"Job Description"
for Medical Power of Attorney Representative and
Healthcare Surrogate in West Virginia

Medical Power of Attorney (MPOA) Representative: Your loved one has become too sick to make medical decisions. In their medical power of attorney form, you have been named to make medical decisions for them in this situation. This sheet describes your possible responsibilities in making decisions and answers some frequently asked questions about them. If you do not want to make decisions, please let the physician know since your loved one needs someone to help tell the doctors what to do. Please understand that your role is to make decisions the way your loved one would make them.

Healthcare Surrogate: Since your loved one did not complete a medical power of attorney form, you have been selected as a healthcare surrogate by their physician to make decisions for them. This sheet describes your possible responsibilities in making decisions and answers some frequently asked questions about them. If you do not want to make decisions, please let the physician know since your loved one needs someone to help tell the doctors what to do**.** Please understand that your role is to make decisions the way your loved one would make them**.**

What is a MPOA Representative?

A MPOA is a legal document that appoints a person chosen by an individual to make healthcare decisions, including those at the end-of-life, when that individual is unable because of illness to make those decisions for their care. If you are your loved one's MPOA representative, you are their legal voice about the extent of care. You need to think, not of your wishes, but what your loved one would want**.**

What is a Healthcare Surrogate?

A healthcare surrogate is a person chosen by a physician or an advanced practice nurse to make healthcare decisions for an individual, including those at the end-of-life, when that individual is unable to make those decisions. By law, physicians or advanced practice nurses must choose surrogates when patients have not completed a medical power of attorney form. West Virginia's Health Care Decisions Act describes a priority order for choosing surrogates. Generally, the person who is "best qualified" should be selected as a surrogate. The following criteria should be considered when determining who is best qualified to serve as a patient's surrogate: a) whether a person will be better able to make decisions according to the patient's wishes or in the patient's best interests; b) a person's regular contact with the patient prior to and during the illness; c) a person's demonstrated care and concern for the patient; d) being able to visit the patient during his or her illness; and e) being able to engage in face-to-face contact with physicians and nurses to make decisions about the patient's care.

When do MPOA Representatives and Healthcare Surrogates make decisions?

In West Virginia, they make decisions after one physician, a licensed psychologist, or an advanced practice nurse determines that the patient is unable because of illness to make his or her own healthcare decisions..

What authorities do MPOA Representatives and Healthcare Surrogates have in West Virginia?

- They have the authority to access the patient's medical records to make healthcare decisions
- They have the authority to release medical records to third parties
- They have the authority to make healthcare decisions on behalf of the incapacitated person except as clearly limited in the medical power of attorney form and as noted in the last section below
- They have the authority to make decisions regarding autopsy and organ and tissue donation

What responsibilities do MPOA Representatives and Healthcare Surrogates have in West Virginia?

- To make decisions that are in accordance with the patient's wishes, including religious and moral beliefs, if those wishes are known.
- If the patient's wishes are not known, to make decisions based on the patient's best interests (see below)

How are a patient's best interests determined?

The treatment team will consider your loved one's medical condition and recommend the treatments that are most likely to benefit and least likely to harm. The first rule of medicine is "Do no harm." The treatment team will take into account the possible goals of care and the balance of the burdens to the benefits that various treatment options involve. Determining best interests for another person is very hard, and you don't always know what the right thing to do is. Perhaps it may be helpful to consider what is the least wrong. You should always try to look at things through your loved one's eyes. Don't just do what you would do if you had this sickness. Don't let your sorrow about what is happening cause you to tell the doctors to do something that you know **your loved one** would not want**.** Think about their medical condition and what **they** would say about it and the treatment they would want for it. Hopefully you have talked with your loved one about their wishes before this situation has occurred so you already know what your loved one would want.

You should talk and talk often with the treatment team and get their recommendation. Ask what are the things that could happen if you agree/disagree to a recommended medication or treatment or procedure. As a MPOA representative or surrogate you have the legal right to say "yes" or "no" to the treatments that are recommended. You can say, "We tried that and we want to stop this," to any treatment, provided you understand what treatment is being offered, its risks and benefits.

Ask, "What are the other options?" Ask, "What are the alternatives and what if we do nothing?" Ask if your loved one will get better. Ask what "better" means. It might mean back to the life your loved one had before getting sick or out of intensive care but in a permanently weakened condition. Ask how much pain your loved one is in and what

could be done to make it hurt less. Ask any other questions you think your loved one would want to know before making a decision. Think about what you have learned and make the decision based on what your loved one would want to happen.

What are the limitations to the MPOA Representative and Healthcare Surrogate authority in West Virginia?

- Authority may be limited by specific directives written by a patient in a medical power of attorney form or living will
- Authority ceases when the patient is again able to make decisions for him/herself
- Authority is limited to making decisions based on what your loved one would have wanted. MPOA representatives and surrogates are not to make decisions based only on what they want for the patient.
- If the MPOA representative or healthcare surrogate requests treatment that is different than what your loved one said he or she wanted, the doctors, nurses, and others treating the patient are required by law to do what the patient wanted.

Please remember to maintain the patient's right to privacy by following HIPAA guidelines.

For more information, please contact the WV Center for End-of-Life Care at 304-293-0695 or online at wvendoflife.org.