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SENATE BILL 1046
Judiciary II (Criminal) Committee Substitute Adopted 5/8/07
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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 (1) ~~"Disposition of remains" means the~~ Disposition of remains. – The
2 decision to bury or cremate human ~~remains as~~ remains, as human
3 ~~remains are~~ defined in G.S. 90-210.121(17)-90-210.121, and, subject
4 to G.S. 32A-19(b), arrangements relating to burial or cremation.
- 5 (1a) ~~"Health care" means any~~ Health care. – Any care, treatment, service,
6 or procedure to maintain, diagnose, treat, or provide for the principal's
7 physical or mental health or personal care and comfort ~~including,~~
8 ~~life-sustaining procedures, including life-prolonging measures.~~ "Health
9 care" includes mental health treatment as defined in subdivision (8) of
10 this section.
- 11 (2) ~~"Health care agent" means the~~ Health care agent. – The person
12 appointed as a health care attorney-in-fact.
- 13 (3) ~~"Health care power of attorney" means a~~ Health care power of
14 attorney. – A written instrument, instrument that substantially meets the
15 requirements of this Article, that is signed in the presence of two
16 qualified witnesses, and acknowledged before a notary public,
17 pursuant to which an attorney-in-fact or agent is appointed to act for
18 the principal in matters relating to the health care of the ~~principal, and~~
19 ~~which substantially meets the requirements of this Article.~~ principal.
20 The notary who takes the acknowledgement may but is not required to
21 be a paid employee of the attending physician or mental health
22 treatment provider, a paid employee of a health facility in which the
23 principal is a patient, or a paid employee of a nursing home or any
24 group-care home in which the principal resides.
- 25 (4) ~~"Life-sustaining procedures" are those forms of care or treatment~~
26 ~~which only serve to artificially prolong the dying process and may~~
27 ~~include mechanical ventilation, dialysis, antibiotics, artificial nutrition~~
28 ~~and hydration, and other forms of treatment which sustain, restore or~~
29 ~~supplant vital bodily functions, but do not include care necessary to~~
30 ~~provide comfort or to alleviate pain.~~ Life-prolonging measures. –
31 Medical procedures or interventions which in the judgment of the
32 attending physician would serve only to postpone artificially the
33 moment of death by sustaining, restoring, or supplanting a vital
34 function, including mechanical ventilation, dialysis, antibiotics,
35 artificial nutrition and hydration, and similar forms of treatment.
36 Life-prolonging measures do not include care necessary to provide
37 comfort or to alleviate pain.
- 38 (5) ~~"Principal" means the~~ Principal. – The person making the health care
39 power of attorney.
- 40 (6) ~~"Qualified witness" means a~~ Qualified witness. – A witness in whose
41 presence the principal has executed the health care power of attorney,
42 who believes the principal to be of sound mind, and who states that he
43 or she (i) is not related within the third degree to the principal nor to
44 the principal's spouse, (ii) does not know nor have a reasonable

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

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

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

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

26 **"§ 32A-19. Extent of authority; limitations of authority.**

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

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

1 criminal prosecution, civil liability, or professional disciplinary action for any action
2 taken in good faith pursuant to an advance instruction for mental health treatment.

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

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

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

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

25 "**§ 32A-24. Reliance on health care power of attorney; defense.**

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

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

36 "(d) The protections of this section extend to any valid health care power of
37 attorney, including a document valid under G.S. 32A-27; these protections are not
38 limited to health care powers of attorney prepared in accordance with the statutory form
39 provided in G.S. 32A-25.1, or to health care powers of attorney filed with the Advance
40 Health Care Directive Registry maintained by the Secretary of State. A health care
41 provider may rely in good faith on an oral or written statement by legal counsel that a
42 document appears to meet applicable statutory requirements for a health care power of
43 attorney. These protections also extend to a document executed in another jurisdiction
44 that is valid as a health care power of attorney under G.S. 32A-27. A health care

1 provider shall have no liability for acting in accordance with a revoked health care
2 power of attorney unless that provider has actual notice of the revocation."

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

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

6 "**§ 32A-25.1. Statutory form health care power of attorney.**

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

10
11 **HEALTH CARE POWER OF ATTORNEY**

12
13 **NOTE: YOU SHOULD USE THIS DOCUMENT TO NAME A PERSON AS**
14 **YOUR HEALTH CARE AGENT IF YOU ARE COMFORTABLE GIVING**
15 **THAT PERSON BROAD AND SWEEPING POWERS TO MAKE HEALTH**
16 **CARE DECISIONS FOR YOU. THERE IS NO LEGAL REQUIREMENT THAT**
17 **ANYONE EXECUTE A HEALTH CARE POWER OF ATTORNEY.**
18

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

26
27 *This document gives the person you designate as your health care agent **broad powers***
28 *to make health care decisions for you when you cannot make the decision yourself or*
29 *cannot communicate your decision to other people. You should discuss your wishes*
30 *concerning life-prolonging measures, mental health treatment, and other health care*
31 *decisions with your health care agent. Except to the extent that you express specific*
32 *limitations or restrictions in this form, your health care agent may make any health care*
33 *decision you could make yourself.*

34
35 *This form does not impose a duty on your health care agent to exercise granted powers,*
36 *but when a power is exercised, your health care agent will be obligated to use due care*
37 *to act in your best interests and in accordance with this document.*

38
39 *This Health Care Power of Attorney form is intended to be valid in any jurisdiction in*
40 *which it is presented, but places outside North Carolina may impose requirements that*
41 *this form does not meet.*

42
43 *If you want to use this form, you must complete it, sign it, and have your signature*
44 *witnessed by two qualified witnesses and proved by a notary public. Follow the*

1 instructions about which choices you can initial very carefully. Do not sign this form
2 until two witnesses and a notary public are present to watch you sign it. You then
3 should give a copy to your health care agent and to any alternates you name. You
4 should consider filing it with the Advance Health Care Directive Registry maintained by
5 the North Carolina Secretary of State: <http://www.nclifelinks.org/ahcdr/>

6
7 **1. Designation of Health Care Agent.**
8

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

13
14 A. Name: _____ Home Telephone: _____
15 Home Address: _____ Work Telephone: _____
16 _____ Cellular Telephone: _____

17
18 B. Name: _____ Home Telephone: _____
19 Home Address: _____ Work Telephone: _____
20 _____ Cellular Telephone: _____

21
22 C. Name: _____ Home Telephone: _____
23 Home Address: _____ Work Telephone: _____
24 _____ Cellular Telephone: _____

25
26 Any successor health care agent designated shall be vested with the same power and
27 duties as if originally named as my health care agent, and shall serve any time his or her
28 predecessor is not reasonably available or is unwilling or unable to serve in that
29 capacity.

30
31 **2. Effectiveness of Appointment.**
32

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

40
41 1. _____ (Physician)

42
43 2. _____ (Physician)
44

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.)

4
5
6
7
8
9
10
11

NOTE: DO NOT initial unless you insert a limitation.

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

12
13
14
15
16
17 **7. Guardianship Provision.**

18
19 If it becomes necessary for a court to appoint a guardian of my person, I nominate the
20 persons designated in Section 1, in the order named, to be the guardian of my person, to
21 serve without bond or security. The guardian shall act consistently with
22 G.S. 35A-1201(a)(5).

23
24 **8. Reliance of Third Parties on Health Care Agent.**

25
26 A. No person who relies in good faith upon the authority of or any
27 representations by my health care agent shall be liable to me, my
28 estate, my heirs, successors, assigns, or personal representatives, for
29 actions or omissions in reliance on that authority or those
30 representations.

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

1 **9. Miscellaneous Provisions.**

2
3 A. Revocation of Prior Powers of Attorney. I revoke any prior health care
4 power of attorney. The preceding sentence is not intended to revoke
5 any general powers of attorney, some of the provisions of which may
6 relate to health care; however, this power of attorney shall take
7 precedence over any health care provisions in any valid general power
8 of attorney I have not revoked.

9
10 B. Jurisdiction, Severability, and Durability. This Health Care Power of
11 Attorney is intended to be valid in any jurisdiction in which it is
12 presented. The powers delegated under this power of attorney are
13 severable, so that the invalidity of one or more powers shall not affect
14 any others. This power of attorney shall not be affected or revoked by
15 my incapacity or mental incompetence.

16
17 C. Health Care Agent Not Liable. My health care agent and my health
18 care agent's estate, heirs, successors, and assigns are hereby released
19 and forever discharged by me, my estate, my heirs, successors, and
20 assigns and personal representatives from all liability and from all
21 claims or demands of all kinds arising out of my health care agent's
22 acts or omissions, except for my health care agent's willful misconduct
23 or gross negligence.

24
25 D. No Civil or Criminal Liability. No act or omission of my health care
26 agent, or of any other person, entity, institution, or facility acting in
27 good faith in reliance on the authority of my health care agent pursuant
28 to this Health Care Power of Attorney shall be considered suicide, nor
29 the cause of my death for any civil or criminal purposes, nor shall it be
30 considered unprofessional conduct or as lack of professional
31 competence. Any person, entity, institution, or facility against whom
32 criminal or civil liability is asserted because of conduct authorized by
33 this Health Care Power of Attorney may interpose this document as a
34 defense.

35
36 E. Reimbursement. My health care agent shall be entitled to
37 reimbursement for all reasonable expenses incurred as a result of
38 carrying out any provision of this directive.

39
40 By signing here, I indicate that I am mentally alert and competent, fully informed as to
41 the contents of this document, and understand the full import of this grant of powers to
42 my health care agent.

43
44 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: _____

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)

(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."

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

3 **"§ 32A-27. Health care powers of attorney executed in other jurisdictions.**

4 Notwithstanding G.S. 32A-16(3), a health care power of attorney or similar
5 document executed in a jurisdiction other than North Carolina shall be valid as a health
6 care power of attorney in this State if it appears to have been executed in accordance
7 with the applicable requirements of that jurisdiction or of this State."

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

10 **"§ 35A-1208. Authority for health care decisions.**

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

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

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

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

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

33 **"§ 90-320. General purpose of Article.**

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

41 (b) Nothing in this Article shall be construed to authorize any affirmative or
42 deliberate act or omission to end life other than to permit the natural process of dying.
43 Nothing in this Article shall impair or supersede any legal right or legal responsibility
44 which any person may have to effect the withholding or withdrawal of ~~life-sustaining~~

1 ~~procedures~~ life-prolonging measures in any lawful manner. In such respect the
2 provisions of this Article are cumulative."

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

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

6 (1) ~~"Declarant" means a~~Declarant. – A person who has signed a
7 declaration in accordance with subsection (e); (c) of this section.

8 (1a) Declaration. – Any signed, witnessed, dated, and proved document
9 meeting the requirements of subsection (c) of this section.

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

14 (2a) Life-prolonging measures. – As defined in G.S. 32A-16(4).

15 (3) ~~"Physician" means any~~Physician. – Any person licensed to practice
16 medicine under Article 1 of Chapter 90 of the laws of the State of
17 North Carolina;Carolina.

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

23 (b) ~~If a person has declared, in accordance with subsection (c) below, a desire~~
24 ~~that his life not be prolonged by extraordinary means or by artificial nutrition or~~
25 ~~hydration, expressed through a declaration, in accordance with subsection (c) of this~~
26 ~~section, a desire that the person's life not be prolonged by life-prolonging measures, and~~
27 ~~the declaration has not been revoked in accordance with subsection (e);(e) of this~~
28 ~~section; and~~

29 (1) It is determined by the attending physician that the declarant's present
30 condition is a condition described in subsection (c) of this section and
31 specified in the declaration for applying the declarant's directives, and

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

33 b. ~~Repealed by Session Laws 1993, c. 553, s. 28;~~

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

35 (2) There is confirmation of the declarant's present condition as set out
36 ~~above~~in subdivision (b)(1) of this section by a physician other than the
37 attending ~~physician;~~physician, if another physician is reasonably
38 available;

39 ~~then extraordinary means or artificial nutrition or hydration, as specified by the~~
40 ~~declarant, the life-prolonging measures identified by the declarant shall or may, as~~
41 ~~specified by the declarant, may be withheld or discontinued upon the direction and~~
42 ~~under the supervision of the attending physician.~~

43 (c) ~~The attending physician may rely upon a signed, witnessed, dated and proved~~
44 ~~declaration, or a copy of that declaration obtained from the Advance Health Care~~

1 ~~Directive Registry maintained by the Secretary of State pursuant to Article 21 of~~
2 ~~Chapter 130A of the General Statutes; shall follow, subject to subsections (b), (e), and~~
3 ~~(k) of this section, a declaration:~~

4 (1) ~~Which expresses a desire of the declarant that extraordinary means or~~
5 ~~artificial nutrition or hydration not be used to prolong his life if his~~
6 ~~condition is determined to be terminal and incurable, or if the declarant~~
7 ~~is diagnosed as being in a persistent vegetative state; and~~That
8 expresses a desire of the declarant that life-prolonging measures not be
9 used to prolong the declarant's life if, as specified in the declaration as
10 to any or all of the following:

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

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

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

20 (2) ~~Which~~That states that the declarant is aware that the declaration
21 authorizes a physician to withhold or discontinue the ~~extraordinary~~
22 ~~means or artificial nutrition or hydration;~~ life-prolonging measures;
23 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~~ the declarant's death under any will of the
30 declarant or codicil thereto then existing or under the Intestate
31 Succession Act as it then provides, (iii) ~~are not the attending physician,~~
32 ~~or an employee of the attending physician, or an employee of a health~~
33 ~~facility in which the declarant is a patient, or an employee of a nursing~~
34 ~~home or any group care home in which the declarant resides,~~ are not
35 the attending physician, licensed health care providers who are paid
36 employees of the attending physician, paid employees of a health
37 facility in which the declarant is a patient, or paid employees of a
38 nursing home or any group care home in which the declarant resides,
39 and (iv) do not have a claim against any portion of the estate of the
40 declarant at the time of the declaration; and

41 (4) ~~Which~~That has been proved before a clerk or assistant clerk of
42 superior court, or a notary public who certifies substantially as set out
43 in subsection ~~(d)~~ (d1) of this section. A notary who takes the
44 acknowledgement may but is not required to be a paid employee of the

1 attending physician, a paid employee of a health facility in which the
2 declarant is a patient, or a paid employee of a nursing home or any
3 group care home in which the declarant resides."

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

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

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

9
10 **ADVANCE DIRECTIVE FOR A NATURAL DEATH ("LIVING WILL")**

11
12 **NOTE: YOU SHOULD USE THIS DOCUMENT TO GIVE YOUR HEALTH**
13 **CARE PROVIDERS INSTRUCTIONS ABOUT WHETHER TO APPLY**
14 **LIFE-PROLONGING MEASURES IN CERTAIN SITUATIONS. THERE IS**
15 **NO LEGAL REQUIREMENT THAT ANYONE EXECUTE A LIVING WILL.**
16

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

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

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

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

41
42 **My Desire for a Natural Death**
43

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

1. When My Directives Apply

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

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

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

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

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

2. These are My Directives about Prolonging My Life:

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

NOTE: INITIAL ONLY IN ONE PLACE.

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

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

3. Exceptions – "Artificial Nutrition or Hydration"

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

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

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(Initial)

I DO want to receive BOTH artificial hydration AND artificial nutrition (for example, through tubes) in those situations.

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

(Initial)

I DO want to receive ONLY artificial hydration (for example, through tubes) in those situations.

NOTE: DO NOT INITIAL THE BLOCK ABOVE OR BELOW IF THIS BLOCK IS INITIALED.

(Initial)

I DO want to receive ONLY artificial nutrition (for example, through tubes) in those situations.

NOTE: DO NOT INITIAL EITHER OF THE TWO BLOCKS ABOVE IF THIS BLOCK IS INITIALED.

4. I Wish to be Made as Comfortable as Possible

I direct that my health care providers take reasonable steps to keep me as clean, comfortable, and free of pain as possible so that my dignity is maintained, even though this care may hasten my death.

5. I Understand my Advance Directive

I am aware and understand that this document directs certain life-prolonging measures to be withheld or discontinued in accordance with my advance instructions.

6. If I have an Available Health Care Agent

If I have appointed a health care agent by executing a health care power of attorney or similar instrument, and that health care agent is acting and available and gives instructions that differ from this Advance Directive, then I direct that:

(Initial)

Follow Advance Directive: This Advance Directive will **override** instructions my health care agent gives about prolonging my life.

(Initial)

Follow Health Care Agent: My health care agent has authority to **override** this Advance Directive.

NOTE: DO NOT INITIAL BOTH BLOCKS. IF YOU DO NOT INITIAL EITHER BOX, THEN YOUR HEALTH CARE PROVIDERS WILL FOLLOW THIS ADVANCE DIRECTIVE AND IGNORE THE INSTRUCTIONS OF YOUR HEALTH CARE AGENT ABOUT PROLONGING YOUR LIFE.

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

1 group care home where the declarant resides. I further state that I do not have any claim
2 against the declarant or the estate of the declarant.

3
4 Date: _____ Witness: _____

5
6 Date: _____ Witness: _____

7
8 _____ COUNTY, _____ STATE

9
10 Sworn to (or affirmed) and subscribed before me this day by _____

11 *(type/print name of declarant)*

12
13 _____
14 *(type/print name of witness)*

15
16 _____
17 *(type/print name of witness)*

18
19
20 Date _____

21 *(Official Seal)*

22 _____
23 *Signature of Notary Public*

24 _____, Notary Public

25 *Printed or typed name*

26 My commission expires: _____ "

27
28 **SECTION 11.(d)** G.S. 90-321(e), (h), and (i) read as rewritten:

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

42 (h) The withholding or discontinuance of ~~extraordinary means and/or the~~
43 ~~withholding or discontinuance of either artificial nutrition or hydration, or both~~
44 life-prolonging measures in accordance with this section shall not be considered the

1 cause of death for any civil or criminal purposes nor shall it be considered
2 unprofessional ~~conduct~~ conduct or a lack of professional competence. Any person,
3 institution or facility against whom criminal or civil liability is asserted because of
4 conduct in compliance with this section may interpose this section as a defense. The
5 protections of this section extend to any valid declaration, including a document valid
6 under subsection (l) of this section; these protections are not limited to declarations
7 prepared in accordance with the statutory form provided in subsection (d1) of this
8 section, or to declarations filed with the Advance Health Care Directive Registry
9 maintained by the Secretary of State. A health care provider may rely in good faith on
10 an oral or written statement by legal counsel that a document appears to meet the
11 statutory requirements for a declaration.

12 (i) ~~Any certificate in the form provided by this section prior to July 1, 1979, shall~~
13 ~~continue to be valid.~~ Use of the statutory form prescribed in subsection (d1) of this
14 section is an optional and nonexclusive method for creating a declaration and does not
15 affect the use of other forms of a declaration, including previous statutory forms."

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

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

19 (1) An attending physician may decline to honor a declaration that
20 expresses a desire of the declarant that life-prolonging measures not be
21 used if doing so would violate that physician's conscience or the
22 conscience-based policy of the facility at which the declarant is being
23 treated; provided, an attending physician who declines to honor a
24 declaration on these grounds must not interfere, and must cooperate
25 reasonably, with efforts to substitute an attending physician whose
26 conscience would not be violated by honoring the declaration, or
27 transfer the declarant to a facility that does not have policies in force
28 that prohibit honoring the declaration.

29 (2) An attending physician may decline to honor a declaration if after
30 reasonable inquiry there are reasonable grounds to question the
31 genuineness or validity of a declaration. The subsection imposes no
32 duty on the attending physician to verify a declaration's genuineness or
33 validity.

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

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

39 "**§ 90-322. Procedures for natural death in the absence of a declaration.**

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

- 1 (1) ~~It is determined by the attending physician that the person's present~~
2 ~~condition is:~~
3 a. ~~Terminal and incurable; or~~
4 b. ~~Repealed by Session Laws 1993, c. 553, s. 29.~~
5 c. ~~Diagnosed as a persistent vegetative state; and~~
6 (1a) That the person:
7 a. Has an incurable or irreversible condition that will result in the
8 person's death within a relatively short period of time; or
9 b. Is unconscious and, to a high degree of medical certainty, will
10 never regain consciousness; and
11 (2) There is confirmation of the person's present condition as set out above
12 in this subsection, in writing by a physician other than the attending
13 physician; and
14 (3) A vital bodily function of the person could be restored by
15 extraordinary means or a vital function of the person is being sustained
16 by extraordinary means; or or is being sustained by life-prolonging
17 measures;
18 (4) ~~The life of the person could be or is being sustained by artificial~~
19 ~~nutrition or hydration;~~

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

22 (b) If a person's condition has been determined to meet the conditions set forth in
23 subsection (a) of this section and no instrument has been executed as provided in
24 G.S. ~~90-32190-321~~, ~~the extraordinary means or artificial nutrition or hydration then~~
25 life-prolonging measures may be withheld or discontinued upon the direction and under
26 the supervision of the attending physician with the concurrence (i) ~~of a health care agent~~
27 ~~appointed pursuant to a health care power of attorney meeting the requirements of~~
28 ~~Article 3 of Chapter 32A of the General Statutes, or (ii) of a guardian of the person, or~~
29 ~~(iii) of the person's spouse, or (iv) of a majority of the relatives of the first degree, in~~
30 ~~that order of the following persons, in the order indicated:~~

- 31 (1) A guardian of the patient's person, or a general guardian with powers
32 over the patient's person, appointed by a court of competent
33 jurisdiction pursuant to Article 5 of Chapter 35A of the General
34 Statutes; provided that, if the patient has a health care agent appointed
35 pursuant to a valid health care power of attorney, the health care agent
36 shall have the right to exercise the authority to the extent granted in the
37 health care power of attorney and to the extent provided in
38 G.S. 32A-19(b) unless the Clerk has suspended the authority of that
39 health care agent in accordance with G.S. 35A-1208(a);
40 (2) A health care agent appointed pursuant to a valid health care power of
41 attorney, to the extent of the authority granted;
42 (3) An attorney-in-fact, with powers to make health care decisions for the
43 patient, appointed by the patient pursuant to Article 1 or Article 2 of

1 Chapter 32A of the General Statutes, to the extent of the authority
2 granted;

3 (4) The patient's spouse;

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

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

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

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

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

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

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

23 "**§ 90-21.13. Informed consent to health care treatment or procedure.**

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

28 (1) The action of the health care provider in obtaining the consent of the
29 patient or other person authorized to give consent for the patient was in
30 accordance with the standards of practice among members of the same
31 health care profession with similar training and experience situated in
32 the same or similar communities; and

33 (2) A reasonable person, from the information provided by the health care
34 provider under the circumstances, would have a general understanding
35 of the procedures or treatments and of the usual and most frequent
36 risks and hazards inherent in the proposed procedures or treatments
37 which are recognized and followed by other health care providers
38 engaged in the same field of practice in the same or similar
39 communities; or

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

1 ~~(b) A consent which is evidenced in writing and which meets the foregoing~~
2 ~~standards, and which is signed by the patient or other authorized person, shall be~~
3 ~~presumed to be a valid consent. This presumption, however, may be subject to rebuttal~~
4 ~~only upon proof that such consent was obtained by fraud, deception or~~
5 ~~misrepresentation of a material fact.~~A consent that meets the foregoing standards, that is
6 given by a patient, or other authorized person, who under all the surrounding
7 circumstances has capacity to make and communicate health care decisions, is a valid
8 consent.

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

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

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

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

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

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

36 d. The patient's spouse;

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

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

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

1 If none of the persons listed under this subdivision is reasonably available, then the
2 patient's attending physician, in the attending physician's discretion, may provide health
3 care treatment without the consent of the patient or other person authorized to consent
4 for the patient if there is confirmation by a physician other than the patient's attending
5 physician of the patient's condition and the necessity for treatment; provided, however,
6 that confirmation of the patient's condition and the necessity for treatment are not
7 required if the delay in obtaining the confirmation would endanger the life or seriously
8 worsen the condition of the patient.

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

14 (e) In the event of any conflict between the provisions of this section and those of
15 G.S. 35A-1245, 90-21.17, and 90-322, and Articles 1A and 19 of
16 Chapter 90, and Article 3 of Chapter 122C, the provisions of those sections and Articles
17 shall control and continue in full force and effect."

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

19 "**§ 90-21.17. Portable do not resuscitate ~~order~~ order and Medical Order for Scope**
20 **of Treatment.**

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

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

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

28 (1) With the consent of the patient;

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

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

34 The physician shall document the basis for the DNR order or MOST in the patient's
35 medical record. When the order is a MOST, the patient or the patient's representative
36 must sign the form, provided, however, that if it is not practicable for the patient's
37 representative to sign the original MOST form, the patient's representative shall sign a
38 copy of the completed form and return it to the health care professional completing the
39 form. The copy of the form with the signature of the patient's representative, whether in
40 paper or electronic form, shall be placed in the patient's medical record. When the
41 signature of the patient's representative is on a separate copy of the MOST form, the
42 original MOST form must indicate in the appropriate signature field that the signature is
43 "on file."

1 (c) The Department of Health and Human Services shall develop a portable DNR
2 order ~~form~~, form, and a MOST form. The official DNR form shall include fields for the
3 name of the patient; the name, address, and telephone number of the physician; the
4 signature of the physician; and other relevant information. At a minimum, the official
5 MOST form shall include fields for: the name of the patient; the name and telephone
6 number of the physician, physician assistant, or nurse practitioner authorizing the order
7 by signing the form; the name and contact information of the health care professional
8 who prepared the form with the patient or the patient's representative; information on
9 who agreed (i.e., the patient or the patient's representative) to the options selected on the
10 MOST form; a range of options for cardiopulmonary resuscitation, medical
11 interventions, antibiotics, medically administered fluids and nutrition; a signature block
12 for the patient or the patient's representative to sign if practicable; effective date of the
13 form and review dates; a prominent advisory that directions in a MOST form may
14 suspend, while those MOST directions are in effect, any conflicting directions in a
15 patient's previously executed declaration of an advance directive for a natural death
16 ("living will"), health care power attorney, or other legally authorized instrument; and
17 an advisory that the MOST may be revoked by the patient or the patient's representative.
18 The form may be approved by reference to a standard form that meets the requirements
19 of this subsection. For purposes of this section, the "patient's representative" means an
20 individual from the list of persons authorized to consent to the withholding of
21 ~~extraordinary care-life-prolonging measures pursuant to G.S. 90-322 or an individual~~
22 ~~who has an established relationship with the patient, who is acting in good faith on~~
23 ~~behalf of the patient, and who can reliably convey the patient's wishes.~~ G.S. 90-322.

24 (d) No physician, emergency medical professional, hospice provider, or other
25 health care provider shall be subject to criminal prosecution, civil liability, or
26 disciplinary action by any professional licensing or certification agency for withholding
27 cardiopulmonary resuscitation from a patient in good faith reliance on an original DNR
28 order or MOST form adopted pursuant to subsection (c) of this section, provided that (i)
29 there are no reasonable grounds for doubting the validity of the order or the identity of
30 the patient, and (ii) the provider does not have actual knowledge of the revocation of the
31 portable DNR ~~order~~, order or MOST. No physician, emergency medical professional,
32 hospice provider, or other health care provider shall be subject to criminal prosecution,
33 civil liability, or disciplinary action by any professional licensing or certification agency
34 for failure to follow a DNR order or MOST form adopted pursuant to subsection (c) of
35 this section if the provider had no actual knowledge of the existence of the DNR
36 ~~order~~, order or MOST.

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

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

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

4 "**§ 130A-420. Authority to dispose of body or body parts.**

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

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

16 ~~(1) The surviving spouse.~~

17 ~~(2) A majority of the surviving children.~~

18 ~~(3) The surviving parents.~~

19 ~~(4) A majority of the surviving siblings.~~

20 ~~(5) A majority of the persons in the classes of the next degrees of kinship,~~
21 ~~in descending order, who, under State law, would inherit the~~
22 ~~decedent's estate if the decedent died intestate.~~

23 ~~(6) A person who has exhibited special care and concern for the decedent~~
24 ~~and is willing and able to make decisions about the disposition.~~

25 (1a) The health care agent under a health care power of attorney giving the
26 health care agent that authority to the extent provided in
27 G.S. 32A-19(b).

28 (2a) The personal representative of the estate of the decedent, or the person
29 named executor in a will prior to appointment.

30 (3a) The surviving spouse.

31 (4a) A majority of the surviving children who are at least 18 years of age
32 and can be located after reasonable efforts.

33 (5a) The surviving parents.

34 (6a) A majority of the surviving siblings who are at least 18 years of age
35 and can be located after reasonable efforts.

36 (7) A majority of the persons in the classes of the next degrees of kinship,
37 in descending order, who, under State law, would inherit the
38 decedent's estate if the decedent died intestate who are at least 18 years
39 of age and can be located after reasonable efforts.

40 (8) A person who has exhibited special care and concern for the decedent
41 and is willing and able to make decisions about the disposition.

42 (9) In the case of indigents or any other individuals whose final
43 disposition is the responsibility of the State or any of its
44 instrumentalities, a public administrator, medical examiner, coroner,

1 State-appointed guardian, or any other public official charged with
2 arranging the final disposition of the decedent.

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

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

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

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

16 "(20) "Legally responsible person" means: (i) when applied to an adult, who
17 has been adjudicated incompetent, a guardian; (ii) when applied to a
18 minor, a parent, guardian, a person standing in loco parentis, or a legal
19 custodian other than a parent who has been granted specific authority
20 by law or in a custody order to consent for medical care, including
21 psychiatric treatment; or (iii) when applied to an adult who is
22 incapable as defined in G.S. 122C-72(c) and who has not been
23 adjudicated incompetent, a health care agent named pursuant to a valid
24 health care power of attorney as prescribed in Article 3 of Chapter 32
25 of the General Statutes-attorney."

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

27 "(d) Each voluntarily admitted ~~client, the client's legally responsible person, or a~~
28 ~~health care agent named pursuant to a valid health care power of attorney~~ client or the
29 client's legally responsible person (including a health care agent named pursuant to a
30 valid health care power of attorney) has the right to consent to or refuse any treatment
31 offered by the facility. Consent may be withdrawn at any time by the person who gave
32 the consent. If treatment is refused, the qualified professional shall determine whether
33 treatment in some other modality is possible. If all appropriate treatment modalities are
34 refused, the voluntarily admitted client may be discharged. In an emergency, a
35 voluntarily admitted client may be administered treatment or medication, other than
36 those specified in subsection (f) of this section, despite the refusal of the ~~client, the~~
37 ~~client's legally responsible person, a health care agent named pursuant to a valid health~~
38 ~~care power of attorney, or~~ client or the client's legally responsible person, even if
39 the client's refusal is expressed in a valid advance instruction for mental health treatment.
40 The Commission may adopt rules to provide a procedure to be followed when a
41 voluntarily admitted client refuses treatment."

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

43 "(c) When the Secretary of State receives a revocation of a document that is filed
44 with the registry and that document's file number and password, or a request to remove

1 that document from the registry without its revocation, the Secretary shall delete that
2 document from the registry database.

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

- 5 (1) Affect the validity of the document in whole or in part.
- 6 (2) Relate to the accuracy of information contained in the document.
- 7 (3) Create a presumption regarding the validity of the document, regarding
8 the accuracy of information contained in the document, or that the
9 statutory requirements for the document have been met."

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

11 "**§ 28A-13-1. Time of accrual of duties and powers.**

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

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

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

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

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

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

3 (1) An individual at least 18 years of age may authorize the cremation and
4 disposition of the individual's own dead body in a written will,
5 pursuant to health care power of attorney giving the health care agent
6 that authority to the extent provided in ~~Article 3 of Chapter 32 of the~~
7 ~~General Statutes, G.S. 32A-19(b)~~, pursuant to a preneed funeral
8 contract executed pursuant to Article 13D of Chapter 90 of the General
9 Statutes, pursuant to a cremation authorization form executed pursuant
10 to Article 13F of Chapter 90 of the General Statutes, or in a written
11 statement signed by the individual and witnessed by two persons who
12 are at least 18 years old. When an individual has authorized his or her
13 own cremation and disposition in accordance with this subsection, the
14 individual or institution designated by that individual shall act as the
15 authorizing agent for that individual."

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

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