

## MISSOURI STATE STATUTES

404.800. Sections 404.800 to 404.865 may be cited as the "Durable Power of Attorney for Health Care Act".

404.805. 1. As used in sections 404.800 to 404.865, the following terms mean:

- (1) "Certification", a written instrument or a written entry in a medical record;
- (2) "Incapacitated", a person who is unable by reason of any physical or mental condition to receive and evaluate information or to communicate decisions to such an extent that he lacks capacity to meet essential requirements for food, clothing, shelter, safety or other care such that serious physical injury, illness or disease is likely to occur;
- (3) "Patient", the principal of a durable power of attorney for health care under sections 404.800 to 404.865.

2. The definitions of section 404.703 shall apply to sections 404.800 to 404.865 except as modified by this section.

404.810. Section 404.710, section 404.714, section 404.705, subsections 1 and 2 of section 404.707, section 404.717, subsection 1 and 2 of section 404.723, section 404.727, and section 404.731 shall apply to powers granted under sections 404.800 to 404.865. No other provisions of sections 404.700 to 404.735 shall apply to the durable power of attorney for health care act unless specifically incorporated by reference therein.

404.815. Notwithstanding any other provision of law to the contrary, an attending physician or an employee of the attending physician, or an owner, operator or employee of a health care facility in which the patient is a resident, shall not serve as an attorney in fact unless:

- (1) The patient and attorney in fact are related by affinity or consanguinity within the second degree;
- (2) The patient and attorney in fact are members of the same community of persons who are bound by vows to a religious life and who conduct or assist in the conducting of religious services and actually and regularly engage in religious, benevolent, charitable, or educational ministry, or the performance of health care services.

404.820. 1. If a patient wishes to confer on an attorney in fact the authority to direct a health care provider to withhold or withdraw artificially supplied nutrition and hydration, the patient shall specifically grant such authority in the power of attorney. This limitation shall not be construed to require that artificially supplied nutrition and hydration be continued when, in the medical judgment of the attending physician, the patient cannot tolerate it.

2. Notwithstanding any other provision of sections 404.800 to 404.865 to the contrary, no attorney in fact may, with the intent of causing the death of the patient, authorize the withdrawal of nutrition or hydration which the patient may ingest through natural means.

3. Attorneys in fact shall consider appropriate measures in accord with current standards of medical practice to provide comfort to the patient.

4. Before an attorney in fact or physician may authorize the withdrawal of nutrition or hydration which the patient may ingest through artificial means, the physician must:

(1) Attempt to explain to the patient the intention to withdraw nutrition and hydration and the consequences for the patient and to provide the opportunity for the patient to refuse the withdrawal of nutrition and hydration; or

(2) Insert in the patient's file a certification that the patient is comatose or consistently in a condition which makes it impossible for the patient to understand the intention to withdraw nutrition and hydration and the consequences to the patient.

404.822. In making any health care decision in accordance with sections 404.800 to 404.865, the attorney in fact shall seek and consider information concerning the patient's medical diagnosis, the patient's prognosis and the benefits and burdens of the treatment to the patient. In withdrawing treatment, which withdrawal will allow the preexisting condition to run its natural course, the attorney in fact shall seek evidence of the medical diagnosis and the prognosis and the benefit and burden of the treatment to the patient to the extent possible within prevailing medical standards.

404.825. Unless the patient expressly authorizes otherwise in the power of attorney, the powers and duties of the attorney in fact to make health care decisions shall commence upon a certification by two licensed physicians based upon an examination of the patient that the patient is incapacitated and will continue to be incapacitated for the period of time during which treatment decisions will be required and the powers and duties shall cease upon certification that the patient is no longer incapacitated. One of the certifying physicians may be the patient's attending physician. The certification shall be made according to accepted medical standards. The determination of incapacity shall be

periodically reviewed by the attending physician. The certification shall be incorporated into the medical records and shall set forth the facts upon which the determination of incapacity is based and the expected duration of the incapacity. Other provisions of this section to the contrary notwithstanding, certification of incapacity by at least one physician is required.

404.830. 1. No physician, nurse, or other individual who is a health care provider or an employee of a health care facility shall be required to honor a health care decision of an attorney in fact if that decision is contrary to the individual's religious beliefs, or sincerely held moral convictions.

2. No hospital, nursing facility, residential care facility, or other health care facility shall be required to honor a health care decision of an attorney in fact if that decision is contrary to the hospital's or facility's institutional policy based on religious beliefs or sincerely held moral convictions unless the hospital or facility received a copy of the durable power of attorney for health care prior to commencing the current series of treatments or current confinement.

3. Any health care provider or facility which, pursuant to subsection 1 or 2 of this section, refuses to honor a health care decision of an attorney in fact shall not impede the attorney in fact from transferring the patient to another health care provider or facility.

404.835. 1. It shall be unlawful for a physician, nurse or other individual who is a health care provider or an employee of a health care facility, hospital, nursing facility, residential care facility or other health care facility to require an individual to execute a durable power of attorney for health care as a condition for the provision of health care services or admission to a health care facility.

2. It shall be unlawful for an insurance company authorized to transact health insurance business in this state, nonprofit health care service plan, health maintenance organization, or other similar person or entity who contracts or agrees to the provision of health care benefits to require an individual to execute a durable power of attorney for health care as a condition to being insured or to receive benefits for health care services.

404.840. 1. A copy of a power of attorney for health care decisions shall be made a part of the patient's medical record when the existence of the power of attorney becomes known to the patient's health care provider and prior to the provider's taking any action pursuant to the decision of the attorney in fact.

2. Except to the extent the right is limited by the power of attorney or any federal law, an attorney in fact designated to make health care decisions has the same right as the patient to receive information regarding the proposed health care, to receive and review medical records and to consent to the disclosure of medical records. However, the right to access to medical records is not a waiver of any evidentiary privilege.

404.845. 1. Nothing contained in sections 404.800 to 404.865 shall revoke, amend or limit the operation of chapter 565, RSMo.

2. If the patient's death results from withholding or withdrawing life-sustaining treatment in accordance with the terms of the durable power of attorney for health care act, the death shall not constitute a suicide or homicide for any purpose under any statute or other rule of law and shall not impair or invalidate any insurance, annuity or other type of contract that is conditioned on the life or death of the patient, any term of the contract to the contrary notwithstanding.

404.847. Nothing contained in sections 404.800 to 404.865 shall be construed to invalidate any durable power of attorney executed prior to August 28, 1991, which permits an attorney in fact to make health care decisions for the principal. The provisions of sections 404.710 and 404.820 henceforth apply to durable powers of attorney for health care executed prior to August 28, 1991. In the absence of a specific writing, decisions regarding nutrition and hydration must be made in accordance with state and federal law.

404.850. 1. A power of attorney for health care may be revoked at any time and in any manner by which the patient is able to communicate the intent to revoke. Revocation shall be effective upon communication of such revocation by the patient to the attorney in fact or to the attending physician or health care provider.

2. Upon learning of the revocation of a power of attorney for health care, the attending physician or other health care provider shall cause the revocation to be made a part of the patient's medical records.

3. Unless the power of attorney provides otherwise, execution by the patient of a valid power of attorney for health care revokes any prior power of attorney for health care.

404.855. A third person, if acting in good faith, may rely and act on the instruction of and deal with the attorney in fact acting pursuant to the authority granted in a power of attorney for health care without liability to the patient or the patient's successors in interest.

404.865. Notwithstanding the provisions of subsection 1 of section 404.723, an attorney in fact shall not be authorized to delegate such health care decision-making power to another person unless explicitly authorized by the patient in the durable power of attorney for health care to make such delegation.

404.870. Nothing in sections 404.710 to 404.865 shall be construed to authorize, approve or condone discrimination against the handicapped or the disabled in the exercise of the authority of a durable power of attorney for health care. Decisions based on factors listed in section 404.822 shall not be considered discriminatory.

404.872. No physician, nurse, or other individual who is a health care provider or an employee of a health care facility shall be discharged or otherwise discriminated against in his employment or employment application for refusing to honor a health care decision withholding or withdrawing life-sustaining treatment if such refusal is based upon the individual's religious beliefs, or sincerely held moral convictions.