



Advance Directives

Your Right to Living Wills and Other Declarations

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

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 main 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the decisions relating to their own medical care, including the decision to have life-sustaining procedures withheld or withdrawn in instances where such persons are diagnosed as having a terminal and irreversible condition.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 on 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 have a "terminal and irreversible condition" and no longer competent or able to participate in the decisions regarding his/her medical care. A terminal and irreversible condition means a continual profound comatose state with no reasonable chance of recovery or a condition caused by injury, disease or illness which, within reasonable medical judgment, would produce death and for which the application of life-sustaining procedures would serve only to postpone the moment of death.

Who May Execute a Living Will?

Any adult person (known as the "declarant") may, at any time, make a written declaration instructing his/her

Continued on next page

physician to withhold or withdraw life-sustaining procedures in the event he/she should have a terminal and irreversible medical condition with the following stipulations:

1. The written declaration must be signed by the declarant making it in the presence of two witnesses, who must also sign the declaration.
2. The witnesses must be two (2) competent adults who are not related to the declarant by blood or marriage and must not be entitled to any portion of the estate of the declarant 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 declarant to notify his/her attending physician that a declaration has been made. In the event, however, that the declarant 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 classes of 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 in writing as having a terminal and irreversible condition by two examining physicians, one of whom must be the attending physician:

1. The court-appointed tutor or curator of the patient, if one has been appointed.
2. Any person or persons previously designated by an adult patient by written instrument signed by the patient in the presence of at least two witness to have the authority to make a declaration for the patient in the event of the patient's inability to do so. If the document so authorizes more than one person, it may include the order in which the persons designated shall have the authority to make the declaration.
3. The patient's spouse, not legally separated.

4. An adult child of the patient.
5. The patient's parents.
6. The patient's brothers and sisters.
7. The patient's relatives, ascending or descending.

If there is more than one person within any individual classes listed in 4 through 7 above, then the declaration must be made by a majority of that class available for consultation upon good faith efforts to secure participation of all within that class. Furthermore, at least two witnesses, as described earlier, must be present at the time the declaration is made by a person(s) specified in the class listed in 2 through 7.

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 declarant without regard to his/her mental state or competency by any of the following methods:

1. By being cancelled, defaced, obliterated, burned, torn or otherwise destroyed by the declarant or by some person in the declarant's presence and at the declarant's directions; or
2. By a written revocation of the declarant expressing the intent to revoke, signed and dated by the person; or
3. By an oral or nonverbal expression by the declarant of the intent to revoke the declaration

Note: Revocation of a Living Will Declaration by any of the above methods is 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 on his/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 or removed. 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, in writing, as having a terminal and irreversible condition by two examining physicians, one of whom is the attending physician, the following persons may voluntarily make a declaration to document the decision regarding the 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, clergy person and family. Hospital personnel will be happy to put you in touch with the hospital 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
Louisiana Revised Statutes-40:1299.58.1 (1999)

Copies are available from the Compliance Office. Call 504.349.1112.

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