



Advance Care Planning: Focusing on Your Health Care Decisions

Presented by: Carol A. Kingman, Esq.



SEMINAR INSTRUCTOR



Carol A. Kingman, Esq.

Carol has lived in Las Vegas since 1987. She graduated from Brigham Young University with a bachelor's degree in Education and from the University of Nevada, Las Vegas (UNLV) with a master's degree in History. When the Boyd School of Law was established at UNLV, she was part of one of the first classes to graduate from there with a Juris Doctorate.

Carol teaches at the College of Southern Nevada in the Paralegal Studies Program, while working full-time as an Elder Law Attorney at the Southern Nevada Senior Law Program, where she has been since 2005. She is currently a Senior Staff Attorney at SNSLP, which serves citizens in southern Nevada who are 60 years of age or older at no cost.

GOALS AND OBJECTIVES

Objective 1:

Participants will understand the role of the Durable Power of Attorney for Health Care Decisions (DPOAH) document in Advance Care Planning.

Objective 2:

Participants will understand the decisions that the DPOAH asks them to make and the important things to consider in making these decisions.

Objective 3:

Participants will understand how the DPOAH coordinates with other Estate Planning documents to meet their goals of outlining their wishes and maintaining their independence as much as possible.

Advance Care Planning—What is it?

- **Outlining your wishes**
- **Designating someone you trust to speak for you if you are unable to speak for yourself**
- **Done in advance—before you need it in an emergency**



Don't Procrastinate!

Advance care planning is...

- Easy to put off.
- Does not feel urgent until you need it.

But...

In an emergency, you might not be able to communicate your wishes!

Powers of Attorney

Powers of Attorney = operate while you are alive:

- For health care decisions
- For end-of-life medical decisions
- For assets:
 - Paying bills*
 - Getting information*
 - Solving problems*
 - Financial management*
 - Selling property*

Wills

Wills = operate after you are gone:

- **Distributes your assets and possessions pursuant to your wishes.**
- **Appoint someone to be in charge of that process.**
- **Gives direction regarding your wishes after death.**
- **Does NOT avoid Probate (the Will is the “roadmap” for Probate).**

Trusts

Trusts = operate both while you are alive and when you are gone:

- **Manages your assets while you are alive.**
- **Disburses assets after your death.**
- **Can continue to manage your assets to benefit heirs after you are gone.**
- **You are in charge while you are alive.**
- **Designates some to be in charge when you are gone (your Successor).**
- **Avoids Probate and operates privately.**

Estate Planning and Advance Care Planning (ACP)

- Usually a collection of documents.
- One document does not do it all.
- Documents coordinate and work together:
 - Will or Trust*
 - Durable Power of Attorney for Health Care Decisions*
 - Financial Power of Attorney for Assets*
 - Authorization for Cremation, Burial, and Final Arrangements*



Advantage of Advance Planning

Provides an enforceable roadmap for others to carry out your wishes while you are alive and when you are gone.

Disadvantages of NOT making Advance Planning =

- **Creates unnecessary confusion and anxiety for family members.**
- **Your wishes may not be known or able to be defended.**
- **Can create delay in accomplishing your wishes.**
- **There may not be a way to enforce your wishes.**
- **Possible Court intervention with Guardianship.**



What is Guardianship?

- **Guardianship Avoidance**
- **Many Clients are concerned about avoiding Guardianship for themselves and loved ones.**
 - It represents a loss of control over one's life and a loss of autonomy regarding one's living situation and finances.
 - it requires Court intervention in a public setting.
 - it provides Court oversight to your care to prevent neglect, abuse, and exploitation.
 - for an adult, it can represent almost a role-reversal of the parent-child relationship, between spouses, or between parents and a child who is appointed to be the Guardian.
- **Intent: “protective” – utilizing the “least restrictive” solution possible.**

Drawbacks to Guardianship:

- It can be expensive to establish – requires Court pleadings and appearances.
- It can delay decision-making ability in a quickly-evolving and deteriorating situation.
- It involves a complete transfer of power away from an individual.
- It involves Court action to resolve what are sometimes costly family disputes.
- It may involve government intervention through Adult Protective Services and the Public Guardian's Office.

Guardianship and ACP

- Guardianship has been called “a failure to plan”:
- Guardianship can be avoided through Advance Care Planning.
- Advance Care Planning provides a private approach to establish a plan in advance of when it is needed.
- Advance Care Planning can minimize disputes and Court involvement.
- Advance Care Planning can give a measure of control and peace of mind to individuals and families.

Guardianship = Reactive

Advance Care Planning = Proactive

ACP—Focus on Durable Power of Attorney for Health Care Decisions (DPOAH)

- It is a legal, enforceable document.
- Sometimes called a “Living Will.”
- Sometimes called an “Advance Directive.”
- It is valid and would be honored in other states.
- More than just a document: it should be a Document and a “Conversation.”



The Meaning of “Durable”

- **It “endures”**
Should you become mentally incapacitated, it is still valid.
- **It does not expire or “time out.”**
- **It can be deliberately revoked.**
- **Creating a new one automatically revokes the prior ones (newest one counts).**

DPOAH

- **The DPOAH has nothing to do with your assets:**

Your money

Your home

Your investments

Your bills or financial obligations

- **It only:**

*Gives authority to make medical decisions
(if you are not able to make them yourself).*

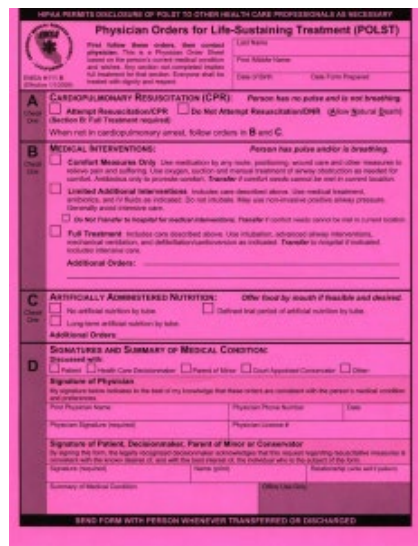
*Gives authority to obtain information from
medical providers.*



Important to Note:

- **The DPOAH is NOT a Do Not Resuscitate Order (DNR)**
*In Nevada, only a physician can give you a DNR.
Physicians can supply patients with a “POLST” (Physician’s Order for Life Sustaining Treatment).
It is printed on bright pink paper to be easily findable in your documents.*

The POLST functions somewhat like a DNR.



The image shows a bright pink form titled "Physician Orders for Life-Sustaining Treatment (POLST)". The form is designed for medical professionals to document a patient's wishes regarding life-sustaining treatments. It includes sections for:
- **Cardiopulmonary Resuscitation (CPR):** Options for "Attempt Resuscitation/CPR" or "Do Not Attempt Resuscitation/DNR".
- **Medical Interventions:** Options for "Comfort Measures Only", "Limited Additional Interventions", or "Full Treatment".
- **Artificially Administered Nutrition:** Options for "No artificial nutrition by tube" or "Long-term artificial nutrition by tube".
- **Signatures and Summary of Medical Condition:** A section for the physician's signature and a summary of the patient's medical condition.
The form also includes a footer that reads "READ FORM WITH PERSON WHENEVER TRANSFERRED OR DISCHARGED".

Difference Between POLST and DPOAH

- **The POLST:**

Functions like a DNR.

Requires a discussion with your physician and a determination that this is an appropriate document for you.

Must be issued by a physician—not a lawyer or one that you write yourself.

- **The DPOAH:**

Provides the opportunity for you to designate that you wish a Life Support apparatus be maintained or discontinued and removed at some point.

This can be created by you or by a lawyer.

Does not require approval from your doctor .

Steps in the Process

1. Ponder
2. Create
3. Review and Evaluate
4. Preserve
5. Share
6. Discuss
7. Update
8. Accessibility



The Process:

- **Ponder:** Give it serious thought and carefully contemplate your wishes regarding end-of-life decisions. Carefully consider whom do you want to entrust with decision-making.
- **Create:** State your wishes in written form – provide a good “roadmap” for those who will speak for you.
- **Review and Evaluate:** Perhaps have a 3rd party read it and see if they understand your wishes.
- **Preserve:** Use a standardized form that utilizes the requisite formalities (signatures/notarization, etc).
- **Share:** Give copies to your doctors and to your agents/family members.
- **Discuss:** This is a “documents and a conversation.” Make sure your agents understand your personal feelings and their responsibilities. Don’t just give someone the document without explanation.
- **Update:** Keep your selection of Agents and their contact information up-to-date and current.
- **Accessibility:** Don’t lock it up; take it with you when you travel; Register with NV Advance Directive Lockbox.

DPOAH Warnings and Information

- States that you understand that this is a legal document.
- You are signing it voluntarily—no one is trying to trick you or force you to sign something.
- The Power of Attorney does not expire.
- The people you choose as “Agents” must act consistently with your wishes.
- It is always revocable, and your decisions can be changed and revised.

IMPORTANT =

- DPOAH only takes effect if you cannot manage your own health care decisions =

It cannot be used to override your current wishes if you are able to express them.



Vocabulary

- **“Principal” = You**
It is your document outlining your wishes
- **“Agents” = The people you designate**

IMPORTANT CONSIDERATIONS:

1. Who will speak for you in a medical emergency if you could not communicate your wishes? Are there people you absolutely do not want to have any authority?
2. Who will have access to your medical information and talk to medical personnel on your behalf?
3. Provide contact information for Agents—phone numbers are critical.
4. How do you feel about life support if you were in a persistent vegetative state?
Keep it going indefinitely and never remove the life support apparatus?
At a certain point direct that you be removed from the life support apparatus?
Do you want artificial nutrition and hydration (feeding tube) to be continued?



DPOAH Document

Additional things to consider regarding your DPOAH document:

- 1. Do you want your Agent to make more than “end-of-life” decisions—giving your Agent the ability to manage your health care anytime you are unable (even temporarily unable?).***
 - For relief of suffering?
 - For restoration of bodily function?
 - Consent for surgeries, procedures or medications?
- 2. Pain management—do you want pain managed with strong medications?***
- 3. Is your goal to be kept comfortable?***
- 4. Do you want pain management with strong medications even if you have late-stage dementia?***

DPOAH

Additional things to consider on DPOAH decisions regarding living arrangements:

- **Almost everyone wants to remain at home as long as possible and not have to relocate, BUT...**
 - *If it is determined to be no longer safe for you to remain in your home OR*
 - *Your medical needs cannot be met when you are living at home OR*
 - *You become a hazard to yourself or others (such as leaving a pot on the stove and forgetting about it, possibly causing a fire):*
 1. *Do you trust your Agents to make choices regarding placement (with your input if you are able)? Assisted living? Skilled Nursing facility? Memory Care (secured)?*
 2. *How do you feel about voluntary placement in a mental health facility?*

Designating a Health Care Agent

A health care agent...

- Does not have to be a relative—can be a trusted friend.
- Must be at least 18 years of age.
- They do not need to be local—can live out of state.
- Do not pick for convenience or to “honor” someone (this is not a “dream job”).
- Select someone you TRUST.
- Select someone who can cope and does not go to pieces in a crisis.
- Generally, it is a good idea to select someone who is philosophically in agreement with your wishes.
- **PHONE NUMBERS** are **CRITICAL**—they need to be able to be contacted.

Designation of Alternate Agents

- Always a good idea to have a back-up.
- Can choose a second and a third choice.
- Choose just as carefully as you chose your first Agent.
- If you are not choosing Alternates, do not leave blank spaces—write “NONE” in the space provided.



No Conflict of Interest

It does not create a “Conflict of Interest” by choosing people to be your Agents who are also beneficiaries (those who will inherit possessions and assets) in your Will or Trust.

Provision Regarding CHALLENGES to Your Wishes

- **DPOAH empowers your Agent(s) to defend your wishes.**
- **Your Agents are your advocates and buffers in the medical system.**
- **For example: If another family member not named on the document challenges the carrying out of your wishes, your Agent is empowered to defend those choices in the medical system.**

HIPAA Release of Information

- **“HIPAA” is a federal law that governs medical personnel and prohibits them from disclosing your personal medical information—they must keep it confidential unless you give consent.**
- **The HIPAA Release gives physicians and medical providers permission to disclose your medical information to people you have designated as your Agents (only them).**
- **Since you have given them a responsibility, they need to have the necessary information to make decisions related to treatment and carrying out your wishes.**
- **If you have an old DPOAH that has never been updated, it may not have a HIPAA Release.**
- **It is IMPORTANT that you have a version of the DPOAH that includes the HIPAA Release.**

Finalizing the DPOAH Document

- **Must be signed by YOU, the Principal.**
- **Ideally, it should be notarized at the time of signing (cannot be notarized after you sign it).**

Advance Directive “Lockbox”

- Operated by the Secretary of State’s Office.
- Places the DPOAH in the computer database of the hospitals in Nevada.
- NOT a public document—accessible only by medical professionals.
- A FREE, OPTIONAL service—your DPOAH is valid whether or not you register it.
- **WHAT IT DOES:** If you were unable to speak for yourself and ask for loved ones and family to be called, or articulate your wishes, this allows the hospital to not only know your wishes, but also those whom you have designated to speak for you.

Accessibility

- **Do not lock up this document where it cannot be found or readily accessed.**
- **There is no sensitive identity information in this document.**
- **Anyone you have designated as an Agent should have a copy—you have given them a job to do, so they need the information.**
- **Give a copy to your health care providers.**
- **Take a copy of it with you when you travel.**
- **Email it to yourself and keep it in your phone—or screen-shot each page.**
- **Some people keep it on the refrigerator where emergency personnel could easily find it.**

Remember =

1. Ponder
2. Create
3. Preserve
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Take-Home Points

1. The Durable Power of Attorney for Health Care Decisions (DPOAH) is a critical piece of Advance Care Planning in preparing for your wishes to be expressed and honored.
2. Prepare for the completion of a DPOAH by carefully considering in advance the decisions you will need to make to complete the document.
3. Always keep your DPOAH document up-to-date and accessible

References and Resources

- Statutory Reference in Nevada Revised Statutes (NRS):

NRS 162A.860 Powers of Attorney

NRS 159 Guardianship

Nevada Lockbox:

c/o Nevada Secretary of State

2250 Las Vegas Blvd. North, Suite 400, North Las Vegas, NV 89030

Phone: (702) 486-2887 Fax: (775) 684-7177

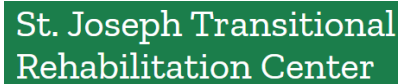
Email: Lockbox@sos.nv.gov

POLST: (Physician's Order for Life Sustaining Treatment):

Contact your Physician



Creating an Age-Friendly Health System & Dementia-Friendly Community in Nevada



CONTACT NIHAN
nihan@unlv.edu | (702) 272-0826 | <http://www.nihan.care>

This material is supported by the Health Resources and Services Administration (HRSA) of the U.S. Department of Health and Human Services (HHS) as part of an award totaling \$3.75 million for five years with 0% percentage financed with nongovernmental sources, grant #U1QHP33069. The contents are those of the author(s) and do not necessarily represent the official views of, nor an endorsement, by HRSA, HHS or the U.S. Government.