

## Enhancing the doctor-patient relationship: Living, dying and use of the living will

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This article aims to establish whether processes around the consideration and execution of the living will help enhance the doctor-patient relationship. Studies indicate that the living will is not used frequently, and that the doctor-patient relationship is often deficient. The article explores the two primary topics – the living will, and the doctor-patient relationship – separately, and then presents a synthesis of these separate investigations. This synthesis concludes that the living will can help enhance the doctor-patient relationship. Following this analysis a brief practical model is offered.

Research suggests that the living will can be used very effectively in medicine provided it is implemented and executed in such a manner as to avoid falling prey to some of its more pressing criticisms. These criticisms include the claim that living wills are not individualised and that they are often open to misinterpretation.<sup>1</sup> It is claimed that they lack individualisation because they are created using a template that may not incorporate the specific and specialised needs of each patient. Furthermore, they 'may not express the patients' true wishes and the living will is often automatically interpreted as a DNR [Do Not Resuscitate] order'.<sup>1</sup> The justification for the claim that the living will may not represent a patient's true wishes is that living wills are often left on file for years. The patient tends not to update it, so it does not incorporate any changes in personal opinion or advances in medical technology.

In his scathing criticism of living wills, Tonelli notes that another problematic aspect of living wills is that they are often unavailable in an emergency or are 'not applicable in many situations involving critically ill patients'.<sup>2</sup>

Such criticisms of the living will must be considered together with its benefits. It is common knowledge that continuous advances in medical technology allow patients to be kept alive longer today than has been possible at any previous point in our history. Many people, especially the elderly, those facing a terminal disease such as dementia and those who are in – or are likely to encounter – unbearable pain, value the opportunity to have some measure of control over the final stage of their lives.<sup>3</sup> The living will allows for this control by enabling a person to express wishes regarding possible treatment for the future – when they may be unable to consent to or refuse it – at a time when they are still competent.

### The living will: Ethical analysis

This section will consider an ethical analysis of the living will according to the first and second formulation of Kant's Categorical Imperative. The first formulation states: 'Act only in accordance with that maxim through which you can, at the same time, will that it become a universal law', and the second: 'So act that you use humanity, whether in your own person or in the person of any other, always at the same time as an end, never merely as a means'.<sup>4</sup>

### Categorical imperatives and the living will

A person generally makes a living will with the expectation that the preferences for medical treatment expressed therein will be carried out and respected at the time when the living will takes effect. Requests expressed in the living will are therefore honoured and implemented, when the time arrives, according to the principle that this is what the person envisaged when they wrote the will.

The first formulation of the Categorical Imperative states that an action is morally acceptable if the maxim of that action can be generalised into a universal law, one to which all people will be subjected. It is ethical, then, to implement requests in a living will when the time arrives to do so. This is because, when such instructions are heeded, doctors are acting on the maxim that people make a living will fully expecting it to be respected. This maxim can readily be universalised. No one would write a living will if it was just going to be ignored.

The living will is also an instrument used in preserving patient autonomy in the event of incapacity. The living will speaks for the patient, dictating that patient's wishes for his or her medical treatment. The second formulation of the Categorical Imperative, that people should always be treated as ends in themselves, is readily applicable here:

- Within the framework of morality, the living will expresses autonomous people's individual requests and wishes.
- According to the second formulation of Kant's Categorical Imperative, it is morally right only to treat people as ends in themselves, not merely as a means to some other end.
- Treating people as 'ends in themselves' implies, *inter alia*, complying with their requests and wishes as long as they are within the framework of morality.
- Therefore acting on requests stated in the living will, and complying with people's wishes within the framework of morality, is ethically correct according to the second formulation of the Categorical Imperative.

This analysis of the living will shows that the concept is ethically valid in two important areas. Firstly, the application of the first

formulation of the Categorical Imperative shows that the maxim upon which a living will is made, and upon which it is carried out, is universalisable. Secondly, application of the second formulation shows that the living will is morally defensible because it treats people as ends in themselves, respecting their intrinsic dignity and worth.

## The doctor-patient relationship

It has been said that 'the dying process should be regarded as a sharing process, the last journey that the patient makes together with [his or] her significant others'.<sup>5</sup> These significant others include, most importantly, the patient's family and his or her doctor. The reasons why these significant others should be kept aware of the patient's end-of-life wishes include the idea that a person is almost always a 'connected/pluralistic' being. As such, the patient is defined according to relationships with others. As Aristotle asserts, we are social animals.<sup>6</sup>

In order that those closely connected to the patient are able to contribute to this kind of 'emotional journey', it is imperative that they are kept informed of the patient's health status and prognosis. This is best achieved through good communication between all parties, thus strengthening relationships.

This communication should have the patient as the primary focus in order to preserve informed consent and autonomy. The benefits of good patient-centred communication include the following:<sup>7</sup>

- The patient feels understood upon enquiry into his or her needs, perspectives and expectations of quality of life and care.
- Attending to the psychosocial needs of the patient by involving family and loved ones gives the patient a feeling of security and belonging.
- One should encourage the patient's involvement in her illness by allowing her to make decisions about her health and the course of treatment to be followed. If this is done in conjunction with familiarising the patient with the nature of her illness she will feel more in control of her circumstances.

Moreover, if this type of communication is done in an unhurried way, and with care on the part of the doctor, the patient will generally feel more confident about the doctor's abilities, and be more trusting of the doctor.

Given the beneficial consequences of a strong doctor-patient relationship, it is surprising that it is still neglected in some situations. Studies reveal that when it comes to joint decision making involving patient, family and doctor, communication is often 'inadequate'.<sup>8</sup> Such lack of communication means that patients often do not receive the benefits detailed above.

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Published studies and articles emphasise a close interconnection between the living will and doctor-patient communication which enhances the doctor-patient relationship.

The link between living wills and the need for better doctor-patient communication regarding end-of-life care has been widely

publicised.<sup>9</sup> Studies have found that many patients are confused by the notion of a living will, but would nonetheless welcome the opportunity to discuss end-of-life care. As a document specifically related to end-of-life care, the invocation of a living will may facilitate an improvement in the quality and frequency of discussions regarding end-of-life care and death. It is noted that living wills are generally in the form of 'worksheets' or templates. These worksheets could be used to help 'reflection and deliberation, and ... [promote] team building between the professionals, families and the patient'.

The importance of communication and relationship is further emphasised by findings that some elderly patients welcomed the opportunity to consider, and have some control over, the last chapter of their lives. Discussion helps to prepare proxy decision makers for their roles in making health care decisions on behalf of the patient. Discussions also give families a chance to talk about the end of life and to resolve personal matters. It is also claimed in the literature that 'living wills [have come] to be seen as a vehicle for achieving greater wisdom and skill in a fundamental aspect of healthcare and a civilized approach to mortality'.<sup>9</sup>

It has been found that the living will, in cases where it had not yet come into force, 'aided discussions about end-of-life care'. It was found that, in the case of 96% of patients and 76% of families, the presence of a living will made it easier to broach and discuss the subject of death. In these cases it was also noted that such discussions took place 'without inappropriately increasing time spent with the patient or relatives'.<sup>10</sup>

In some cases where a patient's living will had not been discussed with family and proxy decision makers, these parties misunderstood its terms and were unfamiliar with its procedures. It was also found that proxy decisions for care showed greater agreement with the living will directives of patients in cases where the living will had been discussed with the patient, the doctor and the proxies themselves. This emphasises the importance of discussing end-of-life care as well as the contents of a living will.

## Case-based reasoning, casuistry and its application to the doctor-patient relationship and living will

Case-based reasoning means that each philosophical case presented must be evaluated on its own merits rather than according to a set of rules. Decisions should be made on a case-by-case basis. In each case the benefits and risks must be evaluated and acted upon in a manner appropriate to the particulars of the case.<sup>11</sup> Case-based reasoning is particularly useful when it comes to the study of bioethics and medical ethics. Medicine is a profession dealing with people, all of whom have specific, and varying, circumstances.

Case-based reasoning allows for the consideration of personal circumstances on their merits. Casuistry proposes a *modus operandi* for doing so, by taking the case at hand and comparing it with one or more paradigm cases. These paradigm cases are ones in which it is quite clear what course of action should be taken.

## A fictional, paradigmatic case

Mbali is 65 years old and has recently been diagnosed with dementia. The disease is still in its early stages. In spite of a con-

vincing diagnosis, Mbali – like many other dementia patients – is in denial about her condition. She still feels normal and functions properly.

Mbali's son, Sipuwe, is a successful lawyer. In his field of work he is well aware that once his mother's dementia renders her incompetent it will be too late for her to express treatment preferences. Because she refuses to discuss her wishes for treatment with him and the rest of their family, Sipuwe worries that his mother is not accepting the reality of her disease.

Sipuwe phones his mother's doctor, Dr Mbete, and voices his concerns. Dr Mbete replies that Sipuwe ought not to worry; he has an idea that might help solve the problem. During the following few weeks, at each of Mbali's visits, Dr Mbete hands her a living will form and encourages her to look at it, ask him questions and express her concerns. He tells Mbali that he encourages all his patients over 65 to make a living will or at least discuss their preferences with him.

Dr Mbete's repeated references to the living will soon start paying off. Mbali comes round to the idea of recording her preferences for treatment. She is still unconvinced about her dementia, but she has accepted that action should be taken on her part 'just in case'. Dr Mbete, having discussed the living will document with Mbali at great length and over a long period of time, is satisfied that he has properly assessed her wishes regarding her end-of-life treatment and care.

Dr Mbete suggests a meeting between Mbali, Sipuwe and himself so that they may all discuss her living will and treatment preferences. In the course of this process the relationship between Mbali and Dr Mbete has been greatly enhanced. Mbali knows that she can trust Dr Mbete and that he will have her best interests at heart when it comes to her future treatment. She also feels more at ease with regard to dying now that she has expressed her concerns to others. Dr Mbete feels empowered to treat Mbali in a manner which she has specified, and he also feels that his extensive interaction with Mbali will better enable him to comfort and reassure her family as she nears the end of her life.

## Fictional case evaluation

This case represents a paradigm by virtue of its straightforwardness and outcome: that the living will, when introduced into the medical consultation process, can help enhance the doctor-patient relationship.

Paradigmatic cases require evaluation according to the maxims pertaining to them. When it comes to the case presented above, these maxims are fairly clear:<sup>12</sup>

- The well-being of the patient – which is amplified by the enhanced doctor-patient relationship.
- The well-being of third parties, such as family members or proxy decision makers. This is amplified by the enhanced relationship that results from the doctor or patient bringing the living will into medical consultation. It is also augmented by a more open relationship with the patient, in which ambiguities regarding the patient's condition are clarified.
- The well-being of the doctor – which comes about as a result of an enhanced doctor-patient relationship. The doctor faces fewer difficult decisions when it comes to predicting treatment

preferences for patients. The doctor can also be assured of the patient's trust and confidence.

The case presented can be considered a good paradigmatic case as it represents a scenario of unambiguous moral acceptability. This is because it enhances the well-being of the three primary agents involved in the process of medical consultation: namely the doctor, patient and the patient's family.

Although this hypothetical situation is somewhat idealistic, it does pave the way for proposing a model according to which all doctors and patients who wish to enhance their relationship may do so.

## A practical model

Proposed below is an outline for a system by which use of the living will might become more widespread. This would then lead to the enhancement of the doctor-patient relationship for many.

What kind of system should this be? Such a system could have as its basis the following considerations:

- A living will is only valid if the person making it is in sound mind.
- Making a living will available through general family practitioners who build up a relationship with their client base over a long period of time would be constructive. It would allow for regular updating of the living will as well as regular discussion regarding end-of-life decisions.
- Having information about the living will freely available to the public in discreet settings (for example in practitioner rooms) would also be helpful. This information could suggest that the living will can initiate sensitive discussions and it could detail the benefits of an enhanced doctor-patient relationship.
- Information about living wills could also be made available in the rooms of doctors who service retirement homes and institutions caring for the aged.

## Conclusion

It appears that the living will can indeed be used as a tool to enhance the doctor-patient relationship. The enhancement of this relationship leads to a situation that is symbiotically beneficial for both doctor and patient. Given that the doctor-patient relationship has been found somewhat deficient in the context of end-of-life discussions, it would be advisable to consider more widespread use of the living will in order to remedy this problem.

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