Life Planning: Protecting Your Rights as a Lesbian, Gay, or Bisexual Mississippian[1]

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[1] This publication is specific to the laws in Mississippi. If you need information about the laws of other states, you should contact an attorney in the state you want to know about or look at websites such as www.rainbowlaw.org, www.lambdalegal.org or www.aclu.org to get information specific to other states. Also, this publication can provide information that is useful to individuals who do not identify as lesbian, gay or bisexual. The state's traditional-family-based legal scheme is not relevant to the lives of many individuals, including those who choose not to marry or who have become estranged from their biological families.

INTRODUCTION

Confronting issues related to legal planning, disability, medical emergencies, and death isn't easy or pleasant. So even though we realize the importance of making such decisions for ourselves and our loved ones, many of us hesitate to do so. Every individual in this country needs to consider what she or he would want to happen if death or disability interrupted her or his expectations about the future. We should also be aware of how the laws in the state in which we live view us, our relationships, and our behavior.

For anyone who is not a member of a "traditional" nuclear family (including lesbians, gay men, and individuals who for any number of reasons choose not to marry or become estranged from their biological or legally-recognized families), planning for contingencies is particularly important. The reason for this is that because so many people fail to make their choices known in advance, the law has a default system for those with no explicit plans. As you might imagine, the state's default choices for such questions as who will inherit your property and who will make medical decisions for you if you are incapacitated are based on the structures of the traditional nuclear family. Thus, they often do not accurately reflect the wishes of those who have different priorities and family structures.

But you can counteract the state's presumptions by drafting legal documents that declare your personal choices. Legal documents such as wills and powers of attorney are important for everyone who wants to decide who receives their property at death or who will see to their health care needs if they cannot care for themselves. They are not just for people who are in long-term relationships, people who are older, or people who have children.

I. Preliminary Questions

What are my rights as a lesbian or gay individual in Mississippi?

As you are probably already aware, Mississippi is one of the hardest places in the nation to live as a lesbian or gay man. In fact, a 2001 article in *The Washington Blade* ranked Mississippi next to last, just above Oklahoma, in its ranking of the best and worst states for gays and lesbians to live in. The methodology was based on a system that assigned points for gay-friendly and anti-gay laws in each state.

Not surprisingly, the best state for gays and lesbians to live in, according to the *Blade*, is Vermont. Rounding out the top ten are: Washington, D.C.; Connecticut; New Jersey; Rhode Island; New Hampshire; Massachusetts; Wisconsin; California; and Hawaii. The worst states other than Mississippi and Oklahoma are: Virginia; Alabama; Kansas; Idaho; North Carolina; Utah; South Carolina; Florida; and Arkansas.

Though there are no federal laws prohibiting sexual orientation discrimination, several states and most major cities in the U.S. have basic sexual orientation protection against discrimination in employment, public accommodations, and housing. For more specific information, you can look at www.lambdalegal.org/cgi-bin/iowa/states, which has links to information on state and local antidiscrimination laws.[2] The website also shows which cities have domestic partnership laws; these laws provide some protections and recognition for same-sex couples.

Obviously, there are no pro-gay laws in Mississippi. However, it is important to be aware of the *anti*-gay laws that exist here. Like many states, Mississippi has a statute prohibiting any recognition of same-sex marriages, including civil unions performed in Vermont.[3] Our state keeps company with only a handful of others in prohibiting same-sex couples from adopting children.[4] For more information on your rights in the area of family law – divorce, child custody, and visitation – see *Child Custody: A Guide for Lesbian and Gay Parents in Mississippi.*[5]

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[2] As of October 2002, the following states had laws prohibiting employment discrimination: CA, CT, MA, MD, MN, NH, NJ, NV, RI, VT, and WI. These states had laws that protect only public employees: CO, DE, IL, IN, MT, NM, NY, PA, and WA.

[3] Miss. Code Ann. § 93-1-1.

[4] Miss. Code Ann. § 93-17-3. Mississippi's so-called "gay adoption" law is different from the one in Florida because it prohibits two individuals of the same sex from adopting a child together, but does not necessarily bar lesbian or gay individuals from adopting children. Florida's law prohibits any gay man or lesbian from adopting, regardless of whether he or she is in a relationship. Utah state regulations prohibit gay adoption, and Arkansas prohibits lesbians and gays from becoming foster parents.

[5] You can order this handbook from the ACLU of Mississippi by calling (601) 355-6464, or from Equality Mississippi by calling (601) 936-7673. In addition, these publications are available online at www.msaclu.org and www.EqualityMS.org.

Mississippi, along with only 12 other states,[6] also has a sodomy law, termed "unnatural intercourse."[7] The law applies to all individuals regardless of sex and sexual orientation and prohibits both anal and oral sex.[8] It carries one of the harshest penalties in the nation – up to 10 years in prison for each count.[9] Fortunately, the sodomy law is rarely enforced, and when it is, it is usually in cases of rape or incest. However, the significance of sodomy laws lies in their existence more than in their enforcement. Sodomy statutes have been used to deny employment to gay job applicants and have provided a basis for denying child custody and visitation rights to lesbian mothers and gay fathers. In this way, sodomy laws subject lesbians and gay men to second-class citizenship, branding them as "criminals," despite the fact that the prohibited forms of sexuality are common among both same- and different-sex couples.

As you can see, Mississippi is not the most welcoming environment for the LGBT community. However, for most people, picking up and moving to a more hospitable state is not an option. Thus, it is important to know what rights LGBT Mississippians can exercise to protect their relationships and choices. To avoid having your wishes go unfulfilled, there are legal documents you can prepare for yourself and your loved ones.

Will my legal documents be recognized by the legal system?

Generally, yes. Any legally competent adult may draft a will, a contract, or a power of attorney. Of course, legal documents are always subject to be challenged by those who are affected by them – in most cases, disgruntled biological or legally-recognized family members. However, to successfully challenge your documents, the challenger will have to prove that you were not competent when you signed them because of mental incompetence, undue influence, fraud, or duress. None of these are easy things to prove, but in a homophobic environment such as Mississippi, there is a greater chance that the legal system will view your choices with skepticism or hostility. This fact makes it even more crucial that you consult a knowledgeable attorney to draft your documents to minimize the possibility of a successful challenge to their validity.

Do I need a lawyer to draft these documents?

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[6] As of October 2002, the states that prohibit sodomy between both same-sex and different-sex partners were as follows: AL, FL, ID, LA, MS, NC, SC, UT, and VA. In addition, KS, MO, OK, and TX prohibit sodomy only between same-sex partners. Many court challenges were pending at press time, so for an updated list of state sodomy laws, you can visit www.lambdalegal.org/cgi-bin/iowa/documents/record?record=275.

[7] Miss. Code Ann. § 97-29-59 (calling sodomy "the detestable and abominable crime against nature committed with mankind or with a beast").

[8] *See* Contreras v. State, 445 So.2d 543 (Miss. 1984) (holding that defendant was properly charged with sodomy rather than sexual battery where defendant's adult daughter testified that she and defendant engaged in fellatio and cunnilingus).

[9] Miss. Code Ann. § 97-29-59 (stating that persons convicted of sodomy "shall be punished by imprisonment in the penitentiary for a term of not more than ten years").

Technically, no statute requires that you consult an attorney to draft a valid will or any other life planning document. In fact, Mississippi is one of a handful of states that still accepts holographic (hand-written) wills. However, the legal requirements for creating a valid will or any other life planning document are strictly enforced, and there have been many instances in which home-made wills have been held invalid by the courts for reasons that have nothing to do with the reason the will was challenged – i.e., what are often called "technicalities." Because individuals who wish to leave their belongings to or have their decisions made by non-family members run a greater risk than the average person of having their plans challenged, there is a greater incentive for these individuals to consult an attorney if they can afford to do so.

If I am lesbian, gay or bisexual, do I have to be "out" to draft these documents?

You do not have to disclose your sexual orientation, HIV status, or the nature of your personal relationships in any of the documents discussed in this publication. In fact, as will be discussed below, in some cases it is imperative that you refrain from doing so. However, it is probably in your best interest to discuss your sexual orientation with any attorney you consult if you feel comfortable doing so, so that she or he will know what legal protections you need. Attorneys are required by law to keep everything their clients say completely confidential.

In Mississippi, it is often hard to locate an attorney who is gay-friendly. If you need a referral, please contact the ACLU of Mississippi at (601) 355-6464.

II. Brief Summary of Important Documents

Last Will and Testament

To ensure that your property distribution wishes are recognized and legally enforceable, you should consult with an attorney to execute a last will and testament. Without a legal will that documents your wishes, intestacy laws (the state's property distribution scheme for those who die without a will) automatically dictate that your biological family will inherit all of your property and possessions.

Because same-sex relationships are not recognized under current intestacy laws in Mississippi (and other states), a valid will is essential for individuals who want to leave property to same-sex partners or other loved ones or to donate money or property to charitable institutions or community organizations. In addition, wills that omit biological family members in favor of same-sex partners or other loved ones have sometimes been challenged by biological families. For this reason, it is especially important that you consult an attorney to make sure that your will meets your needs and conforms to the law of this state.

Advance Health Care Directives

An advance directive is your oral and written instructions about your future medical care, in the event that you become unable to speak for yourself. There are two types of advance directives: a **living will** and a **health care power of attorney**. It is strongly recommended that you complete both to ensure that your wishes concerning medical treatment are honored.

A **living will** (sometimes called a "medical directive") is a written documentation of your wishes about medical treatment should you be unable to communicate at the end of life. It protects your right to refuse medical treatment you do not want and to request treatment that you do want in the event that you lose the ability to make decisions for yourself. In this document, you communicate your wishes directly to your health-care provider.

A **health care power of attorney** (sometimes called a "health care proxy" or "medical power of attorney") is a document that empowers a trusted representative, referred to as your "agent," to make decisions about your health care in the event that you become ill or incapacitated and are unable to communicate your wishes about medical treatment. This document can be critically important for those in same-sex relationships. If you have not legally designated an agent, many health care providers will consult only with traditionally-defined next of kin should you become incapacitated.

In Mississippi, the two advanced directives may combined into one legal document that allows you to give instructions for health care directly to your health-care provider, designate an agent to make decisions about your medical care at any time you cannot make such decisions for yourself, and designate a primary physician. You can complete any combination of these three sections in your advance health-care directive.

An advance health-care directive, like a will, is only legally binding if completed by a competent adult who is 18 years of age or older. It is not necessary, although it may be a good idea, to consult an attorney to prepare your advance health-care directive. If you have access to the Internet, you can download these documents for any state for no charge at http://www.partnershipforcaring.org or for a nominal charge by calling 1-800-989-9455.

Durable Powers of Attorney

A durable power of attorney grants power to another person to act on your behalf in legal and financial matters. It can be valid as soon as you sign it or can become valid only when you become unable to handle your affairs yourself. This document can become extremely important should you become ill, incapacitated, or unavailable for some other reason. However, because it grants such broad powers to another person, you should carefully consider whom you wish to serve as your agent and when you want the power to take effect. You should consult a lawyer to prepare your durable power of attorney.

Other Legal Documents and Protections

At a minimum, every individual should seriously consider completing a living will, health care power of attorney, last will and testament, and durable power of attorney. In addition, there are other types of arrangements that can supplement these basic legal protections based on your situation and needs. You should consult an attorney to advise you as to what documents or arrangements best suit your needs.

For example, a **cohabitation agreement** is a contract between partners or people who live together describing how finances will be managed and defining the obligations and duties within the living arrangement. Such a document can state what property belongs to whom and how that property will be divided between you, should such a division become necessary during your lifetimes.

Through a **parenting agreement**, a co-parent, friend, or chosen family member can be nominated as a child's guardian in the event of the legal parent's death and/or can be granted power to approve medical treatment for the child. Co-parents can draft contracts promising each other that they will care for the children together. However, all documents which affect children are enforceable only at the discretion of the courts, which will always determine the "best interest of the child" when considering the custody of a minor regardless of the legal documents that exist. Nevertheless, it is better to have legal documents stating your intentions and wishes than to have no protection at all.

A **revocable trust** is a will substitute. Many estate planners recommend that their clients use a revocable trust to pass the bulk of their property at death because a revocable trust can avoid the costs associated with probate. A trust can be created very simply by signing a declaration or deed that identifies the property in the trust, names a trustee (the person who will hold legal title to the property and manage it), and names the beneficiaries of the trust (the persons who will have actual use and enjoyment of the property). Individuals who wish to omit family members in favor of same-sex partners or other friends or loved ones when distributing their property often find the revocable trust an attractive option because a trust need not be publicly recorded, whereas a will must be; therefore, a revocable trust provides some protection against contests by family members.

There are other ways besides a will or a revocable trust to pass your property or money on to the person or persons of your choice. For example, many same-sex partners choose to own property together as **joint tenants with rights of survivorship**. What this means is that when one of the two joint tenants dies, the other automatically owns 100% of the property, no matter what the will says. Another way to provide financial security to an unrelated loved one is to have a **life insurance** policy that designates your partner as the beneficiary, or to have a **joint bank account** that does the same.

If you feel strongly about **funeral arrangements**, you should create a document separate from your will stating exactly what arrangements you wish to be carried out. Whether the document will be honored as legal is an open question. Although no minimum legal requirements exist for such a document to be effective, at the least the document should bear your signature, be witnessed by two unbiased witnesses, and notarized.

Because there are advantages and disadvantages to all of these documents, it is strongly recommended that you consult a knowledgeable attorney to advise you as to which options best suit your needs. This booklet is meant to provide general information only and is not a substitute for individual legal advice.

III. Detailed Analysis of Important Documents

A. Wills

If you want someone other than your legal relatives to inherit your property, or if you want to pick and choose among your relatives based on your personal relationships with them, you must legalize your wishes by making and executing a will. In Mississippi, if you do not leave a will, your property will be distributed as follows:[10] if you have a surviving spouse and/or children, they will inherit your property in equal shares. If you have no spouse or children, then your mother, father, brothers, and sisters will inherit your property in equal shares.[11] In the unlikely event that you are survived by none of the above individuals, grandparents, uncles, and aunts are the next in line to inherit. Because many individuals wish to leave their property to non-family members, leaving a valid will is crucial.

Some things you should know about wills include the following:

A will can distribute property. You have the right to leave your property to whomever you choose or whatever organization(s) you choose.

A will can nominate a guardian to care for a person's children in the event of her or his death.[12] Most people do not realize that there are two types of guardians: the guardian "of the person" has legal and physical custody of the child himself; and the guardian "of the estate" is the individual who administers the child's property before the child reaches the age of majority. In many cases, the same person will perform both duties, but two different individuals can be appointed if the decedent so provides in her will or if the court believes it is in the best interest of the child.

It is important to be aware that if one member of a same-sex couple nominates the other partner as physical guardian of her children, this does not automatically mean that the partner will be granted physical custody. In fact, if a biological parent or other family member seeks custody, it is unlikely that custody will be granted to a same-sex partner, though the parent's expression of her wishes is one factor to be taken into account by the court. However, a same-sex partner can be appointed in a will as guardian of the estate.

If a parent wants to assure himself that his partner will have the power to manage the property he leaves to his children, another option is available: he can create a trust in his will, naming his partner as the trustee and the child(ren) as beneficiary(ies). Trustees generally possess broader powers than guardians of the estate. The appointment of a

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[10] *See* Miss. Code Ann. § 91-1-3, 91-1-7.

[11] If you have brothers or sisters who predeceased you but have surviving children, the children of each sibling will split that sibling's share. However, if, for example, your brother predeceased you and had no children but did have a wife, the wife would not inherit anything because spouses do not take by representation in Mississippi.

[12] Miss. Code Ann. § 93-13-7.

trustee must be recognized by the court so long as the trustee is competent and willing to serve in that capacity.

If you cannot afford an attorney, you can execute a valid will on your own. There are many computer programs available for this purpose. However, it is important to be aware of Mississippi's legal requirements for wills.

(1) Testamentary capacity

In order to execute a valid will, you must be: 18 years of age or older; and of "sound and disposing mind" – in other words, having the mental capacity to: understand and appreciate the nature of the act of making a will; know the beneficiaries and their relationship to you; determine how your property will be disposed of.

(2) Requirements for the testator

By law, four things are required of the testator: your signature; your acknowledgement of your signature to your witnesses at the time you request that they sign the will, if you do not sign it in front of them; your communication to the witnesses that the document they are signing is your will; and your oral request that the witnesses sign the will.

A will must be attested by two (2) witnesses. The witnesses must be in your presence when they sign the will. A notary must also be present to notarize the witnesses' supporting affidavits. The witnesses are not required by law to sign in the presence of each other, however, most wills are written as if they will do so.

(3) Requirement for witnesses

By law, three things are required of the witnesses to a will: their signatures on the will; your presence and attention – you must be aware of and see both witnesses sign the will; credibility – i.e., witnesses to a will must be competent under the laws of evidence to testify in support of the will if need be. Fortunately, almost everyone is competent under modern evidence rules. Witnesses should be 18 years of age or older and of sound mind. It is important to note that a witness SHOULD NOT be a beneficiary of the will.[13] As a matter of good practice and extra precaution, witnesses should sign an attestation clause (a sample one is included in Appendix B). Although not required, most attorneys use them.

There is no requirement that your witnesses be people you know or have close relationships with. The function of the witnesses' affidavit is to make the will "self-proving" so that there is no need for the witnesses to be tracked down and made to

[13] *See* Miss. Code Ann. § 91-5-9. This section provides that if a will cannot otherwise be proven, and the only witness is a beneficiary, the devise to that individual is void, as she will be compelled to testify as a witness rather than allowed to take what was devised to her in the will.

testify to the will's validity. However, for the sake of caution, it would be a good idea to choose witnesses who are young enough that they are unlikely to predecease you.

The most likely ground for a will contest in cases of same-sex partners is called *undue influence*. Mississippi adheres to the "Confidential Relationship Doctrine," which holds that if a beneficiary who has a confidential relationship with the testator had something to do with the making of the will, there is a presumption that the beneficiary unduly influenced the testator. Thus, make sure your partner (and/or other beneficiaries) are not involved in the making of the will. Obviously, this does not mean that you can't or shouldn't discuss estate planning together, but that she should not be present when you discuss your wishes with your attorney, make out your will, and execute it.

(4) Executing your will

All it means to "execute" a will is to sign it and have it witnessed and the supporting affidavits of the witnesses signed and notarized as described above. As soon as you do that, your will is valid.

Keep the original in a safe place such as a safety deposit box, fireproof safe or filing cabinet. Make sure the individual you have appointed as your executor knows of the will's existence, where it is, and how to obtain it in the event of your death. Only the original will can be probated.

(5) Changing your will

If you want to change or revoke your will, do not write on it. You can revoke your will by physically destroying the original (this is why copies cannot be probated), such as by tearing it up or burning it. However, it is generally better to see an attorney to add a codicil to the original will or start from scratch and draw up a new one. A new will typically has a revocation clause at the beginning revoking all prior wills.

Every will should appoint an **executor**. Please note that the principal duties of the executor are: (1) to inventory and collect the assets of the decedent; (2) to manage the assets during administration; (3) to receive and pay the claims of creditors and tax collectors; and (4) to distribute the remaining assets to those entitled to them. If you do not choose an executor (and an alternate in case your first choice is unwilling or unable to serve), the chancery court will appoint one for you. Partners can appoint each other, but they do not have to do so. If someone other than a beneficiary is appointed executor, however, she or he will be legally permitted to charge a fee for any services performed.

It is extremely important for same-sex partners who want to inherit from each other to be unmarried (this will probably not be an issue in most cases). Mississippi law makes provisions for the surviving spouse – i.e., if you leave your spouse out of your will, it is

automatically renounced and the surviving spouse may make a claim for a share of the estate.[14]

The federal government taxes all estates that are sufficiently large. Mississippi also has an estate tax. Provisions exist in tax law that allow an estate to pass from one spouse to another without being taxed. As a practical matter, most people do not have estates large enough to be taxed and thus do not have to worry about tax consequences when making their estate plans. For more information on federal and state estate taxes, see *Real Estate Ownership: Rights and Options for Unmarried Couples.*[15]

It is a good idea to draft your will while you are healthy and before you go in for surgery or are hospitalized for some other reason. Drafting your will after you become ill may raise a question as to whether you were of sound mind at the time you signed your will.

B. Advance Health Care Directives

In Mississippi, as in many other states, a statute has been enacted that specifically allows you to appoint another person to make decisions on your behalf regarding health care.[16] The way the statute is written, the Advance Health-Care Directive has three parts.

Part One is a power of attorney for health care, in which you appoint your agent (and an alternate in case your first choice is unwilling or unable to serve). The agent you appoint may make all health-care decisions for you unless you limit her or his powers. These health-care decisions include the authority to: (1) consent or refuse to consent to any care, treatment, service or procedure to affect a physical or mental condition; (2) select or discharge health-care providers and institutions; (3) approve or disapprove diagnostic tests, surgical procedures, programs of medication, and orders not to resuscitate; and (4) direct the provision, withholding, or withdrawal of artificial nutrition and hydration and all other forms of health care. The authority of your agent can be effective upon completion of the document or only upon certification of your incapacity.

Part Two is what is normally referred to as a "living will." Many states have this as a separate document from the health-care power of attorney. A living will differs from a health care power of attorney because instead of speaking through an agent, you are speaking directly to the physicians or hospital about your desires regarding life-sustaining medical procedures. On the standard Mississippi form, choices are provided for you to express your wishes concerning the provision, withholding, or withdrawal of treatment to keep you alive. This includes the provision of artificial nutrition and hydration and the provision of pain relief. You can add any additional wishes that you desire to those provided. Because the living will expresses your desires directly, its provisions will

[14] *See* Miss. Code Ann. § 91-5-25 and § 91-5-27.
[15] You can order this handbook from the ACLU of Mississippi by calling (601) 355-6464, or from Equality Mississippi by calling (601) 936-7673. In addition, these publications are available online at www.msaclu.org and www.EqualityMS.org.
[16] *See* Miss. Code Ann. § 41-41-209.

supersede any decision made by your agent regarding life-sustaining measures. The health care power of attorney (Part One) will remain effective as to all other medical decisions. If you wish to grant your agent the authority to make all your medical decisions, including those concerning life-sustaining measures, you do not have to complete Part Two.

In Part Three, you can designate a physician to have primary responsibility for your health care. It is also a good idea to inform your primary physician of your wishes, to note them in your medical records, and to provide her or him with a copy of your advance health-care directive. If you do not have a primary physician, you can simply skip Part Three. The statute provides that you can complete any combination of the three parts, or only one if you so choose.

Although the directions preceding the form provided in the statute states that you are free to use any form you choose to express your wishes, it is probably better to use the form that the state provides (Appendix B) because it will be familiar to health-care providers. However, it is often particularly important for individuals in same-sex relationships to add a visitation clause, which is in brackets in Appendix B, to specify that your agent has the authority to visit you in the hospital and to determine who else will be allowed to visit you. Many hospitals have policies prohibiting anyone but immediate family members from visiting patients in the intensive care unit.

After you complete your advance directive, make several photocopies of it and distribute them to your agent, alternate agent(s), your doctor, and anyone else who might be involved in your health care. Keep the original in a safe but accessible place (not a safe deposit box).

It is important to note that advance directives are generally not effective during a medical emergency because there is no time to consult the directions in an advance directive or determine a person's underlying medical condition. Once the person comes under the care of a physician, the contents of a living will can be evaluated and the instructions of a health-care agent determined in light of that person's overall prognosis.

Do not confuse a health care power of attorney with a durable financial power of attorney, which will be discussed in the next section. If you want to grant both powers to the same individual, two separate documents will be needed. However, if you have both, it could eliminate the need for a guardianship hearing should one partner become incapacitated.

C. Durable Powers of Attorney

A durable power of attorney is a document that designates an agent to act on another person's behalf (in legal terms, that person is known as the "principal") in managing your financial affairs. It is usually used to make sure a person's bills can be paid in the event of a disability or the person being away for a prolonged period of time. Same-sex

partners often use powers of attorney to make sure that their bank accounts and other assets are available to each other in the event of an emergency.

Historically, powers of attorney became ineffective when the principal became incapacitated, and they still do unless it is specifically provided that the power continue. A *general power of attorney* is automatically revoked upon death or disability. A *durable power of attorney* continues to be in force despite disability.[17]

Durable powers of attorney can be drafted in one of two ways: such that it is effectively immediately, or such that it will become effective only in the event of a disability. Serious advantages and disadvantages exist for both options. If you choose to have the power become effective immediately, you must be certain that you trust the person you designate as your agent. In general, romantic relationships can be less stable than family relationships or even friendships. The power of attorney usually provides broad powers to the agent. Although the agent is supposed to exercise her authority only on behalf of the principal, a great deal of damage can be done if she chooses to disregard this requirement. Thus, it might seem more logical to have the power come into effect only upon incapacity of the principal.

However, the difficulty with having the power come into effect only upon incapacity is that your agent must legally establish your incapacity in order for the power to become effective. It is generally easier to convince financial institutions to recognize a document that is effective immediately. Although powers of attorney can be revoked at any time, the bottom line is that you should be cautious about how much power you grant and to whom you grant it.

All powers of attorney should be notarized, especially those that grant authority over real property. The best way to ensure that your power of attorney will be enforceable is to take it to your various financial institutions (bank, mortgage company, etc) at the time the document is signed. Alternately, you can write a letter, enclosing a copy of the power of attorney and asking that you be notified immediately if the document will not be honored. In addition, many banks have their own power of attorney forms. It is almost always easier to have an agency relationship recognized if you use the bank's own forms. Do this in addition to, not in lieu of, signing the durable power of attorney for asset management.

D. Cohabitation Agreements

A cohabitation agreement (or "living-together agreement") is simply a contract. Generally, such agreements deal with each person's rights and responsibilities regarding property ownership, distribution, income, and expenses. Negotiating a cohabitation

[17] Another option for individuals who are reticent to give broad powers to an agent is a "special" power of attorney, which is limited to a specific matter or transaction. For example, you could give someone the authority to withdraw money from your account to pay your bills while you are out of the country (financial) or to make a medical decision for one day if you are having out-patient surgery (health care).

contract, like a prenuptial agreement, may seem pessimistic or cold; however, it is often the case that couples who talk about these issues and put their expectations in writing have an easier time dividing their property and making other important decisions if and when a break-up does occur. Same-sex couples and other unmarried cohabitants do not have the benefit of an automatic judicial settlement as married couples do when they separate or divorce. Thus, when you are living with someone, sharing expenses, and buying household items together, you should consider drafting a cohabitation agreement.

Because the purpose of drafting a cohabitation agreement is to create a contract that is legally binding on both parties, you should think seriously about the potential consequences of doing so. Once you have signed the agreement, you will be responsible for all of the terms in the contract, even if unforeseen circumstances arise or you decide that you would rather do something differently. Although if both partners want to alter a contract they may be able to do so, you should never enter into a contract with the assumption that you can change the terms afterwards because the other partner has the right to hold you to the original agreement. Thus, it is advisable to only enter into a cohabitation contract if you are in a serious, long-term relationship.

One important concern is whether your cohabitation contract will be enforceable in a court in Mississippi. In general, a contract is enforceable if the following requirements are met: (1) the parties have the capacity to enter into a contract (i.e., have reached majority and are mentally competent); (2) the purpose of the contract is legal (for example, you cannot contract to sell drugs or engage in sexual activity); and (3) a "bargained-for" exchange occurred. This means that each person must benefit from the promises made in the contract, although they do not have to benefit equally – trading one promise for another is sufficient.

A cohabitation agreement should state with specificity who owns what individually, what is owned collectively, and whether joint property is owned in equal shares or in shares proportional to the parties' economic contributions. For example, if Partner A makes $70,000 a year and Partner B makes $30,000 a year, they might split the mortgage payment 60/40 instead of 50/50 and might want to extend that arrangement to cover ownership shares of the property. Furthermore, you should indicate how your joint property should be divided if you stop living together. In many cases, partners will agree to split joint property equally and that the items brought into the relationship remain with their original owners. Of course, you should feel free to choose whatever options best suit your needs.

In addition, the agreement should discuss how expenses will be divided and what will happen to future purchases. You might consider using the agreement to facilitate plans to take turns working and supporting each other while one of you goes to school – because this kind of situation often involves a long period of time and serious financial commitment, documenting your intentions could be a great help if one partner reneges on the verbal agreement if a break-up should occur.

One of the most important parts of a cohabitation agreement is the portion that addresses how the residence should be dealt with if the partners decide not to live together anymore. Whether the property is held in one partner's name, as tenants in common, or as joint tenants,[18] you can make an agreement that defines each partner's rights with regard to the residence in the event of a break-up, as well as rights existing during the relationship.

For example, if two partners have a joint mortgage and one moves out, she is still legally liable for mortgage payments and taxes in the absence of an agreement stating otherwise. One way to avoid this problem is to include a provision in the cohabitation agreement stating that if one partner moves out, the residence must be sold and the proceeds split equally. Alternately, if one partner wishes to remain in the residence, they can make a buy/sell agreement in which one partner agrees to buy out the other. Because agreements regarding real estate can be complex, you should consult an attorney to determine what kind of buy/sell arrangement is best for your situation and consider the tax consequences of whatever options are available to you.

A cohabitation agreement can address questions other than financial arrangements. For example, you might want to include a section on decision-making or on how differences will be settled if an agreement cannot be reached (such as agreeing to submit to arbitration or mediation). However, there is one important caveat concerning cohabitation agreements. In general, contracts dealing with property and finances will be upheld except in cases where fraud or coercion is present. But you must be very careful to make your agreement as business-like as possible – in other words, the agreement should be drafted in the same manner as any contract between two individuals who are in a business, rather than a personal, relationship.

Contracts regarding personal living arrangements – i.e., who walks the dog, does the dishes, and so on – are probably not enforceable. If you wish to express your intentions about personal living arrangements, you should do so in a separate document from your cohabitation agreement. Not only will a court not enforce a personal living contract, it might also refuse to enforce the financial clauses of a contract that deals with both. Also, you should avoid any mention of sexual relations, love, monogamy, etc. Such language will render an entire contract unenforceable because courts will not enforce a contract based upon a "meretricious relationship," or sexual services. Refer to your significant other as "partner" rather than "lover."

Your cohabitation agreement is a legally binding contract and should be created with the assumption that it cannot be modified afterwards. It is a good idea to include a clause stating that any modifications to the contract must be in writing. If your circumstances do change, and you and your partner agree to modify the contract, consider the changes carefully. Modifications should always be in writing, and be signed and dated by both partners.

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[18] *See* Section G for more information on property co-ownership.

Make two copies of the final draft of your cohabitation agreement so that you and your partner each have one. You should both initial every page and then sign and date both copies. It is best to do this when you have your agreement notarized. Notarization alone doesn't make your contract legal or enforceable, but it proves that the signatures are not forged and shows that you intend to make the agreement official.[19]

E. Parenting Agreements

Families whose ties are not defined by biology, marriage, or adoption are put at risk by a legal system that does not provide a mechanism for protecting parental relationships with children when the adult relationships involved are strained or dissolved. However, a parenting agreement may help to establish the fact that a family exists and who is responsible for the child or children. These are typically written agreements between a legally-recognized parent (the biological or adoptive parent) and a non-legally recognized adult who is the child's co-parent (usually the legally-recognized parent's partner). In some states, the non-legally recognized parent may be allowed to adopt the child, thus establishing her or his parental rights. However, in Mississippi this is not an option.

It is important to note upfront that parenting agreements are not enforceable in court as contracts; the court will always make decisions about child custody and visitation on the basis of what it deems to be "in the best interests of the child." Especially in a generally homophobic jurisdiction like Mississippi, such documents are not likely to be regarded as establishing a relationship with the child or aid the court in making a positive determination. Very few states, even the most progressive ones, have recognized the rights of a non-biological parent to custody of or visitation with the child. However, there are other reasons to draft a parenting agreement.

A parenting agreement can help clarify the family relationship in the minds of the children and the adults involved. Drafting the agreement provides an opportunity for partners to talk about their expectations in definite terms. As is the case with cohabitation contracts, those who put their expectations in writing are often better able to work through difficulties should they arise. The agreement should cover at least the following topics:

(1) The parents' mutual intent to raise their child(ren) together and to share all rights and responsibilities with regard to the children;
(2) What proportion each parent has paid or will pay for the care of the child(ren);
(3) Arrangements regarding day-to-day caregiving and decision-making; and

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[19] It is an open question as to whether the Mississippi courts would enforce a cohabitation contract, but the prospects look good. In *Estate of Reaves v. Owen*, 744 So.2d 799 (Miss. App. 1999), the Court of Appeals held that "the prohibition against same-sex marriages does not preclude individuals in homosexual relationships from exercising their rights to privately commit by contract to spend their money and distribute their property as they wish." In addition, the court noted that "no authority states that a contract between two unmarried persons is illegal." (Presumably the court meant two unmarried persons who are or were in an intimate relationship, as parties to contracts are usually unmarried).

(4) Custody, visitation, and financial arrangements should the couple end their relationship.

In addition, it is advisable for you to execute the following documents and make reference to them in your parenting agreement:

(1) A will, which nominates a guardian and an alternate guardian for the child;
(2) Powers of attorney, which should give the non-legally recognized parent the right to make health care decisions, to travel with the child, and to pick the child up from school or day care.

Only one co-parent can claim a child as a dependent on his or income tax return. In most cases, this will probably be the legally-recognized parent. Similarly, it is probable that the child's medical insurance will have to be supplied through the legally-recognized parent's policy.

F. Revocable Trusts

A trust is a fiduciary relationship in which a trustee holds legal title to specific property and is obligated to manage that property on behalf of one or more beneficiaries. In other words, it is a device whereby one person manages property for the benefit of another. A *revocable* trust is one that may be revoked at any time by the "settlor" (the creator of the trust). Because the settlor has reserved the right to revoke the trust, he or she is the real owner of all the property in the trust and thus must pay taxes with respect to the trust property. Also, the trust property will become a part of the settlor's taxable estate at death – in other words, you cannot avoid paying estate taxes by creating a revocable trust.

Many estate planning experts advise their clients to create revocable trusts because the property in the trust passes directly to the beneficiary without being subject to probate administration. Not only can this save your estate money, it can also help protect against will challenges. A will challenge by a family member who would have inherited under Mississippi intestacy laws can still challenge the will, but the will challenge will not affect the property in the trust. Use of the revocable trust is not foolproof – if a family member is successful in challenging the will, she would then have standing to challenge the trust as well. But the trust will make it more difficult for her because she will have to win (and expend resources for) two legal battles instead of one.

For many individuals, a will is a sufficient estate planning tool. If you have a large estate and/or anticipate the possibility of a will contest, a revocable trust might be a better option for you. As always, you should consult a knowledgeable attorney for individualized advice on your situation.

G. Property Co-Ownership

There are two ways for unmarried, unrelated individuals to own property jointly: "joint tenants with rights of survivorship" and "tenants in common."

"Joint tenants with rights of survivorship" are co-owners who inherit from one another immediately upon the death of the other owner, despite any provisions to the contrary in a will or the lack of a valid will. Joint tenancy puts the property out of the reach of anyone who might want to challenge the will.

"Tenants in common" each own one-half share of the residence, but each owner would have to make provisions for distribution of his portion in his will. In this case, if a tenant in common died without leaving a will, her legal heir would then own her half of the property with the surviving partner.

For more detailed information on property co-ownership, see *Real Estate Co-Ownership: Rights and Options for Unmarried Couples*.[20]

H. Joint Bank Accounts

The most common type of joint bank account is a "joint tenancy with right of survivorship" account. Like the JTWROS form property co-ownership, money deposited in such accounts belongs automatically to the survivor in the event of the death of the other partner. However, you should be aware of the major drawback to joint accounts: any party to the account may withdraw all the money at any time.

If you want to maintain your own bank account but provide that the funds go to your partner when you pass away, there are alternatives the JTWROS account. Many banks have a "payable on death" (POD) account that will give the deposited funds to the beneficiary you name, but only after your death.[21] The beneficiary would have no right to withdraw funds during your lifetime.

I. Funeral Arrangements

Your wishes regarding funeral arrangements should not be in your will. Funeral and body disposition arrangements must occur long before a will is probated, probably before anyone even reads it. Instead, you should create another document that states your desires with regard to these matters. Many people think that they can communicate their wishes to their agent, but powers of attorney will not suffice because they terminate

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[20] You can order this handbook from the ACLU of Mississippi by calling (601) 355-6464, or from Equality Mississippi by calling (601) 936-7673. In addition, these publications are available online at www.msaclu.org and www.EqualityMS.org.

[21] Mississippi law authorizes financial institutions to establish accounts payable at death. *See* Miss. Code Ann. § 81-5-62 (banks); Miss Code Ann. § 81-12-145 (savings associations); Miss. Code Ann. § 81-14-363 (savings banks). The statutes specifically state that the beneficiary's right to the money in the account is not affected by the absence of any testamentary provisions relating to the money.

automatically upon your death, after which your agent has no further power to make decisions regarding you.

Mississippi, like most states, does not have a statute that specifically recognizes documents that provide for funeral or burial arrangements. Thus, the legal effect of such documents is not clear. Mississippi law seems to assume that the "next of kin" has the right to make decisions regarding burial or cremation of a deceased family member. If you have strong feelings about the kind of funeral arrangements you want, you should make a clear statement regarding your wishes. The statement should be signed, witnessed, and/or notarized.

In many cases, problems arise when a surviving partner wishes to make a decision about the burial or cremation of the deceased partner that is different from the wishes of a legally-recognized family member. Sometimes funeral homes will only recognize the wishes of a partner or those of the deceased if the person legally considered the "next of kin" signs a waiver. If you are concerned that such a disagreement may occur between your partner and your family, there are a few options to consider. First, if you are comfortable doing so, discuss your wishes with your family so that they are aware ahead of time of whether you want to be buried or cremated, etc. Also, you can provide in your will that your executor will only pay funeral expenses if your preferences are honored.

IV. Conclusion

The information in this booklet is accurate and up-to-date to the best of our knowledge at the time it was printed. However, the law is constantly changing, so you should never assume that a legal document will be valid forever. You should review your documents periodically to ensure that they are still binding.

Appendix A
Publications, Groups, & Resources

Publications

Partnership Protection Documents: A Sampler of Forms, The National Center for Lesbian Rights (1996). [NCLR has many publications and materials concerning partnership protection. For more information, call 415.392.NCLR.]

A Legal Guide for Lesbian and Gay Couples, Eighth Edition, Hayden Curry and Denis Clifford (Berkeley: Nolo Press, 1994). [Nolo Press publishes many self-help law books, audio tapes and software. For a full list of publications, call 800.955.4775.]

The Rights of Lesbians and Gay Men: The Basic ACLU Guide to a Gay Person's Rights, Third Edition, ed. Nan D. Hunter, Sherryl E. Michaelson, and Thomas B. Stoddard (Carbondale, IL: Southern Illinois University Press, 1992).

Groups & Resources

ACLU Lesbian & Gay Rights Project
125 Broad Street, 18th Floor
New York, NY 10004
212.549.2627
www.aclu.org

ACLU of Mississippi
P.O. Box 2242
Jackson, MS 39225-2242
601.355.6464
www.msaclu.org

Camp Sister Spirit
P.O. Box 12
Ovett, MS 39464
601.344.1411
www.campsisterspirit.com

Partnership for Caring
1620 Eye Street, NW, Suite 202
Washington, DC 20006
202.296.8071 or 800.989.9455
www.partnershipforcaring.org

Choice in Dying
National Office
1035 30th Street, NW
Washington, DC 20007
202.338.9790
www.choices.org

Equality Mississippi
P.O. Box 6021
Jackson, MS 39288-6021
601.936.7673
www.EqualityMS.org

Gay Mississippi Online
(a guide to gay and gay-friendly organizations in Mississippi)
www.gunga.net/gayms

GLBA of Ole Miss
P.O. Box 3541
University, MS 38677
662.915.7049
www.olemiss.edu/orgs/glba/

Gays, Lesbians, Bisexuals & Friends (GLBF)
Mississippi State University
Mail Stop 9535
Mississippi State, MS 39762
662.325.8241
http://fineartforum.org/org/glbf/

GenderPAC
1743 Connecticut Ave. NW
4th Floor
Washington, DC 20009-1108
202.462.6610
www.gpac.org

Gay & Lesbian Parents Coalition International
P.O. Box 34337
San Diego, CA 92163
619.296.0199
202.583.8029 (DC Information Access Number)
www.glpci.org

Human Rights Campaign
1101 14th Street NW, #200
Washington, DC 20005
202.628.4160
www.hrc.org

Lambda Legal Defense & Education Fund
Southern Regional Office
1447 Peachtree Street, NE, Suite 1004
Atlanta, GA 30309-3027
404.897.1880
www.lambdalegal.org

National Center for Lesbian Rights
870 Market Street #570
San Francisco, CA 94102
415.392.6257
www.nclrights.org

National Gay & Lesbian Task Force
23201 17th Street, NW
Washington, DC 20009
202.332.6483
www.ngltf.org

National Organization for Women
1000 16th Street NW, #700
Washington, DC 20036
202.331.0066
www.now.org

Appendix B
Sample Forms

LAST WILL AND TESTAMENT

OF

____

I, __________, a resident of ______ County, in the State of Mississippi, being of sound and disposing mind and memory, and being over the age of eighteen (18) years, do hereby make, publish and declare this instrument as and for my Last Will and Testament, hereby revoking any and all other Wills and Codicils heretofore made by me.

ITEM ONE: DEBTS

: I direct that all of my just debts which may be probated in my estate and allowed, including the expenses of my last illness and funeral, shall first be paid out of my estate by my Executor hereinafter named, as soon as possible after my death. Any Estate taxes shall be paid from the residuary of my Estate.

ITEM TWO: SPECIAL BEQUESTS

I hereby give, devise, and bequeath __________ to ________.

ITEM THREE: RESIDUARY ESTATE

I give, devise and bequeath all of my property of whatever kind and wheresoever situated, whether real, personal, or mixed that I may own at the time of my death other than the articles listed in Item Two to _________________.

ITEM FOUR: EXECUTOR

I hereby nominate, constitute and appoint as Executor of this my Last Will and Testament and direct that she shall not be required to give any bond or surety, or sureties as such Executor, nor shall she be required to render any account to any Court or make any inventory of my Estate. Should _______ predecease me, or for any reason be unable or unwilling to serve as Executor, then I nominate, constitute and appoint __________, as Executor, likewise exempting him from the necessity of posting bond, the making of any inventory and the rendering of any account to any Court for his acts as Executor.

ITEM FIVE: BENEFICIARIES

In making this Will I have carefully considered all of those persons related to me and have made what I feel to be the wisest and most just disposition. It is my will that the provisions herein be followed and that such members of my family as are not mentioned herein have not been overlooked, but omitted intentionally.

IN WITNESS WHEREOF, I, ___________, as Testator aforesaid, have hereunto affixed my signature on this the _____ day of (MONTH, YEAR).

____

SIGNED, PUBLISHED, AND DECLARED by the said _______________, as Testator aforesaid, as and for and to be her Last Will and Testament, in the presence of the undersigned, who, at her request, and in her presence, and in the presence of each

other, have hereunto affixed our signatures as witnesses on this the ____ day of (MONTH, YEAR).

WITNESSES:

____

____

ADVANCE HEALTH-CARE DIRECTIVE

Explanation

You have the right to give instructions about your own health care. You also have the right to name someone else to make health-care decisions for you. This form lets you do either or both of these things. It also lets you express your wishes regarding the designation of your primary physician. If you use this form, you may complete or modify all or any part of it. You are free to use a different form.

Part I of this form is a power of attorney for health care. Part I lets you name another individual as agent to make health-care decisions for you if you become incapable of making your own decisions or if you want someone else to make those decisions for you now even though you are still capable. You may name an alternate agent to act for you if your first choice is not willing, able or reasonably available to make decisions for you. Unless related to you, your agent may not be an owner, operator, or employee of a residential long-term health-care institution at which you are receiving care.

Unless the form you sign limits the authority of your agent, your agent may make all health-care decisions for you. This form has a place for you to limit the authority of your agent. You need not limit the authority of your agent if you wish to rely on your agent for all health-care decisions that may have to be made. If you choose not to limit the authority of your agent, your agent will have the right to:

(a) Consent or refuse consent to any care, treatment, service, or procedure to maintain, diagnose, or otherwise affect a physical or mental condition;
(b) Select or discharge health-care providers and institutions;
(c) Approve or disapprove diagnostic tests, surgical procedures, programs of medication, and orders not to resuscitate; and
(d) Direct the provision, withholding, or withdrawal of artificial nutrition and hydration and all other forms of health care.

Part 2 of this form lets you give specific instructions about any aspect of your health care. Choices are provided for you to express your wishes regarding the provision, withholding or withdrawal of treatment to keep you alive, including the provision of artificial nutrition and hydration, as well as the provision of pain relief. Space is provided for you to add the choices you have made or for you to write out any additional wishes.

Part 3 of this form lets you designate a physician to have primary responsibility for your health care.

After completing this form, sign and date the form at the end and have the form witnessed by one of the two alternative methods listed below. Give a copy of the signed and completed form to your physician, to any other health-care providers you may have, to any health-care institution at which you are receiving care, and to any health-care agents you have named. You should talk to the person you have named as agent to make sure that he or she understands your wishes and is willing to take the responsibility.

You have the right to revoke this advance health-care directive or replace this form at any time.

PART 1
POWER OF ATTORNEY FOR HEALTH CARE

(1) DESIGNATION OF AGENT: I designate the following individual as my agent to make health-care decisions for me:

Name
Address
City, State, Zip
Home phone, work phone

If I revoke my agent's authority or if my agent is not willing, able, or reasonably available to make a health-care decision for me, I designate as my first alternate agent:

Name
Address
City, State, Zip
Home phone, work phone

(2) AGENT'S AUTHORITY: My agent is authorized to make all health-care decisions for me, including decisions to provide, withhold, or withdraw artificial nutrition and hydration, and all other forms of health care to keep me alive.

(3) WHEN AGENT'S AUTHORITY BECOMES EFFECTIVE: My agent's authority becomes effective when my primary physician determines that I am unable to make my own health care decisions unless I mark the following box. If I mark this box [ ], my agent's authority to make health-care decisions for me takes place immediately.

(4) AGENT'S OBLIGATION: My agent shall make health-care decisions for me in accordance with this power of attorney for health care, any instructions I give in Part 2 of this form, and my other wishes to the extent known to my agent. To the extent my wishes are unknown, my agent shall make health-care decisions for me in accordance with what my agent determines to be in my best interest. In

determining my best interest, my agent shall consider my personal values to the extent known to my agent.

(5) NOMINATION OF GUARDIAN: If a guardian of my person needs to be appointed for me by a court, I nominate the agent designated in this form. If that agent is not willing, able, or reasonably available to act as a guardian, I nominate the alternate agent whom I have named.

(6) VISITATION: In the event of any injury, illness, or incapacity, my agent is to have first priority to visit me in any facility, in preference over my blood relatives, and under no circumstances is she to be denied access to me. Further, in the event restrictions are placed on visitations to me, for medical or other reasons, my agent is to have exclusive authority, in preference over my blood relatives, in determining the priority of such visitations and may deny such visitations to any and all persons as she alone determines to be in my best interest.

PART II

INSTRUCTIONS FOR HEALTH CARE

If you are satisfied to allow your agent to determine what is best for you in making end-of-life decisions, you need not fill out this part of the form. If you do fill out this part of the form, you may strike or omit any wording you do not want.

(7) END-OF-LIFE DECISIONS: I direct that my health-care providers and others involved in my care provide, withhold, or withdraw treatment in accordance with the choice I have marked below: [ ] (a) Choice Not to Prolong Life: I do not want my life to be prolonged if (i) I have an incurable and irreversible condition that will result in my death within a relatively short time, (ii) I become unconscious and, to a reasonable degree of medical certainty, I will not regain consciousness, or (iii) the likely risks and burdens of treatment would outweigh the expected benefits; or [ ] (b) Choice to Prolong Life: I want my life to be prolonged as long as possible within the limits of generally accepted health-care standards.

(8) ARTIFICIAL NUTRITION AND HYDRATION: Artificial nutrition and hydration must be provided, withheld or withdrawn in accordance with the choice

I have made in paragraph (7) unless I mark the following box. If I mark this box [ ], artificial nutrition and hydration must be provided regardless of my condition and regardless of the choice I have made in paragraph (7).

(9) RELIEF FROM PAIN: Except as I state in the following space, I direct that treatment for alleviation of pain or discomfort must be provided at all times, even if it hastens my death: ____

____.

(10) OTHER WISHES: (If you do not agree with any of the optional choices above and wish to write your own, or if you wish to add to the instructions you have given above, you may do so here). I direct that _______________________

____

____.

(Use additional sheets if necessary).

PART III

PRIMARY PHYSICIAN

(11) I designate the following physician as my primary physician:

____

____

(Provide name and address of physician and, if desired, an alternate primary physician in case your first choice is not willing, able, or reasonably available to act as your primary physician).

(12) EFFECT OF COPY: A copy of this form has the same effect as the original.

(13) SIGNATURES: Sign and date the form here:

________________________________ ________________________________

Date Signature

______________________________ ______________________________

Address Print name

____

City State

(14) WITNESSES: This power of attorney will not be valid for making health-care decisions unless it is either (a) signed by two (2) qualified adult witnesses who are personally known to you and who are present when you sign or acknowledge your signature; or (b) acknowledged before a notary public in the state.

STATE OF MISSISSIPPI
COUNTY OF HINDS

On this the _____ day of _________, in the year 20__, before me, ___________________________, appeared _________, personally known to me (or proved to me on the basis of satisfactory evidence) to be the person whose name is subscribed to this instrument, and acknowledged that she executed it. I declare under the penalty of perjury that the person whose name is subscribed to this instrument appears to be of sound mind and under no duress, fraud or undue influence.

Notary Seal

____

Notary Public