



AANHR

Arkansas Advocates for Nursing Home Residents

Conway (501) 450-9619 · Fairfield Bay (501) 884-6728
Conway (501) 450-7405

PROTECTING NURSING
HOME RESIDENTS

April
2010

Next Meeting

April 12

MEETING

PLACE:

First Assembly of God
Church

4501 Burrow Road
North Little Rock

Directions to church
on back of Newsletter.

10:00 a.m.

Meeting for
members, family and
friends of residents
(Closed to persons
representing the
nursing home
industry).

11:00 a.m.

Public Meeting
(see article at right)



Don't forget to pay
your membership
dues!



April 12th
Meeting Topic:
End of Life
Issues

Attorney Darren
O'Quinn will

discuss end of life issues in the nursing home context including Advance Directives such as a Living Will, a Financial Durable Power of Attorney, and a Health Care Durable Power of Attorney at the April 12th AANHR meeting. These are basically legal documents which will guide the doctor and nursing home regarding treatment of your loved one in the event they become unable to express their own wishes. He will discuss these, as well as other end of life issues, and provide insight on how to successfully deal with them for your loved one in the nursing home setting. Mr. O'Quinn will also answer any questions you might have regarding other nursing home issues

Darren O'Quinn received his Juris Doctor (with honors) from the University of Arkansas at Little Rock School of Law in 1985 and began his law career with one of the largest and most prestigious law firms in Arkansas. There, his practice emphasized the defense of medical negligence and nursing home neglect claims. This practice area was a natural fit for Mr. O'Quinn since he is also a licensed pharmacist.

Mr. O'Quinn left his partnership in 2002, formed his own firm, and began to prosecute the types of cases he formerly defended. Through his over 20

years of experience in both defending and prosecuting medical negligence and nursing home neglect cases, Mr. O'Quinn has gained valuable insight into successfully resolving them. He routinely consults with attorneys from all over the United States and has obtained numerous seven-figure recoveries for his clients.

O'Quinn is a volunteer attorney for Central Arkansas Legal Services and Arkansas Volunteer Lawyers for the Elderly, which provide free legal services for those in need and who cannot afford representation. He is a vigorous proponent and volunteer of Arkansas Advocates for Nursing Home Residents. Mr. O'Quinn trains for and runs marathons to relax in his free time.

Mr. O'Quinn is admitted to practice before all Arkansas state and federal courts, including the Arkansas Supreme Court, The United States District Courts of Arkansas, and the United States Eighth Circuit Court of Appeals. He also practices in other states with co-counsel from those areas and has helped with successful cases in Texas, Oklahoma, Louisiana, Missouri, Mississippi, Tennessee, New York, and elsewhere, and routinely consults with attorneys from all over the United States.

Please join us for this very informative meeting on April 12th.

Coming soon:
CNA appreciation
luncheon.
June 14, 2010

**PRESENTATION TO ARKANSAS ADVOCATES FOR NURSING HOME RESIDENTS (APRIL 2010):
END OF LIFE ISSUES**

By M. Darren O'Quinn, Attorney, Little Rock, Arkansas

I. ADVANCE DIRECTIVES

Advance Directives are documents that specify your wishes for health care if you become unable to make your own decisions. People generally execute advance directives to avoid prolonging the dying process and to prevent unnecessary heartache and turmoil for families. Advance directives ensure you have a say in your medical treatment, bringing dignity to the dying process. If the patient's advance directives are properly executed, the appointed person has the legal authority to make health care decisions for the patient, based on the patient's wishes.

How to Prepare

Step One: The first formal step in making your wishes known is drawing up a living will. (**Living Will** – A legal document that communicates wishes about lifesaving medical treatments in the event a person has a terminal condition and is unable to communicate health-care directives). You can specify whether you want resuscitation and intubation, antibiotics, hydration, blood transfusions, and feeding tubes. You have a full spectrum of options—your directive can state that you want everything done or that you want to limit medical interventions.

Step Two: The second formal step in the advance directive process is appointing a health care agent or surrogate to make decisions on your behalf—via a health care power of attorney—who will use your advance directives as a guide to what decisions you would make if you could. (**Health-Care Power of Attorney** – A kind of power of attorney in which individuals appoint another person—such as a spouse, adult child, friend, or faith leader—to make health-care decisions should they become unable to do so. Also called "health-care proxy"). It's important to select a surrogate who knows what you want but will weigh the pros and cons before making a choice.

Step Three: Once your advance directives are in order, you need to communicate your wishes by making sure to give copies to your doctors, surrogate, attorney, and family, and take the papers with you when you go to the hospital. It's best to communicate in advance with relatives and medical providers about these difficult issues to avoid conflicts later and to give others peace of mind. Under federal law, medical facilities must also inform patients upon admission that they have the right to make advance directives and have them respected. Most experts agree, however, that it's better to contemplate end-of-life issues in your living room, not the emergency room.

II. FINANCIAL POWER OF ATTORNEY

A "power of attorney" is a written document in which you (the "principal") appoint someone else (called the "agent" or "attorney-in-fact") to act for you. Your agent can do any legal act you ask him or her to perform.

Why Is a Power of Attorney Important?

Everyone should think about having a power of attorney. Having one can be more important to your personal well being than a will. The power of attorney allows you to pick someone you trust to handle your affairs if you cannot do so yourself. It gives you peace of mind, reassuring you that in an emergency, someone you choose will have the authority to act for you. If you don't have a power of attorney and you are suddenly incapacitated, your family may have to go through an expensive and time-consuming court action to appoint a guardian or conservator to make decisions for you.

Are There Different Types of Powers of Attorney?

Yes. Powers of attorney can differ depending on when you want the powers to begin and end and on how much responsibility you want to give your agent.

Time

A conventional power of attorney begins when you sign it and continues until you become mentally incapacitated. But most people want someone to make decisions for them when they are unable to do so. If so, you have to say so in your document.

A **durable** power of attorney also begins when you sign it, but it stays in effect for your lifetime unless you cancel it. You must put specific words in the document stating that you want your agent's power to stay in effect even if you become incapacitated. If you want this feature, it's very important that you have these words in your document.

A **springing** power of attorney begins only when a specific event happens, such as when you become incapacitated. Your attorney must carefully draft a springing power of attorney to avoid any difficulty in determining exactly when the "springing" event has happened.

All powers of attorney come to an end at your death. Your agent will have no power to make any decisions after you die.

Responsibility

You can select the responsibilities, or powers, you want your agent to have. You can authorize your agent to do one thing, such as sell your car. Or you can give your agent the authority to do any legal act you could do yourself. You can give the agent a wide range of powers, such as having access to bank accounts, selling stocks, and managing real estate. You may want your agent to sign your income tax return, apply for benefits on your behalf, or make gifts to your favorite charities. Design your power of attorney to fit your anticipated needs.

Are There Any Risks Associated With Powers of Attorney?

The most important way to reduce any risk is to choose your agent carefully. Select someone you trust completely. Never forget that you are giving your agent the opportunity to access your funds at a time when you may not be able to keep tabs on what the agent is doing. So the person must be very trustworthy. You may also want to add ways for other people to check up on what your agent is doing when you cannot.

Will My Agent Be Able to Do My Banking?

If you want your agent to have access to your bank account, be sure to get your bank's authorization form and a signature card for your agent. Usually a bank has its own form to give your agent access to a particular account. If you don't contact the bank before you become incapacitated, the bank may not honor checks and withdrawals that your agent signs.

Giving your agent the authority to have access to your bank account is not the same thing as making a friend or relative a joint owner of the account. You'll want to make sure that you create the right kind of account so your agent has access to your funds but is not listed as an owner.

Can a Bank or Other Institution Refuse to Honor a Valid Power of Attorney?

State laws vary as to whether they penalize a third party, such as a bank or brokerage, for refusing to honor a power of attorney. The best answer to the question is to avoid the problem by being prepared. Once you've signed a power of attorney, contact any financial institutions where you have accounts, safe-deposit boxes, securities, and the like. Give the firms copies of the document and ask whether they have any questions or whether you have to sign other documents, such as authorizations or signature cards. Taking these actions, you can generally avoid any difficulty.

Whom Should I Choose as My Agent?

No one can tell you whom to choose as your agent. The person you choose needs to be someone you trust and someone who can do the job. It is best to avoid someone who is ill, inexperienced in financial matters, has a hard time managing their own money, or for some other reason wouldn't be able to handle the responsibilities. Between two equally qualified persons, the one who lives closer to you is generally the better choice.

Can I Name My Two Children as Co-Agents?

The law permits you to appoint co-agents. However, that may not be a good idea. To make decisions, the two must agree. If they disagree, they may have to go to court. This is really expensive, time-consuming, and defeats the major reason for having a power of attorney. If you have two equally qualified persons to choose between, you may want to name one as your agent and the other as a substitute to step in if your first choice cannot serve. You could also appoint one to make financial decisions and the other to make health care decisions. This is your choice. Do not allow yourself to be talked into selecting anyone other than the person you want.

I Already Have a Will. Can't My Executor Handle My Affairs?

No! Your will determines how your property will be distributed after you die. Your executor has no authority to act before your death. Your power of attorney deals with how to manage your property during your lifetime. On the other hand, your agent has no authority to act after you die.

Can I Still Manage My Own Affairs if I Sign a Power of Attorney?

Even if you sign a power of attorney, you can still manage your own affairs. You are not giving up anything. Instead, you are taking steps today so that your agent will be able to act when and how you have directed, if or when it becomes necessary.

Can I Cancel a Power of Attorney After I Sign It?

Yes. You can cancel, or revoke, a power of attorney at any time by tearing it up, by signing a new one, or by writing that you want to cancel it. You don't have to give any reason. If you do cancel, it's important to let your agent and anyone your agent has been dealing with know that you have canceled the agent's authority.

If I Give a Power of Attorney to Another, Do I Give Up the Right to Manage My Own Affairs?

No. As long as you remain legally competent, you retain full control over your affairs. Think of your agent under your durable power of attorney as an understudy waiting in the wings to help you. You don't hand over top billing until you want your agent to perform. You can change your mind.

III. WILLS AND TRUSTS

**Living Will
And
Durable Power of Attorney for Health Care**

**Provided as a public service by
the Health Law Section of the Arkansas Bar Association**

Please read the Advance Directive Information available on the Arkansas Bar Association's website at <http://www.arkbar.com/> carefully before completing these forms.

NOTE: The form Living Will and Durable Power of Attorney for Health Care are being provided to you as a public service. The attached forms are provided "as is" and are not the substitute for the advice of an attorney. By providing these forms and the Advance Directive Information, neither the Arkansas Bar Association nor its Health Law Section is providing legal advice to you. Consult an attorney if you need legal advice of any nature.

**DECLARATION OF LIVING WILL
OF**

[Name of Declarant]

If I should have an incurable or irreversible condition with no hope of recovery that will cause my death within a relatively short time, and I am no longer able to make decisions regarding my medical treatment, I direct my attending physician, pursuant to the Common Law and the Arkansas Rights of the Terminally Ill or Permanently Unconscious Act, to withhold or withdraw treatment that only prolongs the process of dying and is not necessary to my comfort or to alleviate pain.

Additionally, if I should become permanently unconscious, I direct my attending physician, pursuant to the Arkansas Rights of the Terminally Ill or Permanently Unconscious Act, to withhold or withdraw life-sustaining treatments that are no longer necessary to my comfort or to alleviate pain.

Section 1: Life-Sustaining Treatments

The life-sustaining treatments which **may be withheld or withdrawn** are (check all that apply):

- Cardiopulmonary Resuscitation.
- Mechanical Breathing.
- Major Surgery.
- Kidney Dialysis.
- Chemotherapy.
- Minor Surgery (unless necessary for my comfort or to alleviate pain).
- Invasive Diagnostic Tests.
- Antibiotics.
- Blood Products.
- Other Medications not Necessary for Alleviation of Pain.

Add other medical directives, if any _____

Section 2: Artificial Nutrition and Hydration

I understand that Arkansas law requires me to make my wishes regarding artificial nutrition and hydration known separately from the above directions. Therefore, by initialing the appropriate line(s) below, I specifically:

_____ DIRECT that **artificial nutrition may be withheld** or withdrawn after consultation with my attending physician.

_____ DIRECT that **artificial hydration may be withheld** or withdrawn after consultation with my attending physician.

SIGNED this _____ day of _____, 20____.

Signature

We, the undersigned, do hereby certify that the Declarant, _____ subscribed this Declaration of Living Will in our presence, and we, at his or her request, in his or her presence, and in the presence of each other, signed as attesting witnesses, and we do further certify that the Declarant appeared to be eighteen years of age or older, of sound mind, and acting without undue influence, fraud or restraint and that his or her signature was voluntary.

Witness

Address

City, State and Zip Code

Witness

Address

City, State and Zip Code

**DURABLE POWER OF ATTORNEY FOR HEALTH CARE
OF**

[Name of Declarant]

Pursuant to the Arkansas Durable Power of Attorney for Health Care Act (Ark. Code Ann. § 20-13-104) (the "Act"), I hereby designate and appoint _____ as my agent, or attorney in fact, to make decisions regarding my health care during periods when my health care provider has determined that I lack capacity to decide for myself. Specifically, and not to limit any other rights prescribed under the Act, my attorney-in-fact shall have the power to have access to my medical records for treatment or payment decisions; to disclose medical records to others for purposes of treatment, payment, or health care operations; to employ and discharge physicians; to consent to or refuse to consent to medical procedures, including the withholding or withdrawal of life-sustaining treatment, and nutrition and hydration, according to my wishes expressed in my Living Will, or, if my wishes are unclear under the then existing circumstances of my medical condition, then upon consideration of my best interests as determined by my physician in consultation with my agent; to admit me to hospitals, including psychiatric hospitals, nursing homes, or hospice care; and to sign all appropriate forms, consents and releases in connection with any of said matters.

If _____ resigns, or is not able or available to make health care decisions for me, or if an agent named by me is divorced from me or is my spouse and legally separated from me, I appoint _____ as successor, with all of the rights and powers and authority herein stated. The term "health care" shall have the meaning set forth in Ark. Code Ann. § 20-13-104(c). This Durable Power of Attorney for Health Care shall not be affected by my subsequent disability or incapacity.

SIGNED this _____ day of _____, 20_____.

Signature

We, the undersigned, do hereby certify that the Declarant, _____ subscribed this Durable Power of Attorney for Health Care in our presence, and we, at his or her request, in his or her presence, and in the presence of each other, signed as attesting witnesses, and we do further certify that the Declarant appeared to be eighteen years of age or older, of sound mind, and acting without undue influence, fraud or restraint and that his or her signature was voluntary.

Witness

Witness

Address

Address

City, State and Zip Code

City, State and Zip Code