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A competent adult’s right to control medical decisions affecting one’s body is a widely established right in the United States, and it includes decisions of whether or not to seek treatment in the first place, regardless of where that decision is made.1 A health care proxy enables an adult to appoint another individual, typically a trusted family member or friend, to make health care decisions on his or her behalf if the adult becomes incompetent thereafter and thus is unable to make such critical medical decisions as they arise.2 New York Public Health Law Section 2982(1) authorizes a duly-designated health care proxy to make any and all health care related decisions on the principal’s behalf that the principal would otherwise be empowered to make, provided that the proxy consults with a licensed medical professional.3 However, the statute does

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1 See Gray v. Romeo, 697 F. Supp. 580, 584 (D.R.I. 1988) (“[t]he right to control medical decisions affecting one’s body is deeply rooted in our country’s history and tradition”); In re Estate of Longeway, 549 N.E.2d 292, 297 (Ill. 1989) (a patient has a common law right to refuse life-saving or life-sustaining procedures); In re Peter, 529 A.2d 419 (N.J. 1987) (all patients have the right to refuse life-sustaining medical treatment); see also Jill Hollander, Note, Health Care Proxies: New York’s Attempt to Resolve the Right to Die Dilemma, 57 BROOKLYN L. REV. 145, 145-46 (1991) (discussing right of adults to make decisions regarding their own health care, including decisions such as terminating life-sustaining procedures).


3 See N.Y. PUB. HEALTH LAW § 2982(1)-(2) (McKinney 2004). The statute states:

Rights and duties of agent
not explicitly provide whether a health care proxy is authorized to make such imperative health care decisions outside of a hospital setting, and as such, whether the proxy must obtain a simultaneous approval by a licensed medical professional authorizing the proposed course of treatment.4 The recent decision in Stein v. County of Nassau5 underscores the importance of the health care proxy’s authority to make crucial medical decisions outside a hospital environment when the health of another is at stake.6 In Stein, the United States District Court for the Eastern District of New York considered the two important and inter-related issues of whether emergency responders have to first honor a health care proxy’s decision outside the four walls of a hospital, and if so, whether a health care decision can be made without a simultaneous consultation with a medical professional.7 The court held that Section 2982 requires emergency responders to honor a health care proxy’s decision outside of a hospital setting, and additionally, nothing in the statute indicates that the consultation must be simultaneous with the agent’s decision.8

(1) Scope of authority. Subject to any express limitations in the health care proxy, an agent shall have the authority to make any and all health care decisions on the principal’s behalf that the principal could make. Such authority shall be subject to the provisions of section twenty-nine hundred eighty-nine of this article.

(2) Decision-making standard. After consultation with a licensed physician, registered nurse, licensed [ ] psychologist [ ], licensed master social worker, or a licensed clinical social worker, the agent shall make health care decisions: (a) in accordance with the principal’s wishes, including the principal’s religious and moral beliefs; or (b) if the principal’s wishes are not reasonably known and cannot with reasonable diligence be ascertained, in accordance with the principal’s best interests; provided, however, that if the principal’s wishes regarding the administration of artificial nutrition and hydration are not reasonably known and cannot with reasonable diligence be ascertained, the agent shall not have the authority to make decisions regarding these measures.

Id.
4 See N.Y. PUB. HEALTH LAW § 2982(2) (McKinney 2004) (stating limitations, specifically of relevance in this case, that the health care proxy must first consult with a licensed medical professional regarding the principal’s medical condition).
6 See id. at 143.
7 Id. at 141.
8 Id. at 141-42 (holding that the language of § 2982 authorizes a duly-designated health agent “to make any and all health care decisions on the principal’s behalf that the principal could make”).
On May 15, 1990, Milton Stein designated his wife, Rita Stein, as his health care proxy pursuant to New York Public Health Law Section 2981, authorizing her to make health care decisions on his behalf should he become incompetent and incapable of making such decisions.\textsuperscript{9} Mr. Stein was diagnosed with metastatic prostate cancer in early October of 2005.\textsuperscript{10} Shortly after the initial diagnosis, Mr. Stein became less and less competent.\textsuperscript{11} However, as her husband’s condition rapidly deteriorated on October 8, Mrs. Stein made no attempt to contact Mr. Stein’s primary care physician or any other health professional to discuss how to proceed given Mr. Stein’s incompetence.\textsuperscript{12} Rather, at 10:47 p.m. of that night, Mrs. Stein placed a 911 call from their home.\textsuperscript{13}

Immediately thereafter, medical personnel arrived at the scene, and Mrs. Stein advised the medical technicians that as her husband’s health care proxy, she was able to make medical decisions on his behalf, specifically in this case, deciding to which medical facility her husband should be taken.\textsuperscript{14} However, over Mrs. Stein’s objection, and

\textsuperscript{9} \textit{Id.} at 138 (stating Mr. Stein duly executed a health care proxy pursuant to § 2981). There was no controversy as to whether the health care proxy instrument conformed to the requirements of the statute. \textit{Id. See also N.Y. PUB. HEALTH LAW § 2981} (McKinney 2009) (outlining requirements for designating a health care proxy).

\textsuperscript{10} \textit{See Stein}, 642 F. Supp. 2d at 138. Metastatic prostate cancer is cancer that has spread from its origin in the prostate to other parts of the body. \textit{See Dana Farber Cancer Institute, Cancer Treatment Information by Disease, http://www.dana-farber.org/can/cancer/view.aspx?audience=0&lang=en&doc=CDR0000062965} (last visited Oct. 7, 2010). Prior to the initial diagnosis, Mr. Stein was admitted to North Shore University Hospital (“NSUH”) for extensive testing regarding his failing health. \textit{Stein}, 642 F. Supp. 2d at 138. The treating physician determined that Mr. Stein’s issue was metastatic prostate cancer after reviewing the test results, and he suggested for Mr. Stein to return home on October 7, 2005 until further treatment arrangements were made. \textit{Id.}

\textsuperscript{11} \textit{Id.} It was after Mr. Stein was released that he became less and less responsive, ultimately requiring Mrs. Stein to assume her role as her husband’s health care proxy. \textit{Id.}

\textsuperscript{12} \textit{Id.} Mrs. Stein did not contact Mr. Stein’s “primary care physician at any time on October, 8, 2005.” \textit{Id.} However, the record was silent concerning whether, previous to this incident, Mrs. Stein consulted with Mr. Stein’s primary care physician or an alternative medical professional to hypothetically discuss how to proceed if her husband was incompetent. \textit{ See Stein, 642 F. Supp. 2d} at 142. While the statute does not impose a temporal limitation on the consultation, it must occur nonetheless before any such medical decision is made by the health care proxy. \textit{Id. See also N.Y. PUB. HEALTH LAW § 2982(2)} (McKinney 2004). The pertinent portion of the statute states that “\textit{after} consultation with a licensed physician, registered nurse, licensed [ ] psychologist [ ], licensed master social worker, or a licensed clinical social worker, the agent shall make health care decisions” (emphasis added). \textit{Id.}

\textsuperscript{13} \textit{See Stein, 642 F. Supp. 2d} at 138. Medical personnel responded around 10:58 p.m., approximately eleven minutes after Mrs. Stein placed her 911 emergency call. \textit{Id.} Prior to the medical personnel arriving, defendant police officers responded to the 911 call. \textit{Id.}

\textsuperscript{14} \textit{Id.} at 138. Mrs. Stein requested that her husband be taken to NSUH, the hospital that had
without her consent as her husband’s health care proxy, the medical technicians refused to take Mr. Stein to North Shore University Hospital ("NSUH"), where he had been receiving his cancer treatments and his primary care physician was located; instead, they took him to Winthrop Hospital ("Winthrop"), where Mr. Stein did not receive crucial metastatic prostate cancer treatments for approximately five days.\(^1\) Alleging a violation of Section 2981, Mrs. Stein filed suit against the County of Nassau and the individual medical personnel that attended to her husband during this incident.\(^2\) Mrs. Stein specifically alleged that her status as Mr. Stein’s health care agent gave her unlimited authority to make any and all medical decisions on behalf of her husband, and consequently, she argued that she was able to make such medical decisions, including determining which hospital should treat her husband, within the Steins’ own home.\(^3\) Given that the statute requires the health care proxy to consult with a medical

\(^1\) Id. at 138-39. At Winthrop, Mr. Stein was subjected to tests and x-rays that were unnecessary, specifically because Mr. Stein had already received those treatments at NSUH during his previous stay. Id. at 139. Mr. Stein was exposed to these various treatments because Winthrop did not have his current medical records, and as a result, Mr. Stein went without his metastatic prostate cancer treatments. Id. These treatments were resumed after Mr. Stein was transferred to NSUH after five days of being a Winthrop patient. Id.

\(^2\) See See \textit{Stein}, 642 F. Supp. 2d at 139. Plaintiff’s complaint asserted a total of eleven causes of action based on the defendants’ refusal to honor her as her husband’s health care proxy. Id. The first four causes of action were predicated on the defendants’ decision to take Mr. Stein to Winthrop, and it was alleged that this specific act violated Mr. Stein’s rights under 42 U.S.C. § 1983, as well the Fourth, Fifth, and Fourteenth Amendments to the United States Constitution. Id. Causes of action five through eight rested on the argument that the defendants’ conduct violated Mrs. Stein’s rights under § 1983 and the Fourth and Fourteenth Amendments. Id. The ninth cause of action alleged that defendant Barthelson, a police officer responding to the scene, assaulted Mrs. Stein in removing her from blocking the door through which medical personnel were attempting to transport her husband from the home, specifically during her attempt to prevent those medical technicians from bringing Mr. Stein to Winthrop. Id.

\(^3\) See \textit{id.} at 141. Moreover, Mrs. Stein showed the defendants the original copy of Mr. Stein’s health care proxy with his duly executed signature authorizing his wife to make any and all health care decisions should he become incapacitated. See \textit{Stein}, 642 F. Supp. 2d at 138. Following the defendants’ refusal to recognize the legitimacy of the health care proxy, Mrs. Stein intentionally attempted to obstruct the defendants from taking her husband out of the family home, and also to Winthrop Hospital. See \textit{id.} at 139.
professional, the defendants countered that under Section 2982(2), Mrs. Stein’s decision-making authority was hindered by her failure to first consult with a medical professional before demanding that her husband be taken to a specific hospital.\textsuperscript{18} Thus, in this instance, the defendants argued that Mrs. Stein could only exert her health care proxy authority within a hospital where a simultaneous consultation and decision could be made.\textsuperscript{19} The district court, in applying New York state law, held for Mrs. Stein, refused to read the statute as broadly as her interpretation, and concluded that Section 2982 authorizes health care agents to make medical decisions regardless of the setting; further, while a consultation with the principal’s primary care physician must occur, the consultation does not have to occur concurrent to when the medical decision is actually made.\textsuperscript{20}

In 1914, Judge Cardozo declared that “[e]very human being of adult years and sound mind has a right to determine what shall be done with his own body.”\textsuperscript{21} New York’s legislative and common law history expressly indicates that the state has recognized the right to control one’s own medical treatment, including the state law principle that a patient has a right to refuse medical treatment.\textsuperscript{22} However, in 1988, In re id. at 141. The defendants further argued that a simultaneous consultation was mandatory under section two, which significantly limited the plaintiff’s interpretation of the applicable law, and thereby suggested an interpretation in their favor. \textit{Id.} See generally N.Y. PUB. HEALTH LAW § 2982(2) (McKinney 2004) (“\textquoteright;after consultation with a licensed physician, registered nurse, licensed [ ] psychologist [ ], licensed master social worker, or a licensed clinical social worker, the agent shall make health care decisions . . .”).

\textsuperscript{19} See \textit{Stein}, 642 F. Supp. 2d at 140-41. Thus, the defendants contended that Mrs. Stein was lacking the power to make any and all health care decisions on her husband’s behalf because the evidence suggested that Mrs. Stein failed to contact Mr. Stein’s primary care physician on the day in question. \textit{Id.}

\textsuperscript{20} \textit{Id.} at 141-42. In addition, the court further rejected the defendants’ argument regarding mandatory simultaneous consultation because it would require the court to read “hospital setting” where the text only says that a health care proxy need “consult [ ] with a licensed physician, registered nurse, licensed psychologist, [or] licensed master social worker,” without a specific limitation on where the consultation must occur. \textit{Id.} at 141-42. That reading, the court stated, would hardly be in accordance with the plain meaning of the words and would read an additional limitation into the statute, a limitation the legislature surely considered, but did not place in the statute. \textit{Id.} See generally N.Y. PUB. HEALTH LAW § 2980(9) (McKinney 2010) (defining and interpreting “hospital” setting for the purposes of health care proxy decision-making).

\textsuperscript{21} Schloendorff v. Soc’y of N.Y. Hosp., 105 N.E. 92, 93 (N.Y. 1914) (overruled on other grounds by Bing v. Thunig, 143 N.E.2d 3 (N.Y. 1957)).

\textsuperscript{22} See Kathryn E. Mazzeo, Comment, \textit{The Right to Die Versus the Right to Live-Who Decides? The Long and Wandering Road to a Legislative Solution}, 66 ALB. L. REV. 263, 265-76 (2002) (discussing the history of health care proxy law in New York). \textit{See also} N.Y. PUB. HEALTH LAW § 2504(1)-(6) (McKinney 2005) (enabling certain persons to consent for certain medical, dental, health, and
Westchester County Med. Ctr., the New York Court of Appeals advanced a more rigid approach than the approaches previously articulated for effectuating the treatment preferences of incompetent patients. Rather than accepting general evidence of the patient’s wishes regarding life-sustaining treatment, the concurrence required findings of a specific subjective intent as to the exact procedure in question before the hospital had to honor the patient’s request. Ultimately, the court suggested that “[t]he ideal situation is one in which the patient’s wishes were expressed in some form of a writing . . . while he or she was still competent.”

hospital services). The statute states in relevant part: “(l) [a]ny person who is eighteen years of age or older, or is the parent of a child or has married, may give effective consent for medical, dental, health and hospital services for himself or herself, and the consent of no other person shall be necessary.” Id. § 2504(1). See also Fosmire v. Nicoleau, 551 N.E.2d 77, 81 (N.Y. 1990) (discussing established right of a competent adult to determine the course of his or her own treatment, including rejecting medical treatment); Rivers v. Katz, 495 N.E.2d 337, 341 (N.Y. 1986) (reaffirming the basic right of a competent adult to refuse treatment even when the treatment may be necessary to preserve the person’s life); In re Storar 420 N.E.2d 64, 70 (N.Y. 1981) (stating legislature has recognized the right of a patient to control the course of his medical treatment).

Prior to In re Westchester County Med. Ctr., the New York Court of Appeals in In re Storar adopted an individualized subjective intent test with a clear and convincing evidentiary standard in order to ascertain, and then effectuate, the patient’s clearly expressed wishes. See In re Storar, 420 N.E.2d at 72. In this case, the issue was whether the mother of mentally retarded Storar could make medical decisions on his behalf. Id. In rejecting this proffered analysis, the court held that the mentally retarded patient (Storar) could not make competent reasonable decisions himself, so thus, his mother could not possibly determine his wishes. Id. In In re Eichner, the New York Court of Appeals furthered the previous ruling in In re Storar and applied the subjective intent test to the facts of the case. 420 N.E.2d 64, 72 (N.Y. 1981). In In re Eichner, the court emphasized that in respecting the wishes of the patient, the court was merely giving effect to the decisions regarding treatment that the patient himself had made prior to becoming incompetent, thus effectuating his subjective intent. Id. at 72. Analyzed together, these two cases suggest that the withdrawal of life-sustaining treatment from an incompetent patient is only granted if there is clear and convincing evidence that the patient expressly conveyed the idea that they did not want to receive that specific treatment. See Hollander, supra note 1, at 152-53.

In finding the previous standard unsatisfactory, the court stated “the finding of ‘actual intent’ required . . . must be based on nothing more than a calculated guess as to what the incompetent patient would have thought if she were competent.” Id. at 616-17. Moreover, the court further noted that “[t]here is simply no way of excluding the possibility that the patient has had a change of mind so that her past statements do not indicate her present wishes.” Id. at 617 (mentioning one interpretation and consequence of the subjective intent test to health care proxy decision-making).

Id. at 613 (discussing the need for a writing and the benefits of having one). The court went on to say that “a requirement of a written expression in every case would be unrealistic,” and the
The ability of competent adults to dictate the course of their medical treatment and to express their wishes prior to losing mental capacity suggested a compelling need for new legislation regulating health care proxies in New York. Governor Mario Cuomo convened the New York State Task Force on Life and the Law in March of 1985 with the purpose of establishing a decision-making process to allow competent adults to appoint a proxy to make health care treatment decisions on their behalf in the event they lose the capacity to make such decisions. The New York State legislature, faced with the limitations placed on incompetent adults under the then current law, amended the public health law in 1990 to add Article 29-C, now known as New York Public Health Law §§ 2980 – 2994, as an effective means to ensure that the wishes and interests of adult patients are protected if they lose the ability to speak or make medical treatment decisions for themselves. The New York legislature enacted New York Public Health Law Article 29-C in an effort to “eliminate the ambiguities in the law and obviate the need for a health care provider or family member to seek court approval of court further noted that a patient’s expressed desire to decline treatment does not have to specify a precise condition and course of treatment to be considered an effective mechanism to convey one’s wishes. See id. at 614.

27 See Hollander, supra note 1, at 159-70 (discussing the development and implementation of the New York health care proxy law). Much of the then-emerging discussion on health care proxies in New York State was precipitated by the Supreme Court decision in Cruzan v. Mo. Dep’t of Health, 497 U.S. 261 (1990). In Cruzan, the United States Supreme Court held that a state could require clear and convincing evidence of the patient’s wishes to be shown in order to allow close family members to make medical decisions for an incapacitated patient.See id. at 285-87 (reasoning patient preferences on treatment can be shown by clear and convincing evidence). See generally David LaValle, Note, Physician-Assisted Suicide: Is There a Right to Die? 31 SUFFOLK U. L. REV. 945 (1998) (discussing and reviewing whether a competent, terminally ill patient has the right to die).

28 See Hollander, supra note 1, at 159-60; S.S. v. R.S., 877 N.Y.S.2d 860, 862 (N.Y. Sup. Ct. 2009) (articulating the need for a new health care proxy law). The Task Force immediately recognized, under the current law, that an individual’s best interests may be overshadowed by his or her family’s emotional distress following the individual’s loss of capacity. See Hollander, supra note 1, at 159-60. Furthermore, without a medium enabling individuals to express their medical wishes, the state was implicitly authorizing close relatives and medical professionals to make critical health decisions on their behalf. See id. Therefore, the time was ripe, and there was a compelling need for a change in the state legislation. See id.

29 See S.S. v. R.S., 877 N.Y.S.2d at 862. In approving the new legislation, Governor Cuomo stated “[t]he health care agent must make decisions based upon the patient’s wishes, including consideration of the patient’s religious and moral beliefs.” See id. (citing Governor’s Mem. Approving L 1990, ch. 752). Furthermore, the Governor noted that “[t]he choices posed by medical advances will still be difficult. We will continue to confront them as patients, family members, or health care professionals. But the added anguish of legal uncertainty and confusion will be removed for patients who have created a health care proxy.” See id.
proposed treatment for an adult unable to make health care decisions.” The amended law specifically authorizes any competent adult to appoint a health care agent by executing a form delegating the extent of the proxy’s power to make health care decisions. In addition, the authorized health care proxy is limited to making decisions only in accordance with the patient’s wishes, including the patient’s religious and moral beliefs.

A health care proxy’s role, as provided by New York Public Health Law § 2982, is to make health decisions on behalf of another while effectuating that individual’s medical care preferences. Nevertheless, some discussion remains as to the extent of the health care proxy’s power, and there have been few decisions interpreting and applying the law. For instance, in Matter of Mougiannis v. North Shore-Long Island Jewish Health System, Inc., the Supreme Court of New York determined that the reach of

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30 See id. (citing TULLY MEMORANDUM at pg. 363 of Chapter Law Memorandum, L 1990 ch. 752). See also Hollander, supra note 1, at 159-60 (discussing development of the New York health care proxy law). Governor Cuomo’s Task Force concluded there was a “compelling need” for legislation in New York State to ensure that individuals’ wishes regarding their medical treatment would be followed should they become incompetent. Id. at 160 (citing N.Y. STATE TASK FORCE ON LIFE AND THE LAW, LIFE-SUSTAINING TREATMENT: MAKING DECISIONS AND APPOINTING A HEALTH CARE AGENT 1 (July 1987)).

31 See N.Y. PUB. HEALTH LAW § 2981(5)(b)(c) (McKinney 2009). The new legislation did not confer or expand the rights of patients regarding the rejection of any health care treatment, including those laws against homicide, suicide, assisted suicide, and mercy killing. See S.S. v. R.S., 877 N.Y.S.2d at 862 (discussing limitations of the law regarding physician-assisted homicide).

32 N.Y. PUB. HEALTH LAW § 2982(2)(a) (McKinney 2009). Moreover, another safeguard initiated by the legislature is that the health care proxy is not able to make an authorized decision if the incompetent adult’s wishes are not ascertainable. See id. § 2982(2)(b). Section 2982(2)(b) states “if the principal’s wishes regarding the administration of artificial nutrition and hydration are not reasonably known and cannot with reasonable diligence be ascertained, the agent shall not have the authority to make decisions regarding these measures.” See id.

33 See id. § 2982(1)-(2). Subject to any express limitations provided by the principal in the health proxy instrument, the statute grants somewhat broad authority for the agent to “make any and all health care decisions on the principal’s behalf that the principal could make.” Id.


Section 2982 plainly vests a duly appointed health care proxy the right to obtain the principal’s medical information and clinical records irrespective of whether the incompetent individual is currently receiving treatment. In addition, the Supreme Court of New York held in another case that a health care proxy is not authorized to make decisions about artificial nutrition and hydration if the patient’s wishes are not reasonably known and cannot be ascertained with reasonable diligence. Therefore, while there is limited authority on the subject, the legislative intent to grant the health care proxy the power to decide what is in an incapacitated person’s best interests suggests that the proxy has a very broad power to make these medical decisions, as long as the decision is in accordance with the patient’s wishes.

In Stein v. County of Nassau, the United States District Court for the Eastern District of New York considered the issue of whether emergency responders had to honor the decisions of Mr. Stein’s health care proxy outside of a hospital setting when

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36 See id. at 235-37 (stating reasoning and holding). Relying on Section 2980’s definition of “health care” that includes “any treatment, service or procedure to diagnose or treat an individual’s physical or mental condition,” the court held that its interpretation of whether the agent should have the right to access medical records should be read to effectuate the plain language of the statute. Id. at 235 (emphasis added). Thus, provided only that the information requested is necessary to make an informed decision regarding the principal’s health care, the agent must be given access to her principal’s medical information, irrespective of whether such information pertains to past or current hospitalizations or treatments. Id. at 236. Moreover, there would be no such issue if a principal requested this information, and it accordingly follows from the statute that the agent, like the principal, should have similar access to the medical records because the statute plainly grants the agent the right “to make any and all health care decisions on the principal’s behalf that the principal could make.” Id. See also NY PUB. HEALTH LAW § 2982(3).

37 Borenstein, 797 N.Y.S.2d at 829 (stating holding). The court held that the statute was clear in explicitly stating that a health care proxy cannot make a medical decision about artificial nutrition and hydration unless the patient’s wishes are reasonably known or can be ascertained with reasonable diligence. Id. at 828-29 (emphasis added). This is a strong example of the legislature specifically including a limiting provision to protect human life, without the court imposing an unnecessary restriction on the health care proxy. Id.

38 See N.Y. PUB. HEALTH LAW § 2982(1)-(2) (McKinney 2004). By including the provision “[t]he agent shall have the authority to make any and all health care decisions on the principal’s behalf that the principal could make,” the legislature granted a positive, seemingly unlimited power, only subject to three limitations: the agent must consult with a licensed medical professional; the agent must make health care decisions in accordance with the principal’s wishes, including the principal’s religious and moral beliefs; and the agent will not have the authority to make decisions regarding artificial nutrition and hydration if the patient’s wishes are not reasonably known. Id. (emphasis added). See also N.Y. PUB. HEALTH LAW § 2982(2)(b) (McKinney 2004) (constraining proxy’s ability to make decisions related to artificial hydration and nutrition when the principal’s wishes are not explicitly known).
Mrs. Stein failed to have a concurrent discussion with a medical professional on the best course of treatment for her husband.\textsuperscript{39} The district court explicitly rejected the defendant’s contention that Mrs. Stein had to make her decision regarding her husband’s course of treatment in a hospital setting.\textsuperscript{40} In analyzing the issue, the court looked to the plain language of the statute.\textsuperscript{41} Section 2982 is unambiguous as to the procedural requirement that mandates a previous consultation with a medical professional, and not a simultaneous consultation; it further provides that a health care proxy is “to make any and all health care decisions on the principal’s behalf that the principal could make.”\textsuperscript{42} A principal can make health care decisions at any time and in any location, and those decisions, such as whether to even go to a hospital to receive medical treatment in the first place, can clearly be made outside the parameters of the hospital.\textsuperscript{43} Thus, because the statute empowers health care proxies to make any and all decisions that the principal could make, including those outside a hospital, the court held that Section 2982 does not limit a proxy’s decision-making to the confines of a hospital.\textsuperscript{44}

\textsuperscript{39} Stein v. County of Nassau, 642 F. Supp. 2d 135, 140-42 (E.D.N.Y. 2009). In addition, the validity of the health care proxy within the Steins’ home also affected Mrs. Stein’s own constitutional and assault claims. Id. at 140. As the court duly noted, if Mrs. Stein was not authorized to act as her husband’s health care agent, then she did in fact act “intentionally and unreasonably,” and her claims would be without merit. Id. See supra note 16 and accompanying text (discussing Mrs. Stein’s eleven causes of action).

\textsuperscript{40} See id. at 141-42. In refusing to find for the defendants, the court stated that their requested interpretation ran afoul to three standard principles of statutory construction: “(1) that all parts of a statute should be given effect; (2) that statutes should not be construed so as to nullify any provision or render any term meaningless; and (3) that statutes should be construed in accordance with the plain meaning of the words used.” Id. at 141.

\textsuperscript{41} Id. at 141-42. Moreover, in refusing to read language that blatantly does not appear in the statutory text, the court stated that statutes should simply be construed in accordance with the plain meaning of the words. See Stein, 642 F. Supp. 2d at 141 (citing Orens v. Novello, 783 N.E.2d 492, 495 (N.Y. 2002)).

\textsuperscript{42} See id. at 141-42 (emphasis added) (quoting N.Y. PUB. HEALTH LAW § 2982(1) (McKinney 2004). The defendants’ proffered interpretation of Section 2982 would in effect completely deprive Mrs. Stein of her statutory-driven authority “to make any and all health care decisions on the principal’s behalf that the principal could make.” Id. See also N.Y. PUB. HEALTH LAW § 2982(1) (McKinney 2004).

\textsuperscript{43} See Stein, 642 F. Supp. 2d at 141-42. By the very unpredictable nature of one’s health, many individuals are forced to make critical medical decisions outside of a hospital setting. Id. For example, the decision whether or not to seek medical treatment in the first place must be made outside the hospital. Id. Thus, with no limitation imposed upon a principal regarding the location of where this initial decision is made, this holding is consistent not only with the statutory language, but also with the proffered purpose of the legislation. Id.

\textsuperscript{44} Id. Consequently, the defendants’ claim that Section 2982 is only limited to hospital settings is without merit in the text, and it would ultimately contravene long-accepted canons of the statutory construction of Section 2982. Id.
To resolve the issue of whether a health care proxy can make medical decisions outside of a hospital setting, the court looked at, and appropriately applied, the precise language of New York Public Health Law Section 2982.\(^{45}\) The statute plainly grants a health care proxy the legal right “to make any and all health care decisions on the principal’s behalf that the principal could make.”\(^{46}\) The facts of this case are in line with the statutory language of Section 2982, as Mrs. Stein made the decision on behalf of her husband (as his health care proxy) to determine to which hospital her husband should be transported (any health care decision), and this is a decision that Mr. Stein would clearly have been able to make without further questioning had he been competent at the time the medical personnel arrived.\(^{47}\) A competent adult can make any health related decisions at any time, anywhere, and certain decisions, such as whether to even go to the hospital to receive medical treatment in the first place, are clearly made outside the parameters of a hospital.\(^{48}\) Thus, the court’s holding is a convincing interpretation of the law, and it follows both legislative intent and the limited case law because it expands the rights of health care proxies.\(^{49}\)

The court’s holding that Section 2982 does not mandate a simultaneous discussion with a health care professional, prior to making critical medical decisions, begs the question whether this interpretation follows the statutory language.\(^{50}\) First, Section 2982(2) specifically states “\([\text{a}]f\text{ter} \text{ consultation with a licensed physician, registered nurse, licensed [ ] psychologist [ ], licensed master social worker, or a licensed clinical social worker, the agent shall make health decisions . . . .}\)”\(^{51}\) This section precludes a health care proxy from making a medical decision, or a decision to seek

\(^{45}\) See Stein, 642 F. Supp. 2d at 141-42 (discussing application of the unambiguous statutory language of Section 2982 to the facts of the current case).

\(^{46}\) N.Y. PUB. HEALTH LAW § 2982(1) (McKinney 2004) (emphasis added) (authorizing an agent to make any and all health care decisions on behalf of the principal that the principal could make).

\(^{47}\) See Stein, 642 F. Supp. 2d at 138-39; see also supra notes 14-20 and accompanying text (discussing how Mrs. Stein appropriately asserted that she had the authority to make medical decisions on behalf of her husband as his health care proxy).

\(^{48}\) See Stein, 642 F. Supp. 2d at 141-42 (stating a principal can make health care decisions at any time and in any place).

\(^{49}\) Id. See supra notes 33-34, 36 and accompanying text (discussing the development of the health care proxy law); see also supra notes 28-32 (discussing legislative intent behind enacting Section 2982, specifically to allow competent adults to convey their medical treatment wishes while protecting human life).

\(^{50}\) See Stein, 642 F. Supp. 2d at 141-42; see also supra note 3 and accompanying text (providing specific language used in Section 2982 by the legislature).

\(^{51}\) See N.Y. PUB. HEALTH LAW §2982(2) (McKinney 2004) (emphasis added) (stating health care proxy limitations); see also supra note 31 and accompanying text (listing limitation on health care proxy to make certain decisions regarding the principal’s course of medical treatment).
medical treatment in the first place, without first consulting with a medical professional.\textsuperscript{52} The court’s holding that this procedural requirement is not limited to a simultaneous discussion with any medical professional or even the patient’s own primary-care physician may appear controversial when considering that the legislature intended to protect human life by suggesting that decisions can only be made after discussing the current medical emergency with a licensed medical professional.\textsuperscript{53} Furthermore, legal experts may feel this is a marked departure from the original intent of the law because it is highly unlikely that a health care proxy could make the best medical decision possible with only having a hypothetical discussion with a physician months earlier, likely unrelated to the patient’s current symptoms, where the physician would be forced to give medical advice without being informed of the patient’s current condition.\textsuperscript{54}

In spite of the concerns mentioned above, these potential contentions with the court’s holding appear to be foreclosed by the precedential decision in \textit{Matter of Mougiannis v. North Shore-Long Island Jewish Health System, Inc.}, which appropriately analyzed and interpreted Section 2982 and its relevant legislative history.\textsuperscript{55} Similar to the present case, in \textit{Matter of Mougiannis}, the court rejected the assertion that the health care proxy’s powers are limited in scope and held that such powers allow the proxy to retrieve the principal’s records from the health care facility at which the principal is receiving treatment beyond just the specific time the principal is an inpatient.\textsuperscript{56} Under this rejected, narrow interpretation of the statute, and unjustified interpretation considering such limitations do not appear in the statute’s language, a health care proxy would lose the ability to make informed decisions regarding the principal’s health care because the proxy could not actually be informed of the principal’s medical history without the medical records, and the clear legislative purpose of enabling the health care proxy “to make any and all health care decisions on the principal’s behalf that the principal

\textsuperscript{52} See \textit{N.Y. PUB. HEALTH LAW § 2982(2)} (McKinney 2004).
\textsuperscript{53} See \textit{supra} notes 28-32 and accompanying text (discussing the strict requirements that were put in place to emphasize the value placed on protecting human life while allowing for a health care proxy statute). Furthermore, New York is one of the few states that does not allow a health care proxy to remove artificial nutrition and hydration unless it is specifically provided for in the health care proxy, thereby demonstrating the great lengths that the New York State legislature went to in order to prevent uninformed and rash medical decisions on behalf of an incompetent adult. \textit{See supra} notes 28-32 and accompanying text.
\textsuperscript{54} See \textit{supra} notes 28-32 (articulating the concerns the Task Force had regarding the health care proxy law and what must be included in the statute in order to protect human life).
\textsuperscript{55} See \textit{supra} note 36 and accompanying text (applying holding of the case).
“could make” would thereby be thwarted. Extending the interpretation in Matter of Mougiannis, the Stein court was correct in refusing to read constraining language into Section 2982 in conjunction with the unambiguous statutory language because it is without a doubt that a principal can have such hypothetical discussions with their primary-care physician months before the critical decision is actually made, and accordingly, the health care proxy has the power “to make any and all health care decisions on the principal’s behalf that the principal could make.” Thus, the district court’s holding keeps the prior consultation requirement intact while permitting this logical extension of the proxy’s power to make important decisions in the moment, rather than limiting the power by a strict requirement to simultaneously contact a licensed medical practitioner.

In Stein v. County of Nassau, the court addressed whether a health care proxy can make decisions on behalf of a principal outside of a hospital under Section 2982 without a concurrent consultation with a medical professional. The court correctly held that Section 2982 authorizes a health care proxy to make medical decisions anywhere, regardless of the patient’s location. This decision reiterates the importance of ensuring that health care proxies have the necessary, and admittedly, somewhat broad authority to make medical decisions whenever and wherever the medical emergency takes place to protect the health of an incompetent adult.

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57 Id. See also supra notes 28-32 and accompanying text.
58 N.Y. PUB. HEALTH LAW § 2982(1) (McKinney 2004).
59 See id. § 2982(1)-(2); see also Stein v. County of Nassau, 642 F. Supp. 2d 135, 141-42 (E.D.N.Y. 2009).
60 See id. at 141-42.
61 Id.
62 Id. at 142-43.