

The Rabbinical Council of America
Halachic Guidelines to Assist Patients and their Families
in Making “End-of-Life” Medical Decisions
As of August 10 2009

This document is intended to provide general halachic guidance to patients and families involved in making difficult medical decisions that frequently arise at the end of life. It is not intended as a source for halachic decisions, nor is it a substitute for the essential dialogue among patients, families, rabbis and doctors. **All end-of-life issues and questions should be presented to a Halachic authority, preferably, when possible, before they become urgent or emergency decisions.**

1. What are Advance Directives?

Advance directives are guidelines about one's preferences for care in advance of a possible catastrophic event or change in one's mental capacity. The objective of these directives is to provide a person the opportunity to direct their care and share their preferences for treatment even if they are no longer able to participate in the decision-making process. Examples of such circumstances include stroke, coma or dementia.

There are two legal vehicles, or advance directives, that are used to facilitate decision-making when patients are not capable of making them. Both of these documents are used **only** in cases where the patients are deemed to be incapable to make their own decisions.

Living Will

This document details what to do in specific medical scenarios. Patients decide, in advance, which specific treatments they would request or refuse in each scenario.

Health Care Proxy

This document allows patients to choose an individual who will make decisions on their behalf in case they are unable to do so. While there are no case scenarios in this document, the patient can append specific requests to the document. In the ideal circumstance, the proxy should be intimately familiar with the patient's preferences for end-of-life treatment.

2. What is a halachic Advance Directive? How does it differ from similar documents?

While there are similarities in the nature of the forms, there are fundamental and profound differences between halachic and secular Advance Directives, especially the living will.

The ethical and philosophical underpinnings of secular Advance Directives are based on contemporary secular ethics. The halachic living will assumes adherence to the principles of the Torah as interpreted in the Orthodox tradition. Consequently, it is essential to consult with an Orthodox halachic authority to assure that Advance Directives are compliant with Orthodox tradition.

3. What is a Do Not Resuscitate (DNR) order? Is DNR ever permitted?

When patients with life threatening conditions are admitted to the hospital, they or their families will often be asked if they would like to sign a Do Not Resuscitate (DNR) order. This order means that if the patient's heart stops beating, or if they stop breathing, the medical staff will not initiate CPR or any life-saving maneuvers. Jewish law emphatically emphasizes the preservation of life, though there may be circumstances when a DNR order would be halachically appropriate.

As a word of caution, a DNR order can often be interpreted by the medical staff in a broader sense than intended. It may be perceived as an order to refrain from any aggressive therapy for the patient -- DNT, Do Not Treat. It is essential that the family clarifies their specific intentions and all limitations to the DNR order.

4. What is a Do Not Intubate (DNI) order? Is DNI ever permitted?

One of the treatments often utilized at the end of life is artificial (mechanical) respiration. The procedure for introducing a tube into the lungs, which aids in breathing, is called intubation. The tube is connected to a machine (called a ventilator, respirator, or life-support system). The family will be asked about intubation, either separately, or as a part of the DNR order. The medical indications for intubation are many and are **not** the same in every patient. As with the DNR order, there may be circumstances when it is halachically appropriate to withhold intubation.

If artificial respiration (intubation) is withheld, in accordance with the ruling of a Halachic authority, oxygen supplementation via face mask or nasal prongs can still be provided. Oxygen is usually considered basic care and should be provided to all patients for whom it is medically indicated.

5. Once a patient has been placed on life support, can it ever be removed?

In Jewish law it is forbidden to perform an act that will directly result in the death of the patient. Therefore, removal of a respirator, when it will directly result in the patient's immediate death, is unequivocally prohibited. However, respirators are used for many reasons, and are safely removed in many situations. For patients at the end of life, it may be medically appropriate, in certain circumstances, to remove a respirator, as the respirator may not be required for the

patient's care. **This area requires the input of medical and halachic expertise, and one should proceed with great caution.**

6. How is nutrition delivered to terminal patients unable to take food by mouth? Must such "artificial" nutrition always be provided?

Certain patients with terminal conditions may be unable to eat normally and may require artificial methods to deliver nutrition and hydration. These artificial means can include the following:

Nasogastric Tube (NG tube) – This is a plastic tube that is inserted into the nose (or mouth) and passed into the stomach. This procedure has few complications. It is usually a temporary (days/weeks) measure for delivering nutrition and hydration. Water and specially formulated nutritional liquids can be administered through this tube.

Total Parenteral Nutrition (TPN) - This requires the placement of a catheter (thin tube) into one of the major blood vessels of the body. Only specially designed liquids can be instilled into this catheter. This can be used for prolonged periods, but is not a permanent method of nutrition. There are some potential complications associated with the insertion and maintenance of TPN.

Percutaneous Endoscopic Gastrostomy (PEG) – This is a tube placed directly into the stomach. The term "feeding tube" is used commonly to refer to this device. This requires a minor procedure (endoscopy) with sedation. There are some potential complications associated with the insertion and maintenance of a PEG. This *can* be a permanent method of nutritional delivery. Pureed foods and pulverized pills can be administered through the PEG.

While secular wills include the option to refuse nutrition and hydration, generally Halacha assumes that nutrition should be delivered to all patients. Halachic authorities consider nutrition to be essential, and generally recommend its provision to all patients, whether conscious or comatose. However, there may be circumstances when artificial nutrition and hydration may be discontinued, in accordance with Halacha.

7. Pain control and the use of morphine

Narcotic pain medications, such as morphine, are often prescribed for terminal patients to alleviate suffering near life's end. These medications which provide pain relief are also associated with rare complications that may potentially hasten a patient's death. The alleviation of pain and suffering is a mitzvah and should not be withheld out of concern for potential adverse effects. It is clearly halachically permitted for patients to receive narcotic medication, even when it may possibly hasten their death, when the following conditions are met:

- The intent is purely to alleviate suffering; *not* to terminate life.
- The dose of medicine is gradually increased as necessary to alleviate the pain.

8. If someone suffers from a terminal condition, such as cancer, and develops a secondary infection (e.g., pneumonia or urinary tract infection), must the infection be treated?

While Halachic authorities often require the treatment of secondary infections, there may be situations where treatment for secondary infections or complications may be halachically withheld.

9. Is brain death considered halachic death?

The definition of death, one of the most complex issues in modern medical Halacha, is beyond the scope of this document. There are different halachic opinions as to whether "brain death" constitutes halachic death, and correspondingly, how treatment should proceed in these cases. Even the performance of diagnostic tests for the diagnosis or confirmation of brain death should be discussed with a halachic authority. .

10. Is it permitted to be an organ donor (after death)?

From a medical and legal perspective, organs can be donated from patients who are alive and well (e.g. kidneys, partial liver donation); have sustained cardiac death (e.g. eyes, skin, bone and possibly kidneys); or are brain dead (e.g. heart, liver, lung and kidney). The halachic approach to organ donation is varied and complex, and beyond the scope of this document. Questions about organ donation both before and after death should be posed to a halachic authority.

11. Is an autopsy permitted?

While autopsies are generally prohibited according to Jewish law, there are rare cases when they may be permitted. Modified autopsies or postmortem imaging should be considered where possible even in these cases.

Conclusion

All end-of-life issues and questions should be presented to a Halachic authority, preferably, when possible, before they become urgent or emergency decisions. The above guidelines are intended to provide general information regarding the approach of a Torah observant Jew towards making difficult end-of-life medical decisions. They are not decisive, nor comprehensive. All end-of-life cases should be discussed with a halachic authority. We strongly encourage direct and candid dialogue among the individual, their proxy and their halachic authority prior to completion of the document. In addition, we urge revisiting health care proxy documents on a periodic basis to assure that they are current.

The Rabbinical Council of America

Halachic Health Care Proxy

Proxy and Directive With Respect To Health Care and Post-Mortem Decisions

Introduction

This Halachic Health Care Proxy, revised in August of 2009, is designed to help ensure that all medical and post-death decisions made by others on your behalf will be made in accordance with Jewish law and custom (*Halacha*). **This document is of great importance in light of in-roads made by medical service providers to insert themselves into the decision making process of patients and their families regarding end-of-life issues.** The text of this Halachic Health Care Proxy has been approved by attorneys. While we do not expect that any future change in federal or state laws would materially affect the validity of this document, you should show it to your own attorney to confirm its effectiveness in your state and for your specific needs.

Acknowledgment

The Rabbinical Council of America wishes to acknowledge the pioneering work of Agudath Israel of America, whose Health Care Proxy was invaluable in the formulation of this document.

Further Guidelines

The RCA has also prepared a separate document titled "**Halachic Guidelines to Assist Patients and their Families in Making "End-of-Life" Medical Decisions**" which should be reviewed prior to filling out this form. Like this document, it is available for download at www.rabbis.org (and in printed form can be found at the back of this document.)

Halachic Health Care Proxy Registration

The Union of Orthodox Jewish Congregations of America, through an agreement with the New York Legal Assistance Group (NYLAG), has arranged registration of your Halachic Health Care Proxy free of charge with the U.S. Living Will Registry. The Registry will maintain a copy on a secure website that can be accessed instantly by healthcare providers around the country 24 hours a day through its automated service. We encourage registration, because, in many instances, a patient has to be rushed to the hospital and the family may not be able to locate or access the health care proxy.

Registrants will receive confirmation of their registration and labels to affix to their insurance card & driver's license, stating that their advance directive is registered, and a wallet card listing their Registration #. The registrant is contacted annually by mail to confirm that the advance directive has not been changed or revoked, and to update personal and emergency contact information. This annual update is included in this life-time registration; there is never a charge to the registrant for annual updates or for continued registration.

For more detailed information on the registry, see www.oucommunity.org

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Instructions

(a) Print your name on the first line of the form.

(b) In Section 1, print the name, address, and telephone numbers of the person you wish to designate as your agent to make medical decisions on your behalf if you ever become incapable of making them on your own. Be sure to include all numbers (including cell phone and pager) where your agent can be reached in the event of an emergency. If the contact information for your agent changes, you should provide that updated information to everyone whom you have provided with a copy of your Health Care Proxy.

You should also insert the name, address, and telephone numbers of an alternate agent, to make such decisions if your main agent is unable, unwilling, or unavailable to make such decisions.

Before appointing anyone to serve as your agent, or alternate agent, ascertain that person's willingness to serve in such capacity. For your convenience, an addendum at the end of this document provides talking points to facilitate discussion between you and your proxy. In addition, if you have made arrangements with a burial society (*Chevra Kadisha*) for the handling and disposition of your body after death, you may wish to advise your agents of such arrangements.

Note: the law allows virtually any competent adult (an adult is a person 18 years of age or older, or anyone who has married) to serve as a health care agent. Thus, you may appoint as your agent (or alternate agent) your spouse, adult child, parent or other adult relative.

You may also appoint a non-relative to serve as your agent (or alternate agent), provided that individual has not already been appointed by 10 other persons to serve as a health care agent, or, is a non-physician employee of a health care facility in which you are a patient or resident.

(c) In Section 3, please print the name(s), addresses, and telephone numbers of the Orthodox rabbi and the alternate Orthodox rabbi whose guidance you want your agent to follow, should any questions arise as to the requirements of *halacha*.

You are free to insert the name of any Orthodox Rabbi(s) you choose. However, you are encouraged to discuss the matter with the rabbi to ascertain his specialization in end-of-life halachic issues and willingness to serve in such capacity.

(d) In Section 8, sign and print your name, address, phone numbers, and the date. If you are not physically able to sign and date the form, the law allows another person to do so on

your behalf, as long as he or she does so at your direction, in your presence, and in the presence of two adult witnesses.

(e) In the Declaration of Witnesses section, two witnesses should sign their names and insert their addresses beneath your signature. These two witnesses must be competent adults. Neither of them should be the person you have appointed as your health care agent (or alternate agent). They may, however, be your relatives.

If you reside in a mental health facility, at least one witness must be an individual who is not affiliated with the facility. In addition, if the mental health facility is also a hospital, at least one witness must be a qualified psychiatrist.

(f) It is recommended that you keep the original of this form among your valuable papers in a location that is readily accessible in the event of an emergency; and that you distribute copies to the health care agent (and alternate agent) you have designated in section 1, to the rabbi(s) you have designated in section 3, as well as to your doctors, your lawyer, and anyone else who is likely to be contacted in times of emergency.

(g) If, at any time, you wish to revoke this Proxy and Directive, you may do so by executing a new one; or by notifying your agent or health care provider, in writing, of your intent to revoke it. To avoid possible confusion, it would be wise to try to obtain all originals and copies of the old Proxy and Directive and destroy them.

If you do not revoke the Proxy and Directive, the Law provides that it remains in effect indefinitely. Obviously, if any of the persons whose names you have inserted in the Proxy and Directive dies or becomes otherwise incapable of serving in the role you have assigned, you should execute a new Proxy and Directive.

(h) It is recommended that you also complete the Emergency Instructions Card contained at the end of this form, and carry it with you in your wallet or purse.

(i) If, upon consultation with your rabbi, you would like to add to this standardized Proxy and Directive any additional expression of your wishes with respect to medical and/or post-mortem decisions, you may do so by attaching a "rider" to the standardized form. If you choose to do so, or if you have any other questions concerning this form, please consult an attorney.

These instructions are not part of the Halachic Health Care Proxy and need not be kept attached to the executed document.

Proxy and Directive With Respect To Health Care Decisions and Post-Mortem Decisions

I, _____, hereby declare as follows:

1. Appointment of Agent: In recognition of the fact that there may come a time when I will become unable to make

my own health care decisions because of illness, injury or other circumstances, I hereby appoint

Agent

Name _____

Address _____

Telephone/Email:

Office _____

Home _____

Cell _____

E-mail: _____

as my health care agent to make any and all health care decisions for me, consistent with my wishes as set forth in this directive. If the person named above is unable, unwilling or unavailable to act as my agent, I hereby appoint

Alternate Agent

Name _____

Address _____

Telephone/Email:

Office _____

Home _____

Cell _____

E-mail: _____

to serve in such capacity.

This appointment shall take effect in the event I become unable, because of illness, injury or other circumstances, to make my own health care decisions.

2. Jewish Law to Govern Health Care Decisions: I am Jewish. It is my desire, and I hereby direct, that all health care decisions made for me (whether made by my agent, a guardian appointed for me, or any other person) be made pursuant to Jewish law and custom as determined in accordance with Orthodox interpretation and tradition. Without limiting in any way the generality of the foregoing, it is my wish that Jewish Law and custom should dictate the course of my health care with respect to such matters as the performance of cardio-pulmonary resuscitation if I suffer

cardiac or respiratory arrest; the performance of life-sustaining surgical procedures and the initiation or maintenance of any particular course of life-sustaining medical treatment or other form of life-support maintenance, including the provision of nutrition and hydration; and the criteria by which death shall be determined, including the method by which such criteria shall be medically ascertained or confirmed.

3. Ascertaining the Requirements of Jewish Law: In determining the requirements of Jewish law and custom in connection with this declaration, I direct my agent to consult with the following Orthodox Rabbi and I ask my agent to comply with his halachic decisions:

Rabbi

Name _____

Address _____

Telephone/Email:

Office _____

Home _____

Cell _____

E-mail: _____

If such Orthodox Rabbi is unable, unwilling or unavailable to provide such consultation and guidance, I direct my agent

to consult with the following Orthodox Rabbi and I ask my agent to comply with his halachic decisions:

Alternate Rabbi

Name _____

Address _____

Telephone/Email:

Office _____

Home _____

Cell _____

E-mail: _____

4. Direction to Health Care Providers: Any health care provider shall rely upon and carry out the decisions of my agent, and may assume that such decisions reflect my wishes and were arrived at in accordance with the procedures set forth in this directive, unless such health care provider shall have good cause to believe that my agent has not acted in good faith in accordance with my wishes as expressed in this directive.

If the persons designated in section 1 above as my agent and alternate agent are unable, unwilling or unavailable to serve in such capacity, it is my desire, and I hereby direct, that any health care provider or other person who will be making health care decisions on my behalf follow the procedures outlined in section 3 above in determining the requirements of Jewish law and custom.

Pending contact with the agent and/or Orthodox Rabbi described above, it is my desire, and I hereby direct, that all health care providers undertake all essential emergency and/or life sustaining measures on my behalf.

5. Access to Medical Records and Information; HIPAA:

My agent(s) and Rabbi(s) are hereby authorized under the Health Insurance Portability and Accountability Act of 1996 ("HIPAA") access to any and all protected information, and accordingly all of my protected health information (as such term is defined under HIPAA) and other medical records shall be made available to my agent and rabbi upon request in the same manner as such information and records would be released and disclosed to me, and my agent and rabbi shall have and may exercise all of the rights I would have regarding the use and disclosure of such information and records, as required under HIPAA.

6. Post-Mortem Decisions: It is also my desire, and I hereby direct, that after my death, all decisions concerning the handling and disposition of my body be made pursuant to Jewish law and custom as determined in accordance with

Orthodox interpretation and tradition. For example, Jewish law generally requires expeditious burial and imposes special requirements with regard to the preparation of the body for burial. It is my wish that Jewish law and custom be followed with respect to these matters.

Further, subject to certain limited exceptions, Jewish law generally prohibits the performance of any autopsy or dissection. It is my wish that Jewish law and custom be followed with respect to such procedures, and with respect to all other post-mortem matters including the removal and usage of any of my body organs or tissue for transplantation or any other purposes. I direct that any health care provider in attendance at my death notify the agent and/or Orthodox Rabbi described above immediately upon my death, in addition to any other person whose consent by law must be solicited and obtained, prior to the use of any part of my body as an anatomical gift, so that appropriate decisions and arrangements can be made in accordance with my wishes. Pending such notification, and unless there is specific authorization by the Orthodox Rabbi consulted in accordance with the procedures outlined in section 3 above, it is my desire, and I hereby direct, that no post-mortem procedure be performed on my body.

7. Incontrovertible Evidence of My Wishes: If, for any reason, this document is deemed not legally effective as a health care proxy, or if the persons designated in section 1 above as my agent and alternate agent are unable, unwilling or unavailable to serve in such capacity, I declare to my family, my doctor and anyone else whom it may concern that the wishes I have expressed herein with regard to compliance with Jewish law and custom should be treated as incontrovertible evidence of my intent and desire with respect to all health care measures and post-mortem procedures; and that it is my wish that the procedure outlined in section 3 above should be followed in determining the requirements of Jewish law and custom.

8. Duration and Revocation: It is my understanding and intention that unless I revoke this proxy and directive, it will remain in effect indefinitely. My signature on this document

shall be deemed to constitute a revocation of any prior health care proxy, directive or other similar document I may have executed prior to today's date.

My Signature _____

(If you are not physically able to sign, please ask another person to sign your name on your behalf.)

My Name (printed) _____ **Date** _____

Address _____

Telephone/Email:

Office _____

Home _____

Cell _____

E-mail: _____

Declaration of Witnesses

I, on this _____ day of _____, 20____, declare that the person who signed (or asked another to sign) this document is personally known to me and appears to be of sound mind and acting willingly and free from duress.

He/She signed (or asked another to sign for him/her) this document in my presence (and that person signed in my presence). I am not the person appointed as agent by this document

Signature of Witness 1 _____

Name (printed) _____

Address _____

Telephone/Email:

Office _____

Home _____

Cell _____

E-mail: _____

Signature of Witness 2 _____

Name (printed) _____

Address _____

Telephone/Email:

Office _____

Home _____

Cell _____

E-mail: _____

Appendices

Expression of Intent

See Instructions paragraph (i)

The issues surrounding end-of-life medical decisions are critical and most complex. We, therefore, strongly recommend that you discuss your wishes and concerns openly with your Health Care proxy (as well as the alternate) and your designated Rabbi. In order to give them guidance, in the event that you are unable to make your own decisions, we ask you to review the following scenarios and discuss with them whether you wish to be treated aggressively with all appropriate life-support interventions, or palliative/comfort care, which may include pain medications, symptom relief, antibiotics and feeding tubes.

- *If I become terminally ill, I want to be treated.....*
- *If I am in a coma or have little conscious understanding, with no hope of recovery, then I want to be treated.....*
- *If I have brain damage or a brain disease that makes me unable to recognize people or speak and there is no hope that my condition will improve, I wish to be treated.....*

Medical technology is constantly advancing, so that new treatment options may become available in the future. Additionally, your advance directives at this time of your life may not necessarily apply if or when conditions change. We, therefore, urge you to periodically update this HCP, Health Care Proxy form, along with your DBA, Durable Power-of-Attorney, and Will.

Emergency Instructions Card

See Instructions paragraph (h)

Health Care Proxy Emergency Instructions	
<p>I _____ have executed a "Halachic Health Care Proxy" (HCP) with respect to medical and post-mortem decisions, dated _____. Pursuant to the Halachic HCP, the persons listed on the reverse of this card are to serve as my agent and alternate agent, respectively, in making health care decisions for me if I become unable to do so.</p> <p>I desire that all such health care decisions, as well as all decisions relating to the handling and disposition of my body after I die, should be made pursuant to Jewish law and custom as determined in accordance with Orthodox interpretation and tradition. If there is any question regarding Jewish law and custom, my agent (or any other person making decisions for me) should consult with and follow the guidance of the rabbi or alternate rabbi identified on the reverse of this card. Pending contact with my agent I desire that health care providers should undertake all essential emergency measures on my behalf; and I desire that no autopsy, organ removal, or other post-mortem procedure be performed on my body without authorization from my agent.</p>	<p>Agent: _____</p> <p>Phone: Office: _____ Home: _____</p> <p>Cell: _____ E-Mail: _____</p> <p>Alternate Agent: _____</p> <p>Phone: Office: _____ Home: _____</p> <p>Cell: _____ Email: _____</p> <p>Rabbi: _____</p> <p>Phone: Office: _____ Home: _____</p> <p>Cell: _____ E-mail: _____</p> <p>Alternate Rabbi _____</p> <p>Phone: Office: _____ Home: _____</p> <p>Cell: _____ E-Mail: _____</p>

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- *If I become terminally ill, I want to be treated.....*

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Note: For your benefit, one should:

- carry a copy of the above Emergency Instruction Card in your wallet/purse
- Display this card in your residence (e.g. on refrigerator)