LIVING WILL

A living will is an inter vivos directive made to an individual's physician not to use life-sustaining procedures. Its growing acceptance has been brought about by advances in medical technology which have made it possible to postpone death through the use of artificial life-support devices. The Living Will comes into play when there is no cure or chance for recovery for the condition suffered by the patient and the use of such artificial life-support devices will only serve to prolong the dying process.

Many states have enacted legislation authorizing the use

of the Living Will, sometimes referring to such a document as a Directive to Physician or Declaration. The various state statutes make a distinction between life-sustaining methods which only prolong the dying process and other medical treatment which might bring about a cure and provide comfort to the patient.

In all instances, the Living Will is honored when a

patient is in a terminal condition which will result in death, regardless of what procedures are employed. The terminal nature of the condition should be, and in most states must be, documented by a second opinion.

The statutes extend legal protection and establish guidelines by which hospitals, physicians and their patients will have the freedom to make critical decisions on appropriate medical care, without the fear of lawsuits. An additional important protection is provided with reference to life insurance payments as actions taken pursuant to a patient's declaration will not for any purpose constitute a suicide and the making of a declaration will not affect the sale, procurement or issuance of any policy of life insurance.

The majority of state statutes which have been enacted

fall into two categories, restrictive or liberal. Under

certain statutes in the restrictive category, a directive is effective only if signed or reexecuted at least 14 days after a terminal condition has been diagnosed by a physician whose name and address must be supplied in the document. Another physician must also certify the condition as terminal. If the directive is executed by a healthy individual, it is only advisory and is not binding unless reexecuted as provided above. Any such directive must be reexecuted every five (5) years for it to be effective. It is given effect only after a physician determines that death is imminent. The physician must determine the validity of the directive and its witnesses.

Two witnesses must sign the directive and neither can be a relative, heir, doctor or personnel connected with the doctor or health facility treating the patient. The operation of the directive is suspended during pregnancy. A minor is not allowed to have an agent appointed to act for him and an individual must be at least eighteen (18) years of age to execute such a directive.

In some states a patient in a nursing home must have a

designated patient adversary serve as a witness to his declaration. When there is a valid directive, the doctor must

follow it or transfer his patient to a doctor who will honor it. Failure to do so constitutes unprofessional conduct.

In states whose statutes are categorized as liberal, there is generally no requirement that a specific form be used and a directive may be executed by a healthy person, although it becomes effective only when the patient is certified as having a terminal condition. No reexecution is necessary at 5 year intervals.

These liberal statutes usually allow a directive to be executed on behalf of a minor or incompetent, whether or not

the patient is comatose, but only a family member can act for the incompetent or minor and only after there is written certification by two doctors that extraordinary measures would have to be used to prolong life. This is the only instance when there must be a finding of a terminal or even serious condition before a directive can be executed. Pregnancy does not suspend a directive. Two witnesses are required and the doctor need not determine the validity of the directive. A physician is bound by a directive but no penalties are provided.

Many state statutes embody an approved form which should

be used and others set out required contents and language which has been approved. If a form or language has been approved and is not used, other considerations may be viewed against honoring a patient's wishes.

Such a directive is always revocable in the event that you change your mind. Once a directive is signed, it should be placed in your medical records and any revocation thereof

should be handled in a like manner.

In some states the directive may be used in conjunction

with a durable Power of Attorney statute which permits the appointment of an attorney in fact to make medical treatment decisions for the patient.

In states that have not enacted right to die laws, there

is most likely no form that will be binding, however, when a patient's wishes in this regard are declared in writing, there is a good chance that his/her wishes will be honored under appropriate circumstances.

Form No. 403 has been drafted as an example of a declaration under a restrictive statute. Form No. 404 has been drafted as an example of a declaration under a liberal statute. Please note that paragraph number 5 in Form No. 404 is optional, depending on whether or not you desire to appoint a person to make decisions concerning your medical treatment. If you do not wish to make such an appointment, simply mark through the paragraph and place your initials in the margin to the right of the paragraph.

Should you desire to make a declaration of this nature,

you should contact an attorney in your state to find out what language and instructions are provided by statute. Statutes are enacted and revised continuously and it is simply not possible to provide forms and instructions which are approved and/or acceptable in all states.