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Health Care Directives

“How few of his friends’ houses would a man choose to be at when he is sick.”—Samuel Johnson

A health care directive is, as the name implies, a document prepared to deal with a person’s future health care decisions. In Arizona, there are three types of health care directives: 1) a health care power of attorney, 2) a prehospital medical care directive, and 3) a mental health care power of attorney. A living will, which may be attached to a health care power of attorney or executed separately, is discussed in the next chapter.

Why a chapter on health care directives? The answer is that health care directives constitute an important part of any comprehensive estate plan. Every person implementing an estate plan in Arizona should give serious consideration to executing one or more health care directives.

Each type of directive is discussed below.

1. Health Care Power of Attorney

A health care power of attorney is a written designation of an agent to make health care decisions. It is a durable power of attorney, which means that it survives the person’s subsequent disability or incompetency.

A person who is 18 years of age or older (the “principal”) may designate another adult (the “agent”) to make health care decisions on that person’s behalf. The health care power of

attorney must meet certain legal requirements, including that it be dated and signed, and notarized or witnessed by at least one adult. The principal must appear to be of sound mind and free from duress at the time the health care power of attorney is signed.

An agent designated in a health care power of attorney has full power to give or refuse consent to all medical, surgical, hospital and related health care. The power of attorney is only effective on the inability of the principal to make or communicate health care decisions. If the principal has also executed a living will, the agent will be directed to implement those choices that the principal initialed in the living will.

An amendment to the power of attorney, unless made only to indicate an agent's change of address or phone number, must meet all of the legal requirements applicable to executing the original document. A health care power of attorney, once made, continues in effect until those who may rely on it have notice of its revocation.

2. Prehospital Medical Care Directive

A prehospital medical care directive is a document that, in the event of cardiac or respiratory arrest by the patient, directs the withholding of cardiopulmonary resuscitation by emergency medical system and hospital emergency department personnel. Withholding of cardiopulmonary resuscitation pursuant to a prehospital medical care directive does not, however, include the withholding of other medical interventions, such as intravenous fluids, oxygen or other therapies deemed necessary to provide comfort care or to alleviate pain.

A prehospital medical care directive must be printed on an orange background and may be in either letter or wallet size. A person who has a valid prehospital medical care directive may wear an identifying bracelet on either his wrist or his ankle. The bracelet must be similar to identification bracelets worn in hospitals, be on an orange background, and state certain information in bold type.

3. Mental Health Care Power of Attorney

An adult, known as the principal, may designate another adult or adults, known as the agent, to act as agent and to make mental health care decisions on the principal's behalf. The principal may also designate an alternate adult or adults to act as agent if the original designated agent or agents are unwilling or unable to act.

The agent may make decisions about the mental health treatment on behalf of the principal if the principal is found incapable. If an adult does not have a mental health care power of attorney, an agent with a health care power of attorney (discussed in section 1 above) may make decisions about mental health treatment on behalf of the principal if the principal is found incapable. However, an agent may not consent to admit the principal to a level one behavioral health facility unless the authority is expressly stated in the power of attorney.

The decisions about mental health treatment on behalf of the principal must be consistent with any wishes the principal has expressed in the mental health care directive, mental health care power of attorney, health care power of attorney, or other advance directive.

Note About Legal Requirements for Directives

Due to space limitations, not all of the legal requirements for the health care directives discussed in this chapter have been included. For each type of directive, there are a host of specific requirements that must be followed. The requirements are set forth in Sections 36-3201 through 36-3287 of the Arizona Revised Statutes. For those interested, the text of those statutes may be obtained from the Arizona State Legislature's Web site, www.azleg.state.az.us.

Consistent with the author's advice concerning the drafting and execution of other estate planning documents discussed in this book, the author recommends that an attorney be retained to draft and oversee the execution of all health care directives. By using an attorney, legal compliance will be assured.