

# THE RIGHT *to Remain* FROZEN

*End of Life Meets Life Never Ending  
in Alcor vs. Estate of Mary Robbins*



Norv Brasch • CBA Elder Law Section • 4/19/18  
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## Alcor Life Extension Foundation

- Scientific 501(c)(3) based in Scottsdale
- Almost 100 Members now cryonically preserved; about 1000 more have signed up
- Anxious to overcome some unwelcome notoriety: the Ted Williams Freeze-&-Tell
- Issue of high principle: assuring Members that Alcor will defend their wishes at any cost



## Mary Robbins

- Retired nurse, Alcor Member back to 2001
- Reaffirms '06 with new docs & \$50K annuity
- Dec. '09 diagnosed with quickly lethal cancer
- Contacts Alcor confirming the arrangement
- Feb. '10, family holds her hand as she redesignates annuity to her three daughters
- Daughter takes her to hospice that night, where she dies two days later



## Alcor's Response

- Hours later, Alcor's transportation coordinator turned away at the hospice
- Not even told she had died, but concluding she had, he called local mortuaries until he found where the body had been taken
- Alcor strikes arrangement with the mortuary and family to keep the body on dry ice (at Alcor's expenses of about \$700/day)



## Fast Track Probate Litigation: the Full Arc in a Fortnight

- Day 1 – Alcor Emergency Petition
- Day 3 – Alcor Motion for Summary Judgment
- Days 6-10 – Depos, Affidavits, Case Mgt.
- Day 8 – Response to Motion & Cross-Replies
- Day 9 – Summary Judgment Granted in Part
- Day 10 – Full-Day Hearing
- Day 13 – Ruling
- Day 15 – Waiver of Appeal & Settlement



## **STRATEGY** for the Hearing

- Avoid putting cryonics on trial
- Respecting Mary's family in grief:  
*a tragic mistake*
- Reduce to the single objective of honoring Mary's wishes: the Last Remains Act trumps all related law
- *It's not about the money*



## Hearing

- Critical win on opening argument: UAGA
- Remaining issue: Was redesignation of the annuity a revocation or cancellation?
- Witnesses: hospice, friends & family
- Mary's estate planner on the hot seat
- Objections under the Dead Man's Statute



## Ruling & Settlement

- Order in Alcor's favor on every issue:

*[T]he governing task for the Court is to discover and make manifest Mary's intent, which was for cryonic suspension of her last remains, and that wish shall not be put asunder*

- Settled by family's waiver of appeal in return for Alcor's release of all monetary claims against Mary's estate



**Press Coverage**  
*If Mary Robbins sought immortality she achieved it*

The image shows two overlapping screenshots of an ABC News Health website. The top screenshot has the headline "Fate of Grandmother's Frozen Head Now in Colorado Court" and sub-headlines "Mary Robbins Family Wants Body Intact and Away From Arizona Cryonics Company" and "Family Fights Cryonics Company to Keep Mother's Head". The bottom screenshot has the headline "Court Gives Custody of Grandmother's Frozen Head to Cryonics Company" and sub-headlines "Mary Robbins' Family Sheds Custody of Grandmother's Head" and "The legal battle over Mary Robbins' head has been building since her death on Feb. 9 from cancer. Her children, led by her daughter, Darlene Robbins, led their argument today that their mother's contract with the nonprofit AlcorLife Extension Foundation gave her the right to have her head cryonically suspended." A small photo of a woman's face is visible in the bottom left of the second screenshot. The T&E ADVOCATES logo is in the bottom right corner.

**denverpost.com**

**Judge to rule on who owns woman's frozen remains**

**KKTV.COM**  
SOUTHERN COLORADO'S 11 TV WEB CHANNEL

**Family Says They're Happy Battle Over Mother's Remains Is Over**

**Local**

**T&E ADVOCATES**

**THE HUFFINGTON POST**  
APRIL 11, 2010

**Mary Robbins' Remains Ordered By Judge To Stay Frozen Despite Family's Protest**

**UPI.com**

**U.S. News**

**Court fight over frozen remains**

**National & Wire Services**

**T&E ADVOCATES**



Colorado Woman's Head: Alcor Says Money Was Never an Issue Regarding Freezing It

"Это очень личное решение, и только ей принимать его, а не кому-то еще", - заявил Эрик Бентли, представлявший в суде интересы Alcor.

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### Colorado's Own

20 YEARS ON ICE

FROZEN DEAD GUY

DAYS

WEDERLAND - COLORADO

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## Epilogue

### Post-Mortem:

### Alcor's success exposed major failures in end-of-life planning

- "Ancillary" documents move to center stage
- Seven documents expressed Mary's desires: helpful or confusing?
- Cross-reference, but don't restate
- Don't stash end-of-life directives with the will: copies to family and care providers
- **Bottom line:** not just *what* the client wants at end of life, but *who* knows it and *when*



## Core Categories

- **Preference** – expression of wishes without force of law
- **Delegation** – grant of decision-making authority to another
- **Directive** – enforceable unilateral instructions, trumping all others
- **Order** – contract with medical service providers for specific treatment

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## Delegation

### Medical Power of Attorney

- Appoints one or more agents to make all health care decisions for the patient
- Takes effect either immediately when executed or when the patient lacks decisional capacity (*springing* power)
- Agent must act according to the wishes of the patient or in the patient's best interest
- "Must" be honored by medical provider



## Directive

### Living Will

- The most common EOL document is the most misunderstood: *very* specific directives for *very* limited circumstances
- Takes effect only when the patient:
  - Is in a persistent vegetative state; or
  - Has a terminal condition
- Directs doctors to either continue or terminate life-sustaining treatment
- Comforting in its statutory clarity; almost deceptive in what it actually delivers



## Directive Order

### **CPR Directive (DNR)**

- Preemptive directions as to CPR
- Typically directs all health care providers not to resuscitate
- Becomes an order when signed by the medical professional
- Probably what most clients have in mind when signing a living will
- Beware the car accident problem



## Directive Order

### **MOST Forms**

(**M**edical **O**rders for **S**cope of **T**reatment)

- Check box style: Designed for chronically ill or frail patients to state preferences for all
- Intended to follow the patient across health care facilities (nursing home, hospital, hospice, etc)
- Specifies consent or rejection of comfort measures, transfer to hospital and CPR
- On provider's signature, becomes a binding medical order



## Preference Delegation Directive

### Five Wishes

- Set of multiple advance directives produced by Aging With Dignity
- Includes appointment of a health care decision maker, as well as directives for comfort measures, artificial nutrition and hydration, and disposition of remains
- Conforms to Colorado law regarding advance directives



## Order Delegation Preference Directive

### The Matrix of Core Forms

	Preference	Delegation	Directive	Order
Medical Power		X		
Living Will			X	
CPR Directive			X	X
MOST Forms			X	X
Five Wishes	X	X	X	



## What happens when the rubber meets the road?

- Disconnects between
  - what the attorney prepares
  - what the client thinks he or she has accomplished, and
  - what the documents actually do
- Closing the gaps: the practical realities of end of life decision-making and how we can bring the results in line with client/patient expectations



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