§ 5456. Authority of health care agent.

(a) Extent of authority.--Except as expressly provided otherwise in a health care power of attorney and subject to subsection (b) and section 5460 (relating to relation of health care agent to court-appointed guardian and other agents), a health care agent shall have the authority to make any health care decision and to exercise any right and power regarding the principal's care, custody and health care treatment that the principal could have made and exercised. The foregoing power shall include the power to authorize admission to a medical, nursing, residential or similar facility, or to enter into agreements for the principal's care. The health care agent's authority may extend beyond the principal's death to make anatomical gifts, dispose of the remains and consent to autopsies.

(b) Life-sustaining treatment decisions.--A life-sustaining treatment decision made by a health care agent is subject to this section and sections 5429 (relating to pregnancy), 5454 (relating to when health care power of attorney operative) and 5462(a) (relating to duties of attending physician and health care provider).

(c) Health care decisions.--

(1) The health care agent shall gather information on the principal's prognosis and acceptable medical alternatives regarding diagnosis, treatments and supportive care.

(2) In the case of procedures for which informed consent is required under section 504 of the act of March 20, 2002 (P.L.154, No.13), known as the Medical Care Availability and Reduction of Error (Mcare) Act, the information shall include the information required to be disclosed under that act.

(3) In the case of health care decisions regarding end of life of a patient with an end-stage medical condition, the information shall distinguish between curative alternatives, palliative alternatives and alternatives which will merely serve to prolong the process of dying. The information shall also distinguish between the principal's end-stage medical condition and any other concurrent disease, illness or physical, mental, cognitive or intellectual condition that predated the principal's end-stage medical condition.

(4) After consultation with health care providers and consideration of the information obtained in accordance with paragraphs (1), (2) and (3), the health care agent shall make health care decisions in accordance with the health care agent's understanding and interpretation of the instructions given by the principal at a time when the principal had the capacity to understand, make and communicate health care decisions. Instructions include an advance health care directive made by the principal and any clear written or verbal directions that cover the situation presented.

(5) (i) In the absence of instruction, the health care agent shall make health care decisions that conform to the health care agent's assessment of the principal's preferences and values, including religious and moral beliefs.

(ii) If the health care agent does not know enough about the principal's instructions, preferences and values to decide accordingly, the health care agent shall take into account what the agent knows of the principal's instructions, preferences and values, including religious and moral beliefs, and the health care agent's assessment of the principal's best interests, taking into consideration the following goals and considerations:

(A) The preservation of life.

(B) The relief from suffering.

(C) The preservation or restoration of functioning, taking into account any concurrent disease, illness or physical, mental, cognitive or intellectual condition that may have predated the principal's end-stage medical condition.

(iii) (A) In the absence of a specific, written authorization or direction by a principal to withhold or withdraw nutrition and hydration administered by gastric tube or intravenously or by other artificial or invasive means, a health care agent shall presume that the principal would not want nutrition and hydration withheld or withdrawn.

(B) The presumption may be overcome by previously clearly expressed wishes of the principal to the contrary. In the absence of such clearly expressed wishes, the presumption may be overcome if the health care agent considers the values and preferences of the principal and assesses the factors set forth in subparagraphs (i) and (ii) and determines it is clear that the principal would not wish for artificial nutrition and hydration to be initiated or continued.

(6) The Department of Health shall ensure as part of the licensure process that health care providers under its jurisdiction have policies and procedures in place to implement this subsection.

(d) Health care information.--

(1) Unless specifically provided otherwise in a health care power of attorney, a health care agent has the same rights and limitations as the principal to request, examine, copy and consent or refuse to consent to the disclosure of medical or other health care information.

(2) Disclosure of medical or other health care information to a health care agent does not constitute a waiver of any evidentiary privilege or of a right to assert confidentiality. A health care provider that discloses such information to a health care agent in good faith shall not be liable for the disclosure. A health care agent may not disclose health care information regarding the principal except as is reasonably necessary to perform the agent's obligations to the principal or as otherwise required by law.

(July 8, 2016, P.L.497, No.79, eff. Jan. 1, 2017)

2016 Amendment. Act 79 amended subsec. (a).

Cross References. Section 5456 is referred to in sections 5431, 5461, 5463 of this title.