

COMBINED

Mental Health Declaration and Power of Attorney

III. COMBINED

Pennsylvania's law allows you to make a combined Mental Health Declaration and Power of Attorney. This lets you make decisions about some things, but also lets you give an agent power to make other decisions for you. You choose the decisions that you want your agent to make for you, as many or as few as you like. This makes your Mental Health Advance Directive more flexible in dealing with future situations, such as new treatment options, that you would have no way of knowing about now.

You are presumed to be capable of making an Advance Directive unless you have been adjudicated, incapacitated, involuntarily committed, or found to be incapable of making mental health decisions after examination by both a psychiatrist and another doctor or mental health professional.

Basic Instructions

The following corresponds to the form on page 27.

Read each section very carefully. Begin by printing your name in the blank in the introductory paragraph at the top of the page.

Part I: Introduction

A. When this Declaration becomes effective

Decide when you want the Declaration to become effective. You can specify a condition, such as if you are involuntarily committed for either outpatient or inpatient care, or some other behavior or event that you know happens when you no longer have capacity to make mental health decisions, or you can specify that you want an evaluation for incapacity.

If you do not choose a condition, your incapacity will be determined after examination by a psychiatrist and one of the following: another psychiatrist, psychologist, family physician, attending physician, or other mental health treatment professional. If you have doctors that you would prefer to make the evaluation, you should specify them in your Declaration. Although that doctor may not be available, an effort will at least be made to contact them.

Until your condition is met, or you are found to be unable to make mental health decisions, you will make decisions for yourself.

B. Revocations and Amendments

Revocation means that you are canceling your Directive. If you revoke your Directive, your doctor will no longer have to follow the instructions that you gave in the document. You may change or revoke your Directive at any time, as long as you have capacity to make mental health decisions when you make the change or revocation. You may revoke a specific instruction without revoking the entire document.

If you are currently under an involuntary commitment and you want to change or revoke your Declaration, you will need to request an evaluation to determine if you are capable of making mental health decisions. The evaluation will be done by a psychiatrist and another psychiatrist, psychologist, family physician, attending physician or other mental health professional. If you are found to have the capacity to make mental health decisions, you will be able to revoke or change your Declaration, even though you are in the hospital.

You may revoke your Mental Health Advance Directive orally or in writing. Your Advance Directive will terminate as soon as you communicate your revocation to your treating doctor. It is best to make any changes or revocation in writing, because then there is a clear record of your wishes.

If you make a new Mental Health Advance Directive, you should be sure to notify your doctor and support people that you have revoked the old one. Your Directive will automatically expire two years from the date you made it, unless you are unable to make mental health decisions for yourself at the time it would expire. In that case, it will remain in force until you are able to make decisions for yourself.

To amend your Directive means that you make changes to it. You may make changes at any time, as long as you have capacity to make mental health care decisions. Any changes must be made in writ-

ing and be signed and witnessed by two individuals in the same way as the original document. Any changes will be effective as soon as the changes are communicated to your attending physician or other mental health care provider, either by you, or a witness to your amendments.

C. Termination

Your Advance Directive will automatically expire two years from the date of execution, unless you have been found incapable of making mental health care decisions at the time the directive would expire. In that case, the Declaration will continue to be in force until you regain capacity.

Part II: Mental Health Declaration

A. Treatment preferences

Your Advance Directive will be less likely to be challenged if you include information about what you do want, as well as what you don't want.

Remember that consenting in advance to a particular medication or treatment does not mean your doctor will prescribe that treatment or drug unless it is appropriate treatment at the time you are ill. Consent only means that you consent if it is a suitable choice at that time within the standards of medical care. Your doctor will also have to consider if a particular treatment option is covered by your insurance. If, for example, the HMO that you have does not cover a certain drug on its formulary, your doctor may prescribe a drug that is similar, but is on the HMO formulary as long as you have not withheld consent to that particular drug.

Make sure to mark your preference in each section with your initials. Although you do not have to explain your choices, it is helpful if you include statements explaining why you want or don't want any specific treatments. If any of your choices are challenged, you will have a better chance of having your choice honored if a court understands what your reasons are for making your choice. If you do not have a preference in a given section, you may leave it blank.

1. Choice of Treatment Facility

If you have a preference for, or bad feelings toward, any particular hospital, list them here. Unfortunately, there are times when a particu-

lar place is already full and would be unable to accommodate you, or the treating doctor does not have privileges at the hospital you would prefer. Therefore, although your doctor will try to respect your choice, it may not always be possible.

2. Medications

If you give instructions about medications, be sure to give reasons for your decisions. If, for instance, you experienced unacceptable side effects from a particular generic or dose, you would want to be specific so that your treating doctor understands your concern. That way your doctor will be less likely to prescribe something else that is likely to cause similar problems. Likewise, if you know that a specific medication has worked for you in the past, you should be sure to include that information. If a time-released version works, but the regular brand does not, you should be sure you include that information. The more your doctor knows about you, the more likely you are to get the right treatment, faster.

Be careful what you specify. Medications come in brand and generic names, and also belong to broader classes of drugs, such as "atypical antipsychotics" or "SSRIs." If you rule out an entire class of drugs, you should be aware that a new, helpful drug may come on the market that could be ruled out, even though you don't actually know anything about it.

You may choose to let your agent make decisions related to the use of medications. If you choose this option, be sure to discuss your feelings and prior experiences with your agent.

You may choose not to consent to the use of any medications. Just be aware that you will also be ruling out new medications that could be helpful in your treatment. Your Advance Directive may also be challenged if your doctor believes that you will be irreparably harmed by this choice.

3. Preferences related to electroconvulsive therapy (ECT)

In some cases, a doctor may find that ECT would be an effective form of treatment. If

you have found ECT helpful in the past, or you trust your doctor to make that decision on your behalf, you may decide to consent to this treatment in advance.

You may choose to let your agent make decisions related to ECT. If you choose this option, be sure to discuss your feelings and prior experiences with ECT with your agent.

If you do not wish to undergo ECT under any circumstances, you should initial the line next to “I do not consent to the administration of electroconvulsive therapy.” **NOTE: Your agent is NOT allowed to consent to ECT unless you initial this authorization.**

4. Preferences for experimental studies

Opportunities may exist for you to participate in experimental studies related to treatment of your illness. Sometimes these studies provide more data that helps doctors determine the cause or best practice for treating an illness. Sometimes the studies are based on the idea that a certain new treatment might help. If you participate in a study, you may have access to a new treatment sooner than you would otherwise. However, there may be some level of risk involved. If you want to participate in a study because your doctor believes that the potential benefits to you outweigh the potential risks, you should initial the first choice.

You may choose to let your agent make decisions related to your participation for experimental studies. It is important that your agent understand the kind of studies that you would object to. For example, you may wish to participate only if the study does not include medication or any invasive procedures.

If you do not want to participate in experimental studies of any kind, under any circumstances, you should initial the choice that states that you do not consent. **NOTE: Your agent is NOT allowed to consent to experimental studies unless you initial this authorization.**

5. Preferences regarding drug trials

Similarly, you may have the opportunity to participate in a trial related to new medications. If

you participate, you may have access to a new drug sooner than you would otherwise. However, there may be risks or side effects. If you want to participate in a drug trial if your doctor believes that the potential benefits to you outweigh the potential risks, you should initial the first choice.

You may choose to let your agent make decisions related to your participation in drug trials. It is important that your agent understand any particular risks that you would not be willing to take so that he/she can make the decision you would make given the same information.

If you do not want to participate in a drug trial of any kind, under any circumstances, you should initial the choice that states that you do not consent. **NOTE: Your agent is NOT allowed to consent to research including drug trials unless you initial this authorization.**

6. Additional instructions or information

One of the significant benefits of filling out an Advance Directive is that you are communicating important information to your mental health care provider, agent, and others who support you. This part of your form allows you to provide information that may or may not be directly related to your mental health treatment. If there is other information that you would like your mental health care provider and agent to know you should include it here. You can attach an additional page to the form if there is not enough room to write everything you need to. Just be sure that you print or type your statements, and try to make them as clear as possible, to minimize confusion about what you want to happen. Again, if you do not have a preference about something listed or you are comfortable letting your agent make that particular decision, just leave that particular section blank.

Part III: Mental Health Power of Attorney

Begin by printing your name in the blank in the first paragraph stating that you are authorizing a designated health care agent to make certain decisions on your behalf.

A. Designation of Agent

You may name any adult who has capacity as your agent, with the following exceptions: your mental health care provider or an employee of your mental health care provider or an agent, operator, or employee of a residential facility in which you are receiving care may not serve as your agent unless they are related to you by marriage, blood or adoption.

Write in the name of the person you choose, and fill in their address and phone number. You want the person to be contacted anytime, so add as much information as possible, including work and home phone numbers. The person that you choose as your agent should also sign the document to indicate that he/she accepts serving as your agent.

Since your agent will be making decisions on your behalf, it is very important to choose someone you trust and to discuss your ideas and feelings in detail so that the person really understands what mental health decisions you would have made for yourself.

B. Designation of an Alternative Agent

You may wish to designate an alternative person in case the first person you chose is unavailable. This is a good idea if you have another person that you trust, since people may be unavailable for a variety of reasons such as illness or travel. If you do not have any one that you wish to name as an alternative, leave this section blank.

The person that you choose as your alternative agent should also sign the document to indicate that he/she accepts serving as your agent. Your alternative agent must fill in his/her address and phone number so that they can be reached by your provider.

C. Authority Granted to Agent

You may grant full power and authority to your agent to make all of your mental health care decisions, or you can set limits on the kinds of decisions your agent may make on your behalf. If you wish to limit the decisions your agent can make you should read each subsection carefully and initial your choice. Your agent cannot consent to electroconvulsive therapy, experimental procedures or research unless you expressly grant those pow-

ers by initialing consent in those sections. If there is some other mental health care decision that you do not want your agent to be able to make, you may write it in. Be sure to write clearly, so there is no room for confusion.

The Pennsylvania law does not allow your agent to consent to psychosurgery or the termination of parental rights on your behalf, even if you are willing for your agent to have that power.

Part IV: Nominating a Guardian

A. Preference as to a court-appointed guardian

If you become incapacitated, it is possible that a court may appoint a guardian to act on your behalf. Under the guardianship laws, you may nominate a guardian of your person for consideration by the court. The court will appoint your guardian in accordance with your most recent nomination except for good cause or disqualification. If you wish to name someone in your Declaration, it is important that you talk to that person about whether they feel they can serve as your guardian, because a court will not force them to serve. It is also important that you give that person a copy of your Power of Attorney and explain your wishes regarding mental health treatment.

If the court appoints a guardian, that person will not be able to terminate, revoke or suspend your Declaration unless you want them to be able to. In this section, you should decide whether you want a court appointed guardian to have that power. Even if you do not specify a person that you would want as a guardian, you can still specify whether a person that is appointed by the court is allowed to terminate, revoke or suspend your Declaration.

If the court-appointed guardian and your agent turn out to be different people, the court will give preference to allowing your mental health care agent to continue making mental health care decisions as provided in your Directive, unless you specify otherwise in your Directive. If, after thorough examination, the court decides to grant the powers that you gave to an agent to the guardian, the guardian would still be bound by the same obligations that your agent would have been.

Part V. Execution

You must sign and date your Combined Mental Health Care Declaration and Power of Attorney in this section. If you are unable to sign for yourself, someone else may sign on your behalf.

Your document must be signed and dated by you in the presence of two witnesses. Each witness must be at least 18 years old. The witnesses may not be your agent or a person signing on your behalf.

In order for your Declaration to be effective, you must be sure that the right people have access to it. Be sure to give copies of this Advance Directive to your agent, mental health care provider, and anyone else that may be notified in the event that you are found not to have capacity to make mental health care decisions. Remember that if you cancel or change your document you must let everyone know. It is a good idea to carry a card in your wallet to let people know that you have an Advance Directive.

Please Note: The information in this document is not intended to constitute legal advice applicable to specific factual situations. For specific advice contact the Disability Rights Network of Pennsylvania (DRN) intake line at 1-800-692-7443 (voice) or 1-877-375-7139 (TDD).