LIVING WILL PACKET

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Understanding the Georgia Living Will

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What Is a Living Will?

A Living Will is a document that could be used to postpone or delay our death. The name of the document may differ from state to state. Each state however identifies documents of this nature as advance directives. They allow us to choose the kinds of medical treatment we want or don't want. Specifically, the Living Will allows us to choose whether or not we want to die naturally, without our death being artificially prolonged by various medical procedures.

Does Georgia Have a Living Will Law?

Yes. Georgia's law was first passed in 1984.

How Does a Living Will Differ From a Last Will And Testament?

A Last Will and Testament is a legal document that expresses how we want done with our money and other property after our death. Information on the requirements for a Last Will and Testament is available from the Division of Aging Services or may be available from your local Extension county agent in the form of a Bulletin #1018, entitled "Wills and Estate Planning."

A Living Will is different from a Last Will and Testament and has nothing to do with money or possessions. A Living Will deals with how we wish to be treated when we are dying.

What Does a Living Will Do?

The Living Will authorizes our doctor to withhold or withdraw certain medical procedures which would merely postpone or prolong death.

When Does a Living Will Work?

If we have a Terminal Condition;

If we are in a Persistent Comatose Condition (Coma);

or

If we are in a Persistent Vegetative State.

The law was changed in 1992 to allow us to add directions for withholding or withdrawing treatment while in a persistent comatose or persistent vegetative state.

What Is a Terminal Condition?

According to the Georgia law, terminal condition means an incurable condition caused by disease, illness, or injury. This condition will cause our death, no matter what doctors do. A Living Will may be used when the doctors are not able to cure us or keep us from dying - but do want to keep us alive as long as possible.

The Georgia law states that two physicians (one of whom must be your attending physician) must personally examine us and shall certify in writing that:

- there is no reasonable expectation for improvement in our condition (we will never get any better).

- our death will occur as a result of this incurable disease, illness or injury.

What Is a Persistent Comatose Condition?

Under the 1992 changes to Georgia's Living Will, a persistent comatose condition is defined as a profound or deep state of unconsciousness where there is no reasonable expectation of regaining consciousness. This means that we are alive but not able to react or respond to life around us and we are expected to awaken from that comatose condition. A persistent comatose condition with no reasonable expectation of waking up is different from temporarily being in a coma. The Living Will lets us state what kind of treatment we want if we are in a persistent comatose condition.

Like the definition of terminal condition, the law states that two physicians (one of whom must be your attending physician) must personally examine us and certify in writing:

- we have been in a deep state of unconsciousness for so long that our doctors conclude that the unconscious state will continue, and

- there is no reasonable expectation that we will regain consciousness (we will wake up.)

In other words, we can now state whether we want treatment continued if our doctors decide that we will not wake up from the coma.

What Is a Persistent Vegetative Condition?

A persistent vegetative state is a state of severe or strong mental impairment in which our bodily functions work, but our mind is no longer working. Sometimes people say that someone in a persistent vegetative condition is technically alive, but their brain is dead. Like a terminal condition or a persistent comatose condition, two physicians (one of whom must be our attending physician) must personally examine us and certify in writing that:

- our cognitive function is substantially impaired (our brain is not working), and

- there is no reasonable expectation that we will regain brain function (we will not get better.)

This means that if our brain is not working, and doctors do not believe we will ever recover, we can decide in advance whether we want treatment continued.

What Are Life Sustaining Procedures?

Life sustaining procedures mean any medical procedures or interventions which serve only to prolong but not prevent the dying process. For example, we may be unable to breathe without the help of a machine (called a respirator). If we had a Living Will, the doctors would know that we do not wish to be hooked up to such a machine if it would only prolong the dying process.

What about Feeding Tubes?

We may be so ill that we cannot chew or swallow food. In such a case, our doctor might order Artificial nutrition, which means that they will feed us through a tube that is attached to our nose or directly to our stomach. Under Georgia's law, we can now refuse feeding tubes through a Living Will.

What about Pain Medicine?

Georgia law and standard medical practice assure that we will be given medicine to relieve our pain unless we choose not to. A Living Will and Durable Power of Attorney for Health Care do not deny us the right to be kept comfortable and as free of pain as possible.

What about Water?

The Living Will gives us the opportunity to decide whether or not we want to be given artificial hydration (water) through our veins in the event that we cannot drink water. Under Georgia's law, we can now refuse artificial hydration (water) through a Living Will.

What Happens in Cases Where a Person Is Completely Dependent but Not Technically Dying?

Georgia passed another law, called the Durable Power of Attorney for Health Care. This law allows us to name another person to make health decisions for us and gives this person (called our agent) some idea of what we may or may not want. There is a separate document on this law and how to use it. It is also available from the Georgia Division of Aging Services.

In order to control our medical care in cases where we do not know exactly what care we may need in the future but we have someone we trust to make those decisions for us or to carry out the decisions that we may have already made and explained to him or her - we should consider making a Durable Power of Attorney for Health Care.

There is a separate document on this law and how to use it. It is also available from the Georgia Division of Aging Services. More detailed information can be obtained from an attorney or medical doctor.

The Durable Power of Attorney for Health Care Act was passed during the 1990 session of the Georgia legislature. It is another step in reacting to the health care dilemmas that so many of us may face.

Keep in mind that laws are subject to amendments by legislators and changes by judges. Check with a legal advisor to obtain the latest information.

Once I've Signed a Living Will, How Long Does it Last and Can I Change My Mind?

Yes you may change your mind after signing a Living Will. As long as your Living Will was signed after 1987, it is good until you revoke it, which means you indicate that we no longer wish to have one. If we do wish to revoke our Living Will, we should tear up our copy and notify other people (family members and doctors) who also have a copy. If your Living Will was actually made and signed before 1987, it is a good idea to talk with an attorney or someone else knowledgeable about this law to find out whether or not you need to prepare another Living Will.

How Do Religions Feel about Living Wills?

Living Wills have been accepted by Baptist, Presbyterian, Catholic, Church of Christ, and many other denominations or faiths. Most of them agree with this statement, written by the United Methodist Church: "We assert the right of every person to die in dignity without efforts to prolong terminal illness merely because the technology is available to do so."

However, not all churches or all people in those churches agree. Some vocally oppose the idea of a Living Will.

If we have questions, we may wish to talk to our minister, priest, rabbi, or spiritual advisor.

Should Everyone Have a Living Will?

No. We may decide that we want to live as long as possible. We may choose not to accept a doctor's opinion that we may never recover from our terminal, persistent comatose, or persistent vegetative condition. The idea of "life sustaining procedures" may sound better to us than the idea of "pulling the plug". A Living Will may not fit in with our religious beliefs.

The important thing is THAT we decide, not WHAT we decide. If we do not make our wishes known in writing, our physicians and family will be forced to decide for us. If we don't make this choice, someone else will decide for us.
Should Everyone Think about a Living Will?

Yes. It is important that we think about this, discuss this with our family, friends, advisors, and make a decision. After we have made a decision, we should communicate this decision to our doctors, family members, friends and our lawyer.

If we want to be kept alive for as long as possible - that is our right.

If we do not want to have our dying prolonged, that is our right.

THE IMPORTANT THING IS TO MAKE THAT DECISION AND LET THAT DECISION BE KNOWN.

What Happens If We Do Not Make the Decision in a Living Will or a Durable Power of Attorney for Health Care?

If we do not make a decision for ourselves in advance, members of our family may be forced to make that decision for us. We should not ask our family to make that choice for us.

- It will be very stressful on them.

- If we have not put our wishes down IN WRITING, doctors may not follow the wishes of our family.

- The situation could become bogged down in court, with many people arguing different viewpoints.

- In the meantime, we could remain in a hospital or nursing home, hooked up to machines that cannot make us better - but will not let us die.

Does a Doctor Have to Honor Our Living Will?

NO. Our doctor may refuse to honor our Living Will because it does not fit with his/her personal, religious or spiritual beliefs, or because it is the policy of the hospital or the nursing home where we are being cared for not to honor Living Wills. However, our doctor(s) or the facility should help us or our family locate another doctor and/or facility that will honor our wishes.

How Do I Make a Living Will?

While Georgia may not require that a Living Will look just like the form that appears in the law, there are certain requirements of the Living Will that must be met by every form. We may write our Living Will out by hand, use a form that is available from a hospital, nursing home, doctor's office, or attorney's office as well as some that may be available at various stores, but the form should follow the same basic format as found in the law.

There are rules for who can or cannot witness our Living Will. In order to protect us, the Georgia law requires that we have two witnesses.

These witnesses must be:

* at least 18 years of age;
* not related to us;
* not be a person who will inherit property or money from us;
* not responsible for paying our medical bills; and,
* the first and second witness cannot be our doctor or an employee of the hospital or nursing home where we are being cared for. In other words, we could choose friends, neighbors, people we work with, even our minister or spiritual advisor.

We should not ask someone who will benefit or profit from our death.

We must sign our Living Will while the witnesses watch us.

The witnesses must sign the Living Will while we watch them.

Georgia law also requires that, if we decide to make a Living Will while a patient in a hospital or resident of a skilled care nursing home, we must have an additional person sign the form. This third witness must be the medical director of the skilled nursing home or staff physician not participating in our care. If we are in a hospital, it must be the chief of the hospital staff or staff physician not participating in our care. Recent changes allow a hospital to designate someone else who is not involved in our care to be the third witness.

Do I Have to Have a Lawyer to Make a Living Will?

No. The law does not require that an attorney prepare or otherwise help us with a Living Will. However, if you do not completely understand everything, or if we have questions

about it, ask an attorney or contact the Division of Aging Services. In many areas of the state, lawyers will answer our questions about Living Wills without charging a fee for their advice.

Should My Doctor Be Involved in the Making of My Living Will?

Not Necessarily. A doctor is not required to be involved in this process. However, we would be wise to ask our doctor his or her feelings about honoring our Living Will and ask about the policy on Living Wills at the hospital where he or she practices.

Many doctors have had patients who have been in a position where they could not improve. Decisions had to be made about providing different types of care. Our doctor could explain to us how Living Wills work and why so many people are interested in them.

Once We've Made a Living Will, What Should We Do With It?

Once we have signed our Living Will and our witnesses have also signed it, we should have several copies made. The original should be kept with our other important papers, like our Last Will and Testament, our Letter of Last Instructions, (how we want our funeral to be), Details of My Final Arrangements, etc. These papers should be kept in a place where someone can find them.

It is important that we also give copies of our Living Will to other important people, like family members, and our doctors. It may also be a good idea to carry something in our wallet or pocketbook stating that we have a Living Will and giving a telephone number where family members can be reached.

CONCLUSION:

Thinking and talking about dying is not an easy thing to do. Thinking about a decision being made for us whether we should be kept alive or not is not an easy thing to consider, either. A Living Will allows us to retain control over our medical care, even if we are no longer able to communicate. Deciding about a Living Will should help us and our families rest easier, knowing that we will receive the care we want,

ONLY the care we wish, or ALL the care we wish.

LIVING WILL

Living will made this _____ day of _____(month, year).

I, _____, being of sound mind, willfully and voluntarily make known my desire that my life shall not be prolonged under the circumstances set forth below and do declare:

1. If at any time I should (check each option desired):

( ) have a terminal condition,

( ) become in a coma with no reasonable expectation of regaining consciousness, or

( ) become in a persistent vegetative state with no reasonable expectation of regaining significant cognitive function,

as defined in and established in accordance with the procedures set forth in paragraphs (2), (9), and (13) of Code Section 31-32-2 of the Official Code of Georgia Annotated, I direct that the application of life-sustaining procedures to my body (check the option desired):

( ) including nourishment and hydration,

( ) including nourishment but not hydration, or

( ) excluding nourishment and hydration,

be withheld or withdrawn and that I be permitted to die;

2. In the absence of my ability to give directions regarding the use of such life-sustaining procedures, it is my intention that this living will shall be honored by my family and physician(s) as the final expression of my legal right to refuse medical or surgical treatment and accept the consequences from such refusal;

3. I understand that I may revoke this living will at any time;

4. I understand the full import of this living will, and I am at least 18 years of age and am emotionally and mentally competent to make this living will; and

5. If I am a female and I have been diagnosed as pregnant, this living will shall have no force and effect unless the fetus is not viable and I indicate by initialing after this sentence that I want this living will to be carried out. _____(Initial)

Signed _____

_____(City), _____(County), and _____(State of Residence).

I hereby witness this living will and attest that:

(1) The declarant is personally known to me and I believe the declarant to be at least 18 years of age and of sound mind;

(2) I am at least 18 years of age;

(3) To the best of my knowledge, at the time of the execution of this living will, I:

(A) Am not related to the declarant by blood or marriage;

(B) Would not be entitled to any portion of the declarant's estate by any will or by operation of law under the rules of descent and distribution of this state;

(C) Am not the attending physician of declarant or an employee of the attending physician or an employee of the hospital or skilled nursing facility in which declarant is a patient;

(D) Am not directly financially responsible for the declarant's medical care; and

(E) Have no present claim against any portion of the estate of the declarant;

(4) Declarant has signed this document in my presence as above instructed, on the date above first shown.

Witness _____
Address _____
Witness _____
Address _____

Additional witness required when living will is signed in a hospital or skilled nursing facility.

I hereby witness this living will and attest that I believe the declarant to be of sound mind and to have made this living will willingly and voluntarily.

Witness: _____
Medical director of skilled nursing facility or staff physician not participating in care of the patient or chief of the hospital medical staff or staff physician or hospital designee not participating in care of the patient.

COMMENT: Acts 1986, p. 445, effective March 28, 1986, and Acts 1989, p. 1182, amended the statutory form for the Living Will. The major change was to provide that **living wills are now effective indefinitely; previously, the statutory form had contained a paragraph automatically revoking the Living Will after seven years**. Also, the 1986 amendment provides that living wills shall be in "substantially" the form provided by the statute; previously, the statutory form had been mandatory, and concern had been expressed about whether a Living Will that deviated from the statutory form was valid. See Adams & Adams, "An Overview of Georgia's Living Will Legislation," 36 Mercer L. Rev. 45, 58-59 (1984). The 1989 amendment alleviates this problem to some extent by providing, "A declaration executed on or after March 28, 1986, shall be in substantially the form specified in this subsection. A declaration executed on or after March 28, 1986, in substantially the form specified by prior law shall be valid and effective, except that the paragraph limiting the operation of the living will to a seven-year period shall be ineffective." O.C.G.A. § 31-32- 3(b). Thus, printed forms containing the seven-year termination provision may still be used until exhausted. The new law, however, does not ratify declarations executed prior to March 28, 1986 that deviate from the statutory form.

An additional witness is required when a living will is signed in a hospital or skilled nursing facility.