

SOUTH AFRICAN MEDICAL ASSOCIATION LIVING WILLS AND ADVANCE DIRECTIVE

PREAMBLE

A “living will” is a declaration or an advance directive which will represent a patient’s wish to refuse any medical treatment and attention in the form of being kept alive by artificial means when the patient may no longer be able to competently express a view.

Any person may refuse medical treatment even if such refusal will result in irreversible harm or death, unless such treatment is sanctioned by law. To be able to make such a declaration such as the “living will”, a person must be over the age of medical consent and “compos mentis”. The declaration will remain valid even if the declarant later on becomes “non compos mentis”. This proviso is not the same for Powers of Attorney which loses its authority once the principal (declarant) becomes mentally incompetent.

The “living will” is not a will in the testamentary sense of the word. There is in South Africa at present no law regarding the validity or enforceability of “living wills”. These guidelines have therefore been designed to assist doctors who are confronted with a “living will”. Doctors, are, however, advised to approach “living wills” with considerable circumspection and obtain advice from the South African Medical Association (SAMA) if necessary.

GUIDELINES

1. A doctor should offer to treat and to relieve suffering and should generally act in the best interests of his/her patients. This conforms with the ethical principle of beneficence. There shall be no exception to this principle even in the case of incurable disease or malformation.

The World Medical Association’s declaration on terminal illness should be borne in mind. This declaration recommends that:

“A doctor may relieve suffering of a terminally ill patient by withholding treatment with the consent of the patient or his immediate family if the patient is unable to express his will. Withholding of treatment does not free the doctor from his obligation to assist the phase of his illness and a doctor shall refrain from employing any extraordinary means which would prove of no benefit for the patient.”

2. All patients have a right to refuse treatment, which right should be respected. This, however, does not imply or justify abandonment of the patient. Doctors should offer medical care in accordance with good medical practice. The medical care should also be acceptable to the patient and appropriate to the circumstances. Doctors are encouraged to raise the subject in a sensitive manner with patients who are anxious about the possible administration of unwanted treatment at a later stage.
3. A written advance directive, in the absence of contrary evidence, shall be regarded as representing the patient’s expressed wish. The drafting of an advance directive is the patient’s responsibility. It is, however, recommended that an advance directive should be drafted in conjunction with medical advice and counselling. It is further advisable that

patients discuss the specific terms of their advance directives on a continuing basis with their medical practitioner(s).

4. Patients frequently believe that advance directive to refuse life-saving or sustaining treatment will be honored under all circumstances. The reality of medical practices makes this impossible. If an advance directive is specific to a particular set of circumstances the directive will have no force when these circumstances do not exist. If an advance directive is so general that it applies to all possible events that could arise, it could be viewed as too vague to give any definitive direction to the doctor. In either case doctors will have to rely on their professional judgment to reach a decision.
5. It is the responsibility of a patient to ensure that the existence of an advance directive is known to his/her family and to those who may be asked to comply with its provisions. It is recommended that individuals who made an advance directive, should consider wearing on their person an indication as to the location of the document and lodge a copy thereof at their medical practitioner(s) and/or family member(s). Doctors who are aware of the existence of such an advance directive, should make all reasonable efforts to acquaint themselves with its contents. In cases of emergency, however, necessary treatment should not be delayed in anticipation of a document which is not readily available.
6. It is strongly recommended that patients review their advance directives at regular intervals. It is further recommended that patients should rather destroy the existing advance directive documents if they so wish, instead of amending it.
7. Doctors with a conscientious objection to withhold treatment in any circumstances are not obliged to comply with an advance directive but should advise the patient of their views and offer to step aside or transfer treatment and management of the patient's care to another practitioner.
8. Late discovery of an advance directive after life-prolonging treatment has been initiated is not sufficient grounds for ignoring it.

EXAMPLE OF LIVING WILL

A "Living Will" should be addressed to anyone who may have to implement it or apply to court to enforce it i.e. the patient's your family and (personal) doctor. These persons should know about the Living Will and be able to access it if need be or in an emergency. The Living Will should be a separate document from one's Last Will and Testament since a Last Will and Testament is only acted upon after one's death, whilst the content of the "living will" is a directive to be acted on whilst one is still alive.

LIVING WILL

TO MY FAMILY AND MY PHYSICIAN:

I,

NAME AND SURNAME (ID NUMBER),

the undersigned, presently residing at

ADDRESS, after careful consideration, make the following declaration, which I call my Living Will:

1. This Living Will in no way revokes nor does it change any Will or Testamentary disposition as made by me at a previous occasion.
2. In this Living Will, unless an intention to the contrary appears clearly and concisely the following words carry the meaning as stated: -
 - “Doctors” refer to one or more medical practitioners who may be requested to provide me with a prognosis from time to time, depending on my condition and clinical status at any given moment during my treatment and/or hospitalization
 - “Secondary support system” refer to any artificial and/or mechanical life support system and/or medication/drugs to the same effect

If the time comes when I can no longer take part in decisions for my own future, let this declaration stand as my directive.

If there is no reasonable prospect of my recovery from physical illness or impairment expected to cause me severe distress or to render me incapable of rational existence, I do **not** give my consent to be kept alive by means of a Secondary support system, including by way of a pacemaker.

I also do **not** give my consent to any form of tube-feeding when I am dying; and I request that I receive whatever quantity of drugs and intravenous fluids as may be required to keep me free from pain or distress even if the moment of death is hastened.

This declaration is signed and dated by me in the presence of the under mentioned two witnesses present at the same time who at my request and in my presence and in the presence of each other have hereunto subscribed their names as witnesses.

Dated at _____ on this the _____ day of _____.

Witnesses (Not to be members of one’s family or beneficiaries in the estate)

Signature _____

Signature _____

Name _____

Name _____

Address _____

Address _____

Contact Details:

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