

# MISSOURI LIFE SUPPORT DECLARATION ACT

(Chapter 459 RSMo)

On September 24, 1985, a law went into effect in Missouri that allows a competent adult to sign a declaration permitting the withholding of “death-prolonging procedures” if the adult has a **terminal** condition and is unable to make treatment decisions at that time. The act refers to the written authorization as a “Declaration.”

## Declaration

- ☞ must be written, signed, dated and witnessed (unless wholly in the patient’s handwriting);
- ☞ is only valid in cases of terminal illness;
- ☞ should be part of the patient’s medical record; and
- ☞ may not include directives regarding withholding food and water or palliative medical care.

Any person who executes a Declaration may revoke it orally, in writing, or in any other method of communication.

## SOURCES OF INFORMATION

For more information regarding advance directives and the Durable Power of Attorney for Health Care contact

- ☞ your attorney
- ☞ Midwest Bioethics Center  
410 Archibald, Suite 200  
Kansas City, MO 64111
- ☞ Missouri Bar Association  
326 Monroe  
Jefferson City, MO 65101

### DEFINITIONS OF TERMS

*Advance Directive* – A general term used to apply to written advance health care treatment directives, often referred to as “living wills” and durable power of attorney for health care.

*Durable Power of Attorney for Health Care Decisions* – A signed, dated and notarized document which allows an individual to name an agent to make health care decisions in the event the person completing the document becomes incapacitated.

*Health Care Treatment Directive* – Usually incorporated in a Durable Power of Attorney for Health Care. Health Care Treatment Directives allow individuals to state in advance their wishes regarding health care decisions. Such Directives are similar to a “living will,” however, they are far more comprehensive than most “living wills.” The Health Care Treatment Directives are not necessarily restricted to use only when one is terminally ill.

*“Living Will”* – A term used to describe a variety of advance directives. Usually it is used with a signed, dated, and witnessed document indicating death-prolonging procedures may be withheld or withdrawn.

## A Brief Summary:

# Missouri Law Regarding a Patient’s Right to Make Health Care Treatment Decisions



Any time you are admitted to a long-term care facility or are served by certain organizations that receive Medicare or Medicaid money, you must be told about your right to make health care decisions. The requirement applies to all adults no matter what their medical condition.

Long-term care facilities and other health care organizations must determine if you have an “advance directive,” but they cannot require you to have one in order for you to receive services or be admitted to a facility. They must have policies and procedures on how they handle medical emergencies and advance directives and they must inform you or your legal representative of these prior to or at the time of admission. If you have an advance directive, long-term care facilities must have a copy of it on file and must adhere to your wishes if these are not in conflict with their policies.

This pamphlet is designed to provide information about your rights under Missouri law to accept or refuse medical treatment, including life support. These are important personal health care decisions and they deserve careful thought. It is a good idea to talk about them with your doctor, family, friends, staff members of your health care facility, and most important, if possible a lawyer.

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

**(Chapter 404 RSMo, Supp. 1991)**

On August 28, 1991, a law went into effect in Missouri that allows a competent adult to designate another person to make health care and treatment decisions if and when the adult is unable to do so. The act is known as the Durable Power of Attorney for Health Care.

### The Durable Power of Attorney for Health Care

- ☞ must be signed by the patient and notarized;
- ☞ becomes effective upon certification of the incapacity of an individual by two licensed physicians (unless the power of attorney document provides for a different number; but in any case, certification by at least one physician is required);
- ☞ must provide a specific grant of authority to withhold or withdraw artificially supplied nutrition and hydration if the patient intends the designated person to be able to withhold or withdraw this type of medical treatment; and,
- ☞ may be revoked by the adult, if competent, at any time and in any manner by which he/she is able to communicate his/her intent to revoke.

## **MISSOURI CASE LAW - *The Cruzan Case***

Cruzan v. Director, Missouri Department of Health

- ☞ determined that a state has a right to require “clear and convincing evidence” that a patient would have, if competent, refused treatment; and
- ☞ established that there is a constitutional basis for persons to make decisions regarding their own medical care (including the withholding or withdrawing of food and hydration provided by artificial means).

As applied in Missouri, the Jasper County circuit Court in Cruzan v. Mounton

- ☞ authorized the removal of nutrition and hydration based upon clear and convincing evidence that the patient would have desired the discontinuance of life support measures.

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“*Clear and convincing evidence*” can be established in many ways. Persons can execute a formal document developed by their attorney, can use a statutory declaration form or other printed advance directive form, or can even write something out in their own words. Whatever form or format you use, be sure to give a copy to your physician and health care provider.