

ESTATE PLANNING FOR YOUR COLLEGE STUDENT

by Alexander J. Graziano, Esq.

With a son or daughter heading off to college, probably the last thing on a parent's mind is estate planning. However, a child over 18 who is attending college, or living away from home for any other reason, presents unique legal issues which parents should consider and address by means of certain simple and straightforward legal documents.

The primary issue with a child 18 or older is that now you the parent no longer have the same legal authority over him or her as when the child was below the age of 18. As the parent of a minor child, you had complete control of his or her welfare, from clothing to shelter to education to medical care. As the parent of an adult child, you have none (unless your son or daughter gives you that authority.)

Anyone who has dealt with the health care system during the last 15 years or so is well aware of the privacy provisions of the federal law known as the Health Insurance Portability and Accountability Act of 1996, (HIPPA). The Act imposes severe penalties for unauthorized disclosure of private health information. As a result, most health care providers broadly interpret the prohibition against disclosure, making it very difficult to obtain information about the patient unless you are that person's spouse.

What this means to the parent of a college student living away from home is that you are not entitled to information about your child's health unless he or she authorizes it.

While authorization may seem like a simple matter, it can become complicated. What if your child is unconscious or mentally incapable of giving authorization? What if he or she simply doesn't want you to know?

The above issues can be resolved by means of a few key documents. They are:

- Durable Power of Attorney
- Medical Power of Attorney
- Living Will

1. DURABLE POWER OF ATTORNEY. The creator of a Power of Attorney is called the **Principal**. The Power of Attorney names an **Agent** (also known as an attorney-in-fact) to act on his or her behalf in legal and financial matters. The principal can grant the agent very broad powers or can limit them to certain circumstances or certain assets.

If your adult child signs and delivers a Durable Power of Attorney to you, you will be able to act on your child's behalf for the purposes listed in the document.

A Durable Power of Attorney continues in full force and effect even if the Principal becomes incapacitated. A Power of Attorney terminates upon death.

2. MEDICAL POWER OF ATTORNEY. Under a Medical Power of Attorney, your child appoints an agent (you, the parent) to make medical decisions on his or her behalf in the event he or she is unable to do so. It also allows the agent to communicate with the child's health care providers and receive information about the child's medical condition. This document is often used in conjunction with a **Living Will** (see below) and can help to avoid the privacy issues discussed above in the event the child is unable to make his or her own medical decisions.

3. LIVING WILL. A Living Will contains two parts. In the first, the child creates an **Advance Directive for Health Care** setting forth his or her wishes regarding the use of life-sustaining treatment (surgery, drugs, therapy, machines which provide life support functions, etc.) and the circumstances under which life-sustaining treatment would be withheld or withdrawn.

In the second part, (sometimes referred to as a **Health Care Proxy**), the child names a person or persons (you, the parents) to carry out his or her wishes set forth in the first part.

It is important to note that a Living Will **does not** become effective unless and until the patient become unconscious or mentally incapacitated and unable to make health care decisions for himself or herself.

Once your child has created and signed the above estate planning documents, you as a family should review them periodically to ensure that they remain up to date.

Alexander J. Graziano is a partner in the Verona, New Jersey law firm of Graziano & Campi, LLC. He specializes in Wills, Trusts and Estate Administration. He may be reached at 973-857-2525 or alex@grazianolaw.net.