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A Brief Discussion of S.C. Health Care Advance Directives

This paper must not be construed as the rendering of legal or medical advice. Before making any decisions on Health Care Advance Directives, we strongly recommend that you discuss your situation with your attorney and your personal physician. *All Rights Reserved*

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Introduction and Overview

As of 2020, there are approximately seventy million Americans who are age 65 or older. These Americans differ widely in race, ethnicity, sex, health status, political beliefs and socio-economic status. However, they usually do have two things in common.

First, they are in one of two older stages of life. By way a background, developmental psychologists divide the lifespan into nine over-lapping stages: Infancy: birth to age 1; Toddler: age 2-4; Childhood: age 5-9; Early adolescence: age 10-13; Later adolescence: age 14-18; and Adulthood: age 19+. Adulthood is further sub-divided into Early adulthood age 19-30; Middle adulthood age 31-50; Older adulthood age 51-79; and, Oldest adulthood age 80+

Second, virtually all older Americans want to make their own healthcare decision. That is why most states, including South Carolina, encourage their citizens to use Health Care Advance Directives. Unfortunately, based on current research, only about 28% of Americans have prepared Health Care Advance Directives.

The Patient Self Determination Act

It is best to make critical health care decisions long before you are faced with stressful and traumatic health situations. All states support this concept and recognize the right of individuals to make their own health care decisions. Those rights were the impetus behind the 1990 Patient Self-Determination Act (PSDA).

The PSDA requires all health care agencies receiving Medicare and Medicaid reimbursement to recognize health care advance directives. The PSDA does not create new rights but reaffirms the common-law right of self-determination as guaranteed by the Fourteenth Amendment. Under the PSDA, health care agencies must ask you whether you have executed advance directives and must provide you with educational materials about your rights under state law.

S.C. Health Care Advance Directives

In South Carolina, you can use either statutory Health Care Advance Directives or you can ask your attorney to draft custom advance directives for you. The two S.C. Advance Health Care Directives that most everyone needs are the S.C. Health Care Power of Attorney and the S.C. Declaration of a Desire for a Natural Death. We will describe these documents in some detail.

S.C. Health Care Power of Attorney

The S.C. Health Care Power of Attorney is a legal document in which people age 18 and older name an adult(s) to be their Agent who can make health care decisions for them if, and when, they can no longer make their own health care decisions. Your personal S.C. Health Care Power of Attorney becomes active when two physicians (your personal physician and one other) certify that you are no longer able to make reasoned decisions about your health care or that you can no longer communicate your healthcare decisions in an unambiguous manner.

Before executing your S.C. Health Care Power of Attorney, it is important to give careful thought to who you will name as your Health Care Agent. Your Agent must be at least 18 years old and may not be a health care practitioner involved in your care (unless that person is related to you by blood, marriage or adoption). You can (and probably should) name a back-up Agent to step in if your primary Agent is unavailable.

Here are a few questions to ask yourself before making before naming your Agent:

1. Is this person confident and assertive? You should probably select someone who is comfortable speaking with healthcare professionals and who will be able to forcefully advocate for you.
2. Is this person comfortable talking about death, disability and related subjects?
3. Does this person live near enough to you to be readily available in an emergency?
4. Will this person respect your decisions and honor your requests (even when they disagree with your decisions and requests)?

Your S.C. Health Care Power of Attorney needs to be readily accessible. It is a good idea to give a copy of your directive to your Agent, your back-up Agent, your personal physician and your family members.

You should periodically pull-out your South Carolina Health Care Power of Attorney and review it. Check to make sure both your primary Agent and backup Agent are still able and willing to serve. You can update your South Carolina Health Care Power of Attorney anytime you choose to do so. If you update it, shred your original South Carolina Health Care Power of Attorney and all copies.

In order to make your S.C. Health Care Power of Attorney legal, you must sign and date it in the presence of two witnesses. If you are physically unable to sign, you may direct someone to sign on your behalf and in your presence. One of your witnesses must not be an employee of a health care facility in which you are a patient.

Furthermore, your witnesses cannot be:

1. Your Agent or back-up Agent.
2. Related to you by blood, marriage or adoption.
3. Your personal physician or an employee of your personal physician.
4. Directly financially responsible for your medical care.
5. Entitled to any portion of your estate either under a will or by operation of law.
6. A beneficiary of your life insurance.
7. Anyone with a claim against your estate upon your death.

S.C. Declaration of a Desire for a Natural Death

This advance directive is South Carolina's version of a "living will". In this document, you determine your wishes about your health care if you are no longer able to make your own health care decisions **and** you are terminally ill or in a persistent vegetative state.

Your S.C. Declaration of a Desire for a Natural Death becomes effective when two physicians (usually your personal physician and one other) certify that you are no longer able to make and/or to communicate your health care decisions **and** that you are terminally ill or in a persistent vegetative state.

For your S.C. Declaration of a Desire for a Natural Death to be legally binding, you must be of sound mind and be at least 18 years old. You also must sign it in the presence of two witnesses and have the document notarized (the notary you use may be one of your two witnesses).

A witness to your S.C. Declaration of a Desire for a Natural Death cannot be:

1. Your Agent or back-up Agent.
2. Related to you by blood, marriage or adoption.
3. Your personal physician or an employee of your personal physician.
4. Directly financially responsible for your medical care.
5. Entitled to any portion of your estate either under a will or by operation of law.
6. A beneficiary of your life insurance.
7. Anyone with a claim against your estate upon your death.

In addition to the S.C. Health Care Power of Attorney, and the S.C. Declaration of a Desire for a Natural Death, two other documents are regularly used in South Carolina medical facilities. However, these documents are technically not advance directives. They are the S.C. Physician Order for Scope of Treatment (POST) and the S.C. Do Not Resuscitate Order (DNR)

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S.C Physician Order for Scope of Treatment Form

The S.C. Physician Order for Scope of Treatment Form (commonly called a POST) is a doctor's order that tells medical personnel whether to administer cardiopulmonary resuscitation (CPR) and other life-sustaining measures, such as using intubation, antibiotics and feeding tubes. A POST can be an important tool to help medical providers understand your wishes at a glance since it is usually placed in front of your medical record. It is important to understand that the POST does not replace your S.C. Health Care Power of Attorney nor your S.C. Declaration of a Desire for a Natural Death.

S.C. Do Not Resuscitate Order

The S.C. Do Not Resuscitate Order is designed to prevent EMS personnel from employing resuscitative measures or any other medical process that would extend the patient's suffering with no viable medical reason to perform the procedure. The document is presented to the EMS personnel upon their arrival. A physician must request the form.

Four Sample S.C. Documents to Review

Over the next few pages, you will find samples of four S.C. Health Care documents:

1. [S.C. Health Care Power of Attorney](#)
2. [S.C. Declaration of a Desire for a Natural Death](#)
3. [S.C. Physician Order for Scope of Treatment \(POST\)](#)
4. [S.C. Do Not Resuscitate Order \(DNR\)](#)

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