HEALTH CARE DOCUMENTS:
ENSURING THAT YOUR WISHES ARE FOLLOWED

Living Wills, medical directives, health care proxies - these are methods you can use to ensure that your wishes are followed when you are unable to make your own decisions regarding your health care and the prolonging of your life by artificial means. Many people are confused as to the purpose of each document - not surprisingly, since each of them goes by various names, depending on which state you are in. This overview will attempt to clarify the general purposes of each document, define the most commonly used terms and answer some of the most frequently asked questions.

It is not necessary to consult a lawyer to prepare your healthcare documents, however, if you have questions or concerns it is advisable to discuss them with your lawyer before signing the documents.

Living Wills or Healthcare Directives

Some people are misdirected by the phrase "Living Will". A Living Will declaration, also known as a Directive to Physicians, Medical Directive, Advance Directive, Pre-Hospitalization Directive or Healthcare Directive, has nothing to do with your Last Will and Testament, which does not come into effect until you die and therefore cannot be used to set out your instructions regarding medical care given to you while you are still alive. Instead, a Living Will sets out your wishes regarding life-sustaining treatments and procedures, and under what circumstances these treatments or procedures should be provided, withheld or withdrawn should you become comatose or otherwise unable to communicate your wishes either verbally, in writing or through gestures or sign language. This is your means of communicating your directions regarding medical care when you cannot do so yourself.

It is a common misconception that healthcare directives are meant only to instruct a physician to withhold certain treatments or procedures and to allow a natural death. This is not the case - you may want every effort and expense made on your behalf, so use your Living Will to put it in writing.

When your attending physician is presented with a properly signed and witnessed directive, he or she has a legal obligation to either honor the instructions you set out in the directive, or if he or she cannot do so, to have you transferred into the care of another doctor who will honor your wishes.

A Living Will typically addresses such things as:

- life support, respirators
- artificially administered nutrition and hydration (e.g. intravenous feeding and fluids)
- blood and blood products
- cardio-pulmonary resuscitation (CPR)
- dialysis
- surgery
- administering of drugs
- alleviation of pain and discomfort
- for a woman, the effect of the Living Will in the event she is pregnant at the time

Durable Powers of Attorney for Healthcare

A durable power of attorney for healthcare, also called a Healthcare Proxy in some states, is a document by which you grant another person the authority to make medical decisions for you if you are unable to make them for yourself by appointing them as your proxy or attorney-in-fact (also referred to as your agent, representative or patient advocate) to act on your behalf. The power of attorney doesn't necessarily state what type of treatment or procedure you want (or don't want) to receive. You can leave those decisions to your agent if you feel comfortable doing so. However, it is recommended that you have both documents - in some states, you can combine the two into one form. Making a healthcare directive makes the process easier for your agent. He or she will have a better idea of what your wishes are because you have already set them out in your healthcare directive.

Choosing an Appropriate Healthcare Proxy

The thought of having someone else make your healthcare decisions for you can be a scary one. That is why you should consider carefully who you name as your agent in this regard. It should be someone you trust and someone who cares about you and your welfare, who will make decisions in your best interests and who is at least 18 years of age. It should also be someone who is able and willing to act in this capacity - be sure to discuss it with the person you choose before designating them as your agent. While there is no reason for your agent to live in the same town or even the same state, naming someone who is close at hand makes more sense. He/she may have to act on your behalf for weeks, months, even years - this will be made more difficult if your agent has to travel some distance to ensure that your wishes are being carried out.

Once you have found a person who has agreed to act on your behalf, discuss your wishes with the person so that he/she is well aware of what you want and what decisions you would make for yourself in the same circumstances. While your agent does not have to agree with all of your wishes, you need to be sure that he/she respects your decisions and will abide by them. If your instructions will put your agent in a difficult internal moral, ethical or religious conflict, it is best to designate someone else.

Keep in mind that your agent may have a battle on his/her hands to carry out your wishes against the advice of your physician, and against the wishes of family and friends who do not agree with your decisions. If you think that a conflict is likely, be sure to designate a proxy who will not be afraid to fight for your rights and in your best interests.

You should not, and in most states cannot by virtue of the law, name your doctor, any other medical professional treating you, or an employee of the hospital or nursing facility in which you are a patient.

If there is no one that you are comfortable entrusting your healthcare decisions to, then do not appoint anyone. Instead, prepare a comprehensive Living Will / Healthcare Directive and clearly set out all of your instructions in writing.

The Importance of Completing Healthcare Documents

Even if there is no one that you would trust to act as your Healthcare Proxy, it is important that you complete a healthcare directive which sets out your wishes. This will ensure that your physicians are obligated to provide the care you want and withhold the treatments or procedures you do not want.

In the absence of any directives to guide them, or the appointment of someone to make healthcare decisions on your behalf, the attending physicians will use their own discretion in deciding what kind of medical care you will receive. They will generally go to your immediate family or closest relatives to get their consent and authorization before proceeding with surgery or other serious, risky or intensive procedure or treatment. If you are not married but have a common-law partner, they may not be consulted in this regard. And if you have no partner or family, but have close friends who know your wishes, they probably will not be consulted at all. And even among those close to you who are included in the decision-making, there may be disagreement about treatment. These battles can be so extreme that they end up in court and have to be decided by a judge, who knows nothing about you, your wishes or your condition.

Living Wills and health care proxies are important instruments. You should execute both documents in order to provide the maximum protection possible.

Completing Your Healthcare Documents

Discuss the documents with your family doctor. He/she can help you decide if you have covered all the important and relevant matters, and can help you with technical terms.

If you are preparing your own forms on a computer, you can draft and revise them to reflect your intentions accurately. However, if you are using preprinted forms, be sure to read the entire form

CAREFULLY and make whatever revisions are required by striking out, writing in, and otherwise altering and amending the documents before you sign them.

There are a few legal requirements to keep in mind, in order to ensure that your documents are valid. In general, you must be a competent adult, in other words of sound mind and at least 18 years old, although some jurisdictions will allow a parent to make a Living Will or directive for a minor child. The important point to remember is that in all cases, the person making the directive (or having the directive made for them) must be able to understand what the document is, what their instructions will mean and what the consequences may be.

The documents must be signed and dated, in the presence of two adult witnesses **OR** a notary public, and sometimes both are required, depending on the laws of the state in question. These persons must be able to attest that you were of legal age, of sound mind and not under duress or undue influence when you signed the documents. If you are physically incapable of signing yourself, you can have someone sign for you. Anyone named as an agent cannot act as a witness to the document appointing him or her.

After making the documents, you need to ensure that they can be found. Keep a copy for yourself, and make sure that your personal physician, your proxy and any alternate proxy you have named each have a copy. As well, your spouse, family and close friends should be given a copy.

Modifying or Revoking Your Healthcare Documents

You can make changes to your healthcare documents at any time, so long as you are still of sound mind. Whenever changes are made, they should be dated and properly witnessed. If you make several changes, it would be better to execute a completely new document.

Generally speaking, a Living Will or Healthcare Proxy executed in another state or country will be recognized as legal in the state you are in when the document comes into effect, provided that it conforms to the law of the state or country in which it was made. However, as a precaution, if you move to another state you should consider completing new healthcare documents valid for the new state just to be sure.

You can also revoke a Living Will or Healthcare Proxy at any time. This can be done by giving written or oral notification of your intent to revoke the document to a doctor, nurse or other health care professional, or other reliable witness. It can also be done by executing a new document, which will automatically revoke any previous document of the same type. For instance, executing a new Living Will in May of 2003 revokes any Living Will you may have previously executed.

THIS IS AN 8-PAGE PACKAGE OF FORMS.