



Ohio Revised Code

Section 1337.12 Formality of execution.

Effective: March 20, 2014

Legislation: House Bill 126 - 130th General Assembly

(A)(1) An adult who is of sound mind voluntarily may create a valid durable power of attorney for health care by executing a durable power of attorney, in accordance with section 1337.24 of the Revised Code, that authorizes an attorney in fact as described in division (A)(2) of this section to make health care decisions for the principal at any time that the attending physician of the principal determines that the principal has lost the capacity to make informed health care decisions for the principal. The durable power of attorney for health care may authorize the attorney in fact, commencing immediately upon the execution of the instrument or at any subsequent time and regardless of whether the principal has lost the capacity to make informed health care decisions, to obtain information concerning the principal's health, including protected health information as defined in 45 C.F.R. 160.103. Except as otherwise provided in divisions (B) to (F) of section 1337.13 of the Revised Code, the authorization may include the right to give informed consent, to refuse to give informed consent, or to withdraw informed consent to any health care that is being or could be provided to the principal. Additionally, to be valid, a durable power of attorney for health care shall satisfy both of the following:

(a) It shall be signed at the end of the instrument by the principal and shall state the date of its execution.

(b) It shall be witnessed in accordance with division (B) of this section or be acknowledged by the principal in accordance with division (C) of this section.

(2) Except as otherwise provided in this division, a durable power of attorney for health care may designate any competent adult as the attorney in fact. The attending physician of the principal and an administrator of any nursing home in which the principal is receiving care shall not be designated as an attorney in fact in, or act as an attorney in fact pursuant to, a durable power of attorney for health care. An employee or agent of the attending physician of the principal and an employee or agent of any health care facility in which the principal is being treated shall not be designated as an attorney in fact in, or act as an attorney in fact pursuant to, a durable power of attorney for health



care, except that these limitations do not preclude a principal from designating either type of employee or agent as the principal's attorney in fact if the individual is a competent adult and related to the principal by blood, marriage, or adoption, or if the individual is a competent adult and the principal and the individual are members of the same religious order.

(3) A durable power of attorney for health care shall not expire, unless the principal specifies an expiration date in the instrument. However, when a durable power of attorney contains an expiration date, if the principal lacks the capacity to make informed health care decisions for the principal on the expiration date, the instrument shall continue in effect until the principal regains the capacity to make informed health care decisions for the principal.

(B) If witnessed for purposes of division (A)(1)(b) of this section, a durable power of attorney for health care shall be witnessed by at least two individuals who are adults and who are not ineligible to be witnesses under this division. Any person who is related to the principal by blood, marriage, or adoption, any person who is designated as the attorney in fact or alternate attorney in fact in the instrument, the attending physician of the principal, and the administrator of any nursing home in which the principal is receiving care are ineligible to be witnesses.

The witnessing of a durable power of attorney for health care shall involve the principal signing, or acknowledging the principal's signature, at the end of the instrument in the presence of each witness. Then, each witness shall subscribe the witness's signature after the signature of the principal and, by doing so, attest to the witness's belief that the principal appears to be of sound mind and not under or subject to duress, fraud, or undue influence. The signatures of the principal and the witnesses under this division are not required to appear on the same page of the instrument.

(C) If acknowledged for purposes of division (A)(1)(b) of this section, a durable power of attorney for health care shall be acknowledged before a notary public, who shall make the certification described in section 147.53 of the Revised Code and also shall attest that the principal appears to be of sound mind and not under or subject to duress, fraud, or undue influence.

(D)(1) If a principal has both a valid durable power of attorney for health care and a valid declaration, division (B) of section 2133.03 of the Revised Code applies. If a principal has both a valid durable power of attorney for health care and a DNR identification that is based upon a valid



declaration and if the declaration supersedes the durable power of attorney for health care under division (B) of section 2133.03 of the Revised Code, the DNR identification supersedes the durable power of attorney for health care to the extent of any conflict between the two. A valid durable power of attorney for health care supersedes any DNR identification that is based upon a do-not-resuscitate order that a physician issued for the principal which is inconsistent with the durable power of attorney for health care or a valid decision by the attorney in fact under a durable power of attorney.

(2) As used in division (D) of this section:

(a) "Declaration" has the same meaning as in section 2133.01 of the Revised Code.

(b) "Do-not-resuscitate order" and "DNR identification" have the same meanings as in section 2133.21 of the Revised Code.

(E)(1) In a durable power of attorney for health care, a principal may nominate a guardian of the principal's person, estate, or both for consideration by a court if proceedings for the appointment of a guardian for the principal's person, estate, or both are commenced at a later time. The principal may authorize the person nominated as the guardian or the attorney in fact to nominate a successor guardian for consideration by the court. The principal's nomination of a guardian of the principal's person, estate, or both is revoked by the principal's subsequent nomination of a guardian of the principal's person, estate, or both, and, except for good cause shown or disqualification, the court shall make its appointment in accordance with the principal's most recent nomination.

(2) The principal may direct that bond be waived for a person nominated as guardian or successor guardian under division (E)(1) of this section.

(3) A durable power of attorney for health care that contains the nomination of a person to be the guardian of the person, estate, or both of the principal may be filed with the probate court for safekeeping, and the probate court shall designate the nomination as the nomination of a standby guardian.

(4) If a guardian is appointed for the principal, a durable power of attorney for health care is not



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terminated, and the authority of the attorney in fact continues unless the court, pursuant to its authority under section 2111.50 of the Revised Code, limits, suspends, or terminates the power of attorney after notice to the attorney in fact and upon a finding that the limitation, suspension, or termination is in the best interest of the principal.