

1 MEASURES, AND REPEAL PERSISTENT VEGETATIVE STATE; TO
2 SPECIFY WHEN AN ATTENDING PHYSICIAN MAY WITHHOLD
3 LIFE-PROLONGING MEASURES IF THERE IS A LIVING WILL; TO CREATE
4 A NEW STATUTORY FORM FOR LIVING WILLS; TO CLARIFY HOW TO
5 REVOKE A DECLARATION; TO CLARIFY THE SCOPE OF IMMUNITY OF A
6 HEALTH CARE PROVIDER WHO FOLLOWS A REVOKED DECLARATION;
7 TO ALLOW PROTECTIONS OF DECLARATIONS EXECUTED IN OTHER
8 STATES OR DECLARATIONS THAT DO NOT FOLLOW THE STATUTORY
9 FORM; TO ALLOW A PHYSICIAN TO DECLINE TO HONOR A
10 DECLARATION IN CERTAIN INSTANCES; TO SPECIFY WHEN
11 LIFE-PROLONGING MEASURES MAY BE WITHHELD WHERE THERE IS
12 NO DECLARATION; TO LIST WHO MAY CONSENT TO TREATMENT IF
13 THE PATIENT CANNOT MAKE DECISIONS; TO CREATE THE MEDICAL
14 ORDER FOR SCOPE OF TREATMENT (MOST) FORM AND SPECIFY
15 REQUIRED INFORMATION ON THE FORM; TO PROVIDE THAT REMOVAL
16 OF A DOCUMENT FROM THE ADVANCE DIRECTIVE REGISTRY
17 DATABASE DOES NOT AFFECT ITS VALIDITY; TO PROVIDE THAT A
18 HEALTH CARE POWER OF ATTORNEY CAN SUPERSEDE A PERSONAL
19 REPRESENTATIVE'S AUTHORITY ON THE DISPOSITION OF THE
20 PRINCIPAL'S BODY; TO DIRECT A STUDY ON WHETHER A PERSON MAY
21 REQUIRE THAT MEDICAL CARE BE PROVIDED; AND TO DIRECT A
22 STUDY ON END-OF-LIFE MEDICAL CARE.

23 The General Assembly of North Carolina enacts:

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

25 "(c) This Article is intended and shall be construed to be consistent with the
26 provisions of Article 23 of Chapter 90 of the General Statutes provided that in the event
27 of a conflict between the provisions of this Article and Article 23 of Chapter 90, the
28 provisions of Article 23 of Chapter 90 control. No conflict between these Chapters
29 exists when either a health care power of attorney or a declaration provides that the
30 declaration is subject to decisions of a health care agent. If no declaration has been
31 executed by the principal as provided in G.S. 90-321 that expressly covers the
32 principal's present condition and if the health care agent has been given the specific
33 authority in a health care power of attorney to authorize the withholding or
34 discontinuing of ~~life-sustaining procedures when the principal is in the present~~
35 ~~condition, these procedures~~ life-prolonging measures when the principal is in such
36 condition, the measures may be withheld or discontinued as provided in the health care
37 power of attorney upon the direction and under the supervision of the attending
38 ~~physician. In this case, G.S. 90-322 does not apply.~~ physician, as G.S. 90-322 shall not
39 apply in such case. Nothing in this Article shall be construed to authorize any
40 affirmative or deliberate act or omission to end life other than to permit the natural
41 process of dying."

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

43 "**§ 32A-16. Definitions.**

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

- 3 (1) ~~"Disposition of remains" means the~~ Disposition of remains. – The
4 decision to bury or cremate human ~~remains as~~ remains, as human
5 remains are defined in G.S. 90-210.121(17)-90-210.121, and, subject
6 to G.S. 32A-19(b), arrangements relating to burial or cremation.
- 7 (1a) ~~"Health care" means any~~ Health care. – Any care, treatment, service,
8 or procedure to maintain, diagnose, treat, or provide for the principal's
9 physical or mental health or personal care and comfort ~~including,~~
10 ~~life-sustaining procedures, including life-prolonging measures.~~ "Health
11 care" includes mental health treatment as defined in subdivision (8) of
12 this section.
- 13 (2) ~~"Health care agent" means the~~ Health care agent. – The person
14 appointed as a health care attorney-in-fact.
- 15 (3) ~~"Health care power of attorney" means a~~ Health care power of
16 attorney. – A written instrument, instrument that substantially meets the
17 requirements of this Article, that is signed in the presence of two
18 qualified witnesses, and acknowledged before a notary public,
19 pursuant to which an attorney-in-fact or agent is appointed to act for
20 the principal in matters relating to the health care of the principal, and
21 which substantially meets the requirements of this Article. principal.
22 The notary who takes the acknowledgement may but is not required to
23 be a paid employee of the attending physician or mental health
24 treatment provider, a paid employee of a health facility in which the
25 principal is a patient, or a paid employee of a nursing home or any
26 adult care home in which the principal resides.
- 27 (4) ~~"Life-sustaining procedures" are those forms of care or treatment~~
28 ~~which only serve to artificially prolong the dying process and may~~
29 ~~include mechanical ventilation, dialysis, antibiotics, artificial nutrition~~
30 ~~and hydration, and other forms of treatment which sustain, restore or~~
31 ~~supplant vital bodily functions, but do not include care necessary to~~
32 ~~provide comfort or to alleviate pain.~~ Life-prolonging measures. –
33 Medical procedures or interventions which in the judgment of the
34 attending physician would serve only to postpone artificially the
35 moment of death by sustaining, restoring, or supplanting a vital
36 function, including mechanical ventilation, dialysis, antibiotics,
37 artificial nutrition and hydration, and similar forms of treatment.
38 Life-prolonging measures do not include care necessary to provide
39 comfort or to alleviate pain.
- 40 (5) ~~"Principal" means the~~ Principal. – The person making the health care
41 power of attorney.
- 42 (6) ~~"Qualified witness" means a~~ Qualified witness. – A witness in whose
43 presence the principal has executed the health care power of attorney,
44 who believes the principal to be of sound mind, and who states that he

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

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

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

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

29 **"§ 32A-19. Extent of authority; limitations of authority.**

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

39 (a1) A health care power of attorney may incorporate or be combined with an
40 advance instruction for mental health treatment prepared pursuant to Part 2 of Article 3
41 of Chapter 122C of the General Statutes. A health care agent's decisions about mental
42 health treatment shall be consistent with any statements the principal has expressed in
43 an advance instruction for mental health treatment if one so exists, and if none exists,
44 shall be consistent with what the agent believes in good faith to be the manner in which

1 the principal would act if the principal did not lack ~~sufficient understanding~~ or capacity
2 to make or communicate health care decisions. A health care agent is not subject to
3 criminal prosecution, civil liability, or professional disciplinary action for any action
4 taken in good faith pursuant to an advance instruction for mental health treatment.

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

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

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

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

27 "**§ 32A-24. Reliance on health care power of attorney; defense.**

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

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

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

1 attorney. These protections also extend to a document executed in another jurisdiction
 2 that is valid as a health care power of attorney under G.S. 32A-27. A health care
 3 provider shall have no liability for acting in accordance with a revoked health care
 4 power of attorney unless that provider has actual notice of the revocation."

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

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

8 "**§ 32A-25.1. Statutory form health care power of attorney.**

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

12
 13 **HEALTH CARE POWER OF ATTORNEY**

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

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

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

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

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

If you want to use this form, you must complete it, sign it, and have your signature witnessed by two qualified witnesses and proved by a notary public. Follow the instructions about which choices you can initial very carefully. Do not sign this form until two witnesses and a notary public are present to watch you sign it. You then should give a copy to your health care agent and to any alternates you name. You should consider filing it with the Advance Health Care Directive Registry maintained by the North Carolina Secretary of State: <http://www.nclifelinks.org/ahcdr/>

1. Designation of Health Care Agent.

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

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

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

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

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

2. Effectiveness of Appointment.

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

1. _____ (Physician)

1 2. _____ (*Physician*)

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

6
7 **3. Revocation.**

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

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

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

- 18
19 A. Requesting, reviewing, and receiving any information, verbal or
20 written, regarding my physical or mental health, including, but not
21 limited to, medical and hospital records, and to consent to the
22 disclosure of this information.
- 23
24 B. Employing or discharging my health care providers.
- 25
26 C. Consenting to and authorizing my admission to and discharge from a
27 hospital, nursing or convalescent home, hospice, long-term care
28 facility, or other health care facility.
- 29
30 D. Consenting to and authorizing my admission to and retention in a
31 facility for the care or treatment of mental illness.
- 32
33 E. Consenting to and authorizing the administration of medications for
34 mental health treatment and electroconvulsive treatment (ECT)
35 commonly referred to as "shock treatment."
- 36
37 F. Giving consent for, withdrawing consent for, or withholding consent
38 for, X-ray, anesthesia, medication, surgery, and all other diagnostic
39 and treatment procedures ordered by or under the authorization of a
40 licensed physician, dentist, podiatrist, or other health care provider.
41 This authorization specifically includes the power to consent to
42 measures for relief of pain.
- 43

1 G. Authorizing the withholding or withdrawal of life-prolonging
2 measures.

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

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

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

35
36 **5. Special Provisions and Limitations.**

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

A. Limitations about Artificial Nutrition or Hydration: In exercising the authority to make health care decisions on my behalf, my health care agent: shall NOT have the authority to withhold artificial nutrition (such as through tubes) OR may exercise that authority only in accordance with the following special provisions:

(Initial)

shall NOT have the authority to withhold artificial hydration (such as through tubes) OR may exercise that authority only in accordance with the following special provisions:

NOTE: If you initial either block but do not insert any special provisions, your health care agent shall have NO AUTHORITY to withhold artificial nutrition or hydration.

(Initial)

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

NOTE: DO NOT initial unless you insert a limitation.

(Initial)

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

NOTE: DO NOT INITIAL BOTH BLOCKS ABOVE.

donate my body for anatomical study if needed.

(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.)

(Initial)

NOTE: DO NOT initial unless you insert a limitation.

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

7. Guardianship Provision.

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

8. Reliance of Third Parties on Health Care Agent.

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

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

1 representatives. The authority of my health care agent pursuant to this
2 power of attorney shall be superior to and binding upon my family,
3 relatives, friends, and others.

4
5 **9. Miscellaneous Provisions.**

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

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

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

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

39
40 E. Reimbursement. My health care agent shall be entitled to
41 reimbursement for all reasonable expenses incurred as a result of
42 carrying out any provision of this directive.
43

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

4
5 This the _____ day of _____, 20____.

6
7 _____ (SEAL)
8

9 I hereby state that the principal, _____, being of sound mind, signed (or
10 directed another to sign on the principal's behalf) the foregoing health care power of
11 attorney in my presence, and that I am not related to the principal by blood or marriage,
12 and I would not be entitled to any portion of the estate of the principal under any
13 existing will or codicil of the principal or as an heir under the Intestate Succession Act,
14 if the principal died on this date without a will. I also state that I am not the principal's
15 attending physician, nor a licensed health care provider or mental health treatment
16 provider who is (1) an employee of the principal's attending physician or mental health
17 treatment provider, (2) an employee of the health facility in which the principal is a
18 patient, or (3) an employee of a nursing home or any adult care home where the
19 principal resides. I further state that I do not have any claim against the principal or the
20 estate of the principal.

21
22 Date: _____ Witness: _____
23

24 Date: _____ Witness: _____
25

26 _____ COUNTY, _____ STATE
27

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

30
31 _____
32 *(type/print name of witness)*

33
34 _____
35 *(type/print name of witness)*

36
37
38 Date: _____
39 *(Official Seal)*

_____ *Signature of Notary Public*

40
41 _____, Notary Public
42 *Printed or typed name*

43
44 My commission expires: _____

1
2 (b) Use of the statutory form prescribed in this section is an optional and
3 nonexclusive method for creating a health care power of attorney and does not affect the
4 use of other forms of health care powers of attorney, including previous statutory
5 forms."

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

8 **"§ 32A-27. Health care powers of attorney executed in other jurisdictions.**

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

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

15 **"§ 35A-1208. Authority for health care decisions.**

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

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

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

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

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

38 **"§ 90-320. General purpose of Article.**

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

1 by which a patient or ~~his~~ the patient's representative may exercise these rights. A
 2 military advanced medical directive executed in accordance with 10 U.S.C. § 1044 or
 3 other applicable law is valid in this State.

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

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

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

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

15 (1a) Declaration. – Any signed, witnessed, dated, and proved document
 16 meeting the requirements of subsection (c) of this section.

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

21 (2a) Life-prolonging measures. – As defined in G.S. 32A-16(4).

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

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

30 (b) If a person has ~~declared, in accordance with subsection (e) below, a desire~~
 31 ~~that his life not be prolonged by extraordinary means or by artificial nutrition or~~
 32 ~~hydration, expressed through a declaration, in accordance with subsection (c) of this~~
 33 ~~section, a desire that the person's life not be prolonged by life-prolonging measures, and~~
 34 ~~the declaration has not been revoked in accordance with subsection (e);(e) of this~~
 35 ~~section; and~~

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

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

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

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

42 (2) There is confirmation of the declarant's present condition as set out
 43 ~~above~~ in subdivision (b)(1) of this section by a physician other than the
 44 attending physician;

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

5 (c) ~~The attending physician may rely upon a signed, witnessed, dated and proved~~
6 ~~declaration, or a copy of that declaration obtained from the Advance Health Care~~
7 ~~Directive Registry maintained by the Secretary of State pursuant to Article 21 of~~
8 ~~Chapter 130A of the General Statutes; shall follow, subject to subsections (b), (e), and~~
9 ~~(k) of this section, a declaration:~~

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

17 a. ~~The declarant has an incurable or irreversible condition that will~~
18 ~~result in the declarant's death within a relatively short period of~~
19 ~~time; or~~

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

22 c. ~~The declarant suffers from advanced dementia or any other~~
23 ~~condition resulting in the substantial loss of cognitive ability~~
24 ~~and that loss, to a high degree of medical certainty, is not~~
25 ~~reversible.~~

26 (2) ~~Which That states that the declarant is aware that the declaration~~
27 ~~authorizes a physician to withhold or discontinue the extraordinary~~
28 ~~means or artificial nutrition or hydration; life-prolonging measures;~~
29 ~~and~~

30 (3) ~~Which That has been signed by the declarant in the presence of two~~
31 ~~witnesses who believe the declarant to be of sound mind and who state~~
32 ~~that they (i) are not related within the third degree to the declarant or to~~
33 ~~the declarant's spouse, (ii) do not know or have a reasonable~~
34 ~~expectation that they would be entitled to any portion of the estate of~~
35 ~~the declarant upon his the declarant's death under any will of the~~
36 ~~declarant or codicil thereto then existing or under the Intestate~~
37 ~~Succession Act as it then provides, (iii) are not the attending physician,~~
38 ~~or an employee of the attending physician, or an employee of a health~~
39 ~~facility in which the declarant is a patient, or an employee of a nursing~~
40 ~~home or any group care home in which the declarant resides, are not~~
41 ~~the attending physician, licensed health care providers who are paid~~
42 ~~employees of the attending physician, paid employees of a health~~
43 ~~facility in which the declarant is a patient, or paid employees of a~~
44 ~~nursing home or any adult care home in which the declarant resides,~~

1 and (iv) do not have a claim against any portion of the estate of the
 2 declarant at the time of the declaration; and

- 3 (4) ~~Which~~That has been proved before a clerk or assistant clerk of
 4 superior court, or a notary public who certifies substantially as set out
 5 in subsection ~~(d)~~below ~~(d1)~~ of this section. A notary who takes the
 6 acknowledgement may but is not required to be a paid employee of the
 7 attending physician, a paid employee of a health facility in which the
 8 declarant is a patient, or a paid employee of a nursing home or any
 9 adult care home in which the declarant resides."

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

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

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

15
 16 **ADVANCE DIRECTIVE FOR A NATURAL DEATH ("LIVING WILL")**

17
 18 **NOTE: YOU SHOULD USE THIS DOCUMENT TO GIVE YOUR HEALTH**
 19 **CARE PROVIDERS INSTRUCTIONS TO WITHHOLD OR WITHDRAW**
 20 **LIFE-PROLONGING MEASURES IN CERTAIN SITUATIONS. THERE IS**
 21 **NO LEGAL REQUIREMENT THAT ANYONE EXECUTE A LIVING WILL.**
 22

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

31
 32 *You do not have to use this form to give those instructions, but if you create your own*
 33 *Advance Directive you need to be very careful to ensure that it is consistent with North*
 34 *Carolina law.*

35
 36 *This Living Will form is intended to be valid in any jurisdiction in which it is presented,*
 37 *but places outside North Carolina may impose requirements that this form does not*
 38 *meet.*

39
 40 *If you want to use this form, you must complete it, sign it, and have your signature*
 41 *witnessed by two qualified witnesses and proved by a notary public. Follow the*
 42 *instructions about which choices you can initial very carefully. **Do not sign this form***
 43 ***until** two witnesses and a notary public are present to watch you sign it. You then*
 44 *should consider giving a copy to your primary physician and/or a trusted relative, and*

1 should consider filing it with the Advanced Health Care Directive Registry maintained
2 by the North Carolina Secretary of State: <http://www.nclifelinks.org/ahcdr/>

3
4 **My Desire for a Natural Death**

5
6 I, _____, being of sound mind, desire that, as specified below, my
7 life not be prolonged by life-prolonging measures:

8
9 **1. When My Directives Apply**

10
11 My directions about prolonging my life shall apply **IF** my attending physician
12 determines that I lack capacity to make or communicate health care decisions and:

13
14 **NOTE: YOU MAY INITIAL ANY AND ALL OF THESE CHOICES.**

15
16 _____ I have an incurable or irreversible condition that will result
17 (Initial) in my death within a relatively short period of time.

18
19 _____ I become unconscious and my health care providers
20 (Initial) determine that, to a high degree of medical certainty, I will
21 never regain my consciousness.

22
23 _____ I suffer from advanced dementia or any other condition
24 (Initial) which results in the substantial loss of my cognitive ability
25 and my health care providers determine that, to a high
26 degree of medical certainty, this loss is not reversible.

27
28 **2. These are My Directives about Prolonging My Life:**

29
30 In those situations I have initialed in Section 1, I direct that my health care
31 providers:

32
33 **NOTE: INITIAL ONLY IN ONE PLACE.**

34
35 _____ may provide life-prolonging measures.
36 (Initial)

37
38 _____ shall provide life-prolonging measures.
39 (Initial)

40
41 _____ may withhold or withdraw life-prolonging measures.
42 (Initial)

43
44 _____ shall withhold or withdraw life-prolonging measures.

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:

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

_____ Follow Health Care Agent: My health care agent has
(Initial) 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 adult care home where the declarant resides. I further state that I do not have any claim against the declarant or the estate of the declarant.

Date: _____ Witness: _____

Date: _____ Witness: _____

_____ COUNTY, _____ STATE

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

_____ (type/print name of witness)

_____ (type/print name of witness)

Date _____ (Official Seal)

_____ Signature of Notary Public

_____, Notary Public Printed or typed name

My commission expires: _____"

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

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

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

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

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

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

36 (1) An attending physician may decline to honor a declaration that
37 expresses a desire of the declarant that life-prolonging measures not be
38 used if doing so would violate that physician's conscience or the
39 conscience-based policy of the facility at which the declarant is being
40 treated; provided, an attending physician who declines to honor a
41 declaration on these grounds must not interfere, and must cooperate
42 reasonably, with efforts to substitute an attending physician whose
43 conscience would not be violated by honoring the declaration, or

1 transfer the declarant to a facility that does not have policies in force
2 that prohibit honoring the declaration.

3 (2) An attending physician may decline to honor a declaration if after
4 reasonable inquiry there are reasonable grounds to question the
5 genuineness or validity of a declaration. The subsection imposes no
6 duty on the attending physician to verify a declaration's genuineness or
7 validity.

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

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

13 "**§ 90-322. Procedures for natural death in the absence of a declaration.**

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

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

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

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

23 c. ~~Diagnosed as a persistent vegetative state; and~~

24 (1a) That the person:

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

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

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

32 (3) A vital bodily function of the person could be restored ~~by~~
33 ~~extraordinary means or a vital function of the person is being sustained~~
34 ~~by extraordinary means; or or is being sustained by life-prolonging~~
35 ~~measures;~~

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

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

40 (b) If a person's condition has been determined to meet the conditions set forth in
41 subsection (a) of this section and no instrument has been executed as provided in
42 G.S. 90-321-90-321, ~~the extraordinary means or artificial nutrition or hydration then~~
43 ~~life-prolonging measures~~ may be withheld or discontinued upon the direction and under
44 the supervision of the attending physician with the concurrence (i) ~~of a health care agent~~

1 appointed pursuant to a health care power of attorney meeting the requirements of
2 Article 3 of Chapter 32A of the General Statutes, or (ii) of a guardian of the person, or
3 (iii) of the person's spouse, or (iv) of a majority of the relatives of the first degree, in
4 that order, of the following persons, in the order indicated:

- 5 (1) A guardian of the patient's person, or a general guardian with powers
6 over the patient's person, appointed by a court of competent
7 jurisdiction pursuant to Article 5 of Chapter 35A of the General
8 Statutes; provided that, if the patient has a health care agent appointed
9 pursuant to a valid health care power of attorney, the health care agent
10 shall have the right to exercise the authority to the extent granted in the
11 health care power of attorney and to the extent provided in
12 G.S. 32A-19(b) unless the Clerk has suspended the authority of that
13 health care agent in accordance with G.S. 35A-1208(a);
- 14 (2) A health care agent appointed pursuant to a valid health care power of
15 attorney, to the extent of the authority granted;
- 16 (3) An attorney-in-fact, with powers to make health care decisions for the
17 patient, appointed by the patient pursuant to Article 1 or Article 2 of
18 Chapter 32A of the General Statutes, to the extent of the authority
19 granted;
- 20 (4) The patient's spouse;
- 21 (5) A majority of the patient's reasonably available parents and children
22 who are at least 18 years of age;
- 23 (6) A majority of the patient's reasonably available siblings who are at
24 least 18 years of age; or
- 25 (7) An individual who has an established relationship with the patient,
26 who is acting in good faith on behalf of the patient, and who can
27 reliably convey the patient's wishes.

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

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

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

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

40 "**§ 90-21.13. Informed consent to health care treatment or procedure.**

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

- 1 (1) The action of the health care provider in obtaining the consent of the
2 patient or other person authorized to give consent for the patient was in
3 accordance with the standards of practice among members of the same
4 health care profession with similar training and experience situated in
5 the same or similar communities; and
- 6 (2) A reasonable person, from the information provided by the health care
7 provider under the circumstances, would have a general understanding
8 of the procedures or treatments and of the usual and most frequent
9 risks and hazards inherent in the proposed procedures or treatments
10 which are recognized and followed by other health care providers
11 engaged in the same field of practice in the same or similar
12 communities; or
- 13 (3) A reasonable person, under all the surrounding circumstances, would
14 have undergone such treatment or procedure had he been advised by
15 the health care provider in accordance with the provisions of
16 subdivisions (1) and (2) of this subsection.

17 (b) A consent which is evidenced in writing and which meets the foregoing
18 standards, and which is signed by the patient or other authorized person, shall be
19 presumed to be a valid consent. This presumption, however, may be subject to rebuttal
20 only upon proof that such consent was obtained by fraud, deception or
21 misrepresentation of a material fact. A consent that meets the foregoing standards, that
22 is given by a patient, or other authorized person, who under all the surrounding
23 circumstances has capacity to make and communicate health care decisions, is a valid
24 consent.

25 (c) ~~A valid consent is one which is given by a person who under all the~~
26 ~~surrounding circumstances is mentally and physically competent to give consent. The~~
27 ~~following persons, in the order indicated, are authorized to consent to medical treatment~~
28 ~~on behalf of a patient who is comatose or otherwise lacks capacity to make or~~
29 ~~communicate health care decisions:~~

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

- 1 (4) The patient's spouse;
2 (5) A majority of the patient's reasonably available parents and children
3 who are at least 18 years of age;
4 (6) A majority of the patient's reasonably available siblings who are at
5 least 18 years of age; or
6 (7) An individual who has an established relationship with the patient,
7 who is acting in good faith on behalf of the patient, and who can
8 reliably convey the patient's wishes.

9 (c1) If none of the persons listed under subsection (c) of this section is reasonably
10 available, then the patient's attending physician, in the attending physician's discretion,
11 may provide health care treatment without the consent of the patient or other person
12 authorized to consent for the patient if there is confirmation by a physician other than
13 the patient's attending physician of the patient's condition and the necessity for
14 treatment; provided, however, that confirmation of the patient's condition and the
15 necessity for treatment are not required if the delay in obtaining the confirmation would
16 endanger the life or seriously worsen the condition of the patient.

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

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

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

27 "**§ 90-21.17. Portable do not resuscitate ~~order~~ order and Medical Order for Scope**
28 of Treatment.

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

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

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

- 36 (1) With the consent of the patient;
37 (2) If the patient is a minor, with the consent of the patient's parent or
38 guardian; or
39 (3) If the patient is not a minor but is incapable of making an informed
40 decision regarding consent for the order, with the consent of the
41 patient's representative.

42 The physician shall document the basis for the DNR order or MOST in the patient's
43 medical record. When the order is a MOST, the patient or the patient's representative
44 must sign the form, provided, however, that if it is not practicable for the patient's

1 representative to sign the original MOST form, the patient's representative shall sign a
2 copy of the completed form and return it to the health care professional completing the
3 form. The copy of the form with the signature of the patient's representative, whether in
4 paper or electronic form, shall be placed in the patient's medical record. When the
5 signature of the patient's representative is on a separate copy of the MOST form, the
6 original MOST form must indicate in the appropriate signature field that the signature is
7 "on file".

8 (c) The Department of Health and Human Services shall develop a portable DNR
9 ~~form~~ form and a MOST form. The official DNR form shall include fields for the
10 name of the patient; the name, address, and telephone number of the physician; the
11 signature of the physician; and other relevant information. At a minimum, the official
12 MOST form shall include fields for: the name of the patient; the name, telephone
13 number, and signature of the physician, physician assistant, or nurse practitioner
14 authorizing the order; the name and contact information of the health care professional
15 who prepared the form with the patient or the patient's representative; information on
16 who agreed (i.e., the patient or the patient's representative) to the options selected on the
17 MOST form; a range of options for cardiopulmonary resuscitation, medical
18 interventions, antibiotics, medically administered fluids and nutrition; patient or patient
19 representative's name, contact information, and signature; effective date of the form and
20 review dates; a prominent advisory that directions in a MOST form may suspend, while
21 those MOST directions are in effect, any conflicting directions in a patient's previously
22 executed declaration of an advance directive for a natural death ("living will"), health
23 care power of attorney, or other legally authorized instrument; and an advisory that the
24 MOST may be revoked by the patient or the patient's representative. The official MOST
25 form shall also include the following statement written in boldface type directly above
26 the signature line: '**You are not required to sign this form to receive treatment.**' The
27 form may be approved by reference to a standard form that meets the requirements of
28 this subsection. For purposes of this section, the "patient's representative" means an
29 individual from the list of persons authorized to consent to the withholding of
30 ~~extraordinary care~~ life-prolonging measures pursuant to G.S. 90-322 or an individual
31 ~~who has an established relationship with the patient, who is acting in good faith on~~
32 ~~behalf of the patient, and who can reliably convey the patient's wishes.~~ G.S. 90-322.

33 (d) No physician, emergency medical professional, hospice provider, or other
34 health care provider shall be subject to criminal prosecution, civil liability, or
35 disciplinary action by any professional licensing or certification agency for withholding
36 cardiopulmonary resuscitation or other life-prolonging measures from a patient in good
37 faith reliance on an original DNR order or MOST form adopted pursuant to subsection
38 (c) of this section, provided that (i) there are no reasonable grounds for doubting the
39 validity of the order or the identity of the patient, and (ii) the provider does not have
40 actual knowledge of the revocation of the portable DNR ~~order~~ order or MOST. No
41 physician, emergency medical professional, hospice provider, or other health care
42 provider shall be subject to criminal prosecution, civil liability, or disciplinary action by
43 any professional licensing or certification agency for failure to follow a DNR order or

1 MOST form adopted pursuant to subsection (c) of this section if the provider had no
2 actual knowledge of the existence of the DNR ~~order~~ order or MOST.

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

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

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

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

23 **SECTION 15.(b)** G.S. 122C-57(d) reads as rewritten:

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

39 **SECTION 16.** G.S. 130A-468(c) and (d) read as rewritten:

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

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

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

8 **SECTION 17.** G.S. 28A-13-1 reads as rewritten:

9 **"§ 28A-13-1. Time of accrual of duties and powers.**

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

22 **SECTION 18.** The Legislative Research Commission shall study the issue
23 of whether North Carolina law should be amended to allow a person to require
24 life-prolonging measures. The LRC shall involve all stakeholders in the study. The
25 LRC shall report its recommendations to the 2008 Session of the 2007 General
26 Assembly.

27 **SECTION 19.** The North Carolina Institute of Medicine (Institute) shall
28 study issues related to the provision of end-of-life medical care in North Carolina. As
29 part of the study, the Division of Health Service Regulation, Department of Health and
30 Human Services, and the North Carolina Board of Medicine shall provide to the
31 Institute nonidentifying information regarding claims and complaints related to
32 end-of-life medical treatment by health care providers that was contrary to the express
33 wishes of either the patient or a person authorized by law to make treatment decisions
34 on behalf of the patient. The Institute may review any other data related to end-of-life
35 medical care and treatment the Institute determines is relevant.

36 The purpose of this study is to determine whether statutory changes related to
37 advance directives and health care powers of attorney impact the type and quantity of
38 end-of-life medical care provided to patients, whether the patient's or patient
39 representative's express wishes regarding the provision of treatment at the end of life are
40 being honored, and whether there is any change in the number of persons who request
41 continued treatment at the end of their lives, but do not receive that treatment.

42 The Institute shall report its findings to the following entities no later than
43 January 30, 2013:

- 44 (1) The 2013 General Assembly.

- 1 (2) The North Carolina Bar Association.
- 2 (3) The North Carolina Medical Society.
- 3 **SECTION 20.** This act becomes effective October 1, 2007.