



## CLIENT ADVISORY: Change in the Consent to Treatment Law

AMONG THE FLURRY OF 2010 MID-SUMMER LAW CHANGES IT WOULD BE EASY TO MISS THIS ONE. GEORGIA'S LEGISLATURE AMENDED THE LIST OF THOSE PERSONS AUTHORIZED TO CONSENT TO TREATMENT BY ADDING GRANDCHILDREN, FIRST DEGREE RELATIVES AND "ADULT FRIENDS". FURTHER, THEY CREATED A COURT APPOINTED "TEMPORARY MEDICAL CONSENT GUARDIAN" FOR PATIENTS WITHOUT ANYONE TO CONSENT ON THEIR BEHALF.

It is common to have a concerned relative or friend nearby while treating a patient with an acute or life threatening condition. While the patient is alert, he or she provides the physician with direct consent to treatment. But what happens when the patient is no longer able to consent\* for himself or herself...is that concerned relative or friend authorized to provide consent to treatment for the patient?

The answer is "maybe". Georgia has long codified the order of persons from which physicians should seek consent. SB 367 was signed into law by Governor Perdue and became effective June 3<sup>rd</sup>, 2010. It in part amended O.C.G.A. § 31-9-2 to reflect the following order of those authorized to consent to treatment either orally or otherwise (new additions in **bold**):

- The patient, for himself or herself whether by living will, advance directive for health care, or otherwise;
- Any person authorized to give such consent for the adult under an advance directive for health care or durable power of attorney for health care;
- Any married person for his or her spouse<sup>†</sup>;
- Any parent, whether an adult or a minor, for his or her minor child;
- Any person temporarily standing in loco parentis<sup>‡</sup>, whether formally serving or not, for the minor under his or her care; and any guardian, for his or her ward;
- Any female, regardless of age or marital status, for herself when given in connection with pregnancy, or the prevention thereof, or childbirth;
- Any adult child for his or her parents;
- Any parent for his or her adult child;
- Any adult for his or her brother or sister;
- Any grandparent for his or her grandchild;
- **Any adult grandchild for his or her grandparent;**
- **Any adult niece, nephew, aunt, or uncle of the patient who is related to the patient in the first degree;**
- **Upon the inability of any adult to consent for himself or herself and in the absence of any person above, an adult friend<sup>§</sup> of the patient.**
- **In the absence, after reasonable inquiry, of any person authorized above to consent for the patient, a hospital or other health care facility or any interested person may initiate proceedings for expedited judicial intervention to appoint a temporary medical consent guardian.**

Importantly, the legislature went a step further to delineate that no health care provider will be subject to liability or discipline for unprofessional conduct solely for relying in good faith on any direction or decision by any person reasonably believed to be authorized and empowered to consent under O.C.G.A. § 31-9-2. Additionally, the statute now provides that no person authorized and empowered to consent under O.C.G.A. § 31-9-2 who, in good faith, acts with due care for the benefit of the patient, or who fails to act, shall be subject to liability for such action or inaction.



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Should physicians find themselves in circumstances where there is no one to consent for the patient, they should contact their facility and/or their malpractice insurer/agent so as to ensure compliance with the new expedited procedure for appointing a temporary medical consent guardian. In a hospital setting, the facility may file a petition in the state court where the proposed ward is found. If the court determines that there is probable cause to believe that the proposed consent ward is in need of a temporary medical consent guardian, then the court shall immediately appoint legal counsel to represent the proposed ward and order a preliminary hearing to be conducted within 72 hours after the petition was filed. At the preliminary hearing, the court may appoint a temporary medical consent guardian, order an evidentiary hearing to be held within 4 days, or dismiss the petition. A temporary medical consent guardian shall not be authorized to withdraw life-sustaining procedures unless specifically authorized by the court. The temporary medical consent guardianship is automatically void after 60 days, but the court may terminate the guardianship at anytime.

### **About the Author**

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\* The term "inability of any adult to consent for himself or herself" is codified to mean a determination in the medical record by a licensed physician after the physician has personally examined the adult that the adult "lacks sufficient understanding or capacity to make significant responsible decisions" regarding his or her medical treatment or the ability to communicate by any means such decisions.

† **Important:** The code section reads that only in the event a patient does not have a advance directive for health care or durable power of attorney for health care (in which case the physician takes direction from persons authorized by such documents) does the spouse have the authority to consent.

‡ *loco parentis* is the legal doctrine describing a relationship similar to that of a parent to a child. It refers to an individual who assumes parental status and responsibilities for another individual, usually a young person, without formally adopting that person. For example, legal guardians are said to stand in loco parentis with respect to their wards.

§ An "adult friend" is codified to mean "an adult who has exhibited special care and concern for the patient, who is generally familiar with the patient's health care views and desires, and who is willing and able to become involved in the patient's health care decisions and to act in the patient's best interest." The adult friend shall sign and date an acknowledgment form provided by the hospital or other health care facility in which the patient is located for placement in the patient's records certifying that he or she meets such criteria.