

Wyoming POLST—Real End of Life Planning

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Wyoming estate planners have long dealt with health and end-of-life issues as part of their practices. The Wyoming Legislature authorized the POLST protocol effective July 1, 2015, but for various reasons, it has not received the sort of public educational exposure that might have been expected. The statutes authorizing POLST appear at Wyo. Stat. 35-22-501 et seq., and the rules are promulgated by the Wyoming Department of Health, Aging Division. The Rules are going through some amendments now, to include a bracelet for POLST holders who choose “Do Not Resuscitate” as part of the POLST.

- A. What is the POLST protocol?
 - B. When should a POLST document be used or at least considered?
 - C. How does a POLST document differ from an Advance Healthcare Directive?
 - D. How does a POLST document differ from the traditional and modern Living Will and other end-of life documents in common use?
 - E. What is the estate planner’s role, if any, in clients getting a POLST document?
 - F. How can estate planners and physicians work together to help clients/patients take advantage of the benefits of POLST?
- I. The nature of a POLST document is different than documents estate planners have used before. It represents a significant shift in how end of life planning can now occur.
- A. POLST document is an actual physician’s order for use after a conversation between the patient (or if they’re incapacitated, their surrogate healthcare decision maker) and their physician about end of life decisions and treatments.
 - B. POLST documents are not for every client, but it is important to recognize the situations in which they are helpful and appropriate. Physicians recommend that clients who have a known end of life condition, as well as those who are elderly and in frail health, have POLST documents.

- C. POLST documents will supplement the Advance Healthcare Directives (“AHCDs”) that we are providing to clients now, but we need to take care to make sure they are not contradictory in any way. Most AHCDs or Medical Powers of Attorney are prepared years, even decades, before they become necessary. POLST documents are closer in time to the end of life, and more specific.
- D. Some care needs to be taken to avoid contradictory directives in AHCDs and POLSTs, though the statutes specify that the more recent of the documents will govern if an inconsistency exists.
- E. If clients or physicians initiate POLST planning without contacting their estate planner, attorneys will have to start asking clients if they’ve signed a POLST document as part of any up-dating or other client interactions. The same question should become standard in initial client interviews as well. Nevertheless, there could still be potential for contradictory provisions and misunderstandings by surrogate decision-makers named in older documents.
- F. Older versions of living wills and other end of life documents (like 5 Wishes) may need to be reviewed and possibly amended or eliminated after a POLST document is signed by the client.
- G. These issues don’t require attorneys to create POLST documents, but it appears that estate planners may have a substantial role in coordinating clients/patients and existing estate planning documents to avoid causing more problems than are solved.

II. POLST statutory provisions will impact healthcare given in end of life situations. Wyo.

Stat. §35-22-505.

- A. All healthcare providers have a legal duty to comply with the terms specified in the POLST—EMTs, healthcare providers and healthcare facilities must comply with the orders on the form. Doing so in good faith gives them statutory immunity from civil or criminal liability, as well as regulatory sanction or discipline for professional misconduct.
- B. In the absence of a POLST form, or some other written provider orders or an AHCD available to the provider, consent to life sustaining treatment is presumed.
- C. A POLST form from another state is presumed valid and effective in Wyoming.
- D. Providers must comply whether the doctor who signed the POLST is on the medical staff of the healthcare facility or not.

- E. If a patient with a POLST is transferred from one facility to another, the POLST information is to be transferred as well prior to the transfer.
 - F. A POLST form cannot be made a prerequisite for admission to a healthcare facility. Wyo. Stat. §35-22-506.
 - G. Execution or failure to execute a POLST cannot affect, impair or modify any contract of life or health insurance or annuity or be the basis for any delay in payment. Wyo. Stat. 35-22-507.
 - H. The POLST can be revoked by any means that communicates the patient's intent to revoke, including oral revocation. Any oral revocation is to be documented as soon as possible in writing and signed by the patient or a witness to the revocation. An agent who made the POLST for the patient can also revoke it at any time in a document signed by the agent. A health care professional, agent, guardian or surrogate who is informed of a revocation of a POLST is required to promptly communicate that revocation to the patient's primary care physician, the current supervising health care professional and any health care facility at which the patient is receiving care. Upon revocation, the POLST is void. Wyo. Stat. § 35-22-508.
- III. Practical considerations under the existing POLST rules will need to be discussed with clients. These rules are available on the Wyoming Secretary of State's website by searching for "POLST".
- A. POLST forms may only be on the form approved by the Wyoming Department of Health, which cannot be altered. Forms are available from Department or the Department's website. Health care providers and facilities may rely on a copy of a POLST form as if it was an original.
 - B. The form includes an area allowing the person executing the form to forbid any changes to be made by the surrogate. Physicians indicate that agents and other surrogates frequently disregard AHCD provisions, so this is a big change.
 - C. Form must be signed by patient or surrogate AND physician, and be dated.
 - D. Form is to be printed on gold paper to be easily identifiable for patients and caregivers. A copy of the form is to be posted in a visible area of the patient's place of residence.

- E. All previously issued CPR bracelets and CPR directive forms (Comfort One in Wyoming) and other states shall be considered valid.
 - F. Primary Health Care Providers completing the form with the patient must explain (i) the expected consequences of choices made for each section; (ii) that EMTs might give life-sustaining treatment if the form is not apparent and immediately available; and (iii) how the POLST form can be revoked or changed.
 - G. The person signing the POLST form is (i) responsible for making informed decisions; (ii) encouraged to post the completed POLST form in a visible place in their residence; and (iii) responsible for notifying family members, next of kin, and the surrogate named in the form of the existence of the completed POLST form.
- IV. Attorneys especially, but all estate planners, need to know enough to explain POLST documents to their clients, whether the clients need them immediately, or not
- A. Attorneys may be the first contact a client makes when a bad diagnosis is received.
 - B. Clients may not have heard of POLST documents, either from physicians or public sources, similar to past experience with Comfort One “Do Not Resuscitate orders, which, by the way, have been eliminated completely now.
 - C. Estate Planners should be prepared to connect clients with appropriate physicians to discuss POLST documents.
 - D. Attorneys should ALWAYS obtain a copy of the signed POLST document from the client.
- V. Estate Planners are encouraged to establish communications with physicians who are doing POLST documents for clients
- A. Direct contact in individual cases
 - B. Non-client specific events including physicians to discuss POLST documents, issues and ways to improve the process
 - i. Seminars
 - ii. Bar meeting programs
 - iii. Medical staff meetings at hospitals
 - iv. Medical Society functions
 - v. Programs at service clubs, etc.

- C. Communicate about how to make POLST and Advance Healthcare Directives more useful for physicians and other healthcare providers
- VI. Estate Planners can help get the word out about POLST documents
- A. Media sources—newspaper, radio, television, social media
 - B. Direct contact with all estate planning clients, especially those known to be appropriate POLST patients, or to be care-givers
 - C. Assist with presentations at appropriate organizations, facilities, etc.
 - D. Mailing to clients, particularly those who have Comfort One registration now
 - E. Establish a speaking relationship with local physicians that will be doing POLST documents