

## **THE ADVANCE MEDICAL DIRECTIVE (AMD) aka the “LIVING WILL”**

### **What is an “Advance Medical Directive”?**

An Advance Medical Directive (AMD), also known as a living will, is a voluntary document that allows you to tell your doctors what you want done should you become terminally ill. It applies if and when your physician diagnoses you as having an incurable and irreversible condition resulting in death within a relatively short period of time. In your AMD, you express your wishes as to how you want to be treated.

Every adult in the United States has the legal right to consent to or refuse medical treatment, under the Patient Self-Determination Act of 1990. However, under Army Regulation (AR) 600-20, if an active duty Soldier refuses physician-recommended life-saving treatment, the Soldier’s unit commander may order such treatment; if the Soldier’s unit commander is not present, the hospital commander has the authority to order the treatment.

Many such people recognize that they do not want their lives artificially prolonged, while others may want actions taken to preserve their lives, even if artificially. Any competent person 18 years of age or older may execute an AMD. An AMD informs your medical care providers and family members of your wishes regarding your medical care, including the following: the type of life support measures you want them to remove, including feeding tubes; whether you want to die at home rather than in a hospital; and whether or not you want to donate your organs for transplant or medical research (many states also permit this choice on your driver's license). Signing an AMD does not take away your right to decide on treatment, if you are still competent to do so.

### **What Happens Without an Advance Medical Directive?**

An AMD allows you to make the decisions now while you are healthy and mentally competent. If you do not create an AMD and do not have a Do-Not-Resuscitate order, all life support measures will likely be provided to you, and will likely not be removed until the treating physician consults appropriate family, friends, clergy, and/or the court, regarding your medical treatment. Health care providers often will assume you want them to do everything in their power to prolong your life artificially, regardless of your prognosis. Your family will be practically powerless to take you off of life support, even if you have no chance of recovery. Additionally, if no arrangements are made for medical directives and you become incapacitated, the court may appoint a guardian for you to make certain decisions in your “best interest.”

Although it is not the primary concern in these situations, the expense of using such artificial life support systems can drain an average estate in a matter of days, leaving little to nothing for your survivors. If you have other wishes, you should execute an AMD.

## **Where Does My AMD Work?**

AMDs must meet strict formal requirements to be valid. They are not wills, and unlike a standard will, which is drafted to the specifications of your state of *domicile*, an AMD is drafted in compliance with the state law where you currently *reside*. A congressional law, however, makes AMDs prepared by military legal offices immune to state law requirements. 10 U.S. Code § 1044c provides that an AMD lawfully prepared by a legal assistance attorney has full effect in all 50 states, the District of Columbia, Puerto Rico, and a possession of the United States. Thus, even though certain states (e.g., Texas and Oregon) normally require specific wording in advance medical directives, they are required to recognize an AMD we prepare in the legal assistance office (LOA). The document will remain applicable in all states even after you separate or retire from the military. Army Regulation (AR) 40-3: Medical, Dental, and Veterinary Care, Chapter 2 (Advance Directives, Do-Not-Resuscitate, and Withhold/Withdraw Orders) provides the Army's specific policies and procedures regarding Advance Directives.

## **The “Power of Attorney (POA) for Health Care” for the Constant Vegetative State**

Your AMD will not address your needs if you are in a constant vegetative state and your death is not imminent. Instead, another type of advance directive, a document called a Durable Power of Attorney (POA) for health care will allow you to appoint an agent to make health care decisions during such a time. Importantly, a durable POA for health care is limited to health care decisions, while a more extensive durable POA may potentially allow your agent to make other important decisions for you, including making bank transactions, signing Social Security checks, applying for disability, or simply writing checks to pay your utility bill while you are medically incapacitated.

For a durable POA for health care to activate, you have to be unable to make health care decisions for yourself. The document requires that you give the agent guidance in advance as to how to carry out your wishes. For example, if you are unconscious because you have been in a car accident and you need your health care decisions to be made for you, such as whether to refuse or accept medical treatment or to employ or discharge medical personnel, your durable POA for health care will empower your agent to act and decide for you.

Since it is impossible to predict every possible contingency in an AMD, having both a living will and a durable POA for health care enables you to handle other kinds of gray-area cases where it is uncertain whether you are terminally ill, or your doctor or state law fail to give your wishes due weight. You should review both documents to ensure that provisions in your advance medical directive and durable POA for health care work together and do not contradict one another.

## **Are You Ready to Execute Your AMD?**

If you are ready to get an advance medical directive, please complete the following steps:

1. Pick up a worksheet from the legal assistance office during our office hours and complete it on your own. You can also download the worksheet by going to <http://www.monterey.army.mil/Legal/wills.html>, and clicking on “Basic Will Questionnaire,” which has an AMD questionnaire at the end of it.
2. Once you have completed your worksheet, make a legal assistance appointment by calling (831) 242-5084, and bring the completed worksheet with you to your appointment with an attorney.

## **After Drafting your AMD**

Make copies of your completed advance directives (AMD and/or POA) for your doctor's files, agent, family, and, if applicable, your health care facility. Discuss the policies of your health care provider and be sure they are compatible with your own beliefs and that your wishes will be honored. If your doctor cannot, or will not, carry out your wishes, he or she must transfer you to a doctor who will do as you direct.

An AMD can be destroyed any time you change your mind. You can do this by communicating your intent to revoke the AMD by telling someone (preferably your health care provider and agent), revoking it in writing, or by destroying the document, although doing all three would be the most prudent. Let your doctor, family, and anyone who has a copy of the AMD know that you have destroyed it.

## **For Further Help or Questions:**

For further information about AMDs, please go to <http://www.jagcnet.army.mil/Legal> and look under “estate planning.”

For appointments concerning this issue and other personal legal matters, call the Legal Assistance Branch of the Office of the Staff Judge Advocate, located at Building 358, Buffalo Soldier Trail, Defense Language Institute, Presidio of Monterey (831-242-5084 or DSN 768-5084).