ADVANCE DIRECTIVES

FREQUENTLY ASKED QUESTIONS (FAQ)

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Advance Directives are written documents authorized by statutes of all the states, which allow you to have control over health care decisions when you no longer have capacity to make decisions or communicate your wishes regarding your health care. In Kansas one type of advance directive is officially called a Declaration but is popularly known as a “LIVING WILL”. Another type of advance directive is the “DURABLE POWER OF ATTORNEY FOR HEALTH CARE DECISIONS”. A third directive is called the “PREHOSPITAL DO NOT RESUSCITATE” directive.

Questions about the forms:

1. **HOW ARE THE HEALTH CARE POWER OF ATTORNEY AND THE "LIVING WILL" DIFFERENT?**
The "Living Will" is a statement of personal values. It applies only to persons who have been diagnosed and certified by two physicians as terminally ill.

The Durable Power of Attorney for Health Care Decisions is much more comprehensive than the "Living Will." It is a tool used for naming an agent or proxy to act for you at a future time. It does not focus only on refusing treatment, but can be used to request treatments, issue special instructions, and provide for donating organs and tissues. It is not restricted to be used only when you are terminally ill, but does allow you to state in advance your wishes regarding the use of life-prolonging procedures.

Both the "Living Will" and Durable Power of Attorney for Health Care Decisions have no effect until you can no longer make or communicate decisions for yourself.

2. **SHOULD I HAVE BOTH A DURABLE POWER OF ATTORNEY FOR HEALTH CARE DECISIONS AND A "LIVING WILL"?**
Maybe. The "Living Will" does one thing extremely well. It states beyond any question that if you are dying, and your doctors know you cannot recover, then you want to be allowed to die naturally, with comfort care provided. For the "Living Will" to take effect, two physicians must certify that you are "terminally ill." If you have signed a "Living Will," even your agent cannot override its provisions.

Other circumstances can arise when you may not be terminally ill, but will never recover enough to live a life that is meaningful to you. To provide for that event, you may use the Durable Power of Attorney for Health Care Decisions to name a person you trust to be your agent and make decisions for you. Giving an agent Power of Attorney for Health Care Decisions makes it more likely that your full wishes will be honored.

3. **IF I ALREADY HAVE A "LIVING WILL," DO I NEED A DURABLE POWER OF ATTORNEY FOR HEALTH CARE DECISIONS?**
Yes. The Health Care Power of Attorney allows you to be more specific in your instructions and covers a wider variety of situations. It works together with the "Living Will." If you decide to enact the Durable Power of Attorney for Health Care Decisions, be certain to notify persons to whom you have distributed your "Living Will," and provide them with a copy of your new directive. You also must talk with your agent about what your choices would be.

4. **HOW IS THE DURABLE POWER OF ATTORNEY FOR HEALTH CARE DECISIONS DIFFERENT FROM A REGULAR POWER OF ATTORNEY?**
The Health Care Power of Attorney addresses health care matters only. General (regular) powers of attorney refer to business and financial matters and sometimes also include health care. Many people choose to name separate agents for business decisions and health care decisions and use separate documents to do so. Separate documents also have the advantage of keeping business and financial matters out of a document that will be attached to a hospital medical record or included in a medical file.

A Durable Power of Attorney for Health Care becomes effective WHEN AND ONLY WHEN you cannot make or communicate decisions for yourself.
5. SHOULD I SIGN A DO-NOT-RESUSCITATE FORM?
In some ways the DNR directive is like the Living Will. It makes a clear statement about your values. Like the Living Will, however, it becomes an order that can be acted upon by other people only after your physician signs it. Until the physician makes it an order, it is simply an indication of your preference. You should not execute a DNR directive unless your health is extremely fragile and you have discussed treatment alternatives with your physician.

"How to do it" questions:

6. WHO SHOULD BE MY AGENT?
Your agent should be someone who knows your goals and values and whom you trust to act in accordance with your wishes. You may name a family member, but it is not necessary to do so. Your agent could be a friend or your pastor. Be sure to talk with your agent about your wishes in detail and confirm that he or she agrees to act on your behalf. Your agent cannot be your doctor or nurse or anyone who takes care of you unless he/she is your relative or is bound to you by common vows to a religious life.

It is suggested that you name two alternate agents in the event that your agent is unavailable, unable or unwilling to make treatment decisions for you. You should discuss your wishes with all agents you name.

7. DO I NEED A LAWYER TO EXECUTE A "LIVING WILL" OR A DURABLE POWER OF ATTORNEY FOR HEALTH CARE DECISIONS?
No. However, if you have a lawyer you will probably want to discuss it when you talk about other personal business.

8. DO MY ADVANCE DIRECTIVES HAVE TO BE NOTARIZED?
Kansas law requires that a "Living Will" and a Health Care Power of Attorney may be either witnessed or notarized. If executed in accordance with Kansas law, your directives should be enforceable in all other states.

9. WHAT DO I DO WITH MY ADVANCE DIRECTIVES AFTER I HAVE SIGNED THEM?
It is your responsibility to notify and provide copies of your Durable Power of Attorney for Health Care Decisions to the agent(s) that you named in it and to discuss with them the details of your wishes. You should provide copies of your Advance Directives to all appropriate individuals (i.e., physicians, attorney, family, friends, and clergy). Ask your physician to make your directives part of your permanent medical record. You should have copies of your directives available to give to health care institutions/facilities whenever you need to be admitted.

10. WHEN DO MY ADVANCE DIRECTIVES GO INTO EFFECT?
Advance directives go into effect WHEN AND ONLY WHEN you are no longer able to make or communicate your decisions.

11. HOW LONG WILL MY ADVANCE DIRECTIVES BE EFFECTIVE; MAY I CHANGE OR REVOKE THEM?
Your advance directives are effective until the time of your death, unless you revoke them. It is recommended that you review your directives periodically. Each time that you do this, re-date them and initial in the margins of your documents. This will serve as a powerful indicator that your directions have been well thought out.

If you want to change or revoke your Durable Power of Attorney for Health Care Decisions, you should complete a new document. Then, it is your responsibility to notify all persons to whom you have provided a copy of a previous document.

A "Living Will" can be revoked by telling witnesses you have changed your mind. However, it is better to sign and date a written revocation and destroy all copies of the prior document.
12. WILL MY DURABLE POWER OF ATTORNEY FOR HEALTH CARE DECISIONS BE HONORED IF I AM IN ANOTHER STATE?
The U.S. Supreme Court has stated that adults have a constitutional right to refuse any health care treatment. You may expect your advance directives, if they are properly executed, to be honored in any state.

"How will directives be used?" questions:

13. MUST MY PHYSICIAN, AGENT AND HOSPITAL CARRY OUT MY WISHES EXPRESSED IN MY ADVANCE DIRECTIVES?
The "Living Will" must be honored. Any doctor who will not honor your "Living Will" must assist in arranging your transfer to another doctor. The Kansas law authorizing the Health Care Power of Attorney is less clear, but there is probably a legal obligation for a doctor who objects to carrying out your agent’s instructions to make arrangements for transfer to a different doctor.

The federal Patient Self-Determination Act allows hospitals, care homes, HMOs and Hospices, on the basis of conscience, to refuse to carry out patient directives. It does, however, require all these institutions which accept Medicare or Medicaid funding to inform a patient upon admission about its policies regarding carrying out advance directives. If the institution you have selected informs you it will not honor your directive, you may choose to go elsewhere.

14. CAN MY "LIVING WILL" OR DECISIONS MADE BY MY AGENT BE OVERRIDDEN IN ANY WAY BY MY FAMILY MEMBERS?
No. If you have designated an agent, only that agent has the legal authority to make health care decisions for you. Your agent is free to consult with your doctors and your family for assistance in making decisions.

15. WILL MY ADVANCE DIRECTIVES BE HONORED IN AN EMERGENCY SITUATION?
Normally you should assume that in an emergency situation treatment would be tried until it proves futile, since it may be impossible for emergency personnel to judge whether a treatment will benefit you. If treatment does not and will not lead to a significant recovery and you have a "Living Will," you should expect that treatment which has proven to be futile would be withdrawn.

If you have signed a Health Care Power of Attorney, and your agent is present, he/she may direct emergency personnel in caring for you. If your state of health is poor, and it has already been determined that there is no reasonable expectation that you will regain a minimally acceptable quality of life, your "Living Will" (or your agent) should prompt your doctor to consider signing a "Do Not Resuscitate" (DNR) order, which will protect you from unwanted emergency measures (such as cardiopulmonary resuscitation). A DNR order must be prominently displayed for emergency personnel to see. In hospitals, a DNR order is sometimes called a "no code" order.

16. WHAT IF I DO NOT WANT TO BE RESUSCITATED (CPR) UNDER ANY CIRCUMSTANCES?
You may write that in your Health Care Power of Attorney, and you certainly should inform your agent. But a DNR is essentially a physician order; your doctor must agree that it is appropriate. Some people fear CPR because they don’t want to be "trapped" on life support. That fear may be removed by directing your agent to withdraw life support if it will not lead to significant recovery.

As an alternative, you may use the Pre Hospital Do Not Resuscitate directive to indicate your choice. Under Kansas law, however, the DNR requires that your attending physician sign the form and indicate that it is appropriate for you. Many physicians are unwilling to do that unless the patient is in a terminal condition.

17. HOW WILL MY AGENT KNOW WHEN IT IS TIME TO WITHDRAW LIFE SUPPORT?
It is important to think about what features of your life are so important to you, that you would not want to live without them. Some examples might be:
• The ability to recognize people
• The ability to communicate
• The ability to feed myself
• The ability to swallow food and water
• The ability to make decisions
• The ability to relate to my environment
• The ability to be reasonably free of pain
These are examples only; there is no "right" answer. You should discuss with your friends, family, and physician how you feel about these or other features of your life so they may be confident they are following your wishes when they make decisions for you.

18. MAY I REQUEST THAT ARTIFICIALLY ADMINISTERED FOOD AND WATER (TUBE FEEDINGS) BE WITHDRAWN?
Yes. The U.S. Supreme Court has ruled any individual may direct that artificially administered food and water is refused or withdrawn.

19. MAY I MAKE A PROVISION FOR DONATING ORGSNS OR TISSUES IN MY ADVANCE DIRECTIVES?
Yes. The Durable Power of Attorney for Health Care Decisions gives the agent authority to make decisions about organ (and presumably tissue) donation. At the time of death, your wishes will take precedence over those of your family, so it is important to talk about your decision with your family and your agent. If you wish, you may include specific statements about what donations you want to make. For more information you may contact: Heartland Lions Eye Bank (816) 454-5454 and Midwest Transplant Network (913) 262-1668.

20. WILL MY "LIVING WILL" AFFECT MY LIFE OR HEALTH INSURANCE?
No. Signing a "Living Will" will not invalidate or alter insurance policies, nor will it affect your ability to obtain life or health insurance.

21. WHAT IS A TERMINAL CONDITION OR ILLNESS?
In Kansas, it is defined as a condition where "death will occur whether or not life-sustaining procedures are utilized and where the application of life-sustaining procedures would serve only to artificially prolong the dying process."

22. IS A "PERSISTENT VEGETATIVE STATE" A TERMINAL CONDITION?
Not necessarily, even though there is no expectation of meaningful recovery.

23. DOES MY MENTAL COMPETENCY HAVE TO BE CONFIRMED?
It is presumed that you are competent at the time of signing your advance directives. Your competency to revoke your directives is also presumed and does not need to be proven.

24. ARE THE PHYSICIAN AND HOSPITAL PROTECTED IF THEY CARRY OUT MY ADVANCE DIRECTIVES?
Yes. Physicians, health care professionals, and facilities are protected from legal or professional liability when acting in accordance with your advance directives. The more clearly your directives have been written and discussed with your physician, family, and friends, the more protection health care providers can expect.

25. CAN I BE REQUIRED TO SIGN AN ADVANCE DIRECTIVE?
No. The law specifically prohibits requiring a person to execute an advance directive as a condition for the provision of any service or benefit. For example, a nursing home could not require execution of an advance directive as a condition for admission to the nursing home.

26. ARE ADVANCE DIRECTIVES AGAINST MY RELIGION?
Advance directives are consistent with the beliefs of most major religions. If you have doubts, you should review your decisions with your pastor or religious leader.

27. IS A GUARDIAN THE SAME AS AN AGENT?
No. A Guardian is someone appointed by the court to make decisions for you about the care of your person. An agent is appointed by you to make decisions authorized by you. The Guardian will have authority to make some decisions about your health care, but must seek court approval for many others.

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