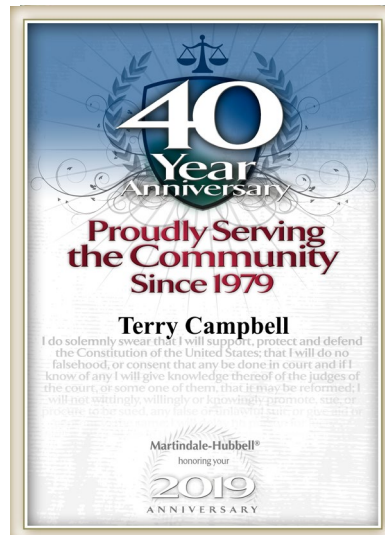


# Advanced Directives and Living Will (Advanced Life Planning)




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An Advanced Directive usually refers to a Living Will,  
a Health Care Power of Attorney and/or a Mental  
Health Care Power of Attorney.





If a person suffers an incapacity and does not have the appropriate planning documents in place, a family member will typically have to go through a court-administered guardianship proceeding to become appointed guardian over the individual's person and perhaps guardian over the estate. With a thorough, properly-executed Health Care Power of Attorney, you are doing everything possible to avoid a guardianship over the person.



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Wisconsin provides for both a Health Care Power of Attorney and a Declaration to Health Care Professionals (living will).

Do you need both documents?

No, you may incorporate all of your wishes regarding life-sustaining procedures and feeding tubes within the Health Care Power of Attorney. There may be advantages to following this approach.

# Key Definitions

## **Health Care Agent**

An individual designated by a principal to make health care decisions on his/her behalf or, if that named agent is unable or unwilling to make those decisions, an alternate individual designated by the principal to do so.

## **Principal**

An individual who executes a Health Care Power of Attorney.

## **Incapacity**

The inability to receive and evaluate information effectively or to communicate decisions to such an extent that the individual lacks the capacity to manage his or her health care decisions.

Other key definitions may be found in §155.01, Wis. Stats.

## Who may execute a Health Care Power of Attorney?

An individual who is of sound mind and has attained age 18.

## How is incapacity determined?

Unless otherwise specified in the power of attorney document, an individual's Health Care Power of Attorney takes effect upon a finding of incapacity by two physicians, or one physician and one licensed advanced practice clinician who personally examines the principal and signs a statement specifying incapacity.

### NOTE:

The desires of a principal who does not have incapacity supersede the effect of his or her Health Care Power of Attorney at all times.

# Execution of a Health Care Power of Attorney

**A valid Health Care Power of Attorney shall meet all of the following:**

- In writing.
- Dated and signed by the principal, or by an individual who has attained age 18, at the express direction and in the presence of the principal.
- Executed voluntarily.
- Signed in the presence of two witnesses.

# Witnessing

**No witness to the Health Care Power of Attorney may, at the time of the execution, be any of the following:**

- Related to the principal by blood, marriage or adoption, or the domestic partner of the individual.
- Have knowledge that he or she is entitled to or has a claim on any portion of the principal's estate.
- Directly financially responsible for the principal's health care.
- The principal's health care agent.
- An individual who is a health care provider who is serving the principal at the time of execution, or an employee (other than a chaplain or a social worker) of an inpatient health care facility in which the principal is a patient.



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## Declaration to Health Care Professionals (Wisconsin Living Will)

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This document has a series of statements in which an individual may check “yes” or “no”. An example is the following initial question:

If I have a **TERMINAL CONDITION**, as determined by a physician, physician assistant, or advanced practice registered nurse, who has personally examined me, and if a physician who has also personally examined me agrees with that determination, I do not want my dying to be artificially prolonged and I do not want life-sustaining procedures to be used. In addition, the following are my directions regarding the use of feeding tubes:

Yes, I want feeding tubes used if I have a terminal condition.

NO, I do not want feeding tubes used if I have a terminal condition.

If you have not checked either box, feeding tubes will be used.

In my opinion, this constitutes a mandate. A health care agent under a power of attorney document would probably not be able to circumvent a disagreement with this determination.

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A Health Care Power of Attorney gives the principal an opportunity to allow a health care agent to be authorized to admit the principal to a long-term care facility and to make life support decisions on the principal's behalf in the event the principal is terminal, incurable, vegetative, etc.

A spouse does not have any of this authority just because of the spousal relationship. Many court guardianships involve a husband or wife seeking guardianship over his or her spouse because the incapacitated individual did not have a good Health Care Power of Attorney in place.

## Limitations on Mental Health Treatment

A health care agent may not admit or commit the principal on an inpatient basis to an institution for mental diseases, an intermediate care facility for the mentally retarded, a state treatment facility or a treatment facility. A health care agent may not consent to experimental mental health research or psychosurgery, electroconvulsive treatment or drastic mental health treatment procedures.

# Initiating the Dialogue

One helpful document is “25 Suggested Topics to Discuss With Your Health Care Agent”.

The following slide contains several websites that have different forms for a Health Care Power of Attorney. In some circumstances, the forms may be sufficient for your purposes. In other cases, it may be advisable to have an attorney-drafted form which gives vast authority to your health care agent to make decisions and then complete one of these forms that you give to be used as a “guide” to your health care agent but not used as the Health Care Power of Attorney document. An attorney drafted form can alter how incapacity is determined and provide other modifications.

# Websites

## **Wisconsin Healthcare Power of Attorney form:**

<https://www.dhs.wisconsin.gov/forms/advdirectives/f00085.pdf>

## **ABA Toolkit for Advanced Health Care Directives:**

[https://www.americanbar.org/content/dam/aba/administrative/law\\_aging/2020-tool-kit-hcap.pdf](https://www.americanbar.org/content/dam/aba/administrative/law_aging/2020-tool-kit-hcap.pdf)

## **Honoring Choices Wisconsin Health Care Power of Attorney form:**

<https://www.aurorahealthcare.org/-/media/aurorahealthcareorg/documents/advanced-care-planning/advanced-directive-document.pdf?la=en&hash=AE9A255495149C3CDF593F01EA4C22F481668280>

## **The Five Wishes Directive:**

<https://fivewishes.org/shop/order/product/five-wishes-advance-directive>

## **Begin the Conversation:**

<http://www.begintheconversation.org/>

## **Starting the Conversation about Health, Legal, Financial and End-of-Life Issues:**

<https://eldercare.acl.gov/public/resources/brochures/docs/Conversations.pdf>

A Health Care Power of Attorney can be tailored to your situation. For example, there is a Halachic Health Care Power of Attorney for those of the Jewish faith, and there are addendums for those of the Catholic faith to address life support situations.

## Mental Health Care Power of Attorney

Wisconsin does not have state-approved mental health care power of attorney.

Many other states do have such a power of attorney or similar document, so if you are not a Wisconsin resident I encourage you check your state's laws.

I can't emphasize enough the importance of dialogue with your health care agents and family members.

*Big surprise* – family members do not always get along.

Avoid power struggles, family disputes and court battles.