

# So Now You Are An Agent Under Medical Power of Attorney

An agent is someone who is given authority in a power of attorney document to make decisions on behalf of the person who signed the power of attorney document (the “principal”). When you act as an agent, you have specific legal duties and responsibilities under the laws of Colorado. For additional information about other types of powers of attorney, please see the brochure *What is a Power of Attorney?*

## What is a Medical Power of Attorney?

A medical power of attorney may also be known as a health care power of attorney. In a medical power of attorney, the principal gives the agent authority to act on the principal's behalf regarding medical treatment, health care, and personal care decisions. A medical power of attorney is intended to cover situations when the principal is alive, but unable to make or communicate decisions with healthcare providers.

## When does my authority as a nominated Agent begin?

The language of the medical power of attorney document will tell you when your authority as an agent begins. Medical power of attorney documents can be either standing or springing.

- A standing medical power of attorney takes effect immediately when the principal signs the document. This gives the agent the authority to act as soon as the medical power of attorney is signed. However, the principal continues to have the authority to make decisions and the agent's duty does not begin until the principal cannot make or communicate decisions. The agent is required to consult with the principal about decisions and to act according to the principal's reasonable expectations and wishes whenever possible.
- A springing medical power of attorney gives an agent authority to act after a specific event occurs, such as when two doctors certify in writing that the principal no longer has the ability to make or communicate medical decisions. In this example, the agent cannot act on behalf of the principal until that certification is provided.

## What authority do I have as an Agent?

An agent's authority to make decisions or act on behalf of the principal depends on what the medical power of attorney document says and the laws of Colorado.

It is important to read the medical power of attorney document to make sure you understand your authority.

You cannot use ignorance of the law as a defense if you act inappropriately as someone's agent. An agent who misuses or abuses their authority under a medical power of attorney document may face criminal prosecution and/or civil liability. If you have any questions about your authority or responsibilities as an agent, you should seek legal advice from an attorney.

An agent should also ask the principal if they have prepared any other health care directives (e.g., Living Will, CPR Directive, MOST Order). If so, discuss and familiarize yourself with the principal's wishes as expressed in these documents. If you have any questions about these documents, you should speak with the principal's health care providers or seek legal advice from an attorney.

## Can I access medical records as an Agent?

When you are acting as agent, you have the right to access the principal's medical records as the principal's “personal representative” under the Health Insurance Portability and Accountability Act (HIPAA) and other federal and state laws.

The principal is entitled to continue receiving their medical, health care, and personal care information even after the agent has started acting.

## What are the responsibilities and duties of an Agent under a Medical Power of Attorney?

Generally, an agent under a medical power of attorney has the following responsibilities and duties:

- **Duty to Confer.** An agent must attempt to communicate with the principal about the principal's preferences on health care decisions, if the principal is able to communicate those preferences. When making medical treatment decisions on behalf of the principal, the agent must also discuss the principal's medical condition with the attending physician or healthcare provider.
- **Duty of Substituted Judgment.** If the principal is unable to make or communicate decisions, the agent must act in accordance with the principal's reasonable expectations or wishes, to the extent the agent knows them. If the agent does not know the principal's expectations or wishes, the agent must act in the principal's best interest.
- **Duty to Make Medical Treatment Decisions.** The agent is responsible for making medical treatment decisions and providing informed consent or refusal of medical treatment on behalf of the principal. Medical treatment includes but is not limited to any health care; medical procedure (including artificially provided

nutrition and hydration); surgery; cardiopulmonary resuscitation (CPR); or service to maintain, diagnose, treat, or provide for the principal's health or personal care.

- **Duty of Loyalty to the Principal.** An agent must put the principal's interests first. An agent cannot engage in actions that would impair their ability to act loyally to the principal.

If an agent breaches their fiduciary duties, the agent may be at risk of criminal prosecution and/or civil liability. If you have any questions about your duties and responsibilities as an agent, you should seek legal advice from an attorney.

### **Can I be paid for serving as someone's Agent?**

An agent can be reimbursed for out-of-pocket expenses incurred on behalf of the principal and for reasonable compensation for time spent assisting the principal, unless the medical power of attorney document prohibits it. Your actions as agent can be scrutinized at any time, so it is recommended that you keep receipts for every expense for which you reimburse yourself. If you wish to be compensated for your time from the principal's assets, you must keep a detailed time log of the work you performed. A court can review an agent's compensation for reasonableness, and may examine the rate charged, the time spent performing the work, the skill required to perform the work, and the circumstances of the work when it was performed.

### **What if I'm nominated as someone's Agent but I don't want to serve as their Agent?**

If you are nominated as someone's agent, you are not required to serve in that role. If you do not wish to accept your nomination, notify the principal of your decision to decline the appointment.

### **When does my authority as Agent end?**

Your authority to act on behalf of the principal ends according to the terms of the medical power of attorney document or when one of the following events occur:

- The principal dies;
- The principal notifies you that you are no longer their agent (this revocation need not be in writing);
- The principal delivers a revocation of their medical power of attorney document to you to notify you that your authority as agent under that document has ended (this revocation need not be in writing); or
- You resign as agent.

If you continue to act or make decisions with respect to the principal's medical, health care, and personal care decisions after resigning, receiving notice of your revocation, or the principal's death, you may be subject to criminal prosecution and/or civil liability.

### **What if there is no Medical Power of Attorney?**

In situations where there is no medical power of attorney (or Living Will), you should seek legal advice from an attorney regarding laws about medical proxy decision-making.

In situations where questions arise concerning other health care directives/orders (e.g., CPR Directive, MOST Order), you should speak with the principal's health care providers or seek legal advice from an attorney.

This brochure is published as a public service by the Colorado Bar Association and was authored and is reviewed and updated as needed by the Civic and Community Affairs Committee, a Subcommittee of the Trusts and Estates Section. Its purpose is to provide general information about the topic contained herein, which is a common legal issue that may come up in estate planning, probate, and/or elder law cases. The information in this brochure is current as of November 2025. You should ensure that there have not been any changes in the law that may affect your matter, which may require consulting with an attorney.

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