

THE CASE OF TERRI SCHIAVO UNDERSCORES THE NEED FOR PROPER PLANNING THROUGH THE USE OF ADVANCE DIRECTIVES FOR HEALTH CARE.

By Brian M. Foley

The much-publicized case of Terri Schiavo from Florida, and the legal battles between her parents and husband, has focused the attention of the nation once again on the importance of proper planning through the use of Advance Directives for Health Care.

It is often taken for granted that individuals in America enjoy the right of self determination when it comes to making decisions about health care. Unfortunately, there are times and circumstances, such as in Terri Schiavo's case, when the individual no longer has the mental capacity to make such decisions. Rather than facing the prospects of family members fighting over the decisions, and ultimately the decisions being made by a Court, state and federal laws permit the creation of an Advance Directive for Health Care.

The Advance Directive provides a legally enforceable document in which the individual specifies his/her treatment preferences and/or appoints a family member, friend or other person with legal authority to carry out their wishes and to make health care decisions on their behalf, in the event the individual becomes incapacitated. Typically, the Advance Directive will do both, give written directions to establish what kind of care is wanted, and appoint a person to ensure that such plan of care is followed.

Advance Directives have been a vital part of estate planning and health care planning for nearly two decades, yet most people still do not have one. Although this is a topic that few care to think about, the consequences of failing to prepare properly for the future can be devastating. In the absence of an Advance Directive, family members and loved ones often agonize over the decisions, disagree on the decisions, and disagree on who has the right to make them. Courts are faced with trying to determine the individual's wishes when he or she cannot speak.

The Advance Directive allows the individual to make their wishes known and also to appoint the person to act on their behalf. The Advance Directive gives one the peace of mind in knowing that they continue to control their own treatment, even if incapacitated. It also alleviates the burden on family members and loved ones when such decisions must be made.

It is important to discuss your health care preferences with physicians, family, friends and loved ones. It is equally as important to create a legally enforceable Advance Directive to eliminate uncertainty.