

Planning in Advance

FOR HEALTH CARE DECISIONS

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Imagine yourself seriously ill and unable to speak for yourself. Who would know what treatment choices you would make if you were able?

When is the last time you talked with your family about what you would want, or not want, if you were ever in a terminal or comatose condition? These conversations can be very difficult. When they do occur, they may include unclear statements such as "Don't ever let me live like a vegetable" or "I don't want to be hooked up to all kinds of machines. No heroics."

Unfortunately, statements such as these are not helpful when decisions must be made for someone in a terminal condition who is unable to speak for himself or herself (perhaps because of a coma or severe pain). For example, if you say that you don't want to be hooked up to machines, does that mean you don't want to use a respirator? Does it also mean you don't want to be fed artificially by tube or to receive

intravenous antibiotics? Medical technology is complicated. Therefore, in order to make your wishes

ordinary treatments such as antibiotic therapy may be considered "heroic measures" in certain clinical

What is a terminal condition?

Terminal condition means any condition of your health which is incurable or cannot be improved. Medical treatment for this type of condition would only serve to prolong the dying process. Imagine yourself in these situations:

You are 82 years old and have had a small stroke. You are in the hospital being treated by your family physician and you are expected to recover. However, on the third day of your hospitalization, you suffer a massive stroke which leaves you unconscious and in critical condition. A neurological consultation confirms that it is unlikely that you will regain consciousness. Your family is asked whether the doctors should try to resuscitate your heart if it should stop. What should they do?

You are 25 years old and have been hit by an automobile as you were crossing the street. You have severe brain damage and have been in a deep coma for 5 months. The doctors say your brain has almost no chance of recovery. Only the part of your brain which makes your heart beat and your lungs breathe is working. Yet, a feeding tube through your nose to your stomach may keep you alive for many more years. Should that feeding tube continue to be used or should it be withdrawn so that you are allowed to die?

clear, it is important for you to know as much as possible about different treatments that are often used in a terminal condition. Some

situations.

Oregonians who are concerned with planning for future health care for possible events such as the two

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listed above have two tools available to them—a Directive to Physicians (Living Will) and a Power of Attorney for Health Care. You don't need to hire an attorney in order to complete either of these documents.

Directive to Physicians

A Directive to Physicians is commonly called a Living Will or Advance Directive. This document tells your physician that you don't want your life artificially prolonged under these circumstances:

- you have an incurable injury, disease, or illness certified to be a terminal illness by two physicians; and
- the application of life-sustaining procedures would only prolong the moment of your death, which is imminent whether or not such procedures are used.

If these conditions are met, then medical caregivers are directed to withhold or withdraw life-sustaining procedures and allow you to die.

You must be at least 18 years old and the Directive must be signed by you in the presence of two witnesses. The witnesses may not be 1) related to you by blood or marriage; 2) entitled to any portion of your estate or have any claim on it; 3) a physician attending you, a person employed by such a physician, or someone employed by a health care facility in which you are a patient.

If you are a patient in a long-term care facility at the time the Directive is signed, one of the witnesses must be a person designated by the Oregon Department of Human Resources. This individual must verify that you are able to willfully and knowledgeably execute the document. The Long-term Care Ombudsman's Office has volunteer ombudsmen in most

Oregon nursing homes who can help meet this witness requirement.

Power of Attorney for Health Care

A Power of Attorney for Health Care is a document by which you authorize another person to make decisions about your health care when you are incapable of making them for yourself. The person you assign to make these decisions is called your "attorney-in-fact" and you are called the "principal."

Your attorney-in-fact cannot act

It's a good idea to evaluate your document periodically to see if you would like to make any changes.

for you when you are able to make your own health care decisions. This document is different from a customary power of attorney which is used for managing a person's property and money. Your attorney-in-fact should be someone you trust and who knows you well. He or she should have the maturity to make decisions for you based on *your values and interests*. In other words, your attorney-in-fact should be able to separate his or her own desires from what *you would want* to have done in a certain situation. This is called using *substituted judgment*, in other words, "walking in another person's shoes."

If you are unable to make health care decisions for yourself, your attorney-in-fact may consent, refuse to consent, or withdraw consent for health care. He or she has the same

right as you do to receive information concerning your proposed health care, to receive and review your medical records, and to consent to disclosure of your medical records.

The document allows you to be as specific or as general about your wishes as you want when authorizing your attorney-in-fact to make health care decisions. There are, however, two kinds of health care decisions to which you must direct specific attention in your document. The first is withholding or withdrawing life-sustaining procedures with the understanding that death may result. The second is withholding or withdrawing artificially administered hydration (water) or nutrition with the understanding that dehydration, malnutrition, and death may result.

If you do wish life-sustaining procedures under all circumstances, you must also specifically state this desire on your Power of Attorney for Health Care form.

You can appoint any competent person 18 or older to be your attorney-in-fact, except: 1) your attending physician; 2) an employee of the attending physician unless he or she is related to you by blood, marriage or adoption; or 3) the owner, operator, or employee of a health facility where you are a patient unless that person is related to you by blood, marriage or adoption.

The Power of Attorney for Health Care is effective for 7 years. After 7 years, you may simply sign a new one. You may revoke or make changes in your document at any time and in any manner, either in writing or orally, or by gestures which communicate your intent. It doesn't matter what your physical or mental condition may be.

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Differences between the two documents

The Directive to Physicians (Living Will) is a written statement prohibiting the use of life-sustaining procedures in the event of a terminal condition. A Power of Attorney for Health Care, on the other hand, is a written document that names a person to speak for you if you are unable to speak for yourself. It is generally preferable to sign a Power of Attorney for Health Care since this document applies to a broader range of medical decisions than the Living Will. The Living Will only applies to circumstances of terminal illness.

To illustrate this point, the issue of whether to continue the feeding tube of the 25-year-old pedestrian

who was hit by a car would have been much more effectively addressed in a Power of Attorney compared to a Directive to Physicians—simply because her death would not be considered to be imminent with the use of a feeding tube. Therefore, if being sustained in this manner in such a circumstance would not be your choice, it would be important to make your wishes known in a Power of Attorney for Health Care.

What to do with the completed documents

You can ask your doctor or local hospital for a copy of the Directive to Physician or the Power of Attorney for Health Care. Each document has instructions telling

you how to complete the form. If you complete the Directive to Physicians and/or the Power of Attorney for Health Care, keep the signed original in a readily accessible place. Do not put it in your safe deposit box where it is not immediately available to those people who will need it. In addition give signed copies to your doctors, family and other loved ones, attorney-in-fact, hospital, home care nurses, minister, priest or rabbi, and anyone else you think should know how you feel. It's a good idea to evaluate your document periodically to see if you would like to make any changes.

The health care decisions discussed in this bulletin are difficult ones. Remember, no one can make them better than you can.

Why is a written document so important?

Putting your health care wishes in writing became particularly significant after a June 25, 1990 U.S. Supreme Court decision on the first "right to die" case to come before it. The Court's opinion on this case is significant for patients in a terminal condition, their families, and health care providers.

The case involved Nancy Cruzan, a young woman in Missouri, who had lived in a persistent vegetative state as a result of a 1983 car accident. She was not brain dead; the lower part of her brain which enabled her heart to beat and her lungs to breathe continued to function. She did not need a ventilator to survive. Because she could do nothing for herself, however, she was artificially fed and hydrated with a feeding tube.

Nancy's parents, believing she would not want to have tube feeding under her circumstances, requested it be discontinued. They based this belief on what they knew about their daughter and in part on her own earlier statement that she would not want to live if she could not be, in her own words, "at least halfway normal."

The U.S. Supreme Court did state that 1) competent patients can refuse life-sustaining treatment and 2) artificial feeding and hydration should be treated the same as any other medical treatment. However, it also stated that Missouri could require the continued treat-

ment of a patient in a persistent vegetative state unless there was "clear and convincing evidence" that he or she had explicitly authorized the termination of treatment before losing the capacity to make decisions. In other words, the parents' request to remove the feeding tube was denied because Missouri did not view the judgment of Nancy's parents as clear and convincing evidence. It's important to note that while the U.S. Supreme Court upheld Missouri's decision, it did not require that other states adopt Missouri's rigorous standing of proof.

Still, it now appears that if you wish to set limits concerning treatment you would be more certain your wishes will be followed if you put those wishes in writing before a health crisis occurs.

A postscript to the Cruzan case: After the U.S. Supreme Court decision, Nancy's parents returned to the scene of their first legal proceeding in Missouri. They brought with them two women who had worked with Nancy at a school for blind and deaf children. These women testified that while Nancy was feeding a severely disabled child, she expressed the sentiment that if she became impaired to the point she became a "vegetable" she would not want to be force-fed or kept alive on machines. The Missouri Court reversed its original decision. The tube feeding for Nancy was discontinued and twelve days later, on December 26, 1990, she died.

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Resources to help you with the decision

Most people are not trained in health care issues and find it confusing to think through what choices they would make in the event of a health crisis. Without adequate information to understand life-sustaining procedures and what is it like to have them used in your care, it is difficult to make informed decisions. Below are listed additional resources to help you think through certain health care issues in order to make decisions which are consistent with your beliefs.

Health Care Decision-Making for Oregon Families

This is an OSU Extension program that introduces the Oregon Living Will and Power of Attorney for Health Care. Primary focus is upon communication among family members concerning difficult health care decisions. Contact your county home economics Extension agent for further information.

Making Health Care Decisions

When You Can't Speak for Yourself

This booklet, a valuable resource, provides specifics about advance directive documents and discusses the importance of family communication about health care decisions. The booklet can be purchased for \$1.00 from Oregon Health Decisions, Suite 723921

SW Washington, Portland, OR 97205. Their toll-free number is 1-800-422-4805.

The Medical Directive

Drs. Linda Emanuel and Ezekiel Emanuel have developed this tool, which sets out four scenarios, allowing people to specify the treatment they would want in each case. It helps guide you through the process of making decisions before completing an advance directive document. While it has no legal power, it may be helpful to attach it to your advance directive document to further clarify and give evidence of your wishes. You can obtain the form by sending a self-addressed, stamped envelope and \$1.00 to The Medical Directive, Harvard Medical School Health Center, 164 Longwood Avenue, 4th floor, Boston, MA 02115.

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Mail your order to Publications Orders, Agricultural Communications, Oregon State University, Administrative Services 422, Corvallis, OR 97331-7119.

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—EC 1243, *When Death Comes: Funeral & Alternative Arrangements*, \$1.25

—PNW 88, *Death—A Family Crisis*, 25¢

—PNW 196, *Growing Older: Sensory Changes* (please call Publications Orders for price), also available in Spanish as PNW 196-S

—PNW 206, *Aging Parents: Helping When Health Fails*, 50¢

—PNW 314, *Helping Memory-Impaired Elders: A Guide for Caregivers*, 50¢

—PNW 315, *Coping with Caregiving: How to Manage Stress When Caring for Elderly Relatives*, 75¢

—PNW 318, *Living Arrangements in Later Life*, \$1.00

—PNW 342, *Alcohol Problems in Later Life*, 75¢

—PNW 344, *Helping Your Older Family Member Handle Finances*, 50¢

—PNW 345, *Financing Health Care in Later Life*, \$1.00

—PNW 347, *Depression in Later Life: Recognition and Treatment*, \$1.50



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