

Colorado Bar Association

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Chapter 6 - Medical Advance Directives

Medical advance directives tell others how to make medical decisions when you no longer can speak for yourself. Living wills, medical durable powers of attorney and CPR directives are examples of medical advance directives used in Colorado.

A federal law, the Patient's Self-Determination Act, requires health care facilities to inform patients of their rights regarding health care decisions. Patients must be provided with information about their right to have advance directives, the types of advance directives available in the state, and the policies of that health care facility in following the instructions of an advance directive. Health care facilities cannot require you to have an advance directive in order to treat you, and they cannot discriminate against you whether you have one or not.

Summary of the Health Insurance Portability and Accountability Act Privacy Rule:

Providers and health insurers who are required to follow this law must keep your information private by:

- Teaching the people who work for them how your information may and may not be used and shared.
- Taking appropriate and reasonable steps to keep your health information secure.

To make sure that your information is protected in a way that does not interfere with your health care, your information can be used and shared:

- For your treatment and care coordination.
- To pay for doctors and hospitals for your health care and help run their businesses.
- With your family, relatives, friends or others you identify who are involved with your health care or your health care bills, unless you object.
- To make sure doctors give good care and nursing homes are clean and safe.
- To protect the public's health, such as by reporting when the flu is in your area.
- To make required reports to the police, such as reporting gunshot wounds.

Your health information cannot be used or shared without your written permission unless this law allows it. For example, without your authorization, your provider generally cannot:

- Give information to your employer.
- Use or share your information for marketing or advertising purposes.
- Share private notes about your mental health counseling sessions.

Living Will (Declaration as to Medical or Surgical Treatment)

Colorado recognizes your right to have a Living Will, which is also called a Declaration as to Medical or Surgical Treatment. The Living Will is a direction to your doctor to withhold or withdraw procedures that will artificially prolong your life, including artificial nourishment and hydration, if you wish. It applies only if you have an incurable injury, disease or illness that two physicians say is terminal, and you have been unconscious, comatose or otherwise incompetent for a week or longer.

It is a good idea to give your doctor a copy of your Living Will. It remains valid until you revoke it. Just tell your health care provider to destroy the document or do so yourself.

You can follow the Colorado form or work with your attorney to revise it according to your personal choices. It is required that you sign it in front of two witnesses who meet the form's eligibility criteria.

Power of Attorney for Health Care

Medical Durable Power of Attorney

The Power of Attorney for Health Care, also known as a Medical Durable Power of Attorney, allows you to name someone else (an attorney-in-fact or agent) to make health care decisions for you when you are not able to do so yourself. You can give specific instructions to this person about surgery, diagnostic tests or the need for nursing home care. This Power of Attorney is for health care issues and does not cover financial matters.

Colorado law does not require a special form to create the Health Care Power of Attorney. There are a number of forms available, but you have the option of drafting a more personalized document for yourself or with help from your attorney. (See other information in this book about "Five Wishes," "Next Step" and "Consumer Tool Kit.")

You can revoke a Power of Attorney orally or in writing:

"I, (name) revoke my Health Care Power of Attorney dated _____."

Date: Signature:

Witness: _____

C.P.R. Directives

In Colorado, it is presumed that you want and consent to have cardiopulmonary resuscitation (CPR). However, physicians can create a CPR directive known as a "DNR Order," "No CPR Order" or "No Cor Order" for a patient in a health care facility. The doctor's order means the patient is not to receive CPR measures if breathing stops or if the heart stops beating. The physician can make this order either upon an evaluation of the patient or at the patient's request.

The CPR form is available through your doctor, who must explain to you the consequences of not receiving CPR. Once you have this form, you can buy a bracelet or necklace to alert emergency medical personnel that you do not want CPR measures.

Five Wishes, Next Step and Consumer's Tool Kit for Health Care Advance Planning

You may have heard about a document called "Five Wishes," which has received wide recognition from feature stories in the media. It is a document that combines the Living Will, Power of Attorney for Health Care, and CPR directions, but with more personal and detailed expressions of your wishes under various circumstances.

"Five Wishes" contains categories in which you state:

1. Whom you want to make your health care decisions
2. Your choice of medical treatment under various conditions
3. Details of how you want to be treated by caregivers
4. Instructions on care for your comfort
5. Final expressions of love for family and friends and how you wish to be remembered.

A volunteer who cared for Mother Teresa during her final illness, Jim Towey, developed "Five Wishes" based on his experience. He also founded the Commission on Aging with Dignity, a nonprofit organization. The Commission and the American Bar Association Commission on Legal Problems for the Elderly worked together on this document to determine that it is valid under the health care statutes of 33 states, including Colorado.

"Five Wishes" helps people exercise their rights to decide the kind of medical treatment and care that they do or don't want when seriously ill.

More information on "Five Wishes" can be obtained from Aging with Dignity. Please refer to "Resources" at the end of this chapter.

The following is reprinted with permission from the American Bar Association's Commission on Legal Problems for the Elderly.

ABA's What to Do After Signing Your Health Care Advance Directive, Tool # 8 Good Advance Planning is a Continuing Conversation

Advance planning for health care is always a work in progress. That's because circumstances change and lives change. One's values and priorities even change. As a sage remarked, "The world looks very different when you're horizontal rather than vertical."

Five Times to Re-Examine Your Health Care Wishes . . .

1. Before each annual physical exam.
2. At the start of each decade of your life.
3. After any major life change — such as birth in the family, marriage, divorce, remarriage and especially after the death of a loved one.
4. After any major medical change — such as being diagnosed with a serious disease or terminal illness — or if such conditions worsen.
5. After losing your ability to live independently.

If your wishes change . . .

Make a new advance directive if your old one no longer reflects your wishes. Ask about the proper way to cancel or amend your existing directive in your state. If you change your advance directive, it is important to notify everyone who has copies of your old medical directive forms.

What to do With Your Advance Directive

1. Keep the original copy of your health care advance directive and these work sheets or other notes some place they easily can be found.
2. Give your chosen proxy a copy of the directive, plus any worksheets or notes. Make sure your proxy knows where to find the original.
3. Give your doctor a copy of your directive. Make certain it is put in your medical record. Make sure your doctor will support your wishes.
4. Carry an advance directive wallet card with you.
5. If entering a hospital or nursing home, take a copy of your directive with you and ask that it be placed in your medical record.
6. Some organizations offer to register advance directives electronically and enable health care institutions to access them electronically. Some churches and synagogues keep advance directives on file for members. You may wish to consider such a service.

If You Don't Want Emergency CPR, One More Step

After completing your advance directive, you may have to take one more step if you want to avoid CPR, or other life support when an ambulance (911) is called.

Some people with serious and irreversible conditions do not want an emergency medical team to give them CPR if their heart stops. If this is your wish, ask how to get a DNR (Do Not Resuscitate) order that will be respected outside of hospitals. These are also called out-of-hospital DNR orders, comfort-care-only orders or by other similar names. They usually require your physician's signature and your consent. You will get a special identifying bracelet or document that must be visible if you have a medical crisis. If the emergency medical team sees the proper bracelet or document upon arrival, you can expect to receive all necessary comfort care — but no life support.

Guardianship

A court procedure to appoint a guardian may be needed if you become incapacitated. However, guardianship may be avoided by giving an agent authority to act for you in a Power of Attorney. An agent of your choice then can make necessary health and financial decisions instead of a court appointing a guardian to help.

A person seriously worried about your welfare could petition the court to appoint a guardian if it is believed you are incapacitated. The court looks into the matter, first directing a qualified person to act as visitor to interview the petitioner, you and others involved. The visitor reports to the court. The court also may require that you be examined by a physician or psychologist.

You must be given notice of the guardianship. You may object and ask for a court hearing. You also can be represented by an attorney.

The petitioner has to prove that there is no better way to deal with your situation. If the court does find that you are incapacitated and an appointment is necessary to provide you with continuing care and supervision, a guardianship will be established.

The law requires that the order specifically outline the duties and responsibilities of the guardian. If the court order directs, the guardian can control where you live and consent to any necessary medical or professional care and treatment. If there is no separate conservatorship, the guardian may have control over your money and tangible property use for your support and care.

The guardian's responsibility for you ends when you die or it is shown to the court that you are no longer incapacitated.

Proxy Decision-Maker

If you have not named an agent to act for you in a Power of Attorney, it's left to your family and friends to select someone. A proxy decision-maker is a person chosen by them to act for you when you are so sick you are unable to make your own decisions.

First, your doctor determines that you are no longer able to make medical decisions. The doctor tells your family members or close friends that they need to choose one person to act as the proxy. If family members or close friends are able to agree on a proxy, then health care providers can rely on that person's authority to make medical decisions. Without an agreement, someone may have to petition the court to appoint a guardian. If the patient objects (despite the presence of dementia or incapacity) then the matter must be presented to the court.

The following is reprinted with permission from the American Bar Association's Commission on Legal Problems for the Elderly:

ABA's Guide for Health Care Proxies, Tool # 9

If you are in a position to make medical decisions for someone else, this guide is for you. If you have been named in someone's medical power of attorney or other advance directive, then you may be referred to as the person's proxy, agent, attorney-in-fact, surrogate or representative. These are all essentially the same job. Even if you have not been named, you may be called upon to participate in medical decisions for close family or friends who are in a medical crisis and cannot speak for themselves.

Exactly What are Your Duties as a Proxy or Agent?

Your duties depend on what the person's advance directive says and upon state law. You have to read the advance directive and ask about state law. Your duties begin when the individual loses the ability to make health care decisions on his or her own.

In general, you will have authority to make any and all decisions a patient would make for himself or herself, if able. This includes:

1. Receiving the same medical information the individual would receive.
2. Conferring with the medical team.
3. Reviewing the medical chart.
4. Asking questions and getting explanations.
5. Discussing treatment options.
6. Requesting consultations and second opinions.
7. Consenting to or refusing medical tests or treatments, including life-sustaining treatment.
8. Authorizing a transfer to another physician or institution, including another type of facility (such as hospital or skilled nursing home).

How to Make Medical Decisions

The toughest decision may concern beginning or stopping life-sustaining treatments. In each life, there comes a time when the patient's condition has deteriorated, and it is clear that he or she will not get better. Family members or doctors may then question the value of life-sustaining treatments that seem to prolong the process of dying. Rather than thinking of this as depriving your loved one of necessary treatment, you may be protecting him or her from unnecessary pain and suffering. Many people say they do not want to die slowly, hooked up to machines or fed artificially through tubes. What does your loved one think?

Steps for a Proxy to Follow

Deciding for a loved one, whom we will call Mary.

1. Find out the medical facts. This requires talking to the doctors and getting a complete picture of the situation. Questions you can use:

- What is the name of Mary's condition?
- If you don't know exactly what's wrong, what are the possibilities?
- Are tests needed to know more? Will the outcome of more testing make any difference in how you treat her or in how she wants to be treated?
- What is the purpose of each test? Do these tests have risks associated with them?
- Is the information you need worth the risk of the test?
- What is her condition doing to her now?
- How do you explain her symptoms?
- What usually happens with this disease?
- What do you think now will be the likely course of this disease or condition?
- How severe or advanced is her case?

2. Find out options. Make sure the physician describes the risks and benefits of each option. You may want to

ask:

- How will this option make Mary improve or feel better?
- What is the success rate, statistically? What is success?
- Can this procedure be done on a trial basis and then re-evaluated? What is an appropriate amount of time for trial? Are you willing to stop it after an agreed upon trial?
- What defines "success" for this option? (It may not be what Mary considers a success.)
- What will it mean to her quality of life?
- If she is to die, how might it affect the circumstances of her death? For example, will it likely require hospitalization instead of home care?
- What are the possibilities of side effects?
- What option do you recommend, and why?

3. Figure out how Mary would decide if she knew all the facts and options. You have three possible approaches to making the decision:

- If you know her preferences, follow them.
- If you do not know Mary's wishes for the specific decision at hand, but you have evidence of what she might want, you can try to figure out how she would decide. This is called substituted judgment, and it requires you to imagine yourself in the patient's position. Consider her values, religious beliefs, past decisions and past statements she has made. The aim is to choose as Mary would probably choose, even if it is not what you would choose for yourself.
- If you have very little or no knowledge of what Mary would want, then you and the doctors will have to make a decision based on what a reasonable person in the same situation would decide. This is called making decisions in the person's best interest. Evaluate the benefits and burdens of the proposed treatment. For example, will the treatment cause pain and suffering? Is it likely to make Mary better?

Things a Proxy Can Do to Make Decisions Easier

DO prepare in advance with the individual. Learn what is important to your loved one in making health care decisions.

Do this before he or she loses the ability to decide. Talk about beliefs and values regarding living and dying. Talk about spiritual beliefs.

DO make yourself and your role known to the medical staff. Make sure the advance directive is on the medical chart. Keep a copy yourself, handy, to show to people involved in the individual's medical care. Keep in touch with these people.

DO stay informed about the person's condition as it changes. Medical conditions change. Identify the person who can best keep you informed of the individual's condition. Stay involved and be flexible.

DO keep the family informed, if appropriate. You may have the legal authority to make medical decisions even if family members disagree. However, most proxies are more comfortable if there is agreement among loved ones. Good communication can foster consensus. But you may also need help in resolving family disagreements. Ask for the facility's patient representative or ombudsman, social worker, clergy or spiritual adviser. Or ask for the ethics committee or ethics consultant.

DO advocate on the patient's behalf and assert yourself with the medical team, if necessary. Some medical people may not be as comfortable as others with your involvement. You may disagree with the doctor's recommendations. It is hard to disagree with medical professionals and institutional authorities. Be tactful and assertive. If their resistance becomes a problem, or if you feel you are not being heard, ask for help. Ask for help from the facility's patient representative, ombudsman, social worker, clergy or spiritual adviser. Or ask for the ethics committee or ethics consultant.

Adapted by the American Bar Association's Commission on Legal Problems of the Elderly from: "Making Health

Care Decisions for Others: A Guide to Being a Health Care Proxy or Surrogate," by the Division of Bioethics, Montefiore Medical Center, Albert Einstein College of Medicine. Bronx, New York.

Mental Commitment

Under extreme circumstances, you could be forced into mental health treatment, but only with court approval. At the hearing, the court will decide whether you are a danger to yourself, others, or "gravely disabled as a result of mental illness."

You can protest and fight the commitment. You have a right to receive notice and a hearing within 10 days. You also have the right to a lawyer and to have one appointed if you cannot afford one.

A concerned person can contact the county attorney's office to request that the county attorney file a petition asking the court to order a mental health evaluation. The purpose of the evaluation is to determine whether you pose a danger to yourself or others or whether you are gravely disabled as a result of a mental illness. If the court finds that you meet the criteria, authorities can place you in a mental health treatment facility for 72 hours for treatment and evaluation. This is called a 72-hour hold. Police officers and certain mental health professionals can place a person on a 72-hour hold without a court order if there is an immediate danger.

After the first 72 hours, either the treating professional will certify that you need further treatment, or you may voluntarily consent to further treatment. Otherwise you must be released.

If it is found that treatment is necessary, the court can approve the decision to certify you for as long as three months of treatment. The treating professional can recertify for an additional three months of treatment under the same procedure, including another hearing. A person cannot be held longer than six months without being certified for long-term treatment. The person has a right to a notice, a hearing, a lawyer and trial by jury. A long-term commitment can be for up to six months, and can be extended for additional six-month periods.

While receiving mental health treatment, whether voluntarily or involuntarily, a person in Colorado keeps the right to vote, make contracts, marry and have a driver's license, unless a court has specifically limited a certain right. Mental health records must be kept confidential, unless a court orders them disclosed to facilitate application for financial help for that person. You also have the right to receive appropriate treatment in the least restrictive setting.

Glossary

Advance Directives

Written instructions that state, in advance, how you want medical decisions to be made if you cannot speak or decide for yourself.

Agent and Attorney-in-Fact

You give authority to another person (an agent and attorney-in-fact) to act for you (the principal) in a Power of Attorney.

CPR (Cardiopulmonary Resuscitation) Directives

Written instructions to health personnel that you do not want to be resuscitated in the event you stop breathing or your heart stops beating.

Declaration as to Medical or Surgical Treatment or Living Will

Your written directions to your doctor to withhold or withdraw life-sustaining procedures that artificially prolong life when you are terminally ill.

Durable Power of Attorney

A Power of Attorney is valid even if the principal becomes incapacitated.

Guardian

The person who has the court-ordered responsibility of caring for and supervising an incapacitated person.

Medical Durable Power of Attorney

You, the principal, give legal authority in this document to an agent to make your health care decisions if you cannot act for yourself.

Mental Commitment

A court proceeding to determine if a person is in danger and needs to be placed in the custody of the Mental Health Division for treatment and care.

Power of Attorney for Health Care

See Medical Durable Power of Attorney.

Principal

You are the principal in a Power of Attorney when you authorize someone else to act as your agent for you and your benefit.

Proxy Decision-Maker

An individual, picked by family members and friends of an incapacitated patient, to make medical treatment decisions when the patient does not have an agent under a Medical Durable Power of Attorney. If there is mutual agreement on who shall act, a hearing to appoint a guardian may be avoided.

Resources

For advance directives information and forms, call the Colorado Hospital Association at (720) 489-1630 for a free copy of the Advance Directives Coalition's brochure, *Your Right to Make Health Care Decisions*.

• American Association of Retired Persons (AARP)

Legal Counsel for the Elderly (LCE)
601 East St. NW
Washington, DC 20049
(800) 424-3410 or (888)-OUR-AARP (687 2277)
<http://www.aarp.org>

(Guidebooks for Advanced Directives and "Planning for Incapacity: A Self Help Guide" are available. See also "End of Life Issues." Provides a wide range of services including counseling, advocacy, benefits and entitlement information.)

• AIDS Hotline

(800) 342-AIDS (2347)

• Aging With Dignity

Distributor of "Five Wishes."
(888) 5-WISHES (594-7437)
For more information, visit the Aging with Dignity website at <http://www.agingwithdignity.org>, or by writing:
P.O. Box 1661
Tallahassee, FL 32302
(850) 681-2010

• **ALS Association**

27001 Agoura Rd. #150
Calabasas Hills, CA 91301
(818) 880 9007 Association's number
(800) 782-4747 Patient services number
<http://www.alsa.org>
(Provides information about ALS (Lou Gehrig's Disease.))

• **Alzheimer's Association**

225 N. Michigan Ave. #1700
Chicago, IL 60601-7633
(800) 272-3900
(312) 335-8700
<http://www.alz.org>
(Information is available about the disease and referrals to local chapters. Also provides access to the nation's largest Alzheimer's library. Telephone (312) 335-8700 or send e-mail to greenfield@alz.org.)

• **American Bar Association**

Commission on Legal Problems of the Elderly
740 15th St., NW
Washington, DC 20005
(202) 662-1000
<http://www.abanet.org>
(Click on "Consumers Tool Kit for Health Care Advance Planning.")
(Also see "Health Care Powers of Attorney: An Introduction and Model Form, 10 Legal Myths About Advanced Medical Directives.")

• **American Pain Society**

4700 W. Lake Ave.
Glenview, IL 60025
(847) 375-4715
<http://www.ampainsoc.org>
(Association of pain physicians, facilities and support groups.)

• **Cancer Care, Inc.**

275 7th Ave.
New York, NY 10001
(800) 813-HOPE (4673)
(212) 712-8080
<http://www.cancercare.org>
(Provides support groups, education programs and workshops for patients and families.)

• **Cancer Information Service**

(800) 4-CANCER (422-6237)
<http://www.cis.nci.nih.gov>
(Answers questions about cancer and cancer treatment.)

• **Caregiver.com**

6365 Taft St. #3003
Hollywood, FL 33024
(800) 829-2734
<http://www.caregiver.com>
(Provides information about advance directives. Publishes a magazine, "Today's Caregiver" and also provides a Support Group directory.)

• Partnership for Caring

Last Acts Partnership
1620 Eye St. NW, Suite 202
Washington, DC 20006
(202) 296-8071
(800) 989-9455

<http://www.partnershipforcaring.org>/<http://www.partnershipforcaring.org>

(Order an Advanced Directives Package for \$5, or download it from the site above for free. Survey of state laws is also available.) (Advocates for the rights of dying patients, provide legal information about end-of-life decisions and offers counseling.)

• Caring Connections

1700 Diagonal Rd., Suite 625
Alexandria, VA 22314
<http://www.caringinfo.org>
(800) 658 8898

"Caring Connections, a program of the National Hospice and Palliative Care Organization (NHPCO), is a national consumer engagement initiative to improve care at the end of life, supported by a grant from The Robert Wood Johnson Foundation.

Caring Connections tracks and monitors all state and federal legislation and significant court cases related to end-of-life care to ensure that our advance directives are up to date."

State-specific free forms and instructions available online.

• Health Insurance Portability and Accountability Act (HIPAA)

Center for Medicare and Medicaid Services (CMS)

<http://www.cms.hhs.gov>

(Consumer information about HIPAA and its protection of health insurance coverage for workers and families when they change or lose jobs.)

Colorado Hospital Association. Call (720) 489-1630 for a free copy of the Advance Directives Coalition's brochure, *Your Right to Make Health Care Decisions*.

• Health Information for the Whole Family

<http://www.Familydoctor.org> from the American Academy of Family Physician Information about advance directives and Do Not Resuscitate Orders from the American Academy of Family Physicians.

• Hospice Foundation of America

1621 Connecticut Ave. NW #300
Washington, DC 20009
(800) 854-3402
<http://www.hospicefoundation.org>

• International Association Hospice and Palliative Care

5535 Memorial Dr., Suite F – PMB 509
Houston, TX 77007 USA
(713) 880-2940
Toll-free (866) 374-2472
Fax (713) 880-2948
<http://www.hospicecare.com>

• Seniors Resource Guide

<http://www.seniorsresourceguide.com>

(Excellent source for services, articles, news, products, housing. Advanced Directives — Retaining our Dignity in the Event of Disability or Incapacity.)

- **University of Colorado Hospital**

<http://uch.uchsc.edu/>

(Rights and Responsibilities of Patients.)

- **U.S. Living Will Registry**

P.O. Box 2789

Westfield, NJ 07091-2789

(800) 548-9455

E-mail: admin@uslivingwillregistry.com

<http://www.uslivingwillregistry.com>

(Explanations of living will, health care proxies and how the Living Will Registry works. Free registration.)

- **Values History Form**

"The purpose of the Values History Form is to assist you in thinking about and writing down what is important to you about your health. If you should at some time become unable to make health care decisions, this form may help others make a decision for you in accordance with your values. You may download this form for free, providing you attribute it to our Health Sciences Ethics Program and the form is not used in a proprietary or for-profit manner. This form is not copyrighted; you may make as many copies as you wish." For more information or to obtain a hard copy write to:

- **Institute for Ethics**

University of New Mexico Health Sciences Center

917 Vassar, NE (MSC 11 6095)

Albuquerque, NM 87131

E-mail: ethics@salud.unm.edu

http://hsc.unm.edu/ethics/advdir/vhform_eng.shtml

Appendix 1: Advance Directives courtesy of the American Bar Association. (pdf document)