

# The Patient's Right to Make Medical Decisions

## How Long Can I Make My Medical Decisions?

You, the patient, always have the right to medical decisions for yourself while you have the capacity to do so. This right includes the ability to refuse treatment including artificial nutrition and hydration. If a doctor determines that you do not have sufficient capacity to make medical decisions, that is, give "informed consent," then the doctor will appoint someone for you.

## What If I Become Incapacitated and Cannot Make My Own Medical Decisions?

- **Proxy**

The answer depends upon whether you have planned for this situation. If you have not, then the attending physician will follow a procedure that leads to the appointment of a "proxy" or spokesperson for you. After the doctor notifies family and friends, the doctor identifies the person selected by consensus among the family and friends of the patient. The person who knows the wishes of the patient the best should be selected as proxy. The law does not provide a priority or "pecking order" for the person that the doctor should appoint first. The doctor makes a notation in the chart that you "lack decisional capacity" and identifies the proxy selected.

- **Agent**

If you have planned, you may have signed a durable power of attorney for health care. This type of power of attorney appoints an agent to decide for you only when you are not able to do so because of your incapacity. The power is "durable" because your agent may exercise it although you are disabled.

## What Authority Will My Representative Have Over My Medical Decisions?

Your proxy or agent will have many significant powers concerning your care including the right to:

- consent *or refuse* care;
- enter a "Do Not Resuscitate" ("DNR") order;
- transfer you to any medical or care facility for care; and,
- enter into contracts for your care.

## Will My Representative Follow My Wishes?

Your representative should determine your wishes concerning your medical treatment and care. The best time to do this, of course, is before you need the care. Even when you are receiving care and incapacitated, your representative should determine your wishes if you can express them. If your representative cannot determine your wishes, then he or she should decide what is best for you as he or she may determine. If you have left a "living will" or "declaration as to medical or surgical treatment," then the representative should use the living will as a guide if you suffer from a terminal condition.

The best way to make sure that your representative carries out your wishes is to select your agent in a durable power of attorney for health care. Without this document, you may have no control over who makes the decisions. As a result, your wishes may be defeated.

Note that a *court-appointed guardian may not remove the agent acting under a durable health care power of attorney unless the agent is unwilling to act or is unfit!* §15-14-501(1), C.R.S. This provision is important in making sure that your wishes are honored if a family dispute arises concerning your care.

### **Why Should I Have a Durable Power of Attorney If I Have a Living Will?**

A living will or declaration as to medical or surgical treatment is a written statement that the patient does not want to have his or her life extended through "life-sustaining procedures" if the patient suffers from a terminal disease or condition. The living will does not appoint a person to decide for you and does not apply if you do not suffer from a terminal illness. In Colorado, you may not be terminally ill although you are in a "persistent vegetative state" or coma that is indefinite. Consequently, the living will does not say what to do for these situations.

### **Can I Change My Mind about My Representative's Powers over My Care?**

Yes. You may do so anytime. The patient's *objection* to the acts of either a proxy or an agent *revokes the authority of the representative to make the decisions* to which the patient objects *even if the patient appears to the representative to be clearly incapacitated* or the patient's objections are "unreasonable!" §15-18.5-103(5), C.R.S. and §15-14-506(4)(a), C.R.S. Medical staff often ignores the objections of the patient and accepts the decisions of the proxy or agent. In such cases, a court should appoint a guardian.