

What Cancer Patients and Their  
Families  
Need To Have In Place  
TODAY  
For  
TOMORROW

A

Presentation To The Baylor University Medical Center  
Patients and Cvetko Center Staff

By

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Our Constitution is in actual operation; everything appears to promise that it will last; but in this world nothing is certain but death and taxes.

Benjamin Franklin 1789

Looper Reed & McGraw, P.C.

# Control of Your Person

- GUARDIANSHIP

- If you become legally “incapacitated” a court will appoint a guardian of your “person”

- Defined –

- Minor

- Adult who, “because of physical or mental condition, is substantially unable to provide food, clothing or shelter for himself or herself, to care for the individual’s own physical health, or to manage the individual’s own financial affairs.”

- Expensive process

# Control of Your Person

- GUARDIANSHIP
  - Potential powers of guardian
    - Physical possession of the “ward”
    - Decision where ward lives
    - Care, supervision and protection of ward
    - Provide food, clothing, shelter, medical care for ward

# Control of Your Person

- GUARDIANSHIP
  - Priority of persons eligible to be guardian
    - Person named in a “designation of guardian before need arises”
      - Relatively simple document
      - Court will generally respect your choice if person suitable
    - Spouse
    - Next of Kin
    - Other qualified persons

# Control of Your Person

- Techniques to Reduce Guardianship of Your Person and Control Own Circumstances
  - Medical Decision and Information
    - Medical Power of Attorney
    - Directive to Physicians (Living Will)
    - HIPAA Authorization
    - Out of Hospital DNR

# Texas Advanced Directives Act

- Governs Medical Powers of Attorney and Directives to Physicians
- Common Features of Documents
  - Statutes provide forms of documents or requirements
  - All documents must be signed either in front of a notary or two witnesses
  - If witness alternative is selected
    - Competent adults
    - At least one witness who is NOT
      - Designated by declarant to make a treatment decision
      - Not related to declarant by blood or marriage
      - Not entitled to any part of declarant's estate
      - The attending physician or an employee of the physician
      - An employee (also officers, directors, partners) of health care facility in which declarant is a patient (some limitations on restriction)

# Medical Power of Attorney

- Statutory Form in Texas
- Effective If You Are Unable To Make Own Medical Decision
- Can Limit Agent's Authority
- Back-up Agents

# Directive to Physicians and Family or Surrogates (Living Will)

- Statutory Form In Texas
- Two different triggering situations
  - “Terminal condition”
    - Incurable condition caused by illness or injury that will produce death within 6 months even with life sustaining treatment
  - “Irreversible condition”
    - Condition, illness or injury
      - Can’t be cured or eliminated, AND
      - Person unable to care for self or make decisions for self, AND
      - Without life sustaining treatment the condition, illness or injury is fatal

# Directive to Physicians and Family or Surrogates (Living Will)

- Two choices if “terminal condition” or “irreversible condition”
  - No treatment other than to keep “comfortable”
  - Use “life sustaining treatment”
    - Medications
    - Artificial life support
      - Mechanical breathing machines
      - Kidney dialysis
      - Artificial nutrition and hydration

# Directive to Physicians and Family or Surrogates (Living Will)

- Parents or legal guardian can sign on behalf of minor child
- Effective until revoked
- May be revoked, regardless of declarant's competency
  - In writing
  - Orally
  - Defacing or destroying document

# Directive to Physicians and Family or Surrogates (Living Will)

- Physician or health care facility that withholds or withdraws life-sustaining treatment in accordance with statute not civilly liable for that action unless there is a failure to “exercise reasonable care.”
- Procedures for transferring care of patient where physician or health care facility refuses to follow patient’s directive
- Cannot withdraw or withhold life-sustaining treatment on pregnant patient

# HIPAA Release and Authorization for Disclosure of Health Information and Medical Records

- Health Insurance Portability and Accountability Act of 1996 adopted by Texas in 2003
  - Provides for confidentiality of medical information
  - Health care providers very wary due to penalties
- Texas Durable Power of Attorney does not work smoothly with HIPAA rules
- Many “home grown” forms being circulated until Texas legislature enacts new legislation

# Out-Of-Hospital DNR Order

- Directs health care professionals acting in an out-of-hospital setting to withhold cardiopulmonary resuscitation and certain other life-sustaining treatment
  - Without one of these, paramedics will institute life-sustaining treatment!
    - Bracelet / Necklace ID's available

# Out-Of-Hospital DNR Order

- Requirements
  - Signed by patient
  - Signed by physician
  - Two witnesses
  - Statement by physician instructing health care professionals and emergency departments not to initiate or continue certain life-sustaining treatment
    - List procedures not to be initiated or continued

# Control of Your Property (while alive)

- GUARDIANSHIP

- If you become legally “incapacitated” a court can appoint a guardian of your “estate”
  - Can be very expensive
  - Guardian must post bond
  - Guardian supervised by court

# Control of Your Property (while alive)

- GUARDIANSHIP

- Selection of guardian same as for guardian of person
- Potential powers of guardian
  - Possession and management of all property of the ward
  - Collect all debts of ward
  - Enforce all obligations in favor of the ward
  - Bring and defend suits by or against the ward

# Control of Your Property (while alive)

- Techniques to Reduce Guardianship of Your Estate
  - Statutory Durable Power of Attorney
  - “Funded” Living Trusts
    - [discussed under disposition of property after death]

# Statutory Durable Power of Attorney

- Statutory Form in Texas
- Scope
  - Broad
  - Narrow
  - Can provide for gift giving powers
- Effective Date
  - On signing
  - On incapacity
- Back-up Agents

# Control of Your Body After Death

- Disposition of Remains
- Anatomical Gifts

- Disposition of Remains on Death
  - Who decides?
    - Priority:
      - Pursuant to written instrument
      - Surviving spouse
      - Adult Children
      - Parents
      - Adult sibling
      - Next of kin

# Appointment of Agent to Control Disposition of Remains

- Permits YOU To Decide Who Controls  
Disposition Of Your Remains
  - Can avoid family disputes
- Special Instructions To Agent
  - E.g., cremation
  - E.g., “scatter ashes in lake”
  - E.g., celebration in Italy

# Anatomical Gifts

- By Will Or “Other Writing”
  - Will
  - Driver’s License
  - Donor Card or Document (2 Witnesses)
- All Or Part Of Body
- Parental Consent Required For Persons Under 18

# Disposition of Property on Death

- Intestacy
- Will
- Trust
- Beneficiary Designation
- Survivorship Property

# Wills

- Dying Without A Will (“Intestate”)
  - Probate is generally MUCH more costly
  - State law decides who inherits your estate
  - No opportunity for tax planning / trusts
- Dying With A Will (“Testate”)
  - Texas has simplified probate
  - You decide who inherits your estate
  - Opportunity for tax planning / trusts

# Intestacy

- Texas Probate Code determines who takes property
- Different results if community property or separate property
- Can be different results if children are not children of surviving spouse
- Complex distribution scheme

# Wills

- General Requirements
  - Written
  - Two Witnesses
  - Texas Self-Proving Affidavit with Notary Simplifies Texas Probate
- Appoints Guardian For Minor Children
- Must be filed in probate proceeding = terms of Will public

# Living Trusts

- Used With “Pour Over Will”
- Amendable / revocable while creator alive
- If “funded” during lifetime of creator, can avoid need for guardianship
- Can Minimize Probate
  - Can avoid multi-state probate (e.g., Destin Condo)
  - Texas homestead can now be held by trust
- Terms Private (not filed in probate proceeding)
- Useful Where Family Discord
- New provision in Texas law for using a “certificate of trust” to prove existence

# Beneficiary Designations

- Beneficiary designation override Will and Trust provisions
  - Life Insurance / Annuities
  - IRA / 401(k) / 403(b) / Pension Plans / Etc.

# Survivorship Property

- Property owned with survivorship provision will override Will and Trust provisions
  - JTWRORS (Joint Tenants With Right of Survivorship)
  - Needs to be in writing under Texas law
- POD / TOD
  - Accounts may have a “pay on death” or “transfer on death” designation

# Personal Checklist -1

- DO YOU KNOW WHERE YOUR KEY ESTATE PLANNING DOCUMENTS AND OTHER CRITICAL LEGAL DOCUMENTS ARE LOCATED?
- DOES YOUR SPOUSE KNOW?
- DO YOUR CHILDREN KNOW?

# Personal Checklist -2

- Last Will and Testament (or Living Trust with Pour Over Will)
  - Charitable Gifts
- Durable Power of Attorney
- Directive to Physicians (“Living Will”)
- Medical Power of Attorney
- HIPAA Authorization
- Designation of Guardian Before Need Arises
- Appointment of Agent to Control Disposition of Remains
- Anatomical Gifts

# Personal Checklist -3

- Birth Certificate
- Social Security card
- Marriage License (Marriage Certificate)
- Citizenship Documents

# Personal Checklist - 4

- Insurance Policies
  - Life
    - BENEFICIARY DESIGNATIONS
  - Health
  - Disability
  - Property
  - Burial

# Personal Checklist - 5

- Bank Account Information
  - Locations
  - Account Numbers
  - How are accounts held
    - JTWROS
    - POD / TOD
  - Passbooks
  - Safe Deposit Boxes (and keys)

# Personal Checklist - 6

- Deed(s) to Real Estate and Mineral Interests
- Automobiles
  - Titles
  - Insurance
- Tax Returns
  - Income Tax (last 3 years)
  - Gift Tax (all)

# Personal Checklist - 7

- Military Discharge/Retirement Documents
  - DD-214
  - Retirement eligibility (reservists)
  - Retirement elections
  - Disability determinations

# Personal Checklist - 8

- Disability Claims (if any)
- Burial Property Certificate of Ownership-  
Prearranged funeral arrangements
- Death Benefits from Employer

# Personal Checklist - 9

- Investment Information
  - Account Numbers
  - Locations
  - Beneficiary Designations (IRA, 401(k), etc)
  - POD / TOD
- Debts
  - Loan Documents (Promissory Notes, Deeds of Trust, Security Agreements)

# Personal Checklist - 10

- Funeral Preferences
  - Obituary
  - Burial or Cremation
  - Location for interment of remains
  - Headstone inscription

# Personal Checklist - 11

- Funeral Preferences
  - Service Preferences
    - Scripture
    - Location
    - Clergy
    - Flowers
    - Pall Bearers
    - Music
    - Charities to receive donations
    - Military Honors

# Personal Checklist - 12

- Family / Personal Information
  - Date of Birth
  - Place of Birth
  - Parents and Grandparents
    - Names
    - Residence
    - Dates of Death
  - Siblings
  - Education
    - Institutions, degrees, dates

# Personal Checklist - 13

- Family / Personal Information
  - Marriage(s)/Divorces
    - Spouse's name
    - Date of Marriage
    - Location
    - Date of Divorce
    - Date of Spouse's death

# Personal Checklist - 14

- Family / Personal Information
  - Children / Grandchildren
    - Names
    - Dates of Birth
    - Dates of Death
    - Location
    - Marriages
  - Employment History

# Personal Checklist - 15

- Family / Personal Information
  - Military Service
    - Branch
    - Dates
    - Highest Rank
    - Duties (e.g., pilot, infantry, submarines)
    - Notable Achievements (e.g., commanding officer USS Enterprise)
    - Combat Service
    - Decorations