

## END OF LIFE DECISIONS

### What is an Advanced Directive?

Advance Directives (“AD’s”) are more commonly known as “Living Wills.” An Advance Directive can be a Directive, a medical power of attorney, or an out-of-hospital Do Not Resuscitate (DNR) Order. Basically, ADs let the medical providers treating you know what your wishes are regarding the extent of treatment you want done to you in the event of a terminal condition.

### Why should I make an Advance Directive, Living Will, etc.?

The number one reason it is important to consider making an Advance Directive is to let everyone know your wishes regarding your health care choices and end of life decisions. Although making an Advanced Directive presents difficult situations to think about, it is very important that your treatment preferences are followed in the event that you are unable to make decisions pertaining to your own health care. To make sure that those details are followed it is important to talk about your wishes with others. Discuss with family members/friends and medical staff your desires regarding the withholding and/or withdrawal of life-sustaining treatment and to what extent life-saving measures should be taken.

### What is the difference between a Medical Power of Attorney, Directive to Physician and an out-of-hospital DNR?

#### *Medical Power of Attorney (MPOA)*

A document where you authorize another adult to make health care decisions on your behalf in the event you are no longer competent to make those decisions (i.e., you cannot communicate, or are not able to make treatment decisions based on reasonable medical information).

#### *Directive to Physician or “Directive”*

This document allows you, the patient, to inform the medical professional about your wishes for giving, withholding or withdrawing life-sustaining treatment in the event of a terminal or irreversible condition. One major difference in a Directive and a Medical Power of Attorney is that no agents are appointed in a Directive – it entails, you, the patient, directing your doctor to proceed in a certain manner regardless of what others may request. Note that if you execute both a Directive and a MPOA, the decisions made by you in a Directive supersede the authority given to your agent in the MPOA. If no Directive is executed, the agent designated in your MPOA will be able to make life-sustaining treatment decisions

on your behalf. One of the more commonly referred to directives is the DNR, which informs medical providers of what measures you are okay with in the event of a terminal or irreversible medical condition.

### *Out-of-Hospital DNR*

A legally binding specific document, prepared and signed by your attending physician, which documents your wishes and directs health care professionals acting in an out-of-hospital setting not to start or continue certain life-sustaining treatments (such as CPR, “advanced airway management,” artificial ventilation, defibrillation, etc.). For an out of hospital DNR to be effective, some type of bracelet or necklace must be worn by the patient in order to adequately notify EMS personnel that you have chosen to decline life saving measures.

### **How do I create an Advanced Directive?**

Each type is different. We’ll take each type one by one and give some helpful information on executing these documents in each discussion section.

### **DIRECTIVE TO PHYSICIANS**

A Directive does not have to be in writing. (However, having it in writing assures that you and your medical providers are clear about your wishes.) A written Directive may be in different forms, but the law requires that a written directive be signed by you, the “declarant” in the presence of TWO witnesses (see below for who can be a witness). You need to let your attending physician know that you have a written directive so that he or she can make the Directive a part of your medical record.

### **Witnesses:**

- Must both be “competent adults” (that is, an adult who is able to understand and appreciate the nature and consequences of a treatment decision)
- One of the witnesses CANNOT be:
  - a person designed by you to make a treatment decision;
  - one of your relatives by blood or marriage;
  - anyone who is entitled to any part of your estate after your death;
  - your attending physician;
  - an employee of the attending physician;
  - an employee of the health care facility where you are a patient; or
  - any person who may have a claim against your estate after you die.

In the event that you are provided with a Directive form by your health care

provider, the law generally allows you to add additional directions other than those listed on the provided form. Also, in the directive you may designate a person to make treatment decisions for you in the event that you become incompetent or otherwise mentally or physically unable to communicate.

Note: YOUR DESIRE SUPERSEDES A DIRECTIVE! If you tell your medical provider that you have changed your mind about something in the Directive, they must obey your desire.

### **What happens if I become incompetent or unable to communicate and I do not have a Directive?**

If you become “incompetent” or are incapable of communication then your attending physician and your legal guardian or medical power of attorney (MPOA) agent may make a treatment decision that may include a decision to withhold or withdraw life-sustaining treatment from you. (Incompetent means lacking the ability, based on reasonable medical judgment, to understand and appreciate the nature and consequences of a treatment decision, including the significant benefits and harms of and reasonable alternatives to a proposed treatment decision.)

If you do not have a legal guardian or a MPOA agent then your attending physician and one “eligible person” may make a treatment decision that may include a decision to withhold or withdraw life-sustaining treatment from you. Eligible persons include your spouse, your adult children, your parents, or your nearest living relative.

Note: Any treatment decisions made if you become incompetent or are incapable of communication must be based on knowledge of what YOU would want, if they know what your wishes are.

In the event that you do not have either a legal guardian, MPOA agent, or an “eligible person” from list above, then your attending physician would need to get another physician who is not involved in your treatment to concurrent to a treatment decision made by your attending physician.

### **What else should I know about a Directive?**

If you have previously executed/created a Directive, the last Directive you executed will be the controlling directive.

If you have executed a Directive in another state or jurisdiction, it will be given the same effect as if it had been validly executed in Texas.

### **How do I Revoke a Directive?**

Any Directive is effective until you revoke it or create another Directive. You or

someone else in your presence and at your direction/request can revoke a Directive by canceling it, defacing it, obliterating it, burning it, tearing it, or otherwise destroying it. You can also sign and date on the Directive your wish/intent to revoke the Directive.

If you use either method listed above, to revoke your Directive, the revocation will not be effective until your attending physician is notified of the revocation - either personally or by mail. You can mail in your notice of revocation to your attending physician, who will then record the revocation in your medical file.

You can also orally state your intent to revoke the directive. If you use this method, the revocation will not be effective until your attending physician is notified of the revocation.

#### **MEDICAL POWER OF ATTORNEY (MPOA):**

##### **How do I execute/designate a MPOA?**

A MPOA is a written document where you authorize another adult to make health care decisions on your behalf in the event you are no longer competent to make those decisions. The law requires that a MPOA be in writing and be signed by you, the “principal.” You must sign it in the presence of TWO witnesses who must also sign the MPOA (witnesses to a MPOA must meet the same requirements as witnesses to a Directive. See above.) Finally, you need to let your attending physician know that you have a MPOA so that he or she can make this document a part of your medical record.

If you are physically unable to sign the MPOA, then another person may sign for you using your name in your presence and noting that it was at your express direction.

#### **\*\*IMPORTANT NOTE\*\***

- A MPOA is not effective unless you, before executing the MPOA, sign a statement that you have received a Disclosure Statement and that you have read and understood its contents.
- The law requires that the Disclosure Statement must be substantially in the form provided under Tex. Health & Safety Code § 166.163.

#### **Is a MPOA the same thing as a “statutory durable power of attorney”?**

No, a statutory durable power of attorney is when you authorize someone else to be your “attorney in fact” or your agent for all your business-type legal decisions. A MPOA is a document you execute where you authorize another adult to make

only health care decisions on your behalf in the event you are no longer competent to make those decisions.

(The statutory durable power of attorney is discussed in the Estate Planning section of the Guide.)

#### **Who can be a MPOA agent?**

Any adult (18 years or older) can be your MPOA, with the following exceptions:

- your health care provider;
- an employee of your health care provider unless the employee is one of your relatives;
- your residential care provider (i.e., your nursing home care provider) ; or
- an employee of your residential care provider unless the employee is one of your relatives

#### **What can my MPOA agent do?**

In general, the agent may make any health care decision on your behalf that you could make if you were competent. BUT, the agent may not consent to: voluntary inpatient mental health; convulsive (shock) treatment; “psychosurgery”; abortion; or your neglect through the omission of care primary intended to provide for your comfort.

#### **What else do I need to know about MPOA?**

##### ***Revoking a MPOA***

A MPOA can be revoked:

- in writing or orally at any time by you to your agent (or a certified or licensed health or residential care provider); OR
- by any other act which shows a specific intent to revoke power, without regard to whether you are competent or without regard to your mental state; OR
- by the execution of a subsequent MPOA; OR
- by the divorce of you and your spouse IF your spouse was your authorized agent under the MPOA, unless your MPOA says otherwise.

#### **OUT-OF-HOSPITAL DNR**

##### **What is an Out-of-Hospital DNR?**

An Out-Of-Hospital DNR Order is a legally binding document that is required to be in the form discussed below. It is to be prepared and signed by your attending physician and directs health care professionals acting in an out-of-hospital setting

not to initiate or continue life-sustaining treatment, which includes cardiopulmonary resuscitation, advanced airway management, artificial ventilation, defibrillation, and/or transcutaneous cardiac pacing.

#### **How do I execute/create an Out-of-Hospital DNR Order?**

The law requires that a written out-of-hospital DNR order shall be on a standard form. Your attending physician or hospital should be able to provide you with an Out-of-Hospital DNR Order form.

Note: An Out-of-Hospital DNR Order does NOT have to be written! However, it must be made in the presence of two qualified witnesses and your attending physician. They will then sign the Order, which will then become part of your medical record.

Note: Your desire SUPERSEDES the Out-Of-Hospital DNR Order!

#### **How do I revoke an Out-of-Hospital DNR Order?**

You can revoke an Out-of-Hospital DNR Order by act (destroying the form and removing the DNR notification device), in writing or orally. Revocation can be accomplished by you, your legal guardian, a qualified relative, your MPOA agent who executed the out-of-hospital DNR order or another person in your presence and your direction.

Note: An oral revocation of an order takes effect only when you or a person who identifies himself or herself as the legal guardian, a qualified relative, or your agent communicates the intent to revoke the order to the responding health care professionals or the attending physician at the scene. The attending physician or the physician's designee shall record the revocation of the order in your medical record.

#### **What else do I need to know about an Out-of-Hospital DNR's?**

If you have a valid out-of-hospital DNR order you may wear a DNR identification device around the neck or on the wrist that lets other medical health care providers know that you have executed or issued a valid out-of-hospital DNR order or have a valid out-of-hospital DNR order executed or issued on the your behalf.

#### **ONE LAST THING TO CONSIDER:**

You may want to look into contacting local hospice about what services they can provide you. It's important to note that a hospice does not just provide help with end of life decisions; they are a great source of information, provide assistance with pain management, and are an excellent source of emotional support.