CENTRAL VIRGINIA
LEGAL AID SOCIETY
www.cvlas.org

101 W. Broad St., Suite #101
Richmond, Virginia 23220
804-648-1012 or 800-868-1012
Fax: 804-649-8794

229 North Sycamore Street
Petersburg, Virginia 23803
804-862-1100 or 800-868-1012
Fax: 804-861-4311

1000 Preston Avenue, Suite B
Charlottesville, Virginia 22903
434-296-8851 or 800-390-9983
Fax: 434-296-5731

Advance Directives

All adults in Virginia have a right to prepare a document called an "Advance Directive" to put their wishes about medical care in writing. An Advance Directive lets other people know the types of medical care you do and do not want in the event you are unable to express your wishes on your own. There are two kinds of Advance Directives.

What are the two types of Advance Directives?

You may appoint another person to be your agent to make health care decisions for you if you become incapable of making health care decisions for yourself. This is called a "Power of Attorney for Health Care."

You also may state what kinds of life-prolonging treatment you want or do not want if you are diagnosed as having a terminal condition and you are unable to express your own wishes. This is called a "Living Will." As of 2009, your Advance Directive also can provide instructions even if you are not in a terminal condition.

Why create an Advance Directive?

An Advance Directive allows you to state your choices for health care or to name someone to make those choices for you, if you become unable to make decisions about your medical treatment. It allows you to say "yes" to treatment you want, and "no" to treatment you do not want.

What kind of Advance Directive do I need?

You may execute a "Power of Attorney for Health Care," a "Living Will," or both. Of the two kinds of Advance Directives, a Power of Attorney for Health Care is broader. A Living Will is helpful in stating your wishes, but it may not be possible to anticipate all possible medical situations for which your Living Will might apply. The best way to protect yourself, however, is to execute both.

Are Advance Directives only for "end-of-life" issues?

No. Advance Directives may address any types of care in situations in which you cannot make decisions for yourself. For example, an Advance Directive may address chronic disease issues, mental health issues, and wishes about admissions to certain types of health care facilities.

Can I just say my wishes orally?

You always should share your health care wishes with your loved ones and your doctors. However, you may create an Oral Advance Directive only if you have a terminal condition and tell your wishes directly to your doctor. Also, putting your wishes in writing reduces confusion about your wishes, since people often forget or misunderstand what was said orally.

What if I'm unsure of what health care I might want?

You still should execute an Advance Directive to describe the important values and beliefs you have. You also can indicate your religious beliefs. Often, these types of statements will help others make appropriate health care choices for you when you cannot make them yourself.

I don't know medical terms. What do I need to say?

You can and should put your wishes in your own words. Just describe as best you can what medical care you do and do not want.

I'm young and/or in good health. Do I need an Advance Directive?

Yes. No one knows what the future might bring. For example, you might need someone to make medical decisions for you in the event that you suffer a sudden injury or illness (such as a car accident). It is better to choose this person in advance and tell him or her about your health care wishes. If you do not choose someone in advance, the law will assign a decision maker who must guess about your wishes.

Who should I pick as my Health Care Power of Attorney?

You may appoint any adult (18 years of age or older). This person needs to be accessible, but he or she does not need to live in Virginia. When you choose your agent, make sure that you have chosen someone who will be able to make potentially difficult decisions about your care, is willing to serve as your agent, and is aware of your wishes. You should choose an alternate in case your first choice is unavailable (for example, your first choice may not be found or may not be willing to be your agent).

I have several children. Can I appoint all of them?

You really should pick just one person as your agent. Picking more than one person can cause conflict, delay decision-making, or result in an inability to make any decision at all. You can include your other children by letting them know your choices. You also may require your one agent to talk with your other children before making any decisions.

If I appoint an agent, will I lose my ability to make my own decisions?

No. Your agent only gets to make health care decisions for you if your doctor, and another doctor or licensed clinical psychologist, examine you and determine you cannot make decisions for yourself. Furthermore, as soon as you can speak for yourself again, decision-making authority returns to you.

What if I change my mind?

You may cancel or modify your Advance Directive at any time, but it is important that you tell others that you have cancelled or changed your Advance Directive.

What does it means to have a terminal condition?

It means that your doctor has determined that you are likely to die soon or that you are in a persistent vegetative state, which is when you have no awareness of your surroundings and your doctors have determined you will not recover.

What does life-prolonging treatment mean?

It means using machines, medicines, and other artificial means to help you breathe, eat, get fluids in your body, have a heartbeat, and otherwise stay alive when your body cannot do these things on its own. Life-prolonging treatment will not help you recover. It does not include drugs to keep you comfortable.

I do not want to limit my care if I have a terminal condition. Will an Advance Directive help me?

Yes. Your Advance Directive allows your doctors and family to know this is your wish.

I'm worried about pain, but I don't want to be hooked up to machines if I have a terminal condition. Should I have an Advance Directive?

Yes. No matter what you choose about life-prolonging treatment, you will be treated for pain and kept comfortable.

Will I get less respect and medical attention if I do not want to have life-prolonging treatment?

No. Your doctors and nurses may not discriminate against you based on your health care choices. You will get whatever care is appropriate, but you will not get any treatment that you have stated you do not want.

Can my spouse be one of my two witnesses? What about other blood relatives?

Yes. Your husband or wife can be your witness. Blood relatives also can be witnesses as long as they are adults.

Can my agent be a witness?

Yes, but to avoid the chance of conflict, it is better to have someone who is not your agent (or your alternate agent) be a witness.

Does an Advance Directive in Virginia need to be notarized?

No. An Advance Directive registry for Virginia is being developed, and when it becomes operational, a notary will be required to post an Advance Directive on the registry. Advance Directives without a notary still will be valid for other purposes.

Are copies of Advance Directives valid?

Yes.

I have a financial Power of Attorney. Does it cover health care decisions?

Probably not. It is better to have a separate health care power of attorney document.

Can my family or doctors override my decisions if I am unable to speak for myself?

No. This is one of the major reasons to create an Advance Directive.

Will my Virginia Advance Directive be valid in other states?

It should be. Just as Virginia honors Advance Directives properly executed in other states, most states have similar rules to honor out-of-state Advance Directives. Nevertheless, if you spend a considerable amount of time in another state, you may want to have an Advance Directive executed for that state as well.

Where should I keep my Advance Directive? Who gets copies?

Just as important as creating an Advance Directive is making sure that other people know you have it and know where it is located. Specifically, you should:

- Give a copy or the original to your agent.
- Give a copy to your doctors, to family and to friends.
- Bring a copy to the hospital with you.

In addition, you should keep a copy of your Advance Directive in a safe place where it can be found easily. Do not keep your only copy in a lock box or safe.

Does it cost anything to create an Advance Directive?'

No. A free form is attached.

Do I need a lawyer to draft an Advance Directive?

No. The free form is all you need, but a lawyer may help you if you have additional questions or complex health care needs. The free form is also only a model. You can use it or numerous other forms or no form at all. Just be sure that whatever you use includes: (1) your health care wishes, (2) your signature, and (3) the signatures of two adult witnesses.

What is a Do Not Resuscitate (DNR) Order?

A DNR is a doctor's order saying you will not get CPR, drugs, or electric shock to restart your heart or breathing if your heart stops or you stop breathing. A Durable Do Not Resuscitate Order (DDNR) is a special DNR order that your doctor can provide you so that EMS, fire, rescue and any health care provider will know your wishes about resuscitation.

Can my Advance Directive provide organ donation wishes?

Yes. Your Advance Directive may provide organ donation and other anatomical gift wishes.

Authorized by Steve Dickinson, Esq., Executive Director, P.O. Box 12206, Richmond, VA 23241

VIRGINIA ADVANCE DIRECTIVE FOR HEALTH CARE

I, _____, willingly and voluntarily make known
Printed Name of Individual Making This Advance Directive for Health Care (Declarant)
my wishes in the event that I am incapable of making an informed decision about my health care, as follows:

(YOU MAY INCLUDE ANY OR ALL OF THE PROVISIONS IN SECTIONS I, II AND III BELOW.)

SECTION I: APPOINTMENT AND POWERS OF MY AGENT

(CROSS THROUGH THIS SECTION I IF YOU DO NOT WANT TO APPOINT AN AGENT TO MAKE HEALTH CARE DECISIONS FOR YOU.)

A. Appointment of My Agent

I hereby appoint _____
Name of Primary Agent — E-mail Address

_____
Home Address — Telephone Number

as my agent to make health care decisions on my behalf as authorized in this document.

If the primary agent named above is not reasonably available or is unable or unwilling to act as my agent, then I appoint as successor agent to serve in that capacity:

_____
Name of Successor Agent — E-mail Address

_____
Home Address — Telephone Number

I grant to my agent full authority to make health care decisions on my behalf as described below. My agent shall have this authority whenever and for as long as I have been determined to be incapable of making an informed decision.

In making health care decisions on my behalf, I want my agent to follow my desires and preferences as stated in this document or as otherwise known to him or her. If my agent cannot determine what health care choice I would have made on my own behalf, then I want my agent to make a choice for me based upon what he or she believes to be in my best interests.

B. Powers of My Agent

[IF YOU APPOINTED AN AGENT ABOVE, YOU MAY GIVE HIM/HER THE POWERS SUGGESTED BELOW. YOU MAY CROSS THROUGH ANY POWERS LISTED BELOW THAT YOU DO NOT WANT TO GIVE YOUR AGENT AND ADD ANY ADDITIONAL POWERS YOU DO WANT TO GIVE YOUR AGENT.]

The powers of my agent shall include the following:

1. To consent to or refuse or withdraw consent to any type of health care, including, but not limited to, artificial respiration (breathing machine), artificially administered nutrition (tube feeding) and hydration (IV fluids), and cardiopulmonary resuscitation (CPR). This authorization specifically includes the power to consent to dosages of pain-relieving medication in excess of recommended dosages in an amount sufficient to relieve pain. This applies even if this medication carries the risk of addiction or of inadvertently hastening my death.
2. To request, receive and review any oral or written information regarding my physical or mental health, including but not limited to medical and hospital records, and to consent to the disclosure of this information as necessary to carry out my directions as stated in this advance directive.
3. To employ and discharge my health care providers.
4. To authorize my admission, transfer, or discharge to or from a hospital, hospice, nursing home, assisted living facility or other medical care facility.
5. To authorize my admission to a health care facility for treatment of mental illness as permitted by law. (If I have other instructions for my agent regarding treatment for mental illness, they are stated in a supplemental document.)
6. To continue to serve as my agent if I object to the agent's authority after I have been determined to be incapable of making an informed decision.
7. To authorize my participation in any health care study approved by an institutional review board or research review committee according to applicable federal or state law if the study offers the prospect of direct therapeutic benefit to me.
8. To authorize my participation in any health care study approved by an institutional review board or research review committee according to applicable federal or state law that aims to increase scientific understanding of any condition that I may have or otherwise to promote human well-being, even though it offers no prospect of direct benefit to me.

9. To make decisions regarding visitation during any time that I am admitted to any health care facility, consistent with the following directions:

_____

10. To take any lawful actions that may be necessary to carry out these decisions, including the granting of releases of liability to medical providers.

ADDITIONAL POWERS OR LIMITATIONS, IF ANY:

_____

_____

_____

SECTION II: MY HEALTH CARE INSTRUCTIONS

[YOU MAY USE ANY OR ALL OF PARTS 1, 2 OR 3 IN THIS SECTION TO DIRECT YOUR HEALTH CARE EVEN IF YOU DO NOT HAVE AN AGENT. IF YOU CHOOSE NOT TO PROVIDE WRITTEN INSTRUCTIONS, DECISIONS WILL BE BASED ON YOUR VALUES AND WISHES, IF KNOWN, AND OTHERWISE ON YOUR BEST INTERESTS. IF YOU ARE AN EYE, ORGAN OR TISSUE DONOR, YOUR INSTRUCTIONS WILL BE APPLIED SO AS TO ENSURE THE MEDICAL SUITABILITY OF YOUR ORGANS, EYES AND TISSUE FOR DONATION.]

1. I provide the following instructions in the event my attending physician determines that my death is imminent (very close) and medical treatment will not help me recover:

[CHECK ONLY 1 BOX IN THIS PART 1.]

☐ I do not want any treatments to prolong my life. This includes tube feeding, IV fluids, cardiopulmonary resuscitation (CPR), ventilator/respirator (breathing machine), kidney dialysis or antibiotics. I understand that I still will receive treatment to relieve pain and make me comfortable. (OR)

☐ I want all treatments to prolong my life as long as possible within the limits of generally accepted health care standards. I understand that I will receive treatment to relieve pain and make me comfortable. (OR)

☐ *[YOU MAY WRITE HERE YOUR OWN INSTRUCTIONS ABOUT YOUR CARE WHEN YOU ARE DYING, INCLUDING SPECIFIC INSTRUCTIONS ABOUT TREATMENTS THAT YOU DO WANT, IF MEDICALLY APPROPRIATE, OR DON'T WANT. IT IS IMPORTANT THAT YOUR INSTRUCTIONS HERE DO NOT CONFLICT WITH OTHER INSTRUCTIONS YOU HAVE GIVEN IN THIS ADVANCE DIRECTIVE.]:*

_____

_____

_____

_____

2. I provide the following instructions if my condition makes me unaware of myself or my surroundings or unable to interact with others, and it is reasonably certain that I will never recover this awareness or ability even with medical treatment:

[CHECK ONLY 1 BOX IN THIS PART 2.]

☐ I do not want any treatments to prolong my life. This includes tube feeding, IV fluids, cardiopulmonary resuscitation (CPR), ventilator/respirator (breathing machine), kidney dialysis or antibiotics. I understand that I still will receive treatment to relieve pain and make me comfortable. (OR)

☐ I want all treatments to prolong my life as long as possible within the limits of generally accepted health care standards. I understand that I will receive treatment to relieve pain and make me comfortable. (OR)

☐ I want to try treatments for a period of time in the hope of some improvement of my condition. I suggest _____ as the period of time after which such treatment should be stopped if my condition has not improved. The exact time period is at the discretion of my agent or surrogate in consultation with my physician. I understand that I still will receive treatment to relieve pain and make me comfortable. (OR)

☐ *[YOU MAY WRITE HERE YOUR INSTRUCTIONS ABOUT YOUR CARE WHEN YOU ARE UNABLE TO INTERACT WITH OTHERS AND ARE NOT EXPECTED TO RECOVER THIS ABILITY. THIS INCLUDES SPECIFIC INSTRUCTIONS ABOUT TREATMENTS YOU DO WANT, IF MEDICALLY APPROPRIATE, OR DON'T WANT. IT IS IMPORTANT THAT YOUR INSTRUCTIONS HERE DO NOT CONFLICT WITH OTHER INSTRUCTIONS YOU HAVE GIVEN IN THIS ADVANCE DIRECTIVE.]*

_____

_____

_____

_____

3. I provide the following other instructions concerning my health care:

[YOU MAY WRITE HERE STATEMENTS AND INSTRUCTIONS ABOUT TREATMENTS THAT YOU DO WANT, IF MEDICALLY APPROPRIATE, OR ABOUT TREATMENTS YOU DO NOT WANT UNDER SPECIFIC CIRCUMSTANCES OR ANY CIRCUMSTANCES. IT IS IMPORTANT YOUR INSTRUCTIONS HERE DO NOT CONFLICT WITH OTHER INSTRUCTIONS YOU HAVE GIVEN IN THIS ADVANCE DIRECTIVE.]

SECTION III: ANATOMICAL GIFTS

[YOU MAY USE THIS DOCUMENT TO RECORD YOUR DECISION TO DONATE YOUR ORGANS, EYES AND TISSUES OR YOUR WHOLE BODY AFTER YOUR DEATH. IF YOU DO NOT MAKE THIS DECISION HERE OR IN ANY OTHER DOCUMENT, YOUR AGENT CAN MAKE THE DECISION FOR YOU UNLESS YOU SPECIFICALLY PROHIBIT HIM/HER FROM DOING SO, WHICH YOU MAY DO IN THIS OR SOME OTHER DOCUMENT. CHECK ONE OF THE BOXES BELOW IF YOU WISH TO USE THIS SECTION TO MAKE YOUR DONATION DECISION.]

☐ I donate my organs, eyes and tissues for use in transplantation, therapy, research and education. I direct that all necessary measures be taken to ensure the medical suitability of my organs, eyes or tissues for donation. I understand that I may register my directions at the Department of Motor Vehicles or directly on the donor registry, www.DonateLifeVirginia.org, and that I may use the donor registry to amend or revoke my directions; OR

☐ I donate my whole body for research and education.

[Write here any specific instructions you wish to give about anatomical gifts.]

AFFIRMATION AND RIGHT TO REVOKE: By signing below, I indicate that I understand this document and that I am willingly and voluntarily executing it. I also understand that I may revoke all or any part of it at any time as provided by law.

Date Signature of Declarant

The declarant signed the foregoing advance directive in my presence. *[TWO ADULT WITNESSES NEEDED]*

Witness Signature Witness Printed

Witness Signature Witness Printed

This form satisfies the requirements of Virginia's Health Care Decisions Act. If you have legal questions about this form or would like to develop a different form to meet your particular needs, you should talk with an attorney. It is your responsibility to provide a copy of your advance directive to your treating physician. You also should provide copies to your agent, close relatives and/or friends. For information on storing this advance directive in the free Virginia Advance Health Directive Registry, go to http://www.VirginiaRegistry.org. This form is provided by the Virginia Hospital & Healthcare Association as a service to its members and the public. (June 2012, www.vhha.com) ▲❋❋