

Living Wills

Living Wills, otherwise known as "advance directives", aim to instruct the medical profession how to deal with a patient faced with terminal illness.

They should take effect only when the patient is suffering from more than one of a number of defined medical conditions such as being in constant, unremitting pain; or being unconscious and unlikely ever to regain consciousness; or suffering from an incurable condition which is expected to result in death within a short time.

Before the directive is actually used, we would recommend that at least two appropriately qualified registered medical practitioners should record their opinions in writing, to confirm that the patient is no longer capable of participating in, or communicating to others, decisions about his or her health care or treatment; and as to the condition and prognosis.

A Living Will should only be made when the maker is able to appreciate its nature and purpose, and the likely consequences of undergoing or refusing treatment. It gives the patient the opportunity to say in advance that, for example, he or she refuses all medical or surgical treatments or procedures, which are aimed only at prolonging or sustaining life. The patient may consent to receive treatment which is designed to relieve pain and suffering and make them more comfortable, even though it may shorten their life.

There is as yet no statute or case law as to the legality of such a document in England and Wales, but they are gaining increasing recognition in the medical profession. Elsewhere, and in particular in the USA, Canada and Australia, "Living Wills" are common and accepted as legally binding documents.




Newspaper articles have fostered the belief that the execution of a Living Will might give a life insurer the opportunity to avoid liability, but this should not be the case; the Living Will should not contain words that might encourage action to actually cause death (as against avoiding unnecessary prolongation of life). However, in cases where someone has a medical history that includes depression, and possibly even attempted suicide in the past, care is needed. Even then, whilst many life policies exclude liability for the insurer, in case of suicide, this is most often limited to the period of 12 months following issue of the policy.

Anyone making a Living Will should discuss it with his or her spouse or partner. The document might require that they be consulted before any decision about treatment is made and implemented, and may require them to take part in any such decision.

Proposals for 2007

The Mental Capacity Act 2005 has introduced the concept of the Lasting Power of Attorney, either for personal welfare decisions or for financial matters, to be available in October 2007. The precise details are currently in consultation.

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