

Powers of Attorney and Advance Directives for Health Care

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We dislike being out of control. For many, the worst possible scenario involves being unable to make our own health care or financial decisions, thus, losing control over our own lives. Powers of attorney and advance directives (sometimes called “proxies” or “living wills”) are promoted as means of maintaining control when we lose the ability to make these important decisions for ourselves. However, none of these documents will magically extend our control into periods of incapacity. The documents are, nonetheless, very important.

The choices we make about our care and actions involve ethical decisions based upon an informed conscience. This is the hallmark of “autonomy.” However, once mentally incapacitated, choices and ethical decisions may exceed our abilities. In this situation, the law allows us to use powers of attorney to name a person who may act on our behalf. Advance directives guide that person’s decision-making so that these decisions are as similar as possible to what we would have decided. By appointing someone we trust and who knows us well, and by guiding that person with information about the value system that normally informs our decisions, we manage to preserve our dignity and autonomy, if not our control.

Different provinces will refer to the same document by different names. However all documents accomplish one of two things, and sometimes both in the same document:

- (1) identify and give authority to the person whom we choose to make decisions on our behalf (substitute decision-maker); and
- (2) provide instructions and information guiding the person who will be making those decisions (advance directives).

A power of attorney for personal or health care is a document that gives someone else the authority to make decisions for us regarding treatment, hospital admissions, hygiene needs, help with dressing, and so on when we can no longer make those decisions ourselves.

Naming a Substitute Decision-Maker

A substitute decision-maker should be someone who knows us well, is able to think clearly in stressful situations, is mature and responsible with his or her own life, and is willing to act on our behalf. Most importantly, we should feel that we can trust this person with very intimate and with potentially life-altering decisions.

All too often, we choose a substitute decision-maker out of obligation, or we choose the person we believe will be least burdened by the task. However, this is a time to be prudent and choose the substitute decision-maker we feel most comfortable with (and who is, of course, willing to act in that role). While we wish to save another person unnecessary burdens, each one of us ought to be willing to accept, and be comfortable with sharing, the burden of care. “For to burden one another is, in large measure, what it means to belong to a family – and to the new family into which we are brought in baptism” (Meilander).

Providing Instructions and Information

Advance directives, if properly approached, can provide the substitute decision-maker with information about who we are now and what values and beliefs matter to us. Instead of a laundry list of treatment choices – many of which may be unhelpful or irrelevant when the time comes – information about us and our values and beliefs provides information that may facilitate decision-making later should we become incapable.

An advance directive may be its own document, may be a set of statements within another document (such as instructions within a power of attorney), or may consist of a verbal understanding between us and our substitute decision-maker. Most importantly, advance directives, however they are done, are a means of ensuring necessary communication between ourselves and our substitute decision-maker. It is this process of communication that ensures that our dignity is honoured.

Capacity

“Capacity” is a legal construct created by courts and legislatures, used to evaluate a person’s ability to make certain decisions. This ability requires that the person be able to both understand and appreciate the decision and

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the consequences of the decision. “Understanding” implies that we are able to process the information relevant to the decision. “Appreciation” requires that we are able to apply that information to ourselves, demonstrating a personalized depth of application and understanding. Capacity is assessed relevant to the decision that needs to be made at the time the decision needs to be made. A substitute decision-maker cannot make decisions on our behalf unless we are incapable of making the decision ourselves.

What if I don’t have a power of attorney or advance directive?

The various laws in each province establish a mechanism for substitute decision-making in the event that an incapable person does not have a power of attorney. In Ontario, for example, the law provides that if a person is incapable of making his or her own health care decision, then whoever is available and highest on the following prioritized list shall make the decision for the incapable person:

1. guardian of the person (appointed by a court)
2. *attorney for personal care*
3. board appointed representative (appointed by a government board)
4. spouse or partner
5. child or parent, or person lawfully in place of a parent
6. parent with only right of access
7. sibling
8. any other relative

Note that a person named in a power of attorney ranks high on the list and that, aside from appointed individuals, non-relatives are not included on the list.

Provincial laws establish a system for a government official (the Public Guardian and Trustee) to make decisions for an incapable person, but only if there is no one else available or qualified to act as substitute decision-maker.

Who needs a power of attorney?

If you are 16 years of age or older, you should have a power of attorney for health care if you are uncomfortable with the person who would otherwise make decisions for you, or if you are concerned about how the decisions might be made.

Everyone needs to discuss needs and desires for health and personal care with his or her substitute decision-maker,

whether that substitute decision-maker is named in a power of attorney or chosen by a legislative list. However, beware of formalizing your advance directives in writing. While some information in writing may be a good thing, too much information or information badly phrased may, in fact, be misleading and may prompt avoidance of an extended discussion of the situation that actually arises. Before writing out advance directives for personal and health care, ask yourself: Why are they needed? Who will use them? How?

Expressing Your Values and Beliefs

There are kits and resources available to help you prepare powers of attorney and advance directives, but do use care in choosing and using them. It is safest to stick with documents that have been prepared by a government agency. Alternatively, consult with a lawyer who specializes in these matters to request assistance in preparing the documents.

While the goals of health care planning cannot be achieved simply with a new document or more legislation, such planning can be improved with better communication and caring relationships. Powers of attorney and advance directives are one means of promoting communication and preserving integrity in relationships.

Questions

1. When and why might powers of attorney be useful?

2. What are the advantages of advance directives? What are the disadvantages?

3. How do we overcome our fears so that we can discuss our wishes, values and beliefs with our representatives?

Reference

Meilaender G. “Christian thinking about advance medical directives,” (1996) 11 (3) *The Christian Century* 854.