

# Instructions for Durable Power of Attorney for Health Care

## Identification of Terms

**Agent:** The person or persons you choose to make decisions for you whenever you cannot do so for yourself; this should be someone you trust to make important decisions for you, someone who is willing to do so, someone who can be easily reached in an emergency, and someone who knows or can learn about your specific health-care needs and wishes.

**Best interests:** If at all possible, your agent must do whatever he or she knows you would do or would want to do if you could make your own choices. However, if your agent doesn't know what you would choose, he or she must make the decision that seems the best for you given the circumstances.

**Capacity:** The ability to listen to information about your options, make a choice, and communicate your choice. People take in information and communicate their choices in different ways. Just because you may need assistance or communicate differently (such as with an interpreter or with a communication device or with pictures) does not mean you do not have capacity. Information should be given to you in a way you can understand it and you should get whatever help you need to make and communicate your choices. Our law says that you have capacity until either a judge or two doctors decide you do not and put their decision in writing. That means that you can legally make your decisions about health care and about your Power of Attorney so long as you have not been found to lack capacity by a judge or two doctors.

**Consent:** Making a decision about medical care. You can either give consent which means saying "yes" to treatment or you can refuse consent which means saying "no" to treatment. You might also hear the phrase "informed consent"—this really means the same thing...saying "yes" or "no" to treatment based on information your doctor gives you about it.

**Durable Power of Attorney:** A "durable" Power of Attorney stays in effect even if you get sick or hurt and don't have capacity to make your own choices anymore. When that happens, your agent starts making decisions for you until you get better and you are able to make your own decisions again.

**Health care:** care for all of your body, including your physical health and your mental health.

**Health-care study:** sometimes called "experimental treatment", this is treatment that may or may not help you; every medication ever used on human beings has gone through a time of testing to see if it works like the scientists think it does; if you agree to be in a health-care study, you will be told about the possible benefits (good things that might happen) and side-effects (bad things that might happen) before you make your decision about doing it

**HIPAA:** stands for Health Insurance Portability and Accountability Act; this is a long and complex federal law, but here, we simply mean the part of the law that protects your private health-care information from being released to anyone without you saying it's okay.

**Incapable of making an informed decision:** this is another way of saying "incapacity" or "lacking capacity"; it is the opposite of "capacity", so it means not being able to listen to information, make a choice or communicate a choice.

**Incapacity:** the opposite of "capacity", so it means not being able to listen to information, make a choice or communicate a choice.

**Life-prolonging treatment:** medical care that will not make you better but may make you live longer; the types of care that we usually mean when we talk about "life-prolonging treatment" include a

respirator to make your lungs breathe when they cannot breathe on their own and a feeding tube to take in food when you cannot eat food through your mouth; these treatments are used to keep the body alive past the time the body would die if they were not used;

**Principal:** You!; the person making the decisions in the Power of Attorney and signing it.

### **Specific instructions for each number in the sample Power of Attorney**

- 1 This line is for your full legal name. Make sure you put your full name here and make sure it is your legal name and not a nickname. If you have a nickname or a name you prefer rather than your legal name, put your full legal name first and then put your preferred name in parentheses. For example, if your name is John Henry Doe but you prefer to be called Jack, you would fill out this line like this: John Henry Doe (Jack). If you have ever been known by a different name and you think it might be confusing if your family or others use your previous name, include it as an AKA (also known as) or note it as “previously known as”. For example, if your name given at birth was Cassius Marcellus Clay Jr. and you legally changed your name to Muhammad Ali, you would fill out this line like this: Muhammad Ali (previously known as Cassius Marcellus Clay Jr.).
- 2 Fill in your birthday here. Your birthday is often used as a way to identify you. There may be two people named John Henry Doe in the hospital, but they probably don’t have the same name and the same birthday. You can write your birthday in numbers or words. For example, if your birthday is January 1, 2015, you can write it as January 1, 2015 or 1/1/2015.
- 3 Your “agent” is the person you choose to make decisions for you whenever you can’t. The person you choose to be in this number-one slot will be the first person the doctor goes to if a decision needs to be made for you, so in this slot you will put the person you want to have that responsibility. On this line, put the person’s full legal name. Just as in line 1, make sure you put the full legal name and if the person has another name they prefer to be called or a previous name, put that name in parentheses after the legal name.
- 4 Put the person’s address on this line. If you don’t know the address, call the person and ask for it. If they have a post office address, put both the post office address and the physical address on this line. For example, if your agent has a post office address, this line might look like this: 1234 Main Street, Anywhere, Virginia, 12345 (P.O. Box 4321, Anywhere, Virginia, 12345).
- 5 Put all phone numbers for the person on this line and identify the type of number in parentheses after each number. Possible numbers include home, cell, work, pager, work cell, etc. Make sure you include the area code for every number and include an extension if there is one. The line might look like this: 434-555-1234 (home); 540-555-2345 (cell); 804-555-3456 ext. 24 (work).
- 6 You have the option of choosing a substitute or alternate agent in case your number-one choice is not available. Most of the time, we choose one of the most important people in our lives as that number-one choice and we probably spend a lot of time with that person. What would happen if you were both in the car when there was an accident and your number-one person was also hurt? In that situation, it would be very helpful to have a second person in line to help out. That’s what this line is for—to choose that second person. You’ll notice there are spaces for four people on this paper. You may choose any number of people as your agents. If you choose less than four, you can leave the unused ones blank or you can cross them out. If you want more than four, check the box below the number-four person and add the others on another piece of paper you can attach to the Power of Attorney. Fill out the names, addresses and phone numbers following the instructions for lines 3, 4 and 5.

7

You don't have to do anything to this paragraph. It describes the power you are giving your agent and when that power is in effect. Your agent has no power to make decisions for you unless you don't have the capacity to do so for yourself and two doctors agree that you don't and they put their decision in writing. Once you get better and one doctor says you can make your own decisions again, your agent goes back to not having any power to make decisions for you.

8

You don't have to do anything to this paragraph. It states that your agent must do whatever he or she knows you would do or would want to do if you could make your own choices. This means that if your agent knows what choice you would make if you could, then your agent must make that choice for you even if he or she doesn't agree with it. However, if your agent doesn't know what you would choose, he or she must make the decision that seems the best for you given the circumstances.

9

This section outlines the powers your agent can have over your medical care. You can choose to give your agent all of the powers listed or you can cross through those that you do not want your agent to have. However, you need to consider carefully how much you limit your agent's authority because you could take away powers that are essential for the agent to do his or her job. The next section will explain each power and will explain the effects of limiting each power so that you can make an informed decision. The following scale will be used when explaining the effect of limiting powers:

**Extremely important:** If you remove this power, your agent will not be able to do the job and your entire Power of Attorney will be weakened or negated.

**Very important:** If you remove this power, it will be very difficult for your agent to do the job and your Power of Attorney will be weakened.

**Important:** If you remove this power, your agent will not be able to make certain decisions that may affect your treatment, but the power to make other decisions will not be affected.

**Optional:** If you remove this power, your agent will not be able to do a specific thing, but the rest of the powers are not affected.

**A. To provide or refuse consent to any type of medical treatment, medication and procedures**

This is the basic power to say "yes" or "no" to medical treatment.

Effect of limiting power: If you remove this power, your agent will not be able to make any medical decisions for you and would basically negate the entire document.

**This power is extremely important.**

**B. To make decisions about life-prolonging treatment**

This allows your agent to make decisions for you when you are either at the end of your life or in a persistent vegetative state (like a permanent coma). Decisions at this time of life include whether to use life-prolonging treatments and machines such as respirators and feeding tubes to keep your body alive when it can no longer complete these functions on its own. It is important to understand that you may need **temporary** life-sustaining treatment after an illness, injury or surgery in order for your body to heal. That is different from life-prolonging treatment that is expected to be **permanent** with no expected chance of surviving without it. This is a very personal decision and is often based on your values, religious beliefs and life experiences. Many people have not thought about these difficult choices and prefer not to do so. That's okay. Here, you are just deciding whether you want your agent to make those decisions if it's ever necessary. You can also put your wishes in writing in a document called a Living Will so that your agent, doctors and loved ones will know exactly what you want.

Effect of limiting power: If you have a living will, those instructions will be followed. If you have not written down your instructions in a Living Will and do not give your agent the power

to make the decision, your doctor will go to your next-of-kin to make the decision (spouse, adult children, parents, siblings, other blood relatives—in that order). If there is more than one person to make the decision, they may not agree and they might argue over the decision. It is best to make your wishes known and/or appoint someone to make these decisions. If you do not do so, you may get care you don't want or not get the care you do want.

**This power is important.**

**C. To request, receive, and review any information, oral or written, about my health care and to consent to the disclosure of this information. I intend that this grant of authority shall meet the requirements of HIPAA and that my agent shall have full access and authority over my medical information**

This power allows your agent to talk to your doctors, get information on your diagnosis and treatment options and release that information to others in order to get you the care you need.

Effect of limiting power: If your agent does not have this power, he or she will not be able to make informed decisions about your care and treatment. He or she will not be able to get information from your doctors or give information to the people who need it to care for you.

**This power is extremely important.**

**D. To hire and fire my health care providers**

This power allows your agent to get a second opinion from a new doctor, find you a new doctor if you get a different diagnosis and need a different type of doctor, and get rid of a doctor who is no longer meeting your needs or following your wishes.

Effect of limiting power: Without this power, your agent would not be able to get a second opinion for serious health conditions or get you to a different doctor if your current doctor cannot meet your needs.

**This power is very important.**

**E. To make decisions regarding visitation consistent with any wishes known by my agent during any time that I am admitted to any health care facility**

This power allows your agent to limit who may come to see you when you are in the hospital. The hospital may have its own rules (for example, only family members can visit you if you are in the intensive care unit) and your agent cannot over-ride those rules, but if you give your agent this power, he or she may create even stricter limitations. This power may be particularly helpful if there are people in your life who you would not want to visit you. You can also create your own list of people you want to be kept away and include this with your Power of Attorney.

Effect of limiting power: If you remove this power, your agent will have no say over who may visit you and will not be able to limit visitors. The only limitations on visitors will be the rules of the hospital and ward where you are receiving treatment.

**This power is optional.**

**F. To authorize my participation in any health care study approved according to applicable federal or state law that offers the prospect of direct therapeutic benefit to me**

This power allows your agent to consent to your participation in experimental treatment such as new drug trials. Sometimes a doctor suggests an experimental drug or treatment when all other methods have not worked and sometimes a doctor thinks the experimental drug or treatment offers the best hope for a cure. In some trials, only half of the participants get the drug or treatment while the rest get a placebo (a harmless pill or treatment that has no benefit to the person) and you may not know which group you are in. The decision to participate in experimental trials is a personal one and there is no right or wrong answer.

Effect of limiting power: If you remove this power, your agent will not be able to consent to any experimental drug or treatment offered by your doctor.

**This power is generally optional but could be important for certain types of illnesses.**

**G. To authorize my admission to or discharge from any hospital, hospice, nursing home or other medical care facility, not including a mental health facility**

This power allows your agent to get you into the type of medical facility necessary to meet your medical needs and to get you out of those facilities when you no longer need them.

Effect of limiting power: If you remove this power, your agent will not be able to get you into a facility to meet your needs if they cannot be met as an outpatient. You would still be admitted for any emergency care, but your agent would not be able to admit you for other treatment such as non-emergency care, surgery or long-term care. Your agent will also not be allowed to make discharge decisions and your discharge might be delayed.

**This power is very important.**

**H. To communicate with health insurers about my care and treatment in order to arrange authorization and payment for services**

This power allows your agent to talk to and negotiate with your insurance providers so that your care can be paid for. Many insurance providers require authorization before care and treatment is provided, so your agent may need to negotiate with them before you can receive the care you need.

Effect of limiting power: If you remove this power, your agent will not be able to negotiate payment for services and you may not get the care you need.

**This power is very important; if your insurance company requires authorization before you can get necessary medical care, this power is extremely important.**

**I. To take any necessary lawful actions to carry out these decisions, including granting releases of liability to medical providers**

This power allows your agent to sign consent forms for the treatment he or she has chosen for you. The other powers above allow your agent to make decisions; this power allows him or her to sign legal documents required before the care is actually given to you.

Effect of limiting power: If you remove this power, your agent will not be able to sign medical releases which are required before any major treatment (such as surgery) is provided.

**This power is extremely important.**

**J. Additional powers, if any: \_\_\_\_\_**

This space allows you to add any powers that are not listed above.

10

You don't have to do anything with this paragraph. It simply states that the document will remain in effect throughout any times when you do not have capacity to make your own decisions. It also makes clear that you will continue to make your own decisions so long as you are able to do so and your agent only has the authority to make decisions for you when you cannot do so for yourself.

11

You don't have to do anything with this paragraph. It simply states that if you have ever written a Power of Attorney before this one, the old one is no longer valid and everyone should now follow this one.

Signatures

12

You do not have to do anything with this statement. It just says that you have capacity to sign the document.

13

Use this line to sign your document once it is all complete and correct. Sign your full legal name and be sure to include the date on the line included for that purpose. Some people cannot sign their name and use a mark instead. That is fine because the witnesses below will see the person put his or her mark on the page as a signature.

14

Put your name on this line. You should put your name exactly as it appears on line 1.

15

These lines are for your witnesses to sign that they saw you sign the paper. They should sign their legal name and be sure to include the date on the line included for that purpose. The dates of the witnesses' signatures should match the date of your signature because you should sign the paper in front of each other. The witnesses do not have to know you. They are simply witnessing that you are signing the paper voluntarily.

**Note on notary:** Virginia law does not require a Health Care Power of Attorney to be notarized, but it is a good idea if possible. If you get your document notarized, it would appear here under the signatures. If you use a notary, you and your witnesses must sign the document in front of the notary and all of the dates must match. You will probably be required to present identification to the notary because he or she must verify that you are the correct person signing the paper.

## Durable Power of Attorney for Health Care

I, 1, (born on 2), willfully and voluntarily write this health care advance directive to assure that, during periods of incapacity, my choices for health care will be carried out even when I am not able to make informed decisions on my own behalf.

### Appointment of Agent

I appoint the following agents, in order of priority, to make health care decisions for me as authorized in this document:

1. Name: 3

Address: 4

Phone Numbers: 5

2. Name: 6

Address: \_\_\_\_\_

Phone Numbers: \_\_\_\_\_

3. Name: \_\_\_\_\_

Address: \_\_\_\_\_

Phone Numbers: \_\_\_\_\_

4. Name: \_\_\_\_\_

Address: \_\_\_\_\_

Phone Numbers: \_\_\_\_\_

I have additional alternate agents listed on a separate page.

7 I grant to my agent full power and authority to make health care decisions for me as described below whenever I am incapable of making an informed decision. Before my agent has any authority to make decisions for me, there must be a written determination of capacity as required by law. If any physician examines me and decides that I have the ability to make my own decisions, all further health care decisions will require my informed consent.

8 In making health care decisions for me, my agent shall follow my wishes and preferences as stated here or as otherwise known. If my agent cannot determine what health care choice I would make for myself, then and only then, he or she must make the choice based on what he or she believes to be in my best interests.

Agent Powers

- 9 I give my agent the power:
- A. To provide or refuse consent to any type of medical treatment, medication and procedures.
  - B. To make decisions about life-prolonging treatment.
  - C. To request, receive, and review any information, oral or written, about my health care and to consent to the disclosure of this information. I intend that this grant of authority shall meet the requirements of HIPAA and that my agent shall have full access and authority over my medical information.
  - D. To hire and fire my health care providers.
  - E. To make decisions regarding visitation consistent with any wishes known by my agent during any time that I am admitted to any health care facility.
  - F. To authorize my participation in any health care study approved according to applicable federal or state law that offers the prospect of direct therapeutic benefit to me.
  - G. To authorize my admission to or discharge from any hospital, hospice, nursing home or other medical care facility, not including a mental health facility.
  - H. To communicate with health insurers about my care and treatment in order to arrange authorization and payment for services.
  - I. To take any necessary lawful actions to carry out these decisions, including granting releases of liability to medical providers.
  - J. Additional powers, if any: \_\_\_\_\_  
\_\_\_\_\_

10 This is a durable power of attorney and shall not terminate upon my incapacity. This power exists only as to those health care decisions for which I am unable to give informed consent.

11 Prior Designations Revoked: I revoke any prior Healthcare Power of Attorney.

Signatures

12 AFFIRMATION: I am mentally capable of making this advance directive and I understand its purpose and effect.

13 \_\_\_\_\_  
Signature \_\_\_\_\_  
Date

14 I attest that \_\_\_\_\_ voluntarily signed this advance directive in my presence.

15 \_\_\_\_\_  
Witness \_\_\_\_\_  
Date

\_\_\_\_\_  
Witness \_\_\_\_\_  
Date

# VIRGINIA ADVANCE HEALTH CARE DIRECTIVE

I, \_\_\_\_\_, (born on \_\_\_\_\_) , willfully and voluntarily write this health care advance directive to assure that, during periods of incapacity, my choices for health care will be carried out even when I am not able to make informed decisions on my own behalf.

## Appointment of Agent

I appoint the following agents, in order of priority, to make health care decisions for me as authorized in this document:

1. Name: \_\_\_\_\_

Address: \_\_\_\_\_

Phone Numbers: \_\_\_\_\_

2. Name: \_\_\_\_\_

Address: \_\_\_\_\_

Phone Numbers: \_\_\_\_\_

3. Name: \_\_\_\_\_

Address: \_\_\_\_\_

Phone Numbers: \_\_\_\_\_

4. Name: \_\_\_\_\_

Address: \_\_\_\_\_

Phone Numbers: \_\_\_\_\_

I grant to my agent full power and authority to make health care decisions for me as described below whenever I am incapable of making an informed decision. Before my agent has any authority to make decisions for me, there must be a written determination of capacity as required by law. If any physician examines me and decides that I have the ability to make my own decisions, all further health care decisions will require my informed consent.

In making health care decisions for me, my agent shall follow my wishes and preferences as stated here or as otherwise known. If my agent cannot determine what health care choice I would make for myself, then and only then, he or she must make the choice based on what he or she believes to be in my best interests.

## Agent Powers

I give my agent the power:

- A. To provide or refuse consent to any type of medical treatment, medication and procedures.
- B. To make decisions about life-prolonging treatment.
- C. To request, receive, and review any information, oral or written, about my health care and to consent to the disclosure of this information. I intend that this grant of authority shall meet the requirements of HIPAA and that my agent shall have full access and authority over my medical information.
- D. To hire and fire my health care providers.
- E. To make decisions regarding visitation consistent with any wishes known by my agent during any time that I am admitted to any health care facility.

- F. To authorize my participation in any health care study approved according to applicable federal or state law that offers the prospect of direct therapeutic benefit to me;
- G. To authorize my admission to or discharge from any hospital, hospice, nursing home or other medical care facility, not including a mental health facility.
- H. To communicate with health insurers about my care and treatment in order to arrange authorization and payment for services.
- I. To take any necessary lawful actions to carry out these decisions, including granting releases of liability to medical providers.
- J. Additional powers, if any: \_\_\_\_\_  
\_\_\_\_\_

This is a durable power of attorney and shall not terminate upon my incapacity. This power exists only as to those health care decisions for which I am unable to give informed consent.

Prior Designations Revoked: I revoke any prior Healthcare Power of Attorney.

Signatures

AFFIRMATION: I am mentally capable of making this advance directive and I understand its purpose and effect.

Signature	Date

I attest that \_\_\_\_\_ voluntarily signed this advance directive in my presence.

Witness	Date

Witness	Date