

## Can patients with dementia prepare a valid will?

A patient with early-stage dementia may wish to write a will before diminishing memory and cognition void future legal transactions.<sup>1</sup> You can help patients protect their heirs from posthumous legal struggles by:

- advising them to consult an attorney about drafting a will
- and explaining the basics of testamentary capacity.

Testamentary capacity is a person's ability to understand his property ownership, rights to claiming that property, and the practical effects of executing his will. Determining whether a person has testamentary capacity rests with a judge or jury, but courts often ask psychiatrists—especially those who diagnose dementia—to help describe the deceased's state of mind when he or she wrote a contested will.

When a will is in probate, a usual heir or some other person may challenge its validity. Lawsuits questioning whether an elderly person had the mental capacity to authorize a legal transaction often hinge on two possible claims:

- undue influence (the will writer was not capable of resisting pressure or manipulation by a person who wanted to influence property distribution)<sup>2</sup>
- insane delusion (the will writer had mistaken beliefs that were not based in reason and could only be explained by mental illness).

The mere presence of mental illnesses, even severe schizophrenia or dementia, does not automatically render a person incapable of creating a valid will.<sup>2</sup> In fact, the court requires a higher level of decision-making capacity for other legal transactions such as contracts. Will writing is an individual matter, whereas a valid contract involves an agreement between two or more persons and necessitates a higher level of functioning to understand.<sup>1</sup>

When counselling patients and their families, explain the basics of testamentary capacity so they can get help navigating end-of-life legal decisions. Legal transactions are more likely to be upheld in court if they are made in the early stages of a dementing disorder, rather than after it progresses.

### References

1. Garner BA (ed). *Black's law dictionary* (abridged 7th ed). St. Paul, MN: West Group, 2000.
2. Regan WM, Gordon SM. Assessing testamentary capacity in elderly people. *South Med J* 1997;90(1):13-5.

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