

## **755 ILCS 45 ARTICLE IV. POWERS OF ATTORNEY FOR HEALTH CARE**

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### **45/4-1. Purpose**

§ 4-1. Purpose. The General Assembly recognizes the right of the individual to control all aspects of his or her personal care and medical treatment, including the right to decline medical treatment or to direct that it be withdrawn, even if death ensues. The right of the individual to decide about personal care overrides the obligation of the physician and other health care providers to render care or to preserve life and health.

However, if the individual becomes disabled, her or his right to control treatment may be denied unless the individual, as principal, can delegate the decision making power to a trusted agent and be sure that the agent's power to make personal and health care decisions for the principal will be effective to the same extent as though made by the principal.

The Illinois statutory recognition of the right of delegation for health care purposes needs to be restated to make it clear that its scope is intended to be as broad as the comparable right of delegation for property and financial matters. However, the General Assembly recognizes that powers concerning life and death and other issues involved in health care agencies are more sensitive than property matters and that particular rules and forms are necessary for health care agencies to insure their validity and efficacy and to protect health care providers so that they will honor the authority of the agent at all times. For purposes of emphasis and their particular application to health care, the General Assembly restates the purposes and public policy announced in Article II, Section 2-1 of this Act, as if those purposes and public policies were set forth verbatim in this Section.

In furtherance of these purposes, the General Assembly adopts this Article, setting forth general principles governing health care agencies and a statutory short form power of attorney for health care, intending that when a power in substantially the form set forth in this Article is used, health care providers and other third parties who rely in good faith on the acts and decisions of the agent within the scope of the power may do so without fear of civil or criminal liability to the principal, the State or any other person. However, the form of health care agency in this Article is not intended to be exclusive with Section 4-5 of this Article may offer powers and protection similar to the statutory short form power of attorney for health care.

### **45/4-2. Short title of this Article**

§4-2. Short Title. This Article shall be known and may be cited as the "Powers of Attorney for Health Care Law."

### **45/4-3. General principles.**

§4-3. General principles. The health care powers that may be delegated to an agent include, without limitation, all powers an individual may have to be informed about and to consent or refuse or withdraw any type of health care for the individual and all powers a parent may have to control or consent to health care for a minor child. A health care agency may extend beyond the principal's death if necessary to permit anatomical gift, autopsy or disposition of remains. Nothing in this Article shall impair or supersede any legal right or legal responsibility of life-sustaining or death-delaying procedures in any lawful manner, and the provisions of this Article are cumulative in such respect.

### **45/4-4. Definitions**

§4-4. Definitions. As used in this Article:

- (a) "Attending physician" means the physician who has primary responsibility at the time of reference for treatment and care of the patient.
- (b) "Health care" means any care, treatment, service or procedure to maintain, diagnose, treat or provide for the patient's physical or mental health or personal care.
- (c) "Health care agency" means an agency governing any type of health care, anatomical gift, autopsy or disposition of remains for an on behalf of a patient and refers to the power of attorney or other written instrument defining the agency or the agency, itself, as appropriate to the context.
- (d) "Health care provider" or "provider" means the attending physician and any other person administering health care to the patient at the time of reference who is licensed, certified, or otherwise authorized or permitted by law to administer health care in the ordinary course of business or the practice of a profession, including any person employed by or acting for any such authorized person.
- (e) "Patient" means the principal or, if the agency governs health care for a minor child or the principal, then the child.

### **45/4-7. Duties of health care providers and others in relation to health care agencies.**

§4-7. Duties of health care providers and others in relation to health care agencies. Each health care provider and each other person with whom an agent deals under a health care agency shall be subject to the following duties and responsibilities:

- (a) It is the responsibility of the agent or patient to notify the health care provider of the existence of the health care agency and any amendment or revocation thereof. A health care provider furnished with a copy of a health care agency shall make it a part of the patient's medical records and shall enter in the records any change in or termination of the health care agency by the principal that becomes

known to the provider. Whenever a provider believes a patient may lack capacity to give informed consent to health care which the provider deems necessary, the provider shall consult with any available health care agent known to the provider who then has power to act for the patient under a health care agency.

(b) A health care decision made by an agent in accordance with the terms of a health care agency shall be complied with by every health care provider to whom the decision is communicated, subject to the provider's right to administer treatment for the patient's care or alleviation of pain; but if the provider is unwilling to comply with the agent's decision, the provider shall promptly inform the agent who shall then be responsible to make the necessary arrangements for the transfer of the patient to another provider. It is understood that a provider who is unwilling to comply with the agent's decision will continue to afford reasonably necessary consultation and care in connection with the transfer.

(c) At the patient's expense and subject to reasonable rules of the health care provider to prevent disruption of the patient's health care, each health care provider shall give an agent authorized to receive such information under a health care agency the same right the principal has to examine and copy any part or all of the patient's medical records that the agent deems relevant to the exercise of the agent's powers, whether the records relate to mental health or any other medical condition and whether they are in the possession of or maintained by any physician, psychiatrist, psychologist, therapist, hospital, nursing home or other health care provider.

(d) If and to the extent a health care agency empowers the agent to (1) make an anatomical gift on behalf of the principal under the Uniform Anatomical Gift Act, as now or hereafter amended, or (2) authorize an autopsy of the principal's body pursuant to Section 2 of "An Act in relation to autopsy of dead bodies", approved August 13, 1965, as now or hereafter amended, or (3) direct the disposition of the principal's remains, the decision by an authorized agent as to anatomical gift, autopsy approval or remains disposition shall be deemed the act of the principal and shall control over the decision of other persons who might otherwise have priority; and each person to whom a direction by the agent in accordance with the terms of the agency is communicated shall comply with such direction.

#### **45/4-5. Limitations on health care agencies.**

§4-5. Limitations on health care agencies. Neither the attending physician nor any other health care provider may act as agent under a health care agency; however, a person who is not administering health care to the patient may act as health care agent for the patient even though the person is a physician or otherwise licensed, certified, authorized, or permitted by law to administer health care in the ordinary course of business or the practice of a profession.

#### **45/4-6. Revocation and amendment of health care agencies.**

§4-6. Revocation and amendment of health care agencies.

(a) Every health care agency may be revoked by the principal at any time without regard to the principal's mental or physical condition, by any of the following methods:

1. By being obliterated, burnt, torn or otherwise destroyed or defaced in a manner indicating intention to revoke;
2. By a written revocation of the agency signed and dated by the principal or person acting at the direction of the principal;

or

3. By an oral or any other expression of the intent to revoke the agency in the presence of a witness 18 years of age or older who signs and dates a writing confirming that such expression of intent was made.

(b) Every health care agency may be amended at any time by a written amendment signed and dated by the principal or person acting at the direction of the principal;

(c) Any person, other than the agent, to whom a revocation or amendment is communicated or delivered shall make all reasonable efforts to inform the agent of that fact as promptly as possible.

#### **45/4-9. Penalties.**

§4-9. Penalties. All persons shall be subject to the following sanctions in relation to health care agencies, in addition to all other sanctions applicable under any other law or rule of professional conduct:

(a) Any person shall be civilly liable who, without the principal's consent, willfully conceals, cancels or alters a health care agency or any amendment or revocation of the agency or who falsifies or forges a health care agency amendment or revocation.

(b) A person who falsifies or forges a health care agency or willfully conceals or withholds personal knowledge of an amendment or revocation of a health care agency with the intent to cause a withholding or withdrawal of life-sustaining or death-delaying procedures contrary to the intent of the principal and thereby, because of such act, directly causes life-sustaining or death-delaying procedures to be withheld or withdrawn and death to the patient to be hastened shall be subject to prosecution for involuntary manslaughter.

(c) Any person who requires or prevents execution of a health care agency as a condition of insuring or providing any type of health care services to the patient shall be civilly liable and guilty of a Class A Misdemeanor.

#### **45/4-10. Statutory short form power of attorney for health care.**

§4-10. Statutory short form power of attorney for health care.

(a) The following form (sometimes also referred to in this Act as the "statutory health care power") may be used to grant an agent powers with respect to the principal's own health care; but the statutory health care power is not intended to be exclusive nor to cover delegation of a parent's power to control the health care of a minor child, and no provision of this Article shall be construed to invalidate or bar use by the principal of any other or different form of power of attorney for health care. Nonstatutory health care powers must be executed by the principal, designate the agent and agent's powers, and comply with Section 4-5 of this Article, but they need not be witnessed or conform in any other respect to the statutory health care power. When a power of attorney in substantially the following form is used, including the "notice" paragraph at the beginning in capital letters, it shall have the meaning and effect prescribed in this act. The statutory health care power may be included in or combined with any other form of power of attorney governing property or other matters

(The "Statutory short form power of attorney for health care" appears on the reverse side of this document.)

(b) The statutory short form power of attorney for health care (the "statutory health care power") authorizes the agent to make any and all health care decisions on behalf of the principal which the principal could make if present and under no disability, subject to any limitation on the granted powers that appear on the face of the form, to be exercised in such manner as the agent deems consistent with the intent and desires of the principal. The agent will be under no duty to exercise granted powers or to assume control of or responsibility for the principal's health care; but when granted powers are exercised, the agent will be required to use care to act for the benefit of the principal in accordance with the terms of the statutory health care power and will be liable for negligent exercise. The agent may act in person or through others reasonably employed by the agent for that purpose but may not delegate authority to make health care decisions. The agent may sign and deliver all instruments, negotiate and enter into all agreements and do all other acts reasonably necessary to implement the

exercise of the powers granted to the agent. Without limited the generality of the foregoing, the statutory health care power shall include the following powers, subject to any limitations appearing on the fact of the form:

(1) The agent is authorized to give consent to and authorize or refuse, or to withhold or withdraw consent to, any and all types of medical care, treatment or procedures relating to the physical or mental health of the principal, including any medication program, surgical procedures, life-sustaining treatment or provision of food and fluids for the principal.

(2) The agent is authorized to admit the principal to or discharge the principal from any and all types of hospitals, institutions, homes, residential or nursing facilities, treatment centers and other health care institutions providing personal care or treatment for any type of physical or mental condition. The agent shall have the same right to visit the principal in the hospital or other institution as is granted to a spouse or adult child of the principal, any rule of the institution to the contrary notwithstanding.

(3) The agent is authorized to contract for any and all types of health care services and facilities in the name of and on behalf of the principal and to bind the principal to pay for all such services and facilities, and to have and exercise those powers over the principal's property as are authorized under the statutory property power, to the extent the agent deems necessary to pay health care costs; and the agent shall not be personally liable for any services or care contracted for on behalf of the principal.

(4) At the principal's expense and subject to reasonable rules of the health care provider to prevent disruption of the principal's health care, the agent shall have the same right as the principal has to examine and copy and consent to disclosure of all the principal's medical records that the agent deems relevant to the exercise of the agent's powers, whether the records relate to the mental health or any other medical condition and whether they are in the possession of or maintained by any physician, psychiatrist, psychologist, therapist, hospital, nursing home or other health care provider.

(5) The agent is authorized: to direct that an autopsy be made pursuant to Section 2 of "An Act in relation to autopsy of dead bodies", approved August 13, 1965, including all amendments; to make a disposition of any part or all of the principal's body pursuant to the Uniform Anatomical Gift Act, as now or hereafter amended, and to direct the disposition of the principal's remains.

**45/4-11. Applicability—Inconsistent acts.**

§4-11. Applicability—Inconsistent acts. This Article applies to all health care providers and other persons in relation to all health care agencies on and after the effective date of this Article. This Article supersedes all other Illinois Acts or parts thereof existing on the effective date of the Article to the extent such other Acts are inconsistent with the terms and operation of this Article; provided, that this Article does not affect the law governing emergency health care. If the principal has a living will under the "Illinois Living Will Act", as now or hereafter amended, the living will shall not be operative so long as an agent is available who is authorized by a health care agency to deal with the subject of life-sustaining or death-delaying procedures for an on behalf of the principal.

**45/4-12. Saving clause.**

§4-12. Saving clause. This Act does not in any way invalidate any health care agency executed or any act of any agent done, or affect any claim, right or remedy that accrued prior to September 22, 1987.