

## **SCHIAVO CASE BRINGS HEALTH CARE DIRECTIVES TO FOREFRONT**

Kathleen Kienitz, Esq., CELA\*

\*Certified Elder Law Attorney

Appeared in Lewiston Sun Journal, April 28, 2005

I am sure that most people reading this have been quite saturated with news about Terri Schiavo and her family's struggle over the end of her life. As tragic a situation as that must have been for her family, one good thing that came out of it was that throngs of people all over the country have become more aware than ever of the importance of making end of life decisions and putting them in writing. If Terri Schiavo had made written advance health care directives, her case would likely have never gone to court or made the news.

Her husband maintained that Terri had verbally expressed that she would never want to be kept alive with tubes if she was in a permanently vegetative state. The court cases centered on the dispute about whether she had actually expressed these wishes. Despite the heated rhetoric in the Schiavo case, most people who come to the point of contemplating end of life decisions choose as Terri Schiavo's husband said she did - to not have life artificially prolonged if there is no hope of regaining a conscious, meaningful life. Most everyone who has watched a loved one languish in a nursing home comes to the realization that they would not want to have their own lives prolonged unduly under such circumstances.

The end of life decisions authorized in Maine and under most states' laws are not to be confused with euthanasia. Euthanasia is the proactive process of ending life, akin to a mercy killing which typically involves the administration of a lethal dose of drugs. Euthanasia is only legal in one state, Oregon, and only if very strict guidelines are met; for example, the person must have a terminal illness, must be examined by mental health specialists and undergo a waiting period. By contrast, advance health care directives only allow one to forego treatment.

Maine, like most other states, has a statute that makes such directives legally binding. In addition, the Maine statute sets forth a model health care directive form. The most important aspect of this form is the appointment of an agent to carry out one's health care decisions in the event of incapacity. The person named in the document will have legally binding authority to make these decisions regardless of the person's familial relationship.

In addition to naming an agent, an advance health care directive should make end of life directives. The Maine statutory form defines the point at which life should not be prolonged as follows:

"I do not want my life to be prolonged if (i) I have an incurable and irreversible condition that will result in my death within a relatively short time, (ii) I become unconscious and, to a reasonable degree of medical certainty, I will not regain consciousness, or (iii) the likely risks and burdens of treatment would outweigh the expected life benefits." Alternatively, one can choose to prolong life as follows: "I want my life to be prolonged as long as possible within the limits of generally accepted health-care standards." As an attorney who has practiced for the past fourteen years and helped hundreds of people set forth their advance health care directives, I have encountered only a couple of people who have chosen to prolong life, no matter what.

The form also has an option regarding specific interventions that are typically used to prolong life. These include artificial hydration and nutrition. The form language sets out the following: “Artificial nutrition and hydration must be provided, withheld, or withdrawn in accordance with the choice I have made in paragraph (6) (the end of life language).” It is this section that would have given Terri Schiavo’s husband the indisputable authority to direct that her feeding tube be withdrawn.

The language used in our Maine statute is not unique and is almost verbatim of what is used in several other states. These laws and forms are a direct result of the amazing innovations in medicine and the ability to prolong life over the past few decades. Thirty years ago, Terri Schiavo would have died within days or weeks of her initial collapse; tubal feeding was not an option. Although it is wonderful that such life prolonging options exist, the downside is that most everyone has stories of witnessing this relative or that friend kept alive in a miserable state just because these technologies were available. This is precisely the reason that living wills and advance health care directive laws have been enacted in virtually every state and why it is so important that everyone take the time to set down his own wishes in writing.

Although most attorneys will prepare health care directives for their clients, it is something most people can do on their own and they are generally available for free in most of the major hospitals and medical centers in Maine.

*Laws and regulations are subject to change. The information presented here is for general use and does not constitute legal advice. If you have legal issues, you are encouraged to consult an attorney to obtain legal advice that is relevant to your specific situation.*

Call us at 207-783-8500 or visit: [www.elderlawmaine.com](http://www.elderlawmaine.com)