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ADVANCE MEDICAL DIRECTIVES VIRGINIA HEALTH CARE DECISIONS ACT

(HEALTH CARE DECLARATION, MEDICAL POWER OF ATTORNEY)

ADVANCE DIRECTIVES AND THE HEALTH CARE DECISIONS ACT

1. What is an Advance Directive?

Many people are concerned about what would happen if, due to a mental or physical disorder, they could not tell their doctor what medical treatments they would or would not want. An advance directive is a statement either written or oral that makes your choices about medical treatment known to your doctor in advance. An advance directive may also name someone to make these decisions for you should you become incapable of deciding for yourself.

2. What is the Health Care Decisions Act and Who Should Be Aware of It?

The Virginia Health Care Decisions Act is a state law which permits adults to make advance directives. Anyone who has strong feelings about how they want to be medically treated should they become incapacitated or unable to communicate their needs should be aware of The Health Care Decisions Act.

3. What Does "Terminal Condition" Mean?

A "terminal condition" means a medical condition from which a patient can not recover, AND:

a) the patient will die regardless of the course of medical treatment (the patient's death is imminent)

or

b) the patient is in a permanent state of unconsciousness ("persistent vegetative state").

4. What Is Meant By "Life Prolonging Procedures"?

Life prolonging procedures refers to the use of artificial means to keep heart beat, respiration or other spontaneous vital functions going or to restore a vital function if it

stops when the patient has a terminal condition. These life prolonging procedures are not expected to cure the illness but merely prolong the dying process. Life prolonging procedures also include the artificial administration (by tubes or I.V.'s) of nutrition (food) and hydration (water). IT DOES NOT INCLUDE ANY PROCEDURE OR MEDICATION NECESSARY TO PROVIDE COMFORT OR ALLEVIATE PAIN.

HEALTH CARE DECLARATIONS

5. What Is A Health Care Declaration or Living Will?

A Living Will is not really a Will at all but rather it is a declaration which states in advance your wishes regarding the use of life-prolonging medical procedures if you are terminally ill and unable to provide further instructions. The Living Will has nothing to do with a conventional Will, which disposes of property after death. Some people refer to the Living Will as a Health Care Declaration. In this pamphlet we will be using the term Health Care Declaration, but remember that a Health Care Declaration is the same as a Living Will.

6. What Goes In A Health Care Declaration?

A Health Care Declaration may:

- a) direct that a specific procedure be provided; or
- b) direct a specific procedure or treatment be withheld.

The most important thing is that you make your Health Care Declaration clear and specific so that those who read it are able to determine what you want.

7. How Do I Make A Health Care Declaration?

A Health Care Declaration may be either a written document or an oral declaration.

- a) The written instrument may be made at any time and must be signed by you and two witnesses. Any one can be a witness except a spouse or blood relative.
- b) An oral Health Care Declaration or oral Living Will has some additional requirements:
 - i) You must be diagnosed as having a terminal condition by your attending physician before making the oral declaration.
 - ii) The oral statement must be made in front of two witnesses and the attending physician. Again, the witnesses cannot be a spouse or a blood relative.

8. Is A Health Care Declaration Executed Under The Former Virginia Natural Death Act Still Valid Under The New Health Care Decisions Act?

Yes. A properly executed Health Care Declaration under the old law remains valid under the new law.

MEDICAL POWER OF ATTORNEY

9. What Is A Medical Power Of Attorney?

A Medical Power of Attorney or Health Care Power of Attorney is another type of advance directive, which allows you to name another person or agent to make health care decisions for you in the event you are unable to speak for yourself.

10. What Is The Difference Between A General Durable Power Of Attorney And A Medical Power Of Attorney?

A General Durable Power of Attorney is a written authorization for someone to act on your behalf for whatever purpose you specify. It generally deals with financial matters. A Medical Power of Attorney is a special durable power of attorney directed exclusively at health care decisions.

11. What Goes In A Medical Power Of Attorney?

The most important part of a Medical Power of Attorney is the appointment of an agent to make health care decisions for you should you become incapable of making your own decisions. You may give the agent broad general powers or you may specify the types of decisions you want your agent to make for you. Some specific powers you may grant to your agent include the authority to:

- a. Allow access to all medical records;
- b. Employ and discharge medical providers;
- c. Consent to or refuse any medical treatment or diagnostic procedure;
- d. Provide guidelines for your agent to follow;
- e. Include other directions to insure the effectiveness of the Medical Power of Attorney.

12. How Do I Make A Medical Power Of Attorney?

The requirements for a Medical Power of Attorney are the same as those for a Health Care Declaration. The written document must be signed by you and two witnesses. The witnesses can not be your spouse or a blood relative.

13. Can I Make An Oral Medical Power Of Attorney?

Yes, the requirements are the same as making an Oral Health Care Declaration. A diagnosis of a terminal condition must be made prior to making the oral statement and the statement must be made in the presence of the attending physician and two witnesses.

14. Who Should Be My Agent?

Since the choice of your agent is your most important decision you should chose someone you can trust to make important medical decisions for you. You should speak to the person (and successor persons) you wish to appoint beforehand to explain your intentions and to confirm their willingness to act on your behalf.

15. When Would My Doctor Talk To My Agent About Decisions Affecting My Health Care?

Your doctor can only talk to your agent when you are unable to make your own informed health care decisions. Legally you are unable to make your own decisions when you have a physical or mental disorder which prevents you from communicating or impairs your judgement.

16. What is the Difference Between A Medical Power Of Attorney And A Health Care Declaration?

People often confuse the two documents but they really do have different purposes. The Health Care Declaration is your own personal statement of the life prolonging procedures you would or would not want should you have a terminal condition and are unable to express your treatment preferences. The Medical Power of Attorney is a document which appoints another person (agent) to make health care decisions for you any time you are unable to decide for yourself. The Health Care Declaration deals solely with life prolonging procedures and applies only if you have a terminal condition. The Medical Power of Attorney covers any situation where you can't make treatment decisions for yourself. It is not limited to life prolonging procedures and you need not have a terminal condition. That doesn't mean you should substitute the Medical Power of Attorney for a Health Care Declaration. In fact, it is probably best to have both documents. What is most important is to be specific about what treatments you want, or do not want, at an end of life situation.

17. Do I Need Both A Medical Power Of Attorney And A Health Care Declaration In Order To Make My Health Care Wishes Known?

Some attorneys draft a Medical Power of Attorney and place within it a Health Care Declaration - you end up signing one document. That is perfectly acceptable. Other attorneys prefer to prepare two separate documents - a Health Care Declaration and a Medical Power of Attorney -both of which refer to each other. This is also perfectly acceptable. How you do these documents is less important than making sure that your wishes are known and that you appoint someone to carry them out.

USING ADVANCE DIRECTIVES WHEN MAKING HEALTH CARE DECISIONS

18. What Do I Do With My Advance Directives After Making Them?

The law requires that all health care facilities ask patients if they have advance directives and once aware of the advance directives must make sure they are a part of your medical record. You should also notify your attending physician that you have made advance directives or, if you are unable to, any other person may notify your physician. Although you don't have to give the original documents to your agent, your agent should know how to get the original documents should an emergency arise.

19. Does My Doctor Have To Follow My Advance Directive?

The physician has a choice of whether to follow an advance directive or not. If your doctor chooses not to follow your advance directive, then he/she must make a reasonable effort to transfer your care to another physician who will follow your wishes.

20. What Happens When There Are No Advance Directives?

If you are incapable of making your own health care decisions and you have no advance directive, Virginia law requires your doctor to look to the following persons, in the specified order of priority to make health care decisions for you:

- a) Your legal guardian
- b) Your spouse
- c) An adult child
- d) Your parent
- e) An adult brother or sister
- f) Nearest living relative

Whoever is making health care decisions for you must act according to your known religious beliefs, basic values and stated preferences. There are no presumptions that you would consent to or refuse any life prolonging procedures.

21. Can I Revoke An Advance Directive?

Yes, both the Health Care Declaration and Medical Power of Attorney may be revoked by:

- a) A signed, dated, written statement revoking it.
- b) Intentionally destroying it.
- c) Making an oral statement of intent to revoke the declaration.

The revocation is effective as soon as it is communicated to the attending physician. You should also notify your agent in writing when you revoke a Medical Power of Attorney.

22. Is My Advance Directive Executed In Another State, Valid In Virginia?

If an advance directive executed in another state complies with the laws of that state OR complies with the laws of Virginia, that advance directive will be deemed valid in Virginia.

23. How Can I Obtain An Advance Directive?

The Virginia Department for the Aging, located at 700 East Franklin Street, Richmond, Virginia 23219-2327, has Advance Directive forms they will mail to you at no cost if you make a request. You may call the Department's information line at 1-800-552-3402 and ask them to send you copies of their Advance Directive forms. Also, although it is not necessary, sometimes it is a good idea to hire an attorney to draft these documents for you. A lawyer can help make your advance directives more personal and include specific instructions you may want in the documents that the state forms do not provide. Any attorney who specializes in elder law should be able to do this. Furthermore, if you meet certain eligibility requirements, Legal Services of Northern Virginia may be able to draft your Advance Directives for free. For more information contact the Legal Services in your area.

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IMPORTANT

Everyone's situation is different and most every rule has exceptions. The information above is intended only for general informational purposes in the State of Virginia. It may not apply to your individual situation. Therefore, it is advisable to discuss your particular situation with a lawyer.

If you need legal help, call the Legal Services Branch that serves the city or county in which you live to make an appointment. To be helped by Legal Services, you must meet financial eligibility requirements. These guidelines will be explained to you when you call.

MAIN OFFICE (FALLS CHURCH OFFICE)	703-778-6800
ALEXANDRIA OFFICE	703-684-5566
ARLINGTON OFFICE	703-532-3733
FAIRFAX OFFICE	703-246-4500
LOUDOUN OFFICE (IN LEESBURG)	703-777-7450
MANASSAS OFFICE	703-368-5711

LAWYER REFERRAL SERVICES

For a small fee you can have a half hour appointment with an attorney, call:

Alexandria	703-548-1105
Arlington	703-228-3390
Fairfax	703-246-3780
Statewide	800-552-7977
Services are available for the hearing impaired by calling:	800-828-1140

Phone numbers updated February 2005