State Bar of New Mexico Foundation
LAWYER REFERRAL
FOR THE ELDERLY PROGRAM
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OPTIONAL ADVANCE HEALTH-CARE DIRECTIVE

THIS FORM IS OPTIONAL. Each paragraph and word of this form is also optional. If you use this form, you may cross out, complete or modify all or any part of it. You are free to use a different form. If you use this form, be sure to sign it and date it.

INSTRUCTIONS

PART 1 of this form is a power of attorney for health care. PART 1 lets you name another individual as agent to make health-care decisions for you if you become incapable of making your own decisions or if you want someone else to make those decisions for you now even though you are still capable. You may also name an alternate agent to act for you if your first choice is not willing, able or reasonably available to make decisions for you. Unless related to you, your agent may not be an owner, operator or employee of a health-care institution at which you are receiving care.

Unless the form you sign limits the authority of your agent, your agent may make all health-care decisions for you. This form has a place for you to limit the authority of your agent.

PART I
POWER OF ATTORNEY FOR HEALTH CARE

This part is the health-care power-of-attorney form, which allows you to name an individual to act as your agent to make health care decisions for you

(1) DESIGNATION OF AGENT: I, _____, name the following individual as my agent to make health-care decisions for me:

_____

Name Phone Number

_____

Address City State Zip Code

If I revoke my agent's authority or if my agent is not willing, able or reasonably available to make a health-care decision for me, I designate as my first alternate agent:

_____

Name Phone Number

_____

Address City State Zip Code

If I revoke the authority of my agent and first alternate agent or if neither is willing, able or reasonably available to make a health-care decision for me, I designate as my second alternate agent:

_____

Name Phone Number

_____

Address City State Zip Code

This Program is funded by:
The Aging and Long Term Care Department, the NM Civil Legal Services Commission, and the State Bar of New Mexico

If you give your agent unlimited authority, they will have the right to:
(a) consent or refuse any care, treatment, service or procedure to maintain, diagnose or otherwise affect a physical or mental condition;
(b) select or discharge health-care providers and institutions;
(c) approve or disapprove diagnostic tests, surgical procedures, programs of medication and orders not to resuscitate; and
(d) direct the provision, withholding or withdrawal of artificial nutrition and hydration and all other forms of health care.

(2) AGENT'S AUTHORITY: My agent is authorized to obtain and review medical records, reports and information about me and to make all health-care decisions for me, including decisions to provide, withhold or withdraw artificial nutrition, hydration and all other forms of health care to keep me alive, except as I state here:

_____

_____

(3) WHEN AGENT'S AUTHORITY BECOMES EFFECTIVE: My agent's authority becomes effective when my primary physician and one other qualified health-care professional determine that I am unable to make my own health-care decisions. **If I initial this box [ ], my agent's authority to make health-care decisions for me takes effect immediately.**

(4) DURABILITY OF AGENT'S AUTHORITY: I intend for this Power of Attorney to be durable and to remain in full force and effect during any period of time where I have been determined to be incapacitated pursuant to Paragraph 3 above. Furthermore, I intend for this Power of Attorney to be effective notwithstanding any lapse of time since its execution. The durability of this Power of Attorney does not in any way affect my ability to revoke this instrument pursuant to Paragraph 14 below.

(5) AGENT'S OBLIGATIONS: My agent shall make health-care decisions for me in accordance with this power of attorney for health care, any instructions I give in Part 2 of this form, and my other wishes, to the extent known to my agent. To the extent my wishes are unknown, my agent shall make health-care decisions for me in accordance with what my agent determines to be in my best interest. In determining my best interest, my agent shall consider my personal values to the extent known to my agent.

(6) NOMINATION OF GUARDIAN: If a guardian of my person needs to be appointed for me by a court, I nominate the agent designated in this form. If that agent is not willing, able or reasonably available to act as guardian, I nominate the alternate agents whom I have named, in the order designated.

PART 2
INSTRUCTIONS FOR HEALTH CARE

PART 2 of this form lets you give specific instructions about any aspect of your health care.

If you are satisfied to allow your agent to determine what is best for you in making end-of-life decisions, you need not fill out this part of the form. If you do fill out this part of the form, you may cross out any wording you do not want.

(7) END OF LIFE DECISIONS: If I am unable to make or communicate decisions regarding my health care, and IF (i) I have an incurable or irreversible condition that will result in my death within a relatively short time, OR (ii) I become unconscious and, to a reasonable degree of medical certainty, I will not regain consciousness, OR (iii) the likely risks and burdens of treatment would outweigh the expected benefits, THEN I direct that my health-care providers and others involved in my care provide, withhold or withdraw treatment in accordance with the choice I have initialed below in one of the following three boxes:

Choices are provided for you to express your wishes regarding life-sustaining treatment, including the provision of artificial nutrition and hydration, as well as the provision of pain relief. Initial and check each choice that you want your health care provider or agent to follow. In addition, you may express your wishes regarding whether you want to make an anatomical gift of some or all of your organs and tissue. Space is also provided for you to add to the choices you have made or for you to write out any additional wishes.

[ ] (a) I CHOOSE NOT TO PROLONG LIFE
I do not want my life to be prolonged.

[ ] (b) I CHOOSE TO PROLONG LIFE
I want my life to be prolonged as long as possible within the limits of generally accepted health-care standards.

[ ] (c) I CHOOSE TO LET MY AGENT DECIDE
My agent under my power of attorney for health care may make life-sustaining treatment decisions for me.

(8) ARTIFICIAL NUTRITION AND HYDRATION: If I have chosen above NOT to prolong life, I also specify by marking my initials below:

[ ] I DO **NOT** want artificial nutrition

OR

[ ] I DO WANT artificial nutrition.

[ ] I DO **NOT** want artificial hydration unless required for my comfort

OR

[ ] I DO WANT artificial hydration.

(9) RELIEF FROM PAIN: Regardless of the choices I have made in this form and except as I state in the following space, I direct that the best medical care possible be provided at all times to keep me clean, comfortable and free of pain or discomfort so that my dignity is maintained, even if this care hastens my death.

(10) ANATOMICAL GIFT DESIGNATION: Upon my death I specify as marked below whether I choose to make an anatomical gift of all or some of my organs or tissue:

[ ] **I CHOOSE** to make an anatomical gift of my organs or tissue to be determined by medical suitability at the time of death, or by my wishes listed below, and artificial support may be maintained long enough for organs to be removed. I wish to make ONLY the following donation: _____.

[ ] **I REFUSE** to make an anatomical gift of any of my organs or tissue.

[ ] **I CHOOSE** to let my agent decide.

(11) OTHER WISHES: (If you wish to write your own instructions, or if you wish to add to the instructions you have given above, you may do so here.) I direct that:_____

_____

_____

PART 3
PRIMARY PHYSICIAN

PART 3 of this form lets you designate a physician to have primary responsibility for your health care, makes a copy as effective as an original, and allows you to revoke at any time.

(12) PRIMARY PHYSICIAN: I designate the following physician as my primary physician: _____

(13) EFFECT OF COPY: A copy has the same effect as the original.

(14) REVOCATION: I understand that I may revoke this OPTIONAL ADVANCE HEALTH-CARE DIRECTIVE at any time, and that if I revoke it, I should promptly notify my supervising health-care provider and any health-care institution where I am receiving care and any others to whom I have given copies of this power of attorney. I understand that I may revoke the designation of an agent either by a signed writing or personally informing the supervising health-care provider.

SIGNATURE: Sign and date the form here:

_____

Your signature Address

_____ _____

Today's Date Print your name

(Optional) SIGNATURE OF WITNESSES:

First Witness **Second Witness**

_____

Name Address Name Address

_____

Signature of Witness Date Signature of Witness Date

(Optional) NOTARY PUBLIC

STATE OF NEW MEXICO)
)ss.
County of _____)

THE FOREGOING instrument was acknowledged before me this _____ day of _____, 200_____, by the principal, _____.

_____
NOTARY PUBLIC

(SEAL)

My Commission expires: _____ .

STATE BAR of NEW MEXICO

Senior Supplement

An Educational Service of Lawyer Referral for the Elderly Program February 2008

Advance Health-Care Directive

For more information call the LREP toll-free Legal Helpline at 1-800-876-6657 or 505-797-6005 (Albuquerque area) or visit us online at www.nmbar.org.

You have the right to make your own health-care decisions as long as you have capacity. You have the right to name someone to make health-care decisions for you when you no longer have capacity. You also have the right to give instructions about your own health care. If you do this in writing, it is called an **Advance Health-Care Directive**. This document lets you name who you want to make decisions for you. It also lets you set out your instructions for end-of-life care, including anatomical gifts or organ donation. By putting this information in writing, you make it easier for your loved ones to know what you want. Witnesses and notarization are optional and not required. You can change your directive any time. A copy is as good as an original.

If two health-care professionals determine that you lack capacity to make your own decisions, your Advance Health-Care Directive goes into effect.

Capacity means the ability to understand what you're being asked to decide, make a decision and communicate it.

The Advance Health-Care Directive Form has three optional parts. You can use any parts you choose and you can change any language in the form to make it meet your needs.

Power of Attorney for Health Care

In the first part of the form, you can name someone you trust as your **agent** to make health-care decisions for you. You can also name other people as backup agents in case the person you name isn't able to act for you when the time comes. Unless you say otherwise, your agent can only make decisions for you if doctors determine you lack capacity. **Naming an agent must be done in writing**. If you don't name an agent in writing, you can later designate a surrogate decision maker, if you have capacity, by personally informing your health-care provider. If you don't designate a surrogate, New Mexico law identifies and prioritizes who can make decisions for you.

Instructions for Health Care

The second part of the form lets you state your wishes for end-of-life care. You can state whether you want to prolong life or not, and what methods you want to be used. It also lets you state your wishes about organ donation. You can also choose to let your agent decide about any of these matters when the time comes.

Primary Physician

The third part of the form lets you designate your primary physician, who would be one of two health-care professionals to decide whether you have capacity.

Revoking an Advance Health-Care Directive

As long as you have capacity, you can revoke an Advance Health-Care Directive. You can revoke your designation of an agent by a signed writing or by personally informing your health-care provider. You can revoke the other parts of the directive in any way that communicates your intent to revoke them.

Frequently Asked Questions About Advance Health-Care Directives:

Q. What health-care decisions can my agent or surrogate make?

A. Unless you limit your agent's authority, your agent has the right to consent or refuse consent to medical care, decide who treats you and where the treatment takes place, and approve or disapprove tests and orders not to resuscitate (DNRs).

Q. What is a DNR?

A. This is a Do Not Resuscitate order that your doctor writes with your consent (or your agent's consent if you lack capacity). This order instructs emergency medical technicians not to resuscitate you if you stop breathing.

Q. When will my instructions for health care go into effect?

A. When you are unable to make or communicate decisions, and either you have an incurable or irreversible condition that will result in your death within a relatively short time or you become unconscious and will not regain consciousness.

Q. Can my agent or surrogate have access to my medical records?

A. Yes. Your agent or surrogate has the same rights as you do to request, receive, examine, copy and consent to the disclosure of health-care information.

Q. If I appoint someone to be my agent, will I lose my right to make my own health-care decisions?

A. No. As long as you have the physical and mental capacity to make your own decisions, you are entitled to do so. Generally, an agent acts only when the principal is incapacitated.

Q. Can I name anyone I want to be my agent?

A. You can name any adult you choose. You should be sure the person you name is someone you trust to carry out your wishes. It should also be someone who is likely to be available when needed.

Q. How does the law prioritize surrogate decision-makers?

A. The law prioritizes surrogate decision-makers according to their relationship to you. The priority of decision makers is as follows:

1) The spouse;
2) An individual who has been in a long term relationship with the patient similar to the commitment of a spouse and where the individual and the patient consider themselves to be responsible for each other;
3) An adult child;
4) A parent;
5) An adult brother or sister;
6) A grandparent.

Q. What if none of these people is available?

A. An adult who has exhibited special care and concern for you, who is familiar with your personal values and who is reasonably available may act as your surrogate.

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