

## LIVING WILLS AND HEALTH CARE POWERS OF ATTORNEY

### **What is a living will declaration?**

A living will is a legal document you can use to express your wishes about the use of life-sustaining treatment if you should become terminally ill or permanently unconscious. A living will:

- \* becomes effective only when you are unable to communicate your wishes and are permanently unconscious or terminally ill;
- \* spells out whether or not you want life-support technology used to prolong your dying;
- \* gives doctors the authority to follow your instructions regarding the medical treatment you want under these conditions;
- \* can be changed or revoked by you at any time, but cannot be changed or revoked by anyone else;
- \* will be followed for a pregnant woman only if certain conditions apply; and
- \* specifies under what conditions you would want artificial feeding and fluids to be withheld.

### **If my living will says I don't want to be hooked up to life-support equipment, would I still get pain medication?**

Yes. A living will only affects care that artificially or technologically postpones death. It would never affect care that eases pain. For example, you would continue to receive oxygen and medical care that includes pain medication, spoon feeding and being turned over in bed.

### **Can I specify that I do not want cardiopulmonary resuscitation (CPR)?**

Yes. The standard living will form specifically allows you to direct your physician to write a DNR (do not resuscitate) order for you if two doctors have agreed that you are either terminally ill or permanently unconscious, and it is medically appropriate. Your attorney and your doctor can help answer questions about the living will form. For more information about DNR orders, see the Ohio State Bar Association's publication, "What you should know about...DNR Orders."

### **Can I have documents saying that if I become critically ill, I want treatment to be continued using every available means to keep me alive?**

Yes, but you should talk with an attorney. You will not be able to use the standard forms for the documents. You should also talk to your physician about the effect of your decision.

### **Who decides that I am dying or permanently unconscious without hope of recovery?**

If you've indicated that you don't want your dying to be artificially prolonged, two doctors who have examined you must agree that you are beyond any medical help and that you will not recover.

### **A living will may be important for a senior citizen, but why would a young adult need one?**

A living will can give you and your family peace of mind whether you are 25 or 75 years of age. Traffic accidents are the leading cause of death among Ohioans under the age of 45. When Nancy Cruzan was 25 years old, she was thrown from a car and went into an irreversible coma. Because she did not have a living will or durable power of attorney, her family had to struggle in courts, including the United States Supreme Court, for seven years before life-support machines could be turned off.

### **Would my family be notified before doctors stop life-support treatments?**

It is very likely your family would be informed. Although doctors do not need your family's permission to follow the instructions provided through your living will, they are required to make reasonable efforts to notify a person named in your living will, or a family member, before following your instructions to withdraw life-support. If the person notified feels your living will is not being properly followed, or is not legally valid, an immediate hearing can be scheduled in probate court to decide if there is a legal reason why your instructions should not be followed. By law, no one can change or overrule your living will if it was freely and correctly executed.

### **Can I specify that I want my feeding and fluid tubes to be removed?**

Yes. If you want to allow your doctor to withhold artificial nutrition/hydration in the event you become permanently unconscious, you must expressly state this in your living will document. However, you do not need to give any special instructions to allow your doctor to withhold nutrition and hydration if you are in a terminal condition and these measures do not comfort you or relieve your pain.

### **What is a health care power of attorney?**

A health care power of attorney (or "durable power of attorney for health care," sometimes known as a "DPOA") is a legal document that authorizes another person to make health care decisions for you if you cannot make them for yourself.

A health care power of attorney:

- \* names an individual you trust to make a wide variety of health care decisions for you at any time you cannot do so for yourself, whether or not your condition is terminal;
- \* becomes effective only when you cannot make your own decisions regarding treatment;
- \* requires the person you appoint to make decisions that are consistent with your wishes; and
- \* will not overrule a living will in the event you have both documents.

**If I want to designate someone to make health care decisions for me, must it be a member of my family?**

No. You may appoint any adult you wish as long as it is not your doctor or the administrator of a health care facility in which you are being treated.

**If I have a living will, do I need a health care power of attorney, too?**

Many people will want to have both documents because they address different aspects of your medical care. A living will gives your end-of-life instructions directly to your doctor and applies only when you cannot communicate your wishes and are in a terminal condition or are permanently unconscious.

A health care power of attorney covers a wide range of health care decisions - like approving surgery - that do not require a patient to be dying. Through this document, you choose someone who knows you well enough to act on your behalf when you cannot.

**What is a mental health declaration?**

Since October 2003, the law has allowed for the creation of a "Declaration of Mental Health Treatment," a document specifically designed to address mental health care concerns. The standard health care power of attorney addresses both physical and mental health issues. In certain cases, however, it may be advisable to have a "Declaration of Mental Health Treatment" as well. For more information about the Declaration of Mental Health Treatment, go to the Ohio State Bar Association's Web site at [www.ohiobar.org](http://www.ohiobar.org). Click on "public," then "resources," then "Law You Can Use." Type "mental health" in the "Law You Can Use" search box.

**My mother is in a nursing home. If she gave me her health care power of attorney, could I act on her behalf in every area affecting her treatment?**

Yes, but not until she is no longer able to make those decisions on her own behalf. A health care power of attorney covers not just life-sustaining treatment, but all aspects of medical treatment whenever the patient is unable to express his or her own wishes.

**Can I use a health care power of attorney to take care of my mother's financial matters?**

No. You must use a different power of attorney document that applies to your mother's business affairs. For more information on "financial" powers of attorney, see the Ohio State Bar Association's pamphlet, "What you should know about...Financial Powers of Attorney."

**Where can I find the standard forms for a living will and a health care power of attorney? Can I draw up my own?**

The Ohio State Bar Association has developed standard forms with the Ohio Hospice & Palliative Care Organization, the Ohio State Medical Association, and the Ohio Hospital Association to make it easier for the people who choose to have these documents. You may obtain a copy of these forms by mailing a request along with \$3 to the Ohio Hospice & Palliative Care Organization at 1646 W. Lane Ave., Suite 2, Upper Arlington, Ohio 43221, or by visiting that organization's Web site at [www.ohpco.org](http://www.ohpco.org).

You do not have to use the standard forms. However, for either document to be valid, it must include specific language spelled out in the Ohio Revised Code. Your physician and attorney will have copies of the standard forms, as will many organizations.

**What do I do after I fill out these documents?**

Make several copies. Give one to a trusted member of your family. Keep another with your personal papers. Leave copies with your physician and your lawyer, and, perhaps, your clergy person.

**Definitions**

Ohio's Living Will Law uses several terms whose meanings are provided below.

**Anatomical gift** - a donation of all or part of a human body to take effect upon or after death.

**Comfort care** - nutrition and/or hydration when administered to diminish pain or discomfort, but not to postpone death; and any other medical care that administered to diminish pain or discomfort - like pain medication and turning a patient - but does not postpone death.

**Donor Registry Enrollment Form** - a form that has been designed to allow individuals to specifically register their wishes regarding organ, tissue and eye donation with the Ohio Bureau of Motor Vehicles Donor Registry.

**Hydration** - fluids that are artificially or technologically administered (e.g., through tubes).

**Life-sustaining treatment** - any medical procedure, treatment, intervention or other measure that when administered to you serves principally to prolong life.

**Nutrition** - refers to food that is artificially or technologically administered (e.g., through tubes).

**Permanently unconscious** - to a reasonable degree of medical certainty: (1) you are irreversibly unaware of yourself or your environment; and (2) there is total loss of cerebral cortical functioning, which results in your having no capacity to experience pain or suffering.

**Terminal condition** - an irreversible, incurable and untreatable condition caused by disease, illness or injury from which, to a reasonable degree of medical certainty: (1) there can be no recovery; and (2) death is likely to occur within a short period of time if life-sustaining treatment is not administered.

*The information contained in this pamphlet is general and should not be applied to specific legal problems without first consulting your own attorney.*

(Updated 02/06/2005)