

WHO SHOULD HAVE A LIVING WILL?

By David A. Onega

Obviously, no one wants to remain in a permanently unconscious state or suffer a terminal illness. None of us expect it to happen, but we all know it can. You've probably heard it before: "If I'm on a ventilator, I want them to pull the plug." Therefore, it would seem everyone would want to sign a Living Will. Right? Well, the answer to that question may not be as obvious as you might think. As with most questions involving the law, there are pros and cons to consider.

By signing a Living Will, you are directing your physician to take certain actions related to the administration of life-sustaining treatment. The provisions of a Living Will are triggered only when two physicians have concluded that you are either (1) in a terminal condition and unable to make your own health care decisions or (2) in a permanently unconscious state (which also means, by default, you are unable to make your own health care decisions).

You may also specify in your Living Will that its provisions are triggered only upon the occurrence of one of the foregoing conditions, but not the other. A "permanently unconscious state" is defined as an

irreversible condition in which you are permanently unaware of yourself and your surroundings and the total loss of higher brain function has left you unable to feel pain or suffering.¹ A "terminal condition" is defined as an irreversible, incurable and untreatable condition caused by disease, illness or injury in which it is believed that you cannot recover and that your death is likely to occur within a relatively short time if you do not receive life-sustaining treatment.² Query whether the phrase "relatively short time" in the preceding sentence means one hour, one day or one week?

If you satisfy the terminal condition state defined above, under a Living Will you may direct your physician to do four things: (1) administer no life-sustaining treatment, including CPR and artificially or technologically supplied nutrition or hydration; (2) withdraw such treatment, including CPR, if such treatment has already started; (3) issue a DNR (Do-Not-Resuscitate) Order; and (4) permit you to die naturally and take no action to postpone your death, and to provide you with only that care necessary to make you comfortable and to relieve your pain.



David A. Onega
Carlile Patchen &
Murphy LLP

If instead, you satisfy the permanently unconscious state defined above, you may direct your physician in the same manner, and may also direct that artificially or technologically supplied nutrition or hydration (food and water) shall be removed as well. Ohio law provides that those in a terminal condition must continue to receive food and water.³ The term "life-sustaining treatment" is defined as any medical procedure, treatment, intervention, or other measure that, when administered to a qualified patient or other patient, will serve principally to prolong the process of dying.⁴

It is important to understand that by signing a Living Will you are effectively taking away the authority of your spouse, children, or anyone else, to decide whether life-sustaining treatment should be continued if you fall into a permanently unconscious state or terminal condition, even if you have appointed them as agents for purposes of making your health care decisions under a Health Care Power of Attorney. How can that be? The answer is because Ohio law says so.

Ohio Revised Code §2133.03 (B)(2) provides that the terms of a Living Will trump any conflicting provisions in a Health Care Power of Attorney. Therefore, if you have signed a Living Will, the terms of the Living Will dictate that such treatment will be stopped or removed. Some people are uncomfortable with that result and would rather have their loved ones



in print



online

THE DAILY REPORTER

providing accurate news
and legal information for
more than a century

580 S. High St., Suite 316 Columbus, OH 43215
Ph (614) 228-NEWS (6397) Fax (614) 224-8649
www.sourcenews.com

making the final decision in that regard. If you share that discomfort, you may not want to adopt a Living Will, but may wish to only sign a Health Care Power of Attorney to designate an agent to make such end-of-life decisions on your behalf.

There is a process outlined in Ohio Revised Code §2133.08, whereby your family members may provide consent to effectuate the removal of life-sustaining treatment, even if you have not signed a Living Will or a Health Care Power of Attorney appointing an agent to make that decision. An important point to consider, however, is that this procedure is available to those in a permanently unconscious state only if such state has been in existence for at least 12 months.⁵ No such 12-month waiting period applies to those in a terminal condition. One court in Ohio has ruled that the 12-month waiting period is unreasonable and not binding.⁶ However, the fact remains that the 12-month waiting period is still provided for under Ohio law. Obviously, the possibility of being in a permanently unconscious state for 12 months is an emotional and expensive outcome that could be avoided simply by adopting a Living Will or a Health Care Power of Attorney appointing an individual to make decisions concerning the administration or removal of life-sustaining treatment, if that is your wish.

Not everyone will want to adopt a Living Will. Doing so removes the burden on your loved ones to make your end-of-life health care decisions. There are pros and cons to that result. Removing the burden also means removing their feeling of responsibility and control. Many people would rather leave decisions concerning the administration of life-sustaining treatment in the hands of a loved one. Now you can decide.



dao@cpmlaw.com

¹ See ORC §2133.01(U) and Ohio Living Will Declaration form.

² See ORC §2133.01(AA) and Ohio Living Will Declaration form.

³ See ORC §2133.02(A)(3)(b).

⁴ See ORC §2133.01(Q).

⁵ See ORC §2133.08(A)(1)(a).

⁶ See *In re Guardianship of Myers*, 62 Ohio Misc. 2d 763, 610 N.E. 2d 663 (Summit County 1993).

Building partners

Lane, Alton & Horst knows that success in business requires wise planning and careful use of trusted resources. We strive to build relationships with our clients that earn their trust and confidence. This can only be accomplished by working hand-in-hand with our clients every day.

Sound old fashioned? Yes, and it is the way we have succeeded with our business partners for over 75 years.

Lane, Alton & Horst *Traditional values in contemporary law*

Columbus, Ohio
614-228-6885
www.lah4law.com

