

*Staple
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*Living Wills and Health
Surrogates:
Difficult Decisions*

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*Many of the monetary and other guidelines discussed in this booklet change frequently. Please be certain to verify their accuracy before acting based on these numbers.

Introduction

In 1991, the Patient Self-Determination Act started a movement in a patient care that continues today. Because of that Act, hospitals will now educate you upon your admission about living wills and health surrogates. You can, in fact, get a free living will or health surrogate document from any hospital.

The document itself is less important, though, than the planning and consideration that goes into the decisions. The worse time to make those decisions is when you are admitted to the hospital. Even at best, that is the time to be thinking positive thoughts about your recovery, not focusing on a worst-case scenario.

Proper planning can also alleviate or even eliminate disputes between family members when it comes time to enforce your wishes. Making sure everyone understands your perspective and supports you will help ensure that unnecessary obstacles are not put in the way, and will also help ensure a less painful transitional period for your loved ones. A clear discussion of the consequences of your choices is critical to your planning success.

Unfortunately, though, as we get older, medical care does become more and more complicated. A return to complete health may no longer be possible,

and then we must undertake a complicated analysis regarding our care. As much as the decisions involved are problematic for us before we become ill, they are exponentially more difficult for our loved ones faced with the same decisions when we cannot speak for ourselves.

Today's baby boomers are likely to be the last generation who will care for their parents and their children. Future generations will not rely on their children for their long-term care. This shift will require even better planning, better tools, and better expression of healthcare desires.

Consequently, it is critical that you consider the various scenarios that might befall you, and make clear decisions specifying the course of action you want your loved ones to take. We will outline here some of the most common decisions you might have to face, and some of the solutions for them. You are welcome to call us if you have any questions.

Overview of Advanced Directives

Advanced directives come in several forms: Living wills, durable powers of attorney for healthcare, and health surrogates -- those directives relating to your healthcare -- are discussed here. For more information on other advanced directives for

legal planning, please see our website for a copy of *Elder Care and the Law*.

A living will becomes effective if you are deemed terminally ill. If your condition is unstable, your living will is not be effective. Therefore, it is important to have other documents in place. Because a health surrogate is specifically provided for under Florida law, our office generally recommends using that device over a durable power of attorney for healthcare. A health surrogate has the ability to speak on your behalf when you are unable to voice your desire about your healthcare. The right surrogate, with the proper understanding of your wishes, can fire doctors to make sure you get the treatment you want.

This booklet is designed to help you consider the major decisions you or your health may someday have to face. For more information on long-term care planning, please visit our website for additional informational booklets.

Should you Resuscitate?

If your heart stops, more likely than not, absent a directive from you or someone speaking on your behalf, the medical staff in attendance will resuscitate -- restart your heart. In most nursing homes and hospitals, it is standard procedure to resuscitate. In a

nursing home, the resuscitation procedure begins at the nursing home and ends in the emergency room. Once the decision to resuscitate is made, medical providers are trained to try every means possible to restart a patient's heart, and if successful more likely than not the patient will undergo a hospital stay afterwards.

If you are terminally ill, however, with no hope of the condition reversing, you might want to direct your care providers not to restart your heart. Even if your condition is not terminally ill, there may be circumstances under which you would want to give that order, such as after a severe and debilitating accident. Your frailty or that of a loved one is also an important consideration since CPR can damage the ribs, lungs, or spleen.

What is important to know is the “default” position of medical providers, and to spend some time thinking about what you would prefer in various circumstances. In general, patients with several medical problems are less likely to survive after resuscitation than those with only the problem that led to the need for resuscitation. According to information provided by LifePath Hospice of Tampa, the survival rate for all patients who have CPR averages 15.2 percent. For patients with several medical problems or in a nursing home, the average drops to less than two percent.

We can consult with you and your loved ones on

this matter to help you reach decisions that are agreeable to all.

Food and Water

Sometimes patients can no longer eat or drink on their own, and medical providers will insert use a nasogastric tube, or perhaps a catheter, to deliver nutrients.

In some instances, the use is temporary. In others, patients could not continue to live without the help. If you consider your choices before your loved ones are faced with difficult decisions, you will save them much emotional difficulty in trying to guess what you would want.

There are two stages at which to consider whether you would want a feeding tube. First is under what circumstances you would want the tube used initially. Second is for how long you would the tube used. The default position of medical providers is generally to use artificial food and water, so if that is not your preference you must have a way to let them know. It is important to note, though, that doctors may ethically remove artificial sustenance if a patient is in an irreversible coma.

On the one hand, many disagree with the use of a feeding tube if the patient has no hope for recovery or is a persistent vegetative state. On the other hand, many believe that food and water are basic human

rights, so believe it to be wrong to not provide sustenance whenever possible. Which decision you make is not important, but what is important is considering what you would like to save your family from making the decision for you.

Hospice Care

As much as we want our loved ones to live forever, we must recognize that neither they nor we can do so. When to shift the focus of care from “getting better” to “getting comfortable” can be a very difficult one to make. It is critical that you guide your loved ones in making that decision to spare them unnecessary emotional pain. Hospitals, as well as hospice, offer “palliative care,” meaning care to provide comfort during the last phase of one’s life.

While making patients as comfortable as possible physically is important, another vital role of hospice is to allow patients and family members to prepare emotionally and spiritually for death. Many patients express a preference to die at home, while some prefer the hospital. Regardless, it is important to express your preferences so they can be honored. Generally, hospice care is thought to be for those with six months or less left to live.

Choosing palliative care does not mean all treatment stops, just that the focus changes to making the patient as comfortable as possible. Pain

medication and oxygen, for example, are examples of treatment consistent with hospice care, but diagnostic testing, surgery, and radiation therapy are generally not. Even if you have chosen palliative care, you can still receive “curative” care for specific problems, such as an infection that can be treated with antibiotics.

Other Questions

Many, many questions exist for you to consider when providing guidance for your health surrogate. Some additional matters include:

Under what circumstances do you want to be hospitalized if you are already in a nursing home? The change of location can be extremely stressful, and in some circumstances is simply not worth it.

Do you want to be put on a respirator? If so, for how long and under what circumstances?

Do you want dialysis? Some patients have long-term kidney failure, while others have sudden, or acute. If uncertain, it is possible to undergo a time-limited trial to see if the benefits outweigh the costs.

What types of pain control would you prefer?

When making your decisions, you will want to consider not only your spiritual and emotional needs, but those of your family as well. If you are making

decisions that will be difficult for them to accept, it is helpful to all involved if you explain your reasoning behind your choices. Always keep in mind that during emotional times, your loved ones may say and do things based on a variety of factors, and you will want to consider those factors as much as possible.

Conclusion

The decisions surrounding advanced directives are complex and difficult to face, but are even more so for your family members. We are happy to consult with you and your family to help you reach the best decisions for everyone involved.

As with all areas of elder law, constantly changing state and federal laws and regulations make this a particularly difficult area of the law to navigate. Our firm keeps current on these changes not only by tracking legislation, but by regularly attending and presenting at local, state, and national elder law seminars. We look at our clients' situations in a holistic manner, taking into consideration physical, spiritual, and financial needs.

For additional helpful articles on elder law, please visit our website at www.law4elders.com.

Jack M. Rosenkranz

Jack M. Rosenkranz received his law degree from the Walter F. George School of Law at Mercer University and his undergraduate degree from Memphis State University. In college, and again in law school, he used his skills and his knowledge of political science and public surveys to bring much-needed changes to campus policies. As a result of his efforts at college, he was awarded the John W. Burgess Award for Meritorious Achievement in Political Science.

Mr. Rosenkranz now uses his natural abilities and legal training in his Elder Law practice, which includes Medicaid and Medicare planning, estate planning, advanced directives, Veterans benefits (such as Aid and Attendance), probate, supplemental trusts, and other long-term care planning needs. He was the first to receive both the Outstanding Achievement Award for the Florida Chapter of National Academy of Elder Law Attorneys and the Member of the Year Award for the Elder Law Section of the Florida Bar in the same year.

His peers have selected him as a Leading American Attorney in Elder Law, and he has an AV rating, the highest possible, with Martindale Hubbell. He remains active in the Elder Law Section of the Florida Bar, the Florida Academy of Elder Law Attorneys, and the National Academy of Elder Law Attorneys, Inc. Mr. Rosenkranz mentors new elder law practitioners, sharing with them the knowledge he has obtained from attending and presenting at numerous local, state, and national seminars each year since he began his practice in 1991.

Mr. Rosenkranz has co-hosted a weekly radio program, "The Informed Elder," on 570 WHNZ. He regularly gives presentations and other informative talks about elder law to the public and to other attorneys.