

# Business & Law Newsletter

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## **RIGHT TO DIE IN TEXAS**

Due to the immense publicity surrounding the Terri Schiavo case in Florida, many people are making inquiries on how to protect themselves and their family in the event a decision must be made on whether or not to withdraw or withhold life support. Texas law contains a statute which specifically authorizes a "Directive to Physician," or what is more popularly known as a "Living Will." The main purpose of a Directive to Physician is a direction from the patient to the physician instructing the physician to administer, withhold or withdraw life-sustaining treatment in the event of a terminal or irreversible condition.

- A **terminal condition** is defined as an incurable condition caused by injury, disease or illness that, according to reasonable medical judgment, will produce death within six months, even with available life-sustaining treatment provided in accordance with the prevailing standard of medical care.
- An **irreversible condition** is a condition, injury or illness (i) that may be treated but is never cured or eliminated; (ii) that leaves a person unable to care for or make decisions for the person's own self; and (iii) that, without life-sustaining treatment provided in accordance with the prevailing standard of care is fatal (**the Schiavo case is a prime example of an irreversible condition**).
- A **life sustaining treatment** is a treatment that, based on reasonable medical judgment, sustains the life of the patient and without which the patient will die. The term includes both life-sustaining medications and artificial life support such as mechanical breathing machines, kidney dialysis treatment, and artificial nutrition and hydration. The term does not include the administration of pain management medication or the performance of a medical procedure considered to be necessary to provide comfort care, or any other medical care provided to alleviate a patient's pain.

A **written** directive which meets certain statutory requirements may be executed by a competent adult at any time either before or after the diagnosis of a terminal condition. It may include other directions to the physician including provisions limiting medical procedures or medication or forced feeding and may contain a provision designating another person to make such treatment decisions. If a competent adult is unable to sign a written directive, he or she may also issue a directive by a **nonwritten** means of communication, which, again, must meet certain statutory requirements. There are also procedures under Texas law to withhold or withdraw life sustaining treatment if no directive has been executed and the person is incompetent.

If you do desire that life sustaining treatment be withheld or withdrawn in certain circumstances, the most important thing you can do is to put a Directive to Physicians into place. This will make clear your desires and will avail you and your family of the remedies and procedures set forth in the Texas Health and Safety Code. Remember that a Directive to Physicians is only one part of the disability planning that should be undertaken and which is regularly done as part of an overall estate plan. ■

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