

March, McMillan & DeJoode, P.C.

Living Will, Health Care Power of Attorney or Both?

Earlier this year Terry Schiavo's excruciating story found its way into our hearts. Every day there are family members of sick or injured people who quietly make decisions about a loved one's care. To make decisions easier each of us can state our wishes in an advance before a disabling injury or illness. A Living Will is almost universally referred to as the answer to Ms. Schiavo's problem. However, a Living Will may not be the answer for everyone.

In Illinois a Living Will Act enables a person to make a written declaration to withhold or withdraw death delaying procedures in the event of a terminal condition. A terminal condition is one that is irreversible and death is imminent. Death delaying procedures are ones that only prolong the dying process. A Living Will is appropriate for a person who wishes not to be kept alive under the limited circumstances dealing with a terminal condition. If procedures are needed to help a patient recover from illness or injury, then a Living Will will have no effect. A Living Will cannot be used to withdraw nutrition and hydration if doing so would result in death solely from dehydration or starvation rather than an existing terminal condition. If Ms. Schiavo lived in Illinois, a Living Will would not have allowed the steps that were taken.

A durable Health Care Power of Attorney is much more flexible than a Living Will. The Health Care Power of Attorney is durable because it is effective even during periods of disability, not just in the case of a terminal condition.

A Health Care Power of Attorney appoints an agent to make personal and health care decisions throughout a person's lifetime and requires health care personnel and other third parties to honor that agent's authority. The Health Care Power of Attorney can be drafted to include the right to decline medical treatment or a direction that it be withdrawn even if death ensues. The Health Care Power of Attorney can include specific instructions including donating organs, the type of treatment that can be administered or withheld and cremation of one's body. If there is a conflict between a Living Will and the Health Care Power of Attorney the Health Care Power of Attorney prevails.

The proposed agent should be asked if they are willing to take on the responsibility. The agent should understand your wishes for your care in the event of a disability or terminal illness. Copies of advance directives, a Living Will or Health Care Power of Attorney, should go to the proposed agent, the physician and all medical care providers. All of these directives are amendable and revocable. You can change your mind at any time. If an agent is unavailable or does not wish to act, it is possible to name a successor under the Health Care Power of Attorney. Many people believe a Living Will or Health Care Power of Attorney are simple fill in the blank documents. Most often it is not so simple and it is necessary to review your wishes with a qualified attorney as well as your agent and family. Failure to do so may result in unneeded expense and heartache to the people who love you. Please consult your attorney when preparing any of these directives.

Remember Wesley Village in your Will or Trust. Nearing death? Leave Wesley Village a bequest.

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