

Advanced Directive Act of Texas Part III
Medical Power of Attorney and Content of a DNR
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There are many decisions which are made in life which are predicated upon finding someone who shares your values and your view of life. Marriage is one of those; a medical power of attorney is another. Giving someone the authority to make decisions for your medical care requires that:

- You know them well
- They know you well
- You trust them to do what you desire
- And, you trust them to do what is best for you.

This requires the sharing of life experiences and the sharing of our beliefs and philosophy of life (see Part IV of this series to be published April 28, 2005 for more on this concept).

There are some legal restrictions on who can be your medical power of attorney as well and there are restrictions on when your medical power of attorney will be called upon for decision making. Subchapter D of the Health and Safety Code Chapter 166 is entitled Medical Power of Attorney. It defines who can serve as a medical power of attorney and the circumstances under which that service will be required. Section 166.151 gives the following definitions:

- (1) "Adult" means a person 18 years of age or older or a person under 18 years of age who has had the disabilities of minority removed.
- (2) "Agent" means an adult to whom authority to make health care decisions is delegated under a medical power of attorney.
- (3) "Health care provider" means an individual or facility licensed, certified, or otherwise authorized to administer health care, for profit or otherwise, in the ordinary course of business or professional practice and includes a physician.
- (4) "Principal" means an adult who has executed a medical power of attorney.
- (5) "Residential care provider" means an individual or facility licensed, certified, or otherwise authorized to operate, for profit or otherwise, a residential care home.

Section 166.152 describes the scope and the duration of the authority. As to the authority of the medical power of attorney, the act states:

- (a) ...the agent may make any health care decision on the principal's behalf that the principal could make if the principal were competent.
- (b) An agent may exercise authority only if the principal's attending physician certifies in writing and files the certification in the principal's medical record that, based on the attending physician's reasonable medical judgment, the principal is incompetent.

(c) ...treatment may not be given to or withheld from the principal if the principal objects regardless of whether, at the time of the objection:

- (1) A medical power of attorney is in effect; or
- (2) The principal is competent.

(d) The principal's attending physician shall make reasonable efforts to inform the principal of any proposed treatment or of any proposal to withdraw or withhold treatment before implementing an agent's advance directive.

(e) After consultation with the attending physician and other health care providers, the agent shall make a health care decision:

(1) According to the agent's knowledge of the principal's wishes, including the principal's religious and moral beliefs; or

(2) If the agent does not know the principal's wishes, according to the agent's assessment of the principal's best interests.

(f) ...an agent may not consent to:

- (1) Voluntary inpatient mental health services;
- (2) Convulsive treatment;
- (3) Psychosurgery;
- (4) Abortion; or

(5) Neglect of the principal through the omission of care primarily intended to provide for the comfort of the principal.

(g) The power of attorney is effective indefinitely on execution...unless it is revoked...or the principal becomes competent. If the medical power of attorney includes an expiration date and on that date the principal is incompetent, the power of attorney continues to be effective until the principal becomes competent....”

It is once again clear that the intent of the legislature is to protect the interest of the individual while making certain that their wishes are carried out so far as is possible. It is also clear that the terms of an advanced directive and/or the acts of those who are following an advanced directive are bound by all laws and statutes, related to human life and its value and preservation.

Content of Advanced Directive

An Advanced Directive can be given verbally according to Section § 166.034, which states:

- (a) A competent qualified patient who is an adult may issue a directive by a nonwritten means of communication.

- (b) A declarant must issue the nonwritten directive in the presence of the attending physician and two witnesses who qualify under Section 166.003...(see Part I of this series for a review of this section)
- (c) The physician shall make the fact of the existence of the directive a part of the declarant's medical record, and the names of the witnesses shall be entered in the medical record.”

The Form of the Advanced Directive

While no form is required by the act, the following is a recommended content. It may be handwritten, typed, photocopied or computer generated.

“I, _____, recognize that the best health care is based upon a partnership of trust and communication with my physician. My physician and I will make health care decisions together as long as I am of sound mind and able to make my wishes known. If there comes a time that I am unable to make medical decisions about myself because of illness or injury, I direct that the following treatment preferences be honored:

If, in the judgment of my physician, I am suffering with a terminal condition from which I am expected to die within six months, even with available life-sustaining treatment provided in accordance with prevailing standards of medical care: _____

I request that all treatments other than those needed to keep me comfortable be discontinued or withheld and my physician allow me to die as gently as possible; OR

I request that I be kept alive in this terminal condition using available life-sustaining treatment. (THIS SELECTION DOES NOT APPLY TO HOSPICE CARE.)

If, in the judgment of my physician, I am suffering with an irreversible condition so that I cannot care for myself or make decisions for myself and am expected to die without life-sustaining treatment provided in accordance with prevailing standards of care: _____

I request that all treatments other than those needed to keep me comfortable be discontinued or withheld and my physician allow me to die as gently as possible; OR

I request that I be kept alive in this irreversible condition using available life-sustaining treatment. (THIS SELECTION DOES NOT APPLY TO HOSPICE CARE.)

Additional requests: (After discussion with your physician, you may wish to consider listing particular treatments in this space that you do or do not want in specific circumstances, such as artificial nutrition and fluids, intravenous antibiotics, etc. Be sure to state whether you do or do not want the particular treatment.)

After signing this directive, if my representative or I elect hospice care, I understand and agree that only those treatments needed to keep me comfortable would be provided and I would not be given available life-sustaining treatments.

If I do not have a Medical Power of Attorney, and I am unable to make my wishes known, I designate the following person(s) to make treatment decisions with my physician compatible with my personal values: 1. _____ 2. _____

(If a Medical Power of Attorney has been executed, then an agent already has been named and you should not list additional names in this document.)

If the above persons are not available, or if I have not designated a spokesperson, I understand that a spokesperson will be chosen for me following standards specified in the laws of Texas. If, in the judgment of my physician, my death is imminent within minutes to hours, even with the use of all available medical treatment provided within the prevailing standard of care, I acknowledge that all treatments may be withheld or removed except those needed to maintain my comfort. I understand that under Texas law this directive has no effect if I have been diagnosed as pregnant. This directive will remain in effect until I revoke it. No other person may do so.

Signed _____ Date _____ City, County, State of Residence

Two competent adult witnesses must sign below, acknowledging the signature of the declarant. The witness designated as Witness 1 may not be a person designated to make a treatment decision for the patient and may not be related to the patient by blood or marriage.

This witness may not be entitled to any part of the estate and may not have a claim against the estate of the patient. This witness may not be the attending physician or an employee of the attending physician. If this witness is an employee of a health care facility in which the patient is being cared for, this witness may not be involved in providing direct patient care to the patient. This witness may not be an officer, director, partner, or business office employee of a health care facility in which the patient is being cared for or of any parent organization of the health care facility."

Definitions:

The recommended form and content of the advanced directive includes the following definitions which control the content and enforceability of the advanced directive::

"Artificial nutrition and hydration" means the provision of nutrients or fluids by a tube inserted in a vein, under the skin in the subcutaneous tissues, or in the stomach (gastrointestinal tract).

"Irreversible condition" means a condition, injury, or illness:

- (1) that may be treated, but is never cured or eliminated;
- (2) that leaves a person unable to care for or make decisions...
- (3) that, without life-sustaining treatment...is fatal.

Explanation: Many serious illnesses such as cancer, failure of major organs (kidney, heart, liver, or lung), and serious brain disease such as Alzheimer's dementia may be considered irreversible early on. There is no cure, but the patient may be kept alive for prolonged periods of time if the patient receives life-sustaining treatments. Late in the course of the same illness, the disease may be considered terminal when, even with treatment, the patient is expected to die. You may wish to consider which burdens of treatment you would be willing to accept in an effort to achieve a particular outcome. This is a very personal decision that you may wish to discuss with your physician, family, or other important persons in your life.

"Life-sustaining treatment" means treatment that, based on reasonable medical judgment, sustains the life of a patient and without which the patient will die. The term includes both life-sustaining medications and artificial life support such as mechanical breathing machines, kidney dialysis treatment, and artificial hydration and nutrition. The term does not include the administration of pain management medication, the performance of a medical procedure necessary to provide comfort care, or any other medical care provided to alleviate a patient's pain.

"Terminal condition" means an incurable condition caused by injury, disease, or illness that according to reasonable medical judgment will produce death within six months, even with available life-sustaining treatment provided in accordance with the prevailing standard of medical care."

Explanation: Many serious illnesses may be considered irreversible early in the course of the illness, but they may not be considered terminal until the disease is fairly advanced. In thinking about terminal illness and its treatment, you again may wish to consider the relative benefits and burdens of treatment and discuss your wishes with your physician, family, or other important persons in your life.

Conclusion

In the final part of this series, next week we will discuss some of the emotional and personal issues surrounding death. In many ways, it is the reality of death which great value to your life and to your health.