

Going Away? Leave a Note...

By JulieAnn Calareso, Esq.

As a parent of two young children, I take every opportunity I can to sneak away for a little while – a couple of hours to the movies, an evening at a restaurant that doesn't offer crayons and a tablecloth to color on, and yes, even occasionally, a trip that puts me far enough away from my kids that they could finish an entire episode of Blues Clues before I made it back to them. While my cell phone is always on, the babysitter has been fully briefed on everything down to the most minute detail, and the frig is plastered with charts and emergency information, I always leave something else – a note authorizing someone else to make health care decisions on my children's behalf in the event I am unable to.

This parental designation is something I remember my own parents doing when I was a child – a note that I brought to my friends' parents at sleepovers, or the note that my grandparents pocketed anytime my siblings and I were let loose on them. After becoming a parent myself, I adopted that practice, and now encourage all parents to know about and use this important provision of the law when they leave children with others.

A parental designation has its legal basis in the General Obligations Law of New York State. It is an informal way to give authority to another person to make decisions on a minor child's behalf in the absence of a parent or legal guardian. The parent is designating someone else to be "a person in parental relation" to that minor child, and such designation may be presented to any school, health plan, or health care provider.

The requirements for such parental designation are: (1.) it must be in writing; (2.) it must include the name of the parent; (3.) it must include the name of the child; (4.) it must include the name of the designee (the person whom the parent is naming to have this authority); (5.) it must have the parent's signature; and (6.) it must be dated. It may also state a period of time during which the designation is valid, provided that it does not exceed thirty (30) days. If a parent wishes to make a parental designation that exceeds thirty (30) days, there are other requirements that must be met. These requirements are a bit more stringent, including the requirement that the document be notarized. In such a case, if the requirements are met, then the designation may remain in effect for up to six (6) months.

A parental designation remains in effect until the thirty (30) day or six (6) month period expires (as applicable), or until it is revoked. It is possible to state in the designation itself a date on which the power will be revoked. This may be practical if a parent knows the precise timing of a trip or event. However, caution may dictate building in a small cushion in case circumstances and travel prevent the parent and child from reuniting as scheduled. If the parent who signed the designation passes away, the parental designation is revoked.

If the parent wishes, the designation may contain authorization or prohibition against certain treatments or activities. It is important to remember that any decision of a designee can be superseded by the parent.

Revocation of the designation occurs upon the expiration of the time period, upon the designee receiving written or oral notice of revocation, or upon the parent executing a new parental designation. It is also possible for a parent to revoke a parental designation by notifying the school, health plan or health care provider to whom the parental designation was presented.

The effect of the designation is that the designee then has the authority to make decisions and give consent for medical, dental, health and hospital services, including immunizations. It does not impose upon the designee a duty of support. It does not result in a change of residence for the child, as the child will continue to be deemed to be a resident of the permanent address of his or her parent and will therefore remain in his or her original school district. Someone who relies upon the direction of a designee and who has, in good faith, acted on that representation, shall not be found negligent for any action or omission if acting in good faith and at the direction of the designee.

Absent such parental designation, a health care provider is entitled to provide emergency services to a child if, in the physician's judgment, an emergency exists and the child is in immediate need of medical attention and an attempt to secure consent would result in the delay of treatment which would increase the risk to the child's life or health. It may only take a few moments to do, but giving a parental designation to any person who will be caring for your children for any extended period of time when you are not immediately available may enable your child to have important health care decisions made on his or her behalf in a time of crisis. Take the extra two minutes as you write the notes on the frig and leave all your contact numbers to leave a parental designation. You'll enjoy your time away more knowing that you did.

JulieAnn Calareso, Esq., a full-time working mother of two young children, is an attorney with the law firm of Burke & Casserly, P.C., in Albany, New York 518-452-1961 (www.burkecasserly.com), who focuses her practice in Estate Planning and Elder Law.