

Physician Orders for Life-Sustaining Treatment

According to the Alzheimer's Association, Physician Orders For Life-Sustaining Treatment (POLST) are forms people complete with their doctor for the purpose of clearly defining which medical treatments are to be given to them at the end of their lives. At least eight states currently recognize POLST forms, including California, Idaho, New York, North Carolina, Oregon, Tennessee, Washington and West Virginia. Although the names may differ slightly by state (such as Idaho's POST program), the forms are essentially the same.

A POLST form is easily recognizable because it is printed on brightly colored paper. It is intended for people with a terminal illness, anyone in a nursing home, or anyone expected to die within the next year. A POLST form offers more choices than a DNR, which typically gives people just two choices if they go into cardiac arrest: resuscitate or do not resuscitate. On a POLST form, people can record their choices about feeding tubes, intubation, mechanical ventilation, IV fluids, comfort measures, or other treatments. The elections in a POLST form constitute a physician's order. While advance directives merely express a person's wishes, a POLST form translates those wishes into medical orders that healthcare professionals such as EMT's and physicians must follow.

POLST forms follow patients across care settings. When someone moves from a nursing home to the hospital or is discharged from the hospital and returns to their home, a DNR or advance directive is not guaranteed to stand in the new setting. With a POLST form, however, the physician's order is enforceable regardless of setting. Most states with POLST programs, such as Idaho, include in their POLST laws that if there is a disagreement between an advance directive or other end-of-life planning document and a POLST form, the POLST form legally trumps the advance directive.

If a person lives at home, their POLST form is usually taped to the refrigerator so it can be located easily in a medical emergency. If the person lives in a long-term care facility, the form goes in their chart. Paramedics in POLST states are trained to check for a POLST form before making treatment decisions. When transporting a person to a hospital, paramedics physically attach the POLST form to the patient, so physicians and other hospital staff can align care with the person's wishes as expressed on the POLST form. Idaho also authorized the development of a standardized piece of POST identification jewelry that people can wear.

Interested readers can find information about state efforts to enable people to use POLST forms at Physician Orders for Life-Sustaining Treatment (POLST) Paradigm Program (<http://www.ohsu.edu/polst/programs/>).

The draft legislation in this SSL volume is based on a 2007 Idaho law about medical care at the end of a person's life. This Act:

- contains provisions about giving consent to one's care to another person;
- contains provisions applicable to a Living Will and Durable Power of Attorney for Health Care;
- provides a duty to inspect certain medical documents;
- contains provisions relating to immunity for actions taken under the Act; and
- incorporates Physician Orders for Scope of Treatment and related protocols into making medical care decisions in advance of dying.

Submitted as:

Idaho

HB119 [Engrossed Bill (Original Bill with Amendment(s) Incorporated)]

Status: Enacted into law in 2007.

Suggested State Legislation

(Title, enacting clause, etc.)

1 Section 1. [*Short Title.*] This Act shall be cited as “An Act to Address Medical Directives
2 and Physician Orders for Scope of Treatment (POST).”

3

4 Section 2. [*Purposes and Application.*]

5 (A) The primary purposes of this Act are:

6 (1) To codify [state] law concerning consent for the furnishing of hospital,
7 medical, dental or surgical care, treatment or procedures, and concerning what constitutes an
8 informed consent for such care, treatment or procedures; and

9 (2) To provide certainty and clarity in the law of medical consent in the
10 furtherance of high standards of health care and its ready availability in proper cases.

11 (B) Nothing in this Act shall be deemed to amend or repeal the provisions of [insert
12 citation] pertaining to hospitalization of the mentally ill, provision of examinations,
13 prescriptions, devices and informational materials regarding prevention of pregnancy or
14 pertaining to therapeutic abortions and consent to the performance thereof.

15 (C) Nothing in this Act shall be construed to permit or require the provision of health care
16 for a patient in contravention of the patient’s stated or implied objection thereto upon religious
17 grounds nor shall anything in this Act be construed to require the granting of permission for or
18 on behalf of any patient who is not able to act for himself by his parent, spouse or guardian in
19 violation of the religious beliefs of the patient or the patient’s parent or spouse.

20

21 Section 3. [*Definitions.*] As used in this Act:

22 (1) “Artificial life-sustaining procedure” means any medical procedure or intervention
23 that utilizes mechanical means to sustain or supplant a vital function which, when applied to a
24 qualified patient, would serve only to artificially prolong life. “Artificial life-sustaining
25 procedure” does not include the administration of pain management medication or the
26 performance of any medical procedure deemed necessary to provide comfort care or to alleviate
27 pain.

28 (2) “Artificial nutrition and hydration” means supplying food and water through a
29 conduit, such as a tube or intravenous line, where the recipient is not required to chew or
30 swallow voluntarily, but does not include assisted feeding, such as spoon feeding or bottle
31 feeding.

32 (3) “Attending physician” means the physician licensed by the state board of medicine
33 who is selected by, or assigned to, the patient and who has primary responsibility for the
34 treatment and care of the patient.

35 (4) “Cardiopulmonary resuscitation” or “CPR” means measures to restore cardiac
36 function and/or to support ventilation in the event of cardiac or respiratory arrest.

37 (5) “Comfort care” means treatment and care to provide comfort and cleanliness.
38 “Comfort care” includes:

39 (a) Oral and body hygiene;

40 (b) Reasonable efforts to offer food and fluids orally;

41 (c) Medication, positioning, warmth, appropriate lighting and other measures to
42 relieve pain and suffering; and

43 (d) Privacy and respect for the dignity and humanity of the patient.

44 (6) “Consent to care” includes refusal to consent to care and/or withdrawal of care.

45 (7) “Directive” or “health care directive” means a document meeting the requirements of
46 [insert citation] and/or a “Physician Orders for Scope of Treatment (POST)” form signed by a
47 physician.

48 (8) “Emergency medical services personnel” means personnel engaged in providing
49 initial emergency medical assistance including, but not limited to, first responders, emergency
50 medical technicians and paramedics.

51 (9) “Health care provider” or “provider” means any person or entity licensed, certified, or
52 otherwise authorized by law to administer health care in the ordinary course of business or
53 practice of a profession, including emergency or other medical services personnel.

54 (10) “Persistent vegetative state” means an irreversible state that has been medically
55 confirmed by a neurological specialist who is an expert in the examination of nonresponsive
56 individuals in which the person has intact brain stem function but no higher cortical function and
57 no awareness of self or environment.

58 (11) “Physician” means a person who holds a current active license to practice medicine
59 and surgery or osteopathic medicine and surgery in this state and is in good standing with no
60 restriction upon or actions taken against his or her license.

61 (12) “Physician Orders for Scope of Treatment (POST) form” means a standardized form
62 containing orders by a physician that states a person's treatment wishes.

63 (13) “Physician Orders for Scope of Treatment (POST) Identification Device” means
64 standardized jewelry which can be worn around the wrist, neck or ankle, and which has been
65 approved by the [department of health and welfare].

66 (14) “Terminal condition” means an incurable or irreversible condition which, without
67 the administration of life-sustaining procedures, will, in the opinion of a physician, result in
68 death if it runs its usual course.

69

70 Section 4. [*People Who May Consent to Their Own Care.*] Any person of ordinary
71 intelligence and awareness sufficient for him or her generally to comprehend the need for, the
72 nature of and the significant risks ordinarily inherent in, any contemplated hospital, medical,
73 dental or surgical care, treatment or procedure is competent to consent thereto on his or her own
74 behalf. Any health care provider may provide such health care and services in reliance upon such
75 a consent if the consenting person appears to the health care provider securing the consent to
76 possess such requisite intelligence and awareness at the time of giving the consent.

77

78 Section 5. [*People Who May Give Consent to Care for Others.*]

79 (A) Consent for the furnishing of hospital, medical, dental or surgical care, treatment or
80 procedures to any person who is not then capable of giving such consent as provided in this Act
81 or who is a minor or incompetent person, may be given or refused in the order of priority set
82 forth hereafter unless the patient is a competent person who has refused to give such consent, and
83 provided further that this subsection shall not be deemed to authorize any person to override the
84 express refusal by a competent patient to give such consent himself:

85 (1) The legal guardian of such person;

86 (2) The person named in a “Living Will and Durable Power of Attorney for
87 Health Care” pursuant to [insert citation], or a similar document authorized by this Act;

88 (3) If married, the spouse of such person;

89 (4) A parent of such person;

90 (5) Any relative representing himself or herself to be an appropriate, responsible
91 person to act under the circumstances;

92 (6) Any other competent individual representing himself or herself to be
93 responsible for the health care of such person; or

94 (7) If the subject person presents a medical emergency or there is a substantial
95 likelihood of his or her life or health being seriously endangered by withholding or delay in the
96 rendering of such hospital, medical, dental or surgical care to such patient and the subject person
97 has not communicated and is unable to communicate his or her treatment wishes, the attending
98 physician or dentist may, in his or her discretion, authorize and/or provide such care, treatment or
99 procedure as he or she deems appropriate, and all persons, agencies and institutions thereafter
100 furnishing the same, including such physician or dentist, may proceed as if informed, valid
101 consent therefore had been otherwise duly given.

102 (B) No person who, in good faith, gives consent or authorization for the provision of
103 hospital, medical, dental or surgical care, treatment or procedures to another as provided by this
104 Act shall be subject to civil liability therefor.

105 (C) No health care provider who, in good faith, obtains consent from a person pursuant to
106 either section 4 of this Act or paragraph (A) of this section, shall be subject to civil liability
107 therefor.

108
109 Section 5. [*Blood Testing.*]

110 (A) A physician may consent to ordering tests of a patient's or a deceased person's blood
111 or other body fluids for the presence of blood-transmitted or body fluid-transmitted viruses or
112 diseases without the prior consent of the patient if:

113 (1) There has been or is likely to be a significant exposure to the patient's or a
114 deceased person's blood or body fluids by a person providing emergency or medical services to
115 such patient which may result in the transmittal of a virus or disease; and

116 (2) The patient is unconscious or incapable of giving informed consent and the
117 physician is unable to obtain consent pursuant to section 4 of this Act.

118 (B) The [department of health and welfare] shall promulgate rules identifying the blood-
119 transmitted or body fluid-transmitted viruses or diseases for which blood tests or body fluid tests
120 can be ordered under this section and defining the term "significant exposure" as provided in this
121 section.

122 (C) Results of tests conducted under this section which confirm the presence of a blood-
123 transmitted or body fluid-transmitted virus or disease shall be reported to the director of the
124 [department of health and welfare] in the name of the patient or deceased person. The
125 [department] records containing such test results shall be used only by public health officials
126 who must conduct investigations. The exposed person shall only be informed of the results of the
127 test and shall not be informed of the name of the patient or deceased person. Protocols shall be
128 established by hospitals to maintain confidentiality while disseminating the necessary test result
129 information to persons who may have a significant exposure to blood or other body fluids and to
130 maintain records of such tests to preserve the confidentiality of the test results.

131 (D) Any person who willfully or maliciously discloses the results of a test conducted
132 under this section, except pursuant to a written authorization by the person whose blood was
133 tested or by such person's authorized representative, or as otherwise authorized by law, shall be
134 guilty of a [misdemeanor.]

135
136 Section 6. [*Sufficiency of Consent.*] Consent, or refusal to consent, for the furnishing of
137 hospital, medical, dental or surgical care, treatment or procedures shall be valid in all respects if
138 the person giving or refusing the consent is sufficiently aware of pertinent facts respecting the
139 need for, the nature of, and the significant risks ordinarily attendant upon, such a patient

140 receiving such care, as to permit the giving or withholding of such consent to be a reasonably
141 informed decision. Any such consent shall be deemed valid and so informed if the physician or
142 dentist to whom it is given or by whom it is secured has made such disclosures and given such
143 advice respecting pertinent facts and considerations as would ordinarily be made and given under
144 the same or similar circumstances, by a like physician or dentist of good standing practicing in
145 the same community. As used in this section, the term “in the same community” refers to that
146 geographic area ordinarily served by the licensed general hospital at or nearest to which such
147 consent is given.

148

149 Section 7. [*Form of Consent.*] It is not essential to the validity of any consent for the
150 furnishing of hospital, medical, dental or surgical care, treatment or procedures that the consent
151 be in writing or any other specific form of expression; provided however, when the giving of
152 such consent is recited or documented in writing and expressly authorizes the care, treatment or
153 procedures to be furnished, and when such writing or form has been executed or initialed by a
154 person competent to give such consent for himself or another, such written consent, in the
155 absence of convincing proof that it was secured maliciously or by fraud, is presumed to be valid
156 for the furnishing of such care, treatment or procedures, and the advice and disclosures of the
157 attending physician or dentist, as well as the level of informed awareness of the giver of such
158 consent, shall be presumed to be sufficient.

159

160 Section 8. [*Responsibility for Consent and Documentation.*] Obtaining consent for health
161 care is the duty of the attending physician or dentist or of another physician or dentist acting on
162 his or her behalf or actually providing the contemplated care, treatment or procedure; provided
163 however, a licensed hospital and any medical or dental office employee, acting with the approval
164 of such an attending or other physician or dentist, may perform the ministerial act of
165 documenting such consent by securing the completion and execution of a form or statement in
166 which the giving of consent for such care is documented by or on behalf of the patient. In
167 performing such a ministerial act, the hospital or medical or dental office employee shall not be
168 deemed to have engaged in the practice of medicine or dentistry.

169

170 Section 9. [*Statement of Policy -- Definition.*] For purposes of [section 9 of this Act
171 through the end of this Act]:

172 (1) The [legislature] recognizes the established common law and the fundamental right of
173 adults to control the decisions relating to the rendering of their medical care, including the
174 decision to have life-sustaining procedures withheld or withdrawn. The [legislature] further finds
175 that modern medical technology has made possible the artificial prolongation of human life
176 beyond natural limits. The [legislature] further finds that patients are sometimes unable to
177 express their desire to withhold or withdraw such artificial life prolongation procedures which
178 provide nothing medically necessary or beneficial to the patient because of the patient's inability
179 to communicate with the physician.

180 (2) In recognition of the dignity and privacy which patients have a right to expect, the
181 [legislature] hereby declares that the laws of this state shall recognize the right of a competent
182 person to have his or her wishes for medical treatment and for the withdrawal of artificial life-
183 sustaining procedures carried out even though that person is no longer able to communicate with
184 the physician.

185 (3) It is the intent of the [legislature] to establish an effective means for such
186 communication. It is not the intent of the [legislature] that the procedures described in [sections 9
187 of this Act through the end of this Act], are the only effective means of such communication, and

188 nothing in [sections 9 of this Act through the end of this Act] shall impair or supersede any legal
189 right or legal responsibility which a person may have to effect the withholding or withdrawal of
190 life-sustaining procedures in any lawful manner. Any authentic expression of a person's wishes
191 with respect to health care should be honored.

192 (4) "Competent person" means any emancipated minor or person [eighteen (18)] or more
193 years of age who is of sound mind.

194

195 Section 10. [*Living Will and Durable Power of Attorney for Health Care.*]

196 (A) Any competent person may execute a document known as a "Living Will and
197 Durable Power of Attorney for Health Care." Such document shall be in substantially the
198 following form, or in another form that contains the elements set forth in this Act. Any portions
199 of the "Living Will and Durable Power of Attorney for Health Care" which are left blank by the
200 person executing the document shall be deemed to be intentional and shall not invalidate the
201 document.

202

203 LIVING WILL AND DURABLE POWER OF ATTORNEY FOR HEALTH CARE

204

205 Date of Directive

206

207 Name of person executing Directive

208

209 Address of person executing Directive

210

211 A LIVING WILL

212

A Directive to Withhold or to Provide Treatment

213

214 1. I willfully and voluntarily make known my desire that my life shall not be prolonged
215 artificially under the circumstances set forth below. This Directive shall only be effective if I am
216 unable to communicate my instructions and:

217 a. I have an incurable or irreversible injury, disease, illness or condition, and a medical
218 doctors who has examined me has certified:

219

1. That such injury, disease, illness or condition is terminal; and

220

2. That the application of artificial life-sustaining procedures would serve only to

221

prolong artificially my life; and

222

3. That my death is imminent, whether or not artificial life-sustaining procedures

223

are utilized; or

224

b. I have been diagnosed as being in a persistent vegetative state.

225

In such event, I direct that the following marked expression of my intent be followed, and that I
226 receive any medical treatment or care that may be required to keep me free of pain or distress.

227

228 Check one box and initial the line after such box:

229

230 I direct that all medical treatment, care and procedures necessary to restore my health and
231 sustain my life be provided to me. Nutrition and hydration, whether artificial or nonartificial,
232 shall not be withheld or withdrawn from me if I would likely die primarily from malnutrition or
233 dehydration rather than from my injury, disease, illness or condition.

234

235 OR

236
237 I direct that all medical treatment, care and procedures, including artificial life-sustaining
238 procedures, be withheld or withdrawn, except that nutrition and hydration, whether artificial or
239 nonartificial shall not be withheld or withdrawn from me if, as a result, I would likely die
240 primarily from malnutrition or dehydration rather than from my injury, disease, illness or
241 condition, as follows: (If none of the following boxes are checked and initialed, then both
242 nutrition and hydration, of any nature, whether artificial or nonartificial, shall be administered.)

243
244 Check one box and initial the line after such box:

245
246 A. Only hydration of any nature, whether artificial or nonartificial, shall be
247 administered;

248 B. Only nutrition, of any nature, whether artificial or nonartificial, shall be
249 administered;

250 C. Both nutrition and hydration, of any nature, whether artificial or nonartificial
251 shall be administered.

252

253 OR

254

255 I direct that all medical treatment, care and procedures be withheld or withdrawn,
256 including withdrawal of the administration of artificial nutrition and hydration.

257

258 2. If I have been diagnosed as pregnant, this Directive shall have no force during the course of
259 my pregnancy.

260

261 3. I understand the full importance of this Directive and am mentally competent to make this
262 Directive. No participant in the making of this Directive or in its being carried into effect shall be
263 held responsible in any way for complying with my directions.

264

265 4. Check one box and initial the line after such box:

266

267 I have discussed these decisions with my physician and have also completed a Physician
268 Orders for Scope of Treatment (POST) Form that contains directions that may be more specific
269 than, but are compatible with, this Directive. I hereby approve of those orders and incorporate
270 them herein as if fully set forth.

271

272 OR

273

274 I have not completed a Physician Orders for Scope of Treatment (POST) form. If a POST
275 form is later signed by my physician, then this Living Will shall be deemed modified to be
276 compatible with the terms of the POST form.

277

278 A DURABLE POWER OF ATTORNEY FOR HEALTH CARE

279

280 1. DESIGNATION OF HEALTH CARE AGENT. None of the following may be designated as
281 your agent: (1) your treating health care provider; (2) a nonrelative employee of your treating
282 health care provider; (3) an operator of a community care facility; or (4) a nonrelative employee
283 of an operator of a community care facility. If the agent or an alternate agent designated in this

284 Directive is my spouse, and our marriage is thereafter dissolved, such designation shall be
285 thereupon revoked.

286

287 I do hereby designate and appoint the following individual as my attorney in fact (agent) to make
288 health care decisions for me as authorized in this Directive. (Insert name, address and telephone
289 number of one individual only as your agent to make health care decisions for you.)

290

291 Name of Health Care Agent:

292

293 Address of Health Care Agent:

294

295

296

297 Telephone Number of Health Care Agent:

298

299 For the purposes of this Directive, "health care decision" means consent, refusal of consent, or
300 withdrawal of consent to any care, treatment, service or procedure to maintain, diagnose or treat
301 an individual's physical condition.

302

303 2. CREATION OF DURABLE POWER OF ATTORNEY FOR HEALTH CARE. By this
304 portion of this Directive, I create a Durable Power of Attorney for Health Care. This power of
305 attorney shall not be affected by my subsequent incapacity. This power shall be effective only
306 when I am unable to communicate rationally.

307

308 3. GENERAL STATEMENT OF AUTHORITY GRANTED. I hereby grant to my agent full
309 power and authority to make health care decisions for me to the same extent that I could make
310 such decisions for myself if I had the capacity to do so. In exercising this authority, my agent
311 shall make health care decisions that are consistent with my desires as stated in this Directive or
312 otherwise made known to my agent including, but not limited to, my desires concerning
313 obtaining or refusing or withdrawing artificial life-sustaining care, treatment, services and
314 procedures, including such desires set forth in a Living Will, Physician Orders for Scope of
315 Treatment (POST) form, or similar document executed by me, if any. (If you want to limit the
316 authority of your agent to make health care decisions for you, you can state the limitations in
317 paragraph 4 ("Statement of Desires, Special Provisions, and Limitations") below. You can
318 indicate your desires by including a statement of your desires in the same paragraph.)

319

320 4. STATEMENT OF DESIRES, SPECIAL PROVISIONS, AND LIMITATIONS. (Your agent
321 must make health care decisions that are consistent with your known desires. You can, but are
322 not required to, state your desires in the space provided below. You should consider whether you
323 want to include a statement of your desires concerning artificial life-sustaining care, treatment,
324 services and procedures. You can also include a statement of your desires concerning other
325 matters relating to your health care, including a list of one or more persons whom you designate
326 to be able to receive medical information about you and/or to be allowed to visit you in a medical
327 institution. You can also make your desires known to your agent by discussing your desires with
328 your agent or by some other means. If there are any types of treatment that you do not want to be
329 used, you should state them in the space below. If you want to limit in any other way the
330 authority given your agent by this Directive, you should state the limits in the space below. If
331 you do not state any limits, your agent will have broad powers to make health care decisions for

332 you, except to the extent that there are limits provided by law.) In exercising the authority under
333 this Durable Power of Attorney for Health Care, my agent shall act consistently with my desires
334 as stated below and is subject to the special provisions and limitations stated in my Physician
335 Orders for Scope of Treatment (POST) form, a Living Will, or similar document executed by
336 me, if any. Additional statement of desires, special provisions, and limitations ... (You may
337 attach additional pages or documents if you need more space to complete your statement.)
338

339 5. INSPECTION AND DISCLOSURE OF INFORMATION RELATING TO MY PHYSICAL
340 OR MENTAL HEALTH.

341

342 A. General Grant of Power and Authority. Subject to any limitations in this Directive, my agent
343 has the power and authority to do all of the following: (1) Request, review and receive any
344 information, verbal or written, regarding my physical or mental health including, but not limited
345 to, medical and hospital records; (2) Execute on my behalf any releases or other documents that
346 may be required in order to obtain this information; (3) Consent to the disclosure of this
347 information; and (4) Consent to the donation of any of my organs for medical purposes. (If you
348 want to limit the authority of your agent to receive and disclose information relating to your
349 health, you must state the limitations in paragraph 4 “Statement of Desires, Special Provisions,
350 and Limitations” above.)
351

352 B. HIPAA Release Authority. My agent shall be treated as I would be with respect to my rights
353 regarding the use and disclosure of my individually identifiable health information or other
354 medical records. This release authority applies to any information governed by the Health
355 Insurance Portability and Accountability Act of 1996 (HIPAA), 42 U.S.C. 1320d and 45 CFR
356 160 through 164. I authorize any physician, health care professional, dentist, health plan,
357 hospital, clinic, laboratory, pharmacy, or other covered health care provider, any insurance
358 company, and the Medical Information Bureau, Inc. or other health care clearinghouse that has
359 provided treatment or services to me, or that has paid for or is seeking payment from me for such
360 services, to give, disclose and release to my agent, without restriction, all of my individually
361 identifiable health information and medical records regarding any past, present or future medical
362 or mental health condition, including all information relating to the diagnosis of HIV/AIDS,
363 sexually transmitted diseases, mental illness, and drug or alcohol abuse. The authority given my
364 agent shall supersede any other agreement that I may have made with my health care providers to
365 restrict access to or disclosure of my individually identifiable health information. The authority
366 given my agent has no expiration date and shall expire only in the event that I revoke the
367 authority in writing and deliver it to my health care provider.
368

369 6. SIGNING DOCUMENTS, WAIVERS AND RELEASES. Where necessary to implement the
370 health care decisions that my agent is authorized by this Directive to make, my agent has the
371 power and authority to execute on my behalf all of the following: (a) Documents titled, or
372 purporting to be, a “Refusal to Permit Treatment” and/or a “Leaving Hospital Against Medical
373 Advice”; and (b) Any necessary waiver or release from liability required by a hospital or
374 physician.
375

376 7. DESIGNATION OF ALTERNATE AGENTS.

377 1. (You are not required to designate any alternate agents but you may do so. Any alternate agent
378 you designate will be able to make the same health care decisions as the agent you designated in
379 paragraph 1 above, in the event that agent is unable or ineligible to act as your agent. If an

380 alternate agent you designate is your spouse, he or she becomes ineligible to act as your agent if
381 your marriage is thereafter dissolved.) If the person designated as my agent in paragraph 1 is not
382 available or becomes ineligible to act as my agent to make a health care decision for me or loses
383 the mental capacity to make health care decisions for me, or if I revoke that person's appointment
384 or authority to act as my agent to make health care decisions for me, then I designate and appoint
385 the following persons to serve as my agent to make health care decisions for me as authorized in
386 this Directive, such persons to serve in the order listed below:

387
388 A. First Alternate Agent:
389 Name
390 Address
391 Telephone Number

392
393 B. Second Alternate Agent:
394 Name
395 Address
396 Telephone Number

397
398 C. Third Alternate Agent:
399 Name
400 Address
401 Telephone Number

402
403 8. PRIOR DESIGNATIONS REVOKED. I revoke any prior Durable Power of Attorney for
404 Health Care.

405
406 DATE AND SIGNATURE OF PRINCIPAL. (You must date and sign this Living Will and
407 Durable Power of Attorney for Health Care.)

408
409 I sign my name to this Statutory Form Living Will and Durable Power of Attorney for Health
410 Care on the date set forth at the beginning of this form at
411 (City, State)

412
413
414 Signature

415
416 Section 11. [*Registering Health Care Directives.*] A health care directive meeting the
417 requirements of [this Act] may be registered with the [secretary of state] pursuant to [insert
418 citation]. Failure to register the health care directive shall not affect the validity of the health care
419 directive.

420
421 Section 12. [*Revocation.*]

422 (A) A “Living Will and Durable Power of Attorney for Health Care” or Physician Orders
423 for Scope of Treatment (POST) form may be revoked at any time by the maker thereof by any of
424 the following methods:

425 (1) By being canceled, defaced, obliterated or burned, torn, or otherwise
426 destroyed by the maker thereof, or by some person in his presence and by his direction;

427 (2) By a written, signed revocation of the maker thereof expressing his intent to
428 revoke; or

429 (3) By an oral expression by the maker thereof expressing his intent to revoke.

430 (B) The maker of the revoked Living Will and Durable Power of Attorney For Health
431 Care is responsible for notifying his physician of the revocation.

432 (C) There shall be no criminal or civil liability on the part of any person for the failure to
433 act upon a revocation of a “Living Will and Durable Power of Attorney for Health Care” or
434 Physician Orders for Scope of Treatment (POST) form made pursuant to [this Act] unless that
435 person has actual knowledge of the revocation.

436

437 Section 13. [*Physician Orders for Scope of Treatment (POST).*]

438 (A) A Physician Orders for Scope of Treatment (POST) form is appropriate in cases
439 where a patient has an incurable or irreversible injury, disease, illness or condition, or where a
440 patient is in a persistent vegetative state. A POST form is also appropriate if such conditions are
441 anticipated.

442 (B) The POST form shall be effective from the date of execution unless otherwise
443 revoked. If there is a conflict between the person's expressed directives, the POST form, and the
444 decisions of the Durable Power of Attorney representative or surrogate, the orders contained in
445 the POST form shall be followed.

446 (C) The attending physician shall, upon request of the patient, provide the patient with a
447 copy of the POST form, discuss with the patient the form's content and ramifications and
448 treatment options, and assist the patient in the completion of the form.

449 (D) The attending physician shall review the POST form:

450 (1) Each time the physician examines the patient, or at least every [seven (7)]
451 days, for patients who are hospitalized; and

452 (2) Each time the patient is transferred from one care setting or care level to
453 another; and

454 (3) Any time there is a substantial change in the patient's health status; and

455 (4) Any time the patient's treatment preferences change.

456 Failure to meet these review requirements does not affect the POST form's validity or
457 enforceability. As conditions warrant, the physician may issue a superseding POST form. The
458 physician shall, whenever practical, consult with the patient or the patient's agent.

459 (E) A patient who has completed a POST form signed by a physician may wear a POST
460 Identification Device as provided in section 3 (13) of this Act.

461 (F) The [department of health and welfare] shall develop the POST Form.

462

463 Section 14. [*Adherence to Physician Orders for Scope of Treatment (POST) Protocol.*]

464 (A) Health care providers and emergency medical services personnel shall comply with a
465 patient's Physician Orders for Scope of Treatment (POST) instruction when presented with a
466 completed POST form signed by a physician or when a patient is wearing a proper POST
467 Identification Device pursuant to section 3 (13) of this Act.

468 (B) A completed POST form is deemed to meet the requirements of “Do Not Resuscitate
469 (DNR)” forms of all [state] health care facilities. Health care providers and emergency medical
470 services personnel shall not require the completion of other forms in order for the patient's
471 wishes to be respected.

472

473 Section 15. [*Duty To Inspect.*] Health care providers and emergency medical services
474 personnel shall make reasonable efforts to inquire as to whether the patient has completed a

475 Physician Orders for Scope of Treatment (POST) form and inspect the patient for a POST
476 Identification Device when presented with a situation calling for artificial life-sustaining
477 treatment not caused by severe trauma or involving mass casualties and with no indication of
478 homicide or suicide.

479

480 Section 16. [*Immunity.*]

481 (A) No emergency medical services personnel, health care provider, facility, or individual
482 employed by, acting as the agent of, or under contract with any such health care provider or
483 facility shall be civilly or criminally liable or subject to discipline for unprofessional conduct for
484 acts or omissions carried out or performed in good faith pursuant to the directives in a facially
485 valid POST form or Living Will or by the holder of a facially valid Durable Power of Attorney
486 or directive for health care.

487 (B) Any physician or other health care provider who for ethical or professional reasons is
488 incapable or unwilling to conform to the desires of the patient as expressed by the procedures set
489 forth in this chapter may withdraw without incurring any civil or criminal liability provided the
490 physician or other health care provider, before withdrawal of his or her participation, makes a
491 good faith effort to assist the patient in obtaining the services of another physician or other health
492 care provider who is willing to provide care for the patient in accordance with the patient's
493 expressed or documented wishes.

494 (C) No person who exercises the responsibilities of a Durable Power of Attorney for
495 Health Care in good faith shall be subject to civil or criminal liability as a result.

496 (D) Neither the registration of a health care directive in the health care directive registry
497 under [insert citation], nor the revocation of such a directive requires a health care provider to
498 request information from that registry. The decision of a health care provider to request or not to
499 request a health care directive document from the registry shall be immune from civil or criminal
500 liability. A health care provider who in good faith acts in reliance on a facially valid health care
501 directive received from the health care directive registry shall be immune from civil or criminal
502 liability for those acts done in such reliance.

503 (E) Health care providers and emergency medical services personnel may disregard the
504 POST form or a POST Identification Device:

505 (1) If they believe in good faith that the order has been revoked; or

506 (2) To avoid oral or physical confrontation; or

507 (3) If ordered to do so by the attending physician.

508

509 Section 17. [*General Provisions.*]

510 (A) Application. This Act shall have no effect or be in any manner construed to apply to
511 people not executing a "Living Will and Durable Power of Attorney for Health Care" or POST
512 form pursuant to this Act nor shall it in any manner affect the rights of any such people or of
513 others acting for or on behalf of such people to give or refuse to give consent or withhold consent
514 for any medical care, neither shall this Act be construed to affect [insert citation] in any manner.

515 (B) Euthanasia, mercy killing, or assisted suicide. This Act does not make legal, and in
516 no way condones, euthanasia, mercy killing, or assisted suicide or permit an affirmative or
517 deliberate act or omission to end life, other than to allow the natural process of dying.

518 (C) Comfort care. People who are taking care of a patient for whom artificial life-
519 sustaining procedures or artificially administered nutrition and hydration are withheld or
520 withdrawn shall provide comfort care as defined in section 3 of this Act.

521 (D) Presumed consent to resuscitation. There is a presumption in favor of consent to
522 cardiopulmonary resuscitation (CPR) unless:

523 (1) A completed Living Will for that person is in effect, pursuant to section 10 of
524 this Act, and the person is in a terminal condition or persistent vegetative state; or

525 (2) A completed Durable Power of Attorney for Health Care for that person is in
526 effect, pursuant to section 10 of this Act, in which the person has indicated that he or she does
527 not wish to receive cardiopulmonary resuscitation, or his or her representative has determined
528 that the person would not wish to receive cardiopulmonary resuscitation; or

529 (3) The patient has a completed Physician Orders for Scope of Treatment (POST)
530 form indicating otherwise and/or proper POST identification pursuant to this Act.

531 (E) Futile care. Nothing in this Act shall be construed to require medical treatment that is
532 medically inappropriate or futile.

533 (F) Existing directives and directives from other states. A Health Care Directive executed
534 prior to [July 1, 2007], but which was in the Living Will, Durable Power of Attorney for Health
535 Care, DNR, or POST form pursuant to prior [state] law at the time of execution, or in another
536 form that contained the elements set forth in this Act at the time of execution, shall be deemed to
537 be in compliance with this Act. Health Care Directives or similar documents executed in another
538 state that substantially comply with this Act shall be deemed to be in compliance with this Act.

539 (G) Insurance.

540 (1) The making of a Living Will and/or Durable Power of Attorney for Health
541 Care or Physician Orders for Scope of Treatment (POST) form pursuant to this Act shall not
542 restrict, inhibit or impair in any manner the sale, procurement or issuance of any policy of life
543 insurance, nor shall it be deemed to modify the terms of an existing policy of life insurance. No
544 policy of life insurance shall be legally impaired or invalidated in any manner by the withholding
545 or withdrawal of artificial life-sustaining procedures from an insured patient, notwithstanding
546 any term of the policy to the contrary.

547 (2) No physician, health care facility or other health care provider and no health
548 care service plan, insurer issuing disability insurance, self-insured employee plan, welfare benefit
549 plan or nonprofit hospital service plan shall require any person to execute a Living Will and
550 Durable Power of Attorney for Health Care or Physician Orders for Scope of Treatment (POST)
551 form as a condition for being insured for, or receiving, health care services.

552 (H) Portability and copies.

553 (1) A completed Physician Orders for Scope of Treatment (POST) form signed by
554 a physician shall be transferred with the patient to, and be effective in, all care settings including,
555 but not limited to, home care, ambulance or other transport, hospital, residential care facility, and
556 hospice care. The POST form shall remain in effect until such time as there is a valid revocation
557 pursuant to section 12 of this Act, or new orders are issued by a physician.

558 (2) A photostatic, facsimile or electronic copy of a valid Physician Orders for
559 Scope of Treatment (POST) form may be treated as an original by a health care provider or by an
560 institution receiving or treating a patient.

561 (I) Registration. A directive or the revocation of a directive meeting the requirements of
562 this Act may be registered with the [secretary of state] pursuant to [insert citation]. Failure to
563 register the health care directive shall not affect the validity of the health care directive.

564 (J) Rulemaking authority.

565 (1) The [department of health and welfare] shall adopt those rules and protocols
566 necessary to administer the provisions of this Act.

567 (2) In the adoption of a Physician Orders for Scope of Treatment (POST) or DNR
568 protocol, the [department] shall adopt standardized POST identification to be used statewide.

569

570 Section 18. [*Order in Protective Proceedings.*]

571 (A) If it is determined that the respondent is not developmentally disabled but appears in
572 need of protective services, the court may cause the proceeding to be expanded or altered for
573 consideration under the Uniform Probate Code.

574 (B) If it is determined that the respondent is able to manage financial resources and meet
575 essential requirements for physical health or safety, the court shall dismiss the petition.

576 (C) If it is determined that the respondent is developmentally disabled and is unable to
577 manage some financial resources or meet some essential requirements for physical health or
578 safety, the court may appoint a partial guardian and/or partial conservator on behalf of the
579 respondent. An order establishing partial guardianship or partial conservatorship shall define the
580 powers and duties of the partial guardian or partial conservator so as to permit the respondent to
581 meet essential requirements for physical health or safety and to manage financial resources
582 commensurate with his ability to do so, and shall specify all legal restrictions to which he is
583 subject. A person for whom a partial guardianship or partial conservatorship has been appointed
584 retains all legal and civil rights except those which have by court order been limited or which
585 have been specifically granted to the partial guardian or partial conservator by the court.

586 (D) If it is determined that the respondent is developmentally disabled and is unable to
587 manage financial resources or meet essential requirements for physical health or safety even with
588 the appointment of a partial guardian or partial conservator, the court may appoint a total
589 guardian and/or total conservator.

590 (E) In the event that more than [one (1)] person seeks to be appointed guardian and/or
591 conservator, the court shall appoint the person or persons most capable of serving on behalf of
592 the respondent; the court shall not customarily or ordinarily appoint the [department] or any
593 other organization or individual, public or private, that is or is likely to be providing services to
594 the respondent.

595 (F) Subject to the limitations of the provisions of subsection (G) of this section, guardians
596 or conservators may have any of the duties and powers as provided in [insert citation] and as
597 specified in the order. Any order appointing a partial or total guardian or partial or total
598 conservator under the provisions of this section must require a report to the court at least
599 [annually]. In addition to such other requirements imposed by law or order, the report shall
600 include:

601 (1) A description of the respondent's current mental, physical and social
602 condition;

603 (2) The respondent's present address and living arrangement;

604 (3) A description of any significant changes in the capacity of the respondent to
605 meet essential requirements for physical health or safety or to manage financial resources;

606 (4) A description of services being provided the respondent;

607 (5) A description of significant actions taken by the guardian or conservator
608 during the reporting period;

609 (6) Any significant problems relating to the guardianship or conservatorship;

610 (7) A complete financial statement of the financial resources under the control or
611 supervision of the guardian or conservator; and

612 (8) A description of the need for continued guardianship or conservatorship
613 services.

614 (G) No guardian appointed under this Act shall have the authority to refuse or withhold
615 consent for medically necessary treatment when the effect of withholding such treatment would
616 seriously endanger the life or health and well-being of the person with a developmental
617 disability. To withhold or attempt to withhold such treatment shall constitute neglect of the
618 person and be cause for removal of the guardian. No physician or caregiver shall withhold or

619 withdraw such treatment for a respondent whose condition is not terminal or whose death is not
620 imminent. If the physician or caregiver cannot obtain valid consent for medically necessary
621 treatment from the guardian, he shall provide the medically necessary treatment as authorized by
622 section 5(A)(7) of this Act.

623 (H) A guardian may consent to withholding or withdrawal of artificial life-sustaining
624 procedures, only if the respondent:

625 (1) Has an incurable injury, disease, illness or condition, certified by the
626 respondent's attending physician and at least [one (1)] other physician to be terminal such that
627 the application of artificial life-sustaining procedures would not result in the possibility of saving
628 or significantly prolonging the life of the respondent, and would only serve to prolong the
629 moment of the respondent's death for a period of hours, days or weeks, and where both
630 physicians certify that death is imminent, whether or not the life-sustaining procedures are used;
631 or

632 (2) Has been diagnosed by the respondent's attending physician and at least [one
633 (1)] other physician as being in a persistent vegetative state which is irreversible and from which
634 the respondent will never regain consciousness.

635 (I) Any person, who has information that medically necessary treatment of a respondent
636 has been withheld or withdrawn, may report such information to [adult protective services] or to
637 the [state protection and advocacy system for people with developmental disabilities], who shall
638 have the authority to investigate the report and in appropriate cases to seek a court order to
639 ensure that medically necessary treatment is provided. If adult protective services or the
640 protection and advocacy system determines that withholding of medical treatment violates the
641 provisions of this section, they may petition the court for an ex parte order to provide or continue
642 the medical treatment in question. If the court finds, based on affidavits or other evidence, that
643 there is probable cause to believe that the withholding of medical treatment in a particular case
644 violates the provisions of this section, and that the life or health of the patient is endangered
645 thereby, the court shall issue an ex parte order to continue or to provide the treatment until such
646 time as the court can hear evidence from the parties involved. Petitions for court orders under
647 this section shall be expedited by the courts and heard as soon as possible. No bond shall be
648 required of a petitioner under this section.

649 (J) No partial or total guardian or partial or total conservator appointed under the
650 provisions of this section may without specific approval of the court in a proceeding separate
651 from that in which such guardian or conservator was appointed:

652 (1) Consent to medical or surgical treatment the effect of which permanently
653 prohibits the conception of children by the respondent unless the treatment or procedures are
654 necessary to protect the physical health of the respondent and would be prescribed for a person
655 who is not developmentally disabled;

656 (2) Consent to experimental surgery, procedures or medications; or

657 (3) Delegate the powers granted by the order.

658

659 Section 19. [*Severability.*] [Insert severability clause.]

660

661 Section 20. [*Repealer.*] [Insert repealer clause.]

662

663 Section 21. [*Effective Date.*] [Insert effective date.]