



Parent's (FKA Dad's!) Law, Part Three

Steven S. Konowitz

Now that our children have graduated from college, started graduate school, finished graduate school, or are entrenched in their careers, their need for a Health Care Proxy, Living Will

and HIPAA Authorization is even more paramount. We might recognize the need for such documents for *ourselves* as parents; after all, we owe it to our children to reduce the foreseeable stress that will accompany our aging. However, the very same documents are also important for our now-adult children, especially when they do not live under roof and/or are geographically distant. Our children's lives and personal philosophies about relationships, life and death have changed so dramatically from when they first officially became adults (In Massachusetts the age of majority is 18) to today. As tough as it can be to accept, they are independent adults. As such, they may not want their parents making critical decisions for them anymore. They may have "significant others" or "best friends" or even close siblings/cousins in their lives who they would want to depend upon to carry out their wishes in serious health-related circumstances.

Let's make certain we understand each of these documents and why they are so important:

A **Living Will**, also known as an advance medical directive, is a document that outlines the medical decisions you want in case you are unable to communicate them. A **Health Care Proxy**, a document that often accompanies a Living Will, names the person you want to make health care decisions for you (known as an agent) in case you are incapacitated. Essentially, the Living Will states what you want to be done and the Health Care Proxy identifies who you want to carry that out. A **HIPAA Authorization** — the acronym refers to the Health Insurance Portability and Accountability Act, the law governing medical data privacy — is a document that allows any appointed person or party to share/receive specific health information. Without this document, family members, friends and significant others have no access to your health information. As a side note: in the Commonwealth of Massachusetts, currently, the Living Will is *not* recognized as a binding document; but, when presented to a Court by your Health Care Agent, the Living Will clearly indicates to the Court what your intentions were when you were fully functional.

Your child may think that having these documents screams: "I am not that old; I am not dying; I will never need them!" The problem with this rationale is that, while statistically sound and very reassuring, if they *are* needed and have

not been drawn up, the consequences could be potentially devastating. Writing a Living Will is not pleasant to think about, but it ensures that the owner of that Living Will, if incapacitated, receives the treatment that s/he wants. In other words, the course of treatment incorporates your child's wishes.

Conversely, if your child has not completed a Health Care Proxy, someone may be asked to make decisions based upon what they believe your child would want done. You might want to encourage your child to figure out his/her preferences for medical treatment, pointing out, for example:

- If your heart stopped beating, would you want CPR or defibrillation, which administers an electric shock to the heart?
- If you were unable to breathe on your own, would you want assistance from a breathing machine?
- If you were unable to eat or drink, would you want feeding tubes to supply your body with nutrition and fluids, and/or dialysis to remove waste from your blood and manage fluid levels?
- Would you want to donate your organs and tissue for transplantation or scientific study?

Because a Living Will raises questions that aren't necessarily easy to answer, one must discuss these questions with a Health Care Agent before naming someone. Also, if your child practices a religion that has a particular stance on certain treatments, this consideration is equally important. When selecting a Health Care Agent, you should encourage your child to choose someone s/he thinks will act honestly and maturely, with *your child's interests* at heart (not someone your child feels obligated to ask). This can be a family member, friend or outside adviser who is able to make thoughtful decisions.

Times have truly changed, and it is not unusual to be involved in a long-term relationship with a "significant other" to whom one is not legally married. This person with whom your child is sharing his or her life will not be entitled to receive any medical information unless s/he has been named in a HIPPA authorization. A well-drafted HIPPA authorization will allow your child to name several individuals, if desired.

A philosopher I once knew stated: "Maturity is tough!" Please contact me if I can assist you or anyone you know.

ssk@kongreen.com | ext.236

As summer draws to a close, let us remind you...

The K&G legal team is your expert counsel for all seasons of life!

WORKING TOGETHER TO SERVE YOU BETTER.



K&G: Now With 100% More Karens

Karen M. Newburg

It's hard for me to believe that I will be coming upon my one-year anniversary with *Konowitz & Greenberg* this fall. My son, who was just an infant when

I joined the firm, is now walking and talking (well, mostly throwing things and yelling "uh oh!"). While my son rules the roost at home, I try my best to serve as the "team captain" at work, so that the *K&G* TEAM can do its best work for our valued clients.

In addition to my role as Office Manager, I am also the *K&G* Legal Assistant. My professional experiences and education have prepared me well for these extra responsibilities. Before moving to Massachusetts with my husband, I practiced law in Connecticut, working at a small trusts and estates firm after receiving my law degree from Saint Louis University and my undergraduate degree from Williams College. Before attending law school, I also earned a master's degree in healthcare administration and worked full-time in a nursing home as an admissions coordinator, honing my interpersonal and communication skills. In addition, I have taught English and History to (sometimes) unruly teens. So, it's not hard to see why I feel well equipped to manage the TEAM here!

What do I actually do here, you might wonder? This is a small office so, not surprisingly, I wear many hats. As the Office Manager, I organize calendars and coordinate meetings; communicate with clients, opposing attorneys and the courts; update our website; and plan the newsletter. I also make sure the office is running smoothly by ordering supplies, managing the billing, and providing technical support and computer assistance.

When I am wearing my Legal Assistant hat, however, I display my "do not disturb" sign at my desk, so that Steven, Karen and Cyndy know that I am not available to fix their computer problems! As a Legal Assistant, I organize and assemble court notebooks for civil litigation and domestic cases and assist in

the preparation and review of legal documents such as Wills, Trusts, and Powers of Attorney. I also run the *K&G* Estate Planning Department, which is a highlight of my job.

One of my most important responsibilities as TEAM captain is ensuring that my attorneys can stay focused on what they do best: practicing law. Each attorney here specializes in somewhat different practice areas. Karen is a highly experienced (and awesome!) domestic relations attorney. As I have learned, this type of practice requires certain talents. For example, appearing in front of a judge in a highly contested divorce proceeding requireschutzpah — that is, a certain swagger or boldness. If you do not understand my reference, you have yet to see Karen Greenberg in action. Karen, who tells me she is "4 feet 11 *and a half* inches tall" is more intimidating than my 6'5" husband could ever be! Cyndy's breadth of knowledge and sharp legal mind makes her an excellent strategist and skilled at analyzing complicated issues. Steven is experienced and unflappable, willing to tackle whatever situation arises for any client who walks through our door. In my role here, I am privileged to work behind the scenes to support their court appearances and other achievements. I love the preparation, the collaboration, and the negotiation. I love the document drafting and the attention to detail this requires. Using my strengths and skills, I am able to assist Karen, Cyndy, and Steven and participate in our clients' successes.

When I graduated from Williams, I could never have anticipated this course, but, right now, I cannot imagine being anywhere else. What I have found most rewarding is the opportunity to take on as much responsibility as I want, which means I am always learning. In fact, joining *K&G* has re-ignited my passion for legal work. In the near future, I hope to expand my legal role and responsibilities even further. I remain very grateful for the warm welcome I continue to receive from my colleagues and our clients!

kmn@kongreen.com | ext.237



Attention All Soon to Be Mother-in-Laws Attention All Soon to Be Father-in-Laws

Karen K. Greenberg

I know the peak wedding season has already passed, so perhaps my message is late for some, but I know it is still timely for others. Perchance your son, or your daughter, is engaged and *planning* to wed. With any luck, you are pleased (or moderately so) with your child's choice of a lifetime partner. If you are not, or even if you are, there is something that you should consider: whether your son or daughter ought to have a prenuptial agreement drawn up before he/she marches down the aisle. *Hmm*, you might be saying, *shouldn't this question be directed at the future groom or future bride?* The answer, as with any answer by a lawyer, always begins with two words: It depends.

Take a moment to think ahead, hopefully far ahead, to when you have departed from this earthly plane. Your worldly goods aren't going anywhere; as the adage puts it, you can't take it with you. But you may have strong opinions about who should keep it.

I think I hear another *hmmm*. Clearly when anticipating a joyful union, one does not want to focus on anything more frightful than the bill. But death or divorce should be considered, particularly with families that have significant possessions to pass on to their children.

"Karen, would you please get to the point?" as Steven would say — actually, he would silently make a sweeping gesture with his arm, letting me know I need to keep moving, and pick up the pace.

A prenuptial agreement, executed by the married couple-to-be, may protect your estate from falling into the hands and/or control of your future (ex) son-or-daughter-in-law. Simply put, a prenuptial agreement, entered into voluntarily, with full financial disclosure to the parties to the agreement, may include language as to inheritances. And, inheritances (and gifts), so long as the assets are kept separate and not co-mingled with the marital estate, may potentially be excluded in case the newlyweds eventually find themselves in a less-than-blissful union. Proper language in a prenuptial

agreement may keep an inheritance off the table and excluded from the marital estate. It may then not be subject to division in the event the parties divorce after your death.

The issue may arise as to whether a surviving spouse is entitled to an inheritance that is part of a deceased spouse's estate. The inherited property may be excluded, if there is a valid agreement in place and the deceased spouse's will does not contradict the prenuptial agreement.

A good estate plan, coupled with pre and postnuptial agreements executed by your children, can help ensure that your "family" assets are protected. However, as mentioned earlier, if co-mingled with the marital estate of the divorcing couple, all can be for naught. Good practices to avoid such pitfalls may include, for example, establishing a trust for large gifts such as a vacation home. What you are hoping to avoid is the couple using inheritances to pay for marital expenses such as vacations or their children's education. Once that occurs, it may be difficult for your child to claim that the inheritance is not a marital asset subject to division upon divorce.

Please do not have the take away of this article be, oh dear, we screwed up. Breathe a sigh of relief. Massachusetts courts have recognized *postnuptial* agreements, so long as such agreements are entered voluntarily with full disclosure of each of the parties' assets and liabilities.

So, returning to your initial question, "Shouldn't the consideration of a prenup be directed to my child," it depends... It depends upon the sophistication, age and worldliness of your offspring. Right after the cake-tasting may just be the moment to be that pushy parent!

Any questions? Of course! You know how to reach the *Konowitz & Greenberg* TEAM. We can help with prenuptial and postnuptial agreements as well as wills and trusts and estates.

kkg@kongreen.com | ext.235



Moving on Up...

Cynthia H. Post

New position? New career? Lateral move? C-suite? Middle Management? New kid on the block?

You've accepted an opportunity and HR sends you a "love letter" that is 108 pages long. You think to yourself, do I really have to read this before signing it? Isn't this just some generic paperwork akin to the Fine Print on the bottom of the form I just signed for my new refrigerator?

You should most certainly read that love letter. Even better, you should have an attorney review it. The relatively small cost that you will incur in hiring counsel may later save you significant funds at several junctures, for example, (1) at the time of hiring; (2) in the event of firing; (3) in the event of resigning; or (4) if your employer closes its doors.

Will my new position include health insurance benefits? For what portion of the premium am I responsible? Is this negotiable? Will my soon-to-be spouse be covered after our wedding in 6 months? Am I entitled to an annual bonus? If I voluntarily leave my position just before my bonus is due, will I receive it? Will my new employer have to pay my commissions that come in to the company after I have left? Is the proposed non-compete legitimate? Can my employer really restrict my work activities like that for the foreseeable future? Can I take the customers I am bringing to my new position with me? Can my old boss badmouth me on social media with no consequences? And, by the way, should I sign that aforementioned "love letter?"

You may wonder whether you will be a so-called contract employee or an employee-at-will, even if you have a written contract. This technicality could become very important if, for example, your dream job morphs into a nightmare or you decide to move cross country or return to school. Will leaving your job subject *you* to a breach of contract claim by your former employer to whom you may have to pay damages?

If you are reading this now as you are "moving on up" and cursing yourself for signing on the dotted line "blindfolded" for your previous job, all may not be lost. Allow us to review what you then signed and with any luck, you are better situated than you think. You may, for example, not realize that you have paid vacation for which you are entitled compensation under Massachusetts law. A little cash in your pocket while you ready yourself for your new adventure could be a nice, unexpected treat.

And if you happen to be reading this while in the process of *searching* for a new position, make sure you ask us about some of our important State laws such as Massachusetts' progressive, and relatively new, Pay Equity Law and our Wage Act.

While reviewing employment contracts and related documents may seem arduous and time-consuming to you, at *K&G*, this type of work is one of our specialties. Let us help you out and pave the way for a rewarding and enjoyable new opportunity.

And for you employers who may be reading along, because of our extensive experience working with employees, we are in an ideal position to assist you in crafting employment agreements and non-competes that comport with your own business objectives. And don't forget those Employee Manuals!

chp@kongreen.com | ext.228

The K&G Team.
Closing in on what's best for you!