

# SCHAUM LAW OFFICES

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**TO: MEMBERS OF THE LONG ISLAND JEWISH  
ORGANIZED MEDICAL STAFF**

*We thought it would be useful for the practicing physician to be fully informed concerning the usage of health care proxies and their interaction in the normal course of the professional day.*

*The statute discusses the naming of “a health care agent. . .” Please note the use of the singular “agent.” If you are presented with a proxy naming more than one person you should insist that only one proxy may be named. This does not prevent the patient from consulting with others but you are relieved of the burden of dealing with different persons who may have differing views on the care to be rendered.*

*You should be aware that the authority of the agent only becomes effective when the patient/principal does not have the capacity to make his/her own decision relating to the needed care. Even if a well meaning person accompanying the patient may wish to interject an opinion regarding treatment this does not act as a “proxy” situation – the patient must be lacking the capacity to make the decision for a proxy to be effective.*

*Physicians frequently inquire as to whether the proxy holder needs a HIPPA authorization to access the records of the patient. The answer – NO – the law permits access and, further, since under HIPPA the individual has full access to his or her own records the same flows to the agent of the patient.*

*In matters involving DNR instructions it is important to note that the designated proxy does not have the right, or the power, to override previously given instructions of the person who created the proxy. Similarly, where the principal (patient) desired aggressive care to continue, the agent cannot contravene these wishes. The agent is to make the decisions which conform to the wishes or directives of the patient. If the issue is unclear the statute states the obvious, namely, that the decision to be rendered should be in accord with the best interests of the patient.*

*The question has been raised as to the responsibility of a physician who received a request from the proxy holder to administer life sustaining treatment although DNR had been signed by the patient. There is language in the Public Health Law which indicates that treatment should be given were death to be a clear result of failure to treat. It is suggested that this is a matter to be judicially determined so that the care giver is not hopelessly entwined.*

*Respectfully submitted,*

*Schaum Law Offices*