

# ADVANCE DIRECTIVES

presented by Tina Janssen-Spinosa

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Thank you  
for having  
us!





# ADVANCE DIRECTIVES

- Advance directives are documents you put in place ahead of time, that give authority to someone you trust (your “agent”) to act in situations where you are not able to do so yourself, or where you prefer to have your agent’s assistance.
- We don’t know what the future may hold. Incapacity could strike at any time. It is important to make thoughtful and deliberate Elder Law planning decisions so we can live our lives with comfort and dignity.
- Common Types of Advance Directives:
  - **Medical Advance Directives:**
    - Health Care Proxy
    - Living Will
  - **Financial Advance Directives:**
    - Power of Attorney

# Medical Decision Making – Examples

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Anna lives in the community and does not have decision making capacity. Anna's vision has declined, and she needs cataract surgery. Who can make the medical decision for Anna to undergo surgery?

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Bill has always had a very close relationship with his sister. Bill has been admitted to the hospital and is unable to make medical decisions. Can Bill's sister make medical decisions on Bill's behalf?

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## THE FAMILY HEALTH CARE DECISIONS ACT (FHCDA)



- The FHCDA is applicable for patients in general hospitals and residential health care facilities (nursing homes).
- The FHCDA establishes the authority of a person to make medical treatment decisions for a patient if the patient lacks capacity to make such decisions and did not appoint a Health Care Agent.
- The person appointed to make the health care decisions, known as the “surrogate,” is listed in order of priority:
  1. Court appointed guardian
  2. Spouse or domestic partner
  3. Child over 18 years old
  4. Parent
  5. Sibling over 18 years old
  6. Close friend or relative

# HEALTH CARE PROXY

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A legal document that authorizes someone you appoint (your “agent”) to make decisions regarding your health and medical needs, but only if you lack the capacity to express your own decisions.

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In New York, you may appoint only one agent to act. It is prudent to appoint an alternate agent to act should your primary agent become unavailable.

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It is critical for your health care agent to understand your wishes concerning your medical and health care, as it is your agent’s duty to express those wishes for you when you cannot do so.

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Upon your loss of capacity or inability to act, this document allows your agent to make medical decisions you would have made if you had capacity.

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# NYS Living Will

Attractive in concept, can be challenging to apply in practice.

Here are excerpts from the NYS standard form (emphasis supplied):

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I direct my attending physician to withhold or withdraw treatment that merely prolongs my dying, if I should be in an incurable or irreversible mental or physical condition with no reasonable expectation of recovery, including but not limited to: (a) a terminal condition; (b) a permanently unconscious condition; or (c) a minimally conscious condition in which I am permanently unable to make decisions or express my wishes. . . .

I feel especially strongly about the following forms of treatment:

- I do not want cardiac resuscitation.
- I do not want mechanical respiration.
- I do not want artificial nutrition and hydration.
- I do not want antibiotics. . . .

I intend my instructions to be carried out, unless I have rescinded them in a new writing or by clearly indicating that I have changed my mind.

Signed \_\_\_\_\_

# MOLST FORM

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- A Medical Orders for Life-Sustaining Treatment (MOLST) form is generally for patients with advanced illness who require long-term care services and/or who might die within 1-2 years.
- The MOLST may also be used for individuals who wish to avoid and/or receive specific life-sustaining treatments.
- A physician, nurse practitioner, or physician assistant reviews the patient's current health status, prognosis, goals for care, and the risks and benefits of each life-sustaining treatment with the patient if they have capacity, or the health care agent or surrogate if the patient lacks capacity.



# Nonhospital Order Not to Resuscitate (DNR Order)

NEW YORK STATE DEPARTMENT OF HEALTH

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Person's Name: \_\_\_\_\_

Date of Birth: \_\_\_\_\_

Do not resuscitate the person named above.

Physician / Nurse Practitioner /

Physician Assistant Signature: \_\_\_\_\_

Print Name: \_\_\_\_\_

License Number: \_\_\_\_\_

Date: \_\_\_\_\_

**NOTE:** The order must be renewed at least every 90 days and reflected on the patient's medical chart. The order must be signed by a physician if the patient has an Intellectual or Developmental Disability. The above is an excerpt. The complete form is DOH-3474 (8/20)

# MEDICAL DECISION MAKING - REVIEW

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Bill has always had a very close relationship with his sister. Bill has been admitted to the hospital and is unable to make medical decisions. Can Bill's sister make medical decisions on Bill's behalf?

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# GRANTING AUTHORIZATION TO ACT ON YOUR BEHALF: THE POWER OF ATTORNEY

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Ayana signed a Power of Attorney at her local bank on the bank's form. Ayana wants her agent to transfer funds from another bank to the bank at which she signed the Power of Attorney. Can Ayana's agent transfer these funds?

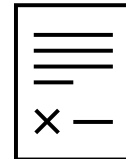
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Kris signed a NY Statutory Power of Attorney and wants her agent to sell a property in Kris' name. Can Kris' agent sell Kris' property?

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Mike owns his apartment, has several financial accounts, receives a pension and social security. Mike thinks that because he has a joint account with Sarah (so Sarah can pay his bills if he needs her assistance) he does not need a NY Statutory Power of Attorney. What do you think?

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# NY STATUTORY POWER OF ATTORNEY

A legal document that authorizes someone you appoint (your “agent”) to act on your behalf regarding your property, investments, insurance, taxes, and other business, personal, or financial matters.

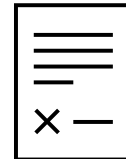
In New York, you may appoint one or more agents to act jointly or separately. It is often wise to appoint a successor agent to act should your primary agent(s) become unavailable.

Agents are legally required to act according to your instructions. If there are no instructions, the agent must always act in your best interests.

If you lose the capacity to act on your own behalf, this document will be vital for managing your financial affairs and obtaining long term care if needed.

# NY STATUTORY POWER OF ATTORNEY

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A Power of Attorney can be broad or narrowly tailored and reflects the powers you wish to give.

Typically, many additions are inserted into the “Modifications” section of the Power of Attorney to ensure that your agent(s) will be able to act on your behalf if needed.

# POWER OF ATTORNEY – REVIEW

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Kris signed a NY Statutory Power of Attorney and wants her agent to sell a property in Kris' name. Can Kris' agent sell Kris' property?

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