

## Living Wills & Medical Power of Attorneys

### I. What is a “Living Will”?

It is a document that sets forth your personal wishes with respect to certain medical care. It speaks for “itself” and does not depend upon allowing another person to substitute personal wishes or medical care directions. It is also called an Advanced Care Directive because it consists of your personal instructions prior to a terminal illness, and not that of any other person or physician.

#### What does it do?

It provides instructions for medical care only in situations where you become unable to competently direct your own care, ie. when comatose or mentally incapacitated. These instructions detail care only for life-sustaining treatments, ie. use of resuscitation, blood transfusions, hydration, nutrition, and the like (basically any life-sustaining activity). It includes any type of artificial or mechanical means of prolonging the dying process. In Iowa, living wills can only be used for care where a diagnosis is considered to be “terminal.” It also does not prevent use of pain or comfort medications.

You can choose either to use these life-sustaining procedures or not use them.

#### When does it become effective?

The living will, in Iowa, will only become effective when an attending physician diagnoses a condition as terminal, **and** this diagnosis must be confirmed by another impartial physician. If there is any chance of recovery, the living will cannot be made effective. Also you must be incapable of making your own medical choices.

#### How to make a living will

In Iowa, you must be at least 18 years of age. It must be signed and witnessed by using one of the following procedures: 1. signed by you and two witnesses (at least age 18) who are not family members nor your attending medical professionals, or 2. signed by you in front of a notary public. Living wills made in other States must conform to these standards in order to be valid in Iowa.

It can be made at any time prior to or even after a diagnosis of a terminal illness. But you must be of sound mind and competency at the time of signing it.

#### What should be done with a valid living will?

It is highly recommended that a living will be provided to your primary caregiver for your medical file. However, it is required to be given to each and every attending physician you may have. Thus, **you should make a copy of it and bring it with you every time you may need to undergo intensive medical care.** You should also inform family members.

### What is a “terminal” condition?

Under Iowa law, an incurable or irreversible condition that without life sustaining procedures, results in death within a relatively short time or a comatose state from which there can be no recovery, to a reasonable degree of medical certainty.

### What if I change my mind?

A living will can be revoked at any time by communicating such, by you or someone designated by you, to your attending physician and by having it removed from your family doctor's medical file. It can also then be replaced by another one at the same time or at some other time. It is based on voluntary consent, so any oral communication will revoke it immediately, so long as you are mentally able to do so.

### Does a living will affect life insurance policies?

No. Life insurance cannot be conditioned upon the existence or creation of a living will. Iowa law also provides that withdrawal of life-sustaining procedures does not constitute suicide or homicide.

## **II. What is a Medical Power of Attorney?**

It is a document where you give power to another person (usually a family member) to act on your behalf in matters of medical care. It is essentially a guardianship for allowing another to make day-to-day care decisions without court supervision. The person to whom you grant this power is called an “attorney-in-fact.”

It can be combined with a living will in order to provide you with more control over your total health care.

### What is covered?

It includes decision making in the consent, refusal to consent or withdrawal of consent to health care. Health care means any care, treatment, service or procedure, the purpose of which is to maintain, diagnose or treat an individual's physical or mental condition.

It can be tailored for specific desires and specific medical conditions, including the preference for organ donation.

It also requires issuing a medical records release form and designation of personal representative (for HIPPA purposes) in favor of your attorney-in-fact.

### How is this done?

In Iowa, you must be at least 18 years of age. It must be signed and witnessed by using one of the following procedures: 1. signed by you and two witnesses (at least age 18) where one is not a family member, or 2. signed by you in front of a notary public. Only one of the witnesses can be a close family member. No witnesses can be health care providers or professionals nor the person you designate as attorney-in-fact.

Your attorney-in-fact can be any person age 18 or older. But cannot be a health care provider or professional.

#### When is it effective?

It will only take effect in situations where life-sustaining treatment may be needed and where you are mentally or physically unable to voice or communicate your desires. It may be used whenever you are diagnosed with or without a terminal illness, ie. whenever comatose or unable to communicate desires. However, a living will takes precedence in times of terminal illness if a living will exists.

#### What if I change my mind?

A living will can be revoked at any time by communicating such, by you or someone designated by you, to your attending physician without regard to your mental or physical condition. Revocation can be made effective by oral or written communication to either your attending physician or your nominated attorney-in-fact.

#### Other considerations

You should nominate a successor attorney-in-fact in case your first choice is unable or unwilling to act in your stead.

Many people combine the use of a power of attorney with a living will so that your personal representative does not have to make the hard choices in times of a terminal illness diagnosis with no possibility of recovery.

In situations where a medical emergency exists and no time is allowable for notification of an attorney-in-fact, medical professionals will procedure as if this document does not exist but only to a point in time where the emergency ceases to be immediate.

You should provide copies to your attorney-in-fact and to any attending physician.

### **III. In Short**

A living will is used to determine your wishes in times of terminal illness with no chance of recovery (death is certain).

A power of attorney is used in times where recovery is possible and likely but you are unable to communicate your desires.

Most people find it desirable to have both documents to cover all conditions. But there is no requirement to use both. You can have only one or none. Iowa law still provides a priority of persons who can make terminal illness decisions in the absence of these documents.

Note: these documents do not cover out-of-hospital “do not resuscitate orders” which are separate documents with separate requirements and conditions to make them effective. These orders can only be created by your physician upon your request.