

ADVANCE DIRECTIVES

UNDERSTANDING ADVANCE DIRECTIVES FOR HEALTH CARE

Living Wills
and
Powers of Attorney
in Pennsylvania



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Making Decisions About Your Medical Care

In Pennsylvania, you have the right to decide whether to accept, reject or discontinue medical care and treatment. If you have not been deemed incompetent to make medical decisions by a doctor, or if you have not been determined incapacitated by a court, then you may direct, by a living will declaration, your medical treatment. You may also have a Health Care Power of Attorney prepared for you, which designates another person to make decisions for you. These are complex issues and should be discussed with your doctor, family, close friends, and when appropriate, your lawyer.

The purpose of this guide is to provide you with general information, not legal advice, about some of these issues so you are informed. For specific advice, please contact your attorney.

Your doctor should provide you with enough information—i.e. risks, benefits, possible side effects, alternative procedure/treatment—for you to make an informed decision on a proposed medical procedure and/or medical treatment. If you desire a specific course of medical care and treatment (or lack thereof) that the provider will not honor, they must inform you and help you find a provider that will honor your wishes.

However, there is no law in Pennsylvania that guarantees that

your medical providers will follow your instructions in all circumstances. There are steps you can take to express your wishes for future medical care and treatment. The following is a series of questions and answers, not legal advice, designed to make these complex issues as easy to understand as possible.

- ***What is an advance directive?***

An advance directive is a written document that you may use, under certain circumstances, to tell others what care you would like to receive or not receive, should you become unable to express your wishes at some time in the future. An advance directive may take many forms and is commonly referred to as a “living will.” In Pennsylvania, a living will is known, according to the law, as an advance directive for health care.

- ***What is a living will?***

In Pennsylvania, a living will is an advance directive for health care and is a written “declaration” that describes the kind of life-sustaining treatment you want or do not want if you are later unable to express your wishes to your doctor.

- ***Who can make a living will?***

Any competent person who is at least 18 years old, or is a high school graduate, or has married can make a living will.

▪ ***What does it mean to be “incompetent”?***

Incompetence is the lack of sufficient capacity for a person to make or communicate decisions concerning himself or herself. The law allows your doctor to decide if you are incompetent.

▪ ***How should my living will be written?***

There is no single correct way to write a living will or declaration. However, your living will is not valid unless you sign it. If you are unable to do so, you must have someone else sign it for you, and two people who are at least 18 years old must sign your living will as witnesses. Neither of those witnesses may be the person who signed your living will on your behalf if you were unable to sign it yourself. It is suggested that you also date your living will, even though the law does not require it. In Pennsylvania, you are not required to have your living will notarized; however, if you are contemplating using the document in another state, you should find out if that state requires notarization, and whether there are other requirements for your living will to be valid.

▪ ***To whom should I give my living will?***

You should give a copy of your living will to your family doctor, and to an immediate family member, close friend or to your lawyer. When you enter a hospital or nursing facility, the law requires your doctor or other medical care provider to ask if you have a living will. If you give a copy of your living will to your doctor or other medical care provider that written document must be made a part of your medical record.

▪ ***What if my doctor or health care provider refuses to follow the directions in my living will?***

Your doctor and any other health care provider must inform you if they cannot, in conscience, follow your wishes, or if the policies of the health care provider prevent them from honoring your

wishes. This is one reason why you should give a copy of your living will to your doctor or to those in charge of your medical care and treatment when you enter a hospital or other medical facility.

If you are incompetent when you are admitted for medical care and have named someone in your living will to make decisions for you, that person must be informed if the wishes contained in your declaration cannot be honored. If you have not named anyone in your living will, your family, guardian or other representative must be informed that your declaration cannot be honored.

The doctor or other health care provider who cannot honor your wishes must then help transfer you to another health care provider willing to carry out your directions—if they are the kind of directions Pennsylvania recognizes as valid. It is advisable, as soon as possible after you have written your living will, to make sure your doctor will follow your wishes, as stated in your living will.

▪ ***When does my living will take effect?***

The advance directive or living will declaration becomes effective when:

- Your doctor has a copy of it; and
- Your doctor has concluded that you are incompetent and either in a terminal condition, or in a state of permanent unconsciousness. For terminal conditions or permanent unconsciousness, a second physician must confirm your doctor’s conclusion.

▪ ***May I change my mind?***

Yes, you may revoke your advance directive at any time and in any manner.

Health Care Power of Attorney

What is a Power of Attorney?

In general, a Power of Attorney is a written document where a principal, the individual making the Power of Attorney, designates an agent to transact a wide variety of powers and duties. The agent then acts for and on behalf of the principal and has a duty to act consistently in the best interests of the principal. A Health Care Power of Attorney designates an agent to make medical decisions for the principal and may contain specific directions for the agent.

Who may make a Power of Attorney?

In Pennsylvania, any competent person who is at least 18 years old may make a Power of Attorney document.

How should the Power of Attorney be written?

The documentation is not valid unless it is signed and dated by the principal. If, for any physical reason, the principal is unable to sign the Power of Attorney, a mark may be made in the presence of two witnesses who are at least 18 years old, and the principal's name shall then be subscribed to the document, and the two witnesses must sign the Power of Attorney in the presence of the principal. In Pennsylvania, the document need not be notarized, but if the principal is contemplating using the document in another state, then it is necessary to find out if the other state requires notarization or if there are other requirements for the Power of Attorney to be valid. Further, the Power of Attorney document is not valid unless it includes a conspicuous "notice," signed by the principal, appointing and empowering the agent and an "acknowledgment," signed by the agent, accepting appointment.

How is a Power of Attorney affected by disability?

A durable Power of Attorney is one in which the powers granted to an agent last indefinitely, unless specifically limited within the document. The Power of Attorney will continue in effect, notwithstanding the principal's subsequent disability, incapacity or incompetence. If not specified, a Power of Attorney is presumed to be "durable."

How is a Power of Attorney terminated?

The principal has the right to revoke, terminate or modify the Power of Attorney at any time. The document is revoked upon notice to the agent of the principal's death, disability or incapacity, **if the document is not durable**, or upon filing of a Divorce where the spouse is the agent.

There is no generic Power of Attorney form in use in Pennsylvania. Please contact your attorney for assistance with Power of Attorney forms.

The following is the Advance Directive for Health Care statutory form:

DECLARATION

I, _____, being of sound mind, willfully and voluntarily make this declaration to be followed if I become incompetent. This declaration reflects my firm and settled commitment to refuse life-sustaining treatment under the circumstances indicated below.

I direct my attending physician to withhold or withdraw life-sustaining treatment that serves only to prolong the process of my dying, if I should be in a terminal condition or in a state of permanent unconsciousness.

I direct that treatment be limited to measures to keep me comfortable and to relieve pain, including any pain that might occur by withholding or withdrawing life-sustaining treatment.

In addition, if I am in the condition described above, I feel especially strong about the following forms of treatment:

I do _____ do not _____ want cardiac resuscitation

I do _____ do not _____ want mechanical respiration

I do _____ do not _____ want tube feeding or any other artificial or invasive form of
 nutrition (food) or hydration (water)

I do _____ do not _____ want blood or blood products

I do _____ do not _____ want any form of surgery or invasive diagnostic tests

I do _____ do not _____ want kidney dialysis

I do _____ do not _____ want antibiotics

I realize that if I do not specifically indicate my preference regarding any of the forms of treatment listed above, I may receive that form of treatment.

OTHER INSTRUCTIONS:

I do _____ do not _____ want to designate another person as my surrogate to make medical treatment decisions for me if I should be incompetent and in a terminal condition or in a state of permanent unconsciousness.

Name and address of surrogate (if applicable):

Name and address of substitute surrogate (if surrogate designated above is unable to serve):

I do _____ do not _____ want to make an anatomical gift of all or part of my body,
Subject to the following limitations, if any:

I made this declaration on the _____ day of _____ (month, year)

Declarant: _____

Signature: _____

Address: _____

The declarant, or the person on behalf of and at the direction of the declarant, knowingly and voluntarily signed this writing by signature or mark in my presence.

Witness: _____

Signature: _____

Address: _____

Witness: _____

Signature: _____

Address: _____