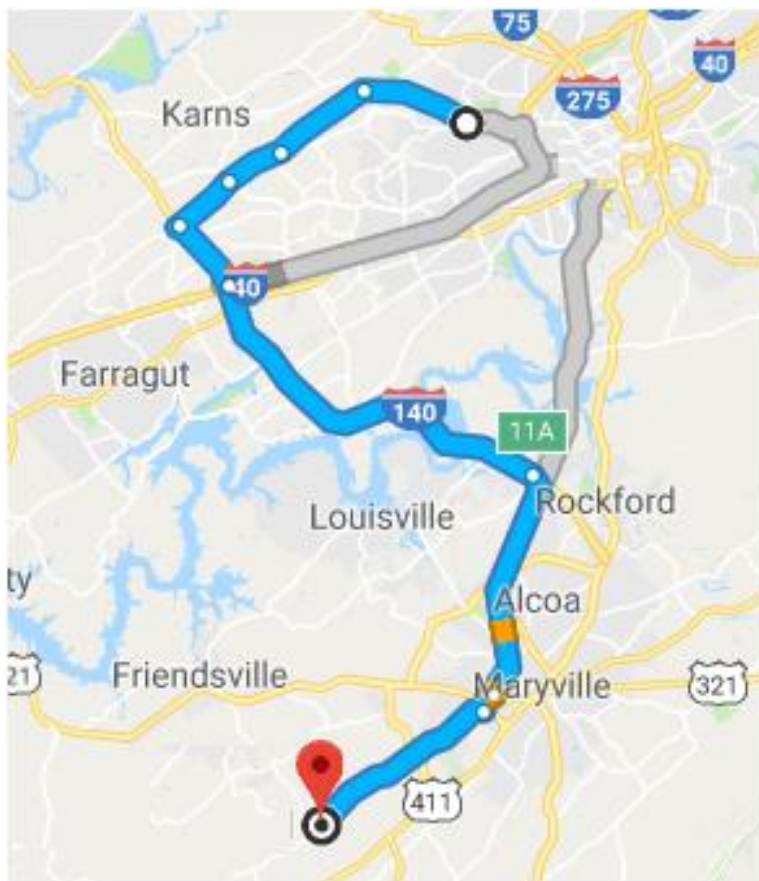


Who's Driving the Bus?



Staying on course to your preferred destination.

“Road Map” vs. No Road Map



Power of Attorney for Healthcare



Allows the patient to appoint someone they trust to make medical treatment decisions for them in the event they cannot

Power of Attorney for Property



Allows the patient to appoint someone they trust to access and manage their property and finances in the event that they cannot

Health Care Surrogate Act:

If there is no named POA or Guardian, this act allows for a **surrogate** to make treatment and end of life decisions in the event of one of the following conditions:

- **Terminal condition**
- **Permanent unconsciousness**
- **Incurable/irreversible condition**



Does not outweigh a living will, POLST, advance directive, power of attorney, or declaration for mental health treatment as to the boundaries of those documents.

Illinois Health Care Surrogate Act (755 ILCS 40/25) Priority Order

- 1. Patient's guardian of person**
- 2. Patient's spouse or partner of a registered civil union**
- 3. Adult child**
- 4. Parent**
- 5. Adult sibling**
- 6. Adult grandchild**
- 7. A close friend of the patient**
- 8. The patient's guardian of the estate**
- 9. The patient's temporary custodian appointed under subsection 2 of section 2-10 of the Juvenile Court Act of 1987, if the court has entered an order granting such authority pursuant to subsection 12 of section 2-10 of the Juvenile Court Act of 1987.**

Living Will:

Document that states that a patient is of sound mind, and that they willfully and voluntarily are making known their desires that their death shall not be artificially postponed.
THAT IS ALL IT DOES!

If a patient has a Living Will – the person they appoint as their **Power of Attorney for Healthcare Agent can override the desires they express in this document!**

It's your patients' trip, it's their choice.



Advantages of a POA:

Patients get to:

- Choose their agent who will act as decisionmaker
- Have their wishes honored.
- Decide when their POA will begin and end.
- Determine what medical treatment and/or property the agent has access to/controls.

It saves the time and expense of court!

However, beware:

- Patient **MUST** be competent/ “have capacity” to draft a Power of Attorney.
- Patient does **NOT** have to be competent/have capacity to **REVOKE** a Healthcare POA. Can be revoked verbally.
- A Property POA, made effective immediately, means that the **person has control over assets even if patient is able to handle them their self.**



A Power of Attorney for Healthcare allows an agent to:

- Access medical records
- Speak with healthcare providers
- Direct organ donation (patient specifies)
- Make end of life decisions (extent of life-sustaining treatment)



You can restrict a POA's actions.

i.e. "shall NOT authorize blood transfusions or amputations"

Your POA dies with you.

Except it can specify the ability to authorize autopsy/ disposition of remains

Your POA can order cremation.

This decision is **binding** and funeral directors, etc. who follow the POA's directions are protected.

The POA for Healthcare allow the patient to direct an agent as to their wishes on life sustaining treatment.

The Healthcare POA can guide the agent regarding wishes for life sustaining treatment.



Recent Changes to POA For Healthcare

• DELAYED REVOCATION

- Provides people with two options when deciding how they revoke their Healthcare POA.
 1. *I elect to delay revocation of this power of attorney for 30 days after I communicate my intent to revoke.*
 2. *I elect for the revocation of this power of attorney to take effect immediately if I communicate my intent to revoke it.*

Option 1: I elect to delay revocation of this power of attorney for 30 days after I communicate my intent to revoke.

- Revocation, regardless if written or verbal is not in effect until 30 days after it is tendered by patient
- Gives patient time to “cool off” or regain capacity and rescind the revocation.
- Good if patient has concerns of developing Alzheimer’s/Dementia/Parkinson’s or some other disease that diminishes capacity as it progresses.

Option 2: I elect for the revocation of this power of attorney to take effect immediately if I communicate my intent to revoke it.

- Revocation is effective as soon as patient communicates their desire to do so to someone with the ability to recognize the revocation.
- Would require patient to execute an entirely new POA Healthcare
- While patient does not need mental capacity to revoke a POA Healthcare, patient must have mental capacity to execute the POA Healthcare.
- This means that if someone revokes their POA and does not have the requisite mental capacity to execute a new one a guardianship or other legal method may be necessary to care for them.

SIMPLIFICATION OF END-OF-LIFE GUIDANCE

SELECT *ONLY ONE* STATEMENT BELOW THAT BEST EXPRESSES YOUR WISHES (optional):

_____ The quality of my life is more important than the length of my life. If I am unconscious and my attending physician believes, in accordance with reasonable medical standards, that I will not wake up or recover my ability to think, communicate with my family and friends, and experience my surroundings, I do not want treatments to prolong my life or delay my death, but I do want treatment or care to make me comfortable and to relieve me of pain.

_____ Staying alive is more important to me, no matter how sick I am, how much I am suffering, the cost of the procedures, or how unlikely my chances for recovery are. I want my life to be prolonged to the greatest extent possible in accordance with reasonable medical standards.



CAUTION: There is no law in place in Illinois that says who will handle your property and finances if you have not appointed an agent through a power of attorney for property

A Property Power of Attorney Allows an Agent to do:

- (a) Real estate transactions**
- (b) Financial institution transactions**
- (c) Stock and bond transactions**
- (d) Tangible personal property transactions**
- (e) Safe deposit box transactions**
- (f) Insurance and annuity transactions**
- (g) Retirement plan transactions**
- (h) Social Security, employment and military service benefits**
- (i) Tax matters**
- (j) Claims and litigation**
- (k) Commodity and option transactions**
- (l) Business operations**
- (m) Borrowing transactions**
- (n) Estate transactions**
- (o) All other property transactions**

What should I know about a Power of Attorney for Property?

- **Listed Powers may be modified to give agent fewer powers.**
- **May grant agent additional powers. However, use extreme caution.**
- **Can only be invoked in writing and when the patient has adequate mental capacity to do so.**



CAUTION

- **Patient should appoint someone that they trust 100%.**
- **Once the Property POA goes into effect, the agent will have full access to not only finances but be able to borrow money in the patient's name unless the agent's authority is restricted.**
- **This is different from a HC POA where the patient always has 1st say if they are competent – here once it goes into effect the POA has a much power as the individual themselves.**

FAQs for Powers of Attorney:

Can there be co-agents?

No. Each agent and successor agent must act alone.

What is a successor agent?

A successor agent can act if the primary agent cannot act for some reason.

Can an agent be revoked?

Healthcare: Yes; at any time, either verbally or in writing as long as there is someone present that can receive the verbal revocation.

Property: Yes; as long as the patient has capacity they can revoke or change agents at any time ***in writing***.

When the Court Must Authorize Someone Else to Drive the Bus: Adult Guardianship



Adult Guardianship

Appointed by the Court when a person is unable to make and communicate decisions regarding personal care or finances due to a mental, physical or developmental disability



Guardianship of the Person

Appointed when a person cannot make or communicate decisions concerning their personal care i.e. medical treatment, social services, etc.



Guardianship of the Estate

Appointed when a person cannot make or communicate decisions concerning their finances or property

Short-Term Guardianship:

Someone chosen by the minor child's parents to become the child's legal guardian for up to 365 days.

- Does NOT involve the Court



Happy Travels!!!



Questions?

Land of Lincoln Legal Aid Champions

Diane M. Goffinet, JD

dgoffinet@lincolnlegal.org

618-457-7800, ext. 6117

Lana Crawford, JD

lcrawford@lincolnlegal.org

618-457-7800, ext. 6119

Madison Olsen

molsen@lincolnlegal.org

618-457-7800 ext. 6127

SIH Medical Champions

Angie Bailey, MPH, MEd, CHES

angie.bailey@sih.net

618-457-5200, ext. 67834

Sandra Schwartz, MPH, CHES

sandra.schwartz@sih.net

618-457-6200, ext. 67837