Introduction to Advance Health Care Directives

California law provides individuals the ability to insure that their health care wishes are known and considered if they become unable to make these decisions themselves. The California Medical Association publishes an Advance Health Care Directive Kit which includes an Advance Health Care Directive form and wallet cards as well as the following information which answers the questions commonly asked about Advance Directives. See page 4 for ordering information.

What is an Advance Health Care Directive?

An Advance Health Care Directive is the best way to make sure that your health care wishes are known and considered if for any reason you are unable to speak for yourself. By completing a form called an “Advance Health Care Directive” California law allows you to do either or both of two things:

First, you may appoint another person to be your health care “agent.” This person (who may also be known as your “attorney-in-fact”) will have legal authority to make decisions about your medical care if you become unable to make these decisions for yourself.

Second, you may write down your health care wishes in the Advance Health Care Directive form—for example, a desire not to receive treatment that only prolongs the dying process if you are terminally ill. Your doctor and your agent must follow your lawful instructions.

Even though you do not have to appoint a health care agent, the California Medical Association (CMA) recommends that you do so. Then there will be someone you trust to actively participate in the decisions surrounding your health care.

Is an Advance Health Care Directive different from a “living will”?

The Advance Health Care Directive has replaced the Durable Power of Attorney for Health Care (or “DPAHC”) as the legally recognized document for appointing a health care agent in California. The Advance Health Care Directive allows you to do more than a DPAHC. An Advance Health Care Directive permits you not only to appoint an agent, but to give instructions about your own health care. You can now do either or both of these things.

What if I have already executed a Durable Power of Attorney for Health Care or a Natural Death Act Declaration. Is it still valid? Do I have to complete a new Advance Health Care Directive?

All valid Durable Powers of Attorney for Health Care (DPAHC) and Natural Death Act Declarations remain valid. Thus, unless your existing DPAHC has expired, you do not have to complete a new Advance Health Care Directive. A DPAHC executed before 1992 has expired and should be replaced.

Because the new Advance Health Care Directive gives you more flexibility to state your health care desires, you may wish to complete the new form even if you previously completed a DPAHC or Natural Death Act Declaration. At a minimum, you should review your existing DPAHC or Natural Death Act Declaration to make sure it has not expired and that it still accurately reflects your wishes.

You do not need a separate living will if you have already stated your wishes about life-sustaining treatment in an Advance Health Care Directive. The Advance Health Care Directive form in the California Medical Association’s Advance Health Care Directive kit includes an optional living will statement that you can select if it reflects your desires.
Who can complete an Advance Health Care Directive?

Any California resident who is at least eighteen (18) years old (or is an emancipated minor), of sound mind, and acting of his or her own free will can complete a valid Advance Health Care Directive.

Do I need a lawyer to complete an Advance Health Care Directive?

No. You do not need a lawyer to assist you in completing an Advance Health Care Directive form (such as the form supplied in the CMA kit). The only exception applies to individuals who have been involuntarily committed to a mental health facility who wish to appoint their conservator as their agent.

Who may I appoint as my health care agent?

You can appoint almost any adult to be your agent. You can choose a member of your family such as your spouse or an adult child, a friend, or someone else you trust. You can also appoint one or more “alternate agents” in case the person you select as your health care agent is unavailable or unwilling to make a decision. (If you appoint your spouse and later get divorced, the Advance Health Care Directive remains valid, but your first alternate agent will become your agent.)

It is important that you talk to the people you plan to appoint to make sure they understand your wishes and agree to accept this responsibility. Your health care agent will be immune from liability so long as he or she acts in good faith.

The law prohibits you from choosing certain people to act as your agent(s). You may not choose your doctor, or a person who operates a community care facility (sometimes called a “board and care home”) or a residential care facility in which you receive care. The law also prohibits you from appointing a person who works for the health facility in which you are being treated, or the community care or residential care facility in which you receive care, unless that person is related to you by blood, marriage, or adoption, or is a co-worker.

Can I appoint more than one person to share the responsibility of being my health care agent?

The California Medical Association (CMA) recommends that you name only one person as your health care agent. If two or more people are given equal authority and they disagree about a health care decision, one of the important purposes of the Advance Health Care Directive—to identify clearly who has authority to speak for you—will be defeated. If you are afraid of offending people close to you by choosing one over another to be your agent, ask them to decide among themselves who will be the agent, and list the others as alternate agents.

I want to provide more specific health care instructions than those included on this form. How do I do that?

You may write detailed instructions for your health care agent and physician(s). To do so, simply attach one or more sheets of paper to the form, write your instructions, write the number of pages you are attaching in the space provided at the end of Section 3, and sign and date the attachments at the same time you have the form witnessed or notarized. For examples of more specific instructions, including specific instructions for organ and tissue donation, go to the California Medical Association’s website at www.calmed.org.

How much authority will my health care agent have?

If you become unable to make your own health care decisions, your agent will have legal authority to speak for you in health care matters. Physicians and other health care professionals will look to your agent for decisions rather than your next of kin or any other person. Your agent will be able to accept, or refuse medical treatment, have access to your medical records, and make decisions about donating your organs, authorizing an autopsy, and disposing of your body should you die.

If you do not want your agent to have certain of these powers or to make certain decisions, you can write a statement in the Advance Health Care Directive form limiting your agent’s authority. In addition, the law says that your agent cannot authorize convulsive treatment (i.e., electroconvulsive therapy or ECT), psychosurgery, sterilization, abortion, or placement in a mental health treatment facility.

The person you appoint as your agent has no authority to make decisions for you until you are unable to make those decisions yourself, unless you choose to allow your agent to make those decisions for you immediately.

When you become incapacitated, your agent must make decisions that are consistent with any instructions you have written in the Advance Health Care Directive form or made known in other ways, such as by telling family members, friends or your doctor. If you have not made your wishes known, your agent must decide what is in your best interests, considering your personal values to the extent they are known.

What should I tell my family, my health care agent, and my doctors?

One of the most important parts of completing an Advance Health Care Directive is the conversations you have about it with your loved ones and your physicians. You should talk about your personal values and what makes living
meaningful for you; your current medical condition and decisions you may foresee in the future; specific concerns or wishes you may have regarding life support or aggressive interventions, hospice or long-term care; what concerns you most about death or dying; and how you would want to spend the last month of your life. It is recommended, although not always possible, that such a discussion include both your physician(s), and your health care agent (and alternate agent(s)).

Tell your loved ones that you have completed an Advance Health Care Directive and what you have said in it, especially if you have selected a health care agent. Your Advance Health Care Directive will likely go into effect during a period of crisis for them. It can help ease their burden to know that you have made some of these decisions in advance. In addition, they should know in advance who is to speak for you in making medical decisions and where copies of your Advance Health Care Directive can be found. Remind them that their role is to make sure that your wishes are communicated and that those wishes guide their decision making.

**Will my health care agent be responsible for my medical bills?**

No, not unless that person would otherwise be responsible for your debts. The Advance Health Care Directive deals only with medical decision making and has no effect on financial responsibility for your health care. Please note, however, that unless you have made other arrangements, your agent may be responsible for costs related to the disposition of your body after you die. Consult an attorney regarding how your financial affairs should best be handled.

**For how long is an Advance Health Care Directive valid?**

An Advance Health Care Directive is valid forever, unless you revoke it or state in the form a specific date on which you want it to expire.

**What should I do with the Advance Health Care Directive form after I fill it out?**

Make sure that the form has been properly signed, dated, and either notarized or witnessed by two qualified individuals (the form includes instructions about who can and cannot be a witness). Keep the original in a safe place where your loved ones can find it quickly. Give copies of the completed form to the people you have appointed as your agent and alternate agent(s), to your doctor(s) and health plan, and to family members or anyone else who is likely to be called if there is a medical emergency. You should tell these people to present a copy of the form at the request of your health care providers or emergency medical personnel.

Take a copy of the form with you if you are going to be admitted to a hospital, nursing home or other health care facility. Copies of the completed form can be relied upon by your agent and doctors as though they were the original.

In addition, you should fill out a contact list such as that provided on the inside front cover of the CMA kit. This will enable you to communicate any changes you make to your directive. Make sure you include the name, address, and telephone and fax numbers for each person or facility to whom you have given a copy of your Advance Health Care Directive form.

**What if I change my mind after completing an Advance Health Care Directive?**

You can revoke or change an Advance Health Care Directive at any time. To revoke the entire form, including the appointment of your agent, you must inform your treating health care provider personally or in writing. Completing a new CMA Advance Health Care Directive will revoke all previous directives. In addition, if you revoke or change your directive, you should notify every person or facility that has a copy of your prior directive and provide them with a new one.

You should complete a new form if you want to name a different person as your agent or make other changes. However, if you need only to update the address or telephone numbers of your agent or alternate agent(s), you may write in the new information, and initial and date the change. Of course, you should make copies or otherwise ensure that those who need this new contact information will have it.

You should make a list of the people and institutions to whom you give a copy of the form so you will know whom to contact if you revoke the Advance Health Care Directive, update contact information, or make a new one. The inside front cover of the CMA kit provides a place for this list.

**How will emergency personnel (such as paramedics) find my Advance Health Care Directive form in the event of an emergency?**

On the back cover of the CMA kit you will find two Advance Health Care Directive Wallet Identification cards. You should complete both cards. Keep one for yourself and give one to your spouse or someone who is likely to be contacted should you be in an emergency situation. The cards should be kept where emergency health care personnel will find them, such as in a wallet.

**I have reached a point in my life that I don’t want the paramedics to give me CPR. Will this Advance Health Care Directive keep this from happening?**
If the paramedics are made aware of your Advance Health Care Directive before they start resuscitative efforts, and the Advance Health Care Directive clearly instructs them not to start these efforts, your wishes should be respected. You may also want to complete the “Prehospital Do Not Resuscitate (DNR)” form and obtain a “Do Not Resuscitate– EMS” medallion approved by California’s Emergency Medical Services Authority. You may order copies of the DNR form (which includes instructions on ordering the medallion) from CMA publications. Please see below for ordering information.

**Is my Advance Health Care Directive valid in other states?**

An Advance Health Care Directive that meets the requirements of California law may or may not be honored in other states, but most states will recognize an Advance Health Care Directive that is executed legally in another state. If you spend a lot of time in another state, you may want to consult a doctor, lawyer, or the medical society in that state to find out about the laws there.

**Can anyone force me to sign an Advance Health Care Directive?**

No. The law specifically says that no one can require you to complete an Advance Health Care Directive before admitting you to a hospital or other health care facility, and no one can deny you health insurance because you choose not to complete an Advance Health Care Directive.

**Can I get more information about the Advance Health Care Directive?**

Yes. Your doctor probably can provide you with more information. However, you should talk to a lawyer if you want legal advice.

**How do I order CMA’s Advance Health Care Directive Kit?**

To order CMA’s Advance Health Care Directive Kit, visit CMA’s online book store at www.cmanet.org, or fax or mail the order form as directed below.

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**PHONE** in your Visa or MasterCard order at (415) 882-3388

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