



Are You Prepared?

Will your wishes be followed if you can't communicate?

By Thomas J. Vale

An article in the Wisconsin State Journal illustrated the danger of failing to do adequate estate planning and executing a power of attorney for health care. An individual became incompetent to act on her own behalf and a guardian was appointed to make decisions for her. The individual's physical and mental condition declined drastically and it was only through medical intervention that she remained alive. The guardian asked the court to allow the medical support to be withdrawn, but the trial court declined to do so and the Wisconsin Supreme Court upheld that decision.

Absent an advanced directive (power of attorney for health care form) granting a designated the health care agent the requisite authority, the Wisconsin Supreme Court felt that the court-appointed guardian did not have the authority to make a life and death decision. If an individual executes a power of attorney for health care form while they are competent, it normally would not be necessary for the court to appoint a guardian in the event an individual becomes incompetent. In addition, you can give your designated health care agent the authority to withdraw life support under the appropriate circumstances.

If you have not considered your estate planning needs, now is a good time to do so. A comprehensive estate plan should consider not only what happens to your assets in the event of your death (usually covered by the terms of a will but should also anticipate issues that will arise should you become incompetent during your lifetime. Normally, an individual should execute a durable power of attorney for health care to designate who will make decisions on their behalf should the need arise. You can then discuss your wishes with your named representatives ahead of time so that you will be assured that your representatives understand your wishes. Even if you have done estate planning in the past, it is a good idea to review all of the documents that you have periodically to make sure they are consistent with your present circumstances.

