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# Physician's Survivor Information



prepared as a membership service by  
**The Massachusetts Medical Society**

This booklet has been prepared by the Massachusetts Medical Society as a source of information to acquaint members and their families with many of the matters which must be confronted upon, or soon after, the death of a member. However, it must be emphasized that this booklet is necessarily selective and in summary form and is *not legal advice*. Consult an attorney about all legal matters.

Following a physician's death, an executor or administrator will be appointed by the Probate Court to supervise the management and settlement of the doctor's estate. On the doctor's death, the surviving family members should review the contents of this booklet with the named executor(s) or administrator(s) and with the attorney who will advise them and the family. This is particularly important since the information contained in this booklet is, necessarily, subject to change at any time by virtue of constantly changing laws, regulations, and court and administrative agency procedures.

Perhaps the two most important insights to be gained from reading this booklet are, first, that the expeditious, orderly, and least costly administration of a member's estate requires careful advance planning with the assistance of competent professionals and, second, that to insure the comfort, security, and peace of mind of the member's surviving spouse after the member's death, the spouse should be a participant in the estate planning process.

This booklet presents information concerning certain pertinent federal and Massachusetts laws. It is not intended as a guide to the law of any other state or jurisdiction.

Although this booklet is divided into two major parts, "*Planning for the Future*," and "*Responding to the Doctor's Death*," the information concerning steps to take after the doctor's death often will be relevant to planning for the future. By the same token, intelligent planning requires that the physician and his family fully understand the problems which will arise and the steps which will have to be taken after his death. Therefore, it is important that the *entire* booklet be reviewed by the physician and his family during the planning process.

The information contained in this booklet, including addresses and telephone numbers, was reviewed for accuracy as of April 11, 2007, but is subject to change at any time. Portions of this booklet have been reprinted with the permission of the California Medical Association.

For ease of reading, only masculine word forms and pronouns are used in this booklet when referring to both males and females. We regret that English provides no functional and impartial alternative.

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## **Planning for the Future**

This section of the booklet is intended to alert the physician and his family to matters which should be attended to well in advance of the doctor's demise. Many of these matters, such as the drafting or revision of a will and the possible creation of a trust, merit careful planning with the assistance of professionals such as lawyers and accountants.

### **Advance Estate Planning**

The importance of careful estate planning cannot be overemphasized. Typically, such advance planning will involve both procedural and substantive matters. Examples of procedural matters include the selection of one or more executors to settle the doctor's estate, the designation of one or more guardians to care for and supervise any minor children, and the appointment of one or more trustees to oversee any trust(s) created by the doctor during his lifetime or at his death. Examples of substantive matters, on the other hand, include the drafting of a will, the drafting of trust instruments, and the consideration of tax issues which will often have an important influence on how the doctor decides to dispose of his property, both during his lifetime and after his death.

An important aspect of estate planning is, as alluded to in the preceding paragraph, the consideration of various means whereby taxes on the transfer of the doctor's property may be reduced, postponed, or avoided entirely. There are a number of steps which are commonly taken to reduce the taxes assessed upon a decedent's estate or his survivors. For example, many types of transfers of property made by the doctor at or prior to his death to or for the benefit of his spouse will reduce the value of the doctor's estate so as to reduce or entirely eliminate the estate taxes assessed upon the estate. (However, it must be cautioned that such transfers may eventually subject the spouse's estate to increased estate tax liability.) Similarly, during his lifetime the doctor may be able to reduce or eliminate his estate's estate tax liability by transferring some of his property (such as stocks, bonds, or life insurance policies) to other individuals or to irrevocable trusts, thus removing the transferred assets from his estate. The doctor and his spouse may also be able to reduce their income tax liability by making outright gifts of income-producing property to others, or by making permanent or temporary gifts of property by means of a trust. However, prior to making any such transfers, the doctor and his spouse should obtain professional advice concerning the tax consequences of such transfers.

It must also be remembered that, to the extent that the doctor's estate will be liable for federal and/or state estate, income, and/or gift taxes, adequate sources of cash must be readily available to pay such taxes.

To avoid the necessity of an unexpected, hurried, and unproductive sale of estate assets to raise the funds necessary to pay those taxes, the estate planners should consider providing for alternative sources of cash to pay such taxes. Such ready sources of cash could include life

insurance policies and pre-negotiated agreements for the doctor's business interests to be sold to his partners or fellow stockholders upon his death at a prearranged price.

From this brief discussion of possible estate planning techniques it should be evident that the potential benefits of advance estate planning are great and merit the involvement of professional advisers such as attorneys and accountants. A failure to plan for the consequences of the doctor's demise, or a failure to obtain professional advice during the planning process, may prove to be costly in terms of unnecessary additional taxes, fees for remedial professional assistance, and unnecessary emotional stress upon the doctor's survivors.

## **Documents**

### **Documents Important to the Estate**

During the doctor's lifetime, the following documents should be located and stored in a place which is known to the doctor's family, lawyer, and intended executor(s):

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#### Documents Effective at Death

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- ✓ Burial and anatomical gift instructions ("living wills")
- ✓ Last will and any codicils appended to it
- ✓ Life insurance policies

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#### Estate Administration and related documents

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- ✓ Stock Certificates and Bonds
- ✓ Deeds and Mortgages
- ✓ Bank Books and Certificates of Deposit
- ✓ Latest Monthly Checking Account Statements
- ✓ Corporate Agreements -professional and closely held corporations
- ✓ Investment Partnership Agreements
- ✓ Latest Income Tax Returns (most recent 3 years)
- ✓ Financial Inventories or Appraisals
- ✓ Promissory notes or IOU's
- ✓ Birth, Marriage, and Divorce Certificates or Decrees
- ✓ Military Service (VA) papers
- ✓ Family Social Security numbers
- ✓ Copies of Automobile and Boat Registrations and Certificates of Title
- ✓ Other Insurance Policies: accident and illness; disability income; automobile
- ✓ Property Insurance: Homeowner's; Tenant's; Personal Articles; General Liability

## Current Bills

List of Outstanding Debts

Schedule of weekly bills and expenses

## Income Related Documents

Pension Plan

Keogh Plan

IRA Account

- homeowner's - tenant's
  - personal articles - general liability Umbrella and/or Excess liability coverage
- Professional (malpractice) liability

A list should be prepared indicating the place where each document may be found. See below for a special discussion of safe deposit boxes.

## **Wills**

The importance of preparing a will and revising it as family and financial circumstances change cannot be overemphasized. If the doctor dies without a will, his property will be distributed according to a pattern established by law, without regard to his wishes. By having a will, the doctor generally will be able to distribute his property as he wishes and may also be able to substantially reduce his estate's and survivors' tax liability.

Once the doctor's will has been drafted, it should be revised whenever the doctor's family or financial circumstances change significantly. For example, the will should be revised if the doctor marries, becomes divorced, adopts a child, or acquires substantial new assets. A will may be revised by executing an amendment to the will, known as a "codicil," or by revoking the old will and executing a new one. Once prepared and executed, a will should be kept in a place known and accessible to the doctor's family and executor(s).

## **Responding to the Doctor's Death**

This section of the booklet deals with many of the problems which must be confronted and the steps which must or may be taken at various times following the doctor's death. Many of these matters will involve the executor(s) of the doctor's estate and should be discussed with the person(s) having that responsibility as soon as possible following the doctor's death. If careful estate planning has preceded the doctor's death, many of the problems discussed in this portion of the booklet will be alleviated.

## **People to Notify Immediately After the Doctor's Death**

There are a number of individuals who should be contacted as soon as possible after the doctor's death. Very often their activities may have significance not immediately recognized by the survivors.

## **Funeral Director**

The funeral director's services can include flowers, clergy, clothing for the deceased, transportation, funeral parlor space rental, etc. If arrangements have not already been made for a burial plot or other method of disposition, the funeral director may be able to assist. Costs vary according to the services provided and your location. In addition to taking care of the details of the funeral, many funeral directors will help the family in other ways, such as contacting fraternal or professional organizations, obtaining certified copies of the death certificate, placing newspaper notices, and applying for any available Social Security or Veterans Administration burial allowance.

## **Attorney**

The importance of promptly obtaining good legal advice cannot be overemphasized. The can help you locate an attorney. The attorney can give legal advice on matters such as obtaining appointment of an executor and allowance of the will, conservation, disbursement and distribution of estate assets, filing appropriate tax returns, filing a probate inventory and executor's accounts with the Probate Court, and revising or drafting a will for the surviving spouse. The lawyer also can provide advice and assistance with respect to applying for various Social Security and Veterans Administrations benefits which may be available to survivors of the doctor. If there is no family lawyer, an attorney referral line may be utilized to find a local attorney experienced in probate matters. The following is a list of attorney referral sources in Massachusetts:

Massachusetts Bar Association Lawyer Referral Service (M-F 9:00 a.m. to 4:45p.m.):  
Toll free in MA (866) 627-7577; In the Boston area (617) 654-0400

Boston Bar Association Lawyer Referral Service(M-F 9:00 a.m. to 5:30 p.m.): (617) 742-0625

National Lawyers Guild (M-F 10:00 a.m. to 1:00 p.m. or leave a message) (617) 227-7008

## **Associate Practitioner(s) and Office Staff**

Temporary professional coverage for the doctor's practice, including hospitalized patients, should be arranged with his colleagues or partners as soon as possible. This is a matter of great importance. The doctor's nurse or secretary should be retained at least temporarily, since someone should be present during normal office hours to notify patients of the doctor's death, attend to bill collections, and perform other office functions. It is especially important to have someone in the office to preserve the going practice if the practice will later be offered for sale.

## **Accountant and/or Tax Consultant**

Often the doctor's accountant or tax consultant can assist the family or the executors of the will by preparing and interpreting financial records and by providing tax information. An accountant's help also can be invaluable in the sale of a medical practice.

## **Insurance Agents**

The doctor's life insurance agent(s) should be notified promptly. Life insurance benefits can usually be paid in a variety of ways. Unless there is an immediate need for all of the cash in a lump sum, a decision on the method of payment should be deferred to allow for careful consideration of the settlement options and their differing tax consequences. If there are no other convenient sources of needed cash to meet family living costs, access to insurance proceeds will meet that need but, in order to avoid rushing into financial decisions during a period of major adjustment, the surviving spouse can usually instruct the insurance company that a certain amount of money is required for immediate needs, and that the company is to hold the rest of the benefits until subsequent instructions are given. This can be done with the understanding that any balance (or entire sum) can be withdrawn at any time, that interest payments on undistributed benefits will begin immediately, and that the right to select a settlement option, including a lump sum payment, is guaranteed to a later date. Settlement options may vary from insurance company to company. The insurance agent should be able to explain each option fully.

### **Sample Letter to Life Insurance Company:**

Dear Sir or Madam:

Please send me the necessary instructions and papers to complete a claim under policy number(s) \_\_\_\_\_ on the life of (FULL NAME), who passed away on (DAY, MONTH, YEAR).

I also wish to know what settlement options and partial elections may be available to me.

Will you please search your file for any other coverages that the deceased may have had, and advise me promptly.

Sincerely,

(SIGNATURE)

(Typed complete name, address and relationship to the doctor or his estate)

## **DOCUMENTS**

### **Copies of Documents**

Several copies of the death certificate may be needed for filing life insurance claims, recording affidavits of death of joint tenants, claims for Social Security benefits, veterans benefits, and other requirements. Fifteen (15) copies should suffice initially and more can always be obtained later from a local official (usually a Town or City Clerk). Most funeral directors, upon request, will obtain certified copies of the death certificate.

It is also advisable to make some extra copies of other important documents, such as birth and marriage certificates.

### **Safe Deposit Boxes**

All safe deposit boxes to which the doctor had access should be searched for the most recent will and any codicils affecting it. If the doctor had the sole right of access to the box, the bank may, except for the purposes of a will search, refuse anyone access to the safe deposit box until an executor or administrator has been appointed and produces a certified copy of his appointment from the Probate Court. At any opening of a safe deposit box to which the doctor had access, the presence of a witness is recommended. Everything found in the safe deposit box should, regardless of its value, be listed with the participation of the witness. If sealed envelopes are found in the box bearing a name other than that of the doctor, each envelope should be opened and the contents carefully noted with the statement that the envelope was marked as the property of another person. If it is believed that the doctor left a will in a safe deposit box and the bank refuses to allow a will search, a petition for the appointment of a temporary administrator or executor may be filed with the Probate Court. When the Probate Court appoints the temporary administrator or executor, the bank will grant him access to the box so that he may secure the contents, including the will. If a will is found in a safe deposit box, it should be delivered to the named executor, who will file it with the county register of probate.

### **Organizations and Agencies to Contact**

#### **Board of Registration in Medicine**

Commonwealth of Massachusetts  
Board of Registration in Medicine  
560 Harrison Avenue, Suite G-4  
Boston, MA 02118  
(800) 377-0550 Toll free  
(617) 654-9800  
(617) 423-5604 TTY  
[www.massmedboard.org](http://www.massmedboard.org)

#### **Social Security Administration**

The Social Security program provides several types of benefits for eligible dependents and survivors. For example, monthly benefits may be available to the doctor's unmarried children under age 18 (or under 19 if they are full-time high school students). Monthly benefits also may be available to the doctor's widow or widower if age 60 or older (or age 50 or older if the widow or widower is disabled).

If you are eligible for a Social Security benefit as a surviving spouse of the doctor, you may also be eligible for hospital insurance protection under the Medicare program upon reaching your 65th birthday.

Such benefits may be quite valuable to the doctor's survivors insofar as Social Security benefits are not currently subject to federal income taxation. Such benefits may, however, become partially taxable in the near future.

It is suggested that brochures describing in more detail the benefits, eligibility requirements, and the documents required to secure these benefits be promptly requested from a local Social Security office. Social Security benefits are not automatically provided; you must file an application for such benefits. Your lawyer may contact the local Social Security office on behalf of the doctor's survivors but, if not, an appointment with a Social Security representative should be made. The Social Security Administration, including district offices, is listed in the "United States Government" listings in your phone book. Having the following information available should speed up processing of your application for benefits:

1. A certified copy of the doctor's death certificate;
2. The doctor's Social Security number;
3. A record of the doctor's earnings in the current and previous two years;
4. A copy of the marriage certificate and any prior divorce decrees for either the doctor or the surviving spouse;
5. Social Security numbers for the spouse and any dependent children;
6. Proof of the spouse's age and the ages of dependent children 18 or younger;

Normally the Social Security Administration requires birth certificates to verify familial relationships, but it may accept baptismal certificates made before the age of five years, or grade school records in unusual circumstances.

### **Veterans Administration**

Veterans Administration benefits also vary. VA benefits which may be available to a deceased veteran's survivors include:

1. guaranteed loans for the purchase by the surviving spouse of a home, house lot; mobile home, or certain kinds of condominiums;
2. VA provided or funded medical care;
3. allowances for funeral and burial expenses incurred in laying the deceased veteran to rest;
4. free burial of the deceased veteran, a surviving spouse, or a minor child in a National Cemetery (application for such interment must be made at the time of death by contacting the director of the nearest National Cemetery);
5. educational and vocational training allowances and counseling services;
6. certain other cash payments;
7. certificates for the deceased veteran's surviving spouse or mother entitling them to a preference in seeking civilian government employment.

The survivor's lawyer may notify the insurance division of the VA of the doctor's death and request that benefit application forms be sent out. If the VA has not been contacted by someone on your behalf and you wish to obtain one or more of the benefits listed above, you should promptly contact the closest regional office. The VA regional office in Massachusetts is:

Veterans Administration  
John F. Kennedy Federal Bldg.  
Government Center Boston, MA 02108  
(617) 565-2585

The VA regional office in Massachusetts is open weekdays. No appointments are granted but assistance is given on a first-come, first-served basis. It is possible for a claim for benefits to be processed even though the prospective beneficiary does not visit the VA office in person. Each regional office has several toll-free numbers. To obtain the appropriate toll-free number for your location, call the toll-free information operator at (800) 555-1212.

The VA will usually require the following documents to process a claim:

1. The doctor's Report of Separation from Active Service, Form DD214 (Discharge Papers);
2. A certified copy of the death certificate;
3. A copy of the marriage certificate and any prior divorce decrees for either the doctor or the spouse;
4. Copies of birth verifications for dependent children;

In addition to these documents, the doctor's complete name and government life insurance policy number or VA claim number should be supplied. If this information is not available, the doctor's military service serial number and the branch and dates of service must be provided. The VA representative can assist you in obtaining from the Department of Defense the necessary documents if they cannot be located.

## **Trusts**

A trust may have been created by the doctor either prior to death or pursuant to the doctor's will. If this is the case, the trustee named under the trust should be contacted. If the trustee is a bank, the trust department should be contacted. Once the assets of the doctor's estate are distributed by the executor to the trustee, it is the trustee's general duty to review the entire financial picture of the trust's assets (which may include real estate, individually owned securities, cash, business interests, and the face value of life insurance; and which may, but normally would not, include works of art, automobiles, jewelry and the like), and to invest the assets, collect income earned by the investments, remit the income as directed in the trust document, and attend to all the details involved in handling the trust. The trustee will keep the necessary financial records and provide the beneficiary with the required reports during the term of the trust.

Fees charged by a bank for trust services generally are based upon a percentage of the assets in the trust and a percentage of the income earned by the trust plus specified fees for "extra" services. A schedule of fees charged will be available from the bank. When a private individual is named as trustee, that person also will be entitled to fees for services rendered as trustee.

The use of trusts may minimize the amount of taxes which would otherwise be imposed upon the successive deaths of family members. Whether or not a trust was created by the

doctor, the surviving spouse should consider the advisability of creating a trust either during the survivor's lifetime or under the survivor's will. Your lawyer and tax advisor can assist in making this decision.

### **Professional Associations**

The district medical society as well as other professional associations to which the doctor belonged should be contacted for possible benefits (such as group life insurance) and/or a refund of unused dues.

### **Other Organizations**

If the doctor was a member of any service organization (such as the Rotary Club), automobile club, fraternal organization, etc., each should be contacted for information on possible benefits and a refund of any unused dues. Many organizations have group life insurance programs and credit unions in which the doctor may have participated.

The following is a sample of a letter to an organization of which the doctor may have been a member:

Dear Sir:

This is to advise you that (FULL NAME) passed away on (DAY, MONTH, YEAR). I understand that he/she may have been covered by a life insurance policy through your organization or that he/she or his/her survivors may have been entitled to some other benefits. If any such insurance or benefits exist, please describe them and send me a list of whatever further information you will need before payment of the insurance proceeds or benefits. Please also inform me if a partial refund will be made of any previously paid dues.

Sincerely,

(SIGNATURE)

(Typed complete name, address and relationship to the doctor or his estate)

### **Current Bills and Immediate Funds Current Bills**

It is preferable to defer paying bills until consulting the attorney for the executor. Generally, the estate of the doctor is responsible for any debt owed by the doctor at the time of his death. As with all matters pertaining to the management of the estate's assets, the executor or administrator of the estate should promptly become involved in settling the

doctor's debts. Although payment of debts may seem to be a routine matter, it is important that the executor or administrator assume responsibility for this as soon as practicable, especially since only enforceable debts and claims against the doctor will be deductible from the doctor's gross estate for death tax purposes.

Many types of installment purchases, loans, and credit accounts are covered by credit life insurance which pays the balance due in the event of the death of the debtor. It is therefore possible that the balances due on a credit card account or other financed purchase (such as of a home, automobile, or boat) will become fully paid when the purchaser dies: All such creditor companies should be contacted by the executor's attorney or the survivor(s) as soon as possible. The following is a sample letter to such companies:

Dear Sir:

This is to inform you that (FULL NAME) passed away on (DAY, MONTH, YEAR). I understand that this account (Number ) may have been covered by a credit life insurance plan through your company. Please inform me of the extent of such insurance, if any, and the amount of the unpaid balance of the account on (DAY, MONTH, YEAR).

Sincerely,

(SIGNATURE)

(Typed complete name, address and relationship to the doctor or his estate)

### **Immediate Funds**

Banks often stop payment on checks after they receive notice of the depositor's death. It is therefore advisable for the doctor and his/her spouse to have separate bank accounts for their own use or joint accounts which will, on the doctor's death, become the property of the surviving spouse without probate. By doing this, the surviving spouse and any dependent children will insure that they have access to needed cash during the period before the assets of the doctor's estate are distributed. Since probate procedures for an estate may take more than a year to complete, it is important for the survivors to have independent sources of cash while the probate proceeding continues. In addition, the probate court may, while the doctor's estate is being probated, grant the doctor's surviving spouse and minor children an allowance from the estate to pay for their necessary living expenses.

#### **Retirement Plan Benefits**

If the doctor previously had created a retirement plan but died before all of the assets were distributed, benefits may be payable to named beneficiaries. The plan's trustee or administrator should be able to determine exactly what benefits and payment options are available. The surviving family should consult with legal and/or financial counsel to determine the most advantageous method of payment in light of their needs and the alternative tax consequences. It should be noted that the doctor may have assets in more

than one retirement plan. For example, benefits may be available from retirement accounts resulting from employment or government service, a Keogh Account created during periods as a solo practitioner or as a partner in a practice, a corporate retirement plan if the doctor's practice was incorporated at some time, and from an Individual Retirement Account ("IRA").

## **Life Insurance**

Life insurance proceeds are the most common source of near immediate funds and they may be available through one or more policies in which the doctor's surviving spouse is named the primary beneficiary or through policies in which a trust established by the doctor or by the doctor's spouse is named the primary beneficiary. Typically, such a trust would permit distributions of income and/or principal to or for the surviving spouse, and/or loans and purchases from the doctor's estate.

## **Checklist For The Home**

### **Transfer of Title to Real Estate and Insurance**

Any real estate (including the home) which is owned in tenancy by the entirety or in joint tenancy passes directly to the surviving spouse or other surviving joint tenants. If the home is owned in tenancy by the entirety or joint tenancy and passes directly to the surviving spouse, it is unnecessary to change the deed in order to indicate that the home is now the sole property of the surviving spouse. Evidence of probate proceedings filed in the county records or a death certificate filed in the County Registry of Deeds will be sufficient evidence of the automatic transfer of title. Fire, theft, and other household and homeowner's insurance policies should promptly be amended to reflect the survivor's sole ownership of the realty in order to avoid any possible lapse in coverage upon the insurance policy's renewal date.

Real estate which stood in the doctor's name alone at his death and his interests in real estate which he owned with another or others as a tenant in common will, in laymen's terms, be transferred according to the terms of the doctor's will when the will is allowed by the Probate Court. If the property does not have to be sold to pay debts, expenses, or taxes, the probate proceedings in the County Probate Court will be sufficient evidence of the transfer of the doctor's title or interests to the devisee(s) named in his will without the need for changing the deed to the real estate.

## **Sale of Real Estate**

If real property was held by the doctor in tenancy by the entirety or in joint tenancy with the surviving spouse, the doctor's surviving spouse enjoys immediate ownership of and control over the realty upon the death of the doctor. Such realty passes to the surviving spouse without probate.

When, on the other hand, real property must be transferred through the Probate Court, the estate's executor(s) may, if necessary to pay the doctor's debts, obtain authorization from the Probate Court to sell the realty. Survivors are advised to contact either their attorney or the estate's executor(s) to resolve any questions which might arise concerning the disposition of real property in which the doctor formerly had an interest. One of the matters to be resolved will be the satisfaction and removal of death tax liens which will have automatically attached to any real estate in which the doctor enjoyed an ownership interest at his death.

## **Utilities**

Utility companies should be advised to change the billing name if it was previously in the doctor's name.

## **Automobile(s)**

Under a special Massachusetts statute, the doctor's surviving spouse will automatically become the owner of any motor vehicles (including automobiles, trucks, vans, and most mobile homes) not used for business purposes which were owned by the doctor at his death, unless the doctor's will makes some other disposition of the vehicles. This statute allows the surviving spouse to obtain ownership of such an automobile without the automobile becoming an asset of the estate subject to probate. To obtain a certificate of title to the automobile, the surviving spouse should apply to the Registry of Motor Vehicles and include with the application for the new certificate of title a copy of the doctor's death certificate, the certificate of title previously issued to the doctor, a sworn affidavit on a form prepared by the Registry stating that the vehicle in question has not been disposed of otherwise by the will of the doctor, and the required fee. For more information, you should contact the Massachusetts Registry of Motor Vehicles, Title Division, 630 Washington Street, Boston, MA [telephone (617) 351-9550.]

## **Probate and Taxes**

### **Probate**

Probate is a civil proceeding which establishes the legitimacy of the decedent's will, if any, collects and protects the decedent's assets, pays outstanding bills, debts, death taxes, and administration expenses, and distributes the net assets of the estate to the designated

recipients of the decedent's property. Probate court jurisdiction generally includes the power to establish the authenticity of a will, to certify the appointment of the executor(s) and any trustee(s) named in the will, and to distribute all real and personal property of the decedent which at death stood in his/her name alone. Normally, assets held in joint tenancy, in tenancy by the entirety, certain trust properties, and life insurance proceeds and retirement benefits payable to a beneficiary other than the estate are outside the jurisdiction of the probate court, although they may still be subject to estate and/or income taxation.

The decedent's last will and any codicils should be submitted for probate to the Probate Court in the county in which the decedent resided at his death. The following information and documents are necessary to begin probate hearings.:

1. The original of the decedent's last will and any codicils to that will.
2. A petition to the Probate Court signed by the named executor, or by the would-be administrator if there is no will.
3. The names and addresses of all the decedent's living children, grandchildren, and his surviving spouse.

The petitioner receives from the Probate Court in response to the filed petition a notice indicating that the petition has been filed. The petitioner then arranges with the local newspaper for the notice's publication and mails copies of the notice to the decedent's spouse, heirs at law, and to those legatees mentioned in the will. The published notice serves as notice to any unknown heirs and possible creditors of the estate that they have a limited time within which to present any claims they may have.

### **Ancillary Probate and Administration**

If at death, the decedent owned an interest in real estate located in another state or country, formal proceedings in those jurisdictions also may be necessary in order to release such property from any death tax liens attaching by reason of the decedent's death or to transfer the decedent's interests in that property as directed in the will. The executor, administrator, or the survivor's attorney should be consulted.

### **Problems Relating to the Medical Practice**

#### **Disposition of Narcotics and Other Drugs**

If the decedent dies leaving narcotics or other controlled substances in the office, the surviving spouse or executor/administrator should promptly notify the following agencies:

- (1) United States Dept. of Justice  
Drug Enforcement Administration, Compliance Division  
50 Stamford Street, Suite 200

Boston, MA 02114  
860-240-3700

(2) Massachusetts Dept. of Public Health, Food & Drug Division  
250 Washington Street Boston, MA 02108 [(617) 624-6000] informing them of the doctor's death and requesting all forms necessary for the lawful disposal of the controlled substances. The letter sent to each agency (by certified mail, return receipt requested) should include the following information:

1. the name and address of the person writing;
2. the name and quantity of each controlled substance to be disposed of;
3. how the person writing came into possession of the controlled substance(s);
4. the name, address, and DEA registration number of the doctor, if known.

Copies should be made of the doctor's Certificate of Registration from the federal Drug Enforcement Administration ("DEA") as well as all other forms and correspondence sent to the DEA or the Massachusetts Department of Public Health. Materials or letters sent should be transmitted by certified mail, return receipt requested, and copies of all letters, receipts, etc., should be retained with the estate documents.

The DEA will instruct you how to dispose of the drugs. One inexpensive method of disposal which the DEA may approve is to pack all of the drugs in boxes, seal the boxes, and request the Massachusetts Department of Public Health to dispose of the boxed drugs for you.

Although you may be able to return some drugs to the manufacturer or supplier for credit or a refund, you should not attempt to do so without the prior written authorization of the DEA.

If you are uncertain as to whether a drug in question is a controlled substance, the disposal of which is subject to Federal and State regulation, contact the DEA in Boston. Controlled substances include most drugs commonly known as opiates, opium derivatives, hallucinogenic substances, depressants, stimulants, and narcotics.

You must void and return all unused narcotics order forms to the DEA in Boston. All unused narcotic triplicate prescription pads should be voided and disposed of with the drugs. The triplicate prescription forms are issued in books of 25, four books at a time; an effort should be made to account for all 100 prescription forms.

The following records of controlled substances should be kept for not less than three years:

1. Application for DEA Certificate of Registration.
2. Inventory of all controlled substances.
3. The doctor's copy of all used drug order forms and prescriptions.
4. The doctor's daily record of dispensing narcotics and other controlled substances.

## **Disposition of Drug Samples and Other Medications**

Drug samples and other medications should not be thrown away unless they are opened, unlabeled, or deteriorated. If packages are unopened, the pharmacist or supplier may take them back. The county medical society or its auxiliary may have a suitable use for them. Before transferring any such samples or medications to anyone, however, you should contact both the DEA and the Massachusetts Department of Public Health, Food and Drug Division, to determine how and if such drugs may be lawfully transferred.

## **Notification of Patients**

The office staff should be retained, at least temporarily. The secretary, bookkeeper, or some other designated person should be authorized by the executor or administrator to deposit funds and write checks on a bank account established for routine operating expenses, so that current bills, payrolls and taxes can be paid, fees collected, etc. The office staff should cancel or transfer appointments, carry out the proper transferring of medical records as requested (see below), and take appropriate steps to notify patients of the doctor's death. If there is a telephone answering service, it is a good idea to retain the service for at least one month. It is a convenient way to notify patients and help them make arrangements for continuing medical care.

## **Patient Records**

Under current Massachusetts law, patient records are the property of the treating physician. However, there are legal and ethical considerations *concerning* them. Medical records are important with respect to the proper care and treatment of a patient. Furthermore, a former patient may sue the doctor's estate for malpractice. Often, the patient's medical records are the only defense to such a suit.

Under Massachusetts law, a patient can sue his doctor for malpractice at any time within three years after the patient learns or should have learned that he has been harmed by the doctor's conduct. Further, under certain circumstances the doctor's estate or his heirs may be liable for the doctor's malpractice. Thus, in order to be prepared to defend against any such lawsuits, medical records should be retained for an indefinite period following the death of the doctor. Such records should be retained in a manner which insures their safety, confidentiality, and retrievability. After the estate is closed, the remaining records can be microfilmed to facilitate storage and retrieval of information. Proper record retention should be discussed with the doctor's professional liability insurance carrier.

Under Massachusetts law, patients have a right to a copy or, in some cases, a summary of their medical records in the doctor's possession. Patients also have a legally protected interest in the confidentiality of their medical records. Specifically, legal liability may be imposed upon a person who improperly discloses a patient's medical history or medical records to an unauthorized person.

Patients should be notified of the doctor's death (in a letter similar to that which follows) and be advised that copies of their medical records will be transferred to any physician whom the patient designates in writing. Although it is suggested that charges not be imposed unless necessary, a reasonable charge may be made for copying and transferring copies of the records requested. The express written consent and direction of the patient or the patient's authorized representative is appropriate in order to furnish a copy of the records to the new physician. The original record should be retained by the estate, along with the patient's transfer authorization.

Under current Massachusetts law, a patient does not have a right to compel his physician to surrender to him his original medical records. Nevertheless, a physician may elect to give copies directly to the patient. Furthermore, should a dispute between a patient and the doctor's estate result in a lawsuit, the patient may be able to gain access to his medical records by means of the pre-trial "discovery" process. Before the estate surrenders copies of a patient's medical records directly to the patient, the completeness of the records should be verified by another doctor.

The following is a sample letter to send to the doctor's patients after the doctor's death and prior to transferring the patient's medical records to any other doctor:

Dear (Patient's Name):

This is to advise you that Dr. \_\_\_\_\_ passed away on - (date)-. We suggest that you promptly select another physician. Dr. \_\_\_\_\_ will be taking over the practice and you may wish to place yourself under his care. Otherwise, you may wish to contact the (Local/ County Medical Society) which can refer you to physicians in your area who are taking new patients.

In any case, we will make copies of your medical records available to the physician you designate. Since medical records are confidential, your written authorization is required to make them available to another physician. Therefore, an authorization form is included in this letter; please complete the form and return it as soon as possible.

In order to cover the costs of duplicating and transferring your records, please note that we must charge \_\_\_\_\_ per page.\*

\*If you decide to impose charges for copying and transferring patients' records, it is suggested that, in the interest of good public relations, patients be apprised of the cost beforehand.

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#### Authorization to Transfer Patient's Medical Records

(Patient)

To the estate of \_\_\_\_\_, MD:

I hereby authorize and request you to furnish a copy of the medical records concerning \_\_\_\_\_ (Patient's name) covering the period from \_\_\_\_\_ to \_\_\_\_\_ to the physician named below:

Doctor

(address, street, city, zip code)

Signed:

Date:

## **Insurance**

### **Professional Liability (Malpractice) Insurance**

It is possible for a physician's estate to be sued for malpractice, so it is very important that adequate insurance coverage be in effect.

The doctor's insurance agent should be notified immediately after the doctor's death to determine what kind of malpractice policy covered the doctor at his death. Some types of malpractice policies (known as "Occurrence Policies") include coverage for any claims which were based upon incidents that took place during the effective period of the policy, but which were not then known to the doctor or the insurance company, and which were not asserted until after the policy expired. Another type of insurance (known as "Claims Made Policies") provides coverage only against claims actually made during the effective period of the policy, regardless of the date of the incident giving rise to those claims. As soon as possible following the death of the doctor, therefore, you or the executor should determine whether the doctor at his death was covered by an occurrence or a claims made type of malpractice policy. If the doctor's coverage was provided under a claims made policy, you may purchase an insurance rider (called a "Reporting Indorsement") which will insure the doctor's estate against future malpractice claims regardless of when the incidents giving rise to the claims took place. For more information concerning such a rider, you should contact The Medical Malpractice Joint Underwriting Association of Massachusetts, P.O. Box 9147, JFK Station, 50 Staniford Street, Boston, MA 02114 [telephone (617) 742-5070].

All professional liability insurance policies, including those which have been cancelled or have expired, should be retained.

### **Medical Insurance for the Family**

The surviving family may continue to be eligible for hospital, surgical and disability benefits under the doctor's health insurance policy. These coverages may or may not cease with the death of the doctor. All health and hospitalization plans should be identified and promptly consulted.

## Other Types of Insurance

Property damage and general liability insurance for the office should not be cancelled until the physical assets of the office are disposed of or the premises are vacated. Consultation with the insurance company or agent is advisable at an early date.

## Sale of the Medical Practice "Buy and Sell" Agreement

Often a partnership or corporate shareholder agreement contains an arrangement which provides that, upon the death of a member of the group, the surviving partner(s) or shareholder(s) must purchase the interest of the deceased member. This arrangement is often referred to as a "buy and sell" agreement. It is often funded by life insurance which provides the money which is ultimately paid to the decedent's estate in return for the decedent's interest in the business.

The survivors of a doctor who practices in a partnership or corporation without a "buy and sell" agreement will have to negotiate a purchase price for the doctor's interest.

## Physical Assets

Depending on the type and organization of the medical practice, the assets of a medical practice may include:

1. Fixtures and medical equipment, such as examining tables, X-ray and physical therapy equipment, and instruments.
2. Equipment not peculiar to the practice of medicine, such as typewriters, desks, file cabinets, and waiting-room furnishings.
3. Supplies, such as bandages, splints, tongue depressors, disposable syringes, stationery, and other office supplies.
4. Office lease or real estate.
5. Goodwill, which is basically the opportunity of serving the patients of the deceased physician.

Ordinarily, the sale of the entire practice is preferable to a piecemeal sale of assets which could minimize the economic value of the goodwill of the practice.

## Tax Considerations

Tax considerations are important in the disposition of a practice. If the estate is selling the assets of the practice, either separately or as a unit, instead of establishing one sales price for the doctor's partnership or shareholder interest, the sales price should be allocated to each asset, including an intangible asset such as goodwill, if applicable. An accountant or other tax advisor should be consulted for assistance in dealing with this complex area. The manner of sale, the method of allocation, and various other factors can have significant tax ramifications.

## **Liens**

If the office's fixtures, equipment or supplies are not completely paid for, the release of any security liens against that property must be obtained at the time of sale. The possibility of credit life insurance covering such indebtedness should be investigated.

## **The Office Lease**

A lease is an agreement to pay rent through the term of the lease. It also carries with it the continuing right to occupy the premises during the lease period. Often the purchaser of the practice will view the purchase of the lease as part of the practice's goodwill. If the purchaser does not need the entire area, a sublease may be negotiated for the balance of the space. The seller (the estate) usually must obtain written consent from the landlord to transfer or assign the lease. It should be pointed out, however, that the landlord's consent does not automatically release the original tenant (or the estate) from liability under the lease. It is therefore advisable to obtain from the landlord a release from further liability for rent whenever possible.

## **Office Improvements**

Improvements made by a doctor-tenant, such as built-in cabinets and the like, generally become the property of the landlord and cannot be removed without the landlord's prior consent.

## **Practice-Related Real Estate**

Special problems are presented when the practice has been located in property owned by the doctor - either in an office building or a residence. Solutions to these problems should be sought in consultation with an attorney and tax advisor, taking into account the wishes of the family, financial needs, and tax consequences.

## **Goodwill**

Goodwill is an intangible asset which results in added value being given to the practice. Specifically, in medicine, it is the opportunity of the new doctor to serve the deceased physician's former patients. It is predicated on the assumption that a significant percentage of the patients of the prior practice will dial the old telephone number or return to the office of their former physician.

Placing a monetary value on the goodwill of a practice is difficult and involves tax considerations from both the buyer's and seller's point of view. The buyer will not be able to depreciate the amount paid for goodwill and therefore will probably want to minimize

the amount attributable to goodwill for tax purposes: Again, a tax advisor should be consulted for assistance.

#### Assistance from the Local Medical Society

The state or district medical society is in a unique position to offer helpful advice and assistance concerning the many problems encountered in the disposal of a medical practice.