



**RSA 137-J: Advance Directives and Do Not Attempt Resuscitation**  
**Frequently Asked Questions & Answers from**  
**Health Provider Education Sessions held October-December 2006\***

**1. Can a notary who is employed by a health care organization (e.g., hospital, nursing home, etc.) sign the advance directive with no witnesses?**

Yes. It is important that person completing an advance directive understand the document that they are signing and voluntarily complete the advance directive document. The notary OR the 2 witnesses OR justice of the peace must be present when the person signs the advance directive. A health care organization should have a specific procedure to make this process operational. It is suggested that an organization's policy not permit a staff member, who is a notary, helping a patient to complete an advance directive be allowed to notarize that patient's advance directive. Use another notary or 2 witnesses. The specific requirements of who can be a witness are found in RSA 137-J:14, I (a).

**2. Does a health facility in-patient DNR order require the signature of the patient or the patient's Durable Power of Attorney for Healthcare (DPOAH) or guardian?**

It is important that a health care organization have a policy and protocol that provides clear documentation of when a patient or their legal representative (DPOAH or guardian) provided consent for a DNR order being written by a physician or ARNP. This may or may not include the signature of the patient or their legal representative on the in-patient DNR order. Refer to RSA 137-J:26 I-V to determine how your health care organization will interpret the statute and establish procedures for in-patient DNR orders.

**3. What is the test or tool to use to determine a patient's capacity to make health decisions?**

There is no single test or question to assess a patient's capacity to make health decisions. It requires clinical judgment. Health care organizations should establish a specific policy and protocol for physicians or Advance Registered Nurse Practitioners (ARNPs) to assess and certify in writing in the medical chart a patient's lack of capacity to make health decisions. This is required to activate the DPOAH. The policy should include a procedure for de-activating the DPOAH if a patient regains their capacity to make health decisions. (See RSA 137-J 7 I (c) for more detail.)

**4. Can an in-patient DNR order be written by a physician without a patient's (or the patient's DPOAH's) explicit consent if the physician believes that CPR is not medically appropriate?**

The law requires 2 physicians or an ARNP and a physician, who both examine the patient, to write a DNR order for a patient who has not or can not consent (see RSA 137-J:25 I. c.).

**5. What if a person is not able to sign their Advance Directive?**

It may be signed by another person in the principle's presence and at the principle's express direction. (See RSA 137-J:14 II.)

**6. Can a person request pain control or comfort measures in their Advance Directive or Portable-DNR?**

Yes

**7. Should a health care organization still seek guardianship for a patient who has authorized their DPOAH to make decisions even against their objections?**

If the patient persists in objecting to treatment that is recommended by the physician and agreed to by their DPOAH then it is advisable to seek guardianship for a more permanent determination regarding competency and decision-making authority.

**8. Can a person who has authorized their DPOAH to make treatment decisions against their objection change their mind about the person who they had selected as their DPOAH thereby revoking their advance directive?**

Yes

**9. Must the person's Advance Directive give permission to the DPOAH to consent to a DNR for that health care agent to agree to it with the physician or ARNP?**

Yes, the person's advance directive must give the DPOAH permission to not start or to discontinue life sustaining treatment in order for the DPOAH to consent to the DNR (see RSA 137-J:26 III.). The person may also wish to write that they want "DNR" or "no CPR" in their advance directive (see 137-J25 I. b.).

**10. Can a mentally ill person provide the DPOAH with the authority to override their wishes?**

A person must be able to understand what they are doing when completing an advance directive. The 2 witnesses or notary (or justice of the peace) who signs the advance directive document are indicating, by their signature, that the person understands the advance directive and is voluntarily completing it. Anyone who questions the mental competency of the person who completed the advance directive may pursue action in the Probate Court.

**11. Can a person select more than one individual to be named as their primary agent for DPOAH?**

Yes, but the person must specify in writing in the advance directive a decision-making process for the group of individuals they select or the health provider will recognize the first individual identified as the primary DPOAH. (See RSA 137-J:18)

**12. Are contract employees considered a health provider employee under the witness requirements?**

Yes, if the contracted employee is working under the supervision of the health care organization then only one should be used to witness the advanced directive and the other person should be independent of the health care organization.

**13. Can medically administered hydration and nutrition ever be withdrawn or withheld by an attending physician without the patient or DPOAH's consent?**

Yes, if medically administered hydration or nutrition would have the unintended consequence of hastening death or causing irreparable harm as certified by the physician (see RSA 137-J:7 III. c.)

**14. Does a health care organization have to ask a person if they have a Portable-DNR when the person is admitted to their health care facility?**

New Hampshire law does not require asking a health facility to ask a person whether they have a Portable-DNR when admitted to a health facility but is a recommended practice. Also, it is a recommended best practice that anyone who is admitted to a health facility who has an advance directive be asked if it currently reflects their preferences or choices.

**15. Does it require 2 physicians or ARNPs to stop cardio-pulmonary resuscitation (CPR)?**

No. A physician or ARNP can determine in the process of providing CPR that it is not achieving the desired outcome and stop the treatment.

**16. Can a DNR be suspended or cancelled when a person undergoes surgery?**

Yes, with the patient's consent.

**17. Does New Hampshire law recognize portable DNR orders from other states?**

The law does not explicitly reference DNR orders from other states. Refer to RSA 137-J:28 I. for more detail on the intent and liability protection of the DNR statute.

**18. Must a physician or health provider comply with a patient's advance directive or request for DNR if the physician or health provider objects on moral or ethical principles?**

No. Refer for more detail to RSA 137-J:7 IV and RSA 137-J:28 III.

**19. Can a Portable-DNR order include instructions for a partial DNR?**

No

**20. Can a photocopy of the Portable-DNR be sent with a long-term care patient who leaves the facility for medical treatments and diagnostic tests?**

No

*\*Disclaimer:*

*This summary is not intended as legal advice. Please consult your organization's counsel, risk manager and/or bio-ethics committee for further information.*