

Advance Directives

Advance Directives are documents that allow people to state their healthcare preferences *while they are able to communicate them* in the event they become incapacitated. Such documents can also name another person, called the person's agent or proxy, to make medical decisions on their behalf, if they are unable to make them for themselves.

The two types of advance directive documents are the Living Will and the Durable Power of Attorney. The Living Will is also called the Living Will Declaration or Declaration. The Durable Power of Attorney is also called the Durable Power of Attorney For Health Care or Health Care Proxy.

The Patient Self-Determination Act of 1991 states that all hospitals will ensure that written information will be provided to every adult inpatient on such advance directives, and that it must be noted in the Medical Record whether or not a patient has made an Advance Directive. Therefore, this patient information booklet is provided to you.

Your decision, either to make or not make such an advance directive, will be respected by your health care providers. You will in no way be discriminated against because of your decision. As a patient in this facility, you will receive health care whether you do or do not execute an advance directive.

Patient Rights

The laws of Louisiana uphold the fundamental right of all persons to control the decisions relating to their own medical care, including the decision to have life-sustaining procedures withheld or withdrawn in instances where such persons are diagnosed as having a terminal and irreversible condition. The laws provide a means through which the rights of patients may be respected even after they are no longer able to participate actively in medical decisions in their own behalf. That

means a Declaration Concerning Life-Sustaining Procedures, better known as a Living Will.

What is a Living Will?

A Living Will in Louisiana is a legal document which describes the medical care that a person would wish should he/she either become terminally and irreversibly ill or be in a continual profound comatose state with no reasonable chance of recovery, and no longer competent or able to participate in the decisions regarding his/her medical care.

Who may execute a Living Will?

Any adult person may, at any time, make a *written* declaration instructing his/her physician to withhold or withdraw life-sustaining procedures in the event he/she should have a terminal and irreversible medical condition, or be in a continual profound comatose state with no reasonable chance of recovery with the following stipulations:

1. The *written* declaration must be signed by the person making it in the presence of two witnesses, who must also sign the declaration.
2. The witnesses must be competent adults who are not related to the person making the declaration by blood or marriage and must not be entitled to any portion of the estate of the person upon his/her death.

An *oral* or *nonverbal* declaration may also be made by an adult in the presence of two witnesses, as described in Section 2 above, by any *nonwritten* means of communication. However, while a *written* declaration may be made at any time, an *oral* or *nonverbal* declaration may be made only AFTER the diagnosis of a terminal and irreversible condition has been made.

Responsibility to Notify Physician

It is the responsibility of the person making the declaration to notify his/her attending physician

that a declaration has been made. In the event, however, that the person who made the declaration is mentally, or physically incapable of communication, any other person may notify the physician of the declaration, i.e., that a Living Will exists.

Who else may execute a Living Will?

Providing that a patient has not previously made a declaration, the laws give the following persons, in the following order of priority, the right to make a declaration on an adult patient's behalf to withhold or withdraw life-sustaining procedures should the patient be comatose, incompetent, or otherwise physically or mentally incapable of communication and be diagnosed and certified as having a terminal and irreversible condition, or be in a continual profound comatose state with no reasonable chance of recovery:

1. The court-appointed guardian of the patient, if one has been appointed.
2. The patient's spouse, not legally separated.
3. The patient's adult children, as a class.
4. The patient's parents, as a class.
5. The patient's brothers and sisters, as a class.
6. The patient's relatives, ascending or descending, as a class.

In any case where the declaration is made by other than a court-appointed guardian, the decision must be a *unanimous* one on the part of those members of the class reasonably available for consultation. Furthermore, at least two witnesses, as described earlier, must be present at the time the declaration is made.

Does a Living Will affect insurance?

No. The making of a declaration or the withholding or withdrawal of life-sustaining procedures from an insured, qualified patient in accordance with Louisiana laws shall not affect the sale, procurement, or issuance of any life insurance policy, nor shall it invalidate or change the terms of any insurance policy, regardless of what the policy

may say to the contrary. Furthermore, the removal of life support systems according to these laws shall not, for any purpose, constitute suicide, nor shall it be deemed the cause of death for purposes of insurance coverage.

Can a Living Will be revoked?

Yes. Louisiana laws provide that a Living Will declaration may be revoked at any time by the person who made the declaration without regard to his/her mental state or competency by any of the following methods: by being cancelled, defaced, obliterated, burned, torn or otherwise destroyed by the person who made the declaration or by some person in his/her presence and at his/her directions; or by a written revocation of the person who made the declaration expressing the intent to revoke, signed and dated by the person; or by an oral or nonverbal expression by the person who made the declaration of the intent to revoke the declaration.

Note: Revocation of a Living Will declaration by any of the above methods shall become effective upon communication to the attending physician.

Other Specific Directions

A person may add other specific provisions to the Living Will in the area above the signature. For example, he/she might want to include such as the following:

Tissue or Organ Donation: *If any of my tissues or organs are sound and would be of value as transplants to other people, I freely give my permission for such donation.*

Designating Another Person

If an adult person does not choose to make his/her treatment decision and declaration, the law permits him/her to designate *another* person to make the treatment decisions and make such a declaration for him/her in the event he/she is diagnosed as having a terminal and irreversible condition and is

unable to participate actively in medical decisions in he/her own behalf.

In such a circumstance, the person may execute a Durable Power of Attorney (the person designated need not be a lawyer).

You should know that if you do not make a declaration, the law will not presume that you desire that life-sustaining procedures be maintained. In fact, the law allows certain other people to make a declaration for you if you are diagnosed as having a terminal and irreversible condition, unable to act on your behalf, and have not made a declaration.

What About a Minor?

If a minor has been diagnosed and certified as having a terminal and irreversible condition, or as being in a continual profound comatose state with no reasonable chance of recovery, the following persons may voluntarily make a declaration relative to withholding or withdrawal of medical treatment or life-sustaining procedures on the minor's behalf:

1. The spouse, if he/she has reached the age of majority, or
2. If there is no spouse, or if the spouse is not available, or is a minor, or is otherwise unable to act, then either the parent or guardian of the minor.

Such declaration on behalf of a minor must be signed by the person making the declaration in the presence of two competent witnesses, as described previously, who must also sign the declaration.

However, an individual named above may not make a declaration if he/she has actual notice of contrary indications by the terminally ill minor, or if, as a parent or guardian, he/she has actual notice of opposition by another parent, or guardian, or a spouse who has attained the age of majority.

More About a "Living Will"

Louisiana law provides a suggested form, but it is only that – suggested. You are free to use your own words, and you can make your instructions as specific as you desire. The form is not as important as the content of your declaration – that is, the law is more concerned with your desires and your instructions than with the form of the declaration.

This patient information booklet was developed to provide you with written information on advance directives. This is not meant to be legal advice, nor is it intended to take the place of the counsel which can be provided by an attorney. This booklet is not a complete explanation of your rights under the law. If you have questions or wish a detailed explanation, you should seek the advice of an attorney.

For additional information and assistance before reaching a decision, you are urged to consult with your physician, attorney, clergyman and family. Hospital personnel will be happy to put you in touch with the chaplain, social worker, or other qualified professionals.

References:

*American Hospital Association
Louisiana Department of Health and Hospitals
Louisiana Hospital Association
Omnibus Budget Reconciliation Act of 1990*

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ADVANCE DIRECTIVES

*As required by:
Patient Self-Determination Act of 1991,
a Federal Law*

Your Right to Living Wills and Other Declarations



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