

February 18, 2007

The guest speaker for APPA's February meeting was William J. White, Attorney-at-Law and CPA. Mr. White is an expert in securing the health care and estate wishes of his clients using the legal instruments of Wills, Power of Attorneys, Living Wills, and Trusts.

Mr. White began his presentation stating his role is to assist clients in developing "Directives." These Directives specifically define what the client's personal representative(s) will decide for them regarding health care, life and death matters, and the protection and distribution of their estate (financial, property and other assets) before they die and afterwards. In this manner the client's designated representative protects the various interests of the client by closely adhering to the instructions of the client to be implemented during the time when the client is unable to act in their own behalf. Thus, these legal instruments prevent others (family members, friends, doctors or hospital staff) from acting counter to the wishes of the client.

When registering to enter a hospital today the hospital staff will request the patient's "Advanced Directives." In essence, these Directives spell out for the hospital their instructions if you become unable to tell them your preferences on your own. These "Advanced Directives" serve to direct the hospital to the person you designated to state your healthcare and life and death wishes. This is what a Living Will provides. These Directives prevent the doctors and/or hospitals from making critical decisions for the patient or refusing to make a decision. The Terry Schiavo case in Florida highlighted the importance of Living Wills and advance health care directives. For 15 years Mrs. Schiavo, who did not have a living will to protect her and experienced extensive brain damage in 1990, was kept alive by being placed on a feeding tube. Her doctor refused to disconnect the feeding tube. This type of life and death issue can be avoided using the legal instruments indicated above and a knowledgeable attorney to properly create them. Mr. White emphasized that everyone has the right to control all aspects of their personal care and medical treatment. This can be accomplished by legally assigning the responsibility to someone to act in your behalf (an Agent in Fact) if you become disabled, incapacitated or incompetent. Living Wills and Durable Power of Attorney (DPOA) are the instruments that serve to document your wishes in these matters.

While a Living Will expresses your wishes when you are in a vegetative state, a DPOA is employed to control your overall health care when you cannot act on your own. Here the Agent in Fact (or Attorney in Fact) is empowered to act for you. These agents have the power to admit or discharge you from the hospital care. A provision can be added, if so desired, that a doctor will help your designated representative in reaching a decision. There are basically three options for the DPOA: 1) Keep you alive no matter what the situation, 2) Do not take any special effort to keep you alive (this is like a Living Will), and 3) If the quality of life is not worth living, cut you off feeding or breathing tubes. The key here is to prevent you from being at the mercy of doctor or a hospital regarding important health care matters.

In Mr. White's opinion every person needs both a Living Will and DPOA. As a safeguard, an alternative representative should be designated. However, do not make your representative a committee of two or more to avoid conflicts of opinion. An alternate is needed if the first designated representative is unavailable for any reason. He offered that if you are admitted at the hospital without an Agent in Fact, you could get a physician to sign for you. However, he recommended that you make the effort to having these matters covered in advance for your own protection.

It should be noted that a Will and a DPOA are separate from a "Do Not Resuscitate (DNR)" order. A DNR tell medical professionals not to perform CPR if your breathing and heartbeat ceases.

Having a Will for you and your spouse is for your mutual protection. A Will defines the disposition of one's personal and jointly owned assets after death. . It also names an Executor who is allowed to transfer title of property and other holdings. The Executor can be the remaining spouse, any family member or an attorney. At the time of death, the Executor can gain access to a Safety Deposit Box to obtain the original version of the Will by providing a Death Certificate and showing a copy of the Will. With the Death Certificate and the Will, the Court will issue a Letter of Testamentary giving permission to take possession of the contents of the Deposit Box and authority for transferring title of property and to act on other matters of the estate as defined in the Will. Mr. White gave an example of a person that took a Georgia Will form from an Internet web site. That person made the mistake of having it witness by the family members who are affected by the Will. When this error was found at the time of his death, the Will was declared invalid and the estate had to be probated by a court-assigned administrator.

Not having a Will leaves the door open to having someone completely unknown named by the court to act as In testate Administrator. This person receives compensation from the estate for their work in resolving the issues of the estate and the process can be very slow in getting financial and property matters resolved. This situation should be avoided.

Mr. White also stated that a Trust could be included within a Will. For example, one can transfer property to a Trust. You have to name a Trustee, who is not related, to handle the Trust and protect it for the intended purpose. That Trustee works for a fee and allocates the money or property according to directions specified in the Trust. A person with two families may use this option to properly allocate the estate assets among all family members. There is something called a Spendthrift Trust that is used when you need someone to protect your property against creditors. If the Trustee is a bank or corporation the fees can be as high as 5% (Georgia State law) and a minimum estate value must be met. Banks will not negotiate on the fee. Long term Trusts require corporate Trustees, however. All of these matters can get very complicated to those not trained in the law. For this reason professional help should be sought.

There is a Financial Power of Attorney (FPOA) that one would use to handle financial affairs during a period of time when you are unable to do it for yourself. For example, an extended hospital stay may prohibit taking care of routine business matters. The

designated person would write checks to pay bills, conduct dealings with a bank, and negotiate with insurance companies. A condition specifying that a designated person act only if you are unable to act on your own can be made. It could also be tied into a doctor's pronouncement before initiating.

A question was asked regarding whether a Will was needed really if one's estate was less than the 2.5 million dollar limit. Mr. White responded that you couldn't always count on this to be the case. He gave an example of a person who died because of an aircraft accident. The insurance settlement raised the value of the estate significantly higher. This situation led to high Probate costs to process the estate.

Pertaining to the various legal instruments discussed, Mr. White recommended that a competent attorney prepare these documents. In this manner attorneys will explain options, prepare the documents and properly witness them before a Notary. Attorneys normally maintain copies of a Will, DPOA or other documents in the event they get misplaced.

APPA was very grateful to Mr. White for volunteering to enlighten its members on these important personal protection issues. Mr. White can be reached at his Tucker office at 404-320-9811.

Disclaimer

The information provided herein represents what the author believes he heard during the February 17 presentation. The author is neither legally trained nor an expert in the personal protection legal instruments indicated in the summary. For this reason the author may not have recorded an accurate accounting or understanding of the important details discussed. For these reasons, neither he nor APPA assume any responsibility for the accuracy of the information provided. It is, therefore, highly recommended that all and any information provided be confirmed with an appropriate Attorney at Law before attempting to establish a Will, Living Will or Power of Attorney on your own. It is hoped that this summary serves to apprise the reader of the need for these legal personal protection instruments.