

## Advance Directives & Powers of Attorney

### Ensuring Your End-of-Life Wishes are Carried Out

Should we become critically ill or unable to speak for ourselves, how can we ensure decisions being made on our behalf are consistent with our beliefs and wishes? The questions around how our finances should be managed and what medical care and interventions we might want when we cannot actively participate in making decisions can be difficult matters for our loved ones and medical providers to navigate. An advance directive is a written, legal document which sets forth your current preferences and specific instructions for a situation that may occur in the future, and at a time you may be incapacitated. By taking time now to anticipate and plan for critical decisions that may need to be made for you later, you can greatly ease uncertainty and pain for your loved ones were that time ever to arrive.

### Types of advance directives:

**Durable Powers of Attorney, generally** – A durable power of attorney (DPOA) is an advance directive which is used to name a representative to make decisions for you under certain circumstances. DPOAs are designed to give another person the legal authority to make decisions and take action on your behalf. There are two primary types of DPOAs – one is for financial matters, and the other is for health care related matters. “Durable” refers to the longevity of the power of attorney in that it remains in effect regardless of the health or mental capacity of the person who signed the document (the “principal”).

**Durable Power of Attorney for Financial Matters** – A DPOA for financial matters enables you, as the principal, to appoint one or more individuals – your “agents” or “attorneys-in-fact” – to manage your financial affairs. These documents generally are drafted broadly to encompass many aspects of your life, such as banking, real estate, insurance, pensions, legal matters, etc. The principal does not have to be incapacitated for these documents to go into effect, although they should not be released unless or until they are needed.

**Durable Power of Attorney for Health Care and Living Will** – A DPOA for health care (HCPOA) enables you to name one or more individuals to act as your agent/attorney-in-fact to make health care decisions for you should you become unable to do so. An HCPOA is “activated” if a medical professional determines that you lack mental capacity. In this document, you also decide whether you will authorize your agent not to start, or to stop, life-sustaining treatment were you determined to be close to death or permanently unconscious. Your health care agent generally will have the authority to sign consents to treatment, to secure additional medical opinions and to agree to palliative care. You can include a significant amount of detail in a HCPOA which then can serve as a treatment directive as if you

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personally were voicing your wishes. A “living will” is an advance directive to medical professionals that takes effect if you have not named any health care agents, or if the health care agents you named no longer are available to make decisions for you. In this document, you decide whether you will authorize medical professionals not to start, or to stop, life-sustaining treatment were you determined to be close to death or permanently unconscious. In New Hampshire, the HCPOA living will are two sections of the same document.

**Do I need a health care power of attorney and/or living will?** These documents can help spare your family the anguish of making critical health and medical intervention decisions for you, and it will be valuable to you in determining and communicating what your own feelings are regarding care should you become incapacitated or gravely ill. You also take charge of deciding who will be the person making decisions on your behalf. These documents should be considered as part of a comprehensive plan.

**DNR and DNI** – Do not resuscitate (DNR) and do not intubate (DNI) orders must be established directly with your physician and they become part of your medical record. Similarly, you also can complete documentation directly with your physician on organ or tissue donations. If you do not have these medical orders in effect, you have the ability to grant your health care agent the authority to agree to those orders in the future when you sign your HCPOA.

**Can I use a single document to name someone to act for me both financially and medically?** No, at least not in the State of New Hampshire. Because medical and financial decisions are governed by separate laws, these documents are drawn up separately. Advance directives are an integral part of thorough estate planning, are governed by strict laws, and should be undertaken with great care and thought.