End of Life Decisions: The Current Legal Landscape and Implications for Physicians

BIBLIOGRAPHY AND OTHER RESOURCES


American Medical Association, *Withholding or Withdrawing Life-Sustaining Medical Treatment*, E.2.20 (June 1996).


# Health Care Power of Attorney and Advance Directive

**Sample of State Laws**

*See American Bar Association at: [http://www.abanet.org/aging/HCPA-CHT04.doc](http://www.abanet.org/aging/HCPA-CHT04.doc)*

<table>
<thead>
<tr>
<th>State</th>
<th>State Law</th>
<th>Type of Document/Form</th>
<th>Agent's Power Limited/ Prohibited Agents Specified</th>
<th>Formalities of Execution</th>
<th>Comity Provision*</th>
</tr>
</thead>
<tbody>
<tr>
<td>CA</td>
<td>Cal. Probate Code § 4600 to 4948</td>
<td>Combined Advance Directive/ Yes (optional)</td>
<td>Yes¹/ Yes²</td>
<td>2 witnesses</td>
<td>Yes</td>
</tr>
<tr>
<td>IL</td>
<td>755 ILCS 45/4-1 to -12</td>
<td>Special DPA/ Yes (optional)</td>
<td>None Specified/ Yes⁴</td>
<td>None specified</td>
<td>Yes</td>
</tr>
<tr>
<td>MN</td>
<td>Minn. Stat. Ann. § 145C.01 to .16</td>
<td>Combined Advance Directive/ Yes (optional)</td>
<td>None Specified/Yes⁵</td>
<td>2 witnesses or notarized</td>
<td>Yes</td>
</tr>
<tr>
<td>NY</td>
<td>N.Y. Pub. Health Law § 2980 to 2994</td>
<td>Special DPA/ Yes (optional)</td>
<td>Yes⁶/ Yes⁷</td>
<td>2 witnesses</td>
<td>Yes</td>
</tr>
<tr>
<td>TX</td>
<td>Tex. Health and Safety Code Ann. § 166.001 to .166</td>
<td>Special DPA/ Yes (must be substantially followed) Proxy contained in LW/ Yes (optional)</td>
<td>Yes⁸/ Yes⁹</td>
<td>2 witnesses</td>
<td>Yes</td>
</tr>
</tbody>
</table>

*Comity Provision, example of statutory language: "An advance directive executed in another state shall be deemed to be validly executed for the purposes of this article if executed in compliance with the laws of this state or the law of the state where executed. Such advance directive shall be construed in accordance with the laws of this state." As of Fall 2003, 12 states lacked comity or reciprocity provisions. See BiFocal, Vol. 25, No. 1 (Fall 2003).

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¹ Limits on agent's powers: civil commitment, electro-convulsive therapy, psycho-surgery, sterilization, abortion.
² Agent cannot be: supervising individual provider, facility provider, or conservator (unless specified conditions are met).
³ Limits on agent's powers: mental health facility admission, electro-convulsive therapy, psycho-surgery, sterilization, abortion, non-IRB approved experimental therapy, life-sustaining procedures while pregnant, pregnancy limitation.
⁴ Agent cannot be the individual provider.
⁵ Agent cannot be: individual provider, facility provider.
⁶ Limits on agent's powers: nutrition and hydration (principal must make wishes reasonably known).
⁷ Agent cannot be: attending physician, facility provider, any agent serving 10 or more principals.
⁸ Limits on agent's powers: mental health facility admission, electro-convulsive therapy, psycho-surgery, abortion, comfort care.
⁹ Agent cannot be: individual provider, facility provider.
**Absence of Advance Directive**  
**Sample of State Law**

*See American Bar Association at: [http://www.abanet.org/aging/Famcon04.doc](http://www.abanet.org/aging/Famcon04.doc)*

<table>
<thead>
<tr>
<th>State</th>
<th>State Statute</th>
<th>Priority of Surrogates</th>
<th>Limitations on Decision</th>
<th>Standard for Decision Making</th>
<th>Disagreement Process Among Equal Priority Surrogates</th>
</tr>
</thead>
<tbody>
<tr>
<td>CA</td>
<td>(1) Cal. Probate Code § 4711 to 4716</td>
<td>An individual orally designated as a surrogate.</td>
<td>Yes&lt;sup&gt;10&lt;/sup&gt;</td>
<td>Yes</td>
<td>None provided</td>
</tr>
<tr>
<td></td>
<td>(2) Cal. Health and Safety Code § 24178</td>
<td>Spouse, Domestic partner, Adult child, Custodial parent, Adult sibling, Adult grandchild, Adult relative with the closest degree of kinship</td>
<td>Yes&lt;sup&gt;11&lt;/sup&gt;</td>
<td>Yes</td>
<td>Consensus required</td>
</tr>
<tr>
<td>FL</td>
<td>Fla. Stat. Ann. § 765.401</td>
<td>Spouse, Adult child, Parent, Sibling, Close adult relative, Close friend, Licensed clinical social worker selected by bioethics committee</td>
<td>Yes&lt;sup&gt;12&lt;/sup&gt;</td>
<td>Yes</td>
<td>Majority rule for adult children or siblings</td>
</tr>
<tr>
<td>IL</td>
<td>755 ILCS 40/25</td>
<td>Spouse, Adult child, Parent, Sibling, Adult grandchild, Close friend, Guardian of the estate</td>
<td>Yes&lt;sup&gt;13&lt;/sup&gt;</td>
<td>Yes</td>
<td>Majority rule for children, siblings, and grandchildren</td>
</tr>
<tr>
<td>MN</td>
<td>NONE</td>
<td></td>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td>NY</td>
<td>N.Y. Pub. Health Law § 2965</td>
<td>Spouse, Adult child, Parent, Sibling, Close friend</td>
<td>Yes&lt;sup&gt;14&lt;/sup&gt;</td>
<td>Yes</td>
<td>Refer to dispute mediation system</td>
</tr>
<tr>
<td>TX</td>
<td>Tex. Health and Safety Code Ann. § 166.039 and § 166.081 to .101</td>
<td>Physician and: Spouse, Adult children, Parent, Nearest relative Attending physician, with concurrence of independent 2nd physician or physician member of ethics committee</td>
<td>Yes (pregnancy limitation)</td>
<td>Yes</td>
<td>None specified</td>
</tr>
</tbody>
</table>

<sup>10</sup> Effective “only during the course of treatment or illness or during the stay in the health care institution when the designation is made, or for 60 days, whichever period is shorter.” Does not apply to civil commitment, electro-convulsive therapy, psychosurgery, sterilization, or abortion.

<sup>11</sup> Consent is limited to medical experiments that relate to the cognitive impairment, lack of capacity, or serious, or life threatening diseases and conditions of research participants. Does not apply to persons involuntarily committed or voluntarily committed by a conservator.

<sup>12</sup> Does not apply to abortion, sterilization, electroshock therapy, psychosurgery, non-IRB approved experimental treatment, or voluntary admission to a mental health facility.

<sup>13</sup> Does not apply to mental health facility, psychotropic medication, or electro-convulsive therapy. If a decision concerns foregoing life-sustaining treatment, patient must be in terminal condition, permanently unconscious, or incurable or irreversible condition.

<sup>14</sup> Limited consent to a DNR order and patient is in terminal condition, or permanently unconscious, or where resuscitation is futile or extraordinarily burdensome.
2005 State Legislation

- Alabama, HB 592, Starvation and Dehydration Prevention Act.
- Kansas, HB 2211, Requires court approval for guardian to remove life support.
- Louisiana, HB 657, Defines “spouse” for purposes of health care decision making.
- Michigan, HB 4752, Bars adulterers from making health care decisions.
- Missouri, SB 547, Custody of PVS patients.
- New Jersey, SB 2519, Adds living wills to marriage license requirements.
- New York, A5406, Decision-making process for selecting and empowering a surrogate.
- Pennsylvania, HB 1417, Determines surrogate for patients without living wills or advance directives.