

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

Yes, but not until she is no longer able to make those decisions on her own behalf. A durable power of attorney for health care covers not just life-sustaining treatment, but all aspects of medical treatment whenever the patient is unable to express his or her own wishes. A regular power of attorney over a relative's business affairs does not apply to medical situations. You need a special durable power of attorney for health care.

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.

I had a durable power of attorney for health care before the 1991 law went into effect. Do I need a new one?

You may. Check with your attorney to make sure that the document you have includes specific language that is required under the 1991 law.

What do I do after I fill out a living will declaration or form for a durable power of attorney for health care?

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.

Can I have documents saying that if I become critically ill, I want treatment to be continued using every available means to keep me alive?

Yes, but you should talk to an attorney. You will not be able to use the standard forms for the documents. You should also talk to your physician about the effect of your decision.

Definitions

Ohio's Living Will Law uses several words that meanings that might be helpful to explain here.

Life-sustaining treatment – any medical procedure, treatment, intervention or other measure that when administered to you serves principally to prolong life.

Hydration – fluids that are artificially or technologically administered through tubes.

Nutrition – refers to food that is artificially or technologically administered through tubes.

Permanently unconscious – to a reasonable degree of medical certainty; (1) you are irreversibly unaware of yourself or your environment; and (2) there is total loss of cerebral cortical functioning – which results in your having no capacity to experience pain or suffering.

Terminal condition – an irreversible, incurable and untreatable condition caused by disease, illness or injury from which, to a reasonable degree of medical certainty: (1) there can be no recovery; and (2) death is likely to occur within a short period of time if life-sustaining treatment is not administered.

Comfort care – nutrition and/or hydration when administered to diminish pain or discomfort, but not to postpone death; and any other medical care that diminishes pain or discomfort – like pain medication and turning a patient – but does not postpone death.

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

Feel free to call our office if you have any questions. Our attorneys are here to help you.

LIVING WILL DECLARATIONS AND HEALTH CARE POWERS OF ATTORNEY

Frequently Asked Questions ...

FGKS

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What is a living will declaration?

A living will is a legal document you can complete now that declares what your wishes are regarding the use of life-sustaining treatment if you should become terminally ill or permanently unconscious.

A living will:

- becomes effective only when you are unable to communicate your wishes and are permanently unconscious or terminally ill;
- spells out whether or not you want life-support technology used to prolong your dying;
- gives doctors the authority to follow your instructions regarding the medical treatment you want under these conditions;
- can be changed or revoked by you at any time, but cannot be changed or revoked by anyone else;
- will be followed for a pregnant woman only if certain conditions apply; and
- specifies under what conditions you would want artificial feeding and fluids to be withheld.

What is a durable power of attorney for health care?

A durable power of attorney for health care is a legal document that authorizes another person to make health care decisions for you if you are unable to make informed health care decisions for yourself.

A durable power of attorney for health care:

- names an individual you trust to make a wide variety of healthcare decisions for you at any time you cannot do so for yourself – whether or not your condition is terminal;
- becomes effective only when you cannot make your own decisions regarding treatment;
- requires the person you appoint to make decisions that are consistent with your wishes; and will not overrule a living will in the event you have both documents.

I don't know about life-support equipment, or what treatment I would want. How do I get more information?

Each of us has the right to learn about our options and should assume responsibility for our own health care decisions. It is important to talk to your doctor and get your questions answered.

If I have a living will, do I need a durable power of attorney for health care too?

Many people will want to have both documents because they address different aspects of your medical care. A living will gives your instructions directly to your doctor and it applies only when you cannot communicate your wishes and are in a terminal condition or are permanently unconscious.

A durable power of attorney covers a wide range of health care decisions – like approving surgery or changing doctors after an accident – that do not require a patient to be dying. Often a spouse or relative is selected to act on your behalf when you cannot, because such a person knows you well enough to know what you would want done.

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 would never affect care that eases pain. For example, you would continue to receive oxygen and medical care that includes pain medication, spoon feeding and being turned over in bed.

Can I specify that I do not want cardiopulmonary resuscitation (CPR)?

Yes. You may include a clause authorizing a “DNR order” in your living will. DNR stands for “do not resuscitate.” The standard form for living wills now includes such a DNR provision. This living will DNR is useful for conveying your wishes to family members and medical staff; however, it will not be activated unless two doctors have agreed that you are either terminally ill or permanently unconscious, and your personal doctor has agreed that you can no longer express your wishes regarding health care. Your attorney can help

answer questions about DNR orders and the provisions concerning DNR that may be included in a living will. You can also discuss DNR orders with your family doctor.

Who decides that I am dying or permanently unconscious without hope of recovery?

If you have indicated that you do not want your dying to be artificially prolonged, two doctors who have examined you must agree that you are beyond any medical help and that you will not recover.

A living will may be important for a senior citizen, but why is this a priority for someone in their twenties?

A living will is designed to give you and your family peace of mind whether you are 25 or 75 years of age. Traffic accidents are the leading cause of death among Ohioans under the age of 45. When Nancy Cruzan was 25 years old, she was thrown from a car and went into an irreversible coma. Because she did not have a living will or durable power of attorney, her family had to struggle in the courts, including the United States Supreme Court, for seven years before life-support machines could be turned off.

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

It is very likely that your family would be informed. Although doctors do not need your family's permission to follow the instructions provided through your living will, they are required to make reasonable efforts to notify a person named in your living will, or a family member, before following your instructions to withdraw life-support. If that person feels your living will is not being properly followed, or is not legally valid, an immediate hearing can be scheduled in probate court to determine if there are legal grounds not to follow your instructions. By law, no one can change or overrule your living will if it was freely and correctly executed.

If my condition becomes hopeless, can I specify that I want my feeding and fluid tubes removed?

No special instructions are needed to allow the withholding of nutrition and hydration if you are in a terminal condition and they do not provide you with comfort or relieve your pain. However, if you want to allow your doctor to withhold artificial nutrition/hydration if you are permanently unconscious, your documents need to expressly state this.