

**MENTAL HEALTH**

**Power of Attorney**

## V. POWER OF ATTORNEY

A Power of Attorney allows you to designate someone else, called an agent, to make treatment decisions for you in the event of a mental health crisis. A Power of Attorney provides flexibility to deal with a situation as it occurs rather than attempting to anticipate every possible situation in advance. When using a Power of Attorney it is very important to choose someone you trust as your agent and to spend time with that person explaining your feelings about treatment choices. Your doctor or his/her employee, or an owner, operator, or employee of a residential facility where you are staying cannot serve as an agent.

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 41.*

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

#### 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 should fill in his/her address and phone number so that they can be reached by your provider.

#### C. When the Power of Attorney becomes effective

Decide when you want the Power of Attorney 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 Power of Attorney. 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.

## **D. Authority granted to your Mental Health Care 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. 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. 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.

### **1. Treatment preferences**

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.

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 you do not have a preference in a given section, you may leave it blank.

#### **a. 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 particular 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.

#### **b. Preferences regarding 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.

Giving your agent authority to make medication decisions allows more flexibility to deal with future situations. For instance, a new drug may come on the market that is not currently available. By allowing your agent to make the decision at the time of your incapacity means that your agent will have the most up-to-date information on which to base decisions.

#### **c. Preferences regarding 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, and/or you trust your agent to make that decision if your doctor thinks it may help, you should initial the line next to "my agent is authorized to consent to the administration of electroconvulsive therapy."

If you do not wish to undergo ECT under any circumstances, you should initial the line next to "I do not consent to the admin-

istration of electroconvulsive therapy.”

**NOTE: Your agent MAY NOT consent to ECT unless you initial this authorization.**

#### **d. 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.

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 MAY NOT consent to experimental studies unless you initial this authorization.**

#### **e. 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 because your doctor believes that the potential benefits to you outweigh the potential risks, you should initial the first choice.

If you do not want to participate in a drug trial of any kind, under any circumstances, you should initial the choice that states your agent does not have your authorization to consent on your behalf.

#### **f. Additional instructions or information**

One of the significant benefits of filling out an Advance Directive is that you are communicating important information to your

doctor and people 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 doctor 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, just leave that particular section blank.

#### **E. Revocations and Amendments**

Revocation means that you are canceling your Power of Attorney. If you revoke your Power of Attorney, your agent will no longer be representing you, and your doctor will no longer have to follow the instructions that your agent gives. You may change or revoke your Power of Attorney 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 Power of Attorney, you will need to request an evaluation to determine if you are capable of making mental health decisions. The evaluation will be done by both 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 Power of Attorney, even though you are in the hospital.

You may revoke your Power of Attorney orally or in writing. It becomes effective 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 Power of Attorney, you should be sure to notify your doctor and support people that you have revoked the old one. Your Power of Attorney 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 Power of Attorney 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 writing 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.

#### **F. 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 Directive will continue to be in force until you regain capacity.

#### **G. 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 Power of Attorney, 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 Power of Attorney 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 Power of Attorney.

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.

#### **H. Execution**

**You must sign and date your Mental Health Care 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. If you are unable to sign the document yourself, you may have someone else sign on your behalf, but that person may not also be a witness.

In order for your Power of Attorney to be effective, you must be sure that the right people have access to it. Be sure to give copies of this to your 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 a Power of Attorney.

***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).***