

A little over a year and a half ago, the Supreme Court of Canada heard an appeal regarding a Muslim patient on life support at Sunnybrook Hospital. The Head of Critical Care (ICU) wanted to disconnect him from life support, effectively ending his life. The family argued in the courts against this on religious grounds.

The Supreme Court ruled that the Doctors should have brought the case before the Consent and Capacity Board – a Provincial Panel Appointed under the Health Consent Act, to be the final decider in Doctor-family disputes. The Court ruled that the Board had the mandate to “determine what the patient would have chosen themselves, IN THEIR PRESENT CONDITION (given quality of life, pain etc)”. Two members of the Supreme Court went against the majority ruling, stating that this would give the power of life and death to an appointed board rather than the courts, where they felt it should be. They were over-ruled.

One does not need much imagination to envision how a secular board appointed by their friends in the provincial government, in these times of spiraling health care costs and deteriorating values.

Current law allows the Health Consent and Capacity Board to call a meeting to hear a case and decide as to whether or not the patient would choose to continue life or be “unplugged”. As part of the process, they will allow a mere 6 hours for family and doctors to provide evidence to be considered before they render a binding decision.

Based on the stated desire of some Doctors to go ahead and terminate the life of a number of patients in the past few months, the “Power of Attorney for Personal Care and Statutory Declaration” form was prepared with the tireless input of expert lawyers, doctors, Echo, other health care providers, Agudas Yisroel in the U.S. and other Rabbinical bodies, as well as key Rabbonim in our city. It has addresses all the potential Halachic as well as legal issues in a sensitive manner. As such, it has been approved by the Vaad HaRabbonim of Toronto.

Given that a catastrophe, chas v'Shalom, could occur suddenly to anyone, all members of the community over the age of 16 are strongly urged to sign the form in all it's parts. There are several Lawyers in our community who are willing to notarize the form at no charge. One should keep all of your family's forms together in a safe place.

This document brings no guarantees. This document, even at its best, can only serve as a means of influencing the Consent and Capacity Board to understand how you would decide, if you could, with regard to termination of your life. As such, it cannot guarantee the result you would want, but it is the best that can be done in this onerous environment. Furthermore, should the Consent and Capacity Board rule against the wishes of your family or your Attorney for Personal Care, the case can be appealed to the Divisional Courts. The doctors must maintain life during the Appeals process. **THE APPEALS PROCESS DOES NOT ALLOW FOR THE INTRODUCTION OF NEW EVIDENCE.** As such, the only evidence heard, at the very beginning (at the Consent and Capacity Board) will be considered even at the Supreme Court Level. Having this form signed, notarized and presented to both the doctors and the Consent and Capacity Board (in the case of a dispute) is the best assurance that your wishes will be heard in the higher courts as well. Being unprepared could very well, chas v'Shalom' be fatal.

Many Rabbonim and the entire Vaad of the City urge you to sign, notarize and safely store this document. It could be a life-saver.

As a document that could be challenged, it is asked that you have your signature witnessed by two non-immediate family competent witnesses, who have known you for some time and have no vested interest in the document being signed.

# Power of Attorney for Personal Care and Statutory Declaration

(Made in accordance with the Substitute Decisions Act, 1992 and the Health Care Consent Act, 1996, SO 1996, c 2, Sch A and Any Successor to that Act)

1. I, \_\_\_\_\_ revoke any previous power of attorney for

personal care made by me and APPOINT \_\_\_\_\_

\_\_\_\_\_ to be my attorney for personal care in accordance with the *Substitute Decisions Act, 1992*.

[Note : A person who provides health care, residential, social, training, or support services to the person giving this power of attorney for compensation may not act as his or her attorney unless that person is also his or her spouse, partner, or relative.]

2. If you have named more than one attorney and you want them to have the authority to act separately, insert the words “jointly and severally” here:

\_\_\_\_\_  
*(this may be left blank)*

3. If the person(s) I have appointed, or any one of them, cannot or will not be my attorney because of refusal, resignation, death, mental incapacity, or removal by the Court, I SUBSTITUTE:

\_\_\_\_\_  
*(this may be left blank)*

to act as my attorney for personal care in the same manner and subject to the same authority as the person he or she is replacing.

4. I give my attorney the **AUTHORITY** to make any personal care decision for me that I am mentally incapable of making for myself, including the giving or refusing of consent to any matter to which the *Health Care Consent Act, 1996* applies, subject to the *Substitute Decisions Act, 1992*, and any instructions, conditions or restrictions contained in this form.

5. **INSTRUCTIONS, CONDITIONS and RESTRICTIONS:** I have carefully considered my wishes applicable to the circumstances that may arise as to my future health care and decisions that may be necessary as to such health care, including decisions to give or refuse consent on my behalf, as to such health care and I have instructed my Attorney for Personal Care as to my applicable wishes. I have full confidence that my Attorney for Personal Care will make health care decisions on my behalf in accordance with those wishes and in accordance with my values and beliefs as an Orthodox Jew. I have set out detailed instructions as to those applicable wishes in Schedule “A” which is annexed to this document and forms part of it.

**SIGNATURE:** \_\_\_\_\_

Date: \_\_\_\_\_

Address: \_\_\_\_\_

**WITNESSES:**

**Witness #1:** Signature: \_\_\_\_\_

Print Name: \_\_\_\_\_

Address: \_\_\_\_\_

Date: \_\_\_\_\_

**Witness #2:** Signature: \_\_\_\_\_

Print Name \_\_\_\_\_

Address: \_\_\_\_\_

Date: \_\_\_\_\_

SCHEDULE "A"

STATUTORY DECLARATION

IN THE MATTER OF THE Health Care Consent Act, 1996, SO 1996, c 2, Sch A and Any Successor to that Act CANADA, PROVINCE OF ONTARIO

I \_\_\_\_\_ of the City of \_\_\_\_\_ in the Province of Ontario

SOLEMNLY DECLARE:

I have carefully considered my wishes applicable to circumstances that may arise in the future as to my health care and instructed my Attorney for Personal Care as to those wishes and also am here below providing a description of my personal values in order to instruct my attorney for personal care or others requiring such information.

MY PERSONAL VALUES

Jewish Law to Govern Health Care and Post Mortum Decisions:

I am Jewish. Jewish law and custom inform and indeed govern every decision I make and as such, must be applied to any decision for my health care. I regard my right to live in accordance with my religious values and beliefs as a precious right guaranteed to me by Canadian law under the Charter of Rights and Freedoms. It is therefore my desire that all health care decisions be made for me in accordance with Jewish religious law and custom as determined in accordance with strict Orthodox Jewish interpretation and tradition should any uncertainty arise as to my wishes. I fully subscribe to the values and beliefs of Judaism that every moment of life is of infinite value. I therefore direct that, unless determined by my Rabbinic Advisor that such actions would be contrary to Jewish Law, my life be prolonged for as long as possible by any means medically available.

Jewish law and custom should also dictate the criteria by which death shall be determined, including the method by which such criteria shall be medically ascertained or confirmed.

I fully understand the role of the Consent and Capacity Board as well as the Courts in Canadian Society. I trust that those attempting to determine my wishes in any particular set of circumstances will be governed by the values and interests herein expressed and will not project their own values in their determination of my best interests; rather, they should recognize that the directives herein expressed are the product of my value system as an Orthodox Jew and are an expression of my paramount interests.

Ascertaining the Requirements of Jewish Religious Law:

In determining the requirements of Jewish law and custom with regard to my health care and in post-mortem decisions, I direct my Attorney for Personal Care to consult with the following Orthodox Jewish Rabbi (who, or his substitute, is to be henceforth referred to as My Rabbinic Advisor) and I ask my Attorney for Personal Care to follow his guidance:

Rabbi Name of Rabbi: \_\_\_\_\_
Address \_\_\_\_\_
Telephone: Day: \_\_\_\_\_ Evening: \_\_\_\_\_
Cell: \_\_\_\_\_ Other Contact: \_\_\_\_\_

If such Orthodox Jewish Rabbi is unable, unwilling or unavailable to provide such consultation and guidance, then I direct my Attorney for Personal Care to consult with, and I ask my Attorney for Personal Care to follow the guidance of, the following Orthodox Jewish Rabbi:

Rabbi Name of Rabbi: \_\_\_\_\_
Address: \_\_\_\_\_
Telephone: Day: \_\_\_\_\_ Evening: \_\_\_\_\_
Cell: \_\_\_\_\_

Initials: \_\_\_\_\_

If both of these Orthodox Jewish Rabbis are unable, unwilling or unavailable to provide such consultation and guidance, then I direct my Attorney to consult with, and I ask my Attorney for Personal Care to follow the guidance of, an Orthodox Jewish Rabbi referred by the following Orthodox Jewish institution, synagogue or organization:

|                     |  |
|---------------------|--|
| <b>Organization</b> | Name of Institution/Organization:<br>_____ |
|                     | Address:<br>_____                          |
|                     | Telephone: Day: _____ Evening: _____       |

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

If the persons designated above as my Attorney for Personal Care and alternate Attorney for Personal Care 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 that are not specified above follow the procedures outlined herein in determining the requirements of Jewish law and custom. The foregoing directions to obtain Rabbinical guidance are not intended to fetter the discretion of my Attorney who shall retain the ultimate authority to make Health Care decisions on my behalf.

**MY WISHES AS TO HEALTH CARE**

**Medical Orders for Life Sustaining Treatment**

I wish to always receive all possible life-sustaining health care to sustain my life for as long as possible.

For further clarity, I direct that this wish of mine be carried out to treat all medical conditions unless my Rabbinic Advisor rules that it is contraindicated under Jewish Law, notwithstanding:

- (1) the seriousness of my future medical conditions,
- (2) my life expectancy,
- (3) the nature of any disease or diseases from which I may be suffering,
- (4) the disability and discomfort that from which I may be expected to suffer as a result of (a) my present or my future medical conditions and (b) any life sustaining health care for present or future medical problems,
- (5) the limitations on my present and future quality of life, resulting from such life-sustaining health care or the treatment of any medical conditions from which I suffer or from which I may suffer in the future,
- (6) any expense or inconvenience that may be caused or incurred as a result of such health care being provided to me.

Without limitation by the former, but for further clarity, the following are my specific wishes and instructions:

**Resuscitation etc.**

If I have no pulse and/or am not breathing I wish to receive Cardio Pulmonary Resuscitation and I am aware that such involves artificial breathing and forceful pressure on the chest to try to restart the heart and that it usually involves electric shock (defibrillation) and a tube being inserted down the throat into the windpipe to assist breathing (intubation) and administration of medication by any route. If my heart stops and/or if my breathing stops, I wish to receive all such resuscitation treatment. I wish to be placed on a ventilator (breathing machine) if necessary to sustain my life for as long as possible, and that my airway be maintained by suction or any other means necessary.

I wish to be transferred to whatever hospital facility that will best provide all possible life-sustaining treatment.

The above is in accordance with my will and would apply at all times unless my Rabbinic advisor counsels that under the circumstances at the time, carrying out these instructions would be contrary to Jewish Law.

**Artificially Administered Fluids and Nutrition**

If I can no longer eat or drink I wish that liquid food or fluids be given by a tube or tubes inserted by the following routes (1) intravenous, (2) nasogastric, (3) gastrostomy, (4) jejunostomy (5) Total Parenteral Nutrition, (6) any additional technology for feeding not previously expressed. I wish all such hydrations and feedings to continue, if needed, to sustain my life for as long as possible. In the event that the attending physician feels that any of these treatments pose a significant danger to life, I direct my attorney to consult with my Rabbinic Advisor and be guided by his counsel.

**Initials: \_\_\_\_\_**

**Antibiotics**

I wish that antibiotics, antiviral as well as any anti-pathogenic agents be used to treat infections, if needed, to sustain my life for as long as possible.

**Pain Palliation**

I wish the use of full pain palliation based upon Guidelines of the U.S. National Institutes of Health or their Canadian equivalent as needed in order to increase comfort while sustaining my life as otherwise stated or inferred by this Declaration.

**Monitoring and Non-Invasive Diagnostic Technologies**

I wish that full monitoring of respiratory rate, pulse, blood pressure, heart rate, heart electrical activity, oxygen saturation levels etc. be initiated and maintained in order to allow the nursing staff, doctors and my family and others to be constantly aware of my medical condition. In addition, I wish that any blood test, cytology, histology, genetic testing, CAT scans, MRI scans, radiographs, ultrasounds or any other medical technology for diagnosis be utilized in order to assist in maintaining my life as otherwise stated or inferred by this Declaration.

**Other Treatments**

Notwithstanding the level of pain or discomfort that may be experienced by me at the time or the pain or discomfort that may be caused by medical and surgical treatment or other health care that may result, I wish to receive all other medical and surgical treatments and other health care including but not limited to: medications, medical and surgical procedures, biopsies, dialysis, blood transfusions, use of medical devices including long-term use of the same to sustain for life for as long as possible, unless my Rabbinical advisor counsels in the attendant circumstances, such treatment would be contrary to Jewish Law, and thus unnecessary. I wish to be transferred to whatever hospital facility that will best provide all possible life-sustaining treatment or treatments.

**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 Jewish 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 my Attorney for Personal Care and/or the Orthodox Rabbis 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 Rabbis consulted in accordance with the procedures outlined above, it is my desire, and I hereby direct, that no post-mortem procedure be performed on my body.

DECLARED before me at the )  
City of Toronto in the Province ) [signature:] \_\_\_\_\_  
of. Ontario this \_\_\_\_ day of ) [Name:]  
\_\_\_\_\_, 20\_\_\_\_ )  
A Commissioner, etc.

*The above was prepared as a Zechus for the Neshama of Chaim Avraham Zalman ben Yitzchak Zev v' Kreindle Nechama Bracha Z'L known affectionately as Avi Silver*