

Health Care Decision-Making Tools

The Terry Schiavo case brought home a scenario that we all dread: you suffer an accident that leaves you permanently unable to care for your physical needs. A tube provides all your nutrition. Wires and monitors envelop your body like a cocoon. What would you want done in this situation? Who would you rely on to carry out your wishes?

If you don't plan for something like this and it comes to pass, then your spouse and relatives may be placed under enormous pressure, and disagreements on what steps they want to take can drag out for years. Your lawyer can help you take steps to plan ahead, just in case.

Health Care Advance Directives

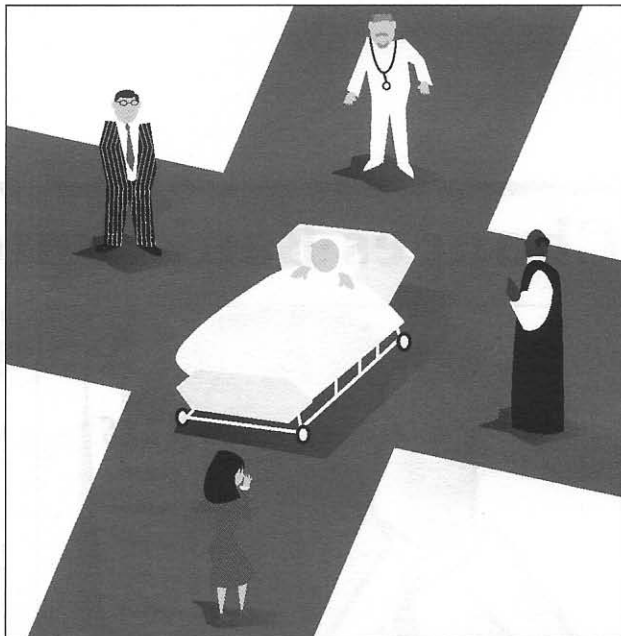
A **health care advance directive** is the primary legal tool for making any health care decision when you cannot speak for yourself. "Health care advance directive" is the general term for any written statement you make while competent concerning your future health care wishes. Formal advance directives include the **living will** and the **health care power of attorney**. All fifty states and the District of Columbia have laws recognizing advance directive use.

A **living will** (or "medical directive" or "declaration" or "directive to physicians") is a type of advance directive that is simply a written instruction spelling out any wishes you have about your treatment or care in the event you are unable to speak for yourself and are terminally ill or permanently unconscious. A living will says in effect, "Whoever is deciding, please follow these instructions!" On its own, a living will is very limited—it usually applies only to end-of-life decisions, and standard instructions tend to be general. Unless you happen to have a good crystal ball, it is impossible to anticipate every future medical scenario.

A **health care power of attorney** (or health care "proxy," or "medical power of attorney") is a document that appoints someone of your choosing to be your authorized "agent" (or "attorney-in-fact" or "proxy"). You can give your agent as much or as little authority as you wish to make health care decisions. The decisions are not limited to just end-of-life decisions.

Appointing an agent provides someone with authority to weigh all the medical facts and circumstances and interpret your wishes accordingly. A health care power of attorney is broader and more flexible than a living will.

A comprehensive **Health Care Advance Directive** combines the living will and the health care power of attorney into one document. In addition, you may include



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any other directions, including organ donation or where and how you prefer to be cared for. Because it is more comprehensive and more flexible than the other tools, it is often the preferred legal tool. Talk to your lawyer about whether it may be appropriate for you.

Naming an Agent

One of the most important steps in making a health care advance directive is choosing an agent—the person who will make decisions on your behalf. A broadly drafted advance directive usually gives an agent authority to:

- Consent to or refuse any medical treatment or diagnostic procedure relating to your physical or mental health, including artificial nutrition and hydration
- Hire or discharge medical providers and authorize admission to medical and long-term care facilities
- Consent to measures for comfort care and pain relief

- Have access to all medical records
- Take whatever measures are necessary to carry out your wishes, including granting releases or waivers to medical facilities and seeking judicial remedies if problems arise.

Your agent will obviously have great power if you become incapacitated, and there is normally no formal oversight of your agent's decisions. Therefore, follow these guidelines:

- Speak to the person beforehand and explain your intentions. Confirm his or her willingness to act and understand your wishes. That means talking honestly and openly about death and dying.
- Ask your lawyer who can and cannot be a health care agent in your state. Each state has different rules. Most prohibit your doctor and other health care providers from being your agent, unless they are related to you.
- Consider naming successor agents.
- Avoid naming co-agents. It adds potential for disagreement and logistical complications. If you really want co-agents, have a plan for what happens when there is a split decision among them.

- If you trust no one to be your agent, you can limit the authority of your agent, by giving the agent authority over some but not all treatment decisions, or by requiring concurrence between your agent and physician.
- You can also identify persons who you do not want to make decisions about you, who will have no authority to challenge a decision of your agent.

Talk About It

Talking about what you would want to happen if you were incapacitated can help guide your thinking, and help guide others if they ever need to make an important decision on your behalf. You may want to discuss your wishes and options with your lawyer, physician, family and whomever you will rely on to speak for you when you cannot. Completing an advance directive form should be an end product of a planning process, which you may need to repeat at various turning points in your life.