



FORT SILL LEGAL ASSISTANCE



MEDICAL POWER OF ATTORNEY

1. A Durable Medical Power of Attorney (also known as a Power of Attorney for Health Care) is a recommended planning document to delegate health care decisions to a chosen person (called the "agent" or "attorney-in-fact") in the event of the principal's (the one who signs the document) disability or illness. Executing a Durable Medical Power of Attorney is especially important in Oklahoma because *the state has not adopted a family consent statute* that allows a prioritized list of individuals to make medical decisions on behalf of an incapacitated person if there is no court-appointed guardian or special court order.
2. A Durable Medical Power of Attorney operates in the same manner as a Financial Durable Power of Attorney. Even though a Durable Power of Attorney covering financial and property issues may also include some health care powers, it is recommended that the principal also create a separate document concerned only with medical and health care decision-making. Doing so distinguishes information and authority regarding the principal's medical records and medical requests from the principal's finances and property. This also allows the principal to elect different individuals to act on financial matters or health matters when appropriate.
3. Powers included in the Medical Power of Attorney grant authority for the agent to handle the principal's health care and medical decisions. Although the agent cannot make life-sustaining decisions for the principal (except the agent may make consent to a "do not resuscitate" order), the agent may make other medical decisions for the principal. In the document, the principal can also grant the agent additional authority, such as access to medical information, employing or terminating health care personnel, authorizing pain relief, granting releases, filing and releasing claims, securing admissions to and discharges from medical, rehabilitation, and hospice facilities, obligating the principal to pay for treatment, and seeking court intervention.
4. Since another document, the Advance Directive for Health Care document (which includes a "living will"), also provides for an agent (called a "proxy" in that document) to make health care decisions, care must be taken to avoid a conflict between two different appointed health care agents. It is recommended that the same individual be named as the agent under both the Durable Power of Attorney for Health Care and the Advance Directive for Health Care.
5. Once signed, witnessed, and notarized, the principal should give the Durable Power of Attorney for Health Care to the named agent(s) and provide copies to all treating physicians, clinics, and health care providers, as well as to immediate family members so all will be informed about the appointment of a health care agent.

6. Since the document is a "durable" power of attorney, it will remain in effect if the principal loses competency. However, the principal retains full rights to make his or her own decisions while competent. This means that the named agent or attorney may speak for the principal, but the competent principal retains veto power if there is disagreement between the two of them. A Medical Power of Attorney is revocable at any time as long as the principal remains competent.

7. Although the Medical Power of Attorney cannot always take the place of guardianship in the case of incompetent adults, it often reduces the need to file for formal guardianship. This will result in saving court costs and attorney fees.

8. Once children reach the age of eighteen, they are considered adults. With the increased privacy given to medical records and treatments, this means parents lose the automatic access to medical information they had when their child was a minor. Families should carefully consider the wisdom of having the new eighteen year old sign a Medical Power of Attorney in case of future medical emergencies.

Updated April 2010

If you have questions concerning the information in this fact sheet, please call the Legal Assistance Office (580) 442-5058 or (580) 442-5059. Our hours of operation are Monday, Tuesday, Wednesday and Friday, 0800 – 1600, and Thursdays 1200-1600. The Fort Sill Legal Assistance Office is located on the 4th floor of Building 4700, Hartell Hall on Mow-Way Road.