

## CHAPTER 145C

## DURABLE POWER OF ATTORNEY FOR HEALTH CARE

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**145C.01 DEFINITIONS.**

Subdivision 1. **Applicability.** The definitions in this section apply to this chapter.

Subd. 2. **Agent.** "Agent" means an individual age 18 or older who is designated by a principal in a durable power of attorney for health care to make health care decisions on behalf of a principal and has consented to act in that capacity. An agent may also be referred to as "attorney in fact."

Subd. 3. **Durable power of attorney for health care.** "Durable power of attorney for health care" means an instrument authorizing an agent to make health care decisions for the principal if the principal is unable, in the judgment of the attending physician, to make or communicate health care decisions.

Subd. 4. **Health care.** "Health care" means any care, treatment, service, or procedure to maintain, diagnose, or treat a person's physical or mental condition. "Health care" includes the provision of nutrition or hydration parenterally or through intubation. "Health care" does not include intrusive mental health treatment as defined in section 253B.03, subdivision 6b, unless the durable power of attorney for health care specifically applies to decisions relating to intrusive mental health treatment.

Subd. 5. **Health care decision.** "Health care decision" means the consent, refusal of consent, or withdrawal of consent to health care.

Subd. 6. **Health care provider.** "Health care provider" means a person, health care facility, organization, or corporation licensed, certified, or otherwise authorized or permitted by the laws of this state to administer health care directly or through an arrangement with other health care providers, including health maintenance organizations licensed under chapter 62D.

Subd. 7. **Health care facility.** "Health care facility" means a hospital or other entity licensed under sections 144.50 to 144.58, a nursing home licensed to serve adults under section 144A.02, or a home care provider licensed under sections 144A.43 to 144A.49.

Subd. 8. **Principal.** "Principal" means an individual age 18 or older who has executed a durable power of attorney for health care.

**History:** 1993 c 312 s 2

**145C.02 DURABLE POWER OF ATTORNEY FOR HEALTH CARE.**

A durable power of attorney for health care under this chapter authorizes the agent to make health care decisions for the principal when the principal is unable, in the judgment of the principal's attending physician, to make or communicate health care decisions. The durable power of attorney for health care must substantially comply with the requirements of this chapter. An instrument executed prior to August 1, 1993, purporting to create a durable power of attorney for health care is valid if the document specifically authorizes the agent to make health care decisions and is executed in compliance with section 145C.03.

**History:** 1993 c 312 s 3

**145C.03 REQUIREMENTS.**

Subdivision 1. **Execution.** A durable power of attorney for health care must be signed by the principal or in the principal's name by some other individual acting in the principal's presence and by the principal's direction. A durable power of attorney for health care must contain the date of its execution and must be witnessed or acknowledged by one of the following methods:

(1) signed by at least two individuals age 18 or older each of whom witnessed either the signing of the instrument by the principal or the principal's acknowledgment of the signature; or

(2) acknowledged by the principal before a notary public who is not the agent.

Subd. 2. **Individuals ineligible to act as agent.** The following individuals are not eligible to act as the agent in a durable power of attorney for health care, unless the individual designated is related to the principal by blood, marriage, registered domestic partnership, or adoption:

(1) a health care provider attending the principal; or

(2) an employee of a health care provider attending the principal.

Subd. 3. **Individuals ineligible to act as witnesses.** The agent designated in the durable power of attorney for health care may not act as a witness for the execution of the durable power of attorney for health care.

At least one witness to the execution of the durable power of attorney for health care must not be a health care provider providing direct care to the principal or an employee of a health care provider providing direct care to the principal on the date of execution.

**History:** 1993 c 312 s 4

**145C.04 EXECUTED IN ANOTHER STATE.**

A durable power of attorney for health care or similar document executed in another state or jurisdiction in compliance with the law of that state or jurisdiction is valid and enforceable in this state, to the extent the document is consistent with the laws of this state.

**History:** 1993 c 312 s 5

**145C.05 SUGGESTED FORM.**

Subdivision 1. **Content.** A durable power of attorney for health care executed pursuant to this chapter may, but need not, be in the following form:

"I appoint ..... as my agent (my attorney in fact) to make any health care decision for me when, in the judgment of my attending physician, I am unable to make or communicate the decision myself and my agent consents to make or communicate the decision on my behalf.

My agent has the power to make any health care decision for me. This power includes the power to give consent, to refuse consent, or to withdraw consent to any care, treatment, service, or procedure to maintain, diagnose, or treat my physical or mental condition, including giving me food or water by artificial means. My agent has the power, where consistent with the laws of this state, to make a health care decision to withhold or stop health care necessary to keep me alive. It is my intention that my agent or any alternative agent has a personal obligation to me to make health care decisions for me consistent with my expressed wishes. I understand, however, that my agent or any alternative agent has no legal duty to act.

My agent and any alternative agents have consented to act as my agent. My agent and any alternative agents have been notified that they will be nominated as a guardian or conservator for me.

My agent must act consistently with my desires as stated in this document or as otherwise made known by me to my agent.

My agent has the same right as I would have to receive, review, and obtain copies of my medical records and to consent to disclosure of those records."

Subd. 2. **Additional provisions.** The durable power of attorney for health care may include additional provisions consistent with this chapter, including:

- (1) the designation of one or more alternative agents to act if the named agent is unable, unavailable, or unwilling to serve;
- (2) specific instructions to the agent or any alternative agents;
- (3) limitations, if any, on the right of the agent or any alternative agents to receive, review, obtain copies of, and consent to the disclosure of the principal's medical records; and
- (4) limitations, if any, on the nomination of the agent as guardian or conservator for purposes of section 525.544.

**History:** 1993 c 312 s 6

#### 145C.06 WHEN EFFECTIVE.

(a) Except as provided in paragraph (b), a durable power of attorney for health care is effective for a health care decision when:

- (1) it has been executed in accordance with section 145C.03; and
- (2) the principal is unable, in the determination of the attending physician of the principal, to make or communicate that health care decision and the agent consents to make or communicate the decision.

(b) If the principal states in the durable power of attorney that the principal does not have an attending physician because the principal in good faith generally selects and depends upon spiritual means or prayer for the treatment or care of disease or remedial care, the principal may designate an individual in the durable power of attorney for health care who may certify in a writing acknowledged before a notary public that the principal is unable to make or communicate a health care decision. The requirements of section 145C.03, subdivisions 2 and 3, relating to the eligibility of a health care provider attending the principal or the provider's employee to act as an agent or witness apply to an individual designated under this paragraph.

**History:** 1993 c 312 s 7

#### 145C.07 AUTHORITY AND DUTIES OF AGENT.

Subdivision 1. **Authority.** The agent has authority to make any particular health care decision only if the principal is unable, in the determination of the attending physician, to make or communicate that health care decision. The agent does not have authority to consent to a voluntary commitment under chapter 253B. The physician or health care provider shall continue to obtain the principal's informed consent to all health care decisions for which the principal is capable of informed consent.

Subd. 2. **Agent as guardian.** Except as otherwise provided in the durable power of attorney for health care, appointment of the agent in a durable power of attorney for health care is considered a nomination of a guardian or conservator of the person for purposes of section 525.544.

Subd. 3. **Duties.** In exercising the authority under the durable power of attorney for health care, the agent has a duty to act in accordance with the desires of the principal as expressed in the durable power of attorney for health care, as expressed in a living will under chapter 145B or in a declaration regarding intrusive mental health treatment under section 253B.03, subdivision 6d, or as otherwise made known by the principal to the agent at any time. If the principal's desires are not known or cannot be determined from information known to the agent, the agent has a duty to act in the best interests of the principal taking into account the principal's overall medical condition and prognosis. An agent or any alternative agent has a personal obligation to the principal to make health care decisions authorized by the durable power of attorney for health care but this obligation does not constitute a legal duty to act.

Subd. 4. **Inconsistencies among documents.** In the event of inconsistency between the designation of a proxy under chapter 145B or section 253B.03, subdivision 6d, or

of an agent under this chapter, the most recent designation takes precedence. In the event of other inconsistencies among documents executed under this chapter, under chapter 145B, or under section 253B.03, subdivision 6d, or 525.544, the provisions of the most recently executed document take precedence only to the extent of the inconsistency.

*History: 1993 c 312 s 8*

#### **145C.08 AUTHORITY TO REVIEW MEDICAL RECORDS.**

An agent acting pursuant to a durable power of attorney for health care has the same right as the principal to receive, review, and obtain copies of medical records of the principal, and to consent to the disclosure of medical records of the principal, unless the durable power of attorney for health care expressly provides otherwise.

*History: 1993 c 312 s 9*

#### **145C.09 REVOCATION OF DURABLE POWER OF ATTORNEY.**

Subdivision 1. **Revocation.** The principal may revoke a durable power of attorney for health care at any time by doing any of the following:

(1) canceling, defacing, obliterating, burning, tearing, or otherwise destroying the durable power of attorney for health care instrument or directing another in the presence of the principal to destroy the durable power of attorney for health care instrument;

(2) executing a statement, in writing and dated, expressing the principal's intent to revoke the durable power of attorney for health care;

(3) verbally expressing the principal's intent to revoke the durable power of attorney for health care in the presence of two witnesses who do not have to be present at the same time; or

(4) executing a subsequent durable power of attorney for health care instrument, to the extent the subsequent instrument is inconsistent with any prior instrument.

Subd. 2. **Effect of dissolution or annulment of marriage or termination of domestic partnership on appointment of agent.** Unless the durable power of attorney for health care expressly provides otherwise, the appointment by the principal of the principal's spouse or domestic partner as agent under a durable power of attorney for health care is revoked by the commencement of proceedings for dissolution, annulment, or termination of the principal's marriage or commencement of proceedings for termination of the principal's registered domestic partnership.

*History: 1993 c 312 s 10*

#### **145C.10 PRESUMPTIONS.**

The principal is presumed to have capacity to appoint an agent to make health care decisions and to revoke a durable power of attorney for health care. A health care provider or agent may presume that a durable power of attorney for health care is valid absent actual knowledge to the contrary.

It is presumed that an agent, and a health care provider acting pursuant to the direction of an agent, are acting in good faith and in the best interests of the principal, absent clear and convincing evidence to the contrary.

This chapter does not create a presumption concerning the intention of an individual who has not executed a durable power of attorney for health care and does not impair or supersede any right or responsibility of an individual to consent, refuse to consent, or withdraw consent to health care on behalf of another in the absence of a durable power of attorney for health care.

For purposes of this chapter, acting in good faith means acting consistently with the desires of the principal as expressed in the durable power of attorney for health care, as expressed in a living will under chapter 145B or in a declaration regarding intrusive mental health treatment under section 253B.03, subdivision 6d, or otherwise made

known by the principal to the agent. If the principal's desires are not known or cannot be determined from information known to the agent, acting in good faith means acting in the best interests of the principal, taking into account the principal's overall medical condition and prognosis.

**History:** 1993 c 312 s 11

#### 145C.11 IMMUNITIES.

Subdivision 1. **Agent.** An agent is not subject to criminal prosecution or civil liability for any health care decision made in good faith pursuant to a durable power of attorney for health care, unless the agent has actual knowledge of the revocation of the durable power of attorney for health care.

Subd. 2. **Health care provider.** (a) A health care provider is not subject to criminal prosecution, civil liability, or professional disciplinary action if the health care provider relies on a health care decision made by the agent and the following requirements are satisfied:

(1) the health care provider believes in good faith that the decision was made by an agent authorized to make the decision and has no actual knowledge that the durable power of attorney for health care has been revoked; and

(2) the health care provider believes in good faith that the decision is consistent with the desires of the principal as expressed in the durable power of attorney for health care or otherwise made known by the principal to the agent.

(b) A health care provider who administers health care necessary to keep the principal alive, despite a health care decision of the agent to withhold or withdraw that treatment, is not subject to criminal prosecution, civil liability, or professional disciplinary action if that health care provider promptly took all reasonable steps to transfer care of the principal to another health care provider willing to comply with the decision of the agent.

**History:** 1993 c 312 s 12

#### 145C.12 PROHIBITED PRACTICES.

Subdivision 1. **Health care provider.** A health care provider, health care service plan, insurer, self-insured employee welfare benefit plan, or nonprofit hospital plan may not condition admission to a facility, or the providing of treatment or insurance, on the requirement that an individual execute a durable power of attorney for health care.

Subd. 2. **Insurance.** A policy of life insurance is not legally impaired or invalidated in any manner by the withholding or withdrawing of health care pursuant to the direction of an agent appointed pursuant to this chapter.

**History:** 1993 c 312 s 13

#### 145C.13 PENALTIES.

Subdivision 1. **Gross misdemeanor offenses.** Whoever commits any of the following acts is guilty of a gross misdemeanor:

(1) willfully conceals, cancels, defaces, or obliterates a durable power of attorney for health care of a principal without the consent of the principal;

(2) willfully conceals or withholds personal knowledge of a revocation of a durable power of attorney for health care;

(3) falsifies or forges a durable power of attorney for health care or a revocation of the instrument;

(4) coerces or fraudulently induces another to execute a durable power of attorney for health care; or

(5) requires or prohibits the execution of a durable power of attorney for health care as a condition for being insured for or receiving all or some health care services.

Subd. 2. **Felony offenses.** Whoever commits an act prohibited under subdivision

1 is guilty of a felony if the act results in bodily harm to the principal or to the person who would have been a principal but for the unlawful act.

**History:** 1993 c 312 s 14

#### **145C.14 CERTAIN PRACTICES NOT CONDONED.**

Nothing in this chapter may be construed to condone, authorize, or approve mercy killing or euthanasia.

**History:** 1993 c 312 s 15

#### **145C.15 DUTIES OF HEALTH CARE PROVIDERS TO PROVIDE LIFE-SUSTAINING HEALTH CARE.**

(a) If a proxy acting under chapter 145B or an agent acting under this chapter directs the provision of health care, nutrition, or hydration that, in reasonable medical judgment, has a significant possibility of sustaining the life of the principal or declarant, a health care provider shall take all reasonable steps to ensure the provision of the directed health care, nutrition, or hydration if the provider has the legal and actual capability of providing the health care either itself or by transferring the principal or declarant to a health care provider who has that capability. Any transfer of a principal or declarant under this paragraph must be done promptly and, if necessary to preserve the life of the principal or declarant, by emergency means. This paragraph does not apply if a living will under chapter 145B or a durable power of attorney for health care indicates an intention to the contrary.

(b) A health care provider who is unwilling to provide directed health care under paragraph (a) that the provider has the legal and actual capability of providing may transfer the principal or declarant to another health care provider willing to provide the directed health care but the provider shall take all reasonable steps to ensure provision of the directed health care until the principal or declarant is transferred.

(c) Nothing in this section alters any legal obligation or lack of legal obligation of a health care provider to provide health care to a principal or declarant who refuses, has refused, or is unable to pay for the health care.

**History:** 1993 c 312 s 16