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Durable Power of Attorney for Health Care in Kansas

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Understanding the Durable Power of Attorney for Health Care

A durable power of attorney for health care is one type of advance directive. With this document, you name the person you authorize to make your health care decisions for you. It is usually made effective when you are not capable of making decisions for yourself. It is important that you communicate your wishes for health care to your appointed representative.

The document becomes effective if and when you are unable to make decisions, as determined by your attending physician, or if you have identified another standard that should be applied. The person that you name may be called a health care agent.

This person has the authority to make treatment decisions for you, including what medical personnel to hire or fire. Your health care agent can make decisions about admitting you to medical facilities and institutions.

Your agent has the right to receive and review information, including medical records, that pertain to your health status. However, federal law, particularly the Health Insurance Portability and Accountability Act of 1996 (HIPAA), also outlines who has access to medical records. Therefore, it is recommended that you also complete a HIPAA authorization

form and designate your “personal representative” to access medical records. She or he may decide about organ donation, autopsy, and what to do with your body after death. The health care agent cannot revoke a previously existing document regarding your wishes, such as a living will.

Talking to Others about the Durable Power of Attorney for Health Care

Completing a durable power of attorney for health care is a serious decision. It is a good idea to talk with your physician about the durable power of attorney for health care to ensure that you completely understand the options and ramifications. Consulting an attorney whenever you are contemplating end-of-life decisions may be helpful as well. Your individual situation may make some decisions more complicated than it seems at first.

Some people find that talking to their family, a trusted friend, or spiritual advisor can be helpful in thinking through these types of decisions. Because a durable power of attorney for health care is used when there is illness, injury, and death, discussing these choices can make some people uncomfortable. However, receiving the care that you want at the end of your life is too important to be ignored just because the conversation may be a difficult one.

Naming a Durable Power of Attorney for Health Care

The first step is to talk to the person you want to name as your agent. Ask the individual if she or he would be able to advocate for you and ensure that your wishes are carried out. Sometimes your wishes might be different than your agent's personal preferences. Sometimes you may be in a situation that you could not have anticipated, and the person that you name may not know what you would have wanted. In those situations, you trust that person to use his or her best judgment on your behalf. Although many people ask a relative to act as an agent, you do not have to name someone who is related to you.

Your treating health care provider, employees of your treating health care provider, and employees, owners, directors or officers of certain types of health care facilities may not be named as your agent unless:

1. The named agent is related to you by blood, marriage or adoption; or
2. You and the agent have taken vows in the same religious community.

The person that you name must be at least 18 years of age. You should choose the person who is best suited to the task. You may choose joint agents, although this is not recommended if you are choosing two people to avoid conflict or hurt feelings. You should also designate one or more alternates in case your first or second choice for agent is unable to serve.

The person acting as a durable power of attorney for health care who believes that the form is valid and who acts in good faith is not liable for his or her actions as the agent.

A durable power of attorney for health care can be changed at any time. You may change the person that you have named to act on your behalf. You should review and update this form from time to time.

How to Complete a Durable Power of Attorney for Health Care

A durable power of attorney for health care is a legal document. In Kansas, you do not need a lawyer to complete the form, as Kansas statutes offer "fill-in-the-blank" forms that you may complete on your own. It is recommended that you use these forms if you are not using the services of an attorney. State laws vary, though, so you want to be sure that you know other states' requirements if you plan on moving or if you are caring for someone out-of-state. A good place to find more information about a state's policies on advance directives such as the durable power of attorney for health care is the health department or the state office on aging. You can also ask a physician, health care provider or legal advisor for more information.

The durable power of attorney for health care form must be dated and signed in the presence of two witnesses who are at least 18 years of age. The witnesses may not be related to you by blood, marriage or adoption, entitled to your estate, or directly responsible financially for your health care. Another option is to have the durable power of attorney for health care form acknowledged before a notary public.

After Completing a Durable Power of Attorney for Health Care

Once you have completed a durable power of attorney for health care, you may want to talk to your family, friends, and health care providers about your wishes, the decisions that you have outlined, and the content and location of your durable power of attorney for health care document. This may help avoid any confusion during what is sure to be a stressful time for those who love you and care for you.

Make sure that you have a copy on hand, and give copies to your loved ones, doctors,

hospital, and lawyer, if you have one. You may want to consider carrying a copy with you or at least placing a note in your wallet or purse stating that you have a durable power of attorney for health care and where it can be found. You may want to consider placing copies of your durable power of attorney for health care in your automobile's glove box.

There are some private companies that can electronically store your advance directives via the Internet. Others provide bracelets to wear that indicate your wishes. There are typically fees for these services.

Summary

Thinking about what you desire at the end of life is an important task. Communicate with your family and health care providers. Keep copies of your advance directives available in case of emergency. If you would like more information about this subject, please see additional K-State Research and Extension publications on advance directives, living wills, and do not resuscitate directives. Also see the list of Kansas Resources for more information.

Kansas Resources

Elder Law Hotline

(800) 353-5337

www.kansaslegalservices.org/Home/PublicWeb/GetHelp

Kansas Department on Aging

(800) 432-3535

www.agingkansas.org

Kansas Health Ethics

(316) 684-1991

www.kansashealthethics.org

Kansas Legal Services

(888) 353-5337

www.kansaslegalservices.org

Life Project

Helpline: (888) 202-5433

www.lifeproject.org

Kansas Resources with Downloadable Forms

Kansas Bar Association

(785) 234-5696

www.ksbar.org or ksbar.lawinfo.com (page with forms)

The University of Kansas Hospital (offers forms in Spanish) www.kumed.com/bodyside.cfm?id=2120

National Resources

Caring Connections

Helpline: (800) 658-8898

Spanish Helpline: (877) 658-8896

www.caringinfo.org

National Library of Medicine and the National

Institutes of Health: MedlinePlus

www.nlm.nih.gov/medlineplus/advancedirectives.html

LawHelp.org

www.lawhelp.org

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**DURABLE POWER OF ATTORNEY FOR HEALTH CARE DECISIONS
GENERAL STATEMENT OF AUTHORITY GRANTED**

K.S.A. 58-632

I, _____

designate and appoint:

Name:

Address:

Telephone Number:

to be my agent for health care decisions and pursuant to the language stated below, on my behalf to:

(1) Consent, refuse consent, or withdraw consent to any care, treatment, service or procedure to maintain, diagnose or treat a physical or mental condition, and to make decisions about organ donation, autopsy and disposition of the body;

(2) make all necessary arrangements at any hospital, psychiatric hospital or psychiatric treatment facility, hospice, nursing home or similar institution; to employ or discharge health care personnel to include physicians, psychiatrists, psychologists, dentists, nurses, therapists or any other person who is licensed, certified or otherwise authorized or permitted by the laws of this state to administer health care as the agent shall deem necessary for my physical, mental and emotional well being; and

(3) request, receive and review any information, verbal or written, regarding my personal affairs or physical or mental health including medical and hospital records and to execute any releases of other documents that may be required in order to obtain such information.

In exercising the grant of authority set forth above my agent for health care decisions shall:

(Here may be inserted any special instructions or statement of the principal's desires to be followed by the agent in exercising the authority granted).

LIMITATIONS OF AUTHORITY

(1) The powers of the agent herein shall be limited to the extent set out in writing in this durable power of attorney for health care decisions, and shall not include the power to revoke or invalidate any previously existing declaration made in accordance with the natural death act.

(2) The agent shall be prohibited from authorizing consent for the following items:

(3) This durable power of attorney for health care decisions shall be subject to the additional following limitations:

EFFECTIVE TIME

This power of attorney for health care decisions shall become effective (*immediately and shall not be affected by my subsequent disability or incapacity or upon the occurrence of my disability or incapacity*).

REVOCAATION

Any durable power of attorney for health care decisions I have previously made is hereby revoked.

(This durable power of attorney for health care decisions shall be revoked *by an instrument in writing executed, witnessed or acknowledged in the same manner as required herein or set out another manner of revocation, if desired.*)

EXECUTION

Executed this _____, at _____, Kansas.

_____ Principal.

This document must be: (1) Witnessed by two individuals of lawful age who are not the agent, not related to the principal by blood, marriage or adoption, not entitled to any portion of principal's estate and not financially responsible for principal's health care; OR (2) acknowledged by a notary public.

Witness

Witness

Address

Address

(OR)

STATE OF _____)

SS.

COUNTY OF _____)

This instrument was acknowledged before me on _____ by _____.
(date) (name of person)

_____ (Signature of notary public)

(Seal, if any)

My appointment expires:_____

Legal Disclaimer

Durable Power of Attorney for Health Care in Kansas is designed to acquaint the reader with certain legal information about end-of-life issues. It is not designed as a substitute for legal advice, nor does it tell everything one needs to know about end-of-life issues. Future changes in the law cannot be predicted, and statements in this program are based solely on the laws in force on the date of publication. If readers have specific questions, they should seek professional advice. A resource listing of attorneys by state can be provided by the specific State Bar Association. You can locate your state bar association at <http://www.abanet.org/barserv/stlobar.html>.

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