

Legal Documents That Maybe Presented To Attendants On The Scene

I. Durable power of attorney for health care decisions (DPOAHCD) KSA 58-625

What is it?

A DPOAHCD is a legal document where the patient designates an agent to make health care decisions, including the decision to consent or refuse to consent to emergency care. K.S.A. 58-625

1. The attendant should review the document to determine whether the agent has the right to consent/refuse to consent to treatment.
2. The document will tell the attendant when the agent can make health care decisions. Most DPOAHCDs are not effective until the patient is “impaired” as determined by the patient’s attending physician. However, some DPOAHCDs are effective regardless of whether the patient is impaired. K.S.A. 58-625; K.S.A 2003 Supp. 58-629(b).
3. The agent has a duty to act consistent with the expressed desires of the patient. If the patient is not under a legal guardianship and appears to be mentally capable of making health care decisions, the attendant should follow the patient’s wishes. K.S.A. 2003 Supp. 58-629(c).
4. If the attendant follows the DPOAHCD and the latter is found to be invalid [i.e. not dated and witnessed by 2 appropriate witnesses etc.], the attendant will still be immune from legal liability as a result of following the DPOAHCD. K.S.A. 2003 Supp. 58-629(g)

II. Power of Attorney (POA) KSA 2003 Supp. 58-650

What is it?

A POA is a legal document where a person designates an agent to make certain decisions, usually financial. However, sometimes a POA may authorize an agent to make certain medical decisions.

1. The attendant should review the document to determine whether the agent can make decisions regarding the right to consent/refuse to consent to treatment.
2. If the document gives the right to make medical decisions, the attendant will need to determine when the power is effective. POAs can be effective when the patient is no longer capable of making decisions or when the patient is still capable. A durable POA continues regardless of the patient’s disability. A nondurable POA ceases when the patient can no longer make decisions regarding health care.
3. The agent has a duty to communicate with the patient and follow the patient’s instructions “to the extent reasonably possible under the circumstances.” K.S.A. 2003 Supp. 58-656(b). If the patient is not under

a legal guardianship and appears to be mentally capable of making decisions, the attendant should follow the patient's wishes.

4. A DPOAHCD generally supercedes a POA. When faced with both a POA and a DPOAHCD, an attendant should follow a DPOAHCD. K.S.A. 2003 Supp. 58-654(g)(2).
5. Attendants who act under a POA may be immune from liability. K.S.A. 2003 Supp. 58-658.

III. Living Will

KSA 65-28, 101

What is it?

A living will is a legal document that applies only to patients who have a terminal illness, as certified by 2 physicians. A living will directs medical personnel to withhold or withdraw life-sustaining procedures.

1. This document becomes effective when the patient is no longer capable of making medical care decisions. If the patient is capable, the patient's desires supercede the living will.
2. A living will applies only to life sustaining procedures – not routine medical care such as splinting broken limbs.

IV Guardianship

KSA 2003 Supp. 59-3051

What is it?

A guardianship is established for a person who lacks the capacity to meet his/her essential needs for physical health. If a court has appointed a person to be the guardian of the patient, the guardian should give the attendant a court order to this effect.

1. A guardian makes medical decisions for the patient but the guardian has to take into account the “expressed desires and personal values of the ward to the extent known to the guardian” in making those decisions. K.S.A. 2003 Supp. 59-3075(a)(2)
2. A guardian can consent or refuse to consent to treatment. K.S.A. 2003 Supp. 59-3075(b)(3). However, a guardian cannot consent to withholding life saving or life sustaining medical care unless the patient has executed a living will or a DPOAHCD.

V Do Not Resuscitate Orders/Directives (DNR)

KSA 65-4941

What is it?

A DNR directs health care providers to not initiate any procedure to restart breathing or heart function if breathing/heart function fails. K.S.A. 65-4942

1. No civil/criminal liability if health care provider withholds CPR pursuant to DNR. K.S.A. 65-4944.