HEALTH CARE DIRECTIVES

A health care directive allows an individual to appoint a health care agent to make health care decisions when the individual lacks decision-making capacity. A Minnesota health care directive grants various powers to the agent, including: the authority to review and release medical records; to act consistently with the stated wishes of the individual; to have access to the individual at all times; to choose were the individual lives when in need of health care and what personal security measures are needed to keep the individual safe.

A health care directive allows an individual to express their intentions regarding their health care. For instance, if deemed to be in a terminal condition or a vegetative state by the attending physician, the individual can express a desire to be allowed to die naturally without the aid of artificial support or resuscitation. Similarly, the individual can express a desire to be kept comfortable and free of pain even if though the administration of such pain medication may hasten the individual’s death. A health care directive can also be used to express intentions regarding organ and tissue donation and whether cremation or burial is desired.

Of the powers granted, the health care agent’s ability to determine where the individual lives is arguably the most important. The necessity of this power often arises when an individual is no longer mentally capable of caring for themselves and are unwilling to voluntarily move to a suitable living environment. If a health care directive is not in place, or if the health care directive fails to grant this power, a guardianship proceeding would be necessary for a determination of incapacity and appointment of a guardian. Only after the unnecessary expenditure of time and money will the guardian have the authority to determine where the individual lives. Be advised, all health care directives are not the same. A health care directive provided by a hospital or clinic may not grant the power to determine where the individual lives as these institutions are primarily interested in matters related to the administration of health care and not the individual’s living arrangements.

Finally, selection of the proper health care agent is critical. For end-of-life situations in particular, a health care agent should understand their duty is to follow the individual’s wishes as stated. Significantly, it is not the agent’s responsibility to “pull the plug”. Rather, it is the attending physician that will determine whether the individual is in a terminal condition or vegetative state. It is only upon that medical diagnosis that the health care agent will express the individual’s intentions as stated in the health care directive.