

LawFacts

What you should know about.....



Living Wills and Health Care Powers of Attorney

Document last updated 04/02/2008

What is a living will declaration?

A living will is a legal document you can use to express your wishes about the use of life-sustaining treatment if you should become terminally ill or permanently unconscious. A living will:

- becomes effective only when you are unable to communicate your wishes and are permanently unconscious or terminally ill;
- says whether or not you want life-support technology to be used or not to be used;
- gives doctors the authority to follow your instructions regarding the medical treatment you want under these conditions;
- can be changed or revoked by you at any time, but cannot be changed or revoked by anyone else;
- will be followed for a pregnant woman only if certain conditions apply; and
- specifies under what conditions you would want artificial feeding and fluids to be withheld.

Also, a living will now permits you to state your intent to make - or not to make - an anatomical gift (such as organs or tissues) upon your death.

If my living will says I don't want to be hooked up to life-support equipment, would I still get pain medication?

Yes. A living will only affects care that artificially or technologically postpones death. It would never affect care that eases pain. For example, you would continue to receive oxygen and medical care that includes pain medication, spoon feeding and being turned over in bed.

Can I specify that I do not want cardiopulmonary resuscitation (CPR)?

Yes. The standard living will form specifically allows you to direct your physician to write a DNR (do not resuscitate) order for you if two doctors have agreed that you are either terminally ill or permanently unconscious, and it is medically appropriate. Your attorney and your doctor can help answer questions about the living will form. For more information about DNR orders, see the Ohio State Bar Association's publication, "What you should know about...DNR Orders."

Can I have documents saying that, if I become critically ill, I want treatment to be continued using every available means to keep me alive?

Yes, but you should talk with an attorney because you will not be able to use the standard forms for the documents. You should also talk with your physician about your decision.

Who decides that I am dying or permanently unconscious without hope of recovery?

If you've indicated that you do not want your dying to be artificially prolonged, two doctors who have examined you must agree that you are beyond any medical help and that you will not recover.

A living will may be important for a senior citizen, but why would a young adult need one?

A living will can give you and your family peace of mind whether you are 25 or 75 years of age. Traffic accidents are the leading cause of death among Ohioans under the age of 45. The Terry Schiavo case illustrates the importance of these documents and decisions for young adults as well as older people.

Would my family be notified before doctors stop life-support treatments?

It is very likely your family would be informed. Although doctors do not need your family's permission to follow the instructions provided through your living will, they must make reasonable efforts to notify a person named in your living will, or a family member, before following your instructions to withdraw life-support. If the person notified feels your living will is not being properly followed, or is not legally valid, an immediate hearing can be scheduled in probate court to decide if there is a legal reason why your instructions should not be followed. By law, no one can change or overrule your living will if it was freely and correctly executed.

Can I specify that I want my feeding and fluid tubes to be removed?

Yes. If you want to allow your doctor to withhold artificial nutrition/hydration in the event you become permanently unconscious, you must expressly state this in your living will document. However, you do not need to give any special instructions to allow your doctor to withhold nutrition and hydration if you are in a terminal condition and these measures do not comfort you or relieve your pain.

If I do not have a living will, can the agent I name under a health care power of attorney make end-of-life decisions for me?

Yes, if you spell this out in your health care power of attorney. Many people use a living will to directly state their end-of-life instructions, but if you choose to have only a health care power of attorney, you can give your agent the power to make all health care decisions, including the use or termination of life-support and artificial nutrition and hydration.

What is a health care power of attorney?

A health care power of attorney (or “durable power of attorney for health care,” sometimes known as a “DPOA”) is a legal document that authorizes another person to make health care decisions for you if you cannot make them for yourself.

A health care power of attorney:

- names an individual you trust to make a wide variety of health care decisions for you at any time you cannot do so for yourself, whether or not your condition is terminal;
- becomes effective only when you cannot make your own decisions regarding treatment;
- requires the person you appoint to make decisions that are consistent with your wishes; and
- will not overrule a living will if you have both documents.

If I want to designate someone to make health care decisions for me, must it be a member of my family?

No. You may appoint any adult you wish as long as it is not your doctor or the administrator of a health care facility in which you are being treated, or any person employed by either your doctor or a health facility in which you are being treated.

If I have a living will, do I need a health care power of attorney too?

Yes. Many people will want to have both documents because a living will only applies in limited end-of-life circumstances, whereas a health care power of attorney covers all other situations concerning your medical care whenever you cannot make health care decisions for yourself.

What is a mental health declaration?

Since October 2003, the law has allowed for the creation of a “Declaration of Mental Health Treatment,” a document specifically designed to address mental health care concerns. The standard health care power of attorney addresses both physical and mental health issues. In certain cases, however, it may be advisable to have a “Declaration of Mental Health Treatment” as well. For more information about the Declaration of Mental Health Treatment, go to the Ohio State Bar Association's Web site at www.ohiobar.org. Click on “public,” then “resources,” then “Law You Can Use.” Scroll down and click on the article entitled, “What You Should Know about the Declaration of Mental Health Treatment”.

My mother is in a nursing home. If she gave me her health care power of attorney, could I act on her behalf in every area affecting her treatment?

Yes, but not until she is no longer able to make those decisions on her own behalf. A health care power of attorney covers not just life-sustaining treatment, but all aspects of medical treatment whenever the patient is unable to express his or her own wishes.

Can I use a health care power of attorney to take care of my mother's financial matters?

No. You must use a different power of attorney document that applies to your mother's business affairs. For more information on "financial" powers of attorney, see the Ohio State Bar Association's pamphlet, "What you should know about...Financial Powers of Attorney."

Where can I find the standard forms for a living will and health care power of attorney? Can I draw up my own?

The Ohio State Bar Association has developed standard forms with the Ohio Hospice & Palliative Care Organization, the Ohio State Medical Association, and the Ohio Hospital Association to make it easier for the people who choose to have these documents. You may obtain a copy of these forms by mailing a request along with \$3 to the Ohio Hospice & Palliative Care Organization at 555 Metro Place N., Suite 651, Dublin, Ohio 43017, or by visiting that organization's Web site at www.ohpco.org.

You do not have to use the standard forms. However, for either document to be valid, it must include specific language spelled out in the Ohio Revised Code. Your physician and attorney will have copies of the standard forms, as will many organizations.

What do I do after I fill out these documents?

Make several copies. Give one to a trusted member of your family. Keep another with your personal papers. Leave copies with your physician and your lawyer, and, perhaps, your clergy person.

Definitions

Ohio's Living Will Law uses several terms whose meanings are provided below.

Anatomical gift - a donation of all or part of a human body to take effect upon or after death.

Comfort care - any measure taken to diminish pain or discomfort, but not to postpone death. These measures may include the provision of nutrition and/or hydration and any other medical care such as pain medication and turning a patient.

Donor Registry Enrollment Form - a form that has been designed to allow individuals to specifically register their wishes regarding organ, tissue and eye donation with the Ohio Bureau of Motor Vehicles Donor Registry.

Hydration - fluids that are artificially or technologically administered (e.g., through tubes).

Life-sustaining treatment - any medical procedure, treatment, intervention or other measure that, when administered to you, serves principally to prolong the process of dying.

Nutrition - refers to food that is artificially or technologically administered (e.g., through tubes).

Permanently unconscious - to a reasonable degree of medical certainty: (1) you are irreversibly unaware of yourself or your environment; and (2) there is total loss of cerebral cortical functioning, which results in your having no capacity to experience pain or suffering.

Terminal condition - an irreversible, incurable and untreatable condition caused by disease, illness or injury from which, to a reasonable degree of medical certainty: (1) there can be no recovery; and (2) death is likely to occur within a short period of time if life-sustaining treatment is not administered.

4/02/2008

The information contained in this pamphlet is general and should not be applied to specific legal problems without first consulting your own attorney.

Funding from the Ohio State Bar Foundation

Copyright © 1999-2008 Ohio State Bar Association. All rights reserved. Used with permission.

*Reproduced and Distributed by:
Kenneth R. Sechler, Attorney at Law
6135 Memorial Drive, Suite 105A
Dublin, Ohio 43017-9005
614/889-0234
ksechler@sechlerlaw.com
www.sechlerlaw.com*