
STATE BAR OF MICHIGAN

PROBATE AND ESTATE PLANNING SECTION



PATIENT ADVOCATE
DESIGNATION

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Patient Advocate Designation

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Decisions about medical care can be among the most difficult and personal decisions that individuals face. Most people have strong opinions about the type of care they may want in certain situations. Sometimes, their mental or physical condition is such that they are no longer able to voice their opinions or designate another person to make these decisions due to their mental or physical condition. A legal document called a Patient Advocate Designation allows individuals to designate another person in advance to make medical treatment decisions for them in the event that they become unable to make medical treatment decisions due to a mental or physical condition.

What Is a Patient Advocate Designation?

Patient Advocate Designations are legal documents that allow individuals (called “Patients”) to appoint another person or persons (a “Patient Advocate”) to exercise powers over their care, custody, and medical treatment decisions during any period in which they are unable to participate in making those decisions. A Patient Advocate Designation is sometimes identified as a Medical Power of Attorney or a Health Care Proxy. Every individual has the legal right to make decisions regarding their own medical treatment. Patient Advocate Designations allow individuals to direct how medical treatment will be provided to them in the event that they are unable to participate in medical treatment decisions due to their mental or physical condition. Patient Advocate Designations are the only Michigan legal documents by which individuals can designate another person to make medical treatment decisions for them. Neither trustees under revocable living trusts nor agents under financial Durable Powers of Attorney are authorized by law to make these decisions unless they also have been properly appointed Patient Advocate. If an individual with no patient advocate receives Medicaid or has a reduced life expectancy due to an advanced illness, the law allows the family to make medical treatment decisions when the individual is unable to do so. However, the law is unclear on who makes decisions if there is conflict among family members. In uncontested situations with no designated patient advocate, decisions generally may be made by a consensus of the next of kin but there is no legal basis for making decisions that way.

Guardians are court-appointed advocates who have the right to make care, custody, and medical treatment decisions for the person for whom they have been appointed guardian. However, if that person

had properly executed a Patient Advocate Designation before the appointment of the guardian, the Patient Advocate usually retains the power to make decisions regarding that person's medical care. Additionally, the designation of a Patient Advocate often eliminates the need for a court-appointed guardian.

What Type of Directives Can Be Included in a Patient Advocate Designation?

In addition to appointing a Patient Advocate, individuals may include a statement of their desires relating to their care and medical treatment in the designation. They can also make "living will" declarations to describe the types of life-sustaining treatment that they would like to receive. However, living wills are not expressly authorized by Michigan law.

What Are the Execution Requirements for a Patient Advocate Designation?

Anyone 18 years or older who is of sound mind and not under duress, fraud, or undue influence at the time of signing can execute a Patient Advocate Designation. Many people who may be considered to be incapacitated or developmentally disabled nevertheless may have the capacity to execute a Patient Advocate Designation. In order to be valid, a Patient Advocate Designation must be properly signed and witnessed by two people. The witnesses must not be the appointed Patient Advocate, relatives, will beneficiaries, heirs, care workers, or employees of a facility where the Patient resides.

A Patient may revoke the designation at any time in any manner sufficient to communicate an intent to revoke even if at that time the Patient is unable to participate in medical treatment decisions. If the Patient's physician or health facility has notice of the Patient's revocation of the designation, the physician or health facility is required to note the revocation in the Patient's medical records and bedside chart and must notify the Patient Advocate.

When Does the Designation Take Effect?

The designation comes into effect only when the person making the designation is no longer able to participate in medical treatment decisions. The Patient's attending physician makes this determination in consultation with another physician or a licensed psychologist. The determination must be put in writing, incorporated into the Patient's medical record, and reviewed at least once a year.

If a dispute arises whether the Patient is able to participate in medical treatment decisions, a petition can be filed in probate court requesting the court to determine whether the Patient is able to do so.

What Are the Responsibilities of Patient Advocates and the Limitations on their Powers?

The person appointed Patient Advocate must also sign an acceptance of the designation, agreeing to the terms of the appointment as set out in state law. These terms include certain legal limitations on the Patient Advocate's authority.

An important thing to know about the limits on a Patient Advocate's authority is that a Patient Advocate cannot, under any circumstances, direct medical treatment that would lead to the death of the Patient. Michigan law prohibits euthanasia or "mercy killing".

A Patient Advocate is allowed, however, to make a decision to withhold or withdraw treatment that would allow a Patient to die. This can only be done if the Patient has authorized the Patient Advocate in a clear and convincing manner to make such a decision. The Patient must also acknowledge that such a decision to withhold or withdraw treatment would or could allow the Patient's death. A Patient Advocate can never make a life-ending decision if the Patient is pregnant. Even when a Patient has previously expressed a desire to have life-sustaining care or medical treatment withheld or withdrawn, the Patient Advocate cannot act on that earlier declaration if the Patient later expresses a desire to have life-sustaining care or treatment provided, regardless of whether the Patient is currently incapacitated or unable to participate in medical treatment decisions.

The Patient Advocate has the duty to act in the Patient's best interests. Preferences expressed or evidenced when the Patient is able to participate in medical treatment decisions are presumed to be in the Patient's best interests. The Patient Advocate has a duty to take reasonable steps to follow the Patient's expressed desires, preferences, and instructions. While these desires do not have to be set forth in writing, one of the best ways to ensure that the Patient Advocate has notice of them is to include them in the Patient Advocate Designation.

The Patient Advocate's powers cannot be delegated to another person without prior authorization by the Patient.

A designation appointing the spouse as Patient Advocate that was executed during the Patient's marriage is suspended during an action for separation or dissolution of marriage and revoked when the marriage is dissolved.

What Are the Responsibilities of the Medical Professional Regarding Patient Advocate Designations?

Medical professionals are bound by sound medical practice and by the Patient Advocate's instructions if they reasonably believe that the Patient Advocate Designation has been properly executed and the Patient Advocate is acting in compliance with the law. Under those circumstances, they are only liable in the same manner and to the same extent as if the Patient had made the decision.

If a dispute arises as to whether the Patient Advocate is acting consistent with the terms of the Patient Advocate Designation, the Patient's best interests or the law, a petition can be filed in the probate court requesting the court to determine whether the designation should be continued or the Patient Advocate should be removed.



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