



A Primer in Health Care Advance Directives

Advances in modern medicine have made it possible to prolong the lives of seriously ill individuals without always offering realistic hope for improvement or a cure. For some individuals, the possibility of extended life is viewed as meaningful and beneficial. For others, prolonging life artificially may only extend suffering and delay the dying process.

The Florida Legislature recognizes the fundamental right of individuals to make medical decisions to have life-prolonging health care procedures provided, withheld, or withdrawn. It also recognizes the right of adults to plan ahead for any type of health care decision and to have their wishes respected through the use of advance directives. Frequently, advance directives are written when a person is diagnosed with a life-threatening illness or is planning some course of medical treatment. More often, however, these documents are included as a part of a person's estate planning arrangements.

In a general sense, an advance directive is a document that expresses desires concerning health care or anatomical donations after death. Advance directives in Florida include living wills, designations of health care surrogate/powers of attorney for health care and anatomical gift declarations.

A living will is a declaration that allows a person to state desires with regard to life-prolonging procedures. These procedures are not expected to cure a terminal condition but only prolong the dying process, such as the use of a ventilator and CPR. Florida law provides that life-prolonging medical procedures may be withheld or withdrawn if a person is terminally ill, in an end-stage condition, or in a persistent vegetative state (each of these conditions is further defined by statute). In each situation, a person may direct that he or she does not desire to have life support or other life sustaining health care. Furthermore, a person may also specify whether to maintain nutrition and hydration (food and water) through artificial means if it would only serve to prolong an inevitable death.



A designation of health care surrogate/power of attorney for health care is a written document naming another person as a representative to make medical decisions if the principal is unable to make them on his or her own. Instructions could include desires for types of treatment under various circumstances, similar to a living will. Unlike a living will, however, the designation of a health care surrogate/power of attorney for healthcare typically permits a surrogate to make most, if not all, decisions concerning health care when the principal is unable to make medical decisions or provide informed consent.

An anatomical gift declaration is a written statement that indicates a person's wish to donate all or part of his or her body at death. This declaration can include specific organ and tissue donations to persons in need or the donation of the entire body to medical science. An anatomical gift declaration can be included in a Last Will and Testament or separate written instrument, although these declarations are most often accomplished by signing the back of a person's driver's license.

In the absence of advance directives, Chapter 765 of the Florida Statutes permit health care decisions to be made by certain individuals, who include a court appointed guardian, one's spouse, and one's children. Because these individuals may not know a patient's wishes for medical care in any given circumstance, reliance on these default rules to govern a patient's health care can be problematic and result in treatment that is inconsistent with his or her wishes.



Joshua T. Keleske, P.L. serves families in the Tampa Bay area with their estate planning, estate and trust administration, and business planning needs. If you have questions regarding how we can be of assistance to you and your family, please contact us at anytime at 813-254-0044. We are happy to answer your questions and arrange for an appointment to speak with you.

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