

Tools for Protecting Your Health Care Wishes

In health care settings like an emergency room, the right documents will help make sure your wishes are respected. If you're procrastinating about creating those documents, think about the experience of Cindy Meneghin, a Lambda Legal plaintiff in one of our marriage cases. When she was rushed to the emergency room with meningitis, hospital staff first ignored her partner of 30 years. Terrified of losing consciousness without her partner in charge of medical decisions, Cindy yelled, "She's my partner!" several times. But that didn't work, so she screamed, "She's my power of attorney!" That worked like a charm.

Please Note: This document offers general information only and is not intended to provide guidance or legal advice regarding anyone's specific situation.

FIRST STEPS

1. Give some thought to who's the best person to understand what decisions you would make for your health care if you couldn't make them yourself.
2. Consult the following resources for legal help:
 - Lambda Legal's Help Desk at 212-809-8585 (toll-free: 866-542-8336) or legalhelpdesk@lambdalegal.org (for LGBT/HIV friendly attorneys)
 - www.lawhelp.org (for help determining whether there is an affordable attorney in your area)
 - www.abanet.org/legalservices/findlegalhelp/home.cfm (to find attorneys in your area who may reduce charges)

HEALTH CARE PROXY, OR DURABLE POWER OF ATTORNEY FOR HEALTH CARE

Take the power! Create a document to make sure that the right person makes medical decisions for you when you can't make them yourself.

Why do I need this power tool? If you are in a serious accident or you become sick enough to be hospitalized and can no longer make medical decisions for yourself, you want the person you choose to be empowered to make those decisions. Otherwise the first relative who arrives at the scene might be called upon to make complicated and personal medical decisions. In one Lambda Legal case, Paula Long's same-sex partner was hospitalized unconscious with heart, lung and kidney failure, and staff refused to give Paula information, instead telling her they needed contacts for blood relatives. Lambda Legal eventually put things right, but a health care proxy would have helped Paula avoid the emotional nightmare in the first place.

How it works: You create a legal document, which may be called a health care proxy, a durable power of attorney for health care or a medical power of attorney, depending on what state you live in. You are the "principal," and the person you appoint to make medical decisions for you is the "agent." The document should say that medical personnel are authorized to release medical information to your agent under the federal Health Insurance Portability and Accountability Act (HIPAA). Here are a few tips for using a health care proxy.

- The call your loved ones dread — you're critically hurt or ill — often comes while they're at work, school or otherwise away from home. Most people will rush to your side,

not go home for your health care documents. Keep in mind that even if you carry your documents with you, if you are incapacitated you can't authorize access to any items you may have been carrying. Many same-sex couples use satchels created for passports and airline tickets to carry each other's documents. You should also carry copies of any certificate of marriage, civil union or domestic partnership.

- To make sure that anyone can find your documents, here's an old trick: put your important documents in a zipper bag in the freezer, and tell your agent and family and friends that you're keeping them there — before an emergency strikes. The papers will be easier to locate in your freezer than in a desk drawer or filing cabinet.
- Talk to your attorney about whether you should supplement a health care proxy by naming a "guardian" or "conservator," because you may need someone with broader authority than a health care agent. For instance, if you wind up needing long-term care, there may be a dispute about who has the right to care for you. If you are transgender, you may need to add an instruction that your gender identity be respected, to further empower your proxy to advocate on your behalf.

LIVING WILL

Take the power! Create a document to make sure that your wishes will be honored for life-sustaining procedures, and that your loved ones will have the information they need to advocate for your wishes.

Why do I need this power tool? You may feel strongly about whether you want resuscitation or insertion tubes if you are in a persistent vegetative state, or if you are likely to

die soon. For good reason, it is very hard to block or end procedures that keep someone alive. A living will gives guidance about your wishes on this very serious matter and is all the more important if your loved ones' authority to carry out your wishes is more likely to be questioned, as it could be with same-sex partners or friends of no legal relation.

How it works: A living will is not a last will and testament. It is your wishes in writing for what should happen when you need certain procedures to stay alive. A living will gives medical professionals and your advocates information about life-sustaining procedures like forms of resuscitation, tubes for breathing or feeding, and the management of pain. Because it is guidance given in advance, it is often called an "advance directive." Many hospitals even keep living will forms on hand. And in some states, the living will is incorporated into a power of attorney or health care proxy. A couple things to remember:

- Given the gravity of the decision to prolong or terminate life, health care providers will be all the more cautious when objections to the living will are raised by relatives. So consider telling your wishes to anyone who might raise objections.
- Ask your attorney if the state has an official form that is used for the living will, to reduce the potential for doubts or objections.

For all documents, sign multiple copies so you have extra originals in case health care staff says a copy is no good. Sign in blue ink to reduce the chances that health care staff will claim it's not an original.

HOSPITAL VISITATION DIRECTIVE

Take the power! Create a document that directs health care providers to allow your loved ones to visit you in the hospital.

Why do I need this power tool?

If you have a health care emergency, hospital staff may treat the people who have significant roles in your life like strangers. Staff at a Maryland hospital kept Lambda Legal plaintiff Bill Flanigan from seeing his dying partner for six hours, until his partner's mother arrived. Even if you are married to a same-sex partner, your spouse may be barred at the door of a hospital room and denied information about you. And though you may have created a health care proxy appointing your loved one or best friend as your agent, staff often refuse to honor the role of a health care agent unless a patient is incapacitated. You may still be conscious but too ill or distraught to advocate effectively for your needs.

How it works: A “directive” designating who can visit you in the hospital can be part of another document like a health care proxy or living will, or it can be a stand-alone document. The best choice depends partly on the state you live in. For example, in Minnesota, a law creating the role of a “health care agent” also provides that your agent can visit you (the principal) “regardless of whether the principal retains decision-making capacity.” That means you can use a health care proxy to address the need for visitation privileges, and the law will explicitly back you up. Other states have different approaches, so an attorney licensed to practice in your state can guide you. Here are a couple tips:

- Hospitals prioritize “family” for visitation. The Joint Commission, which evaluates and accredits hospitals all over the United States,



Though **Cindy Meneghin** and **Maureen Kilian** had been partners for 30 years, Cindy had to fight with hospital staff to allow Maureen to be by her side in an emergency. Fortunately, they took the power by preparing legal documents in advance to protect them in a hospital setting.

defines family as: “The person(s) who plays a significant role in the individual’s [patient’s] life. This may include a person(s) not legally related to the individual.” In your directive, it may be helpful to include a reference to the Joint Commission and its definition of family, because hospital staff will recognize the name of the commission and may treat you more appropriately. This can be especially important when you travel outside your home state (if you do get in trouble, call the Joint Commission’s complaint line at 1-800-994-6610, or email complaints@jointcommission.org).

- Depending on how you feel about your biological relatives, you may also want to consider naming individuals who are NOT allowed to visit you (if you wish to avoid naming one person in particular, you might refer to biological relatives, in general). That might cut down on the haggling your partner or best friend may have to do over dividing the time spent with you, and signal to hospital staff the people in your life who matter most.

