

SUGGESTIONS FOR PREPARING WILL TO LIVE DURABLE POWER OF ATTORNEY

*(Please read the document itself before reading this.
It will help you better understand the suggestions.)*

YOU ARE NOT REQUIRED TO FILL OUT ANY PART OF THIS “WILL TO LIVE” OR ANY OTHER DOCUMENT SUCH AS A LIVING WILL OR DURABLE POWER OF ATTORNEY FOR HEALTH CARE. NO ONE MAY FORCE YOU TO SIGN THIS DOCUMENT OR ANY OTHER OF ITS KIND.

The Will to Live form starts from the principle that the presumption should be for life. If you sign it without writing any “SPECIAL CONDITIONS,” you are giving directions to your health care provider(s) and health care agent¹ to do their best to preserve your life.

Some people may wish to continue certain types of medical treatment when they are terminally ill and in the final stages of life. Others may not.

If you wish to refuse some specific medical treatment, the Will to Live form provides space to do so (“SPECIAL CONDITIONS”). You may make special conditions for your treatment when your death is imminent, meaning you will live no more than a week even if given all available medical treatment; or when you are incurably terminally ill, meaning you will live no more than three months even if given all available medical treatment. There is also space for you to write down special conditions for circumstances you describe yourself.

The important thing for you to remember if you choose to fill out any part of the “SPECIAL CONDITIONS” sections of the Will to Live is that you must be very specific in listing what treatments you do not want. Some examples of how to be specific will be given shortly, or you may ask your physician what types of treatment might be expected in your specific case.

Why is it important to be specific? Because, given the pro-euthanasia views widespread in society and particularly among many (not all) health care providers, there is great danger that a vague description of what you do not want will be misunderstood or distorted so as to deny you treatment that you do want.

¹ Some states use the terms “attorney in fact,” “surrogate,” “designee,” and “representative” instead of “agent.” They are synonymous for purposes of these suggestions.

Many in the medical profession as well as in the courts are now so committed to the quality of life ethic that they take as a given that patients with severe disabilities are better off dead and would prefer not to receive either life-saving measures or nutrition and hydration. So pervasive is this “consensus” that it is accurate to say that in practice it is no longer true that the “presumption is for life” but rather for death. In other words, instead of assuming that a now incompetent patient would want to receive treatment and care in the absence of clear evidence to the contrary, the assumption has virtually become that since any “reasonable” person would want to exercise a “right to die,” treatment and care should be withheld or withdrawn unless there is evidence to the contrary. The Will to Live is intended to maximize the chance of providing that evidence.

It is important to remember that you are writing a legal document, not holding a conversation, and not writing a moral textbook. The language you or a religious or moral leader might use in discussing what is and is not moral to refuse is, from a legal standpoint, often much too vague. Therefore, it is subject to misunderstanding or deliberate abuse.

The person you appoint as your health care agent may understand general terms in the same way you do. But remember that the person you appoint may die, or become incapacitated, or simply be unavailable when decisions must be made about your health care. If any of these happens, a court might appoint someone else you don’t know in that person’s place. Also remember that since the agent has to follow the instructions you write in this form, a health care provider could try to persuade a court that the agent isn’t really following your wishes. A court could overrule your agent’s insistence on treatment in cases in which the court interprets any vague language you put in your “Will to Live” less protectively than you meant it.

So, for example, do not simply say you don’t want “extraordinary treatment.” Whatever the value of that language in moral discussions, there is so much debate over what it means legally that it could be interpreted very broadly by a doctor or a court. For instance, it might be interpreted to require starving you to death when you have a disability, even if you are in no danger of death if you are fed.

For the same reason, do not use language rejecting treatment which has a phrase like “excessive pain, expense or other excessive burden.” Doctors and courts may have a very different definition of what is “excessive” or a “burden” than you do. Do not use language that rejects treatment that “does not offer a reasonable hope of benefit.” “Benefit” is a legally vague term. If you had a significant disability, a health care provider or court might think you would want no medical treatment at all, since many doctors and judges unfortunately believe there is no “benefit” to life with a severe disability.

What sort of language is specific enough if you wish to write exclusions? Here are some examples of things you might--or might not--want to list under one or more of the “Special Conditions” described on the form. Remember that any of these will prevent treatment ONLY under the circumstances--such as when death is imminent--described in the “Special Condition” you list it under. (The examples are not meant to be all inclusive--just samples of the type of thing you might want to write.)

“Cardiopulmonary resuscitation (CPR).” (If you would like CPR in some but not all circumstances when you are terminally ill, you should try to be still more specific: for example,

you might write “CPR if cardiopulmonary arrest has been caused by my terminal illness or a complication of it.” This would mean that you would still get CPR if, for example, you were the victim of smoke inhalation in a fire.) “Organ transplants.” (Again, you could be still more specific, rejecting, for example, just a “heart transplant.”)

“Surgery that would not cure me, would not improve either my mental or my physical condition, would not make me more comfortable, and would not help me to have less pain, but would only keep me alive longer.”

“A treatment that will itself cause me severe, intractable, and long-lasting pain but will not cure me.”

Pain Relief

Under the “General Presumption for Life,” of your Will to Live, you will be given medication necessary to control any pain you may have “as long as the medication is not used in order to cause my death.” This means that you may be given pain medication that has the secondary, but unintended, effect of shortening your life. If this is not your wish, you may want to write something like one of the following under the third set of “Special Conditions” (the section for conditions you describe yourself):

“I would like medication to relieve my pain but only to the extent the medication would not seriously threaten to shorten my life.” OR

“I would like medication to relieve my pain but only to the extent it is known, to a reasonable medical certainty, that it will not shorten my life.”

Think carefully about any special conditions you decide to write in your “Will to Live.” You may want to show them to your intended agent and a couple of other people to see if they find them clear and if they mean the same thing to them as they mean to you. Remember that how carefully you write may literally be a matter of life or death--your own.

AFTER WRITING DOWN YOUR SPECIAL CONDITIONS, IF ANY, YOU SHOULD MARK OUT THE REST OF THE BLANK LINES LEFT ON THE FORM FOR THEM (JUST AS YOU DO AFTER WRITING OUT THE AMOUNT ON A CHECK) TO PREVENT ANY DANGER THAT SOMEBODY OTHER THAN YOU COULD WRITE IN SOMETHING ELSE.

IT IS WISE TO REVIEW YOUR WILL TO LIVE PERIODICALLY TO ENSURE THAT IT STILL GIVES THE DIRECTIONS YOU WANT FOLLOWED.

Robert Powell Center for Medical Ethics
National Right to Life
www.nrlc.org ~ (202) 378-8862

How to use the Kansas Will to Live Form SUGGESTIONS AND REQUIREMENTS

1. This document allows you to name a health care agent who will make health care decisions for you whenever you are unable to make them for yourself. It also allows you to give instructions concerning medical treatment decisions that the health care agent must follow.
2. You cannot name as your agent your treating health care provider or an employee of your treating health care provider, or an employee, owner, director, or officer of any hospital, nursing home, or other health care facility. However, you may name one of these as your agent IF:
 - a. the person is related to you by blood, marriage or adoption OR,
 - b. you and your health care agent are members of the same religious community who are bound by vows to a religious life AND who conduct or assist in the conduct of religious services AND actually and regularly engage in religious, benevolent, charitable or educational ministries or the performance of health care services.
3. **You should be aware that even after you appoint a health care agent through this document, a court may still appoint a guardian for you if you become unable to make your own health care decisions. That court-appointed guardian will be given the same power to revoke or amend this document that you would have had if you were not disabled or incapacitated. If you wish you may nominate, using this document, a person for consideration by the court if proceedings to appoint a guardian for you are commenced. (This person could be the individual you are appointing as your health care agent, or someone else, if you prefer.) The court must make its appointment in accordance with your most recent nomination in a durable power of attorney for health care decisions except for good cause or disqualification. If you wish to nominate someone to be your guardian using this document, please write the following on the lines provided in subsection (3) in the section titled "LIMITATIONS OF AUTHORITY" on page 4: "I nominate [insert name, address, and telephone number of person you wish to nominate] to be my court-appointed guardian if protective proceedings for my person are hereafter commenced."**
4. NOTE: Certain sections that appear in this document are required by Kansas law to be included in this form. The Will to Live language has been inserted into the first section of this document titled "GENERAL STATEMENT OF AUTHORITY GRANTED." This Will to Live language is consistent with the presumption for life and should be filled out in accordance with your wishes. In order to ensure that the Will to Live controls, the phrase "(see above)" appears on the lines provided in subsections (2) and (3) in the section titled "LIMITATIONS OF AUTHORITY." To avoid confusion, you may wish to refrain from putting additional information on these lines. Additional information written

in by you could lead to interpretations inconsistent with the Will to Live. Of course, you may nominate someone to be your guardian on the lines provided in subsection (3) as explained in Instruction 3 above.

5. You must do one of the following to properly designate a health care agent through this document:
 - a. You can sign and date this document in the presence of two witnesses. The witnesses must then sign the document.
 - OR
 - b. You can have it notarized by a notary public.
6. If you use witnesses instead of a notary public, the witnesses must be at least 18 years of age. The witnesses cannot be your health care agent, anyone who is related to you by blood, marriage or adoption, anyone who is entitled to inherit anything from you under your will (including any codicil to your will) or as an heir under state law, or anyone who is directly financially responsible for your health care.
7. Your health care agent's authority takes effect only when you no longer have the capacity to make and communicate your own health care decisions.
8. The document will remain in effect until you revoke (cancel) it. Revocation of this document should be in writing, signed and either witnessed or notarized in the same manner as this document. If you execute a new document naming a health care agent, you will revoke this document unless the new document specifically says otherwise. You must also notify your health care agent of any revocation or change.
9. You should tell your doctor about this document. You should also ask your doctor to keep a copy of this document as a part of your medical health record. Give copies of the signed original to your health care agent, family members, and anyone else you think appropriate. Keep the original document in a safe place that will be easily accessible to others in case of an emergency and tell someone where it is.
10. This type of document has been authorized by the Kansas Durable Power of Attorney for Health Care Decisions Act, Kan. Stat. Ann. §§ 58-625 to -632.
11. You should periodically review your document to be sure it complies with your wishes. Before making any changes, be aware that it is possible that the statutes controlling this document have changed since this form was prepared. Contact the Will to Live Project by visiting www.nrlc.org (click on "Will to Live") or an attorney to determine if this form can still be used.
12. If you have any questions about this document, or want assistance filling it out, please consult an attorney.

For additional copies, please visit: www.nrlc.org and click on “Will to Live.”

Reviewed 2013

Kansas Durable Power of Attorney for Health Care Decisions With Will to Live Language

DURABLE POWER OF ATTORNEY FOR HEALTH CARE DECISIONS GENERAL STATEMENT OF AUTHORITY GRANTED

I, _____, designate and appoint:

Name: _____

Address: _____

Telephone number: _____

to be my agent for health care decisions and pursuant to the language stated below, on my behalf to:

- (1) Consent, refuse consent, or withdraw consent to any care, treatment, service or procedure to maintain, diagnose or treat a physical or mental condition, and to make decisions about organ donation, autopsy and disposition of the body;

- (2) make all necessary arrangements at any hospital, psychiatric hospital or psychiatric treatment facility, hospice, nursing home or similar institution; to employ or discharge health care personnel to include physicians, psychiatrists, psychologists, dentists, nurses, therapists or any other person who is licensed, certified or otherwise authorized or permitted by the laws of this state to administer health care as the agent shall deem necessary for my physical, mental and emotional well being; and

- (3) request, receive and review any information, verbal or written, regarding my personal affairs or physical or mental health including medical and hospital records and to execute any releases of other documents that may be required in order to obtain such information.

In exercising the grant of authority set forth above my agent for health care decisions shall:

(Here may be inserted any special instructions or statement of the principal's desires to be followed by the agent in exercising the authority granted.)

GENERAL PRESUMPTION FOR LIFE

I direct my health care provider(s) and health care agent(s) to make health care decisions consistent with my general desire for the use of medical treatment that would preserve my life, as well as for the use of medical treatment that can cure, improve, reduce or prevent deterioration in, any physical or mental condition.

Food and water are not medical treatment, but basic necessities. I direct my health care provider(s) and health care agent to provide me with food and fluids, orally, intravenously, by tube, or by other means to the full extent necessary both to preserve my life and to assure me the optimal health possible.

I direct that medication to alleviate my pain be provided, as long as the medication is not used in order to cause my death.

I direct that the following be provided:

- the administration of medication;
- cardiopulmonary resuscitation (CPR); and
- the performance of all other medical procedures, techniques, and technologies, including surgery,

—all to the full extent necessary to correct, reverse, or alleviate life-threatening or health impairing conditions or complications arising from those conditions.

I also direct that I be provided basic nursing care and procedures to provide comfort care.

I reject, however, any treatments that use an unborn or newborn child, or any tissue or organ of an unborn or newborn child, who has been subject to an induced abortion. This rejection does not apply to the use of tissues or organs obtained in the course of the removal of an ectopic pregnancy.

I also reject any treatments that use an organ or tissue of another person obtained in a manner that causes, contributes to, or hastens that person's death.

I request and direct that medical treatment and care be provided to me to preserve my life without discrimination based on my age or physical or mental disability or the "quality" of my life. I reject any action or omission that is intended to cause or hasten my death.

I direct my health care provider(s) and health care agent to follow the policy above, even if I am judged to be incompetent.

During the time I am incompetent, my agent, as named above, is authorized to make medical decisions on my behalf, consistent with the above policy, after consultation with my health care provider(s), utilizing the most current diagnoses and/or prognosis of my medical condition, in the following situations with the written special instructions.

WHEN MY DEATH IS IMMINENT

A. If I have an incurable terminal illness or injury, and I will die imminently – meaning that a reasonably prudent physician, knowledgeable about the case and the treatment possibilities with respect to the medical conditions involved, would judge that I will live only a week or less even if lifesaving treatment or care is provided to me – the following may be withheld or withdrawn:
(Be as specific as possible; SEE SUGGESTIONS.):

(Cross off any remaining blank lines.)

WHEN I AM TERMINALLY ILL

B. Final Stage of Terminal Condition. If I have an incurable terminal illness or injury and even though death is not imminent I am in the final stage of that terminal condition – meaning that a reasonably prudent physician, knowledgeable about the case and the treatment possibilities with respect to the medical conditions involved, would judge that I will live only three months or less, even if lifesaving treatment or care is provided to me – the following may be withheld or withdrawn:
(Be as specific as possible; SEE SUGGESTIONS.):

(Cross off any remaining blank lines.)

C. OTHER SPECIAL CONDITIONS:

(Be as specific as possible; SEE SUGGESTIONS.):

(Cross off any remaining blank lines.)

IF I AM PREGNANT

D. Special Instructions for Pregnancy. If I am pregnant, I direct my health care provider(s) and health care agent(s) to use all lifesaving procedures for myself with none of the above special conditions applying if there is a chance that prolonging my life might allow my child to be born alive. I also direct that lifesaving procedures be used even if I am legally determined to be brain dead if there is a chance that doing so might allow my child to be born alive. Except as I specify by writing my signature in the box below, no one is authorized to consent to any procedure for me that would result in the death of my unborn child.

If I am pregnant, and I am not in the final stage of a terminal condition as defined above, medical procedures required to prevent my death are authorized even if they may result in the death of my unborn child provided every possible effort is made to preserve both my life and the life of my unborn child.

Signature of Declarant

LIMITATIONS OF AUTHORITY

1. The powers of the agent herein shall be limited to the extent set out in writing in this durable power of attorney for health care decisions, and shall not include the power to revoke or invalidate any previously existing declaration made in accordance with the natural death act.

2. The agent shall be prohibited from authorizing consent for the following items:
(see above) _____

3. This durable power of attorney for health care decisions shall be subject to the additional following limitations: (see above) _____

EFFECTIVE TIME

This power of attorney for health care decisions shall become effective immediately and shall not be affected by my subsequent disability or incapacity or upon the occurrence of my disability or incapacity.

REVOCATION

Any durable power of attorney for health care decisions I have previously made is hereby revoked. (This durable power of attorney for health care decisions shall be revoked by an instrument in writing executed, witnessed or acknowledged in the same manner as required herein or set out another manner of revocation, if desired.)

