

# Virginia Advance Directives Primer for Providers<sup>1</sup>

## The Basics

Written Advance Directives in Virginia fall into two primary categories: (1) “Living Wills,” which allow patients to express their wishes about all forms of health care decisions, and (2) “Medical Powers of Attorney,” or “Agents,” or “Proxy” designations, which allow patients to designate another individual to speak on their behalf in the event that they are incapable of making informed decisions on their own (as determined by two physicians, one of whom is not otherwise currently involved in the patient’s treatment). Advance directives may also include organ donation choices.

Advance directives are useful for patients regardless of age or current health status. It is important that patients understand that advance directives are not merely documents to express wishes not to have certain treatment; advance directives can and should be used to state any particular preferences for care (such as a patient who wants to expressly state the desire to be on a ventilator and have a feeding tube if necessary, or to state a desire to accept a particular surgical procedure) and to record any personal values that could help others make health care decision on behalf of the patient. Unfortunately, when a patient lacks an advance directive, it is necessary to obtain treatment decisions from an individual according to the order prescribed by law (guardian, spouse, children, parents, siblings, other blood relatives), but the individual(s) appointed are often left to guess what the patient would really want.

## The Requirements

The requirements for advance directives in Virginia are very simple: (1) an adult puts his/her health care wishes in writing, (2) he/she signs it, and (3) the document is signed by two adult witnesses. Spouses and blood relatives may serve as witnesses to an advance directive. (This was a major change in the law, which became effective July 1, 2005.) Nurses and physicians may also serve as witnesses. As these simple requirements reflect, advance directives in Virginia are not required to be notarized; they need not be on any special form; and they do not need to be drafted by an attorney. Furthermore, copies, faxes, and PDFs of advance directives are all valid in Virginia.

## Oral Advance Directives

Patients who are diagnosed with a terminal condition may make an oral advance directive (oral living will), if they state their wishes in the presence of their attending physician and two witnesses.

## Choosing an Agent

Patients should think carefully when choosing an agent. To avoid conflict, it is usually best to choose only one person, and an alternate. The person chosen should know the patient’s wishes and be mature, responsible, and willing to serve in this important role. The individual need not live in Virginia but does need to be accessible by phone. Patients should also choose an alternate agent in the event the primary cannot or will not serve.

## Revocation

Patients may revoke their own advance directives at any time if they are capable of understanding the nature and consequences of their actions. Patients may also partially revoke their advance directives, leaving the remainder in effect. However, advance directives may not be revoked by family members or physicians. In the event that a family disagrees with a patient’s advance directive, you are encouraged to contact your hospital’s Ethics Committee or legal counsel for assistance.

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<sup>1</sup> NOTICE: THIS SUMMARY IS FOR REFERENCE/EDUCATIONAL PURPOSES ONLY AND SHOULD NOT BE CONSIDERED LEGAL ADVICE. TO VIEW THE OFFICIAL VIRGINIA CODE SEE: <http://leg1.state.va.us/lis.htm>.

## **Patient Protest**

Although patient protest will ordinarily prevent a physician from providing or withdrawing health care, absent a court order, Virginia law provides two specific exceptions for protesting patients deemed incapable of making informed decisions. First, agents may follow the advance directive for medically appropriate care (other than withholding or withdrawing life-prolonging care) if the advance directive specifies that it trumps any protests about the specific form of health care, and this portion of the advance directive was signed by the patient's physician. Second, an agent or decision-maker may authorize health care (again, not involving the withholding or withdrawing of life-prolonging care) over protest if based on the patient's value or best interests and the recommended health care has been affirmed as ethically acceptable.

## **Durable Do Not Resuscitate Orders**

If a patient (**but only the patient**) is able to and does express a desire to be resuscitated to a health care provider or practitioner, such an expression revokes the provider or practitioner's authority to follow the patient's Durable Do Not Resuscitate Order (DDNR). No one other than the patient may revoke a DDNR that the patient executed. Only if the patient is a minor or otherwise incapable of making an informed decision and the patient's DDNR was issued by a person authorized to act on the patient's behalf may an expression by that authorized person to resuscitate the patient revoke the DDNR. Only the person who consented to the DDNR may revoke it; however, physicians may rescind a DDNR in accordance with accepted medical practice. If a DDNR is revoked, a new one may be issued with the patient or authorized person's consent.

## **Forms and Information**

Federal law requires hospitals to ask patients whether they have an advance directive and to offer forms and information. Accordingly, advance directive forms and information are typically available in the Emergency Department, Admitting, and Outpatient Surgery Registration areas of every hospital. The Virginia Hospital and Healthcare Association's booklet, "Your Right To Decide" is an excellent resource for patients.

## **Why This Matters**

Even when they can speak for themselves, patients often struggle with decisions about their health care. Deferring to others when the patients cannot speak for themselves is even harder. Advance directives reduce—if not eliminate—confusion, and they relieve family members from having to guess about the patient's wishes. Advance directives enable all those involved to provide the most appropriate care for patients.

## **Additional Information**

For information for your patients, a summary of Virginia's Healthcare Decisions Act, an Advance Directives Checklist, and other information visit:

<http://www.vsb.org/site/public/healthcare-decisions-day>. The official Healthcare Decisions Act, from the Virginia Code, §§ 54.1–2982 to –2993, may be found at <http://leg1.state.va.us/>.

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Health Law Section of the Virginia State Bar  
Eighth & Main Building  
707 East Main Street, Suite 1500  
Richmond, VA 23219-2800  
(804) 775-0500