

Advance Directives: What are they and how do they impact care?

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CAVEAT - Nothing in these slides is intended as legal advice or any other type of professional advice. Rather, the information in this presentation is solely for educational purposes.



DPOAs, Living Wills, and DNRs

AN INTRODUCTION

A package of solutions allowing patients **“to speak”** when they become incapacitated:

- **Natural Death Act Declaration** (K.S.A. 65-28,101 et seq.)
- **Durable Power of Attorney for Health Care Decisions (“DPOA-HC”)**(K.S.A. 58-625 et seq.)
- **Do Not Resuscitate (“DNRs”)**(K.S.A. 65-4941 et seq.)

All have statutorily, required elements.

Templates are set forth in statutes, although, in practice, many such directives include more detail than the forms in the statutes

In Re Quinlan-70 N.J. 10 (1975)

- Karen Ann Quinlan
- Issue was whether her life support could be removed
- New Jersey SCT Decision
- U.S. Supreme Court denied review

THE NATURAL DEATH ACT (K.S.A. 65-28,101 et seq.)

COMPONENTS

Key Components of The Natural Death Act:

- Right to execute a **declaration** directing the **withholding or withdrawal of life-sustaining procedures** when the patient has a terminal condition.
- “Life-sustaining procedure” means any medical procedure or intervention which **only serves to prolong the dying process and where, in the judgment of the attending physician, death will occur whether or not such procedure or intervention is used.**
- Enacted in 1979

THE NATURAL DEATH ACT

COMPONENTS

- Requires written certification of a patient's terminal condition by two physicians who have personally examined the patient , one of whom must be the patient's attending physician
- An attending physician who refuses to comply with a Natural Death Act Declaration must transfer the patient to the care of another physician.
- Protection from civil and criminal liability when withhold or withdraw life-sustaining procedures for a patient pursuant to the person's Natural Death Act Declaration. K.S.A. 65-28,106.

CRUZAN v. DIRECTOR, MISSOURI DEPARTMENT OF HEALTH, 110 S.Ct. 2841 (1990)

- US Supreme Court decision that addressed right to die issues
- U.S. Supreme Court affirmed the Missouri Supreme Court's decision to require clear and convincing evidence of patient's wishes regarding the removal of life support

Patient Self-Determination Act (42 C.F.R. 189.100 et seq.)

Patient Self-Determination Act

The Patient Self-Determination Act (PSDA) took effect December 1, 1991:

- The Act was intended to promote awareness and discussion of health-care issues in preparation for medical decisions at the end of life.
- Health-care institutions that receive Medicare or Medicaid funds must inform patients about advance directives authorized in their state.

DPOA-HC (K.S.A 58-625 et seq.)(Enacted in 1989)

COMPONENTS

DPOA-HC appoints another (“**agent**”) to make health decisions for a patient in the event of a patient’s disability or incapacity.

Powers given to the agent can include the:

- Power to consent or refuse treatment/care
- Power to make all arrangements for care at a hospital, treatment facility, nursing facility, or similar institution
- Power to employ or discharge health care professionals
- Power to receive and transmit relevant information regarding the patient’s health
- Power to request or release health information and execute necessary documents for care.

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DPOA-HC

COMPONENTS

- Immunity is granted to persons who act in good faith pursuant to the terms of a durable power of attorney for health care decisions even if such DPOA-HC is invalid, provided the person did not know of the invalidity. K.S.A. 58-629(g)
- DPOA-HCs from other states are recognized in Kansas if the DPOA-HC was valid under the laws of the other state at the time of execution.
- Must contain language to the effect that the patient intended the DPOA-HC to be “exercisable” despite the patient’s subsequent disability or incapacity, e.g., the DPOA-HC “shall not be affected by subsequent disability or incapacity” or the DPOA-HC “shall become effective upon the patients disability or incapacity.”

DPOA-HC

General Durable
Power of Attorney

vs.

Durable Power of
Attorney for Health
Care Decisions

DO NOT RESUSCITATE (K.S.A 65-4941 et seq.)(Enacted in 1994)

COMPONENTS

Kansas recognizes the validity of “do not resuscitate” directives signed by a patient, subject to certain requirements, e.g., in writing, dated, and witnessed by unrelated person. See, K.S.A. 65-4943 for specifics.

- Health care providers who withhold or withdraw cardiopulmonary resuscitation in good faith pursuant to a “do not resuscitate” order or directive or in the presence of a DNR identifier, e.g., medallion or bracelet worn by a patient, is protected from civil and criminal liability. K.S.A. 65-4944

DNR
Directive

vs.

DNR
Order

IT'S A PACKAGE

They work in combination to be the “voice” of the patient:

1. Durable Powers of Attorney for Health Care Decisions
2. Natural Death Act Declarations
3. Do Not Resuscitate Directives



QUESTIONS

