

**GENERAL ASSEMBLY OF NORTH CAROLINA
SESSION 2005**

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**HOUSE BILL 967
Committee Substitute Favorable 5/18/05
Senate Judiciary II Committee Substitute Adopted 8/12/05**

Short Title: Health Care Power of Atty/Dispos. of Remains. (Public)

Sponsors:

Referred to:

March 29, 2005

A BILL TO BE ENTITLED

1 AN ACT TO PROVIDE THAT IF A VALIDLY EXECUTED HEALTH CARE
2 POWER OF ATTORNEY AUTHORIZES THE HEALTH CARE AGENT TO
3 EXERCISE RIGHTS WITH RESPECT TO ANATOMICAL GIFTS, AUTOPSY,
4 OR DISPOSITION OF THE PRINCIPAL'S REMAINS, THE AUTHORIZING
5 PROVISION WILL CONTINUE IN EFFECT AFTER THE DEATH OF THE
6 PRINCIPAL FOR PURPOSES OF EXERCISING THE AUTHORIZED RIGHTS,
7 TO DEFINE "DISPOSITION OF REMAINS", AND TO MAKE CONFORMING
8 CHANGES.
9

10 The General Assembly of North Carolina enacts:

11 **SECTION 1.** G.S. 32A-16 reads as rewritten:

12 **"§ 32A-16. Definitions.**

13 As used in this Article, unless the context clearly requires otherwise, the following
14 terms have the meanings specified:

15 (1) "Disposition of remains" means the decision to bury or cremate human
16 remains as defined in G.S. 90-210.121(17).

17 ~~(1)~~(1a) "Health care" means any care, treatment, service, or procedure to
18 maintain, diagnose, treat, or provide for the principal's physical or
19 mental health or personal care and comfort including, life-sustaining
20 procedures. "Health care" includes mental health treatment as defined
21 in subdivision (8) of this section.

22 (2) "Health care agent" means the person appointed as a health care
23 attorney-in-fact.

24 (3) "Health care power of attorney" means a written instrument, signed in
25 the presence of two qualified witnesses, and acknowledged before a
26 notary public, pursuant to which an attorney-in-fact or agent is
27 appointed to act for the principal in matters relating to the health care

of the principal, and which substantially meets the requirements of this Article.

(4) "Life-sustaining procedures" are those forms of care or treatment which only serve to artificially prolong the dying process and may include mechanical ventilation, dialysis, antibiotics, artificial nutrition and hydration, and other forms of treatment which sustain, restore or supplant vital bodily functions, but do not include care necessary to provide comfort or to alleviate pain.

(5) "Principal" means the person making the health care power of attorney.

(6) "Qualified witness" means a witness in whose presence the principal has executed the health care power of attorney, who believes the principal to be of sound mind, and who states that he (i) is not related within the third degree to the principal nor to the principal's spouse, (ii) does not know nor have a reasonable expectation that he would be entitled to any portion of the estate of the principal upon the principal's death under any existing will or codicil of the principal or under the Intestate Succession Act as it then provides, (iii) is not the attending physician or mental health treatment provider of the principal, nor an employee of the attending physician or mental health treatment provider, nor an employee of a health facility in which the principal is a patient, nor an employee of a nursing home or any group-care home in which the principal resides, and (iv) does not have a claim against any portion of the estate of the principal at the time of the principal's execution of the health care power of attorney.

(7) "Advance instruction for mental health treatment" or "advance instruction" means a written instrument as defined in G.S. 122C-72(1) pursuant to which the principal makes a declaration of instructions, information, and preferences regarding mental health treatment.

(8) "Mental health treatment" means the process of providing for the physical, emotional, psychological, and social needs of the principal for the principal's mental illness. "Mental health treatment" includes, but is not limited to, electroconvulsive treatment, treatment of mental illness with psychotropic medication, and admission to and retention in a facility for care or treatment of mental illness."

SECTION 2. G.S. 32A-20(b) reads as rewritten:

"§ 32A-20. Effectiveness and duration; revocation.

...

(b) A Except for purposes of exercising authority granted by a health care power of attorney with respect to anatomical gifts, autopsy, or disposition of remains as provided in G.S. 32A-19(b), a health care power of attorney is revoked by the death of the principal. A health care power of attorney may be revoked by the principal at any time, so long as the principal is capable of making and communicating health care decisions. The principal may exercise this right of revocation by executing and

1 acknowledging an instrument of revocation, by executing and acknowledging a
2 subsequent health care power of attorney, or in any other manner by which the principal
3 is able to communicate an intent to revoke. This revocation becomes effective only
4 upon communication by the principal to each health care agent named in the revoked
5 health care power of attorney and to the principal's attending physician or eligible
6 psychologist.

7"

8 **SECTION 3.** G.S. 32A-25 reads as rewritten:

9 **"§ 32A-25. Statutory form health care power of attorney.**

10 The use of the following form in the creation of a health care power of attorney is
11 lawful and, when used, it shall meet the requirements of and be construed in accordance
12 with the provisions of this Article:

13 (Notice: This document gives the person you designate your health care agent broad
14 powers to make health care decisions, including mental health treatment decisions, for
15 you. Except to the extent that you express specific limitations or restrictions on the
16 authority of your health care agent, this power includes the power to consent to your
17 doctor not giving treatment or stopping treatment necessary to keep you alive, admit
18 you to a facility, and administer certain treatments and medications. This power exists
19 only as to those health care decisions for which you are unable to give informed
20 consent.

21 This form does not impose a duty on your health care agent to exercise granted
22 powers, but when a power is exercised, your health care agent will have to use due care
23 to act in your best interests and in accordance with this document. For mental health
24 treatment decisions, your health care agent will act according to how the health care
25 agent believes you would act if you were making the decision. Because the powers
26 granted by this document are broad and sweeping, you should discuss your wishes
27 concerning life-sustaining procedures, mental health treatment, and other health care
28 decisions with your health care agent.

29 Use of this form in the creation of a health care power of attorney is lawful and is
30 authorized pursuant to North Carolina law. However, use of this form is an optional and
31 nonexclusive method for creating a health care power of attorney and North Carolina
32 law does not bar the use of any other or different form of power of attorney for health
33 care that meets the statutory requirements.)

34 1. Designation of health care agent.

35 I, _____, being of sound mind, hereby appoint

36 Name: _____

37 Home Address: _____

38 Home Telephone Number _____ Work Telephone Number _____

39 as my health care attorney-in-fact (herein referred to as my "health care agent") to act
40 for me and in my name (in any way I could act in person) to make health care decisions
41 for me as authorized in this document.

42 If the person named as my health care agent is not reasonably available or is unable
43 or unwilling to act as my agent, then I appoint the following persons (each to act alone
44 and successively, in the order named), to serve in that capacity: (Optional)

1 A. Name: _____
 2 Home Address: _____
 3 Home Telephone Number _____Work Telephone
 4 Number_____

5 B. Name: _____
 6 Home Address: _____
 7 Home Telephone Number _____Work Telephone
 8 Number_____

9 Each successor health care agent designated shall be vested with the same power and
 10 duties as if originally named as my health care agent.

11 2. Effectiveness of appointment.

12 (Notice: This health care power of attorney may be revoked by you at any time in any
 13 manner by which you are able to communicate your intent to revoke to your health care
 14 agent and your attending physician.)

15 Absent revocation, the authority granted in this document shall become effective
 16 when and if the physician or physicians designated below determine that I lack
 17 sufficient understanding or capacity to make or communicate decisions relating to my
 18 health care and will continue in effect during my incapacity, until my ~~death~~death,
 19 except if I authorize my health care agent to exercise my rights with respect to
 20 anatomical gifts, autopsy, or disposition of my remains, this authority will continue after
 21 my death to the extent necessary to exercise the authority granted in this document for
 22 these purposes.

23 This determination shall be made by the following physician or physicians. For
 24 decisions related to mental health treatment, this determination shall be made by the
 25 following physician or eligible psychologist. (You may include here a designation of
 26 your choice, including your attending physician or eligible psychologist, or any other
 27 physician or eligible psychologist. You may also name two or more physicians or
 28 eligible psychologists, if desired, both of whom must make this determination before the
 29 authority granted to the health care agent becomes effective.):

30 _____
 31 _____
 32 _____
 33 _____

34 3. General statement of authority granted.

35 Except as indicated in section 4 below, I hereby grant to my health care agent named
 36 above full power and authority to make health care decisions, including mental health
 37 treatment decisions, on my behalf, including, but not limited to, the following:

- 38 A. To request, review, and receive any information, verbal or written,
 39 regarding my physical or mental health, including, but not limited to,
 40 medical and hospital records, and to consent to the disclosure of this
 41 information.
- 42 B. To employ or discharge my health care providers.
- 43 C. To consent to and authorize my admission to and discharge from a
 44 hospital, nursing or convalescent home, or other institution.

- 1 D. To consent to and authorize my admission to and retention in a facility
2 for the care or treatment of mental illness.
- 3 E. To consent to and authorize the administration of medications for
4 mental health treatment and electroconvulsive treatment (ECT)
5 commonly referred to as "shock treatment".
- 6 F. To give consent for, to withdraw consent for, or to withhold consent
7 for, X ray, anesthesia, medication, surgery, and all other diagnostic and
8 treatment procedures ordered by or under the authorization of a
9 licensed physician, dentist, or podiatrist. This authorization
10 specifically includes the power to consent to measures for relief of
11 pain.
- 12 G. To authorize the withholding or withdrawal of life-sustaining
13 procedures when and if my physician determines that I am terminally
14 ill, permanently in a coma, suffer severe dementia, or am in a
15 persistent vegetative state. Life-sustaining procedures are those forms
16 of medical care that only serve to artificially prolong the dying process
17 and may include mechanical ventilation, dialysis, antibiotics, artificial
18 nutrition and hydration, and other forms of medical treatment which
19 sustain, restore or supplant vital bodily functions. Life-sustaining
20 procedures do not include care necessary to provide comfort or
21 alleviate pain.
- 22 I DESIRE THAT MY LIFE NOT BE PROLONGED BY
23 LIFE-SUSTAINING PROCEDURES IF I AM TERMINALLY
24 ILL, PERMANENTLY IN A COMA, SUFFER SEVERE
25 DEMENTIA, OR AM IN A PERSISTENT VEGETATIVE
26 STATE.
- 27 H. To exercise any right I may have to make a disposition of any part or
28 all of my body for medical ~~purposes, purposes; to donate my organs,~~ to
29 authorize an ~~autopsy, autopsy; to make an anatomical gift of my organs~~
30 or body, or part thereof, and to direct the disposition of my remains.
- 31 I. To take any lawful actions that may be necessary to carry out these
32 decisions, including the granting of releases of liability to medical
33 providers.

34 4. Special provisions and limitations.

35 (Notice: The above grant of power is intended to be as broad as possible so that your
36 health care agent will have authority to make any decisions you could make to obtain or
37 terminate any type of health care. If you wish to limit the scope of your health care
38 agent's powers, you may do so in this section.)

- 39 A. In exercising the authority to make health care decisions on my behalf,
40 the authority of my health care agent is subject to the following special
41 provisions and limitations (Here you may include any specific
42 limitations you deem appropriate such as: your own definition of when
43 life-sustaining treatment should be withheld or discontinued, or
44 instructions to refuse any specific types of treatment that are

inconsistent with your religious beliefs, or unacceptable to you for any other reason.):

B. In exercising the authority to make mental health decisions on my behalf, the authority of my health care agent is subject to the following special provisions and limitations. (Here you may include any specific limitations you deem appropriate such as: limiting the grant of authority to make only mental health treatment decisions, your own instructions regarding the administration or withholding of psychotropic medications and electroconvulsive treatment (ECT), instructions regarding your admission to and retention in a health care facility for mental health treatment, or instructions to refuse any specific types of treatment that are unacceptable to you):

C. (Notice: This health care power of attorney may incorporate or be combined with an advance instruction for mental health treatment, executed in accordance with Part 2 of Article 3 of Chapter 122C of the General Statutes, which you may use to state your instructions regarding mental health treatment in the event you lack sufficient understanding or capacity to make or communicate mental health treatment decisions. Because your health care agent's decisions about decisions must be consistent with any statements you have expressed in an advance instruction, you should indicate here whether you have executed an advance instruction for mental health treatment.):

D. In exercising the authority to make decisions regarding autopsy, anatomical gifts and disposition of remains on my behalf, the authority of my health care agent is subject to the following special provisions and limitations. (Here you may include any specific limitations you deem appropriate such as: limiting the grant of authority and the scope of authority, instructions regarding gifts of the body or body part, or instructions regarding burial or cremation):

1
2
3
4 5. Guardianship provision.

5 If it becomes necessary for a court to appoint a guardian of my person, I nominate
6 my health care agent acting under this document to be the guardian of my person, to
7 serve without bond or security. The guardian shall act consistently with
8 G.S. 35A-1201(a)(5).

9 6. Reliance of third parties on health care agent.

10 A. No person who relies in good faith upon the authority of or any
11 representations by my health care agent shall be liable to me, my
12 estate, my heirs, successors, assigns, or personal representatives, for
13 actions or omissions by my health care agent.

14 B. The powers conferred on my health care agent by this document may
15 be exercised by my health care agent alone, and my health care agent's
16 signature or act under the authority granted in this document may be
17 accepted by persons as fully authorized by me and with the same force
18 and effect as if I were personally present, competent, and acting on my
19 own behalf. All acts performed in good faith by my health care agent
20 pursuant to this power of attorney are done with my consent and shall
21 have the same validity and effect as if I were present and exercised the
22 powers myself, and shall inure to the benefit of and bind me, my
23 estate, my heirs, successors, assigns, and personal representatives. The
24 authority of my health care agent pursuant to this power of attorney
25 shall be superior to and binding upon my family, relatives, friends, and
26 others.

27 7. Miscellaneous provisions.

28 A. I revoke any prior health care power of attorney.

29 B. My health care agent shall be entitled to sign, execute, deliver, and
30 acknowledge any contract or other document that may be necessary,
31 desirable, convenient, or proper in order to exercise and carry out any
32 of the powers described in this document and to incur reasonable costs
33 on my behalf incident to the exercise of these powers; provided,
34 however, that except as shall be necessary in order to exercise the
35 powers described in this document relating to my health care, my
36 health care agent shall not have any authority over my property or
37 financial affairs.

38 C. My health care agent and my health care agent's estate, heirs,
39 successors, and assigns are hereby released and forever discharged by
40 me, my estate, my heirs, successors, and assigns and personal
41 representatives from all liability and from all claims or demands of all
42 kinds arising out of the acts or omissions of my health care agent
43 pursuant to this document, except for willful misconduct or gross
44 negligence.

D. No act or omission of my health care agent, or of any other person, institution, or facility acting in good faith in reliance on the authority of my health care agent pursuant to this health care power of attorney shall be considered suicide, nor the cause of my death for any civil or criminal purposes, nor shall it be considered unprofessional conduct or as lack of professional competence. Any person, institution, or facility against whom criminal or civil liability is asserted because of conduct authorized by this health care power of attorney may interpose this document as a defense.

8. Signature of principal.

By signing here, I indicate that I am mentally alert and competent, fully informed as to the contents of this document, and understand the full import of this grant of powers to my health care agent.

_____(SEAL) _____
Signature of Principal Date

9. Signatures of Witnesses.

I hereby state that the Principal, _____, being of sound mind, signed the foregoing health care power of attorney in my presence, and that I am not related to the principal by blood or marriage, and I would not be entitled to any portion of the estate of the principal under any existing will or codicil of the principal or as an heir under the Intestate Succession Act, if the principal died on this date without a will. I also state that I am not the principal's attending physician, nor an employee of the principal's attending physician, nor an employee of the health facility in which the principal is a patient, nor an employee of a nursing home or any group care home where the principal resides. I further state that I do not have any claim against the principal.

Witness: _____ Date: _____

Witness: _____ Date: _____

STATE OF NORTH CAROLINA

COUNTY OF _____

CERTIFICATE

I, _____, a Notary Public for _____ County, North Carolina, hereby certify that _____ appeared before me and swore to me and to the witnesses in my presence that this instrument is a health care power of attorney, and that he/she willingly and voluntarily made and executed it as his/her free act and deed for the purposes expressed in it.

I further certify that _____ and _____, witnesses, appeared before me and swore that they witnessed _____ sign the attached health care power of attorney,

1 believing him/her to be of sound mind; and also swore that at the time they witnessed
2 the signing (i) they were not related within the third degree to him/her or his/her spouse,
3 and (ii) they did not know nor have a reasonable expectation that they would be entitled
4 to any portion of his/her estate upon his/her death under any will or codicil thereto then
5 existing or under the Intestate Succession Act as it provided at that time, and (iii) they
6 were not a physician attending him/her, nor an employee of an attending physician, nor
7 an employee of a health facility in which he/she was a patient, nor an employee of a
8 nursing home or any group-care home in which he/she resided, and (iv) they did not
9 have a claim against him/her. I further certify that I am satisfied as to the genuineness
10 and due execution of the instrument.

11 This the _____ day of _____, _____

12
13 _____
14 Notary Public

15
16 My Commission Expires:
17 _____
18

19 (A copy of this form should be given to your health care agent and any alternate
20 named in this power of attorney, and to your physician and family members.)"

21 **SECTION 4.** G.S. 130A-389(b) reads as rewritten:

22 "(b) In deaths where the Chief Medical Examiner and the medical examiner
23 investigating the case do not deem it advisable and in the public interest that an autopsy
24 be performed, but the next-of-kin of the deceased requests that an autopsy be
25 performed, the Chief Medical Examiner or a designated pathologist may perform the
26 autopsy and autopsy, unless the deceased's health care power of attorney granted
27 authority for such decisions to the health care agent. If the Chief Medical Examiner or a
28 designated pathologist performs the autopsy at the request of the next of kin, the cost
29 shall be paid by the next of kin."

30 **SECTION 5.** G.S. 130A-398 reads as rewritten:

31 **"§ 130A-398. Limitation on right to perform autopsy.**

32 The right to perform an autopsy shall be limited to those cases in which:

- 33 (1) The Chief Medical Examiner or a county medical examiner, acting
34 pursuant to G.S. 130A-389, directs that an autopsy be performed;
- 35 (2) The Commission of Anatomy, acting pursuant to G.S. 130A-415, has
36 given written consent for an autopsy to be performed on an unclaimed
37 body;
- 38 (3) A prosecuting officer or district attorney, acting pursuant to G.S. 15-7
39 in case of homicide, directs that an autopsy be performed;
- 40 (4) The decedent directs in writing prior to death that an autopsy be
41 performed upon the occurrence of the decedent's death;
- 42 (4a) The health care agent under a health care power of attorney with
43 authority to make decisions with respect to autopsies requests that an
44 autopsy be performed upon the deceased principal;

- 1 (5) The personal representative of the estate of the decedent requests that
 2 an autopsy be performed upon the decedent; or
 3 (6) Any of the following persons, in order of priority, when persons in
 4 prior classes are not available at the time of death, and in the absence
 5 of actual notice of contrary indications by the decedent or actual
 6 opposition by a member of the same or prior class, authorizes an
 7 autopsy to be performed:
 8 a. The spouse;
 9 b. Any adult child or stepchild;
 10 c. Any parent or stepparents;
 11 d. Any adult sibling;
 12 e. A guardian of the person of the decedent at the time of the
 13 decedent's death;
 14 f. Any relative or person who accepts responsibility for final
 15 disposition of the body by other customary and lawful
 16 procedures;
 17 g. Any person under obligation to dispose of the body."

18 **SECTION 6.** G.S. 130A-404(b) reads as rewritten:

19 "(b) If the decedent has not made a gift in the manner prescribed in
 20 G.S. 130A-406, then any of the following persons, in order of priority stated, when
 21 persons in prior classes are not available at the time of death, and in the absence of
 22 actual notice of contrary indications by the decedent or actual notice of opposition by a
 23 member of the same or a prior class, may give all or any part of the decedent's body for
 24 any purpose specified in G.S. 130A-405.

- 25 (1) ~~The spouse;~~The health care agent under a health care power of
 26 attorney with authority to make decisions with respect to anatomical
 27 gifts;
 28 (2) ~~An adult child;~~The spouse;
 29 (3) ~~Either parent;~~An adult child;
 30 (4) ~~An adult sibling;~~Either parent;
 31 (5) ~~A guardian of the person of the decedent at the time of decedent's~~
 32 ~~death;~~An adult sibling;
 33 (6) ~~Any other person authorized or under obligation to dispose of the~~
 34 ~~body.~~A guardian of the person of the decedent at the time of decedent's
 35 death;
 36 (7) Any other person authorized or under obligation to dispose of the
 37 body."

38 **SECTION 7.** This act becomes effective October 1, 2005, and applies to
 39 powers of attorney created before and after that date.