
Who Makes Medical Decisions When I Cannot?

Today's advanced medical technology allows physicians to keep a person "alive" in situations that formerly would have resulted in death. Individuals who do not wish their lives to be prolonged by such artificial techniques must plan ahead and put their desires in writing.



In the now famous case of Cruzan v. Dir. Mo. Dept. of Health, 110 S. Ct. 2841 1990, the U.S. Supreme Court held that a state may demand clear and convincing proof of a person's wish to refuse or withdraw medical support. Ms. Cruzan was an accident victim who had not made clear her desire to have medical support withdrawn. Because of this failure, she could have been kept alive, in a vegetative state, for years, at an estimated cost of \$200,000 per year.

When Should Medical Treatment Be Withheld?

As the following examples are read, one might ask, "Would I want medical support withdrawn in this situation?"

- In a coma with no hope of recovery.
- In a coma with a small likelihood of recovery with permanent brain damage.
- Afflicted with brain damage or disease, severe in nature, and a terminal illness.
- Afflicted with brain damage or disease, severe in nature, but without terminal illness.

In these situations, and others, difficult decisions must be made as to the treatment to be provided or withheld (for example, artificial respiration, medicine, food, water, etc.).

When a patient is incapable of expressing his or her wishes, some other way must be found to guide the decision making process. The "living will" and "durable power of attorney for health care" (advance health care directives) are useful in this regard.

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Living Will

Most states recognize some form of what has been called a “living will”, or “directive to physicians.” Such a document sets down in writing a person’s wishes as to the type of medical treatment to be provided, or withheld, and the general circumstances under which the directive applies.

Durable Power of Attorney for Health Care

Many states also have provision for a durable power of attorney for health care, which allows an individual to appoint another person to make health care decisions for them if they became unable to do so. The agent is generally empowered to make decisions beyond end-of-life issues, such as admission to a nursing home, consent for surgical operations, and care in the event of senility or other disability.

Seek Professional Guidance

In preparing the documents to guide those who will make medical decisions for you if you are no longer able to do so, the advice and guidance of a trained, experienced attorney, licensed in your state of residence and familiar with local law, is highly recommended.

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