

Medical Power of Attorney

Information for Patients

From the office of the TMA General Counsel

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General Information

The full advance directives statute is at Texas Health and Safety Code, Chapter 166. All legal citations herein are to that chapter.

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 is revoked or the principal becomes competent. The document may contain a termination or expiration date, but if on that specified date the principal is incompetent, the power of attorney continues to be effective until the principal becomes competent unless it is revoked. *§166.152(g)*

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. *§166.152(b)*

Is the agent obligated to follow the principal's wishes?

Yes. An agent must, after consultation with the attending physician and other health care providers, make a health care decision according to the agent's knowledge of the principal's wishes, including the principal's religious and moral beliefs. If the agent does not know the principal's wishes, the agent must make the decision according to the agent's assessment of the principal's best interests. *§166.152(e)*

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 health care on the principal's behalf. This could include any treatment, service, or procedure to maintain, diagnose, or treat a physical or mental condition. An agent may consent, refuse to consent, or withdraw consent to medical treatment and may make decisions about withdrawing or withholding life-sustaining treatment. However, an agent cannot consent to:

- Commitment to a mental institution,
- Convulsive treatment,
- Psychosurgery,
- Abortion, and
- Neglect of comfort care. *§166.152(f)*

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. Finally, if the principal designates a spouse to be the agent, the medical power of attorney is automatically revoked if the principal's marriage to the agent is dissolved, annulled, or declared void (unless the document provides otherwise). *§166.155*

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

The medical power of attorney form itself contains important legal disclosures about the significance of a medical power of attorney. The disclosures urge the principal to understand the implications of signing a medical power of attorney. *§166.164*



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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 agent 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?

There may be alternate agents. 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. §166.164

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.

If you appoint your health or residential care provider (e.g., your 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 health or residential care provider; the law does not permit a person to do both at the same time. §166.164

How can you obtain a medical power of attorney form?

You may contact the Texas Department of Aging and Disability Services; your local hospital, long-term care facility, physician, or 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 Texas Association of Homes for the Aging.

Do you need a witness?

You may sign the medical power of attorney and have your signature acknowledged before a notary public, or you may sign it in the presence of two competent adult witnesses, who then must also sign it. At least one of the adult witnesses must not be:



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- 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. §166.164

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Permission is granted to reproduce this document.

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:

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, annulled, or declared void unless this document provides otherwise.)

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.

Disclosure Statement

THIS MEDICAL POWER OF ATTORNEY IS AN IMPORTANT LEGAL DOCUMENT. BEFORE SIGNING THIS DOCUMENT, YOU SHOULD KNOW THESE IMPORTANT FACTS:

Except to the extent you state otherwise, this document gives the person you name as your agent the authority to make any and all health care decisions for you in accordance with your wishes, including your religious and moral beliefs, when you are unable to make the decisions for yourself. 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 is effective 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 if you were able to make health care decisions for yourself.

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MEDICAL POWER OF ATTORNEY FORM *Designation of Health Care Agent* (continued)

It is important that you discuss this document with your physician or other health care provider before you sign the document 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 else 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 to explain it to you.

The person you appoint as agent should be someone you know and trust. The person must be 18 years of age or older or a person under 18 years of age who has had the disabilities of minority removed. If you appoint your health or residential care provider (e.g., your physician or an employee of a home health agency, hospital, nursing facility, or residential care facility, other than a relative), that person has to choose between acting as your agent or as your health or residential care provider; the law does not allow a person to serve as 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 and give each a signed copy. You should indicate on the document itself the people and institutions that you intend to have signed copies. Your agent is not liable for health care decisions made in good faith on your behalf.

Once you have signed this document, you have the right to make health care decisions for yourself as long as you are able to make those decisions, and 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 health or residential care provider orally or in writing or by your execution of a subsequent medical power of attorney. Unless you state otherwise in this document, your appointment of a spouse is revoked if your marriage is dissolved, annulled, or declared void.

This document may not be changed or modified. If you want to make changes in this document, you must execute a new medical power of attorney.

You may wish to designate an alternate agent in the event that your agent is unwilling, unable, or ineligible to act as your agent. If you designate an alternate agent, the alternate agent has the same authority as the agent 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:

- (1) The person you have designated as your agent;
- (2) A person related to you by blood or marriage;
- (3) 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;
- (4) Your attending physician;
- (5) An employee of your attending physician;
- (6) 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
- (7) A person who, at the time this medical power of attorney is executed, has a claim against any part of your estate after your death.

By signing below, I acknowledge that I have read and understand the information contained in the above 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) _____

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 —

(continued)

MEDICAL POWER OF ATTORNEY FORM *Designation of Health Care Agent* (continued)

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) _____

Signature: _____ Print Name: _____

STATEMENT OF FIRST WITNESS.

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. 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: _____