

ADVANCE DIRECTIVES



Making Decisions About Your Care and Treatment:

*Your rights as a
patient in Pennsylvania*

Geisinger
Health System

Introduction

In Pennsylvania, competent adults have the right to decide whether to accept, reject or discontinue medical care and treatment. If you do not wish to undergo a certain procedure or to receive a certain type of treatment, you have the right to make your wishes known to your doctor or other health care provider and generally to have those wishes respected.

There may be times, however, when a person cannot make his or her wishes known to a health care provider. For example, a person may be unconscious or too badly injured to tell the attending doctor what kind of care or treatment he or she would like to receive or under what circumstances that doctor should withhold care of treatment.

Why you should take the time to read this

The purpose of this document is to inform you what the law currently states about your rights as a competent adult to tell other people if and how you would like to receive medical care and treatment from a health care provider in the event that you need medical attention but become physically or mentally unable to give instructions about your care and treatment later. It also outlines what Pennsylvania law states about the duty of a health care provider to follow your advance instructions.

To make these complex issues easier to understand, we have addressed them through a series of questions and answers. Before you make any decision about the issues addressed in this document, you should discuss them with your doctor, members of your family, and where appropriate, your attorney.

Questions and Answers

***Q.* What are my rights to accept, to reject or to stop medical care or treatment?**

A. In Pennsylvania, adults generally have the right to decide if they want to accept, reject or discontinue medical care and treatment.

***Q.* What does my doctor have to tell me about my care and treatment?**

A. Your doctor should provide you with all of the information which a person in your situation reasonably would want to know in order to make an informed decision about a proposed procedure or course of treatment. This means that your doctor should tell you about the risks and benefits of the medical procedure or course of treatment which he or she is recommending, possible side effects, and alternatives, if any, to the proposed procedure or course of treatment. You may accept or reject your doctor's advice and you may seek a second opinion.

***Q.* Does my health care provider have to tell me if it will not honor my wishes?**

A. Yes. The law requires your health care provider (hospital, nursing home, home health care services, hospice or HMO) to give you a written statement of its policies. For example, upon admission to a hospital, a patient must be told if that hospital will not honor his or her wish to have food and water withheld or withdrawn under certain circumstance.

Q. If I become physically or mentally unable to make a decision about my medical care or treatment, what can I do now to guarantee that my wishes will be followed later?

A. There is no law in Pennsylvania which guarantees that a health care provider will follow your instruction in every circumstance. There are, however, steps you can take to express your wishes about future treatment. One of these steps is to write and sign an advance directive.

Q. What is an advance directive?

A. An advance directive is a written document which 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. In Pennsylvania, two types are specifically authorized: (1) a Living Will and (2) a Durable Power of Attorney for Health Care. (For your convenience we have included these documents at the back of this booklet. You may fill out these forms at any time. You do not need an attorney in order to execute an Advance Directive.)

Q. What is a living will?

A. In Pennsylvania, a Living Will is a written document that describes the kind of life - sustaining treatment you want or do not want if you are later unable to tell your doctor what kind of treatment you wish to receive.

It is important for you to know that Pennsylvania's living will law does not recognize all types of instructions which might be contained in a person's living will. Only those instructions which relate to situations where medical treatment would serve only to prolong the process of dying or to maintain a patient in a state of permanent unconsciousness can be recognized. You should also understand that a Living Will is not a will. A will tells your survivors what to do with your property after your death.

Q. Who can make a living will?

A. Any competent person who (1) is at least 18 years old, (2) is a high school graduate, or (3) has married, can make a living will.

Q. When does a living will take effect?

A. A living will only takes effect when:

- your doctor has a copy of it; and
- your doctor has concluded that you are incompetent and therefore no longer able to make decisions about the medical care you wish to receive; and
- your doctor and a second doctor have determined that you are in a terminal condition or in a state of permanent unconsciousness.

Q. What is meant by "competent?"

A. Competence means sufficient capacity for a person to make or communicate decisions concerning himself. The law allows your doctor to decide if you are competent for purposes of implementing a living will and does not require a judge to make that decision.

Q. What should my living will contain?

A. There is no single, correct way to write a living will; your living will may have additional or different directions than the directions which appear in the sample living will included in this booklet. Your living will is not valid, however, unless you have taken the following steps:

- You must sign your living will. If you are unable to do so, you must have someone wise sign it for you; and
- Two persons 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 if you were unable to sign it yourself.
- You should also date your living will even though the law does not require it.

Q. What if I already have a living will?

A. Pennsylvania's living will law went into effect on April 16, 1992. You should review any living will drafted before that date to see that it meets the two requirements described above.

Q. To whom should I give my living will?

A. You should give a copy of your living will to your doctor, hospital, nursing home or other health care provider. When you enter a hospital or nursing facility, the law requires your doctor or other health care provider to ask if you have an advance directive. If you give a copy of your living will to your doctor or other health care provider, that document must be made a part of your medical record. The person(s) you have selected as your Agent(s) in a Durable Power of Attorney for Health Care should also be given a copy of your living will.

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

A. Your doctor and any other health care provider must tell you if they cannot in good conscience follow your wishes or if the policies of the institution 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.

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 told if the wishes contained in your living will cannot be honored. If you have not named anyone in your living will, your family, guardian or other representative must be informed that your living will cannot be honored. The doctor or other health care providers 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 direction which Pennsylvania recognizes as valid. If, after a discussion with your doctor or health care provider, you are not satisfied that your wishes are being followed, you may contact the Pennsylvania Department of Health, Division of Acute and Ambulatory Care, at 1-800-254-5164 to register your complaint.

Q. Is a living will effective when I am pregnant?

A. Pennsylvania law generally does not permit a doctor or other health care provider to honor the living will of a pregnant woman who has directed that she not be kept alive. The terms of such a living will may be honored, however, if the woman's doctor determines that

life-sustaining treatment (1) will not maintain the woman in a manner that will allow for the continued development of the unborn child, (2) will physically harm the pregnant woman, or (3) cause her pain which could not be relieved by medication.

If your living will is not honored because you are pregnant, the Commonwealth must pay all of the usual, customary, and reasonable expenses of your care.

Q. What if I change my mind after I have written a living will?

A. Pennsylvania's living will law stated that you may revoke a living will at any time. All that you must do is tell your doctor or other health care provider that you are revoking it. Someone who saw or heard you revoke your living will may also tell your doctor or other health care provider about the revocation.

You can also change or rewrite your living will. If you change your mind after you have written down your instructions, you should destroy your written instructions or revoke them and write new ones. You should also consider telling everyone who participated in your decision making process that you have changed your mind and give a copy of any new instructions to your doctor, health care provider, and anyone else who had a copy of your old instructions.

Q. What is a Durable Power of Attorney for Health Care?

A. A Durable Power of Attorney for Health Care is a document which allows you, the "Principal", to name another person, the "Agent", to make certain medical decisions for you if you are unable to make them for yourself. The person you choose as your Agent can:

- authorize your admission to a medical, nursing, residential or other facility;
- enter into agreements for your care, and
- authorize medical and surgical procedures.

The power to authorize medical and surgical procedures means that your Agent may arrange for and consent to medical, therapeutic, and surgical procedures for you, including the administration of drugs.

Q. Why do they call it a Durable Power of Attorney?

A. Normally, a power of attorney becomes ineffective if you become incapacitated. A "Durable" Power of Attorney continues to be effective or takes effect if or when you become incapacitated. In Pennsylvania, your Power of Attorney is presumed to be "durable" unless you specifically provide otherwise in the document itself.

Q. What are some of the major differences between a living will and a durable power of attorney for health care?

A. These are just some of the differences between the two documents:

- A Durable Power of Attorney for Health Care generally names someone (an "Agent") to make health care decisions for you without necessarily describing what those decisions should be. A Living Will, on the other hand, typically spells out what kind of life-sustaining treatment you want to receive, and may or may not name someone to

make those decisions for you should you become incompetent and in a terminal condition or permanent state of unconsciousness. Unlike a Durable Power of Attorney for Health Care, a Living Will only takes effect when you are in a terminal condition or a permanent state of unconsciousness, and only pertains to decisions about life-sustaining treatment.

- A Durable Power of Attorney for Health Care is designed to give your named representative (your "Agent") authority to make all sorts of medical care decisions for you, such as whether you should be admitted to a particular kind of health care facility. A Living Will, on the other hand, is generally used to tell your health care provider what kind of life-sustaining treatment you want to receive or not receive in the event you become unable to tell the provider yourself because you have become incompetent and are in a terminal condition or permanent state of unconsciousness.

Q. May I have both a Durable Power of Attorney for Health Care and a Living Will?

A. Yes.

Q. With whom should I discuss my instructions before I write them down?

A. Before you write your instructions down, you may wish to discuss them with your doctor, members of your family, friends, or other appropriate persons-such as a member of the clergy. If you are writing a Durable Power of Attorney for Health Care, you should also discuss your wishes with the person(s) you are naming as your Agent(s). Similarly, if you are writing a Living Will and naming someone in that document to carry out your wishes, you should discuss your wishes, with that person.

Q. To whom should I give my instructions?

A. You should give your written instructions to your family doctor and, if applicable, to your hospital, nursing home or other health care provider. You may also want to give a copy to your family or anyone else involved in your health care decisions about your care and treatment.

Q. What if I don't leave instructions or name an individual who will make decisions for me?

A. If you become unable to express your wishes about your medical care or treatment and do not leave instructions or name a person who will make decisions for you, a health care provider may ask your family or the courts to make decisions about your care and treatment.

Q. What if I have expressed my wishes orally about treatment, but have not put my wishes in writing?

A. Oral directions which you have given to your physician or your family will sometimes be followed by health care providers depending on how detailed and recent those instructions were. Thus, you may wish to tell your personal physician and your family your wishes about future treatment, even if you choose not to sign some sort of advance directive.

Q. Do I have to write a Living Will or Durable Power of Attorney for Health Care?

A. No. It's your decision. Under the law, a health care provider may not condition the provision of your care or otherwise discriminate against you on the basis of whether you have executed such a document. Moreover, under Pennsylvania law, no health care provider or insurer may charge a different fee or rate depending on whether you have completed a living will.

Q. If I have more questions about Living Wills or Durable Power of Attorney for Health Care, whom should I contact?

A. In addition to a lawyer, there are many individuals and groups who can provide you with information about such documents. Here are some that you may wish to consult:

- Your local long term care ombudsman, who can be reached by calling your community's Area Agency of Aging (AAA). The AAA phone number is in the Yellow Pages of your phone book.

Pennsylvania Council of Aging
555 Walnut Street, 5th Floor
Harrisburg, PA 17101-1919
(570) 783-1924

- The American Association of Retired Persons (AARP)
255 Market Street
Harrisburg, PA 17101
(570) 238-2277
- The Pennsylvania Medical Society
Business Resource Center
777 East Park Drive
Harrisburg, PA 18105-8820
(570) 558-7750

LIVING WILL

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 with hold 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 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 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. [NOTE: If you wish to designate a surrogate to make other kinds of health care decisions for you, you can fill out the "Durable Power of Attorney For Health Care" form at the end of this booklet.

Name and address of surrogate (if applicable): _____

Phone: _____

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

Phone: _____

Declarant's signature: _____ Date: _____

Declarant's address: _____

The declaration 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: _____

Witness' address: _____

Witness' signature: _____

Witness' address: _____

DURABLE POWER OF ATTORNEY FOR HEALTH CARE

NOTICE

THE PURPOSE OF THIS DURABLE POWER OF ATTORNEY FOR HEALTH CARE IS TO GIVE THE PERSON YOU DESIGNATE (YOUR "AGENT") BROAD POWERS TO MAKE DECISIONS REGARDING YOUR MEDICAL CARE AND TREATMENT.

THIS POWER OF ATTORNEY DOES NOT IMPOSE A DUTY ON YOUR AGENT TO EXERCISE GRANTED POWERS, BUT WHEN POWERS ARE EXERCISED, YOUR AGENT MUST USE DUE CARE TO ACT FOR YOUR BENEFIT AND IN ACCORDANCE WITH THIS POWER OF ATTORNEY.

YOUR AGENT MAY EXERCISE THE POWERS GIVEN HERE THROUGHOUT YOUR LIFETIME, EVEN AFTER YOU BECOME INCAPACITATED, UNLESS YOU EXPRESSLY LIMIT THE DURATION OF THESE POWERS OR YOU REVOKE THESE POWERS OR A COURT ACTING ON YOUR BEHALF TERMINATES YOUR AGENT'S AUTHORITY.

A COURT CAN TAKE AWAY THE POWERS OF YOUR AGENT IF IT FINDS YOUR AGENT IS NOT ACTING PROPERLY.

THE POWERS AND DUTIES OF AN AGENT UNDER A POWER OF ATTORNEY ARE EXPLAINED MORE FULLY IN 20 Pa.C.S. CH. 56.

IF THERE IS ANYTHING ABOUT THIS FORM THAT YOU DO NOT UNDERSTAND, YOU SHOULD ASK A LAWYER OF YOUR OWN CHOOSING TO EXPLAIN IT TO YOU.

I HAVE READ OR HAD EXPLAINED TO ME THIS NOTICE AND I UNDERSTAND ITS CONTENTS.

PRINCIPAL

DATE

DURABLE POWER OF ATTORNEY FOR HEALTH CARE

Power of Attorney made this _____ day of _____, 20 ____

1. I, the undersigned, hereby appoint (insert name and address of agent)

as my Agent to act for me, in my name and on my behalf, to make any and all decisions for me that I could make myself relating to my medical care and treatment. My agent shall be permitted to:

- A. apply for and authorize my admission to a medical, nursing, residential or similar facility, and to execute any admission or consent forms required by such facility that are consistent with this paragraph; and to enter into agreements for my care by such facility or elsewhere during my lifetime or for such lesser period of time as my Agent may designate, including retaining nurses to care for me
- B. arrange for and consent to medical, therapeutic and surgical procedures, including the administration of drugs; and, as provided by law, to authorize the withholding or withdrawal of medical, therapeutic and surgical procedures, even though my death may ensue
- C. have the same access to my medical records that I have, including the right to disclose the contents to others
- D. make a disposition of any part or all of my body for medical purposes, authorize an autopsy, and direct the disposition of my remains

2. The powers that I granted above shall be subject to the following rules or limitations (if none, leave blank):

3. This Durable Power of Attorney shall become effective on _____ (you may fill in a date; or a triggering event such as "my incapacity". If you leave this space blank, this Durable Power of Attorney will become effective immediately).

4. This Durable Power of Attorney shall terminate on _____ (if you leave this space blank, the powers that you have granted to your Agent shall remain in force throughout your lifetime, and through any period of your incapacity. Except as otherwise specifically provided in this document, these powers shall terminate upon your death).

5. If the Agent named by me shall die, become legally disabled, resign, refuse to act or be unavailable, I name the following persons (each to act alone and successively, in order named) as Successor Agents:

6. If I am found by a court to be legally incompetent, and a Legal Guardian is to be appointed for me, I hereby nominate the following persons (in the order named) to serve as such Guardian:

I AM FULLY INFORMED ABOUT ALL OF THE CONTENTS OF THIS FORM, AND I UNDERSTAND FULLY THE CONSEQUENCES OF THIS GRANT OF POWERS TO MY AGENT(S).

PRINCIPAL

DATE

THE PRINCIPAL HAS HAD AN OPPORTUNITY TO READ THE ABOVE FORM AND HAS VOLUNTARILY SIGNED THE FORM OR ACKNOWLEDGED HIS OR HER SIGNATURE OR MARK ON THE FORM IN MY PRESENCE:

WITNESS #1 SIGNATURE

DATE

WITNESS #1 ADDRESS

WITNESS #1 TELEPHONE

WITNESS #2 SIGNATURE

DATE

WITNESS #2 ADDRESS

WITNESS #2 TELEPHONE

You must have your Agent, and any Successor Agents that you have named, read and sign the following "Acknowledgement".

ACKNOWLEDGEMENT

I, _____, have read the attached power of attorney and am the person identified as the Agent (and Successor Agent(s), as applicable) for the principal. I hereby acknowledge that in the absence of a specific provision to the contrary in the power of attorney or in 20 Pa.C.S. when I act as agent:

I shall exercise the powers for the benefit of the principal.

If I have been given any authority to handle the principal's property, I shall keep the assets of the principal separate from my assets.

I shall exercise reasonable caution and prudence.

I shall keep a full and accurate record of all actions, receipts and disbursements on behalf of the principal.

AGENT

DATE

SUCCESSOR AGENT # 1

DATE

SUCCESSOR AGENT #2

DATE