

GENERAL ASSEMBLY OF NORTH CAROLINA
SESSION 2007

S

2

SENATE BILL 1046
Judiciary II (Criminal) Committee Substitute Adopted 5/8/07

Short Title: Advance Directives/Health Care Pwr. Atty.-AB

(Public)

Sponsors:

Referred to:

March 21, 2007

A BILL TO BE ENTITLED

AN ACT TO CLARIFY THE RIGHT TO MAKE ADVANCE DIRECTIVES AND TO DESIGNATE HEALTH CARE AGENTS; TO IMPROVE AND SIMPLIFY THE MEANS OF MAKING THESE DIRECTIVES AND DESIGNATIONS; AND TO STUDY ISSUES RELATED TO THE ABILITY OF A PERSON TO DIRECT THAT MEDICAL CARE TO PROLONG LIFE SHALL BE CONTINUED.

The General Assembly of North Carolina enacts:

SECTION 1. G.S. 32A-15(c) reads as rewritten:

"(c) This Article is intended and shall be construed to be consistent with the provisions of Article 23 of Chapter 90 of the General Statutes provided that in the event of a conflict between the provisions of this Article and Article 23 of Chapter 90, the provisions of Article 23 of Chapter 90 control. No conflict between these Chapters exists when either a health care power of attorney or a declaration provides that the declaration is subject to decisions of a health care agent. If no declaration has been executed by the principal as provided in G.S. 90-321 that expressly covers the principal's present condition and if the health care agent has been given the specific authority in a health care power of attorney to authorize the withholding or discontinuing of ~~life sustaining procedures when the principal is in the present condition, these procedures~~ life-prolonging measures when the principal is in such condition, the measures may be withheld or discontinued as provided in the health care power of attorney upon the direction and under the supervision of the attending physician. ~~In this case, G.S. 90-322 does not apply.~~ physician, as G.S. 90-322 shall not apply in such case."

SECTION 2. G.S. 32A-16 reads as rewritten:

"§ 32A-16. Definitions.

~~As used in this Article, unless the context clearly requires otherwise, the following terms have the meanings specified:~~ The following definitions apply in this Article:

- (1) ~~"Disposition of remains" means the~~ Disposition of remains. – The decision to bury or cremate human remains as remains, as human

1 remains are defined in G.S. ~~90-210.121(17)~~-90-210.121, and, subject
2 to G.S. 32A-19(b), arrangements relating to burial or cremation.

3 (1a) ~~"Health care" means any~~ Health care. – Any care, treatment, service,
4 or procedure to maintain, diagnose, treat, or provide for the principal's
5 physical or mental health or personal care and comfort ~~including,~~
6 ~~life-sustaining procedures, including life-prolonging measures.~~ "Health
7 care" includes mental health treatment as defined in subdivision (8) of
8 this section.

9 (2) ~~"Health care agent" means the~~ Health care agent. – The person
10 appointed as a health care attorney-in-fact.

11 (3) ~~"Health care power of attorney" means a~~ Health care power of
12 attorney. – A written instrument, instrument that substantially meets the
13 requirements of this Article, that is signed in the presence of two
14 qualified witnesses, and acknowledged before a notary public, at least
15 one qualified witness, and is acknowledged before a notary public,
16 pursuant to which an attorney-in-fact or agent is appointed to act for
17 the principal in matters relating to the health care of the principal, and
18 which substantially meets the requirements of this Article.principal.
19 The notary who takes the acknowledgement may but is not required to
20 be a paid employee of the attending physician or mental health
21 treatment provider, a paid employee of a health facility in which the
22 principal is a patient, or a paid employee of a nursing home or any
23 group-care home in which the principal resides.

24 (4) ~~"Life sustaining procedures" are those forms of care or treatment~~
25 ~~which only serve to artificially prolong the dying process and may~~
26 ~~include mechanical ventilation, dialysis, antibiotics, artificial nutrition~~
27 ~~and hydration, and other forms of treatment which sustain, restore or~~
28 ~~supplant vital bodily functions, but do not include care necessary to~~
29 ~~provide comfort or to alleviate pain.~~Life-prolonging measures. –
30 Medical procedures or interventions which in the judgment of the
31 attending physician would serve only to postpone artificially the
32 moment of death by sustaining, restoring, or supplanting a vital
33 function, including mechanical ventilation, dialysis, antibiotics,
34 artificial nutrition and hydration, and similar forms of treatment.
35 Life-prolonging measures do not include care necessary to provide
36 comfort or to alleviate pain.

37 (5) ~~"Principal" means the~~ Principal. – The person making the health care
38 power of attorney.

39 (6) ~~"Qualified witness" means a~~ Qualified witness. – A witness in whose
40 presence the principal has executed the health care power of attorney,
41 who believes the principal to be of sound mind, and who states that he
42 or she (i) is not related within the third degree to the principal nor to
43 the principal's spouse, (ii) does not know nor have a reasonable
44 expectation that he or she would be entitled to any portion of the estate

1 of the principal upon the principal's death under any existing will or
2 codicil of the principal or under the Intestate Succession Act as it then
3 provides, (iii) is not the attending physician or mental health treatment
4 provider of the principal, nor ~~an a licensed health care provider who is~~
5 a paid employee of the attending physician or mental health treatment
6 provider, nor ~~an a paid~~ employee of a health facility in which the
7 principal is a patient, nor ~~an a paid~~ employee of a nursing home or any
8 group-care home in which the principal resides, and (iv) does not have
9 a claim against any portion of the estate of the principal at the time of
10 the principal's execution of the health care power of attorney.

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

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

24 **SECTION 3.** G.S. 32A-19(a), (a1), and (b) read as rewritten:

25 **"§ 32A-19. Extent of authority; limitations of authority.**

26 (a) A principal, pursuant to a health care power of attorney, may grant to the
27 health care agent full power and authority to make health care decisions to the same
28 extent that the principal could make those decisions for himself or herself if he or she
29 had ~~understanding and~~ capacity to make and communicate health care decisions,
30 including without limitation, the power to authorize withholding or discontinuing
31 ~~life-sustaining procedures~~ life-prolonging measures and the power to authorize the
32 giving or withholding of mental health treatment. A health care power of attorney may
33 also contain or incorporate by reference any lawful guidelines or directions relating to
34 the health care of the principal as the principal deems appropriate.

35 (a1) A health care power of attorney may incorporate or be combined with an
36 advance instruction for mental health treatment prepared pursuant to Part 2 of Article 3
37 of Chapter 122C of the General Statutes. A health care agent's decisions about mental
38 health treatment shall be consistent with any statements the principal has expressed in
39 an advance instruction for mental health treatment if one so exists, and if none exists,
40 shall be consistent with what the agent believes in good faith to be the manner in which
41 the principal would act if the principal did not lack ~~sufficient understanding or~~ capacity
42 to make or communicate health care decisions. A health care agent is not subject to
43 criminal prosecution, civil liability, or professional disciplinary action for any action
44 taken in good faith pursuant to an advance instruction for mental health treatment.

1 (b) A health care power of attorney may authorize the health care agent to
2 exercise any and all rights the principal may have with respect to anatomical gifts, the
3 authorization of any autopsy, and the disposition of ~~remains-remains~~; provided this
4 authority is limited to incurring reasonable costs related to exercising these powers and
5 a health care power of attorney does not give the health care agent general authority
6 over a principal's property or financial affairs."

7 **SECTION 4.** G.S. 32A-22(a) reads as rewritten:

8 "(a) If, following the execution of a health care power of attorney, a court of
9 competent jurisdiction appoints a guardian of the person of the principal, or a general
10 guardian with powers over the person of the principal, the guardian may petition the
11 court, after giving notice to the health care agent, to suspend the authority of the health
12 care agent during the guardianship. The court may suspend the authority of the health
13 care agent for good cause shown, provided that the court's order must direct whether the
14 guardian shall act consistently with the health care power of attorney or whether and in
15 what respect the guardian may deviate from it. Any order suspending the authority of
16 the health care agent must set forth the court's findings of fact and conclusions of
17 law.~~the health care power of attorney shall cease to be effective upon the appointment~~
18 ~~and qualification of the guardian.~~ The guardian shall act consistently with
19 G.S. 35A-1201(a)(5). A health care provider shall be fully protected from liability in
20 relying on a health care power of attorney until given actual notice of the court's order
21 suspending the authority of the health care agent."

22 **SECTION 5.(a)** G.S. 32A-24(c) reads as rewritten:

23 **"§ 32A-24. Reliance on health care power of attorney; defense.**

24 "(c) The withholding or withdrawal of ~~life-sustaining procedures~~ life-prolonging
25 measures by or under the orders of a physician pursuant to the authorization of a health
26 care agent shall not be considered suicide or the cause of death for any civil or criminal
27 purpose nor shall it be considered unprofessional conduct or a lack of professional
28 competence. Any person, institution or facility, including without limitation the health
29 care agent and the attending physician, against whom criminal or civil liability is
30 asserted because of conduct described in this section, may interpose this section as a
31 defense."

32 **SECTION 5.(b)** G.S. 32A-24 is amended by adding the following new
33 subsection to read:

34 "(d) The protections of this section extend to any valid health care power of
35 attorney, including a document valid under G.S. 32A-27; these protections are not
36 limited to health care powers of attorney prepared in accordance with the statutory form
37 provided in G.S. 32A-25.1, or to health care powers of attorney filed with the Advance
38 Health Care Directive Registry maintained by the Secretary of State. A health care
39 provider may rely in good faith on an oral or written statement by legal counsel that a
40 document appears to meet applicable statutory requirements for a health care power of
41 attorney. These protections also extend to a document executed in another jurisdiction
42 that is valid as a health care power of attorney under G.S. 32A-27. A health care
43 provider shall have no liability for acting in accordance with a revoked health care
44 power of attorney unless that provider has actual notice of the revocation."

SECTION 6.(a) G.S. 32A-25 is repealed.

SECTION 6.(b) Article 3 of Chapter 32A of the General Statutes is amended by adding the following new section to read:

"§ 32A-25.1. Statutory form health care power of attorney.

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

HEALTH CARE POWER OF ATTORNEY

NOTE: YOU SHOULD USE THIS DOCUMENT TO NAME A PERSON AS YOUR HEALTH CARE AGENT IF YOU ARE COMFORTABLE GIVING THAT PERSON BROAD AND SWEEPING POWERS TO MAKE HEALTH CARE DECISIONS FOR YOU. THERE IS NO LEGAL REQUIREMENT THAT ANYONE EXECUTE A HEALTH CARE POWER OF ATTORNEY.

EXPLANATION: You have the right to name someone to make health care decisions for you when you cannot make or communicate those decisions. This form may be used to create a health care power of attorney, and meets the requirements of North Carolina law. However, you are not required to use this form, and North Carolina law allows the use of other forms that meet certain requirements. If you prepare your own health care power of attorney, you should be very careful to make sure it is consistent with North Carolina law.

*This document gives the person you designate as your health care agent **broad powers** to make health care decisions for you when you cannot make the decision yourself or cannot communicate your decision to other people. You should discuss your wishes concerning life-prolonging measures, mental health treatment, and other health care decisions with your health care agent. Except to the extent that you express specific limitations or restrictions in this form, your health care agent may make any health care decision you could make yourself.*

This form does not impose a duty on your health care agent to exercise granted powers, but when a power is exercised, your health care agent will be obligated to use due care to act in your best interests and in accordance with this document.

This Health Care Power of Attorney form is intended to be valid in any jurisdiction in which it is presented, but places outside North Carolina may impose requirements that this form does not meet.

*If you want to use this form, you must complete it, sign it, and have your signature witnessed by a qualified witness and proved by a notary public. Follow the instructions about which choices you can initial very carefully. **Do not sign this form until** a witness and a notary public are present to watch you sign it. You then should give a copy to*

your health care agent and to any alternates you name. You should consider filing it with the Advance Health Care Directive Registry maintained by the North Carolina Secretary of State: <http://www.nclifelinks.org/ahcdr/>

1. Designation of Health Care Agent.

I, _____, being of sound mind, hereby appoint the following person(s) to serve as my health care agent to act for me and in my name (in any way I could act in person) to make health care decisions for me as authorized in this document. My designated health care agent(s) shall serve alone, in the order named.

A. Name: _____ Home Telephone: _____
Home Address: _____ Work Telephone: _____
Cellular Telephone: _____

B. Name: _____ Home Telephone: _____
Home Address: _____ Work Telephone: _____
Cellular Telephone: _____

C. Name: _____ Home Telephone: _____
Home Address: _____ Work Telephone: _____
Cellular Telephone: _____

Any successor health care agent designated shall be vested with the same power and duties as if originally named as my health care agent, and shall serve any time his or her predecessor is not reasonably available or is unwilling or unable to serve in that capacity.

2. Effectiveness of Appointment.

My designation of a health care agent expires only when I revoke it. Absent revocation, the authority granted in this document shall become effective when and if one of the physician(s) listed below determines that I lack capacity to make or communicate decisions relating to my health care, and will continue in effect during that incapacity, or until my death, except if I authorize my health care agent to exercise my rights with respect to anatomical gifts, autopsy, or disposition of my remains, this authority will continue after my death to the extent necessary to exercise that authority.

1. _____ (Physician)

2. _____ (Physician)

1 If I have not designated a physician, or no physician(s) named above are reasonably
2 available, the determination that I lack capacity to make or communicate decisions
3 relating to my health care shall be made by my attending physician.
4

5 **3. Revocation.**
6

7 Any time while I am competent, I may revoke this power of attorney in a writing I sign
8 or by communicating my intent to revoke, in any clear and consistent manner, to my
9 health care agent or my health care provider.
10

11 **4. General Statement of Authority Granted.**
12

13 Subject to any restrictions set forth in Section 6 below, I grant to my health care agent
14 full power and authority to make and carry out all health care decisions for me. These
15 decisions include, but are not limited to:
16

17 A. Requesting, reviewing, and receiving any information, verbal or
18 written, regarding my physical or mental health, including, but not
19 limited to, medical and hospital records, and to consent to the
20 disclosure of this information.
21

22 B. Employing or discharging my health care providers.
23

24 C. Consenting to and authorizing my admission to and discharge from a
25 hospital, nursing or convalescent home, hospice, long-term care
26 facility, or other health care facility.
27

28 D. Consenting to and authorizing my admission to and retention in a
29 facility for the care or treatment of mental illness.
30

31 E. Consenting to and authorizing the administration of medications for
32 mental health treatment and electroconvulsive treatment (ECT)
33 commonly referred to as "shock treatment."
34

35 F. Giving consent for, withdrawing consent for, or withholding consent
36 for, X-ray, anesthesia, medication, surgery, and all other diagnostic
37 and treatment procedures ordered by or under the authorization of a
38 licensed physician, dentist, podiatrist, or other health care provider.
39 This authorization specifically includes the power to consent to
40 measures for relief of pain.
41

42 G. Authorizing the withholding or withdrawal of life-prolonging
43 measures.
44

1 H. Providing my medical information at the request of any individual
2 acting as my attorney-in-fact under a durable power of attorney or as a
3 Trustee or successor Trustee under any Trust Agreement of which I am
4 a Grantor or Trustee, or at the request of any other individual whom
5 my health care agent believes should have such information. I desire
6 that such information be provided whenever it would expedite the
7 prompt and proper handling of my affairs or the affairs of any person
8 or entity for which I have some responsibility. In addition, I authorize
9 my health care agent to take any and all legal steps necessary to ensure
10 compliance with my instructions providing access to my protected
11 health information. Such steps shall include resorting to any and all
12 legal procedures in and out of courts as may be necessary to enforce
13 my rights under the law and shall include attempting to recover
14 attorneys' fees against anyone who does not comply with this health
15 care power of attorney.

16
17 I. To the extent I have not already made valid and enforceable
18 arrangements during my lifetime that have not been revoked,
19 exercising any right I may have to authorize an autopsy or direct the
20 disposition of my remains.

21
22 J. Taking any lawful actions that may be necessary to carry out these
23 decisions, including, but not limited to: (i) signing, executing,
24 delivering, and acknowledging any agreement, release, authorization,
25 or other document that may be necessary, desirable, convenient, or
26 proper in order to exercise and carry out any of these powers; (ii)
27 granting releases of liability to medical providers or others; and (iii)
28 incurring reasonable costs on my behalf related to exercising these
29 powers, provided that this health care power of attorney shall not give
30 my health care agent general authority over my property or financial
31 affairs.

32 33 **5. Special Provisions and Limitations.**

34
35 (Notice: The authority granted in this document is intended to be as broad as possible
36 so that your health care agent will have authority to make any decisions you could make
37 to obtain or terminate any type of health care treatment or service. If you wish to limit
38 the scope of your health care agent's powers, you may do so in this section. If none of
39 the following are initialed, there will be no special limitations on your agent's authority.)

40
41 A. Limitations about Artificial Nutrition or Hydration: In
42 exercising the authority to make health care decisions on my
43 behalf, my health care agent:

1 _____ shall NOT have the authority to withhold artificial nutrition
2 (Initial) (such as through tubes) OR may exercise that authority only
3 in accordance with the following special provisions:
4 _____
5 _____

6
7 _____ shall NOT have the authority to withhold artificial hydration
8 (Initial) (such as through tubes) OR may exercise that authority only
9 in accordance with the following special provisions:
10 _____
11 _____

12
13 **NOTE: If you initial either block but do not insert any**
14 **special provisions, your health care agent shall have NO**
15 **AUTHORITY to withhold artificial nutrition or**
16 **hydration.**
17 _____

18 _____ B. Limitations Concerning Health Care Decisions. In exercising
19 (Initial) the authority to make health care decisions on my behalf, the
20 authority of my health care agent is subject to the following
21 special provisions: (Here you may include any specific
22 provisions you deem appropriate such as: your own definition
23 of when life-prolonging measures should be withheld or
24 discontinued, or instructions to refuse any specific types of
25 treatment that are inconsistent with your religious beliefs, or
26 are unacceptable to you for any other reason.)
27 _____
28 _____

29 **NOTE: DO NOT initial unless you insert a limitation.**
30 _____

31 _____ C. Limitations Concerning Mental Health Decisions. In
32 (Initial) exercising the authority to make mental health decisions on
33 my behalf, the authority of my health care agent is subject to
34 the following special provisions: (Here you may include any
35 specific provisions you deem appropriate such as: limiting
36 the grant of authority to make only mental health treatment
37 decisions, your own instructions regarding the administration
38 or withholding of psychotropic medications and
39 electroconvulsive treatment (ECT), instructions regarding
40 your admission to and retention in a health care facility for
41 mental health treatment, or instructions to refuse any specific
42 types of treatment that are unacceptable to you.)
43 _____
44 _____

NOTE: DO NOT initial unless you insert a limitation.

(Initial)

D. Advance Instruction for Mental Health Treatment. (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 capacity to make or communicate mental health treatment decisions. Because your health care agent's 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):

NOTE: DO NOT initial unless you insert a limitation.

(Initial)

E. Autopsy and Disposition of Remains. In exercising the authority to make decisions regarding autopsy 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, or instructions regarding burial or cremation):

NOTE: DO NOT initial unless you insert a limitation.

6. Organ Donation.

To the extent I have not already made valid and enforceable arrangements during my lifetime that have not been revoked, my health care agent may exercise any right I may have to:

(Initial)

donate any needed organs or parts; or

(Initial)

donate only the following organs or parts:

NOTE: DO NOT INITIAL BOTH BLOCKS ABOVE.

donate my body for anatomical study if needed.

1 (Initial)

2 _____
3 (Initial)

In exercising the authority to make donations, 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, or instructions regarding gifts of the body or body parts.)

NOTE: DO NOT initial unless you insert a limitation.

NOTE: NO AUTHORITY FOR ORGAN DONATION IS GRANTED IN THIS INSTRUMENT WITHOUT YOUR INITIALS.

7. Guardianship Provision.

If it becomes necessary for a court to appoint a guardian of my person, I nominate the persons designated in Section 1, in the order named, to be the guardian of my person, to serve without bond or security. The guardian shall act consistently with G.S. 35A-1201(a)(5).

8. Reliance of Third Parties on Health Care Agent.

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

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

9. Miscellaneous Provisions.

A. Revocation of Prior Powers of Attorney. I revoke any prior health care power of attorney. The preceding sentence is not intended to revoke any general powers of attorney, some of the provisions of which may relate to health care; however, this power of attorney shall take precedence over any health care provisions in any valid general power of attorney I have not revoked.

B. Jurisdiction, Severability, and Durability. This Health Care Power of Attorney is intended to be valid in any jurisdiction in which it is presented. The powers delegated under this power of attorney are severable, so that the invalidity of one or more powers shall not affect any others. This power of attorney shall not be affected or revoked by my incapacity or mental incompetence.

C. Health Care Agent Not Liable. My health care agent and my health care agent's estate, heirs, successors, and assigns are hereby released and forever discharged by me, my estate, my heirs, successors, and assigns and personal representatives from all liability and from all claims or demands of all kinds arising out of my health care agent's acts or omissions, except for my health care agent's willful misconduct or gross negligence.

D. No Civil or Criminal Liability. No act or omission of my health care agent, or of any other person, entity, 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, entity, 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.

E. Reimbursement. My health care agent shall be entitled to reimbursement for all reasonable expenses incurred as a result of carrying out any provision of this directive.

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.

This the _____ day of _____, 20_____.

(SEAL)

I hereby state that the principal, _____, being of sound mind, signed (or directed another to sign on the principal's behalf) 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 a licensed health care provider or mental health treatment provider who is (1) an employee of the principal's attending physician or mental health treatment provider, (2) an employee of the health facility in which the principal is a patient, or (3) 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 or the estate of the principal.

Date: _____ Witness: _____

_____ COUNTY, _____ STATE

Sworn to (or affirmed) and subscribed before me this day by _____
(type/print name of signer)

(type/print name of witness)

Date _____
(Official Seal)

Signature of Notary Public

_____, Notary Public
Printed or typed name

My commission expires: _____

(b) Use of the statutory form prescribed in this section is an optional and nonexclusive method for creating a health care power of attorney and does not affect the use of other forms of health care powers of attorney, including previous statutory forms."

SECTION 7. Article 3 of Chapter 32A of the General Statutes is amended by adding the following new section to read:

"§ 32A-27. Health care powers of attorney executed in other jurisdictions.

Notwithstanding G.S. 32A-16(3), a health care power of attorney or similar document executed in a jurisdiction other than North Carolina shall be valid as a health

1 care power of attorney in this State if it appears to have been executed in accordance
2 with the applicable requirements of that jurisdiction or of this State."

3 **SECTION 8.** Article 4 of Chapter 35A of the General Statutes is amended
4 by adding the following new section to read:

5 **"§ 35A-1208. Authority for health care decisions.**

6 (a) A guardian of the person or general guardian of an incompetent adult may
7 petition the Clerk, in accordance with G.S. 32A-22(a), for an order suspending the
8 authority of a health care agent, as that term is defined in G.S. 32A-16(2).

9 (b) A guardian of the person or general guardian of an incompetent adult may not
10 revoke a Declaration, as that term is defined in G.S. 90-321."

11 **SECTION 9.** G.S. 35A-1241(a)(3) reads as rewritten:

12 "(3) The guardian of the person may give any consent or approval that may
13 be necessary to enable the ward to receive medical, legal,
14 psychological, or other professional care, counsel, treatment, or
15 ~~service~~.service; provided that, if the patient has a health care agent
16 appointed pursuant to a valid health care power of attorney, the health
17 care agent shall have the right to exercise the authority granted in the
18 health care power of attorney unless the Clerk has suspended the
19 authority of that health care agent in accordance with G.S. 35A-1208.
20 The guardian shall not, however, consent to the sterilization of a
21 mentally ill or mentally retarded ward unless the guardian obtains an
22 order from the clerk in accordance with G.S. 35A-1245. The guardian
23 of the person may give any other consent or approval on the ward's
24 behalf that may be required or in the ward's best interest. The guardian
25 may petition the clerk for the clerk's concurrence in the consent or
26 approval."

27 **SECTION 10.** G.S. 90-320 reads as rewritten:

28 **"§ 90-320. General purpose of Article.**

29 (a) The General Assembly recognizes as a matter of public policy that an
30 individual's rights include the right to a peaceful and natural death and that a patient or
31 ~~his~~the patient's representative has the fundamental right to control the decisions relating
32 to the rendering of ~~his~~the patient's own medical care, including the decision to have
33 ~~extraordinary means~~ life-prolonging measures withheld or withdrawn in instances of a
34 terminal condition. This Article is to establish an optional and nonexclusive procedure
35 by which a patient or ~~his~~the patient's representative may exercise these rights.

36 (b) Nothing in this Article shall be construed to authorize any affirmative or
37 deliberate act or omission to end life other than to permit the natural process of dying.
38 Nothing in this Article shall impair or supersede any legal right or legal responsibility
39 which any person may have to effect the withholding or withdrawal of ~~life-sustaining~~
40 ~~procedures~~ life-prolonging measures in any lawful manner. In such respect the
41 provisions of this Article are cumulative."

42 **SECTION 11.(a)** G.S. 90-321(a), (b), and (c) read as rewritten:

43 "(a) ~~As used in this Article the term:~~The following definitions apply in this
44 Article:

- 1 (1) ~~"Declarant" means a Declarant. – A person who has signed a~~
2 ~~declaration in accordance with subsection (e); (c) of this section.~~
- 3 (1a) Declaration. – Any signed, witnessed, dated, and proved document
4 meeting the requirements of subsection (c) of this section.
- 5 (2) ~~"Extraordinary means" is defined as any medical procedure or~~
6 ~~intervention which in the judgment of the attending physician would~~
7 ~~serve only to postpone artificially the moment of death by sustaining,~~
8 ~~restoring, or supplanting a vital function;~~
- 9 (2a) Life-prolonging measures. – As defined in G.S. 32A-16(4).
- 10 (3) ~~"Physician" means any Physician. – Any person licensed to practice~~
11 ~~medicine under Article 1 of Chapter 90 of the laws of the State of~~
12 ~~North Carolina; Carolina.~~
- 13 (4) ~~"Persistent vegetative state" is a medical condition whereby in the~~
14 ~~judgment of the attending physician the patient suffers from a~~
15 ~~sustained complete loss of self aware cognition and, without the use of~~
16 ~~extraordinary means or artificial nutrition or hydration, will succumb~~
17 ~~to death within a short period of time.~~
- 18 (b) ~~If a person has declared, in accordance with subsection (e) below, a desire~~
19 ~~that his life not be prolonged by extraordinary means or by artificial nutrition or~~
20 ~~hydration, expressed through a declaration, in accordance with subsection (c) of this~~
21 ~~section, a desire that the person's life not be prolonged by life-prolonging measures, and~~
22 ~~the declaration has not been revoked in accordance with subsection (e);(e) of this~~
23 ~~section; and~~
- 24 (1) It is determined by the attending physician that the declarant's present
25 condition is a condition described in subsection (c) of this section and
26 specified in the declaration for applying the declarant's directives, and
27 a. ~~Terminal and incurable; or~~
28 b. ~~Repealed by Session Laws 1993, c. 553, s. 28;~~
29 c. ~~Diagnosed as a persistent vegetative state; and~~
- 30 (2) There is confirmation of the declarant's present condition as set out
31 ~~above~~ in subdivision (b)(1) of this section by a physician other than the
32 attending ~~physieian;~~ physician, if another physician is reasonably
33 available;
- 34 ~~then extraordinary means or artificial nutrition or hydration, as specified by the~~
35 ~~declarant, the life-prolonging measures identified by the declarant shall or may, as~~
36 ~~specified by the declarant, may be withheld or discontinued upon the direction and~~
37 ~~under the supervision of the attending physician.~~
- 38 (c) ~~The attending physician may rely upon a signed, witnessed, dated and proved~~
39 ~~declaration, or a copy of that declaration obtained from the Advance Health Care~~
40 ~~Directive Registry maintained by the Secretary of State pursuant to Article 21 of~~
41 ~~Chapter 130A of the General Statutes; shall follow, subject to subsections (b), (e), and~~
42 ~~(k) of this section, a declaration:~~
- 43 (1) ~~Which expresses a desire of the declarant that extraordinary means or~~
44 ~~artificial nutrition or hydration not be used to prolong his life if his~~

1 condition is determined to be terminal and incurable, or if the declarant
 2 is diagnosed as being in a persistent vegetative state; and That
 3 expresses a desire of the declarant that life-prolonging measures not be
 4 used to prolong the declarant's life if, as specified in the declaration as
 5 to any or all of the following:

6 a. The declarant has an incurable or irreversible condition that will
 7 result in the declarant's death within a relatively short period of
 8 time; or

9 b. The declarant becomes unconscious and, to a high degree of
 10 medical certainty, will never regain consciousness; or

11 c. The declarant suffers from advanced dementia or any other
 12 condition resulting in the substantial loss of cognitive ability
 13 and that loss, to a high degree of medical certainty, is not
 14 reversible.

15 (2) ~~Which~~ That states that the declarant is aware that the declaration
 16 authorizes a physician to withhold or discontinue the ~~extraordinary~~
 17 ~~means or artificial nutrition or hydration;~~ life-prolonging measures;
 18 and

19 (3) ~~Which has been signed by the declarant in the presence of two~~
 20 ~~witnesses who believe the declarant to be of sound mind and who state~~
 21 ~~that they (i) are~~ That has been signed by the declarant in the presence
 22 of at least one witness who believes the declarant to be of sound mind
 23 and who states that he or she (i) is not related within the third degree to
 24 the declarant or to the declarant's spouse, (ii) ~~do~~ does not know or have
 25 a reasonable expectation that ~~they~~ he or she would be entitled to any
 26 portion of the estate of the declarant upon ~~his~~ the declarant's death
 27 under any will of the declarant or codicil thereto then existing or under
 28 the Intestate Succession Act as it then provides, (iii) ~~are not the~~
 29 attending physician, or an employee of the attending physician, or an
 30 employee of a health facility in which the declarant is a patient, or an
 31 employee of a nursing home or any group care home in which the
 32 declarant resides, is not the attending physician, or a licensed health
 33 care provider who is a paid employee of the attending physician, a paid
 34 employee of a health facility in which the declarant is a patient, or a
 35 paid employee of a nursing home or any group care home in which the
 36 declarant resides, and (iv) ~~do~~ does not have a claim against any portion
 37 of the estate of the declarant at the time of the declaration; and

38 (4) ~~Which~~ That has been proved before a clerk or assistant clerk of
 39 superior court, or a notary public who certifies substantially as set out
 40 in subsection ~~(d)~~ (d1) of this section. A notary who takes the
 41 acknowledgement may but is not required to be a paid employee of the
 42 attending physician, a paid employee of a health facility in which the
 43 declarant is a patient, or a paid employee of a nursing home or any
 44 group care home in which the declarant resides."

1 **SECTION 11.(b)** G.S. 90-321(d) is repealed.

2 **SECTION 11.(c)** G.S. 90-321 is amended by adding the following new
 3 subsection to read:

4 "(d1) The following form is specifically determined to meet the requirements of
 5 subsection (c) of this section:

6
 7 **ADVANCE DIRECTIVE FOR A NATURAL DEATH ("LIVING WILL")**

8
 9 **NOTE: YOU SHOULD USE THIS DOCUMENT TO GIVE YOUR HEALTH**
 10 **CARE PROVIDERS INSTRUCTIONS ABOUT WHETHER TO APPLY**
 11 **LIFE-PROLONGING MEASURES IN CERTAIN SITUATIONS. THERE IS**
 12 **NO LEGAL REQUIREMENT THAT ANYONE EXECUTE A LIVING WILL.**
 13

14 **GENERAL INSTRUCTIONS:** *You can use this Advance Directive ("Living Will")*
 15 *form to give instructions for the future about whether you want your health care*
 16 *providers to apply life-prolonging measures in certain situations. You should talk to*
 17 *your doctor about what these terms mean. The Living Will states what choices you*
 18 *would have made for yourself if you were able to communicate. Talk to your family*
 19 *members, friends, and others you trust about your choices. Also, it is a good idea to talk*
 20 *with professionals such as your doctors, clergypersons, and lawyers before you*
 21 *complete and sign this Living Will.*

22
 23 *You do not have to use this form to give those instructions, but if you create your own*
 24 *Advance Directive you need to be very careful to ensure that it is consistent with North*
 25 *Carolina law.*

26
 27 *This Living Will form is intended to be valid in any jurisdiction in which it is presented,*
 28 *but places outside North Carolina may impose requirements that this form does not*
 29 *meet.*

30
 31 *If you want to use this form, you must complete it, sign it, and have your signature*
 32 *witnessed by a qualified witness and proved by a notary public. Follow the instructions*
 33 *about which choices you can initial very carefully. **Do not sign this form until a witness***
 34 *and a notary public are present to watch you sign it. You then should consider giving a*
 35 *copy to your primary physician and/or a trusted relative, and should consider filing it*
 36 *with the Advanced Health Care Directive Registry maintained by the North Carolina*
 37 *Secretary of State: <http://www.nclifelinks.org/ahcdr/>*

38
 39 **My Desire for a Natural Death**

40
 41 I, _____, being of sound mind, desire that, as specified below, my
 42 life not be prolonged by life-prolonging measures:

43
 44 **1. When My Directives Apply**

1
2 My directions about prolonging my life shall apply *IF* my attending physician
3 determines that I lack capacity to make or communicate health care decisions and:

4
5 **NOTE: YOU MAY INITIAL ANY AND ALL OF THESE CHOICES.**

6
7 _____ I have an incurable or irreversible condition that will result
8 (Initial) in my death within a relatively short period of time.

9
10 _____ I become unconscious and my health care providers
11 (Initial) determine that, to a high degree of medical certainty, I will
12 never regain my consciousness.

13
14 _____ I suffer from advanced dementia or any other condition
15 (Initial) which results in the substantial loss of my cognitive ability
16 and my health care providers determine that, to a high
17 degree of medical certainty, this loss is not reversible.

18
19 **2. These are My Directives about Prolonging My Life:**

20
21 In those situations I have initialed in Section 1, I direct that my health care
22 providers:

23
24 **NOTE: INITIAL ONLY IN ONE PLACE.**

25
26 _____ may withhold or withdraw life-prolonging measures.
27 (Initial)

28
29 _____ shall withhold or withdraw life-prolonging measures.
30 (Initial)

31
32 **3. Exceptions – "Artificial Nutrition or Hydration"**

33
34 **NOTE: INITIAL ONLY IF YOU WANT TO MAKE EXCEPTIONS TO**
35 **YOUR INSTRUCTIONS IN PARAGRAPH 2.**

36
37 EVEN THOUGH I do not want my life prolonged in those situations I have
38 initialed in Section 1:

39 _____ I *DO* want to receive BOTH artificial hydration AND
40 (Initial) artificial nutrition (for example, through tubes) in those
41 situations.

42
43 **NOTE: DO NOT INITIAL THIS BLOCK IF ONE OF**
44 **THE BLOCKS BELOW IS INITIALED.**

7. My Health Care Providers May Rely on this Directive

My health care providers shall not be liable to me or to my family, my estate, my heirs, or my personal representative for following the instructions I give in this instrument. Following my directions shall not be considered suicide, or the cause of my death, or malpractice or unprofessional conduct. If I have revoked this instrument but my health care providers do not know that I have done so, and they follow the instructions in this instrument in good faith, they shall be entitled to the same protections to which they would have been entitled if the instrument had not been revoked.

8. I Want this Directive to be Effective Anywhere

I intend that this Advance Directive be followed by any health care provider in any place.

9. I have the Right to Revoke this Advance Directive

I understand that at any time I may revoke this Advance Directive in a writing I sign or by communicating in any clear and consistent manner my intent to revoke it to my attending physician. I understand that if I revoke this instrument I should try to destroy all copies of it.

This the _____ day of _____, _____.

Print Name

I hereby state that the declarant, _____, being of sound mind, signed (or directed another to sign on declarant's behalf) the foregoing Advance Directive for a Natural Death in my presence, and that I am not related to the declarant by blood or marriage, and I would not be entitled to any portion of the estate of the declarant under any existing will or codicil of the declarant or as an heir under the Intestate Succession Act, if the declarant died on this date without a will. I also state that I am not the declarant's attending physician, nor a licensed health care provider who is (1) an employee of the declarant's attending physician, (2) nor an employee of the health facility in which the declarant is a patient, or (3) an employee of a nursing home or any group care home where the declarant resides. I further state that I do not have any claim against the declarant or the estate of the declarant.

Date: _____ Witness: _____

_____ COUNTY, _____ STATE

Sworn to (or affirmed) and subscribed before me this day by _____
(type/print name of declarant)

(type/print name of witness)

Date _____
(Official Seal)

Signature of Notary Public

_____, Notary Public
Printed or typed name

My commission expires: _____ "

SECTION 11.(d) G.S. 90-321(e), (h), and (i) read as rewritten:

"(e) ~~The above declaration may be revoked by the declarant, in any manner by which he is able to communicate his intent to revoke, without regard to his mental or physical condition. Such revocation shall become effective only upon communication to the attending physician by the declarant or by an individual acting on behalf of the declarant.~~ A declaration may be revoked by the declarant, in writing or in any manner by which the declarant is able to communicate the declarant's intent to revoke in a clear and consistent manner, without regard to the declarant's mental or physical condition. A health care provider shall have no liability for acting in accordance with a revoked declaration unless the provider has actual notice of the revocation. A health care agent may not revoke a declaration unless the health care power of attorney explicitly authorizes that revocation; however, a health care agent may exercise any authority explicitly given to the health care agent in a declaration. A guardian of the person of the declarant or general guardian may not revoke a declaration.

(h) The withholding or discontinuance of ~~extraordinary means and/or the withholding or discontinuance of either artificial nutrition or hydration, or both life-prolonging measures~~ in accordance with this section shall not be considered the cause of death for any civil or criminal purposes nor shall it be considered unprofessional ~~conduct~~ or a lack of professional competence. Any person, institution or facility against whom criminal or civil liability is asserted because of conduct in compliance with this section may interpose this section as a defense. The protections of this section extend to any valid declaration, including a document valid under subsection (l) of this section; these protections are not limited to declarations prepared in accordance with the statutory form provided in subsection (d1) of this section, or to declarations filed with the Advance Health Care Directive Registry maintained by the Secretary of State. A health care provider may rely in good faith on an oral or written statement by legal counsel that a document appears to meet the statutory requirements for a declaration.

(i) ~~Any certificate in the form provided by this section prior to July 1, 1979, shall continue to be valid.~~ Use of the statutory form prescribed in subsection (d1) of this

1 section is an optional and nonexclusive method for creating a declaration and does not
2 affect the use of other forms of a declaration, including previous statutory forms."

3 **SECTION 11.(e)** G.S. 90-321 is amended by adding the following new
4 subsections to read:

5 "(k) Notwithstanding subsection (c) of this section:

6 (1) An attending physician may decline to honor a declaration that
7 expresses a desire of the declarant that life-prolonging measures not be
8 used if doing so would violate that physician's conscience or the
9 conscience-based policy of the facility at which the declarant is being
10 treated; provided, an attending physician who declines to honor a
11 declaration on these grounds must not interfere, and must cooperate
12 reasonably, with efforts to substitute an attending physician whose
13 conscience would not be violated by honoring the declaration, or
14 transfer the declarant to a facility that does not have policies in force
15 that prohibit honoring the declaration.

16 (2) An attending physician may decline to honor a declaration if after
17 reasonable inquiry there are reasonable grounds to question the
18 genuineness or validity of a declaration. The subsection imposes no
19 duty on the attending physician to verify a declaration's genuineness or
20 validity.

21 (l) Notwithstanding subsection (c) of this section, a declaration or similar
22 document executed in a jurisdiction other than North Carolina shall be valid in this State
23 if it appears to have been executed in accordance with the applicable requirements of
24 that jurisdiction or this State."

25 **SECTION 12.** G.S. 90-322 reads as rewritten:

26 **"§ 90-322. Procedures for natural death in the absence of a declaration.**

27 (a) ~~If a person is comatose and there is no reasonable possibility that he will~~
28 ~~return to a cognitive sapient state or is mentally incapacitated, and: If the attending~~
29 ~~physician determines, to a high degree of medical certainty, that a person lacks capacity~~
30 ~~to make or communicate health care decisions and the person will never regain that~~
31 ~~capacity, and:~~

32 ~~(1) It is determined by the attending physician that the person's present~~
33 ~~condition is:~~

34 ~~a. Terminal and incurable; or~~

35 ~~b. Repealed by Session Laws 1993, c. 553, s. 29.~~

36 ~~e. Diagnosed as a persistent vegetative state; and~~

37 (1a) That the person:

38 a. Has an incurable or irreversible condition that will result in the
39 person's death within a relatively short period of time; or

40 b. Is unconscious and, to a high degree of medical certainty, will
41 never regain consciousness; and

42 (2) There is confirmation of the person's present condition as set out above
43 in this subsection, in writing by a physician other than the attending
44 physician; and

1 (3) A vital bodily function of the person could be restored by
2 ~~extraordinary means or a vital function of the person is being sustained~~
3 ~~by extraordinary means; or~~ or is being sustained by life-prolonging
4 measures;

5 (4) ~~The life of the person could be or is being sustained by artificial~~
6 ~~nutrition or hydration;~~

7 then, ~~extraordinary means or artificial nutrition or hydration~~ life-prolonging measures
8 may be withheld or discontinued in accordance with subsection ~~(b)~~ (b) of this section.

9 (b) If a person's condition has been determined to meet the conditions set forth in
10 subsection (a) of this section and no instrument has been executed as provided in
11 ~~G.S. 90-321-90-321, the extraordinary means or artificial nutrition or hydration then~~
12 life-prolonging measures may be withheld or discontinued upon the direction and under
13 the supervision of the attending physician with the concurrence ~~(i) of a health care agent~~
14 ~~appointed pursuant to a health care power of attorney meeting the requirements of~~
15 ~~Article 3 of Chapter 32A of the General Statutes, or (ii) of a guardian of the person, or~~
16 ~~(iii) of the person's spouse, or (iv) of a majority of the relatives of the first degree, in~~
17 that order of the following persons, in the order indicated:

18 (1) A guardian of the patient's person, or a general guardian with powers
19 over the patient's person, appointed by a court of competent
20 jurisdiction pursuant to Article 5 of Chapter 35A of the General
21 Statutes; provided that, if the patient has a health care agent appointed
22 pursuant to a valid health care power of attorney, the health care agent
23 shall have the right to exercise the authority to the extent granted in the
24 health care power of attorney and to the extent provided in
25 G.S. 32A-19(b) unless the Clerk has suspended the authority of that
26 health care agent in accordance with G.S. 35A-1208(a);

27 (2) A health care agent appointed pursuant to a valid health care power of
28 attorney, to the extent of the authority granted;

29 (3) An attorney-in-fact, with powers to make health care decisions for the
30 patient, appointed by the patient pursuant to Article 1 or Article 2 of
31 Chapter 32A of the General Statutes, to the extent of the authority
32 granted;

33 (4) The patient's spouse;

34 (5) A majority of the patient's reasonably available parents and children
35 who are at least 18 years of age;

36 (6) A majority of the patient's reasonably available siblings who are at
37 least 18 years of age; or

38 (7) An individual who has an established relationship with the patient,
39 who is acting in good faith on behalf of the patient, and who can
40 reliably convey the patient's wishes.

41 If none of the above is reasonably available then at the discretion of the attending
42 physician the ~~extraordinary means or artificial nutrition or hydration~~ life-prolonging
43 measures may be withheld or discontinued upon the direction and under the supervision
44 of the attending physician.

1 (c) Repealed by Session Laws 1979, c. 715, s. 2.

2 (d) The withholding or discontinuance of such ~~extraordinary means or artificial~~
3 ~~nutrition or hydration~~ life-prolonging measures shall not be considered the cause of
4 death for any civil or criminal purpose nor shall it be considered unprofessional
5 conduct. Any person, institution or facility against whom criminal or civil liability is
6 asserted because of conduct in compliance with this section may interpose this section
7 as a defense."

8 **SECTION 13.** G.S. 90-21.13 reads as rewritten:

9 **"§ 90-21.13. Informed consent to health care treatment or procedure.**

10 (a) No recovery shall be allowed against any health care provider upon the
11 grounds that the health care treatment was rendered without the informed consent of the
12 patient or the ~~patient's spouse, parent, guardian, nearest relative or other person~~
13 authorized to give consent for the patient where:

14 (1) The action of the health care provider in obtaining the consent of the
15 patient or other person authorized to give consent for the patient was in
16 accordance with the standards of practice among members of the same
17 health care profession with similar training and experience situated in
18 the same or similar communities; and

19 (2) A reasonable person, from the information provided by the health care
20 provider under the circumstances, would have a general understanding
21 of the procedures or treatments and of the usual and most frequent
22 risks and hazards inherent in the proposed procedures or treatments
23 which are recognized and followed by other health care providers
24 engaged in the same field of practice in the same or similar
25 communities; or

26 (3) A reasonable person, under all the surrounding circumstances, would
27 have undergone such treatment or procedure had he been advised by
28 the health care provider in accordance with the provisions of
29 subdivisions (1) and (2) of this subsection.

30 (b) ~~A consent which is evidenced in writing and which meets the foregoing~~
31 ~~standards, and which is signed by the patient or other authorized person, shall be~~
32 ~~presumed to be a valid consent. This presumption, however, may be subject to rebuttal~~
33 ~~only upon proof that such consent was obtained by fraud, deception or~~
34 ~~misrepresentation of a material fact.~~ A consent that meets the foregoing standards, that is
35 given by a patient, or other authorized person, who under all the surrounding
36 circumstances has capacity to make and communicate health care decisions, is a valid
37 consent.

38 (c) ~~A valid consent is one which is given by a person who under all the~~
39 ~~surrounding circumstances is mentally and physically competent to give consent.~~

40 (1) Consent that is evidenced in writing, and that is signed by the patient
41 or other authorized person, shall be presumed to be a valid consent.
42 This presumption may be rebutted only upon proof that such consent
43 was obtained by fraud, deception, or misrepresentation of a material
44 fact.

1 (2) The following persons, in the order indicated, are authorized to
2 consent to medical treatment on behalf of a patient who is comatose or
3 otherwise lacks capacity to make or communicate health care
4 decisions:

5 a. A guardian of the patient's person, or a general guardian with
6 powers over the patient's person, appointed by a court of
7 competent jurisdiction pursuant to Article 5 of Chapter 35A of
8 the General Statutes; provided that, if the patient has a health
9 care agent appointed pursuant to a valid health care power of
10 attorney, the health care agent shall have the right to exercise
11 the authority to the extent granted in the health care power of
12 attorney and to the extent provided in G.S. 32A-19(b) unless the
13 Clerk has suspended the authority of that health care agent in
14 accordance with G.S. 35A-1208(a);

15 b. A health care agent appointed pursuant to a valid health care
16 power of attorney, to the extent of the authority granted;

17 c. An attorney-in-fact, with powers to make health care decisions
18 for the patient, appointed by the patient pursuant to Article 1 or
19 Article 2 of Chapter 32A of the General Statutes, to the extent
20 of the authority granted;

21 d. The patient's spouse;

22 e. A majority of the patient's reasonably available parents and
23 children who are at least 18 years of age;

24 f. A majority of the patient's reasonably available siblings who are
25 at least 18 years of age; or

26 g. An individual who has an established relationship with the
27 patient, who is acting in good faith on behalf of the patient, and
28 who can reliably convey the patient's wishes.

29 If none of the persons listed under this subdivision is reasonably available, then the
30 patient's attending physician, in the attending physician's discretion, may provide health
31 care treatment without the consent of the patient or other person authorized to consent
32 for the patient if there is confirmation by a physician other than the patient's attending
33 physician of the patient's condition and the necessity for treatment; provided, however,
34 that confirmation of the patient's condition and the necessity for treatment are not
35 required if the delay in obtaining the confirmation would endanger the life or seriously
36 worsen the condition of the patient.

37 (d) No action may be maintained against any health care provider upon any
38 guarantee, warranty or assurance as to the result of any medical, surgical or diagnostic
39 procedure or treatment unless the guarantee, warranty or assurance, or some note or
40 memorandum thereof, shall be in writing and signed by the provider or by some other
41 person authorized to act for or on behalf of such provider.

42 (e) In the event of any conflict between the provisions of this section and those of
43 ~~G.S. 35A-1245~~G.S. 35A-1245, 90-21.17, and 90-322, and Articles 1A and 19 of

1 Chapter 90, and Article 3 of Chapter 122C, the provisions of those sections and Articles
2 shall control and continue in full force and effect."

3 SECTION 14. G.S. 90-21.17 reads as rewritten:

4 "**§ 90-21.17. Portable do not resuscitate ~~order~~ order and Medical Order for Scope
5 of Treatment.**

6 (a) It is the intent of this section to recognize a patient's desire and right to
7 withhold cardiopulmonary resuscitation and other life-prolonging measures to avoid
8 loss of dignity and unnecessary pain and suffering through the use of a portable do not
9 resuscitate ("DNR") ~~order~~ order or a Medical Order for Scope of Treatment (MOST).

10 This section establishes an optional and nonexclusive procedure by which a patient
11 or the patient's representative may exercise this right.

12 (b) A physician may issue a portable DNR order or MOST for a patient:

13 (1) With the consent of the patient;

14 (2) If the patient is a minor, with the consent of the patient's parent or
15 guardian; or

16 (3) If the patient is not a minor but is incapable of making an informed
17 decision regarding consent for the order, with the consent of the
18 patient's representative.

19 The physician shall document the basis for the DNR order or MOST in the patient's
20 medical record. When the order is a MOST, the patient or the patient's representative
21 must sign the form, provided, however, that if it is not practicable for the patient's
22 representative to sign the original MOST form, the patient's representative shall sign a
23 copy of the completed form and return it to the health care professional completing the
24 form. The copy of the form with the signature of the patient's representative, whether in
25 paper or electronic form, shall be placed in the patient's medical record. When the
26 signature of the patient's representative is on a separate copy of the MOST form, the
27 original MOST form must indicate in the appropriate signature field that the signature is
28 "on file."

29 (c) The Department of Health and Human Services shall develop a portable DNR
30 order ~~form~~ form, and a MOST form. The official DNR form shall include fields for the
31 name of the patient; the name, address, and telephone number of the physician; the
32 signature of the physician; and other relevant information. At a minimum, the official
33 MOST form shall include fields for: the name of the patient; the name and telephone
34 number of the physician, physician assistant, or nurse practitioner authorizing the order
35 by signing the form; the name and contact information of the health care professional
36 who prepared the form with the patient or the patient's representative; information on
37 who agreed (i.e., the patient or the patient's representative) to the options selected on the
38 MOST form; a range of options for cardiopulmonary resuscitation, medical
39 interventions, antibiotics, medically administered fluids and nutrition; a signature block
40 for the patient or the patient's representative to sign if practicable; effective date of the
41 form and review dates; and an advisory that the MOST may be revoked by the patient or
42 the patient's representative. The form may be approved by reference to a standard form
43 that meets the requirements of this subsection. For purposes of this section, the
44 "patient's representative" means an individual from the list of persons authorized to

1 consent to the withholding of ~~extraordinary care~~ life-prolonging measures pursuant to
2 ~~G.S. 90-322 or an individual who has an established relationship with the patient, who~~
3 ~~is acting in good faith on behalf of the patient, and who can reliably convey the patient's~~
4 ~~wishes.~~ G.S. 90-322.

5 (d) No physician, emergency medical professional, hospice provider, or other
6 health care provider shall be subject to criminal prosecution, civil liability, or
7 disciplinary action by any professional licensing or certification agency for withholding
8 cardiopulmonary resuscitation from a patient in good faith reliance on an original DNR
9 order or MOST form adopted pursuant to subsection (c) of this section, provided that (i)
10 there are no reasonable grounds for doubting the validity of the order or the identity of
11 the patient, and (ii) the provider does not have actual knowledge of the revocation of the
12 portable DNR ~~order.~~ order or MOST. No physician, emergency medical professional,
13 hospice provider, or other health care provider shall be subject to criminal prosecution,
14 civil liability, or disciplinary action by any professional licensing or certification agency
15 for failure to follow a DNR order or MOST form adopted pursuant to subsection (c) of
16 this section if the provider had no actual knowledge of the existence of the DNR
17 ~~order.~~ order or MOST.

18 (e) A health care facility may develop policies and procedures that authorize the
19 facility's provider to accept a portable DNR order or MOST as if it were an order of the
20 medical staff of that facility. This section does not prohibit a physician in a health care
21 facility from issuing a written order, other than a portable DNR ~~order.~~ order or MOST
22 not to resuscitate a patient in the event of cardiac or respiratory arrest, or to use,
23 withhold, or withdraw additional medical interventions as provided in the MOST, in
24 accordance with acceptable medical practice and the facility's policies.

25 (f) Nothing in this section shall affect the validity of portable DNR order or
26 MOST forms in existence prior to the effective date of this section."

27 **SECTION 15.** G.S. 130A-420 reads as rewritten:

28 "**§ 130A-420. Authority to dispose of body or body parts.**

29 (a) An individual at least 18 years of age may authorize the disposition of the
30 individual's own dead body in a written will, pursuant to a health care power of attorney
31 to the extent provided in Article 3 of Chapter 32A of the General Statutes, pursuant to a
32 preneed funeral contract executed pursuant to Article 13D of Chapter 90 of the General
33 Statutes, pursuant to a cremation authorization form executed pursuant to Article 13C of
34 Chapter 90 of the General Statutes, or in a written statement signed by the individual
35 and witnessed by two persons who are at least 18 years old.

36 (b) If a decedent has left no written authorization for the disposal of the
37 decedent's body as permitted under subsection (a) of this section, the following
38 competent persons in the order listed may authorize the type, method, place, and
39 disposition of the decedent's body:

- 40 (1) ~~The surviving spouse.~~
- 41 (2) ~~A majority of the surviving children.~~
- 42 (3) ~~The surviving parents.~~
- 43 (4) ~~A majority of the surviving siblings.~~

- 1 ~~(5) A majority of the persons in the classes of the next degrees of kinship,~~
2 ~~in descending order, who, under State law, would inherit the~~
3 ~~decedent's estate if the decedent died intestate.~~
- 4 ~~(6) A person who has exhibited special care and concern for the decedent~~
5 ~~and is willing and able to make decisions about the disposition.~~
- 6 (1a) The health care agent under a health care power of attorney giving the
7 health care agent that authority to the extent provided in
8 G.S. 32A-19(b).
- 9 (2a) The personal representative of the estate of the decedent, or the person
10 named executor in a will prior to appointment.
- 11 (3a) The surviving spouse.
- 12 (4a) A majority of the surviving children who are at least 18 years of age
13 and can be located after reasonable efforts.
- 14 (5a) The surviving parents.
- 15 (6a) A majority of the surviving siblings who are at least 18 years of age
16 and can be located after reasonable efforts.
- 17 (7) A majority of the persons in the classes of the next degrees of kinship,
18 in descending order, who, under State law, would inherit the
19 decedent's estate if the decedent died intestate who are at least 18 years
20 of age and can be located after reasonable efforts.
- 21 (8) A person who has exhibited special care and concern for the decedent
22 and is willing and able to make decisions about the disposition.
- 23 (9) In the case of indigents or any other individuals whose final
24 disposition is the responsibility of the State or any of its
25 instrumentalities, a public administrator, medical examiner, coroner,
26 State-appointed guardian, or any other public official charged with
27 arranging the final disposition of the decedent.

28 This subsection does not grant to any person the right to cancel a preneed funeral
29 contract executed pursuant to Article 13D of Chapter 90 of the General Statutes or to
30 prohibit the substitution of a preneed licensee as authorized under G.S. 90-210.63.

31 (c) An individual at least 18 years of age may, in a writing signed by the
32 individual, authorize the disposition of one or more of the individual's body parts that
33 has been or will be removed. If the individual does not authorize the disposition, a
34 person listed in subsection (b) of this section may authorize the disposition as if the
35 individual was deceased.

36 (d) This section does not apply to the disposition of dead human bodies as
37 anatomical gifts under Part 3 of Article 16 of Chapter 130A of the General Statutes or
38 the right to perform autopsies under Part 2 of Article 16 of Chapter 130A of the General
39 Statutes."

40 **SECTION 16.(a)** G.S. 122C-3(20) reads as rewritten:

41 "(20) "Legally responsible person" means: (i) when applied to an adult, who
42 has been adjudicated incompetent, a guardian; (ii) when applied to a
43 minor, a parent, guardian, a person standing in loco parentis, or a legal
44 custodian other than a parent who has been granted specific authority

1 by law or in a custody order to consent for medical care, including
2 psychiatric treatment; or (iii) when applied to an adult who is
3 incapable as defined in G.S. 122C-72(c) and who has not been
4 adjudicated incompetent, a health care agent named pursuant to a valid
5 health care power of attorney as prescribed in Article 3 of Chapter 32
6 of the General Statutes attorney."

7 **SECTION 16.(b)** G.S. 122C-57(d) reads as rewritten:

8 "(d) Each voluntarily admitted client, ~~the client's legally responsible person, or a~~
9 ~~health care agent named pursuant to a valid health care power of attorney~~ client or the
10 client's legally responsible person (including a health care agent named pursuant to a
11 valid health care power of attorney) has the right to consent to or refuse any treatment
12 offered by the facility. Consent may be withdrawn at any time by the person who gave
13 the consent. If treatment is refused, the qualified professional shall determine whether
14 treatment in some other modality is possible. If all appropriate treatment modalities are
15 refused, the voluntarily admitted client may be discharged. In an emergency, a
16 voluntarily admitted client may be administered treatment or medication, other than
17 those specified in subsection (f) of this section, despite the refusal of the ~~client, the~~
18 ~~client's legally responsible person, a health care agent named pursuant to a valid health~~
19 ~~care power of attorney, or client or the client's legally responsible person, even if~~ the
20 client's refusal is expressed in a valid advance instruction for mental health treatment.
21 The Commission may adopt rules to provide a procedure to be followed when a
22 voluntarily admitted client refuses treatment."

23 **SECTION 16.(c)** G.S. 122C-72(1) reads as rewritten:

24 "(1) "Advance instruction for mental health treatment" or "advance
25 instruction" means a written instrument, signed in the presence of ~~two~~
26 ~~qualified witnesses who believe~~ at least one qualified witness who
27 believes the principal to be of sound mind at the time of the signing,
28 and acknowledged before a notary public, pursuant to which the
29 principal makes a declaration of instructions, information, and
30 preferences regarding the principal's mental health treatment and states
31 that the principal is aware that the advance instruction authorizes a
32 mental health treatment provider to act according to the instruction. It
33 may also state the principal's instructions regarding, but not limited to,
34 consent to or refusal of mental health treatment when the principal is
35 incapable."

36 **SECTION 17.** G.S. 130A-468(c) and (d) read as rewritten:

37 "(c) When the Secretary of State receives a revocation of a document that is filed
38 with the registry and that document's file number and password, or a request to remove
39 that document from the registry without its revocation, the Secretary shall delete that
40 document from the registry database.

41 (d) The Secretary of State's entry of a document ~~into~~ into, or removal of a
42 document from, the registry database does not do any of the following:

- 43 (1) Affect the validity of the document in whole or in part.
- 44 (2) Relate to the accuracy of information contained in the document.

- 1 (3) Create a presumption regarding the validity of the document, regarding
2 the accuracy of information contained in the document, or that the
3 statutory requirements for the document have been met."

4 **SECTION 18.** G.S. 28A-13-1 reads as rewritten:

5 **"§ 28A-13-1. Time of accrual of duties and powers.**

6 The duties and powers of a personal representative commence upon his appointment.
7 The powers of a personal representative relate back to give acts by the person appointed
8 which are beneficial to the estate occurring prior to appointment the same effect as those
9 occurring thereafter. ~~Prior to appointment,~~ However, a person named executor in a will
10 ~~may may, prior to appointment,~~ carry out written instructions of the decedent relating to
11 ~~his the decedent's~~ body, funeral and burial ~~arrangements-arrangements;~~ provided that a
12 health care agent authorized in a valid health care power of attorney to make body,
13 funeral, and burial arrangements shall have precedence in making these arrangements,
14 both before and after qualification of the decedent's personal representative, to the
15 extent provided in G.S. 32A-19(b). A personal representative may ratify and accept acts
16 on behalf of the estate done by others where the acts would have been proper for a
17 personal representative."

18 **SECTION 19.(a)** G.S. 90-210.63 is amended by adding the following new
19 subsection to read:

20 "(c) The following persons, in the priority listed below, shall have the right to
21 serve as the legal representative of the preneed contract beneficiary:

- 22 (1) The health care agent under a health care power of attorney for the
23 preneed contract beneficiary with authority to make funeral decisions
24 to the extent provided in G.S. 32A-19(b);
25 (2) The personal representative of the estate of the preneed contract
26 beneficiary, or the person named executor in a will prior to
27 appointment; or
28 (3) Any of the following persons, in order of priority, when persons in
29 prior classes are not available at the time of death:
30 a. The spouse of the preneed contract beneficiary;
31 b. Any adult child or stepchild of the preneed contract beneficiary;
32 c. Any parent of the preneed contract beneficiary;
33 d. Any adult sibling of the preneed contract beneficiary; or
34 e. A guardian of the person of the preneed contract beneficiary at
35 the time of the preneed contract beneficiary's death."

36 **SECTION 19.(b)** G.S. 90-210.124(a) and 90-210.124(a)(1) read as
37 rewritten:

38 "(a) The following ~~person,~~persons in the priority list below, shall have the right to
39 serve as an "authorizing agent":

- 40 (1) An individual at least 18 years of age may authorize the cremation and
41 disposition of the individual's own dead body in a written will,
42 pursuant to health care power of attorney giving the health care agent
43 that authority to the extent provided in ~~Article 3 of Chapter 32 of the~~
44 ~~General Statutes,~~ G.S. 32A-19(b), pursuant to a preneed funeral

1 contract executed pursuant to Article 13D of Chapter 90 of the General
2 Statutes, pursuant to a cremation authorization form executed pursuant
3 to Article 13F of Chapter 90 of the General Statutes, or in a written
4 statement signed by the individual and witnessed by two persons who
5 are at least 18 years old. When an individual has authorized his or her
6 own cremation and disposition in accordance with this subsection, the
7 individual or institution designated by that individual shall act as the
8 authorizing agent for that individual."

9 **SECTION 19.(c)** The Legislative Research Commission shall study the
10 issue of whether North Carolina law should be amended to allow a person to require
11 life-prolonging measures. The LRC shall involve all stakeholders in the study. The
12 LRC shall report its recommendations to the 2008 Session of the 2007 General
13 Assembly.

14 **SECTION 20.** This act is effective when it becomes law.