

# Wills, AMDs and LPAs – WHAT'S THE DIFFERENCE?

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As our population grows older, doctors are likely to encounter patients who need to make decisions about their future care. It is good for doctors to have these discussions with their patients and help them plan ahead so that their wishes are followed in the event that they are no longer able to make those decisions themselves. This article will discuss the differences between a will, an Advance Medical Directive (AMD) and a Lasting Power of Attorney (LPA).

## Will

A will or testament is a legal document that expresses the wishes of a person (testator) as to how his/her property (estate) is to be disposed when he/she is deceased, and which person (executor) will manage the property and the process of its disposal. If the deceased did not leave a valid will behind before he/she passed away, then Singapore's rules on intestate succession, as described in the Intestate Succession Act, will determine how the deceased's estate is distributed to his/her survivors.

Any person over the age of majority and having "testamentary capacity" (ie,

generally, being of sound mind) can make a will, with or without the aid of a lawyer. The legal requisites for testamentary capacity are:<sup>1</sup>

- (a) The testator understands the nature of the act and what its consequences are;
- (b) He/she knows the extent of his/her property of which he/she is disposing;
- (c) He/she knows who his/her beneficiaries are and can appreciate their claims to his/her property; and,
- (d) He/she is free from an abnormal state of mind (eg, delusions) that might distort feelings or judgements relevant to making the will.

Upon the death of the testator, an application for probate may be made in a court with probate jurisdiction to determine the validity of the will and to appoint an executor. If the will is ruled invalid in probate, then inheritance will occur under the laws of intestacy as if a will were never drafted.

## Advance Medical Directive

An AMD, also known as a "living will", is a legal document governed by the

Advance Medical Directive Act (AMDA) 1996 which authorises the use of AMDs in Singapore.<sup>2</sup> It allows a person of sound mind and over the age of 21 to sign an AMD in advance to inform his/her treating doctor that he/she does not want any extraordinary life-sustaining treatments to artificially prolong his/her life in the event of terminal illness, where death is inevitable and impending.<sup>3</sup> It only comes into effect when the person is terminally ill.

"Extraordinary life-sustaining treatment" refers to any medical procedures or interventions which, when administered to a terminally ill patient, will only prolong the process of dying when death is imminent. "Terminal illness" is defined in the AMDA as an incurable condition caused by injury or disease from which there is no reasonable prospect of a temporary or permanent recovery. For such a condition, death is imminent even if extraordinary life-sustaining measures were used. These measures would only serve to postpone the moment of death for the patient.<sup>4</sup>

To make an AMD, the person has to complete an AMD form (available from any clinic, polyclinic, hospital, or

online), sign it in the presence of two witnesses, and return it to the Registrar of AMDs at the Ministry of Health. The signer's doctor must be one of the two witnesses. The doctor will ensure that the signer is not forced into making the AMD, is of sound mind, and understands the nature and implications of an AMD. The witnesses must not have any vested interests in the signer's death.

The AMD is a confidential document, and the doctor and clinicians treating the patient do not know who has made an AMD. They are also not allowed to ask their patients if they have made an AMD. It is only when the treating doctor has reasons to believe that the patient is terminally ill and unable to make his/her wishes known, can the doctor then check with the Registrar of Advance Medical Directives on whether the patient has made an AMD. An AMD can be revoked at any time by the signer in the presence of at least one witness, by completing the AMD revocation form.

## Lasting Power of Attorney

The Mental Capacity Act (MCA) passed in Singapore in 2008 allowed for the setting up of an LPA,<sup>5</sup> which enables a competent adult ("donor") to plan ahead for his/her future needs by appointing one or more competent adults ("donees") to make decisions and act on his/her behalf, should he/she lose the mental capacity to make those decisions in the future. The appointed donee is empowered to act in two broad areas: (1) Personal welfare, which includes decisions relating to daily activities and accommodation; and (2) Property and affairs, which includes decisions relating to financial matters, property and assets.

The LPA certificate issuer (CI) has to determine the potential donor's mental capacity to make the relevant decisions relating to the setting up of the LPA at the time of the assessment. The CI also has to ensure that the potential donor has not been coerced or deceived into making the LPA.

The CI may only issue the certificate if the potential donor is assessed to have the mental capacity to set up the LPA.

The potential donor must also understand the LPA's purpose and the powers that will be given to the potential donee should the donor lose his/her mental capacity in the future. The completed LPA form is then submitted to the Office of the Public Guardian (OPG), who will verify the form and the accompanying documents. The LPA will be registered after three weeks if there are no objections received in that period.

There are two LPA forms available. LPA Form 1 is the standard form that most donors will use to grant their donees general powers, with some basic restrictions. LPA Form 2 is for donors who wish to grant their donees customised powers. LPA Form 2 will require the assistance of a lawyer to draft the annex to the form. To set up the LPA using either of these forms, the potential donor will need to see an LPA CI, who has to be an accredited medical practitioner, a practising lawyer or a registered psychiatrist.

The MCA (2008) was amended in 2021 to allow for the registering of LPAs online, which will come into effect in the later part of 2022. The Office of the Public Guardian Online (OPGO) system makes it easier by using an online form instead of the current paper form. To ensure security, the CI must obtain an access code from the donor when retrieving the online copy of the LPA form from the OPGO system. The CI is then able to go through the LPA form with the donor and complete the required sections. This allows for digital signing of the completed LPA form without requiring the physical red seals necessary in the current process. It also allows the CI to submit the LPA form on behalf of the donor through the OPGO system.

## Conclusion

There are key differences between a will, an AMD and an LPA. A will allows a person to determine the distribution of his/her property and assets after he/she dies. The AMD allows a person to specify that he/she does not want the use of extraordinary life-sustaining treatments when terminally ill. The LPA

allows a person to appoint someone to make personal welfare and financial decisions for him/her when he/she loses the capacity to make those decisions on his/her own. The doctor encountering patients wanting to plan ahead in these areas can help them understand the differences between these legal documents and how they may get their future needs organised. ♦

## References

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