

Advance Health Care Directive: What you need to know

ODCC Seminar: Life after Death

April 27, 2008

Advance Health Care Directive: What you need to know

What is a health care directive?

Why is it important to have one?

- **What is a health care directive?**

- A health care directive is a written document that informs others of your wishes about your healthcare (i.e. the withdrawal of life-sustaining procedures when one is in a terminal condition, coma, or persistent vegetative state) (mainly end-of-life choices) (“living will”)

- It allows you to name an agent (durable power of attorney for healthcare) to legally decide for you on health-related matters if you are unable to decide (does not make this “agent” legally responsible for matters of estate, existing debt, etc.)

- *Living Will* versus *Will*
- *Durable Power of Attorney for Healthcare* versus *Durable Power of Attorney*

- **Living Will**: a legal written document declaring the type and extent of medical care you desire in the event that you become incapacitated
- **Last Will**: is used to distribute property to beneficiaries, specify last wishes, and name guardians for minor children. It is an important part of any estate plan. Without one, the courts will make these critical decisions for you.

- *Durable Power of Attorney for Healthcare:*
(“healthcare agent”)

- someone that you can appoint to act on your behalf to see that your Advance Health Care Directive is made known to your doctors and health care providers, and more importantly the Health Care Agent is the person who is entrusted to see that your health care instructions are followed.

- Is not responsible for your medical bills

- *Durable Power of Attorney:*

- lets you appoint a trusted person to manage important financial and legal matters on your behalf

- **Durable Power of Attorney for Healthcare:**
(“healthcare agent”)

- **If you become incapacitated and are unable to make your own health care decisions, your designated healthcare agent will have the legal authority to speak for you regarding your health care matters.**
- **Doctors and other health care professionals will look to your healthcare agent for decisions rather than your next of kin or any other person.**
- **Your healthcare agent will be able to accept or refuse medical treatment on your behalf, have access to all of your medical records, as well as make decisions about donating your organs, authorizing an autopsy, and disposing of your body in the event of your death.**

- **Why is having a health care directive important?**



- **Why is having a health care directive important?**



- **Why is having a health care directive important?**



- **Why is having a health care directive important?**
 - **It is the best way to ensure that your wishes for health-related matters (e.g. end-of-life choices) are followed when you are not able to decide for yourself (e.g. physically or mentally incapacitated)**
 - **Gives family members assurance and confidence about your wishes during a time of grieving and mourning**
 - **Avoids having family members “guess” your wishes or make critical medical care decisions for you during time of emotional turmoil.**
 - **Resolves any conflicts arising among family members (spouses, parents, siblings) by designating an “agent” (durable power of attorney for healthcare).**

- **What if I don't have a health care directive and I cannot decide for myself?**
 - **Will still receive medical treatment**
 - **No legal ramifications (is not required by law)**
 - **Doctors will take into consideration what people close to you may say about your treatment preferences**

- **How do I make a health care directive?**
- ***Fill out the GA Advance Directive for Healthcare Form!***
 - **Be in writing and dated**
 - **State full name**
 - **Be signed by you or someone you authorize to sign for you when you can understand and communicate your health care wishes**
 - **Have signature verified by notary public and/or 2 witnesses (GA law does not require notary)**
 - **Include the appointment of a durable power of attorney for healthcare to make health care decisions for you and/or instructions about the health care choices you wish to make**

- **What can I put in my health care directive?**
 - **The person you trust as your agent to make health care decisions for you. You can name alternative agents in case the first agent is unavailable, or joint agents.**
 - **Your goals, values and preferences about health care.**
 - **The types of medical treatment you would want (or not want).**
 - **How you want your agent or agents to decide.**
 - **Where you want to receive care.**

- **What can I put in my health care directive?**
 - **Instructions about artificial nutrition and hydration.**
 - **Instructions if you are pregnant (if fetus is viable, health care directive is not applicable)**
 - **Donation of organs, tissues and eyes.**
 - **Funeral arrangements.**
 - **Who you would like as your guardian or conservator if there is a court action.**
 - **You may be as specific or as general as you wish. You can choose which issues or treatments to deal with in your health care directive.**

- **Are There Any Limits to What I Can Put in My Health Care Directive?**

- **There are some limits about what you can put in your health care directive. For instance:**

- **Your agent must be at least 18 years of age.**

- **Your agent cannot be your health care provider**

- **You cannot request health care treatment that is outside of reasonable medical practice.**


- **You cannot request assisted suicide.**

• How Long Does a Health Care Directive Last? Can I Change It?

Revoking this advance directive for health care

The Georgia Advance Directive for Health Care may be revoked at any time, regardless of the declarant's mental state or competency. **It remains effective even if a Guardian is appointed for the declarant unless a court specifically orders otherwise.**

Revocation can occur in any of the following ways:

- 
- ♦ By completing a new advance directive for health care
 - ♦ By burning, tearing up, or otherwise destroying the existing advance directive for health care
 - ♦ By writing a clear statement expressing the intent to revoke the advance directive for health care
 - ♦ By orally expressing the intent to revoke the advance directive for health care in the presence of a witness 18 years of age or older who confirms this in writing within 30 days. The revocation is effective when the treating physician documents it in the medical record.
 - ♦ Marrying after executing an advance directive for health care revokes any agent other than the declarant's spouse
 - ♦ Divorcing or otherwise dissolving a marriage after the execution of an advance directive for health care revokes the designation of the spouse as the health care agent

- **What Should I Do With My Health Care Directive After I Have Signed It?**

- **You should inform others of your health care directive and give people copies of it.**

- **Family members**

- **Anyone named in the directive**

- **Primary care**

- **Keep one copy in a safe place (e.g. safety deposit box)**

- **GA Law states that a copy of the original document is sufficient**

- **Review and update your directive as your needs change. Keep it in a safe place where it is easily found.**

GEORGIA ADVANCE DIRECTIVE FOR HEALTH CARE

The effect of the Georgia Advance Directive for Health Care Act on the Georgia Living Will and Georgia Durable Power of Attorney for Health Care Laws.

- **Following the trends of other states, GA officially combined the concepts of the Living Will and the designation of a durable power of attorney for health care into a single legal document: *The Georgia Advance Directive for Healthcare***
- **Effective July 1, 2007**

The difference between this advance directive form and the Living Will and Durable Power of Attorney for Health Care

The Georgia Advance Directive for Health Care is an attempt to combine the best features of the Living Will and Durable Power of Attorney for Health Care into one written document. An effort has also been made to make the execution (signing and witnessing) of this document easier and more convenient. The effect of this new document still does not constitute suicide, physician assisted suicide, homicide or euthanasia. Completing one has no affect on insurance, annuities or anything else contingent on the life or death of the person making the advance directive (hereafter, “the declarant”).

Three parts of the Georgia Advance Directive for Health Care

Part One: allows an agent to be appointed to carry out health care decisions (formerly the Durable Power of Attorney for Health Care)

Part Two: allows choices about withholding or withdrawing life support and accepting or refusing nutrition and/or hydration (formerly the Living Will)

Part Three: allows one to nominate someone to be appointed as Guardian if a court determines that a guardian is necessary.

PART ONE: HEALTH CARE AGENT

(1) HEALTH CARE AGENT

I select the following person as my health care agent to make health care decisions for me:

Name: _____

Address: _____

Telephone Numbers:

(Home)

(Work)

(Mobile/Cell)

E-Mail Address: _____

(2) BACK-UP HEALTH CARE AGENT

[This section is optional. PART ONE will be effective even if this section is left blank.]

If my health care agent cannot be contacted in a reasonable time period and cannot be located with reasonable efforts or for any reason my health care agent is unavailable or unable or unwilling to act as my health care agent, then I select the following, each to act successively in the order named, as my back-up health care agent(s):

First Back-up Agent

Name: _____

Address: _____

Telephone Numbers: _____

(Home, Work, and Mobile/Cell)

E-Mail Address: _____

Second Back-up Agent

Name: _____

Address: _____

Telephone Numbers: _____

(Home, Work, and Mobile/Cell)

E-Mail Address: _____

(5) POWERS OF HEALTH CARE AGENT AFTER DEATH

(A) AUTOPSY

My health care agent will have the power to authorize an autopsy of my body unless I have limited my health care agent's power by initialing below.

_____ (Initials) My health care agent will not have the power to authorize an autopsy of my body (unless an autopsy is required by law).

(B) ORGAN DONATION AND DONATION OF BODY

My health care agent will have the power to make a disposition of any part or all of my body for medical purposes pursuant to the Georgia Anatomical Gift Act, unless I have limited my health care agent's power by initialing below.

[Initial each statement that you want to apply.]

_____ (Initials) My health care agent will not have the power to make a disposition of my body for use in a medical study program.

_____ (Initials) My health care agent will not have the power to donate any of my organs.

(C) FINAL DISPOSITION OF BODY

My health care agent will have the power to make decisions about the final disposition of my body **unless** I have initialed below.

_____ (Initials) I want the following person to make decisions about the final disposition of my body:

(C) FINAL DISPOSITION OF BODY

My health care agent will have the power to make decisions about the final disposition of my body **unless** I have initialed below.

_____ (Initials) I want the following person to make decisions about the final disposition of my body:

Name: _____

Address: _____

Telephone Numbers: _____

(Home, Work, and Mobile/Cell)

E-Mail Address: _____

I wish for my body to be:

_____ (Initials) Buried **OR** _____ (Initials) Cremated

PART TWO: TREATMENT PREFERENCES

(6) CONDITIONS

PART TWO will be effective if I am in any of the following conditions:

[Initial each condition in which you want PART TWO to be effective.]

_____ (Initials) A terminal condition, which means I have an incurable or irreversible condition that will result in my death in a relatively short period of time.

_____ (Initials) A state of permanent unconsciousness, which means I am in an incurable or irreversible condition in which I am not aware of myself or my environment and I show no behavioral response to my environment.

My condition will be determined in writing after personal examination by my attending physician and a second physician in accordance with currently accepted medical standards.

If I am in any condition that I initialed in Section (6) above and I can no longer communicate my treatment preferences after reasonable and appropriate efforts have been made to communicate with me about my treatment preferences, then:

(A) _____ (Initials) ***Try to extend my life for as long as possible***, using all medications, machines, or other medical procedures that in reasonable medical judgment could keep me alive. If I am unable to take nutrition or fluids by mouth, then I want to receive nutrition or fluids by tube or other medical means.

OR

(B) _____ (Initials) ***Allow my natural death to occur.*** I do not want any medications, machines, or other medical procedures that in reasonable medical judgment could keep me alive but cannot cure me. I do not want to receive nutrition or fluids by tube or other medical means except as needed to provide pain medication.

OR

(C) _____ (Initials) I do not want any medications, machines, or other medical procedures that in reasonable medical judgment could keep me alive but cannot cure me, except as follows:

[Initial each statement that you want to apply to option (C).]

_____ (Initials) If I am unable to take nutrition by mouth, I want to receive nutrition by tube or other medical means.

_____ (Initials) If I am unable to take fluids by mouth, I want to receive fluids by tube or other medical means.

_____ (Initials) If I need assistance to breathe, I want to have a ventilator used.

_____ (Initials) If my heart or pulse has stopped, I want to have cardiopulmonary resuscitation (CPR) used.

PART THREE: GUARDIANSHIP

(10) GUARDIANSHIP

[PART THREE is optional. This advance directive for health care will be effective even if PART THREE is left blank. If you wish to nominate a person to be your guardian in the event a court decides that a guardian should be appointed, complete PART THREE. A court will appoint a guardian for you if the court finds that you are not able to make significant responsible decisions for yourself regarding your personal support, safety, or welfare. A court will appoint the person nominated by you if the court finds that the appointment will serve your best interest and welfare. If you have selected a health care agent in PART ONE, you may (but are not required to) nominate the same person to be your guardian. If your health care agent and guardian are not the same person, your health care agent will have priority over your guardian in making your health care decisions, unless a court determines otherwise.]

[State your preference by initialing (A) or (B). Choose (A) only if you have also completed PART ONE.]

(A) _____ (Initials) I nominate the person serving as my health care agent under PART ONE to serve as my guardian.

OR

(B) _____ (Initials) I nominate the following person to serve as my guardian:

Name: _____

Address: _____

Telephone Numbers: _____

(Home, Work, and Mobile/Cell)

E-Mail Address: _____

PART FOUR: EFFECTIVENESS AND SIGNATURES

This advance directive for health care will become effective only if I am unable or choose not to make or communicate my own health care decisions.

Completing this form revokes and replaces any advance directive for health care, durable power of attorney for health care, health care proxy, or living will that I have completed before this date.

Unless I have initialed below and have provided alternative future dates or events, this advance directive for health care will become effective at the time I sign it and will remain effective until my death (and after my death to the extent authorized in Section (5) of PART ONE).

- **Conclusions:**

- **An Advance Healthcare directive allows**

- **1) a person to legally record in writing one's wishes for end-of-life choices (e.g. the withdrawal of life-sustaining procedures when one is in a terminal condition, coma, or persistent vegetative state)**
(LIVING WILL)

- **2) a person to designate a healthcare agent to make health-care decisions for you if you cannot do so**
(DURABLE POWER OF ATTORNEY FOR HEALTHCARE)

- **Conclusions:**
- **Having a healthcare directive is not a legal requirement under GA Law. . .**
- ***But everyone should have one!***