

# **Advance Health Care Directives**

## **Frequently Asked Questions for Professionals**

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*This fact sheet is an overview of some of the key elements of California's Health Care Decisions Law of 2000. Additional details can be obtained through the resources listed at the end.*

Effective July 1, 2000, this law consolidated California's previous advance directive laws to make it easier for individuals to make their preferences known through written and oral communication.

A more generic advance directive, the Advance Health Care Directive (AHCD), replaced previous advance directive forms, such as the Natural Death Act Declaration, the Directive to Physicians and the Durable Power of Attorney for Health Care (DPAHC).

### **Are those previous advance directive forms still valid?**

If a completed advance directive was previously valid, it remains so unless rescinded by the person. Forms that were legal before July 1, 2000 can also still be used if desired.

### **What does the Advance Health Care Directive (AHCD) do?**

The AHCD allows a person to do either or both of two things:

1. Appoint a Power of Attorney for Health Care
2. State instructions for future healthcare decisions

The AHCD can be used to indicate preferences for healthcare treatment, such as management of the dying process and specifying personal values about quality of life. The law allows – but does not require – other preferences to be documented, such as appointment of a conservator or guardian, autopsy and funeral arrangements, and organ and tissue donation. The only statutory language required in the document itself relates to the witnesses, so the use of a standardized form is convenient but not required.

### **What needs to be done to complete an AHCD?**

It is valid if:

1. completed by a competent person over age 18,
2. includes the person's name, signature, and the date executed, and
3. is acknowledged by a notary public or signed by two witnesses. An attorney is not required.

At least one witness must not be related or named in the will of the person. Persons excluded as witnesses are the person's agent; physician or health care provider or their employees; the owner,

operator, or employee of a nursing facility or residential care home in which the person resides. If the person resides in a nursing facility, one witness must be an ombudsman or patient advocate.

## What else do healthcare professionals need to know about an AHCD?

- The AHCD is assumed valid unless there is substantial evidence to the contrary.
- It becomes effective only if the person becomes incapable of making healthcare decisions for any reason (unless the directive stipulates otherwise).
- It can direct that the agent's authority is to take place immediately even though the person retains decision making capacity.
- It can be used to state who is not to make healthcare decisions for the person.
- Copies of an AHCD have the same authority as the original.
- A person cannot be required to complete an AHCD as a precondition for admission to a hospital or nursing facility or for the provision of health care.

## What is the role of the Healthcare Agent?

With a few exceptions, the agent designated in the AHCD has legal authority in all healthcare matters unless limitations are stipulated. The agent may, for example:

- Select or discharge healthcare providers and institutions;
- Accept or refuse medical treatments, including artificial nutrition and hydration and resuscitation attempts;
- Receive information on the person's condition, view the medical record, and authorize release of the medical record when needed;
- Consent to tissue and organ donation, authorize an autopsy, and arrange for disposition of the remains after death.

The agent does not assume responsibility for medical bills, debts held by the person or for managing the person's financial affairs. Restrictions on who can be appointed as a person's agent are similar to those restrictions on who can witness the AHCD.

## Can a person make an oral advance directive?

Yes, with certain restrictions. A person may orally designate a surrogate to make healthcare decisions only by personally informing the supervising healthcare provider (SHCP, see definitions). This appointment is only effective during the course of treatment, illness, or stay in the healthcare institution (usually 60 days or less). A verbally designated surrogate supersedes a previous written directive only during that time frame. Instructions for current or future care may be given orally at any time, but instructions for future care, such as you might put in AHCD, are more secure if they are supported by a written document and an informed agent.

## How are healthcare decisions made for the patient?

Healthcare decisions made by a designated agent, surrogate, or court-appointed conservator with authority to make healthcare decisions should meet the following standard:

- Healthcare decisions must be in accord with the patient's individual healthcare instructions, if any, and other wishes to the extent known to the agent, surrogate or conservator.
- If the patient's wishes are not known, decisions are to be made in accord with the agent, surrogate, or conservator's determination of the patient's best interest in light of the personal values and beliefs of the patient to the extent they are known.

## What are the duties of healthcare professionals?

- A healthcare provider or institution must comply with a patient's advance directive or instructions from an agent or surrogate to the same extent as if the decision had been made by the patient.
- The SHCP must document all pertinent information about the existence or revocation of an AHCD or any oral communication about preferences in the healthcare record.
- The primary physician (see definition) who determines (or is informed of a determination) that a patient lacks capacity or has recovered capacity must record such in the healthcare record.
- Before implementing a healthcare decision for a patient, the SHCP must inform the patient of the decision and the identity of the person who made it.

Physicians and other healthcare providers may decline to comply with an AHCD or an agent's decision because of conscience (personal or in institutional policy) or because the care would be medically ineffective or contrary to generally accepted healthcare standards. In such cases:

- The patient and agent must be immediately informed of such decision.
- All reasonable efforts to assist in transfer of the patient to another provider must be undertaken.
- Continuing care must be provided to the patient until transfer can be accomplished.

Immunity is explicitly granted to agents and health care providers who make good faith health care decisions in accord with the person's written or oral preferences.

## Can an AHCD be revoked?

Yes. A person having capacity may revoke all or part of the AHCD at any time. The revocation must be clearly documented by healthcare providers.

- The designation of the agent may be revoked only in writing or by personally informing the SHCP.

- Healthcare instructions can be revoked in any manner that communicates intent to revoke.

## What if a person does not have an AHCD?

If a person lacks the capacity to make decisions, the physician and healthcare team will usually turn to the most appropriate decision-maker from close family or friends of the person. The most appropriate decision maker is someone who has a close, caring relationship with the person, is aware of the person's values and beliefs, and is willing and able to make the needed decisions. This person may or may not be the person's next-of-kin. (This process for appointing a decision maker has been common practice in California for many years, though not in statute.)

## Definitions Provided in the Health Care Decisions Law

The following terms are explicitly defined in the legislation:

### **Capacity:**

a patient's ability to understand the nature and consequences of proposed health care, including its significant benefits, risks, and alternatives, and to make and communicate a decision.

### **Health care decision:**

a decision made by a patient or the patient's agent, conservator, or surrogate, regarding the patient's health care, including the following:

- Selection and discharge of health care providers and institutions
- Approval or disapproval of diagnostic tests, surgical procedures, and programs of medication
- Directions to provide, withhold, or withdraw artificial nutrition and hydration and all other forms of health care, including cardiopulmonary resuscitation

### **Primary physician:**

a physician designated by a patient or the patient's agent to have primary responsibility for the patient's health care or, if the primary physician is not reasonably available, the physician who undertakes that responsibility.

### **Supervising health care provider (SHCP):**

the primary physician, or if there is no primary physician or he or she is not reasonably available, the health care provider who has undertaken primary responsibility for a patient's health care.

## Additional Resources

Check the Coalition for Compassionate Care of California website for updates on materials, community and professional education programs and curriculum at [CoalitionCCC.org](http://CoalitionCCC.org).



## Text of law:

AB 891 (Chapter 658, Statutes of 1999) codified at Probate Code sections 4600-4805. To obtain a copy, visit [leginfo.ca.gov](http://leginfo.ca.gov).

## Analysis of law:

- California Hospital Association Consent Manual. To order a copy, call (800) 494-2001 or visit [calhealth.org](http://calhealth.org).
- CMA ON-CALL, Information on Demand Service or online at [cmanet.org](http://cmanet.org).

## Advance Health Care Directive Forms:

- The Coalition for Compassionate Care offers a selection of forms. Visit [CoalitionCCC.org](http://CoalitionCCC.org) and click on Advance Care Planning.
- The California Hospital Association Consent Manual contains a copy of a suggested form in both English and Spanish. Manuals can be ordered by calling (800) 494-2001 or visit [calhealth.org](http://calhealth.org).
- The California Medical Association has an Advance Health Care Directive Kit available in English or Spanish for \$5. To order, call CMA Publications at (800) 882-1CMA or visit [cmanet.org](http://cmanet.org).
- Caring Connections has state-specific forms that can be downloaded at [caringinfo.org](http://caringinfo.org).

## Supporting Materials:

- A pamphlet containing the required Patient Self Determination Act (PSDA) language for California is available through USC's Pacific Center for Health Policy & Ethics. Call (213) 740-2541 or visit [lawweb.usc.edu/Pacific\\_Center/](http://lawweb.usc.edu/Pacific_Center/).
- Finding Your Way: A Guide for End-of-Life Medical Decisions. This 13-page, easy-to-read booklet helps those who are starting the advance care planning process or considering whether to initiate or withdraw life-sustaining treatment when the end of life is near. Also in Spanish. Available to view online or purchase through CCCC's online store at [CoalitionCCC.org](http://CoalitionCCC.org).
- Mrs. Lee's Story: Medical Decisions Near the End of Life. This 16-page booklet written in Chinese and English relates the story of 91-year old Mrs. Ming Lee to introduce health issues that concern Chinese elders and their families. It includes basic information on advance care planning and advance directives, pain management and hospice care. Available to view online or purchase through CCCC's online store at [CoalitionCCC.org](http://CoalitionCCC.org).