

# Informed Consent

A Guide to Understanding a Patient's Right to Self Decision

OCTOBER 2009

By:

Carmel M. Cosgrave

Donna E. Fernandez



SmithAmundsen

# TABLE OF CONTENTS

1.	DEFINING INFORMED CONSENT .....	1
	When Informed Consent is Required .....	1
	The Informed Consent Conversation .....	1
	Established Patient Rights .....	2
	Full Disclosure of Health Care Provider .....	2
2.	PERSONS WHO CAN GIVE CONSENT .....	3
	Competent Adult Patients .....	3
	Appointed Legal Guardian .....	3
	Parent of a Minor .....	3
	Agent Under a Durable Power of Attorney for Health Care .....	3
	Attorney-in-Fact Under Mental Health Treatment Preference Declaration.....	5
	Health Care Surrogate .....	8
	Public Guardian .....	10
3.	CONSENT & MINORS .....	11
	Emergency Situations.....	11
	Drug or Alcohol Abuse Problems.....	11
	Birth Control Services .....	12
	Sexually Transmitted Diseases .....	12
	Victim of a Sexual Assault .....	12
	Abortion .....	13
4.	SPECIAL CIRCUMSTANCES .....	15
	Do Not Resuscitate (DNR) Orders.....	15
	Experimental Treatment .....	15
	Drug & Blood Alcohol Testing.....	16
	HIV Testing.....	17
	Foregoing Life Sustaining Treatment by Living Will.....	19
5.	CONSENT FOR MENTAL HEALTH PATIENTS.....	22
	Voluntary Admission of Adult.....	22
	Emergency Admission of Adult.....	23
	Outpatient Mental Health Services for Minors.....	25
6.	APPENDIX .....	26
	Illinois Statutory Short Form Power of Attorney for Health Care	
	Declaration for Mental Health Treatment	
	Uniform Do-Not-Resuscitate (DNR) Advance Directive	
	Living Will Declaration	

# SECTION 1: DEFINING INFORMED CONSENT

## Definition of Informed Consent:

In providing medical [services] [care] [treatment] to [a patient], a medical professional must obtain [the patient's] informed consent. **When I use the expression "informed consent" I mean a consent obtained from a patient by [a medical professional] after the disclosure by [the medical professional] of those [risks of] [and] [or] [alternatives to] the proposed treatment which a reasonably well-qualified [medical professional] would disclose under the same or similar circumstances.** The failure to obtain informed consent is professional negligence. I.P.I. 105.07.01 (2008 edition).

## When Informed Consent is Required

- General Rule: Informed consent is generally required for all medical procedures.
- Exception for Emergency Medical Treatment: Informed consent is not required in an emergency situation as determined by the physician. Any decision to forego patient consent because of an emergency situation must be well documented in the chart

## The Informed Consent Conversation

- It is the responsibility of the attending physician to provide the patient with pertinent information to allow the patient to make an informed decision about the patient's care. At a minimum, the attending physician should discuss the following items with the patient:
  - Diagnosis
  - Nature and purpose of proposed procedure or treatment
  - Risks and consequences of proposed procedure or treatment
  - Likelihood of success for proposed procedure and/or the complications rate
  - Feasible alternatives to proposed procedure or treatment
  - Prognosis if proposed procedure or treatment is not provided
- When the patient consents to the proposed procedure or treatment after the informed consent conversation, the attending physician must document the informed consent conversation in the patient's medical record.

## **Established Patient Rights**

- To receive care consistent with sound medical and nursing practices. 410 ILCS 50/3(a) (2009).
- To be informed of the physician responsible for coordinating his or her care. 410 ILCS 50/3(a) (2009).
- To receive information concerning his or her condition and proposed treatment. 410 ILCS 50/3(a) (2009).
- To refuse any treatment to the extent permitted by law. 410 ILCS 50/3(a) (2009).
- To receive privacy and confidentiality from disclosure of the nature or details of medical services, except to the patient, the patient's decision maker, health care providers and staff providing care or processing payment, parties responsible for peer review, and other required to be notified by law. 410 ILCS 50/3(d) (2009).
- To receive privacy and confidentiality of records except as otherwise provided by law. 410 ILCS 50/3(a) (2009).
- To examine and receive a reasonable explanation of his or her total bill for services rendered by a physician or other health care provider, including the itemized charges for specific services received. 410 ILCS 50/3(b) (2009).
- To receive timely, prior notice of the termination of a policy or plan by an insurance company or health care facility. 410 ILCS 50/3(c) (2009).
- To receive notice of any requirement that he or she must be tested for an HIV infection or other identified causative agent of AIDS. 410 ILCS 50/3(c) (2009).
- To receive a written statement of these rights upon admission to a hospital. 410 ILCS 50/5(a) (2009).

## **Full Disclosure of Health Care Provider**

- Any physician, medical student, resident, advanced practice nurse, registered nurse, or physician assistant who provides treatment or care to a patient must inform the patient of his or her profession before providing treatment or care. 410 ILCS 50/7 (2009).
- All health care providers, employees, students, and volunteers of a health care facility who treats a patient or resident of a facility must wear an identification badge that readily discloses his or her first name, licensure status (if applicable), and staff position. 410 ILCS 50/6 (2009).

## SECTION 2: PERSONS WHO CAN GIVE CONSENT

### Competent Adult Patients

- A competent adult patient is any individual who has the capacity to understand the underlying medical condition and the capacity to understand the objective of the treatment.
- It is presumed under the law that an individual possesses the requisite mental capacity to make reasonable decisions with respect to health care.
- A diagnosis of mental illness or mental retardation, of itself, is not a bar to a determination of decisional capacity. 755 ILCS 40/20(c) (2009).
- A disabled person is defined as a person 18 years or older, who because of mental deterioration, mental illness, developmental disability, or physical disability lacks sufficient understanding or capacity to make or communicate responsible decisions concerning the care of his person. 755 ILCS 5/11a-2 (2009).
- A person may also be considered disabled because of gambling, idleness, debauchery or excessive use of intoxicants or drugs, or spends or wastes his estate as to expose himself or his family to want or suffering. 755 ILCS 5/11a-2 (2009).

### Appointed Legal Guardian

- A guardian has no power, duty or liability with respect to any personal or healthcare matters, absent a court order pursuant the Illinois Power of Attorney Act.

### Parent of a Minor

- If the minor's parents are divorced, the custodial parent may provide consent for the minor child.
- If custodial parent is not available to provide consent, a parent with actual custody may consent to the procedure. Taylor v. R.D. Morgan & Assoc., 205 Ill. App. 3d 682 (5th Dist. 1990).

### Agent Under Durable Power of Attorney for Health Care

An adult of sound mind may delegate the decision making power for health care decisions for a period when he becomes disabled to a trusted agent through a Power of Attorney for Health Care. 755 ILCS 45/4-1 (2009)

- Responsibility of Agent: An agent must notify the physician of the existence of any health care agency, amendment, or revocation. 755 ILCS 45/4-7(a) (2009).
- Responsibility of Health Care Provider: A health care provider that receives a health care agency must make it a part of the principal's medical records and document any subsequent amendment or revocation. 755 ILCS 45/4-7(a) (2009).
- Unwilling Health Care Provider: A health care provider who disagrees with the direction of an agent must notify the agent who is then responsible for making arrangements for the transfer of the patient to another provider. The provider should continue to provide reasonably necessary consultation and care in connection with the transfer. 755 ILCS 45/4-7(b) (2009).
- Amendments: The terms of the agency may be amended at any time by a written amendment signed and dated by the principal or person acting at the direction of the principal. 755 ILCS 45/4-6(b) (2009).
- Right of Revocation: A Power of Attorney for Health Care may be revoked by the principal at any time, without regard to the declarant's mental or physical condition, in any of the following ways:
  - Obliterating, burning, tearing, or otherwise destroying or defacing the document in a manner indicating an intention to revoke. 755 ILCS 45/4-6(a) (2009).
  - A written revocation of the agency that is signed and dated by the principal or a person acting at the direction of the principal. 755 ILCS 45/4-6(a) (2009).
  - Oral or other expression of intent to revoke the agency, in the presence of a witness 18 years of age or older who signs and dates a writing confirming that such expression or intent was made. 755 ILCS 45/4-6(a) (2009).
- Penalties:
  - A person who, without the principal's consent, willfully conceals, cancels, or alters a health care agency or any amendment or revocation of the agency or who falsifies or forges a health care agency, amendment, or revocation, can be held civilly liable. 755 ILCS 45/4-9(a) (2009).
  - A person who falsifies or forges a health care agency or willfully conceals or withholds personal knowledge of an amendment or revocation of a health care agency with the intent to withhold death delaying procedures, and leading to the death of the principal, is subject to prosecution for involuntary manslaughter. 755 ILCS 45/4-9(b) (2009).

A sample of a proper "Power of Attorney for Health Care" is located in the Appendix.

- A person who requires or prevents the execution of a health care agency as a condition for receiving health care services or insurance is guilty of a Class A misdemeanor. 755 ILCS 45/4-9(c) (2009).
- Immunity: A health care provider who in good faith relies upon the terms of a health care agency will not be subject to civil or criminal liability or discipline for unprofessional conduct. 755 ILCS 45/4-8 (2009).

### **Attorney-in-Fact Under Mental Health Treatment Preference Declaration**

An adult of sound mind may make a declaration of preferences or instructions regarding mental health treatment, including consent or refusal of mental health treatment to be invoked when the adult becomes incapable. 755 ILCS 43/10 (2009).

- Requirements of Declaration: Must be signed by principal and two competent adult witnesses who attest that the principal is known to them, that the declaration was signed by the principal in their presence, and the principal appears to be of sound mind and not under duress, fraud, or undue influence. 755 ILCS 43/20 (2009).
  - Witnesses of the declaration cannot be persons related to principal by blood, marriage, or adoption of an attending physician, mental health service provider, owner or operator of health care facility, or relative of a physician, provider, owner, or operator. 755 ILCS 43/65 (2009).
  - Must be delivered to the principal's attending physician. 755 ILCS 43/25 (2009).
- Appointment of Attorney-in-Fact: A declaration may designate a competent adult to act as attorney-in-fact and alternative attorney-in-fact to make decisions about mental health treatment when the principal becomes incapable. 755 ILCS 43/15 (2009).
  - The attorney-in-fact cannot be an attending physician or an employee, owner, or operator of a mental health facility if that person is not related to the principal by blood, marriage, or adoption. 755 ILCS 43/60 (2009).
  - The attorney-in-fact must accept the appointment in writing before making decision about mental health treatment on behalf of the principal. 755 ILCS 43/15 (2009).

A sample of a proper "Declaration for Mental Health Treatment" is located in the Appendix.

- The attorney-in-fact must make decisions consistent with the preferences and instructions in the declaration by the principal. 755 ILCS 43/15 (2009).
- Authority of Attorney-in-Fact:
  - The attorney-in-fact does not have authority to make mental health treatment decisions unless the principal is incapable. 755 ILCS 43/30 (2009).
  - When the principle becomes incapable, the attorney-in-fact has a duty to act consistently with the preferences or instruction expressed by the principal in the declaration. 755 ILCS 43/30 (2009).
  - The attorney-in-fact has the authority to receive information regarding the proposed mental health treatment and to obtain the principal's medical records relevant to the proposed treatment. 755 ILCS 43/30 (2009).
  - An attorney-in-fact is not personally liable for the cost of the treatment provided to the principal. 755 ILCS 43/30 (2009).
  - An attorney-in-fact is not subject to criminal prosecution, civil liability, or professional disciplinary action for any action taken in good faith pursuant to a declaration for mental health treatment. 755 ILCS 43/30 (2009).
  - An attorney-in-fact may withdraw by giving notice to the principal, if the principal is capable. If the principal is not capable, the attorney-in-fact may withdraw by notifying the principal's attending physician. 755 ILCS 43/70 (2009).
  - A person who has withdrawn as attorney-in-fact may rescind the withdrawal by executing an acceptance after the date of the withdrawal and notifying the principal or the principal's attending physician if the principal is incapable. 755 ILCS 43/70 (2009).
- Expiration of Declaration:
  - A declaration for mental health treatment is effective for three years after its execution. 755 ILCS 43/10 (2009).
  - The authority of the attorney-in-fact or alternative attorney-in-fact is effective as long as the declaration of mental health treatment is effective. 755 ILCS 43/10 (2009).
  - If the declaration of mental health treatment has been invoked, and the three years since execution has lapsed, the declaration remains in effect until the principal is no longer incapable. 755 ILCS 43/10 (2009).
- Right of Revocation: A declaration may be revoked in whole or in part at any time by a written statement of a capable principal that is signed by the principal and a

physician and is delivered to the principal's attending physician. 755 ILCS 43/50 (2009).

- Responsibility of Attending Physician:
  - Continue to obtain informed consent for all mental health treatment decisions if the principal is capable of providing informed consent or refusal. 755 ILCS 43/25 (2009).
  - Upon receipt of a declaration for mental health treatment, it should be made a part of the principal's medical record. 755 ILCS 43/40 (2009).
  - Inform the principal or attorney-in-fact if unwilling to comply with declaration, withdraw from the principal's care, and document the unwillingness and withdrawal in the principal's medical record. 755 ILCS 43/40 (2009).
  - Act in accordance with the declaration when the principal has been found to be in capable. 755 ILCS 43/25 (2009).
  - Upon receipt of a revocation of a declaration, it should be documented in the principal's medical record. 755 ILCS 43/50 (2009).
  - Upon notification that an attorney-in-fact seeks to withdraw, it should be documented in the principal's medical record. 755 ILCS 43/70 (2009).
- Exceptions to Following Declaration:
  - When a court order contradicts the principal's preferences or instructions specified in the declaration. 755 ILCS 43/45(a) (2009).
  - In cases of emergency endangering life or health. 755 ILCS 43/45(b) (2009)
  - The declaration is contrary to the laws regarding taking a person into custody, or to admit, retain, or treat a person in health care facility. 755 ILCS 43/45(c) (2009).
- Immunity: A physician who, to a reasonable degree of medical certainty, determines that the principal is capable or incapable of revoking a declaration or a physician or provider who administers or does not administer mental health treatment according to and in good faith reliance of a decision of the attorney-in-fact or the validity of a declaration, is not subject to criminal prosecution, civil liability, or professional disciplinary action. 755 ILCS 43/55 (2009).

## Health Care Surrogate

When there is no living will declaration, declaration for mental health treatment, or agent under a durable power of attorney for health care, a surrogate decision maker may be identified by the attending physician to make decisions for a patient without decisional capacity. 755 ILCS 40/15 (2009).

- Decisions whether to forego life-sustaining treatment for a patient without a Living Will, a Power of Attorney for Health Care, or a Mental Health Treatment Preference Declaration, and who lacks decisional capacity, may be made by certain family members and others. In order for a surrogate to make such decisions, the patient must have: (1) lack of decisional capacity and (2) a qualifying condition.
- Effective January 1, 1998, surrogate decision makers are authorized to make decisions as to medical treatment for patients who lack decisional capacity but do not have a qualifying condition. However, the amendment does not further describe what type of medical treatment decisions the surrogate can make.
- Determining Whether a Patient Lacks Decisional Capacity
  - A determination that a patient lacks decisional capacity must be made by the attending physician to a reasonable degree of medical certainty and the cause, nature, and duration must be certified in writing by the attending physician.
  - When a patient lacks decisional capacity, the health care provider must make a reasonable inquiry as to the availability of a health care agent as a Power of Attorney for Health Care. When no agent is available, the health care provider must make a reasonable inquiry as to the availability of possible surrogates.
  - When no written determination has been made by an attending physician that the patient lacks decisional capacity, a hospital's duty to inquire into the availability of the appropriate surrogate decision maker is not triggered. Collins v. Lake Forest Hosp., 213 Ill. 2d 234 (2004).
  - If a written determination is made by the attending physician, the hospital is required to attempt to contact a surrogate by telephone within 24 hours after the patient is determined to lack decisional capacity. 755 ILCS 40/25(a) (2009).
- Determining Whether There is a Qualifying Condition: The condition and its cause must be certified in the record by the attending physician *and* by one other concurring qualified physician

- Types of Qualifying Conditions:
  - Terminal Condition: A condition with no reasonable prospect for cure or recovery and where death is imminent.
  - Permanent Unconsciousness: A condition that, to a high degree of medical certainty:
    - (i) Will last permanently without improvement;
    - (ii) In which sensation, purposeful action, social interaction, and awareness of self and environment are absent; and
    - (iii) For which life-sustaining treatment provides only minimal medical benefit.
  - Incurable or Irreversible Condition: A condition:
    - (i) For which there is no reasonable prospect of cure or recovery;
    - (ii) That ultimately will cause death even if life-sustaining treatment is started or continues;
    - (iii) That imposes severe pain or otherwise imposes an inhumane burden on the patient; and
    - (iv) Life-sustaining treatment provides only minimal medical benefit.
- Priority of Surrogates: The following people may act as surrogate decision makers and should be considered for the position in this order:
  - Guardian
  - Spouse
  - Any adult son or daughter
  - Either parent
  - Any adult brother or sister
  - Any adult grandchild
  - Close friend
  - Guardian of the estate
- The patient must be informed of the surrogate's identity and if the surrogate is not court appointed and the patient objects, then the surrogate cannot act as a decision maker.
- When the appropriate surrogate has been identified, the hospital must record the name, address, telephone number, and relationship of that person to the patient in the patient's medical record. 755 ILCS 40/25(b) (2009).

- Documenting a Surrogate's Consent: When a surrogate makes the decision to forego life-sustaining treatment, the decision must be made in the presence of the attending physician and another adult witness at least 18 years old. The decision and substantive discussions must be clearly documented in the patient record.
- Standard for Surrogate Decision Making: In making his or her decisions, the surrogate is to conform as closely as possible to what the patient would have done. If the patient's wishes are unknown and remain unknown after reasonable efforts to discover them, or if the patient is a minor, the decision must be made on the basis of the patient's best interests. In determining the patient's best interests, the surrogate is to weigh the burdens against the benefits of the treatment and take into account other family and friends' views that the patient would have considered.

### Public Guardian

- If a patient is a ward of the state, the public guardian generally has the authority to consent to medical procedures.

## SECTION 3: CONSENT & MINORS

In general, the consent of a parent or guardian is required for most medical procedures on minors.

- Exceptions:
  - The minor is married. 410 ILCS 210/1 (2009).
  - The minor is pregnant. 410 ILCS 210/1 (2009).
  - The minor is a parent. 410 ILCS 210/1 (2009).
  - The minor is over 16 years old and provides a court order evidencing emancipation. 750 ILCS 30/5 (2009).
  - The minor is over 16 years old and provides a court order evidencing partial emancipation which specifically includes the right to make decisions related to medical care and treatment. 750 ILCS 30/5 (2009).

### Emergency Situations

- Informed consent is not required when obtaining consent is not reasonably feasible under the circumstances without adversely affecting the condition of the minor's health. 410 ILCS 210/3 (2009).

### Drug or Alcohol Abuse Problems

- A minor that is twelve years old or older may consent to medical care or counseling related to the diagnosis and treatment of a drug or alcohol addiction or related to a family member's drug or alcohol abuse. Consent from a minor's parent or guardian is not required when the minor is twelve years old or older. 410 ILCS 210/4 (2009).
- A medical provider must make a reasonable effort to involve family members in such treatment, if the minor so consents and the medical provider believes that such involvement will not be detrimental to the progress of the care to the minor. The medical care provider should make a reasonable effort to encourage the minor to accept family involvement in the care and treatment. 410 ILCS 210/4 (2009).
- A medical care provider shall not inform the minor's parent or guardian of the minor's condition or treatment without the minor's consent, unless it is necessary, in

the medical provider's judgment, in order to protect the safety of the minor, a family member, or other individual. 410 ILCS 210/5 (2009).

### **Birth Control Services**

- Birth control services and information may be rendered to any minor in any of the following circumstances:
  - Minor is married, a parent, or pregnant. 325 ILCS 10/1 (2009).
  - Minor has the consent of a parent or guardian. 325 ILCS 10/1 (2009).
  - Minor is referred by a physician, clergyman, or planned parenthood agency. 325 ILCS 10/1 (2009).
  - When the failure to provide services would create a serious health hazard. 325 ILCS 10/1 (2009).

### **Sexually Transmitted Diseases**

- A minor that is twelve years old or older may consent to medical care or counseling related to the diagnosis and treatment of a sexually transmitted disease. Consent from a minor's parent or guardian is not required when the minor is twelve years old or older. 410 ILCS 210/4 (2009).
- Each incident of sexually transmitted disease must be reported to the State Department of Public Health. 410 ILCS 210/4 (2009).
- A medical provider must make a reasonable effort to involve family members in such treatment, if the minor so consents and the medical provider believes that such involvement will not be detrimental to the progress of the care to the minor. The medical care provider should make a reasonable effort to encourage the minor to accept family involvement in the care and treatment. 410 ILCS 210/4 (2009).
- A medical care provider who provides counseling to a minor who is the victim of sexual abuse may, but is not required to, inform the minor's parent or guardian as to the treatment given or needed. 410 ILCS 210/5 (2009).

### **Victim of a Sexual Assault**

- A minor may consent to medical care or counseling related to the diagnosis or treatment of any disease or injury arising from a sexual assault as if the minor were an adult. Consent from a minor's parent or guardian is not required. 410 ILCS 210/3 (2009).

## Abortion

- A person may not perform an abortion on a minor without the minor's consent, except in a medical emergency. 750 ILCS 70/30 (2009).
- No person shall knowingly perform an abortion upon a minor or an incompetent person unless the physician, the physician's agent, or the referring physician has given at least 48 hours actual notice to an adult family member of the physician's intention to perform the abortion. If actual notice is not possible after reasonable effort, the physician or the physician's agent must give at least 48 hours of constructive notice. 750 ILCS 70/15 (2009).
  - A "minor" is defined as any person under 18 years old who has not been married or who has not been emancipated. 750 ILCS 70/10 (2009).
  - "Actual notice" is defined as the giving of notice directly, in person or by telephone. 750 ILCS 70/10 (2009).
  - An "adult family member" is defined as a person over 21 years of age who is the parent, grandparent, step-parent living in the house hold, or legal guardian. 750 ILCS 70/10 (2009).
  - "Constructive notice" is defined as notice by certified mail to the last known address of the person entitled to notice with delivery deemed to have occurred 48 hours after the certified notice is mailed. 750 ILCS 70/10 (2009).
- Exceptions: Notice is not required in the following circumstances:
  - The minor is accompanied by a person entitled to notice. 750 ILCS 70/20 (2009).
  - Notice is waived in writing by a person entitled to notice. 750 ILCS 70/20 (2009).
  - The attending physician certifies in the minor's medical records that a medical emergency exists and there is insufficient time to provide the required notice. 750 ILCS 70/20 (2009). A "medical emergency" is defined as a condition that, on the basis of the physician's good faith clinical judgment, so complicates the medical condition of a pregnant woman as to necessitate the immediate abortion of her pregnancy to avert her death or which delay will create serious risk of substantial and irreversible impairment of major bodily function. 750 ILCS 70/10 (2009).

An "abortion" is defined as the use of any instrument, medicine, drug or any other substance or device to terminate the probability of a live birth, to preserve the life or health of a child after live birth, or to remove a dead fetus.

- The minor declares in writing that she is the victim of sexual abuse, neglect, or physical abuse by an adult family member. The physician must certify in the minor's medical record that he or she has received the written declaration of abuse or neglect. 750 ILCS 70/20 (2009).
- Notice is waived by a written court order where the minor has petitioned the court for waiver of the notice requirement and the court has found that the preponderance of the evidence shows that (1) the minor is sufficiently mature and well enough to decide intelligently whether to have an abortion or (2) notification is not in the best interest of the minor. 750 ILCS 70/25 (2009).

The Seventh Circuit has recently upheld the constitutionality of waiver of notice by court order, finding that this was a permissible attempt to assist a minor in making an informed choice about whether to obtain an abortion. Zbaraz v. Madigan, No. 08-1620 (7th Cir. July 14, 2009).

- Penalties: Any physician who willfully fails to provide notice before performing an abortion on a minor shall be referred to the Illinois State Medical Disciplinary Board. 750 ILCS 70/40 (2009).
- Immunity: Any physician who in good faith provides notice or relies on an exception to the notice requirement cannot be subject to any type of civil or criminal liability or discipline for unprofessional conduct for failure to give the required notice. 750 ILCS 70/45 (2009).

## SECTION 4: SPECIAL CIRCUMSTANCES

### Do Not Resuscitate (DNR) Orders

- An adult or emancipated minor of sound mind may direct that resuscitating efforts not be implemented by executing a document stating as such. 755 ILCS 40/65(a) (2009).
- Consent must be obtained from the individual, from another person at the individual's direction, from the individual's legal guardian, agent under a power of attorney for health care, or surrogate decision maker. 755 ILCS 40/65(b) (2009).
  - Effective January 1, 2010: Consent must be witnessed by one adult who attests that the individual, other person guardian, agent, or surrogate has had the opportunity to read the form and has signed the form or acknowledged his or her signature or mark on the form in the witness' presence. 755 ILCS 40/65(b) (2009).
- A health care professional may presume in the absence of knowledge to the contrary, that a completed DNR Order is valid. 755 ILCS 40/65(d) (2009).
- A health care professional who in good faith complies with a DNR Order cannot be subject to criminal or civil liability or be found to have committed an act of unprofessional conduct. 755 ILCS 40/65(d) (2009).

A sample of a "Do Not Resuscitate Order" from the Department of Public Health is located in the Appendix.

### Experimental Treatment

- No physician may conduct any research program or experimental procedure of a patient without the prior informed consent of the patient or, if the patient is unable to consent, the patient's guardian, spouse, parent, or authorized agent. 410 ILCS 50/3.1(b) (2009)
- Any patient who is the subject of a research program or an experimental procedure, must receive an explanation of the nature and possible consequences of such research or experiment and consent to it before the research or experiment is conducted. 410 ILCS 50/3.1(a) (2009).

Even though a hospital is not in the best position to obtain informed consent, when a hospital is a participant in a clinical investigation, the hospital assumes a duty to ensure that informed consent is obtained for each participant in the clinical study. Kus v. Sherman Hosp., 268 Ill. App. 3d 771 (2nd Dist. 1995).

## Drug & Blood Alcohol Testing

- Implied Consent: Any person who drives or is in actual physical control of a motor vehicle in Illinois shall be deemed to have given consent to a chemical test of blood, breath, or urine for the purpose of determining the content of alcohol or drugs if they are arrested. 625 ILCS 5/11-501.1 (2009).
  - A person who is dead, unconscious, or otherwise incapable of refusal, shall be deemed not have withdrawn consent. 625 ILCS 5/11-501.1 (2009).
  - The testing is to be administered by a police officer who will designate which type of testing should be administered. A urine test may be administered even after a blood and/or breath test have been administered. 625 ILCS 5/11-501.1 (2009).
  - A withdrawal may not be administered until the medical professional determines that the withdrawal can be made without interfering or endangering the well being of the patient. 625 ILCS 5/11-501.6 (2009).
- Immunity for Medical Providers: A person who in good faith withdraws blood or collects urine for evidentiary purposes at the request of a law enforcement officer cannot be held civilly liable for doing so, unless the act is performed in a willful and wanton manner. 625 ILCS 5/11-500.1 (2009).
  - “Willful and wanton” is defined as a course of action that shows an actual or deliberate intention to cause harm or which, if not intentional, shows an utter indifference to or conscious disregard for the health or safety of another. 625 ILCS 5/11-500.1 (2009).
  - A “person” is a physician authorized to practice medicine, a registered nurse, a trained phlebotomist, a certified paramedic, or other person approved by the Department of State Police. 625 ILCS 5/11-501.2 (2009).
- Reporting Test Results: The results of blood or urine tests performed for the purpose of determining the content of alcohol or drugs on an individual’s blood or urine received in the course of receiving emergency medical treatment from injuries in a motor vehicle accident shall be disclosed to a requesting law enforcement agent. 625 ILCS 5/11-501.4-1 (2009).

A lawsuit brought against a hospital physician and nurse alleging that they unlawfully forced her to submit to a blood draw after a DUI arrest was dismissed because they were acting in good faith reliance that the police officer who requested the blood draw had probable cause to request it. Ruppel v. Ramseyer, 33 F. Supp. 2d 720 (C.D. Ill. 1999).

- Immunity for Reporting: No person shall be liable for civil damages or professional discipline as a result of the disclosure or reporting of tests, except for willful or wanton misconduct. 625 ILCS 5/11-501.4-1 (2009).

## HIV Testing

- Anonymous Testing: Patients have the right to anonymous testing unless identification of the patient is otherwise required. A health care facility or provider that does not provide anonymous testing must refer a patient requesting anonymous testing to a site where it is available. 410 ILCS 305/6 (2009).
- Pre-Test Information: Before obtaining informed consent, a health care professional must make the following information available to a patient in writing, verbally, by video, or other means:
  - A fair explanation of the test, including its purpose, potential uses, limitations, and the meaning of its results. 410 ILCS 305/3(d)(1) (2009).
  - A fair explanation of the procedure to be followed, including the voluntary nature of the test, the right to withdraw consent at any time, the right to anonymity to the extent provided by law, and the right to confidential treatment of the test results to the extent provided by law. 410 ILCS 305/3(d)(2) (2009).
  - The availability of additional or confirmatory testing and referrals for further information or counseling. 410 ILCS 305/5 (2009).
  - An opportunity to ask questions and decline testing. 410 ILCS 305/3(d)(2) (2009).
- Obtaining Consent: A health care provider or facility must obtain informed consent from the patient or his legally authorized representative after providing the aforementioned pre-test information before ordering an HIV test. 410 ILCS 305/4 (2009).
- Exceptions to Consent Requirement: Consent is not required in any of the following situations:
  - A physician determines that such testing is medically indicated to provide appropriate diagnosis and treatment to the patient, provided that the patient has otherwise provided consent to the physician for medical treatment. 410 ILCS 305/8 (2009).
  - A health care provider, firefighter, or EMT is involved in accidental direct skin or mucous membrane contact with the blood or bodily fluids of an individual which is of a nature that may transmit HIV. 410 ILCS 305/7 (2009).

- A law enforcement officer acting in the line of duty is involved in direct skin or mucous membrane contact with the blood or bodily fluids of an individual which is of a nature that may transmit HIV. 410 ILCS 305/7 (2009).
- Research performed in such a way that the identity of the individual is not known and may not be retrieved by the researcher, and the individual is not informed of the results. 410 ILCS 305/8 (2009).
- A human body donated to a health care facility or provider under the Illinois Anatomical Gift Act and where testing is necessary to assure medical acceptability of such gift for the purpose intended. 410 ILCS 305/7 (2009).
- Semen provided prior to September 21, 1987 to a health care facility or provider for the purpose of artificial insemination and where testing is necessary to assure medical acceptability of semen for the purpose intended. 410 ILCS 305/7 (2009).
- Non-Disclosure Requirement: No person may disclose or be compelled to disclose the identity of an individual who has been tested for HIV or the results of an HIV test which would identify the individual. 410 ILCS 305/9
- Exceptions to Disclosure Requirement: Disclosure is permitted to any of the following individuals:
  - The individual who was the subject of the test or his legally authorized representative. 410 ILCS 305/9(a) (2009).
  - Any person designated in a legally effective release of the tests results executed by the individual who was the subject of the test or his legally authorized representative. 410 ILCS 305/9(b) (2009).
  - The parent of a minor patient who tests positive for HIV shall be notified provided that the physician believes notification is in the best interest of the minor, the physician has been unsuccessful in persuading the minor to notify the parent and the physician has reason to believe the parent has not been notified. 410 ILCS 305/9(k) (2009).
  - The spouse of a patient who tests positive for HIV may be notified, but is not required to be, provided that the physician has been unsuccessful in persuading the patient to notify the spouse and the physician has reason to believe the spouse has not been notified. 410 ILCS 305/9(a) (2009).
  - A temporary caretaker of a child taken into temporary protective custody by the Department of Children and Family Services. 410 ILCS 305/9(j) (2009).
  - A health care provider or employee of a health care facility who needs to know the test results and is authorized to obtain the results, provides patient care, or handles process specimens of bodily fluids or tissues. 410 ILCS 305/9(c) (2009).

- A health facility staff committee which conducts program monitoring, program evaluation, or service reviews. 410 ILCS 305/9(f) (2009).
- A health care facility or health care provider which procures, processes, distributes, or uses a human body part from a deceased person. 410 ILCS 305/9(e) (2009).
- A health care facility or health care provider which procures, processes, distributes, or uses semen provided prior to September 21, 1987 for the purpose of artificial insemination. 410 ILCS 305/9(e) (2009).
- A health care provider, firefighter, or EMT who is involved in accidental direct skin or mucous membrane contact with the blood or bodily fluids of an individual which is of a nature that may transmit HIV. 410 ILCS 305/9(h) (2009).
- A law enforcement officer acting in the line of duty is involved in direct skin or mucous membrane contact with the blood or bodily fluids of an individual which is of a nature that may transmit HIV. 410 ILCS 305/9(i) (2009).
- Department of Public Health and other designated local health authorities. 410 ILCS 305/9(d) (2009).

### **Foregoing Life Sustaining Treatment by Living Will**

- **Execution of Declaration:** An individual of sound mind, that is 18 or older or an emancipated minor, may execute a document directing that if he is suffering from a terminal condition, then death delaying procedures should not be utilized for the prolongation of life. 755 ILCS 35/3(a) (2009).
  - The declaration must be signed by the declarant, or another at the declarant's direction, and witnessed by two individuals that are 18 or older. 755 ILCS 35/3(b) (2009).
  - The declaration may contain specific directions; if any specific directions are found to be invalid, the remaining portions of the declaration must be given effect. 755 ILCS 35/3(e) (2009).
  - The declaration of a woman who is pregnant must not be given effect if the attending physician determines that it is possible for the fetus to develop to the point of live birth with the continued application of death delaying procedures. 755 ILCS 35/3(c) (2009).

A sample of a proper "Living Will Declaration" is located in the Appendix.

- It is the responsibility of the declarant to provide his attending physician with the declaration, if able, and to ask the physician if he is willing to comply with the provisions of the declaration. 755 ILCS 35/3(d) (2009).
- Recording Declaration: An attending physician who determines a patient has a terminal condition and has knowledge of a declaration must document the determination of terminal condition and the terms of the declaration in the medical record. 755 ILCS 35/4 (2009).
- Unwilling Physician: An attending physician who is unwilling to comply with provisions of a declaration shall so advise the declarant and it is the declarant's responsibility to initiate a transfer of physician, if able; if the declarant is unable to initiate a transfer of physician, the physician must notify another individual authorized by the declarant, a guardian, or a member of the declarant's family. 755 ILCS 35/3(d) (2009).
- Right of Revocation: A declaration may be revoked at any time by the declarant, without regard to the declarant's mental or physical condition, in any of the following ways:
  - Obliterating, burning, tearing, or otherwise destroying or defacing the declaration in a manner indicating an intention to revoke. 755 ILCS 35/5(a) (2009).
  - A written revocation of the declaration signed and dated by the declarant or a person acting at the direction of the declarant. 755 ILCS 35/5(a) (2009).
  - Oral or other expression of intent to revoke the declaration, in the presence of a witness 18 years of age or older who signs and dates a writing confirming that such expression or intent was made. 755 ILCS 35/5(a) (2009).
- Recording Revocation: The revocation is effective when it is communicated to the attending physician by the declarant or witness to the revocation and the attending physician must document the date, time, and place where notice of the revocation was received. 755 ILCS 35/5(b) (2009).
- Penalties:
  - A person who willfully conceals, cancels, defaces, obliterates, or damages the declaration of another without the declarant's consent or forges a revocation, or who fails to comply with these requirements, can be held civilly liable. 755 ILCS 35/8(a) (2009).
  - A person who coerces or fraudulently induces another to execute a declaration or falsifies or forges the declaration of another, or who willfully conceals or withholds personal knowledge of a revocation, with the intent to withhold death delaying procedures, and leading to the death of another, is subject to prosecution for involuntary manslaughter. 755 ILCS 35/8(b) (2009).

- A physician or other health care provider who willfully fails to comply with these requirements is guilty of unethical and unprofessional conduct in violation of the Medical Practice Act of 1987. 755 ILCS 35/8(c)-(d) (2009).
- A person who requires or prohibits the execution of a declaration as a condition for receiving health care services or insurance is guilty of a Class A misdemeanor. 755 ILCS 35/8(e) (2009).
- Immunity: A physician or other health care provider may presume, in the absence of knowledge to the contrary, that a declaration is valid and cannot be criminally or civilly liable or found to have committed unprofessional conduct when acting in good faith on a declaration or revocation. 755 ILCS 35/5 (2009); 755 ILCS 35/7 (2009).

# SECTION 5: CONSENT FOR MENTAL HEALTH PATIENTS

## Voluntary Admission of Adult

- Any person 16 or older may be admitted to a mental health facility as a voluntary recipient for treatment of a mental illness upon the filing of an application with the facility director of a facility if the facility director deems such person clinically suitable for admission as a voluntary recipient. 405 ILCS 5/3-400 (2009).
- The application for a voluntary recipient may be executed by any of the following:
  - The person seeking admission, if 18 or older. 405 ILCS 5/3-401(a) (2009).
  - Any interested person, 18 or older, at the request of the person seeking admission. 405 ILCS 5/3-401(a) (2009).
  - A minor, 16 or older with the minor's parent or guardian being immediately notified of the admission. 405 ILCS 5/3-401(a) (2009).
- The written application form must inform the voluntary recipient in simple, non-technical terms and in large, bold face type that he has the right to be discharged from the facility at the earliest appropriate time, not to exceed 5 days (not including weekend and holidays) after giving written notice of the desire to be discharged, unless two certificates are filed with court asserting that the recipient is subject to involuntary admission. 405 ILCS 5/3-401(b) (2009).
  - Upon admission, this right to be discharged must also be communicated orally to the recipient. 405 ILCS 5/3-401(b) (2009).
  - Upon admission, a copy of the written application must be given to the recipient and any parent, guardian, relative, attorney, or friend accompanying the recipient to the facility. 405 ILCS 5/3-401(b) (2009).
- 30 days after the voluntary admission of a recipient, the facility director must review the recipient's record and assess the need for continuing hospitalization. The facility director must consult with the recipient if continuing hospitalization is indicated and request consent from the recipient to continue receiving treatment. 405 ILCS 5/3-404 (2009).
  - The request and consent must be documented in the recipient's record. 405 ILCS 5/3-404 (2009).
  - The recipient must be reassessed and consent must be obtained every 60 days thereafter for as long as the hospitalization continues. 405 ILCS 5/3-404 (2009).
  - The recipient's failure to provide consent to continue treatment constitutes notice of the desire to be discharged.

## Emergency Admission of Adult

- When a person 18 years of age or older is in a condition that immediate hospitalization is necessary to protect that person or others from physical harm, any person that is 18 years of age or older may present a petition to the facility director of a mental health facility in the county where the respondent resides or is present. 405 ILCS 5/3-601(a) (2009).
  - Note: A surrogate decision maker under the Health Care Surrogate act may not consent to the admission to a mental health facility for a person who lacks decision making capacity, but may present a petition. 405 ILCS 5/3-601.2 (2009).
  - This has no effect on the authority of a court appointed guardian. 405 ILCS 5/3-601.2 (2009).
- The petition must include all of the following items:
  - Detailed statement of the reason that the respondent is subject to involuntary admission, including signs and symptoms of mental illness and a description of any acts, threats, or other behavior or pattern of behavior along with the time and place of their occurrence. 405 ILCS 5/3-601(b) (2009).
  - Name and address of the spouse, parent, guardian, substitute decision maker, close relative, or if none, a close friend who may have the other names and addresses; if this information is unavailable, then the petition should state that a diligent inquiry was made and specify the steps taken. 405 ILCS 5/3-601(b) (2009).
  - Petitioner's relationship to the respondent and a statement of whether the petitioner has a legal or financial interest in the matter or is involved in litigation with the respondent; if any such relationship exists, there must also be a statement of why the petitioner believes it would not be practicable or possible for someone else to be the petitioner. 405 ILCS 5/3-601(b) (2009).
  - The names, addresses, and telephone numbers of the witnesses by which the facts asserted may be proved. 405 ILCS 5/3-601(b) (2009).
  - A certificate executed by a physician, qualified examiner, or clinical psychologist which states that the respondent was examined not more than

Because involuntary commitment invades a person's liberty, the code requirements will be strictly construed in favor of the patient. For example, a person was determined to have a viable action against a hospital and certifying physician for false imprisonment after it was discovered that the certificate utilized was defective. Arthur v. Lutheran Gen. Hosp., 295 Ill. App. 3d 81 (1st. Dist. 1998).

72 hours prior to admission, that the respondent is subject to involuntary admission and requires immediate hospitalization, and the respondent was advised of his rights; there should be no information regarding clinical observations or factual information. 405 ILCS 5/3-602 (2009).

- If no physician, qualified examiner, or clinical psychologist is immediately available or if it is otherwise not possible to obtain the certificate, the respondent may be detained for examination in a mental health facility as long as the petition specifies the following additional information:
  - The petitioner believes as a result of personal observation that the respondent is subject to involuntary admission. 40 ILCS 5/3-603 (b) (2009).
  - A diligent effort was made to obtain a certificate. 40 ILCS 5/3-603 (b) (2009).
  - No physician, qualified examiner, or clinical psychologist could be found who has examined or could examine the respondent. 40 ILCS 5/3-603 (b) (2009).
  - A diligent effort has been made to convince the respondent to appear voluntarily for examination by a physician, qualified examiner, or clinical psychologist, unless that petitioner reasonably believes that effort would impose a risk of harm to the respondent or others. 40 ILCS 5/3-603 (b) (2009).
- If a certificate cannot be obtained within 24 hours, the respondent must be released. 405 ILCS 5/3-604 (2009).
- Upon admission, the following rights of the respondent must be observed:
  - The respondent must be allowed to complete no less than 2 telephone calls at the time of admission. 40 ILCS 5/3-609 (2009).
  - Within 12 hours of admission, the respondent must be given a copy of the petition and a statement of rights. 40 ILCS 5/3-609 (2009).
  - Within 24 hours of admission (not including weekends and holidays), these documents must be forwarded to the respondent's attorney and guardian. 40 ILCS 5/3-609 (2009).
  - The respondent must be asked if he desires the documents to be forwarded to any other persons, and at least 2 other persons shall receive the documents. 40 ILCS 5/3-609 (2009).
  - Within 24 hours (not including weekends or holidays), the respondent must be examined by a psychiatrist who must complete a second certificate; the psychiatrist cannot have executed the first certificate. 405 ILCS 5/3-610 (2009).

- The respondent must be informed of his right to refuse medications; if the respondent refuses, medications cannot be given unless it is necessary to prevent the respondent from causing serious harm to himself or others; the facility must record all treatments given to the respondents and the reasons each medication was given. 405 ILCS 5/3-608 (2009).
- The following follow-up procedures are required by the mental health facility:
  - Within 24 hours of the admission (not including weekends or holidays), the facility director must file 2 copies of the petition, the first certificate, proof of service of the petition, and statement of rights given to the respondent with the court in the county where the facility is located. 405 ILCS 5/3-611 (2009).
  - Upon this filing, the court must set a hearing to be held within 5 days (not including weekends or holidays) with notice of the time and place of the hearing to be served upon the respondent, responsible relatives, attorney, guardians, and at least two other persons designated by respondent. 405 ILCS 5/3-611 (2009).
  - The second certificate must be promptly filed with the court by the facility director. 405 ILCS 5/3-611 (2009).

### **Outpatient Mental Health Services for Minors**

- A minor that is 12 years old or older may request and receive outpatient counseling services or psychotherapy without notification to the parents or guardian. 405 ILCS 5/3-501(a) (2009).
- The outpatient treatment is limited to five sessions of no longer than 45 minutes each when a parent or guardian is not notified. 405 ILCS 5/3-501(a) (2009).
- A parent or guardian should be notified if the facility director believes it necessary. Under such circumstances, the minor patient must be told of the impending notification. 405 ILCS 5/3-501(a) (2009).
- A parent or guardian is not responsible for the cost of treatment, unless the parent or guardian consented. 405 ILCS 5/3-501(b) (2009).

# APPENDIX

# Illinois Statutory Short Form Power of Attorney for Health Care

*(NOTICE: the purpose of this power of attorney is to give the person you designate (your "agent") broad powers to make health care decisions for you, including power to require, consent to or withdraw any type of personal care or medical treatment for any physical or mental condition and to admit you to or discharge you from any hospital, home or other institution. This form does not impose a duty on your agent to exercise granted powers; but when powers are exercised, your agent will have to use due care to act for your benefit and in accordance with this form and keep a record of receipts, disbursements and significant actions taken as agent. A court can take away powers of your agent if it finds the agent is not acting properly. You may name successor agents under this form but not co-agents, and no health care provider may be named. Unless you expressly limit the duration of this power in the manner provided below, until you revoke this power or a court acting on your behalf terminates it, your agent may exercise the powers given here throughout your lifetime, even after you become disabled. The powers you give your agent, your right to revoke those powers and the penalties for violating the law are explained more fully in sections 4-5, 4-6, 4-9 and 4-10(b) of the Illinois "Powers of Attorney for Health Care Law" of which this form is a part. That law expressly permits the use of any different form of power of attorney you may desire. If there is anything about this form that you do not understand, you should ask a lawyer to explain it to you.)*

POWER OF ATTORNEY made this \_\_\_\_\_ day of \_\_\_\_\_ (month, year).

I, \_\_\_\_\_  
(insert name and address of principal)

hereby appoint: \_\_\_\_\_  
(insert name and address of agent)

as my attorney-in-fact (my "agent") to act for me and in my name (in any way I could act in person) to make any and all decisions for me concerning my personal care, medical treatment, hospitalization and health care and to require, withhold or withdraw any type of medical treatment or procedure, even though my death may ensue. My agent shall have the same access to my medical records that I have, including the right to disclose the contents to others. My agent shall also have full power to authorize an autopsy and direct the disposition of my remains. Effective upon my death, my agent has the full power to make an anatomical gift of the following (initial one):

Any organ:

Specific organs:

*(The above grant of power is intended to be as broad as possible so that your agent will have authority to make any decision you could make to obtain or terminate any type of health care, including withdrawal of food and water and other life-sustaining measures, if your agent believes such action would be consistent with your intent and desires. If you wish to limit the scope of your agent's powers or prescribe special rules or limit the power to make an anatomical gift, authorize autopsy or dispose of remains, you may do so in the following paragraphs.)*

2. The powers granted above shall not include the following powers or shall be subject to the following rules or limitations (here you may include any specific limitations you deem appropriate, such as: your own definition of when life-sustaining measures should be withheld; a direction to continue food and fluids or life-sustaining treatment in all events; or instructions to refuse any specific types of treatment that are inconsistent with your religious beliefs or unacceptable to you for any other reason, such as blood transfusion, electro-convulsive therapy, amputation, psychosurgery, voluntary admission to a mental institution, etc.):

---

---

---

---

(continued)

*(The subject of life-sustaining treatment is of particular importance. For your convenience in dealing with that subject, some general statements concerning the withholding or removal of life-sustaining treatment are set forth below. If you agree with one of these statements, you may initial that statement; but do not initial more than one):*

\_\_\_\_\_ I do not want my life to be prolonged nor do I want life-sustaining treatment to be provided or continued if my  
Initialed agent believes the burdens of the treatment outweigh the expected benefits. I want my agent to consider the relief of suffering, the expense involved and the quality as well as the possible extension of my life in making decisions concerning life-sustaining treatment.

\_\_\_\_\_ I want my life to be prolonged and I want life-sustaining treatment to be provided or continued unless I am in a  
Initialed coma which my attending physician believes to be irreversible, in accordance with reasonable medical standards at the time of reference. If and when I have suffered irreversible coma, I want life-sustaining treatment to be withheld or discontinued.

\_\_\_\_\_ I want my life to be prolonged to the greatest extent possible without regard to my condition, the chances I have  
Initialed for recovery or the cost of the procedures.

*(This power of attorney may be amended or revoked by you in the manner provided in section 4-6 of the Illinois "powers of attorney for health care law" (see the back of this form). Absent amendment or revocation, the authority granted in this power of attorney will become effective at the time this power is signed and will continue until your death, and beyond if anatomical gift, autopsy or disposition of remains is authorized, unless a limitation on the beginning date or duration is made by initialing and completing either or both of the following:)*

3.( ) This power of attorney shall become effective on \_\_\_\_\_

(insert a future date or event during your lifetime, such as court determination of your disability, when you want this power to first take effect)

4.( ) This power of attorney shall terminate on \_\_\_\_\_

(insert a future date or event, such as court determination of your disability, when you want this power to terminate prior to your death)

*(If you wish to name successor agents, insert the names and addresses of such successors in the following paragraph.)*

5. If any agent named by me shall die, become incompetent, resign, refuse to accept the office of agent or be unavailable, I name the following (each to act alone and successively, in the order named) as successors to such agent:

\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_

For purposes of this paragraph 5, a person shall be considered to be incompetent if and while the person is a minor or an adjudicated incompetent or disabled person or the person is unable to give prompt and intelligent consideration to health care matters, as certified by a licensed physician.

*(If you wish to name your agent as guardian of your person, in the event a court decides that one should be appointed, you may, but are not required to, do so by retaining the following paragraph. The court will appoint your agent if the court finds that such appointment will serve your best interests and welfare. Strike out paragraph 6 if you do not want your agent to act as guardian.)*

6. If a guardian of my person is to be appointed, I nominate the agent acting under this power of attorney as such guardian, to serve without bond or security.

7. I am fully informed as to all the contents of this form and understand the full import of this grant of powers to my agent.

Signed \_\_\_\_\_  
(principal)

The principal has had an opportunity to read the above form and has signed the form or acknowledged his or her signature or mark on the form in my presence.

\_\_\_\_\_ Residing at \_\_\_\_\_  
(witness)

*(You may, but are not required to, request your agent and successor agents to provide specimen signatures below. If you include specimen signatures in this power of attorney, you must complete the certification opposite the signatures of the agents.)*

Specimen signatures of agent (and successors)

I certify that the signatures of my agent (and successors) are correct.

\_\_\_\_\_  
(agent)

\_\_\_\_\_  
(principal)

\_\_\_\_\_  
(successor agent)

\_\_\_\_\_  
(principal)

\_\_\_\_\_  
(successor agent)

\_\_\_\_\_  
(principal)

# Declaration for Mental Health Treatment

I \_\_\_\_\_, being an adult of sound mind, willfully and voluntarily make this declaration for mental health treatment to be followed if it is determined by 2 physicians or the court that my ability to receive and evaluate information effectively or communicate decisions is impaired to such an extent that I lack the capacity to refuse or consent to mental health treatment. "Mental health treatment" means electroconvulsive treatment, treatment of mental illness with psychotropic medication, and admission to and retention in a health care facility for a period up to 17 days.

I understand that I may become incapable of giving or withholding informed consent for mental health treatment due to the symptoms of a diagnosed mental disorder. These symptoms may include:

---

---

## PSYCHOTROPIC MEDICATIONS

If I become incapable of giving or withholding informed consent for mental health treatment, my wishes regarding psychotropic medications are as follows:

\_\_\_\_\_ I consent to the administration of the following medications:

---

\_\_\_\_\_ I do not consent to the administration of the following medications:

---

Conditions or limitations: \_\_\_\_\_

---

---

## ELECTROCONVULSIVE TREATMENT

If I become incapable of giving or withholding informed consent for mental health treatment, my wishes regarding electroconvulsive treatment are as follows:

\_\_\_\_\_ I consent to the administration of electroconvulsive treatment.

\_\_\_\_\_ I do not consent to the administration of electroconvulsive treatment.

Conditions or limitations: \_\_\_\_\_

---

---

---

**ADMISSION TO AND RETENTION IN FACILITY**

If I become incapable of giving or withholding informed consent for mental health treatment, my wishes regarding admission to and retention in a health care facility for mental health treatment are as follows:

\_\_\_\_\_ I consent to being admitted to a health care facility for mental health treatment.

\_\_\_\_\_ I do not consent to being admitted to a health care facility for mental health treatment.

This directive cannot, by law, provide consent to retain me in a facility for more than 17 days.

Conditions or limitations: \_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_

**SELECTION OF PHYSICIAN (optional)**

If it becomes necessary to determine if I have become incapable of giving or withholding informed consent for mental health treatment, I choose Dr. \_\_\_\_\_ of \_\_\_\_\_ to be one of the 2 physicians who will determine whether I am incapable. If that physician is unavailable, that physician's designee shall determine whether I am incapable.

**ADDITIONAL REFERENCES OR INSTRUCTIONS**

\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_

Conditions or limitations: \_\_\_\_\_  
\_\_\_\_\_

**ATTORNEY-IN-FACT**

I hereby appoint:

NAME \_\_\_\_\_

ADDRESS \_\_\_\_\_

TELEPHONE# \_\_\_\_\_

to act as my attorney-in-fact to make decisions regarding my mental health treatment if I become incapable of giving or withholding informed consent for that treatment.

**ATTORNEY-IN-FACT (continued)**

If the person named above refuses or is unable to act on my behalf, or if I revoke that person's authority to act as my attorney-in-fact, I authorize the following person to act as my attorney-in-fact:

NAME \_\_\_\_\_

ADDRESS \_\_\_\_\_

TELEPHONE# \_\_\_\_\_

My attorney-in-fact is authorized to make decisions that are consistent with the wishes I have expressed in this declaration or, if not expressed, as are otherwise known to my attorney-in-fact. If my wishes are not expressed and are not otherwise known by my attorney-in-fact, my attorney-in-fact is to act in what he or she believes to be my best interest.

\_\_\_\_\_  
(Signature of Principal/Date)

**AFFIRMATION OF WITNESSES**

We affirm that the principal is personally known to us, that the principal signed or acknowledged the principal's signature on this declaration for mental health treatment in our presence, that the principal appears to be of sound mind and not under duress, fraud or undue influence, that neither of us is:

A person appointed as an attorney-in-fact by this document;

The principal's attending physician or mental health service provider or a relative of the physician or provider;

The owner, operator, or relative of an owner or operator of a facility in which the principal is a patient or resident; or

A person related to the principal by blood, marriage or adoption.

Witnessed By:

\_\_\_\_\_  
(Signature of Witness/Date)

\_\_\_\_\_  
(Printed Name of Witness)

\_\_\_\_\_  
(Signature of Witness/Date)

\_\_\_\_\_  
(Printed Name of Witness)

**ACCEPTANCE OF APPOINTMENT AS ATTORNEY-IN-FACT**

I accept this appointment and agree to serve as attorney-in-fact to make decisions about mental health treatment for the principal. I understand that I have a duty to act consistent with the desires of the principal as expressed in this appointment. I understand that this document gives me authority to make decisions about mental health treatment only while the principal is incapable as determined by a court or 2 physicians. I understand that the principal may revoke this declaration in whole or in part at any time and in any manner when the principal is not incapable.

\_\_\_\_\_  
(Signature of Attorney-in-fact/Date)

\_\_\_\_\_  
(Printed Name of Witness)

\_\_\_\_\_  
(Signature of Attorney-in-fact/Date)

\_\_\_\_\_  
(Printed Name of Witness)

**NOTICE TO PERSON MAKING A DECLARATION FOR MENTAL HEALTH TREATMENT**

This is an important legal document. It creates a declaration for mental health treatment. Before signing this document, you should know these important facts:

This document allows you to make decisions in advance about 3 types of mental health treatment: psychotropic medication, electroconvulsive therapy, and short-term (up to 17 days) admission to a treatment facility. The instructions that you include in this declaration will be followed only if 2 physicians or the court believes that you are incapable of making treatment decisions. Otherwise, you will be considered capable to give or withhold consent for the treatments.

You may also appoint a person as your attorney-in-fact to make these treatment decisions for you if you become incapable. The person you appoint has a duty to act consistent with your desires as stated in this document or, if your desires are not stated or otherwise made known to the attorney-in-fact, to act in a manner consistent with what the person in good faith believes to be in your best interest. For the appointment to be effective, the person you appoint must accept the appointment in writing. The person also has the right to withdraw from acting as your attorney-in-fact at any time.

This document will continue in effect for a period of 3 years unless you become incapable of participating in mental health treatment decisions. If this occurs, the directive will continue in effect until you are no longer incapable.

You have the right to revoke this document in whole or in part at any time you have been determined by a physician to be capable of giving or withholding informed consent for mental health treatment. A revocation is effective when it is communicated to your attending physician in writing and is signed by you and a physician. The revocation may be in a form similar to the following:

**REVOCAION**

I, \_\_\_\_\_, willfully and voluntarily revoke my declaration for mental health treatment as indicated

I revoke my entire declaration

I revoke the following portion of my declaration

\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_

Date \_\_\_\_\_ Signed \_\_\_\_\_  
(Signature of principal)

I, Dr. \_\_\_\_\_, have evaluated the principal and determined that he or she is capable of giving or withholding informed consent for mental health treatment.

Date \_\_\_\_\_ Signed \_\_\_\_\_  
(Signature of physician)

If there is anything in this document that you do not understand, you should ask a lawyer to explain it to you. This declaration will not be valid unless it is signed by 2 qualified witnesses who are personally known to you and who are present when you sign or acknowledge your signature.

History  
(Source: P.A. 89-439, § 75.)





# Living Will

## DECLARATION

This declaration is made this \_\_\_\_\_ day of \_\_\_\_\_ (month, year).

I, \_\_\_\_\_, being of sound mind, willfully and voluntarily make known my desires that my moment of death shall not be artificially postponed.

If at any time I should have an incurable and irreversible injury, disease, or illness judged to be a terminal condition by my attending physician who has personally examined me and has determined that my death is imminent except for death delaying procedures, I direct that such procedures which would only prolong the dying process be withheld or withdrawn, and that I be permitted to die naturally with only the administration of medication, sustenance, or the performance of any medical procedure deemed necessary by my attending physician to provide me with comfort care.

In the absence of my ability to give directions regarding the use of such death delaying procedures, it is my intention that this declaration shall be honored by my family and physician as the final expression of my legal right to refuse medical or surgical treatment and accept the consequences from such refusal.

Signed \_\_\_\_\_

City, County and State of Residence \_\_\_\_\_

The declarant is personally known to me and I believe him or her to be of sound mind. I saw the declarant sign the declaration in my presence (or the declarant acknowledged in my presence that he or she had signed the declaration) and I signed the declaration as a witness in the presence of the declarant. I did not sign the declarant's signature above for or at the direction of the declarant. At the date of this instrument, I am not entitled to any portion of the estate of the declarant according to the laws of intestate succession or, to the best of my knowledge and belief, under any will of declarant or other instrument taking effect at declarant's death, or directly financially responsible for declarant's medical care.

Witness \_\_\_\_\_

Witness \_\_\_\_\_