



## **Advance Medical Directives**

Every adult in the United States has the legal right to consent to or refuse medical treatment, under the Patient Self-Determination Act of 1990. All medical facilities receiving Medicare or Medicaid benefits must tell their patients about this law.

Making your wishes known about the treatment you would want when you're incapacitated can be very helpful to doctors and to your family. You can do that on forms called "advance medical directives." They are requested when you check into a hospital, but you are not required to have them to receive care, treatment or admission.

If you become unable to make decisions concerning your medical treatment, another person, called an "agent," may make such decisions for you. This person should know your desires concerning medical treatment, so they can act on your behalf. If no arrangements are made for medical directives and you become incapacitated, the court may appoint a guardian for you.

Signing advanced medical directives doesn't take away your right to decide on treatment, if you are able to do so.

Be sure to discuss your wishes and beliefs concerning medical treatment with your doctor, family and agent. Make copies of your advance directives for your doctor's files, agent, family and, if applicable, your health care facility. Discuss the policies of your health care provider and be sure they are compatible with your own beliefs and that your wishes will be honored.

Even though you don't need special forms, you can get ones for a "Living Will" and a "Medical Power of Attorney" through Bradford Publishing Company and office supply stores. Be sure they are Colorado forms. A Cardiopulmonary Resuscitation (CPR) Directive is available through your doctor's office or the Colorado Department of Health. These forms need to be signed by you (the patient), and some must also be signed by two witnesses. A CPR Directive must be signed by your doctor. It's useful sometimes to have the forms notarized.

### **CPR**

CPR is an attempt to revive someone whose heart and/or breathing has stopped. This attempt can be made by using special drugs or machines or pressing very firmly on the chest.

In Colorado, it is presumed you would want CPR unless you and your doctor have signed a form that allows you (or your agent or proxy) to refuse CPR.

If you have a CPR directive, and your heart and/or lungs stop, medical personnel won't try to press on your chest, or use breathing tubes, electric shock or anything else to get your heart and/or lungs working again. A CPR bracelet or necklace may be worn, indicating you don't want these emergency measures.

Signing a CPR directive won't prevent you from receiving other kinds of needed medical care such as treatment for pain, bleeding, broken bones or other comfort care.

If you are a patient in a health care facility and you don't have a CPR directive or aren't able to sign one, your doctor may decide, usually in consultation with you and/or family members, that resuscitation would be inappropriate. The doctor will write Do Not Resuscitate (DNR) or NO COR on your chart.

### **Living Wills**

In Colorado, state law recognizes a document correctly known as a Declaration as to Medical or Surgical Treatment. Most people know this document as a "Living Will." This document allows you to express, in advance, how you wish to be medically treated in the event that you are in a terminal condition. While there is no legal definition of the term "terminal condition," physicians commonly recognize this as a medical condition from which you are expected to die within the next six months or less regardless of your medical treatment. This situation includes diseases, injuries, and illnesses for which no medical treatment is available which would cause you to recover. While Colorado law does not specifically address the subject of "persistent vegetative state," many lawyers



and physicians have concluded that this medical condition is included in the term “terminal condition. Ask your physician to discuss these medical terms with you.

The Colorado Living Will allows you to express your preferences as to whether or not to accept “life sustaining treatment” in the event you are in a terminal condition. “Life sustaining treatment” would include the use of medical machines, surgeries and medications which might keep you alive for a slightly longer period of time than without these treatments, but which would still result in your death in the near term future. Regardless of your decision to accept or reject life sustaining treatment, medical professionals will continue to provide you all necessary treatment for the purpose of alleviating pain and suffering.

In addition to expressing your preferences concerning life sustaining treatment, Colorado law permits you to decide in advance whether you wish to have nutrition and hydration (“food and water”) intravenously in the event you are unable to take nutrition and hydration orally. Again, nothing in your preferences will prevent medical professionals from providing you necessary pain medications and relief.

Finally, under Colorado law you are permitted to include in your Living Will language which expresses your preference as to whether or not you wish to be an organ and tissue donor at the time of your death.

#### **Other Information You May Wish to Include**

Colorado has a suggested form for a Living Will. However, this form is not mandatory and many other high-quality Living Will forms are available. You may wish to consider adding other types of information in your Living Will, including the items suggested here.

- Making a separate paragraph for your preference as to how you wish to be treated in the event you are in a Persistent Vegetative State.
- Providing individualized medical directives in the event you have religious beliefs which would either prohibit or require certain types of medical care, in accordance with the teachings of your religion.
- Providing individualized medical directives in the event you have existing medical conditions that you wish your medical professionals to know about in advance.
- Providing language which tells medical professionals which document controls in the event of a conflict, your Living Will or your Medical Powers of Attorney.
- Listing people you wish your medical professionals to contact to discuss your medical condition in the event you have reached a terminal condition.

The laws in all 50 states permit the recognition of a Living Will executed in a different state, so long as that Living Will complies with the state law requirement in the state where it was executed. Nevertheless, in the event you spend a significant amount of time in more than one state, such as having a vacation or winter home in another state, we highly recommend you execute a Living Will here in Colorado and one in the state where you spend significant periods of time. This will alleviate confusion in the event that state laws may dictate a different form from the one you have executed in Colorado.

#### **Medical Powers of Attorney**

All states recognize a document known as a Medical Power of Attorney. Under a Medical Power of Attorney you may designate whom you wish to speak for you in the event that you are unable to speak for yourself concerning medical treatment. This person is known as your “Agent.” Unlike a Living Will, a Medical Power of Attorney is not limited to terminal conditions. Rather, it permits your Agent to speak for you concerning any form of medical treatment, including both terminal conditions and routine medical procedures and treatment. You may appoint any adult (in Colorado, defined as any person over the age of 18) to be your Agent under Medical Power of Attorney. While only one person should act as your medical Agent at any given time, you may wish to include one or more Alternate Agents in the event your primary named Agent is unavailable for any reason to make decisions. Your Medical Power of Attorney may be as specific or as general as you wish. However, the more detailed information you provide in the document, the more knowledge medical professionals will have concerning how you wish to be treated medically.

### **Why Have Such a Document?**

By executing a Living Will and a Medical Power of Attorney, you can express to others, including family, friends, and medical professionals, how you wish to be treated at the end of your life, or in any situation in which you are unable to make your own medical decisions. (Whenever you can make your own medical decisions, an Agent under Medical Power of Attorney cannot override your decision.) Physicians prefer to see these documents so that they are not forced to make decisions concerning medical treatment without information and background from you, the patient. Appointing an Agent designates who speaks for you concerning medical care, rather than having to gather a consensus of your relatives. For your family, these documents provide your expressed wishes rather than making the family guess your desires. Nevertheless, it is an excellent idea to discuss your wishes as to medical treatment with your family. The more discussion you have with them on this subject, the more likely your wishes will be followed.

### **Obtaining and Maintaining Living Wills and Medical Powers of Attorney**

Your attorney can provide each of these documents to you. Normally, Living Wills require at least two witnesses. Most hospitals and other medical institutions will not permit their staff to witness these documents. In most states, certain relatives and others cannot be witnesses to the signing of these documents.

You should always keep the original of these documents. Provide a copy of your Living Will and Medical Power Attorney your physician and other medical professionals to be placed into your medical records. When you are admitted to a hospital, you should provide copies of these documents to the hospital admitting staff to be placed into your medical records. As to the original of these documents, it is not a good idea to place the documents in a safe deposit box at a bank, as on weekends, holidays and nights, the documents would not be available for use. Make sure your Agent knows where the originals are.

### **Proxy Decision Maker For Medical Treatment**

When an adult doesn't have advanced medical directives and hasn't made his/her wishes known, under Colorado law someone can be chosen to make such decisions. That person would be chosen from among a group of "interested persons" including the person's spouse, parents, any adult child, sibling, grandchild, or any close friend of the patient. The intent of the law is to avoid guardianship proceedings.

The patient's attending physician must first determine that the adult patient lacks the ability to provide informed consent to or refusal of medical treatment. An effort must be made to tell the patient that he or she lacks the ability to provide informed consent and that a close relative or friend will be selected to make medical decisions. The physician, or designee, must try to locate and notify as many of the "interested persons" as practical about the patient's lack of decisional capacity, and of the need to select a decision-maker for the patient.

The group of interested persons must try to reach a consensus among themselves as to which person among them should make medical decisions on behalf of the patient. Ideally, the person selected should have a close relationship with the patient and be likely to know the patient's wishes about medical treatment. The physician then tells the patient that a proxy has been selected, says who the person selected is, and explains the patient's right to object to the person selected.

If the group cannot agree on a decision-maker, or if the patient objects to the person selected, a guardianship proceeding must be instituted so that someone can make needed medical decisions on behalf of the patient.

The proxy decision-maker for medical care may authorize all decisions except removal or withdrawal of artificial nourishment and hydration. Such a decision by a proxy may be made only when the attending physician and a second independent physician trained in neurology or neurosurgery certify in the patient's chart that providing or continuing artificial nourishment or hydration is merely prolonging the act of dying, and it is unlikely to restore the patient to independent neurological functioning. A proxy may ask for assistance from a medical ethics committee of the medical facility or ask the facility for an outside referral to provide assistance or consultation in making a medical decision.



*(2008) This pamphlet is published as a public service by the Colorado Bar Association. It was updated by Tom Rodriguez in 2008. Its purpose is to inform citizens of their legal rights and obligations and to provide information regarding the legal profession and how it may best serve the community. Changes may have occurred in the law since the time of publication. Before relying on this information, consult an attorney about your individual case.*