

Top Misconceptions About Living Wills

#1 A Living Will is all I need for decisions about my health care.

False. A Living Will on its own is not sufficient. You should also have a Health Care Power of Attorney that names an agent who can make health care decisions on your behalf in the event that you aren't able to do so.

A Living Will is an expression of your wishes regarding your health care. However, Living Will instructions often need interpretation. Your agent make decisions regarding your health care when your wishes are not clear after the facts about your condition have been determined.

#2 I can simply tell my doctor what I want.

False. While it is extremely important to advise your health care professionals about your wishes, it is not a replacement for a formal declaration of your wishes.

Telling your doctor what your wishes are does serve two important purposes: (1) Good health care decision making requires communication between your doctor and yourself; and (2) Oral statements provide important supporting evidence about your wishes and help clarify and reinforce your preferences.

#3 A Living Will might take effect while I am being treated for a disease or injury from which I might otherwise recover.

False. A Living Will is designed for use only if your health care professionals determine that you are suffering from an incurable and irreversible medical condition which will, to a reasonable degree of medical certainty, result in death regardless of any extraordinary procedures or life-sustaining treatments.

#4 A Living Will means "Pull the Plug."

False. While it is true that the majority of people use a Living Will as a means to prevent being kept alive artificially, it is a mistake to assume that the existence of a Living Will is synonymous with "Pull the Plug." A Living Will is an expression of your wishes regarding your health care, and should reflect all that you do - and do not - want. In some circumstances, where religions, such as Judaism and Catholicism, may have important tenets regarding the continuation of certain treatments, a Living Will allows you to express those tenets that you adhere to in a formal manner.

A Living Will also allows you to express your wishes for effective pain control, comfort and care during a terminal illness or medical condition.

#5 A Living Will is irrevocable.

False. Just like you would with a traditional Will, if your wishes change, you should update your Living Will and Power of Attorney. It may also be necessary to update your Living Will if the laws change. Pennsylvania, for example, has recently changed its laws regarding Power of Attorney.

#6 A Living Will means that I will give up some control and flexibility.

False. You aren't giving up any control or flexibility with a Living Will. In fact, you're accomplishing quite the contrary. You are retaining control. As long as you are able to make your own decisions, your consent must be obtained for medical treatment. When you are not able to make your own decisions, your Living Will formalizes your wishes regarding those decisions. Health care professionals cannot legally ignore your agent or written instructions.

#7 Doctors and other health care providers are not legally obligated to follow my Living Will.

False. Sort of. As a legal matter, a health care professional cannot treat you against your wishes. Thus, if a physician acts contrary to your clear instructions or your agent's instructions, the physician is breaking the law.

However, as a practical matter, a physician may substitute his or her own judgment if your wishes aren't clear. A physician may also object to your Living Will based on reasons of conscience, and state law may permit the physician or hospital to refuse to honor it. However, hospitals must notify you if this is their policy at the time of admission. In this event, your agent can make arrangements to have you transferred to another facility where your wishes will be honored.

#8 If I do not have a Living Will, I can rely on my family to make my health care decisions.

False. If you do not have a Living Will or Health Care Power of Attorney, the state may designate your next of kin to make some or all health care decisions. However, problems can arise because family members may not know what your wishes are, or multiple family members, such as children or siblings, may disagree about the best course of action. In the case of a family disagreement, your physician may become the default decision maker.

#9 Living Wills are a legal tool for older people.

False. We often think of death and dying as associated with old age, but recent events have reminded us that isn't true. In the case of many younger people, the stakes are actually higher because you might be kept alive for decades in a condition that you would not want.

A Living Will is an important legal planning tool for all adults.