



Ohio Revised Code

Section 1337.13 Authority of attorney in fact under a durable power of attorney for health care.

Effective: April 6, 2017

Legislation: House Bill 451 - 131st General Assembly

(A)(1) An attorney in fact under a durable power of attorney for health care shall make health care decisions for the principal only if the instrument substantially complies with section 1337.12 of the Revised Code and specifically authorizes the attorney in fact to make health care decisions for the principal, and only if the attending physician of the principal determines that the principal has lost the capacity to make informed health care decisions for the principal. If authorized in the instrument, the attorney in fact, commencing immediately upon the execution of the instrument or at any subsequent time specified in the instrument and regardless of whether the principal has lost the capacity to make informed health care decisions, may 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 this section and subject to any specific limitations in the instrument, the attorney in fact may make health care decisions for the principal to the same extent as the principal could make those decisions for the principal if the principal had the capacity to do so. Except as otherwise provided in divisions (B) to (F) of this section, in exercising that authority, the attorney in fact shall act consistently with the desires of the principal or, if the desires of the principal are unknown, shall act in the best interest of the principal.

(2) This section does not affect, and shall not be construed as affecting, any right that the person designated as attorney in fact in a durable power of attorney for health care may have, apart from the instrument, to make or participate in the making of health care decisions on behalf of the principal.

(3) Unless the right is limited in a durable power of attorney for health care, when acting pursuant to the instrument, the attorney in fact has the same right as the principal to receive information about proposed health care, to review health care records, and to consent to the disclosure of health care records.

(B)(1) An attorney in fact under a durable power of attorney for health care does not have authority, on behalf of the principal, to refuse or withdraw informed consent to life-sustaining treatment, unless



the principal is in a terminal condition or in a permanently unconscious state and unless the applicable requirements of divisions (B)(2) and (3) of this section are satisfied.

(2) In order for an attorney in fact to refuse or withdraw informed consent to life-sustaining treatment for a principal who is in a permanently unconscious state, the consulting physician associated with the determination that the principal is in the permanently unconscious state shall be a physician who, by virtue of advanced education or training, of a practice limited to particular diseases, illnesses, injuries, therapies, or branches of medicine and surgery or osteopathic medicine and surgery, of certification as a specialist in a particular branch of medicine or surgery or osteopathic medicine and surgery, or of experience acquired in the practice of medicine and surgery or osteopathic medicine and surgery, is qualified to determine whether the principal is in a permanently unconscious state.

(3) In order for an attorney in fact to refuse or withdraw informed consent to life-sustaining treatment for a principal who is in a terminal condition or in a permanently unconscious state, the attending physician of the principal shall determine, in good faith, both of the following:

(a) To a reasonable degree of medical certainty, and in accordance with reasonable medical standards, that there is no reasonable possibility that the principal will regain the capacity to make informed health care decisions for the principal ;

(b) That the attorney in fact is competent to make such a decision under division (H) of this section.

(C) Except as otherwise provided in this division, an attorney in fact under a durable power of attorney for health care does not have authority, on behalf of the principal, to refuse or withdraw informed consent to health care necessary to provide comfort care. This division does not preclude, and shall not be construed as precluding, an attorney in fact under a durable power of attorney for health care from refusing or withdrawing informed consent to the provision of nutrition or hydration to the principal if, under the circumstances described in division (E) of this section, the attorney in fact would not be prohibited from refusing or withdrawing informed consent to the provision of nutrition or hydration to the principal.

(D) An attorney in fact under a durable power of attorney for health care does not have authority to



refuse or withdraw informed consent to health care for a principal who is pregnant if the refusal or withdrawal of the health care would terminate the pregnancy, unless the pregnancy or the health care would pose a substantial risk to the life of the principal, or unless the principal's attending physician and at least one other physician who has examined the principal determine, to a reasonable degree of medical certainty and in accordance with reasonable medical standards, that the fetus would not be born alive.

(E) An attorney in fact under a durable power of attorney for health care does not have authority to refuse or withdraw informed consent to the provision of nutrition or hydration to the principal, unless the principal is in a terminal condition or in a permanently unconscious state and unless the following apply:

(1) The principal's attending physician and at least one other physician who has examined the principal determine, to a reasonable degree of medical certainty and in accordance with reasonable medical standards, that nutrition or hydration will not or no longer will serve to provide comfort to, or alleviate pain of, the principal.

(2) If the principal is in a permanently unconscious state, the principal has authorized the attorney in fact to refuse or withdraw informed consent to the provision of nutrition or hydration to the principal when the principal is in a permanently unconscious state by doing both of the following in the durable power of attorney for health care:

(a) Including a statement in capital letters or other conspicuous type, including, but not limited to, a different font, bigger type, or boldface type, that the attorney in fact may refuse or withdraw informed consent to the provision of nutrition or hydration to the principal if the principal is in a permanently unconscious state and if the determination described in division (E)(1) of this section is made, or checking or otherwise marking a box or line that is adjacent to a similar statement on a printed form of a durable power of attorney for health care;

(b) Placing the principal's initials or signature underneath or adjacent to the statement, check, or other mark described in division (E)(2)(a) of this section.

(3) If the principal is in a permanently unconscious state, the principal's attending physician



determines, in good faith, that the principal authorized the attorney in fact to refuse or withdraw informed consent to the provision of nutrition or hydration to the principal when the principal is in a permanently unconscious state by complying with the requirements of divisions (E)(2)(a) and (b) of this section.

(4) The principal's attending physician determines, in good faith, that the attorney in fact is competent to make such a decision under division (H) of this section.

(F) An attorney in fact under a durable power of attorney for health care does not have authority to withdraw informed consent to any health care to which the principal previously consented, unless at least one of the following applies:

(1) A change in the physical condition of the principal has significantly decreased the benefit of that health care to the principal.

(2) The health care is not, or is no longer, significantly effective in achieving the purposes for which the principal consented to its use.

(G) An attorney in fact under a durable power of attorney for health care does not have authority to make decisions pertaining to the use or continuation of life-sustaining treatment or the provision of nutrition or hydration to the principal unless the attorney in fact is competent to make those decisions under division (H) of this section.

(H) An attorney in fact is competent to make decisions under division (B), (E), or (G) of this section unless the attorney in fact is subject to a temporary protection order, civil protection order, or any other protection order issued by a court in this state or another state in which the principal is the alleged victim.