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Advance Medical Directives (Part 1 of 2)

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Consent to End-of-Life Care

Article 11 of the *Civil Code of Québec*[1] states that no one can be made to undergo care without his consent. The *Act respecting end-of-life care*[2] ("the Act"), passed by the National Assembly of Québec, came into force on December 15, 2015. Since that date, a person can give or refuse consent to specific forms of end-of-life care, provided he has given advance medical directives ("AMDs") for that purpose. If no AMDs are in place, and the individual is incapable of giving or refusing consent to such care, a person authorized by the Act, or by a protection mandate which the individual gave in anticipation of incapacity, can give or refuse consent in place of the individual. AMDs must be in writing.

Form and transmission of content

Only two forms of AMDs are accepted, both of which are in writing:

1. Notarial deed *en minute*:
Your notary would be a good adviser for this form of AMDs, usually prepared at the same time as a will, or at the same time as a general power of attorney and protection mandate.
2. Using the form available from the Régie de l'assurance-maladie du Québec (RAMQ):
This form must be filled out and signed by its author in the presence of two adult witnesses. Persons wishing to obtain the form can request it from the RAMQ by phone.

In our opinion, a notarial deed is the safest way to ensure the person's wishes are respected. Such a document is considered proof of the individual's identity and capacity on the date the AMDs therein are given.

Once AMDs are drafted, they must be entered in the AMD registry kept by the RAMQ.

Thanks to that measure, a doctor who has a patient's health insurance card will have access to the registry at all times, and can read the patient's AMDs, if any. If the patient has given AMDs and they are in the registry, the doctor must carry them out.

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Provided the formalities for preparing the AMDs have been rigorously complied with, the patient has the assurance that his or her wishes, as set out in the AMDs, must be implemented if the patient is unable to make his or her consent or refusal known.

AMDs are restricted to THREE CLINICAL SITUATIONS and FIVE SPECIFIC TYPES OF CARE.

Clinical situations

AMDs are limited to the following three end-of-life situations:

> the person is at the end of life and is suffering from neurodegenerative impairment;
> the person's cognitive functions have been severely and irreversibly compromised, resulting in a comatose or vegetative state; or
> the person's cognitive functions have been severely and irreversibly compromised, resulting in a state of dementia at an advanced stage.

Specific types of care

By means of AMDs, a person can consent in advance to the following care, or refuse it in advance, in the event that he becomes incapable and the situation arises:

> Cardiopulmonary resuscitation
> Ventilator-assisted breathing or breathing by another device
> Renal dialysis treatment
> Forced or artificial feeding
> Forced or artificial hydration

This means that it is not possible to consent to, or refuse, types of care other than the five types mentioned above.

A person can consent to or refuse certain specific types of care in any of the clinical situations specified above. Therefore, AMDs can cover the three clinical situations referred to above, or just one or two of them, and, for each of the clinical situations, can consent to, or refuse, any or all the types of care listed above. For example, a person might give AMDs only for cases where his cognitive functions are severely and irreversibly compromised, resulting in a comatose or vegetative state. For that clinical situation, the person can accept or refuse any or all the care mentioned above — that is, cardiopulmonary resuscitation, assisted breathing, dialysis, forced or artificial feeding, and forced or artificial breathing.

It should be clear from the foregoing remarks that AMDs are not a substitute for protection mandates given by a person. The directives issued in AMDs complement a person's protection mandate, and are intended to consent in advance to certain types of care in specific clinical situations, or to refuse them in those situations. Such directives cannot be challenged by the individual's friends or family, and the medical team must comply with them. AMDs can be modified or revoked at any time, in accordance with the same formalities discussed above.

The next column in this series will be about medical aid in dying. It will help readers understand the difference between AMDs, and medical aid in dying.

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1. *Civil Code of Québec*, CQLR, c. C-1991.
2. *An Act Respecting End-of-Life Care*, RSQ, c. S-32.0001.

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