

RD SMITH LAW

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Life Care Planning Frequently Asked Questions

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WHAT CAN I DO TO MAKE SURE THAT THE SCHIAVO SITUATION DOES NOT HAPPEN TO ME AND TO MY FAMILY?

Terri Shiavo was in her 20s when she had her catastrophic collapse. Unfortunately, she did not leave written instructions (an "advance directive") expressing how she would like to be cared for if something happened to her. Because she did not leave instructions, the courts had to intervene to determine what she would want. Further complicating matters, her family did not agree on what her wishes would be, causing an incredibly painful situation for all involved. By taking the proper steps now, you can ensure that your wishes are known. Those steps include completing advanced directives, such as a Living Will and/or a Health Care Power of Attorney, and then discussing your choices with your loved ones so they can understand and support your wishes if you are unable to communicate for yourself.

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WHAT ARE THE DIFFERENT DOCUMENTS?

For example, what is a Durable Health Care Power of Attorney? The Durable Health Care Power of Attorney is a document lets you choose another person, called an "agent," to make health care decisions if you can no longer make those decisions for yourself. Unless the document includes specific limits, the agent will have broad authority to make any health care decision you could normally make for yourself. This could include a decision about whether or not to continue tube feeding.

WHAT IS A LIVING WILL?

A Living Will is a written statement that expresses your wishes about medical treatment that would delay death from a terminal condition. It also applies to situations of persistent vegetative state or irreversible coma. A Living Will would speak for you in the event that you were unable to communicate. It gives direction and guidance to others, but is not as broadly applicable as a Durable Health Care Power of Attorney. For example, a Living Will does not permit health care providers to stop tube feeding - only an agent appointed by a Durable Health Care Power of Attorney or a court-appointed guardian may make such a decision.

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CAN I SIGN BOTH A LIVING WILL AND A DURABLE HEALTH CARE POWER OF ATTORNEY?

Yes, but if you sign both you must attach a copy of your Living Will to the Durable Health Care Power of Attorney.

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WHAT IF I DON'T SIGN ANYTHING? WHO WILL MAKE DECISIONS FOR ME IF I AM UNABLE TO COMMUNICATE?

Health care providers (for example, doctors and nurses) will first try to find out if a you appointed an agent pursuant to a Durable Health Care Power of Attorney. It is also possible that a court will appoint a guardian to act as the surrogate. If you did not leave a Durable Health Care Power of Attorney and there is no court appointed guardian, the health care providers will contact the following people, in this order, who will have the authority to make health care decisions for the you (following the your wishes, if known). These people are called "surrogates."

1. Your spouse, unless you and your spouse are legally separated.
2. Your adult child. If there is more than one adult child, the health care providers will seek the consent of a majority of the children who are available for consultation.
3. Your parent.
4. If you are unmarried, your domestic partner if no other person has assumed any financial responsibility for you.
5. Your brother or sister.
6. Your close friend.

If none of the above persons can be located, health care providers may make decisions on your behalf with the input of an ethics committee or a second physician. Again, only agents and guardians may make the decision to withdraw the artificial administration of food or fluid once it has begun. A surrogate decision-maker may not make such a decision under Arizona law.

SHOULD I COMPLETE A DO NOT RESUSCITATE "DNR" FORM?

If you are healthy and strong, you probably will not wish to complete a DNR. You can express your wishes about how you wish to be cared for should you become seriously ill without completing a DNR. DNRs are most appropriate for people who would probably not do well with CPR (cardiopulmonary resuscitation) because they are very sick, terminally ill or otherwise extremely weak. In any case, you will need to discuss the DNR with your doctor, who will also need to sign the form.

AT WHAT AGE SHOULD I THINK ABOUT FILLING OUT THESE DOCUMENTS?

Now, so long as you are at least 18 years of age. It is never too early to think about these things and make preparations.

WHAT SHOULD I DO ONCE I'VE FILLED OUT THE DOCUMENTS?

First, it is critically important that you talk about the documents and your wishes with your family, your agent and your physician. An agent needs to know what your feelings are in order to act on your behalf. You also need to make sure that the appropriate people have copies of the documents, including your agent, your family and your physician. You can register your documents with the Secretary of State or with a service such as Docubank.

DO I HAVE TO USE A NOTARY TO COMPLETE THESE FORMS?

Yes. The Durable Health Care Power of Attorney, Living Will and Durable Mental Health Care Power of Attorney must be signed by EITHER a witness OR a notary. Please note that the witness must be at least 18, cannot be family (related by blood, adoption or marriage), cannot be in your will to receive part of your estate, cannot be appointed as your representative, and cannot be a health care giver. A witness CAN be a neighbor, a friend, or an acquaintance who is an adult, is not in your will and is not caring for you or representing you.

HOW DOES HIPAA APPLY TO MY LIFE CARE PLANNING FORMS?

There is a difference of opinion as to whether HIPAA (Health Insurance Portability and Accountability Act of 1996) applies to life care planning documents.

In an abundance of caution, we have placed a HIPAA release under the "Signature and Verification" section of both the Health Care and Mental Health Power of Attorney forms, just above the space for your signature. This release should reassure anyone concerned about HIPAA issues, especially medical personnel, that they may provide information about your care to your representative(s).

WHAT ELSE SHOULD I KNOW?

These documents are meant for you to express your wishes, whatever they may be, so you receive the treatment you want if you can no longer communicate. This Office is not recommending any particular choices but does urge you to think about these choices, discuss them with your loved ones, and complete the appropriate documents for your situation. Hopefully, having your wishes clearly expressed to your loved ones and in these documents will help those close to you avoid the anguish suffered by the Schiavo family.