

Estate Planning Documents – What Every Physician Must Have

by Lawrence B. Keller, CLU, ChFC & Doris L. Martin, Esq.

All physicians need to have certain legal documents as part of their estate plan. Even if you are young, have little or no assets, and are not married, it is important to execute the proper legal documents to ensure that your wishes regarding medical treatment and property distribution are respected and honored. Generally, four documents form the foundation of every estate plan — a last will and testament, a durable power of attorney, a healthcare representative appointment, and a living will.

Last Will and Testament

A **will** is the cornerstone of an estate plan. If your will is drafted properly and conforms to the law in your state, it will ensure that wishes regarding property distribution are recognized and legally enforceable. If you do not have a will when you die, you will be considered as having died “intestate.” This means that the laws of your state will determine how your property will pass to your closest living relatives. Unfortunately, many times the state’s formula and rules for distributing assets to those people would not be what you would have wanted if you had done some planning.

In addition, a will can allow you to:

- Appoint a guardian for a minor child.
- Name an executor to collect and manage the estate assets, distribute them to beneficiaries, and pay any taxes, debts, and estate expenses.
- Establish domicile (permanent legal residence) in a particular state, for tax or other reasons.
- Provide that property is held in trust for your spouse or children under the terms that you choose until the age that you determine.
- Create a trust for a disabled beneficiary to maximize eligibility for government assistance.
- Avoid the increased legal costs and delay of administering an estate without a will.
- Protect your children’s inheritance if they are not children of your current spouse.

- Prevent or ameliorate family tension by expressing your wishes.

Durable Power of Attorney

It is expected that during the course of our lives we may become incapacitated and unable to act either because of a physical infirmity or mental incapacity. A **durable power of attorney** is a document that allows a person, referred to as an “attorney-in-fact,” to act in all matters of a financial and/or legal nature when you are not in a position to act for yourself. Without one, it is necessary for someone to go to court to be appointed as your representative, which is both an expensive and cumbersome proceeding, and one that can take months to complete.

Healthcare Representative Appointment

A document appointing a **healthcare agent** empowers another person to act as your “agent” to make decisions regarding your healthcare if you become incapacitated and unable to make them yourself. This document is called a health care proxy, a medical power of attorney, or the designation of a surrogate, depending on the state in which you live. It allows your agent to make, as you have instructed, all types of medical decisions, including changing medications, choosing courses of treatments, selecting physicians, transferring you to medical facilities, and withholding artificial nutrition, hydration, and ventilation. Not surprisingly, doctors, like the proverbial cobbler’s child, often have never appointed a health care representative for themselves. Without one, your medical care could be determined by lawyers and the courts.

Living Will

A **living will** (sometimes called a “medical directive” or “advanced directive”) is a statement of your wishes as to what medical treatment should be provided or withheld, if you become incapacitated and unable to communicate them yourself. States accord this expression of your wishes varying degrees of enforceability, but it can at least provide a guide.

Beyond The Basics

Many married couples in the United States have a tragic financial blunder hidden in their estate plans. In order to understand why, you must be familiar with two fundamental rules of the estate tax system.

The Unified Credit

The unified credit (commonly called the “estate tax exemption”) allows an individual to leave assets worth up to a certain amount (\$1,500,000 in 2004) at his or her death to anyone, without any Federal estate tax being levied. However, if it is not used, it is lost forever.

The Unlimited Marital Deduction

A married person may leave an unlimited amount of assets to his or her spouse (provided both spouses are U.S. citizens) free of estate taxes and without using up any of the estate tax exemption. Unfortunately, when thinking about their estate plan, too many married couples see the unlimited marital deduction as their solution. Unfortunately, this strategy can cost one’s children or other beneficiaries hundreds of thousands of dollars in estate taxes if the surviving spouse’s estate is worth more than the estate tax exemption. Meanwhile, the first spouse’s estate tax exemption was not used and, in effect, wasted.

Bypass or Credit Shelter Trust

The “bypass trust” was created to solve this problem. This trust is used to allow both spouses to take advantage of the estate tax exemption — once at the death of the first spouse, and then again at the death of the second spouse. It permits a couple to pass up to \$3,000,000 (in 2004) free of Federal estate tax to children or other beneficiaries.

Irrevocable Life Insurance Trust (ILIT)

The majority of physicians either own or plan to purchase a significant amount of life insurance to protect their families. You are probably already aware that life insurance death benefits are paid on an income

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tax-free basis to named beneficiaries. However, those same death benefits are subject to Federal estate taxes. Understanding the threat of estate taxes on your life insurance proceeds is the first step in protecting these funds from unnecessary taxation.

The **irrevocable life insurance trust** (ILIT) ensures that your life insurance will not be subject to estate taxes, which can exceed 50 percent, depending on your state of residence. On a \$1,000,000 policy, this tool may save your beneficiaries approximately \$500,000. If structured properly, the ILIT, like a Will, can protect the funds for the use of children, and not their disgruntled spouses or creditors. The funds can be used to cover estate taxes, to

provide an income stream, to pay off liabilities, and to keep other valuable assets intact for the family for years to come.

Summary

Every estate plan is built around four legal documents — a last will and testament, a durable power of attorney, a healthcare representative appointment, and a living will. By working with an attorney who specializes in estate planning, you can ensure that your wishes regarding medical treatment and property distribution are respected and honored. In addition to drafting the above documents, your attorney might also incorporate other legal instruments and/or strategies to take advantage of further estate tax savings

opportunities and/or protect your assets from the claims of creditors.

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temporarily to understand the region in which they intend to be an owner. This can be perilous, which is why I recommend evaluating one's need to be an owner. If ownership is a goal, a timetable should be established. Answering these questions will provide the insight needed to make key employment decisions prior to ownership.

Most of you will consider joining an existing practice in some capacity, such as becoming an associate, working locum tenens, or as an employee on a partnership track. All of these are viable options, but you must make decisions that allow you the flexibility to change as you grow personally and professionally with limited risk. The risk may be financial, and, in the worst circumstances, professional. For example, I recently consulted with a gentleman who is practicing in a different state while he is undergoing legal separation from his former group. He will do so until his partnership interests are legally severed. He feels this will protect his right to return to this area in the future. Prior to starting practice in his new state, he was out of work for approximately four and a half months. This is a perfect illustration of personal as well as financial hardship. The moral of the story — maintain flexibility until you are sure.

Accordingly, you should enter every

professional agreement with an exit strategy. This is the major tenet I've used as a consultant. We work with our clients to understand them personally, as well as professionally, urging them to analyze their needs objectively. This approach eases the anxiety associated with addressing issues of compensation, restrictive covenants and contracts structured with complicated buy-in provisions.

Compensation should be fair for the market you are entering. Never enter into an agreement feeling that you are being inadequately compensated, hoping that over time your compensation will improve. Many recent residency graduates underestimate their worth in the workplace. Additionally, they neglect to realize that they are entering a market where demand far outweighs supply. For instance, how many practices can actually see a patient within the same day, week or month that they call for an appointment? Many practices are scheduling patients four to twelve weeks in advance. Understanding lead times is just one example of evaluating your worth to a practice. Thus, providing points for negotiating compensation.

Although the next several months can serve as great source of confusion and anxiety, don't let them. Realize that your opportunities are endless in

virtually any region of the country. Dermatology provides a unique set of options which are unparalleled by any other specialty of medicine. This is a position that should be seized upon by graduates. The points for consideration I have highlighted here should provide graduates with an extreme sense of security. Remember — pursue all options with the highest degree of flexibility and keep in mind that compensation should be fair and reasonable.

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Save the date

