

Advance Medical Directives

Personal Planning for the Future

'There are two guarantees in life – death and taxes.' Most people probably prefer to talk about taxes instead of death. However, stating your final wishes about your medical care and estate is worth your time. Oftentimes, family members are faced with many questions that they cannot answer when a loved one is not able to make his/her own decisions. Advance medical directives may help this situation from happening in your family.



What is an advanced medical directive?

An advanced medical directive is a legal document. It states what you want and who you want to be your decision maker. It acts as a guide for the person, whom you named on your advance medical directive, on how you want your medical care carried out. For example, do you want to be put on life support, be given antibiotics, or have kidney dialysis? You can state your answers on your advance medical directive so that family and medical professionals know what you want when it comes to your medical care.

Why is having an advance medical directive important?

The law gives consent (permission) to medical providers to give whatever medical care they can to a person in an emergency. This means medical professionals assume you want them to do whatever they can to save your life. It is important to have an advance medical directive if this is not what you want. If you do not want care, or have specific wishes, then an advance medical directive takes the place of this assumption. Medical professionals must follow your advance medical directive. However, your wishes must be in writing (i.e. the advance medical directive) for them to be followed. This means that without a WRITTEN advance medical directive, even if you have said that you do not want CPR, blood transfusions, dialysis, or other life saving measures, medical professionals have no choice but to give you whatever medical care is necessary. This is true even if family members are present who know what your wishes are. Without a written medical directive, all life saving measures will be given.

How do I know which type of advance medical directive is right for me?

There are different types of advance medical directives: medical and financial powers of attorney, living will, and 'Do Not Resuscitate' order. Each kind of advance medical directive listed below has pros and cons. The one you choose should match what type of emergency medical care you want. You can also combine these forms if you choose more than one advance medical directive.

What is a living will?

A living will is a legal document that says your life is not to be continued by medical interventions, like feeding tubes or life support, when you are seriously and permanently injured. It is not the same as a regular will that names who you want to receive your possessions and/or property. In a living will, you can name what specific medical treatments you do or do not want. Common examples of medical care included in living wills are feeding tubes, ventilators, surgery, CPR and dialysis.

What is a Do Not Resuscitate (DNR) Order?

A Do Not Resuscitate (DNR) Order is a legal document saying that you do not want to be resuscitated (brought back to life by CPR). A DNR only covers resuscitation by CPR. It does not cover others ways, like feeding tubes, dialysis or antibiotics. A DNR can be written by you, your doctor, other medical professionals or your medical power of attorney. Your DNR order can be part of your living will or a part of instructions to your medical power of attorney.

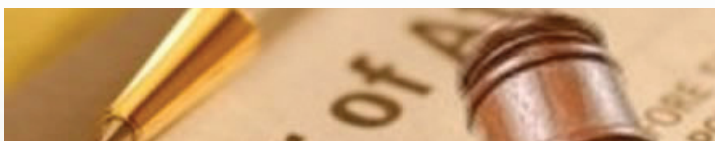
What is a Medical Power of Attorney?

A Medical Power of Attorney (MPOA) is an adult whom you have chosen to make decisions for you when you are no longer able to make decisions for yourself. A MPOA is usually a separate document from your living will. However, you can name a MPOA in your living will if you choose.

If you do not name your own medical power of attorney, then your doctor can name someone for you. This person is known as a health care surrogate and can make medical decisions for you. A health care surrogate is named **ONLY** when you do not have any advance medical directives **AND** you are not able to make decisions for yourself. If this is the case, your doctor will choose someone from a list that can include your spouse, adult children, parents, adult siblings, adult grandchildren, close friends, or a representative from a public agency, like the Department of Health and Human Resources (DHHR). DHHR is in charge of making the list from which your doctor can choose a health care surrogate.

Your doctor does not have to choose a surrogate who is closely related to you. Your doctor may choose someone from the list who is not related to you or a person you may not know. Your doctor's choice is based on whomever your doctor believes is the best person to be your health care surrogate. If your doctor chooses someone to whom you are not related or do not know, then he/she must put in writing the names of the people not chosen and the reason why.

Some people are not allowed to be health care surrogates. These people include healthcare providers treating you and someone working for and/or at the place from where you are getting medical care.



What authority does a Medical Power of Attorney or a health care surrogate have?

A Medical Power of Attorney and a health care surrogate have a lot of authority in West Virginia. They can look at medical records of the incapacitated person (the person who cannot make their own decisions); allow medical records to be sent to third parties, like insurance companies; make decisions about autopsy (a medical examination that finds out the cause of death) and tissue donation; and make all medical decisions unless you state otherwise on your MPOA form.

How do I cancel or change my Medical Power of Attorney?

In West Virginia there are four ways you can cancel or change your Medical Power of Attorney.

1. Destroy the MPOA document or have it destroyed by another person under your direction while you are physically present (useful if you are not physically capable of destroying the document on your own).
2. Give written notice to your doctor. This notice is not valid as a change until it has been received by your doctor.
3. Cancel or change your MPOA in front of a witness who is 18 years old or older. The witness must give a signed and dated written statement saying that you told him/her to change the MPOA and what the change is. It must be sent to your doctor. This notice, or change to your MPOA, is not valid until your doctor receives it.

4. Divorce. If your MPOA is the person you are divorcing, then this person will automatically be cancelled as your MPOA. If you still want to use your former spouse, you will have to rename him/her. If not, you can ask someone else to be your MPOA.

If you have been declared incompetent (unable to make your own decisions) and want to cancel your MPOA, you will need to get a court order to change it. A guardian will have to be in charge of having the MPOA canceled. If you do not already have a guardian, then a judge will assign one for you.



What is a financial power of attorney?

A financial power of attorney is a person you choose to help manage your money, like paying your bills and keeping track of your bank accounts. You and your power of attorney can manage your finances together until you are no longer able to make your own decisions. This person can also take over your finances right away if you choose. A power of attorney who starts managing your money along with you as soon as you choose him or her is called a durable power of attorney. A person who starts managing your money at a specific time is called a springing power of attorney. A springing power of attorney starts managing your money when you tell him/her to do so. Most people have their springing power of attorney take over their finances at the point of incapacity (when they can no longer make decisions for themselves).

What does it mean to manage someone's estate?

Managing someone's estate means taking care of all the things the person would normally do. This can include: paying their bills; taking care of their home; filing their taxes; and keeping track of their investments.

What if a loved one does not have any advance medical directives?

If you want to care for someone who does not have any advance medical directives (never chose someone to be their MPOA), you can ask your county court to appoint you as a guardian or conservator. A guardian can only make medical decisions for the person to whom they are giving care. A conservator takes care of the person's estate and financial business.

Anyone can ask their county court to assign a guardian or conservator to an individual who needs care because they are incapacitated. This involves a court proceeding.



Resources

Advance medical directive forms can usually be found at your health care provider's office or clinic. Samples of these forms are also at www.wvethics.org. Lawyers can be helpful in completing these forms. Advance medical directives can also be done as part of your estate planning, like wills.

West Virginia Senior Legal Aid is a non-profit organization focused on assisting older adults in legal issues. Their lawyers can help you write your advance medical directives and complete related forms. To contact Legal Aid, call **800-229-5068** or visit www.seniorlegalaid.com.

WVU's Center for Health Ethics and Law works to improve the quality of patient care in West Virginia. The Center focuses on teaching people about ethical and legal issues in health care. It serves as a resource for West Virginians when making medical decisions. This includes advance medical directives. You can find forms and laws relating to advance medical directives on their website at www.wvethics.org. If you have questions, you can call the Center at **877-209-8086**.

The West Virginia Center for End of Life Care is the statewide distribution point for living wills, powers of attorney, do-not-resuscitate cards and physician orders for scope of treatment (POST) forms. For more information, call **877-209-8086** or visit www.wvendoflife.org.



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