LIVING WILLS
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It is probably a family's worst nightmare – a loved one is in an accident and is being kept "alive" by artificial means. Does the family switch the machines off? Would that be the loved one's wish? Does the doctor agree?

A living will is a document signed by a person when s/he has the capacity to do so. The living will sets out what the person wants to happen in the event that s/he is rendered incapable of surviving without permanent medical assistance.

The important paragraph in a living will is the following:

> *If there is no reasonable prospect of my recovery from physical illness or impairment expected to cause me severe distress or to render me incapable of rational existence, I request that I be allowed to die and not be kept alive by artificial means and that I receive whatever quantity of drugs may be required to keep me free from pain or distress even if the moment of death is hastened.*

There has been debate in the past about whether a doctor's decision to honour a living will amounts to passive euthanasia. On the one hand, the argument is that the patient has the right to accept or refuse treatment and has simply given an advance directive in this regard. On the other hand, the arguments are that doctors have a duty to save patients, and a directive given by the patient in the past is not necessarily the intention of the patient in the present.

There is no legislation in South Africa confirming the validity of living wills or "advance directives". There is a proposed Bill entitled "The End of Life Decisions Act", which was drawn up in 1999 but has not yet been debated in Parliament.

As far as case law is concerned, the most publicised case is the US case of Karen Quinlan, which was decided in 1976 and which (on appeal) upheld her right to privacy (which included the right to refuse treatment). There appears to be only one South African case (Clarke v Hurst, decided in Durban in 1992) but the Court's decision, although going in favour of the patient's right to die, did not accept the validity of a living will. The current view seems to be that living wills may be ethically acceptable but are currently not recognised as legally enforceable instructions. The Medical Protection Society has advised doctors that they can comply with an advance directive where the patient is in a permanent vegetative state. In all other instances, a doctor who is uncertain whether or not to comply with an advance directive may approach the court for guidance.

The practical approach seems to be that people should have a living will because, if they are unconscious and in a life threatening state, it will be the only document evidencing their wishes. The facts (and the doctor's views) will determine whether the living will is acted upon.

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Some further reading suggestions on the internet which may be of assistance are the following:

- MPS Booklet, *Guide to Taking Consent for Medical Treatment 2011*
- MPS Factsheet, *Consent: The basics*
- Skeen A, *Living wills and advance directives in South African Law* 2004 University of the Witwatersrand
- SAMA, *Guidelines for medical practitioners on living wills*
- SAMA, *Euthanasia and the artificial preservation of life*
- HPCSA, *Guidelines for the Withholding and Withdrawing of Treatment*
- HPCSA, *Seeking Patients' Informed Consent: The Ethical Considerations*
- Visser, A. Advance directives: A guide for doctors. *What's New Doc* (Issue 18: 2012)

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