



# *Who Decides?*



## *Caring for Patients with Diminished Capacity*



SENIOR LAW  
RESOURCE CENTER

What every Oklahoma health care professional needs to know about the legal and ethical issues of patient incapacity and surrogate decisionmaking

*Who Decides? Caring For Patients With Diminished Capacity* was produced by the Senior Law Resource Center, Inc. with support from the Hospice Foundation of Oklahoma Affiliated Fund, Inc.

The Senior Law Resource Center is a non-profit organization providing legal information and services to seniors and caregivers in Oklahoma. The mission of the Senior Law Resource Center is to empower Oklahomans to age with independence, dignity, and security.

The Hospice Foundation of Oklahoma Affiliated Fund, Inc., an endowment administered by the Oklahoma City Community Foundation, was founded in 1998 to support programs that train and educate persons providing physical, emotional, social, and spiritual care to terminally ill persons and their loved ones, and to educate the public, patients, and families concerning the death process.

Additional copies of this guide may be ordered from:

Senior Law Resource Center  
P.O. Box 1408  
Oklahoma City, OK 73106  
(405) 528-0858  
FAX (405) 601-2134  
[info@OklahomaSeniorLaw.org](mailto:info@OklahomaSeniorLaw.org)

This guide can also be downloaded in PDF format from [www.OklahomaSeniorLaw.org](http://www.OklahomaSeniorLaw.org).

Users are encouraged to reproduce parts or all of this guide. However, copies of this guide may not be sold.

Printed in 2009

# Table of Contents

<b>Introduction &amp; Overview .....</b>	<b>3</b>
<b>Patients' Rights &amp; Incapacity .....</b>	<b>4</b>
<b>Treatment Presumptions &amp; Exceptions .....</b>	<b>6</b>
Treatment Presumptions and Exceptions .....	6
Cardiopulmonary Resuscitation (CPR) .....	6
Artificially Administered Nutrition and Hydration (ANH) .....	7
Other Life-Sustaining Treatment .....	9
Non Life-Sustaining Treatment .....	10
Disclosing Health Information .....	11
<b>Patient Representatives &amp; Legal Documents .....</b>	<b>12</b>
Patient Representatives and Legal Documents .....	12
Advance Directive for Health Care .....	12
Durable Power of Attorney .....	18
Do-Not-Resuscitate (DNR) Consent .....	20
Guardianship .....	23
HIPAA Authorization .....	25
<b>Other Legal &amp; Ethical Issues .....</b>	<b>27</b>
Protection from Liability .....	27
Legal Requirements .....	27
Ethical Issues .....	29
<b>Appendices .....</b>	<b>31</b>
Appendix A: Glossary of Key Terms .....	31
Appendix B: Information Resources .....	32
Appendix C: Relevant Law .....	34
<b>Forms .....</b>	<b>37</b>
Oklahoma Advance Directive for Health Care .....	37
Oklahoma Do-Not-Resuscitate (DNR) Consent Form .....	41



# Introduction & Overview

As the population ages, health care providers will increasingly care for patients with diminished capacity. Whether or not patients have planned in advance for incapacity, health care professionals must be knowledgeable about how to work with patient representatives and what options are available when making treatment decisions.

This guide addresses the legal and ethical issues faced by health care professionals caring for patients with diminished capacity. When state law applies, the information presented is specific to Oklahoma.

The first section provides information about patients' rights and incapacity. The second part describes the legal presumptions about medical treatment that apply when a patient lacks capacity to give consent and the exceptions to these presumptions. The third section covers the different legal documents that can be used to authorize and guide surrogate decisionmakers. Finally, the fourth section addresses other legal and ethical issues, including protection from liability and requirements imposed on health care providers by state and federal law.

Reference materials can be found at the end of this guide. Appendix A provides a glossary of key terms. A list of organizations and information resources is provided in Appendix B. Appendix C summarizes the applicable state and federal laws, including statutes, regulations, case law, and Attorney General's opinions. Sample Advance Directive for Health Care and DNR Consent forms are located in the back of this booklet.

This guide provides general information and is not intended to serve as legal or medical advice in any particular situation. Nor does it create an attorney-client relationship between the Senior Law Resource Center and its readers.

The focus of this guide is on helping professionals more effectively provide medical care to adults with diminished capacity. Therefore, it does not address medical decisionmaking for children. It also does not cover mental health treatment issues. However, information about Advance Directives for Mental Health Treatment can be found on the Senior Law Resource Center's website, [www.OklahomaSeniorLaw.org](http://www.OklahomaSeniorLaw.org).

The Senior Law Resource Center would like to thank the Hospice Foundation of Oklahoma Affiliated Fund, Inc. for providing the financial support that made this guide possible. Thank you also to the attorneys and health care professionals who generously donated their time and expertise to this project.

We hope that this guide will serve as a practical resource for health care providers. Readers' comments and suggestions are very welcome.

Please share your feedback with us.

Senior Law Resource Center  
P.O. Box 1408  
Oklahoma City, OK 73101  
[info@OklahomaSeniorLaw.org](mailto:info@OklahomaSeniorLaw.org)  
(405) 528-0858

# Patients' Rights & Incapacity

Competent patients have a constitutionally-protected right to make decisions about their own health care. They have the right to refuse medical treatment or direct that treatment be withdrawn, even at the risk of causing death. This right to control one's own medical treatment outweighs any obligation a health care provider has to preserve life.

Adults are presumed to have the capacity to make their own medical decisions. Certain people are deemed by law to lack capacity to make health care decisions. These include minors and persons who have been declared legally incompetent by a court to make medical treatment decisions. This typically occurs in a guardianship proceeding.

If a patient is not deemed legally incompetent by virtue of age or court order, it is up to physicians to determine if a patient lacks the capacity to make medical decisions. This is often difficult because capacity is not an all-or-nothing proposition. Patients may have the capacity to make some decisions, but not others. Some patients may have sufficient capacity at certain times, but lack capacity at other times due to the effects of medication or symptoms of mental or physical illness.

## Capacity vs. Competency

Mental capacity is assessed by a health care professional. Competency is a legal determination made by a court. Evidence of incapacity may be used by a judge to determine whether a person is legally incompetent.

## Incapacity vs. Poor Judgment

Lack of capacity to make a decision is not the same thing as making a foolish decision. Going against medical advice does not automatically signal a lack of decisionmaking capacity. However, a seemingly unreasonable decision coupled by other signs of incapacity may justify a more thorough capacity assessment.

Capacity is based on function, not diagnosis. A patient who is diagnosed with Alzheimer's disease does not automatically lose the right or ability to make decisions. Rather, capacity should be determined based on whether the patient can sufficiently understand relevant information, appreciate the pros and cons of various options, and express a reasoned choice based on the information available.

In general, patients have sufficient capacity to make medical decisions if they can:

- Understand their medical conditions and the available treatment options
- Weigh the risks and benefits of the possible courses of action
- Appreciate the likely consequences of their treatment decisions
- Communicate their decisions

Patients with limited capacity should be given every opportunity to make their own decisions. To maximize a patient's ability, consider the following:

# Patients' Rights & Incapacity

- Are there times of day when the patient is more aware and better able to communicate?
- Are there medications or treatments that affect the patient's capacity?
- Can the information be presented in a way that is easier for the patient to understand?
- Can someone help the patient to better understand the information and communicate with care providers?
- Can the decision be delayed until the patient is able to understand and communicate sufficiently?

When assessing a person's capacity to make a particular medical decision, consider the following factors:

- *Variability* – does the patient state the same wish consistently?
- *Reasoning* – can the patient articulate the reasoning behind the decision?
- *Comprehension* – does the patient appreciate the situation and likely consequences of the decision?
- *Lifetime Consistency* – is the decision consistent with the patient's personality and patterns over time?
- *Undue Influence* – does it appear that the patient is making up his own mind, or is someone else exerting pressure?
- *Potential Harm* – to what degree could the patient be harmed by the decision?
- *Irreversibility* – can the decision be reversed?

Patients with diminished capacity should still be kept informed and involved in their own health care to the greatest extent possible.

When patients lack capacity to make medical decisions, they still retain the right to have their wishes honored. Often these wishes are expressed in a document such as an Advance Directive for Health Care. They may also be communicated by a representative appointed by the patient or by a judge.

When working with incapacitated patients and their families, allow the following principles to guide your decisions and actions:

- *Honor Patient Autonomy* – Respect patients' known wishes and values. This applies even if the patient's wishes contradict those of family members or health care providers.
- *Strive to Do Good and Avoid Harm* – The goal of care should be helping the patient. This principle involves more than treating illness. It also includes alleviating pain and maintaining the patient's dignity.
- *Speak the Truth* – Patients and their representatives must have enough information about their conditions and treatment options to give informed consent.
- *Maintain Confidentiality* – Patients' personal health information is confidential. This right to privacy continues even when a patient loses capacity. See page 11 for more information on HIPAA and permitted disclosures.

# Treatment Presumptions & Exceptions

## Treatment Presumptions and Exceptions

There is a general presumption that incapacitated patients consent to life-sustaining treatment such as cardiopulmonary resuscitation (CPR) and artificially administered nutrition and hydration (ANH). There are two types of situations when this presumption may not apply. The first is when there is sufficient evidence that the patient would not have consented to treatment if she were capable. The second is when treatment would be futile, impossible, or actually cause harm.

Depending on the type of treatment at issue, there are different ways to overcome the presumption of consent. This section outlines the rules that apply to the following types of treatment:

- Cardiopulmonary Resuscitation (CPR)
- Artificially Administered Nutrition and Hydration (ANH)
- Other Life-Sustaining Treatment
- Non Life-Sustaining Treatment

In addition, issues about disclosing protected medical information to family and other caregivers are also addressed.

## Cardiopulmonary Resuscitation (CPR)

Cardiopulmonary resuscitation (CPR) is emergency medical treatment designed to restart heart and/or breathing function. CPR includes chest compressions, artificial ventilation, intubations, defibrillation, and emergency cardiac medications. Oklahoma law

presumes that everyone consents to CPR in the event their heart function or breathing stops. Unless this presumption has been overcome, physicians and other health care providers are required to provide CPR to a patient whose heart or breathing has ceased.

This presumption can be overcome if one of the following conditions is met:

### ***A Competent Patient Declines CPR in Advance***

Competent patients may notify their attending physicians that they do not consent to CPR. This notification must be entered into patients' medical records.

A competent patient may also complete a Do-Not-Resuscitate (DNR) Consent form (see page 20) directing that no medical procedure be used to restore breathing or heartbeat. Directions regarding CPR can also be communicated by a patient in an Advance Directive for Health Care (see page 12).

### ***A Representative Declines CPR on Behalf of an Incapacitated Patient***

If the patient lacks capacity, a legal representative can refuse to consent to CPR on behalf of the patient. Legal representatives authorized to refuse CPR are:

- an attorney-in-fact granted health care decisionmaking authority under a Durable Power of Attorney
- a health care proxy named in an Advance Directive for Health Care
- a guardian of the person



# Treatment Presumptions & Exceptions

The legal representative must base this decision on knowledge that the patient would not have consented to CPR. The reason the representative, rather than the patient, is making the decision must be documented in the patient's medical record.

A patient's legal representative can notify the attending physician that she knows that the patient would not have consented to CPR. This notification should be entered into the patient's medical record. A legal representative may also complete a DNR Consent form on behalf of an incapacitated patient.

## ***The Attending Physician Knows the Patient Would Not Have Consented***

If an incapacitated patient does not have a representative, the attending physician may refuse CPR on behalf of the patient if the physician knows the patient would not have consented to CPR. The physician must know by clear and convincing evidence that the patient, when competent, made an informed decision that he would not have consented to CPR. This decision may have been communicated by the patient either orally or in writing to the physician directly, or to family members, health care providers, or others close to the patient, who in turn tell the attending physician.

A physician may use this knowledge to sign a DNR Consent form or write a DNR Order in the chart. The place for physicians to sign is on the back of the DNR Consent form.

## ***CPR Would Not Prevent Imminent Death***

Physicians and other health care providers are not required to administer CPR if, in their reasonable medical judgment, such treatment would not prevent the imminent death of the patient.

## **Artificially Administered Nutrition and Hydration (ANH)**

Under Oklahoma law, every incapacitated patient is presumed to consent to artificially administered nutrition and hydration (ANH). ANH can be withheld or withdrawn from an incapacitated patient only if one of the following conditions is met:

### ***The Patient Completed an Advance Directive for Health Care***

ANH can be withheld or withdrawn if the patient, when competent, completed the Living Will section of an Advance Directive for Health Care and the document specifically authorizes the withholding or withdrawal

### **Read the Form!**

Not all patients who complete Advance Directives for Health Care choose not to have ANH or other life-sustaining treatment. Some patients may specify that they want ANH or other life-sustaining treatment under certain circumstances.

It is important to read the patient's Advance Directive. Do not assume that all patients with Advance Directives wish to forego treatment.

# Treatment Presumptions & Exceptions

of ANH. It is not enough if the document only states the patient does not want life-sustaining treatment in general.

Before the Living Will section of an Advance Directive goes into effect, the attending physician and another physician must first determine that the patient is not capable of making an informed decision about health care, including ANH. Second, the attending physician and a second physician must determine that the patient falls into one of the categories addressed in the form:

- *Terminal Condition* – having an incurable and irreversible condition that will result in death within six months even with life-sustaining treatment
- *Persistently Unconscious* – having an irreversible condition causing a lack of thought and awareness of self and the environment
- *End-Stage Condition* – having an untreatable and irreversible condition resulting in severe and permanent deterioration, indicated by complete physical dependence and incompetence
- Any other condition specified by the patient in the Advance Directive for Health Care.

If these requirements are met, the patient's instructions in the Advance Directive regarding ANH should be followed.

## Pregnancy Exception

If an incapacitated patient is known to be pregnant, Oklahoma law requires she be given life-sustaining treatment. The only exception is if the patient completed an Advance Directive for Health Care in which she wrote in her own words that life-sustaining treatment and/or ANH should be withheld or withdrawn in the course of pregnancy.

## ***The Attending Physician Knows the Patient's Wishes***

ANH may be withheld or withdrawn if the attending physician has actual knowledge that the patient would not consent to such treatment. This requires that the patient and physician discussed the patient's specific preferences about ANH at a time when the patient had capacity and enough information to make an informed decision.

If such a conversation occurs, it is strongly recommended that the details of the discussion be included in the patient's medical record.

## ***A Court Determines the Patient's Wishes***

A judge can authorize the withholding or withdrawal of ANH only if there is sufficient evidence that the patient did not want such treatment under the circumstances. The evidence must show that the patient, when competent, made an informed decision that ANH should be withheld or withdrawn.

# Treatment Presumptions & Exceptions

The patient's wishes must be proved by clear and convincing evidence. This is a high standard of proof. The evidence must be so strong that the judge can say without reservation that the patient would not have wanted ANH under the specific circumstances. This evidence can be in the form of written or oral statements made by the patient. The more specific the statement, the better. For example, a general statement about wanting to die with dignity is not as strong as a statement such as, "If I ever have Alzheimer's disease and can't feed myself, don't put me on a feeding tube."

## ***ANH Is Not Medically Appropriate***

There are three circumstances in which ANH can be withheld or withdrawn based on a determination of medical inappropriateness. These determinations must be made by the attending physician and a second consulting physician.

ANH can be withheld or withdrawn if the attending physician and a second consulting physician determine that any one of the following is true:

- That ANH would cause severe, intractable, and long-lasting pain
- That it is not medically possible to administer ANH
- That the patient will never regain competence, that the patient is in the final stage of a terminal condition, that death is imminent, and that death will be caused by the underlying condition, not the withdrawal of ANH.

## **Other Life-Sustaining Treatment**

As with CPR and ANH, the law presumes that incapacitated patients would want to receive other types of life-sustaining treatment unless there is sufficient evidence to the contrary. Other types of life-sustaining treatment include, for example, dialysis, ventilators, and pacemakers.

If the patient completed the Living Will section of an Advance Directive for Health Care stating the wish not to receive life-sustaining treatment, those wishes must be honored. (See the previous section on ANH for more information about when the Living Will section of an Advance Directive for Health Care takes effect.)

### **Who Cannot Make Decisions about ANH or Other Life-Sustaining Treatment**

An Advance Directive for Health Care is the only document that can empower a patient's representative to make decisions regarding ANH and other life-sustaining treatment. A durable power of attorney cannot grant that authority. Nor can a court-appointed guardian make the decision unless the court has issued a separate order.

A representative appointed as guardian or under a durable power of attorney can make other medical decisions, including signing a DNR Consent form.

# Treatment Presumptions & Exceptions

A health care proxy named in an Advance Directive for Health Care can make decisions about life-sustaining treatment. However, the health care proxy cannot make decisions that contradict the express wishes of the patient. If the patient's wishes are not known, the health care proxy should try to determine what the patient would have wanted based on the patient's values and personal views. If there is not sufficient information to determine what the patient would have wanted, the decision can be made based on what is in the best interest of the patient.

Oklahoma law is less clear about when life-sustaining treatment other than CPR or ANH

can be withheld or withdrawn absent an Advance Directive for Health Care. The guiding principle should always be to honor the patient's wishes.

Oklahoma law specifies that substitute decisionmakers should first consider and honor the known wishes of the patient. If there is not sufficient information about what the patient would have wanted, the surrogate is to use reasonable judgment in determining what the patient would have wanted based on the patient's values. If this is not possible, the decision should be made based on what is in the best interest of the patient.

## Questions for Surrogates

When discussing an incapacitated patient's values and preferences with surrogates, consider using the following discussion questions:

- What was he like before he got sick? What was important to him?
- Did he ever know someone who was seriously ill? Did he talk about how he might want to be treated if he were in a similar situation?
- Did he ever discuss what he would want if he could not make decisions for himself?
- Did he ever talk about his fears or wishes about illness or death?
- Was he religious or spiritual? How might his beliefs shape his decision?

## Non Life-Sustaining Treatment

There is more flexibility in who can make non life-sustaining treatment decisions on behalf of incapacitated patients. A health care proxy named in an Advance Directive for Health Care can make health care decisions, as can an attorney-in-fact appointed by a Durable Power of Attorney containing health care powers. A guardian of the person appointed by a court may also make decisions about most non life-sustaining treatments. (See page 23 for more on guardians' authority.)

Often health care providers will look to close relatives for guidance. While Oklahoma does not have a statute explicitly authorizing spouses or relatives to make health care decisions on behalf of incapacitated family members, Oklahoma law does state a strong preference for keeping medical treatment decisions out of the courts whenever possible.

# Treatment Presumptions & Exceptions

## **Consent to Participate in Experimental Treatment**

Oklahoma law allows family members to consent on behalf of an incapacitated patient to participation in a board-approved experimental treatment, test, or drug. If no guardian, attorney-in-fact, or health care proxy has the authority, the following persons can consent, in order of preference: spouse, adult child, parent, adult sibling, or other relative by blood or marriage.

A guardian must get prior court permission unless the treatment is necessary in an emergency to save the patient's life.

ers can exercise professional judgment to determine whether the patient consents.

If a patient lacks the capacity to consent, health care providers can share information with family and friends if, in their professional judgment, it would be in the best interest of the patient to do so. If someone besides a family member or friend is seeking information, the health care provider must first determine that the person is involved in the patient's health care or payment for health services.

Whether or not a patient has capacity, only the information the third party needs to know should be shared. For example, family members may be informed of the patient's current condition, but not about the patient's past unrelated health problems.

## **Disclosing Health Information**

The Health Insurance Portability and Accountability Act (HIPAA) provides national standards to protect patients' medical records and personal health information. There has been much confusion and concern about what patient information HIPAA does and does not allow health care providers to disclose.

HIPAA does allow the sharing of health care information with surrogates, family members, and others. If a patient has capacity, a health care provider may share information with family and friends if the patient consents. Consent can be given by an affirmative agreement or by failing to object after being given an opportunity to do so. Health care provid-

HIPAA also permits friends and family members to pick up prescriptions, medical supplies, x-rays, and other similar medical items on behalf of a patient. Again, health care providers are to use their professional judgment to determine if it is in the best interest of the patient to allow third parties to pick up these items.

# Patient Representatives & Legal Documents

## Patient Representatives and Legal Documents

If a patient lacks capacity to make medical decisions, a representative often must step in to make decisions on behalf of the patient. Representatives can be appointed in advance by the patient or may be appointed by a court.

There are different legal documents that grant representatives authority and/or provide information about patient wishes. These include:

- Advance Directive for Health Care
- Durable Power of Attorney
- DNR Consent
- Letters of Guardianship
- HIPAA Authorization

Each type of document has different requirements for valid execution, takes effect at various times, and serves a different purpose.

### Advance Directive for Health Care

An Advance Directive for Health Care is used to communicate in advance a patient's instructions regarding medical treatment, including life-sustaining treatment, in the event the patient is not able to make decisions in the future. It is also used to appoint representatives, called "health care proxies," who can make all health care decisions on behalf of the person who executed the document.

Document	Who Can Execute
Advance Directive for Health Care	The patient, if has capacity
Durable Power of Attorney	The patient, if has capacity
DNR Consent	The patient, if has capacity  If patient lacks capacity, an attorney-in-fact for health care, a health care proxy, guardian of the person, or attending physician
Letters of Guardianship	A judge, upon a finding that the patient is incompetent
HIPAA Authorization	The patient, if has capacity  If patient lacks capacity, a representative authorized to make health care decisions

# Patient Representatives & Legal Documents

What It Can Do	Requirements	When It Takes Effect
<p>Evidence the patient's wishes regarding medical treatment, including life-sustaining treatment</p> <p>Appoint representatives to make all health care decisions, including life-sustaining treatment decisions</p> <p>Evidence the patient's wishes regarding organ or body donation</p>	<p>Patient must have been at least 18 and capacitated</p> <p>Signed by the patient and by 2 witnesses who were at least 18 and who are not going to inherit from the patient</p> <p>NO notary required</p>	<p>When attending physician and second physician determine the patient is unable to make health care decisions</p>
<p>Appoint a representative to make financial and/or health care decisions, as described in the document</p> <p>CANNOT grant authority to make life-sustaining treatment decisions</p>	<p>Patient must have been at least 18 and capacitated</p> <p>Signed by the patient and by 2 witnesses who were at least 18, not named as attorney-in-fact, and not related to those named or to the patient</p> <p>YES notary required</p>	<p>Either immediately or upon the incapacity of the patient, depending on the language of the document</p>
<p>Evidence the patient's wish not to receive CPR or other intervention to restart heart or breathing function</p>	<p>Signed by patient, representative, or physician</p> <p>If signed by patient or representative, signed also by 2 witnesses who were at least 18 and who will not inherit from the patient</p> <p>If signed by physician, no witnesses required</p> <p>NO notary required</p>	<p>Immediately</p>
<p>Appoint a guardian to make financial and/or medical decisions</p> <p>CANNOT grant authority to make life-sustaining treatment decisions without a separate court order</p>	<p>Signed by a judge</p>	<p>Immediately</p>
<p>Grants third party access to patient's medical records and information</p>	<p>Signed by patient or representative</p> <p>NO notary required</p>	<p>Immediately, unless specifies otherwise</p>

# Patient Representatives & Legal Documents

## ***What Does an Advance Directive for Health Care Authorize?***

An Advance Directive for Health Care authorizes a health care proxy to make all health care decisions on behalf of an incapacitated patient. This includes both life-sustaining treatment decisions and other health care decisions.

The health care proxy must make decisions consistent with the known wishes of the patient. This means the choices made by the patient in the Living Will section of the Advance Directive must be followed. For example, if a patient instructed that no life-sustaining treatment be administered if he became terminally ill, the health care proxy

There is a common misperception that health care providers are not legally allowed to witness Advance Directives or other legal documents.

**It is perfectly legal for health care providers to witness signatures of patients.**

For many patients, health care providers may be the only people available to witness their planning documents. Refusal to serve as witnesses can be a significant obstacle for some patients wanting to complete Advance Directives, Durable Powers of Attorney, or DNR Consent forms.

If an institution has internal policies forbidding employees from serving as witnesses, staff should take an active role in finding alternative witnesses for patients.

does not have the authority to override these instructions. Likewise, if a patient elected all treatment in her Living Will, the health care proxy does not have the power to authorize the withholding or withdrawal of life-sustaining treatment.

The health care proxy may also know the patients' wishes through other sources, including writings or conversations the patient had with the proxy or others.

Sometimes there is not enough evidence to show what the patient would have wanted. In that case, the health care proxy should use reasonable judgment to determine what the patient would have chosen, based on the known values of the patient. If that is not possible, the decision should be made based on what the proxy reasonably determines is in the best interest of the patient.

## ***When Does It Take Effect?***

An Advance Directive for Health Care only takes effect if a patient is unable to make medical decisions. For purposes of activating an Advance Directive for Health Care, a patient lacking capacity is called a "qualified patient."

To activate an Advance Directive for Health Care, the patient's attending physician and another physician who has examined the patient must determine that the patient is unable to make an informed decision regarding health care, including life-sustaining treatment.



# Patient Representatives & Legal Documents

There is no need to refer to a patient's Advance Directive for Health Care for guidance, nor can a health care proxy make decisions, until the patient has been determined to be a qualified patient.

## ***Who Can Complete an Advance Directive for Health Care?***

Anyone who is at least 18 and has sufficient mental capacity can complete an Advance Directive for Health Care. A person is presumed to have sufficient mental capacity unless there is evidence to the contrary.

Each person must complete his own Advance Directive for Health Care. No one can complete an Advance Directive for Health Care for someone else. Forging or falsifying an Advance Directive for Health Care is a felony.

## ***How To Tell If an Advance Directive for Health Care Is Valid***

In order to be valid, an Advance Directive for Health Care must meet certain requirements. The person who executed the form must have been at least 18 and of sound mind. If the patient filled out the Living Will section of the form, the patient's choices regarding life-sustaining treatment should be initialed. The document should be dated and signed by the patient.

It should also be signed by two witnesses who are not related to the patient or going to inherit from the patient. While not specifically prohibited, the people named as health care proxies should not serve as witnesses.

## **Checklist for an Advance Directive for Health Care**

- ☑ Patient initialed next to choices regarding life-sustaining treatment decisions
- ☑ Dated and signed by the patient
- ☑ Signed by two witnesses who are not related to the patient and will not inherit from the patient
- ☑ Document has not been revoked by the patient

An Advance Directive for Health Care does not need to be notarized. Unless they know information to the contrary, health care providers can presume that an Advance Directive for Health Care is valid.

Copies of an Advance Directive form are just as valid as the original.

Once it is determined that the Advance Directive for Health Care was validly executed, the next step is to make sure it has not been revoked. If the patient has completed more than one Advance Directive for Health Care, only the most recently executed form is in effect.

## ***What about Advance Directives Executed in Other States?***

Oklahoma law recognizes Advance Directives from other states as long as the person who executed the form was a resident of that other state at the time, was in that state when the form was completed, and the form complies with either the law of that other state or

# Patient Representatives & Legal Documents

with Oklahoma law. For example, New Mexico law does not require that an Advance Directive be witnessed. Therefore, an Advance Directive executed by a New Mexico resident in New Mexico would be valid in Oklahoma even if not witnessed.

Unlike Oklahoma's Advance Directive form, forms from many other states do not separate ANH from other life-sustaining treatment choices. For example, Florida's Living Will only refers to "life-prolonging procedures" and does not address ANH specifically. Under Oklahoma's Advance Directive Act, this alone would not be sufficient to authorize the withholding or withdrawal of ANH.

Other states' forms specifically authorize the withholding or withdrawal of ANH, but do not provide separate provisions dealing only with ANH that are to be separately marked by the patient. For example, the New Jersey form specifically includes ANH in its definition of life-sustaining treatment. But, it does not provide a place for a patient to separately express his wishes about ANH.

Under Oklahoma law, as long as the person who executed the form was not a resident of Oklahoma or in Oklahoma, a form like New Jersey's can be deemed to authorize the withholding or withdrawal of ANH. If the person was an Oklahoma resident or in Oklahoma at the time the form was completed, there must be a separate section dealing only with ANH that is separately marked (such as by initials). This can be added in the person's own words.

For more information about the forms and requirements of other states, go to [www.caringinfo.org](http://www.caringinfo.org).

If the patient's Advance Directive does not meet the requirements of Oklahoma law, that does not necessarily mean that the patient must receive ANH. The attending physician may still authorize the withholding or withdrawal of ANH if that physician knows the patient gave informed consent for this when competent. Likewise, the other ways of overcoming the presumption of providing ANH still apply (see pages 7-10). The focus should always be on honoring the known wishes of the patient.

## **What about the Five Wishes® Form?**

Some patients choose to use the *Five Wishes*® advance directive, a form developed and distributed by the national organization Aging with Dignity. As long as the form was properly executed under Oklahoma statute, it is valid in Oklahoma.

However, unlike Oklahoma's Advance Directive form, the *Five Wishes*® form does not separate ANH from other life-sustaining treatment. Instead, it defines "life-support treatment" to include all treatment designed to prolong life, including tube feeding.

As long as the person who executed the form was not a resident of Oklahoma at the time and the form was completed outside of Oklahoma, the *Five Wishes*® form can authorize the withholding or withdrawal of ANH. If

# Patient Representatives & Legal Documents

the person was an Oklahoma resident at the time the form was completed, or if the form was completed in Oklahoma, there must be a separate section dealing only with ANH that is separately marked. This can be added in the person's own words.

If the *Five Wishes*<sup>®</sup> form is not by itself sufficient to overcome the presumption of administering ANH, the attending physician may still authorize the withholding or withdrawal of ANH if that physician knows the patient gave informed consent for this when competent. Likewise, the other ways of overcoming the presumption of providing ANH still apply (see pages 7-10). The focus should always be on honoring the known wishes of the patient.

## **What about Older Advance Directive Forms?**

The Oklahoma Advance Directive for Health Care form was updated by statute in 2006. Advance Directive forms that were validly executed prior to then are still valid. However, they are limited to their terms. For example, older forms may not address end-stage conditions. Patients who are able should be encouraged to update their older Advance Directives using the current form.

## **How Can an Advance Directive Be Changed or Revoked?**

If a patient wants to make changes, he should complete a new Advance Directive form. For example, if a patient wants to change the name of his health care proxy, he should complete a new form rather than crossing out the name and writing in the replacement.

All patients can revoke their Advance Directives for Health Care, even those who have been determined to lack capacity. A patient can revoke part or all of an Advance Directive in any manner sufficient to communicate the intent to revoke. This may include crossing out sections or the entire form, tearing up the form, or stating orally or in writing that it has been revoked. Anyone who witnesses a patient revoke an Advance Directive should inform the patient's health care providers as soon as possible.

The revocation becomes effective as soon as it has been communicated to the attending physician or other health care provider. Once a health care provider is aware that a patient's Advance Directive has been revoked in part or entirely, the revocation must be documented in the patient's medical record.

It is a felony to willfully hide or withhold knowledge that someone has revoked her Advance Directive for Health Care.

Only the patient can revoke an Advance Directive for Health Care. No one else can revoke an Advance Directive on behalf of a patient. It is a felony to willfully hide, change, or destroy someone else's Advance Directive for Health Care without permission.

## **Can a Health Care Provider Refuse to Comply with an Advance Directive?**

Before an Advance Directive takes effect, any physician or other health care provider given a patient's Advance Directive who is unwilling to comply with the patient's wishes must promptly tell the patient.

# Patient Representatives & Legal Documents

A physician or other health care provider may refuse to comply with a patient's Advance Directive for Health Care once it becomes active. However, Oklahoma law requires that she promptly take all reasonable steps to arrange care for the patient by another provider who will comply. Furthermore, a physician or other health care provider must comply with an Advance Directive pending transfer to another provider if refusal would likely result in the death of the patient. Willfully failing to arrange for alternate care for a patient constitutes unprofessional conduct.

## **Durable Power of Attorney**

A durable power of attorney is a legal document in which one person gives another person the power to act on her behalf. The person who executes a durable power of attorney is called the "principal." The person who is given the power to act on behalf of the principal is called the "attorney-in-fact" or "agent."

### ***What Does a Durable Power of Attorney Authorize?***

Each durable power of attorney is different and must be read carefully to determine what it authorizes. Some are narrow and cover only a few types of decisions. Others are broad and encompass all financial and health care decisions.

Furthermore, durable powers of attorney may sometimes include limitations on authority. For example, some may require more than one person to sign off on certain decisions. Others may contain specific instruc-

tions regarding health care that an attorney-in-fact must follow.

A durable power of attorney can never grant someone the authority to execute an Advance Directive for Health Care for the principal. Nor can it give the power to make life-sustaining treatment decisions unless it complies with the requirements of an Advance Directive for Health Care. This means that any paragraph authorizing the attorney-in-fact to make life-sustaining treatment decisions must be separately initialed or signed by the principal.

### ***When Does It Take Effect?***

There are two types of durable powers of attorney. One type takes effect as soon as it is signed. The other type, called a "springing" durable power of attorney, takes effect only if the principal becomes incapacitated.

Each durable power of attorney should include a section that states whether the document takes effective immediately or only if the principal becomes incapacitated.

Springing durable powers of attorney generally will also include a description of when the principal will be determined to be incapacitated. Usually, a determination of incapacity requires written documentation by two physicians.

If a durable power of attorney requires written documentation of the principal's incapacity, it does not take effect until that documentation is attached.

# Patient Representatives & Legal Documents

## ***Who Can Complete a Durable Power of Attorney?***

Anyone who is at least 18 and of sound mind may execute a durable power of attorney.

Each person must execute her own durable power of attorney. However, if the principal is mentally competent but physically unable to sign her name, she may direct another to sign it for her on her behalf and in her presence.

## ***How To Tell If a Durable Power of Attorney Is Valid***

A valid durable power of attorney that includes health care powers should be signed by the principal and two witnesses. Witnesses must be at least 18 and not related by blood or marriage to the principal or to anyone named as attorney-in-fact. A person named as attorney-in-fact cannot also serve as a witness.

Durable powers of attorney that include health care powers must be notarized.

### **Checklist for a Durable Power of Attorney**

- ☑ Signed by the patient
- ☑ Signed by two witnesses who are not named as attorney-in-fact nor related to the principal or to anyone named as attorney-in-fact
- ☑ Notarized
- ☑ Document has not been revoked by the patient

Once it is determined that the durable power of attorney was validly executed, the next step is to make sure it has not been revoked.

If the patient has completed more than one durable power of attorney, only the most recent validly executed one is in effect.

Copies of a durable power of attorney are usually just as valid as the original, unless the document states otherwise. Often the durable power of attorney will address this explicitly.

## ***What about Durable Powers of Attorney Executed in Other States?***

Oklahoma law recognizes durable powers of attorney from other states as long as they conform to the requirements of a validly executed durable power of attorney under Oklahoma law (see section above).

## ***How Can a Durable Power of Attorney Be Changed or Revoked?***

The principal may make changes to a durable power of attorney in a separate document, often called “Amendment to Durable Power of Attorney.” Changes should never be made directly on the original document. Any amendment must be signed, witnessed, and notarized in the same manner as a durable power of attorney.

As long as the principal is still of sound mind, she can revoke her power of attorney in any manner and at any time. The revocation becomes effective when the attorney-in-fact is informed that the power of attorney has been revoked.

# Patient Representatives & Legal Documents

A durable power of attorney is automatically revoked when the principal dies and the attorney-in-fact becomes aware of the principal's death.

## ***Can a Physician Refuse to Honor a Durable Power of Attorney?***

There is no statute requiring that a physician or other health care provider honor a durable power of attorney by allowing the attorney-in-fact to exercise his authority.

## **Do-Not-Resuscitate (DNR) Consent**

A Do-Not-Resuscitate (DNR) Consent form documents a patient's wish that, should the patient's heart or breathing stop, no medical procedures are to be used to restore heart function or breathing.

### ***What Does a DNR Consent Authorize?***

A DNR Consent form instructs health care providers, including EMS personnel, not to give a patient CPR. The form only applies to emergency medical treatment aimed at restoring breathing or heart function. It does not address any other life-sustaining medical treatment.

### ***When Does It Take Effect?***

A DNR Consent form takes effect as soon as it is signed. It is very important that patients and caregivers understand this fact. A DNR Consent form is a "near death" document that should only be used in cases when CPR or other medical procedures to restore breathing and heart functions would be inappropriate or unwelcome.

### ***Who Can Complete a DNR Consent?***

If the patient has capacity, the patient may sign a DNR Consent form. If the patient lacks sufficient capacity, an authorized representative may sign a DNR Consent form on behalf of the patient. Authorized representatives can be one of the following:

- Attorney-in-fact acting under a Durable Power of Attorney that includes health care decisionmaking
- Health care proxy acting under an Advance Directive for Health Care
- Guardian of the Person

If the patient is under the care of a health care facility, a representative must be informed in writing by the patient's attending physician that the representative is required to base the decision on what the incapacitated patient would have wanted. The attending physician should also encourage the representative to consult family members and others close to the patient before making the decision. The attending physician should explain the consequences of signing a DNR Consent form to the representative and others being consulted.

The reason why a representative, rather than the patient, signed the DNR Consent form and evidence that the nature and consequences of the decision were explained must be documented in the patient's medical records.

In the event an incapacitated person lacks an authorized representative, an attending physician may sign a DNR Consent form on behalf of the patient. The attending physician

# Patient Representatives & Legal Documents

must know by clear and convincing evidence that the patient, when competent, made an informed decision to forego CPR. The attending physician may know the patient's wishes based on oral or written communication between the patient and family members, friends, or health care providers. Information about the patient's wishes may come from the patient directly or from third parties.

## **How To Tell If a DNR Consent Is Valid**

Oklahoma law provides a standardized DNR Consent form. The form should be signed by the patient, if competent at the time. If the patient is not competent, the form may be signed by an authorized representative or the attending physician.

If the form was signed by the patient or representative, it should be dated and signed by two witnesses who were at least 18 and did not stand to inherit from the patient. If the form is signed on the back by the physician, it does not need to be witnessed.

### **Checklist for a DNR Consent Form**

- ☑ Signed by the patient, an authorized representative, or an attending physician
- ☑ Signed by two witnesses who will not inherit from patient (unless signed by physician, then no witness required)
- ☑ Document has not been revoked by the patient or representative

A DNR Consent does not need to be notarized or signed by a physician. Copies of a DNR Consent are just as valid as the original.

DNR Consent forms other than the one provided by Oklahoma law may be valid if they comply with Oklahoma law. For example, a patient could write instructions in an Advance Directive for Health Care directing that CPR not be performed.

## **What about DNR Forms Executed in Other States?**

Oklahoma law does not specifically address whether or not DNR forms from other states are recognized in Oklahoma. If the form is similar to Oklahoma's form, it should be honored. Furthermore, any form that communicates the wishes of the patient regarding CPR may be used as evidence of the patient's wishes by a representative or attending physician to sign an Oklahoma DNR Consent form on behalf of an incapacitated patient.

## **How Can a DNR Consent Be Changed or Revoked?**

If a patient is receiving health care services, she may revoke a DNR Consent by telling the physician or other health care provider either in writing or verbally. Any health care provider who is notified that a patient has revoked a DNR Consent must immediately inform the attending physician. As soon as the attending physician is informed that the DNR Consent is revoked, that physician must immediately cancel the DNR Order and notify the other health care professionals providing care to the patient.

# Patient Representatives & Legal Documents

If a patient is not receiving health care services, the DNR Consent may be revoked by destroying the form and removing all DNR identification from the person (e.g., a DNR bracelet). The patient is responsible for telling her attending physician that her DNR Consent has been revoked.

An incapacitated patient's representative may also revoke a DNR Consent by telling a physician or other health care provider either verbally or in writing. The representative may also destroy the DNR Consent form and remove all DNR identification from the patient's body. It is up to the representative to notify the attending physician that the DNR Consent has been revoked.

## ***Can Physicians or Other Health Care Providers Refuse To Issue or Comply with a DNR Consent?***

If a patient goes into cardiac or respiratory arrest, physicians and health care providers must comply with the patient's wishes expressed in a DNR Consent. Likewise, Oklahoma law requires that, when given a DNR Consent form, health care providers take appropriate actions to comply.

If a physician knows that she will not be able to comply with a DNR Consent, that physician must take reasonable steps to promptly inform the patient or patient's representative of the refusal. The physician must also promptly take all reasonable steps to arrange for care of the patient by another physician or health care provider who will comply.

## **Required Policies Regarding DNR Consent and Orders**

Health care agencies are required to have written policies and procedures to ensure patients' rights are honored. The policies and procedures must require that:

- All decisions regarding CPR are to be made by the patient unless the patient lacks capacity
- The reason a representative, rather than the patient, is making a decision regarding CPR must be documented in the patient's record
- Representatives must be given written materials instructing them that they are to make their decisions based on what the patient would have decided if able
- Physicians are to encourage consultation among family members and others close to the patient
- Physicians are to explain to patient representatives and family members the nature and consequences of the decision to be made and to document in the patient's record the fact that such an explanation was given
- Patients, health care providers, and the community must be provided with ongoing education by the health care agency about the use of the DNR Consent.



# Patient Representatives & Legal Documents

## Guardianship

A guardian is a person appointed by a court to make decisions on behalf of an incapacitated or partially incapacitated person. An incapacitated person under a guardianship is called a “ward.”

When a judge appoints a guardian, she will issue an order. She will also issue Letters of Guardianship. The guardianship order may specify the scope of the guardian’s authority. The Letters of Guardianship are evidence that the guardianship has taken effect.

### **What Does a Guardianship Authorize?**

There are two types of guardianship in Oklahoma. Guardianship of the Person can grant the authority to make decisions regarding the ward’s personal and health care. Guardianship of the Property (sometimes called Guardianship of the Estate) can grant the power to manage the ward’s finances and assets. Usually the same person is appointed as Guardian of the Person and the Property (or Estate). However, if a person is only appointed Guardian of the Property (or Estate), she probably does not have authority to make personal care or medical decisions on behalf of the ward.

Guardianships can also be General or Limited. A General Guardian of the Person has broad authority to make almost all decisions about the ward’s personal and health care. A Limited Guardian of the Person has only the authority specifically granted by the court. Usually, these powers are described in a court order.

In some cases, co-guardians may be appointed. Co-guardians must act jointly unless one has given the other written permission to act for them both or if the court order allows them to act independently. The court may also issue an order declaring one of the guardians to be unable to carry out the duties of guardianship and allowing the remaining guardian to act alone. If more than two guardians are appointed, the majority of the guardians may act.

A guardian can sign a DNR Consent without a separate court order. The power of a guardian to authorize the withholding or withdrawal of other life-sustaining treatment is very limited.

If the ward has an Advance Directive for Health Care, the guardian can carry out the wishes expressed in the document. However,

### **Limitations on Guardians’ Authority**

Unless there is a life-threatening emergency, a guardian must get court permission to consent to certain non life-sustaining medical procedures on behalf of the patient, including:

- abortion
- psychosurgery
- removal of a bodily organ
- experimental biomedical or behavioral procedure
- participation in a biomedical or behavioral experiment.

# Patient Representatives & Legal Documents

if the ward does not have an Advance Directive, the guardian must obtain an order from the court authorizing the withholding or withdrawal of life-sustaining treatment. This can only be done at the time the ward is in need of such treatment.

## ***When Does It Take Effect?***

A guardianship takes effect as soon as Letters of Guardianship are issued by the court.

## ***Who Can Appoint a Guardian?***

Only a district court judge can appoint a guardian.

## ***How To Tell If Guardianship Papers Are Valid***

Guardianship orders and Letters of Guardianship must be signed by a judge. Letters of Guardianship should also be signed under oath by the guardian.

Make sure there is a file stamp stating the court and date of filing. This is usually in the

### **DHS Guardianship**

The Department of Human Services (DHS) may be appointed guardian of an incapacitated person who has been the victim of abuse, neglect, or exploitation if that person is at substantial risk of death or serious harm. As guardian, DHS cannot consent to or deny consent to a DNR order or other life-sustaining treatment. Only the district court overseeing the guardianship has authority to make life-sustaining treatment decisions.

### **Checklist for Letters of Guardianship**

- Signed by a judge
- Signed by the guardian under oath
- Specifies that it grants Guardianship of the Person

upper right hand corner on the first page of the document. If you have doubts, you can ask for a certified copy. This is a copy that has been embossed and signed by a deputy court clerk confirming that the copy matches the original filed with the court clerk's office.

Guardianship files are not public record. A judge may authorize the release of part or all of a guardianship file.

## ***What about Guardianships Granted in Other States?***

Every state's guardianship laws are different. Transferring guardianship from one state to another is often a complicated legal process. However, it is fairly safe to say that, at least for wards who are only visiting Oklahoma, guardianships granted in other states remain valid and should be honored.

Some state laws limit a guardian's authority to move a ward to a different county or state. Generally, when a ward has permanently moved to a different state, the guardian should have the guardianship transferred to a court in the new state.

# Patient Representatives & Legal Documents

## HIPAA Authorization

The Health Insurance Portability and Accountability Act (HIPAA) allows a patient or a representative to execute an “authorization” giving health care providers permission to share protected information with named third parties.

### ***What Does a HIPAA Authorization Authorize?***

A HIPAA Authorization permits the disclosure of otherwise protected medical information to third parties named in the document. Each document should be read to determine the scope and timeframe of the authorization.

### ***When Does It Take Effect?***

Unless otherwise specified, a HIPAA Authorization will take effect as soon as it is signed. A HIPAA Authorization remains in effect until it is revoked or it expires.

### ***Who Can Execute a HIPAA Authorization?***

The patient or the patient’s representative who is authorized to make health care decisions may sign an authorization. If the authorization is signed by a representative, a description of the representative’s authority must be included.

### ***How to Tell if a HIPAA Authorization is Valid***

Federal regulations outline the basic requirements of a valid HIPAA Authorization. First, it must contain a specific and meaningful description of the information that can be used or disclosed. Guidelines provided by

### **Checklist for a HIPAA Authorization**

- ☑ Describes information to be used or disclosed
- ☑ Describes the person(s) or classes authorized to disclose the information
- ☑ Describes the person(s) or classes authorized to receive the information
- ☑ States an expiration date or describes an expiration event
- ☑ Includes a statement about the patient’s right to revoke and how to revoke
- ☑ States that a person who receives the information may disclose it to others, and it may thereby lose its protected status
- ☑ Signed and dated by the patient or representative
- ☑ If signed by the representative, a description of the representative’s authority
- ☑ The document is not known to have expired or been revoked

These requirements apply to HIPAA Authorizations that are not being provided to the patient by an entity covered by HIPAA.

There are additional requirements for valid HIPAA Authorizations given to patients by covered entities, such as hospitals, on behalf of themselves or other covered entities.

# Patient Representatives & Legal Documents

the U.S. Department of Health and Human Services state that this description can be broad, such as “entire medical record.” However, the guidelines warn that general statements such as “all protected health information” are likely too vague because patients may not understand the scope of the information covered.

Second, the authorization must identify the person(s) or class of persons who are authorized to disclose the information. It is not necessary to list individual health care providers if the authorization describes classes or categories of providers. For example, a document may authorize “any physician, health care professional, hospital, medical facility, or other health care provider” to disclose information. It may also simply say “all medical sources.”

Third, the document must identify the person(s) or class of persons who are authorized to request and receive the information. Often this will be specifically named people or entities. However, an authorization can permit disclosure to a class of people, such as employees of a particular company.

A HIPAA Authorization should also contain an expiration date or event. If the expiration is not a fixed date, it must be based on either the patient (e.g., when the patient reaches a certain age) or the purpose of the disclosure (e.g., when enrollment in a plan ends).

A HIPAA Authorization must include a statement describing the patient’s right to revoke the authorization and describe how the pa-

tient can revoke. It must also contain a statement that information used or disclosed as a result of the authorization may be redisclosed by the person who received the information, thereby losing its protection.

The patient must sign and date the authorization. If the authorization was executed by a representative, the document should state the source of this representative’s authority.

There is no requirement under federal or Oklahoma law that a HIPAA Authorization be notarized or witnessed. Copies are as valid as the original.

## ***How Can a HIPAA Authorization Be Revoked?***

A HIPAA Authorization can be revoked in writing at any time. The revocation takes effect when it is received by the health care provider who was previously authorized to disclose information.

## ***Can Physicians or Other Health Care Providers Refuse To Comply with a HIPAA Authorization?***

A physician or other health care provider can refuse to disclose medical information if he reasonably believes the patient may be subject to abuse or neglect by the person requesting the information, or if he otherwise believes releasing the information would put the patient in danger.

# Other Legal & Ethical Issues

## Protection from Liability

Oklahoma law protects physicians and other health care providers from liability if they act reasonably and in good faith. Physicians are required to use their best judgment, exercise ordinary care, and apply the knowledge and skills possessed and used by other physicians in good standing who are engaged in the same field of practice. This is a national standard of competence.

Absent contrary knowledge, physicians and other health care providers can presume that documents such as Advance Directives for Health Care are valid. Health care providers cannot be held liable if they reasonably rely on documents that they were unaware had been revoked or were not validly executed.

Physicians and other health care providers can also presume, absent evidence to the contrary, that patients have sufficient capacity to make decisions about their medical care.

## Legal Requirements

Both state and federal law impose requirements on health care organizations and professionals regarding advance planning for medical treatment and honoring patients' wishes.

### ***Informing Patients of Their Rights***

Most hospitals, home health care agencies, hospice organizations, HMOs, and nursing homes are required to provide patients with written information regarding their rights to make medical decisions, including the right to execute planning documents such as Ad-

While health care providers must give patients information about Advance Directives and other planning documents, they cannot require patients to complete these forms.

vance Directives. Generally, this information is provided to patients at the time of admission or prior to the initiation of services.

In the event state law changes, written materials provided to patients must be updated within 90 days from the effective date of the change.

Health care institutions must also provide patients with written information about their policies regarding implementing patients' treatment preferences. If the organization has an institutional objection to honoring certain wishes, patients must be given written statements of limitation that describe the range of medical conditions or procedures affected by the objection. These statements must also clarify the difference between objections of the institution as a whole and objections raised by individual health care providers. These statements of limitation should cite to the legal authority permitting such objections.

### ***Documenting Patients' Wishes***

In addition to providing patients with information, health care organizations are required to have systems in place for documenting whether patients have Advance Directives or DNR Consents. They are also required to have policies and procedures designed to ensure patients' wishes are honored.

# Other Legal & Ethical Issues

## Checklist of Legal Requirements

Does your facility . . .

- ☑ Have written policies about documenting patients' wishes, Advance Directives, and DNR Consent or Order forms?
- ☑ Ask patients if they have Advance Directives or DNR Consent forms?
- ☑ Inform patients about their rights to make medical decisions and complete Advance Directives and DNR Consent forms?
- ☑ Provide patients with current Advance Directive for Health Care and DNR Consent forms when requested?
- ☑ Make patients' wishes and forms part of their medical records?
- ☑ Educate staff and patients about Advance Directives, DNR Consent forms and patients' rights?
- ☑ Treat patients equally whether they have an Advance Directive or not?
- ☑ Promptly inform patients if you are unable to honor their expressed wishes?
- ☑ Have systems in place to ensure documentation of patients' wishes follow the patients when they are discharged or transferred?

A health care provider who is given a copy of a patient's Advance Directive or DNR Consent form must make it a part of the patient's medical record. Likewise, these documents should follow the patient if transferred to a different facility or health care provider.

## *Honoring Patients' Wishes*

If a physician or other health care provider would not be willing to comply with a competent patient's Advance Directive for Health Care or DNR Consent, she must promptly inform the patient of this fact.

If the attending physician or other health care provider is not willing to comply with an incapacitated patient's Advance Directive for Health Care or DNR Consent, that health care provider must promptly take all reasonable steps to arrange care for the patient by another provider who is willing to comply. If refusal to comply with the wishes of the patient would likely result in the death of the patient, the provider must comply with the

## **POLST Forms**

POLST, which stands for Physician Orders for Life-Sustaining Treatment, is a system designed to improve the quality of end-of-life care by converting patients' preferences into medical orders. A POLST form is a brightly colored order form completed by a health care provider in consultation with a patient or surrogate decision-maker. A POLST form does not replace other forms like Advance Directives or DNR Consents. Rather, it serves to translate those forms into medical orders that go with the patient and help to ensure that health care providers in different settings comply with the patient's end-of-life wishes. For more information about the POLST program, go to [www.POLST.org](http://www.POLST.org).

## Other Legal & Ethical Issues

patient's treatment decision until the patient is transferred to another provider's care. It is considered unprofessional conduct to refuse to arrange alternate care for a patient.

### **Ongoing Education**

Health care agencies are required to provide ongoing education to patients, staff, and the general public about Advance Directives for Health Care and DNR Consent forms. Agencies are also required to provide ongoing education to staff regarding organizational policies and procedures.

### **Reporting Suspected Abuse, Neglect, or Exploitation**

If a physician or other health care professional suspects abuse, neglect, or exploitation of a vulnerable person, she must make a report to the Department of Human Services or local law enforcement. Knowingly and willingly failing to make such a report is a misdemeanor.

Anyone who makes a report in good faith is protected from liability. Employers are not permitted to retaliate against employees for reporting suspected abuse.

More information about the the signs of caregiver abuse, neglect, and exploitation can be found on the Resource Center section of the Senior Law Resource Center's website, [www.OklahomaSeniorLaw.org](http://www.OklahomaSeniorLaw.org).

### **Ethical Issues**

Below is a brief discussion of some of the common ethical issues that arise when caring

### **Reporting Abuse, Neglect, or Exploitation**

If danger appears to be immediate, call 911.

Notify Adult Protective Services at (800) 522-3511.

If the suspected abuse is taking place in a nursing home or other long-term care facility, contact Oklahoma's Long-Term Care Ombudsman at (405) 521-6734.

Notify the local police, sheriff, or district attorney's office.

for patients with diminished capacity, particularly at the end of life. Questions regarding the ethical implications of treatment choices should be referred to the ethics committee of the health care facility.

### **Informed and Freely Given Consent**

Patients have the right to exercise informed consent when making medical decisions. To exercise informed consent, patients must have sufficient information about their medical condition, treatment options, and likely side effects and outcomes.

If a patient lacks the capacity to understand the information about her condition and treatment options, she cannot exercise informed consent. Likewise, if someone who has power or influence over the patient is exerting pressure, the patient's decision may not be based on true consent.

# Other Legal & Ethical Issues

## ***Withholding Treatment vs. Withdrawing Treatment***

Never starting treatment may seem less problematic than withdrawing treatment that has already been started. However, there is no legal or ethical difference between withholding and withdrawing treatment.

## ***Withholding or Withdrawing ANH***

Of all the life-sustaining treatments, withholding or withdrawing artificially administered nutrition and hydration (ANH) is perhaps the most troubling to health care providers and the general public. We associate ANH with the basic human acts of eating and drinking. However, it is important to distinguish ANH from food and water. Delivering nourishment and hydration through a tube inserted into the stomach is fundamentally different from assisting a patient to take in food and liquids by mouth.

ANH is a medical intervention that can cause complications, including infection, bloating, loss of mobility, and discomfort. Rejection of hydration and nutrition is a normal part of the dying process as the body's functions shut down. For patients at the end of life who are not longer able to take in food or water, death is caused by the underlying medical condition, not by the removal of ANH.

## ***Refusal of Treatment vs. Suicide***

Refusing treatment may hasten death, but it is not the same as committing suicide. When a patient refuses treatment, the cause of death is the underlying illness or injury. Refusing treatment is a legally protected right. Suicide

involves an act that directly causes death. There is no legal right to commit suicide.

Honoring a patient's wish to forego treatment is not assisted suicide. When a health care provider withholds or withdraws life-sustaining treatment, the cause of death is the underlying terminal condition. It is not illegal or unethical to withhold or withdraw unwanted life-sustaining treatment. However, it is illegal in Oklahoma and in most other states to administer a lethal dose of medication or otherwise act in a way that directly causes the death of a patient.

### **Double Effect**

Patients at the end of life who experience chronic and severe discomfort may be given high doses of pain medication. Some of these medications may have the side effect of suppressing breathing to the point of hastening death. This is referred to as "double effect."

As long as the purpose of the medication is to treat pain and alleviate symptoms, such treatment is both legal and ethical. However, morphine or other pain treatment cannot be administered in high doses with the intent of causing death.



# Appendix A: Glossary of Key Terms

**Advance Directive for Health Care:** A document that enables a person to state what kind of life-sustaining treatment he or she would wish to receive or forego if the person is no longer able to make decisions in the future. It also allows a person to appoint decisionmakers, called health care proxies.

**Artificially Administered Nutrition and Hydration (ANH):** A method of delivering liquids and nutrients through a tube inserted through the nose and throat or surgically placed into the stomach for patients who cannot eat or drink by mouth.

**Attending Physician:** A licensed physician with primary responsibility for treatment of a patient. A patient may have more than one attending physician who share responsibility.

**Cardiopulmonary Resuscitation (CPR):** Emergency measures used to restore heart or breathing function.

**Do-Not-Resuscitate (DNR) Consent Form:** A form completed by a patient, representative, or physician to document a patient's wishes that, should the patient's heart or breathing stop, no medical procedures are to be used to restore heart function or breathing.

**Do-Not-Resuscitate (DNR) Order:** A physician's order not to perform CPR on a patient.

**Durable Power of Attorney:** A document used to delegate legal authority to another person, called an attorney-in-fact.

**Guardian:** A person appointed by a court and given power to make some or all decisions on behalf of an incapacitated person.

**Health Care Provider:** Any physician, dentist, nurse, paramedic, psychologist, or other professional providing medical, dental, nursing, psychological, hospice, or other health care services.

**Incapacity:** The inability, because of physical or mental impairment, to understand the nature and likely consequences of a decision, to make an informed choice, and/or to communicate that choice.

**Living Will:** See Advance Directive for Health Care.

**Persistent Vegetative State:** A deep and permanent unconsciousness. Patients may have eyes open, but they have very little brain activity and are capable only of involuntary and reflex movements.

**Persistent Unconsciousness:** See Persistent Vegetative State.

**Terminal Condition:** An incurable condition from which a person is expected to die within six months, even if treatment is administered.

## Appendix B: Information Resources

### **AARP**

(866) 295-7277

Oklahoma Chapter (405) 632-1945

[www.aarp.org/endoflife](http://www.aarp.org/endoflife)

### **Adult Protective Services**

(800) 522-3511

### **Aging with Dignity**

(888) 5WISHES (594-7437)

[www.agingwithdignity.org](http://www.agingwithdignity.org)

### **Alzheimer's Association**

(800) 272-3900

[www.alz.org](http://www.alz.org)

Oklahoma Chapter [www.alz.org/alzokar](http://www.alz.org/alzokar)

### **Alzheimer's Resource Room**

[www.aoa.gov/alz/index.asp](http://www.aoa.gov/alz/index.asp)

### **American Bar Association Commission on Law and Aging**

(202) 662-8690

[www.abanet.org/aging](http://www.abanet.org/aging)

### **American Bar Association Health Law Section**

[www.abanet.org/health](http://www.abanet.org/health)

### **American Health Lawyers Association**

(202) 833-1100

[www.healthlawyers.org](http://www.healthlawyers.org)

### **American Medical Association**

(800) 621-8335

[www.ama-assn.org](http://www.ama-assn.org)

### **American Nurses Association**

1-800-274-4ANA

[www.nursingworld.org](http://www.nursingworld.org)

### **Americans for Better Care of the Dying**

703-647-8505

[www.abcd-caring.org](http://www.abcd-caring.org)

### **Bazon Center for Mental Health Law**

202-467-5730

[www.bazon.org](http://www.bazon.org)

### **CAAVA: Court-Appointed Advocates for Vulnerable Adults**

(405) 522-3077

### **Center for Practical Bioethics**

(800) 344-3829

[www.practicalbioethics.org](http://www.practicalbioethics.org)

### **Centers for Medicare and Medicaid Services**

[www.cms.hhs.gov](http://www.cms.hhs.gov)

### **Department of Health and Human Services**

[www.hhs.gov](http://www.hhs.gov)

### **Joint Commission on Accreditation of Health Care Organizations**

[www.jointcommission.org](http://www.jointcommission.org)

### **Last Acts**

(877) 843-7953

[www.lastacts.org](http://www.lastacts.org)

### **Legal Aid Senior Law Project**

(405) 557-0014

[www.legalaidok.org/](http://www.legalaidok.org/)

### **Long-Term Care Ombudsman**

(405) 521-6734

### **National Gerontological Nursing Association**

[www.ngna.org](http://www.ngna.org)

### **National Hospice and Palliative Care Organization**

[www.nhpco.org](http://www.nhpco.org)

## Appendix B: Information Resources

### **Oklahoma Alliance for Better Care of the Dying**

[www.okabcd.org](http://www.okabcd.org)

### **Oklahoma Attorney General's Office**

(405) 521-3921 or (918) 581-2885

[www.oag.state.ok.us](http://www.oag.state.ok.us)

### **Oklahoma Bar Association**

(405) 416-7000 or (800) 522-8065

[www.okbar.org](http://www.okbar.org)

### **Oklahoma Department of Human Services, Aging Services Division**

(800) 211-2116

[www.okdhs.org](http://www.okdhs.org)

(Advance Directive forms can be ordered from DHS by calling (877) 283-4113 or by fax at (405) 524-9633)

### **Oklahoma Developmental Disabilities Council**

(405) 521-4984 or (800) 836-4470

[www.okddc.ok.gov](http://www.okddc.ok.gov)

### **Oklahoma Disability Law Center**

(405) 525-7755 or (800) 880-7755

[www.oklahomadisabilitylaw.org](http://www.oklahomadisabilitylaw.org)

### **Oklahoma Health Care Authority**

(405) 522-7300

[www.ohca.state.ok.us](http://www.ohca.state.ok.us)

### **Oklahoma Hospice and Palliative Care Association**

(405) 606-4442, (866) 459-4152, or

(800) 356-0622

[www.okhospice.org](http://www.okhospice.org)

### **Oklahoma Geriatric Education Center**

(405) 271-8199

[www.ouhsc.edu/OkGEC](http://www.ouhsc.edu/OkGEC)

### **Oklahoma Mental Health and Aging Coalition**

[www.omhac.org](http://www.omhac.org)

### **Oklahoma Palliative Care Resource Center**

(405) 271-1491, ext. 49194

<http://okpalliative.nursing.ouhsc.edu>

### **Oklahoma Supreme Court Network**

[www.oscn.net](http://www.oscn.net)

### **Partnership for Caring**

(800) 658-8898

[www.partnershipforcaring.org](http://www.partnershipforcaring.org)

### **POLST: Physician Orders for Life-Sustaining Treatment Paradigm**

[www.POLST.org](http://www.POLST.org)

### **Promoting Excellence in End-of-Life Care**

[www.promotingexcellence.org](http://www.promotingexcellence.org)

### **Senior Law Resource Center**

(405) 528-0858

[www.OklahomaSeniorLaw.org](http://www.OklahomaSeniorLaw.org)

### **Sooner Palliative Care Institute**

(405) 271-1491, ext. 49160

[www.nursing.ouhsc.edu/SPCI](http://www.nursing.ouhsc.edu/SPCI)

### **Supportive Care Coalition**

[www.supportivecarecoalition.org](http://www.supportivecarecoalition.org)

### **TIME: Toolkit of Instruments to Measure End-of-Life Care**

[www.chcr.brown.edu/pcoc/toolkit.htm](http://www.chcr.brown.edu/pcoc/toolkit.htm)

# Appendix C: Relevant Law

## **Oklahoma Statutes**

All of these statutes can be viewed at [www.oscn.net](http://www.oscn.net).

### **Hydration and Nutrition for Incompetent Patients Act (63 O.S. §§ 3080.1 – 3080.5)**

This act creates a presumption that all incompetent patients consent to artificially administered nutrition and hydration (ANH). It also lays out the circumstances when this presumption can be overcome.

### **Oklahoma Advance Directive Act (63 O.S. §§ 3101.1 – 3102A)**

This act codifies the constitutional right to decline medical treatment. It provides the Advance Directive for Health Care form which can be used by patients to state what types of medical treatment they would want at the end of life and to appoint representatives, called health care proxies, to make medical decisions in the event the patients ever lack capacity.

### **Oklahoma Do-Not-Resuscitate Act (63 O.S. §§ 3131.1 – 3131.14)**

This act creates a presumption that all patients consent to cardiopulmonary resuscitation (CPR) if their heart or breathing stops. It also describes the circumstances in which this presumption can be overcome. The statute includes the DNR Consent Form used by patients, their representatives, or their physicians to choose not to consent to CPR.

### **Uniform Durable Power of Attorney Act (58 O.S. §§ 1071 – 1077)**

This act permits a competent adult to appoint a representative (called an attorney-in-fact) to make financial and/or medical decisions on his or her behalf. It sets out the requirements

for appointing an attorney-in-fact and puts some limits on the types of medical decisions the attorney-in-fact can make.

### **Oklahoma Guardianship and Conservatorship Act (30 O.S. §§ 1-101 – 4-904)**

This act outlines the procedure by which a guardian may be appointed by a court to make decisions, including medical decisions, on behalf of an incompetent person. It also places certain limits on guardians' powers to make medical decisions.

### **Advance Directive for Mental Health Treatment Act (43A O.S. §§ 11-101 – 11-113)**

This act recognizes individuals' right to control their own mental health treatment. It provides the Advance Directive for Mental Health Treatment form which can be used to state in advance what kinds of mental health treatment a person consents to if he or she is ever unable to make decisions. It also allows for the appointment of attorneys-in-fact to make mental health treatment choices.

### **Protective Services for Vulnerable Adults Act (43A O.S. §§ 10-101 – 10-111)**

This act defines abuse, neglect, and exploitation of vulnerable adults and requires health care professionals and others to report suspected abuse, neglect, or exploitation. It also describes the procedure for investigating allegations.

### **Abuse, Neglect, or Financial Exploitation by Caretaker (21 O.S. §§ 843.1 – 844)**

This act makes it a felony to abuse, neglect, or exploit a vulnerable adult. It makes verbal abuse of a vulnerable adult a misdemeanor.

# Appendix C: Relevant Law

## **Federal Statutes & Regulations**

### **Health Insurance Portability and Accountability Act (HIPAA)**

This federal act and accompanying regulations creates national standards for giving patients' control over their personal health information. Among other things, the act and regulations put limits on who can access private medical records. An excellent source for guidance on HIPAA laws and regulations is the U.S. Department of Health and Human Services website [www.hhs.gov/hipaafaq](http://www.hhs.gov/hipaafaq).

### **Patient Self-Determination Act (PSDA)**

The federal law commonly referred to as the Patient Self-Determination Act requires most health care providers, including hospitals, nursing homes, hospices, HMOs, and home health agencies, to provide patients with information about advance directives. Generally this is done at admission by providing a written handout about patients' rights to make health care decisions and by giving patients the opportunity to make advance directives part of their medical records. The law also prohibits health care providers from discriminating against patients for having or not having advance directives.

Unfortunately, the relevant federal provisions are embedded in complex laws and regulations spanning hundreds of pages. For guidance on federal requirements, the following websites are recommended:

- Department of Health and Human Services [www.hhs.gov](http://www.hhs.gov)
- Centers for Medicare and Medicaid Services [www.cms.hhs.gov](http://www.cms.hhs.gov)

- The Joint Commission on Accreditation of Health Care Organizations [www.jointcommission.org](http://www.jointcommission.org)

## **Attorney General Opinions**

Attorney General Opinions can be accessed at [www.oscn.net](http://www.oscn.net).

### **Oklahoma Attorney General Opinion 2006 OK AG 7**

This opinion addresses the effectiveness of the *Five Wishes*<sup>®</sup> advance directive form under Oklahoma law. The opinion states that the *Five Wishes*<sup>®</sup> form is sufficient to give an attending physician knowledge that the patient authorized the withholding or withdrawal of ANH. It also determined that Oklahoma's former law was unconstitutional and led to a revision of the Advance Directive statute, expanding the circumstances under which patients could refuse ANH.

### **Oklahoma Attorney General Opinion 2006 OK AG 32**

In 2006, the Oklahoma Legislature amended the advance directive statute. This opinion held that advance directives executed prior to May 2006 were still valid and enforceable.

### **Oklahoma Attorney General Opinion 2006 OK AG 34**

This opinion deals with the issue of whether a durable power of attorney can be used to appoint someone to make life-sustaining treatment decisions. The opinion states that to do so, the durable power of attorney must comply with the requirements of an advance directive form and specifically authorize the attorney-in-fact to withhold or withdraw ANH.

# Appendix C: Relevant Law

## **Case Law**

### ***Cruzan v. Director, Mo. Dep't of Health*, 497 U.S. 261 (1990)**

Nancy Beth Cruzan was a young woman who, after a severe car accident, was in a persistent vegetative state. The state court refused her parents' request that the feeding tube be removed. The U.S. Supreme Court held that Cruzan had a constitutional right to refuse unwanted treatment, including life-sustaining treatment, but that states can require such wishes be proven by clear and convincing evidence.

### ***Washington v. Glucksberg*, 521 U.S. 702 (1997); *Vacco v. Quill*, 521 U.S. 793 (1997)**

In both of these cases, the U.S. Supreme Court made a distinction between refusing medical treatment and physician-assisted suicide. The constitutional right to refuse treatment is based on the right to maintain bodily integrity. However, the constitution does not guarantee the right to commit suicide or hasten death.

# OKLAHOMA ADVANCE DIRECTIVE FOR HEALTH CARE

If I am incapable of making an informed decision regarding my health care, I direct my health care providers to follow my instructions below.

## I. Living Will

If my attending physician and another physician determine that I am no longer able to make decisions regarding my health care treatment, I direct my attending physician and other health care providers, pursuant to the Oklahoma Advance Directive Act, to follow my instructions as set forth below:

(1) If I have a terminal condition, that is, an incurable and irreversible condition that even with the administration of life-sustaining treatment will, in the opinion of the attending physician and another physician, result in death within six (6) months:

(Initial only one option)

\_\_\_\_\_ I direct that my life not be extended by life-sustaining treatment, except that if I am unable to take food and water by mouth, I wish to receive artificially administered nutrition and hydration.

\_\_\_\_\_ I direct that my life not be extended by life-sustaining treatment, including artificially administered nutrition and hydration.

\_\_\_\_\_ I direct that I be given life-sustaining treatment and, if I am unable to take food and water by mouth, I wish to receive artificially administered nutrition and hydration.

(Initial only if applicable)

\_\_\_\_\_ See my more specific instructions in paragraph (4) below.

(2) If I am persistently unconscious, that is, I have an irreversible condition, as determined by the attending physician and another physician, in which thought and awareness of self and environment are absent:

(Initial only one option)

\_\_\_\_\_ I direct that my life not be extended by life-sustaining treatment, except that if I am unable to take food and water by mouth, I wish to receive artificially administered nutrition and hydration.

\_\_\_\_\_ I direct that my life not be extended by life-sustaining treatment, including artificially administered nutrition and hydration.

\_\_\_\_\_ I direct that I be given life-sustaining treatment and, if I am unable to take food and water by mouth, I wish to receive artificially administered nutrition and hydration.

(Initial only if applicable)

\_\_\_\_\_ See my more specific instructions in paragraph (4) below.

(3) If I have an end-stage condition, that is, a condition caused by injury, disease, or illness, which results in severe and permanent deterioration indicated by incompetency and complete physical dependency for which treatment of the irreversible condition would be medically ineffective:

(Initial only one option)

\_\_\_\_\_ I direct that my life not be extended by life-sustaining treatment, except that if I am unable to take food and water by mouth, I wish to receive artificially administered nutrition and hydration.

\_\_\_\_\_ I direct that my life not be extended by life-sustaining treatment, including artificially administered nutrition and hydration.

\_\_\_\_\_ I direct that I be given life-sustaining treatment and, if I am unable to take food and water by mouth, I wish to receive artificially administered nutrition and hydration.

(Initial only if applicable)

\_\_\_\_\_ See my more specific instructions in paragraph (4) below.

(4) OTHER. Here you may:

(a) describe other conditions in which you would want life-sustaining treatment or artificially administered nutrition and hydration provided, withheld, or withdrawn,

(b) give more specific instructions about your wishes concerning life-sustaining treatment or artificially administered nutrition and hydration if you have a terminal condition, are persistently unconscious, or have an end-stage condition, or

(c) do both of these:

---

---

---

---

---

---

---

---

---

---

\_\_\_\_\_ Initial



## II. My Appointment of My Health Care Proxy

If my attending physician and another physician determine that I am no longer able to make decisions regarding my medical treatment, I direct my attending physician and other health care providers pursuant to the Oklahoma Advance Directive Act to follow the instructions of \_\_\_\_\_, whom I appoint as my health care proxy. If my health care proxy is unable or unwilling to serve, I appoint \_\_\_\_\_ as my alternate health care proxy with the same authority. My health care proxy is authorized to make whatever health care treatment decisions I could make if I were able, except that decisions regarding life-sustaining treatment and artificially administered nutrition and hydration can be made by my health care proxy or alternate health care proxy only as I have indicated in the foregoing sections.

If I fail to designate a health care proxy in this section, I am deliberately declining to designate a health care proxy.

## III. Anatomical Gifts

Pursuant to the provisions of the Uniform Anatomical Gift Act, I direct that at the time of my death my entire body or designated body organs or body parts be donated for purposes of:

(Initial all that apply)

\_\_\_\_\_ transplantation therapy

\_\_\_\_\_ advancement of medical science, research, or education

\_\_\_\_\_ advancement of dental science, research, or education

Death means either irreversible cessation of circulatory and respiratory functions or irreversible cessation of all functions of the entire brain, including the brain stem. If I initial the "yes" line below, I specifically donate:

\_\_\_\_\_ My entire body

or

\_\_\_\_\_ The following body organs or parts:

\_\_\_\_\_ lungs

\_\_\_\_\_ liver

\_\_\_\_\_ pancreas

\_\_\_\_\_ heart

\_\_\_\_\_ kidneys

\_\_\_\_\_ brain

\_\_\_\_\_ skin

\_\_\_\_\_ bones/marrow

\_\_\_\_\_ blood/fluids

\_\_\_\_\_ tissue

\_\_\_\_\_ arteries

\_\_\_\_\_ eyes/cornea/lens

**IV. General Provisions**

- a. I understand that I must be eighteen (18) years of age or older to execute this form.
- b. I understand that my witnesses must be eighteen (18) years of age or older and shall not be related to me and shall not inherit from me.
- c. I understand that if I have been diagnosed as pregnant and that diagnosis is known to my attending physician, I will be provided with life-sustaining treatment and artificially administered hydration and nutrition unless I have, in my own words, specifically authorized that during a course of pregnancy, life-sustaining treatment and/or artificially administered hydration and/or nutrition shall be withheld or withdrawn.
- d. In the absence of my ability to give directions regarding the use of life-sustaining procedures, it is my intention that this advance directive shall be honored by my family and physicians as the final expression of my legal right to choose or refuse medical or surgical treatment including, but not limited to, the administration of life-sustaining procedures, and I accept the consequences of such choice or refusal.
- e. This advance directive shall be in effect until it is revoked.
- f. I understand that I may revoke this advance directive at any time.
- g. I understand and agree that if I have any prior directives, and if I sign this advance directive, my prior directives are revoked.
- h. I understand the full importance of this advance directive and I am emotionally and mentally competent to make this advance directive.
- i. I understand that my physician(s) shall make all decisions based upon his or her best judgment applying with ordinary care and diligence the knowledge and skill that is possessed and used by members of the physician’s profession in good standing engaged in the same field of practice at that time, measured by national standards.

Signed this \_\_\_ day of \_\_\_\_\_, 20 \_\_\_.

\_\_\_\_\_  
Signature

\_\_\_\_\_  
City of

\_\_\_\_\_  
County, Oklahoma

\_\_\_\_\_  
Date of birth (Optional for identification purposes)

This advance directive was signed in my presence.

\_\_\_\_\_  
Signature of Witness

\_\_\_\_\_  
Signature of Witness

\_\_\_\_\_, OK  
Residence

\_\_\_\_\_, OK  
Residence

# OKLAHOMA DO-NOT-RESUSCITATE (DNR) CONSENT FORM

I, \_\_\_\_\_, request limited health care as described in this document. If my heart stops beating or if I stop breathing, no medical procedure to restore breathing or heart function will be instituted by any health care provider including, but not limited to, emergency medical services (EMS) personnel.

I understand that this decision will not prevent me from receiving other health care such as the Heimlich maneuver or oxygen and other comfort care measures.

I understand that I may revoke this consent at any time in one of the following ways:

1. If I am under the care of a health care agency, by making an oral, written, or other act of communication to a physician or other health care provider of a health care agency;
2. If I am not under the care of a health care agency, by destroying my do-not-resuscitate form, removing all do-not-resuscitate identification from my person, and notifying my attending physician of the revocation;
3. If I am incapacitated and under the care of a health care agency, my representative may revoke the do-not-resuscitate consent by written notification of a physician or other health care provider of the health care agency or by oral notification of my attending physician; or
4. If I am incapacitated and not under the care of a health care agency, my representative may revoke the do-not-resuscitate consent by destroying the do-not-resuscitate form, removing all do-not-resuscitate identification from my person, and notifying my attending physician of the revocation.

I give permission for this information to be given to EMS personnel, doctors, nurses, and other health care providers. I hereby state that I am making an informed decision and agree to a do-not-resuscitate order.

\_\_\_\_\_  
Signature of Person

or

\_\_\_\_\_  
Signature of Representative

(Limited to an attorney-in-fact for health care decisions acting under the Durable Power of Attorney Act, a health care proxy acting under the Oklahoma Rights of the Terminally Ill or Persistently Unconscious Act or a guardian of the person appointed under the Oklahoma Guardianship and Conservatorship Act.)

\_\_\_\_\_  
Date

This DNR consent form was signed in my presence.

\_\_\_\_\_  
Signature of Witness

\_\_\_\_\_  
Address

\_\_\_\_\_  
Signature of Witness

\_\_\_\_\_  
Address

## CERTIFICATION OF PHYSICIAN

This form is to be used by an attending physician only to certify that an incapacitated person without a representative would not have consented to the administration of cardiopulmonary resuscitation in the event of cardiac or respiratory arrest. An attending physician of an incapacitated person without a representative must know by clear and convincing evidence that the incapacitated person, when competent, decided on the basis of information sufficient to constitute informed consent that such person would not have consented to the administration of cardiopulmonary resuscitation in the event of cardiac or respiratory arrest. Clear and convincing evidence for this purpose shall include oral, written, or other acts of communication between the patient, when competent, and family members, health care providers, or others close to the patient with knowledge of the patient's desires.

I hereby certify, based on clear and convincing evidence presented to me, that I believe

---

*Name of Incapacitated Patient*

would not have consented to the administration of cardiopulmonary resuscitation in the event of cardiac or respiratory arrest. Therefore, in the event of cardiac or respiratory arrest, no chest compressions, artificial ventilation, intubation, defibrillation, or emergency cardiac medications are to be initiated.

---

*Physician's Signature*

---

*Physician's Name (PRINT)*

---

*Physician's Address/Phone*

---

*Date*



Funding for the publication of this guide was provided by the Hospice Foundation of Oklahoma Affiliated Fund of the Oklahoma City Community Foundation.

Other Publications Available from the Senior Law Resource Center

Your Right To Decide: Oklahoma's Advance Directive & Other Health Care Planning Tools

Oklahoma Grandparents' Legal Guide

Publications may be downloaded from **[www.OklahomaSeniorLaw.org](http://www.OklahomaSeniorLaw.org)** or ordered from:

Senior Law Resource Center  
P.O. Box 1408  
Oklahoma City, OK 73106  
(405) 528-0858  
FAX (405) 601-2134  
[info@OklahomaSeniorLaw.org](mailto:info@OklahomaSeniorLaw.org)

The Senior Law Resource Center offers information about a variety of legal issues on our website:  
**[www.OklahomaSeniorLaw.org](http://www.OklahomaSeniorLaw.org)**.



SENIOR LAW  
RESOURCE CENTER  
[WWW.OKLAHOMASENIORLAW.ORG](http://WWW.OKLAHOMASENIORLAW.ORG)