

LIVING WILLS AND OTHER ADVANCE DIRECTIVES

THE FOLLOWING INFORMATION IS PROVIDED
COURTESY OF THE MISSOURI BAR ASSOCIATION:

What is a Living Will?

A living will is a brief declaration or statement that a person may make indicating their desire that certain medical treatment be either withheld or withdrawn under certain circumstances. The Missouri statute authorizing the creation of living wills specifies that the statement or declaration be in substantially the following form: "I have the primary right to make my own decisions concerning treatment that might unduly prolong the dying process. By this declaration I express to my physician, family and friends my intent. If I should have a terminal condition it is my desire that my dying not be prolonged by administration of death-prolonging procedures. If my condition is terminal and I am unable to participate in decisions regarding my medical treatment, I direct my attending physician to withhold or withdraw medical procedures that merely prolong the dying process and are not necessary to my comfort or to alleviate pain. It is not my intent to authorize affirmative or deliberate acts or omissions to shorten my life, rather only to permit the natural process of dying."

How is a Living Will Made?

Any competent person 18 years of age or older can make a living will by signing and dating a statement similar to that shown above before two witnesses. These witnesses must be at least 18 years old, and should not be related to the person signing the declaration, a beneficiary of his or her estate or financially responsible for his or her medical care. The statement can be typed or handwritten. It is recommended that a living will or any other advance directives be considered and prepared in advance of any hospitalization or impending surgery – it is not something anyone should feel pressured to decide in a short period of time, if that can be avoided.

Limitations of Living Wills

While most people have heard of living wills, many are unaware of the significant limitations of the living will as defined by Missouri statutes. The terms "death-prolonging procedure" and "terminal condition" are used in the statute to specify the circumstances to which a living will applies. The statute defines both of those terms as relating to a condition where death will occur within a short period of time whether or not certain treatment is provided. In other words, the patient will die shortly with or without artificial resuscitation, use of a ventilator, artificially supplied nutrition and hydration or other invasive surgical procedures. By definition, then, a living will only avoids treatment when death is imminent and the treatment is ineffective to avoid or significantly delay death. Furthermore, the statute prohibits a living will from withholding or withdrawing artificially supplied nutrition and hydration, which is sustenance supplied through a feeding tube or IV.

What Should I Do With My Living Will?

The most important part of having a living will or other advance directives after they are signed is to be certain that they are accessible. They should be kept close at hand, not in a safe deposit box, because they may be needed at a moment's notice. Many people travel with them. Some even keep them in their purse or billfold. At a minimum, it is recommended that you deliver a copy to your attending physician and at least make your close relatives aware that you have one. Giving a copy of your living will or other advance directives to your physician gives you an opportunity to discuss your desires and ask any questions you may have about any procedure and also to ask your physician if he or she will follow your directions. If you have appointed an attorney-in-fact to make health care decisions in case of your incapacity, he or she should have a copy. If you are hospitalized, a copy should go into your medical

records. For these reasons, it is often wise to sign more than one copy of your living will or other advance directives.

Revoking a Living Will

Once made, a living will or other advance directives are easily revoked or canceled. They can be revoked either orally or in writing. If possible, it is advisable to gather and destroy all copies of the advance directives if you desire to revoke them. By statute, health care providers are required to note a revocation of a living will in the medical records of the patient.

Durable Power of Attorney

If you have a durable power of attorney which appoints someone to make health care decisions for you, do you still need a living will or other advance directives? The answer is yes. Whether or not you have a power of attorney does not affect the need of desire for a living will or other advance directives. If you do not have a power of attorney, your advance directives will be very helpful to instruct your physician and the hospital as to the care you desire. If you do have a power of attorney, your advance directives will give very important guidance to your attorney-in-fact as to how he or she should act. In fact, you may want to combine your power of attorney, your living will and your other advance directives into one document.

Why Have a Living Will?

You take the burden off of your family and friends to make this decision for you at a time when they will most likely be emotionally upset by your critical condition.