



Who Will Decide for Mom?

James A. Jaeger

Hill, Glowacki, Jaeger & Hughes, LLP

ijaeger@hill-law-firm.com

608-244-1354

www.hill-law-firm.com

[The Medical Context]

- Longer Life Expectancy
- Prevalence of Dementia
- “Advances” in Medical Technology
- Legal and Ethical Systems have not kept up

[The Legal Context]

- Case Law
 - *Karen Ann Quinlen*
 - *Nancy Cruzan*
 - *Terry Schiavo*
 - *L.W.*
 - *Edna M.F.*

[The Statutory Context]

- “Natural Death Act”—Declaration to Physicians
- Power of Attorney for Health Care
- DNR Bracelet
- “Family Consent” (not yet passed)

[Declaration to Physicians]

- Oldest AMD In Wisconsin
- Direct communication patient to medical provider
- When Effective
 - Persistent Vegetative State
 - Terminal Condition

[Declaration to Physician]

- Treatments Affected
 - Life Sustaining Measures (Vents, CPR etc.)
 - Tube Feeding
 - Can't Use to Demand heroic measures
- Most Relevant Use: When there is not a surrogate decision maker.

[DNR Bracelet]

- Newest AMD in Wisconsin
- Direct communication patient to medical provider
- Patient must be in terminal condition
- Prescribed by Doctor

[DNR Bracelet]

- Directed to First Responders
 - Fire Fighters
 - EMT's
 - Police Officers
- Do not resuscitate from cardiac or respiratory arrest
- Terminally Ill individuals in community.

Power of Attorney for Health Care

- Newest and Most Widely Used
- Patient communicates with “agent” who will communicate with Medical providers
- All Health Care Decisions—not just end of life

Power of Attorney for Health Care

- Takes Effect When Incapacitated
 - Unable to receive, evaluate or communicate health care decisions
 - Two M.D.'s or one M.D. and one Psychologist certify in writing (activation)
- May Be Revoked “at any time”
 - Destroying or Defacing
 - Revoke Orally
 - Revoke in Writing

Power of Attorney for Health Care

- Who Can execute?
 - Over 18
 - Of “Sound Mind”
- Who can witness
 - Over 18
 - Not a relative
 - Not a Health care provider (except Social Workers and Chaplains)

Power of Attorney for Health Care

- Who can be a Health Care Agent
 - Anyone (including family)
 - Not a Health Care Provider (unless a family member)
- Who should be the Health Care Agent?
 - Difficult Decision

Power of Attorney for Health Care

- Difficult and intensely personal decision
- My Criteria
 - Shares or will support your views and values
 - Strong enough to make difficult decisions
 - Willing to be your advocate in the system
 - Forget Gender, Birth Order etc.
 - Geographical Proximity: all other things being equal this can be a factor—but not determinative.

Power of Attorney for Health Care

- Theory of POAHC: The agent will know your wishes and carry them out.
- Substituted Judgment, not Best Interests (unless your wishes are not known)
- Different From Guardian
- Note that wishes of principal take precedence “at any time”

Power of Attorney for Health Care

- The Conversation
 - Principal needs to communicate his/her wishes to agent
 - Should also communicate to other family members to avoid misunderstandings
 - Not necessarily fill in “wishes” portion of POAHC document

Power of Attorney for Health Care

- Sources for “Conversation”
 - *Gift to Your Families* Booklet
 - “Addendum”
 - *Go Wish* Cards
- Role of Chaplains in Conversation
 - Probably Not at Signing
 - Counseling with Patient or Agent at Bedside

Power of Attorney for Health Care

- Specific Issues In Document
 - Nursing Home/CBRF
 - Tube Feeding
 - Decisions if Pregnant
 - Organ/Tissue Donation
- In General—agent needs to know patient's general philosophy of life, health and death.

Power of Attorney for Health Care

- Agent Who Does not Carry out Wishes
 - Counseling with Agent as to his/her role
 - Proceeding to Review Agent's Actions under Ch. 155
 - Guardianship

Power of Attorney for Health Care

- Power of Attorney for Health Care v. Guardianship
 - Different decision making standards
 - Substituted Judgment
 - Best Interests
 - Appointment of Guardian does not automatically revoke POAHC under new Law

Power of Attorney for Health Care

■ Tube Feeding

- POAHC: Whatever document says

- Guardianship

- If persistent vegetative state, guardian can withhold or withdraw

- If not persistent vegetative state, guardian can only withhold or withdraw if wishes of principal are known (*Edna M.F.*)

[Suggested Readings]

- *The Long Goodbye* William Colby
- *Unplugged: Recovering the Right to Die in America* William Colby
- *The Good Death* Marilyn Webb
- *How We Die* Sherwin B. Nuland
- *A Gift for your Family* State Bar of Wisconsin