

Advance Health Care Directive (CT)

RACHEL B.G. SHERMAN, DANIEL P. FITZGERALD, AND KATHERINE COTTER GENT, CUMMINGS & LOCKWOOD LLC WITH PRACTICAL LAW TRUSTS & ESTATES

Search the [Resource ID numbers in blue](#) on Westlaw for more.

An advance health care directive that allows an individual residing in Connecticut to express personal health care instructions regarding life-sustaining treatments and end-of-life care, to authorize an agent (health care representative) to make health care decisions on the individual's behalf, to appoint a conservator of the person in case of incapacity, and to make an anatomical gift. This Standard Document also includes HIPAA release language. This Standard Document contains integrated notes and drafting tips.

DRAFTING NOTE: READ THIS BEFORE USING DOCUMENT

Any individual 18 years of age or older residing in Connecticut may execute a document that contains directions regarding any aspect of health care, including the withholding or withdrawal of life support systems (Conn. Gen. Stat. Ann. § 19a-575). For example, an individual (principal) may execute:

- A living will, which is a written statement containing the principal's wishes concerning any aspect of his health care, including the withholding or withdrawal of life support systems.
- An appointment of health care representative, which is a written statement that appoints a health care representative to make health care decisions for the principal if he becomes incapacitated.
- An advance directive or advance health care directive, which is a

document that contains both a living will and an appointment of health care representative.

(Conn. Gen. Stat. Ann. § 19a-570.)

This Standard Document is an advance health care directive containing a living will, an appointment of health care representative, a designation of conservator, and instructions for anatomical gifts. The benefit of having multiple statements in a single document like this Standard Document is that the principal can ensure that instructions are consistent across the statements. For a living will and appointment of health care representative, which are most commonly executed together in Connecticut, see Standard Document, Living Will and Appointment of Health Care Representative (CT) ([w-009-0161](#)).

This Standard Document complies with the Connecticut rules for:

- Drafting a living will.
- Choosing a health care representative.
- Appointing a conservator.
- Executing an advance health care directive.

(Conn. Gen. Stat. Ann. §§ 19a-575 to 19a-578.)

CAPACITY TO EXECUTE AN ADVANCE HEALTH CARE DIRECTIVE

To execute a valid advance health care directive, the principal must be:

- 18 years of age or older.
- Able to understand the nature and consequences of health care decisions.

(Conn. Gen. Stat. Ann. § 19a-575a.)

ADVANCE HEALTH CARE DIRECTIVE ONLY EFFECTIVE ON INCAPACITY

The principal retains control over his own health care decisions until an attending physician determines that the principal is incapacitated. A principal is considered to be incapacitated if he cannot:

- Understand and appreciate the nature and consequences of health care

decisions, including the benefits and disadvantages of treatment.

- Reach and communicate an informed decision regarding the treatment.

(Conn. Gen. Stat. Ann. § 19a-570.)

The designated health care representative has authority to speak for the principal only after this determination is made (Conn. Gen. Stat. Ann. § 19a-579).

LIVING WILL PROVISIONS NOT APPLICABLE TO PREGNANT WOMEN

The statutory provisions regarding living wills do not apply to principals who are pregnant (Conn. Gen. Stat. Ann. § 19a-574).

BRACKETED ITEMS

The drafting party should replace bracketed language in ALL CAPS with case-specific facts or other information. Bracketed language in sentence case is optional language that the drafting party may include, modify, or delete in its discretion. A forward slash between words or phrases indicates that the drafting party should include one of the words or phrases contained in the brackets in the document.

ADVANCE HEALTH CARE DIRECTIVE

To any physician who is treating me: These are my health care instructions including those concerning the withholding or withdrawal of life support systems, together with the appointment of my health care representative, the designation of my conservator of the person for future incapacity, and my document of anatomical gift. As my physician, you may rely on these health care instructions and any decision made by my health care representative or conservator of my person, if I am incapacitated to the point when I can no longer actively take part in decisions for my own life, and am unable to direct my physician as to my own medical care.

LIVING WILL

I, [PRINCIPAL NAME], the author of this document, request that, if my condition is deemed terminal or if I am determined to be permanently unconscious, I be allowed to die and not be kept alive through life support systems. By terminal condition, I mean that I have an incurable or irreversible medical condition which, without the administration of life support systems, will, in the opinion of my attending physician, result in death within a relatively short time. By permanently unconscious I mean that I am in a permanent coma or persistent vegetative state which is an irreversible condition in which I am at no time aware of myself or the environment and show no behavioral response to the environment.

The life support systems which I do not want include, but are not limited to: artificial respiration, cardiopulmonary resuscitation and artificial means of providing nutrition and hydration. I do want sufficient pain medication to maintain my physical comfort. I do not intend any direct taking of my life, but only that my dying not be unreasonably prolonged.

DRAFTING NOTE: LIVING WILL**IDENTIFYING THE PRINCIPAL**

The living will should state not only the principal's legal name but also any aliases, including a maiden or married name, by inserting an "also known as" clause following the principal's name.

OPTIONAL INSTRUCTIONS, LIFE SUPPORT SYSTEMS, AND MEDICATION

This section allows the principal to choose which life support systems he does or does not want administered. A life support system is any medical procedure or intervention which, when applied to the principal, would serve only to postpone the moment of death or maintain him in a state of permanent unconsciousness, including mechanical or electronic devices, such as artificial means of providing hydration and nutrition (Conn. Gen. Stat. Ann. § 19a-570).

The second paragraph of this section covers the most common treatments. However, counsel may want to consider adding life support systems that the principal does not want to include, such as antibiotics.

Counsel should consider including a provision to request that sufficient pain medication be administered to maintain physical comfort, including treatment to relieve pain that might occur by the withholding or withdrawing of life support systems.

REVOKING A LIVING WILL

A principal may revoke his living will at any time and in any manner, regardless of his mental or physical condition (Conn. Gen. Stat. Ann. § 19a-579a). Counsel may want to consider including a sentence at the beginning of the Living Will stating that the principal revokes any prior living wills.

APPOINTMENT OF HEALTH CARE REPRESENTATIVE

I appoint [HEALTH CARE REPRESENTATIVE NAME] to be my health care representative.

If my attending physician determines that I am unable to understand and appreciate the nature and consequences of health care decisions and unable to reach and communicate an informed decision regarding treatment, my health care representative is authorized to make any and all health care decisions for me, including (1) the decision to accept or refuse any treatment, service or procedure used to diagnose or treat my physical or mental condition, except as otherwise provided by law such as for psychosurgery or shock therapy, as defined in C.G.S. Section 17a-540, and (2) the decision to provide, withhold or withdraw life support systems. I direct my health care representative to make decisions on my behalf in accordance with my wishes, as stated in this document or as otherwise known to my health care representative. In the event my wishes are not clear or a situation arises that I did not anticipate, my health care representative may make a decision in my best interests, based upon what is known of my wishes.

If [HEALTH CARE REPRESENTATIVE NAME] is unwilling or unable to serve as my health care representative, I appoint [ALTERNATE HEALTH CARE REPRESENTATIVE NAME] to be my alternative health care representative.

DRAFTING NOTE: APPOINTMENT OF HEALTH CARE REPRESENTATIVE

The principal must identify an individual in this section to act as his health care representative. The principal should carefully consider whom he wants to act as his representative. The principal should

consider choosing a representative whom he trusts and who:

- Knows the principal well.
- Knows and respects the principal's values.

- Ideally lives near the principal in case of emergency.

Counsel should recommend that the principal discuss the role with the potential representative, as well as the principal's wishes regarding health care, before executing the appointment of health care representative.

The principal should also consider naming an alternate health care representative to serve as his representative if the primary representative is unwilling or unable to act. If the principal wants to name an alternate representative, he should include the name of the alternate representative in the brackets where indicated.

The principal may appoint multiple representatives to act jointly. However, counsel should generally advise against it because of the potential for disagreement among representatives.

LIMITATIONS ON WHO MAY SERVE AS HEALTH CARE REPRESENTATIVE

Unless related to the principal by blood, marriage, or adoption, certain individuals may not serve as a health care representative, including:

- An operator, administrator, or employee of a hospital, residential care home, rest home with nursing supervision or chronic and convalescent nursing home where the principal is or will be receiving care.
- An administrator or employee of a government agency that is financially responsible for the principal's medical care.

(Conn. Gen. Stat. Ann. § 19a-576.)

SCOPE OF APPOINTMENT

An appointment of health care representative authorizes the representative to make any and all health care decisions for the principal. The representative should comply with the principal's wishes and religious or moral beliefs. If the principal's wishes are unclear or if an unanticipated situation arises where the representative does not know the principal's wishes, then the representative should decide in the principal's best interests, based on the principal's known beliefs.

REVOKING AN APPOINTMENT OF HEALTH CARE REPRESENTATIVE

The principal may revoke his appointment of health care representative at any time, provided the revocation is in writing and signed by the principal in front of two witnesses (Conn. Gen. Stat. Ann. § 19a-575a).

Unless the principal specifies otherwise, the appointment of the principal's spouse as health care representative is automatically revoked on:

- The divorce or legal separation of the principal and spouse.
- The annulment or dissolution of their marriage.

(Conn. Gen. Stat. Ann. § 19a-579b.)

Counsel may want to consider including a sentence at the beginning of the Appointment of Health Care Representative stating that the principal revokes any prior appointments of health care representative.

DESIGNATION OF CONSERVATOR

If a conservator of my person should need to be appointed, I designate [CONSERVATOR NAME] be appointed my conservator. If [CONSERVATOR NAME] is unwilling or unable to serve as my conservator, I designate [SUCCESSOR CONSERVATOR NAME] to be successor conservator. No bond shall be required of either of them in any jurisdiction.

DRAFTING NOTE: DESIGNATION OF CONSERVATOR

The probate court can appoint a conservator to supervise the principal's personal affairs if:

- The court finds that the principal is incapable of:
 - managing his own affairs; or
 - caring for himself.
- The principal voluntarily asks the court to do so.

(Conn. Gen. Stat. Ann. § 45a-644(a), (b).)

A principal who is 18 years of age or older and of sound mind may designate a conservator or successor conservator in writing whom he wishes to be appointed if he is later found to be incapable of managing his affairs or caring for himself (Conn. Gen. Stat. Ann. § 45a-645(a)).

The principal may designate:

- A conservator of the estate to supervise the principal's financial affairs.

- A conservator of the person to supervise the principal's personal affairs.

(Conn. Gen. Stat. Ann. § 45a-644(a), (b).)

An advance health care directive may contain a designation of conservator of the person for future incapacity (Conn. Gen. Stat. Ann. § 19a-575a). If the principal wishes to designate a conservator of the estate, he may include the designation in his durable power of attorney (see Standard Document, Power of Attorney (CT) ([w-007-9231](#))).

A probate court judge cannot name a different conservator than the one appointed in the advance health care directive unless the court finds that:

- The nominated conservator is unwilling or unable to serve.
- There is substantial evidence to disqualify the nominated conservator.

(Conn. Gen. Stat. Ann. § 45a-650.)

ANATOMICAL GIFTS

I hereby make this anatomical gift, if medically acceptable, to take effect upon my death.

I give: (check one)

_____ (1) any needed organs or parts

_____ (2) only the following organs or parts

to be donated for: (check one)

_____ (1) any of the purposes stated in subsection (a) of section 19a-289j

_____ (2) these limited purposes

These requests, appointments, and designations are made after careful reflection, while I am of sound mind. Any party receiving a duly executed copy or facsimile of this document may rely upon it unless such party has received actual notice of my revocation of it.

DRAFTING NOTE: ANATOMICAL GIFTS

The principal may choose to include an anatomical gift in his advance health care directive. An anatomical gift is a donation of all or part of a human body to take effect

after the donor's death for transplantation, therapy, research, or education (Conn. Gen. Stat. Ann. § 19a-289a).

A principal may make an anatomical gift during his life through an agent, including a health care representative, unless the power of attorney for health care or other record prohibits the agent from making an anatomical gift (Conn. Gen. Stat. Ann. § 19a-289c).

- Signing a record.
- Subsequently executing a document of gift that amends or revokes a previous anatomical gift or portion of an anatomical gift, either expressly or by inconsistency. (Conn. Gen. Stat. Ann. § 19a-289e.)

REVOKING AN ANATOMICAL GIFT

The principal may amend or revoke an anatomical gift at any time by:

HIPAA RELEASE AUTHORITY

I hereby designate [PERSONAL REPRESENTATIVE NAME] as my personal representative within the meaning of, and having all of the same rights as I would have under, the Health Insurance Portability and Accountability Act of 1996, 42 U.S.C. § 1320d et seq. and 45 C.F.R. Parts 160-164. If [PERSONAL REPRESENTATIVE NAME] is unwilling or unable to serve as my personal representative, I appoint [ALTERNATE PERSONAL REPRESENTATIVE NAME] to be my personal representative. To that end I hereby authorize all health care providers, including physicians, nurses, hospitals, and all other persons (including entities) who may have provided, or be providing, me with any type of health care, to disclose to my said personal representative designated above all protected health information that relates directly or indirectly to my capacity to make rational and reasonable decisions regarding my health care when requested by my said personal representative. This authorization is intended to provide my health care providers with the authorization necessary to allow each of them to disclose protected health information regarding me to my said personal representative for the purpose of facilitating a determination regarding my capacity to make health care decisions.

Once such a determination that I am unable to understand and appreciate the nature and consequences of health care decisions and unable to reach and communicate an informed decision regarding treatment has been made, I further authorize all health care providers, including physicians, nurses, hospitals, and all other persons (including entities) who may have provided, or be providing, me with any type of health care, to disclose to my personal representative designated above all protected health information, including information that relates to my past, present or future physical or mental health or condition, the provision of health care, or the past, present or future payment for the provision of health care.

Notwithstanding any other provision of law to the contrary, my personal representative shall have the right to access, inspect and copy my protected health information held by hospitals, clinics, health plans and other covered entities, to request amendments to my protected health information, to request an accounting of disclosures that have been made without my authorization to anyone other than me for purposes other than treatment, payment and health care operations, to receive a Notice of Privacy Practices from any health care provider, health plan or others in the health care system, to request confidential communications of protected health information, to request restrictions on uses or disclosures of protected health information and to complain about privacy practices to any covered entity and the Secretary of Health and Human Services.

I recognize that information disclosed by a health care provider pursuant to this authorization is subject to redisclosure and may no longer be protected by the privacy rules of 45 C.F.R. Part 164. This authorization may be revoked by a writing signed by me. This authorization shall expire five years following my death unless validly revoked prior to that date.

DRAFTING NOTE: HIPAA RELEASE AUTHORITY

Under the terms of the Health Insurance Portability and Accountability Act of 1996 (HIPAA) and the implementing regulations, a person authorized to act on behalf of an individual in making health care-related decisions is considered the individual's personal representative (42 U.S.C. §§ 1320d to 1320d-8 and 45 C.F.R. §§ 160.101 to 164.534).

Connecticut's statutory Advance Health Care Directive form does not contain

a HIPAA release to allow health care providers to provide the representative with protected health information. Counsel should consider adding this HIPAA release language so that the principal's medical providers can legally provide the representative with the necessary health care information to allow the representative to make a well-informed medical decision on the principal's behalf.

SIGNATURE OF PRINCIPAL

DATE

[PRINCIPAL NAME]

STATEMENT AND SIGNATURES OF WITNESSES

This document was signed and dated in our presence by [PRINCIPAL NAME], the Author of this document, who appeared to be eighteen years of age or older, of sound mind and able to understand and appreciate the nature and consequences of health care decisions at the time this document was signed. The Author appeared to be under no improper influence. We have subscribed this document in the Author's presence and at the Author's request and in the presence of each other.

Signature: _____

Print Name:

[FIRST WITNESS NAME]

Address:

[FIRST WITNESS ADDRESS]

Signature: _____

Print Name:

[SECOND WITNESS NAME]

Address:

[SECOND WITNESS ADDRESS]

DRAFTING NOTE: EXECUTION REQUIREMENTS

The principal must sign and date the document in the presence of two adult witnesses. The person appointed as health

care representative cannot act as a witness. (Conn. Gen. Stat. Ann. § 19a-576.)

The two witnesses must watch the principal sign the document and then sign the document themselves, stating that the principal executed the document willingly and was not under duress (Conn. Gen. Stat. Ann. § 19a-576).

If the principal resides at a facility operated or licensed by the Department of Mental Health and Addiction Services of the

Department of Developmental Services, at least one witness must be:

- An individual who is not affiliated with the facility.
- A physician or licensed clinical psychologist with specialized training in treating mental illness or developmental disabilities.

(Conn. Gen. Stat. Ann. § 19a-576.)

STATE OF CONNECTICUT)
 COUNTY OF [COUNTY]) ss. [TOWN]
)

On the [DAY] day of [MONTH], in the year [YEAR], before me, the undersigned, personally appeared [PRINCIPAL NAME], personally known to me or proved to me on the basis of a driver’s license or other satisfactory evidence to be the individual whose name is subscribed to the within instrument and acknowledged before me that [he/she] executed the same as [his/her] free act and deed in [his/her] capacity therein stated, that by [his/her] signature on the instrument, the individual, or the person upon behalf of whom the individual acted, executed the instrument for the purposes therein contained, and that such individual made such appearance before the undersigned in [TOWN], Connecticut.

 Notary Public
 Commissioner of the Superior Court

STATE OF CONNECTICUT)
 COUNTY OF [COUNTY]) ss. [TOWN]
)

We, [WITNESS ONE NAME] and [WITNESS TWO NAME], the subscribing witnesses, being duly sworn, say that we witnessed the execution of the within ADVANCE HEALTH CARE DIRECTIVE by [PRINCIPAL NAME], the Author; that the Author subscribed, published and declared the same to be the Author’s ADVANCE HEALTH CARE DIRECTIVE in our presence; that we thereafter subscribed the document as witnesses in the Author’s presence, at the Author’s request, and in the presence of each other; that at the time of the execution of said document the Author appeared to us to be eighteen years of age or older, of sound mind, able to understand the nature and consequences of said document, and under no improper influence, and we make this affidavit at the Author’s request this [DAY] day of [MONTH], [YEAR].

Witness

Witness

 Notary Public
 Commissioner of the Superior Court

DRAFTING NOTE: NOTARY

The principal's and the witnesses' signatures on an advance health care directive are not required to be notarized. However, counsel should consider having the document signed in the presence of a

notary in case the principal's capacity or the authenticity of the document is called into question. If a notary does not witness the principal's signature, counsel should delete the notary block.

ABOUT PRACTICAL LAW

Practical Law provides legal know-how that gives lawyers a better starting point. Our expert team of attorney editors creates and maintains thousands of up-to-date, practical resources across all major practice areas. We go beyond primary law and traditional legal research to give you the resources needed to practice more efficiently, improve client service and add more value.

If you are not currently a subscriber, we invite you to take a trial of our online services at legalsolutions.com/practical-law. For more information or to schedule training, call **1-800-733-2889** or e-mail referenceattorneys@tr.com.