

Living Wills and Durable Powers of Attorney for Health Care

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[Advanced Directive for Health Care](#) (pdf)

The Terry Schiavo case in Florida highlighted the importance of living wills and advance health care directives. At the time of her death in March 2005, Ms. Schiavo, who did not have a living will, had been under constant care for nearly 7 years after suffering extensive brain damage in 1990. Parties for both sides spent hundreds of thousands of dollars in legal fees and invested years in heart-wrenching litigation over whether the feeding tube keeping Ms. Schiavo alive could be removed.

This pamphlet discusses two methods recognized in Georgia for ensuring that your wishes regarding your health care are respected should you be unable to speak for yourself: the living will and the durable power of attorney for health care.

You have the right to control all aspects of your personal care and medical treatment, but if you become disabled, incapacitated or incompetent, someone else will need to make those decisions on your behalf. Living wills and durable powers of attorney for health care may be used to specify your wishes regarding your health care matters and whether you want life support if you are in a condition to require it. These documents are sometimes referred to as health care directives or health care proxies, and may even be incorporated into one document.

What is a Living Will?

A living will is a document that allows you to make known your wishes as to whether life sustaining or death delaying procedures, food and/or water should be withheld or withdrawn in certain limited circumstances. A living will is effective in the event you suffer from one or more of the specific conditions of (1) a terminal illness, (2) a coma with no reasonable expectation of recovery, or (3) a persistent vegetative state with no reasonable expectation of regaining significant cognitive function.

What is a Durable Power of Attorney for Health Care?

A durable power of attorney for health care is a document which allows you to authorize another person (called an agent) to act on your behalf in matters relating to your personal care, medical treatment, hospitalization, and health care. These powers include an authorization to require, withhold, or withdraw any type of medical treatment or procedure. This power of attorney is called "durable" because it continues to be effective (and in some cases can only be effective) upon your disability, incapacity or incompetency. Unlike a living will, which generally only applies to end-of-life decisions, a health care power of attorney may apply to a number of lesser, non-life threatening situations in which a medical care decision must be made.

What are the Duties of my Agent?

Your agent is not allowed to make health care decisions that are different from or contrary to your wishes. However, because the agent will speak on your behalf if you are unable to speak for yourself, it is very important that you choose an agent who knows what your decisions would be in certain situations.

The health care power of attorney can give your agent the power to consent or refuse all types of medical care and treatments. These include decisions on medication, surgery, or life-sustaining or death-delaying treatment. You may also authorize your agent to examine and consent to disclosure of your medical records and provide for choices for your health care based on your religious beliefs.

Your agent can decide whether to admit you to or discharge you from a hospital or nursing home and can authorize contracts for all types of health care services.

You may give your agent the power to make post-death decisions including the right to authorize an autopsy or consent to anatomical gifts. You may also specify your wishes regarding burial or cremation.

What are the Duties of Health Care Providers such as Doctors and Hospitals?

Once given a copy of your health care directive, if the health care provider believes that you are unable to understand the general nature of the health care procedure that the provider deems necessary, then the provider should consult with the agent named in your power of attorney or follow the treatment wishes you expressed in your living will. The provider must comply with the treatment decision made by your agent or as otherwise expressed in your health care directive to the same extent as if made by you at the time of the treatment decision.

What is the Relationship between a Health Care Power of Attorney and Living Will?

Generally, if you have a health care power of attorney, your living will does not apply as long as your agent is available to deal with the subject of life-sustaining or death-delaying procedures on your behalf. If your agent is not available, then your living will can specify your decision regarding the procedures.

Does HIPAA Apply to my Agent?

The federal Health Insurance Portability and Accountability Act (HIPAA) strictly limits access to your private medical records. This Act protects your private medical records and history from disclosure to third parties except upon your request or as necessary to treat you. A well-drafted health care power of attorney will allow your agent access to your private medical records so that he or she will have the information necessary to make an informed decision.

What is a Do Not Resuscitate (DNR) Order?

Living wills and health care powers of attorney are separate from a DNR order. A DNR Order tells medical professionals not to perform CPR. This means that doctors, nurses and emergency medical personnel will not attempt emergency CPR if the patient's breathing or heartbeat stops.

DNR orders may be written for patients in a hospital or nursing home, or for patients at home. Hospital DNR orders tell the medical staff not to revive the patient if cardiac arrest occurs. If the patient is in a nursing home or at home, a DNR order tells the staff and emergency medical personnel not to perform emergency resuscitation and not to transfer the patient to a hospital for CPR. A DNR order is only a decision about CPR and does not relate to any other treatment.

What are the Requirements for a Valid Health Care Power of Attorney or Living Will?

- The health care power of attorney and living will must be in writing and signed in the presence of two or more witnesses who are at least 18 years of age and who also must sign. There are additional signing requirements if you are in a hospital or skilled nursing facility.
- No health care provider may act as your agent if he or she is directly involved in your health care. "Health care provider" means an attending doctor or other person who is licensed to provide health care. It does not mean a family member who is caring for you.
- The health care power of attorney and living will do not need to be notarized to be valid.

Do I Need a Lawyer to Create these Documents?

Georgia law provides standard forms for living wills and health care powers of attorney and you do not have to have a lawyer prepare them for you. Many hospitals and health care providers have educational materials and standard forms available. However, many of the provisions are technical and can be somewhat confusing. A lawyer can assist you with an explanation of the terms and requirements of the documents to ensure your wishes are reflected.

Other Issues Concerning Health Care Directives

- Should your wishes change, you may revoke a signed health care power of attorney and living will prior to your disability, incapacity or incompetency.
- Unless the health care power of attorney specifies otherwise, marriage may revoke a health care power of attorney that designates a person other than your new spouse as your health care agent. Similarly, divorce revokes your former spouse as your agent unless the health care power of attorney specifies otherwise.

- A health care power of attorney and living will signed and witnessed in another state may be valid in Georgia; however, if you have moved here from another state, it is wise to have your documents reviewed by a Georgia lawyer to ensure that they comply with Georgia law.
- A health care power of attorney may be used to name a person who would be your guardian should a guardianship become necessary for you.
- A living will and a health care power of attorney do not allow your agent to make financial decisions or have the authority to control your finances. You would need a Financial Power of Attorney for any type of financial matters relating to your property.
- You may appoint more than one person to act as your agent.
- Copies of your documents should be treated the same as if they were original documents.

Summary

Health care powers of attorney and living wills are useful tools for communicating your medical wishes in the event you are unable to speak for yourself. These devices can lessen the potential anguish of loved ones should a catastrophic event occur by eliminating the uncertainty over what you would have desired. An estate planning attorney can listen to you and recommend documentation to ensure that your wishes are respected.

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