



Social Media Is Not an Estate Planning Tool

March 14, 2023

Posted in Estate Planning

Whether you see TikTok as an entertaining pastime or a waste of time, we can probably all agree that the social media platform is a showcase for some pretty questionable practices. None is more questionable than the recent trend of expectant mothers posting videos of themselves giving instructions in case a medical emergency occurs during childbirth that necessitates someone to decide between saving the mother or her unborn child.

A recent story featured on CNN highlighted a young mother in Texas, pregnant with her fifth child. Having four sons already, she was delighted when she found out her fifth baby would be the girl she had always dreamed of having. The only problem was her memory of her last pregnancy. The labor had been a difficult one and required an emergency C-section. Concerned with what would happen to her four boys if she didn't make it through the delivery process, she posted a video to TikTok. In her video she expressed her wish for the doctors to prioritize her life so that she could live to raise her boys.

Fortunately, the medical reality is that doctors are almost never faced with such a dilemma. Unfortunately, this trend reveals a lack of the public's understanding of the legal tools available for them to express their wishes concerning their own medical care should they become physically unable to voice their wishes.

Would this approach actually be effective? The short answer is probably not. Most jurisdictions require that statements regarding medical care be in writing and signed by the individual and witnesses. In Illinois there are more effective means than TikTok to make your wishes concerning health care known.

Illinois recognizes the fundamental right of its citizens to control their own healthcare decisions, including the decision to have life-saving procedures withheld or withdrawn in the instance of a terminal condition. To ensure that these rights are respected even if the individual is unable to participate actively in the decision-making process, the legislature has provided Illinois residents with four important tools to allow them to control their health care.

These four tools are often referred to as advanced directives. An advance directive is a written statement prepared for and signed by you expressing how you want medical decisions to be made in the future should you not be able to make them yourself. Let's take a look at the four advanced directives provided for under Illinois law and see what role each plays.

The Health Care Power of Attorney

A health care power of attorney is a wonderfully flexible tool for maintaining control over your healthcare in the event that you become incapacitated. Simply put, the health care power of attorney lets you choose someone to step into your shoes and make health care decisions for you if you can't make those decisions for yourself. More importantly, it allows you to give very specific instructions to the agent you appoint about the health care you do or do not want to receive. Your agent is required to follow these specific instructions you give regarding care you want provided or withheld.

The Living Will

A useful companion to the health care power of attorney is the living will. Living wills only come into play once it is determined that you are incapacitated and suffering from what is called a terminal condition. A terminal condition means an incurable and irreversible condition such that death is imminent and the application of any death -procedures serves only to prolong the dying process. In these cases, a living will informs your health care provider whether you want death-delaying procedures to be used. Like the health care power of attorney, the living will allows you to give specific directions as to which death-delaying procedures you do or don't want.

The Mental Health Treatment Preference Declaration

This advanced directive allows persons in need of mental health treatment to communicate their treatment preferences in the event that their condition worsens to the point that they can no longer make treatment decisions for themselves. For example, an individual can say that they don't want electroconvulsive treatment (ECT) while agreeing to the administration of psychotropic medications. It also allows an individual to say whether or not they wish to be admitted to a mental health facility for up to 17 days of treatment.

Similar to the health care power of attorney, you can also appoint another person to make your mental health decisions for you. As in the case of the healthcare power of attorney, the person you appoint is bound to decisions consistent with any desires you express in your declaration unless a court orders differently or an emergency threatens your life or health.

Do-Not-Resuscitate/Practitioner Orders for Life-Sustaining Treatment

This advanced directive is often obtained from your health care professional or health care facility. The do-not-resuscitate (DNR)/practitioner orders for life-sustaining treatment (POLST) is used to direct what if any procedures [such as cardiopulmonary resuscitation (CPR)]that you want used in the event that your heart and/or breathing stops. Like the previous advanced directives, it must be signed by you or your agent and properly witnessed to be effective.

The Takeaway

Illinois law provides multiple options for individuals to retain and exercise control over their health care even after they've lost the ability to be an active participant in the process. To preserve your rights under the law, you should consult an attorney to assist you in preparing and properly executing the advanced directives you need. It's also important that you have a serious conversation with your family, your physician, and any persons you plan to appoint to make decisions on your behalf. If they know your wishes before the need arrives, they'll find it easier to follow your wishes. It's also a good idea to make sure a family member or trusted friend knows the physical location of your advanced directives. Also, if you cancel or change an advance directive in the future, remember to tell these same people about the change or cancellation.

Tags: Advanced Directives, DNR, Do Not Resuscitate, Healthcare Power of Attorney, Living Will, Mental Health Treatment Preference