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MEDICAL POWERS**

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# **PARENTS CAN DESIGNATE SCHOOL AND MEDICAL POWERS**

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# BONUS NEWS 4

## Parents Can Designate School and Medical Powers

By Gerard Wallace

At the end of last June, Governor Pataki signed a bill into law which created a "Designation of Person in Parental Relation" in Article 5 of the General Obligations Law, by adding a new Title 15-A, with sections 5-1551-5-1555. See Chapter Number 119 (S.3216;



A.6307). The new law repealed last year's "Caregiver Consent" Act, which contained a suggested form (Title 18). That consent bill was signed by the governor under the condition that it would be repealed and replaced by the designation power. The previous consent bill was similar to bills that the governor had vetoed twice before.

The designation law, effective 90 days after signing, creates a limited parental power of attorney by legalizing the common practice of parents writing short notes to schools or to medical providers in order to permit other persons to assume responsibility for children. The law has a simplified note for up to thirty days of care, and also a more formal note for longer periods of care. The new law does not have a suggested form.

The new law describes how to designate, who can be designated, and what parental powers can be designated.

### The Note (Writing)

The new law provides that parents can designate a caregiver via a writing that contains certain information. For periods of time that are less than one month, the writing must contain:

- parent's name
- designee's name
- children's names
- parent's signature with date

If the time period is not stated, it's assumed to be thirty days. The note can also describe the extent of the powers.

For periods of time between thirty days and six months, the note must also contain:

- address and telephone number of the parent
- address and telephone number of the designee
- date of birth of each child
- date of commencement or event that causes the designation to be active
- written consent of the designee
- statement that no court order bars the parent from designating
- notarization

If any of the extra elements necessary for the six-month writing are missing, the note is still good for thirty days so long as it contains the core elements.

It is unclear if the parent and the designee must both have their signatures notarized. The previous bill mandated notarization only by the parent or parents. It may be that this writing can be signed (without notarization) by the designee. But, when possible, designees should get their signature notarized in order to eliminate a potential issue.

### Designees

Any adult can be designated. The person does not have to be a relative.

### Person in Parental Relation

Designations confer the powers and responsibility of a "person in parental relation." This phrase is a legal term, which is defined in both the Public Health Law and the Education Law. The designation states that a "person designated by a parent pursuant to this title shall possess all the powers and duties of a person in parental relation pursuant to sections twenty-one hundred sixty-four and twenty-five hundred four of the public health law and sections two and thirty-two hundred twelve of the education law, unless otherwise specified in the designation." Such a person can perform all the actions listed in numerous statutes that refer to a "person in parental relation." See section 5-1555(1).

"Person[s] in parental relation" can enroll a child in school, be responsible for most schooling activities, like getting birth certificates for enrollment, receiving report cards, consenting to class trips. They do not get all the powers of a parent, just those listed in the

twenty or so statutes in the education law that empower a “person in parental relation.”

The law amends the Public Health Law by adding designees to the definition of a “person in parental relation.” A “person in parental relation” can consent (or refuse) immunization and routine medical care, including prescription medications, dental work, and mental health therapies. The law does not permit designees to consent to certain medical procedures, including major medical treatment as described in section 80.03 of the Mental Hygiene Law, electroconvulsive therapy, and the withdrawal of life sustaining medical care. In sum, a designee cannot consent to elective major medical procedures, which require the consent of the parent(s) or legal guardian.

### School Enrollment

One limitation on the use of these writings concerns proof of school enrollment. Free tuition at a public school requires that the student reside in the school district. Residence must be proven to the school authorities. The new law specifically states that these writings cannot be used as proof of children’s residency. The new law does permit designated caregivers to enroll children in school, but they must prove residency by other means.

In some school districts, authorities demand legal custody or legal guardianship to prove residency. Since persons who are designees should be able to enroll children in school, legal custody and guardianship are clearly not the only proofs of residency.

Proving residency requires sufficient evidence to overcome the presumption that children reside with their parents. Some school districts accept sworn statements by parents and caregivers as sufficient proof. Since this law implies that out-of-court writings should enable caregivers to assume educational responsibilities, it follows that sworn affidavits attest-

ing to the residency of children, when accompanied by a proper designation, should be sufficient to prove residency.

### Other Provisions

The new law limits the effect of a designation to a period of six months. Since the new law does not prohibit renewals, subsequent designations can repeatedly designate the same caregiver.

The designation is not “durable,” the powers of a designee cease when a parent becomes incapacitated.

If there’s a court order indicating that the parents are joint custodians, then both must sign the designation.

The law can be revoked at will by one parent, either orally or in writing. Notice can be to the designee or to the school or medical provider.

The law also covers “incapacitated persons” which refers to adult children who are unable to make decisions for themselves. For such persons, other statutes stipulate that a parent must become the legal guardian. This part of the new law will probably be disregarded and eventually deleted.

With this law a major change has been made to the Public Health Law. For the first time someone other than a parent or legal guardian can consent to “medical, dental, health and hospital services” for a child.

**Gerard Wallace is a consultant to AARP NY and to the National Committee of Grandparents for Children’s Rights on the legal issues facing non-parents raising children. From 2001 to 2003 he wrote a column on these issues for the *Elder Law Attorney* and he will once again be writing on these issues. See [www.grandparentsrightsllaw.com](http://www.grandparentsrightsllaw.com).**

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