DEATH IN TEXAS: THE DOCUMENTS THAT CONTROL MEDICAL TREATMENT AND END-OF-LIFE DECISIONS

by Karen Telschow Johnson, J.D.[*]

I. INTRODUCTION

In my estate planning and elder law practice people face their mortality every day. They acknowledge this by preparing for their eventual deaths, and taking responsibility to ensure their loved ones are financially cared for and the transfer of assets and payments of debts can easily be handled upon their deaths. The more humbling conversation comes when we discuss what happens when the client is alive but has trouble communicating for themselves. What if they are alive but disabled by a traumatic brain injury, stroke, heart attack, fall, Alzheimer's diagnosis, cancer or other disease that causes a slow, but eventual demise? Who has the right to speak for you when you can no longer effectively communicate for yourself?

"When my time comes, my kids will know what I want. They'll figure it out," he says. In the meantime, the adult child across the table from me is crying, "It's hard to think about." An adult child who never had a

* J.D., Texas A&M University School of Law, 1998; B.A., Texas A&M University, 1988.

conversation with an aging parent nearing the end of life should not be having it in a hospital room.[1]

Prior to any illness or chronic disease taking its toll on the human body, the advanced care planning process should be addressed numerous times before it is needed.[2] In 2015, a total of 2,712,630 resident deaths were registered in the United States, yielding a crude death rate of 844 per 100,000.[3] The following were the 15 leading causes of death in that year: 1) Diseases of heart (heart disease), 2) Malignant neoplasms (cancer), 3) Chronic lower respiratory diseases, 4) Accidents (unintentional injuries), 5) Cerebrovascular diseases (stroke), 6) Alzheimer's disease, 7) Diabetes mellitus (diabetes), 8) Influenza and pneumonia, 9) Nephritis, nephrotic syndrome and nephrosis (kidney disease), 10) Intentional self-harm (suicide), 11) Septicemia, 12) Chronic liver disease and cirrhosis, 13) Essential hypertension and hypertensive renal disease (hypertension), 14) Parkinson's disease, and 15) Pneumonitis due to solids and liquids.[4] Most of the aforementioned diseases do not result in immediate death.[5] The body tends to fail over an extended period of time with numerous hospitalizations and transitioning from times of stability to downward trends.[6] What legal documents exist in Texas to address medical treatment and end-of-life needs?[7] When can these documents be used and how can patients control their own medical decisions—what they want and do not want— during life and near the end of life?[8]

Texas utilizes statutory and non-statutory documents to provide medical staff, physicians, and ancillary staff guidance for their patients' treatment desires and end-of-life options.[9] To be clear, there is an important distinction to be made when deciding about medical treatment options.[10] Is the patient in a curative treatment modality, where treatment may provide a cure for a disease process, or is the patient in palliative care, i.e., trying to be kept

---

1. The above hypothetical was created by the author for the purpose of this article.

2. *See generally Advance Care Planning: Healthcare Directives*, NAT'L INST. OF HEALTH (Jan. 15, 2018), https://www.nia.nih.gov/health/advance-care-planning-healthcare-directives (emphasizing the importance of creating an advanced directive even if one is not sick or aging) [perma.cc/8DSJ-52HN].

3. Sherry L. Murphy et al., *Deaths: Final Data for 2015*, 66 NAT'L VITAL STAT. REP. 6 (2017), https://www.cdc.gov/nchs/data/nvsr/nvsr66/nvsr66_06.pdf [perma.cc/8GB9-NEGK].

4. *Id.*

5. *See generally About Chronic Diseases*, CTR. FOR DISEASE CONTROL & PREVENTION, https://www.cdc.gov/chronicdisease/about/index.htm (stating that chronic diseases are caused by certain risk behaviors over time and require ongoing medical attention) [perma.cc/PA67-NTKX] (last updated Sep. 5, 2018).

6. *See* Oren Traub, *Problems Due to Hospitalization*, MERCK MANUAL, https://www.merck manuals.com/home/special-subjects/hospital-care/problems-due-to-hospitalization [perma.cc/338D-LULD] (last updated Mar. 2018).

7. *See infra* Appendices A–D.

8. *See infra* Parts II–IV.

9. *See infra* Appendices A–D.

10. *See* Judon Fambrough, *End-of-Life Documents*, TEX. A&M REAL EST. CTR. TECH. REP. 2044 (Feb. 2016), https://assets.recenter.tamu.edu/Documents/Articles/2044.pdf [perma.cc/J5XG-JC2J].

comfortable?[11] Texas uses a variety of documents to assist the medical community and their patients in communicating options for curative and palliative care treatment.[12]

The documents governing treatment decisions by Texas statute are the following: the Directive to Physicians and Family or Surrogates and the Out of Hospital Do-Not-Resuscitate (OOH-DNR) documents.[13] Texas has also recently enacted Do-Not-Resuscitate protocols for hospitals, effective April 1, 2018, and those will be reviewed here as well.[14] The non-statutory documents governing treatment decisions consist of the Medical Orders Scope of Treatment Form (MOST) and the Five Wishes Document.[15]

Although Texas has a statutory Medical Power of Attorney form, that document will not be reviewed here.[16] Because the medical power of attorney is only applicable when the patient can no longer effectively communicate with medical staff, this paper will only focus on documents reflective of the communication needed between patient and physician while a patient can effectively express their medical treatment desires.[17]

II. THE STATUTORY DOCUMENTS

A. Directive to Physicians and Family or Surrogates (See Appendix A)

The "living will" in Texas, controlling what medical procedures may be needed at the end of life, is governed by the Directive to Physicians and Family or Surrogates.[18] The document is effective if a patient is being treated by a health care provider in a hospital or other skilled nursing and assisted living facilities.[19] It also becomes effective when a patient is considered a qualified patient, diagnosed and certified by a physician in writing to be diagnosed with a terminal or irreversible condition.[20]

> "Terminal condition" means an incurable condition caused by injury, disease, or illness that according to reasonable medical judgment will produce death within six months, even with available life-sustaining treatment provided in accordance with the prevailing standard of medical care. A patient who has been admitted to a program under which the person receives hospice services provided by a home and community support

11. *Id.*
12. *See infra* Appendices A–D.
13. *See infra* Appendices A–B.
14. *See infra* Part III.
15. *See infra* Appendix D.
16. *See* TEX. HEALTH & SAFETY CODE ANN. § 166.002 (Supp.).
17. *See id.*
18. *Id.* § 166.033.
19. *Id.* § 166.004.
20. *Id.* § 166.033.

> services agency licensed under Chapter 142 is presumed to have a terminal condition for purposes of this chapter."[21]

An example of a terminal condition is a cancer diagnosis and medical complications from such diagnosis.[22]

> "Irreversible condition" means a condition, injury, or illness: (A) that may be treated but is never cured or eliminated; (B) that leaves a person unable to care for or make decisions for the person's own self; and (C) that, without life-sustaining treatment provided in accordance with the prevailing standard of medical care, is fatal.[23]

Diagnoses that fall under this classification are complications from sudden accidents and disease processes such as Parkinson's Disease and Alzheimer's Disease where there is no cure resulting in the patient's death due to complications from the irreversible disease.[24] Therefore, for the directive to be effective, two steps must occur: 1) the patient must be a qualified patient, and 2) such status has to be certified by a physician in writing.[25] If there is a chance of recovery, this document is not effective because the patient is not qualified.[26]

Once a patient is qualified by the physician as being at the end-of-life in a terminal condition or from complications due to an irreversible condition, the Directive to Physicians, and the choices regarding end-of-life selected by the patient in the directive, guides the medical staff as to the patient's wishes when they can no longer communicate.[27] Under the terminal and irreversible condition sections of the document, a patient is asked to select one of the following options:

> I request that all treatments other than those needed to keep me comfortable be discontinued or withheld and my physician allow me to die as gently as possible; OR I request that I be kept alive in this terminal condition using available life-sustaining treatment. (THIS SELECTION DOES NOT APPLY TO HOSPICE CARE).[28]

The language "keep me comfortable" and "allow me to die as gently as possible" are generally understandable phrases wherein the patient, having selected that choice, will be removed from the machines sustaining a patient's

---

21. *Id.* § 166.002(13).
22. *See* Fambrough, *supra* note 10.
23. TEX. HEALTH & SAFETY CODE ANN. § 166.002(9) (Supp.).
24. *See* Murphy et al., *supra* note 3.
25. TEX. HEALTH & SAFETY CODE ANN. § 166.002 (Supp.).
26. *See id.*
27. *See id.* § 166.033.
28. *Id.*

life.[29] Clarification is then needed for the phrase "life-sustaining treatment."[30] If the second choice is selected, what does that mean in actuality?[31]

> "Life-sustaining treatment" means treatment that, based on reasonable medical judgment, sustains the life of a patient and without which the patient will die. The term includes both life-sustaining medications and artificial life support such as mechanical breathing machines, kidney dialysis treatment, and artificially administered nutrition and hydration. The term does not include the administration of pain management medication, the performance of a medical procedure necessary to provide comfort care, or any other medical care provided to alleviate a patient's pain.[32]

In other words, life support would be removed.[33] These selections are initialed by the patient in the statutory document.[34] There is availability in the statutory form to provide for more specific instructions as well to enhance the communication between a patient and their physician.[35] The directive includes the following:

> Additional requests: (After discussion with your physician, you may wish to consider listing particular treatments in this space that you do or do not want in specific circumstances, such as artificially administered nutrition and hydration, intravenous antibiotics, etc. Be sure to state whether you do or do not want the particular treatment.)[36]

Any considerations a patient may have based on religious preferences, or on their experiences, may be placed in that section of the document.[37]

Most importantly, despite any and all efforts a patient may put into having a thorough and completed written directive, the patient has the right to change it orally.[38] A directive is effective until it is revoked.[39] The law recognizes that because a patient cannot always predict what events may precipitate the changing of a written directive, a declarant may orally state an intention to revoke the directive.[40] The additional requirements for the revocation to be effective is that it must be communicated as follows:

---

29. *See id.*
30. *See id.*
31. *See Medical Power of Attorney*, *infra* note 42.
32. TEX. HEALTH & SAFETY CODE ANN. § 166.033 (Supp.).
33. *Id.*
34. *Id.*
35. *Id.*
36. *Id.*
37. *See id.*
38. TEX. HEALTH & SAFETY CODE ANN. § 166.042(a)(3) (Supp.).
39. *Id.* § 166.041.
40. *See id.* § 166.042(a)(3).

> An oral revocation issued as prescribed by Subsection (a)(3) takes effect only when the declarant or a person acting on behalf of the declarant notifies the attending physician of the revocation. The attending physician or the physician's designee shall record in the patient's medical record the time, date, and place of the revocation, and, if different, the time, date, and place that the physician received notice of the revocation. The attending physician or the physician's designees shall also enter the word "VOID" on each page of the copy of the directive in the patient's medical record.[41]

This current statutory form is limited in its discussion of all of the issues that may arise at the end-of-life.[42] Because of this limitation, there are non-statutory forms currently being used in medical facilities across Texas.[43] Those will be specifically addressed later in this paper.[44]

The Directive to Physicians and Families or Surrogates does not apply to outpatient hospital services including emergency services.[45] What document guides medical professionals when the Directive does not apply?[46]

B. Out-of-Hospital Do-Not-Resuscitate Order (OOH-DNR) (See Appendix B)

The Directive to Physicians is not effective outside of a facility.[47] When an ambulance arrives at a patient's home, the directive will not guide the standard of care, but the Out-of-Hospital Do-Not-Resuscitate Order (OOH-DNR) is a legal form that will govern medical care given in the field.[48] In coordination with a physician, a patient may fill out this form, sign it, have the physician sign it, and take comfort in knowing that they will not be revived once breathing and cardiac response has ceased.[49] When executed, the document "becomes effective immediately on the date of execution for health care professionals acting in out-of-hospital settings. It remains in effect until the person is pronounced dead by authorized medical or legal authority or the document is revoked. Comfort care will be given as needed."[50] This do-not-resuscitate (DNR) order must be signed by a patient's

---

41. *Id.* § 166.042(c).
42. *Medical Power of Attorney*, TEX. MED. ASS'N (May 2016), http://www.texmed.org/Template.aspx?id=65#PROVIDERS [perma.cc/FD28-S7Y2].
43. *See* Charles Sabatino, *Can My Advance Directives Travel Across State Lines? An Essay on Portability*, 38 BIFOCAL, A J. OF THE ABA COMM'N ON LAW & AGING 3 (2016), https://www.americanbar.org/groups/law_aging/publications/bifocal/vol_38/issue_1_october2016/advance-directives-across-state-lines/ [perma.cc/MHY7-S2EX].
44. *See infra* Part IV.
45. TEX. HEALTH & SAFETY CODE ANN. § 166.033 (Supp.).
46. *See generally id.* (emphasizing that the form does not apply to hospice care).
47. *See generally id.* (referring to OOH-DNR document as another type of directive).
48. TEX. HEALTH & SAFETY CODE ANN. §§ 166.033, 166.082 (Supp.).
49. TEX. HEALTH & SAFETY CODE ANN. §§ 166.101, 166.083 (Supp.).
50. *See infra* Appendix B.

physician who is familiar with the medical records of the patient.[51] By signing, the physician confirms they are the attending physician and directs "health care professionals acting in out-of-hospital settings, including a hospital emergency department, not to initiate or continue certain life-sustaining treatment on behalf of the person."[52] The document may still be revoked in writing or verbally.[53]

III. THE STATUTORY REQUIREMENTS FOR A DO-NOT-RESUSCITATE ORDER

Texas does not have a statutory form for a do-not-resuscitate order.[54] However, as of April 1, 2018, the Texas Health and Safety Code was amended to add provisions to Section 1, Subchapter E, Sections 166.201 through 166.209 to govern such orders in a health care facility or hospital setting.[55] This recent addition to the code is important to understand because it establishes the legal standards for an effective DNR order.[56] The following are the provisions specifically related to the DNR procedures:

> Sec. 166.203. General Procedures and Requirements for Do-Not-Resuscitate Orders (a) A DNR order issued for a patient is valid only if the patient's attending physician issues the order, the order is dated, and the order: (1) is issued in compliance with: (A) the written and dated directions of a patient who was competent at the time the patient wrote the directions; (B) the oral directions of a competent patient delivered to or observed by two competent adult witnesses, at least one of whom must be a person not listed under Section 166.003(2)(E) or (F); (C) the directions in an advance directive enforceable under Section 166.005 or executed in accordance with Section 166.032, 166.034, or 166.035; (D) the directions of a patient's legal guardian or agent under a medical power of attorney acting in accordance with Subchapter D; or (E) a treatment decision made in accordance with Section 166.039; or (2) is not contrary to the directions of a patient who was competent at the time the patient conveyed the directions and, in the reasonable medical judgment of the patient's attending physician: (A) the patient's death is imminent, regardless of the provision of cardiopulmonary resuscitation; and (B) the DNR order is medically appropriate. (C) The DNR order takes effect at the time the order is issued, provided the order is placed in the patient's medical record as soon as practicable. (D) Before placing in a patient's medical record, a DNR order issued under Subsection (a)(2), the physician, physician assistant, nurse, or

51. TEX. HEALTH & SAFETY CODE ANN. § 166.084(b) (Supp.).

52. TEX. HEALTH & SAFETY CODE ANN. § 166.083(b)(4) (Supp.).

53. TEX. HEALTH & SAFETY CODE ANN. § 166.083(b)(5) (Supp.).

54. *See generally* TEX. HEALTH & SAFETY CODE ANN. § 166.203 (Supp.) (describing the requirements of a valid DNR in Texas, but there is no accompanying form).

55. Tex. H.B. 12, 85th Leg., C.S. (2017).

56. *See* TEX. HEALTH & SAFETY CODE ANN. §§ 166.201–.209 (Supp.).

> other person acting on behalf of a health care facility or hospital shall: (1) inform the patient of the order's issuance; or (2) if the patient is incompetent, make a reasonably diligent effort to contact or cause to be contacted and inform of the order's issuance: (A) the patient's known agent under a medical power of attorney or legal guardian; or (B) for a patient who does not have a known agent under a medical power of attorney or legal guardian, a person described by Section 166.039(b)(1), (2), or (3). (d) To the extent a DNR order described by Subsection (a)(1) conflicts with a treatment decision or advance directive validly executed or issued under this chapter, the treatment decision made in compliance with this subchapter, advance directive validly executed or issued as described by this subchapter, or DNR order dated and validly executed or issued in compliance with this subchapter later in time controls.[57]

In reviewing this new statute there are a few points to clarify; first, before placing the executed DNR Order in the patient's record, section 166.203(c) requires notice.[58] The mandated staff member, physician, nurse or other staff shall inform the patient of the issuance of the DNR or if such patient is incompetent:

> make a reasonably diligent effort to contact or cause to be contacted and inform of the order's issuance: (A) the patient's known agent under a medical power of attorney or legal guardian; or (B) for a patient who does not have a known agent under a medical power of attorney or legal guardian, a person described by Section 166.039(b)(1), (2), or (3).[59]

Second, the issuance of the order takes effect when it is placed in the patient's medical record.[60] Because the order cannot be placed in the medical record of the patient until the notice procedure requirements are met, there is concern of a possible delay between the signing of the order and its timely implementation.[61]

---

57. TEX. HEALTH & SAFETY CODE ANN. § 166.203 (Supp.).
58. *Id.*
59. *Id.* § 166.203(c)(2).
60. *Id.* § 166.203(b).
61. *Health Care Facility Do-Not-Resuscitate Orders*, TEX. MED. ASS'N (2018), https://www.texmed.org/uploadedFiles/Current/2016_Advocacy/End_of_Life/Senate%20Bill%2011%20Summary%20FINAL.pdf [perma.cc/9VAR-E9PW] (last visited Nov. 6, 2018).

IV. THE NON-STATUTORY DOCUMENTS ADDRESSING MEDICAL AND END-OF-LIFE TREATMENT

A. Texas MOST Form (See Appendix C)

Most patients are unfamiliar with the Texas MOST form unless they are in the medical profession, but they should be.[62] MOST stands for Medical Orders for Scope of Treatment and the MOST form in use today was promulgated by the Texas Most Coalition, February 26, 2016.[63] MOST stems from a program developed in the 1970s in an effort to promote advanced care planning conversations between patients, their physicians, and care teams.[64] This program was known as POLST, Physicians Orders for Life Sustaining Treatment, and is known in different forms throughout the United States.[65] In Texas, the phrase Medical Orders for Scope of Treatment, was more in line with our statutory advance directives already in place.[66]

MOST is a "physician order set and care planning tool based upon patient treatment preferences that travels with the patient from one site of treatment to another."[67] The purpose of MOST is to:

> promote patient centered health care and improve communication about that health care between hospitals, nursing facilities and other sites of care. The order and treatment preferences should be based upon: the patient's medical condition as determined by a physician; and the patient's preferences as directly expressed by the patient, the Living Will, or by the patient's surrogate (patient representative) if the patient can't communicate and lacks a Living Will.[68]

This form also directly addresses the concerns surrounding the effectiveness of Cardio-Pulmonary Resuscitation (CPR) and specifically states that:

> CPR is sometimes helpful but other times can be harmful. It is most effective when a patient dies unexpectedly. CPR is rarely effective in advanced cancer, organ failure, other advanced illness, or advanced age when death would not be a surprise. CPR started in the nursing home

62. *See infra* Appendix C.

63. *See Bringing the POLST Process to Texas – Fact Sheet: An Introduction to the Texas MOST Coalition*, TEX. MOST COAL., https://www.northtexasrespectingchoices.com/wp-content/uploads/FACT SHEET2-2016.pdf [perma.cc/CU38-AJ6A] (last visited Nov. 7, 2018); *see What is POLST: History of the POLST Paradigm*, THE COAL. FOR QUALITY END-OF-LIFE CARE, https://www.coalitionqec.org/polstmost.html [perma.cc/5776-82YT] (last visited Oct. 3, 2018).

64. *See* THE COAL. FOR QUALITY END-OF-LIFE CARE, *supra* note 63.

65. *Id.*

66. *See* TEX. MOST COAL., *supra* note 63.

67. *See infra* Appendix C.

68. *See infra* Appendix C.

> almost never leads to survival. If CPR is initially successful in resuscitating a patient, the patient will be on a breathing machine in the ICU. Patients should discuss with their physician the potential to benefit from CPR based on their medical condition.[69]

CPR is not as successful as seen on television and in fact, a thirty-year review of 19,955 hospital-based CPRs revealed a survival-to-discharge rate of only 15%.[70] The false narrative is disproportionate to the reality when it comes to successfully surviving from cardiac arrest.[71] Robert L. Fine, M.D. offered a clear distinction of CPR's success rate based on the health status of the patient.[72] Reports show that patients who are free living and independent have a higher survival rate at discharge (19%) than those who are homebound (<3%) or nursing home residents (<3%) prior to hospital-based CPR.[73] Distinctively, when resuscitation was attempted in a nursing home of 117 patients, 102 (89%) were pronounced dead in the ER; two died within twenty-four hours of admission to the hospital; eleven died with an average stay of five days in the hospital; one survived to discharge, returning to the nursing home with advanced dementia and dying eight months later; and, 1 returned to the nursing home in the same condition they were in prearrest.[74]

Use of the POLST (Physician Orders for Life Sustaining Treatment) form in Oregon was found to be successful in addressing the needs of patient's treatment preferences and altered treatment in 45% of cases where it was present.[75] In fact, most (75%) of the respondents agreed that the POLST Program provides clear instructions about patient's preferences and 93% agreed that the POLST Program is "useful in determining which treatments to provide when the patient has no pulse and is apneic."[76] Such success translates into the wishes of patients being heard and followed in the field.[77]

---

69. *See infra* Appendix C.

70. Wendy K. Mariner, *Outcomes Assessment in Health Care Reform: Promise and Limitations*, 20 AM. J. L. & MED. 37, 44 (1994) (citing A. Patrick Schneider II et al., *In-Hospital Cardiopulmonary Resuscitation: A 30-Year Review*, 6 J. AM. BOARD FAM. PRAC. 91, 91 (1993)).

71. *See id.*

72. *See* Robert L. Fine, M.D., *A POLST Form for Texas: What is it and Why is it Important?*, TEX. DEP'T OF ST. HEALTH SERVS., https://www.dshs.texas.gov/emstraumasystems/POLST.pdf [perma.cc/2QNL-TWSE] (last visited Oct. 3, 2018).

73. *Id.*; *see* M. Urlzerg & C. Ways, *Survival After Cardiopulmonary Resuscitation for an In-Hospital Cardiac Arrest*, 25 J. FAM. PRAC. 41-44 (1987).

74. Fine, *supra* note 72; Garry E. Applebaum et al., *The Outcome of CPR Initiated in Nursing Homes* 38 AM. GERIATRIC SOC'Y 197, 197 (1990).

75. Terri A. Schmidt et al., *The Physician Orders for Life-Sustaining Treatment Program: Oregon Emergency Medical Technicians' Practical Experiences and Attitudes*, 52 J. AM. GERIATRICS SOC'Y 1430-34 (2004) https://onlinelibrary.wiley.com/doi/full/10.1111/j.1532-5415.2004.52403.x [perma.cc/7HRC-QF3M].

76. *Id.*

77. *See id.*

Advance care planning discussions are facilitated by the use of documents providing for greater detail of treatment protocols desired by the patient, but it does not mean that the MOST form should be used for all patients.[78]

> The conversation supporting completion of a MOST form is only for patients who are terminal with advanced illnesses or for whom their physician would not be surprised if they died in the next 12 months. The conversation is an effort to focus on what level of treatment the patient wants based on their current conditions and to engage the patient in shared decision-making with their physician. This document puts the advance directive into action by translating the patient's treatment wishes into a medical order, centralizing information, facilitating record keeping, and ensuring transfer of appropriate information among healthcare professionals and across care settings.[79]

B. The Five Wishes Document (See Appendix D)

Five Wishes was originally introduced in 1996 as a Florida-only document that combined a living will and health care power of attorney, but also addressed matters of comfort, care, and spirituality."[80] A national version of the document was created in 1998, and "Five Wishes is now available in 26 languages and in braille."[81] "More than 18 million documents have been distributed by a network of over 35,000 partner organizations worldwide."[82] The Five Wishes Document currently "meets the legal requirements for an advance directive in 42 states and the District of Columbia."[83]

Although Texas does not utilize the Five Wishes document as a statutory form, the Texas Medical Association, since the (TMA) House of Delegates: TexMed 2006, a Report of Council on Health Service Organizations regarding Advance Directives, also proposed "doing something to implement 5 wishes."[84]

The Five Wishes document addresses patient treatment and end-of-life matters using understandable language to enhance communication between medical staff and the patient.[85] In brief, Wish 1 advises medical staff who has the right to speak on behalf of the patient, in other words, who is to be

---

78. THE COAL. FOR QUALITY END-OF-LIFE CARE, *supra* note 63.

79. *Id.*

80. *Five Wishes – A Living Will With Heart*, 20 FIN. ARCHITECTS, INC. 1 (2012), www.lifetime solution.com/site/4thQtr2012.pdf [perma.cc/PLQ5-83FK].

81. *Id.*

82. *Id.*

83. *Id.*

84. Dennis Pacl, *Report of Council On Health Service Organization*, TEX. MED. ASS'N (June 24, 2010), https://www.texmed.org/Template.aspx?id=4858 [perma.cc/9BTG-ZGDS].

85. *See infra* Appendix D.

appointed the medical power of attorney.[86] Wish 2 informs the staff about the type of medical treatment the patient may or may not want such as decisions regarding life-sustaining treatment and issues addressing brain damage.[87] Wish 3 specifically addresses comfort care and includes preferences about how to handle nausea through a desire to decide upon whether or not there should be religious readings.[88] Wish 4 acknowledges that the patient is near the end of life and directs others on how to treat the patient at that time.[89] Lastly, Wish 5 informs loved ones of some thoughts the patient has regarding forgiveness and funeral arrangements.[90]

The Texas Advance Directive reviewed earlier has two lines to initial by, regarding whether a patient desires life sustaining treatment or instead prefers to be kept comfortable.[91] It is insufficient to meaningfully reflect all the events that occur at the end-of-life with such limited choices.[92] MOST and the Five Wishes documents are more reflective of the type of decisions that a patient faces during their lives and near the end-of-life.[93]

V. CONCLUSION

When patients have documents in place reflecting their medical treatment preferences during all stages of their lives, the odds of those decisions being followed are greater than if there were nothing in place at all.[94] Relying upon loved ones to know what medical treatment may or may not be wanted in time of a medical crisis does not provide any reassurances that a patient's preferences will be followed when needed.[95] "My children will decide" is not an answer that medical staff can look to when deciding upon placement of a feeding tube, whether or not to be intubated, or to perform CPR.[96]

When I was fifty, I had a shot across the bow of my life reminding me that I am but a mere mortal. Since then, I had medical testing in which the recited side effects of said tests were not innocuous. When my medical power of attorney and I discussed the side effects and my options in detail, I clearly stated to her, "Do everything." I exercise, I eat healthy, I have a good life and I can recover from almost anything, but when I am in my eighties,

---

86. *See infra* Appendix D.
87. *See infra* Appendix D.
88. *See infra* Appendix D.
89. *See infra* Appendix D.
90. *See infra* Appendix D.
91. TEX. HEALTH & SAFETY CODE ANN. § 166.033 (Supp.).
92. *See id.*
93. *See supra* Section IV.A; *see infra* Appendix D.
94. *See generally* Ben A. Rich, *Advance Directives*, 19 J. LEGAL MED. 63 (1998) (defending advance directives' ability to minimize costs and inappropriate care).
95. *Id.*
96. *Id.*

the answer may be different. Therefore, these conversations need to be ongoing ones. Currently, my Directive to Physicians and Family or Surrogates is filled out and in the area for additional instructions, I have "See Five Wishes attached" and it is completely filled out as well.[97]

When attorneys discuss legacy planning with their clients, conversations surrounding advanced care planning is typically a cursory part of the meeting.[98] However, this part of the conversation is what people actually want to talk about and they just need guidance on how to do that.[99] The statutory and non-statutory documents provide such guidance and should be reviewed and discussed with clients in an office setting and with loved ones on a frequent basis.[100] There are many medical decisions to make throughout life.[101] The only way to ensure those decisions are honored is to place them in writing.[102]

97. The above hypothetical was created by the author for purposes of this article; *see infra* Appendix D.

98. *See* Anjali Mullick et al., *An Introduction to Advance Care Planning in Practice*, BRITISH MED. J. (Oct. 21, 2013), http://www.goldstandardsframeowork.org.uk/cd-content/uploads/files/ACP/An%20intro%20to%20advance%20care%20planning%20in%20practice.pdf [perma.cc/6NQ6-2W2N]; *see also* Romayne Gallagher, *An Approach to Advance Care Planning in the Office*, NAT'L CTR. FOR BIOTECH. INFO., https://www.ncbi.nlm.nih.gov/pmc/articles/PMC1481678/ [perma.cc/KU7A-7WWB] (last visited Nov. 7, 2018) (explaining that advance care planning facilitates communication among the patient, their family, and their health care providers).

99. *See* Mullick et al., *supra* note 98.

100. *See supra* Parts III–IV.

101. *See* Mullick et al., *supra* note 98.

102. *Id.*

APPENDIX A

Texas Directive to Physicians and Family or Surrogates (Living Will)

Instructions for completing this document:

This is an important legal document known as an Advance Directive. It is designed to help you communicate your wishes about medical treatment at some time in the future when you are unable to make your wishes known because of illness or injury. These wishes are usually based on personal values. In particular, you may want to consider what burdens or hardships of treatment you would be willing to accept for a particular amount of benefit obtained if you were seriously ill.

You are encouraged to discuss your values and wishes with your family or chosen spokesperson, as well as your physician. Your physician, other health care provider or medical institution may provide you with various resources to assist you in completing your advance directive. Brief definitions are listed below and may aid you in your discussions and advance planning.

Initial the treatment choices that best reflect your personal preferences.

Provide a copy of your directive to your physician, usual hospital, and family or spokesperson.

Consider a periodic review of this document. By periodic review, you can best assure that the directive reflects your preferences. In addition to this advance directive, Texas law provides for two other types of directives that can be important during a serious illness. These are the Medical Power of Attorney and the Out-of-Hospital Do-Not-Resuscitate Order. You may wish to discuss these with your physician, family, hospital representative, or other advisers. You may also wish to complete a directive related to the donation of organs and tissues.

DIRECTIVE

I, _____, recognize that the best health care is based upon a partnership of trust and communication with my physician. My physician and I will make health care decisions together as long as I am of sound mind and able to make my wishes known. If there comes a time that I am unable to make medical decisions about myself because of illness or injury, I direct that the following treatment preferences be honored:

If, in the judgment of my physician, I am suffering with a terminal condition from which I am expected to die within six months, even with available life-sustaining treatment provided in accordance with prevailing standards of medical care:

____ I request that all treatments other than those needed to keep me comfortable be discontinued or withheld and my physician allow me to die as gently as possible; OR

____ I request that I be kept alive in this terminal condition using available life sustaining treatment. (THIS SELECTION DOES NOT APPLY TO HOSPICE CARE.)

If, in the judgment of my physician, I am suffering with an irreversible condition so that I cannot care for myself or make decisions for myself and I am expected to die without life-sustaining treatment provided in accordance with prevailing standards of care:

____ I request that all treatments other than those needed to keep me comfortable be discontinued or withheld and my physician allow me to die as gently as possible; OR

____ I request that I be kept alive in this irreversible condition using available life-sustaining treatment. (THIS SELECTION DOES NOT APPLY TO HOSPICE CARE.)

Additional requests: (After discussion with your physician, you may wish to consider listing particular treatments in this space that you do or do not want in specific circumstances, such as artificial nutrition and fluids, intravenous antibiotics, etc. Be sure to state whether you do or do not want the particular treatment.)

_____

_____

After signing this directive, if my representative or I elect hospice care, I understand and agree that only those treatments needed to keep me comfortable would be provided and I would not be given available life-sustaining treatments.

3/2011 47641 rev

Living Will – Page 2

If I do not have a Medical Power of Attorney, and I am unable to make my wishes known, I designate the following person(s) to make treatment decisions with my physician compatible with my personal values:

1. _____

2. _____

(If a Medical Power of Attorney has been executed, then an agent already has been named and you should not list additional names in this document.)

If the above persons are not available, or if I have not designated a spokesperson, I understand that a spokesperson will be chosen for me following standards specified in the laws of Texas.

If, in the judgment of my physician, my death is imminent within minutes to hours, even with the use of all available medical treatment provided within the prevailing standard of care, I acknowledge that all treatments may be withheld or removed except those needed to maintain my comfort.

I understand that under Texas law this directive has no effect if I have been diagnosed as pregnant.

This directive will remain in effect until I revoke it. No other person may do so.

Signed _____Date_____

City, County, State of Residence _____

OPTION 1: EXECUTION IN THE PRESENCE OF TWO WITNESSES:

Two competent adult witnesses must sign below, acknowledging the signature of the declarant. The witness designated as Witness 1 may not be a person designated to make a treatment decision for the patient, and may not be related to the patient by blood or marriage. This witness may not be entitled to any part of the estate, and may not have a claim against the estate of the patient. This witness may not be the attending physician or an employee of the attending physician. If this witness is an employee of a health care facility in which the patient is being cared for, this witness may not be involved in providing direct patient care to the patient. This witness may not be an officer, director, partner or business office employee of a health care facility in which the patient is being cared for or of any parent organization of the health care facility.

Witness 1_____

Witness 2_____

OR

OPTION 2: EXECUTION IN PRESENCE OF NOTARY PUBLIC:

State of Texas
County of _____

This instrument was acknowledged before me on _____, 20____

by _____.
(Printed Name)

_____
Notary Public Signature

(Personalized Seal)

Definitions:

Artificial nutrition and hydration means the provision of nutrients or fluids by a tube inserted in a vein, under the skin in the subcutaneous tissues, or in the stomach (gastrointestinal tract).

Irreversible condition means a condition, injury or illness:

1) that may be treated, but is never cured or eliminated;
2) that leaves a person unable to care for or make decisions for the person's own self; and
3) that, without life sustaining treatment provided in accordance with the prevailing standard of medical care, is fatal.

Explanation: Many serious illnesses such as cancer, failure of major organs (kidney, heart, liver, or lung), and serious brain disease such as Alzheimer's dementia may be considered irreversible early on. There is no cure, but the patient may be kept alive for prolonged periods of time if the patient receives life-sustaining treatments. Late in the course of the same illness, the disease may be considered terminal when, even with treatment, the patient is expected to die. You may wish to consider which burdens of treatment you would be willing to accept in an effort to achieve a particular outcome. This is a very personal decision that you may wish to discuss with your physician, family, or other important persons in your life.

Life sustaining treatment means a treatment that, based on reasonable medical judgment, sustains the life of a patient and without which the patient will die. The term includes both life-sustaining medications and artificial life support such as mechanical breathing machines, kidney dialysis treatment, and artificial hydration and nutrition. The term does not include the administration of pain management medication, the performance of a medical procedure necessary to provide comfort care, or any other medical care provided to alleviate a patient's pain.

Terminal condition means an incurable condition caused by injury, disease or illness that according to reasonable medical judgment, will produce death within six months, even with available life-sustaining treatment provided in accordance with the prevailing standard of medical care. Explanation: Many serious illnesses may be considered irreversible early in the course of the illness, but they may not be considered terminal until the disease is fairly advanced. In thinking about terminal illness and its treatment, you again may wish to consider the relative benefits and burdens of treatment and discuss your wishes with your physician, family, or other important persons in your life.

APPENDIX B

Figure: 25 TAC §157.25 (h)(2)

OUT-OF-HOSPITAL DO-NOT-RESUSCITATE (OOH-DNR) ORDER

Print form

TEXAS DEPARTMENT OF STATE HEALTH SERVICES

STOP DO NOT RESUSCITATE

This document becomes effective immediately on the date of execution for health care professionals acting in out-of-hospital settings. It remains in effect until the person is pronounced dead by authorized medical or legal authority or the document is revoked. Comfort care will be given as needed.

Person's full legal name _____ Date of birth _____ ☐ Male ☐ Female

A. Declaration of the adult person: I am competent and at least 18 years of age. **I direct that none of the following resuscitation measures be initiated or continued for me: cardiopulmonary resuscitation (CPR), transcutaneous cardiac pacing, defibrillation, advanced airway management, artificial ventilation.**

Person's signature _____ Date _____ Printed name _____

B. Declaration by legal guardian, agent or proxy on behalf of the adult person who is incompetent or otherwise incapable of communication:

I am the: ☐ legal guardian; ☐ agent in a Medical Power of Attorney; OR ☐ proxy in a directive to physicians of the above-noted person who is incompetent or otherwise mentally or physically incapable of communication.

Based upon the known desires of the person, or a determination of the best interest of the person, **I direct that none of the following resuscitation measures be initiated or continued for the person: cardiopulmonary resuscitation (CPR), transcutaneous cardiac pacing, defibrillation, advanced airway management, artificial ventilation.**

Signature _____ Date _____ Printed name _____

C. Declaration by a qualified relative of the adult person who is incompetent or otherwise incapable of communication: I am the above-noted person's:

☐ spouse, ☐ adult child, ☐ parent, OR ☐ nearest living relative, and I am qualified to make this treatment decision under Health and Safety Code §166.088.

To my knowledge the adult person is incompetent or otherwise mentally or physically incapable of communication and is without a legal guardian, agent or proxy. Based upon the known desires of the person or a determination of the best interests of the person, **I direct that none of the following resuscitation measures be initiated or continued for the person: cardiopulmonary resuscitation (CPR), transcutaneous cardiac pacing, defibrillation, advanced airway management, artificial ventilation.**

Signature _____ Date _____ Printed name _____

D. Declaration by physician based on directive to physicians by a person now incompetent or nonwritten communication to the physician by a competent person: I am the above-noted person's attending physician and have:

☐ seen evidence of his/her previously issued directive to physicians by the adult, now incompetent; OR ☐ observed his/her issuance before two witnesses of an OOH-DNR in a nonwritten manner.

I direct that none of the following resuscitation measures be initiated or continued for the person: cardiopulmonary resuscitation (CPR), transcutaneous cardiac pacing, defibrillation, advanced airway management, artificial ventilation.

Attending physician's signature _____ Date _____ Printed name _____ Lic# _____

E. Declaration on behalf of the minor person: I am the minor's: ☐ parent; ☐ legal guardian; OR ☒ managing conservator.

A physician has diagnosed the minor as suffering from a terminal or irreversible condition. **I direct that none of the following resuscitation measures be initiated or continued for the person: cardiopulmonary resuscitation (CPR), transcutaneous cardiac pacing, defibrillation, advanced airway management, artificial ventilation.**

Signature _____ Date _____

Printed name _____

TWO WITNESSES: (See qualifications on backside.) We have witnessed the above-noted competent adult person or authorized declarant making his/her signature above and, if applicable, the above-noted adult person making an OOH-DNR by nonwritten communication to the attending physician.

Witness 1 signature _____ Date _____ Printed name _____

Witness 2 signature _____ Date _____ Printed name _____

Notary in the State of Texas and County of _____. The above noted person personally appeared before me and signed the above noted declaration on this date: _____

Signature & seal: _____ Notary's printed name: _____ *Notary Seal*

[Note: Notary cannot acknowledge the witnessing of the person making an OOH-DNR order in a nonwritten manner]

PHYSICIAN'S STATEMENT: I am the attending physician of the above-noted person and have noted the existence of this order in the person's medical records. **I direct health care professionals acting in out-of-hospital settings, including a hospital emergency department, not to initiate or continue for the person: cardiopulmonary resuscitation (CPR), transcutaneous cardiac pacing, defibrillation, advanced airway management, artificial ventilation.**

Physician's signature _____ Date _____

Printed name _____ License # _____

F. Directive by two physicians on behalf of the adult, who is incompetent or unable to communicate and without guardian, agent, proxy or relative: The person's specific wishes are unknown, but resuscitation measures are, in reasonable medical judgment, considered ineffective or are otherwise not in the best interests of the person. **I direct health care professionals acting in out-of-hospital settings, including a hospital emergency department, not to initiate or continue for the person: cardiopulmonary resuscitation (CPR), transcutaneous cardiac pacing, defibrillation, advanced airway management, artificial ventilation.**

Attending physician's signature _____ Date _____ Printed name _____ Lic# _____

Signature of second physician _____ Date _____ Printed name _____ Lic# _____

Physician's electronic or digital signature must meet criteria listed in Health and Safety Code §166.082(c).

All persons who have signed above must sign below, acknowledging that this document has been properly completed.

Person's signature _____ Guardian/Agent/Proxy/Relative signature _____

Attending physician's signature _____ Second physician's signature _____

Witness 1 signature _____ Witness 2 signature _____ Notary's signature _____

This document or a copy thereof must accompany the person during his/her medical transport.

APPENDIX C

TEXAS MEDICAL ORDERS FOR SCOPE OF TREATMENT (MOST) [TXMOSTCoalition2-26-16]

First Name:	Last Name:	Follow this MOST and patient preferences first, then contact a physician. **Any section not completed implies full treatment for that section and does not invalidate the form.** Send this MOST with the patient for all transfers between treatment sites. Comfort care and dignity will be provided to all patients.
Date of Birth:	Date Form Prepared:	

A Check ONLY one

PHYSICIAN RESUSCITATION ORDER: If patient does not have a pulse and is not breathing:

☐ **Attempt Resuscitation (CPR)** Place tube in the windpipe, electrical shocks to the chest, chest compression, and IV tubes for fluids/medications.

☐ **Do Not Attempt Resuscitation/Allow Natural death (DNAR/AND**) Provide physical comfort, emotional, and respectful spiritual support to patient and family. ☐ **Out-Of-Hospital-Do-Not-Resuscitate Form completed**

If patient is not in cardiopulmonary arrest, follow orders found in Sections **B** and **C**

B Check ONLY one

MEDICAL INTERVENTION SCOPE: If patient is unstable, has pulse and is breathing:

☐ **FULL INTERVENTIONS:** Transfer to a hospital, and if necessary to ICU. Use comfort and selective measures, and may add medically appropriate ICU interventions like, but not limited to, intubation/ventilator support, ICU-only medications, and dialysis.

☐ **SELECTIVE INTERVENTIONS:** If necessary, transfer to a hospital. In addition to comfort measures, may add interventions like intravenous antibiotics, non-invasive breathing support (BiPAP/CPAP), and fluid resuscitation.

☐ **COMFORT INTERVENTIONS ONLY:** Avoid hospitalization unless needed to provide comfort care. Focus on symptom control, dignity, and allowing gentle, natural death should it occur. Use comfort interventions like oral, subcutaneous, or intravenous medications (e.g., opioids), comfort foods/liquids, oxygen, and emotional/spiritual support.

ADDITIONAL ORDERS:_____

C Check ONLY one

MEDICALLY ASSISTED NUTRITION/HYDRATION

Offer nutrition and hydration by mouth at all intervention levels if feasible.

☐ **No medically assisted nutrition.**

☐ **Unless medically contra-indicated*, defined trial of medically assisted nutrition.**

Length of trial _____ Goal _____

☐ **Long-term medically assisted nutrition.**

*In some circumstances including, but not limited to, heart, lung, liver or kidney failure, assisted nutrition or hydration may increase suffering or hasten death, and is therefore medically contraindicated.

D

DOCUMENTATION OF DISCUSSION AND SIGNATURES:

Discussed with:	**Rationale for these orders:** **(Choose all that apply)**
☐ Patient (Patient has capacity) ☐ Health Care Agent or Decision Maker: _____ *(Relationship, Name)* ☐ Court Appointed Guardian ☐ Others in Attendance: _____ *(Relationship, Name)*	☐ Living Will (Directive to Physicians and Family or Surrogates) ☐ Medical Power of Attorney ☐ Other: _____

Physician Signature: My signature certifies both the order and preferences above and the basis for them.

X **Physician Signature:**	**Print Physician Name:**	**Date:**	**Phone Number:**

Patient or Patient's Surrogate Signature:

X **Patient or Surrogate Signature:**	**Print Patient or Surrogate's Name, if signing:**	**Date:**	**Phone Number:**

SEND FORM WITH PATIENT WHENEVER TRANSFERRED OR DISCHARGED

Organization or Facility Identifier:	

Patient Last Name:	First Name:	DOB:	
Facilitator Information: If someone other than patient's physician is facilitating this conversation:			
Facilitator Last Name:	**Facilitator First Name:**	**Credentials:**	**Phone Number:**

Instructions for MOST Form

What is MOST?
MOST stands for Medical Orders for Scope of Treatment. It is a physician order set and care planning tool based upon patient treatment preferences that travels with the patient from one site of treatment to another.

Intent or Purpose of MOST: The MOST form is intended to promote patient centered health care and improve communication about that health care between hospitals, nursing facilities and other sites of care. The order and treatment preferences should be based upon:

- The patient's medical condition as determined by a physician; and
- The patient's preferences as directly expressed by the patient, the Living Will, or by the patient's surrogate (patient representative) if the patient can't communicate and lacks a Living Will.

Section A: Translates patient preferences regarding resuscitation into a physician order. It applies when a patient does not have a pulse and is not breathing. If a patient is not in cardiopulmonary arrest, then go to Sections B, C, D. At all times, health care professionals should remember that a DNAR/AND order does not mean that other health problems should go untreated.

Information Regarding Cardio-Pulmonary Resuscitation (CPR): CPR is sometimes helpful but other times can be harmful. It is most effective when a patient dies unexpectedly. CPR is rarely effective in advanced cancer, organ failure, other advanced illness, or advanced age when death would not be a surprise. CPR started in the nursing home almost never leads to survival. If CPR is initially successful in resuscitating a patient, the patient will be on a breathing machine in the ICU. Patients should discuss with their physician the potential to benefit from CPR based on their medical condition.

Section B and C: Provide guidance for more specific orders which a treating physician may issue according to the patient's medical condition, medical appropriateness, and local medical and nursing facility policy. These sections apply when a patient has a pulse and is breathing.

Is MOST a Valid Physician Order for Non-EMS Personnel? Yes. MOST is a valid order for health care personnel in an out of hospital setting other than Emergency Medical Services professionals, as stated in Section 166.102 of the Texas Health and Safety Code: PHYSICIAN'S DNR ORDER MAY BE HONORED BY HEALTH CARE PERSONNEL OTHER THAN EMERGENCY MEDICAL SERVICES PERSONNEL. (a) …a licensed nurse or person providing health care services in an out-of-hospital setting may honor a physician's do-not-resuscitate order.

Is MOST a Valid Physician Order for EMS Personnel? NO. If EMS comes to a patient in arrest, they will attempt CPR unless a completed (8 signatures) Texas-Out-of-Hospital DNR is present.

What Should Health Care Professionals (Other than EMS) Do With This Form? Make the form a part of the patient's medical record in your facility. Honor the order to attempt or not attempt CPR and patient treatment preferences in accordance with the standard of care in your community. If patient is transferred to any other medical facility, send the form with the patient.

Living Will, MPOA, and OOH-DNR Order: MOST is vital but does not replace these documents. EMS should honor and execute an OOH-DNR order or device [Tex. H&S Code, 166.102(b)] Although this MOST conveys important information about a patient's treatment preferences, it does not replace a Living Will, MPOA, or OOH-DNR Order. A patient's Living Will, MPOA, or OOH-DNR Order controls over this MOST. Health care professionals should be aware that when responding to a call for assistance, EMS personnel shall honor only a properly executed or issued OOH-DNR Order or identification device. [Tex. H&S Code, §166.102(b)].

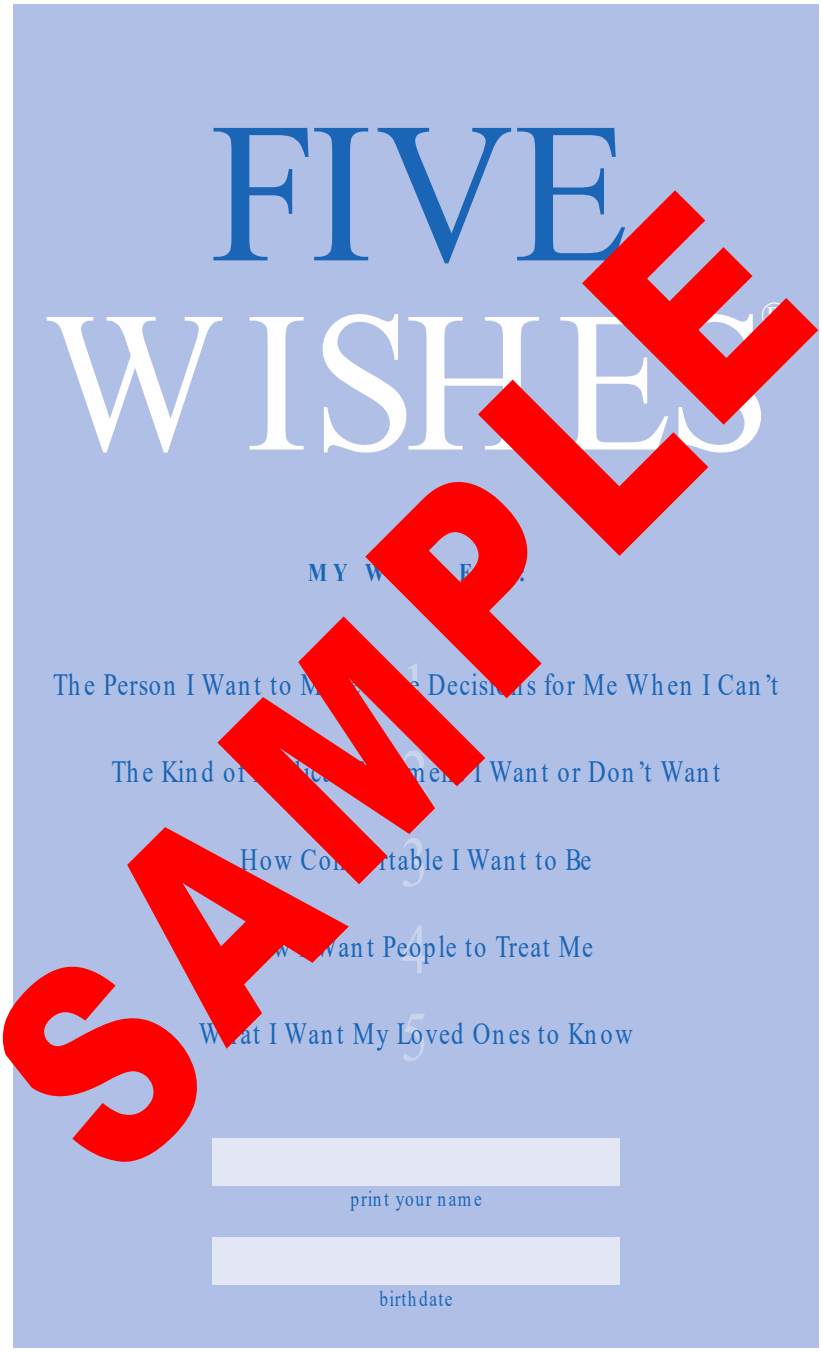
Copy of MOST and HIPAA: A copy of a completed MOST is as valid as the original, and HIPAA permits disclosure of a completed MOST to other health care providers as necessary for treatment purposes. The complete MOST and associated documents will also be available to your treating physicians electronically via a secure local health information exchange.

Review: Physicians and patient/surrogate should review this form yearly or upon change in care setting, medical condition, or patient treatment preferences. If no changes, physician may simply initial the date of review in the boxes above. If changes are desired by the patient or surrogate, create a new form!

Date of Review								
Physician Initials								

SEND the MOST FORM ON ALL TRANSFERS BETWEEN HEALTHCARE SITES

APPENDIX D


FIVE
WISHES
SAMPLE
The Person I Want to Make Decisions for Me When I Can't
The Kind of Medical Treatment I Want or Don't Want
How Comfortable I Want to Be
How I Want People to Treat Me
What I Want My Loved Ones to Know
print your name
birthdate

Five Wishes

There are many things in life that are out of our hands. Five Wishes document gives you a way to control some very important—how you are treated if you get seriously ill. It is a legal, easy-to-complete form that lets you say exactly what you want. Once it is filled out and properly signed it is valid under the laws of most states.

What Is Five Wishes?

Five Wishes is the first living will that talks about your personal, emotional and spiritual needs as well as your medical wishes. It lets you choose the person you want to make health care decisions for you if you are not able to make them for yourself. And it lets you say exactly how you wish to be treated.

If you get seriously ill, this document was written with the help of The American Bar Association's Commission on Law and Aging, and the nation's leading experts in end-of-life care. It is easy to use. All you have to do is check a box, circle a direction, or write a few sentences.

How Five Wishes Helps You And Your Family

- It lets you talk with your family and doctor about how you want to be treated if you become seriously ill.
- Your family and friends will not have to guess what you want. It protects them if you become seriously ill, because they won't have to make hard choices without knowing your wishes.
- You can know what your mom, dad, spouse, or friend wants. You can be there for them when they need you most. You will understand what they really want.

How Five Wishes Began

Jim Towey worked closely with Mother Teresa, and, for one year, he lived in a hospice she ran in Washington, DC. Inspired by this first-hand experience, Mr. Towey sought a way for patients and their families to plan ahead and to cope with serious illness. The result is Five Wishes and the response to it has been overwhelming. It has been featured on CNN and NBC's Today Show and in the pages of *Time* and *Money* magazines. Newspapers have called Five Wishes the first "living will with a heart and soul." Today, Five Wishes is available in 23 languages

Who Should Use Five Wishes

Five Wishes is for anyone 18 or older — married, single, parents, adult children, and friends. Over 13 million Americans of all ages have already used it. Because it works so well, lawyers, doctors, hospitals and hospices, faith communities, employers, and retiree groups are handing out this document.

Five Wishes States

If you live in the **District of Columbia** or one of the **42 states** listed below, y
Five Wishes and have the peace of mind to know that it substantially meets your
requirements under the law:

Alaska	Illinois	Montana	South Carolina
Arizona	Iowa	Nebraska	South Dakota
Arkansas	Kentucky	Nevada	essee
California	Louisiana	New J	
Colorado	Maine		
Connecticut	Maryland		Wash
Delaware	Massachusetts	rth Ca	West Virginia
Florida	Michigan		Wisconsin
Georgia	Minnesota		Wyoming
Hawaii	Mississip	Pen	
Idaho	Misso	Rhode	

If your state is not o be 42 st ste Five Wishes does not meet the technical requirements in ur s o st tors in your state may be reluctant to honor Five Wishes es, from es not on this list do complete Five Wishes along with their st al fo find that Five Wishes helps them express all that they want and provides ful guide to family members, friends, care givers an t doctors and hea professionals know they need to listen to your wis u express them.

How Do I C o Five Wishes?

ou may already iving will or a durable power of attorney for health care. If you ve Wishes instead, all you need to do is fill out and sign a new Five Wishes irecte oon as you sign it, it takes away any advance directive you had before. To m su ght form is used, please do the following:

- Destroy all copies of your old living will or durable power of attorney for health care. Or you can write "revoked" in large letters across the copy you have. Tell your lawyer if he or she helped prepare those old forms for you. *AND*
- Tell your Health Care Agent, family members, and doctor that you have filled out a new Five Wishes. Make sure they know about your new wishes.

WISH 1

The Person I Want To Make Health Care Decisions For Me When I Can't Make Them For Myself.

If I am no longer able to make my own health care decisions, this form names the person I choose to make these choices for me. This person will be my Health Care Agent (or other term that may be used in my state, such as proxy, representative, or surrogate). This person will make my health care choices if both of these things happen:

- *My attending or treating doctor finds I am no longer able to make health care choices, AND*
- *Another health care prof[illegible] agrees that this is true.*

If my state has a differe[illegible] findi[illegible] am not able to make health care cho[illegible] state's w[illegible] should be followed.

The Person I Choose As My Health Care Agent

First Choice Name

Phone

Address

City/Sta[illegible]

If this person is not able or willing to make these cho[illegible] s divorced or legally separated from me, *OR* this person has died, then these people are my next ch[illegible]

Second Choice Name

Third Choi[illegible]me

Address

[illegible]ss

City/State/Zip

City/State/Zip

Phone

Phone

Picking The[illegible]ht [illegible] To Be Your Health Care Agent

Choose some[illegible] [illegible]y well, [illegible]ares about you[illegible] can make difficult [illegible]cisions. A spou[illegible]mily member may [illegible]st choic[illegible]ecause they are too [illegible]olved. Sometimes they **are** the [illegible]st choic[illegible]know best. Choose someone w[illegible] is ab[illegible]nd up for you so that your [illegible]owed. Also, choose someone who is likely to be nearby so that they can help when you need them. Whether you choose a spouse, family member, or friend as your Health Care Agent, make sure you talk about these wishes and be sure that this person agrees to respect and follow your wishes. Your Health Care Agent should be **at least 18 years or older** (in Colorado, 21 years or older) and should **not** be:

- Your health care provider, including the owner or operator of a health or residential or community care facility serving you.
- An employee or spouse of an employee of your health care provider.
- Serving as an agent or proxy for 10 or more people unless he or she is your spouse or close relative.

I understand that my Health Care Agent can make health care decisions for me. I want my Agent to be able to do the following: **(Please cross out anything you don't want your Agent to do that is listed below.)**

- Make choices for me about my medical care or services, like tests, medicine, or surgery. This care or service could be to find out what my health problem is, or how to treat it. It can also include care to keep me alive. If the treatment or care has already started, my Health Care Agent can keep it going or have it stopped.
- Interpret any instructions I have given in this form or given in other discussions, according to my Health Care Agent's understanding of my wishes and values.
- Consent to admission to an assisted living facility, hospital, hospice, or nursing home for me. My Health Care Agent can hire any kind of health care worker I may need to help me or take care of me. My Agent may also fire a health care worker, if needed.
- Make the decision to request, take aw... give medical treatment... provided food and water, ... treatments to keep me alive.
- See and approve release of my medical records and personal files. If I need to sign my name to get any of these files, my Health Care Agent can sign it for me.
- Move me to anoth... get the ...re I need or to carry out ...
- Authorize or refuse to ... ...y medi... or procedure needed to help ...
- ... legal action needed to carry o... my wishes.
- Dona... ...rgans ... of mine as allowed by ...
- ...y for Medicare, Medicaid, or other programs ...surance benefits for me. My Health Care Agent can see my personal files, like bank ...rds, to find out what is needed to fill out ...orms.
- Listed below are any changes, additions, or limitations on my Health Care Agent's powers.

_____
_____
_____
_____
_____
_____
_____

If I Cha... My Mind About Having A Health Care Agent, I Will

- ...oy all copies of this part of the Five Wishes form. *OR*
- Tell someone, such as my doctor or family, that I want to cancel or change my Health Care Agent. *OR*
- Write the word "Revoked" in large letters across the name of each agent whose authority I want to cancel. Sign my name on that page.

WISH 2

My Wish For The Kind Of Medical Treatment I Want Or Don't Want.

I believe that my life is precious and I deserve to be treated with dignity. When the time comes that I am very sick and am not able to speak for myself, I want the following wishes, [illegible] other directions I have given to my Health Care Agent, to be respected and followed.

What You Should Keep In Mind As My Caregiver

- I do not want to be in pain. I want my doctor to give me enough medicine to relieve my pain, even if that means that I will be drowsy or sleep more than I would otherwise.
- I do not want anything done [illegible] my [illegible]s or nurses with the intent [illegible] taking [illegible]
- I want to [illegible] food [illegible]s by [illegible]outh, and k[illegible] arm.

What "Life-Support Treatment" M[illegible] To M[illegible]

Life-support treatment means any medical procedure, device or medication to keep me [illegible]. Life-support treatment includes: me[illegible] devices put in me to help me [illegible]breathe; [illegible] water supplied by medic[illegible] fee[illegible]; cardiopulmonary resuscitati[illegible]; surgery; blood transfusions; dialy[illegible]; [illegible]ibiot[illegible].

[illegible]ning else meant to keep me alive. If I [illegible] limit the meaning of life-support treatme[illegible] use of my religious or personal beliefs, I write this limitation in the space below. [illegible] this to make very clear what I want and [illegible] what conditions.

_____

_____

_____

_____

_____

[illegible] Emergency

If [illegible]u hav[illegible]dical emergency and [illegible]ersonnel arrive, they may look to see if you have a **Do Not Resuscitate** form or bracelet. Many states require a person to have a **Do Not Resuscitate** form filled out and signed by a doctor. This form lets ambulance personnel know that you don't want them to use life-support treatment when you are dying. Please check with your doctor to see if you need to have a **Do Not Resuscitate** form filled out.

Here is the kind of medical treatment that I want or don't want in the four situations listed below. I want my Health Care Agent, my family, my doctors and other health care providers, my friends and all others to know these directions.

Close to death:

If my doctor and another health care professional both decide that I am likely to die within a short period of time, and life-support treatment would only delay the moment of my death (Choose *one* of the following):

- ❑ I want to have life-support treatment.
- ❑ I do not want life-support treatment. If it has been started, I want it stopped.
- ❑ I want to have life-support treatment if my doctor believes it could help. But I want my doctor to stop giving me life-support treatment if it is not helping my health condition or symptoms.

In A Coma And Not Expected To Wake Up Or Recover:

If my doctor and another health care profes… decide that I am in a coma from… I am n… ec… to wake up or recover, and I h… …fe-support treatment would only dela… …ont… death (Choose *one* of the following):

- ❑ I want t… …pport treatment.
- ❑ I do not w… …-sup… …nt. If it has been started, … it st…
- ❑ I want to have li… …treatment if my doctor believes it could he… …want my doctor to … life-support treatment if it is not … condition or symptoms.

Permanent And Severe Brain Damage And Not Expected To Recover:

If my doctor and another health… …fessional both decide that I have permana… …vere br…n damage, (for example, I can op… …but … …speak or understand) and I am no… …et better… life-support treatment would on… …s m… my death (Choose *one* of the follow…

- ❑ I … …ve life-support treatment.
- ❑ I do no… …supp… …nt. If it has …en started, … …d.
- ❑ … to have life-s… …port treatment if my doctor …es it could help. But I want my doctor to …op giving me life-support treatment if it is not …g my health condition or symptoms.

In Another Condition Under Which I … Not Wish To Be Kept Alive:

I… …e is another condition under which I do not wish to have life-support treatment, I describe it below. In this condition, I believe that the costs and burdens of life-support treatment are too much and not worth the benefits to me. Therefore, in this condition, I do not want life-support treatment. (For example, you may write "end-stage condition." That means that your health has gotten worse. You are not able to take care of yourself in any way, mentally or physically. Life-support treatment will not help you recover. Please leave the space blank if you have no other condition to describe.)

_____

_____

_____

_____

_____

The next three wishes deal with my personal, spiritual and emotional wishes. They are important to me. I want to be treated with dignity near the end of my life, so I would like people to do the things written in Wishes 3, 4, and 5 when they can be done. I understand that my family, my doctors and other health care providers, my friends, and others may not be able to do these things or are not required by law to do these things. I do not expect the following wishes to place new or added legal duties on my doctors or other health care providers. I also do not expect these wishes to excuse my doctor or other health care providers from giving me the proper care asked for by law.

WISH 3

My Wish For How Comfortable I Want

(Please cross out anything that you don't agree with.)

- I do not want to be in pain. I want my doctor to give me enough medicine to relieve my pain, even if that means I will be drowsy or sleep more than I would otherwise.
- If I show signs of depression, nausea, shortness of breath, or hallucinations, I want my care givers to do whatever they can to help me.
- I wish to have a cool moist cloth put on my head if I have a fever.
- I want my lips and mouth kept m stop dryness.
- I wish to have warm ba kept fresh and clean at all ti
- I wish to be massaged with wa be.
- I wi my favorite ic played when possible
- ish to have pe e like shaving, nail ng, hair brushing, and teeth brushing, as as they do not cause me pain or discomfort.
- ish to have religious readings and well- ems read aloud when I am near death.
- I wish to know about options for hospice care to provide medical, emotional and spiritual care for me and my loved ones.

WISH 4

Wish For How I Want People To Treat Me.

(out anything that you don't agree with.)

- I wish to have me when possible. want someone h me when it seems th may come any time.
- y hand held and to be talked to when p , even if I don't seem to voice or touch of others.
- I wish to have others by my side praying for me when possible.
- I wish to have the members of my faith community told that I am sick and asked to pray for me and visit me.
- I wish to be cared for with kindness and cheerfulness, and not sadness.
- I wish to have pictures of my loved ones in my room, near my bed.
- If I am not able to control my bowel or bladder functions, I wish for my clothes and bed linens to be kept clean, and for them to be changed as soon as they can be if they have been soiled.
- I want to die in my home, if that can be done.

WISH 5

My Wish For What I Want My Loved Ones To Know.

(Please cross out anything that you don't agree with.)

- I wish to have my family and friends know that I love them.
- I wish to be forgiven for the times I have hurt my family, friends, and others.
- I wish to have my family, friends and others know that I forgive them for when they may have hurt me in my life.
- I wish for my family and friends to know that I do not fear death itself. I think it is not the end, but a new beginning for me.
- I wish for all of my family members to make peace with each other before my death, if they can.
- I wish for my family and friends to think about what I was like before I [illegible] seriously ill. I want them to remember me in this way after my [illegible].
- I wish for my family and friends and caregivers to respect my [illegible] even if they don't agree with [illegible].
- I wish for my family, friends and others to look at my dying as a time [illegible] growth for everyone, including me. [illegible] me live a meaningful life in my [illegible].
- I wish my family and friends to get counseling if they have trouble with my death. I want [illegible] to give joy and not [illegible].
- After my death, I would like my body to (circle one): buried or cremated.
- My body or remains should be put in the following location_____.
- The following person knows my funeral wishes: _____.

If anyone asks how I want [illegible] remembered, please say the following about me:

_____

_____

_____

If there is a memorial service for me, I wish for this service to include the following (list music, scripture reading or other specific requests that you have):

_____

_____

_____

(Please use the space below for any other wishes. For example, you may want to donate any or all parts of your body after you die. You may also wish to designate a charity to receive memorial contributions. Please attach a separate sheet of paper if you need more space.)

_____

_____

_____

Texas Disclosure Statement

The following statement is required by the Texas Advance Directives Act

This is an important legal document. Before signing this document, you should know these important facts:

Except to the extent you state otherwise, this document gives the person you name as your agent the authority to make any and all health care decisions for you in accordance with your wishes, including your religious and moral beliefs, when you are no longer capable of making them yourself. Because "health care" means any treatment, service or procedure to maintain, diagnose, or treat your physical or mental condition, your agent has the power to make a broad range of health care decisions for you. Your agent may consent, refuse to consent, or withdraw consent to medical treatment and may make decisions about withdrawing or withholding life-sustaining treatment. Your agent may not consent to voluntary inpatient mental health services, convulsive treatment, psychosurgery, or abortion. A physician must comply with your agent's instructions or allow you to be transferred to another physician.

Your agent's authority begins when your doctor certifies that you lack the competence to make health care decisions

Your agent is obligated to follow your instructions when making decisions on your behalf. Unless you state ot dr agent h ame authority to make decisions about your health care as you would have had.

It is important that you discuss this document with your physician or other health care provider before you sign it ou understa the nature and range of decisions that may be made on your behalf. If you do not have a physician, you should talk w lse who is knowledgeable about these issues and can answer your questions. You do not need a lawyer's assistance to complete this nt if anything in this document that you do not understand, you should ask a lawyer to explain it to you.

The person you appoint as agent should be someone you know and trust. The person must b years of age or older or a person ears of age who has had the disabilities of minority removed. If you appoint your health or resid provider (e.g., your physician or employee of a home health agency, hospital, nursing home, or residential care home, other than a relativ has to choose between acting as your agent or as your health or residential care provider; the law does not permit a person to do both at the

You should inform the person you appoint that you want the person to be your health care agent. Y cuss th with your agent and your physician and give each a signed copy. You should indicate on the docume f the people and gned copies. Your agent is not liable for health care decisions made in good faith on your behalf.

Even after you have signed this document, you have the right to make dec ourself as long are able to do so and treatment cannot be given to you or stopped over your objection. You have t voke the granted to your agent by informing your agent or your health or residential care provider orally or in writing, by your execu sequ l power of attorney. Unless you state otherwise, your appointment of a spouse dissolves on divorce.

This document may not be changed or modified. If you want to make change ment, you must make an entirely new one.

You may wish to designate an alternate agent in the even r agent is unwill r ineligible to act as your agent. Any alternate agent you designate has the same authority to make health r you.

This Power of Attorney is not valid unless it is signed i o competent adu witnesses. The following persons may not act as ONE of the witnesses:

- the person you have designated as y
- a person related to you by blood or m
- a person entitled to any part of your esta or cod cuted by you or by operation of law;
- your attending physician;
- an employee of your attending physician;
- an employee of a health care facility in which you nt if th yee is providing direct patient care to you or is an officer, director, partner, or business offi mployee of a health care fa f any parent organization of the health care facility; or
- a person who, at the er of attorney is execut laim against any part of your estate after your death.

Sig he Five Wishes Form

Pl e sure you sig Five Wishes form in the presence of the two witnesses.

, ask that my family, my doctors, and other health care providers, my friends, all y wishes as communicated by my Health Care Agent (if I have one and he or she is available), or as s form. This form becomes valid when I am unable to make decisions or speak for myself. If any part of this form ca legally followed, I ask that all other parts of this form be followed. I also revoke any health care advance d made before. I have been provided with a Texas disclosure statement (see above) explaining the effect o t. I have read and understand the information contained in this disclosure statement.

Signature: _____

Address: _____

Phone: _____ Date: _____

Witness Statement · (2 witnesses needed):

I, the witness, declare that the person who signed or acknowledged this form (hereafter "person") is personally known to me, that he/she signed or acknowledged this [Health Care Agent and/or Living Will form(s)] in my presence, and that he/she appears to be of sound mind and under no duress, fraud, or undue influence.

I also declare that I am over 18 years of age and am NOT:

- The individual appointed as (agent/proxy/surrogate/patient advocate/representative) by this document or his/her successor,
- The person's health care provider, including owner or operator of a health, long-term care, or other residential or community care facility serving the person,
- An employee of the person's health care provider,
- Financially responsible for the person's health care,
- An employee of a life or health insu… provider for the person,
- Related to the person by blo… age, or adoption, and,
- To the best of my knowle… person or entitled to any part … ate under a will or codicil, by opera…

(Some states may have fewer rules about who may be a witness. Unless you know your state's rules, please fo…

Signature of Witness # 1	Signature of W…
Printed Name of Witness	P… e of Witne…
Address	…dress
Phone	

Notarization · Only required fo… of Missou… arolina, South Carolina and West Virginia

- If you live in Missouri, only your signature should be notarized.
- If you … in North Carolina, South Carolina or West Virginia, you should have your signature, and the signatures of your witnesses, notarized.

STATE OF_____ COU… F_____

On this ____ day of _____, 20__ _____, _____, and _____, known to me (or satisfactorily proven) to be the person named in the foregoing instrument and … pectively, personally … before me, a Notary Public, within and for the State and County aforesaid, and acknowledged that they … xecuted the same … the purposes stated therein.

My Commission Expires: _____

Notary Public

Five … meant to help you pl… t is not meant to give you legal advice. It does not try to answer all questions about anything that could come up. Every person … every situation is differe… nge from time to time. If you have a specific question or problem, talk to a medical or legal professional for advice.

… illet Ca…

…portant No… Medical Personnel:
I ha… a Fiv… s Advance Directive.

Signa…

Please consult this document and/or my Health Care Agent in an emergency. My Agent is:

Name

Address City/State/Zip

Phone

My primary care physician is:

Name

Address City/State/Zip

Phone

My document is located at:

Cut Out Card, Fold and Laminate for Safekeeping

11

What To Do After You Complete Five Wishes

- Make sure you sign and witness the form just the way it says in the directions. Then your Five Wishes will be legal and valid.
- Talk about your wishes with your health care agent, family members and others who care about you. Give them copies of your completed Five Wishes.
- Keep the original copy you signed in a special place in your home. Do NOT put it in a safe deposit box. Keep it nearby so that someone can find it when you need it.
- Fill out the wallet card below. Carry it with you. That way people will know where you keep your Five Wishes.
- Talk to your doctor during your next office visit. Give your doctor a copy of your Five Wishes. Make sure it is put in your medical record. Be sure your doctor understands your wishes and is willing to follow them. Ask hi[illegible]er to tell other doctors who treat yo[illegible] them.
- If you are admitted to [illegible]or pu[illegible]me, take a copy of your Five W[illegible]. Ask that it be put in your medical rec[illegible]
- I have [illegible] the following people cop[illegible]y compl[illegible] Wishes:

_____

_____

_____

Here's What People Are Saying About [illegible] Wishes:

"It will be a year since my mother [illegible] We knew wha[illegible]ted because she had the Five Wishes living will. When it came dow[illegible]y brother and I had no questions on what we needed to do. We had p[illegible]"

Cheryl K.
Longwood, Florida

"I must say [illegible]our Five Wishes. I[illegible] easy to understand, and doesn't dwell on the concrete issues of l[illegible]n the issues of real importance—human care. I used it for myself[illegible]y hus[illegible]

Susan W.
Flagstaff, Arizona

"I don't [illegible]t my chil[illegible]o have to make the decisions I am having to make for my mother. [illegible]there were so many medical options to be considered. Thank you for such a sensitive and carin[illegible]n. I can simply fill it out and have it on file for my children."

Diana W.
Hanover, Illinois