

The Ins and Outs of Advance Medical Directives in Maryland

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Disclaimer: content is not legal advice

What's the point of advance directives (ADs)?

- Normal situation in health care: you decide about treatment
 - Informed consent
- What if you can't?
- ADs allow you to plan for this future situation

Two kinds of decisions in ADs

- Deciding who decides for you: naming health care agent(s)
 - AKA durable medical power of attorney
 - *Not* financial power of attorney
- Deciding what's to be done: living will
 - Covers life-sustaining, maybe other, treatments

AD naming decision maker

- “Health care agent” is Maryland term
- AD says:
 - Who agent is
 - What authority agent has
 - When authority may be exercised
 - Usually after loss of capacity
- Usually covers all health care decisions
 - Including about life-sustaining treatment

Decision-making criteria

- What would the patient want done?
 - Sources of information:
 - Living will-type of AD
 - Prior statements or behavior
 - Religious beliefs, personal values
- What's in the patient's best interest?
 - Benefit/burden assessment

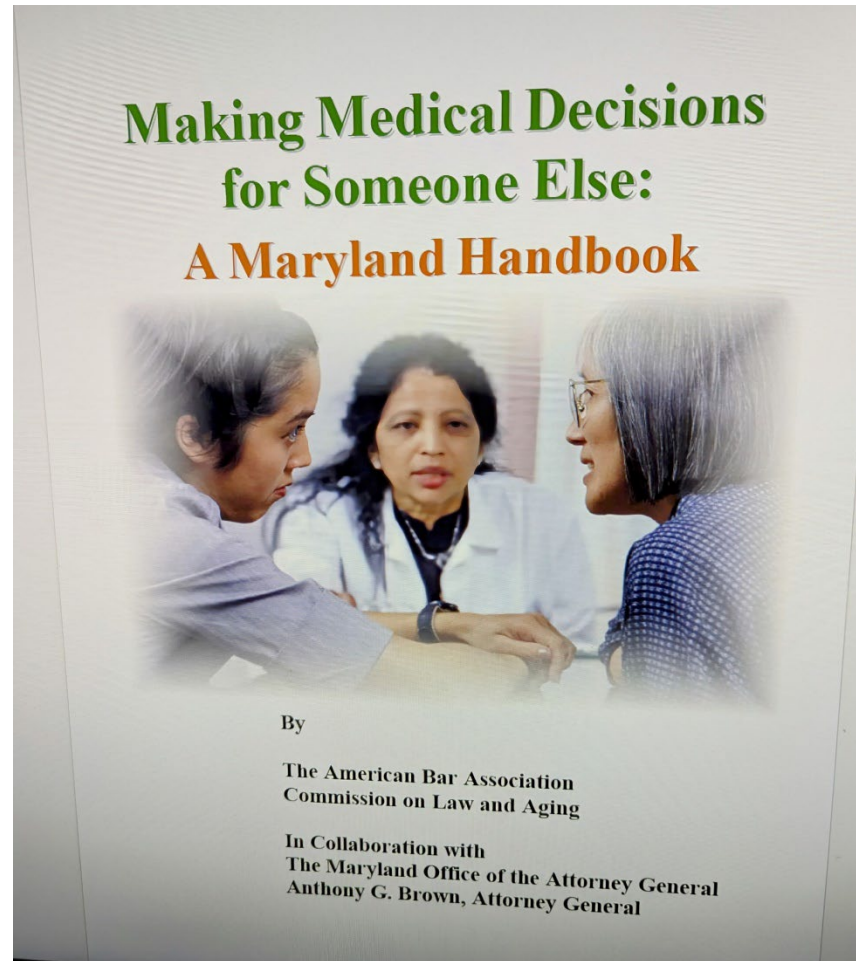
Can a solo ager find a health care agent?

- Cast a wide net
- Within the family
 - Nieces, nephews, cousins, grandchildren
- Others you could count on
 - Friends, neighbors, fellow congregants
- Be brave enough to ask
- Can you overcome their reluctance?

How to help your agent

- Prepare for the talk
 - The Conversation Project
 - <https://theconversationproject.org/wp-content/uploads/2020/12/ConversationStarterGuide.pdf>
- Talk about your wishes
 - Especially what's in your living will
 - How much discretion will your agent have?
- Give them a preview of what they'll face
 - “Making Medical Decisions for Someone Else: A Maryland Handbook”
 - <https://www.marylandattorneygeneral.gov/health%20policy%20documents/proxyhandbook.pdf>

Navigating hard decisions



Making Medical Decisions for Someone Else: A Maryland Handbook

By

The American Bar Association
Commission on Law and Aging

In Collaboration with
The Maryland Office of the Attorney General
Anthony G. Brown, Attorney General

Navigating hard decisions

IV. Steps to Follow in Making Medical Decisions



Carla stood in the hospital hallway with the doctor who was explaining the seriousness of her mother's condition. Some time ago, her mother had named Carla as her health care agent in her advance directive. But Carla is still in shock over what is happening. And she is now being asked to make some very important decisions about her mother. How does she begin?

Once a crisis occurs, it often is easier if you have talked with the patient in advance, as suggested above. But whether you had such a conversation or not, as a proxy you can use basic steps to help you make decisions on the patient's behalf.

1. Find out the medical facts. This requires talking to the doctors and getting a complete picture of the situation. Questions you can use:

- ▶ What is the name of the patient's condition?
- ▶ If you don't know exactly what's wrong, what are the possibilities?
- ▶ Are tests needed to know more? Will the outcome of more testing make any difference in how you treat the patient, or in how the patient wants to be treated? (If not, why do the test?)
- ▶ What is the purpose of each test? Do these tests have risks?
- ▶ Is the information you need worth the risk of the test?
- ▶ How do you explain the symptoms?
- ▶ How severe or advanced is this case?
- ▶ What do you think will be the likely course of this disease or condition?

2. Find out the options. Make sure the doctor describes the risks and benefits of each option. In comparing these options, ask:

- ▶ How will this option make the patient improve or feel better?

Steps in Making Medical Decisions

- Find out the facts.
- Find out the options.
- Decide based on
 - what the patient would do, or
 - what's best for the patient.

AD documenting treatment decisions

- Commonly called living will
- Follows “If ... then ...” model
 - “If I lose capacity and I’m in [specified conditions],
 - Then no CPR, ventilator, etc.”
 - Medically administered nutrition/hydration (tube feeding) same as other life-sustaining treatments, unless the AD says otherwise
 - Or: aggressive interventions requested

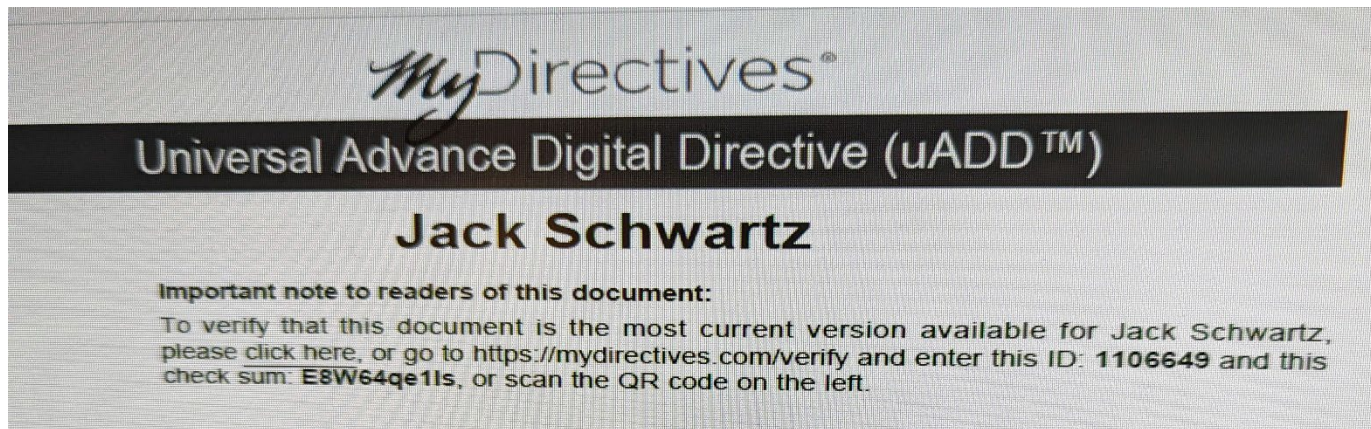
When is a living will refusal of life-sustaining treatment effective?

- Certification of incapacity + qualifying condition
 - Attending physician + second physician or NP
- Qualifying conditions:
 - “Terminal” – death imminent
 - “End-stage” – progressive, irreversible, advanced to the point of “complete physical dependency”
 - Death not necessarily imminent
 - Primarily advanced dementia, maybe other diseases
 - “Persistent vegetative state” – permanent loss of consciousness

Addressing dementia in an AD

- Instruction about end-stage condition would cover treatments when dementia becomes advanced
- What about treatment refusal earlier in the course of Alzheimer's?
 - Broadly empower your health care agent
 - Living will instruction, by itself, won't work
- Can a living will be used to refuse all food and water?
 - No, though limits can be stated
 - For example: "If I'm in an end-stage condition, I only want food and water for comfort, not regular meals."

ADs: the legal formalities



Creating a paper AD

- Signatures of individual and two witnesses, date
- No required form
 - Out-of-state ADs valid
- Copies are valid – no magic in the original
- Distribute it widely

Creating an electronic AD

- Use a state-approved platform
 - <https://www.mydirectives.com>
- Great advantage: easily accessible to Maryland and DC hospitals
 - Via regional health information exchange

Creating an oral AD

- Can be useful in a pinch
- Statement to physician, NP, or PA + 1 witness
 - Documented in chart

Changing an AD

- New one on same topic revokes old
- Only individual with capacity may change/revoke

Medical Orders for Life-Sustaining Treatment (MOLST)

- Physician/PA/NP order, not AD

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Maryland Medical Orders for Life-Sustaining Treatment (MOLST)			
Patient's Last Name, First, Middle Initial		Date of Birth	
		<input type="checkbox"/> Male <input type="checkbox"/> Female	
<small>This form includes medical orders for Emergency Medical Services (EMS) and other medical personnel regarding cardiopulmonary resuscitation and other life-sustaining treatment options for a specific patient. It is valid in all health care facilities and programs throughout Maryland. This order form shall be kept with other active medical orders in the patient's medical record. The physician, nurse practitioner (NP), or physician assistant (PA) must accurately and legibly complete the form and then sign and date it. The physician, NP, or PA shall select only 1 choice in Section 1 and only 1 choice in any of the other Sections that apply to this patient. If any of Sections 2-9 do not apply, leave them blank. A copy of the original of every completed MOLST form must be given to the patient or authorized decision maker within 48 hours of completion of the form or sooner if the patient is discharged or transferred.</small>			
CERTIFICATION FOR THE BASIS OF THESE ORDERS: Mark any and all that apply.			
I hereby certify that these orders are entered as a result of a discussion with and the informed consent of: <input type="checkbox"/> the patient, or <input type="checkbox"/> the patient's health care agent as named in the patient's advance directive; or <input type="checkbox"/> the patient's guardian of the person as per the authority granted by a court order; or <input type="checkbox"/> the patient's surrogate as per the authority granted by the Health Care Decisions Act; or <input type="checkbox"/> if the patient is a minor, the patient's legal guardian or another legally authorized adult.			
Or, I hereby certify that these orders are based on: <input type="checkbox"/> instructions in the patient's advance directive; or <input type="checkbox"/> other legal authority in accordance with all provisions of the Health Care Decisions Act. All supporting documentation must be contained in the patient's medical records.			
<input type="checkbox"/> Mark this line if the patient or authorized decision maker declines to discuss or is unable to make a decision about these treatments. The patient's or authorized decision maker's participation in the preparation of the MOLST form is always voluntary. If the patient or authorized decision maker has not limited care, except as otherwise provided by law, CPR will be attempted and other treatments will be given.			
CPR (RESUSCITATION) STATUS: EMS providers must follow the Maryland Medical Protocols for EMS Providers. Attempt CPR: If cardiac and/or pulmonary arrest occurs, attempt cardiopulmonary resuscitation (CPR). This will include any and all medical efforts that are indicated during arrest, including artificial ventilation and efforts to restore and/or stabilize cardiopulmonary function. [If the patient or authorized decision maker does not or cannot make any selection regarding CPR status, mark this option. Exceptions: If a valid advance directive declines CPR, CPR is medically ineffective, or there is some other legal basis for not attempting CPR, mark one of the "No CPR" options below.]			
1 No CPR, Option A, Comprehensive Efforts to Prevent Arrest: Prior to arrest, administer all medications needed to stabilize the patient. If cardiac and/or pulmonary arrest occurs, do not attempt resuscitation (No CPR). Allow death to occur naturally. Option A-1, Intubate: Comprehensive efforts may include intubation and artificial ventilation. Option A-2, Do Not Intubate (DNI): Comprehensive efforts may include limited ventilatory support by CPAP or BiPAP, but do not intubate. No CPR, Option B, Palliative and Supportive Care: Prior to arrest, provide passive oxygen for comfort and control any external bleeding. Prior to arrest, provide medications for pain relief as needed, but no other medications. Do not intubate or use CPAP or BiPAP. If cardiac and/or pulmonary arrest occurs, do not attempt resuscitation (No CPR). Allow death to occur naturally.			
SIGNATURE OF PHYSICIAN, NURSE PRACTITIONER, OR PHYSICIAN ASSISTANT (Signature and date are required to validate order)			
Practitioner's Signature		Print Practitioner's Name	
Maryland License #		Date	

Patient's Last Name, First, Middle Initial		Date of Birth		Page 2 of 2	
				<input type="checkbox"/> Male <input type="checkbox"/> Female	
Orders in Sections 2-9 below do not apply to EMS providers and are for situations other than cardiopulmonary arrest. Only complete applicable items in Sections 2 through 8, and only select one choice per applicable Section.					
ARTIFICIAL VENTILATION					
2a. _____ May use intubation and artificial ventilation indefinitely, if medically indicated.					
2b. _____ May use intubation and artificial ventilation as a limited therapeutic trial.					
Time limit _____					
2c. _____ May use only CPAP or BiPAP for artificial ventilation, as medically indicated.					
Time limit _____					
2d. _____ Do not use any artificial ventilation (no intubation, CPAP or BiPAP).					
BLOOD TRANSFUSION					
3a. _____ May give any blood product (whole blood, packed red blood cells, plasma or platelets) that is medically indicated.		3b. _____ Do not give any blood products.			
HOSPITAL TRANSFER					
4a. _____ Transfer to hospital for any situation requiring hospital-level care.		4b. _____ Transfer to hospital for severe pain or severe symptoms that cannot be controlled otherwise.			
		4c. _____ Do not transfer to hospital, but treat with options available outside the hospital.			
MEDICAL WORKUP					
5a. _____ May perform any medical tests indicated to diagnose and/or treat a medical condition.		5b. _____ Only perform limited medical tests necessary for symptomatic treatment or comfort.			
		5c. _____ Do not perform any medical tests for diagnosis or treatment.			
ANTIBIOTICS					
6a. _____ May use antibiotics (oral, intravenous or intramuscular) as medically indicated.		6c. _____ May use oral antibiotics only when indicated for symptom relief or comfort.			
6b. _____ May use oral antibiotics when medically indicated, but do not give intravenous or intramuscular antibiotics.		6d. _____ Do not treat with antibiotics.			
ARTIFICIALLY ADMINISTERED FLUIDS AND NUTRITION					
7a. _____ May give artificially administered fluids and nutrition, even indefinitely, if medically indicated.		7c. _____ May give fluids for artificial hydration as a therapeutic trial, but do not give artificially administered nutrition.			
7b. _____ May give artificially administered fluids and nutrition, if medically indicated, as a trial.		7d. _____ Do not provide artificially administered fluids or nutrition.			
Time limit _____					
DIALYSIS					
8a. _____ May give chronic dialysis for end-stage kidney disease if medically indicated.		8b. _____ May give dialysis for a limited period.			
		8c. _____ Do not provide acute or chronic dialysis.			
Time limit _____					
OTHER ORDERS					
9 _____					

PHYSICIAN'S OR NURSE PRACTITIONER'S SIGNATURE (Signature and date are required to validate order)					
Practitioner's Signature		Print Practitioner's Name			
Maryland License #		Date			

What is MOLST for?

- Communicates CPR preference to EMS
 - Essential if you want DNR status rather than CPR
- Seeks greater continuity of care -- valid in all health care facilities
- Bridges the gap between AD and a medically actionable order
- Aimed at people who already have significant medical issues
- MOLST is a short-term document, might change as condition changes
 - Not everyone needs a MOLST
 - If you think you do need one, talk to your doctor

MOLST content

- Code status (attempt CPR?)
- Plus, to the extent relevant:
 - Ventilator
 - Blood transfusion
 - Hospital transfer
 - Medical workup
 - Antibiotics
 - Nutrition/hydration via tube
 - Dialysis

Basis for orders on MOLST

- Physician/PA/NP certifies that orders are based on:
- Informed consent by
 - Patient
 - Agent or surrogate, or
- Instructions in AD, or
- Physician certification of medically ineffective treatment (rare)

The case of Ms. Smith (no MOLST)

- 89 y/o, nursing home, advanced dementia, end-stage condition
- Niece is health care agent; living will declines life-sustaining medical treatment, including no artificial nutrition and hydration
- One afternoon becomes drowsy, feverish, breathing rapidly
- Physician covering for attending does not know patient, cannot reach niece, does not see AD
- Orders transfer to hospital via EMS

The case of Ms. Smith (no MOLST)

- Diagnosis = aspiration pneumonia, treatment = hydration and antibiotics
- Pneumonia improves, but she is not eating
- Evaluation of swallowing → recommendation for feeding tube
- Niece refuses, angry over unwanted transfer and treatment

The case of Ms. Smith (with MOLST)

- MOLST reflects living will instructions
 - Orders no CPR, no hospital transfer, antibiotics for comfort only, no AN&H
- MOLST is prominently flagged in chart
- Covering physician applies MOLST
- No transfer
- Palliative care in nursing home
 - Adapted from Bomba et al. 2012. Cleveland Clinic J. of Medicine 79:457-464.

Resources on the HCDA: Maryland AG

- <https://www.marylandattorneygeneral.gov/Pages/HealthPolicy/eolcare.aspx>

The screenshot shows the official website of the Maryland Attorney General, Anthony G. Brown. The header features the state seal and the title "ANTHONY G. BROWN MARYLAND ATTORNEY GENERAL". A navigation bar includes links for Consumer Complaints, Home, Quick Links, Services, Registrations, News, Our Office, and Employment. The main content area is titled "Health Decisions Policy" and "Legal Advice on End-of-Life and Other Issues". It contains a paragraph explaining the office's role in providing legal opinions on the Health Care Decisions Act. Below this is a table listing topics and subtopics with their last updated dates.

Topic	Subtopic	Last Updated
I. Patient's informed consent	A. Application to life-sustaining treatments	5-28-08
	B. Relationship to oral advance directive	12-20-05
	C. Minors	11-20-02
II. Advance directives	A. Nature and scope	1-18-06
	B. Content	2-26-07
	C. Execution and Documentation	7-27-07
	D. Facility participation	

Resources on MOLST: Maryland Department of Health

- <https://app.smartsheet.com/b/publish?EQBCT=02d1b21d39724e608f8d2e62aea48aa5>