



Determining Your Medical Destiny -

The Benefits of Having a Health Care Directive

by Courtney Wowryk

If you bring up the name Terri Schaivo in conversation you're likely to receive a strong reaction. As most will recall, Ms. Schaivo was at the centre of a heartbreaking legal battle in which her husband fought, and ultimately won, the right to have Terri's feeding tube removed.

The Schaivo families' saga (for lack of a better term) began in 1990 when Terri collapsed in her home, suffering irreparable brain damage due to a lack of oxygen. Ultimately, Terri was left in a "persistent vegetative state" requiring around-the-clock medical care and highly invasive medical treatment to live. What resulted was a very public, fifteen-year-long battle between her husband and parents. On the one side Michael Schaivo maintained that his wife would not/did not want to

be kept alive by artificial means. On the other side, Terri's parents, the Schindler's, believed that as Terri was still conscious she should be kept alive through all means medically possible.

Regardless of where you stand in the right-to-die debate, the Schaivo case illustrates two important points: 1) you should discuss your medical wishes with your family and friends while you're healthy and still can; and 2) it's wise to appoint someone to speak on your behalf medically, just in case you're ever unable to speak for yourself.

As a lawyer, I've found that many people believe their Executor or Power of Attorney can speak on their behalf medically. However, neither a Will nor a Power of Attorney grants your Executor or Attorney the authority to

speak on your behalf medically. The only document that does grant this authority is a Health Care Directive, otherwise known as a Living Will.

A Health Care Directive is a document in which you state your wishes and instructions regarding medical treatment, in the event you're unable to communicate your wishes to your doctor directly. These instructions tell your doctor what treatments you accept and those you refuse, and can be as simple or as complicated as you wish. In a Health Care Directive you also appoint someone (a "Proxy") to speak on your behalf. Generally, we see spouses being appointed the proxies for each other, or alternatively adult children or other close family members. Additionally, you can appoint more than one person to act as your health

care proxy. However, in those circumstances it's important to determine how decisions will be made in the event of a disagreement.

On the simple end of the spectrum you can appoint someone to be your health care proxy and grant them total discretion to speak on your behalf. The expectation is of course, that you and your proxy have discussed your medical wishes. On the opposite side of the spectrum, the health care proxy is given specific instructions by the person as to his or her wishes, specifying what treatments are and are not to be administered. Specific instructions are usually developed with the help of a doctor or nurse, to ensure that all treatment options are known and the correct terminology used.

In most cases, I find that people grant their proxy

great discretion, with the only limitation being that if that person suffers catastrophic brain injury, he or she is to be kept comfortable (i.e. given pain medication), but isn't to be kept alive by artificial means (i.e. on a machine).

What if I don't have a Health Care Directive?

Just because you don't have a Health Care Directive does not mean there's no one to speak on your behalf. In that case, health care providers turn to family members to speak on their loved ones' behalves. Problems arise however where family members don't agree (as in the Schaivo case). In these cases the loudest voice often prevails. This of course can mean that someone who doesn't know your wishes, or perhaps doesn't agree with them, can determine your fate. Problems can also arise where someone is in a

long-term or common-law relationship. In such cases the girlfriend/boyfriend or common-law spouse can be cut out of the discussion altogether.

To ensure that your medical wishes are known (and followed) be sure to discuss them with your friends and family, and to execute a Health Care Directive. The uncomfortable moments you spend considering and discussing these issues could potentially save your loved ones untold stress, and can ensure that your wishes are followed. For more information about Health Care Directives please contact a Solicitor.

All information on Terri Schaivo was found at http://en.wikipedia.org/wiki/Terri_Schiavo_case.