

## YOUR RIGHT TO DIE

By Attorney Michael H. Wald

It's never a fun topic, but like taxes, it's an unavoidable part of each of our lives. And we're hearing and talking about it more and more these days, especially in the light of the woman in California who has taken her right to die case to the Supreme Court.

The woman is suffering from a terminal disease and wants to put an end to her suffering. The courts have ruled that she must be force fed -- the government has declared that she cannot decide whether or not to die.

Texas, we can be grateful, is one of the more progressive states in this regard. We are allowed to make the choice whether or not we will be put on life support systems if we're suffering from a terminal disease or injury.

And new laws just passed provide for others to tell our doctors what they think we would have wanted if we were able to speak.

The document is called a "Living Will" when it is written out.

And of course, there are restrictions and requirements for this declaration to be carried out.

Basically, the state has said that any Texas citizen can declare his or her desire to avoid the prolonging of his or her life through artificial means. The person declaring this must clearly execute this directive willfully and voluntarily, for starters.

The person must sign this statement, in the presence of two people who would never stand to benefit from the person's death.

These witnesses can be disqualified for several reasons, including: being related by blood or

marriage to the person; being entitled to any part of the person's estate; being the person's chief doctor; and being a patient or employee of the hospital where the person is being treated.

These two witnesses must sign the document.

Living Wills can be drawn up well before the person becomes ill, but should be presented to the person's chief physician as quickly as possible once a terminal condition is found out, so the document can be included in the person's medical record.

If no Living Will has been drawn up, new amendments allow this declaration to be made orally -- or even with hand sign, blinking, or nodding. But again, this must be done in the presence of the chief doctor and two witnesses that will pass the tests mentioned above.

And if a person doesn't want to declare this "Living Will" on his own, and would prefer that another person make the decision to keep the artificial life support system working or not -- when the patient cannot think for himself -- it can be arranged.

You can't just agree that another person will have final say -- the patient must be in a state of coma, incompetency or just physically unable to communicate before the other person's decision will be considered. But this agreement must be spelled out in advance like the Living Will and must meet the standards of the law.

New laws now even allow those who may benefit from the patient's death to have a say in the artificial life support question, even if the patient never issued any directive one way or the other.

Legal guardians, spouses, children, parents, and other living relatives can, in many cases, choose to maintain or cut off artificial life support -- in consultation with the chief physician. In all cases, the patient must be in the coma state, incompetent, or physically unable to communicate.

While minors cannot make a Living Will -- it is up to the minor patient's parents or guardian (or

spouse if it is an adult) -- any terminally ill minor who can communicate can order that the life support systems be maintained as long as possible.

The Living Will can be revoked at any time, by tearing up or defacing the document, by written instruction, or orally.

If the chief physician does not abide by the Living Will and refuses to stop the artificial life support, he won't be penalized. But he must try to have the patient transferred to the care of a different physician.

The Living Will is not a document to allow mercy killings. It is only a way for people to choose to be able to die naturally. Most importantly, and ignoring all religious opinions about life, given the high costs of keeping a body "alive," your heirs will probably benefit more from your quick, natural death, than if you were artificially kept "alive" for months with no hope of recovery. A Living Will is not a selfish idea -- it might help your family and other heirs more than you.

And if your lawyer has helped you write a normal will, but hasn't mentioned the Living Will, it may be time for a new lawyer. Wills take effect when you die. Living Wills, and thus the name, are at work when you are still living. You have a choice in Texas. You should be aware of it.

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