

Living wills offer patients a choice and are now enshrined in Thai law

Imagine yourself standing silently with your relatives in a hospital's intensive-care unit, staring at the still figure of a loved one lying helplessly in bed. At that moment, your greatest wish is for that loved one to be able to speak even for the last time to let you, his doctor and everyone there know whether he would like to have his life support system and medical treatment continued, withheld or withdrawn.

Now, such an indication, or a "living will", is recognised and can be made for the first time under Thai law. Section 12, paragraph 1 of the National Health Act 2007, which became effective on March 20, 2007, provides that "a person shall have the right to make a living will in writing to refuse public health service that is supplied merely to prolong his/her terminal stage of life or to cease the severe suffering from illnesses".

The Act further defines "public health service" as "any service relating to health promotion, prevention and control of diseases and health hazards, diagnosis and treatment of illness and rehabilitation of person, family and community".

Correspondingly, paragraph 3 of Section 12 provides protection to public health professional practitioners who comply with any such living will, as it is provided that any act done by them in compliance with the living shall not be held an offence and they shall not be liable to any responsibility whatsoever.

The right to make an advance written living will as prescribed under Section 12 essentially represents the patient's right to refuse medical treatment at the

terminal stage of his life. If a patient so wishes, he can now make a living will in advance in writing declaring his refusal of public health services or medical treatment that are administered merely to prolong his life or to stop his severe suffering from illness, so that he may die a natural death without causing unnecessary burden on other persons.

Such a patient's right to refuse medical treatment at the final stage of his life under Section 12 of the Act is not the same as "euthanasia" or "mercy killing". Section 12 and the living will made thereunder do not give the public health professional practitioner or any person any right or permission to kill the patient.

Also, a living will (sometimes known as "advance directive" or "advance decision") is unrelated to the conventional will designed and used primarily to deal with estate/property distribution after death. It is essentially an advance written declaration of one's decisions and preferences in his health care and medical treatment.

Moreover, even though such right has just been explicitly recognised and permitted under Section 12 of the Act, every person actually already has the basic right to control and make decisions about his medical care, including the right to agree to or refuse medical treatment. If you are competent and able to communicate, you may simply tell your doctor of your decision with respect to your medical care/treatment.

But what if circumstances do not give you such option? Section 12 permits you to make such a decision and

declaration ahead of time through a written living will while you are still competent and able to communicate and declare such decisions, so the public health professional practitioner can comply with them. It should be noted that this is the patient's right, and hence not compulsory.

Section 12, paragraph 2, requires that a living will must be carried out in accordance with the rules and procedures prescribed by Ministerial Regulation. To date, however, such Regulation has not yet been issued.

In any event, any person wishing to make a declaration to refuse public health can now do so by making a written living will in advance. It is advisable that he make such a living will while he is totally competent and able to give direction about his own health care/medical treatment.

As well, the living will's existence and content should be made known to his relatives and doctors so that they are fully aware of and can comply with his decisions or requirements as indicated in his living will promptly, before any life-support system is applied or used, as arguably Section 12 and the living will made thereunder do not give any right or permission to the public health professional practitioner or any person to "pull the plug" on a person.

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