

LIVING WILLS

The term "living will" is commonly understood to mean written instructions which indicate the medical treatment a patient wants or does not want in specified medical circumstances. The term "living will" is also used to describe a number of similar (but not the same) types of instruments known by such other names as advance directives, patient directives, health care proxies, advance care documents, directives to physicians and durable powers of attorney.

Actually, the term "living will" is a somewhat unfortunate choice of words as it is not really a will at all in the normally accepted sense of the word. A regular will, that is to say a legal will, is of no force and effect while the maker of the document is alive since the maker is always (assuming mental capacity) able to change or amend it. The living will, on the other hand, only comes into play during the maker's lifetime and then usually when the maker is no longer competent to make changes to it.

The concept of living wills originally came to Canada from the United States. It started in California with the Natural Death Act and now in a majority of states there is legislation to regularize the making of such documents. It also protects doctors from liability as they are the ones in the unfortunate position of having to operate under the terms of the living will.

If you hear a reference to a "DNR" on the hospital dramas on TV, it is probably meant to refer to a "Do Not Resuscitate" order, often contained in a living will or similar document.

Ontario and Manitoba now have living will legislation but there do not appear to be plans in any other jurisdictions to introduce similar laws*. This means that in the rest of the country there is no legislation to "breathe life" into such documents. That does not mean, however, that preparing and executing a form of living will is a waste of time because governments may introduce enabling legislation at any time to validate a living will that is presently invalid.

The most serious problem with living wills is that they generally include some form of statement or declaration that the individual does not want any "heroic measures" taken to sustain life in the event that he or she is in a vegetative or permanently comatose state. They also usually request that death "not be unreasonably prolonged" or that "the dignity of life not be destroyed". While these requests sound good in theory, they are very difficult to put into practice.

Without some definition of what is or is not an "heroic measure" or an "unreasonable prolonging of life" (often found in the legislation) it is left to the best guess of the attending physician or the nearest relative as to what is or is not heroic or unreasonable. Their guess may not be what was wanted by the original maker of the document.

The unsettled state of the law has left many members of the medical profession understandably confused and concerned and it has created a state of uncertainty and ambiguity for patients, members of the public and the legal profession as well. In order for solutions to be forthcoming there will need to be a combined effort from the medical profession, the legal profession, the public and, most importantly, the legislators.

* The laws of other jurisdictions are not regularly monitored.