

GENERAL ASSEMBLY OF NORTH CAROLINA  
1991 SESSION

CHAPTER 639  
HOUSE BILL 821

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

The General Assembly of North Carolina enacts:

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

"ARTICLE 3.

"Health Care Powers of Attorney.

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

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

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

(c) This Article is intended and shall be construed to be consistent with the provisions of Article 23 of Chapter 90 of the General Statutes provided that in the event of a conflict between the provisions of this Article and Article 23 of Chapter 90, the provisions of Article 23 of Chapter 90 shall control.

**"§ 32A-16. Definitions.**

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

- (1) 'Health care' means 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-sustaining procedures.
- (2) 'Health care agent' means the person appointed as a health care attorney-in-fact.
- (3) 'Health care power of attorney' means a written instrument, signed in the presence of two qualified witnesses, and 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, and which substantially meets the requirements of this Article.

- (4) 'Life-sustaining procedures' are those forms of care or treatment which only serve to artificially prolong the dying process and may include mechanical ventilation, dialysis, antibiotics, artificial nutrition and hydration, and other forms of treatment which sustain, restore or supplant vital bodily functions, but do not include care necessary to provide comfort or to alleviate pain.
- (5) 'Principal' means the person making the health care power of attorney.
- (6) 'Qualified witness' means 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 (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 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 of the principal, nor an employee of the attending physician, nor an employee of a health facility in which the principal is a patient, nor an employee of a nursing home or any group-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.

**"§ 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.

**"§ 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.

**"§ 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 understanding and capacity to make and communicate health care decisions, including without limitation, the power to authorize withholding or discontinuing life-sustaining procedures. 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.

(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.

(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 act 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 the effective date of this act.

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

(a) A health care power of attorney shall become effective when and if the physician or physicians 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 if the physician or physicians designated by the principal is unavailable or is otherwise unable or unwilling to make such 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.

(b) A health care power of attorney shall be revoked by the death of the principal and 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 such 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 his or her intent to revoke. Such revocation shall become 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.

(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.

**"§ 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.

**"§ 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 health care power of attorney shall cease to be effective upon the appointment and qualification of the guardian.

(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.

**"§ 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.

**"§ 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.

(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-sustaining procedures 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.

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

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:

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

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 have to use due care to act in your best interests and in accordance with this document. Because the powers granted by this document are broad and sweeping, you should discuss your wishes concerning life-sustaining procedures with your health care agent.

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

1. Designation of health care agent.

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

Name:.....

Home Address:.....

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

as my health care attorney-in-fact (herein referred to as my "health care agent") 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.

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

A. Name:.....

Home Address:.....

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

B. Name:.....

Home Address:.....

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

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

2. Effectiveness of appointment.

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

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

.....  
.....  
.....  
.....

3. General statement of authority granted.

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

- A. To request, review, and receive any information, verbal or written, regarding my physical or mental health, including, but not limited to, medical and hospital records, and to consent to the disclosure of this information;
- B. To employ or discharge my health care providers;
- C. To consent to and authorize my admission to and discharge from a hospital, nursing or convalescent home, or other institution;
- D. To give consent for, to withdraw consent for, or to withhold consent for, X ray, anesthesia, medication, surgery, and all other diagnostic and treatment procedures ordered by or under the authorization of a licensed physician, dentist, or podiatrist. This authorization specifically includes the power to consent to measures for relief of pain.
- E. To authorize the withholding or withdrawal of life-sustaining procedures when and if my physician determines that I am terminally ill, permanently in a coma, suffer severe dementia, or am in a persistent vegetative state. Life-sustaining procedures are those forms of medical care that only serve to artificially prolong the dying process and may include mechanical ventilation, dialysis, antibiotics, artificial nutrition and hydration, and other forms of medical treatment which sustain, restore or supplant vital bodily functions. Life-sustaining procedures do not include care necessary to provide comfort or alleviate pain.

I DESIRE THAT MY LIFE NOT BE PROLONGED BY LIFE-SUSTAINING PROCEDURES IF I AM TERMINALLY ILL, PERMANENTLY IN A COMA, SUFFER SEVERE

DEMENTIA, OR AM IN A PERSISTENT VEGETATIVE STATE.

- F. To exercise any right I may have to make a disposition of any part or all of my body for medical purposes, to donate my organs, to authorize an autopsy, and to direct the disposition of my remains.
- G. To take any lawful actions that may be necessary to carry out these decisions, including the granting of releases of liability to medical providers.

4. Special provisions and limitations.

(Notice: The above grant of power 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. If you wish to limit the scope of your health care agent's powers, you may do so in this section.)

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 and limitations (Here you may include any specific limitations you deem appropriate such as: your own definition of when life-sustaining treatment should be withheld or discontinued, or instructions to refuse any specific types of treatment that are inconsistent with your religious beliefs, or unacceptable to you for any other reason.):

.....  
.....  
.....  
.....

5. Guardianship provision.

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

6. 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 by my health care agent.
- 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 act 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.

7. Miscellaneous provisions.

- A. I revoke any prior health care power of attorney.
- B. My health care agent shall be entitled to sign, execute, deliver, and acknowledge any contract or other document that may be necessary, desirable, convenient, or proper in order to exercise and carry out any of the powers described in this document and to incur reasonable costs on my behalf incident to the exercise of these powers; provided, however, that except as shall be necessary in order to exercise the powers described in this document relating to my health care, my health care agent shall not have any authority over my property or financial affairs.
- C. 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, and assigns and personal representatives from all liability and from all claims or demands of all kinds arising out of the acts or omissions of my health care agent pursuant to this document, except for willful misconduct or gross negligence.
- D. No act or omission of my health care agent, or of any other person, 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, 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.

8. Signature of principal.

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

.....  
Signature of Principal

.....  
Date

9. Signatures of Witnesses.

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



attending physician, nor an employee of the health facility in which the principal is a patient, nor an employee of a nursing home or any group care home where the principal resides. I further state that I do not have any claim against the principal.

Witness:.....Date:.....

Witness:.....Date:.....

STATE OF NORTH CAROLINA

COUNTY OF.....

CERTIFICATE

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

I further certify that.....and....., witnesses, appeared before me and swore that they witnessed.....sign the attached health care power of attorney, believing him/her to be of sound mind; and also swore that at the time they witnessed the signing (i) they were not related within the third degree to him/her or his/her spouse, and (ii) they did not know nor have a reasonable expectation that they would be entitled to any portion of his/her estate upon his/her death under any will or codicil thereto then existing or under the Intestate Succession Act as it provided at that time, and (iii) they were not a physician attending him/her, nor an employee of an attending physician, nor an employee of a health facility in which he/she was a patient, nor an employee of a nursing home or any group-care home in which he/she resided, and (iv) they did not have a claim against him/her. I further certify that I am satisfied as to the genuineness and due execution of the instrument.

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

.....  
Notary Public

My Commission Expires:

.....

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

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

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

.....'

**"§ 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."

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

"(9) Personal Relationships and Affairs. – To do all acts necessary for maintaining the customary standard of living of the principal, the spouse and children, and other dependents of the principal; to provide medical, dental and surgical care, hospitalization and custodial care for the principal, the spouse, and children, and other dependents of the principal; to continue whatever provision has been made by the principal, for the principal, the spouse, and children, and other dependents of the principal, with respect to automobiles, or other means of transportation; to continue whatever charge accounts have been operated by the principal, for the convenience of the principal, the spouse, and children, and other dependents of the principal, to open such new accounts as the attorney-in-fact shall think to be desirable for the accomplishment of any of the purposes enumerated in this section, and to pay the items charged on such accounts by any person authorized or permitted by the principal or the attorney-in-fact to make such charges; to continue the discharge of any services or duties assumed by the principal, to any parent, relative or friend of the principal; to continue payments incidental to the membership or affiliation of the principal in any church, club, society, order or other organization, or to continue contributions thereto.

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

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

**"§ 90-321. Right to a natural death.**

(a) As used in this Article the term:

- (1) 'Declarant' means a person who has signed a declaration in accordance with subsection (c);
- (2) 'Extraordinary means' is defined as any medical procedure or intervention which in the judgment of the attending physician would serve only to postpone artificially the moment of death by sustaining, restoring, or supplanting a vital function;

- (3) 'Physician' means any person licensed to practice medicine under Article 1 of Chapter 90 of the laws of the State of North Carolina-  
Carolina;
- (4) 'Persistent vegetative state' is a medical condition whereby in the judgment of the attending physician the patient suffers from a sustained complete loss of self-aware cognition and, without the use of extraordinary means or artificial nutrition or hydration, will succumb to death within a short period of time.

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

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

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

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

- (1) Which expresses a desire of the declarant that ~~no~~-extraordinary ~~means~~ means or artificial nutrition or hydration not be used to prolong his life if his condition is determined to be terminal and ~~incurable;~~ incurable, or if the declarant is diagnosed as being in a persistent vegetative state; and
- (2) Which states that the declarant is aware that the declaration authorizes a physician to withhold or discontinue the extraordinary ~~means;~~ means or artificial nutrition or hydration; and
- (3) Which has been signed by the declarant in the presence of two witnesses who believe the declarant to be of sound mind and who state that they (i) are not related within the third degree to the declarant or to the declarant's spouse, (ii) do not know or have a reasonable expectation that they would be entitled to any portion of the estate of the declarant upon his death under any will of the declarant or codicil thereto then existing or under the Intestate Succession Act as it then provides, (iii) are not the attending physician, or an employee of the attending physician, or an employee of a health facility in which the declarant is a patient, or an employee of a nursing home or any group-care home in which the declarant resides, and (iv) do not have a claim

against any portion of the estate of the declarant at the time of the declaration; and

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

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

'Declaration Of A Desire For A Natural Death'

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

(Initial any of the following, as desired):

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

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

..... In addition to withholding or discontinuing extraordinary means if such means are necessary, my physician may withhold or discontinue either artificial nutrition or hydration, or both.

'..... If my physician determines that I am in a persistent vegetative state, I authorize the following:

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

..... In addition to withholding or discontinuing extraordinary means if such means are necessary, my physician may withhold or discontinue either artificial nutrition or hydration, or both.

'This the .....day of.....

Signature.....

'I hereby state that the declarant,....., being of sound mind signed the above declaration in my presence and that I am not related to the declarant by blood or marriage and that I do not know or have a reasonable expectation that I would 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 or an employee of the declarant's attending physician, or an employee of a health facility in which the declarant is a patient or an employee of a nursing home or any group-care home where the declarant resides. I further state that I do not now have any claim against the declarant.

Witness .....  
Witness .....

The clerk or the assistant clerk, or a notary public may, upon proper proof, certify the declaration as follows:

'Certificate'

I, ....., Clerk (Assistant Clerk) of Superior Court or Notary Public (circle one as appropriate) for .....County hereby certify that....., the declarant, appeared before me and swore to me and to the witnesses in my presence that this instrument is his Declaration Of A Desire For A Natural Death, and that he had willingly and voluntarily made and executed it as his free act and deed for the purposes expressed in it.

I further certify that ..... and ....., witnesses, appeared before me and swore that they witnessed ....., declarant, sign the attached declaration, believing him to be of sound mind; and also swore that at the time they witnessed the declaration (i) they were not related within the third degree to the declarant or to the declarant's spouse, and (ii) they did 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 provides at that time, and (iii) they were not a physician attending the declarant or an employee of an attending physician or an employee of a health facility in which the declarant was a patient or an employee of a nursing home or any group-care home in which the declarant resided, and (iv) they did not have a claim against the declarant. I further certify that I am satisfied as to the genuineness and due execution of the declaration.

'This the ..... day of .....

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

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

- (1) Upon the testimony of the two witnesses; or
- (2) If the testimony of only one witness is available, then
  - a. Upon the testimony of such witness, and
  - b. Upon proof of the handwriting of the witness who is dead or whose testimony is otherwise unavailable, and
  - c. Upon proof of the handwriting of the declarant, unless he signed by his mark; or upon proof of such other circumstances

as will satisfy the clerk or assistant clerk of the superior court, or a notary public as to the genuineness and due execution of the declaration.

- (3) If the testimony of none of the witnesses is available, such declaration may be proved by the clerk or assistant clerk, or a notary public
  - a. Upon proof of the handwriting of the two witnesses whose testimony is unavailable, and
  - b. Upon compliance with paragraph c of subdivision (2) above.

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

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

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

'Certificate'

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

'This the ..... day of ....., .....

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

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

(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 extraordinary means and/or the withholding or discontinuance of either artificial nutrition or hydration, or both 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. 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.

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

(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 proved in accordance with the provisions of this section."

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

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

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

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

a. Terminal; and

b. Incurable; ~~and or~~

c. ~~Irreversible; and~~ Diagnosed as a persistent vegetative state; 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 function of the person could be restored by extraordinary means or a vital function of the person is being sustained by extraordinary means; or

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

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

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

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

In the General Assembly read three times and ratified this the 11th day of July, 1991.

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James C. Gardner  
President of the Senate

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Daniel Blue, Jr.  
Speaker of the House of Representatives