

Making Decisions About Your Care And Treatment: Your Rights As A Patient In Pennsylvania

I. Introduction

In Pennsylvania, competent adults have the right to decide whether to accept, reject or discontinue medical care and treatment. If you do not wish to undergo a certain procedure or to receive a certain type of treatment, you have the right to make your wishes known to your doctor or other health care provider and generally to have those wishes respected.

There may be times, however, when a person cannot make his or her wishes known to a health care provider. For example, a person may be unconscious or too badly injured to tell his or her doctor what kind of care or treatment he or she would like to receive or under what circumstances that doctor should withhold care or treatment.

The purpose of this document is to let you know what the law currently has to say about your rights as a competent adult to tell other people now if and how you would like to receive medical care and treatment from a health care provider in the event that you need medical attention but become physically or mentally unable to give instructions about your care and treatment later. It also tells you what Pennsylvania law has to say about the duty of a health care provider to follow your advance instructions.

To make these complex issues easier to understand, we have addressed them through a series of questions and answers. Before you make any decisions about the issues addressed in this document, you should discuss them with your doctor, members of your family, and where appropriate, your lawyer.

II. Questions and Answers

General Information About Your Rights

1. What are my rights to accept, to reject or to stop medical care or treatment?

In Pennsylvania, adults generally have the right to decide if they want to accept, to reject or to discontinue medical care and treatment.

2. What does my doctor have to tell me about my care and treatment?

Your doctor should provide you with all of the information which a person in your situation reasonably would want to know in order to make an informed decision about a proposed procedure or course of treatment. This means that your doctor should tell you about the risks and benefits of the medical procedure or course of treatment which he or she is recommending, possible "side effects," and alternatives, if any, to the proposed procedure or course of treatment. You may accept or reject your doctor's advice and you may seek a second opinion.

3. Does my health care provider have to tell me if it will not honor my wishes?

Yes. The law requires your health care provider (Hospital, nursing home, home health care service, hospice or HMO) to give you a written statement of its policies. For example, upon admission to a hospital, a patient must be told if that hospital will not honor his or her wish to have food and water withheld or withdrawn under certain circumstances.

4. If I become physically or mentally unable to make a decision about my medical care or treatment, what can I do now to guarantee that my wishes will be followed later?

There is no law in Pennsylvania which guarantees that a health care provider will follow your instructions in every circumstance. There are, however, steps you can take to express your wishes about future treatment. One of these steps is to write and sign an advance directive.

5. What is an "advance directive"?

An "advance directive" is a written document which you may use under certain circumstances to tell others what care you would like to receive or not receive should you become unable to express your wishes at some time in the future. An "advance directive" may take many forms. In Pennsylvania, two types are specifically authorized: (1) a "living will" (also known as an "Advance Directive for Health Care") and (2) a "Durable Power of Attorney" for health care.

Living Wills

6. What is a "living will"?

In Pennsylvania, a "living will" is a written document that describes the kind of "life sustaining treatment" you want or do not want if you are later unable to tell your doctor what kind of treatment you wish to receive. For your convenience, we have attached a sample "living will" to this pamphlet.

It is important for you to know that Pennsylvania's "living will" law does not recognize all types of instructions which might be contained in a person's "living will." Rather, those instructions must relate to situations where medical treatment would serve only to prolong the process of dying or to maintain a patient in a state of permanent unconsciousness. So, for example, Pennsylvania does not specifically recognize "living wills" which direct a health care provider to refuse medically beneficial, nonfutile care.

You should also understand that a "living will" is not a will. A will tells your survivors what to do with your property after your death.

7. Who can make a "living will"?

Any competent person who (1) is at least 18 years old, (2) is a high school graduate, or (3) has married, can make a "living will."

8. When does a "living will" take effect?

A "living will" only takes effect when:

- (1) Your doctor has a copy of it; and
- (2) Your doctor has concluded that you are "incompetent" and therefore no longer able to make decisions about the medical care you wish to receive; and
- (3) Your doctor and a second doctor have determined that you are in a "terminal condition" or in a "state of permanent unconsciousness."

9. What does it mean to be "incompetent"?

"Incompetence" means "the lack of sufficient capacity for a person to make or communicate decisions concerning himself." The law allows your doctor to decide if you are "incompetent" for purposes of implementing a "living will" and does not require a judge to make that decision.

10. What should my "living will" contain?

There is no single correct way to write a "living will"; your "living will" may have additional or different directions than the directions which appear in the sample "living will" attached to this pamphlet. Your "living will" is not valid, however, unless you have taken the following steps:

- (1) You must sign your "living will." If you are unable to do so, you must have someone else sign it for you; and
- (2) Two people who are at least 18 years old must sign your "living will" as witnesses. Neither of those witnesses may be the person who signed your "living will" if you were unable to sign it yourself.

You should also date your living will, even though the law does not require it.

11. What if I already have a "living will"?

Pennsylvania's "living will" law went into effect on April 16, 1992. You should review any "living will" drafted before that date to see that it meets the two requirements described in the answer to Question 10.

12. To whom should I give my "living will"?

You should give a copy of your "living will" to your doctor, hospital, nursing home or other health care provider. When you enter a hospital or nursing facility, the law requires your doctor or other health care provider to ask you if you have an advance directive. If you give a copy of your "living will" to your doctor or other health care provider, that document must be made a part of your medical record.

13. What if my doctor or health care provider refuses to follow the directions in my "living will"?

Your doctor and any other health care provider must tell you if they cannot in good conscience follow your wishes or if the policies of the institution prevent them from honoring your wishes. This is one reason why you should give a copy of your "living will" to your doctor or to those in charge of your medical care and treatment.

If you are incompetent when you are admitted for medical care and have named someone in your "living will" to make decisions for you, that person must be told if the wishes contained in your "living will" cannot be honored. If you have not named anyone in your "living will," your family, guardian or other representative must be informed that your "living will" cannot be honored.

The doctor or other health care provider who cannot honor your wishes must then help transfer you to another health care provider willing to carry out your directions--if they are the kind of directions which Pennsylvania recognizes as valid.

14. Is a "living will" effective when I am pregnant?

Pennsylvania law generally does not permit a doctor or other health care provider to honor the "living will" of a pregnant woman who has directed that she not be kept alive. The terms of such a "living will" may be honored, however, if the woman's doctor determines that life-sustaining treatment (1) will not maintain the woman in a manner that will allow for the continued development and birth of the unborn child, (2) will physically harm the pregnant woman, or (3) cause her pain which could not be relieved by medication.

If your "living will" is not honored because you are pregnant, the Commonwealth must pay all of the usual, customary, and reasonable expenses of your care.

15. What if I change my mind after I have written a "living will"?

Pennsylvania's "living will" law states that you may revoke a "living will" at any time and in any manner. All that you must do is tell your doctor or other health care provider that you are revoking it. Someone who saw or who heard you revoke your "living will" may also tell your doctor or other health care provider about the revocation.

You can also change or rewrite your "living will." If you change your mind after you have written down your instructions, you should destroy your written instructions or revoke them and write new ones. You should also consider telling everyone who participated in your decision-making process that you have changed your mind and give a copy of any new instructions to your doctor, health care provider, and anyone else who had a copy of your old instructions.

Durable Powers of Attorney For Health Care

16. What is a "Durable Power of Attorney" for health care?

A "Durable Power of Attorney" for health care is a document which allows you (the "principal") to name another person (the "attorney in fact") to make certain medical decisions for you if you are unable to make them for yourself. The person you choose as your "attorney in fact" does not have to be a lawyer. The law says that the "attorney in fact" can:

- (1) Authorize you admission to a medical, nursing, residential or other facility;
- (2) Enter into agreements for your care, and
- (3) Authorize medical and surgical procedures.

The power to "authorize medical and surgical procedures" means that your attorney-in-fact may arrange for and consent to medical, therapeutic, and surgical procedures for you, including the administration of drugs.

As of this writing, courts in Pennsylvania have not decided if the law permits an attorney-in-fact to refuse treatment on your behalf, especially if the attorney-in-fact is refusing potentially beneficial care.

17. Why do they call it a "Durable Power of Attorney"?

Normally, a "power of attorney" becomes ineffective if you become incapacitated. A "durable power of attorney" continues to be effective or takes effect if or when you become incapacitated. To be considered a "durable power of attorney" for health care, the document must contain the following or similar language:

"This power of attorney shall not be affected by my subsequent disability or incapacity"

-or-

"this power of attorney shall become effective upon my disability or incapacity."

18. What are some of the major differences between a "living will" and a "durable power of attorney" for health care?

These are just some of the differences between the two documents:

- (1) A "durable power of attorney" for health care generally names someone to make health care decisions for you without necessarily describing what those decisions should be. A "living will," on the other hand, often spells out what kind of life-sustaining treatment you want to receive and may or may not name someone to make those decisions for you should you become incompetent and in a terminal condition or permanent state of unconsciousness. Unlike a "durable power of attorney" for health care, a "living will" only takes effect when you are in a terminal condition or permanent state of unconsciousness.
- (2) A "durable power of attorney" for health care is designed to give your named representative authority to make all sorts of medical care decisions for you, such as whether you should be admitted to particular kind of health care facility. A "living will," on the other hand, is generally used to tell your health care provider what kind of medical care and treatment you want to receive or not receive in the event you become unable to tell the provider yourself because you have become incompetent and are in a terminal condition or permanent state of unconsciousness.
- (3) It is unclear if, under a "durable power of attorney" for health care, the person who you choose to make decisions for you, can refuse or stop life sustaining treatment for you; a "living will" clearly can be used for that purpose.

19. May I have both a "Durable Power of Attorney" for health care and a "living will"?

Yes.

Discussing Your Instructions With Others

20. With whom should I discuss my instructions before I write them down?

Before you write your instructions down, you may wish to discuss them with your doctor, members of your family, friends or other appropriate persons -- such as a member of the clergy. If you are writing a "Durable Power of Attorney" for health care, you should also discuss your wishes with the person you are naming as your attorney-in-fact. Similarly, if you are writing a "living will" and naming someone in that document to carry out your wishes, you should discuss your wishes with that person.

21. To whom should I give my written instructions?

You should give your written instructions to your family doctor and, if applicable, to your hospital, nursing home or other health care provider. You may also want to give a copy to your family or anyone else involved in your health care decision-making process.

22. What if I don't leave instructions or name a person who will make decisions for me?

If you become unable to express your wishes about your medical care or treatment and do not leave instructions or name a person who will make decisions for you, a health care provider may ask your family or the courts to make decisions about your care and treatment.

23. What if I have expressed my wishes orally about treatment, but have not put my wishes in writing?

Oral directions which you have given to your physician or your family will sometimes be followed by health care providers, depending on how detailed and recent those instructions were. Thus, you may wish to tell your personal physician and your family your wishes about future treatment, even if you choose not to sign some sort of "advance directive."

24. Do I have to write a "living will" or "durable power of attorney" for health care?

No. It's your decision. Under the law, a health care provider may not condition the provision of your care or otherwise discriminate against you on the basis of whether you have executed such a document. Moreover, under Pennsylvania law, no health care provider or insurer may charge a different fee or rate depending on whether you have executed a "living will."

25. Are "living wills" and "Durable Powers of Attorney" executed in other states recognized in Pennsylvania?

The law in Pennsylvania is unclear. It is possible, however, that at the very least your doctor, hospital or a judge may use such documents to determine who will make decisions about your care and what those decisions will be.

26. If I have more questions about "living wills" or "durable powers of attorney" for health care, who should I contact?

In addition to a lawyer, there are many individuals and groups who can provide you with information about such documents. Here are some that you may wish to consult:

- (1) Your local long term care ombudsman, who can be reached by calling your community's "Area Agency on Aging" (AAA). The AAA phone number is in the "blue pages" of your phone book.
- (2) Office of the State Long Term Care Ombudsman
PA Department of Aging
231 State Street
Harrisburg, PA 17101-9896
(717) 783-7247
- (3) Pennsylvania Council on Aging
231 State Street
Harrisburg, PA 17101-9896
(717) 783-1924
- (4) The American Association of Retired Persons (AARP)
225 Market Street
Harrisburg, PA 17101
(717) 238-2277
- (5) The Pennsylvania Medical Society
Division of communication and Public Affairs
77 East Park Drive
Harrisburg, PA 17105-8820
(717) 558-7750