

able to manage their affairs, something similar to this, only with health care decisions I assume would be implied in that area. The remedy in a will is that if there is misexecution or if there is some undue influence, that the will, itself, then may be thrown out, and we don't worry about that because the bounty of the estate is still present. You just don't distribute it to someone else. If there is misexecution here, or undue influence, unfortunately, we don't have that time period to reflect, the number of years, because time may be short. Is the appropriate remedy then for someone, if there is a suspect of that, to act quickly and go to court and try to make those determinations before, thus injunctive relief may be possible, is that an area that we are looking at?

SENATOR LANDIS: My guess is that somebody could attack a living will on an injunctive basis along the lines of what you argue and could interrupt the application of the living will. Procedurally, what the commons tell us is this, if you are a physician and you have the triggering mechanism, the patient has brought you the living will, it is in your medical files, you have this obligation, must you then go back, identify the age of the witnesses, whether they are in the will or the like, and perform a very complicated legal task to give effect to the living will? And the commissioners have said, no. What you should do is proceed on the professional standards in judgment of the doctor, given admittedly a somewhat simplified system of attestation, but that that is the greater of the policy choices because it effectuates the patient's desires more closely than a rigorous legal standard that would have everybody acting like lawyers and investigators before they do a living will.

SENATOR KRISTENSEN: Or you could make the living will self-proving, similar to what we do with a will where you don't...I mean the will is presumed to be valid because it has been notarized, and in statute, we have made it self-proving so you don't have to go back every time a will is submitted for probate and say, were they 18, were they of sound mind, dig up the witnesses. The fact is the document, in itself, presents the presumption that all those things, execution was validly performed, and it was self-proving, would that be...?

SENATOR LANDIS: That is a possibility. On the other hand, it has the same situation.

SPEAKER BAACK PRESIDING