

Communication is key

- Make the decision to make a plan now; making decisions during a medical crisis is stressful.
- Appoint a patient advocate with a DPOA-HC.
- Make sure your DPOA-HC clearly spells out your wishes and your patient advocate understands your wishes.
- Revisit your DPOA-HC annually or if you have any changes in your health or wishes.
- Talk about your wishes in advance with your family members.
- Speak with your doctors and make sure they understand your wishes and have your DPOA-HC on file.

Problematic living wills can be filled out by any adult, while a POLST document contains actual medical orders you've agreed to and are signed by a doctor, much like orders put in a patient's hospital chart. POLST is supposed to be limited to persons with a serious illness or condition, but you would not formally need to be declared "terminally ill."

POLST moves closer to legitimate informed consent because you would have known conditions which make certain medical developments more predictable. This allows you and your doctor to discuss foreseeable scenarios and treatment plans. You or a patient's family members should be cautious about a POLST document that seems biased toward withholding or withdrawing treatment, or if it contains medical orders unrelated to your known medical condition. Authorizing medical orders through POLST based on hypothetical situations only serves to make it a "living will on steroids."

REFERENCES

- ¹ Kutner, Luis, "Due Process of Euthanasia: The Living Will, A Proposal," *Indiana Law Journal* 44, no. 4, 1969.
- ² "Living Will 1st Step, Euthanasia Group Says," *USA Today*, 16 August 1998.
- ³ Carey, J., "The Faulty Promise of Living Wills," *U.S. News & World Report*, 24 July 1989: 63-64.
- ⁴ *American Medical News*, 17 May 1993: 1.



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END-OF-LIFE CARE & DECISIONS

Advanced Directives and Respecting Life



LIVING WILLS
POWER OF ATTORNEY
ADVANCED DIRECTIVES
POLST

Navigating the troubled waters of end-of-life care decisions

As medical technology advances, life-and-death decisions have become more complicated. Many illnesses that were once hopelessly terminal now have life-saving or life-extending treatments.

Sometimes treatment options are unwanted or deprive a patient of a peaceful and dignified death. Every patient has the right to refuse treatment viewed as burdensome. But in this era of changing medical ethics and "cost containment," there is also the risk that patients could be denied wanted treatment.

Here are the essential basics you need to know to receive the care you want and to protect yourself or a loved one from medical rationing or biases against life-sustaining treatment.

Who is the decision-maker?

You should be. The fundamental principle for medical decisions is informed consent. You are presented with your diagnosis and available treatment options so you or your surrogate decision-maker can consent to the chosen treatment. But what if you are unable to make your own decisions? How should you prepare for that?

Planning for future health care decisions should begin by appointing a durable power of attorney for health care (DPOA-HC) to a trusted person and sharing your beliefs and treatment wishes with that person. It's equally important you avoid utilizing a "living will." Both DPOA-HCs and living wills are generically referred to as an "advance directive."

What is health care power of attorney?

A durable power of attorney for health care (DPOA-HC) is different from a general power of attorney granted to give someone authority over financial or other decisions. You can grant the same person both types of power of attorney, but usually it requires two different documents.

Under a DPOA-HC your appointed patient advocate makes decisions based on your wishes and the circumstances of your medical condition at that particular time.

Laws governing DPOA-HCs vary by state. Some require the document to be notarized, others just witnessed by one or two neutral individuals. A power of attorney document has a place for you to name a primary agent and a secondary "back-up" agent in case the first one cannot serve you.

Why should living wills be avoided?

A living will is a generic document which pretends to allow you to give informed consent to future medical situations. In reality they are almost universally oriented toward withholding or withdrawing treatment to bring about your death. Living wills were originally created by the American euthanasia movement. They were first introduced in a 1969 law article titled, "Due Process of Euthanasia: The Living Will, a Proposal."¹ The movement's intentions hadn't changed 30 years later as shown by this 1998 USA Today headline, "Living will 1st step, euthanasia group says."²

In addition to their dubious origins, living wills fail to provide meaningful direction to health care

providers. A U.S. News and World Report article on living wills states, "The problem is language. The vernacular of living wills – such phrases as 'terminally ill,' 'no reasonable expectation of recovery,' 'heroic measures' and 'life-prolonging procedures' – is so fuzzy and open to interpretation that doctors are frequently left with no clear idea of which measures the patient wants started, stopped or maintained."³



Since 1991 federal law (the Patient Self-Determination Act) has required hospitals to inform patients about their state's advance directive laws and options. The law does not require patients to fill out an advance directive. The law didn't have much of an impact. A 1993 article in the American Medical News found that after two years the law was not showing the desired results⁴ and by 2005 it was deemed a failure.

What is POLST?

There is another type of advance directive document becoming more common that is a significant variation on the living will. Originally known as Physician Orders for Life-Sustaining Treatment (POLST), it's often also called Physician Orders for Scope of Treatment (POST) or Medical Orders for Scope of Treatment (MOST). *Continued on back...*