

# THE MORLEY LAW FIRM, PLC

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## Advance Directives

### What you need to know.

The right to refuse or discontinue medical treatment has long been recognized in the United States. In a landmark case decided nearly a decade ago, Justice Cardozo held that “Every human being of adult years and sound mind has a right to determine what shall be done with his own body; and a surgeon who performs an operation without his patient's consent, commits an assault, for which he is liable in damages.” *Schloendorff v. The Society of the New York Hospital*, 105 N.E. 92 (1914). This interest in refusing unwanted medical treatment is a fundamental right protected by the 14th Amendment of the Constitution.<sup>1</sup> *Cruzan v. Director, Missouri Department of Health*, 497 U.S. 261 (1990).

In ordinary circumstances, the legal doctrine of informed consent protects this interest. The doctrine requires healthcare providers to give patients sufficient information to form reasoned decisions about their medical treatment options. And even when patients' decisions are contrary to the healthcare

providers' recommendations, the patients' decisions must be respected nonetheless. Indeed, competent patients have the right to refuse even life-sustaining medical treatment.

Sometimes, however, patients' wishes regarding their own medical treatment are not always respected. This may be because patients cannot communicate their wishes. Or it may be because healthcare providers insist on a particular course of treatment.

### What you should know.

Advance directives are important tools that enhance patients' right to self-determination by allowing patients to convey their wishes in advance regarding future health care. Two important types of advance directives are Health Care Powers of Attorney and Living Wills. A Health Care Power of Attorney is used to appoint a representative to make medical decisions for you in the event you are incapacitated. The person making the instrument is the “principal” and the person designated as the representative is the “agent.” The agent should make decisions with your wishes in mind, so it is important to choose someone you trust and

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<sup>1</sup> This right also may be protected by the First Amendment of the United States Constitution when refusal of medical treatment is based upon religious beliefs.

to talk to them in advance about your desires and values.

A Living Will is a legal instrument that is used to make your wishes known regarding life prolonging medical treatments. For example, a common wish expressed in a Living Will is that artificially administered food and fluids NOT be administered if you are in an irreversible coma. On the other hand, you may express a desire that your life be preserved to the greatest extent possible. Regardless of your preferences, the important thing is that you have a voice.

Some estimate that less than 5% of Americans have executed an advance directive. If you do not have an advance directive, you are giving up the right to determine what will be done with your own body if you are incapacitated. It is important to realize that it is your job to communicate your health care wishes.

Setting forth your wishes in a Living Will and choosing someone as your health care agent enhances the likelihood that your rights will be respected.

If you prepare an advance directive, you should give a copy to your healthcare provider. You also should tell your friends and family that you have an advance directive and may even considering giving them a copy too. In 2004, the Arizona Secretary of State created a Registry for advance directives. The Registry is a database for the storage of advance directives that is a safe and confidential place to store your advance directive. Health care providers and your friends or family can access your advance directive from the registry using information you provide.

If you would like THE MORLEY LAW FIRM, PLC to prepare your advance directive, contact us today.