

In crisis: life-and-death decisions

The tragic situation of Terri Schiavo and her family has brought a heightened sensitivity to the need for all of us to make our wishes concerning health care known in advance of any illness or injury that might make us unable to communicate clearly. We offer this discussion as an aid in understanding some of the medical and financial “end of life” planning issues that you may want to consider.

First, some definitions

Many of the reports and articles in the media have used the term “living will” as a reference to the document that you prepare in order to express your wishes regarding your treatment in the event of a terminal illness. But there’s much below the surface. The broader term, *advance medical directive*, covers what actually are several different documents that encompass treatment issues.

A *living will* is a document that specifies the kinds of medical treatment that you want should you become unable to articulate your wishes yourself. Commonly, a living will states that should you suffer an incurable or irreversible illness or disease, and your attending physician determines that your condition is terminal, measures that only would prolong your life or the process of dying should be discontinued or withheld. More specific information can be included regarding medications, life support equipment or nourishment. The document may request that the hospital or other treatment facility have a “do-not-resuscitate” (DNR) order on hand. Of course, a living will can take the opposite approach. The document may request that you want any and all possible treatments that are within the range of generally accepted medical standards.

A *durable power of attorney for health care* (or *health-care proxy*) is a document in which you designate another person to make health-care decisions if you are rendered incapable of making your wishes known. The individual chosen has, generally, the same rights to request or refuse treatments that you would have if you were capable of making and communicating your decisions. Certain people are likely to be restricted from being named to serve as a health-care proxy—for example, your physician or an employee of the institution

caring for you (unless he or she is related by blood, marriage or adoption). If there is no one whom you trust to act as your proxy, the living will is a safer approach.

Many states permit individuals to create a *combined directive*. As its name implies, you can both name a health-care proxy to speak for you if you are unable to make your decisions known and also instruct your proxy to follow your wishes as you have outlined in the living will portion of the document.

The need for formalities

All states recognize some form of advance medical directive. Your state's laws define the kind of document that you may create with regard to your medical treatment. It's important to consult the laws of your own state rather than rely upon general information that you may obtain. The laws of each state vary considerably in terminology, the scope of decision-making addressed, restrictions and the formal requirements for drafting an advance medical directive.

Your state government's Web site usually can tell you the particulars about advance medical directives. It even may include a form that you can use. You also can download and use forms from other places on the Internet as long as you determine that the form meets your state's requirements.

Most of the language in the forms is boilerplate, expressing sentiments in general terms, and may not reflect your beliefs accurately. If that's the case, you may wish to ask your attorney to draft a directive with language that is appropriate for you.

Once you have executed your directive, make certain that you review it regularly to be certain that it still reflects your wishes, and if it's a durable power of attorney for health care, that the proxy whom you have named is still available and willing to serve. It's probably a good idea to keep a card in your wallet stating that you have an advance directive and noting where it can be found. You should consider giving copies to your attorney, physician and any family members whom you feel should have them. If the directive is a durable power for health care, make sure that your health-care proxy has a copy.

Should you move to another state, you will need to determine whether your directive will be recognized in your new state or whether you need to draft a new document.

The American Bar Association provides a wealth of valuable information about medical directives at www.abanet.org/aging.

The financial side of planning

A long illness (whether it is terminal or not) may have a significant impact on your investments, a family business and your finances in general. Therefore, hand in hand with drafting medical directives is setting in place the appropriate documents to help make certain that your financial life will continue to operate at full capacity when you are not at the helm.

A *durable power of attorney for property* is a document that allows you to give authority to another (your *agent* or *attorney-in-fact*). Unlike a regular power of attorney, the durable power remains in effect if you become unable to make decisions about your finances. (The document becomes ineffective at your death.) The powers that you grant your agent may be broad or narrow as needed. You may be able to make your power “springing” if you are uncomfortable with giving someone authority to act on your behalf while you are fully capable. A *springing durable power of attorney* operates just like a durable power but only becomes effective when you become incapable—based upon a finding of a physician.

As helpful as a durable power of attorney can be, it may not be a perfect solution. Some institutions require use of their own form or that the power be reexecuted to their own specifications, which, of course, defeats the purpose of the document for someone who is legally incapacitated. And springing powers are not recognized in all states and are not always recognized as readily as the more standard durable power.

Coupling a durable power of attorney with a *revocable living trust* may provide the ultimate solution. The trust is created along with the durable power. The power directs that should you become incapacitated, all of your assets pour over into the trust. The assets in the trust will be managed professionally by the trustee, as you direct in the trust agreement—which can be shaped to suit your particular needs and circumstances. Should you die, the trust will distribute the assets as you have instructed in the agreement, much like a will.

We would be glad to provide you with more details about what a revocable living trust can accomplish for you and your family.

Endnote

According to www.medicinenet.com, approximately four out of every five adults have no advance medical directive. According to this medical reference site, in 1950 about one-half

of Americans who died did so at home. Now approximately 85% of Americans die in a health-care setting—a hospital, a nursing home or a rehabilitation center, with at least 12% in an intensive-care unit. These statistics reinforce the importance of taking the steps necessary to make certain that all of your wishes—for both medical treatment and financial matters—will be carried out in a manner that you believe appropriate.

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Any developments occurring after January 31, 2006, are not reflected in this article.