

## 15 QUESTIONS ABOUT LIVING WILLS

- 1. What is a Living Will or Advanced Care Directive?** Most people have heard of the term *living will*. A living will is nothing more than a set of directives or instructions that you have put into written form specifying your wishes for your medical care and treatment should you become terminally ill or comatose. These documents are also called *advance care directives*.
- 2. Is a Living Will valid in Michigan?** No. To date, no statute has been passed by the Michigan Legislature nor has any court recognized the validity of a living will as a binding directive. You are certainly free to execute a living will so that your loved ones and health care providers are aware of your wishes, but no one is legally required to follow the directives in the living will.
- 3. Does Michigan have a binding medical care directive?** Yes. In late 1990, the Michigan Legislature enacted a statute authorizing any person 18 years or older to execute a *patient advocate designation*.
- 4. What is a Patient Advocate Designation?** A patient advocate designation, sometimes called a durable power of attorney for health care, is a written document by which you appoint a person of your choosing, called the *patient advocate*, to make medical decisions for you if you are unable to make these decisions yourself. The decisions made by your patient advocate, based upon directives and instructions you have given, are binding upon your medical care providers.
- 5. Is a Patient Advocate Designation more powerful than a Living Will?** Yes. A living will only deals with the circumstances under which you wish to terminate life support and die with dignity. A patient advocate designation is much broader, covering a wider spectrum of circumstances. For example, if you are in a coma because of a life threatening blood clot on the brain, your patient advocate can authorize the life saving surgery. Such a circumstance would not be dealt with under a living will.
- 6. Is a Patient Advocate Designation different from a "no code" or "do not resuscitate" order?** Yes. This form, which is commonly provided by a hospital at the time of admission, simply means that if you go into cardiac or respiratory arrest while in the hospital no action will be taken to revive you. But if you are brought into the hospital in a comatose condition or become comatose while a patient, the hospital will place you on life support systems which may maintain you in such a condition indefinitely. Absent a subsequent cardiac or respiratory arrest, the no code or do not resuscitate order will have no applicability.
- 7. When does the Patient Advocate act?** The Patient Advocate will make medical decisions for you only when you are unable to do so for yourself. As long as you can make informed decisions regarding your medical treatment, you will make all of your own decisions. If you cannot make informed decisions for yourself, the patient advocate will be empowered to make those decisions for you. Should you regain your decision making ability — for example if you were in a coma and then came out of the coma — the patient advocate would no longer be authorized to act and you would be back making your own decisions.

**8. Who can be my Patient Advocate?** You can designate any person age 18 years or older to be your patient advocate. Thus, you could designate your spouse, adult children, other relatives, or even a friend or neighbor. It should be someone that you have confidence in and trust to carry out your wishes. Before designating someone to serve as your patient advocate, you should ask the person if he or she is willing to serve in this important role. While not required, we recommend that you appoint one or two alternate patient advocates to act in case your first choice is unable to act, unavailable, etc.

**9. What happens if I change my mind?** A patient advocate designation can be changed or revoked at any time. If you change your wishes regarding your medical treatment, the designation can be changed or rewritten to reflect your current wishes. If you wish to name someone else as your patient advocate, the designation can be changed. If you decide that you do not want a patient advocate designation, the designation can be revoked in its entirety. You have complete flexibility and complete control.

**10. Can I write my own Patient Advocate Designation?** We recommend that you **do not** write your own designation. The Michigan statute requires that certain language and certain formalities be included in the designation in order to be valid. If you try to write your own you may leave out some required language or miss a formality, which would make the designation invalid. And you would probably not find this out until the very moment that you needed the designation! There are forms provided by several organizations which you can use. Just be sure that the form is designed to comply with the Michigan statute and was drawn up after January 1, 1991. For a very nominal charge we can prepare a designation for you which will meet all of the requirements and formalities and which will be valid without question.

**11. Can my spouse and children witness my Patient Advocate Designation?** Absolutely not. To avoid possible questions regarding conflicts of interest, the Michigan statute provides that the following persons **may not** witness a designation:

Spouse, parent, child, grandchild, sibling, heir at law, heir under a Will, the doctor treating you, your patient advocate, an employee of your life insurance or health insurance company, an employee of the health facility where you are receiving treatment, or an employee of a home for the aged.

**12. What should I do with my Patient Advocate Designation once signed?** First, the most important thing for you to do once you have signed your designation is to have your patient advocates sign the acceptance form which should be part of the document. In addition to your signature, the Michigan statute requires that the persons designated as patient advocates sign an acceptance stating, among other things, that they are willing to accept this responsibility. Thus, the patient advocate designation is not valid until signed by both you and at least one of the persons designated. Second, you should have multiple copies made of the original designation and be sure that both you and the patient advocates have several copies each so that they will be readily available when needed. **Do not store the designation in a place where you cannot obtain immediate access to it.** Third, if you are currently treating on a regular basis with any doctors, check with the doctor to see if he or she wants a copy of the designation for your file. If admitted to a hospital or other care facility, a copy of the designation should be made part of your medical file.

**13. What if I signed a medical directive before January 1, 1991?** Because of the particular requirements of the Michigan statute necessary to make a patient advocate valid, any medical directive, living

will, durable power of attorney for health care, etc. signed before this date is probably invalid. You should have such a document reviewed by someone knowledgeable regarding the Michigan requirements. We would be glad to review any such document for you free of charge.

**14. What happens if I do not have a Patient Advocate Designation?** If you do not have a valid patient advocate designation and become unable to make medical decisions for yourself, either through old age, Alzheimer's disease or dementia, stroke, auto accident, etc., your loved ones will have to petition the county probate court to have a guardian appointed for you. Unless there is a life threatening emergency, this procedure could take 3 to 4 weeks and could cost between \$500 and \$1,000 for attorney fees. Furthermore, all probate court proceedings and records are public records; there is a complete loss of privacy in probate court. While the guardianship is pending, there is no one authorized to make medical decisions for you — you are in limbo. And the proceeding can drag on much longer if there is a dispute among the family members as to who should be your guardian. These proceedings are sometimes referred to as *living probate*. The simple act of executing a patient advocate designation avoids this entanglement with the probate court and the related expense.

**15. What does a Patient Advocate Designation cost?** We can prepare a patient advocate designation for you which meets all of the Michigan statutory requirements and formalities, and which will be valid without question. The cost is \$100.

**This Report provides only a general description of the matters discussed. You must consult legal counsel to obtain individualized legal advice regarding further details and the specifics of your particular situation. We are glad to answer your questions or discuss your situation with you in detail.**

*For a confidential consultation, contact us at:*

**BOOTH PATTERSON, P.C.**

Attorneys at Law

1090 West Huron Street

Waterford, Michigan 48328

(248) 681-1200

[www.boothpatterson.com](http://www.boothpatterson.com)