

SUGGESTIONS FOR PREPARING WILL TO LIVE DURABLE POWER OF ATTORNEY

*(Please read the document itself before reading this.
It will help you better understand the suggestions.)*

YOU ARE NOT REQUIRED TO FILL OUT ANY PART OF THIS "WILL TO LIVE" OR ANY OTHER DOCUMENT SUCH AS A LIVING WILL OR DURABLE POWER OF ATTORNEY FOR HEALTH CARE. NO ONE MAY FORCE YOU TO SIGN THIS DOCUMENT OR ANY OTHER OF ITS KIND.

The Will to Live form starts from the principle that the presumption should be for life. If you sign it without writing any "SPECIAL CONDITIONS," you are giving directions to your health care provider(s) and health care agent¹ to do their best to preserve your life.

Some people may wish to continue certain types of medical treatment when they are terminally ill and in the final stages of life. Others may not.

If you wish to refuse some specific medical treatment, the Will to Live form provides space to do so ("SPECIAL CONDITIONS"). You may make special conditions for your treatment when your death is imminent, meaning you will live no more than a week even if given all available medical treatment; or when you are incurably terminally ill, meaning you will live no more than three months even if given all available medical treatment. There is also space for you to write down special conditions for circumstances you describe yourself.

The important thing for you to remember if you choose to fill out any part of the "SPECIAL CONDITIONS" sections of the Will to Live is that you must be very specific in listing what treatments you do not want. Some examples of how to be specific will be given shortly, or you may ask your physician what types of treatment might be expected in your specific case.

Why is it important to be specific? Because, given the pro-euthanasia views widespread in society and particularly among many (not all) health care providers, there is great danger that a vague description of what you do not want will be misunderstood or distorted so as to deny you treatment that you do want.

Many in the medical profession as well as in the courts are now so committed to the

¹ Some states use the terms "attorney in fact," "surrogate," "designee," and "representative" instead of "agent." They are synonymous for purposes of these suggestions.

quality of life ethic that they take as a given that patients with severe disabilities are better off dead and would prefer not to receive either life-saving measures or nutrition and hydration. So pervasive is this "consensus" that it is accurate to say that in practice it is no longer true that the "presumption is for life" but rather for death. In other words, instead of assuming that a now incompetent patient would want to receive treatment and care in the absence of clear evidence to the contrary, the assumption has virtually become that since any "reasonable" person would want to exercise a "right to die," treatment and care should be withheld or withdrawn unless there is evidence to the contrary. The Will to Live is intended to maximize the chance of providing that evidence.

It is important to remember that you are writing a legal document, not holding a conversation, and not writing a moral textbook. The language you or a religious or moral leader might use in discussing what is and is not moral to refuse is, from a legal standpoint, often much too vague. Therefore, it is subject to misunderstanding or deliberate abuse.

The person you appoint as your health care agent may understand general terms in the same way you do. But remember that the person you appoint may die, or become incapacitated, or simply be unavailable when decisions must be made about your health care. If any of these happens, a court might appoint someone else you don't know in that person's place. Also remember that since the agent has to follow the instructions you write in this form, a health care provider could try to persuade a court that the agent isn't really following your wishes. A court could overrule your agent's insistence on treatment in cases in which the court interprets any vague language you put in your "Will to Live" less protectively than you meant it.

So, for example, do not simply say you don't want "extraordinary treatment." Whatever the value of that language in moral discussions, there is so much debate over what it means legally that it could be interpreted very broadly by a doctor or a court. For instance, it might be interpreted to require starving you to death when you have a disability, even if you are in no danger of death if you are fed.

For the same reason, do not use language rejecting treatment which has a phrase like "excessive pain, expense or other excessive burden." Doctors and courts may have a very different definition of what is "excessive" or a "burden" than you do. Do not use language that rejects treatment that "does not offer a reasonable hope of benefit." "Benefit" is a legally vague term. If you had a significant disability, a health care provider or court might think you would want no medical treatment at all, since many doctors and judges unfortunately believe there is no "benefit" to life with a severe disability.

What sort of language is specific enough if you wish to write exclusions? Here are some examples of things you might--or might not--want to list under one or more of the "Special Conditions" described on the form. Remember that any of these will prevent treatment ONLY under the circumstances--such as when death is imminent--described in the "Special Condition" you list it under. (The examples are not meant to be all inclusive--just samples of the type of thing you might want to write.)

"Cardiopulmonary resuscitation (CPR)." (If you would like CPR in some but not all circumstances when you are terminally ill, you should try to be still more specific: for example, you might write "CPR if cardiopulmonary arrest has been caused by my terminal illness or a complication of it." This would mean that you would still get CPR if, for example, you were the victim of smoke inhalation in a fire.) "Organ transplants." (Again, you could be still more specific, rejecting, for example, just a "heart transplant.")

"Surgery that would not cure me, would not improve either my mental or my physical condition, would not make me more comfortable, and would not help me to have less pain, but would only keep me alive longer."

"A treatment that will itself cause me severe, intractable, and long-lasting pain but will not cure me."

Pain Relief

Under the "General Presumption for Life," of your Will to Live, you will be given medication necessary to control any pain you may have "as long as the medication is not used in order to cause my death." This means that you may be given pain medication that has the secondary, but unintended, effect of shortening your life. If this is not your wish, you may want to write something like one of the following under the third set of "Special Conditions" (the section for conditions you describe yourself):

"I would like medication to relieve my pain but only to the extent the medication would not seriously threaten to shorten my life." OR

"I would like medication to relieve my pain but only to the extent it is known, to a reasonable medical certainty, that it will not shorten my life."

Think carefully about any special conditions you decide to write in your "Will to Live." You may want to show them to your intended agent and a couple of other people to see if they find them clear and if they mean the same thing to them as they mean to you. Remember that how carefully you write may literally be a matter of life or death--your own.

AFTER WRITING DOWN YOUR SPECIAL CONDITIONS, IF ANY, YOU SHOULD MARK OUT THE REST OF THE BLANK LINES LEFT ON THE FORM FOR THEM (JUST AS YOU DO AFTER WRITING OUT THE AMOUNT ON A CHECK) TO PREVENT ANY DANGER THAT SOMEBODY OTHER THAN YOU COULD WRITE IN SOMETHING ELSE.

IT IS WISE TO REVIEW YOUR WILL TO LIVE PERIODICALLY TO ENSURE THAT IT STILL GIVES THE DIRECTIONS YOU WANT FOLLOWED.

Robert Powell Center for Medical Ethics
National Right to Life
www.nrlc.org ~ (202) 378-8862

How to use the Utah Will to Live Form – SUGGESTIONS AND REQUIREMENTS:

1. This document allows you to designate a health care agent who will make health care decisions for you whenever you are unable to make them for yourself. As required by Utah law, the “SPECIAL POWER OF ATTORNEY” form authorizes your agent to give directions only through the use of a “DIRECTIVE TO PHYSICIANS AND PROVIDERS OF MEDICAL SERVICES” form. A “DIRECTIVE TO PHYSICIANS AND PROVIDERS OF MEDICAL SERVICES” form is included so that it may be given to your agent for use should you become incapacitated.
2. You should be aware that the Utah Personal Choice and Living Will Act does **not** say that you may give individualized instructions concerning medical treatment decisions – such as those in the “Will to Live” language – that your health care agent must follow. For that reason, you should be aware that there is a possibility this document may not be legally recognized in Utah. However, there are reasonable arguments – set forth in the document – why a Utah court might and hopefully will accept it as valid and put it into practice.
3. You must be at least 18 years old to name a health care agent through this document.
4. Your health care agent must be at least 18 years of age.
5. You must sign the “SPECIAL POWER OF ATTORNEY” form and have it notarized by a notary public.
6. Your health care agent will have the authority to use the “DIRECTIVE TO PHYSICIANS AND PROVIDERS OF MEDICAL SERVICES” form only after you become unable to give directions concerning health care decisions yourself.
7. The “SPECIAL POWER OF ATTORNEY” form will remain in effect until you revoke (cancel) it. You may revoke this document at any time. The revocation of the document may be oral, or written, or by destruction of the document. If the revocation is written, it must be signed and dated by you. (If you are unable to sign and date it yourself, you may direct someone to do it for you in your presence). If the revocation is oral, a witness at least 18 years of age must confirm your oral expression of an intent to revoke in writing and must sign and date this written confirmation.
8. You should tell your doctor about this document. You should also ask your doctor to keep a copy of this document as a part of your medical health record. Give copies of the signed original to your health care agent, family members, and anyone else you think appropriate. Keep the original document in a safe place that will be easily accessible to others in case of an emergency and tell someone where it is.

9. You should periodically review your document to be sure it complies with your wishes. Before making any changes, be aware that it is possible that the statutes controlling this document have changed since this form was prepared. Contact the Will to Live Project by visiting www.nrlc.org (click on “Will to Live”) or an attorney to determine if this form can still be used.
10. If you have any questions about this document or want assistance filling it out, please consult an attorney.

For additional copies of the Will to Live, please visit www.nrlc.org
and click on “Will to Live”

**Utah Health Care Agent
Will to Live Form**

I, _____,
of _____,
this _____ day of _____,

being of sound mind, willfully and voluntarily appoint

_____ of _____
as my agent and attorney-in-fact, without substitution, with lawful authority to execute a directive on my behalf under Section 75-2-1105, governing the care and treatment to be administered to or withheld from me at any time after I incur an injury, disease or illness which renders me unable to give current directions to attending physicians and other providers of medical services.

I have carefully selected my above-named agent with confidence in the belief that this person's familiarity with my desires, beliefs, and attitudes will result in directions to attending physicians and providers of medical services which would probably be the same as I would give if able to do so.

While I recognize that this and the following paragraphs which appear in bold print are not in the form prescribed by Utah Code Ann. Sec. 75-2-1106, I rely for their validity upon the provision in sec. 75-2-1102 which states "[T]he Legislature declares that this state recognizes the right to make binding written directives instructing physicians and other providers of medical services ... to provide only to the extent set forth in a directive, life-sustaining and other medical procedures."

In the alternative, I intend this document to serve as a durable power of attorney under Utah Code Ann. sec. 75-5-501. Finally, since I intend these paragraphs of this document to serve as clear and convincing evidence of my wishes, I also rely for the validity of my here stating my specific and binding instruction to my agent on my constitutional right not to be involuntarily deprived of life without due process of law and on my constitutionally protected liberty interest to direct the course of my medical treatment.

GENERAL PRESUMPTION FOR LIFE

I direct my health care provider(s) and health care agent to make health care decisions consistent with my general desire for the use of medical treatment that would preserve my life, as well as for the use of medical treatment that can cure, improve, reduce or prevent deterioration in, any physical or mental condition.

Food and water are not medical treatment, but basic necessities. I direct my health care provider(s) and health care agent to provide me with food and fluids, orally, intravenously, by tube, or by other means to the full extent necessary both to preserve my life and to assure me the optimal health possible.

I direct that medication to alleviate my pain be provided, as long as the medication is not used in order to cause my death.

I direct that the following be provided:

- the administration of medication;
- cardiopulmonary resuscitation (CPR); and
- the performance of all other medical procedures, techniques, and technologies, including surgery,

—all to the full extent necessary to correct, reverse, or alleviate life-threatening or health impairing conditions or complications arising from those conditions.

I also direct that I be provided basic nursing care and procedures to provide comfort care.

I reject, however, any treatments that use an unborn or newborn child, or any tissue or organ of an unborn or newborn child, who has been subject to an induced abortion. This rejection does not apply to the use of tissues or organs obtained in the course of the removal of an ectopic pregnancy.

I also reject any treatments that use an organ or tissue of another person obtained in a manner that causes, contributes to, or hastens that person's death.

The instructions in this document are intended to be followed even if suicide is alleged to be attempted at some point after it is signed.

I request and direct that medical treatment and care be provided to me to preserve my life without discrimination based on my age or physical or mental disability or the "quality" of my life. I reject any action or omission that is intended to cause or hasten my death.

I direct my health care provider(s) and health care agent to follow the policy above, even if I am judged to be incompetent.

During the time I am incompetent, my agent, as named above, is authorized to make medical decisions on my behalf, consistent with the above policy, after consultation with my health care provider(s), utilizing the most current diagnoses and/or prognosis of my medical condition, in the following situations with the written special instructions.

WHEN MY DEATH IS IMMINENT

A. If I have an incurable terminal illness or injury, and I will die imminently – meaning that a reasonably prudent physician, knowledgeable about the case and the treatment possibilities with

respect to the medical conditions involved, would judge that I will live only a week or less even if lifesaving treatment or care is provided to me – the following may be withheld or withdrawn:
(Be as specific as possible; SEE SUGGESTIONS.):

(Cross off any remaining blank lines.)

WHEN I AM TERMINALLY ILL

B. Final Stage of Terminal Condition. If I have an incurable terminal illness or injury and even though death is not imminent I am in the final stage of that terminal condition – meaning that a reasonably prudent physician, knowledgeable about the case and the treatment possibilities with respect to the medical conditions involved, would judge that I will live only three months or less, even if lifesaving treatment or care is provided to me – the following may be withheld or withdrawn:

(Be as specific as possible; SEE SUGGESTIONS.):

(Cross off any remaining blank lines.)

C. OTHER SPECIAL CONDITIONS:

(Be as specific as possible; SEE SUGGESTIONS.):

(Cross off any remaining blank lines.)

IF I AM PREGNANT

D. Special Instructions for Pregnancy. If I am pregnant, I direct my health care provider(s) and health care attorney in fact(s) to use all lifesaving procedures for myself with none of the above special conditions applying if there is a chance that prolonging my life might allow my child to be born alive. I also direct that lifesaving procedures be used even I am legally determined to be brain dead if there is a chance that doing so might allow my child to be born alive. Except as I specify by writing my signature in the box below, no one is authorized to consent to any procedure for me that would result in the death of my unborn child.

**DIRECTIVE TO PHYSICIANS AND PROVIDERS OF
MEDICAL SERVICES
(Pursuant to Section 75-2-1105, UCA)**

I, _____, certify that I am serving as the attending physician for _____, of _____, who has been under my care since the _____ day of _____, _____.

This declarant, _____, is currently suffering from the following injury, disease, or illness:

- i. I certify that I have explained to the declarant to the extent he/she is able to understand, and to the available persons acting as proxy, the reasonable alternatives for his/her care and treatment.
- ii. I certify that the care and treatment alternatives directed below are:

_____ (a) directed by the declarant; or

_____ (b) that the declarant has a physical or mental condition which renders him/her unable to give personal directions for care and treatment and that the care and treatment alternatives directed below are in my opinion, and in the opinion of the declarant's proxy, what the declarant would probably decide if able to give current directions concerning his/her care and treatment.

Date

Signature of attending physician

The following care and treatment or withholding of treatment is directed with respect to the declarant:

Person signing on declarant's behalf,
if applicable

Signature of declarant or person authorized
by law to sign directive as a proxy on behalf of
declarant

Address of Signer

City, County, and State of residence of Signer

We witnesses certify that each of us is 18 years of age or older, that we personally witnessed the declarant or a proxy sign this directive; that we are acquainted with the declarant and, if the foregoing was signed by a proxy, also the proxy; that we believe that care and treatment alternative directed above are in the interest of declarant and what declarant has decided or would probably decide for himself/herself if able to give current directions concerning his/her care or treatment; that neither of us signed the above directive for or on behalf of declarant; that we are not related to the declarant by blood or marriage nor are we entitled to any portion of declarant's estate according to the laws of intestate succession of this state or under any will or codicil of the declarant; that we are not directly financially responsible for declarant's medical care; and that we are not agents of any health care facility in which declarant may be a patient at the time of signing this directive.

Signature of Witness

Signature of Witness

Address of Witness

Address of Witness