
The Health and Elder Law Clinic: A Medical Legal Partnership with the Miller School of Medicine



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What is a Medical Legal Partnership?

- **Healthcare delivery model** that integrates legal assistance as a vital component of patient care because medicine alone cannot solve the health problems of vulnerable populations
- **Doctors** learn to **screen for legal issues** and refer a patient to an on-site attorney when an underlying social circumstance impairing a patient's health is detected
- **MDs and JDs work together** to remove legal and social barriers that prevent vulnerable populations from getting needed care and improve health outcomes
- **Legal professionals** become **members of the healthcare team** to assist patients with legal issues, such as disability, public benefits, advance directives, immigration relief and unhealthy housing conditions

UM's Pathbreaking Medical Legal Partnership

- The Miller School of Medicine and the Law School launched an MLP in 2005
- HIV Clinics, Jefferson Reaves Sr. Health Center, and the VA Hospital
- Medical providers screen, identify and refer patients to the on-site legal clinic
- 100s of low-income patients helped with:
 - Social Security disability
 - Food Stamps
 - Medicaid and other insurance
 - landlord-tenant and immigration cases
 - Advance directives, guardianship, wills
- Recovered >\$100K for patients in benefits
- Recovered >\$100K in insurance payments for health care institutions



Planning For The Future: Helping Patients Make Enforceable Long-term Decisions



Permanency Planning

- **There are 7 documents that, together, provide complete permanency planning:**
 - (1) Durable Power of Attorney
 - (2) Designation of Health Care Surrogate
 - (3) A Will
 - (4) The Living Will
 - (5) Funeral Directive
 - (6) Hospital Visit Authorization
 - (7) Declaration of Pre-need Guardian
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Durable Power of Attorney

- The **durable power of attorney** is a device available to Floridians that makes it possible for a person to plan ahead in case of serious incapacity.
 - Durable → survives incapacity
 - A durable power of attorney avoids the court process involved in designating a person to handle your affairs, avoids court ordered guardianship.
 - Can be broad or limited in the powers it conveys.
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“Limited” Power of Attorney

- Gives only limited powers
 - Specified in the document
 - Example:
 - May give someone the right to sign a deed to property on a day when the grantor is out of town
 - Someone can sign checks for the client
 - Someone can take care of a specific task for the client if/when incapacitation occurs
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Health Care Surrogate

- A surrogate steps in and makes health care decisions **only** after the principal is incapacitated and unable to make health care decisions.
 - Also called DPOA for Healthcare, or Health Care Representative
 - It is the duty of the health care surrogate to make the health care decisions the surrogate believes the principal would make under the exact situations
 - Step into their shoes
 - Similar to a living will, you can include info re any treatment you want/ do not want
 - Once the principal regains capacity, the surrogate's decision-making authority ends.
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Wills

- **Legally binding** statement directing who will receive specific property at his/her death
 - Appoints a legal representative to carry out his/her wishes as expressed in the will
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Wills

To be valid, a will must meet certain requirements. The requirements vary from state to state. **These are the requirements in Florida:**

1. the testator must be **at least 18 years** or an emancipated minor;
 2. the testator must be of **sound mind** at the time the will is prepared;
 3. the will must be **in writing** (either typed or hand-written). It cannot be oral;
 4. the will must be signed by the testator at the **end** of the will, and **in the presence of two witnesses**;
 5. the witnesses do not need to know the contents of the document, but they must acknowledge that the testator knows he is signing his will, and the competent **witnesses must sign the will** in the presence of each other and of the testator; and
 6. it is also advisable to have your will **notarized** in Florida. This makes the probate process simpler.
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Living Wills

- A living will is a witnessed written declaration providing instructions concerning life-prolonging procedures in the event such person suffers from a terminal condition, end-stage condition, or persistent vegetative state.
 - It may also be a witnessed oral statement made by the person expressing his or her instructions.
 - The document must be signed by the principal in the presence of two subscribing witnesses, one of whom is neither a spouse nor a blood relative of the principal.
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Living Will

- The living will allows the client to direct that life-prolonging procedures be withheld or withdrawn when the application of such would serve only to artificially prolong process of dying
 - Pain management is an option
 - Very important for client to keep all Drs. informed of these wishes
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Do Not Resuscitate Order

- Contained within the Living Will
 - A DNR is a request not to have cardiopulmonary resuscitation (CPR) if your heart stops or if you stop breathing.
 - Unless given other instructions, hospital staff/paramedics will try to help all patients whose heart has stopped or who have stopped breathing.
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Hospital Visit Authorization

- This document allows a person to tell doctors and others at the hospital who s/he wants to visit that person if the amount of people who can visit is limited.
- It can be used to let friends who are not family members visit that person during a hospitalization.
- This is a concern for certain clients who have privacy issues

Pre-Need Guardian

- Allows our client to declare a guardian for their child (minor or incapacitated adult)
 - Even allows a client to name a guardian for themselves if predicting incapacity soon
 - Allows them to choose who they DON'T WANT
 - Avoids having the court select the guardian
 - A Court usually bound to appoints the person named in the Pre-Need Guardian for a minor, and is required (with few exceptions) to appoint the pre-need guardian selected by an adult.
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Pre-Need Guardianship

- Formal Statement that is filed with the clerk of court of county of residence
 - The Clerk of the Court will produce the declaration if and when a petition for incapacity is filed.
 - The first choice of guardian in Florida is your preference if it can be proven by a PNG. If there is no PNG, the courts will appoint a blood relative. This creates a presumption that your nominated pre-need guardian is entitled to serve as your guardian.
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Funeral Directive

- Allows the client to spell out exact wishes for funeral proceedings
 - Can choose cremation/ burial
 - Informs of pre-paid funeral arrangements
 - Allows client to name someone responsible for making such arrangements
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Quick Notes on Competency

- Competency is generally PRESUMED and the burden of proving incompetency is on the person who contests.
 - However, if someone is adjudicated incompetent before executing documents, the burden shifts and the presumption is of continuing incompetency
 - F.S. 732.501 requires a “sound mind” to execute planning documents
 - Since this is not that clear, the Florida Supreme Court has been called upon to clarify
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FLORIDA LAW

- F.S. 732.501 requires a “sound mind” to execute planning documents
 - Since this is not that clear, the Florida Supreme Court has been called upon to clarify
 - There is no statutory definition of “testamentary capacity,” only a case law definition has evolved, discussed on the next slides
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Florida Supreme Court Clarification

- Testamentary Capacity is an ability to:
 - ❑ Understand in a general way the nature and extent of the property to be disposed of;
 - ❑ Understand in a general way the testator's relationship to those who would naturally claim substantial benefit from the will (some states call this the objects of the testator's bounty);
 - ❑ Understand the practical effect of the will as executed; and
 - ❑ Consider the three foregoing matters and hold them in mind for a sufficient length of time to perceive at least their obvious relations to each other and to form some rational judgment in relationship to them

Lack of testamentary capacity is NOT automatically established by:

- Old age
- Physical ailments
- Failing memory
- Vacillating judgment

...OR by inability to speak or write

- “. . . while the testatrix could neither speak nor write when she executed her will, she was in possession of her mental faculties, gave direction for its preparation, read it when it was prepared, and indicated by gesture and nod that it was in compliance with her desire. She then handed it to her minister . . . and by the same token directed him to sign it for her. He signed her name to it, and she make [sic] her mark or touched the pen as this was done in the presence of the subscribing witnesses. We think this was ample compliance with the law.”

Ziegler v. Brown 150 So. 608, 609 (Fla. 1933)

It is important to plan ahead!

- Even if you do not have many assets, it is still important to plan ahead
 - You should instruct the named persons about your wishes (it should not come as a surprise)
 - You can still change your mind, new documents can be drafted anytime
 - If you do not plan ahead, these important decisions will be made by a court appointed guardian who might not be aware of your wishes
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We want to **STRESS** the Importance of Permanency Planning:

ESPECIALLY:

- PRE-NEED GUARDIANSHIP
 - DURABLE POWER OF ATTORNEY
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Why Are These So Important?

- They ensure that the patient and/or the patient's children are cared for according to the client's wishes
 - They ensure that the patient's assets are handled by a person of the patient's choosing
 - They avoid costly and time-consuming disagreements
 - They can limit Government and Court involvement
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...Altogether? They make for less stress

- By dealing with these issues before they arise, they reduce the time, stress, and effort often associated with end-of-life concerns
 - Often eliminates the need to make judgment calls on client's wishes and best interests.
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