

# Advance Health Care Directives and Anatomical Gifts

*Scott M. Solkoff*

ELDER LAW COLLEGE  
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## Introduction

In Elder Law, there can be no more a fundamental, core issue than that of end-of-life health care decision making. The right of a person to manifest his or her own health care destiny does not come from words in the constitutions. Still, the courts have found that some of our most fundamental freedoms appear in the federal constitution and that of the various states because they were assumed by our founders to be so inalienable and so fundamental as to be necessary for a free people. Such is the right to control our own health care. The courts have found the right to control our own health care to be grounded in privacy and other more explicit constitutional provisions. *Cruzan by Cruzan v. Director, Missouri Dept. of Health*, 497 U.S. 261 (1990); *In re Guardianship of Browning*, 568 So. 2d 4 (Fla. 1990); *John F. Kennedy Memorial Hosp., Inc. v. Bludworth*, 452 So. 2d 921 799 (Fla. 1984).

As Elder Law Attorneys, we have the privilege and responsibility to inform our clients about the choices they can make in their own health care. Our clients commonly do not know what questions to ask or even what issues are most important. It is up to us to frame the issues without bias or judgment and to then inform, guide, draft and enforce our clients' rights. This article and our accompanying talk cover these rights with practice tips such as talking points, drafting tips, and citations to the law. This article also draws from Chapter 27, "Advance Health Care Directives and Anatomical Gifts" in *Solkoff & Solkoff, Elder Law Practice Guide* (17<sup>th</sup> ed. 2016-2017).