

Their Decision, Not Yours – The Duty of a Health Care Proxy

by Leanna Hamill, Attorney at Law

The New York Times has a recent article called “An Ill Father, A Life and Death Decision.” (<http://www.nytimes.com/2010/01/26/health/26case.html?ref=health>) It’s about a daughter who has been appointed as the health care proxy for her father. This means that when he is unable to make or communicate his health care decisions, she communicates his wishes to his health care providers. Notice that her role is not to make the decisions for him. In the story, her father is sick again – his liver, lungs and kidneys are failing. The doctors ask her if they should intubate him.

I am acutely tempted to answer, “Of course not — my father would not want heroic measures.” But I hesitate because I know it might not be true. In the past, he has wanted everything possible done. This night is different, but I do not know if his answer would be different.

I look at my father. It is hard to tell if he is conscious. No one else is looking at my father. Everyone is watching me closely.

Finally, I say out loud the only thing I know to be true. “In the past, my father has asked that everything possible be done.”

Then I bend over my father and ask him in a clear, strong voice: “Daddy, do you want to be intubated again? Squeeze my hand if you want to be intubated.” I wait, but he does not squeeze. Instead, he surprises us all by nodding his head. He is weak, but the nod is unmistakable.

In the story, the nurses seem annoyed that they chose this invasive procedure.

What the doctor and nurses do not know, what I hesitate to admit even to myself, is that I almost gave them the answer they wanted: the reasonable one. But I would have been terribly wrong.

My father never really recovered. He could never again breathe without a respirator, he never left the hospital bed, and he eventually needed dialysis and a feeding tube. Six months later he died of heart failure.

I suppose my father’s decision was a mistake. But it was his mistake to make, not mine. My role was to support my father, no matter what, and to tell the truth, no matter how hard.

This is why when I talk to my clients about their health care proxy, I stress that it is not just enough to appoint someone to make those health care decisions, you must talk to them about the decisions you want them to make. You have to actually have the conversations about end of life care, intubation, feeding tubes and all those things that make most people uncomfortable. You also have to make sure that you are appointing someone who is capable of communicating your wishes during a medical crisis.

A lot of my clients use the Five Wishes Living Will to help them with these decisions. Other choose a living will designed by their church, still others write their own. The important thing is that you do it, and then talk about it with those people to whom you are giving the authority to communicate those decisions. And then trust that they will convey your wishes, not theirs.