

Power of Attorney? The Unexpected Is Always One Record Request Away

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A 45-year-old man rushes into a Maryland hospital's HIM department requesting the full medical records of both his 70-year-old mother and father. Both had been previously treated by the hospital for complications from Alzheimer's disease.

Some years previously the mother and father each had created durable powers of attorney for healthcare documents that named the agent who could handle their medical affairs. This included access to their medical records.

The mother named her husband, the son's father, as her sole healthcare agent. The father named the son, their only child, as his sole healthcare agent.

Now suffering from late-stage Alzheimer's disease and living in a hospice, the mother and father are unable to manage their own medical care.

The son requests access to his father's medical records as his father's named healthcare agent.

Because his father is unable to serve as his mother's agent, the son-acting in the role of his father's agent-says he is now his mother's agent by default. He presents the father's and mother's durable healthcare powers of attorney documents as proof of his legal rights.

Should the man receive access to both his father's and mother's records?

Answer

Yes, he should, but not for the reason he states. A durable power of attorney for healthcare cannot be transferred, nor does it reach beyond the agent named in the document. Being the father's agent does not grant the son rights to his mother's records.

However, this situation takes place in Maryland, one of several states with surrogate decision-making statutes. The Maryland statute provides for a hierarchy of substitute healthcare decision makers in instances where a patient has not named a healthcare power of attorney agent or the named agent is unable to serve.

With the father incapacitated and the couple having only one child, the son is the first in line to serve as his mother's healthcare decision maker. This status would grant him legal access to her medical records. If the son was not next in line under the Maryland statute, or this scenario occurred in a state without substitute healthcare decision maker laws, the son's request for the mother's records should be denied.

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