

Practical Probate: Advance Directives

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In my last column, I discussed health care representatives as a tool that adults may use to plan for incapacity. Another tool that may be used along with an appointment of health care representative is the advance health care directive, commonly known as a Living Will.

Of course, as long as someone is able to understand their medical condition and can communicate with their health care providers, there is no need for a health care representative or Living Will. It's when someone can't actively take part in health care decision-making that a Living Will and health care representative may be useful.

Effective October 1, 2006, Connecticut law allows Living Wills to include direction on any aspect of a person's own health care. Previously, Living Wills were limited to direction regarding life support only.

A Living Will is a written document. It directs a physician or other health care professional to provide or to not provide medical, surgical or other measures should a terminally ill patient become incapacitated.

A Living Will must be prepared and signed well before incapacity strikes. Once someone becomes incapacitated, it's not possible for him or her to effectively execute a Living Will. Certain formalities must be observed

or the Living Will won't be valid. A "do it yourself" approach is not recommended. I've seen situations as a Probate Judge where a well-meaning friend or relative "drafted" a Living Will, which was then signed. Because the Living Will document was not correctly understood, the patient's "wishes" were the exact opposite of what the Living Will indicated.

In Connecticut, physicians and licensed medical facilities are granted immunity from criminal and civil liability should they remove or withhold life saving or life-sustaining measures for incapacitated patients who are permanently unconscious. In order for this liability protection to apply, however, a number of requirements must be in place. One of them is that the physician or medical facility considers the patient's wishes. A Living Will is one way to document and communicate your wishes to others.

In addition to a Living Will, there are other ways you can communicate what measures you would and would not want should you become unconscious. Discuss your wishes with your healthcare provider, and have him or her make a note of it in your medical record. Discuss your wishes with family members before there is a crisis. This can go a long way toward ensuring your wishes are both known and followed, in addition to providing family members with

some measure of peace of mind should they need to make such decisions. The best approach to making it more likely your wishes will be followed is to use all of these measures so everyone – your family and health care providers – are well aware of your wishes, and they are documented.

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