

PUBLICATION

Advance Care Planning: Setting your own Course

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As an estate planning lawyer, I often ask my clients to give me their vow that “they shall die in the arms of their lover, having spent their last dollar, with their capacity intact, and a glass of wine in hand toasting to a life well lived”.

But of course, that’s an impossible vow to give. And now more than ever, we simply cannot predict what life will throw at us.

In the spirit of this vow, the other day a client asked me a question that’s relevant for so many Albertans. She was reviewing her estate plan (Will, Personal Directive, Enduring Power of Attorney) and wanted to better understand how things worked between her Personal Directive and her wishes about the level of care she would like to receive should she become sick with the Coronavirus.

She is not fearful of getting sick but is concerned about the inability to direct her care in the event she cannot communicate. Through her own research and discussion with her family she came to the decision to not be intubated should she be ill enough to require artificial breathing. She is mindful, balanced, well read, informed and capable, and she’s doing what all Albertans should - that is, being prepared.

When meeting with a client, I always express how I hope their advanced care plan is never required but how important it is to have established, should it be needed.

Personal Directives are a part of an advanced care plan to ensure your care is well managed when you are no longer capable. For most clients, their Personal Directive have two common statements:

I want all diagnostic and therapeutic interventions which can be reasonably expected to allow me to regain the capacity to make my own decisions.

and

If, in the opinion of my Agent, this directive does not give clear instructions that are relevant to the health care decision to be made on my behalf, my Agent must make the decision based upon my Agent's knowledge of my wishes, beliefs and values.

How do these two statements come into play when the client does not wish to be intubated? They don't.

The best place to register your instruction for “no intubation if sick with COVID-19” is within your Goals of Care Order (GOC) not your Personal Directive. For Albertans, the Goals of Care Order is a health order you can establish with your doctor that assists the health care team in providing you with the level of care you wish to receive in the event you cannot communicate.

A Personal Directive is only ever activated if you lose your capacity and should only be activated if you have *definitely* lost capacity. Capacity should not be transient but should be well established, documented and verifiable. Having a hard time breathing and communicating would not be considered as ‘lost capacity’. It’s likely your Personal Directive will not be activated should you become sick with COVID-19.

The Alberta Health Services website explains the [Goals of Care Order](#). If this is something you wish to discuss with your doctor, I would recommend you be prepared for the discussion. It will help you make the best decision for you.

Our estate planning lawyers continue to advocate for doing a Personal Directive, and one that has broad statements like the two above. These broad statements allow your Agent the authority to make the correct decision for you as the facts are presented. We also advocate for discussing your PD, your wishes, values and beliefs with your named agents. These wishes, beliefs and values may change over time and can be specific in nature, such as “Do not intubate me should I have COVID-19”.

Write your Agents a note, talk to them, be open about your instructions. Transparency and openness are key to a well operating Personal Directives and Goals of Care Orders. These documents should, if necessary, operate well together.

Our [Wills, Trusts & Estates](#) lawyers help Albertans prepare for the unknowns that life can throw at us. For assistance with your estate plan, and subsequent Goal of Care Orders, we can help you with the discussion and organize a family meeting. Just as two people are not the same, estate plans should also be customized for you, and we would be happy to assist.