

# ESTATES AND PROTECTED INDIVIDUALS CODE (EXCERPT)

## Act 386 of 1998

### PART 5

#### DURABLE POWER OF ATTORNEY AND DESIGNATION OF PATIENT ADVOCATE

##### **700.5501 Durable power of attorney; definition.**

Sec. 5501. A durable power of attorney is a power of attorney by which a principal designates another as the principal's attorney in fact in writing and the writing contains the words "This power of attorney is not affected by the principal's subsequent disability or incapacity, or by the lapse of time", or "This power of attorney is effective upon the disability or incapacity of the principal", or similar words showing the principal's intent that the authority conferred is exercisable notwithstanding the principal's subsequent disability or incapacity and, unless the power states a termination time, notwithstanding the lapse of time since the execution of the instrument.

**History:** 1998, Act 386, Eff. Apr. 1, 2000.

##### **700.5502 Durable power of attorney not affected by lapse of time, disability, or incapacity; legal description of real estate not required.**

Sec. 5502. An act done by an attorney in fact under a durable power of attorney during a period of disability or incapacity of the principal has the same effect and inures to the benefit of and binds the principal and the principal's successors in interest as if the principal were competent and not disabled. Unless the instrument states a termination time, the power is exercisable notwithstanding the lapse of time since the execution of the instrument. A durable power of attorney that authorizes the agent to convey or otherwise exercise power over real estate does not need to contain the real estate's legal description.

**History:** 1998, Act 386, Eff. Apr. 1, 2000.

##### **700.5503 Relation of attorney in fact to court-appointed fiduciary.**

Sec. 5503. (1) If, following execution of a durable power of attorney, a court of the principal's domicile appoints a conservator, estate guardian, or other fiduciary charged with the management of all of the principal's property or all of his or her property except specified exclusions, the attorney in fact is accountable to the fiduciary as well as to the principal. The fiduciary has the same power to revoke or amend the power of attorney that the principal would have had if he or she were not disabled or incapacitated.

(2) By a durable power of attorney, a principal may nominate the conservator, guardian of his or her estate, or guardian of his or her person for consideration by the court if a protective proceeding for the principal's person or estate is commenced after execution of the power of attorney. The court shall make its appointment in accordance with the principal's most recent nomination in a durable power of attorney except for good cause or disqualification.

**History:** 1998, Act 386, Eff. Apr. 1, 2000.

##### **700.5504 Power of attorney not revoked until notice.**

Sec. 5504. (1) The death of a principal who has executed a written power of attorney, durable or otherwise, does not revoke or terminate the agency as to the attorney in fact or other person who, without actual knowledge of the principal's death, acts in good faith under the power. An action taken as provided in this subsection, unless otherwise invalid or unenforceable, binds the principal's successors in interest.

(2) The disability or incapacity of a principal who has previously executed a written power of attorney that is not a durable power does not revoke or terminate the agency as to the attorney in fact or other person who, without actual knowledge of the principal's disability or incapacity, acts in good faith under the power. An action taken as provided in this subsection, unless otherwise invalid or unenforceable, binds the principal and his or her successors in interest.

**History:** 1998, Act 386, Eff. Apr. 1, 2000.

##### **700.5505 Proof of continuance of durable and other powers of attorney by affidavit.**

Sec. 5505. (1) If an attorney in fact acts in good-faith reliance on a power of attorney, durable or otherwise, and executes a sworn statement stating that, at the time of the action, the attorney in fact did not have actual knowledge

of the principal's death, disability, or incapacity or of the power's termination by revocation, the sworn statement is, in the absence of fraud, conclusive proof of the power's nontermination or nonrevocation.

(2) If the exercise of the power of attorney requires execution and delivery of an instrument that is recordable, the sworn statement when authenticated for record is also recordable.

(3) This section does not affect a provision in a power of attorney for its termination by expiration of time or occurrence of an event other than express revocation or a change in the principal's capacity.

**History:** 1998, Act 386, Eff. Apr. 1, 2000.

#### **700.5506 Designation of patient advocate.**

Sec. 5506. (1) An individual 18 years of age or older who is of sound mind at the time the designation is made may designate in writing another individual who is 18 years of age or older to exercise powers concerning care, custody, and medical treatment decisions for the individual making the designation. For purposes of this section and sections 5507 to 5512, an individual who is named in a designation to exercise powers concerning care, custody, and medical treatment decisions is known as a patient advocate and an individual who makes a designation is known as a patient.

(2) A designation under this section must be in writing, signed, witnessed as provided in subsection (3), dated, executed voluntarily, and, before its implementation, made part of the patient's medical record with the patient's attending physician and, if applicable, with the facility where the patient is located. The designation must include a statement that the authority conferred under this section is exercisable only when the patient is unable to participate in medical treatment decisions.

(3) A designation under this section must be executed in the presence of and signed by 2 witnesses. A witness under this section shall not be the patient's spouse, parent, child, grandchild, sibling, presumptive heir, known devisee at the time of the witnessing, physician, or patient advocate or an employee of a life or health insurance provider for the patient, of a health facility that is treating the patient, or of a home for the aged as defined in section 20106 of the public health code, 1978 PA 368, MCL 333.20106, where the patient resides. A witness shall not sign the designation unless the patient appears to be of sound mind and under no duress, fraud, or undue influence.

**History:** 1998, Act 386, Eff. Apr. 1, 2000.

#### **700.5507 Contents; acceptance of patient advocate designation.**

Sec. 5507. (1) A patient advocate designation may include a statement of the patient's desires on care, custody, and medical treatment. The patient may authorize the patient advocate to exercise 1 or more powers concerning the patient's care, custody, and medical treatment that the patient could have exercised on his or her own behalf.

(2) A patient may designate in the designation a successor individual as a patient advocate who may exercise powers concerning care, custody, and medical treatment decisions for the patient if the first individual named as patient advocate does not accept, is incapacitated, resigns, or is removed.

(3) Before a patient advocate designation is implemented, a copy of the designation must be given to the proposed patient advocate and must be given to a successor patient advocate before the successor acts as patient advocate. Before acting as a patient advocate, the proposed patient advocate must sign an acceptance of the designation.

(4) The acceptance of a designation as a patient advocate must include substantially all of the following statements:

1. This designation is not effective unless the patient is unable to participate in medical treatment decisions.

2. A patient advocate shall not exercise powers concerning the patient's care, custody, and medical treatment that the patient, if the patient were able to participate in the decision, could not have exercised on his or her own behalf.

3. This designation cannot be used to make a medical treatment decision to withhold or withdraw treatment from a patient who is pregnant that would result in the pregnant patient's death.

4. A patient advocate may make a decision to withhold or withdraw treatment that would allow a patient to die only if the patient has expressed in a clear and convincing manner that the patient advocate is authorized to make such a decision, and that the patient acknowledges that such a decision could or would allow the patient's death.

5. A patient advocate shall not receive compensation for the performance of his or her authority, rights, and responsibilities, but a patient advocate may be reimbursed for actual and necessary expenses incurred in the performance of his or her authority, rights, and responsibilities.

6. A patient advocate shall act in accordance with the standards of care applicable to fiduciaries when acting for the patient and shall act consistent with the patient's best interests. The known desires of the patient expressed or evidenced while the patient is able to participate in medical treatment decisions are presumed to be in the patient's

best interests.

7. A patient may revoke his or her designation at any time and in any manner sufficient to communicate an intent to revoke.

8. A patient advocate may revoke his or her acceptance to the designation at any time and in any manner sufficient to communicate an intent to revoke.

9. A patient admitted to a health facility or agency has the rights enumerated in section 20201 of the public health code, 1978 PA 368, MCL 333.20201.

**History:** 1998, Act 386, Eff. Apr. 1, 2000.

#### **700.5508 Determination of advocate's authority to act.**

Sec. 5508. (1) The authority under a patient advocate designation is exercisable by a patient advocate only when the patient is unable to participate in medical treatment decisions. The patient's attending physician and another physician or licensed psychologist shall determine upon examination of the patient when the patient is unable to participate in medical treatment decisions, shall put the determination in writing, shall make the determination part of the patient's medical record, and shall review the determination not less than annually. If the patient's religious beliefs prohibit an examination and this is stated in the designation, the patient must indicate in the designation how it shall be determined when the patient advocate exercises powers concerning decisions on behalf of the patient.

(2) If a dispute arises as to whether the patient is unable to participate in medical treatment decisions, a petition may be filed with the court in the county in which the patient resides or is found requesting the court's determination as to whether the patient is unable to participate in medical treatment decisions. If a petition is filed under this subsection, the court shall appoint a guardian ad litem to represent the patient for the purposes of this subsection. The court shall conduct a hearing on a petition under this subsection as soon as possible and not later than 7 days after the court receives the petition. As soon as possible and not later than 7 days after the hearing, the court shall determine whether or not the patient is able to participate in medical treatment decisions. If the court determines that the patient is unable to participate in medical treatment decisions, the patient advocate's authority, rights, and responsibilities are effective. If the court determines that the patient is able to participate in medical treatment decisions, the patient advocate's authority, rights, and responsibilities are not effective.

**History:** 1998, Act 386, Eff. Apr. 1, 2000.

#### **700.5509 Authority and responsibilities of patient advocate.**

Sec. 5509. (1) An individual designated as a patient advocate has the following authority, rights, responsibilities, and limitations:

(a) A patient advocate shall act in accordance with the standards of care applicable to fiduciaries in exercising his or her powers.

(b) A patient advocate shall take reasonable steps to follow the desires, instructions, or guidelines given by the patient while the patient was able to participate in care, custody, or medical treatment decisions, whether given orally or as written in the designation.

(c) A patient advocate shall not exercise powers concerning the patient's care, custody, and medical treatment that the patient, if the patient were able to participate in the decision, could not have exercised on his or her own behalf.

(d) This designation cannot be used to make a medical treatment decision to withhold or withdraw treatment from a patient who is pregnant that would result in the pregnant patient's death.

(e) A patient advocate may make a decision to withhold or withdraw treatment that would allow a patient to die only if the patient has expressed in a clear and convincing manner that the patient advocate is authorized to make such a decision, and that the patient acknowledges that such a decision could or would allow the patient's death.

(f) A patient advocate may choose to have the patient placed under hospice care.

(g) A patient advocate under this section shall not delegate his or her powers to another individual without prior authorization by the patient.

(2) A patient advocate designation is suspended when the patient regains the ability to participate in medical treatment decisions. The suspension is effective as long as the patient is able to participate in medical treatment decisions. If the patient subsequently is determined under section 5508 to be unable to participate in medical treatment decisions, the patient advocate's authority, rights, responsibilities, and limitations are again effective.

**History:** History: 1998, Act 386, Eff. Apr. 1, 2000;—Am. 1999, Act 52, Eff. Apr. 1, 2000.

#### **700.5510 Revocation of patient advocate designation.**

Sec. 5510. (1) A patient advocate designation is revoked by any of the following:

- (a) The patient's death.
- (b) An order of removal by the probate court under section 5511(4).
- (c) The patient advocate's resignation or removal by the court, unless a successor patient advocate has been designated.
- (d) The patient's revocation of the designation. Even if the patient is unable to participate in medical treatment decisions, a patient may revoke a designation at any time and in any manner by which he or she is able to communicate an intent to revoke the designation. If there is a dispute as to the intent of the patient to revoke the designation, the court may make a determination on the patient's intent to revoke the designation. If the revocation is not in writing, an individual who witnesses a revocation of a designation shall describe in writing the circumstances of the revocation, must sign the writing, and shall notify, if possible, the patient advocate of the revocation. If the patient's physician or health facility has notice of the patient's revocation of a designation, the physician or health facility shall note the revocation in the patient's medical records and bedside chart and must notify the patient advocate.
- (e) A subsequent designation that revokes the prior designation either expressly or by inconsistency.
- (f) The occurrence of a provision for revocation contained in the designation.
- (g) If a designation is executed during a patient's marriage naming the patient's spouse as the patient advocate, the designation is suspended during the pendency of an action for separate maintenance, annulment, or divorce and is revoked upon the entry of a judgment of separate maintenance, annulment, or divorce, unless the patient has named a successor individual to serve as a patient advocate. If a successor patient advocate is named, that individual acts as the patient advocate.

(2) The revocation of a patient advocate designation under subsection (1) does not revoke or terminate the agency as to the patient advocate or other person who acts in good faith under the designation and without actual knowledge of the revocation. Unless the action is otherwise invalid or unenforceable, an action taken without knowledge of the revocation binds the patient and his or her heirs, devisees, and personal representatives. A sworn statement executed by the patient advocate stating that, at the time of doing an act in accordance with the designation, he or she did not have actual knowledge of the revocation of the designation is, in the absence of fraud, conclusive proof that the patient advocate did not have actual knowledge of the revocation at the time of the act.

**History:** 1998, Act 386, Eff. Apr. 1, 2000.

### **700.5511 Binding effect; liability of provider; dispute.**

Sec. 5511. (1) Irrespective of a previously expressed or evidenced desire, a current desire by a patient to have provided, and not withheld or withdrawn, a specific life-extending care, custody, or medical treatment is binding on the patient advocate, if known by the patient advocate, regardless of the then ability or inability of the patient to participate in care, custody, or medical treatment decisions or the patient's competency.

(2) A person providing, performing, withholding, or withdrawing care, custody, or medical treatment as a result of the decision of an individual who is reasonably believed to be a patient advocate and who is reasonably believed to be acting within the authority granted by the designation is liable in the same manner and to the same extent as if the patient had made the decision on his or her own behalf.

(3) A person providing care, custody, or medical treatment to a patient is bound by sound medical practice and by a patient advocate's instructions if the patient advocate complies with sections 5506 to 5512, but is not bound by the patient advocate's instructions if the patient advocate does not comply with these sections.

(4) If a dispute arises as to whether a patient advocate is acting consistent with the patient's best interests or is not complying with sections 5506 to 5512, a petition may be filed with the court in the county in which the patient resides or is found requesting the court's determination as to the continuation of the designation or the removal of the patient advocate.

**History:** 1998, Act 386, Eff. Apr. 1, 2000.

### **700.5512 Restrictions.**

Sec. 5512. (1) A patient advocate cannot make a medical treatment decision under the authority of or under the process created by this section and sections 5506 to 5511 to withhold or withdraw treatment from a pregnant patient that would result in the pregnant patient's death.

(2) A health care provider shall not require a patient advocate designation to be executed as a condition of providing, withholding, or withdrawing care, custody, or medical treatment.

(3) A life or health insurer shall not do any of the following because of the execution or implementation of a

patient advocate designation or because of the failure or refusal to execute or implement such a designation:

- (a) Refuse to provide or continue coverage to the patient.
- (b) Limit the amount of coverage available to a patient.
- (c) Charge a patient a different rate.
- (d) Consider the terms of an existing policy of life or health insurance to have been breached or modified.
- (e) Invoke a suicide or intentional death exemption or exclusion in a policy covering the patient.

(4) A patient advocate designation shall not be construed to condone, permit, authorize, or approve suicide or homicide.

(5) Except as provided in subsections (2) and (3), this section and sections 5506 to 5511 only apply to or affect an individual who has executed a patient advocate designation or an individual acting for or on behalf of another individual who has executed a patient advocate designation.

(6) Nothing in this section or sections 5506 to 5511 shall be considered to authorize or compel care, custody, or medical treatment decisions for a patient who objects on religious grounds.

(7) A designation executed before the effective date of this section with the intent of accomplishing a similar purpose as this section is valid but is subject to this section, section 5506(1), and sections 5507 to 5511; must be in writing, signed, witnessed or notarized, dated, and executed voluntarily; and, before its implementation, must be made part of the patient's medical record.

**History:** 1998, Act 386, Eff. Apr. 1, 2000.

#### **700.5513 Conflict with mental health code; controlling act.**

Sec. 5513. If a provision of this article conflicts with a provision of the mental health code, 1974 PA 258, MCL 330.1001 to 330.2106, that act controls.

**History:** 1998, Act 386, Eff. Apr. 1, 2000.

#### **700.5520 Guardian making medical decisions; designation of another individual prohibited.**

Sec. 5520. A legally incapacitated individual who has a guardian with responsibility for making medical treatment decisions cannot then designate another individual to make medical treatment decisions for the legally incapacitated individual.

**History:** Add. 2000, Act 312, Eff. Jan. 1, 2001.

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