

Thursday, May 1, 2014

## DURABLE POWER OF ATTORNEY FOR HEALTHCARE

The New Hampshire Legislature is considering a change in the statute authorizing a Durable Power of Attorney for Healthcare. The proposed change would create a new category of decision-maker: **Surrogate** (under the current statute, one who is authorized to make such decisions under a written Power of Attorney is an "**Agent**"). A Surrogate would be selected by the healthcare provider if an Agent or Guardian is not "*available, willing and able to act*". The provider is expected to choose from a list of priorities in the statute. the list is:

*a) The patient's spouse, or civil union partner or common law spouse as defined by RSA 457:39, unless there is a divorce proceeding, separation agreement, or restraining order limiting that person's relationship with the patient.*

*(b) Any adult son or daughter of the patient.*

*(c) Either parent of the patient.*

*(d) Any adult brother or sister of the patient.*

*(e) Any adult grandchild of the patient.*

*(f) Any grandparent of the patient.*

*(g) Any adult aunt, uncle, niece, or nephew of the patient.*

*(h) A close friend of the patient.*

*(i) The agent with financial power of attorney or a conservator appointed in accordance with RSA 464-A.*

*(j) The guardian of the patient's estate.*

There are numerous issues with this legislation starting with the fact that the Surrogate is chosen by an APRN or physician without input from the patient- the patient is incapacitated! The person chosen by the healthcare provider may or may not know the patient's wishes or may not wish to follow known wishes because of personal beliefs. I understand the need for such legislation because not everybody has a Durable Power of Attorney for Healthcare. Indeed, most new clients are quite surprised when I tell them that neither spouses nor adult children have any power under current New Hampshire law to make healthcare decisions for an incapacitated spouse or parent. I understand that we are one of only five states without such legislation. We do need some sort of Surrogate law. Indeed, I lobbied for such a law in the late 80's or early 90's. Hopefully, some of the issues with this legislation will be worked out before it becomes law. you can see the current text at [HB 1434](#)

The answer, of course, is to have a carefully considered Durable Power of Attorney drafted and executed. This way you choose who your Agent will be and you have the opportunity to have a conversation with that Agent to make certain that your wishes are known and respected. This is especially crucial in end of life decisions.

For more information, feel free to contact me at Sowerby Law Office, PLLC 603-249-5925 Or [dwight@sowerbylawoffice.com](mailto:dwright@sowerbylawoffice.com)

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