

The Advance Health Care Directive

A complete estate plan consists of three core documents: (1) a Revocable Living Trust (or a Will in certain limited circumstances); (2) a Durable Power of Attorney; and (3) an Advance Health Care Directive. In this article I will focus on the third document.

An Advance Health Care Directive is a written document in which one person (the principal) designates another person (the agent) to make medical decisions on the principal's behalf when the principal is unable to make medical decisions for him or herself. The principal may also predetermine which decisions should be made in certain medical situations. The Advance Health Care Directive thus serves two distinct purposes: (1) appointing an agent, and (2) expressing your desires concerning the medical treatment you would prefer under given medical circumstances.

Under California law, as long as you are able to give informed consent concerning your health care decisions, you may of course make your own decisions. The problem arises when you lack the capacity to understand the nature and consequences of a particular decision or are unable to communicate your decision. If you lack capacity to make decisions for yourself, decision-making authority is given in the following order of priority: (1) an agent you verbally designated during a hospitalization; (2) an agent you designated in an Advance Health Care Directive; (3) a court-appointed conservator; or (4) a close family member. In most circumstances, the decision-making authority rests with a close family member because advance planning has not been done and the circumstances do not warrant court involvement. In this case, the treating physician has discretion in determining who will speak for you. The doctor will consider (1) the relationship involved (for adults, spouses are generally given first priority; for minors or unmarried adults, parents are generally given first priority), (2) who is most familiar with your values and medical desires, (3) who would be most affected by the course of treatment selected, and (4) who has expressed a concern or interest in your welfare. The situation may get complicated where a doctor is not comfortable relying on the instructions of a spouse or relative for various reasons. You might recall a recent court case highlighted in the media which involved a fight between a woman's husband and her parents regarding whether life support would be terminated.

Through estate planning you can avoid any uncertainty regarding what your wishes are and who will make health care decisions for you in a medical emergency. You should take the time now to select someone who understands your desires and in whom you have absolute faith in their judgment to exercise discretion in a manner that would be satisfactory to you.

The second purpose of the Advance Health Care Directive is: expressing your desires concerning the medical treatment you would prefer under certain medical circumstances.

You may have heard of the term "living will". A living will is a written statement about the types of medical care you want (or don't want) if you become incapacitated. This is a different document than the "will" used for estate planning purposes. The living

will is only concerned with health care issues. In contrast, the will determines what will happen to your property. The Advance Health Care Directive incorporates the living will.

One of the most distressing situations a family has to face is that of making medical decisions concerning whether to withhold or withdraw life support for a loved one. I know of a situation in which brothers and sisters, holding vigil outside their mother's intensive care hospital room, spent hours heatedly arguing about what medical course of action to take rather than comforting one another. Since their mother had not expressed her wishes before she had a massive heart attack, the family was left to make the decision without the benefit of her input. Those voting to keep their mother on life support stated that they couldn't bear the guilt associated with "pulling the plug". Those voting to let their mother "pass on in peace" by disconnecting the life support felt it was the only humane thing to do under the circumstances. Without a consensus from the family, the doctor refused to take any action and mother languished in the hospital intensive care ward for a couple of difficult weeks before the inevitable occurred.

Most people I know are more concerned with "quality of life" and "dying with dignity" rather than length of days at any cost. There are legitimate concerns about living with debilitating pain, depleting resources, prolonging the anguish of loved ones and an imbalance between the burdens of a proposed treatment versus the expected benefits. A common sentiment expressed in the Advance Health Care Directive is "If I should have an incurable injury, disease, or illness certified by two (2) physicians to be a terminal condition, and if the application of life-sustaining procedures would serve only to artificially prolong the moment of my death, and if my treating physician determines that my death is imminent, whether or not life-sustaining procedures are utilized, then I desire that all life-sustaining treatment be withheld or removed". The Advance Health Care Directive can also set forth preferences concerning medical conditions such as coma and Alzheimer's and whether organ donation and autopsy are permissible.

When an estate plan is prepared, a discussion and statement of preferences regarding end-of-life issues must be an integral part. Just like the disposition of your worldly goods, decisions involving your health care should be carefully considered and clearly stated during the estate planning process.