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Well, There's Your Problem! With apologies to Mythbusters
April 10, 2018
Taxation, Probate & Trust Section

1. DIGITAL ASSETS

a. *PROBLEM:* Under Digital Assets statute in Idaho, still can be difficult to access without proper language in documents.

Solution: Language for wills, trusts, powers - see attached

b. *PROBLEM:* Even if have proper documents, how find the accounts?

Solution: Keep physical lists of accounts

c. *PROBLEM:* Clients are horrible at creating passwords.

Solution: Password protectors/generators: LastPass, Dashlane, passwordsgenerator, Random,, RoboForm, Gibson Research, etc. as standalones, and many as part of suites - Norton etc. Strengths vary as to what programs work best with (Chrome, Internet Explorer, FireFox, etc.) and whether best on mobile devices or desktop. Usually free versions work fine for clients.

d. *PROBLEM:* Crypto currencies - digital currency in which encryption techniques are used to regulate the generation of units of currency and verify the transfer of funds, operating independently of a central bank or government.

i. Bitcoin was the first, 2008. Mysterious who or what started it. Started at 1,309.03 Bitcoins to the dollar, got as high as \$20,000 per Bitcoin December 2017, now back below \$7,000. Wildly volatile. "Mined" in "blocks" - uses "block chain" technology.

ii. An online explanation of mining new blocks so you can see why this is not for the faint of heart, slightly amended by me for clarity -

Since there is no central authority or central bank, there has to be a way of gathering every transaction carried out with a crypto currency in order to create a new block. Network nodes that carry out this task are called "miners". Every time a slew of transactions is amassed into a block, this is appended to the blockchain. Whoever appends the block gets rewarded with some of that crypto currency - usually a very small fraction of the value of the currency, but it adds up.

To prevent the devaluation of the currency by miners building lots of blocks,

the task is made harder to conduct. This is achieved by making miners solve complicated mathematical problems called "proof of work".

Calculating hashes

In order to successfully create a block, it must be accompanied by a cryptographic hash that fulfills certain requirements. The only feasible way to arrive at a hash matching the correct criteria is to simply calculate as many as possible and wait until you get a matching hash. When the right hash is found, a new block is formed and the miner that found it is awarded with units of crypto currency.

Think of it like one of those competitions where you have to guess the weight of the cake - only you get unlimited guesses, and the first one to submit a correct answer wins. Whoever can make guesses at the fastest rate has a higher chance of winning. So turn loose the computer programs.

Crypto currency mining limits

In practice, this means that miners are competing against each other to calculate as many hashes as possible, in the hopes of getting to be the first one to hit the correct one, form a block and get their crypto currency payout.

However, the difficulty of calculating the hashes also scales - every new block of bitcoins becomes harder to mine. In theory, this ensures that the rate at which new blocks are created remains steady. Many crypto currencies also have a finite limit on the amount of units that can ever be generated. For example, there will only ever be 21 million Bitcoins in the world. After that, mining a new block will not work. Takes huge amount of computer power and ever increasing, and therefore huge amount of power.

All clear now? What you need to know is that the thousands of mining computers (transactions are spread around many computers) have to all agree that your transaction is legitimate and record it, so theoretically difficult to deny that you received a payment and/or to successfully hack. BUT there have been losses that have been settled by Bitcoin in some way, but unclear how.

Totally in computers, no physical existence. Maximum number of Bitcoins is 21 million, with about 25% of that generated so far. Maybe 1,500 types now, with the vast majority being scams. Major ones like Dash, Ethereum, Bitcoin etc. have regular online markets. Can keep your crypto currencies in either an exchange for it or in a "wallet" (which can be "hot" or "cold" - don't ask). Google has banned apps for mining from its store.

There are now Bitcoin ATM's - saw one in Boise area recently.

ii. PROBLEMS -

- a. Since no physical existence, there is a complicated string of letters, characters, etc., like a super password, that represented ownership.

Whoever has that “key” owns the Bitcoin(s) associated with it. If lose the key, the ownership disappears. There is not way to track by name, social security number, etc. Only the key. Can get a flash drive with the key on it, but better not lose that either and better make sure flash drive is readable as technology changes. I am now aware of a probate where \$250,000 in Bitcoins cannot be accessed and probably is lost. And, every time there is a transaction within the Bitcoin(s) represented by that key, there is a new key and the old key is worthless. So you must work with clients holding these to make sure they will be fully transferable at death or incapacity.

b. What are the tax consequences? IRS defines as “property” for tax purposes (Notice 2014-21), but might be business property, investment property, or personal property. Need to track basis, but that can be tricky if not set up properly. There is a taxable transaction every time the crypto currency is used, so have to calculate your basis in that portion of the crypto currency used versus the value of what you got. Every time. Could be gain or loss. There is no 1099 etc. reporting from the exchanges, although the IRS has filed suit against the Bitcoin exchange, much like the suit against Swiss banks. Only a few hundred persons have been reporting crypto currency gains annually. Also clearly a probate asset and subject to estate and gift taxes.

c. The exchanges currently allow only single ownership, so not joint names, survivorship, CPWROS etc. What if assigned to a trust? Would professional trustees want to hold crypto currencies?

John McGown came across this incredible statistic that puts the electricity usage of crypto currencies into perspective. The Bitcoin network alone (not including all other Crypto currency technologies) uses nearly six times as much energy annually as that used by San Francisco in a year.

2. POWERS:

a. Living Wills and POST forms

i. Two entities you should be aware of: Honoring Choices (their website is HonoringChoicesIdaho.org and Idaho Health Continuum of Care Association (newly merged on April 1 and website still under construction).

ii. *PROBLEM:* Living Will is limited and some people do not want, and little or no discussion about issues in medical directives.

A. Part of solution - expanded language for medical directives - see attached document.

B. Second part of solution - website for the two organizations have a great deal of educational materials and an expanded medical directive.

C. RLA solution - I have a 6 page handout on Information to Health Care Agent which is one page of facts and then 5 pages of narrative.

iii. So why not have clients go to Honoring Choices website and fill out their greatly expanded medical directive there for free? My biased but accurate view:

- A. Attorneys like to charge for things.
- B. Attorneys like to claim to have "unique solutions" that no other Attorney has.
- C. More charitably, sometimes need to have discussion with the client on these issues because of the need for independent advice and the attorney's knowledge of the client and their family.

iii. *PROBLEM*: Living Will vs. POST (Physician's Orders for Scope of Treatment) and incorrect use of POST forms - oral discussion and maybe solution.

iv. *PROBLEM*: POST form done only for CPR avoidance.

- A. Partial solution - the checkoff in my expanded version of medical directive.
- B. Even better solution - modify POST form - see attached document.

b. Springing vs. immediate financial powers

3. *PROBLEM*: Married couples, especially second marriages with kids on both sides from prior marriages.

Solution: Proper engagement letter to lay out the possible conflict and resolution - two different formats. Need the letter signed and returned by the clients.

4. *PROBLEM*: At first death of married couple with real estate, Summary Administration or probate required.

Solution: CPWROS deeds and ownerships - avoiding first death Summary Administration or Probate. Applies to all types of assets, not just real estate. But watch out for divorce potential.

EXHIBIT ONE

Digital Assets

Powers

2. DIGITAL ASSETS, ETC. My agent shall have the power to access, use, control, and assume the ownership rights of my digital or electronic devices, including, but not limited to, desktop, laptop, table, or other types of computers and their peripheral equipment, storage devices, mobile telephones, "smart" phones, personal digital assistants, electronic books, electronic watches, electronic body and activity monitoring equipment, cameras, audio and video recorders, and any similar digital or electronic devices, which I, alone or with others, own or lease. My agent shall have the power to access, manage, modify, deactivate, delete, control, sell or transfer any digital assets, electronically stored information, and/or electronic communications owned by me, alone or with others, including, but not limited to, e-mail accounts, short message and text accounts, records of electronic communications, digital music, digital photographs, digital video, digital voice and voicemail, video games and virtual "worlds" or fantasy accounts created by any such games or other programs, "apps", accounts, networking websites, blogs, file sharing accounts, financial accounts, domain registrations, names, or DNS service accounts, online accounts at stores or other organizations and entities, social media, membership or patronage accounts with all inherent rights and benefits, and other online accounts or rights, which either currently exist or may exist at any time. My agent may obtain copies of any such digital information and may authorize others to have access to such digital information. My agent may employ agents or advisors to assist in collecting such electronic data, including, but not limited to, accessing such accounts, resetting passwords, or other authenticating protocols, either decrypting or encrypting digital information, and dealing with such information in furtherance of the administration of my affairs. The powers granted to my agent by this paragraph shall be broadly construed and shall not be limited or restricted by any web or electronic service provider. My agent shall have the authority to protect or enhance my, or any other person's, privacy by directing that any stored information owned or created by me, alone or with others, about any of my past activities, or of any other person, on the internet, or all other forms of electronic activities, or about me, or any other person, be deleted and that any links to or search results about me, or any other person, and such information be deleted or otherwise deactivated. My agent shall have all the rights, authorities, and privileges that I have with regard to any such digital assets.

This authorization is to be construed to be my lawful consent under the Electronic Communications Privacy Act of 1986, as amended, the Computer Fraud and Abuse Act of 1986, as amended, the Revised Uniform Fiduciary Access to Digital Assets Act under Idaho Code §§15-14-101 et seq., as amended, and any other applicable federal or state data privacy law or criminal law.

Wills

SECTION DIGITAL ASSETS, ETC. My Personal Representative shall have the power to access, use, control, and assume the ownership rights of my digital or electronic devices, including, but not limited to, desktop, laptop, table, or other types of computers and their peripheral equipment, storage devices, mobile telephones, "smart" phones, personal digital assistants, electronic books, electronic watches, electronic body and activity monitoring equipment, cameras, audio and video recorders, and any similar digital or electronic devices, which I, alone or with others, own or lease. My Personal Representative shall have the power to access, manage, modify, deactivate, delete, control, sell or transfer any digital assets, electronically stored information, and/or electronic communications owned by me, alone or with others, including, but not limited to, e-mail accounts, short message and text accounts, records of electronic communications, digital music, digital photographs, digital video, digital voice and voicemail, video games and virtual "worlds" or fantasy accounts created by any such games or other programs, "apps", accounts, networking websites, blogs, file sharing accounts, financial accounts, domain registrations, names, or DNS service

accounts, online accounts at stores or other organizations and entities, social media, membership or patronage accounts with all inherent rights and benefits, and other online accounts or rights, which either currently exist or may exist at any time. My Personal Representative may obtain copies of any such digital information and may authorize others to have access to such digital information. My Personal Representative may employ agents or advisors to assist in collecting such electronic data, including, but not limited to, accessing such accounts, resetting passwords, or other authenticating protocols, either decrypting or encrypting digital information, and dealing with such information in furtherance of the administration of my estate. The powers granted to my Personal Representative by this paragraph shall be broadly construed and shall not be limited or restricted by any web or electronic service provider. My Personal Representative shall have the authority to protect or enhance my, or any other person's, privacy by directing that any stored information owned or created by me, alone or with others, about any of my past activities, or of any other person, on the internet, or all other forms of electronic activities, or about me, or any other person, be deleted and that any links to or search results about me, or any other person, and such information be deleted or otherwise deactivated. My Personal Representative shall have all the rights, authorities, and privileges that I would have if alive with regard to any such digital assets.

This authorization is to be construed to be my lawful consent under the Electronic Communications Privacy Act of 1986, as amended, the Computer Fraud and Abuse Act of 1986, as amended, the Revised Uniform Fiduciary Access to Digital Assets Act under Idaho Code §§15-14-101 et seq., as amended, and any other applicable federal or state data privacy law or criminal law.

Trusts

SECTION DIGITAL ASSETS, ETC. My Trustee shall have the power to access, use, control, and assume the ownership rights of my digital or electronic devices, including, but not limited to, desktop, laptop, tablet, or other types of computers and their peripheral equipment, storage devices, mobile telephones, "smart" phones, personal digital assistants, electronic books, electronic watches, electronic body and activity monitoring equipment, cameras, audio and video recorders, and any similar digital or electronic devices, which I, alone or with others, own or lease. My Trustee shall have the power to access, manage, modify, deactivate, delete, control, sell or transfer any digital assets, electronically stored information, and/or electronic communications owned by me, alone or with others, including, but not limited to, e-mail accounts, short message and text accounts, records of electronic communications, digital music, digital photographs, digital video, digital voice and voicemail, video games and virtual "worlds" or fantasy accounts created by any such games or other programs, "apps", accounts, networking websites, blogs, file sharing accounts, financial accounts, domain registrations, names, or DNS service accounts, online accounts at stores or other organizations and entities, social media, membership or patronage accounts with all inherent rights and benefits, and other online accounts or rights, which either currently exist or may exist at any time. My Trustee may obtain copies of any such digital information and may authorize others to have access to such digital information. My Trustee may employ agents or advisors to assist in collecting such electronic data, including, but not limited to, accessing such accounts, resetting passwords, or other authenticating protocols, either decrypting or encrypting digital information, and dealing with such information in furtherance of the administration of my estate. The powers granted to my Trustee by this paragraph shall be broadly construed and shall not be limited or restricted by any web or electronic service provider. My Trustee shall have the authority to protect or enhance my, or any other person's, privacy by directing that any stored information owned or created by me, alone or with others, about any of my past activities, or of any other person, on the internet, or all other forms of electronic activities, or about me, or any other person, be deleted and that any links to or search results about me, or any other person, and such information be deleted or otherwise deactivated. My Trustee shall have

all the rights, authorities, and privileges that I would have if alive and competent with regard to any such digital assets.

This authorization is to be construed to be my lawful consent under the Electronic Communications Privacy Act of 1986, as amended, the Computer Fraud and Abuse Act of 1986, as amended, the Revised Uniform Fiduciary Access to Digital Assets Act under Idaho Code §§15-14-101 et seq., as amended, and any other applicable federal or state data privacy law or criminal law.

**Authorization and Consent for Release
of Electronically Stored Information**

I hereby authorize any person or entity that possesses, custodies, or controls any electronically stored information of mine or that provides to me an electronic communication service or remote computing service, whether public or private, to divulge to my then-acting fiduciaries at any time:

- (1) any electronically stored information of mine;
- (2) the contents of any communication that is electronic storage by that service or that is carried or maintained on that service;
- (3) any record or other information pertaining to me with respect to that service.

The terms used in this authorization are to be construed as broadly as possible, and the term "fiduciaries" includes an attorney-in-fact acting under a power of attorney document signed by me, a guardian or conservator appointed for me, a trustee of my revocable trust, and a personal representative (executor) of my estate.

This authorization is to be construed to be my lawful consent under:

- (1) the Electronic Communications Privacy Act of 1986, as amended;
- (2) the Computer Fraud and Abuse Act of 1986, as amended;
- (3) the Idaho Revised Uniform Fiduciary Access to Digital Assets Act; and,
- (4) any other applicable federal or state data privacy law or criminal law.

This authorization is effective immediately. Unless this authorization is revoked by me in writing while I am competent, this authorization continues to be effective during any period that I am incapacitated and continues to be effective after my death.

Unless a person or entity has received actual notice that this authorization has been validly revoked by me, that person or entity receiving this authorization may act in reliance on the presumption that it is valid and unrevoked, and that person or entity is released and held harmless by me, my heirs, legal representatives, successors, and assigns from any loss suffered or liability incurred for acting according to this authorization. A person or entity may accept a copy or facsimile of this original authorization as though it were an original document.

Signed: _____

[name]
[address]
[phone number]

STATE OF IDAHO)
)
County of) ss.

On this _____ day of _____, before me, _____
_____, a Notary Public in and for said state, personally appeared _____
_____, known or identified to me to be the person whose name is
subscribed to the foregoing instrument, and acknowledged to me that he/she executed the same.

IN WITNESS WHEREOF, I have hereunto set my hand and affixed my official seal the day and year
in this certificate first above written.

Notary Public for Idaho
Residing at _____
My commission expires _____

EXHIBIT TWO

Living Will and Durable Power of Attorney - RLA modified form

RLA Health Care Directives Handout

ROBERT L. ALDRIDGE, CHARTERED
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LIVING WILL AND DURABLE POWER OF ATTORNEY FOR HEALTH CARE

Date of Directive:
Name of person executing Directive:
Address of person executing Directive:

My telephone number(s): (Primary) (Secondary)
Last 4 digits of Social Security Number: ~~XXX-XX~~- _____

**A LIVING WILL
A Directive to Withhold or to Provide Treatment**

_____ Initial here if you do not wish to complete the Living Will

1. Being of sound mind, I willfully, and voluntarily make known my desire that my life shall not be prolonged artificially under the circumstances set forth below. This Directive shall only be effective if I am unable to communicate my instructions, and:

a. I have an incurable injury, disease, illness, or condition and a medical doctor who has examined me has certified:

1. that such injury or disease or illness or condition is terminal; and,
2. that the application of artificial life-sustaining procedures would serve only to prolong artificially my life; and,
3. that my death is imminent, whether or not artificial life-sustaining procedures are utilized;

OR,

b. I have been diagnosed as being in a persistent vegetative state.

(Under Idaho Code Section 39-4503. DEFINITIONS. "Artificial life-sustaining procedure" means any medical procedure or intervention which utilizes mechanical means to sustain or supplant a vital function which when applied to a qualified patient, would serve only to artificially prolong life. Artificial life-sustaining procedures shall not include the administration of medication or the performance of any medical procedure deemed necessary to alleviate pain. "Artificial nutrition and hydration" means supplying food and water through a conduit, such as a tube or intravenous line, where the recipient is not required to chew or swallow voluntarily, but does not include assisted feeding, such as spoon or bottle feeding.)

In such event, I direct that the following marked expression of my intent be followed, and that I receive any medical treatment or care that may be required to keep me free of pain or distress.

**CHECK ONE BOX AND INITIAL THE LINE AFTER SUCH BOX
CHOOSE ONLY ONE OF THE THREE FOLLOWING OPTIONS**

OPTION 1:

_____ I direct that all medical treatment, care, and procedures necessary to restore my health, sustain my life, and to abolish or alleviate pain or distress be provided to me. Nutrition and hydration, whether artificial or non-artificial, shall not be withheld or withdrawn from me if I would likely die primarily from malnutrition or dehydration rather than from my injury, disease, illness, or condition.

OR

OPTION 2:

_____ I direct that all medical treatment, care, and procedures, including artificial life-sustaining procedures, be withheld or withdrawn, except that nutrition and hydration, whether artificial or non-artificial, shall not be withheld or withdrawn from me if, as a result, I would likely die primarily from malnutrition or dehydration rather than from my injury, disease, illness, or condition, as follows (if none of the following boxes are checked, then both nutrition and hydration, of any nature, whether artificial or non-artificial, shall be administered).

**If you chose this option, check only one box below and initial the line after such box –
Choose only one of the three options below, A or B or C**

- A. _____ Only hydration, of any nature, whether artificial or non-artificial, shall be administered;
- B. _____ Only nutrition, of any nature, whether artificial or non-artificial, shall be administered;
- C. _____ Both nutrition and hydration, of any nature, whether artificial or non-artificial, shall be administered.

OR

OPTION 3:

_____ I direct that all medical treatment, care, and procedures be withheld or withdrawn, including withdrawal of the administration of artificial nutrition and hydration.

2. If I have been diagnosed as pregnant, this directive shall have no force during the course of my pregnancy.

3. I understand the full importance of this directive and am mentally competent to make this directive. No participant in the making of this directive or in its being carried into effect shall be held responsible in any way for complying with my directions.

4. Check one box and initial the line after such box.

OPTION 1:

_____ I have discussed these decisions with my physician, advanced practice professional nurse or physician assistant, and have also completed a Physician Orders for Scope of Treatment (POST) form that contains directions that may be more specific than, but are compatible with, this Directive. I hereby approve of those orders and incorporate them herein as if fully set forth.

OR

OPTION 2:

_____ I have not completed a Physician Orders for Scope of Treatment (POST) form. If a POST form is later signed by my physician, advanced practice professional nurse or physician assistant, then this living will shall be deemed modified to be compatible with the terms of the POST form.

_____ Initial here if you do not wish to name a Health Care Agent and direct your health care providers to use the instructions and decisions written in your Living Will and Information To Health Care Agent, if any, to guide medical decisions.

A DURABLE POWER OF ATTORNEY FOR HEALTH CARE

1. DESIGNATION OF HEALTH CARE AGENT. None of the following may be designated as your agent: (1) your treating health care provider, (2) a non-relative employee of your treating health care provider, (3) an operator of a community care facility, or (4) a non-relative employee of an operator of a community care facility. If the agent or an alternate agent designated in this directive is my spouse, and our marriage is thereafter dissolved, such designation shall thereupon be revoked.

I do hereby designate and appoint the following individual as my attorney in fact (agent) to make health care decisions for me as authorized in this document (Insert name, address, and telephone number of one individual only as your agent to make health care decisions for you.):

Name of Health Care Agent:

Agent's Address:

Agent's Telephone numbers:

Agent's relationship to me:

For the purposes of this document, "health care decision" means consent, refusal of consent, or withdrawal of consent to any care, treatment, service, or procedure to maintain, diagnose, or treat an individual's physical condition.

2. CREATION OF DURABLE POWER OF ATTORNEY FOR HEALTH CARE. By this portion of this document, I create a durable power of attorney for health care. This power of attorney shall not be affected by my subsequent incapacity. This power shall be effective only when I am unable to communicate rationally.

3. GENERAL STATEMENT OF AUTHORITY GRANTED. Subject to any limitations in this document, including as set forth in Paragraph 2, immediately above, I hereby grant to my agent full power and authority to make health care decisions for me to the same extent that I could make such decisions for myself if I had the capacity to do so. In exercising this authority, my agent shall make health care decisions that are consistent with my desires as stated in this document or otherwise made known to my agent, including, but not limited to, my desires concerning obtaining or refusing or withdrawing life-prolonging care, treatment, services, and procedures, including such desires set forth in a living will or similar document executed by me, if any. (If you want to limit the authority of your agent to make health care decisions for you, you can state the limitations in paragraph 4 ("Statement of Desires, Special Provisions, and Limitations") below. You can indicate your desires by including a statement of your desires in the same paragraph.)

4. STATEMENT OF DESIRES, SPECIAL PROVISIONS, AND LIMITATIONS. (Your agent must make health care decisions that are consistent with your known desires. You can, but are not required to, state your desires in the space provided below. You should consider whether you want to include a statement of your desires concerning life-prolonging care, treatment, services, and procedures. You can also include a statement of your desires concerning other matters relating to your health care, including a list of one or more persons whom you designate to be able to receive medical information about you and/or to be allowed to visit you in a medical institution. You can also make your desires known to your agent by discussing your desires with your agent or by some other means. If there are any types of treatment that you do not want to be used, you should state them in the space below. If you want to limit in any other way the authority given your agent by this document, you should state the limits in the space below. If you do not state any limits, your agent will have broad powers to make health care decisions for you, except to the extent that there are limits provided by law.) In exercising the authority under this durable power of attorney for health care, my agent shall act consistently with my desires as stated below and is subject to the special provisions and limitations stated in a living will or similar document executed by me, if any. Additional statement of desires, special provisions, and limitations:

_____ Initial here if none.

_____ Initial here if appropriate. Decisions my Health Care Agent may communicate and direct on my behalf include, but are not limited to, the following:

- Follow the instructions on this directive that are based on my wishes, values and beliefs;
- Consent for treatment(s) such as tests, medications, surgery, or other treatments;
- Refuse or stop treatment(s) such as tests, medications, surgery, or other treatments;
- Release my medical records as needed, as stated by law (HIPAA and the Idaho Health Records Act);
- Determine which health care provider(s) and organization(s) will best meet my health care needs;
- Arrange for the care of my body after death if my wishes are not already known.

_____ Initial here if appropriate. Additional statement of desires and special provisions:
See attached.

_____ Initial here if appropriate. Limits or comments on the authority and responsibility

of my Health Care Agent:
See attached.

_____ Initial if you do not want CPR

5. INSPECTION AND DISCLOSURE OF INFORMATION RELATING TO MY PHYSICAL OR MENTAL HEALTH.

A. General Grant of Power and Authority. Subject to any limitations in this document, my agent has the power and authority to do all of the following: (a) Request, review, and receive any information, verbal or written, regarding my physical or mental health, including, but not limited to, medical and hospital records. (b) Execute on my behalf any releases or other documents that may be required in order to obtain this information. (c) Consent to the disclosure of this information. (d) Consent to the donation of any of my organs for medical purposes. (If you want to limit the authority of your agent to receive and disclose information relating to your health, you must state the limitations in paragraph 4 ("Statement of Desires, Special Provisions, and Limitations") above.)

B. HIPAA Release Authority. My agent shall be treated as I would be with respect to my rights regarding the use and disclosure of my individually identifiable health information or other medical records. This release authority applies to any information governed by the Health Insurance Portability and Accountability Act of 1996 (HIPAA), 42 U.S.C. 1320d and 45 CFR 160 through 164. I authorize any physician, health care professional, dentist, health plan, hospital, clinic, laboratory, pharmacy, or other covered health care provider, any insurance company, and the MIB Group, Inc. (formerly the Medical Information Bureau, Inc.) or other health care clearinghouse that has provided treatment or services to me, or that has paid for or is seeking payment from me for such services, to give, disclose, and release to my agent, without restriction, all of my individually identifiable health information and medical records regarding any past, present, or future medical or mental health condition, including all information relating to the diagnosis of HIV/AIDS, sexually transmitted diseases, mental illness, and drug or alcohol abuse. The authority given my agent shall supersede any other agreement that I may have made with my health care providers to restrict access to or disclosure of my individually identifiable health information. The authority given my agent has no expiration date and shall expire only in the event that I revoke the authority in writing and deliver it to my health care provider.

6. SIGNING DOCUMENTS, WAIVERS, AND RELEASES. Where necessary to implement the health care decisions that my agent is authorized by this document to make, my agent has the power and authority to execute on my behalf all of the following: (a) Documents titled, or purporting to be, a "Refusal to Permit Treatment" and/or a "Leaving Hospital Against Medical Advice". (b) Any necessary waiver or release from liability required by a hospital or physician.

7. DESIGNATION OF ALTERNATE AGENTS. (You are not required to designate any alternate agents but you may do so. Any alternate agent you designate will be able to make the same health care decisions as the agent you designated in paragraph 1, above, in the event that agent is unable or ineligible to act as your agent. If an alternate agent you designate is your spouse, he or she becomes ineligible to act as your agent if your marriage is thereafter dissolved.) If the person designated as my agent in paragraph 1 is not available or becomes ineligible to act as my agent to make a health care decision for me or loses the mental capacity to make health care decisions for me, or if I revoke that person's appointment or authority to act as my agent to make health care

decisions for me, then I designate and appoint the following persons to serve as my agent to make health care decisions for me as authorized in this document, such persons to serve in the order listed below:

A. First Alternate Agent:

Telephone:
Relationship to me:

B. Second Alternate Agent:

Telephone:
Relationship to me:

C. Third Alternate Agent:

Telephone:
Relationship to me:

8. PRIOR DESIGNATIONS REVOKED. I revoke any prior durable power of attorney for health care.

DATE AND SIGNATURE OF PRINCIPAL: I sign my name to this Statutory Form Living Will and Durable Power of Attorney for Health Care on the date set forth at the beginning of this Form at Boise, Idaho.

STATE OF IDAHO)
) ss.
COUNTY OF ADA)

On _____, before me personally appeared _____, to me known (or proved to me on basis of satisfactory evidence) to be the person whose name is subscribed to this instrument, and acknowledged that he/she executed it. I declare under penalty of perjury that the person whose name is subscribed to this instrument appears to be of sound mind and under no duress, fraud, or undue influence.

Notary Public for Idaho
Residing at Meridian
My commission expires on _____

STATEMENT OF WITNESSES

Each of the undersigned declare under penalty of perjury under the laws of Idaho that the person who signed or acknowledged this document is personally known to me (or proved to me on the basis of convincing evidence) to be the principal, that the principal signed or acknowledged this durable power of attorney in my presence, that the principal appears to be of sound mind and under no duress, fraud, or undue influence, that I am not the person appointed as attorney in fact by this document, and that I am not a health care provider, an employee of a health care provider, the operator of a community care facility, nor an employee of an operator of a community care facility. further declare under penalty of perjury under the laws of Idaho that I am not related to the principal by blood, marriage, or adoption, and, to the best of my knowledge, I am not entitled to any part of the estate of the principal upon the death of the principal under a will now existing or by operation of law.

Residence address:
Date:

Residence address:
Date:

HEALTH CARE DIRECTIVES

I have attached a detailed explanation of the use of Health Care Directives and choices you will be making in those Directives at signing.

I know the explanation is lengthy, but this is a complex and important set of decisions and you should understand them thoroughly. We will discuss them at signing in as much detail as needed.

Please read through the explanation before you complete the portion of the Will Questionnaire naming Health Care Agents. It will help you determine who is appropriate to pick as those agents.

I really do want four choices if at all possible for your Health Care Agent. You do not want to have to keep redoing documents if your single choice becomes unavailable. Also, if your first choice cannot be reached, your second choice will be contacted. The more choices, the more likely your wishes will be carried out.

I discourage having co-Agents for a number of reasons we can discuss at your signing.

I also need every phone number that might reach each Agent. Medical decisions are often unexpected and immediate. Choices must be made quickly. You want the person(s) you have named to make your decisions when you cannot, and the contact will often be by phone. Therefore, give me the cell number of the person, the home number of the person, the work number of the person, the cell number of the spouse of the person, and any other number that might reach that person. I would rather have too many numbers and sort out the important ones than have too few.

What is an Advance Directive for Health Care?

An Advance Directive for Health Care, or Advance Directive, allows you to write down your goals, values and preferences for future health care decisions and who you want to communicate your health care decisions if you are unable to communicate for yourself. For adults, completing an Advance Directive is important if you had a life threatening event, like an accident or serious illness, and cannot make your own decisions. It applies whenever you cannot communicate your medical decisions. You do not have to be in a terminal condition for the Advance Directive to be used. For example, if during a routine surgery procedure a situation comes up that has not been discussed with you and a decision is needed, your Advance Directive can give authority to your Health Care Agent to make that decision.

Idaho's Advance Directive for Health Care has two (2) parts:

1. Durable Power of Attorney for Health Care (Health Care Agent)

Allows you to pick one or more individuals (but not your health care provider, who cannot fulfill that role) to communicate health care decisions on your behalf if you cannot communicate for yourself. This person is called your Health Care Agent. The Power can also give specific instructions to your Health Care Agent and to your health care providers. I always want four choices, as shown on the Will Questionnaire.

2. Living Will

The limited conditions under which the Living Will would apply are discussed further below. The Living Will, if those limited conditions apply, allows you to provide instructions for health care treatments based upon your values and what is important to you by choosing one of three options, also discussed below. These instructions are important if you had a life threatening event, like an accident or serious illness, and cannot communicate for yourself.

What is a Health Care Agent?

This is the individual you choose and authorize to consult with your health care team about your health care decisions if you are unable to communicate for yourself. This does **not** authorize your Health Care Agent to make financial or business decisions for you. It does **not** give your Health Care Agent authority to make decisions about your mental health treatment.

Who should I choose as my Health Care Agent?

Talk to the individual you want as your Health Care Agent to make sure he or she understands, and is willing to perform, this important role for you before you list him or her as a choice.

Your Health Care Agent must meet all of the following criteria:

- Be at least 18 years old.
- Not be your health care provider or an employee at your hospital, clinic, or other place where you receive care (unless he or she is a close relative).
- Will carry out your instructions and follow the health care choices you make even if he or she does not agree with them.
- Will carry out any other health care instructions you have discussed with him/her.
- Will make decisions in difficult or stressful moments according to your instructions.
- Will make decisions in your best interest that reflect your goals, values, and preferences.

Can I change my mind later about my decisions in this document?

Yes, you may change your mind and make changes to this document at any time. However, you will need to do this in a new document. If you make changes, please give copies of your new document to your new and previous Health Care Agent, your health care providers, and any others who may have an outdated copy.

If you name your spouse as your Health Care Agent (or Alternate) and your marriage is later annulled or you are divorced, the designation of your spouse as Health Care Agent or Alternate is no longer valid. You may name your ex-spouse as your Health Care Agent (or Alternate) only if you do a new Durable Power of Attorney for Health Care document after your annulment or divorce.

What do I do when my documents are complete?

- Give a copy of these documents to the following people:
 - The individual you picked as your Health Care Agent;
 - Your health care providers – or give them a copy of your Health Care Directive card so they can access your documents online.
- Talk to those you love and trust to make sure they know your wishes and who you picked as your Health Care Agent.
- Keep a signed and dated original of these documents in a well-known place. If we have prepared an estate planning binder for you, make sure it is there.
- If you go to a clinic, hospital, or other medical setting, have them make a copy of your Health Care Directive Card so they can access the documents online and ask that the documents be placed in your medical record. The Card is best, instead of a copy of your documents, because the Card will automatically be updated if new documents are registered.
- Schedule to review and update these documents if you change your mind about your choices or when any of the “Six D’s” occur:

<i>Decade:</i>	when you begin a new decade in your life.
<i>Death:</i>	you experience the death of someone you love.
<i>Divorce:</i>	your Health Care Agent is your spouse or partner and your relationship ends. A new Health Care agent should be identified in a new document.
<i>Diagnosis:</i>	you are diagnosed with a serious illness.
<i>Discharge:</i>	you are discharged from a hospital stay.
<i>Decline:</i>	your illness gets worse.

If your goals or wishes change, tell the individual you picked as your Health Care Agent(s), your family, your health care provider, and everyone who has copies of your Durable Power of Attorney for Health Care and Living Will. You should complete new documents that reflect your current wishes. Always destroy prior documents to avoid confusion.

Make sure you take a copy of your Health Care Directive Card with you when you are traveling. Most states will accept a properly executed document from another state.

We will give you a checklist, at signing, of what to do with the Health Care Directive Card when you receive it.

LIVING WILL

If your health care provider determines your illness or injury cannot be cured and death is likely, or your brain function will not return, the treatments listed below can keep you alive. These treatments may or may not provide benefit and can cause suffering. To respect your wishes and maintain comfort and dignity, treatments can be started or stopped as guided by your goals, values, and preferences.

In your Living Will, you make choices under certain limited situations on whether you do or do not want life prolonging treatments. Examples of life prolonging treatments may include:

- **Tube feeding:** a tube placed in your nose or stomach to provide liquid nutrition when you cannot eat by mouth.
- **Ventilator:** a breathing machine attached to a tube that is placed into your windpipe when you cannot breathe on your own.
- **IV fluids:** a tube placed in your vein to supply water (and/or nutrition for a limited time) when you are unable to drink or eat.
- **Dialysis:** a machine that removes excess fluid and waste products from your blood when your kidneys no longer work.
- **Blood Products:** donated blood from a blood bank that is provided through a tube placed in your vein and is used to replace blood or blood parts you have lost.

The Living Will is only effective if you are unable to communicate your wishes, **AND:**

You have been diagnosed as being in a persistent vegetative state; or,

You have an incurable injury, disease, illness, or condition and a medical doctor who has examined you has certified:

1. that such injury or disease or illness or condition is terminal; and,
2. that the application of artificial life-sustaining procedures would serve only to prolong artificially your life; and,
3. that your death is imminent, whether or not artificial life-sustaining procedures are utilized.

What are “artificial life-sustaining procedures”?

“Artificial life-sustaining procedure” means any medical procedure or intervention which utilizes mechanical means to sustain or supplant a vital function which when applied to a qualified patient, would serve only to artificially prolong life. Artificial life-sustaining procedures shall not include the administration of medication or the performance of any medical procedure deemed necessary to alleviate pain. “Artificial nutrition and hydration” means supplying food and water through a conduit, such as a tube or intravenous line, where the recipient is not required to chew or swallow voluntarily, but does not include assisted feeding, such as spoon or bottle feeding.

What are your options in the Living Will?

Because the statute mandates that you will receive "comfort care" (pain medication, oxygen, spoon or bottle feeding if possible, etc.) regardless of which option you choose, the choices are really about life prolonging machinery and nutrition/hydration. Simplified, the three choices are:

1. Continue all medical procedures, including machinery and nutrition/hydration.
2. No machinery, but provide nutrition and/or hydration. You can choose whether to have only hydration, only nutrition, or both.
3. No machinery or artificial nutrition/hydration, just comfort care.

We will discuss these options in detail at signing.

Cardiopulmonary Resuscitation (CPR)

Cardiopulmonary Resuscitation (CPR) is a treatment that attempts to restore your heart beat and/or breathing when they have stopped. CPR may include chest compressions (forceful pushing on the chest to circulate blood), medications, electrical shock, insertion of a breathing tube, and hospitalization. Although CPR may restore your heart beat and breathing, it does not always work, and may cause painful bruising, broken ribs, and a difficult recovery. CPR does not work as well for people who are weak, frail, or have chronic disease.

Imagine this situation:

A life threatening event has left you unable to communicate with those around you or to participate in your daily care, treatment planning, or decision making. Even though all care and available treatments are being provided, your doctors determine your illness or injury cannot be cured and death is likely, or your brain function will not return.

In this situation would you or would you not want CPR attempted if your heart stops or you stop breathing? You can make that choice in your Durable Power of Attorney For Health Care.

This question may also come up if you execute a POST form (Physician's Orders for Scope of Treatment) where you can decide whether you do or do not want resuscitation if your heart stops or you stop breathing. You may, in that POST form, decide that you want to be resuscitated but you do not want CPR performed as a method of resuscitation.

Registering your documents and obtaining a Health Care Directive Card

We will register your documents and obtain your Health Care Directive Card, which is the size of a credit card and should always be with you. We will also give you a checklist of what to do with the Card when you receive it. The Card has the website address for the Idaho Secretary of State, your name, and an identification number and a password. This allows any health care provider, using that information, to obtain copies of your documents. Of course, you must have your Card with you at all times and in a place where will be easily and immediately found in an emergency.

EXHIBIT THREE

Modified POST form

Idaho Physician Orders for Scope of Treatment (POST)

HIPAA PERMITS DISCLOSURE OF FORM & ACCESS TO ELECTRONIC REGISTRY TO HEALTH CARE PROFESSIONALS AS NECESSARY FOR TREATMENT

- This form must be signed and dated by an authorized practitioner in Section E to be valid
- If any section is NOT COMPLETE provide the most comprehensive treatment in that section
- EMS: If questions arise contact on-line Medical Control

Last name _____
 First name _____
 Middle name _____
 Date of birth ____/____/____
 Last four digits of SS # _____
 Male Female Other _____

Section A Select only ONE box	Cardiopulmonary Resuscitation: Patient is not breathing and/or does not have a pulse <input type="checkbox"/> Do Not Resuscitate: Allow Natural Death (No Code/DNR/DNAR): No CPR or advanced cardiac life support interventions <input type="checkbox"/> Resuscitate (Full Code): Provide CPR (artificial respirations and cardiac compressions, defibrillation, and emergency medications as indicated by the medical condition) I WANT CPR <input checked="" type="checkbox"/> I do not want CPR <input type="checkbox"/> Follow the instructions of my Health Care Agent
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Section B Select only ONE box	Medical Interventions: Patient has a pulse and is breathing <input type="checkbox"/> Comfort measures only: Use medications by any route, positioning, wound care and other measures to relieve pain and suffering. Use oxygen, oral suctioning and manual treatment of airway obstruction. Reasonable measures are to be made to offer food and fluids by mouth. Transfer to higher level of care only if comfort needs cannot be met in current location. <input type="checkbox"/> Limited additional interventions: In addition to the treatment described above, you may include cardiac monitoring, oral/IV medications and/or less invasive airway support (e.g. CPAP, BIPAP) but does not include intubation, advanced airway interventions, or mechanical ventilation. Transfer to higher level of care (e.g. from home to hospital) and provide treatment as indicated in Section A. Avoid admit to Intensive Care. <input type="checkbox"/> Aggressive interventions: In addition to the treatment described above and in Section A, you may include other interventions (e.g. dialysis, ventricular support, intubation, mechanical ventilation) Additional instructions: _____
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Section C	Artificial Fluids and Nutrition: <input type="checkbox"/> Yes <input type="checkbox"/> No Artificial fluids (IV) <input type="checkbox"/> Yes <input type="checkbox"/> No Artificial Nutrition (Feeding tube) NOTE: Oral fluids and nutrition must always be offered if medically feasible Other instructions: _____	Antibiotics and blood products: <input type="checkbox"/> Yes <input type="checkbox"/> No Antibiotics <input type="checkbox"/> Yes <input type="checkbox"/> No Blood products Other instructions: _____
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Section D	Advance Directives: The following documents also exist: <input type="checkbox"/> Living Will <input type="checkbox"/> DPAHC <input type="checkbox"/> Other _____
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Section E	_____ I request that this document be submitted to the Idaho Health Care Directive Registry Patient/Surrogate initials Patient/Surrogate Signature: <input checked="" type="checkbox"/> * _____ * _____ * ____/____/____ Print Patient/Surrogate name Relationship (Self, Spouse, etc.) Date By signing below, I attest that these medical orders are, to the best of my knowledge, consistent with the patient's current medical condition and preferences. Physician/APRN/PA Signature: <input checked="" type="checkbox"/> Phone # _____ * _____ * _____ * ____/____/____ Print Physician/APRN/PA name ID license number Date Discussed with: <input type="checkbox"/> Patient <input type="checkbox"/> Spouse <input type="checkbox"/> DPAHC <input type="checkbox"/> Other _____ The basis for these orders is: <input type="checkbox"/> Patient's request <input type="checkbox"/> Patient's known preference ***ORIGINAL TO ACCOMPANY PATIENT IF TRANSFERRED OR DISCHARGED*** ***PROVIDER SUBMISSION OF COPY TO REGISTRY RECOMMENDED*** ***COPY OR FAX OF ORIGINAL LEGALLY VALID***
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