



Decision-Making Authority of a Health Care Agent Information for Massachusetts Health Care Providers

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1. What is the scope of an agent's decision making authority? Can it be limited?

Unless specifically limited in the health care proxy, the agent can make any and all health care decisions that the patient can make, including decisions about life-sustaining treatment. The patient can impose limits on the agent's authority in the health care proxy document. Section 5.*

2. When does an agent's decision making authority begin? What is the physician's role?

The agent's authority begins only if and when the patient's attending physician makes a written determination that the patient has lost the ability to make or communicate health care decisions. The attending physician must state an opinion regarding the cause and nature of the incapacity as well as its extent and probable duration. The notice must be entered in the patient's permanent medical record and must be given promptly orally and in writing to the patient (if there is any indication that the patient has the ability to comprehend such notice) and to the agent. Section 6.

3. How does an agent make decisions? What process should the agent follow?

The agent is required to first consult with health care providers and fully consider acceptable medical alternatives regarding diagnosis, prognosis, treatments and their side effects. Based on this information, the agent must make health care decisions in accordance with the agent's assessment of the patient's wishes, including the patient's religious and moral beliefs. If the patient's wishes are unknown, the agent must make decisions in the patient's best interest. Section 5.

4. Do all health care providers have to follow the agent's decisions regarding care? Are there exceptions?

Health care providers are generally required to abide by the agent's decisions regarding initiating, continuing, and discontinuing treatment. However, if a provider or facility is unable to honor a decision because of moral or religious views, the physician or provider must arrange to transfer the patient to another provider or facility willing to honor the agent's decision. Sections 14 and 15.



5. If a patient is unable to make decisions, does a surrogate decision-maker have to be appointed in a health care proxy even if the decision-maker is a spouse or family member?

Yes, the health care proxy statute requires health care providers to comply with decisions made by a health care agent acting under a health care proxy to the same extent as if those decisions had been made by the patient, but does not generally authorize providers to follow the decisions of an informal surrogate decision-maker. Section 5. There may be some exceptional situations in which a “responsible party” may also make health care decisions. Section 16.

6. If a patient regains the ability to make decisions, does the agent’s authority automatically terminate?

If the attending physician determines that the patient has regained capacity, the agent’s authority terminates and the patient’s consent to treatment is required beginning at that point. If the attending physician determines that the patient subsequently loses capacity yet again, the agent’s authority recommences. Section 6.

7. Can an agent sign a Medical Orders for Life-Sustaining Treatment (MOLST) form?

Yes. The MOLST protocol in Massachusetts permits a health care agent to sign the MOLST. For further information, see:<http://molst-ma.org/faqs-about-who-can-sign-molst-form-behalf-patient>

8. Can the agent request treatments that the patient previously refused or revoke the MOLST?

Yes. Just as patients can change their minds about treatment, agents can make any decisions about treatment (or changing treatment) that the patients could make. However, if the health care proxy expressly limits the agent’s authority in any way, the agent’s authority is subject to those limitations. Section 5.

9. Can agents be removed if they are not fulfilling their responsibilities?

Yes. A court may remove an agent if the agent is not reasonably available, willing and competent to fulfill his or her obligations or if the agent is acting in bad faith. Section 17.

*All Section references are to the Massachusetts Health Care Proxy statute, General Laws Chapter 201D. For further information, please see <https://malegislature.gov/Laws/GeneralLaws/PartII/TitleII/Chapter201D/Section1>

The information above is general in nature and is not intended to constitute legal advice about particular cases. For advice about individual patient matters, please consult with your facility’s legal department.