

ADVANCE HEALTH CARE DIRECTIVES: HOW TO CHOOSE YOUR MEDICAL DECISION MAKERS; THE IMPORTANCE OF PREPARING AND REGULARLY UPDATING IT; KEEPING IT HANDY!

Quite often we represent someone who does not have close family or friends to make medical decisions on their behalf if they cannot speak for themselves. We see clients who have neither siblings nor children who, once informed about the possibility of such, may wish to hire a professional fiduciary to take on this daunting but crucial responsibility. This is, in fact, what we arrange for these clients to do. We have very caring and competent professional fiduciaries prepared to assist in such situations, if and when the time comes. Usually they also are appointed conservator and trustee to be able to handle the estate smoothly and seamlessly.

Clients would much rather pay a professional, with whom they get to know, to make these types of decisions. That way the client has an objective decision-maker working for him or her, based upon the priorities previously discussed prior to any incapacitation.

Sometimes a friend will agree to be the decision-maker, but they are often about the same age. If the client dies within five years or so, that may be alright. But after that, what will happen? With people living longer and families having fewer children, this may become a growing issue.

A 2006 study reported that 16 percent of people in intensive care units have no designated decision-maker and no identifiable family who could fill that role. [*New York Times*, October 24, 2013, Paula Span, "Hiring an End-of-Life Enforcer."] Some geriatric social workers are proposing a new type of professional, the healthcare fiduciary. Drawn primarily from retired social workers or nurses, clergy, or paralegals, they would be trained and certified to navigate the health care system. Fiduciaries are often associated with law firms which specialize in estate planning and/or elder law. They would charge perhaps close to \$100 an hour, much less than an attorney or even most geriatric care managers would charge.

Fiduciaries are often a desirable option even for people who have relatives close by. Maybe they do not want to burden their close friends or family members. Maybe they worry about how to pick one child over another to make such important decisions. Maybe they are estranged from their relatives. Maybe they worry that in a crisis, relatives will not be able or willing to honor their instructions. Maybe it is just too hard to deal with the whole subject. After all, sadly, despite being told over and over again to prepare for the future and create advance health care directives, most people still do not.

On another point relative to this issue, I have read that health care professionals very often encounter the frustration of a patient declaring that, yes, he or she does have a signed AHCD, but, no, the patient does not have it with him or her and cannot remember where the copy is. Sometimes the original is locked up in the safe deposit box along with the will. [*New York Times*, October 17, 2013, Paula Span, "Where's That Advance Health Care Directive?"] What if the patient arrives at the ER unconscious or incoherent? By the time family members are contacted and able to locate and produce the document, it may very well be too late. I read a funny/sad story about a 67-year-old man who came in to the emergency room with pneumonia. He, too, had an advance directive, which was stored at his attorney's office. The Patient

Ombudsman at the hospital tried to get in touch with his lawyer. However the firm could not fax a copy of the directive, because the man's lawyer carried it around with him in a briefcase in his car and he was out taking a deposition. Hours passed before the lawyer could return the call, and even then he was on the road and not near a fax machine. I cannot presume to know what possessed that lawyer to keep originals of anything belonging to a client in his briefcase; but I do know that would never happen at Cooper-Gordon.

We at Cooper-Gordon LLP do not keep original documents in our office. They go home in a nice notebook with the clients. We scan all original documents and provide our clients and any professional fiduciaries with the scanned copies. We tell the clients to forward the scanned documents to all named agents, trustees, executors and conservators. It is **always essential** that all primary health care providers, including doctors (cardiologists, neurologists), hospitals, clinics, medical labs and imaging centers, have copies of the AHCD. ***It seems evident that the time has come to also encourage everyone to carry a thumb drive with these important documents on them. Even those with little computer knowledge can ask someone (including the lawyer who has prepared all the documents) to copy the documents onto the flash drive.***

Most of the time, patients who have advance directives somewhere and do not bring them to the hospital have simply left them at home. But lawyers' offices and safe deposit boxes are also popular locations. All of which are useless if a person cannot direct his own care, or if family members are at odds, or they are spending time the patient usually does not have rummaging through drawers and files looking for the paperwork while the ER staff stands by.

The more copies there are in circulation, the better the odds that one will materialize at the hospital when you need it.
