

**ADVANCE DIRECTIVES:  
IT'S YOUR RIGHT.....To accept or refuse medical care.**

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1. Advance Directives: the purpose....
  - a. To protect your right if you become mentally or physically unable to choose or communicate your wishes due to an injury or illness.
  - b. To help you protect your right to make medical choices that can affect your life.
  - c. To help your family avoid the responsibility – and stress—of making difficult decisions.
  - d. To help your physician by providing guidelines for your care.
  
2. Federal law: “Patient Self-Determination Act of 1990”
  - a. Omnibus Budget Reconciliation Act of 1990 (OBRA)
  - b. Effective December 1, 1991
  - c. Applies to hospitals, skilled nursing facilities, home health agencies, hospice programs, and HMO’s that receive Medicaid and Medicare funding.
  - d. Requires each of those covered by the Act to provide each patient with written information concerning:
    - i. The individual’s right under state law to make decisions regarding medical care (i.e., living will and/or durable power of attorney for healthcare).
    - ii. Written policies of the entity respecting the implementation of such rights.
  - e. Requires each covered entity:
    - i. To document in the patient’s medical record whether or not the patient has executed an advance directive.
    - ii. To provide education for the entity’s staff and the community on issues concerning advance directives.
    - iii. To not condition the provision of care or discriminate against a patient based on whether or not the patient has executed an advance directive.
    - iv. To ensure compliance with requirements of state law respecting advance directives.
  
3. Advance Directive: Defined....
  - a. Defined under federal law as “a written instruction, such as a living will or durable power of attorney for health care, recognized under

state law relating to the provision of such care when the individual is incapacitated.”

- b. Ohio’s law took effect October 10, 1991.
4. “Living Will” (declaration)
- a. Sections 2133.01 to 2133.15 of the Ohio Revised Code.
  - b. Authorizes competent adults to execute a written document that spells out in advance the patient’s wishes regarding health care treatment in the event the patient becomes in a “permanent unconscious” state or in a “terminal condition”.
  - c. “Permanent unconscious state”: A state of permanent unconsciousness in a patient that to a reasonable degree of medical certainty as determined by the patient’s attending physician and one other physician who has examined the patient and is characterized by both of the following:
    - i. Irreversible unawareness of one’s being and environment.
    - ii. Total loss of cerebral cortical functioning, resulting in the patient having no capacity to experience pain or suffering.
  - d. “Terminal Condition”: An irreversible, incurable and untreatable condition caused by disease, illness or injury from which, to a reasonable degree of medical certainty as determined in accordance with reasonable medical standards by a patient’s attending physician and one other physician who has examined the patient, both of the following apply:
    - i. There can be no recovery.
    - ii. Death is likely to occur within a relatively short time if life-sustaining treatment is not administered.
  - e. A Living Will permits the physician to withhold all life-sustaining measures, including nutrition and hydration if indicated on the Living Will form. A Living Will does not allow the doctor to discontinue “comfort care”.
  - f. The physician must make a reasonable effort to notify the person(s) designated in the Living Will or the closest family members if life-sustaining treatment is to be withdrawn.
  - g. Only the closest family members may challenge the decision to withhold life-sustaining treatment.
  - h. Under Ohio law, a Living Will is applicable to patients in a terminal condition or a permanently unconscious state. If a patient wishes to direct medical treatment in other circumstances, a Durable Power of Attorney for Healthcare should be prepared.

- i. If the patient has both a Living Will and a DPOA for Healthcare, a Living Will takes precedence over a DPOA for Healthcare.
5. “Durable Power of Attorney for Healthcare”
  - a. Allows a person the patient chooses to carry out his or her wishes for all of his or her medical care when the patient cannot act for him/herself.
  - b. A patient cannot give a valid DPOA if the patient is incompetent.
  - c. All DPOA for Healthcare expire upon the patient’s death.
  - d. The patient selects one person and may select two alternates.
    - i. The person selected must abide by the patient’s wishes and act in the patient’s best interest.
6. Forms: available a) on-line at [www.ohpco.org](http://www.ohpco.org) (This is the Ohio Hospice & Palliative Care Organization. The forms are included in a booklet entitled “Choices, Living Well at the End of Life”); b) from one of the entities listed in #3,c above; c)from your attorney.
7. No Advance Directive document?
  - a. Ohio law allows the patient’s family to withhold or remove the patient from life support if the patient is in a permanently unconscious state (but only after 12 months) or a terminal condition.
  - b. Consent to withhold or withdraw life-sustaining treatment may be given in the following descending order:
    - i. Guardian of the patient.
    - ii. Patient’s spouse.
    - iii. An adult child of the patient. If one or more adult children, a majority who are available within a reasonable period of time for consultation with the attending physician.
    - iv. Patient’s parent.
    - v. An adult sibling of the patient. (Majority rule.)
    - vi. Nearest adult who is related by blood or adoption.
8. Do-Not-Resuscitate Order (DNR)
  - a. Found in sections 2133.21 through 2133.26 of the Ohio Revised Code.
  - b. And Chapter 3701-62 of the Ohio Administrative Code
  - c. Ohio’s law took effect October 1, 2000.
  - d. Directive (order) written by a practitioner that identifies a person and specifies that CPR should not be administered.