

HAVING THE LAST WORD: HEALTH CARE DIRECTIVES IN MINNESOTA

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Last year, the nation watched as Terri Schiavo's family fought in court over removing her nutrition and hydration because she was in a persistent vegetative state with no hope of recovery. Although Terri Schiavo had told her husband that she did not wish to live in a vegetative state, she did not express her wishes in writing or communicate her wishes to other family members. If you want to make your wishes about health care clear

for your family and avoid the involvement of the courts, we recommend that you take the following steps.

Prepare A Health Care Directive (Living Will)

A health care directive in Minnesota consists of two parts. In the first part, you may appoint one or more agents to make health care decisions on your behalf whenever you are unable to make or communicate your health care decisions. Your health care agent steps into your shoes as a substitute decision-maker. Your health care agent has the power to consent to medical treatment or withhold consent to medical treatment as if you were making these medical decisions for yourself. Your health care agent has full access to all of your medical records. In addition, your agent has the power to choose where you would live whenever you need health care and may determine whatever personal security measures are needed to keep you safe. In the event that a guardian is appointed by the court to make decisions concerning your health care, the health care agent nominated in a health care directive has priority to serve as the court appointed guardian.

In the second part of a health care directive, you may state your wishes concerning your health care. The wishes that you state in this part provide guidance to your health care agent in the event you are in a terminal condition, a coma with little hope of recovery, a persistent vegetative state, suffering from advanced dementia or completely dependent on others for all of your physical needs. You may state broad goals for what you would like to achieve for your health care, for example, care to support comfort and pain management. On the other hand, you may express your wishes in terms of the specific type of treatment you would like to receive or not receive, for example, no feeding tubes.

This year, the Minnesota Legislature considered a bill that would have provided that a person is presumed to direct his or her health care provider to provide the person with sufficient nutrition or hydration to sustain life. This presumption could be

overcome by expressly authorizing the withholding or withdrawal of nutrition or hydration. Because this legislation could be introduced again, we recommend that you specifically address this issue in your health care directive.

Some questions to consider:

- Do you wish to receive whatever care is appropriate to keep you as comfortable and free of pain as reasonably possible even if some of the drugs or procedures may hasten your death?
- Do you wish to receive feeding tubes, artificial nutrition and hydration to prolong your life?
- Do you wish to be kept alive by artificial means (e.g., respirator) or heroic measures (e.g., cardiopulmonary resuscitation (CPR))?
- Do you wish to receive hospice care at home, if possible?

In addition to designating health care, the health care directive may be used to provide for the donation of organs, tissues and other body parts and may also be used to authorize cremation or other burial instructions.

Appoint A Health Care Agent to Carry Out Your Wishes

It may not be possible to anticipate all possible situations when stating the specific types of treatment in a health care directive. Appointing a health care agent to act as a substitute decision-maker provides flexibility in responding to a particular medical need. Ideally, your health care agent should be someone who understands your wishes and goals concerning your health care and is willing to follow your wishes.

If you appoint more than one agent to act at the same time, disputes among your health care agents (and family members) may arise concerning your health care. You may provide a mechanism to resolve disputes in the health care directive, for example, designating one of the agents to make the final and binding decision in the event of a dispute.

No matter how many health care agents or successor agents you appoint in your health care directive, you should discuss with your agents not only your health care wishes, but also their beliefs and opinions concerning health care to make sure that they will follow your wishes when the time comes.

Communicate With Health Care Agents and Family Members

Communication is the key for accomplishing your goals regarding your health care and easing the situation for family members. You should candidly discuss your wishes concerning your health care with your health care agents and family members. The topic may not be pleasant, but the conversation with family members is vital to avoid heartbreaking disputes among family members.

Failure to communicate health care wishes in a written directive or in conversations with family members has led to contentious family disputes requiring intervention by courts and legislatures. A well written health care directive, the appointment of a health care agent who will carry out your wishes and candid conversations with family members can protect you and your family from governmental intervention in your health care.

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