

Commonly Asked Questions About the Advance Directive

The Advance Directive form allows you to appoint a health care representative to make health care decisions for you if you become incapable of making health care decisions for yourself. The Advance Directive form also allows you to indicate your preferences regarding life support and tube feeding in the event you become incapable of making those decisions yourself. The Advance Directive is not the same as Portable Orders for Life Sustaining Treatment (POLST), which you may only obtain from your personal physician.

THIS MEMORANDUM REVIEWS SOME COMMON QUESTIONS ABOUT THE ADVANCE DIRECTIVE.

Instructions for Completing the Advance Directive

Part One of the form asks for your name, contact information, and birthdate. The Advance Directive will remain in effect for your lifetime unless you revise or revoke it. You may revoke the Advance Directive at any time.

Part Two of the form is used to appoint a health care representative to make health care decisions when you are unable to do so. Please provide mailing address, email address, and phone numbers to enable your health care providers to contact your representative. You should also include the relationship of the representative so the health care providers understand the identity of the person with whom they will be interacting.

Part Three A of the form sets forth your instructions to your health care representative. You will express your wishes with respect to three situations: terminal condition, advanced progressive illness, and permanent unconsciousness. For each situation, you will indicate whether you want to try all available treatments to sustain your life, try to sustain life with artificial feeding and hydration but no other treatment, withhold all treatments to sustain life, or allow your health care representative to decide for you after consulting with the health care providers.

Part Three B of the form provides an opportunity for you to tell your representative what is important for you to have quality of life. Specifically, you may make selections indicating which things, if you could no longer do, would greatly diminish your quality of life: communicating with family, friends, and others, being free from long-term severe pain and suffering, knowing your identity and the identity of others, living without being hooked up to machines, and participating in activities that have meaning to you. You may also include examples of your own.

Part Three C provides space for you to include information about your religious or spiritual beliefs that would affect your care or end of life decisions. You may list them directly on the form or attach a separate document that will be incorporated into the Advance Directive.

Part Four A, B, and C give you the ability to include information about your life and values, including your family history, experiences with health care, cultural background, career, and social support system. You may also indicate where you would like to receive care

such as in a hospital or nursing home or assisted living facility or your home. Finally, you may list any other information that you believe would be helpful for your health care representative and health care providers to know. Attaching additional writings is acceptable, and those writings will become part of your Advance Directive.

Part Four D allows you to authorize your health care representative to discuss your health status and care with additional friends and family whom you might not otherwise appoint as your agent but would want to contribute to decisions about your care or end of life. This provision is helpful insofar as it allows you to involve additional people in your care while allowing your health care providers to consult with just one representative.

QUESTIONS

Whom can I appoint as my health care representative?

You can appoint almost anyone as your health care representative. However, you cannot appoint the following persons unless they are related to you by blood, marriage, or adoption:

- Your doctor or any of his or her employees; or
- An owner, operator, or employee of a health care facility where you reside.

If there is anyone you specifically wish NOT to be able to make health care decisions for you, you may add a statement to that effect in Part 4.C. of the form.

What power does my health care representative have?

If you are incapable of making decisions for yourself, your health care representative has the same decision-making power that you would have had if not incapable. Beyond choosing what health care you receive, your health care representative also has a right to receive information regarding any proposed care as well as a right of access to your medical records, which he or she can choose to disclose to other persons.

The Advance Directive does not allow your health care representative to make decisions for you regarding care or treatment of mental illness. If you would like to designate someone to make mental health decisions for you in case you are incapable, you may do so by filling out the Mental Health Directive form. Please let us know if you would like to receive this form.

If my parent or spouse is not competent to fill out an Advance Directive, can I make health care decisions for him or her?

Family members may make life support decisions for an incapable person (“principal”) even if the principal has not completed an Advance Directive. The following list is the order of priority for who can make such decisions: a guardian of the principal who is authorized to make health care decisions; the principal’s spouse; a designated adult universally accepted by the others on this list; a majority of the principal’s adult children who can be located; either parent of the principal; a majority of the principal’s adult siblings who can be located; or any adult relative or adult friend. If none of these persons is

available, the attending physician may continue or withdraw life support at his or her discretion.

What happens if the health care representative I appoint refuses to follow my instructions about life support and tube feeding?

Health care representatives who violate the terms of the Advance Directive may be removed by a court.

Who can be my witnesses when I sign the Advance Directive? Do both of them have to be with me when I sign the Advance Directive?

Both witnesses must be adults and must NOT be your relative by blood, marriage, or adoption; an owner, operator, or employee of a health care facility where you are a patient or resident; or the person who is being appointed as your health care representative or alternate health care representative. If you are residing in a long-term care facility when you complete your Advance Directive, one of the witnesses must be a qualified person designated by the facility. The witnesses must be with you when you sign the Advance Directive, or you must acknowledge your signature in front of them. If no appropriate witness is available, the Advance Directive may be signed in the presence of a notary public.

This material is intended for general informational purposes only and should not be construed as legal advice or a legal opinion on specific facts or circumstances. You are urged to consult an experienced attorney concerning your particular situation and any specific legal questions you may have.

What if I decide that I want to revoke my Advance Directive while I am still capable?

You may revoke your Advance Directive at any time and in any manner in which you are able to communicate your intent to revoke. You must communicate your intent to the attending physician or health care provider, or to your health care representative.

What happens if I have appointed my spouse as my health care representative and we are later divorced?

Your spouse's appointment as your health care representative is suspended if you file a petition for dissolution or annulment of marriage unless you reaffirm the appointment in writing after the filing of the petition.

Will paramedics responding to a medical emergency respect my Advance Directive?

Paramedics and other emergency medical personnel are required to provide all possible emergency treatment to patients unless they have a physician's order not to do so. The Advance Directive is not a physician's order, so emergency medical personnel will not be bound by it. If you are gravely ill and do not wish to receive life support in an emergency situation, you should request Physician Orders for Life-Sustaining Treatment ("POLST") from your doctor.

How does the Advance Directive relate to a "do not resuscitate" order or POLST, and to Oregon's assisted suicide law?

POLSTs are orders written by physicians for persons close to the end of their lives. The POLST provides health care personnel with directions or restrictions regarding resuscitation, medical intervention, antibiotics, and artificial feeding. If you live at home

and have a POLST, you should display the POLST form in a prominent location. If you live in a long-term care facility, the staff should keep your form in the front of your medical record chart.

Oregon's assisted suicide law (the "Death with Dignity Act") allows terminally ill patients to obtain lethal medications from their doctors. A person wishing to end his or her life in this manner must have been determined by the attending physician and consulting physician to be suffering from a terminal disease, and they verify that the person is capable, is acting voluntarily, and has made an informed decision. The person must make a written request for medication. The Advance Directive applies only if you are unable to make decisions and thus is something unrelated to the Death with Dignity Act.

Signing the Advance Directive

We will provide you with an execution-ready Advance Directive to complete prior to our signing meeting. We ask that you consult with your spiritual or religious guide and your doctor to discuss any particular belief or medical plan that you wish to include in the Advance Directive or for advice on which selections to make in Part 3 of the form. As your attorneys, we are not qualified to address those issues with you. At your signing meeting, we will have you sign one copy of the Advance Directive, to be kept in a place of safekeeping. We also recommend that you provide photocopies to your primary-care physician and health care representative. Executing a new Advance Directive will revoke a prior Advance Directive.

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