

Communicating End-of-Life Decisions Now May Avoid Problems Later

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Many people may recall a sad but pivotal event that occurred over twenty-five years ago in New Jersey. Karen Ann Quinlan became the focus of national attention as her family and the hospital that cared for her fought a courtroom battle. The conflict arose over whether life support apparatuses should be removed from her body, which lingered in a chronic and persistent vegetative state. The result would be sure death.

In the aftermath of that event, almost every state has passed legislation allowing adults to prepare legal instructions that indicate their wishes regarding life support in the event they suffer from a terminal condition and are comatose, incompetent, or physically incapable of communicating. Commonly referred to as "living wills" (and more formally as "Directives to Physicians and Family or Surrogates"), these advance directives have received widespread acceptance by the citizens of Texas.

In Texas, the living will is an instruction made according to the "Advance Directives Act" of the Health and Safety Code. The living will authorizes end-of-life decisions for a person who is unable to make those decisions. It instructs the person's physician to withhold or withdraw life-sustaining treatment if he or she is diagnosed with a terminal or irreversible condition. A terminal condition is one in which the person is expected to die within six months. An irreversible condition is one in which the person cannot make decisions or care for him or herself. The Act further defines both conditions in that, for the directive to be effective, the person is expected to die even with available life-sustaining treatment in accordance with prevailing standards of medical care. Advance directives also include instructions to administer treatment, such as providing comfort care for relief of pain to a person in a terminal or irreversible condition.

Keep in mind that the current desire of a patient, even if incompetent, supercedes a directive and a person may not withdraw or withhold life-sustaining treatments under the Act from a pregnant patient. Also, the directive may name "proxies" or agents to make decisions although, it may not be necessary to name an agent in the living will if one has already been named in the medical power of attorney.

A health care professional or facility that does not follow a directive is subject to review and disciplinary action by the appropriate licensing board. The health care provider may transfer the patient to another facility that will comply with the directive, and if certain procedures are followed, the original provider may avoid liability.

Although directive forms are readily available, there are good reasons for seeking legal counsel from an attorney familiar with these documents. Here are some important points that should be discussed:

- The living will can be coordinated with other advance directives, such as the medical power of attorney.

- The appropriate proxy or agent appointment is crucial. The named individual must not fall within those persons precluded.
- The agent should have the strength to advocate for the wishes of the patient, even if he or she disagrees with the patient.
- Alternates should be named in the event the first named agent is unable or refuses to act.
- Determine the appropriate time for providing the directive to a health care provider. Because of a lack of knowledge about directives, some physicians believe that if a directive has been placed in the patient's chart, they have the authority to mark the chart with a Do Not Resuscitate Order. The appropriateness of this action depends on the condition and desires of the patient and the wording in the directive.
- Knowledge of the patient's values and religious beliefs will help the proxy or agent make decisions. For example, it may be helpful to include instructions regarding the administering or withholding of nutrition, hydration, or pain medications and the patient's beliefs in regard to blood transfusions.
- Above all, communicate with your physician, agent, family, and attorney. Get your directives ready.