

Adults of every age should have advance health care directives

A colleague told me about receiving the middle-of-the-night call no parent wants to get – her daughter at college had been rushed to the hospital and was unconscious.

Desperate to know what had happened, she called the emergency room but no one would give her any information. You see, her daughter was over 18 and had no health care power of attorney. Concern over privacy rules kept the hospital workers from giving the mother any information.

The daughter recovered but not before costing her mother many frantic hours. Mom felt sheepish. "As an elder law attorney, I should have thought to have her prepare an advance health care directive," she said.

An advance health care directive typically has two parts. The first part is a health care power of attorney, which names an agent to make health care decisions for you when you can't. A sentence or two giving your agent the right to receive your medical information helps your agent get vital knowledge from doctors and nurses.

The second part is typically a "living will," which gives instructions on what to do if you're in an end-stage medical condition (an illness,



injury or condition in an advanced state that is likely to result in death despite medical treatment), a state of permanent unconsciousness, or similar situation.

Why would a girl of 18 need instructions about an end-stage medical condition? Consider this: several of the most highly publicized or landmark cases on this topic involved women who were in their twenties when they fell into a permanently unconscious condition: Karen Ann Quinlan, Nancy Cruzan, and Terry Schiavo. At that age, they each had the constitution to remain alive for years while their court cases dragged on.

In cases like those, a written living will would have clarified what the patient wanted.

With high school commencement season approaching, consider an off-beat but highly practical graduation gift: the graduate's very own advance health care directive. ■

Can you revoke or countermand health care directives?

Test your knowledge – you may be surprised!

Most health care directives in Pennsylvania contain (1) a health care power of attorney and (2) a living will. In the power of attorney, the "principal" authorizes an "agent" to make healthcare decisions when the principal cannot. In the living will, the principal gives instructions about what should be done in end-of-life circumstances such as an advanced incurable disease or persistent vegetative state.

Take this quiz to see if you know how those documents can be revoked or decisions countermanded in Pennsylvania.

1. **TRUE OR FALSE?** A principal must be of sound mind to revoke a health care power of attorney.
2. **TRUE OR FALSE?** A principal must be of sound mind to revoke a living will.
3. **TRUE OR FALSE?** A health care power of attorney may only be revoked in writing.
4. **TRUE OR FALSE?** A principal must be of sound mind to countermand decisions made by an agent under a health care power of attorney.

1. **TRUE.** The citation of the statute is 20 Pa. C.S.A. § 5459(a).
2. **FALSE.** "A living will may be revoked at any time and in any manner by the principal regardless of the mental or physical condition of the principal." 20 Pa. C.S.A. § 5444(a). Usually, a principal must be competent to revoke a legal document, but not in the case of a living will in Pennsylvania. The legislature apparently wished to make sure that a living will could be revoked easily, and that health care providers or family members would not have to make any determination about whether the principal is competent. If the principal – competent or not – revokes the living will in any manner, it is no longer valid.
3. **FALSE.** A health care power of attorney may be revoked in writing "or by personally informing the attending physician, health care provider or health care agent that the health care power of attorney is revoked." 20 Pa. C.S.A. § 5459(a). If it is revoked in writing, the writing must be executed under the same requirements for establishing a health care power of attorney (such as being signed and dated by the principal and witnessed by two adults).
4. **IT DEPENDS.** A competent principal may countermand any decision made by the health care agent, but an incompetent principal may only countermand a decision that would withhold or withdraw life-sustaining treatment. 20 Pa. C.S.A. § 5457.

Answers: