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DECISIONS ABOUT YOUR HEALTH CARE

HOW YOU CAN PLAN FOR THE FUTURE WITH LIVING WILLS AND OTHER HEALTH CARE DIRECTIVES

The following summary was prepared by the Patient Self Determination Act Committee of the Arizona Bar Association because of a 1991 Federal law. We hope that this information will be helpful to you in considering whether to complete a health care directive, and if you complete one, in preparing for its possible use in the future.

If you decide to complete a health care directive, you may want to discuss your health care wishes with your doctor before completing the document. Even if you do not discuss the directive beforehand with your doctor, you should discuss your wishes with him after it has been prepared. You should also discuss the document and your instructions about your health care with your family members and the person you name as your agent in any health care power of attorney. Your legal concerns can be addressed by our firm.

Who makes your health care decisions?

You do, if you can make and communicate them. Your doctors should tell you about the treatment they recommend, other reasonable alternatives, and important medical risks and benefits of that treatment and the alternatives. You have the right to decide what health care, if any, you will accept.

What happens if you become unable to make or communicate your health care decisions?

You can still have some control over your health care decisions if you have planned ahead. One way to plan ahead is by making a **health care directive** which names someone to make these decisions for you, or which guides or controls these decisions. If you have not named someone in a health care directive, your doctors must seek a person authorized by law to make these decisions. A person who makes health care decisions for you is called a **surrogate**.

What is a health care directive?

It is a written statement about how you want your health care decisions made. Under Arizona law, there are three common types of health care directives. They are:

A **health care power of attorney**, which is a written statement in which you name an adult to make health care decisions for you. That person will make health care decisions for you *only* when you cannot make or communicate such decisions.

A **living will**, which is a written statement about health care you want or do not want that is to be followed if you cannot make your own health care decisions. For example, a living will can say whether you would want to be fed through a tube if you were unconscious and unlikely to recover.

A **pre-hospital medical care directive**, which is a directive refusing cardiopulmonary resuscitation, a type of lifesaving emergency care, if you have a heart attack or can't breathe outside a hospital or in a hospital emergency room. To make one, you must complete a special orange form.

These directives, used separately or together, can help you say “yes” to treatment you want and “no” to treatment you don't want.

Must your health care directives be followed?

Yes. Both health care providers and surrogates must follow valid health care directives.

Can you be required to make a health directive?

No. Whether you make a health care directive is entirely up to you. A health care provider cannot refuse care based on whether or not you have a health care directive.

Can you change or revoke health care directives?

Yes. If you change or revoke a health care directive, you should notify everyone who has a copy.

Who can legally make health care decisions for you if you are unable to make your own decisions and if you have not made a health care power of attorney?

A court may appoint a guardian to make health care decisions for you. Otherwise, your health care provider must go down the following list to find a surrogate to make health care decisions for you:

1. Your husband or wife, unless you are legally separated.
2. Your adult child. If you have more than one adult child, a majority of those who are available.
3. Your mother or father.
4. Your domestic partner, unless someone else has financial responsibility for you.
5. Your brother or sister.
6. A close friend of yours. (Someone who shows special concern for you and is familiar with your health care views.)

If your health care provider cannot find an available and willing surrogate to make health care decisions for you, then your doctor can decide with the advice of an ethics committee or, if this is not possible, with the approval of another doctor.

You can keep anyone from becoming your surrogate by saying, preferably in writing, that you do not want that person to make health decisions for you.

A surrogate will *not* have the right to decide to have tubes withdrawn from you that are used to give you food or fluids unless:

- ❖ **you have appointed that surrogate to make health care decisions for you in a health care power of attorney; or**
- ❖ **a court has appointed that surrogate as your guardian to make health care decisions for you; or,**
- ❖ **you have stated in a health care directive that you do not want this specific treatment.**

ADDITIONAL INFORMATION FOR ANYONE WHO ALREADY HAS OR WANTS TO MAKE A HEALTH CARE DIRECTIVE

What if you already have a living will or other health care directive?

A health care directive, which was valid when made anywhere in the U.S., is valid under Arizona law. However, Arizona law changed on September 30, 1992, making new choices available to you. You should review your health care directives periodically and update them as needed.

Do you need a lawyer to make a health care directive?

No. Just be sure that your directive is valid under Arizona law.

What does the law require for a health care directive after September 30, 1992?

A health care power of attorney *must*:

- ❖ Name a person to make health care decisions for you if you become unable to make your own decisions. You may also name an additional person or persons to make decisions for you if your first choice cannot serve. The person or persons must be at least 18 years old.
- ❖ Be signed or marked by you and dated.
- ❖ Be signed by a notary or by an adult witness or witnesses, who saw you sign or mark the document and who say that you appear to be of sound mind and free from duress. A notary or witness cannot be the person you name to make your decisions and cannot be providing health care to you. If you have only one witness, that witness cannot be related to you or someone who will get any of your property from your estate if you die.

A living will *must*:

- ❖ State how you want your health care decisions to be made in the future.
- ❖ Be signed or marked by you and dated.
- ❖ Be notarized or witnessed in the same way as described above for a health care power of attorney.

A pre-hospital medical care directive *must*:

- ❖ Be in the exact form required by law.
- ❖ Be printed on an orange background.

- ❖ Be signed or marked by you and dated.
- ❖ Be signed by a licensed health care provider and a witness.

If you have signed an orange pre-hospital medical care directive, you may also wear a special orange bracelet. It must state your name, your doctor's name, and the words "do not resuscitate". This bracelet will call to the attention of emergency medical personnel that you have signed the form and that you do not want the cardiopulmonary resuscitation outside a hospital or in an hospital emergency room.

You should talk to your doctor about pre-hospital directives if you are thinking about signing one. Forms are available through the Office of Emergency Medical Services in the Department of Health Services, although any pre-hospital directive which is in the exact form that meets the requirements of the law may be used.

Who should have copies of your health care directives?

It is very important that you give copies to your doctors at once and to any health care facility upon admission. You should give copies to anyone you have named to make health care decisions for you in a health care power of attorney. You may also want to give copies to close family members. Be sure to keep extra copies for yourself.

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