



KANSAS 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

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

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Designed for use in the Legally Secure Your Financial Future program. Originally developed by Carol A. Schwab, J.D., LL.M., Professor and Extension Specialist, North Carolina State University Extension. Adapted for Kansas by Carol Young, Financial Management Specialist and Debra M. Sellers, PhD, Adult Development & Aging Specialist, both from Kansas State University, with assistance from Shon Robben, an attorney in Manhattan, Kansas.

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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 Kansas law as of July 2011. 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 the health care agent, Joe has the right to make this decision for his father at this time.

Kansas answer: It Depends/False

The durable power of attorney for health care (DPOA) in Kansas becomes effective if and when Grandpa Dan is unable to make decisions, as determined by his attending physician, or it may become effective by another standard if Grandpa Dan included specific language in the DPOA document.

We do not know what language is included in Grandpa Dan's durable power of attorney for health care. The power of attorney may give Joe the authority to make decisions on behalf of Grandpa Dan even before an attending physician can determine whether or not Grandpa Dan is able to make decisions on his own.

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

Kansas answer: False

Grandpa Dan's living will comes into effect after he has been diagnosed and certified in writing to have a terminal condition by two physicians. These physicians must have personally examined him, and one must be his attending physician. Thus, a living will does not 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. Grandpa Dan is not necessarily suffering from a terminal illness. Joe has no authority and no right to make this decision at this time.

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

Kansas answer: False

EMS has a duty to resuscitate Grandpa Dan when they are called, unless he has a "Do Not Resuscitate" (DNR) directive or order. If Grandpa Dan has a DNR directive or order that is given to the EMS personnel, or is wearing an insignia, EMS will not resuscitate him. Practically speaking, however, there are times EMS personnel may be reluctant to follow the written DNR and will resuscitate a patient despite the written DNR.

However, since DNR's are typically only completed for those at the end-of-life, or frail elderly, it is unlikely that Grandpa Dan has or should have completed a DNR directive or DNR order. 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.

Kansas answer: False

Unless Grandpa Dan has a DNR directive or order, which is unlikely (as noted above), EMS must resuscitate him, regardless of what is written in his living will. Under Kansas law, the attending physician and one other doctor must diagnosis and certify in writing that the patient is terminally ill. EMS personnel do not have the right to make this determination.

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

Kansas 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.

Kansas answer: It depends

It depends upon whether Grandpa Dan is able to communicate his health care decisions rationally. 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 is unable to communicate his health care decisions rationally, as determined by Grandpa Dan's attending physician, or if Grandpa Dan has written instructions regarding another standard that should be applied.

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

Kansas answer: False

Under Kansas law, the health care agent can not revoke a previously existing document regarding your wishes, such as a living will.

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