



## ELDER LAW AND ESTATE PLANNING

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# Man wants soon-to-be ex wife to continue as health care decision maker

**Question:** My wife and I are divorcing after 10 years of marriage. She's named as my health care surrogate. I want her to continue as my surrogate even after the divorce is final, and she's willing to do it. We remain great friends and we have a child together. I want to know if it is legally possible to have her continue as my surrogate? If yes, then is there anything I need to do to make it happen?

**Answer:** How fortunate that you and your ex-wife-to-be enjoy a good relationship. Assuming your health care surrogate is properly drafted and executed and is legally valid, it remains in full force until the divorce is final. Per Florida Statute 765.104(2), filing for a dissolution of marriage does not affect your health care surrogate. For now, your wife is still your health care decision-maker.

That will cease to be true when the divorce is final. At that point, her authority under the document terminates. Therefore, if you want your wife to continue to serve as your health care decision-maker, you will need to create a brand new health care surrogate. You could do that after the divorce comes through, but you don't have to wait until then. You may create a new health care surrogate right now. Your attorney should make it

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clear in the document that your surrogate will remain your surrogate despite any subsequent dissolution of marriage.

Your letter does not mention if you named a back-up to your wife on your current document. If you did not, make sure you name a back-up on the new document.

Although you have not asked, please note the rules are different for a Durable Power of Attorney vis-à-vis divorce. If you named your wife as your agent under your Durable Power of Attorney, her authority terminated when you filed for the dissolution of marriage.

*Joseph Karp and Jonathan Karp are Florida Elder Law and Estate Planning Attorneys. The Karp Law Firm is located in Palm Beach and St. Lucie counties. It assists clients with wills, trusts, Medicaid and VA benefits planning, special needs planning, asset preservation, probate/trust administration, estate litigation, and probate and elder law mediation.*