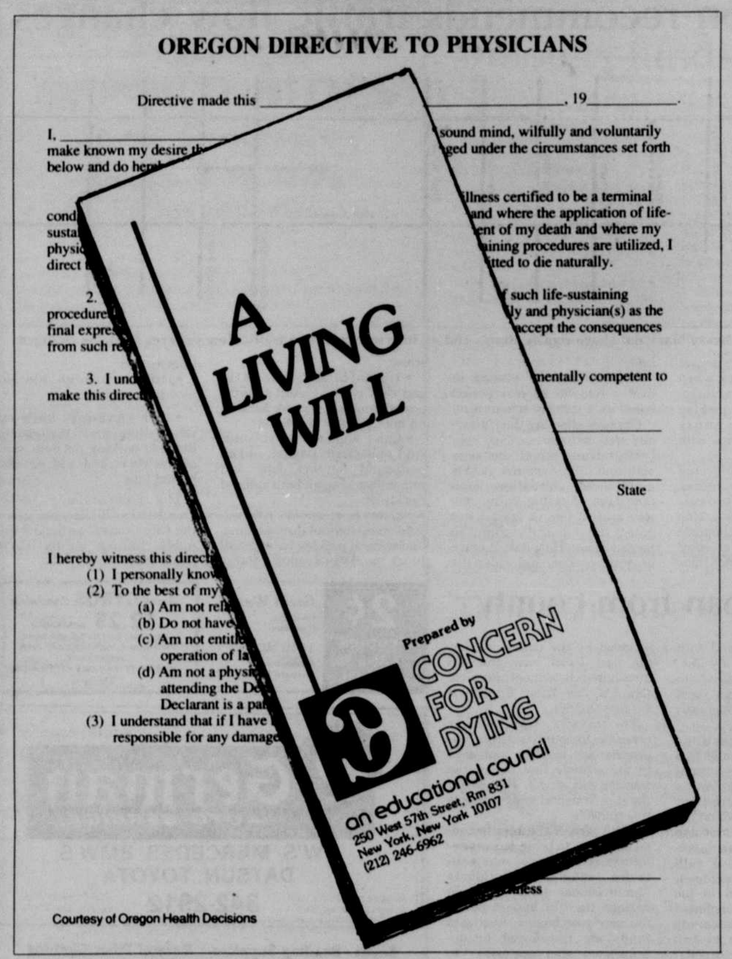

Living Wills: *Controversial documents offer patients chance to depart from life with dignity*

By Wendy Fisher
Of the Emerald

Eighty-two percent of adults in Oregon have heard of living wills; 16 percent actually have them.

The few who have living wills believe that to prolong their life artificially, to depend on family and machines to maintain their life, is to throw away any dignity they have left.

A living will is a written document stating that a patient maintained by "extraordinary" means such as life-sustaining systems, antibiotics or surgery used only to prolong their life may refuse treatment.

Fear of death or fear of possible pain from removal of life-sustaining systems lead others to waive the pursuit of a living will. Others believe they may recover from a coma and having a living will may endanger that chance.

"There are many stories of comatose patients coming out of a coma despite their doctor's opinion," according to Robert Wheeler, a Eugene attorney who specializes in living wills. Some believe a possible cure may be found while they linger in a coma, he said.

There are three main types of living wills, each offering a variety of options. One is specifically for terminal patients, while others may be used by patients even if death is not imminent. In all cases, the patient must have "extraordinary" measures before the living will can be enacted.

What exactly constitutes "extraordinary" measures is where the controversy surrounding the issue arises.

Of the three main types of living wills only one, the Directive to Physicians, has passed through Oregon state legislative channels. The directive states that if you are certified "terminally ill" by two physicians, you may refuse antibiotics, surgery or life-sustaining systems used only to prolong life.

The directive must be signed by two competent adults not related to or having any claim to the patient's estate.

The second type of living will is not legally recognized by the Oregon Legislature, but it is upheld as legal by Oregon courts. The Living Will is not considered as "strict" or "limiting" as the directive and hence is much more controversial.

Depending on which version of the Living Will a person selects, there is usually a choice of four or more options. In the face of impending death, a patient may refuse electrical and mechanical resuscitation or nasogastric (through the nose) feeding tubes and mechanical respiration. A patient also can choose where to live during the last days of a his or her illness and whether to donate organs.

The patient who signs a Living Will also may choose to sign a Durable Power of Attorney; a person is thereby appointed by the patient to make treatment decisions for them should they become incapable of communicating.

Lastly, a fill-in-the-blank option allows the patient to select specific provisions he or she wants. One example might be deciding whether to be transported to a hospital if a patient's condition worsens causing an emergency, or to refuse life-saving surgery. The Living Will then should be signed and dated by two witnesses over age 18.

The last type of living will is the Power of Attorney for Health Care. As with the Living Will's power of attorney, this document allows a patient to appoint a person to make treatment decisions based on advisory discussions with medical professionals, lawyers or a previously appointed person. Unlike the Living Will, this does not require the authorization of the patient's signature by a notary public.

The Power of Attorney for Health Care, however, must be signed by two qualified witnesses.

The power of attorney document states that if you are terminally ill or in a persistent vegetative state and are comatose or unable to make decisions, the person designated by the power of attorney will make all treatment decisions.

The document also offers options to choose from such as whether to withdraw electrical and mechanical resuscitation, mechanical respirator, nasogastric, gastrostromy (through stomach wall) or intravenous feeding and antibiotics to treat life-threatening infections.

The directive is the least controversial and simplest of the three types of wills.

One apparent benefit of the directive is that it does not prolong life with a respirator. If pneumonia or other illnesses develop, there is the choice of whether to treat with antibiotics or surgery.

Dr. Gary Glasser, a specialist in diseases of the elderly, and Wheeler both believe the directive is helpful. "It is useful in terms of setting up guidelines," Glasser said.

The directive also stimulates communication within the family, according to Wheeler. "It helps to get people talking about it, especially with the right people, such as doctors and family," he said.

It is the only legally binding document, Wheeler said. Because of this, the physician is required to do as the patient wishes or transfer him to a doctor or hospital that will. Physicians also are protected by law from having any criminal or civil actions filed against them.

But Wheeler said the directive is too limited. "It only covers the very end of life, whereas the Living Will and Power of Attorney can help earlier," he said.

Since the directive allows only the removal of the respirator, patients who continue to breath on their own after removal of the respirator may linger on the edge of death until they die of natural causes, he said.

The Oregon Legislature is currently considering five proposed laws to change the directive. One proposal would allow the removal of a feeding tube, giving patients who linger a choice to die sooner.

Some say the Living Will itself cannot be consciously separated into good and bad points because it benefits those in a vegetative state. The Living Will does not require the holder to be terminally ill and allows removal of the nasogastric feeding tube.

In the United States alone, 10,000 patients are considered to be in persistent vegetative states. A vegetative state implies conditions ranging from slightly brain damaged to very brain damaged. In all cases, the patient is unresponsive to stimuli.

"Most people think of vegetative state as permanent," said Brian Churchill, a registered nurse and organ donor coordinator at Sacred Heart General Hospital. "This is not necessarily true."

In fact, some vegetative states are eventually reversible; still, many continue to linger in zombie-like states. The directive is no help to them because they are not considered terminal.

Many are cases such as Karen Ann Quinlan, a young woman who lingered for 10 years in a persistent vegetative state after removal of a respirator failed to end her life. The Living Will and Power of Attorney may help patients like Quinlan die sooner by allowing removal of feeding tubes.

The issue is controversial. Starvation is a slow and agonizing process, and it is not known whether comatose or vegetative patients have a sense of pain.

In many cases involving terminally ill patients, the removal of feeding tubes may actually aid in comfort, Glasser said.

Right to Life, which is concerned with the "sanctity of human life," is 3avidly against the Living Will, especially removal of feeding tubes. Members of this group believe it may be opening doors to suicide and mercy killing.

"We are headed toward the handicapped having their food and water withheld," said Gayle Atteberry, the chairwoman for Eugene/Springfield Right to Life.

The Living Will also could be abused by dialysis patients and others with active minds who must depend on machines to keep them alive, Atteberry said. If allowed to sign the Living Will and the physician complies, the patient may "commit suicide" by having feeding tubes or other life-sustaining systems removed, she said.

"We have gotten ourselves into this with our advanced technology," Atteberry said. "We're opening a huge door. We've got to stop, got to draw the line."

An act of compassion may lead to mercy killing to stop the agony a patient goes through as they starve to death after removal of feeding tubes, she added.

Atteberry used abortion to illustrate her point. "People felt sorry for rape and incest cases, which are less than 1 percent (of abortion cases), and now we have 1.5 million babies killed, 99 percent simply because of inconvenience — we opened the door," she said.

The Power of Attorney has generally the same points as the Living Will because it allows removal of feeding tubes from non-terminal patients.

Wheeler sees the Power of Attorney as one of the most useful documents because treatment already has been discussed and options marked on the form. Wheeler believes this allows less chance for misinterpretation.

In addition, a Power of Attorney can be used to take action against a negligent person if the patient's illness was caused by an accident or carelessness.

Of the five proposed changes to the directive the Oregon Legislature will decide on, Atteberry believes not all will pass because of outspoken controversies.

Changing the minimum age of signing a directive from 18 to 15 meets arguments not only from Right to Life, but from others who believe 15-year-olds are not mature enough to make such large decisions. Another proposed law is to give oral and non-verbal directives the same legal impact as a written directive.

Controversies confronting this are the possibility of misinterpretation, especially non-verbal. Glasser believes it may have an advantage because written words don't change, but patients' thoughts change as they experience life on machines.

Requirements of witnesses signing directives may be relaxed. Currently, a witness must not be related to the patient by blood, have any claim on the holder's estate or be providing health care to the patient. These limitations would be eliminated. If the proposal passes, it could increase the likelihood of forgery not only for deviant purposes but for emotional and compassionate purposes. However, "when doctors are making decisions they always consider a hidden motive a relative may have," Glasser said.

Obtaining a living will can still be done easily, according to Wheeler, and a lawyer is not necessarily needed if the Living Will is read carefully and signers consult with their family.

"Any stationery store carrying legal documents carries a directive for about 25 cents," he said. The forms must be filled out correcty, though, or the directive may be void, he warned.

A Power of Attorney and directive along with a booklet explaining living wills can be found at the Western Oregon Health Policy Institute of Eugene, 99 W. 10th Ave., Room 337, Wheeler said.

The Living Will itself can be received from Concern for Dying, 250 W. 57th St., Room 831, New York, N.Y., 10107.

"If (a patient) hasn't made their desires known, there is no sense of what is right," Glasser said. "People come down to operating on their own sense of values."

Glasser said he has seen families suffer the trauma of decision. "There is guilt if they do and guilt if they don't," he said.

A directive helps guide such decisions. "None of these documents by themselves or in combination is as important as good solid discussion with a spouse, family and doctors about what somebody wants," Wheeler said.