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## MAKING CHOICES FOR CRITICAL CARE

The Tennessee Health Care Decisions Act (the THCDA) was passed in 2004, in an attempt to make it easier for patients who are not represented by attorneys to execute documents similar to the Tennessee statutory Living Will and Power of Attorney for Health Care.

In recent months, these health care documents have received more publicity because of the Terri Schiavo case in Florida.

As you are probably aware, Ms. Schiavo suffered severe brain damage following a heart attack in 1990, which left her unable to care for herself and dependent on a feeding tube for nutrients and fluids. Her husband and her parents spent many years in court battling over whether her feeding tube should be removed, and who had the right to make that decision.

The time, money and emotional energy spent

by Ms. Schiavo's husband and parents could have been avoided if Ms. Schiavo had executed health care documents containing her own personal instructions as to life sustaining procedures.

Recently, the Tennessee Department of Health released form documents that comply with the THCDA. The new documents are simpler to execute; however, the instructions in the forms are vague and leave much to interpretation.

We believe that the existing statutory framework for a Living Will and Power of Attorney for Health Care, when properly executed with the assistance of an attorney, provide much clearer, detailed instructions regarding critical care decisions for our clients. Indeed, the THCDA specifically recognizes the continuing validity of these documents if executed properly.

As illustrated by the Terri Schiavo case, it is critical that every person execute these health care directives so that family members and health care providers can know without any doubt a person's wishes relating to their health care and life sustaining procedures.

It is also important that the health care agent be able to access medical records when making health care decisions. Therefore, we make certain that the Powers of Attorney for Health Care comply with the Health Insurance Portability and Accountability Act (HIPAA). HIPAA is discussed in more detail on page 2 of this issue.

Please contact our office if you are interested in having our firm review your existing health care documents or assist with the preparation of these documents for you.

**WISEMAN BIGGS BRAY  
PLLC**

1665 Bonnie Lane  
Suite 106  
Memphis, Tennessee 38016  
901.372.5003 voice  
901.383.6599 fax

## RELEASE OF HEALTH INFORMATION

Congress passed the Health Insurance Portability and Accountability Act (HIPAA) to limit the use, disclosure or release of health information. Many have experienced the effects of HIPAA when family members have attempted to access medical records from physicians or hospitals. Often, it is crucial that family or other designated persons have

access to protected medical information, particularly in cases where a person is unable to care for himself or herself.

Every person should sign an "Authorization for Release of Protected Health Information" so that the persons designated in the authorization may discuss your health records with your health care providers in

order to facilitate health care decisions. The access to medical records becomes even more important for an agent acting pursuant to a Power of Attorney for Health Care, as discussed on page 1.

If you would like to have our firm prepare an "Authorization for Release of Protected Health Information," please contact us.

## THE TENNESSEE UNIFORM TRUST CODE

The new Tennessee Uniform Trust Code (TUTC) became effective in 2004, and will apply retroactively to all trusts. The TUTC ushers in a new era in trust formation, interpretation, administration and distribution. The TUTC creates new responsibilities for trustees and beneficiaries and new opportunities for amendment, termination and

reformation of trusts. Many of these opportunities can be accomplished without the expense and formality of judicial proceedings. For example, an irrevocable trust can be modified or terminated during the lifetime of the maker of the trust with the consent of all the beneficiaries, even if the modification or termination is inconsistent with

the original purpose of the trust.

All trusts should be reviewed to make certain that they comply with the provisions of the TUTC. If you would like us to review your existing trust documents, or if a trustee wishes to modify an irrevocable trust, such as an Irrevocable Life Insurance Trust, please contact our office.

Please visit our website at [www.WBBLawFirm.com](http://www.WBBLawFirm.com)

which contains information about estate planning strategies as well as additional information about other services our firm can provide.

## LARRY BRAY RECEIVES HIGHEST RATING

Legal ability ratings of attorneys have been an integral part of Martindale-Hubbell's century-long service to the legal community. The ratings reflect the confidential recommendations made by other attorneys for attorneys.

As a result of an extensive and confidential peer review

of local attorneys, Larry Bray was awarded an AV rating, which is the highest rating awarded by Martindale-Hubbell.

The AV rating identifies an attorney with very high to preeminent legal ability, integrity and overall professional excellence.



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