

§ 5461. Decisions by health care representative.

(a) **General rule.**--A health care representative may make a health care decision for an individual whose attending physician has determined that the individual is incompetent if:

- (1) the individual is at least 18 years of age, has graduated from high school, has married or is an emancipated minor;
- (2) (i) the individual does not have a health care power of attorney; or
(ii) the individual's health care agent is not reasonably available or has indicated an unwillingness to act and no alternate health care agent is reasonably available; and
- (3) a guardian of the person to make health care decisions has not been appointed for the individual.

(b) **Application.**--This section applies to decisions regarding treatment, care, goods or services that a caretaker is obligated to provide to a care-dependent person who has an end-stage medical condition or is permanently unconscious as permitted under 18 Pa.C.S. § 2713(e)(5) (relating to neglect of care-dependent person).

(c) **Extent of authority of health care representative.**--Except as set forth in section 5462(c)(1) (relating to duties of attending physician and health care provider), the authority and the decision-making process of a health care representative shall be the same as provided for a health care agent in section 5456 (relating to authority of health care agent) and 5460(c) (relating to relation of health care agent to court-appointed guardian and other agents).

(d) **Who may act as health care representative.**--

(1) An individual of sound mind may, by a signed writing or by personally informing the attending physician or the health care provider, designate one or more individuals to act as health care representative. In the absence of a designation or if no designee is reasonably available, any member of the following classes, in descending order of priority, who is reasonably available may act as health care representative:

- (i) The spouse, unless an action for divorce is pending, and the adult children of the principal who are not the children of the spouse.
- (ii) An adult child.
- (iii) A parent.
- (iv) An adult brother or sister.
- (v) An adult grandchild.

(vi) An adult who has knowledge of the principal's preferences and values, including, but not limited to, religious and moral beliefs, to assess how the principal would make health care decisions.

(2) An individual may by signed writing, including a health care power of attorney, provide for a different order of priority.

(3) An individual with a higher priority who is willing to act as a health care representative may assume the authority to act notwithstanding the fact that another individual has previously assumed that authority.

(e) **Disqualification.**--An individual of sound mind may disqualify one or more individuals from acting as health care representative in the same manner as specified under subsection (d) for the designation of a health care representative. An individual may also disqualify one or more individuals from acting as health care representative by a health care power of attorney. Upon the petition of any member of the classes set forth in subsection (d), the court may disqualify for cause shown an individual otherwise eligible to serve as a health care representative.

(f) **Limitation on designation of health care representative.**--Unless related by blood, marriage or adoption, a health care representative may not be the principal's attending physician or other health care provider nor an owner, operator or employee of a health care provider in which the principal receives care.

(g) **Decision of health care representative.**--

(1) If more than one member of a class assumes authority to act as a health care representative, the members do not agree on a health care decision and the attending physician or health care provider is so informed, the attending physician or health care provider may rely on the decision of a majority of the members of that class who have communicated their views to the attending physician or health care provider.

(2) If the members of the class of health care representatives are evenly divided concerning the health care decision and the attending physician or health care provider is so informed, an individual having a lower priority may not act as a health care representative. So long as the class remains evenly divided, no decision shall be deemed made until such time as the parties resolve their disagreement. Notwithstanding such disagreement, nothing in this subsection shall be construed to preclude the administration of health care treatment in accordance with accepted standards of medical practice.

(h) Duty of health care representative.--Promptly upon assuming authority to act, a health care representative shall communicate the assumption of authority to the members of the principal's family specified in subsection (d) who can be readily contacted.

(i) Countermand of health care decision.--

(1) A principal of sound mind may countermand any health care decision made by the principal's health care representative at any time and in any manner by personally informing the attending physician or health care provider.

(2) Regardless of the principal's mental or physical capacity, a principal may countermand a health care decision made by the principal's health care representative that would withhold or withdraw life-sustaining treatment at any time and in any manner by personally informing the attending physician.

(3) The attending physician or health care provider shall make reasonable efforts to promptly inform the health care representative of a countermand exercised under this section.

(4) A countermand exercised under this section shall not affect the authority of the health care representative to make other health care decisions.

(j) Court approval unnecessary.--A health care decision made by a health care representative for a principal shall be effective without court approval.

(k) Written declaration of health care representative.--An attending physician or health care provider may require a person claiming the right to act as health care representative for a principal to provide a written declaration made under penalty of perjury stating facts and circumstances reasonably sufficient to establish the claimed authority.

Cross References. Section 5461 is referred to in sections 5422, 5431, 5453 of this title; section 2713 of Title 18 (Crimes and Offenses).