

There are many resources for information about Advance Directives, Living Wills and Medical Power of Attorney. We have gathered some names of organizations that offer additional information and hope that you will carefully consider your options. Listed below are some names and web sites that may be of benefit to you.

The U.S. National Library of Medicine and National Institute of Health. <http://www.nlm.nih.gov/medlineplus/advancedirectives.html>

Legal Services of New Jersey (LSNJ Law)
www.lsnjlaw.org/english/healthcare/livingwills/advancedirectives/index.cfm

Your local chapter of AARP, or http://www.aarp.org/bulletin/yourhealth/Articles/a2003-12-09-advance_directives.html

The State of New Jersey, Department of Health. at http://www.state.nj.us/health/ltc/advance_directives.doc

For assistance in finding these or other locations to educate yourself on the details concerning Advance Directives contact your local Senior Citizen Center your Public Library or your family physician.

Presented by James S. La Corte, Surrogate of Union County



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Planning Ahead for Your Health Care MAKING YOUR WISHES KNOWN



A Guide For Medical Advance Directives

A guide to the legal process

- Making your wishes known
- A few definitions
- Three kinds of Advance Directives
- Questions and Answers

Compliments of: James S. LaCorte,
Surrogate of Union County

It has been my pleasure over the years to bring you as much informative information as possible.



It has come to my attention that a number of citizens do not have a document that would allow a family member, significant other or friend to act on their behalf if they should not be able to issue medical directives should the need arise.

I have prepared this booklet for your use to help you understand the sometimes complex issues involved with writing an advanced medical directive. These materials are provided for "information only and do not constitute legal advice". It is advisable that you consult with a health care professional and an attorney to make sure that your directive accurately reflects your intentions. No two cases are the same.

If you would like to have additional information on Wills and Estates, please contact my office and we will be more than happy to send you information. You may also visit us on the internet at www.ucnj.org/surrogate.

Terms you should understand

Persistent Vegetative State:

A condition of permanent unconsciousness in which the patient loses all capacity for interaction with their environment or other people. It is usually caused by an injury to the brain. It is normally not regarded as a terminal condition and with the aid of medical care, artificial fluids and nutrition patients can survive for many years.

Incurable and Irreversible Chronic Diseases:

Disabling diseases such as Alzheimer's disease, organic brain syndrome or other diseases which get progressively worse over time, eventually resulting in death. Depending on the disease, the patient may also experience partial or complete loss of physical and mental abilities. Because the rate at which these diseases advance may be slow, such diseases are not considered terminal in their early stages.

Whole Brain Death:

Death due to total and irreversible loss of all functions of the entire brain, including the brain stem. The criteria of whole brain death must be used to accurately determine death in individuals who have suffered massive or total brain damage but whose heart and lungs are kept functioning by machines. Brain dead individuals are not vegetative or in a coma, but are in fact dead.

Attending Physician:

The doctor directly responsible for your medical treatment. He or she may not be your regular family physician. Depending on your health care needs the attending physician may consult with others in order to diagnose and treat your medical condition, but he or she remains directly responsible for your care.

► **Terms you should understand**

Artificially provided fluids and nutrition:

The provision of food and water to seriously ill patients who are unable or unwilling to eat. Depending of the method used, such as insertion of a feeding tube or an intravenous line, and as the condition of the patient, techniques may involve minor surgery, continuous supervision by medical and sometimes surgical personnel, risk of injury or infection, and side effects.

Cardiopulmonary Resuscitation (CPR):

A treatment administered by health care professional when a person's heartbeat and breathing stops. CPR may restore functioning if administered properly and in a timely fashion and may include the use of mechanical devices and or drugs.

Life-sustaining measures:

Any medical procedure, device, artificially provided fluids and nutrition, drugs, surgery, or therapy that uses mechanical or other artificial means to sustain, restore or supplant a vital bodily function, thereby prolonging the life of a patient.

Health care representative or health care proxy:

In the event an individual loses decision making capacity, a health care representative or proxy is a person who has been legally designated to make decisions on his or her behalf. A health care representative appointed through the execution of a proxy directive (a durable power of attorney for health care).

Terminal Condition:

The terminal stage of an irreversibly fatal illness, disease, or condition. While determination of a specific "life-expectancy" is not required for a diagnosis of a "terminal condition" a prognosis of a life expectancy of one year or less, with or without the provision of life sustaining treatment, is generally considered terminal.

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Functions of the Surrogate's Court

Probate Wills

Process Adoptions

Process complaints for incapacitated matters

Process contested probate matters

Film and record all probate proceedings

Invest minor's funds

Appoint Guardians for Minors

Act as Clerk of the Superior Court

The Union County Surrogate

2 Broad Street

Elizabeth, NJ 07207

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A FEW DEFINITIONS

Advance Directive—If you want your wishes to guide those responsible for your care, you have to plan for what you want in advance. Generally, such planning is more likely to be effective if it's done in writing. So, by an “advance directive” we mean any written directions you prepare in advance to say what kind of medical care you want in the event you become unable to make decisions for yourself.

Proxy Directives

One way to have a say in your future medical care is to designate a person you trust and give that person the legal authority to decide for you if you are unable to make decisions for yourself. Your chosen proxy (known as *Health Care Representative*) serves as your substitute, “standing in” for you in discussions with your physician and others responsible for your care. By a proxy directive we mean written directions that name a “proxy” to act for you. Another term people use for a proxy directive is a “durable power of attorney for health care”.



Instruction Directives

Another way to have a say in your future medical care is to provide those responsible for your care with a statement of your medical treatment preferences. By “instruction directives” we mean written directions that spell out in advance what medical treatments you wish to accept or refuse and the circumstances in which you want your wishes implemented. These instructions then serve as a guide to those responsible for your care. Another term some people use for an instruction directive is a “living will”.

Combined Directives

A third way combines features of both the proxy and the instruction directive. You may prefer to give both written instructions, and designate a health care representative or proxy to see that your instructions are carried out. So by a “combined directive” we mean a single document in which you select a health care representative and provide him or her with a statement of your medical treatment preferences.

If you enter a hospital, nursing home, or hospice a copy of your advance directive should be provided so that it can be made part of your medical records.

16. Can I be required to complete an advance directive as a condition of my insurance coverage?

No. You cannot be required to complete an advance directive as a condition for obtaining a life or health insurance policy. Also, having or not having an advance directive has no effect on your current health or life insurance coverage, or health benefits.

17. Can I use my advance directive to make an organ donation upon my death?

Yes. Your directive and instruction directive should state your wishes regarding organ donation. For further information regarding organ donations you should contact either an organ procurement agency or your local hospital.

18. Will another state honor my advance directive?

It is likely that your advance directive will be honored in another state, but this is not guaranteed.

19. What if I already have a living will?

While you may want to review your existing living will or advance directive and make sure it reflects your wishes, there is no legal requirement that you do so.

20. Do I need an attorney or doctor to write one?

As with any important document especially one of this nature, getting experienced professional advice is always recommended.

Questions and Answers

10. If I want to give specific instructions about my medical care, what should I say?

If you have any special concerns about particular treatments you should clearly express them in your directive. If you feel there are medical conditions which would lead you to decide to forego all medical treatment, and accept an earlier death, this should be clearly indicated in your directive.

11. Are there particular treatments I should specifically mention in my directive?

It is a good idea to indicate your specific preferences concerning two specific kinds of life sustaining measures: artificially provided fluids and nutrition and cardiopulmonary resuscitation. Stating your preferences clearly concerning these two treatments will be of considerable help in avoiding uncertainty, disagreements or confusions about your wishes.

12. Can I request all measures be taken to sustain my life?

Yes. You should make this choice clear in your advance directive. Remember, a directive can be used to request medical treatments as well as to refuse unwanted ones.

13. Does my doctor have to carry out my wishes as stated in my instruction directive?

If your treatment preferences are clear your doctor is legally obligated to implement your wishes, unless doing this would violate his or her conscience or accepted medical practice. If your doctor is unwilling to honor your wishes he or she must assist in transferring you to the care of another doctor.

14. Can I revoke my directive at any time?

Yes. You can revoke your directive at any time, regardless of your physical or mental condition. This can be done in writing, orally, or by any action which indicates that you no longer want the directive to be in effect.

15. Who should have copies of my Advance Directive?

A copy should be given to the person that you have named as your health care representative, as well as to your family, your doctor and others who are important to you.

Whichever form you choose, it is important to remember to discuss your health care preferences with others. In order to help you choose the kind of directive which best suits your circumstances, the following pages answer some frequently asked questions about advance directives.

Questions and Answers

1. Why should I consider writing an Advance Directive.

Serious injury, illness or mental incapacity may make it impossible for you to make health care decisions for yourself. In these situations, those responsible for your care will have to make decisions for you. Advance directives are legal documents which provide information for your treatment preferences to those caring for you, helping to insure that your wishes are respected even when you can't make decisions yourself. A clearly written directive helps prevent disagreements among those close to you and alleviates some of the burdens of decision making which are often experienced by family members, friends and health care providers.

2. When does my Advance Directive take effect?

Your directive takes effect when you no longer have the ability to make certain decisions about your health care. This judgment is normally made by your attending physician, and any additional physicians who may be required by law to examine you. If there is any doubt about your ability to make such decisions, your doctor will consult with another doctor with training and experience in this area. Together they will decide if you are unable to make your own health care decisions.



Questions and Answers

3. What happens if I regain the ability to make my own decisions?

If you regain your ability to make decisions, then you resume making your own decisions directly. Your directive is in effect only as long as you are unable to make your own decisions.

4. What is the advantage of having a health care representative,? Isn't it enough to have an instruction directive?

Your doctor and other health care professionals are legally obligated to consider your expressed wishes stated in your instruction directive or "living will". However, instances may occur in which medical circumstances arise or treatments are proposed that you may not have thought about when you wrote your directive. If this happens your health care representative has the authority to participate in discussions with your health care providers and to make treatment decisions for you in accordance with what he or she knows of your wishes. Your health care representative will also be able to make decisions as your medical condition changes, in accordance with your wishes and best interests.

5. If I decide to appoint a health care representative, who should I trust with this task?

The person you choose to be your health care representative has the legal right to accept or refuse medical treatment (including life sustaining measures) on your behalf and to assure that your wishes concerning your medical treatment are carried out. You should choose a person who knows you well and who is familiar with your feelings about different types of medical treatment and the conditions under which you would choose to accept or refuse either a specific treatment or all treatments.

A health care representative must understand that his or her responsibility is to implement your wishes even if your representative or others might disagree with them. So it is important to select someone in whose judgment you have confidence. People that your might consider asking to be your health care

representative include:

- A member of your family or a very close friend, your priest, rabbi, or minister, OR
- A trusted health care provider, but your attending physician cannot serve as both your physician and your health care representative.

6 Should I discuss my wishes with my health care representative and others?

Absolutely! Your health care representative is the person who speaks for you when you can't speak for yourself. It is very important that he or she has a clear sense of your feelings, attitudes and health care preferences. You should also discuss your wishes with your physician, family members and others who will be involved in caring for you.

7. Does my health care representative have the authority to make all health care decisions for me?

It is up to you to say what your health care representative can and cannot decide. You may wish to give him or her broad authority to make all treatment decisions including decisions to forego life-sustaining measures. On the other hand, you may wish to restrict the authority to specific treatments or circumstances. Your representative has to respect these limitations.

8. Is my doctor obligated to talk to my health care representative?

Yes. Your health care representative has the legal authority to make medical decisions on your behalf, in consultations with your doctor. Your doctor is legally obligated to consult with your chosen representative and to respect his or her decision as if it were your own decision.

9. Is my health care representative the only person who can speak for me, or can other family members or friends participate in making treatment decisions?

It is generally a good idea for your health care representative to consult with family members or others in making decisions, and if you wish you can direct that he or she should do so. It should be understood by everyone, however, that your health care representative is the only person with the legal authority to make decisions about your health care even if others disagree.