

## HEALTH CARE DECISION MAKING

Today, medical equipment and technology allow physicians to sustain a person in a vegetative state for many years without any hope of recovery. Individuals who do not wish to be kept alive by such sophisticated life-sustaining techniques must put their desires in writing.

In the now famous case of Cruzan v. Dir. Mo. Dept. of Health, 110 S. Ct. 2841 1990, the U.S. Supreme Court held that a state may demand clear and convincing proof of a person's wish to exercise his or her right to die. Ms. Cruzan was an accident victim who had not made clear her intent to have medical support withdrawn. Because of this failure, she could have been kept "alive," in a vegetative state, for many years, at an estimated cost of \$200,000 per year. The emotional toll on her family was incalculable.

Maryland has adopted the Health Care Decisions Act and codifies issues not only pertaining to end of life health care decision making, but also the appointment of health care surrogates or agents to make health care decisions on a person's behalf in the event a person is unable to do so. It is important to remember that any patient with appropriate capacity has the right to make health care decisions on their own behalf (otherwise known as the doctrine of informed consent) without interference of a surrogate or health care agent.

The Health Care Decisions Act allows an adult who has decision making capacity to provide for: (i) written instructions authorizing the provision, withholding or withdrawal of health care, often called a directive or living will, (ii) a written appointment of an agent to make health care decisions, often called a durable power of attorney for health care and (iii) an oral statement to a physician leaving instructions or appointing an agent. A written advance directive must be witnessed by two adults, neither of which should be that person's health care agent and at least one witness must have no financial interest in the person's death. The health care agent, if appointed, may not be an employee, owner or operator of a health care facility where the person is being treated, unless the agent also qualifies as a surrogate under Maryland law.

In the event a person has not appointed a health care agent, or if the appointed health care agent is not available, and the person no longer has the capacity to make health care decisions personally, a surrogate has authority to do so. Surrogates are indicated in the following priority order: (i) a guardian if one has been appointed, (ii) the person's spouse, (iii) person's adult children, (iv) person's parent, (v) person's adult brother or sister or (vi) friend or other relative who describes in an affidavit that he has enough contact with person to be able to act as the surrogate.