

## NATIONAL HEALTHCARE DECISION DAY

FREE Teleconference, Wednesday, May 4, 2011 from 12:30 – 1:30 p.m.

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April 16, 2011 is Mitchell Rabbino National Healthcare Decision Day, an annual public service project sponsored by the New York State Bar Association and designed to explain legal procedures and documents to help New Yorkers make better, more informed healthcare and financial decisions. Garfunkel Wild, P.C. is proud to participate in this project by issuing this client alert and hosting a teleconference. This year's topic is a "Legal Checklist," an overview of legal documents every New Yorker needs to understand. Here is a brief description of items on the checklist.

### Health Care Proxy

A Health Care Proxy allows you to name someone as your healthcare agent and authorize that agent to make healthcare decisions on your behalf in the event you are incapacitated and unable to make such decisions. The agent's decisions are to be made in accordance with your wishes, which may be stated on the form. It is important to discuss these wishes with your agent and to include on the form the statement that your agent is aware of your wishes concerning artificial nutrition and hydration. You may use the form issued by the New York Department of Health. In the absence of a Health Care Proxy, a family member or close friend may be identified and empowered to make health care decisions on your behalf in the event that you are in a hospital or nursing home and incapacitated.

### Living Will

A Living Will allows you to express your wishes concerning medical treatment in the event you cannot communicate. A Living Will typically provides that under certain stated medical circumstances (such as when there is no reasonable chance of recovery) you do not want specified (or perhaps any) medical treatment. While a Living Will can provide guidance to your medical decision maker, it also can be interpreted to limit such decision-making authority because it is limited to its stated terms and it cannot address all possible circumstances.

### Authorization for Release of Patient Information

A healthcare agent designated in a Proxy is allowed access to medical information in order to make informed decisions regarding care if you are incapacitated. However, if you are not incapacitated, no one, including the healthcare agent appointed in the Proxy, has legal authority to act on your behalf and access medical records without appropriate written permission. It may be advisable to allow someone, such as the agent named in the Proxy, access to your medical records even if you are not incapacitated if you want someone to assist you in arranging medical care. You can do this by signing an Authorization for Release of Patient Information.

### Do Not Resuscitate Order / MOLST

A Do Not Resuscitate Order (DNR) is a refusal of cardiopulmonary resuscitation in the event of cardiac or pulmonary arrest. A DNR, which is signed by a physician upon your consent, applies only if you are in a hospital or nursing home. If you are in your residence, a hospice, a clinic, or anywhere else and do not wish to

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be resuscitated, you must have a “Non-Hospital” DNR signed by your physician or a MOLST (Medical Orders for Life-Sustaining Treatment). A MOLST can be used to document your wishes concerning various forms of life-sustaining medical treatment, including DNR, endotracheal intubation and mechanical ventilation, artificial nutrition and hydration, future hospitalization, antibiotics, and other instructions. It is designed to improve the quality of end of life care for those with serious health conditions or those who wish to define their care wishes when facing the end of life. The form must be completed by both you and your physician. It is intended to apply immediately, and not upon a trigger of future incapacity. The form may be completed in stages as a medical condition deteriorates.

### Power of Attorney

A power of attorney allows you to appoint someone as your agent in making financial decisions on your behalf. Powers granted can be broad and general or specific and limited. It is a very powerful tool and care must be given to choosing agents who will act in your best interests. A power of attorney, along with healthcare documents, can eliminate the need for a costly and burdensome court supervised guardianship of your affairs in the event of your incapacity.

### Appointment of Agent to Control Disposition of Remains

In this form, you may designate who is in charge of the disposition of your remains after your death and state directions to the agent regarding the disposition. The agent is authorized to carry out your directions to the extent such directions are lawful and practical, and considering the financial capacity of your estate. This form is useful if your spouse or children are not your chosen agent in this regard or if you have a request you think may not be honored by those family members.

### Will

A Will is not only for people who want to set up trusts or save estate taxes. While a Will can accomplish those important goals, the primary reason for making a Will is to leave your property to the persons you choose in the manner you wish and appoint the person of your choice as the Executor and as Guardian of your minor children. In the absence of a Will, state law provides who inherits your assets and who is entitled to be your appointed representative (which may not be what you intend), and the costs of administering your estate are increased. In addition, property left to a minor child outright requires a court appointed guardian, court approval for use of funds, and strict investment limits.

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Planning for end-of-life care and estate planning is not easy, but not planning can leave family or friends in a difficult position and increase estate taxes and expenses. You may be reluctant to sign documents, believing that to do so gives up control. However, you should understand that by signing you are in fact taking control by stating your wishes and appointing trusted individuals to carry them out. Taking time now to make these plans and properly document them will provide the authority to the persons of your choice to make decisions when necessary and ensure that your directions are carried out.

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If you have any questions, please contact the GW attorney with whom you regularly consult.

### About Garfunkel Wild, P.C.

Garfunkel Wild, P.C. was founded in 1980 with a single purpose in mind: to become a pre-eminent health care law firm attending to the unique business and legal needs of its clients. Since then, the firm has grown to over 70 attorneys devoted to addressing the complex legal, regulatory, business and financial needs of its diverse clients.

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