

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

(a) If the attending physician determines, to a high degree of medical certainty, that a person lacks capacity to make or communicate health care decisions and the person will never regain that capacity, and:

- (1) Repealed by Session Laws 2007-502, s. 12, effective October 1, 2007.
- (1a) That the person:
 - a. Has an incurable or irreversible condition that will result in the person's death within a relatively short period of time; or
 - b. Is unconscious and, to a high degree of medical certainty, will never regain consciousness; and
- (2) There is confirmation of the person's present condition as set out above in this subsection, in writing by a physician other than the attending physician; and
- (3) A vital bodily function of the person could be restored or is being sustained by life-prolonging measures;
- (4) Repealed by Session Laws 2007-502, s. 12, effective October 1, 2007.

then, life-prolonging measures may be withheld or discontinued in accordance with subsection (b) of this section.

(b) If a person's condition has been determined to meet the conditions set forth in subsection (a) of this section and no instrument has been executed as provided in G.S. 90-321, then life-prolonging measures may be withheld or discontinued upon the direction and under the supervision of the attending physician with the concurrence of the following persons, in the order indicated:

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

If none of the above is reasonably available then at the discretion of the attending physician the life-prolonging measures may be withheld or discontinued upon the direction and under the supervision of the attending physician.

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

(d) The withholding or discontinuance of such life-prolonging measures shall not be considered the cause of death for any civil or criminal purpose nor shall it be considered unprofessional conduct. 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. (1977, c. 815; 1979, c. 715, s. 2; 1981, c. 848, s. 5; 1983, c. 313, ss. 2-4; c. 768, s. 5.1; 1991, c. 639, s. 4; 1993, c. 553, s. 29; 2007-502, s. 12; 2017-153, s. 2.6; 2018-142, s. 35(b).)