

PREVENTIVE LAW

SERIES

Legal Assistance Program

TOPIC:

ADVANCE MEDICAL DIRECTIVES

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**Legal Assistance Office
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**Office of the
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ADVANCE MEDICAL DIRECTIVES/LIVING WILL

The material in this handout represents general legal principles. The law is continually changing; although the information in the handout was current as of the date it was drafted, some provisions in this pamphlet may have changed. It is always best to consult an attorney about your legal rights and responsibilities regarding your particular case

All states recognize advance medical directives (AMDs) or "living wills". These are documents you create while healthy that express your desires concerning the medical treatment you want if you cannot speak for yourself. Under the Patient Self-Determination Act of 1990, all medical facilities receiving Medicare or Medicaid benefits must tell their patients about this law. Making your wishes known about the treatment you would want when you are unable to explain can be very helpful to doctors and to your family. You can do that in an AMD. You may prepare one when you check into a hospital – but you are not required to have one to receive care, treatment, or admission. Many individuals use both a living will and medical power of attorney (sometimes called a health care proxy) together to indicate their desires.

What is a living will?

A living will directs your doctor to withhold or withdraw life-prolonging treatment if you are terminally ill or permanently unconscious. It lists the treatments and procedures you do not want. For example, you can specify that you do not want cardiac resuscitation if you are diagnosed with a terminal condition. You can give directions to your doctor to provide only those treatments that will relieve pain and provide comfort. It applies only if you are terminally ill or permanently unconscious.

When does my living will take effect?

In general, it takes effect when:

- (1) You are diagnosed to be close to death from a terminal condition or to be permanently comatose; and
- (2) You cannot communicate your own wishes for your medical care orally, in writing, or through gesture; and
- (3) The medical personnel attending you are notified of your written directions for your medical care.

Where should I keep my living will?

Once you sign your living will give a copy to your physician to file for future reference. You can also request that a copy be filed in your military medical records. You should review your living will periodically and amend it to reflect any changes you desire.

What is a medical care power of attorney?

A medical care power of attorney (or health care proxy) is a document in which you name a person to make health care decisions for you when you cannot. It also allows you to provide specific instructions to your representative, or agent, about the type of care you would want. It is used whenever you do not have the capacity to make your own health care decision.

Who can be an agent or proxy?

It is very important to choose someone you trust to make decisions. Pick someone who knows you well and knows your values and wishes, and is willing to serve as your agent. You can appoint any adult except your doctor, an employee of your doctor, or an employee of your hospital or nursing home. Your agent does not have to be related to you and cannot be held liable for the costs of your care simply by serving as your agent.

Are there advantages to naming an agent?

Yes, since it is impossible to predict every possible contingency in an AMD, having both a living will and a medical care power of attorney covers other kinds of disability, or gray-area cases where it is uncertain that you are terminally ill, or your doctor or state law fail to give your wishes due weight. Your agent can talk with your doctor about your changing medical condition, deciding to authorize or have treatment withdrawn as circumstances change. Additionally, your agent can clarify vague language within your treatment instructions because of the agent's knowledge of the quality of life issues important to you.

Do advance directives affect decisions about life support?

Life support is used to replace or support a failing bodily function. Patients are often put on life support temporarily until their illness is stabilized or cured and their body resumes normal functioning. However, sometimes a patient's body never functions again without the use of life support. To make an informed decision about life support, consider the benefits as well as the burdens of the treatment being offered. A treatment may be beneficial if it relieves suffering or restores body functioning, or it may be burdensome if it causes pain or prolongs the dying process. In your advance medical directive you can state that you want certain life support measures for a specific length of time, with continuation based on your improvement. When making decisions about certain treatments, make sure you understand why the treatment is being offered and what benefits might result from it.

What happens if I do not have a living will or medical power of attorney?

The doctors treating you will use their discretion and judgment in deciding on medical care. If a question arises about whether surgery or some other medical procedure is authorized, doctors may turn to your spouse, adult child, or other close relative. Problems often arise when family members disagree what treatment is best for the patient. Indeed, disagreements can end up before the hospital's ethics committee for review, or even before a court to decide on the patient's behalf. To avoid putting family members against each other during a period of high emotional stress, prepare your advance medical directive, clearly stating your wishes about the treatments and procedures you want.

Why would I not want Cardiopulmonary resuscitation (CPR)?

The success of CPR depends on a patient's overall medical condition. While age alone does not determine whether CPR will be successful, the illnesses and frailties which occur as one ages often reduces the success rate of CPR. However, if a doctor determines that CPR will not work, it is not provided. When patients are seriously or terminally ill, CPR may not work or may only partially work, leaving the patient brain-damaged or in worse medical condition than before experiencing the heart failure.

Can I provide instructions about pain medication or food and water?

Many state laws presume people want relief from pain and discomfort and specifically exclude pain-relieving procedures from definitions of life-prolonging treatments that may be withheld. Some states also exclude food and water (also called nutrition and hydration) from the definitions of life-prolonging treatments. However, there is some controversy about whether providing food and water, or drugs to make a person comfortable, will also have the effect of prolonging that person's life. Some people choose to direct that all food, water, and pain relief be withheld if they are comatose or likely to die soon. Others direct to have their lives potentially prolonged rather than face the possibility that discomfort or pain will go untreated. It is extremely important to include your decision in your advance medical directives and discuss this with your family so that they know your wishes.

Can I donate my organs in an AMD?

Yes, your AMD can also include a statement indicating your decision about organ and tissue donation, although many states permit that on your driver's license.