Durable Power Of Attorney For Healthcare Decisions: Patient Or Family Must Inform Healthcare Provider.

A durable power of attorney for healthcare decisions is a legal document by which a patient makes known to the patient's professional caregivers his or her wishes with regard to healthcare treatment decisions taking place after the patient has lost the capacity to make or express such decisions.

In general, persons sign durable powers of attorney for healthcare decisions to indicate that they do not want to be subjected to artificial life support and painful, invasive and pointless medical interventions after realistic hope of survival has passed. They also appoint a specific person to extend expressed permission on the patient's behalf to caregivers to cease such interventions and let the patient expire.

Healthcare professionals are bound to honor patient's durable powers of attorney for healthcare decisions. They can be sued by family members and by the legal representatives of deceased patients' estates for performing medical interventions and for prolonging the patient's suffering in violation of the patient's wishes.

The Court of Appeals of Georgia ruled recently, however, that it is the responsibility of the patient, if still lucid, or a family member, or the person designated in the patient's durable power of attorney, to bring to the patient's caregivers' attention the fact that such a document exists, to provide a copy of the document for the patient's chart, and to make an affirmative statement of the patient's wish not to sustain further treatment.

Without affirmative communication from the patient, the family or the person designated in the patient's power of attorney, healthcare professionals are not to be held legally liable for not knowing the patient's wishes or for exercising their own best judgment, the court said. **Roberts vs. Jones, 475 S.E. 2d 193 (Ga. App., 1996).**

A patient's caregivers are not legally accountable for violating a patient's durable power of attorney for healthcare decisions if the patient, the patient's family or the person designated to exercise the patient's durable power of attorney does not come forward to communicate the patient's wishes to the patient's caregivers.

Before treatment is rendered in violation of the wishes the patient has set down, the existence of a durable power of attorney for healthcare decisions must be brought to the attention of those caring for the patient, by the patient, if able, by a family member, or by the person, most often a family member, designated in the durable power of attorney for healthcare decisions to make decisions for the patient.

Hospitals, when informed of the existence of a durable power of attorney, should ask for a copy of the document and place the document in the patient's chart for ready reference by the patient's caregivers.

COURT OF APPEALS OF GEORGIA, 1996.

Organ Transplant: Court Throws Out Lawsuit Over Use Of Donor Organs With CMV.

One heart and lung set were deemed unacceptable for a five-year-old recipient, and the transplant did not proceed. The surgeon explained to the mother that a set of organs, "have to be clean, perfect, nothing, no spots, no diseases, no viruses" for a transplant to go ahead.

Five months later another donor was available, who just prior to death had received a blood transfusion positive for CMV. The surgeon accepted the organs with this knowledge and went ahead with the transplant, without discussing the donor's CMV status with the recipient's mother, and the recipient died from CMV.

Considering the recipient's emergent need and the scarcity of available transplant organs, it is not accepted practice automatically to reject donor organs because they are from a donor infected with CMV.

It is not universal practice to discuss donor organs' CMV status with the donor's family prior to transplant, if sound medical judgment indicates a need to go ahead promptly with the transplant.

UNITED STATES DISTRICT COURT, NEW YORK, 1996.

The U.S. District Court for the Southern District of New York threw out the mother's lawsuit against the surgeon and hospital. It ruled it was not necessary, under the circumstances, to have sought the mother's informed consent for use of these organs. **Good vs. Presbyterian Hospital, 934 F. Supp. 107 (S.D.N.Y., 1996).**