



Statement of my instructions in the event of my becoming mentally incapacitated



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There is a growing practice in the UK of passive euthanasia of those who are seriously ill or mentally incapacitated. The Instructions and explanatory notes in this booklet set out clearly what we need to do to protect ourselves and our loved ones for the time when, inevitably, we ourselves reach that vulnerable stage in our lives.

It has been drafted by some of SPUC's most dedicated and experienced medical and legal advisers. The Instructions/ advice relate to completing Form LP1H on Lasting Power of Attorney Health and Care Decisions.

When completing Form LP1H it is important to consult a lawyer but ensure that he complies fully with what's below. Any alterations may compromise your protection.

John Smeaton

SPUC CEO 1996 - 2021

Instructions

1. In the event of my becoming mentally incapacitated in accordance with sections 2 and 3 of the Mental Capacity Act 2005, I instruct that my donees of this lasting power of attorney shall make welfare decisions on my behalf, including decisions about medical and clinical treatment, in accordance with the instructions which I have expressed below.
2. Where the attorney is in any doubt as to the approach which best represents my instructions, views, wishes, feelings and beliefs, and thus the approach that should be adopted, the following persons must be consulted:

[NAMES]

3. Those responsible for administering my care, including nursing staff, family, friends and carers, and in the case of medical and clinical treatment and nursing care, clinical and nursing staff, must not at any time deprive me of, nor withdraw or withhold from me, basic care, as below defined, and/or ordinary treatment, as below defined.
4. I hereby make it particularly and expressly clear that the provision of hydration and nutrition, howsoever delivered and/or administered, must **not** be withdrawn or withheld from me unless to provide it will directly cause my death.
5. Any decision to withdraw or withhold the provision of hydration and nutrition must be made by my attorney in compliance with these instructions.
6. In the event of any deadlock between my attorney and the clinical team whereby the clinical team is not prepared to give effect to my wishes, as expressed herein and by my attorney complying with these instructions, I hereby indicate my wish that I be transferred elsewhere, whether within the UK or abroad, to wherever my instructions will be honoured and followed.
7. I must not, at any time, be allowed to die of dehydration or starvation, howsoever attempted, and whether openly or whether by subreption, concealment or clandestine means. I must not, at any time, be unnecessarily deprived of consciousness. I wish to be able to spend as much time as possible with those whom I know and love, particularly my family.
8. Although I accept the need for, and indeed I desire, appropriate and necessary pain relief, I specifically refuse intervention of any kind, whether for pain relief or otherwise, to the extent that it will, on the balance of probabilities, hasten my death but I nevertheless desire such pain relief up to the extent where it does not hasten my death.
Additionally, I specifically refuse, reject and decline any intervention which may be, or may be construed as, an act of mercy killing, euthanasia (whether passive or active) or assisted suicide.
9. [OPTIONAL PARAGRAPH] I do not wish to donate any of my organs. I have recorded my decision on the NHS organ donor register.
10. I am of the [NAME] faith and I do/do not wish a priest /pastor/rabbi/imam to visit me if and when I am unwell or dying [and (if you do) the same must be chosen from the attached list. I specifically insist that my religious wishes and beliefs be respected, that the services of such a representative of my faith not be withheld, withdrawn or impeded by anyone].
11. I have discussed this document with my lasting power of attorney for health and welfare.

Definitions

12. **Basic care** means the provision of nutrition and hydration, howsoever delivered and administered, whether naturally or artificially, whether by tube, subcutaneously or otherwise, warmth, shelter, hygiene and relief from pain, which are necessary to sustain life and well-being.
13. **Ordinary treatment** means ordinary medical, clinical and nursing care and means treatment which treats my condition with a view to restoring my health, where possible, and which alleviates my symptoms with the aim of restoring mental and physical well-being. Ordinary treatment includes, but is not limited to, that which can be provided in a domiciliary setting without the direct supervision of nursing or medical staff (for example the administration of insulin to a diabetic, or antibiotics for infection).

Recording

14. Discussions regarding medical or clinical decisions must be recorded by audio-visual means so that those attorneys or consultees, not present at the time, can participate in the decision-making **before** the decisions are made.

My attorneys

15. My donees of this lasting power of attorney for health and welfare are as set out in Section 2 of this Welfare Lasting Power of Attorney Form (LP1H).
16. These attorneys are joint and several but they are all to be consulted before any decision is taken, unless an attorney has died, become mentally incapacitated or cannot, after extensive search, be found. In the event of a genuine emergency, when time does not permit consulting all the attorneys, then the view of the first attorney remaining on the list shall prevail and, if there is insufficient time to consult him, then the view of the next attorney in the list shall prevail. In the unlikely event that there is insufficient time to consult any of the attorneys then a decision shall be made that follows the wording of this statement but the attorneys shall be contacted and consulted thereafter as soon as possible.
17. In the event of a deadlock between the attorneys, the view of the majority shall prevail but if a deadlock still remains (i.e. because of an even number of attorneys) then the view of the first on the list shall prevail.

Notes when filling in Form LP1H “Welfare Lasting Power of Attorney”

1. The paragraphs above (1) to (17) to be inserted into the box marked “instructions” in section 7 “Preferences and Instructions” of the Welfare Lasting Power of Attorney Form (LP1H). Ignore the box marked “preferences”.
2. Tick the box marked “jointly and severally” in section 3 “How should your attorneys make decisions?” of the form LP1H.
3. Ensure that you name, in section 4 “Replacement attorneys” of the form LP1H, some replacement attorneys who will replace your primary attorneys in the event that any of them dies or becomes incapacitated.
4. Choose option A in section 5 “Life-sustaining treatment” of the Form LP1H.
5. You may wish to add names at section 6 “People to notify when the LAP is registered” who can object that your statement has been obtained by undue pressure or fraud but this is optional.
6. At sections 9 to 11 and 15, signatures of the essential persons are required and some must be witnessed. Your solicitor will assist you with this.
7. Section 12 is your application to register your Welfare Lasting Power of Attorney Form (LP1H) and at section 13 you may name others whom you would like to be notified once your Welfare Lasting Power of Attorney Form (LP1H) has been registered although it is unnecessary and we recommend that you leave this blank.
8. You are recommended to consult a solicitor to help you complete the Form LP1H but ensure that he complies fully with the below. Any alterations may compromise your protection.

Further Explanatory Notes When Filling In Form LP1H

Note to paragraph 2

You might include here a priest, a doctor, or some other persons with relevant professional experience or expertise but be sure they are trustworthy and loyal to your instructions, wishes and beliefs.

If you wish anyone to MAKE a decision on your behalf, then you MUST name them as your attorney. Anyone else will have no authority to decide.

Note to Paragraph 5

We have deliberately kept this simple. In the light of the words of Lady Black, sitting in the UK Supreme Court, in *An NHS Trust and ors v Y and anor* [2018] UKSC 46, at paragraph 116, stating:

“However, it was decided as far back as the Bland case that CANH is in fact to be seen as medical treatment.”

It is possible that the clinical team might claim the right to withdraw or withhold clinically-assisted nutrition and hydration (CANH) on the basis that it is medical treatment and thus a matter purely for the treating clinicians to decide and not the lasting attorney.

The lasting attorney must be robust enough to tell the treating clinician that nutrition and hydration must nevertheless be provided, even by other means if necessary, and that the patient must not be dehydrated or starved to death. Faced with this insistence by the lasting attorney, the treating clinicians are unlikely then to withdraw or withhold CANH.

Your lasting attorney will need to be briefed about that.

Note to paragraph 15

When appointing donees of your lasting power of attorney take care that you appoint as attorneys only those you can completely trust to carry out your wishes and protect you from harm and, if possible, to appoint at least three.

Note to paragraph 16

The attorneys are to be joint and several because if they were joint only then, upon the death or incapacity of any one attorney, this statement and the LP1H would become invalid. However, we have added an obligation to consult all the attorneys to resolve the issue.

Note regarding witnesses

We suggest that you ask at least one of your appointed attorneys to witness this document for you. If that is not possible others can be asked to witness it, but you should also discuss your wishes with the donees of your Power of Attorney.

IMPORTANT NOTE

WHEN APPOINTING DONEES OF YOUR LASTING POWER OF ATTORNEY TAKE CARE THAT YOU APPOINT AS ATTORNEYS ONLY THOSE YOU CAN COMPLETELY TRUST TO CARRY OUT YOUR WISHES AND PROTECT YOU FROM HARM AND, IF POSSIBLE, TO APPOINT AT LEAST THREE.

IT IS POSSIBLE THAT YOUR WIFE OR HUSBAND WON'T NECESSARILY BE THE BEST PERSON TO APPOINT.

ADDITIONALLY, YOU NEED TO GIVE THE ATTORNEY THE RIGHT TO DECIDE ABOUT LIFE-SUSTAINING TREATMENT (CHOOSE OPTION A IN SECTION 5 OF THE FORM LP1H). IF YOU DO NOT THEN YOU WILL COMPROMISE HIS ABILITY TO GAIN SAY THE DOCTORS OVER LIFE-SUSTAINING TREATMENT.

Finally

Once you've made your lasting power of attorney (LPA), you need to register it with the Office of the Public Guardian (OPG). It takes up to 12 weeks to register an LPA if there are no mistakes in the application.

The Power of Attorney does not have force unless you lack the capacity to make decisions for yourself. You must decide whom you trust to be your attorney. It is advisable to set up Powers of Attorney before you become unwell. If you leave it too late, you may miss your chance to make the LPA.

Lasting Powers of Attorney for property and financial affairs are also very useful for many, but they DO NOT confer any authority upon the donee to make decisions about health care matters.



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