



ADVANCE DIRECTIVE

DURABLE POWER OF ATTORNEY
FOR HEALTH CARE



WHAT IS A DURABLE POWER OF ATTORNEY FOR HEALTH CARE?¹

A Durable Power of Attorney for Health Care is a legally binding document naming a patient advocate who exercises power concerning the patient's care, custody, and medical or mental health treatment or is authorized to make an anatomical gift on behalf of the patient, or both, as provided under law.²

A Durable Power of Attorney for Health Care creates a legally binding relationship between the patient and his/her designee (patient advocate) where the patient advocate will abide by a set of health care directives created by the patient. The advanced directive consists of the directives that create a Durable Power of Attorney for Health Care and allows the patient to appoint the patient advocate who can utilize the documentation as guidance in the event the patient is unable to participate in his/her medical treatment.

There are numerous individuals who are not allowed to be a witness to the patient's signature of a Durable Power of Attorney for Health Care, including the patient's spouse, parent, child, grandchild, sibling, presumptive heir, known devisee at the time of the witnessing, physician, or an employee providing care to the patient. The patient advocate must sign a statement accepting the designation prior to services being rendered.³ Additionally, the patient may revoke his/her patient advocate at any time.

A patient advocate should be a trusted individual at least 18 years of age and of sound mind. The patient advocate is only able to act when the patient is unable to participate in his/her medical treatment, as determined in writing by two physicians or one physician and one licensed psychologist.⁴ Additionally, the patient advocate must sign a statement accepting the designation prior to services being rendered.

WHAT IS A DO-NOT-RESUSCITATE ORDER?

A do-not-resuscitate order is a document directing that if a patient suffers cessation of both spontaneous respiration and circulation in a setting outside of a hospital, resuscitation will not be initiated.⁵

A separate document known as a Michigan Do-Not-Resuscitate order is required. However, under a Durable Power of Attorney for Health Care, patient may select life-enhancing care, which will keep the patient comfortable until death occurs naturally.

WHAT IS AN ANATOMICAL GIFT?

An anatomical gift is a donation of all or part of a human body. A patient must specifically provide the designee with authorization to provide an anatomical gift. That portion of the patient advocate designation is the only portion that will survive after the patient.

¹ MCL 700.5506

² MCL 700.1106

³ MCL 700.5507

⁴ MCL 700.5508

⁵ MCL 333.1052

REQUIREMENTS NECESSARY TO CREATE AND INITIATE A DURABLE POWER OF ATTORNEY FOR HEALTH CARE

Requirements to include in a form for patients to dedicate a Durable Power of Attorney for health care decisions only when the patient is unable to do so themselves must consist of all of the following:

- Designation of the patient advocate:
 - Patient advocate must be at least 18 years of age; and
 - Patient advocate must be of sound mind at the time of designation.
- Form must be:
 - Signed by the patient in the presence of two witnesses, who are at least 18 and of sound mind, and the two witnesses must sign as witnesses to the signature;
 - A witness cannot be any of the following in relation to the patient:
 - Spouse;
 - Parent;
 - Child;
 - Grandchild;
 - Sibling;
 - Presumptive heir;
 - Physician;
 - Patient advocate;
 - Any employee of life or health insurance provider;
 - Any employee of a health facility treating the patient;
 - Any employee of a nursing home where the patient resides; or
 - Any employee of a hospital or community mental health services program that is providing mental health services to the patient.
 - Dated; and
 - Specify the authority under the form is exercisable only when the patient is unable to participate in medical or mental health treatment decisions.

Before the patient advocate may act on behalf of the patient, the patient advocate must accept the duties and sign an acceptance form.

Before implementation, the form should become part of the patient's medical record with the patient's attending physician, mental health professional providing treatment to the patient, facility where the patient is located, or hospital that is providing mental health services to the patient.



FORM THAT PATIENT ADVOCATE MUST SIGN ACCEPTING DUTIES:

- The form shall include the following language:
 - “This patient advocate designation is not effective unless the patient is unable to participate in decisions regarding the patient’s medical or mental health, as applicable.
 - If this patient advocate designation includes the authority to make an anatomical gift as described in MCL 700.5506, the authority remains exercisable after the patient’s death.
 - This patient advocate designation cannot be used to make a medical treatment decision to withhold or withdraw treatment from a patient who is pregnant that would result in the pregnant patient’s death.
 - A patient advocate may make a decision to withhold or withdraw treatment that would allow a patient to die only if the patient has expressed in a clear and convincing manner that the patient advocate is authorized to make such a decision, and that the patient acknowledges that such a decision could or would allow the patient’s death.
 - A patient advocate shall not receive compensation for the performance of his or her authority, rights, and responsibilities, but a patient advocate may be reimbursed for actual and necessary expenses incurred in the performance of his or her authority, rights, and responsibilities.
 - A patient advocate shall act in accordance with the standards of care applicable to fiduciaries when acting for the patient and shall act consistent with the patient’s best interests. The known desires of the patient expressed or evidenced while the patient is able to participate in medical or mental health treatment decisions are presumed to be in the patient’s best interests.
 - A patient may revoke his or her patient advocate designation at any time and in any manner sufficient to communicate an intent to revoke.
 - A patient may waive his or her right to revoke the patient advocate designation as the power to make mental health treatment decisions, and if such a waiver is made, his or her ability to revoke as to certain treatment will be delayed for 30 days after the patient communicates his or her intent to revoke.
 - A patient advocate may revoke his or her acceptance of the patient advocate designation at any time and in any manner sufficient to communicate an intent to revoke.
 - A patient admitted to a health facility or agency has the rights enumerated in section 20201 of the Public Health Code, 1978 PA 368, MCL 333.20201.
 - If the designation authorizes the patient advocate to make an anatomical gift, the authority remains exercisable after the patient’s death. A patient advocate may not exercise the authority to make an anatomical gift if the patient advocate has received actual notice that the patient expressed an unwillingness to make the gift.”



HEALTH CARE

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