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ADVANCED MEDICAL DIRECTIVES

1. A FEW WORDS ABOUT THIS BOOKLET

This pamphlet is intended to provide a brief overview of the law governing advanced medical directives. If you need more detailed information, we encourage you to discuss your specific situation with a legal professional. The attorneys in the base legal office **cannot represent** you in court. There are various Legal Referral Services in Colorado that can help you in your search for a civilian lawyer. Please refer to last page of this pamphlet for *Helpful Contact Information*.

2. ADVANCE MEDICAL DIRECTIVES

Every adult in the United States has the legal right to consent to or refuse medical treatment, under the Patient Self-Determination Act of 1990. All medical facilities receiving Medicare or Medicaid benefits must tell their patients about this law. Making your wishes known about the treatment you would want when you're incapacitated can be very helpful to doctors and to your family. You can make your wishes known on forms called "advance medical directives." Signing advanced medical directives doesn't take away your right to decide on treatment, if you are able to do so. There are multiple documents categorized as "advance medical directives," each specifically addressing different forms of medical treatment.

3. MEDICAL DURABLE POWER OF ATTORNEY

A *Medical Durable Power of Attorney*, perhaps the most useful and practical of these directives, allows you to establish a process so that medical care decisions can be made which are consistent with your wishes when you are no longer able to express those wishes directly to your doctor or family.

A medical durable power of attorney is a legal document in which you name someone else (called an "agent" or an "attorney in fact") to make health care decisions for you if you can't make them, even if you are not terminally ill. Your agent can get copies of your medical records and other

The information provided in this document is meant for the sole use of Active Duty service members, retirees, their families, and those individuals eligible for legal assistance. The information is general in nature and meant only to provide a brief overview of various legal matters. Rights and responsibility vary widely according to the particular set of circumstances in each case. Laws can vary across states, services, and civilian jurisdictions and laws are changed from time to time. Do not rely upon the general restatements of background information presented here without discussing your specific situation with a legal professional.

information in order to make medical decisions for you. You may appoint *anyone* to be your health care agent so long as that person is at least 18 years old, mentally competent, and willing to serve as your agent. Your agent doesn't need to live in Colorado, but it usually makes things more convenient. You should also name a second person to serve in case the first person can't.

It's important to talk with your agent, your doctor, and your family about what you would want in the event you are incapacitated, about your medical care choices and your Medical Durable Power of Attorney. It is also important to talk with your doctor and your family regarding your wishes.

Your Medical Durable Power of Attorney may contain instructions to your agent about specific medical treatments, such as decisions about surgery, diagnostic tests or procedures. It may include a specific course of treatment for a known disease or condition, or a decision regarding nursing home care or other out-of-home placement. You can name an agent without giving specific instructions to that person. The legal office can assist you in executing a medical durable power of attorney.

4. LIVING WILLS

A *Living Will* gives your doctor your instructions about life sustaining procedures and artificial nourishment. If your doctor cannot, or will not, carry out your wishes, he or she must transfer you to a doctor who will do as you direct.

The *Living Will* document, which you sign, instructs your doctor to withhold or withdraw life-sustaining procedures in the event that at some future time, you are:

1. Terminally ill and have been unconscious, comatose or otherwise incompetent for a specific period of time -- no less than 7 days (by Colorado law) or
2. Terminally ill and are unable to make or communicate responsible decisions about your care

"Life sustaining procedures" means any medical procedure or intervention that would only prolong the dying process. "Terminally ill" means an incurable or irreversible condition with no possibility of recovery, as agreed upon by two doctors in writing.

A *Living Will* can also direct your doctor to withhold or withdraw artificial nourishment if it is the only procedure being provided. If a doctor determines this will cause you pain, he/she will give you enough nourishment to alleviate pain. Through a *Living Will*, you can direct that artificial nourishment 1) be discontinued immediately, 2) be given to you for the time period you specify in the document, or 3) not ever be withheld.

Any competent person 18 years of age or older may execute a *Living Will*.

A *Living Will* **can be destroyed any time you change your mind**. You can do this by telling someone, revoking it in writing, or by destroying the document. Let your doctor, family and anyone who has a copy of it know that you've destroyed it.

Advantages to having a *Living Will*:

1. Difficult decisions about future care are made while you are competent, alert and not sick.

2. Your directions allow you to die under circumstances you have chosen. It makes your wishes clear in the event of a dispute as to what you might have wanted.
3. A *Living Will* removes the burden of decisions having to be made by grieving loved ones when you are dying.
4. A *Living Will* can reduce medical expenses.

Disadvantages to having a *Living Will*:

1. A *Living Will* is effective in a very narrow set of circumstances.
2. The decisions you made may be hard for your family and create disharmony.
3. A parent, adult child, spouse or agent under a power of attorney can challenge the validity of the *Living Will* in court.

5. CPR DIRECTIVES

CPR is an attempt to revive someone whose heart and/or breathing has stopped. This attempt can be made by using special drugs or machines or pressing very firmly on the chest.

In Colorado, it is presumed you would want CPR unless you and your doctor have signed a form that allows you (or your agent or proxy) to refuse CPR.

If you have a CPR directive, and your heart and/or lungs stop, medical personnel won't try to press on your chest, or use breathing tubes, electric shock or anything else to get your heart and/or lungs working again. A CPR bracelet or necklace may be worn, indicating you don't want these emergency measures.

Signing a CPR directive won't prevent you from receiving other kinds of needed medical care such as treatment for pain, bleeding, broken bones or other comfort care.

If you are a patient in a health care facility and you don't have a CPR directive or aren't able to sign one, your doctor may decide, usually in consultation with you and/or family members, that resuscitation would be inappropriate. The doctor will write Do Not Resuscitate (DNR) or NO CPR on your chart.

The legal office is unable to provide CPR directives. Such directives are available through your doctor's office or the Colorado Department of Health. A CPR directive must be signed by both you the patient and your doctor.

6. WHEN THERE ARE NO ADVANCE DIRECTIVES

When an adult doesn't have advanced medical directives and hasn't made his/her wishes known, under Colorado law someone can be chosen to make such decisions. That person would be chosen from among a group of "interested persons" including the person's spouse, parents, any adult child, sibling, grandchild, or any close friend of the patient. The intent of the law is to avoid guardianship proceedings.

The patient's attending physician must first determine that the adult patient lacks the ability to provide informed consent to or refusal of medical treatment. An effort must be made to tell the patient that he or she lacks the ability to provide informed consent, and that a close relative or friend will be selected to make medical decisions. The physician, or designee, must try to locate and notify as many of the "interested persons" as practical about the patient's lack of decisional capacity, and of the need to select a decision-maker for the patient.

The group of interested persons must try to reach a consensus among themselves as to which person among them should make medical decisions on behalf of the patient. Ideally, the person selected should have a close relationship with the patient and be likely to know the patient's wishes about medical treatment. The physician then tells the patient that a proxy has been selected, says who the person selected is, and explains the patient's right to object to the person selected.

If the group cannot agree on a decision-maker, or if the patient objects to the person selected, a guardianship proceeding must be instituted so that someone can make needed medical decisions on behalf of the patient.

The proxy decision-maker for medical care may authorize all decisions except removal or withdrawal of artificial nourishment and hydration. Such a decision by a proxy may be made only when the attending physician and a second independent physician trained in neurology or neurosurgery certify in the patient's chart that providing or continuing artificial nourishment or hydration is merely prolonging the act of dying, and it is unlikely to restore the patient to independent neurological functioning.

A proxy may ask for assistance from a medical ethics committee of the medical facility or ask the facility for an outside referral to provide assistance or consultation in making a medical decision.

Be sure to discuss your wishes and beliefs concerning medical treatment with your doctor, family and agent. Make copies of your advance directives for your doctor's files, agent, family, and, if applicable, your health care facility. Discuss the policies of your health care provider and be sure they are compatible with your own beliefs and that your wishes will be honored.

HELPFUL CONTACT INFORMATION

El Paso County Bar Association's Lawyer Referral Service: (719) 636-1532

Colorado Legal Services: (303) 837-1321

Legal Aid Foundation of Colorado: (303) 863-9544

Metropolitan Lawyer Referral Service: (303) 831-8000

Denver Bar Association: (303) 831-1309

Other Helpful Websites:

<https://aflegalassistance.law.af.mil>

http://www.denbar.org/index.cfm/ID/1102/DBA/For_the_Public

<http://coloradolegalservices.org/co/homepage.html>

<http://www.legalaidfoundation.org/>