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Lessons From The Case Of Terri Schiavo

At the time this article went to press, the case of Terri Schiavo was occupying most of the media's attention. Terri had been in a persistent vegetative state, and her parents and her husband disagreed on whether her feeding tube should be removed. I am sure each of us has our own opinion on this issue. However, what we should all recognize is that similar situations can be avoided with proper advance planning and discussion with family members. Elder law attorneys are uniquely qualified to assist individuals and their families when confronted with difficult decisions regarding medical treatment, or the withholding of medical treatment.

Although court-appointed guardians may have the authority to make health care decisions, including end-of-life decisions, an individual is far better served by executing an advance directive which can be in the form of a living will, health care proxy or both. As we have seen, without advance directives, the process of deciding what to do medically -and when to do it- can be a time-consuming and emotional task for caregivers, family members, friends and health care providers.

Advance directives allow you to select in advance the person most trusted as your agent to make health care decisions in case you can't do it yourself. A living will is an expression of how you want to be treated during end-of-life care. It generally applies if you are in a persistent vegetative state, coma, or you are terminally ill. The health care proxy is a delegation of authority to a third party to make health care decisions for you when you are unable to do so. All states and the District of Columbia impose legal requirements on the content and execution of these documents for them to be valid.

Once you have made the decision to have advance health care directives, there are many issues for you to consider, including:

- Who will serve as your health care agent and successor agent?
- Under what conditions, if any, do you want to authorize the withdrawal of life-sustaining medical treatment?
- Does your authorization to withhold or withdraw life-sustaining medical treatment extend to artificial nutrition or hydration (feeding tube)?
- Do you have specific preferences concerning health care facilities or providers?
- Do you have any moral or religious convictions that dictate the use or rejection of certain forms of medical treatment?
- Do you want to make anatomical gifts (organ donation) or give the agent the power and authority to make these gifts?

In light of the privacy rules in the Health Insurance Portability and Accountability Act of 1996 (HIPAA) and related regulations, the advance directive should also include a specific, immediate authorization under HIPAA for your health care agent to obtain confidential information concerning your medical condition. This will allow the agent to talk with your physicians and review your medical records. Although many individuals are accompanied by their children to routine medical appointments, in an emergency situation the children need to know that they will be able to talk with the treating medical professionals about their parent's condition.

You want to make sure that your agent, family and healthcare providers know that you have advance medical directives. At a minimum, you should have a candid and frank discussion of the advance directive and your health care preferences with your immediate family, health care agents and primary care physician and provide each of them with a copy of the advance directives. We suggest that you also mail a copy of the advance directive to your doctors so that

they have it in your file. You may also wish to have a wallet-sized card that informs third parties of the existence of your advance directive and the names and telephone numbers of your health care agents.

Typically, individuals do not like to think about advance directives and end-of-life care. Hopefully, that will start to change in light of the Schiavo case.