



Health Care Power of Attorney

You have the right to control the decisions about your medical care. To make these decisions, you must be competent and able to communicate. What happens if you are unable to make decisions about your medical care?

North Carolina law provides two methods for making your wishes known in advance: living wills and health care power of attorney. You may use a living will to tell your doctors that you do not want to be kept alive by extraordinary medical treatment or by artificial nutrition or hydration if you are terminally and incurably ill or if you are in a persistent vegetative state. You may use a health care power of attorney to appoint someone to make your medical decisions if you should become unable to make them yourself. This publication explains how to use a health care power of attorney.

For more information about living wills, read the North Carolina Cooperative Extension Service publication *The Living Will*, FCS-540-02.

Health Care Power of Attorney

What is it?

A health care power of attorney is a document that allows someone to make medical decisions for you if you cannot make them yourself. You do not need to be terminally ill, only unable to communicate. You must sign the document in the presence of two qualified witnesses, and it must be notarized. The form provided by Section 32A-25, North Carolina General Statutes, is duplicated at the end of this publication. Other forms may be used as long as they comply with the requirements of the statute. One such form is the Five Wishes document.

Who may make a health care power of attorney?

You must be at least 18 years old, and you must be able to make and communicate health care decisions.

Who may be appointed?

You may appoint any competent person who is at least 18 years old and who is not providing health care to you for money. The person you appoint is called your health care agent.

How much authority does it give your health care agent?

You may give your health care agent the same power and authority as you have yourself to make your medical decisions. This includes the power to consent to your doctor giving, withholding, or stopping any medical treatment, service or diagnostic procedure, including life-sustaining procedures.

You also may limit your health care agent's power. To make sure that your health care agent understands how you want everything handled, you may provide directions or guidelines as part of your health care power of attorney. However, limits on your health care agent's authority may reduce his or her ability to make necessary medical decisions on your behalf. Also, a too-complicated health care power of attorney may leave your doctor unsure as to which decisions may be made by your health care agent.

In addition to making your health care decisions, you may authorize your health care agent to donate your body for medical purposes, to donate your organs, to authorize an autopsy, and to dispose of your remains.

When is it effective?

Your health care power of attorney is effective when a doctor states in writing that you lack sufficient understanding or capacity to make or communicate health care decisions. You may name the doctor or doctors you want to make this determination. If the doctors you name are unavailable, the doctor taking care of you may make this determination.

How is a health care power of attorney revoked?

You may revoke your health care power of attorney at any time, so long as you are able to make and communicate your medical care decisions. The revocation may be in writing or by any means that you are able to communicate your intent to revoke to your doctor and health care agent. Also, you revoke a health care power of attorney by signing another health care power of attorney or Five Wishes document. Revocation is effective only after you have notified your doctor and each named health care agent. Notify everyone to whom you provided a copy, such as family members and others concerned with your health and well-being, such as your pastor. Finally, your death revokes your health care power of attorney.

What happens if your health care agent is unable or unwilling to act?

What happens if your health care agent dies or becomes sick or incapacitated? What if he or she simply refuses to act? To avoid this problem, you may want to name substitute health care agents. If none of the people you have named can serve, your health care power of attorney will have no legal effect.

How does a health care power of attorney work if you have given someone a durable power of attorney?

A durable power of attorney is a document used to give someone the legal authority to act on your behalf. A general durable power of attorney gives someone (called your "attorney-in-fact") broad powers to handle your affairs, including your property and finances.

You may include a health care power of attorney in your durable power of attorney. If you choose this method, the same person who has authority to handle your financial and other personal affairs will have the authority to make your health care decisions. One document covers everything.

Or, you may choose to name a health care agent in a separate health care power of attorney. A health care power of attorney does not affect the non-health care powers granted to your attorney-in-fact under a general durable power of attorney. However, if you give health care powers to both your attorney-in-fact and health care agent, your health care agent's power is superior.

How does a health care power of attorney work if the court appoints a guardian?

If the court appoints a guardian of the person (someone to take care of your physical needs) or a general guardian (someone to take care of both you and your property), your health care power of attorney will cease to be effective. To protect your choice of health care agent, you may use your health care power of attorney to recommend that your health care agent be appointed as your guardian of the person if you are declared legally incompetent.

Conclusion

A health care power of attorney is the best assurance that your medical care will be handled the way you want if you become unable to make these decisions yourself. Simply telling your family what you want done is not enough. Someone needs the legal right to make these decisions for you. Choose your health care agent carefully. He or she will have the right to make life and death decisions on your behalf. Make sure your health care agent understands your wishes. For guidance and more information, ask your attorney.

Health Insurance Portability and Accountability Act (HIPAA) Effective 2003

The Health Insurance Portability and Accountability Act regulations govern how health care information must be kept confidential and the circumstances under which individuals' health care information may be disclosed. You will want to make sure your durable medical power of attorney comply with the HIPAA regulations.

The North Carolina Cooperative Extension Service prepared this publication as a public service. It is designed to acquaint you with certain legal issues and concerns. It is not designed as a substitute for legal advice, nor does it tell you everything you may need to know about this subject. Future changes in the law cannot be predicted, and statements in this publication are based solely on the laws in force on the date of publication

If you have specific questions on this issue, seek professional advice. If you need an attorney, you may call the North Carolina Lawyer Referral Service, a non-profit public service project of the North Carolina Bar Association, toll-free: 1-800-662-7660 (Wake County residents call: 828-1054).

HEALTH CARE POWER OF ATTORNEY

(Notice: This document gives the person you designate your health care agent broad powers to make health care decisions for you, including the power to consent to your doctor not giving treatment or stopping treatment necessary to keep you alive. This power exists only as to those health care decisions for which you are unable to give informed consent.

This form does not impose a duty on your health care agent to exercise granted powers, but when a power is exercised, your health care agent will have to use due care to act in your best interests and in accordance with this document. Because the powers granted by this document are broad and sweeping, you should discuss your wishes concerning life-sustaining procedures with your health care agent.

Use of this form in the creation of a health care power of attorney is lawful and is authorized pursuant to North Carolina law. However, use of this form is an optional and nonexclusive method for creating a health care power of attorney and North Carolina law does not bar the use of any other or different form of power of attorney for health care that meets the statutory requirements.)

1. Designation of health care agent.

I, _____, being of sound mind, hereby appoint

Name: _____

Home Address: _____

Home Telephone Number _____

Work Telephone Number _____

as my health care attorney-in-fact (herein referred to as my "health care agent") to act for me and in my name (in any way I could act in person) to make health care decisions for me as authorized in this document.

If the person named as my health care agent is not reasonably available or is unable or unwilling to act as my agent, then I appoint the following persons (each to act alone and successively, in the order named), to serve in that capacity: *(Optional)*

a. Name: _____

Home Address: _____

Home Telephone Number _____

Work Telephone Number _____

b. Name: _____

Home Address: _____

Home Telephone Number _____

Work Telephone Number _____

Each successor health care agent designated shall be vested with the same power and duties as if originally named as my health care agent.

2. Effectiveness of appointment.

(Notice: This health care power of attorney may be revoked by you at any time in any manner by which you are able to communicate your intent to revoke to your health care agent and your attending physician.)

Absent revocation, the authority granted in this document shall become effective when and if the physician or physicians designated below determine that I lack sufficient understanding or capacity to make or communicate decisions relating to my health care and will continue in effect during my incapacity, until my death. This determination shall be made by the following physician or physicians *(You may include here a designation of your choice, including your attending physician, or any other physician. You may also name two or more physicians, if desired, both of whom must make this determination before the authority granted to the health care agent becomes effective.)*:

3. General statement of authority granted.

Except as indicated in section 4 below, I hereby grant to my health care agent named above full power and authority to make health care decisions on my behalf, including, but not limited to, the following:

- A. To request, review, and receive any information, verbal or written, regarding my physical or mental health, including, but not limited to, medical and hospital records, and to consent to the disclosure of this information;
- B. To employ or discharge my health care providers;
- C. To consent to and authorize my admission to and discharge from a hospital, nursing or convalescent home, or other institution;
- D. To give consent for, to withdraw consent for, or to withhold consent for, X ray, anesthesia, medication, surgery, and all other diagnostic and treatment procedures ordered by or under the authorization of a licensed physician, dentist, or podiatrist. This authorization specifically includes the power to consent to measures for relief of pain.
- E. To authorize the withholding or withdrawal of life-sustaining procedures when and if my physician determines that I am terminally ill, permanently in a coma, suffer severe dementia, or am in a persistent vegetative state. Life-sustaining procedures are those forms of medical care that only serve to artificially prolong the dying process and may include mechanical ventilation, dialysis, antibiotics, artificial nutrition and hydration, and other forms of medical treatment which sustain, restore or supplant vital bodily functions. Life-sustaining procedures do not include care necessary to provide comfort or alleviate pain.

I DESIRE THAT MY LIFE NOT BE PROLONGED BY LIFE-SUSTAINING PROCEDURES IF I AM TERMINALLY ILL,
PERMANENTLY IN A COMA, SUFFER SEVERE DEMENTIA, OR AM IN A PERSISTENT VEGETATIVE STATE.

- F. To exercise any right I may have to make a disposition of any part or all of my body for medical purposes, to donate my organs, to authorize an autopsy, and to direct the disposition of my remains.
- G. To take any lawful actions that may be necessary to carry out these decisions, including the granting of releases of liability to medical providers.

4. Special provisions and limitations.

(Notice: The above grant of power is intended to be as broad as possible so that your health care agent will have authority to make any decisions you could make to obtain or terminate any type of health care. If you wish to limit the scope of your health care agent's powers, you may do so in this section.)

In exercising the authority to make health care decisions on my behalf, the authority of my health care agent is subject to the following special provisions and limitations *(Here you may include any specific limitations you deem appropriate such as: your own definition of when life-sustaining treatment should be withheld or discontinued, or instructions to refuse any specific types of treatment that are inconsistent with your religious beliefs, or unacceptable to you for any other reason.):*

5. Guardianship provision.

If it becomes necessary for a court to appoint a guardian of my person, I nominate my health care agent acting under this document to be the guardian of my person, to serve without bond or security.

6. Reliance of third parties on health care agent.

- A. No person who relies in good faith upon the authority of or any representations by my health care agent shall be liable to me, my estate, my heirs, successors, assigns, or personal representatives, for actions or omissions by my health care agent.

B. The powers conferred on my health care agent by this document may be exercised by my health care agent alone, and my health care agent's signature or act under the authority granted in this document may be accepted by persons as fully authorized by me and with the same force and effect as if I were personally present, competent, and acting on my own behalf. All acts performed in good faith by my health care agent pursuant to this power of attorney are done with my consent and shall have the same validity and effect as if I were present and exercised the powers myself, and shall inure to the benefit of and bind me, my estate, my heirs, successors, assigns, and personal representatives. The authority of my health care agent pursuant to this power of attorney shall be superior to and binding upon my family, relatives, friends, and others.

7. Miscellaneous provisions.

- A. I revoke any prior health care power of attorney.
- B. My health care agent shall be entitled to sign, execute, deliver, and acknowledge any contract or other document that may be necessary, desirable, convenient, or proper in order to exercise and carry out any of the powers described in this document and to incur reasonable costs on my behalf incident to the exercise of these powers; provided, however, that except as shall be necessary in order to exercise the powers described in this document relating to my health care, my health care agent shall not have any authority over my property or financial affairs.
- C. My health care agent and my health care agent's estate, heirs, successors, and assigns are hereby released and forever discharged by me, my estate, my heirs, successors, and assigns and personal representatives from all liability and from all claims or demands of all kinds arising out of the acts or omissions of my health care agent pursuant to this document, except for willful misconduct or gross negligence.
- D. No act or omission of my health care agent, or of any other person, institution, or facility acting in good faith in reliance on the authority of my health care agent pursuant to this health care power of attorney shall be considered suicide, nor the cause of my death for any civil or criminal purposes, nor shall it be considered unprofessional conduct or as lack of professional competence. Any person, institution, or facility against whom criminal or civil liability is asserted because of conduct authorized by this health care power of attorney may interpose this document as a defense.

8. Signature of principal.

By signing here, I indicate that I am mentally alert and competent, fully informed as to the contents of this document, and understand the full import of this grant of powers to my health care agent.

Signature of Principal (SEAL)

Date _____

9. Signatures of Witnesses.

I hereby state that the Principal, _____, being of sound mind, signed the foregoing health care power of attorney in my presence, and that I am not related to the principal by blood or marriage, and I would not be entitled to any portion of the estate of the principal under any existing will or codicil of the principal or as an heir under the Intestate Succession Act, if the principal died on this date without a will. I also state that I am not the principal's attending physician, nor an employee of the principal's attending physician, nor an employee of the health facility in which the principal is a patient, nor an employee of a nursing home or any group care home where the principal resides. I further state that I do not have any claim against the principal.

Witness: _____ Date: _____

Witness: _____ Date: _____

STATE OF NORTH CAROLINA

COUNTY OF _____

CERTIFICATE

I, _____, a Notary Public for _____ County, North

Carolina, hereby certify that _____ appeared before me and swore to me and to the witnesses in my presence that this instrument is a health care power of attorney, and that he/she willingly and voluntarily made and executed it as his/her free act and deed for the purposes expressed in it.

I further certify that _____ and _____, witnesses, appeared before me and swore that they witnessed _____ sign the attached health care power of attorney, believing him/her to be of sound mind; and also swore that at the time they witnessed the signing (i) they were not related within the third degree to him/her or his/her spouse, and (ii) they did not know nor have a reasonable expectation that they would be entitled to any portion of his/her estate upon his/her death under any will or codicil thereto then existing or under the Intestate Succession Act as it provided at that time, and (iii) they were not a physician attending him/her, nor an employee of an attending physician, nor an employee of a health facility in which he/she was a patient, nor an employee of a nursing home or any group-care home in which he/she resided, and (iv) they did not have a claim against him/her. I further certify that I am satisfied as to the genuineness and due execution of the instrument.

This the _____ day of _____, 20____.

Notary Public

My Commission Expires:

(A copy of this form should be given to your health care agent and any alternate named in this power of attorney, and to your physician and family members.)

I, _____, agree to act as health care agent for _____, pursuant to this health care power of attorney.

This the _____ day of _____, 20__.

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This publication is a revision of HE-387, published in 1991.

7,700 copies of this public document were printed at a cost of \$1,520 or \$.19 per copy.

Published by
NORTH CAROLINA COOPERATIVE EXTENSION

COLLEGE OF
AGRICULTURE & LIFE SCIENCES
ACADEMICS • RESEARCH • EXTENSION