Course Objectives

- Increase your knowledge about financial planning
- Improve your ability to make informed decisions
Elder Law -- Health Care Decisions
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Lesson Objectives

• Understand what is “Informed Consent”
• Learn what is the role of an agent
• Understand who can decide
• Learn how to authorize others to make decisions
A patient must provide “Informed Consent” in order to be treated (with some special exceptions)

A person who has capacity will normally make those decisions on his or her own
Role of an Agent

- Person who acts on behalf of someone else, known as a “principal”
- Common legal concept used in numerous other areas of law
- We can also appoint agents to help make health care decisions
Who are Agents?

If a person lacks capacity, decisions may be made by some type of agent, especially:

- Guardian
- Surrogate
- Advance Health Care Directive
- Physician Orders for Life-Sustaining Treatment (POLST)
Living Will vs. Health Care Directive

- People with capacity designate someone to make health decisions on their own
- In Hawai'i, there are no “living wills”
- Advance Health Care Directives (AHCD) are multi-part documents
Legal document with multiple parts:

- Power of Attorney for Health Care (designate an agent)
- Individual Instructions
- Choices for end-of-life treatment, religious beliefs, organ donation, pain medication, etc.
Generally very easy to execute

- Forms available from attorneys, doctors, online, etc.
- May be notarized OR witnessed by two non-interested parties (e.g. not the caregiver or the agent)
- Persons signing the instrument must have capacity to do so!
A person who may make medical decisions on behalf of someone who does not have capacity to do so

Authorized in the Uniform Health Care Decisions Act

Confusing method: May be designated or undesignated, but there are complicated details with respect to the appointment and the decision making process
Guardianship

- Court proceeding pursuant to the Uniform Guardianship and Protective Proceedings Act. Codified as part of the Hawai'i Probate Code
- Adjudication of INCAPACITY
- Appointment of a guardian who can make personal decisions for the incapacitated person
- NOT for financial decisions
Becoming a Guardian

- Petition the Family Court
- Serve interested parties
- Attend hearing to prove incapacity and appropriateness as guardian
- Make personal decisions for individual (not financial)
- File Annual Reports
- No personal liability
- Return to court only for changes in circumstances
Conclusion

- Concept of informed consent
- Concept of capacity
- Concept of agency and who can make medical decisions
• It is important to plan ahead with documents such as Advance Health Care Directives
• Next time, we will cover similar concepts within a financial context
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