

LIVING WILL

Background

The Wisconsin Living Will Act was created by the Legislature in 1984, and sets forth a standardized form of a Living Will. Wisconsin is one of many states to adopt such an act, although there are still some states that have yet to adopt a Living Will Act.

Historically, an individual has the legal right to control all aspects of his or her personal care and medical treatment, including the right to decline certain treatment. However, if an individual becomes disabled, his or her right to control the aspects of his or her medical care and treatment may be denied unless that person has previously set forth, in writing, that person's desires and wishes with respect to his or her medical care. Without providing some evidence of your desires or wishes concerning the withdrawal of life sustaining treatment while you are competent to make such a decision, it is very probably that even a subsequently appointed court ordered guardian will be unable to authorize the withdrawal of life sustaining treatment in the event that choice is ever a viable alternative.

Consequently, the Living Will provides a mechanism whereby you can set forth your desires concerning the withdrawal of life sustaining treatment under specific circumstances while you are alive and competent, so that those desires can be considered and your rights respected in the event you ever become incompetent and disabled and unable to express these desires.

Form

The form of the Living Will is set forth in the Living Will Act. The pertinent language of that form is as follows:

If at any time I should have an incurable and irreversible injury, disease, or illness judged to be a terminal condition by my attending physician who has personally examined me, and has determined that my death is imminent except for death delaying procedures, I direct that such procedures which would only prolong the dying process be withheld or withdrawn, and that I be permitted to die naturally with only the administration of medication, sustenance, or the performance of any medical procedure deemed necessary by my attending physician to provide me with comfort care.

Essentially, the Living Will directs that life sustaining treatment be withheld or withdrawn if your attending physician medically determines that you have an incurable and irreversible injury or illness and that your death is imminent except for death delaying procedures. The key to this document is that there be a specific directive that you make concerning the withdrawal of life sustaining procedures upon a certain event, as opposed to appointing someone to make decisions for you.

Other Provisions in Act

The Living Will that you execute should be provided to your family or primary physician so that the physician can make it a part of your medical records. The purpose of this is two-fold. First of all, it is important that your physician be made aware of your wishes since he/she is most likely the person that will be involved in making the medical decisions necessary to effectuate the document. It is the obligation of any physician who is provided with a Living Will (or a copy thereof) to make the Living Will part of your medical records. The second purpose is to provide your physician with an opportunity to indicate whether or not he/she would be willing to comply with the provisions of your Living Will, the physician must promptly so advise you. You would then have the opportunity to select another physician who would be willing to comply with your desires.

Validity

Although the Living will is a document created under the authority of the Wisconsin State Legislature and the Wisconsin Probate Laws, a Living Will executed in the State of Wisconsin pursuant to this Act may be valid in States outside of Wisconsin. Because many states have adopted Living Will statutes, it is possible that a Living Will drafted and executed in Wisconsin will meet the requirements of the Living Will statute in another state and therefore be valid in that state. However, this determination must be made on a state by state basis. If you have a question as to whether or not a Living Will executed in Wisconsin would be valid in a particular state outside of Wisconsin, we would be happy to review the Living Will Act of that State and make the determination for you.

CAUTION!

This is a serious document, literally dealing with life and death issues. You must guard against making vague statements that could be misinterpreted by a doctor you do not know. You need to be informed about what you are signing, and the effect it will have on future medical treatment.

Attorney John L. Maier, Jr.
Sweet & Maier, S.C.
February, 2010