



## **An Elder and Special Needs Law Firm**

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### **Exercise Your Right to Decide Your Future Health Care with Appropriate Advance Directives**

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It is our experience that health care advance directives are given the least amount of thought when compared to other documents in the estate plan. However, advance directives are arguably the most important estate planning documents. An individual may be of limited means, but still may find himself incapable of making medical decisions. Consequently, even young people should consider executing advance directives as they could have accidents or illnesses making them incapable of making their own health care decisions.

#### **What Is An Advance Directive?**

A health care advance directive is a spoken or written instruction about future medical care and treatment. An advance directive may name a person who can assist with executing health care instructions and make health care decisions when one cannot make such decisions. It is important to note, however, that having a health care advance directive does not take away one's right to decide current health care.

#### **What are the Types of Advance Directives?**

The following advance directives may be executed under Indiana law:

- Health Care Representative
- Health Care Power of Attorney
- Living Will Declaration or Life-Prolonging Procedures Declaration
- Psychiatric Advance Directive
- Out of Hospital Do No Resuscitation Declaration and Order
- Physician Orders for Scope of Treatment (POST)
- Organ and Tissue Donation

An individual may have one of these directives or several in their plan. Some directives, such as the Physician Orders for Scope of Treatment (POST) and Out of Hospital Do Not Resuscitate Declaration and Order require the maker to have a particular terminal or related diagnosis.

### **Why Are Advance Directives So Important?**

Advance directives are important as they ensure that your goals of care are expressed and followed and the persons directing your care are those of your choosing. With an advance directive you select your health care advocate and give that person guidelines in how to make decisions for your future care.

Without advance directives Indiana law appoints a “committee” of persons who make medical decisions for you. This committee consists of an individual’s parents, adult siblings, spouse, and adult children. A treating physician can consult with *any* of these individuals to obtain consent for medical treatment. Most often an individual will not want all members of this committee to consent to health care on that individual’s behalf or may want to give certain members priority for decision making over others. An individual may also desire to appoint someone not in the statutory default committee or want to disqualify someone in that committee.

### **Who Should I choose as my Health Care Representative?**

We describe your Health Care Representative as that person who is at your bedside in a medical crisis. As a result, this should ideally be someone geographically close.

Your Health Care Representative should be someone that shares your philosophy on life prolonging care or will otherwise ensure that your wishes will be followed. You should avoid the common practice of naming an oldest child or a child with no other role in your estate plan if he or she is unlikely to follow your wishes.

### **How Do I Know What Advance Directives I Need?**

A good start is to appoint a Health Care Power of Attorney/Health Care Representative. A Living Will to express your intentions in terminal and irreversible circumstances is helpful as well.

Additional advance directives may also be necessary depending upon your desires and circumstances. An elder law attorney can assist you with choosing those directives that will meet your goals and ensure the documents you choose meet all legal requirements to be valid. The elder law attorney can also be helpful and advising as to who should be your Health Care Representative. An elder law attorney can also help you define how each directive interplays with another. For example, what controls in a terminal situation, your direction under a Living Will or the instruction of your Health Care Representative?

### **What Should I Do with My Advance Directives?**

You should make sure that your Health Care Representative, immediate family members, physician, attorney, and other health care providers are aware that your health care advance directive exists. You should also make sure these individuals know where your advance

directives are located. You may want to include a small card in your purse or wallet that indicates who your Health Care Representative is and where your advance directives can be found. Finally, you should also consider requesting that your physician and other health care providers make your advance directives a part of your permanent medical chart.

Everyone with capacity to execute them should have health care advance directives. Without them, your health care wishes may be unmet and decisions may be made by someone you would not want making those decisions. An elder law attorney can help you identify those directives that best suit your needs and those best suited to carry out your directives, advise you how to manage complex family matters, and help clarify how each directive relates with another. If you need to establish or update your health care advance directives and estate plan with one designed to best meet your needs, call us. The goal at the Stinson Law Firm is to secure your present and future and leave you with the peace of mind you deserve. Contact us today.

*\*Certified as an Elder Law Attorney by the National Elder Law Foundation*

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