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National Academy of
Elder Law Attorneys, Inc.

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VIRGINIA ADVANCE DIRECTIVES DAY

Governor Timothy Kaine has signed a Certificate of Recognition, recognizing April 17, 2007 as Advance Directives Day in the Commonwealth of Virginia. The purpose of this day is to raise public awareness of the importance of planning ahead for healthcare decisions related to end-of-life care and medical decision-making in the event that patients are unable to speak for themselves, and to encourage the specific use of advanced directives to communicate these important healthcare decisions.

In Virginia, the Health Care Decisions Act provides the specifics of the Commonwealth's advance directives law. It is estimated, however, that only about 15% of all Virginians have executed an advance directive, and it is estimated that less than 50% of severely or terminally ill patients have an advance directive. One of the primary goals of Advance Directives Day is to encourage hospitals, nursing homes, assisted living facilities, continuing care retirement communities, and hospices to participate in a Commonwealth-wide effort to provide clear and consistent information to the public about advance directives.

All adults in Virginia have the right to prepare an advance directive in order to put their wishes regarding medical care in writing. There are two components to the advance directive. The first component is the living will. This permits an individual to state what kind of life-prolonging treatment the individual wants or does not want if diagnosed with a terminal illness and is unable to express his or her wishes. Life-prolonging treatment includes using machines, medicines and other artificial means to help individuals breathe, eat, get fluids into their bodies, have a heartbeat, and otherwise stay alive when the body cannot do these things on its own. Medications used to keep an individual comfortable are not considered life-prolonging treatment. Life-prolonging treatment will not help an individual recover. Another way to look at the living will is that if an individual is in the dying process, then the individual does not want artificial means to prolonging the dying process, but the individual might want pain-relieving medications to be administered, even if it accelerates the dying process.

The other component of the advance directive is often called a power of attorney for healthcare. This allows an individual to appoint an agent or agents to make medical decisions for the individual if the individual becomes incapable of making medical decisions. The document can specifically tell the agent what kind of care the individual does or does not want. For example, the document can give the agent the authority to work with a physician for the physician to enter a do not resuscitate order (DNR) on the individual's behalf, but the advance directive itself is not as a DNR order. The agent can only make medical decisions if the individual's physician and another physician or licensed clinical psychologist examine the individual, and determine in writing that the individual cannot make medical decisions for himself or herself. As soon as the individual is capable of speaking again, decision-making authority of the agent ceases.

It is important for people to put their wishes in writing, because oral advance directives can only be created if an individual has a terminal condition and can tell his or her wishes directly to his or her physician. Unfortunately, many terminally ill individuals may no longer be competent to discuss their wishes with their physicians. Putting the wishes in writing reduces confusion about the patient's desires, and also establishes clear lines of authority for decision-making. This is important for blended families where there may be second spouses and adult children, and for younger couples where conflicts can arise between parents and spouses. Everyone over 18 years of age should sign an advance directive; it is not just for the elderly. Everyone may need an agent to make medical decisions in case of a sudden illness or injury, such as an auto accident.

Anyone over 18 years of age can be named as an agent in an advance directive; the agent does not have to be a Virginia resident. An alternate agent should be named in case the primary agent is unavailable to serve. Advance directives must be witnessed by two individuals over 18 years of age; the agents should not witness the document. Advance directives do not need to be notarized; however, the advance directives that Oast & Hook prepares for its clients are notarized in case they need to be used in other states. Although Virginia advance directives are designed to be valid in any state, for those who spend a considerable amount of time in another state, then they should prepare an advance directive for the other state. Advance directives can also be registered with the U.S. Living Will Registry.

Copies of an advance directive are valid. For this reason, Oast & Hook recommends that its clients keep the original advance directive in a secure place, and let their agents know where it is located. They should give copies of their advance directives to their primary care physicians and all specialists. They should also give copies to each agent, and discuss their wishes with their agents. They should carry a copy of the advance directive in the glove compartment of their vehicles, and place one on the side of their refrigerator. It is also a good idea to take a copy of the advance directive when traveling. Oast & Hook provides its clients with wallet cards stating that the client has executed an advance directive, and listing the names and telephone numbers of the agents. The Oast & Hook advance directive also includes a privacy act waiver, also called a HIPAA waiver, that permits the agent to immediately talk with the physicians or review medical records, even if the physicians have not declared the client incapable of making medical decisions.

This is helpful for seniors when the children do not know if they need to act as the agent for their parent, and the only way they can decide is to talk with the parent's physicians.

Oast & Hook is pleased to participate in Virginia Advance Directives Day. Certified Elder Law Attorney Sandra L. Smith will participate in a program at Westminster Canterbury at 1:30 p.m., Tuesday, April 17th to discuss advance directives and other planning issues. The attorneys at Oast & Hook work with clients on preparing advance directives as part of their estate, financial, and long-term care planning process. Useful websites: U.S. Living Will Registry: <http://www.uslivingwillregistry.com>; Virginia Advance Directives Day: <http://www.vsb.org/sections/hl/advancedirectivesday2007.html>

Announcement

Oast & Hook attorney Andrew H. Hook will be a featured speaker at the ALI-ABA program entitled "Elder Law: Issues, Answers, and Opportunities," April 26 and 27, 2007, at the Millennium Knickerbocker in Chicago. The program brochure and registration form are available at <http://www.ali-aba.org/aliaba/cm061.htm>

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