

# Estate Planning

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Acorn Lawyers Monthly Estate Planning Update



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#### Estate Planning Seminars

We are hosting two free seminars on estate planning this month, for which financial planners and accountants can claim development points:

20 March: Basics of Estate Planning (re-run of our last seminar)

27 March: Foundations of Testamentary Trust Wills

Both seminars will be held at Acorn Lawyers from 12:45pm to 2:00pm with a light lunch and refreshments. Numbers are strictly limited to 10, so please contact us for an early reservation.



## Medical Health Decisions – The Power of an Enduring Guardian and the Role of Doctors

### Seminar Accreditation

We proudly advise that we have received formal accreditation for CPD points from the FPA for our last seminar, the Basics of Estate Planning and our next seminar, Foundations of Testamentary Trust Wills. Accountants can also claim self-assessed development points. Both seminars will be running **this month**.

### Medical Decisions and Consents

Please excuse me for being overly personal, but on January 12 I collapsed in the early hours of the morning. Falling briefly into a coma I was extracted from my bathroom by two hefty ambulance drivers and taken to Wollongong Hospital.

My blood pressure was 70 over 44 which, I understand, is pretty grim. I did subsequently go into another coma and I was treated for pneumonia. I was shocked to later discover from my specialist that I also suffered two cardiac arrests. I had never been so ill, but I learnt a lot about patient care.

Firstly, I admired the team play of all of the hospital staff: specialists, registrars, doctors, nurses, even the cleaners. Secondly, I learnt that lawyers have much to offer our mutual clients in terminal and major medical issues. I was in hospital for eight days and on the third day I got to know Annie, an elderly Croatian woman who had been in remission for ovarian cancer for 4 years. She knew that the cancer was in a severe state of recurrence.

One evening she was very distressed and simply wanted to go home. Her husband, three children, a spouse or two and three grandchildren were there and she said: "I know the cancer is back". The registrar said: "Annie whatever you decide, you decide". He was not rude, but very matter of fact and could not see that his medical protocol was out of step with the family's wishes.

After he left I gently spoke to Annie and the family. I said "I am a lawyer and Advance Health Care Directives and medical consents are part of my practice area." I said to Annie: "Annie you would really assist your family to deal with your health issues if you had the tests. You may still decide to have no further treatment. That is your personal decision, but I know that your family knowing will help them

a lot." Annie and the family gratefully accepted my advice. While doctors must rule by the book, a lawyer can be more relational in advising clients during difficult times.

### Futile Treatment

I received a distressing call from a good friend of mine about three weeks ago. His young cousin, Billy, had sadly attempted suicide and was being kept alive only by life support. Billy's parents did not want to turn off the life support. However, the doctor informed the family that he had decided to switch off the life support. How could the doctor make this decision on behalf of the family?

The common law grants doctors a high degree of autonomy as they have the power to determine that **treatment is futile**, removing the obligation to treat a patient. The decision that treatment is futile is made in the first instance by the doctor, but can be challenged before a court or tribunal.

To provide some background, at common law a person who voluntarily assumes responsibility for another, who is unable to care for themselves due to mental or physical incapacity, has a duty to provide that person with the necessities of life. However, case law in Australia has held that there is no duty to provide treatment that is futile.

Billy's doctor had sadly determined any further treatment was futile. This generally means that maintaining Billy on life support would only delay an inevitable death. In determining whether treatment is futile, the law of negligence requires doctors to exercise reasonable care and skill, as with all their medical decisions. Accordingly, this is not a decision that can be made lightly.

We advised Billy's parents that they could challenge the doctor's decision in the Supreme Court of NSW, under *parens patriae* jurisdiction (best interests of an incompetent person). Senior Counsel advised us to put the hospital on notice that Billy's parents would seek an urgent interim injunction restraining the doctor from turning off the life support, pending a decision by the Court.

In the end, Billy's family did not challenge the decision of the doctor. We also advised Billy's parents to ask for a case worker. Through the case worker, Billy's family were able to discuss Billy's treatment with his doctor and reached the decision that life support should be terminated. Sadly, Billy passed away.

- Lindsay Stoddart, Director