

Sharing Your Wishes

When you find yourself gathering with friends and family, consider taking time to talk with your loved ones about “life planning” preferences. In this context, “life planning” refers to your individual wishes with regard to legal, medical and financial decision-making in the event you become unable to make your own decisions or to communicate your wishes directly. This article focuses on medical decision-making, but it is important to discuss legal and financial decision-making as well.

Whether you are a primary caregiver for someone else, or are facing your own medical issues, the greatest gift you can give family and friends is to initiate an open discussion regarding the type of medical care you prefer during periods of incapacity or at end-of-life. Although these may be difficult discussions, it is highly important that your wishes be expressed directly, and in writing through the execution of a Durable Power of Attorney for Health Care and Living Will.

The Durable Power of Attorney for Health Care and Living Will is a document governed by state law (specifically, in New Hampshire, by RSA 137-J). Through this document, you may name a family member or friend to act as your “agent” (or “attorney-in-fact”) in the event you lack the capacity to make medical decisions for yourself. If you then become incapacitated, your agent has the authority to speak with doctors, review medical records and make decisions about your health care. **In New Hampshire, without this document, no one – not even a spouse, parent or child – has the legal authority to make medical decisions for you.** This document further permits you to authorize your agent to end life support measures (including artificial food and water) in the event two physicians (or one physician and one Advanced Registered Nurse Practitioner) have determined you are “near death” or “permanently unconscious.” This grant of authority does not **require** your agent to end life sustaining treatment; however, without being expressly granted this authority, your agent would not be able to end life support measures once started.

Section I, C of the Durable Power of Attorney for Health Care and Living Will allows you to express other personal preferences with respect to other end-of-life care matters, such as pain management and the possibility of needing nursing home level of care. Let your loved ones know what is important to you, such as their presence at your bedside, being kept clean and comfortable, having a minister or priest visit, or listening to your favorite music. By providing guidance to your family and friends, you not only increase the possibility that your wishes will be followed, but you afford your family the peace of mind that comes from knowing what those wishes are, and following them.

Once you sign a Durable Power of Attorney for Health Care and Living Will, please do not just file it away. Rather, be sure to distribute a copy to your primary and specialist physicians, the hospital closest to you, and to those listed as your agents and alternate agents.

If you have any questions, please contact the New Hampshire Bar Association, 2 Pillsbury Street, Suite 300, Concord NH 03301, Phone: (603) 224-6942 or Fax: (603) 224-2910; email: NHBAinfo@nhbar.org and ask for the Booklet “Making Medical Decisions for Some Else – a New Hampshire Handbook.” In addition, you may obtain this booklet and a Durable Power of Attorney for Health Care document at the Foundation for Health Communities website, www.healthynh.com.



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At Butenhof & Bomster, PC, we focus our practice in the areas of elder law, estate planning, Medicaid planning, special needs trusts planning, guardianships, and probate and trust administration. Simply put, our philosophy is that each client's circumstances are unique and deserving of individualized attention and planning, regardless of whether such planning involves the creation of a complex trust structure or simply the execution of a health care power of attorney.