

WEST VIRGINIA



**Legal Documents
To Assure Future Health Care Choices**

ADVANCE DIRECTIVES

YOUR RIGHT TO MAKE HEALTH CARE DECISIONS UNDER THE LAW IN WEST VIRGINIA

INTRODUCTION

West Virginia and federal law give every competent adult, 18 years or older, the right to make their own health care decisions, including the right to decide what medical care or treatment to accept, reject or discontinue. If you do not want to receive certain types of treatment or if you wish to name someone to make health care decisions for you, you have the right to make these desires known to your doctor, hospital or other health care providers, and in general, have these rights respected. You also have the right to be told about the nature of your illness in terms that you can understand, the general nature of the proposed treatments, the risks of failing to undergo these treatments and any alternative treatments or procedures that may be available to you.

However, there may be times when you cannot make your wishes known to your doctor or other health care providers. For example, if you were taken to a hospital in a coma, would you want the hospital's medical staff to know what your specific wishes are about the medical care that you want or do not want to receive.

This booklet describes what West Virginia and federal law have to say about your rights to inform your health care providers about medical care and treatment you want, or do not want, and about your right to select another person to make these decisions for you, if you are physically or mentally unable to make them yourself.

To make these difficult issues easier to understand, we have presented the information in the form of questions and answers. Because this is an important matter, we urge you to talk to your spouse, family, close friends, personal advisor, your doctor and your attorney before deciding whether or not you want an advance directive.

QUESTIONS AND ANSWERS

GENERAL INFORMATION ABOUT ADVANCE DIRECTIVES

What are "Advance Directives"?

Advance directives are documents which state your choices about medical treatment or name someone to make decisions about your medical treatment, if you are unable to make these decisions or choices yourself. They are called "advance" directives, because they are signed in advance to let your doctor and other health care providers know your wishes concerning medical treatment. Through advance directives, you can make legally valid decisions about your future medical care.

West Virginia law recognizes 2 types of advance directives:

- 1) A Living Will.
- 2) A Medical Power of Attorney.

Do I have to have an Advance Directive?

No. It is entirely up to you whether you want to prepare any documents. But if questions arise about the kind of medical treatment that you want or do not want, advance directives may help to solve these important issues. Your doctor or any health care provider cannot require you to have an advance directive in order to receive care; nor can they prohibit you from having an advance directive. Moreover, under West Virginia law, no health care provider or insurer can charge a different fee or rate depending on whether or not you have executed an advance directive.

What will happen if I do not make an Advance Directive?

You will receive medical care even if you do not have any advance directives. However, there is a greater chance that you will receive more treatment or more procedures than you may want.

If you cannot speak for yourself and you do not have any advance directives, your health care provider will look to the following people in the order listed for decisions about your care:

- 1) Your guardian, if a court has appointed one;
- 2) Your spouse;
- 3) Any of your adult children;
- 4) Either of your parents;
- 5) Any of your brothers or sisters;
- 6) Any of your adult grandchildren;
- 7) A close friend; or
- 8) Other persons chosen by the West Virginia Department of Health and Human Resources.

How do I know what treatment I want?

Your doctor must advise you about your medical condition and what different treatments can do for you. Many treatments have serious side effects. Your doctor must give you information, in language that you can understand, about serious problems that medical treatment is likely to cause. Often, more than one treatment might help you and different people might have different ideas on which is best. Your doctor can tell you the treatments that are available to you, but he or she cannot choose for you. That choice depends on what is important to you.

Whom should I talk to about Advance Directives?

Before writing down your instructions, you should talk to those people closest to you and who are concerned about your care and feelings. Discuss them with your family, your doctor, friends and other appropriate people, such as a member of your clergy or your lawyer. These are the people who will be involved with your health care if you are unable to make your own decisions.

When do Advance Directives go into effect?

It is important to remember that these directives only take effect when you can

no longer make your own health care decisions. As long as you are able to give "informed consent," your health care providers will rely on **YOU** and **NOT** on your advance directives.

What is "Informed Consent" ?

Informed consent means that you are able to understand the nature, extent and probable consequences of proposed medical treatments and you are able to make rational evaluations of the risks and benefits of those treatments as compared with the risks and benefits of alternate procedures **AND** you are able to communicate that understanding in any way.

How will health care providers know if I have any Advance Directives?

All hospitals, nursing homes, home health agencies, HMO's and all other health care facilities that accept federal funds must ask if you have an advance directive, and if so, they must see that it is made part of your medical records.

Will my Advance Directives be followed?

Generally, yes, if they comply with West Virginia law. Federal law requires your health care providers to give you their written policies and procedures concerning advance directives. A summary statement of those policies is provided for you at the back of this book. It may happen that your doctor or other health care provider cannot or will not follow your advance directives for moral, religious or professional reasons, even though they comply with West Virginia law. If this happens, they must immediately tell you. Then they must also help you transfer to another doctor or facility that will do what you want.

Can I change my mind after I write an Advance Directive?

Yes. At any time, you can cancel or change any advance directive that you have written. To cancel your directive, simply destroy the original document and tell your family, friends, doctor and anyone else who has copies that you have cancelled them. To change your advance directives, simply write and date a new one. Again, give copies of your documents to all the appropriate parties, including your doctor.

Do I need a lawyer to help me make an Advance Directive?

A lawyer may be helpful and you might choose to discuss these matters with him or her, but there is no legal requirement in West Virginia to do so. You may use the form that is provided in this booklet to execute your advance directives.

Can I provide for organ donation in West Virginia Advance Directives?

Yes. West Virginia law now provides that you can include a statement concerning your wishes to donate your tissues and organs after death in West Virginia's advance directive document. You do **NOT** have to donate your organs after death to fill out the advance directive document.

Will being an organ donor affect my care at the hospital?

No. If you are injured or ill and are taken to a hospital emergency room, you will

receive the best possible care, whether or not you are an organ donor. Donation procedures begin only after all efforts to save your life have been exhausted and death has been declared.

Does my religion permit organ donation?

Almost every major faith either supports organ and tissue donation or finds it acceptable as a personal decision for their members. The Gypsy faith is the only one holding any restrictions regarding donation due to their belief in the afterlife.

Can I still have a regular funeral service?

Yes. A traditional open casket funeral service can still take place, even though many organs and tissues have been donated. The surgical procedures used are performed by highly skilled professionals and the appearance of the donor's body is unchanged.

Will my West Virginia Advance Directive be valid in another state?

The laws on advance directives differ from state to state, so it is unclear whether a West Virginia advance directive will be valid in another state. Because an advance directive is a clear expression of your wishes about medical care, it will influence that care no matter where you are admitted. However, if you expect to spend a great deal of time in another state, you might want to consider signing an advance directive that meets all the legal requirements of that state.

Will Advance Directives from other states be valid in West Virginia?

Yes. An advance directive executed in compliance with another state's laws will be valid in West Virginia to the extent permitted by West Virginia law.

What should I do with my Advance Directives?

You should keep them in a safe place where your family members can get to them. Do **NOT** keep the original copies in your safe deposit box. Give copies of these documents to as many of the following people as you are comfortable with: your spouse and other family members; your doctor; your lawyer; your clergy person; and any local hospital or nursing home where you may be residing. Another idea is to keep a small wallet card in your purse or wallet which states that you have an advance directive and who should be contacted. Wallet cards are provided for you at the back of this booklet for that purpose.

LIVING WILL

What is a "Living Will"?

A living will is a document which tells your doctor or other health care providers whether or not you want life-prolonging treatments or procedures administered to you if you are in a terminal condition or a persistent vegetative state. It is called a "living will" because it takes effect while you are still living.

Is a "Living Will" the same as a "Will" or "Living Trust"?

No. Wills and living trusts are financial documents which allow you to plan for

the distribution of your financial assets and property after your death. A living will only deals with medical issues while you are still living. Wills and living trusts are complex legal documents and you usually need legal advice to execute them. You do not need a lawyer to complete your West Virginia living will.

When does a West Virginia Living Will go into effect?

A West Virginia living will goes into effect when:

- 1) your doctor has a copy of it, and
- 2) your doctor has concluded that you are no longer able to make your own health care decisions, and
- 3) your doctor has determined that you are in a terminal condition or persistent vegetative state and the use of life-prolonging procedures will only prolong your death.

What are "life-prolonging" procedures?

These are treatments or procedures that are not expected to cure your terminal condition or make you better. They only prolong dying. Examples are mechanical respirators which help you breathe, kidney dialysis which clears your body of wastes, and cardiopulmonary resuscitation (CPR) which restores your heartbeat.

What is a "terminal" condition?

A terminal condition is defined as an incurable or irreversible condition for which administration of medical treatment will only prolong the dying process and without administration of these treatments or procedures, death will occur in a relatively short period of time.

What is a "persistent-vegetative" state?

A persistent vegetative state means that a patient is in a permanent coma or state of unconsciousness caused by illness, injury or disease. The patient is totally unaware of himself or herself, his or her surroundings and environment and to a reasonable degree of medical certainty, there can be no recovery.

Is a Living Will the same as a "Do Not Resuscitate (DNR)" order?

No. A West Virginia living will covers almost all types of life-prolonging treatments and procedures. A "Do Not Resuscitate" order covers two types of life-threatening situations. A DNR order is a document prepared by your doctor at your direction and placed in your medical records. It states that if you suffer cardiac arrest (your heart stops beating) or respiratory arrest (you stop breathing), your health care providers are not to try to revive you by any means.

Will I receive medication for pain?

Unless you state otherwise in the living will, medication for pain will be provided where appropriate to make you comfortable and will not be discontinued.

Can my doctors be sued or prosecuted for carrying out the provisions of a West Virginia Living Will?

No. The West Virginia Health Care Decisions Act provides that no health care provider or their employees can be subject to criminal or civil liability for carrying out the provisions of a valid West Virginia living will.

Does a West Virginia Living Will affect insurance?

No. The making of a living will, in accordance with West Virginia law, will not affect the sale or issuance of any life insurance policy, nor shall it invalidate or change the terms of any insurance policy. In addition, the removal of life-support systems according to the West Virginia law, shall not, for any purpose, constitute suicide, homicide or euthanasia, nor shall it be deemed the cause of death for the purposes of insurance coverage.

MEDICAL POWER OF ATTORNEY

What is a Medical Power of Attorney (MPOA)?

A MPOA is a legal document which allows you (the "Principal") to appoint another person (the "representative" or "attorney-in-fact") to make medical decisions for you if you should become temporarily or permanently unable to make those decisions yourself. The person you choose as your attorney-in-fact does not have to be a lawyer.

Who can I select to be my Representative?

You can appoint almost any adult to be your representative. You should select a person(s) knowledgeable about your wishes, values, religious beliefs, in whom you have trust and confidence, and who knows how you feel about health care. You should discuss the matter with the person(s) you have chosen and make sure that they understand and agree to accept the responsibility.

You can select a member of your family, such as your spouse, child, brother or sister, or a close friend. If you select your spouse and then become divorced, the appointment of your spouse as your representative is revoked.

The only people who **CANNOT** be appointed as your representative are:

- 1) Your treating health care provider;
- 2) An employee of your treating health care provider, unless he or she is related to you;
- 3) An operator of a health care facility in which you are a patient or resident; or
- 4) An employee of a operator of a health care facility in which you are a patient or resident, unless he or she is related to you.

When does the MPOA take effect?

The MPOA only becomes effective when you are temporarily or permanently

unable to make your own health care decisions and your representative consents to start making those decisions. Your representative will begin making decisions after your doctor has decided that you are no longer able to make them. Remember, as long as you are able to make treatment decisions, you have the right to do so.

What decisions can my Representative make?

Unless you limit his or her authority in the MPOA, your representative will be able to make almost every treatment decision in accordance with accepted medical practice that you could make, if you were able to do so. If your wishes are not known or cannot be determined, your representative has the duty to act in your best interest in the performance of his or her duties. These decisions can include authorizing, refusing, or withdrawing treatment, even if it means that you will die.

West Virginia law now allows your representative to make decisions after your death concerning autopsy, funeral arrangements or cremation and organ and tissue donation. However, your representative cannot cancel any funeral contracts that you made before your death.

As you can see, the appointment of a representative is a very serious decision on your part.

What happens if I regain the capacity to make my own decisions?

If your doctor determines that you have regained the capacity to make or to communicate health care decisions, then two things will happen:

- 1) Your representative's authority will end; and
- 2) Your consent will be required for treatment.

If your doctor later determines that you no longer have the capacity to make or to communicate health care decisions, then your representative's authority will be restored.

Can there be more than one Representative?

Yes. While you are not required to do so, you may designate alternates who may also act for you, if your primary representative is unavailable, unable or unwilling to act. Your alternates have the same decision-making powers as the primary representative.

Can I appoint more than one person to share the responsibility of being my Representative?

You should appoint only **ONE** person to be your representative. Any others that you want to be involved with your health care decisions should be appointed as your alternates. If two or more people are given equal authority and they disagree on a health care decision, one of the most important purposes of the MPOA--to clearly identify who has the authority to speak for you--will be defeated. If you are afraid of offending those people close to you by choosing one over another to be your

representative, ask them to decide among themselves who will be your primary representative and select the others as alternates.

Can my Representative be liable for decisions made on my behalf?

No. Your health care representative or your alternates cannot be held liable for treatment decisions made in good faith on your behalf. Also, he or she cannot be held liable for costs incurred for your care, just because he or she is your representative.

Can my Representative resign?

Yes. Your representative and your alternates can resign at any time by giving written notice to you, your doctor or the hospital or nursing home where you are receiving care.

How is the MPOA different from the Living Will?

A living will only applies if you are terminally ill or in a persistent vegetative state, and unless you write in other specific instructions, it only tells your doctor what you do **NOT** want. The MPOA allows you to appoint someone to make health care decisions for you if you cannot make them. It covers all health care situations in which you are incapable of making decisions for yourself. It also allows you to give specific instructions to your representative about the type of care you want to receive.

The MPOA allows your representative to respond to medical situations that you might not have anticipated and to make decisions for you with knowledge of your values and wishes. Since the MPOA is more flexible, it is the advance directive most people choose. Some people, however, do not have someone whom they trust or who knows their values and preferences. These people should consider creating a living will.

Does the Advance Directive document have to be signed and witnessed?

Yes. You must sign (or have someone sign the document in your presence and at your direction, if you are unable to sign) and date it. Then it must be witnessed by 2 qualified people, who are at least 18 years of age or older, and notarized.

The following people **CANNOT** witness your signature of the document:

- 1) Any person who signed the form at your direction, if you were unable to sign;
- 2) Any person related to you by blood or marriage;
- 3) Any person who is entitled to any portion of your estate;
- 4) Any person directly financially responsible for your medical care;
- 5) Your attending physician; or
- 6) Your health care representative or your alternate(s).

How can I find a Notary Public?

Businesses such as banks, insurance companies, government offices, hospitals, doctors offices and automobile associations have or can direct you to a notary public.

STATE OF WEST VIRGINIA COMBINED MEDICAL POWER OF ATTORNEY AND LIVING WILL

Dated: _____, 20 _____

I, _____
(Insert your Name)

(Address) (City, State, Zip Code)

(Telephone Number) (Date of Birth)

hereby appoint as my representative to act on my behalf to give, withhold or withdraw informed consent to health care decisions in the event that I am not able to do so myself.

The person I choose as my representative is:

(Insert the name, address, area code and telephone number of the person you wish to designate as your representative)

Successor representative

If my representative is unable, unwilling or disqualified to serve, then I appoint as my successor representative:

(Insert the name, address, area code and telephone number of the person you wish to designate as your successor representative)

SIGNATURE OF PRINCIPAL

THIS MEDICAL POWER OF ATTORNEY SHALL BECOME EFFECTIVE ONLY UPON MY INCAPACITY TO GIVE, WITHHOLD OR WITHDRAW INFORMED CONSENT TO MY OWN MEDICAL CARE.

(Signature of Principal) (Print Name)

(Address) (City, State, Zip Code)

SIGNATURE OF WITNESSES

I did not sign the principal's signature above. I am at least eighteen years of age and am not related to the principal by blood or marriage. I am not entitled to any portion of the estate of the principal or to the best of my knowledge under any will of the principal or codicil thereto, or legally responsible for the costs of the principal's medical or other care. I am not the principal's attending physician, nor am I the representative or successor representative of the principal.

Witness _____ Date _____

Witness _____ Date _____

SIGNATURE OF NOTARY

STATE OF _____

COUNTY OF _____

I, _____, a Notary Public of said County, do certify that _____ as principal, and _____ and _____ as witnesses whose names are signed to the writing above bearing date on the _____ day of _____ 20_____, have this day acknowledged the same before me. Given under my hand this _____ day of _____, 20_____.

My commission expires: _____

(Signature of Notary Public)

A SUMMARY STATEMENT OF HEALTH CARE POLICIES REGARDING PATIENTS' RIGHTS OF SELF-DETERMINATION

(Since a summary like this cannot answer all possible questions or cover every circumstance, you should discuss any remaining questions with a representative of this health care facility.)

1. Prior to the start of any procedure or treatment, the physician shall provide the patient with whatever information is necessary for the patient to make an informed judgment about whether the patient does or does not want the procedure or treatment performed. Except in an emergency, the information provided to the patient to obtain the patient's consent shall include, but not necessarily be limited to, the intended procedure or treatment, the potential risks, and the probable length of disability. Whenever significant alternatives of care or treatment exist, or when the patient requests information concerning alternatives, the patient shall be given such information. The patient shall have the right to know the person responsible for all procedures and treatments.

2. The patient may refuse medical treatment to the extent permitted by law. If the patient refuses treatment, the patient will be informed of significant medical consequences that may result from such action.

3. The patient will receive written information concerning his or her individual rights under state law to make decisions concerning medical care.

4. The patient will be given information and the opportunity to execute advance directives--including, but not limited to, a West Virginia Living Will and a Medical Power of Attorney.

5. The patient shall receive care regardless of whether or not the patient has or has not made an advance directive.

6. The patient shall have his or her advance directive(s), if any has been created, made a part of his or her permanent medical record.

7. The patient shall have all of the terms of his or her advance directive(s) complied with by the health care facility and caregivers to the extent required or allowed by West Virginia law.

8. The patient shall be transferred to another doctor or health care facility if his or her doctor(s), or agent of his or her doctor(s), or the health care facility cannot respect the patient's advance directive requests as a matter of "conscience".

9. The patient shall receive the name, phone number and address of the appropriate state agency responsible for receiving questions and complaints about these advance directive policies.

