

LEATHERMAN LAW GROUP LEDGER

Volume 2, Issue 11



November 2013

At first glance, this month's topic of Advance Health Care Directives (AHDC) might seem a little grim for the holiday season. I recently drafted my own AHDC. It was a difficult task because I had to choose someone that I trusted to be my agent. You definitely do not want to choose someone who will benefit from your death! And then I had to make hard and fast decisions about how I wanted to direct that person to handle my situation if I am incapacitated. These were not easy decisions and I did toss and turn a few nights. But, now I feel secure that my friends and family will not face the horrible situations described in our first article on "Lessons from the Past." I am looking forward to a really happy, guiltless holiday season! Glenda

Happy Thanksgiving, everyone!

Avoiding Unwanted End-of-Life Treatment: Lessons from the Past

By Patricia Porter

Estate planning is about more than creating a living trust and deciding who will get what when we die. It's also about preparing for our own death and dying, and helping our loved ones make decisions if we become unable to do so.

As medical science has progressed, so has the debate over extending life. Pressures mount as choices abound, raising the stakes for family strife and care that hurts rather than helps. But at least the debate has given us tools to protect ourselves and our loved ones against unnecessary pain as we say our goodbyes.

The most important tool is the Advance Health Care Directive (AHCD), or "living will," in which we make our end-of-life wishes known if we lose the ability to speak for ourselves. We appoint a trusted friend or family member to ensure those wishes are carried out. Two witnesses must sign the California legal document.

Amid complaints that some hospitals weren't getting the message, states came up with a form tailored for medical professionals who might not have access to a patient's living will. In California, it's known as a POLST, or Physician Orders for Life-Sustaining Treatment, and includes orders on CPR, feeding tubes, ventilators and other means of prolonging life, as well as orders to avoid all

treatment except for comfort care to relieve pain.

Doctor and patient, or the patient's legally recognized decision-maker, sign the POLST, which becomes part of the patient's medical record.

Past court cases suggest that all adults, even those in their twenties, should put their end-of-life wishes in writing. They also helped establish the legal and cultural framework that is giving people greater control over their end-of-life choices.

Karen Ann Quinlan, a 21-year-old college student in 1975, passed out at a party after ingesting a combination of alcohol and sedatives. By the time help arrived, the New Jersey resident had stopped breathing and lapsed into what doctors five months later diagnosed as a persistent vegetative state. Believing their daughter would never regain consciousness, Quinlan's parents urged doctors to remove her from feeding tubes and a ventilator. When doctors refused, saying Quinlan did not meet the criteria for brain death, the parents took the case to court in what became one of the first "right to die" cases in U.S. legal history. Based on the right of privacy, the New Jersey Supreme Court ruled that "no compelling interest of the state could compel Karen to endure the unendurable," and allowed her to be taken off life support. She died of pulmonary failure in 1985.



Happy Thanksgiving!!

Terri Schiavo was 26 years old when she collapsed in her St. Petersburg, Fla., apartment after suffering cardiac arrest. When paramedics arrived in response to husband Michael's 911 call, she had stopped breathing and had no pulse. Paramedics transported her to a local hospital, where a tube was inserted to clear her airway and she was put on a ventilator. Within a couple of months, doctors diagnosed persistent vegetative state; over the next few years, doctors attempted speech and physical therapy and other experimental therapies, hoping to restore a state of awareness. The efforts failed, and in 1998, Mr. Schiavo petitioned Florida's Sixth Circuit Court to remove the feeding tube. His wife's parents counter-sued, setting off a firestorm of publicity. The feeding tube was first removed in 2001, after a judge ruled Schiavo would not have wished to continue life-prolonging measures; the ruling was appealed and the tube reinserted

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several days later. After appeals all the way to the U.S. Supreme Court had been exhausted, the tube was removed. Schiavo died two weeks later on March 31, 2005.

Nancy Cruzan was 33 years old in 1990 when her parents won their legal battle to have her feeding tube removed. A car crash eight years earlier left her in a vegetative state. The Missouri woman died 12 days later, with her family at her bedside. The Supreme Court ruling on Cruzan's right to die sparked a fierce debate about how and when families can decide to withdraw nourishment or medical treatment from an incapacitated loved one. "The Cruzan case focused national attention on this issue in

an unprecedented way," a spokesman for the Society for the Right to Die told the New York Times. "While it's been a horrible agony for the Cruzans, having intimate private details on the public stage, and having to defend themselves, we owe them a debt for educating us and giving so much impetus to living wills and legislation that helps people plan ahead." But the leader of an anti-abortion group disagreed. "I sympathize with the hardship of caring for a helpless woman, but I have no sympathy for a family who solves their problems by starving their daughter to death when there were hundreds of bona fide offers to care for her regardless of her condition. Even a dog in Missouri cannot be legally starved to death."

It was close. In its right-to-die ruling, the Supreme Court said Missouri could stop the Cruzans from withholding food and water absent "clear and convincing" evidence their daughter would have granted permission to pull the plug. Former co-workers later testified in a state hearing that they recalled Cruzan saying she never would have wanted to "live like a vegetable." The judge withdrew her objections, ruling there was clear evidence of Cruzan's wishes, and permitted the feeding tube to be removed.

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Patricia Porter is a former Sacramento Bee copy editor and under water homeowner.

Preparing Your Exit Strategy

Compassion & Choices, an advocacy group that promotes advance directives to avoid unwanted medical treatment has created a "Values Worksheet" to help make decisions about end-of-life care. It also can serve as a launching pad for discussions with family members and health care providers.

It begins with a checklist that ranks values on a scale of 0 to 4 on topics related to death and dying. Is letting nature take its course important to you, or is living as long as possible, regardless of quality of life, more important?

How do you weigh being independent and free of physical limitations against being comfortable and as pain-free as possible? Would you prefer a quick death rather than a lingering one? Is avoiding expensive care important?

Do you want to be mentally alert and competent even if it means some pain? Is leaving money to family, friends or charity an important goal for you? Or is

making a contribution to medical research or teaching a more intriguing goal?

A second section seeks statements rather than filling in the blank. Sample questions:

- How do you feel about life-sustaining measures in the face of terminal illness? Permanent coma? Irreversible chronic illness such as Alzheimer's disease?
- Do you have strong feelings about particular medical procedures? Some procedures to think about include: mechanical breathing (respirator); cardiopulmonary resuscitation (CPR); artificial nutrition and hydration (tube feeding); hospital intensive care, pain medication; chemo or radiation therapy; and surgery.
- Would you want to be placed in a nursing home if your condition warranted?
- Would you always want to know the truth about your condition, your treatment options and their chance of success?

The next step is to download and complete the California Advance Health Care Directive (AHCD) and Physician Orders for Life-

Sustaining (POLST) forms to tell your wishes to your health care team. "Wellness visits" offer an ideal forum to discuss end-of-life plans and values with your primary care physician.

Online resources can guide you in the planning process:

Download the AHCD form at <http://ag.ca.gov/consumers/pdf/ProbateCodeAdvancedHealthCareDirectiveForm-fillable.pdf>

Download the POLST at <http://www.cdph.ca.gov/programs/LnC/Documents/MDS30-ApprovedPOLSTForm.pdf>

An easy-to-read AHCD form can be downloaded from the Institute for Healthcare Advancement website at <http://www.ih4health.org/default.aspx?MenuItemID=266&AspxAutoDetectCookieSupport=1>

Explore the *Compassion & Choices* website at www.compassionandchoices.org