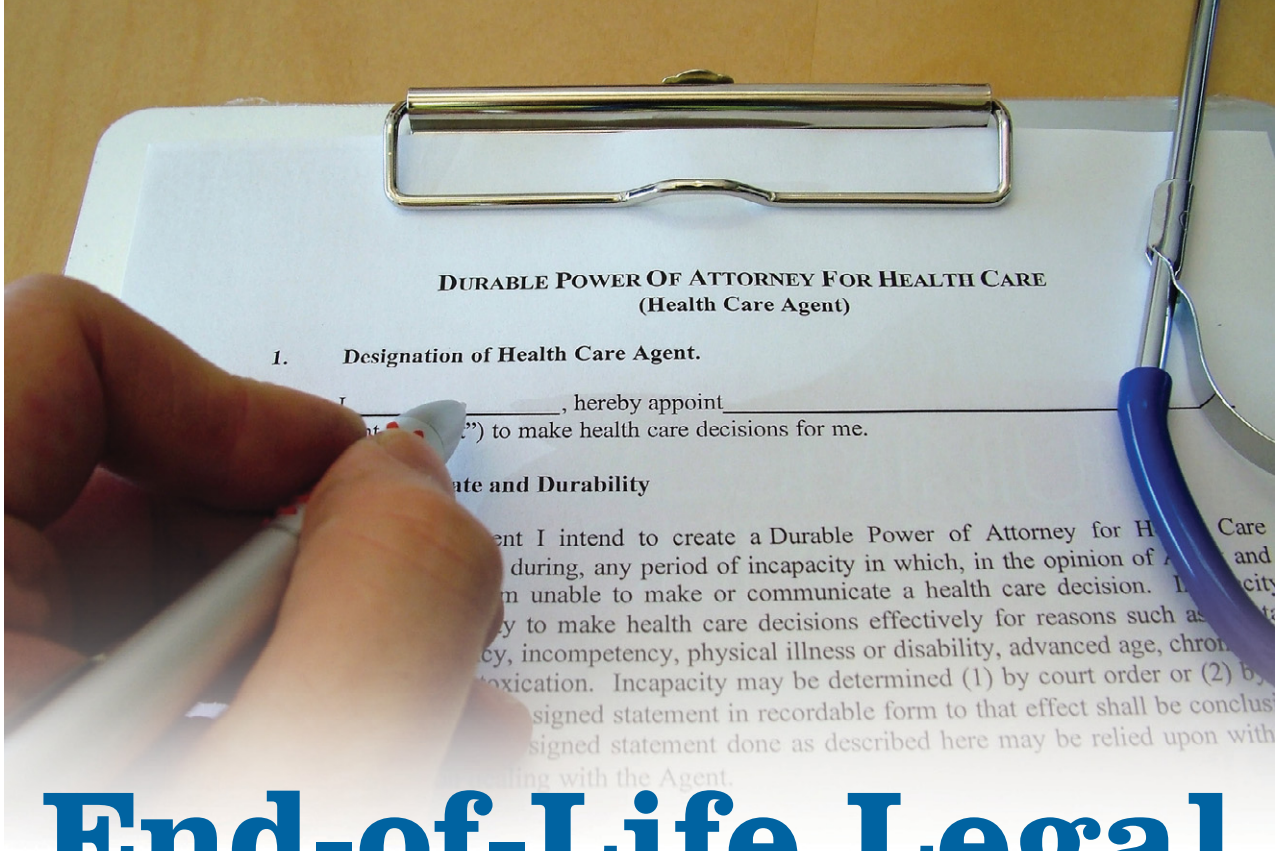

End-of-Life Legal Considerations

ROXANNE LYNN WARD

ABSTRACT

End-of-life decisions and the accompanying legal ramifications related thereto are important matters to be considered and understood by nurse practitioners (NPs). This article focuses on 3 potential legal issues: creating advance directives with patients and their families, withholding or withdrawal of life-sustaining treatment, and do-not-resuscitate orders. The article also discusses improving communication about end-of-life care, thereby avoiding any potential legal pitfalls. Additionally, a legal case summary is provided to illustrate the importance of documentation in the patient's medical record, as well as an overview of advance care planning.

Keywords: advance care planning, advanced directive, balancing, communication, competent, considerations, CPR, decisions, designated, disciplinary team interventions, DNR, durable, ethical, goals, hospice, humane, judgments, lawsuit, legal, life-sustaining, life-threatening, mandatory, medical malpractice, mental competency, palliative, power, nurse practitioner, preferences, proxy, records, resuscitation, surrogate, transition, withdrawal, withholding

In October 2007, I was advised that my father was terminally ill. I would not have thought at that time that this experience would lead to the writing of an article regarding end-of-life issues. However, as impressed as I was by the care and compassion of his 2 primary caregivers, both of whom were nurse practitioners (NPs), I was intrigued by the various legal discussions that ensued with my father's caregivers, especially during the last weeks of his life. As the days passed and my father's condition worsened, discussions of end-of-life decisions and the accompanying legal ramifications related thereto became a welcome distraction from the harsh and often-

times unbearable reality that my dad, at the young age of 72, would soon be gone from this life.

The discussions seemed to center around 3 primary potential legal issues, as follows: creating advance directives with patients and their families, withholding or withdrawal of life-sustaining treatment, and DNR (do not resuscitate) orders. We discussed that there are such a large number of patients who do not speak with their treating health care providers about what they desire as their lives near an end. Discussions about improving that communication about end-of-life care are crucial to avoiding any confusion, as well as to avoid any potential legal pitfalls. These discussions must necessarily include the patient's family members as well.

NPs can play a vital role in easing the transition from aggressive treatment in a hospital setting to palliative care. To do so successfully, the NP must be fully prepared to make ethical and humane decisions and, at the same time, consider ways to avoid liability. The shift of focus from curing the patient to palliative care is a challenging one to discuss with the patient and the patient's family members. The NPs who provided the hospital and then palliative care to my father felt very strongly that it cannot be stressed enough to patients and their families alike the importance of having an advanced directive as well as a health care proxy, which is a durable power of attorney for health care.

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Advance directives are the plans that a patient makes for his or her future health care decisions in the event that he or she cannot make those decisions independently. Advance directives can be oral or in writing. A strong recommendation should be made to patients to put these directives in writing, as this will assist in clearly stating the patient's wishes and intentions, thereby making it easier for health care providers who do not know the patient (ie, if the patient comes into an emergency department while out of town) to understand what the patient desires with regard to end-of-life care. There are 2 basic types of written advance directives. The first is the appointment of someone else to make health care decisions if the patient is not capable of doing so. This is referred to as the durable power of attorney for health care. The second is typically referred to as a living will, and it provides a rather narrow set of instructions about care to be rendered or withheld at the end of the patient's life.

A durable power of attorney allows the patient to name another person (ie, the attorney in fact) to make certain medical decisions for the patient if he or she is unable to make them for him or herself. The attorney in fact can authorize admission of the patient to a medical, nursing, residential, or other facility, enter into agreements for the patient's care, and authorize medical and surgical procedures. There are certain important differences between a living will and a durable power of attorney. Specifically, a durable power of attorney for health care generally names someone to make health care decisions for the patient, without necessarily describing what those decisions should be. A living will only takes effect when the patient is in a terminal condition, or permanent state of unconsciousness.

The patient may, through the durable power of attorney form, indicate whether his or her agent is authorized to withdraw certain types of medical treatment, such as artificially supplied nutrition and hydration. It is a good idea for a patient to have both a living will and a durable power of attorney/health care directive, as many living will forms only apply when the patient is expected to die within a short period of time, and do not allow for the withdrawal or withholding of artificial nutrition and hydration. Specifically, they do not cover a condition such as a persistent vegetative state. A health care directive allows the patient to furnish clear and convincing proof of his or her intentions regarding the withholding or withdrawal of life-prolonging procedures and may be relied upon by the patient's physician even if the patient is unable to communicate his or her decisions. The NP should discuss with the patient any important values and preferences that are relevant to the patient's medical care.

The health care directive form may include, but is not limited to, the following items: I want the following life-prolonging procedures to be withheld or withdrawn—artificially supplied nutrition and hydration (including tube feeding of food and water), surgery or