In Florida, a competent individual has a variety of choices to ensure that his wishes are carried out should he lose capacity to make his own medical decisions. These choices are generally referred to as advance directives. This article will examine the procedure for invoking a valid surrogacy, proxy, and a living will.

When a surrogate or proxy is involved, the surrogate or proxy’s power is not invoked until the patient is deemed incapacitated. If the patient’s capacity is in question, the attending physician must first evaluate the patient and document the evaluation. Although a second physician’s opinion is only required in the event that the attending physician has a question as to capacity, obtaining the second opinion is always a good idea. Upon determination of incapacity, the facility or provider will then notify the surrogate or proxy in writing that the surrogacy or proxy has commenced. The surrogacy or proxy shall remain in effect until the patient regains capacity.

Similarly, the terms of a living will regarding life-prolonging procedures are not invoked until it is determined that: 1) the principal does not have a reasonable medical probability of recovering capacity; 2) the principal has a terminal condition, an end-stage condition, or is in a persistent vegetative state; and 3) the limitations and conditions expressed orally or in a written declaration have been carefully considered and satisfied. To determine whether the patient has a terminal condition, an end-stage condition, or is in a persistent vegetative state; or whether a medical condition or limitation referred to in an advance directive exists, the patient’s attending physician and at least one other consulting physician must separately examine the patient. The findings of each examination must be documented in the patient’s medical record and signed by each physician before life-prolonging procedures may be withheld or withdrawn.

In conclusion, once a patient has a valid advance directive in place, the patient’s capacity is the key to invoking the terms of a valid surrogacy, proxy, or living will regarding life-prolonging procedures. Once incapacity is determined, the terms of the advance directive should be followed by the health care provider.

Author: Kristin K. Morris - de la Parte & Gilbert, P.A.