

The logo for the Voluntary Euthanasia Society (VES) consists of the letters 'VES' in a white, sans-serif font, centered within a blue semi-circular shape that resembles the top half of a circle.

choice, dignity.

LIVING WILLS – A MATTER OF CHOICE

Presented by
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What is a Living Will?

- VES is the leading organisation in the UK regarding end of life decision-making.
- VES is committed to ensuring that the wishes of the patient are central to all medical treatment decisions.
- VES has extensive knowledge in relation to the use of Living Wills and supported the only piece of major research which has been done on the adoption of Living Will policies by NHS trusts.
- A Living Will states how you wish to be treated if you become incapacitated. Living Wills are also known as Advance Directives and Advance Statements.

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A Living Will is legally enforceable

A Living Will is **legally binding** provided that at the time it is signed you:-

- i. have the mental capacity to make the medical decisions contained in the Living Will;
- ii. you understand the consequences of your decisions;
- iii. the statement of your intention as to future treatment is clear and applies to the medical circumstances which later arise;
- iv. your decision(s) is not made under somebody else's influence;
- v. you are 18 years or over.

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The Right to Refuse Treatment

• So long as you are competent you can refuse treatment even if that refusal takes place in the future when you have lost capacity.

• The important point is that at the time you made your Living Will you were competent.

• Providing certain requirements are met, a refusal of treatment as contained in a Living Will is legally enforceable, even if it results in your death.

• If a doctor treats you against your wishes this is likely to be a civil trespass and/or a criminal assault.

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Recognition of Living Wills

•VES is regularly consulted by NHS Trusts, GP surgeries, care homes and solicitors in relation to Living Wills.

•The BMA, RCN, GMC, NMC and the Law Society have all endorsed the use of Living Wills.

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Patient Autonomy

- This desire for control over treatment decisions is well documented.
- In a survey conducted by Rebekah Schiff published in the BMJ in 2000, it was found that the majority of the elderly patients surveyed preferred 'comfort only' care, even if they might die, to active treatment. The single condition most feared was advanced dementia.
- It was also clear that the elderly had given much thought to healthcare proxies and to what conditions they would find acceptable and which they would not.

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A Pro Choice Living Will

- The importance of a pro-choice Living Will.
- Patient autonomy is the key-determining characteristic in relation to medical treatment decisions.
- The new VES Living Will is a pro-choice document. The VES Living Will informs the doctor whether the patient wishes to refuse treatment in certain situations or, have medical care to prolong life for as long as possible.

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Ignorance of Living Wills

- There is widespread ignorance amongst the caring professions at all levels including GPs, nurses in the community, all types of medical and nursing staff in hospital, and care staff in residential homes about Living Wills.
- This ignorance could be best countered by legislation to underpin Living Wills as in other European countries such as Spain and Denmark.
- When it is explained to GPs who are usually the people asked to witness a Living Will what a Living Will is, they are often interested in the document and ask to have some for their surgeries.

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The Need for a National Register

- The need for a national database for registration of Living Wills.
- A national registration system would assist doctors trying to treat patients appropriately and alleviate a lot of concern of those who have a Living Will.
- In Spain, recent legislation has put Living Wills onto a statutory basis. Catalonia has set up a registration system for Living Wills. This has greatly helped the medical profession who now know for certain by accessing the database whether the person has a Living Will and can then act accordingly.

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What happens in hospitals

- There are problems with using a Living Will in a hospital setting.
- In the BMA News Review published on 4th September 1996, a survey of over 750 GPs and hospital doctors revealed that 24% of doctors would not respect a refusal of treatment set out in a Living Will.
- This is very troubling given that a valid Living Will is a legally enforceable document.
- Treating a person against their wishes is both unlawful trespass and common law assault.

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An NHS Survey

- Age Concern and Kings College Centre of Medical Law have already recommended education and monitoring with regard to Living Wills and we would further endorse this.
- In a survey published by the BMJ in January 2000 regarding the use of Living Wills in NHS Trusts it was found that, 90% of the Trusts believed that national guidance on Living Wills would be useful.
- 70% of Trusts which had already developed a policy made provision for patients to indicate in advance their unwillingness to accept particular procedures or forms of treatment.
- The federal law in the United States requires health care facilities that receive Medicaid or Medicare funds to inform their patients of their right to execute a Living Will.

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The Case of Miss B

- The case of Miss B.
- Whilst Ms. B was competent, nevertheless, her wishes were still not respected.
- There needs to be greater education of the medical profession in relation to Living Wills to ensure they understand that a Living Will is a legally enforceable document.

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Health Care Proxies

- A health care proxy is somebody whom you would like to take part in medical decisions on your behalf should you become unable to do so.
- In England and Wales there are proposals to clarify the legal status of a "Health Care Proxy" but even so doctors will in practice pay attention to what a proxy says.
- In Scotland, health care proxies are known as Welfare Attorneys. They are recognised under the Adults with Incapacity (Scotland) Act 2000 as having the legal power to make decisions on your behalf in accordance with what your medical treatment wishes would have been.
- The Health Care Proxy may be your husband, wife or partner, or a relative or any other person and should be at least 18 years old.
- Making Decisions Consultation Paper - legislation of health care proxies is urgently needed.

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Conclusions

- VES is dedicated to ensuring that patients have control over their medical treatment decisions.
- A properly drafted Living Will is legally enforceable.
- They are recognised by the BMA, RCN, GMC, NMC and the Law Society.
- It is likely that some valid Living Wills are ignored by doctors, thereby causing a great deal of distress to the patient and relatives, and exposing the doctor to prosecution for assault or proceedings for unlawful trespass as in the case of Miss B.

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Action Points

- The promotion of Pro Choice Living Wills as far as possible.
- Better training of the caring professions regarding the role and legal effect of Living Wills.
- A national procedure throughout NHS Trusts in connection with Living Wills as part of the protocols for admission and consent.
- Legislation which recognises the legal validity of Living Wills and makes it clear what needs to be in a Living Will to make it enforceable. With this in place all health professionals will have a much better chance of knowing what a Living Will is and whether the one in front of them should be complied with.
- The legalisation of health care proxies.

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