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LIVING WILLS (“ADVANCE DIRECTIVES”) IN SOUTH AFRICA

This is a topic that is not often spoken about, as human beings are not inclined to speak about their own mortality and the possibility of being medically incapacitated. There are often incidents that occur that we are poorly prepared for, thus leaving loved ones and families in stressful situations forced to make important medical life decisions.

A living will is a legal document that sets out your wishes for future medical care when you are still alive, and you cannot express them yourself, this is a form of an advance directive. The purpose of a living will is to give instruction to **not** be kept alive artificially through life support or other medical interventions in the event that there is **no possibility** of recovery and **death is expected**. This is usually in situations where a person is in a coma, terminally ill and unconscious, this reduces the hospital costs and relieves the financial burden placed on families.

Living wills are not legally recognisable in South African statutory law however the law does acknowledge each person's right to accept or decline medical treatment. Our constitution offers each person the right to bodily and psychological integrity which means to have control over one's own body. Doctors and family members are not forced to comply with a living will if there is a slightest chance of recovery. Medical practitioners that are faced with this dilemma should get advice and recommendations from the South African Medical Association (SAMA).

It is important to note that you will still require a living will even if you have a power of attorney in place because a power of attorney lapses when you are no longer of sound mind and a living will only comes into effect when you are mentally incompetent.

All living wills and advance directive documents are guided by the set guidelines that are set out by the SAMA and each doctor will act accordingly. It is important to note that euthanasia and assisted suicide is unlawful in South Africa and such request cannot be included in the advance directive document. You are however at liberty to include the following but not limited hereto: pain management, artificial life support, organ donation, CPR, feeding tubes etc.



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Therefore, it is useful to state your wishes in a document in the form of a living will that confirms your position with regards to future medical care, this will help guide your doctor with what medical treatment you would accept and decline if you are medically incapacitated. The doctor will therefore be guided accordingly by your living will and the SAMA guidelines when making medical decisions on your behalf. It is advised that the living will be kept in safekeeping and a copy be delivered to your family doctor and attorney and that this is communicated to your family and friends so that they are aware of the existence of such document.

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