

# **Understanding the Durable Power of Attorney for Health Care**

## **What Is a Durable Power of Attorney For Health Care?**

A Durable Power of Attorney for Health Care (DPOA-HC) is a document or paper that allows us to designate or name a person or persons to make decisions about our health care in case we are not able to make those decisions ourselves. It gives some direction about the kinds of medical treatment we want.

## **Are They Legal in Georgia?**

Yes. The Durable Power of Attorney for Health Care Act was passed in the 1990 legislative session. The law became effective on July 1, 1990.

## **Why Would Anyone Want to Have One of These?**

Advances in medical technology have been a mixed blessing. Today people are living longer and longer. Yet the quality of life does not always match the quantity of life. In other words, many people wonder, "What good is it to live to be 100 years old if our last years are spent confined to a bed? We may not know who we are or where we are; we may be unable to feed or groom ourselves. Is this really living?", we ask.

Today, courts in most situations agree that we have a right to control our health care. If we have cancer but do not want to be treated, that is our right. If we have a stroke and will be paralyzed for the rest of our life, we have the right to refuse medical treatment that will keep us alive. In other words, unless a special circumstance exists, we have a right to control our medical care. Doctors cannot force us to live when we no longer wish to live. We cannot be forced to take medicine or receive other life sustaining procedures if we expressly state those wishes.

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## **What if we are unable to communicate with our doctors?**

But suppose we are unable to communicate with our doctors. For example, what happens if we were in an automobile accident and suffered severe head injuries which left us unable to move and with no brain activity? Doctors said that we would remain in a "persistent vegetative state" and will never recover. We could be kept alive if we were hooked up to machines that help us to breathe and tubes that provide us with nourishment.

The law says we have the right to refuse such treatment and can be allowed to "die with dignity." However, in this example, we are in a coma. We cannot talk or communicate to doctors and tell them how we want to be treated - or not treated.

The Supreme Court decision on June 25, 1990, on the "right to die" was based on a situation like this. A 25 year old woman was injured in an automobile accident. She was left in a "persistent vegetative state." Doctors said she might live for another 30 years like this.

Her parents told the doctors that their daughter would not want to live like this. They told the doctors to remove the feeding tubes and let their daughter "die with dignity." The doctors refused. The case went all the way to the United States Supreme Court. The Supreme Court said that **UNLESS WE MAKE OUR WISHES KNOWN, PREFERABLY IN WRITING**, that the state could intervene to protect life.

This woman could have remained in a coma for another 30 years, not really dead, but certainly not fully living, either. However, further court decisions in her home state gave her family the authority to see that her wishes were followed, and she passed away in December of 1990.

If this woman had made a Durable Power of Attorney for Health Care, all of this could have been avoided.

## **How Does a Durable Power of Attorney for Health Care Work?**

We sign a paper that says that we want a certain person or persons (called an agent) to make health care decisions for us if we are unable to make those decisions ourselves. We could be unable to make those decisions because of an injury or because we have become mentally incapable of making such decisions ourselves. Unfortunately, some of us may become mentally confused as we grow older.

This form gives them the legal power to make certain decisions regarding our health care - but ONLY when we are incapable of making those decisions ourselves.

## **What Decisions Can They Make?**

They can decide on a wide range of health care issues. This can include whether to admit or discharge us from a hospital or nursing home, what treatments may or may not be given, who can have access to our medical records, and even how our body is disposed of after our death. For example, they may donate our organs, order an autopsy, and even direct funeral arrangements.

## **How Does My Durable Power of Attorney for Health Care Agent Know What I Want?**

We must tell them - in writing. There is a suggested form that allows us to state in writing how we would like to be treated - or not treated - in various medical situations. We can also tell our DPOA-HC agent how we want our body disposed of, if we want to donate any organs to science, etc. We can direct that we do or do not want to be hooked up to machines that keep us alive. We can state that we do or do not want to be hooked up to feeding tubes that provide us with nourishment and hydration (food and water). We can even use the document to name a person we want to be our guardian, should it become necessary.

## **What Is a Guardian?**

A guardian is someone who is legally appointed by the court to act on our behalf when the court finds that we are not capable of managing our own affairs. The court can appoint a guardian over our person, our property or both. The court can also appoint a guardian to act for a limited purpose or limited time period. A guardianship takes away a person's legal rights and places rights and responsibilities in someone else's hands. We should discuss guardianship with our attorney if we have any questions.

## **Who Should I Appoint to Be My Durable Power of Attorney For Health Care Agent?**

We can choose anyone who is over 18 years of age. The only restriction is that they cannot be our health care provider. In other words, they should not be our doctor or work at a nursing home where we reside, or hospital where we may be a patient.

We should choose someone that we can trust and who will carry out our wishes. They can be a family member, a friend, someone we work with, or a spiritual advisor.

Although this is not required by the law, it is a good idea to discuss our wishes with the person or persons we would like to appoint to be our agent. This could be a difficult role with unexpected hard decisions to make. We should be sure the person we choose is willing to make those decisions for us.

## **Can I Appoint More than One DPOA-HC Agent?**

Yes. The law allows us to appoint co-agents (two people who will serve as equals) and/or successive agents (a second person who will succeed the first person in case they are unable to perform their duty). We should consider naming more than one person since an agent may not be available or may choose not to act in a certain situation.

## **Is My Agent Required to Act for Me?**

No. The law does not force the agent to act for us. However, if the person chooses to act, they must do so according to our wishes. This is one reason why we may want to ask the person we name whether they are willing to act for us, should it be necessary.

## **Is My Durable Power of Attorney for Health Care Agent Liable for What They Do?**

No. As long as they are acting in "good faith" and in accordance with our instructions, the law protects them from liability (being sued) for their actions.

## **If I Change My Mind, Can I Change My Durable Power of Attorney Form?**

Yes. We should destroy the copy that we have and tell others who might have a copy that we have changed our minds. We can then make a newer DPOA-HC that reflects our current wishes.

There are also some special parts of the law which address ways that the document could be revoked (cancelled). For example, the law says that if we get married after we have signed a DPOA-HC, it will be automatically revoked (not legally valid) unless we have named our new husband or wife as our agent. The law also discusses ways that we can cancel the DPOA-HC verbally. We should see an attorney to have these and other fine points explained.

## **Is There a Best Time to Appoint a DPOA-HC Agent?**

Most of us don't really want to think about dying. When we are young, we assume that we have many years ahead of us. But remember, the June 1990, Supreme Court case involved a woman who was only 25 years old at the time of her accident. Who would have predicted what would happen to her?

**So the best time to think about and appoint a DPOA-HC  
Is NOW.**

## **I Am More Interested in the Right to Live than the Right to Die. How Can I Make Sure That No One "Pulls the Plug" on Me?**

The DPOA-HC is a neutral document. It does not assume that we feel one way over another. It allows us to state in writing exactly how we feel. If we want to "hang on to life as long as possible," we should say so in the form. In fact, there is a place in the Georgia form to express this desire. But more importantly, one should make sure that the person(s) appointed as agent(s) can be trusted to carry out your wishes

## **I Don't Want to Exist Like a Vegetable, But I Don't Want to Be in Pain, Either. Is There a Conflict?**

No. Standard medical practice says that we should be kept as comfortable and as free of pain as is possible. Often when someone is disconnected from a respirator, they are given a sedative that helps them to relax and go to sleep. No one wants us to suffer needlessly. The Georgia law on DPOA-HC also addresses this and states that health care providers have a right to administer medicine to control our pain, regardless of what our Power of Attorney for Health Care instructions may say.

## **What Is The Difference Between a Durable Power of Attorney For Health Care And a Living Will?**

As explained, a Durable Power of Attorney for Health Care allows us to appoint a person or persons to make health care decisions if we cannot act for ourselves. A Living Will simply states our wish to have certain types of care withheld or withdrawn in situations set out in the Living Will itself. A Living Will may apply if we have a terminal condition, are in a coma or a persistent vegetative state. A Durable Power of Attorney for Health Care is broader in that it can apply to any condition you may have or treatment you may need., For more information on the Living Will, ask for the publication called "Understanding the Georgia Living Will".

**NOTE:** Keep in mind that all laws are subject to amendments by legislators and interpretations by courts. Check with a legal advisor to obtain the latest information.

## **What Is The Difference Between a Durable Power of Attorney For Health Care And a Financial or General Power of Attorney?**

The DPOA-HC is designed to authorize someone to act on our behalf to direct decisions about our body and health care or treatment. A financial or general power of attorney can be designed to authorize someone to act on our behalf in financial or other matters. A person can use two different documents, one for decisions about the person (DPOA-HC) and one for the property (regular POA). The law also allows us to combine both types of powers of attorney into one document, if we wish. See a lawyer if you have any questions about a power of attorney for property or finances or if you have questions about combining the two documents into one.

## **How Do Religions View a Durable Power of Attorney for Health Care?**

Many religions support our having the power to control our health care. Medical technology has advanced quicker than medical ethics. Often hospital boards and families rely on a minister or other spiritual counselor to offer advice. Many religious groups and individuals support our right to decide.

However, some religious groups and individuals are very much against a DPOA-HC. Instead of saying this gives us the right to die, they think it gives others the right to kill.

The Georgia law states that the DPOA-HC is not a form of euthanasia (mercy killing). We are not actively killing someone. Insurance companies do not consider such decisions suicide. Despite these statements, some people do object to a DPOA-HC. If you have questions or would like to know your

religion's views of this, ask your local minister, priest, rabbi, or spiritual leader.

## **This Is All Very Complicated! Can The County Agent Help Me?**

No. The county agent is neither a doctor nor a lawyer. If you need help in understanding this, you should make an appointment to discuss this with a legal or medical expert.

## **What Form Can I Use?**

The Georgia law states that we can devise a DPOA-HC form to custom fit our needs. Our form does not have to be a word for word duplication of the form suggested in the law. We should consult an attorney if we want to insure our DPOA-HC form is legally valid. We should consult a medical doctor if we have questions about the types of treatment or medical issues that may arise.

### **CONCLUSION**

No one likes to think about such matters. However, as the saying goes, "bad things happen." Most people hope that they will simply go to sleep one night in their own bed and not wake up. The reality is that about 80% of people die while in a nursing home or hospital. The majority are not physically or mentally able to make decisions about their own health care.

In order to protect ourselves, it is in our best interest to appoint a DPOA-HC agent. We should use a DPOA-HC to let others know how we wish to be treated if we are not able to communicate those wishes at the time.

What we decide is up to us. We can custom design our DPOA-HC to our own wishes. It is an important task that we all should consider.



**DISCLAIMER:** This publication contains general information. It is not the intention of The University of Georgia Cooperative Extension Service nor the Georgia Division of Aging Services to provide specific legal or medical advice. Individuals are encouraged to consult professionals to help them make an informed decision.

**NOTICE:** Laws change both by amendments by lawmakers and decisions by courts. In order to be safe, we should check with our attorney to be sure this information is up to date.

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C. Wayne Jordan, Director

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## SAMPLE FORM

Be sure you understand this form completely before you sign it. If there is any part of this form you do not understand you should ask a lawyer or physician to explain it to you before you sign it.

It is very important that you completely understand every part of the document before you sign anything. If you have any questions or concerns about the DPOA-HC, consult a lawyer. If you have questions about medical terms used or the implications of decisions, talk to your family doctor.

Attached is an example of a form for the DPOA-HC. The Georgia law on these documents provides a form to use but also allows for some flexibility in personalizing the form to fit individual needs. This form is not an exact word-for-word duplication of the form in the statute. The authors in no way intend to provide specific legal advice on the DPOA-HC. It is intended for general education and information only. You may use this form or obtain a copy of the form in the statute to use.

Copies of the statutory form are available at no cost from the Georgia Division of Aging Services, 2 Peachtree Street, Suite 9.398, Atlanta, GA 30303-3142.

The 1999 amendments to the law regarding the Georgia Durable Power of Attorney for Health Care clarify the following:

- a form which is substantially similar to the statutory form is acceptable under the law
- substantially similar forms from other states are acceptable in the State of Georgia
- the health care power may be included in or combined with any other form of power of attorney including those governing property or financial matters
- a form is acceptable which only provides to the patient notice which is substantially similar to that which appears at the beginning of the form

## DURABLE POWER OF ATTORNEY FOR HEALTH CARE

(Notice: the purpose of this power of attorney is to give the person you designate (your "agent") broad powers to make health care decisions for you, including power to require, consent to or withdraw any type of personal care or medical treatment for any physical or mental condition and to admit you or discharge you from any hospital, home or other institution, but not including psychosurgery, sterilization or involuntary hospitalization or treatment covered by Title 37 of the Official Code of Georgia Annotated. This form does not impose a duty on your agent to exercise granted powers; but when a power is exercised, your agent will have to use due care to act for your benefit and in accordance with this form. A court can take away the powers of your agent if it finds the agent is not acting properly. You may name co-agents and successor agents under this form, but you may not name a health care provider who may be directly or indirectly involved in rendering health care to you under this power. Unless you expressly limit the duration of this power in the manner provided below, or until you revoke this power or a court acting on your behalf terminates it, your agent may exercise the powers given herein throughout your lifetime, even after you become disabled, incapacitated or incompetent. The powers you give your agent, your right to revoke those powers and the penalties for violating the law are explained more fully in Sections 31-36-6, 31-36-9 and 31-36-10(b) of the Georgia "Durable Power of Attorney for Health Care Act" of which this form is part. That Act expressly permits the use of any different form of power of attorney you may desire. If there is anything about this form that you do not understand, you should ask a lawyer to explain it to you.)

**DURABLE POWER OF ATTORNEY FOR HEALTH CARE\***

This agreement was made the \_\_\_\_ day of \_\_\_\_\_, \_\_\_\_\_.  
(month) (Year)

1. I, \_\_\_\_\_, who resides at  
(Print or type your name.)

(Print or type your complete address)

do hereby appoint \_\_\_\_\_  
(Print or type their complete name)

of \_\_\_\_\_  
(Print or type their complete address)

to serve as my DURABLE POWER OF ATTORNEY FOR HEALTH CARE AGENT.  
The above named person can make any and all decisions for me concerning my personal care, medical treatment, hospitalization, and health care. They are empowered to require, withhold, or withdraw any type of medical treatment, according to the wishes I have hereby outlined. These decisions may be made, even though my death may result from these decisions.

This person is empowered to make these decisions if I am not capable of making these decisions myself.

2. Co-Agent (check one)

- 9 A. I do not wish to name a person as co-agent.
- 9 B. I wish to have another person serve as my co-agent. This person shall serve as an equal and have equal authority to exercise the powers so outlined in this agreement. The person that I wish to serve as co-agent and have equal powers of durable power of attorney for health care is the named person below.

(Print or type the name of co-agent)

(Print or type their complete address)

3. My agent(s) shall have the same access to my medical records that I would have. They have the right to disclose the contents of these medical records to others.

My agent(s) shall have the power to dispose of my body, order an autopsy, or donate certain of my organs as outlined below. (Specify any wishes you have about donating organs, an autopsy, or funeral arrangements in this space.)

4. If I am ill and unable to make such a decision for myself, I do hereby provide my Durable Power of Attorney for Health Care Agent(s) with the following guidelines. If I have initialed one of the three statements below, this philosophy should be used as a guideline for future decisions. Additional guidance can be found in the checklist that follows.

I DO NOT want my life to be prolonged nor do I want life-sustaining or death-delaying treatment to be provided or continued if my agent(s) believe the burdens of treatment outweigh the expected benefits. I want my agent(s) to consider the relief of suffering, the expense involved, and the quality of my life in making decisions concerning life-sustaining or death-delaying treatment.

(Initial here if this is your wish)

I DO want my life to be prolonged, and I want life-sustaining or death-delaying treatment to be provided or continued UNLESS I am in a coma, including a persistent vegetative state, which my doctor believes to be irreversible. If and when I have suffered such an irreversible coma, I want life-sustaining or death-delaying treatment to be withheld or discontinued.

(Initial here if this is your wish)

I DO want my life to be prolonged to the greatest extent possible. I do not care what condition I am in, what the chances are for my recovery, or how much the procedures cost to keep me alive.

(Initial here if this is your wish)



5. To further clarify my feelings about a possible illness and the treatment (or lack of) that I desire, the checklist below is intended to provide guidance for my Durable Power of Attorney for Health Care Agent(s). You can leave this section blank if you wish. You may wish to talk to your doctor about the medical effects of these treatments or if you have questions or concerns about this section.

Assuming that I am seriously ill, am in an irreversible condition, or have a terminal illness, I do hereby check to indicate my wishes about the following treatments.

<b>Treatment or Procedure</b>	<b>I Want this regardless of the chances of success</b>	<b>Don't Want this regardless of the chances of success</b>	<b>Want only if I'm in a persistent vegetative condition</b>	<b>Want if I'm in a persistent comatose condition</b>	<b>Want only if I have a terminal condition</b>	<b>Don't want if I have a terminal condition</b>
A. cardiopulmonary resuscitation (heart massage, shock or something to restart my heart)						
B. mechanical breathing (respirator)						
C. artificial nutrition (feeding tubes)						

Treatment or Procedure	I Want this regardless of the chances of success	Don't Want this regardless of the chances of success	Want only if I'm in a persistent vegetative condition	Want if I'm in a persistent comatose condition	Want only if I have a terminal condition	Don't want if I have a terminal condition
D. artificial hydration (water)						
E. major surgery						
F. kidney dialysis						
G. chemotherapy (treatment for cancer)						
H. minor surgery						
I. antibiotics (to fight infection)						
J. invasive diagnostic tests (biopsies and exploratory surgeries)						
K. blood or blood products (such as transfusions)						
L. Other (Specify)						

Treatment or Procedure	I Want this regardless of the chances of success	Don't Want this regardless of the chances of success	Want only if I'm in a persistent vegetative condition	Want if I'm in a persistent comatose condition	Want only if I have a terminal condition	Don't want if I have a terminal condition
M. Other (Specify)						
N. Other (Specify)						

**If you have any other requests or rules you wish followed, or if you want any of the above treatments tried and then stopped if no clear improvement, write those instructions here.**

6. This power of attorney for health care normally becomes effective the date that it is signed. The durable power of attorney for health care agent normally does not make decisions for you unless or until you become disabled, incapacitated, or incompetent to make decisions on your own.

If you wish to specify a date when this document becomes effective or ceases to be effective, designate those dates below. You can use this section to name a situation or event in the future upon which you want this document to become effective.

(Date other than date signed that this becomes effective)

(Date or future event that this agreement shall terminate or end)

7. If the agent(s) named by me shall die, become legally disabled, incapacitated, or incompetent, or if he or she shall resign, refuse to act, or be unavailable to act, I name the following persons to serve as my agents for durable power of attorney for health care. They will serve successively in the order that they are listed.

(Print or type name and address)

(Print or type name and address)

(Print or type name and address)

(Print or type name and address)

8. (A) If the time comes when a judge decides that I need a guardian to act in my behalf on a variety of matters, I do hereby request the judge to appoint the following person as my guardian.

(Print or type complete name and address)

8. (B) If the time comes when a judge decides that I need a guardian to act in my behalf on a variety of matters, I do hereby request that the judge **not appoint** the following person(s) as my guardian.

(Name of person)

(Relationship of the person to me)

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(Reason I do not want this person to be my guardian)

(Name of person)

(Relationship of the person to me)

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(Reason I do not want this person to be my guardian)

9. I am fully informed as to all of the contents of this form, and I understand the importance of the powers that I am granting my agents.

(Sign your full name)

(Date)

10. We, the undersigned, witness that the above listed person (principal) has read or has been read the above form, understands and agrees to it, and has signed it in our presence. We, the witnesses to this document, are all over 18 years of age, have watched as the person signed this document, and have watched as each witness has signed it, at the request of the principal, on the above date.

(Signature of witness #1)

(Print or type name and address of witness #1)

(Signature of witness #2)

(Print or type name and address of witness #2)

**If you are currently residing or being cared for in a nursing home or hospital, an additional witness is required. This witness should be the attending physician.**

I hereby witness this health care agreement and attest that I believe the principal to be of sound mind and to have made this health care agreement willingly and voluntarily.

(Signature of attending physician)

(Print or type full name and address)



You may, but are not required to, request that your agent and successor agents provide specimen signatures below. If you include specimen (sample) signatures in this power of attorney you must complete the certification opposite the signatures of the agents.

Specimen signatures of agent (s)

I certify that the signature of my agent is correct

(Agent)

(Principal)

(Co-Agent)

(Principal)

Specimen signatures of successor agent(s)

I certify that the signature of my successor agent(s) is/are correct

(Agent)

(Principal)

(Agent)

(Principal)

(Agent)

(Principal)