

END OF LIFE DECISION-MAKING

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Most people have been following the case in Florida involving Terri Schiavo. She has existed in a persistent vegetative state since her heart stopped in 1990 and her brain went without oxygen for five or six minutes. She had not prepared a Living Will or Health Care Directive. Her husband has argued that she did not want to be kept alive by artificial means. Her parents have battled just as persistently to keep her alive. The bitter legal and emotional dispute could have been avoided if Terri Schiavo had executed a Living Will or Health Care Directive (hereinafter referred to as "Living Will").

A Living Will provides instruction to a health care provider. A Living Will can be tailored to meet the needs and wishes of the individual. A Living Will should specifically set forth the circumstances under which an individual does not want life-sustaining treatment. Furthermore, if the individual wants to be treated aggressively, no matter how hopeless his or her condition, the Living Will can so provide. Under New Jersey law, an individual may discontinue life-sustaining treatment in situations where there is no reasonable hope of recovery or when the individual is brain dead or in a terminal condition. The Living Will should define what the individual means by life-sustaining treatment. Usually, individuals do not want cardiac resuscitation, mechanical respiration, blood or blood products, any form of surgery or invasive diagnostic test, kidney dialysis, antibiotics and chemotherapy.

A more sensitive issue is fluids and nutrition by feeding tube or intravenous infusion. Conservative and Orthodox Jews are not supposed to withhold or withdraw a feeding tube. The Catholic Church believes that a feeding tube may be withheld or withdrawn if the individual is brain dead, but not in a situation where the individual is terminal. Other religious groups have guidelines that need to be considered and incorporated into an individual's Living Will.

A Living Will should also designate a representative to voice the individual's health care preferences to medical practitioners in the event the individual is unable to communicate such desires. The representative designated in the Living Will acts as an agent or Health Care Proxy for the individual. A Living Will and Health Care Proxy can be combined into one document.

A major problem with Living Wills and Advance Directives is enforcement. Only about one-half of all of these documents are enforced. The problem is that many Living Wills do not contain clear directions as to what treatment the individual wants and what treatment the individual wants to refuse. Individuals

should not utilize pre-printed, vague forms as their Living Wills. By having a specific and properly drafted Living Will, individuals no longer able to communicate can ensure that their health care instructions will be followed. If you are interested in learning more about the benefits of a Living Will or Health Care Proxy please contact a competent estate planning attorney.