Questions & Answers from the Medical & Legal Panels

1. **What is the difference between "palliative care" and "hospice?"**

   Palliative care is care of symptoms and stress of illness. It is appropriate for any age group and any medical setting, hospital, home, and hospice in any illness at any time. Symptoms may be shortness of breath, pain, abdominal bloating, emesis and anxiety, etc.

   Hospice care is care provided in the last six months of life. It may include medical care, nursing care, respiratory care, oxygen, durable medical equipment, and medications. It does not include curative therapies such as chemotherapy.

2. **Is the "Serious Illness Conversation Guide" (SICG) being used much by doctors with patients in the latter stages of life?**

   This guide and its acronym are something of which I have never heard; after 45 years, 140,000 patient encounters, and probably 500,000 medical documents viewed, I have never even seen the term. If you have a SICG and/or a sheet of questions and want to discuss that with your doctor, they will be happy to do so. A general, standardized physical examination on someone over the age of 65 will include mental status, functional assessment, ability to perform activities of daily life, and will usually remind them to do a power of attorney for medical care, an advance directive, and ask if they have a will, along with forms for a POA and advance directive.

3. **Are current medical students being trained in working with patients with serious or life-threatening, issues?**

   Yes. Medical training is a long process. There's an undergraduate degree of four years. There is four years of medical school: basic sciences and clinicals. There's a residency process of three years in your chosen specialty. Then there is further specialization in the path chosen for 1 to 3 years. There are courses and certifications in many areas such as palliative care.

   All illnesses and health problems are serious to the person who experiences those issues. Some doctors such as pathologists do not have lots of patient contact. It's rare for an ophthalmologist, dermatologist or plastic surgeon to have to deal with the acutely ill or dying patients. The role of the pediatrician and the obstetrician with their patients is quite different than the oncologists. Orthopedists take care of very few myocardial infarctions, septicemias, renal failures, etc.

4. **What are the purposes and limitations of the following for the doctor/hospital?**

   a. **Advance Directive**

      The advance directive is very helpful in letting us know what the patient's wishes are. Wishes change over time. The advance directive can be changed. It's good to have the advance directive available if one dies at home and is not desirous to be resuscitated. 911 can be called and if EMS shows up the advance directive can be shown to the EMS team, preventing undesired CPR or transport.

   b. **A Living Will (or Directive to Physicians and Family or Surrogates)**

      See Dick Brown's paper, "Estate Planning Basics—What Every Texan Needs to Know"

   c. **Medical Power of Attorney -- or Health Care Proxy**

      The power of attorney for medical decision making is quite important; who is going to make the decisions when you can't. I would select somebody who is available and who liked me. It also helps in situations where the family is divided. It helps the medical team to have somebody designated to make decisions.

d. Out-of-Hospital Do-Not-Resuscitate Order

5. Is mydirectives.com (a website to create, share, update documents for emergencies and end-of-life plans) a legally/medically effective way to make patient's desires available to doctors/family?

The website looks great to me. It's certainly a nice way to put your wishes, papers etc. in one location. Medically it's always great to have wishes documented. Information is good. It should be really helpful for the family.

6. What are the chances in Austin of complete (or almost complete) neurological recovery with bystander CPR out of hospital cardiac arrest versus an arrest in an ER if the individual is over 65 years old? What is the average EMS response time in Austin?

7. At what time period (1 month, 3 months , 12 months, etc.) will a stroke victim be unlikely to make any further significant improvement?

8. The wife has medical power of attorney. When can a wife tell her husband's physicians in the hospital to "turn the machines off?" Is the hospital legally required to do so? What is the process?

Texas law does not permit suicide or murder. Therefore, "turning the machines off" is only possible in Texas if the patient has an irreversible condition that requires machine support to maintain life or if the patient is terminally ill.

Health & Safety Code §§ 166.038 and 166.152 govern what can be done in that case.

§ 166.038 (concerning the Directive to Physicians) says that if the patient has executed a Directive to Physicians, the attending physician and the designated person may make a treatment decision in accordance with the declarant's directions. The directive form allows the patient to choose whether he/she wants support to be provided or withheld. (Emphasis added.)

§ 166.038 (concerning the Medical Power of Attorney) says that "the agent may make any health care decision on the principal's behalf that the principal could make if the principal were competent" and that the "agent may exercise authority only if the principal's attending physician certifies in writing and files the certification in the principal's medical record that, based on the attending physician's reasonable medical judgment, the principal is incompetent." (Emphasis added.)

So, if the husband is incompetent and being supported by machines, his wife (agent) has the power, but not the obligation, to order the machines stopped UNLESS the Directive to Physicians says otherwise. The hospital is legally required to follow the wife's directions unless a court orders it to do otherwise.

9. Can the patient signal instructions to the doctors to turn the machines off? What is the process? Does the patient have complete authority to do so?

Texas law does not permit suicide. Therefore, for a competent patient to direct the machines to be turned off, the patient would have to meet the criteria of the advanced directive form (irreversible condition requiring life support or terminal illness). If the patient does not have one of those conditions, the doctor will likely challenge the patient's competence to make his/her own health care decisions.

10. Husband comes to the ER with a stroke. Doctors recommend respirator with intubation. Wife says that the instructions refusing all intubation are at home. How much time does she have to obtain the documents before he is intubated? If he is intubated when she returns, will the hospital pull the tube out and let the patient die?

The first question is a medical procedure one. The law does not specify a time. I do not think a hospital's legal advisor would want it to take the legal risk of not intubating without that directive being presented to it.

The second question should be answered by referring to the answer to question 8 above ("The wife has medical power of attorney….").

11. Husband is found lifeless in his chair watching a football game. Wife calls EMS without thinking. EMS arrives quickly. She then tells EMS not to do resuscitation because resuscitation is not what her husband wants. Can she refuse EMS assistance and transportation to a hospital?

Not unless the patient's doctor has issued an Out of Hospital Do Not Resuscitate Order and it is provided to the EMS personnel.

12. Which hospital is better at rapid radiological procedures and administration of clot-busting drugs for a stroke victim in Austin? Is one hospital better able to do this at 3 am? Can the spouse instruct EMS to bypass the closest hospital and bring patient to a facility of his/her choice?

13. Patient is single. Can oldest child make life support decisions if there is no medical power of attorney? What if the two oldest children disagree?

This is governed by Health & Safety Code § 166.039. In the absence of a Medical Power of Attorney or Directive to Physicians designating the person to make care decisions, the treatment decision is made by the attending physician and "one person, if available, from one of the following categories," which in this case would be "the patient's reasonably available adult children." If a child other than the one chosen disagrees with the decision, that child "must apply for temporary guardianship under Chapter 1251, Estates Code." As a practical matter, once the hospital learns that a child is headed to court, the treatment will be maintained until the ensuing court battle is resolved by the granting or denial of the temporary guardianship application.

14. What is a legal definition of death if the heart is still beating but without brain activity? What does "no" brain activity mean?

Health & Safety Code § 671.001 covers 2 situations.

Normally, a "person is dead when, according to ordinary standards of medical practice, there is irreversible cessation of the person's spontaneous respiratory and circulatory functions." (Emphasis added.)

However, if "artificial means of support preclude a determination that a person's spontaneous respiratory and circulatory functions have ceased, the person is dead when, in the announced opinion of a physician, according to ordinary standards of medical practice, there is irreversible cessation of all spontaneous brain function." (Emphasis added.)

15. ***Have you had any patients have an "out of body experience" when the patient was clinically dead? If yes, what were the circumstances and do you know how it changed their lives? Historically are all "out of body experiences" pleasant? Do Jewish patients also have this experience? Is it more common in Christians?***
16. **Is a handwritten will sufficient and acceptable in Texas?**

    Some are, some aren't. Have to look at each one to determine. Plus, they typically are so poorly written that they cause a lot of problems and extra expense at time of probate. Sort of like asking if you can pull your own tooth or do surgery on yourself. Maybe, but probably not a very good idea and likely to be unduly painful.

17. **For all of our panelists (medical and legal):**
    Being a Christian and knowing what you know about end-of-life issues, what have you decided you do and don't want for yourself and why, and by what legal documentation? (Powers of Attorney? Directive(s)? HIPAA Authorization? Etc.)

    Rev. Michael Barber:
    My wife and I have both completed our MPOA, Durable POA, Last Will in Testament, and Living Will (Directive to Physicians). I do not have a DNR but if I live into my 60s or 70s I plan to get that (must have an MD signature). I really am not a fan of CPR because I've worked in a hospital so long and see how it really is. There are, however, rare times when it works out well and since I'm 48 with wife and kids I guess at this age I would want CPR.

    At a minimum, MPOA, DPOA, and Last Will should be completed by ALL PEOPLE OF ANY AGE. If you do not have these documents it creates so many problems for families (even if you are married and have next of kin) and they cannot be done if someone is unable to sign a paper and/or speak for themselves. If you don't have an MPOA medical records cannot be obtained and the Social Security office and insurance companies will not talk with you. If you don't have a DPOA a bank will not allow you to get into any accounts or pay bills, etc. If you don't have a Last Will and something happens to you, your estate goes to a probate court judge regardless of anything.

    Dick Brown, Esq.:
    I am not opposed to temporary intubation or temporary tube feeding. (What if Susan had said no to one of those for Bruce?) Plus, I had a personal family experience—a cousin who was violently opposed to being on a ventilator. When in her 70s, she got bacterial pneumonia and, while unconscious, her husband said yes to the ventilator. Less than 6 months later she summited Mt. Kilimanjaro. Without heroic pulmonary support, I, myself, would not have seen my 6th birthday, so I am prejudiced in favor of modern medical care.

    Formal documents that I have are a revocable living trust, a will, 2 powers of attorney for property, a medical power of attorney, a declaration of guardians, a living will, a H.I.P.A.A. access authorization, an appointment of agents for remains, and a direction for disposition of remains. Informal documents are letters of desires for personal property and funeral service, finding lists for documents, and a digital access information sheet.