

 <p><b>HAWAII HEALTH SYSTEMS</b> C O R P O R A T I O N <i>"Touching Lives Everyday"</i></p> <p><b>Policies and Procedures</b></p>	<p><b>Department:</b> Legal</p>	<p><b>Policy No.:</b> <b>PAT 1007</b></p>
	<p><b>Issued by:</b> Quality Council</p>	<p><b>Revision No.:</b> 1</p>
<p>Subject: <b><i>Advance Directive Procedure</i></b></p>	<p><b>Approved by:</b>  Thomas M. Driskill, Jr. President &amp; CEO</p>	<p><b>Effective Date:</b> January 4, 2002</p>
		<p><b>Supersedes Policy:</b> December 5, 2001</p> <p><b>Page:</b> 1 of 7</p>

## I. POLICY:

HHSC recognizes and supports the fundamental rights of each individual adult and emancipated minor to control his or her health-care. HHSC abides by the requirements of the Patient Self-Determination Act, a federal law since December 1, 1991. The federal law provides that individuals have rights to be informed, in writing, of their rights under Hawaii state law to make their own health-care decisions, including the right to accept or refuse medical or surgical treatment and the right to formulate advance directives, and to be provided written policies of the facility regarding the implementation of such rights.

An advance health-care directive consists of an individual's direction concerning a health-care decision for the individual, and/or a power of attorney which designates an agent to make health-care decisions for the individual when the individual is incapacitated. Health-care decisions, as used in this Policy and Procedure, include decisions regarding the selection and discharge of health-care providers and facilities. Approval or disapproval of diagnostic tests, surgical procedures, programs of medication, and orders not to resuscitate, are also health-care decisions. Health-care decisions further include directions to provide, withhold, or withdraw artificial nutrition and hydration, provided that withholding or withdrawing artificial nutrition or hydration is in accord with accepted and applicable health-care standards. Individuals have rights under Hawaii State law to make their own health-care decisions.

HHSC does not condition the provision of care or otherwise discriminate against any patient or resident based on whether or not he or she has issued, executed, or revoked an advance health-care directive. If an individual has, or establishes, an advance health-care directive, it is the policy of HHSC to honor it within the limits of all applicable laws and the mission, philosophy, and capabilities of HHSC.

However, HHSC does recognize a physician's right, based on reasons of conscience, to decline compliance with an individual's directions concerning health-care decisions for the individual. A physician may also decline to comply with an individual's direction that requires medically ineffective health care or health care contrary to generally accepted standards of care applicable to the physician.

## **II. PROCEDURE:**

A patient or a resident who has attained the age of eighteen or is married and/or totally self-supporting (hereinafter "individual") must be properly informed of his or her rights to control his or her health-care, and his or her advance health-care directive, if any, must be identified. The facility and the health-care provider must comply with the identified directive within the limits of the applicable laws and the mission, philosophy, and capabilities of the facility and HHSC. Proper record must be made and maintained during the course of implementing this policy and procedure. A physician or facility may not require or prohibit the execution or revocation of an advance health-care directive as a condition for providing care. Procedure for implementing the policy follows.

### **A. Providing Information to the Individual.**

An individual must be informed in writing of his or her rights under the Uniform Health-care Decisions Act of the state of Hawaii. Therefore, at the time of admission as an inpatient, or in advance of coming under the care in the case of a home health agency, an individual, or if incompetent, his or her family or guardian if one is appointed, shall be given a packet on advance health-care directive. Each facility shall designate a person who, or department which, shall be responsible to provide such a packet to the individual or his or her family or guardian. The packet will include a description of the individual's rights under the state law on advance health-care directives, frequently asked questions and answers, an optional form which may be used to create an advance health-care directive, and a statement of the facility's policy regarding advance health-care directives. If an individual or his or her family has questions regarding advance health-care directives, or wishes further information and/or assistance, appropriate referral shall be made, and the referral documented in the medical record. Each facility shall designate a person to whom, or a department to which, such referral shall be made.

An individual who is diagnosed as pregnant by her attending physician shall be informed that the Uniform Health-Care Decisions Act of Hawaii does not apply to her.

### **B. Obtaining Information Regarding Individual's Advance Health-care Directive.**

A health-care provider must identify the existence of any advance health-care directive prepared by the individual. Therefore, at the time of admission as an inpatient, or in advance of coming under the care in the case of a home health agency, each facility shall determine whether an individual has executed a living will, durable power of attorney for health-care, advance health-care directive, or otherwise prepared any other instruction for health-care, and document it in a designated and prominent part of the individual's current medical record. Each facility shall designate a person who, or a department which, shall be responsible to make that determination and documentation. Each facility shall also designate a person to whom, or a department to which, referral shall be made in the event the above designated person or department is unable to determine whether or not an advance health-care directive is available for the individual.

A physician who has primary responsibility for the individual's health-care or his or her designee (hereinafter "supervising health-care provider") who has been notified of the existence of an advance health-care directive must record its existence in a prominent part of the individual's current medical record. If the individual's advance health-care directive is in writing, a supervising health-care provider shall ask the individual or his or

her family to bring a copy to the facility, or otherwise make all reasonable efforts to obtain a copy of it. If a copy is furnished, the supervising health-care provider shall arrange for its maintenance in the designated area of the medical record. Upon the individual's discharge from the hospital, any written advance directive submitted to the facility must be returned to the individual.

If an individual at any time indicates that he or she wishes to establish an advance health-care directive, appropriate referral for assistance shall be made, and the referral documented in the medical record. Each facility shall designate a person to whom, or a department to which, such referral shall be made. If the individual completes an advance health-care directive with the assistance of the person or department so designated by the facility, that designated person or department shall inform the supervising health-care provider and nursing, and document same in the medical record.

### **C. Complying With Health-care Decisions.**

#### **1. Advance Health-care Directive.**

An advance health-care directive consists of an individual's oral or written direction concerning health-care decisions for the individual ("individual instruction"), and/or a written power of attorney which designates an agent to make health-care decisions for the individual ("a power of attorney for health-care"). Health-care decisions, as the phrase is used in this Policy and Procedure, include decisions regarding the selection and discharge of health-care providers and facilities; approval or disapproval of diagnostic tests, surgical procedures, programs of medication, and orders not to resuscitate; and direction to provide, withhold, or withdraw artificial nutrition and hydration, provided that withholding or withdrawing artificial nutrition or hydration is in accord with accepted and applicable health-care standards. A written advance health-care directive may also include the individual's nomination of a guardian of the person. If an advance health-care directive to terminate, withdraw, or withhold care is to be implemented, a supportive plan of care shall be developed under the direction of the attending physician. Each facility shall designate a person who, or a department which, shall be responsible for the development of such a plan of care under the direction of the attending physician.

Each facility shall designate a person to whom, or a department to which, referrals shall be made in the event an individual or his or her family has any question regarding advance health-care directives. If, at any time, an individual or his or her family has any question regarding advance health-care directives, referral should be made to the designated person or department at the facility, the attending physician notified of the referral, and the referral documented in the medical record.

Validity. An advance health-care directive shall be valid if it complies with Hawaii's Uniform Health-Care Decisions Act, or if it was executed in compliance with the laws of the state where it was executed. Prior to any decision to terminate treatment is to be made based on an individual's advance health-care directive, the attending physician shall notify the Facility Administrator or his or her designee for the determination of the legal validity of the advance directive and any individual instructions. In no event shall any treatment be terminated based on an advance health-care directive prior to the determination of its validity.

Revocation. A designation of an agent may be revoked only by a signed writing or by personally informing the supervising physician. Any other part of an advance health-care directive may be revoked at any time and in any manner that communicates intent to revoke. A health-care provider who is informed of a revocation shall promptly communicate the fact of the revocation to the supervising health-care provider and to any health-care institution at which the individual is receiving care. The supervising health-care provider so informed shall then have the fact of the revocation documented promptly in a prominent part of the medical record. If the revocation is in writing, the supervising health-care provider shall request a copy of it and arrange for its maintenance in the medical record.

2. Health-care Decision by a Designated Agent for Health-care.

An agent designated in the power of attorney may make health-care decision on behalf of the individual. Unless otherwise specifically stated in the power of attorney for health-care, the authority of an agent designated in the power of attorney becomes effective only if a physician who has primary responsibility for the individual's health-care ("primary physician") certifies in writing that the individual lacks capacity. Capacity is defined as the ability to understand the significant benefits, risks, and alternatives to proposed health-care and to make and communicate a health-care decision. Certification shall be filed in the individual's medical record. Unless otherwise specifically stated in the power of attorney for health-care, the authority of an agent ceases to be effective upon a determination that the individual has recovered capacity.

3. Health-care Decision by a Surrogate.

A surrogate may make a health-care decision for the individual if the primary physician of the individual determines that the individual lacks capacity, and no agent or guardian has been designated or appointed, respectively, or is reasonably available. Upon a determination that an individual lacks decisional capacity to provide informed consent to or refusal of medical treatment, the primary physician or his or her designee shall make reasonable efforts to notify the individual of his or her lack of capacity. A supervising health-care provider who knows or learns of a designation or disqualification of a surrogate shall promptly record it in the medical record. If the designation or disqualification is in writing, a supervising health-care provider shall request a copy of it, and if one is furnished, shall arrange for its maintenance in the medical record.

A surrogate may either be designated by the individual, or be appointed by interested persons. A supervising health-care provider shall require a surrogate to provide a written declaration under the penalty of false swearing stating facts and circumstances reasonably sufficient to establish his or her claimed authority to act as a surrogate. The Patient/Resident Declaration of Authority to Act as Surrogate form (Section B-1) or the Appointed ("Non-Designated") Surrogate form (Section B-2 and Section B-2A) shall be used to document this in the medical record.

An individual may designate a surrogate to make a health-care decision for the individual by personally informing the supervising health-care provider. A surrogate designated by the individual may make health-care decisions for the individual that the individual could make on the individual's own behalf. An individual may

disqualify a surrogate by personally informing the supervising health-care provider. A supervising health-care provider who is so informed shall promptly record it in the medical record.

If the individual has not designated a surrogate, or the designated surrogate is not readily available, interested persons may appoint a surrogate from among themselves. Interested persons are the individual's spouse, unless legally separated or estranged, a reciprocal beneficiary, any adult child, either parent of the individual, an adult sibling or adult grandchild of the individual, or any adult who has exhibited special care and concern for the individual and who is familiar with the individual's personal values. The primary physician or his or her designee shall make reasonable efforts to locate as many interested persons as practicable. The primary physician may rely on interested persons to notify other family members or interested persons. The primary physician or his or her designee shall then inform the interested persons so located of the individual's lack of decisional capacity and that a surrogate decision-maker should be selected for the individual.

An appointed surrogate may make health-care decisions for the individual that the individual could make on his or her own behalf, except for decisions on withholding or withdrawing artificial nutrition and hydration. Artificial nutrition and hydration may be withheld or withdrawn for an individual upon a decision of an appointed surrogate only when the primary physician and a second independent physician certify in the medical record that the provision or continuation of artificial nutrition or hydration is merely prolonging the act of dying and the individual is highly unlikely to have any neurological response in the future. The "Certification for Withdrawal, Withholding of Artificial Nutrition and Hydration for a Surrogate Appointed through Consensus of Interested Persons" form shall be used to document this in the medical record.

If interested persons cannot reach a consensus as to who should act as a surrogate, or if any of the interested persons disagrees with the selection or the decision of the surrogate, then any of the interested persons involved in the discussions to choose a surrogate may seek guardianship of the individual by initiating guardianship proceedings pursuant to Chapter 551 of the Hawaii Revised Statutes.

#### 4. Health-care Decision by Guardian.

A guardian shall comply with the individual's direction concerning health-care decisions for the individual. A guardian shall not revoke the individual's advance health-care directive unless expressly authorized by a court of competent jurisdiction. Unless there is a court order to the contrary, the health-care decision of an agent takes precedence over that of a guardian.

### **D. When Physicians May Decline Compliance.**

Individual instructions, and decisions made by anyone with authority to make a health-care decision on behalf of an individual, must be honored by the health-care provider and the facility within the limits of the applicable laws and the mission, philosophy, and capabilities of HHSC. However, a physician may decline to comply with a direction concerning health-care decisions either because of reasons of conscience, or because it requires medically ineffective health care or health care contrary to generally accepted health-care standards applicable to the physician.

The physician who declines shall promptly inform the individual, if possible, and any person then authorized to make health-care decisions for the individual. The physician shall immediately make all reasonable efforts to assist in the transfer of the individual and his/her medical record to another physician who is, or another facility or institution that is, willing to comply with the individual's instruction or health-care decision. The physician shall provide continuing care to the individual until a transfer can be effected.

#### **E. Other Things to Consider in the Implementation of this Policy and Procedure.**

##### **1. When a Conflict or a Question Arises.**

If any health-care provider identifies, recognizes, or learns of a conflict, or has a question, as to the validity of an advance health-care directive, its terms, or the procedures involved, he or she shall notify the Facility Administrator immediately. The Facility Administrator shall obtain legal counsel if necessary.

##### **2. When a Condition Affecting Advance Health-care Directive is Identified.**

If a supervising health-care provider makes or is informed of a determination that a condition exists which affects an individual's advance health-care directive or the authority of an agent, guardian, or surrogate, he or she shall promptly record the determination in the individual's medical record. The supervising health-care provider shall then communicate the determination to the individual, if possible, and to any person then authorized to make health-care decisions for the individual.

##### **3. Re-determination of Decisional Capacity.**

If any interested person, guardian, or primary physician believes the individual has regained decisional capacity, and so informs the primary physician, the primary physician shall reexamine the individual and determine whether the individual has regained decisional capacity. The primary physician shall then enter his or her decision and the basis for it in the medical record. The primary physician shall also communicate the decision to the individual and any person then authorized to make health-care decisions for the individual, and the person who initiated the re-determination of decisional capacity. Upon determination that the individual has regained his or her decisional capacity, the individual shall be informed of his or her rights under the federal Patient Self-Determination Act, and the Uniform Health-care Decisions Act of the state of Hawaii and the policies of the facility regarding the implementation of such rights. Each facility shall designate a person who, or a department which, shall be responsible to so inform the individual.

##### **4. Rights of a Pregnant Individual.**

If an individual diagnosed as pregnant by her attending physician communicates or submits an advance health-care directive to a health-care provider, the health-care provider shall immediately notify the Facility Administrator. If necessary, the Facility Administrator shall obtain legal counsel.

## **F. Educating Staff and the Community.**

Each facility shall designate a person who, or a department which, shall arrange for the education of its staff concerning its policies, and the current federal and state laws regarding advance health-care directives and rights of individuals thereunder. This will be an ongoing educational process, providing for education of the facility staff as laws change and hospital policies are amended. The person or department so designated will also arrange for education of the community at large regarding federal and state laws regarding advance health-care directives and rights of individuals under same. Each facility shall also designate a person who, or a department which, shall maintain appropriate records of all educational activities.

## **G. Compliance.**

The facility Risk Manager and/or Compliance Officer will oversee the facility's compliance with this policy and procedures, and the federal and state laws concerning advance health-care directives. Compliance will be reviewed periodically, but not less than once a year. Any complaints or grievances will be addressed through the facility's grievance process.

The medical staff shall develop medical staff policy and procedures on advance health-care directives which comply with the federal and state laws concerning advance health-care directives, and consistent with any other policies and procedures of the facility on advance health-care directives.

### Reference:

1. Hawai'i Revised Statutes, Chapter 327 D
2. Hawai'i Revised Statutes, Chapter 327 E
3. Hawai'i Revised Statutes, Chapter 551
4. Patient Self-Determination Act, 42 USC 1395cc(f) (codified), Public Law 101-508, 4206b (Omnibus Budget Reconciliation Act of 1990)

- Attachments:**
1. Advance Health-Care Directive (Form)
  2. Your Rights Regarding Life-Sustaining Medical Treatment

**ADVANCE HEALTH-CARE DIRECTIVE**

MY NAME IS \_\_\_\_\_

**PART 1  
DURABLE POWER OF ATTORNEY FOR HEALTH CARE DECISIONS**

(1) DESIGNATION OF AGENT: I designate the following individual as my agent to make health-care decisions for me:

\_\_\_\_\_  
*(Name of individual you choose as agent)*

\_\_\_\_\_  
*(Address) (City) (State) (Zip code)*

\_\_\_\_\_  
*(Home phone) (Work phone)*

OPTIONAL: If I revoke my agent’s authority or if my agent is not willing, able, or reasonably available to make a health-care decision for me, I designate as my first alternate agent:

\_\_\_\_\_  
*(Name of individual you choose as agent)*

\_\_\_\_\_  
*(Address) (City) (State) (Zip code)*

\_\_\_\_\_  
*(Home phone) (Work phone)*

OPTIONAL: If I revoke the authority of my agent and first alternate agent or if neither is willing, able, or reasonably available to make a health-care decision for me, I designate as my second alternate agent:

\_\_\_\_\_  
*(Name of individual you choose as agent)*

\_\_\_\_\_  
*(Address) (City) (State) (Zip code)*

\_\_\_\_\_  
*(Home phone) (Work phone)*

- (2) AGENT'S AUTHORITY: My agent is authorized to make all health-care decisions for me, including, but not limited to, decisions to provide, withhold, or withdraw artificial nutrition and hydration, and all other forms of health care to keep me alive, except as I state here:

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*(Add additional sheets if needed.)*

- (3) WHEN AGENT'S AUTHORITY BECOMES EFFECTIVE: My agent's authority becomes effective when my primary physician determines that I am unable to make my own health-care decisions unless I mark the following box.

If I mark this box, my agent's authority to make health-care decisions for me takes effect **immediately**.

- (4) AGENT'S OBLIGATION: My agent shall make health-care decisions for me in accordance with this power of attorney for health care, any instructions I give in Part 2 of this form, and my other wishes to the extent known to my agent. To the extent my wishes are unknown, my agent shall make health-care decisions for me in accordance with what my agent determines to be in my best interest. In determining my best interest, my agent shall consider my personal values to the extent known to my agent.

- (5) NOMINATION OF GUARDIAN: If a guardian of my person needs to be appointed for me by a court, I nominate the agent designated in this form. If that agent is not willing, able, or reasonably available to act as guardian, I nominate the alternate agents whom I have named, in the order designated.

## ADVANCE HEALTH-CARE DIRECTIVE

### PART 2 INSTRUCTIONS FOR HEALTH CARE

If you are satisfied to allow your agent to determine what is best for you in making end-of-life decisions, you need not fill out this part of the form. If you do fill out this part of the form, you may strike through any wording you do not want.

(6) END-OF-LIFE DECISIONS: I direct that my health-care providers and others involved in my care provide, withhold, or withdraw treatment in accordance with the choice I have marked below: **(Check only one of the two boxes below.)**

(a) Choice Not to Prolong Life

I do not want my life to be prolonged if

- (i) I have an incurable and irreversible condition that will result in my death within a relatively short time,
- (ii) I become unconscious and, to a reasonable degree of medical certainty, I will not regain consciousness, or
- (iii) The likely risks and burdens of treatment would outweigh the expected benefits, OR

(b) Choice To Prolong Life

I want my life to be prolonged as long as possible within the limits of generally accepted health-care standards.

(7) ARTIFICIAL NUTRITION AND HYDRATION: Artificial nutrition and hydration must be provided, withheld or withdrawn in accordance with the choice I have made in paragraph (6) unless I mark the following box.

If I mark this box, artificial nutrition and hydration must be provided regardless of my condition and regardless of the choice I have made in paragraph (6).

(8) RELIEF FROM PAIN: If I mark the following box,

I direct that treatment to alleviate pain or discomfort should be provided to me even if it hastens my death.



**ADVANCE HEALTH-CARE DIRECTIVE**

**PART 3  
PRIMARY PHYSICIAN (OPTIONAL)**

(10) I designate the following physician as my primary physician:

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*(Name of individual you choose as agent)*

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*(Address)* *(City)* *(State)* *(Zip code)*

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*(Home phone)* *(Work phone)*

OPTIONAL: If the physician I have designated above is not willing, able, or reasonably available to act as my primary physician, I designate the following physician as my primary physician:

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*(Name of individual you choose as agent)*

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*(Address)* *(City)* *(State)* *(Zip code)*

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*(Home phone)* *(Work phone)*

**ADVANCE HEALTH-CARE DIRECTIVE**

(11) EFFECT OF COPY: A copy of this form has the same effect as the original.

(12) SIGNATURES: Sign and date the form here:

\_\_\_\_\_  
*(Sign Your Name)* \_\_\_\_\_  
*(Date)*

\_\_\_\_\_  
*(Print Your Name)*

\_\_\_\_\_  
*(Print Your Address)* *(City)* *(State)* *(Zip code)*

(13) WITNESSES: This power of attorney will not be valid for making health-care decisions unless it is either (a) signed by two qualified adult witnesses who are personally known to you and who are present when you sign or acknowledge your signature; or (b) acknowledged before a notary public in the state.

**ALTERNATIVE NO. 1**

First Witness:

I declare under penalty of false swearing pursuant to section 710-1062, Hawaii Revised Statutes, that the principal is personally known to me, that the principal signed or acknowledged this power of attorney in my presence, that the principal appears to be of sound mind and under no duress, fraud, or undue influence, that I am not the person appointed as agent by this document, and that I am not a health-care provider, nor an employee of a health-care provider or facility. I am not related to the principal by blood, marriage, or adoption, and to the best of my knowledge, I am not entitled to any part of the estate of the principal upon the death of the principal under a will now existing or by operation of law.

\_\_\_\_\_  
*(Sign Your Name)* \_\_\_\_\_  
*(Date)*

\_\_\_\_\_  
*(Print Your Name)*

\_\_\_\_\_  
*(Print Your Address)* *(City)* *(State)* *(Zip code)*

ADVANCE HEALTH-CARE DIRECTIVE

Second Witness:

I declare under penalty of false swearing pursuant to section 710-1062, Hawaii Revised Statutes, that the principal is personally known to me, that the principal signed or acknowledged this power of attorney in my presence, that the principal appears to be of sound mind and under no duress, fraud, or undue influence, that I am not the person appointed as agent by this document, and that I am not a health-care provider, nor an employee of a health-care provider or facility.

\_\_\_\_\_  
(Sign Your Name)

\_\_\_\_\_  
(Date)

\_\_\_\_\_  
(Print Your Name)

\_\_\_\_\_  
(Print Your Address)

\_\_\_\_\_  
(City)

\_\_\_\_\_  
(State)

\_\_\_\_\_  
(Zip code)

ALTERNATIVE NO. 2

State of Hawaii

County of \_\_\_\_\_

On this \_\_\_\_\_ day of \_\_\_\_\_, in the year \_\_\_\_\_, before me,  
\_\_\_\_\_  
(insert name of notary public)

appeared \_\_\_\_\_,  
personally known to me (or proved to me on the basis of satisfactory evidence) to be the person whose name is subscribed to this instrument, and acknowledged that he or she executed it.

\_\_\_\_\_  
(Signature of Notary Public)

Notary Seal

My Commission Expires: \_\_\_\_\_



**THIS SECTION TO BE COMPLETED AND SIGNED ONLY BY  
APPOINTED (“NON-DESIGNATED”) SURROGATE**

I have been selected by consensus of interested persons of the above named patient/resident to act as the patient’s/resident’s surrogate to make health-care decisions for the patient/resident. I accept the appointment as a “non-designated surrogate” or an “appointed surrogate”.

1. I am an interested person based on my relationship to the patient as: *(select one)*

- Spouse (not legally separated or estranged)
- Reciprocal Beneficiary
- Adult Child
- Parent
- Adult sibling
- Adult Grandchild
- Adult who has exhibited special care and concern for the patient/resident and who is familiar with the patient’s/resident’s personal values.

2. The following other interested persons took part in my selection: (names and relationship to patient)

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3. Additional facts and circumstances to established claimed authority (if any)

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*(Use additional sheets of paper if necessary—attach copies of any relevant documents.)*

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*(Signature of Appointed Surrogate)*

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*(Date)*

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*(Printed Name)*

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*(Address)*

*(City)*

*(State)*

*(Zip code)*

**LACK OF CAPACITY DETERMINATION  
FOR SURROGATE DECISION MAKING**

As his or her primary physician, I certify that \_\_\_\_\_  
(patient/resident name) DOES NOT have the ability to understand the significant  
benefits, risks, and alternatives to proposed health care, and DOES NOT have the  
ability to make and communicate a health care decision.

\_\_\_\_\_  
*Signature of Primary Physician*

\_\_\_\_\_  
*Date*

\_\_\_\_\_  
*Name of Primary Physician (print)*

**CERTIFICATION FOR WITHDRAWAL OR WITHHOLDING OF  
ARTIFICIAL NUTRITION AND HYDRATION**

**This certification must be completed before artificial nutrition and hydration may be withheld or withdrawn for a patient/resident upon a decision of a surrogate who has not been designated by the patient/resident.**

**Primary Physician**

As the primary physician for \_\_\_\_\_  
(patient/resident name), I certify that the provision or continuation of artificial nutrition or hydration is merely prolonging the act of dying and the patient/resident is highly unlikely to have any neurological response in the future.

\_\_\_\_\_  
*Signature of Primary Physician*

\_\_\_\_\_  
*Date*

\_\_\_\_\_  
*Name of Primary Physician (print)*

**Independent Physician**

As an independent physician, I certify that for \_\_\_\_\_  
(patient/resident name) the provision or continuation of artificial nutrition or hydration is merely prolonging the act of dying and the patient/resident is highly unlikely to have any neurological response in the future.

\_\_\_\_\_  
*Signature of Independent Physician*

\_\_\_\_\_  
*Date*

\_\_\_\_\_  
*Name of Independent Physician (print)*

## HEALTH CARE DECISIONS:

### YOUR RIGHTS REGARDING LIFE-SUSTAINING MEDICAL TREATMENT

Date: October 15, 1999

NOTE: The information we have provided to you is general. If you have specific legal questions you should contact your health care provider and/or an attorney, and/or the community resources listed at the end of this document.

A federal law (the Patient Self-Determination Act) has been in effect since December 1, 1991. This federal law requires us to give you information about your health care rights. Hawai'i has several laws which protect your right to make health care decisions, including a new law, effective July 1, 1999, called the Uniform Health Care Decisions Act (Modified) or UHCDA. The UHCDA sets out legal rights concerning health care decision-making by individuals, and by "agents" and "surrogates" when an individual is no longer able to make health care decisions.

The laws are designed to help you express your wishes about your health care, in advance, before you may become badly injured, permanently unconscious, or suffer some other medical crisis. In other words, the idea is for you to give directions, **in advance**, about what kind of health care, including life-sustaining medical treatment you want or do not want in the event you can no longer tell your doctor or family members or friends what your wishes are. Your right to make medical treatment decisions includes your right to decide whether you want all available medical treatment for as long as possible, or whether you would prefer to have some or all medical treatment withheld or withdrawn.

The laws are also designed to give you the opportunity to designate someone to carry out your health care decisions or to make health care decisions for you when you are unable to do so. In the event you do not designate someone, the laws also provide a procedure for selection of a "surrogate," if necessary, to make decisions on your behalf.

**Your decisions on these issues are very serious, and can affect whether you live or die, and when. It is strongly recommended that you talk with your doctor and family and friends about these issues, so you and everyone else knows what you want and do not want.**

Here are some questions and answers to help you understand your rights. If you have any questions about these issues, please let us know.

**Q. Have there been changes to the law concerning health care decisions?**

A. Yes. Session Laws of Hawai`i, Act 169, signed by the governor on July 1, 1999, established the Uniform Health Care Decisions Act (Modified). It repealed Hawai`i Revised Statutes (HRS) Chapter 327D (medical Treatment Decisions) in its entirety as well as significantly modifying HRS § 551D-2.5 (Durable power of attorney for health care decisions). The new law changed Hawai`i's laws pertaining to health-care decision-making, including advance health-care directive and surrogate decision-making. Hawai`i's version of the Uniform Health Care Decisions Act (UHCDA) was adapted from the Uniform Act approved by the National Conference on Uniform Laws and by the American Bar Association House of Delegates.

2. **Q. How do these health care issues usually come up?**

A. In most cases, there is no difficulty because even though you are ill or injured, you are still alert and able to tell your doctor or other health care provider what medical treatment or other health care you want or do not want. Those wishes will almost always be followed. However, if you are so badly injured or disabled that you **cannot make your wishes known**, it will help if you have made your wishes known in advance. You can do this by making an "advance directive," which can include giving individual instructions about your health care and designating an "agent" in a health care power of attorney to make health care decisions for you. In the past, what is now called an individual instruction was often referred to as a "living will." This term was confusing and is not found in the law.

3. **Q. Who decides about medical treatment – me or my doctors?**

A. Your doctors will give you information and advice about treatment. You can choose. You can say "Yes" to treatments you want. You can say "No" to any treatment you don't want – even if it might keep you alive longer.

4. **Q. How do I know what I want?**

A. Your doctor can tell you what different treatments can do for you. Many treatments have "side effects." Your doctor must tell you about serious problems that medical treatment is likely to cause you. Often, there is more than one treatment that might help – and people have different ideas about which is best. Your doctor can't tell you which treatment you want or whether you want any of these treatments. That depends on your values. Sometimes people have to choose between things like being independent, or being free of pain, or living as long as possible, or being able to recognize and talk with your friends and family.

5. Q. **What is an advance directive – is it the same as a “living will?”**  
A. An advance directive is an “individual instruction” or a power of attorney for health care and they can be accomplished separately or combined into one document. You make an individual instruction and/or a power of attorney for health care BEFORE you lose the ability to tell your health care providers what health care you want or do not want.  
**An individual instruction** may be oral or written and provides an individual’s directions concerning health-care decisions.  
**A power of attorney for health care** must be in writing and provides the designation of an “agent” to make health-care decisions for the person granting the power.  
**A surrogate** is an individual, other than a patient’s agent or guardian, authorized to make a health-care decision for the patient. As will be explained later, a surrogate may be designated by a patient or may be selected for a patient who is no longer able to communicate.  
The term “living will” is not used in current laws but is a common term used to describe an individual’s instructions concerning health care.
6. Q. **What should I put into my advance directive?**  
A. The most important thing is to make your wishes known about health care. This can include instructions whether you want life-sustaining treatment or life-extending treatment (such as tube feeding) if you are ever in a permanent coma or are so ill that there is no reasonable chance you will recover. There may be treatment the doctors can give you, which will not make you better, but which will keep you alive in a persistent vegetative state or coma. You are entitled to be kept alive this way if you want. If you do not want to be kept alive under these conditions, you should make your wishes known. You can also designate an agent to make health care decisions for you.
7. Q. **Must my instructions be written?**  
A. No, but written instructions are **strongly** preferred. Verbal instructions are helpful, but your wishes are more likely to be honored without the need to go to court if they are in writing. You can orally designate a “surrogate” to make health care decisions for you by telling the supervising health care provider. Your health care power of attorney, however, must be in writing.
8. Q. **Do I have to have an advance directive?**  
A. No. You are free to have one or not have one. If you do not have one, your oral/verbal instructions will help people know what you want, but this is not nearly as helpful as having your wishes in writing. Also, a surrogate may

be selected to make a health care decision for you. You may prefer to appoint an agent under a power of attorney for health care or at least tell your supervising health care provider who you want to designate as a surrogate for you become unable to make decisions for yourself.

9. Q. **I already have a “living will.” Do I need a new advance directive?**  
A. This is a VERY important issue. Generally, you do need a new living will if your current “living will” is a very “old” one (done before July 1, 1991). You probably need a new one because your old “living will” may seriously **restrict** your wishes and rights. If you made a “living will” under the provisions of the law in existence between July 1, 1991, and June 30, 1999, you may not need to make a new one but it is critical to make sure you have a document which correctly states **YOUR** wishes. When in doubt, make a new advance directive. A sample optional form is included in this packet.
10. Q. **Do I have to use the sample optional form approved by the Legislature?**  
A. No. It is just an optional sample. The sample form may be used to create an advance health-care directive. This form may be duplicated. This form may be modified to suit your needs, or a completely different form may be used as long as it contains the substance of the sample form.
11. Q. **Isn’t it possible that my doctor or family will give up on me too quickly if I have a living will?**  
A. Yes, it is possible if you did not make your desires clear. However, many people don’t want to be kept alive by machines if the machines will only prolong dying, but wouldn’t object to the machines if they were only temporary. Thus, it is important in an advance directive to explain the circumstances under which you want or don’t want those treatments. For example, many people do not want to be kept alive on a ventilator (breathing machine) if it merely prolongs their dying, but they want the ventilator or other forms of life-sustaining treatment if their health could be restored with a satisfactory quality of life.
12. Q. **I spent a part of the year in one state and part of the year in another. Do I need a different advance directive for each state?**  
A. The answer to this question is not clear in all cases, but, like Hawai`i, more and more states are adopting the Uniform Health Care Decisions Act (UHCDA) which is intended to make sure that advance directives executed in one state or territory are recognized in others. Until all states adopt the UHCDA, it is probably a good idea to have an advance directive for each state that you live in for a considerable amount of time each year.

13. Q. **Where should I keep my advance directive? Who should know about it? How many original advance directives should I get?**
- A. You should give a copy to your regular doctor or various friends or relatives who will hear about it if you should ever get seriously ill.

The law is clear that copies of advance directives are sufficient but some hospitals or doctors may want to see the original version. You may want to keep the original version in a place where a friend or relative can find it. Make sure a friend or relative knows they are to find and deliver the original to your doctor should you become seriously injured or disabled.

14. Q. **May I name particular medical treatments that I want or do not want?**
- A. Yes. You may name particular treatments that you either want or do not want. One treatment that is very important to state your preferences about is a feeding tube. The main idea is to make your wishes known, whatever they are. Some people want an advance directive so they do not get unwanted treatment; others feel that they would want everything possible done for them if there were any hope of keeping them alive; and others want treatment in some situations but not in others. That is perfectly valid. You can and should give instructions no matter what your wishes are. You have every legal right to make your wishes known no matter what they are. The optional sample form provides a good framework for making decisions, including decisions about tube feeding and organ donations.

15. Q. **What if my doctor doesn't want to carry out my wishes?**
- A. It is important that you try to find out about this ahead of time. If you give your doctor your advance directive and he or she says something like "I could never go along with this," then you need to consider whether to change doctors. Hawai`i law requires the doctor to either honor your wishes, or make arrangements to transfer your care to another doctor. Hawai`i law also provides for sanctions, including monetary damages and attorneys fees, against health care providers who violate the law. Also, Hawai`i law provides immunities for health care providers who, in good faith, carry out the directions of patients and authorized agents or surrogates.

16. Q. **What does the new Hawai`i law say about withdrawal of tube feeding or other artificial nourishment and fluids?**
- A. You are entitled to have tube feeding if you want it, and you are entitled not to have tube feeding if you do not want it. The old law required your “living will” to have a two-part checklist on the specific issue of whether you want tube feeding to be provided or not, and under what circumstances. If you did not choose one option or the other, then it was presumed that you did want tube feeding and other artificial feeding or fluids. The new UHCDA law DOES NOT require such a checklist but a checklist is included in the optional sample form for your convenience.
17. Q. **Does an advance directive give anyone the right to make financial decisions for me?**
- A. No. The advance directive is only for health care decisions. If you want someone to make financial decisions for you, or have access to your bank accounts, etc., you need to talk with an attorney or other expert to help you with the proper documents.
18. Q. **Does a “health care power-of-attorney” mean I have to appoint an attorney to make health care decisions for me?**
- A. No. Because of the term “power-of-attorney,” some people think that you must appoint an attorney to make your health care decisions for you. This is not so, and most people do not appoint an attorney for this. You can appoint any competent adult (age 18 or over).
19. Q. **If I decide I want a health care power-of-attorney, who may I appoint to make decisions for me? Must it be a family member?**
- A. You may appoint any competent adult age 18 or over. The person you appoint does not have to be a family member. Unless related to you by blood, marriage, or adoption, your agent may not be an owner, operator, or employee of the health-care institution at which you are receiving care. Some people want to designate their doctor to make these decisions, but it is generally best not to.
20. Q. **If I want a health care power-of-attorney, when does it go into effect?**
- A. Unless otherwise specified in a power of attorney for health care, the authority of an agent becomes effective only upon a determination that you lack capacity, and ceases to be effective upon a determination that you have recovered capacity.

21. Q. **What if the person I name as my decision-maker in a health care power-of-attorney dies or is unavailable?**
- A. A surrogate will then have to be appointed from among interested persons. If there is any disagreement as to who shall be the surrogate, guardianship proceedings may be initiated to have the court appoint your legal guardian. Therefore, if you write a power of attorney for health care, it is a good idea to name a second person to make decisions **in case the first person you name is unavailable or unwilling to act**. It is especially important if you name your spouse, since both of you could become incapacitated at the same time, such as in an accident.
22. Q. **May I ask more than one person to make health care decisions for me?**
- A. It is probably not a good idea to name more than one person to make your decisions for you, because this can become very inconvenient. For example, what if you name two people as equal decision-makers, but they disagree about what to do? Instead, you might state you want your decision-maker to “consult” with someone else (such as another friend or relative) before making decisions about your treatment, while leaving the final responsibility with your one decision-maker.
23. Q. **What if the person I name to make decisions for me doesn’t want to?**
- A. Please see the answer to Question 21. It is important to know whether the person you name will honor your wishes, or might become too emotional to honor your wishes to have all treatment withdrawn. If so, you should consider naming someone else.
24. Q. **What are the technical requirements for executing an advance directive?**
- A. The new UHCDA law, effective July 1, 1999, makes executing an advance directive much easier than under the old law. Individual instructions for health care may be oral or in writing. Powers of attorney for health care must be in writing, contain the date of its execution, be signed by you, and be witnessed by one of the following methods:
- Alternative 1
- (1) Signed by at least two individuals, each of whom witnessed either the signing of the instrument by you or your acknowledgement of the signature of the instrument. A witness for a power of attorney for health care shall not be:
- (a) A health-care provider;

- (b) An employee of a health-care provider or facility; or
- (c) The agent.

At least one of the individuals used as a witness for a power of attorney for health care shall be someone who is neither related to you by blood, marriage, or adoption; nor entitled to any portion of your estate upon your death under your will or codicil existing at the time of execution of the power of attorney for health care or by operation of law then existing.

#### Alternative 2

Acknowledged before a notary public at any place within the State of Hawaii.

25. Q. **What if I change my mind and do not want my advance directive to be valid anymore?**
- A. No problem. It is easy to revoke an advance directive. You may revoke the designation of an agent only by a signed writing or by personally informing the physician responsible for your care. You may revoke all or part of an advance health-care directive, other than the designation of an agent, at any time and way that communicates an intent to revoke.
26. Q. **What is a “DNR” order?**
- A. It is important to know that in an emergency, if a patient suffers a cardiac or respiratory arrest in a hospital, he or she will normally be resuscitated unless there is a written “DNR” (do not resuscitate) order in that person’s medical record.

The DNR order is an order to forego the standard initiation of cardiopulmonary resuscitation (CPR), medications, and other life-saving measures. A DNR order does not alter other treatment decisions. A patient’s preference to refuse resuscitation may be expressed in advance in writing and may serve as the basis for a DNR order. The decision to refuse resuscitation may also be made orally by a mentally competent patient to the treating physician. Oral statements can also serve as the basis for a DNR order. DNR orders are written in the patient’s medical chart and, thereafter, emergency procedures to resuscitate the patient will not be carried out.

27. Q. **What is a “comfort care only” document?**

Traditionally, DNR codes only applied in situations where a person is a patient in a health care facility. Often, however, people suffer cardiac or respiratory arrest outside a health care facility setting. Hawai`i law allows a terminally ill person in the community to prepare in advance “a comfort care only” document. It states in advance that he or she does not want to be resuscitated if an emergency happens outside a health care facility. For further details on this “comfort care only” document, please ask your physician, nurse, or social worker.

28. Q. **What if I have further questions, or if I want a living will or durable power of attorney for health care or comfort care only document?**

A. For further information, please ask those who are directly involved with or in charge of your medical care, an attorney, or any of the community resources on the attached list.

## COMMUNITY RESOURCES

Oahu:	University of Hawai`i Elder Law Program William S. Richardson School of Law 2515 Dole Street Honolulu, HI 96822	Phone: 956-6544
	Hawai`i Medical Association 1306 South Beretania Street Honolulu, HI 96814	Phone; 536-7702
	Elderly Affairs Division City and County of Honolulu 715 South King Street, Suite 200 Honolulu, HI 96813	Phone: 523-4361
	Legal Aid Society of Hawai`i 1108 Nuuanu Avenue Honolulu, HI 96817	Phone: 536-4302
	Executive Office on Aging 250 South Hotel Street, Suite 109 Honolulu, HI 96813 Provides state coordination of services to older adults.	Phone; 586-0100
Hawai`i	Legal Aid Society of Hawai`i 305 Wailuku Drive Hilo, HI 96720	Phone: 961-2851
Kauai:	Seniors Law Program 4268-K Rice Street Lihue, HI 96766	Phone: 246-0573
	Legal Aid Society of Hawai`i 4370 Kukui Grove, Suite 202 Lihue, HI 96766	Phone: 245-4728
Maui:	Legal Aid Society of Hawai`i 2287 Main Street Wailuku, HI 96793	Phone: 244-3731

Other: Volunteer Legal Services Hawai`i Phone: 528-7046  
545 Queen Street, Suite 100  
Honolulu, HI 96813  
Serves low income persons by trying to match them with  
volunteer lawyers.

Lawyer Referral and Information Service Phone: 537-9140  
1136 Union Mall, PH-I  
Honolulu, HI 96813  
Offers referrals to attorneys by fields of practice.

Notaries: Notaries can usually be found at banks, real estate offices, escrow  
companies and law offices.

#### DEFINITIONS OF TERMS USED:

“Advance health-care directive” means an individual instruction or a power of attorney for health care.

“Agent” means an individual designated in a power of attorney for health care to make a health-care decision for the individual granting the power.

“Best interest” means that the benefits to the individual resulting from a treatment outweigh the burdens to the individual resulting from that treatment and shall include:

- (1) The effect of the treatment on the physical, emotional, and cognitive functions of the patient;
- (2) The degree of physical pain or discomfort caused to the individual by the treatment or the withholding or withdrawal of the treatment;
- (3) The degree to which the individual’s medical condition, the treatment, or the withholding or withdrawal of treatment, results in a severe and continuing impairment.
- (4) The effect of the treatment on the life expectancy of the patient;
- (5) The prognosis of the patient for recovery, with and without the treatment;

- (6) The risks, side effects, and benefits of the treatment or the withholding of treatment; and
- (7) The religious beliefs and basic values of the individual receiving treatment, to the extent that these may assist the surrogate decision-maker in determining benefits and burdens.

“Capacity” means an individual’s ability to understand the significant benefits, risks, and alternatives to proposed health care and to make and communicate a health-care decision.

“Emancipated minor” means a person under eighteen years of age who is totally self-supporting.

“Guardian” means a judicially appointed guardian or conservator having authority to make a health-care decision for an individual.

“Health care” means any care, treatment, service, or procedure to maintain, diagnose, or otherwise affect an individual’s physical or mental condition, including:

- (1) Selection and discharge of health-care providers and institutions;
- (2) Approval or disapproval of diagnostic tests, surgical procedures, programs of medication, and orders not to resuscitate; and
- (3) Direction to provide, withhold, or withdraw artificial nutrition and hydration; provided that withholding or withdrawing artificial nutrition or hydration is in accord with generally accepted health care standards applicable to health care providers or institutions.

“Health-care decision” means a decision made by an individual or the individual’s agent, guardian, or surrogate, regarding the individual’s health care.

“Health-care institution” means an institution, facility, or agency licensed, certified, or otherwise authorized or permitted by law to provide health care in the ordinary course of business.

“Health-care provider” means an individual licensed, certified, or otherwise authorized or permitted by law to provide health care in the ordinary course of business or practice of a profession.

“Individual instruction” means an individual’s direction concerning a health-care decision for the individual.

“Interested persons” means the patient’s spouse, unless legally separated or estranged, a reciprocal beneficiary, any adult child, either parent of the patient, an adult sibling or adult grandchild of the patient, or any adult who has exhibited special care and concern for the patient and who is familiar with the patient’s personal values.

“Person” means an individual, corporation, business trust, estate, trust, partnership, association, joint venture, government, governmental subdivision, agency, or instrumentality, or any other legal or commercial entity.

“Physician” means an individual authorized to practice medicine or osteopathy under chapter 453 or 460.

“Power of attorney for health care” means the designation of an agent to make health-care decisions for the individual granting the power.

“Primary physician” means a physician designated by an individual or the individual’s agent, guardian, or surrogate, to have primary responsibility for the individual’s health care or, in the absence of a designation or if the designated physician is not reasonably available, a physician who undertakes the responsibility.

“Reasonably available” means able to be contacted with a level of diligence appropriate to the seriousness and urgency of a patient’s health care needs, and willing and able to act in a timely manner considering the urgency of the patient’s health care needs.

“State” means a state of the United States, the District of Columbia, the Commonwealth of Puerto Rico, or a territory or insular possession subject to the jurisdiction of the United States.

“Supervising health-care provider” means the primary physician or the physician’s designee, or the health-care provider or the provider’s designee who has undertaken primary responsibility for an individual’s health care.

“Surrogate” means an individual, other than a patient’s agent or guardian, authorized under this chapter to make a health-care decision for the patient.

“CPR”:           Abbreviation for cardiopulmonary resuscitation. It is a basic emergency procedure for life support, consisting of artificial respiration and manual external cardiac massage.<sup>1</sup>

“DNR” order: Abbreviation for “do not resuscitate” order. It is a note written in the patient record and signed by a qualified, usually attending physician, instructing the staff of the institution not to attempt to resuscitate a particular patient in the event of cardiac or respiratory failure.<sup>2</sup>

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<sup>1</sup> Mosby’s Medical Dictionary. Revised 3<sup>rd</sup> Edition (1990).

<sup>2</sup> Mosby’s Medical Dictionary. Revised 3<sup>rd</sup> Edition (1990).