

LIFETIME POWERS OF ATTORNEY

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The term “Power of Attorney” is used to refer to a variety of different documents. There are financial Powers of Attorney and there are medical Powers of Attorney. Both documents are important, yet each one serves a very specific purpose. In this article, I am going to explain the difference and why is it is important to have both in place.

Financial Powers of Attorney

A financial Power of Attorney is a legal document that allows you to name an individual, called an agent or attorney in fact, to act on your behalf with regard to your day to day financial matters. Within the category of financial Powers of Attorney, there are basically three different types that can be set up:

1. The “Durable Power of Attorney” is effective upon signing and remains effective until death. The Durable Power of Attorney is effective whether you are competent or incompetent.
2. The Power of Attorney (not Durable) is effective upon signing, but is not effective should you become mentally incompetent. This Power of Attorney is commonly used for people that need someone to take care of a single task, such as the sale of the home or paying bills while they are out of town. This Power of Attorney does not allow the designated agent to continue acting on your behalf if you become incapacitated.
3. The “Springing Durable Power of Attorney” is effective at incapacity, not at the time of signing. This document is used when you do not want anyone acting on your behalf while you are able to handle your own financial affairs (regardless of physical limitations). Therefore, it “springs” into effect at your incapacity (typically this is proven by two licensed physicians).

The purpose of the Power of Attorney is to plan ahead for situations you cannot anticipate. For example, what would happen if you were diagnosed with dementia or if you became extremely ill? Who would run your business, work with your employer, sell your home or pay your bills if you could not? If you have not taken the time to name an “agent” under one of the Powers of Attorney identified above, the only way you may be able to get assistance is by having the court intervene and name a “financial agent” for you. If the court gets involved, the process to appoint a financial agent for you is called a conservatorship proceeding. Once the court gets involved, it can become a time consuming and costly experience. By setting up a Power of Attorney now (well before you need it), you can designate someone you trust to act on your behalf and the you can keep the court out of

your business.

If you do not get your affairs in order when you are healthy and competent, there is a good chance that your family will spend considerable time and money in court to get permission to act on your behalf. Additionally, there is also the chance that your court appointed conservator may not be the person you would have chosen to oversee your finances. When you do not plan ahead, you leave important personal decisions unanswered and ultimately in the hand of the court.

Medical Powers of Attorney

For years, many of us have heard the term Living Will, but we have confused this term with the basic Last Will and Testament. Designation of Patient Advocate and Living Will is basically a medical Power of Attorney. It is a legal document that allows you to name someone to make medical decisions for you if you cannot, address issues regarding life support and get medical information about you or your condition (HIPAA powers).

For a long time, family members, especially spouses, have been able to get by without a medical Power of Attorney. Years ago, before HIPAA, no one would question a spouse's authority to make decisions for an ill or incompetent spouse, because that was their job. However, after experiencing the facts surrounding the Terry Schaivo case and with the enactment of a federal law called HIPAA (Health Insurance and Portability Act), we have learned that if you do not have a medical advocate appointed, most likely you have not addressed your wishes regarding life support and you have not given anyone permission to get medical information. As a result, your family may run into road blocks. On top of all that, you take the risk that your family members (spouse, adult children, parents, siblings) do not agree on the type of care you should receive or issues related to life support.

Although the Terry Schaivo case is over 15 years old, it still speaks loud and clear as to what problems family members can encounter. Terry's husband and her parents did not agree on the type of care she was to receive or on whether she should be removed from life support. Since Terry had never taken the time to set up a Designation of Patient Advocate and address life support issues, there was no clear indication of her wishes. The court would not pick sides, spouse versus parents. As a result, Terry Schaivo was left on life support for over ten years. Regardless of whether you agree with the decision that was made to leave her on life support or to ultimately remove her from her feeding tube, what we all need to take from this case is the importance of putting our wishes in writing. *See my article titled "Your Exit Strategy."*

In addition to dealing with who will serve as the medical advocate and whether or not you want to be on life support, now you have to deal with privacy issues or the release of medical information. HIPAA was enacted by the federal government in 1996 and ultimately enforced in 2004 to protect patient privacy and medical records. As a result of the HIPAA laws, family members have been denied information about the condition of a loved one, doctors are being denied pertinent information on a patient and in some situations relatives from out of state have been denied information about the condition of a loved one or the passing of a loved one. Because HIPAA is a federal law, each medical institution may interpret and implement the law differently. The intent

of the law was to protect privacy of patient information, it was not designed to interfere with access to health care.

While it appears that the actual intent of the law and the implementation of it are a bit skewed, there is one simple way to help keep your family informed. A Designation of Patient Advocate and Living Will with HIPAA authorization can designate a key person to act on your behalf and to access medical information on your behalf.

Many of us take for granted that when the time comes for family to make decisions about our care that everyone will agree and our wishes will be magically known to everyone. Unfortunately, when a medical crisis occurs, we can never be sure how our loved ones will respond. By setting up the Designation of Patient Advocate and Living Will with HIPAA authorization, while you are alive and competent, you have the opportunity to discuss these issues with your family and your advocate now!

Issues for You and Your Patient Advocate to Discuss

Setting up your Patient Advocate and Living Will is the first step to making your wishes known. Because situations and circumstances in our life change, it may be important to revisit our health care wishes. Many experts say that you should revisit your decisions 1) at the start of a new decade; 2) when you experience the death of a loved one; 3) when you experience a divorce or major family change; 4) when you are diagnosed with a serious health condition, a decline or deterioration in your health. Should you experience one of these changes, not only should you revisit the decisions you have made in your medical advocate, but below are some of the questions that you may want to discuss with your patient advocate as well:

Any time you sign a Designation of Patient Advocate and Living Will (many individuals refer to this same document as a Health Care Power of Attorney or Advance Medical Directive), you should make sure you give a copy to your patient advocate, your physician, any medical specialist that you work with and you should keep a copy readily available for your own use. In addition to the steps provided above, below are some questions you may want to review with your patient advocate so they have a better understanding of how you feel about medical care and/or life support issues. To make sound moral decisions, patients and/or their patient advocates must receive all relevant information about their condition including the proposed treatment and its benefits, possible risks, side-effects, and costs.

When choosing the person best suited to serve as your patient advocate, some of the things you should consider are as follows:

1. Someone who would be able to act on your behalf and separate his or her own personal or religious feelings from yours.
2. Someone who lives close or could travel to be at your side immediately.
3. Someone who you trust with your life.
4. Someone that you talk with now about sensitive issues and will listen to your wishes

- and concerns.
5. Someone who would be a strong advocate in the face of an unresponsive doctor or institution.
 6. Someone who is confident enough to handle conflicting opinions between family members.
 7. Someone who will likely be available in the future.
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Before answering the questions below, it is important to make a distinction between some basic terminology we use regularly when discussing end of life issues. **Brain dead** should not be confused with **persistent vegetative state** or **coma**. In brain death, the entire brain irreversibly ceases to function. Everything shuts down; the cerebral cortex, which controls higher functions, as well as the brain stem, which regulates automatic actions like heart beat and breathing. In a persistent vegetative state, the cerebral cortex has been destroyed, leaving the person incapable of thought or memory, but the brain stem remains intact and functional. A person in a persistent vegetative state can live for years without a mechanical ventilator or other technological support. A coma is just a general term for lack of unresponsiveness and can occur for any number of reasons. The coma can be temporary, as it is used during general anaesthesia, or it can be permanent, as sometimes happens following an injury. With a coma, only detailed neurological testing can determine the extent of the brain injury or its prognosis. With a better understanding of these different illnesses, the confusion between each and the emotional distress it can cause can be avoided.

For the following questions, in some situations only one answer will apply and in some circumstances you may circle more than one response:

1. If I can no longer recognize or interact with family or friends:
 - a. I definitely want treatment that might keep me alive.
 - b. I probably would not want treatment that might keep me alive.
 - c. I am unsure of what I want.

Comments: _____

2. I can no longer walk, but I can get around in a wheelchair:
 - a. I definitely want treatment that might keep me alive.
 - b. Probably would not treatment that might keep me alive.
 - c. Unsure of what I want.

Comments: _____

3. If I am in severe, un-treatable pain most of the time:
 - a. I definitely want treatment that might keep me alive.

- b. I probably would not want treatment that might keep me alive.
- c. I am unsure of what I want.

Comments: _____

4. If I am on a feeding tube that keeps me alive:
- a. I definitely want treatment that might keep me alive.
 - b. I probably would not want treatment that might keep me alive.
 - c. I am unsure of what I want.

Comments: _____

5. If I am on a kidney dialysis machine that keeps me alive:
- a. I definitely want treatment that might keep me alive.
 - b. I probably would not want treatment that might keep me alive.
 - c. I am unsure of what I want.

Comments: _____

6. If I am on a breathing machine to keep me alive:
- a. I definitely want treatment that might keep me alive.
 - b. I probably would not want treatment that might keep me alive.
 - c. I am unsure of what I want.

Comments: _____

7. If I need someone to take care of me 24 hours a day:
- a. I definitely want treatment that might keep me alive.
 - b. I probably would not want treatment that might keep me alive.
 - c. I am unsure of what I want.

Comments: _____

8. If I have to live in a nursing home permanently:
- a. I definitely want treatment that might keep me alive.
 - b. I probably would not want treatment that might keep me alive.
 - c. I am unsure of what I want.

Comments: _____

9. If the doctors are recommending treatment to your patient advocate, but the treatments will have a severe side-effect, such as severe pain, nausea, vomiting or weakness that could last for several months:
- a. I would be willing to endure such side effects if the chances of regaining my current health was less than 70%.
 - b. I would be willing to endure such side effects if the chances of regaining my current

health was less than 50%.

- c. I would be willing to endure such side effects if the chances of regaining my current health was less than 20%.

Comments: _____

10. If you were suffering from Alzheimer's disease and it had progressed to the point where you could no longer recognize or converse with your family and spoon feeding was no longer possible, would you want to be fed by a tube?

- a. Yes
- b. No
- c. Uncertain

Comments: _____

11. Which of the following situations do you fear the most:

- a. Being in pain.
- b. Losing the ability to think.
- c. Being a financial burden on family.

Comments: _____

12. If a doctor advised you that your condition was terminal, but treatment such as chemotherapy might give you an additional six months of your life would you want chemotherapy or a rigorous treatment plan even if it had sever side affects such as constant pain, nausea, vomiting, weakness?

- a. Yes
- b. No
- c. Uncertain

Comments: _____

13. If you were terminally ill with a condition that caused you a considerable amount of pain, would you want to be sedated even to the point of unconsciousness if it would control the pain?

- a. Yes
- b. No
- c. Uncertain

Comments: _____

14. Is it more important for you at end of life care that your wishes be followed or that friends and family are comfortable with the decision that you have made.

- a. My decisions are more important.
- b. Having family and friends agree is more important.
- c. Uncertain.

Comments: _____

15. Assume that you are physically frail and are unable to perform some of the most basic tasks such as dressing, bathing, eating and going to the toilet. Assume that you live at a nursing home and although your mind is fairly clear each time that you come down with an illness such as flu or pneumonia, you are hospitalized for several days and given antibiotics through and IV tube. The next time you get pneumonia do you want aggressive antibiotic treatment again or just kept comfortable until death occurs.

- a. I would like antibiotic treatment.
- b. Keep me comfortable.
- c. Uncertain.

Comments: _____

16. If your heart, kidneys, pancreas, lungs, liver or any other vital organs could all be used in a transplant operation to save lives, would you want your family to donate them at your death?

- a. Yes
- b. No
- c. Uncertain

Comments: _____

17. If there is a presumption in favor of continuing to provide food and water to a patient, but there is a stage in the dying process when even food and water may no longer be helpful because they provide no benefit, and the doctor has determined that food and water is providing no benefit:

- a. I still want to be provided with food and water
- b. I would want food and water discontinued immediately
- c. I am unsure of what I want

Comments: _____

18. If I am suffering from extreme and/or unreasonable pain, it is my wish that:

- a. I be kept as comfortable as possible but remain in a conscious state
- b. I request that I be given the maximum amount of medication to relieve any and all pain even though it may bring about disorientation or produce unconsciousness
- c. I am unsure of what I want

Comments: _____
