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The Importance of Having a Health Care Proxy

By James S. Rizzo, Esq.*

A Health Care Proxy falls within the three core documents all persons 18 or older should complete (the other two being a Will and Power of Attorney). It is necessary when you have the temporary inability to make medical decisions for yourself and more often when you are stricken with a permanent inability to make such decisions and have been declared to have little to no likelihood of survival. Understandably, thinking of yourself in an end of life situation without any capacity to make decisions is an awful thought. However, for most people, the thought of being kept alive in that state by artificial means for weeks or months on end is much worse.

A Health Care Proxy authorizes another individual (usually a spouse, significant other or adult child) to carry out your health care wishes and, among other powers, allows him or her to enter a Do Not Resuscitate Order (“DNR”) on your behalf to relieve an end of life situation. Generally, without a Health Care Proxy all reasonable medical treatments will continue to be provided and people may be kept alive by artificial means indefinitely or until a court order can be obtained to remove such measures.

A Health Care Proxy is usually the shortest and fastest estate planning document to complete. It requires the appointment of a primary agent and successor agent along with their contact information, including phone numbers, which should be kept current. Once completed, a copy should be given to your primary care physician and any other facility where you obtain medical treatment. Your primary care doctor should have your Health Care Proxy saved electronically so another facility can quickly obtain it when authorized and necessary.

An up to date Health Care Proxy form should reference and specifically authorize your agent to obtain and review your medical records in compliance with the Health Insurance Portability and Accountability Act of 1996 (HIPAA) privacy regulations. This allows your agent the discretion, among other powers, to confirm the severity of your medical condition to family members and/or seek a second opinion if warranted. Also, if you are a registered organ donor or wish to become one, such should be listed in the Health Care Proxy to ensure your wishes are known and carried out.

The persons you select as primary and successor agents should be aware of your wishes and beliefs when it comes to end of life issues. However, there may be situations where your health care agent may falter or “hope for a miracle” and keep you alive by artificial means longer than you would have preferred if you had the capacity to make the decision. For this reason, a Health Care Proxy should contain a specific, maximum number of days your agent may wait to

authorize the DNR order. However, after such time expires your agent is then directed to enter such an order on your behalf. Other practical reasons for specifying a timeframe in your Health Care Proxy are if you have relatives living out of state that would need to be notified or consulted prior to your passing or you wish to give your agent time to seek a second medical opinion.

A Health Care Proxy takes little time to complete yet can save your family and loved ones many weeks or months of emotional turmoil. It can also avoid escalating legal and medical costs if your condition allows you to be kept alive indefinitely by artificial means. As with all estate planning, the peace of mind you provide yourself and your loved ones far outweighs the time and expense of getting your core documents in order.

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Last Revised: June 1, 2017