

5 Tips When Notarizing For Medical Patients



Notarizing for medical patients can be among the most challenging assignments to complete, and often requires far more than basic Notary skills.

Clients in healthcare facilities can be very ill, heavily medicated or otherwise impaired, which means the notarization could require extra time, compassion and skill.

Often, patients who need to sign documents have issues with alertness, positive identification, signing ability and other challenges you won't find covered in your Notary handbook.

In this setting, clients are at their most vulnerable. They're often stuck in a room with equipment connected to them that beeps or buzzes; arm bands or leg stockings that squeeze their limbs; and IV bags hanging on poles, etc. They may be lying down, draped in a gown and thin blanket, and not physically or mentally at their finest.

In this situation, they may need significant documents notarized, such as powers of attorney, which gives another person temporary or long-term power to make their medical or financial decisions. Here are tips for notarizing documents for clients in hospitals, hospices and other healthcare facilities:

1. Schedule Extra Time for Hospital Notarizations

Consider total time versus uninterrupted time. After you find parking, which is usually not near the entrance of the facility, you may walk through a maze of hallways and elevators. There will likely be staff interruptions for taking vitals, making notes and conducting medical procedures, such as X-rays and changing IVs. Book a realistic amount of time for the appointment so that you won't rush the client or be tempted to take shortcuts.

2. Speak To an Alert Signer

You should [always make sure your signer is alert](#) and aware of what's going on before completing the notarization. Engaging your client in everyday conversation, as well as asking casual questions about the document, should help you decide if it is appropriate to proceed. If you are unsure, look to a nurse or social worker to see if there's anything prohibiting them from signing. Follow the best practice of noting your client's behavior and awareness in your journal.

If the signer's family or other visitors are causing any kind of commotion, you might ask them to step out momentarily to [ensure the signer is not being pressured](#) or directed.

3. Know Guidelines for Alternatives to Full Signatures

Your client's medical condition may make signing the document difficult. Make sure you're familiar with your state's guidelines regarding alternatives to a full signature. If witnesses are present and available, you may be able to have the patient [sign with a mark](#), such as an "X" or even a thumbprint. If your signer is unable to sign, your state's laws may allow the patient to direct [another person to sign his or her name](#).

4. Understand the Alternatives to ID Documents

Many patients do not have their ID with them at the hospital, making the task of verifying your signer's identity challenging. Again, you need to know what your state's rules and guidelines say about what is acceptable ID — especially what is an acceptable alternative to an identity document. For example, does your state make provisions for the use of [credible witnesses to identify a patient](#)? If so, what are the requirements? If not, what other alternatives are there? When in doubt, call the [NNA Hotline](#) for assistance.

Taking assignments at medical facilities requires a little extra flexibility. Being fully prepared — down to bringing extra tools such as a clipboard and special pens for patients with arthritic or damaged hands — will go a long way toward making these types of appointments as streamlined and flawless as if performed in an office setting.

5. Know the Requirements of The Facility

Apart from the Notary-related requirements, it also is helpful to ask about any non-notarial rules so you do not encounter any unexpected obstacles or legal issues that impact the acceptance of the document.

For example, if you go to a nursing home or long-term care facility in California to notarize an Advance Health Care directive, the signing must be witnessed by a patient advocate called an ombudsman. This person ensures that the patient understands what they are signing, is alert and agrees with the health care decisions detailed in the document. Without this special witness, the directive will not be honored at the facility and could be challenged at another facility.

Most other states have similar requirements. So it's advisable to find out what type of document you're expected to notarize ahead of time because ombudsmen are not employed by the facility and generally only work by appointment.

Psychiatric and behavioral centers also may have special requirements. Some facilities have policies barring patients from signing documents because they may be in an altered state or taking psychotropic medications. Either of these situations would impair their ability to make informed decisions. Some facilities will not allow you beyond the front desk.

For these assignments, check with the facility directly about their policies. The person hiring you may not be aware of them or may have inaccurate information.

If policy is not an issue, take extra care screening the signer for willingness and awareness, and make sure to document the steps you take in this environment. I ask for a doctor's verification that the patient can sign for themselves before proceeding.

Possibly contacting a Social Worker, Physician, nurse's station, etc. at that facility could be of help in this situation and be of assistance and direction on how to proceed.

A Notary's Role in Preventing Elder Financial Exploitation



In Montana, as in every other state, there has been a significant increase in the number of cases of elder financial exploitation. What is particularly concerning is that these crimes are often committed with a Notary Public as an active, though sometimes unwitting, accomplice. This is certainly not the role Notaries should play in our society.

One recent case involved an elderly lady with dementia whose son used her power of attorney to sell her home and drain her bank accounts of over \$240,000. She was left destitute — dependent on Medicaid and state-funded nursing care — a far cry from the well-planned and comfortable golden years she and her recently deceased husband had worked and saved for during their 60 years of marriage.

How was the Notary involved in this crime? She admitted to the authorities that she had notarized the power of attorney even though the son was forcibly directing his mother to sign the document when she had no idea what she was doing. By the time the crime was discovered, the son had squandered most of the money and left the country. The banks, the title company, and the other institutions involved in this case all absolved themselves of accountability for the same reason: They relied upon the notarized power of attorney as sufficient authorization for the transactions carried out by her “lawful” agent. And the Notary? Her defense was that she thought all she had to do was identify the elderly woman as the signer of the documents.

Protecting the Public

The National Notary Association and the Delaware Notary Association advocates that Notaries, as public officials, play a key role in protecting the public. In the NNA's White Paper, “Why Notarization Is More Relevant and Vital Than Ever,” published in 2011, the case was made that Notaries in the 21st century lend credibility and legitimacy to documents requiring the imprimatur of the Notary Public. The final paragraph summed up the message well:

“Properties are conveyed, contracts are honored, adoptions are finalized, estate plans are established and medical wishes are respected — all because documents bearing the authenticating signature and seal of a Notary Public are trusted. The notarial act is the foundation of trust and the Notaries who perform them are Society's guarantors of integrity and authenticity.”

Those very elements of trust, integrity, and authenticity are called into question by some of the most egregious instances of elder financial exploitation, like the one above.

Sadly, elder financial exploitation is often committed by family members and caregivers — the people who should be most protective of the welfare of these vulnerable individuals. These crimes are

particularly heinous because they are deliberate and premeditated, and frequently the damages cannot be recovered in time to help the victims.

A man who claimed to be a caregiver for an elderly gentleman in a small town in Montana is now facing over twenty years in prison for multiple counts of elder abuse and financial exploitation. A friend of the caregiver, who notarized several of the documents purportedly involved in the scheme, is also under investigation for her part in defrauding the victim of assets and property worth hundreds of thousands of dollars. At the heart of the state's prosecution is the contention that the victim was mentally incompetent to handle his affairs, and the caregiver and his accomplice stole his entire estate by means of documents that were forged and fraudulently notarized. The trial is scheduled for early next year.

With the proliferation of identity theft and the billions of dollars in cost to individuals and society at large, Notaries, of course, must diligently focus on demanding the signer's physical presence and proof of the signer's identity. That isn't all though; the Notary should determine that the signer is intentionally signing the document and is aware of what the document is. The NNA's *Notary Public Code of Professional Responsibility*, Guiding Principle III, states:

"The Notary shall require the presence of each signer and oath-taker in order to carefully screen each for identity and willingness, and to observe that each appears aware of the significance of the transaction requiring a notarial act."

Unfortunately, while Notaries are diligent in assuring that grandma is physically in their presence and is indeed the person named in the documents, they often do not realize that they should apply the standard of reasonable care to assessing grandma's ability to knowingly and willingly sign those documents as well. Most states' Notary laws don't specifically require Notaries to do so. However, to protect the public in general and our eldest citizens in particular, it is imperative that Notaries take the extra step to verify that signers of powers of attorney and other high-value documents have voluntarily signed their names and understood what their documents mean if the trust that is implied by the notarial seal is to be maintained.

There are a number of things that Notaries can do to become a force in preventing elder financial exploitation and abuse.

Become Educated

Professor Emeritus Malcolm Morris of the Northern Illinois University College of Law, in his presentation during the NNA 2014 Conference in Phoenix, issued a challenge for Notaries to educate themselves when he noted that Notaries have the choice to become either "functionaries or professionals." A functionary does the minimum; a professional takes the time to learn as much about the duties and responsibilities of the office as possible and prepares for handling unusual and complex situations before they arise. This is particularly necessary for preventing elder financial exploitation.

Professional Notaries should become familiar with the kinds of documents most commonly involved in elder exploitation. Learning the differences between the types of powers of attorney (general, limited, durable and medical) and knowing the types of documents that are used to transfer property (quitclaim deeds, deeds of trust/warranty deeds, titles) prepares the Notary to perform the requested notarization with confidence and a basic comprehension of the potential consequences of the document being signed. It's not necessary to have extensive knowledge about these documents; simply having a general understanding of their purpose creates a strong foundation for the professional Notary, who can then be extra vigilant when signers present themselves for notarization.

It's also important for Notaries to recognize that not every situation of possible elder financial exploitation involves the elderly person directly. As shown by the two examples above, the initial fraud occurred when an enabling document — the power of attorney — was negligently or fraudulently signed and then notarized. Subsequently, the document was used by the agent to sign other documents, many requiring notarization, to perpetrate additional crimes.

In order to thwart those secondary frauds, Notaries must know and follow their state's regulations about verifying an agent's authority to sign in a representative capacity. Some states, like Montana, require that a Notary must verify the signer's capacity before notarizing a document signed by an attorney in fact, trustee, or guardian. However, in most states, Notaries are not explicitly required to do this.

It must be noted that some states' statutes are silent on this matter and other states specifically prohibit Notaries from requesting authorizing documents. Every Notary must know exactly what his or her state

expects regarding the verification of an agent's authority and capacity to sign on behalf of another person or entity, and then must act accordingly.

Assess the Situation

It is often difficult to determine the potential for abuse. Like many of the situations that Notaries face, reality doesn't always match the model circumstances. Professional Notaries must know what the warning signs are and prepare themselves in advance to deal with the complex and unusual conditions that can occur when dealing with elderly signers or those who are signing on their behalf.

Some of the red flags include:

- Someone other than the signer requests the notarization
- You have been told that the signer is sedated or medicated
- The signer appears confused, lethargic, tired or sleepy
- The signer appears reluctant to sign the document
- A friend or family member seems to be pressuring the signer to execute the documents
- The signer/agent seems to be in a rush or hurry to have the notarization completed

Not every one of the above situations is always a problem, of course; for instance, it's not that unusual for a person to ask if you will notarize something for a spouse or a friend. Yet when an adult child unknown to the Notary asks the Notary to come to an elderly parent's home to notarize end of life documents, the Notary should be more alert for signs pointing to the possibility of fraud.

Manage the Notarization

Once the signers present themselves for the notarization, it's critical for the Notary to assume control of the notarial process by directing it from start to finish. Unless witnesses are needed, the Notary should seriously consider removing everyone but the signer from the room. This offers the Notary a one-on-one opportunity to directly assess the signer's awareness and intention to sign the document and to confirm that the signer is free from duress or pressure to sign the documents. This experience culminates in the signer either acknowledging his or her signature to the Notary or swearing to any required oath for the notarization.

Remember, performing a notarization is not an Olympic speed event. Points aren't earned for completing a notarial certificate in record time. Don't let the customer or other impending duties pressure you into rushing through the process. Take the time necessary to ascertain what you need to know and to explain to the signer what you are doing. Ultimately, this will ensure that you perform the notarization properly.

Create the Record

The final way that Notaries can combat elder financial exploitation is to complete a detailed record of the transaction. The [journal entry](#) is the official record of the transaction, and together with the notarial certificate on the document itself, provides confirmation that the document was properly signed or acknowledged in the presence of the Notary by the signer or legally authorized representative, who willingly executed the document for its intended purpose.

A Notary who records the specific details of the event in a journal provides invaluable information should a future challenge arise about the legitimacy of the transaction. It is not necessary to limit the entries in your journal to only those elements required by law or those suggested by best practices. Think of your journal as your diary and include any data that you think might be important if there would ever be a question about the transaction or the notarization. For example, you might want to record that the notarization was requested by the signer's caregiver; that the caregiver was excused from the room before the notarization took place; who, if anybody else was present; that you visited with the signer for several minutes and determined that he/she was aware of the document, indicated that he/she

understood its purpose, and intended to sign it for that purpose. That's great contemporaneous evidence to complement the [notarial certificate](#)!

As the "guarantors of integrity and authenticity" Notaries Public can and should play a critical role in deterring, preventing, and combatting the scourge of elder financial exploitation. A notarized document should always be a shield, not a weapon, in the fight against elder financial abuse.

Tips When Notarizing For Elderly Signers



Older signers often have medical, physical or personal challenges that can make it more difficult to complete a notarization for them. But the following tips can help make notarizing for a senior proceed more smoothly.

1. **Choose a time when the signer is most relaxed and coherent.** Try to arrange the appointment with family members or caregivers ahead of time, to ensure that you don't show up when the signer is agitated, tired, or otherwise in distress. The signer's attention should be focused on you and on the task at hand.

2. **Make small talk.** Having a short conversation with the signer can help not only put him or her at ease, it can also help you gauge the patient's awareness. Ask questions about the patient's interests, current events, or any other topics that require some measure of understanding in order to respond.

3. **Explain yourself.** While it is never your job to offer advice, you should take the time to explain your role as a third-party witness to the document transaction, and that it is your job to properly identify the signers and make sure they know what it is they are signing. Having a clear understanding about the process can help ease the signer's anxiety.

4. **Seek clarification.** A good way of gauging a signer's awareness is to simply have them repeat back to you what it is they are signing. If they are unable to do so, this may be a sign that they are not aware, and simply going through the motions.

5. **Observe the signer's surroundings.** If the patient's family or caregivers are present, be on the look-out for any signs that might indicate that they are coercing the patient to sign the paperwork, especially if they have any vested interest in the documents being signed, such as a financial power of attorney. In some cases, just taking the time introducing yourself and explaining your role as a Notary first may help put an older signer at ease. However, if you have reasonable doubt concerning the [signer's awareness](#) and [willingness](#), you should halt the notarization at once and record in your journal the reason for stopping the notarization.