



## HEALTH CARE ACCESS AND ADVOCACY DURING COVID

Life Legal is a pro-life, pro bono law firm that handles a wide spectrum of cases involving the protection of vulnerable life. We handle matters involving the beginning of life, including forced abortion cases, protecting pro-life speech, employment discrimination, conscience protections, and many more. We also handle cases involving the denial of life-sustaining care. I used to call these end-of-life cases until I realized that most of the time, we were not dealing with the natural end of someone's life, but rather the forced death of a disabled or otherwise vulnerable person who is not able to communicate his or her wishes.

Most often, these are relatively young patients—young adults and even children.

So, what does this look like?

It looks like 39-year-old Melanie, who suffered a stroke that left her incapacitated. 24 hours later, doctors told Melanie's mother that her daughter would never recover and recommended that she be transferred to hospice care—without food.

Two weeks later, we received a call from Melanie's fiancé, who was concerned about the doctors' course of treatment. While Melanie was largely unresponsive when she went into hospice, the fiancé noticed that she had started moving and could blink in response to basic questions. At one point, he asked her if she wanted to live and she clearly indicated that she did.

Melanie's fiancé called us and we immediately contacted a local attorney. This was a challenging case, because the fiancé did not have legal standing to challenge the mother's decision-making authority—even though Melanie and her mother had been estranged for years.

Our attorney went to court and eventually obtained a court order to have Melanie transferred back to the hospital. But the hospice refused to move her, saying that Melanie's family had agreed that Melanie would not want to live under these circumstances. Why did they think that? Probably because she made an offhand comment at some point while watching "Million Dollar Baby" or another movie

where a patient was hooked up to a ventilator and said she wouldn't want to live that way.”

It should be noted that Melanie could breathe on her own and was not even on a ventilator.

I want to explain for a moment why the hospital removed her food, but not her hydration. This is because they wanted to ensure that her organs remained healthy. Forcing starvation often precipitates another cardiac event. At this point, the patient can be declared legally dead and the organs can be harvested.

Our attorney had to go back to court and ultimately, the judge himself called the hospice doctor and threatened him with criminal and civil sanctions if he did not immediately move Melanie back to the hospital, with nutrition.

Several days later, Melanie began to speak. Within a few weeks, she was well on her way to making a full recovery.

When I first became involved in this case, I didn't believe that patients in the U.S. could actually be starved to death. I actually flew out to Philadelphia to meet Melanie. I attended a court hearing, where the judge took the attorneys into his chambers so he could read him the riot act. Since then, we have handled hundreds of similar cases—unfortunately not always with the same happy ending.

So why am I talking about this now?

A few reasons. First, what saved Melanie's life was the presence of an advocate—her fiancé—who was in the hospital and then hospice with her and could see exactly what was happening.

Because of COVID, many hospitals are limiting or even restricting visitation rights altogether. Not only does this deprive the patient of beneficial companionship, it deprives them of a patient advocate. And in cases like Melanie's where patients are incapacitated or otherwise unable to speak, patient advocates are essential.

They can facilitate communication between patients and health care providers to ensure that patients' needs are addressed. They make sure patients are not being deprived of life-saving care and treatment.

For this reason, the Centers for Medicare and Medicaid (CMS) has issued guidance urging hospitals to allow in-person visits during COVID for particularly vulnerable patients, including patients with disabilities.

The tragic reality is that these patients are being discriminated against in health care settings.

The American Bar Association reports that many health care providers hold negative views of disabled patients that compromise their care and treatment. Hospital visitation and patient advocacy are fundamental to protect patients from being denied medical care because of this pervasive bias.

Prohibiting visitation for vulnerable patients is tantamount to denying access to medical care and services. You need to know that federal laws prohibit discrimination because of a patient's disability. Patients have a right to a patient advocate who can communicate their health care needs and ensure that they receive the same quality of care as other patients. These laws remain in full effect during COVID-19.

In addition to COVID, we are facing a radical shift in our culture that values death over the protection of life.

Tragically, many people—including many health care professionals—do not believe that human beings possess inherent dignity. They do not believe that we are endowed by our Creator with certain inalienable rights—preeminent among those being the right to LIFE.

Instead, these people fight for the “right to die” and even the right to kill others whose capacity to contribute something of material value is in some way diminished.

This utilitarian, materialistic world view also holds that health care decisions should be made in light of the greater good.

And here we have a systemic problem that is only likely to get worse. A lot of our casework involves Medicaid patients or patients with inadequate health insurance. They've been told they qualify for extremely low cost or free coverage and they are handed an “insurance” card.

What they are not told is that Medicaid only pays 30 to 40 cents on the dollar for the care that is provided to patients. When a patient shows up in the ICU with a significant brain injury, the hospital is calculating how long that person may have to be treated and the money that the hospital will have to pay out of pocket to provide that medical care.

And this is where the “greater good” enters in.

In the case of abortion, the greater good in utilitarian terms means that “unwanted” children must be sacrificed so more resources are available for the rest of us. This is the premise behind Planned Parenthood and the abortion cartel. It is what Supreme Court Justice Ruth Bader Ginsberg meant when she talked about getting rid of populations that “we don’t want too many of.” It is what Margaret Sanger meant when she talked about **“the gradual suppression, elimination and eventual extirpation of defective stocks—those human weeds which threaten the blooming of the finest flowers of American civilization.”**

Similarly, an “unwanted” adult—someone who does not meet the requisite quality of life—can be sacrificed to preserve resources for other people. This is the argument that was made to Melanie’s family and the families of so many patients we represent. Basically, doctors told her family she was nothing more than a “human weed.”

So, how can you protect yourself and your loved ones to ensure that you receive the treatment you need?

First, you need an advance directive. This is a document that expresses your wishes in the event you should become incapacitated.

Advance directives typically have four components:

1. Name a designated health care agent or proxy whom you authorize to make health care decisions on your behalf.

You will need to discuss your wishes in great detail with this person. Ideally, this individual will share your beliefs—but should at least be very familiar with the specifics of the type of care you want to receive.

2. Specify what type of care you wish to receive if you become incapacitated through an injury or illness.

We recently had a case involving a woman who had a Catholic health care directive. She was very careful to select two health care agents that shared her religious beliefs about the protection of life. However, she did not specify in the document that she wanted long-term care including ventilation and nutrition and hydration. The judge said that because she did not specifically state that she wanted those things, she must not have wanted them. And he authorized the hospital to remove her ventilator, even though her health care agents had found another facility that was willing to take her as a transfer patient.

So please be specific.

3. Identify the extent of pain relief you would like to receive and whether you authorize pain relief drugs that may hasten your death.

I will discuss this in upcoming videos, but you need to know that certain pain relievers can shorten your life. This is known as “terminal sedation.”

4. Provide instructions regarding the disposition of your organs and other body parts upon your death.

This too, is something you need to think about carefully. If you are a registered organ donor—through a check box on your driver’s license application or renewal—please familiarize yourself with the details of organ donation. You need to know that organs are not harvested from people who are truly dead. I know, for example, that hospitals are not supposed to treat organ donors differently from other patients—but the reality is that people’s personal views come into play in cases like this that involve decisions about life and death.

I have recommended that people who are not sure about organ donation leave that decision to their health care proxy to be made in real time rather than registering as an organ donor in advance.

These are not easy things to think about—no one wants to believe that they could become incapacitated—even temporarily. Not only do we need to think about these things and take action to protect our own lives—we need to talk about these things with each other, with our spiritual leaders, and with our elected officials and policy makers. Who else is going to uphold human dignity and the right to life if we are silent?

If you have questions about anything I've talked about, feel free to post questions, comments, etc. below the video. If you prefer to contact us privately, [click here](#) or call 707.224.6675.

God bless you!

December 2020