Dying with Your Boots On:
Health Care Decision-making and the Importance of Advance Planning

OneJustice
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Training Roadmap

- The Right to Control Health Care Decisions
- The Advance Health Care Directive (AHCD)
- Other Forms

The Comatose Young Women

- The Right to Refuse Treatment (Die) clarified in cases of significant pushback
- Karen Ann Quinlan (1975)
- Nancy Cruzan (1983)

Subject of key SCOTUS decision (497 U.S. 261)

- Terri Schiavo (1990)

When the Dust Settled

1) Competent people have the right to refuse life-prolonging measures
    - Autonomy / Informed Consent
2) Where wishes are unknown, surrogates may exercise right to refuse
3) Decisions A LOT easier if wishes are known

State Law Dominates

- Federal Patient Self-determination Act requires federally funded providers to promote health care directives (no substance)

Documenting Wishes

California takes the lead - 1976 Natural Death Act

- borne of technology and Quinlan case
- highly controversial

2000 Health Care Decisions Law - new AHCD (Probate Code 4600-4800)

STATUTORY FORM (Prob. C. 4701 - can be altered)

The AHCD

Two Parts:

- Power of Attorney
  - Name a surrogate to fulfill wishes and fill in gray area
  - Watch out for trigger
- Living Will
  - End-of-Life care preferences
  - Anatomical Gifts
  - Disposition of Remains
  - Any other instructions

Importance of Agent

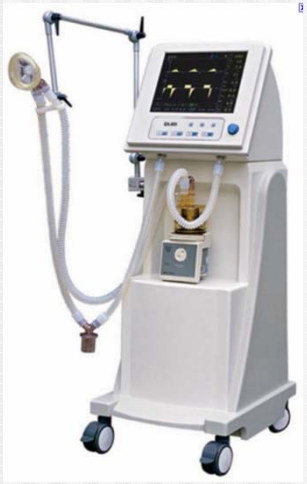
- California has no official hierarchy of default surrogacy
- Providers use decision-making vacuums to their benefit

Power of Attorney Hotspots

- Power to sign Arbitration Agreements?
  Yes, it is implied (Garrison, 132 CalApp4th 253)
- Authorize Involuntary Treatment? The Odysseus dilemma
- Visitation Rights

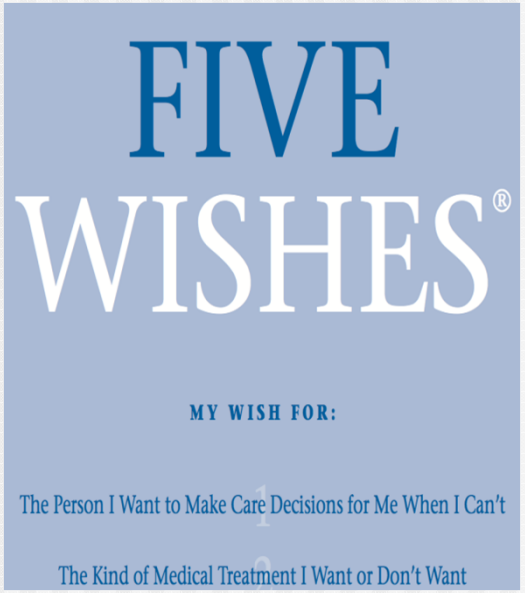
AHCD Living Will - Life Support

- Default is a somewhat confusing choice between artificial life support and “natural death.”
- Several alternatives
  - More narrative of scenarios (e.g. Severe Dementia, Persistent Vegetative vs. Minimally Conscious States)
  - More care options considered:
    - feeding tubes (new efficacy findings),
    - CPR,
    - antibiotics,
    - hospitalizations, pacemaker, fracture treatment, cancer treatment, dialysis



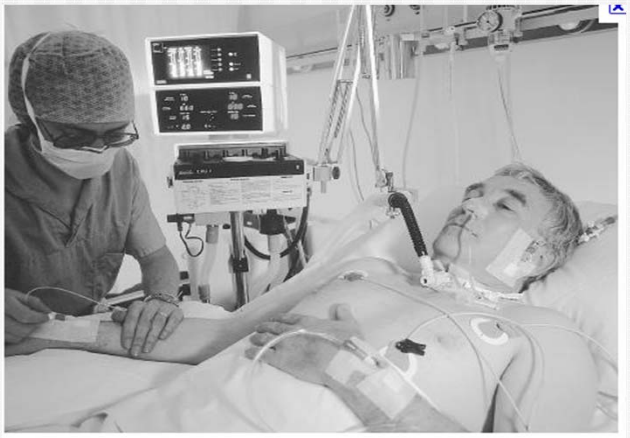
Statement of Values

- Perhaps the greatest value to a living will is not for specific instruction but to document personal values to elucidate unanticipated choices
- Five Wishes (actually 40+)



AHCD Living Will - Beyond Artificial Life Support

- Pain Relief - consider “terminal sedation”
- Preference for returning home (no longer part of standard form)
- Nomination of Conservator
- Three lines for “other wishes”



Anatomical Gifts - Catch 22

- Artificial life support often necessary to keep organs viable
- “agent authorized to maintain life support after brain death to facilitate transplantation.”

The Perfect AHCD

- One that instructs regarding major issues and guides for unanticipated scenarios.
- Reviewed regularly
  - Change in personal circumstances or values (psychological adjustment)
  - Unanticipated treatment needs
  - Advances in medical science

Other Health Decision-making Forms

- DNR
- POLST
  - I do not recommend use of POLST
  - Unconst'l 3rd-party override
  - Hospital exception
  - For more info,

    http://canhr.org/reports/2010/POLST_WhitePaper.pdf

Dying with Your Boots On?

Thank you for participating in today's training.