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HEALTH

Living Wills: Clarify Requirements for Effective Revocation

CODE SECTION:	O.C.G.A. § 31-32-5 (amended)
BILL NUMBER:	HB 18
ACT NUMBER:	488
SUMMARY:	The Act addresses the written revocation of living wills and states that an effective written revocation of a living will must clearly express an intent to revoke a living will as opposed to an intent to revoke previous wills distributing property after the death of the testator.
EFFECTIVE DATE:	March 17, 1987

History

A living will "is a declaration directing one's family and physician to avoid heroic measures or extraordinary means of treatment in the case of terminal illness and to give only [palliative] care and permit natural death."¹ O.C.G.A. § 31-32-1 permits a person to execute a document which expresses an intent to have extraordinary life sustaining procedures withheld in the event of terminal illness.² A declarant of a living will may revoke at any time without regard to his mental state or competency.

O.C.G.A. § 31-32-5 provides three methods for revocation of a living will. First, a living will can be revoked by physical impairment, such as defacing, obliterating, burning, or otherwise destroying it.³ A revocation of a living will in this manner is effective if done by the declarant or by someone else in the presence of or under the direction of the declarant. Second, the declarant may revoke a living will in writing.⁴ A written revocation can be executed by the declarant or by some person acting under the direction of the declarant. This written revocation is effective only after the revocation is communicated to the attending physician by the person signing the revocation.⁵ Further, the Code provides that the attending physician, after notification of a written revocation, must docu-

1. Stanford, *The Georgia Living Will*, 21 GA. ST. B.J. 15, 15 (1985).

2. For a full explanation of the "Living Will Code," see generally Adams & Adams, *An Overview of Georgia Living Will Legislation*, 36 MERCER L. REV. 45, 65-66 (1984).

3. O.C.G.A. § 31-32-5(a)(1) (Supp. 1987).

4. O.C.G.A. § 31-32-5(a)(2) (Supp. 1987).

5. *Id.*

ment the date and the time of the revocation on the patient's medical records. Finally, O.C.G.A. § 31-32-5(a)(3) provides for revocation of a living will "by any verbal or non-verbal expression by the declarant of his intent to revoke the living will."⁶ Similar to a written revocation, this "verbal or non-verbal expression" of revocation must be communicated to and documented by the attending physician to be effective.⁷ The Act does not add any new means of revoking living wills, but seeks to clarify the written revocation and the "verbal or non-verbal expression" revocation clauses.

HB 18

The purpose of the Act is to prevent an inadvertent revocation of a living will. A will distributing real and personal property after death normally contains a standard revocation clause which revokes "all other wills." The standard revocation clause in a will distributing property after death could arguably apply to living wills. The Act addresses this potential problem. When the original living will bill was passed, the problem of an inadvertent revocation of a living will by the subsequent execution of a will relating to the disposition of property after death was not addressed.⁸ HB 18 was passed because the Judiciary Committee foresaw the possibility of a problem with the revocation section in O.C.G.A. § 31-32-5.⁹ The Committee wanted to clarify the revocability of living wills to avoid possible litigation on the issue.¹⁰

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6. O.C.G.A. § 31-32-5(a)(3) (Supp. 1987).

7. *Id.*

8 Telephone interview with Representative Kenneth Waldrep, House District No. 80 (Mar. 20, 1987).

9. *Id.*

10. *Id.*