

**Decreasing Complexity of Completing Advance Directives:
A Policy Brief from the North Carolina Serious Illness
Coalition Advance Care Planning Work Group**

Updated: March 18, 2021



SUMMARY

In North Carolina, advance directives have required two witness signatures that meet North Carolina's legal requirements, as well as notarization. In response to the COVID-19 pandemic, the North Carolina General Assembly passed Session Law 2020-3 on May 4, 2020, removing the requirement for two witnesses and allowing remote/video notarization. The provision for eliminating two witnesses applied until August 1, 2020. Session Law 2020-80 extended a sunset of the authorization for video notary until December 31, 2021, but did not extend the removal of the two witness requirement for Advance Directives.

Also, the Secretary of State's registry of advance directive documents is currently only allowed to accept documents in paper form.

Legislative Action Needed to Advance NCIOM Task Force Recommendations

Session Law 2020-3 implemented changes similar to those recommended by the NCIOM Task Force on Serious Illness Care in April 2020. To allow individuals and families to complete advance directives both during the COVID-19 pandemic and into the future more effectively, the North Carolina Serious Illness Coalition is calling on the General Assembly to make the following changes permanent:

1. Allow video notary and witnessing
2. Signature of EITHER two witnesses OR notary for completion of advance directives

To expand opportunities to submit advance directive documents to the Secretary of State's registry, the Coalition also calls on the General Assembly to:

3. Revise NCGS § 130a-468 to allow electronic transfer of advance care planning documents to and from the Secretary of State's Advance Directive Registry.

***SEE APPENDIX FOR PROPOSED CHANGE IN
LEGISLATIVE TEXT***

Background

In 2020, a Serious Illness Care Task Force ("task force") convened by the North Carolina Institute of Medicine (NCIOM) made [30 consensus-based, evidence-based, and actionable recommendations](#) to improve serious illness care in North Carolina.

The task force identified important ways to ensure that individuals can identify and achieve their goals for care, including improving the understanding of and processes to complete advance care planning documents.

WHAT IS ADVANCE CARE PLANNING (ACP)?

Broadly defined, advance care planning is a process by which individuals discuss and document their care preferences, "to ensure that health care treatment (they) may receive is consistent with wishes and preferences should (the individual) be unable to make decisions or speak" for themselves.¹

WHAT IS AN ADVANCE DIRECTIVE?

An advance directive is a legal document that goes into effect when an individual is incapacitated and can no longer make or communicate decisions.² It allows individuals to express preferences for care, including end-of-life care, and may be adjusted as circumstances or diagnoses change.³ These documents include:

- **Health Care Power of Attorney** - Legal document that allows you to name a person to serve as your "Healthcare Agent." Your agent is able to make decisions about your care if you are not able to make care decisions yourself.
- **Living Will** - Describes an individual's preferences for medical treatment, life support, and end-of-life care.
- **Advance Directives for Mental Health Treatment** - Describes which mental health treatments an individual would want or not

want if unable to speak for themselves; can be combined with or separate from a health care power of attorney²

TAKING ACTION ON TASK FORCE RECOMMENDATIONS

The North Carolina Serious Illness Coalition was created in response to NCIOM task force *Recommendation 2.1^a* to establish coordinated statewide leadership to facilitate implementation of recommendations and ongoing work to achieve quality of living for individuals with serious illness. In Fall 2020, the Coalition's Work Group on Advance Care Planning began studying further improvements needed to modernize the process of completing and communicating ACP documents.

COVID-19 and Advance Care Planning

Many of the Task Force recommendations have been impacted and emphasized by the COVID-19 pandemic. When the task force report was published in April 2020, North Carolina requirements for completing advance directives were that they be:

- 1) written;
- 2) signed while the individual can still make and communicate health care decisions;
- 3) witnessed and signed by two adult witnesses that meet North Carolina's legal requirements; and
- 4) notarized.⁴

One of the Priority Recommendations of the task force was **Recommendation 4.6: Revise signature and notary requirements for advance directive documents.**

In response to the COVID-19 pandemic, the North Carolina General Assembly passed Session Law 2020-3 on May 4, 2020, that allowed for:

- Video witnessing and notarization of advance directives, and
- Removal of the requirement for two witnesses.

Originally, these policy changes were set to end on August 1, 2020. Session Law 2020-80 extended the authorization for video notary and witnessing to December 31, 2021.

Recommendation 4.6: Revise signature and notary requirements for advance directives documents

In order to ease administrative burden, increase participation in completing documents, and improve accuracy of advance directives, the North Carolina General Assembly should revise North Carolina General Statute § 32A-15 and General Statute § 90-320 to change the requirement for two witnesses and notarization for advance directive documents, including living wills and health care powers of attorney. Requirement should be changed to either two witness signatures OR notarization.

However, the amended requirements related to witness and notary signatures were not extended.

Our state is one of only three states that requires both notary AND two witness signatures for completion of advance directives, with most other states requiring *either* notary signature *or* two witnesses.⁵ States with less restrictive signature requirements have shown no evidence of greater incidence of fraud.⁶ Similarly, changing from more restrictive to less restrictive requirements has not increased abuse.⁶

"The current requirements for completion of advance directives are burdensome. For sick patients admitted to a COVID unit or the ICU, we struggle to provide support for them to complete their advance directives.... Pre-COVID, we provided around 140 advance directive consults per month, and helped an average of 40 people complete their advance directive documents. This has plummeted to an average of only 10 per month, with the primary challenge being access to a notary and two witnesses at the same time."

*Dr. Tae Lee, Medical Director
Vidant Palliative Care and Hospice Services
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^a The North Carolina Serious Illness Coalition should provide statewide coordinated leadership to oversee and coordinate the implementation of the recommendations from the Task Force on Serious Illness Care. Under the direction of an executive committee, the Coalition should: 1. Identify and appoint appropriate stakeholders for membership in the Coalition; 2. Determine statewide standards for what defines "serious illness" and how it is applied across recommendations. 3. Identify and support work groups charged with additional development and implementation of specific recommendations and to serve in an advisory capacity

to additional partners. Workgroups may include: awareness/communication, quality metrics/measurement, advance care planning, workforce (including wages), and policy/regulation; 4. Develop work plan for prioritization and implementation of recommendations; 5. Report progress on implementation on an annual basis to relevant stakeholders; 6. Provide support and leadership for the North Carolina Partnership on Compassionate Care; 7. Pursue sustainable funding from philanthropic organizations for ongoing work of the Coalition.

Advance Care Planning in North Carolina

ACP documents in North Carolina are currently siloed, residing in:

- Health system Electronic Health Records,
- The NC Secretary of State's database,
- Private databases,
- Paper format in the homes of patients, and/or
- Possibly with rural primary care physicians

There could be multiple versions in one or more of these places for the same individual.

Current Practice for Advance Care Planning in North Carolina

Currently in North Carolina, the Office of the Secretary of State houses a registry of advance directives. Individuals can choose to complete a registration form and submit their paper documents with a fee of \$10 per document. Individuals receive a registry card with a file number and password that can be given to family members and health care providers.⁷ The registry has collected approximately 80,000 documents over the past 20 years, but it is unclear how many of these are currently active.⁸

The Secretary of State's advance directive registry is not linked to the state's Health Information Exchange – NC HealthConnex. NC HealthConnex is an electronic network implemented by NC General Statute 90-414.7 that "facilitates conversations between health care providers, allowing them to access and share health-related information across the state."⁹ Individual patients' advance directive forms are not currently housed on NC HealthConnex – providers are only able to note that advance directives exist for a patient. There are 146 participant organizations, primarily hospitals, that make information on advance directives available to providers through inclusion in electronic health records or other formats.¹⁰

Officials from the North Carolina Secretary of State's Office and the Health Information Exchange Authority are working with the North Carolina Serious Illness Coalition to determine how these systems can be improved and integrated to allow patients and health care providers to register and access advance directives more easily.

One of the Priority Recommendations of the task force was **Recommendation 4.7.3:** Revise NCGS § 130a-468 to allow acceptance of electronic versions of advance directives to be entered into registry database.

Recommendation 4.7.3: Ease administrative burden, increase participation in completing documents, and improve accuracy of advance directives, the North Carolina General Assembly should:

Revise NCGS § 130a-468 to allow acceptance of electronic versions of advance directives to be entered into registry database.

Other recommendations from the NCIOM Task Force to the General Assembly related to these systems include:

- Elimination of fees for filing documents with the Secretary of State's Advance Directive Registry (Rec. 4.7)
- Allocation of funding for ongoing processing and maintenance of the registry and work needed to integrate the registry with NC HealthConnex (Rec. 4.7 & 4.10)
- Acceptance of electronic portable medical orders (Rec. 4.8)⁶

Vision for the Future of Advance Care Planning in North Carolina

Individuals and families/caregivers will understand the importance of having advance care planning discussions with family, decision makers, and health care providers.

Individuals and families/caregivers will be able to complete advance care planning documentation with minimal barriers or complexities.

Individuals, families/caregivers, and health care providers will be able to access advance directive documents when they are needed most – at the point of care.

Legislative Action Needed to Advance NCIOM Task Force Recommendations

- 1) Permanently change the requirement for both two witnesses and notary signature on advance directives to allow for EITHER two witnesses OR notary signature.
- 2) Permanently allow video OR in-person notary and witness signature for advance directives and other legal purposes.
- 3) Revise NCGS § 130a-468 to allow electronic transfer of advance care planning documents to and from the Secretary of State's Advance Directive Registry.

SEE APPENDIX FOR PROPOSED CHANGE IN LEGISLATIVE TEXT

Call to Action: How the North Carolina General Assembly Can Improve Advance Care Planning

1 The North Carolina Serious Illness Coalition recommends the North Carolina General Assembly implement permanent legislative change to the requirement for both two witnesses and notary signature for completion of Advance Directives to allow individuals to use EITHER two witnesses OR a notary for document completion. **This policy change will:**

- Allow individuals and families to effectively complete advance directives both during the COVID-19 pandemic and into the future, and
- Bring North Carolina in line with nearly all other states and increase the ability of residents to complete important Advance Care Planning documents.

2 The North Carolina Serious Illness Coalition recommends that the North Carolina General Assembly permanently allow notary and witness signature for advance directives and other legal documents via video OR in person. **This policy change will:**

- Provide greater access to notaries for our state's rural residents, individuals who lack transportation or have limited mobility, and others who may not be able to see a notary in person, and
- Enable other industries, including real estate, to avail themselves of this enhanced capability.

3 The North Carolina Serious Illness Coalition recommends that the North Carolina General Assembly revise NCGS § 130a-468 to allow electronic transfer of advance care planning documents to and from the Secretary of State's Advance Directive Registry. **This policy change will:**

- Allow individuals to submit their advance care planning documents to the Secretary of State's registry in the most convenient format for them, either on paper or electronically.

- Set the stage for linking documents in the state registry to NC HealthConnex.

Additional Legislative Attention Is Needed

Along with the aforementioned priorities, additional improvements to the state's ACP systems are needed to allow for better communication of patient wishes to health care providers. The North Carolina Serious Illness Coalition Work Group on Advance Care Planning is continuing research on the best practice for ACP dissemination throughout the state, working with the Secretary of State's Office, and will bring further recommendations at a later date.

In addition, access to portable medical orders and adherence to individuals' wishes for end-of-life care may be improved through revisions to North Carolina statute to include the national Physician Orders for Life-Sustaining Treatment (POLST) form. The National POLST Paradigm is a national organization that provides guidance and support to states as they implement or revise medical orders—in North Carolina, this includes the MOST form. The National POLST Paradigm has created a standard national POLST form that aims to meet legal standards across states and make it easier to honor patient wishes across states.^{6,11}

References

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7. North Carolina Secretary of State Advance Health Care Directive Registry Registration Form. https://www.sosnc.gov/documents/forms/advance_healthcare_directives/registration_form.pdf. Accessed January 5, 2021.
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9. North Carolina Department of Information Technology – Health Information Exchange. General FAQs About NC HealthConnex. <https://hiea.nc.gov/faqs/general-faqs-about-nc-healthconnex#what-is-nc-healthconnex>. Accessed January 12, 2021.
10. Personal communication from Christie Burris of the Health Information Exchange Authority. November 19, 2020.
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Appendix

A.

§ 90-321. Right to a natural death.

(a) The following definitions apply in this Article:

- (1) Declarant. - A person who has signed a declaration in accordance with subsection (c) of this section.
- (1a) Declaration. - Except as provided in G.S. 90-321.1, any signed; ~~witnessed~~, dated ~~and~~ **and witnessed or** proved document meeting the requirements of subsection (c) of this section.
- (2) Repealed by Session Laws 2007-502, s. 11(a), effective October 1, 2007.
- (2a) Life-prolonging measures. - As defined in G.S. 32A-16(4).
- (3) Physician. - Any person licensed to practice medicine under Article 1 of Chapter 90 of the laws of the State of North Carolina.
- (4) Repealed by Session Laws 2007-502, s. 11(a), effective October 1, 2007.

(b) If a person has expressed through a declaration, in accordance with subsection (c) of this section, a desire that the person's life not be prolonged by life-prolonging measures, and the declaration has not been revoked in accordance with subsection (e) of this section; and

- (1) It is determined by the attending physician that the declarant's present condition is a condition described in subsection (c) of this section and specified in the declaration for applying the declarant's directives, and
- (2) There is confirmation of the declarant's present condition as set out in subdivision (b)(1) of this section by a physician other than the attending physician;

then the life-prolonging measures identified by the declarant shall or may, as specified by the declarant, be withheld or discontinued upon the direction and under the supervision of the attending physician.

(c) The attending physician shall follow, subject to subsections (b), (e), and (k) of this section, a declaration:

- (1) That expresses a desire of the declarant that life-prolonging measures not be used to prolong the declarant's life if, as specified in the declaration as to any or all of the following:
 - a. The declarant has an incurable or irreversible condition that will result in the declarant's death within a relatively short period of time; or
 - b. The declarant becomes unconscious and, to a high degree of medical certainty, will never regain consciousness; or
 - c. The declarant suffers from advanced dementia or any other condition resulting in the substantial loss of cognitive ability and that loss, to a high degree of medical certainty, is not reversible.
- (2) That states that the declarant is aware that the declaration authorizes a physician to withhold or discontinue the life-prolonging measures; and

(3) That has been properly witnessed or notarized as provided for in the following provisions:

- ~~(3)~~ (a) Except as provided in G.S. 90-321.1, that 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 the declarant's 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, licensed health care providers who are paid employees of the attending physician, paid employees of a health facility in which the declarant is a patient, or paid employees of a nursing home or any adult 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; or

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

(d) Repealed by Session Laws 2007-502, s. 11(b), effective October 1, 2007.

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

ADVANCE DIRECTIVE FOR A NATURAL DEATH ("LIVING WILL")

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

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

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

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

*If you want to use this form, you must complete it, sign it, and have your signature witnessed by 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 consider giving a copy to your primary physician and/or a trusted relative, and should consider filing it with the Advanced Health Care Directive Registry maintained by the North Carolina Secretary of State: <http://www.nclifelinks.org/ahcdr/>*

My Desire for a Natural Death

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

1. When My Directives Apply

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

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

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

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

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

2. These are My Directives about Prolonging My Life:

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

NOTE: INITIAL ONLY IN ONE PLACE.

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

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

3. Exceptions - "Artificial Nutrition or Hydration"

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

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

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

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

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

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

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

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

4. I Wish to be Made as Comfortable as Possible

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

5. I Understand my Advance Directive

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

6. If I have an Available Health Care Agent

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

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

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

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

7. My Health Care Providers May Rely on this Directive

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

8. I Want this Directive to be Effective Anywhere

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

Box #1

If you elect to have your declaration witnessed, complete the following section:

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

Box #2

If you elect to have your declaration notarized, have the following section completed by a qualified notary public:

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: _____

(e) A declaration may be revoked by the declarant, in writing or in any manner by which the declarant is able to communicate the declarant's intent to revoke in a clear and consistent manner, without regard to the declarant's mental or physical condition. A health care provider shall have no liability for acting in accordance with a revoked declaration unless the provider has actual notice of the revocation. A health care agent may not revoke a declaration unless the health care power of attorney explicitly authorizes that revocation; however, a health care agent may exercise any authority explicitly given to the health care agent in a declaration. A guardian of the person of the declarant or general guardian may not revoke a declaration.

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

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

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

(i) Use of the statutory form prescribed in subsection (d1) of this section is an optional and nonexclusive method for creating a declaration and does not affect the use of other forms of a declaration, including previous statutory forms.

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

B.

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, including mental health 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 control. No conflict between these Chapters exists when either a health care power of attorney or a declaration provides that the declaration is subject to decisions of a health care agent. If no declaration has been executed by the principal as provided in G.S. 90-321 that expressly covers the principal's present condition and if the health care agent has been given the specific authority in a health care power of attorney to authorize the withholding or discontinuing of life-prolonging measures when the principal is in such condition, the measures may be withheld or discontinued as provided in the health care power of attorney upon the direction and under the supervision of the attending physician, as G.S. 90-322 shall not apply in such case. Nothing in this Article shall be construed to authorize any affirmative or deliberate act or omission to end life other than to permit the natural process of dying.

(d) This Article is intended and shall be construed to be consistent with the provisions of Part 3A of Article 16 of Chapter 130A of the General Statutes. In the event of a conflict between the provisions of this Article and Part 3A of Article 16 of Chapter 130A, the provisions of Part 3A of Article 16 of Chapter 130A control. (1991, c. 639, s. 1; 1993, c. 523, s. 1; 1998-198, s. 1; 1998-217, s. 53; 2007-502, s. 1; 2008-153, s. 4.)

§ 32A-16. Definitions.

The following definitions apply in this Article:

- (1) Disposition of remains. - The decision to bury or cremate human remains, as human remains are defined in G.S. 90-210.121, and, subject to G.S. 32A-19(b), arrangements relating to burial or cremation.
- (1a) Health care. - Any care, treatment, service, or procedure to maintain, diagnose, treat, or provide for the principal's physical or mental health or personal care and comfort including life-prolonging measures. "Health care" includes mental health treatment as defined in subdivision (8) of this section.
- (2) Health care agent. - The person appointed as a health care attorney-in-fact.
- (3) Health care power of attorney. - Except as provided in G.S. 32A-16.1, a written instrument that substantially meets the requirements of this Article, that is signed in the presence of two qualified witnesses, ~~and~~ or acknowledged before a notary public, pursuant to which an attorney-in-fact or agent is appointed to act for the principal in matters relating to the health care of the principal. The notary who takes the acknowledgement may but is not required to be a paid employee of the attending physician or mental health treatment provider, a paid employee of a health facility in which the principal is a patient, or a paid employee of a nursing home or any adult care home in which the principal resides.

- (4) Life-prolonging measures. - Medical procedures or interventions 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, including mechanical ventilation, dialysis, antibiotics, artificial nutrition and hydration, and similar forms of treatment. Life-prolonging measures do not include care necessary to provide comfort or to alleviate pain.
- (5) Principal. - The person making the health care power of attorney.
- (6) Qualified witness. - Except as provided in G.S. 32A-16.1, a witness in whose presence the principal has executed the health care power of attorney, who believes the principal to be of sound mind, and who states that he or she (i) is not related within the third degree to the principal nor to the principal's spouse, (ii) does not know nor have a reasonable expectation that he or she would be entitled to any portion of the estate of the principal upon the principal's death under any existing will or codicil of the principal or under the Intestate Succession Act as it then provides, (iii) is not the attending physician or mental health treatment provider of the principal, nor a licensed health care provider who is a paid employee of the attending physician or mental health treatment provider, nor a paid employee of a health facility in which the principal is a patient, nor a paid employee of a nursing home or any adult care home in which the principal resides, and (iv) does not have a claim against any portion of the estate of the principal at the time of the principal's execution of the health care power of attorney.
- (7) Advance instruction for mental health treatment or advance instruction. - As defined in G.S. 122C-72(1).
- (8) Mental health treatment. - The process of providing for the physical, emotional, psychological, and social needs of the principal for the principal's mental illness. "Mental health treatment" includes electroconvulsive treatment, treatment of mental illness with psychotropic medication, and admission to and retention in a facility for care or treatment of mental illness. (1991, c. 639, s. 1; 1998-198, s. 1; 1998-217, s. 53; 2005-351, s. 1; 2006-226, s. 32; 2007-502, s. 2; 2020-3, s. 4.10(a).)

§ 32A-16.1. Health care powers of attorney executed during state of emergency.

(a) The requirement of G.S. 32A-16(3) that a health care power of attorney be executed in the presence of two qualified witnesses **or notarized by a qualified notary public** shall be waived for all instruments executed on or after the effective date of this section and prior to termination of the state of emergency declared by Governor Roy Cooper in Executive Order No. 116, on March 10, 2020, as the same may be extended by any subsequent executive order, such that an instrument that is signed by the principal, properly acknowledged before a notary public, and otherwise executed in compliance with the provisions of this Article shall not be invalidated by the principal's failure to execute the health care power of attorney in the presence of two qualified witnesses.

(b) Health care powers of attorney executed without two qualified witnesses during the time period defined in subsection (a) of this section shall contain a short and plain statement indicating that the instrument was executed in accordance with the procedures of this section.

(c) This section shall expire at 12:01 A.M. on August 1, 2020; provided, however, all instruments made in accordance with this section and while this section is in effect shall remain effective and shall not need to be reaffirmed. (2020-3, s. 4.10(b).)

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

Any person having understanding and capacity to make and communicate health care decisions, who is 18 years of age or older, may make a health care power of attorney. (1991, c. 639, s. 1.)

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

Any competent person who is not engaged in providing health care to the principal for remuneration, and who is 18 years of age or older, may act as a health care agent. (1991, c. 639, s. 1.)

§ 32A-19. Extent of authority; limitations of authority.

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

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

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

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

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

(e) This Article shall not be construed to invalidate a power of attorney that authorizes an agent to make health care decisions for the principal, which was executed prior to October 1, 1991.

(f) A health care power of attorney does not limit any authority in Article 5 of Chapter 122C of the General Statutes either to take a person into custody or to admit, retain, or treat a person in a facility. (1991, c. 639, s. 1; 1998-198, s. 1; 1998-217, s. 53; 2007-502, s. 3.)

§ 32A-20. Effectiveness and duration; revocation.

(a) A health care power of attorney shall become effective when and if the physician or physicians or, in the case of mental health treatment, physician or eligible psychologist as defined in G.S. 122C-3(13d), designated by the principal determine in writing that the principal lacks sufficient understanding or capacity to make or communicate decisions relating to the health care of the principal, and shall continue in effect during the incapacity of the principal. The determination shall be made by the principal's attending physician or eligible psychologist if the physician or physicians or eligible psychologist designated by the principal is unavailable or is otherwise unable or unwilling to make this determination or if the principal failed to designate a physician or physicians or eligible psychologist to make this determination. A health care power of attorney may include a provision that, if the principal does not designate a physician for reasons based on his religious or moral beliefs as specified in the health care power of attorney, a person designated by the principal in the health care power of attorney may certify in writing, acknowledged before a notary public, that the principal lacks sufficient understanding or capacity to make or communicate

decisions relating to his health care. The person so designated must be a competent person 18 years of age or older, not engaged in providing health care to the principal for remuneration, and must be a person other than the health care agent. For purposes of exercising authority described in G.S. 32A-19(b), however, a health care power of attorney shall be effective following the death of the principal without regard to the principal's understanding or capacity when the principal was living. Nothing in this section shall be construed to prevent a principal from revoking a health care power of attorney.

(b) Except for purposes of exercising authority granted by a health care power of attorney with respect to anatomical gifts, autopsy, or disposition of remains as provided in G.S. 32A-19(b), a health care power of attorney is revoked by the death of the principal. A health care power of attorney may be revoked by the principal at any time, so long as the principal is capable of making and communicating health care decisions. The principal may exercise this right of revocation by executing and acknowledging an instrument of revocation, by executing and acknowledging a subsequent health care power of attorney, or in any other manner by which the principal is able to communicate an intent to revoke. This revocation becomes effective only upon communication by the principal to each health care agent named in the revoked health care power of attorney and to the principal's attending physician or eligible psychologist.

(c) The authority of a health care agent who is the spouse of the principal shall be revoked upon the entry by a court of a decree of divorce or separation between the principal and the health care agent; provided that if the health care power of attorney designates a successor health care agent, the successor shall serve as the health care agent, and the health care power of attorney shall not be revoked. (1991, c. 639, s. 1; 1993, c. 523, s. 2; 1998-198, s. 1; 1998-217, s. 53; 2005-351, s. 2; 2006-226, s. 32; 2011-344, s. 10; 2012-18, s. 3.11.)

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

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

(b) If all health care agents named in the instrument or substituted, die or for any reason fail or refuse to act, and all methods of substitution have been exhausted, the health care power of attorney shall cease to be effective. (1991, c. 639, s. 1.)

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

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

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

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

(d) A health care power of attorney may be combined with or incorporated into a general power of attorney which is executed in accordance with the requirements of this Article. (1991, c. 639, s. 1; 1998-198, s. 1; 1998-217, s. 53; 2007-502, s. 4.)

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

The provisions of Article 2 of this Chapter shall not be applicable to a health care power of attorney executed pursuant to this Article. (1991, c. 639, s. 1.)

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

(a) Any physician or other health care provider involved in the medical care of the principal may rely upon the authority of the health care agent contained in a signed and acknowledged health care power of attorney in the absence of actual knowledge of revocation of the health care power of attorney. The physician or health care provider may rely upon a copy of the health care power of attorney obtained from the Advance Health Care Directive Registry maintained by the Secretary of State pursuant to Article 21 of Chapter 130A of the General Statutes to the same extent that the individual may rely upon the original document.

(b) All health care decisions made by a health care agent pursuant to a health care power of attorney during any period following a determination that the principal lacks understanding or capacity to make or communicate health care decisions shall have the same effect as if the principal were not incapacitated and were present and acting on his or her own behalf. Any health care provider relying in good faith on the authority of a health care agent shall be protected to the full extent of the power conferred upon the health care agent, and no person so relying on the authority of the health care agent shall be liable, by reason of his reliance, for actions taken pursuant to a decision of the health care agent.

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

(d) The protections of this section extend to any valid health care power of attorney, including a document valid under G.S. 32A-27; these protections are not limited to health care powers of attorney prepared in accordance with the statutory form provided in G.S. 32A-25.1, or to health care powers of attorney filed with the Advance Health Care Directive Registry maintained by the Secretary of State. A health care provider may rely in good faith on an oral or written statement by legal counsel that a document appears to meet applicable statutory requirements for a health care power of attorney. These protections also extend to a document executed in another jurisdiction that is valid as a health care power of attorney under G.S. 32A-27. A health care provider shall have no liability for acting in accordance with a revoked health care power of attorney unless that provider has actual notice of the revocation. (1991, c. 639, s. 1; 2001-455, s. 3; 2001-513, s. 30(b); 2007-502, ss. 5(a), (b).)

§ 32A-25: Repealed by Session Laws 2007-502, s. 6(a), effective October 1, 2007.

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

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

HEALTH CARE POWER OF ATTORNEY

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

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

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

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

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

*If you want to use this form, you must complete it, sign it, and have your signature witnessed by two qualified witnesses **and or** 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/or** 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: _____

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

2. Effectiveness of Appointment.

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

1. _____ (Physician)

2. _____ (Physician)

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

3. Revocation.

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

4. General Statement of Authority Granted.

Subject to any restrictions set forth in Section 5 below, I grant to my health care agent full power and authority to make and carry out all health care decisions for me. These decisions include, but are not limited to:

- A. Requesting, reviewing, and receiving 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. Employing or discharging my health care providers.
- C. Consenting to and authorizing my admission to and discharge from a hospital, nursing or convalescent home, hospice, long-term care facility, or other health care facility.
- D. Consenting to and authorizing my admission to and retention in a facility for the care or treatment of mental illness.
- E. Consenting to and authorizing the administration of medications for mental health treatment and electroconvulsive treatment (ECT) commonly referred to as "shock treatment."

- F. Giving consent for, withdrawing consent for, or withholding 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, podiatrist, or other health care provider. This authorization specifically includes the power to consent to measures for relief of pain.
- G. Authorizing the withholding or withdrawal of life-prolonging measures.
- H. Providing my medical information at the request of any individual acting as my attorney-in-fact under a durable power of attorney or as a Trustee or successor Trustee under any Trust Agreement of which I am a Grantor or Trustee, or at the request of any other individual whom my health care agent believes should have such information. I desire that such information be provided whenever it would expedite the prompt and proper handling of my affairs or the affairs of any person or entity for which I have some responsibility. In addition, I authorize my health care agent to take any and all legal steps necessary to ensure compliance with my instructions providing access to my protected health information. Such steps shall include resorting to any and all legal procedures in and out of courts as may be necessary to enforce my rights under the law and shall include attempting to recover attorneys' fees against anyone who does not comply with this health care power of attorney.
- I. To the extent I have not already made valid and enforceable arrangements during my lifetime that have not been revoked, exercising any right I may have to authorize an autopsy or direct the disposition of my remains.
- J. Taking any lawful actions that may be necessary to carry out these decisions, including, but not limited to: (i) signing, executing, delivering, and acknowledging any agreement, release, authorization, or other document that may be necessary, desirable, convenient, or proper in order to exercise and carry out any of these powers; (ii) granting releases of liability to medical providers or others; and (iii) incurring reasonable costs on my behalf related to exercising these powers, provided that this health care power of attorney shall not give my health care agent general authority over my property or financial affairs.

5. Special Provisions and Limitations.

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

- 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)

(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 mental health treatment, or instructions to refuse any specific types of treatment that are unacceptable to you.)

NOTE: DO NOT initial unless you insert a limitation.

(Initial) D. Advance Instruction for Mental Health Treatment. (Notice: This health care power of attorney may incorporate or be combined with an advance instruction for mental health treatment, executed in accordance with Part 2 of Article 3 of Chapter 122C of the General Statutes, which you may use to state your instructions regarding mental health treatment in the event you lack capacity to make or communicate mental health treatment decisions. Because your health care agent's decisions must be consistent with any statements you have expressed in an advance instruction, you should indicate here whether you have executed an advance instruction for mental health treatment):

NOTE: DO NOT initial unless you insert a limitation.

(Initial)

E. Autopsy and Disposition of Remains. In exercising the authority to make decisions regarding autopsy and disposition of remains on my behalf, the authority of my health care agent is subject to the following special provisions and limitations. (Here you may include any specific limitations you deem appropriate such as: limiting the grant of authority and the scope of authority, or instructions regarding burial or cremation):

NOTE: DO NOT initial unless you insert a limitation.

6. Organ Donation.

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

(Initial)

donate any needed organs or parts; or

(Initial)

donate only the following organs or parts:

NOTE: DO NOT INITIAL BOTH BLOCKS ABOVE.

(Initial)

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.)

NOTE: DO NOT initial unless you insert a limitation.

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

7. Guardianship Provision.

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

8. Reliance of Third Parties on Health Care Agent.

- A. No person who relies in good faith upon the authority of or any representations by my health care agent shall be liable to me, my estate, my heirs, successors, assigns, or personal representatives, for actions or omissions in reliance on that authority or those representations.
- B. The powers conferred on my health care agent by this document may be exercised by my health care agent alone, and my health care agent's signature or action taken under the authority granted in this document may be accepted by persons as fully authorized by me and with the same force and effect as if I were personally present, competent, and acting on my own behalf. All acts performed in good faith by my health care agent pursuant to this power of attorney are done with my consent and shall have the same validity and effect as if I were present and exercised the powers myself, and shall inure to the benefit of and bind me, my estate, my heirs, successors, assigns, and personal representatives. The authority of my health care agent pursuant to this power of attorney shall be superior to and binding upon my family, relatives, friends, and others.

9. Miscellaneous Provisions.

- A. **Revocation of Prior Powers of Attorney.** I revoke any prior health care power of attorney. The preceding sentence is not intended to revoke any general powers of attorney, some of the provisions of which may relate to health care; however, this power of attorney shall take precedence over any health care provisions in any valid general power of attorney I have not revoked.
- B. **Jurisdiction, Severability, and Durability.** This Health Care Power of Attorney is intended to be valid in any jurisdiction in which it is presented. The powers delegated under this power of attorney are severable, so that the invalidity of one or more powers shall not affect any others. This power of attorney shall not be affected or revoked by my incapacity or mental incompetence.
- C. **Health Care Agent Not Liable.** My health care agent and my health care agent's estate, heirs, successors, and assigns are hereby released and forever discharged by me, my estate, my heirs, successors, assigns, and personal representatives from all liability and from all claims or demands of all kinds arising out of my health care agent's acts or omissions, except for my health care agent's willful misconduct or gross negligence.
- D. **No Civil or Criminal Liability.** No act or omission of my health care agent, or of any other person, entity, institution, or facility acting in good faith in reliance on the authority of my health care agent pursuant to this Health Care Power of Attorney shall be considered suicide, nor the cause of my death for any civil or criminal purposes, nor shall it be considered unprofessional conduct or as lack of professional competence. Any person, entity, institution, or facility against whom criminal or civil liability is asserted because of conduct authorized by this Health Care Power of Attorney may interpose this document as a defense.
- E. **Reimbursement.** My health care agent shall be entitled to reimbursement for all reasonable expenses incurred as a result of carrying out any provision of this directive.

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

This the _____ day of _____, 20_____.

_____(SEAL)

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

Box #1

If you elect to have your declaration witnessed, complete the following section:

Date: _____ Witness: _____

Date: _____ Witness: _____

_____ COUNTY, _____ STATE

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

(type/print name of witness)

(type/print name of witness)

Box #2

If you elect to have your declaration notarized, have the following section completed by a qualified notary public:

Date: _____
(Official Seal)

Signature of Notary Public

_____, Notary Public
Printed or typed name

My commission expires: _____

(b) Use of the statutory form prescribed in this section is an optional and nonexclusive method for creating a health care power of attorney and does not affect the use of other forms of health care powers of attorney, including previous statutory forms. (1991, c. 639, s. 1; 1993, c. 523, s. 3; 1998-198, s. 1; 1998-217, s. 53; 2005-351, s. 3; 2006-226, s. 32; 2007-502, s. 6(b); 2008-187, s. 37(a).)

§ 32A-26. Health care power of attorney and declaration of desire for natural death.

A health care power of attorney meeting the requirements of this Article may be combined with or incorporated into a Declaration of A Desire For A Natural Death which meets the requirements of Article 23 of Chapter 90 of the General Statutes. (1991, c. 639, s. 1.)

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

Notwithstanding G.S. 32A-16(3), a health care power of attorney or similar document executed in a jurisdiction other than North Carolina shall be valid as a health care power of attorney in this State if it appears to have been executed in accordance with the applicable requirements of that jurisdiction or of this State. (2007-502, s. 7.)