



## ADVANCED MEDICAL DIRECTIVES

April 2009

Living wills, (also known as “Advanced Medical Directives”) are a directive by which a person makes a choice about a possible future healthcare procedure, intended to be effective only when he or she is not competent. They enable you to say what you would like to happen (medically) in the future if your mental capacity becomes impaired. In this situation, a doctor must act in your best interest and the details of a living will would be taken into account in making decisions. A living will is an opportunity to document your views on what constitutes an intolerable existence and how you would wish to be treated medically in this event.

A living will cannot be used to demand or refuse anything that you cannot demand or refuse when conscious and competent—for example, they cannot be used to demand euthanasia. Our Bill of Rights states that ‘everyone has the right to refuse to undergo any medical treatment’ so living wills can arguably be used to refuse medical treatment. Living wills therefore tread a fine line between allowing a patient to make healthcare choices and the constraints of a doctor’s statutory and ethical obligations to provide the necessities of life.

The New Zealand Medical Association recognises the advantages of living wills in providing “a process of reflection, discussion and communication of healthcare preferences that respects the patient’s right to take an active role in their healthcare, in an environment of shared decision making between the patient and doctor”. It views living wills as particularly useful in clinical settings where:

- (a) the patient is in the final phase of a terminal illness or condition that is incurable and progressive and is likely to die within a few months; or
- (b) the patient is in a persistent vegetative state or coma; or
- (c) the patient has an illness or an injury of such severity that there is no reasonable prospect that he or she will recover to the extent that his or her life can be sustained without the continued application of life sustaining measures, and/or has no reasonable prospect of regaining decision making capacity.

Lawyers preparing a living will must ensure that the client has full mental competence, has been fully informed as to the process and possible outcomes and has made the decision free from undue influence.

If you are considering a living will, think about these things:

- (i) If living wills are made a long time before capacity is lost, treatment options may have significantly changed;
- (ii) Your views about what constitutes a horrible existence may also change over time
- (iii) Living wills should be reviewed regularly to ensure that they continue to correctly reflect your wishes.
- (iv) It is important that a copy is held by your doctor, spouse and/or close family members and your solicitor.

For more information, please contact one of our offices.

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