



MEDICAL POWER OF ATTORNEY FOR SAME-SEX COUPLES

FREQUENTLY ASKED QUESTIONS

1. *What is a Medical Power of Attorney?*

Also known as a Durable Power of Attorney for Health Care, it is a legal document in which one person (“the patient”) designates another person (“the patient advocate”) to make medical decisions on the patient’s behalf in the event the patient is unable to make those decisions. It can also contain a number of additional provisions, such as authorizing a medical provider to give medical information about the patient to the patient advocate, and authorizing the patient advocate to sign documents on the patient’s behalf. A properly drafted Medical Power of Attorney is a very powerful tool that gives the patient advocate the legal authority to participate fully in the patient’s care and make decisions regarding all aspects of the patient’s medical treatment. Because a patient advocate’s authority is superior to anyone else’s authority over the patient, it avoids any potential conflict or confusion as to whom doctors and hospitals should consult regarding the patient’s care.

2. *Is a Medical Power of Attorney the same as a “Living Will”?*

No, but it can serve a similar purpose. A “living will” is a document in which you state what medical treatment you do (or don’t) want in the event you are catastrophically injured, including whether and under what circumstances to continue life support. The purpose of a living will is to avoid the heart-wrenching disputes that can occur between your health care providers and loved ones when they don’t all agree on the best course of action, often based on non-medical factors such as religious belief. However, in Michigan, a living will is not legally binding, so it is very important that you have a Medical Power of Attorney that gives your patient advocate the authority to make such decisions and includes your wishes and instructions about what treatment you do and don’t want in the event of catastrophic injury.

3. *My doctor knows about my partner and we’ve never had a problem. Why do I need a Medical Power of Attorney?*

You have no control over what doctor or hospital will be treating you in the event of an emergency. It may very likely be some provider you have never seen before. By law, a doctor or hospital may only discuss your health information with someone who is involved in your care, and the same doctor or hospital can decide who will be involved if you are not able to do so yourself. In addition, most hospitals will only allow a member of the “immediate family” to visit you in certain areas and at certain times. Because your life partner is not legally recognized as your spouse in Michigan (even

if you are married or had a civil union in another state or country), he or she is not considered part of your immediate family, and has no legal authority to be involved in your medical care. There have been cases where a partner has been prevented from even visiting the other partner in the hospital. But if your partner is your patient advocate under a Medical Power of Attorney, he or she is legally entitled to be there and will have the legal authority to participate in your medical care.

4. *My family will tell the doctor/hospital to talk to my partner; isn't that good enough?*

In the event of a medical emergency, you can't count on a family member to be immediately available. In addition, your partner shouldn't have to depend on getting someone else's permission in order to be at your side at such an important time. There also may be a situation when your partner and your family do not agree about your care or even who should stay with you. A Medical Power of Attorney tells your doctors and your family that your partner has the final say, based on your expressed wishes.

5. *Can a Medical Power of Attorney be included in a General Power of Attorney?*

Because Michigan law has a specific statute that sets out the requirements for a Medical Power of Attorney, and includes the "rules" your patient advocate must agree to, it needs to be in a separate document. We strongly recommend that you also have a General Power of Attorney to provide your agent with the legal authority to transact business on your behalf in the event you are incapacitated. That document gives your agent broad authority to act for you in a number of ways, and avoids the need for someone to go to court to be appointed as the conservator of your estate just so that your personal business can be handled while you are unable to do so.

6. *Do I need a lawyer to prepare a Medical Power of Attorney?*

Yes, if you want one that will be a thorough, complete and accurate expression of your intentions and the authority you want to give to your advocate. Although there are generic medical power of attorney forms available from various sources that you can fill out yourself, they do not cover all of the things that a document that is custom-drafted for you will contain. In the event of a medical emergency, the provisions that aren't on your generic form could be very important. A lawyer is skilled at "what ifs" and can make sure that nothing is left out. If properly drafted, a Medical Power of Attorney can give your partner all of the rights that a legally-recognized spouse would have in connection with your medical care, and will avoid all of the potential problems your partner could otherwise have in trying to carry out your wishes.