

# End of Life Decisions: The Current Legal Landscape and Implications for Physicians

## BIBLIOGRAPHY AND OTHER RESOURCES

Stewart Ain, *Schiavo Case Creates Ethical Debate*, The Jewish Week, at: <http://www.thejewishweek.com/news/newscontent.php3?artid=10682> (June 15, 2005).

American Bar Association, *Surrogate Consent in the Absence of an Advance Directive*, available at: <http://www.abanet.org/aging/Famcon04.doc> (July 2004).

American Bar Association, *Health Care Power of Attorney and Combined Advance Directive Legislation*, available at: <http://www.abanet.org/aging/HCPA-CHT04.doc> (September 2004).

American Medical Association, *Optimal Use of Orders-Not-To-Intervene and Advance Directives*, E-2.225 (June 1998).

American Medical Association, *Withholding or Withdrawing Life-Sustaining Medical Treatment*, E.2.20 (June 1996).

American Medical Association, Council on Ethical and Judicial Affairs, *Surrogate Decision Making*, Report 4-A-01 (2001).

American Medical Association, Council on Ethical and Judicial Affairs, *Surrogate Decision Making Amendment*, Opinion 6-I-04 (June 2001).

Anthony L. Back and Robert M. Arnold, *Dealing with Conflict in Caring for the Seriously Ill*, 293 JAMA 1374 (2005).

Pam Belluck, *Even as Doctors Say Enough, Families Fight to Prolong Life*, New York Times, A1, March 26, 2005.

Ronald Cranford, *The Permanent Vegetative State and the Sad Case of Terri Schiavo*, Expert Testimony: Bridging Bioethics and Evidence Law, The Journal of Law, Medicine and Ethics (Summer 2005).

Howard B. Degenholtz et al., *The Relationship Between Having a Living Will and Dying in Place*, 141 Annals of Internal Medicine 113 (2005).

Shaila Dewan, *Taking a New Look at End-of-Life Legislation*, New York Times, A14, March 31, 2005.

David M. English, *The Uniform Health-Care Decision Act and Its Progress in the States*, Probate and Property, available at: <http://www.abanet.org/rpvt/publications/magazine/2001/01mj/01mjenglish.html> (May/June 2001).

*In re Guardianship of Theresa Marie Schiavo*. 2005 Fla. App. LEXIS 3574 (Fla. App., March 16, 2005).

Fiona Hass, *Understanding the Legal Implications of Living Wills*, Nursing Times, available at: <http://www.nursingtimes.net/nav?page=nt.print&resource=1883709> (January 2005).

Susan Jacoby, *The Schiavo Factor*, AARP Bulletin (May 2005).

Naomi Karp, *Report Urges Laws and Practices To Address Problems of Elderly Patients Incapable of Making Health Care Decisions*, 25 (1) Bar Association In Focus on Aging and the Law 1 (Fall 2003).

National Conference of Commissioners on Uniform State Laws, *Uniform Health-Care Decisions Act* (July/August 1993).

New York Office of the Attorney General, *Planning Your Health Care in Advance: How To Make Your End of Life Wishes Known and Honored*, available at: [www.oag.ny.us](http://www.oag.ny.us).

Barbara A. Noah, *Politicizing the End of Life: Lessons from the Schiavo Controversy*, 59 U. Miami L. Rev. 107 (2004).

Religion and Ethics Newsweekly, *Terry Schiavo and End-of-Life Care* (episode no. 830), available at: [www.pbs.org/wnet/religionandethics/week830/perspectives.html](http://www.pbs.org/wnet/religionandethics/week830/perspectives.html) (March 25, 2005).

Charles P. Sabatino, *De-Balkanizing State Advance Directive Law*, 25 (1) Bar Association In Focus on Aging and the Law 1 (Fall 2003).

John Schwartz, *New Openness in Deciding When and How to Die*, New York Times, A1, March 21, 2005.

John Schwartz, *Many Still Seek One final Say on Ending Life*, New York Times, June 17, 2005.

Sheryl Gay Stolberg, *Lawmakers Ready To Again Debate End-of-Life Issues*, New York Times, A1, March 28, 2005.

Sheryl Gay Stolberg, *A Collision of Disparate Forces May Be Reshaping American Law*, New York Times, A18, April 1, 2005.

Southeast Tennessee Legal Services, *Advance Directives*, available at: [http://www.setnlegalservices.org/advance\\_directives.htm](http://www.setnlegalservices.org/advance_directives.htm) (last accessed: June 14, 2005).

Rachel Zoll, *Faith Traditions Differ on Schiavo Ethics*, Guardian Unlimited, available at: <http://www.guardian.co.uk/worldlatest/story/0,1280,-4883221,00.html> (March 22, 2005).

## Health Care Power of Attorney and Advance Directive Sample of State Laws

**See American Bar Association at: <http://www.abanet.org/aging/HCPA-CHT04.doc>**

State	State Law	Type of Document/Form	Agent's Power Limited/ Prohibited Agents Specified	Formalities of Execution	Comity Provision*
CA	Cal. Probate Code § 4600 to 4948	Combined Advance Directive/ Yes (optional)	Yes <sup>1</sup> / Yes <sup>2</sup>	2 witnesses	Yes
FL	Fla. Stat. Ann. § 765.101 to .404	Combined Advance Directive/ Yes (optional)	Yes <sup>3</sup> / None Specified	2 witnesses	Yes
IL	755 ILCS 45/4-1 to -12	Special DPA/ Yes (optional)	None Specified/ Yes <sup>4</sup>	None specified	Yes
MN	Minn. Stat. Ann. § 145C.01 to .16	Combined Advance Directive/ Yes (optional)	None Specified/Yes <sup>5</sup>	2 witnesses or notarized	Yes
NY	N.Y. Pub. Health Law § 2980 to 2994	Special DPA/ Yes (optional)	Yes <sup>6</sup> / Yes <sup>7</sup>	2 witnesses	Yes
TX	Tex. Health and Safety Code Ann. § 166.001 to .166	Special DPA/ Yes (must be substantially followed)  Proxy contained in LW/ Yes (optional)	Yes <sup>8</sup> / Yes <sup>9</sup>	2 witnesses	Yes

\*Comity Provision, example of statutory language: "An advance directive executed in another state shall be deemed to be validly executed for the purposes of this article if executed in compliance with the laws of this state or the law of the state where executed. Such advance directive shall be construed in accordance with the laws of this state." As of Fall 2003, 12 states lacked comity or reciprocity provisions. See BiFocal, Vol. 25, No. 1 (Fall 2003).

<sup>1</sup> Limits on agent's powers: civil commitment, electro-convulsive therapy, psycho-surgery, sterilization, abortion.

<sup>2</sup> Agent cannot be: supervising individual provider, facility provider, or conservator (unless specified conditions are met).

<sup>3</sup> Limits on agent's powers: mental health facility admission, electro-convulsive therapy, psycho-surgery, sterilization, abortion, non-IRB approved experimental therapy, life-sustaining procedures while pregnant, pregnancy limitation.

<sup>4</sup> Agent cannot be the individual provider.

<sup>5</sup> Agent cannot be: individual provider, facility provider.

<sup>6</sup> Limits on agent's powers: nutrition and hydration (principal must make wishes reasonably known).

<sup>7</sup> Agent cannot be: attending physician, facility provider, any agent serving 10 or more principals.

<sup>8</sup> Limits on agent's powers: mental health facility admission, electro-convulsive therapy, psycho-surgery, abortion, comfort care.

<sup>9</sup> Agent cannot be: individual provider, facility provider.

## Absence of Advance Directive Sample of State Law

See American Bar Association at: <http://www.abanet.org/aging/Famcon04.doc>

State	State Statute	Priority of Surrogates	Limitations on Decision	Standard for Decision Making	Disagreement Process Among Equal Priority Surrogates
CA	(1) Cal. Probate Code § 4711 to 4716	An individual orally designated as a surrogate.	Yes <sup>10</sup>	Yes	None provided
	(2) Cal. Health and Safety Code § 24178	Spouse, Domestic partner, Adult child, Custodial parent, Adult sibling, Adult grandchild, Adult relative with the closest degree of kinship	Yes <sup>11</sup>	Yes	Consensus required
FL	Fla. Stat. Ann. § 765.401	Spouse, Adult child, Parent, Sibling, Close adult relative, Close friend, Licensed clinical social worker selected by bioethics committee	Yes <sup>12</sup>	Yes	Majority rule for adult children or siblings
IL	755 ILCS 40/25	Spouse, Adult child, Parent, Sibling, Adult grandchild, Close friend, Guardian of the estate	Yes <sup>13</sup>	Yes	Majority rule for children, siblings, and grandchildren
MN	<b>NONE</b>				
NY	N.Y. Pub. Health Law § 2965	Spouse, Adult child, Parent, Sibling, Close friend	Yes <sup>14</sup>	Yes	Refer to dispute mediation system
TX	Tex. Health and Safety Code Ann. § 166.039 and § 166.081 to .101	Physician and: Spouse, Adult children, Parent, Nearest relative  Attending physician, with concurrence of independent 2 <sup>nd</sup> physician or physician member of ethics committee	Yes (pregnancy limitation)	Yes	None specified

<sup>10</sup> Effective "only during the course of treatment or illness or during the stay in the health care institution when the designation is made, or for 60 days, whichever period is shorter." Does not apply to civil commitment, electro-convulsive therapy, psychosurgery, sterilization, or abortion.

<sup>11</sup> Consent is limited to medical experiments that relate to the cognitive impairment, lack of capacity, or serious, or life threatening diseases and conditions of research participants. Does not apply to persons involuntarily committed or voluntarily committed by a conservator.

<sup>12</sup> Does not apply to abortion, sterilization, electroshock therapy, psychosurgery, non-IRB approved experimental treatment, or voluntary admission to a mental health facility.

<sup>13</sup> Does not apply to mental health facility, psychotropic medication, or electro-convulsive therapy. If a decision concerns foregoing life-sustaining treatment, patient must be in terminal condition, permanently unconscious, or incurable or irreversible condition.

<sup>14</sup> Limited consent to a DNR order and patient is in terminal condition, or permanently unconscious, or where resuscitation is futile or extraordinarily burdensome.

## **2005 State Legislation**

- Alabama, HB 592, Starvation and Dehydration Prevention Act.
- Kansas, HB 2211, Requires court approval for guardian to remove life support.
- Louisiana, HB 657, Defines “spouse” for purposes of health care decision making.
- Michigan, HB 4752, Bars adulterers from making health care decisions.
- Missouri, SB 547, Custody of PVS patients.
- New Jersey, SB 2519, Adds living wills to marriage license requirements.
- New York, A5406, Decision-making process for selecting and empowering a surrogate.
- Pennsylvania, HB 1417, Determines surrogate for patients without living wills or advance directives.