

Medical Power of Attorney

What is a Medical Power of Attorney?

A Medical Power of Attorney is a document signed by a competent adult giving an agent, a trusted person, the authority to make health care and medical decisions when the principal (the person signing the Medical Power of Attorney) is no longer able to make them and a doctor so certifies.



Information Not Legal Advice

This pamphlet is for information only and is not a substitute for the advice of an attorney.

Do I really need a Medical Power of Attorney?

A Medical Power of Attorney makes it clear to health care professional whom you wish to make health care decisions for you. It is not the same as a General Power of Attorney in that the Medical Power of Attorney speaks to health care decisions.

Is a Medical Power of Attorney different from a durable power of attorney?

A Medical Power of Attorney is one kind of durable power of attorney. A Medical Power of Attorney gives your agent the right to make health care decisions for you. A general durable power of attorney usually does not give the person the right to make decisions about health care. A general durable power of attorney usually serves a different purpose.

When can my agent use a Medical Power of Attorney?

Your agent cannot make medical decisions for you unless you cannot make decisions for yourself. Your doctor must say, in writing, that you cannot make your own health care decisions. The doctor's certification goes in your medical file.

Your agent can only make medical decisions for you until you are able to make them again. You can revoke (cancel) your Medical Power of Attorney at any time.

Do I have to pay for the medical care authorized by my agent?

Yes. You are responsible for paying your medical bills, whether you or your agent requests the care.

What is the difference between a living will and a medical power of attorney?

In Texas, a living will is called a *Directive to Physicians and Family or Surrogates*. A Directive to Physicians tells your doctor the kinds of medical care that you want to receive and lists any types of medical procedures that you do not want to have done to you in case you become incapacitated. For example, if you do not want to be placed on a ventilator (artificial breathing machine), you can say that in a Directive to Physicians.

Many people choose to have a Directive to Physicians and a Medical Power of Attorney. If you have both and they conflict with one another, doctors will use the most recent one, the document executed later in time controls.

Who can I name as my agent in a Medical Power of Attorney?

Your agent must be someone you trust and can be any adult (18 or older) who is of sound mind, **except** the following people:

- Your health care provider
- Your residential care provider (for example, a nursing home administrator)
- An employee of your health care provider or residential care provider, unless that employee is your relative.

What is a health care provider?

A health care provider is a person or facility that provides health care. Your doctor is a health care provider. A residential health care provider is a person or facility that gives medical care in a setting where people stay for a long time. Nursing homes are residential health care providers.

What decisions can an agent make with a Medical Power of Attorney?

Unless the Medical Power of Attorney limits the agent's powers, they can make most medical decisions for you. But,

The agent **cannot**:

- Agree to hospitalize you for mental health services,
- Agree to convulsive treatment or psychosurgery,
- Agree to an abortion, or
- Refuse care that will keep you comfortable.

What is a health care decision?

Health care decisions are agreeing to, or not agreeing to, medical procedures or services to diagnose or treat your physical or mental condition. Your agent has to talk to your doctors before making medical decisions. Your agent can see your medical and hospital records.

Can I object to receiving or withholding treatment?

Yes, as long as you can make your wishes known. Even if your agent has a Medical Power of Attorney, your wishes must be honored, even if you do not have the ability to make medical decisions.

Does the agent have to take responsibility for decisions about my health care?

If your agent follows the power of attorney and makes medical decisions in good faith, they cannot be held legally responsible for the decision they made.

How long does a Medical Power of Attorney last?

The Medical Power of Attorney begins when your doctor says in writing that you cannot make medical decisions for yourself. It lasts until:

- You are able to make your own medical decisions,
- You revoke (cancel) it, or
- Its expiration date (if there is one) arrives.

If the power of attorney expires when you are incompetent, it will stay in effect until you are competent or until you revoke it.

What do I have to do for my Medical Power of Attorney to be legal?

You have to sign your Medical Power of Attorney in front of two witnesses OR have your signature acknowledged by a notary public.

You also have to read a disclosure statement that explains what a Medical Power of Attorney does, and you have to sign a statement saying that you read and understood the disclosure statement.

As noted, the Medical Power of Attorney can be signed before a notary public *without* the need for witnesses.

Who can be a witness?

Both witnesses must be at least 18 years old. And, **one** of the witnesses cannot be:

- Your agent,
- Your primary doctor or an employee of your primary doctor,
- Your residential care provider or an employee of your residential care provider,
- Your spouse or any relative,
- A person entitled to any part of your estate, or
- Any person who has a claim against your estate.

How do I revoke (cancel) a Medical Power of Attorney?

You can revoke a Medical Power of Attorney even if you cannot make your own medical decisions. To cancel it, you can:

- Tell the agent, in person or in writing,
- Tell your doctor or residential care provider, in person or in writing,
- Do something that shows you intend to revoke the power, or
- Sign a new Medical Power of Attorney.

If your spouse is your agent, the Medical Power of Attorney automatically ends if you get divorced.

Do my doctors have to follow the Medical Power of Attorney?

Yes, as long as they know it exists and it does not go against your wishes or the law.

Where can I get a Medical Power of Attorney form?

You and your family can get free *Medical Power of Attorney* and *Directive to Physicians* forms from the Legal Hotline for Texans or at www.texaslawhelp.org/ If you are over 60 years of age or older, or if you are receiving Medicare you may call the Legal Hotline for Texans to speak to an attorney free of charge.

For more information...

Texas Law Help has useful information on many areas of the law. Go to www.texaslawhelp.org.

Legal Hotline for Texans: (800) 622-2520 or (512) 477-3950

Call our attorney-staffed legal hotline. Advice is free for Texans 60 and older or for anyone receiving Medicare.