



## YOUR DURABLE POWER OF ATTORNEY FOR HEALTH CARE

by Layne T. Rushforth

1. **OVERVIEW:** By signing a "Durable Power of Attorney for Health Care" (referred to in this memo as a "DPAHC"), you are authorizing one or more persons to make health-care decisions for you if you cannot make them for yourself. The person you name is referred to as your "health-care agent" or "health-care attorney-in-fact". 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. 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 DPAHC 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").

2. **CUSTOMIZING THE FORM:** The "Durable Power of Attorney for Health Care" (or "DPAHC") form is substantially in the form prescribed by Nevada law, although we have attempted to clarify some of the options in the form itself. It 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 a notary public.

a. **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 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. **Customized Form.** The statutory DPAHC form has two 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.

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

(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.

(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 blank at the end of paragraph 4. If you want to express your desires, you may give them as guidelines (e.g., "I prefer not to receive chemotherapy if I cannot make the decision myself. . .") or as absolute prohibitions ("I never want chemotherapy under any circumstances or conditions. . .").

ii. Long-Term Care. In paragraph 6, you are given the option of expressing your desires with respect to your long-term care. In this document, "long-term care" is defined as physical care you are unable to provide for yourself for at least 90 days (or for the balance of your life, if shorter). You may give the health-care agent the power to select your physician and other health-care providers, health-care facilities, caregivers, and/or long-term care facility. If you prefer home care over care in a long-term care facility, you should initial that statement, and you can also indicate that your "home" includes an assisted-living facility. The last subparagraph of paragraph 6 can be completed and initialed if you want to add personalized instructions related to your long-term care.

iii. 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.

(1) *Maintain Life Support.* If you indicate that you agree with subparagraph 7.a., 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.b, 7.c, or 7.d because they are inconsistent with 7.a. (Comment: 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.a.)

(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.b.

(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.c.

*Comment on 7.b. and 7.c.: Subparagraph 7.b. relates to unrecoverable illness or injury and 7.c. 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.*

(4) *Quality of Life.* Subparagraph 7.d. 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: 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.)

(5) *Pain.* Subparagraph 7.e. expresses a desire for pain relief, even if life-sustaining treatments or procedures are withheld or withdrawn.

(6) *Authority to Withdraw Artificially Administered Nutrition and Hydration.* Subparagraph 7.f. relates to the withdrawal or withholding of artificially administered nutrition and hydration.

(a) Option 7.f.i 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.

(b) Option 7.f.ii 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 than from your existing illness or injury.

(c) Option 7.f.iii 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.f. You should agree with only one provision under this subparagraph, and you should disagree with the others.*

*If you never want artificially administered nutrition and hydration withheld or withdrawn, you must initial that you agree with 7.f.i and that you disagree with 7.f.ii and 7.f.iii.*

*Initial that you agree with 7.f.ii. and that you disagree with 7.f.i and 7.f.iii 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 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 than from your illness or injury, initial that you agree with 7.f.iii, and initial that you disagree with 7.f.i and 7.f.ii.*

(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.g. 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.



iv. Anatomical Gift. You have the option to make a gift of your body parts, fluids ("humors"), or tissues.

(1) *No Gift*. If you initial subparagraph 9.a, you are declining to make an anatomical gift.

(2) *Specified Purposes*. If you want to be an organ donor, you need to initial the line next to each of the purposes for which the donated organs can be used.

v. Funeral and Burial. You may direct your agent to bury or cremate your mortal remains (or both). 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.

3. **EXECUTION:** You must sign the form in the presence of two "qualified witnesses", and the form explains who may not be a witness.<sup>1</sup>

4. **REGISTRATION:** The Nevada Secretary of State, in partnership with the U.S. Living Will Registry®, provides a free registration service. For an application with instructions, point your Internet-connected web browser to <http://www.nvsos.gov/online/nadr/forms/LWLRegAgreement.pdf>. For more information on the Secretary of State's "Living Will Lockbox" service, point your web browser to <http://www.nvsos.gov/online/nadr/index.asp>.

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<sup>1</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.