

Using a
Living Will,
Health Care Power of Attorney,
and
Prehospital Medical Care Directive
(the “orange form”),

to protect your right to direct your own health care and to refuse life-sustaining medical treatments you do not want.

DOROTHY GARSKE CENTER

www.dgcenter.org



Imagine

You are 35 years old. A drunken driver crashes into your car, causing severe head injuries and brain damage. For six months, you are in a coma from which your doctors say you never will emerge. However, artificial feeding and other measures could keep you alive for years. Should your relatives ask that the feeding tubes be removed to allow you to die a “natural” death?

You are 75 years old and being treated for a heart condition. You suffer a stroke. For some time you are bedridden and unable to care for yourself. Then you are admitted to a nursing home, disoriented and physically combative. Some decisions must be made. Should physical restraints be used to prevent you from hurting yourself? Should your physician prescribe sedatives to calm you? Who will make these decisions?

These are two examples of difficult health care situations faced by patients, families, and physicians every day. Advances in medical technology have changed the way we die. “The timing of death—once a matter of fate—is now a matter of human choice.” (US Supreme Court, 1990)

It is your legal right to decide who should make decisions about your health care and how such decisions are to be made, if you become unable to make such decisions. These rights can be protected by taking the time *now* to:

- Clearly communicate your values and treatment wishes to your family, your physicians, and someone you trust to make health care decisions on your behalf. This should be done both orally and in a carefully written legal form.
- Legally appoint as your health care

agent(s) the person(s) you trust to make health care decisions on your behalf.

In Arizona, three health care directives may be used to document your health care wishes. These are: the *Living Will*; the *Health Care Power of Attorney*; and, the *Prehospital Medical Care Directive*.

In a LIVING WILL you instruct any person legally authorized to make health care decisions for you if you are unable to make your own decisions. Research by Dorothy Garske Center suggests that *Living Will* documents should not rely on ambiguous expressions like “terminal conditions” and “no heroic measures.” Rather, your *Living Will* should:

Clearly state your underlying reasons and values for preparing a *Living Will*, such as avoiding a quality of life that is unacceptable to you;

Explain how decisions are to be made by anyone who is legally authorized to implement your *Living Will*;

Describe the circumstances in which you do not want life-sustaining treatments, such as artificial feeding, CPR, ventilators, and surgeries, used to prevent your death;

Give your directions about using pain medication; and, your wishes on other matters such as autopsy and organ donation.

In a HEALTH CARE POWER OF ATTORNEY you give someone you trust, your “agent,” legal authority to make all health care decisions for you if you become unable to make such decisions. Your agent must follow your *Living Will* and otherwise honor your values and wishes. Your agent does not have to be a family member; and, should not be your physician. *Make certain that your agent is willing and able to carry out your wishes.*

In addition to naming your primary agent, your

Health Care Power of Attorney document should:

Name an alternate, if possible, to act on your behalf, if your primary agent is not available;

Define the scope of your agent’s authority and when that authority is to be in effect; and,

Request that your agent be appointed as your guardian, should that become necessary.

A third Arizona directive, the **PREHOSPITAL MEDICAL CARE DIRECTIVE**, should be used *only if you do not want to receive CPR at any time under any circumstances.*

If breathing or heartbeat stop and emergency medical service (“911”) is called, emergency personnel will almost certainly attempt cardiopulmonary resuscitation (CPR), unless they are promptly presented with a valid *orange Prehospital Medical Care Directive*. Neither a *Living Will* nor *Health Care Power of Attorney* can be relied upon to avoid unwanted CPR in at such times.

Dorothy Garske Center has *Prehospital Medical Care Directive* kits, and “do not resuscitate” (DNR) bands. These orange bands may be worn to indicate that you have completed the form.

A *Living Will* or *Health Care Power of Attorney* must be signed and dated in the presence of a notary, *or*, one unrelated witness who is not a beneficiary of your estate, *or* two witnesses. A witness may not be your agent or directly involved in your health care. A *Prehospital Medical Care Directive* must be signed, dated and witnessed. A health care professional must also sign this form.

The law gives certain people authority to act as your “surrogate,” if you have no health care agent or guardian. Without a directive, someone you might never choose to make health care decisions for you could get that authority. Without a directive (or if your directive is vague), values and wishes other than

your own are more likely to prevail when treatment decisions must be made for you. Provisions within Arizona's statute could make it necessary to go to court to stop artificial feeding, no matter how hopeless the situation.

Dorothy Garske Center has developed a reasonable, responsible, and legal way for you to direct how decisions about your health care are to be made should you become unable to make your own decisions.

Scientific evidence indicates that the wishes of gravely ill and dying hospital patients are frequently overlooked. Sometimes this may be due to poor communication. At times physicians impose their values in their efforts to do what they believe is "best." On the other hand, many physicians help agents and family deal with their own needs while maintaining fidelity to a patient's wishes.

A clearly written directive with specific treatment instructions can be of help to anyone who is genuinely trying to honor your wishes. There is no evidence that specific instructions ever create problems, while reports of problems with very general instructions are common. Discussing one's wishes with agents, family, and one's physicians appear to be a most critical aspect of advance health care planning.

The *Living Will and Health Care Power of Attorney* developed by Dorothy Garske Center is one easy-to-complete form that meets, and even exceeds, the criteria for these two documents. The form comes with a thorough explanatory booklet that guides you through the issues you need to consider and discuss with your agent, family and physicians. You can complete the Dorothy Garske Center *Living Will and Health Care Power of Attorney* without a lawyer.

If you already have a *Living Will or Health Care (or Medical) Power of Attorney* from any state, it is legal in Arizona if it was legal when

prepared. However, now may be a good time to review your documents in light of the criteria stated in this brochure. It may be advisable to update your directives by using the Dorothy Garske Center *Living Will and Health Care Power of Attorney*. While no one can guarantee that your health care wishes will be honored, the Garske directive can help **protect your rights and lessen the burden on your family.**

You may obtain these forms through the Internet at www.dgcenter.org.

Comments about Dorothy Garske Center's *Living Will & Health Care Power of Attorney*

I found the booklet and forms very readable and understandable. I have long had the desire to do this and now I have the means.

Seminar Participant

Our people who complete the process feel both relief and satisfaction that they have acted responsibly on their own behalf and caringly for loved ones who might be called upon to make responsible health care decisions on their behalf.

Leroy W. Calbom, Chaplain

I found the consumer kit very complete. It covers a wide range of options that would be helpful to patients and physicians alike.

Joseph Goldberger, M.D.

The Dorothy Garske Center's form for both Health Care Power of Attorney and Living Will complies with Arizona law and is the most comprehensive document I have seen.

*Chester Mclaughlin, Elder-Law Attorney
Chair, Arizona State Bar Association
Patient Self-Determination Act Committee*

ANSWERS TO QUESTIONS ABOUT LIVING WILLS AND OTHER ADVANCE DIRECTIVES

Prepared by Dorothy Garske Center

For directive forms visit our web site at www.dgcenter.org

Does an *agent* appointed in a Health Care Power of Attorney (also known as a Medical Power of Attorney) need to be a resident of Arizona? NO, but your agent, or a successor agent, needs to be available if a medical crises occurs.

Can my doctor be my agent? It's not prohibited by law in Arizona, as it is in some states, but it is not a good idea. If you want to do this, make certain this is acceptable to your doctor.

Must doctors honor living wills and a health care agent's decisions? YES, as long as the requests are medically reasonable. A doctor who refuses a directive as a matter of conscience *must* transfer the patient to another doctor who will honor the patient's and agent's decisions.

Are Living Wills and other directives done in Arizona valid in other states? Usually, but not always. If you live part of the year in another state, you may want to make sure your Arizona documents will be honored there.

Are Living Wills and other directives done in *other* states valid in Arizona? Nearly always. They should conform to current Arizona law *or* to the law of the state in which they were prepared.

Can a Living Will and a Health Care Power of Attorney be combined into one document? YES. (The Garske directive is a combined Living Will and Health Care Power of Attorney.)

Can the holder of a *general* durable power of attorney make health care decisions? *Only* if the power of attorney specifically authorizes *health care* as well as financial decision-making.

Should a Health Care Power of Attorney be separate from a general durable power of attorney? That is a good idea, but law does not require it.

Does a Health Care Power of Attorney need to be registered? NO.

Do I have to use the Living Will and Health care Power of Attorney forms published in the statute? NO. They are only *samples*. Some authorities considered them to be poorly drafted.

Does a *trust* cover health care decision-making? It could; it depends on how it is drafted.

Must a Health Care Power of Attorney or Living Will be notarized? NO. That is one way to verify that, when you signed your document(s), you did so freely and were of sound mind. Both documents may be witnessed instead. (General durable power of attorney documents for financial matters have their own specific adoption requirements.)

Continued on reverse

Can a Health Care Power of Attorney or Living Will be signed by a member of the family for someone who does not have the capacity to sign his or her own document? NO.

These documents must be prepared when you have the capacity to understand what you are doing and can sign or mark your own document. A Prehospital Medical Care Directive may be completed by an *agent*.

Is a copy of a valid document also valid? YES. Copies of the *orange* Prehospital Medical Care Directive must be on *orange* paper.

Who should get a copy of my Living Will and Health Care Power of Attorney and who should keep the originals? You or your agent may keep original documents. Give copies to your agent(s), your doctor(s), close family, and anyone else you would want to know about your wishes. Keep your copy *at* home with other important papers (*NOT* in a bank safety-deposit box).

How often must a Living Will or Health Care Power of Attorney be redone? That is for you to decide; the law does not say. You should review your documents every year or **two** and make changes or redo them as needed.

How are changes made in a Living Will or Health Care Power of Attorney? Other than changes of address information, all changes must be initialed, dated and witnessed. When you wish to change an agent or to substantially change your instructions, it is advisable to prepare a new document.

How is a Living Will or Health Care Power of Attorney revoked? By destroying the documents, by asking others *not* to honor them, or by doing new ones. Make sure that all copies of a revoked (or amended) document are retrieved and replaced with copies of a new (or amended) document.

Will a paramedic honor a Living Will or Health Care Power of Attorney? Probably not. Arizona law authorizes the use of an orange “Prehospital Medical Care Directive” to refuse CPR from emergency medical services personnel.

Can family members make health care decisions if there is no agent appointed through a Health Care Power of Attorney or a court-appointed guardian? YES. The law provides for decision-making in these circumstances by family members or other persons, *but their authority to direct the withdrawal of tube-feeding is restricted*.

** These ‘answers to questions’ have been reviewed by an attorney. However, they are not intended to replace sound legal advice. Contact your attorney for legal advice.*

Do you need to complete or update your Living Will or Health Care Power of Attorney?

Dorothy Garske Center has a comprehensive, combined Living Will and Health Care Power of Attorney that is legal in Arizona (and most other states). It helps you state your wishes clearly and may be completed without a lawyer. Obtain this and other forms at www.dgcenter.org
