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Till the emergency room do us part

by Alma Soongji Beck

On May 29, while at a marriage equality rally in Fresno, Kristen Orbin collapsed and was rushed to a nearby hospital after suffering an epileptic seizure. She had executed an advance health care directive (Directive) that designated her partner, Teresa Rowe, as her health care agent. However, at the hospital, Rowe was barred from visiting Orbin or giving advice about her treatment. When Rowe offered to have Orbin's Directive faxed to the hospital, Rowe was told the Directive would do no good. After several hours, Orbin managed to complain to a doctor, and Rowe was finally allowed to see her, but only after Orbin was given medication that had caused her extreme pain – medication that Rowe had expressly asked the hospital staff not to give to Orbin for this very reason.

Most people, gay and straight alike, are appalled when hearing this story. I was too. This story brings home the very thing that many of us in relationships are often most concerned about – facing prejudice and bigotry in a hospital setting, at a time when we and our partners are the most vulnerable and in need.

So what do we do if we are ever in this situation? With prejudice also comes an opportunity for growth and self-advocacy. This column offers some ideas for what to do, including suggestions for self-advocacy.

1. Bring your Directive with you. Two excellent places to put an extra copy of your Directive are: (1) your suitcase, and (2) your vehicle glove compartment, backpack, briefcase, or day bag, even when traveling within California. When Rowe asked permission to have the Directive faxed into the hospital, she was told the Directive "would not have mattered." I am not so sure. It is one thing to refuse to give out a fax number. It is a whole different thing to disregard a legal document that is given to you.

2. Keep asking. And get names. If the first hospital staff member you ask will not acknowledge the Directive, ask another, and then another after that. Get people's names and ask to speak to their supervisors. People will often become more cooperative when they know they will be held accountable.

If you are still refused, remind the staff members that following a Directive is required under California law. A health care provider who ignores a valid Directive is liable for statutory damages of \$2,500, or actual damages resulting from the violation, whichever is greater, plus attorney's fees. Moreover, if refusal to recognize the Directive is the product of discrimination, the aggrieved party could sue the hospital for violation of state anti-discrimination laws.

If you are feeling bold, you can ask people if they are ready to testify in the lawsuit against the hospital as the people who refused to accept your validly executed Directive.

3. Call your doctor and your attorney. Leave copies of your Directive with your doctor and your attorney, and keep their phone numbers both in your wallet and in your cell phone. If you do not have a copy of your Directive with you, one of them can fax or messenger a copy to you or the hospital. Better yet, have your attorney call the hospital director directly.

4. Register your Directive with the California secretary of state. You can lodge a copy of your Directive with the California Secretary of State's office, which maintains a registry of Directives. Certain information on your Directive, such as the name and contact information of your health care agent, can be made available upon request to medical providers. To register your Directive, visit <http://www.sos.ca.gov/ahcdr>.

5. Call upon your friends. If you are like most people, when someone you love is in medical distress, you will probably find it extremely difficult thinking and advocating for yourself, especially in the face of hostility and resistance. This is a good time to call upon your friends to be with you and be your voice. Imagine how hospital staff would react to the 10 angry people you brought with you from the marriage equality rally. Or even 10 very nice people. Or even five. You get the idea.

Orbin and Rowe's case did result in positive change as earlier this month, the hospital, Community Regional Medical Center, agreed to make policy changes and conduct staff trainings on these issues. The American Civil Liberties Union and the National Center for Lesbian Rights worked on the case.

Do we need Directives?

Validly married spouses and California registered domestic partners, both opposite sex and same sex, can visit each other in the hospital and act as each other's health care agents under California law, even without a Directive. However, due to prejudice, people in same-sex relationships cannot yet rely solely on their rights as spouses or domestic partners. Also, most other states still do not recognize same-sex marriage or domestic partnership.

Fortunately, a Directive has free-standing legal effect apart from marriage or domestic partnership. For people who are married or domestic partners, a Directive can serve as a back-up in case the medical provider will not recognize the marriage or domestic partnership. For people who are not married or in a domestic partnership, a Directive is the only way to give your partner the authority to make medical decisions on your behalf.

How to get a Directive

To download a free pre-printed California Advance Health Care Directive form, visit www.caringinfo.org (click on "planning ahead"). Use the information available on the Web site to fill out the form. The California form must be signed either in front of a notary or before two witnesses.

The California Medical Association also provides a kit for preparing a Directive. Information about the kit is available at www.cmanet.org.

Please note that the state and CMA forms do not include some important elements. To tailor the Directive to your needs, ask your attorney to draft a Directive according to your wishes. If you have any questions about the issues raised in this article, please seek legal counsel.

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This column contains general information about issues and should not be construed as legal advice. Every case must be analyzed independently, based on the specific facts of the case. If you have questions or concerns about your particular situation, please consult an attorney.

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