

## The Probate and Family Court Department

### Procedure for Actions Filed Under G. L. c. 201D

#### What is Required to Commence an Action Under G. L. c. 201D?

- An action may be commenced by filing a **Petition for Special Proceeding In Re: A Health Care Proxy Pursuant to G. L. c. 201D (MPC 405)** (hereinafter “Petition”) in order to:
  - Affirm a health care proxy;
  - Remove a health care agent;
  - Override a health care agent’s decision;
  - Determine the validity of the health care proxy.
- For all other requests, a General Probate Petition (MPC 200) must be filed.

#### What Additional Forms are Required?

- **Statement of Attending Physician Filed With Petition for Special Proceeding In Re: A Health Care Proxy (MPC 406)** (hereinafter “Physician’s Statement”).
  - The Physician’s Statement must be filed with the Petition. The examination must have taken place no more than thirty (30) days prior to the filing of the petition.
  - The Physician’s Statement contains confidential health information. The Physician’s Statement **must be impounded** and not kept in the public file.

### **Where is the Petition Filed?**

- The Petition may be brought in matters where a guardianship is already in place (where the Respondent retains the right to make medical decisions), or it may be brought independent of any other action. A dispute regarding a health care proxy may also be raised in a pending guardianship without filing a Petition. See, e.g., Guardianship of Elma Mason, 41 Mass.App.Ct., 298, 669 N.E.2d 1081 (1996).
  - If there is no guardianship, the Petition is to be filed in the county where the Principal resides, whether in a home or at a nursing facility.
  - If the Principal is under a Massachusetts guardianship, the Petition is to be filed in the division where the guardianship was allowed.

### **What is the Filing Fee?**

- The filing fee is \$150 plus a \$15 surcharge, if applicable. See the Probate and Family Court Uniform Fee Schedule for details regarding a surcharge.

### **What Happens Next?**

- When the Petition is filed, the court will provide a hearing date. The hearing date must be entered on the Petition in the space provided in order to notify others when served. The process is similar to the process used to schedule and hear a motion.
- Most proxy disputes concern time sensitive decisions. Every attempt should be made to schedule the hearing no more than 10 calendar days after the Petition is filed.

### **Is Counsel Appointed for the Principal?**

- If the Principal does not have private counsel at the time of filing the Petition, the court must immediately appoint counsel. Appointments will be made from CPCS attorneys associated with Fee Generating Category "A". A copy of the Petition and all documentation must be provided to appointed counsel.

### What are the Notice Requirements?

- The Principal must be provided notice of any proceeding commenced under the health care proxy statute, absent a court order. In general, ex-parte relief is not available.
- Notice of the Petition **must** be provided **not later than 72 hours prior to the hearing, in-hand**, to the Principal and to the following interested persons, if any;
  - Counsel for the Principal
  - Health Care Agent and Alternate Health Care Agent
  - Spouse of Principal
  - Children of Principal
  - Guardian or Conservator of Principal in the Commonwealth or elsewhere
  - Holder of Durable Power of Attorney
  - Health Care Provider/Physician (depending upon the nature of the dispute)
- If the Principal has counsel notice must be provided **in-hand** or **by facsimile** to counsel.
- If the Principal resides in a facility defined by G. L. c. 201D, § 1, notice must be provided **in-hand** or **by facsimile** to the facility.

### How Can an Interested Person Object to a Proceeding?

- The Principal or persons interested in the proceeding may object by filing an appearance for the purpose of objecting prior to the hearing date or by appearing at the hearing and objecting on the record. Form (MPC 505a), Appearance (and Objection) may be used. An Affidavit of Objections is not required. In the alternative, Form (CJP 126), Notice of Appearance may also be used.

### What Happens at the Hearing?

- At the hearing, the court can order that a health care proxy is valid, or that it is invalid; that the health care proxy is affirmed, or that the health care agent is removed. The court can also override an agent's decision on the ground that such decision was made in bad faith or not in accordance with the statute. The court will issue a Decree on Special Proceeding In Re: Health Care Proxy (MPC 793).
- If the court affirms a health care proxy, the Decree will indicate that a decision to affirm the health care proxy continues until the Principal's attending physician determines the Principal has regained capacity to make or to communicate health care decisions.