

willing to pay your funeral expenses gets to decide for you.

### **Organ and Tissue Donation Declarations**

You may make a declaration regarding organ and tissue donation in a stand-alone document, Living Will, or on your driver's license. You may give specific direction as to who should benefit from the donation, and may even give certain individuals, such as family members a preference. If you do not make a declaration, your agent, spouse, adult children, parents, adult siblings, adult grandchildren, grandparents, caregiver, or your guardian, if applicable gets to decide whether or not to make an organ and/or tissue donation.

### **Considerations for All Advance Medical Directives**

Your advance medical directive(s) should include statements about any religious beliefs that would either prohibit or require certain types of medical care, existing medical conditions that you want the medical professionals to know about in advance, which document shall control if there is more than one declaration and they conflict, and who decides whether or not you are unable to make medical decisions for yourself.

So long as your Living Will and other advance medical directives comply with the state law where the directive is executed, it will likely be recognized and honored in all other states. Nevertheless, if you spend a significant amount of time in more than one state, such as having a vacation or winter home in another state, you should execute documents in both states in case there are different requirements. It is very important to make sure all your declarations are

consistent to avoid any confusion or disputes.

You should keep the original directives somewhere that is easily accessible and you should inform your loved ones where to find them. It is not a good idea to place the documents in a safe deposit box at a bank, as on weekends, holidays, and nights, the documents would not be available for use.

Communication is key. Many people prefer to keep their legal affairs private, but when it comes to end of life and medical treatment issues, communication with family members, close friends, doctors, and other medical professionals is the key to ensuring your wishes are followed. Take the time to discuss these issues with your family, close friends, and medical professionals.

### **Proxy Decision Maker For Medical Treatment**

If you do not make any advance medical directives, Colorado law allows health care providers to rely on a proxy decision maker chosen by "interested persons" to make decisions for an incapacitated patient. Medical professionals must make reasonable efforts to contact all of the people they think have an interest in the patient's care, including the patient's spouse, parents, adult children, siblings, adult grandchildren, and close friends.

In order for a proxy decision maker to have authority to make medical decisions, the patient's attending physician must determine that the patient lacks the ability to provide informed consent to or refusal of medical treatment. Medical professionals must make an effort to tell the patient that he or she lacks the ability to provide informed consent and that a close relative or friend will be selected to make medical decisions for them.

The group of "interested persons" must try to reach a consensus as to which of them

should be selected as the proxy decision maker on behalf of the patient. Ideally, the person selected should have a close relationship with the patient and be likely to know the patient's wishes about medical treatment. Medical professionals must tell the patient that a proxy decision maker has been selected, and that the patient has the right to contest the selection of the individual. If the group of interested persons cannot agree on an individual to serve as the proxy decision maker, or if the patient objects to the the selection, a guardianship proceeding must be instituted to appoint someone to make medical decisions on behalf of the patient.

A proxy decision maker may authorize all decisions alone except when it comes to the removal or withdrawal of artificial nourishment and hydration. If the patient's attending physician and an independent physician trained in neurology or neurosurgery certify that artificial nourishment or hydration is merely prolonging the act of dying and is unlikely to restore the patient to independent neurological function, the proxy may decide whether or not to withdraw artificial nourishment and hydration. A proxy decision maker may ask for assistance from a medical ethics committee of the medical facility or ask the facility for an outside referral to provide assistance or consultation in making a medical decision.

*(Updated January 2012) This pamphlet is published as a public service by the Colorado Bar Association. Its purpose is to inform citizens of their legal rights and obligations and to provide information regarding the legal profession and how it may best serve the community. Changes may have occurred in the law since the time of publication. Before relying on this information, consult an attorney about your individual case.*



## **ADVANCE MEDICAL DIRECTIVES**

Every adult has the legal right to consent to or refuse medical treatment, and may declare their wishes in writing in the event that they cannot communicate them. All medical facilities that receive Medicare or Medicaid funds must tell their patients about these rights. Patients should make their your wishes known in the event they become incapacitated. This can be very helpful to doctors and to family members. Most hospitals ask for any advance medical directives you may have, and many even provide a short form for you to make the decisions on the spot. However, you are not required to have any advance medical directives in order to receive care, treatment, or be admitted.

There are five primary types of advance medical directives: 1. Living Wills; 2. CPR Orders/Do Not Resuscitate Orders; 3. Medical/Health Care Power of Attorney; 4. Disposition of Last Remains Declarations; and 5. Organ and Tissue Donation Declarations. An advance medical directive document may incorporate several of these directives. Signing an advanced medical directive does not take away your right to make medical decisions if you are able to do so, but allows your beliefs and decisions to be carried out when you cannot communicate them.

If you do not execute any advance medical directives or appoint a person to make decisions for you and you become incapacitated, your loved ones may have to go to court and pursue a guardianship so they have the authority to make medical decisions for you. While you are encouraged to work with an attorney to execute advance medical directives, Living Will and Medical Power of Attorney forms are available at most office supply stores or by searching on-line. If you choose to use a form, make sure it is a Colorado form as the requirements for advance medical directives are state specific.

You should provide copies of your advance directives to your doctor, family members, health care agent, and any medical facility you may be admitted to.

### **Living Wills**

In Colorado, individuals may execute a “Declaration as to Medical or Surgical Treatment,” more commonly referred to as a “Living Will.” A Living Will covers the administration, withholding, or withdrawal of life-sustaining procedures when you have a terminal condition and are unconscious or otherwise incompetent. In this very limited set of circumstances, declarations you make in a properly executed Living Will as to artificial nutrition, artificial hydration, and the administration, removal, or refusal of life-sustaining procedures govern your treating physician’s course of action. Under Colorado law, a “life-sustaining procedure” is any medical procedure that only serves to prolong the dying process, including CPR, defibrillation, medications, and surgery.

A Living Will also may include declarations regarding your wishes as to your treatment if you are in a persistent vegetative state (which is not a terminal condition), and whether or not you want to make anatomical gifts. You are encouraged to discuss any medical questions or issues you have with your doctor so you can make the best decision. Regardless of your decision to accept or reject life-sustaining treatment, medical professionals will continue to provide all necessary treatment to alleviate pain and suffering.

A Living Will may be revoked or amended at any time. If you do revoke or amend a Living Will, it is very important that you provide your doctor, family, and anyone else with the most current version so they are aware of your wishes.. So long as a Living Will appears valid and the medical professionals are not aware of any fraud, revocation, or that it was improperly executed,

the attending physician may rely on it without the threat of liability. A Living Will must be witnessed by two uninterested parties, and should be notarized if possible.

### **CPR Orders/Do not Resuscitate Orders**

CPR treatments are medical procedures that attempt to restore cardiac function or support breathing, including chest compressions, electric shocks, and breathing tubes. Unlike a Living Will or Health Care Power of Attorney that only you execute, you must get a CPR directive from your doctor’s office or the Colorado Department of Health, and your doctor must sign it after a consultation. If you have a CPR directive, you should place it prominently in your home (on the front door or refrigerator) so that emergency medical personnel can find it easily and carry out your wishes. In addition, you may receive an identification bracelet, that indicates you do not want CPR administered.

If you do not have a CPR directive, your medical professional presumes you want CPR, unless your Health Care Agent or Health Care Proxy directs otherwise. Similarly, if medical professionals have a reasonable belief that the document is invalid or have doubt as to your identity, CPR will be administered.

Like all advance medical directives, a CPR directive can be revoked at any time. It is important to note that a CPR directive does not apply to other kinds of care, such as treatment for pain, bleeding, or broken bones. If you are a patient in a health care facility and you have a CPR directive stating that you do not want CPR administered, the doctor will issue a “Do Not Resuscitate” (DNR) order that is prominently placed in your chart.

### **Medical /Health Care Power of Attorney**

A Medical or Health Care Power of Attorney is a declaration of whom you want to make medical decisions for you when you cannot make them for yourself. This person is known as the “Agent,” and they can make any medical decisions you could have made yourself if you were able to do so. Unlike a Living Will, an agent’s authority does not just apply when you are terminally ill or in a persistent vegetative state, but your agent must carry out your wishes expressed in a Living Will if you have one. A Medical Power of Attorney should include a statement giving medical professionals permission to release information to your agent even before it is determined you cannot make decisions for yourself so that they may work with the medical professionals to determine whether or not you are incapacitated. You may grant your agent very broad authority or limit their authority, and may give specific directions and guidance as to your wishes and beliefs. Finally, you may name alternate or successor agents, and may revoke or amend the document at any time.

### **Disposition of Last Remains Declarations**

You have the right and power to direct the disposition of your last remains. Colorado laws provides protection from individuals who may try to impose their views over your stated wishes. You may make this declaration in a will; prepaid funeral, burial, or cremation contract; Medical Power of attorney; Designated Beneficiary Agreement; or Living Will. The declaration may cover disposition (cremation, burial, entombment) and ceremonial instructions, and must be signed and dated by you. If you do not make a declaration, your Personal Representative, spouse, designated beneficiary, adult children, parents, guardian, conservator, majority of adult siblings, **then** any person