

For more information

- ▶ **Louisiana State Bar Association**
www.lsba.org/goto/consumerbrochures
- ▶ **Mental Health Advocacy Services**
www.mhas-la.org
1-800-428-5432
- ▶ **Office of Behavioral Health - Louisiana**
www.oad.dhh.louisiana.gov
1-800-424-4399

Conclusion

Remember that the success of the American legal system depends on many people fulfilling many roles. Parties, jurors, witnesses, lawyers and judges all work together to make our system work.

This brochure, prepared by the Public Information Committee of the Louisiana State Bar Association, is issued to inform and provide general information, not to advise. If you have a specific legal problem, you should not try to apply or interpret the law without the aid of an attorney who knows the facts because the facts may change the application of the law.



For further information, call or write to:
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IS THERE A POWER
OF ATTORNEY FOR
MENTAL HEALTH
TREATMENT?

*A Guide to
Advance Directives
for Mental Health
Treatment*

Courtesy
LSBA

Mentally Ill Persons and Mental Health Law

Mental illness is common. Of Louisiana's over 4 million residents, close to 183,000 live with serious mental illness and about 49,000 children live with serious mental illness.

Mental Health Law is a specialized set of laws that can be found in the Louisiana Revised Statutes (La. R.S. 28:1-28:213). It does not contain a specific definition for mental illness, but does define a "Mentally ill person" as any person with a psychiatric disorder which has substantial adverse effects on his/her ability to function and who requires care and treatment.

The Mental Health Advocacy Services (1-800-428-5432) and the Office of Mental Health can explain advance directives, provide forms, and answer any other mental health related questions.

Advanced Directives

The advance directive is a written document voluntarily executed by a principal granting a representative the right to make decisions about mental health treatment when the principal is determined to be incapable.

The advanced directive can be in the form of a Declaration (which sets forth preferences or instructions and which can include consent or refusal of mental health treatment), an Appointment of Representative (to make mental health decisions), or both (in which the representative will act for the principal).

Regardless of the form of the advanced directive, your instructions cannot limit the state's ability to take you into protective custody, or to involuntarily admit or commit you to a treatment facility. Your instructions can also be disregard-



ed in an emergency if your instructions have not reduced the behavior that has caused the emergency.

If a representative is appointed, the representative must be a competent adult and must accept the appointment in writing and may withdraw by giving notice to the principal.

The person you appoint must act consistently with your wishes as expressed in the advanced directive, but if your representative does not know your wishes, he/she must make decisions in your best interest.

The advance directive will not be valid unless it is signed by two qualified witnesses who are personally know to you and who are present when you sign or acknowledge your signature. Also the advanced directive must be accompanied by a written mental status examination performed by a physician or psychologist attesting to your ability to make reasoned decisions about your mental health treatment.

The advanced directive will continue in effect

for 5 years unless you become incapable. If you become incapable, the directive will continue in effect until you are no longer incapable.

You have the right to revoke the document in whole or in part at any time you have not been determined incapable by two physicians. However, the revocation is not effective until it is communicated to your treating physician or other provider.

Power of Attorney v. Advanced Directive

While the Louisiana Medical Consent Law (La. R.S. 40:1299.50) governs consent for surgical and medical treatment and who can give consent, care and treatment of the mentally ill is specifically excluded from this law. Therefore, a health care power of attorney is not valid for mental health treatment decisions.

An Advanced Directive for Mental Health Treatment is a document that allows YOU to make decisions in advance about mental health treatment.

The instructions that YOU include in the directive will be followed only if two physicians believe that you are "incapable," which means that, due to any infirmity, you are currently unable to make or to communicate reasoned decisions regarding your mental health treatment.

The incapacity of a principal is established by two physicians who have personally examined the principal, determined that he/she is incapable and signed a written certificate, which is made a part of the medical record.

Some examples of mental health treatment are psychoactive medication, short-term (not to exceed 15 days) admission to a treatment facility, electroshock therapy and outpatient services.