

“To Be or Not To Be”: The Advance Medical Directive

The end of life decision is something that most people would rather not think about; yet, it is important for a person to communicate his or her desires on this issue through an advance medical directive (AMD). There are two parts of the AMD, a living will and a health care power of attorney (HCPA).

Living Will

A living will is instructions given by a person specifying what actions should be taken for their health in the event that they are unable to make medical decisions due to illness or incapacity.

A living will is a declaration directing that a physician may withhold or withdraw life-sustaining procedures when a person is in a terminal condition. Life sustaining procedures are typically defined as any medical procedure or intervention that would only prolong the dying process, while a terminal condition usually means an incurable or irreversible condition with no possibility of recovery as agreed upon by two doctors in writing. Most living will documents give the person the opportunity to state his or her intentions regarding the withholding of a list of life-sustaining procedures, such as receiving or withdrawing artificial nourishment, under circumstances of terminal illness or permanent unconsciousness. A living will can be general or very specific.

A living will is advantageous in several ways. First, the document allows a person to make difficult decisions about future care while the person is competent, alert, and free of illness. Second, the directions in the living will allow a person to die under circumstances he or she has chosen and makes that person's intention known in the event of a dispute amongst grieving family members.

Nevertheless, the person should beware of the limitations of a living will. The language in the living will can be very vague and can conflict with quality medical care that the person will receive. Withholding or withdrawing life-sustaining procedures does not necessarily mean a person does not want to be placed on life support no matter what. In most situations, the doctors do not know whether a person's recovery is unrealistic unless the doctor knows that the person has a pre-existing, terminal condition. So what usually happens is that a very ill person gets the full extent of the medical care, and if he or she does not recover, the doctors will talk to the family or a healthcare “proxy” or agent to determine what to do with the person, in terms of medical care.

Health care Power of Attorney (HCPA)

HCPA is a special kind of power of attorney that deals with health care planning when a person is unable to make an informed medical decision on his or her own due to terminal illness, coma, or incapacitation. The HCPA allows a person to appoint an agent or proxy to make health care decisions for the person, including the decision to refuse or withdraw life-sustaining procedures, intravenous feeding tube, or ventilator. Because it is

impossible to predict every possible contingency in a living will, having a HCPA enables the agent to make the proper determination for the person.

Due to the seriousness of the decision, the person should discuss his or her wishes in advance with his or her agent such as a spouse, child, or close friend. The person should try to talk about various contingencies that might arise and what the agent should do in each contingency. Keep in mind, the agent should understand that they are making these difficult decisions based on what the person would have wanted rather than what the agent would have wanted for the person.

When a person becomes seriously ill and is no longer able to communicate whether he or she wants to continue treatment, the person's family and physician often must make decisions based on what they think the person might want. Living wills and medical powers of attorney help to relieve anxiety, grief, and medical expenses by allowing the person to state, in advance, what the person wants should he or she become unable to make an informed medical decision.

For more information on advance medical directives or for drafting of the advance medical directive, please contact 913-684-4944 or visit the Ft. Leavenworth Legal Assistance Office.