

Texas Medical Association Guidelines for Directive to Physician

The Texas Health and Safety Code authorizes the use of a written Directive to Physicians ("DIRECTIVE") in accordance with the guidelines set out below.

Printed and distributed courtesy of the Texas Medical Association Board of Councilors 401 West 15th Street, Austin, Texas 78701-1680 512/370-1341.

September, 1999.

Guidelines for Signers

General Information

If you are at least 18 years old, of sound mind, and acting on your own free will, you may sign a DIRECTIVE TO PHYSICIANS ("DIRECTIVE") concerning your own care in the presence of two qualified witnesses. The DIRECTIVE allows you to instruct your physician not to use artificial methods to extend the natural process of dying. Before signing the DIRECTIVE, you may ask advice from anyone you wish, including your attorney.

If you sign the DIRECTIVE, you must tell your physician. Ask that it be made part of your medical record. If you have signed a written DIRECTIVE of which your doctor is unaware, inform your doctor of its existence. If you become physically or mentally unable to do so, another person may inform your physician.

Witnesses

The DIRECTIVE must be witnessed by two competent adults.

At least one witness cannot be a person who:

- a. is related to you by blood or marriage;
- b. has a claim on your estate;
- c. has been designated by you to make a health care treatment decision on your behalf;
- d. your attending physician;
- e. is employed by your attending physician;
- f. is an employee of a health care facility in which you reside, if the employee is involved in providing direct patient care to you or is an officer, director, partner, or business office employee of the health care facility or of any parent organization of the health care facility.

Effect of Directive

The DIRECTIVE becomes effective - meaning that life-sustaining treatment can be withdrawn - only when you become a "qualified patient." A qualified patient means a patient with a terminal or irreversible condition that has been diagnosed and certified in writing by the attending physician.

No one may force you to sign the DIRECTIVE. No one may deny you insurance or health care services because you have chosen not to sign it. If you do sign the DIRECTIVE, it will not affect your insurance or any other rights you may have to accept or reject medical treatment. If your attending physician chooses not to follow the DIRECTIVE, he/she must make a reasonable effort to transfer responsibility for your care to another physician.

You may designate another person to make treatment decisions for you if you become incompetent, or are otherwise mentally or physically incapable of communication. However, you do not have to do so in order for the DIRECTIVE to be a legal document. If you do, that designated person may also execute an out-of-hospital do-not-resuscitate order

Enforceability of a Directive Executed in Another Jurisdiction

A directive or similar instrument validly executed in another jurisdiction shall be given the same effect as a DIRECTIVE validly executed under the law of this state. This does not authorize the administration, withholding, or withdrawal of health care otherwise prohibited by the law of this state.

Revocation

The DIRECTIVE is valid until it is revoked. You may revoke the DIRECTIVE at any time, even in the final stages of a terminal illness. If you revoke the DIRECTIVE, be sure your physician is told of your decision. The physician or the physician designee shall record in the patient's medical record the time and date when the physician received notice of the written revocation and shall enter the word "VOID" on each page of the copy of the DIRECTIVE in the patient's medical record. If you change your mind after executing a DIRECTIVE, your expressed desire to receive life-sustaining treatment will at all times supersede the effect of a DIRECTIVE.

Minors

If a qualified patient is under 18 years of age, any of the following persons may execute a DIRECTIVE on behalf of the patient: (1) the patient's spouse, if the spouse is an adult; (2) the patient's parents; or (3) the patient's legal guardian. However, the desire of a competent qualified patient who is under 18 years of age shall always supersede a DIRECTIVE executed on his/her behalf. A form which may be executed on behalf of a minor is provided.

Guidelines for Physicians

Definitions:

"Artificial nutrition and hydration" means the provision of nutrients or fluids by a tube inserted in a vein, under the skin in the subcutaneous tissues, or in the stomach (gastrointestinal tract).

"Irreversible condition" means a condition, injury, or illness:

- (a) that may be treated, but is never cured or eliminated;
- (b) that leaves a person unable to care for or make decisions for the person's own self; and
- (c) that, without life-sustaining treatment provided in accordance with the prevailing standard of medical care, is fatal.

Explanation: Many serious illnesses such as cancer, failure of major organs (kidney, heart, liver, or lung), and serious brain disease such as Alzheimer's dementia may be considered irreversible early on. There is no cure, but the patient may be kept alive for prolonged periods of time if the patient receives life-sustaining treatments. Late in the course of the same illness, the disease may be considered terminal when, even with treatment, the patient is expected to die. You may wish to consider which burdens of treatment you would be willing to accept in an effort to achieve a particular outcome. This is a very personal decision that you may wish to discuss with your physician, family, or other important persons in your life.

"Life-sustaining treatment" means treatment that, based on reasonable medical judgment, sustains the life of a patient and without which the patient will die. The term includes both life-sustaining medications and artificial life support such as mechanical breathing machines, kidney dialysis treatment, and artificial hydration and nutrition. The term does not include the administration of pain management medication, the performance of a medical procedure necessary to provide comfort care, or any other medical care provided to alleviate a patient's pain.

"Terminal condition" means an incurable condition caused by injury, disease, or illness that according to reasonable medical judgment will produce death within six months, even with available life-sustaining treatment provided in accordance with the prevailing standard of medical care.

Explanation: Many serious illnesses may be considered irreversible early in the course of the illness, but they may not be considered terminal until the disease is fairly advanced. In thinking about terminal illness and its treatment, you again may wish to consider the relative benefits and burdens of treatment and discuss your wishes with your physician, family, or other important persons in your life.

A "qualified patient" is a person diagnosed and certified in writing to be afflicted with a terminal or irreversible condition that has been diagnosed and certified in writing by the attending physician.

Upon Receipt of a Directive

Make sure the DIRECTIVE is properly witnessed.

Make the DIRECTIVE part of the patient's medical record. Federal law requires all Medicare certified facilities to document whether a patient has executed a written advance directive. Texas law requires a person signing a DIRECTIVE to inform their physician that they have done so.

Note whether the patient has designated another person to make treatment decisions for them under this DIRECTIVE should he/she become incompetent or otherwise incapable of communication.

Carrying Out a Directive

This DIRECTIVE has no operative effect until:

- a. the attending physician diagnoses and certifies in writing that the patient has a "terminal or irreversible condition;" and
- b. the attending physician determines that death is imminent within minutes or hours, even with the use of all available medical treatment provided within the prevailing standard of care.

These facts must be noted in the patient's medical record.

The following additional steps are suggested:

- a. Is the patient pregnant? (The DIRECTIVE is invalid and has no effect if the patient is pregnant at the time it is to be carried out.)
- b. Is the patient incompetent or otherwise incapable of communication? If so, enter that information in the patient's current medical record before proceeding to step 3.
- c. If the patient designated another person to make treatment decisions for them in the DIRECTIVE (see #3 under "Upon Receipt of a Directive" above), has that person been contacted and consulted?
- d. Note that the DIRECTIVE may be carried out in the event the patient is incompetent or otherwise incapable of communication and has not designated another person to make a treatment decision.
- e. Has the DIRECTIVE been revoked? (Should you receive such revocation from or on behalf of a patient, enter that information promptly and prominently in the patient's current medical record.)

Liability Questions

The law provides that a physician who carries out the DIRECTIVE is protected from civil and criminal liability, unless he/she fails to exercise reasonable care when applying the patient's DIRECTIVE. However, if you do not choose to carry out the DIRECTIVE of a qualified patient, you may be subject to criminal and civil liability, and disciplinary action by the Texas State Board of Medical Examiners.

Review process and immunity from disciplinary action, and civil and criminal liability. If the patient's attending physician refuses to honor a DIRECTIVE, an ethics or medical committee may review that refusal. The attending physician cannot be a member of the review committee, and the patient must be given life-sustaining treatment during the review process. The patient or the person responsible for making the health care decisions on behalf of the patient ("surrogate") must be given at least 48 hours notice that the committee will be meeting to discuss the patient's DIRECTIVE. The patient or surrogate is entitled to attend the committee meeting. The patient or surrogate must also receive a written explanation of the decision reached through the review process. This written explanation must appear in the patient's medical record.

If the attending physician, the patient, or the surrogate do not agree with the decision resulting from the review process, then the attending physician must make a reasonable effort to transfer the patient to a physician who will comply with the DIRECTIVE. If the patient resides in a health care facility, then the facility's personnel must assist the physician in arranging for the transfer of the patient to another physician, an alternative care setting within that facility, or another facility that will comply with the DIRECTIVE.

If the patient or the surrogate is requesting life-sustaining treatment and the attending physician believes that the administration of the treatment would be inappropriate, the appropriateness of the treatment may be reviewed by an ethics or medical committee as described above. If the review process determines that the requested treatment is not appropriate, then the physician must make a reasonable attempt to transfer the patient to a physician who will provide the life-sustaining treatment. The health care facility in which the patient resides must assist the physician in attempting to transfer the patient to another physician, an alternative care setting within that facility, or another facility that will provide the requested treatment. The patient must be given life-sustaining treatment pending transfer. However, neither the physician nor the health care facility are obligated to provide the life-sustaining treatment after the 10th day after the patient or surrogate receives the written notification of the decision reached via the review process.

If a health care facility and the physician follow the review process described above, the physician and the health care facility will be immune from disciplinary action, or civil and criminal liability for refusing to honor a patient's or surrogate's treatment decision or DIRECTIVE.

A physician's refusal to honor a treatment decision or a DIRECTIVE need not be reviewed by an ethics or medical committee. Even so, the refusing physician must continue to provide life-sustaining treatment to the patient, but only until the physician and health care facility have had a reasonable opportunity to transfer the patient to another physician or health care facility that will comply with the DIRECTIVE or treatment decision. If an ethics or medical committee does not review the refusal, however, the physician and the health care facility lose their immunity to disciplinary action, or civil or criminal liability.

Directive to Physicians and Family Members

Instructions for completing this document:

This is an important legal document known as a "Directive to Physicians." It is designed to help you communicate your wishes about medical treatment at some time in the future when you are unable to make your wishes known because of illness or injury. These wishes are usually based on personal values. In particular, you may want to consider what burdens or hardships of treatment you would be willing to accept for a particular amount of benefit obtained if you were seriously ill.

You are encouraged to discuss your values and wishes with your family or chosen spokesperson, as well as your physician. Your physician, other health care provider, or medical institution may provide you with various resources to assist you in completing your advance directive. Brief definitions are listed below and may aid you in your discussions and advance planning. Initial the treatment choices that best reflect your personal preferences. Provide a copy of your directive to your physician, usual hospital, and family or spokesperson. Consider a periodic review of this document. By periodic review, you can best assure that the directive reflects your preferences.

In addition to this Directive to Physicians, Texas law provides for two other types of directives that can be important during a serious illness. These are the Medical Power of Attorney and the Out-of-Hospital Do-Not-Resuscitate Order. You may wish to discuss these with your physician, family, hospital representative, or other advisers. You may also wish to complete a directive related to the donation of organs and tissues.

Information is provided courtesy of the Texas Medical Association for general information and is not intended to serve as legal advice. Any legal advice needed for a particular situation should be obtained from an attorney.

Permission is granted to reproduce this document.
