

# LIVING WILL & DURABLE POA FOR HEALTH CARE



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## **INTRODUCTION**

Although nobody likes to discuss death or terminal illness, these are possibilities that may confront you or a loved one at any time, regardless of your present health.

## **LIVING WILL**

A living will allows you to designate what type of medical care you wish to receive, or not receive, if you become terminally ill or mortally injured. You may wish to express your desire to withhold certain treatments (“pull the plug”) if you have a terminal, unconscious condition with no chance of recovery. Alternatively, a living will can specify that you wish all possible life support to be administered to sustain your life.

Having a living will is important because it makes your desires clear to your family and loved ones. If you fail to do this in advance in the form of a living will, it could result in a dispute between family members about your care. Any dispute and potential court battle can be avoided by expressing your wishes in a living will.

## **DURABLE POWER OF ATTORNEY FOR HEALTH CARE**

A durable power of attorney for health care (DPOA) is a document that allows you to appoint an agent to make health care decisions for you if you are rendered incapable of making those

decisions yourself. This includes the authority to execute the wishes expressed in your living will. For a DPOA to become effective, you need only be incapacitated as opposed to terminally ill. For example, if a car accident renders you unconscious, your agent can authorize necessary surgery. If desired, your DPOA can also authorize your agent to donate organs and perform similar functions.

## **AGENTS**

For your DPOA, you must appoint an agent to carry out your wishes. Generally, you can choose anyone except the following: (1) your treating health care provider; (2) a non-relative employee of your treating health care provider; (3) an operator of a community care facility; or (4) a non-relative employee of an operator of a community care facility.

Your agent should be someone who knows you well enough to make health care decisions in accordance with your wishes. At the same time, your agent will need to be able to overcome the emotions of your incapacitation. Your living will expresses your desires but cannot serve as a tool to force your agent to act. It authorizes the withdrawal of treatment but does not require it. It is a good idea to talk with your prospective agent to make sure they are comfortable with the task you are asking them to perform. Because these documents might not be used for many

years, make sure you update them as needed.

## **DRAFTING LIVING WILLS & DURABLE POWERS OF ATTORNEY**

Living wills and durable powers of attorney for health care are legal documents that must meet strict formal requirements of the law to be valid.

A federal statute, 10 USC § 1044a, provides that living wills prepared in military legal offices are enforceable even if they do not comply with a particular state's required formalities. Thus, even though certain states normally require specific wording in living wills, they are required to recognize any living will we prepare. However, other states that simply do not permit living wills are not required to recognize even living wills prepared by military legal offices. If you permanently relocate to a different state, it is a good idea to consult with a military legal office or civilian attorney in that jurisdiction concerning the validity of any living will we prepare here.

## **WITHOUT A LIVING WILL**

If you do not have a living will, health care providers will assume you want them to do everything in their power to prolong your life artificially, regardless of your prognosis. Your family will be practically powerless to take you off life support, even if you have no chance of recovery. Although it is not the primary concern in these situations, the expense of using artificial life support systems can drain an average estate in a matter of days.

**\*This handout is general in nature. It is not a substitute for legal advice from an attorney regarding individual situations. (August 2021)**

**For additional information on this and other legal topics, see the Air Force Legal Assistance Website:**  
<https://aflegalassistance.law.af.mil>