

END OF LIFE DECISIONS

A Planning Checklist

Health Care Decisions. Financial Management Decisions.
Inheritance/Asset Transfer at Death Decisions.



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Incapacity Issues – After Death Administration

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MEDICAL SUPPLIES FOR CARE AT HOME SINCE 1957



Food For Thought...

Most people don't like to think about their own death. So, it is easy *NOT TO PLAN*.

As a result, important matters could be made by estranged family members, doctors, or sometimes even judges, who may know very little about what you would prefer.

Health Care Decisions.

Financial Management/Incapacity.

Inheritance/Transfer On Death.

“Easy” process or “difficult”?
- That's up to you.



Healthcare Decisions...

Due to advances in medical science, the dying process is often prolonged, people can be kept alive without quality of life, and there is more “incapacity” among those who are ill.



End of life issues have taken center stage since the 1970's. Many people have come before us, and fought their way up through the court system to for End of Life rights.

These battles were expensive, painful for the families, and took years in the courts.

As a result of their efforts and sacrifices, each of us now have END OF LIFE RIGHTS that we did not have before.

Health Care Decisions

A Brief History: RIGHT TO REFUSE TREATMENT

1975 New Jersey Supreme Court: *In Re: Quinlan*

Joseph Quinlan sought a court order to have his daughter, Karen, who had long been in a persistent vegetative state (PVS), removed from a respirator.

The New Jersey Supreme Court held that, under both the United States and New Jersey constitutions, *Karen had the right to decline medical treatment*. Reason: Personal Privacy Rights.

Since this important court decision, various state courts struggled in approximately 130 cases with the “right-to-die” issue, arriving at various conflicting decisions.



A Brief History: RIGHT TO DIE

1990 U.S. Supreme Court Case: *Cruzan v. MO Dep't of Health*

After a car accident, Nancy was in a persistent vegetative state. She had a feeding tube. Her parents fought to have the tube removed.



Ultimately, the Court recognized a competent person's constitutionally protected right to refuse life-prolonging treatment (including hydration and nutrition).

In the case of incompetent persons, a state could adopt a standard that required "clear and convincing" proof of a person's preferences. The court ultimately ruled that there was sufficient evidence that *Nancy would not want to be kept alive.*

How Do We Meet This “Clear and Convincing” Evidence Standard?

Under federal law, people have the right to state their preferences, and name a “PROXY” or “AGENT” to make decisions for them. This legal document - it is known by different names in different states.

- Advance Health Care Directive
- Power of Attorney for Health Care
- Living Will



Details About Health Care Documents.

You must legally be an adult (18 years old in most states) to make a valid document directing your health care.

You must also be of sound mind -- that is, able to understand what the document means, what it contains, and how it works. In the document, you...



CHOOSE: Immediate or Springing

CHOOSE: Your AGENT (Proxy) decision maker.

CHOOSE: Your HEALTH CARE and END OF LIFE preferences.



Where Do You Get This Important Health Care Document?

The Attorney handling your estate planning will prepare...

The Internet (make sure its appropriate for your state)

Hospitals often have “generic” forms.

“Five Wishes” (www.agingwithdignity.com):

- Good in 42 states. \$5.00

Remember about HIPAA (privacy) release.

POLST

Physicians Order for Life Sustaining Treatment

A POLST form is generally only appropriate for people who are in the final year of life, or suffering from an advanced stage terminal illness or an illness from which they are not expected to recover.

It is complementary to an Advance Directive (POA for health care).

The POLST form must be signed by a physician or medical professional. If a medical professional has not signed the form, it is not legally binding.

HIPAA PERMITS DISCLOSURE OF POLST TO OTHER HEALTH CARE PROFESSIONALS AS NECESSARY

Physician Orders for Life-Sustaining Treatment (POLST)

First follow these orders, then contact physician. This is a Physician Order Sheet based on the person's current medical condition and wishes. Any section not completed implies full treatment for that section. Everyone shall be treated with dignity and respect.

EMSA #111 B (Effective 1/1/2009)

Last Name _____
First/Middle Name _____
Date of Birth _____ Date Form Prepared _____

A CARDIOPULMONARY RESUSCITATION (CPR): *Person has no pulse and is not breathing.*
Check One: ☐ Attempt Resuscitation/CPR ☐ Do Not Attempt Resuscitation/DNR (Allow Natural Death)
(Section B: Full Treatment required)
When not in cardiopulmonary arrest, follow orders in B and C.

B MEDICAL INTERVENTIONS: *Person has pulse and/or is breathing.*
Check One: ☐ Comfort Measures Only Use medication by any route, positioning, wound care and other measures to relieve pain and suffering. Use oxygen, suction and manual treatment of airway obstruction as needed for comfort. Antibiotics only to promote comfort. **Transfer** if comfort needs cannot be met in current location.
☐ Limited Additional Interventions Includes care described above. Use medical treatment, antibiotics, and IV fluids as indicated. Do not intubate. May use non-invasive positive airway pressure. Generally avoid intensive care.
☐ Do Not Transfer to hospital for medical interventions. **Transfer** if comfort needs cannot be met in current location.
☐ Full Treatment Includes care described above. Use intubation, advanced airway interventions, mechanical ventilation, and defibrillation/cardioversion as indicated. **Transfer** to hospital if indicated. Includes intensive care.
Additional Orders: _____

C ARTIFICIALLY ADMINISTERED NUTRITION: *Offer food by mouth if feasible and desired.*
Check One: ☐ No artificial nutrition by tube. ☐ Defined trial period of artificial nutrition by tube.
☐ Long-term artificial nutrition by tube.
Additional Orders: _____

D SIGNATURES AND SUMMARY OF MEDICAL CONDITION:
Discussed with:
☐ Patient ☐ Health Care Decisionmaker ☐ Parent of Minor ☐ Court Appointed Conservator ☐ Other: _____
Signature of Physician
My signature below indicates to the best of my knowledge that these orders are consistent with the person's medical condition and preferences.
Print Physician Name _____ Physician Phone Number _____ Date _____
Physician Signature (required) _____ Physician License # _____
Signature of Patient, Decisionmaker, Parent of Minor or Conservator
By signing this form, the legally recognized decisionmaker acknowledges that this request regarding resuscitative measures is consistent with the known desires of, and with the best interest of, the individual who is the subject of the form.
Signature (required) _____ Name (print) _____ Relationship (write self if patient) _____
Summary of Medical Condition _____ Office Use Only _____

SEND FORM WITH PERSON WHENEVER TRANSFERRED OR DISCHARGED

Physician Assisted Suicide:

Physician-assisted suicide is legal in five U.S. states.

It is an option given to individuals by state law in **Oregon, Vermont, Washington and California.**

It is an option given to individuals in Montana via court decision.

Individuals must have a terminal illness as well as a prognosis of six months or less to live.

Physicians cannot be prosecuted for prescribing medications to hasten death.



Financial Management. Valid only while you are alive.

Power of Attorney for Financial Management

Appoint an Agent who can:

Deal with insurance companies,
banks, financial institutions.

Pursue lawsuits, defend lawsuits.

Deal with Pensions, credit cards, etc.

Handle long-term care issues, employ caregivers, etc.

Handle eligibility for VA benefits, Medicaid, and other public benefits. Note: Must specifically include such powers.



Inheritance Issues.

Asset Transfer Plan: What is Yours?

Joint Tenancy

Beneficiary Designations

- IRA's, Life Insurance, Annuities, etc.

Revocable Trust

- “Contract” to control your assets

Probate Court

Last Will and Testament

Irrevocable Living Trust

Nothing





IMPORTANT CHECKLIST:

1. Healthcare Decisions (Healthcare Directive)

- Name your Agents, your preferences, when effective, etc.
- HIPAA Release. (*Privacy of health information.*)
- Is a POLST appropriate?
- Does your state offer physician assisted death options?

2. Financial Decisions and Management (Power of Attorney)

- Name your Agents. What powers will you include?
- Public Benefit planning (Medicaid)

3. What is Your “Asset Transfer Plan”?

- Will, Trust, Joint Tenancy, Beneficiary, Nothing?
- What is the Probate Process like in your state?



Important Websites:

www.themcnamaralawfirm.com

www.VAbenefits4seniors.com

www.help4srs.org

www.canhr.org

Thank You!

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