

Legal Documents for People with HIV

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Duke Legal Project is a clinical legal education program of Duke Law School. Legal Representation is provided by Duke Law Students under the close supervision of licensed attorneys.



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THE LIVING WILL

A Living Will expresses your desire to be allowed to die when your condition is medically hopeless and you can only be kept alive by artificial nutrition and hydration (“tube feeding”) or by extraordinary means (any medical care that artificially prolongs death—a breathing machine is one example). Your doctor will turn to your Living Will for guidance only if you are mentally unable to make your own health care decisions.

A Living Will does not allow a doctor to “pull the plug” on you if there is any realistic chance that you might recover to the point where you no longer need tube feeding or life support.

You have several choices about how your Living Will should work: (1) You can require your doctor to follow your Living Will; (2) You can allow but not require your doctor

to follow your Living Will; or (3) You can appoint someone besides your doctor to make the decision about withholding life support if you are mentally incompetent.

If you have a Living Will, it will be kept with your medical records, but you should also tell your doctor(s) that you have one and discuss the document with him or her.

How can I get these legal documents?

People with HIV who can't afford an attorney can contact the **Duke Legal Project** at (919) 613-7169 or toll free at 888-600-7274.

Cases are handled by advanced law students under the supervision of licensed attorneys. All services are free.

WILLS

You can have a will prepared if you are over 18 and are of sound mind, as the law defines it.

A will can do at least four important things for you:

1) Give property. In your will, you can say who you want to get your property, whether that property is a house, a car, money in the bank, a favorite picture, or an old sweatshirt. Of course, you can name more than one person. You can give your favorite picture to your mom and your sweatshirt to your friend Eddie. If you die without a will, state law will determine how your property will pass, without regard to your wishes.

2) Choose who will carry out your will. In your will, you can pick the person who will oversee the distribution of your property. This person (called the “executor”) will make sure that your wishes are carried out.

3) Remains. In your will, you can say what you would like done with your remains. For example, if you want to be cremated rather

than buried, you can say so in your will.

4) Plan for children. If you have children, a will can set up a trust to help provide for them. You can also say in your will who you would like to have custody of your children when you die, though in some cases your wishes will not be granted. If you have children, be sure to ask what can be done for them in your will.

If you have a will prepared, and later decide that you do not like it, it can be revoked or amended.



THE POWER OF ATTORNEY

When you give someone your “power of attorney,” you give him or her the power to handle your affairs. For example, they can get money from your bank account, they can pay your rent, they can make a dentist’s appointment for you, and they can pay your taxes. The way this works in practice is that you sign a piece of paper—which is itself called a “power of attorney”—in front of a notary. The paper says that the person you’ve chosen has your power of attorney. If that person needs to withdraw money from your bank account, they show the teller the paper.

Obviously, the person to whom you give this power should be a person that you trust completely. You can give your power of attorney to more than one person.

Just because you give someone your power of attorney doesn’t mean you can’t get money from your bank account, pay your rent, and so on. You don’t lose any power over your own affairs by giving someone your power of attorney—you just share it with

that other person.

If you become “incapacitated” (incapable of handling your own affairs), the person you gave your power of attorney to can still handle your affairs for you, as long as you gave them a “durable” power of attorney, and they filed it properly.

Some people want to handle their own affairs while they can, but want to give someone else their power of attorney for use only after they become incapacitated. While this is a good idea in some cases, it is often more trouble than it is worth. For example, if you gave someone a power of attorney like this, and you became incapacitated, they might have trouble convincing the bank that you really were incapacitated—and so they might not be able to pay your bills.

If you give someone your power of attorney, and later decide that you don’t want them to have it, you can always revoke it (take it back). You can also limit the powers that the person can have.

THE HEALTH CARE POWER OF ATTORNEY

When you sign a Health Care Power of Attorney, you give someone else the power to make decisions about your medical care when you are not mentally able to do so (when you are “incompetent”). The person you appoint to make decisions on your behalf is called your “Health Care Agent.” You can also appoint an alternate Health Care Agent to make decisions if the Health Care Agent is unavailable, or is unwilling to make decisions.

It is important to remember that you can (and in fact, must) make your own health care choices while you are able. Your Health Care Agent can only act on your behalf when you have become “incompetent.” Whether you are competent or incompetent is a decision made by the doctor (or doctors) of your choice, or if that doctor is not available, by your attending physician. You name this doctor (or these doctors) in the Health Care Power of Attorney document itself. If you are incompetent for a while, but recover and become competent again, you can (and in fact, must)



make your own health care decisions again.

You can let your Health Care Agent make whatever decisions they see fit, or you can require them to do certain things in certain situations. At a minimum, you should discuss your health and your feelings about different types of treatment with your Health Care Agent.

The standard Health Care Power of Attorney form grants your Health Care Agent the power to authorize the withholding or withdrawal of life-supporting measures. You can leave the choice of whether and when to withhold life support to your Health Care Agent. Or, you can require your Health Care Agent to withhold life support in certain situations, or you can forbid your Health Care Agent from withholding life support. It is up to you.

If you name someone as your Health Care Agent but later change your mind, you can revoke (take back) the power you gave them.