

Information sheet for those who want to prepare advance directives:

### **Advance Directives – Additional Considerations**

In 1992 the Florida Legislature drafted statutory forms for advance directives (Living Will and Designation of Health Care Surrogate). An advance directive is a witnessed written or spoken statement made by a competent adult, which gives instructions or expresses that individual's desires concerning any aspect of his or her future health care treatment. These documents may be sufficient for your needs; however, many people add specific information to the forms, making them fit individual needs not addressed in the statutory form.

Every patient has a right to understand treatment proposed by a health care provider, including cost, risk, and alternatives to the proposed treatment, before consenting to the treatment. This right is known as the right of “informed consent.” Every patient has the constitutional right to refuse proposed treatment. This may be done either personally if the patient has the mental capacity to do so, or through a surrogate or proxy if the patient lacks such capacity. A health care surrogate makes health care decisions for an incompetent individual. In making those decisions, the health care surrogate is bound to follow the instructions and wishes of that individual, *not* those of the health care surrogate. The more specific the directive is, the more likely your wishes will be followed.

There is no guarantee that medical providers will honor a living will; however, failure to specify in the living will conditions or illness for which you would want to have specific treatment withheld or withdrawn may result either in a hospital refusing to withhold the treatment or in a court hearing to determine whether the treatment should be administered. (A court hearing can be costly.)

Do not assume that the living will and health care surrogate forms provided by a hospital, a nursing home, a doctor, The Florida Bar, or anyone else reflect your particular wishes. The form in the statute is clearly optional.

The living will and designation of health care surrogate forms should give the person you name as your surrogate the authority to make any and all health care decisions for you in accordance with your values and your religious and moral beliefs, at a time when you do not have the mental capacity to make the decisions for yourself. Your surrogate may consent, refuse to consent, or withdraw consent previously given to medical treatment and may make decisions about withdrawing or withholding life-sustaining treatment. As a result, *both documents should be written* to reflect your personal wishes.

If you have any doubts about the documents provided to you, you should discuss these matters with your doctor and your lawyer. Use these professionals to assist you in identifying conditions not contemplated by the statutory form and specific types of treatments or procedures that you want withheld if those conditions occur.

Your Designation of Health Care Surrogate and Living Will are important legal documents. Before you sign, please consider the following facts:

1. Signing your Designation of Health Care Surrogate protects your rights to make your wishes known about medical treatment, but it does not guarantee that your wishes will be honored.
2. The documents do not have to be notarized, but each must be signed by two witnesses. Both witnesses must be adults, and at least one must be someone other than your spouse or blood relative. Your health care provider or an employee of your health care provider may not be a witness.
3. You have the right to make decisions about your medical treatment as long as you are able to give informed consent. Your surrogate will make health care decisions that you are no longer able to make for yourself when you are unable to give informed consent. Your surrogate will have the power to make all health care decisions, including decisions about life-sustaining treatment.
4. The documents will remain valid until you revoke them. You can revoke either by signing another advance directive, by signing a statement that you revoke a document, by ripping up a document, or by simply saying that you revoke a document. If you do revoke either a Designation of Health Care Surrogate or a Living Will, you have to tell everyone to whom you gave a copy that you have revoked it.
5. You have the duty to notify your doctor that you have signed an advance directive. You should give your doctor a copy of each document. You should also give a copy of each to anyone who would be likely to be called in an emergency. Also, you should keep a list of everyone to whom you give a copy. You should keep the original in a safe place. Take a copy of each with you whenever you travel. To minimize any confusion or doubt about your wishes or the surrogate's authority, the documents should be as specific and explicit as possible.
6. In these documents, you can put limitations on the power to make health care decisions, or you can include your specific desires for treatment or withholding of treatment. For the most part, your surrogate will be obligated to follow your instructions when making decisions on your behalf.
7. You should inform the person that you want her or him to be your health care surrogate, providing your surrogate and any alternates with a copy of each document.
8. Do not sign the documents unless you clearly understand them.
9. Your situation may be unique, and these forms may not be sufficient. The Florida Statutes are not the only source of writings that exercise your right to control your medical treatment.

Section 765.101(17) of the Florida Statutes defines “terminal condition” as follows:

- (a) A condition caused by injury, disease, or illness from which there is no reasonable probability of recovery and which, without treatment, can be expected to cause death; or
- (b) A persistent vegetative state characterized by a permanent and irreversible condition of unconsciousness in which there is:
  - 1. The absence of voluntary action or cognitive behavior of any kind;  
and
  - 2. An inability to communicate or interact purposefully with the environment.

It is unclear whether the definition above will allow life support to be removed in the later stages of Alzheimer's, stroke, amyotrophic lateral sclerosis, Parkinson's, or other chronic illnesses. The definition of “terminal condition” in the documents can be expanded to include these conditions. For example:

“any condition which renders me unable to care for myself such as: a massive cerebrovascular accident, severe prolonged Alzheimer's Disease, Parkinson's Disease, amyotrophic lateral sclerosis, or similar catastrophic traumas, diseases, or illnesses.”

Some examples of “life-prolonging procedures” you may want to ask for or specifically decline are listed below. This list is illustrative only and is not meant to be exhaustive. If you are concerned about these particular procedures, be as specific as possible so you accurately express your feelings.

- 1. Cardiopulmonary resuscitation (CPR). Using drugs and electric shock to keep the heart beating at the point of death. This may require a “DNR” (do not resuscitate) order in order to avoid CPR.
- 2. Artificial administration of nutrition and hydration (forced feeding and fluid through tubes in the veins, nose, or stomach).
- 3. Mechanical, drug, or chemical treatment by any means.
- 4. Mechanical breathing assistance (breathing by machine).
- 5. Chemotherapy (using drugs to fight cancer).
- 6. Invasive diagnostic tests (for example, using a flexible tube to look into the stomach).

7. Blood or blood products by transfusion.
8. Antibiotics (using drugs to fight infection).
9. Surgical procedures, major or minor.
10. Pain medications (may dull consciousness and indirectly shorten life).