

# **DURABLE POWER OF ATTORNEY FOR HEALTHCARE**

## **Background**

The Durable Power of Attorney for Health Care is designed to make it possible for families to handle problems of disability, without resorting to the Probate Court. It provides the structure for personal care and medical decisions to be made by an agent during disability. This document is important to all persons, regardless of age, due to the authority that can be transferred under it, without Court intervention, during those periods in which a person becomes disabled, which are often unpredictable and unexpected.

## **Purpose**

Historically, an individual has the right to control all aspects of his or her personal care and medical treatment, including the right to decline certain treatment.

However, if an individual becomes disabled, his or her right to control the aspects of his or her medical care and treatment may be denied, unless that person has previously delegated this authority to another person. Typically, in the case of disability, a guardian is appointed, and that guardian makes decisions on behalf of the disabled person, based on what the guardian believes to be in the best interest of the disabled person. However, the appointment of a guardian can be a cumbersome and expensive process, and does not assure the disabled person that his or her desires will be carried out.

The Durable Power of Attorney for Health Care Act provides an alternative to the appointment of a Court ordered guardian. Essentially, through the Durable Power of Attorney, the disabled person (the Principal) can delegate his or her decision making power to a trusted agent (the Agent), and can make sure that the Agent's power to make personal and health care decisions for the disabled person will be effective to the same extent as though made by the disabled person. The Durable Power of Attorney for Health Care not only avoids the need for a Court appointed guardian, but also allows the Principal, before he or she becomes disabled, to set forth specific instructions and preferences with respect to financial and business decisions to be acted upon after disability.

## **Choices**

The basic form of the Statutory Form of Power of Attorney for Health Care is set forth in the Durable Power of Attorney for Health Care Act. However, the form is very flexible and provides for numerous alternatives and modifications that may be made to the basic form, in order to tailor it to the wishes and desires of the Principal executing the document.

A summary of some of these choices and alternatives follows. You should carefully consider these choices when reviewing the Power of Attorney that has been prepared for you, and you should feel free to incorporate any of these alternatives into your particular document.

1. In the opening sections of the document, you indicate who you want to be your Agent. You may name successor Agents to act in the event the originally named Agent is unable or unwilling to, but you may not name co-agents.

2. The grant of power that is included is intended to be as broad as possible so that your Agent will have authority to make any decision you could make to obtain or terminate any type of health care, including withdrawal of food and water and other life-sustaining measures, if your Agent believes such action would be consistent with your intent and desires.

3. If you wish to limit the scope of your Agent's powers, or prescribe special rules, or limit the power to make an anatomical gift, authorize autopsy or dispose of remains, you may do so by specifying these things in the document.

4. The flexibility provided by the Act allows you to include any specific limitations you deem appropriate, such as: your own definition of when life-sustaining measures should be withheld; a direction to continue food and water in all events; or instructions to refuse any specific types of treatment that are inconsistent with your religious beliefs or unacceptable to you for any other reason, such as blood transfusion, electro-convulsive therapy, amputation, psychosurgery, voluntary admission to a mental institution, etc.

5. The subject of life-sustaining treatment is of particular importance. Your Agent is being empowered to make decisions that conform with what you would do if you had the capacity to decide. You need to communicate those wishes to your Agent, including:

- your personal, religious and philosophical views
- your views on life-sustaining treatment, and how you weigh the benefits and burdens of such treatment
- your views on an absolute duty to resuscitate
- treatment if you are in a persistent vegetative state
- degree of treatment in view of a terminal illness.

Attorney John L. Maier, Jr.  
Sweet, Maier & Coletti, S.C.  
February, 2010