



## **YOUR DURABLE POWER OF ATTORNEY FOR HEALTH CARE**

*Explanation of the Nevada Advance Health-Care Directive*

**A. OVERVIEW.** This memo was designed to accompany the "Durable Power of Attorney for Health Care" provided by Rushforth Firm Ltd., and the references to paragraphs in this memo refer to paragraphs in that specific form.<sup>1</sup> In this memo, we refer to the health-care power of attorney as a "HCPOA". This form also includes the provisions normally included in a "directive to physicians" that is sometimes called a "living will". By signing this form, you are authorizing one or more persons to make health-care decisions for you if you cannot make them for yourself. Because HCPOA is giving health-care instructions in advance of the need, it is sometimes referred to as an "advance health-care directive".

A.1 You are the "principal", and the person you name to make health-care decisions for you is referred to as your "health-care agent" or "health-care attorney-in-fact".

A.2 Unless you specify otherwise, your health-care agent can use this form to obtain information regarding your health and health treatment, visit you in medical facilities, and authorize all types of health and medical care, including surgery, medication, nursing home care, etc.

A.3 This memo is intended to help you decide which options to initial and to help you decide what, if any, personalized provisions you want to add. The HCPOA is effective immediately so that your health-care agent has authority as a "personal representative" as that term is defined in the federal Health Insurance Portability and Accountability Act of 1996 (referred to herein as "HIPAA").

A.4 Please note, that if this memo accompanies a form that has been customized for you, the paragraph numbers referred to herein may have been numbered differently, and some of the paragraphs mentioned may not exist.

**B. CUSTOMIZING THE FORM.** The "Durable Power of Attorney for Health Care" (or "HCPOA") form was designed starting with the statutory form provided under Nevada law.<sup>2</sup> We have modified the statutory form in an attempt to clarify some of the options in the form itself. The health-care power of form becomes your document when it is properly completed, you have initialed the desired options and added any desired clarifications and instructions of your own, and you have signed the document and acknowledged it before two witnesses or a notary public.<sup>3</sup>

B.1 Your Agent and Alternates. You should name someone to act in your behalf, and, if possible, you should also name one or more alternates who can act if your

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<sup>1</sup> If a health-care power of attorney form has not been provided, download it from our web site at <https://rushforthfirm.info/pdf/hcpa.pdf>.

<sup>2</sup> The statutory form is found at <https://www.leg.state.nv.us/NRS/NRS-162A.html#NRS162ASec860>, but the use of that form is not required by law.

<sup>3</sup> Under Nevada law, a durable power of attorney for health care must be witnessed by two qualified witnesses or it should be notarized. Because the notary option may not be valid for the living will provisions or the anatomical gift provisions that are included in our form, two witnesses are required and there is no notary option.

first choice is unavailable or unwilling to act. The document should include an address and phone number (and perhaps a telecopier/fax number) for each agent designated to expedite communication in an emergency. Doctors and other health-care providers should not be designated as health care agents unless they are family members or unless they will not be rendering any treatment pursuant to the power.

**B.2 Co-Agents.** When two or more agents may serve jointly, paragraph 1 should clearly indicate whether each agent may act alone, the agents must agree unanimously, or the agents will make decisions by majority vote.

**B.3 Customized Form.** The statutory HCPOA form has several places where customized instructions can be given. The comments in this memo attempt to explain your option(s), but they are not intended to recommend any particular option.

**C. RESTRICTIONS.** Nevada law does not permit this form to be used for "commitment to or placement in a mental health treatment facility, convulsive treatment, psychosurgery, sterilization, or abortion." You may add other restrictions of your own, such as prohibiting chemotherapy or blood transfusions.

**C.1 Prohibitions.** If you wish to add such restrictions, they need to be inserted at the end of paragraph 4, but do not put any restrictions unless you want those restrictions to be absolute in all circumstances.

**C.2 Discretion.** Most clients prefer to leave it to the discretion of the health-care agent under the circumstances, and if you feel that way, you should initial the first blank at the end of paragraph 4 (after "no other limitations"). If you want to express your desires, initial the last blank for paragraph 4 (after "the following limitations apply") and insert guidelines (e.g., "*I prefer not to receive chemotherapy if I cannot make the decision myself...*") or absolute prohibitions ("*I never want chemotherapy under any circumstances or conditions...*").

**D. HEALTH-CARE AND LIVING ARRANGEMENTS.** In paragraph 6, you are given the option of expressing your desires with respect to your living and health-care arrangements.

**D.2** If you agree with subparagraph 6.1, you are declaring that you would prefer to be cared for in your own home, and you also authorize your health-care agent to make arrangements for your care at home.

**D.3** If you agree with subparagraph 6.2, you are authorizing your health-care agent to arrange for care in an assisted-living facility if home care is not appropriate.

**D.4** If you agree with subparagraph 6.3, you are authorizing your health-care agent to arrange for your care, including long-term care, in an appropriate health-care facility, when in-home care and care at an assisted-living are inadequate to meet your needs.

**D.5** By agreeing with subparagraph 6.4, you are declaring that you want to stay at home even if this is not in your best interest, even if it is expensive and may make your

health worse. Changing this decision will require the court appointment of a guardian for you.

D.6 In subparagraph 6.5, you can add specific instructions about your long-term care. You should initial the provision only if you have added personalized instructions.

**Comment on 6:** *Most people want to be cared for at home [6.1]. Some people find an assisted-living facility to be a good second choice [6.2], and many people are willing to be in a care facility if the home care and assisted-living care are inadequate [6.3]. A few people insist on home care even if it is detrimental to their health and/or very costly [6.4]. If you agree with subparagraph 6.4, you must disagree with subparagraphs 6.1, 6.2, and 6.3.*

**E. ARTIFICIAL LIFE SUPPORT CHOICES.** There are several options you must consider with respect to the administration of life-sustaining treatments. These are set forth in paragraph 7 of the Durable Power of Attorney for Health Care. If you agree that a subparagraph expresses your wishes, initial the first blank under the paragraph. If you disagree with the statement, initial that you disagree in the second blank. If you do not wish to express any desires, you should initial the third option ("As my Agent decides"), leaving the decision up to your health-care agent.

E.1 Maintain Life Support. If you indicate that you agree with subparagraph 7.1., you are stating that you want to be kept alive as long as possible, regardless of your chances for recovery, regardless of the slim chance for survival, and regardless of the cost. If you agree with this subparagraph, you may not agree with 7.2, 7.3, or 7.3 because they are inconsistent with 7.1.

**Comment on 7.1:** *Most people do not want to be kept alive on artificial life support systems "to the greatest extent possible", so they disagree with subparagraph 7.1.)*

E.2 Unrecoverable Illness or Injury. If you do not want life-sustaining procedures used when there is no reasonable hope that you will recover from your illness or injury, initial that you agree with subparagraph 7.2.

E.3 Coma. If you do not want life-sustaining procedures used if you are in an irreversible coma (or coma-like condition), initial that you agree with subparagraph 7.3.

**Comment on 7.2 and 7.3:** *Subparagraph 7.2. relates to unrecoverable illness or injury and 7.3. relates to irreversible comas. It is uncommon to initial one without the other, but there is a difference. As to each option you agree with, you are expressing a desire to die naturally. As to each option you disagree with, you are expressing a desire for life-sustaining treatments and procedures. As to either option that you do not initial at all, your health-care agent may make the determination.*

E.4 Quality of Life. Subparagraph 7.4. expresses a desire not to have life-sustaining procedures used if the benefits of treatment are unlikely to outweigh the burdens. "Quality of life" is a factor to be considered, in addition to any possible extension of your life expectancy.

**Comment on 7.4:** *When considering a treatment or procedure, this option gives your health-care agent authority to balance quality and quantity of life. In other words, if a painful and expensive procedure will possibly give you another 3-6 months, but only in a vegetative state, your health care agent may determine that life-sustaining procedures are not in your best interest.)*

E.5 Pain. Subparagraph 7.5. expresses a desire for pain relief, even if life-sustaining treatments or procedures are withheld or withdrawn.

E.6 Authority to Withdraw Artificially Administered Nutrition and Hydration. Subparagraph 7.6. relates to the withdrawal or withholding of artificially administered nutrition and hydration. There are three options, and you need to agree with one and disagree with the other two as they are mutually inconsistent.

E.6.1 Option 7.6.1 requires that artificially administered nutrition and hydration never be withheld or withdrawn. In other words, feeding and nutrition tubes or devices cannot be withdrawn or withheld even if other life-sustaining procedures are withdrawn or withheld.

E.6.2 Option 7.6.2 permits, but does not require, your health-care agent to withhold and/or remove artificially administered nutrition and hydration at the same time life-sustaining procedures are withheld and/or withdrawn; however, it may not be withheld or withdrawn if you would die of starvation or dehydration rather from your existing illness or injury.

E.6.3 Option 7.6.3 allows nutrition and hydration to be withheld or withdrawn even if you may die of starvation or dehydration rather than from your existing illness or injury.

**Comment on 7.6:** *You should agree with only one provision under this subparagraph, and you should disagree with the others. Selecting “as my agent decides” is discouraged because it gives no guidance to the health-care agent as to your wishes.*

*If you never want artificially administered nutrition and hydration withheld or withdrawn, you must initial that you agree with 7.6.1 and that you disagree with 7.6.2 and 7.6.3.*

*Initial that you agree with 7.6.2. and that you disagree with 7.6.1 and 7.6.3 if you want to allow the withholding or withdrawal of life-support systems except in cases where it is decided that you would die from starvation and/or dehydration rather than from your illness or injury. If you have initialed that you do not want to remain in an irreversible coma (subsection 7.3), initialing that you agree with 7.6.2 can create a conflict. In some coma cases, withholding or withdrawing the artificial nutrition and hydration may be the only way to allow you to die naturally.*

*If you want to give your health-care agent the greatest flexibility to permit or withhold nutrition and hydration, even if you may die from starvation and/or dehydration, rather from your illness or injury, initial that you agree with 7.6.3, and initial that you disagree with 7.6.1 and 7.6.2.*

**E.7 Clarifications; Instructions.** Nevada law specifically allows you to insert your own instructions and clarifications regarding your health care and life-prolonging treatments. Initial 7.7. only if such additional instructions or clarifications are given in the space provided. As an example, some people want life-sustaining treatments withdrawn only after they have been in place for at least 72 hours. Others give more elaborate instructions regarding when specific life-support systems and treatments should be withdrawn or withheld.

**F. ANATOMICAL GIFT.** You have the option to make a gift of your body parts, fluids ("humors"), or tissues.

**F.1 No Gift.** If you initial subparagraph 11.1 of paragraph 11 (Uniform Anatomical Gift), you are declining to make any anatomical gift.

**F.2 Specified Purposes.** If you want to be an organ donor, you need to initial in the "Yes" column next to the purpose for which you agree to make the donation. Initial under the "No" column for each purpose that is not an acceptable purpose for you.

**G. FUNERAL AND BURIAL.** In paragraph 12, you may direct your agent to bury or cremate your mortal remains (or both). Nevada law includes alkaline hydrolysis (also known as aquamation and water cremation) as a permitted form of cremation. You may also give instructions relating to a funeral or other memorial service. If you leave this section blank, it will be up to the family to decide what to do with respect to your mortal remains and any memorial service. If you leave this section blank, state law (NRS 451.024 in Nevada) will determine who is the decision maker with respect to your mortal remains.

**H. EXECUTION.** You must sign the form in the presence of two "qualified witnesses", and the form explains who is ineligible to be a witness.

**I. REGISTRATION.** The Nevada Secretary of State provides a living will "lockbox" service. For more information, point your web browser to <https://www.nvsos.gov/sos/online-services/nevada-lockbox>.

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