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REVIEW

The living will or advanced directives. Medicolegal considerations and analysis of the status of implementation in Spain[☆]



Josep Arimany-Manso^{a,b,*}, Laura Aragonès-Rodríguez^a,
Esperanza-L. Gómez-Durán^{a,c}, Emma Galcerán^a, Carles Martin-Fumadó^{c,d},
Francesc Torralba-Rosselló^e

^a Servicio de Responsabilidad Profesional, Colegio Oficial de Médicos de Barcelona, Barcelona, Spain

^b Unidad de Medicina Legal y Toxicología, Departamento de Salud Pública, Facultad de Medicina, Universidad de Barcelona, Barcelona, Spain

^c Departamento de Medicina, Universitat Internacional de Catalunya, Barcelona, Spain

^d Institut de Medicina Legal i Ciències Forenses de Catalunya, Barcelona, Spain

^e Universitat Ramon Llull, Barcelona, Spain

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Abstract The social significance of the rights of patients has produced in Spain a diffuse legislative enactment since 2000 that culminated with the drafting of the living will document, or advanced directives. The basis of this document is the recognition of the autonomy of the patient. This respect goes beyond the competencies of the patient by enabling clinical situations to be anticipated and related decisions to be taken in advance.

Living will is a written document that reflects an act of personal responsibility. It is a tool for making clinical decisions that is particularly applicable to chronic patients susceptible of developing cognitive impairment and a state of dependency. Health professionals should be aware of current legislation on the principle of autonomy, and must make their patients aware of the option to implement this procedure. An educational and public awareness campaign aimed at professionals and the general public is required.

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* Corresponding author.

E-mail address: josep.arimany@comb.cat (J. Arimany-Manso).

PALABRAS CLAVE

Documento de voluntades anticipadas;
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El testamento vital o documento de voluntades anticipadas. Consideraciones médico-legales y análisis de la situación de implantación en España

Resumen La trascendencia social de los derechos de los pacientes ha comportado en España una prolija promulgación legislativa desde el año 2000, que culmina con el desarrollo del documento conocido como testamento vital, de instrucciones previas o de voluntades anticipadas. El fundamento del testamento vital radica en el reconocimiento de la autonomía del paciente. Este respeto va más allá de la situación de competencia del paciente al permitir anticipar situaciones clínicas y sus correspondientes decisiones. El documento de voluntades anticipadas es un documento escrito que refleja un acto de responsabilidad personal, siendo de especial ayuda en enfermos crónicos que pueden evolucionar hacia situaciones de dependencia y deterioro cognitivo. Los profesionales de la salud deben conocer la legislación vigente en materia del principio de autonomía. Resulta esencial que den a conocer a sus pacientes la posibilidad de realizar este procedimiento. Es necesaria una tarea divulgativa y pedagógica ante los profesionales y la población general.

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Introduction

The origin of the so-called living will (LW) or advance directive (AD) stems from the 1969 publication by Luis Kutner of a concept document in which a person may express their wishes with regard to medical treatment in the event of terminal illness.¹

Its initial implementation was scant due to the lack of regulatory support. In 1976, however, the scenario changed following the conflict between two parents and a health-care centre due to the removal of mechanical ventilation from a patient with irreversible brain damage (Karen Quinlan case).² This led to the constitution of the first hospital ethical committees, and the State of California issued the Natural Death Act that legalised the LW and acknowledged the patient's right to prevent the artificial prolongation of their life.³

In Europe, the first legislation to make reference to the LW is the Convention for the Protection of Human Rights and Dignity of the Human Being, with regard to the Application of Biology and Medicine (Oviedo, 1997),⁴ which was ratified by Spain and has been effective since 1 January 2000. Article 9 thereof states that "the previously expressed wishes relating to a medical intervention by a patient who is not, at the time of the intervention, in a state to express his or her wishes shall be taken into account".

Following this Convention, several Spanish autonomous communities regulated the matter individually, albeit without a common deliberation that would guarantee the minimum ethical standards,⁵ thereby rendering the enactment of a basic state-wide law necessary in order to establish the minimum common contents. Table 1 reflects the different names appearing in the legislation of the autonomous communities, although this article will use the term advance directive (AD).

Law 41/2002⁶ provided the legislative foundations for the implementation of the AD in Spain. Article 11 defines it as "the advance statement by an adult, capable and free

Table 1 Different names, according to the autonomous communities.

Preliminary instructions	Spain, Castile and Leon, Galicia, La Rioja, Madrid, Murcia
Advance will	Aragon, Balearic Islands, Castilla-La Mancha, Catalonia, Valencian Community, Navarre, Basque Country
Advanced statement of will	Canary Islands
Preliminary will	Cantabria
Advance expression of will	Extremadura
Advance living will	Andalusia

person of their will as they wish it to be observed in the event of circumstances in which they are unable to personally express their wishes regarding their health care and treatment or, following their death, regarding what is to be done with their body or organs", thus reflecting the patient's or citizen's will if they are incapable taking their own decisions.

In Spain, the related jurisprudence is virtually non-existent. Mention should be made here of the order by the Provincial Court of Lleida, Penal Section 1 (no. 28/2011 of 25 January), which resolved a previous ruling against which an appeal had been brought, regarding the performance of a blood transfusion. The patient, a Jehovah's witness, told their attending physician, and had also stated in a duly registered AD, that they did not wish to have a blood transfusion even if their hypothetical condition rendered one necessary. In this case, and although several rulings by the Constitutional Court of Spain have described human life as a fundamental value that prevails over the freedom and ethics of the individual, the judge found that, taking into account that the only exceptions to consent will be when there is a risk to public health and when there is an immediate and

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