

Parsonage Vandenack Williams LLC

THE NEBRASKA POWER OF ATTORNEY FOR HEALTH CARE

PURPOSE AND SCOPE OF A POWER OF ATTORNEY FOR HEALTH CARE

The Nebraska Power of Attorney for Health Care (“PAHC”) allows you to appoint someone else (called your “attorney in fact”) to make most medical decisions for you when you become “incapable” of making your own health care decisions. Your attorney in fact will not be able to make life-sustaining treatment decisions or withhold or withdraw tube feeding unless you specifically authorize them to do so in the Power of Attorney for Health Care.

For purposes of a Nebraska Power of Attorney for Health Care, “health care decision” is defined to include consent, refusal of consent, or withdrawal of consent to health care. “Health care” shall mean any treatment, procedure, or intervention to diagnose, cure, care for, or treat the effect of disease, injury, and degenerative conditions. “Health care decision” does not include the withdrawal or withholding of the usual and typical provision of nutrition and hydration, or the withdrawal or withholding of life-sustaining procedures, or of artificially administered nutrition or hydration, except to the extent you specifically authorize your attorney in fact to make life-sustaining treatment decisions and decisions concerning the withholding or withdrawal of artificially administered nutrition and hydration in the power of attorney.

In no event will the attorney in fact have the authority to consent to the withholding or withdrawing of a life-sustaining procedure or artificially administered nutrition or hydration unless you are suffering from a terminal condition or have lapsed into a persistent vegetative state and the Power of Attorney for Health Care explicitly grants such authority to the attorney in fact or your intent to have life-sustaining procedures or artificially administered nutrition or hydration withheld or withdrawn under such circumstances is established by clear and convincing evidence.

For purpose of a Nebraska Power of Attorney for Health Care, a “life-sustaining procedure” means any medical procedure, treatment, or intervention that uses a mechanical or other artificial means to sustain, restore, or supplant a spontaneous vital function and when applied to a person suffering from a terminal condition or who is in a persistent vegetative state, serves only to prolong the dying process. Life sustaining procedure does not include routine care necessary to maintain patient comfort or the usual and typical provision of nutrition and hydration.

For purposes of a Nebraska Power of Attorney for Health Care, “attending physician” is defined as the physician, selected by or assigned to you, who has primary responsibility for the care and treatment of you.

For purposes of a Nebraska Power of Attorney for Health Care, a “health care provider”, is defined as an individual or facility licensed, certified, or otherwise authorized or permitted by law to administer health care in the ordinary course of business or professional practice.

For purposes of a Nebraska Power of Attorney for Health Care, a “persistent vegetative state” shall mean a medical condition that, to a reasonable degree of medical certainty as determined in accordance with currently accepted medical standards, is characterized by a total and irreversible loss of consciousness and capacity for cognitive interaction with the environment and no reasonable hope of improvement.

For purposes of a Nebraska Power of Attorney for Health Care, a “terminal condition”, means an incurable and irreversible medical condition caused by injury, disease, or physical illness which, to a reasonable degree of medical certainty, will result in death regardless of the continued application of medical treatment including life-sustaining procedures.

The person that you appoint as attorney in fact is authorized to make health care decisions for you when you are “incapable” of making your own health care decisions. For purposes of a Nebraska Power of Attorney for Health Care, “incapable” is defined as the inability to understand and appreciate the nature and consequences of health care decisions, including the benefits of, risks of, and alternatives to any proposed health care, or the inability to communicate in any manner an informed health care decision. The determination that you are incapable of making your own health care decision will be made in writing by your attending physician. You may specify that such a determination must be confirmed by a second physician.

Executing a Power of Attorney for Health Care does not restrict your right to make health care decisions for yourself, as long as you are not incapable of making such decisions. By executing a Power of Attorney for Health Care, you do not waive your right to routine hygiene, nursing, and comfort care and the usual and typical provision of nutrition and hydration.

AUTHORITY AND DUTIES OF ATTORNEY IN FACT

The following may not act as your attorney in fact:

- Your attending physician;
- An employee of your attending physician, unless that person is related to you by blood, marriage, or adoption;

- A person who is an owner, operator, or employee of a health care provider in which you are a resident, unless that person is related to you by blood, marriage, or adoption;
- A person who is presently serving as attorney in fact at the time of proposed designation for ten or more people, unless that person is related to you by blood, marriage, or adoption.

You should choose an alternate attorney in fact in case your first choice is unable or unwilling to act on your behalf. You may specify that any determination that you are incapable of making health care decisions must be confirmed by a second physician.

In the event that you are pregnant when you become incapable of making your own health care decisions, and if it is probable that the unborn child will develop to the point of live birth with the continued application of health care, the Power of Attorney for Health Care may not be used to give the attorney in fact authority to consent to any decision that will result in the death of an unborn child. Because this restriction may be unconstitutional, an instruction by you to withhold or withdraw life-sustaining treatment during pregnancy may be enforceable.

The attorney in fact shall not be personally responsible for the cost of health care provided to you. Your attorney in fact shall have the same right as you would to receive information regarding any proposed health care, to receive and review medical and clinical records, and to consent to the disclosure of such records.

You may wish to state in the Power of Attorney for Health Care specific instructions or wishes or you may limit the authority of your attorney in fact. The person you designate as your attorney in fact has a duty to act consistently with your desires as you state them in the Power of Attorney for Health Care or as otherwise made known by you. If your desires are unknown, then the attorney in fact has a duty to act in a manner consistent with your best interests. The person you designate as attorney in fact will not have the authority to consent to the withholding or withdrawal of nutrition or hydration unless you give your attorney in fact that authority in the Power of Attorney for Health Care or in some other clear and convincing manner. Even if you give your attorney in fact the authority to consent to the withholding or withdrawal of such procedures, the attorney in fact may not consent until you are determined to have lapsed into a persistent vegetative state or are found to have a terminal condition. The person you designate as attorney in fact does have the right to withdraw from the duties of attorney in fact at any time. In the event that the person you designated as attorney in fact withdraws from this duty, then the successor you appoint will assume such duties.

HOW A POWER OF ATTORNEY FOR HEALTH CARE BECOMES OPERATIVE

Your Power of Attorney for Health Care will take effect when you can no longer speak for yourself. A copy of the completed Power of Attorney for Health Care must be provided to your attorney in fact and to your attending physician. The determination that you are incapable of making health care

decisions will be made in writing by your attending physician and any consulting physician. If your attorney in fact is not your closest relative, and if you have not instructed otherwise, your attorney in fact must notify your next of kin, and your court-appointed guardian, if any, that you are no longer able to speak for yourself.

To be effective, the Power of Attorney for Health Care must be in writing, identify yourself as Principal, identify the attorney in fact, and the successor attorney in fact, if any. The Power of Attorney for Health Care must specifically authorize the attorney in fact to make health care decisions on your behalf in the event that you are incapable, show the date the Power of Attorney for Health Care was executed, and be witnessed and signed by at least two adults or notarized by a notary public.

When the existence of your Power of Attorney for Health Care becomes known, the attending physician must make it a part of your medical record. If applicable, a copy shall be filed with any other health care provider of which you are a patient or a resident. The attending physician must promptly notify the attorney in fact when you become incapable of making health care decisions. Before the attending physician can act upon a health care decision made by an attorney in fact, the attending physician has a duty to confirm that you continue to be incapable. Such confirmation must be in writing and shall be included in your medical records.

A health care provider may refuse to honor a decision made by you or by your attorney in fact if it is contrary to a formally adopted policy of the organization that is expressly based on religious beliefs or sincerely held ethical or moral convictions central to the operating principals of the organization and if such policy was made known to you prior to your being determined incapable or to your attorney in fact after you have been determined incapable. In such a case, the attorney in fact may arrange a transfer to another health care facility. If the attorney in fact is unable or unwilling to arrange a transfer to another health care facility, the health care provider organization may intervene to facilitate such a transfer.

A doctor or another individual health care provider may refuse to honor a health care decision if such decision is contrary to the individual's religious beliefs or sincerely held moral or ethical convictions and such individual health care provider promptly informs your attorney in fact and the health care provider of such refusal. In such case, the health care provider organization is criminally liable if they fail to assist in the transfer of responsibility for you to another individual health care provider who is willing to honor the decision of your attorney in fact.

Signed originals of your Power of Attorney for Health Care should be kept in a safe place that is known to your family and friends and that is easily accessible to them in an emergency. You should provide photocopies of your executed Power of Attorney for Health Care to your attorney in fact and alternate attorney in fact (if you name one), to your doctor or doctors and to family members or close friends who might be concerned with your medical care. Do not keep a signed original in your safe deposit box, as access to the safe deposit box could be difficult.

Your doctor may be able to refer you to a hospital likely to comply with your wishes in the event you become seriously ill or injured. If your doctor indicates that he or she is unlikely to comply with your wishes, then you may want to make advance arrangements for your transfer to a physician willing to comply with the wishes expressed in your Power of Attorney for Health Care, in the event you become terminally ill or lapse into a persistent vegetative state.

REVOKING A POWER OF ATTORNEY FOR HEALTH CARE

You may revoke your Power of Attorney for Health Care or a health care decision made by an attorney in fact at any time, as long as you are competent and in any manner by which you are able to communicate your intent to revoke. Such a revocation shall be effective upon communication to the attending physician, or the health care provider who shall promptly inform the attending physician of the revocation, or the attorney in fact who shall promptly inform the attending physician of the revocation.