

LawFacts

What you should know about.....

Living Wills and Health Care Powers of Attorney

Document last updated 4/8/2016



What is a health care power of attorney?

A health care power of attorney (or durable power of attorney for health care, sometimes known as a DPOA or health care proxy) is a legal document that authorizes another person (your agent) to obtain your health information and to make health care decisions for you. You can allow your agent to get your health information and communicate with your health care provider at any time, but health care decisions can be made for you only if and when you cannot make health care decisions for yourself.

A health care power of attorney:

- Names an individual you trust to make a wide variety of health care decisions for you at any time you cannot do so for yourself, whether or not your condition is terminal;
- Requires the person you appoint to make decisions that are consistent with your wishes; and
- Will not overrule a living will if you have both documents.

Are there any decisions about my health care treatment that my agent cannot make?

Yes. There are limits to the decisions your agent can make. Your agent cannot:

- Order the withdrawal of life-sustaining treatment unless two physicians have confirmed that you are in a terminal condition or permanently unconscious state, and that there is no reasonable possibility that you will be able to make decisions;
- Order the withdrawal of artificially or technologically supplied nutrition or hydration unless you are terminally ill or permanently unconscious and two physicians agree that nutrition and hydration will no longer provide comfort or relieve pain;
- Order the withdrawal of health care treatment you have previously consented to, unless your condition has changed so much that the treatment is significantly less beneficial to you, or is not achieving its purpose;

- Order the withdrawal of treatment intended to give you comfort care or to relieve pain; or
- Refuse or withdraw informed consent to health care if you are pregnant, if the refusal or withdrawal would end your pregnancy, unless the pregnancy or health care would create a substantial risk to your life or two physicians determine that the fetus would not be born alive.

If I want to designate someone to make health care decisions for me, must it be a member of my family?

No. You may appoint any adult you wish as long as it is not your doctor or the administrator of a health care facility in which you are being treated, or any person employed by either your doctor or a health facility in which you are being treated.

My mother is in a nursing home. If she made me her agent under her health care power of attorney, could I act on her behalf in every area affecting her treatment?

Yes, if your mother is unable to make informed health care decisions for herself. Also, you can obtain your mother's health care information if your mother has authorized you to do so through her health care power of attorney.

Can I use a health care power of attorney to take care of my mother's financial matters?

No. You must use a financial power of attorney document to address your mother's financial affairs. For more information on financial powers of attorney, see the Ohio State Bar Association's pamphlet, "What you should know about...Financial Powers of Attorney."

Can I use a health care power of attorney to name a guardian for me, my minor children, or my adult disabled children?

Yes. The health care power of attorney is usually sufficient to avoid the need for a guardian, but you can name ("nominate") guardians through this document. Your guardian should be someone you trust to handle your person, your estate, or both (and those of your minor or adult disabled children). You may also allow the guardian you name to nominate a successor guardian.

What is a mental health declaration?

Ohio law also allows for the creation of a "declaration of mental health treatment," a document specifically designed to address mental health care concerns. The standard health care power of attorney addresses both physical and mental health issues, but it may be advisable to also have a "declaration of mental health treatment" to indicate strong preferences about certain treatments, medications or doctors. For more information about the declaration of mental health treatment, visit the Disability Rights Ohio website at www.disabilityrightsohio.org and type "declaration of mental health treatment" in the search box.

What is a living will declaration?

A living will is a legal document you can use to set forth your directions about the use or non-use of artificial life-sustaining support if you become terminally ill or permanently unconscious. A living will:

- Becomes effective only when you cannot communicate your wishes and are permanently unconscious or terminally ill;
- Can be changed or revoked by you at any time, but cannot be changed or revoked by anyone else; and
- Trumps the health care power of attorney.

If my living will says I do not want to be hooked up to life-support equipment, would I still get pain medication?

Yes. A living will only affects care that artificially or technologically postpones death. It does not affect care that eases pain. For example, you would continue to receive oxygen and medical care including pain medication, spoon feeding and being turned over in bed. Your doctor is required to provide comfort care as long he or she feels it is medically appropriate.

Can I specify, in my living will, that I do not want cardiopulmonary resuscitation (CPR)?

Yes. You can direct your physician to write a DNR (do not resuscitate) order for you if two doctors have agreed that you are either terminally ill or permanently unconscious, and it is medically appropriate. For more information about DNR orders, see the Ohio State Bar Association's publication, "What you should know about...DNR Orders" or visit the Ohio Department of Health website at www.odh.ohio.gov (phone: 614-466-3975).

If I am in a terminal condition and I choose not to prolong my dying, what will the doctor do?

Your doctor will avoid life-sustaining treatment including CPR and technologically supplied nutrition and hydration; and he or she will issue a DNR (Do Not Resuscitate) order. Your doctor will also keep you as comfortable and pain-free as possible. In other words, you will be allowed to die naturally.

If I am in a permanently unconscious state, and I do not choose to prolong my life, what will the doctor do?

Your doctor will avoid life-sustaining treatment, including CPR, but will continue to provide technologically supplied nutrition and hydration unless your living will document says it should be withdrawn or withheld. Your doctor will continue efforts to keep you comfortable and pain-free.

Can my living will say I want treatment to be continued using every available means to keep me alive if I become critically ill?

Yes. You should also talk with your physician about your decision.

Who decides that I am terminally ill or permanently unconscious?

If you have indicated you do not want to prolong suffering in order to maintain life through artificial means (e.g., breathing tube, dialysis, IV nutrition, etc.) and would choose to allow a natural death, two doctors who have examined you must agree you have a terminal condition or illness. A terminal disease, injury or illness is an irreversible, incurable condition that will result in death regardless of treatment. "Permanently unconscious state" means you are permanently unaware of yourself and your surroundings.

A living will may be important for a senior citizen, but why would a young adult need one?

A living will can give you and your family peace of mind whether you are 25 or 75 years of age. Traffic accidents are still a leading cause of disability and death among young Ohioans. The Terri Schiavo case illustrates the importance of these documents and decisions for young adults as well as for older people. Terri Schiavo did not have a living will. Several months following massive brain damage from cardiac arrest in 1990, doctors determined she was in a "vegetative state," but a court battle lasted until 2005 over whether or not life support should be continued.

Would my family be notified before doctors stop life-support treatments?

Very likely, yes. Although doctors do not need your family's permission to follow the instructions provided through your living will, they must make reasonable efforts to notify a person named in your living will before following your instructions to withdraw life-support. If the person notified feels your living will is not being properly followed, or is not legally valid, an immediate hearing can be scheduled in probate court to decide if there is a legal reason why your instructions should not be followed. By law, no one can change or overrule your living will if it was freely and correctly executed.

If I have a living will, should I have a health care power of attorney, too?

Yes. Many people will want to have both documents, because a living will only applies in limited end-of-life circumstances, whereas a health care power of attorney covers all other situations concerning your medical care whenever you cannot make health care decisions for yourself. If, however, you choose to have only a health care power of attorney, you can give your agent the authority to make end-of-life decisions.

If I do not have a living will, can my health care power of attorney agent make end-of-life decisions for me?

Yes, if you spell this out in your health care power of attorney. Many people use a living will to dictate their end-of-life instructions, but if you choose to have only a health care power of attorney, you can give your agent the power to make all health care decisions, including the use or termination of life-support and artificial nutrition and hydration.

Where can I find the standard forms for a living will and health care power of attorney? Can I draw up my own?

The Ohio State Bar Association has developed standard forms with the Midwest Care Alliance, the Ohio State Medical Association, the Ohio Hospital Association and the Ohio Osteopathic Association to make it easier for those who choose to have these documents. You may obtain a copy of these forms by mailing a request along with \$4 to LeadingAge Ohio (formerly Midwest Care Alliance), 2233 North Bank Dr., Columbus, OH 43220, or by visiting that organization's website at www.midwestcarealliance.org. You may also be able to obtain a copy of these forms from a variety of other organizations or from your physician or attorney.

You do not have to use any forms. However, to be valid, forms for health care powers of attorney and living wills must include specific language spelled out in the Ohio Revised Code.

What do I do after I fill out these documents?

Make several copies. Give one to a trusted member of your family. Keep another with your personal papers. Leave copies with your physician and your lawyer, and, perhaps, your clergy person. Be sure to give a copy of your health care power of attorney document to the person you have designated to be your agent.

© April 2016 Ohio State Bar Association

LawFacts Pamphlet Series
Ohio State Bar Association
PO Box 16562
Columbus, OH 43216-6562
(800) 282-6556 or (614) 487-2050
www.ohiobar.org

Funding from the Ohio State Bar Foundation

This is one of a series of LawFacts public information pamphlets. Others may be obtained through an attorney's office, by writing the Ohio State Bar Association or through www.ohiobar.org.

The information contained in this pamphlet is general and should not be applied to specific legal problems without first consulting an attorney.

Reproduced and Distributed by:
Kenneth R. Sechler, Attorney at Law
6135 Memorial Dr, Suite105A
Dublin, Ohio 43017-9014
614/889-0234
ksechler@sechlerlaw.com ❖ www.sechlerlaw.com