

The Editor's Corner: Internet Users Should Follow Age-Old Advice: "Caveat Emptor!"

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Abstract

Internet users should follow the age-old advice: "Caveat Emptor," or "Let the Buyer Beware." Whether it is a scam or simply unreliable information, Internet users need to develop Web savvy to separate the reliable from the unreliable. The following editorial provides guidance on how to judge legal services and/or information offered through the web.

Sound advice remains sound advice regardless of how many millenniums it's been around. "Caveat Emptor" or "Let the Buyer Beware" was good advice in medieval times when peasants were warned not to buy a "pig in a poke,"^[1] and it's good advice today for Internet users who are beginning to rely upon the Web as a virtual library and a virtual mall. Horror stories abound of how people are being cheated through the Web. For example, did you hear the one about

- the lady who paid \$2,000 for a rare Beanie Baby™ (I find it hard to believe there is such a thing) only to find out on delivery that it was a fake?
- the man who ordered a computer that was never delivered even though his credit card had been charged? Or
- the family who ordered a computer and received only a collection of worthless computer parts?

The Internet offers endless opportunities for victimization, and consumers who purchase goods over the Web are not the only consumers who need to be wary -- consumers who use the Web to obtain information also need to be cautious. The [lead article](#) in this issue of *FFCI* discusses how

to judge information about nutrition and health on the Web. I would like to add my two cents about how to judge the quality of legal information available on the Web. Here are some tips.

- **Ascertain who posted the information.** Was the information posted by a university? Was it posted by a governmental agency? By a law firm? By a nonprofit organization? By Bubba? Knowing who posted the information will provide some insight as to the reliability of the information. Look for their credentials, and try to figure out their agenda, if any. Are they selling something? Advocating a cause? If you can't find the credentials of the author, caveat emptor!

- **Ascertain the date the information was created and/or posted.** Legal information, unlike cheese or wine, does not fare well over time. The law can change from day-to-day as a result of actions taken by state and federal courts, state and federal legislators, and state and federal regulatory boards. Keeping a Web site that contains legal information updated is a tremendous challenge.^[2] Sometimes major rules of law change, but more often it is the details or minute points of law that change. As a rule of thumb, legal information posted over a year ago should be viewed cautiously. **Best advice:** Use legal information posted on the Web as a starting point to educate yourself, but don't rely on it as legal advice regardless of how reliable the source. You should rely upon your attorney for legal advice.

- **Ascertain the Web site's purpose.** Is it educational? Is it an advertisement for legal services? Is it selling something? For example, if the information on the Web site claims that **everyone** needs a living trust, chances are, they are selling trusts, and you should look for additional information and a second opinion as to whether a trust is appropriate for your circumstances. If the Web site is selling legal services or legal document(s), there may be an additional problem of the unauthorized practice of law. Only licensed attorneys may practice law within the state that they are licensed. The practice of law includes providing legal advice, even if there is no charge for the advice. Web sites that offer legal services or documents ^[3] over the web by someone who is not a licensed attorney in your state should be viewed as waving a big Red Flag that says: "Caveat Emptor!"

An example of a Web site that provides legal documents/services is [Aging with Dignity](#). It originates in Florida and was founded in 1996 by Jim Towey, who is represented to be a former associate of the late Mother Teresa. The former First Lady, Rosalyn Carter, is quoted on the site and is represented to be a supporter. The site provides a legal document entitled, "Five Wishes" that combines a [living will](#) and [health care power of attorney](#) into one document. The document is written in layman's language that is easy to read and understand, and it sells for \$5.00. The

Web site claims that the document meets the legal requirements in 33 other states, including North Carolina.

I have no idea whether the "Five Wishes" document complies with Florida law and the laws of the other 32 states listed. However, I am certain that it does not meet the requirements of North Carolina law.

Some of the best elder law and estate planning attorneys in North Carolina reviewed "Five Wishes" and determined that it is not in accord with North Carolina law on the living will and health care power of attorney. A few of the discrepancies include the following.

- "Five Wishes" requires that the patient's treating doctor AND another health care professional agree that the patient is no longer able to make health care choices before the health care agent's authority is effective. North Carolina allows the principal to choose the doctor(s) who will make this decision, and there is no requirement of a second opinion.
- "Five Wishes" restricts the use of an alternate health care agent to situations when the first-named agent is unable or unwilling to make the choices for the principal. North Carolina law also allows an alternate to be called if the first-named agent is not reasonably available.
- The procedure for revocation as set out in "Five Wishes" does not revoke a health care power of attorney under North Carolina law.
- The terminology used in "Five Wishes" may or may not conform to North Carolina law, i.e., definition of "Life Support Treatment." North Carolina statutes use specific terms that are defined by law.
- "Five Wishes" requires that the patient's doctor *and another health care professional* decide whether life support treatment should be withheld or discontinued (emphasis added). North Carolina law requires two physicians to make this decision. The term "health care professional" is too broad and does not comply with North Carolina statutory requirements.
- The language in "Five Wishes" allows the doctor and another health care professional to withdraw or withhold treatment if the patient is "close to death," "in a coma," or "have permanent and severe brain damage." The North Carolina living will statute provides for the withholding and withdrawal of extraordinary medical treatment if the patient is (1) terminally and incurably ill, or (2) diagnosed to be in a persistent vegetative state. The

terms used in "Five Wishes" are not necessarily consistent with the terms used in the North Carolina statute.

- North Carolina law requires the inclusion of specific statements in a living will that are not included in "Five Wishes." The consequences of failing to include these statements have not yet been addressed by the courts in North Carolina, so the statements are included as a matter of course in living wills drafted by North Carolina attorneys.
- The certification for the notary provided in "Five Wishes" does not conform to the certificate provided under North Carolina law.
- Finally, North Carolina case law indicates that strict compliance with the statute is necessary to determine when the living will requirements are met before the family may assert the patient's living will as a defense in an action by the nursing home to recover its fees. See, *First Healthcare Corporation v. Rettinger*, 342 N.C. 886, reversing 118 N.C. App. 600 (1995).

The failure of "Five Wishes" to meet the requirements of North Carolina law threatens the statutory defense provided by law to physicians and other health care providers who rely upon a patient's living will and health care power of attorney. North Carolina law states that "any person, institution or facility against whom criminal or civil liability is asserted because of conduct *in compliance with this section* may interpose this section as a defense." [Emphasis added.] N.C.G.S. § 90-321. Right to a natural death. [See also, "Any person, institution or facility, including without limitation the health care agent and the attending physician, against whom criminal or civil liability is asserted because of conduct *described in this section*, may interpose this section as a defense." N.C.G.S. § 32A-24. Reliance on health care power of attorney; defense. (Emphasis added)]

As a result, many members of the medical community in North Carolina are reluctant to honor the "Five Wishes" document because it does not comply with North Carolina law and, consequently, may not provide the statutory defense. By representing that "Five Wishes" is valid in North Carolina, when in fact it does not comply with North Carolina law, Aging with Dignity does a grave disservice to their North Carolina customers by compromising their legal rights.

How are the rights of North Carolinians compromised if they rely upon the "Five Wishes" document? Consider the following scenario. Mrs. Smith is 75 years old, is in an advanced stage of Parkinson's disease, and lives in a nursing home. In the course of a short hospitalization, she has feeding tubes inserted. After she is returned to the nursing home, her family requests that the feeding tubes be removed, and they produce her "Five Wishes" document. Because the document does not comply with North Carolina law, the nursing home insists that the family obtain a court

order directing the removal of the feeding tubes. The process takes the family approximately six months, and Mrs. Smith dies within a few days after the tubes are removed. The family refuses to pay the nursing home costs for the six months it took them to obtain the court order. The nursing home sues, and the North Carolina courts hold in favor of the nursing home because the statutory requirements of the living will were not met until immediately prior to the removal of the feeding tubes.[\[4\]](#)

If Mrs. Smith's living will had complied with North Carolina law, she could have saved her family thousands of dollars in attorney's fees and several years of court battles. Her "Five Wishes" document merely served as evidence of her wishes in court. It did not accomplish her goal of directing her health care providers to terminate life support systems under the given circumstances.

The Internet gives access to an unprecedented wealth of information, products, and services. Modern technology is revolutionizing the ways people learn and shop. Savvy consumers will use the Internet to help them make informed choices, whether in buying a car or in learning about their legal rights. Savvy Web consumers will also follow the age-old advice: "Caveat Emptor!"

Editor's Note: At the time this article is posted, the Elder Law Section and the Estate Planning and Fiduciary Law Section of the North Carolina Bar Association are writing Aging with Dignity to request that they remove North Carolina from their list of states in which their document is valid.

Notes

Note 1: This expression deals with the folly of buying something one has not seen. Unscrupulous English peasants would substitute a runt, or even a cat, for a piglet which they carried to market in a sack (poke) slung over their shoulder. The dishonest seller would refuse to open the sack because it would be difficult to catch the piglet if it escaped. Anyone who buys a "pig in a poke" buys something sight unseen. Funk, Charles E. *2107 Curious Word Origins, Sayings & Expressions*. Galahad Books, BBS Publishing Corporation, (1993) pp. 105-06. [\[Return to text.\]](#)

Note 2: Save your e-mails -- I am aware that I have a few documents on the Web that need updating. They are on my To Do List, and I have some great excuses for not getting them done. [\[Return to text.\]](#)

Note 3: An exception to this rule would be a document that is an exact duplicate of a legal form provided by statute. North Carolina has statutory forms for a [living will](#) and a [health care power of attorney](#), which we duplicate in our educational publications. Providing a modified version of the forms would be the unauthorized practice of law. [\[Return to text.\]](#)

Note 4: For a similar fact scenario, see *First Healthcare Corporation v. Rettinger*, 342 N.C. 886, *reversing* 118 N.C. App. 600 (1995). In this case, the nursing home patient had a North Carolina living will, but he signed it before the statutory form was changed to specifically include the withholding or removal of feeding tubes. Thus, the nursing home insisted upon a court order before removing the feeding tubes. [\[Return to text.\]](#)

The opinions expressed in this editorial are the opinions of the author and do not necessarily represent the opinions of *FFCI*, its Editorial Board members, the North Carolina Cooperative Extension Service, or NC State University.

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