

# Advance Health Care Directive

# Fiduciary Positions in an Estate Plan

## Document

## Fiduciary Position

## Who?

Durable Power of Attorney

Agent or Attorney in Fact

??? (2 to 3 people)

Advance Health Care Directive

Agent

??? (2 to 4 people)

Will

Executor / Executrix /  
Administator

??? (2 to 3 people)

Living Trust

Successor Trustee

??? (3 people or trust co)

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Conservatorship

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Conservator

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??? (nominate 1 in AHCD)

# Advance Health Care Directive

- “It’s not that I’m afraid to die, I just don’t want to be there when it happens”

~ Woody

Allen

# Advance Health Care Directive - TYPES

- Health Care Power of Attorney – part 1
  - name a person to make health care decisions for you when you are unable to do so
- Living Will – part 2
  - written, legal document that spells out medical treatments you would and would not want to be used to keep you alive, as well as your preferences for other medical decisions, such as pain management or organ donation.

## California Advance Health Care Directive

- Combines both documents into one legal document

# Advance health care directive – part 1

\*\*\*Choosing a person to act as your health care agent is important\*\*\*

- Meets California's requirements for a health care agent
- Is not your doctor or a part of your medical care team
- Is willing and able to discuss medical care and end-of-life issues with you
- Can be trusted to make decisions that adhere to your wishes and values
- Can be trusted to be your advocate if there are disagreements about your care

# Advance Health Care directive - part 1

- Who can you choose to be your AGENT?
  - Spouse
  - Family member
  - Friend
  - Member of a faith community
  - California Licensed Professional Fiduciary

Who can't you choose to be your AGENT?

Your doctor or medical professional

Health care worker or employee in an assisted living or board and care facility

Corporation

# Advance Health Care Directive – part 2

Written, legal document that spells out:

- medical treatments you would want to keep you alive
- Medical treatments you would NOT want to keep you alive
- preferences for other medical decisions
  - pain management
  - organ donation

# Advance health care directive – part 2

- When creating your directive:
  - Think about your values
  - How important is it for you to be independent and self-sufficient?
  - What circumstances might make you feel like your life is not worth living
  - Would you want treatment to extend your life in any situation?
  - **COMMUNICATE THESE WISHES TO YOUR AGENTS!!!!!!**



# Advance health care directive – part 2

- Possible end of life decisions you can include in part 2 of your Advance Health Care Directive
  - Cardiopulmonary Resuscitation – restarts the heart when it stops beating.
  - Mechanical Ventilation – takes over breathing if you are unable to breathe on your own.
  - Intubation – supplies the body with nutrients and fluids intravenously or via a tube in the stomach.
  - Dialysis – removes waste from your blood and manages fluid levels if your kidneys fail.
  - Antibiotics or Antivirals – used to treat many infections.
  - Comfort Care (Palliative Care) – may include any number of interventions that may be used to keep you comfortable and manage pain while abiding by your other treatment wishes.
  - Organ & Tissue Donations – transplantation can be specified in part 2 of your AHCD. If your organs are removed for donation, you will be kept on life-sustaining treatment temporarily until the procedure is complete.
  - Donating your body for scientific study – contact local medical school or donation program in advance

# Advance health care directive

- Keep the originals in a safe but easily accessible place.
- Give a copy to your doctor.
- Give a copy to your health care agent and any alternate agents.
- Keep a record of who has your advance directives.
- Carry a wallet-sized card that indicates you have advance directives, identifies your health care agent and states where a copy of your directives can be found.
- Keep a copy with you when you are traveling.
- Talk to family members and other important people in your life about your advance directives and your health care wishes.
  - By having these *conversations now*, you help ensure that your family members clearly understand your wishes.
  - Having a *clear understanding of your preferences* can help your family members avoid conflict and feelings of guilt.

# Advance health care directive

- “I have witnessed many families who agreed to life-prolonging measures for a loved one in an emergency situation because they hadn’t previously thought about or discussed what to do in such a crisis. Then, after taking time to think through the wishes of their loved one, they had to reverse their decision and stop the heroic measures that were taking place – all at a great emotional and financial cost.”

~ Karen M. Wyatt, M.D.

# Advance health care directive

- Reviewing and changing your Advance Health Care Directive
  - New diagnosis
  - Change in marital status
  - About every 10 years

# Advance health care directive

- **Your Way booklet**
  - • Think about what is important
  - • Obtain wanted medical care and avoid unwanted medical care
  - • Live life the way we choose
  - • Help our family and friends know what we want
  - • Help our family and friends do what we want
  - • “Your Way” can be used by individuals, families and friends
  - • “Your Way” can also be used by attorneys, care managers and private fiduciaries to help their clients.

# Health insurance portability and accountability act (HIPAA)

- The HIPAA Privacy Rule creates national standards to protect individuals' medical records and other personal health information.
- It gives patients more control over their health information.
- It sets boundaries on the use and release of health records.
- It establishes appropriate safeguards that health care providers and others must achieve to protect the privacy of health information.
- It holds violators accountable, with civil and criminal penalties that can be imposed if they violate patients' privacy rights.
- And it strikes a balance when public responsibility supports disclosure of some forms of data – for example, to protect public health.

# Physicians order for life sustain treatment

- POLST
  - Intended for people who have already been diagnosed with a serious illness.
  - Does not replace your other directives.
  - Serves as doctor-ordered instructions — not unlike a prescription — to ensure that, in case of an emergency, you receive the treatment you prefer.
  - Your doctor will fill out the form based on:
    - the content of your Advance Health Care Directive
    - the discussions you have with your doctor about the likely course of your illness
    - your treatment preferences.

**\*\*\*The POLST stays with you\*\*\***

# Physicians Aid in dying – death with dignity

- *Death with dignity* statutes allow mentally competent adult state residents who have a terminal illness with a confirmed prognosis of having 6 or fewer months to live to voluntarily request and receive a prescription medication to hasten their inevitable, imminent death.
- The death with dignity process is robust:
  - Two physicians must confirm the patient's residency, diagnosis, prognosis, mental competence, and voluntariness of the request.
  - Two waiting periods, the first between the oral requests, the second between receiving and filling the prescription, are required.



# Advance health care directive

- “Even though we don’t like to think about it, death is going to come no matter what, so we should learn how to stare it down. Remember that a death well handled is one of the surest signs of a life well lived.”

Thanissaro Bhikkhu

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