No Adult is “Too Young”
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In 2005 the national news media accounts of Terry Schiavo became a hot topic around water coolers and kitchen tables all over the country. Ms. Schiavo was the Florida woman at the center of a battle that pitted her husband against her parents regarding whether she should receive food and water by artificial means because she was in a persistent vegetative state. Everyone had an opinion either “for” the husband or “for” her parents. The key issue is: what did Terry Schiavo want? Her husband said she did not want extraordinary measures, including food and water, and her parents said she did. No one knew for sure, but it seemed that everyone had an opinion. Her case was one of the most gut wrenching cases of our time because it brings up an issue all of us could face. We find ourselves asking, “What if that were me?”

Terry Schiavo generated a host of legal cases. The Florida Supreme Court heard several appeals. Congress got involved, as did the then President, George W. Bush. The United States Supreme Court denied a petition for certiorari and, as a result, eventually the feeding and hydration tube was removed and Ms. Schiavo died on March 31, 2005. While the opinions are many, there is one thing that everyone in the case agreed upon, and that is that there would be no case at all if Ms. Schiavo had completed a directive, “living will” or durable power of attorney setting forth her wishes.

In Alaska, effective January 1, 2005, there is no longer a “living will” as that statute was specifically repealed.[i] Alaska now has the Alaska Advance Heath Care Directive, which is based on the California Directive. A directive is a written document that sets forth what a person wants to happen to them in the event of their incapacity. Every state – including Alaska – has some version of a directive or a living will. A durable power of attorney appoints a person to take care of your personal affairs in the events you cannot. It is “durable” meaning that it is still effective should you become incapacitated.

The directive is literally printed in the statute and the specific language is “on the books.”[ii] The new directive replaced the former “living will” statute. Those living wills and durable powers of attorney signed before January 1, 2005 are “grandfathered in” so they are still valid. The new directive is quite comprehensive and it is worth taking a look at. It is also a good idea to discuss these issues with your doctor and to make sure he/she also has a copy of your directive.

Alaska’s directive is very similar to California’s. A form can be completed and is valid and an attorney does not need to draft the form. The directive sets forth basic medical choices, including whether the person wants food and hydration, as well as pain medication. The directive does not grant or determine financial powers. Most hospitals require a directive be on file before admission. The directive also names a person to make medical decisions on behalf of the incapacitated person. In Alaska the directive needs to be witnessed by two disinterested people or signed before a notary. It is best to do both.

The directive becomes effective when the principal (the person who signed the healthcare directive) lacks capacity and that decision is made by a primary physician. The power granted in the directive form can be made effective upon signature, but it remains in force if the principal lacks capacity, which is different than a standard power of attorney, which is revoked unless it is made “durable.” Being “durable” simply means that the validity of the document survives the principal’s incapacity.

A directive can be revoked in any way that shows intent to revoke such as: tearing, burning, or writing "revoked." Total destruction is the best way to revoke so that there is no question of what the principal wanted. The agent designation must be in writing or the principal must orally inform the supervising healthcare provider of his/her designated agent. It is always best for this to be in writing. Divorce, dissolution or legal separation revokes a spousal agency.

If there is no directive, an adult may designate a surrogate by informing the healthcare provider, orally, who they want to serve. If that is not done, then the statute sets forth the priority of who can act -- a spouse, adult child, parent, or adult sibling. If there is no one else, someone else who cared for the person may act. Obviously there could be issues if there is more than one adult child, parent or sibling and, of course, those people could disagree on what should be done. Moving down the list of priority, it is likely that at some point a medical provider will want the designated person to have court authority, most likely in the form of a guardianship, so that the medical provider knows that he/she is dealing with a person who has authority to act. The cost – both emotional and financial – can be avoided by a directive. A directive only becomes important when the principal is in a medical crisis and at that time, the last place family and friends want to be is in court!

Anyone over the age of 18 should make a healthcare directive. Terry Schiavo was in her mid-20's when she had the healthcare crisis that led to her incapacity. Any competent adult can complete the form and should complete the form so that his/her wishes are in writing.

In order to cover all of your needs in the event of incapacity, it is also a good idea to have appointed a trusted person as your attorney-in-fact in a written Power of Attorney so that he or she can take care of your financial and personal affairs during the period you cannot. The Power of Attorney can be made "durable" so that it is still effective should you become incapacitated.

A copy of the statutory Alaska Advance Health Care Directive is available to be downloaded at: www.alaskalaw.com. Go to "Forms" and look for the link for the Alaska Health Care Directive. It is advisable that you discuss this form, which is straight out of the statute, with your own attorney to make sure it fits your personal situation and that you complete it correctly.

No one over the age of 18 is "too young" for an Advance Health Care Directive. Save yourself and your loved ones heartache, headache, and money. Get an Advance Health Care Directive so that your loved ones know what you want to happen should you face a debilitating illness. No American family should have to face the heartbreak that the Schiavo family faced.

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[i] Alaska Stat. 13.52.010 et seq.
[ii] Alaska Stat. 13.52.300.