We would be happy to work with you to develop a communication system that addresses your goals and concerns.

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