FACT SHEET: Advance Directives, Durable Power of Attorney for Health Care and Surrogate Decision Making

Talking about the end of life can be hard for patients and their families. This fact sheet aims to provide you with helpful tips as you work through the process with your loved ones and health care providers.

If you have specific questions regarding advance directives faculty and staff at the MU Center for Health Ethics are available to assist you. More information can be found at https://medicine.missouri.edu/centers-institutes-labs/health-ethics or by calling 573-882-2738.

SURROGATE/DPOA FOR HEALTH CARE INFORMATION

• **Purpose:** The ethical intent of involving surrogates in the medical decision-making process is so that they can represent the wishes of the patient.

• **DPOA for Health Care:** A legal document that appoints another individual to make medical decisions on the author’s behalf, in the event that the maker lacks capacity to make or communicate medical decisions.

• **DPOA Use:** DPOA’s do not go into effect unless the patient has lost decision making capacity.

• **In Missouri, No Hierarchical Surrogacy Law:** Unless the patient has appointed a Durable Power of Attorney for Healthcare (DPOA) or has a court appointed guardian, there is no surrogacy law in the State of Missouri which dictates a hierarchy for surrogate decision maker (e.g. a patient’s daughter may have just as much legal standing as a spouse in making decisions).

• **In Kansas, Surrogacy Law:** In the absence of an appointed agent or guardian for health care decision making, there is a priority of surrogates:
  - Spouse, unless legally separated
  - Adult child
  - Parent
  - A relative

ADVANCE DIRECTIVE (AD) INFORMATION

• **Purpose:** Advance directives can protect a patient’s rights and wishes in the event the patient becomes physically or mentally unable to make healthcare decisions. Providers honor a patient’s advance directive as long as it does not violate State and Federal laws.

• **Capacity:** AD’s are not used for decision-making unless an individual loses his or her ability to communicate, or cannot make decisions on their own. Only a competent patient may enact or revoke an AD (including DPOA) at any time and in any manner, written or verbal.

• **Document Creation:** AD’s apply only to medical decisions, not financial or other types of decisions. An individual can cancel or change their advance directive at any time. A lawyer isn’t needed to complete an advance directive. Advance directives are honored in all 50 states.

• **Use:** An AD becomes effective when:
  - the attending physician determines that the patient has lost decision-making capacity and this determination has been validated; and,
  - a valid, executed advance directive is available in the healthcare setting.
Validity: To be valid, an AD must be:
- signed and dated by, or at the direction of the patient (declarant) in the presence of two adult witnesses, who shall attest that the patient is of sound mind and free of duress and undue influence, or it can be signed and dated by the patient (declarant) and acknowledged before a notary public or attorney at law
- The designated proxy or healthcare representative cannot act as a witness for the patient.
- Out-of-state advance directives are honored.
- No particular form needs to be used and photo copies are acceptable.

ADVANCE CARE PLANNING DEFINITIONS

- Adult: An individual 18 years or older.
- Attending Physician: The licensed physician responsible for the overall management of the care and treatment of the patient.
- Advance Directive: A document in which a person either expresses a choice for medical treatments and/or names an individual who should make treatment choices if the person becomes unable to make these decisions. The most frequently used type of advance directives are the Living Will (instructive directive) and the Durable Power of Attorney (proxy directive) for Healthcare. A durable power of attorney can be combined with a living will into a single document that describes one’s treatment preferences in various situations and names a proxy.
- Declarant: A mentally capable adult who executes an advance directive.
- Healthcare Representative (proxy): The individual designated to make healthcare decisions on the declarant’s behalf in accordance with the terms and order of priority stated in a living will and/or with the patient’s previously expressed wishes.
- Living Will: A document specifying an individual’s preferences regarding medical decisions to withhold or withdraw life-sustaining treatment if the person is seriously ill and unable to communicate his/her decisions.
- Durable Power of Attorney for Health Care or Health Care Proxy Directive: A witnessed legal document in which a patient names another person to make medical decisions if the patient becomes unable to make them. Instructions about treatment preferred or to be provided, such as surgery or artificial nutrition and hydration, can also be included.
- Decision-Making Capacity: A patient’s ability to understand and appreciate the nature and consequences of healthcare decisions, including the benefits and risks of each, and alternatives to any proposed healthcare, and to reach an informed decision.
- Life Sustaining Treatment: The use of any medical device or procedure, artificially provided fluids and nutrition, drugs, surgery, or therapy that uses mechanical or other artificial means to sustain, restore, or supplant a vital bodily function, and thereby increasing the life expectancy of a patient.
- Terminal Condition: The stage of an irreversibly fatal illness, disease, or condition. Without requiring a specific determination of life expectancy, this policy recognizes that a prognosis of six months or less, without life sustaining treatment, based upon reasonable medical certainty is a terminal condition.