

GENERAL EXPLANATION OF ADVANCE DIRECTIVE

What is an Advance Directive?

Oregon law allows a person who is at least 18 years old and who is capable of making and communicating his or her own health care decisions, to sign an "Advance Directive," a document containing health care instructions and/or the appointment of a "health care representative." An Advance Directive is a separate document from a "general" or "durable" power of attorney which is used for managing a person's property and financial affairs in the event of incapacity. The Advance Directive replaces the former "Power of Attorney for Health Care" and the "Directive to Physicians." If you signed these forms prior to November 4, 1993, they are still valid, but, unlike the Advance Directive, the Power of Attorney for Health Care must be renewed after seven years.

Health care instructions are your advance instructions regarding your own health care decisions. You may also designate another competent adult as your "health care representative" to make health care decisions on your behalf. In the event you become unable to make your own health care decisions, your health care representative would have generally the same authority over your health care as you would if you could make your own decisions.

Deciding whether to sign an Advance Directive is your own personal decision and the law firm of Buckley Law P.C. makes no recommendation as to whether or not you should sign one.

When is an Advance Directive effective?

The Advance Directive is effective immediately upon its proper execution, but your health care representative is only allowed to make health care decisions on your behalf when you are "incapable" of making your own health care decisions. Oregon law considers you "incapable" only when your attending physician or a court declares you to be incapable of making and communicating your health care decisions.

What decisions can my health care representative make?

With the exceptions described herein, your health care representative can make all decisions regarding your health care. A health care representative is never allowed to consent to the following treatments for you: commitment to or placement in a mental health treatment facility, convulsive treatments, psychosurgery, sterilization or abortion.

What about removal of life support?

Your health care representative cannot make decisions to withhold or withdraw a life-sustaining procedure unless you specifically designate in the Advance Directive that he or she has such authority, or if it has been medically confirmed that:

- (a) You are in a terminal condition;

- (b) You are permanently unconscious;
- (c) Life support would not benefit you and would cause you permanent and severe pain; or
- (d) You are in an advanced stage of a progressive, fatal illness.

Life support will not be removed if you state in the Advance Directive that you want it continued.

What about "tube feeding"?

Your health care representative cannot make decisions to withhold or withdraw artificially administered food and water necessary to sustain your life unless you specifically designate in the Advance Directive that he or she has such authority, or if it has been medically confirmed that:

- (a) It is not medically feasible and would cause you permanent and severe pain;
- (b) You are permanently unconscious;
- (c) You are in a terminal condition; or
- (d) You are in an advanced stage of a progressive, fatal illness.

Note: Oregon law presumes that every person who cannot make or communicate their own health care decisions (either temporarily or permanently) has consented to artificially administered food and water ("tube feeding") unless that person while capable either clearly and specifically stated that he or she would have refused tube feeding or has appointed a health care representative with the power to make these decisions, or the conditions described above exist.

How does my health care representative make health care decisions?

Your health care representative must act consistently with your desires as expressed in your Advance Directive or as you otherwise make your desires known to him or her. In the absence of such instructions, your health care representative has a duty to act in a manner he or she in good faith believes to be in your best interests.

Can I revoke the Advance Directive or a decision of my health care representative?

As to decisions regarding life sustaining procedures or artificially administered food and water, you may revoke your Advance Directive or a health care decision of your health care representative at any time, whether or not you are capable of making your own health care decisions. You may revoke your Advance Directive in its entirety or as to any other instruction, or any other health care decision of your health care representative, as long as you are capable of making and communicating your health care decisions. The revocation may be done orally or in writing and is effective immediately upon communication to your attending physician, health care provider, or your health care representative. The execution of a valid health care instruction revokes any prior health care instruction.

How long is the Advance Directive effective?

Unless you provide in the Advance Directive for a specific expiration date, your Advance Directive continues in effect until you revoke it or you die. If you designate an expiration date, and you are incapable of making and communicating your own health care decisions when that date arrives, the directive will continue in effect until you are no longer incapable (or upon a valid revocation or your death). Also, if your spouse is named as your health care representative and a petition for dissolution or annulment of the marriage is filed, unless you provide otherwise, the designation is suspended unless you reaffirm it in writing after the filing of the petition. It is your responsibility to monitor the need to reaffirm your Advance Directive and the law firm of Buckley Law P.C. **will not** keep track of this requirement for you.

How do I sign an Advance Directive?

Oregon law requires that you use the form prescribed by the Oregon legislature. You can designate a primary and an alternate health care representative. You must sign the form in the presence of two qualified witnesses. The witnesses cannot be the health care representative or your attending physician, and one must not be a blood relative, a prospective heir or taker under your will, or an owner or employee of a health care facility where you are a patient or resident. The witnesses must sign the form under the "Declaration of Witnesses". The primary and alternate (if any) health care representative must also sign the form accepting the designation. Read the form carefully for specific information on the signing, witnessing and acceptance of the Advance Directive.

How is the Advance Directive enforced?

Your health care representative and your attending physician must comply with your Advance Directive. Oregon law provides for criminal penalties for willfully forging, concealing or destroying the Advance Directive or the reinstatement or the revocation of the Advance Directive if the intent was to hasten the death of the principal or affect a health care decision. However, Oregon law provides for immunities from criminal penalties if the health care provider, facility and health care representative act in good faith according to your desires.

What do I do with my Advance Directive?

If you elect to sign an Advance Directive, you should keep the document in a safe place and provide a copy to your health care representative as well as your personal physician. You might also want to give a copy to other family members or your clergy.