

**Elder Law Workshop**  
**Fall 2009**  
**Professor Dayton**

**Drafting Exercise # 2: Durable Power of Attorney**

Becky is a 48 year old attorney with a large non-profit HMO. She has been employed by the HMO since 1997. Becky receives a salary and does not represent clients outside her corporate practice. Delia (67 years old) is Becky's paralegal; she has also worked for the HMO's legal department since 1997.

The HMO operates a senior resources center as part of one of its clinics. Maud (94 years old) often came into the senior center and did volunteer work for the center between 1994-2005. Both Becky and Delia came to know Maud during those years. Delia has maintained regular contact with Maud since she quit the volunteer work. Delia occasionally takes Maud to church, brings her flowers, and takes her out to dinner. In 2005, Delia made arrangements for Meals-on-Wheels to begin delivering hot meals to Maud six days a week. That continues to the present. Maud has outlived both her husbands and her three children. Her only known relative within the metro area in which she resides is a cousin, Claude (79 years old), whom she has not seen since 1968. Delia has reason to believe that Maud has significant assets—as much as \$200,000—that she has accumulated through her 94 years of frugality and careful investment.

Maud lives alone in an apartment she has rented for 33 years. The last few times Delia has visited Maud, she has noticed that Maud seems to be more forgetful generally of matters such as when she has taken her medicine, when she last had a visitor, and what she has been watching on television. Delia has also found a number of unpaid bills among Maud's papers and last month had to call the electric company to prevent a service disconnect. Delia is concerned that Maud has become unable to handle her business affairs and is worried that something bad will happen to Maud because of her failure to pay bills and take care of other financial matters. After Delia described Maud's situation to Becky, Becky suggested that Maud needs a power-of-attorney authorizing some responsible party to assist her with her financial and related affairs. Delia asked Becky if she would be willing to be Maud's attorney in fact. After giving some thought to the matter, Becky said that she would. Delia discussed the issue with Maud, and Maud agreed to let Becky "pay my bills and things."

Becky and Maud have come to your office requesting that you draft a durable power of attorney appointing Becky as attorney-in-fact for Maud. Both have indicated that they would prefer that the power is *only as broad as necessary* to allow Becky to pay Maud's bills and otherwise tend to her financial affairs, including monitoring bank accounts and similar assets.

**Assignment:** Draft a durable power of attorney that will permit Becky to act for Maud regarding financial matters. The power should as broad as—but no broader than—necessary to accomplish the objectives stated by Becky and Maud. It should comply with all relevant aspects of the law of the jurisdiction in which it will be effected. You may use the jurisdiction's statutory form (if one exists) if that form will accomplish the goals articulated by the client. In

drafting the power, you should be mindful of any ethical issues that the situation described above may present.