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JIM: Welcome to this week’s show, and I’m so glad we have a special guest today. It’s Marty Shenkman, who is an estate planning attorney who has spoken all over the country, he’s written several articles, written literally thousands of articles, he’s authored over 42 books, and today’s topic is going to be on a subject he’s both written books and articles about, and that’s estate planning for clients living with Parkinson’s or other chronic neurological conditions. I think this is a subject, I know I’ve been involved in estate planning for many years, and I don’t think I’ve ever come across too many times this subject. Marty, I’d just like to welcome you to the program.

00:41

MARTY: Thank you, happy to be here. Can I make a quick comment, I think it’s important to understand that your perspective of not having heard a lot about this is really the common perspective, but that’s changing dramatically. First of all there’s about one hundred thirty million American’s living with chronic disease, neurologic diseases, Alzheimer’s and various dementias, Multiple Sclerosis, Huntington’s Disease, Parkinson’s Disease and so on and so forth are far more common than people realize, and with the aging population the incidents of these diseases and these challenges is going to continue to grow. Not only for advisors, but for all clients and consumers, this is something really critical to deal with. A lot of the studies have shown that the number one concern, sometimes for before worrying about running out of money, one of the number one concerns for many Americans retiring is dementia and Alzheimer’s and what it may do to their independence. It’s a very important topic.

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JIM: I know you live and breathe this, because you even founded a charitable organization dealing with this chronicillnessplanning.org, which helps to educate professional advisors on planning for clients with chronic illnesses. How did you get involved in this?

1:57

MARTY: My wife was diagnosed 11 years ago with multiple sclerosis, and I was shocked to find that there was very little in the professional literature to help advisors, attorneys, accountants, financial planners, insurance consultants to really help clients deal with the unique challenges of chronic neurologic disease. I’m on the board of the American Brain Foundation and well aware of the myriad of different diseases and challenges that people face. What I made really my personal mission was to set about writing articles and giving speeches and creating resources so professionals, and even consumers can get information to help better plan to deal with the challenges of these different diseases, whether it’s Alzheimer’s, Parkinson’s, Multiple Sclerosis, and so on. The key is that the client, the consumer needs to tell all their advisors about the health challenge that they or a loved one has, because the advisors can do incredible things to help the client plan, but if they’re not informed of what the issue is and what the consequences or conditions or disease course are, they really don’t know how to plan. A very simple example, if you have a neurologic or chronic disease or disability and you may have to retire at age 50 instead of age 65, all your financial forecasts have to change, but if you don’t tell your advisor this, every year that goes by without you telling them could put you further off track. If you have an open discussion it can literally save your financial future.

3:32

JIM: In my situation with people that I come across, I’ve got to believe one of the issues is if you don’t tell your advisors you have a progressive disease like Alzheimer’s, you get to a point where you’re not involved in the planning process anymore and your family may not be able to be involved or control the situation the way they could is planning is done before you get to that point where you can’t sign or do things for yourself. Isn’t that true?

3:56

MARTY: Absolutely correct, but let’s end this on a positive proactive note. Whatever your current situation is or a loved one, tell your advisors now, so even if somebody is progressed in terms of whether it’s Alzheimer’s or Lewy Body Dementia or any other disease or condition that they have, the sooner they tell their advisor the better. It may be possible that if a loved one can’t act to write a new will or change their planning, that using a durable power of attorney they may have signed years ago, even if not the optimal planning may still enable them to change thing. If you or a loved one has an issue, meet with your advisors and tell them now. It’s really critical. I think part of the reason that people don’t discuss this is they’re just not comfortable doing so, and more important they don’t understand what their advisor can do to help them. I’ll give you a very specific example and it’s disturbing. The most common situation I see with people that receive a diagnosis with a health issue is that they’ve let their life insurance lapse. Why? Because I think it’s human nature. People receive a bad diagnosis, they’re scared, they’re worried, and they do what I refer to as the turtle, you know they pull into the shell to feel protected, and then they simply cut anything they use as not essential. Too often I see insurance policies allowed to lapse. Those policies if the people have the financial wherewithal could be converted to permanent policies if they’re not already permanent. Permanent life insurance has incredible options in terms of borrowing against it and so on and so forth that might be ideal, but if the customer, the consumer, the client lets it lapse all those options are gone. One of the things if you’ve now been diagnosed with a difficult medical condition, that policy may be saleable to the secondary market, that just may be a great resource financially for you. Again, before you do anything and doing nothing is something, it may be the wrong action, talk to your advisor, and tell them what’s going on. Simple, simple things may make a huge overall financial impact.

6:08

JIM: Another thing is in the last 10 to 20 years a lot of policies now come with things like terminal illness riders, chronic illness riders, long-term care riders, so you really got to be careful about lapsing those policies, you might be missing out on benefits that you might be eligible for.

6:24

MARTY: Right, lapsing it may be the right thing, but it may not be. But why guess on something that could be such a significant financial resource potentially. Talk to your advisor and let them review the three, four, five options you may have and make an informed decision. I think people get fearful and they just don’t understand the incredible impact these decisions can make and if they would only talk to their advisor sooner rather than later it may have a huge impact.

6:50

JIM: Hey we’re going to take a short break and when we come back, Marty, let’s talk about some of the steps that people might want to consider if they’re suffering from one of these chronic illnesses. That might be different than just the standard planning that folks might be inclined to do otherwise, so please stay tuned.

7:06

[BREAK]

7:10

JIM: Welcome back as we continue to visit with Martin Shenkman who is an attorney, CPA, he has his MBA, and he has really been focused on helping provide resources for planning for people with chronic illnesses such as Alzheimer’s and Parkinson’s. Marty, before the break we were talking about sometimes people make the mistake of maybe doing nothing or taking action on their own, making decisions in a vacuum without including their advisors. If someone comes to you and let’s say they’ve got the beginning stages of one of these chronic illnesses, what steps are you recommending that they start looking into and eventually taking?

7:48

MARTY: Well I think a lot of it, and this is really a key take home for everybody listening to this podcast, is what disease is involved and what is your experience with it. There can be, even if you have several people that have been diagnosed with Parkinson’s, what is your disease course, how will it impact your life. I mean Michael J. Fox as an example has been an incredible role model who effectively deal with and manage Parkinson’s. It depends, so you need to really sit down and talk. Some of things that you need to review. First, what is your financial situation and what’s your financial future. What kind of insurance do you have? You need to revise all your financial projections, your budget and financial forecast to contemplate what the disease course may be. For example, if somebody is diagnosed with Multiple Sclerosis, let’s say and the typical person diagnosed is a young woman in her mid-30s, she may have a 10 year work expectancy or a 15 year work expectancy. Well that changes everything, so hopefully she has a disability policy in place and you can reasonably project let’s say that she could work 10 more years, you have to roll forward all your planning assumptions, she may need to take much more risk on in her investment portfolio because of the shortened expectancy for which she’s going to have income coming in and greater need living off her savings. If somebody already has a long-term care policy in place, even if they are fine and anticipate being fine for years and not colleting on it, immediately review it. The unfortunate, almost joke of it is that when people buy long-term care coverage the only question they ask is how much. But once they have an issue or a challenge that’s real it becomes much more of a concern. Really maybe a simple way of assessing the first step is take an inventory, what are your estate planning documents, what are your financial resources, and then make informed decisions based on the facts that you have what you can do.

9:45

JIM: What about when it comes to estate planning being that you’re an attorney, what legal documents are you recommending that people have, and what tweaks might they make based on the fact that they already have a known illness.

9:58

MARTY: That’s a great question. Let me first just quickly redefine estate planning, because most people very erroneously, and it’s very damaging to their plan, especially if there’s a health issue, but for everybody. Estate planning is not just about a will. Estate planning has to be very broadly defined as all the things necessary to protect you while you’re alive and your loved ones while you’re alive and ask of including through disability. Don’t view estate planning merely as a will and planning for death, it’s planning for life. Take a much broader more positive view of what the process is. If you have a chronic disease or a disability or neurologic condition or any health challenge, you want to make sure that you have in place the following document, a durable power of attorney. It’s a power of attorney in which it’s a document in which you name an agent, a person to act on your behalf, who can take care of legal tax financial and related matters if you are incapacitated and can’t do so. Everybody should have a power of attorney. We’ll come back to that concept again in a second when we talk about revocable trusts. Everybody should have a number of healthcare related documents. I apologize that there’s multiple documents, I didn’t create the complexity but it kind of is what it is. These documents may include a HIPAA release, which is a document authorizing someone to have access to your medical records and communicate with your physicians. That’s important if you go in for a procedure and you’re going to be perfectly fine but you want somebody a family member, friend, or loved one to be able to communicate with your physicians to help you. Second, you should have a healthcare proxy. That’s also called sometimes a medical power of attorney. It’s a document in which you name a person to make medical decisions for you if you cannot. The third is a living will, which is a statement of your healthcare wishes, and all these documents if you have strong religious feelings they should be embodied in there as well. If you have a specific known health issue, you want to make sure that you deal with the issues realistically, you don’t want to just deal with it theoretically. If you have a known health issue, give some thought to how that may impact, maybe you want to expressly provide that unproven treatments, experimental treatments should be permitted and so on. Fifth document you need is a will, which does what everyone thinks; it names guardians if you have minor children and says where your property goes. For many people a revocable trust is a better option to add with a will and a power of attorney. Let me just a quick minute, I don’t want to get too complicated but explain. Revocable trusts are almost universally explained as a vehicle to avoid probate. I’m not really concerned about avoiding probate if you’re facing a health challenge. What I’m more concerned about is creating a structure that protects you as your disease progresses. A revocable trust is much more robust than a power of attorney. You can name an institutional trust if you want. It’s a vehicle by which you can put the title or ownership of the assets in the name of the trustee, so it can be much easier for the trustees to use it than to use a power of attorney. All these things need more talk, but that’s a good overview of the things that you may want to address.

13:06

JIM: Marty, one other thing that we started suggesting as an option for our clients is having them sign a waiver release or whatever to communicate with their designated power of attorney or maybe their kids, because we’ve had situations where people have let go of their insurance and didn’t want anybody notified, and that ended up being a poor decision. While they’re thinking clearly and the skies are clear and there is no stress involved, we asked them if that would be a good idea if they would designate one of their professionals to have the ability that if they’re going down the path of maybe making a questionable decision that that advisor has permission to talk to that designated person to make sure important coverages aren’t lapsed out or that they make a decision that might hurt them financially. I don’t know if you’ve seen those before, we just started using that.

14:00

MARTY: Well it’s a brilliant concept. Let me tell you that the direction you’re heading in, and there are some issues and technicalities that have to be addressed, but it’s a brilliant concept because what you’re now doing is going beyond just the near documents and formalities of planning and trying to address the practical aspects of planning, and that is vital, and I think that is the very direction all of estate planning is moving and must move. It’s not just enough to have a great document. If you have an agent and a power of attorney but the lawyer has an issue with client confidentiality and attorney client privilege and is not certain who he or she can talk to, you may have a problem. If you’re the financial advisor for a client and you need to have open communication with another advisor and there is no authorization to do so, you may be stymied at a critical point in time when your advise could be absolutely essential to what’s going on. I think it’s a great concept. If we take it in a broader perspective, I think clients, consumers that face health issues or any challenge for that matter, all of them need to do is go through the what-if’s with their advisors not just from a technical perspective but from a practical perspective. I’ll give you an example of something that I see as a major challenge, not just for clients with chronic disease but all aging clients as well, and that is they tend to have too many accounts in to many different places so that nobody really has a handle on what’s going on. Consolidating assets, once you’ve consolidated assets, getting a duplicate copy of a monthly statement to a key friend or family member, not the agent under the power of attorney or the trustee under the \_\_\_\_\_, somebody else who can be a monitor and keep an independent eye. This kind of practical planning, which is where your question started, is absolutely one of the most powerful aspects of what can be done to protect people.

15:48

JIM: Man, I’ve heard too many horror stories and been involved in too many horror stories, that all those things that you just talked about are so critically important regardless of the circumstances. It’s just exasperated if you have one of these chronic diseases, especially if it’s a neurological disorder that can affect as the disease progresses affect your ability to make good decisions.

16:10

MARTY: Just to be clear not all neurologic conditions have a significant cognitive impact. They may have motor skill impact and other impact, and that’s why it’s important for the client to communicate very clearly to the advisors what their current situation is. Here’s where I also see this going. A lot of times clients either it’s very difficult for them to deal with this or they don’t understand it, even if their physician’s communicated to them, it just may be emotionally to difficult or it may be from a technical perspective too hard to understand some of the nuances. Many times it can be beneficial for everyone to involve a care manager as part of the planning team, especially with aging clients and situations becoming more common. If a care manager is involved they can be the go between, almost the translator between the medical side of the advisors for the client and the financial legal side. That may be something that some clients might want to consider. But I’ll tell you the most powerful thing that also goes back to your comment of getting authorization. The most powerful step that a client can take to protect themselves as they age or if they have a neurologic or other condition is to meet on a regular basis with all of their advisors. Clients are often loathed to do up these, oh my the attorney may bill, the accountant may bill, it’s probably one of the best investments you can make, and with technology you can cut the cost to the bone. You can have a web meeting if you want to keep the cost limited, but having all the advisors once a year, even a 20 or 30 minute web conference, you get everyone on the same page and a lot of the practical issues like you raised of making sure there’s an authorization to deal with another critical advisor. A lot of the practical issues can come out of that. What I think a lot of clients don’t realize is when they sit down to sign a will or they first move to an investment manager or financial planner and they’re first working out a budget or an asset allocation, there’s an overwhelming number of decision to get a will done or to get on board with a new financial planner. But then clients tend to think that okay I’ve done that now I’m all set, no, that’s just the first step. It’s the ongoing maintenance that’s so critical. To use a horrible analogy, it’s no different than you buy a great quality car, but if you don’t change the oil and service it periodically it’s just not going to run. Your planning needs the same routine maintenance, especially if you have a health issue that may change over time.

18:32

JIM: Absolutely, and I’d even throw in one more thing for clients to consider. If you’re going to do that meeting at some point you might even want to have a family meeting, get the kids involved, whether it’s t 32,000 feet or right down the nitty-gritty detail because if they’re the ones your picking as your powers of attorney. You know I’ve seen too often where people wanted to keep everything a big secret until the time happens, and I think sometimes that can be a big mistake. Baptism by fire never seems to get the best results I think.

19:01

MARTY: No, you’re 100% correct, and that should be part of the ongoing meetings, and at the appropriate time and to the appropriate degree of information the relevant party should be involved. That may be children, it may be friends, it may be siblings, and it may be a professional advisor serving in some of these capacities. Whatever it is, whoever it is for your plan it’s far better that they slowly be educated and informed what’s going on than find oh my Jane just had an acute medical condition and I’m her what? That’s not an optimal approach. That’s certainly part of the planning, but again that goes back to sort of what’s becoming a theme of our discussion. It’s not just about the finalities of a will or an asset allocation, it’s about communicating with your advisors and making certain that the practical steps that work for you and your circumstances are addressed.

19:50

JIM: Well Marty I could go on forever, this is a great topic. But before we wrap up here, you mentioned a wealth of information that you have available to help advisors in helping their clients. Where do people go to get more information or how do they get in touch with you?

20:04

MARTY: I have a website that is going to be launched, it’s not there yet, it’s going to be called chronicillnessplanning.org, but it’s not quite there. It’s going to probably be another three to six months before it’s launched. What my goal is is to put all of the articles, all the speeches, all of the webinars and recordings of them on different chronic diseases and planning for chronic illness and aging generally on that website so advisors and even consumers, but primarily advisors can access these resources. It’s a little premature but it will happen.

20:34

JIM: Alright, well I definitely appreciate the fact that you took time to visit with us today and hopefully we’ve motivated some people out there to get serious about their planning. There are always options and planning always results in better results when you’ve taken the time to figure things out rather than let what happens happen. Being on top of it I think always helps.

20:54

MARTY: Absolutely and I would end on the same positive note. If you or a loved one has any kind of neurologic condition or health challenge, or even just the more traditional issues of aging, meet with your advisors, communicate with your advisors, be proactive because addressing practical issues now while you can is what’s going to keep you in control and keep you safe and keep you on the right financial course.

21:17

JIM: Alright, well thanks again, Marty. I appreciate you being with us and I look forward to having you on again sometime in the near future.

21:23

MARTY: My pleasure.

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