

From the desk of

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The Terry Schiavo Case

I get quite a few questions about the case of Terry Schiavo, the unfortunate woman who died in Florida after living in a persistent vegetative state for about 15 years. Her husband, who had been appointed her guardian, wanted all life support removed, including her feeding tube. Her parents argued that she was responsive to some stimuli and vehemently opposed what they considered to be her forced starvation. Ms. Schiavo had left nothing in writing expressing her wishes regarding life support. After years of litigation, the feeding tube was ultimately removed and she died about a week later.

It's hard to find a bright side to the story. It is certainly not a scenario I would wish upon anyone. Perhaps some good can come if more people will take the time to consider what they would want in similar circumstances and express those desires in writing.

Many of you have executed a Directive to Physicians, informally known as a "living will," stating your desires regarding life-sustaining treatment if you ever suffer from a terminal or irreversible condition. You may also have signed a Medical Power of Attorney appointing an agent to make medical decisions (including end-of-life decisions) for you if you lose the capacity to do so.

So, what happens in Texas if a patient has no living will? Texas law allows the decision to withdraw or withhold life-sustaining treatment to be made by the attending physician and the patient's legal guardian or agent under a medical power of attorney. If there is no guardian or agent, the decision can be made by the physician and one person from the following categories (in order of priority): the patient's spouse, reasonably available adult children, parents, or nearest living relative.

If there are no relatives, then another physician must concur in the decision. The fact that a patient does not have a living will does not create a presumption that the patient does not want a decision to be made to withdraw or withhold life-sustaining treatment.

Some find it hard to rely solely on a living will because they don't trust a document to adequately anticipate all

the unique circumstances that may arise. For that reason, I consider the Medical Power of Attorney to be at least as important, if not more so. If someone you trust has the clear authority to make these decisions on your behalf, then there is less concern over when the living will takes effect, how it will apply to your circumstances, etc. Most people sign both, leaving the living will as the expression of their ultimate desires, but appointing a medical agent to make sure all other options have been exhausted.

You should certainly give thought to exactly what treatment you would or would not want. Under Texas law, "life-sustaining treatment" is defined as:

"treatment that, based on reasonable medical judgment, sustains the life of a patient and without which the patient will die. The term includes both life-sustaining medications and artificial life support such as mechanical breathing machines, kidney dialysis treatment, and *artificial hydration and nutrition*. The term does not include the administration of pain management medication, the performance of a medical procedure necessary to provide comfort care, or any other medical care provided to alleviate a patient's pain." [emphasis added]

In other words, under the typical Texas Directive to Physicians, a patient's feeding tube would be withdrawn just as was done in Terri Schiavo's case. I have had clients recently who wanted to reinforce this notion by making specific reference in their document to the Schiavo case. Others may have no problem turning off a respirator, but do not consider nutrition and hydration to be "artificial" means of life support.

I heard a bioethicist on TV recently opine that at least 75% of all deaths in America involve some decision on the part of the patient or family. I do not know if that is true, but it would not surprise me. End-of-life decisions are made every day in hospitals across this country. If your loved ones ever face such a decision regarding you, make sure they aren't left wondering (or fighting) over what you would want.