

# ADVANCED MEDICAL DIRECTIVE AND HEALTH CARE POWER OF ATTORNEY

## **What is an Advanced Medical Directive?**

An Advance Medical Directive, also known as a Living Will, is a 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 making your death imminent (usually within 30 days or less). In your Advanced Medical Directive, 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. 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 Advance Medical Directive. An Advanced Medical Directive 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 Advanced Medical Directive does not take away your right to decide on treatment, if you are still able to do so.

## **Advanced Medical Directive/Living Will vs. Last Will and Testament**

An Advanced Medical Directive is sometimes called a Living Will. A Living Will is not the same thing as a Last Will and Testament. A Last Will and Testament dictates how your assets will be distributed after your death. An Advanced Medical Directive or Living Will allows you to make certain end-of-life medical care decisions ahead of time in case you are unable to communicate your wishes to your health care providers.

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

An Advanced Medical Directive allows you to make the decisions now while you are healthy and mentally competent. If you do not create an Advanced Medical Directive, all life support measures will be provided to you and not removed. Health care providers will assume you want them to do everything in their power to prolong your life artificially, regardless of your prognosis. Your family may be practically powerless to take you off 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 nothing for your survivors. If you have other wishes, you should execute an Advanced Medical Directive.

## **Where Does My Advanced Medical Directive Work?**

Advanced Medical Directives 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 Advanced Medical Directive is drafted in compliance with the state law where you currently *reside*. A congressional law, however, makes Advanced Medical Directives prepared by military legal

offices immune to state law requirements. 10 U.S. Code, section 1044c provides that an Advanced Medical Directive lawfully prepared by a legal assistance attorney has full effect in all 50 states, the District of Columbia, and Puerto Rico. Thus, even though certain states (e.g., Texas and Oregon) normally require specific wording in Advanced Medical Directives, they are required to recognize an Advanced Medical Directive prepared in the legal assistance office. The document will remain applicable in all states even after you separate or retire from the military.

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

Your Advanced Medical Directive 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 Health Care Power of Attorney (POA) will allow you to appoint an agent to make health care decisions during such a time. Importantly, a Health Care POA is limited to healthcare 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 Health Care POA 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 or wounded while deployed and you need your health care decisions to be made for you, your Health Care POA will empower your agent to act and decide. Such decisions include whether to refuse or accept medical treatment or to employ or discharge medical personnel

Since it is impossible to predict every possible contingency in an Advanced Medical Directive, having both an Advanced Medical Directive and a Health Care POA care enables you to handle other kinds of gray-area cases where it's not certain 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 Health Care POA work together and do not contradict one another.

### **What to Do With Your Advanced Medical Directive and Health Care POA**

After you have your signed, notarized Advanced Medical Directive and/or Health Care POA, make copies 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 Advanced Medical Directive or Health Care POA can be destroyed any time you change your mind. You can do this by telling someone, 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 it know that you've destroyed it.

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

For appointments concerning this issue and other personal legal matters, please call the Fort Polk Legal Assistance Office at (337) 531-2580 for an appointment. Hours of operation are Monday through Friday, 0800 – 1130 and 1230 – 1630. We are located in Building 1454 on Alabama Avenue, next to the Showboat Theater.