

## **Pennsylvania Supreme Court Addresses Plenary Guardian Authority**

PA Supreme Court rules that a plenary guardian lacks the authority to refuse “life-preserving” medical treatment on behalf of a life-long incapacitated person where the person is neither suffering from an end-stage medical condition nor is permanently unconscious.

The subject person, David, is “incapacitated” pursuant to statutory law. His parents were court-appointed plenary guardian pursuant to that same statute. In 2007, David became ill with aspiration pneumonia. Treating physicians determined that his condition required that he be placed on a mechanical ventilator. His parents attempted to decline that treatment on his behalf, asserting that mechanical ventilation was not in his best interest; and because his parents were court-appointed plenary guardians, they had the duty to assert the rights and best interests of the incapacitated person. The hospital denied that request, however, and David remained on a ventilator for several weeks. Subsequently, his condition improved to the point where he no longer required this treatment.

In light of the dispute over David’s medical care, his parents petitioned the Orphans’ court to be appointed his “health care agents” for purposes of the Health Care Agents and Representatives Act (HCARA). His parents sought this appointment because the HCARA is part of a larger statutory scheme recognizing a qualified right of individuals to make decisions related to their own health care and establishing a framework for substitute health care decision-making for persons who are “incompetent” to do so, through the use of the Advanced Health Care Directive or a Health Care Power of Attorney.

A “health care agent,” designated by an Advanced Health Care Directive or Health Care Power of Attorney, normally has the same authority as a competent principal to make health care decisions concerning the principal’s care with no requirement of court approval. Furthermore, the HCARA contains a provision removing the medical personnel’s affirmative duty to provide life-preserving treatment to an incompetent person who has neither an end-stage medical condition nor is permanently unconscious, if the incompetent person’s agent under an Advanced Health Care Directive or Health Care Power of Attorney so directs and the document confers that authority upon the agent.

David’s parents maintained the position that, although David had been incapacitated since birth, he retained the inherent right to make medical decisions -- including the right to refuse life-preserving treatment -- and such right extended to them as his court-appointed plenary guardians. The state Department of Public Welfare contested the parents’ position claiming the only exceptions to the statutorily-imposed affirmative duty to provide life-preserving treatment to a person arise when the person is competent and objects to the treatment or the person is incompetent and the incompetent’s agent under an Advanced Health Care Directive or Health Care Power of Attorney so objects and the document confers that authority upon the agent. The parents claimed their status as court-appointed plenary guardians conferred upon them the same power as an agent under an Advanced Health Care Directive or Health Care Power of Attorney.

The PA Supreme Court discussed the HCARA as a statute that reflects a careful legislative effort to balance various rights and interests in the sensitive arena of personal medical care provided to

one who is not competent to assert his or her own rights. On the one hand, the statute manifests respect for advance health care directives, as well as the decisions of close relatives and friends, where the incompetent person suffers from an end-stage condition or permanent unconsciousness, and enables health care providers to comply with such decisions.

The Court reasons further that the HCARA, on the other hand, more sharply regulates the situation in which the incompetent person suffers from a life-threatening but treatable condition, obviously reflecting the Legislature's assertion of a policy position of greater state involvement to preserve life in such circumstances. The HCARA does allow for life-preserving medical treatment to be refused in such instances, but only by a health care agent (or the principal should he or she regain the capacity to make health care decisions). Moreover, since a health care agent can only be designated by a competent principal, the Court ruled that such refusal is unavailable in the case of one who has never been competent to delegate the act of personal medical decision-making in the first instance. Furthermore, the Court ruled that the guardianship act does not alter the requirements of the HCARA.

The Court also reminds us that through the HCARA provision, which requires that life-preserving treatment must be provided to an incompetent who is not suffering from end-stage medical condition or permanent unconsciousness and has not appointed a health care agent, the Pennsylvania Legislature has supplanted the common law right to refuse medical treatment in these instances. Thus, if a person desires to overcome this duty of medical personnel to provide life-preserving treatment when the person becomes incompetent but is not suffering from end-stage medical condition or has become permanently unconscious, then this person must do so in a valid Advanced Health Care Directive or Health Care Power of Attorney.

If you have any questions or concerns about anything contained in this article, including whether you should have an Advanced Health Care Directive or Health Care Power of Attorney and what that document should include, please do not hesitate to contact me at 717-657-7770.

Melanie W. Scaringi  
Attorney-At-Law  
Scaringi & Scaringi, PC  
[melanie@scaringilaw.com](mailto:melanie@scaringilaw.com)

© Scaringi & Scaringi, PC