

## **THE HEALTH CARE PROXY AND LIVING WILL IN NEW YORK STATE**

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The recent case of Terry Schiavo has highlighted an awareness throughout the country for the need to implement Advance Directives concerning health care decision-making.

In New York the legal document that is used is called a Health Care Proxy. This is a document that is used to manage an individual's health care needs. The Proxy can be used to make day to day decisions that are not threatening, such as choosing a particular health care provider, choosing a particular hospital, using a particular course of treatment, or refusing treatment. In addition, the Proxy can be used to deal with the termination or withholding of life-support for an individual who is terminally ill or in a permanently unconscious state and not likely to recover.

This comprehensive health care document is simple to execute and provides for the appointment of only one health decision-maker. In addition, the document provides for one alternate health decision-maker. It is not possible, under the current law, to elect more than two individuals to serve as representatives to make health care decisions.

It is also important to understand that the Health Care Proxy only becomes effective if the patient is unable to make the decisions regarding his or her health care. As long as the individual is capable of making those decisions, then he or she will make the decisions regarding the course of treatment. A Proxy becomes effective only in the event of incapacity and an inability to make those decisions.

A Proxy is easy to execute. It is signed in the presence of two witnesses. A Proxy document can be obtained through an attorney, On Line, in a legal stationery store or through the New York state Department of Health.

In addition, Advance Directive documents, such as Health Proxies, are provided to patients upon admission to a hospital or long-term care facility. It is advisable to execute these documents before health treatment is needed, preferably as part of a comprehensive Estate Plan.

The document should be kept in a safe and retrievable place. Bank safe deposit boxes are usually not advisable because of limited access. A more appropriate way to safe-guard legal documents, including the Health Care Proxy, involves the use of a fire-proof legal documents box, stored in the individual's house, or in the house of the agent. The legal document box is accessible twenty-four hours a day, seven days a week.

It is also advisable that upon admission to a hospital or a health care facility, a copy of the Health Proxy is made available to the institution to be included in the patient's file. The original document can be used for comparison purposes, but should not be given over to the institution because it may be difficult to retrieve at a later date.

The Health Care Proxy may be changed at any time, so long as the patient is capable of executing a new Proxy.

Individuals considering executing a Health Care Proxy should consult with a knowledgeable attorney to explore the many issues that are often associated with the signing of a Health Proxy. This discussion should extend to a comprehensive Estate Plan that would also deal with financial matters.