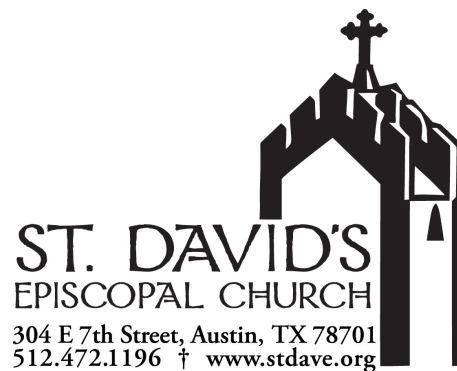


# PLANNING FOR A GRACEFUL EXIT



A FINAL GIFT TO THOSE WE LOVE



## INTRODUCTION

Dear Friends in Christ,

One of the privileges of ministry is to be present with people in time of need. As a priest I am aware that there is no greater time of need than that which occurs at the death of a loved one. While, as people of faith, we know that Christ's Easter victory has overcome death, we are still aware of the challenges, difficulties and loss of such times.

This book has been created as a gift that we may leave for those who remain at the time of death. It can be a help when we must make funeral plans of those we love, but it will be of most assistance when we take the opportunity to plan ourselves, making our desires known, as a final gift for those we love.

I invite each member of the Church to make the investment of time to review this book and with a loved one and/or member of the clergy to use it as a resource that will become a gift to those who remain when we die.

Faithfully,

A handwritten signature in black ink that reads "David Boyd". The signature is written in a cursive, flowing style.

The Reverend David A. Boyd  
Rector

TABLE OF CONTENTS

Instructions for the Time of Death .....	4
Planning Form For Funeral Service.....	8
Legal Considerations .....	18
Form for Medical Power of Attorney for Health Care .....	19
Form for Medical Directive (Living Will) .....	24
Commentary on Use of These Forms .....	27
Form for Durable Statutory Power of Attorney .....	33
Commentary on Texas Law Regarding Wills and Durable Statutory Power of Attorney .....	37
Opportunities for Bequests .....	44
Letter of Instructions to Survivors .....	45

## INSTRUCTIONS FOR THE TIME OF DEATH

### PLANNING YOUR FUNERAL

The liturgy for the dead is an Easter liturgy. It finds all meaning in the resurrection. Because Jesus was raised from the dead, we too, shall be raised. The liturgy, therefore, is characterized by joy, in the certainty that neither death, nor life, nor angels, nor principalities, nor things present, nor things to come, nor powers, nor height, nor depth, nor anything else in all creation, will be able to separate us from the love of God in Christ Jesus our Lord.

*This joy, however, does not make human grief unchristian. The very love we have for each other in Christ brings deep sorrow when we are parted by death. Jesus himself wept at the grave of his friend. So, while we rejoice that one we love has entered into the nearer presence of our Lord we sorrow in sympathy with those who mourn.*

*Book of Common Prayer, pg. 507*

### Cremation and St. David's Columbarium

With the completion and dedication of St. David's Columbarium in the Spring of 2005 we especially invite our members to consider cremation and interment in our Columbarium as they make their plans.

The practice of cremation is an ancient one and has gained renewed attention in recent decades. One reason for this renewed attention is the opportunity to be buried at one's place of worship during life, the Church. Another is the ecological consideration of using less space for the interment of those who have died thereby making us better stewards of the earth at a time when land use is a growing concern. There is also the practical consideration that cremation and internment in a Columbarium costs a fraction of burial with a casket in a cemetery. While there was a time when some Churches discouraged cremation, most Christian traditions, including our own, now encourage cremation for these reasons and others.

St. David's Columbarium is available to any member of the parish. Costs for interment range from \$1,000 to \$1,300. For information about St. David's Columbarium, please contact St. David's Parish Administrator at 512-472-1196.

LETTER OF INSTRUCTIONS

FUNERAL

I ( ) have ( ) have not pre-arranged for my funeral at the following funeral home, where I'd prefer my remains to be handled:

Contact person: \_\_\_\_\_ Phone number: \_\_\_\_\_

Disposition of Physical Remains

\_\_\_\_ I want my physical remains to be buried (if cremation is preferred, see next page).

- A cemetery plot has (not) been purchased: \_\_\_\_ Yes \_\_\_\_ No
  - If yes,
    - The deed for the plot can be found: \_\_\_\_\_
    - The contact person for the cemetery is: \_\_\_\_\_,
    - Telephone # \_\_\_\_\_
    - I purchased the plot from: \_\_\_\_\_ on \_\_\_\_\_ (date).
  - If no,
    - Please purchase a plot for me in \_\_\_\_\_ Cemetery in \_\_\_\_\_ (city, state).
    - Or, Please contact the military survivor assistance officer to arrange for a plot for me in \_\_\_\_\_ Cemetery, located at \_\_\_\_\_.

- I want a \_\_\_\_\_ (metal/wood/name of style, if known) casket.  
*Note: caskets can be purchased at a significant savings by buying from a distributor rather than buying from the funeral home.*

- I want to be buried in \_\_\_\_\_. (clothing)

- I want the following items buried with my remains:  
\_\_\_\_\_

- I want a headstone, describe (or provide photo of type):  
\_\_\_\_\_

*(Note: Service members and honorably discharged veterans can receive a Veterans Administration headstone free of charge).*

I would like the following to serve as pallbearers if they are able (list up to eight, along with contact information):

---

---

---

---

---

---

---

---

---

---

I want my physical remains to be cremated

Before any service

After a memorial service

Desired disposition of ashes:

- Spread at \_\_\_\_\_ (location)
- Kept by \_\_\_\_\_ (name)
- Interred at \_\_\_\_\_ (location)

I would like visiting hours at the funeral home:

Open

Closed casket

I would like a reception at St. David's Episcopal Church after the service.

**DEATH CERTIFICATE INFORMATION**

Information funeral director will need for death certificate:

<b>Full name</b>	
<b>Residence address</b>	
<b>Marital status</b>	
<b>Spouse's name</b>	
<b>Date of birth</b>	
<b>Birthplace</b>	
<b>Social security number</b>	
<b>Occupation</b>	
<b>Father's name and birthplace</b>	
<b>Mother's name and birthplace</b>	
<b>Length of residence in state</b>	
<b>Military service dates</b>	
<b>Number of copy of death certificates</b>	<input type="checkbox"/> Need a copy for insurance desired policies, all assets that require title transfers, VA, some account

**ST. DAVID'S EPISCOPAL CHURCH  
FUNERAL PLANNING INFORMATION**

A funeral is a celebration of thanksgiving for the gift of a human life. For those who remain, the funeral rites are an important part of the process of grieving and saying goodbye. The plans that you make will shape some of the memories they draw on in the future for comfort, and so it is important to design the service with care. Your loved ones will appreciate knowing what your wishes were concerning your service. It will prevent their having to make these decisions hurriedly in a time of stress.

Name \_\_\_\_\_

Date of Birth \_\_\_\_\_

Date of Death \_\_\_\_\_

Clergy Requested \_\_\_\_\_

Family/Personal Contact \_\_\_\_\_ Phone \_\_\_\_\_

Funeral Home Contact \_\_\_\_\_ Phone \_\_\_\_\_

Closed casket present? Yes \_\_\_ No \_\_\_ Ashes present? Yes \_\_\_ No \_\_\_

Place of Interment \_\_\_\_\_

**THE WORSHIP SERVICE**

Rite I (traditional language) BCP p. 468 or Rite II (contemporary language) BCP p. 491

Eucharist      Yes\_\_\_\_ No \_\_\_\_

If Eucharist is desired, and you prefer a specific Eucharistic prayer, please circle one:

If Rite I, Eucharistic Prayer I or II

If Rite II, Eucharistic Prayer A, B, C, or D

Music: Organ\_\_\_\_\_Other instruments\_\_\_\_\_

Vocal music\_\_\_\_\_Soloist\_\_\_\_\_

Prelude\_\_\_\_\_

The service allows for you to choose family or friends to fill the following roles at the service: crucifer, acolytes, lectors (readers), an intercessor, and chalice administrator(s). If you have no preference, the celebrant will fill those roles as needed.

I have chosen the following persons to serve as:

Crucifer\_\_\_\_\_ Acolytes\_\_\_\_\_

Intercessor\_\_\_\_\_ Chalice Administrators\_\_\_\_\_

*(Note: the service allows for up to two lessons, a psalm and a gospel. See the attached lists. You may also choose other Scripture readings.)*

Old Testament Lesson:\_\_\_\_\_ Read by\_\_\_\_\_

Psalm:\_\_\_\_\_

New Testament Lesson: \_\_\_\_\_ Read by \_\_\_\_\_

Gospel: \_\_\_\_\_

*(Read by clergy in a service of Holy Eucharist.)*

A homily, remarks and reflections may be offered by the Celebrant, or a member of the family or a friend.

Please indicate your desires: \_\_\_\_\_

\_\_\_\_\_

Offertory music \_\_\_\_\_

Anthems BCP p. 500 or Canticle or Closing Hymn \_\_\_\_\_

Postlude \_\_\_\_\_

Will there be military or other honors? \_\_\_\_\_

Additional requests \_\_\_\_\_

\_\_\_\_\_

*In the Episcopal Church members are normally buried from the church. The coffin, when present, is closed and is always covered by a pall, which the church provides.*

**Prepared by:** \_\_\_\_\_ **Date:** \_\_\_\_\_

Please leave a copy of this form with the Church let loved ones know that you have made these choices by sharing this information with them.

## SCRIPTURE SELECTIONS FOR BURIAL LITURGIES

### Old Testament and Apocrypha

#### *Book of Common Prayer*

Isaiah 25:6-9 (He will swallow up death in victory)

Isaiah 61:1-3 (To comfort all that mourn)

Lamentations 3:22-26, 31-33 (The Lord is good unto them that wait for him)

Wisdom 3:1-5, 9 (The souls of the righteous are in the hand of God)

Job 19:21-27a (I know that my Redeemer liveth)

#### *Additional selections from the New Zealand Book of Common Prayer*

Proverbs 31:10-31 (A capable wife who can find?)

Ecclesiastes 3:1-14 (Fr everything there is a season)

Isaiah 40:28-31 (Have you not known? Have you not heard?)

Lamentations 3:17-21, 22-26 (my soul is bereft of peace)

2 Esdras 2:42-48 (These are they who have put off mortal clothing)

Wisdom 4:7-15 (The righteous, though they die early, will be at rest)

### Psalms

#### *Book of Common Prayer*

Psalm 23 (The Lord is my shepherd) Rite I or Rite II version

Psalm 27 (The Lord is my light and my salvation: whom shall I fear?)

Psalm 42 (As a deer longs for flowing streams, so my soul longs for you, O God)

Psalm 90 (Lord, you have been our dwelling place in all generations)

Psalm 116 (I love the Lord, because he has heard my voice and my supplications)

Psalm 121 (I lift up my eyes to the hills – from where will my help come?)

Psalm 130 (out of the depths I cry to you. O Lord)

Psalm 139 (O Lord, you have searched me and known me)

#### *Additional selections from the New Zealand Book of Common Prayer*

Psalm 25 (To you, O Lord, I lift up my soul)

Psalm 46 (God is our refuge and our strength)

Psalm 103 (Bless the Lord, O my soul)

## **New Testament Readings**

### *Book of Common Prayer*

Romans 8:14-19, 34-35, 37-39 (Neither death, nor life...will be able to separate us from the love of God in Christ Jesus our Lord)

1 Corinthians 15:20-26, 35-38 42-48. 53-58 (Christ has been raised from the dead)

2 Corinthians 4:16-5:9 (So we do not lose heart)

1 John 3:1-2 (See what the father has given us)

Revelations 7:9-17 (there was a great multitude)

Revelation 21:2-7 (And I saw the holy city, the new Jerusalem)

### *Additional selections from the New Zealand Book of Common Prayer*

Romans 6:1-11 (What then are we to say?)

1 Corinthians 13 (If I speak in the tongues of mortals and of angels)

1 Corinthians 15:12-19 (Now if Christ is proclaimed as raised from the dead)

1 Corinthians 15:20-22, 35-38, 42-44, 53-58 (Where, O death, is your sting?)

2 Corinthians 1:3-5 (Blessed be the God and Father of our Lord Jesus Christ)

2 Corinthians 4:7-14 (But we have this treasure in clay jars)

2 Corinthians 4:13-5:10 (But just as we have the same spirit of faith that is in accordance with scripture)

Philippians 3:8-21 (I regard everything as loss because of the surpassing value of knowing Christ Jesus my Lord)

Philippians 3:20-4:1, 4-7 (But our citizenship is in heaven)

1 Thessalonians 4:13, 14, 15-18 (But we do not want you to be uninformed)

1 Peter 1:3-9 (Blessed be the God and Father of our Lord Jesus Christ)

## **Gospel Readings**

### *Book of Common Prayer*

John 5:24-27 (anyone who hears my word and believes him who sent me has eternal life)

John 6:37-40 (Everything that the father gives me will come to me)

John 10:11-16 (I am the good shepherd)

John 11:21-27 (Martha said to Jesus, 'Lord, if you had been here, my brother would not have died)

John 14:1-6 (Do not let your hearts be troubled)

*Additional selections from the New Zealand Book of Common Prayer*

Matthew 5:3-10 (Blessed are the poor in spirit, for theirs is the kingdom of heaven)

Mark 10:13-16 (People were bringing little children to him)

Luke 15:11-32 (Then Jesus said, 'There was a man who had two sons)

Luke 23:44-49, 24:1-7 (It was now about noon, and darkness came over the whole land)

Luke 24:13-35 (Now on that same day two of them were going to a village called Emmaus)

John 15:19-29 (Very truly I tell you the Son can do nothing on his own)

John 6:46-58 (Not that anyone has seen the father except the one who is from God)

John 10:1-15 (Very truly I tell you, anyone who does not enter the sheepfold by the gate)

## SUGGESTED HYMNS FOR THE LITURGY OF THE BURIAL OF THE DEAD

### *The Hymnal 1982*

- 151 From Deepest Woe I Cry To Thee (3)  
194/195 Jesus Lives! The Terrors Now (4)  
208 Alleluia! The Strife Is O'er The Battle Done (5)  
287 For All The Saints, Who From Their Labors Rest (8)  
326 From Glory To Glory Advancing (2)  
338 Wherefore, O Father, We Thy Humble Servants (2)  
354 Into Paradise May The Angels Lead You (2)  
355 Give Rest, O Christ, To Your Servants (1)  
356 May Choirs of Angels Lead You To Paradise On High (3)  
357 Jesus, Son of Mary (4)  
358 Christ The Victorious, Give To Your Servants (4)  
429 I'll Praise My Maker While I've Breath (4)  
444 Blessed Be The God Of Israel (3)  
447 The Christ Who Died But Rose Again (4)  
455/456 O Love Of God, How Strong And True (4)  
487 Come My Way, My Truth, My Life  
499 Lord God, You Now Have Set Your Servant Free (1)  
517 How Lovely Is Thy Dwelling Place  
560 Remember Your Servants, Lord (9)  
620 Jerusalem, My Happy Home  
621/622 Light's Abode, Celestial Salem (5)  
623 O What Their Joy And Their Glory Must Be (5)  
625 Ye Holy Angels Bright  
635 If Thou But Trust In God To Guide Thee (2)  
636/637 How Firm A Foundation, Ye Saints Of The Lord (5)  
645/646 The King of Love, My Shepherd Is (6)  
658 As Longs The Deer For Cooling Streams (4)  
663 The Lord My God My Shepherd Is  
664 My Shepherd Will Supply My Need (3)  
665 All My Hope On God Is Founded (5)  
666 Out Of The Depths I Call (4)  
668 I To The Hills Will Lift Mine Eyes  
680 O God, Our Help In Ages Past (6)  
687/688 A Mighty Fortress Is Our God (4)  
690 Guide Me, O Thou Great Jehovah (3)  
692 I Heard The Voice Of Jesus Say

*Wonder, Love, and Praise*

- 760 O Wheat Whose Crushing Was For Bread (3)
- 762 I Am The Bread Of Life (4)
- 765 O Blessed Spring, Where Word And Sign Embrace Us (5)
- 770/771 O God Of Gentle Strength (4)
- 775 Give Thanks For Life, The Measure Of Our Days
- 776 No Saint On Earth Lives Life To Self Alone (2)
- 791 Peace Before Us (6)
- 793 Here, O Lord, Your Servants Gather (4)
- 799 Abide With Me: Fast Falls The Eventide (4)
- 801 God Be With You Till We Meet Again (4)
- 810 You Who Dwell In The Shelter Of The Lord (3)
- 811 You Shall Cross The Barren Desert (3)
- 816/817 Christ Is Risen From The Dead (1)
- 828 *Beati In Domo Domini* (1)

*Lift Every Voice and Sing*

- 103 Steal Away, Steal Away To Jesus
- 106 Precious Lord, Take My Hand
- 180 Ain-A' That Good News
- 181 Amazing Grace, How Sweet The Sound (5)
- 188 When Peace Like A River
- 190 If When You Give The Best Of Your Service (4)
- 204 When Waves Of Affliction Sweep Over The Soul (4)
- 207 We Are Often Tossed And Driv'n
- 213 Children Of The Heav'nly Father

**OBITUARY**

It is very helpful to write your obituary or at least to have all the pertinent factual information assembled. The obituary is needed quickly after a death, and it is sometimes hard for those left behind to gather all the needed information in a short time.

Please provide the obituary shown below to the following newspapers:

Newspaper	Phone/Fax/E-Mail

Obituary – either write your own (space provided below) or provide bullet points which newspaper can turn into an obituary. Important items to include:

- Full name: \_\_\_\_\_
- Parents' names: \_\_\_\_\_
- Date of birth: \_\_\_\_\_
- Circumstances of death - to be provided by survivor after death
- Career information: \_\_\_\_\_  
 \_\_\_\_\_  
 \_\_\_\_\_
- Community activities: \_\_\_\_\_  
 \_\_\_\_\_  
 \_\_\_\_\_
- Dates of military service along with rank achieved: \_\_\_\_\_  
 \_\_\_\_\_  
 \_\_\_\_\_



## LEGAL AND PERSONAL CONSIDERATIONS

The matters covered in the next few pages are things to be discussed with your attorney, if you have not done so, and with your loved ones.

## DIFFICULT DECISIONS IN ADVANCE

A common fear that many of us share, often based on past observations of friends or loved ones, is that we may come to a point in life where we can no longer make critical decisions about our lives or medical treatments we may or may not wish.

Most people, when asked, say that they would like to die a peaceful death surrounded by family and friends. Often this is not the case because these wishes have not been discussed and have not been put in written form.

The forms on the following pages for a *Durable Power of Attorney for Health Care* and for a *Medical Directive*, when executed, offer a way to clearly convey your wishes about end of life support and treatment.

Preparing a valid will and keeping it updated are important elements in end of life planning for families of all ages.

“The Minister of the Congregation is directed to instruct the people, from time to time, about the duty of Christian parents to make prudent provision for the well-being of their families, and of all persons to make wills, while they are in health, arranging for the disposal of their temporal goods, not neglecting, if they are able, to leave bequests for religious and charitable uses.”

— Book of Common Prayer, 1979 version, page 445  
concluding the chapter “Thanksgiving for Children”

## MEDICAL POWER OF ATTORNEY

### DESIGNATION OF HEALTH CARE AGENT.

I, \_\_\_\_\_ (insert your name) appoint:

Name \_\_\_\_\_

Address \_\_\_\_\_

Phone \_\_\_\_\_

as my agent to make any and all health care decisions for me, except to the extent I state otherwise in this document. This medical power of attorney takes effect if I become unable to make my own health care decisions and this fact is certified in writing by my physician.

LIMITATIONS ON THE DECISION-MAKING AUTHORITY OF MY AGENT ARE AS FOLLOWS:

\_\_\_\_\_  
\_\_\_\_\_

### DESIGNATION OF ALTERNATE AGENT.

(You are not required to designate an alternate agent but you may do so. An alternate agent may make the same health care decisions as the designated agent if the designated agent is unable or unwilling to act as your agent. If the agent designated is your spouse, the designation is automatically revoked by law if your marriage is dissolved.)

If the person designated as my agent is unable or unwilling to make health care decisions for me, I designate the following persons to serve as my agent to make health care decisions for me as authorized by this document, who serve in the following order:

#### A. First Alternate Agent

Name: \_\_\_\_\_

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

Phone \_\_\_\_\_

#### B. Second Alternate Agent

Name: \_\_\_\_\_

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

Phone \_\_\_\_\_

The original of this document is kept at: \_\_\_\_\_

The following individuals or institutions have signed copies:

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

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

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

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

**DURATION.**

I understand that this power of attorney exists indefinitely from the date I execute this document unless I establish a shorter time or revoke the power of attorney. If I am unable to make health care decisions for myself when this power of attorney expires, the authority I have granted my agent continues to exist until the time I become able to make health care decisions for myself.

(IF APPLICABLE) This power of attorney ends on the following date: \_\_\_\_\_

**PRIOR DESIGNATIONS REVOKED.**

I revoke any prior medical power of attorney.

**ACKNOWLEDGMENT OF DISCLOSURE STATEMENT.**

I have been provided with a disclosure statement explaining the effect of this document. I have read and understand that information contained in the disclosure statement.

(YOU MUST DATE AND SIGN THIS POWER OF ATTORNEY.)

I sign my name to this medical power of attorney on \_\_\_\_\_ day of \_\_\_\_\_ (month, year)  
at \_\_\_\_\_ (City and State).

\_\_\_\_\_  
(Signature)

\_\_\_\_\_  
(Print Name)

STATEMENT OF FIRST WITNESS.

I am not the person appointed as agent by this document I am not related to the principal by blood or marriage. I would not be entitled to any portion of the principal's estate on the principal's death. I am not the attending physician of the principal or an employee of the attending physician. I have no claim against any portion of the principal's estate on the principal's death. Furthermore, if I am an employee of a health care facility in which the principal is a patient, I am not involved in providing direct patient care to the principal and am not an officer, director, partner, or business office employee of the health care facility or of any parent organization of the health care facility-

Signature: \_\_\_\_\_

Print Name: \_\_\_\_\_ Date: \_\_\_\_\_

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

SIGNATURE OF SECOND WITNESS.

Signature: \_\_\_\_\_

Print Name: \_\_\_\_\_ Date: \_\_\_\_\_

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

**INFORMATION CONCERNING THE MEDICAL POWER OF ATTORNEY**

**THIS IS AN IMPORTANT LEGAL DOCUMENT. BEFORE SIGNING THIS DOCUMENT, YOU SHOULD KNOW THESE IMPORTANT FACTS:**

Except to the extent you state otherwise, this document gives the person you name as your agent the authority to make any and all health care decisions for you in accordance with your wishes, including your religious and moral beliefs, when you are no longer capable of making them yourself. Because "health care" means any treatment, service, or procedure to maintain, diagnose, or treat your physical or mental condition, your agent has the power to make a broad range of health care decisions for you. Your agent may consent, refuse to consent, or withdraw consent to medical treatment and may make decisions about withdrawing or withholding life-sustaining treatment. Your agent may not consent to voluntary inpatient mental health services, convulsive treatment, psychosurgery, or abortion. A physician must comply with your agent's instructions or allow you to be transferred to another physician.

Your agent's authority begins when your doctor certifies that you lack the competence to make health care decisions.

Your agent is obligated to follow your instructions when making decisions on your behalf. Unless you state otherwise, your agent has the same authority to make decisions about your health care as you would have had.

It is important that you discuss this document with your physician or other health care provider before you sign it to make sure that you understand the nature and range of decisions that may be made on your behalf. If you do not have a physician, you should talk with someone else who is knowledgeable about these issues and can answer your questions. You do not need a lawyer's assistance to complete this document, but if there is anything in this document that you do not understand, you should ask a lawyer to explain it to you.

The person you appoint as agent should be someone you know and trust. The person must be 18 years of age or older or a person under 18 years of age who has had the disabilities of minority removed. If you appoint your health or residential care provider (e.g., your physician or an employee of a home health agency, hospital, nursing home, or residential care home, other than a relative), that person has to choose between acting as your agent or as your health or residential care provider; the law does not permit a person to do both at the same time.

You should inform the person you appoint that you want the person to be your health care agent. You should discuss this document with your agent and your physician and give each a signed copy. You should indicate on the document itself the people and institutions who have signed copies. Your agent is not liable for health care decisions made in good faith on your behalf.

Even after you have signed this document, you have the right to make health care decisions for yourself as long as you are able to do so and treatment cannot be given to you or stopped over your objection. You have the right to revoke the authority granted to your agent by informing your agent or your health or residential care provider orally or in writing or by your execution of a subsequent medical power of attorney . Unless you state otherwise, your appointment of a spouse dissolves on divorce.

This document may not be changed or modified. If you want to make changes in the document, you must make an entirely new one.

You may wish to designate an alternate agent in the event that your agent is unwilling, unable, or ineligible to act as your agent. Any alternate agent you designate has the same authority to make health care decisions for you.

THIS POWER OF ATTORNEY IS NOT VALID UNLESS IT IS SIGNED IN THE PRESENCE OF TWO COMPETENT ADULT WITNESSES. THE FOLLOWING PERSONS MAY NOT ACT AS ONE OF THE WITNESSES:

- (1) the person you have designated as your agent;
- (2) a person related to you by blood or marriage;
- (3) a person entitled to any part of your estate after your death under a will or codicil executed by you or by operation of law;
- (4) your attending physician
- (5) an employee of your attending physician;
- (6) an employee of a health care facility in which you are a patient if the employee is providing direct patient care to you or is an officer, director, partner, or business office employee of the health care facility or of any parent organization of the health care facility; or
- (7) a person who, at the time this power of attorney is executed, has a claim against any part of your estate after your death .

FORM OF MEDICAL POWER OF ATTORNEY. The medical power of attorney must be in substantially this form.

## DIRECTIVE TO PHYSICIANS AND FAMILY OR SURROGATES (LIVING WILL)

This is an important legal document known as an **Advance Directive**. It is designed to help you communicate your wishes about medical treatment at some time in the future when you are unable to make your wishes known because of illness or injury. These wishes are usually based on personal values. In particular, you may want to consider what burdens or hardships of treatment you would be willing to accept for a particular amount of benefit obtained if you were seriously ill.

You are encouraged to discuss your values and wishes with your family or chosen spokesperson, as well as your physician. Your physician, other health care provider, or medical institution may provide you with various resources to assist you in completing your advance directive. Brief definitions are listed below and may aid you in your discussions and advance planning. Initial the treatment choices that best reflect your personal preferences. Provide a copy of your directive to your physician, usual hospital, and family or spokesperson. Consider a periodic review of this document. By periodic review, you can best assure that the directive reflects your preferences.

In addition to this advance directive, Texas law provides for two other types of directives that can be important during a serious illness. These are the Medical Power of Attorney and the Out-of-Hospital Do-Not-Resuscitate Order. You may wish to discuss these with your physician, family, hospital representative, or other advisers. You may also wish to complete a directive related to the donation of organs and tissues.

### DIRECTIVE

I, \_\_\_\_\_ recognize that the best health care is based upon a partnership of trust and communication with my physician. My physician and I will make health care decisions together as long as I am of sound mind and able to make my wishes known. If there comes a time that I am unable to make medical decisions about myself because of illness or injury, I direct that the following treatment preferences be honored:

- If, in the judgment of my physician, I am suffering with a terminal condition from which I am expected to die within six months, even with available life-sustaining treatment provided in accordance with prevailing standards of medical care:

\_\_\_\_ I request that all treatments other than those needed to keep me comfortable be discontinued or withheld and my physician allow me to die as gently as possible; OR

\_\_\_\_ I request that I be kept alive in this terminal condition using available life-sustaining treatment. **(THIS SELECTION DOES NOT APPLY TO HOSPICE CARE.)**

- If, in the judgment of my physician, I am suffering with an irreversible condition so that I cannot care for myself or make decisions for myself and am expected to die without life-sustaining treatment provided in accordance with prevailing standards of care:

\_\_\_\_ I request that all treatments other than those needed to keep me comfortable be discontinued or withheld and my physician allow me to die as gently as possible; OR

\_\_\_\_ I request that I be kept alive in this irreversible condition using available life-sustaining treatment. **(THIS SELECTION DOES NOT APPLY TO HOSPICE CARE.)**

**Additional requests:** (After discussion with your physician, you may wish to consider listing particular treatments in this space that you do or do not want in specific circumstances, such as artificial nutrition and fluids, intravenous antibiotics, etc. Be sure to state whether you do or do not want the particular treatment.)

---

---

---

After signing this directive, if my representative or I elect hospice care, I understand and agree that only those treatments needed to keep me comfortable would be provided and I would not be given available life-sustaining treatments.

If I do not have a Medical Power of Attorney, and I am unable to make my wishes known, I designate the following person(s) to make treatment decisions with my physician compatible with my personal values:

1. \_\_\_\_\_
2. \_\_\_\_\_

(If a Medical Power of Attorney has been executed, then an agent already has been named and you should not list additional names in this document.)

If the above persons are not available, or if I have not designated a spokesperson, I understand that a spokesperson will be chosen for me following standards specified in the laws of Texas. If, in the judgment of my physician, my death is imminent within minutes to hours, even with the use of all available medical treatment provided within the prevailing standard of care, I acknowledge that all treatments may be withheld or removed except those needed to maintain my comfort. I understand that under Texas law this directive has no effect if I have been diagnosed as pregnant. This directive will remain in effect until I revoke it. No other person may do so.

Signed \_\_\_\_\_ Date \_\_\_\_\_

City, County, State of Residence \_\_\_\_\_

Two competent adult witnesses must sign below, acknowledging the signature of the declarant. The witness designated as Witness 1 may not be a person designated to make a treatment decision for the patient and may not be related to the patient by blood or marriage. This witness may not be entitled to any part of the estate and may not have a claim against the estate of the patient. This witness may not be the attending physician or an employee of the attending physician. If this witness is an employee of a health care facility in which the patient is being cared for, this witness may not be involved in providing direct patient care to the patient. This witness may not be an officer, director, partner, or business office employee of a health care facility in which the patient is being cared for or of any parent organization of the health care facility.

Witness 1 \_\_\_\_\_ Witness 2 \_\_\_\_\_

**Definitions:**

"Artificial nutrition and hydration" means the provision of nutrients or fluids by a tube inserted in a vein, under the skin in the subcutaneous tissues, or in the stomach (gastrointestinal tract).

"Irreversible condition" means a condition, injury, or illness:

- (1) that may be treated, but is never cured or eliminated;
- (2) that leaves a person unable to care for or make decisions for the person's own self;  
and
- (3) that, without life-sustaining treatment provided in accordance with the prevailing standard of medical care, is fatal.

**Explanation:** Many serious illnesses such as cancer, failure of major organs (kidney, heart, liver, or lung), and serious brain disease such as Alzheimer's dementia may be considered irreversible early on. There is no cure, but the patient may be kept alive for prolonged periods of time if the patient receives life-sustaining treatments. Late in the course of the same illness, the disease may be considered terminal when, even with treatment, the patient is expected to die. You may wish to consider which burdens of treatment you would be willing to accept in an effort to achieve a particular outcome. This is a very personal decision that you may wish to discuss with your physician, family, or other important persons in your life.

"Life-sustaining treatment" means treatment that, based on reasonable medical judgment, sustains the life of a patient and without which the patient will die. The term includes both life-sustaining medications and artificial life support such as mechanical breathing machines, kidney dialysis treatment, and artificial hydration and nutrition. The term does not include the administration of pain management medication, the performance of a medical procedure necessary to provide comfort care, or any other medical care provided to alleviate a patient's pain.

"Terminal condition" means an incurable condition caused by injury, disease, or illness that according to reasonable medical judgment will produce death within six months, even with available life-sustaining treatment provided in accordance with the prevailing standard of medical care.

**Explanation:** Many serious illnesses may be considered irreversible early in the course of the illness, but they may not be considered terminal until the disease is fairly advanced. In thinking about terminal illness and its treatment, you again may wish to consider the relative benefits and burdens of treatment and discuss your wishes with your physician, family, or other important persons in your life.

UNDERSTANDING TEXAS LAWS ABOUT YOUR RIGHTS TO  
MAKE HEALTHCARE DECISIONS  
MEDICAL POWERS OF ATTORNEY, LIVING WILLS, AND  
CONSENT FOR FAMILY MEMBERS

Louise M. Joy, MHA, JD  
Joy & Young, LLP  
Director, American Health Lawyers Association

**INTRODUCTION**

The laws of most states give individuals the opportunity to make decisions about what care they would want or not want to receive when they are terminal or suffering from an irreversible condition. The laws also allow them to choose whom they want to have make decisions for them if they cannot make decisions for themselves, regardless of whether they have a terminal condition. These documents are collectively referred to as advance directives.

There are various kinds of advance directives--the most common are living wills and medical powers of attorney (MPA) Advance directives are governed by state law, which often differ in the applicable requirements.

In 1991, Congress passed the **Patient Self Determination Act** after much news about the case of Nancy Cruzan<sup>1</sup>. (See federal regulations at 42 C.F.R. § 489.100-.102.) In this case, the parents of Ms. Cruzan had requested that she be removed from artificial nutrition and hydration because Ms. Cruzan was in a persistent vegetative state. The law requires hospitals, home health agencies, nursing homes, hospices and HMOs to ask individuals whether they have executed advance directives and for the entities to offer patients information about health care decision making rights under state law and the facility's policies on honoring advance directives, including restrictions it may pose on honoring advance directives.

**ADVANCE DIRECTIVE DOCUMENTS & RELATED TERMS**

The **Medical Power of Attorney (MPA)**<sup>2</sup> allows a person to appoint someone to make healthcare decisions for the designating individual when that person is unable to make

---

<sup>1</sup> *Cruzan v. Director, Missouri Dep't of Public Health*, 497 U.S. 261, 110 S.Ct. 2841, 111 L.Ed.2nd 224 (1990). See also *Bush v. Schiavo*, 855 So. 2d 321 (Fla. 2004), \_ S. Ct.\_ (Mem), 2005 WL 126535 (2005).

<sup>2</sup> Tex. Health & Safety Code §§ 166.151-.166.)

decisions personally. Under Texas law, Usually, a MPA is effective only after a person has been determined to be incapacitated. The person creating the MPA is called the “principal.” The person appointed to act on behalf of the principal is the “agent.” The principal does not have to be terminally ill for a MPA for healthcare to be in effect. The person can be in a coma or temporarily incapacitated due to accident, an illness, or injury.

A **Power of Attorney (POA)** or Durable Power of Attorney allows another person(s) to make business decisions, and can be effective immediately without the principal being declared incapacitated. If the POA is “durable,” that means it will remain effective if the principal becomes incapacitated. (This will be discussed by David Hughes in the 5th session of this series.)

A **Living Will** lets a person create a legal document to instruct family and healthcare providers what to do if the person is terminally ill or has an irreversible condition. In Texas, a living will is also called a “directive to physicians”<sup>3</sup> and is only effective if an individual is determined by the individual’s physician to be terminal or have an irreversible condition.

**Do-Not Resuscitate Order or DNR Order** is a physician’s order in a patient’s record indicating that CPR, advanced airway management, artificial ventilation (respirator), defibrillation, transcutaneous cardiac pacing, should be withheld or withdrawn from a patient.

**Out-Of-Hospital Do-Not-Resuscitate Order (OOH-DNR Order)**<sup>4</sup> is a legally binding order that is prepared and signed by an individual’s physician and by the individual and two witnesses. This is used to tell EMS providers and emergency departments not to take heroic measures if called to care for the individual. It must be on the approved form.

A **Guardian** is court-appointed, and makes decisions regarding the care and custody of the person (or ward) who has been declared incompetent.

**Incompetent** has a specific meaning under Texas law on advance directives: Lacking the ability, based on reasonable medical judgment to understand and appreciate the nature and consequences of a treatment decision, including the significant benefits and harms of and reasonable alternatives to a proposed treatment. If the individual’s physician determines that the individual cannot understand this information, then a decision-maker is needed to make

---

<sup>3</sup> Tex. Health & Safety Code §§ 166.031-.051.

<sup>4</sup> Tex. Health & Safety Code §§ 166.081-.101.

health care decisions on behalf of the individual.<sup>5</sup> This is the trigger for decision-making by an agent under a Medical Power of Attorney and/or a Living Will.

**Health Care Decision** means consent, refusal to consent, or withdrawal of consent to health care treatment, service or a procedure to maintain, diagnose, or treat an individual's physical or mental condition.<sup>6</sup>

**Terminal Condition:** an incurable condition cause by injury, disease, or illness that according to reasonable medical judgment will produce death within six months, even with available life-sustaining treatment provided in accordance with the prevailing standard of medical care. A person under hospice care is presumed to have terminal condition.<sup>7</sup>

**Irreversible Condition:** A condition, injury or illness:

- that may be treated but is never cured or eliminated;
- that leaves the person unable to care for or make decisions for the person's own self; and
- that, without life-sustaining treatment provided in accordance with the prevailing standard of care is fatal.<sup>8</sup>

**Life Sustaining Treatment:** Treatment that, based on reasonable medical judgment, sustains the life of the patient and without which the patient will die. The term includes life-sustaining medications and artificial life support such as

- mechanical breathing devices
- kidney dialysis
- artificial nutrition and hydration

It does not include administration of pain management medication or the performance of procedures considered to be necessary to provide comfort care or any other medical care provided to alleviate the patient's pain.<sup>9</sup>

---

<sup>5</sup> Texas Health & Safety Code § 166.002(8).

<sup>6</sup> Tex. Health & Safety Code §166.008(7).

<sup>7</sup> Tex. Health & Safety Code §166.008(13).

<sup>8</sup> Tex. Health & Safety Code §166.008(9).

<sup>9</sup> Tex. Health & Safety Code §166.008(10).

## CONSIDERATIONS WHEN EXECUTING A MEDICAL POWER OF ATTORNEY OR LIVING WILL<sup>10</sup>

7. **Is the proposed agent/decision-maker aware of your wishes?**
8. Is the person willing to speak on your behalf?
9. Does the person live close by or could travel to be by your side if needed?
10. Is this person someone who knows you well and understands what's important to you?
11. Is this person someone you trust with your life?
12. Will this person talk with you now about sensitive issues and will listen to your wishes?
13. Will this person honor your wishes even if he or she does not agree with them?
14. Will this person be available long into the future? (Is the person in good health?)
15. Do you want to consider a successor or alternate decision-maker?
16. Will this person be able to handle conflicting opinions between family members, friends and medical personnel?
17. Can this person be a strong advocate in the face of an unresponsive doctor or institution?
18. Do you desire any of the following, and, if so, under what circumstances and for how long (e.g., immediately after a stroke, but to be discontinued if no improvement is seen after a certain period of time; if the principal has Alzheimers disease, cancer, or a similar condition):
  - a. Cardiopulmonary resuscitation (CPR);
  - b. Ventilator;
  - c. Antibiotics;
  - d. Kidney Dialysis
  - e. Hospitalization; or
  - f. Hospitalization for correctable injuries, such as a broken bone?
19. Do you want artificial nutrition and hydration? If so, under what conditions?
20. Do you have a thorough understanding of the medical issues that may be involved?
21. Have you considered that your wishes may change over time or as a result of the actual development of a particular condition?
22. **Does the proposed agent/decision-maker agree with the principal's wishes?**
23. **Will the proposed agent/decision-maker carry out the principal's wishes, even if the proposed agent/decision-maker does not share the principal's views?**
24. **Where do you keep your advance directives?** Once it is executed, make several copies (maybe 10). Make sure that the agents or agents have copies and keep several in an easily accessible file in your home. Also, give one to your physician to include in your medical record.

---

<sup>10</sup> American Bar Association, Consumer's Toolkit for Health Care Advance Planning [www.abanet.org/aging/toolkit/home.html](http://www.abanet.org/aging/toolkit/home.html)

If you are experiencing on-going health care problems keep one with you and give one to all the treating physicians and the places where you are receiving treatment.

**Other Issues and Concerns:**

25. What if the agent does not know the patient's express wishes? Even in situations where a principal conveyed general wishes to the agent, it is possible that a particular situation was not anticipated. (Under Texas law the agent is required to make decisions according to the knowledge of the principal's wishes, including religious beliefs if known. If the wishes are not known, then according to the agent's assessment of the principal's best interests.<sup>11</sup>)

26. Will the advance directive be applicable if the principal moves to another state? (An out of state directive would likely be honored in Texas. To be safe, an individual may want to reexecute his or her directives if s/he changes state of residence. (Ultimately, however, anything in writing is better than nothing in writing as evidence of the individual's wishes.)

27. How many physicians must certify that the principal is incapacitated before the MPA take effect? (In Texas, the patient's attending physician must certify in writing that the principal is incompetent.)

28. How often should advance directives be reviewed to see if they still comport with the principal's wishes? There is not specific timeframe when this must be done under Texas law. It is helpful to review periodically and if the individual develops health problems.

29. Is the agent able to control who visits the principal or access to healthcare information? The agent may limit access to health care information and may be able to control access to visit to the principal. For example, assume that the daughter of a principal is agent and appointed to make healthcare decisions for principal and that the principal has a good relationship with a stepson, but the daughter does not. Can the daughter, acting as an agent, keep the stepson from visiting the principal? Can the daughter keep the stepson in question from taking the principal out of the healthcare facility for a short leave of absence (e.g., home for Thanksgiving dinner)? Can the stepson receive information about the principal's state of health without permission of the agent?

30. Does the agent have to be a family member, or can this be an unrelated person who shares the principal's beliefs? Under Texas laws and most states laws the agent does not have to be a family member. The major reason these laws were adopted were to give an individual the right to appoint someone that the individual trusts without regard to whether that person was a family member (by blood or marriage.)

---

<sup>11</sup> Tex. Health & Safety Code §166.152.

## **WHO MAKES DECISIONS IF YOU DON'T HAVE A MEDICAL POWER OF ATTORNEY OR LIVING WILL?**

Under Texas law, if an individual has not designated a decision-maker and does not have a guardian, the following individuals may make healthcare decisions. In order of priority:

- a. Spouse
- b. the patient's reasonably available adult children
- c. Parents
- d. nearest living relative

### Considerations:

- Who is likely to make decisions if you do not exercise your right to choose?
- Do they know what you want?
- Are those persons likely to know the individual's wishes for care at the end-of-life or in life-limiting circumstances?
- Will they honor your wishes?
- If your adult children will decide:
  - How do they get along?
  - Do they know what you want?
  - Will they agree about what needs to be done?
  - Will they follow your wishes?
  - What about the potential for a life-long conflict resulting from having to make this decision?

### **MORE RESOURCES**

American Health Lawyers Association [www.healthlawyers.org](http://www.healthlawyers.org) (In May 2005 American Health Lawyers Association will have available on line and free of charge an End-Of-Life Planning Guide with checklists and resources for evaluating decisions about financial planning, home health care, hospice care, assisted living, nursing facilities, advance directives etc.) (Useful for individuals making decisions and for relatives/friends who want to help and be involved).

American Bar Association [www.abanet.org/aging/](http://www.abanet.org/aging/) has a very helpful tool kit for decision-making.

## STATUTORY DURABLE POWER OF ATTORNEY

*Provided by <http://familycaregiversonline.com/legal-medical.html>*

## STATUTORY DURABLE POWER OF ATTORNEY

NOTICE: THE POWERS GRANTED BY THIS DOCUMENT ARE BROAD AND SWEEPING. THEY ARE EXPLAINED IN THE DURABLE POWER OF ATTORNEY ACT, CHAPTER XII, TEXAS PROBATE CODE. IF YOU HAVE ANY QUESTIONS ABOUT THESE POWERS, OBTAIN COMPETENT LEGAL ADVICE. THIS DOCUMENT DOES NOT AUTHORIZE ANYONE TO MAKE MEDICAL AND OTHER HEALTH-CARE DECISIONS FOR YOU. YOU MAY REVOKE THIS POWER OF ATTORNEY IF YOU LATER WISH TO DO SO.

I, \_\_\_\_\_ (insert your name and address), appoint  
\_\_\_\_\_ (insert the name and address of the person appointed) as my agent (attorney-in-fact) to act for me in any lawful way with respect to all of the following powers except for a power that I have crossed out below.

TO WITHHOLD A POWER, YOU MUST CROSS OUT EACH POWER WITHHELD.

- Real property transactions;
- Tangible personal property transactions;
- Stock and bond transactions;
- Commodity and option transactions;
- Banking and other financial institution transactions;
- Business operating transactions;
- Insurance and annuity transactions;
- Estate, trust, and other beneficiary transactions;
- Claims and litigation;
- Personal and family maintenance;
- Benefits from social security, Medicare, Medicaid, or other governmental programs or civil or military service;
- Retirement plan transactions;
- Tax matters.

IF NO POWER LISTED ABOVE IS CROSSED OUT, THIS DOCUMENT SHALL BE CONSTRUED AND INTERPRETED AS A GENERAL POWER OF ATTORNEY AND MY AGENT (ATTORNEY IN FACT) SHALL HAVE THE POWER AND AUTHORITY TO PERFORM OR UNDERTAKE ANY ACTION I COULD PERFORM OR UNDERTAKE IF I WERE PERSONALLY PRESENT.

SPECIAL INSTRUCTIONS:

Special instructions applicable to gifts (initial in front of the following sentence to have it apply):

I grant my agent (attorney in fact) the power to apply my property to make gifts, except that the amount of a gift to an individual may not exceed the amount of annual exclusions allowed from the federal gift tax for the calendar year of the gift.

ON THE FOLLOWING LINES YOU MAY GIVE SPECIAL INSTRUCTIONS LIMITING OR EXTENDING THE POWERS GRANTED TO YOUR AGENT.

---

---

---

---

---

---

---

UNLESS YOU DIRECT OTHERWISE ABOVE, THIS POWER OF ATTORNEY IS EFFECTIVE IMMEDIATELY AND WILL CONTINUE UNTIL IT IS REVOKED.

CHOOSE ONE OF THE FOLLOWING ALTERNATIVES BY CROSSING OUT THE ALTERNATIVE NOT CHOSEN:

(A) This power of attorney is not affected by my subsequent disability or incapacity.

(B) This power of attorney becomes effective upon my disability or incapacity.

YOU SHOULD CHOOSE ALTERNATIVE (A) IF THIS POWER OF ATTORNEY IS TO BECOME EFFECTIVE ON THE DATE IT IS EXECUTED.

IF NEITHER (A) NOR (B) IS CROSSED OUT, IT WILL BE ASSUMED THAT YOU CHOSE ALTERNATIVE (A).

If Alternative (B) is chosen and a definition of my disability or incapacity is not contained in this power of attorney, I shall be considered disabled or incapacitated for purposes of this















































