

GENERAL ASSEMBLY OF NORTH CAROLINA

SESSION 1991

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HOUSE BILL 821

Senate Human Resources Committee Substitute Adopted 7/3/91

Short Title: Health Pwr of Atty/Nat'l Death Act.

(Public)

Sponsors:

Referred to:

April 15, 1991

A BILL TO BE ENTITLED

AN ACT TO ESTABLISH AN ADDITIONAL METHOD FOR AN INDIVIDUAL TO DESIGNATE AN ATTORNEY-IN-FACT TO MAKE HEALTH CARE DECISIONS AND TO AMEND THE NATURAL DEATH ACT.

The General Assembly of North Carolina enacts:

Section 1. Chapter 32A of the General Statutes is amended by adding a new Article to read:

"ARTICLE 3.

"HEALTH CARE POWERS OF ATTORNEY.

"§ 32A-15. General purpose of this Article.

(a) The General Assembly recognizes as a matter of public policy the fundamental right of an individual to control the decisions relating to his or her medical care, and that this right may be exercised on behalf of the individual by an agent chosen by the individual.

(b) The purpose of this Article is to establish an additional, nonexclusive method for an individual to exercise his or her right to give, withhold, or withdraw consent to medical treatment when the individual lacks sufficient understanding or capacity to make or communicate health care decisions.

(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 shall control.

"§ 32A-16. Definitions.

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

- 3 (1) 'Health care' means any care, treatment, service, or procedure to
4 maintain, diagnose, treat, or provide for the principal's physical or
5 mental health or personal care and comfort including, life-sustaining
6 procedures.
- 7 (2) 'Health care agent' means the person appointed as a health care
8 attorney-in-fact.
- 9 (3) 'Health care power of attorney' means a written instrument, signed in
10 the presence of two qualified witnesses, and acknowledged before a
11 notary public, pursuant to which an attorney-in-fact or agent is
12 appointed to act for the principal in matters relating to the health care
13 of the principal, and which substantially meets the requirements of this
14 Article.
- 15 (4) 'Life-sustaining procedures' are those forms of care or treatment which
16 only serve to artificially prolong the dying process and may include
17 mechanical ventilation, dialysis, antibiotics, artificial nutrition and
18 hydration, and other forms of treatment which sustain, restore or
19 supplant vital bodily functions, but do not include care necessary to
20 provide comfort or to alleviate pain.
- 21 (5) 'Principal' means the person making the health care power of attorney.
- 22 (6) 'Qualified witness' means a witness in whose presence the principal
23 has executed the health care power of attorney, who believes the
24 principal to be of sound mind, and who states that he (i) is not related
25 within the third degree to the principal nor to the principal's spouse,
26 (ii) does not know nor have a reasonable expectation that he would be
27 entitled to any portion of the estate of the principal upon the principal's
28 death under any existing will or codicil of the principal or under the
29 Intestate Succession Act as it then provides, (iii) is not the attending
30 physician of the principal, nor an employee of the attending physician,
31 nor an employee of a health facility in which the principal is a patient,
32 nor an employee of a nursing home or any group-care home in which
33 the principal resides, and (iv) does not have a claim against any portion
34 of the estate of the principal at the time of the principal's execution of
35 the health care power of attorney.

36 **"§ 32A-17. Who may make a health care power of attorney.**

37 Any person having understanding and capacity to make and communicate health
38 care decisions, who is 18 years of age or older, may make a health care power of
39 attorney.

40 **"§ 32A-18. Who may act as a health care attorney-in-fact.**

41 Any competent person who is not engaged in providing health care to the principal
42 for remuneration, and who is 18 years of age or older, may act as a health care agent.

43 **"§ 32A-19. Extent of authority; limitations of authority.**

1 (a) A principal, pursuant to a health care power of attorney, may grant to the
2 health care agent full power and authority to make health care decisions to the same
3 extent that the principal could make those decisions for himself or herself if he or she
4 had understanding and capacity to make and communicate health care decisions,
5 including without limitation, the power to authorize withholding or discontinuing life-
6 sustaining procedures. A health care power of attorney may also contain or incorporate
7 by reference any lawful guidelines or directions relating to the health care of the
8 principal as the principal deems appropriate.

9 (b) A health care power of attorney may authorize the health care agent to
10 exercise any and all rights the principal may have with respect to anatomical gifts, the
11 authorization of any autopsy, and the disposition of remains.

12 (c) A health care power of attorney may contain, and the authority of the health
13 care agent shall be subject to, the specific limitations or restrictions as the principal
14 deems appropriate.

15 (d) The powers and authority granted to the health care agent pursuant to a health
16 care power of attorney shall be limited to the matters addressed in it, and, except as
17 necessary to exercise such powers and authority relating to health care, shall not confer
18 any power or authority with respect to the property or financial affairs of the principal.

19 (e) This act shall not be construed to invalidate a power of attorney that
20 authorizes an agent to make health care decisions for the principal, which was executed
21 prior to the effective date of this act.

22 **"§ 32A-20. Effectiveness and duration; revocation.**

23 (a) A health care power of attorney shall become effective when and if the
24 physician or physicians designated by the principal determine in writing that the
25 principal lacks sufficient understanding or capacity to make or communicate decisions
26 relating to the health care of the principal, and shall continue in effect during the
27 incapacity of the principal. The determination shall be made by the principal's attending
28 physician if the physician or physicians designated by the principal is unavailable or is
29 otherwise unable or unwilling to make such determination. A health care power of
30 attorney may include a provision that, if the principal does not designate a physician for
31 reasons based on his religious or moral beliefs as specified in the health care power of
32 attorney, a person designated by the principal in the health care power of attorney may
33 certify in writing, acknowledged before a notary public, that the principal lacks
34 sufficient understanding or capacity to make or communicate decisions relating to his
35 health care. The person so designated must be a competent person 18 years of age or
36 older, not engaged in providing health care to the principal for remuneration, and must
37 be a person other than the health care agent.

38 (b) A health care power of attorney shall be revoked by the death of the principal
39 and may be revoked by the principal at any time, so long as the principal is capable of
40 making and communicating health care decisions. The principal may exercise such
41 right of revocation by executing and acknowledging an instrument of revocation, by
42 executing and acknowledging a subsequent health care power of attorney, or in any
43 other manner by which the principal is able to communicate his or her intent to revoke.
44 Such revocation shall become effective only upon communication by the principal to

1 each health care agent named in the revoked health care power of attorney and to the
2 principal's attending physician.

3 (c) The authority of a health care agent who is the spouse of the principal shall be
4 revoked upon the entry by a court of a decree of divorce or separation between the
5 principal and the health care agent; provided that if the health care power of attorney
6 designates a successor health care agent, the successor shall serve as the health care
7 agent, and the health care power of attorney shall not be revoked.

8 **"§ 32A-21. Appointment, resignation, removal, and substitution.**

9 (a) A health care power of attorney may contain provisions relating to the
10 appointment, resignation, removal and substitution of the health care agent.

11 (b) If all health care agents named in the instrument or substituted, die or for any
12 reason fail or refuse to act, and all methods of substitution have been exhausted, the
13 health care power of attorney shall cease to be effective.

14 **"§ 32A-22. Relation of the health care agent to a court-appointed fiduciary and to**
15 **a general attorney-in-fact.**

16 (a) If, following the execution of a health care power of attorney, a court of
17 competent jurisdiction appoints a guardian of the person of the principal, or a general
18 guardian with powers over the person of the principal, the health care power of attorney
19 shall cease to be effective upon the appointment and qualification of the guardian.

20 (b) A principal may nominate, by a health care power of attorney, the guardian of
21 the person of the principal if a guardianship proceeding is thereafter commenced. The
22 court shall make its appointment in accordance with the principal's most recent
23 nomination in an unrevoked health care power of attorney, except for good cause
24 shown.

25 (c) The execution of a health care power of attorney shall not revoke, restrict or
26 otherwise affect any nonhealth care powers granted by the principal to an attorney-in-
27 fact pursuant to a general power of attorney; provided that the powers granted to the
28 health care agent with respect to health care matters shall be superior to any similar
29 powers granted by the principal to an attorney-in-fact under a general power of attorney.

30 (d) A health care power of attorney may be combined with or incorporated into a
31 general power of attorney which is executed in accordance with the requirements of this
32 Article.

33 **"§ 32A-23. Article 2, Chapter 32A, not applicable.**

34 The provisions of Article 2 of this Chapter shall not be applicable to a health care
35 power of attorney executed pursuant to this Article.

36 **"§ 32A-24. Reliance on health care power of attorney; defense.**

37 (a) Any physician or other health care provider involved in the medical care of
38 the principal may rely upon the authority of the health care agent contained in a signed
39 and acknowledged health care power of attorney in the absence of actual knowledge of
40 revocation of the health care power of attorney.

41 (b) All health care decisions made by a health care agent pursuant to a health care
42 power of attorney during any period following a determination that the principal lacks
43 understanding or capacity to make or communicate health care decisions shall have the
44 same effect as if the principal were not incapacitated and were present and acting on his

1 or her own behalf. Any health care provider relying in good faith on the authority of a
2 health care agent shall be protected to the full extent of the power conferred upon the
3 health care agent, and no person so relying on the authority of the health care agent shall
4 be liable, by reason of his reliance, for actions taken pursuant to a decision of the health
5 care agent.

6 (c) The withholding or withdrawal of life-sustaining procedures by or under the
7 orders of a physician pursuant to the authorization of a health care agent shall not be
8 considered suicide or the cause of death for any civil or criminal purpose nor shall it be
9 considered unprofessional conduct or a lack of professional competence. Any person,
10 institution or facility, including without limitation the health care agent and the
11 attending physician, against whom criminal or civil liability is asserted because of
12 conduct described in this section, may interpose this section as a defense.

13 **"§ 32A-25. Statutory form health care power of attorney.**

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

17 (Notice: This document gives the person you designate your health care agent broad
18 powers to make health care decisions for you, including the power to consent to your
19 doctor not giving treatment or stopping treatment necessary to keep you alive. This
20 power exists only as to those health care decisions for which you are unable to give
21 informed consent.

22 This form does not impose a duty on your health care agent to exercise granted
23 powers, but when a power is exercised, your health care agent will have to use due care
24 to act in your best interests and in accordance with this document. Because the powers
25 granted by this document are broad and sweeping, you should discuss your wishes
26 concerning life-sustaining procedures with your health care agent.

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

32 1. Designation of health care agent.

33 I,....., being of sound mind, hereby appoint

34 Name:.....

35 Home Address:.....

36 Home Telephone Number..... Work Telephone Number.....

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

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

43 A. Name:.....

44 Home Address:.....

Home Telephone Number.....Work Telephone Number.....

B. Name:.....

Home Address:.....

Home Telephone Number.....Work Telephone Number.....

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

2. Effectiveness of appointment.

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

Absent revocation, the authority granted in this document shall become effective when and if the physician or physicians designated below determine that I lack sufficient understanding or capacity to make or communicate decisions relating to my health care and will continue in effect during my incapacity, until my death. This determination shall be made by the following physician or physicians (You may include here a designation of your choice, including your attending physician, or any other physician. You may also name two or more physicians, if desired, both of whom must make this determination before the authority granted to the health care agent becomes effective.):

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.....

3. General statement of authority granted.

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

- A. To request, review, and receive any information, verbal or written, regarding my physical or mental health, including, but not limited to, medical and hospital records, and to consent to the disclosure of this information;
B. To employ or discharge my health care providers;
C. To consent to and authorize my admission to and discharge from a hospital, nursing or convalescent home, or other institution;
D. To give consent for, to withdraw consent for, or to withhold consent for, X ray, anesthesia, medication, surgery, and all other diagnostic and treatment procedures ordered by or under the authorization of a licensed physician, dentist, or podiatrist. This authorization specifically includes the power to consent to measures for relief of pain.

1 E. To authorize the withholding or withdrawal of life-sustaining
 2 procedures when and if my physician determines that I am terminally
 3 ill, permanently in a coma, suffer severe dementia, or am in a
 4 persistent vegetative state. Life-sustaining procedures are those forms
 5 of medical care that only serve to artificially prolong the dying process
 6 and may include mechanical ventilation, dialysis, antibiotics, artificial
 7 nutrition and hydration, and other forms of medical treatment which
 8 sustain, restore or supplant vital bodily functions. Life-sustaining
 9 procedures do not include care necessary to provide comfort or
 10 alleviate pain.

11 I DESIRE THAT MY LIFE NOT BE PROLONGED BY LIFE-
 12 SUSTAINING PROCEDURES IF I AM TERMINALLY ILL,
 13 PERMANENTLY IN A COMA, SUFFER SEVERE
 14 DEMENTIA, OR AM IN A PERSISTENT VEGETATIVE
 15 STATE.

16 F. To exercise any right I may have to make a disposition of any part or
 17 all of my body for medical purposes, to donate my organs, to authorize
 18 an autopsy, and to direct the disposition of my remains.

19 G. To take any lawful actions that may be necessary to carry out these
 20 decisions, including the granting of releases of liability to medical
 21 providers.

22 4. Special provisions and limitations.

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

27 In exercising the authority to make health care decisions on my behalf, the authority
 28 of my health care agent is subject to the following special provisions and limitations
 29 (Here you may include any specific limitations you deem appropriate such as: your own
 30 definition of when life-sustaining treatment should be withheld or discontinued, or
 31 instructions to refuse any specific types of treatment that are inconsistent with your
 32 religious beliefs, or unacceptable to you for any other reason.):

33
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41 5. Guardianship provision.

42 If it becomes necessary for a court to appoint a guardian of my person, I nominate
 43 my health care agent acting under this document to be the guardian of my person, to
 44 serve without bond or security.

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

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

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

19 7. Miscellaneous provisions.

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

21 B. My health care agent shall be entitled to sign, execute, deliver, and
22 acknowledge any contract or other document that may be necessary,
23 desirable, convenient, or proper in order to exercise and carry out any
24 of the powers described in this document and to incur reasonable costs
25 on my behalf incident to the exercise of these powers; provided,
26 however, that except as shall be necessary in order to exercise the
27 powers described in this document relating to my health care, my
28 health care agent shall not have any authority over my property or
29 financial affairs.

30 C. My health care agent and my health care agent's estate, heirs,
31 successors, and assigns are hereby released and forever discharged by
32 me, my estate, my heirs, successors, and assigns and personal
33 representatives from all liability and from all claims or demands of all
34 kinds arising out of the acts or omissions of my health care agent
35 pursuant to this document, except for willful misconduct or gross
36 negligence.

37 D. No act or omission of my health care agent, or of any other person,
38 institution, or facility acting in good faith in reliance on the authority
39 of my health care agent pursuant to this health care power of attorney
40 shall be considered suicide, nor the cause of my death for any civil or
41 criminal purposes, nor shall it be considered unprofessional conduct or
42 as lack of professional competence. Any person, institution, or facility
43 against whom criminal or civil liability is asserted because of conduct

authorized by this health care power of attorney may interpose this document as a defense.

8. Signature of principal.

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

Signature of Principal

Date

9. Signatures of Witnesses.

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

Witness: Date:

Witness: Date:

STATE OF NORTH CAROLINA

COUNTY OF

CERTIFICATE

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

I further certify that and witnesses, appeared before me and swore that they witnessed sign the attached health care power of attorney, believing him/her to be of sound mind; and also swore that at the time they witnessed the signing (i) they were not related within the third degree to him/her or his/her spouse, and (ii) they did not know nor have a reasonable expectation that they would be entitled to any portion of his/her estate upon his/her death under any will or codicil thereto then existing or under the Intestate Succession Act as it provided at that time, and (iii) they were not a physician attending him/her, nor an employee of an attending physician, nor

1 an employee of a health facility in which he/she was a patient, nor an employee of a
2 nursing home or any group-care home in which he/she resided, and (iv) they did not
3 have a claim against him/her. I further certify that I am satisfied as to the genuineness
4 and due execution of the instrument.

5 This the.....day of....., 19.....

6
7 _____
8 Notary Public
9

10 My Commission Expires:

11 _____
12

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

15 I,....., agree to act as health care agent for, pursuant to this
16 health care power of attorney.

17 This the.....day of....., 19.....
18

19 _____!
20 **"§ 32A-26. Health care power of attorney and declaration of desire for natural**
21 **death.**

22 A health care power of attorney meeting the requirements of this Article may be
23 combined with or incorporated into a Declaration of A Desire For A Natural Death
24 which meets the requirements of Article 23 of Chapter 90 of the General Statutes."

25 Sec. 2. G.S. 32A-2(9) reads as rewritten:

26 "(9) Personal Relationships and Affairs. – To do all acts
27 necessary for maintaining the customary standard of living of the
28 principal, the spouse and children, and other dependents of the
29 principal; to provide medical, dental and surgical care,
30 hospitalization and custodial care for the principal, the spouse, and
31 children, and other dependents of the principal; to continue whatever
32 provision has been made by the principal, for the principal, the
33 spouse, and children, and other dependents of the principal, with
34 respect to automobiles, or other means of transportation; to continue
35 whatever charge accounts have been operated by the principal, for
36 the convenience of the principal, the spouse, and children, and other
37 dependents of the principal, to open such new accounts as the
38 attorney-in-fact shall think to be desirable for the accomplishment of
39 any of the purposes enumerated in this section, and to pay the items
40 charged on such accounts by any person authorized or permitted by
41 the principal or the attorney-in-fact to make such charges; to
42 continue the discharge of any services or duties assumed by the
43 principal, to any parent, relative or friend of the principal; to
44 continue payments incidental to the membership or affiliation of the

principal in any church, club, society, order or other organization, or to continue contributions thereto.

In the event the attorney-in-fact named pursuant to G.S. 32A-1 makes a decision regarding the health care of the principal that is contradictory to a decision made by a health care agent appointed pursuant to Article 3 of this Chapter, the decision of the health care agent shall overrule the decision of the attorney-in-fact."

Sec. 3. G.S. 90-321 reads as rewritten:

"§ 90-321. Right to a natural death.

(a) As used in this Article the term:

- (1) 'Declarant' means a person who has signed a declaration in accordance with subsection (c);
- (2) 'Extraordinary means' is defined as any medical procedure or intervention which in the judgment of the attending physician would serve only to postpone artificially the moment of death by sustaining, restoring, or supplanting a vital function;
- (3) 'Physician' means any person licensed to practice medicine under Article 1 of Chapter 90 of the laws of the State of North Carolina-
Carolina;
- (4) 'Persistent vegetative state' is a medical condition whereby in the judgment of the attending physician the patient suffers from a sustained complete loss of self-aware cognition and, without the use of extraordinary means or artificial nutrition or hydration, will succumb to death within a short period of time.

(b) If a person has declared, in accordance with subsection (c) below, a desire that his life not be prolonged by extraordinary ~~means;~~ means or by artificial nutrition or hydration, and the declaration has not been revoked in accordance with subsection (e);
and

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

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

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

- (1) Which expresses a desire of the declarant that ~~no~~-extraordinary ~~means~~ means or artificial nutrition or hydration not be used to prolong his life if his condition is determined to be terminal and ~~incurable;~~ incurable, or

if the declarant is diagnosed as being in a persistent vegetative state;
and

(2) Which states that the declarant is aware that the declaration authorizes a physician to withhold or discontinue the extraordinary ~~means~~; means or artificial nutrition or hydration; and

(3) Which has been signed by the declarant in the presence of two witnesses who believe the declarant to be of sound mind and who state that they (i) are not related within the third degree to the declarant or to the declarant's spouse, (ii) do not know or have a reasonable expectation that they would be entitled to any portion of the estate of the declarant upon his death under any will of the declarant or codicil thereto then existing or under the Intestate Succession Act as it then provides, (iii) are not the attending physician, or an employee of the attending physician, or an employee of a health facility in which the declarant is a patient, or an employee of a nursing home or any group-care home in which the declarant resides, and (iv) do not have a claim against any portion of the estate of the declarant at the time of the declaration; and

(4) Which has been proved before a clerk or assistant clerk of superior court, or a notary public who certifies substantially as set out in subsection (d) below.

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

'DECLARATION OF A DESIRE FOR A NATURAL DEATH'

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

(Initial any of the following, as desired):

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

..... My physician may withhold or discontinue extraordinary means only.

1 (i) they were not related within the third degree to the declarant or to the
2 declarant's spouse, and (ii) they did not know or have a reasonable expectation that they
3 would be entitled to any portion of the estate of the declarant upon the declarant's death
4 under any will of the declarant or codicil thereto then existing or under the Intestate
5 Succession Act as it provides at that time, and (iii) they were not a physician attending
6 the declarant or an employee of an attending physician or an employee of a health
7 facility in which the declarant was a patient or an employee of a nursing home or any
8 group-care home in which the declarant resided, and (iv) they did not have a claim
9 against the declarant. I further certify that I am satisfied as to the genuineness and due
10 execution of the declaration.

11 'This the day of

12 Clerk (Assistant Clerk) of Superior Court or
13 Notary Public (circle one as appropriate) for
14 the County of

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

- 17 (1) Upon the testimony of the two witnesses; or
- 18 (2) If the testimony of only one witness is available, then
 - 19 a. Upon the testimony of such witness, and
 - 20 b. Upon proof of the handwriting of the witness who is dead or
 - 21 whose testimony is otherwise unavailable, and
 - 22 c. Upon proof of the handwriting of the declarant, unless he
 - 23 signed by his mark; or upon proof of such other circumstances
 - 24 as will satisfy the clerk or assistant clerk of the superior court,
 - 25 or a notary public as to the genuineness and due execution of
 - 26 the declaration.
- 27 (3) If the testimony of none of the witnesses is available, such declaration
28 may be proved by the clerk or assistant clerk, or a notary public
 - 29 a. Upon proof of the handwriting of the two witnesses whose
 - 30 testimony is unavailable, and
 - 31 b. Upon compliance with paragraph c of subdivision (2) above.

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

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

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

41
42 **'CERTIFICATE'**
43

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

7 'This the day of,

8

9

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

10

11

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

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

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

22 (h) The withholding or discontinuance of extraordinary means and/or the
 23 withholding or discontinuance of either artificial nutrition or hydration, or both in
 24 accordance with this section shall not be considered the cause of death for any civil or
 25 criminal purposes nor shall it be considered unprofessional conduct. Any person,
 26 institution or facility against whom criminal or civil liability is asserted because of
 27 conduct in compliance with this section may interpose this section as a defense.

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

30 (j) The form provided by this section may be combined with or incorporated into
 31 a health care power of attorney form meeting the requirements of Article 3 of Chapter
 32 32A of the General Statutes; provided, however, that the resulting form shall be signed,
 33 witnessed, and proved in accordance with the provisions of this section."

34 Sec. 4. G.S. 90-322 reads as rewritten:

35 "**§90-322. Procedures for natural death in the absence of a declaration.**

36 (a) If a person is comatose and there is no reasonable possibility that he will
 37 return to a cognitive sapient state or is mentally incapacitated, and:

38 (1) It is determined by the attending physician that the person's present
 39 condition is:

40 a. Terminal; and

41 b. Incurable; ~~and-or~~

42 c. ~~Irreversible; and~~ Diagnosed as a persistent vegetative state; and

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

4 (3) A vital function of the person could be restored by extraordinary
5 means or a vital function of the person is being sustained by
6 extraordinary means; or

7 (4) The life of the person could be or is being sustained by artificial
8 nutrition or hydration;

9 then, extraordinary means or artificial nutrition or hydration may be withheld or
10 discontinued in accordance with subsection (b).

11 (b) If a person's condition has been determined to meet the conditions set forth in
12 subsection (a) and no instrument has been executed as provided in G.S. 90-321 the
13 extraordinary means ~~to prolong life or artificial nutrition or hydration~~ may be withheld or
14 discontinued upon the direction and under the supervision of the attending physician
15 with the concurrence (i) ~~of the person's spouse,~~ of a health care agent appointed pursuant
16 to a health care power of attorney meeting the requirements of Article 3 of Chapter 32A
17 of the General Statutes, or (ii) of a guardian of the person, or (iii) of the person's spouse,
18 or (iv) of a majority of the relatives of the first degree, in that order. If none of the above
19 is available then at the discretion of the attending physician the extraordinary means or
20 artificial nutrition or hydration may be withheld or discontinued upon the direction and
21 under the supervision of the attending physician.

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

23 (d) The withholding or discontinuance of such extraordinary means or artificial
24 nutrition or hydration shall not be considered the cause of death for any civil or criminal
25 purpose nor shall it be considered unprofessional conduct. Any person, institution or
26 facility against whom criminal or civil liability is asserted because of conduct in
27 compliance with this section may interpose this section as a defense."

28 Sec. 5. This act is effective October 1, 1991.