



FROM THE SHORE *Calm water still has an undertow — plan before it pulls.*

COMPLIANCE & COUNSEL

HIPAA, CMIA, DPA, AHCD & POLSTs — Oh My!

A plain-English breakdown of the four documents that protect you if you can't speak for yourself — and why each matters in California incapacity planning.

TAMARA L. HARPER, ESQ. • 7 MIN READ • ESTATE · INCAPACITY

An estate plan isn't only about what happens after death. Just as important is who can act for you — and how — if illness or injury ever leaves you unable to act for yourself.

Four documents do that work in California. Two protect access to your medical records, one names who speaks for your care, one turns a seriously ill patient's wishes into binding medical orders, and one keeps your finances running. Together they form the foundation of your incapacity plan — and they keep a court from having to step in.

AT A GLANCE The four documents — and who needs each

01 HIPAA & CMIA Authorization
Lets the people you trust access your protected medical records.

02 Advance Health Care Directive
Names a health care agent and records your treatment wishes.

03 POLST
A physician's order translating a seriously ill patient's wishes into action.

04 Durable Power of Attorney
Authorizes an agent to manage your finances if you can't.

ACCESS & AUTHORITY

First, who is allowed to know — and to speak

Before anyone can make a medical decision for you, two things must be true: they can lawfully see your records, and they have authority to act. These first two documents handle each.

01 HIPAA & CMIA Authorization

These are the two privacy laws — one federal, one state — that lock down your medical records. **HIPAA** (1996) restricts physicians, dentists, and other providers from disclosing your protected health information without your consent. California's **Confidentiality of Medical Information Act (CMIA)** goes further still, with even greater protection against unauthorized access.

Why you need a signed authorization: even those closest to you — spouse, parents, children — must have your written permission to access your records. The people who will manage your assets or carry out your plan need a HIPAA and CMIA authorization on file with your providers and insurer.

There's a very practical reason this matters for trusts. Without a California-compliant HIPAA waiver, your successor trustee likely **cannot obtain the two doctors' letters** needed to establish your incapacity — and a court-appointed conservatorship may become necessary to transition control. That is exactly the expensive, time-consuming process you want to avoid.

02 Advance Health Care Directive (AHCD)

An AHCD lets you state your medical wishes and name someone to speak for you if you can't communicate. In California, a single form lets you name an agent and record treatment preferences, signed with either two witnesses or a notary.

It combines a **living will** and a **medical power of attorney** — letting you state end-of-life decisions and appoint someone to act if you become incapacitated, reducing the risk of family conflict during a crisis. You can specify preferences on life-sustaining treatment such as mechanical ventilation and CPR; many directives also address organ donation.

It works hand in hand with your HIPAA authorization: with the waiver in place, providers can share information with your agent, who then uses their AHCD authority to decide. We recommend that **every adult over 18** — healthy or not — have one. Accidents and sudden emergencies don't wait for old age.

“

You don't need to be sick or elderly for these documents to matter. Accidents and sudden medical emergencies can happen to anyone — and that is precisely when it's too late to sign.

TAMARA L. HARPER, ESQ.

03 POLST — Physician Orders for Life-Sustaining Treatment

A POLST is a **physician order** — not just a legal document — that gives people with serious illness more control over the end-of-life care they receive. Its distinctions from an AHCD matter:

- ◆ **Who it's for:** only individuals with a very serious illness who may not survive long. Not a routine document for healthy adults.
- ◆ **What it is:** a medical order signed by a physician, for those with serious illness or frailty — it translates a patient's wishes into actionable orders.
- ◆ **Its legal force:** California law requires that POLST orders be followed, with immunity for those who comply in good faith.
- ◆ **What it can include:** orders to perform — or not perform — CPR, including a DNR order.

Think of the AHCD as your broader, forward-looking statement of wishes, and the POLST as the specific, immediately actionable order for someone already seriously ill. The POLST **complements** a directive; it does not replace it.

04 Durable Power of Attorney (DPA / DPOA)

A Durable Power of Attorney lets you appoint an **agent** (or "attorney-in-fact") to manage your financial, legal, or health care affairs. The key feature: it stays valid even if you become mentally incapacitated. It covers paying bills, managing bank accounts, handling investments, and dealing with real estate.

Why it's critical: it's a myth that marriage automatically lets your spouse manage all your finances if you're incapacitated. A joint account may be shared, but a 401(k), IRA, or real estate titled in your name alone is **not automatically accessible** — without the right document, your spouse would need a court order.

THE "DURABLE" LANGUAGE

Cal. Probate Code § 4124

A power is "durable" only with language such as: "This power of attorney shall not be affected by subsequent incapacity of the principal." Without it, the document fails the moment it's needed.



The right documents keep a steady course.

Remember

A California Durable Power of Attorney stays in force until you revoke it — or until your death. It does **not** control what happens to your assets afterward; that's the work of your will or trust. The two operate in sequence: the DPA governs while you're living, and your trust takes over once you're gone.

THE WHOLE PICTURE

How they all fit together

Each document has a distinct job and a distinct audience. Read across the row to see what each one is, what it does, and who needs it.

| DOCUMENT | TYPE | PURPOSE | WHO NEEDS IT |
|---|---|--|--|
| HIPAA / CMIA Privacy authorization | <i>Authorization form</i> | Lets trusted people access your medical records. | Everyone with an estate plan |
| AHCD Advance Health Care Directive | <i>Legal document</i> | Names a health care agent; states your medical and end-of-life wishes. | All adults 18+ |
| POLST Life-sustaining treatment order | <i>Medical order (physician-signed)</i> | Immediate, specific treatment orders for the seriously ill. | Seriously / terminally ill patients |
| DPA / DPOA Durable Power of Attorney | <i>Legal document</i> | Authorizes an agent to manage your finances if you're incapacitated. | All adults 18+ |

Together, these four documents ensure the right people have the right authority to act for you — **without requiring a court to get involved**. That protects both you and the people you love, at the moment it matters most.

FOR YOUR READING LIST

- **California AG — Advance Health Care Directives**
oag.ca.gov · forms & your rights
- **California POLST — Patient & Family Resources**
capolst.org · when a POLST is appropriate

A note from counsel

We prepare these documents so they work together — and so they're valid the moment they're needed, not after a court gets involved. A short conversation helps us tailor the set to your family, your assets, and your wishes.

LET'S TALK

Don't leave your care to chance.

Whether you're building your first plan or refreshing an existing one, schedule a virtual or in-office appointment and we'll make sure the right people can act for you.

BOOK A MEETING →

CALL 805-409-0530 ↗

This article is provided for general informational purposes and does not constitute legal advice. For guidance specific to your situation, please contact our office.