

OVERVIEW OF POWERS OF ATTORNEY, ADVANCED DIRECTIVES, AND THE POST

Durable vs. Non-Durable Power of Attorney

A Durable Power of Attorney (DPOA) can be general or limited in scope but it remains in effect after you become incapacitated. The Durable Power of Attorney is created by an individual, called a principal, and grants another person, called an attorney-in-fact, legal rights to act on the principal's behalf.

If the Power of Attorney is not “durable” the moment the principal becomes incapacitated, the POA would be terminated and the attorney-in-fact would have no legal rights. The disabled principal would then need a guardian.

Springing vs. Non-Springing Power of Attorney

A signed non-springing durable power of attorney is immediately effective, and stays effective until you revoke it, or you die. Once signed, the agent under the power of attorney receives the authority to begin making decision on behalf of the principle.

A “springing” power of attorney is not immediately effective. It “springs” into effect upon the happening of a specific event, such as illness or injury. You can include language requiring your physician or a third party to confirm your mental incompetence to activate the power. This will give you some protection against a greedy or impatient attorney-in-fact. It will, unfortunately, delay the moment when somebody will be authorized to manage your affairs. Not all states permit a springing power of attorney.

Durable Power of Attorney for Finances (DPOAF)

A DPOAF ensures that an attorney-in-fact will be able to manage all the principal's financial matters for the principal. It is incredibly wise to consult with a skilled attorney when naming an agent, as powers of attorney are powerful instruments that give authority over one’s financial affairs, assets, and money. In Idaho, the signature of the principal in this document must be notarized.

Advanced Directive for Health Care

An Advanced Directive for Health Care includes both a *Durable Power of Attorney Health Care* and a *Living Will*. For more information, visit this website <https://honoringchoicesidaho.org/ichooseformyself/>

For health care decisions, some states have “family consent” laws permitting other family members to make certain kinds of health care decisions for you. The Idaho Code. Title 39, Health & Safety. Chapter 45, The Idaho Medical Consent and Natural Death Act <http://www.legislature.idaho.gov/idstat/Title39/T39CH45SECT39-4504.htm> provides a list, in order of authorization, that allows for an individual to deny, or consent to care, for a second individual who has been rendered unable to communicate. In most other states, no one—not even a spouse—has an automatic right to make most decisions on your behalf.

Durable Power of Attorney for Health Care (DPOA-HC)

A Durable Power of Attorney for Health Care is like the Durable Power of Attorney for Finances but directed exclusively at health care concerns. It also has other names, such as “health care proxy.”

A DPOA-HC enables you to appoint someone to make any or all health care decisions for you if you become incapacitated or unable to communicate your wishes. This person has the authority to make necessary health care decisions and is responsible for ensuring that providers carry out your wishes in the event you are unable to. The DPOAHC helps ensure that your doctor and family will know and respect your wishes. It also helps relieve the stress and conflicts caused when families must guess what you would have wanted.

Most states have special witnessing requirements. The state of Idaho, however, does not require witnessing nor notarizing the document. Be sure your assigned Durable Power of Attorney for Health Care has a copy of this document as well as your Primary Care Physician.

Living Will (or Health Care Directive)

A living will-also known as health care directive is a written statement that dictates health wishes in case someone becomes incapacitated, terminally ill, or is unable to communicate his/her wishes. It is important to be sure your Durable Power of Attorney for Health Care (DPOAHC) has a copy of your living will and understands your wishes. You should also make sure your DPOAHC and physician have a copy of this document. Creating a living will and naming a DPOAHC are simple procedures. It is wise to consult with a skilled attorney when naming an agent, as powers of attorney are powerful instruments that give authority over life and death decisions.

Physicians Order for Scope of Treatment (POST)

Emergency Medical Services (EMS); i.e., paramedics and hospital emergency department personnel, are required by law to provide cardiopulmonary resuscitation (CPR) unless they are given a separate directive that states otherwise. In Idaho, these directives are called “Physician Scope of Treatment” or POST. They are designed for people who are severely or terminally ill or elderly. These directives instruct EMS personnel about your wishes to attempt or not attempt CPR if your heart or breathing should stop. The POST must be completed with and signed by your physician. Paramedics who are called to the home will typically look for key medical documents on your refrigerator. It is helpful to keep a copy of your signed POST, medication, physicians, and health history readily accessible. It is wise to provide your local hospitals with a copy.

Idaho Health Care Directive Registry

The Idaho Secretary of State maintains a registry where you may file your advanced directives, also known as your health care directives. Your health care directive may consist of a **living will, a durable power of attorney for health care** and/or a **POST** (Physician Orders for Scope of Treatment). You may find these forms on the Idaho Secretary of State website. <http://www.sos.idaho.gov/general/hcdr.htm>