



JLichter.com

[www.jlichter.com](http://www.jlichter.com)

---

## **Making Sense of your Health Care Proxy and Power of Attorney**

*By Joseph Lichter, Esq.*

Health Care Proxy... Power of Attorney.... if you are not familiar with these terms and already are dreading doing your Last Will and Testament, the words might make your head spin.

As with many things in life, a bit of knowledge goes a long way in calming your nerves. A Health Care Proxy and Power of Attorney are really not that complicated, yet their impact can be significant. They are documents which are commonly prepared as part of estate planning. Both apply to situations that might arise *before* you pass on.

If you become unable, even temporarily, to properly communicate your wishes due to being in a coma, suffering a stroke, getting injured in an accident, or a like situation, these documents serve a vital role in protecting your interests in the best manner possible.

Here are some common questions I am often asked concerning these important documents.

*What is a Health Care Proxy (HCP)?* A HCP is a document signed by you, when you are well, that appoints an "Agent" of your choosing to make health care decisions for you. Your Agent will have the authority to make these decisions for you, *as if they were you*, and will therefore have the ultimate say in how your health care is carried out.

*Do I need a HCP?* If you become incapacitated, how will your doctor know what you want? Unless you addressed this issue while you were well, there is no way he/she will ever know. By appointing someone you trust, you can know that your wishes will be followed as much as possible.

Appointing an Agent can minimize the bitter divisions that sometimes arise when different family members have different opinions about your health care. As you clearly

appointed that Agent to make these decisions on your behalf, the other members will (hopefully!) defer to that person's judgment as being closest to your own.

*Besides appointing an Agent, what else is in a HCP?* A HCP might also include your wishes regarding organ donation and your specific intentions regarding the life saving measures you would want performed, or not performed, should you come to be in such a state. (This can also be set forth in a separate document called a "Living Will", which I am not addressing in this article).

*Who should I choose as Agent for my HCP?* Clearly, your Agent should be someone you trust to make serious (possibly life and death) health care decisions for you in what may be very trying circumstances. When you decide who it will be, it would be wise to have a discussion with them a) to confirm that they are willing to take on this responsibility and b) to explain to them your wishes regarding your health care. This is usually a family member, but it does not have to be. It also does not have to be someone with medical training.

*When does a HCP go into effect?* A HCP does not take effect upon signing. Rather, in the event that two doctors determine that you do not have the capacity to make decisions for yourself, the Agent obtains the authority to make decisions on your behalf.

*Who needs a HCP?* Everyone who wants a say in their health care benefits from a HCP. No one knows how and when their health will deteriorate, and just how suddenly this will happen; and no one knows if they will be the victim of a sudden accident that will leave them in a coma or in an uncommunicative state. A HCP is your best form of communication should the unthinkable happen.

Got it so far? A HCP transfers your right to make decisions for yourself to someone you trust, in case you are medically unable to make decisions for yourself. Now, on to *Power of Attorney (POA)*...

*What is a POA?* Like a HCP, a POA transfers your right to make decisions for yourself to someone you trust. But a POA gives the person of your choosing the right to decide about your money and property, not your health care. Through a POA, you appoint an "Agent" to make financial decisions for you. In most instances, your Agent is given the authority to make these decisions for you, *as if they were you*. You give him or her the ultimate say in how your finances are handled.

*Do I need a POA?* A POA is important because although you may become incapacitated, your financial obligations still continue. For example, the last thing you or your family needs as a result of a prolonged and difficult sickness is to face foreclosure, or a situation with no electricity/gas/water, because no one could access your money to pay your mortgage or utility bills while you were ill. By appointing an Agent now, you can rest assured that you and your family will not suffer from an absence of financial management later.

*What is included in my POA?* This ranges. The POA has applications in many legal arenas. For estate planning, it usually means transferring practically unlimited power over your finances, so that your Agent is not constrained in the means that he/she can help you.

*Who should I choose as Agent under my POA?* As with a HCP, you should choose someone you trust. You should also consider someone who is financially competent; after all, they will be paying your bills and performing other financial tasks. (A note of caution here: since a POA gives the Agent the broad power to handle your

financial affairs, it should be treated with care-- for this document grants free reign which might be abused by someone who succumbs to the lure of managing all your money. It is therefore critical to choose your Agent wisely!)

*Who needs a POA?* Assuming you have an Agent you can trust, everyone who cares about their finances being in order, for them and their families, should execute a POA. A common mistake for people who are married is thinking that because you are married, your spouse is therefore entitled to manage your individual assets. In truth, a POA is the vehicle to ensure that your spouse has access to assets that are in your name. The same applies to anyone who wants someone they trust, spouse or not, to be able to tap into their assets if the need arises.

*Are HCPs and POAs permitted under Jewish Law?* Though this is not an article about the implications of Halacha on a POA or HCP (or Living Will, for that matter), there are several issues to consider. One important question is whether one can make decisions today -- when they are healthy—as to what life-saving measures should be taken when they are incapacitated. A properly drafted HCP will conform with Halacha (and address this issue).

The decisions that you formalize in your HCP and POA are of great significance and should not be made quickly or lightly. The HCP agent you choose may determine at what point you stop receiving life-prolonging measures. The POA agent may have complete access to your checking account with your life savings.

As I discussed in my last article, which described how the inability to envision one's own death can prevent people-- otherwise reasonable people-- from preparing a Will, one must recognize that unfortunate events happen to people like you and me. Anyone can, without warning, be left incapacitated. Most of us know someone who experienced 9/11 first hand. We know of people who have been attacked in our community in broad daylight. We know of people who were unexpectedly diagnosed with a debilitating disease. And we know of people who have sustained serious injuries in unforeseeable accidents. Estate planning is not about preventing these unfortunate events. But it is about being prepared for them as best as possible, for your sake and your family's sake.

*Joseph Lichter is an attorney practicing in Cedarhurst. He can be reached for comment at 516-792-0200 or at [jl@jlichter.com](mailto:jl@jlichter.com).*