



Topic for the Month:

Advance Health Care Directives

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The Schiavo Aftermath—Establishing the Need for Advance Health Care Directives: By now, most of us (if not all) have heard about the tragic plight of Terri Schiavo.¹ If there is a lesson to be learned from the Schiavo case, it is that most of us can avoid a similar fate. To spare our loved ones the related pain and heartache, all we have to do is take a few moments to plan ahead with a simple signature or two. While there are many opinions on the "Right-to-Die" debate, very few experts would dispute that the Schiavo case could have been avoided if Schiavo had designated a Health Care Agent and/or had a Living Will. Quite simply, with a Health Care Agent and/or a Living Will in place, Schiavo's husband and parents would have had nothing to argue about.

In Wisconsin, there are two forms of **Advance Health Care Directives** that enable an individual to declare his/her health preferences and decisions:

A) Declaration to Physicians (a/k/a "Living Will"). The Living Will is an advance health care directive that describes the type of life-sustaining care an individual would desire only if the individual had a terminal illness or were in a "persistent vegetative state." The Living Will directs the physician whether or not to withhold or withdraw life-sustaining treatment or a feeding tube if one develops an illness or injury that cannot be cured and death is imminent. The Living Will does not give an individual the ability to have another person make health care decisions on his/her behalf. The Living Will is merely written instructions for the physician. As illustrated by the Schiavo case, the definition of a "terminal condition" and/or a "persistent vegetative state" is not entirely clear and subject to a myriad of interpretations.

B) Power of Attorney for Health Care. The Power of Attorney for Health Care enables a person to appoint an individual as a health care agent to make all health care decisions, in the event of that person's incapacity or inability to make health care decisions. In addition, the Power of Attorney for

¹Terri Schiavo had been severely brain damaged and lived on a feeding tube for nearly sixteen years. For several years preceding her death, Schiavo's husband sought to remove the feeding tube that had kept her alive, while her parents fought him in court each step of the way. Schiavo's husband ultimately prevailed and she passed away on March 31, 2005. Schiavo did not have a Power of Attorney for Health Care or a Living Will.

Health Care enables the person to make specific treatment preferences and desires known to the health care agent, in order to guide the health care agent's decisions. The authority vested in the health care agent by the Power of Attorney for Health Care is applicable in all types of health decisions, not just those concerning life-sustaining treatment, as is the case with the Living Will.

The Power of Attorney for Health Care is a far superior advance health care directive as compared to the Living Will, due to its broader scope and, more importantly, because it allows an individual to appoint a health care agent as an advocate. The health care agent can directly communicate one's health care treatment desires, decisions and preferences to the attending physician or health care provider. However, despite the limitations of the Living Will, it certainly has its viability and utility, particularly for those individuals who may not have anyone they feel comfortable giving the responsibility for such difficult health care decisions.

None of us knows what the future holds nor how long we will remain healthy enough to have control over our mental and physical abilities. Serious health problems can happen without warning. Even routine surgical procedures can have unexpected complications. All one has to do is consider Terri Schiavo, who was just 26 when she unexpectedly lost control of her life forever. By having advance health care directives in place, a Wisconsin resident can make their wishes known to their loved ones and avoid the countless, days, months and even years of potential arguing that Terri Schiavo's family endured.

Attorneys C. David Stellpflug and Evan Lin handle all legal issues dealing with estate planning, including Wills, Trusts, Powers of Attorney and Advance Health Care Directives.



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Our firm is committed to providing **innovative legal solutions** to your estate planning needs. If you have a question on any estate planning issue, feel free to call attorneys Stellpflug or Lin. You may also visit our website at **WISLAWYERS.COM**