



Why a Letter of Competency Should Be Part of Every Senior's Legal File

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Dementia and other health issues that affect one's mental capacity are devastating in many ways, but they can also complicate the basic legal planning that is recommended for all seniors. Many have shared stories about bitter disputes between family members over whether an aging loved one's will, powers of attorney and other legal documents were valid.

The perfect storm of questionable mental capacity and preparing for the future can breed suspicion and jealousy, often pitting family members against one another. However, adding one very simple step to a senior's legal planning process can reduce the potential for unnecessary stress and familial discord down the road.

How a Letter of Competency Works

Encouraging a loved one to obtain a letter of competency at the time their will, power of attorney forms, advance directive and any other legal documents are drafted and signed will help dispel any notions that these documents were created while they lacked the mental capacity to make medical, financial and legal decisions.

While attorneys are prohibited from helping incompetent individuals to change or create legal documents, the legal definition of incompetence differs slightly

from the medical definition of mental capacity. Ensuring that a person is both legally and medically capable of making decisions about their health care, finances and estate should eliminate any doubt about the validity of their documentation.

How to Obtain a Letter of Competency

Most people request this letter from a primary care physician who has seen the patient over the course of several years and is familiar with any changes in their baseline mental and physical health. In some cases, though, obtaining this letter from a doctor who specializes in mental health and cognition, such as a psychiatrist or a neurologist, is a good idea.

For example, if your mother is already experiencing mild memory loss and has not had a primary care doctor for a decade, then a complete mental evaluation conducted by a specialist would be more credible compared to a mini-mental exam conducted by a new family doctor who is seeing her for the first time.

The attorney you're working with should be able to recommend which of a loved one's physicians would be able to provide the most accurate statement.

What a Letter of Competency Should Include

A generic letter from a doctor attesting to a patient's mental capacity should be printed on the physician's letterhead and include the following fundamental pieces of information:

- Patient's name
- Patient's date of birth
- Date the patient-physician relationship was established

- Physician's statement testifying to the patient's ability or inability to make independent decisions regarding healthcare, finances and legal matters
- The patient's relevant medical diagnoses (e.g. Alzheimer's disease, stroke, mental illness, developmental delay, etc.)
- Date of diagnosis for each relevant medical issue
- Physician's contact information

While the above pieces of information are typically included in a basic statement of mental capacity, it is wise to work with an attorney to determine if any other facts or supporting evidence should be included. File the original letter(s) of competency away with the corresponding legal documentation in a safe place, such as a locked file cabinet, a safe deposit box or with an attorney. It's wise to have the physician keep a copy in the patient's medical file as well.

Documentation is Key

It is impossible to predict whether a sibling, grandchild, stepparent or other family member may contest the validity of an aging loved one's legal documentation, but it happens all the time. Some of these cases even end up in expensive and lengthy guardianship proceedings. Others result in lawsuits where a loved one's will is contested. These squabbles can divide families and destroy relationships.

It may seem excessive to seek additional proof of mental capacity when changing or creating any legal documents, but it's better to be safe than sorry. The time and energy involved in attending a doctor's appointment and obtaining a letter of competency is minimal compared to the emotional turmoil

and legal fees involved in a lawsuit or an investigation conducted by Adult Protective Services (APS).

It isn't easy but encouraging your loved one to make sound legal preparations, acting in their best interest, and taking every precaution to carefully document changes in their health and financial status will ensure that your caregiving journey goes as smoothly as possible.

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