

GENERAL ASSEMBLY OF NORTH CAROLINA

SESSION 1991

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HOUSE BILL 821

Short Title: Amend Natural Death Act.

(Public)

Sponsors: Representative Holt.

Referred to: Judiciary I.

April 15, 1991

A BILL TO BE ENTITLED

AN ACT TO AMEND THE PROVISIONS OF THE NATURAL DEATH ACT TO INCLUDE THE MEDICAL CONDITION OF PERSISTENT VEGETATIVE STATE.

The General Assembly of North Carolina enacts:

Section 1. G.S. 90-321 reads as rewritten:

"§ 90-321. Right to a natural death.

(a) As used in this Article the term:

(1) 'Declarant' means a person who has signed a declaration in accordance with subsection (c);

(2) 'Extraordinary means' is defined as any medical procedure or intervention which in the judgment of the attending physician would serve only to postpone artificially the moment of death by sustaining, restoring, or supplanting a vital function;

(3) 'Physician' means any person licensed to practice medicine under Article 1 of Chapter 90 of the laws of the State of North Carolina.

(4) 'Persistent vegetative state' is a medical condition whereby in the judgment of the attending physician the patient suffers from a sustained complete loss of self-aware cognition and, without the use of extraordinary means or artificial nutrition or hydration, will succumb to death within a short period of time.

(b) If a person has declared, in accordance with subsection (c) below, a desire that his life not be prolonged by extraordinary means; means or by artificial nutrition or

1 hydration, and the declaration has not been revoked in accordance with subsection (e);  
2 and

- 3 (1) It is determined by the attending physician that the declarant's present  
4 condition is  
5 a. Terminal; and  
6 b. Incurable; ~~and or~~  
7 c. Diagnosed as a persistent vegetative state; and  
8 (2) There is confirmation of the declarant's present condition as set out  
9 above in subdivision (b)(1) by a physician other than the attending  
10 physician;

11 then extraordinary means or artificial nutrition or hydration, as specified by the  
12 declarant, may be withheld or discontinued upon the direction and under the supervision  
13 of the attending physician.

14 (c) The attending physician may rely upon a signed, witnessed, dated and proved  
15 declaration:

- 16 (1) Which expresses a desire of the declarant that ~~no~~ extraordinary means  
17 means or artificial nutrition or hydration not be used to prolong his life  
18 if his condition is determined to be terminal and ~~incurable; incurable, or~~  
19 if the declarant is diagnosed as being in a persistent vegetative state;  
20 and  
21 (2) Which states that the declarant is aware that the declaration authorizes  
22 a physician to withhold or discontinue the extraordinary ~~means;~~ means  
23 or artificial nutrition or hydration; and  
24 (3) Which has been signed by the declarant in the presence of two  
25 witnesses who believe the declarant to be of sound mind and who state  
26 that they (i) are not related within the third degree to the declarant or to  
27 the declarant's spouse, (ii) do not know or have a reasonable  
28 expectation that they would be entitled to any portion of the estate of  
29 the declarant upon his death under any will of the declarant or codicil  
30 thereto then existing or under the Intestate Succession Act as it then  
31 provides, (iii) are not the attending physician, or an employee of the  
32 attending physician, or an employee of a health facility in which the  
33 declarant is a patient, or an employee of a nursing home or any group-  
34 care home in which the declarant resides, and (iv) do not have a claim  
35 against any portion of the estate of the declarant at the time of the  
36 declaration; and  
37 (4) Which has been proved before a clerk or assistant clerk of superior  
38 court, or a notary public who certifies substantially as set out in  
39 subsection (d) below.

40 (d) The following form is specifically determined to meet the requirements  
41 above:

42

43 **'DECLARATION OF A DESIRE FOR A NATURAL DEATH'**

44

1 ~~I, ....., being of sound mind, desire that my life not be prolonged by~~  
 2 ~~extraordinary means if my condition is determined to be terminal and incurable. I am~~  
 3 ~~aware and understand that this writing authorizes a physician to withhold or discontinue~~  
 4 ~~extraordinary means. I, ....., being of sound mind, desire that, as specified below,~~  
 5 my life not be prolonged by extraordinary means or by artificial nutrition or hydration if  
 6 my condition is determined to be terminal and incurable or if I am diagnosed as being in  
 7 a persistent vegetative state. I am aware and understand that this writing authorizes a  
 8 physician to withhold or discontinue extraordinary means or artificial nutrition or  
 9 hydration, in accordance with my specifications set forth below:

10 (Initial any of the following, as desired):

11  
 12 '..... If my condition is determined to be terminal  
 13 and incurable, I authorize the following:

14  
 15 ..... My physician may withhold or discontinue  
 16 extraordinary means only.

17  
 18 ..... In addition to withholding or discontinuing  
 19 extraordinary means if such means are necessary,  
 20 my physician may withhold or discontinue  
 21 either artificial nutrition or hydration, or both.

22  
 23 '..... If my physician determines that I am in a persistent  
 24 vegetative state, I authorize the following:

25  
 26 ..... My physician may withhold or discontinue  
 27 extraordinary means only.

28  
 29 ..... In addition to withholding or discontinuing  
 30 extraordinary means if such means are necessary,  
 31 my physician may withhold or discontinue  
 32 either artificial nutrition or hydration, or both.

33  
 34 'This the .....day of.....

35 Signature.....

36 'I hereby state that the declarant,....., being of sound mind signed the above  
 37 declaration in my presence and that I am not related to the declarant by blood or  
 38 marriage and that I do not know or have a reasonable expectation that I would be  
 39 entitled to any portion of the estate of the declarant under any existing will or codicil of  
 40 the declarant or as an heir under the Intestate Succession Act if the declarant died on  
 41 this date without a will. I also state that I am not the declarant's attending physician or  
 42 an employee of the declarant's attending physician, or an employee of a health facility in  
 43 which the declarant is a patient or an employee of a nursing home or any group-care

1 home where the declarant resides. I further state that I do not now have any claim  
2 against the declarant.

3  
4  
5  
6

Witness  
Witness '

7 The clerk or the assistant clerk, or a notary public may, upon proper proof, certify  
8 the declaration as follows:

9

**'CERTIFICATE'**

10

11  
12 'I, ....., Clerk (Assistant Clerk) of Superior Court or Notary Public (circle one  
13 as appropriate) for .....County hereby certify  
14 that....., the declarant, appeared before me and swore to me and to the  
15 witnesses in my presence that this instrument is his Declaration Of A Desire For A  
16 Natural Death, and that he had willingly and voluntarily made and executed it as his free  
17 act and deed for the purposes expressed in it.

18 'I further certify that ..... and ....., witnesses, appeared before me and  
19 swore that they witnessed ....., declarant, sign the attached declaration, believing  
20 him to be of sound mind; and also swore that at the time they witnessed the declaration  
21 (i) they were not related within the third degree to the declarant or to the  
22 declarant's spouse, and (ii) they did not know or have a reasonable expectation that they  
23 would be entitled to any portion of the estate of the declarant upon the declarant's death  
24 under any will of the declarant or codicil thereto then existing or under the Intestate  
25 Succession Act as it provides at that time, and (iii) they were not a physician attending  
26 the declarant or an employee of an attending physician or an employee of a health  
27 facility in which the declarant was a patient or an employee of a nursing home or any  
28 group-care home in which the declarant resided, and (iv) they did not have a claim  
29 against the declarant. I further certify that I am satisfied as to the genuineness and due  
30 execution of the declaration.

31 'This the ..... day of .....

32 Clerk (Assistant Clerk) of Superior Court or  
33 Notary Public (circle one as appropriate) for  
34 the County of .....

35 The above declaration may be proved by the clerk or the assistant clerk, or a notary  
36 public in the following manner:

- 37 (1) Upon the testimony of the two witnesses; or
- 38 (2) If the testimony of only one witness is available, then
  - 39 a. Upon the testimony of such witness, and
  - 40 b. Upon proof of the handwriting of the witness who is dead or  
41 whose testimony is otherwise unavailable, and
  - 42 c. Upon proof of the handwriting of the declarant, unless he  
43 signed by his mark; or upon proof of such other circumstances  
44 as will satisfy the clerk or assistant clerk of the superior court,

1 or a notary public as to the genuineness and due execution of  
2 the declaration.

3 (3) If the testimony of none of the witnesses is available, such declaration  
4 may be proved by the clerk or assistant clerk, or a notary public

5 a. Upon proof of the handwriting of the two witnesses whose  
6 testimony is unavailable, and

7 b. Upon compliance with paragraph c of subdivision (2) above.

8 Due execution may be established, where the evidence required above is  
9 unavoidably lacking or inadequate, by testimony of other competent witnesses as to the  
10 requisite facts.

11 The testimony of a witness is unavailable within the meaning of this subsection  
12 when the witness is dead, out of the State, not to be found within the State, insane or  
13 otherwise incompetent, physically unable to testify or refuses to testify.

14 If the testimony of one or both of the witnesses is not available the clerk or the  
15 assistant clerk, or a notary public or superior court may, upon proper proof, certify the  
16 declaration as follows:

17  
18 **'CERTIFICATE'**

19  
20 'I ....., Clerk (Assistant Clerk) of Court for the Superior Court or Notary Public  
21 (circle one as appropriate) of..... County hereby certify that based upon the evidence  
22 before me I am satisfied as to the genuineness and due execution of the attached  
23 declaration by ....., declarant, and that the declarant's signature was witnessed  
24 by....., and ....., who at the time of the declaration met the qualifications of  
25 G.S. 90-321(c)(3).

26 'This the ..... day of ....., .....

27  
28 Clerk (Assistant Clerk) of Superior Court or  
29 Notary Public (circle one as appropriate) for  
30 ..... County.'

31 (e) The above declaration may be revoked by the declarant, in any manner by  
32 which he is able to communicate his intent to revoke, without regard to his mental or  
33 physical condition. Such revocation shall become effective only upon communication to  
34 the attending physician by the declarant or by an individual acting on behalf of the  
35 declarant.

36 (f) The execution and consummation of declarations made in accordance with  
37 subsection (c) shall not constitute suicide for any purpose.

38 (g) No person shall be required to sign a declaration in accordance with  
39 subsection (c) as a condition for becoming insured under any insurance contract or for  
40 receiving any medical treatment.

41 (h) The withholding or discontinuance of extraordinary means and/or the  
42 withholding or discontinuance of either artificial nutrition or hydration, or both in  
43 accordance with this section shall not be considered the cause of death for any civil or  
44 criminal purposes nor shall it be considered unprofessional conduct. Any person,

1 institution or facility against whom criminal or civil liability is asserted because of  
2 conduct in compliance with this section may interpose this section as a defense.

3 (i) Any certificate in the form provided by this section prior to July 1, 1979, shall  
4 continue to be valid."

5 Sec. 2. This act is effective upon ratification.