

CAPE MAY COUNTY SURROGATE COURT



4 Moore Road, DN-207, Cape May Court House, NJ 08210-1654
Phone: (609) 463-6666 * Fax: (609) 463-6454
Email: surrogate@co.cape-may.nj.us

M. Susan Sheppard
Surrogate / Judge

R. Lynne Germanio
Deputy Surrogate
Jo-Ann Trunfio
Special Deputy Surrogate

Dear Friends:

As a courtesy to the citizens of Cape May County and as a public service, enclosed herewith is information and forms concerning a "Living Will" or "Advance Directive for Health Care".

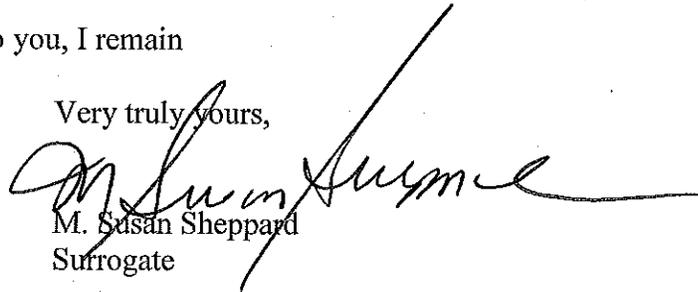
A Living Will/Advance Directive for Health Care is a document you may sign that will let the world know what, if any, medical treatment you desire in the event you become incapacitated and cannot make decisions on your own.

This document enables you to specify your treatment preferences and appoint your health care representative, that is, the person you trust to act for you and make all of your medical decisions if you are unable to make them and are prevented by either physical or mental incapacity from making your own medical decisions.

While not required, you may wish to consult with an attorney of your choice should you have questions concerning a "Living Will" or other legal document options like a power of attorney.

Trusting I have been of service to you, I remain

Very truly yours,



M. Susan Sheppard
Surrogate

MSS:klh

What is a Living Will?

(Advance Directive
For Health Care)



Cape May County, NJ
Surrogate Court

M. SUSAN SHEPPARD, *Surrogate/Judge*

(Mailing Address)

(Location of Court)

4 Moore Road, DN 207

9 North Main Street

Cape May Court House

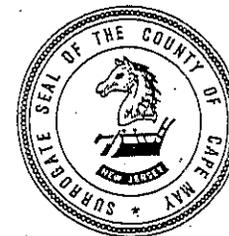
Cape May Court House

New Jersey 08210

New Jersey 08210

Office: (609) 463-6666

Email: surrogate@co.cape-may.nj.us



The Surrogate who sits in her court in your county is using authorities which trace back to the Archbishop of London and beyond the Archbishop into the Roman Emperors and the Bible. As long as there have been wills, and orphans, and incompetents, there have been judicial officers to probate the wills, to appoint guardians for minors and incompetents and to supervise the handling of their affairs.



M. SUSAN SHEPPARD
SURROGATE

In New Jersey the person who passes on the validity of a will, gives the executor proof of his authority to administer the estate and sees to it that the executor handles the estate properly, is called the Surrogate. Each county has a Surrogate's Court and the Surrogate is the Judge of that court. He or she is elected for a term of five years, pursuant to the Constitution of New Jersey, by the people of the county in which he or she has jurisdiction.

The word "Surrogate" means "one who takes the place of another." The Surrogate in each county is actually taking the place of the governor, who in 1710 received from the Archbishop of London the authority as the Archbishop's "Ordinary" or Surrogate-General to probate wills, issue marriage licenses and perform those functions which at that time were in the province of the Church. That power, eventually distributed by the governor of the Crown Colony of New Jersey, and subsequently the governor of the State of New Jersey to his Surrogates, was recognized by subsequent New Jersey Legislatures in statutes which codified the powers and duties of the Surrogates, and by the Constitutions which fixed their terms.

Today the County Surrogate administers a court which is almost certain to touch the lives of every person in the county at some time. Aside from the appointment of a guardian for a minor who comes into an estate (often a settlement arising from an accident), or the supervision of an adoption, or a sanity hearing, for example, it is increasingly common, after a death, to visit the Surrogate's Court for the appointment of someone to handle the estate of the deceased.

Notes

Whom should I appoint as my Health Care Representative?

You should choose someone who is aware of your desires and whose judgment you trust. You should discuss your advance directive with that person and make sure he/she has a copy. It is also important to ascertain that the individual you select is willing to assume this responsibility.

How can I revoke my Advance Directive?

An Advance Directive may be revoked by notification, to the health care representative, physician, nurse or other health care professional, or other reliable witness. Such notification can be written, oral, or by any other act evidencing an intent to revoke the document. Also, subsequent proxy directives or instructive directives may be executed to revoke ones previously made.

Am I required to execute an Advance Directive?

No. The statute gives you this option. No one can force you to execute an Advance Directive. One of the requirements for proper execution of the document is that the person executing it be free of duress and undue influence.

Does the execution of an Advance Directive affect organ donations?

The right of an individual to make an anatomical gift is not restricted by the execution of an Advance Directive. An individual's right to make such a gift is controlled by the Uniform Anatomical Gift Act, which in New Jersey has been adopted at NJS.26:6-57 through 65.

NEW JERSEY ADVANCE DIRECTIVE FOR HEALTH CARE (LIVING WILL) GUIDELINES

FOR THE COMPLETION OF YOUR LIVING WILL DOCUMENT AS PROVIDED WITH THIS PAMPHLET

Prior to executing a New Jersey Advance Directive for Health Care (commonly known as a Living Will) and the Durable Power of Attorney For Health Care for the Appointment of a Health Care Representative (Proxy Directive), you should consult with your physician, hospital, family and become fully informed about your rights regarding medical treatment, the procedures and options available and all matters related to these important legal documents and their consequences.

After extensive study and a full understanding, you may complete the document by printing your name on the top line of the document in the space provided for that purpose.

Under the headings A - TERMINAL CONDITIONS, B - PERMANENTLY UNCONSCIOUS and C - INCURABLE AND IRREVERSIBLE CONDITIONS THAT ARE NOT TERMINAL you should denote your preferences regarding treatment by marking a check or an (X) after number 1 if you wish to direct the withholding or discontinuation of medical treatment. If you wish to direct the continuation of life-sustaining treatment you must mark a check or an (X) on the space after the number 2.

Under the heading D - EXPERIMENTAL AND/OR FUTILE TREATMENT, you may mark a check or make an (X) in the space marked 1 only if you want this form of therapy or treatment withheld or withdrawn.

The heading E - BRAIN DEATH provides you with the option of excluding your death from being declared on the basis of the irreversible cessation of the entire brain, including the brain stem.

The heading F - SPECIFIC PROCEDURES AND/OR TREATMENTS provides you with the opportunity to express your desire and wishes regarding some specific medical treatment options. Should you want a particular treatment you should mark a check or make an (X) following the words: "I do want". Should you oppose a particular treatment or procedure, mark a check or make an (X) following the words: "I do not want."

The heading G - ORGAN DONATION provides you with the choice of donating your organs or not. Should you wish to donate your whole body to science for research or give any specific instructions

regarding organ donations, you may write those directions in the box labeled specific instructions.

On the reverse side of the document under the heading SPECIFIC INSTRUCTIONS there is a boxed space that enables you to write any wishes, directions and instructions that you wish to add to the document. This space enables you to craft the document to address your personal philosophy, value system, religious concerns and any other instructions.

The heading DURABLE POWER OF ATTORNEY FOR HEALTH CARE for the APPOINTMENT of a HEALTH CARE REPRESENTATIVE (PROXY DIRECTIVE), provides you with a legal document that enables you to appoint a primary representative and an alternate health care representative authorized to make decisions regarding your health care and treatments consistent with your wishes as expressed in the instruction directive.

Please note that you should discuss your health care wishes with your selected representatives and that they should consent to serve as your proxies.

This document can be completed by dating the section that follows the sentence: "I sign this document knowingly and after careful deliberation " this day, month and year and by signing your name and printing your address.

Two non-relative witnesses must sign their names and addresses and the document must be dated. Although New Jersey statutes do not require notarization, this form provides for this option.

When you have completed your Advance Directive make several copies. Keep the original document in a safe but easily accessible place and tell others where you have stored it. **DO NOT KEEP YOUR ADVANCE DIRECTIVE IN A SAFE DEPOSIT BOX.** Have it readily available upon admission to a hospital or nursing facility. Give copies of your Advance Directive to the individuals you have chosen to be your Health Care Representative and Alternate Health Care Representative. You may also give copies of your Advance Directive to your doctor, your family, clergy and to anyone who might be involved with your health care.

Keep a completed ID, identification card on your person and carry your Advance Directive with you when you travel.

An Advance Directive becomes operative when given to the attending physician or to the health care institution and when the person is determined to lack capacity to make a particular health care decision. An attending physician's determination that a patient lacks decision making capacity must be confirmed by another physician.

Most important is to understand that an Advance Directive is limited by its purpose: to avoid prolonging the death process. If an individual executes an Advance Directive prohibiting use of a ventilator, that individual's wishes will be honored if the ventilator does nothing more than prolong the process of dying. In some circumstances an individual is placed on a ventilator with anticipation of recovery. In that case the ventilator is not prolonging someone's death.

An Advance Directive will be affected by changes in medical technology. A procedure which, in 1980 merely prolonged death, may, in 1996, be a valuable life saving tool.

An Advance Directive authorizes medical care providers to withhold treatment. It does not, nor cannot authorize a medical care provider to take proactive steps to hasten your death.

What is a Medical Power of Attorney?

The Medical Power of Attorney is a document which permits you to appoint an individual to make decisions on your behalf. In New Jersey this is known as a Proxy Directive and may be included in your Advance Directive.

Where should I keep my Advance Directive?

The Advance Directive does you no good unless it is available. Since it obviously comes into play when you have lost the ability to express yourself, it is important for individuals other than yourself to know where it is. Most hospitals will ask you if you have executed an Advance Directive prior to admission. Certainly the individual whom you have appointed as your proxy should have access to your Advance Directive.

Other Sources of Information

Information regarding New Jersey statutes can be obtained from the New Jersey Department of Community Affairs or the New Jersey Commission on Legal and Ethical Problems in the Delivery of Health Care.

How is an Advance Directive prepared?

It is important for the Advance Directive to be prepared properly. If it is not, it may be given no effect, thereby thwarting your intentions. The New Jersey Statute sets out specific requirements for executing an Advance Directive. The Advance Directive shall be signed and dated by, or at the direction of, the maker in the presence of two subscribing adult witnesses, or a notary public, attorney at law, or other person authorized to administer oaths, who shall attest that the person is of sound mind and free of duress and undue influence. A designated health care representative shall not act as a witness to the execution of an Advance Directive. An Advance Directive may be supplemented by a video or audio tape recording. A female may include information as to what effect the Advance Directive shall have if she is pregnant.

Must I consult with my doctor before preparing an Advance Directive?

No, but you have that option also. The Advance Directive refers to specific medical treatments, or the application of specific medical devices. If you have questions about those treatments or devices you should consult your physician.

What is the purpose of an Advance Directive?

An Advance Directive recognizes a distinction between medical treatment which assists recovery and medical treatment which merely prolongs the process of dying. An Advance Directive speaks for you when you cannot. It tells your medical care providers that you do not want them to prolong the process of dying.

What are some limitations of an Advance Directive?

There are several. First, the degree to which they are accepted varies from state to state. The national trend is toward increased acceptance.

Pursuant to an Advance Directive, life-sustaining treatment may be removed only when the patient is permanently unconscious, the patient's condition is terminal, or if the treatment is experimental and is likely to be ineffective or is likely merely to prolong the dying process. Life-sustaining treatment may also be withdrawn if the patient has a serious irreversible illness. Withdrawal or withholding of treatment must reasonably outweigh the benefits to the patient. Imposition of treatment on an unwilling patient would have to be considered inhumane.

NEW JERSEY ADVANCE DIRECTIVE FOR HEALTH CARE (LIVING WILL)

GLOSSARY OF MEDICAL TERMS

A. LIFE SUSTAINING TREATMENT

- 1. CARDIOPULMONARY RESUSCITATION (CPR):** CPR describes procedures that are done to restart the heart when it stops beating ("cardiac arrest"), and/or to provide artificial respiration when breathing stops ("respiratory arrest"). CPR can involve manual pressure to the chest and mouth-to-mouth breathing or pumping of air into the lungs using a rubber bag. In some instances, a tube may be inserted into the windpipe ("intubation") for mechanical ventilation.
- 2. MECHANICAL VENTILATION OR RESPIRATION:** A machine called a respirator or ventilator can take over breathing if the lungs cannot adequately breathe. It provides oxygen through a tube inserted into the windpipe.
- 3. SURGERY:** A surgical procedure involves cutting into the body to treat a problem.
- 4. CHEMOTHERAPY:** Chemotherapy is drug treatment for cancer. It is used to cure cancer or reduce the discomfort of cancer even if it does not cure it.
- 5. RADIATION THERAPY:** Radiation therapy involves the use of high levels of radiation to shrink or destroy a tumor.
- 6. DIALYSIS:** Dialysis requires the use of a machine that cleanses the blood when the kidneys cannot function adequately. This can be done through tubes placed into blood vessels (hemodialysis) or done through tubes into the abdomen (peritoneal dialysis).
- 7. TRANSFUSION:** The term transfusion refers to giving of any type of blood product into a vein intravenously.
- 8. ARTIFICIALLY PROVIDED NUTRITION AND FLUIDS:** This group of terms refers to feeding patients who are unable to swallow food and fluid. This can be done through a tube into a vein or into the stomach. The feeding tube to the stomach can be placed through the nose (nasogastric tube) or through the abdomen (gastrostomy tube).
- 9. ANTIBIOTICS:** Antibiotics are medications used to fight infections. They can be administered by mouth, by vein, by injection into a muscle, or through a feeding tube.

B. COMFORT AND SUPPORTIVE CARE (PALLIATIVE CARE)

Comfort care is any kind of treatment that increases a person's physical or emotional comfort. Comfort care includes adequate pain control. It may also include oxygen, food and fluids by mouth, moistening of the lips, cleaning, turning, touching a person, or simply sitting with someone who is bedridden.

C. MEDICAL CONDITIONS:

- 1. TERMINAL CONDITION:** The end stage of an irreversible fatal illness, disease or condition.
- 2. PERMANENT UNCONSCIOUSNESS:** A medical condition that is total and irreversible in which a person cannot interact with his/her surroundings or with others in any way and in which a person does not experience pleasure or pain.

D. ADVANCE DIRECTIVE FOR HEALTH CARE/LIVING WILL:

- 1. INSTRUCTION DIRECTIVE:** An Instruction Directive for Health Care, sometimes called a Living Will is a written document, signed by you, in which you decide in advance the kind of care you would want if for any reason you are unable to make health care decisions for yourself.
- 3. PROXY DIRECTIVE:** The Proxy Directive enables you to designate a health care representative. This person may be a family member, friend or other person who understands your feelings and is willing to make decisions for you about accepting, refusing or withdrawing treatment if you become unable to do so for yourself.

This list of definitions for certain medical terms may be relevant when preparing an Advance Directive for Health Care/Living Will. The definitions are intended to provide basic information only. Many of the terms are broad and complex and cannot be adequately explained in one brief passage. Also technology and treatments change over time. If you have questions about a particular procedure the best source of information is your doctor.

Introduction

An Advance Directive, commonly known as a Living Will, permits an individual to provide a general statement of his wishes regarding health care in the event the individual has lost the ability to express his desires.

An Advance Directive permits you to write down your intentions regarding medical procedures in the event you can no longer express yourself.

The purpose of an Advance Directive is to permit an individual to preclude medical treatment which prolongs death rather than improves recovery or quality of life.

It is important to note the limitations of an advance directive. The document does not permit a physician to take pro-active steps to terminate life, but rather permits withholding of treatment.

What is an Advance Directive (Living Will)?

In New Jersey an Advance Directive (commonly referred to as a Living Will) may include both an Instruction Directive and a Proxy Directive. An Instruction Directive is a writing which provides instructions and direction regarding the person's wishes for health care in the event that person subsequently lacks decision making capacity. A Proxy Directive is a writing which designates a health care representative in the event the maker subsequently lacks decision making capacity.

Is an Advance Directive legal?

Yes. New Jersey Statute 26:2H-54 (1992) specifically authorizes an individual to execute an Advance Directive, and to appoint another as proxy for health care decisions. Advance Directives are recognized in all 50 states, information regarding the law in a particular state can be accessed through that state or through the Federal Patient Self-Determination Act, 42 USC 1395 c(a)-1 et. seq.

Can anyone prepare an Advance Directive?

Any competent adult (18 years or older) may execute an Advance Directive.

Must I hire an Attorney to prepare an Advance Directive?

No, but you have that option.

New Jersey Advance Directive for Health Care (Living Will)

** I, _____ (print name) being of sound mind and a competent adult knowing my rights regarding medical care and treatment, do hereby execute this legally binding document expressing my wishes and directions to my family and health care providers of the treatment and care that I desire in the event that I am prevented by either physical or mental incapacity from making future medical decisions.

A – Terminal Condition

If I am diagnosed as having an incurable and irreversible illness, disease or condition and if my attending physician and at least one additional physician who has personally examined me determine that my condition is terminal:

1. _____ I direct that life-sustaining treatment which would serve only to artificially prolong my dying be withheld or ended. I also direct that I be given all medically appropriate treatment and care necessary to make me comfortable and to relieve pain.
2. _____ I direct that life-sustaining treatment be continued.

B – Permanently Unconscious

If there should come a time when I become permanently unconscious, and it is determined by my attending physician and at least one additional physician with appropriate expertise who has personally examined me, that I have totally and irreversibly lost consciousness and my ability to interact with other people and my surroundings:

1. _____ I direct that life-sustaining treatment be withheld or discontinued. I understand that I will not experience pain or discomfort in this condition, and I direct that I be given all medically appropriate treatment and care necessary to provide for my personal hygiene and dignity.
2. _____ I direct that life-sustaining treatment be continued.

C – Incurable and Irreversible Conditions that are not Terminal

If there comes a time when I am diagnosed as having an incurable and irreversible illness, disease or condition which may not be terminal, but causes me to experience severe and worsening physical or mental deterioration and from which I will never regain the ability to make decisions and express my wishes:

1. _____ I direct that life-sustaining measures be withheld or discontinued and that I be given all medically appropriate care necessary to make me comfortable and to relieve pain.
2. _____ I direct that life-sustaining treatment be continued.

D – Experimental and /or Futile Treatment

If I am receiving life-sustaining treatment that is experimental and not a proven therapy, or is likely to be ineffective or futile in prolonging life:

1. _____ I direct that such life-sustaining treatment be withheld or withdrawn. I also direct that I be given all medically appropriate care necessary to make me comfortable and to relieve pain.

E-- Brain Death

The State of New Jersey has enacted legislation that has determined that an individual may be declared legally brain dead when there has been an irreversible cessation of all functions of the entire brain, including the brain stem. (This is also known as whole brain death). However, should this definition interfere with personal religious beliefs of individuals, they may request that it not be applied.

1. _____ To declare my death on the basis of the whole brain death standard would violate my personal beliefs. I therefore wish my death to be declared only when my heartbeat and breathing has irreversibly stopped.

F– Specific Procedures and /or Treatments

If I am in any of the conditions described above, I feel especially strong about the following forms of treatment:

- | | |
|-----------------|---|
| I do want _____ | I do not want _____ cardiopulmonary resuscitation |
| I do want _____ | I do not want _____ mechanical respiration |
| I do want _____ | I do not want _____ tube feeding |
| I do want _____ | I do not want _____ antibiotics |
| I do want _____ | I do not want _____ maximum pain relief |
| I do want _____ | I do not want _____ kidney dialysis |
| I do want _____ | I do not want _____ surgery (such as amputation) |
| I do want _____ | I do not want _____ blood transfusion |
| I do want _____ | I do not want _____ to die at home |

G – Organ Donation

- I do want _____ I do not want _____ to donate my organs

SPECIFIC INSTRUCTIONS

(Please write in your own hand your end of life instructions, directions and treatment preferences and sign your signature.)

Durable Power of Attorney for Health Care for the Appointment of a Health Care Representative (Proxy Directive)

** I _____ (print name here) do hereby
appoint: (Name) _____ (Telephone) _____
(Address) _____ (City) _____ (State) _____ (Zip) _____

to be my health care representative to make any and all health care decisions for me, including decisions to accept or to refuse any treatment, service or procedure used to diagnose or treat my physical or mental condition and decisions to provide, withhold or withdraw life-sustaining treatment if I am unable to make such decisions myself. I direct my health care representative to make decisions on my behalf in accordance with my wishes as stated in this document, or as otherwise known to him or her. In the event my wishes are not clear or if a situation arises that I did not anticipate, my health care representative is authorized to make decisions in my best interest.

HIPAA PROVISION IN MEDICAL DIRECTIVES

The Medical Decision Attorney-in-Fact named in this document is hereby designated as my "Personal Representative" as defined by 45 CFR 164.502 (g), commonly known as the HEALTH INSURANCE PORTABILITY AND ACCOUNTABILITY ACT of 1996 (HIPAA). This individual is to have the same access to my health care and treatment information as I would have if I were able to act for myself. My Medical Decision Attorney-in-Fact and Personal Representative named herein is also authorized to take any and all legal steps necessary to ensure his or her access to information and such action shall include resorting to legal process, if necessary, to enforce my rights under the law and shall attempt to recover attorney's fees, as authorized by New Jersey law, in enforcing my rights.

Signature _____

If the previously named person is unable, unwilling, or unavailable to act as my health care representative, I appoint the following as my alternate health care representative:

(Name) _____ (Telephone) _____
(Address) _____ (City) _____ (State) _____ (Zip) _____

I sign this document knowingly and after careful deliberation this, the _____ day of _____, 20_____.

** Signature: _____
(Address) _____ (City) _____ (State) _____ (Zip) _____

Witnesses:

Witness Signature _____ Witness Name (print) _____
(Address) _____ (City) _____ (State) _____ (Zip) _____

Witness Signature _____ Witness Name (print) _____
(Address) _____ (City) _____ (State) _____ (Zip) _____

Sworn and Subscribed before me on the _____ day of _____, 20_____

Notary Public - State of New Jersey

M. SUSAN SHEPPARD, Surrogate/Judge

Cape May County Surrogate Court

Mailing Address: 4 Moore Road, Cape May Court House, NJ 08210, Phone: (609) 463-6666, Email: surrogate@co.cape-may.nj.us