

# Advance healthcare directives under Cayman law

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## What is an advance healthcare directive?

An advance health care directive is also known as a living will. It is actually not a new concept but is new to being recognised in the Cayman Islands. In 2019 the Health Care Decisions Act was implemented in the Cayman Islands.

This law allows a person to determine their wishes surrounding medical care and treatment, including end of life care, should they become mentally incompetent, and prepare a legal document to this effect. The legal document outlines preferred medical treatments and procedures such as life support and resuscitation.

Advance directives have been around for some time, the UK for example has had these types of directives available to persons for many years. The United States of America, Australia, Canada, South Africa and even our close neighbours in Jamaica, have similar instruments.

## How do I make an advance decision?

An advance directive is a legal document, referred to as an advance health care directive. A person must be 18 or older and mentally competent to make an advance directive. The form must be signed in the presence of a doctor, who will witness and sign the form.

The reason for the signing of the form in the presence of a doctor is to make sure that the directive-maker fully understands the medical decisions that the form legally binds and that the directive-maker is competent at the time of executing the directive.

The directive allows the directive-maker to appoint a proxy to make health care decisions on behalf of the directive-maker in accordance with the directive-maker's wishes.

Once a directive has been executed, you should let your proxy and your lawyer have a copy, let your family know it exists, and it is even possible to request that the hospital attach it to your medical file/record.

## Do you have to keep the original of the directive with you at all times?

Unlike a will, an electronic copy of the directive is valid and legally binding. A picture of it on your phone, or on email or a copy of it in your medical records will be sufficient.

We recommend if you change or revoke the directive that all previous copies are removed and relevant persons notified.

## What are some important take away points regarding an advance directive?

Critical for the directive-maker to bear in mind is what it can and cannot do. An advance health care directive allows the person to decide what they would like a physician to do in the event that the directive-maker becomes mentally incapacitated or otherwise unable to

communicate their wishes.

To that end the directive will only take effect once the directive-maker is deemed to be mentally incompetent. Like a will, it can be revoked at any time while the directive-maker is mentally competent.

It is important to note that in the Cayman Islands, an advance directive does not authorise euthanasia or assisted suicide.

### **What are the foreseeable legal issues?**

There have been quite a few legal questions surrounding this relatively new law and its directive.

These include questions about the directive being able to prevail over any right of an attorney of the directive-maker or of the directive maker's nearest relative, and questions about protection for proxy and registered practitioners and the recognition of similar directives and proxies from other jurisdictions.

Luckily the drafters of the law have anticipated some of these questions and issues and have adequately addressed them within the framework of the law.

Can you expand on the question about the directive prevailing over any right of an attorney or the directive-maker or of the directive maker's nearest relative?

By operation of the Health Care Decisions Act, 2019 section 16, while a directive is operative, it prevails over any right of an attorney of the directive-maker or of the directive-maker's nearest relative.

The Power of Attorney Act, 1996 Revision provides that an instrument created under this law is not an enduring power of attorney, that means once the person is incapacitated the instrument (known as a Power of Attorney) is no longer valid.

### **How can you assist clients with this directive?**

As a legal practitioner in the private wealth team at Ogier, our team specialises in wills and trusts, among other services. As such we offer the drafting of a directive along with the drafting of a Cayman Islands will. Personally, having a background of over 17 years in the medical profession as a registered health care practitioner, places me in a unique position as a lawyer to be able to explain this document and provide necessary accompanying advice to our clients.

We are able to provide comprehensive wealth management planning with the peace of mind that our clients' wishes will be honoured even when they are not able to make decisions for themselves.

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