The Responsibilities of Being a Health Care Proxy

(Agent, Surrogate, Power of Attorney for Health Care)

If you have been asked, or if you are in a position to make medical decisions for someone else, this Memorandum is for you. If you have been named as someone’s medical power of attorney in an advance directive, then you may be referred to as the person’s proxy, agent, attorney-in-fact, surrogate, or representative. These are all essentially the same job. Even if you have not been named, you may be called upon to participate in medical decisions for close family or friends who are in a medical crisis and cannot speak for themselves.

Your duties depend on what the person’s Health Care Proxy and/or Living Will says and upon state law. Read their advance directives and ask about state law. Your duties begin when the individual loses the ability to make health care decisions on his or her own for either mental or physical reasons. And you can also give support and be an important part of their decisions long before that happens.

In general, you will have authority to make any and all decisions a patient would make for him or herself, if able. This includes:

1. Receiving the same medical information the individual would receive.
2. Conferring with the medical team.
3. Reviewing the medical chart.
4. Asking questions and getting explanations.
5. Discussing treatment options.
6. Requesting consultations and second opinions.
7. Consenting to or refusing medical tests or treatments, including life-sustaining treatment.
8. Authorizing a transfer to another physician or institution, including another type of facility (such as a hospital or skilled nursing home).

The toughest decisions you may have to make will concern the beginning or stopping of “life-sustaining treatments” (life supports). It is important to understand what the person themselves would want.

Possible Steps to Follow When Making Decisions (some examples using the name Sally, or mother)

1. **Find out the medical facts.** This requires talking to the doctors and getting a complete picture of the situation. Questions you can address to medical providers (using “mother” as an example):
• What is the name of mother’s condition? If you can’t say exactly what’s wrong, what are the possibilities?

• Are tests needed to know more? Will the outcome of more testing make any difference in how you treat her, or in how she wants to be treated? (If not, why do the test?)

• What is the purpose of each test? Do these tests have risks associated with them? Is the information you need worth the risk of the test?

• What is her condition doing to her now? Please explain her symptoms?

• What usually happens with this disease/condition? What is the most likely course this disease or condition might take?

• How severe or advanced is her case?

2. Find out the options. Make sure the physician describes the risks and benefits of each option. Here are some questions you may want to ask:

• How will this option make Sally improve or feel better?

• What is the success rate statistically? How do you define success? ? (It may not be what mother/Sally would consider a success.)

• Can this procedure be done on a trial basis and then reevaluated? What is an appropriate amount of time for a trial? Are you willing to stop it after an agreed-upon trial?

• What will it mean to her quality of life?

• What is her prognosis? Do you feel she could die within six weeks? A year?

If she is to die, how might treatment affect the circumstances of her death? (For example, will it likely require hospitalization instead of home care?)

• What are the possible side effects of this treatment?

• What option do you recommend, and why?

3. Try to figure out how Sally/mother would decide if she knew all the facts and options. You have three possible approaches to making the decision:

• One - If you know her preferences, follow them. Even if you do not agree with them. It is still HER life.

• Two - If you do not know Sally’s wishes for the specific decision at hand, but you have evidence of what she might want, you can try to figure out how she would decide. This is called substituted judgment, and it requires you imagining yourself in the patient’s position. Consider her values,
spirituality, religious beliefs, past decisions, and past statements she has made. The aim is to choose as Sally/mother would probably choose, even if it is not what you would choose for yourself.

• Three - If you have very little or no knowledge of what mother would want, then you and the doctors will have to make a decision based on what you believe any reasonable person in the same situation would decide. This is called making decisions in the patient’s best interest. Evaluate the benefits and burdens of the proposed treatment. For example, will the treatment cause her pain or suffering? Or prolong her distress? Is it likely to make her better?

If a loved one or friend or fee-based client has named you as their Medical Power of Attorney.....

DO prepare in advance with the individual. Learn what is important to your loved one/friend/client in making health care decisions. Do this long before he or she is ill or loses the ability to decide. Talk about beliefs and values regarding living, and dying. Talk about spiritual beliefs.

DO make yourself and your role known to medical staff. Make sure the advance directive is in the medical chart. Keep a copy for yourself, handy, to show to people involved in the individual’s medical care. Keep in touch with these people.

DO stay informed about the person’s condition as it changes. Medical conditions change and staff at a hospital or other facility can also change. Identify the person who can best keep you informed of the individual’s condition. Stay involved and be flexible.

If you are not a family member, DO keep the family informed, if any and if appropriate. You may have the legal authority to make medical decisions even if family members disagree. However most proxies are more comfortable if there is agreement among loved ones. Good communication can foster consensus; and you may also need help in resolving family disagreements. If needed, ask for a palliative care consult, or for the facility’s patient representative or ombudsman, social worker, clergy or spiritual advisor. Or ask for the ethics committee or ethics consultant.

DO advocate on the patient’s behalf and assert yourself with the medical team, if necessary. Some medical people may not be as comfortable as others with your involvement. You may disagree with the doctor’s recommendations. It can be challenging to disagree with medical professionals and institutional authorities. Be tactful, but also be assertive. If their resistance becomes a problem, or if you feel you are not being heard, ask for help. Again, you can ask for help from the facility’s patient representative or ombudsman, a social worker, clergy or spiritual advisor, ethics committee or ethics consultant.

It is an honor and a privilege to act on behalf of another when they cannot act on their own behalf. Remember why the person asked you to serve and congratulate yourself for being willing to serve in this compassionate capacity on behalf of a person you care about.