

Planning For the Future

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What is Elder Law?

- Elder Law consists of various areas of law specifically geared towards Senior Citizens' legal issues
- An Elder Law Attorney is familiar with the significance and interplay of these issues
- Real Estate, Estate Planning, Incapacity Planning, Medicaid Planning, Nursing Home Abuse, Medicare and Social Security



Reduced Mental Capacity

- We all want to think that we will always be able to take care of ourselves.
- But we have to face the fact that our capacity can be diminished
- Everyone, no matter how old, should sign a durable power of attorney for health care and for financial matters to somebody they trust



Durable Power of Attorney

- ❑ A Durable Power of Attorney appoints somebody to act in place of the Grantor
- ❑ Durable means it Survives Incapacity
- ❑ It must have specific language or it is invalid as soon as it is needed
- ❑ Power generally includes Everything, including bank accounts, real estate, brokerage accounts, etc.

Durable Power of Attorney

Continued

- The Power of Attorney may give the power to create trusts or make gifts
- May allow the Agent to make gifts to himself or herself
- Preneed Guardian Appointment
 - Important because sometimes somebody else will apply to be guardian
 - Can designate who that will be



The Other Choice - Guardianship

- If a person has not signed a power of attorney, becomes incapacitated, there is an expensive, embarrassing process called Guardianship that may be needed
- Once a guardianship exists, it remains an open court file while the ward is alive



Guardianship Creation

- ❑ Somebody signs a Petition
- ❑ Court Appoints a Committee and an Attorney to represent the Ward
- ❑ The Documents are Read to the Ward
- ❑ There is a Hearing in which the Court declares the Ward Incapacitated and Appoints the Guardian
- ❑ Costs \$4,000 or more to create.



Health Care Provisions

- Everybody should execute a Health Care Surrogate Form
 - Designates a first and second choice to make medical decisions
 - If surgery, treatment, etc. is needed and person cannot speak for himself or herself, the designee or alternate will make the decision
 - It is a Statutory Form, so it does not require a lot of information



FORM DESIGNATION OF HEALTH CARE SURROGATE

- “In the event that I have been determined to be incapacitated to provide informed consent for medical treatment and surgical and diagnostic procedures, I wish to designate as my surrogate for health care decisions:”

.....

- “If my surrogate is unwilling or unable to perform the duties of a surrogate, I wish to designate as my alternate surrogate:”



Form Health Care Surrogate Cont.

- “I fully understand that this designation will permit my designee to make health care decisions, except for anatomical gifts, unless I have executed an anatomical gift declaration pursuant to law, and to provide, withhold, or withdraw consent on my behalf; to apply for public benefits to defray the cost of health care; and to authorize my admission to or transfer from a health care facility. I further affirm that this designation is not being made as a condition of treatment or admission to a health care facility.”



Living Will - Advanced Directive

- Everybody should execute a Living Will unless they want to be kept alive no matter what
- The living will states if the signer is in a certain condition, as determined by the physician and a second physician, life prolonging procedures should be withheld or withdrawn so he can die naturally



FORM LIVING WILL

- “I willfully and voluntarily make known my desire that my dying not be artificially prolonged under the circumstances set forth below, and I do hereby declare that if, at any time, I am incapacitated and

_____ I have a terminal condition; or,
(initial)

_____ I have an end-stage condition; or,
(initial)

_____ I am in a persistent vegetative state
(initial)

- and if my attending or treating physician and another consulting physician have determined that there is no reasonable medical probability of my recovery from such condition, I direct that life-prolonging procedures be withheld or withdrawn when the application of such procedures would serve only to prolong artificially the process of dying, and that I be permitted to die naturally with only the administration of medication or the performance of any medical procedure deemed necessary to provide me with comfort care or to alleviate pain.”



Living Will Continued

- “It is my intention that this declaration be honored by my family and physician as the final expression of my legal right to refuse medical or surgical treatment and to accept the consequences for such refusal. In the event that I have been determined to be unable to provide express and informed consent regarding the withholding, withdrawal, or continuation of life prolonging procedures, I wish to designate my surrogate, or alternate, named above, as my surrogate to carry out the provisions of this declaration.

- I understand the full import of this declaration, and I am emotionally and mentally competent to make this declaration.”



Absence of Advance Directive

- **“765.401 The proxy.--**
- (1) If an incapacitated or developmentally disabled patient has not executed an advance directive, or designated a surrogate to execute an advance directive, or the designated or alternate surrogate is no longer available to make health care decisions, health care decisions may be made for the patient by any of the following individuals, in the following order of priority, if no individual in a prior class is reasonably available, willing, or competent to act:
 - (a) The judicially appointed guardian of the patient or the guardian advocate of the person having a developmental disability as defined in s. [393.063](#), who has been authorized to consent to medical treatment, if such guardian has previously been appointed; however, this paragraph shall not be construed to require such appointment before a treatment decision can be made under this subsection;
 - (b) The patient's spouse;
 - (c) An adult child of the patient, or if the patient has more than one adult child, a majority of the adult children who are reasonably available for consultation;
 - (d) A parent of the patient;
 - (e) The adult sibling of the patient or, if the patient has more than one sibling, a majority of the adult siblings who are reasonably available for consultation;
 - (f) An adult relative of the patient who has exhibited special care and concern for the patient and who has maintained regular contact with the patient and who is familiar with the patient's activities, health, and religious or moral beliefs; or
 - (g) A close friend of the patient.”



Absence of Advance Directive Cont

- “h) A clinical social worker licensed pursuant to chapter 491, or who is a graduate of a court-approved guardianship program. Such a proxy must be selected by the provider's bioethics committee and must not be employed by the provider. If the provider does not have a bioethics committee, then such a proxy may be chosen through an arrangement with the bioethics committee of another provider. The proxy will be notified that, upon request, the provider shall make available a second physician, not involved in the patient's care to assist the proxy in evaluating treatment. Decisions to withhold or withdraw life-prolonging procedures will be reviewed by the facility's bioethics committee. Documentation of efforts to locate proxies from prior classes must be recorded in the patient record.”



Absence of Advance Directive Cont.

- “(2) Any health care decision made under this part must be based on the proxy's informed consent and on the decision the proxy reasonably believes the patient would have made under the circumstances. If there is no indication of what the patient would have chosen, the proxy may consider the patient's best interest in deciding that proposed treatments are to be withheld or that treatments currently in effect are to be withdrawn.”



Absence of Advance Directive Cont

- “...a proxy's decision to withhold or withdraw life-prolonging procedures must be supported by clear and convincing evidence that the decision would have been the one the patient would have chosen had the patient been competent or, if there is no indication of what the patient would have chosen, that the decision is in the patient's best interest.”



Do Not Resuscitate Orders

- ❑ Not for Everybody - Not the Same as Living Will
- ❑ If one has a terminal illness or other life limiting condition, a DNR is appropriate
 - Signed by the Person, Surrogate, Attorney in Fact or Guardian
 - AND the Doctor
- ❑ The Person will not be revived



DNR - Paramedics

- **“401.45 Denial of emergency treatment; civil liability.–**
- (3)(a) Resuscitation may be withheld or withdrawn from a patient by an emergency medical technician or paramedic if evidence of an order not to resuscitate by the patient's physician is presented to the emergency medical technician or paramedic. An order not to resuscitate, to be valid, must be on the form adopted by rule of the department. The form must be signed by the patient's physician and by the patient or, if the patient is incapacitated, the patient's health care surrogate or proxy as provided in chapter 765, court-appointed guardian as provided in chapter 744, or attorney in fact under a durable power of attorney as provided in chapter 709. The court-appointed guardian or attorney in fact must have been delegated authority to make health care decisions on behalf of the patient.”

Chapter 400 NURSING HOMES

AND RELATED HEALTH CARE FACILITIES

- **400.142 (under nursing homes)... orders not to resuscitate.—**
- “3) Facility staff may withhold or withdraw cardiopulmonary resuscitation if presented with an order not to resuscitate executed pursuant to s. [401.45](#). The agency shall adopt rules providing for the implementation of such orders. Facility staff and facilities shall not be subject to criminal prosecution or civil liability, nor be considered to have engaged in negligent or unprofessional conduct, for withholding or withdrawing cardiopulmonary resuscitation pursuant to such an order and rules adopted by the agency. The absence of an order not to resuscitate executed pursuant to s. [401.45](#) does not preclude a physician from withholding or withdrawing cardiopulmonary resuscitation as otherwise permitted by law.”



400.6095 Patient admission; assessment; plan of care; discharge; death.– [Hospice]

- “(8) The hospice care team may withhold or withdraw cardiopulmonary resuscitation if presented with an order not to resuscitate executed pursuant to s. [401.45](#). The department shall adopt rules providing for the implementation of such orders. Hospice staff shall not be subject to criminal prosecution or civil liability, nor be considered to have engaged in negligent or unprofessional conduct, for withholding or withdrawing cardiopulmonary resuscitation pursuant to such an order and applicable rules. The absence of an order to resuscitate executed pursuant to s. [401.45](#) does not preclude a physician from withholding or withdrawing cardiopulmonary resuscitation as otherwise permitted by law.”

Patient's Full Legal Name: _____ Date: _____
(Print or Type Name)

PATIENT'S STATEMENT

Based upon informed consent, I, the undersigned, hereby direct that CPR be withheld or withdrawn.
(If not signed by patient, check applicable box):

- Surrogate Proxy (both as defined in Chapter 765, F.S.)
 Court appointed guardian Durable power of attorney (pursuant to Chapter 709, F.S.)

(Applicable Signature)

(Print or Type Name)

PHYSICIAN'S STATEMENT

I, the undersigned, a physician licensed pursuant to Chapter 458 or 459, F.S., am the physician of the patient named above. I hereby direct the withholding or withdrawing of cardiopulmonary resuscitation (artificial ventilation, cardiac compression, endotracheal intubation and defibrillation) from the patient in the event of the patient's cardiac or respiratory arrest.

(Signature of Physician)

(Date)

Telephone Number (Emergency)

(Print or Type Name)

(Physician's Medical License Number)