ADVANCE MEDICAL DIRECTIVES

CALIFORNIA
STATE AIDS LEGAL SERVICES
ASSOCIATION (SALSA)

Legal Services for Persons with HIV Infection
TAKING CHARGE OF YOUR HEALTH CARE

AFTER DISCOVERING YOU ARE HIV positive or have AIDS, you are likely to find yourself thrust into the world of health care; a world which may seem overwhelming and unfamiliar.

You may be faced with issues you never knew existed and you may be required to make difficult decisions about your medical treatment.

Despite these obstacles, you can help the situation by taking an active, participatory role in determining your course of care. Working with your health care provider, you can be involved in creating a treatment regime appropriate for you.

This involves two important steps: (1) educating yourself about your rights regarding health care decisions, and (2) taking steps to inform others about your decisions.

The Right to Decide

As a competent adult, you have a constitutionally protected right to make decisions about your health care. This includes the right to accept or reject treatment, and the right to consent to treatment. For example, you have the right to request that life support equipment (i.e., a respirator) be withheld and/or withdrawn.

Your right to decisions over your medical care survives even if you become incompetent and unable to make informed health care decisions for yourself.
Should there be a time when your ability to make medical decisions is impaired, others (such as a family member and/or a significant other) can assist your physician in executing your wishes.

**Educate Yourself**

Before creating any formal legal documents or making decisions about your health care, it is important to know all the options. A good first step is to discuss the issues with the physician who is primarily responsible for your care.

Although it may be difficult for you to confront such issues as withdrawing medical treatment, the importance of early evaluation cannot be overstated. It allows you to participate in your care and helps others understand what you want.

Other sources of education include: books and articles about medical treatment, talking with friends about the issues of treatment options, and attending support groups to hear various views on the subject.

Once you have gathered sufficient information and have had a chance to review the various choices, you will be ready to take the next step: informing others of what you want.

**INFORMING OTHERS OF YOUR DECISIONS**

**Using Advance Medical Directives**

In order for your desires regarding medical treatment to be carried out, you have to make them known. This can be done both formally and informally.
The most common informal way for making your views known is through discussions with friends, family, and your health care providers. Despite the importance of these conversations, using the formal process of creating written documentation of your wishes is the best way to make them known.

Documents used for this purpose are:

The Durable Power of Attorney for Health Care and the Directive to Physicians.

1. The Durable Power of Attorney for Health Care

The Durable Power of Attorney for Health Care ("DPAHC") allows you to designate a person to make medical decisions for you during any period of time when you are incompetent and unable to make such decisions.

Referred to as the "agent," this person must make decisions based on the instructions included in your DPAHC and in consultation with your physician.

The basic requirements necessary for executing a DPAHC are:

- You must be a competent adult at the time of executing the document.
- You must name an agent to serve when you become incompetent (there are restrictions on who can be the agent).
• The document must be witnessed by two individuals (there are important restrictions on who can be witnesses) or notarized by a notary public.
• If the document is a printed form document which you purchase, it must contain certain statutory warnings.

There are several places to obtain printed form DPAHC's which you can execute. Your physician and/or hospital may have some or you can usually obtain one from the California Medical Association.

BE SURE TO FOLLOW ALL THE INSTRUCTIONS ON THE FORM WHEN EXECUTING THE DOCUMENT.

2. The Directive to Physicians

The Directive to Physicians is a document allowing you to tell your doctor your desires regarding withholding or withdrawing "life sustaining" procedures. A valid Directive requires the following:

• You must be a competent adult.
• The form and wording of the document must comply with the law.
• The document must be witnessed by two individuals (there are important restrictions on who can be witnesses).

In addition, a Directive is only binding if:

1. It is prepared after you have been diagnosed with a terminal "incurable" condition, and
2. You have waited 14 days after being diagnosed before executing the document.

A binding directive means that your physician is required to comply with your desires and if unable to do so, should make necessary arrangements to transfer you to a physician who will comply with your requests.

A non-binding directive can be executed at any time even if you have not been diagnosed with a terminal condition, however, a physician is not legally obligated to follow it.

3. DPAHC or Directive to Physicians?

You are probably asking yourself whether you should execute a DPAHC or a Directive to Physicians. Both documents are valuable tools, but the DPAHC has several advantages over the Directive to Physicians:

• It allows you to designate a person to assist your physician in making decisions about your care. This person can make those decisions based on your known wishes in light of your medical condition at the time and after reviewing all the factors involved.

• It is binding even if signed when you have not been diagnosed with a terminal illness.

• You can include a variety of information about various aspects of your care (not just your views on life-sustaining treatment).
4. Competency

In order for your advance medical directive to be valid, you must be competent at the time you signed it. In other words, you must be of sound mind and have a clear understanding of your actions at the time you signed the document.

The following steps may be useful to help establish competency:

- Discuss your desires regarding treatment with your physician or other health care provider. This helps them understand what you want and reinforces that the document is an accurate reflection of your intent.

- If appropriate, seek assistance from a neutral party (such as an attorney or other person not named as the agent) when drafting and executing the document. This allows a neutral person to witness your state of mind and creates an opportunity for them to review the document with you to be sure it says what you want it to say.

- If you are in the hospital when executing the document, ask the health professionals to make a note in your medical record regarding your mental status.

- Do not execute the document when you are taking medications which alter your ability to make decisions.

- Discuss your wishes with your family, significant other, and others who will be involved in your care.
Helping people to understand what you want reinforces your decisions and eases the process for others.

**Preparing the Document**

A lawyer is not required to prepare either of these advance medical directives, and printed forms are available for your use.

However, if you are a person with AIDS or are HIV positive and you want assistance executing these documents, contact the AIDS legal Referral Panel in your area during business hours.

The panel will arrange for a volunteer attorney to assist you in drafting either a Durable Power of Attorney for Health Care or a Directive to Physicians. There is no charge for those who meet the financial eligibility guidelines. If you are unable to make an office visit, a panel attorney will come to your home or hospital room.

The assist the attorney in drafting a document regarding your medical decisions, please review this pamphlet and take the time to educate yourself about what type of information you want in the document. If you have a particular question, write it down and be sure to ask the attorney. The attorney will be happy to answer any questions which you have.
Optional Items to Include in Your DPAHC

In addition to the information contained on the printed form DPAHC, you can include various other statements pertaining to your medical care which are of concern to you.

(NOTE: This is a sample of desires, special provisions, and limitations to the California Medical Association's form for the Durable Power of Attorney for Health Care ("DPA/HC"). The statement is illustrative, not exhaustive, of the powers recognized by Cal.Civ.C. 2410-2443.)*

(Name of Principal), of (City, State), do hereby nominate, constitute and appoint (Name of Agent), of (City, State), as my true and lawful attorney-in-fact, to act for me in and in my name, place and stead, with regard to any and all medical and health care decisions to be made concerning my medical condition, treatment and care, including, but not limited to the following powers:

A. Priority in Visitation. To be given first priority in visitation should I be a patient in any hospital, health care facility, or institution including, but not limited to, any intensive care or coronary care units of any medical facility, and should I be unable to express a preference on account of my illness or disability.

* Taken from AIDS Law Manual; Wills and Durable Power of Attorney, 2.62-2.64.
B. Employment of Health Care Personnel. To employ such physicians, dentists, nurses, therapists, and other professional or non-professionals, as my attorney-in-fact may deem necessary or appropriate for my physical or mental well-being; and to pay from my funds reasonable compensation for all services performed by such persons.

C. Gain Access to Medical and Other Personal Information. To request, review, and receive any information, verbal or written, regarding my personal affairs or my physical or mental health, including medical and hospital records, and to execute any releases or other documents that may be required in order to obtain this information.

D. Receive Items of Personal Property and Effects. To receive into (his/her) possession any and all items of personal property and effects which may be recovered from, on, or about my person by any hospital, police agency or any other person at the time of my illness, disability or death.

E. Consent or Refuse Consent to Medical Care. To give or withhold consent to medical care, surgery, or any other medical procedures to tests; to arrange for my hospitalization, convalescent care or home care; and to revoke, withdraw, modify or change consent to such medical care, surgery, or any other medical procedures or test, hospitalization, convalescent care or home care which I or my attorney-in-fact may have previously allowed or consented to.
I ask my attorney-in-fact to be guided in making such decisions by what I have told my attorney-in-fact about my personal preferences regarding such care.

Based on those same preferences, my attorney-in-fact may also summon paramedics or other emergency medical personnel and seek emergency treatment for me, or choose not to do so, as my attorney-in-fact deems appropriate given my wishes and my medical status at the time of the decision. My attorney-in-fact is authorized, when dealing with hospitals and physicians, to sign documents entitled or purporting to be "Refusal to Permit Treatment" and "Leaving Hospital Against Medical Advice" as well as any necessary waivers of or releases from liability required by the hospitals or physicians to implement my wishes regarding medical treatment or non-treatment.

F. Refuse Life-Prolonging Treatment or Procedures.

To request that aggressive medical therapy not be instituted or be discontinued, including (but not limited to) cardiopulmonary resuscitation, the implantation of cardiac pacemaker, renal dialysis, parenteral feeding, the use of respirators or ventilators, nasogastric tube use, endotracheal tube use, and organ transplants. My attorney-in-fact should try to discuss the specifics of any such decision with me if I am able to communicate in any manner.

If I am unconscious, comatose, senile, or otherwise unreachable by such communication, my attorney-in-fact
should make the decision guided by any preferences which I may have previously expressed and the information given by the physicians treating me as to my medical diagnosis and prognosis. My attorney-in-fact may specifically request and concur the writing of a "no-code" (do not resuscitate) order by the attending or treating physician.

G. **Provide Relief from Pain.** To consent to and arrange for the administration of pain-relieving drugs of any type, or other surgical or medical procedures calculated to relieve any pain even though their use may lead to permanent physical damage, addiction, or even hasten the moment of (but not intentionally cause) my death.

My attorney-in-fact may also consent to and arrange for unconventional pain-relief therapies such as biofeedback, guided imagery, relaxation therapy, acupuncture, skin stimulation or cutaneous stimulation, and other therapies which I or my attorney-in-fact believe may be helpful to me.

H. **Protect My Right of Privacy.** To exercise my right of privacy to make decisions regarding my medical treatment and my right to be left alone even though the exercise of my right may hasten death or be against conventional medical advice.

My attorney-in-fact may take appropriate legal action, if necessary in the judgment of my attorney-in-fact, to enforce my right in this regard.
I. **Authorize Release of My Body.** To authorize the release of my body from any hospital or any other authority having possession of my body at the time of my death and to make all decisions necessary for the removal and transportation of my body from the place of death.

J. **(OPTIONAL) Authorize Cremation of My Body and Disposition of My Remains.** To authorize the cremation of my body and to receive my ashes, whereupon my attorney-in-fact is to place (QUANTITY) in an urn, and place this urn with its contents in an appropriate site at (LOCATION), which I hereby select as my final resting place.

   It is my hope and desire that (NAME OF PARTNER) will arrange that (his/her) body will be cremated after (his/her) death, and will be placed in an urn next to my own ashes in the same site as (LOCATION), and that we will share a plaque bearing our names and dates of birth and death. My attorney-in-fact may, as (he/she) chooses, dispose of, keep, or distribute any of my ashes which (he/she) does not inter at (LOCATION). If it is impossible or highly impracticable for my attorney-in-fact to perform any of the instructions I have given regarding my cremation or interment, my attorney-in-fact may, at (his/her) discretion, dispose of my body in such manner as (he/she) deems appropriate under the circumstances.

K. **(OPTIONAL) Authorize Funeral or Memorial Service.** I authorize my attorney-in-fact to make such arrangements for a
funeral or memorial service in the (NAME OF RELIGIOUS AFFILIATION
OR TRADITION) as are not inconsistent with the wishes I have
expressed above regarding my cremation and interment.

L. Execute Documents and Contracts. To sign,
execute, deliver, acknowledge, and make declaration in any
document(s) that may be necessary or proper in order to exercise
any of the powers described in this document, to enter into
contracts and to pay reasonable compensation or costs in the
exercise of any such powers.

This Durable Power of Attorney shall take effect upon
my incapacity. Said incapacity shall be defined as my failure,
due to deteriorating physical or mental health, to be able to
make informed decisions regarding the cause of my medical
treatment, or my failure, due to deteriorating physical or mental
health, to be able to sign any documents or perform any act
necessary to decisions regarding the cause of my medical
treatment.

IN WITNESS WHEREOF, I have hereunto signed my name this
_____________ day of ______________________, 19__.

Principal's Signature