

The Right to Choose: **Living Wills in British Columbia**

*O Death, rock me asleep,
Bring me to quiet rest,
Let pass my weary guiltless ghost
Out of my careful breast.*

Attributed to Anne and George Boleyn (1536)

In 21st century North America, we live in a privileged culture where our choices have almost outstripped our desire to choose. My great grandmother Ann Argue died in 1948. She had relatively few health choices, did not have a Living Will, and would not have understood the utility of such a document.

In the last half-century, our lives have changed considerably in ways that make it prudent to consider and choose in advance what health care we want if we become unable to make or communicate those decisions ourselves.

Consider the following common facts of life in 2005.

- More and more of us are living longer than ever before. But with that extended lifespan comes an increased likelihood of chronic illness and loss of cognitive ability.
- We have access to remarkable medical technology that offers us an ever-increasing array of treatments and

ways of prolonging both life and the dying process at its end.

- As a culture we are discouraged from thinking or talking about our own mortality. In our youth-obsessed, death-denying society, we are not encouraged to think about our mortality or to make plans for what is an inevitable end. When decisions about a family member's health care must be made, too often they are based on guesses or emotional motives.

Taken together, those simple facts offer a persuasive argument for clearly communicating our wishes for future health care to our family and other

decision-makers. Leaving aside the possibility of catastrophic illness or accident, it is likely that many of us will reach an advanced age and may be unable to make our own health care decisions.

When that time comes, there will be even more choices in medical treatments available than there are now and, without clear communication about our view of what makes a good quality of life and instruction about what health treatments we want and under what circumstances, our families may be left with the unenviable task of guessing our wishes.

Teaching people about Living Wills, also known as advance directives, I have heard many stories about death in families—stories about good deaths when the dying person's wishes were known and stories about difficult deaths fraught with disagreement or guilt.

But it is not those stories that remain in my memory. It is the hundreds of individuals I meet whose voices ask in calm, dignified, and emphatic tones for



Ann Argue, great grandmother of the author

As a culture we are discouraged from thinking or talking about our own mortality.

the information and tools to document their wishes for future health care. These people simply and instinctively know that giving instruction about the health care they want in the future is the right thing to do—*right* because it is our right to decide such things and *right* because it relieves others of the terrible burden of making those decisions for us.

These are brave and practical people who are not afraid to contemplate their own mortality and consider the point at which they believe a good life ends and a good death begins.

The information they need provides answers to these questions.

- Who makes health care decisions for me if I become decisionally incapable?
- On what basis does my decision-maker make such decisions?
- How do I convey my wishes to my decision-maker?

Who?

In BC, every capable adult has the right to consent or withhold consent to health care, that is, to accept or reject the health care treatment offered. If an adult is unable to make or communicate such decisions due to illness or cognitive impairment, British Columbia law allows another person to make those decisions on behalf of the adult.

A capable adult can choose the individual who will make substitute decisions for him or her in the future. If the adult does not select an individual before the adult becomes incapable, the law requires that a health care provider or a court of law appoint someone to make those decisions. The laws and rules for the appointment of these different decision-makers are as follows.

The *Patients Property Act* outlines procedures for a family member, a friend, or the Public Guardian and Trustee to be appointed by the court as guardian or **Committee** (pronounced kaw-meh-tay) of an adult deemed incapable of making health care and personal care decisions.

A capable adult can choose another person to make decisions for him or her

for the time when the adult is no longer able. This choice is made under the authority of the *Representation Agreement Act*, which allows capable adults to appoint **Representatives** to make health care and personal decisions for the adult when he or she is no longer decisionally capable.

A Representation Agreement that allows the Representative to refuse life-supporting care and treatment on behalf of another person requires consultation with and a certificate from a lawyer. In BC, a Representation Agreement is the only means of choosing who will make health care decisions for you if you become incapable of doing so yourself.

In BC, every capable adult has the right to consent or withhold consent to health care, that is, to accept or reject the health care treatment offered.

Note: Individuals appointed through Powers of Attorney are not legally empowered to make health care decisions—only financial or legal decisions—for another adult.

If a health care decision must be made for an incapable adult who has not appointed a Representative (does not have a Representation Agreement), the *Health Care (Consent) and Care Facility (Admission) Act* requires a health care provider to appoint someone to make decisions on behalf of the adult. The health care provider chooses that person—a **Temporary Substitute Decision-Maker** (TSDM)—from the following list, in this order, to make the decision for the adult.

1. The adult's spouse
2. The adult's child
3. The adult's parent
4. The adult's brother or sister
5. Anyone else related by birth or adoption to the adult

The TSDM must be at least 19 years of age, have been in contact with the adult during the preceding 12 months, have no dispute with the adult, and be decisionally capable and willing to comply with the duties described in the *Health Care (Consent) and Care Facility (Admission) Act*.

If the adult has no adult relative who matches these criteria, the health care provider must refer to the Office of the Public Guardian and Trustee (OPGT), which is able to appoint someone else to make the decision, for example, friend, associate, or staff member of the OPGT.

In emergency situations when the Representative cannot be reached or a TSDM cannot be appointed, a **health care provider** must provide treatment unless he or she has reason to believe the patient did not want the treatment. In an emergency, a health care provider may override a refusal of treatment from a TSDM or Representative if he or she feels that decision-maker is not complying with the duties with which that individual has been entrusted.

What?

What are the duties of Committees, Representatives, and Temporary Substitute Decision-Makers when they make health care decisions on behalf of incapable adults?

BC legislation requires that a health care decision made on behalf of an incapable adult be based on “the instructions or wishes the adult expressed while he or she was capable.” If an adult's wishes are not known, the decision is made based on the adult's values and beliefs. If these are not known, the decision is based on the adult's best interests using a process detailed in the *Health Care (Consent) and Care Facility (Admission) Act*.

How?

In BC, our laws do not specify how a capable adult must express his or her wishes for future health care and thus do not identify Living Wills or advance directives. Our legislation simply requires substitute decision-makers to base their decisions on the adult's known wishes.

While these wishes can be expressed verbally or in writing, the most effective

and reliable means of doing this is in a written document that has been discussed and shared with family, friends, and health care providers.

Advance directives or Living Wills are one way for us to express our wishes for future health care. There are many different models for advance directives or Living Wills. In BC, any and all these forms constitute legally binding instruction. Whatever form you choose to use, it is important to remember that your goal should be to give your family and health care providers the greatest possible confidence in your instruction. You can do this by:

- being as clear as possible in your instruction and including or discussing your reasons—usually your values and beliefs—for making the decisions you have made;
- making sure your document is up-to-date and that it reflects your most recent thinking about what health care you want; and
- ensuring you have talked over the content of your Living Will with your

Advance directives or Living Wills are one way for us to express our wishes for future health care.

family and health care providers and you have given them copies of the document.

Advance directives are tools to help us begin to break through the cultural taboos about death and dying, to confront our mortality and plan for the future. ▲

Catherine Luke, PhD, is the project manager and educator for the Vancouver Island Health Authority's "Let Me Decide" Advance Directives Project. She made a presentation on advance health care planning at the Spring 2005 Seminar of The Society of Notaries Public of BC.

Voice: 250 370-5687

advance.directives@viha.ca
www.viha.ca/healthpoint/let_me_decide/index.htm

For More Information . . .

- BC's Office of the Public Guardian and Trustee Website:
<http://www.trustee.bc.ca/>
- Representation Agreement Resource Centre Website:
<http://www.rarc.ca/textual/home.htm>
- British Columbia Legislation:
Representation Agreement Act, Patients Property Act, and Health Care (Consent and Care Facility (Admission) Act
- "Let Me Decide" Advance Directives Project (until March 2006) of the Vancouver Island Health Authority (VIHA)
Voice: 250 370-5687
email: advance.directives@viha.ca
http://www.viha.ca/healthpoint/let_me_decide/index.htm