

## **Overview of Advance Health Care Directives, Living Wills and Medical Powers of Attorney ©**

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### **What is an Advance Health Care Directive?**

There are several types of advance health care directives. Two of the most common are:

#### **1. Medical power of attorneys**

A medical power of attorney (known in Michigan as a Designation of Patient Advocate) is a written document in which you appoint an agent to make medical care and treatment decisions on your behalf, and give instructions about your health care wishes, if you are physically or mentally incapacitated.

#### **2. Living wills**

A living will is a written document in which you give directions for medical treatment should you become unable to communicate your wishes. A living will sets out medical treatments you choose to have, as well as the procedures or treatments you do not want to have, in the event of terminal illness or traumatic injury. This may be combined into the medical power of attorney or designation of patient advocate.

### **Do I need an attorney to make a medical power of attorney or living will?**

There is no legal requirement that an attorney draft your medical power of attorney or living will, but it is important to be aware that Michigan has specific laws for creating advance health care directives. Those laws require that you be at least 18 years of age, of sound mind and not subject to duress, fraud or undue influence; that the agent be at least 18 years of age; that the medical power of attorney be in writing; that the medical power of attorney include a statement that the agent's authority is exercisable only if you are unable to make medical or mental health treatment decisions, and in the case of authority to make anatomical gifts, that the authority remains exercisable after your death; and that you sign, date and voluntarily execute the medical power of attorney in the presence of two witnesses who must also sign it. The witnesses cannot be your spouse, parent, child, grandchild, sibling, presumptive heir, known devisee at the time of the witnessing, physician, patient advocate, employee of your life or health insurance provider, employee of a health facility that is treating you, employee of a home for the aged where you reside, or employee of a community mental health services program or hospital that is providing mental health services to you. It is prudent to have an attorney draft your medical power of attorney or living will to ensure that it complies with Michigan laws.

### **Do I need a medical power of attorney or living will?**

Everyone should have a medical power of attorney and living will. These documents are best drafted as part of an overall estate plan.

## **What happens if I don't have a medical power of attorney or living will?**

If you become incapacitated without a medical power of attorney appointing an agent to make decisions about your health care, your family will have to go to the probate court to obtain guardianship over you in order to legally make decisions about your health care. Likewise, if you become incapacitated without a living will, your family or the hospital may need to obtain a court order to continue or cease certain life sustaining medical treatment. The court process can be eliminated with a properly drafted and executed designation of patient advocate and/or living will.

## **What are the pros and cons of medical power of attorneys and living wills?**

### Pros

- They speak for you in writing and allow your wishes to be followed
- They can spare your family the emotional burden of making tough medical decisions
- They can eliminate the need for guardianship or other protective proceedings in the probate court

### Cons

- They require you to think about your own disability or mortality