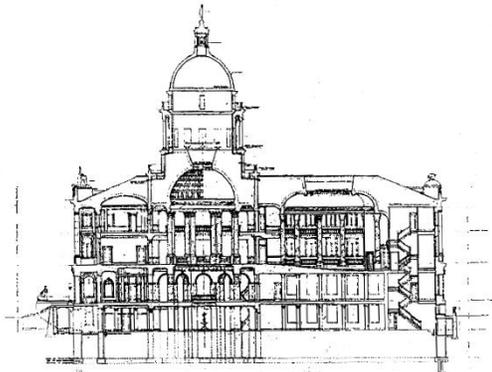




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HEALTH CARE DECISIONS **IMPORTANCE OF ADVANCE DIRECTIVES**

All adults have the fundamental right to control their own medical care, including the decision to utilize or terminate artificial, extraordinary or heroic medical treatments that only prolong the process of dying. This right is normally exercised by competent patients giving (or withholding) consent for treatment when such treatment is proposed by their physicians or the facility in which they are receiving care.



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Unfortunately, many patients lack the mental capacity or physical ability during the course of their medical treatment to communicate with their physicians. These patients are no longer able to make their own health care decisions directly. New Jersey law now recognizes two distinct documents that can be executed in advance of a disabling illness or accident in order to provide a mechanism for health care decision-making when the patient is no longer able to make their decisions directly.

If you have any religious affiliations or convictions, be certain to have your religious adviser review any health care forms you are considering signing. Many do not address fundamental requirements of most religious groups.

Advance Health Care Directive/Living Will

If you want your wishes to guide those responsible for your health care, you must plan in advance. Generally, such planning is more likely to be effective if it is done in writing. An Advance Directive is a written statement of your directions regarding the kind of medical care you wish to receive under certain limited circumstances in the event that you become unable to make your own decisions. The Advance Directive becomes effective only when the patient is in one of the following conditions: (a) permanently unconscious; (b) in a persistent vegetative state; (c) terminally ill, which is defined by statute to mean an expectation of survival of less than six (6) months; (d) there has been a declaration of death based on neurological criteria, i.e. brain death; and (e) if the patient has a serious irreversible illness and the risks and burdens of providing treatment reasonably outweigh the benefits to the patient, and imposition of treatment on an unwilling patient would be inhumane.

Under the New Jersey Advance Directives for Health Care Act (N.J.S.A. 26:2H-53 et seq.), your Directive takes effect when you no longer have the ability to make decisions about your own health care. This judgment is normally made by your attending physician, and by any additional physicians who may be required by law to examine you. If there is any doubt about your ability to make such decisions, said decisions will be made by your doctor after consultation with another physician possessing expertise in the particular area. If you regain your ability to make decisions at a later time, you may resume making your own decisions directly. Your Directive is in effect only as long as you are unable to make your own decisions.

Update Your Documents Whenever You Wish

An Advance Directive can be updated or modified, in whole or in part, at any time, by a legally competent individual. You should review your Directive periodically and update it whenever you feel it no longer accurately reflects your wishes. It is a good idea to review your directive not less than every two years.

New Jersey statute requires that you sign the Advance Directive and that your signature be witnessed by two individuals or, in the alternative, be acknowledged before a Notary Public, attorney at law, or other person authorized to administer oaths. You can revoke your Directive at any time; such revocation may be done in writing, orally, or by any action that indicates that you no longer want the Directive to be in effect.

Proxy Directives - Appointing an Agent to Make Decisions if You Cannot

Another way to control your future medical care is to designate a person, whom you trust understands your health care wishes, to act as your agent. This designee, known as a proxy, is granted the legal authority to make medical decisions for you if you are unable to make such decisions for yourself. If you become incapacitated and cannot make your own decisions, your chosen proxy (also known as your "Health Care Representative")

will serve as your substitute. The proxy is your representative in discussions with your physician and others responsible for your care when you are unable to communicate your wishes. In order to be effective in New Jersey, the document appointing the health care proxy must contain clear language stating that it is to be used for such an appointment.

Many medical powers of attorney found at stationery stores, discount supply houses and bookstores do not meet these requirements. Therefore, you should be cautious about signing any such documents without professional oversight.

This document, as in an Advance Directive, must be witnessed by two individuals, or acknowledged before a Notary Public, attorney at law, or another person authorized to administer oaths.

The completed Proxy Directive should be treated as any other important legal document. It is important that copies be given to physicians, family members and friends, but care should be taken that the original document be readily available and its whereabouts known to family members. A safe deposit box is not an appropriate place to keep an Advance Directive or Proxy, as it cannot be retrieved except during banking hours.

Witnesses to any of the above documents should not be related by blood or marriage; not be entitled to receive anything from your estate nor pursuant to your Will; and not be directly involved in providing health care to you. The Proxy will not be effective if the person designated as your proxy has signed as a witness.

Difference Between the Advance Directive and Proxy Directive

The reader should note the distinction between the Advance Directive and the Proxy Directive. The Advance Directive is effective only under the five conditions listed above. If the person writing the document indicates, for example, that he or she does not want artificial nutrition and hydration and does not want ventilators or respirators, those procedures would only be withheld if the patient was not expected to live. If the patient underwent fairly routine surgery, after which he or she needed an IV and a respirator as part of the normal recovery process, he or she would be administered those procedures, because the Advance Directive would not apply to his or her condition.

The health care representative designated under a Proxy Directive has the power to make decisions at such times when the patient cannot communicate.

If the patient has been determined to be in one of the states to which the Advance Directive applies, the proxy should make decisions that reflect the patient's wishes expressed in the Advance Directive. If the patient is not in one of those conditions, the proxy should render a health care decision that reflects one which the patient would have made. It is, therefore, critical that the individual who signs an Advance Directive and Proxy share openly and fully his or her health care wishes with his or her proxy.

The State of New Jersey has a website where you may find forms, information and Frequently Asked Questions on Advance Directives at the following URL:
<http://www.nj.gov/health/advancedirective/ad/forums-faqs/>

Here are direct links to the forms (Developed by the New Jersey Commission on Legal and Ethical Problems in the Delivery of Health Care):

- [Proxy Directive](#) (Durable Power of Attorney for Health Care) [pdf 15k]
- [Instructive Directive](#) (Living Will) [pdf 28k]