

# Summary of Virginia Health Care Decisions Act

**NOTICE: THIS SUMMARY IS FOR REFERENCE/EDUCATIONAL PURPOSES ONLY AND SHOULD NOT BE CONSIDERED LEGAL ADVICE. TO VIEW THE OFFICIAL VIRGINIA CODE, SEE: <http://leg1.state.va.us/lis.htm>.**

54.1-2982 – Important Definitions (Note: selected definitions below are direct quotes from the Virginia Code).

- “Incapable of making an informed decision” means the inability of an adult patient, because of mental illness, mental retardation, or any other mental or physical disorder which precludes communication or impairs judgment and which has been diagnosed and certified in writing by his attending physician and a second physician or licensed clinical psychologist after personal examination of such patient, to make an informed decision about providing, withholding or withdrawing a specific medical treatment or course of treatment because he is unable to understand the nature, extent or probable consequences of the proposed medical decision, or to make a rational evaluation of the risks and benefits of alternatives to that decision. For purposes of [the act], persons who are deaf, dysphasic or have other communication disorders, who are speech, shall not be considered incapable of making an informed decision.
- “Life-prolonging procedure” means any medical procedure, treatment or intervention which (i) utilizes mechanical or other artificial means to sustain, restore or supplant a spontaneous vital function, or is otherwise of such a nature as to afford a patient no reasonable expectation of recovery from a terminal condition and (ii) when applied to a patient in a terminal condition, would serve only to prolong the dying process. The term includes artificially administered hydration and nutrition. However, nothing in this act shall prohibit the administration of medication or the performance of any medical procedure deemed necessary to provide comfort care or to alleviate pain, including the administration of pain relieving medications in excess of recommended dosages in accordance with §§ 54.1-2971.01 and 54.1-3408.1. For purposes of §§ 54.1-2988, 54.1-2989, and 54.1-2991, the term also shall include cardiopulmonary resuscitation.
- “Persistent vegetative state” means a condition caused by injury, disease or illness in which a patient has suffered a loss of consciousness, with no behavioral evidence of self-awareness or awareness of surroundings in a learned manner, other than reflex activity of muscles and nerves for low level conditioned response, and from which, to a reasonable degree of medical probability, there can be no recovery.
- “Terminal condition” means a condition caused by injury, disease or illness from

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which, to a reasonable degree of medical probability a patient cannot recover and (i) the patient's death is imminent or (ii) the patient is in a persistent vegetative state. 254.1-2983 - Procedure for Creating An Advance Directive.

- Written:
  - Any adult may:
    - a. Authorize providing, withholding, or withdrawal of life-prolonging procedures in the event the person has a terminal condition; and/or
    - b. Appoint an agent for health care decisions when the person is incapable of making an informed decision about health care

**Essential:** must be signed the patient and two adult witnesses. Date not required, but strongly recommended.

- Oral:
  - a. Any competent adult;
  - b. Diagnosed by attending physician as in terminal condition;
  - c. In presence of attending physician and two witnesses;
  - d. May: direct provision of treatment, withholding of treatment and/or appoint agent.
- Note: "incapable of making an informed decision" must be certified in writing by the patient's physician and a second physician or clinical psychologist after personal examination of the patient. Only the patient's attending physician is necessary to determine that a patient has a terminal condition.

54.1-2984 - Suggested Form.

- Advance directive may:
  - a. Direct provision of treatment;
  - b. Direct withholding treatment;
  - c. Appoint agent;
  - d. Make anatomical gift.
- Use of suggested form not required.
- Note: notary not required. Lawyer not required to draft.

54.1-2985 - Revocation.

- At any time by the declarant by:
  - a. Signed dated writing; or
  - b. Physical cancellation or destruction in patient's presence and at his/her direction; or
  - c. Oral revocation, but effective only when communicated to attending physician.
- Note: No liability for failure to act on revocation unless/until revocation communicated/known.

54.1-2986 - Procedure in Absence of an Advance Directive.

- No presumption regarding care when no advance directive or advance directive silent on a particular treatment

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- Attending physician and second physician or licensed clinical psychologist must determine after a personal examination that the patient is incapable of making informed decision about health care
- Decision maker order:
  1. Guardian
  2. Spouse (See note below)
  3. Adult child\*
  4. Parent\*
  5. Sibling\*
  6. Any other blood relative in descending order\*

\*If two or more, majority rule

- Decision-maker required to try to ascertain patient's wishes and/or religious preferences
- Decision-maker may not make any decision that is known or reasonably should be known to be protested by patient or contrary to the patient's basic values/religion
- Physicians must re-evaluate patient's decision making capacity every 180 days
- Note on spouses: Virginia law prohibits marriages, civil unions, partnership contracts, and other arrangements of persons of the same sex that purport to bestow the privileges or obligations of marriage. Virginia does not recognize such arrangements entered into in any other state or jurisdiction. Virginia law does not, however, prohibit an individual from appointing a same sex partner from being appointed as a health care power of attorney or agent.

### 54.1-2987 - Transfer of Patient when Physician Refuses to Comply.

- Attending physician who refuses to comply shall make reasonable effort to transfer and must comply with 54.1-2990 (see below)
- Applies even if medically or ethically inappropriate

### 54.1-2987.1 - Durable Do Not Resuscitate Order.

- Bona fide physician/patient relationship required
- Valid for EMS personnel and licensed health care practitioners in any licensed facility
- No withholding treatment if known at the time action is protested by patient (in other words, the patient revokes the DDNR)
- Note: original form or authorized jewelry required (no copies)

### 54.1-2988 - Immunity from liability.

- No criminal prosecution or civil liability for anyone acting at direction of physician
- Compliance in good faith measured by preponderance of evidence standard
- Distribution of forms not unauthorized practice of law
- Advance directives are presumed to be made by competent person

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### 54.1-2989 - Willful Destruction.

- Class 6 felony for acts that prevent expressed intent to be done
- Class 2 felony to falsify or forge advance directive

### 4.1-2989.1 – Failure to Deliver Advance Directive.

- Agent who is in possession of a valid advance directive has authority even if the declarant has not delivered the advance directive to the agent
- Providers have no obligation to inquire into manner or circumstances by which the agent obtained an advance directive
- Court can consider the above in any action brought to remove the agent or revoke an advance directive

### 54.1-2990 - Medically Unnecessary Treatment.

- Physician not required to provide care/treatment he/she deems medically or ethically inappropriate, however:
  - Must inform patient or agent of reasons and make reasonable effort to transfer
  - Not required to provide treatment if physically or legally unable
  - Nothing in statute condones mercy killing or euthanasia

### 54.1-2991 - Effect of Declaration.

- Advance directive does not constitute suicide and has no effect on life insurance

### 54.1-2992 - Preservation of Existing Rights.

- Provisions of the Healthcare Decisions Act are cumulative with existing common law and statutory law regarding consent to treatment

### 54.1-2993 - Reciprocity.

- Advance directives deemed valid in Virginia if valid in other state or valid by Virginia requirements (*i.e.* signed by the patient and two adult witnesses)

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