

**A USER’S GUIDE FOR YOU AND YOUR AGENT:
SOME CONSIDERATIONS FOR UTILIZATION
OF YOUR HEALTH CARE POWER OF ATTORNEY
AND LIVING WILL**

Having just completed one or both of the above medical directive documents, there is a strong temptation to say, "Now, that's done!" Following are some important "to dos" in making these documents work best for you:

1. Furnish a copy of the Health Care Power of Attorney to at least the agent and the first successor agent. You and your agent (and your successor agent, if your first agent is your spouse) should study this User’s Guide together and engage in a very important discussion of when and how she or he will begin to act as your agent when the time comes, if ever. The Power of Attorney you have signed probably provides that the agent’s authority began when you signed it, although you presumably do not wish the agent to make any of your decisions as long as you are able. It is over that point, ‘when you are able’, that problems can arise. Your agent may have good reason to believe you need help, but you see no reason for it, precisely because of the declining capacity your agent has observed. Probably the most frequently occurring example of this is whether the principal should be driving an automobile. This issue is dealt with extensively in “Physician’s Guide to Assessing and Counseling Older Drivers, available at <http://www.ama-assn.org/ama/pub/category/10791.html> Now, while you are clear about the time you would want help, is the time you and your agent can best plan for handing over the reins (and perhaps the wheel) gracefully and appreciatively. You should decide who might be called upon to help make a decision, if you and your agent are not ‘on the same page’. It might be another family member, or members, a close neighbor, your pastor, primary care physician or a lawyer you had most recently consulted. Especially the agent might gain some insights into the situation from the Alzheimer’s website www.helpguide.org or from “The Caregiver Helpbook, Powerful Tools for Caregivers”, in particular Chapter Seven, available from Legacy Caregiver Services, <http://www.legacyhealth.org/body.cfm?id=691>. The latter, in particular, may help your agent see the importance of involving you in the decision-making as much and as long as you are able. You and your agent should make fairly detailed notes of your discussion and conclusions. If the process is available, a DVD or at least an audio tape should be made of the suggestions considered and agreed upon for resolving a difference between you and your agent as to the need to transfer authority from you. Of course, transfer of authority does not always need to be complete and absolute. There may still be things you can do for yourself, while your agent assumes some of the tasks in your behalf. You may be able to do some advance planning now about how such a partial transfer of authority might work.

2. If your documents are already on file with a data bank such as the Decatur Memorial Hospital Living Will Center, carry the card from such data bank, showing how to access it, with your driver's license or other primary identification card, and give a copy of the card to your agent, successor agents and to all healthcare providers and facilities you use. Your primary physician should be offered a copy of both the Health Care Power of Attorney and Living Will for your chart

3. Also furnish your agent and at least the first successor agent and keep updated information concerning any hospital/medical insurance and long term care insurance you may have, names and telephone numbers of each of your attending physicians, dentist, optometrist, and the names of hospitals or nursing care facilities of your choice. It may also be helpful for your agent to have knowledge of your medical history, medications which you are currently taking (or ones to which you have had bad reactions) and the name of the pharmacy from which you purchase your prescriptions where your agent could get a list of your medications from time to time. If you've ever had surgery, tell your agent about any problems encountered with anesthesia administration or post-op nausea. . You should discuss with your physician and with your agent the circumstances under which you would not want to be resuscitated. Then, if such a condition should ever arise, you (or your agent, if you lack decisional capacity) should consult your physician to determine if one of the new Uniform Do-Not-Resuscitate (DNR) Advance Directive forms should be executed for use by EMTs on your way to a hospital from home or a residential care facility. This DNR form, signed by you, or your agent, and by your physician, is the **only** direction by which EMTs will abide on the way to the hospital, unless your healthcare agent happens to be present with the Health Care Power of Attorney and directs the EMTs not to resuscitate you. . Without such an order or personal direction of your agent, the EMTs will be bound to administer CPR and, if necessary, other resuscitative procedures
4. The next time you are to be seen by your primary care physician, take your health care agent along, if possible. Introduce these two people who will have so much to say about your health care if you are unable to give directions yourself. Make it clear to your physician that your agent is to have full access to medical findings, opinions and recommendations the same as you do, and that your physician is not to question your agent's authority to inquire and to make decisions, the same as you can do. Your physician or anyone else providing health care services to you always has the right to inquire of you whether you still want your designated agent to act for you. The law provides that even if you are not mentally competent, you may revoke your Health Care Power of Attorney, merely by advising someone of the age of 18 years or upwards that this is your intention. A provision may have been added to your Health Care Power of Attorney in an attempt to waive this power if your agent and physician believe you are not competent.
5. Your agent and at least the first successor agent should also be informed of any wishes you may have as to organ donations or whole body donations, regardless of the extent to which your Health Care Power of Attorney addresses this topic, and of any funeral and burial plans you have made and any prepayments you have made.
6. Although Paragraph 2 of the Health Care Power of Attorney is fairly specific as to some procedures your agent should or should not consider, any additional help you can give her or him as to how you would wish health care decisions made about you, will be a help to such agent at a very difficult time. Too, your ideas in this area may change from time to time based

upon experiences you have encountered with others or based upon changes in your own health condition. Even if these do not involve amending your Health Care Power of Attorney, which may be done (preferably in the same formal manner as the Power of Attorney has been executed in the first instance), there may be other changes in your thinking which should at least be communicated to the agent.

7. It is also a good idea from time to time, especially when consulting with your physician, or in contacts with your agent or successor agents, to advise him or her that you are still aware that you have executed a Health Care Power of Attorney and/or Living Will and that it is still your intention to have those directions honored, if that is the case.
8. Addresses and telephone numbers of the agent and successor agents should be kept current at all times; and should something happen which makes one or more of your agents no longer appropriate, you would want to amend the instrument to delete that agent and to insert a new agent, if possible. Finally, any changes in the documents, or in the data suggested to be given to the appropriate parties, should be communicated to the same people who originally received the document or information.
9. Whenever your agent signs any document as such agent, it should be done in the following format:

Principal
By:
Agent

So that your agent does not become personally liable for your obligations, he or she should never just sign his or her name alone without expressly showing that the signature is as agent.
10. Often people being asked to rely upon the Power of Attorney will ask to see it. The statute provides that "any person who acts in good faith reliance on a copy of a document purporting to establish an agency will be fully protected..." It also provides that "the named agent shall furnish an affidavit to the reliant on demand stating that the instrument relied on is a true copy of the agency and that to the best of the named agent's knowledge, the named principal is alive and the relevant powers of the named agent have not been altered or terminated." Such an affidavit, in blank, may have been attached as Exhibit A to your Power of Attorney, as a master copy from which your agent can duplicate, complete, date and sign copies as required by those relying on the Power of Attorney. If not a part of your Power of Attorney, we can furnish that form upon request.
11. If a successor agent is attempting to act for you, he or she will need to satisfy anyone asked to rely upon his or her authority that all prior named agents are either deceased, have become incompetent, have resigned or refused to accept the office of agent or are unavailable.

Attached are suggested forms which may be used for some of these purposes. For proving death of a prior agent, a copy of the death certificate is the best evidence; for proving minority of an agent or successor agent, a copy of the birth certificate. That a prior agent has been adjudicated incompetent, or a disabled person, is best proven by a copy of the court order of such adjudication. If your Power of Attorney makes reference to an Affidavit of Reliance in the final paragraph before your signature, the Affidavit of Reliance form attached to your Power of Attorney is intended to make further proof of a prior agent's inability or unwillingness to serve unnecessary.

12. Should your agent ever encounter difficulty in recognition of his or her authority, your agent should refer the intended reliant, doctor, hospital or other health care provider to 755 ILCS 45/4-7(b). That statute requires the health care provider to do what your agent directs or tell that agent he or she is unwilling to comply. Then your agent has the authority to transfer you to the care of another health care provider who will so comply with your agent 's direction.

Should you have questions or concerns as to your Health Care Power of Attorney and/or Living Will beyond the information provided above, or in clarification of it, we will be pleased to serve you further.

[YOUR FIRM NAME HERE.]

CERTIFICATION BY LICENSED PHYSICIAN

I, the undersigned licensed physician attending (name of agent or successor agent), agent or successor agent under Health Care Power of Attorney of (name of principal) dated _____, _____, hereby certify that said agent or successor agent is unable to give prompt and intelligent consideration to health care matters.

Signed this _____ day of _____, _____.

_____, Physician

RESIGNATION OF AGENT

I, _____, named an agent or successor agent under Health Care Power of Attorney of (name of principal) dated _____, _____ resign as agent.

Signed this _____ day of _____, _____.

Agent/Successor Agent

REFUSAL OF AGENT TO ACCEPT OFFICE

I, _____, named an agent or successor agent under Health Care Power of Attorney of (name of principal) dated _____, _____, refuse to accept the office of agent.

Signed this _____ day of _____, _____.

Agent/Successor Agent

