



Family Health Care Decisions Act (FHCDA) and how it affects hospitals in New York City

New York's Family Health Care Decisions Act (FHCDA)

•Went into effect June 1, 2010. Leaves in place (i) laws that allow for the appointment of legal guardians and (ii) the health care proxy law (which allows a patient to appoint a health care agent to make health care decisions in the event the patient loses the capacity to do so).

Step 1 – Can the patient make his/ her own decision? If yes, then the FHCDA does not apply

Step 2 – If no, we ask if is there a legal guardian or health care proxy? If yes, then the FHCDA does not apply

Step 3 – If there is no legal guardian or health care proxy, then the FHCDA does apply and it specifies who has legal authority to make health care decisions, using the following surrogate list (in list of priority)

- Spouse or domestic partner.
- Adult child.
- Parent.
- Sibling.
- Close adult friend or relative familiar with the patient's views about health care.

Case Study #1 of the FHCDA

Facts

- In 2007, Patient John signed a health care proxy naming his then loving daughter, Susan, his proxy to make all health care decisions for him in case he became incapacitated.
- Within a year, Father John and his daughter had a massive blowup resulting in neither one of them contacting the other for the past two years. John has made mention that he doesn't want to ever see or communicate with daughter Susan for the rest of his life.
- In the interim, John's son, Tom, has been taking care of his father, paying all his bills and making sure his needs are met. John is now hospitalized and in a coma due to a stroke.
- Son Tom expresses to the hospital his wishes to make his father's medical decisions under the FHCDA. Daughter Susan shows up at the hospital and disagrees with Tom's health care decisions regarding her father.

Question: Who should the hospital listen to Tom or Susan regarding their father's healthcare decisions?

Case Study #2 of the FHCDA

Facts

- Patient Mary is placed into the hospital and also has severe dementia. Her live-in companion for the past 5 years, Alfred, now seeks to invoke “surrogate” powers under the FHCDA.
- Mary’s only child, Steve, opposes anything authority that Alfred seeks to have regarding his mother.
- Steve asserts that he is the sole “blood” relative of Mary and that his mother has been a widow for the past 7 years since his father died during their long marriage.

Question: Who has the authority to make healthcare decisions for Mary since her state of dementia makes her incapable of making decisions for herself? Companion Alfred or son Steve?

Case Study #3 of the FHCDA

Facts

- While in the hospital for a routine procedure, patient Jerry expressed in a conversation to his physician Jones and nurse Smith, during a bed checkup, that if his treatment ever gets critical and he is put on life support, his desire that all life support efforts be withdrawn. The doctor and nurse joke with Jerry that his condition is so benign that this scenario would never happen and they proceed to discuss the Yankees defeat by the Texas Rangers.
- Within that week, patient Jerry's routine procedure takes a severe turn resulting in internal bleeding and organ shutdown. Dr. Jones remembering his conversation with Jerry, decides to remove all life support from the patient.
- Upon hearing this decision, Jerry's wife, Selma, becomes hysterical and demands that the life support machine stays hooked up to her husband.

Question#1: What should Dr. Jones do, follow Jerry's wishes or listen to Selma, the wife?

Question#2: Would this answer be any different if wife Selma, held a Health Care Proxy?

Question#3: Would this answer be any different if wife Selma held a Power of Attorney?

Case Study #4 of the FHCDA

Facts

- The hospital medical staff has made a determination that patient Sara is incapacitated. She believes that water is flowing through her veins and the CIA is behind this plot, using her as an experiment. Sara is very verbal to all the doctors, nurses and family members regarding her beliefs.
- Sara's adult daughter, Betty, consults with the hospital staff and together they believe there is a procedure that can help Sara. Sara vehemently objects to the procedure, thinking that the doctors are additional CIA operatives who now plan to inject rat poison in her veins and refuses to allow the hospital to treat her.
- Everyone agrees that it would be best for Sara to undergo the procedure except for Sara.

Question: What should the hospital do?

Case Study #5 of the FHCDA

Facts

- Patient Wilson is brought into the hospital in a coma. A Guardianship action is immediately commenced and a Court Appointed Guardian is named. The Court Appointed Guardian has never met his ward, Patient Wilson.
- Wilson's two children attempted to be named guardians, but they lived in California, so the Court decided that it was in Wilson's best interest to appoint a "local" guardian who could "take care" of Wilson's needs.
- The hospital has come up with various procedures that they feel can assist Wilson and hopefully bring him out of the coma.
- The Court appointed guardian, who has still never met Wilson outside his comatose state, chooses procedure A. Wilson's two children opt for procedure B. The hospital does not know who to listen to as both procedures may assist patient Wilson.

Question: Who controls?



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Gary Elias, Esq. (LifeStream) is an attorney with over 25 years experience. Mr. Elias is an expert on Elder Law.



Robin Fried (LifeStream) is a Licensed Certified Social Worker (LCSW) and Certified Geriatric Care Manager (GCM) with over 30 years experience

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