

## HIPPA Medical Privacy

- ❖ HIPPA regulations may prevent you from disclosing medical information to relatives or friends.
- ❖ With the proper documents, you can have these restrictions waived.

## Declaration of Guardian in the Event of Incapacity

- ❖ Designates who you would like to become your guardian if guardianship is unavoidable.
- ❖ Can also be used to prevent appointment of a specific person or persons that you do not wish to serve as your guardian.
- ❖ Usually, a durable power of attorney avoids the need for a guardianship proceeding.

## Power of Attorney: Not Just A Form

- ❖ A power of attorney is a grant of authority by a principal to a person who the principal appoints as his or her attorney-in-fact, or "agent".
- ❖ The principal confers upon the agent the authority to perform certain specified acts or a broad range of acts on the principal's behalf.

## Durable Power of Attorney

- ❖ A written power of attorney that expresses the authority conferred on the agent will not be effected by the principal's subsequent incapacity.
- ❖ Typically effective immediately upon execution.

## Springing Power of Attorney

- ❖ Used when principal is reluctant to delegate broad powers while still competent.
- ❖ Becomes effective on disability of principal and not before.

**Peter J. Losavio, Jr.** is the only Louisiana Elder Law Attorney certified by the National Elder Law Foundation. He graduated from Louisiana State University Law School in Baton Rouge, and received his LLM in taxation from the University of Florida. He is a certified tax specialist and a certified estate planning and administration specialist by the Louisiana Board of Legal Specialization.

## Certifications

Certified by the National Academy of Elder Law Attorneys  
Certified Public Accountant  
Certified Financial Planner  
Board Certified Tax Law Specialist  
Board Certified Estate Planning and Administration Specialist  
Accredited by the Department of Veterans Affairs

## Membership

National Academy of Elder Law Attorneys  
Life Care Planning Law Firms Association  
Special Needs Alliance  
Baton Rouge Bar Association  
Louisiana State Bar Association  
Texas State Bar Association  
American Bar Association

**This brochure, prepared by Losavio and Dejean, LLC, is issued to inform and provide general information, not to offer advice. If you have a specific legal problem, you should try not to apply or interpret the law without the aid of a trained expert who knows the facts, because the facts may change the application of the law.**

©Peter J. Losavio, Jr.

# Incapacity: Knowing Your Rights

**It's your life.  
And your decision.**



8414 Bluebonnet Blvd.  
Suite 110  
Baton Rouge, LA 70810  
225-769-4200  
800-769-3522  
www.losaviodejean.com



Scan this barcode  
to like us on **f**  
facebook.com/losaviodejean

## “**INCAPACITY:**

want of capacity; want of power or ability to take or dispose; want of legal ability to act.

## **LEGAL INCAPACITY:**

This expression implies that the person in view has the right vested in him, but is prevented by some impediment from exercising it.”

*Black's Law Dictionary, 2nd ed.*

An important part of estate planning is preparation for possible *incapacity*. A common, effective way of achieving this preparation is through the use of advance medical directives, financial powers of attorney, directives to physicians for health matters, and designations of guardians.

### Living Wills

- ❖ A legally binding document that directs a person's treating physician to withhold or withdraw all life sustaining treatment in the event the person is diagnosed having a terminal and irreversible condition.
- ❖ Relieves family members of the responsibility of making the decision to withhold or withdraw life sustaining treatment after diagnosis of a terminal and irreversible condition.

- ❖ Does not give authority to authorize health care decisions such as surgery, medical expenses, nursing home residence, or medication.

- ❖ Only applicable when the person is in the terminal and irreversible condition.

- ❖ A living will is not enough by itself. You also need a health care power of attorney, advance medical directives, and a financial power of attorney.

### Medical Power of Attorney

- ❖ Authorizes a trusted person or persons to make health care decisions in the event you are unable to make them.

- ❖ Typically, family is chosen to help you and be in charge of medical decisions when you are unable to represent yourself.

### Advanced Medical Directives

- ❖ Gives specific instructions to your agent concerning medical treatment, surgery, diagnostic testing, medication, and residence in specific medical situations.

- ❖ Help you to maintain dignity, responsibility, and freedom of choice.

- ❖ Allows you to make sure your wishes are followed after you are no longer able to express them.

- ❖ These are not easy choices to make, but making the right decisions now can profoundly reduce your physical hardships as well as the emotional suffering and discord among your loved ones.

- ❖ We can help insure that your intentions are precisely stated and on the record in the necessary legally certified documentation.

## Three Ways That Advanced Medical Directives Protect Your Family

- 1. Maintain control.** Control your medical directives concerning medical treatment and such issues as surgery, chemotherapy, blood transfusions, and kidney dialysis. Keep peace of mind knowing your wishes and desires concerning medical treatment will be honored.
- 2. Erase emotional burden.** When you have executed your advance medical directives, you free your agent from the decisions and emotional burden concerning your treatment. Your agent has guidance and knows what your decisions are.
- 3. Eliminate disagreement.** Spouses and children may disagree concerning medical treatment. Advance medical directives explicitly state your desires and wishes, freeing your agent from decision making. In the event of disagreement your agent can refer to your wishes concerning treatment in this legally binding document, preventing hard feelings or emotional remorse from or between family members.