**Advance Medical Directives:**

**Drafting Tips and Practical Advice**

***Presented by:***

**Kristin M. Lenhart, Esq.**

**Dinsmore & Shohl LLP**

CINCINNATI, OHIO

255 East Fifth Street, Suite 1900

Cincinnati, Ohio 45202

(513) 977-8200

Direct Dial: (513) 977-8550

E-Mail: kristin.lenhart@dinsmore.com



Ann Arbor, MI; Charleston, WV; Chicago IL; Cincinnati, OH; Columbus, OH; Covington, KY; Dayton, OH; Denver CO; Detroit, MI; Frankfort, KY; Huntington, WV; Lewisburg, WV; Lexington, KY; Louisville, KY; Morgantown, WV; Mystic, CT; Philadelphia, PA; Pittsburgh, PA; San Diego, CA; Washington, D.C.; Wheeling, WV

**I. OHIO STATUTES**

1. ***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]](#footnote-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]](#footnote-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]](#footnote-3)
	2. *Instrument of gift*. An individual can make anatomical gifts under the Revised UAGA:[[4]](#footnote-4)
		1. By will if age 18;
		2. 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.
		3. By a designation on a driver’s license or identification card, which must be renewed upon renewal of each license or identification card.
		4. 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 Donor Registry.” You may also go to www.donatelifeohio.org.

* 1. *Effect*. The gift becomes effective on death. A valid declaration prevails over any contrary wishes of the decedent’s family.[[5]](#footnote-5)
	2. *Amendment or Revocation of Gift*. The Revised UAGA enumerates the ways in which an anatomical gift can be amended or revoked:[[6]](#footnote-6)
		1. By a record signed by the donor or signed by a person authorized to make an anatomical gift on behalf of the donor.
		2. 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).
		3. 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.
		4. 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.
		5. 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).
		6. By a parent who is reasonably available, if the donor is an unemancipated minor who has died.
		7. 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).
	3. *Forms*.
		1. *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]](#footnote-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.

* + - 1. Almost all organs and tissues can be used for transplantation.
			2. 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.
			3. 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.
			4. 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.
			5. Research typically means the use of the lungs to research the effects of certain illnesses, such as asthma and cystic fibrosis.
			6. Education does not include the donation of the entire body to a medical institution.
			7. 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.
			8. 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]](#footnote-8)
			9. 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

* 1. *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]](#footnote-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]](#footnote-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.
		1. Jahi McMath Case; Marlise Munoz Case
1. ***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]](#footnote-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 also include a grant of authority to determine whether to use or withhold CPR.[[12]](#footnote-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:
		1. “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]](#footnote-13)
		2. “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]](#footnote-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]](#footnote-15)
	3. *When operative*. A living will declaration only becomes operative when the following criteria are satisfied:[[16]](#footnote-16)
		1. The declaration is communicated to the declarant’s attending physician;
		2. 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
		3. The attending physician determines that the declarant is no longer able to make informed decisions regarding the administration of life-sustaining treatment.
		4. 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.
		5. 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]](#footnote-17)
		1. to record the living will declaration in the declarant's medical record;
		2. 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
		3. 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 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]](#footnote-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]](#footnote-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. Unless a declaration provides otherwise, a declaration is revoked by a subsequent declaration. [[20]](#footnote-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]](#footnote-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]](#footnote-22)
	10. *Anatomical Gifts*. The Ohio Living Will forms include Anatomical gift language.[[23]](#footnote-23)
2. ***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]](#footnote-24)
		1. 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]](#footnote-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]](#footnote-26)
	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 unconconscious 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]](#footnote-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]](#footnote-28)
		1. 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]](#footnote-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 revocation. Absent actual knowledge to the contrary, a physician may rely upon such information and act in accordance with the revocation.[[30]](#footnote-30)
	9. *Immunities*. Attending physicians are given immunity from civil and criminal liability, as well as professional disciplinary action, if they, in good faith:
		1. believe that the attorney in fact is authorized to make health care decisions,
		2. believe that the attorney in fact is making decisions consistent with the desires of the principal,
		3. determine that the principal has lost the capacity to make informed health care decisions,
		4. 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,
		5. 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]](#footnote-31)
	11. Declaration for Mental Health Treatment
		1. An adult who has capacity to consent to mental health treatment decisions voluntarily may execute a declaration governing the use or continuation, or the withholding or withdrawal, of mental health treatment.[[32]](#footnote-32)
		2. The declaration shall be signed at the end by the declarant, state the date of its execution, and either be witnessed or be acknowledged in accordance with section 2135.06 of the Revised Code. The declaration may include a designation by the declarant of a person to act as a proxy to make decisions regarding mental health treatment pursuant to the declaration, and, if the declaration includes a designation of a proxy, the declaration shall be signed at the end by the designated proxy. The declarant may name in the declaration a physician and assign the physician the primary responsibility for the declarant's mental health treatment. The declaration may include a specific authorization for the use or continuation, or the withholding or withdrawal, of mental health treatment.[[33]](#footnote-33)
			1. Ohio has a form - Can discuss consent or lack thereof to various pyschotropic medications, electro-convulsive treatment; admission to a facility, various other treatment preferences
		3. A declaration for mental health treatment remains valid and effective for three years after its execution unless it is properly revoked. If a declaration for mental health treatment has become operative and is in effect at the expiration of three years after its execution, the declaration remains effective until the declarant has the capacity to consent to mental health treatment decisions. If a declaration for mental health treatment has not become operative at the expiration of three years after its execution, the declaration may be renewed once for an additional three years or in very specific instances remains effective.[[34]](#footnote-34)
		4. A declaration does not revoke or supersede a health care power of attorney created under Ohio Revised Code Chapter 1337, but it does supersede with respect to the mental health treatment of declarant.[[35]](#footnote-35)
3. ***DNR Identifications***. A DNR identification is used to indicate the declarant’s wish that CPR be withheld or withdrawn under specified circumstances.
	1. *Definitions*.
		1. 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.[[36]](#footnote-36)
		2. “CPR” means cardiopulmonary resuscitation or a component of cardiopulmonary resuscitation,[[37]](#footnote-37) 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:
		1. 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;
		2. 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.
4. ***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.[[38]](#footnote-38) An "Incompetent" is "any person who is so mentally impaired as a result of mental or physical illness or disability…that the person is incapable of taking proper care of the person's self…".[[39]](#footnote-39)
	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.[[40]](#footnote-40)
	3. *Hearing on competency*. The burden of proving incompetency shall be by clear and convincing evidence.[[41]](#footnote-41) 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.[[42]](#footnote-42)
	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.[[43]](#footnote-43) 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 making the nomination signed the writing in their presence and acknowledged by the person making the nomination before a notary public.[[44]](#footnote-44)

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.

* 1. *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.
	2. *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.

 - guardian, spouse, majority of adult children available, etc.

 (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](https://web.lexis-nexis.com/research/buttonTFLink?_m=f69b8e93cd7b8a8499bf9788889cf960&_xfercite=%3ccite%20cc%3d%22USA%22%3e%3c%21%5bCDATA%5bORC%20Ann.%202133.09%5d%5d%3e%3c%2fcite%3e&_butType=4&_butStat=0&_butNum=4&_butInline=1&_butinfo=OHCODE%202133.08&_fmtstr=FULL&docnum=1&_startdoc=1&wchp=dGLzVtb-zSkAb&_md5=e1de1d85ef0d28b5620493ae946c6b1e) 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 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.

1. ***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.[[45]](#footnote-45)
	2. Ohio now provides for a statutory form for a power of attorney. This form is found in Ohio Rev. Code § 1337.60.
2. ***HIPAA’s Privacy Rules***. The Health Insurance Portability and Accountability Act of 1996 was enacted to protect the privacy of health care information.[[46]](#footnote-46) 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.[[47]](#footnote-47)
	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.[[48]](#footnote-48)
	2. *Personal representative*. An individual’s personal representative includes:
		1. The agent named in the individual’s health care power of attorney; or
		2. 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. The Ohio form now incorporates this. However, many still have their clients sign a separate authorization to allow the release of the PHI to specified individuals. The authorization can be a separate document 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 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.

1. ***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.[[49]](#footnote-49) 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 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.[[50]](#footnote-50)
	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.[[51]](#footnote-51)
	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:[[52]](#footnote-52)

* + 1. The person dies;
		2. A probate court declares or determines that the person is incompetent;
		3. The person resigns or declines to exercise the right;
		4. The person refuses to exercise the right within two days after notification of the declarant's death;
		5. The person cannot be located with reasonable effort;
		6. The person is the declarant's former spouse (unless declaration was signed and dated after the termination of the marriage)[[53]](#footnote-53);
		7. 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);[[54]](#footnote-54)
		8. 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.[[55]](#footnote-55)
		9. 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.[[56]](#footnote-56)
	1. *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.[[57]](#footnote-57)
	2. *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 decision.[[58]](#footnote-58)
	3. *Revocation.*A declarant may revoke a written declaration executed under [Ohio](https://web.lexis-nexis.com/research/buttonTFLink?_m=24de4970bd60f63fee010556ced39332&_xfercite=%3ccite%20cc%3d%22USA%22%3e%3c%21%5bCDATA%5bORC%20Ann.%202108.80%5d%5d%3e%3c%2fcite%3e&_butType=4&_butStat=0&_butNum=2&_butInline=1&_butinfo=OHCODE%202108.70&_fmtstr=FULL&docnum=1&_startdoc=1&wchp=dGLbVlW-zSkAb&_md5=227dd019112bcca04d08ec0c39528761) 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.[[59]](#footnote-59)
	4. *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.[[60]](#footnote-60)
	5. *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.[[61]](#footnote-61)

**II. 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.

 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 (now LeadingAge Ohio), the Ohio State Medical Association, the Ohio Hospital Association, Ohio Osteopathic Association and the Ohio State Bar Association) collaborate, sign off on and promote. It is a good idea to utilize these forms as they are well known to all hospitals etc.
		1. These forms can be readily found on-line (as well as in the appendices).
			1. <http://www.midwestcarealliance.org/aws/MCA/pt/sp/adva> ce\_directives
			2. <http://ohiohospitals.org/OHA/media/Images/Membership> 20Services/Documents/advance-directives-2015-update final5.pdf
			3. <https://www.ohiobar.org/ForLawyers/MemberResources/> egalResources/Pages/StaticPage-269.aspx
				1. The OSBA page contains downloadable as well as fillable versions of these forms.
	2. *Executing the documents*.
		1. 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.
		2. Walk through the documents carefully with the client ensuring that they understand each part that they are initialing or checking.
		3. 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.
		4. 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*.
		1. 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.
		2. 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.
		3. 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.
		4. Some clients may wish to discuss the religious implications of the documents with their religious advisors.
	5. *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.

B. Ohio Living Wills and Advance Directives Week is celebrated the second full week in October to inspire, educate and empower providers and the public about the importance of advance care planning.

10453260v1

**Appendix A**

State of Ohio

Donor Registry Enrollment Form

Notice to Declarant

The purpose of the Donor Registry Enrollment Form is to document your wish to donate organs, tissues and/or corneas at the time of your death.

This form should be completed only if you have NOT already registered as a donor with the Ohio Bureau of Motor Vehicles (BMV) when renewing a driver license or state identification card; online through the BMV website; or previously through a paper form. If you wish to make an anatomical gift or modify an existing registration this form must be sent to the BMV to ensure your wishes for organ, tissue and/or cornea donation will be honored. This document will serve as your authorization to recover the organs, tissue and/or corneas indicated at the time of your death, if medically possible.

In submitting this form your wishes will be recorded in the Ohio Donor Registry maintained by the BMV and will be accessible only to the appropriate organ, tissue and cornea recovery agencies at the time of death. You are encouraged to share your wishes with your next of kin so they are aware of your intentions to be a donor.

This form can also be used to amend or revoke your wishes for donation. The completed form should be mailed to:

Ohio Bureau of Motor Vehicles

Attn: Records Request

P. O. Box 16583

Columbus, OH 43216-­‐6583

Frequently asked questions about organ, tissue and cornea donation are addressed on page three of this section. If you have more specific questions, contact information for the state’s organ and tissue recovery agencies is also listed, and you are encouraged to contact them or visit their websites.

Ohio Donor Registry Enrollment Form

If you have NOT already registered as a donor with the Ohio Bureau of Motor Vehicles (BMV) when renewing a driver license or state ID, the Ohio Donor Registry Form must be filed with the BMV to ensure your wishes concerning organ and tissue donation will be honored. This document will serve as your authorization to recover the organs and/or tissues indicated at the time of your death, if medically possible. In submitting this form, your wishes will be recorded in the Ohio Donor Registry maintained by the BMV and will be accessible only to the appropriate organ and tissue recovery agencies at the time of death. Be sure to share your wishes with loved ones so they are aware of your intentions. This form can also be used to amend or revoke your wishes for donation.

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 CARD # **OR** SOCIAL SECURITY #  |
|   |   |   |

**DONOR REGISTRY ENROLLMENT OPTIONS**

|  |
| --- |
| **OPTION I****[ ]** Upon my death, I make an anatomical gift of my organs, tissue and eyes for any purpose authorized by law. |
| **OPTION 2****[ ]** Upon my death, I make an anatomical gift of the following organs, tissue and/or eyes selected below:**[ ]** All organs, tissues and eyes |
| **ORGANS** |  | **TISSUES** |
| **[ ]** Heart | **[ ]** Intestines | **[ ]** Eyes/Corneas | **[ ]** Veins |
| **[ ]** Lungs | **[ ]** Small Bowel | **[ ]** Heart Valves | **[ ]** Fascia |
| **[ ]** Liver (and associated vessels) | **[ ]** Bone | **[ ]** Skin |
| **[ ]** Kidneys (and associated vessels) | **[ ]** Tendons | **[ ]** Nerves |
| **[ ]** Pancreas/Islet Cells | **[ ]** Ligaments |
| 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 REGISTRANTX | DATE |

**Organ and Tissue Donation in Ohio**

One individual can save or quality of life for people who suffer from organ failure, congenital defects, bone cancer, orthopedic injuries, burns, blindness and more. One organ donor can save up to 8 lives by donating heart, lungs, kidneys, pancreas, small intestine and liver. More than 123,000 Americans are on the national waiting list for a life-saving organ transplant; 3,400 in Ohio. Statistically, 18 people in the U.S. die every day while waiting for transplants. If you register as a donor, be sure to share the decision with your family members.

**Who can become a donor?** All individuals over the age of 151/2 can register and give advance authorization for donation. Medical suitability for donation is determined at the time of death. If a minor dies before the age of 18, a parent can amend or revoke the donation decision.

**Are there age limits for donors?** People of all ages and medical histories should consider themselves potential donors. Newborns as well as senior citizens have been organ donors. Medical condition at the time of death will determine what organs and tissues can be donated.

**If I join the Donor Registry, will it affect the quality of medical care I receive at the hospital?** No, doctors at hospitals are concerned with caring for the patient in front of them and are not involved with donation and transplantation. Every effort is made to save your life before donation is considered.

**Will donation disfigure my body? Can there be an open casket funeral?** Donation does not disfigure the body and does not interfere with or delay a funeral, including open casket services.

**Are there any costs to my family for donation?** The donor’s family does NOT pay for the cost of the donation. All costs related to donation of organs, eyes and tissues are paid by the designated recovery agency.

**Does my religion approve of donation?** All major religions support organ, eye and tissue donation as an unselfish act of charity.

**Can I sell my organs?** No. The National Organ Transplant Act makes it illegal to sell human organs and tissue. Violators are subject to fines and imprisonment. Among the reasons for this rule is the concern of Congress that buying and selling of organs might lead to inequitable access to donor organs, with the wealthy having an unfair advantage.

**How are organs distributed?** Donor organs are matched to recipients through a federally-regulated system based on a number of factors including blood type, body size, medical urgency, time on waiting list and geographical location.

**Can I be an organ and tissue donor and also donate my body to science?** Total body donation takes precedence over organ and tissue donation. If you wish to donate your entire body, you must make arrangements with a medical school or research facility prior to your death. Medical schools, research facilities and other agencies study bodies to gain greater understanding of anatomy and disease mechanisms in humans. This research is also vital to saving and improving lives.

**Does the registry authorize living donation?** No, living donation is not authorized by the registry. It is possible to donate a kidney, or part of a liver or lung while alive, but that is arranged on an individual basis through specific transplant centers.

**For more information on donation, contact one of the state’s four federally designated organ procurement organizations:**

Northeastern Ohio Western Ohio Central and Southeastern Ohio Southwestern Ohio

LifeBanc Life Connection of Ohio Lifeline of Ohio LifeCenter

[www.lifebanc.org](http://www.lifebanc.org) [www.lifeconnectionofohio.org](http://www.lifeconnectionofohio.org) [www.lifelineofohio.org](http://www.lifelineofohio.org) [www.lifepassiton.org](http://www.lifepassiton.org)

216.752.5433 937.223.8223 800.525.5667 513.558.5555

**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 takes precedence 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 a Living Will Declaration and a Health Care Power of Attorney, you should keep copies of these documents together. Bring your document(s) with you whenever you are a patient in a health care facility or when you update your medical records with your physician.]



Ohio

Living Will Declaration

[R.C. §2133]

(Print Name)

(Birth Date)

This is my Living Will Declaration. I revoke all prior Living Will Declarations signed by me. I understand the nature and purpose of this document. If any provision is found to be invalid or unenforceable, it will not affect the rest of this document.

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 direction that my dying not be artificially prolonged. [R.C. §2133.02 (A)(1]]

I intend that this Living Will Declaration will be honored by my family and physicians as the final expression of my legal right to refuse certain health care. [R.C.§2133.03(B)(2)]

Definitions

**Adult** means a person who is 18 years of age or older.

**Agent or attorney-in-fact** means a competent adult who a person (the “principal”) can name in a Health Care Power of Attorney to make health care decisions for the principal.

**Anatomical gift** means a donation of part or all of a human body to take effect after the donor’s death for the purpose of transplantation, therapy, research or education.

**Artificially or technologically supplied nutrition or hydration** means food and fluids provided through intravenous or tube feedings. [You can refuse or discontinue a feeding tube, or authorize your Health Care Power of Attorney agent to refuse or discontinue artificial nutrition or hydration.]

**Comfort care** means any measure, medical or nursing procedure, treatment or intervention, including nutrition and or hydration, that is taken to diminish a patient’s pain or discomfort, but not to postpone death.

**CPR** means cardiopulmonary resuscitation, one of several ways to start a person’s breathing or heartbeat once either has stopped. It does not include clearing a person’s airway for a reason other than resuscitation.

**Declarant** means the person signing the Living. Will Declaration

**Do Not Resuscitate or DNR Order** means a physician’s medical order that is written into a patient’s record to indicate that the patient should not receive cardiopulmonary resuscitation.

**Health care** means any care, treatment, service or procedure to maintain, diagnose or treat an individual’s physical or mental health.

**Health care decision** means giving informed consent, refusing to give informed consent, or withdrawing informed consent to health care.

**Health Care Power of Attorney** means a legal document that lets the principal authorize an agent to make health care decisions for the principal in most health care situations when the principal can no longer make such decisions. Also, the principal can authorize the agent to gather protected health information for and on behalf of the principal immediately or at any other time. A Health Care Power of Attorney is NOT a financial power of attorney.

The Health Care Power of Attorney document also can be used to nominate person(s) to act as guardian of the principal's person or estate. Even if a court appoints a guardian for the principal, the Health Care Power of Attorney remains in effect unless the court rules otherwise.

**Life-sustaining treatment** means any medical procedure, treatment, intervention or other measure that, when administered to a patient, mainly prolongs the process of dying.

**Living Will Declaration** means a legal document that lets a competent adult (“declarant”) specify what health care the declarant wants or does not want when he or she becomes terminally ill or permanently unconscious and can no longer make his or her wishes known. It is NOT and does not replace a will, which is used to appoint an executor to manage a person’s estate after death.

**Permanently unconscious state** means an irreversible condition in which the patient is permanently unaware of himself or herself and surroundings. At least two physicians must examine the patient and agree that the patient has totally lost higher brain function and is unable to suffer or feel pain.

**Principal** means a competent adult who signs a Health Care Power of Attorney.

**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, both of the following apply: (1) there can be no recovery and (2) death is likely to occur within a relatively short time if life-­‐sustaining treatment is not administered.

**No Expiration Date.** This Living Will Declaration will have no expiration date. However, I may revoke it at any time. [R.C. §2133.04(A)]

**Copies the Same as Original**. Any person may rely on a copy of this document. [R.C. §2133.02(C)]

**Out of State Application**. I intend that this document be honored in any jurisdiction to the extent allowed by law. [R.C. §2133.14]

I have completed a **Health Care Power of Attorney**: Yes No

**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 *[cross out any unused lines]*: [R.C.§2133.05(2)(a)]

 First contact’s name and relationship:

 Address:

 Telephone number(s):

 Second contact’s name and relationship:

X out area if not used

 Address:

 Telephone number(s):

 Third contact’s name and relationship:

 Address:

 Telephone number(s):

If I am in a **TERMINAL CONDITION** and unable to make my own health care decisions, OR if I am in a **PERMANENTLY UNCONSCIOUS STATE** and there is no reasonable possibility that I will regain the capacity to make informed decisions, then I direct my physician to let me die naturally, providing me only with **comfort care**.

For the purpose of providing comfort care, I authorize my physician to:

1. Administer no life‐sustaining treatment, including CPR;
2. Withhold or withdraw artificially or technologically supplied nutrition or hydration, provided that, if I am in a permanently unconscious state, I have authorized such withholding or withdrawal under **Special Instructions** below and the other conditions have been met;
3. Issue a DNR Order; and
4. Take no action to postpone my death, providing me with only the care necessary to make me comfortable and to relieve pain.

*Special Instructions****.***

**By placing my initials, signature, check or other mark in this box, I specifically authorize my physician to withhold, or if treatment has commenced, to withdraw, consent to the provision of artificially or technologically supplied nutrition or hydration if I am in a permanently unconscious state AND 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.** [R.C. §2133.02(A)(3) and R.C. §2133.08]

***Additional instructions or limitations***.

*[If the space below is not sufficient, you may attach additional pages.*

*If you do not have any additional instructions or limitations, write “None” below.]*

*[The “anatomical gift” language provided below is required by ORC §2133.07(C). Donate Life Ohio recommends that you indicate your authorization to be an organ, tissue or cornea donor at the Ohio Bureau of Motor Vehicles when receiving a driver license or, if you wish to place restrictions on your donation, on a Donor Registry Enrollment Form (attached) sent to the Ohio Bureau of Motor Vehicles.]*

*[If you use this living will to declare your authorization, indicate the organs and/or tissues you wish to donate and cross out any purposes for which you do not authorize your donation to be used. Please see the attached Donor Registry Enrollment Form for help in this regard. In all cases, let your family know your declared wishes for donation.]*

ANATOMICAL GIFT (optional)

Upon my death, the following are my directions regarding donation of all or part of my body: In the hope that I may help others upon my death, I hereby give the following body parts: *[Check all that apply.]*

[ ]  All organs, tissue and eyes for any purposes authorized by law.

OR

|  |  |  |  |
| --- | --- | --- | --- |
| [ ] Heart | [ ] Lungs  | [ ] Liver (and associated vessels) | [ ] Pancreas/Islet Cells |
| [ ] Small Bowel | [ ] Intestines | [ ] Kidneys (and associated vessels) | [ ] Eyes/Cornea |
| [ ] Heart Valves | [ ] Bones | [ ] Tendons | [ ] Ligaments |
| [ ] Veins | [ ] Fascia | [ ] Skin | [ ] Nerves |

For the following purposes authorized by law:

|  |  |  |  |  |
| --- | --- | --- | --- | --- |
| [ ] All Purposes | [ ] Transplantation | [ ] Therapy | [ ] Research | [ ] Education |

If I do not indicate a desire to donate all or part of my body by filling in the lines above, no presumption is created about my desire to make or refuse to make an anatomical gift.

SIGNATURE of DECLARANT

I understand that I am responsible for telling members of my family, the agent named in my Health Care Power of Attorney (if I have one), my physician, my lawyer, my religious advisor and others about this Living Will Declaration. I understand I may give copies of this Living Will Declaration to any person.

I understand that I must sign (or direct an individual to sign for me) this Living Will Declaration and state the date of the signing, and that the signing either must be witnessed by two adults who are eligible to witness the signing OR the signing must be acknowledged before a notary public. [R.C. §2133.02]

I sign my name to this Living Will Declaration.

On \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_ , 20\_\_\_, at \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_, Ohio.

, Declarant

[Choose Witnesses OR a Notary Acknowledgment.]

WITNESSES [R.C. §2133.02(B)(1)]

*[The following persons CANNOT serve as a witness to this Living Will Declaration:*

* Your agent in your Health Care Power of Attorney, if any;
* The guardian of your person or estate, if any;
* Any alternate agent or guardian, if any;
* Anyone related to you by blood, marriage or adoption (for example, your spouse and children);
* Your attending physician; and
* The administrator of the nursing home where you are receiving care.]

***I attest that the Declarant signed or acknowledged this Living Will Declaration in my presence, and that the Declarant appears to be of sound mind and not under or subject to duress, fraud or undue influence.***

 / / Witness One’s Signature Witness One’s Printed Name Date

Witness One’s Address

 / / Witness Two’s Signature Witness Two’s Printed Name Date

Witness Two’s Address

***OR, if there are no witnesses,***

**NOTARY ACKNOWLEDGMENT** [R.C. §2133.02(B)(2)]

STATE OF OHIO

COUNTY OF \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_ SS.

On , 20\_\_\_, before me, the undersigned notary public, personally appeared , declarant of the above Living Will Declaration, 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:

 My Commission is Permanent:

*© March 2015. May be reprinted and copied for use by the public, attorneys, medical and osteopathic physicians, hospitals, bar associations, medical societies and nonprofit associations and organizations. It may not be reproduced commercially for sale at a profit.*

**Appendix C**

State of Ohio Advance Directives:

Health Care Power of Attorney

Living Will Declaration

I have completed a **Health Care Power of Attorney**: Yes \_\_\_\_\_\_ No \_\_\_\_\_\_.

I have added special notes to my Health Care Power of Attorney: Yes \_\_\_\_\_\_ No \_\_\_\_\_\_.

I have included **Nomination of Guardian(s)** on my Health Care Power of Attorney:

 Yes \_\_\_\_\_\_ No \_\_\_\_\_\_.

I have completed a **Living Will Declaration**: Yes \_\_\_\_\_\_ No \_\_\_\_\_\_.

I have added special instructions to my Living Will Declaration: Yes \_\_\_\_\_\_ No \_\_\_\_\_\_.

*[NOTE: Whenever you sign a new advance directive document, it automatically will revoke prior similar documents unless you provide otherwise. [R.C. §1337.14 and R.C. §2133.04 (C)]*

*[NOTE: If you make changes to an advance directive, remember to make similar changes to your other advance directives.]*

State of Ohio

Health Care Power of Attorney

[R.C. §1337]

(Print Full Name)

(Birth Date)

This is my Health Care Power of Attorney. I revoke all prior Health Care Powers of Attorney signed by me. I understand the nature and purpose of this document. If any provision is found to be invalid or unenforceable, it will not affect the rest of this document.

I understand that my agent can make health care decisions for me only whenever my attending physician has determined that I have lost the capacity to make informed health care decisions. However, this does not require or imply that a court must declare me incompetent.

Definitions

**Adult** means a person who is 18 years of age or older.

**Agent or attorney-in-fact** means a competent adult who a person (the “principal”) can name in a Health Care Power of Attorney to make health care decisions for the principal.

**Artificially or technologically supplied nutrition or hydration** means food and fluids provided through intravenous or tube feedings. *[You can refuse or discontinue a feeding tube or authorize your Health Care Power of Attorney agent to refuse or discontinue artificial nutrition or hydration.]*

**Bond** means an insurance policy issued to protect the ward’s assets from theft or loss caused by the Guardian of the Estate’s failure to properly perform his or her duties.

**Comfort care** means any measure, medical or nursing procedure, treatment or intervention, including nutrition and/or hydration, that is taken to diminish a patient’s pain or discomfort, but not to postpone death.

**CPR** means cardiopulmonary resuscitation, one of several ways to start a person’s breathing or heartbeat once either has stopped. It does not include clearing a person’s airway for a reason other than resuscitation.

**Do Not Resuscitate or DNR Order** means a physician’s medical order that is written into a patient’s record to indicate that the patient should not receive cardiopulmonary resuscitation.



**Guardian** means the person appointed by a court through a legal procedure to make decisions for a ward. A **Guardianship** is established by such court appointment.

**Health care** means any care, treatment, service or procedure to maintain, diagnose or treat an individual’s physical or mental health.

**Health care decision** means giving informed consent, refusing to give informed consent, or withdrawing informed consent to health care.

**Health Care Power of Attorney** means a legal document that lets the principal authorize an agent to make health care decisions for the principal in most health care situations when the principal can no longer make such decisions. Also, the principal can authorize the agent to gather protected health information for and on behalf of the principal immediately or at any other time. A Health Care Power of Attorney is NOT a financial power of attorney.

The Health Care Power of Attorney document also can be used to nominate person(s) to act as guardian of the principal's person or estate. Even if a court appoints a guardian for the principal, the Health Care Power of Attorney remains in effect unless the court rules otherwise.

**Life‐sustaining treatment** means any medical procedure, treatment, intervention or other measure that, when administered to a patient, mainly prolongs the process of dying.

**Living Will Declaration** means a legal document that lets a competent adult (“declarant”) specify what health care the declarant wants or does not want when he or she becomes terminally ill or permanently unconscious and can no longer make his or her wishes known. It is NOT and does not replace a will, which is used to appoint an executor to manage a person’s estate after death.

**Permanently unconscious state** means an irreversible condition in which the patient is permanently unaware of himself or herself and surroundings. At least two physicians must examine the patient and agree that the patient has totally lost higher brain function and is unable to suffer or feel pain.

**Principal** means a competent adult who signs a Health Care Power of Attorney.

**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 principal's attending physician and one other physician who has examined the principal, both of the following apply: (1) there can be no recovery and (2) death is likely to occur within a relatively short time if life-sustaining treatment is not administered.

**Ward** means the person the court has determined to be incompetent. The ward’s person, financial estate, or both, is protected by a guardian the court appoints and oversees.

**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 and relationship:

Address:

 Telephone number(s):

 **By placing my initials, signature, check or other mark in this box, I specifically authorize my agent to obtain my protected health care information immediately and at any future time.**

**Guidance to Agent.** My agent will make health care decisions for me based on my instructions in this document and my wishes otherwise known to my agent. If my agent believes that my wishes conflict with what is in this document, this document will take precedence. If there are no instructions and if my wishes are unclear or unknown for any particular situation, 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.

**Naming of alternate agent(s)**. If my agent named above is not immediately available or is unwilling or unable to make decisions for me, then I name, in the following order of priority, the persons listed below as my alternate agents *[cross out any unused lines]*:

 First Alternate agent’s name and relationship:

X out area if not used

 Address:

 Telephone number(s):

 Second alternate agent’s name and relationship:

 Address:

 Telephone number(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.

**Authority of Agent**. Except for those items I have crossed out and subject to any choices I have made in this Health Care Power of Attorney, my agent has full and complete authority to make all health care decisions for me. This authority includes, but is not limited to, the following:

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.
2. If I am in a terminal condition and I do not have a Living Will Declaration that addresses treatment for such condition, to make decisions regarding 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, interventions or other measure.
4. To request, review and receive any information, verbal or written, regarding my physical or mental condition, 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 person who acts while relying on 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, if I am in a place where the terms of this document are not enforced.
11. To complete and sign for me the following:
* Consents to health care treatment, or to the issuing of Do Not Resuscitate (DNR) Orders or other similar orders; and
* Requests to be transferred to another facility, to be discharged against health care advice, or other similar requests; and
* Any other document desirable or necessary to implement health care decisions that my agent is authorized to make pursuant to this document.

***Special Instructions***.

**By placing my initials, signature, check or other mark in this box, I specifically authorize my agent to refuse or, if treatment has started, to withdraw consent to, the provision of artificially or technologically supplied nutrition or hydration if I am in a permanently unconscious state AND 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.** [R.C. §1337.13(E)(2)(a) and (b)]

**Limitations of Agent’s Authority**. I understand there are limitations to the authority of my agent under Ohio law:

1. My agent does not have authority to refuse or withdraw informed consent to health care necessary to provide comfort care.
2. My agent does not have the authority to refuse or withdraw informed consent to health care if I am 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 my life, or unless my attending physician and at least one other physician to a reasonable degree of medical certainty determines that the fetus would not be born alive.
3. My agent cannot order the withdrawal of life-sustaining treatment, including artificially or technologically supplied nutrition or hydration, unless I am in a terminal condition or in a permanently unconscious state and two physicians have determined that life-sustaining treatment would not or would no longer provide comfort to me or alleviate my pain.
4. 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. Below are my specific instructions or limitations:

*[If the space below is not sufficient, you may attach additional pages. If you do not have any additional instructions or limitations, write “None” below.]*

**Nomination of Guardian**

[R.C. §1337.28(A) and R.C. §2111.121]

*[You may, but are not required to, use this document to nominate a guardian, should guardianship proceedings be started, for your person or your estate.]*

I understand that any person I nominate is not required to accept the duties of guardianship, and that the probate court maintains jurisdiction over any guardianship. [R.C. §2111.121(C)]

I understand that the court will honor my nominations except for good cause shown or disqualification. [R.C. §2111.121(B)]

I understand that, if a **guardian of the person** is appointed for me, such guardian’s duties would include making day-to-day decisions of a personal nature on my behalf, such as food, clothing, and living arrangements, but this or any subsequent Health Care Power of Attorney would remain in effect and control health care decisions for me, unless determined otherwise by the court. The court will determine limits, suspend or terminate this or any subsequent Health Care Power of Attorney, if they find that the limitation, suspension or termination is in my best interests. [R.C. §1337.28 (C)]

**I intend that the authority given to my agent in my Health Care Power of Attorney will eliminate the need for any court to appoint a guardian of my person**. However, should such proceedings start, I nominate the person(s) below in the order listed as **guardian of my person**.

By writing my initials, signature, a check mark or other mark in this box, I nominate my agent and alternate agent(s), if any, to be **guardian of my person**, in the order named above.

If I do not choose my agent or an alternate agent to be the **guardian of my person**, I choose the following person(s), in this order *[cross out any unused lines]*:

X out area if not used

 Guardian of my person’s name and relationship:

 Address:

 Telephone number(s):

 Alternate Guardian of my person’s name and relationship:

 Address:

 Telephone number(s):

**Guardian of the estate** means the person appointed by a court to make financial decisions on behalf of the ward, with the court’s involvement. The guardian of the estate is required to be bonded, unless bond is waived in writing or the court finds it unnecessary.

 By placing my initials, signature, a check mark or other mark in this box, I nominate my agent and alternate agent(s), if any, to be **guardian of my estate**, in the order named above.

If I do not choose my agent or an alternate agent to be the **guardian of my estate**, I choose the following person(s), in this order *[cross out any unused lines]*:

X out area if not used

 Guardian of my estate name and relationship:

 Address:

 Telephone number(s):

 Alternate Guardian of my estate name and relationship:

 Address:

 Telephone number(s):

 By placing my initials, signature, check or other mark in this box, I direct that bond be waived for guardian or successor **guardian of my estate**. [R.C. §1337.28 (B)]

Ohio Living Will Page Five of Seven

If I do not make any mark in this box, it means that I expect the guardian or successor guardian of my estate to be bonded. [R.C. §1337.28 (B)]

**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.

**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 be liable to me or any other person for any breach of duty unless such breach of duty was committed dishonestly, with an improper motive, or with reckless indifference to the purposes of this document or my best interests. [R.C. §1337.35]

**Copies are the Same as Original**. Any person may rely on a copy of this document. [R.C. §1337.26(D)]

**Out of State Application**. I intend that this document be honored in any jurisdiction to the extent allowed by law. [R.C. §1337.26(C)]

 I have completed a **Living Will**: Yes \_\_\_\_\_\_ No \_\_\_\_\_\_

SIGNATURE of PRINCIPAL

I understand that I am responsible for telling members of my family and my physician, my lawyer, my religious advisor and others about this Health Care Power of Attorney. I understand I may give copies of this Health Care Power of Attorney to any person.

I understand that I may file a copy of this Health Care Power of Attorney with the probate court for safekeeping. [R.C. §1337.12(E)(3)]

I understand that I must sign this Health Care Power of Attorney and state the date of my signing, and that my signing either must be witnessed by two adults who are eligible to witness my signing OR the signing must be acknowledged before a notary public. [R.C. §1337.12]

I sign my name to this Health Care Power of Attorney.

On, , 20\_\_\_, at \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_, Ohio.

 **\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_**, Principal

[Choose Witnesses OR a Notary Acknowledgment.]

WITNESSES [R.C. §1337.12(B)]

*[The following persons CANNOT serve as a witness to this Health Care Power of Attorney:*

* *Your agent, if any;*
* *The guardian of your person or estate, if any;*
* *Any alternate or successor agent or guardian, if any;*
* *Anyone related to you by blood, marriage, or adoption (for example, your spouse and children);*
* *Your attending physician; and*
* *The administrator of any nursing home where you are receiving care.]*

***I attest that the principal signed or acknowledged this Health Care Power of Attorney in my presence, and that the principal appears to be of sound mind and not under or subject to duress, fraud or undue influence.***

 / /

Witness One’s Signature Witness One’s Printed Name Date

Witness One’s Address

 / /

Witness Two’s Signature Witness Two’s Printed Name Date

Witness Two’s Address

***OR, if there are no witnesses,***

**NOTARY ACKNOWLEDGMENT** [R.C. §1337.12]

STATE OF OHIO

COUNTY OF HAMILTON ss.

On , 20\_\_\_, before me, the undersigned notary public, personally appeared , principal of the above Health Care Power of Attorney, 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:

 My Commission is Permanent:

*© March 2015. May be reprinted and copied for use by the public, attorneys, medical and osteopathic physicians, hospitals, bar associations, medical societies and nonprofit associations and organizations. It may not be reproduced commercially for sale at a profit.*

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 recover 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**

**Notice as required by Ohio Revised Code 1337.17**

**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.

**Notice as required by Ohio Revised Code §1337.17**

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 when you 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.

**Notice as required by Ohio Revised Code §1337.17**

ADDENDUM

This notice was not updated when certain provisions of the law regarding the Health Care Power of Attorney were changed in March 2014. Please be advised of the following changes:

You may, but are not required to, authorize your agent to get your health information, including information that is protected by law and otherwise not available to your agent. You can authorize your agent to have access to your health information immediately upon your signing of this document or at any later time, even though you are still able to make your own health care decisions.

You may also, but are not required to, use this document to name guardians for you or your estate should guardianship proceedings be started**.**

*© March 2015. May be reprinted and copied for use by the public, attorneys, medical and osteopathic physicians, hospitals, bar associations, medical societies and nonprofit associations and organizations. It may not be reproduced commercially for sale at a profit.*

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)

( ) Specifically Excluded Powers. Notwithstanding any general provision herein to the contrary, this durable general power of attorney shall grant to my Agent no right, power, authority or interest with respect to any interest I might have or acquire in a passive foreign investment company as described in §1297 of the IRC or the Regulations relating thereunder or in any “specified foreign financial asset” as described in Section 6038D of the IRC or the Regulations pertaining thereto. This durable general power of attorney shall grant no signature authority (or other authority comparable to a signature authority) over an account or other interest in a foreign financial institution described in 31 U.S.C. §5312 the reporting for which is required by 31 U.S.C. §5314 and 31 C.F.R. §1010.350.

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 represent-ative 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 \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_ | ) |

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](http://elibraries.westlaw.com/find/default.wl?DB=1000279&DocName=OHSTS2108%2E70&FindType=L&AP=&fn=_top&utid=%7b4E32D121-DA8F-43B2-B63A-5118699D36A8%7d&rs=EW1.0&mt=Ohio&vr=2.0&sv=Full&sp=dinsmore-3002) 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:

1. Ohio Rev. Code § 2108.04(A). [↑](#footnote-ref-1)
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. [↑](#footnote-ref-2)
3. Ohio Rev. Code § 2108.01(C). [↑](#footnote-ref-3)
4. Ohio Rev. Code § 2108.05. [↑](#footnote-ref-4)
5. Ohio Rev. Code § 2108.08. [↑](#footnote-ref-5)
6. Ohio Rev. Code §§ 2108.06 (A) & (B). [↑](#footnote-ref-6)
7. Ohio Rev. Code § 2133.07. [↑](#footnote-ref-7)
8. Ohio Rev. Code § 2108.23. [↑](#footnote-ref-8)
9. Ohio Rev. Code § 2108.33. [↑](#footnote-ref-9)
10. Ohio Rev. Code § 2108.40. [↑](#footnote-ref-10)
11. Ohio Rev. Code § 2133.01. [↑](#footnote-ref-11)
12. *Id*. [↑](#footnote-ref-12)
13. Ohio Rev. Code § 2133.01(AA). [↑](#footnote-ref-13)
14. Ohio Rev. Code § 2133.01(U). [↑](#footnote-ref-14)
15. Ohio Rev. Code § 2133.02(B)(1), (2). [↑](#footnote-ref-15)
16. Ohio Rev. Code § 2133.03(A). [↑](#footnote-ref-16)
17. Ohio Rev. Code § 2133.05(A), (B). [↑](#footnote-ref-17)
18. Ohio Rev. Code § 2133.06. [↑](#footnote-ref-18)
19. Ohio Rev. Code § 2133.03(B). [↑](#footnote-ref-19)
20. Ohio Rev. Code § 2133.04. [↑](#footnote-ref-20)
21. Ohio Rev. Code § 2133.11. [↑](#footnote-ref-21)
22. Ohio Rev. Code § 2133.10. [↑](#footnote-ref-22)
23. Ohio Rev. Code § 2133.16 [↑](#footnote-ref-23)
24. Ohio Rev. Code § 1337.12. [↑](#footnote-ref-24)
25. Ohio Rev. Code § 1337.12(A)(2). [↑](#footnote-ref-25)
26. Ohio Rev. Code § 1337.13(D). [↑](#footnote-ref-26)
27. Ohio Rev. Code § 1337.13(E). [↑](#footnote-ref-27)
28. Ohio Rev. Code § 1337.12(A)(1). [↑](#footnote-ref-28)
29. Ohio Rev. Code § 1337.12(E)(1). [↑](#footnote-ref-29)
30. Ohio Rev. Code § 1337.14. [↑](#footnote-ref-30)
31. Ohio Rev. Code § 1337.15(A). [↑](#footnote-ref-31)
32. Ohio Rev. Code § 2135.02(A). [↑](#footnote-ref-32)
33. *Id.* [↑](#footnote-ref-33)
34. Ohio Rev. Code § 2135.03 [↑](#footnote-ref-34)
35. Ohio Rev. Code § 2135.12 [↑](#footnote-ref-35)
36. Ohio Rev. Code § 2133.21(C). [↑](#footnote-ref-36)
37. Ohio Admin. Code § 3701-62-01(E). [↑](#footnote-ref-37)
38. Ohio Rev. Code § 2111.01(A). [↑](#footnote-ref-38)
39. Ohio Rev. Code § 2111.01(D). [↑](#footnote-ref-39)
40. Ohio Rev. Code § 2111.02(A). [↑](#footnote-ref-40)
41. Ohio Rev. Code § 2111.02(C). [↑](#footnote-ref-41)
42. Timothy M. Sigward, Ph.D., *The Assessment of Competence,* The Centers for Interactive Geriatric Assessment. [↑](#footnote-ref-42)
43. Ohio Rev. Code § 2111.02(B). [↑](#footnote-ref-43)
44. Ohio Rev. Code § 2111.121. [↑](#footnote-ref-44)
45. Ohio Rev. Code § 1337.24. [↑](#footnote-ref-45)
46. *See* 42 USC §§ 1320d-1320d-8 and 45 C.F.R. §§ 160, 164.500-164.534. [↑](#footnote-ref-46)
47. *Id.* [↑](#footnote-ref-47)
48. 45 C.F.R. § 164.502(a)(2). [↑](#footnote-ref-48)
49. Ohio Rev. Code § 2108.70(B). [↑](#footnote-ref-49)
50. Ohio Rev. Code § 2108.71. [↑](#footnote-ref-50)
51. Ohio Rev. Code § 2108.73. [↑](#footnote-ref-51)
52. Ohio Rev. Code § 2108.75. [↑](#footnote-ref-52)
53. Ohio Rev. Code § 2108.76. [↑](#footnote-ref-53)
54. Ohio Rev. Code § 2108.77 (A) & (B). [↑](#footnote-ref-54)
55. Ohio Rev. Code § 2108.77(C) & (D). [↑](#footnote-ref-55)
56. Ohio Rev. Code § 2108.75 (B). [↑](#footnote-ref-56)
57. Ohio Rev. Code § 2108.78. [↑](#footnote-ref-57)
58. Ohio Rev. Code § 2108.79. [↑](#footnote-ref-58)
59. Ohio Rev. Code § 2108.80. [↑](#footnote-ref-59)
60. Ohio Rev. Code § 2108.86. [↑](#footnote-ref-60)
61. Ohio Rev. Code § 2108.89. [↑](#footnote-ref-61)