



Legal Tools for the Family Caregiver

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Estate Planning, Elder Law, Special Needs Planning

Tools for the Family Caregiver

- ▶ Healthcare Power of Attorney
- ▶ Advance Directive for a Natural Death (Living Will)
- ▶ Durable General Power of Attorney
- ▶ Special Needs Trust
- ▶ Caregiver Agreement



Advance Directives vs. Physicians Orders

Advance Directive – any statement by a competent individual of the individual's preferences for treatment and/or appointment of a decision maker, in the event the person loses the ability to make decisions.

Formal Advance Directives:

- ▶ Advance Directive for a Natural Death (Living Will)
- ▶ Health Care Power of Attorney

Medical Orders:

- ▶ DNR (Do Not Resuscitate)
- ▶ MOST (Medical Order for Scope of Treatment)

DNR

MOST

**STOP
DO NOT
Resuscitate**

Effective Date: _____
Expiration Date, if any: _____
☐ Check box if no expiration

DO NOT RESUSCITATE ORDER

Patient's full name: _____

In the event of cardiac and/or pulmonary arrest of the patient, efforts at cardiopulmonary resuscitation of the patient SHOULD NOT be attempted. This order does not affect other medically indicated and ordered care.

I have documented the basis for this order and the consent required by the NC General Statute 90-21.17(b) in the patient's records.

Signature of Attending Physician/Physician Assistant/Nurse Practitioner: _____
Printed Name of Attending Physician: _____
Address: _____
City, State, Zip: _____
Telephone Number (office): _____
Telephone Number (emergency): _____

Do Not Copy Do Not Alter

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NEW YORK STATE DEPARTMENT OF HEALTH
Medical Orders for Life-Sustaining Treatment (MOLST)

THE PATIENT KEEPS THE ORIGINAL MOLST FORM (DURING TRAVEL) IN DIFFERENT CARE SETTINGS. THE PHYSICIAN KEEPS A COPY.

LAST KNOWN WISHS (CHECK ONE)
WISHS: _____
NOT WISHS: _____
DO NOT RESUSCITATE ☐ NOW ☐ FUTURE ☐ 24-HOUR NURSE-LED MOLST FORM

Do Not Resuscitate (DNR) and Other Life-Sustaining Treatment (OLST)
This is a medical order form that tells others the patient's wishes for life-sustaining treatment. It should not be used to replace or change the MOLST form based on the patient's or his/her medical condition, status, or wishes if MOLST instructions. This patient is capable of making decisions about his/her health-care preferences as best understood by the health-care provider or surrogate. A healthcare provider may sign the MOLST form. A healthcare professional may not follow these instructions as the patient is not capable of making decisions about his/her health-care preferences for medical treatment.

MOLST is primarily for patients with serious health conditions. This patient or other decision-maker should notify the physician and consider asking the physician to sign a MOLST form if the patient:

- Plans to travel or change place of all life-sustaining treatment.
- Expects to be hospitalized or in a long-term care facility.
- Anticipates being in a nursing home.

Write patient last a developmental disability and loss or incapacity to decide. See the state rules before applying for and after the application for legal requirements for MOLST.

SECTION A: Resuscitation Instructions When the Patient Has the Ability to Make Decisions
Check one:
☐ **CPR Order: Attempt Cardio-Pulmonary Resuscitation**
CPR involves artificial breathing and chest compressions to try to restart the heart. It usually involves electric shock (cardiovascular resuscitation) to help restart the heart. This is attempted to restart breathing and heartbeat. It means that all interventions will be done to restart the heart. If the heart stops or breathing stops, restarting breathing and restarting heartbeat will be attempted to be restarted.

☐ **DNR Order: Do Not Attempt Resuscitation (Allow Natural Death)**
This means no CPR, no artificial breathing or chest compressions to restart the heart or breathing.

SECTION B: Consent for Physician-Led End-of-Life Care (Do Not Do)
The patient or surrogate is asked to decide about resuscitation if he or she has the ability to decide about resuscitation. If the patient does NOT have the ability to decide about resuscitation and has a health-care proxy, the health-care proxy makes the decision. If there is no health-care proxy, another person will decide. (See the rules about substituted judgment.)

Signature: _____ (Check if Patient's Consent) (Check if Patient's Health Care Proxy) _____
Printed name of Patient or Surrogate: _____
Address: _____
City, State, Zip: _____
Telephone Number: _____
Date: _____
Physician Signature for Section A and B: _____
Printed Name of Physician: _____
Address: _____
City, State, Zip: _____
Telephone Number: _____
Date: _____

SECTION C: Advance Directives
Check all advance directives that have been completed:
☐ Health Care Proxy ☐ Living Will ☐ Organ Donation ☐ Declaration of End-of-Life Advance Directive
MOLST Form (MOLST) is a form that is used to document a patient's wishes for medical treatment.

Healthcare Powers of Attorney

- ▶ Naming someone to make health care decisions when you lack capacity to communicate your own decisions



Living Will

Advance Directive for A Natural Death

A document where you state your wishes for life sustaining treatment.



What Treatment Can Be Withheld?



- ▶ “Life sustaining procedures”
 - ▶ Defined as care or treatment that only serves to prolong dying process.
- ▶ Can include mechanical ventilation, antibiotics, dialysis, artificial nutrition and hydration, etc.

Who decides if there is no directive?

- ▶ Spouse
- ▶ Majority of Available Parents and Children
- ▶ Majority of Available Siblings
- ▶ Individual with “Established Relationship”
- ▶ Attending physician



Planning for Incapacity Money Management

Durable Power of Attorney
vs.
Joint Ownership



Titling Assets Jointly With Children

- ▶ Parents' assets now subject to creditors and liabilities of child
- ▶ Tax Issues
 - ▶ Gift Tax
 - ▶ Capital Gains Tax
- ▶ Disrupts estate plan



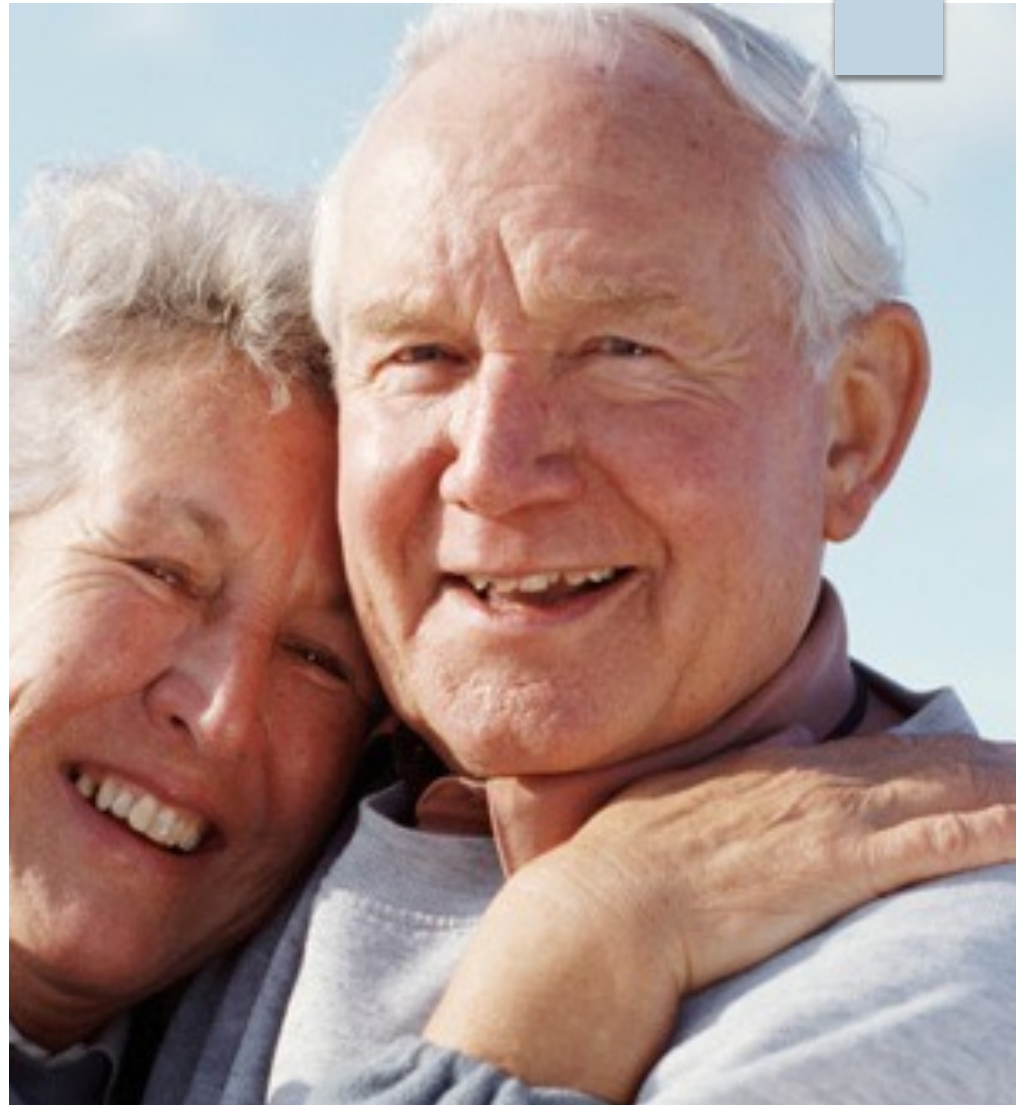
Power of Attorney

A written instrument where one person (the Principal) gives another person (the Agent) the authority to manage the Principal's property



Jack and Jill

- ▶ Married 40 years
- ▶ Jack has advanced dementia
- ▶ Nursing home costs \$10,000 per month.
- ▶ Jack has a power of attorney, appointing Jill as his agent.



Power of Attorney



- ▶ Gifting Powers
 - ▶ Power to sign deeds, sell or purchase property is not the same as the power to gift the property
 - ▶ Gifting is not presumed
 - ▶ Problems with limitations on gifting
 - ▶ Community Spouse
 - ▶ Disabled Child

Jack and Jill Medicaid Eligibility

- ▶ Nursing Home Spouse - \$2,000
- ▶ Community Spouse – Half of “countable resource” up to a max of \$137,400
- ▶ House is non-countable, but if home is in Jack’s name at his death, it will be subject to estate recovery.



Jack and Jill

- ▶ Jill would like to transfer the house into her sole name.
- ▶ Jack's power of attorney states that Jill can make gifts of Jack's property ***"in amounts not to exceed the annual exclusion amount for federal gift tax purposes."***



Jack and Jill



- ▶ Due to the limitation on gifting in the POA, Jill cannot re-title the house in her name.
- ▶ She finds out that she can apply for Medicaid, but if the property is in Jack's name at his death, it will have to be sold to payback the state.
- ▶ Jill will have to petition the Court if she wants to transfer the house into her name.

Jim and Susan



- ▶ Jim has a power of attorney that allows gifts to Susan as his spouse without a limitation on the amount.
- ▶ Susan applies for Medicaid for Jim and uses the POA to transfer the house in only her name.

Jim and Susan



- ▶ To further protect the property upon Susan's death, Susan updates her Will to leave everything to Jim in a special needs trust.
- ▶ This means Jim won't lose his Medicaid if he inherits property from Susan and the property can pass to the couple's children at both of their deaths.

Special Needs Trust



- ▶ A trust set up in your will for a disabled spouse
- ▶ The Trustee uses the funds in the trust to pay for things the disabled spouse needs
- ▶ If the disabled spouse is on Medicaid, the trust will not cause him or her to lose Medicaid
- ▶ At the disabled spouse's death, the funds pass to the children (or whomever you choose)

Bob and Ruth



- ▶ Ruth has advanced dementia and is no longer able to manage her bank accounts.
- ▶ Ruth does not have a power of attorney.

Guardianship

- ▶ Incompetency Hearing
 - ▶ Service by Sheriff
- ▶ Appointment of a Guardian ad Litem (G.A.L.)
- ▶ G.A.L. makes a recommendation to the court
- ▶ If declared incompetent, Guardian appointed



Bob and Ruth

- ▶ Ruth has \$300,000 in an account titled in her name only
- ▶ Ruth and Bob own their house jointly
- ▶ Bob is appointed General Guardian for Ruth



Bob and Ruth

- ▶ Guardianship Fees = \$1,200
- ▶ Bond Premium = \$3,000
- ▶ Bob can't sell the couple's house w/o court approval
- ▶ Bob must petition the court whenever he needs to use money in the guardianship estate for Ruth's care.
- ▶ Bob must file annual accountings with the Clerk of Court



Judy's Story

- ▶ Judy hired a caregiver to help with bathing, dressing and meal preparation. She did not use a contract.
- ▶ A few years later, Judy needed nursing home care.
- ▶ When Judy applied for Medicaid she was told that the money she paid her caregiver was considered a “transfer of assets” and she would not get any assistance from Medicaid for 3 years!



Caregiver Agreements



- ▶ Must be in writing, signed by the caregiver and the recipient (or his or her agent) and must be dated
- ▶ Must be signed before services are performed
- ▶ Either party must be able to terminate at any time
- ▶ Person receiving care can not be in a nursing home at the time
- ▶ Services must be recommended in writing and signed by doctor as necessary to prevent entry into a nursing home
- ▶ Must specify the type, frequency, and duration of services
- ▶ Must specify amount to be paid
- ▶ Amount paid can't be greater than fair market value

Planning Tips



- ▶ Meet with a qualified elder law attorney
- ▶ Health Care Power of Attorney – name someone to make health care decisions for you
- ▶ Living Will – have a talk with family members about your wishes for end of life treatment
- ▶ Durable Power of Attorney – consider whether the agent should be able to make gifts to the spouse or others
- ▶ Caregiver Agreements – must have written agreement if payments are made to caregivers
- ▶ Update Last Will & Testament – consider special needs trust.

THANK YOU!



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