

LEGAL FORUM

Plan for end of life as with retirement

Many go to great lengths to ensure that their retirement plans are in order. However, it is less common to plan for the health-care legal issues almost certain to come — such as the decision to continue or remove life support. This situation was brought into public focus in the well-known Terri Schiavo saga.

In early 1990, Teresa “Terri” Schiavo collapsed in her St. Petersburg apartment. Her husband, Michael, called 911 and paramedics found her unresponsive. At the hospital, Terri was placed on a ventilator and was diagnosed as being in a persistent vegetative state. At that time Terri had no health-care directive in place — and thus a tumultuous legal battle ensued between Terri’s parents and Michael.

Witnesses provided varying testimony regarding Terri’s end-of-life wishes, with Michael asserting that she would not want life support, and Terri’s parents countering that she was a devout Catholic and thus would desire life support. All told, more than a decade passed and hundreds of thousands of dollars were spent in court proceedings. Ultimately, in 2005, Terri was disconnected from life support.

Fortunately, for those who properly plan, the Schiavo situation can be avoided.



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Under Florida statute, any person age 18 or over may execute a Living Will. The document directs either that life support be continued or removed once the statutory medical criteria for life support removal are met. Importantly, Florida statutes provide that a Living Will constitutes “clear and convincing evidence” of the patient’s health-care wishes, and therefore one’s directives in the Living Will are to be carried out regardless of contentious parties.

However, if there is no health-care documentation, the decision passes to the patient’s Statutory Proxy. The general statutory sequence for the Proxy appointment is first the spouse, then one’s adult children, then one’s parents, then one’s siblings, and finally a “close friend.”

Importantly, as in the Schiavo case, the Statutory Proxy may not have life support removed unless it is shown by “clear and convincing evidence” that removal would have been the patient’s desire. Con-

sequently, if there is substantial evidence that the patient may have desired life support, then life support may not be removed.

Furthermore, if there is no evidence regarding the patient’s life support desire, then life support may be removed only if removal is deemed to be in the patient’s “best interest” — but the Florida statutes do not define what is one’s “best interest.”

In addition to the Living Will, a properly crafted health-care plan will also contain a Health-Care Surrogate designation. In this designation, the patient identifies the person who will serve as Surrogate, in lieu of the Statutory Proxy, if the patient becomes incapacitated. The Surrogate holds legal authority to act on behalf of the patient in all health-care matters but must follow any specific instructions in the Living Will.

It is critical that one execute a Surrogate designation so that the Surrogate will make medical decisions if incapacity occurs. Importantly, the Surrogate designation precludes the Statutory Proxy, who may be a person ill-suited for this role, such as an estranged adult child.

For those with existing health-care plans, the plan should be reviewed whenever there has been a significant change in one’s circumstances, or

every five years. Although health-care documents remain valid indefinitely, Florida law authorizes these documents to be verbally revoked by the patient — and thus presenting an “old” Living Will to a medical facility may raise the question as to whether the now incapacitated patient had verbally revoked the document.

And health-care planning is not just for seniors. Terri Schiavo was only 26 when her ordeal began. Therefore, take the time and implement a health-care plan.

In summary, the value of a health-care plan can be enormous to one’s family, particularly at a very difficult time. Therefore, it is prudent to have a health-care plan prepared that is closely tailored to one’s wishes and compliant with Florida law.

And although health organizations, websites and office supply shops often offer “fill in the blank” health-care documents, I recommend that such self-help shortcuts be avoided in these important matters.

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