WHAT ARE HEALTH-CARE ADVANCE DIRECTIVES?

Health care advance directives are instructions given for one’s future care. No one else may write your health care advance directive. Unlike most other types of advance planning, a health care directive is silent unless you are unable to participate in the medical decisions at the time those decisions need to be made.

The law in Florida recognizes a competent adult’s right to accept or refuse any type of medical care for any reason whatsoever. This right of self determination can survive incapacity if such desire is communicated in a clear and convincing manner prior to the onset of incapacity. Putting one’s desires in writing with two witnesses, one of whom is not related meets the legal requirements. In addition, it is important that these desires be communicated to physicians and family in an ongoing and thoughtful manner. Such action will help avoid the potential of family conflict.

The Florida Statutes delineate three general types of health care advance directives. The narrowest, termed a “Living Will”, informs health care givers what type of care would be elected or declined following diagnosis of a terminal condition; an end stage of a chronic condition; or a permanent vegetative state. A diagnosis for any of these conditions means there is no known successful cure. A Living Will may prevent prolongation of the death or suffering by a patient whose family may insist upon a misguided attempt to “do everything possible”, or who suffer from an inability to “let go”. Failure to have personally stated clear and convincing directions to the contrary can allow a decision-maker to insist on maintaining a dying condition indefinitely. This difficult situation has been heartbreakingly portrayed for more than thirteen years in the case of Terri Schiavo.

The second type of advance directive is much broader and thus far more helpful to a patient. In Florida, this directive is called a Health Care Surrogate Designation; it may be referred to as a Durable Power of Attorney for health care decisions in other states, or even a Designated Proxy. This designation establishes and protects the author’s wishes regarding who is to decide in the event of his incapacity to make a medical decision. Obviously, this person, the designee, should know and accept such designation. This designation must be in writing and be witnessed by two persons, neither of whom is the designated person. One witness can not be either related or married to the author.

Once you have decided who should make decisions on your behalf, it is incumbent upon you to inform the surrogate what decisions you would like to be made. This process is not inflexible, and ought to be routinely updated to reflect your knowledge and understanding of your particular situation in life. This is your responsibility; a surrogate may be called upon to defend a decision undertaken on your behalf. A history of ongoing discussions enables your surrogate to knowledgeably communicate your wishes. If you are diagnosed with an illness, your surrogate should know the plan of care, the possible side effects, and the prognosis. He should know everything you know about your state of health.
The importance of a surrogate designation cannot be overstated because most cases of incapacity are consequent to trauma and thus unforeseen. A person can be enjoying excellent health, suffer a terrible car crash and never again have capacity to make health care decisions for himself. In these situations, having a previously appointed surrogate can facilitate decisions regarding nursing home care, treatment, and even transfer to other facilities.

Consider the patient diagnosed with Alzheimer’s who is not in the end stages of the disease but who is in renal failure. This patient could well be forced to undergo dialysis because of his inability to refuse it. With no designated surrogate, family members may feel compelled to impose this regimen, which the patient may have refused given the choice. The earlier appointment of a surrogate who had discussed which therapies the patient would have wanted undertaken or refused in the event of such a diagnosis could have obviated the imposition of either burdensome or fruitless care.

The existence of written directives has no impact on insurance. These directives are not necessary for admission or care at any facility, and the withdrawal or withholding of care as directed by these documents does not impair or invalidate life insurance. These directives, if executed in Florida are recognized in the other forty-nine states. (They must be signed in the presence of two witnesses neither of whom is the intended surrogate, and one of whom is neither related nor a spouse)

It is important to note that surrogates do not have unlimited power. Unless specifically directed, a surrogate may not consent to abortion, sterilization, electroshock therapy, experimental treatment, or voluntary admission to a mental hospital.

The third type of advance directive involves organ donation upon one’s demise. A designation on a Florida driver’s license is considered sufficient. Again, such a decision should be known to the family.

In summary, communication with the designated surrogate is absolutely vital. The need to keep family and the treating physician up to date on the status of one’s desires cannot be overstressed. Wishes regarding care may change according to diagnosis, prognosis, age, family obligations, and of course, the state of medical technology. In unusual circumstances, a lawyer may be required, but in most cases, the following actions are all that are necessary:

1. knowledge of one’s health status and what conditions might reasonably be anticipated;
2. the kinds of care one would opt for and those therapies that would not be chosen in any circumstance (e.g. artificial sustenance and/or hydration, cardiac and/or respiratory resuscitation);
3. the length of time beyond which nothing further is desired (e.g. dialysis);
4. the kind of intervention then expected (e.g. Hospice);
5. communication of these desires (in writing if possible, although not necessary) to one’s surrogate, family and doctors.

No person in history enjoys a greater right of self-determination regarding health care than a competent American adult; however, that right is fragile. If not protected, it can be lost in a second.

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