



1-877-209-8086

www.wvendoflife.org

**Advance Directives for
Health Care Decision-Making
in West Virginia:
*Frequently Asked Questions and Forms***

Revised October 2010

FORMS INCLUDED:

Living Will

Medical Power of Attorney

Combined Living Will & Medical Power of Attorney

With additional demographic information for inclusion in

WV e-Directive Registry

This booklet is based on the West Virginia Health Care Decisions Act passed by the West Virginia Legislature in March 2000 and amended in 2002 and 2007. The Policy Task Force hopes that this booklet will be of assistance to West Virginians in understanding and completing advance directives. The Center's website at www.wvendoflife.org contains a copy of the West Virginia Health Care Decisions Act, additional forms that can be downloaded, and possible directives that individuals might want to include in the Special Directives or Limitations section of their Living Will or Medical Power of Attorney. The information in this booklet is not considered to be legal advice.

What Are “Advance Directives for Healthcare Decision-Making?” Why Are They Important?

As an adult, you have the right to make your own healthcare decisions. Your doctor and other healthcare providers must tell you about the nature of any proposed procedure or treatment, its probable benefits or effects, and any predictable discomfort, complications, or risks. You have the right to know about alternative treatments and their risks and benefits. You have the right to ask questions, and then you have the right to decide whether you want the treatment or not. Your right to accept medical or surgical treatment also includes the right to refuse it.

But what if you become incapable of making healthcare decisions for yourself because of injury or illness? Imagine that you are in a hospital, terminally ill with cancer, and are confused. Who will decide whether you should have CPR (cardiopulmonary resuscitation) if your heart should stop suddenly? Or what if you are 40 years old and are involved in a motor vehicle accident which leaves you permanently unconscious? Who will decide whether you are to be kept alive with tube feedings? Or what if you have Alzheimer’s disease and you develop a serious infection in a nursing home? Who will decide whether or not you will be hospitalized and treated with antibiotics?

“West Virginia Law Recognizes Two Types of Advance Directives... the Living Will and the Medical Power of Attorney.”

You can remain in charge of your health care, even after you can no longer make decisions for yourself, by creating a document called an “advance directive.”

West Virginia law recognizes two types of written advance directives for healthcare decision-making: the Living Will and the Medical Power of Attorney. This booklet presents information about these directives and includes the appropriate forms. Both forms have a special section for you to write in specific comments about circumstances in which you would not want CPR, a feeding tube, dialysis, or treatment with a breathing machine. You should discuss these comments with your family and doctors so they can better understand what is important to you in receiving medical treatment. Should you wish to have both forms in one document, there is also a combined Living Will/Medical Power of Attorney form in this booklet.

You can use these documents to let your family and doctor know your decisions for health care if you become unable to decide for yourself. You can appoint someone you know and trust as your Medical Power of Attorney representative to ensure that your choice or decision is honored.

Frequently Asked Questions about Advance Directives

1. *What is a Living Will?*

A Living Will is a document that tells your doctor how you want to be treated if you are terminally ill or permanently unconscious. You can use a Living Will to tell your doctor you want to avoid life-prolonging interventions such as cardiopulmonary resuscitation (CPR), kidney dialysis, or breathing machines. You can use a Living Will to tell your doctor you just want to be pain-free and comfortable at the end of life. You may also add other special instructions or limitations in your Living Will.

A Living Will form is included at the end of this booklet. You may create a Living Will by filling out this form and having it properly witnessed and notarized (see questions 13 & 14).

2. *What is a Medical Power of Attorney?*

A Medical Power of Attorney is another type of advance directive that allows you to name a person to make healthcare decisions for you if you are unable to make them for yourself.

A Medical Power of Attorney form is included at the end of this booklet. You may create a Medical Power of Attorney by filling out this form and having it properly witnessed and notarized (see questions 13 & 14).

3. *How is the Medical Power of Attorney different from the Living Will?*

A Living Will only applies if you are terminally ill or permanently unconscious AND too sick to make decisions for yourself. A Living Will only tells your doctor what you do not want unless you write in other specific instructions. A Living Will is a written record of decisions that you have made yourself.

On the other hand, the Medical Power of Attorney allows you to choose someone else to make healthcare decisions for you if you are too sick to make them for yourself. This person is called your Medical Power of Attorney representative. Your representative can make any healthcare decision that you could make if you were able. A Medical Power of Attorney allows you to give specific instructions to your representative about the type of care you would want to receive.

The Medical Power of Attorney allows your representative to respond to medical situations that you might not have anticipated and to make decisions for you with knowledge of your values and wishes.

4. *I am a young person in good health. Do I really need to create a formal Advance Directive?*

Advance Directives are for all adults, including mature minors and emancipated minors. We never know when an accident or serious illness will leave us incapable of making our own healthcare decisions.

5. *What if I already have a Living Will? Do I need to create a Medical Power of Attorney?*

Most West Virginians create both a Medical Power of Attorney and a Living Will. Since the Medical Power of Attorney is a more flexible document and allows you to name someone to make decisions for you, it is advisable to create a Medical Power of Attorney even if you have already signed a Living Will.

The representative you appoint as your Medical Power of Attorney representative can help see that the preferences expressed in your Living Will are carried out. Some people, however, do not have someone whom they trust or who knows their values and preferences. These people should consider creating a Living Will.

If you choose to sign both documents, you should see that they are stored in the same place to help assure that your representative will know to respect all of your wishes. Alternatively, you may complete a combined living will and medical power of attorney document (enclosed at the back of this booklet) which combines both documents into one form.

6. *Should I complete a new Living Will or Medical Power of Attorney if I completed one before June 11, 2000?*

On June 11, 2000, a new law went into effect that made several changes to the Living Will and Medical Power of Attorney forms. Most importantly, the new law requires only one physician to decide whether you are able to make your own healthcare decisions. Forms completed prior to the new law require two physicians to make this determination. The new forms also are written in clearer, easy to understand language. If you want to take advantage of these changes, you should complete a new Living Will and Medical Power of Attorney.

7. *Can I combine my Living Will and Medical Power of Attorney in one form?*

Yes. If you do not want CPR, feeding tubes, breathing machines, or other life-prolonging interventions if you become terminally ill or permanently unconscious, then you can use one document that combines both the Living Will and the Medical Power of Attorney forms.

A combined Medical Power of Attorney/Living Will form is included at the end of this booklet. You may create a combined Medical Power of Attorney/Living Will by fill in out this form and having it properly witnessed and notarized (see questions 13 & 14).

8. *Can I still make my own healthcare decisions once I have created an Advance Directive?*

Yes. Your Advance Directive does not become effective until you are incapable of clearly expressing your own wishes. As long as you can do this, you have the right to make your own decisions.

9. *If I decide to create a Medical Power of Attorney, how should I choose my representative?*

Choose someone who knows your values and wishes, and whom you trust to make decisions for you. Do the same for a successor representative. Ask both to be sure they understand and agree to be your representative.

You may, but do not have to, choose a family member to be your representative. Regardless of your choice, your representative should be someone who will be available if needed and who will decide matters the way you would decide.

Name only one person each as your representative and your successor representative. Do not choose your doctor, or another person who is likely to be your future healthcare provider, as your representative or successor representative.

10. *What instructions should I give my representatives concerning my health care?*

You may give very general instructions and preferences, or be quite specific. It would be helpful to your representatives to have directions from you about medical conditions in which you would NOT want life prolonging intervention, particularly medically administered food and water (tube feedings), cardiopulmonary resuscitation (CPR), and the use of machines to help you breathe. You should also tell your representative if you want to be an organ and tissue donor.

Many people choose to write their representatives a letter stating their personal values and wishes, their feelings about life and death, and any specific instructions, and to attach a copy of this letter to their Medical Power of Attorney.

Talk with your representatives about your choices and personal values and beliefs. Make sure they know what is important to you. This information will help them make the decisions that you would make if you were able.

11. *Can any person create an Advance Directive?*

Yes. Any adult (including a mature or emancipated minor) who has the capacity to make decisions for him or herself can create an Advance Directive.

12. *Do I need a lawyer to create an Advance Directive?*

No. Both the Medical Power of Attorney and Living Will can be created without the assistance of a lawyer.

13. *Who should witness my signature on my Advance Directive?*

Your witnesses must be at least 18 years of age and not related to you by blood or marriage. Choose persons who will not inherit any of your property. Do not choose the person you named as your representative or your successor representative or your doctor as your witness.

14. *How can I find a Notary Public to complete my Medical Power of Attorney form?*

Businesses such as banks, insurance agents, government offices, hospitals, doctors' offices, and automobile associations have or can direct you to a notary public.

15. *What should I do with my Advance Directive after I sign it?*

After your Advance Directive is signed, witnessed and notarized, give one copy each to your representative, your successor representative, your doctor, and your local hospital. Keep the original document in a safe location where it can be easily found. Your safe deposit box is most

likely NOT the best place for your Advance Directive unless you are certain someone close to you has access to the safe deposit box if you become incapacitated.

Make sure your representative knows where the original is so it can be shown to your doctor on request. However, a photo copy of your Advance Directive is legally valid.

16. *What if my doctor or my family does not agree with my treatment choices or healthcare decisions?*

You can prevent this from happening by talking with your family and healthcare providers about your decisions and personal values and beliefs. If others understand your choices and the reasons for them, there is less of a chance that they will challenge them later.

If you have made your wishes known in an Advance Directive and a disagreement does occur, your doctor and your representative must respect your wishes. You have a right to refuse or consent to health care. If your doctor cannot comply with your wishes, he or she must transfer your care to another doctor.

The consent or refusal of your Medical Power of Attorney representative is as meaningful and valid as your own. The wishes of other family members will not override your own clearly expressed choices or those made by your representative on your behalf.

17. *Do I have to sign an Advance Directive to receive healthcare treatment?*

No. A doctor or other healthcare provider cannot require you to complete an Advance Directive as a condition for you to receive services.

18. *Will another state honor my Advance Directive?*

Laws differ somewhat from state to state, but in general, a patient's expressed wishes will be honored. No law or court has invalidated the concept of Advance Directives, and an increasing number of statutes and court decisions support it.

19. *What if I change my mind about who I want to be my representative or about the kind of treatment I want?*

You should review your Advance Directive periodically to make sure it still reflects your wishes. The best way to change your Advance Directive is to create a new one. The new Advance Directive will automatically cancel the old one. Be sure to notify all people who have copies of your Advance Directive that you completed a new one. Collect and destroy all copies of the old version.

20. *How can I be sure that the wishes expressed in my Advance Directive will be followed?*

Be sure your doctor has a current copy. Bring a copy with you if you are admitted to a healthcare facility. Tell people where you keep your Advance Directive.

21. *If my heart should stop, I want to be resuscitated in my current condition. Can I request CPR on my living will?*

Yes, you can request CPR on your living will, but it is not recommended. Remember that a living will only goes into effect if you are terminally ill or permanently unconscious AND too sick to make decisions for yourself. In such circumstances, CPR is very unlikely to be effective. Instructions on the living will do not apply to healthy individuals. However, if you do decide that you want to request CPR on your living will, consider adding an extra sentence in the Special Directives or Limitations section to address a deterioration in your health: “If CPR is deemed to be medically ineffective for me at sometime in the future by my doctor, I authorize my Medical Power of Attorney representative to consent to a Do Not Resuscitate order for me at that time.”

22. *Can I write my wishes for funeral arrangements on my advance directive?*

Yes, you can give the person you name as your Medical Power of Attorney representative the authority to make decisions for you about funeral arrangements or cremation. The way to do so is to write instructions in the Special Directives or Limitations on this section of the medical power of attorney form or the combined medical power of attorney-living will form. To grant authority to your medical power of attorney representative, include a sentence as follows: “I authorize my representative to make decisions regarding my funeral arrangements or cremation.”

23. *How can I get more copies of the Advance Directives forms and this booklet?*

You may call the **West Virginia Center for End-of-Life Care** toll-free at **1-877-209-8086**. If you have Internet access, go to www.wvendoflife.org and click on “Advance Directive Forms and Law.” You can print off forms from the website. You may also photo copy the forms in this booklet.

Opt In INITIAL box if you agree to have this advance directive submitted to the WV *e-Directive* Registry, and released to treating health care providers. Complete information to RIGHT.

REGISTRY FAX: 304-293-7442

Last Name/First/Middle _____
Address _____
City/State/Zip _____
Date of Birth (mm/dd/yyyy) ____/____/____
Last 4 SSN ____-____-____-____ Gender M__ F__

STATE OF WEST VIRGINIA
COMBINED
MEDICAL POWER OF ATTORNEY
AND LIVING WILL

The Person I Want to Make Health Care Decisions
For Me When I Can't Make Them for Myself
And
The Kind of Medical Treatment I Want and Don't Want
If I Have a Terminal Condition or Am In a Persistent Vegetative State

Dated: _____, 20____

I, _____, hereby
(Insert your name and address)

appoint as my representative to act on my behalf to give, withhold or withdraw informed consent to health care decisions in the event that I am not able to do so myself.

The person I choose as my representative is:

(Insert the name, address, area code and telephone number of the person you wish to designate as your representative)

The person I choose as my successor representative is:

If my representative is unable, unwilling or disqualified to serve, then I appoint

(Insert the name, address, area code and telephone number of the person you wish to designate as your successor representative)

This appointment shall extend to, but not be limited to, health care decisions relating to medical treatment, surgical treatment, nursing care, medication, hospitalization, care and treatment in a nursing home or other facility, and home health care. The representative appointed by this document is specifically authorized to be granted access to my medical records and other health information and to act on my behalf to consent to, refuse or withdraw any and all medical treatment or diagnostic procedures, or autopsy if my representative determines that I, if able to do so, would consent to, refuse or withdraw such treatment or procedures. Such authority shall include, but not be limited to, decisions regarding the withholding or withdrawal of life-prolonging interventions.

I appoint this representative because I believe this person understands my wishes and values and will act to carry into effect the health care decisions that I would make if I were able to do so, and because I also believe that this person will act in my best interest when my wishes are unknown. It is my intent that my family, my physician and all legal authorities be bound by the decisions that are made by the representative appointed by this document, and it is my intent that these decisions should not be the subject of review by any health care provider or administrative or judicial agency.

It is my intent that this document be legally binding and effective and that this document be taken as a formal statement of my desire concerning the method by which any health care decisions should be made on my behalf during any period when I am unable to make such decisions.

In exercising the authority under this medical power of attorney, my representative shall act consistently with my special directives or limitations as stated below.

I am giving the following SPECIAL DIRECTIVES OR LIMITATIONS ON THIS POWER: (Comments about tube feedings, breathing machines, cardiopulmonary resuscitation, dialysis, mental health treatment, funeral arrangements, autopsy, and organ donation may be placed here. My failure to provide special directives or limitations does not mean that I want or refuse certain treatments).

1. If I am very sick and not able to communicate my wishes for myself and I am certified by one physician who has personally examined me, to have a terminal condition or to be in a persistent vegetative state (I am unconscious and am neither aware of my environment nor able to interact with others,) I direct that life-prolonging medical intervention that would serve solely to prolong the dying process or maintain me in a persistent vegetative state be withheld or withdrawn. I want to be allowed to die naturally and only be given medications or other medical procedures necessary to keep me comfortable. I want to receive as much medication as is necessary to alleviate my pain.

2. Other directives: _____

THIS MEDICAL POWER OF ATTORNEY SHALL BECOME EFFECTIVE ONLY UPON MY INCAPACITY TO GIVE, WITHHOLD OR WITHDRAW INFORMED CONSENT TO MY OWN MEDICAL CARE.

Signature of the Principal DATE _____

I did not sign the principal's signature above. I am at least eighteen years of age and am not related to the principal by blood or marriage. I am not entitled to any portion of the estate of the principal or to the best of my knowledge under any will of the principal or codicil thereto, or legally responsible for the costs of the principal's medical or other care. I am not the principal's attending physician, nor am I the representative or successor representative of the principal.

Witness _____ DATE _____

Witness _____ DATE _____

STATE OF _____

COUNTY OF _____

I, _____, a Notary Public of said County, do certify that _____, as principal, and _____ and _____, as witnesses, whose names are signed to the writing above bearing date on the ____ day of _____, 20____, have this day acknowledged the same before me.

Given under my hand this _____ day of _____, 20____.

My commission expires: _____

Signature of Notary Public

Opt In INITIAL box if you agree to have this advance directive submitted to the WV *e-Directive* Registry, and released to treating health care providers. Complete information to RIGHT.
REGISTRY FAX: 304-293-7442

Last Name/First/Middle _____
Address _____
City/State/Zip _____
Date of Birth (mm/dd/yyyy) ____/____/____
Last 4 SSN ____-____-____-____ Gender M____ F____

**STATE OF WEST VIRGINIA
MEDICAL POWER OF ATTORNEY**

The Person I Want to Make Health Care Decisions
For Me When I Can't Make Them for Myself

Dated: _____, 20 ____

I, _____, hereby
(Insert your name and address)

appoint as my representative to act on my behalf to give, withhold or withdraw informed consent to health care decisions in the event that I am not able to do so myself.

The person I choose as my representative is:

(Insert the name, address, area code and telephone number of the person you wish to designate as your representative)

The person I choose as my successor representative is:

If my representative is unable, unwilling or disqualified to serve, then I appoint

(Insert the name, address, area code and telephone number of the person you wish to designate as your successor representative)

This appointment shall extend to, but not be limited to, health care decisions relating to medical treatment, surgical treatment, nursing care, medication, hospitalization, care and treatment in a nursing home or other facility, and home health care. The representative appointed by this document is specifically authorized to be granted access to my medical records and other health information and to act on my behalf to consent to, refuse or withdraw any and all medical treatment or diagnostic procedures, or autopsy if my representative determines that I, if able to do so, would consent to, refuse or withdraw such treatment or procedures. Such authority shall include, but not be limited to, decisions regarding the withholding or withdrawal of life-prolonging interventions.

I appoint this representative because I believe this person understands my wishes and values and will act to carry into effect the health care decisions that I would make if I were able to do so, and because I also believe that this person will act in my best interest when my wishes are unknown. It is my intent that my family, my physician and all legal authorities be bound by the decisions that are made by the representative appointed by this document, and it is my intent that these decisions should not be the subject of review by any health care provider or administrative or judicial agency.

Opt In INITIAL box if you agree to have this advance directive submitted to the WV e-Directive Registry, and released to treating health care providers. Complete information to RIGHT.

REGISTRY FAX: 304-293-7442

Last Name/First/Middle _____
Address _____
City/State/Zip _____
Date of Birth (mm/dd/yyyy) ____/____/____
Last 4 SSN ____-____-____-____ Gender M__ F__

**STATE OF WEST VIRGINIA
LIVING WILL**

**The Kind of Medical Treatment I Want and Don't Want
If I Have a Terminal Condition or Am In a Persistent Vegetative State**

Living will made this _____ day of _____ (month, year).

I, _____, being of sound mind, willfully and voluntarily declare that I want my wishes to be respected if I am very sick and not able to communicate my wishes for myself. In the absence of my ability to give directions regarding the use of life-prolonging medical intervention, it is my desire that my dying shall not be prolonged under the following circumstances:

If I am very sick and not able to communicate my wishes for myself and I am certified by one physician who has personally examined me, to have a terminal condition or to be in a persistent vegetative state (I am unconscious and am neither aware of my environment nor able to interact with others,) I direct that life-prolonging medical intervention that would serve solely to prolong the dying process or maintain me in a persistent vegetative state be withheld or withdrawn. I want to be allowed to die naturally and only be given medications or other medical procedures necessary to keep me comfortable. I want to receive as much medication as is necessary to alleviate my pain.

I give the following SPECIAL DIRECTIVES OR LIMITATIONS: (Comments about tube feedings, breathing machines, cardiopulmonary resuscitation, dialysis, and mental health treatment may be placed here. My failure to provide special directives or limitations does not mean that I want or refuse certain treatments.)

It is my intention that this living will be honored as the final expression of my legal right to refuse medical or surgical treatment and accept the consequences resulting from such refusal.

I understand the full import of this living will.

Signed

Date

Address

I did not sign the principal's signature above for or at the direction of the principal. I am at least eighteen years of age and am not related to the principal by blood or marriage, entitled to any portion of the estate of the principal to the best of my knowledge under any will of principal or codicil thereto, or directly financially responsible for principal's medical care. I am not the principal's attending physician or the principal's medical power of attorney representative or successor medical power of attorney representative under a medical power of attorney.

Witness _____

DATE _____

Witness _____

DATE _____

STATE OF _____

COUNTY OF _____

I, _____, a Notary Public of said County, do certify that _____, as principal, and _____, and _____, as witnesses, whose names are signed to the writing above bearing date on the ____ day of _____, 20____, have this day acknowledged the same before me.

Given under my hand this _____ day of _____, 20____.

My commission expires: _____

Signature of Notary Public