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3
4 **IN THE CIRCUIT COURT OF THE STATE OF OREGON**
5
6 **FOR THE COUNTY OF JACKSON**

7 IN THE MATTER OF THE
8 GUARDIANSHIP

CASE NO.: 13-017-G6

9 OF

HEARING MEMORANDUM

10 NORA RAUPERS HARRIS,

11 PROTECTED PERSON.

12
13 **ISSUE PRESENTED**

14 Should the Court issue a Protective Order requiring Fern Gardens Senior
15 Living to stop assisted feeding of the Protected Person?

16 **ANSWER**

17 The answer to the issue presented is that the Protected Person, when she was
18 competent, made her desire clear that she did not wish to have her life prolonged
19 in this manner. Further, the Protected Person signed an Advance Directive giving
20

1 the Guardian authority to direct the cessation of eating and drinking by proxy.

2 **BACKGROUND**

3 Nora R Harris (hereinafter "Nora") was born February, 1953. After
4 graduating from High School, Nora spent three months travelling Europe by
5 herself. Upon her return from Europe, Nora enrolled in Penn State University.
6 After a year at Penn State she moved to San Francisco. While in San Francisco,
7 Nora met her husband to be, William L Harris, (hereinafter "Bill") Guardian
8 herein.
9

10 Nora's intelligence and quick wit along with her strength and independence
11 left Bill utterly smitten. Nora and Bill moved in together in 1975 and were married
12 two years later, in December 1977. They have been married for more than 38
13 years.
14

15 In 1979 Nora received her Bachelor's Degree, as Valedictorian, from San
16 Francisco State in English Literature, specializing in Virginia Woolf. Nora and Bill
17 welcomed their daughter Anne into their family in July, 1980. Nora spent the next
18 fourteen years at home with Anne. In 1994, Nora went back to school to obtain her
19 Master's degree in Library and Information Sciences from the University of
20

1 Pittsburgh. In the summer of 1994 she became a reference librarian at the Corte
2 Madera Branch in Marin County, California. Within two years she became the
3 head librarian for the Fairfax Library in the Marin County Library system. In 2005
4 Nora changed occupations from librarian to book indexing. Nora had a gift of
5 recalling almost all of the countless books she has read and retaining information
6 from each.
7

8 Her early trip alone to Europe after High School instilled in Nora a love of
9 travel and adventure. Nora and Bill enjoyed extensive overseas travel, including
10 multiple trips to Antarctica. Their adventures and travels cemented the bonds of
11 love between Nora and Bill. They enjoyed a rich and fulfilling life together. All of
12 that changed in June, 2009 when, at the age of 56 Nora was diagnosed with early
13 on-set Alzheimer's Disease. This came as a crushing blow to both Nora and Bill.
14

15 After her diagnosis Bill and Nora spoke at great length about the future,
16 including financial issues as well as end of life decisions. They also spoke about
17 these issues and concerns with friends. They joined Alzheimer's support groups.
18 As part of their preparation for the future Nora and Bill hired an Attorney to assist
19 them with their legal matters, including the Advance Directive that is on file
20

1 herein. Nora was very clear that she did not want her life to be prolonged after her
2 mind (ability to process) was gone, even if her body lived on.

3 Although Bill and Nora still lived in the Bay Area they were drawn to
4 Ashland, Oregon for several reasons. They had been attending plays in Ashland
5 for about 30 years. The cost of long-term care in Oregon was significantly less than
6 in California and given her relatively young age, they recognized that her care
7 needs may be protracted. Another reason Nora and Bill chose Oregon was because
8 of Oregon's Death with Dignity Act. Prior to their move here, Bill and Nora did
9 not understand that the law required Nora to be Capable (defined as able to make
10 and communicate health care decisions) of requesting the medication required
11 under the Act. Nora's brain has long since that time been incapable of any
12 executive function.
13
14

15 In January, 2013 Bill made the very difficult decision to place Nora in
16 memory care at Fern Gardens because he was still working and unable to provide
17 the amount of care she required. Bill liked Fern Gardens because of the design of
18 the facility and the care they showed their patients.
19

20 Because of their multiple discussions and Bill's knowledge of Nora's desires

1 regarding her care upon placement at Fern Gardens Bill advised that she was not
2 to be given protein shakes as she had started losing weight. At the time of her
3 placement Nora weighed 160 pounds. Within a year she was down to about 130
4 pounds. In December, 2014 Nora was placed on Hospice because she had dropped
5 from 120 pounds to 100 pounds in about 5-6 weeks. After three months on
6 Hospice she began to gain weight again. Within the following year Nora again lost
7 another 10 pounds and was again placed on Hospice. Nora's wishes have been
8 made clear to her husband, friends and in her Advance Directive. The irony of her
9 move to Oregon is that Nora wished to receive the compassion offered by
10 Oregon's Death with Dignity Act but now, when she really needs it, such is not
11 available to her.
12
13

14 ANALYSIS

15 Voluntarily Stopping Eating and Drinking (Hereinafter referred to as
16 "VSED") is a clinically validated "exit option" that enables a good quality death.
17 Unfortunately, there has been very little legal analysis of a right to VSED by proxy.
18 It is well established law that an individual may refuse nutrition and hydration just
19 as one may refuse other intrusions on her personal autonomy.
20

1 VSED entails deliberately ceasing the (self or assisted) oral intake of all food
2 and fluids, except for those small amounts of fluids necessary for mouth comfort or
3 for the administration of pain medication. See *Boudewijn Chabot, A Hastened*
4 *Death by Self-Denial of Food and Drink*, page 11 (2008). For patients with the
5 capacity to make healthcare decisions, the decision to stop eating and drinking can
6 be made at any time and is completely voluntary. VSED only applies to patients
7 who make the deliberate, contemporaneous or advance choice to stop eating and
8 drinking in order to hasten death. VSED does not apply to a patient who ceases to
9 eat or drink spontaneously due to a medical condition.
10

11 VSED ensures a comfortable, natural, and dignified death. See *Pope and*
12 *Anderson, Voluntarily Stopping Eating and Drinking: A Legal Treatment Option at*
13 *the End of Life*, *Widener Law Review*, Volume 17:363, 389 (2011). Death by VSED
14 involves very little pain, if any. In fact, "the general impression among hospice
15 clinicians is that starvation and dehydration do not contribute to suffering among
16 the dying and might actually contribute to a comfortable passage from life." *Id* at
17 395 (internal citations omitted).
18
19

20 Although a patient has the right to refuse treatment when a patient such as

1 Nora suffers from severe dementia, where she would likely refuse treatment the
2 very nature of the disease makes it impossible for her to refuse the treatment on
3 her own. Many patients at the end of their lives lack the capacity to make their
4 own healthcare decisions. Nora appointed her husband, the Guardian to be her
5 health care representative for this very type of circumstance. In doing so she
6 granted him full authority to offer VSED as a compassionate, dignified option.
7

8 POWER OF ATTORNEY FOR HEALTH CARE

9 On September 3rd, 2009, Nora appointed her husband Bill as Health care
10 representative for her. The Health Care Power of Attorney, attached as Exhibit
11 "A" was executed in California and pursuant to California Probate Code. In
12 California, "Health care" includes "any care, treatment, service, or procedure to
13 maintain, diagnose, or otherwise affect a patient's physical or mental condition."
14 Cal. Prob. Code § 4615 (emphasis added). This broad definition encompasses
15 assisted spoon feeding as a service that affects a patient's condition.
16

17 In Article 1.3 Nora grants Bill authority to "make all health care decisions for
18 me * * *." Again, withholding assisted feeding falls within the definition of health
19 care from above. Article 1.5 obligates Bill to make health care decisions for Nora in
20

1 accordance with the Power of Attorney and her wishes to the extent known to Bill.

2 Bill is absolutely certain that he knows Nora's wishes.

3 In Part 2 of the Power of Attorney for Health Care, Nora initialed letter "a"
4 that states, "I do **not** want my life to be prolonged and I do **not** want life-sustaining
5 treatment to be provided or continued if **any** of the following conditions apply:"
6 (emphasis in original). The list of following conditions includes terminal illness
7 and incurable and irreversible conditions, which accurately describes her advanced
8 dementia. It is important to point out that the first part of that instruction stands
9 alone and that Nora has clearly stated that she does not want her life to be
10 prolonged. Nora's husband, Bill is seeking Court authority to preserve Nora's
11 clearly stated instructions.
12
13

14 Importantly, among the authority Nora delegated to Bill on page six of the
15 Power of Attorney for Health Care is that he is specifically authorized to "[s]ign on
16 my behalf documents purporting to be 'Refusal to Permit Treatment'". Further, on
17 page six Nora grants to Bill "the broadest discretion possible during any period
18 that I am incapable of giving informed consent about my medical care, which shall
19 include consenting to, withdrawing consent to, any treatment, service, or
20

1 procedure to diagnose, maintain or treat any physical or mental condition of
2 mine.” (emphasis added). Based upon California’s broad definition of Health care
3 this must include assisted spoon feeding.
4

5 On page seven the Power of Attorney specifically lists what the agent may
6 not do and VSED is not among those treatments the agent may not consent to. It is
7 clear by the Power of Attorney itself that Nora granted Bill the authority to carry
8 out her wishes including VSED by proxy.

9 In its official website, The Oregon State Department of Consumer and
10 Business Services states that “[a]mong the decisions [a] health care representative
11 can make is whether to withhold or remove life support, food, or hydration.” Page
12 2 of State website page attached as Exhibit “B”. This statement is not referring to
13 feeding tubes but “food.”
14

15 CONCLUSION

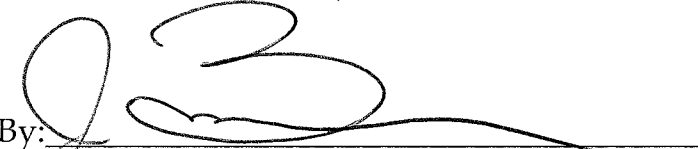
16 Advance Directives are limited documents. They cannot consider every
17 possible circumstance and condition in which a person may find herself in the
18 future. The nuances of medical decisions can be difficult to understand. Bill and
19 Nora Harris did everything they possibly could to plan for and prepare for the end
20

1 of Nora's life. Nora is no longer capable of consenting to or refusing food. Her
2 actions of biting and chewing are an autonomic response, not a reasoned,
3 considered action. She already made her reasoned, considered decisions when
4 executing an Advance Directive she thought would be followed.
5

6 VSED by proxy is legally allowed under these circumstances. Nora was clear
7 in her wishes and her husband/guardian/health care representative has made his
8 directions clear. The Court should honor the wishes of this husband and wife.

9 **RESPECTFULLY SUBMITTED** this 12th day of July, 2016.

10 ARANT & BROESDER, LLC

11
12 By: 
13 JASON C. BROESDER, OSB No. 992289
Of Attorneys for Guardian

14 SUBMITTED BY:

15 JASON C. BROESDER, OSB #992289

16 Arant & Broesder, LLC

17 jason@broesderlaw.com

18 Of Attorneys for Guardian

ADVANCE HEALTH CARE DIRECTIVE
(California Probate Code Section 4701)

Explanation

You have the right to give instructions about your own health care. You also have the right to name someone else to make health care decisions for you. This form lets you do either or both of these things. It also lets you express your wishes regarding donation of organs and the designation of your primary physician. If you use this form, you may complete or modify all or any part of it. You are free to use a different form.

Part 1 of this form is a power of attorney for health care. Part 1 lets you name another individual as agent to make health care decisions for you if you become incapable of making your own decisions or if you want someone else to make those decisions for you now even though you are still capable. You may also name an alternate agent to act for you if your first choice is not willing, able, or reasonably available to make decisions for you. (Your agent may not be an operator or employee of a community care facility or a residential care facility where you are receiving care, or your supervising health care provider or employee of the health care institution where you are receiving care, unless your agent is related to you or is a coworker.) Unless the form you sign limits the authority of your agent, your agent may make all health care decisions for you. This form has a place for you to limit the authority of your agent. You need not limit the authority of your agent if you wish to rely on your agent for all health care decisions that may have to be made. If you choose not to limit the authority of your agent, your agent will have the right to:

- (a) Consent or refuse consent to any care, treatment, service, or procedure to maintain, diagnose, or otherwise affect a physical or mental condition.
- (b) Select or discharge health care providers and institutions.
- (c) Approve or disapprove diagnostic tests, surgical procedures, and programs of medication.
- (d) Direct the provision, withholding, or withdrawal of artificial nutrition and hydration and all other forms of health care, including cardiopulmonary resuscitation.
- (e) Make anatomical gifts, authorize an autopsy, and direct disposition of remains.

Part 2 of this form lets you give specific instructions about any aspect of your health care, whether or not you appoint an agent. Choices are provided for you to express your wishes regarding the provision, withholding, or withdrawal of treatment to keep you alive, as well as the provision of pain relief. Space is also provided for you to add to the choices you have made or for you to write out any additional wishes. If you are satisfied to allow your agent to determine what is best for you in making end-of-life decisions, you need not fill out Part 2 of this form.

Exhibit "A" to this form lets you express an intention to donate your bodily organs and tissues following your death.

After completing this form, sign and date the form at the end and have your signature notarized. You may wish to give a copy of the signed and completed form to your physician, to any other health care providers you may have, to any health care institution at which you are receiving care, and to any health care agents you have named. You should talk to the person you have named as agent to be sure he or she is willing to serve.

PART I: POWER OF ATTORNEY FOR HEALTH CARE

I revoke all prior advance health care directives and durable powers of attorney for health care signed by me. This document shall not be affected by my subsequent incapacity. I am not a patient in a skilled nursing facility, and I am not a conservatee.

1.1 NAME AND ADDRESS OF PRINCIPAL. My name and address are:

Nora R. Harris, 83 Arnold Drive, Novato, CA 94949

1.2 DESIGNATION OF AGENTS.

a. **PRIMARY AGENT.** I designate the following individual as my agent to make health care decisions for me:

William L. Harris, 83 Arnold Drive, Novato, CA 94949

b. **FIRST ALTERNATE AGENT.** If I revoke my agent's authority or if my agent is not willing, able or reasonably available to make a health care decision for me, I designate as my first alternate agent:

Anne G. Harris, 1976 Cal Young Road #113, Eugene, OR 97401

c. **SECOND ALTERNATE AGENT.** If I revoke the authority of my agent and first alternate agent or if neither is willing, able, or reasonably available to make a health care decision for me, I designate as my second alternate agent:

Margery Harris, 124 Silver Shoals Drive, Shell Beach, CA 93449

1.3 **AGENT'S AUTHORITY.** Unless I otherwise specify in Exhibit "A", my agent is authorized to make all health care decisions for me, including decisions to provide, withhold, or withdraw artificial nutrition and hydration and all other forms of health care to keep me alive.

1.4 **WHEN AGENT'S AUTHORITY BECOMES EFFECTIVE.** Unless I otherwise specify in Exhibit "A", my agent's authority to make health care decisions for me takes effect immediately.

1.5 **AGENT'S OBLIGATION.** My agent shall make health care decisions for me in accordance with this power of attorney for health care, any instructions I give in Part 2 of or Exhibit "A" to this form, and my other wishes to the extent known to my agent. To the extent my wishes are unknown, my agent shall make health care decisions for me in accordance with what my agent determines to be in my best interest. In determining my best interest, my agent shall consider my personal values to the extent known to my agent.

1.6 AGENT'S POST -DEATH AUTHORITY. Unless I specify otherwise in Exhibit "A", my agent is authorized to make anatomical gifts, authorize an autopsy, and direct disposition of my remains.

PART 2: INSTRUCTIONS FOR HEALTH CARE

2.1 END-OF-LIFE DECISIONS. I direct that my health care providers and others involved in my care provide, withhold, or withdraw treatment in accordance with the choice I have marked below:

mlh **a. I Choose NOT To Prolong Life.** If I initial this line, I do not want my life to be prolonged and I do not want life-sustaining treatment to be provided or continued if any of the following conditions apply:

(1) I am in a coma or persistent vegetative state which two qualified physicians who are familiar with my condition, have diagnosed as irreversible (that is, there is no reasonable possibility that I will regain consciousness).

(2) I am terminally ill and the use of life sustaining procedures would only serve to artificially delay the moment of my death.

(3) I have an incurable and irreversible condition that will result in my death within a relatively short time.

(4) I become unconscious and, to a reasonable degree of medical certainty, I will not regain consciousness.

(5) The likely risks and burdens of treatment outweigh the expected benefits. In such circumstances, I authorize my agent to sign a request to forego resuscitation measures, including a "do not resuscitate" ("DNR") form.

 b. I Choose To Prolong Life: If I initial this line, I want my life to be prolonged as long as possible within the limits of generally accepted health care standards.

2.2 RELIEF FROM PAIN: Except as I state here, I direct that treatment for alleviation of pain or discomfort be provided at all times, even if it hastens my death:

mlh **a. NO RESTRICTIONS.** If I initial this line, no restrictions.

 b. RESTRICTIONS. If I initial this line, the following restrictions: _____

(Add additional sheets if needed.)

2.3 OTHER WISHES: I may attach special wishes and directions at Exhibit "A" attached to this instrument.

PART 3: DONATION OF ORGANS AT DEATH

a. **NO DONATIONS.** If I initial this line, I do NOT want any organs, tissues or parts donated following my death; **OR**

ML b. **MAXIMUM DONATION AUTHORITY.** If I initial this line, I authorize my agent to give any needed organs, tissues, or parts following my death; **OR**

c. **LIMITED DONATION AUTHORITY.** If I initial this line, I give the following organs, tissues, or parts only following my death: _____

d. **SPECIFIC PURPOSES.** If I initial this line and I have authorized any donations, my gift is for the following purposes only (I will line through any of the following purposes that I do not want):

- (1) Transplant (2) Therapy (3) Research (4) Education

PART 4: HIPAA RELEASE AUTHORITY

My agent has the authority to exercise the same rights as I would be able to exercise and shall be treated as I would be regarding the use and disclosure of my individually identifiable health information and medical records. This release authority applies to any information governed by the Health Insurance Portability and Accountability Act of 1996 (HIPAA), 42 USC 1320d and 45 CFR 160-164. I authorize any of the following entities that have provided treatment or services to me or that has paid for or is seeking payment from me for such services to give, disclose and release to my agent without restriction all of my individually identifiable health information and medical records:

- i. Physicians, dentists, medical or healthcare personnel;
- ii. Health plans, hospitals, clinics, laboratories, pharmacies, or other health care providers;
- iii. Any insurance company or other health care clearinghouses.

The authority given my agent shall supersede any prior agreement that I have made with my health care providers to restrict access to or disclosure of my individually identifiable health information. The authority given my agent has no expiration date and shall expire only upon my explicit revocation in writing.

PART 5: EFFECT OF COPY

A copy of this form has the same effect as the original.

SIGNATURE

9/3/09
(date)

Nora R. Harris
(sign your name)

STATE OF CALIFORNIA)
) ss.
COUNTY OF SAN FRANCISCO)

On September 3, 2009, before me, John J. Alkazin,
a Notary Public for California, personally appeared Nora R. Harris, who
proved to me on the basis of satisfactory evidence to be the person whose name is subscribed
to the within instrument and acknowledged to me that she executed the same in her
authorized capacity, and that by her signature on the instrument the person or the entity upon
behalf of which the person acted, executed the instrument.

I certify under PENALTY OF PERJURY under the laws of State of California that
the foregoing paragraph is true and correct.

WITNESS my hand and official seal.

(seal)

John J. Alkazin
Notary Public for California

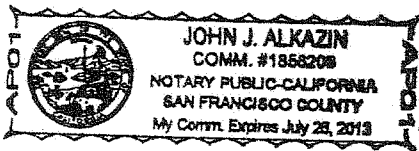


Exhibit "A" to Advance Health Care Directive

I make the following special directions and statement of desires.

- **This Advance Directive becomes effective only upon my incapacity.** This instrument becomes effective only if
 - *my primary physician signs a written statement that I am unable to make my own health care decisions.
 - *a board-certified psycho-neurologist or a board-certified psychiatrist, who is unrelated by blood or marriage to me, signs a written statement that he or she has examined me and that I lack the capacity to contract under the criteria set forth in California Probate Code Section 810 et. seq.
- **Restrictions on my agent's post-death authority.**
 - *My agent may authorize an autopsy (California Health & Safety Code Section 7113).
 - *My agent may direct disposition of my remains.
 - *My agent is authorized and directed to handle the disposition of my remains in accordance with the directions contained in my Last Will and Testament or as otherwise communicated to my agent.
- **Medical Care.** In addition to general authorities, my agent is specifically authorized to:
 - *Request, review and receive any information, verbal or written, regarding my physical or mental health, including (but not limited to) medical and hospital records; sign on my behalf any releases or other documents that may be required to obtain this information; and consent to disclosure of this information.
 - *Sign on my behalf documents purporting to be "Refusal to Permit Treatment", "Leaving Hospital Against Medical Advice", "Do Not Resuscitate (DNR)" and "No Code" or similar instructions, and to sign any waiver or release from liability reasonably required by a hospital or physician.
 - *Consent to X-ray examinations and anesthesia.
- **Extent of Agent's Authority.** My agent shall have the broadest discretion possible during any period that I am incapable of giving informed consent about my medical care, which shall include consenting to, withdrawing consent to, any treatment, service, or procedure to diagnose, maintain or treat any physical or mental condition of mine. Unless I line through any power listed below, this authority shall include:
 - *Artificial respiration (commencement or termination) .
 - *Artificial nutrition and hydration (nourishment provided by feeding tube) (commencement or termination).
 - *Cardiopulmonary resuscitation (CPR).
 - *Antibiotics.
 - *Organ transplantations.

*Blood transfusions.

*Other treatments.

- **What my agent may NOT do.** I acknowledge that California law provides that my agent may not do any of the following without a court order:
 -
 - *Commitment or placement in a mental health treatment facility against my objection.
 - *Consent to convulsive treatment as defined in Welfare and Institutions Code Section 5325.
 - *Consent to psychosurgery as defined in Welfare and Institutions Code Section 5324).
 - *Consent to sterilization.
 - *Consent to abortion.

- **Determining where I may live.**
 -
 - * I wish to live in my home for as long as reasonably possible without endangering my physical or mental health and safety, or my financial security. My agent is authorized to hire whatever household employees or personal care givers as may be necessary to permit me to live in my home.
 - * If my agent determines that it is inappropriate or dangerous for me to live in my home, then I desire the least restrictive and most home-like environment deemed appropriate by my agent, to include (but not be limited to) residential facilities, hospitals, hospices, nursing homes, convalescent facilities, and private board and care facilities. I wish to live as close as possible to my residence, so that I may still visit friends and neighbors to the extent that my agent determines that I will benefit from those relationships. I ask that my agent allow me as much autonomy and privacy as possible, including placement in an assisted living care facility or board and care facility. I desire that my agent encourage me in my social relationships and social interaction even if I seem no longer able to recognize my family and friends or to fully participate in social activities.
 - * I wish to return home as soon as possible after any hospitalization or convalescent care.

- **Visitation rights.** My agent shall have the first right of visitation while I am a patient in a hospital, health care facility, or other institution, including (but not limited to) any intensive care or coronary care unit of a medical facility. My agent shall have the right to restrict other visitors if my agent determines that is necessary for my health.

- **Employment and discharge of others.** My agent shall have the power to employ and discharge physicians, dentists, nurses, therapists, household employees and other persons as my agent determines necessary or proper for my physical, mental and emotional well being. My agent shall arrange for my transportation and meals; shall handle my mail; and shall arrange for my recreation and entertainment. My agent shall have the right to arrange for reasonable compensation for these persons, and to charge these expenses to my trust or other assets.

- **Psychiatric care.** If two independent psychiatrists licensed to practice in the State of California examine me and determine that I am in immediate need of hospitalization or institutionalization because of mental disorders, alcoholism or substance abuse, then my

agent shall have the authority to arrange for my voluntary admission to an appropriate hospital or institution for treatment of the diagnosed problem or disorder; to arrange for and consent to private psychiatric and psychological treatment for me; and to refuse consent for any such hospitalization or treatment; and to revoke consent for any such hospitalization or treatment that my agent or I may have given at a prior time.

- **Life prolonging procedures.** My agent is authorized to request that aggressive medical therapy be instituted or discontinued, including (but not limited to) cardiopulmonary resuscitation, cardiac pacemaker, renal dialysis, parental feeding, the use of respirators and ventilators, blood transfusions, nasogastric tube use, intravenous feeding, and endotracheal tube use.

Department of Consumer and Business Services (/DCBS/Pages/index.aspx) / Division of Financial Regulation (/DCBS/Insurance/Pages/index.aspx) / Medicare help (/DCBS/Insurance/shiba/Pages/shiba.aspx) / Topics (/DCBS/Insurance/shiba/topics/Pages/topics.aspx) / Advance directives

Advance directives

What is an advance directive?

An advance directive explains the specific health care measures a person wants if he or she has a terminal illness or injury and is incapable of indicating whether to continue curative and life-sustaining treatment, or to remove life support systems.

The person must develop the advance directive while he or she is able to clearly and definitively express himself or herself verbally, in writing, or in sign language. It must express the person's own free will regarding his or her health care, not the will of anyone else. It does not affect routine care for cleanliness and comfort. This care must be given whether or not there is an advance directive.

In Oregon, the Health Care Decisions Act (ORS 127.505 - 127.660 and ORS 127.995) allows an individual to preauthorize health care representatives to allow the natural dying process if he or she is medically confirmed to be in one of the conditions described in his or her health care instructions. This act does not authorize euthanasia, assisted suicide, or any overt action to end the person's life.

Witnesses

Two adults, at least one of them not related to the person by blood or marriage nor entitled to any portion of the person's estate, must witness or acknowledge the person signing the advance directive. The person's attending physician, attorney-in-fact, and health care or residential staff may not serve as witnesses.

Health care instructions

These may either be general or relate to the four specific conditions outlined below. However, general

Advance directives

Advance Directive form (/DCBS/Insurance/shiba/Documents/advance_directive_form.pdf)

Our role

SHIBA does not regulate advance directives, or maintain the form.

SHIBA staff and volunteers cannot provide legal or medical advice.

The form may be available in other languages at physicians' offices or hospitals.

Medicare help

Call statewide office:

1-800-722-4134 (toll-free)

Find help near you:

Oregon counseling sites (/DCBS/insurance/shiba/get_help/Pages/helpnearlyou.aspx)

Contact us:

SHIBA contact form (/DCBS/insurance/shiba/get_help/Pages/shiba-contact-form.aspx)

Medicare:

1-800-633-4227 (toll-free), 24 hours a day, seven days a week

Medicare.gov (<http://www.medicare.gov/>)

Other key links:

EXHIBIT B PAGE 1 OF 3

instructions, such as the person never wishes to be placed on life support, may be too vague and not provide for a situation in which an accident or emergency requires that the person temporarily be placed on life support. Specific instructions about the person's wishes in each of the four scenarios listed below are preferred. Some hospitals' social workers or chaplains will provide instructions and forms for advance directives. The patient's physician can determine whether any of these four conditions apply:

- **CMS.gov** (<http://cms.gov/>)
- **Social Security** (<http://www.ssa.gov/>)
- **Healthcare.gov** (<http://www.healthcare.gov/>)
- **Oregon Aging and People with Disabilities** (</DHS/SPWpd/Pages/index.aspx>)

1. **Close to death:** Terminal illness in which death is imminent with or without treatment, and where life support will only postpone the moment of death.
2. **Permanently unconscious:** Completely lacking an awareness of self and external environment, with no reasonable possibility of a return to a conscious state.
3. **Advanced progressive illness:** A progressive illness that will be fatal and is unlikely to improve.
4. **Extraordinary suffering:** Illness or condition in which life support will not improve the person's medical condition and would cause the person permanent and severe pain.

Options

Health care representative: An advance directive can appoint someone who is at least 18 years old to make medical decisions for the person when that individual is not able to do so. Among the decisions this health care representative can make is whether to withhold or remove life support, food, or hydration. The health care representative and an alternate must sign the document, accepting their appointment. The patient should appoint a health care representative that he or she trusts completely. A patient can voluntarily revoke his or her appointment of a health care representative at any time. A general Durable Power of Attorney, which is for financial affairs, does not include authority to make health care decisions.

Special instructions and conditions: These can be inserted into the health care plan or included for the health care representative as long as they do not deal with the distribution of property.

Duration and changes: The advance directive can be designated in effect for a limited period of time. If not, it is in effect until the person revokes it in writing, or dies. A person can cross out words or add words to his or her

advance directive to make it better express his or her wishes.

CERTIFICATE OF SERVICE

Jackson County Circuit Court Case No. 13-017-G6

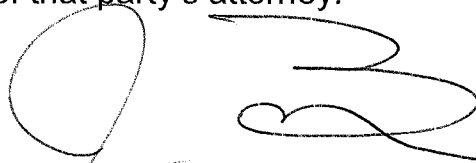
I, certify that on the 12th day of July, 2016, I caused a true and correct copy of the foregoing HEARING MEMORANDUM to be served on the parties listed below:

Michael W. Grant, OSB #982404
Oregon Department of Justice
1162 Court Street NE
Salem, OR 97301-4096

Eric Foster, Esq.
Foster & Denman, LLP
3521 East Barnett Road
Medford, OR 97504

By facsimile.

- By depositing said true copy in the United States Post Office at Medford, Oregon, in a sealed envelope with postage fully prepaid thereon, addressed to the following and that between the same post office and the address to which said copy was mailed, there is a regular communication by U.S. Mail.
- By causing to be hand-delivered to the regular office of that party's attorney, a true copy thereof.
- By sending a true copy thereof via overnight courier in a sealed, prepaid envelope, to the regular office of that party's attorney.



Jason C. Broesder, OSB# 992289
Attorney for Guardian