

Living wills in Greece: Bioethical dilemmas and legal parameters.

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ABSTRACT: Living wills are legal documents that set out the medical care an individual, or the principal, wants or does not want in the event that he or she becomes incapable of communicating his or her wishes. A living will is used by people whose wishes will be met should they reach a point when they are no longer able to make the decisions for themselves. For example, if a person sustained life-threatening injuries, or was incapacitated as a result of some terminal illness, the decisions about his or her health care will be his/hers as long as there is a living will. Without one, the decision becomes the responsibility of spouses, family members or other third parties. This paper aims to discuss important issues in the end of life healthcare and how the Greek legal system deals with bioethical dilemmas.

Key words: Euthanasia, living will, presumed consent

INTRODUCTION

The issue of euthanasia is very complex and currently divides the legal world, the medical community and the public. The number of people suffering from incurable diseases or the consequences of various accidents is continuously increasing, living a life without dignity or being in a vegetative state. Euthanasia is defined as the deliberate killing of an incurable patient, with or without his consent, for redemption or relief from the painful agony of unbearable pains that exist when therapies fail to soothe.

But who can decide about when, how and why a life should end? Under what circumstances? To what extent does the medical task of maintaining a life extend? Is life susceptible to gradations of this value? Who will judge that? The doctor, the relatives, the state? What does the law say about that?

All kinds of euthanasia are in the spotlight. This happens because of the constant evolution of medical science resulting in increased opportunities to maintain and extend the life of a human being for a long time, even if the patient has lost touch with the environment and is not - in perceptions of medical science - going to return¹.

There are a number of important issues and questions arising from the above: does the patient have the right to set himself the therapeutic treatment with the "living wills" or the "previous directives for end of life"? - Who decides the duration of the extension of life for terminally ill patients, - what is the borderline between life and death by the time the patient is not objectively able to decide his fate?

The institution of "living wills" or "earlier directives" is not yet regulated in Greece. Below, the reasons for the existence of this legal vacuum are analyzed.

CONDITIONS OF A VALID CONSENSUS

In Greece, it is widely supported that the consent of the patient is necessary to prevent the therapeutic intervention to be a crime. In the criminal law, it was also supported that medical intervention is permissible when it is carried out for the interests of the patient².

The new Code of Medical Ethics enhances the role of information and consensus of the patient whose lack of consensus is an independent judicial claim.

The Code of Medical Ethics adopts the provisions of the Convention of Oviedo which has now increased standard power in Greece. But when the patient is able to consent, the possibility of consensus is linked to the capacity to act.

When the patient is unable to consent, he does not dominate the consensus but third persons decide: the judicial review or relatives.

In particular, with regard to the information, the doctor has the obligation to inform the patient about the disease in general and specific to each practice³. The updating includes the purpose and the nature of the operation, the consequences and risks according to the spiritual level of the patient⁴. The medical act without the consent of the patient even if it is carried out in accordance with all the rules of medicine, it is recommended to conduct behavior and poor performance of the contract of medical assistance⁵.

If the patient is a minor, the consensus is compensated by having the parental care. The mature minor is limited only to the expression of opinion. The minor patient is compensated by having the parental care for him. The mature minor (for example in the age of fifteen years) is limited only to the expression of his opinion⁶.

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TESTAMENT LIFE AND PRESUMED CONSENT

The statement of the willingness of death should be "real" and "conclusive". But if this decision exists, even after thinking, how can anyone be sure about whether and to what extent, this really exists in a situation like that?

Because of the distrust towards the freedom of expression about the willingness of death, as well as, the fact that at the time that there is a need to adopt measures to extend life, the affected person is unable to have or express valid willingness, there was invented the model of "living will" or "advance directives for end of life" for the patient.

The main advantage of the living will, which was first developed by English and American companies of euthanasia, is the projection that will solve the doctor's hands in cases of artificial extension of the patient's life for a period, without noticing the least probability of their recovery⁷. In these cases, doctors make use of a "living will", respecting the right of self-determination of the patient, obey in already - via the will- of externalized will and exceed possible moral dilemmas which nature created in situations like this.

In fact, the term "living will" describes a declaration of will whereby a person during a period that is still healthy (or in case of illness at least 30 days before the critical act of euthanasia) expresses his consent or refusal to undergo some treatments in case that later he becomes physically incapable to realize or to assess his state of health and to express his desire⁸. More accurately, these are acts of disposal 'cause of death' that contain the will of the testator as regards the legitimate good of life triggered in a phase in which the death has not already occurred⁹.

In the prevailing view, the "living will" is a legal act, which is not subject to a specific type. It is established either by deed or verbally. But it is obvious that in any case this should be proved by witnesses who should not be notoriously incompetent (e.g. minors or mental-spiritual disturbed)⁹.

Any adult is able to draw up 'living wills', if there is no reason for his legal incapacity. The "living will" statement is revocable at any time, regardless of the patient's mental clarity and the type of recall, for example the will of cancellation may be externalized by ripping, crumpling, burning of the paper etc. The recall is, also, valid when it is communicated to the doctor by the witnesses of the recall. Even if there is no expressed revocation, the doctor should always certify that under the current circumstances the patient insists on his previous decision¹⁰.

The "living wills" concern in particular the medical instruments and actions that support (life-supporting) the functions of the agency. Usually, they are associated with the effort of a cardiopulmonary resuscitation of the patients, the medication for the maintenance of the heart beat, blood pressure and/or the fight against microbial infections, the oxygen supply, the supply of liquid and food by artificial means and the submission of the patient to dialysis. The "living wills" reflect the principles and values of the person - for example what is

considered to be the acceptable quality of life without prejudice against the dignity or the beliefs of the medical operations associated with the support or maintenance of organic functions - and put on the table all the ethical and legal dilemmas that accompany the decisions concerning the "end" of life¹¹.

In other words, the "living will" constitute a legal instrument in order to express the determination of the patients about therapeutic treatment at the end of their life, when they lack the ability of perception or expression of their willingness because of their illness. The distinguishing characteristic of them is that they are medical instruments for patients who cannot consent.

Such statements may involve a certain degree of security, because they might not have been made under an elation of depression or under the influence of others, but came with a clear mind without any emotion, even if they are deemed rejected. This happens because there is always a risk for it not being applicable anymore to take measures to extend life, at the time that is necessary. In case that the decisions are taken after hypothetical questions in advance like 'If ...', then the main base is a limited part of the critical factors or situations and nobody can be sure, that these evaluative options will remain unchanged under different conditions¹⁰. A typical example is the famous pianist who may state that he does not want to live if he cannot play the piano again, but when he is really approaching death, he changes his mind and prefers living without fingers to not living at all¹⁰. The living will therefore cannot be regarded as a sufficient basis for the elimination of the particular legal obligation of the physician to intervene¹².

It is a reasonable question whether the 'living wills' can be a basic indication for typesetting presumed consent. However, respect for the previous will of the patient who has lost the ability of expression is accepted in the new Code of Medical Ethics (Article 29 paragraph 2) and Article 9 of the Oviedo Convention which states that the willingness of the patient expressed before the medical intervention will be taken into account, while the patient during operation is not able to express his personal desire¹³.

Some people claim that such a statement may be considered as evidence of presumed consent, where it can be assumed that under supervening circumstances the patient would not wish to take further measures for the conservation of life, based on pre-existing statements or other events¹⁰.

But the declaration of intention to withdraw the particular legal obligation of the physician must have been expressed under certain circumstances, when there is already a painful disease that leads to death and the patient is fully informed about the actual situation. If, at that point of time, the patient is not able to make a valid will, then the doctor is obliged to act as in any other similar case, completely ignoring the previous statements. The presumed will of the patient can be taken into account only for the support of life and never against it.

As for the crucial time when the willingness must be manifested, must be noted that in the case that the

patient initially stated that he did not wish to undergo medical treatment, but later, and while there was still time to provide any medical care, he changed his determination and stated in any way, even conceptually, that he doesn't want to die without being supported, doctors are obliged to act in accordance to the apparent or even resulting/alleged -by the clues- later determination¹².

But also in the cases that a need of immediate intervention exists in order to avoid any risk for the life or health of a minor patient or patient unable to articulate his desire, for whom the decisions are made by their 'representatives', when these representatives refuse to assist the person who is in danger, the doctor is obliged to do everything possible to keep the patient alive¹².

CONCLUSION

In conclusion, we would say that the "living will" does not solve the patient's problem, just eases the doctor's decisions. The main concern is not the mental pressure that the doctor is facing, but the patient's life which is not acceptable to depend on statements of intention which were made under different conditions, separated in time from the critical point that the patient is facing death. It is a moral issue and this is what all legislators, physicians and ordinary citizens should have in mind when they are facing the dilemma: firstly, to proceed to the legalization of the "living wills" under certain conditions, secondly to end the life of the patient or thirdly to give the consent for ending the life of their relative

Οι διαθήκες ζωής στην Ελλάδα: Βιοηθικά διλήμματα και νομικές παράμετροι

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ΠΕΡΙΛΗΨΗ: Οι διαθήκες ζωής είναι νομικά έγγραφα που καθορίζουν ζητήματα του τέλους της ζωής, όταν οι ασθενείς καθίστανται ανίκανοι να εκφράσουν τις επιθυμίες σχετικά με την ιατρική τους περίθαλψη. Χωρίς τη διαθήκη ζωής, η απόφαση γίνεται ευθύνη των συζύγων, των μελών της οικογένειας ή άλλων τρίτων προσώπων. Σκοπός αυτού του άρθρου είναι να σχολιάσει σημαντικά ζητήματα που αφορούν στην παροχή ιατρικής φροντίδας στο τέλος της ζωής και πως η ελληνική νομοθεσία χειρίζεται βιοηθικά διλήμματα.

Λέξεις κλειδιά: ευθανασία, διαθήκη ζωής, εικαζόμενη συναίνεση

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