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Why You Need a Living Will in Virginia

The public today is becoming increasingly concerned with the problems associated with the use of unnecessary, expensive, and often painful medical procedures on terminally ill patients who have no reasonable hope of benefiting from these procedures. Most of the publicity surrounding this issue has focused on patients with no brain activity that have been maintained in a vegetative state for years with artificial feeding and respirators.

However, a far more common problem is the denial of effective pain medication and the administration of useless medical procedures. Pain medication is frequently not given in high enough doses to be effective to relieve pain in a terminally ill patient. The two reasons most often stated for this are: a substantial risk that the patient might die of an overdose; and the patient might become addicted to narcotics or other drugs used in high doses over extended periods of time.

Cardiopulmonary resuscitation (CPR) is one of the more frequently encountered useless medical procedures. Even if a terminally ill patient has only been given a realistic chance of living for a few more days, the patient will be given cardiopulmonary resuscitation in the event of a heart attack. Patients under these circumstances then endure additional days of pain and agony when they could have died peacefully in their sleep.

In most hospitals, the only way to prevent repeated CPR from being performed on a terminally ill patient is to have a "no code" order entered in the patient's record by the treating physician. These orders are difficult, and often impossible to obtain.

The hospitals and physicians that provide useless and painful medical procedures do not provide these procedures free of charge. The patient's spouse and children are often presented with an enormous bill for these services even though they were of no benefit to the patient and actually may have increased the suffering of the patient.

The Living Will

The Living Will is a document designed to address some of the concerns described above. The Living Will is also referred to as a "Declaration." Virginia permits an individual to spell out for his physicians and his family the type of medical treatment he/she wants. More importantly, an individual can indicate the type of treatment he/she does not want.

A copy of the Living Will can be given to an individual's physician, placed in the medical records, and given to family members. It is also advisable to discuss its contents with family members and treating physicians.

A Living Will, even when properly drafted, is unfortunately, not foolproof. However, the U.S. Supreme Court has indicated that if an individual has not left a Living Will (or some other evidence of their intent), neither the treating physicians nor the family members will have the authority to stop certain routine medical procedures. The Court has indicated that if an individual has left a Living Will, the individual's requests will be followed if reasonable. (Cruzan v. Director, Missouri Department of Health).

The Living Will should contain the form language set out in the Virginia Code, commonly referred to as the (Virginia Natural Death Act). The witnesses signing the Living Will should not include anyone who could possibly benefit from the individual's death or anyone involved in the medical treatment of the individual. This would include family members, beneficiaries of the person's estate, and treating physicians and nurses.

In addition, the language of the U.S. Supreme Court decision suggests that the will should contain explicit directions for physicians. Simple forms used in the past may not meet standards of evidence (The Supreme Court decision calls for clear evidence of the individual's intent). Simply copying the language of Virginia's Natural Death Act onto a form, and having the individual and two witnesses sign it may not be enough to create an effective Living Will.

Virginia's Natural Death Act does not address in detail the types of medical issues that concern patients and it does not appear to provide enough direction to physicians. Harvard Medical School has drafted language to be used in a Living Will that provides much more explicit instructions to physicians concerning the details of the medical treatment desired by the individual. This language or some variation of it should be used in the Living Will.

Another document, called a Durable Health Care Power of Attorney, is usually created at the same time as the Living Will. This document specifies who is to have the authority to carry out the provisions of the individual's Living Will, or who is to have authority over health care decisions if something comes up that is not addressed in the Living Will.