



ADVANCED

HEALTH CARE PLANNING

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IT'S TIME FOR A CHECKUP!

Addressing Medical Issues & Health Care Planning in the Estate Planning Context

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August 22, 2018

WHAT'S THE PROBLEM?



Lawyers don't know medicine

and doctors don't know the law



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RECEIPT OF APPROPRIATE & DESIRED HEALTH CARE

"Attorneys focus too much on end of life decisions and don't consider the continuum of lifetime care."



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ATTORNEY'S VIEW OF HEALTH CARE

- *Advance Directives*
- *Health Care Declarations*
- *Health Care Powers of Attorney*
- *Living Wills*
- *POLST/MOLST*

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PHYSICIAN'S VIEW OF HEALTH CARE

- *Illness*
- *Diagnosis*
- *Treatment*
- *Disability*

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SELECTION OF HEALTH CARE SURROGATES

- *What are the considerations in selecting an appropriate health care surrogate?*
 - *Geography*
 - *Advocacy*
 - *Knowledge*
 - *Number*
 - *Succession*
 - *Subject matter*

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RESPONSIBILITIES & STANDARDS

- *Health care decisions v. Financial health-related decisions*
- *Substituted judgment v. Best interests*



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THE CALL TO ACTION

When does health care decision making transfer from a principal to a surrogate?

- *Determining when the principal is not able to make health care decisions*
- *Who drives the determination?*
- *Is it even necessary?*

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CREATING THE IDEAL HEALTH CARE PLAN

- *Careful selection of appropriate health care surrogates*
- *A comprehensive and customized expression of health care wishes for all points in life*
- *A financial plan for funding the desired plan of care*
- *Cooperative relationship between physicians, lawyers and family members*

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**ANSWERING
QUESTIONS OF
CAPACITY**

*"Doctors don't understand
the legal consequences
or standards of
determining incapacity."*

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**PHYSICIAN'S VIEW
OF CAPACITY**



- Clinical evaluations
- Cognitive screening tests
- Neurologic diagnostic tests

But functional capability is the real issue!

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LOOK FOR RED FLAGS!

*What are signs that suggest a
capacity assessment should be
done?*

- Unusual involvement of family members
- Serious accident or injury
- Significant hospitalization
- Change in personality or hygiene
- Forgetfulness or confusion



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WHY DETERMINE CAPACITY?

When we ask for an assessment, what are we really trying to address?

- Testamentary decision making vs. capacity to contract?
- Ability to manage personal or financial affairs
- Implications of an incapacity determination



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THANK YOU

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Marve Ann M. Alaimo

Marve Ann is a partner based in the Naples, Florida office who focuses her practice in estate planning and wealth preservation. She has nearly 20 years of experience in estate and charitable gift planning, probate and trust administration as well as estate and trust litigation and guardianship.

Marve Ann focuses on conflict avoidance and cooperative problem solving as foundational elements of an estate plan, as family dynamics can often complicate an already stressful time.

She is a Florida Bar Board Certified Wills, Trusts and Estates lawyer and has served as a Florida Supreme Court Certified Circuit Civil Mediator. In addition to representing private clients, Marve Ann has also represented local, regional and national charities, nonprofits, and both private and public universities in shepherding their charitable gifts.

Bar Admissions

Florida
U.S. District Court for the Middle District of Florida
U.S. Tax Court

Presentations

- "Mom Always Liked You Best: Common Reasons Estate Plans Fail," AICPA Engage 2018, American Institute of CPAs, June 11, 2018
- "Estate Planning Still Matters," GBQ Partners, Porter Wright, May 23, 2018
- "The Hatfields & the McCoys: Pitfalls When Planning Devises of Real Estate," Estate Planning Conference, Ave Maria School of Law, April 27, 2018
- "Real Estate and Financial Planning Strategies Forum," The Glenview at Pelican Bay, March 14, 2018
- "Home Sweet Home...or Not! What Every Lawyer Should Know About Homestead," Collier County Women's Bar Association, Oct. 25, 2017

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EDUCATION

University of Miami School of Law,
L.L.M., *with highest honors*, 1998

University of Florida Levin College of
Law, J.D., *with honors*, 1997

University of Florida, B.S., *with
honors*, 1993

University of Florida, A.A., *with
highest honors*, 1991

SERVICES

Tax, Estate Planning & Personal Wealth

- Wealth and asset preservation
- Estate and gift planning
- Tax
- Marital agreements, adoptions and guardianships
- Probate, trust and guardianship litigation
- Tax exempt organizations

Litigation

- Probate, trust and guardianship litigation

Sports

- “Look Before You Leap! Planning at the Cliff of Client Capacity,” National Association of Personal Financial Advisors, Oct. 19, 2017; CPA Academy, July 31, 2017; American Institute of Certified Public Accountants, June 12, 2017; Collier County Bar Association, Sept. 1, 2016; Ave Maria School of Law, May 6, 2016
- “Let’s Talk! Why Gender Matters in Firms and Client Relationships,” American Institute of Certified Public Accountants, June 13, 2017
- “It’s Risky Business! Litigation in the World of Estate Planning,” American Institute of Certified Public Accountants, June 13, 2017
- “It’s Time for a Check Up! Addressing Health Care Issues and Medical Planning in the Estate Planning Context,” Ave Maria School of Law, April 28, 2017
- “Parlez Vous International Estate Planning?” Ave Maria School of Law, April 28, 2017
- “Silly Lawyer, Tricks Aren’t Just for Kids: Civil Procedure for the Wills, Trusts & Estates Lawyer,” Collier County Bar Association, Feb. 24, 2017
- “Hey @grandkids, Like Me on Facebook! Estate Planning with Digital Assets,” Estate Planning Council of Lee County, April 21, 2016
- “The Intersection of Family Law and Estate Planning: Everything you Need to Know to Make the Right Referrals,” National Asian Pacific American Bar Association, March 24, 2016
- “Ethical and Professional Pitfalls in the Chronology of a Probate Dispute,” Lee County Bar Association, Dec. 1, 2016

Publications

- “Six ways you can bolster your clients’ testamentary capacity,” *NAPFA Advisor*, March 2018
- “Civil procedure can be the probate lawyer’s friend,” Lee County Bar Association, August 2016

Honors | Awards

- *Florida Super Lawyers*®, Estate Planning & Probate, Estate & Trust Litigation
- *Florida Super Lawyers*®, Rising Stars, 2010 - 2012
- Lee County Bar Association, Pro Bono Service Award, 2009
- *Gulfshore Life*, Five Star Wealth Manager

Community

- Ave Maria School of Law Estate Planning Conference: Conference Co-Chair, 2018; Speaker Selection Subcommittee, Co-Chair, 2016 - 2017
- Chi Omega Fraternity, Pi Mu Chapter, Financial Advisor
- Girl Scouts Gulf Coast Florida, Volunteer
- National Kidney Foundation of Florida, Inc., Trustee
- Girls Going Places, Entrepreneurship Conference Mentor, 2018

PROFESSIONAL ASSOCIATIONS

- Collier County Bar Association, *Trust and Estates Section*
- Estate Planning Council of Naples, Inc., President-Elect
- Lee County Bar Association, *Trust and Estates Section*
- The Florida Bar, *Real Property, Probate & Trust Law Section*; *Guardianship Law Committee*, Member; *Elective Share Ad Hoc Committee*, Member

Dr. Susan O. Cassidy

Dr. Cassidy is a physician and an attorney with broad expertise in clinical care, cognitive issues, conflict resolution and business leadership.

Her experience ranges from direct patient care to advocating change in national health care policies. She is uniquely qualified to assist physicians, hospitals, attorneys, wealth managers, patients and families with all types of health care issues.

CRITICALMD® provides a broad range of services including:

- Cognitive Capacity Assessments
- Personalized Medical Planning
- Mediation and Conflict Resolution
- Home Care and Assisted Living Evaluations and Support
- Advocacy, Medical Resource, and Referral Services
- Health Care Surrogacy and Pre-Need Guardianship

As the Medical Director for the NFL Player Benefits Plan, Dr. Cassidy had a key role in the design and execution of the NFL Player Neurocognitive Benefit. Since leaving the NFL Player Benefit Plan, Dr. Cassidy formed CRITICALMD® to provide assistance to patients, families, elder and estate attorneys, and wealth management professionals.

Her clinical experience includes; private medical practice and Medical Director positions at IBM and at Aetna Health Plans. She had a lead role on Ford Motor Company's Health Care Team in Ford's bargaining with the UAW, serving on Michigan Blue Cross Blue Shield's Board of Directors. After Ford, she was a Senior Director and then Vice President at Sanofi-aventis Pharmaceuticals.

As CEO of a medical device company, Dr. Cassidy drafted legislation, The Breast Cancer Patient Equity Act, to mandate equity in Medicare coverage of prosthetics for women with breast cancer.

Dr. Cassidy is a Board-Certified Internist who received her medical degree from Vanderbilt University Medical Center and her Juris Doctor degree from University of Connecticut School of Law. In addition to Board Certification in Internal Medicine, she completed a Psychiatry internship at Vanderbilt.

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She is a faculty member teaching Public Health Law for the American College of Preventive Medicine. While serving as a coach for Georgetown Law School's International Mediation Competition Team, she taught mediation as an Adjunct Professor at the George Washington University School of Law.

Dr. Cassidy is an experienced mediator. Representative matters include: Professional Privileges, Appropriateness of Care, Patient Family Issues, Incapacity and Guardianship Disputes, Ethical Considerations, End of Life Decision-making, and Adverse Events.