

The Doctor with No Health Care Proxy: No One is Immune to New York State Law

A 60-year-old surgeon, like most doctors and most humans, never believed anything bad would happen to him. He was sitting at a cocktail party, had a terrible headache, collapsed, had a sudden intracranial hemorrhage, was comatose, was rapidly moved to Mount Sinai Hospital where he had all of the best modern neurosurgical interventions, none of which helped him, and he remained deeply comatose and responsive only to deep pain. He was not in a persistent vegetative state, and he was not brain dead, but he was not waking up more than a month after his surgery and there was no improvement in his mental status. He had been married for 40 years, had four adult children, and was a person of extreme independence. He was unwilling to let anyone help him with anything. His personality was clear. At this point, he was bed bound on a ventilator, PEG fed and dependent for everything. There was no question in anyone's mind – his colleagues, his wife, his children – that he would never want to live on machines or be in a nursing home. However, he had never appointed a health care proxy because he thought it would never be necessary for him; he had never expressed his wishes about what he would want if he ever were to be in these circumstances. It was a conversation he had never had. (Therefore, he left no “clear and convincing evidence” of his wishes). As a result, he remained ventilator- and feeding tube-dependent for many months after this because the law required those interventions continue. No one in his family – not his wife and not his children – had the authority to make a decision on his behalf. There was nothing at all that anyone could do to let this physician, a member of an empowered class of people in our society, have the peaceful and dignified death that he desired.

Excerpt from the testimony of Dr. Diane Meier, Director, The Lillian and Benjamin Hertzberg Palliative Care Institute at the Mount Sinai School of Medicine, New York State Assembly Health Committee Hearing, December 8, 2005.