

# MAKING DECISIONS ABOUT YOUR CARE AND TREATMENT:

## YOUR RIGHTS AS A PATIENT IN PENNSYLVANIA

### INTRODUCTION

In Pennsylvania, competent adults have the right to decide whether to accept, to reject or to discontinue medical care and treatment. Generally, if a person does not want to undergo a certain procedure or to receive a certain type of treatment, he or she has the right to make those wishes known to his or her doctor or other health care provider and to have these 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 injured too severely 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 tell you what Pennsylvania law currently has to say about:

1. Your rights as a competent adult to accept or reject medical or surgical treatment from a health care provider
2. Your right as a competent adult to give advance instructions to others about your care and treatment.
3. The duty of your health care provider to follow these 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 or friends, and where appropriate, your lawyer.

### QUESTIONS AND ANSWERS

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

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

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

Your doctor must provide you with all the information which a person in your situation reasonably needs to know in order to make an informed decision about a proposed procedure or course of treatment. This means that your doctor must 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 honor my wishes?***

Yes. The law requires your health care provider 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 honor his or her wish to have food and water withheld or withdrawn.

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 my wishes will be followed later?***

There is no law in Pennsylvania which *guarantees* that a health care provider will follow you instructions in every circumstance. There are, however, steps you can take to express your wishes and direct treatment. These are called “**Advance Directives**”.

5. ***What form can my “advance directive” take?***

An advance directive can take the form of a “**Durable Power of Attorney**” and/or a “**living will**”.

6. ***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 law says that and attorney-in-fact can:**

- a. Authorize your admission to a medical nursing, residential or similar facility
- b. Enter into agreements for you care
- c. 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, therapeutical, and surgical procedures for you, including the administration of drugs.

As of this writing, courts in Pennsylvania have not decided if the law permits and attorney-in-fact to *refuse* treatment on your behalf, especially if that refusal includes the withdrawal of life- sustaining treatment.

The person you choose as your attorney-in-fact does not have to be a lawyer.

7. ***Why do they call it a “Durable Power of Attorney”?***

Normally, a “**power of attorney**” becomes ineffective if you become incompetent. A “**durable power of attorney**” continues to be effective to takes effect if or when you become incompetent. To be considered a “**durable power of attorney**” for health care, the document must contain at least 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 by disability or incapacity”

8. ***What about a “living will”?***

A “**living**” **will** is a document which usually states that you desire to be allowed to die a natural death and not be kept alive by medical treatment, heroic measures or artificial means that will not improve your health. There are also “**living**” **wills** which state that you *do* want to be kept alive. (*Your will is a separate document which tells your supervisors what to do with your property after your death.*)

9. ***Does Pennsylvania law recognize “living wills”?***

On April 16, 1992, the Governor signed into law the “**Advance Directive for Health Care Act**” which provides for the recognition of living wills in Pennsylvania.

- 10. *With whom should I discuss my instructions before I commit them to writing?***  
Before you commit your wishes to writing, 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**.
- 11. *To whom should I give my written instructions?***  
You should give your written instructions to your doctor, hospital, nursing home or other health care provider, or anyone else involved in your health care decision-making process.  
  
Federal law requires your health care provider to state in your medical record whether you have executed an **advance directive**. Federal law also states that a health care provider may not condition the provision of your care or otherwise discriminate against you on the basis of whether or not you have executed such a document.
- 12. *What if I change my mind?***  
If you change your mind, you should destroy your written instructions or revoke them and write new instructions. You should also tell everyone who participated in your decision-making process that you have changed your mind.
- 13. *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.
- 14. *If the courts can decide, why should I decide now?***  
Although a judge will do his or her best to decide what care or treatment you would have wanted, there is not guarantee that the judge will learn of or follow your wishes. Clear written instructions increase the chances that your wishes will be honored.
- 15. *Are "Living Wills" and "Durable Powers of Attorney" executed in other states enforceable in Pennsylvania?***  
The law in Pennsylvania is unclear on this issue. It is possible, however, that at the very least a court will use such documents to determine who will make decisions about your care and what those decisions will be.

**16. *If I have more questions about “advance directives”, who should I contact?***

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

- a. Your Local Long Term Care Ombudsman.  
See: <http://www.aging.pa.gov/local-resources/Pages/AAA.aspx>
- b. Office of the State Long Term Care Ombudsman  
<http://www.aging.pa.gov/>  
(412) 350-4234
- c. Pennsylvania Council on Aging  
<http://www.aging.pa.gov/organization/pa-council-on-aging/Pages/default.aspx>

**17. *Where can I obtain forms to get started with my living will?***

**A. Societies & Agencies**

1. Allegheny County Bar Association  
<https://www.acba.org/public/livingwill>  
(412) 261-6161
2. Pennsylvania Long Term Care Ombudsman  
<http://www.aging.pa.gov/local-resources/Pages/AAA.aspx>  
(412) 350-6905 / (412) 350-4234
3. Pennsylvania Council on Aging  
<http://www.aging.pa.gov/Pages/Contact-Us.aspx>  
(717) 783-1550

**B. Attorneys**

**C. Office Stores**