



Do You Have an Advance Directive?

At the beginning of 2006, lawyers at the Legal Hotline for Michigan Seniors began asking callers if they had an advance directive, i.e. a document giving written instructions about medical care, to be effective when the person was unable to make and communicate their own decisions. We discovered most of our callers do not have this document. To date, we have sent out hundreds of them free of charge.

Many remember the sad death of Terri Schiavo, in March of 2005, after being comatose for over a decade and half. Although there was evidence that she had made verbal statements suggesting she would not have wanted to be kept alive in her brain-damaged condition, a lengthy and bitter legal battle occurred because she had not put her views in writing. A recent article about Ms. Schiavo mentioned “perhaps the greatest effect that Schiavo has had on the American psyche is to remind citizens to consider drawing up an advance directive while they are still mentally alert. The rate of advance directive creation in America has increased since Terri Schiavo died.”

You may never end up in circumstances where you are unable to make your own medical decisions, but if this happens, and you have not signed an advance directive, your family could face difficult legal struggles to care for you. Your prior verbal statements will not be enough to determine your medical

treatment—it is necessary that you set out your views in writing. That is what an advance directive can do for you and why the Hotline recommends everybody should have one.

Here are a number of questions and answers about a document called a Designation of Patient Advocate which the Legal Hotline believes is the best form of advance directive for you.

1. What is a Designation of Patient Advocate?

A Designation of Patient Advocate is one type of advance directive. An advance directive is a written document in which a competent individual gives instructions about his or her medical care, to be implemented at some future time should that person lack the capacity or ability to make their own decision. A Health Care Power of Attorney, a Living Will and a Designation of Patient Advocate are all advance directives.

2. What is the difference between a Living Will and a Designation of Patient Advocate?

Both documents are advance directives. A Living Will sets out your wishes regarding end of life medical treatment. A Designation of Patient Advocate authorizes another person, referred to as a Patient Advocate (your agent), to make medical decisions for you if you are unable to do so yourself. A Designation of Patient Advocate is legally recognized by statute in Michigan, but a Living Will is not.

3. Is there a difference between a Durable Power of Attorney and a Designation of Patient Advocate?

Yes. The Durable Power of Attorney is used for handling financial matters, not medical care decisions. If you need a

financial power of attorney you should hire an attorney to draft it for you.

4. Is a Designation of Patient Advocate legally binding in Michigan?

Yes, based on a state law passed in 1990, called the Designation of Patient Advocate Act, Michigan Compiled Law # 700.5506. For another to make healthcare decisions for you, the law requires a written document signed and dated by you and witnessed as described below. If your Designation of Patient Advocate is properly completed it must be honored by health care providers except when it violates the provider's stated ethical or moral policies.

5. Who can sign a Designation of Patient Advocate and who can be appointed to act?

Anyone who is 18 years of age or older and of sound mind can sign a Designation of Patient Advocate. The person you appoint to act for you, your Patient Advocate, must be at least 18 years of age or older. You should choose someone you trust to handle the responsibility, who is willing to serve and who will carry out your wishes. You can appoint a second person, known as a successor, to act as Patient Advocate if your first choice is unable to serve.

6. Does a Patient Advocate have to accept the responsibility before acting?

Yes, he or she must sign an acceptance agreeing to honor your wishes and act in your best interests. Michigan law has specific language which must be included in the acceptance. The Patient Advocate does not have to sign the acceptance at the same time you sign the Designation of Patient Advocate.

7. When can the Patient Advocate act on my behalf?

The Patient Advocate can make decisions for you only when you are unable to participate in medical treatment decisions. Your attending physician and one other physician or licensed psychologist will make that determination. If your religious beliefs prohibit a physician's examination, you must indicate in the Designation of Patient Advocate how to determine when the Patient Advocate can make decisions on your behalf.

8. Why might I be unable to participate in medical treatment decisions?

You might become temporarily or permanently unconscious from disease, accident, or surgery. You might be mentally unable to make decisions about your care due to disease or injury. You might have a temporary loss of ability to make or communicate decisions if, for example, you had a stroke. You might be unable to make decisions because of a degenerative condition such as Alzheimer's disease.

9. What powers can I give a Patient Advocate?

You can give a Patient Advocate the power to make those medical and personal care decisions you normally make for yourself. Such decisions could include consenting to or refusing medical treatment, arranging for home health care or adult day care, or authorizing admission to a hospital or nursing home. A Patient Advocate can be authorized to make an anatomical gift of all or part of a patient's body.

10. Can I give my Patient Advocate the authority to make decisions to withhold or withdraw life sustaining treatment, including food and water administered through tubes?

Yes, but state law requires that you express in a clear and convincing manner that the Patient Advocate is authorized to make such decisions, and you must acknowledge that these decisions could or would allow your death. If you have specific desires as to when you want to forego life-sustaining treatment, you should include them as written instructions in your Designation of Patient Advocate. According to state law, a Patient Advocate cannot authorize a decision to withhold or withdraw treatment that would result in a pregnant patient's death.

11. Can I revoke my Patient Advocate designation?

Yes. A patient can revoke his or her designation at any time and in any manner sufficient to communicate an intent to revoke, but it is best that you make the revocation in writing and make sure that you notify your health care providers of the change.

12. Must a Designation of Patient Advocate be witnessed or notarized?

A Designation of Patient Advocate must be signed in the presence of two witnesses who must also sign. The following individuals **cannot** serve as witnesses: your spouse, parents, children, grandchildren, siblings, heirs at law, beneficiaries of your will, your physicians, employees of your life or health insurance, employees of a health facility that is treating you, employees of a home for the aged where you reside, or your named Patient Advocates. Notarization is not required.

13. In general, what should I do before completing a Designation of Patient Advocate?

Carefully consider who you might choose to be your Patient Advocate. Think about your treatment wishes. Discuss the issue

with family members. Talk with your minister, rabbi, priest, or other spiritual advisor if you feel it would be helpful. Bring the subject up with your doctor. Have a discussion about benefits and burdens of various types of treatment. Be sure to discuss this thoroughly with the person you are selecting as your Patient Advocate. Then take action to complete the advanced directive.

14. Is there a standard form for a Designation of Patient Advocate?

No, but there are several choices of forms available. A number of organizations provide these forms for free or for a small fee. Check with your local hospital, library or senior center. You could also use a form provided by an organization, one drafted by your own attorney, or you may write out the document yourself.

15. What if there is a dispute as to how my Designation of Patient Advocate should be carried out?

If there is a dispute as to whether your Patient Advocate is acting consistent with your best interests, the probate court may be petitioned to resolve the dispute. The court can remove a Patient Advocate who acts improperly.

16. What do I do with the document when it is completed?

You should take copies of it to all your medical providers to ensure it is included in your medical records. Discuss it with your medical providers so they hear directly from you what your wishes are. Give a copy to the Patient Advocate and thoroughly discuss your wishes. Make sure your Patient Advocate has a clear understanding of what you want and is willing to follow your directions. Let your Patient Advocate know where to locate the original document.

17. After I create a Designation of Patient Advocate, do I ever need to renew the form?

No. However, it is a good idea to review your Designation of Patient Advocate form in the following circumstances: after you turn a new decade old; there is a death of a friend or family member and it changes your view on the way you would like your health care handled if you become sick; you go through a divorce; you receive a new diagnosis; or there is a significant decline in your current health condition.

18. If I have a Designation of Patient Advocate established in one state and I move to another do I need to create a new one?

Most states will recognize a Designation of Patient Advocate as valid if it was created under another state's law. However, to be sure that there aren't any problems, if you are moving, will shortly be moving to another state, or will be staying for an extended period of time in a state other than your current residence, you should sign a new document to comply with the laws of the state in which you will be residing or staying in for an extended period of time.

19. Must I have an advance directive?

No. The decision to have an advance directive is purely voluntary. No family member, hospital, or insurance company can force you to have one, or dictate what the document should say if you decide to write one.

20. How can I obtain a Designation of Patient Advocate?

A Designation of Patient Advocate is a legal document. There are pre-printed forms available at various places, like

hospitals. Although the Hotline doesn't recommend it, you can prepare one yourself. An attorney can draft one for you as well as provide you information and answer questions for you. This could cost as much as \$200-\$300. Fortunately, you can contact the **Legal Hotline for Michigan Seniors** to request a free Designation of Patient Advocate form and also obtain advice on how to complete it at no charge. Seniors age 60 or older or their legal representatives or caregivers can call the Hotline at **1(800) 347-5297** from 9AM to 5PM weekdays.

Research has shown that most people don't have an advance directive. Of those who have signed one, they have seldom explained their wishes to their agent. Health care providers frequently don't know their patient has a directive and when they do know about it, it isn't in the medical record. Moreover, if it is in the record, it is often not visible. Keep this information in mind after you have signed your Designation of Patient Advocate and be sure to clearly share this information with your family and medical care providers!