

SCHIAVO CASE SPURS INTEREST IN HEALTH CARE DIRECTIVES

The recent publicity about the Terri Schiavo case has caused increased public interest in health care directives. Unfortunately, the scenario presented by the Schiavo case is not new. Many of us remember the cases of Karen Ann Quinlan, who died in 1985, and Nancy Cruzan, who died in 1990. Each of these cases involved (1) a patient diagnosed to be in a persistent vegetative state; (2) a disagreement among family members and others about whether the patient should be kept alive by life sustaining apparatus, procedures or treatments; (3) numerous and costly (financially and emotionally) court trials and appeals; and (4) the intervention of non-family members for moral, religious or political reasons. Probably most importantly, none of the patients in these highly publicized cases had executed a written health care directive.

Many estate planners believe the difficulties encountered by the families in these cases could have been completely avoided or at least substantially reduced if the patient had executed a written health care directive before becoming disabled. There are two general categories of health care directives: "living wills" and health care powers of attorney.

A living will is a document whereby an individual indicates which procedures or treatments may or may not be implemented, continued or withdrawn under specified circumstances. Some living wills contain a list of medical procedures that the patient can use to indicate whether certain procedures shall or shall not be permitted under described circumstances.

A health care power of attorney appoints a person to act as agent to make health care decisions for the patient when the patient is determined to be unable to make his or her own health care decisions. In our opinion, this document is more flexible, since the agent is authorized to make any decision relating to the patient's health care, not only those involving life sustaining procedures but the whole range of decisions relating to a patient's health care.

We recommend that every adult have a written health care directive and review it periodically. If you have a health care directive that is more than two years old, it is likely that it should be updated to comply with the recent federal HIPPA law and regulations relating to access to medical information.

Please do not hesitate to contact us if you have any questions about health care directives or if we may prepare one for you.

Estate Planning and Probate Practice Group

James E. Rembolt
jrembolt@remboltludtke.com

David A. Ludtke
dludtke@remboltludtke.com

Alan D. Slattery
aslattery@remboltludtke.com

Rick D. Lange
rlange@remboltludtke.com

Timothy F. Clare
tclare@remboltludtke.com

Timothy L. Moll
tmoll@remboltludtke.com

F. William Schellpeper III
fschellpeper@remboltludtke.com

Rembolt Ludtke LLP

1201 Lincoln Mall, Suite 102
Lincoln, NE 68508
Fax: 402 / 475-5087
402 / 475-5100

125 South 6th Street
Seward, NE 68434
Fax: 402 / 643-3969
402 / 643-4770

www.remboltludtke.com

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