

## **Living wills**

Every day advances in medicine enable health care professionals to treat illnesses that only a few years ago would have been fatal. While many of these medical advances are welcome, some people fear that we are approaching a stage where life will be maintained no matter what the quality of that life or the wishes of the patient. This has led to a growing discussion about health care directives, or living wills as they are often called.

This brochure provides general information about living wills. It is not meant to replace advice from your doctor and lawyer. If you are thinking about making a living will, you need to get medical and legal advice and to read other more in-depth materials on the subject.

### **Who usually makes decisions about health care?**

If you are mentally competent, you have a legal right to make decisions about your health care, including whether to accept or refuse a treatment. Even if you have a living will, if you are competent, your consent must be obtained before you can be treated. Exceptions are made, however, in an emergency.

If you are not competent for whatever reason, you must rely on others to make decisions for you. A living will can help the decision-maker understand your wishes concerning your health care.

### **What is a living will?**

A living will is a written document that spells out your wishes for health care should you ever be unable to consent to treatment. Living wills deal only with health care. They do not deal with property or assets.

Usually living wills are only important if you are unable to consent and you have a terminal illness or are seriously injured and unlikely to recover. In such cases, medical staff need to know what measures you wish them to take to care for you.

### **Will the terms of my living will be followed?**

A living will is a clear indication of your wishes and may help your family and medical staff reach a decision. However, there are no guarantees that any term of the living will will be followed. Family members or your proxy, in consultation with medical staff, will have to decide what to do, taking into account all factors, including your written wishes. (A proxy is someone you have appointed to make decisions about your health care should you be unable to consent.)

A living will may ease the emotional burden on family members or your proxy if they have to make decisions about your health. Many families consider a living will morally binding,

especially if you have discussed it with them beforehand, which is a wise thing to do.

## Is a living will the same as euthanasia?

No. A living will is a written indication of your wishes for medical treatment in the event of a terminal or incurable illness, injury, or disease. It is not a request to take steps to end your life.

Euthanasia, or mercy killing as it is sometimes called, is the term used when someone takes steps to end your life to relieve your suffering. Assisted suicide is a term used when someone, at your request, takes steps to help you end your life because your illness or condition prevents you from committing suicide without help. Under Canadian criminal law both euthanasia and assisted suicide are illegal. They cannot be part of a living will.

## Who should have a living will?

Whether you decide to have a living will is a personal choice. You may be happy to leave decisions about health care to family and medical staff should you become unable to consent. You may not have any close family with whom you wish to discuss your wishes, or you may prefer to have your family know your wishes either formally in a living will or informally through discussion.

At the very least, you should discuss your wishes with your family or proxy (if you have appointed one) and your doctor, even if you choose not to formally set them out in a living will.

The more your family or proxy and doctors are familiar with your wishes the easier it will be for them to decide what care to provide.

## Whom should I talk to before making a living will?

- Your doctor and other health care professionals so that you understand the medical terms used for different levels of care. For example, you may come across terms such as palliative care and non-resuscitation orders.
- A lawyer so that you understand the legal issues involved.
- Close family members and your proxy (if you have one) so that they know your wishes and know that you have a living will for them to refer to.

## What goes into a living will?

The living will must have your name and address and the date. It will need to set out the kind of life-sustaining treatments you want in a variety of circumstances should you be incapable of consenting at the time. You must sign the living will and date it. Your signature should be witnessed by two adults. They should give their addresses.

If you do not already have a proxy, you may also want to include the appointment of someone to

consent to treatment on your behalf should you become unable to consent. You should choose someone whom you trust to carry out your wishes. The person must be at least 19 years old but does not have to be your next of kin or a relative.

## Where should I keep my living will?

You should keep it in a safe but accessible place. For example, if you keep it in a safety deposit box at the bank, it may be difficult for your family to get at it quickly. For this reason, you should give a copy to your doctor to keep in your medical file and either give a copy to your next of kin and proxy (if you have one) or make sure they know where to find a copy or the original.

## How often should I update my living will?

Medical diagnoses and treatments are constantly changing and improving. You should, therefore, review your living will at least every two years. If you have a specific illness or disease, you should try to keep up to date on treatments.

Organizations such as the Canadian Cancer Society, the Alzheimer Society of Nova Scotia, and the AIDS Coalition of Nova Scotia will have up-to-date information and resources on particular diseases or illnesses. You can also ask your doctor or specialist or browse the Internet.

## What happens if I do not have a living will?

- If you are able to consent, whether or not you have a living will, your doctor must obtain your consent before treating you.
- If you are unable to consent to treatment for whatever reason, someone else will be asked to consent on your behalf. This is usually a husband, wife, parent, adult child or proxy.
- You can formally appoint someone (a proxy) to consent on your behalf in the event you are unable to consent. This is done under the *Nova Scotia Medical Consent Act*.
- A relative or friend could apply to the courts to be appointed your guardian. Before a guardian is appointed, a judge has to be satisfied that you are mentally incompetent and that it is in your best interests to have a guardian appointed.
- Where there is no guardian or other person willing or able to consent, the Public Trustee may be asked to step in. (For more information, see our brochure *The Public Trustee*.)

Remember that if you are unable to consent, even if you have a living will, the medical authorities will consult your family or your proxy to consent on your behalf. The living will only tells them what you would wish, the person making the decision will ultimately determine what medical care you should get.

## Where can I get more information?

**Canadian Pensioners Concerned Inc.** has a package called *My Plans For Me: Educational Information Package on Advanced Health Care Directives in Canada* (\$15).

For more information contact:

Suite 325, 7071 Bayers Road

Halifax, NS B3L 2C2;

phone: (902) 455-7684, fax (902): 455-1825.

***Let me decide*** (\$10) by Dr. William Molloy and Virginia Mepham is a Canadian booklet about living wills.

For more information contact:

428 Orkney Road,

RR 1 Troy, Ontario L0R 2B0;

phone: (905) 628-0354, fax: (905) 628-4901

email: [idecide@netcom.ca](mailto:idecide@netcom.ca)

**Living Wills – Centre for Bioethics** can be reached at:

The Centre for Bioethics,

University of Toronto,

Tanz Neuroscience Building,

6 Queen's Park Crescent,

West Toronto, ON M5S 1A8;

phone: (416) 978-2709, fax: (416) 978-1911, Web site: [www.utoronto.ca/jcb](http://www.utoronto.ca/jcb)

## **Finding a lawyer**

Lawyers are listed in the Yellow Pages of the phone book. You can also call the Legal Information Society's legal information and lawyer-referral service.

## **Legal Aid**

Nova Scotia Legal Aid has offices across the province. They are listed in the white pages of the phone book.

Dalhousie Legal Aid serves the Halifax area. The number is (902) 423-8105.

## **Legal Information Society of Nova Scotia**

The Legal Information Society of Nova Scotia, formerly the Public Legal Education Society of Nova Scotia, provides information about the law through booklets, brochures, a Speakers' Bureau, Dial-a-Law (a telephone information line), and a web site. We also provide a lawyer-referral service. Callers will be given the names of lawyers who will give an interview of up to 30 minutes for \$20 plus HST.

For more information on the law or to use the lawyer-referral service call **455-3135** in the Halifax Regional Municipality or

**1-800-665-9779** toll free in the rest of Nova Scotia.

For information on publications, the Speakers' Bureau and other business, please call **(902) 454-2198** or email [lisns@attcanada.ca](mailto:lisns@attcanada.ca). To see our publications online, visit our web site at [www.legalinfo.org](http://www.legalinfo.org).

To use Dial-a-Law, which provides legal information on tape, please call **(902) 420-1888**. This is a 24-hour service. It is not toll free.

Information in this brochure does not replace advice from a lawyer. If you have a legal problem, you should talk with a lawyer.

We try to keep our materials accurate and up to date. However, laws do change. You can check with a lawyer for changes to laws mentioned in this brochure.

The Legal Information Society of Nova Scotia provides the public with information and resources about the law. The Society receives funding from the Law Foundation of Nova Scotia, the Department of Justice Canada, the Nova Scotia Department of Justice, and donations from Nova Scotians.

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