



NOT ALL HEALTHCARE AGENTS ARE GOOD: PROTECT YOUR RESIDENTS WITH GUARDIANSHIP PROCEEDINGS

By Ken Kern, Senior Partner, Cona Elder Law

In a recent case handled by Cona Elder Law, a hospital patient's Health Care Proxy ("HCP") demanded that the patient's attending physicians cease and withdraw the administering of appropriate medical treatment necessary to alleviate his current symptoms, and to withhold all forms of medical intervention. Additionally, under the guise of the patient's Living Will, the HCP also demanded that palliative or hospice care and services be administered to the patient, despite the fact, that his treating physicians believed that his current medical condition did not meet the criteria for palliative or hospice care. As the patient's sister vehemently disagreed with the HCP's directions to the attending physicians, the hospital referred her to Cona Elder Law.

Upon its retention by the resident's sister, Cona Elder Law immediately filed an emergency Article 81 proceeding seeking the appointment of a temporary guardian and the issuance of a temporary restraining order against the current HCP from making any further health care decisions on the patient's behalf pending the outcome of the hearing in this matter. The Court granted both of Cona Elder Law's applications and the patient's sister, as his temporary guardian, immediately authorized a procedure strongly recommended by his attending physicians. Prior to said procedure, the resident was comatose and his prognosis without the procedure was dire, at best. However, within two weeks' time, the patient was alert and his condition had significantly improved.

This case highlights the difficulties both hospitals and skilled nursing facilities may face when accepting direction from a Health Care Agent who is either not listening to the medical teams' recommendations, whether same is attributable to simple ignorance or, as was in the case here, the agent placing her own best interests over those of the patient/resident. In this particular case, the Health Care Proxy was the patient's wife and before the patient suffered this catastrophic medical event, they were in the midst of a rather acrimonious divorce proceeding. As such, there was an inherent conflict of interest in the wife continuing to serve as the patient's health care agent and her actions seem to belie that she was making decisions that would not only obviate the need to continue with the divorce proceeding but also result in her windfall victory.

Just like hospitals, skilled nursing facilities must ensure that their residents are receiving care and treatment in accordance with accepted medical standards, despite what a Health Care Proxy might direct. If a skilled nursing facility finds themselves in such a situation, it has a duty to protect its residents from harm and an Article 81 proceeding is a quick and effective means to achieve this goal.

Cona Elder Law's experienced attorneys are well versed in New York Article 81 proceedings and can assist residential health care facilities in ensuring that its residents are protected from health care agents with nefarious intentions. Contact us at **631.390.5000** or [click here](#) to learn more about how our firm can help your facility preserve its bottom line and ensure its ability to continue to provide quality services to nursing home residents.