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Living wills: What you should know

Most encounters with healthcare professionals, particularly in hospital and home care situations, results in the question "Do you have a living will?" If someone is hospitalized, and they reply in the negative, then they are often given a generic form to sign. Be very cautious about signing such a form, since this decision should be made after careful thought and discussion with family members, and your attorney.

In 1992, Pennsylvania became the last state in the nation to adopt a Living Will or Advance Directive statute. Along with the *suggested* form provided in the statute, came the mandate for healthcare professionals in certain settings, such as hospitals, nursing homes, and homecare situations, to provide information on Living Wills to the patient. Unfortunately, many healthcare professionals, at the behest of their employers, encourage patients to sign the generic form, often with no explanation as to its contents. The Living Will form is not easy to understand, and requires making an affirmative decision as to what type or types of life sustaining treatment one would want or need in the event of a life-threatening illness. Research has shown that most people cannot discern exactly what they would want, or not want, done in a situation that is unimaginable for most. As a result, many Living Wills under the older statute were not followed.

Physicians, lawyers, and legislators combined forces to draft new legislation which was signed into law in late 2006, known as Act 169. This law provided Pennsylvanians with the ability to execute a Healthcare Power of Attorney, which includes a Living Will. In doing so, Pennsylvanians can appoint an Agent or Agents who will make healthcare decisions for them in the event that they are unable to speak for themselves. This document should provide the Agent with guidance as to how one might wish to be cared for in the event of terminal illness, coma, or severe brain damage. Therefore, your Agent is merely carrying out your intentions if you were able to voice those intentions yourself.

Two key items are needed to make a Healthcare Power of Attorney the powerful document it should be. One is to designate an Agent or Agents. The other is to discuss your feelings and beliefs with those Agents. The exercise of actively considering who to appoint as an Agent, and the questions asked in the document are an important part of the decision making which goes far beyond signing a generic form. The document should be tailored to your needs, rather than one-size-fits-all.

A Healthcare Power of Attorney addresses another important area related to healthcare decisions. The Healthcare Portability and Accountability Act (HIPAA) contains privacy regulations related to healthcare. It is vital that your Agent be able to speak with your physicians, access medical records, and assist you as needed in other situations that the HIPAA regulations prohibit without your written permission. This is true even between spouses, and parents with children who are 18 years old and older.

Finally, Act 169 addresses the situation where no advance directive or Living Will is in place. Unfortunately, this may result in someone who you do not wish to make decisions for you, such as an estranged spouse, will be put into the position of decision maker.

A qualified attorney can help you create a document that meets your individual needs.