

# Authority of Family Members or Soldiers to Act on Behalf of One Another

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## **Authority of Family Members or Soldiers to Act on Behalf of One Another**

The first question that must be answered is how does someone convey this authority? By ensuring everyone has the following documents:

1. HIPAA Release Form: this is the form that allows the designated people to discuss the principal's health with medical professionals and, if appropriate, obtain copies of the appropriate medical records
2. Health Care Powers of Attorney: medical professionals cannot implement medical procedures, other than those required in an emergency to preserve life, without permission from the patient or designated health care proxy; this could lead to significant medical issues if the patient is unable to consent and hasn't appointed a health care proxy. These are probably the most important legal documents anyone can have.
3. Advance Directives ("Living Wills"): these may be the second most important legal document when it comes to one's personal and medical needs. This document normally becomes relevant when one of the following conditions exists: (a) the patient is diagnosed with a terminal illness (i.e., is presumed to pass within six months regardless of medical intervention); (b) is persistently unconscious (i.e., in my terminology, the patient is "brain dead"); or (c) the patient has an irreversible, untreatable condition that will result in death (i.e., an "end-stage condition."). Without

this form, a patient would be maintained on life support regardless of medical condition until the patient eventually passes due to deterioration of the body and organs. This is horrible for the family. My brother-in-law was an architect who collapsed in the middle of the road with a brain aneurism and was maintained on life support for 12 years. His wife and 9-year-old son had to live with that for all those years and it adversely affected the son, not to mention his wife.

4. Property & Financial Powers of Attorney: Everyone has financial issues that may need to be addressed by someone else under certain circumstances. If a soldier is deployed, who can access the soldier's financial records if a SNAFU should occur? Who can re-register a vehicle if the tag is expiring? Who can take care of ongoing periodic expenses, write checks, etc.? What about filing federal and state income tax returns? These are just a few reasons for having durable powers of attorney (DPOAs) for property and finance.
5. Unique Deployment Issues: Military personnel are unique in that they are expected routinely to leave their homes and families for extended periods of time, often without the ability to communicate with those back home. It is essential for military personnel to have agents who can access their financial, medical, and related records.
  - These authorizing documents must be enforceable and comprehensive.

- We do not want a repeat of the issues encountered by family members during Operation Desert Shield/Desert Storm who were unable to access financial accounts to pay routine expenses.
- Congress tried to resolve this through federal legislation, but we are once again encountering issues with financial companies refusing to accept DPOAs that are over 5-years old, 3-years old, 1-year old and even newer than that.
- It is incumbent upon attorneys to understand the resources available when such situations arise.
  - For guard and reserve personnel, extended deployments can cause problems with civilian employment. Assistance is available through the Reserve Officers Association (ROA) to help resolve such issues.
  - For single parents, the military requires that a guardianship or caregiver plan be in place for all minor children. Failure to take appropriate action can be grounds for separation from the military.

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