Durable Power of Attorney for Health Care and Health Care Directive

and

HIPAA Privacy Authorization Form

Frequently Asked Questions and Answers,
Instructions, and Forms

Distributed as a public service
by The Missouri Bar

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FROM THE MISSOURI BAR TO YOU

The health care decisions form, the release of medical information form, and the instructions booklet have been developed as a service of The Missouri Bar, the statewide association for all lawyers. Working for the public good, The Missouri Bar strives to improve the law and the administration of justice.

SPECIAL NOTE

Please understand that the instructions and frequently asked questions contained in the booklet, as well as the forms that you can consider completing, do not take the place of meeting with and receiving advice and counsel from an attorney-at-law experienced in assisting clients with completing these forms. Often lawyers who do estate planning, elder law, and general practice emphasizing those areas can assist you with your health care advance planning. Please contact any of them if you have any questions.

ORDERING INFORMATION

The forms with information from this booklet are available on The Missouri Bar website at www.mobar.org. The form may be filled out online, but must be signed in front of a notary. Additional printed copies of this booklet and forms are available at no charge at courthouses, libraries, and University of Missouri Extension Centers. The forms may be copied for use by other persons. The booklet and forms may be ordered from The Missouri Bar at no charge.

Copies of this booklet may be ordered online at www.mobar.org. In addition, copies may be ordered by sending an e-mail to brochures@mobar.org or by writing to:

Health Care Form
The Missouri Bar
P. O. Box 119
Jefferson City, MO 65102-0119

INTRODUCTION

Specific instructions for completing the detachable health care durable power of attorney and health care directive form are found in this booklet or on The Missouri Bar website at www.mobar.org. The form is usually copied and given to health care providers without the instructions. The copies are intended to be accepted as the originals.

Specific instructions are also provided for completing the release of medical information form found in this booklet or on The Missouri Bar website.

You may have questions about the process of advance-care planning as well as the use of the forms provided in this booklet or on the website. If so, please read the "Frequently Asked Questions" for answers from the lawyers who prepared the forms, or contact a lawyer of your choice with your questions.

Please remember that a form may not meet every person's needs or contain every person's choices. Most people recognize that a "one size-fits-all" approach may not be appropriate for everyone; however, efforts were made to prepare a form to meet the needs of many people who would be completing these forms.

If either form does not meet your needs in specifying your wishes, consult with a lawyer who practices in these areas to assure that your choices for care and treatment, as well as decision-makers, are properly addressed and followed.

FREQUENTLY ASKED QUESTIONS ("FAQs")

F.A.Q. # 1: Do I need a lawyer to complete this form?
A. No. If you do not feel that this form meets your needs or if you have questions, you may want to consult a lawyer. If you have questions about medical care and treatment, your physician, social workers, registered nurses, and other health care providers also may be able to assist you and answer your questions.

F.A.Q. # 2: Why does this form have three parts?
A. Part I is your Durable Power of Attorney for Health Care. In Part I, you name someone to be your agent and make your decisions for you if you lack the capacity to make or communicate them in the future. You also should name alternates if your first person cannot serve. Finally, list the powers that you want your Agent to exercise for you if you cannot make those decisions. When completed with Part III, Part I can be used with or without Part II.

Part II is your Health Care Directive. In Part II, you indicate your care and treatment choices about life-prolonging procedures if you are found to be persistently unconscious or at the end-stage of a serious incapacitating or terminal illness. Your choices should be usually given in advance of the time you may have such conditions to provide guidance and support to your Agent if you are unable to make or communicate the decisions yourself. When completed with Part III, Part II can be used with or without Part I.

Part III instructs your Agent how the form is to be used in making decisions and also provides for a notary to acknowledge it before it can be used. If Part II is completed, the form must also be witnessed. The notary acknowledgment must be done for either Part I or Part II.

F.A.Q. # 3: What is a Durable Power of Attorney for Health Care (Part I)?
A. The Durable Power of Attorney for Health Care (Part I) is a document that enables you to appoint an agent to make your health care decisions and follow your choices, but only when you are unable to make them yourself. These decisions not only include advocating for care and treatment that you need but also may include decisions to withdraw or withhold life-prolonging procedures when certain conditions specified by you are met.

F.A.Q. #4: What is a Health Care Directive (Part II)?
A. The Health Care Directive (Part II) is a document that enables you to state in advance the choices that you want made regarding care and treatment, including life-prolonging procedures when certain conditions you specify are met. It may be relied upon to provide guidance and support to your decision-making Agent when your agent is asked by health-care providers to make choices about life-prolonging procedures when you are unable to communicate them.

F.A.Q. #5: Do I need both a Durable Power of Attorney for Health Care *and* a Health Care Directive?
A. This is a matter of choice. If you want someone to speak for you concerning your future medical care and treatment, you need to appoint an agent to do so in the Durable Power of Attorney (Part I). Please do this (Part I) if you have someone in mind to appoint. If you only want to name a decision-maker without including a directive to follow in making decisions, then complete Parts I and III without Part II.

If you want to indicate your choices in advance about care and treatment, including life prolonging procedures, you need to complete the Health Care Directive (Part II). The Health Care Directive (Part II) can provide guidance and support to your Agent in following your choices. If you do not want to appoint an agent to make your decisions, then complete Parts II and III without Part I (of course, be sure to indicate your name and identifying information on top of the first page of the form even if not using Part I).

F.A.Q. #6: What are the requirements for a person to serve as my Agent?
A. You may appoint a person 18 years of age or older. An agent is usually a close relative or friend that you trust with your life. The agent cannot be your physician, or an owner/operator or employee of a health care facility where you are a patient or resident, unless you are related to that person.

F.A.Q. #7: Can your Agent request that tube feeding be withheld or withdrawn?
A. Yes, if you specifically authorize your Agent to do so. The Durable Power of Attorney for Health Care (Part I) requires that you indicate whether or not you choose your Agent to have authority to withhold or withdraw artificially-supplied nutrition or hydration (i.e., tube feeding). You also can specify your choice about withholding and withdrawing artificially-supplied nutrition and hydration and the serious conditions to be met before the life-prolonging procedures indicated in the Health Care Directive (Part II) are withheld or withdrawn.

F.A.Q. #8: When can my Agent act?
A. The Durable Power of Attorney for Health Care (Part I) only becomes effective for making health care decisions when you are determined to be incapacitated and unable to make health care decisions. The form enables you to choose whether you want one physician or two to determine if you lack capacity to make health care decisions. Unless you indicate otherwise, Missouri law requires two physicians to make this determination about incapacity. Many people choose just one physician. Please consider whether two physicians would be available when your Agent needs to make emergency health care decisions for you. Some other powers take effect immediately without a finding of incapacity in Part I, Section 6.

F.A.Q. #9: If I already have a Durable Power of Attorney form completed, should I complete a new Durable Power of Attorney for Health Care (Part I)?
A. This depends upon whether you want to update and replace what you have with something that complies with current Missouri law. Your existing Durable Power of Attorney may not cover health care, may have been done in another state or not be up to date, or may need to name a different person to make your decisions. For example, the "Right of Sepulcher" will need to be specified in your Durable Power of Attorney if you want your Agent to handle the disposition of your body after you die because of recently-enacted law.

F.A.Q. #10: If I already have a living will or other advance directive, should I complete a new Health Care Directive (Part II)?
A. This depends on what your documents say in specifying your current choices. Many living wills currently in use apply only when you are expected to die within a short period of time and do not allow for the withholding or withdrawal of artificially-supplied nutrition and hydration. Often living wills do not name agents to follow your choices when you lack capacity, and you may want to complete Part I to do that. Some living wills do not cover the condition of being persistently unconscious.

F.A.Q. # 11: What is the difference between a out-of-hospital do not resuscitate (OHDNR) order and a health care directive?
A. The OHDNR order is a physician's order under Missouri law that the patient will not be resuscitated if the patient stops breathing or the patient's heart stops. The order must be signed by a physician and the patient (or if the patient lacks capacity, the patient's agent under a health care durable power of attorney or the patient's guardian). A health care directive is not a physician's order, but it is signed by the patient to indicate the patient's choices about several types of treatment if certain conditions happen in the future. Please visit with your health care provider if you have further questions.

F.A.Q. #12: Does the authority of my Agent under my Durable Power of Attorney for Health Care end at my death?
A. Yes, with a few exceptions. In Section 6 of Part I of the Durable Power of Attorney for Health Care, you can give your Agent the following special powers to act for you after you die: (A) to choose and control the burial, cremation, or other final disposition of your remains

(called the "right of sepulcher"); (B) to consent to an autopsy; and (C) to delegate the health-care decision making to another person. In Section 6, you can also give your agent the power to consent to or prohibit anatomical gifts of organs or tissue.

F.A.Q. #13: What is right of sepulcher? Can I name my Agent to have this right?
A. The right of sepulcher is given to a person to control your burial, cremation, or other final disposition of your body. You can authorize your Agent to have this right in Section 6 of Part I, the Durable Power of Attorney for Health Care. If you do not authorize your Agent to have this right, Missouri law gives the right to your spouse or other family members, in a certain priority, to have control. You should inform your Agent about your wishes for what you want to happen to your body after you die. You may obtain more information about right of sepulcher from a funeral home.

F.A.Q. # 14: After I complete the Durable Power of Attorney for Health Care(Part I) and/or the Health Care Directive (Part II), do I need to do anything else?
A. You should do several things after you have completed the form. First, you should detach and give copies of the form to your Agent, your physician, and any other health care provider. Second, you should discuss your wishes with your Agent, your physicians, and your family and friends, including clergy. Finally, you should review your form to keep it up to date and remind your Agent, your physicians, and your family and friends of your wishes on a periodic basis.

SPECIFIC INSTRUCTIONS ABOUT COMPLETING THE FORM

This form is designed for you as the Principal to indicate your specific choices. Neatly print your full name on the first blank line at the top of page 1 because you are the Principal. Complete your current address, city, state, and zip code on the second blank line at the top of page 1.

Instructions for Part I – DURABLE POWER OF ATTORNEY FOR HEALTH CARE (Pages 1-2)

If you choose to name an agent to make your health care decisions when you are incapacitated, complete Part I. If you do not choose to name an agent, mark an "X" through Part I on pages 1 and 2 and proceed to Part II for your Health Care Directive.

Section 1 (Page 1). **Selection of Agent**: Please think carefully about the person you want to be your Agent to make health care decisions for you because you will trust that person to make decisions about your life. Rather than name the oldest child, you might consider how the person would communicate your choices to health care providers. You want someone who is decisive, diplomatic, and reliable in following your choices. Your Agent needs to keep the family informed and try to reach consensus with them about life-prolonging procedures when possible.

It is suggested that only one agent be named to serve at a time. Naming more than one person to make decisions can result in confusion for the family and health care staff and in undue delay in an emergency. If more than one serves at a time, it is best to specify that one can act individually.

Section 2 (Page 1). **Alternate Agents**: You should name alternates to act if your first Agent resigns or is not able or available to act. You should try to pick someone with similar qualities as those you were looking for in your first Agent. At least two are recommended.

Section 3 (Page 1). **Durability**: This is the standard clause required for a Durable Power of Attorney for Health Care to be effective in Missouri after the principal becomes incapacitated.

DURABLE POWER OF ATTORNEY FOR HEALTH CARE AND/OR HEALTH CARE DIRECTIVE OF

(Print full name here) _____

(Address, City, State, Zip) _____

PART I. DURABLE POWER OF ATTORNEY FOR HEALTH CARE

(If you *DO NOT WISH* to name someone to serve as your decision-making Agent, mark an "X" through Part I on pages 1 & 2 and continue on to Part II.)

1. **Selection of Agent.** I, _____, currently a resident of _____ County, Missouri, appoint the following person as my true and lawful attorney-in-fact ("Agent"):

Name: _____

Address: _____

_____

Phone(s): 1st _____ 2nd _____

2. **Alternate Agent.** If my Agent resigns or is not able or available to make health care decisions for me, or if an Agent named by me is divorced from me or is my spouse and legally separated from me, I appoint the following persons in the order named below to serve as my alternate Agent and to have the same powers as my Agent:

First Alternate Agent:

Name: _____

Address: _____

_____

Phone(s): 1st _____

2nd _____

Second Alternate Agent:

Name: _____

Address: _____

_____

Phone(s): 1st _____

2nd _____

3. **Durability.** This is a Durable Power of Attorney, and the authority of my Agent, when effective, shall not terminate or be void or voidable if I am or become disabled or incapacitated or in the event of later uncertainty as to whether I am dead or alive.

4. **Effective Date as to Health Care Decision Making.** This Durable Power of Attorney is effective as to health care decision making when I am incapacitated and unable to make and communicate a health care decision as certified by ***(check one of the following boxes):*** ☐ one physician **OR** ☐ two physicians.

5. **Agent's Powers.** I grant to my Agent full authority as to health care decision making to:

A. Give consent to, prohibit, or withdraw any type of health care, long-term care, hospice or palliative care, medical care, treatment, or procedure, either in my residence or a facility outside of my residence, even if my death may result, including, but not limited to, an out of hospital do-not-resuscitate order, with the following specific authorization ***(initial one of the following boxes to indicate your choice):***

_____ Initials — I wish to AUTHORIZE my Agent to direct a health care provider to withhold or withdraw artificially supplied nutrition and hydration (including tube feeding of food and water);

_____ Initials — OR I DO NOT AUTHORIZE my Agent to direct a health care provider to withhold or withdraw artificially supplied nutrition and hydration (including tube feeding of food and water);

B. Make all necessary arrangements for health care services on my behalf and to hire and fire medical personnel responsible for my care;

C. Move me into, or out of, any health care or assisted living/residential care facility or my home (even if against medical advice) to obtain compliance with the decisions of my Agent;

D. Take any other action necessary to do what I authorize here, including, but not limited to, granting any waiver or release from liability required by any health care provider and taking any legal action at the expense of my estate to enforce this Durable Power of Attorney for Health Care;

E. Receive information regarding my health care, obtain copies of and review my medical records, consent to the disclosure of my medical records, and act as my "personal representative" as defined in the regulations [45 C.F.R. 164.502(g)] enacted pursuant to the Health Insurance Portability and Accountability Act of 1996 ("HIPAA");

6. **Effective Date as to Other Authority.** In addition to the powers set forth above, I authorize effective upon my signature and without the need for a physician's certification of incapacity that my Agent be authorized to have one or more of the following powers ***(initial your desired choices):***

_____ Initials Determine what happens to my body after my death (authority for right of sepulcher);

_____ Initials Give consent after my death to an autopsy or postmortem examination of my remains;

_____ Initials Delegate health care decision-making power to another person ("Delegee") as selected by my Agent, and the Delegee shall be identified in writing by my Agent;

With respect to anatomical gifts of my body or any part (i.e., organs or tissues), please initial your desired choice below:

_____ Initials **AUTHORIZATION OF ANATOMICAL GIFTS.** I wish to AUTHORIZE my Agent to make an anatomical gift of my body or part (organ or tissue).

My donations are for the following purposes: (check one)	GIFT SPECIFICATIONS: (check one)
☐ Transplantation ☐ Therapy ☐ Research ☐ Education ☐ All the above	I would like to donate ☐ Any needed organs and tissues, as allowed by law. ☐ Any needed organs and tissues as allowed by law, with the following restrictions:

_____ Initials **PROHIBITION OF ANATOMICAL GIFTS.** I DO NOT AUTHORIZE my Agent to make an anatomical gift of my body or any part (organ or tissue).

7. **Agent's Financial Liability and Compensation**. My Agent, acting under this Durable Power of Attorney for Health Care, will incur no personal financial liability. My Agent shall not be entitled to compensation for services performed under this Durable Power of Attorney for Health Care, but my Agent shall be entitled to reimbursement for all reasonable expenses incurred as a result of carrying out any provisions hereof.

PART II. HEALTH CARE DIRECTIVE

(If you *DO NOT WISH* to make a health care directive but only wish to have an Agent make your decisions without the directive, be sure that you have completed Part I on pages 1 & 2, mark an "X" through Part II on pages 2 & 3 and continue to Part III.)

1. I make this HEALTH CARE DIRECTIVE ("Directive") to exercise my right to determine the course of my health care and to provide clear and convincing proof of my choices and instructions about my treatment.

2. If I am persistently unconscious or there is no reasonable expectation of my recovery from a seriously incapacitating or terminal illness or condition, I direct that all of the life-prolonging procedures that I have initialed below be withheld or withdrawn.

Initials	**artificially supplied nutrition and hydration (including tube feeding of food and water)**		
Initials	**surgery or other invasive procedures**	Initials	**heart-lung resuscitation (CPR)**
Initials	**antibiotics**	Initials	**dialysis**
Initials	**mechanical ventilator (respirator)**	Initials	**chemotherapy**
Initials	**radiation therapy**		
Initials	**other procedures specified by me (insert)** _____		
Initials	**all other "life-prolonging" medical or surgical procedures that are merely intended to keep me alive without reasonable hope of improving my condition or curing my illness or injury**		

3. However, if my physician believes that any life-prolonging procedure may lead to a recovery significant to me as communicated by me or my Agent to my physician, then I direct my physician to try the treatment for a reasonable period of time. If it does not cause my condition to improve, I direct the treatment to be withdrawn even if it shortens my life. I also direct that I be given medical treatment to relieve pain or to provide comfort, even if such treatment might shorten my life, suppress my appetite or my breathing, or be habit-forming.

4. If I have already consented to be on the Missouri organ and tissue donor registry or my Agent has authorized the donation of my organs or tissues, I realize it may be necessary to maintain my body artificially after my death until my organs or tissues can be removed.

IF I HAVE NOT DESIGNATED AN AGENT IN THE DURABLE POWER OF ATTORNEY, PART II OF THIS DOCUMENT IS MEANT TO BE IN FULL FORCE AND EFFECT AS MY HEALTH CARE DIRECTIVE.

PART III. GENERAL PROVISIONS INCLUDED IN THE DURABLE POWER OF ATTORNEY FOR HEALTH CARE AND HEALTH CARE DIRECTIVE

1. Relationship Between Durable Power of Attorney for Health Care and Health Care Directive . If I have executed both the Durable Power of Attorney for Health Care and Health Care Directive, I encourage my Agent to:

A. First, follow my choices as expressed in the above Directive or otherwise from knowing me or having had various discussions with me about making decisions regarding life-prolonging procedures.

B. Second, if my Agent does not know my choices for the specific decision at hand, but my Agent has evidence of my preferences, my Agent can determine how I would decide. My Agent should consider my values, religious beliefs, past decisions, and past statements. The aim is to choose as I would choose, *even if it is not what my Agent would choose for himself or herself.*

C. Third, if my Agent has little or no knowledge of choices I would make, then my Agent and the physicians will have to make a decision based on what a reasonable person in the same situation would decide. I have confidence in my Agent's ability to make decisions in my best interest if my Agent does not have enough information to follow my preferences.

D. Finally, if the Durable Power of Attorney for Health Care is determined to be ineffective, or if my Agent is not able to serve, the Health Care Directive is intended to be used on its own as firm instructions to my health care providers regarding life-prolonging procedures.

2. Protection of Third Parties Who Rely on My Agent. No person who relies in good faith upon any representations by my Agent or Alternate Agent shall be liable to me, my estate, my heirs or assigns, for recognizing the Agent's authority.

3. Revocation of Prior Durable Power of Attorney for Health Care or Health Care Directive. I revoke any prior living will, declaration or health care directive executed by me. If I have appointed an Agent in a prior durable power of attorney, I revoke any prior health care durable power of attorney or any health care terms contained in that other durable power of attorney and intend that this Durable Power for Attorney for Health Care (if completed) and this Health Care Directive (if completed) replace or supplant earlier documents or provisions of earlier documents.

4. Validity. This document is intended to be valid in any jurisdiction in which it is presented. The provisions of this document are separable, so that the invalidity of one or more provisions shall not affect any others. A copy of this document shall be as valid as the original.

IF YOU HAVE COMPLETED THE ENTIRE DOCUMENT OR ONLY THE DIRECTIVE (PART II), YOU MUST SIGN THIS DOCUMENT IN THE PRESENCE OF TWO WITNESSES.

IN WITNESS WHEREOF, I signed this document on _____(month, date),_____(year).

_____
Signature
Printed Name: _____

WITNESSES: The person who signed this document is of sound mind and voluntarily signed this document in our presence. Each of the undersigned witnesses is at least eighteen years of age.

Signature _____
Print Name _____
Address _____
_____

Signature _____
Print Name _____
Address _____
_____

NOTARY ACKNOWLEDGMENT
(Only required if Part I or entire document completed.)

STATE OF MISSOURI)
) **SS**
COUNTY OF _____)

On this _____ day of _____ (month), _____ (year), before me personally appeared _____ _____, to me known to be the person described in and who executed the foregoing instrument and acknowledged that he/she executed the same as his/her free act and deed.

IN WITNESS WHEREOF, I have hereunto set my hand and affixed my official seal in the County or City and state aforementioned, on the day and year first above written.

_____

_____, Notary Public
(Name Printed)

Section 4 (Page 1). **Effective Date as to Health Care Decisions**: The Agent designated in your Durable Power of Attorney for Health Care may only act to make your health care decisions after one or two physicians determine that you lack capacity. Please indicate whether you want one or two physicians to determine when you are incapacitated. If you fail to specify, then the law presumes that you want two. Please remember that in some parts of the state and in certain health care facilities during after-hours emergencies, it may be difficult to find a second physician to determine capacity in order to have someone advocate for your health care.

Section 5 (Page 1). **Agent's Powers**: Some of the listed powers are self-explanatory and do not require you to choose from options but give your Agent the power to advocate for treatment and care for you, as well as make necessary decisions to provide informed consent for your medical care. One power requires for you to choose from some options.

In Subsection 5A (Page 1), please indicate your choice by checking one of the two boxes indicating whether or not you authorize your Agent to withhold or withdraw artificially-supplied nutrition or hydration.

Section 6 (Page 2). **Effective Date as to Other Authority**: You may specify certain additional powers for your Agent as follows:

- ✓ To have the Right of Sepulcher to be designated "next of kin" under Missouri law to have custody and control for the disposition of your body.
- ✓ To consent to an autopsy after your death.
- ✓ To delegate decision-making power to another person. This can be useful if your Agent might be temporarily unavailable.
- ✓ To authorize anatomical gifts by initialing the shaded box with a range of stated options for you to choose from to further check off. Or you may choose to prohibit anatomical gifts by initialing the second shaded box.

Be sure to initial the bottom of pages 1, 2 and 3 of the form.

Instructions for Part II – HEALTH CARE DIRECTIVE (Pages 2-3)

If you choose to provide directions to your Agent or your health care providers about what life-prolonging procedures you want or do not want if you are in a persistently unconscious or terminally ill condition, please complete Part II. If you choose not to provide direction to your Agent or your health care providers, mark an "X" through Part II on pages 2 and 3 and proceed to Part III to sign your form.

Section 1 (Page 2) indicates your intent for the directive under Missouri law to provide clear and convincing proof of your choices and instructions about life-prolonging treatment.

Section 2 (Page 3) indicates that life-prolonging procedures are to be withheld or withdrawn only under two conditions: either you are in a persistently unconscious condition with no reasonable chance of medical recovery, or you are at the end-stage of a terminal condition. Where the line is drawn on such issues often depends upon what your medical providers determine and tell you. Your Agent may find other providers who have other opinions.

Certain life-prolonging procedures are listed for you to indicate that you choose to withhold or withdraw by putting your initials in the shaded boxes when you are in a persistently unconscious condition or you are at the end-stage of a terminal condition. If you know of a procedure that you do not want but it is not listed, you can specify it by writing its name in the blank line given.

Section 3 (Page 3) indicates that if providing any life-prolonging procedures might result in a recovery that you define as reasonable, then you want that procedure done. This sec-

tion also allows you to choose to do any of the initialed life-prolonging procedures if the reason for doing them is to relieve your pain or provide comfort to you in addition to prolonging your life.

Section 4 (Page 3) only applies if you have consented to make anatomical gifts of your organs or tissues in order to carry out your choice to do them.

Instructions for Part III – GENERAL PROVISIONS APPLICABLE TO THE DURABLE POWER OF ATTORNEY FOR HEALTH CARE AND HEALTH CARE DIRECTIVE (Pages 3-4)

Part III must be completed for the Durable Power of Attorney for Health Care (Part I) and the Health Care Directive (Part II) to be effective. Some of the sections are self-explanatory and a few are discussed below.

Section 1. Relationship Between Durable Power of Attorney for Health Care and Health Care Directive (Pages 3-4). If you have completed both the Durable Power of Attorney for Health Care (Part I) and the Health Care Directive (Part II) or you have just completed the Durable Power of Attorney for Health Care (Part I), then this section sets out steps for your Agent to consider and follow in making decisions about life-prolonging procedures for you.

A. First, follow your choices as expressed in your Directive (if you completed it) or otherwise from knowing you or having had various discussions with you about making decisions regarding life-prolonging procedures.

B. Second, if your Agent does not know your choices for the specific decision at hand, but your Agent has evidence of what you might want, your Agent can try to determine how you would decide. This is called *substituted judgment,* and it requires your Agent to imagine himself or herself in your position. Your Agent should consider your values, religious beliefs, past decisions, and past statements you have made. The aim is to have your Agent choose as you would probably choose, *even if it is not what your Agent would choose for himself or herself.*

C. Third, if your Agent has very little or no knowledge of choices that you would want, then your Agent and the doctors will have to make a decision based on what a reasonable person in the same situation would decide. This is called making decisions in your *best interest.* You should have confidence in your Agent's ability to make decisions in your best interest if your Agent does not have enough information to follow your preferences or use substituted judgment. If this is the case, you authorize your Agent to make decisions which might even be contrary to your Directive in his or her best judgment.

D. Finally, if the durable power of attorney is determined to be ineffective, or if your Agent (or your named alternate) is not able to serve, the Directive (if you have completed it) is intended to be used on its own as firm instructions to your health care providers regarding life-prolonging procedures.

Section 3 (Page 4). Revocation of Prior Durable Power of Attorney for Health Care or Prior Health Care Directive. If you have completed one or both of Parts I and II, you are replacing and supplanting any durable power of attorney with health care terms or any earlier health care directive or living will. You should give copies of your most recent completed forms to your Agent and alternate, your physician and other health care providers, and your family members.

Section 4. Validity (Page 4). This document will be considered valid in Missouri and should be recognized in other states and countries on a temporary basis when you are traveling. If you change your residency, you should complete the form that your new home state recognizes. In recognition that the documents need

to be given to many people, including health care providers, copies are considered as valid as the original.

Signature (Page 4). You must sign the form in the presence of two witnesses if you complete Part II and a notary public if you complete Part I (or both Part I and Part II).

Witnesses (Page 4). Because Missouri requires clear and convincing evidence of wishes expressed in the Health Care Directive (Part II), two witnesses are required. Thus, witnesses are required if both the Durable Power of Attorney for Health Care (Part I) and Health Care Directive (Part II) are completed or only the Health Care Directive (Part II). It is suggested that the witnesses not be related to you and be at least 18 years of age.

NOTARY ACKNOWLEDGMENT (Page 4). The notary acknowledgment is required by Missouri law if you appoint an agent and complete a Durable Power of Attorney for Health Care (Part I), or if you complete both Part I and Part II.

FINAL INSTRUCTIONS

After you have completed the form and indicated your choices, you should do the following:

- ☞ Make copies of the form for your Agent and any alternates, your physician (take them to your next appointments), and your health care providers when you are admitted (e.g., hospitals, clinics, nursing homes, assisted living facilities, hospice and palliative care providers, and home health agencies). You will be asked about them each time you are admitted, and you should give them new copies each time you change your form.

- ☞ Discuss, discuss, discuss with your family, your Agent, your physicians, and your health care providers your choices, wishes, and views about your health conditions, the treatments that you prefer, the care or treatment that you want to avoid, and what choices you would want made if life-prolonging procedures are proposed for you when you are persistently unconscious or when you are at the end stage of a serious incapacitating or terminal illness or condition.

- ☞ If you have choices that you want followed not only about life-prolonging procedures but also about other end-of-life considerations, please discuss what you want with your family, your physicians, your clergy, and your agents. You may obtain assistance with such planning from lawyers who can help you clarify your wishes in writing.

- ☞ After you have completed the Durable Power of Attorney for Health Care Form and given it to your agent, you should tell your agent that you will make your own decisions until you are certified as being incapacitated. After you have been certified as incapacitated, tell your agent that he or she will be asked to make any treatment decisions for you. When your agent signs your consent and other forms to carry out your choices, you should tell your agent to sign your name first and sign his or her name afterwards to indicate that your agent is signing for you using your Durable Power of Attorney for Health Care. For example, your agent would sign "John H. Doe, by Sally I. Smith, POA."

Instructions for HIPAA Privacy Authorization Form

You are entitled to keep your health information private. The HIPAA Privacy Authorization Form should be completed if you would like some person other than yourself to have access to your medical records and information. This form gives your health care providers written authorization to release your health information to the persons you have named.

Since a Durable Power of Attorney for Health Care is only effective after you have lost your capacity to make or communicate decisions and does not authorize release of medical information to the person named while you remain competent, it is then necessary to complete and sign the HIPAA Privacy Authorization Form.

You may complete a HIPAA Privacy Authorization Form whether or not you have a Durable Power of Attorney for Health Care. This HIPAA Authorization Form in this booklet is to be used along with the Durable Power of Attorney for Health Care form.

In **Section 1,** insert the name of your Agent named in your Durable Power of Attorney for Health Care.

In **Section 2(a),** indicate what time period is covered by the authorization, either with the specific dates or by checking the box that permits the release of medical information for all past, present, and future periods.

In **Section 2(b)**, check the box if you want to include all of your medical records.

In **Section 3(a),** check the box to indicate whether you want your complete health record, which includes records related to mental health, communicable diseases, HIV or AIDS and the treatment of alcoholism or drug abuse, to be released.

In **Section 3(b)**, check the box to indicate which records you want to exclude, if you want any excluded. Please note that if you do not want to authorize the release of your complete health record, you must indicate with a check which records you want excluded.

In **Section 4,** insert the name of the person or persons and relationship to you to whom you give permission to receive your medical information in addition to the Agent named in your Durable Power of Attorney for Health Care. Oftentimes people want other family members or friends to find out how you are doing in addition to your Agent. It is recommended that you name the Alternate Agents from your Durable Power of Attorney for Health Care.

In **Section 6,** fill in the date if you want this authorization to expire; otherwise, the authorization will remain in effect until nine (9) months after your death.

Please read **Sections 5, 7, 8 and 9** before signing your name and dating the form.

After you have completed the HIPPA Privacy Authorization Form, detach, make copies and give copies to your health care providers.

HIPAA Privacy Authorization Form

Authorization for Use or Disclosure of Protected Health Information
(Required by the Health Insurance Portability and Accountability Act — 45 CFR Parts 160 and 164)

1. I hereby authorize all medical service sources and health care providers to use and/or disclose the protected health information ("PHI") described below to my agent identified in my durable power of attorney for health care named _____.

2. Authorization for release of PHI covering the period of health care (check one)
   a. ☐ from (date) _____ - to (date)_____ OR
   b ☐ all past, present and future periods.

3. I hereby authorize the release of PHI as follows (check one):
   a. ☐ my complete health record (including records relating to mental health care, communicable diseases, HIV or AIDS, and treatment of alcohol/drug abuse). OR
   b. ☐ my complete health record *with the exception of the following information* (check as appropriate):
      ☐ Mental health records
      ☐ Communicable diseases (including HIV and AIDS)
      ☐ Alcohol/drug abuse treatment
      ☐ Other (please specify): _____.

4. In addition to the authorization for release of my PHI described in paragraphs 3 a and 3 b of this Authorization, I authorize disclosure of information regarding my billing, condition, treatment and prognosis to the following individual(s):

   Name _____ Relationship _____

   Name _____ Relationship _____

   Name _____ Relationship _____

5. This medical information may be used by the persons I authorize to receive this information for medical treatment or consultation, billing or claims payment, or other purposes as I may direct.

6. This authorization shall be in force and effect until nine (9) months after my death or _____, (date or event) at which time this authorization expires.

7. I understand that I have the right to revoke this authorization, in writing, at any time. I understand that a revocation is not effective to the extent that any person or entity has already acted in reliance on my authorization or if my authorization was obtained as a condition of obtaining insurance coverage and the insurer has a legal right to contest a claim.

8. I understand that my treatment, payment, enrollment, or eligibility for benefits will not be conditioned on whether I sign this authorization.

9. I understand that information used or disclosed pursuant to this authorization may be disclosed by the recipient and may no longer be protected by federal or state law.

_____ Date: _____
Signature of Patient

Tear off, keep original, and give copies to your health care provider, agent and family members

ORDERING INFORMATION

The forms with information from this booklet are available on The Missouri Bar website at www.mobar.org. The form may be filled out online, but must be signed in front of a notary. Additional printed copies of this booklet and forms are available at no charge at courthouses, libraries, and University of Missouri Extension Centers. The forms may be copied for use by other persons. The booklet and forms may be ordered from The Missouri Bar at no charge.

Copies of this booklet may be ordered online at www.mobar.org. In addition, copies may be ordered by sending an e-mail to brochures@mobar.org or by writing to:

Health Care Form
The Missouri Bar
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