



Elder Law Newsletter

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A PROFESSIONAL LAW
CORPORATION

*Protecting and
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The Need for Advance Health Care Directive and Careful Selection of Agent is Highlighted by the *Schiavo* and *Pinette* cases.

When she was just 26, Terri Schiavo suffered heart failure that led to severe brain damage due to lack of oxygen. For many years her husband and parents worked together to get Terri the best medical care possible, but after several years Michael Schiavo, Terri's husband, came to the conclusion that Terri would never recover from her vegetative state. Like most young people, Terri did not have an advance health care directive, a document that under California law serves to appoint the person's health care agent as well as offer directives as to the type of end-of-life, and other, medical procedures that the person wants to have implemented.

Because of the lack of directive which clearly voiced Terri's desires with regard to medical care, a protracted legal battle erupted between Michael Schiavo, who believed that Terri would not want to continue to live in a vegetative state, and Terri parents, the Schindlers, who believed that Terri would have wanted to continue to live due in part to her religious upbringing. The lack of an advance health care directive led to the intrusion of millions worldwide into the life of this unfortunate woman, the destruction of what was formerly a close knit family, and the unnecessary expenditure of hundreds of thousands, if not millions, of dollars in legal fees and health care costs.

Like Terri Schiavo, Hanford Pinette found himself in a vegetative state – He was being kept alive with a lung machine and kidney dialysis. Unlike Ms. Schiavo, Mr. Pinette had executed a living will and the designation of health care surrogate (the Florida equivalent of an advance health care directive in California). His living will specified that if he became unable to decide for himself and he were in a terminal condition, he did not want to be kept alive through extraordinary means. He appointed his wife, Alice Pinette, to make health care decisions for him when he became unable to do so.

Two physicians determined that Hanford was terminal and that, under the terms

of his living will, the machines should be disconnected. The doctors reasoned that Hanford was terminal because it was expected he would never be weaned from the machines. Alice disagreed and asserted that many people, such as Christopher Reeve, live years of quality life with the assistance of machines. The hospital brought the matter to the court and, on November 23, 2004, the court ruled that Mr. Pinette had clearly expressed his wishes that he did not wish to be kept alive by a machine. The hospital removed the machines and Hanford died almost immediately.

The *Schiavo* case illustrates the importance of expressing your wishes through the execution of an advance health care directive. The *Pinette* case illustrates the importance of communicating your health care wishes, and selecting an agent that will honor those wishes.

In the alternative, an advance health care directive can be drafted to give the agent absolute discretion when it comes to making end-of-life and other health care decisions. If Mr. Pinette had drafted his documents to give his wife absolute discretion, Alice would have overridden his living will and would have sustained his life. Care must be taken in selecting this option, as the health care agent may be reluctant to give up hope and allow the principal's death, even under circumstances where it might be what the principal would have wanted. This again underscores the importance of the principal communicating his health care wishes to his agent and exercising great care to choose a health care agent who shares the principal's values and thought processes when it comes to making health care decisions.

To avoid the tragedy illustrated in the *Schiavo* case, advisors should recommend clients not only execute advance health care directives for themselves, but also for their children that are old enough to be able to voice their opinions with regarding to health care choices. To avoid the problems of *Pinette*, make sure that you select an agent that shares your values and will carry out your wishes.

Can We Be of Assistance?

Dennis M. Sandoval, A Professional Law Corporation, specializes in estate planning (including probate administration and trust / will contests), asset protection planning, elder law (including qualifying for Medi-Cal coverage, conservatorships, and creation of Special Needs Trusts for disabled beneficiaries) and tax controversy work (including federal and state tax audits, appeals and litigation). All of your referrals will be handled promptly and professionally.

Mr. Sandoval is available to speak to your group or organization. Call (951) 787-7711 to schedule him to speak on any topic relating to estate planning, elder law, asset protection or taxes.

Upcoming Seminars / Classes for Professionals

Planning Traps for Gays and the Elderly Under the California Domestic Partner Rights and Responsibilities Act of 2003	4/9/2005	9 am – noon	University of California at Riverside Extension (UNEX) 3 hrs. Attorney CLE
The Basics of Medi-Cal Planning for Long Term Care	4/30/2005	8 am – 5 pm	UNEX 7.5 hrs. Attorney CLE
Naming a Trust as Beneficiary of a Retirement Plan: A Magical Mystery Tour; Federal Estate Tax Repeal Update and Recent Developments; Using a (d)(4)(A) Trust to Protect Benefits of Disabled Beneficiaries	5/12 – 5/15/2005	TBD	American Academy of Estate Planning Attorneys Eden Roc Resort & Spa Miami
Retirement Plan Distribution Rules: A Magical Mystery Tour; Federal Estate Tax Repeal Update and recent Tax Developments	5/19 - 5/22/2005	TBD	National Academy of Elder Law Attorneys Fairmont Hotel San Francisco
The Basics of Conservatorships in California	5/26/2005	Noon – 1 pm	Kaiser Hospital Riverside
The Mechanics of Drafting First Party and Third Party Special Needs Trusts in California	6/18/2005	9 am - noon	UNEX 3 hrs. Attorney CLE
Maintaining and Maximizing Government Benefits for Special Needs Beneficiaries: The Basics of Administering a Special Needs Trust	6/18/2005	1 pm – 4 pm	UNEX 3 hrs. Attorney CLE
Retirement Plan Distribution Rules: A Magical Mystery Tour; Federal Estate Tax Repeal Update and recent Tax Developments	9/29 - 10/2/2005	TBD	National Academy of Elder Law Attorneys Sheraton New Orleans New Orleans
Topics to be Determined	10/6 – 10/10/2005	TBD	American Academy of Estate Planning Attorneys Catamaran Hotel San Diego