

A HALACHIC ADVANCE MEDICAL DIRECTIVE

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An Introduction to A Halachic Advance Medical Directive

I. Advance Directives

An Advance Medical Directive can be used in two ways. You can use it to appoint an individual as your health care Agent, giving him or her the right to make treatment decisions on your behalf in the event that you would be unable or unwilling to do so. The Advance Directive can also be used to communicate specific instructions and wishes that you may have regarding your treatment decisions, in order to assure that whoever is deciding the course of your treatment will act in your best interest.

1. Appointing an Agent

According to the Maryland Legislature's Health Care Decision Act (1993)*, if an Agent has not been designated, family members of the patient become the surrogate decision makers according to the following hierarchy: the patient's spouse; an adult child of the patient; a parent of the patient; or an adult sibling of the patient. The surrogate has virtually unlimited authority to dictate the course of treatment of the patient, including the withholding or withdrawal of life-sustaining procedures, based on his or her understanding of the wishes of the patient.

If you are confident that the family member(s) the law would consider your surrogate would guide treatment in a way that truly reflects your wishes, it may be unnecessary to designate an Agent. You may however feel that the particular family member(s) would not understand your wishes, or perhaps would not be ideally suited for the difficult and stressful responsibility of making life and death decisions under emotionally trying circumstances. You may also be in a situation where the law would not appoint a single surrogate, but rather a group, such as a situation where more than one child of the patient is able to function in this capacity and the spouse is not. In this case the law requires consensus amongst all decision makers of equal standing, something which may be difficult to achieve. In cases such as these, you would be well advised to designate a Health Care Agent.

The statutory** form for appointment of a Health Care Agent includes the option to subject the Agent's authority to specific provisions and limitations.

2. Health Care Instructions

The second aspect of an Advance Directive is the communication of specific instructions as to the course of treatment you would like followed should any of a variety of situations arise. This may not be necessary in situations where you are confident that the Agent you have chosen, or the family member(s) who would serve as your surrogate, have a very clear understanding of your wishes.

* This approach has been adopted in other states including the State of New York (Bill 7166-B, 1993). While New Jersey has not yet legislated this approach, it is presumable that it will do so in the near future. In the meanwhile you would have to consider the fact that without an appointed Agent your health care decisions might be made by the courts.

** All references to the 'statutory form' are to the sample form provided in the Maryland Law (House Bill 1243).

However, even under such circumstances, it may be wise to commit your wishes to writing in the form of an Advance Directive. Given the extreme seriousness of these decisions, and the pressure of the decision maker may be under from your family, friends or health care providers, your Agent may easily begin to doubt his previous understanding of your wishes. An unambiguous Advance Directive helps the Agent by giving him clear guidance, enabling him to proceed with confidence. Similarly, the Agent and the family are spared from the often unnecessary guilt feelings which might otherwise plague them after the fact.

It is crucial to recognize that any written communication of Health Care Instructions, no matter how detailed, is not a substitute for an active and present Agent or surrogate. Health Care professionals need to deal with the people involved; it is difficult for them to respond to a 'piece of paper'. Additionally, no directive could possibly cover all eventualities. Only a person who has a true understanding of your general attitudes can.

II. Halachic Considerations

The issues dealt with in an Advance Medical Directive are addressed by Orthodox Jewish Law (Halacha). The extreme complexity of these issues lies in the reality that in approaching these questions one stands between the all-important and – in this situation – conflicting values of the preservation of human life and the alleviation of human suffering. An inappropriate decision may constitute murder on the one hand, or torture on the other. As such the gravity of these issues cannot be underestimated.

An attempt has been made here to formulate an Advance Medical Directive that incorporates the Halachic and personal concerns of the Torah-committed Jew, while conforming to the standards of the statutory form and other traditional versions of the Advance Directive. While the standard directive addresses primarily the two areas of the choice of an Agent and the communication of specific health care instructions, the proposed Halachic directive addresses five: the choice of an Agent; the expressed desire for the treatment to conform to Halachic standards; the choice of a rabbinic consultant; an outline of the normative Halachic approach to these issues; and the patient's personal expression of his wishes to be followed where Halachically appropriate.

1. The Choice of an Agent

Any decisions that Jewish Law leaves to individual preference must be made based on the patient's wishes alone. Thus the ultimate concern in surrogate decision making is the delivery of accurate substituted judgement, i.e. what the patient would want under these circumstances, not what the surrogate himself would want. This is an extremely sensitive task that ideally would be performed by someone with a genuine appreciation of the patient's wishes. Additionally, in a Halachic context, the patient would be best served by an individual who would work comfortably in consultation with the chosen Rabbi. It is always advised to confirm in advance your designated Agent's agreement to act in this role.

2. Desire For Treatment to Conform to Halachic Standards

This statement is included as a general proviso, instructing the Agent or surrogate of the patient's desire to follow Halacha in the course of his treatment. This imposes a limitation on the Agent's authority to act without proper assurance that his decisions indeed conform to Halacha.

3. The Choice of a Rabbi

Rabbinic involvement in this area is important as the Halachic and medical issues are extremely complex and require careful case-by-case analysis. You are advised to ascertain that the rabbi you designate is willing and able to serve in this capacity.

4. An Outline of The Normative Halachic Approach

In these issues, as in many others, there does not exist unanimity amongst rabbis as to the correct Halachic approach. There are rabbis who take a vitalist stance, understanding that Torah requires everything to be done under virtually all circumstances. The position outlined here does not follow that approach but adopts what seems to be the majority view, i.e. that more discrimination is appropriate in applying life-prolonging therapies.

This outline is not meant as a substitute for actual Rabbinic involvement, nor does it in any way limit the Halachic authority of the designated Rabbi. It is included in the text of the Directive to provide guidance to everyone involved as to the limitations and allowances Halacha makes in these areas, and to provide a context for the patient's statement of his own preferences.

5. Patient's Wishes

This section closely resembles the Health Care Instruction portion (Part B) of the statutory form. Its inclusion here is predicated on the understanding that under certain circumstances the Halacha allows for the personal discretion of the patient in determining whether or not to apply life-prolonging therapies. Even as all the statutory options are included, it should be recognized that the Halacha may consider a particular option, such as withholding of nutrition and hydration, always inappropriate. In fact, any number of the options presented here are specifically ruled out in the Outline of The Normative Halachic Approach. It is desirable, however, to include these options to allow for the different schools of Halachic opinion the designated Rabbi may adhere to.

Please note as well that beyond the three statutory options, a fourth option, ruling out only aggressive and burdensome procedures, is included. This stands between the extremes offered by the statutory options, and may in fact best approximate the normative Halachic position.

* Please note that New Jersey law does not allow for the designation as an Agent of any administrator or employee of the declarant's health care institution, unless the designee is related to the declarant. This includes the patient's attending physician as well.

Advance Directive
Part A
Appointment of Health Care Agent

(Optional Form)

(Cross through this whole part of the form if you do not want to appoint a health care agent to make health care decisions for you. If you do want to appoint an agent, cross through any items in the form that you do not want to apply.)

1. I, _____
residing at _____

appoint the following individual as my agent to make health care decisions for me:

(Full Name, Address and Telephone Number of Agent)

Optional: If this agent is unavailable or is unable or unwilling to act as my agent, then I appoint the following person to act in this capacity:

(Full Name, Address and Telephone Number of Back-up Agent)

2. My agent has full power and authority, subject to the limitations set forth in this document, to make health care decisions for me, including the power to:

- A. Request, receive and review any information, oral or written, regarding my physical or mental health, including, but not limited to, medical and hospital records, and consent to disclosure of this information;
- B. Employ and discharge my health care providers;
- C. Authorize my admission to or discharge from (including transfer to another facility) any hospital, hospice, nursing home, adult home, or other medical care facility; and
- D. Consent to the provision, withholding or withdrawal of health care, including, in appropriate circumstances, life-sustaining procedures.

3. The authority of my agent is subject to the following additional provisions and limitations:

4. My agent’s authority becomes operative (initial only the one option that applies):

_____ When my attending physician and a second physician determine that I am incapable of making an informed decision regarding my health care.

_____ When this document is signed.

5. My agent is to make health care decisions for me based on the dictates of Orthodox Jewish Law (Halacha) as determined by an Orthodox Rabbi considered knowledgeable in and responsible to the dictates of Halacha. If considered Halachically appropriate by the Rabbi, the agent is to take into account any other health care instructions I give in this document and my wishes as otherwise known to my agent. Where my wishes are unknown or unclear, my agent is to make health care decisions for me based on my best interest, if this is considered Halachically appropriate by the Rabbi. In such a case my agent is to determine my best interest after considering the benefits, burdens and risks that might result from a given treatment or course of treatment, or from the withholding or withdrawal of a treatment or course of treatment.

Where Halacha as determined by the Rabbi prohibits or requires the provision, continuation, discontinuation, withholding or withdrawal of any treatment, course of treatment or life-sustaining procedure, such Halachic determination shall be absolutely binding on my agent and my health care provider, and shall supersede or replace any decision predicated on other health care instructions given in this document, my wishes as otherwise known to my agent, or the agent’s determination of my best interests.

6. My agent shall not be liable for the costs of care based solely on this authorization.

By signing below, I indicate that I am emotionally and mentally competent to make this appointment of a health care agent and that I understand its purpose and effect.

(Date)

(Signature of Declarant)

The declarant signed or acknowledged signing this appointment of a health care agent in my presence, and based upon my personal observation, appears to be a competent individual.

(Witness)

(Witness)

(Signature and Addresses of Two Witnesses)

Advance Directive
Part B
Health Care Instructions

(Optional Form)

(Cross through all statements that you do not want to apply)

I. Instruction To Seek Rabbinic Guidance

In all decisions regarding my health care, I instruct my health care providers and my agent, or where applicable, my authorized surrogate, to act in accordance with Orthodox Jewish Law (Halacha). Determination of the requirements of Halacha shall be made by an Orthodox Rabbi considered knowledgeable in, and responsible to, the dictates of Halacha, who shall be consulted prior to the rendering of any such decisions. The opinion of the Rabbi as to the requirements of Halacha shall be binding and conclusive.

II. Choice of Rabbi

(Please note that more than one of these options can be used)

Optional: As such, I instruct my health care providers and my agent, or where applicable, my authorized surrogate, to consult with the following individual whose opinion shall be considered authoritative in these matters:

(Full Name, Address and Telephone Number of Rabbi)

Optional: Where a specific Rabbi has not been chosen, or in the event that the chosen Rabbi is unavailable, the choice of a Rabbi shall be (initial the one option that applies)

_____ made _____ approved by:

(Full Name, Address and Telephone Number of Referring Individual or Organization)

Optional: _____ Where the responsibility of choosing a Rabbi falls upon my agent or authorized surrogate, their choice shall be guided by the Halachic principles articulated in the Outline of Halachic Position included in this document.

III. Interim Procedures Where Rabbinic Guidance is Unavailable

In the event that a treatment decision must be made before the Rabbi can be consulted, because, in the professional medical judgement of my health care providers, there is imminent danger to life, I direct my agent, authorized surrogate, or in the event that they too are unavailable, my health care providers (initial the option that applies):

Suggested Clause: _____ To use all means of treatment and life support on my behalf.

Alternative: _____ To follow the Halachic principles articulated in the outline of Halachic Position included in this document. The Health Care Preferences shall not be considered.

The Rabbi shall be consulted as soon as practicable and his determination of the requirements of Halacha shall supersede the instructions of this paragraph.

IV. Outline of Halachic Position

In order to guide my agent, authorized surrogate, and health care providers in the process of making decisions regarding my health care, I will outline a general Halachic attitude with regard to these issues. *This outline does not discharge the agent, authorized surrogate, or the health care provider of the responsibility to promptly seek the determination of the Rabbi, or of the duty of promptly appointing a Rabbi as instructed in this document.*

In the event of any inconsistency between these instructions and the Rabbi's determination of the requirements of Halacha, the Rabbi's determination shall control.

Orthodox Jewish Law (Halacha) values life of any quality or potential duration. However, in circumstances where the continuance of life involves the endurance of incessant and irreversible pain and suffering for the patient, the patient may forego certain life-prolonging therapies.

Active euthanasia is never tolerated. Nutrition and hydration shall be provided using oral, tubal or intravenous means, until and unless this is considered physiologically unsafe.

A crucial distinction must be made between the withholding and the withdrawal of life support systems. Under no circumstances, including a clinical diagnosis of brain death, should life support be withdrawn without the consent of qualified Rabbinic authority. With regard to a patient with an end-stage condition or in a persistent vegetative state, where the continuance of life does not involve the endurance of incessant and irreversible pain and suffering for the patient, treatment shall be pursued aggressively as it would for an otherwise healthy patient.

Any patient may forego procedures that expose the patient to a significant immediate risk.

DNR orders may be appropriate where resuscitation would only prolong a very tenuous hold on life. The order should include only active resuscitative procedures. Palliative care is advised and encouraged inasmuch as drugs are not administered with any intent to shorten the life of the patient.

Inter-current illness should be treated with the same principles applied to the primary illness.

IV. Health Care Preferences

(Cross through this part of the form if you do not want to use it to give health care instructions. If you do want to complete this portion of the form, initial those statements you want to be included in the document and cross through those statements that do not apply.)

These statements do not discharge the agent, authorized surrogate, or the health care provider of the responsibility to promptly seek the determination of the Rabbi or from the duty of promptly appointing a Rabbi as instructed in this document.

Pending contact with the Rabbi, the Health Care Preference section shall be ignored and directions in Interim Procedures section of this document followed.

In the event of any inconsistency between these statements and the Rabbi's determination of the requirements of Halacha, the Rabbi's determination shall control.

Where I have the Halachic option to forego treatment, I hereby state my preference:

1. If my death from a terminal condition is imminent and even if life-sustaining procedures are used there is no reasonable expectation of my recovery:

_____ I direct that if considered Halachically appropriate by Rabbi as heretofore designated, I be given all available medical treatment.

_____ I direct that if considered Halachically appropriate by Rabbi as heretofore designated, that my life be extended by life sustaining procedures, including provision of artificial nutrition, hydration and ventilation, but not by performance of aggressive and burdensome medical procedures.

_____ I direct that if considered Halachically appropriate by Rabbi as heretofore designated, that my life not be extended by life-sustaining procedures, except that if I am not able to take food by mouth I wish to receive nutrition and hydration artificially.

_____ I direct that if considered Halachically appropriate by Rabbi as heretofore designated, that my life not be extended by life-sustaining procedures including the administration of nutrition and hydration artificially.

2. If I am in a persistent vegetative state, that is, if I am not conscious and am not aware of my environment nor able to interact with others, and there is no reasonable expectation of my recovery:

_____ I direct that if considered Halachically appropriate by Rabbi as heretofore designated, I be given all available medical treatment.

_____ I direct that if considered Halachically appropriate by Rabbi as heretofore designated, that my life be extended by life-sustaining procedures, including provision of artificial nutrition, hydration and ventilation, but not by performance of aggressive and burdensome medical procedures.

_____ I direct that if considered Halachically appropriate by Rabbi as heretofore designated, that my life not be extended by life-sustaining procedures, except that if I am not able to take food by mouth I wish to receive nutrition and hydration artificially.

_____ I direct that if considered Halachically appropriate by Rabbi as heretofore designated, that my life not be extended by life-sustaining procedures including the administration of nutrition and hydration artificially.

3. If I have an end-stage condition, that is, a condition caused by injury, disease or illness, as a result of which I have suffered severe and permanent deterioration indicated by incompetence and complete physical dependency and for which, to a reasonable degree of medical certainty, treatment of the irreversible condition would be medically ineffective:

_____ I direct that if considered Halachically appropriate by Rabbi as heretofore designated, I be given all available medical treatment.

_____ I direct that if considered Halachically appropriate by Rabbi as heretofore designated, that my life be extended by life-sustaining procedures, including provision of artificial nutrition, hydration and ventilation, but not by performance of aggressive and burdensome medical procedures.

_____ I direct that if considered Halachically appropriate by Rabbi as heretofore designated, that my life not be extended by life-sustaining procedures, except that if I am not able to take food by mouth I wish to receive nutrition and hydration artificially.

_____ I direct that if considered Halachically appropriate by Rabbi as heretofore designated, that my life not be extended by life-sustaining procedures including the administration of nutrition and hydration artificially.

4. (Initial either option A or option B)

A. _____ I direct that if considered Halachically appropriate by Rabbi as heretofore designated, medication to relieve pain and suffering be given to me even if the medication: (initial the option you want to apply)

_____ would _____ would possibly shorten my remaining life.

B. _____ I direct that if considered Halachically appropriate by Rabbi as heretofore designated, no matter what my condition, medication to relieve pain and suffering not be given to me if the medication: (initial the option you want to apply)

_____ would _____ would possibly shorten my remaining life.

5. If I am pregnant, my decisions shall be modified as follows:

A. Any treatment or procedure that may hasten my death shall not be instituted for the benefit of the fetus unless approved by Rabbi as heretofore designated.

B. _____ If considered Halachically appropriate by Rabbi as heretofore designated, any other treatment or procedure, even if it will cause my pain or discomfort, shall be instituted for the benefit of the fetus.

C. _____

6. I direct (in the following space indicate any other instructions regarding receipt or non-receipt of any health care):

By signing below, I indicate that I am emotionally and mentally competent to make this Advance Directive and that I understand the purpose and effect of this document.

(Date)

(Signature of Declarant)

The declarant signed or acknowledged signing these health care instructions in my presence and based upon my personal observation appears to be a competent individual.

(Signatures, Names and Addresses of Two Witnesses)