

# University of Toronto Joint Centre for Bioethics

## Living Will

### PREFACE

The Joint Centre for Bioethics Living Will was developed by Dr. Peter A. Singer. It is a guide to help you think about and express your wishes about future health and personal care decisions.

This Living Will is not intended to be used in the absence of specific medical and legal advice. Neither the Joint Centre for Bioethics nor Peter Singer assumes liability for any loss or damage suffered by any person by reason of their reliance on the information contained herein.

The University of Toronto and other institutions participating in the Joint Centre for Bioethics make no representations regarding the technical quality, accuracy, or lawfulness of the material presented herein.

If you have any suggestions for improving this living will, please send them to Peter Singer at the Joint Centre for Bioethics (e-mail: [peter.singer@utoronto.ca](mailto:peter.singer@utoronto.ca)).

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## Chapter 1

### Questions and Answers About Living Wills

#### WHAT IS A LIVING WILL?

A living will, sometimes called an "advance directive," is a document containing your wishes about your future health or personal care. You make a living will when you are able to understand treatment choices and appreciate their consequences (that is, when you are "capable"). A living will only takes effect when you can no longer understand and appreciate treatment choices (that is, when you are "incapable").

Living wills that meet certain technical legal requirements are also called "health care directives," "advance health care directives," "representation agreements," "mandates," "authorizations," "personal directives," and "powers of attorney for personal care," depending upon the province in which you live.

There are two parts to this living will: a *proxy directive* and an *instruction directive*. Because proxy and instruction directives are complementary, your living will should, if possible, contain both of these directives.

#### WHAT IS A PROXY DIRECTIVE?

A *proxy directive* specifies *who* you want to make decisions on your behalf if you can no longer do so. The proxy should be someone you know and trust, and who understands your way of thinking about your health care treatment and personal care. This could be your spouse, partner, family member or close friend. This person should him or herself be capable of making health care and other personal care decisions and be willing to act as your proxy.

Because the proxy is responsible for carrying out your wishes, **it is important that you discuss your wishes with your proxy**. Otherwise, it may be difficult for your proxy to guess what your wishes might be.

You may name more than one person to act as your proxy, but you should state whether they should make decisions together as a group, or whether they should be given authority individually. In addition, you may want to indicate how disagreements between your proxies should be resolved. You might also want to name different proxies to make different types of decisions. Taking these steps can help to avoid conflict in case your proxies disagree about your treatment.

You may also wish, in your living will, to say whether you would want your doctors to follow the treatment decisions of your proxy, or your wishes as expressed in the instruction directive, if these two appear to be in conflict.

## **WHAT IS AN INSTRUCTION DIRECTIVE?**

An *instruction directive* specifies *what* health care or other personal care choices you would want your proxy to make in particular situations. This living will gives you information on which to base your health and personal care decisions. It also provides space for you to express, in your own words, the values and beliefs that should guide these decisions.

Health care decisions are those made either by you, or by someone on your behalf, to consent or to refuse to consent to a treatment. Treatment refers to anything done for a diagnostic, therapeutic, preventive or palliative (comfort care) reason. See Chapter 3 for more information about health care decisions.

Personal care decisions refer to decisions about those aspects of your daily life that are necessary for maintaining your health and well-being. These include shelter, nutrition, hygiene, clothing, and safety. See Chapter 4 for more information about personal care decisions.

## **WHY SHOULD I MAKE A LIVING WILL?**

People complete a living will for two main reasons: to gain control over their future health care, and to relieve their loved ones from the burden of making difficult decisions for them. If you don't complete a living will, there might be conflict among family members about who should make decisions for you or what treatment should be given. Even if there is no conflict, it may be very difficult for your loved ones to make life-and-death decisions for you. A living will makes it easier on them by reducing guilt feelings. If your loved ones feel they are making the decision you would have made yourself, they will be less likely to blame themselves and feel guilty. If you haven't told anyone what you want, no one will know.

However, to make a living will, you must consider the prospect of your own sickness and death and make plans for these events. Some people find this distressing. Each person should decide whether completing a living will is right for them.

Usually, a living will is part of a broader process called "advance care planning."

## **WHAT IS ADVANCE CARE PLANNING?**

Advance care planning is a process of communication between people and their loved ones about future health and personal care issues. Advance care planning can help people prepare for death, which may be in the near or distant future, in the context of their personal relationships. Although a living will may be part of the advance care planning process, many people find that the most important part of advance care planning is having discussions with others. As you fill out your living will, share your thoughts and wishes about your future care with your loved ones, particularly the proxy or proxies who you appoint. Make sure that your family and friends know your choice of proxy. Make sure also that they understand your feelings and why you made the decision which you expressed in your living will.

Making sure that your loved ones are aware of your preferences will help ensure that you will be cared for in the way you wish. It will also give them confidence that they are doing the right thing for you.

### **WHAT TYPE OF LIVING WILL SHOULD I MAKE?**

Because instruction and proxy directives are complementary, your living will should, if possible, contain both of these directives. However, if you find that making decisions for a possible future illness is too difficult, then you may want to complete only the proxy directive. In this case, your proxy(ies) will make treatment and care decisions for you, based on their judgement as to what you would want, or would be best for you.

Or, if you do not have someone you trust to make decisions on your behalf, then you may want to complete only the instruction directive. If you do that, persons making decisions for you will be guided by your instructions in making treatment and personal care decisions for you.

### **HOW IS A LIVING WILL DIFFERENT FROM A REGULAR WILL OR POWER OF ATTORNEY?**

A regular will takes effect only after you have died, and directs how your *property* will be distributed among your heirs. Both a power of attorney for property and a living will take effect while you are still alive, but unable to make decisions for yourself. A power of attorney for property names someone else to make decisions for you regarding your finances and property. A living will contains instructions about your health and personal care, and may also name someone to make these decisions on your behalf, if you are no longer capable of doing so.

### **DO I NEED TO COMPLETE THE LIVING WILL WITH MY DOCTOR?**

It is a good idea to review your living will with your doctor. The doctor can ensure that you have understood the choices in the living will and that the instruction directive is suitable for your own health situation.

For example, a person with chronic lung disease will want to focus primarily on whether to go on a ventilator (breathing machine) if he or she develops respiratory failure. A person with kidney failure receiving dialysis will want to focus primarily on the situations in which he or she would want dialysis to be stopped. A doctor can help ensure that the living will you prepare is suitable for your medical circumstances.

### **DO I NEED TO COMPLETE THE LIVING WILL WITH MY LAWYER?**

It is a good idea to consult a lawyer with experience in this area. A living will is a legal document with serious legal implications. A lawyer can ensure that your living will is legally valid in your province. A lawyer's assistance may be particularly helpful if your capacity to make a living will is likely to be challenged, or if there may be disagreement among your family or between your family and proxy.

If you plan to consult a lawyer, use this information to help you discuss your wishes about health and personal care with your loved ones, but do not sign or witness the living will form in Chapter 5, because the lawyer may want to incorporate this booklet into his or her own form.

Remember that by completing this form, you revoke any previous living wills you have made. If you use the form without a lawyer, pay special attention to who cannot be a proxy or witness in your province, and make sure that your witnesses watch you sign, and then sign themselves.

### **WHAT SHOULD I DO WITH MY COMPLETED LIVING WILL?**

Since a living will speaks for you when you are no longer able to speak for yourself, other people must know that it exists. Give copies of your living will to your proxy, doctor, lawyer, and family members. If you review your wishes with these people and give them the opportunity to discuss your living will with you, they will be more likely to understand and follow your wishes. Do not put your living will in your safety deposit box, since it will not be easy to gain access to it when needed. You may photocopy the Living Will (see Chapter 5) once you have completed it.

### **WHAT IF I CHANGE MY MIND ABOUT MY WISHES OR PROXY?**

You can change your mind about your health care or other personal care decisions or your proxy at any time while you are still capable. If you change your mind, you should change your living will. Also, you should review your living will at regular intervals, such as one a year, and when there are important changes in your life - for example: if your medical condition changes, if you are admitted to hospital, if you marry or divorce, or if your proxy dies. If you change your living will, replace all copies of the old one with copies of the new one. You should destroy the old copies so they do not get mixed up with the new copies of your living will.

### **WILL MY LIVING WILL BE FOLLOWED?**

Yes, it should be followed. The Canadian Medical Association has endorsed a policy supporting living wills and most doctors favour them. In provinces with specific legislation, people may be legally required to follow your living will. However, there could be circumstances in which you would not want people to follow your living will - for example, if there is evidence that you have changed your mind but have not changed your living will, or there has been a medical advance that you did not know about when you completed the forms. In your living will, you can say how much leeway you want to give your proxy in following your wishes.

## *Chapter 2*

### **Is A Living Will Legal in Canada?**

*This information was updated in December 2002 by Daniel Sperling. For up-to-date information on the legal status of living wills in Canada, consult a lawyer.*

The provinces of Alberta, Manitoba, Newfoundland, Nova Scotia, Ontario, Quebec and Saskatchewan have legalized the making of living wills. British Columbia and Prince Edward Island have also passed such laws, but they are not yet in force. Living wills have different names and powers depending on the province which you live in.

It is reasonable to expect that other provinces will pass laws about living wills in the future. There are also court cases in Canada that support the use of living wills. As well, the Canadian Medical Association has endorsed a policy supporting the use of living wills.

Check the following pages for information about the particular legislation on living wills in your province.

For more detailed information, or to be sure that your living will is valid to do what you want, it is recommended that you consult with a lawyer.

#### ***Alberta***

The Personal Directives Act was proclaimed and took effect in Alberta on 1 December 1997.

A "personal directive," the Alberta name for a living will, may be made by anyone who is at least 18 years of age and who is presumed to understand the nature and effect of the personal directive. It may be used to appoint an "agent" (proxy) to make either personal or health care decisions and/or to give instructions about health care or personal matters. The term personal matters means any matter of a non-financial nature that relates to a person and includes accommodating, with whom the person may live and associate, participation in social, educational, and employment activities, legal matters and any other matter prescribed by regulations to the act.

If at the time while a personal directive is in effect the proxy ("agent") is under 18 or lacks the capacity to make personal decisions on behalf of the directive's maker, the proxy has no authority to act under the personal directive.

The personal directive must be in writing, dated and signed by its maker in the presence of a witness or by another person on behalf of the maker at the maker's direction and in the presence of the maker and a witness. The personal directive must also be signed by the witness in the presence of the maker of the personal directive. The following persons may not witness the signing of a personal directive: the proxy, the proxy's spouse, a person who signs the personal directive on behalf of its maker or his or her spouse.



The proxy ("agent") or the proxy's spouse may not sign on behalf of the maker.

A personal directive can be revoked on the occurrence of a date or event stated in the directive, by making a subsequent personal directive that contradicts an earlier directive, by making any document that expresses an intention to revoke the earlier directive, or by destroying the earlier directive with the intention of revoking it.

A person who makes the directive or any other interested person may apply to court for a judicial decision in regard to the directive, its maker's capacity, or for further advice and directions.

The Joint Centre for Bioethics Living Will is a legal personal directive for use in Alberta.

### ***British Columbia***

In British Columbia a living will is called "a representation agreement." Every adult (19 years old) may make (and is presumed to be able to make) a representation agreement.

The representation agreement act authorizes a proxy ("representative") who must also be an adult to make decisions about health care and about personal care on behalf of the patient. A detailed list of such decisions is mentioned in sections 7 and 9 to the British Columbia Representation Agreement Act. In regard to some decisions (those in section 7) a representation agreement could be made even though its maker is incapable of making a contact or managing his or her health care, personal care, legal matters, financial affairs, business or assets. Instead, the law asks for the following factors to be considered: the maker of the representation agreement (hereinafter "the maker") should communicate a desire to have a representative make, help make, or stop making decisions; the maker should demonstrate choices and preferences and should be able to express feelings of approval or disapproval of others; the maker should be aware that making the representation agreement or changing or revoking any of its provisions means that the proxy ("representative") may make or stop making decisions or choices that affect the maker; whether the maker has a relationship of trust with the proxy. In regard to other decisions (those in section 9) the law states that the authorization of proxy is valid unless the maker is incapable of understanding the nature of the authority and the effect of giving it to the proxy. Thus, it is important to consult a lawyer before making such a representation agreement that will include any of these decisions making.

A representation agreement must be in writing and signed by its maker and by each proxy named in the agreement. If there is more than one proxy, the proxies must not be present together when they sign the agreement, and any one or more of them may sign in counterpart. The maker's signature must be witnessed by two witnesses each of whom must sign the agreement.

A representation agreement can be signed on behalf of its maker if he or she is physically incapable of signing the agreement, and if the person signing the agreement is 19 years old who is not a proxy or a witness to the agreement. The signature must be witnessed by two witnesses each of whom must sign the agreement and the person signing the agreement and each witness need to complete a certificate in a prescribed form that appears in the regulations to the act.

The following persons cannot witness the signing of a representation agreement: the proxy, the proxy's spouse, child, or parent, an employee or agent of a proxy, anyone under 19 years old, anyone who does not understand and does not receive interpretive assistance to understand the type of communication used by the maker.

A representation agreement has no effect unless it is registered by the registrar in accordance with the regulations to the act. However, a proxy may exercise the authority in the agreement even before it was registered if it is necessary to protect the patient's interests, the agreement has been or is about to be sent to the registrar for registration, the proxy notifies the registrar that he or she proposes to exercise or has exercised the authority, and the proxy acts in accordance with the instructions set out in the agreement.

The law specifically states that anything undertaken made by a proxy on behalf of the patient is binding on the patient, even after the proxy no longer has authority under the representation agreement.

A representation agreement can be revoked by an amendment to the agreement executed in accordance with the procedure for executing the original agreement, or any criteria for change or revocation that are set out in the agreement. In case of revocation, a written notice of the revocation must be given to each proxy. In case of change to the original agreement, the registrar has to give a written notice of the change, and usually only 72 hours after this notice is the changed provision in effect.

The law sets a procedure to apply the court for an order confirming a change to, or the revocation of, a representation agreement or for an order canceling all or part of a representation agreement.

Since the law in British Columbia is very complex, it is recommended that you use the Joint Centre for Bioethics Living Will to help you discuss your wishes about health and personal care with your loved ones, and to record your wishes. However, to ensure that your living will is legally valid in BC, you should consult a lawyer who has experience preparing them.

### ***Manitoba***

In Manitoba, a living will is called a "health care directive." A person has the capacity to make a health care directive if he or she is able to understand the information that is relevant to making a decision and is able to appreciate the reasonably foreseeable consequences of a decision, or of lack of decision. People who are 16 years of age or older are presumed to have the capacity to make a health care directive, unless they are proven not to have capacity. Persons under 16 years of age are presumed to not have the capacity to make a health care directive, unless it is shown that they do have capacity.

The person appointed as proxy must be at least 18 years old. To be valid, a health care directive must be in writing, dated, and signed by the person making it, or by another person at the direction and in the presence of the maker of the directive who is not the proxy, or the proxy's spouse. If the directive is signed by another person as described above, the maker of the directive

must acknowledge the signature in the presence of a witness (who is not the proxy or the proxy's spouse). The witness must also sign the directive as witness to the maker's presence.

The health care directive does not need to be witnessed if the person making it can sign for him or herself.

A directive may be revoked by a later directive, by a later writing declaring an intention to revoke the directive (that is made in the same manner as the directive), or by destruction with the intent to revoke, the original directive (by the maker or others in the presence and at the direction of the maker).

The Health Care Directive Act does not authorize the proxy to make personal care decisions, only decisions about health care.

The Joint Centre for Bioethics Living Will is a legal personal directive for use in Manitoba.

### ***New Brunswick***

A living will in New Brunswick is called "power of attorney for personal care." In a power of attorney under seal a patient can appoint a proxy ("attorney") to make some or all personal care decisions on behalf of the patient. In order to be valid, the Infirm Patients Act states that a power of attorney must be signed by the patient, or signed in the name of the patient by another person in the presence and at the direction of the patient, and must also be witnessed by an adult other than the proxy.

The Joint Centre for Bioethics Living Will is a legal power of attorney for personal care for use in New Brunswick.

### ***Newfoundland***

In Newfoundland, living wills are called "advance health care directives," and the proxy is called "a substitute decision maker." A person is competent to make an advance health care directive if he or she is able to understand the information that is relevant to making a health care decision and able to appreciate the reasonably foreseeable consequences of that decision.

In the absence of evidence to the contrary, a person who is 16 years of age or older is presumed to be competent, and a person who is younger than 16 years is presumed not to be competent.

The person named as substitute decision maker ("proxy") must be at least 19 years old and indicate in writing his or her acceptance of the appointment. The advance health care directive must be in writing and signed by the person making it, with two independent witnesses. It can also be signed by another person than the patient in his or her presence and by his or her direction, only if the person signing the directive is not the proxy or the proxy's spouse, and the patient acknowledged the signature in the presence of at least two independent witnesses (neither of whom is the proxy or the proxy's spouse). These witnesses should attest and subscribe the advance health care directive in the presence of the person making it.

An advance health care directive may be revoked either by a later health care directive, a later writing signed by the person who made the health care directive, declaring intention to revoke it that was executed in the same manner as the advance health care directive, or by destroying the advance health care directive.

The Advance Health Care Directives Act does not authorize the proxy to make personal care decisions, only decisions about health care.

The Joint Centre for Bioethics Living Will is a legal personal directive for use in Newfoundland.

### ***Nova Scotia***

In Nova Scotia, any person who of the age of majority and capable of giving consent to medical treatment may authorize another person of the age of majority to give consent or directions regarding medical treatment on his or her behalf, if at any time in the future he or she is no longer capable of giving such consent.

The authorization must be in writing, signed by the person giving it, and witnessed by a person who is not the proxy or the spouse of the proxy.

The Medical Consent Act does not authorize the proxy to make personal care decisions, or the appointment of more than one proxy.

The Joint Centre for Bioethics Living Will is a legal personal directive for use in Nova Scotia.

### ***Ontario***

In Ontario, a living will is called a "power of attorney for personal care." A power of attorney for personal care must appoint a proxy (known as the "attorney for personal care") and may contain an instruction directive.

A person is capable of giving a power of attorney for personal care if he or she has the ability to understand whether the proposed attorney has a genuine concern for the person's welfare and he or she appreciates that the person may need to have the proposed attorney make decisions for that person.

The person making the power of attorney for personal care and the person appointed to be the proxy, must both be at least 16 years old. The Substitute Decisions Act makes the assumption according to which a person who is 16 or more is presumed to be capable of giving or refusing consent in connection with his or her own personal care.

A person may not act as proxy if they provide, for pay, health care, or residential, social, training, or support services to the person making the living will (unless the person is a spouse, partner, or relative).

The power of attorney for personal care must be witnessed by two people, and signed by them. The following people may not act as witnesses: the proxy, the spouse or partner of the patient or proxy, a child of the patient, anyone who him or herself has a legal guardian, and anyone who is less than 18 years old.

Revocation of power of attorney for personal care must be in writing and executed in the same way as a power of attorney for personal care.

The Joint Centre for Bioethics Living Will is a legal personal directive for use in Ontario.

### ***Prince Edward Island***

Prince Edward Island's Consent to Treatment and Health Care Directives Act came into effect on 1 July 2000. In Prince Edward Island, a living will is called a "directive." Anyone who is capable and at least 16 years of age may make a directive, which may stipulate treatment, procedure or medication and/or circumstances in which the patient shall be permitted to die a natural death. A directive may also appoint a proxy to make a health care decision for the person who is making the directive (the patient). Directives may be given not just for particular treatments but also about anything in the broader range of health care in general. However, no provision is made specifically for personal care decisions.

According to the law in Prince Edward Island, capacity with respect to treatment is the ability to understand the information relevant to making a decision concerning the treatment, understanding that the information applies to the particular situation of the person who makes the directive, and the appreciation of the reasonably foreseeable consequences of a decision or lack of decision.

The directive must be in writing, dated and signed by its maker. A witness is required to sign only when the directive is signed by another on behalf of, and in the presence of the maker (in which case neither the persona signing on behalf of the maker, or the witness, may be the proxy or the proxy's spouse).

The appointment of a proxy is not effective unless the proxy or another person at the direction of the proxy agrees in writing to the appointment prior to the maker becoming incapable.

A directive may be revoked either by a later directive, a later writing declaring an intention to revoke the directive of the maker of the directive that is executed in the same way as a directive, or by destroying the directive.

The Joint Centre for Bioethics Living Will is a legal directive for use in Prince Edward Island.

### ***Quebec***

In Quebec, a person may give a "mandate in anticipation of incapacity." The person giving the mandate ("the mandator") may name another person ("the mandatary") to make decisions on his or her behalf, including health and personal care decisions, in the event that he or she becomes

incapable. The mandatary must act in the mandator's best interests, taking into account, as much as possible, the person's wishes.

The mandate, given by an adult at least 18 years of age, is made by notarial act or in the presence of two disinterested witnesses who attest to the fact that the person is capable. The mandator is not required to disclose to the witnesses what is in the mandate.

The mandate has to be signed by the mandator or by another person (who is not the proxy) in the presence and according to the mandator's directions. The witnesses also have to sign the mandate in the presence of the mandator.

The mandate takes effect once the court verifies that the person has become incompetent and confirms the validity of the mandate. The mandatary has to make such a request to the court once the mandator has incapacity to take care of him or herself or to administer his or her property.

Because the Quebec law is complex, and court approval is required for the mandate to take effect, it is recommended that you use the Joint Centre for Bioethics Living Will to help you discuss your wishes about health and personal care with your loved ones, and to record your wishes. However, to draw up a legally valid mandate, you should consult a notary.

### ***Saskatchewan***

In Saskatchewan, a living will is called a "directive." A directive may be made by any person of 16 years of age or older who has the capacity to make a health care decision. Capacity to make a health care decision means the ability to understand relevant information about a proposed treatment, to appreciate the reasonably foreseeable consequences of making or not making a health care decision, and to communicate a health care decision on a proposed treatment.

A directive is not valid unless it is in writing, dated and signed by the person making the directive or by a person other than the proxy or the proxy's spouse, if the signature was acknowledged by the person making the directive (the patient) or if he or she served as witness in the presence of the patient. A directive does not require a witness unless it is signed by another person, as stated above.

The proxy appointed in the directive must be at least 18 years of age, and must also have the capacity to make a health care decision. A married person who is under 18 may be appointed as a proxy for his or her spouse, only if the married person has the capacity to make health care decisions.

A directive may be revoked either orally, in writing, by destroying the directive or by making a new directive. An appointment of a spouse as a proxy is revoked if the marriage is terminated.

The Health Care Directive and Substitute Health Care Decision Makers Act does not authorize a proxy to make personal care decisions, only decisions about health care.

The Joint Centre for Bioethics Living Will is a legal directive for use in Saskatchewan.

## *Yukon*

In Yukon, a living will is "an enduring power of attorney" if the patient is an adult at the time of its execution, is mentally capable of understanding the nature and effect of it, and it is in writing, dated, and signed by the patient. If the patient is physically incapable of signing the enduring power of attorney, another person may sign on the patient's behalf in the presence of the patient and a lawyer, and under the direction of the patient. The following persons are not eligible to sign: the proxy or his or her spouse, the lawyer who is supposed to be present at the signature or his or her spouse.

The enduring power of attorney should contain a statement indicating that it continues notwithstanding any mental incapacity or infirmity of the patient that occurs after the execution of the power of attorney, or that it takes effect on the mental incapacity or infirmity of the patient. The enduring power of attorney must also incorporate the explanatory notes set out in the schedule to the Enduring Power of Attorney Act, and accompanied by a certificate of legal advice signed by a lawyer who is not the proxy or the proxy's spouse. The law specifically sets out what the certificate of legal advice should contain.

An enduring power of attorney appoints a proxy ("attorney") who is adult at the time of the execution of the enduring power of attorney. The proxy has to acknowledge in writing that he or she has been appointed by the patient, and has been made aware of the responsibilities of acting as a proxy and has agreed to undertake these responsibilities. The proxy can apply for the opinion, advice, or direction of the court on any matter respecting the management or administration of the patient's property.

Since the law in Yukon is complex and asks for a direct involvement of a lawyer, it is recommended that you use the Joint Centre for Bioethics Living Will to help you discuss your wishes about health and personal care with your loved ones, and to record your wishes. However, to draw up a legally valid enduring power of attorney, you should consult a lawyer.

## *Chapter 3*

### **Information About Health Care Decisions**

To make an **instruction directive** for health care decisions, you need to imagine yourself becoming very ill or nearing death. This is not easy to do. To help you do this, we describe in detail some health situations in which a living will might be needed, and the life-sustaining treatments that might be used. This information should help you to have discussions with your proxy and to fill in the "grid" part of the instruction directive in Chapter 5.

As you are considering these treatments, keep in mind that you may feel differently about them if you were actually in the situations described than you feel about them now. For each of the health situations, imagine that you are in the situation described, and then you develop a further medical problem that requires treatment. Remember that the treatment may be long-term or short-term as described below.

If you do not receive the treatment, you would die. If you receive the treatment, the chance that you will live depends on the nature of the medical problem. Even if you recover fully from the medical problem, you would return to the health situation you were in before you developed the further medical problem.

#### **HEALTH SITUATIONS**

##### *Current Health*

This describes the way your health is now. This category is included mainly for emergency purposes. That is, if you had a potentially reversible accident or illness, from which you might recover if you had treatment, would you want treatment? For example, if you had a heart attack today and your heart stopped, would you want CPR? Or, if you developed pneumonia today and couldn't breathe on your own, would you want to go on a ventilator? If you have a car accident and need life-saving surgery, would you want it?

##### *Stroke*

This means you would have damage to the brain causing permanent physical disability such as paralysis. You might also have trouble communicating because of your impaired speech. Assume that these problems would stay the same for the rest of your life. They do not get worse with time unless there is another injury to the brain, such as another stroke. Stroke can be described as follows.

**Mild:** You would have mild paralysis on one side of the body. You could walk with a cane or walker. Meaningful conversations would be possible, but you might have trouble finding words. You could carry out most routine daily activities, such as work and household duties, dressing, eating, bathing, and using the toilet. You would have good control of your bowel and bladder. You could live at home with someone caring for you for a few hours each day.



**Moderate:** You would have moderate paralysis on one side of the body. You would be unable to walk and would need a wheelchair. You could carry out conversations, but you might not always make sense. You would need help with routine daily activities. You may have bowel and bladder control. You could live at home with someone caring for you throughout the daytime; otherwise you would probably need to live in a nursing home.

**Severe:** You would have severe paralysis on one side of the body. You would be unable to walk, and would need to be in a chair or bed. You would not have meaningful conversations. You would be unable to carry out routine daily activities. You would need a feeding tube for nourishment. You could live at home with someone caring for you all day and night; otherwise you would probably need to be cared for in a chronic care hospital.

### ***Dementia***

This means you would have a progressive and irreversible deterioration in brain function. You would be awake and aware but you would have trouble thinking clearly, recognizing people, and communicating. Dementia gradually worsens over months or years. Dementia can be described as either mild, moderate or severe.

**Mild:** You could have meaningful conversations, but would be forgetful and have poor short-term memory. You could carry out most routine daily activities, such as work and household duties, dressing, eating, bathing, and using the toilet. You would have bowel and bladder control. You could live at home with someone caring for you for a few hours each day.

**Moderate:** You would not always recognize family and friends. You could carry out conversations but you might not always make sense. You would need help with routine daily activities. You may have bowel and bladder control. You could live at home with someone caring for you throughout the day; otherwise you would probably need to live in a nursing home.

**Severe:** You would not recognize family and friends, and would be unable to have meaningful conversations. You would be unable to carry out routine daily activities. You would need a feeding tube for nourishment. You would not have bowel and bladder control. You could live at home with someone caring for you all day and night; otherwise you would probably need to be cared for in a chronic care hospital.

### ***Permanent Coma***

This means you would be permanently unconscious. Permanent coma is usually caused by decreased blood flow to the brain; for example, from the heart stopping. You would be unable to eat or drink and would need a feeding tube for nourishment. You would not have bowel or bladder control. You would need to be in bed, and you would never regain consciousness. You could live at home with someone caring for you all day and night; otherwise you would probably need to be cared for in a chronic care hospital.

## ***Terminal Illness***

This means you would have an illness for which there is no known cure, such as some types of cancer. The time between diagnosis of a terminal illness and death varies considerably, but it is usually less than six months. One of the most common concerns for people diagnosed with a terminal illness is that they will have to suffer a great deal of pain. With proper pain management, however, this should usually not be the case.

## **LIFE-SUSTAINING TREATMENTS**

In each of the health situations described on the previous pages, you might need the following life-sustaining treatments. The treatment might be short-term or long-term. Regardless of your specific treatment choices, your doctors and nurses should provide basic comfort care including pain relief.

***Cardiopulmonary Resuscitation (CPR)*** is used to try to restart the heart if it has stopped beating. CPR involves applying pressure and electrical shocks to the chest, assisted breathing with a respirator (breathing machine) through a tube inserted down the throat and into the lungs, and giving drugs through a needle into a vein. It is usually followed by unconsciousness and several days of treatment in an intensive care unit. Without CPR, immediate death is certain.

On average when hospitalised patients are given CPR, it is successful at restarting the heart in about 41% of patients (41 patients out of 100). However, only about 14% (14 patients out of 100) will live to be discharged from hospital. These figures vary greatly depending on the type and severity of the patient's illness. Patients whose hearts are successfully restarted but who do not survive to hospital discharge spend several days in an intensive care unit before death.

The chance that a person will live depends on the cause of the heart stopping and the seriousness of the person's other illnesses.

***Ventilator*** (breathing machine) is used when a person cannot breathe. A tube is put down the person's throat into the lungs. The ventilator is needed as long as the person's lungs are not working.

Without the ventilator, a person with respiratory failure will probably die within minutes to hours. With the ventilator, the chance that a person will live depends on the cause of the respiratory failure, and the seriousness of the person's other illnesses.

***Dialysis*** (kidney machine) replaces the normal functions of the kidney. Dialysis removes excess potassium, water, and other waste products from the blood. Without dialysis, the potassium in the blood would build up and cause the heart to stop. Dialysis is needed as long as the person's kidneys are not working. Without dialysis, a person with kidney failure will die within 7 to 14 days. With dialysis, the chance that a person will live depends on the cause of the kidney failure and the seriousness of the person's other illnesses.

***Life-Saving Surgery*** may involve a wide range of procedures - for example, removal of an inflamed gall bladder or appendix. Without surgery, a person with a serious illness may die within hours to days. With surgery, the chance that a person will live depends on why the person needed surgery and the seriousness of the person's other injuries or illnesses.

***Blood Transfusion*** refers to blood given through a needle inserted into a person's vein. A person who is bleeding very heavily from a stomach ulcer or during major surgery, needs a blood transfusion.

In emergency situations, a person who is bleeding very heavily and who does not receive a blood transfusion will probably die within hours. With a blood transfusion, the chance that the person will live depends on the seriousness of the person's other injuries or illnesses.

***Life-Saving Antibiotics*** are drugs that are used to treat infections such as pneumonia or meningitis. They may be given orally, in the form of pills, or they may be given intravenously, through a needle into a vein. Without antibiotics, a person with a life-threatening infection will likely die in hours or days. With antibiotics, the chance that a person will live depends on the type of infection, the severity of the patient's illness, and the presence of other illnesses.

In some cases, antibiotics may cause side effects such as fever, nausea, vomiting or skin rashes, or they may affect the function of the liver, blood systems or kidneys. These may be severe enough to require switching to another drug.

***Tube Feeding*** involves giving liquid nourishment through a tube that is put into a person's stomach through the nose, or through a small hole in the abdomen. A person who cannot eat (e.g., someone in a coma, or someone who cannot swallow) needs a feeding tube to receive nutrition.

Without tube feeding, a person who cannot eat or drink will die within days to weeks. With tube feeding, the chance that a person will live depends on the seriousness of the person's other injuries or illnesses.

## *Chapter 4*

### **Information About Personal Care Decisions**

In addition to decisions about health care, you can use your living will to record your wishes about other aspects of your personal care, such as shelter, nutrition, hygiene, clothing, and safety.

#### *Shelter*

Decisions about shelter concern where you will live. These decisions arise most often when you cannot easily receive the care you need at home, or when it is felt that you are at risk of suffering harm if you continue to live at home. For example, if space at a hospice were available, would you like to be treated there? Or, if you need to, are you willing to go to a hospital or long-term care facility?

#### *Nutrition*

Decisions about nutrition concern what types of food you will receive. For example, if you would prefer to be given a vegetarian diet, or other type of diet, or if you would prefer a specific type of food according to your cultural or religious beliefs (such as Kosher food), you can indicate this in your living will.

#### *Hygiene*

Decisions about hygiene concern your personal cleanliness. For example, what would you like your caregivers to do if you refuse bathing? Or, you may have particular wishes about your own personal grooming or appearance.

#### *Clothing*

Decisions about clothing concern what types of clothing you want to wear. For example, there may be certain clothing that has cultural or religious significance such as yarmulkes or turbans. However, this may also include instructions about the way you are most comfortable being dressed, or in other aspects of your appearance.

#### *Safety*

Safety is an aspect of all of the other personal care decisions. Some decisions you might make about shelter, nutrition, hygiene, or clothing could put you "at risk" of suffering harm. In addition, safety may involve decisions about the use of restraints. How would you like your caregivers to balance your freedom to be "at risk" against your personal safety?

## *Chapter 5*

### **The Joint Centre for Bioethics Living Will Form**

The following is the Joint Centre for Bioethics Living Will form.

Be sure to discuss your wishes with your proxy. You can use the descriptions of the health situations and treatments, and the living will form, to help you with this discussion.

This living will is a legal document. Although you can complete this form without a lawyer, it is a good idea to consult a lawyer with experience in this area.

The living will contains medical information to help you make decisions. If you have questions about the descriptions of health situations or treatments, or about your own medical conditions and what might happen to you in the future, you should discuss these with your doctor.

Complete the living will using a black pen to make it easier to photocopy. When you have completed it, make copies to give to your proxy(ies), doctor, and lawyer.

If you change your mind about who you want to be your proxy, or about your wishes regarding treatment, change your living will and give copies of the new one to anyone who has a copy of the old one. Then, destroy all copies of your old living will.

#### ***THE PROXY DIRECTIVE***

The proxy must follow the wishes of the person making the living will. In situations for which the person has not specified a wish, the proxy would make the decision based on the person's best interests, taking into consideration the person's value and beliefs.

If you name more than one person to act as your proxy, you should say how they will make decisions. There are three options:

First, you can have your proxies make decisions individually, in the order that you list them in your living will. If the first named proxy is unavailable, or has died, then the next proxy listed in your living will would make the necessary decisions on your behalf, and so on.

Second, you can say in your living will that you want your proxies to make decisions as a group. If you want your proxies to make decisions as a group, you should indicate how you would like disagreements between your proxies to be resolved. This could be by majority vote or by giving your first-named proxy the final say.

Third, you can limit the authority of your proxies to make certain decisions. For example, you may have someone who you want to make decisions about your health care, and someone else to make other personal care decisions such as nutrition, clothing, hygiene or shelter.

The wishes contained in this living will are intended to help your proxy(ies) understand what you want. You can also say how much leeway your proxy should have in interpreting your wishes; i.e., do you want your instructions followed exactly or used only as a guideline?

I authorize the following person(s) to make health care and other personal care decisions on my behalf if I am no longer capable of making them for myself.

**Proxy 1**

Name: \_\_\_\_\_

Relationship: \_\_\_\_\_

Address: \_\_\_\_\_

\_\_\_\_\_

Telephone: \_\_\_\_\_

**If you want more than one person to be your proxy, add the additional name(s) below:**

**Proxy 2**

Name: \_\_\_\_\_

Relationship: \_\_\_\_\_

Address: \_\_\_\_\_

\_\_\_\_\_

Telephone: \_\_\_\_\_

**Proxy 3**

Name: \_\_\_\_\_

Relationship: \_\_\_\_\_

Address: \_\_\_\_\_

\_\_\_\_\_

Telephone: \_\_\_\_\_

**Proxy 4**

Name: \_\_\_\_\_

Relationship: \_\_\_\_\_

Address: \_\_\_\_\_

\_\_\_\_\_

Telephone: \_\_\_\_\_

NOTE: In Newfoundland and Prince Edward Island, the proxy must indicate in writing his or her acceptance of the appointment (at the end of this chapter).

Do you want your proxies to make decisions individually (i.e., proxy 1 will make decisions if available; otherwise proxy 2 will make decisions etc.), or as a group?

- individually
- as a group

If you want your proxies to make decisions as a group, how do you want disagreements resolved?

- follow directions of proxy 1
- follow directions of the majority of my proxies

If you want particular proxies to make health care decisions, and others to make other personal care decisions, specify here:

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How much leeway do you want to give your proxies in interpreting your wishes? Specify here:

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### ***THE INSTRUCTION DIRECTIVE***

The first part of the instruction directive is the Treatment Table. Please refer back to Chapter 3, "Information About Health Care Decisions," for descriptions of the health situations and life-sustaining treatments used in the Treatment Table.

For each of the health situations (found in the first column of the table), imagine that you are in the situation described, and then you develop a further medical problem that requires some life-sustaining treatment (found in the top row of the table). If you do not receive this treatment, you would die. If you receive the treatment, the chance that you will live depends on the nature of the medical problem. Even if you recover fully from the medical problem, you would return to the health situation you were in before you developed the further medical problem.

As an example, imagine that, at some future time, you suffer from a severe stroke. Then, you develop pneumonia requiring life-saving antibiotics. Without the antibiotics, you would die. With the antibiotics, your chance of surviving depends on the nature and severity of the pneumonia. Of course, even if the antibiotics were successful in treating your pneumonia, you would still have severe stroke.

You should then decide whether or not you would want the particular treatment (antibiotics) if you were in this condition (severe stroke).

**TO COMPLETE THE TABLE**

Write your treatment decision ("YES", "NO", "UNDECIDED," or "TRIAL") in the box for every combination of health situation and treatment.

Take the example from the previous page and imagine again that you suffer from a severe stroke. If in that situation you would want life-saving antibiotics, if they were the only hope of saving your life, you would write "YES" in the box found where the column marked "Antibiotics" and the row marked "Severe Stroke" meet. If you would not want antibiotics in those circumstances, write "NO" in that box. If you are undecided, you would write "UNDECIDED."

One other option is possible. In some cases, it may be unclear initially whether a given treatment will be beneficial or not. In these cases, you may want to try the treatment for an appropriate period, usually a few days to a couple of weeks. During this time your doctors would monitor and assess the effectiveness of the treatment and determine how beneficial it was for you. If the treatment proved to be beneficial, it could be continued. If not, it could be stopped. If you wish such a treatment trial, then write "TRIAL" in the box. For CPR and surgery, a treatment trial is not appropriate because these treatments are given all at once in a short time.

Then, the rest of the boxes may be filled in, by imagining yourself in each health situation and that you require each of the life-sustaining treatments listed.

	CPR	VENTILATOR	DIALYSIS	LIFE-SAVING SURGERY	BLOOD TRANSFUSION	LIFE-SAVING ANTIBIOTICS	TUBE FEEDING
CURRENT HEALTH							
MILD STROKE							
MODERATE STROKE							
SEVERE STROKE							
MILD DEMENTIA							
MODERATE DEMENTIA							
SEVERE DEMENTIA							
PERMANENT COMA							
TERMINAL ILLNESS							





I have read and understood all sections of this living will.

All previous living wills made by me are to be revoked, and this directive is to be followed.

The person(s) whom I have named as a proxy(ies) is/are authorized to give directions and make decisions, on my behalf, concerning my personal care and to give or refuse consent on my behalf to treatment, in accordance with the instructions found in this living will.

**In Alberta**, upon the *Personal Directives Act* coming into force, I intend that this living will shall be a personal directive for the purposes of that Act.

**In Manitoba**, I intend that this living will shall be a health care directive under the *Health Care Directives Act*.

**In Newfoundland**, I intend this living will shall be an advance health care directive under the *Advance Health Care Directives Act*.

**In Nova Scotia**, I intend that this living will shall be an authorization under the *Medical Consent Act*.

**In Ontario**, I intend that this living will shall be a power of attorney for personal care under the *Substitute Decisions Act*.

**In Prince Edward Island**, upon the *Consent to Treatment and Health Care Directives Act* coming into force, I intend that this living will shall be a health care directive for the purposes of that Act.

**In Saskatchewan**, I intend that this living will shall be a directive under the *Health Care Directive and Substitute Health Care Decision Makers Act*.

**PERSONAL INFORMATION AND SIGNATURE**  
(of person making this living will)

Name: \_\_\_\_\_

Address: \_\_\_\_\_

\_\_\_\_\_

Signature: \_\_\_\_\_

Date: \_\_\_\_\_

Sign in the presence of both witnesses -

See next page for Instructions for Witnesses

**INSTRUCTIONS FOR WITNESSES**

Although the requirements in different provinces vary, for greater certainty, use two witnesses. The witnesses must be present together and sign immediately after the living will is signed by the person completing it. Neither witness should be the proxy or the proxy's spouse.

In Ontario, the following people may not be a witness: a child of the patient; anyone who him or herself has a legal guardian; and anyone who is less than 18 years old.

In Newfoundland, witnesses must be "independent."

**WITNESS 1**

Name: \_\_\_\_\_  
Address: \_\_\_\_\_  
\_\_\_\_\_  
Signature: \_\_\_\_\_  
Date: \_\_\_\_\_

**WITNESS 2**

Name: \_\_\_\_\_  
Address: \_\_\_\_\_  
\_\_\_\_\_  
Signature: \_\_\_\_\_  
Date: \_\_\_\_\_

**AGREEMENT TO ACT AS PROXY** (Required in Newfoundland and Prince Edward Island)

I agree to act as Proxy for \_\_\_\_\_ in the event that he/she becomes incapable.

**PROXY 1:** Name: \_\_\_\_\_  
Signature: \_\_\_\_\_  
Date: \_\_\_\_\_

**PROXY 2:** Name: \_\_\_\_\_  
Signature: \_\_\_\_\_  
Date: \_\_\_\_\_

**PROXY 3:** Name: \_\_\_\_\_  
Signature: \_\_\_\_\_  
Date: \_\_\_\_\_

**PROXY 4:** Name: \_\_\_\_\_  
Signature: \_\_\_\_\_  
Date: \_\_\_\_\_