

Advance Medical Directives: Drafting Tips and Practical Advice

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I. OHIO STATUTES

- A. *Anatomical Gifts*. See Appendix A. Ohio originally adopted the 1968 version of the Uniform Anatomical Gift Act. That version, as amended, remained in place until January 6, 2009 when Governor Strickland signed House Bill 529 into law. This Bill adopted the 2006 version of the Revised Uniform Anatomical Gift Act ("Revised UAGA").

Any individual of sound mind may make an anatomical gift for any purpose specified in Ohio Rev. Code § 2108.04. An emancipated minor or a minor who is at least fifteen years and six months of age and therefore authorized to apply for a temporary instruction permit issued under Ohio Rev. Code § 4507.05 are able to make an anatomical gift without parental consent.¹ In addition, a donor's parent (if not emancipated minor), a guardian, or a donor's agent acting under a durable power of attorney for health care, can make an anatomical gift.²

1. *Definition*. An "anatomical gift" is a donation of all or part of a human body which takes effect upon death for the purpose of transplantation, therapy, research or education.³
2. *Instrument of gift*. An individual can make anatomical gifts under the Revised UAGA:⁴
 - a. By will if age 18;
 - b. By a donor card or other record signed by the donor or by authorizing that a statement or symbol indicating that the donor has certified a willingness to make an anatomical gift be included in a donor registry. If the donor is physically unable to sign a record, the record may be signed by another individual at the direction of the donor and must be witnessed by at least two adults, at least one of whom is a disinterested witness, and the record must state that it has been signed and witnessed as provided in Ohio Rev. Code § 2108.05(B)(1). One may want to attach an affidavit affirming that all conditions have been met. There is no prescribed form for an anatomical gift. A document of gift need not be delivered during the donor's lifetime to be effective.
 - c. By a designation on a driver's license or identification card, which must be renewed upon renewal of each license or identification card.

¹ Ohio Rev. Code § 2108.04(A).

² Ohio Rev. Code § 2108.04. Note that the power for a health care agent to make an anatomical gift is presumed unless the power of attorney or other record prohibits the agent from making such a gift.

³ Ohio Rev. Code § 2108.01(C).

⁴ Ohio Rev. Code § 2108.05.

- d. During a terminal illness, a donor can communicate that he or she intends to make an anatomical gift to two adults, at least one of whom is a disinterested witness. This communication can be in any form.

A designation on a driver's license or identification card constitutes an unrestricted donation of any or all parts of the body for the purposes specified in the statute. This designation can be limited by the execution of a living will declaration containing specific restrictions.

Anyone in the BMV registry can modify his or her registration online by going to <http://bmv.ohio.gov> and clicking on "Donate Life ", or by going directly to <http://www.publicsafety.ohio.gov/services.stm> and clicking on "Organ and Tissue Donor Registry." You may also go to www.donatelifeoio.org.

3. *Effect.* The gift becomes effective on death. A valid declaration prevails over any contrary wishes of the decedent's family.⁵
4. *Amendment or Revocation of Gift.* The Revised UAGA enumerates the ways in which an anatomical gift can be amended or revoked:⁶
 - a. By a record signed by the donor or signed by a person authorized to make an anatomical gift on behalf of the donor.
 - b. By a record signed by another individual acting at the direction of the donor or other person authorized to make an anatomical gift if the donor or other person is physically unable to sign. This must be witnessed by two adults, at least one of whom is disinterested and the record must state that it has been signed and witnessed as provided in Ohio Rev. Code § 2108.06(C)(1).
 - c. By a later-executed document of gift that amends/revokes a previous anatomical gift or portion of an anatomical gift, either expressly or by inconsistency.
 - d. If not made in a will, by any form of communication during a terminal illness or injury addressed to at least two adults, at least one of which is a disinterested witness.
 - e. If made in a will, by the manner provided for amendment/revocation of wills (i.e. if amended, signed at the end by the donor/testator before two competent witnesses who also sign; if revoked, revoked in accordance with Ohio Revised Code § 2107.33).

⁵ Ohio Rev. Code § 2108.08.

⁶ Ohio Rev. Code §§ 2108.06 (A) & (B).

- f. By a parent who is reasonably available, if the donor is an unemancipated minor who has died.
- g. By the destruction or cancellation of the document of gift, or the portion of the document of gift used to make the gift, with the intent to revoke the gift (this applies to revocation of the gift only).

5. *Forms.*

- a. *General.* A declaration for adults who are not advised by an attorney must include anatomical gift language and a separate Donor Registry Enrollment form which can be sent to the Ohio Bureau of Motor Vehicles.⁷
- b. *Donor registry enrollment form.* This form allows the individual to indicate whether he or she should be included in the Donor Registry. The form allows the individual to choose whether to make a gift of organs, tissues and eyes for any purpose authorized by law, or the individual can specify which organs, tissues or body parts he or she wishes to donate and he or she can designate for which purpose the anatomical gift should be used, including transplantation, therapy, research or education.
 - i. Almost all organs and tissues can be used for transplantation.
 - ii. An individual can save up to eight lives through organ donation and improve quality of life for more than 50 people through tissue and eye donation.
 - iii. Most people, regardless of their age, can donate their corneas. The oldest donor in the U.S. was 92 years old at the time of his death.
 - iv. Therapy includes using skin to help keep fluids in and prevent infection to protect a patient until they have recovered enough to donate their own skin.
 - v. Research typically means the use of the lungs to research the effects of certain illnesses, such as asthma and cystic fibrosis.
 - vi. Education does not include the donation of the entire body to a medical institution.

⁷ Ohio Rev. Code § 2133.07.

- vii. If an individual does not join the Donor Registry, his family will be contacted and given the opportunity to decide whether to make an anatomical gift on the individual's behalf.
- viii. By joining the Registry, the donor consents to a confidential review of medical records, laboratory testing, and the donor's medical and social history. This information is only available to organ procurement organizations, tissue banks, and eye banks.⁸
- ix. For more information, see:
<http://optn.transplant.hrsa.gov> (The Organ Procurement and Transplantation Network) and <http://organdonor.gov>.

Life Center Organ Donor Network
www.lifepassiton.org

Life Connection of Ohio and Dayton
www.lifeconnectionofohio.org

6. *Immunity.* The Bureau of Motor Vehicles and its employees are not liable in any civil or criminal proceeding for acting or failing to act in accordance with Ohio Rev. Code §§ 2108.23, 2108.32 or 4501.024, unless the act or omission was malicious, in bad faith, or wanton or reckless.⁹ A physician who makes a determination of death in accordance with § 2108.40 is not liable in any civil or criminal proceeding for his acts based on that determination.¹⁰ Ohio Rev. Code § 2108.40 provides that an individual is dead if the individual has sustained either irreversible cessation of circulatory and respiratory functions or irreversible cessation of all functions of the brain, including the brain stem, as determined in accordance with accepted medical standards.

a. Recent California Jahi McMath Case

B. *Living Wills.* See Appendix B. Ohio Rev. Code § 2133.02(A) permits “an adult who is of sound mind” to “execute at any time a declaration governing the use or continuation, or the withholding or withdrawal, of life-sustaining treatment.” This includes the right to withdraw nutrition and hydration if a declarant is in a “terminal condition” or “permanently unconscious state.”¹¹ The declaration may include a designation of one or more persons to be notified by the attending physician when such treatment would be withheld or withdrawn pursuant to the declaration, and may

⁸ Ohio Rev. Code § 2108.23.

⁹ Ohio Rev. Code § 2108.33.

¹⁰ Ohio Rev. Code § 2108.40.

¹¹ Ohio Rev. Code § 2133.01.

also include a grant of authority to determine whether to use or withhold CPR.¹² The living will is important when you are at the end of your life.

1. *Key definitions.* The following statutory definitions govern determinations as to the operation of a living will:
 - a. “Terminal condition” means an irreversible, incurable, and untreatable condition caused by disease, illness or injury from which, to a reasonable degree of medical certainty as determined in accordance with reasonable medical standards by a declarant’s attending physician and one other physician who has examined the declarant, there can be no recovery, AND death is likely to occur within a relatively short time if life-sustaining treatment is not administered.¹³
 - b. “Permanently unconscious state” means a state of permanent unconsciousness in a declarant that, to a reasonable degree of medical certainty as determined in accordance with reasonable medical standards by the declarant’s attending physician and one other physician who has examined the declarant, is characterized by both an irreversible unawareness of one’s being and environment, AND total loss of cerebral cortical functioning, resulting in the declarant having no capacity to experience pain or suffering.¹⁴
2. *Execution.* A living will declaration must be signed by the declarant or by another person at the direction of the declarant, must include the date of execution, and must either be witnessed by two qualified witnesses or acknowledged before a notary public. To be qualified as a witness, an individual must be an adult who is not related to the declarant by blood, marriage or adoption, and who is neither the declarant’s attending physician or the administrator of a nursing home where the declarant is receiving care. By signing the declaration, each witness or the notary must attest to his or her belief that the declarant appears to be of sound mind and not subject to any duress, fraud or undue influence.¹⁵
3. *When operative.* A living will declaration only becomes operative when the following criteria are satisfied:¹⁶
 - a. The declaration is communicated to the declarant’s attending physician;

¹² *Id.*

¹³ Ohio Rev. Code § 2133.01(AA).

¹⁴ Ohio Rev. Code § 2133.01(U).

¹⁵ Ohio Rev. Code § 2133.02(B)(1), (2).

¹⁶ Ohio Rev. Code § 2133.03(A).

- b. The attending physician and one other “consulting physician” who examines the declarant determine that the declarant is in a “terminal condition” or “permanently unconscious state,” whichever is addressed in the declaration; and
 - c. The attending physician determines that the declarant is no longer able to make informed decisions regarding the administration of life-sustaining treatment.
 - d. Additionally, to become operative in connection with a declarant who is in a “permanently unconscious state,” the consulting physician must be qualified to make such a determination based on advanced education, specialty certification, or experience in the practice of medicine or surgery or osteopathic medicine and surgery.
 - e. To become operative in connection with a declarant who is in either a terminal condition or permanently unconscious state, the attending physician must determine in good faith, to a reasonable degree of medical certainty, and in accordance with reasonable medical standards, that there is no reasonable possibility that the declarant will regain the capacity to make informed decisions regarding the administration of life-sustaining treatment.
4. *Physician's duties.* Once the living will becomes operative, a physician has the following duties:¹⁷
- a. to record the living will declaration in the declarant's medical record;
 - b. to make a good faith effort and use reasonable diligence to notify one or more persons the declarant listed in his or her living will, or if no one is listed, to notify the declarant's guardian, if applicable, or spouse, children, parents, or adult siblings and to list those notified and the manner of notification in the declarant's medical record; and
 - c. to allow time for those persons notified to object by filing a complaint with the probate court of the county where the declarant is located seeking an order: (i) that the physician reevaluate the determination that the declarant is in a terminal condition or in a permanently unconscious state, the determination that the declarant is no longer able to make informed decisions about treatment, the determination that there is no possibility declarant will regain capacity to make these decisions or the course of action to be taken; or (ii) invalidating the living will because it was executed

¹⁷ Ohio Rev. Code § 2133.05(A), (B).

when the declarant was not of sound mind or subject to duress, fraud or undue influence, or does not comply with the statute's requirement.

5. *Pregnancy.* If a declarant is pregnant (at the time of permanent unconsciousness or terminal condition), life-sustaining treatment shall not be withheld or withdrawn if the withholding or withdrawal of the treatment would terminate the pregnancy, unless two physicians determine to a reasonable degree of medical certainty and in accordance with reasonable medical standards, that the fetus would not be born alive.¹⁸
6. *Priority.* A living will declaration supersedes any general "consent to treatment" form signed by or on behalf of the declarant to the extent those documents may conflict, regardless of whether the consent form was signed before or after the declarant's admission to the health care facility, and even if such form was signed after the declaration. A living will also supersedes an inconsistent health care power of attorney, as well as a DNR identification or DNR order that a physician has issued for the declarant and that is inconsistent with the living will.¹⁹
7. *Revocation.* A declarant may revoke a living will at any time and in any manner. A revocation becomes effective when the declarant expresses his intention to revoke or, if the declarant had previously made his attending physician aware of the declaration, when the revocation is communicated to the attending physician by the declarant himself, a witness to the revocation, or other health care personnel to whom such witness has communicated the fact of the revocation. Absent actual knowledge to the contrary, a physician may rely upon such information and act in accordance with the revocation.²⁰
8. *Immunities.* An attending physician, consulting physician, health care facility, or other health care personnel acting under the direction of an attending physician are given immunity from civil and criminal liability, as well as professional disciplinary action, if they comply with a living will declaration as prescribed by statute.²¹
9. *Physician's refusal.* If a physician refuses to comply with a declarant's living will as a matter of conscience or on another basis, the physician must so advise the declarant and must not prevent or unreasonably delay the transfer of the declarant to the care of another physician who is willing and able to comply with the declarant's wishes.²²

¹⁸ Ohio Rev. Code § 2133.06.

¹⁹ Ohio Rev. Code § 2133.03(B).

²⁰ Ohio Rev. Code § 2133.04.

²¹ Ohio Rev. Code § 2133.11.

²² Ohio Rev. Code § 2133.10.

10. *Anatomical Gifts.* The Ohio Living Will forms include Anatomical gift language.²³

C. ***Health Care Powers of Attorney.*** See Appendix C. Ohio Rev. Code § 1337.12 permits “an adult who is of sound mind” to create “a valid durable health care power of attorney” to authorize a designated agent to make health care decisions on behalf of the principal when the latter loses the capacity to make informed decisions for himself or herself. This may include the right to give informed consent, to refuse to give informed consent or to withdraw informed consent to any health care that is being or could be provided to the principal. The power of attorney is “durable” in that it survives the incapacity of the principal, unless it expressly provides that it is terminated by the incapacity of the principal. The health care power of attorney is important during your life whenever you cannot make your own health care decisions.

1. *Execution.* A health care power of attorney must be signed by the principal and must include the date of execution. It must either be witnessed by two qualified witnesses (as described above for living wills) or acknowledged before a notary public.²⁴
 - a. Note: an amendment effective March 20, 2014 includes an alternate attorney in fact as an ineligible witness.
2. *Ineligible persons.* Any competent adult may serve as an attorney in fact for health care except for a principal's attending physician and administrator of the nursing home in which the principal is receiving care. An employee of the principal's physician or the principal's health care facility also may not serve as the principal's attorney in fact for health care unless the employee is related to the principal by blood, marriage or adoption or if the employee and the principal are members of the same religious order.²⁵
3. *Pregnancy.* An attorney in fact for health care does not have authority to refuse or withdraw informed consent to health care for a principal who is pregnant if the refusal or withdrawal of the health care would terminate the pregnancy, unless the pregnancy or the health care would pose a substantial risk to the life of the principal, or unless two physicians have examined the principal and determined, to a reasonable degree of medical certainty and in accordance with reasonable medical standards, that the fetus would not be born alive.²⁶

²³ Ohio Rev. Code § 2133.16

²⁴ Ohio Rev. Code § 1337.12.

²⁵ Ohio Rev. Code § 1337.12(A)(2).

²⁶ Ohio Rev. Code § 1337.13(D).

4. *Effect of living will.* If the principal also has a valid living will declaration, the health care power of attorney will become operative under the same conditions as the living will, described above.
5. *Withholding of nutrition and hydration.* An attorney in fact will not have authority to refuse or withhold informed consent to the provision of artificially supplied nutrition or hydration for a principal in a permanently unconscious state unless the principal, in the health care power of attorney, includes specific language to that effect in capital letters or other conspicuous type. In addition, the principal must place his initials next to this paragraph on the health care power of attorney form.²⁷
6. *Protected Health Information.* The durable power of attorney for health care may authorize the attorney in fact, commencing immediately upon the execution of the instrument or at any subsequent time and regardless of whether the principal has lost the capacity to make informed health care decisions, to obtain information concerning the principal's health, including protected health information as defined in 45 C.F.R. 160.103.²⁸
 - a. Note: New change as of March 20, 2014- Previously, an executed durable power of attorney for health care would not operate to authorize the attorney in fact to obtain the principal's health information until a health care provider determined the principal had lost the capacity to make informed health care decisions. The law now allows a durable power of attorney for health care to authorize the attorney in fact to obtain the principal's health information immediately upon execution of the document, or at a later stated time, without the requirement of a determination of lack of capacity.
7. *Nomination of Guardian.* New change as of March 20, 2014 - In a durable power of attorney for health care, a principal may nominate a guardian of the principal's person, estate, or both for consideration by a court if proceedings for the appointment of a guardian for the principal's person, estate, or both are commenced at a later time.²⁹
8. *Revocation.* Like a living will, a principal may revoke a health care power of attorney at any time and in any manner. A revocation becomes effective when the principal expresses his intention to revoke or, if the principal had previously made his attending physician aware of the power of attorney, when it is communicated to the attending physician by the principal himself, a witness to the revocation, or other health care personnel to whom such witness has communicated the fact of the

²⁷ Ohio Rev. Code § 1337.13(E).

²⁸ Ohio Rev. Code § 1337.12(A)(1).

²⁹ Ohio Rev. Code § 1337.12(E)(1).

revocation. Absent actual knowledge to the contrary, a physician may rely upon such information and act in accordance with the revocation.³⁰

9. *Immunities.* Attending physicians are given immunity from civil and criminal liability, as well as professional disciplinary action, if they, in good faith:
 - a. believe that the attorney in fact is authorized to make health care decisions,
 - b. believe that the attorney in fact is making decisions consistent with the desires of the principal,
 - c. determine that the principal has lost the capacity to make informed health care decisions,
 - d. attempt to determine the desires of the principal to the extent the principal is able to convey them and places a report of the attempt in the health care records,
 - e. if the decision is to withhold or withdraw life-sustaining treatment, determine, to a reasonable degree of medical certainty, and in accordance with reasonable medical standards, that the principal is in a terminal condition or in a permanently unconscious state and there is no reasonable possibility that the principal will regain the capacity to make informed health care decisions for the principal,
10. if the decision is to withdraw nutrition or hydration, determine that the nutrition or hydration will not or no longer serve to provide comfort to or alleviate the pain of the principal.³¹

D. ***DNR Identifications.*** A DNR identification is used to indicate the declarant's wish that CPR be withheld or withdrawn under specified circumstances.

1. *Definitions.*
 - a. A "DNR identification" is an approved card, form, necklace or bracelet signifying *either* (1) that the holder has executed an unrevoked declaration authorizing the withholding or withdrawal of CPR, *or* (2) that the holder's attending physician has issued a current DNR Order.³²
 - b. "CPR" means cardiopulmonary resuscitation or a component of

³⁰ Ohio Rev. Code § 1337.14.

³¹ Ohio Rev. Code § 1337.15(A).

³² Ohio Rev. Code § 2133.21(C).

cardiopulmonary resuscitation,³³ including any of the following: administration of chest compressions, insertion of an artificial airway, administration of resuscitation drugs, defibrillation or cardioversion, provision of respiratory assistance, initiation of a resuscitative intravenous line, and initiation of cardiac monitoring.

2. *Living will as DNR identification.* Ohio Rev. Code § 2133.07 specifically permits DNR provisions to be incorporated in a living will declaration. In such a case, the declaration will serve as a DNR identification if it includes a statement of the declarant's intent to use it as such.
3. *Effect of DNR order.* Unlike a Living Will and Health Care Power of Attorney, a DNR Order must be written and signed by a physician, clinical nurse specialist or a certified practitioner after consultation with the patient. Once the DNR has been activated, medical personnel:
 - a. Are to do the following: suction the airway, administer oxygen, position for comfort, splint or immobilize, control bleeding, provide pain medication, provide emotional support, contact other appropriate health care providers;
 - b. Are not to do the following: administer chest compressions, insert an artificial airway, administer resuscitative drugs, defibrillate or cardiovert, provide respiratory assistance (other than suctioning the airway and administering oxygen), initiate a resuscitative IV, initiate cardiac monitoring.
4. *Immunities.* In addition to the immunities described for compliance with living wills, Ohio Rev. Code § 2133.22 extends similar protection for compliance with a DNR identification to nurse practitioners, emergency medical services personnel, and administrators, employees, contractors and volunteers of a health care facility at which such action is taken.
5. *Ohio Administrative Code.* The statutory provisions are expanded upon at Ohio Administrative Code §§ 3701-62-01 et seq.

E. ***Guardianships.*** What happens when Advance Directives are not in place. Someone must file for guardianship in Probate Court.

1. *Definition.* A "Guardian" is defined as any person, association, or corporation appointed by the probate court to have the care and management of the person, the estate, or both of an incompetent or minor.³⁴ An "Incompetent" is "any person who is so mentally impaired as a result of mental or physical illness or disability...that the person is

³³ Ohio Admin. Code § 3701-62-01(E).

³⁴ Ohio Rev. Code § 2111.01(A).

incapable of taking proper care of the person's self...".³⁵

2. *Appointment.* When necessary, the probate court on its own motion or on application by any interested party shall appoint a guardian of the person of an incompetent, provided the person for whom the guardian is to be appointed is a resident of the county or has a legal settlement in the county and has had the opportunity to have the assistance of counsel in the proceeding for the appointment of such guardian.³⁶
3. *Hearing on competency.* The burden of proving incompetency shall be by clear and convincing evidence.³⁷ The alleged incompetent individual has the following rights: to be represented by independent counsel of his choice; to have a friend or family member present; and to have evidence of an independent expert evaluation introduced.
4. *Expert evaluation.* An expert evaluation will likely include the following: a review of the circumstances which led to the request for assessment; level of functioning before current circumstances; an interview which includes a basic mental status exam, behavioral signs of mental illness, such as hallucinations or delusions, whether the individual appreciates the situation at hand and whether the individual has the ability to express preferences; and the expert's assessment of the individual's speech/language abilities, motor behavior, thought processes, memory, concentration and comprehension, judgment, and perceptions of time and place. Specifically, the expert may attempt to determine whether the individual is substantially capable of managing his or her finances and property and caring for his or her daily living.³⁸
5. *Emergencies.* When it is reasonably certain that immediate action is required to prevent significant injury to the person of the incompetent, after receiving notice of the emergency, the probate court may issue any order that it considers necessary to prevent injury to the person of the incompetent or may appoint an emergency guardian for a maximum of seventy-two hours.³⁹ The emergency guardian may then be appointed as the guardian of the person. An emergency guardian was appointed in the Carpenter case, below.
6. *Nominating a guardian for oneself.* A person may nominate a guardian for himself or herself either in a durable power of attorney document, a health care power of attorney document or in writing signed by the person making the nomination in the presence of two witnesses, signed by the witnesses, containing an attestation of the witnesses that the person

³⁵ Ohio Rev. Code § 2111.01(D).

³⁶ Ohio Rev. Code § 2111.02(A).

³⁷ Ohio Rev. Code § 2111.02(C).

³⁸ Timothy M. Sigward, Ph.D., *The Assessment of Competence*, The Centers for Interactive Geriatric Assessment.

³⁹ Ohio Rev. Code § 2111.02(B).

making the nomination signed the writing in their presence and acknowledged by the person making the nomination before a notary public.⁴⁰

Please note: Although for recording purposes only a notary is required, if your power of attorney includes a nomination of a guardian, two witnesses are required.

7. *Duties of a guardian of person.* Under Ohio Rev. Code § 2111.13, a guardian of the person may authorize or approve the provision to the incompetent of medical, health or other professional care, counsel, treatment or services unless an interested party files objections with the probate court, or the court, by rule or order, provides otherwise.
8. *Withdrawal of Nutrition and Hydration by a Guardian.* If a patient has not executed a living will or health care power of attorney, Ohio Rev. Code §2133.09 provides that consent to withdraw nutrition and hydration may be given by a guardian. However, the guardian must first apply to the probate court for an order authorizing the withdrawal.

Ohio Rev. Code §2133.09(C)(2) provides that the guardian must establish all of the following:

- (a) The patient currently is and for at least the immediately preceding twelve months has been in a permanently unconscious state.
- (b) The patient no longer is able to make informed decisions regarding the administration of life-sustaining treatment.
- (c) There is no reasonable possibility that the patient will regain the capacity to make informed decisions regarding the administration of life-sustaining treatment.
- (d) Written consent to the withholding or withdrawal of life-sustaining treatment in connection with the patient has been given by the appropriate individual or individuals in accordance with Ohio Rev. Code Section 2133.08.
- (e) A probate court has not reversed the consent to the withholding or withdrawal of life-sustaining treatment in connection to the patient pursuant to division (E) of Ohio Rev. Code Section 2133.08.
- (f) The attending physician of the patient and one other physician as described in division (A)(2) of Ohio Rev. Code Section 2133.08 who examines the patient determine, in good faith, to a reasonable degree of medical certainty, and in accordance with reasonable

⁴⁰ Ohio Rev. Code § 2111.121.

medical standards, that nutrition and hydration will not or no longer will provide comfort or alleviate pain in connection with the patient.

(g) Written consent to the withholding or withdrawal of nutrition and hydration in connection with the patient, witnessed by two individuals who satisfy the witness eligibility criteria set forth in division (B)(1) of Ohio Rev. Code Section 2133.02 is given to the attending physician of the patient by an appropriate individual or individuals as specified in division (B) of Ohio Rev. Code Section 2133.08.

(h) The decision to withhold or withdraw nutrition and hydration in connection with the patient is consistent with the previously expressed intention of the patient or is consistent with the type of informed consent decision that the patient would have made if he previously had expressed his intention with respect to the use or continuation, or the withholding or withdrawal, of nutrition and hydration.

A trial court in Mercer County, Ohio held that nutrition and hydration could not be withdrawn, despite the request of all adult children of the patient and the doctor's testimony that the requirements of Ohio Rev. Code §2133.09(C)(2)(a) through (d) had been met. The children testified that the mother had stated that she would never want to be "kept alive by a machine or any type of life support." The trial court however, concluded that this was not sufficient because the mother was not specific about her wishes regarding withdrawal of nutrition and hydration.

The Court of Appeals for Mercer County ruled that the trial court erred in interpreting Ohio Rev. Code §2133.09(C)(2)(e) to require a person to have specifically declared his or her wishes regarding nutrition and hydration. The court found the children's testimony supported an inference that withholding nutrition and hydration was consistent with the patient's wishes. No. 10-04-03, 2004-Ohio-6491; *In Re Biersack* (Ohio App. 3 Dist., Mercer, 12-06-2004). 2004 WL 2785963, unreported.

F. ***Financial Power of Attorney.*** See Appendix D.

1. A principal may designate another as attorney-in-fact by a power of attorney in writing. A power of attorney created under Ohio Rev. Code § 1337.21 to 1337.64 is durable unless it expressly provides that it is terminated by the incapacity of the principal.⁴¹
2. Ohio now provides for a statutory form for a power of attorney. This form is found in Ohio Rev. Code § 1337.60.

G. ***HIPAA's Privacy Rules.*** The Health Insurance Portability and Accountability

⁴¹ Ohio Rev. Code § 1337.24.

Act of 1996 was enacted to protect the privacy of health care information.⁴² In a health care power of attorney, the principal may nominate the attorney-in-fact or any other person to be guardian of the principal's person, estate, or both, and may waive the bond for said guardian or his successors.⁴³

1. *Required disclosure of Private Health Information (PHI).* An individual or an individual's personal representative may request access to the individual's PHI or an accounting of the disclosures of his or her PHI and this information must be disclosed to the individual or his or her personal representative.⁴⁴
2. *Personal representative.* An individual's personal representative includes:
 - a. The agent named in the individual's health care power of attorney; or
 - b. A court-appointed guardian, but the guardian must be granted the power to give informed medical consent on the ward's behalf.
3. *Impact on estate planning.* Advance directives provide for access to PHI immediately upon execution of the document, or at a later stated time, without the requirement of a determination of lack of capacity. However, until the Ohio forms are updated, an individual should execute a separate document in order to provide access to certain family members or friends, an individual should execute a valid authorization to allow the release of the PHI to these specified individuals. The authorization can be a separate document, it can be incorporated into a health care advance directive, or it can be included in a durable power of attorney. The statutory power of attorney includes the power for the agent to act as the principal's personal representative pursuant to 42 U.S.C. 1320d to 1320d-9 and applicable regulations.

Following is another paragraph that could be included in a power of attorney.

To be treated as I would be with respect to my rights regarding the use or disclosure of my individually identifiable health information or other medical records, including, but not limited to, any information governed by the Health Insurance Portability and Accountability Act of 1996, 42 U.S.C. §1320d, as amended, and the implementing regulations, 45 C.F.R. Part 160 and Part 164, Subparts A and F, known as the Standards for Privacy of Individually

⁴² See 42 USC §§ 1320d-1320d-8 and 45 C.F.R. §§ 160, 164.500-164.534.

⁴³ *Id.*

⁴⁴ 45 C.F.R. § 164.502(a)(2).

Identifiable Health Information (“HIPAA”). In particular, I authorize any physician, health care professional, health plan, hospital, clinic, laboratory, pharmacy or other covered health care provider, any insurance company or other health plan, and any health care clearinghouse that has provided treatment or services to me or that has paid for or is seeking payment from me for such service, to give, disclose and release to my attorney in fact, without restriction, all of my health information and medical records regarding any past, present or future medical or mental health condition, including all information relating to the diagnosis and treatment of HIV/AIDS, sexually transmitted diseases, mental illness or drug or alcohol abuse. This authority granted to my attorney in fact supersedes any prior agreement I have made with any health plan, health care clearinghouse or health care provider to restrict access to or disclosure of my health information or medical records. This authority granted to my attorney in fact has no expiration date and expires only if I revoke this authority in writing and deliver it to the health plan, health care clearinghouse or health care provider.

H. *Appointment of Representative for Disposition of Bodily Remains, Funeral Arrangements, and Burial or Cremation Goods and Services.*

See Appendix E. Ohio Rev. Code § 2108.70 permits an "adult who is of sound mind" to execute at any time a written declaration assigning to a representative one or more of the following rights: (1) The right to direct the disposition, after death, of the declarant's body or any part of the declarant's body that becomes separated from the body before death. This right includes the right to determine the location, manner, and conditions of the disposition of the declarant's bodily remains. (2) The right to make arrangements and purchase goods and services for the declarant's funeral. This right includes the right to determine the location, manner, and condition of the declarant's funeral. (3) The right to make arrangements and purchase goods and services for the declarant's burial, cremation, or other manner of final disposition. This right includes the right to determine the location, manner, and condition of the declarant's burial, cremation, or other manner of final disposition.⁴⁵ Absent such declaration, there is also a statutory right of disposition provided for in Ohio Rev. Code § 2108.81. According to the statute, the right of disposition is assigned to the following persons, if mentally competent adults who can be located with reasonable effort in the order of priority stated: 1) the deceased person's surviving spouse; 2) the surviving child/children of the deceased person; 3) the deceased person's surviving parent/parents; 4) the deceased persons surviving siblings (whether whole or half blood); 5) the deceased person's surviving grandparents; 6) the lineal descendants of

⁴⁵ Ohio Rev. Code § 2108.70(B).

the deceased person's grandparents; 7) the deceased person's guardian, if any; 8) any person willing to assume the right of disposition, after attesting in writing that a good faith effort has been made to locate the persons in items 1-7.

1. *When Operative.* The assignment or reassignment of a right of disposition by a declarant under Ohio Rev. Code § 2108.70 vests in a representative or a successor representative at the time of the declarant's death.⁴⁶

2. *Execution.* A written declaration executed by a declarant under Ohio Rev. Code § 2108.70 shall be signed and dated by the declarant in the presence of either a notary public or two qualified witnesses. To be qualified as a witness, an individual must be an adult who is not related to the declarant by blood, marriage or adoption.⁴⁷

3. *Disqualified from Serving as Representative.* A person shall be disqualified from serving as a representative or successor representative, or from having the right of disposition for a deceased adult if any of the following occurs:⁴⁸
 - a. The person dies;

 - b. A probate court declares or determines that the person is incompetent;

 - c. The person resigns or declines to exercise the right;

 - d. The person refuses to exercise the right within two days after notification of the declarant's death;

 - e. The person cannot be located with reasonable effort;

 - f. The person is the declarant's former spouse (unless declaration was

⁴⁶ Ohio Rev. Code § 2108.71.

⁴⁷ Ohio Rev. Code § 2108.73.

⁴⁸ Ohio Rev. Code § 2108.75.

signed and dated after the termination of the marriage)⁴⁹;

- g. The person has been charged with murder, aggravated murder, or voluntary manslaughter of anyone (if charges later dismissed or acquitted, the right is restored), or if the person has been charged with domestic violence that resulted in or contributed to the declarant's death (if charges later dismissed or acquitted, the right is restored);⁵⁰
 - h. The person and declarant are spouses and an action to terminate the marriage is currently pending or the probate court determines that the two spouses were estranged. As used in this division, "estranged" means that a declarant's spouse and the declarant were physically and emotionally separated from each other, at the time of the declarant's death, and had been separated for a period of time that clearly demonstrates an absence of due affection, trust, and regard between spouse and the declarant of deceased adult.⁵¹
 - i. In addition, no owner, employee, or agent of a funeral home, cemetery, or crematory providing funeral, burial, or cremation services for a declarant shall serve as a representative or successor representative for the declarant unless the owner, employee, or agent is related to the declarant by blood, marriage, or adoption.⁵²
4. *Anatomical Gifts.* If a declarant has made a valid declaration of an anatomical gift, any person to whom the declarant has assigned the right of disposition is bound by the declaration of the anatomical gift and must follow the instructions associated with the gift before making any decisions or taking any other actions associated with the right.⁵³
5. *Group Representatives.* The declarant may appoint a person or group of persons as his or her representative/(s) or successor representative/(s). If a group of persons is appointed and they disagree regarding how the right is to be exercised, the decisions of the majority of the persons in the group shall prevail. If a majority cannot agree, then the probate court of the county in which the declarant resided at the time of death shall make the

⁴⁹ Ohio Rev. Code § 2108.76.

⁵⁰ Ohio Rev. Code § 2108.77 (A) & (B).

⁵¹ Ohio Rev. Code § 2108.77(C) & (D).

⁵² Ohio Rev. Code § 2108.75 (B).

⁵³ Ohio Rev. Code § 2108.78.

decision.⁵⁴

6. *Revocation.* A declarant may revoke a written declaration executed under Ohio Rev. Code § 2108.70 by indicating the declarant's desire to revoke the declaration in a document signed and dated by the declarant in the presence of either of the following: (1) A notary public or (2) two qualified witnesses.⁵⁵
7. *Immunities.* No funeral home, funeral director, crematory operator, cemetery operator, cemetery organization, or other person asked to assist with a deceased person's funeral, burial, cremation, or other manner of final disposition, who relies, in good faith on the contents of a written declaration or the instructions of the person or group of persons the funeral home, funeral director, crematory operator, cemetery operator, cemetery organization, or other person reasonably believes has the right of disposition, shall be subject to criminal or civil liability or subject to disciplinary action for taking an action or not taking an action in reliance on such contents or instructions and for otherwise complying with Ohio Rev. Code §§ 2108.70 - 2108.90.⁵⁶
8. *Assumption of Costs.* If the representative or successor representative signs the "Acknowledgement of Assumption of Obligations and Costs" section of the form appointing the representative (which section is optional), he or she is liable for the reasonable costs of any goods or services purchased in connection with the exercise of the right of disposition.⁵⁷

II. RECENT CASE LAW

Carpenter v. Mason et al., 126 Ohio Misc.2d 17 (2003), 2003-Ohio-6490. In this November 26, 2003 case, the probate court in Summit County considered whether there was sufficient evidence of a patient's desire that no life-sustaining treatment be used when he was in a permanently unconscious state even though he had signed a Do Not Resuscitate Form requesting a resuscitation status.

In June, 2003 Gerald Carpenter, an 82 year old man in good health, moved into Crystal Care Center, a nursing home facility. At his intake interview, he signed a form and thereby indicated that he had reviewed and discussed the DNR options and requested a "FULL CODE" status, instead of electing a do not resuscitate status. This form, which became the essential element of this case, did not specifically address Mr. Carpenter's wishes should he be in a terminable condition or permanently unconscious state.

⁵⁴ Ohio Rev. Code § 2108.79.

⁵⁵ Ohio Rev. Code § 2108.80.

⁵⁶ Ohio Rev. Code § 2108.86.

⁵⁷ Ohio Rev. Code § 2108.89.

In September, 2003 Mr. Carpenter was admitted to Akron City Hospital, unresponsive. He had suffered from an intracranial bleed or a hemorrhage in the brain. He was placed on a ventilator and a feeding tube was inserted. Two weeks after admission, a CT scan revealed that Mr. Carpenter had suffered from two more intracranial bleeds since admission to the hospital.

When Mr. Carpenter entered the hospital, the staff could not locate any family members to make decisions, so they contacted the probate court, and attorney Josiah L. Mason, who did not know Mr. Carpenter, was appointed as emergency guardian. Eventually, Mr. Mason was appointed Guardian of the Person and Estate of Mr. Carpenter. Although Mr. Carpenter was in a permanently unconscious state, Mr. Mason believed he did not have the authority to authorize the hospital to withdraw life-sustaining measures and allow Mr. Carpenter to die from the underlying cause of his condition because of the form Mr. Carpenter signed when he entered the nursing home. (Under Ohio Rev. Code § 2133.08, when a patient does not have a declaration that addresses his intent should he be determined to be in a terminal condition/permanently unconscious state, certain interested individuals, such as a patient's guardian, spouse, or adult children, have authority to give written consent to the use or continuation or withholding or withdrawal of life-sustaining treatment.)

Mr. Carpenter's son, Ernest, filed a complaint pursuant to Ohio Rev. Code § 2133.08(E), which permits interested individuals to object to another interested individual's consent to the use or continuation of life-sustaining treatment for a patient without a living will declaration and to file a complaint in probate court if the decision to use or continue life sustaining treatment is not consistent with the previously expressed intention of the patient or with the type of informed consent decision that the patient would have made if he previously had expressed his intentions.

The court considered the testimony of Ernest and of Mr. Carpenter's granddaughter. Ernest testified that about fifteen years earlier, he had a conversation with Mr. Carpenter in which he stated that he did not want to live hooked up to a machine. The granddaughter testified that although she never spoke about the subject of life-sustaining treatment with her grandfather, she believed that he would not want to live in the state he was in. Finally, the court considered the testimony of the director of the Crystal Care Center, who handled Mr. Carpenter's intake and paperwork as he entered the nursing home. The director stated that when she and Mr. Carpenter discussed the DNR form on which he requested a "FULL CODE" status, the conversation was solely in the context of what the nursing home would do if he suffered a heart attack, specifically that nursing home staff would give him chest compressions and call for an ambulance, not merely keep him comfortable and allow nature to take its course. At no point did the director discuss with Mr. Carpenter the options in the context of terminal illness or a permanently unconscious state.

The court reversed the consent of Mr. Mason to the use or continuation of life-sustaining treatment for Mr. Carpenter. The court found Mr. Mason's reliance on the DNR form to be unfounded since the form was not signed in the context of terminal illness or a permanently unconscious state. The court noted that pursuant to Ohio Rev. Code § 2133.02 [a section of the living will statutes] declarations must use either or both of the terms "terminal condition" and "permanently unconscious state" and must define or explain the terms. In Mr. Carpenter's case, the form in question did not comply with the standard. Finally, the court found that Ernest Carpenter showed by clear-and-convincing evidence that Mr. Mason's decision to use or

continue life-sustaining treatment was not consistent with the previously expressed intention of Mr. Carpenter, nor with the type of informed consent decision that Mr. Carpenter would have made with respect to the use or continuation, or the withholding or withdrawal of life-sustaining treatment should he subsequently be in a terminal condition or a permanently unconscious state.

The court concluded that any further life-prolonging procedures would be "futile and cruel," and ordered the hospital, in consultation with Ernest Carpenter, to devise and implement a treatment plan which will keep Mr. Carpenter comfortable with no surgical procedures to prolong the dying process.

III. PRACTICAL CONSIDERATIONS/ISSUES

A. Because of the importance and sensitivity involving end of life decisions, being informed and prepared to discuss relevant issues will be very valuable to your clients. Having them execute the form documents is often just the first step. There are other issues many clients should consider:

1. *Form of Documents.* Ohio has form documents which a variety of organizations (such as the Midwest Care Alliance, the Ohio State Medical Association, the Ohio Hospital Association, Ohio Osteopathic Association and the Ohio State Bar Association) sign off on. It is a good idea to utilize these forms as they are well known to all hospitals etc.

- a. Until documents are updated for most recent changes in law, (if desired) indicate somewhere in the durable power of attorney for health care that one's agent is immediately or at any future time authorized to act on one's behalf even if one has not lost the capacity to make informed healthcare decisions; as well as to obtain protective health care information concerning one's health.
- b. Perhaps include extensive language in the durable power of attorney for health care to name guardians.

2. *Executing the documents.*

- a. Encourage clients to ask questions about the documents. These questions can be addressed to you and to their physician. Be sure they understand the terms in the documents and feel comfortable with their decision to sign them.
- b. Clients do not have to have both a living will and a health care power of attorney, but there are advantages to having both. Appointing an attorney in fact ensures a more flexible form of decision making, since the agent can respond to unanticipated conditions or changes, not just end of life decisions. The living will is useful for end of life decisions, if the attorney in fact becomes unavailable or unwilling to

serve. In such a case, the living will declaration can guide medical decision making. It also reassures the attorney in fact that he or she is following the wishes of the declarant and eases the burden of decision making. If the attorney in fact's decisions are challenged, the living will can provide evidence that the agent is acting in good faith.

- c. Since a living will declaration is not operative except when patients are in a terminal condition or permanently unconscious state, inform clients that if they so desire, they may want to obtain a DNR identification from their physician to operate in other circumstances, such as cardiac arrest.
3. *Choosing an attorney in fact for health care.* Encourage clients to give thought to whom they would like to serve as their attorney in fact for health care decision making. It must be someone they trust who understands their wishes. The attorney in fact must be willing to accept the significant responsibility and willing to carry out the client's wishes. Not every spouse, parent or child may be willing or able to give consent to withhold or withdraw life sustaining treatment for his or her loved one.
4. *Discussing wishes.*
 - a. It is not necessarily true that an attorney in fact will know or understand a client's end of life desires. Encourage clients to discuss their wishes with their attorney in fact. Examples of areas they may wish to discuss include wishes re: CPR, nutrition and hydration, dialysis, etc.
 - b. Important areas to discuss include: religious beliefs and moral convictions and how they affect a client's attitude towards serious illness, attitude toward health, illness, dying and death, and feelings towards doctors and other caregivers.
 - c. It is also important to discuss wishes with family members who have not been appointed as an attorney in fact. This may prevent conflicts between the attorney in fact who understands a client's wishes and family members who may not have been informed by the client of his or her wishes. If a client foresees conflicts between family members and/or the attorney in fact, encourage the client to include in his documents more detailed explanation of his or her full wishes.
 - d. Some clients may wish to discuss the religious implications of the documents with their religious advisors.
4. *Distributing the documents.* Clients should distribute copies of their end of life documents to their attorney in fact and doctors. They should bring copies of the documents with them if they undergo surgical procedures or are

admitted to the hospital for any reason.

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Appendix A



**OHIO DEPARTMENT OF PUBLIC SAFETY
BUREAU OF MOTOR VEHICLES**

DONOR REGISTRY ENROLLMENT

**To register, please complete and mail this enrollment form to:
Ohio Bureau of Motor Vehicles
Attn: Records Request
P.O. BOX 16583
Columbus, OH 43216-6583**

(Please Print)

Last Name	First	Middle
Mailing Address		
City	State	Zip
Phone	Date of Birth	State of Ohio DL/ID or SSN

Donor Registry Enrollment Options

Option 1

Upon my death, I make an anatomical gift of my organs, tissues, and/or eyes for any purpose authorized by law.

Option 2

Upon my death, I make an anatomical gift of my organs, tissues, and/or eyes selected below

All Organs, Tissues and Eyes

Organs

Heart

Lungs

Liver (and associated vessels)

Kidneys (and associated vessels)

Pancreas/Islet Cells

Intestines

Small Bowel

Tissues

Eyes/Corneas

Heart Valves

Bone

Tendons

Ligaments

Veins

Fascia

Skin

Nerves

For the following purposes authorized by law:

All Purposes

Transplantation

Therapy

Research

Education

Option 3

Please take me out of the Ohio Donor Registry.

Signature of Donor Registrant

Date

Appendix B

STATE OF OHIO LIVING WILL DECLARATION NOTICE TO DECLARANT

The purpose of this Living Will Declaration is to document your wish that life-sustaining treatment, including artificially or technologically supplied nutrition and hydration, be withheld or withdrawn if you are unable to make informed medical decisions and are in a terminal condition or in a permanently unconscious state. This Living Will Declaration does not affect the responsibility of health care personnel to provide comfort care to you. Comfort care means any measure taken to diminish pain or discomfort, but not to postpone death.

If you would not choose to limit any or all forms of life-sustaining treatment, including CPR, you have the legal right to so choose and may wish to state your medical treatment preferences in writing in a different document.

Under Ohio law, a Living Will Declaration is applicable only to individuals in a terminal condition or a permanently unconscious state. If you wish to direct medical treatment in other circumstances, you should prepare a Health Care Power of Attorney. If you are in a terminal condition or a permanently unconscious state, this Living Will Declaration controls over a Health Care Power of Attorney.

You should consider completing a new Living Will Declaration if your medical condition changes, or if you later decide to complete a Health Care Power of Attorney. If you have both documents, you should keep copies of both documents together, with your other important papers, and bring copies of both your Living Will and your Health Care Power of Attorney with you whenever you are a patient in a health care facility.

STATE OF OHIO
Living Will Declaration
of

(Birth Date)

I state that this is my **Ohio Living Will Declaration**. I am of sound mind and not under or subject to duress, fraud or undue influence. I am a competent adult who understands and accepts the consequences of this action. I voluntarily declare my wish that my dying not be artificially prolonged.

If I am unable to give directions regarding the use of life-sustaining treatment when I am in a terminal condition or a permanently unconscious state, I intend that this Living Will Declaration be honored by my family and physicians as the final expression of my legal right to refuse health care.

Definitions. Several legal and medical terms are used in this document. For convenience they are explained below.

Anatomical gift means a donation of all or part of a human body to take effect upon or after death.

Artificially or technologically supplied nutrition or hydration means the providing of food and fluids through intravenous or tube “feedings.”

Cardiopulmonary resuscitation or CPR means treatment to try to restart breathing or heartbeat. CPR may be done by breathing into the mouth, pushing on the chest, putting a tube through the mouth or nose into the throat, administering medication, giving electric shock to the chest, or by other means.

Declarant means the person signing this document.

Donor Registry Enrollment Form means a form that has been designed to allow individuals to specifically register their wishes regarding organ, tissue and eye donation with the Ohio Bureau of Motor Vehicles Donor Registry.

Do Not Resuscitate or DNR Order means a medical order given by my physician and written in my medical records that cardiopulmonary resuscitation or CPR is not to be administered to me.

Health care means any medical (including dental, nursing, psychological, and surgical) procedure, treatment, intervention or other measure used to maintain, diagnose or treat any physical or mental condition.

Health Care Power of Attorney means another document that allows me to name an adult person to act as my agent to make health care decisions for me if I become unable to do so.

Life-sustaining treatment means any health care, including artificially or technologically supplied nutrition and hydration that will serve mainly to prolong the process of dying.

Living Will Declaration or **Living Will** means this document that lets me specify the health care I want to receive if I become terminally ill or permanently unconscious and cannot make my wishes known.

Permanently unconscious state means an irreversible condition in which I am permanently unaware of myself and my surroundings. My physician and one other physician must examine me and agree that the total loss of higher brain function has left me unable to feel pain or suffering.

Terminal condition or **terminal illness** means an irreversible, incurable and untreatable condition caused by disease, illness or injury. My physician and one other physician will have examined me and believe that I cannot recover and that death is likely to occur within a relatively short time if I do not receive life-sustaining treatment.

[Instructions and other information to assist in completing this document are set forth within brackets and in italic type.]

Health Care if I Am in a Terminal Condition. If I am in a terminal condition and unable to make my own health care decisions, I direct that my physician shall:

1. Administer no life-sustaining treatment, including CPR and artificially or technologically supplied nutrition or hydration; and
2. Withdraw such treatment, including CPR, if such treatment has started; and
3. Issue a DNR Order; and
4. Permit me to die naturally and take no action to postpone my death, providing me with only that care necessary to make me comfortable and to relieve my pain.

Health Care if I Am in a Permanently Unconscious State. If I am in a permanently unconscious state, I direct that my physician shall:

1. Administer no life-sustaining treatment, including CPR, except for the provision of artificially or technologically supplied nutrition or hydration unless, in the following paragraph, I have authorized its withholding or withdrawal; and
2. Withdraw such treatment, including CPR, if such treatment has started; and
3. Issue a DNR Order; and
4. Permit me to die naturally and take no action to postpone my death, providing me with only that care necessary to make me comfortable and to relieve my pain.

Special Instructions. By placing my initials at number 3 below, I want to specifically authorize my physician to withhold or to withdraw artificially or technologically supplied nutrition or hydration if:

1. I am in a permanently unconscious state; and
2. My physician and at least one other physician who has examined me have determined, to a reasonable degree of medical certainty, that artificially or technologically supplied nutrition and hydration will not provide comfort to me or relieve my pain; and
3. I have placed my initials on this line: _____

Notifications. [Note: You do not need to name anyone. If no one is named, the law requires your attending physician to make a reasonable effort to notify one of the following persons in the order named: your guardian, your spouse, your adult children who are available, your parents, or a majority of your adult siblings who are available.]

In the event my attending physician determines that life-sustaining treatment should be withheld or withdrawn, my physician shall make a reasonable effort to notify one of the persons named below, in the following order of priority:

[Note: If you do not name two contacts, you may wish to cross out the unused lines.]

First Contact:

Name: _____

Address: _____

Phone(s): _____

Second Contact:

Name: _____

Address: _____

Phone(s): _____

No Expiration Date. This Living Will Declaration will have no expiration date. However, I may revoke it at any time.

Copies the Same as Original. Any person may rely on a copy of this document.

Out of State Application. I intend that this document be honored in any jurisdiction to the extent allowed by law.

Health Care Power of Attorney. I have completed a Health Care Power of Attorney:

Yes No

SIGNATURE

[See below for witness or notary requirements.]

I understand the purpose and effect of this document and sign my name to this **Living Will Declaration** dated _____, 20__ at _____, Ohio.

_____, Declarant

[You are responsible for telling members of your family, the agent named in your Health Care Power of Attorney (if you have one), and your physician about this document. You also may wish to tell your religious advisor and your lawyer that you have signed a Living Will Declaration. You may wish to give a copy to each person notified.]

[You may choose to file a copy of this Living Will Declaration with your county recorder for safekeeping.]

WITNESSES OR NOTARY ACKNOWLEDGMENT

[Choose one.]

*[This Living Will Declaration will not be valid unless it either is signed by two eligible witnesses who are present when you sign or are present when you acknowledge your signature, **or** it is acknowledged before a Notary Public.]*

*[The following persons **cannot** serve as a witness to this Living Will Declaration: the agent or any successor agent named in your Health Care Power of Attorney; your spouse; your children; anyone else related to you by blood, marriage or adoption; your attending physician; or, if you are in a nursing home, the administrator of the nursing home.]*

Witnesses. I attest that the Declarant signed or acknowledged this Living Will Declaration in my presence, that the Declarant appears to be of sound mind and not under or subject to duress, fraud or undue influence. I further attest that I am not an agent designated in the Declarant's Health Care Power of Attorney, I am not the attending physician of the Declarant, I am not the administrator of a nursing home in which the Declarant is receiving care, and I am an adult not related to the Declarant by blood, marriage or adoption.

_____ residing at _____
(Signature)

(Print Name)
Date: _____

_____ residing at _____
(Signature)

(Print Name)
Date: _____

OR

Notary Acknowledgment

STATE OF OHIO)
)
COUNTY OF HAMILTON)

Dated _____, 20__ before me, the undersigned Notary Public, personally appeared _____ known to me or satisfactorily proven to be the person whose name is subscribed to the above **Living Will Declaration** as the Declarant, and who has acknowledged that [he/she] executed the same for the purposes expressed therein. I attest that the Declarant appears to be of sound mind and not under or subject to duress, fraud or undue influence.

Notary Public
My Commission Expires: _____

Anatomical Gift (optional)

INSTRUCTIONS: If you elect to make an anatomical gift, please complete and file the attached “Donor Registry Enrollment Form” with the Ohio Bureau of Motor Vehicles (BMV) or make your wishes known to the BMV at the time you obtain or renew your driver's license or State ID to ensure that your wishes will be honored. **NOTE:** If you modify or revoke your decision regarding anatomical gifts, those changes can be made using the Ohio Donor Registry Enrollment Form.

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Life-sustaining treatment means any health care, including artificially or technologically supplied nutrition and hydration that will serve mainly to prolong the process of dying.

Living Will Declaration or **Living Will** means another document that lets me specify the health care I want to receive if I become terminally ill or permanently unconscious and cannot make my wishes known.

Permanently unconscious state means an irreversible condition in which I am permanently unaware of myself and surroundings. My physician and one other physician must examine me and agree that the total loss of higher brain function has left me unable to feel pain or suffering.

Principal means the person signing this document.

Terminal condition or **terminal illness** means an irreversible, incurable and untreatable condition caused by disease, illness or injury. My physician and one other physician will have examined me and believe that I cannot recover and that death is likely to occur within a relatively short time if I do not receive life-sustaining treatment.

[Instructions and other information to assist in completing this document are set forth within brackets and in italic type.]

Naming of My Agent. The person named below is my agent who will make health care decisions for me as authorized in this document.

Agent's Name: _____

Agent's Current Address: _____

Agent's Current Phone Number: _____

Naming of Alternate Agents. *[Note: You do not need to name alternate agents. You also may name just one alternate agent. If you do not name alternate agents or name just one alternate agent, you may wish to cross out the unused lines.]*

Should my agent named above not be immediately available or be unwilling or unable to make decisions for me, then I name, in the following order of priority, the following persons as my alternate agents:

First Alternate Agent:

Name: _____

Address: _____

Phone(s): _____

Second Alternate Agent:

Name: _____

Address: _____

Phone(s): _____

Any person can rely on a statement by any alternate agent named above that he or she is properly acting under this document and such person does not have to make any further investigation or inquiry.

Guidance to Agent. My agent will make health care decisions for me based on the instructions that I give in this document and on my wishes otherwise known to my agent. If my agent believes that my wishes as made known to my agent conflict with what is in this document, this document will control. If my wishes are unclear or unknown, my agent will make health care decisions in my best interests. My agent will determine my best interests after considering the benefits, the burdens, and the risks that might result from a given decision. If no agent is available, this document will guide decisions about my health care.

Authority of Agent. My agent has full and complete authority to make all health care decisions for me whenever I cannot make such decisions, unless I have otherwise indicated below. This authority includes, but is not limited to, the following: *[Note: Cross out any authority that you do not want your agent to have.]*

1. To consent to the administration of pain-relieving drugs or treatment or procedures (including surgery) that my agent, upon medical advice, believes may provide comfort to me, even though such drugs, treatment or procedures may hasten my death. My comfort and freedom from pain are important to me and should be protected by my agent and physician.
2. If I am in a terminal condition, to give, to withdraw or to refuse to give informed consent to life-sustaining treatment, including artificially or technologically supplied nutrition or hydration.
3. To give, withdraw or refuse to give informed consent to any health care procedure, treatment, intervention or other measure.
4. To request, review, and receive any information, verbal or written, regarding my physical or mental health, including, but not limited to, all my medical and health care records.

5. To consent to further disclosure of information, and to disclose medical and related information concerning my condition and treatment to other persons.
6. To execute for me any releases or other documents that may be required in order to obtain medical and related information.
7. To execute consents, waivers, and releases of liability for me and for my estate to all persons who comply with my agent's instructions and decisions. To indemnify and hold harmless, at my expense, any third party who acts under this Health Care Power of Attorney. I will be bound by such indemnity entered into by my agent.
8. To select, employ, and discharge health care personnel and services providing home health care and the like.
9. To select, contract for my admission to, transfer me to, or authorize my discharge from any medical or health care facility, including, but not limited to, hospitals, nursing homes, assisted living facilities, hospices, adult homes and the like.
10. To transport me or arrange for my transportation to a place where this Health Care Power of Attorney is honored, should I become unable to make health care decisions for myself in a place where this document is not enforced.
11. To complete and sign for me the following:
 - (a) Consents to health care treatment, or the issuance of Do Not Resuscitate (DNR) Orders or other similar orders; and
 - (b) Requests for my transfer to another facility, to be discharged against health care advice, or other similar requests; and
 - (c) Any other document desirable to implement health care decisions that my agent is authorized to make pursuant to this document.

Special Instructions. By placing my initials at number 3 below, I want to specifically authorize my agent to refuse, or if treatment has commenced, to withdraw consent to, the provision of artificially or technologically supplied nutrition or hydration if:

1. I am in a permanently unconscious state; and
2. My physician and at least one other physician who has examined me have determined, to a reasonable degree of medical certainty, that artificially or technologically supplied nutrition and hydration will not provide comfort to me or relieve my pain; and
3. I have placed my initials on this line: _____

Limitations of Agent's Authority. I understand that under Ohio law, there are five limitations to the authority of my agent:

1. My agent cannot order the withdrawal of life-sustaining treatment unless I am in a terminal condition or a permanently unconscious state, and two physicians have confirmed the diagnosis and have determined that I have no reasonable possibility of regaining the ability to make decisions; and
2. My agent cannot order the withdrawal of any treatment given to provide comfort care or to relieve pain; and
3. If I am pregnant, my agent cannot refuse or withdraw informed consent to health care if the refusal or withdrawal would end my pregnancy, unless the pregnancy or health care would create a substantial risk to my life or two physicians determine that the fetus would not be born alive; and
4. My agent cannot order the withdrawal of artificially or technologically supplied nutrition or hydration unless I am terminally ill or permanently unconscious and two physicians agree that nutrition or hydration will no longer provide comfort or relieve pain and, in the event that I am permanently unconscious, I have given a specific direction to withdraw nutrition or hydration elsewhere in this document; and
5. If I previously consented to any health care, my agent cannot withdraw that treatment unless my condition has significantly changed so that the health care is significantly less beneficial to me, or unless the health care is not achieving the purpose for which I chose the health care.

Additional Instructions or Limitations. I may give additional instructions or impose additional limitations on the authority of my agent. *[Note: On the lines below you may write in additional instructions or limitations. Here you may include any specific instructions or limitations you consider appropriate, such as instructions to refuse specific types of treatment that are inconsistent with your religious beliefs or unacceptable to you for any other reason. If the space below is not sufficient, you may attach additional pages. If you include additional instructions or limitations here and your wishes change, you should complete a new Health Care Power of Attorney and tell your agent about the changes. If you do not have any additional instructions or limitations, you may wish to write "None" below or cross out the unused lines.]*

No Expiration Date. This Health Care Power of Attorney will have no expiration date and will not be affected by my disability or by the passage of time.

Guardian. I intend that the authority given to my agent will eliminate the need for any court to appoint a guardian of my person. However, should such proceedings start, I nominate my agent to serve as the guardian of my person, without bond.

Enforcement by Agent. My agent may take for me, at my expense, any action my agent considers advisable to enforce my wishes under this document.

Release of Agent's Personal Liability. My agent will not incur any personal liability to me or my estate for making reasonable choices in good faith concerning my health care.

Copies the Same as Original. Any person may rely on a copy of this document.

Out of State Application. I intend that this document be honored in any jurisdiction to the extent allowed by law.

Living Will. I have completed a Living Will:

Yes No

Donor Registry Enrollment Form. I have completed the Donor Registry Enrollment Form:

Yes No

SIGNATURE

[See next page for witness or notary requirements.]

I understand the purpose and effect of this document and sign my name to this **Health Care Power of Attorney** dated _____, 20__ at _____, Ohio.

_____, Principal

[You are responsible for telling members of your family and your physician about this document and the name of your agent. You also may wish, but are not required to tell your religious advisor and your lawyer that you have signed a Health Care Power of Attorney. You may wish to give a copy to each person notified.]

[You may choose to file a copy of this Health Care Power of Attorney with your County Recorder for safekeeping.]

WITNESSES OR NOTARY ACKNOWLEDGMENT

[Choose one.]

*[This Health Care Power of Attorney will not be valid unless it either is signed by two eligible witnesses who are present when you sign or are present when you acknowledge your signature, **or** it is acknowledged before a Notary Public.]*

*[The following persons **cannot** serve as a witness to this Health Care Power of Attorney: the agent; any successor agent named in this document; your spouse; your children; anyone else related to you by blood, marriage or adoption; your attending physician; or, if you are in a nursing home, the administrator of the nursing home.]*

Witnesses. I attest that the Principal signed or acknowledged this Health Care Power of Attorney in my presence, that the Principal appears to be of sound mind and not under or subject to duress, fraud or undue influence. I further attest that I am not an agent designated in this document, I am not the attending physician of the Principal, I am not the administrator of a nursing home in which the Principal is receiving care, and I am an adult not related to the Principal by blood, marriage or adoption.

_____ residing at _____
(Signature)

(Print Name)
Date: _____

_____ residing at _____
(Signature)

(Print Name)
Date: _____

OR

Notary Acknowledgment

STATE OF OHIO)
)
COUNTY OF HAMILTON)

Dated _____, 20__ before me, the undersigned Notary Public, personally appeared _____ known to me or satisfactorily proven to be the person whose name is subscribed to the above **Health Care Power of Attorney** as the Principal, and who has acknowledged that [he/she] executed the same for the purposes expressed therein. I attest that the Principal appears to be of sound mind and not under or subject to duress, fraud or undue influence.

Notary Public
My Commission Expires: _____

[This notice is included in this printed form as required by Ohio Revised Code § 1337.17.]

NOTICE TO ADULT EXECUTING THIS DOCUMENT

This is an important legal document. Before executing this document, you should know these facts:

This document gives the person you designate (the attorney-in-fact) the power to make MOST health care decisions for you if you lose the capacity to make informed health care decisions for yourself. This power is effective only when your attending physician determines that you have lost the capacity to make informed health care decisions for yourself and, notwithstanding this document, as long as you have the capacity to make informed health care decisions for yourself, you retain the right to make all medical and other health care decisions for yourself.

You may include specific limitations in this document on the authority of the attorney-in-fact to make health care decisions for you.

Subject to any specific limitations you include in this document, if your attending physician determines that you have lost the capacity to make an informed decision on a health care matter, the attorney-in-fact GENERALLY will be authorized by this document to make health care decisions for you to the same extent as you could make those decisions yourself, if you had the capacity to do so. The authority of the attorney-in-fact to make health care decisions for you GENERALLY will include the authority to give informed consent, to refuse to give informed consent, or to withdraw informed consent to any care, treatment, service, or procedure to maintain, diagnose, or treat a physical or mental condition.

HOWEVER, even if the attorney-in-fact has general authority to make health care decisions for you under this document, the attorney-in-fact NEVER will be authorized to do any of the following:

- (1) Refuse or withdraw informed consent to life-sustaining treatment (unless your attending physician and one other physician who examines you determine, to a reasonable degree of medical certainty and in accordance with reasonable medical standards, that either of the following applies:
 - (a) You are suffering from an irreversible, incurable and untreatable condition caused by disease, illness, or injury from which (i) there can be no recovery and (ii) your death is likely to occur within a relatively short time if life sustaining treatment is not administered, and your attending physician additionally determines, to a reasonable degree of medical certainty and in accordance with reasonable medical standards, that there is no reasonable possibility that you will regain the capacity to make informed health care decisions for yourself.
 - (b) You are in a state of permanent unconsciousness that is characterized by you being irreversibly unaware of yourself and your environment and by a total loss of cerebral cortical functioning, resulting in you having no capacity to experience pain or suffering, and your attending physician additionally determines, to a reasonable degree of medical certainty and in accordance with reasonable medical standards, that there is no reasonable

possibility that you will regain the capacity to make informed health care decisions for yourself);

- (2) Refuse or withdraw informed consent to health care necessary to provide you with comfort care (except that, if the attorney-in-fact is not prohibited from doing so under (4) below, the attorney-in-fact could refuse or withdraw informed consent to the provision of nutrition or hydration to you as described under (4) below).

(You should understand that comfort care is defined in Ohio law to mean artificially or technologically administered sustenance (nutrition) or fluids (hydration) when administered to diminish your pain or discomfort, not to postpone your death, and any other medical or nursing procedure, treatment, intervention, or other measure that would be taken to diminish your pain or discomfort, not to postpone your death. Consequently, if your attending physician were to determine that a previously described medical or nursing procedure, treatment, intervention, or other measure will not or no longer will serve to provide comfort to you or alleviate your pain, then, subject to (4) below, your attorney-in-fact would be authorized to refuse or withdraw informed consent to the procedure, treatment, intervention, or other measure.);

- (3) Refuse or withdraw informed consent to health care for you if you are pregnant and if the refusal or withdrawal would terminate the pregnancy (unless the pregnancy or health care would pose a substantial risk to your life, or unless your attending physician and at least one other physician who examines you determine, to a reasonable degree of medical certainty and in accordance with reasonable medical standards, that the fetus would not be born alive);

- (4) **Refuse or withdraw informed consent to the provision of artificially or technologically administered sustenance (nutrition) or fluids (hydration) to you, unless:**

- (a) You are in a terminal condition or in a permanently unconscious state.

- (b) Your attending physician and at least one other physician who has examined you determine, to a reasonable degree of medical certainty and in accordance with reasonable medical standards, that nutrition or hydration will not or no longer will serve to provide comfort to you or alleviate your pain.

- (c) If, but only if, you are in a permanently unconscious state, you authorize the attorney-in-fact to refuse or withdraw informed consent to the provision of nutrition or hydration to you by doing both of the following in this document:

- (i) Including a statement in capital letters or other conspicuous type, including, but not limited to, a different font, bigger type, or boldface type, that the attorney-in-fact may refuse or withdraw informed consent to the provision of nutrition or hydration to

you if you are in a permanently unconscious state and if the determination that nutrition or hydration will not or no longer will serve to provide comfort to you or alleviate your pain is made, or checking or otherwise marking a box or line (if any) that is adjacent to a similar statement on this document;

- (ii) Placing your initials or signature underneath or adjacent to the statement, check, or other mark previously described.**
 - (d) Your attending physician determines, in good faith, that you authorized the attorney-in-fact to refuse or withdraw informed consent to the provision of nutrition or hydration to you if you are in a permanently unconscious state by complying with the above requirements of (4)(c)(i) and (ii) above.**
- (5) Withdraw informed consent to any health care to which you previously consented, unless a change in your physical condition has significantly decreased the benefit of that health care to you, or unless the health care is not, or is no longer, significantly effective in achieving the purposes for which you consented to its use.

Additionally, when exercising authority to make health care decisions for you, the attorney-in-fact will have to act consistently with your desires or, if your desires are unknown, to act in your best interest. You may express your desires to the attorney-in-fact by including them in this document or by making them known to the attorney-in-fact in another manner.

When acting pursuant to this document, the attorney-in-fact GENERALLY will have the same rights that you have to receive information about proposed health care, to review health care records, and to consent to the disclosure of health care records. You can limit that right in this document if you so choose.

Generally, you may designate any competent adult as the attorney-in-fact under this document. However, you CANNOT designate your attending physician or the administrator of any nursing home in which you are receiving care as the attorney-in-fact under this document. Additionally, you CANNOT designate an employee or agent of your attending physician, or an employee or agent of a health care facility at which you are being treated, as the attorney-in-fact under this document, unless either type of employee or agent is a competent adult and related to you by blood, marriage, or adoption, or unless either type of employee or agent is a competent adult and you and the employee or agent are members of the same religious order.

This document has no expiration date under Ohio law, but you may choose to specify a date upon which your durable power of attorney for health care will expire. However, if you specify an expiration date and then lack the capacity to make informed health care decisions for yourself on that date, the document and the power it grants to your attorney-in-fact will continue in effect until you regain the capacity to make informed health care decisions for yourself.

You have the right to revoke the designation of the attorney-in-fact and the right to revoke this entire document at any time and in any manner. Any such revocation generally will be effective when you express your intention to make the revocation. However, if you made your attending physician aware of this document, any such revocation will be effective only when you communicate it to your attending physician, or when a witness to the revocation or other health

care personnel to whom the revocation is communicated by such a witness communicates it to your attending physician.

If you execute this document and create a valid durable power of attorney for health care with it, it will revoke any prior, valid durable power of attorney for health care that you created, unless you indicate otherwise in this document.

This document is not valid as a durable power of attorney for health care unless it is acknowledged before a notary public or is signed by at least two adult witnesses who are present when you sign or acknowledge your signature. No person who is related to you by blood, marriage, or adoption may be a witness. The attorney-in-fact, your attending physician, and the administrator of any nursing home in which you are receiving care also are ineligible to be witnesses.

If there is anything in this document that you do not understand, you should ask your lawyer to explain it to you.

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Appendix D

**OHIO
STATUTORY POWER OF ATTORNEY
(ORC §1337.60)**

DESIGNATION OF AGENT

I, _____, name the following person as my agent:

Name of Agent:

Agent's Address:

Agent's Telephone Number:

DESIGNATION OF SUCCESSOR AGENT(S) (OPTIONAL)

If my agent is unable or unwilling to act for me, I name as my successor agent:

Name of Successor Agent:

Successor Agent's Address:

Successor Agent's Telephone Number:

If my successor agent is unable or unwilling to act for me, I name as my second successor agent:

Name of Second Successor Agent:

Second Successor Agent's Address:

Second Successor Agent's Telephone Number:

GRANT OF GENERAL AUTHORITY

I grant my agent and any successor agent general authority to act for me with respect to the following subjects as defined in the Uniform Power of Attorney Act (sections 1337.21 to 1337.64 of the Revised Code):

(INITIAL each subject you want to include in the agent's general authority. If you wish to grant general authority over all of the subjects you may initial "All Preceding Subjects" instead of initialing each subject.)

- () Real Property
- () Tangible Personal Property
- () Stocks and Bonds
- () Commodities and Options
- () Banks and Other Financial Institutions
- () Operation of Entity or Business
- () Insurance and Annuities
- () Estates, Trusts, and Other Beneficial Interests
- () Claims and Litigation
- () Personal and Family Maintenance
- () Benefits from Governmental Programs or Civil or Military Service
- () Retirement Plans
- () Taxes
- () All Preceding Subjects

LIMITATION ON AGENT'S AUTHORITY

An agent that is not my ancestor, spouse, or descendant MAY NOT use my property to benefit the agent or a person to whom the agent owes an obligation of support unless I have included that authority in the Special Instructions.

ACTIONS REQUIRING EXPRESS AUTHORITY (OPTIONAL)

You must give your agent express authority to perform certain actions. Please review the following and initial each action that you wish to grant authority over to your agent and any successor agent. Please consider this carefully.

- () Create or change rights of survivorship.
- () Create or change a beneficiary designation
- () Delegate authority granted under the power of attorney.
- () Waive my right to be a beneficiary of a joint and survivor annuity, including a survivor benefit under a retirement plan.
- () Exercise fiduciary powers that I have authority to delegate.
- () Make a gift: To carry out any gift or charitable pledge program commenced by me and which my attorney in fact agrees should be continued, even though my attorney in fact may be donee of such gifts.
- () Make a gift: To my lineal descendants, which my attorney in fact deems appropriate, even though my attorney in fact may be donee of such gifts, but in no event shall any gifts made hereunder to any one donee exceed the amount of the annual exclusion from taxable gifts to a donee available under Internal Revenue Code 2503(b) (or any corresponding provisions of succeeding law).
- () Make a gift: To my lineal descendants which my attorney in fact deems appropriate, even though my attorney in fact may be donee of such gifts, in a total amount not to exceed my remaining federal exemption amount. My attorney in fact is hereby authorized to execute and file any required gift tax return in connection with any gift(s) made hereunder.
- () Make Payments: Directly to an educational organization for tuition payments or directly to health care providers for medical services on behalf of a donee, which my attorney in fact deems appropriate even if made on behalf of my attorney in fact.

SPECIAL INSTRUCTIONS (OPTIONAL)

You may give additional instructions on the following lines.

- () _____
- () _____
- () _____
- () _____

RELEASE:

I release, discharge and agree to hold harmless my agent and any successor agent from any and all claims arising or resulting from the agent's actions under this power of attorney as permitted by O.R.C. §1337.35.

EFFECTIVE DATE

This power of attorney is effective immediately unless I have stated otherwise in the Special Instructions.

NOMINATION OF GUARDIAN (OPTIONAL)

If it becomes necessary for a court to appoint a guardian of my estate or my person, I nominate the following person(s) for appointment:

ESTATE

Name of Nominee for guardian of my estate:

Nominee's Address:

Nominee's Telephone Number:

PERSON

Name of Nominee for guardian of my person:

Nominee's Address:

Nominee's Telephone Number:

RELIANCE ON THIS POWER OF ATTORNEY

Any person, including my agent, may rely upon the validity of this power of attorney or a copy of it unless that person knows it has terminated or is invalid.

SIGNATURE AND ACKNOWLEDGEMENT

Your Signature

Date

Your Name Printed: _____

Your Address: _____

Your Telephone Number: _____

(Witness)

(Witness)

STATE OF OHIO)

)

COUNTY OF)

This document was acknowledged before me on _____, 20__ by
_____.

Signature of Notary

My Commission Expires: _____

This instrument prepared by:

Dinsmore & Shohl LLP
255 East 5th Street, Suite 1900
Cincinnati, OH 45202

IMPORTANT INFORMATION

This power of attorney authorizes another person (your agent) to make decisions concerning your property for you (the principal). Your agent will be able to make decisions and act with respect to your property (including your money) whether or not you are able to act for yourself. The meaning of authority over subjects listed on this form is explained in the Uniform Power of Attorney Act (sections 1337.21 to 1337.64 of the Revised Code).

This power of attorney does not authorize the agent to make health-care decisions for you.

You should select someone you trust to serve as your agent. Unless you specify otherwise, generally the agent's authority will continue until you die or revoke the power of attorney or the agent resigns or is unable to act for you.

Your agent is entitled to reasonable compensation unless you state otherwise in the Special Instructions.

This form provides for designation of one agent. If you wish to name more than one agent you may name a coagent in the Special Instructions. Coagents are not required to act together unless you include that requirement in the Special Instructions.

If your agent is unable or unwilling to act for you, your power of attorney will end unless you have named a successor agent. You may also name a second successor agent.

This power of attorney becomes effective immediately unless you state otherwise in the Special Instructions.

ACTIONS REQUIRING EXPRESS AUTHORITY

Unless expressly authorized and initialed by me in the Special Instructions, this power of attorney does not grant authority to my agent to do any of the following:

- (1) Create a trust;
- (2) Amend, revoke, or terminate an inter vivos trust, even if specific authority to do so is granted to the agent in the trust agreement;
- (3) Make a gift;
- (4) Create or change rights of survivorship;
- (5) Create or change a beneficiary designation;
- (6) Delegate authority granted under the power of attorney;
- (7) Waive the principal's right to be a beneficiary of a joint and survivor annuity, including a survivor benefit under a retirement plan;
- (8) Exercise fiduciary powers that the principal has authority to delegate.

CAUTION: Granting any of the above eight powers will give your agent the authority to take actions that could significantly reduce your property or change how your property is distributed at your death.

If you have questions about the power of attorney or the authority you are granting to your agent, you should seek legal advice before signing this form.

IMPORTANT INFORMATION FOR AGENT

Agent's Duties

When you accept the authority granted under this power of attorney, a special legal relationship is created between you and the principal. This relationship imposes upon you legal duties until you resign or the power of attorney is terminated or revoked. You must:

- (1) Do what you know the principal reasonably expects you to do with the principal's property or, if you do not know the principal's expectations, act in the principal's best interest;
- (2) Act in good faith;
- (3) Do nothing beyond the authority granted in this power of attorney;
- (4) Attempt to preserve the principal's estate plan if you know that plan and preserving the plan is consistent with the principal's best interest;
- (5) Disclose your identity as an agent whenever you act for the principal by writing or printing the name of the principal and signing your own name as "agent" in the following manner:

(Principal's Name) by (Your Signature) as Agent.

Unless the Special Instructions in this power of attorney state otherwise, you must also:

- (1) Act loyally for the principal's benefit;
- (2) Avoid conflicts that would impair your ability to act in the principal's best interest;
- (3) Act with care, competence, and diligence;
- (4) Keep a record of all receipts, disbursements, and transactions made on behalf of the principal;
- (5) Cooperate with any person that has authority to make health-care decisions for the principal to do what you know the principal reasonably expects or, if you do not know the principal's expectations, to act in the principal's best interest.

Termination of Agent's Authority

You must stop acting on behalf of the principal if you learn of any event that terminates this power of attorney or your authority under this power of attorney. Events that terminate a power of attorney or your authority to act under a power of attorney include:

- (1) The death of the principal;
- (2) The principal's revocation of the power of attorney or your authority;
- (3) The occurrence of a termination event stated in the power of attorney;
- (4) The purpose of the power of attorney is fully accomplished;

(5) If you are married to the principal, a legal action is filed with a court to end your marriage, or for your legal separation, unless the Special Instructions in this power of attorney state that such an action will not terminate your authority.

Liability of Agent

The meaning of the authority granted to you is defined in the Uniform Power of Attorney Act (sections 1337.21 to 1337.64 of the Revised Code). If you violate the Uniform Power of Attorney Act or act outside the authority granted, you may be liable for any damages caused by your violation.

If there is anything about this document or your duties that you do not understand, you should seek legal advice.

Appendix E

**APPOINTMENT OF REPRESENTATIVE FOR
DISPOSITION OF BODILY REMAINS, FUNERAL ARRANGEMENTS,
AND BURIAL OR CREMATION GOODS AND SERVICES**

I, _____, residing at _____, an adult being of sound mind, willfully and voluntarily appoint my representative, named below, to have the right of disposition, as defined in section 2108.70 of the Revised Code, for my body upon my death. All decisions made by my representative with respect to the right of disposition shall be binding.

Representative

(If the representative is a group of persons, indicate the name, last known address, and telephone number of each person in the group.)

Name: _____

Address: _____

Phone(s): _____

Successor Representative

If my representative is disqualified from serving as my representative as described in Section 2108.75 of the Revised Code, then I hereby appoint the following person or group of persons to serve as my successor representative.

(If the successor representative is a group of persons, indicate the name, last known address, and telephone number of each person in the group.)

Name: _____

Address: _____

Phone(s): _____

PREFERENCES REGARDING HOW THE RIGHT OF DISPOSITION SHOULD BE EXERCISED, INCLUDING ANY RELIGIOUS OBSERVANCES THE DECLARANT WISHES A REPRESENTATIVE OR A SUCCESSOR REPRESENTATIVE TO CONSIDER:

ONE OR MORE SOURCES OF FUNDS THAT COULD BE USED TO PAY FOR GOODS AND SERVICES ASSOCIATED WITH AN EXERCISE OF THE RIGHT OF DISPOSITION:

DURATION:

The appointment of my representative and, if applicable, successor representative, becomes effective upon my death.

PRIOR APPOINTMENTS REVOKED:

I hereby revoke any written declaration that I executed in accordance with section 2108.70 of the Ohio Revised Code prior to the date of execution of this written declaration indicated below.

AUTHORIZATION TO ACT:

I hereby agree that any of the following that receives a copy of this written declaration may act under it:

- Cemetery organization;
- Crematory operator;
- Business operating a columbarium;
- Funeral director;
- Embalmer;
- Funeral home;
- Any other person asked to assist with my funeral, burial, cremation, or other manner of final disposition.

MODIFICATION AND REVOCATION - WHEN EFFECTIVE:

Any modification or revocation of this written declaration is not effective as to any party until that party receives actual notice of the modification or revocation.

LIABILITY:

No person who acts in accordance with a properly executed copy of this written declaration shall be liable for damages of any kind associated with the person's reliance on this declaration.

Signed on _____, 20__.

_____, Declarant

ACKNOWLEDGMENT OF ASSUMPTION OF OBLIGATIONS AND COSTS:

By signing below, the representative, or successor representative, if applicable, acknowledges that she, as representative or successor representative, assumes the right of disposition as defined in section 2108.70 of the Revised Code.

ACCEPTANCE (OPTIONAL):

The undersigned hereby accepts this appointment as representative or successor representative, as applicable, for the right of disposition as defined in section 2108.70 of the Revised Code.

Signed on _____, 20__.

Signature of representative
(if representative is a group of persons,
each person in the group shall sign)

Signed on _____, 20__.

Signature of successor representative
(if successor representative is a group of
persons, each person in the group shall
sign)

WITNESSES:

I attest that the Declarant signed or acknowledged this assignment of the right of disposition under section 2108.70 of the Revised Code in my presence and that the Declarant is at least eighteen years of age and appears to be of sound mind and not under or subject to duress, fraud, or undue influence. I further attest that I am not the Declarant's representative or successor representative, I am at least eighteen years of age, and I am not related to the Declarant by blood, marriage, or adoption.

First Witness:

_____ residing at _____
(Signature)

(Print Name)
Date: _____

Second Witness:

_____ residing at _____
(Signature)

(Print Name)
Date: _____

OR

Notary Acknowledgment

STATE OF OHIO)
)
COUNTY OF HAMILTON)

Dated _____, 20__ before me, the undersigned Notary Public, personally appeared _____ known to me or satisfactorily proven to be the person whose name is subscribed as the Declarant, and who has acknowledged that [he/she] executed this written declaration under section 2108.70 of the revised code for the purposes expressed in that section. I attest that the Declarant is at least eighteen years of age and appears to be of sound mind and not under or subject to duress, fraud, or undue influence.

Notary Public
My Commission Expires: