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The Health Care Proxy and The Living Will

In the wake of the Terri Schiavo matter, our firm has been inundated with inquiries about living wills. Often, as we answered the questions, we found ourselves explaining the differences between Health Care Proxies and Living Wills, and encouraging the caller to have both documents in place. We thought that this would be a better forum to address these important issues as it reaches a much wider audience.

A Health Care Proxy is the formal designation of another to act as your agent in health-care decision making in the event that you become ill or incapacitated or are unable to communicate your wishes or instructions. These are decisions concerning diagnosis, treatment, services and procedures relative to your physical or mental condition and may include end-of-life decisions such as whether to continue or terminate life-sustaining treatment. Under New York law, a Health Care Proxy must designate a single Agent and must be properly signed and witnessed.

A Living Will is the written expression of your most significant health-care decisions. It is a recommended supplement to a valid Health Care Proxy and constitutes a guide for the Agent you designate in your Health Care Proxy. If a question should later arise as to whether the decisions your Agent makes on your behalf are consistent with your wishes, a Living Will can provide the necessary support and ensure that you receive the care and attention that you have directed - and only that.

Even after you have appointed a Health Care Agent, you have the right to continue making health care decisions for yourself for as long as you are able to do so. Your Agent does not begin making your health-care decisions until you can no longer communicate or doctors determine that your ability to make decisions is impaired. Remember, it is not just Alzheimers or stroke that causes incompetence, mental faculties may be impaired as a result of accident and other illnesses.

Every one of us should be protected by a valid and enforceable Health Care Proxy. Apart from the preparation and execution of the document, however, it is imperative that we fully and frankly discuss these issues, and the way in which we wish to be treated, with our designated Agent. Unless your Agent knows your preferences regarding, for example, artificial hydration and nutrition (the provision of food and water through a feeding tube), he or she may make decisions that are contrary to, or inconsistent with your wishes.