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Death with dignity

Your right to die in Oregon may improve your quality of life

BY BRADLEY J. WOODWORTH

Note: No two legal situations are exactly the same. This column discusses general legal principles only. For specific advice, consult your lawyer.

Much attention has been focused lately on legal issues of the "right to die" with dignity. The United States Supreme Court, in its recent *Cruzan* case held that, at least where a comatose patient had not clearly and unequivocally recorded her desire prior to becoming disabled, there was no constitutional right to have life support technology removed, even when the patient is in a "persistent vegetative state."

Janet Adkins, a Portland, woman, gained national media attention when she took her own life by means of a doctor-built "suicide machine," rather than suffer a long and painful decline from her Alzheimer's Disease.

A related issue in such cases is who decides what medical treatments will be given or withheld from the patient, when the patient is no longer able to make his or her own decisions. Unfortunately, this has an immediacy for many young and middle-aged gay men who, but for the AIDS epidemic, would probably not have to consider such issues for many years.

Counsel

What, me worry?

Every one knows that American medical technology has exploded in recent years. It is now possible for high-technology (and high-cost) medical treatments to sustain a semblance of physical life, even when the patient is irreversibly comatose, and the question is not *whether* the patient will die but *when* and *how*. Being unconscious, debilitated and kept alive by artificial means, including a respirator and feeding tube, is something many people simply do not want. Additionally, some people have substantial assets that they would like to pass on to their lover or family members. Even a short period of time on full life support systems can suck up all your money. A month spent in intensive care on life support, can run to, or even exceed, \$50,000. Some people would rather have their last \$50,000 go to their surviving loved ones than to a hospital.

There is also something very disquieting about contemplating such a total absence of control over one's life (or death). You are unable to make your own decisions and are completely dependent on others to decide what to do to, or for, you, for how long, and so forth.

Given these substantial concerns, it is not surprising that many people want to limit the amount and type of medical treatment they receive, particularly if they have no realistic chance of recovering from their illness, or leading any type of normal life again.

What you can do under Oregon law

Thanks to the recent session of the Oregon legislature, Oregonians now enjoy some of the most liberal laws in the nation regarding the right to die with dignity. For many years, Oregonians have been able to execute a "Living Will," also known as a "Directive to Physicians." This document instructs your physi-

cian, in the event of your terminal illness and imminent death, not to prolong your life by use of extraordinary medical means.

The advantage to such a document is clear. However, the living will also has some limitations: It does not specifically cover the situation of withdrawing life support systems, nor does it specifically cover withdrawing artificially administered food and water. In the absence of such specific instructions, many physicians and hospitals are reluctant, or will refuse altogether, to withdraw these life-sustaining procedures.

Fortunately, these problems were solved in great measure when the Oregon legislature adopted a form of "Durable Power of Attorney for Healthcare (POA)." Under a durable POA, you can specifically make known your wishes that life support treatments, including respiration, not be started or be withdrawn, even if it is likely that death will result or be hastened by such action. Further, the durable POA permits you to record your wish that artificially administered nutrition and hydration be withdrawn, again with the understanding that death may result or be hastened by that action.

Perhaps the most important provision you can make in a durable POA is to appoint a loved one, other than a family member, to make medical decisions for you when you are disabled. Thus, many gay couples, or gay individuals who have close gay friends, want to execute a durable POA, so that their lover or gay family member has full legal authority to make the necessary decisions when they cannot make their own decisions.

Why is this important? In the absence of such an appointment of a person to make the decisions, the law provides that your next of kin make the decisions. For some people this is fine, but for others, who may be estranged from their families, or whose families may have different religious or other values, it can be very difficult. I observed a very tragic situation in which a disabled person, unable to make decisions, and requiring long-term rehabilitative care, had failed to designate his lover to make decisions. The patient's parents, from California, intervened at the hospital, with the end result being that the patient ended up transported to California to receive the long-term treatment there, far from his lover, friends, home and community.

Such nightmares are easily avoided. Durable Power of Attorney forms and Living Will forms can be prepared for you by nearly any gay community lawyer. The forms are simple and straightforward and the fee for preparing them is relatively modest, usually between \$25 and \$50. Additionally, a small fee is charged for recording the documents in the public records if you choose to do that.

As a gay person, you may have important rights you want to protect, and non-family loved ones who you may want to appoint to assist in your affairs if you are disabled. Under Oregon law, you have ample opportunity to do so. However, you must take these actions when you are fully mentally competent.

The author is an attorney in private practice and maintains his office in the Crown Plaza Building in downtown Portland.