

*Michigan*

Advance Directive  
for  
Mental Health Care

*Planning for Mental Health Care in the Event of  
Loss of Decision-Making Ability*

Bradley Geller

The Legal Reference for this Pamphlet is: Michigan Public Act 386 of 1998 (Estates and Protected Individuals Code, section 700.5506, effective January 3, 2005).

This pamphlet is published by the Michigan Department of Community Health, Mental Health and Substance Abuse Administration, to provide information and resources to individuals who are interested in completing an advance directive for mental health care.

In partnership with the Department's Recovery Council, it was written by Bradley Geller, a lawyer who has drafted a number of well-regarded publications for the Michigan Legislature, the Elder Law and Advocacy Section of the State Bar, the Washtenaw County Probate Court, and the State Long Term Care Ombudsman Program.

For more information, contact Colleen Jasper, Director of the Office of Consumer Relations, Michigan Department of Community Health, at [jasper@michigan.gov](mailto:jasper@michigan.gov). Copies are also available to download from the Department's website at: <http://www.michigan.gov/mdch>.

## **Foreword**

We all value the right to make decisions for ourselves. Whether we term this freedom, liberty or independence, it is central to our idea of dignity.

One important area in which we exercise independence is in choosing the mental health treatment we receive.

Unfortunately, due to illness, we may become unable to make informed choices about our care.

No one likes to consider the possibility of becoming unable to make decisions even on a temporary basis. It is easy to put off thinking about that happening, and what treatment we would like at that time.

As difficult as it is to look at these issues, by doing so we can help ensure our wishes are honored in the future. Any action you take to plan is completely voluntary.

Once you decide upon your wishes, the next step is inexpensive or free, and can be part of your person-centered planning process. This pamphlet contains information to assist you. The fill-in-the-blanks form at the end of the pamphlet is but one option should you choose to proceed.

## Questions and Answers

### A. Introduction

#### **What is an *advance directive for mental health care*?**

An advance directive for mental health care, also known as a durable power of attorney for mental health care, is a document in which you appoint another individual to make mental health decisions for you in the future, should you lose the ability to make decisions for yourself.

Although the term “patient” is used, the document can be applicable to treatment in a hospital and in the community.

#### **Are there different types of durable powers of attorney?**

Yes. There is also a durable power of attorney for health care, and a durable power of attorney covering money and finances.

#### **How is a durable power of attorney for health care different from an advance directive for mental health care?**

In a durable power of attorney for health care, you can choose someone to make a broad range of medical decisions if an accident or sickness makes you unable to make decisions. You can also say what type of care you wish if you become terminally ill.

#### **Can a durable power of attorney for health care include wishes concerning mental health treatment?**

Yes.

**Can I have both a durable power of attorney for health care and an advance directive for mental health care?**

Yes. Or you can choose to have one or the other, or no durable power at all.

**Why might I want to have both documents?**

First, you might want to choose one individual to make health care decisions, and a different person to make mental health decisions.

Second, if you use fill-in-the-blanks forms, an advance directive for mental health care will likely have more space to set forth your detailed wishes about mental health care.

**Where can I get more information about a durable power of attorney for health care?**

One source is the website for the State Bar of Michigan, [www.michbar.org/elderlaw/](http://www.michbar.org/elderlaw/). Click on “advance directives” for information and a form.

You should also feel free to discuss this with your doctor or therapist.

**Must I have an advance directive for mental health care?**

No. The decision to have any type of advance directive is completely voluntary. No family member, hospital or insurance company can force you to have one, or dictate what the document should say if you decide to write one.

A hospital cannot deny you service because you have an advance directive or because you don't have one.

**What are the advantages of having an advance directive for mental health care?**

If you have had experience with the mental health system, you may like some doctors, hospitals and medications. You may also have had bad experiences you wish to avoid repeating.

In your advance directive, you can express your specific wishes, thereby increasing the chances your wishes will be honored.

You can also avoid a commitment hearing in probate court in some circumstances.

**Is an advance directive for mental health care legally binding?**

Yes.

**Who is eligible to have an advance directive for mental health care?**

You must be at least 18 years old. You must understand you are giving another person power to make certain decisions for you should you become unable to give informed consent.

If you have had a guardian appointed under the Estates and Protected Individuals Code, you cannot then sign an advance directive.

**What is the person to whom I give decision-making power called?**

That person is known as your *patient advocate*.

**When can the patient advocate act on my behalf?**

Your patient advocate can only make decisions for you if you cannot give informed consent to mental health treatment.

## **What is “informed consent”?**

You can give informed consent if you can:

- understand you have a condition that needs treatment, and
- understand the treatment options (including no treatment) for the condition you have, and
- consider the possible benefits and drawbacks (such as side effects from medication) from each treatment, and
- make a reasonable choice among the treatments available.

## **How might I become unable to give informed consent?**

You might become unable to make mental health decisions if severe depression, bipolar disorder, schizo-affective disorder or schizophrenia affects your mood or thought process, or dementia affects your memory.

Symptoms of a condition from which you suffer might get worse because of stress, failure to take prescribed medication, or taking a medication wrongly prescribed.

## **Who determines I am not able to give informed consent?**

After examining you, a physician **and** a mental health professional must each make the determination with respect to mental health treatment.

You may in the document choose the physician and mental health professional you wish to make this determination.

## **Are there any powers I can give my patient advocate immediately?**

Yes. You can give your patient advocate the right to look at your medical and mental health records whenever necessary.

## **What powers concerning my treatment can I give a patient advocate?**

Generally, you can give a patient advocate power to make those mental health decisions you normally make for yourself.

You can, for example, give your patient advocate permission to arrange outpatient therapy, to agree to or refuse medicine, and to sign you in for inpatient treatment.

It is very important to clearly choose in the document those powers you are giving your patient advocate.

**Can I give my patient advocate power to hospitalize me as a formal voluntary patient?**

Yes.

**Does having an advance directive override a commitment order?**

If you give your patient advocate the power to hospitalize you, there may be no need for an application or petition to the probate court and a commitment hearing in the future.

If there is a petition and court order, the patient advocate must honor the provisions of that order.

**What powers can I give my patient advocate concerning medication?**

You can give your patient advocate the power to refuse medication, to see that you receive medication you have asked for, to choose among recommended medications for your condition, and to force you to take medication if you object at the time.

**Can I include authority to refuse electro-convulsive therapy (ECT)?**

Yes, you can state you do not want to receive ECT treatments (also known as shock therapy). Or, if you wish, you can give your patient advocate the right to consent to ECT.

**Can I state other things I want?**

Yes. For example, you can specify the doctor and mental health care provider you want to make the decision about your ability to give informed consent.

You can choose your therapist, choose which drugs you do and do not want to receive, and state which hospital is best (if you give your patient advocate authority to hospitalize you).

**Is it important to express my specific wishes?**

Your wishes cannot be followed if no one is aware of them. It can also be a problem for your advocate to make a decision for you without telling her or him what you want. If you have certain desires, make these clear to your patient advocate in talking to him or her, and include these wishes in your advance directive.

**What is the duty of my patient advocate?**

Your patient advocate has a duty to take reasonable steps to follow your desires and instructions, oral and written, decided upon while you were able to give informed consent.

**Will my wishes always be followed?**

No. A mental health professional can refuse to honor your wishes concerning a specific mental health treatment, location or professional, if there is a psychiatric emergency endangering your life or the life of another person, or



the treatment you seek is unavailable, or there is a conflict with court-ordered treatment.

**Whom can I choose as patient advocate?**

Any person age 18 or older can be a patient advocate. You can choose your spouse, an adult child, a friend or other individual. You should choose someone you trust, who can handle the responsibility, and who is willing to be your patient advocate.

It is a good idea to talk with the individual you propose to name as patient advocate before you complete and sign the document.

**Can I choose a second person to serve as patient advocate in case the first person I choose is unable to serve as patient advocate?**

Yes. It is a good idea to do so. The law does not provide for more than one person to serve at the same time.

**What must I do to have a legally binding advance directive for mental health care?**

The declaration must be in writing, signed by you, and witnessed by two adults.

**Can anyone be a witness?**

No, there are limitations on who can be a witness. You need witnesses who are not immediate family members, not your doctor or patient advocate, and not an employee of a hospital or community mental health program where you are a patient or client.

You can have friends, people you know, or neighbors, for instance, sign as witnesses.

**Does the document need to be signed by a notary?**

No.

**What does a patient advocate need to do before acting for me?**

Before the patient advocate can act, he or she must sign an *acceptance*. This can be done at the time you complete the document or at a later time. The general language of the acceptance is set forth in law.

**Is there a required form for the document?**

No. You may choose to use the sample form in this pamphlet.

Make sure when you complete the document that you type or print clearly.

**Must I use a fill-in-the-blanks form?**

No. You have the right to have a lawyer write an advance directive for you.

You also have the right to write your own document. But given the complexity of the law, it is more likely the document will be accepted if you use a fill-in-the-blanks form or see a lawyer. In any case, make sure to clearly state those powers you want your patient advocate to have.

**Once I sign an advance directive, may I change my mind?**

Yes. You may want to name a different patient advocate or change your wishes. So long as you are of sound mind, you can sign a new document and then destroy the old one.

You can cancel the advance directive by telling someone or showing in any way that the document does not reflect your current wishes.

### **Can I decide to give up the right to cancel the document?**

Yes. In the document, you can **choose** to waive your right to immediately cancel the advance directive.

In such case, your decision to cancel the advance directive is effective 30 days after you tell someone you want the advance directive cancelled.

### **Why might I choose this option?**

If your document takes effect, your judgment may be altered, and you are not likely to make the best decisions about treatment. If you know this in advance, you can plan for it by giving your patient advocate 30 days to act on your behalf.

Should you choose this option, your patient advocate could authorize medication, for instance, even if you didn't like it at the time.

### **Can my patient advocate resign?**

Yes. A patient advocate can resign at any time. If so, your named successor would become patient advocate should you become unable to give informed consent.

### **What if there is a dispute when my patient advocate is making decisions for me?**

If an interested person disputes whether the patient advocate is acting in your best interests, or has the authority to act on your behalf, he or she may petition the local probate court in writing to resolve the dispute.

### **What if I regain the ability to give informed consent in mental health decisions?**

The powers of your patient advocate stop during the time you are able to give informed consent.

### **In general, what should I do before completing an advance directive?**

Take your time - these are difficult decisions. Think about what treatment you would like under various circumstances in the future. Consider whom you might choose as your patient advocate, and make sure that person is willing to serve.

### **Should I also talk with a mental health professional?**

Yes! Bring the subject up. Have a discussion about the benefits and drawbacks of various types of treatment. Express at least your general wishes and make sure the health care professional is comfortable with carrying them out.

### **What should I do with an advance directive after it is signed?**

Give the original durable power of attorney for health care to your patient advocate (or at least make sure she or he knows where it is). Give a copy to your mental health professional, and keep a copy for yourself. Let people know whom you have chosen as your patient advocate.

### **After I sign one or more advance directives, should I continue to discuss the issue of my care?**

Yes. Sit down with the person you have chosen as patient advocate. The clearer picture he or she has of your wishes, the better. If some time has passed since you signed the document, discuss the issue again.

### **When should I review an advance directive?**

Since medicines and treatments are constantly changing, and since there may be changes in your outlook, it would be wise to review your advance directive once a year. Upon review, you can decide to keep the document, write a new one, or have no advance directive at all.

If you decide to keep the advance directive, you can put your initials and the date on the bottom. The document does not expire until you decide to cancel it.

### **What should I do if I write a new advance directive?**

Whether you choose a different person to be your patient advocate or change your wishes for care, try to get back copies of the old document and destroy them. Give everyone you want copies of the new document.

### **What are the responsibilities of health care facilities?**

Hospitals, nursing homes, hospice organizations and home health agencies receiving federal funds have an obligation to inform incoming patients of their rights to consent to or refuse treatment, including the right to have advance directives.

A health care facility cannot force you to sign an advance directive, or refuse to care for you if you have signed one.

If given an advance directive, the hospital or nursing home must make it part of your medical record.

### **Will the hospital or nursing home honor my document?**

If the facility has no reason to question the document is real, has proof you are no longer able to give informed consent, and believes a patient advocate is acting consistent with your wishes, the facility would likely comply.

Be aware even though you have an advance directive, there is no absolute promise your wishes will be honored.

As mentioned earlier, there are times your wishes will not be honored. For instance, the treatment you request might not be available, might conflict with court-ordered treatment, or may not address a danger to your life or others.

## **What if I decide not to have an advance directive?**

You may choose that option if you wish.

Decisions would still have to be made for you should you become unable to make them. In that instance, it is quite possible a petition for involuntary commitment will be brought in probate court.

Website information for advance directives:

<http://www.michigan.gov/mdch>

click on: Mental Health & Substance Abuse

click on: Mental Illness & Developmental Disability

click on: Psychiatric Advance Directive

click on: Advance Directive Questions and Answers Pamphlet; or  
Advance Directive Form; or  
Advance Directive Declaration