ADVANCE MEDICAL DIRECTIVES

Health Care Declaration (Living Will) and Medical Power of Attorney

What is an Advance Directive?

Many people are concerned about what would happen if, due to a mental or physical disorder, they could not tell their doctor what medical treatments they would or would not want. An advance directive is a statement either written or oral that makes your choices about medical treatment know to your doctor in advance. An advance directive may also name someone to make those decisions for you should you become incapable of deciding for yourself.

What is the Health Care Decision Act and who should be aware of it?

The Virginia Health Care Decision Act is a state law which permits adults to make advance directives. Anyone who has strong feelings about how they want to be medically treated, should they become incapacitated or unable to communicate their needs, should be aware of the Health Care Decisions Act.

What does "Terminal Condition" mean?

A "terminal condition" means a medical condition from which a patient cannot recover, AND:

1. The patient will die regardless of the course of medical treatment (the patient's death is imminent)

   OR

2. The patient is in a permanent state of unconsciousness ("persistent vegetative state").

What is meant by "Life Prolonging Procedures"?

Life prolonging procedures refers to the use of artificial means to keep heartbeat, respiration, or other spontaneous vital functions going to restore a vital function if it stops when the patient has a terminal condition. These life prolonging procedures are not expected to cure the illness, but merely prolong the dying process. Life prolonging procedures also include the artificial administration (by tubes of I.V.'s) of nutrition (food) and

hydration (water). IT DOES NOT INCLUDE ANY PROCEDURE OR MEDICATION NECESSARY TO PROVIDE COMFORT OR ALLEVIATE PAIN.

Health Care Declarations
(Living Wills)

What is a Health Care Declaration or Living Will?

A Living Will is not really a Will at all, but rather it is a declaration which states in advance your wishes regarding the use of life-prolonging medical procedures if you are terminally ill and unable to provide further instructions. The Living Will has nothing to do with a conventional Will, which disposes of property after death. The technical term for the Living Will is "Health Care Declaration." This handout will use the more commonly known term Living Will, but remember that a Health Care Declaration is the same as a Living Will.

What goes in a Living Will?

A Living Will may:

- Direct that a specific procedure be provide, or
- Direct a specific procedure or treatment be withheld.

The most important thing is that you make your Living Will clear and specific so that those who read it are able to determine what you want.

How do I make a Living Will?

A Living Will may be either a written document or an oral declaration.

- The written document may be made at any time and must be signed by you and two witnesses. Anyone can be a witness except a spouse or blood relative.
- An oral Living Will has some additional requirements:
    - You must be diagnosed as having a terminal condition by your attending physician before making the oral declaration.
    - The oral statement must be made in front of two witnesses and the attending physician. Again, the witnesses cannot be a spouse or a blood relative.

Is a Living Will executed under the former Virginia Natural Death Act still valid under the Health Care Decisions Act?

Yes. A properly executed Living Will under the old law remains valid under the new law.

Medical Power of Attorney

What is a Medical Power of Attorney?

A Medical Power of Attorney or Health Care Power of Attorney is under another type of advance directive which allows you to name another person or agent to make health care decisions for you in the event you are unable to speak for yourself.

What is the difference between a General Durable Power of Attorney and a Medical Power of Attorney?

A General Power of Attorney is a written authorization for someone to act on your behalf for whatever purpose you specify. This type of power of attorney generally deals with financial matters, but can include whatever powers you like. Any Power of Attorney can be made "Durable" by including specific language that states the Power of Attorney will remain in effect if you become mentally incompetent. It is recommended that all types of Power of Attorney be made "Durable."

A Medical Power of Attorney is a special durable power of attorney directed exclusively at health care decisions.

What is the difference between a Medical Power of Attorney and a Living Will?

People often confuse the two documents, but they really do have different purposes.

The Living Will is your own personal statement of the life prolonging procedures you would or would not want should you have a terminal condition and are unable to express your treatment preferences. The Medical Power of Attorney is a document which appoints another person (agent) to make health care decisions for you at any time you are unable to decide for yourself.

The Living Will deals solely with life prolonging procedures and applies only if you have a terminal condition. The Medical Power of Attorney covers any situation where you can't make treatment decisions for yourself. It is not limited to life prolonging procedures and you need not have a terminal condition. That doesn't mean you should substitute the Medical Power of Attorney for a Living Will.

In fact, it is probably best to have both documents. What is important is to be specific about what treatments you want, or do not want, at an end of life situation.

What goes in a Medical Power of Attorney?

The most important part of a Medical Power of Attorney is the appointment of an agent to make health care decisions for you should you become incapable of making your own decisions. You may give the agent broad general powers or you may specify the types of decisions you want your agent to make for you. Some specific powers you may grant to your agent include the authority to:

- Allow access to all medical records;
- Employ and discharge medical providers;
- Consent or refuse any medical treatment or diagnostic procedure;
- Provide guidelines for your agent to follow;
- Include other directions to ensure the effectiveness of the Medical Power of Attorney.

How do I make a Medical Power of Attorney?

The requirements for a Medical Power of Attorney are the same as those for a Living Will. The written document must be signed by you and two witnesses. The witnesses cannot be your spouse or a blood relative.

Can I make an oral Medical Power of Attorney?

Yes, the requirements are the same as making an oral Living Will. A diagnosis of a terminal condition must be made prior to making the oral statement and the statement must be made in the presence of the attending physician and two witnesses.

Who should be my agent?

Since the choice of your agent is your most important decision, you should choose someone you can trust to make important medical decisions for you. You should speak to the person (and successor persons) you wish to appoint beforehand to explain your intentions and to confirm their willingness to act on your behalf.

When would my doctor talk to my agent about decisions affecting my health care?

Your doctor can only talk to your agent when you are unable to make your own informed health care decisions. Legally you are unable to make your own decisions when you have a physical or mental disorder which prevents you from communicating or impairs your judgement.

Do I need both a Medical Power of Attorney and a Living Will in order to make my health care wishes known?

Some attorneys draft a Medical Power of Attorney and place within it a Living Will – you end up signing one document. This is perfectly acceptable. Other attorneys prefer to prepare two separate documents – a Living Will and a Medical Power of Attorney – both of which refer to each other. This is also perfectly acceptable. How you do these documents is less important than making sure that your wishes are known and that you appoint someone to carry them out.

Using Advance Directives When Making Health Care Decisions

What do I do with my advance directives after making them?

The law requires that all health care facilities ask patients if they have advance directives and, once aware of the advance directives, must make sure they are a part of your medical record. You should also notify your attending physician that you have made advance directives, or, if you are unable to, any other person may notify your physician. Although you don't have to give the original documents to your agent, your agent should know how to get the original documents should an emergency arise.

Does my doctor have to follow my advance directive?

The physician has a choice of whether to follow your directive or not. If your doctor chooses not to follow your advance directive, then he/she must make a reasonable effort to transfer your care to another physician who will follow your wishes.

What happens when there are no advance directives?

If you are incapable of making your own health care decisions and you have no advance directive, Virginia law requires your doctor to look for the following persons, in the specified order of priority, to make health care decisions for you:

1. Your legal guardian
2. Your spouse
3. An adult child
4. Your parent
5. An adult brother or sister
6. Nearest living relative

Whoever is making health care decisions for you must act according to your known religious beliefs, basic values, and stated preferences. There are no presumptions that you would consent to or refuse any life prolonging procedures.

Can I revoke an advance directive?

Yes, both the Living Will and the Medical Power of Attorney may be revoked by:

1. A signed, dated, written statement revoking it;
2. Intentionally destroying it; or,
3. Making an oral statement of intent to revoke the declaration.

The revocation is effective as it is communicated to the attending physician. You should also notify your agent in writing when you revoke a Medical Power of Attorney.

Is my advance directive executed in another state, valid in Virginia?

If an advance directive executed in another state complies with the laws of that state OR complies with the laws of Virginia, that advance directive will be deemed valid in Virginia.

What should I do if I want to donate my organs?

If you want to donate your organs upon your death, there are several ways you can make this desire known. You may specify on your driver's license that you wish to be an organ donor. You also can indicate your desire to donate your organs in any signed, written document, including your advance directive or your will. If you are unable to sign the document yourself, you can have another person sign it for you in your presence and the presence of two witnesses, who must also sign. If you wish, you may appoint an agent in your will or your advance directive to make a gift of your organs upon your death. In all cases, be sure to let your family know your decision regarding organ donation. Doing so can save valuable time in getting your organs to those in need, if you have decided to make an anatomical gift.

What is a Durable Do Not Resuscitate Order?

A Durable do Not Resuscitate Order is not the same thing as an advance directive. It is a written order made by a doctor to withhold cardiopulmonary resuscitation. This means that medical personnel will not act if there is a respiratory or cardiac arrest. A doctor may issue the order only with the consent of the patient or the patient's legal representative. The order remains valid and in effect until it is revoked by the patient or the representative.

Will having an advance directive affect my insurance benefits?

Under the law of the Commonwealth of Virginia, your decision to make an advance directive may not affect whether you are able to obtain a life insurance policy or be used as a reason for your insurance company to modify the terms of your existing policy. If you or your health care power of attorney agent choose to have your life-prolonging procedures be withheld or withdrawn, this does not constitute a suicide, and it will not affect your insurance benefits. In addition, no one may require you to make an advance directive or consent to a Durable Do Not Resuscitate Order as a condition to being insured for, or receiving health care services.

Where should Living Wills or other advance directives be stored?

Living Wills or Durable Power of Attorney for Health Care documents should NOT be placed in a safe deposit box. The absence or disability of the maker would leave the documents inaccessible at the time when it may be needed.

It is an excellent idea to sign two copies. Deliver one to the person holding the Power of Attorney (and attorney and/or caregiver) and the other in a safe place such as an accessible file cabinet in your home, with a long-term health care provider, and again with a caregiver. You should also make sure that your family members and attorney know that you have an advance directive and where it's located.

It is also an excellent idea to register your Living Will or Durable Power of Attorney for Health Care documents in the AgeNet Living Will and Caregiver Notification Registry. The registry is free and raises awareness about the existence of advance directives – increasing the likelihood that the documents will be accessible and made available in a timely manner when crucial health care decisions are being made.

Going to this website will give you more information:
http://www.agenet.com/Category_Pages/document_display.asp?Id=420&

Why not a safe deposit box?

Banks normally do not recommend what a box renter "tenant" should or should not keep in a safe deposit box. However, anything that needs to be quickly accessible, such as advance directives, or immediately needed following death, such as wills or insurance policies, should NOT be kept in a safe deposit box. A joint box "tenant" or authorized deputy does not necessarily have the right to remove necessary documents from the box.

THIS INFORMATION IS NOT LEGAL ADVICE. Legal advice is dependent upon the specific circumstances of each situation. Therefore, the information contained in this pamphlet cannot replace the advice of competent legal counsel.

Free Legal information by Web and Phone: www.vlas.org and
1-866-LeglAid (534-5243)