

The Law and You

Living Wills & Medical Directives in Utah - Part One

In March 2005, the Terry Schiavo story dominated the news. You may agree or disagree with the extensive media coverage devoted to the story. But the issue of “living wills” quickly became a hot topic.

Since each state enacts its own laws governing living wills, it is important to understand Utah’s laws on the subject.

Because the subject matter is somewhat extensive, this month’s column is labeled “Part One.” Next month I will conclude this subject with “Part Two.”

For those of you who can access the Internet or law libraries, you can find Utah’s Personal Choice and Living Will Act at Title 75, Part 2, Section 1101, or § 75-2-1101 (“Act”). For others, I will highlight parts of the Act that I feel are particularly relevant and important.

The Act includes the following:

“developments in medical technology make possible many alternatives for treating medical conditions and make possible the unnatural prolongation of death. .

“persons should have the clear legal choice to be spared unwanted life-sustaining procedures, and be permitted to die with a maximum of dignity and a minimum of pain. .

“In recognition of the dignity and privacy which all persons are entitled to expect, and to protect the right of individuals to refuse to be touched or treated in any manner without their willing consent, the 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, or to provide only to the extent set forth in a directive, life-sustaining and other medical procedures.”

A Living Will can be prepared for anyone 18 years of age or older but it must be in writing, dated and signed by the person in the presence of two or more witnesses. And, none of the witnesses may be (a) related by blood or marriage; (b) entitled to any part of the estate; (c) directly financially responsible for the person’s medical care; or (d) any agent of a health care facility where the person receives care at the time of signing.

The Living Will must also be in substantially the form as provided in the Act, or specifically in § 75-2-1104.

The Utah Act specifically defines “artificial nutrition and hydration” as follows:

“. . . means supplying food and water through a conduit such as a tube or intravenous line, where the recipient is not required to chew or swallow voluntarily, including nasogastric tubes, gastrostomies, jejunostomies, and intravenous infusions. Artificial nutrition and hydration does not include assisted feeding, such as spoon or bottle feeding.”

The medical terms in the Act are best discussed with a physician. However, a simple definition of “jejunostomies” is a surgical formation of an opening through the abdominal wall into part of the small intestine.

In effect, Utah’s law includes the type of feeding tubes that were surgically inserted in

the abdomen of Terry Schiavo. If you accept the standard Living Will form in Utah, you are authorizing the removal of feeding tubes. Of course, such removal would only occur when two physicians have determined that your life is being sustained by artificial means.

A companion document that you should have is a Special Power of Attorney (“SPOA”).

Like a Living Will, a SPOA must also be prepared in substantial form as provided by the Act under § 75-2-1106. And, the agent that you appoint in the SPOA is empowered to prepare a medical directive that takes precedence of your Living Will.

Far too often, a Living Will is lost or filed away and the physician has no access to it. In those cases, the SPOA can save the day.

For both documents, it is very important that they are accessible to those who need them. For the Living Will, copies should be made for your primary physician or other care providers. For the SPOA, copies should be made for your agent named in your SPOA.

Although you should begin with the standard form provided in the Act, you can customize it so that it reflects your particular desires. Most people, however, will accept the standard language as is without modification.

In Part Two, I will discuss some of the aspects of a Living Will and SPOA that are not so commonly understood, including what happens when there is no Living Will or SPOA.

In preparing a Living Will or a SPOA, you can do it yourself. It may be best, however, to have an Elder Law Attorney prepare it for you along with your other estate documents like a Will and a Durable Power of 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.