

The Law and You

Living Wills & Medical Directives in Utah - Part Two

This month's column is Part Two of a two-part series on medical directives. The Terry Schiavo story in March was the impetus for discussing Living Wills and Medical Directives, particularly from the view point of Utah's laws.

As a brief review, Utah's Personal Choice and Living Will Act is found at § 75-2-1101 in the Utah Code ("Act"). The Act's intent is artfully stated in part as:

"In recognition of the dignity and privacy which all persons are entitled to expect, . . . the [Utah] Legislature declares that this state recognizes the right to make binding written directives instructing physicians and other providers of medical services to withhold or withdraw, . . . life-sustaining and other medical procedures."

A Living Will in Utah must be in substantially the form as provided in the Act and must be witnessed by at least two witnesses. And, a properly executed Living Will is presumed to be valid. Moreover, it is presumed that the person executing a Living Will is of sound mind and exercised discretion in signing the Living Will.

As discussed in Part One, there is a companion and important document that everyone should also have. It is a Special Power of Attorney ("SPOA"), and it also must be prepared in substantial form as provided by the Act.

However, you may have moved to Utah with a Living Will that was prepared in compliance with the laws of another state. Is it valid in Utah? Generally, the answer is yes. Such a Living Will or SPOA is presumed to comply with Utah's Act, unless the Living

Will or SPOA expressly prohibits its use in Utah.

It is impossible to predict all medical conditions that may arise. So, it is important that your agent, appointed in your SPOA, be well informed before making the necessary medical decisions on your behalf.

Your agent should know your intimate desires concerning healthcare. His or her healthcare decisions may even conflict with your Living Will.

But what happens if you fail to prepare a Living Will and you have no SPOA? What then?

The Act provides for medical services for individuals who have no Living Will nor any SPOA. Specifically, § 75-2-1107 permits the withdrawal of artificial, life-sustaining procedures.

Withdrawal of such life-sustaining procedures is permitted with the written concurrence of two physicians and another person, in the following priority, who is either:

- a. the legal guardian or spouse; or
- b. a parent; or
- c. a child who is 18 years of age or older.

Except where a guardian is acting as the third person, at least two witnesses must also be present at the time of the decision and must also sign the written concurrence of the physicians and the other person.

Regardless of the opinions of two physicians, and regardless of a third person's concurrence, and regardless of whether or not you have a Living Will and a SPOA, your desires always have priority. This assumes, however, that your desires can be determined directly or indirectly.

You always have the right to revoke any directives that you have previously signed. This means your Living Will or a SPOA can

be revoked by a written statement signed by you. Even an oral revocation is effective if a witness signs and dates a written document that confirms your revocation.

What if a family member or other person intentionally conceals, cancels, defaces, obliterates, or damages your Living Will or SPOA? The Act provides criminal penalties.

The Act also makes it a crime to forge or falsify a Living Will for another person with the intent to withhold or withdraw life-sustaining procedures that are contrary to the wishes of that person. If death occurs from such actions, the forger is guilty of criminal homicide.

In contrast, when death occurs as a result of a valid Living Will or from the consent given by the agent nominated in a SPOA, there is no suicide or assisted suicide.

One final point concerns insurance and health care providers. Insurance companies and health care providers cannot require that you have a Living Will nor withhold payment of life insurance benefits if you have a Living Will.

You may have other questions about Living Wills or Special Powers of Attorney. If so, or in preparing a Living Will or a SPOA, you should contact an Elder Law Attorney. To locate an Elder Law Attorney, check your local Yellow Pages or the National Academy of Elder Law Attorneys at (520) 881-4005, or on their web site at www.naela.com.