



The Peninsula Center
for Estate and Lifelong Planning
Attorneys and Counselors at Law

461 McLAWS CIRCLE, SUITE 2
WILLIAMSBURG, VIRGINIA 23185
Telephone: (757) 969-1900
Facsimile: (757) 969-1903
www.tpcestate.com

**Advocating for Yourself and Your Family under an Advance
Medical Directive**

An “advance medical directive,” sometimes called a “medical power of attorney” or “health care power of attorney,” allows the signer to authorize someone else to make medical decisions on the signer’s behalf. To execute an advance medical directive, the signer must be of sound mind and cognitively capable of selecting someone she trusts to become her decision-maker, or “health care agent.” However, the health care agent’s authority to make decisions on the signer’s behalf only begins once a doctor determines that the signer is no longer cognitively capable of making medical decisions for herself. Once the physician determines that a person is incapacitated, then the health care agent is to be consulted in making medical decisions, rather than the patient herself, while the patient continues to be incapacitated.

Unlike an advance medical directive, a HIPAA authorization form simply designates individuals to whom doctors can disclose a patient’s confidential medical information. Naming a family member on a HIPAA authorization form does not give that person medical decision-making authority, but rather simply says that this individual may speak to the doctor and get medical information about the patient.

Though this is a relatively straightforward concept, we have become aware of two (2) incidents recently in which medical personnel have egregiously

misunderstood the role of the advance medical directive and the HIPAA authorization form. We wanted to share these stories to provide concrete examples of the importance of advocating for yourself and your loved ones.

In the first situation, a client's mother resided in the memory care section of an assisted living facility. The mother's dementia had progressed such that she was very clearly incapacitated, and the staff at the assisted living facility knew that our client was to make all medical decisions for her mother through the advance medical directive, because the mother had lost the ability to do so for herself. The client's mother experienced a medical episode at the assisted living facility. The facility staff called 911 and alerted our client that her mother was on her way to the emergency room. Our client immediately left to meet her mother and the ambulance at the hospital when they arrived.

When our client arrived at the emergency room, however, the hospital staff refused to let our client see her mother. Our client explained that her mother was incapacitated and that the ambulance picked her up from a memory care unit, and showed staff her mother's advance medical directive which appointed her as her mother's health care agent. Still, the staff refused to allow our client access to her mother, and proceeded to ask our client's mother for her own medical history which, of course, the mother was not able to provide accurately. They also allowed the mother to meet with nurses alone, even though she would very clearly not be able to understand what they were doing or give informed consent to the treatment they proposed. Eventually, by asking to speak to the supervisor and refusing to back down, our client was reunited with her mother and was able to make decisions on her behalf. However, it was only through this persistent advocacy that our client was able to accomplish this.

In the second, unrelated instance, our client very clearly still has the cognitive ability to make his own decisions. He is healthy, has no underlying diagnoses, and very clearly is not incapacitated. His primary care physician ordered some routine bloodwork. After the bloodwork was complete, the primary care physician's office called the client to give him the results of the lab work.

However, the nurse refused to give the results to our client directly, stating that she could only give the results to the client's son, because the client's son was named on the HIPAA authorization form as having authority to receive medical information on the client's behalf. The nurse somehow could not understand that the client himself was still entitled to his own medical information, and that the HIPAA form did not relinquish the client's right to speak to doctors on his own behalf.

Although an advance medical directive and HIPAA authorization form give your loved ones certain legal rights, we are still faced with the terrifying practical reality that the people enforcing these documents do not always understand or honor what the documents say. Thus, it is crucial to ensure that you are well-informed so you can advocate for your own rights or for the rights of your loved one in an emergency medical situation.

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