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Topic for the Month:

Health Care

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Health Care - The Big Picture: Health Care is an issue which affects everyone, at some point in their life. Even if you are healthy, a family member or loved one may be dealing with a significant health care issue. Advances in medicine and rising health care costs, have led to new and difficult questions about health care. This issue of **LawClips** will address your basic legal rights regarding medical treatment, living wills and advance health care directives.

Your Right to Medical Care: Under the legal doctrine of Informed Consent, you have the right to decide whether and how you will receive medical care. To allow you to make an informed decision, a health care provider must explain the proposed treatment and other alternatives to treatment. You must then consent before treatment commences. You also have the right to refuse medical treatment. As long as you are legally competent, you have the right to refuse treatment, even if your family or doctors disagree. If you lack the mental capacity to make an informed decision about medical treatment, your physician, legal guardian or health care agent will make the decision. A health care agent is one who is designated in an **advance directive**.



Advance Directive: This is a written instruction which is made when a person is mentally competent. The purpose of the advance directive is to state how you want health care decisions made if you become incapacitated. Under Wisconsin law, there are two forms of advance directives -- the living will and the health care power of attorney.

- **Living Will:** Describes the kind of life-sustaining care you would want if injury or illness leaves you in a terminal condition or in a persistent vegetative state (permanent unconsciousness) with no hope of recovery.
- **Health Care Power of Attorney:** Is a document which identifies an appointed "agent," who will make all health care decisions (not just those involving life support) for you if you lose the ability to make decisions for yourself. You may also include a description of your treatment preferences in this document. The key is to include language which helps guide the agent, who will be making decisions for you.

Do I Need Both a Living Will and Health Care Power of Attorney? It is a matter of personal preference. Some people are not comfortable asking another person to make life and death decisions for them. In these situations, most people opt for a living will, which will make those decisions in advance. A health care power of attorney is more powerful and flexible than a living will. For example, a health care power of attorney can be drafted so that your agent has the authority to make a variety of medical decisions for you. A living will is limited to directing when artificial life support is to be withheld.

When Should I Prepare an Advance Directive? Now. We all assume that our health will remain good and that we will have some warning before any serious illness or accident. We also know that this assumption is flawed. Prepare an advance directive while your health is good.

What if I Don't Have an Advance Directive? A surrogate decision maker, in consultation with your doctor, will make treatment decisions for you. Many times, the surrogate decision maker is a spouse, adult child, adult sibling or close friend.

Do I Need an Attorney to Create a Living Will and Health Care Power of Attorney? Not necessarily. There are standard forms available in courthouses, hospitals, nursing homes and through the Wisconsin Department of Health and Family Services. There is also a consumer guide titled **A Gift to Your Family**, which was developed by Wisconsin legal and medical professionals. This guide is available from the State Bar of Wisconsin [www.legalexplorer.com]. Others may choose to have an attorney complete the standard forms or write an individualized document. In any case, be sure to read the instructions carefully and follow rules about who may serve as witnesses and other requirements about how the documents must be executed. If a document is completed incorrectly or not witnessed properly, it may not be valid.



Know Your Rights: Our firm is committed to educating and advising consumers on their rights. Feel free to contact attorneys **Mark A. Bartels, C. David Stellpflug or Evan Y. Lin**, with any legal questions on Health Care issues.