

"Mom, Help! I Need My Vaccine Records!" Essential Estate Planning Documents Our Adult Children Require

After my daughter left for college, I received a call from her one day asking me to send her a copy of her vaccination records. I called her doctor's office and was promptly informed that they could not release that information to me as my daughter was now over age 18. Regardless of the fact that I was present at every doctor's appointment from the time of her birth and was a witness to each of the vaccinations, all of a sudden my access to information was terminated. Legally as a parent, I understood that I now have no rights to help my children or assist in their decision making. I realized that as a parent of a young adult child, it was necessary to take the proper steps to ensure I would be able to help them in the event they were to become unable to make their own decisions.



Fortunately, this realization came to me in the form of a request for routine vaccination records - this realization can come under far worse circumstances. In a world when our children can be attending a music festival in Las Vegas or a nightclub in Orlando and are at risk of being injured by a shooter, it makes sense to have documents in place which enable us as parents to step in and help our children in the event of an emergency.



As estate planning attorneys, we always encourage our clients to establish documents to enable others to step in to act in the event of the individual's legal incapacity. Our young adult children require the same documents. These include:

◆ Durable Power of Attorney which permits the designated individual(s) to step in and make financial decisions in the event the principal is either unable to make his or her own decisions or, in certain specified circumstances, even while the principal is capable of making decisions (for example when my daughter went to Australia and New Zealand for a seven week study abroad program, I could cash checks payable to her or access her account to pay her bills with a properly structured power of attorney which was effective even while she was capable of handling her own financial matters). The ability of the principal to make decisions is commonly determined by two physicians who examine the principal and determine whether he or she is capable of making his or her financial decisions.

The Durable Power of Attorney may grant broad authority to the Agent to make any and all financial decisions or may be limited in scope (for example to handle the purchase or sale of real estate). Certain governmental agencies do not accept a Durable Power of Attorney, for example the Social Security Administration and the Department of Veterans Affairs. Also, many banking institutions are becoming increasingly wary of honoring Durable Powers of Attorney due to widespread abuse. Therefore, it is suggested that if a Durable Power of Attorney is executed, the principal and agent should take a copy of the document to the bank and sign signature cards to be used in the event of the principal's later incapacity (if the bank will hold the signature cards for future use).

◆ Patient Advocate Designation which enables the Patient Advocate to make the Patient's medical decisions in the event the Patient's primary physician and a second physician or licensed psychologist have examined the Patient and determined he or she is unable to make informed medical decisions.

The Patient Advocate should have authority to make any and all medical treatment decisions and should have access to the Patient's medical records. The Patient

should also specify whether or not the Patient Advocate may choose to refuse, withdraw or withhold life support ("pull the plug"). This authority is commonly triggered only if the Patient suffers from an incurable injury, disease or illness regarded as a terminal condition by two physicians who have determined that the application of life sustaining procedures, treatment, machinery or medication will only artificially prolong the dying process; or the Patient is in a permanent vegetative state or an irreversible coma as certified by two physicians who have determined that such treatment will only artificially prolong the Patient's life in a permanent vegetative state or irreversible coma.

Any special instructions the Patient has regarding donation of organs or burial/cremation should also be specified in the Patient Advocate Designation.

◆ Authorization Under The Health Insurance Portability And Accountability Act ("HIPAA") which grants authority to the designated "Personal Representatives" to have access to the individual's protected health information and medical records. This is crucial as the Patient Advocate Designation, and often the Durable Power of Attorney, only become effective following the determination of two physicians that the Patient/Principal is unable to make his or her own decisions. However, if the determination of the physicians is protected health information and cannot be disclosed, the only option to have that determination made available is to involve the Probate Court (avoidance of which is one of the reasons we prepare these documents).

◆ Last Will and Testament which designates who inherits and who is responsible to carry out the terms ("Personal Representative"). While not helpful in an emergency, and less important as State law provides rules governing the disposition of an individual's assets if he or she dies intestate (without a Will), a simple Will cannot hurt. Generally, more important is naming beneficiaries on retirement accounts and insurance policies and designating joint owners or payable on death beneficiaries on bank accounts and other investment accounts.



◆ Revocable Living Trust - when the individual marries, has a child and/or acquires assets with significant value, a Trust should be considered. The Trust provides a method to manage property in the event the creator becomes incapacitated, if properly funded can avoid probate and provides property management for the ultimate recipients. Further, a Trust may be revised as often as the creator chooses to address changes in circumstances and personal situations.

◆ Funeral Representative Designation which specifies the priority for appointment as "Funeral Representative" who is charged with making decisions regarding, and carrying out any special instructions with respect to, funeral and burial/cremation. A Funeral Representative Designation is similar to a Will in that it will not be helpful in an emergency and there are State laws providing default rules for priority of the appointment. However, it is a helpful document to have if there are specific wishes to be carried out or if the person(s) who would normally have priority to be appointed under State law are not those who would otherwise be selected.

While, as parents, we hope there will never be a need to act in a legal capacity for our children, having the proper documents in place offers peace of mind and ensures that we will not have to rely on the probate court system to obtain legal guardianship and conservatorship to act for our children, which is time consuming and can be expensive. For more information, contact [Lisa J. Walters](#) or any other of our [Estate Planning Attorneys](#).