

Information for Patients, Physicians, and Providers

General Information

To be read by the patient and physician or other provider. The full advance directives statute is at Texas Health and Safety Code, Chapter 166.

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Definitions

- **Physician** means a physician licensed by the Texas Medical Board; or a properly credentialed physician who holds a commission in the uniformed services of the United States and who is serving on active duty in this state. §166.002(12)
- The **agent** is the adult to whom authority to make health care decisions is delegated under a medical power of attorney. §166.151(2)
- The **principal** is the adult who executes a medical power of attorney. §166.151(4)
- **Providers** are (a) health care providers — individuals or facilities licensed, certified, or otherwise authorized to administer health care, for profit or otherwise, and includes physicians, and (b) residential care providers — individuals or facilities licensed, certified, or otherwise authorized to operate, for profit or otherwise, a residential care home. §166.151(3), (5)

What is a medical power of attorney?

It is a document, signed by a competent adult, i.e., “principal,” designating a person who the principal trusts to make health care decisions on the principal’s behalf should the principal be unable to make such decisions. The individual chosen to act on the principal’s behalf is referred to as an “agent.”

When does the medical power of attorney go into effect and how long is it effective?

It is effective immediately after it is executed and delivered to the agent. It is effective indefinitely unless it contains a specific termination date, it is revoked, or the principal becomes competent. §166.152

When does the agent have the right to make health care decisions on the principal’s behalf?

An agent may make health care decisions on the principal’s behalf only if the principal’s attending physician certifies in writing that the principal is incompetent. The physician must file the certification in the principal’s medical record. §166.151(b)

Can the agent make a health care decision if the principal objects?

No. Treatment may not be given to or withheld from the principal if the principal objects. This is true whether or not the principal is incompetent. §166.152(c)

What health care decisionmaking power does the medical power of attorney grant to an agent?

Under a medical power of attorney, an agent is given wide latitude when consenting to treatment on the principal’s behalf. However, an agent cannot consent to: §166.152(f)

- Commitment to a mental institution,
- Convulsive treatment,
- Psychosurgery,
- Abortion, and
- Neglect of comfort care.

And in the medical power of attorney document itself, the principal may limit the agent’s decisionmaking authority.

How is the medical power of attorney revoked?

A medical power of attorney may be revoked by notifying either the agent or the principal’s physician or provider orally or in writing, of the principal’s intent to revoke. This revocation will occur regardless of the principal’s capacity to make health care decisions. Further, if the principal executes a later medical power of attorney, then all prior ones are revoked. If the principal designates his/her spouse to be the agent, then a later divorce revokes the medical power of attorney. §166.155

What assurance is there that the principal understands the consequences of signing a medical power of attorney?

The medical power of attorney is not legally effective unless the principal signs a disclosure statement that he or she has read and understood the contents of the medical power of attorney before signing the medical power of attorney itself. §166.162

Information of Importance to Patients/ Principals

Do I need a medical power of attorney?

There is a chance in your lifetime that you may be seriously injured, ill, or otherwise unable to make decisions regarding health care. If this should happen, it would be helpful to have someone who knows your values and in whom you have trust to make such decisions for you.

Who should be selected as an agent?

The principal should be someone knowledgeable about your wishes, values, and religious beliefs, and in whom you have trust and confidence. In the event your agent does not know of your wishes, that agent should be willing to make health care decisions based upon your best interests.

Can there be more than one agent?

Yes. Although you are not required to designate an alternate agent, you may do so. The alternate agent(s) may make the same health care decisions as the designated agent if the designated agent is unable or unwilling to act. §166.163

Who can be an agent?

Anyone may act as an agent other than the following:

- The principal's physician or health care provider,
- An employee of the physician or health care provider unless the person is a relative of the principal,
- The principal's residential care provider, or
- An employee of the principal's residential care provider unless the person is the principal's relative. §166.153

How can you obtain a medical power of attorney?

You may contact the Texas Department of Aging and Disability Services; your local hospital, long-term care facility, physician, attorney, or a state health organization such as the Texas Conference of Catholic Health Facilities, Texas Medical Association, Texas Hospital Association, Texas Health Care Association, or the Texas Association of Homes for the Aging.

Do you need a witness?

Either two witnesses must sign the medical power of attorney, or you may sign it and have your signature acknowledged before a notary public. At least one of the witnesses must not be:

- Designated by the principal to make a health care decision on the principal's behalf;
- Related to the principal by blood or marriage;
- The principal's attending physician or an employee of the attending physician;
- Entitled to a part of the principal's estate;
- A person having a claim against the principal's estate;
- An employee of a health care facility in which the principal is a patient if the employee is providing direct care to the principal; or
- An officer, director, partner, or business office employee of the health care facility or of any parent organization of the health care facility. §166.154

What is the difference between a medical power of attorney and a directive to physicians?

The directive to physicians is a document that is limited in scope, addressing only the withholding or withdrawing of medical treatment for those persons having a terminal or irreversible condition. The medical power of attorney is broader in scope and includes all health care decisions with only a few exceptions. The medical power of attorney does not require that the principal be in a terminal or irreversible condition before the principal's agent can make health care decisions on the principal's behalf.

Does a person need a lawyer to execute a medical power of attorney?

No, a lawyer is not necessary to execute a medical power of attorney. §166.163

Information of Importance to Physicians and Providers

What duties does the physician provider have when presented with a principal's medical power of attorney?

A principal's physician or provider, or an employee of the physician or provider shall follow a directive of the principal's agent to the extent it is consistent with the desires of the principal, the law, and the medical power of attorney.

The attending physician does not have to verify that the agent's decision is consistent with the principal's wishes or religious or moral beliefs. If the principal's physician or provider will not follow an agent's decision, the physician or provider must inform the agent as soon as reasonably possible. The agent may select another physician or provider.

A health or residential care provider may not be required to act in a manner contrary to a physician's order. §166.158

Suppose that the principal's medical power of attorney provides the agent with decisionmaking authority with regard to the provision of life-sustaining treatment. Suppose that the agent wishes to have the physician remove life-sustaining treatment from the principal, but the principal's attending physician refuses to comply with the decision? In light of this refusal, what is the responsibility of the physician and the applicable health care facility?

If the principal's attending physician refuses to honor the agent's decision, then the physician's refusal may be reviewed by a medical or ethics committee. If the ethics or medical committee reviews the refusal, the physician cannot be a member of the review committee. The principal must be provided life-sustaining treatment while the review is taking place. The agent must be given at least 48 hours' notice of when the review committee will convene and must also be allowed to attend the committee meeting. The agent must be provided a written explanation of the decision reached during the review process. If the agent or the physician disagrees with the decision reached through the review process, then the physician must make a reasonable effort to transfer the patient to a physician who is willing to comply with the agent's decision. If the principal is a patient in a health care facility, the facility's personnel shall assist the physician in arranging the principal's transfer to another physician, an alternative care setting within that facility, or another facility that will honor the agent's decision. If the process just described is followed, then the physician and the health care facility will be immune from disciplinary action, civil liability, and criminal liability. §166.046

Suppose that the principal's medical power of attorney provides the agent with decisionmaking authority with regard to the provision of life-sustaining treatment. Suppose that the agent wants the physician to provide life-sustaining treatment but the principal's attending physician believes that the requested treatment is inappropriate. What is the responsibility of the physician and the applicable health care facility in this case?

If the physician believes that the requested treatment is inappropriate, then an ethics or medical committee may review the requested treatment for appropriateness. Again, the physician cannot be a member of the review committee, and the patient must be provided life-sustaining treatment while the review is taking place. The agent must be allowed to attend the meeting of the review committee and must be provided a written explanation of the decision reached during the review process.

If the review process determines that the administration of the requested life-sustaining treatment is inappropriate, then the principal's physician must make a reasonable effort to transfer the patient to a physician who is willing to provide the requested treatment. The health care facility in which the patient resides must assist the physician in arranging the patient's transfer to another physician, an alternative care setting within that facility, or another facility that will provide the requested treatment. Although the physician and the health care facility are obligated

to provide life-sustaining procedures pending transfer, this obligation is limited. The physician and the health care facility are not obligated to provide life-sustaining treatment after the 10th day after the agent receives a written notification that the review process has determined that the administration of the requested life-sustaining treatment is inappropriate. If the hospital and physician follow this process, then the physician and the health care facility will be immune from disciplinary action, civil liability, and criminal liability. §166.046

Is the review process described above mandatory?

No. However, even if the physician's refusal to comply with an agent's directive does not come under the review process, the physician and the health care facility must provide life-sustaining treatment. The physician and the health care facility need only provide the treatment until a reasonable opportunity has been afforded for the transfer of the patient to another physician or health care facility willing to comply with the directive. But because an ethics or medical committee did not review the physician's refusal, neither the physician nor the hospital will be granted immunity from disciplinary action, civil liability, or criminal liability. §166.046

What must be done if a physician or provider learns that a principal's medical power of attorney has been revoked?

When a physician or provider is informed of, or provided with, a revocation of a medical power of attorney, the revocation shall be recorded in the medical record and notice given to the agent. §166.155

What rights to the principal's medical records does the agent have?

The agent may, in the course of making a health care decision:

- Request, review, and receive information about the principal's physical or mental health, including medical and hospital records;
- Execute a release required to obtain the information; and
- Consent to the disclosure of the information. §166.157

To what extent is an agent liable for a decision made under the authority of a medical power of attorney?

An agent, acting in good faith, will not incur criminal or civil liability for a health care decision made under a medical power of attorney. §166.160(a)

What liability does a physician or provider incur as a result of a decision made by an agent under a medical power of attorney?

The principal's attending physician or providers will not be subject to civil or criminal liability, or disciplinary action if any act or omission is performed in good faith under the direction of an agent who has a medical power of attorney, provided the act or omission does not constitute a failure to exercise due care in the provision of health care services. §166.160(b)

Who is liable for the cost of medical care decisions made by the agent?

The agent will not be responsible for the cost consequent to the agent's decision if the principal, if competent, would not have been liable for the costs connected with making the same decision as the agent. §166.161

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Medical Power of Attorney Disclosure Statement Form

This is an important legal document. Before signing this document, you should know these important facts:

Unless you state otherwise, this document gives the person you name as your agent the authority to make all health care decisions for you in accordance with your wishes, when your doctor certifies that you lack the capacity to make health care decisions. Because "health care" means any treatment, service, or procedure to maintain, diagnose, or treat your physical or mental condition, your agent has the power to make a broad range of health care decisions for you. Your agent may consent, refuse to consent, or withdraw consent to medical treatment, and may make decisions about withdrawing or withholding life sustaining treatment. Your agent may not consent to voluntary inpatient mental health services, convulsive treatment, psychosurgery, or abortion. A physician must comply with your agent's instructions or allow you to be transferred to another physician.

Your agent's authority begins when your doctor certifies that you lack the competence to make health care decisions. Your agent is obligated to follow your instructions when making decisions on your behalf. Unless you state otherwise, your agent has the same authority to make decisions about your health care as you would have had.

It is important that you discuss this document with your physician or provider before you sign it to ensure that you understand the nature and range of decisions that may be made on your behalf. If you do not have a physician, you should talk with someone who is knowledgeable about these issues and can answer your questions. You do not need a lawyer's assistance to complete this document, but if there is anything in this document that you do not understand, you should ask a lawyer's advice.

The person you appoint as agent should be someone when you know and trust and who is 18 years of age or older, or is under 18 years of age and has had the disabilities of minority removed. If you appoint a physician or an employee of a home health agency, hospital, nursing home, or residential care home, other than a relative, that person has to choose between acting as your agent or as your physician or provider; the law does not permit a person to do both at the same time.

You should inform the person you appoint that you want the person to be your health care agent. You should discuss this document with your agent and your physician; give each a signed copy; and indicate on the document the people and institutions who have signed copies. Your agent is not liable for health care decisions made in good faith on your behalf.

Even after you have signed this document, you have the right to make health care decisions for yourself as long as you are able to do so. In such case, treatment cannot be given to you or stopped over your objection. You have the right to revoke the authority granted to your agent by informing your agent or your physician or provider orally or in writing, or by your execution of a subsequent medical power of attorney. Unless you state otherwise, your appointment of a spouse dissolves on divorce.

This document may not be changed or modified. If you want to make changes in the document, you must make an entirely new one.

You may wish to designate an alternate agent in the event that your agent is unwilling, unable, or ineligible to act as your agent. Any alternate agent you designate has the same authority to make health care decisions for you.

This power of attorney is not valid unless:

- (1) You sign it and have your signature acknowledged before a notary public, or**
- (2) You sign it in the presence of two competent adult witnesses.**

The following persons may not act as one of the witnesses:

The person you have designated as your agent; a person related to you by blood or marriage, a person entitled to any part of your estate after your death under a will or codicil executed by you or by operation of law; your attending physician; an employee of your attending physician; an employee of a health care facility in which you are a patient if the employee is providing direct patient care to you or is an officer, director, partner, or business office employee of the health care facility or of any parent organization of the health care facility; or a person who, at the time this power of attorney is executed, has a claim against any part of your estate after your death.

Medical Power of Attorney Form *Designation of Health Care Agent*

I, (insert your name) _____ appoint:
Name: _____ Phone: _____
Address: _____

as my agent to make any and all health care decisions for me, except to the extent I state otherwise in this document. This medical power of attorney takes effect if I become unable to make my own health care decisions and my physician certifies this fact in writing.

LIMITATIONS ON THE DECISIONMAKING AUTHORITY OF MY AGENT ARE AS FOLLOWS:

(continued on back)

Medical Power of Attorney Form *Designation of Health Care Agent* (continued)

Designation of Alternate Agent (You are not required to designate an alternate agent but you may do so. An alternate agent may make the same health care decisions as the designated agent if the designated agent is unable or unwilling to act as your agent. If the agent designated is your spouse, the designation is automatically revoked by law if your marriage is dissolved.)

If the person designated as my agent is unable or unwilling to make health care decisions for me, I designate the following persons to serve as my agent to make health care decisions for me as authorized by this document, who serve in the following order:

First Alternate Agent

Name: _____ Phone: _____
Address: _____

Second Alternate Agent

Name: _____ Phone: _____
Address: _____

The original of this document is kept at _____

The following individuals or institutions have signed copies:

Name: _____ Phone: _____
Address: _____

Name: _____ Phone: _____
Address: _____

Duration I understand that this power of attorney exists indefinitely from the date I execute this document unless I establish a shorter time or revoke the power of attorney. If I am unable to make health care decisions for myself when this power of attorney expires, the authority I have granted my agent continues to exist until the time I become able to make health care decisions for myself.

(IF APPLICABLE) This power of attorney ends on the following date: _____

Prior Designations Revoked I revoke any prior medical power of attorney.

Acknowledgment of Disclosure Statement I have been provided with a disclosure statement explaining the effect of this document. I have read and understand that information contained in the disclosure statement.

YOU MUST DATE AND SIGN THIS POWER OF ATTORNEY. You may sign it and have your signature acknowledged before a notary public, or you may sign it in the presence of two competent adult witnesses.

SIGNATURE ACKNOWLEDGED BEFORE NOTARY

I sign my name to this medical power of attorney on _____ day of _____ month _____ year at _____
City and State: _____ Date: _____
Signature: _____ Print Name: _____

State of Texas, County of _____.

This instrument was acknowledged before me on _____ (date) by _____ (name of person acknowledging).

NOTARY PUBLIC, State of Texas

Notary's printed name: _____ My commission expires: _____

OR

SIGNATURE IN PRESENCE OF TWO COMPETENT ADULT WITNESSES

I sign my name to this medical power of attorney on _____ day of _____ month _____ year at _____
City and State: _____ Date: _____
Signature: _____ Print Name: _____

I am not the person appointed an agent by this document. I am not related to the principal by blood or marriage. I would not be entitled to any portion of the principal's estate on the principal's death. I am not the attending physician of the principal or an employee of the attending physician. I have no claim against any portion of the principal's estate on the principal's death. Furthermore, if I am an employee of a health care facility in which the principal is a patient, I am not involved in providing direct patient care to the principal and am not an officer, director, partner, or business office employee of the health care facility or of any parent organization of the health care facility.

Signature: _____ Print Name: _____
Address: _____ Date: _____

SIGNATURE OF SECOND WITNESS _____

Signature: _____ Print Name: _____
Address: _____ Date: _____