

Declaration

This declaration is made this _____, 20___: I, Joe Client, being of sound mind, willfully and voluntarily make known my desires that my moment of death shall not be artificially postponed.

If at any time I should have an incurable and irreversible injury, disease, or illness judged to be a terminal condition by my attending physician who has personally examined me and has determined that my death is imminent except for death delaying procedures, I direct that such procedures which would only prolong the dying process be withheld or withdrawn, and that I be permitted to die naturally with only the administration of medication, sustenance, or the performance of any medical procedure deemed necessary by my attending physician to provide me with comfort care.

In the absence of my ability to give directions regarding the use of such death delaying procedures, it is my intention that this declaration shall be honored by my family and physician as the final expression of my legal right to refuse medical or surgical treatment and accept the consequences from such refusal.

Joe Client
Anywhere, County, Illinois

The Declarant, Joe Client, is personally known to me and I believe him to be of sound mind. I saw the Declarant sign the Declaration in my presence and I signed the Declaration as a witness in the presence of the Declarant or the Declarant acknowledged in my presence that he had signed the Declaration and I signed the Declaration as a witness in his presence. I did not sign the Declarant's signature above for or at the direction of the Declarant. At the date of this instrument, I am not entitled to any portion of the estate of the Declarant according to the laws of intestate succession or, to the best of my knowledge and belief, under any will of Declarant or other instrument taking effect at Declarant's death, or directly financially responsible for Declarant's medical care.

A N S E L M O	_____
Witness	
L I N D B E R G	_____
Witness	
O L I V E R	

Excerpts from Illinois Living Will Act
755 ILCS 35/1 et seq.

Section 35/1. Purpose. The legislature finds that persons have the fundamental right to control the decisions relating to the rendering of their own medical care, including the decision to have death delaying procedures withheld or withdrawn in instances of a terminal condition.

In order that the rights of patients may be respected even after they are no longer able to participate actively in decisions about themselves, the legislature hereby declares that the laws of this State shall recognize the right of a person to make a written declaration instructing his or her physician to withhold or withdraw death delaying procedures in the event of a terminal condition.

Section 35/2. Definitions:

- (a) "Attending physician" means the physician selected by, or assigned to, the patient who has primary responsibility for the treatment and care of the patient.
- (b) "Declaration" means a witnessed document in writing, voluntarily executed by the declarant in accordance with the requirements of Section 3.
- (c) "Health-care provider" means a person who is licensed, certified or otherwise authorized by the law of this State to administer health care in the ordinary course of business or practice of a profession.
- (d) "Death delaying procedure" means any medical procedure or intervention which, when applied to a qualified patient, in the judgment of the attending physician would serve only to postpone the moment of death. In appropriate circumstances, such procedures include, but are not limited to, assisted ventilation, artificial kidney treatments, intravenous feeding or medication, blood transfusions, tube feeding and other procedures of greater or lesser magnitude that serve only to delay death. However, this Act does not affect the responsibility of the attending physician or other health care provider to provide treatment for a patient's comfort care or alleviation of pain. Nutrition and hydration shall not be withdrawn or withheld from a qualified patient if the withdrawal or withholding would result in death solely from dehydration or starvation rather than from the existing terminal condition.
- (e) "Person" means an individual, corporation, business trust, estate, trust, partnership, association, government, governmental subdivision or agency, or any other legal entity.
- (f) "Physician" means a person licensed to practice medicine in all its branches.
- (g) "Qualified patient" means a patient who has executed a declaration in accordance with this Act and who has been diagnosed and verified in writing to be afflicted with a terminal condition by his or her attending physician who has personally examined the patient. A qualified patient has the right to make decisions regarding death delaying procedures as long as he or she is able to do so.
- (h) "Terminal condition" means an incurable and irreversible condition which is such that death is imminent and the application of death delaying procedures serves only to prolong the dying process.

Section 35/3. Execution of a document.

- (a) An individual of sound mind and having reached the age of majority or having obtained the status of an emancipated person pursuant to the "Emancipation of Mature Minors Act", as now or hereafter amended, may execute a document directing that if he is suffering from a terminal condition, then death delaying procedures shall not be utilized for the prolongation of his life.
- (b) The declaration must be signed by the declarant, or another at the declarant's direction, and witnessed by 2 individuals 18 years of age or older.
- (c) The declaration of a qualified patient diagnosed as pregnant by the attending physician shall be given no force and effect as long as in the opinion of the attending physician it is possible that the fetus could develop to the point of live birth with the continued application of death delaying procedures.
- (d) If the patient is able, it shall be the responsibility of the patient to provide for notification to his or her attending physician of the existence of a declaration, to provide the declaration to the physician and to ask the attending physician whether he or she is willing to comply with its provisions. An attending physician who is so notified shall make the declaration, or copy of the declaration, a part of the patient's medical records. If the physician is at any time unwilling to comply with its provisions, the physician shall promptly so advise the declarant. If the physician is unwilling to comply with its provisions and the patient is able, it is the patient's responsibility to initiate the transfer to another physician of the patient's choosing. If the physician is unwilling to comply with its provisions and the patient is at any time not able to initiate the transfer, then the attending physician shall without delay notify the person with the highest priority, as set forth in this subsection, who is available, able, and willing to make arrangements for the transfer of the patient and the appropriate medical records to another physician for the effectuation of the patient's declaration. The order of priority is as follows: (1) any person authorized by the patient to make such arrangements, (2) a guardian of the person of the patient, without the necessity of obtaining a court order to do so, and (3) any member of the patient's family.
- (e) The declaration may, but need not, be in the above form, and in addition may include other specific directions. Should any specific direction be determined to be invalid, such invalidity shall not affect other directions of the declaration which can be given effect without the invalid direction, and to this end the directions in the declaration are severable.

Section 35/4. Recording of a terminal condition. Upon determining that the declarant has a terminal condition, the attending physician who knows of a declaration shall record the determination and the terms of the declaration in the declarant's medical record. A physician who records in writing a terminal condition under this Section is presumed to be acting in good faith. Unless it is alleged and proved that his action violated the standard of reasonable professional care and judgment under the circumstances, he is immune from civil or criminal liability that otherwise might be incurred.

Section 35/5. Revocation.

(a) A declaration may be revoked at any time by the declarant, without regard to declarant'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 cancel;

(2) By a written revocation of the declaration signed and dated by the declarant or person acting at the direction of the declarant; or

(3) By an oral or any other expression of the intent to revoke the declaration, 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) A revocation is effective upon communication to the attending physician by the declarant or by another who witnessed the revocation. The attending physician shall record in the patient's medical record the time and date when and the place where he or she received notification of the revocation.

(c) There shall be no criminal or civil liability on the part of any person for failure to act upon a revocation made pursuant to this Section unless that person has actual knowledge of the revocation.

Section 35/6. Physician responsibilities. An attending physician who has been notified of the existence of a declaration executed under this Act, without delay after the diagnosis of a terminal condition of the patient, shall take the necessary steps to provide for written recording of the patient's terminal condition, so that the patient may be deemed to be a qualified patient under this Act, or shall notify the patient or, if the patient is unable to initiate a transfer, the person or persons described in subsection (d) of Section 3 in the order of priority stated therein that the physician is unwilling to comply with the provisions of the patient's declaration.

Section 35/7. Immunity. The desires of a qualified patient shall at all times supersede the effect of the declaration. A physician or other health-care provider may presume, in the absence of knowledge to the contrary, that a declaration complies with this Act and is valid.

No physician, health care provider or employee thereof who in good faith and pursuant to reasonable medical standards causes or participates in the withholding or withdrawing of death delaying procedures from a qualified patient pursuant to a declaration which purports to have been made in accordance with this Act shall as a result thereof, be subject to criminal or civil liability, or be found to have committed an act of unprofessional conduct.

Section 35/8. Penalties.

(a) Any person who willfully conceals, cancels, defaces, obliterates, or damages the declaration of another without such declarant's consent or who falsifies or forges a revocation of the declaration of another or who willfully fails to comply with Section 6 shall be civilly liable.

(b) Any person who coerces or fraudulently induces another to execute a declaration or falsifies or forges the declaration of another, or willfully conceals or withholds personal knowledge of a revocation as provided in Section 5 with the intent to cause a withholding or withdrawal of death delaying procedures contrary to the wishes of the qualified patient and thereby, because of such act, directly causes death delaying procedures to be withheld or withdrawn, and death to another thereby be hastened, shall be subject to prosecution for involuntary manslaughter.

(c) A physician or other health-care provider who willfully fails to notify the health care facility or fails to comply with Section 6 is guilty of engaging in unethical and unprofessional conduct in violation of paragraph 5 of Section 4433 of the Medical Practice Act.

(d) A physician who willfully fails to record the determination of terminal condition in accordance with Section 4, without giving the notice required by Section 6 of his unwillingness to comply with the provisions of the patient's declaration, is guilty of willfully omitting to file or record medical reports as required by law in violation of paragraph 22 of Section 16 of the Medical Practice Act.

(e) A person who requires or prohibits the execution of a declaration as a condition for being insured for, or receiving, health-care services is guilty of a class A misdemeanor.

(f) The penalties provided in this Section do not displace any penalty applicable under other law.

Section 35/9. General provisions.

(a) The withholding or withdrawal of death delaying procedures from a qualified patient in accordance with the provisions of this Act shall not, for any purpose, constitute a suicide.

(b) The making of a declaration pursuant to Section 3 shall not affect in any manner the sale, procurement, or issuance of any policy of life insurance, nor shall it be deemed to modify the terms of an existing policy of life insurance. No policy of life insurance shall be legally impaired or invalidated in any manner by the withholding or withdrawal of death delaying procedures from an insured qualified patient, notwithstanding any term of the policy to the contrary.

(c) No physician, health care facility, or other health care provider, and no health care service plan, health maintenance organization, insurer issuing disability insurance, self-insured employee welfare benefit plan, nonprofit medical service corporation or mutual nonprofit hospital service corporation shall require any person to execute a declaration as a condition for being insured for, or receiving, health care services.

(d) Nothing in this Act shall impair or supersede any legal right or legal responsibility which any person may have to effect the withholding or withdrawal of death delaying procedures in any lawful manner. In such respect the provisions of this Act are cumulative.

(e) This Act shall create no presumption concerning the intention of an individual who has not executed a declaration to consent to the use of withholding of death delaying procedures in the event of a terminal condition.

(f) Nothing in this Act shall be construed to condone, authorize or approve mercy killing or to permit any affirmative or deliberate act or omission to end life other than to permit the natural process of dying as provided in this Act.

(g) An instrument executed before the effective date of this Act that substantially complies with paragraph (e) of Section 3 shall be given effect pursuant to the provisions of this Act.

(h) A declaration executed in another state in compliance with the law of that state or this State is validly executed for purposes of this Act, and such declaration shall be applied in accordance with the provisions of this Act.

Section 35/10. Short title. This Act shall be known and may be cited as the “Illinois Living Will Act”.

