

End of life issues raise serious legal questions



THE
LAW

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As the tragic case of Terri Schiavo highlights, few decisions can end up being as important as making your wishes known before you become incapacitated.

People do not want the government making personal decisions for them. Most people have a lot more confidence in their loved ones than they do in some legislator who does not even know them. Congress' attempt to intervene in the Schiavo case prompted many people to inquire: Does the state have a role in a person's death?

Many people were offended that lawmakers could override a spouse's decision on health care, while others took the opposite position based on the belief it is always best to err on the side of life, along with the advocates for the disabled who want assurances that life-support would not be withdrawn for purely financial reasons.

The majority of the American population don't, however, want government intervention. Polls say that over 80 percent of Americans disapproved of Congress intervening on behalf of Schiavo's parents to try to force the reinsertion of their daughter's feeding tube. A few states have gone to the opposite extreme by allowing doctors and hospital ethics committees who see no hope for a patient's recovery to overturn the decisions of family members.

Under Nevada law, any person over 18 who is competent has the right to make health care decisions in any type of medical facility, provided they are fully informed of all of their options. Laws defining advance directives differ by state, so consult an attorney on the proper forms and requirements that are outlined by your state legislation.

Since the Schiavo case, many people have sought through their attorney or numerous organizations "Advance Directives," which is essentially a set of instructions that informs your caregivers of the specific type of treatment you wish to undergo or not undergo. These advance directives usually consist of a "Living Will" or Health Care Power of Attorney.

power of attorney or proxy authorizes the agent or proxy to make decisions about your care. A health-care proxy permits a "trusted agent" — usually a spouse, adult child or other close relative or friend — to express your wishes if you cannot communicate on your own and to interpret those wishes if there is any uncertainty.

You should also consider putting in a clause relating to the privacy provisions of the Health Insurance Portability and Accountability Act ("HIPAA") to prevent those named in your power of attorney and living will from receiving medical information. To avoid that problem, language it should be added to your power of attorney stating the agent has authority to receive information under HIPAA.

In Nevada we have an option of completing two kinds of health care declarations.

A declaration is often called a "Directive to Physician" whereby a person directs the treating physician to withhold or withdraw treatment that will only prolong the dying process. The other option is a health care power of attorney where you appoint another person to be your health care proxy. Most experts believe a health care power of attorney is a better choice.

That document gives the proxy the legal right to make decisions for you if you no longer can. It is important to discuss the preferences with your proxy and with other family members so they will support the proxy's decision. Normally it is the spouse, a relative or a close friend. Make sure your doctors and your proxy understand your values and beliefs. Discuss what you consider a minimally accepted quality of life and tell them not to pursue treatment that will not restore you to that level.

The question often arises whether their spouse is the person to whom they want to delegate their own end-of-life decisions. How should friends, children, siblings and parents be involved? Others wrestle with the question of what constitutes a life worth living, while some people want to die pain-free and with dignity. Others want to continue on if there is any chance whatsoever the situation could improve. The problem arises when the patient's own wishes conflict with those of the relative who has been given the proxy. In many cases the proxy is the spouse of the ill person who cannot bring themselves to carry out the wishes of the dying spouse.

perform life-saving Cardiopulmonary Resuscitation (CPR) when your heart or lungs cease to function. Hospitals perform CPR on all patients who require it, so medical personnel must be alerted of your DNR status. Oftentimes, a DNR will be placed in your medical chart, but in the event that you don't receive medical care at your regular hospital, documentation must be provided to the staff and attending physician or CPR treatment will be given. It may be a good idea to supply family members or your attorney with copies of the DNR request for situations such as this.

People who usually obtain a DNR are suffering from painful or terminal illness such as cancer, AIDS or debilitating diseases like Alzheimer's or Huntington's. Heed warning — if you are in relatively good health and possess a relatively clean, disease-free medical history, your doctor or legal representative may deny your request for a DNR.

Points to consider when deciding on the type of advance directive(s) to secure:

- Are you comfortable with the idea of existing on a feeding tube or ventilator?
- Would you be opposed to the use of drugs or CPR for revival?
- How do you feel about the idea of being in a permanent state of unconsciousness

or suffering from senility?

- Do you have anyone you would trust to make medical decisions for you?
- Would you be comfortable knowing that you would have to depend on others for your complete care?
- What is your personal definition of having "quality of life"?

You can change your advance directive at any time as long as you are of sound mind and body to do so. If you are in the hospital and cannot make necessary changes in writing, make sure you vocalize your wishes, if you are able to do so, to your doctor and loved ones. Precedent shows that these wishes will almost always override previous instructions.

Many people are under the false impression that advance directives are matters strictly for the elderly. That is not the case, which was recently proven by the drama of the Schiavo and Schindler families. Remember, life itself is tenuous, as accidents and tragedies can befall us at any time. Protect your wishes and your family's emotional state by securing an advance directive. In times of illness, their minds should be focused on your health and well-being.

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