

A Better Way:
Planning for Peace at End of Life¹

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Business owners as people should be concerned about their own human frailty. Since advance medical directives are receiving so much attention in the news of late, this column focuses on what they are and how they work.

Illinois law gives people a way to express their own desires about the possibility of "death with dignity". You may end life peacefully if circumstances lead to key decisions.

An "advance directive" is a legal document that directs medical care following an incapacity or severe illness. Illinois provides two distinct yet related documents for people to express their wishes. A "living will" is your declaration that quality of life is as important as biological existence. To implement that wish, you may sign a "Power of Attorney for Health Care". Through this legal step, you appoint an agent, and potential successor agents, to make health care decisions when you cannot act or express yourself.

Illinois statutes provide forms that medical providers and others must respect. You would use these documents to direct doctors, nurses and other care-givers after you have become incapacitated or disabled. These documents should comply with state law, both in content as well as how you sign them.

The starting point is the Power of Attorney for Health Care. This form empowers an agent to make health care decisions when you cannot speak or express your wishes. You may authorize one or more decisions along a spectrum. One extreme prolongs life at all costs. The other extreme withholds or withdraws medical procedures for certain reasons. Illinois provides a third option between these extremes. The middle choice is a balancing of benefits, burdens, suffering, costs and quality of life to direct whether to continue

¹ **Important note:** *This information is designed to provide a general overview with regard to the subject matter covered. The author and publisher and host are not providing legal, accounting, or specific advice to your situation. You should consult with the professional advisors of your choice for specific advice.*

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medical treatments.

You may also get more specific if you wish. Some people itemize which treatments you permit and others you forbid. You may tailor the form to reflect your own choices. Many advisors recommend giving your agent some discretion. Others encourage people to provide specific guidance to the agent through the form.

There are several "process" issues in the Health Care Power of Attorney. For example, Illinois does not recognize co-agents. You appoint one person at a time to act as your health care decision-maker. When choosing someone to act on your behalf, you should include a back-up, or successor, agent if your first choice can't or won't act. A treating doctor and minor children may not be agents. Some people wish to limit the power of the agent. So they appoint a guardian who is distinct from the health care proxy. You may affirm organ donor status through this form. However, the driver's license is still the main place to express this wish. And be sure when you complete the form that there is appropriate witnessing of it. The rules are complex, so ask your lawyer for details. Finally, once you execute advance directives, be sure to keep them available when needed. Do not lock them away in a safe deposit box that only you may access.

The traditional starting point is a Living Will. This form declares your intentions about end-of-life medical treatment. Illinois recognizes it as expressing informed consent to reduce, end or prevent the start of medical procedures that would otherwise sustain life. Prior to the use of advance directives, the medical tradition was to "do no harm". Then the Supreme Court handed down decisions about legal principals including privacy and death with dignity. States changed their laws so people could express their wishes and appoint agents to implement those desires.

These concepts differ from the idea of assisted suicide. Withholding or withdrawing life-sustaining treatment, such as force-feeding and hydration, is not the same as ending one's ability to breathe or maintain a heart-beat. The living will is the legally recognized way to express such wishes within the context of ending life in what you consider a peaceful, resourceful way.

Procedurally, you must execute the living will in the presence of two witnesses, similar to a last will and testament. Witnesses cannot be beneficiaries, heirs or those responsible for the financial costs of your care. Again, state law prescribes a specific form. Yet people with their legal and medical advisors may tailor their living wills to include or exclude desired points.

Some people are concerned about whether they can change their mind. While alive and well, anyone who has executed advance medical directives under Illinois law may indeed revoke them. Further, if the medical team recognizes that the patient is in control of the thought

process, then that patient's desires as expressed will trump a contradictory decision by an appointed agent. The patient would also have the peace of mind of knowing that when doctors and the family follow the advance directive, a resulting death is neither suicide nor homicide.

Please consider five other pointers to plan for peace at end-of-life. First, be sure that key people know of your plans. Discuss them with loved ones, such as spouses, life partners, adult children, parents, and other close friends. Provide copies to health care professionals. Include them in medical records.

Second, keep copies in vehicles that family might use to transport to hospitals in case of emergency. Entrust copies to advisors such as attorneys.

Third, review decisions from time to time. An annual check-up of planning instruments can be an effective way to keep your plans current.

Mistakes can be quite costly for a patient and loved ones. So please consult with a competent Illinois lawyer when you execute these forms in this state or move in. Other states have their own rules. If you move, ask a lawyer who knows about advance directives in the new state to review existing forms or help create new ones. Without properly executed documents, an incapacitated person may need a court to appoint a temporary agent or guardian.

And lastly, you should also consider how families can disagree on what is best. A well thought out power of attorney and living will could help preserve family harmony.

Indeed, this simple but powerful step can help bring peace to you and those who care at the very time that you and they most need peace.

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Advance Directives - Additional Provisions Some People Consider

Illinois law sets forth the basic text for a Health Care Power of Attorney. Some people wish to add provisions covering additional areas of concern. You may express your wishes regarding just about any area of health care. Some common other areas include:

- States or levels of functioning in which you would not want (or want) life-sustaining treatment, e.g., states such as permanent unconsciousness or severe dementia.
- Types of life-sustaining treatment you may want or not want and under what conditions

- The use of artificial nutrition & hydration, including feeding tubes
- Instructions about any other specific medical procedure that may be expected, in light of your personal and family medical history, and degree of medical condition, including extent of diagnostic testing (such as limiting invasive procedures)
- Organ and tissue donation wishes (**Organs** you can donate: Heart, Kidneys, Pancreas, Lungs, Liver, Intestines; **Tissue** you can donate: Cornea, Skin, Bone marrow, Heart valves, Connective tissue) - Note that to be transplanted, organs must receive blood until they are removed from the body of the donor. Therefore, it may be necessary to place the donor on a breathing machine temporarily or provide other organ-sustaining treatment.
- Preferences regarding pain control and comfort care (palliative care)
- Preferences regarding other aspects of end-of-life care, such as your place of care, environmental wishes, and hospice care
- Preferences about participating in medical research even if it will not help your condition - you must contact a medical institution to which you are interested in making this donation. Medical schools, research facilities and other agencies need to study bodies to gain greater understanding of disease mechanisms in humans. But, this kind of donation must be accepted by the medical institution. Note that total body donation may *not* be an option if you also choose to be an organ or tissue donor.
- Preferences regarding disposition of your body, including freezing
- Preferences regarding religious / faith activities as you approach death
- Preferences regarding music and other non-medical comforts as you approach death
- Preferences regarding levels of personal care and conduct of personal or business matters (probably better addressed through powers of attorney for property, trusts, buy-sell agreements and other arrangements)

Sources include American Bar Association Commission on Law and the Aging and American Bar Association *Senior Lawyer*.