

IMPORTANT INFORMATION ABOUT YOUR
DIRECTIVE TO PHYSICIANS AND FAMILY OR SURROGATES
“ADVANCE DIRECTIVE”

THIS IS AN IMPORTANT LEGAL DOCUMENT.

You do not need an Advance Directive to receive medical attention. The purpose of an Advance Directive is to record your medical treatment choices in case you are unable to communicate them and are expected either to remain in a permanent vegetative state or to die within six months even with available medical treatment.

If you have an Advance Directive, give a copy to each of your doctors and to the agent and alternate agent under your Medical Power of Attorney.

Think about your personal values. Discuss them with your family, friends and doctor. Consider what burdens or hardships of treatment you would be willing to accept for a particular amount of benefit obtained if you were seriously ill.

Review your Advance Directive at least every two years. One survey found that almost half the people changed their minds within two years.

You can change your mind, regardless of your mental state or competency. You or the person you appoint in your Medical Power of Attorney must tell your doctor your new decision in the presence of two witnesses who are not your heirs and are not connected with the management of the health care facility where you may be staying. Remind your physician to write your new decision in your medical records. Also ask your lawyer to create a new Advance Directive so that someone does not refer to the old one by mistake.

This Advance Directive form is about pain management, called palliative care. If there are other forms of treatment which you do or do not want under certain circumstances, add them in the space for Additional Requests.

The most important decisions happen not when death is inevitable, but when there is a possibility that treatments may benefit you. These may include a transfer to an Intensive Care Unit, intubation and mechanical ventilation, hydration, artificial nutrition, therapeutic, time-limited trials and CPR.

The Texas State Legislature has provided other directives which can be important during a serious illness. These are the Medical Power of Attorney and the Out-of-Hospital Do-Not-Resuscitate Order. You can donate your tissue or organs using a form at www.shareyourlife.org.

Except for emergency and outpatient services, when you begin receiving health care or are admitted to a hospital or other health care facility, you must be given a clear, precise written statement of any procedure which that person or facility is unable or unwilling to provide. This will let you change doctors or hospitals or other health care facilities so that your Advance Directive can be followed.

If you are unable to receive or understand the notice, it must be given (in order of preference) to your legal guardian, the person named in your Medical Power of Attorney, your spouse, your adult child, your parent or the person admitting you. You must be given the notice yourself if you become able to receive and understand it.

Anyone who defaces, obliterates or damages your Advance Directive without your consent may be charged with a Class A Misdemeanor.

Anyone who falsifies or forges your Advance Directive or intentionally conceals or withholds knowledge that you have revoked your Advance Directive and thereby directly causes life-sustaining treatment to be withheld or withdrawn, hastening your death, may be charged with criminal homicide.

If your doctor disagrees with the decision *to provide* life-sustaining treatment, he must arrange for you to be transferred to another doctor or facility or ask an ethics committee for its opinion. He must tell this to you or to the person named in your Medical Power of Attorney in writing.

If your doctor disagrees with the decision *to withhold or withdraw* life-sustaining treatment, he must arrange for you to be transferred to another doctor or facility or ask an ethics committee for its opinion. She must tell you or the person named in your Medical Power of Attorney in writing.

The Texas State Legislature has created forms for your doctor to use.

When There Is A Disagreement About Medical Treatment:

The Physician Recommends Against Life-Sustaining Treatment That You Wish to Continue

“You have been given this information because you have requested life-sustaining treatment, which the attending physician believes is not appropriate. This information is being provided to help you understand state law, your rights and the resources available to you in such circumstances. It outlines the process for resolving disagreements about treatment among patients, families and physicians. It is based upon Section 166.046 of the Texas Advance Directives Act, codified in Chapter 166 of the Texas Health and Safety Code.

“When an attending physician refuses to comply with an Advance Directive or other request for life-sustaining treatment because of the physician’s judgment that the treatment would be inappropriate, the case will be reviewed by an ethics or medical committee. Life-sustaining treatment will be provided through the review.

“You will receive notification of this review at least 48 hours before a meeting of the committee related to your case. You are entitled to attend the meeting. Your physician is not. With your agreement, the meeting may be held sooner than 48 hours, if possible.

“You are entitled to receive a written explanation of the decision reached during the review process.

“If after this review process both the attending physician and the ethics or medical committee conclude that life-sustaining treatment is inappropriate and yet you continue to request such treatment, then the following procedure will occur:

“1. The physician, with the help of the health care facility, will assist you in trying to find a physician and facility willing to provide the requested treatment.

“2. You are being given a list of health care providers and referral groups that have volunteered their readiness to consider accepting transfer, or to assist in locating a provider willing to accept transfer, maintained by the Texas Health Care Information Council. You may wish to contact providers or referral groups on the list or others of your choice to get help in arranging a transfer.

“3. The patient will continue to be given life-sustaining treatment until he or she can be transferred to a willing provider for up to 10 days from the time you were given the committee’s decision that life-sustaining treatment is not appropriate.

“4. If a transfer can be arranged, the patient will be responsible for the costs of transfer.

“5. If a provider cannot be found willing to give the requested treatment within 10 days, life-sustaining treatment may be withdrawn unless a court of law has granted an extension.

“6. You may ask the appropriate district or county court to extend the 10-day period if the court finds that there is a reasonable expectation that a physician or health care facility willing to provide life-sustaining treatment will be found if the extension is granted.

“*Life-sustaining treatment*” means treatment that, based on a reasonable medical judgment, sustains the life of a patient and without which the patient will die. The term includes both life-sustaining medications and

artificial life support, such as mechanical breathing machines, kidney dialysis treatment, and artificial nutrition and hydration.

“The term does not include the administration of pain management medication or the performance of a medical procedure considered necessary to provide comfort care, or any other medical care provided to alleviate a patient’s pain.”

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When There Is A Disagreement About Medical Treatment:

The Physician Recommends Life-Sustaining Treatment That You Wish to Stop

“You have been given this information because you have requested the withdrawal or withholding of life-sustaining treatment and the attending physician refuses to comply with that request. The information is being provided to help you understand state law, your rights, and the resources available to you in such circumstances. It outlines the process for resolving disagreements about treatment among patients, families and physicians. It is based upon Section 166.046 of the Texas Advance Directives Act, codified in Chapter 166 of the Texas Health and Safety Code.

“When an attending physician refuses to comply with an advance directive or other request for withdrawal or withholding of life-sustaining treatment for any reason, the case will be reviewed by an ethics or medical committee. Life-sustaining treatment will be provided through the review.

“You will receive notification of this review at least 48 hours before a meeting of the committee related to your case. You are entitled to attend the meeting. Your physician is not. With your agreement, the meeting may be held sooner than 48 hours, if possible.

“You are entitled to receive a written explanation of the decision reached during the review process.

“If you or the attending physician do not agree with the decision reached during the review process.

“If you or the attending physician do not agree with the decision reached during the review process, and the attending physician still refuses to comply with your request to withhold or withdraw life-sustaining treatment.

“1. The physician, with the help of the health care facility, will assist you in trying to find a physician and facility willing to withdraw or withhold the life-sustaining treatment.

“2. You are being given a list of health care providers and referral groups that have volunteered their readiness to consider accepting transfer, or to assist in locating a provider willing to accept transfer, maintained by the Texas Health Care Information Council. You may wish to contact providers or referral groups on the list or others of your choice to get help in arranging a transfer.

“Life-sustaining treatment” means treatment that, based on reasonable medical judgment, sustains the life of a patient and without which the patient will die. The term includes both life-sustaining medications and artificial life support, such as mechanical breathing machines, kidney dialysis treatment, and artificial nutrition and hydration.

“The term does not include the administration of pain management medication or the performance of a medical procedure considered to be necessary to alleviate a patient’s pain.”

The Texas State Legislature has created definitions for the words in your Advance Directive and the two forms your doctor may use. If these are unclear, please discuss them with your doctor or your elder law attorney before completing your Advance Directive and whenever you replace it. Medical science changes. These changes may influence your decisions.

Artificial nutrition and hydration means the provision of nutrients or fluids by a tube inserted in a vein, under the skin in the subcutaneous tissues, or in the stomach (gastrointestinal tract).

Attending physician means a physician selected by or assigned to a patient who has primary responsibility for a patient’s treatment and care.

Cardiopulmonary resuscitation (“CPR”) means any medical intervention used to restore circulatory or respiratory function that has ceased.*

Explanation: CPR, which involves breaking ribs, has been very effective in middle aged people having their first heart attack or stroke. Studies over the past 20 years have found that people who receive CPR when they have already been hospitalized do not fare as well: only 15% live to be discharged; only 10% survive without brain damage. A study of hospitalized people in their 80s and 90s found that 3% lived to be discharged, 1% without brain damage. Most tended to die within one week after CPR.

An Out-of-Hospital Do-Not-Resuscitate Directive or a general Do Not Resuscitate Directive should prominently state that the directive applies to CPR ONLY.

A Do-Not-Hospitalize Directive should prominently state that the directive applies to treatment for a stated condition only and that it does not apply to pain management or to other conditions, such as a leg broken in a fall.

The Texas Out-of-Hospital Do-Not-Resuscitate Form, information on it and the yellow bracelet to alert EMS is found at <https://www.dshs.texas.gov/emstraumasystems/dnr.shtm#form>. If you change your mind, tear up the form and destroy the bracelet or tell the medical personnel when they arrive.

Competent means possessing 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.

Declarant means a person who has executed or issued a directive under Chapter 166 of the Texas Health and Safety Code.

Digital signature means an electronic identifier intended by the person using it to have the same force and effect as a manual signature.

Directive means an instrument created under the Texas Health and Safety Code to administer, withhold, or withdraw life-sustaining treatment in the event of a terminal or irreversible condition.

Electronic signature means a facsimile scan, uploaded image, computer-generated image, or other electronic representation of a manual signature that is intended by the person using it to have the same force and effect of law as a manual signature.

Ethics or medical committee means a committee established under Sections 161.031-161.033 of the Texas Health and Safety Code.

Health care provider means

- a hospital;
- an institution licensed under the Texas Health and Safety Code, including a skilled nursing facility;

- a home and community support services agency;
- a personal care facility;
- a special care facility.

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.

Irreversible condition means a condition, injury, or illness

- that may be treated but is never cured or eliminated;
- that leaves a person unable to care for or make decision for the person's own self;

AND

that without life-sustaining treatment provided in accordance with the prevailing standard of medical care is fatal.

Explanation: Many serious illnesses such as cancer, failure of major organs (kidney, heart, liver or lung) and serious brain disease such as Alzheimer's dementia may be considered irreversible early on. Late in the course of the same illness, the disease is considered terminal when, even with treatment, the patient is expected to die.

Life-sustaining treatment means treatment which, based on reasonable medical judgment, sustains the life of the patient and without which the patient would die. This term includes both life-sustaining medications and artificial life support such as mechanical breathing machines, kidney dialysis treatment, and artificial nutrition and hydration. This term does not include the administration of pain management medication, a medical procedure necessary to provide comfort care, or any other medical care provided to alleviate a patient's pain.

Medical Power of Attorney means a document delegating to an agent authority to make health care decisions consistent with the Texas Health and Safety Code.

Explanation: The agent may act only when a person is unable to act or this Advance Directive is insufficient and that person is not reasonably expected to be able to act within the near future when a decision must be made.

Physician means

- a physician licensed by the Texas State Board of Medical Examiners; or
- a properly credentialed physician who holds a commission in the uniformed services of the United States and who is actively serving on duty in this state.

Qualified patient means a patient with a terminal or irreversible condition which has been diagnosed and certified in writing by the attending physician. *Before withholding or withdrawing life-sustaining treatment from a qualified patient, the attending physician must determine that the steps proposed to be taken are in accord with the Texas Health and Safety Code and the patient's existing desires. All health care providers must take reasonable care in withholding or withdrawing life-sustaining treatment.*

Terminal condition means an incurable condition caused by injury, disease, or illness that according to reasonable medical judgment will produce death within six months, even with available life-sustaining treatment provided in accordance with the prevailing standard of medical care.

Explanation. Many serious illnesses may be considered irreversible early in the course of the illness, but they may not be considered terminal until the disease is fairly advanced.

Witness means a person who is required to witness the signing of an advance directive or the issuance of an unwritten advance directive.

- Each witness must be a competent adult.
- At least one of the witnesses must be a person who is not
 - someone designated by the declarant to make a treatment decision;
 - someone related to the declarant by blood or marriage;
 - someone entitled to any part of the declarant's estate after the declarant's death whether under a will or codicil executed by the declarant or by operation of law;
 - the attending physician;
 - an employee of the attending physician;

an employee of a health care facility in which the declarant is a patient if the employee is providing direct patient care to the declarant or is an officer, director, partner, or business office employee of the health care facility; or

a person who, at the time the Advance Directive is signed (or, if the Advance Directive is an unwritten directive under the Texas Health and Safety Code, when that directive is issued) has a claim against any part of the declarant’s estate after the declarant’s death.

THIS PAGE IS A LEGALLY ENFORCEABLE DOCUMENT WHEN SIGNED.

IT SHOULD BE ATTACHED TO YOUR ADVANCE DIRECTIVE.

A COPY SHOULD BE GIVEN TO ANYONE HOLDING A MEDICAL POWER OF ATTORNEY FROM YOU.

Instructions to my authorized persons: Anyone holding a Medical Power of Attorney signed by me and duly witnessed (or court appointed guardian if a court substitutes that guardian for all people holding that Medical Power of Attorney) is authorized to bring a legal action in any applicable forum against any entity which refuses to recognize and accept this Advance Directive. That person is also authorized to sign any document they think appropriate to obtain protected medical information.

Waiver and release: I hereby release any person or entity which relies on this authorization from any liability related to releasing my protected medical information and for any action taken by these authorized persons.

Valid document: A copy of this authorization, waiver and release shall be accepted as if it were the original document I signed.

Signed _____

Date_____

Print Name_____

Date of Birth_____

DIRECTIVE TO PHYSICIANS AND FAMILY OR SURROGATES

“ADVANCE DIRECTIVE”

I, _____, recognize that the best health care is based on a partnership of trust and communication with my physician. My physician and I will make health care decisions together as long as I am of sound mind and able to make my wishes known. If there comes a time that I am unable to make medical decisions about myself because of illness, disease or injury, I direct that the following treatment preferences be honored.

If, in the judgment of my physician, I am suffering from a **terminal** condition from which I am expected to die within six months, even with available life-sustaining treatment provided in accordance with prevailing standards of care:

_____ I request that all treatments other than those needed to keep me comfortable be discontinued or withheld and that my physician allow me to die as gently as possible.

OR

_____ I request that I be kept alive in this terminal condition using available life-sustaining treatment. (THIS CHOICE DOES NOT APPLY TO HOSPICE CARE.)

If, in the judgment of my physician, I am suffering with an **irreversible** condition so that I cannot care for myself or make decisions for myself **and** am expected to die without life-sustaining treatment provided in accordance with prevailing standards of care:

_____ I request that all treatments other than those needed to keep me comfortable be discontinued or withheld and my physician allow me to die as gently as possible.

OR

_____ I request that I be kept alive in this irreversible condition using available life-sustaining treatment. (THIS CHOICE DOES NOT APPLY TO HOSPICE CARE.)

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Additional Requests. (After talking with your physician, you may wish to consider listing below treatments which you DO or DO NOT want in specific circumstances such as artificial nutrition, artificial hydration or intravenous antibiotics. Be sure to state *whether you DO or DO NOT want the particular treatment.*)

I WANT _____

I DO NOT WANT _____

After I sign this Advance Directive, if I or my representative elect hospice care, I understand and agree that only those treatments needed to keep me comfortable will be provided and that I will not be given available life-sustaining treatments.

_____ I have a Medical Power of Attorney.

OR

_____ I do not have a Medical Power of Attorney. If I am unable to make my wishes known, I designate the following people (in order of preference) to make treatment decisions with my physician compatible with my personal values.

1. _____ [contact information: _____

2. _____ [contact information: _____

I understand that if these people are not available, or if I have not designated a spokesperson, a spokesperson will be chosen for me following the standards specified by the Laws of Texas.

If, in the judgment of my physician, my death is imminent within minutes to hours, even with the use of all available medical treatment provided with the prevailing standard of care, I acknowledge that all treatments may be withheld or removed except those needed to maintain my comfort. I understand that under Texas law this may not be done if I am diagnosed as pregnant.

This directive will remain in effect until I revoke it. No one else may do so.

Signed _____ Date _____

Printed Name _____ Date of Birth _____

City and County of Residence _____

STATEMENT OF FIRST WITNESS

I am not a person named in this document. I am not related to the principal by blood or marriage. I would not be entitled to any portion of the principal's estate upon the principal's death. I am not the attending physician of the principal or an employee of the attending physician. I have no claim against any portion of the principal's estate upon the principal's death. Further, if I am an employee of a health care facility where the principal is a patient, I am not involved in providing direct patient care to the principal and am not an officer, director, partner or business office employee of the health care facility or of any parent organization of the health care facility.

Signature of 1st Witness _____ Date _____

Printed Name _____

Address _____

Signature of 2nd Witness _____ Date _____

Printed Name _____

Address _____
