

# legal lines

from  
MOORE, SUSLER, MCNUTT & WRIGLEY  
Lawyers

## Who needs a living will anyway?

When Mary Smith went to the emergency room for a cut finger, they asked her if she had a living will. Even though her injury was far from fatal, the hospital had to ask her that question under the law.

Does Mary need a living will? So long as her injuries or illnesses are no more serious than the finger, she won't. But what if Mary suffered a stroke, or an accident left her unconscious? What if she couldn't get well? Would a living will help then? It might, but it would be better still if Mary had made a health care power of attorney naming her husband John, or perhaps her daughter Sally as her agent.

We're not saying "don't have a living will." It still may come in handy if your agent can't be found or can't make a necessary health care decision for you. Obviously it gave President Nixon some control over how he would die. Because he had a living will, he was allowed to die with dignity.

What's the main difference between the two forms? A living will has limited use. It only comes into play when your physician says you have a terminal illness or injury. Then, and *only* then, will your desire not to be connected to life support systems or to forego CPR be honored by treating physicians or other health care providers. And you may still get tube or intravenous feeding.

With a health care power of attorney, **you** name someone like your spouse or adult child to speak and act for you on all kinds of health care and comfort problems whenever you are unable to do these things for yourself because of

stroke or other inability to say what you want. Any reports concerning your condition, any questions you could ask your doctors, any decision you could make about where and how you'll be cared for – all of these and more will be in the hands of the agent chosen by you.

Even though the statutory short form power of attorney for health care as enacted by the Illinois General Assembly is a **form**, it lets you tailor it to your special needs. You can choose among three general directions to guide your agent. You can tell the agent to withhold life support systems if the minuses outweigh the pluses (sort of like a living will), or second, you can say such things should not be done if you are in a coma, or finally, you can say "keep me alive as long as possible regardless of cost or pain." Other things you can change are to tell the agent not to authorize an autopsy or donate your organs, if these are against your beliefs.

Since the power of attorney gives the agent a lot of leeway, there are many other ways you can

make it fit you simply by telling your agent about things you would or would not want done to or for you. These ideas may occur as you witness other loved ones receive health care you do or don't like.

Who should be your agent? First should probably be your most significant other, able to make such decisions. For most married couples this would be the spouse. Any able person 18 years of age or over may act as your health care agent. The form provides for naming alternate agents (as many as you want) to act, if your first named agent cannot or will not act. For good reasons you are not to name co-agents, two or more people who act together. No physician should have to deal with a committee. You have to have your wits about you to make or amend a health care power of attorney, but you can revoke it anytime. Even before any capacity problem you may well change your mind as to how you want your health care administered. Likewise, the person who would be the best agent may change.

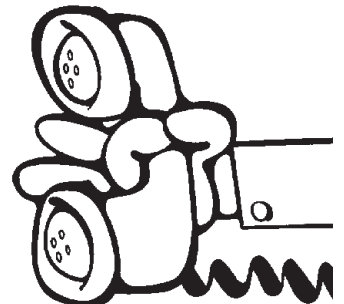
### Let Us Hear from You !

This publication is for you. We want it to be something you look forward to, not just *another newsletter*. We intend to provide information (not advice) about legal issues of wide interest.

What law related topic would you like to see in a future issue? How often would you look forward to future issues? Monthly?

Quarterly? Yearly? Never? What other things can we do to serve clients better?

Just call us at 872-1600.



## Living Will (Continued)

A big advantage of the health care power of attorney over a living will is that it probably will avoid the complication and expense of a court-supervised guardianship of your person. (Having a *property* power of attorney as well – more about this in a later issue – can likewise head off court guardianship as to your worldly goods.)

What do you do with your health care power of attorney and living will once you have made them? Certainly do not just put them away and forget about them. Your physicians and at least your first-named agent should have copies. You should take them with you whenever you intend to enter a hospital or nursing home in Decatur or elsewhere.

A good free service is available at Decatur Memorial Hospital – its Living Will Center – where you can place your form on file, receive a card to carry with a phone number that can be accessed 24 hours a day, 7 days a week for faxing copies to the facility where the authority is needed – anywhere in the continental United States.

So, you are ready. What do you do now? Printed forms are available at least at the two local hospitals, and the Office on Aging in the Decatur Civic Center at No. 1 Gary K. Anderson Plaza downtown. Or, you can consult us about the process. We like to think we have some special ideas to offer concerning the execution and use of the forms, selection of agents and

generally making the power of attorney and living will work best for you. We often do it as part of other valuable life and estate planning advice.

By the way, if you are old enough to have adult children, get them thinking about this, too. All the rush to legislation like Illinois' living will and health care power of attorney arose from cases like the young Karen Quinlan who for so long was kept on life support systems in a vegetative state. Ironically, it's only the "more mature" of us who are giving much thought to making these plans. So long as we have attained 18 years of age, it is never too early to make them. We never know when it will be too late.

## The Election is Coming...

And once again, the Illinois Constitution is on the ballot.

The proposed Amendment is to Article I, Section 8, dealing with the Illinois Child Shield Law of 1991. That law allowed a child's testimony to be taken by closed circuit television during a trial, if a judge decided the child would be too upset by testifying in open court. Just this year, our Illinois Supreme Court overturned that law in the case of People v. Fitzpatrick, saying that the Illinois Constitution "requires a face to face confrontation" between an accused and the victim-witnesses in criminal trials.

The Amendment on the November ballot would replace the right of an accused "to meet the witnesses face to face" with a new right "to be confronted with the witness against him or her."

The problem with the proposed amendment (which would reverse People v. Fitzpatrick) is that it goes farther than just child sexual abuse or assault cases. According to the Illinois State Bar Association, this proposed amendment could eliminate face to face confrontation for **all** criminal defendants, not just those involving child sexual abuse.

Confrontation sounds a lot like face to face, but it is not necessarily the same thing. Confrontation may be just watching the witness testify on closed circuit television. That's face to screen, not face to face, and according to J. Brian Heller, chair of the Individual Rights and Responsibilities section council of the ISBA, would deprive a jury of the chance to see how a witness reacts to the defendant who will be condemned by his or her testimony.

In order to get the testimony of young child abuse or assault victims, shielding them from a face to face meeting with the defendant is probably worthwhile. But giving that same shield to all witnesses against all criminal defendants goes too far. That is why our state bar association recommends voting against the amendment on the November ballot.



## We're still on Water...But we're more down to earth!

After being located on the 10th floor of the old Citizens Building downtown (now the First of America Center) since it was built, we relocated last October to our new building at 3071 North Water Street – just west of Brettwood Village.

We are very enthused about our new quarters and clients have told us that our parking lot at the door is a real plus.

If you have not had the "cook's tour" yet, drop by any business day. We like to show off our new home.

Moore, Susler, McNutt & Wrigley  
3071 North Water Street  
Decatur, IL 62526

(217) 872-1600