

Information and Directives

The Texas Health and Safety Code, Chapter 166, authorizes the use of a written Directive to Physicians (“DIRECTIVE”) in accordance with the guidelines set out below.

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Information for Signers

General Information

If you are at least 18 years old, of sound mind, and acting on your own free will, you may sign a DIRECTIVE TO PHYSICIANS (“DIRECTIVE”) concerning your own care in the presence of two qualified witnesses. The DIRECTIVE allows you to instruct your physician not to use artificial methods to extend the natural process of dying. Before signing the DIRECTIVE, you may ask advice from anyone you wish, including your attorney.

If you sign the DIRECTIVE, you must tell your physician. Ask that it be made part of your medical record. If you have signed a written DIRECTIVE of which your doctor is unaware, inform your doctor of its existence. If you become physically or mentally unable to do so, another person may inform your physician.

Witnesses

The DIRECTIVE must be witnessed by two competent adults.

At least one witness cannot be a person who:

- (a) Has been designated by you to make a health care or treatment decision on your behalf;
- (b) Is related to you by blood or marriage;
- (c) Is entitled to any part of your estate;
- (d) Is your attending physician;
- (e) Is employed by your attending physician;
- (f) Is an employee of a health care facility in which you reside, if the employee is involved in providing direct patient care to you or is an officer, director, partner, or business office employee of the health care facility or of any parent organization of the health care facility; and
- (g) Has a claim on any part of your estate after your death.

§166.003

Effect of Directive

The DIRECTIVE becomes effective — meaning that life-sustaining treatment can be withdrawn — only when you become a “qualified patient.” A qualified patient means a patient with a terminal or irreversible condition who has been diagnosed and certified in writing by the attending physician. §166.131

No one may force you to sign the DIRECTIVE. No one may deny you insurance or health care services because you have chosen not to sign it. If you do sign the DIRECTIVE, it will not affect your insurance or any other rights you may have to accept or reject medical treatment. If your attending physician chooses not to follow the DIRECTIVE, he/she must make a reasonable effort to transfer responsibility for your care to another physician. §166.007

You may designate another person to make health care or treatment decisions for you if you become incompetent, or are otherwise mentally or physically incapable of communication. However, you do not have to do so in order for the DIRECTIVE to be a legal document. If you do, that designated person may also execute an out-of-hospital do-not-resuscitate order. §166.032(c)

Enforceability of a Directive Executed in Another Jurisdiction

A directive or similar instrument validly executed in another jurisdiction shall be given the same effect as a DIRECTIVE validly executed under the law of this state. This does not authorize the administration, withholding, or withdrawal of health care otherwise prohibited by the law of this state. §166.005

Revocation

The DIRECTIVE is valid until it is revoked. You may revoke the DIRECTIVE at any time, even in the final stages of a terminal illness. If you revoke the DIRECTIVE, be sure your physician is told of your decision. The physician or the physician designee shall record in the patient’s medical record the time and date when the physician received notice of the written revocation and shall enter the word “VOID” on each page of the copy of the DIRECTIVE in the patient’s medical record. §166.042-043 If you change your mind after executing a DIRECTIVE, your expressed desire to receive life-sustaining treatment will at all times supersede the effect of a DIRECTIVE. §166.037

Minors

If a qualified patient is under 18 years of age, any of the following persons may execute a DIRECTIVE on behalf of the patient: (1) the patient’s spouse, if the spouse is an adult; (2) the patient’s parents; or (3) the patient’s legal guardian. §166.035 However, the desire of a competent qualified patient who is under 18 years of age shall always supersede a DIRECTIVE executed on his/her behalf. §166.037 A form which may be executed on behalf of a minor is provided.

Information for Physicians

Upon Receipt of a Directive

Make sure the DIRECTIVE is properly witnessed.

Make the DIRECTIVE part of the patient’s medical record. Federal law requires all Medicare-certified facilities to document whether a patient has executed a written advance directive. Texas law requires persons signing a DIRECTIVE to inform their physician that they have done so. §166.032(d)

Note whether the patient has designated another person to make health care or treatment decisions for him/her under this DIRECTIVE should the patient become incompetent or otherwise incapable of communication.

Carrying Out a Directive

This DIRECTIVE has no operative effect until:

- (a) The attending physician diagnoses and certifies in writing that the patient has a “terminal or irreversible condition;” and
- (b) The attending physician determines that death is imminent within minutes or hours, even with the use of all available medical treatment provided within the prevailing standard of care.

These facts must be noted in the patient's medical record.

The following additional steps are suggested:

- (a) Is the patient pregnant? (The DIRECTIVE is invalid and has no effect if the patient is pregnant at the time it is to be carried out.)
- (b) Is the patient incompetent or otherwise incapable of communication? If so, enter that information in the patient's current medical record before proceeding to the next step.
- (c) If the patient designated another person to make health care or treatment decisions for them in the DIRECTIVE (see Upon Receipt of a Directive above), has that person been contacted and consulted?
- (d) Note that the DIRECTIVE may be carried out in the event the patient is incompetent or otherwise incapable of communication and has not designated another person to make a treatment decision.
- (e) Has the DIRECTIVE been revoked? (Should you receive such revocation from or on behalf of a patient, enter that information promptly and prominently in the patient's current medical record.)

Liability Questions

The law provides that a physician who carries out the DIRECTIVE is protected from civil and criminal liability, unless he/she fails to exercise reasonable care when applying the patient's DIRECTIVE. §166.044(a), (c)

However, if you do not choose to carry out the DIRECTIVE of a qualified patient, you may be subject to civil and criminal liability, and disciplinary action by the Texas Medical Board. §166.045(b)

Review Process and Immunity From Disciplinary Action, and Civil and Criminal Liability

If the patient's attending physician refuses to honor a DIRECTIVE, an ethics or medical committee shall review that refusal. The attending physician cannot be a member of the review committee, and the patient must be given life-sustaining treatment during the review process. The patient or the person responsible for making the health care decisions on behalf of the patient ("surrogate") must be given at least 48 hours notice that the committee will be meeting to discuss the patient's DIRECTIVE. The patient or surrogate is entitled to attend the committee meeting. The patient or surrogate must also receive a written explanation of the decision reached through the review process. This written explanation must appear in the patient's medical record. §166.046(a), (b)

If the attending physician, the patient, or the surrogate do not agree with the decision resulting from the review process, then the attending physician must make a reasonable effort to transfer the patient to a physician who will comply with the DIRECTIVE. If the patient resides in a health care facility, then the facility's personnel must assist the physician in arranging for the transfer of the patient to another physician, an alternative care setting within that facility, or another facility that will comply with the DIRECTIVE. §166.046(d)

If the patient or the surrogate is requesting life-sustaining treatment and the attending physician believes that the administration of the treatment would be inappropriate, the appropriateness of the treatment may be reviewed by an ethics or medical committee as described above. If the review process determines that the requested treatment is not appropriate, then the physician must make a reasonable attempt to transfer the patient to a physician who will provide the life-sustaining treatment. The health care facility in which the patient resides must assist the physician in attempting to transfer the patient to another physician, an alternative care setting within that facility, or another facility that will provide the requested treatment. The patient must be given life-sustaining treatment pending transfer. However, neither the physician nor the health care facility are obligated to provide the life-sustaining treatment after the 10th day after the patient or surrogate receives the written notification of the decision reached via the review process.

If a health care facility and the physician follow the review process described above, the physician and the health care facility will be immune from disciplinary action, or civil and criminal liability for refusing to honor a patient's or surrogate's treatment decision or DIRECTIVE. §166.045(d)

A physician's refusal to honor a treatment decision or a DIRECTIVE shall be reviewed by an ethics or medical committee. §166.046(a) The refusing physician must continue to provide life-sustaining treatment to the patient, but only until the physician and health care facility have had a reasonable opportunity to transfer the patient to another physician or health care facility that will comply with the DIRECTIVE or treatment decision. §166.045(c)

NOTICE: The Texas Medical Association provides this information with the express understanding that 1) no attorney-client relationship exists, 2) neither TMA nor its attorneys are engaged in providing legal advice and 3) that the information is of a general character. **This is not a substitute for the advice of an attorney.** While every effort is made to ensure that content is complete, accurate and timely, TMA cannot guarantee the accuracy and totality of the information contained in this publication and assumes no legal responsibility for loss or damages resulting from the use of this content. You should not rely on this information when dealing with personal legal matters; rather legal advice from retained legal counsel should be sought. Any legal forms are only provided for the use of physicians in consultation with their attorneys.

Directive to Physicians and Family or Surrogates



I, _____, recognize that the best health care is based upon a partnership of trust and communication with my physician. My physician and I will make health care or treatment decisions together as long as I am of sound mind and able to make my wishes known. If there comes a time that I am unable to make medical decisions about myself because of illness or injury, I direct that the following treatment preferences be honored:

If, in the judgment of my physician, I am suffering with a terminal condition from which I am expected to die within six months, even with available life-sustaining treatment provided in accordance with prevailing standards of medical care:

I request that all treatments other than those needed to keep me comfortable be discontinued or withheld and my physician allow me to die as gently as possible; OR

I request that I be kept alive in this terminal condition using available life-sustaining treatment. (THIS SELECTION DOES NOT APPLY TO HOSPICE CARE).

If, in the judgment of my physician, I am suffering with an irreversible condition so that I cannot care for myself or make decisions for myself and am expected to die without life-sustaining treatment provided in accordance with prevailing standards of care:

I request that all treatments other than those needed to keep me comfortable be discontinued or withheld and my physician allow me to die as gently as possible; OR

I request that I be kept alive in this irreversible condition using available life-sustaining treatment. (THIS SELECTION DOES NOT APPLY TO HOSPICE CARE).

Additional requests: (After discussion with your physician, you may wish to consider listing particular treatments in this space that you do or do not want in specific circumstances, such as artificially administered nutrition and hydration or intravenous antibiotics, etc. Be sure to state whether you do or do not want the particular treatment).

After signing this DIRECTIVE, if my representative or I elect hospice care, I understand and agree that only those treatments needed to keep me comfortable would be provided and I would not be given available life-sustaining treatments.

If I do not have a Medical Power of Attorney and I am unable to make my wishes known, I designate the following person(s) to make health care or treatment decisions with my physician compatible with my personal values.

1. _____
2. _____

(If a Medical Power of Attorney has been executed, then an agent already has been named and you should not list additional names in this document).

If the above persons are not available, or if I have not designated a spokesperson, I understand that a spokesperson will be chosen for me following standards specified in the laws of Texas. If, in the judgment of my physician, my death is imminent within minutes to hours, even with the use of all available medical treatment provided within the prevailing standard of care, I acknowledge that all treatments may be withheld or removed except those needed to maintain my comfort.

I understand that under Texas law this DIRECTIVE has no effect if I have been diagnosed as pregnant. This DIRECTIVE will remain in effect until I revoke it. No other person may do so.

Signed _____

Date _____

City, County and State of Residence _____

Two competent witnesses must sign below, acknowledging your signature. The witness designated as "Witness 1" may not be a person designated to make a health care or treatment decision for the patient and may not be related to the patient by blood or marriage. The witness may not be entitled to any part of the estate and may not have a claim against the estate of the patient. The witness may not be the attending physician or an employee of the attending physician. If this witness is an employee of the health care facility in which the patient is being cared for, this witness may not be involved in providing direct patient care to the patient. This witness may not be an officer, director, partner, or business office employee of the health care facility in which the patient is being cared for or of any parent organization of the health care facility.

Witness 1 _____

Witness 2 _____

TEXAS LAW DOES NOT REQUIRE THIS DIRECTIVE TO BE NOTARIZED.

Directive to Physicians and Family Members

Instructions for completing this document

This is an important legal document known as a “directive to physicians” or an “advance directive.” It is designed to help you communicate your wishes about medical treatment at some time in the future when you are unable to make your wishes known because of illness or injury. These wishes are usually based on personal values. In particular, you may want to consider what burdens or hardships of treatment you would be willing to accept for a particular amount of benefit obtained if you were seriously ill.

You are encouraged to discuss your values and wishes with your family or chosen spokesperson, as well as your physician. Your physician, health care provider, or medical institution may provide you with various resources to assist you in completing your

advance directive. The brief definitions listed below may aid you in your discussions and advance planning. Initial the treatment choices that best reflect your personal preferences. Provide a copy of your directive to your physician, usual hospital, and family or spokesperson. Consider a periodic review of this document. By periodic review, you can best ensure that the directive reflects your preferences.

In addition to this Directive to Physicians, Texas law provides for two other types of directives that can be important during a serious illness. These are the Medical Power of Attorney and the Out-of-Hospital Do-Not-Resuscitate Order. You may wish to discuss these with your physician, family, hospital representative, or other advisers. You may also wish to complete a directive related to the donation of organs and tissues.

Definitions

“Artificially administered nutrition and hydration” means the provision of nutrients or fluids by a tube inserted in a vein, under the skin in the subcutaneous tissues, or in the gastrointestinal tract.

“Irreversible condition” means a condition, injury, or illness:

- (a) That may be treated, but is never cured or eliminated;
- (b) That leaves a person unable to care for or make decisions for the person's own self; and
- (c) That, without life-sustaining treatment provided in accordance with the prevailing standard of medical care, is fatal.

Explanation: Many serious illnesses such as cancer, failure of major organs (kidney, heart, liver, or lung), and serious brain disease such as Alzheimer's dementia may be considered irreversible early on. There is no cure, but the patient may be kept alive for prolonged periods of time if the patient receives life-sustaining treatments. Late in the course of the same illness, the disease may be considered terminal when, even with treatment, the patient is expected to die. You may wish to consider which burdens of treatment you would be willing to accept in an effort to achieve a particular outcome. This is a very personal decision that you may wish to discuss with your physician, family, or other important persons in your life.

“Life-sustaining treatment” means treatment that, based on reasonable medical judgment, sustains the life of a patient and without which the patient will die. The term includes both life-sustaining medications and artificial life support such as mechanical breathing machines, kidney dialysis treatment, and artificially administered nutrition and hydration. The term does not include the administration of pain management medication, the performance of a medical procedure necessary to provide comfort care, or any other medical care provided to alleviate a patient's pain.

“Terminal condition” means an incurable condition caused by injury, disease, or illness that according to reasonable medical judgment will produce death within six months, even with available life-sustaining treatment provided in accordance with the prevailing standard of medical care.

Explanation: Many serious illnesses may be considered irreversible early in the course of the illness, but they may not be considered terminal until the disease is fairly advanced. In thinking about terminal illness and its treatment, you again may wish to consider the relative benefits and burdens of treatment and discuss your wishes with your physician, family, or other important persons in your life.

Directive to Physicians

For Persons Under 18 Years of Age



DIRECTIVE made this _____ day _____ (month year).

I/we _____, am/are the

spouse parent(s) guardian of _____, a qualified patient under 18 years of age.

Being of sound mind, I/we willfully and voluntarily make known my/our desire that his/her life not be artificially prolonged under the circumstances set forth below, and do hereby declare:

1. If at any time the patient whose name appears above has an incurable or irreversible condition caused by injury, disease, or illness certified to be a terminal condition by two physicians and if the application of life-sustaining procedures would serve only to artificially prolong the moment of his/her death and if his/her attending physician determines that his/her death is imminent or will result within a relatively short time without application of life-sustaining procedures, I/we direct that such procedures be withheld or withdrawn and that he/she be permitted to die naturally.
3. On behalf of the said patient it is my/our intention that this DIRECTIVE shall be honored by his/her physicians as the final expression of my/our legal right to refuse medical or surgical treatment on behalf of the said patient and to accept the consequences from such refusal.
3. If the patient has been diagnosed as pregnant and that diagnosis is known to her physician, this DIRECTIVE shall have no force or effect during the course of her pregnancy.
4. This DIRECTIVE shall be in effect until it is revoked. I/we understand that my/our authority to execute this DIRECTIVE on behalf of the above-named patient expires on his/her 18th birthday.
5. I/we understand the full import of this DIRECTIVE and I/we am/are emotionally and mentally competent to make this DIRECTIVE.
6. I/we understand that the desire of the above-named patient, if mentally competent, to receive life-sustaining treatment shall at all times supersede the effect of this DIRECTIVE.

Signed _____