



Organize, Communicate, Prepare

How Much Do You Know About Advance Directives for Health Care?

You may use advance directives to tell your doctors and your family what medical treatment you do or do not want if you should become unable to make these decisions yourself. A living will is your statement that you do not want to be kept alive by artificial means if you are terminally ill. A DNR Directive communicates your desire to not be revived, should you stop breathing or your heart stop beating, and is typically used by those who are terminally ill, or the frail elderly. You may use a health care power of attorney to name a health care agent who will make your medical decisions when you are unable to do so.

Many people, as well as some medical providers, do not fully understand advance directives. How much do you know? Take the quiz below and find out.

Advance Directives Quiz

1. After a patient is connected to life support systems, it is legally difficult to withdraw him or her from the life support systems.
 True
 False
2. Without a living will, the doctors and hospital must put and keep a terminally ill patient on life support systems, regardless of the cost.
 True
 False
3. Emergency Medical Services (EMS) must be given a copy of your living will if they are called to resuscitate you.
 True
 False
4. If you have a living will, you should also have a Do Not Resuscitate (DNR) order.
 True
 False

5. You revoke your living will by tearing it up.
 True
 False
6. Your health care agent has the right to make all health care decisions on your behalf under a Health Care Power of Attorney and can make decisions over your objections.
 True
 False
7. More often than not, it is one or more family members who prevent a patient's living will from being honored by the doctor and medical provider.
 True
 False
8. A living will from another state is not valid in this state.
 True
 False
9. A hospital or nursing home can insist that someone being admitted must sign a living will.
 True
 False
10. The law is more concerned about protecting doctors than it is about honoring a patient's wishes.
 True
 False
11. The Power of Attorney for Health Care must always be a family member if one is available.
 True
 False
12. The Power of Attorney for Health Care may be shared by more than one individual.
 True
 False

13. An attorney must be used to draw up a legal living will.

- True
 False

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Designed for use in the *Legally Secure Your Financial Future* program. Originally developed by Carol A. Schwab, J.D., LL.M., Professor and Extension Specialist, North Carolina State University Extension. Adapted for Kansas by Carol Young, Financial Management Specialist and Debra M. Sellers, PhD, Adult Development & Aging Specialist, both from Kansas State University, with assistance from Shon Robben, an attorney in Manhattan, Kansas.

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Quiz Answers

The following answers are based upon Kansas law as of the date of publication. The laws in other states may be different. Laws are subject to change, so please ask your attorney for answers to specific questions.

1. After a patient is connected to life support systems, it is legally difficult to withdraw him or her from the life support systems.

KANSAS Answer: False.

There is no legal barrier for a dying patient to have life support systems withdrawn. Two doctors must certify that - regardless of the use of artificial life sustaining procedures – the person is in a terminal condition. Oral evidence during life of a desire to die without artificial life sustaining procedures is not required, but recommended.

In regard to the diagnosis of persistent vegetative state: this is a complex issue under Kansas law, and it is recommended that individuals consult with an attorney if this is a concern.

2. Without a living will, the doctors and hospital must put and keep a terminally ill patient on life support systems, regardless of the cost.

KANSAS answer: False.

The law does not require that a patient have signed a living will in order to have life support withheld or withdrawn. The benefit of a written directive on care at end of life is that it leaves no doubt as to the patient's desire and lessens the likelihood that family conflict will prevent the patient's directive from being honored. In the absence of a patient's written directives, the law sets out a scheme of priority to determine which person or group of persons has authority to give health care directives. Experience teaches that end-of-life decision-making by others in the absence of written directives is more problematic than with written directives.

3. Emergency Medical Services (EMS) must be given a copy of your living will if they are called to resuscitate you.

KANSAS answer: False.

EMS first-responders acting outside of a hospital setting will resuscitate a patient even if that patient is known to have signed a living will electing against receiving artificial life sustaining procedures. EMS personnel will attempt to resuscitate because they do not have the benefit and protection of two physicians on site, certifying that the patient has a terminal condition.

However, Kansas law allows for Do Not Resuscitate directives and orders. A DNR directive is a dated and witnessed document that is put into writing. The DNR is usually reserved for those who are terminally ill or the frail elderly. It is *HIGHLY* recommended that you speak with your physician at length about a DNR directive to ensure that you understand all of the ramifications of this directive.

The document must be signed by you and your physician or for you by someone else based upon your expressed direction. A signature from a physician is not required if you are a member of a church which provides medical treatment by spiritual means, such as through prayer alone and other care consistent with your church or religion. If someone else signs for you, they must do so in your presence and at your direction. The witness must be: 1) at least 18 years of age, 2) not related to you by blood or marriage, 3) not entitled to your estate, 4) not financially responsible for your medical care, and 5) not the same person who signed the document for you at your direction if you are unable to sign for yourself.

The DNR directive provides coverage for you when living in the community. Those people that are living in their communities receiving hospice or other end-of-life care and who do not want to be resuscitated if their heart or breathing stops may find this form helpful. You may be given an insignia by your physician (bracelet or medallion) that identifies you and your wish to not be resuscitated. The DNR directive must be given to EMS personnel, who will then respect your wishes to not resuscitate you under Kansas law. Practically speaking, however, there are times EMS personnel may be reluctant to follow the written DNR and will resuscitate a patient despite the written DNR.

Your physician could also write a DNR *order* as part of your medical record during an admission to a hospital or care facility.

No health care provider who in good faith honors a DNR directive, order, or insignia is subject to civil liability, is guilty of a crime, or is guilty of an act of unprofessional conduct (KSA 65-4944). A durable power of attorney for health care may ask for a DNR order on your behalf if those were your wishes prior to the illness or injury.

4. If you have a living will, you should also have a Do Not Resuscitate (DNR) order.

KANSAS answer: False.

While all adults, healthy or not, should have a living will and health care power of attorney, only terminally ill patients or frail elderly typically are provided with a DNR directive or order. If a healthy person has a DNR directive or order, it may prevent him from receiving medical care needed to save his life.

**5. The only way to revoke your living will is by tearing it up.
KANSAS answer: False.**

You can destroy a living will by tearing it up, burning it, or destroying it in some other fashion, by revoking it in writing, or by verbally revoking it in the presence of a witness who is at least 18 years of age. This witness must sign and date a document that states that you made a statement describing your intention. This verbal instruction becomes effective when your attending physician receives this signed and dated document. Your physician will make a note in your medical record of the time, date and place of when he or she received notification of this document. Anyone who does not know about the revocation is not liable criminally or civilly for actions they take regarding the living will instructions.

**6. Your health care agent has the right to make all health care decisions on your behalf under a Health Care Durable Power of Attorney and can make decisions over your objections.
KANSAS answer: False.**

The DPoA is **usually** made effective when you are not capable of making the decision yourself. You will always make decisions for yourself whenever you are capable unless the specific Power of Attorney for Health Care document indicates otherwise. Under this standard, your agent has no authority to give health care directives for you unless you are found to be unable to make and communicate informed medical decisions. Only then does the agent's authority come into being. The attending physician makes this determination. However, a Health Care Power of Attorney can be made effective immediately if this is your desire and if this is explicitly stated on the form (KSA 58-629). The agent cannot be granted the authority to revoke a previously existing "Living Will".

**7. More often than not, it is one or more family members who prevent a patient's living will from being honored by the doctor and hospital.
KANSAS answer: True.**

Experience shows that when disputes arise concerning end-of-life decision-making and a patient's advance directives, more often than not the conflict occurs between family members. Conflict can usually be avoided by prior, comprehensive discussions with family members regarding what kind of end-of-life care you want and why you made those decisions.

**8. A living will from another state is not valid in Kansas.
KANSAS answer: False.**

A living will valid when executed in another state will be respected in Kansas. However, Kansas health care providers are very familiar with the state's suggested document format. Your agent will have an easier time getting a

familiar format respected than one substantially different than Kansas's suggested format. If you have brought another state's living will or health care power of attorney into Kansas, you will be better served by re-executing your directives using Kansas's format.

9. A hospital or nursing home can insist that someone being admitted must sign a living will.

KANSAS answer: False.

Federal law prohibits a health care facility discriminating against a patient for not having a living will or health care power of attorney. Nonetheless, it is not uncommon for assisted care facilities and nursing homes to suggest that one is needed prior to admission.

10. The law is more concerned about protecting doctors than it is about honoring a patient's wishes.

KANSAS answer: False.

The law is as concerned with your right to determine your end-of-life care as it is with legal protection for health care providers who respect your directives.

11. The Durable Power of Attorney for Health Care must always be a family member, if one is available.

KANSAS answer: False.

You may choose any person that you desire to be your proxy, with a few exceptions: the person that you name cannot be your treating health care provider, or an employee of your treating health care provider. S/he also cannot be an employee, owner, director or officer of a facility, unless that individual is related to you by blood, marriage or adoption; or you and that individual are members of a religious community that regularly engages in charitable or educational aid or the performance of health care services. He or she must be at least 18 years of age.

You should choose the person who is best suited to the task. You may choose joint agents, although this is not recommended if you are choosing two people to save feelings or to avoid conflict. You should also designate one or more alternates in case your first or second choice for agent is unable to serve.

12. The Durable Power of Attorney for Health Care may be shared by more than one person.

KANSAS answer: True.

You can designate agents to serve jointly. Before making a joint designation you should make sure your basis for choosing a joint designation is sound. Choosing

a second person to serve jointly with your first choice in order to avoid hurt feelings or because you believe your first choice is unable to serve independently may not be wise. Similarly, choosing joint agents to balance out irreconcilable conflict between the two over your end-of-life care may be unsound. Choose a trustworthy person who cares about you, is a good communicator, and can gain consensus in a crisis.

You should also designate one or more alternates, however, in case your first or second choice for agent is unable to serve.

13. An attorney must be used to draw up a legal living will.

KANSAS answer: False.

You do not have to employ an attorney to draw a living will, health care power of attorney, or DNR Directive, as Kansas statutes offer “fill-in-the-blank” forms that you may complete on your own. It is recommended that you use the statutory forms if you are not utilizing an attorney. You should, however, discuss these documents with someone who is knowledgeable about the options, operation, and effect of health care directives, particularly with the DNR Directive. Experts advise against a person completing health care directives without first having the benefit of competent advice.

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