



PLANNING FOR YOUR...

# PEACE OF MIND

A GUIDE TO MEDICAL AND LEGAL DECISIONS

*Dear Friend,*

*This booklet was designed to assist you in preplanning by providing frequently asked questions, general information and forms on MIPeace of Mind Registry, Michigan's Statutory Will, Patient Advocate law and organ donation.*

*This booklet is not intended to replace the advice of a legal professional when it comes to making long-term care and end-of-life decisions.*

*For additional information or if you are in need of a referral for legal counsel, please contact:*

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ADVANCE DIRECTIVES  
FOR HEALTH CARE:  
MICHIGAN'S PATIENT  
ADVOCATE LAW

# Frequently Asked Questions

**1. What is an “advance directive”?**

An advance directive is a written document in which a competent individual gives instructions about his or her health care, that will be implemented at some future time should that person lack the ability to make decisions for himself or herself.

**2. Must I have an advance directive?**

No. The decision to have an advance directive is purely voluntary. No family member, hospital, or insurance company can force you to have one, or dictate what the document should say if you decide to write one.

**3. Are there different types of advance directives?**

Yes. There are three types: a durable power of attorney for health care, a living will, and a do-not-resuscitate order. Living wills are not recognized in Michigan statute. However, in case of a dispute as to your health care desires, your written or oral statements regarding your wishes pertaining to health care or the withdrawal or refusal of treatment may be used as evidence in court, if you are unable to participate in health care decisions. You may wish to consult an attorney for further information regarding durable powers of attorney or living wills.

**4. What is a “designation of patient advocate”?**

In Michigan statute, a designation of patient advocate is the term used for a durable power of attorney for health care, also known as a health care proxy—a document in which you give another person the power to make medical treatment and related personal care and custody decisions for you.

**5. Is a durable power of attorney for health and/or mental health care legally binding in Michigan?**

Yes, based on a state law passed in 1990 (PA 312 of 1990), later replaced by PA 386 of 1998 and PA 532 of 2004 (sections 700.5506-700.5515 of the *Michigan Compiled Laws*).

**6. Who is eligible to create a designation of patient advocate?**

Anyone who is 18 years of age or older and of sound mind is eligible.

**7. What is the title of the person to whom I give decision-making power?**

That person is known as a “patient advocate.”

**8. Who may I appoint as a patient advocate?**

Anyone who is 18 years of age or older may be appointed. You should choose someone you trust who can handle the responsibility and who is willing to serve.

**9. Does a patient advocate need to accept the responsibility before acting?**

Yes, he or she must sign an acceptance. This does not have to be done at the time you sign the document. Nevertheless, you should speak to the person you propose to name as patient advocate to make sure he or she is willing to serve.

**10. When can the patient advocate act in my behalf?**

The patient advocate can make decisions for you only when you are unable to participate in medical treatment decisions. The patient advocate for mental health treatment can make decisions for you when you are unable to give informed consent for mental health treatment.

**11. Why might I be unable to participate in medical and mental health treatment decisions?**

You may become temporarily or permanently unconscious from disease, accident, or surgery. You may be awake but mentally unable to make decisions about your care due to disease or injury. In addition, you might have a temporary loss of ability to make or communicate decisions if, for example, you had a stroke. Others might suffer long-term or permanent loss through a degenerative condition such as Alzheimer's disease. Your doctor and a mental health professional, after examination, may determine that you are unable to give informed consent for mental health treatment.

**12. Who determines that I am no longer able to participate in these decisions?**

Your attending physician and one other physician or licensed psychologist must make that determination. If your religious beliefs prohibit an examination to make this determination, and this is stated in the designation document, you must indicate in the document how the determination will be made. For mental health treatment, your physician and a mental health professional must make that determination.

**13. What powers can I give a patient advocate?**

You can give a patient advocate the power to make those personal care decisions you normally make for yourself. For example, you can give your patient advocate power to consent to or refuse medical treatment for you, to arrange for home health care or adult day care, arrange care in a nursing home, or move you to a home for the aged. A patient advocate may also be empowered to make an anatomical gift of all or part of the patient's body. According to state law, if you were to become incompetent while pregnant, your patient advocate could not authorize a medical treatment decision to withhold or withdraw treatment that would result in your death. You can give your patient advocate for mental health the power to obtain and consent to mental health care and treatment that is in your best interest, including arranging for appropriate residential placement and making payments to secure the necessary treatment.

**14. Can I give my patient advocate the authority to make decisions to withhold or withdraw life-sustaining treatment, including food and water administered through tubes?**

Yes, but you must express in a clear and convincing manner that the patient advocate is authorized to make such decisions, and you must acknowledge that these decisions could or would allow your death. If you have specific desires as to when you want to forego life-sustaining treatment, you must describe in the document the specific circumstances in which he or she can act.

**15. Do I have the right to express in the document my wishes concerning medical treatment and personal care?**

Yes. You might, for example, express your wishes concerning the type of care you want during terminal illness. You might also express a desire not to be placed in a nursing home and a desire to die at home. Your patient advocate has a duty to try to follow your wishes.

**16. Is it important to express my wishes in the designation of patient advocate document?**

Yes. Your wishes might not be followed if others are unaware of them. It can also be a great burden for your patient advocate to make a decision for you without your specific guidance.

**17. Can I revoke my patient advocate designation?**

Yes. A patient may revoke his or her designation at any time and in any manner sufficient to communicate an intent to revoke. However, for mental health treatment, you may waive your right to revoke your Patient Advocate Designation for up to 30 days to allow for treatment.

**18. Can I appoint a second person to serve as patient advocate in case the first-named person is unable to serve?**

Yes. In fact, this is highly recommended.

**19. Must a designation of patient advocate document be witnessed?**

Yes. A designation must be executed in the presence of and signed by two witnesses. The witnesses must not include your spouse, parent, child, grandchild, sibling, presumptive heir, known devisee at the time of the witnessing, physician, or patient advocate. Witnesses must also not include an employee of your life or health insurance provider, a health facility that is treating you, a home for the aged where you reside, or a community mental health services program or hospital that is providing mental health treatment to you.

**20. In general, what should I do before completing an advance directive?**

Give careful consideration to whom you might choose to be your advocate or to act in your place. Think about your treatment wishes. Discuss the issue with family members. Talk with your minister, rabbi, priest, or other spiritual leader if you feel it would be helpful. Bring the subject up with your doctor. Have a discussion about the benefits and burdens of various types of treatment.

**21. Are there issues I should give particular attention to?**

Yes. Many people have strong feelings about the administration of food and water, either by tube down their throat, a tube placed surgically into their stomach, or intravenously. You should consider and indicate in what circumstances, if any, you wish such procedures withheld or withdrawn. Also, bear in mind that your opinions regarding your own health care may change over time. Your wishes regarding medical treatment when you are relatively young may be quite different from your wishes when you reach advanced age, so you may wish to review your decisions periodically with your patient advocate.

**22. Is there a standard form for an advance directive?**

No. While this publication contains a sample form which you may choose to use to designate a patient advocate, you may use a form designed by an organization, you may hire an attorney to draft the necessary documentation, or you may write out the document yourself. If you write the documentation yourself, make sure that it is legible. Under state law, the designation must be in writing, you must sign the document, date it, and have it witnessed as described above.

A person accepting the responsibility to act as a patient advocate must sign an acceptance to the designation document which contains provisions required by statute. **(These statutory provisions are listed in sections A through J found in Part VI of the attached Designation of Patient Advocate form.)**

**23. What if there is a dispute as to how my designation of patient advocate should be carried out?**

If there is a dispute as to whether your patient advocate is acting consistent with your best interest, the probate court may be petitioned to resolve the dispute. The court can remove a patient advocate who acts improperly in your behalf.

# Guide for Using the Designation of Patient Advocate Form

The pages following this guide contain a blank copy of a Designation of Patient Advocate form which you may use to designate your patient advocate. **This is a suggested form only. Michigan law does not require a specific form to be used.** If you wish to provide more details in your designation of patient advocate document, you may attach additional pages to it containing those details. This guide is intended to help clarify the purposes of the various provisions in this form.

THIS FORM PROVIDES A DESIGNATION OF PATIENT ADVOCATE FOR PURPOSES OF CARE, CUSTODY, MEDICAL AND MENTAL HEALTH TREATMENT. IF YOU DESIRE A MORE COMPREHENSIVE DOCUMENT THAT ALSO GRANTS AUTHORITY FOR HANDLING FINANCIAL, BUSINESS OR PERSONAL AFFAIRS, PLEASE CONSULT AN ATTORNEY.

## SECTION I: APPOINTMENT OF ADVOCATE

The first several blanks in the form are for putting your name and the name of the person you are appointing as your advocate and successor advocate. You may appoint ANY person who is at least 18 years of age or older and of sound mind to be your advocate. It is important that you consult with the person you are naming and secure his or her consent before naming that person.

The law requires that, before you can be considered unable to participate in medical or mental health treatment decisions, a determination must be made by your attending physician and at least one other physician, a licensed psychologist, or a mental health professional. Because some individuals' religious beliefs may not allow for an examination by a physician, the document may state the religious objection and indicate how the determination shall be made.

## SECTION II: REVOCATION

This section clarifies that you may revoke your patient advocate designation at any time by clearly communicating your intent to do so. With regard to mental health treatment, you may choose to waive your right to revoke for up to 30 days.

## SECTION III: GRANTS OF AUTHORITY AND RESPONSIBILITY

This is a crucial section of the designation of patient advocate document. You may check any, all, or none of the grants of power. If you do not check any of the options, you will need to attach your own written grants of power to indicate what powers your advocate will have.

This section contains the very important provision regarding whether decisions to withhold or withdraw treatment, which would allow you to die, will be made for you. Due to the serious nature of this granting of power, Michigan law requires that you express in a clear and convincing manner that your patient advocate is authorized to make such a decision, and that you acknowledge that such a decision could or would allow your death. If you do grant this authority, you should make clear to your patient advocate your desires for treatment. Section IV of the form provides a space for setting forth your specific desires.

## **SECTION IV: DESIRES AND PREFERENCES FOR TREATMENT**

This is the section of the document where you may state your desires regarding the care, custody, and medical treatment you want or do not want to receive, and under what circumstances treatment should be administered, continued, refused, or withdrawn. Here you may direct your treatment regarding mechanical life-supports (like respirators or kidney dialysis), ordinary or routine treatments (simple surgeries, use of antibiotics, insulin, heart or blood pressure medications, blood transfusions, pain medication, etc.), and basic care (including the provision of food and water). As with the other sections of your designation of patient advocate document, you may attach additional pages if the space provided is inadequate.

MICHIGAN LAW DOES NOT REQUIRE THAT YOU FILL OUT THIS SECTION OR PROVIDE AN ATTACHMENT ACCOMPLISHING THE SAME PURPOSE. The law stipulates that your advocate must act in your best interest and that health care providers should comply with your advocate's direction if he or she is reasonably believed to be acting within the authority granted in your designation of the patient advocate. Thus, directions your advocate gives which are consistent with your statement in this section are not likely to be questioned.

## **SECTION V: SIGNATURE AND WITNESSING**

Michigan law requires that before a patient advocate can execute any of his or her duties and responsibilities, he or she must sign an Acceptance to the designation. The first provision of Section V simply insures that you are aware that this designation must be signed before it becomes effective. It also will indicate whether the designation and acceptance process were completed at one time.

Next, your signature is required. Finally, the requirements pertaining to the witnessing of the designation are contained within this section. Please note the limitations on who may serve as a witness.

## **SECTION VI: ACCEPTANCE OF THE DESIGNATION**

As noted above, the advocate whom you name must sign an Acceptance of your designation before he or she can act on your behalf. Michigan law requires that certain information regarding the rights, authorities, and limits related to patient advocate designations be contained within this Acceptance. The Acceptance provided in Section VI of the form meets these requirements.

The name of the person you are appointing should appear in the first blank, and your name (patient) should appear in the second blank. The third blank should contain the date on which you signed your designation of patient advocate document. The Acceptance may be signed on the same day, or at a later time. Finally, your advocate's signature and the date of his or her signing are needed at the end of the Acceptance.

# Designation of Patient Advocate (Durable Power of Attorney for Health Care)

(Please print or type required information)

## I. Appointment of Patient Advocate

I, \_\_\_\_\_  
*(Your full name)*

of \_\_\_\_\_  
*(Your complete legal address)*

hereby appoint \_\_\_\_\_  
*(Person you are appointing as your Patient Advocate)*

residing at \_\_\_\_\_  
*(Person's complete address)*

as my Patient Advocate with the following power to be exercised in my name and for my benefit, for the purpose of making decisions regarding my care, custody, and medical and/or mental health treatment. This Designation of Patient Advocate shall not be affected by my disability or incapacity, and is governed by sections 700.5506-700.5515 of the *Michigan Compiled Laws*.

In the event that the above-named Patient Advocate is unable or expresses an intent not to serve as advocate, I then appoint

\_\_\_\_\_ residing at \_\_\_\_\_  
*(Name of successor Patient Advocate)* *(Address)*

to serve as my successor Patient Advocate.

This designation of Patient Advocate shall be exercisable (check one):

When my attending physician and at least one other physician or licensed psychologist determine upon examination that I am unable to participate in medical decisions; puts the determination in writing; and makes it part of my medical record. For mental health treatment, when a physician and a mental health professional both certify in writing after examination that I am unable to give informed consent to mental health treatment.

My religious beliefs prohibit my examination as detailed above. Therefore, the determination of my inability to participate in medical decisions or give informed consent to mental health treatment shall be made as follows:

\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_

*(use attached sheet if necessary)*

I designate the following physician(s) and/or mental health practitioner(s) to make the determination as to whether I am able to give informed consent for mental health treatment:

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I understand that if any of these individuals are unwilling or unable to make this determination within a reasonable time, the required examination and determination may be made by another physician or mental health professional, as appropriate.

Before the powers granted in this designation of patient advocate are exercisable, a copy of it shall be placed in my medical record with my attending physician and, if applicable, with the facility where I am located.

Michigan law states that an individual designated as a patient advocate has the following authority, rights, responsibilities, and limitations:

- (a) A patient advocate shall act in accordance with the standards of care applicable to fiduciaries in exercising his or her powers.
- (b) A patient advocate shall take reasonable steps to follow the desires, instructions, or guidelines given by the patient while the patient was able to participate in decisions regarding care, custody, medical treatment, or mental health treatment, as applicable, whether given orally or as written in the designation.
- (c) A patient advocate shall not exercise powers concerning the patient's care, custody, and medical or mental health treatment that the patient, if the patient were able to participate in the decision, could not have exercised on his or her own behalf.
- (d) The designation cannot be used to make a medical treatment decision to withhold or withdraw treatment from a patient who is pregnant that would result in the pregnant patient's death.
- (e) A patient advocate may make a decision to withhold or withdraw treatment that would allow a patient to die only if the patient has expressed in a clear and convincing manner that the patient advocate is authorized to make such a decision, and that the patient acknowledges that such a decision could or would allow the patient's death.
- (f) A patient advocate may choose to have the patient placed under hospice care.
- (g) A patient advocate under this section shall not delegate his or her powers to another individual without prior authorization by the patient.
- (h) With regard to mental health treatment decisions, the patient advocate shall only consent to the forced administration of medication or to inpatient hospitalization, other than hospitalization as a formal voluntary patient under section 415 of the mental health code, 1974 PA 258, MCL 330.1415,

if the patient has expressed in a clear and convincing manner that the patient advocate is authorized to consent to that treatment. If a patient is hospitalized as a formal voluntary patient under an application executed by his or her patient advocate, the patient retains the right to terminate the hospitalization under section 419 of the mental health code, 1974 PA 258, MCL 330.1419.

A patient advocate designation is suspended when the patient regains the ability to participate in decisions regarding medical treatment or mental health treatment, as applicable. The suspension is effective as long as the patient is able to participate in those decisions. If the patient subsequently is determined under MCL 700.5508 or 700.5515 to be unable to participate in decisions regarding medical treatment or mental health treatment, as applicable, the patient advocate's authority, rights, responsibilities, and limitations are again effective.

## II. Revocation

I retain the right to revoke this designation of patient advocate as to medical treatment at any time, and by any means whereby I may communicate an intent to revoke it.

As to mental health treatment (check one):

- I retain the right to revoke this designation of patient advocate at any time, and by any means whereby I may communicate an intent to revoke it.
- I waive the right to revoke the powers granted in this Patient Advocate Designation regarding mental health treatment decisions. This waiver does not affect the rights afforded to me to terminate formal voluntary hospitalization under MCL 330.1419. Furthermore, if I communicate at a later time that I wish to revoke this Patient Advocate Designation for mental health treatment while I am deemed unable to participate in decisions regarding mental health treatment, and I am receiving mental health treatment at that time, mental health treatment shall not continue for more than thirty (30) days.

If you wish to revoke a Designation of Patient Advocate, it is best to do it in writing and to provide a copy of the revocation to your physician, mental health professional or health care facility.

### III. Grants of Authority and Responsibility

With respect to my physical and medical treatment, I am granting to my advocate the authorities and responsibilities indicated below. [Check those you are authorizing and add any additional authorities and responsibilities below. Use more sheets if necessary.]

- Access to and control over my medical records and information.
- Power to employ and discharge physicians, nurses, therapists, and any other care providers, and to pay them reasonable compensation.
- Power to give informed consent to receiving any medical treatment or diagnostic, surgical, or therapeutic procedure.
- Power to refuse, or to authorize the discontinuance of, any medical treatment, or diagnostic, surgical, or therapeutic procedure.
- I AUTHORIZE MY ADVOCATE TO MAKE A DECISION TO WITHHOLD OR WITHDRAW TREATMENT THAT WOULD ALLOW MY DEATH AND FURTHER ACKNOWLEDGE THAT SUCH A DECISION TO WITHHOLD OR WITHDRAW TREATMENT COULD ALLOW MY DEATH. I INSTRUCT MY ADVOCATE IN SECTION IV AS TO MY DESIRES REGARDING THE WITHHOLDING OR WITHDRAWAL OF TREATMENT THAT COULD BRING ABOUT MY DEATH. (If you have checked this item, it is strongly recommended that you use the optional Section IV to specify your desires.)
- Power to execute waivers, medical authorizations, and such other approval as may be required to permit or authorize care which I may need, or to discontinue care that I am receiving.
- Arrange and consent to inpatient psychiatric hospitalization and treatment as a formal voluntary patient, pursuant to MCL 330.1415, if it is in my best interest and is the least restrictive treatment to protect my safety and/or the safety of others. However, if I am hospitalized as a formal voluntary patient under an application executed by my patient advocate, I retain the right to terminate the hospitalization in accordance with MCL 330.1419.
- To make an anatomical gift of all or part of my body as I have designated on my Organ Donation form and in accordance with the Public Health Code, MCL 333.10101 to 333.10123. This authority remains exercisable after my death.





## VI. Acceptance to the Designation of Patient Advocate

I, \_\_\_\_\_ hereby accept the  
(Print patient advocate's name)

responsibilities conferred upon me by \_\_\_\_\_  
(Print patient's name)

to serve as patient advocate in this document executed on

\_\_\_\_\_. I maintain the right to revoke this acceptance at  
(Date)

any time and by any means whereby I may communicate a desire to revoke it. By providing my signature below, I acknowledge that I have read and understand the requirements of Michigan law pertaining to the execution of a designation of a patient advocate, set out in sections (A) through (J) below.

- (A) This designation is not effective unless the patient is unable to participate in medical or mental health treatment decisions. If the patient advocate designation includes the authority to make an anatomical gift as described in MCL 700.5506, the authority remains exercisable after the patient's death.
- (B) A patient advocate shall not exercise powers concerning the patient's care, custody, and medical or mental health treatment that the patient, if the patient were able to participate in the decision, could not have exercised on his or her own behalf.
- (C) This designation cannot be used to make a medical treatment decision to withhold or withdraw treatment from a patient who is pregnant that would result in the pregnant patient's death.
- (D) A patient advocate may make a decision to withhold or withdraw treatment that would allow a patient to die only if the patient has expressed in a clear and convincing manner that the patient advocate is authorized to make such a decision, and that the patient acknowledges that such a decision could or would allow the patient's death.
- (E) A patient advocate shall not receive compensation for the performance of his or her authority, rights, and responsibilities, but a patient advocate may be reimbursed for actual and necessary expenses incurred in the performance of his or her authority, rights, and responsibilities.
- (F) A patient advocate shall act in accordance with the standards of care applicable to fiduciaries when acting for the patient and shall act consistent with the patient's best interest. The known desires of the patient expressed or evidenced while the patient is able to participate in medical or mental health treatment decisions are presumed to be in the patient's best interest.
- (G) A patient may revoke his or her patient advocate designation at any time and in any manner sufficient to communicate an intent to revoke.
- (H) A patient may waive his or her right to revoke the patient advocate designation as to the power to make mental health treatment decisions and, if such a waiver is made, his or her ability to revoke as to certain treatment will be delayed for up to 30 days after the patient communicates his or her intent to revoke.

- (I) A patient advocate may revoke his or her acceptance to the designation at any time and in any manner sufficient to communicate an intent to revoke.
- (J) A patient admitted to a health facility or agency has the rights enumerated in section 20201 of the Public Health Code, 1978 PA 368, MCL 333.20201.

Some, but not all, of the rights enumerated in section 20201 include:

A patient or resident in a health facility or agency (including a hospital or nursing home) will not be denied appropriate care on the basis of race, religion, color, national origin, sex, age, disability, marital status, sexual preference, or source of payment.

Patients and residents are also entitled to:

- inspect, or receive for a reasonable fee, a copy of their medical records, to have the confidentiality of those records maintained and to refuse the release to a person outside the health facility or agency except as required by a transfer to another health care facility or otherwise required by law.
- receive adequate and appropriate care, and to receive from the appropriate individual within the facility information about his or her medical condition, proposed course of treatment, and prospects of recovery, in terms which the patient or resident can understand unless medically contraindicated.
- refuse treatment to the extent provided by the law and to be informed of the consequences of that refusal. If a refusal of treatment prevents a health facility or its staff from providing appropriate care according to ethical and professional standards, the relationship with the patient or resident may be terminated upon reasonable notice.
- information about the facility's policies and procedures for initiation, review, and resolution of patient complaints.
- to exercise his or her rights as a patient or resident and as a citizen, and to this end may present grievances or recommend changes in policies and services on behalf of himself or herself or others to the health facility or agency staff, to governmental officials, or to another person of his or her choice within or outside the health facility or agency, free from restraint, interference, coercion, discrimination, or reprisal.
- receive and examine an explanation of his or her bill regardless of the source of payment and to receive, upon request, information relating to financial assistance available through the facility.
- associate and have private communications and consultations with his or her physician, attorney, or any other person of his or her choice, and to send and receive personal mail unopened on the same day it is received at the health facility or agency, unless medically contraindicated as documented by the attending physician in the medical record.

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*(Patient Advocate's Signature)*

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*(Date)*