

Medical Power of Attorney

By Wesley E. Wright and Molly Dear Abshire, as published in the Houston Chronicle Senior Living Section on September 1, 2002.

Among the advance planning strategies that address healthcare issues, the medical power of attorney is considered the most useful and is the most widely used. Nearly every state has some form of this advance directive.

The medical power of attorney allows an individual, or "principal," to choose an agent to make healthcare decisions in the event of his or her incapacity, without giving control to the court. Healthcare professionals encourage the use of medical powers of attorney because they designate a specific person to make medical decisions, thus shifting the burden from doctors to family members or trusted friends with whom the patient should have discussed his or her views on life, death and care.

The medical power of attorney covers most kinds of medical treatments. The agent has the ability to make all decisions related to the quality and extent of the principal's healthcare and therapy. The agent's powers may include selecting a physician, consenting to surgery, and authorizing medications, but will never allow an agent to consent to abortion, psychosurgery, involuntary inpatient mental health services, or neglect.

In Texas, our Legislature has issued a statutory medical power of attorney form, in part to make them more acceptable and easily recognized by third parties. The statutory form is "springing," in other words, it is effective only when the principal becomes incapacitated. The agent may exercise his or her authority only after the principal's attending physician has certified that, in the physician's opinion, the principal lacks the capacity to make healthcare decisions for himself.

It is important that the document is thoroughly explained to the principal and that he or she receives counsel regarding the choice of the agent. Alternate agents should be chosen in the event the first named agent is unable to serve. The agent's primary responsibility is to ensure that the incapacitated principal's wishes are honored. The principal should designate an agent who can advocate for the principal's treatment, interact with healthcare professionals and use their best judgment regarding medical decisions. The principal should discuss his or her religious, moral and ethical beliefs about healthcare with the agent. Carefully choosing an appropriate agent to make healthcare decisions helps avoid potential disharmony among family members regarding who has decision making authority.

The principal can revoke the power of attorney at any time in a variety of ways. The last executed power of attorney takes precedence. It is a good idea to periodically review these documents to determine if the same agent makes sense as circumstances change. With the mobility of our society, a child who was the perfect choice as an agent three years ago may now live in Australia and would no longer be the preferred agent to make decisions in the event of a healthcare crisis. Likewise, if the principal resides part of each year in another state, it may be wise to execute separate documents with provisions particular to each state.

There are good reasons for separating the medical power of attorney from other advance directives, such as a financial power of attorney. The medical power of attorney must be substantially the same as the statutory form. Merging it with the financial power of attorney would change it significantly and could serve as a reason for later invalidation of the document. Privacy principles also favor separating the documents. Why provide, for example, real property descriptions and financial agents' names to persons who only need information pertaining to healthcare?

Finally, original medical powers of attorney should be stored in an easily accessible fireproof place. Although the statutory form implies that a copy is to be recognized, many healthcare professionals insist upon seeing the original.