

tion; (3) You do not want any life-sustaining procedures except as you specifically indicate in the form, and you can choose to receive artificial nourishment and/or hydration, a ventilator and/or CPR. No matter which of the three options you choose, you may also provide additional treatment preferences on the form.

Can my health care agent make decisions regarding my treatment in a terminal condition or state of permanent unconsciousness?

Unless you provide otherwise in your ADHC, the treatment preferences expressed in your ADHC are ineffective so long as you have a health care agent who is available and willing to make decisions on your behalf regarding the withholding or withdrawal of life-sustaining procedures and/or the provision of nourishment or hydration. However, your health care agent is required to take any treatment preferences expressed in your ADHC into account when making decisions about your health care.

Am I required to express my treatment preferences for a terminal condition or state of permanent unconsciousness in my ADHC?

You are not required to express treatment preferences for a terminal condition or state of permanent unconsciousness in an ADHC. If you wish, you may use an ADHC only to appoint a health care agent.

Is my health care provider required to honor my ADHC?

If your health care provider receives your ADHC, your health care provider has the responsibility to enter the ADHC in your medical records, to grant your health care agent adequate access to you, to consult with your health care agent, to comply with the decisions of your health care agent and to give your health care agent the same right to examine and copy your medical records that you would have. A health care provider who fails or refuses to comply with your treatment preferences regarding the withholding or withdrawal of life-sustaining procedures and/or the provision of nourishment or hydration must advise your health care agent (if you have one) or your next of kin or guardian and, if directed to do so, must allow you to be transferred to another physician who will comply with your treatment preferences.

What effect does my marriage or divorce have on my ADHC?

Unless you provide otherwise in your ADHC, if you get married after executing an ADHC, the marriage revokes the designation of anyone other than your spouse as your health care agent. And unless you provide otherwise in your ADHC, if you get divorced after executing an ADHC, the divorce revokes the designation of your former spouse as your health care agent.

What is the difference between an ADHC and a durable power of attorney for health care?

Georgia law used to provide for the appointment of a health care agent in a document called a durable power of attorney for health care. Since 2007, the ADHC has replaced the durable power of attorney for health care in Georgia. Your durable power of attorney for health care executed under the old law remains effective, but it would be a good idea for you to replace it with an ADHC.

What is the difference between an ADHC and a living will?

Georgia law used to provide for the declaration of treatment preferences for a terminal condition and state of permanent unconsciousness in a document called a living will. Since 2007, the ADHC has replaced the living will in Georgia. Your living will executed under the old law remains effective, but it would be a good idea for you to replace it with an ADHC.

What is a guardian?

A court will appoint a guardian for you if the court finds that you are not able to make significant responsible decisions for yourself regarding your personal support, safety or welfare. A court will appoint the person nominated by you if the court finds that the appointment will serve your best interest and welfare. In an ADHC, you may nominate a person to serve as your guardian in the event a court decides that a guardian should be appointed. You may (but are not required to) nominate your health care agent to be your guardian. A guardian does not have the power to manage your property or financial affairs.



This pamphlet was prepared by the Fiduciary Law Section of the State Bar of Georgia as a public service. It is not intended to be a comprehensive statement of law. Its purpose is to inform, not to advise on any specific legal problem. If you have specific questions regarding any matter contained in this pamphlet, you are encouraged to consult an attorney.



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Advance Directive for Health Care

Consumer Pamphlet Series

 **State Bar
of Georgia**

Foreword

You have the right to control all aspects of your personal care and medical treatment, including the right to insist upon medical treatment or direct that medical treatment be withheld or withdrawn. If you cannot (or do not want to) communicate your health care decisions for yourself, you have the right to choose someone to make health care decisions for you. You also have the right to state your treatment preferences if you have a terminal condition or are in a state of permanent unconsciousness.

The Georgia Advance Directive for Health Care Act gives you an opportunity to choose someone to make health care decisions on your behalf and to make a clear expression of your decisions regarding health care if you are in a terminal condition or state of permanent unconsciousness by executing an advance directive for health care.

What is an advance directive for health care?

An advance directive for health care (ADHC) is a legal document in which you (1) appoint your health care agent, and/or (2) direct the withholding or withdrawal of life-sustaining procedures and/or the provision of nourishment or hydration if you are in a terminal condition or a state of permanent unconsciousness. (Since 2007, the ADHC has replaced the legal documents called durable power of attorney for health care and living will in Georgia.)

Is any particular form of ADHC required?

You may use any form of ADHC that complies with Georgia law. However, the law provides a standard form of ADHC that will be treated as complying with Georgia law if it is properly executed. An attorney can provide you a form of ADHC and help you understand it, complete it and properly execute it. An ADHC must be in writing, signed by you, and attested and signed by two adult witnesses. You may revoke or amend your ADHC at any time.

Who may execute an ADHC?

Any adult who is of sound mind may execute an ADHC.

What is a health care agent?

A health care agent is a person appointed by you in an ADHC to act on your behalf to make decisions related to the consent to, refusal of or withdrawal of any type of health care. A health care agent may also be given the authority to make decisions related to autopsy, anatomi-

cal gifts and the final disposition of your body after your death. A physician or health care provider who is directly involved in your care may not be your health care agent.

What is meant by health care?

Health care means any care, treatment, service or procedure to maintain, diagnose, treat or provide for your physical or mental health or personal care.

What powers does my health care agent have?

Your health care agent will make health care decisions for you only when you are unable to communicate your health care decisions or you choose to have your health care agent communicate your health care decisions. Your health care agent will have the same authority to make any health care decision that you could make. The health care agent's authority includes the power to admit you to or discharge you from any hospital, skilled nursing facility, hospice or other health care facility or service; the power to request, consent to, withhold or withdraw any kind of health care; and the power to contract for any health care facility or service for you and to obligate you to make arrangements for these services. Your health care agent may accompany you in an ambulance and may visit or consult with you in person while you are in a hospital, skilled nursing facility, hospice or other health care facility. If you choose, your health care agent will also have the power to authorize an autopsy of your body after your death, make a disposition of all or any part of your body for medical purposes and make decisions about the final disposition of your body.

Does my health care agent have access to medical records?

Your health care agent will be your personal representative for all purposes of federal or state laws relating to privacy of medical records and will have the same access to your medical records that you have and can disclose the contents of your medical records to others for your ongoing health care.

How does my health care agent make decisions?

When making health care decisions for you, your health care agent should think about what action would be consistent with past conversations the two of you have had, your treatment preferences as expressed in your ADHC, your religious and other beliefs and values and how you

have handled medical and other important issues in the past. If what you would decide is still unclear, then your health care agent should make decisions for you that your agent believes are in your best interest, considering the benefits, burdens and risks of your current circumstances and treatment options.

Am I required to appoint a health care agent in my ADHC?

You are not required to appoint a health care agent in an ADHC. If you wish, you may use an ADHC only to express your treatment preferences if you have a terminal condition or are in a state of permanent unconsciousness.

How do I express my treatment preferences for a terminal condition or state of permanent unconsciousness in my ADHC?

In an ADHC you may express your treatment preferences for either or both of two conditions: if you are in a terminal condition or if you are in a state of permanent unconsciousness. Your condition will be determined in writing by your attending physician and a second physician in accordance with currently accepted medical standards. Your treatment preferences in your ADHC will be followed only if you can no longer communicate your treatment preferences after appropriate efforts have been made to communicate with you



about your treatment preferences. Treatment preferences are your decisions as to the withholding or withdrawal of life-sustaining procedures and/or the provision of nourishment and hydration (nutrition and fluids).

What is a terminal condition?

A terminal condition is an incurable or irreversible condition which would result in your death in a relatively short period of time.

What is a state of permanent unconsciousness?

A state of permanent unconsciousness is an incurable or irreversible condition in which you are not aware of yourself or your environment and in which you show no behavioral response to your environment.

What are life-sustaining procedures?

Life-sustaining procedures are medications, machines or other medical procedures which, when applied to you in a terminal condition or state of permanent unconsciousness, could in reasonable medical judgment keep you alive but cannot cure you and where, in the judgment of the attending physician and a second physician, your death will occur without such procedures or interventions. Life-sustaining procedures do not include administration of medication to alleviate pain or the performance of any medical procedures deemed necessary to alleviate pain. Life-sustaining procedures also do not include the provision of nourishment or hydration (nutrition and fluids), but you may direct the withholding or withdrawal of nourishment or hydration in an ADHC.

What are my options for treatment preferences for a terminal condition or state of permanent unconsciousness?

The form of ADHC provided by the law allows you to express any one of three preferences for treatment if you are in a terminal condition or state of permanent unconsciousness: (1) Try to extend your life as much as possible, using all life-sustaining procedures, and if you are unable to receive nourishment or hydration (nutrition and fluids) by mouth, then you want to receive artificial nourishment or hydration (by tube or other medical means); (2) Allow your natural death to occur; you do not want any life-sustaining procedures or artificial nourishment or hydra-