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ORAL INSTRUCTIONS TO REMOVE

LIFE SUSTAINING MEDICAL TREATMENT ARE NOT EFFECTIVE

By: Matt W. Zeigler, Esq.

As a patient in a medical care facility, you have the right to decide, in advance, what kind of medical care and life-sustaining treatment you would like to receive. Life-sustaining treatment is any kind of medical intervention which could keep you alive. You also have the right to refuse or withhold any medical treatment, including life-sustaining treatment.

The State of Michigan adopted a new law, the Patient Self-Determination Act, Michigan Law PA 312 of 1990 which documents that you have made these important medical decisions. This new law adopted a standard form for the State of Michigan called the Designation of Patient Advocate Form and Durable Power of Attorney for Health Care.

A Designation of Patient Advocate Form and Durable Power of Attorney for Health Care authorizes an individual of your choice to be responsible for decisions and medical treatment regarding your health care if you are incapable of making those decisions. You may designate specifically the type of medical treatment you wish to accept or refuse.

The Michigan Supreme Court, in a case decided in August, 1995, determined that oral instructions to relatives, friends and doctors, are not effective to convey that the incapacitated medical patient wishes NOT to have life sustaining measures used to artificially prolong life.

In that case, In Re Martin, the wife petitioned for removal of life support from her husband, but her husband's mother and sister petitioned the court against removal.

The lower court held that the oral instructions to his wife WERE EFFECTIVE to convey the patient's wishes that he did not wish extraordinary life support measures taken.

The Michigan Supreme Court reversed that decision. The Supreme Court refused to permit the withdrawal of life supporting treatment from an individual who had not reduced his wishes to writing prior to his illness.

The Supreme Court has stated that unless it can be shown that a person, while still competent, made statements evidencing, clearly and convincingly, a firm and settled commitment to the termination of life support under the circumstances **like the condition they are in**, life sustaining medical treatment cannot be withdrawn because they had not expressed their wishes in a written directive such as a Living Will, Patient Advocate Designation or a Durable Power of Attorney.

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Once it is determined that a patient has made a competent and conscious decision for health care before becoming incapacitated, a court cannot authorize a surrogate decision maker to waive the right to continue life-sustaining medical treatment unless it can be established by clear and convincing evidence that, while competent, he or she stated that they wanted to refuse life-sustaining medical treatment under the specific circumstances present.

The *Martin* case suggests that even if you made a decision and orally conveyed that decision to a relative or friend during an illness related to, for example, a heart bypass surgery, that the decision would not be honored by the doctors, hospitals and court system when you were later incapacitated by pneumonia.

Consent to refuse life-sustaining treatment is a valid right. It is a valid medical decision under a set of particular circumstances, made while you are competent. In order for those decisions to be valid, the decisions must be made, recorded and communicated to others, in writing, before you lose the capacity to make further choices. These recorded decisions survive incompetency and may be carried out by a surrogate decision maker.

Specific statements made by you, while competent, must meet the exacting standard of clear and convincing evidence. Optimally, the expression of these decisions are made through a Living Will, Patient Advocate Designation or Durable Power of Attorney setting forth the situations in which you prefer that medical intervention cease.

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