

November 16, 2015; Guam's Natural Death Act

Over the last three columns, I've discussed the topic of assisted suicide, also known as euthanasia or mercy killing. Undoubtedly, a number of readers have wondered if Guam has a law that permits such a practice.

The answer to this question depends on how you personally define assisted suicide. If you envision assisted suicide to be a voluntary act by a doctor to intentionally bring about a person's death, the answer is no – there is no Guam law that authorizes such behavior.

In fact, there is a specific provision in a Guam law that states that Guam does “not condone, authorize, or approve mercy killing or assisted suicide or permit any affirmative or deliberate act or omission to end life other than to permit the natural process of dying.” Consequently, a doctor may not give a patient a drug, or a drug cocktail, with the specific intent of ending the patient's life.

However, if you define assisted suicide to include the deliberate act of *withholding* treatment that could prolong life, you could successfully argue that indeed Guam has a law that permits a type of assisted suicide. Let me explain.

Almost twenty years ago, on March 5, 1996, the Guam Legislature passed Public Law 23-73:1, the Natural Death Act (NDA). Within the NDA, Guam recognizes “the right of any adult person to make a written declaration instructing his or her physician to withhold or withdraw life-sustaining treatment in the event of a terminal condition or permanent unconscious condition” This is sometimes referred to as “do not resuscitate.”

Let's explore some of the law's specific provisions. Persons with a sound mind who are 18 years or older can execute a written statement declaring that if they have an incurable or irreversible condition, a doctor may not administer any life-sustaining treatment. A parent or legal guardian of a minor can execute such a declaration on behalf of the minor.

This written declaration is often referred to as a “living will” or “advanced directive.”

Obviously, this must be done before the ravages of an illness rob the person of the mental capacity to make such a serious decision. In my practice, I've helped numerous clients draft living wills, and the vast majority aren't ill at all. The clients simply wish to prepare for the future. Frequently, a regular will is prepared at the same time as a living will. However, the NDA requires that the declaration be a separate document, so it can't be incorporated into a regular will.

The person must sign the living will in front of two witnesses. A witness cannot be someone who is entitled to any portion of the person's estate under a will

and cannot be an employee of a healthcare provider or community care facility. If the person is living in a nursing home, one of the witnesses must be a patient advocate or ombudsman, recognized as such under Guam law.

Under the NDA, a person can opt out of “life-sustaining treatment.” This can include instructions not to be connected to a life-support machine or to receive cardiopulmonary resuscitation if the heart stops beating or breathing ceases. The administration of medical procedures to alleviate pain and for nutrition or hydration are not considered “life-sustaining treatment.” A person can revoke a living will at any time, either orally or in writing, regardless of their frame of mind.

The declaration, or living will, becomes operative when: it is communicated to the attending physician; the person is diagnosed to be terminally ill or unconscious by both the attending physician and a second physician who personally examines the patient; and as a result of this condition, the patient is no longer able to make decisions regarding the administration of life-sustaining treatment.

Once a living will becomes operative, the attending physician and other healthcare providers must comply with the patient’s written instructions or they must take all reasonable steps to promptly transfer the patient to another doctor or healthcare provider who is willing to do so. Attempts to interfere with a living will, to hide its existence, or to change its terms are considered felonious criminal acts and can be punishable by incarceration.

According to the NDA, a death that results from withholding or withdrawing life-sustaining treatment may not be considered a suicide or homicide. Rather, it will be labeled a natural death. This is an important provision because many life insurance policies specifically exclude suicides and murders from coverage.

Proponents of euthanasia frequently argue that living wills are a type of legalized assisted-suicide. If patients can legally decide to withhold treatment to prolong life, they should also have the right to decide to take medication to end life when death is near.