

An illness or medical emergency can happen to any of us at anytime. Age, wealth, gender...virtually have no bearing. Have you given any thought to whom you would want to make a medical decision for you if you could not do it yourself? Even as important, have you thought about who you would not want to make any medical decisions for you?

Many married couples want their spouse to be that person. I have heard clients say they don't need to have anything in writing because their spouse will make those decisions. Unfortunately, being married does not give a spouse the automatic authority to do so.

According to North Carolina Statutes, if a patient is comatose or otherwise lacks capacity to make or communicate health care decisions, the attending physician is required to abide by the list of individuals in the order provided by statute, as follows:

1. A guardian of the patient or one appointed by Court
2. A health care agent appointed pursuant to a valid health care power of attorney.
3. An attorney in fact, with powers to make health care decisions for the patient
Patient's spouse
4. A majority of the patient's reasonably available parents and children who are at least 18 years of age
5. A majority of the patient's reasonably available siblings who are at least 18 years of age
6. An individual who has an established relationship with the patient, who is acting in good faith

If you know that your spouse could never make your medical decisions (and I have seen this with many of my clients) it is important that you have a health care power of attorney naming the agent of your choice. If you do want your spouse, name him or her in your health care power of attorney and name a successor as well.

A health care power of attorney should be considered an important and necessary document to have as part of a complete estate plan, regardless of marital status, age or health.

If you do not have a health care power of attorney, call our Ballantyne, North Carolina estate planning office at 704-843-1446 and we will guide you in creating the proper estate planning documents that fit your personal needs.