

## DURABLE POWER OF ATTORNEY FOR HEALTH CARE

### **144B.1 Definitions.**

For purposes of this chapter, unless the context otherwise requires:

1. "*Attorney in fact*" means an individual who is designated by a durable power of attorney for health care as an agent to make health care decisions on behalf of a principal and has consented to act in that capacity.
2. "*Durable power of attorney for health care*" means a document authorizing an attorney in fact to make health care decisions for the principal if the principal is unable, in the judgment of the attending physician, to make health care decisions.
3. "*Health care*" means any care, treatment, service, or procedure to maintain, diagnose, or treat an individual's physical or mental condition. "*Health care*" does not include the provision of nutrition or hydration except when they are required to be provided parenterally or through intubation.
4. "*Health care decision*" means the consent, refusal of consent, or withdrawal of consent to health care.
5. "*Health care provider*" means a person who is licensed, certified, or otherwise authorized or permitted by the law of this state to administer health care in the ordinary course of business or in the practice of a profession.
6. "*Principal*" means a person age eighteen or older who has executed a durable power of attorney for health care.

91 Acts, ch 140, §1

### **144B.2 Durable power of attorney for health care.**

A durable power of attorney for health care authorizes the attorney in fact to make health care decisions for the principal if the durable power of attorney for health care substantially complies with the requirements of this chapter. A document executed prior to May 8, 1991, purporting to create a durable power of attorney for health care shall be deemed valid if the document specifically authorizes the attorney in fact to make health care decisions and is signed by the principal.

91 Acts, ch 140, §2

### **144B.3 Requirements.**

1. An attorney in fact shall make health care decisions only if the following requirements are satisfied:
  - a. The durable power of attorney for health care explicitly authorizes the attorney in fact to make health care decisions.
  - b. The durable power of attorney for health care contains the date of its execution and is witnessed or acknowledged by one of the following methods:
    - (1) Is signed by at least two individuals who, in the presence of each other and the principal, witnessed the signing of the instrument by the principal or by another person acting on behalf of the principal at the principal's direction.
    - (2) Is acknowledged before a notarial officer within this state.

2. The following individuals shall not be witnesses for a durable power of attorney for health care:

- a. A health care provider attending the principal on the date of execution.
- b. An employee of a health care provider attending the principal on the date of execution.
- c. The individual designated in the durable power of attorney for health care as the attorney in fact.
- d. An individual who is less than eighteen years of age.

3. At least one of the witnesses for a durable power of attorney for health care shall be an individual who is not a relative of the principal by blood, marriage, or adoption within the third degree of consanguinity.

4. A durable power of attorney for health care or similar document executed in another state or jurisdiction in compliance with the law of that state or jurisdiction shall be deemed valid and enforceable in this state, to the extent the document is consistent with the laws of this state. A durable power of attorney or similar document executed by a veteran of the armed forces which is in compliance with the federal department of veterans affairs advance directive requirements shall be deemed valid and enforceable.

91 Acts, ch 140, §3; 98 Acts, ch 1083, §2

#### **144B.4 Individuals ineligible to be attorney in fact.**

The following individuals shall not be designated as the attorney in fact to make health care decisions under a durable power of attorney for health care:

- 1. A health care provider attending the principal on the date of execution.
- 2. An employee of a health care provider attending the principal on the date of execution unless the individual to be designated is related to the principal by blood, marriage, or adoption within the third degree of consanguinity.

91 Acts, ch 140, §4

#### **144B.5 Durable power of attorney for health care form.**

1. A durable power of attorney for health care executed pursuant to this chapter may, but need not, be in the following form:

I hereby designate ..... as my attorney in fact (my agent) and give to my agent the power to make health care decisions for me. This power exists only when I am unable, in the judgment of my attending physician, to make those health care decisions. The attorney in fact must act consistently with my desires as stated in this document or otherwise made known.

Except as otherwise specified in this document, this document gives my agent the power, where otherwise consistent with the law of this state, to consent to my physician not giving health care or stopping health care which is necessary to keep me alive.

This document gives my agent power to make health care decisions on my behalf, including to consent, to refuse to consent, or to withdraw consent to the provision of any care, treatment, service, or procedure to maintain, diagnose, or treat a physical or mental condition. This power is subject to any statement of my desires and any limitations included in this document.

My agent has the right to examine my medical records and to consent to disclosure of such records.

2. In addition to the foregoing, the principal may provide specific instructions in the document conferring the durable power of attorney for health care, consistent with the provisions of this chapter.
3. The principal may include a statement indicating that the designated attorney in fact has been notified of and consented to the designation.
4. A durable power of attorney for health care may designate one or more alternative attorneys in fact.

91 Acts, ch 140, §5

#### **144B.6 Attorney in fact priority to make decisions.**

1. Unless the district court sitting in equity specifically finds that the attorney in fact is acting in a manner contrary to the wishes of the principal or the durable power of attorney for health care provides otherwise, an attorney in fact who is known to the health care provider to be available and willing to make health care decisions has priority over any other person, including a guardian appointed pursuant to chapter 633, to act for the principal in all matters of health care decisions. The attorney in fact has authority to make a particular health care decision only if the principal is unable, in the judgment of the attending physician, to make the health care decision. If the principal objects to a decision to withhold or withdraw health care, the principal shall be presumed to be able to make a decision.

2. In exercising the authority under the durable power of attorney for health care, the attorney in fact has a duty to act in accordance with the desires of the principal as expressed in the durable power of attorney for health care or otherwise made known to the attorney in fact at any time. A declaration executed by the principal pursuant to the life- sustaining procedures Act, chapter 144A, shall not be interpreted as expressing an intent to prohibit the withdrawal of hydration or nutrition when required to be provided parenterally or through intubation and shall not otherwise restrict the authority of the attorney in fact unless either the declaration or the durable power of attorney for health care expressly provides otherwise. If the principal's desires are unknown, the attorney in fact has a duty to act in the best interests of the principal, taking into account the principal's overall medical condition and prognosis.

91 Acts, ch 140, §6

#### **144B.7 Authority to review medical records.**

Except as limited by the durable power of attorney for health care, an attorney in fact has the same right as the principal to receive and review medical records of the principal, and to consent to the disclosure of medical records of the principal when acting pursuant to the durable power of attorney for health care.

91 Acts, ch 140, §7

#### **144B.8 Revocation of durable power of attorney.**

1. A durable power of attorney for health care may be revoked at any time and in any manner by which the principal is able to communicate the intent to revoke, without regard to mental or physical condition. Revocation may be by notifying the attorney in fact orally or in writing. Revocation may also be made by notifying a health care provider orally or in writing while that provider is engaged in providing health care to the principal. A revocation is only effective as to a health care provider upon its communication to the provider by the principal or by another to whom the principal has communicated revocation. The health care provider shall document the revocation in the treatment records of the principal.

2. The principal is presumed to have the capacity to revoke a durable power of attorney for health care.
3. Unless it provides otherwise, a valid durable power of attorney for health care revokes any prior durable power of attorney for health care.
4. If authority granted by a durable power of attorney for health care is revoked under this section, an individual is not subject to criminal prosecution or civil liability for acting in good faith reliance upon the durable power of attorney for health care unless the individual has actual knowledge of the revocation.
5. The fact of execution and subsequent revocation of a durable power of attorney shall have no effect upon subsequent health care decisions made in accordance with accepted principles of law and standards of medical care governing those decisions.

91 Acts, ch 140, §8

#### **144B.9 Immunities and responsibilities.**

1. A health care provider is not subject to criminal prosecution, civil liability, or professional disciplinary action if the health care provider relies on a health care decision and both of the following requirements are satisfied:
  - a. The decision is made by an attorney in fact who the health care provider believes in good faith is authorized to make the decision.
  - b. The health care provider believes in good faith that the decision is not inconsistent with the desires of the principal as expressed in the durable power of attorney for health care or otherwise made known to the health care provider, and, if the decision is to withhold or withdraw health care necessary to keep the principal alive, the health care provider has provided an opportunity for the principal to object to the decision.
2. Notwithstanding a contrary health care decision of the attorney in fact, the health care provider is not subject to criminal prosecution, civil liability, or professional disciplinary action for failing to withhold or withdraw health care necessary to keep the principal alive. However, the attorney in fact may make provisions to transfer the responsibility for the care of the principal to another health care provider.
3. An attorney in fact is not subject to criminal prosecution or civil liability for any health care decision made in good faith pursuant to a durable power of attorney for health care.
4. It shall be presumed that an attorney in fact, and a health care provider acting pursuant to the direction of an attorney in fact, are acting in good faith and in the best interests of the principal absent clear and convincing evidence to the contrary.
5. For purposes of this section, acting in "*good faith*" means acting consistent with the desires of the principal as expressed in the durable power of attorney for health care or otherwise made known to the attorney in fact, or where those desires are unknown, acting in the best interests of the principal, taking into account the principal's overall medical condition and prognosis.
6. A health care provider or attorney in fact may presume that a durable power of attorney for health care is valid absent actual knowledge to the contrary.

91 Acts, ch 140, §9

#### **144B.10 Emergency treatment.**

This chapter does not affect the law governing health care treatment in an emergency.

91 Acts, ch 140, §10

**144B.11 Prohibited practices.**

1. A health care provider, health care service plan, insurer, self-insured employee welfare benefit plan, or nonprofit hospital plan shall not condition admission to a facility, or the providing of treatment, or insurance, on the requirement that an individual execute a durable power of attorney for health care.
2. A policy of life insurance shall not be legally impaired or invalidated in any manner by the withholding or withdrawing of health care pursuant to the direction of an attorney in fact appointed pursuant to this chapter.

91 Acts, ch 140, §11

**144B.12 General provisions.**

1. This chapter does not create a presumption concerning the intention of an individual who has not executed a durable power of attorney for health care and does not impair or supersede any right or responsibility of an individual to consent, refuse to consent, or withdraw consent to health care on behalf of another in the absence of a durable power of attorney for health care.
2. This chapter shall not be construed to condone, authorize, or approve any affirmative or deliberate act or omission which would constitute mercy killing or euthanasia.
3. If after executing a durable power of attorney for health care designating a spouse as attorney in fact, the marriage between the principal and the attorney in fact is dissolved, the power is thereby revoked. In the event of remarriage to each other, the power is reinstated unless otherwise revoked by the principal.
4. It is the responsibility of the principal to provide for notification of a health care provider of the terms of the principal's durable power of attorney for health care.

91 Acts, ch 140, §12