

Dying Well

by Nancy A. Roberson, J.D.

“To every thing there is a season, and a time to every purpose under the heaven: A time to be born, and a time to die.”

(Ecclesiastes 3:1-2)

Have you thought about your death? How will you die? What about your loved ones? How will they die? These are morbid but realistic thoughts, because none of us will escape this earth alive. Some of us will live long lives and then peacefully slip away. Others will die suddenly, and some will die painfully, after prolonged illnesses. During an illness, we (or others) may need to make gut-wrenching decisions about our health care.

During my life, I have been involved with end-of-life health care decisions for family (including my first husband, my grandmother and my father) and clients. Always foremost, is the concern about what that person would have wanted.

I had my first experience when I was 27, and my first husband, David Phillips, was 28. After suffering complications during chemotherapy while being treated for Hodgkin's lymphoma, David lapsed into a coma. Before his death, his doctors proposed various procedures to save David's life. David was young, I loved him and he was the father of our 2-year-old daughter. I wanted David to live, so I authorized several extraordinary procedures to try to save David's life. After David's death, our family doctor

wondered whether we had done too much to try to save David's life. I will never know what David would have wanted, because David and I had not discussed it.

The decisions about my grandmother and my father were easier, because Grandma was nearly 99 years old when she died of pneumonia after breaking her hip, and Dad was 82 when he died of lung cancer. Our family had some guidance about end-of-life health care decision making, because Grandma and Dad had health care directives to guide us.

Most people would prefer not to think about the possibility of a life or death decision having to be made for them if they are terminal or are permanently unconscious, but putting those closest to us in the unfortunate position of lacking the knowledge or authority to make such a decision would be far worse. Therefore, health care directives are essential documents in your estate plan. A health care directive is a written document containing your wishes about your health care. In Ohio, where I live and work, Ohio law has created several kinds of health care directives, which I subsequently describe. Of course, your state may have different health care

directives; consult with your lawyer and doctor about them.

A living will is a written document in which you declare your intentions regarding the use of life-sustaining treatment if you are terminal or are permanently unconscious. A living will usually directs that life-sustaining medical treatment be withheld or withdrawn if you are unable to make informed medical decisions and are terminal or are permanently unconscious.

A health care power of attorney (HCPOA) is a written document that authorizes another person to make health care decisions for you when you are unable to make them for yourself. The scope of the HCPOA is much broader than that of the living will because the HCPOA permits the authorization of medical treatment during most, including terminal and permanently unconscious, conditions.

A Do Not Resuscitate (DNR) order means CPR is not to be administered. A DNR order must be issued by a physician and is not self-executing by means of any patient document. A DNR identification is a card or form, or patient document, necklace or bracelet, and signifies that either (1)

the person has an operative living will authorizing withholding of CPR, or (2) a physician has issued a DNR order.

An Authorization to Disclose Protected Health Information (HIPAA) form is a written document designed to protect your personal health information. With this form, you can declare which persons are authorized to receive your relevant medical information. The HIPAA authorization can help those designated in your HCPOA to make informed decisions regarding your health care. Without HIPAA authorization, your agent may be denied access to important information concerning your health.

An advance medical directive form is a written document that allows you to specifically delineate your wishes regarding the use of life-sustaining medical treatment if you become unable to make such decisions for yourself. This form provides the opportunity to choose or reject specific treatments – thus enabling you to narrowly define any general decisions made in your living will. Although your doctor will not use this form to make medical decisions against his or her professional opinion, the form can help your doctor and agent understand your wishes in complicated situations.

I recommend that your health care directives be separate from your general durable power of attorney. First, most people do not want their desires with respect to various forms of health care to gain the exposure that is often required with a general durable power of attorney. Second, you may want a different person to make health care decisions for you than the person who takes care of your financial matters. Third, a busy doctor may not have time to read through a lengthy document before making a critical decision about your health care.

The standard forms for each health care directive are available through lawyers, doctors, hospitals and various other organizations. Do not hesitate to customize your health care directives if the standard forms do not properly reflect your wishes. I do, however, encourage you to use the standard forms if they do reflect your values because these forms will be easily recognized by health care providers, avoid any delays caused by interpreting personalized documents and reduce legal fees.

These documents are an aid to understanding your choices if you become incompetent; they should be used to supplement, not replace, communication among you, your family and your physicians. You should discuss your wishes about your health care with your family and doctors and give each of your doctors a copy of each of your health care directives.

An experience with health care decision making for a client in her eighties, for whom I served as agent and attorney, illustrates the importance of having these documents and discussing these issues with people who will be affected by them. 'Mary' was legally blind and living in a nursing home when she suffered a stroke on a Friday. The following Sunday, Mary's doctor asked me to make the feeding tube decision for Mary because she could not swallow. Although Mary had health care directives in which she indicated that she did not want a feeding tube if she was permanently unconscious, Mary was conscious, but she could not communicate her wishes to her doctors. Thus, I began the journey of determining the right decision for Mary. I visited Mary. We were able to have some communication, but she was unable to tell me whether or not she wanted a feeding tube. I met with her doctor, who explained the

dynamics of stroke to me and showed me pictures of Mary's brain. I talked to Mary's friends, my staff, my friends and my mother. A staff attorney talked to Mary's priest. What Mary wanted and what served her best interests was always the focus of our inquiry. As it turned out, Mary's condition deteriorated and, by Wednesday, I decided that Mary would not have a feeding tube. On Friday, Mary died from her stroke. That experience reinforced to me the importance of discussing the feeding tube decision with those who may need to make the decision or be affected by it. The Advance Medical Directive Form available on our website at www.dayton-attorney.com is a great tool to help start the conversation.

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Nancy Roberson is a lawyer who has focused her practice on estate planning and probate law for over 25 years. She received her B.A. degree in English from Indiana University in 1971 and her J.D. degree from the University of Dayton School of Law in 1981, where she was a member of the Editorial Board for the University of Dayton Law Review.

Nancy is a member of the American Bar Association, the Ohio State Bar Association, the Dayton Bar Association and the Christian Legal Society. She formerly served as chairperson of the Dayton Bar Association's Estate Planning, Probate and Trust Law Committee and as president of the Dayton Trust and Estate Planning Group.

Since 2003, Nancy has been board-certified by the Ohio State Bar Association as a specialist in the areas of estate planning, probate and trust law. Her interest in the fields of estate planning and probate law grew out of her experience of being widowed at the age of 27 when her daughter, Amy, was two years old. Amy is an adult now, married and working for Nancy. Nancy has been married to Bob Roberson since 1984. Nancy cofounded and cofacilitates two support groups for widows, one of which has operated for over 20 years. In addition, she is actively involved with her church and her family's common interest in basketball. She has presented the "Are You Prepared?" seminar for many years and coauthored the workbook, "Solutions," in 1994 with Pam Walker. Nancy can be contacted through her website at www.dayton-attorney.com.