

Are Living Wills of any value?

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“DOCTORS OFTEN FAIL TO HEED WISHES OF DYING PATIENTS”

(*New York Times*, November, 1995)

“LIVING WILLS RARELY OF AID, STUDY SAYS”

(*New York Times*, April, 1997)

The studies these headlines are referring to raise serious questions about our society’s commitment to honoring every person’s right to direct their own health care using advance health care directives, such as living wills. The researchers report that even the wishes of patients who had prepared living wills were frequently ignored or overridden.

One study found that only one quarter of the physicians knew that their patients had prepared living wills. Other studies have suggested that advance health care directives have limited influence on medical treatment decisions. This is distressing news to anyone who has taken the time to complete a living will. However, rather than abandoning living wills, perhaps we can learn from these studies.

Doctors are dedicated to preventing death, fear legal liability for not doing so, are often poor communicators, and will frequently simply yield to family members who are unprepared and oppose honoring the directive of a dying family member. All of these factors can contribute to the failure to discontinue unwanted medical treatment. Overcoming this may require forceful expression of one’s wishes.

The value of explicit directives.

One authority interviewed for the 1995 *Times* article observed that most living wills are “so vague as to be meaningless.” *Only three percent of the documents reviewed in one study contained*

instructions explicit enough to guide decisionmaking. Most living will forms (but not the forms distributed by Dorothy Garske Center) rely on very general language. Phrases like “terminal conditions,” “no hope for recovery,” “treatment that only prolongs the dying process,” and “no extraordinary means” are medically and legally useless.

A carefully worded directive can be helpful. Your directive should identify health or functional conditions under which you do not want *any* life-sustaining treatments used to attempt to prevent your death. For example “unconsciousness or coma from which I probably will not recover” is a condition that many people consider as undesirable as death itself.

The specific life-sustained treatments *not* wanted, should you experience these conditions, also need to be named. That way physician, including specialists who may be in attendance when your directive is in effect, have evidence that, at the time you completed your directive, you knew what you might be forgoing at some future date. *This is the level of detail provided in Dorothy Garske Center’s combined living will and health care power of attorney form.*

Some people only seem to be concerned about the legal validity of their documents. Arizona’s living will law is simple and inclusive with respect to questions of document validity. It is very *unlikely* that a directive will not be honored because of doubts about its legal validity.

People should be more concerned about whether their directives clearly and accurately state their values and treatment wishes. Do not assume that because your living will was drafted by an attorney or copied from the statute that it is an adequate statement of your health care treatment wishes. Make certain your directives state *your* wishes.

Well written, explicit directives are only part of the answer.

Unfortunately, even carefully written directives may not provide sufficient protection. For one thing, you need to make certain *you* understand

what your directives say. It appears that many people have unrealistic expectations of what medical treatments can achieve and understand poorly how our directives, if followed, might effect treatment decisions. When the time is at hand to decide whether to forgo life-sustaining treatments, poorly understood directives are more likely to be countermanded by family and patients themselves. Your physician is the best person to help you understand the practical implications of your health care treatment choices.

(Note: long directives are not automatically good directives. There are directives that are specific in ways that can be confusing. These include *some* documents that reject all life-sustaining treatments without qualification or with qualifications that are highly ambiguous.)

In addition, do not assume that your documents will be consulted. The research cited in the *NY Times* articles suggests that fidelity to a dying patient's wishes is not always a high priority in hospitals. According to the researchers, when nurses assisted patients record and communicate their wishes, compliance with their wishes *did not* improve.

This suggests that advance health care planning involves more than preparing good documents. Foremost are careful *selection* and *preparation* of an agent (or agents) when you complete your health care power of attorney. Thorough discussion of your values and specific wishes with your agent is a great importance—a discussion that should be periodically renewed.

Make sure your agent understands the full scope of her or his authority. *Your document should spell out your agent's authority.* Sometimes health care providers resist the authority of agents who disagree with what the provider wants to do. Calm, but firm, assertion of one's authority can be critical when advance health care directives must be implemented.

It may be important to arrange for support for your agent. At a time when your directives are in effect, the person you have selected as your agent is likely to be under great emotional stress. Even if there have been good advance discussions, the content of those discussions may be pushed into the background or it may be discounted by someone who becomes involved at the time critical decisions must be made. Support can come from successor agents, family members, close friends, clergy, and, your attorney.

Above all try to establish positive, effective communication with your physician on these matters. Prepare your agent and family to do the same. Sometimes physician's need help in understanding that your agent and family want to be involved and that they do not need to be protected from the truth.

In addition, I recommend you consider telling your agent something similar to what I have told mine. "I trust that you will do your best, and I hope that things will go as I wish. However, I understand that things do not always go as planned. I am at peace with that possibility. Please do your best. But, most of all, I want my family to find peace after I am gone--though I do hope that I am missed."

Do you need to complete or update your Living Will or Health Care Power of Attorney?

Dorothy Garske Center has a comprehensive, combined Living Will and Health Care Power of Attorney that is legal in Arizona (and most other states). It helps you state your wishes clearly and may be completed without a lawyer.

This and other forms are available at the Center web site at www.dgcenter.org.
