



**A Guide
to
Advance Directives
and
Guardianship
in Michigan**

Introduction

1. What is an Advance Directive?

In Michigan, an Advance Directive allows you to appoint someone, called a patient advocate who can help make sure that your health care choices are honored at some point in the future when you are not able to make or communicate your choices. The purpose of an advance directive is to strengthen your control over your medical and mental health treatment decision making and enhance your independence and self-determination.



With an Advance Directive, you decide who your representative is. Your representative is called the Patient Advocate. You can also decide what instructions your Patient Advocate is given.

2. What is a Guardianship?

A guardianship is a relationship created by the Court. A guardian can be either a person, or an organization – such as a bank.

3. What is the difference between a Guardian and a Patient Advocate?

One important difference between a Guardian and a Patient Advocate is **who** makes the appointment. A Guardian is appointed by the Court to protect your legal rights. However, you have the power to decide who your Patient Advocate is, and what decisions your Patient Advocate makes. The patient advocate designation is a voluntary, private agreement. After you have made your choice, the patient advocate can help enforce your choices about your care, and health treatment decisions.

4. Do all Guardians have the same Powers?

If a Court decides that you are not legally capable of taking care of yourself, the Court may grant your Guardian authority to make all decisions on your behalf. The court can grant your guardian power to make health care decisions, to decide where you will live, to arrange for services, to receive money belonging to you and to use it for your care. Sometimes the Court may place limits on your Guardian's power. It is important to understand that your guardian does not have total control over you. Ordinarily you would keep your right to communicate, to associate with your friends and relatives, and to practice your religion.

Examples of Guardians

1. Conservator



A conservator is a person appointed by the probate court to take care of the property or estate of another person. The conservator is responsible to the court for how the person's money or property is managed. Conservators do not have the right to make medical decisions or determine where the individual lives. This is similar to what you may be familiar with as a "payee".

2. Plenary Guardian

A guardian who has the full legal rights and powers over the individual, their property, or both is called a plenary guardian. You may also hear this type of guardian called a "full" guardian.

3. Partial Guardian

A guardian who has less than full power is called a limited, or a partial guardian.

The court will provide the guardian with papers which will explain the powers and duties of the guardian.

For example, we all have many rights. We have the right to decide what kind of health care we receive. We have the right to decide how to spend our money. We have the right to be with our friends. Imagine that each right has a different color on this pie-chart. In Michigan, a court is required to give a guardian only those powers and only for that period of time necessary to provide for the specific needs of that individual. If an individual needs help taking care of his financial affairs (the green section), then the court would take those rights and appoint a guardian (perhaps a payee) to assist with them. In the meantime, the individual would still be competent to take care of their own health care needs.



4. Guardian ad litem

A Guardian ad litem is often appointed in adoption, child custody or child abuse cases. The Guardian ad litem is often an independent fact-finder for the judge and does not usually have authority to make decisions for the individual.

5. Stand-by Guardian

Often a Court will appoint one or more standby guardians. A standby guardian can become effective without returning to court if the initially appointed guardian dies, resigns or is unable to fulfill their duties. In an emergency situation and in the absence and unavailability of the initially appointed guardian, the standby guardian may temporarily assume the powers and duties of the initially appointed guardian.

6. **Testamentary Guardian**

In Michigan, a parent of a minor may appoint by will or by another document signed by the parent.



7. **‘in loco parentis’**

This is a Latin term meaning that the individual is acting “in place of a parent” and refers to the legal responsibility of a person or organization that takes on some of the functions and responsibilities of a parent.

Who has the Power to make decisions for you?

Who has the power to consent to surgery?

In general, a doctor cannot perform surgery without consent from one of the following groups:

1. **YOU** if you are over 18 and do not have a guardian for medical purposes.
2. **Your parent** who has legal and physical custody of you if you are less than 18 years of age.
3. **Your guardian** if the guardian has been legally empowered to consent to surgery.
4. **Your patient advocate** if properly appointed under a durable power of attorney for healthcare.

Who can make decisions about the donation of body parts?

Sometimes individuals may wish to donate their body or organs when they die. A competent adult may make a gift of all or a portion of their body effective upon their death. Other individuals may also make that kind of decision. For example, parents, spouses, adult children, adult brothers or sisters may choose to make a gift after an individual has died. But in addition to these groups of people, a guardian can also make that choice. And finally, a patient advocate can also choose to make a gift of all or a portion of an individual’s body after their death.

These questions are important because they show that the “patient advocate” can be as important to you as a parent or guardian.

Now that we have a common understanding of the powers and responsibilities of a guardian, we can take a closer look at Advance Directives.

Advance Directives in General

1. **What is an Advance Directive?**

As we discussed earlier, all individuals value the right to make their own choices. Some of the choices we make include choices for our medical or mental health care treatment. But, when we become sick, we may not be able to make, or communicate those choices. An Advance Directive may help us with those choices. If you create a valid advance directive when you are healthy and competent, then your doctors, therapists and others may better understand your choices when you are not healthy or when you lack the capacity to make or communicate your choices. An advance directive helps people understand the choices you want to make.



2. **What are the advantages of having an advance directive?**

Some day, you may not be able to make or communicate your own health care choices. This could happen because of a medical or mental health matter. Without an advance directive, the probate court may need to appoint a guardian. The guardian then would make your health care choices. You may lose some control over the choices made for you.

3. **Do I have to have an advance directive?**

The decision to have an advance directive is strictly voluntary. No family member, no hospital or insurance company can force you to create an advance directive. The choices you make in your advance directive are completely up to you. And, you cannot be denied healthcare services because of a choice you make about your advance directive.

4. **If you create an Advance Directive, how often should you review it?**

Although there is no time limit on the validity of a Durable Power of Attorney for Healthcare in Michigan, it is a good idea to review your Advance Directive from time to time. Medical technology continues to change, and even the law may change. You may choose to leave your choices the same, or you may choose to change a portion of your advance directive. Whatever your choice, it is important that your decisions are made clear. Even if you decide to leave everything the same, it is a good idea to initial and date the bottom of the document. This lets people know that you reviewed it and want your decisions to stay the same.



5. What responsibilities do healthcare providers have?

Healthcare providers (which include hospitals, doctors and Northern Lakes Community Mental Health) must tell their consumers about their rights. As a consumer of health care, you have the right to consent to any treatment you receive. You also have the right to refuse health care treatment. Health care providers also have a responsibility to explain advance directives to you. No healthcare provider can force you to create an advance directive. And, if you create an advance directive, the health care provider must put a copy of it in your medical record.

6. What if I choose not to create an advance directive?

Someday you may not be able to make, or communicate, your own medical or mental health choices. Choices may still have to be made for you. Medical or mental health providers may make choices different from what you would have chosen. Perhaps the Court will need to appoint a guardian to make these choices for you.

7. Are there different types of advance directives?

Basically, there are **3** types of advance directives. Each type of advance directive accomplishes something different. It is important to understand the difference between these three types.

ONE: A **durable power of attorney for health care** allows you to appoint someone to make decisions for you if you have a medical or mental health care crisis. That person can be called an **agent**, a **patient advocate** or a healthcare **proxy**. These three names mean the same thing. Michigan courts will honor a durable power of attorney for health care.

TWO: A **living will** tells health care providers and the courts about your health care choices if you are not able to tell them yourself. Living wills usually deal with specific situations and end-of-life situations. Living wills may not be very helpful in all circumstances.

Michigan Courts may look at a living will. But, the courts do not have to follow what a living will says.

THREE: A **Do-not-resuscitate order** says that you do not want anyone to attempt to help you if your breathing and heartbeat stops. This can also be called a **DNR**.

~ Durable Power of Attorney for Health Care (DPA) ~

Let's take a closer look at the phrase "Durable Power of Attorney for Healthcare"

1. What is a 'Power of Attorney'?

- 'Power of Attorney'** is a legal document. You use this document to give someone the power to make legal decisions for you. A 'Power of Attorney' could apply to your business or financial decisions. Or a 'Power of Attorney' could apply to your health care decisions. Or, you could arrange for a 'Power of Attorney' to apply to both kinds of decisions for you.

2. What is a durable power of attorney for health care?

- The typical "Power of Attorney" only lasts as long as the individual giving the power is competent. The word 'durable' means that the power being given will continue to exist even when you become unable to make decisions.
- A **durable power of attorney (DPA) for health care** is used to give your patient advocate the power to make **medical or mental health treatment** and other personal care decisions for you.
- In Michigan, the law controlling Advance Directives, applies to medical as well as mental health care, although this booklet will focus more on the mental health care perspective.

For example, if you expect to need mental health treatment in the future and believe that you might not be able to make or communicate your decisions at that time, an Advance Directive empowers you to make your treatment preferences known. An advance directive may improve communication between you and your physician or therapist.

3. Is a DPA for health care legally binding in Michigan?

A durable power of attorney for health care is legally binding in Michigan.



4. Who may create a durable power of attorney for health care?

Basically, there are two requirements to create a durable power of attorney.

- First**, you must be an adult.
- Second**, you must also be legally competent.

5. What is your decision maker called?

That person is known as the "**Patient advocate**". This person could also be called your '**agent**' or your '**proxy**'. These names mean the same thing.

6. Who can you appoint as your patient advocate?

Your patient advocate can be any adult. Your patient advocate could be your spouse, an adult child or friend.

7. When can your patient advocate act in your behalf?

Your patient advocate is able to make health care choices for you only when you are unable to. For example, at some time you may be unable to make your medical or mental health decisions because of an episode of clinical depression, bipolar disorder, schizophrenia or dementia. Your patient advocate would step in at that time. However, you continue to make your own choices as long as you are able to.

8. What powers can you give your patient advocate?

You can give your patient advocate power to accept or refuse medical treatment for you. This can include arrangements for home health care or day care. It can also include decisions about nursing home care. You can give your patient advocate discretion to make choices for you, or you can leave detailed instructions about the choices you want made.

10. Will my patient advocate have power to handle my financial affairs?

Although it is possible for your patient advocate to handle your financial affairs, this is a different power from a Durable Power of Attorney for Healthcare. If you want your patient advocate to handle your money, you should speak with a lawyer.

11. How is a valid durable power of attorney for health care created?

A valid durable power of attorney for your medical or mental health care, must have 3 things.

- The paper must be in **writing**
- You need to **sign the paper**
- You need to have **two witnesses*** **There are limitations on who can be a witness**

- * The witnesses cannot be immediate family members.
- * Your patient advocate or your doctor cannot be a witness.
- * Witnesses cannot be employed by your health care or mental health care provider.



A witness must be a legally competent adult at least 18 years of age or older and can be a friend or a neighbor for instance.

12. Does the Durable Power of Attorney form have to look a certain way?

There is no particular form that a Durable Power of Attorney must comply with. There are many organizations with free forms you can use. Or, you could create your own form. Make sure you type or print clearly. (For examples, see the websites in the back of this booklet.)

13. Can the Durable Power of Attorney form contain specific health choices?

You can be very specific about the choices you want made regarding your medical or mental health care. You may prefer a specific doctor, hospital or medication. Or you may want to avoid a specific doctor, hospital or medication. Your patient advocate has a duty to try to follow your wishes as much as possible.

14. Is it important to express your specific choices in the durable power of attorney for health care document?

Yes. Your choices cannot be followed if they are not known. It is more difficult for your patient advocate to follow your choices if you have not made them clear.

15. What could happen if the durable power of attorney for healthcare does not contain specific wishes?

If you do not clearly tell your patient advocate what your choices are, your patient advocate will have to use their best judgment. Some of your other close relatives or friends may disagree with those choices and ask a probate court to help decide what decisions to make.

16. Can a person revoke their patient advocate designation?

You may change your mind about your patient advocate designation at any time and in any manner that you are able to communicate your intention to change your mind.

You may waive your right to revoke the patient advocate designation as to the power to make mental health treatment decisions. In other words, you can agree not to change your mind about the patient advocate designation you made for your mental health treatment. If you do this, your ability to revoke certain mental health treatment decisions will be delayed for 30 days after you communicate your intention to revoke.

9. Will your patient advocate be able to consent to a forced administration of medication?

You can give your patient advocate the power to refuse medication, to make sure that you receive medication you have asked for, to choose among recommended medications for your condition, and to force you to take medication if you object at the time.

However, your patient advocate does not automatically have the right to consent to the forced administration of medication. You must express, in your durable Power of Attorney for Healthcare, in a clear and convincing manner that your patient advocate is authorized to consent to such treatment – if that is your wish.

And remember, as with any type of durable power of attorney for healthcare, you can change your mind. In the document, you can choose to waive your right to immediately cancel the advance directive. In this case, your decision to cancel

the advance directive is effective 30 days after you tell someone you want to cancel an advance directive you had written at an earlier time.

~ Living Will ~

1. **What is a 'living will'?**

A living will is used to tell care-givers and family members **what kind of health care you want**. Like a Durable Power of Attorney for Healthcare, living wills are used to explain a person's healthcare choices when that person is not able to communicate their choices.

2. **Is a living will legally binding in Michigan?**

Although honored throughout most of the United States, living wills are not legally binding in Michigan. You are allowed to have a living will. However, Living Wills do not carry the same legal force that a Durable Power of Attorney for Health Care does, and the courts do not have to follow the choices you make in a living will.

3. **What is the main difference between a durable power of attorney for health care and a living will?**

Although a living can be similar to a durable power of attorney, **living wills do not create a patient advocate**. Living wills only talk about **what your decisions for health care are** – they do not appoint a patient advocate.

Your patient advocate is very important. When you create a power of attorney for health care, your patient advocate speaks for you when you are not able to.

Living wills are usually used when a person is terminally ill, permanently unconscious, or minimally conscious due to brain damage and is not expected to regain their ability to make decisions.

On the other hand, a durable power of attorney for health care is effective even if you are temporarily unable to make or communicate your medical or mental health care decisions.

More Information about Durable Power of Attorney for Healthcare

1. How can Advance Directives be used for Mental Health Treatment?

Advance directives can be used to give guidance for your future mental health treatment. For example, you can give your patient advocate information about what doctor, therapist, hospital or medications you prefer. You can give your patient advocate the power to arrange outpatient therapy, to agree to or refuse a specific medicine, and to arrange for inpatient treatment. If you give your patient advocate the power to hospitalize you, there may be no need for an application or petition to the probate court and a commitment hearing in the future.

2. What is a Psychiatric Advance Directive (PAD) or an Advance Psychiatric Directive (APD)?

Some States use a document called a Psychiatric Advance Directive (PAD), or sometimes it is called an Advance Psychiatric Directive (APD). Some people in Michigan may use these terms when they are talking about the mental healthcare aspect of a Durable Power of Attorney for Healthcare. No matter what the document is called, the rules we talked about earlier are still used. The document must be in writing, the consumer must sign it, there must be two acceptable witnesses, and a patient advocate must be appointed.

NLCMH also uses a document called a **‘crisis plan’**. A crisis plan helps explain how you want your personal affairs handled if you become unable to make or communicate your choices. A crisis plan may be similar to a living will. A crisis plan, however, is not a legally acceptable Advance Directive. A crisis plan does not appoint a patient advocate to help you. **Remember**, a durable power of attorney for health care appoints a patient advocate to help make your choices.

3. What does ‘Kevin’s Law’ have to do with Advance Directives?

‘Kevin’s Law’ represents a series of laws named after Kevin Heisinger, who was beaten to death in August 2000 at a Kalamazoo bus station. The person who killed Kevin had been diagnosed with schizophrenia. For several weeks before his attack on Kevin, this individual had shown erratic, aggressive behavior.

Kevin’s Law says that an individual who has mental illness, who is not complying with their treatment, and who attempts, or threatens serious violent behavior toward himself or others, would be eligible for Assisted Outpatient Treatment.

During the process of providing Assisted Outpatient Treatment to an individual, the court would have to consider any preferences, medication experiences or any other directions included in an advance directive the individual had created.

Do-Not-Resuscitate Order

~(DNR)~

1. What is a Do-Not-Resuscitate Order?

A Do-Not-Resuscitate Order is also called a DNR.

A DNR is a special kind of Advance Directive. Some people do not want any special care made to prolong their life. A DNR tells care givers not to give you extra care if your heart stops or if your breathing stops.

2. Who May Complete A Do-Not-Resuscitate Form?

Like the Durable Power of Attorney for Healthcare, you may complete a DNR if you are older than 18 and competent, (in other words, the court has not declared you incompetent). If you want to create a DNR, you should also discuss this with your doctor.

3. Where are DNR Forms available?

The forms are available from most hospice organizations.

4. What happens to the DNR form after it is signed?

Again, like the Durable Power of Attorney for Healthcare, you should keep the DNR form where you, and your healthcare providers can find it. It should become part of your **medical record**. You should tell your family that you signed a DNR. Tell them where to find it. You may also choose to wear a DNR bracelet.

5. Can I Be Forced To Sign A DNR Order?

- No one can force you to sign a DNR statement.
- No one can refuse to provide treatment because you signed a DNR statement.
- No one can refuse to provide treatment because you would not sign a DNR statement.

6. Can a DNR form be changed once it is created?

Like any type of Advance Directive, you can change your mind. You may cancel your DNR at anytime. You may cancel your DNR in any way you are able to.

7. Can Insurance Coverage Be Changed because a DNR Order is created?

Insurance can not be changed because you create a DNR. Also, your insurance can not change because you choose not to create a DNR.

8. Have Do-Not-Resuscitate Orders Changed recently?

In the past you could only have a DNR Order if you were in the hospital. Now you can have a DNR Order outside of the hospital, for example, in an adult foster care facility. You may choose to wear a DNR bracelet. The bracelet lets people know what your choices are.

9. Is an adult foster care facility required to resuscitate a resident whose heart and breathing have stopped and who has executed a valid do-not-resuscitate order?

Adult foster care homes are required to follow licensing rules established by the State of Michigan. For additional information about these rules, you may contact any of the agencies listed on page #15 of this booklet.

10. Can a guardian of an adult ward with developmental disability sign an advance directive under the Michigan Do-Not-Resuscitate (DNR) Procedure Act?

Only a competent adult can sign a DNR for themselves. A guardian **cannot** sign a DNR for you.

11. Where should a do-not-resuscitate order be kept?

- Your patient advocate should have a copy of the document.
- Your doctor should have a copy.
- You should keep a copy for your personal records.
- Let your care-givers know who you have chosen as your patient advocate.
- Also let your family members know who you have chosen as your patient advocate.
- A copy of your DNR should be kept in your **MEDICAL RECORD**.

12. Is it important to be specific when I write my end of life instructions?

It is very important to be as specific as possible when listing what treatments you do not want. If you are not very clear, there is a danger that a vague description will be misunderstood and you may be denied treatment that you **do** want.

You should review your choices with your patient advocate to make sure your choices are understood.

Where to get more information about Advance Directives.

- The Michigan Department of Community Health provides information about Advance Directives at their website:
http://www.michigan.gov/mdch/0,1607,7-132-2941_4868_41752---,00.html
- The State Bar of Michigan has prepared a pamphlet called: **Patient Advocate Designation**. It can be found at:
<http://michbar.org/probate/pdfs/patientadvocate.pdf>
- The State Bar of Michigan also has additional information at this site:
<http://www.michbar.org/elderlaw/adpamphlet.cfm>
- Blue Cross Blue Shield of Michigan has information about Advance Directives, as well as forms at:
http://www.bcbsm.com/member/establishing_advance_directive/advance_directive_faq.shtml
- Hospice of Michigan has information at:
<http://www.hom.org/directives.asp>
- The national Right to Life has prepared suggestions for creating an Advance Directive in Michigan at:
<http://www.nrlc.org/euthanasia/willtolive/docs/michigan.rev1205.pdf>
- **Caring Connections**, a program of the National Hospice and Palliative Care Organizations (NHPCO), is a national consumer engagement initiative to improve care at the end of life, supported by a grant from The Robert Wood Johnson Foundation. You can find additional information about Michigan Advance Directives at:
<http://www.caringinfo.org/files/public/Michigan.pdf>

This booklet provides an overview of Guardianships and Advance Directives available in Michigan.

This is intended only as a summary and is not intended to provide legal advice for your specific situation.