

The ACS Risk Management Approach to the Problem of Asset Preservation

Preserving the Patient and Preserving the Patient's Assets

Our *number one goal* is that the patient be preserved in the best way we can and then kept safe indefinitely.

A *second goal* is that funds be available for reanimation at some indefinite time in the future.

A *third goal* is that funds owned by the patient during his lifetime be available to him after reanimation.

Obviously, this third goal only becomes important if the first two goals are met.

Part I. Managing the Patients' Safety

All too often in cryonics, the emphasis has been on the initial suspension process without the proper concern for keeping the patient safe during the perhaps hundreds of years that he must remain at cold temperature.

The old-timers in cryonics remember well the negative consequences to growth and public confidence in the cryonics movement that came about as a result of the Chadsworth disaster. Whatever the negative consequences were to the various cryonics societies from this "meltdown" to the *patients* who were supposedly being kept at the Chadsworth facility, the consequence was an end to any possibilities of future life.

The supporters of cryonics, especially those with considerable wealth, are well advised to use some of their assets to ensure that Chadsworth never happens again. It is not enough to ensure that the cryonics facility where you intend to someday reside as a patient be kept safe and the organization operating it kept solvent. Any failed cryonics society or facility will negatively impact cryonics as a whole and each individual's prospect of immortality.

Trust but Verify

Cryonics is not a faith based movement. We need to do everything we can to make the organizations responsible for cryonics patients as trustworthy as possible. That is not enough. We also must build into our patient care system the methods and means to verify that patients are being properly cared for. The American Cryonics Society does this through inspection authority for any facility that houses ACS patients. This third party inspection is just one verification means. Another is the patient sponsorship system used by ACS where each patient is assigned a living member who has responsibility for his sponsored patient during the time his charge is in cold care.

Wealthy Patients and Patients with Enemies Present Special Problems

Two categories of patients present special risks. The first are patients who have determined and vengeful enemies. Examples are Malcolm X, Sedan Hussein, Howard Jarvis, Martin Luther King, or most any well known political figure.

The second category of risky patients are people of great wealth. Any hooligan can threaten to blow up a cryonics suspension facility and demand money for not doing so. Armed takeover of facilities, kidnapping of patients, and frivolous lawsuits are other means that persons of low character can use to try to extort money from wealthy cryonics societies, wealthy trust funds, or the relatives of wealthy patients.

Before a cryonics suspension facility takes on a patient that presents these special risks, it needs to be sure that the funds are available to protect against these enhanced risks. Conversely, any would-be patient who possesses great wealth should plan on making the necessary funds available to protect him or her.

Apart from providing funds for the special risks involved with wealthy or famous people, it is probably a good idea that cryonics groups refrain from bragging about the fact that rich and famous patients are at their facility.

The rest of this paper deals with problems of preserving money assets.

Part II. Preserving Money

History

The American Cryonics Society has had a program for asset preservation through suspension and reanimation since 1974. In 1981, we hired Attorney Jim Bianchi to review our program and suggest changes. He suggested we make use of testamentary trusts as our main instrument to accomplish this purpose and he crafted a model trust for ACS members. In another review in 1991, additional model trusts were presented. We have now had quite a number of attorneys and estate planners who have tried their hand at revising or improving this model trust, and Mr. Bianchi has continued to make modifications and adaptations.

Parallel in development of the model trust plan was a second approach that made use of an application form rather than a trust. The original forms developed for this purpose were called the California short forms and we have now modified our short forms for use by people other than Californians. With the short forms, members direct the American Cryonics Society to establish a trust or dedicated fund within ACS. The establishment of this trust or fund will not take place until after the member deanimates. Many members, especially those with dedicated assets of \$500,000 or less, find that the short forms is less burdensome than hiring an attorney to draft a trust. The short forms also allow ACS to put the member's trust together at some date in the future where many of the legal questions that plague current cryonics trusts have been better resolved.

The Current Approach

In the attached summary sheets, we present advantages and disadvantages of several asset preservation plans that have been used or are being used by ACS members. Copies of model trusts are available by request.

The approach used by ACS is to have a diversity of money assets to guard against various negative contingency. For example, the CI contract is fully funded for any ACS member in cold storage at the CI facility. As a fully funded CI member, any ACS member in cold storage at that location would be entitled to all of the privileges of other CI members. If CI is prudent in their money management procedures, this fund alone could be adequate for long term preservation.

Dedicated funds within ACS are funds established in the name of the donor and are to be used for the donor's long term storage, reanimation, and care and sustenance once he is reanimated. Dedicated funds within ACS are required except where ACS is the trustee for a member's cryonics trust. These dedicated funds provide money for inspection of the CI facility and relocation of the patient if necessary, as well as reanimation funds. Please note, however, that we have no good estimate of the cost of reanimation and any such funds may prove inadequate.

Trusts established by members (or by ACS) can be quite varied in their application and purpose. Typically, a trust provides for cryonics research, acts as a backup to ACS dedicated funds and provides provisions whereby the member can exercise some degree of control over these assets after he is reanimated. Provisions vary from terminating the trust and giving all money therein to the reanimated member to provisions which allow the reanimated member to become the trustee of his own trust.

Tax Codes and Trusts

Probably more than any other single factor that affects trust provisions are the Federal tax codes that apply. ACS model trusts are typically taxed either as a 501(C)3 non-profit trust or as a trust under Tax Code 641.

Tax Code 641

Under Tax Code 641, the trust may be used to achieve private and personal objectives. This makes earnings subject to taxation. These earnings may be reduced through grants or gifts to support research if made to 501(C)3 organizations. An advantage to being taxed under 641 is that provisions calling for distribution to a reanimated cryonics patient are not as likely to cause legal problems or to be disallowed by the IRS.

641 trusts are subject to the rule against perpetuities. Establishing such trust in states that *do not have* the rule against perpetuities is one way to deal with this problem. Another approach is to have trust provisions that call for the trust to be paid over to the dedicated fund within ACS should time run out before reanimation.

Tax Code 501(C)3

Trusts established under 501(C)3 must serve the public good. Whether or not the trust may have provisions to benefit an individual when he becomes the subject of a cryonic suspension experiment is questionable. The general rule is that an individual cannot personally benefit from 501(C)3 trusts. It can be argued, however, that the eventuality of future reanimation is so remote as to negate the concept of personal benefit. As far as we know, there has been no IRS rulings on this subject and to challenge the IRS should they rule a cryonics trust cannot qualify under 501(C)3 would be very expensive. 501(C)3 trusts also have limitations on how much earnings can accumulate within the trust. Generally speaking, most earnings must be used for the non-profit purpose (such as research) called for in the trust document. All ACS trusts to date are under Tax Code 641.

Some individuals have established two trusts. The first is a 501(C)3 trust which promotes research. Under provisions of this trust, the member who had established it may only benefit as a member of a "class." That is to say, if ACS provides money from this trust for a burglar alarm system in the CI facility, then the member benefits along with all of the other people kept at the CI facility. The second trust established under this two-trust system is a private purpose trust under Tax Code 641. All of the "selfish provisions" are placed under this trust including the right to retrieve trust assets sometime in the future after reanimation.

Living Trusts

Some ACS members have also established living trusts, partly for reasons of reducing estate taxes. Typically, a living trust terminates on the death of a member and the assets are paid into the member's testamentary trust. For living trusts that are established for cryonic purposes, members sometimes act as trustee during their lifetime but have ACS assume that role upon their death. In such trusts, ACS is named as successor trustee. A variation on this idea is the charitable remainder trust where the member is entitled to trust earnings during his lifetime with the principal sum going to ACS when the member dies.

Trusts for Members of Other Cryonics Groups

ACS is willing to hold money in trust or as a fund for individuals who do not have their primary suspension arrangements with ACS. However, ACS has no authority over people in cold storage who are not ACS members. In other words, even if we thought that such a person was getting sub-standard care, we could not direct that he be moved to a better facility. Also, questions on distribution of such assets need to be very carefully spelled out. ACS trusts for ACS members can provide some "wobble room" on the determination of whether or not the reanimated person is indeed the same as the individual who set up the trust. Trusts for people suspended and cared for outside of ACS need to give us very specific instructions. For example, if the individual reanimated is declared by a court of law to be legally identical, then there is no ambiguity. An advantage of having ACS manage some asset in trust for individuals cared for by other cryonics organizations is obtaining a diversity of management. It is a way to put your eggs in more than one basket.

ACS Path I - Member Completes Short Form Application

Member completes short form application.

Member directs ACS to establish a trust or dedicated fund for him to be completed when member deanimates.
Member answers questions in application concerning use of funds and suspension preferences (head only, full body, etc.).

Member provides minimum of \$155,000 funding. In our example, we will assume funding of \$250,000. Often this is in the form of a life insurance policy.

Member deanimates.

ACS establishes a trust or dedicated fund for member upon his deanimation after payment of suspension costs and to satisfy CI's upfront costs.

Use of funds are as follows:

Suspension Cost - \$20-\$70k (will assume \$50k in our example)

CI - \$35k (This is a fully funded CI contract with metal protective pod)

Fund Balance (placed in trust or dedicated fund in name of member)
 $\$250k - 50k - 35k = \$165k$

Member is kept in cold care.

Members' funds used for periodic inspection of CI facility

Member could be moved to an alternate storage facility at the discretion of ACS

Member reanimates.

Once the member has been reanimated and is able to manage his own affairs, ACS will consider the scientific experiment successfully terminated, and any remaining part of the dedicated funds will be returned to the member if the law at the time of reanimation permits. Even if permitted, the disbursement of cash from the dedicated fund may be treated as a taxable event to the member. If the law does not permit disbursement of funds to the member directly, then ACS will use the funds for permitted purposes to the member's benefit, such as care, housing and sustenance, retraining or other education.

If member had a trust established by ACS once he is declared by a court of law as being the same person who deanimated long ago, he may claim all trust assets. Alternatively, he could be named as trustee of the trust established in his name, replacing ACS as trustee.

ACS Path II – Member Establishes Trust

Member and his attorney establish either living or testamentary trust.

Unless this trust names ACS as trustee, ACS requires minimum funding of \$155,000 to be paid to ACS outside of the trust. Distribution of funds from this \$155,000 endowment is handled the same as in Path I.

Member deanimates.

Trust assets are managed in accordance with provisions spelled out in the trust document. These provisions are discussed below. If member has living trust, ACS becomes trustee as successor trustee.

Assuming ACS is not the trustee for the member's main trust: ACS establishes dedicated fund for member upon his deanimation after payment of suspension costs and to satisfy CI's upfront costs.

Use of funds are as follows:

Suspension Cost - \$20-\$70k (will assume \$50k in our example)

CI - \$35k (This is a fully funded CI contract with metal protective pod)

Fund Balance (placed in dedicated fund in name of member)
 $\$250k - 50k - 35k = \$165k$

Member is kept in cold care.

Trust acts as backup for member's dedicated fund.

Member's funds in ACS dedicated fund are used for periodic inspection of CI facility.

Member could be moved to alternate storage facility at the discretion of ACS.

Member reanimates.

If member had a trust established by ACS once he is declared by a court of law as being the same person who deanimated long ago, he may claim all trust assets. Alternatively, he could be named as trustee of the trust established in his name, replacing ACS as trustee.

Money from dedicated fund within ACS could be used for reanimation. Money from trust may also be used provided the trust has such provisions.

Trust assets may be distributed to member to use as he wishes. Alternatively, if member becomes trustee of his own trust, he directs funds distribution and management.

If member had a dedicated fund established for him by ACS, he would be entitled to care, housing and sustenance, retraining or other education, he may or may not be entitled to money grant from his dedicated fund account.