



# Powers of Attorney for Health Care

---

## The Basics and Beyond

Joseph Tully, Attorney-at-Law

Part of a lecture series sponsored by the Academy Service Corporation

May 13, 2020

# Arizona Statutory Advance Directives

LCPP §1, p.6

**Written instructions that state the kind of health care you want**

**Statutory = as set forth in the laws of Arizona**

**Includes:**

**Durable Health Care Power of Attorney**

**Living Will (End of Life Care)**

**Do Not Resuscitate Directive (“Orange Card”)**

**Durable Mental Health Care Power of Attorney**

# Powers of Attorney in General

**Have nothing to do with lawyers**

**Allow you, as “Principal”, to appoint an “Agent” to act on your behalf**

**Terminate on death (and sometimes incapacity) of Principal**

**Can be “Durable” - remain in effect if Principal becomes incapacitated**

# Types of Powers of Attorney

**General (property) - gives your Agent authority to handle property matters on your behalf**

**Property Power of Attorney is an essential part of an estate plan**

**Special - gives your Agent authority to deal with a specific transaction e.g. to act on your behalf in a real estate matter**

**Healthcare - what I'll be talking about at length today**

# Incapacity - Definition

**AZ law: “incapacitated person” is an adult who is unable to make or communicate responsible decisions due to**

- mental illness, mental deficiency, mental disorder**
- physical illness or disability**
- chronic use of drugs, chronic intoxication, or “other cause”**

# AZ Attorney General's "Life Care Planning"

**Comprehensive resource that includes discussion on "Advance Directives for Health Care Planning"**

**Provides sample documents and fill in the blank forms**

**Allows you to prepare various documents on your own without lawyer assistance**

**pros - saves \$; you can change documents on your own**

**cons - no one to ask questions of or to explain documents;  
lawyer prepared documents can provide more flexibility**

# AZ Durable Health Care Power of Attorney LCPP §5

**Allows you as Principal to appoint an Agent to act on your behalf if you reach a point in life when you can no longer make medical decisions on your own**

**Authorizes Agent to make decisions “when I cannot make or communicate” health care decisions**

**Agent can**

**provide consent for medical care and treatment**

**consent to admit you to hospitals, nursing homes, and assisted living facilities**

**authorize access to medical records**

# ... AZ Durable Health Care Power of Attorney

LCPP §5 and §1, p.4

**Agent's authority is not solely limited to what's in the document**

**Principal can expressly exclude certain treatments**

**e.g. don't withhold food and hydration**

**e.g. don't put me on a ventilator**

**Allows Principal to give specific directions regarding**

**- autopsy; I do/don't consent to voluntary autopsy**

**- organ donation; I don't consent... or I do consent and here are specifics**

**- funeral and burial; my specifics are... or let Agent decide**

# AZ Living Will (End-of-life Care)

LCPP §7

**Expresses your wishes concerning care you want or don't want if you are in a**

- terminal condition**
- persistent vegetative state**
- irreversible coma**

**Includes choices you would make if you were able to communicate**

# ...AZ Living Will (End-of-life Care)

LCPP §7

**Arizona document addresses five specific issues:**

**I only want “Comfort Care” – do not prolong my life if I’m in a terminal condition**

**Limitations on mechanical treatment you want or do not want for e.g. do not withhold food and hydration; don’t put me on a ventilator**

**If I am pregnant I do or don't want treatment**

**Unless and until it's determined that I'm in a terminal condition etc. give me treatment**

**I do, or don't, want my life prolonged to the greatest extent possible**

# Living Will vs. Healthcare Power of Attorney

**Living Will does not allow for appointment of an Agent to speak for/represent you; Health Care Power of Attorney does**

**Living Will only applies to end-of-life care; Health Care Power of Attorney can be used in other situations**

**To avoid confusion, the Living Will should be attached to the Health Care Power of Attorney**

# AZ statutory “Do Not Resuscitate” Directive LCPP §9

**Differs from physician signed, hospital DNR**

**a.k.a Pre-hospital Medical Care Directive**

**a.k.a “Orange Card” - must be printed on orange paper**

**Must be available to First Responders – put on refrigerator or in some other place EMTs will see it**

**If I stop breathing or my heart stops “do not resuscitate”; paragraph 1 sets forth specifics re: cardiac and respiratory arrest**

**If I am choking or have fainted, try to keep me going**

# AZ Mental Health Care Power of Attorney

LCPP §6

Is “durable”

Comes into effect if you become "incapable" of making decisions related to Mental Health Care issues

Requires incapacity be determined by an Arizona licensed psychiatrist or psychologist

Cannot be revoked while the Principal is incapacitated

Allows the Agent to consent to Mental Health Care treatment including medications

# **Hierarchy in Making Treatment Decisions** LCPP §1, p.1

**Follow wishes expressed in written documents**

**Substituted judgement**

**decisions will be made based on what representative believes you would want**

**Good Faith determination of what is best for you**

**if there are no written documents and representative does not know what you would want**

# Who Keeps the Documents?

**You should keep the originals**

**Give copies to your doctors and agents; LCPP §1, p.7 contains wallet-sized notice**

**Consider AZ Advance Directive Registry, a service of the AZ Secretary of State**

**Digital copies are kept in a centralized place where health care workers have access**

# A Few More Things...

**Advanced Directives prepared in another state are valid in AZ**

**But normally the laws of the state where treatment occurs control**

**Recommendation: if you are a snowbird, have Advanced Directives for each state**

**Agents - choose one primary, several secondary**

**Agent will be one at a time, not a committee (no co-agents)**

# ... A Few More Things

## Communication with Agent

**Documents can only go so far; have meaningful, specific conversation with Agent regarding your wishes**

**Give examples of what you want/don't want**

**If Agent is not a family member, be sure they understand your wishes, especially if you are passing over family members**

# What if I Don't Have Documents?

LCPP §2, p.2

**Representative will be court - appointed guardian**

**If no documents or guardian the following, in order, may act:**

- spouse - unless legally separated**
- adult child; if more than one, health care provider shall seek the consent of a majority**
- parent of the patient**
- domestic partner, if the patient is unmarried (critical)**
- brother or sister of the patient**
- close friend**

# Many Thanks...

**To the Academy Service Corporation for allowing me to present this initial talk on health care related topics**

**To Marcia Neugebauer for narrating today**

**To Jim Johnson, Mike Horn-Mitchem and the rest of the tech crew for putting this all together**

**To you, my fellow Academy Villagers, for participating**

**email – [tullylaw@msn.com](mailto:tullylaw@msn.com)**