

Is there life in the living will?

IT HAS LONG BEEN ESTABLISHED THAT A COMPETENT ADULT MAY REFUSE MEDICAL TREATMENT, EVEN IF THIS MAY LEAD TO HIS OR HER DEATH. BY COMPETENT, BROADLY, WE MEAN IN POSSESSION OF HIS OR HER MENTAL FACULTIES.

What of those who are not competent?

The living will ('advance directive', to give it its proper legal name) allows a patient to refuse in advance the care that he does not wish to receive. The intention is that the directive will be effective even when he or she is unable to communicate such a direction, because he is incapable whether mentally or physically.

Following the passing of the Mental Capacity Act 2005, it is now possible to appoint a welfare attorney; to appoint a person (of your choice) to communicate with the medical team and make such decisions on your behalf including, if you choose, withholding treatment which would sustain your life.

This is a welcome development. However as has been pointed out in previous PG Lore articles the new powers of attorney are not without their problems. They are complicated to create and need to be registered with the Office of the Public Guardian before they are effective. More specifically they are not decisions or directions themselves, but merely a delegation of such decisions.

Delegating decisions has advantages: your attorney can make his or her decision in light of the circumstances at the time and bearing in mind the range of medical options. But disadvantages

too: it is a significant burden to hand on to a person who is likely to be close to you emotionally, and who will have to exercise judgement at what is likely to be a very difficult time.

Some will prefer the certainty of a fixed direction, and so opt for the living will. There are still practical issues to consider: care must be taken to ensure that the will is in the correct form, appropriately executed, and clear as to its effect; and that the will is current – although a living will must be made in writing it can be revoked orally. Ultimate power rests in all cases with the doctor, and any doubt in his or her mind about the efficacy of the living will, is likely to render the will of limited or no effect.

It is difficult to give general advice on how best to proceed in this difficult area; as always each case is going to be different, and it will only be after proper discussion with your doctor, the family, and your lawyer that a fully informed decision can be made.

However in answer to the question posed by this article, Yes, the living will is alive and well. But now there is a new challenger in the shape of the welfare lasting power of attorney. Whether the living will survives will depend on the evolution of this new species.



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