

**DURABLE POWER OF ATTORNEY FOR HEALTH CARE**

**OF**

[NAME]

1. DESIGNATION OF HEALTH CARE AGENT.

(a) Pursuant to the Missouri Durable Power of Attorney for Health Act, Mo.Rev.Stat. §§ 404.700-404.735 and §§404.800-404.872, I hereby appoint my \_\_\_\_\_ (relationship), \_\_\_\_\_ (name), as my attorney-in-fact (referred to in this document as my "Health Care Agent") to make health care and related decisions for me according to the principles and directives set forth herein. I believe that my Health Care Agent understands the principles by which I have tried to live my life, especially the principle that every human life is a gift to be nurtured and loved no matter how helpless or impaired it may be at any particular time. I direct my Health Care Agent to carry out my wishes as described in this Durable Power of Attorney for Health Care when I am incapacitated as defined in Mo.Rev.Stat. § 404.805.1(2) and thus no longer able to make or communicate my own health care decisions.

(b) If the Health Care Agent named by me shall become unable or unwilling to serve at any time, or in the event that my Health Care Agent is my spouse and we become legally separated or divorced, I name the following persons, one at a time, as successor Health Care Agent: first, \_\_\_\_\_ (name), \_\_\_\_\_ (relationship), but at any time that he/she becomes unable, unwilling to serve, then second, \_\_\_\_\_ (name), \_\_\_\_\_ (relationship).

2. EFFECTIVE DATE AND DURABILITY. I expect to make my own health care decisions as long as I am able to do so. By this document I intend to create a durable power of attorney effective only when treatment decisions for my care need to be made and I am incapacitated, as certified in writing by [check one:] \_\_\_ one (1) licensed physician or \_\_\_ two (2) licensed physicians. The powers and duties of my Health Care Agent shall cease upon certification by a licensed physician that I am no longer incapacitated. "Incapacitated" means that I am unable by reason of any physical or mental condition to receive and evaluate information or to communicate decisions to such an extent that I lack capacity to meet essential requirements for food, clothing, shelter, safety or other care such that serious physical injury, illness or disease is likely to occur

3. EXERCISE OF POWERS AND DUTIES.

(a) Whenever I am to be admitted to a hospital, clinic, ambulatory surgical center, or other health-care institution, my Health Care Agent shall ensure that a copy of this Durable Power of Attorney for Health Care is given to the admitting office or admitting staff with directions to make it a part of my record. This document is not a “living will,” but it does contain advance directives of which the medical staff needs to be put on notice so that they may comply with Mo.Rev.Stat. §§ 404.830.2 & .3 and § 404.840.

(b) At such time as my Health Care Agent is called upon to make decisions about treatment for me, then he/she should take the following steps to make a sound judgment:

(1) Obtain as much information as possible on my current condition (diagnosis) and probable progression (prognosis) if the condition is untreated as well as the prognosis under the proposed treatment and possible alternative treatments.

(2) Obtain as much information as possible on what exactly the treatment is expected to do for me, e.g., keep me from starving to death, reduce fever and/or infection, destroy cancer cells, etc.

(3) Also obtain information on what side effects to expect from the proposed treatment, its risks to life or of other harm, and the burdens of pain, of costs to me or to my family (without consideration of the cost to an insurer or government program to which I have a contractual or other legal right to make a claim for its assistance in payment of a part or the whole of such costs), or of impairment of other bodily or mental functions that the treatment may create.

(4) Answer this question: Does the proposed treatment itself accelerate death? No one may choose a course of action or inaction with the intent to cause death. Mo.Rev.Stat. § 404.820.2. However, my Health Care Agent may choose pain control measures that have the secondary effect of reducing the bodily defenses that stave off my death and may thus make death come sooner than otherwise, so long as accelerating death is not the intended goal. When weighing pain control measures, my Health Care Agent should also keep in mind that humanity finds solace and comfort in the presence of other people, especially relatives and friends, so that preserving a certain amount of awareness at the cost

of some pain may be more soothing for me than to receive maximum pain relief.

(5) Armed with the information obtained as outlined above, and after reviewing whenever needed my directives in this document, my Health Care Agent shall make his or her best judgment call about what the appropriate treatment in light of the general principles expressed below and my directives in this Durable Power of Attorney for Health Care.

#### 4. GENERAL PRINCIPLES TO GUIDE MY AGENT.

(a) In addition to what has been stated above, I direct that, should I become gravely ill, my Health Care Agent shall ensure that I receive the ordinary means of preserving life that all people, whether impaired or not, must have to stay alive. Such ordinary means include warmth, cleanliness, nutrition, hydration, and minimum shifting of posture and position to minimize bedsores, muscle atrophy, and other discomfort. Even when I am unable to swallow, either because I am unconscious, severely disabled either mentally or physically, or for any other reason, the administration of food and water, including medically assisted administration thereof, shall continue to be part of my normal treatment. My Health Care Agent, therefore, may direct a health care provider to withhold or withdraw medically assisted nutrition and hydration only if supplying nutrition and hydration has no medically reasonable hope of sustaining my life or poses disproportionate risks or burdens to me.

(b) In weighing the benefits and burdens of a proposed treatment to reach a decision for my health, the presumption shall be in favor of obtaining or continuing treatment that helps me to live to a natural death, unless the burdens and risks of the treatment are disproportionately greater than the marginal benefit that the proposed treatment will or does provide in all the circumstances. I have found very helpful the analysis of benefits and burdens for invasive treatments that was made by the Supreme Court of Missouri in *Cruzan v. Harmon*, 760 S.W.2d 408 (Mo. banc 1988).

(c) I reject any application of the concept of “futility” that is based on a theory that if my condition cannot be cured, then it is a waste of resources to provide treatment to maintain my life. I reject any application of “quality of life” criteria to conclude that my life itself is a burden and may be ended because I am in pain or in a condition of impairment such that I no longer give the appearance of appreciating or being able to appreciate my life. I reject a theory that I lack sufficient “dignity” to continue to live because I am dependent on others to

meet my basic bodily needs. My dignity as a human being does not depend on freedom from impairment. I will not gain any greater dignity by being turned into a corpse. No condition or disease I might have or suffer, though it is untreatable, incurable, or irreversible, makes treatment “futile” or disqualifies me from receiving treatment and care. The quality of my life will not be improved by making me die sooner than the time of natural death.

(d) There comes a time when death is imminent and the body no longer receives benefit from treatment or ordinary care, e.g., when it no longer assimilates food or fluids. In such circumstances, I direct my Health Care Agent not to continue any treatment that represents merely a “death prolonging procedure” under Mo.Rev.Stat. § 459.010(3). I further direct that if my body no longer tolerates nutrition and hydration by artificial means, then providing nutrition and hydration by artificial means shall be discontinued pursuant to Mo.Rev.Stat. § 404.820.1.

(e) I direct my Health Care Agent, if the health-care institution or medical professionals that are taking care of me do not agree with the decisions that my Agent makes, to use every reasonable means at his or her disposal to obtain their compliance with his or her decisions made in accordance with these, my directives.

5. HEALTH CARE AGENT'S POWERS. My Health Care Agent shall have the following powers and authority in order to carry out the directives contained herein:

(a) To consent, refuse to consent, or withdraw consent to any type of treatment under the principles expressed herein, provided, however, that my Health Care Agent may not execute an outside the hospital do-not-resuscitate order under Mo.Rev.Stat. §§ 190.600-190.621 or any similar law of another jurisdiction;

(b) To have access to medical records and health care information to the same extent I have access, including authorization for such access pursuant to the Health Insurance Portability and Accountability Act of 1996 (HIPAA) and regulations issued thereunder, 45 CFR Parts 160, 162, & 164, and also pursuant to any applicable state law that provides for confidentiality of health care information, and to disclose the contents thereof to others. I hereby authorize all health care providers and any other organization or facility subject to the provisions of HIPAA and/or any applicable state law concerning the confidentiality of health care information, including any physician, health-care professional, health plan, hospital, clinic, laboratory, pharmacy, dentist, and other health-care provider, or any insurance company that has

provided treatment or services to me or that has paid for such services for me or is seeking payment from me for such services, to provide to my Health Care Agent all records and other personal health information protected by HIPAA and/or any applicable state law concerning the confidentiality of health care information, including individually identifiable health information, regarding any past, present or future medical or mental health condition and treatments thereof;

(c) To authorize my admission to or discharge from (even against medical advice) any hospital, nursing home, residential care, assisted living or similar facility or service, whether in or outside of the State of Missouri;

(d) To contract on my behalf for any health care related service, without my Health Care Agent incurring personal liability for such contracts;

(e) To make all necessary arrangements for health care services on my behalf, including but not limited to such related services as examinations, radiology, laboratory work, medications, convalescence care, and physical and other therapies, and to hire and discharge medical, social service and other support personnel responsible for my care;

(f) When it is in my best interests, to grant any waiver or release from liability required by any health care provider; and

(g) To take any action consistent with the principles I have expressed above that my Health Care Agent deems necessary or appropriate, in his/her discretion, for my benefit with respect to my health care, including, but not limited to, taking any necessary legal action at the expense of my estate to enforce this Durable Power of Attorney for Health Care.

6. **RESERVED POWERS.** I do not authorize my Health Care Agent to exercise the following powers:

(a) To make any change to this Durable Power of Attorney for Health Care, to my Last Will and Testament, and any trust instrument I might have executed; or

(b) To exercise any right or power to make anatomical gifts of all or part of my body, to exercise the right of sepulcher, to authorize an autopsy, or to have or exercise any additional powers other than those I have specifically described in this Durable Power of Attorney for Health Care.

7. **RELIANCE AND INDEMNIFICATION.** My Health Care Agent acts in a fiduciary capacity. This Durable Power of Attorney for Health Care shall be good and binding as between myself, my heirs and estate, and third parties who have not received actual notice of

its revocation or modification. I agree to be bound by all that my Health Care Agent shall determine and do on my behalf, and for myself, my heirs and estate, I will defend and indemnify my Health Care Agent and third parties from all claims that arise by reason of reliance on this Durable Power of Attorney for Health Care. Third parties who rely on, contract with, otherwise act at the request of, or otherwise deal with my Health Care Agent shall have all the protections provided to third parties in the Durable Power of Attorney Law of Missouri, Mo.Rev.Stat. §§ 404.700-404.735, and the Missouri Durable of Attorney for Health Care Act, Mo.Rev.Stat. §§ 404.800-404.872. No third party shall have any duty to inquire into or question the propriety of any act or determination of my Health Care Agent.

8. MISCELLANEOUS.

(a) I hereby revoke all my previous health care declarations, living wills, and durable powers of attorney for health care, by whatever name they may be known or titled, provided, however, that I do not revoke any powers of attorney or durable powers of attorney to the extent that the same address subjects other than those addressed in this document.

(b) My Health Care Agent shall be entitled to reimbursement for all expenses incurred or paid in the course of carrying out his/her duties under this Durable Power of Attonrey for Health Care, but he/she shall not be entitled to other compensation.

(e) The provisions of this document are severable. If a court of competent jurisdiction finds any provision hereof to be void or unenforceable, then such finding shall not affect the validity or enforceability of any other provisions hereof.

(f) A copy of this document showing my handwritten signature and acknowledgment thereof shall be as valid as the original so long as the text and signatures are reasonably legible.

**BY SIGNING HERE, I INDICATE THAT I UNDERSTAND THE CONTENTS OF THIS DOCUMENT AND THE EFFECT OF THIS GRANT OF POWERS TO MY HEALTH CARE AGENT. THIS IS A DURABLE POWER OF ATTORNEY FOR HEALTH CARE AND THE AUTHORITY OF MY ATTORNEY-IN-FACT (HEALTH CARE AGENT) SHALL NOT TERMINATE IF I BECOME DISABLED OR INCAPACITATED.**

IN WITNESS WHEREOF, I have executed this Durable Power of Attorney for Health Care on the \_\_\_\_ day of \_\_\_\_\_, 20\_\_\_\_.

\_\_\_\_\_  
Signature

ACKNOWLEDGMENT

STATE OF MISSOURI            )  
  ) SS.  
COUNTY OF \_\_\_\_\_ )

On this \_\_\_\_\_ day of \_\_\_\_\_, 20\_\_\_\_, before me personally appeared \_\_\_\_\_, to me known to be the person described in and who executed the foregoing Durable Power of Attorney for Health Care and acknowledged that he or she executed the same as his or her free act and deed.

IN WITNESS WHEREOF, I have hereunto set my hand and affixed my official seal in the County and State and on the day and year first above written.

\_\_\_\_\_  
Notary Public

My Commission expires:

