

Powerless Attorney

By Reg P. Wydeven
October 25, 2015

Last week we learned about the downward spiral of former NBA star Lamar Odom. Odom was found unconscious in a Las Vegas brothel by his two female companions with a nosebleed. He had cocaine in his system, along with an herbal version of Viagra. He is believed to have suffered several strokes.

Odom was rushed to a local hospital where he lay comatose and in critical condition. Khloe Kardashian, Odom's estranged wife, rushed to be by his side, along with several members of her family. While the Kardashian clan gets their fair share of criticism, Khloe did an honorable thing by flying Odom's children and their mother to Nevada to be with him.

Kardashian filed for divorce and she's been separated from Odom for nearly two years. She's currently dating another NBA All-Star, James Harden. However, because the divorce hasn't been finalized, Kardashian and Odom are technically still married. As his wife, Kardashian was responsible for making all of Odom's medical decisions while he was in a coma, a process she claimed "overwhelmed" her.

Although overwhelming, she did a good job making decisions for him. Odom came out of the coma and is hopefully on the road to a full recovery. If Odom would have been in Wisconsin, however, things would have played out differently (and not just because we don't have any brothels).

As Odom's wife, Kardashian made all his medical decisions because he couldn't. Unlike Nevada, Wisconsin has no spousal consent law. In other words, just by virtue of being married, spouses have no authority to make medical decisions for one another. This surprises many people because Wisconsin is a marital property law state. This means all property acquired by spouses during their marriage is deemed to be owned by both spouses 50/50, with a few exceptions like gifts and inheritances.

So while Wisconsin bestows many property rights to spouses, the State does not permit them to make medical decisions for one another. Even if Odom and Kardashian had been happily married here for 50 years, she would have no authority to make health care decisions for him if he couldn't make decisions for himself due to a stroke.

For this reason, health care powers of attorney are so important. A HCPOA allows you to designate someone to make health care decisions for you in the event you become incapacitated. This means two doctors have examined and determined you are incapable of making decisions on your own.

In Wisconsin, if you become incapacitated, the law says that if you haven't nominated an agent to make decisions for you under a HCPOA, the only person who can make a decision for you is a court-appointed guardian. A guardianship is a lengthy and costly process. The state statutes delineate the priority of candidates for your guardian, starting with your spouse, then adult children, then parents, grandparents, siblings and so on. So while the court may pick the same person you would have, they also might not.

So if you're going to go on a cocaine-fueled bender in a brothel, be sure to complete a HCPOA. Better yet, just skip the bender and go right to completing the HCPOA. You can download one here: <https://www.dhs.wisconsin.gov/forms/advdirectives/f00085.pdf>.