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MATSUMURA LAW FIRM

Wills, Trusts, Probate
And Estate Planning

Take Additional Steps to Ensure That Your Agent Has No Issues in Advocating for Your Care

Durable Power of Attorney for Health Care (Part II)

Completing Your Advance Directive Is Only The First Step

My last newsletter discussed the importance of completing a CMA Advance Health Care Directive to make your medical preferences known. This issue addresses specifics steps you should take after completing your Advance Directive to further ensure that your medical wishes are carried out.

- How important is it to be physically independent?
- How important is it for you to be able to recognize people and/or interact with them?
- What aspects of daily living are most important to you?

Because it is impossible to anticipate all medical situations that can arise, a prior detailed discussion with your agent is crucial to assist him/her in not only inferring your wishes, but also making the same decision which you would make for yourself. If your agent is confident that his/her decisions accurately reflect your wishes, your agent can better serve as an advocate for you and can feel better about assisting you.

Discussing Your Wishes With Your Agent. Your agent's role is to make the same medical decisions for you as you would make for yourself. To assist your agent, you should discuss health care specifics with your agent.

Your agent will need to know when and how aggressively you would want life-sustaining treatments applied if you are terminally ill. It is also helpful to convey to your agent your personal and other values that shape your view about death and dying. For example, you may wish to discuss issues such as:

- Should financial concerns enter into your decisions about your treatment?
- Would you prefer to stay at home during your illness as long as possible?
- Do you want your agent to take into account the effect of your illness on other people?

What if My Family Disagrees With My Agent? To ensure that your wishes are carried out, you should not only be sure your agent understands your intent, but also that your family is aware of your medical preferences. Legally, your agent has authority to make decisions for you even if your family disagrees. However, if family members disagree, they can make it extremely difficult for doctors to carry out your agent's decisions.

To reduce conflict, you should communicate your decisions with your family members, especially those that you anticipate may object. You may wish to memorialize your intent in writing, along

(continued on reverse)

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Durable Power of Attorney for Health Care (cont'd)

with an explanation about your decisions so that your family understands.

Providing Copies of Your Advance Health Care Directive.

After you execute a CMA Advance Health Care Directive form, you should give a copy of your form to:

- The person you appoint as your agent.
- Your treating physicians.
- Other responsible person who is likely to be called if there is a medical emergency.

Make sure that even if you are not able to make decisions for yourself, that your medical preferences will be carried out.

Copies of the Directive can be distributed instead of the original. Also, if you provide a copy to one physician in a medical group (i.e. Kaiser Hospital, Washington Hospital, etc.), the copy will be sufficient for all other providers within the group.

Remember, your Advance Health Care Directive can be changed or revoked by you at any time. If you do make changes, you should be sure to re-distribute your new Directive and request the return of all copies of your prior Directive from your agents and physicians.

About Me

I graduated cum laude from the University of the Pacific in Stockton, California with a Bachelor's in Science (B.S.) degree in Business Administration. I received my law degree (J.D.) from King Hall School of Law at U.C. Davis, and was admitted to the California State Bar in 1993. I completed my Masters in Taxation (LL.M.) at Golden Gate University in San Francisco in 1998.

What if the Doctor Refuses to Follow Your Directions?

Although rare, a medical provider can refuse to honor Advance Directives for moral or religious reasons. If this occurs, the physician may withdraw and transfer care to someone who will honor your requests. However, for practical purposes, it will be difficult to arrange for transfer to another physician or facility. If you believe that your directions may not be honored, speak with your physician in advance. If your physician expresses unwillingness to honor your wishes, you may wish to transfer physicians or discuss alternatives to resolve such a conflict before it arises.



Conclusion. Providing your loved ones with information they need to make medical decisions for you is a great gift. It can spare them emotional anguish and conflict. Making end-of-life decisions for someone else is difficult and painful and you can make those decisions easier by talking about your preferences while you are healthy enough to do so. Without clear evidence of your wishes, your doctor may continue your treatment for longer than you prefer, not only because of their medical training, but also to protect themselves from liability. Even if your family believes that you would not want treatment, without an Advance Health Care Directive, they might not be able to stop it without court intervention ✪

I have practiced exclusively in the area of estate planning, probate and trust administration for approximately nine years.

My husband and I live in Pleasanton and in our spare time, enjoy supporting Cal Athletics (GO BEARS!) as well as hope for a better next year for the SF Giants (Go Tim Lincecum!).

Next Issue: Gifts of Tangible Personal Property