



Organize, Communicate, Prepare

Case Study 1

When is it too soon to honor a living will? When does your health care agent have the authority to make your medical decisions?

Grandpa Dan is 78 years old, and as far as he knows, he is in good health except for some arthritis in his hands. Grandpa Dan has a living will. He has stated to his family many times that he does not want to be kept alive on life support systems when it's his time to go. At his death, his only child, Joe, will inherit a large amount of property.

Joe is home for a weeklong visit with his wife Sarah and three children. Grandpa Dan is thrilled to see his son, his daughter-in-law, and grandchildren, and he has gone out of his way to show the grandkids a great time.

On the third morning of the visit, Grandpa Dan experiences severe chest pain that radiates down his left arm. Joe fears that his dad is having a heart attack. As he rushes to call 911, his wife, Sarah, reminds him that his father has a living will and would not want an ambulance called. Grandpa Dan also named Joe as his health care agent in his health care durable power of attorney. When Joe insists on calling 911, Sarah reminds him that he has the right to make this decision for his father, and that he is morally obligated to honor his father's wishes.

How would you advise Joe? Help him out by answering the following questions.

1. As health care agent, Joe has the right to make this decision for his father at this time.

- True
 False
 It depends

2. Joe should honor his father's living will and not call 911.

- True
 False
 It depends

Assume that Joe calls 911 and Emergency Medical Services arrives.

3. EMS will need a copy of Grandpa Dan's living will.

- True
 False
 It depends

Case Study 1

4. Sarah will be able to stop EMS from resuscitating Grandpa Dan by showing them his living will.
- True
 False
 It depends
5. After EMS takes Grandpa Dan to the hospital, Joe should show his doctors the health care durable power of attorney and the living will.
- True
 False
 It depends
6. Once the doctors have a copy of Grandpa Dan's health care durable power of attorney, they must consult with Joe before making major health care decisions.
- True
 False
 It depends
7. Joe, as Grandpa Dan's health care agent, can revoke Grandpa Dan's living will.
- True
 False
 It depends

Adapted for use in the Legally Secure Your Financial Future program; prepared by [Carol A. Schwab, J.D., LL.M.](#), professor and Extension Specialist, NC State University.
Reviewed for Idaho use by Boise attorneys, Robert Aldridge, September 2004 and Robert Wreggelsworth, June 2005.
[Copyright](#)

This document is for non-profit educational purposes only. This document may not be used by a profit-making company or organization. When used by a non-profit organization, appropriate credit must be given to the Cooperative Extension *Legally Secure Your Financial Future: Organize, Communicate, Prepare* education program. Materials for this program were developed by a team from six land-grant universities. The program is included in the program toolkit of the Cooperative Extension *Financial Security in Later Life* national initiative. For more information go to: <http://www.csrees.usda.gov/fsll>.

Case Study 1
Answers

When is it too soon to honor a living will?

When does your health care agent have the authority to make your medical decisions?

The following answers are based upon North Dakota law as of January 2006. The laws in other states may be different. Laws are subject to change, so please ask your attorney for answers to specific questions.

1. As health care agent, Joe has the right to make this decision for his father at this time.

ND answer: False

As Grandpa Dan's health care agent, Joe has the right to make health care decisions on his father's behalf after Grandpa Dan's doctors have determined and stated in writing that Grandpa Dan is not able to make, understand, or communicate his health care decisions. In other words, Joe has no authority under Grandpa Dan's health care power of attorney until Grandpa Dan's doctors give him that power. Is there any reason to believe that Grandpa Dan is incapable of making his own health care decisions at this point?

2. Joe should honor his father's living will and not call 911.

ND answer: False

The living will does not necessarily mean that someone wants to die at the first natural opportunity. Although Grandpa Dan could die from a heart attack, he could very well survive to live a productive and normal life. A living will is honored when the patient is either terminally **and** incurably ill **or** diagnosed in a persistent vegetative state. Grandpa Dan is not necessarily suffering from an incurable illness. Joe has no authority and no right to make this decision at this time.

Assume that Joe calls 911 and Emergency Medical Services arrives.

3. EMS will need a copy of Grandpa Dan's living will.

ND answer: False

EMS has a duty to resuscitate the patient when they are called. Unless Grandpa Dan's doctor has entered a "Do Not Resuscitate" (DNR) order for Grandpa Dan, EMS will resuscitate him. Although it isn't wrong to give them a copy of Grandpa Dan's living will, it is not necessary to do so.

4. Sarah will be able to stop EMS from resuscitating Grandpa Dan by showing them his living will.

ND answer: False

Unless Grandpa Dan's doctor has entered a DNR order for Grandpa Dan, EMS must resuscitate him, regardless of what is written in his living will. Under North Dakota law, two doctors must diagnosis that the patient is either terminally **and** incurably ill **or** in a persistent vegetative state. EMS personnel do not have the right to make this determination. North Dakota law is written to

protect patients from premature decisions made by people who are not qualified to make the decision.

5. After EMS takes Grandpa Dan to the hospital, Joe should show his doctors the health care power of attorney and the living will.

ND answer: True

Although a copy of Grandpa Dan's living will and health care power of attorney should be in his medical file (assuming that he gave copies to his doctor), it is helpful if Joe can provide copies to the doctors who are taking care of Grandpa Dan.

As health care agent, Joe should have a copy of both documents in his files, or at least know where he can get a copy. He should also know where Grandpa Dan keeps the original of both documents, just in case he has to produce the originals for the doctors. Grandpa Dan should have discussed his wishes with Joe and made sure that his son is prepared to represent his interests with the doctors and hospitals.

6. Once the doctors have a copy of Grandpa Dan's health care power of attorney, they must consult with Joe before making major health care decisions.

ND answer: It depends

It depends upon whether the doctors have determined and stated in writing that Grandpa Dan is not competent and unable to make, understand, or communicate his health care decisions. As long as Grandpa Dan is competent and able to make and communicate his health care decisions, the doctors must consult Grandpa Dan. Joe has no authority as health care agent until Grandpa Dan's doctors make the necessary determination.

7. Joe, as Grandpa Dan's health care agent, can revoke Grandpa Dan's living will.

ND answer: It depends

It depends upon whether Grandpa Dan's doctors have made the necessary finding that Grandpa Dan is not competent and unable to make, understand, or communicate his health care decisions. Until the doctors make that determination, Joe has no authority under the health care power of attorney. If the doctors have made the required findings, and Joe is acting as Grandpa Dan's health care agent, the answer also depends upon what authority Grandpa Dan has given Joe as health care agent. If Grandpa Dan's health care power of attorney states that his health care agent cannot revoke his living will, then Joe will not have that authority. However, if Grandpa Dan's health care power of attorney does not prohibit the health care agent from revoking the living will, then his health care agent may have that authority.

Related Case Study

Case Study 4. The surviving spouse's share.

Adapted for use in the Legally Secure Your Financial Future program; prepared by Carol A. Schwab, J.D., LL.M., former professor and Extension Specialist, NC State University.

Reviewed for North Dakota use by Paul Murphy, Attorney at Law, Murphy and Spahr Law Office PC, Carrington, ND, January 2006.

This publication is provided as a public service and is designed to acquaint you with certain legal issues and concerns. It is not designed as a substitute for legal advice, nor does it tell you everything you may need to know

Case Study 1

about this subject. Future changes in the law cannot be predicted, and statements in this publication are based solely on the laws in force on the date of publication.

Date: September 2004

[Copyright](#)

This document is for non-profit educational purposes only. This document may not be used by a profit-making company or organization. When used by a non-profit organization, appropriate credit must be given to the Cooperative Extension *Legally Secure Your Financial Future: Organize, Communicate, Prepare* education program. Materials for this program were developed by a team from six land-grant universities. The program is included in the program toolkit of the Cooperative *Extension Financial Security in Later Life* national initiative. For more information go to: <http://www.csrees.usda.gov/fsll>.