

AS AN OBSERVANT JEW, YOU WONDER:

“How can I be sure that halacha will be followed when other people must decide the course of my medical treatment? How can I ensure that my body is treated according to halacha after death?”

THE HALACHIC LIVING WILL

Is it for you?

No one likes to think about it. But one day, G-d forbid, it can happen to you. You are in a terrible accident – or are stricken with a sudden catastrophic illness – and you no longer are capable of making decisions regarding your own health care. In an era of rapid advances in medical technology, complex questions may arise regarding your medical treatment. As an observant Jew, you would want such medical decisions to be made in accordance with Jewish law and custom (halacha) – but your doctors know nothing about that.

What will happen?

Can you imagine the extraordinary pressures on your loved ones at such a trying time? And what if no family member is available to make such decisions?

Who will decide?

Or, it is already past the stage of medical intervention, and the “authorities” wish to perform an autopsy on your body.

Will they be able to?

Although we hope none of these scenarios ever comes to pass, the possibility does exist. To protect yourself, you should fill out and sign the Halachic Living Will.

What is the “Halachic Living Will”?

The Halachic Living Will consists of two separate forms: (1) a formal legal document to be kept among your other valuable papers; and (2) a wallet-size “Emergency Instructions” card to be carried on your person. These two standardized forms, developed under the direction and approval of prominent rabbinic authorities from across the Orthodox Jewish spectrum, are designed to help observant Jews ensure that when medical decisions and post-death decisions are made by others on their behalf, such decisions will be made in accordance with *halacha*.

How Does it Accomplish its Purpose?

The Halachic Living Will form enables you to appoint another competent adult to serve as your “health care agent” to make medical decisions on your behalf if, G-d forbid, you ever become incapable of making such decisions on your own. It further directs that all such decisions, as well as post-mortem decisions regarding the handling and disposition of your body after death, are to be made in accordance with *halacha*. And, should any question ever arise as to the requirements of *halacha*, the form directs the agent to consult with, and follow the guidance of, any Orthodox rabbinical authority you wish to designate. Other standardized living will forms which you may be encouraged to sign do may not include these protections and may even include provisions that are contrary to *halacha*.

Why is the Halachic Living Will Necessary?

Without it there is a significant risk that if you cannot make medical decisions for yourself, decisions may be made on your behalf that will be contrary to basic *halachic* principles. Or, perhaps you are not confident that your family will consult with competent rabbinic authority in making decisions on your behalf. In cases like these, the Halachic Living Will is an indispensable means of ensuring that these critical decisions will be made in accordance with your wishes.

Who Can I Appoint as My Health Care Agent?

As a general rule, you may appoint virtually any competent adult as your agent – a family member, a friend, anyone you trust to carry out your wishes. The Halachic Living Will also allows you to appoint an alternate agent to make decisions on your behalf if the person you select as your agent is unavailable, unable or unwilling to serve in that role. Obviously, before appointing any one to serve as your health care agent, you would be well advised to ascertain that person’s willingness to serve in that capacity.

Which Rabbi Should I Appoint to Advise My Agent?

Any Orthodox Rabbi you would like. Here again, you should ascertain beforehand that the rabbi you would like to appoint as a *halachic* advisor to your agent is competent to deal with the types of complex questions of *halacha* that may arise, and that he would be willing to serve in that capacity. The Halachic Living Will further provides you an opportunity to designate an Orthodox Jewish organization or institution to refer a different rabbi to guide your agent if the rabbi you have designated is not able to provide such guidance.

Is the Halachic Living Will Legally Binding?

Yes. It was developed and prepared by the legal department of Agudah Israel of America together with other knowledgeable attorneys to conform with the provisions of applicable court decisions and state statutes. The Halachic Living Will has been approved by numerous experts in laws relating to living wills.

Is the Same Form Binding in All 50 States?

Not necessarily. The basic principle that a competent adult has the right to appoint someone to serve as his health care agent, and that he has the further right to instruct the agent as to the criteria by which medical decisions are to be made on his behalf, is accepted throughout the United States. There may be certain variations among the states with respect to the formal requirements of a “living will” or “health care proxy,” as well as with respect to such substantive questions as whether, and under what circumstances, your doctor may serve as your agent. For that reason, Agudath Israel of America has prepared alternate Halachic Living Will forms for use in various states across the country.

Why Do I Also Need the Wallet-Size Card?

One never knows when an emergency may arise. It is therefore wise to carry with you at all times (except in a public domain on the Sabbath, when Jewish law prohibits carrying) a card that informs any emergency health care provider that you have prepared a Halachic Living Will. The card also summarizes the key provisions of the Halachic Living Will form, and provides all relevant names and phone numbers.

Does it Cost Me Any Money to Obtain the Halachic Living Will?

No. Individual copies may be obtained from Agudath Israel of America free of charge.

For more information or for copies of the Halachic Living Will, please contact:

Agudath Israel of America
42 Broadway, 14th floor
New York, NY 10004
(212) 797-9000

The Halachic Living Will

PROXY AND DIRECTIVE WITH RESPECT TO HEALTH CARE DECISIONS AND POST-MORTEM DECISIONS FOR USE IN NEW YORK STATE

The “Halachic Living Will” is designed to help ensure that all medical and post-death decisions made by others on your behalf will be made in accordance with Jewish law and custom (halacha). This document, the “Proxy and Directive with Respect to Health Care Decisions and Post-Mortem Decisions,” is the basic form that provides such protection.

INSTRUCTIONS

(a) Please print your name on the first line of the form.

(b) In Section 1, print the name, address, and day and evening telephone numbers of the person you wish to designate as your agent to make medical decisions on your behalf if, G-d forbid, you ever become incapable of making them on your own.

You may also insert the name, address, and telephone numbers of an alternate agent to make such decisions if your main agent is unable, unwilling, or unavailable to make such decisions.

It is recommended that before appointing anyone to serve as your agent or alternate agent you should ascertain that person’s willingness to serve in such capacity. In addition, if you have made arrangements with a burial society (Chevra Kadisha) for the handling and disposition of your body after death, you may wish to advise your agents of such arrangements.

Note: New York law allows virtually any competent adult (an adult is a person 18 years of age or older, or anyone who has married) to serve as a health care agent. Thus, you may appoint as your agent (or alternate agent) your spouse, adult child, parent or other adult relative.

You may also appoint a non-relative to serve as your agent (or alternate agent), unless that individual has already been appointed by 10 other persons to serve as a health care agent; or unless that individual is a non-physician employee of a health care facility in which you are a patient or resident.

(c) In section 3, please print the name, address, and telephone numbers of the Orthodox Rabbi whose guidance you want your agent to follow, should any questions arise as to the requirements of halacha.

You should then print the name, address, and telephone numbers of the Orthodox Jewish institution or organization you want your agent to contact for a referral to another Orthodox Rabbi if the rabbi you have identified is unable, unwilling or unavailable to provide the appropriate consultation and guidance.

You are, of course, free to insert the name of any Orthodox Rabbi or institution/organization you would like, but before doing so it is advisable to discuss the matter with the rabbi or institution/organization to ascertain their competency and willingness to serve in such capacity.

(d) In Section 7, sign and print your name, address, phone numbers, and the date. If you are not physically able to do these things, New York law allows another person to sign and date the form on your behalf, as long as he or she does so at your direction, in your presence, and in the presence of two adult witnesses.

(e) In the DECLARATION OF WITNESSES Section, two witnesses should sign their names and insert their addresses beneath your signature. These two witnesses must be competent adults. Neither of them should be the person you have appointed as your health care agent (or alternate agent). They may, however, be your relatives.

IF YOU RESIDE IN A MENTAL HEALTH FACILITY, at least one witness must be an individual who is not affiliated with the facility. In addition, if the mental health facility is also a hospital, at least one witness must be a qualified psychiatrist.

(f) It is recommended that you keep the original of this form among your valuable papers; and that you **distribute copies to the health care agent (and alternate agent)** you have designated in section 1, **to the rabbi and institution/organization** you have designated in section 3, as well as to **your doctors, your lawyer, and anyone else who is likely to be contacted in times of emergency.**

(g) **If at any time you wish to revoke this Proxy and Directive, you may do so by executing a new one; or by notifying your agent or health care provider, orally or in writing, of your intent to revoke it.**

If you do not revoke the Proxy and Directive, New York law provides that it remains in effect indefinitely. Obviously, if any of the persons whose names you have inserted in the Proxy and Directive dies or becomes otherwise incapable of serving in the role you have assigned, it would be wise to execute a new Proxy and Directive.

(h) It is recommended that you also complete the second component of the Halachic Living Will, the **“Emergency Instructions Card,”** and carry it with you in your wallet or billfold.

(i) If, upon consultation with your rabbi, you would like to add to this standardized Proxy and Directive any additional expression of your wishes with respect to medical and/or post-mortem decisions, you may do so by attaching a “rider” to the standardized form. If you choose to do so, or if you have any other questions concerning this form, please consult an attorney.

The Halachic Living Will

**PROXY AND DIRECTIVE WITH RESPECT TO
HEALTH CARE DECISIONS AND POST-MORTEM
DECISIONS
FOR USE IN NEW YORK STATE**

I, _____, hereby declare as follows:

1. Appointment of Agent: In recognition of the fact that there may come a time when I will become unable to make my own health care decisions because of illness, injury or other circumstances, I hereby appoint

Agent Name of Agent: _____

Address: _____

Telephone: Day: _____ Evening: _____

as my health care agent to make any and all health care decisions for me, consistent with my wishes as set forth in this directive.

If the person named above is unable, unwilling or unavailable to act as my agent, I hereby appoint

Alternate Agent Name of Alternate Agent: _____

Address: _____

Telephone: Day: _____ Evening: _____

to serve in such capacity.

This appointment shall take effect in the event I become unable, because of illness, injury or other circumstances, to make my own health care decisions.

2. Jewish Law to Govern Health Care Decisions: I am Jewish. It is my desire, and I hereby direct, that all health care decisions made for me be made pursuant to Jewish law and custom as determined in accordance with strict Orthodox interpretation and tradition. Without limiting in any way the generality of the foregoing, it is my wish that Jewish law and custom should dictate the course of my health care with respect to such matters as the performance of cardio-pulmonary resuscitation if I suffer cardiac or respiratory arrest; the performance of life-sustaining surgical procedures and the initiation or maintenance of any particular course of life-sustaining medical treatment or other form of life-support maintenance, including the provision of nutrition and hydration; and the criteria by which death shall be determined, including the method by which such criteria shall be medically ascertained or confirmed.

3. Ascertaining the Requirements of Jewish Law: In determining the requirements of Jewish law and custom in connection with this declaration, I direct my agent to consult with and follow the guidance of the following Orthodox Rabbi:

Rabbi Name of Rabbi: _____

Address: _____

Telephone: Day: _____ Evening: _____

If such Orthodox Rabbi is unable, unwilling or unavailable to provide such consultation and guidance, then I direct my agent to consult with and follow the guidance of an Orthodox Rabbi referred by the following Orthodox Jewish institution or organization:

Organization Name of Institution/Organization: _____

Address: _____

Telephone: Day: _____ Evening: _____

If such institution or organization is unable, unwilling or unavailable to make such a reference, or if the Orthodox Rabbi referred by such institution or organization is unable, unwilling or unavailable to provide such guidance, then I direct my agent to consult with and follow the guidance of an Orthodox Rabbi whose guidance on issues of Jewish law and custom my agent in good faith believes I would respect and follow.

4. Direction to Health Care Providers: Any health care provider shall rely upon and carry out the decisions of my agent, and may assume that such decisions reflect my wishes and were arrived at in accordance with the procedures set forth in this directive, unless such health care provider shall have good cause to believe that my agent has not acted in good faith in accordance with my wishes as expressed in this directive.

If the persons designated in section 1 above as my agent and alternate agent are unable, unwilling or unavailable to serve in such capacity, it is my desire, and I hereby direct, that any health care provider or other person who will be making health care decisions on my behalf follow the procedures outlined in section 3 above in determining the requirements of Jewish law and custom.

Pending contact with the agent and/or Orthodox Rabbi described above, it is my desire, and I hereby direct, that all health care providers undertake all essential emergency and/or life sustaining measures on my behalf.

5. Post-Mortem Decisions: It is also my desire, and I hereby direct, that after my death, all decisions concerning the handling and disposition of my body be made pursuant to Jewish law and custom as determined in accordance with strict Orthodox interpretation and tradition. For example, Jewish law generally requires expeditious burial and imposes special requirements with regard to the preparation of the body for burial. It is my wish that Jewish law and custom be followed with respect to these matters.

Further, subject to certain limited exceptions, Jewish law generally prohibits the performance of any autopsy or dissection. It is my wish that Jewish law and custom be followed with respect to such procedures, and with respect to all other post-mortem matters including the removal and usage of any of my body organs or tissue for transplantation or any other purposes. I direct that any health care provider in attendance at my death notify the agent and/or Orthodox Rabbi described above immediately upon my death, in addition to any other person whose consent by law must be solicited and obtained, prior to the use of any part of my body as an anatomical gift, so that appropriate decisions and arrangements can be made in accordance with my wishes.

Pending such notification, and unless there is specific authorization by the Orthodox Rabbi consulted in accordance with the procedures outlined in section 3 above, it is my desire, and I hereby direct, that no post-mortem procedure be performed on my body.

6. Incontrovertible Evidence of My Wishes: If, for any reason, this document is deemed not legally effective as a health care proxy, or if the persons designated in section 1 above as my agent and alternate agent are unable, unwilling or unavailable to serve in such capacity, I declare to my family, my doctor and anyone else whom it may concern that the wishes I have expressed herein with regard to compliance with Jewish law and custom should be treated as incontrovertible evidence of my intent and desire with respect to all health care measures and post-mortem procedures; and that it is my wish that the procedure outlined in section 3 above should be followed in determining the requirements of Jewish law and custom.

7. Duration and Revocation: It is my understanding and intention that unless I revoke this proxy and directive, it will remain in effect indefinitely. My signature on this document shall be deemed to constitute a revocation of any prior health care proxy, directive or other similar document I may have executed prior to today's date.

My Signature

Signature: _____

(If you are not physically capable of signing, please ask another person to sign your name on your behalf.)

Print Name: _____

Date: _____

Address: _____

Telephone: Day: _____ Evening: _____

DECLARATION OF WITNESSES

I, on this _____ day of _____, 200__, declare that the person who signed (or asked another to sign) this document is personally known to me and appears to be of sound mind and acting willingly and free from duress. He/She signed (or asked another to sign for him/her) this document in my presence (and that person signed in my presence). I am not the person appointed as agent by this document.

Witnesses

Witness 1: _____

Residing at: _____

Witness 2: _____

Residing at: _____

Developed and published by: Agudath Israel of America • 42 Broadway, 14th Floor • New York, NY 10004 • 212-797-9000