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Keeping Current

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The Estate Planning Group of Kissinger and Fellman, P.C. represents families in developing and implementing estate and gift tax planning strategies, Wills, the establishment and management of Trusts, and family business succession. Our attorneys also provide experienced advice and guidance and documentation for charitable contributions of all kinds, including charitable remainder and annuity trusts, public charities, private foundations, supporting organizations, and philanthropic funds.

Taking Care of Yourself When You Cannot: Advance Medical Directives & Living Wills

It has been thirty years since Karen Ann Quinlan went to the hospital in a coma. It took a full year for the New Jersey courts to figure out what to do. One positive result of her tragedy was the popularization of a legal concept called a "living will".

In 1983, Nancy Cruzan was found on the side of a road following a car accident. She was permanently unconscious and without any higher brain function. It took seven years - and the U.S. Supreme Court - to open the door so that an incapacitated person's wishes could control the withdrawal of life-sustaining treatment.

Fifteen years ago, the unfortunate odyssey of Terri Schiavo began - having reportedly suffered irreversible brain injury as a result of heart failure. Hands full of courtroom battles between her parents, on the one hand, and her spouse, who was appointed as her guardian, on the other, failed to satisfactorily resolve the numerous issues regarding whether Mrs. Schiavo had expressed a wish that life-sustaining treatment be refused.

The very personal wishes regarding the withdrawal - or administration - of life-support - are at best expressed in written advance medical directives, including a durable power of attorney for health care and a "living will" declaration. There are differences between these two advance medical directives.

A living will is limited in scope. In Colorado, if you have a terminal injury, illness or condition, and if you are in a coma or a persistent vegetative state, you can direct that life-sustaining treatments and artificial nutrition and hydration be withdrawn or

withheld. However, a living will does not cover whether dialysis should be started, or a million other medical decisions.

A durable power of attorney for health care is flexible and broad enough to cover many issues that are not covered in a living will. In a living will, you do not name a specific person to act for you; on the other hand, a durable power of attorney for health care enables you to name a specific person to make medical decisions for you when you are unable to speak for yourself.

Karen Ann Quinlan was 21 when her legal odyssey started, Nancy Cruzan was 25 when she had her accident, and Terri Schiavo was also in her 20s when she suffered the health care problem that changed her life. It's obvious that advance medical directives are not just for senior citizens; your young adult children should also be aware of and take action on this most important topic. Advance medical directives are state-specific and, we believe, should be very individualized; not "one size fits all."

It is important to review your advance medical directives regularly. Laws frequently change. For example, we've recently prepared language to be added to our clients' durable powers of attorney for health care concerning "HIPPA", a new medical information privacy law. The agent you've selected to be your health care spokesperson must be able to consistently obtain information about your condition and not be hindered by red tape. Other changes in your advance medical directives may also be warranted. Perhaps most importantly, medical decision-making is a topic that involves all family members. It is important that you share your wishes with your family and have them in writing; otherwise, problems may arise.

For all these reasons, we encourage you to locate your advance directives. If you have any questions or concerns and would like to be sure things are the way you would want them to be, please call us for an appointment to discuss these matters. This would also be a good opportunity to review your other estate planning documents to ensure that they will continue to satisfy your objectives, by keeping them current.