



Advance Health Directive

Who'd have thought that even dieing could be so complicated

By Tony Crilly

Right to die

With great interest I read an article regarding a young woman at the centre of a 'right to die' debate in Italy. It was announced that she had passed away as politicians in Italy's Senate were debating a law that would force doctors to continue feeding Eluano Englaro, a 38-year-old Italian woman, who had been in a persistent vegetative state since being injured in a car crash in 1992. Doctors at a private clinic in the northern city of Udine had been withholding treatment through feeding tubes for five days. Englaro's father had been battling with the courts in Italy to let his daughter die since 1999, insisting it was her wish.

In July, a court in Milan had ruled that doctors had proved that her coma was irreversible and that before the accident she had expressed a preference for dying over being kept alive artificially. State prosecutors appealed against the ruling, but the Court of Cassation in Rome ruled the challenge inadmissible in November. The Italian Health Ministry subsequently issued an order barring all hospitals in the region from withdrawing life support, but this was overruled by a court in Milan on 21 January.

Italy's Prime Minister, Sylvio Berlusconi, drafted a decree early May to prevent doctors from letting Englaro die; however, President Giorgio Napolitano refused to sign it. The Government's move sparked fury amongst centre left opposition politicians who accused it of trying to exploit the case. Englaro was transferred to La Quiete Clinic in Udine from a church-run hospital in Lecco after it was said they would receive her and allow her to die. Italy does not allow euthanasia. Patients have a right to refuse treatment, but they are not allowed to give advance directions on the treatment they wish to receive if they become unconscious.

In Australia, we have the right to dictate certain medical treatments.

Get your paperwork in order

In Queensland, an Advance Health Directive can be signed under the *Powers of Attorney Act 1998* which provides that every competent adult has the legal right to accept or refuse any recommended healthcare. An individual can state their wishes or directions regarding future healthcare for various medical conditions. In circumstances where they are unable to make their own decisions, a doctor must explain the various options and then a lawyer must explain the legal implications.

The form covers special conditions, religious beliefs, terminal and incurable or irreversible conditions, including permanent unconsciousness (coma) and a persistent vegetative state. The options include cardio pulmonary resuscitation, assisted ventilation with use of a machine and artificial feeding and hydration. The form also provides for the appointment of an attorney for personal and health matters.

Recently I was involved in a case in which the son of a patient in hospital had threatened to take the issue of his healthcare to the Guardianship Tribunal on the basis that his wife was not taking adequate steps regarding his medical care. The supervising specialist had advised the wife that there was no possible benefit from surgery for a lesion on the patient's brain as he had advance dementia and it had no bearing on his wellbeing. The son was aggressive about the decision of the wife and had threatened to apply for appointment of the Public Trustee and a specific order for the surgery to be performed. Thankfully, after some discussion, the son accepted his father's condition and no application was made. The wife is the statutory health attorney for the husband and, therefore, has the power to make medical decisions on his behalf. An Advance Health Directive would have greatly assisted the circumstances.

Enduring Power of Attorney

These matters take on even greater complexity when the person involved controls a reasonable amount of wealth, either by being a controlling individual of a trust, or director and shareholder of a private company. It is always recommended that a financial Enduring Power of Attorney is appointed and careful consideration be given to the appropriate person to take charge of financial matters.

One of the more difficult areas is the control over private superannuation funds. It is valid for a financial power of attorney to confirm or renew a Binding Death Benefit Nomination for superannuation on the same terms. It does not seem possible for a power of attorney to alter a Binding Nomination. There are tremendous obligations on a person appointed under the *Powers of Attorney Act 1998*, including maintaining records and keeping separate accounts.

Devastating circumstances

Recently, my firm had a client who was asked to step aside as attorney for her husband and the Public Trustee appointed. There were limited assets, but the client lived overseas. Her husband had suffered a heart attack and oxygen deprivation causing permanent brain damage. The usual reports had not been properly completed and returned to the Guardianship Tribunal and on that basis, the Tribunal sought to remove the wife as attorney. In a further blow for our client, whilst she was struggling to cope with the full-time care of her disabled husband, her 11-year-old son contracted leukemia. During the period which the Tribunal sought financial records, our client was busy taking both her husband and son to hospital for treatment. Her son passed away not long before the Tribunal wrote to her indicating that because she had failed to lodge the documents, they would bring an Application to have her removed.

We acted pro bono and maintained our client's status as financial attorney for the husband. Further time was granted to allow reports to be obtained.

It is deeply distressing for family members to face a Tribunal when their circumstances are already overwhelming due to the illness of family members. It certainly pays to ensure that a proper Enduring Power of Attorney for financial matters has been signed, as well as an Advance Health Directive for personal and health matters. In the end, it is better to predetermine the outcome by exercising your statutory rights, rather than leaving it to the decision of some unknown bureaucrat.

As part of Crilly Lawyers' Estate Planning Process, we ensure that Enduring Powers of Attorney for financial matters, as well as health and personal matters, are signed. We ensure that there are alternative appointments if the first choice of Attorney is unable to act. An Advance Health Directive is a good opportunity to exercise freedom of choice, as it is an advantage to have these options about future medical care available to us. I would be interested to hear any other examples where this might have solved a problem for you.