

Understanding the Durable Power of Attorney for Health Care

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What Is a Durable Power of Attorney For Health Care?

A Durable Power of Attorney for Health Care, herein after (DPOA-HC) is a document or paper that allows us to designate or name a person or persons to make decisions about our health care in case we are not able to make those decisions ourselves. It gives some direction about the kinds of medical treatment we want.

Are They Legal in Georgia?

Yes. The Durable Power of Attorney for Health Care Act was passed in the 1990 legislative session. The law and the form were revised as of July 1, 2007.

What if the Declarant (person creating the Power of Attorney and choosing an agent) has been diagnosed with Alzheimers or is mentally ill?

The law requires that the declarant be "of sound mind." If the declarant is not "of sound mind," the Power of Attorney will not be legally binding. A good definition of "sound mind" is as follows:

Generally, a person to have capacity required to be of sound mind, must have sufficient capacity to comprehend and understand nature and effect of business he is doing, and person whose mental incapacity if clearly of such degree as to render him unable to conduct ordinary affairs of life is not of 'sound mind,' but weakness of understanding alone is insufficient to show mental unsoundness, if capacity remains to see things in their true relations and individual has moderate comprehension of his immediate duties and value and use of his property.
Schuman v. Westbrook, 181 S.W.2d 470, 207 Ark. 495 (1944).

Why Would Anyone Want to Have One of These?

Advances in medical technology have been a mixed blessing. Today people are living longer and longer. Yet the quality of life does not always match the quantity of life. In other words, many people wonder, "What good is it to live to be 100 years old if our last years are spent confined to a bed? We may not know who we are or where we are; we may be unable to feed or groom ourselves. Some ask, "Is this really living?"

Today, courts in most situations agree that we have a right to control our health care. If we have cancer but do not want to be treated, that is our right. If we have a stroke and will be paralyzed for the rest of our life, we have the right to refuse medical treatment that will keep us alive. In other words, unless a special circumstance exists, we have a right to control our medical care. Doctors cannot force us to live when we no longer wish to live. We cannot be forced to take medicine or receive other life sustaining procedures if we expressly state those wishes.

What if we are unable to communicate with our doctors?

But suppose we are unable to communicate with our doctors. For example, what happens if we were in an automobile accident and suffered severe head injuries which left us unable to move and with no brain activity? Doctors said that we would remain in a "persistent vegetative state"

and will never recover. We could be kept alive if we were hooked up to machines that help us to breathe and tubes that provide us with nourishment.

The law says we have the right to refuse such treatment and can be allowed to "die with dignity." However, in this example, we are in a coma. We cannot talk or communicate to doctors and tell them how we want to be treated - or not treated.

The Supreme Court decision on June 25, 1990, on the "right to die" was based on a situation like this. A 25 year old woman was injured in an automobile accident. She was left in a "persistent vegetative state." Doctors said she might live for another 30 years like this.

Her parents told the doctors that their daughter would not want to live like this. They told the doctors to remove the feeding tubes and let their daughter "die with dignity." The doctors refused. The case went all the way to the United States Supreme Court. The Supreme Court said that **UNLESS WE MAKE OUR WISHES KNOWN, PREFERABLY IN WRITING**, that the state could intervene to protect life.

This woman could have remained in a coma for another 30 years, not really dead, but certainly not fully living, either. However, further court decisions in her home state gave her family the authority to see that her wishes were followed, and she passed away in December of 1990.

If this woman had made a Durable Power of Attorney for Health Care, all of this could have been avoided.

How Does a Durable Power of Attorney for Health Care Work?

We sign a paper that says that we want a certain person or persons (called an agent) to make health care decisions for us if we are unable to make those decisions ourselves. We could be unable to make those decisions because of an injury or because we have become mentally incapable of making such decisions ourselves. Unfortunately, some of us may become mentally confused as we grow older.

This form gives them the legal power to make certain decisions regarding our health care - but **ONLY** when we are incapable of making those decisions ourselves.

What Decisions Can They Make?

They can decide on a wide range of health care issues. This can include whether to admit or discharge us from a hospital or nursing home, what treatments may or may not be given, who can have access to our medical records, and even how our body is disposed of after our death. For example, they may donate our organs, order an autopsy, and even direct funeral arrangements.

How Does My Durable Power of Attorney for Health Care Agent Know What I Want?

We must tell them - in writing. There is a suggested form that allows us to state in writing how we would like to be treated - or not treated - in various medical situations. We can also tell our agent how we want our body disposed of, if we want to donate any organs to science, etc. We can direct that we do or do not want to be hooked up to machines that keep us alive. We can state that we do or do not want to be hooked up to feeding tubes that provide us with nourishment and hydration (food and water). We can even use the document to name a person we want to be our guardian, should it become necessary.

What Is a Guardian?

A guardian is someone who is legally appointed by the court to act on our behalf when the court finds that we are not capable of managing our own affairs. The court can appoint a guardian over our person, our property or both. The court can also appoint a guardian to act for a limited purpose or limited time period. A guardianship takes away a person's legal rights and places rights and responsibilities in someone else's hands. We should discuss guardianship with our attorney if we have any questions.

Who Should I Appoint to Be My Durable Power of Attorney For Health Care Agent?

We can choose anyone who is over 18 years of age. The only restriction is that they cannot be our health care provider. In other words, they should not be our doctor or work at a nursing home where we reside, or hospital where we may be a patient.

We should choose someone that we can trust and who will carry out our wishes. They can be a family member, a friend, someone we work with, or a spiritual advisor.

Although this is not required by the law, it is a good idea to discuss our wishes with the person or persons we would like to appoint to be our agent. This could be a difficult role with unexpected hard decisions to make. We should be sure the person we choose is willing to make those decisions for us.

Can I Appoint More than One Durable Power of Attorney for Health Care Agent?

Yes. The law allows us to appoint co-agents (two people who will serve as equals) and/or successive agents (a second person who will succeed the first person in case they are unable to perform their duty). We should consider naming more than one person since an agent may not be available or may choose not to act in a certain situation.

Is My Agent Required to Act for Me?

No. The law does not force the agent to act for us. However, if the person chooses to act, they must do so according to our wishes. This is one reason why we may want to ask the person we name whether they are willing to act for us, should it be necessary.

Is My Durable Power of Attorney for Health Care Agent Liable for What They Do?

No. As long as they are acting in "good faith" and in accordance with our instructions, the law protects them from liability (being sued) for their actions.

If I Change My Mind, Can I Change My Durable Power of Attorney Form?

Yes. We should destroy the copy that we have and tell others who might have a copy that we have changed our minds. We can then make a newer one that reflects our current wishes.

There are also some special parts of the law which address ways that the document could be revoked (cancelled). For example, the law says that if we get married after we have signed a DPOA-HC, it will be automatically revoked (not legally valid) unless we have named our new

husband or wife as our agent. The law also discusses ways that we can cancel the DPOA-HC verbally. We should see an attorney to have these and other fine points explained.

Is There a Best Time to Appoint a DPOA-HC Agent?

Most of us don't really want to think about dying. When we are young, we assume that we have many years ahead of us. But remember, the June 1990, Supreme Court case involved a woman who was only 25 years old at the time of her accident. Who would have predicted what would happen to her? So the best time to think about and appoint a DPOA-HC Is NOW.

I Am More Interested in the Right to Live than the Right to Die. How Can I Make Sure That No One "Pulls the Plug" on Me?

The DPOA-HC is intended to be a neutral document. It does not assume that we feel one way over another. It allows us to state in writing exactly how we feel. If we want to "hang on to life as long as possible," we should say so in the form. In fact, there is a place in the Georgia form to express this desire. But more importantly, one should make sure that the person(s) appointed as agent(s) can be trusted to carry out your wishes.

I Don't Want to Exist Like a Vegetable, But I Don't Want to Be in Pain, Either. Is There a Conflict?

No. Standard medical practice says that we should be kept as comfortable and as free of pain as is possible. Often when someone is disconnected from a respirator, they are given a sedative that helps them to relax and go to sleep. No one wants us to suffer needlessly. The Georgia law on DPOA-HC also addresses this and states that health care providers have a right to administer medicine to control our pain, regardless of what our Power of Attorney for Health Care instructions may say.

What Is The Difference Between a Durable Power of Attorney For Health Care And a Living Will?

As explained, a Durable Power of Attorney for Health Care allows us to appoint a person or persons to make health care decisions if we cannot act for ourselves. A Living Will simply states our wish to have certain types of care withheld or withdrawn in situations set out in the Living Will itself. A Living Will may apply if we have a terminal condition, are in a coma or a persistent vegetative state. A Durable Power of Attorney for Health Care is broader in that it can apply to any condition you may have or treatment you may need., For more information on the Living Will, ask for the publication called "Understanding the Georgia Living Will".

NOTE: Keep in mind that all laws are subject to amendments by legislators and interpretations by courts. Check with a legal advisor to obtain the latest information.

What Is The Difference Between a Durable Power of Attorney For Health Care And a Financial or General Power of Attorney?

The DPOA-HC is designed to authorize someone to act on our behalf to direct decisions about our body and health care or treatment. A financial or general power of attorney can be designed to authorize someone to act on our behalf in financial or other matters. A person can use two different documents, one for decisions about the person (DPOA-HC) and one for the property (regular POA). The law also allows us to combine both types of powers of attorney into one document, if we wish. See a lawyer if you have any questions about a power of attorney for property or finances or if you have questions about combining the two documents into one.

How Do Religions View a Durable Power of Attorney for Health Care?

Many religions support our having the power to control our health care. Medical technology has advanced quicker than medical ethics. Often hospital boards and families rely on a minister or other spiritual counselor to offer advice. Many religious groups and individuals support our right to decide.

However, some religious groups and individuals are very much against a DPOA-HC. Instead of saying this gives us the right to die, they think it gives others the right to kill.

The Georgia law states that the DPOA-HC is not a form of euthanasia (mercy killing). We are not actively killing someone. Insurance companies do not consider such decisions suicide. Despite these statements, some people do object to a DPOA-HC.

This Is All Very Complicated! Can The County Agent Help Me?

No. The county agent is neither a doctor nor a lawyer. If you need help in understanding this, you should make an appointment to discuss this with a legal or medical expert.

What Form Can I Use?

The Georgia law on these documents provides a form to use but also allows for some flexibility in personalizing the form to fit individual needs. This form is an exact word-for-word duplication of the form in the statute. The authors in no way intend to provide specific legal advice on the DPOA-HC. It is intended for general education and information only. You may use this form or obtain a copy of the form in the statute to use. Copies of the statutory form are available at no cost from the Georgia Division of Aging Services, 2 Peachtree Street, Suite 9.398, Atlanta, GA 30303-3142.

CONCLUSION

No one likes to think about such matters. However, as the saying goes, "bad things happen." Most people hope that they will simply go to sleep one night in their own bed and not wake up. The reality is that about 80% of people die while in a nursing home or hospital. The majority are not physically or mentally able to make decisions about their own health care.

In order to protect ourselves, it is in our best interest to appoint a DPOA-HC agent. We should use a DPOA-HC to let others know how we wish to be treated if we are not able to communicate those wishes at the time.

What we decide is up to us. We can custom design our DPOA-HC to our own wishes. It is an important task that we all should consider.

The Georgia law states that we can devise a DPOA-HC form to custom fit our needs. Our form does not have to be a word for word duplication of the form suggested in the law. We should consult an attorney if we want to insure our DPOA-HC form is legally valid. We should consult a medical doctor if we have questions about the types of treatment or medical issues that may arise.

O.C.G.A. § 31-32-4. GEORGIA ADVANCE DIRECTIVE FOR HEALTH CARE

By: _____ Date of Birth: _____ (Print Name) (Month/Day/Year)

This advance directive for health care has four parts:

PART ONE HEALTH CARE AGENT. This part allows you to choose someone to make health care decisions for you when you cannot (or do not want to) make health care decisions for yourself. The person you choose is called a health care agent. You may also have your health care agent make decisions for you after your death with respect to an autopsy, organ donation, body donation, and final disposition of your body. You should talk to your health care agent about this important role. **PART TWO TREATMENT PREFERENCES.** This part allows you to state your treatment preferences if you have a terminal condition or if you are in a state of permanent unconsciousness. **PART TWO** will become effective only if you are unable to communicate your treatment preferences. Reasonable and appropriate efforts will be made to communicate with you about your treatment preferences before **PART TWO** becomes effective. You should talk to your family and others close to you about your treatment preferences. **PART THREE GUARDIANSHIP.** This part allows you to nominate a person to be your guardian should one ever be needed. **PART FOUR EFFECTIVENESS AND SIGNATURES.** This part requires your signature and the signatures of two witnesses. You must complete **PART FOUR** if you have filled out any other part of this form.

You may fill out any or all of the first three parts listed above. You must fill out **PART FOUR** of this form in order for this form to be effective.

You should give a copy of this completed form to people who might need it, such as your health care agent, your family, and your physician. Keep a copy of this completed form at home in a place where it can easily be found if it is needed. Review this completed form periodically to make sure it still reflects your preferences. If your preferences change, complete a new advance directive for health care.

Using this form of advance directive for health care is completely optional. Other forms of advance directives for health care may be used in Georgia.

You may revoke this completed form at any time. This completed form will replace any advance directive for health care, durable power of attorney for health care, health care proxy, or living will that you have completed before completing this form. **PART ONE: HEALTH CARE AGENT**

[**PART ONE** will be effective even if **PART TWO** is not completed. A physician or health care provider who is directly involved in your health care may not serve as your health care agent. If you are married, a future divorce or annulment of your marriage will revoke the selection of your current spouse as your health care agent. If you are not married, a future marriage will revoke the selection of your health care agent unless the person you selected as your health care agent is your new spouse.]

(1) **HEALTH CARE AGENT** I select the following person as my health care agent to make health care decisions for me: Name:

_____ Address:

Telephone Numbers: _____ (Home, Work, and Mobile)

(2) BACK-UP HEALTH CARE AGENT [This section is optional. PART ONE will be effective even if this section is left blank.]

If my health care agent cannot be contacted in a reasonable time period and cannot be located with reasonable efforts or for any reason my health care agent is unavailable or unable or unwilling to act as my health care agent, then I select the following, each to act successively in the order named, as my back-up health care agent(s):

Name: _____
Address: _____
Telephone Numbers: _____ (Home, Work, and Mobile)

Name: _____
Address: _____
Telephone Numbers: _____ (Home, Work, and Mobile)

(3) GENERAL POWERS OF HEALTH CARE AGENT My health care agent will make health care decisions for me when I am unable to communicate my health care decisions or I choose to have my health care agent communicate my health care decisions.

My health care agent will have the same authority to make any health care decision that I could make. My health care agent's authority includes, for example, the power to:

- Admit me to or discharge me from any hospital, skilled nursing facility, hospice, or other health care facility or service;
- Request, consent to, withhold, or withdraw any type of health care; and
- Contract for any health care facility or service for me, and to obligate me to pay for these services (and my health care agent will not be financially liable for any services or care contracted for me or on my behalf).

My health care agent will be my personal representative for all purposes of federal or state law related to privacy of medical records (including the Health Insurance Portability and Accountability Act of 1996) and will have the same access to my medical records that I have and can disclose the contents of my medical records to others for my ongoing health care.

My health care agent may accompany me in an ambulance or air ambulance if in the opinion of the ambulance personnel protocol permits a passenger and my health care agent may visit or consult with me in person while I am in a hospital, skilled nursing facility, hospice, or other health care facility or service if its protocol permits visitation.

My health care agent may present a copy of this advance directive for health care in lieu of the original and the copy will have the same meaning and effect as the original.

I understand that under Georgia law:

- My health care agent may refuse to act as my health care agent;
- A court can take away the powers of my health care agent if it finds that my health care agent is not acting properly; and
- My health care agent does not have the power to make health care decisions for me regarding psychosurgery, sterilization, or treatment or involuntary hospitalization for mental or emotional illness, mental retardation, or addictive disease.

(4) GUIDANCE FOR HEALTH CARE AGENT When making health care decisions for me, my health care agent should think about what action would be consistent with past conversations we have had, my treatment preferences as expressed in PART TWO (if I have filled out PART TWO), my religious and other beliefs and values, and how I have handled medical and other important issues in the past. If what I would decide is still unclear, then my health care agent should make decisions for me that my health care agent believes are in my best interest, considering the benefits, burdens, and risks of my current circumstances and treatment options.

(5) POWERS OF HEALTH CARE AGENT AFTER DEATH (A) AUTOPSY

My health care agent will have the power to authorize an autopsy of my body unless I have limited my health care agent's power by initialing below.

_____ (Initials) My health care agent will not have the power to authorize an autopsy of my body (unless an autopsy is required by law).

(B) ORGAN DONATION AND DONATION OF BODY My health care agent will have the power to make a disposition of any part or all of my body for medical purposes pursuant to the Georgia Anatomical Gift Act, unless I have limited my health care agent's power by initialing below.

[Initial each statement that you want to apply.]

_____ (Initials) My health care agent will not have the power to make a disposition of my body for use in a medical study program. _____ (Initials) My health care agent will not have the power to donate any of my organs.

(C) FINAL DISPOSITION OF BODY My health care agent will have the power to make decisions about the final disposition of my body unless I have initialed below.

_____ (Initials) I want the following person to make decisions about the final disposition of my body:

Name: _____ Address: _____
 _____ Telephone
 Numbers: _____ (Home, Work, and
 Mobile)

I wish for my body to be:

_____ (Initials) Buried OR _____ (Initials) Cremated PART TWO: TREATMENT PREFERENCES

[PART TWO will be effective only if you are unable to communicate your treatment preferences

after reasonable and appropriate efforts have been made to communicate with you about your treatment preferences. PART TWO will be effective even if PART ONE is not completed. If you have not selected a health care agent in PART ONE, or if your health care agent is not available, then PART TWO will provide your physician and other health care providers with your treatment preferences. If you have selected a health care agent in PART ONE, then your health care agent will have the authority to make all health care decisions for you regarding matters covered by PART TWO. Your health care agent will be guided by your treatment preferences and other factors described in Section (4) of PART ONE.]

(6) CONDITIONS PART TWO will be effective if I am in any of the following conditions:

[Initial each condition in which you want PART TWO to be effective.]

_____ (Initials) A terminal condition, which means I have an incurable or irreversible condition that will result in my death in a relatively short period of time.

_____ (Initials) A state of permanent unconsciousness, which means I am in an incurable or irreversible condition in which I am not aware of myself or my environment and I show no behavioral response to my environment.

My condition will be determined in writing after personal examination by my attending physician and a second physician in accordance with currently accepted medical standards.

(7) TREATMENT PREFERENCES [State your treatment preference by initialing (A), (B), or (C). If you choose (C), state your additional treatment preferences by initialing one or more of the statements following (C). You may provide additional instructions about your treatment preferences in the next section. You will be provided with comfort care, including pain relief, but you may also want to state your specific preferences regarding pain relief in the next section.]

If I am in any condition that I initialed in Section (6) above and I can no longer communicate my treatment preferences after reasonable and appropriate efforts have been made to communicate with me about my treatment preferences, then:

(A) _____ (Initials) Try to extend my life for as long as possible, using all medications, machines, or other medical procedures that in reasonable medical judgment could keep me alive. If I am unable to take nutrition or fluids by mouth, then I want to receive nutrition or fluids by tube or other medical means. OR (B) _____ (Initials) Allow my natural death to occur. I do not want any medications, machines, or other medical procedures that in reasonable medical judgment could keep me alive but cannot cure me. I do not want to receive nutrition or fluids by tube or other medical means except as needed to provide pain medication. OR (C) _____ (Initials) I do not want any medications, machines, or other medical procedures that in reasonable medical judgment could keep me alive but cannot cure me, except as follows:

[Initial each statement that you want to apply to option (C).]

_____ (Initials) If I am unable to take nutrition by mouth, I want to receive nutrition by tube or other medical means. _____ (Initials) If I am unable to take fluids by mouth, I want to receive fluids by tube or other medical means. _____ (Initials) If I need assistance to breathe, I want to have a ventilator used. _____ (Initials) If my heart or pulse has stopped, I want to have cardiopulmonary resuscitation (CPR) used.

(8) ADDITIONAL STATEMENTS [This section is optional. PART TWO will be effective even if this section is left blank. This section allows you to state additional treatment preferences, to provide additional guidance to your health care agent (if you have selected a health care agent in PART ONE), or to provide information about your personal and religious values about your medical treatment. For example, you may want to state your treatment preferences regarding medications to fight infection, surgery, amputation, blood transfusion, or kidney dialysis. Understanding that you cannot foresee everything that could happen to you after you can no longer communicate your treatment preferences, you may want to provide guidance to your health care agent (if you have selected a health care agent in PART ONE) about following your treatment preferences. You may want to state your specific preferences regarding pain relief.]

(9) IN CASE OF PREGNANCY [PART TWO will be effective even if this section is left blank.]

I understand that under Georgia law, PART TWO generally will have no force and effect if I am pregnant unless the fetus is not viable and I indicate by initialing below that I want PART TWO to be carried out.

_____ (Initials) I want PART TWO to be carried out if my fetus is not viable.

PART THREE: GUARDIANSHIP

(10) GUARDIANSHIP [PART THREE is optional. This advance directive for health care will be effective even if PART THREE is left blank. If you wish to nominate a person to be your guardian in the event a court decides that a guardian should be appointed, complete PART THREE. A court will appoint a guardian for you if the court finds that you are not able to make significant responsible decisions for yourself regarding your personal support, safety, or welfare. A court will appoint the person nominated by you if the court finds that the appointment will serve your best interest and welfare. If you have selected a health care agent in PART ONE, you may (but are not required to) nominate the same person to be your guardian. If your health care agent and guardian are not the same person, your health care agent will have priority over your guardian in making your health care decisions, unless a court determines otherwise.]

[State your preference by initialing (A) or (B). Choose (A) only if you have also completed PART ONE.]

(A) _____ (Initials) I nominate the person serving as my health care agent under PART ONE to serve as my guardian. OR (B) _____ (Initials) I nominate the following person to serve as my guardian:

Name: _____ Address: _____
_____ Telephone Numbers: _____
_____ (Home, Work, and Mobile)

PART FOUR: EFFECTIVENESS AND SIGNATURES

This advance directive for health care will become effective only if I am unable or choose not to

make or communicate my own health care decisions.

This form revokes any advance directive for health care, durable power of attorney for health care, health care proxy, or living will that I have completed before this date.

Unless I have initialed below and have provided alternative future dates or events, this advance directive for health care will become effective at the time I sign it and will remain effective until my death (and after my death to the extent authorized in Section (5) of PART ONE).

_____ (Initials) This advance directive for health care will become effective on or upon _____ and will terminate on or upon _____.

[You must sign and date or acknowledge signing and dating this form in the presence of two witnesses. Both witnesses must be of sound mind and must be at least 18 years of age, but the witnesses do not have to be together or present with you when you sign this form. A witness:

- Cannot be a person who was selected to be your health care agent or back-up health care agent in PART ONE;
- Cannot be a person who will knowingly inherit anything from you or otherwise knowingly gain a financial benefit from your death; or
- Cannot be a person who is directly involved in your health care.

Only one of the witnesses may be an employee, agent, or medical staff member of the hospital, skilled nursing facility, hospice, or other health care facility in which you are receiving health care (but this witness cannot be directly involved in your health care).]

By signing below, I state that I am emotionally and mentally capable of making this advance directive for health care and that I understand its purpose and effect.

_____ (Signature of Declarant)
_____ (Date)

The declarant signed this form in my presence or acknowledged signing this form to me. Based upon my personal observation, the declarant appeared to be emotionally and mentally capable of making this advance directive for health care and signed this form willingly and voluntarily.

_____ (Signature of First Witness) (Date) Print Name: _____ Address: _____

_____ (Signature of Second Witness) (Date) Print Name: _____ Address: _____

[This form does not need to be notarized.]