

# EMERGENCY MEDICAL CARE (“EMC”) & DO NOT RESUSCITATE (“DNR”) ORDERS IN BOTSWANA LIVING WILLS

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We have come full circle to where this topic started: living wills. Click [here](#) in case you missed those articles. Living wills as advance directives

To recap briefly: a living will is an advance directive made while a patient is mentally competent, which states that if at any time a person suffers from an incurable disease or injury that cannot be successfully treated, life-sustaining treatment should be withheld or withdrawn and the patient left to die naturally.

Depending on the wording of the living will and the condition of the patient, such a directive may be interpreted to include a request for a DNR order. Alternatively, the maker of the living will may add a clause requesting a DNR order, if they cease to breathe or their heart stops beating and the prognosis is hopeless, and resuscitation is likely to result in severe suffering or a persistent, irreversible, unconscious condition with no meaningful existence.

Although living wills have not been recognised by statute in Botswana, at common law they should be respected by doctors provided they are satisfied that the conditions for the refusal in the living will have been satisfied and that the document represents the current wishes of the patient (e.g. it is current and was lodged with the patient’s medical practitioners, family or attorneys, or was found on the patient’s person).

The National Health Quality Standards (“NHQS”) guidelines implicitly recognise living wills on the “*right to treatment and to refuse treatment*” and its “*position on withholding resuscitative services and foregoing life-sustaining treatments*.” These essentially say that patients should be given the opportunity and be encouraged to indicate their wishes regarding further treatment and as regards future care in possible critical circumstances.

The NHQS guidelines furthermore implicitly recognize proxy decision-making on behalf of incompetent patients by allowing such patients to mandate a person to make decisions on their behalf when they are no longer able to do so. In our view, to suggest that this would be to the exclusion of a written expression of will, would be absurd, although this has yet to be tested before our courts.

## What is informed refusal of treatment?

Patients have the right, ethically and legally, to refuse treatment even if it’s not in their best interests.

According to the National Health Act (“**the Act**”), informed refusal, as in the case of an informed consent, occurs when patients who are mentally competent state that they wish to refuse treatment after they have: (i) had the implications, risks and obligations of such refusal explained to them; (ii) understood and appreciated the consequences of the refusal; and (iii) confirmed that they wish to persist with such refusal.

The Act specifically enjoins health care providers to inform patients of their right to refuse health services and explain the implications, risks and obligations of such refusal.

With that, we are at end of this topic. If you read all four articles, you have my sincere thanks and I do hope that they prove useful to you, or spur you to think about some things you may not have considered.

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