

The Law and You Advance Directives for 2008 - The Final Chapter

This month's column hopefully represents the final chapter on the new advance directives for 2008. This series began with an introduction in December 2007, and was followed by Parts I and II in January and February 2008.

It was anticipated that Part II would conclude the discussion. However, the 2008 Legislature amended the Utah Advance Health Care Directive Act, § 75-2a-101 thru 124 (the "Act").

To illustrate the extensiveness of the Act and its 2008 modifications, the online printout for Senate Bill 161 is 37 pages! I will highlight only a few of the changes I feel are most important to you.

The Act now allows only adults to express their desires in an advance health care directive. The prior version allowed any person to do so regardless of age.

A health care provider now excludes an emergency medical services provider. This makes your advance directive ineffective in emergency situations, *e.g.*, when an ambulance arrives at the scene of an accident or when called to your home.

Now, however, there is a new directive in addition to the advance directive. It is called a "Life With Dignity Order." This is an order designated by Utah's Department of Health that gives

direction to health care providers, including emergency medical services providers. This a written order on a form approved by the Department of Health. It must be prepared by your physician or APRN ("advance practice registered nurse").

Importantly, an emergency medical provider is immune from prosecution if he or she provides life sustaining treatment when that person's Life With Dignity Order directs that life sustaining treatment be withheld or withdrawn.

And, if there is a conflict between the Life With Dignity Order and the person's advance health care directive, the Life With Dignity Order takes precedence.

To complicate matters, there is also a POLST form which is a "Physician Order for Life-Sustaining Treatment." It is a physician's order and not an advance health care directive. The POLST form is basically an order that is transferable and follows a patient from a hospital to a care facility or from one care facility to another. The care providers must follow the instructions on this form.

Along with substantive changes to the Act, the advance health care directive form set forth in the Act was also modified. Section 75-2a-117 of the Act provides an

“Optional Form.” This Form, or a substantially similar form, is presumed valid under the Act.

The Center on Aging at the University of Utah has a direct link to download the Form in pdf format. From your browser, enter the following URL address:

http://aging.utah.edu/utah_coa/directives/index.html

This will bring you to a page with various links to the Form or Instructions. You can also fill in the Form online and then print it.

I have also constructed my own version of the Form for my clients. It can be printed or filled in online and then sent to me by e-mail for review. Use of the option for e-mail is limited to those who are having me help with other estate documents.

You can fill in online my Form by going to my web site at “utahattorney.com” and selecting “Advance Health Care Directives” under the heading of “Elder Law” on the home page or selecting the Elder Law tab and then scrolling down to “Advance Health Care Directives”. With a single click, you can easily obtain the *Utah Advance Health Care Directive Form*, print it, or fill it in online and e-mail it to me for review and your subsequent execution in the presence of a qualified witness.

If you need help in deciding what to do, you might consult with an Elder Law

Attorney to help you. To locate an Elder Law Attorney, check with the National Academy of Elder Law Attorneys at (520) 881-4005, or your local Yellow Pages.