



FORT SILL LEGAL ASSISTANCE

MEDICAL POWERS OF ATTORNEY



A Durable Medical Power of Attorney (*Power of Attorney for Health Care*) is a recommended planning document to delegate health care decisions to a chosen person (called the “agent” or “attorney-in-fact”) in the event of the principal’s (*the person who signs the document*) disability, incapacity, or extended absence. Executing a Durable Medical Power of Attorney is especially important in Oklahoma because the state has **not** adopted a family consent statute that allows a prioritized list of individuals to make medical decisions on behalf of an incapacitated person if there is no court-appointed guardian or special court order.

A Durable Medical Power of Attorney operates in the same manner as a Financial Durable Power of Attorney. Even though a Durable Power of Attorney covering financial and property issues may also include some health care powers, it is recommended that the principal also create a separate document concerned only with medical and health care decisions. Doing so distinguishes information and authority regarding the principal’s medical records and medical requests from the principal’s finances and property. This also allows the principal to elect different individuals to act on financial or health matters when appropriate.

Powers included in the Medical Power of Attorney grant authority for the agent to handle the principal’s health care and medical decisions. Although the agent cannot make life-sustaining decisions for the principal (except the agent may consent to a “do not resuscitate” order), the agent may make other medical decisions for the principal. In the document, the principal can also grant the agent additional authority, such as access to medical information, employing or terminating health care personnel, authorizing pain relief, granting releases, filing and releasing claims, securing admissions to and discharges from medical, rehabilitation, and hospice facilities, obligating the principal to pay for treatment, and seeking court intervention.

Since another document, the Advance Directive for Health Care document (which includes a “living will”), also provides for an agent (called a “proxy” in that document) to make health care decisions, care must be taken to avoid a conflict between two different appointed health care agents. It is recommended that the same individual be named as the agent under both the Durable Power of Attorney for Health Care and the Advance Directive for Health Care.

Once signed, witnessed, and notarized, the principal should give the Durable Power of Attorney for Health Care to the named agent(s) and provide copies to all treating physicians, clinics, and health care providers, as well as to immediate family members so all will be informed about the appointment of a health care agent.

Since the document is a “durable” power of attorney, it will remain in effect if the principal loses competency. However, the principal retains full rights to make his or her own decisions while competent. This means that the named agent or attorney may speak for the principal, but the competent principal retains veto power if there is

disagreement between the two of them. A Medical Power of Attorney is revocable at any time if the principal remains competent. To revoke this document, the principal who signed it needs to take action to destroy the original or sign a written revocation. The principal should also contact anyone who may have relied upon the document in the past and inform that person of the revocation.

Although the Medical Power of Attorney cannot always take the place of guardianship in the case of incompetent adults, it often reduces the need to file for formal guardianship. This will result in saving court costs and attorney fees.

Once children reach the age of eighteen, they are considered adults. With the increased privacy given to medical records and treatments, this means parents lose the automatic access to medical information they had when their child was a minor. Families should carefully consider the wisdom of having the new eighteen-year-old sign a Medical Power of Attorney in case of future medical emergencies.

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This Information Paper provides only basic information and is not intended to serve as a substitute for personal consultation with a Legal Assistance Attorney. To schedule an appointment with a Legal Assistance Attorney, please contact the Legal Assistance Office at (580) 442-5058. The Fort Sill Legal Assistance Office is located on the 4th Floor of Building 4700 (Welcome Center) at 4700 Mow-Way Road, Fort Sill, Oklahoma 73503.