End-of-Life Issues for Pharmacists

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The Pharmacist’s Role in Care of the Dying

- Prelude to Palliation
- Drugs for Palliation
- Regulatory Issues
- Ethical Concerns
- Opportunity to Care, to Heal, to Grow

What is a “Good Death”?

- On your index card, please print your name on the unlined side
- On the lined side, in the next 5 minutes, please provide an example of a death that can be called “good”.
- Thank you.

Question 1

- In Arkansas, death is defined as complete and irreversible cessation of heart function and respiration AND:
  - A. loss of cognitive function;
  - B. loss of control over voluntary muscles;
  - C. loss of brainstem function;
  - D. complete cessation of electrical activity in the brain.

Definitions of Death

- Common Law – One of Two in Arkansas
  - Irreversible and complete cessation of respiration and circulation
- Whole Brain – Second of Two in Arkansas
  - Irreversible absence of any electrical activity in the brain
- Higher Faculties – Not in All Jurisdictions
  - Irreversible and permanent loss of cortical function

Funeral Practices

- Preparation of the body
- Coffins
- Time before Interment
- The Burial Service
- The Reused Grave or the Family Plot?
Embalming Technology Arrives

- Purpose
  - Esthetic, Hygienic, Guarantee against revivification
- Sudden Demand
  - Mass casualties of Civil War in remote places
- A New Trade
  - Death managed outside the home, as a business that produces status-symbol goods

Death Leaves the Home

- From a Family to an Institutional Setting
- The public hospital -- once a shameful place
- The emergence of interventionist medicine
- Best practice in hospitals, therefore death ["failure"] also happens there
- Attempts to define a "normal" dying and grief process

Question 2

- The greatest recent change in funeral practices in Arkansas has been the increased number of:
  - A. interments in above-ground crypts;
  - B. burial in mausolea;
  - C. burial without a coffin;
  - D. cremation.

Your Own Plan

- Estate Planning is a Foundation Course
- It Must Include Your Family
- Formulate and State
  - What is Important to You
  - What Disposition You Want for the Possessions You Have Built Up
  - How Your Designated Managers Shall Keep Faith with Your Wishes

Documents

- Your Will – Do Not Let Technical Flaws Thwart Your Wishes
- Your Health-Care Directives
  - A Living Will is NOT Enough!
- Other Planning Tools Appropriate to You
  - Annuities, Gifts During Life
  - Insurance, Trusts

Why A living will AND A Medical Power of Attorney?

- A living will: written document which allows a person to make a present declaration about future medical treatment.
- A living will typically focuses on the application of life-sustaining treatments.
- A Living Will is Not Enough
  - Future Interpretation
  - Difficult Circumstances
Health Care Proxy?
• A health care proxy is a Durable Medical Power of Attorney.
• A health care proxy gives the authority to a designated other to make health care decisions if you are unable to make those decisions yourself. (legally: Incompetent)
• People must know that you have a living will and health care proxy – and have both available.

Charitable Remainder and Charitable Lead Trusts
• Charitable remainder trust pays an income stream to a beneficiary and the residuum of the trust passes to a charity at death of beneficiary (ies).
• A charitable lead trust pays an income stream to the charity and the residuum to a beneficiary at some point in the future.
• A charitable trust produces a charitable deduction in the year formed and funded.

Factors in Professional Conduct
• Relationship to the Decedent
• Manner of Death
• Age of Decedent
• Status of Decedent
• Relationship to Survivors

We Stand at an “Untidy” Place
• Patients or consumers?
• Clear emergence of hospice interest
• Acceptance of care directives
• Uncertainty and politicization

Question 3
• The presence of pain and anxiety in a dying patient are components of:
  – A. suffering;
  – B. Regret Syndrome;
  – C. dementia;
  – D. imminent death.

Question 4
• The two greatest fears, generally speaking, of the dying patient are uncontrolled pain and:
  – A. poverty;
  – B. excommunication;
  – C. abandonment;
  – D. unauthorized medical experimentation.
Prelude to Palliation

- Diagnosis of Certain Fatal Illness
- Conference to Determine Patient’s Will
- Conference with Family/Intimates
- Proper Order:
  - No Not Resuscitate
  - Comfort Care Only
  - Allow Natural Death

Classes of Drugs

- Analgesics – Relief of Pain
  - Opioid
  - NSAID
- Tranquilizers – Relief of Anxiety
  - Antianxiety
  - Antidepressant
- Sedatives/Hypnotics – Level of Consciousness

Other Useful Drugs

- Antiinflammatory Steroids
- Antitussive – Cough Suppressant
- Antiemetic – Anti-Nausea/Vomiting
- Nontraditional Analgesics – Pain Relief
- Terminal Sedation/Palliative Sedation Drugs – Demand Careful Definition and Use
- Everything Else in the Formulary

Specific Drugs: Opioids

- Morphine – The Gold Standard
- Oxycodone – Synthetic
- Hydromorphone – Semi-Synthetic
- Fentanyl – Short-Acting, Available as Transdermal Patch, Infusion
- Methadone – Pharmaceutical Long-Acting

Limits to Drug Selection

- Renal Status/Insufficiency
- Bleeding Diathesis
- Hypovolemia
- Fragile GI Mucosa
- Concurrent Diseases

Added Limit?

Regulatory Concern

- Use of Opioids is Proper
- Barriers may Include
  - Inappropriate Concern about Addiction
  - Concern about Manipulation
  - Consequences of Regulatory Scrutiny
  - Liability Claims
**NSAID Dosing Guidelines**
- Build Rapidly to Maximum Dose
- ASA is the First Line
- APAP is the Second Choice
- Other NSAIDs *per* Patient Tolerance
- Consider Limiting Factors: CHF, Renal Status, GI Irritation, Hepatic Toxicity

**“Weak” Opioids**
- The Second Step
  - Convenience for Prescribers
  - Codeine as the Model
    - Useful up to 200 mg orally
    - Biotransformation to morphine
  - Fixed Combinations with NSAID
    - Inhibit Titration of Opioid Dose
    - Limit Opioid Daily Dose
    - New 3000 mg Daily Limit for APAP

**Mixed Agonist/Antagonists**
- Synthetic Opioids
  - Analgesic Ceiling
  - Escalant Respiratory Depression
  - Unacceptable Side Effects
  - Withdrawal Symptoms in Opioid-Dependent Patient
  - Few Oral Formulations (Pentazocine only in combination *with* Naloxone, ASA, or APAP)

**Pain is Dynamic**
- Appropriate Drugs May change
  - Increases with Course of Disease
  - May Remit
  - May Masquerade
    - Anorexia
    - Nausea/Vomiting
    - Depression

**Regulatory Concerns/Obstacles**
- Legally, relief of pain is part of the “usual and customary” practice of medicine.
- Therefore, dispensing is protected if
  - Physician/Patient/Pharmacist Relationship is intact
  - Prescriptions are within usual and customary scope of practice
- Consistent and Sufficient Documentation IS Mandatory

**Question 6**
- The use of a pain-relieving drug that may also depress respiration illustrates the Principle of:
  - A. *Stare Decisis*;
  - B. Double Effect;
  - C. Primary Intention;
  - D. Double Indemnity
Question 7

- The pharmacist can do the most benefit for the dying patient in the treatment of:
  - A. depression;
  - B. pain;
  - C. infections;
  - D. xerophthalmia.

Specific Drugs for Palliative and Terminal Sedation

- Morphine IV
- Lorazepam IV
- Propofol IV
- Appropriate ONLY as a Response to
  - Severe and Unrelieved Pain
  - In a Patient Actively Dying
  - Intended only to provide palliation
  - Continued until patient expires – natural death

May Accompany Terminal Sedation

- Comfort Care Only
- Discontinuation of Tube Feedings
- Discontinuation of Intravenous Therapy
- Continuation of Intravenous Access
- Discontinuation of Futile Therapies
- Institution of New Treatments

NOT Terminal Sedation

- Dose in excess of reasonable palliative dose
- Dose intended to produce death
- Dose that replaces previous comfort care of the dying patient
- Dose that accompanies abandonment of the dying patient

What Does Not Change?

- The dying and death of our patients will occur, despite best care.
- Some conflict in dying may properly be managed by planning.
- We may expect to grieve, for their deaths foreshadow our own.
- Pharmacists can provide relief of suffering for all the dying.
- Care for Ourselves as Provide This Care

Manner of Death

- The Law recognizes 5 Manners of Death
  - Natural: self-defining
  - Accidental: due to unintended actions of self or of other
  - Suicide: due to deliberate action by decedent
    - Once styled “Felo de se”
  - Homicide: due to deliberate action by another
  - Undetermined: self-defining
Social Prompts: Manner of Death

- Is Any Essentially “Good?”
- What does one say … or do, if
  - Natural?
  - Accidental?
  - Suicide?
  - Homicide?
  - Undetermined?

Which is More Difficult?

- Expectations of
  - Others
  - Ourselves
  - Our Peers
- Each is a Portal into Grieving

Grief

- Natural Response to Loss
- A Single Certainty – Change in the Survivor’s Life
- Can include Many Emotions
  - Sadness/Depression
  - Anger
  - Regret
  - Fear (The Future, The Unknown)

Unhealthy Responses to Grief

- Attack
  - Misplaced Defense of Self
  - Displaces Discomfort onto Others
- Avoidance
  - Attempts to Deny the Reality of Loss
- Self-Harm
  - Wounds the Self, Rather than Acknowledging Pain of Loss

Coping – Healthy Responses

- A Social Process
- Acknowledges Grief (Pain, Sadness, Loneliness, Other?)
- Allows Time for Grief Work
- Seeks Support in a Realistic Manner
- Keeps Sight of Mundane Responsibilities

Results

- Unhealthy Responses lead to
  - Lack of Healing (short-term and long-term)
  - Unresolved Feelings of Loss
- Healthy Responses lead to
  - Appropriate Mourning
  - Healing, as Far as Possible
  - The Faded Scar may be the Best Proof
Stages of Grief

- Kübler-Ross’ 5 Stages
  - denial, anger, bargaining, depression, and acceptance
- Another, with 7 Stages
  - Shock & Denial; Pain & Guilt; Anger & Bargaining; Depression, Reflection, & Loneliness; Upward Turn; Reconstruction & Working Through; Acceptance & Hope

Another Grief Model

- Roberta Temes
  - Numbness (mechanical functioning and social insulation)
  - Disorganization (intensely painful feelings of loss)
  - Reorganization (re-entry into a more ‘normal’ social life.)

Wants of Patients

- The Dead are beyond our reach. We can no longer physically or psychically help, nor harm, them.
- The Survivors, who must grieve successfully, or lead diminished lives remain as our patients

Wants of Caregivers

- Security for ourselves
- Acknowledgement of our loss
- Acknowledgement of our ties to the dead
- Time/Space to grieve
- Time/Space to heal ourselves

Results of Unsuccessful Grief for the Caregiver

- Dissatisfaction with Practice
- Anger
- Withdrawal into robotic conduct
- Avoidance of future attachments to the dying
- Burnout

Role of Time

- Does it heal?
  - In a narrow sense
  - If no other way, by loss of clear memory
- It does bring Change
  - Hurtful Change, if it limits future living
  - Desirable Change, if it adapts, enriching future living
Feelings When Grieving

- Time Standing Still (“Outside” of Events)
- Family/Friends allow too little time to be present, to share, our grief
- Frustration from Lack of Energy, Concentration
- Obsession with the Past

Other Feelings When Grieving

- Awareness of Risk/Hazard
  - “I have never done this without ______.”
- Holiday Insecurities
  - “This was her/his/our favorite holiday. How do I celebrate it now?”
- Aloneness
  - Different than Solitude. Prompts: Awakening, Bedtime, Mealtimes, Homecoming, Morning

Caring for Caregivers
In Grief and Through Grief

- First – What do you now do to cope with conflict, anger, loss of energy, negative feelings in general?
- Make Your Own list.
  - Prayer, Exercise, Companionship, Change of Scenery, Service, Meditation, other Positive Activities
- This is where you begin.

In Your Family

- Speak candidly about feeling sad, about what you have lost
- Speak gently, focusing on “I feel” statements
- It is OK to say things more than once
- Be open to the caring you will encounter
- Nothing is too hard for your loved ones to hear, but you do soften the details

Professional Support

- Talk to your own physician
- Do not hesitate to ask for and to accept psychiatric help
- Do not dismiss the use of short-term Rx
- Seek a grief support group
- You are not the first, nor alone

Anodynes to Avoid in Grief

- Alcohol or other depressants
- Use of drugs, outside of supervised therapy
- Passivity
  - Sleep/TV, “relaxing”, isolation, overeating, skipping eating, “comfort food”
- Imprudent Major changes in your life
  - Major purchases, shopping as an end, expensive travel, new commitments too soon
In Your Practice

- Find a confidant or confidants
- Face the cause of your grief
- Accept (or even welcome) support
- Seek development (depth or breadth) of work

Learn

- The essence of our profession
- A central part of all our selves
- A necessity to avoid stagnation
- A source of new insight
- A source of delight

Work

- The Pharmacist’s work is service.
  - Antidote to idleness
  - Source of continuity
  - Source of resources for the new
  - Source of perspective for your own loss

Play

- Look at the word “Recreation”
  - “Re” (again) + “Create”
  - To make a New Person
- A chance to explore the untried
- A chance to revisit the enjoyed
- A venue to renew acquaintance and meet new persons

Release

- Let go of what was lost
- Hold tight to the memories, for they are never lost
- Let go of hurtful memories
- Let go of negative talk
- Let go of negative self-talk

Hope

- Do not expect to find The Lost, for you will never recover that in this life
- Expect scarring. You will not heal and find yourself unchanged
- Assert your own worth, for the loss did not lessen that
- Expect to find a future better than grief can imagine
**Love**

- We need to use the word more
- Consider why you chose your profession, was it not largely because you wanted a life that serves The Other?
- Would you not continue some part of this service, so long as you live?
- Love for yourself means conserving your powers to remain part of creation.

**Religious/Spiritual**

- Your faith life continues even in grief
  - conferring meaning on grief
  - providing the presence of clergy
  - establishing formal rituals for mourning
  - supporting survivors like yourself
  - placing you in community
  - providing you a place of safety

**Why is Healthy Grieving Important for the Caregiver?**

- You are too precious to lose to absent or failed grieving
- You are too scarce a resource to lose
- You are of too much worth to lose
- Your talent and diligent work merit a good outcome when loss finds you

**Death and Dying**

*Estate Planning and Estate Taxation*

- What is estate planning?
  - “The preparation of a plan of administration and disposition of one’s estate using a will, trusts, gifts, power of attorney, etc….” from State Farm.com
  - Estate planning is a process with multiple steps and multiple considerations which address both the decedent and the survivors.

- The Estate – things to consider
  - The Estate consists of all equity which has been accrued and earned over the course of an individual’s life.
  - Estate Planning offers the chance to make decisions which will affect that equity after death.
Estate Planning Step One

- Maintain an up to date listing of your assets and liabilities.

- Your career and your life are a business and you are the owner. Maintain the results of your career and life with the same care and consideration with which you maintain the activities of your career.

Estate Planning Step Two

- Do not avoid questions about property, medical treatments and death.

- Consider your desires and wishes as well as the desires and wishes of those close to you.

Estate Planning Step Three

- Determine what your decisions are.

- Discuss your decisions with your spouse and others affected by those decisions.

- Be prepared to reconcile your decisions, if there are any conflicts with your spouse or others affected.

Estate Planning Step Four

- For your own protection and the protection of your beneficiaries, make your decisions known.

Fundamental Estate Planning Tools

- Your Will

- Your Powers of Attorney (POA’s)

- Your Living Will

- Your Health Care Proxy
What is your will?

- Your will is a document which designates the people to manage your estate and designates the transfer of the assets of your estate.

- Your will is governed by state law and it is highly advisable to consult an attorney in its construction.

Arkansas restrictions on wills

- “If a Will is typewritten, it must be signed by at least two witnesses to the testator’s signature. The witnesses should be persons who do not receive any property in the Will.”

- “A handwritten (holographic) Will is valid in Arkansas if it is entirely in the handwriting of the testator and signed by the testator. It may be witnessed, but does not have to be. To be admitted into Court after the testator’s death, three persons familiar with the testator who will not receive any property under the Will must testify that the handwriting and signature are the testator’s. The danger of a homemade Will is that you may inadvertently create an instrument which is not valid or which has unintended consequences.”

Maintaining Your Will

- Your will is a living document and should be evaluated regularly for any changes to the law governing the will and the law governing taxation of the will.

- Your will is a living document and should be evaluated when any significant changes occur in your life. Examples include marriage, divorce, the birth of a child, and the majority of a child.

Why is a will of signal importance?

- Dying without a will results in the death being considered intestate.

- Intestacy leaves your estate and your survivors to the processes of the courts which can result in unnecessary delays and costs.

Personal Representatives

- One or more personal representatives are nominated by the will to take charge of the estate.

- You may resign as a personal representative with the court’s approval.

- Functioning as a personal representative carries several duties and commensurate liabilities for failure to perform those duties.

- Banks with trust powers and Trust Companies are able to serve as personal representatives.

The Duties of a Personal Representative

- Take possession of and protect the real and personal property, excepting the homestead and real estate specifically given by the will.

- Keep real estate and personal property properly insured.

- Receive the rents and payments due and collect interest, dividends and other income.

- Make proper demand for and collect all the debts, claims and notes due.

- Assist in determining the names, ages, residences and degree of relationship of all possible heirs.

- Litigate or settle any pending lawsuits in which the deceased had an interest.

- Keep the property of the estate in good repair.

- Keep surplus funds invested.

- Obey and perform all the orders of the court.

- Determine and pay federal and state estate taxes and federal and state income taxes.

- Pay the valid claims of creditors and, if necessary, sell the estate property to do so.

- Distribute the remaining assets to the proper heirs.
What is a power of attorney?

“A power of attorney is an instrument which authorizes another person to transact business or make certain decisions on your behalf.”

General and Specific Powers of Attorney

- A general power of attorney has broad application to allow the attorney to transact business for the principal.
- A specific power of attorney limits the ability to transact business to specific transactions.

What makes a power of attorney Durable?

- Most POA’s are revoked upon death or incapacity of the principal.
- A Durable POA is not affected by subsequent disability or incapacity.
- A Durable POA can be drafted to go into effect when the principal becomes incompetent.

Why are powers of attorney important?

- Powers of attorney are important because they allow you to choose who will make decisions in your place rather than forcing the courts to choose the decision maker.
- Powers of attorney function best when used to discuss your decisions with individuals you trust to follow through on them.

What is a living will?

- A living will is a written document which allows a person to make a present decision about future medical care or treatment.
- A living will typically focuses on the application of life-sustaining treatments.

What is a health care proxy?

- A health care proxy is a durable medical power of attorney.
- A health care proxy gives the authority to make health care decisions to another if you are unable to make those decisions yourself.
Make your wishes known. Silence is the source of conflict.

- In order for a living will to function, it must be known that you have a living will and the living will must be available.

- In order for a health care proxy to function, it must be known and available and your proxy must know your decisions and be trusted to follow them.

The team approach to estate planning.

- Your Attorney
- Your CPA
- Life insurance professionals
- Appraiser
- Financial and Investment Planners
- Personal representatives
- Trustees

What will your attorney do?

- Draft your will and other legal documents.

- Review those documents with you regularly for any changes in your decisions or any changes in law.

What will your CPA do?

- Assist with record keeping of assets and liabilities

- Plan your estate to reduce tax burdens

- Prepare estate tax and final income tax returns for filing

What is Probate?

- Probate is a legal process for transferring your assets to your survivors.

- A probate court proceeding is required regardless of whether or not a will exists.

Why is probate disliked?

- Probate costs money and can cost as much as 5% to 10% of the gross estate.

- Probate takes time. State law requires a minimum of six months probate time to allow time to make claims against the estate.

- Probate creates public records which can result in an uncomfortable lack of privacy.
Remember Real Estate

- Real estate is governed by the probate rules of the state it is in. If real estate is owned outside of Arkansas, a separate probate will occur in each state where real estate is owned.

How can probate be addressed?

- An effective will streamlines probate.
- A contested will or an intestate death exacerbates costs in time and money of probate.
- Probate is intended to address assets held in your name.

Additional Ways to Hold Assets

- Joint tenancies
- Living trusts
- “Pour-Over” Provisions

Why a joint tenancy?

- Property in joint ownership does not pass through probate.
- Property in joint ownership is controlled equally throughout the joint ownership.
- Property in joint ownership is still subject to taxation.

Why a living trust?

- You structure the trust.
- The terms of the trust do not become public during probate.
- The assets held by the trust do not become public during probate.

Why a “pour-over” provision?

- Holding all assets in trust is not practical during an individual’s life.
- The “pour-over” provision shifts the assets into trust in the event of death and allows the assets to be managed ordinarily during life.
What do I do when someone dies?

- Immediately contact your bank regarding any joint accounts which are required for regular expenses.
- Locate important papers such as bank statements and bank books, deeds and insurance policies.
- Locate important certificates such as birth certificate, marriage certificate, military discharge papers, social security card, tax forms, birth certificates for any minor children.
- Obtain multiple copies of the certified death certificate.

What do I do next?

- Avoid making life changing decisions or large purchases, unless previously planned, until time has passed and you are able to address decisions rationally.
- Do not be pressured by others because you are a survivor, personal representative or trustee. Perform your duties and follow the wishes of the decedent.

Estate Taxation

- The estate tax is a tax on the transfer of assets from one individual to another.
- Estate taxes are identical to "inter-vivos" gift taxes.

Key Estate Tax Items

- Your Annual Exemption
- Your Unified Credit
- Your Marital Exemption
- Income with Respect to Decedent Taxation
- Life Insurance Proceeds
- Transfers within three years of death

Your Annual Exemption

- For 2012 your annual gift tax exemption is $13,000.
- Any individual can gift $13,000 to any other individual without reporting the transfer or paying taxes on the transfer.
- In estate planning, remember that this applies to each individual. Two parents may thus gift $13,000 each to a child moving $26,000 out of the estate.

529 College Savings Plans

- A qualified 529 college savings plan is an instrument structured by a state to encourage college savings.
- 5 years of annual exclusion may be used at once to fund a 529 plan to a maximum of $65,000.
- Therefore one individual may contribute $65,000 in one year to a 529 plan with no tax consequences other than consuming the majority of 5 years of annual exemption.
- To utilize the 5 year provision, a gift tax return must be filed.
Your Unified Credit

- Your exemption from estate taxes results from a unified credit against calculated taxes owed.
- 2012 - $5,120,000 Exemption from a $1,772,800 credit
- 2013 and after – $1,000,000 from a $345,800 credit if no changes are made to current law
- The Unified credit has been in constant flux since 2001. This area requires regular discussion with your tax professional.

Maximum Estate and Gift Tax Rates

- 2012 – 35%
- 2013 and after – 55%
- These rates have been in flux since 2001. These are another consideration to discuss regularly with your tax professional.

“Inter-Vivos” Gift Taxation

- “Inter-vivos” gifts are simply transfers of assets from you to another during your life.
- During 2012 “inter-vivos” gifts are covered by the same $5,120,000 exemption from a $1,772,800 credit.
- After 2012, “inter-vivos” gifts are covered by a $1,000,000 exemption from a $345,800 unified credit. The effect of this change on gifts prior to 2012 over this limit is uncertain.
- This is the same credit which covers estate taxation. Remember that “inter-vivos” gifts affect your estate tax situation.

The Bottom Line for your patients.

- If a net estate, after expenses, charitable contributions and settling the debts of that estate is less that $5,120,000 this year or less than $1,000,000 after 2012 then no estate taxes will be owed.
- Speaking broadly, from 2008 information, 1 in 73 estates generated an estate tax return and 1 in 166 owed estate taxes.

Your Marital Exemption

- 100% of assets transferred to your spouse are exempt from estate taxation.
- Do not ignore your Unified Credit in the face of the Marital Exemption.
- During 2012 the unused portion of your Unified Credit is portable to a surviving spouse. This is another item that has an unknown future after 2012.

I just gave you $1,772,800.

- When one spouse dies, that spouse should always transfer assets up to the full amount of their Unified Credit to someone who is not their spouse.
- The portability of the credit during 2012 may not survive. I recommend not relying on it.
- Unfortunately, after 2012, I’ve only given you $345,800.
**Income With Respect to Decedent Taxation (IRD Tax)**

- An income tax return will have to be filed for you for the year in which you die.
- Certain assets, if handled improperly, can immediately fall into your annual income tax return in the year you die.
- This primarily affects Standard IRA and 401(k) retirement savings.

**Life Insurance Proceeds**

- Life insurance proceeds paid to a beneficiary upon your death are not taxed as part of your estate, unless you or your estate are the beneficiary.
- Life insurance proceeds are a key tool in planning to manage estate taxes.

**Transfers within three years of death**

- Also known as transfers in anticipation of death.
- Broadly speaking, if you retain control over an asset in any way, it will be part of your estate.
- This issue is a trap for the unwary. Properly planned trusts and gifts are unlikely to ever experience this issue.

**Trusts and You – Key Trust Items**

- Living Trusts
- Irrevocable and Revocable Trusts
- ILIT’s
- Charitable Remainder and Charitable Lead Trusts

**Credit for Tax on Prior Transfers**

- As part of the Tax Relief Unemployment Insurance Reauthorization and Job Creation Act of 2010 a credit was created for tax on prior transfers.
- In brief, if an asset has been transferred during the last 10 years and tax has been paid on the transfer of that asset, a credit is available if the asset is transferred again.
- This transfer may or may not continue after 2012.

**Living Trust**

- A living trust is any trust created during your lifetime.
- A living trust is an instrument which holds assets and is controlled by a trustee.
Irrevocable and Revocable Trusts

- An irrevocable trust cannot have its terms modified in any way after the trust is created.
- A revocable trust may have its terms change.
- In order for a trust to be used as a vessel for a transfer of assets out of your estate, it must be irrevocable.

ILIT’s

- An ILIT is an Irrevocable Life Insurance Trust.
- An ILIT holds a life insurance policy and receives the proceeds of that policy upon your death for the benefit of some other individual or individuals.
- The premiums paid on the life insurance policy on behalf of the ILIT are an “inter-vivos” gift to the beneficiary or beneficiaries of the trust.

Charitable Remainder and Charitable Lead Trusts

- A charitable remainder trust pays an income stream to a beneficiary and the residual of the trust passes to the charity at some point in the future.
- A charitable lead trust pays an income stream to the charity and the residual of the trust passes to a beneficiary at some point in the future.
- A charitable trust must be irrevocable.
- A charitable trust is a charitable deduction in the year it is formed and funded.

Calculation Example One

- A married couple with a $8,000,000 net worth. How best to use their exemptions?

Calculation Example Two

- A Wealthy individual with a single piece of non-liquid property worth $9,000,000. How best to address the taxes?

Calculation Example Three

- A $3,500,000 traditional IRA is the largest asset in an $8,000,000 estate. What are the tax effects? How can those tax effects be addressed?
Other General Items

- Use Roth IRA and Roth 401(k) options to shelter the compounding on your retirement savings.

- Student loans are typically discharged upon death.

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WILLS, ESTATES, & OTHER MEDICAL LEGAL DOCUMENTS

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GRAPHIC WARNING

- The lecture talks about death…it may be uncomfortable, but it’s going to happen to all of us, so you should plan for it the best you can.

- Lots of new terminology…I will try to explain each term, but if I don’t raise your hand and I’ll define.

- Most of the discussion today revolves around what happens to your stuff once you die.

- Lots of legal information is in this presentation, but this presentation is not intended to provide legal advice.

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FIRST FEW DEFINITIONS

Bob writes his last will and testament.
Bob is a testator.
If Bob dies without a will, he dies intestate.

Upon Bob’s death, Bob’s stuff is called his estate.

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LET’S ASSUME BOB HAD A WILL
WHO GETS BOB’S ESTATE?

- Since Bob died with a will, the will controls so long as

- How to determine if the will is valid?
  - Was it created properly?
  - Was it revoked?
  - Is there a newer will?
  - Was a revoked will revived?
FORMALITIES OF A WILL

- Basic rules:
  - Testator must be of sound mind
  - Must be at least 18 years of age when will is created
  - Must be witnessed by at least two competent witnesses (interested vs. disinterested)
  - Must be signed by the testator and at minimum 2 witnesses
  - Testator must declare his intent for this to be his final will and sign the will in the presence of the witnesses
  - Testator’s signature must be at the end of the will or codicil
  - Witnesses must sign in the presence of testator (self proving affidavit)
  - All participants must be participating on their own free will without coercion
  - Exception is a holographic will

INTENTIONALITIES OF THE WILL

- If formalities are met, then the intentions of the testator will be followed where they are made with reasonable certainty in the will

- Documents in existence at the time of execution may be incorporated

- Incorporated writing may be altered by testator after its preparation

HOW TO REVOKE A WILL

- By the creation of a subsequent will which revokes the prior will or part of the will either expressly or by inconsistency

- By being burned, torn, cancelled, or destroyed with the intent and for the purpose of revoking it by the testator or at the testator’s direction

- If only a partial revocation, remainder of the will remains valid

- Can revive a revoked will by re-execution

BOB’S WILL

I, Bob Smith, acknowledge that this is my last will and testament.

I leave my house to my only son, Joe Smith.

I leave $25,000 to my oldest daughter, Jane Smith.

I leave $1 to my youngest daughter, Sue Smith.

I place the residue of my estate in trust for the benefit of the First United Methodist Church of Conway for the exclusive purpose of purchasing and installing a pipe organ manufactured by Great Organs of Austria within 24 months of my death. The remaining trust assets shall be used for the benefit of the Conway Boy’s & Girl’s Club.

My wishes should be carried out by my favorite cousin, O. James Simpson.

Signed & witnessed in the presence of each other this 28th day of September, 2011.

Bob Smith

Witnesses:

Jane Smith

Alan Goldstein

Theresa Williams

BOB’S STUFF

- A joint savings account with Betty Johnson, Bob’s secret lover - $150,000
- A 401(k) worth $75,000
- Life insurance valued at $250,000
- A 2011 Lexus LS460
- A personal checking account with $85,000
- A lease on a penthouse apartment in downtown Little Rock with 9 months remaining at $1500 a month
- Personal belongings in the apartment worth $100,000, including his grandmother’s wedding ring
- 300 acres of land at the intersection of Chenal and Hwy 10 in West Little Rock

OTHER WILL FACTORS FOR BRIEF DISCUSSION

- Non-probate transfers (NPT)
- Omitted heirs
- Simultaneous death
- After-acquired property
- Pretermitted heirs/afterborn heirs
- Pretermitted spouse
- Adoption
- Type of title of property
- Elective shares
- Kids
- Support trusts, charitable trusts
HOW IS THE WILL ADMINISTERED

• Either the will may name or the court may name an Executor to handle the estate
• If the Executor refuses to serve or can’t serve, the court may appoint a substitute
• Executor has a fiduciary duty to the estate (reasonably prudent person standard)
• This is called the Probate process

IF THE WILL IS INVALID OR IF THERE IS NO WILL….THEN WHAT?

• Bob is presumed to have died without any will and has therefore passed away intestate (without a will)
• State’s law of intestacy controls to determine who gets the stuff
• Court appoints an executor to administer the estate and then follows statutory scheme of state
• So who get’s the stuff???

TABLE OF CONSANGUINITY

• Con – “together” Sanguine – “blood”

INTESTACY CONTINUED

• Arkansas limits intestate inheritance to 5 degrees
• Limits to 5th degree to avoid “laughing heirs”
• If there are no living relatives within 5 degrees, then the estate escheats to the state

BENEFITS OF HAVING A WILL

• Reduces conflict amongst surviving heirs
• Minimizes court involvement in disposition of estate
• Reduces overall cost to dispose of estate
• In larger estates, they are valuable tools to minimize the estate’s tax burden
  • What is a “larger estate” has been in flux since President George W. Bush took office and continues to be today…so it is wise to plan

WILL VS. LIVING WILL

• Will – becomes an enforceable legal document upon death
• Living Will, also known as an “advanced directive” – allows you to preplan medical care that you want to receive in the event that you can no competent to make decisions in real time
• Like a Will, a Living Will must meet certain formalities to be valid
COMMON CONDITIONS ADDRESSED IN LIVING WILLS

- CPR
- Artificial ventilation
- Surgery
- Dialysis
- Administration of certain drugs
- Blood
- Hydration
- Nutrition
- Other specific requests

COMPARE DURABLE POWER OF ATTORNEY FOR HEALTH CARE

- Formerly included in the traditional Power of Attorney (POA)
- Separate Durable Health Care Power of Attorney created by Legislature within the last decade
- It is a contract where you are designating a trusted person to be your “agent” to make medical decision on your behalf
- Formalities must be followed, including capacity
- It is “durable” because it survives a disability or incapacity
- Revocable

SAMPLE DURABLE POWER OF ATTORNEY FOR HEALTH CARE

Pursuant to the Arkansas Durable Power of Attorney for Health Care Act (Ark. Code Ann. § 20-13-104) (the “Act”), I hereby designate and appoint _____________________________ as my agent, or attorney in fact, to make decisions regarding my health care during periods when my health care provider has determined that I lack capacity to decide for myself.

Specifically, and not to limit any other rights prescribed under the Act, my attorney-in-fact shall have the power to have access to my medical records for treatment or payment decisions; to disclose medical records to others for purposes of treatment, payment, or health care operations; to employ and discharge physicians to consent to or refuse to consent to medical procedures, including the withholding or withdrawing of life-sustaining treatment; and nutrition and hydration, according to my wishes expressed in my Living Will, or, if my wishes are unclear under the then existing circumstances of my medical condition, then upon consideration of my best interests as determined by my physician in consultation with my agent; to admit me to hospitals, including psychiatric hospitals, nursing homes, or hospice care; and to sign all appropriate forms, consents and releases in connection with any of said matters.

*Blue text is a HIPAA Designee Directive

POWER OF ATTORNEY

- It is a contract where you are designating a trusted person to be your “agent” to make all decisions except medical decision on your behalf
- May be general or specific
- Old Arkansas POA’s use to also include health care decisions…but they are no longer valid for health care decision
- Formalities must be followed
- They automatically terminate in the event of incapacity or disability
- Now “durable” by default in Arkansas, i.e. survive disability or incapacity
- Revocable

QUESTIONS

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