



PROPER PLANNING MAY CREATE PEACE OF MIND



MAY 2008

INCAPACITY PLANNING FOR COLLEGE STUDENTS

Events like the Virginia Tech shooting create concern for every parent who has a child in college. As parents our concern focuses not just on the safety and well-being of our children but also on how we can make medical decisions for our college children.

Following the event, many parents were alarmed to learn that they were denied access to information about the medical condition of their child due to the HIPAA Privacy Rule. Much to their anger and surprise they were told that a college age child was a legal adult and the parent could not access information or, make medical decisions for the child. The HIPAA Privacy Rule imposes a penalty on a health care provider or institution who releases information without the authorization of the patient. Consequently, more and more health care providers are strictly following the confidentiality requirements of the HIPAA Privacy Rule.

One way to avoid this situation is by having a child execute a 'Designation of Health Care Surrogate' on their 18th birthday. The Designation is a legally enforceable document that identifies those persons (i.e. parents) authorized

to make medical decisions and access medical records concerning the adult child. This document can effectively help a family avoid a legal guardianship proceeding in the event the adult child is involved in an incident (i.e. car accident) that leaves them incapacitated or, unable to effectively participate in his/her medical decision-making. The Designation can be changed at the time the child marries should he/she desire to designate their spouse or another trusted party.

A 'Durable Power of Attorney.' is another important document. It allows the adult child to designate the parents to handle their child's financial affairs in the event of the child's incapacity. Keep in mind that if the child has, for example, a UGMTA account the parent has no control over it once the child becomes a legal adult. Absent the child giving the parent a Durable Power of Attorney, a guardianship proceeding would be required to manage the child's affairs.

"...parents were alarmed to learn that they were denied access to information about the medical condition of their [college-age] child."

Our firm has created a special package to address the needs of college children and their parents. Please call our office for further information.

Ask about participating in our *free* Florida Bar Approved **Advanced Level** Continuing Education Seminar at your office.

Firm Facts:

Stephanie is a Former Chair of The Florida Bar Elder Law Section. Our firm is proud to be a *Business Friend of Eagle* sponsor for the Florida Justice Association.

Practice Areas

Estate & Incapacity Planning

- ◆ Last Will & Testament
- ◆ Probate & Trust Administration
- ◆ Revocable Trust
- ◆ Durable Power of Attorney
- ◆ Designation of Healthcare Surrogate
- ◆ Quit Claim Deed
- ◆ Living Will

Emergency & Advocacy Services

- ◆ Emergency & Standard Guardianships
- ◆ Long Term Care Facility Residents' Rights
- ◆ Medicaid Applications & Appeals

Government Assistance

- ◆ Special Needs Trusts
- ◆ Representation of Special Needs Trust's Trustees
- ◆ Protecting Lawsuit Proceeds and Inheritances While Preserving Medicaid and SSI Eligibility
- ◆ Exceptions to Medicaid Lien Recovery