MAKING YOUR WISHES KNOWN®
Through
MY FINAL DECISIONS™

Rarely a day passes that we don't or hear about death, illness, serious injury, and the trials of the families who endure it. But we're usually insulated from those who go through it -- or so we think. "It will never happen to me," we conclude. That's probably what Nancy Cruzan and Terri Schiavo thought.

On December 26, 1990, Nancy Cruzan was allowed to die after spending eight years in a permanently unconscious state with no hope of recovery. During four of her last eight years, Nancy's family was involved in an emotional, physically wrenching, and expensive controversy with the State of Missouri to allow her to die. The dispute arose because Nancy Cruzan had not sufficiently made her healthcare wishes known.

The United States Supreme Court ultimately decided that, although Nancy had the right to choose what medical treatment she wanted -- and didn't want -- before her accident when she was able to make decisions, there was not enough proof to conclude what her wishes really were. Since she had not made her wishes known in writing before her accident, she was not able to resist the fruitless efforts that delayed her normal process of dying afterwards.

Unwittingly, Nancy Cruzan forfeited control of her life to the State of Missouri and to the courts and placed a quite unintended burden on her family. Had she adequately expressed her desires in writing before her injury, her wishes would have been followed after she became permanently unconscious.

On March 18, 2005, Terri Schiavo's feeding tube was removed after years of legal wrangling between Terri's parents and her husband over conflicts of interest and who should make Terri's final decision. Terri's parents believed her husband had conflicts of interest when he fathered children by another woman while Terri was incapacitated – but

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the courts did not. Had Terri put her wishes in writing, all of it could have been avoided.

Life is both uncertain and unpredictable. We do not know when we are going to die or if some accident or illness will render us incapable of making our medical care, financial, or legal decisions. If we do not take care of these matters while we can, we will place far greater emotional and financial burdens on our families. Our families will be left not only to wonder what our wishes would have been, but also with to convince judges that we would -- or would not -- have wanted to be artificially sustained if there was no chance of real recovery. In the end, if we don't act, the courts may be called upon to make our decisions for us.

If we die without a will, our assets will be distributed according to the law of the state where we live, regardless of what we may have wanted. Similarly, if we don't put our final decisions in writing, stating the medical treatment we want -- and don't want, the legal system will dictate what happens to us, regardless of our intentions.

Today, healthcare planning is an integral part of estate planning. Of the documents you should consider, some deal with property and the others deal with health care.

- Your **Durable Power of Attorney** gives authority to a trusted agent to handle your finances during your life, especially if you are incapacitated. Your **Last Will and Testament** allows you to make decisions about how your property will be divided upon your death.
- "**Advance Healthcare Directive"** is an all-encompassing term that includes the Living Will (generally limited to end of life issues only), the Durable Healthcare Power of Attorney (which varies from state to state), and the Medical Directive (which may be attached to other advance directives so you can be more specific with your instructions_. Together, these documents allow you to make decisions

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now about how your medical care will be handled later if you become incapable of making those decisions yourself.

The worst possible time to make any decision is when your options are limited or nonexistent. To be prepared to make important decisions, you need not know all the answers, only the questions to ask.

My Final Decisions™ is a unique **Advance Health Care Directive that is** designed to make you aware of your options so you can maintain control of the quality of your life in the way you deem appropriate. **My Final Decisions**™ is a combination of Advance health Care Directives that allows you to state your intentions and instructions not only regarding end of life care, but also about a myriad of other situations in which we could find ourselves and which must be addressed.

In addition to allowing you to stating your health care decisions in writing for end-of-life issues, **My Final Decisions™** gives you the opportunity to give trusted individuals your preferences and instructions about how you wish to be treated 1) should you be unconscious, but not terminal; 2) should you have dementia or Alzheimer's or a head injury that affects your ability to state your wishes; 3) should you be in a nursing home by allowing your agent to exercise your rights under the Patient's Bill of Rights; and 4) about post death issues, such as organ transplants, burial, cremation, the type of service you desire, and other directions.

Depending where you live, the goal of making your wishes known may require a number of legal documents, some of which may not be available where you live because the law is different in every state. **My Final Decisions™** allows you to put your health care preferences and wishes in writing in a self-guided fashion to allow you to be the architect of your future, rather than allow third persons to make these important decisions for you.

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As part of the planning process, we want to give you a brief overview of issues you may want to consider. We are not providing legal advice, but an outline of documents you should consider.

FOR YOUR PROPERTY

If you don't plan with a will and a durable power of attorney or trust, you will lose control over who handles your finances should you become incapacitated, and where your property goes upon your death. To be effective, your will and durable power of attorney must comply with the law of your state and you must be mentally competent when you sign them. You can revoke or change these documents at any time before your die so long as you are mentally competent when you do so.

DURABLE POWER OF ATTORNEY

All states authorize people to sign powers of attorney through which property decisions can be made for you by others. A power of attorney is a written document by which you give someone else -- called an attorney-in-fact, a proxy, or an agent -- the legal authority to act for you under certain circumstances. You may name any person over the age of 18 to be your agent.

In most states, laws governing durable power of attorney laws specifically refer to property decisions, not medical decisions. But some states allow an agent to make medical decisions under a power of attorney.

You can decide and control how much power to give your agent and under what conditions the power may be exercised. For example, you may give you agent authority to deal only with one piece of your property or with all of your property. You may give your agent power to act immediately or only if you become incapacitated.

There are two kinds of powers of attorney:

1) A regular power of attorney. The agent's power begins when you sign and ends

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when you die or become incapacitated. This means that if you become incapacitated, your family will be required to go to court to get a guardian appointed to handle your financial affairs. These are rarely used today.

2) A durable power of attorney. The agent's power begins when you sign and remains in effect even if you become incapacitated, but terminates on your death -- when your will takes over.

You will want to consider a durable power of attorney because if you become incapacitated, your private business will not be made public in the courts, and your family will be spared the expense of these proceedings.

If you don't want the agent's power to become effective until you become incapacitated, then you may want to consider a "springing durable power of attorney," that is, one which "springs" into effect when you become unable to act for yourself. In order to do this, your document should define the event or events under which the document becomes effective.

You may change or even cancel a power of attorney at any time after you sign it -- so long as you still have mental capacity and follow with the law of the state where you live. Because the law of each state is different, and because each situation is different, you should consult with your attorney before making your final decisions. Find out about the law of your state before you act, and be sure to make careful and considered judgments before you sign anything.

LAST WILL AND TESTAMENT

Through your Last Will and Testament, you control what happens to your property at your death. A will does not become effective until you die, so you may change or even cancel it at any time after you sign it -- so long as you still have mental capacity and follow

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with the law of the state where you live.

Without a will, you forfeit to the state where you live your right to direct where your property goes when you die. Without a will, unintended results can, and frequently do, occur.

A will not only distributes your property in the way you desire when you die, but also names the person you choose to administer your estate. It can even provide for the person you want to be guardian of your minor children and, depending on how it's prepared, it may even be able to save your estate from taxes!

Because each person's situation is different and because there are some technicalities to be avoided, a lawyer should help you prepare your will. Seeing a home-made will set aside by the courts because someone failed to follow the rules is most unfortunate. The cost of a simple will is not great, but the protection a properly drafted will affords is priceless.

ADVANCE HEALTHCARE DIRECTIVES

The American Medical Association estimates that 70 percent of us will face the issue of whether to prolong or terminate life support during our lives -- yet less than 30 percent of us have signed advance directives.

Like your right to say how your property will be distributed through your will, you also have the right to make your own healthcare decisions. But, like not having a will, if you don't make your healthcare wishes known before the need arises, you may forfeit your rights and allow the law of the state where you live – sometimes referred to as the “Adult Health Care Consent Act” – to stand in the place of your written instructions.

"Advance Healthcare Directives" -- interchangeably called "Advance Directives," "Healthcare Directives," or "Medical Directives" -- are a number of documents that you

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can use to express your wishes about your future medical treatment.

Advance Health Care Directives do not take effect until you become incapacitated or are otherwise unable to make or express your decisions. Until that time, you can change or revoke these documents. Since the law of each state is different, let's talk about the basics of the most common Advance Health Care Directives:

THE LIVING WILL

The Living Will is probably the best-known type of Advance Health Care Directive, and also the most limited and restrictive.

Simply put, with a living will, you can decide if you want to be kept alive by artificial means if there is no reasonable hope of your recovery. It allows you to make decisions in advance to not prolong the natural process of dying under circumstances that are determined by the law in your state. Generally, living wills become effective when a person is terminally ill or persistently vegetative (that is, has no brain waves) and would otherwise die in a short period of time.

Similar to a will that allows you to control the disposition of your property, a living will permits you to control the use of extraordinary medical treatment that could otherwise be used to fruitlessly prolong your natural process of dying only if you are terminally ill, suffer from a permanent condition defined by your state legislature, and are incapable of making decisions for yourself. This means that if you have Alzheimer's Disease or a heard injury, for example, most living wills will not apply.

Although they vary from state to state, living wills have some common features.

1) Generally, living wills become effective only in the event of a terminal illness where death is expected in "a short time" and you are incapable of making your healthcare decisions. "A short time" has been defined as "imminent," "within a few

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months," "six months," "shortly," and so on.

2) The existence of the triggering terminal illness or permanent unconsciousness must be certified by two or more physicians before the living will takes effect.

3) Generally, directions can be given for withholding or withdrawal of life-sustaining treatment so you can refuse life-prolonging medical procedures.

However, there are wide variations about how general or how specific the instructions must be. For example, some state laws allow your to refuse artificial feeding and hydration, but others forbid these directions. Some states have extended the use of living wills to permanent unconsciousness.

Although living wills provide a step in the right direction, they are limited and do not deal with many problem areas we see today. For example, doctors say that it is often difficult to certify the triggering event which makes the living will effective -- the existence of a terminal illness that will shortly result in death. In some states living wills do not apply in the non-terminal cases -- such as the comatose or persistently vegetative patients like Nancy Cruzan who can be maintained indefinitely on life support systems.

Although most medical practitioners recommend a living will and although most states have laws on the books that give you sample, non-binding forms, you should realize that....

1) A LIVING WILL IS LIMITED IN APPLICATION. Since it focuses on the desire to have medical treatment terminated or never started, the living will is generally restricted to withholding or withdrawing heroic measures rather than a carefully thought out directive of health care decisions. Once prepared, most people feel secure and do not review their situations regularly. And this may be a mistake.

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2) <u>THE LIVING WILL CAN BE TOO VAGUE</u>. Many of the state laws and living will forms have very vague language concerning just what type of treatment is to be withheld or not continued. Therefore, doctors often do not know with certainty what your desires really are.

3) <u>THE LIVING WILL IS GENERALLY NOT SUFFICIENT</u>. Many living will laws only make the document effective if the patient is terminally ill. If this is the case, it will not be effective if the patient is in a permanent coma or suffers from Alzheimer's disease.

4) <u>BOTTOM LINE</u>. Although the living will is an important part of you making your healthcare wishes known, having a living will does not necessarily mean that you are in control of all of your potential health care decisions. So look into the other types of Advance Directives that might be available in your state.

Living Wills are generally statutory form documents available in each state.

DURABLE HEALTHCARE POWER OF ATTORNEY

The United States Constitution guarantees you the right to decide what medical treatment you will accept or decline. As long as you are mentally and physically able to communicate your decisions, you remain in control. However, as we have seen, life is neither predictable nor certain.

If, for example, you are unconscious for any reason and you cannot communicate your desires, where do your doctors turn to make important treatment decisions? If it is up to your family, and you have not made your wishes known in writing, then they may spend a lot of time, not to mention money, in courts trying to prove what you would have wanted.

So, in order to fill in some of the gaps that the living will leaves, many professionals suggest that, **<u>instead of a living will,</u>** you should consider signing a **Durable Healthcare**

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Power of Attorney and an Advance Health Care Directive which include end of life directions.

While the laws of each state legislature differ in varying ways, all states and the District of Columbia now have laws authorizing general "durable" powers of attorney, but not all specifically authorize durable healthcare powers of attorney by which you can give specific instructions or authority to your agent to act for you by making all healthcare decisions. In some states, the general durable power of attorney covers healthcare decisions, while in others it doesn't.

The durable health care power of attorney overcomes many of the limitations created by living wills. Like the durable financial power of attorney, these documents are called "durable" because, unlike the regular power of attorney, they remain effective after the person who signs it -- called the principal -- becomes incapable of making decisions.

While it is not absolutely clear, many authorities feel that you have the absolute right to sign a health care power of attorney. However, some states have specific laws on the books that authorize the appointment of a health care agent, while others rely on court decisions. Because of the importance of the question, you should find out the law in your state before you complete your planning.

Durable health care powers of attorney have several advantages over living wills. Depending on the law of your state, durable healthcare powers can cover a broad range of directions and can either be detailed or general:

1) They can direct that everything possible be done to preserve your life, or that nothing be done, or that some procedures be done and others not be done.

2) They can be flexible enough to deal with unforeseen developments by giving the agent the authority to act as the agent sees fit, or they can specifically limit the

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agent's authority to act.

3) They can also provide that the power is not effective until you are unable to act, and then you can direct how the agent is to act.

Nevertheless, like living wills, these health care powers have drawbacks too, some of which are as follows:

1) One problem is deciding who to appoint as one's agent--what person should be given authority to make life or death treatment decisions for you when you cannot? This is a particularly troublesome matter for elderly persons who have no family or friends to turn to.

2) Another problem is that the durable health care power may be ignored either by the agent or by the caregivers. If you have signed a health care power attorney, your medical providers will turn to your agent and, barring some unforseen events, they will be bound to follow his or her decisions.

The main advantages of using a durable heath care power of attorney include, but are not limited to....

1) It is effective anytime you are unable to make decisions for yourself.

2) It is not limited to withholding or withdrawing treatment as is the living will. Instead, you can provide for proactive treatment if that is your desire.

3) It can cover situations which you might not foresee. It designates one person to make the difficult health care decisions.

4) It helps eliminate intra-family disputes that can occur during these trying times.

The most important thing to do before signing a healthcare power of attorney is to choose the person you would like to act as your agent and discuss your intentions with that person. And after you sign it, you should discuss your desires with your agent and

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even give your agent a list of your desires. Let him or her know what are your wishes concerning life support procedures and what your feelings are toward extraordinary life prolonging medical procedures.

Then if your agent is later called on to make decisions, he or she will be able to act effectively on your behalf. And don't forget to let your family and doctor know about your health care power of attorney.

You can revoke, amend or change a healthcare power of attorney anytime after you have signed it. Simply destroy the original and any copies you have or have sent out. Be sure to write each person to whom you have given a copy.

MEDICAL DIRECTIVE

What if you are reluctant to appoint a health care agent or you do not have a close friend or family member who is willing to serve? Or what if you are worried that when the time comes for a decision, it may be difficult or impossible to contact the health care agent?

Another document is becoming more widely used and can help you stay in control of your medical care: **The Medical Directive**. Unlike the living will, the medical directive's focus is on positive health care decisions. A highly flexible instrument, the medical directive is not vague as is the living will.

A medical directive is a written document that states your wishes concerning medical treatment if you later become unable to communicate your wishes. The medical directive gets its power from your constitutional right to select or refuse medical treatment while you are mentally competent.

It is your expression, in legal form, of what treatment you wish to accept or refuse.

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It does not become effective until you are mentally incompetent to make the health care decisions yourself, regardless of whether or not you are terminally ill.

While it is very broad in scope, no medical directive can foresee all circumstances. That is why we suggest that the medical directive be coupled with a living will and the appointment of health care agent.

The Medical Directive can also serve to give your healthcare agent a better idea of what your wishes are so that any decision the agent makes are truly your decisions, not the agent's judgment alone.

Since the medical directive is a relatively new document, few state laws specifically authorize it. However, following the Cruzan decision, it appears that such a directive would be followed by the courts as a clear expression of your desires.

Since the medical directive is effective only if you become mentally incapacitated, you can revoke it anytime prior to it becoming effective.

SUMMARY

You must remember that the laws in each state are different. What we have given you is an overview to acquaint you with the basics of Advance Health Care Directives. If you wish to remain in control of your property and your health care treatment, you should consider signing a durable power of attorney, a last will and testament, a durable health care power of attorney with medical directives.

After you sign these documents you should place your will in a safe place -- your safe deposit box or leave it with your lawyer. Regardless, make sure to tell the person who you have chosen to become the personal representative of your estate where it is. In some states, a power of attorney must be filed with the records of the clerk of court. Be sure to ask your lawyer.

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The healthcare documents regarding your medical treatment should also be placed in a safe place, but not a safety deposit box. We suggest that you give your doctor, lawyer, minister, friends, and relatives copies of these documents because they will do you no good if the people who will be around you in the hospital don't know they exist.

To remain in control, you must sign documents that communicate your desires in a clear and legally sufficient way. Then, you should let friends, relatives, doctors, lawyers, and ministers know what your desires are.

Some suggest that signing all of these documents is too much trouble, but based on the current variations in the laws from state to state, this approach seems safest and the best way to make your wishes known. You may consider combining some of these documents.

THE FUTURE

What happened to Nancy Cruzan and her family and Terri Schiavo and their families has focused our attention on the matter of patient control over medical treatment. And we continue to see families thrown into the news each day because the courts are being asked to intervene in decisions that would best be made by the person involved.

Our purpose is not to tell you what to do. You may want to keep all life support systems functioning as long as possible. You may want your doctors to use all means to keep you alive. You may desire that no extraordinary means be used. These are your privileges and rights.

The important thing is for <u>YOU</u> to make the decision, not the state, not the courts, and not those whom you may not trust.

At best, litigation is costly, time-consuming, and uncertain. The overburdened judicial system is ill-prepared to deal with life and death decisions. This litigation

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becomes emotionally exhausting to the judge and the family. Litigation often pits family members against each other and against healthcare providers. Litigation needlessly invites the intervention of public agencies, the media, and self-appointed guardians of the public interest.

Oftentimes, the glut of "interested parties" involved in attempting to protect the rights of the patient include not only the family, but also the doctors, other caregivers, and state agencies. All too often, this results in unwieldy, lengthy proceedings in the course of which the patient dies and family and friends are not only rubbed raw emotionally, but also impoverished.

While our legal system is beginning to develop some alternatives that are better than litigation, but they will take some time. There is a great need to educate the public and the health care community about the availability and the advantages and disadvantages of Advance Health Care Directives.

We discuss our wills and our estate plans, but we are often unwilling to discuss the dying process, even with close family members. We should try to address these matters and come to understandings within our families and with our doctors and healthcare providers. Failure to communicate is the most commom reason the courts become involved in what should be personal decisions. Too few people have Advance Directives.

There is also a great need to educate doctors and healthcare providers about the existence and validity of Advance Directives. Otherwise, they may refuse to accept our wishes for a variety of reasons.

There are no provisions for either enforcement of or penalty for non-compliance with advance directives, and there are additional practical difficulties--for example....

- Who should get copies?
- What if there is no regular doctor?

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- How is notice of the document to be given to the hospital in an emergency when the patient is unconscious?
- How can living wills or durable powers be revoked?
- Are documents signed in one state valid in another?

MY FINAL DECISIONS™

Now that you have become acclimated with what you should consider in planning for the uncertainties of life, we would like to introduce you to **My Final Decisions™**, the only self-guided way in which you can combine the end-of-life health care decision-making of a living will with the flexibility of a Medical Directive and include directions about your burial and other issues that, if not specifically handled, could lead to divisive and expensive family disputes.

Because the decisions you are about to make should not be taken lightly, completing **My Final Decisions™** can not be accomplished in five minutes. You will be asked to first list the names, addresses, and telephone numbers of those you would want to act as agents for you should you not be able to express your wishes.

Then, as you go through the self-guided process, you will have the opportunity to express your preferences about the important issues that surround planning for the uncertainties of life.

Advance Health Care Directives are not cure-alls, but they are far better than nothing. At the very least, they indicate what we as patients wanted when we were competent to make the decision. Whatever your decision may be, we strongly urge you to **Make Your Wishes Known®.**

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