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*ALS (“Lou Gehrig’s
Disease”)
Resource Guide*

Jack M. Rosenkranz
ROSENKRANZ LAW FIRM
Attorneys at Law

www.law4elders.com
813-223-4195

House Calls Available

Table of Contents*

Introduction.....1
 Power of Attorney.....2
 Health Surrogate.....3
 Revising Wills and Trusts.....3
 Changing Property Titles.....4
 Financial Gifts.....4
 Medicaid Planning.....5
 Conclusion.....7

Offices in Tampa, St. Petersburg, and Sun City
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*Many of the monetary and other guidelines discussed in this booklet change frequently. Please be certain to verify their accuracy before acting based on these numbers.

Introduction

Coping with a diagnosis of Amyotrophic Lateral Sclerosis (ALS or “Lou Gehrig’s Disease”) can be very traumatic. Whether you are the one with the illness, or whether it is a beloved family member, you will find yourself going through what famed psychologist Elizabeth Kubler-Ross labeled the five stages of grief: Denial, anger, bargaining, depression, and acceptance. The stages do not necessarily happen in order, and just because you pass through one stage does not mean you will not revisit it again later.

It is important to realize that you cannot cope alone in such a situation. Aside from surrounding yourself with your loved ones, you will want to seek as much professional advice as possible, from top-notch physicians for medical care, to psychologists familiar with coping with terminal illnesses, to a good disability and elder law attorney to help you make sound legal decisions. As difficult as it is to face, now is the time to ensure your desires are known regarding medical care, to put in place individuals who will look out for you interests when you are no longer able to, to plan your final act, and to implement a sound estate plan. In addition to this brochure, you will find several others on our website to help you with your planning.

If you are helping a family member cope with an

ALS diagnosis, we can work with you to gently and kindly facilitate the discussions that must take place. While you are taking care of the person who has ALS, make sure you remember to take care of yourself as well. The only way to continue to be there for your loved one is to be there for yourself first.

Finally, when you are deciding on which physicians and other professionals to use, be sure to pick providers whose philosophies and outlooks are similar to your own. Be proactive and ask plenty of questions, taking as many notes as you need. If a professional is not comfortable with this, it is time to find another.

Power of Attorney

ALS is a frightening disease, and one of the realities of it is that eventually you will likely not be able to make decisions for yourself. We have found that many married people assume that they are allowed to make legally binding decisions on behalf of their spouse. Unfortunately, the law does not work that way. What you will need to do is implement a power of attorney.

A power of attorney can be as broad or as narrow as you would like, and give a range of different abilities to the person holding it. You will want to decide now what you would like done with accounts,

taxes, and other financial matters.

A power of attorney also exists for healthcare needs, but we have found that a health surrogate is generally more effective in ensuring your healthcare wishes are followed. We discuss health surrogates immediately below.

Health Surrogate

Because a living will applies only if you are terminally ill, a health surrogate is an extremely important part of long-term care planning. This document may be more effective at a time of crisis than a living will because it will protect your wishes even when you are in an unstable situation and have not been declared terminally ill. Provided for by a special statute, it is the strongest way to protect your healthcare choices when you are unable to speak for yourself.

You can authorize your healthcare surrogate to refuse life-sustaining care in certain circumstances, or to prolong it when current medical standards would otherwise terminate it.

Revising Wills & Trusts

If you haven't already completed your estate planning, you will want to do so now. If you have,

you will want to make sure the documents consider your new situation. Even if we did not draft your original documents, we can help you with this, reviewing whatever is necessary to ensure your family is cared for.

Changing Property Titles

Now is the time to evaluate how your property is held and retitle any real or personal property that will not transfer as you would wish. If you acquired assets before you were married, for example, you might want to reconsider retitling these items to include your spouse.

Reviewing your property titles is also helpful in protecting your assets in case you have a long-term nursing home stay.

Financial Gifts

Making financial gifts is one way to plan your estate, and you may be able to give more away than you realize. The law allows you to give \$11,000 per calendar year per recipient, free of estate, gift, and income tax.

For example, if a husband and wife have three children and six grandchildren, the husband and wife can each give \$11,000 to each of these descendants

on December 31, and the same amount the following day. By doing so, they have quickly eliminated \$396,000 from their combined gross estate. The grandchildren can then give their gifts back to their parents, also free of tax.

An improper gift, though, can jeopardize your ability to receive benefits through government programs. This area of the law can be complicated, and we'll be glad to help make sure you comply with the latest federal and state laws.

Medicaid Planning

At first, many people find accepting government benefits to be difficult and do not want to consider it as part of their planning. When an illness such as ALS strikes, however, it is important to consider every avenue possible to care for yourself and to protect your family. Government benefits are a way to get the care you need while protecting your family's financial security.

Medicaid will pay nursing home expenses to those who qualify. To qualify, income eligibility and resource eligibility must be established. For income, the applicant cannot earn more than \$1,692.00 per month. With respect to assets, a married applicant and his or her spouse are allowed to keep a home, personal effects, a car or two, and other assets, up to \$94,760. The dollar amounts are adjusted every six

months, so be sure to check with our office before making any decisions or planning based on these numbers.

Part of good planning can involve divesting assets, but property transfers, including transfers to trusts, are examined closely, and frequently the transferred property is still considered part of the assets for determining eligibility. Property divested within thirty-six months prior to application is included in determining eligibility, as is property divested into or from a trust within sixty month. Special trusts can be established, though, to create eligibility.

Forming special trusts and other types of financial planning to protect your Medicaid benefits has become somewhat controversial. Many individuals are concerned that they won't receive the same level of care at a facility that accepts Medicaid as they would if they were private pay patients. The reality is that Medicaid pays for the care of approximately seventy percent of the patients in nursing home facilities. These same patients are mixed into the same facility with private pay patients. Like two passengers seated side-by-side on an airline, one might have paid \$250 for a ticket, the other a \$1000. Which one would you rather be? Employing strategies to protect your assets is a legitimate way to protect your and your spouse's financial future.

Conclusion

As ALS progresses, your ability to make financial and healthcare decisions may decrease. Therefore, it is critical to plan now to ensure your wishes are carried out and your family protected.

We welcome your questions and the opportunity to work with you on your planning. Constantly changing state and federal laws and regulations make this a particularly difficult area of the law to navigate. Our firm keeps current on these changes not only by tracking legislation, but by regularly attending and presenting at local, state, and national elder law seminars. We look at our clients' situations in a holistic manner, taking into consideration physical, spiritual, and financial needs.

For additional helpful articles on elder law, please visit our website at www.law4elders.com.

Jack M. Rosenkranz

Jack M. Rosenkranz received his law degree from the Walter F. George School of Law at Mercer University and his undergraduate degree from Memphis State University. In college, and again in law school, he used his skills and his knowledge of political science and public surveys to bring much-needed changes to campus policies. As a result of his efforts at college, he was awarded the John W. Burgess Award for Meritorious Achievement in Political Science.

Mr. Rosenkranz now uses his natural abilities and legal training in his Elder Law practice, which includes Medicaid and Medicare planning, estate planning, advanced directives, Veterans benefits (such as Aid and Attendance), probate, supplemental trusts, and other long-term care planning needs. He was the first to receive both the Outstanding Achievement Award for the Florida Chapter of National Academy of Elder Law Attorneys and the Member of the Year Award for the Elder Law Section of the Florida Bar in the same year.

His peers have selected him as a Leading American Attorney in Elder Law, and he has an AV rating, the highest possible, with Martindale Hubbell. He remains active in the Elder Law Section of the Florida Bar, the Florida Academy of Elder Law Attorneys, and the National Academy of Elder Law Attorneys, Inc. Mr. Rosenkranz mentors new elder law practitioners, sharing with them the knowledge he has obtained from attending and presenting at numerous local, state, and national seminars each year since he began his practice in 1991.

Mr. Rosenkranz has co-hosted a weekly radio program, "The Informed Elder," on 570 WHNZ. He regularly gives presentations and other informative talks about elder law to the public and to other attorneys.

Notes