

## **Planning Ahead for College Freshman – It Means More than Picking the Right Professor**

Casey W. Pope, Esq.

If you're a parent, it probably seems like just yesterday you were walking your child into his classroom on his first day of kindergarten. Now you're loading up the car and preparing to move your child into the dorm room as he begins his college journey. As you add shower shoes and the futon to your move-in checklist this fall, I encourage you to also add a very important item to the list – your child's advance medical directive.

Graduating high school and starting college marks the transition from childhood to adulthood, both figuratively and literally, as most college freshmen are 18 years old. From a legal perspective, the college freshman is an adult, although the parents may still think of him as their child. Many parents may just assume that they have the legal right to make medical decisions for the child until he gets married. Unfortunately, this simply is not the case.

Adults (persons 18 years or older) have a constitutional right to make their own medical decisions. If an adult is sick or injured and becomes unable to make or communicate medical decisions, then a surrogate decision maker must be appointed through either a health care power of attorney or a court-appointed guardianship. If no surrogate has been named, a spouse or parent can legally make emergency medical decisions only. Physicians can also make emergency decisions for the adult when no spouse or other family member is available.

In non-emergency situations, the parents must have explicit permission from their adult child through a health care power of attorney or guardianship to make medical decisions for him. Note that a guardianship is a court-appointed role, meaning it takes time and money to obtain and is heavily supervised by the courts. A health care power of attorney, on the other hand, is a legal document that is prepared in advance and that becomes effective immediately upon the doctor's determination that the patient can no longer make his own medical decisions. Perhaps even more importantly, the health care power of attorney allows its maker to choose who he would want to make his decisions, not the courts.

In addition to the health care power of attorney, every college freshman also needs a medical authorization or HIPAA form. This legal document authorizes medical providers to share the adult's confidential medical information with his parents or other persons of his choosing. Without the medical authorization, doctors are forbidden by the HIPAA laws from discussing the adult child's medical situation with anyone, including the parents. Therefore, the medical authorization is absolutely critical.

For parents who have cared for their children all their lives, it is only natural to want jump in and protect them if they become sick or injured. But the legal reality is, without medical directives in place ahead of time, parents have limited ability to act on their child's behalf once that child turns 18. So this fall, make it a priority to ensure your child's well-being is protected in case of an illness or accident. It's just as important as choosing the right professor for English class.

*Casey Pope is an attorney at Patrick, Harper & Dixon, LLP in Hickory, North Carolina. She practices primarily in the areas of estate planning, elder law, and business and corporate law. Casey may be contacted at 828-322-7741 or via email at [cpop@phd-law.com](mailto:cpop@phd-law.com). Patrick, Harper & Dixon is Hickory's oldest and largest full-service law firm.*