

## Advance Directives

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## Why are advance directives so important?

- Technology can prolong physical existence without improving actual quality of life. Possibility that life of an individual in a persistent vegetative state can continue for years.
- The cost of long term and catastrophic health care can eliminate the assets that an incapacitated individual may wish to leave behind.
- Also an emotional cost to the patient's family members, who may agonize (and perhaps argue) over what patient would have truly wanted.

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## Terri Schiavo case (Florida)

- Now 40 years old, suffered severe brain damage in 1990 at age 27 after sustaining a cardiac arrest brought on by a potassium imbalance (which may have been precipitated by an eating disorder).
- No written advance directive. Ms. Schiavo has been in LTC since then, maintained with constant nursing care and with a feeding and hydration tube.
- Dispute: Husband has argued that she would have not have wanted her life prolonged artificially; Ms. Schiavo's parents have disputed that.

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## "Terri's Law"

- Prolonged court battles between husband and parents finally culminated in a Florida state court judge issuing an order to remove the feeding tube. Tube was removed October 15, 2003.
- Legislature enacted and Gov. Jeb Bush signed "Terri's Law" on October 21, 2003. Law was tailored specifically to Schiavo's situation, and gave Governor Bush authority to issue a one-time stay to prevent the withholding of food and nutrition. Feeding/hydration tube was later replaced pursuant to Bush's order.

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### Appeal of “Terri’s Law”

- Mr. Schiavo appealed. Case ultimately heard by Florida Supreme Court.
- Florida Supreme Court ruled for Mr. Schiavo, based on Separation of Power Doctrine (also found in Florida Constitution).
- Current status: situation still unresolved, as Governor Bush has requested a rehearing before Florida Supreme Court.

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### What is Washington law re: advance directives?

- Natural Death Act, RCW 70.122 et seq., allows “any adult person” to execute a document directing the withholding or withdrawal of “life sustaining treatment”.
- “Life sustaining treatment” is any medical or surgical intervention that uses mechanical or other artificial means to sustain, restore, or replace a vital function, which when applied to a “qualified patient”, serves only to prolong the process of dying. This includes artificially provided nutrition or hydration (RCW 70.122.020)

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### What is a “qualified patient”?

- Adult person who is diagnosed in writing to have a terminal condition by the patient’s attending physician (=PCP), who has personally examined the patient; or,
- Adult person who is diagnosed in writing to have a permanent unconscious condition in accordance with accepted medical standards by two physicians, (one of who is attending physician), both of whom have personally examined the patient.

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### What is considered to be a “terminal condition”?

- An incurable or irreversible condition caused by injury, disease, or illness, that, within reasonable medical judgment, will cause death within a reasonable period of time in accordance with accepted medical standards, and
- Where the application of life-sustaining treatment serves only to prolong the process of dying. (RCW 70.122.020)

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### **Checklist for a valid health care directive (RCW 70.122.030)**

- Must be in writing.
- Must be signed by declarant in the presence of two witnesses:
- Witnesses cannot be related to declarant by blood or marriage and cannot be entitled to any portion of the declarant's estate.
- Witnesses cannot be attending physician or an employee of the attending physician or a health facility in which the declarant is a patient.
- Witnesses cannot have a claim against declarant's estate upon his/her death.

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### **Types of treatments which may be described in health care directive:**

- Accept/refuse artificially provided hydration/nutrition;
- Accept/refuse pain medication at doses to relieve pain (if such medication may increase risk of death)
- Accept/refuse to have "DNR"/"No Code" order placed in/on chart.
- May list any other "life sustaining/heroic measures" that are permitted by patient; e.g. intubation, ventilation, etc.

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### **Medical record (RCW 70.122.030)**

- Directive or copy of directive shall be made part of the patient's medical record retained by the attending physician.
- Copy of directive shall be forwarded (by MD) to the custodian of records for the health care facility when the withholding or withdrawal of life support is contemplated.

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### **Revocation of health care directive (RCW 70.122.040)**

- Can be revoked by the qualified patient at any time, regardless of whether qualified patient has been declared incompetent:
- By canceling, defacing, obliterating, burning, tearing, or otherwise destroying it or instructing someone else to do so (physical destruction).
- By written revocation (signed, dated) or by verbal expression.

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### Revocation (cont'd):

- If written or verbal expression, shall become effective only upon communication to the attending physician by the declarant or by a person acting in his/her behalf.
- Attending physician shall record in pt's medical record date, time and place of revocation and date, time, and place (if different) of when physician was notified of revocation.

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### What Natural Death Act does not allow..

- RCW 70.122.100 specifically states:
  - Nothing in this chapter shall be construed to condone, authorize, or approve mercy killing or physician-assisted suicide, or to permit and affirmative or deliberate act or omission to end life other than to permit the natural process of dying.

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### Health care durable power of attorney

- Basically an extension of the concept of a durable general power of attorney (for financial matters-see RCW 11.94)
- "Durable" power because attorney-in-fact can act during incapacity of principal
- Can be any trusted adult friend or family member
- Cannot be principal's MD, MD's employees, or owners, administrators, or employees of health care facility where principal resides or receives care (unless spouse, adult child, brother/sister)

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### Powers that can be given to "attorney-in-fact"

- To access medical records and other personal info
- To employ and discharge health care personnel
- To give, withhold, or withdraw informed consent for medical treatment
- To exercise and protect rights of principal
- To authorize pain relief
- To grant releases
- [Companionship and visitation: to be equivalent to a family member in this respect]

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## **Mental health advance directives**

- Allows individuals with periodic major mental health issues to effectively approve/disapprove of specific mental health treatments even at time of incapacity
- Important tool because cannot use a durable power of attorney for most acute mental health situations. In WA, attorney-in-fact cannot consent to therapy involving convulsions; psychosurgery; or psychiatric or mental health procedures that are intrusive on person's bodily integrity, freedom of movement, or the rights set forth in the involuntary commitment statute (RCW 71.05.370)

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## **Mental health advance directives: requirements**

- Must be in writing
- Must be dated and signed by the principal (exceptions)
- Must designate whether it can be revoked during periods of incapacity or not
- Must be witnessed by two individuals who can attest that they know principal; were present during signing; can attest that principal did not appear incapacitated
- Note that advance directive CANNOT be used as authority for inpatient admission for more than 14 days in a 21 day period

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## **Mental health advance directive can be revoked by the following actions:**

- By written statement of principal or at the principal's direction in principal's presence;
- Expressly or by inconsistency, by a subsequent directive;
- By court order.
- Note that mental health advance directive can be revoked during incapacity only if originally written to permit revocation during incapacity.

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