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Halachic Health Care Proxy/"Living Will"

A Communal Service Provided by the Orthodox Union Department of Community Services
Safe Homes, Safe Shuls, Safe Schools Initiative

As an Outgrowth of Health-Related Communal Programs on "When Illness Strikes..." this document has been prepared by the Department of Community Services of the Orthodox Union to educate and raise awareness to encourage developing a Halachic Health Care Proxy/"Living Will".

Who will make your health care decisions should you become unable to do so? It is estimated that four out of five Americans do not have a written Health Care Proxy/"Living Will" to help their families make medical decisions for them should they become incapacitated.

A Health Care Proxy allows you to appoint someone you trust (your "agent" or "proxy") to make health care decisions on your behalf when it is medically determined that you are incapable of making those decisions for yourself. It is important to note that a *Halachic* Health Care Proxy/"Living Will" is not limited in use to cases of terminal illness and it ceases to be in effect when it is medically determined that an individual is capable of making decisions once again.

Hospitals, nursing homes, doctors, and other health care providers must follow your Health Care Agent's decisions as if they were your own. The appointed Health Care Agent may be a family member, relative, friend, etc., over eighteen years of age who has your trust in carrying out your wishes in accordance with *Halacha*, Orthodox Jewish law.

In addition to naming a Health Care Agent, you may also list on the form specific instructions about the kind of health care you do or do not want. You may give your Health Care Agent as little or as much authority as you choose. Depending on which state you live in, you may need one or two documents to both name a Health Care Agent and to provide your Health Care Agent and health care providers with your desired medical treatment guidelines. Having a *Halachic* Health Care Proxy/"Living Will" prevents stress and provides a clear direction for everyone involved in a patient's case. The *Halachic* Health Care Proxy/"Living Will" protects you and your family by ensuring that your wishes in the "Living Will" section (or separate form) are carried out.

What is a "Living Will"?

A "Living Will" is a legal document which states, in advance, your desires about medical treatment should you subsequently become incapable of expressing those desires yourself. It can provide specific instructions about what treatment you would or would not want under a

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given circumstance. Of course, you cannot predict the nature of all future illnesses, therefore, the "Living Will" also should provide your health care providers with general guidelines, such as your desire that any treatment you receive be in conformity with Halacha, Orthodox Jewish Law. State law dictates whether it can be part of your Health Care Proxy or must be a separate document. In some states, a "Living Will" is in a legislatively-approved format that can be completed as you wish. Its enforceability comes from both state and Federal statutes and case law.

The court cases that have addressed "Living Wills," or, more often, the lack of them, have a common theme: how shall a health care provider proceed with the medical treatment of an incapacitated patient if there is no evidence of his or her wishes? A "Living Will" provides that evidence.

Is a Health Care Proxy the Same as a "Living Will"?

No. A Health Care Proxy is the document in which you name your Health Care Agent to make medical decisions for you, if you become incapable of making them yourself. A "Living Will" is the document that provides your specific instructions about health care decisions (but you may put such instructions in your Health Care Proxy as well).

What Types of *Halachic* Health Care Proxies/ "Living Wills" Are Available?

Within the Orthodox community, there are two forms of *Halachic* Health Care Proxies/"Living Wills" for your consideration.¹ One has been formulated by the Rabbinical Council of America and is conveniently available online for download and printout, at www.rabbis.org. The other form has been prepared by Agudath Israel of America located at 42 Broadway, New York, NY 10007, telephone number 212-797-9000. The Agudath Israel of America form is a combined Health Care Proxy and "Living Will," that permits you to both appoint your Health Care Agent and directly addresses your preferences with respect to common terminal health care issues. Agudath Israel has different versions for each state.

Whichever form you select, please be sure to consult with an Orthodox rabbi to make certain that any instructions that you add to the generic form are not in conflict with *Halacha*, Orthodox Jewish Law. **We also recommend that you consult with an attorney to make certain that the form is properly executed and valid under your state's law.**

Why Should I Choose a Health Care Agent?

If you become unable, even temporarily, to make health care decisions, someone else must decide for you. Health care providers often look to family members for guidance. Family members may express what they think your wishes are related to a particular treatment.

¹ If you conduct an internet search, you may find other, similar forms, some of which can only be obtained with a fee. We do not recommend their use.

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However, only a Health Care Agent that you appoint has the legal authority to make treatment decisions if you are unable to decide for yourself.

Signing a Health Care Proxy in which you appoint a Health Care Agent lets you control your medical treatment by:

- allowing your Health Care Agent to make health care decisions on your behalf as you would want them decided;
- empowering you to choose the person that you think would make the best health care decisions for you;
- enabling you to avoid conflict or confusion among family members and/or significant others by choosing the one person who has the ultimate control over your medical treatment.

You also may appoint an alternate Health Care Agent to take over if your first choice is unavailable or cannot make decisions for you. It is recommended that, if a second (or even third) person whom you trust is able to act as an alternate Health Care Agent, that you do appoint him or her, now, to provide you with maximum protection.

Why Do I Need to Appoint a Health Care Agent if I'm Young and Healthy?

Appointing a Health Care Agent is a good idea even though you are not elderly or terminally ill. A Health Care Agent can act on your behalf if you become even temporarily unable to make your own health care decisions (such as might occur if you are under general anesthesia or have become comatose because of an accident). When you again become able to make your own health care decisions, your Health Care Agent will no longer be authorized to act.

How Do I Appoint a Health Care Agent?

All competent adults, eighteen years of age or older, can appoint a Health Care Agent by signing a *Halachic* Health Care Proxy or *Halachic* Health Care Proxy/"Living Will". In most cases, a *Halachic* Health Care Proxy/"Living Will" form requires only your signature and that of two witnesses (neither of whom is appointed as your Health Care Agent). Your and/or your witnesses signatures also may need to be notarized. The *Halachic* Health Care Proxy/"Living Will" can be signed without fee (other than a nominal notary public fee, if applicable) and does not necessarily require an attorney to be involved in its preparation.²

Before appointing someone as your Health Care Agent, discuss it with him or her to make sure that he or she is willing to act as your Health Care Agent and understands what is involved. Discuss your health care wishes and the *Halachic* Health Care Proxy/"Living Will" and online registry through NYLAG with your Health Care Agent. You should give your Health Care Agent a copy of your signed *Halachic* Health Care Proxy/"Living Will." You also should give copies to

² Although an attorney's assistance is not required to complete a *Halachic* Health Care Proxy/"Living Will," we nonetheless strongly encourage you to have an attorney review your *Halachic* Health Care Proxy/"Living Will" to ensure that it will be effective in your state.

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your primary doctor, your attorney and any other family members or close friends who you think should be aware of its provisions. Just be sure that if you sign a new *Halachic* Health Care Proxy/"Living Will," that you replace the copies that you previously gave those individuals.

Who Can Be a Health Care Agent?

In general, anyone eighteen years of age or older can be a Health Care Agent: your spouse, children, grandchildren, siblings, close friends, etc. The person you are appointing as your Health Care Agent or your alternate Health Care agent cannot sign as a witness on your Health Care Proxy. If you select a doctor as your agent, he or she likely will have to choose between acting as your agent or as your attending physician because a doctor cannot do both at the same time. If you have any doubts, your attorney can advise you about who may not act as your Health Care Agent in your state and under your particular circumstances.

How will my Health Care Agent Make Decisions?

Your Health Care Agent must follow your wishes, as well as your moral and religious beliefs. The *Halachic* Health Care Proxy/"Living Will" forms of the RCA and Agudath Israel indicate that all decisions are in conformity with *Halacha*, Orthodox Jewish Law. If any questions arise with respect to *Halacha*, an Orthodox rabbi knowledgeable in Orthodox Jewish Law should be designated for consultation in your document.

How Will my Health Care Agent Know my Wishes?

A copy of the *Halachic* Health Care Proxy/"Living Will" should be given to your Health Care Agent. You may also want to give a copy to your doctor, attorney, and any other family member or close friend. Having an open and frank discussion about your wishes with your Health Care Agent will put him or her in a better position to serve your interests. If your agent does not know your wishes or beliefs, your agent is legally required to act in your best interest. Because this is a major responsibility for the person you appoint as your Health Care Agent, you should have a discussion with the person about what types of treatments you would or would not want under different types of circumstances, such as:

- whether you would want life support initiated/continued/removed if you are in a permanent coma;
- whether you would want treatments initiated/continued/removed if you have a terminal illness;
- whether you would want artificial nutrition and hydration initiated/withheld or continued or withdrawn and under what types of circumstances.

All Decisions Must Conform to Orthodox Jewish Law.

An Orthodox rabbi who is a *halachic* authority should be consulted when completing the form and may be designated, if agreeable, as the Health Care Agent or alternate Health Care Agent.

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Can my Health Care Agent Overrule my Wishes or Prior Treatment Instructions?

No. Your Health Care Agent is obligated to make decisions based on your wishes as stated in the *Halachic* Health Care Proxy/ "Living Will" form. If you clearly expressed particular wishes, or gave particular treatment instructions, your agent has a duty to follow those wishes or instructions.

Who Will Pay Attention to my Agent?

All hospitals, nursing homes, doctors and other health care providers are legally required to provide your Health Care Agent with the same information that would be provided to you and to honor the decisions by your Health Care Agent as if they were made by you. If a hospital or nursing home objects to some treatment options (such as removing certain treatment) it must tell you or your agent BEFORE or upon admission, if reasonably possible. Moreover, if the hospital is opposed to your treatment, you can be moved to another facility that is not.

What if my Health Care Agent is Not Available When Decisions Must be Made?

As noted above, you may appoint an alternate Health Care Agent to decide for you if your primary Health Care Agent is unavailable, unable or unwilling to act when decisions must be made. Otherwise, health care providers will make health care decisions for you that follow instructions you gave while you were still able to do so. Any instructions that you write on your *Halachic* Health Care Proxy/"Living Will" will guide health care providers under these circumstances.

What if I Change my Mind?

It is easy to revoke your *Halachic* Health Care Proxy/"Living Will," to change the person you have chosen as your Health Care Agent or to change any instructions or limitations you have included in your *Halachic* Health Care Proxy/"Living Will." Simply fill out a new *Halachic* Health Care Proxy/"Living Will" and register it. In addition, you may indicate that your *Halachic* Health Care Proxy/"Living Will" expires on a specified date or if certain events occur. Otherwise, the *Halachic* Health Care Proxy/"Living Will" will be valid indefinitely.

If you choose your spouse as your Health Care Agent or as an alternate and you get divorced, the appointment *should* be revoked automatically unless you have stated otherwise in your current *Halachic* Health Care Proxy/ "Living Will" or, after your divorce, have completed a new *Halachic* Health Care Proxy/ "Living Will" naming your former spouse. However, if you are facing a divorce, you must discuss this issue with your attorney.

Can my Health Care Agent be Legally Liable for Decisions Made on my Behalf?

No. The applicable state laws invariably say that your Health Care Agent will not be liable for health care decisions made in good faith on your behalf. Also, he or she cannot be held liable for

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costs of your care just because he or she is your agent. Nonetheless, we encourage you to confirm with your attorney that the law in your state provides that protection against liability to your Health Care Agent.

On-line Registration

The Orthodox Union, through agreement with the New York Legal Assistance Group ("NYLAG"), has arranged for you to register your *Halachic* Health Care Proxy/ "Living Will" with the U.S. Living Will Registry[®] FREE of charge. Once you are registered, any of your health care providers can gain access to your *Halachic* Health Care Proxy/"Living Will" should the need arise. You simply complete a Registration Agreement and send it, together with a copy of your *Halachic* Health Care Proxy/"Living Will" to NYLAG.³

It is important that you register through New York Legal Assistance Group and not directly through the U.S. Living Will Registry[®]. To begin the registration process, go to:

www.oucommunity.org and print out the U.S. Living Will Registry[®] registration agreement, download it, and complete it. If you have problems downloading the form, please visit www.nytlc.org and look for the U.S. Living Will Registry[®] registration agreement, download it and complete it.

The registration form together with the *Halachic* Health Care Proxy/"Living Will" form may be returned by e-mail, mail, or fax.

E-mail of scanned documents to: tlc@nylag.org
Mail: New York Legal Assistance Group
Total Life Choices Program
450 West 33rd Street
11th Floor
New York, NY 10001
Fax: (212) 750-0820.

Sincerely,
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³ Even if you register your *Halachic* Health Care Proxy/"Living Will" on line, for peace of mind, you may still want to give a copy to your Health Care Agent, your doctor, and your attorney. You also should keep a copy with other important papers, but not in a location where no one can access it, like a safe deposit box.

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