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Living Wills

What Is A Living Will?

It is a document that expresses your choices about life-sustaining treatment in case you are later unable to express them. However, its use is restricted to two situations. You must either be in a "terminal condition" or in a "permanently unconscious state."

How Is A Living Will Different From A Durable Power Of Attorney For Health Care?

A living will express your desires about administering life-sustaining treatment when you are no longer capable of making a choice. A durable power of attorney for health care (DPOAHC) appoints another person to make all health care decisions for you, after you become incompetent. It is a good idea to have a DPOAHC so someone you trust can make decisions if you cannot do so. These health care decisions include any choice you would normally make that affects your health, such as whether to take medication, have an operation or end life support.

Although the agent you designated under your DPOAHC may have the authority to make end of life decisions, if you also have a living will, the living will must be followed, since it expresses what you want regarding end of life support. If your living will does not agree with your general consent to treatment, which most people sign when they enter a nursing home, the living will must be followed.

What Is Required To Create A Valid Living Will?

A living will must (a) be signed by you, the declarant (the person who creates the living will); (b) include the date you signed it; and (c) be witnessed by two adults (or acknowledged by a notary public). Witnesses cannot be (a) related to you by blood, marriage or adoption; (b) your attending physician; or (c) the administrator of a nursing facility where you are receiving care. Witnesses must state that you appear to be of sound mind, and that no one is forcing or tricking you into signing a living will.

Are Living Wills Created In Other States Valid In Ohio?

A living will created under the law of another state, if it follows that state's law, is valid in Ohio. A living will created in Ohio before Ohio's living will law was effective (Oct. 1991) must basically follow current Ohio law to be valid.

When Does My Living Will Become Effective To Terminate Life Support?

You must tell your attending physician about your living will. He or she must certify that you are not capable of making informed health care decisions for yourself, and that there is no real possibility that you will be able to in the future. Also, the attending physician and one other physician who has examined you must determine you are in a terminal condition or in a permanently unconscious state.

Can My Living Will Order That Artificially Supplied Food And Fluids Be Withheld?

Yes, but if you are permanently unconscious, your living will must specifically say so in capital letters, and you must initial or sign this part of the living will. Only then may artificially supplied food or liquids

(such as those given through a tube or an IV) be refused or withdrawn if your attending physician and one other physician who has examined you decide both (a) that you are permanently unconscious; and (b) that food or fluids would not provide comfort or stop your pain. However, even if you have a living will, comfort care such as food, fluids or medication to relieve your pain cannot be withdrawn.

What Happens If I Don't Have A Living Will?

If you do not have a living will, and if you are permanently unconscious, the attending physician must seek consent from your family and seek an order from probate court as to whether to withdraw food or liquids. The court will not order withdrawal of food or liquids until you have been in a permanently unconscious state for 12 months. However, if you are in the final stages of a terminal illness, your relatives may consent to the withdrawal of artificially supplied food or liquids sooner. Notice must be given to the rest of the family 48 hours before withdrawal to allow the family to file an objection to the withdrawal with the Probate court.

Can I Revoke My Living Will?

Yes. You may revoke, or cancel, your living will at any time and in any way. If your attending physician knows you have a living will, the will can be revoked as soon as your doctor learns that you have revoked. Your doctor can find this out from you, from someone who witnessed your revocation or health care staff who were told by a witness. Your most recent living will automatically revokes a prior living will, unless the most recent version provides otherwise.

Must Doctors And Health Providers Honor My Living Will?

No. Doctors and health care facilities may refuse to follow the instructions in your living will. But the person who refuses to follow it cannot stop or delay your transfer to a facility or provider who will honor your living will. Providers must notify you of their policy on living wills. Ask about this policy as soon as possible.

When It Is Time To Withdraw Life Support, What Must My Attending Physician Do?

Your attending physician must record in your medical record the factors that make your living will go into effect. He or she must also notify certain persons. If you say in your living will who you want to be notified, then those people must be contacted. If you don't make this clear in your living will, then he or she must notify these people in this order: your guardian; your spouse; your adult children who are reasonably available; your parents; or a majority of your adult brothers and/or sisters who are reasonably available. The attending physician must record the names of the people notified. If the physician cannot notify the appropriate person(s), he or she must record the efforts made to try to reach them. Your physician must then wait 48 hours before withdrawing life support to allow time for someone to object.

How Does Someone Object To Withdrawing Life Support?

If someone you name in your living will, or someone that the physician must contact, objects, he or she must tell the attending physician within 48 hours after receiving notice. Then he or she must file an action in probate court within 2 business days, or it will be too late to object. Also, if at any time a person you named in your living will, or your spouse or guardian, believes that you are not receiving proper comfort care, he or she may bring an action in probate court. No one else may participate in any court action.

What Does Probate Court Do?

The court can order your attending physician to:

a) reevaluate you;
b) invalidate the living will because it does not comply with the law or because you did not voluntarily sign it; or
c) uphold the doctor's decision.

Do Living Wills Affect Provider Liability?

Your attending physician, the consulting physician and health care providers are not liable for their decisions when they act in good faith and in accordance with reasonable medical standards. However, all health care providers remain liable for negligence which causes you injury or death.

After I Create A Living Will, What Should I Do With It?

Discuss your living will with your family and doctor. you should advise your attorney of your living will and leave a copy with him/her. You should always give a copy of your living will to your attending physician, and to those family members you have chosen to make sure that your wishes are followed. Your doctor is to include the copy with your medical record.

Must I Have An Attorney Write My Living Will?

You do not have to have an attorney write a living will. You can use a form, so long as it complies with Ohio law. However, you may want to hire an attorney to help make sure you include everything you want covered in your living will.

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