



ELDER LAW AND ESTATE PLANNING

Joseph Karp

Uncles refuses health care planning, worrying niece

Question: My uncle has no health care documents and says he doesn't want to worry me with his health issues. He has no wife or kids, but I am close with him. He doesn't realize that it's his lack of planning that most worries me. Last year he spent a week in the hospital. He was conscious, and no one ever contacted me. What happens if he really can't make his own decisions? Do the doctors just do whatever they think is best?

Answer: If your uncle cannot make his own health care decisions and has no valid documents authorizing someone else to make them, Florida's health care proxy law applies. It gives the following people the authority to decide, in descending order:

1. Guardian
2. Spouse
3. Adult child, or if more than one, a majority of the adult children who are reasonably available for consultation
4. Parent
5. Adult sibling, or if more than one, a majority of the adult siblings reasonably available for consultation
6. Adult relative who has exhibited special care and concern for the patient, has maintained regular contact with the patient, and is generally familiar with the patient's activities, health, and religious or moral beliefs
7. Close friend
8. Under specific

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circumstances, a clinical social worker

If he has no living siblings to step in, it looks like the proxy job would fall to you. However, it can be a long and drawn-out process for a health care provider to figure out who someone's legal proxy is. I suggest you tell your uncle he'd be lifting a big weight off of your shoulders if he establishes a Health Care Surrogate authorizing you as his decision-maker. The document should also contain a release required under federal HIPAA laws, which would authorize all medical providers, health insurance carriers, and pharmacies to release information to you so that you can facilitate his care. Knowing he's helping you may move him. Good luck!

Joseph Karp, a member of the Florida and New York Bars, is a Nationally and Florida Bar Certified Elder Law Attorney and founder of The Karp Law Firm, located in Palm Beach and St. Lucie counties. The firm assists clients with wills, trusts, Medicaid and VA benefits planning, special needs planning, asset preservation, probate/trust administration and estate litigation.