



## **Estate Planning Pitfall** **Your medical power of attorney isn't HIPAA-compliant**

Because of the personal nature of health care decisions, you recognize the importance of having a durable medical power of attorney (also commonly referred to as a "health care proxy") as part of your estate plan. This document authorizes your spouse or another representative to make medical decisions on your behalf in the event you become unable to make them yourself.

But unless your medical power of attorney is compliant with the federal Health Insurance Portability and Accountability Act of 1996 (HIPAA), you could end up in a situation where your designated representative is forced to make a medical decision on your behalf without having complete access to your personal health information. Or your representative could have to petition a court for the appointment of a guardian who could then give the representative access, which could be time-consuming and costly.

Typically, a medical power of attorney requires a physician to certify in writing that you're unable to make your own medical decisions before your representative can step in. But according to HIPAA, health care providers are prohibited from disclosing your personal health information without first obtaining your written permission, and they could face severe penalties for unauthorized disclosures. Many physicians would consider certifying your incapacity to be a disclosure of personal health information. Of course, if you were incapable of making decisions, you likely would also be unable to provide written permission, leaving you in a "catch-22" situation.

That's why it's critical to carefully craft your medical power of attorney document to contain an express, HIPAA-compliant authorization. Then be sure to periodically review the document and update it as necessary to ensure it's current in relation to changing laws.

*For more information, please contact us via phone or e-mail, or visit us on the World-Wide Web:*

**Lennington Law Firm, PLLC**  
821 Raymond Avenue, Suite 315  
St Paul, MN 55114

Peter G. Lennington, Esq.  
peter@lennington.com

651-641-0741  
<http://www.lennington.com/>