
IT'S NEVER TOO LATE, UNTIL IT IS

CREATING ADVANCE DIRECTIVES

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SDAHO POST-ACUTE CONFERENCE
APRIL 1, 2026




A CENTURY STRONG
100 South Dakota
Association of Healthcare Organizations

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POLL QUESTION

I have completed a Durable Power of Attorney for Health Care for myself.

- A. Yes
- B. No



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I have completed a Durable Power of Attorney for Health Care for myself.

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**1 IN 3 (36.7%) OF AMERICANS HAVE AN ADVANCE DIRECTIVE- HIGHER FOR 65+ (45-61%)
CHRONIC/SERIOUS ILLNESS (38%) NURSING HOME/HOSPICE (50-88%)**

YADAV KN, GABLER NB, COONEY E, KENT S, KIM J, HERBST N, MANTE A, HALPERN SD, COURTRIGHT KB. APPROXIMATELY ONE IN THREE US ADULTS COMPLETES ANY TYPE OF ADVANCE DIRECTIVE FOR END-OF-LIFE CARE. HEALTH AFF (MILLWOOD). 2017 JUL 13;36(7):1244-1251. DOI:10.1377/HLTHAFF.2017.0175. PMID: 28679811

Percent of South Dakotans 18 and older who have an Advance Directive: 28%

South Dakota Cancer Plan 2026-2030



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**CASE
PRESENTATION**



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**CASE
PRESENTATION**



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WHAT ARE ADVANCE DIRECTIVES

- Advance Directives are LEGAL documents that provide instructions for medical care. They only go into effect if a person lacks capacity to communicate their own wishes
- In South Dakota, we have 4 documents:
 - Living Will § 34-12D
 - Durable Power of Attorney for Health Care (DPOA-HC)§ 59-7
 - Comfort One (transportable medical order)§ 34-12F
 - South Dakota Medical Order for Scope of Treatment (SD MOST) (transportable medical order)§ 34-12H



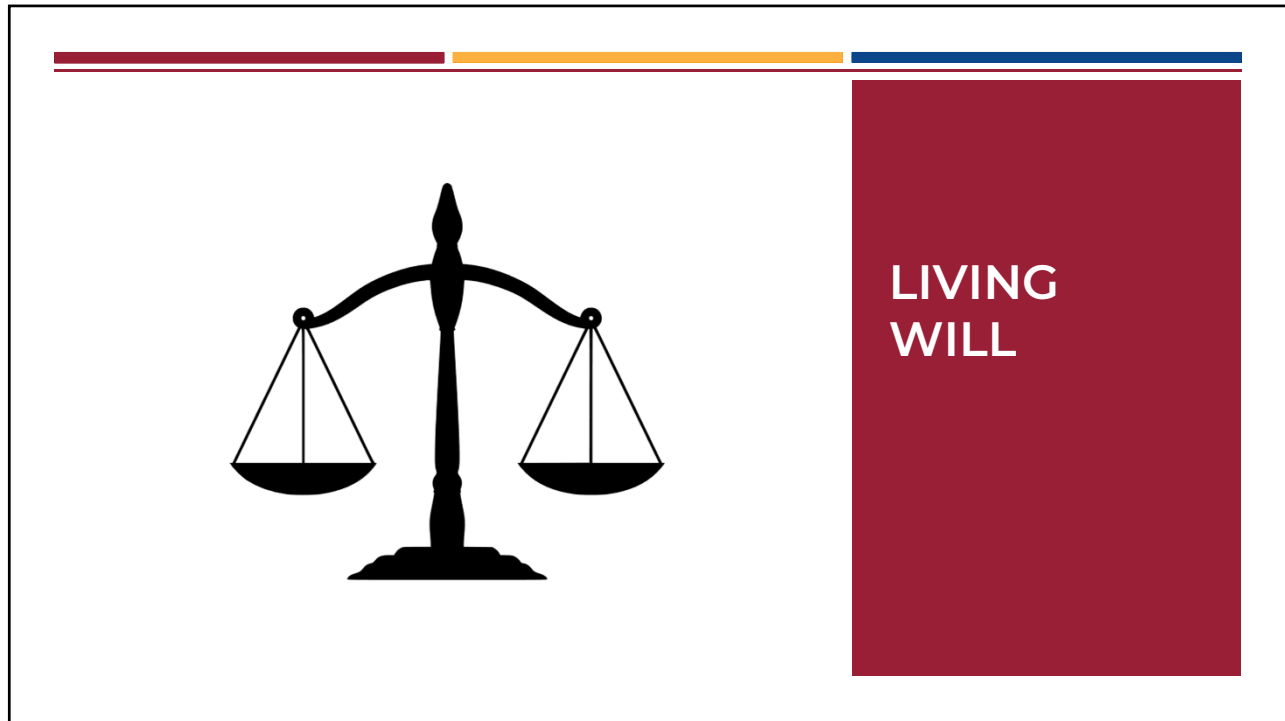
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CAPACITY

- Understand the pros and cons and other options for treatment
 - Informed consent
- 4 criteria to have capacity
 - Understand the situation
 - Appreciate the consequences of their decision
 - Reason through their thought process
 - Communicate their wishes
- Determined by the attending doctor



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What is it? A legal document telling your doctors what kind of life sustaining treatment you want if:

- You have a terminal illness **AND**
- Death is imminent **AND**
- Can't communicate decisions

How is it completed?

- Must be filled out by the patient
- Must have information about preferences for artificial nutrition & hydration (SDCL 34-12D-2)
- Witnessed by two adults **or** a notary public
- Forms may be at your facility or can be found in statute

Who can have one?

- Any competent adult (18+)

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- **Benefits of a Living Will:**
 - Provides information to the healthcare team on the type of Life Sustaining Care you want *in very specific situations*
 - Especially important for people with very limited to no support people- “Unfriended”
- **Limitations of a Living Will**
 - Only comes in to play when all 3 criteria are met
 - It does not appoint someone to speak on your behalf
 - It does not usually direct your healthcare team on anything other than life sustaining treatment



South Dakota Living Will

[Click here](#)

LIVING WILL DECLARATION

This is an important legal document. It gives the medical professional you are to explain to the extent you are in a terminal condition and are unable to participate in your own medical decision. This living will may state what kind of treatments you want or do not want to receive.

Prepare this living will carefully. If you use this form, read it completely. You may want to seek professional help to make sure the form does what you intend and is completed without mistakes.

This living will remains valid and in effect until you are able to make it. Before this living will particularly to make sure it continues to reflect your wishes. You may amend or revoke this living will at any time by notifying your physician and other health care providers. You should also notify all of the following persons of your wishes, your physician, and your health care facility. This form is entirely optional. If you choose to use this form, please note that the form provides signature lines for you, for your physician, and for your witnesses.

TO MY FAMILY, HEALTH CARE PROVIDER, AND ALL THOSE CONCERNED WITH MY CARE:

I, _____, direct you to follow my wishes for care if I am in a terminal condition, my death is imminent, and I am unable to communicate my decisions about my medical care.

With respect to my life-sustaining treatment, direct the following:

(Check only one of the following options. If you do not agree with either of the following options, space is provided below for you to set forth your own directions.)

_____ If my death is imminent or I am permanently unconscious, I choose not to prolong my life. If life-sustaining treatment has been started, cease it, but keep me comfortable and control my pain.


_____ Even if my death is imminent or I am permanently unconscious, I choose to prolong my life.

_____ Choose either of the above options, and have all my instructions placed before me promptly if and my death is imminent or I am permanently unconscious.




What happens if there is no Living Will?

- Full medical intervention
- Look for other documents
- Identify legal surrogate decision maker based on South Dakota Law § 34-12C-3
 - Spouse, if not legally separated
 - Adult child
 - Parent
 - Adult sibling
 - Grandparent or an adult grandchild
 - Aunt, uncle, adult cousin, adult niece or nephew
 - Close friend




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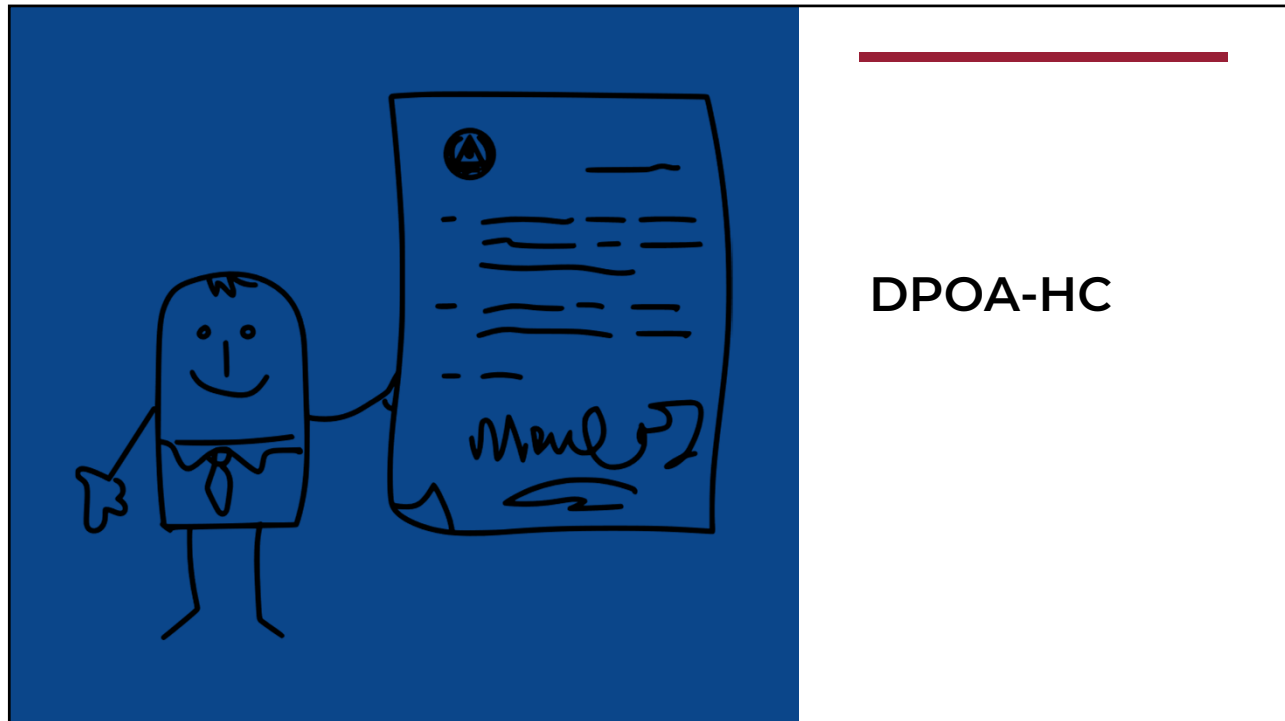


CASE DISCUSSION

- How would this case have changed if there were a Living Will?



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What is it? A legal document that appoints someone (an “agent” or “attorney-in-fact” or “health care proxy”) to make medical decisions for you if you cannot do so yourself

- Can make any healthcare decision from treatment, signing consents, discharge planning
- Activated by the patient’s ability to make decisions

How is completed?

- Must be filled out by the patient
- Must have information about preferences for artificial nutrition & hydration
- Witnessed by two adults **or** a notary public

Who can have one?

- Any competent adult 18 +

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Benefits of a Durable Power of Attorney for Health Care (DPOA-HC)

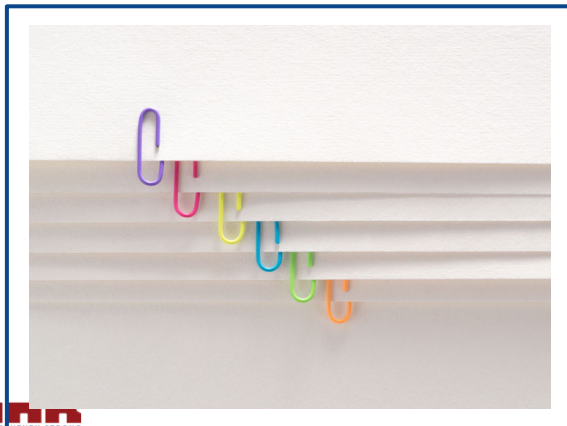
- Names a person to represent your values and preferences for health care
- Allows you to name an alternate “agent”
- Flexible- allows your agent to make decisions based on what your most current health status is
- Some documents allow you to express what kind of medical care you want in specific situations

Limitations of a DPOA-HC

- Legal document- not a lot of room to express your values and preferences
- Discussion Aid- ex. [The Conversation Project](#)
- Often completed without talking to the agent about values, preferences in different situations
- Agent may be unaware they have been named
- Lock box syndrome



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■ There is no specific durable power of attorney for health care form in South Dakota

■ Hospitals and clinics have free forms that can be used. They usually have a notary on staff.

■ Completed forms may be given to:

- The patient (original)
- The agent
- Primary care doctor/hospital/EMR



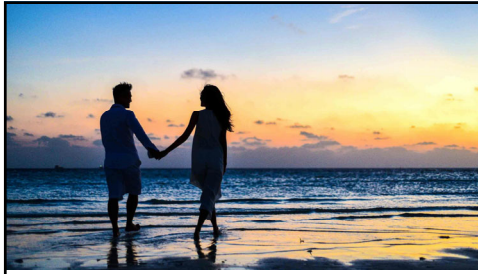
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■ **What happens if your patient does not have a DPOA-HC**

- Identify legal surrogate decision maker based on South Dakota Law § 34-12C-3
 - Spouse, if not legally separated
 - Adult child
 - Parent
 - Adult sibling
 - Grandparent or an adult grandchild
 - Aunt, uncle, adult cousin, adult niece or nephew
 - Close friend



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CASE DISCUSSION

- How would this case have changed if there were a DPOA-HC?



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POLL QUESTION

In your overall practice, how often do you have advance directives conversations?

- A. Daily
- B. Weekly
- C. Every Month
- D. Couple times per year
- E. Very Rarely



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In your overall practice, how often do you have advance directives conversations?

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WHEN DO YOU UPDATE THESE FORMS

5 D's

- Decade
- Divorce
- Death
- Diagnosis
- Decline



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COMFORT
ONE

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What is it? A transportable medical order and a legal document.

- Signed medical order originally designed for EMS personnel
- Directs EMS to withhold Cardiopulmonary Resuscitation (CPR) and Intubation in the event of cardiac arrest

How is completed?

- Can be completed by a patient or their healthcare agent
- Must be signed by a physician or advanced practice provider (PA/NP)

Who can have one?

- Anyone who does not want to have CPR and Intubation in the event their heart stops in accordance with accepted medical and ethical guidelines



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Benefits of a Comfort One

- Allows a patient's values and goals for health care to be honored
- Give EMS clear direction on how to care for the patient
- Allows for all other types of emergency medical intervention to be provided
- ID bracelet available to purchase for easy identification of the medical order

Limitations of a Comfort One

- Triplicate form to be distributed:
 - White: original stays with the patient and to be shown to EMS
 - Yellow: stays with the doctor who signed the form (order)
 - Pink: mailed to the State for their records- can send a bracelet if purchased once this is received
- EMS must see the original order or a bracelet to withhold CPR/Intubation
- Bracelets are an expense- \$45.00 (submitted w/form)



Instructions for ordering a bracelet can be found at: <https://doh.sd.gov/healthcare-professionals/advance-directives-and-medical-orders/>



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Comfort ONE

South Dakota's Do Not Resuscitate Form

[Click Here](#)



Physicians and medical centers can request Comfort One Forms through the Department of Health:
<https://doh.sd.gov/healthcare-professionals/advance-directives-and-medical-orders/>

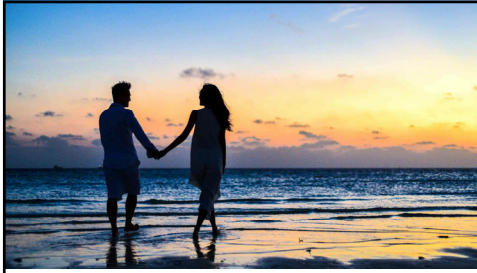


What happens if your patient does not have a Comfort One?

- Your client WILL RECEIVE:
 - Chest Compressions
 - Defibrillation
 - Ventilator Support

- Emergency Medical Services (EMS) personnel are required to provide full medical intervention without a medical order from a doctor to withhold.





CASE DISCUSSION

■ How would this case have changed if there were a Comfort One prior to the event?



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SD MOST

MEDICAL ORDER FOR SCOPE OF TREATMENT

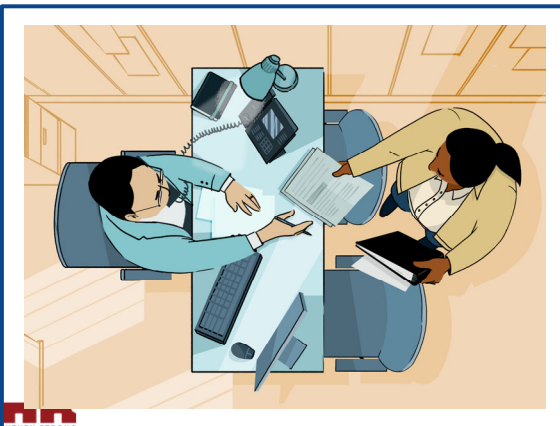


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- **What is it?** A transportable medical order and a legal document.
 - Voluntary process that “elicits, documents, communicates and honors patient medical treatment wishes through shared decision-making.”
 - Valid across all care settings, all facilities including the home
- **Who can have one?**
 - Anyone who has a terminal condition (as defined in §34-12D-1(7))
 - Anyone who you wouldn't be surprised if they passed away in the next year

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■ How is it completed?

- Occurs between a medical provider and the patient (&/or Authorized Representative) as part of a Goals of Care conversation (what matters most to the patient)
- The documented conversation and the form are added to the patient's chart
- Must be completed by a physician, nurse practitioner or physician assistant
- Must be signed and dated by a MD, DO, NP or PA to be valid
- Must be signed by the patient or their Authorized Representative
- The orders must be added to the patient's chart as appropriate

IDA
A COMMITMENT
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ADDITIONAL MOST FACTS

- MOST documents can be updated anytime based on patient preference
- A MOST can only be updated or revoked by the person signing the original form
- A MOST identifies the treatments a patient wants and treatments the patient wishes to avoid
- A MOST does not replace a durable power of attorney- a patient should have both
- MOST documents are honored in other states
- A MOST document is used when a patient is incapacitated and likely to pass away within one-year
- A copy, fax or scanned document will be honored



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MEDICAL ORDER FOR SCOPE OF TREATMENT

[CLICK HERE](#)

comfort needs cannot be met in current location.
 ADDITIONAL ORDERS: (e.g. dialysis, etc.)

C. ARTIFICIALLY ADMINISTERED NUTRITION AND HYDRATION:
ALWAYS OFFER FOOD AND FLUIDS BY MOUTH AS TOLERATED.
 Based on the Provider's medical judgment:

	YES	NO
1. Will artificially administered nutrition and hydration be unable to prolong life?	<input type="checkbox"/>	<input type="checkbox"/>
2. Will artificially administered nutrition and hydration be more burdensome than beneficial?	<input type="checkbox"/>	<input type="checkbox"/>
3. Will artificially administered nutrition and hydration cause significant physical discomfort?	<input type="checkbox"/>	<input type="checkbox"/>
4. Has patient previously expressed a desire to forgo artificially administered nutrition and hydration by tube?	<input type="checkbox"/>	<input type="checkbox"/>

In order for artificially administered nutrition and hydration to be withheld, there must be a "YES" answer to one or more of questions 1-4 above.

D. INFORMED CONSENT DISCUSSION:
 _____ had an informed consent discussion with patient or authorized representative.
 Name of Medical Provider (MD, DO, NP or PA)

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WHAT HAPPENS IF YOUR PATIENT DOESN'T HAVE A MOST?



In an emergency, they will receive full medical intervention, even if that is not what they wanted

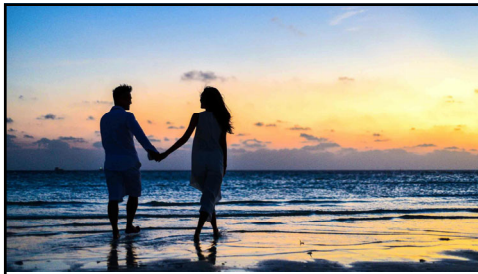


A legal surrogate decision maker will need to be identified

DPOA
State Statute



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CASE DISCUSSION

How would this case have changed if there were a SDMOST?




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POLL QUESTION


Who should make the decision about the type of care our case patient will have?

- A. Parents
- B. Husband
- C. Girlfriend
- D. Court System
- E. Other




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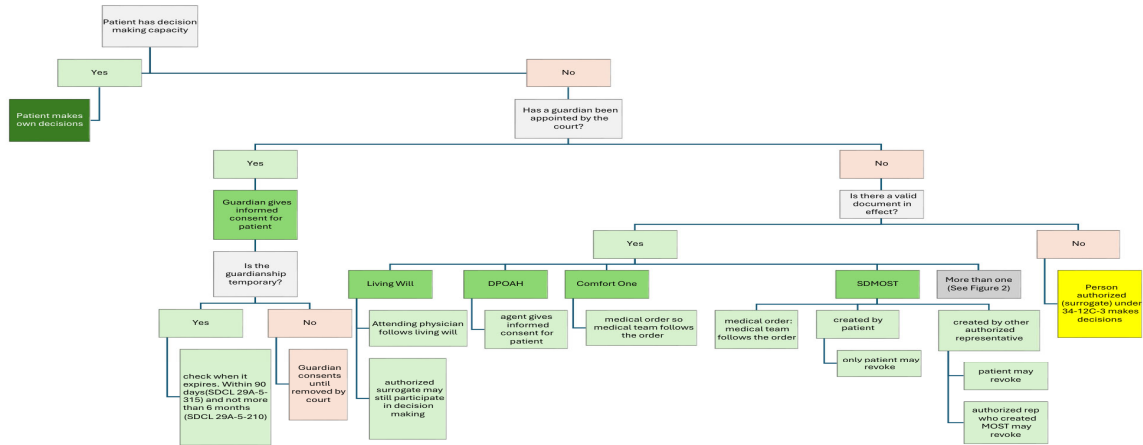
Who should make the decision about the type of care our case patient will have?

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Figure 1. A flow chart to guide providers through who and what to consider in relation to healthcare decision-making.

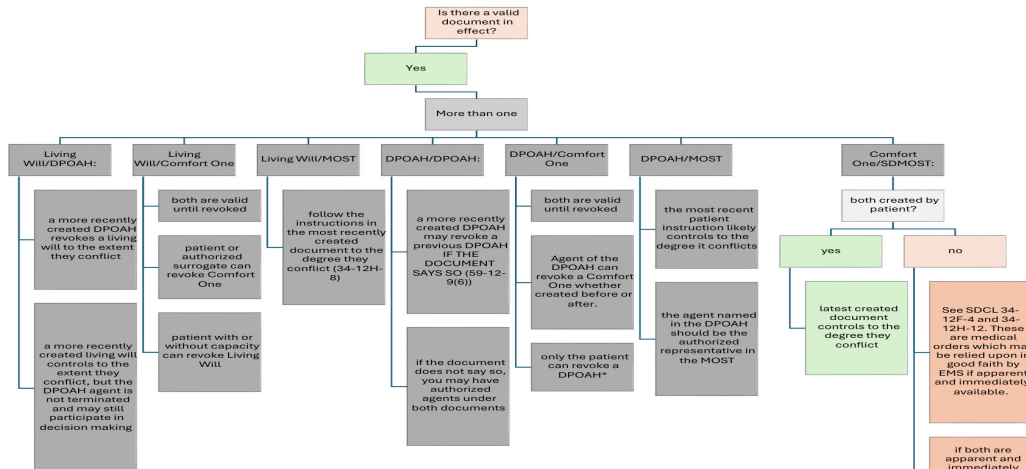


*A DPOAH may be terminated by certain other conditions found in SDCL 59-12-9 and not listed in this chart
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Figure 2. A flow chart to guide providers through who and what to consider in relation to healthcare decision-making.



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CASE REVEAL:

TERRI SCHIAVO
12/3/63-3/31/2005



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THANK YOU!
Questions?



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